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Singapore-Malaysia Relations: Beyond Realism

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Singapore merged with Malaya, Sabah and Sarawak to form the Federation of Malaysia in 1963. However, this political union proved to be short-lived as Singapore was ousted from the Federation in 1965 due to political and ethnic differences. This failed political union, and the resulting stigma of separation has continued to cast a shadow over Singapore-Malaysia's bilateral ties. Furthermore, due to the geographical proximity between these two states, bilateral problems are prone to exaggeration by both sides, often a case of "virtuous self and the stereotypical other" (Ganesan, 2005, p. 58) Even though problems in bilateral relations tend to be subjected to hyperbolic treatment for domestic political purposes, it is important to be aware that serious problems do exist between Singapore and Malaysia. For instance, both states have outstanding disputes over substantive issues such as the sovereignty of Pedra Branca, a small but strategic island off the eastern entrance of the Straits of Singapore, and the supply of water from Malaysia to Singapore. Hence, the existence of real and perceived problems between Singapore and Malaysia has resulted in realism, which focuses mainly on the adversarial aspects of international relations, establishing a near-monopoly on the analysis of the Republic's foreign policy towards Malaysia (Chan, 1969, Ganesan, 2005, Huxley, 1991, Leifer, 1987, Buszynski, 1985). Although realism has been the preferred theory thus far, Alan Chong (2006), a Singaporean academic, argues that realism is unable to fully explain Singapore's foreign policy output. Therefore, he puts forward the concept of "abridged realism" so as to take into account the liberal and associational aspects present in Singapore's foreign policy output overlooked by existing realist literature. However, despite recognising the limitations of the realist approach, he is, nevertheless, still working within the realist paradigm, one that he recognises to be problematic. Furthermore, by choosing to work within the realist framework, the emphasis is still placed on the adversarial aspects of Singapore's foreign policy, and does not constitute a significant departure from current scholarship.

While adversarial aspects are indeed present, this paper argues that a closer examination of the resolution of the sovereignty dispute over Pedra Branca, and the genesis of the dispute over the supply of water from Malaysia to Singapore will demonstrate that associational aspects are present, evidenced by how both states handle these two conflicts. A well-rounded analysis of Singapore's foreign policy has to take into account the associational aspects that have been relegated to the sidelines by realist literature. Therefore, this paper posits that the English School theory, which Martin Wight advocated to be the *via media* between realism and liberalism (Wight and Porter, 1991, p. 91), presents itself to be a good candidate to address the existing literature's lacuna.

Given the prevailing literature's emphasis on the adversarial aspects, this paper, for purposes of brevity, focuses primarily on the associational aspects. To support the use of the English School theory in this context, this paper argues that Singapore and

Malaysia have a special relationship that allows their interaction to take on the form of international society. As a result, they are able to handle these two disputes through institutions such as international law, defined here as “a body of rules which binds states ... in world politics in their relations with one another and is considered to have the status of law” (Bull, 1977, p. 127). Furthermore, this paper also argues that Singapore and Malaysia’s handling of the Pedra Branca and water disputes reflect their joint commitment to honouring the principles of “life, truth and property” (Bull, 1977, pp. 4-5), which Bull argues to be the “elementary or primary goals of modern international society” (Bull, 1977, p. 19). Since their actions are consistent with the tenets of international society, the use of the English School theory in this context is appropriate.

Realism and its Inadequacies

Realism is arguably the most dominant theory of international relations. As such, it is not surprising that the body of scholarship on Southeast Asian international relations is also dominated by realism (Huxley, 1996). This theory argues that sovereign states are the primary actors within the anarchical international system. This system is anarchical because no overarching authority exists that has universal control and authority over the sovereign states. Within the realist paradigm, states continually compete against each other to maximise their self-interests.

From the realist perspective, it is expected that in the case of Singapore’s relations with almost any other states, the geographically larger and more populous state with superior natural resources will be the preponderant power, and Singapore as the smaller state will be expected to be in an inferior position. However, this is not the case in Singapore-Malaysia’s relations; both states have expressly chosen to base their interaction on international law as evidenced by the two case studies presented here, which attest to the strength of the associational aspects that exists between the two states which realism overlooks. Likewise, Leifer also argues that realism’s validity in explaining Singapore’s foreign policy is overstated. This is because Singapore’s political culture is one “which is informed by a condition and consciousness of vulnerability...[and] the *rhetoric* [emphasis added] of government registers a belief in the premises of the realist paradigm in International Relations, whereby states are obliged to fend for themselves as best as they can in an ungoverned and hostile world” (Leifer, 2000, p. 15). Leifer understands the distinction between words and deeds, which Rajaratnam, Singapore’s inaugural foreign minister, emphasised as early as 1965:

I would first like to state that when we come to talk about the foreign policy of a country, there are two senses in which we can do so. We can identify its foreign policy by the statements of principles and objectives propounded by the leaders of a country...Then there is another sense in which we can talk of a foreign policy, in which we can abstract it from the concrete decisions and actions taken by a country on specific international issues...In other words, there is a foreign policy of words of principles, and there is a foreign policy of deeds. For practical reasons, the foreign policy of deeds is a more reliable guide to the intentions of a country than its declared and invariably reassuring principles (Kwa, 2006, p. 21).

