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**International Law, History & Policy:  
Singapore in the Early Years**

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# **INTERNATIONAL LAW, HISTORY AND POLICY: SINGAPORE IN THE EARLY YEARS\***

**KEVIN YL TAN**

## **INTRODUCTION**

The sudden creation of an independent Singapore as a unitary republic on 9 August 1965 was an accident of history.<sup>1</sup> No one ever imagined that a tiny island totally bereft of natural resources and populated by immigrants with a heady mix of three major ethnic people was viable as a state, much less as a nation. From the legal perspective, the transition from colony to statehood was fairly straightforward. Britain surrendered sovereignty over the island in the process of creating the Federation of Malaysia in

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1 Indeed, historian Edwin Lee calls Singapore the ‘unexpected nation.’ See Edwin Lee, *Singapore: The Unexpected Nation* (Singapore: Institute of Southeast Asian Studies, 2008).

1963, and when Singapore seceded from the Federation in 1965, legal continuity was ensured through a series of agreements and legislative enactments.

The historical gloss given to the creation of modern Singapore in many published accounts belies the complex and complicated issues that bedevilled the nascent state in its early years. This monograph considers the role of international law in Singapore's early years from colony to independent state against the political and historical backdrop of Southeast Asia in the highly volatile 1960s. It can be broadly divided into three main parts. Part I describes Singapore's international legal personality during its colonial period (1819–1963). Part II details the difficulties Singapore experienced in its attempt to free itself from colonial rule by becoming a constituent state of the Federation of Malaysia in 1963. Opposition to the formation of Malaysia from its two of its largest neighbours – the Philippines and Indonesia – threatened to derail the formation of Southeast Asia's first and only federation and to deny Singapore its independence. The period discussed in this Part runs from 1963 to 1965. Part III deals with the international law issues that Singapore had to deal with after it became independent in 1965. A large portion of this paper is devoted to discussing the various problems and issues Singapore confronted between 1965 and 1970.

## I. SINGAPORE'S INTERNATIONAL LEGAL PERSONALITY UNDER THE BRITISH<sup>2</sup>

Almost all historical accounts of modern Singapore begin with Raffles' landing on the island in late January 1819 and his subsequent signing of the Treaty of Friendship and Cooperation with Sultan Hussein on 6 February 1819. Regardless of the merits of chronicling Singapore's pre-Raffles history, the signing of this treaty is, for the legal historian, the most important starting point. Under this Treaty, the English East India Company was permitted to set up 'a factory or factories' on any part of the islands in consideration of an annual payment of 5,000 Spanish dollars to the Sultan.<sup>3</sup> Significantly, while the Treaty provided British 'protection' over the port of Singapore, no steps were taken to have the island ceded to British control. The complete cession of Singapore to the East India Company took place five years later through the Treaty of Friendship and Alliance. These two treaties were signed by the British Resident, John Crawfurd, on the one part and Sultan Hussein and Temenggong Abdul Rahman on the other.

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2 For a legal history of Singapore's early legal personality, see Alfred P Rubin, *The International Personality of the Malay Peninsula: A Study of the International Law of Imperialism* (Kuala Lumpur: Penerbit Universiti Malaya, 1974) at 253–277. See also, Benedict CW Teo, 'The Historical Evolution of Singapore's Status in International Law' in Kevin YL Tan & Michael Hor (eds), *Encounters with Singapore Legal History: Essays in Memory of Geoffrey Wilson Bartholomew* (Singapore: Singapore Journal of Legal Studies, 2009) 129–159.

3 Art 2, Treaty of Friendship and Cooperation concluded between Sir Thomas Stamford Raffles and Sultan Hussein Mahummud Shah, 6 Feb 1819. The text of the Treaty can be found in Charles Burton Buckley, *An Anecdotal History of Old Times in Singapore* (Reprint, Singapore: Oxford University Press, 1984) at 38–40.