Existing realist literature on Singapore-Malaysia’s relations has tended to focus on the words of the two governments, and not the actual deeds of the two governments. A more accurate reading requires an analysis of the deeds of both governments, which is the approach this paper adopts, and is so doing, also establishes the credence to the use of the English School theory to analyse Singapore-Malaysia’s relations.

English School theory

The label 'English School' was popularised in the 1970s to categorise a group of British or British-influenced political theorists such as Hedley Bull, Martin Wight and C.A.W. Manning who focus on the concept of international society in the study of International Relations. Hedley Bull defines an international society of states to exist:

...when a group of states, conscious of certain common interests and common values form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions (1977, p. 16).

From the above definition, this paper purports that the "common set of rules" Bull was alluding to manifests itself most evidently in the form of international law, which is essentially a common code of conduct among states, and is central to the working of international society.

The primary argument of the first generation of English School theorists like Hedley Bull is that despite the anarchical structure of the international system, there is still a high degree of order present as states do observe international law. This indicates that associational aspects in international relations are present but are often overlooked by realism. Likewise, this neglect is also applicable to Singapore's foreign policy towards Malaysia.

Thomas Hobbes, the quintessential realist, argued that the term "international law" was a misnomer. This was because there is no universal sovereign in international politics and "where there is no common power, there is no law" (1947, p. 83). However, a closer examination of Singapore's bilateral relations with Malaysia indicates that Hobbes' observation is not valid since international law regulates much of their interaction. Even though no common power exists to compel them to adhere to this particular set of laws, both states have come to a mutual understanding that their actions should be based on international law as evidenced by their handling of the dispute over Pedra Branca's sovereignty and the water supply issue. This perceived anomaly can be easily explained by the English School theory. From the English School perspective, functional or utilitarian considerations, rather than moral or ethical considerations, are why states observe common institutions like international law, which distinguishes it from both realism and liberalism, which are prone to seeing the world in terms of power and ethics respectively (Vincent, 1985).

States do not obey international law because it is in their nature to do so. However, this should not undermine the general observation that most still observe it. Even when their actions are not in accordance with international law, recalcitrant states still tend to justify their actions with reference to the perceived set of norms, values, and rules that should govern their behaviour. This affirms the importance states attach to international law. As such, R.J. Vincent argues that the general adherence to international law "[provides] evidence for the existence of [international society], not the reason for its existence" (1985, p. 213). Furthermore, international law is not an abstract concept; it "can only exist within a social framework...Where there is law, there must be a society within which it is operative" (Zimmern, 1938, p. 12). As Singapore and Malaysia base their interactions based upon international law, it can then be inferred with a high degree of certainty that an international society does exist between them, thereby providing *prima facie* evidence that using the English School theory is appropriate in this context.

Singapore's Foreign Policy towards Malaysia and the English School theory

In order to analyse Singapore's foreign policy towards Malaysia using the English School theory, it must meet a number of conditions. Firstly, the interaction between Singapore and Malaysia must conform to that of an international society, the basic theoretical unit of the English School. The most straightforward way to establish the argument's validity is to prove that a common culture exists between Singapore and Malaysia (Bull, 1977). A common culture is important because it facilitates the formation of international society as it makes for "easier communication and closer awareness and understanding" (Bull, 1977, p. 16). Secondly, a common culture can also "facilitate the definition of common rules and the evolution of common institutions" (Bull, 1977, p. 16).

A credible test to determine if the English School theory lends itself well to analysing Singapore's foreign policy towards Malaysia is to examine the conflict resolution process between these two states. The conflict resolution process is important because it will be a good gauge to determine if they subscribe to the principles of "life, truth and property", basic goals of international society. Unlike existing literature, this paper focuses on how the disputes over sovereignty and natural resources between Singapore and Malaysia are dealt with, and not that these disputes are present. These two issues are expressly chosen because disputes over sovereignty and natural resources are associated with high politics, and are common causes of armed conflict between states. By subjecting the English School theory to challenging cases like these would deflect criticisms that the theory's relevance is established through an examination of issues that are peripheral, and not central to International Relations.