The Treaty of Friendship and Alliance, concluded on 2 August 1824 ceded 'full sovereignty and property' over Singapore to the East India Company, 'together with the adjacent seas, straits, and islets, to the extent of ten geographical miles, from the coast of the said main Island of Singapore.'<sup>4</sup> In exchange, the East India Company agreed to pay Sultan Hussein the sum of 33,200 Spanish dollars and a monthly stipend of 1,300 Spanish dollars for the remainder of his natural life; and a sum of 26,800 Spanish dollars to Temenggong Abdul Rahman, and a monthly stipend of 700 Spanish dollars for the duration of his natural life.<sup>5</sup> In addition, the East India Company agreed to 'receive and treat' Sultan Hussein and Temenggong Abdul Rahman 'with all the honours, respect and courtesy belonging to their rank and station, whenever they may reside at, or visit the Island of Singapore.'<sup>6</sup> Article 8 of the Treaty further stipulated that should the Sultan and Temenggong decide to continue residing in Singapore, they 'shall enter into no alliance and maintain no correspondence with any foreign power or potentate whatsoever, without the knowledge and consent' of the East India Company.

It was thus that Singapore became a settlement under the East India Company. Together with Penang and Malacca, it formed the presidency of the Straits Settlements and was run by the East India Company out of Fort William (Calcutta) in India. Between 1784 and 1858, when the East India Company was dissolved, the British Government took an increasingly active and effective role in governing India and its affairs. The Indian Mutiny of 1857–1858 led to the collapse of the East India Company, which,

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4 Article 2, Treaty of Friendship and Alliance, 2 Aug 1824. The text of the Treaty can be found in Buckley, *ibid*, at 168–170.

5 Article 3, *ibid*.

6 Article 5, *ibid*.

by this time, had been suffering serious financial difficulties. In 1858, the British Parliament passed the Government of India Act<sup>7</sup> and Her Majesty's Government took over all possessions of the East India Company, including Singapore. Section 1 of the Act provided that:

The Government of the territories now in the possession or under the Government of the East India Company, and all powers in relation to Government vested in or exercised by the said Company in trust for Her Majesty, shall cease to be vested in or exercised by the said Company; and all territories in the possession or under the government of the said Company, and all rights vested in or which if this Act had not been passed might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name; and for the purposes of this Act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid.

From 1858 onwards, Singapore and the rest of the Straits Settlements territories became British territory and all treaties and agreements that had been entered into by the British Government automatically bound its colonies. At the time of Singapore's entry into Malaysia in 1963, the Treaty Section of the British Foreign and Commonwealth Office listed some 344 treaties and

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<sup>7</sup> Government of India Act, 1858, 21 & 22 Vict c 106.

agreements to which Singapore was a party by dint of it being a British colony.<sup>8</sup>

In 1867, when long-distance governing from India was no longer tenable, the Colonial Office in London took over the Straits Settlements' oversight. The 1867 Order in Council (in effect a colonial-style constitution) established the colony of the Straits Settlements with its own Legislative Council and later, its own Executive Council. The Governor, who represented the Queen, administered the Colony. As a colony, the Straits Settlements had no control over finance, defence, foreign affairs and internal security, and this situation prevailed till 1958. Constitutionally, the period from 1867 to 1942 can be considered as one since there were few changes in the way the island was administered throughout this period. The Straits Settlements was abolished in 1946 after the end of World War II. The states of Penang and Malacca joined the rest of the Malay States to form the Malayan Union while Singapore was administered as a separate crown colony.

Between 1946 and 1954, several constitutional changes were effected to give greater representation to the people. For example, the first elections were held in 1948. That said, the island was still administered by a Governor who had powers to suspend the Constitution while laws continued to be made by a predominantly-unelected Legislative Council. Following the Rendel Constitution Commission's report, the first major

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8 See *List of Treaties Which Applied to North Borneo, Sarawak and Singapore* (London: Treaty Section, FCO, October 1969), available at the CJ Koh Law Library, National University of Singapore. This list is not exhaustive since it did not list any of the International Labour Organization treaties that applied to Singapore. In any case, the list includes 43 extradition treaties; 168 bilateral agreements; 102 multilateral agreements and 31 air services agreements.

constitutional change came about in 1955 when a 25-member Legislative Assembly, most of whose members were popularly elected, replaced the old Legislative Council.

After three sets of constitutional talks between 1956 and 1958, the British Government granted Singapore self-governing status.<sup>9</sup> This meant that while Singapore's new Legislative Assembly had power to legislate over almost all matters. The portfolios of defence and foreign affairs, however, remained in the hands of the British. Internal security was managed by the Internal Security Council comprising representatives of Singapore, Britain and the Federation of Malaya.<sup>10</sup> Under article 72(1) of the 1958 Constitution of the State of Singapore, 'defence and external matters shall be the responsibility of the Government of the United Kingdom.' All acts and treaties entered into by the UK Government would, in the relevant and appropriate cases, bind the Singapore Government. Thus, when the United Kingdom signed the Articles of Agreement of the International Development Association (IDA) on 29 January 1960,<sup>11</sup> these Articles automatically applied to Singapore as well. At the same time, the Government of Singapore 'acting with the assent of the Government of the United Kingdom' was responsible for the 'conduct of matters concerning the trade and cultural relations of Singapore with other countries.'<sup>12</sup> In the appropriate instance and at the instigation of the UK Government, the Singapore Government could also be delegated 'responsibility for the conduct, with the assent of the Government of the United Kingdom, of other mat-

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9 See State of Singapore Act 1958, 6 & 7 Eliz 2 c 59.