Special Relationship: Basis of Common Culture

The term "special relationship" is originally used to describe the bilateral relations between the United Kingdom and the United States since 1940. Linguistic and cultural similarities coupled with close historical links between these two states formed the basis of this special relationship. Despite the close links between the two states, as evidenced by the United States' assistance to the United Kingdom in the form of the Lend-Lease Act, Marshall Plan, and political support during the Falklands conflict against Argentina, and likewise, strong British support for the American war effort in Iraq, bilateral relations between them were also sometimes fraught with difficulties. For example, President Dwight D. Eisenhower did not support Prime Minister Anthony Eden's actions in the Suez; Prime Minister Harold Wilson did not accede to President Lyndon Johnson's request for military assistance during the Indochina conflict. The important issue to note is that even within the context of a special relationship between very close allies such as the United Kingdom and the United States, problems and differences remain.

The state of the relationship between Singapore and Malaysia is no different. Although Singapore and Malaysia do share a common history and have very close links, it is inevitable that there would always be a certain degree of tension and friction between them. Abdullah Badawi, in his then capacity as Malaysia's Foreign Minister, made a valid point in 1990:

You may ask why Malaysians are so sensitive. Perhaps, even emotional about what happens in Singapore. After all, Malaysia also shares a common border with Thailand. Yet the Malaysians do not get uptight or publicly emotional about the fate of Malays in Southern Thailand and about the American presence in that country. It is a fact that relations between Malaysia and Singapore have been underlined by a certain degree of competitiveness, tension and sometimes, even hostility (1990, p. 10).

Apart from geographical proximity, Singapore, unlike Thailand, is always “the yardstick against which [Malaysia is] measured against” (Badawi, 1990, p. 15), which also increases mutual antagonism between the two states. Likewise, Lee Hsien Loong, in his former capacity as Minister of Trade and Industry and Second Minister for Defence, also observed that disputes are bound to occur even between states with strong bilateral relations such as Singapore and Malaysia. He explained that: It is not possible to avoid all such issues between two close neighbours. But such controversies should be treated as differences between intimate friends. They should not jeopardise fundamentals...With goodwill and good sense on both sides, any difficulty can be smoothed over, and given time any unintentional damage done to relations can be repaired (Lee, 1988).

He was aware that despite the presence of differences between these two states, it was also very important to not only focus on the adversarial aspects and in so doing, to overlook the associational aspects. He reasoned that the political leaders from both sides had:

...gone through many crises together, including the trauma of separation, these men knew one another and had reached an accommodation with one another. Each had taken the measure of the other. Miscalculations were unlikely, and the relationship had become steady and predictable (Lee, 1988).

Therefore, in spite of the problems and tensions that has at times clouded Singapore’s relations with Malaysia, just as in the case of the United Kingdom and the United States, there is a very strong support for the argument that Singapore and Malaysia do have a “special relationship”.

In a landmark speech Singapore’s first Foreign Minister Rajaratnam made *after* the Republic was ejected from the Federation, he emphasised the “special relationship” between Singapore and Malaysia. He emphatically stressed that both states share many historical, cultural, and societal links that could neither be denied nor made obscure:

There is something unreal and odd about lumping our relations with Malaysia under foreign relations...The survival and well-being of Malaysia is essential to Singapore’s survival. Conversely, the survival of Singapore is essential to Malaysia’s survival...we in Singapore have to accept the fact that we and Malaysia are two sovereign states, compelled to move, by different routes towards the ultimate destiny of one people and one country...So one cannot talk of a foreign policy towards Malaysia in the same sense as we would in regard to other countries. It must be foreign policy of a special kind, a foreign policy towards a country which, though constitutionally foreign, is essentially one with us and which, sanity and logic reassert themselves must once more become one. It must be a foreign policy based on the realisation that Singapore and Malaysia are really two arms of one politically organic whole, each of which through a constitutional proclamation has been declared separate and independent (Kwa, 2006, p.15).

The timing of the above speech was very significant. Even though Singapore had already been ejected from the Federation, bilateral relations were still surprisingly cordial, which lent further credence to the argument that relations between these two states remain very strong; they can not only weather, but can also survive the trauma of serious political differences.

In 1988, more than twenty years after the separation, Lee Hsien Loong again reiterated the special relationship between Singapore and Malaysia: Singapore cannot set sail and go somewhere else if it quarrels with Malaysia. Singapore and Malaysia are fated to live side by side for all time, *bagai aur dengan tebing* (like bamboo roots and the river bank). Therefore, let us both work together, with sincerity, understanding, and conviction, to build confidence, harmony, and cooperation with each other (Lee, 1988).

Likewise, Prime Minister Goh Chok Tong, in 1995, had also emphasised Singapore's "unique and special" relationship with Malaysia (Hassan, 1995).

In order to sustain any relationships, it is essential that the element of reciprocity is present. It is therefore significant to note that Malaysia's notion of a special relationship also concurs with Singapore. For instance, Badawi noted that:

For many Singaporeans, Malaysia is where their parents, grandparents, or relatives are from and where they will continue to live. There is therefore, a sense of the brotherhood on the part of Malaysians about what happens to their kind in Singapore and vice versa. It is because we are close that we have become sensitive about our relationship... We cannot divorce ourselves from the emotional attachment or the historical and cultural linkages which exist between us (Badawi, 1990, p. 10).

In 2003, Malaysian Prime Minister Badawi again stressed that there was "an inextricable relationship between Malaysia and Singapore. There will be differences of opinion on many things. There will be perhaps be periods of tension because we do not see things from the same perspective. But I believe that the relationship between Malaysia and Singapore will not deteriorate to the extent that it will involve us in any kind of conflict" (Ministry of Foreign Affairs [MFA], 2003c).

Senior ministers from both sides acknowledge that there would always be problems between Malaysia and Singapore, but they are very confident that the problems can be solved in a manner that is acceptable to both states. Singapore's current Foreign Minister George Yeo opined in an interview with *Astro Awani Television* in February 2008 that "[b]etween neighbours, there will always be niggling problems but the big game is one of cooperation", and this is "[b]ecause our two countries share so much in common in terms of our history, our culture, our heritage..." (MFA, 2008).

The continuing acknowledgement of this special relationship by the new generation of political elites such as Lee Hsien Loong, George Yeo, and Abdullah Badawi proves that it is not based on personal diplomacy or friendship between the former long-serving Prime Ministers Lee Kuan Yew and Mahathir. Instead, this special relationship is stable and enduring because it has already been institutionalised. Significantly, the special relationship between Singapore and Malaysia provides very strong proof that these two states have already reached a prior consensus as to what constitutes acceptable behaviour and so a high degree of order can be observed in the inter-state interaction between them. Despite the presence of adversarial aspects in this set of bilateral relations as reflected by unresolved bilateral disputes, associational aspects are also present, as evidenced by the way these two states resolve them, which existing realist literature overlooks.

Sovereignty Dispute: Pedra Branca

Sovereignty is deemed to be of utmost importance by all states. It is the principle that determines whether a geographical territory qualifies as a state, which is the unit that is most widely accepted as the primary and most legitimate actor within the

international system. Hence, states can be expected to be highly protective of their sovereign status, and so disputes over sovereignty is one of the most common causes of armed conflict between states. As such, Malaysia's contest of Singapore's sovereignty over Pedra Branca is one of the most important issues for Singapore's foreign policy (Sen, 1991). Although the sovereignty dispute over Pedra Branca is not an immediate source of conflict, its mismanagement could strain ties between the two neighbouring states (*Straits Times*, 29 May, 2002, 16 June, 1992, 13 January 1993). For instance, Singapore has already constructed a helipad and deployed a commando detachment at that location (Huxley, 2001). At the same time, Singapore also conducts regular naval patrols around the disputed territory. With the military presence in the region, the potential for the dispute to escalate to an armed conflict has therefore influenced present scholarship to focus on the adversarial aspects of this issue. For instance Leifer (2000) and Ganesan (2005) concentrate on the bilateral tensions arising from this dispute. Similarly, Singh (1999) also devotes much attention on how the dispute started and correspondingly less emphasis on how both states have attempted to resolve it.

Historical Background

Pedra Branca is a very small island, approximately the size of a football field, twenty-four nautical miles off the eastern entrance to the Straits of Singapore. The British colonial government of Singapore built and administered the Horsburgh Lighthouse on the island since 1849. The idea to build a lighthouse on Pedra Branca was first mooted in 1838 when a group of merchants from the East India Company (EIC) wanted to honour the late James Horsburgh, an accomplished hydrographer with the Company. Since then Britain exercised control over the island, which Singapore took over when it became independent in 1965, and Malaysia had never protested against Singapore's title over the island. For instance, M. Seth Bin Saaid, Acting State Secretary of Johor to the Colonial Secretary, in a letter to the Singapore authorities in September 1953 clearly stated Johor's express disclaimer of title to Pedra Branca (Singapore Government, 2004). There were no disputes over the Pedra Branca's sovereignty until 1979 when the Malaysian government published the *Map Showing the Territorial Waters and Continental Shelf Boundaries* that included the island in its territorial waters (Haller-Trost, 1993). According to Muhiyiddin, a Malaysian politician, Pedra Branca belongs to Malaysia and that the Malaysian government is prepared and able to produce documentary evidence to prove that this disputed territory belongs to Malaysia and not Singapore (*Straits Times*, 8 September, 1991). In early 1980, Singapore responded by lodging a formal protest to Malaysia over the contentious new map. Though "tiny as it is, [Pedra Branca] is significant for its strategic position, impact on the delimitation of territorial sea boundaries and, most of all, for national pride" (Hong, 2003). Hence, both Singapore and Malaysia have adopted a very tough attitude towards this issue.