10 See Part VII, Singapore (Constitution) Order in Council, 1958, SI S293, No 1956.

11 See UK Treaty Series 1/1961, Cmnd 1244.

12 Article 73(1), Singapore (Constitution) Order in Council, *ibid.*



ters relating to external affairs.<sup>13</sup> This meant that the Singapore Government had powers to enter into treaties with other states and bind the UK Government.<sup>14</sup>

Pursuant to these provisions, the UK Secretary of State for the Colonies sent a despatch to the Yang di-Pertuan Negara (head of state) of Singapore in April 1959 stipulating that the responsibility for external affairs delegated to the Singapore Government included the conclusion of treaties ‘of purely local concern with the Federation of Malaya, Indonesia, Sarawak, North Borneo and Brunei’ or ‘trade agreements with other countries, whether bilateral or multi-lateral, relating solely to the treatment of goods but excluding agreements relating to establishment matters, ie those affecting the rights of persons and companies or the contracting parties, and to shipping.’<sup>15</sup> In addition, the Singapore Government was permitted to sign ‘multi-lateral agreements involving membership of international organisations which Singapore under the constitutions of the organisations would be entitled to join.’<sup>16</sup>

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13 Article 73(2), *ibid.*

14 See S Jayakumar, ‘Singapore and State Succession: International Relations and Internal Law’ (1970) 19 ICLQ 398, at 399–400 [hereinafter ‘Jayakumar’].

15 *Singapore Government Gazette*, Supplement No 14, 7 Apr 1959. See also E Lauterpacht, ‘The Contemporary Practice of the United Kingdom in the Field of International Law: Survey and Comment, IX’ (1961) 10 ICLQ 548, at 576–577.

16 *Ibid.* For the practical effect of these provisions, see Peter Boyce, ‘Policy Without Power: Singapore’s External Affairs Power’ (1965) 6(2) *Journal of Southeast Asian History* 87.

## II MERGER WITH MALAYSIA

### Forming Greater Malaysia

Singapore's continued existence as a self-governing colony was intended to be temporary. The People's Action Party (PAP), which won a landslide victory in the 1959 general elections, came to power on the platform of independence through 'merger' with the Federation of Malaya. The British had granted independence to their territories on the Malay Peninsula – the Federated Malay States, part of the Straits Settlements and the Unfederated Malay States – in 1957 by establishing the Federation of Malaya. Singapore had, since the end of World War II, been governed as a separate Crown Colony because of its strategic importance to the British and also because any attempt at that time to incorporate the island into the wider Malay polity was likely to be problematic on account of Singapore's huge Chinese population. That said, Singapore politicians never imagined an independent Singapore. Independence for the island would be obtained through some kind of merger or association with the Malay States.

Malayan leaders, especially Prime Minister Tunku Abdul Rahman ('the Tunku') were initially hesitant to admit Singapore into the Federation, but increasing pro-Communist activity on the island and pressure from the British led the Tunku to change his mind in 1961.<sup>17</sup> The PAP leaders were then able to work with the Malaysians towards a merger solution and ultimate independence for Singapore. This led to the creation of an enlarged federation – Greater Malaysia – comprising the Federation of Malaya, Singapore, as well as the former British colonies of Sarawak and North Borneo (Sabah) on the island of Borneo.

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17 See Tan Tai Yong, *Creating 'Greater Malaysia'* (Singapore: Institute of Southeast Asian Studies, 2008).

The plan for the new Federation of Malaysia grew out of a combination of several urgent imperatives. The first was the British need to maintain their military bases in Singapore and to ensure that Singapore remained a stable, friendly post-independence ally in the region. The second was the need on the part of the British to decolonize their three economically backward territories in Borneo: Sarawak, Sabah and Brunei. Third, the Malayan leaders were getting increasingly concerned about heightened left wing, pro-communist activity in Singapore and feared the collapse of the moderate anti-communist PAP. Finally, the wave of decolonization that had begun at the end of World War II was now approaching its zenith and it was in Britain's interests to devolve power as quickly as possible and the only way Britain would accept Singapore's independence was through this Federation. This was undoubtedly fuelled by the growing international calls on the former European powers to decolonize. The only way that Singapore could free itself from colonial rule was to become part of a much larger entity, in this case, the Federation of Malaysia.

Under the Malaysia Agreement signed between Great Britain and the Federation of Malaya, Britain would enact an Act to relinquish sovereign control over Singapore, Sarawak and North Borneo (now Sabah). This was accomplished through the enactment of the Malaysia Act 1963, clause 1(1) of which states that on Malaysia Day, 'Her Majesty's sovereignty and jurisdiction in respect of the new states shall be relinquished so as to vest in the manner agreed'.<sup>18</sup> While the merger deal was being hammered out and sealed between the Governments of the United Kingdom and the Federation of Malaya, not all was well. Unhappiness was

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18 Section 1(1), Malaysia Act 1963, Chapter 35 (UK).

brewing both internally and externally, and this led to several major challenges involving international law.

### **Decolonization, Self-Determination and the Referendum: Challenge at the United Nations**

The first internal challenge to merger with the Federation of Malaya came from Singapore and grew out of a political struggle between the PAP and their opponents. These included the Barisan Sosialis (Socialist Front), the Liberal-Socialist Party, the Workers' Party, the United People's Party and the Partai Rakyat (People's Party).

From the international law perspective, moves were already afoot to turn decolonization into a major international issue. On 14 December 1960, the United Nations General Assembly had adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples – the famous Resolution 1514 – with 89 votes in favour and only 9 abstentions.<sup>19</sup> Article 5 of Resolution 1514, states:

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

Moreover, Article 3 provided that '[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.' To monitor the imple-

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19 The states which abstained were: Australia, Belgium, Dominican Republic, France, Spain, South Africa, United Kingdom and the United States of America.

mentation of Resolution 1514, the General Assembly created the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (referred to popularly as the 'UN Committee on Colonialism') in 1961. Even though Great Britain abstained from voting on Resolution 1514, pressure on her to decolonize was palpable. Not only did this pressure come from the international community, it came from its strongest ally, the United States of America who extracted this concession from the British in the Atlantic Charter.<sup>20</sup>

In Singapore, the PAP sought merger with Malaysia on the basis of the strong mandate it obtained during the general elections of 1959 when it won 43 of the 51 seats. However, this mandate became questionable when dissension within the Party led to a split. In July 1961, following a debate on a vote of confidence in the government, 13 PAP Assemblymen were expelled from the PAP for abstaining. They went on to form a new political party, the Barisan Sosialis ('the Barisan'). Overnight, the PAP's majority in the Legislative Assembly was whittled down as they now only commanded 30 of the 51 seats. More defections occurred until the PAP had a majority of just one seat in the Assembly. Given this situation, it would have been impossible to rely on the mandate achieved in 1959 to move forth with merger. A new mandate was necessary, especially since the Barisan argued that the terms of merger offered by the Tunku were detrimental to the Singapore people.

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20 Clause 3 of the Charter reads: 'Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them.'

On 27 July 1961, the Barisan put forth their merger proposal.<sup>21</sup> They argued for automatic Malayan citizenship, and full internal autonomy of Singapore, including its security arrangements. The proposal was couched in terms that were calculated to irritate and provoke the Tunku who had openly declared his intention to lock up the left-wing activists and the pro-communists under the Internal Security Act. At this juncture, the Barisan was more concerned that its key leaders would be locked up by the Tunku than in achieving a realistic merger deal that would find acceptance with the Tunku. Had a snap general election been called at that time, the PAP might well have been defeated. Prime Minister Lee Kuan Yew favoured a referendum instead.<sup>22</sup> There was no provision in the Constitution for the conduct of such a referendum but this did not perturb Lee, who moved the National Referendum Bill to prepare for the referendum.<sup>23</sup> A date of 1 September 1962 was set for the referendum in which the electorate of Singapore was to opt to one of three options offered by the Government.<sup>24</sup> All three options pertained to the terms of merger and not to whether or not the people of Singapore would agree to a merger.

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21 See *Singapore Legislative Assembly Debates*, 24 November 1961, at cols 689-692.