In 1989, the Ports of Singapore Authorities (PSA) started work to install new radar systems in Pedra Branca to aid navigation in the Straits of Singapore, and ignited the sovereignty dispute, which was then in abeyance, again. When the construction works commenced, PSA reminded all ships to stay away from the area for safety reasons. As a result, some Malaysian fishing vessels could not fish in the area when the construction works were underway. However, certain Malaysian quarters interpreted that PSA's action targeted Malaysian vessels. In response, PSA stressed that "that all vessels, not just the Malaysian ones, had been asked to keep away from the island" since the Malaysian government was now claiming ownership of the island (*Straits*

Times, 21 July, 1989). According to the PSA, after it completed the construction works in August 1989, all fishing vessels were allowed back into the area around Pedra Branca (*Straits Times*, 26 August, 1989). PSA maintained that the temporary entry restriction was due to safety considerations, and this action did not specifically target Malaysian vessels.

In September 1991, the Johor Baru division of United Malay National Organisation (UMNO) passed an extraordinary resolution “calling on the Malaysian government to restore Malaysia’s sovereignty over Pedra Branca.” (MFA, 1991, *Straits Times*, 15 September 1991, 25 September 1991). Its action effectively escalated the issue from a once-off fishing dispute since Malaysian vessels have always been allowed into the area (*Straits Times*, 25 September 1991) into a full-blown sovereignty issue. Furthermore, in a politically provocative action, opposition party Parti Islam (PAS) planned to plant the Malaysian flag on Pedra Branca to stake Malaysia’s ownership of the disputed territory (*Straits Times*, 21 May 1992). Mahathir warned PAS “not to look for trouble” (Hassan, 1992) and his warning proves that any escalation by either state has the very real potential for the dispute to escalate into a conflict between Singapore and Malaysia. Apart from not wanting to spark off a possible confrontation, Mahathir’s stern warning was also an explicit manifestation of Malaysia’s commitment to bind itself to adhering to international law in resolving the sovereignty dispute (Ghosh, 1992).

In an attempt to resolve this territorial dispute, Singapore pressed Malaysia to exchange diplomatic papers so that both parties could examine the other’s claim to the island. Both parties agreed to this undertaking in 1992 (*Straits Times*, 17 September 1991, 27 January 1992). Although Malaysia agreed to this diplomatic arrangement, it was not forthcoming in providing the necessary documents to its Singaporean counterparts. Chan Sek Keong, Singapore’s Attorney-General sent a diplomatic note to the Malaysia authorities on 17 February 1992, which drew no response. Hence, Singapore sent a second request in March of the same year (*Straits Times*, 17 March, 1992). Even in June 1992, the Singapore press was still reporting that Ministry of Foreign Affairs (MFA) was still awaiting the response from its Malaysian counterpart (*Straits Times*, 6 June, 1992). Given the difficulty of resolving the issue on a bilateral basis, Singapore, as early as 1991, proposed that the sovereignty dispute should be handed over to the International Court of Justice (ICJ) for adjudication, a move that Malaysia accepted.

In a move that signalled Malaysia’s firm, and more importantly, continuing intent to resolve the dispute in a mutually acceptable manner, Mahathir declared during the Fourth ASEAN Summit held in Singapore in 1992 that “Malaysia would adhere strictly to legal principles and not history to resolve the dispute”. Furthermore, from Malaysia’s perspective, since it has other outstanding territorial disputes with other states over the ownership of the Spratly Islands, it is vital that for it to “stick to one principle—that being the legality, rather than the historical basis of the claim” (Haller-Trost, 1993, p. 3) so as not to potentially jeopardise Malaysia’s position in the other cases (Government of Malaysia, 2004). Haq, a political analyst, commented at that time that “[this was] a wise and constructive move... [that set] a healthy precedent and [built] up a climate for settling such disputes by judicial rather than other means” (Fernandez, 1991). In 1994, Singapore and Malaysia agreed in principle to refer the dispute to the ICJ. Prime Minister Goh Chok Tong commented: “That means, if Malaysia proves that legally, it [the island] is theirs, well it is theirs. If Singapore has a stronger legal case, then it is ours. That’s a very civilised way of settling disputes” (Parameswaran, 1994). In 1996, the foreign ministers met in Kuala Lumpur to discuss

the terms of reference so that the case could be submitted to the ICJ (*New Straits Times*, 8 March 1996).