22 See Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Singapore: Singapore Press Holdings, 1998) at 393.

23 See Singapore National Referendum Ordinance 1961.

24 The choices were: Alternative A – merger giving Singapore autonomy in labour, education and other agreed matters set out in Command Paper No 33 of 1961 and under which Singapore citizens automatically become citizens of Malaysia; Alternative B – complete and unconditional merger on equal basis with the other 11 states under the Federation of Malaya; and Alternative C – merger on terms no less favourable than those given to the Borneo territories.

The PAP's opponents – who had formed themselves into a group called the Council of Joint Action (CJA) – attempted to block the merger and scuttle the referendum by taking the issue before the UN Committee on Colonialism. On 6 July 1962, 19 individual members of the Assembly<sup>25</sup> signed a memorandum condemning the referendum on the grounds that the proposed constitutional changes had been 'devised by the British Government to assure its continued right to bases in Singapore, and to protect its privileged economic position.'<sup>26</sup> The CJA also criticized the terms, and the lack of choice in the referendum. In the memorandum, the CJA concluded that the transfer of sovereignty would be contrary to the spirit and letter of the United Nations General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples, and ended by requesting the presence of a UN observer to 'deter a major act of perfidy being perpetrated against our people.'<sup>27</sup> Dr Lee Siew Choh, argued that the UN needed to put in place 'appropriate measures' to ensure that the transfer of sovereignty over Singapore was in accord with Resolution 1514, which provided for full consultation and self-determination of the inhabitants of the dependencies. The UN should thus send an independent

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25 The 19 members of the Assembly were: Lee Siew Choh, Low Por Tuck, Wong Soon, Fong, ST Bani, Sheng Nam Chin, Chan Sun Wing, Ong Chang Sam, Leong Keng Seng, Fng Yin Ching, Lin You Eng, Tee Kim Leng, Teo Hock Guan, Tan Cheng Teng (Barsian Sosialis); Ong Eng Guan, SV Lingam, Ng Teng Kian (UPP); David Marshall (Workers' Party); Hoe Puay Choo and CH Koh (Independents)

26 *Memorandum* submitted to Secretary-General, United Nations, 6 Jul 1962, para 4.

27 *Memorandum* submitted to Secretary-General, United Nations, 6 Jul 1962, para 20.

and trusted observer to assess the situation and report back to the Committee.

The former Chief Minister and leader of the opposition Workers' Party, David Marshall, took a particularly active part in these appeals. After dispatching the memorandum to the Secretary-General of the United Nations, Marshall wrote personally to Alex Quaison-Sackey, Ghana's ambassador to the United Nations who was also a member of the Committee. Marshall urged him to bring the letter to the attention of the Committee.<sup>28</sup> Quaison-Sackey replied promptly, saying that he had studied the memorandum 'very carefully and thoroughly' and felt that the Committee should take up the matter. He also told Marshall that he would discuss this with the Committee Chairman, Ambassador CS Jha of India.<sup>29</sup> Marshall informed the other 18 signatories of this development and then proceeded to write directly to Ambassador Jha. However, a positive reply was not forthcoming partly because members of the Committee were unsure the matter was within their jurisdiction, especially since they could not interfere in internal affairs. Indeed, that was exactly what Prime Minister Lee Kuan Yew argued.<sup>30</sup>

Marshall was nothing if not persistent, and he tried many times to call the Jha on the phone to urge him to commence a hearing.<sup>31</sup> In the meantime, he had sent for a Queen's Counsel's opinion on the proposed citizenship terms under the referen-

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28 David Marshall to Quaison-Sackey, 6 Jul 1962, DM/106/23, David Marshall papers (ISEAS Library).

29 Quaison-Sackey to David Marshall, 12 Jul 1962, DM/106/27, David Marshall papers (ISEAS Library).

30 'Referendum and UN: New Moves' *The Straits Times* 19 Jul 1962; see also 'It is an Internal Matter' *The Malayan Times*, 19 Jul 1962.