Resolution

After seven years of intermittent negotiations, a major breakthrough was achieved in early 2003 when Singapore and Malaysia successfully worked out the legal details that enabled this dispute to be referred to the ICJ. Both states signed the Special Agreement in Putrajaya to formalise the referral of the issue to the International Court of Justice (ICJ) on 6 February 2003 (MFA, 2003b). More significantly, as part of the agreement, both states committed in advance to “accept the Judgment of the Court . . . as final and binding upon them” (International Court of Justice, 2006, Singapore Government, 2003). The Special Agreement was necessary “because neither Malaysia nor Singapore accepts the jurisdiction of the ICJ as compulsory” (Hong, 2003a).

Malaysia’s decision to submit the case to the ICJ for review was not a foregone conclusion during the late 1980s and 1990s. For instance in 1991, Datuk Shahrir Abdul Samad, head of the UMNO Johor Baru division, organised a public forum “Pulau Batu Putih - Between Reality and History”. He argued that there was no need to refer the matter to a third party because “as the island was clearly in Malaysian waters (Osman, 1991)”. Opposition party, Parti Rakyat Malaysia (PRM) also urged the Malaysian government not to give in to Singapore’s pressure for third-party adjudication (*Straits Times*, 1991f). Likewise, there was also pressure from within UMNO for the Malaysian cabinet to press its claim over the disputed island (Hassan, 1992b). Given the political pressure from within the ruling party and from the opposition, the final decision to accept ICJ’s adjudication is therefore very significant. It is risky to accept the ICJ’s authority as a state may end up with an unfavourable decision. If a state were to resolve the issue bilaterally, it will arguably have more control over the resolution process. Yet in this particular case, both Singapore and Malaysia have agreed to accept the ICJ’s authority, a development that strongly provides evidence of the primacy of the associational aspects over the adversarial aspects in their bilateral relationship. To put the issue in context, Tommy Koh, a senior Singaporean diplomat, lamented in 1978 prior to the start of this sovereignty dispute, “that of the 149 member States of the United Nations, only 45 have accepted [sic] the compulsory jurisdiction of the International Court of Justice. At the present the Court has not a single case before it. The reluctance of U.N. members to refer their disputes to the Court stands in sharp contrast to their readiness to resort to force to settle their disputes” (1997).

Existence of a Common Code of Conduct

Further supporting the English School’s argument that international order is possible to achieve through the states’ observance of various international institutions such as international law, and that Singapore-Malaysia interactions are congruent with that of an international society is the fact that inter-state disputes cannot be referred to the ICJ on a unilateral basis; both parties involved must unanimously agree to submit the case to the ICJ for adjudication in order for the case to be heard there. For instance, the ICJ ruled that it could not adjudicate on Portugal’s case against Australia in the *East Timor* case because it affected Indonesia’s interests, and the latter was not a party to the case.

The ICJ has no coercive power to pressure the dissenting state to submit the case before the organisation for review (*Straits Times*, 12 October 1991); the ICJ can only hear the cases that states choose to bring before it (International Court of Justice,

2008). As EH Carr writes in the *Twenty Years' Crisis*, “the institution of the Court has not changed international law: it has merely created certain special obligations for states willing to accept them” (2001, pp. 170-1). The joint decision to refer the Pedra Branca dispute to the ICJ demonstrates that the recognition and observance of international law and norms still form the bedrock of the interaction between Singapore and Malaysia (Wong, 2007). This is because there is “no principle of law which enables one to decide that a given issue is suitable for treatment by legal methods. The decision is political...[and] determined by the political relations between the countries involved” (Carr, 2001, p. 199). Since both Singapore and Malaysia are obeying international law even though they are under no duress to do so provides very strong support for the to the central argument that both states have reached a prior consensus as to what constitutes a mutually acceptable method to resolve the dispute and so their interaction takes on the form of international society.

The ICJ begun to hear the case in January 2008 and the verdict was delivered on May 23, 2008 in which Singapore’s title was upheld. In this dispute, both states have not resorted to the use of military force, have agreed to honour the agreement to accept the ICJ’s decision, and have promised to recognise the rights of ownership of island to whichever state the ICJ awards it to. Their actions conform to the principles of “life, truth, and property”, and provides strong evidence that their interaction takes on the form of international society, thereby validating the use of the English School theory in this context.