31 David Marshall to Chairman, Committee on Colonialism, 16 Jul 1962, David Marshall papers, DM/105/25/1-2 (ISEAS Library).



dum.<sup>32</sup> On 19 July 1962, the UN Committee on Colonialism voted 10-2 in favour of an Indian proposal not to take cognisance of the Singapore petition. Five members abstained.<sup>33</sup> Marshall was 'distressed and depressed' as he felt that India – whom he respected deeply and whose representative Mr Bhadkamar moved the motion to ignore the Singapore petition – had acted 'as a tool of imperialists.'<sup>34</sup> Late on the morning of Saturday 21 July, Marshall received a cable from New York. It was from Dr Dragoslav Protitch, the Under-Secretary for the Department of Trusteeship and Information from Non-Self-Governing Territories.<sup>35</sup> Protitch told Marshall that even though the Committee had decided against taking cognisance of the petition, 'if any petitioner wishes to appear before it personally, it will be necessary to make a formal request for a hearing' which will be considered in accordance with 'established procedures'.<sup>36</sup>

The petitioners immediately made a formal request for a hearing, which was duly granted. On 24 July, a four-member team, comprising Lee Siew Choh (leader), Sandra Woodhull, Lim Hock Siew and Wee Soo Bee left Singapore for New York.<sup>37</sup> Marshall, who was handling a case in Sabah, would join them later. Prime Minister Lee Kuan Yew lost no time in also making

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32 See Dingle Foot, 'Government of Singapore: Proposed Referendum Opinion' DM/106/12/1, David Marshall papers (ISEAS Library).

33 'Petition is Rejected' *The Malay Mail* 19 Jul 1962; 'Lee's Triumph' *The Straits Times*, 20 Jul 1962.

34 David Marshall to Quaison-Sackey, 20 Jul 1962, DM/106/8/1, David Marshall papers (ISEAS Library).

35 This Department merged with the Special Committee on Colonialism in 1963.

36 Cable from Protitch to David Marshall, 21 Jul 1962, DM/106/11, David Marshall Papers (ISEAS Library).

37 'Four of the 19 Off to the UN' *The Malayan Times*, 25 Jul 1962.

a formal request to appear before the Committee as he believed that his government had a good case. Originally scheduled to leave New York for London, Lee decided to postpone his trip to await the arrival of the CJA members.<sup>38</sup> Lee was sure that they had planned to be in New York after he had departed for London so that they 'could have a big bash' at him. He thus decided to 'call their bluff' by postponing his departure.<sup>39</sup>

Hearings commenced on the morning of 26 July with Lee Siew Choh leading the submissions. That afternoon, Lee Kuan Yew and Goh Keng Swee put forward the government's case. Lee led a brilliant point-for-point rebuttal of the opposition submissions and provided a lucid and comprehensive background to events,<sup>40</sup> which obviously persuaded members of the Committee.<sup>41</sup> Marshall arrived in time to speak on the morning of Monday 30 July. The opposition's main champion on the Committee was the Soviet Union's Valentin Oberemko who felt that a 'gross deceit' had been perpetrated against the people of Singapore.<sup>42</sup> However, the rest of the Committee would not be swayed. The

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38 'Hear Both Sides – Our Case is Good, Lee tells UN' *The Straits Times*, 25 Jul 1962; and 'Lee Requests UN Hearing' *The Malay Mail*, 25 Jul 1962.

39 'Kuan Yew: 'I have Called their Bluff' *The Malay Mail* 26 Jul 1962.

40 See UN General Assembly, 'Petition from Mr Lee Kuan Yew, Prime Minister of Singapore' A/AC.109/PET.18/Add.1, 26 Jul 1962, DM/169/4/1; and UN General Assembly, 'Verbatim Record of the Eight-Seventh Meeting' A/AC.109/PV.87, 27 Jul 1962, DM/169/5/1, David Marshall Papers (ISEAS Library).

41 India's AB Bhadkamkar told Reuters that Lee had been 'extremely convincing'. See 'Victory for Lee Almost Certain' *The Malayan Times*, 29 Jul 1962.

42 'Soviet 'Gross Deceit' Cries Raise No Echo' *The Straits Times*, 2 Aug 1962.

Committee decided that the United Nations would not intervene or send an observer.

On 1 September 1962, Singapore first and hitherto, only referendum was held. Of the 624,000 voters eligible, 561,559 (or 90%) turned up for the referendum. An overwhelming 71.1% of the voters supported the Government-sponsored Alternative A, which meant merger giving Singapore autonomy in labour and education as well as matters set out in Command Paper No 33 of 1961, and under which all Singapore citizens would become citizens of Malaysia.

### **Self Determination in Borneo: The Cobbold Commission**

The issue of self-determination with respect to the peoples of North Borneo formed the bedrock of yet another challenge to the formation of the Federation of Malaysia. Under the Joint Statement issued by the British and Malayan Governments on 23 November 1961, clause 4 provided:

4. Before coming to any final decision it is necessary to ascertain the views of the peoples of North Borneo and Sarawak. It has accordingly been decided to set up a Commission to carry out this task and to make recommendations....

In the spirit of ensuring that decolonization was carried in accordance with the wishes of the peoples of North Borneo, the British Government, working with the Federation of Malaya Government, appointed a Commission of Enquiry for North Borneo and Sarawak in January 1962 to determine if the people supported the proposal to create a Federation of Malaysia. The five-man team, which comprised two Malaysians and three British representatives, was headed by Lord Cameron Cobbold, who had recently stepped down from being Governor of the Bank

of England.<sup>43</sup> The Commission commenced its enquiry on 18 February 1962 and released its findings, report and recommendations on 1 August 1962. In the course of their enquiry, the Commission held 50 hearings in 35 different centres, received some 2,200 memorials and representations and talked to some 4,000 persons and 690 groups and organizations. At the end of the hearings, Cobbold concluded:

About one-third of the population of each territory strongly favours early realisation of Malaysia without too much concern about terms and conditions. Another third, many of them favourable to the Malaysia project, ask, with varying degrees of emphasis, for conditions and safeguards varying in nature and extent: the warmth of support among this category would be markedly influenced by a firm expression of opinion by Governments that the detailed arrangements eventually agreed upon are in the best interests of the territories. The remaining third is divided between those who insist on independence before Malaysia is considered and those who would strongly prefer to see British rule continue for some years to come. If the conditions and reservations which they have put forward could be substantially met, the second category referred to above would generally support the proposals. Moreover once a firm decision was taken quite a number of the third category would be likely to abandon their opposition and decide to make the best of a doubtful job. There will remain a hard core, vocal and politically active, which will oppose Malaysia on any terms unless it is preceded by independence and self-government: this hard

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43 Cobbold was Governor of the Bank of England from 1949 to 1961. The other members were Wong Pow Nee, Chief Minister of Penang, Mohammed Ghazali Shafie, Permanent Secretary to the Ministry of Foreign Affairs, Anthony Abell, former Governor of Sarawak and David Watherston, former Chief Secretary of the Federation of Malaya.

core might amount to near 20 per cent of the population of Sarawak and somewhat less in North Borneo.<sup>44</sup>

The Cobbold Commission Report provided the British with an assurance that the decolonization of the Borneo territories through the so-called Greater Malaysia Plan was in accordance with the wishes of its people. This was important for two main reasons. First, it was clear that the United Nations General Assembly, through its Resolution 1514, was anxious that decolonization should be carried out as quickly as possible and that it should reflect the wishes of the colonial peoples. Second, Indonesia's President Sukarno had attacked the Greater Malaysia Plan as a neo-colonist plot to maintain Britain's dominance in the region. This will be further discussed below.

#### **The Challenge from the State of Kelantan<sup>45</sup>**

The PAP's opponents were not the only ones challenging the merger proposals from within. In the Federation of Malaya, the Government of the State of Kelantan launched a constitutional challenge, which had international law implications. On 11 September 1963, just 4 days before the new Federation of Malaysia was to come into being, the Government of the State of Kelantan sought a declaration that the Malaysia Agreement and Malaysia

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44 Report of the Commission of Enquiry: North Borneo and Sarawak, 1962, para 144.

45 On the Kelantan challenge, see Johan Shamsuddin Sabaruddin, 'The Kelantan Challenge' in Andrew Harding & HP Lee (eds), *Constitutional Landmarks in Malaysia: The First 50 Years 1957–2007* (Kuala Lumpur: LexisNexis, 2007) 47–53.

Act were null and void, or alternatively, that even if they were valid, they did not bind the State of Kelantan.<sup>46</sup>

The Malaysia Agreement<sup>47</sup> was concluded between the Governments of the United Kingdom, the Federation of Malaya, North Borneo, Sarawak and Singapore on 9 July 1963. Article 1 of the Agreement states:

1. The Colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation of Malaya as the States of Sabah, Sarawak and Singapore in accordance with the constitutional instruments annexed to this Agreement and the Federation shall thereafter be called 'Malaysia'.