Water Supply Issue

Apart from the sovereignty dispute over Pedra Branca, the future supply of water from Malaysia to Singapore is another issue that has put the bilateral relations of these two states under significant strain. This is because both states have thus far failed to come to a consensus as to what constitutes an equitable arrangement acceptable to them over the future supply of water once the two current contracts signed in 1961 and 1962 lapse in 2011 and 2061 respectively. Although there are no indications that Singapore and Malaysia are likely to come to blows over this issue in the foreseeable future, nevertheless the potential for a conflict does exist. As a PAP backbencher puts it: “This issue [of water supply] is very serious. I mean, it is not a case of sacrificing an opportunity to bathe ourselves. It’s our lifeblood. It’s like declaring war on Singapore if they cut off water” (Nathan, 2002, p. 397). The importance of a continual supply of water from Johor to Singapore is so great that the latter is prepared if need be, to go to war in order to ensure that it does not become disrupted (Sayuthi, 2002). Lee Kuan Yew in his memoirs wrote that if Malaysia were to suddenly turn off the taps and cause a serious shortage of water, the Singapore military “would have to go in, forcibly if need be, to repair damaged pipes and machinery to restore the water flow” (2000, p. 276). However, this worst-case scenario though possible, is highly unlikely to occur because the fundamental cause of bilateral friction does not arise from the physical natural resource itself; instead the tension arises from Singapore and Malaysia’s conflicting legal interpretations of the terms in the water agreements. Yet existing literature has largely focused on the adversarial aspects of this issue (Kwa, 2002, pp. 45-98, Singh, 1999, pp. 205-13).

The supply of potable water in the world is limited. Singapore is not unique as other states also face problems with securing a reliable water source. This water shortage problem is also present in regions such as the Middle East, where it has contributed to the outbreak of armed conflicts. For instance, the issue of water supply and distribution from the Euphrates River has already resulted in disputes between Iraq,

Syria and Turkey. In most cases of water disputes, the four main possible causes of conflict are over usage, quality, distribution and availability issues (Haftendorn, 1999), and the common theme running through these four factors is that they are all related to the physical nature resource itself.

In the case of the water dispute between Singapore and Malaysia, none of the four causes listed above are applicable. Since Singapore separated from Malaysia, and the latter started selling water to the Republic, there have been no disputes over how Singapore has used, or is planning to use the water.

In terms of quality, Malaysia sells raw water to Singapore which does its own treatment process. In fact, Singapore treats the raw water it purchases from Johor, and then sells the processed water back to it. If there were any problems with water quality, it would be more likely that Johor would raise them, and not Singapore. As of now, Johor has yet to complain about the quality of the water it has bought from Singapore. As such, the quality of the water supply is not a factor in this bilateral dispute.

About the distribution rights, Singapore recognises that the water clearly belongs to Malaysia. Singapore has never disputed Malaysia's ownership of this resource. In terms of availability, the Malaysian government has stated that it is willing to continue supplying water to Singapore into the foreseeable future. However, Malaysia wants to increase the price of the water and Singapore accepts this decision. Singapore is willing and able to pay for the increased cost of water. The only problem is that Singapore is against Malaysia's unilateral and arbitrary price increase without any prior consultation. The crux of the dispute is the principle behind how Malaysia calculates the price of water, and not the price or availability of water itself.

Background of Water Dispute

The first water agreement signed between Singapore and the then-Malaya allowed Singapore to get its water from Johor for free. When Malaya became independent, two new water contracts were signed in 1961 and 1962 respectively. Under the terms of these two agreements, Singapore paid 3 Malaysian cents per thousand gallons of raw water from Johor. Under the terms of the agreements, Malaysia had the right to review and increase the price of water in twenty-five years' time, which happened in 1986 and 1987 respectively. This review was not done then. The issue of price revision only surfaced in 2000 when Prime Minister Mahathir wanted to increase the price Singapore paid for raw water currently at 3 Malaysian cents to 45 Malaysian cents, a fifteenth-fold increase (Singapore Government, 2005). In 2002, Mahathir again proposed fixing the price of raw water at 60 Malaysian cents, and not the earlier stated price of 45 Malaysian cents. He also proposed to backdate the new price to 1 September 1986 and 29 September 1987 respectively (Singapore Government, 2005). Singapore's position was that since Malaysia did not choose to exercise its right to revise the price of raw water at the twenty-five year cut-off mark, it had effectively renounced its right to do so. Malaysia's position was that it reserved the right to revise the price of raw water after twenty-five years, and not only at the twenty-five year mark

Although Singapore was agreeable to an upward price revision, it did not agree to backdate the price revision. Furthermore, the Singapore Government argued that the price revision was applicable to future water from Johor, and not for water already supplied since the mid-1980s. When Malaysia made the price revision proposal, it also introduced a new formulation to calculate the price of raw water it sells to Singapore in the future. Prime Minister Goh Chok Tong responded that Singapore

was agreeable to this move but noted that it would be very difficult for either party to come up with a formula to fix the future price of water since many variables are involved. However, Goh stressed that it was imperative for both parties to have “a definite basis for all future price revisions” (Singapore Government, 2005). From Singapore’s position, the contentious issue was how the price of water was calculated, and not the actual price Singapore paid for it (MFA, 2001). Singapore Foreign Minister Jayakumar also insisted: “The fundamental issue was not the price of water, but *how* [emphasis original] Singapore was made to pay for any revision. This cannot be done at the will or dictate of Malaysia” (MFA, 2003a). As such, the water dispute arose solely out of the legal principles behind the validity of Malaysia’s action in wanting to revise the price of raw water, and not over the natural resource itself. Likewise, during this whole fiasco over the water issue, the main contention, as Mahathir wrote, was “the price review of raw water, and how it was to be arrived at” (Singapore Government, 2005).

Despite the public rhetoric of turning off the taps supplying water to Singapore, Malaysia has agreed to honour the terms of the Separation treaty between the two states (Kolesnikov, 2002). Singapore has consistently argued that Malaysia cannot unilaterally modify the terms of the 1961 and 1962 water agreements because they are part of the 1965 Separation agreement that was lodged with the United Nations. Hence, these agreements “cannot be altered without the express consent of both parties” (Singapore Government, 2005) as the unilateral modification of these agreements would directly undermine Singapore’s sovereignty. Furthermore, it is also very important to note that although Malaysia perceives that the price Singapore pays for raw water is not equitable, Mahathir has stressed that Malaysia is both morally and legally bound to observe the agreement signed with Singapore; Malaysia recognises that it cannot act unilaterally without Singapore’s consent (Lau, 2002). Even though the Malaysian government’s rhetoric indicates that it wants to revise the price upwards or to turn off the taps, the rhetoric has not been, and is very unlikely to translate into concrete action in the foreseeable future. Moreover, in a reconciliatory gesture to decrease bilateral tension, Mahathir noted in 2001 that after the first of the two water contracts lapses in 2011, even though “there is no provision for any continued supply of...raw water to Singapore. Nevertheless Johore is willing to supply...treated water if Singapore so desires” (Singapore Government, 2005). As reported in the *New Straits Times*, Mahathir had reiterated, “There was never any question of Malaysia not continuing to supply water to Singapore, [...] It was a matter of price and process, not do or die” (Lim, 2003). His statements make it even clearer that water scarcity did not cause this bilateral dispute; it essentially arises from conflicting interpretations over the terms of the two water agreements. Malaysia’s actions thus far have conformed to the principle of *pacta sunt servanda*, which demonstrates the presence of associational aspects in this bilateral relationship. Currently, the disputes over the legal interpretations have yet to be resolved although both parties are still receptive towards conducting future negotiations to settle the differences.

In this dispute, despite the public rhetoric of using military force, of unilaterally increase the price or of turning off the taps, neither state has actually done, or is likely to do so. Even though Malaysia does not perceive the water agreements to be equitable, it has agreed to honour the terms. Singapore, on its part, has never laid claim over the water and has always respected Malaysia’s ownership of this natural resource. Like the Pedra Branca issue, both states’ handling of the water dispute

conforms to the principles of “life, truth and property”, which then justifies using the English School theory.

Conclusion

In conclusion, this paper has established that Singapore and Malaysia have a special relationship that allows their interaction to take on the form of international society. Despite there having serious bilateral disputes between them, and the historical and political baggage associated with the failed merger and the ensuing split, they have managed to successfully co-exist. This development indicates that the associational aspects of the relationship are arguably more influential than the adversarial aspects. Hence, the disputes over Pedra Branca and the water supply, issues that have greater potential to lead to armed conflicts are dealt with through the use of legal principles. This development is very significant as it introduces certainty and stability into their interaction. It is then possible for them to develop long-sightedness in their interactions with each other, thereby mitigating the adversarial aspects of the bilateral relations. Over time, even if the agreed mode of conflict resolution through using international law is not codified, prolonged exposure to this particular mode will cause it to be perceived as the *de facto* course of action to take.

These two case studies have shown that even in the absence of a universal authority in the international realm to ensure that laws are observed as in the domestic context, both Singapore and Malaysia have internalised the use of international law to resolve their differences. From the English School’s perspective, international law is not a command. Yet, both Singapore and Malaysia obey it, which validates the English School’s central argument that states are able to observe a common code of conduct and regulate their interaction even within anarchical conditions. In the sovereignty dispute over Pedra Branca, both states agreed to refer the case to the ICJ for adjudication, and that the decision reached by this court would be final and binding on both states. In the water supply issue, the bilateral dispute arises from a legal principle, namely which interpretation of the terms is accepted to be authoritative, rather than over the physical resource itself. In both case studies, their actions are consistent with “life, truth and property”, which are the goals of international society, and is congruent with the English School theory.

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