Pursuant to this Agreement, the Malayan Parliament passed the Malaysia Act under which appropriate amendments were made to the Federal Constitution to affect this new union. The Kelantan Government argued that both the Malaysia Agreement and the Malaysia Act were not binding on Kelantan on the following grounds:

- (a) that the Malaysia Act in effect abolished the Federation of Malaya and this was contrary to the 1957 Federation of Malaya Agreement;
- (b) that the proposed changes required the consent of each of the constituent states of the Federation of Malaya – including Kelantan – and this had not been obtained;

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46 See *The Government of the State of Kelantan v The Government of the Federation of Malay and Tunku Abdul Rahman Putra Al-Haj* [1963] MLJ 355.

47 See Agreement Between the Federation of Malaya, the United Kingdom of Great Britain and Northern Ireland, North Borneo, Sarawak and Singapore, 1963.

- (c) the Sultan of Kelantan should have been a party to the Malaysia Agreement, but was not;
- (d) a constitutional convention existed that required the Malay rulers be consulted regarding any substantial change in the Constitution; and
- (e) the Federal Parliament had no power to legislate for Kelantan in respect of any matter regarding which the State had its own legislation.

In deciding the application, the High Court had occasion to consider the legal effects of both the 1957 and the 1963 Agreements on the sovereignty of Kelantan. Sir James Thomson, Chief Justice of Malaya held that the 1957 Agreement was an international treaty that bound the sovereign states whose rulers signed the Agreement:

That Agreement was signed by the then Ruler of the State of Kelantan and it has not been questioned that thereby the State of Kelantan became a party to the Agreement. Whether prior to the date of the Agreement Kelantan was a sovereign State may be open to argument. For myself I think it was and that the present question should be considered on that basis. If, however, Kelantan was a sovereign State immediately prior to the 1957 Agreement the effect of that Agreement was that a very large portion of the powers that go to make up sovereignty passed by reason of that Agreement from the plaintiff Government to the Government of the Federation. It is perhaps unnecessary to add that the extent of the powers which have thus passed and the modes of their exercise are limited and determined by the provisions of the 1957 Constitution which formed an integral

part of the Agreement and are to be ascertained by an examination of that Constitution.<sup>48</sup>

Thomson CJ further added that the powers of the Federation were granted by the sovereign rulers as signatories to the 1957 Agreement, and as such, the Federal Government had power to conclude a new treaty to enlarge the Federation and the Federal Parliament had competence to pass the Malaysia Act. Thomson CJ further pointed out that while the Constitution formed an important part of Malaysia's municipal law, it was also part of the Agreement signed by previously sovereign states that went to make up the Federation of Malaya, and it should thus be construed according to the principles applied to the interpretation of treaties:

The general principle is that treaties, being compacts between nations, are not to be subjected to the minute interpretation which in private law may result in defeating through technical construction the real purpose of the negotiators.<sup>49</sup>

At first blush, Thomson CJ's approach was decidedly positivist. The validity of the Malaysia Act was premised on the powers conferred on the Federation of Malaya Parliament by the 1957 Agreement. However, he seemed to suggest that there were limits on this power:

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48 *The Government of the State of Kelantan v The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj* [1963] MLJ 355. For an academic comment on this case, see S Jayakumar, 'Admission of New States: *The Government of the State of Kelantan v The Government of the Federation of Malaya & Tunku Abdul Rahman Putra Al-Haj* (1964) 6 *Malaya Law Review* 181–188.

49 The learned Chief Justice quoted this passage from Henry Wheaton, *Elements of International Law*, 6 ed (WB Lawrence ed) (Boston, 1886) at 522.



... I cannot see that Parliament went in any way beyond its powers or that it *did anything so fundamentally revolutionary as to require fulfillment of a condition which the Constitution itself does not prescribe that is to say a condition to the effect that the State of Kelantan or any other State should be consulted*. It is true in a sense that the new Federation is something different from the old one. It will contain more States. It will have a different name. But if that state of affairs be brought about by means contained in the Constitution itself and which were contained in it at the time of the 1957 Agreement, of which it is an integral part, I cannot see how it can possibly be made out that there has been any breach of any foundation pact among the original parties. [emphasis added]<sup>50</sup>

Of course, what amounts to an act that is ‘so fundamentally revolutionary’ was never considered in any detail. Singapore’s status as a constituent state in the Federation of Malaysia was thus confirmed internally by reference to the powers of the Federal Parliament under the 1957 Agreement to which the previously sovereign states were parties.

### **Sukarno’s Challenge & the Philippines’ Sabah Claim**

The internal objections to the Federation of Malaysia were mild compared to the external objections to the new union. These objections came from two of Malaya’s neighbours – Indonesia and the Philippines. Both these claims were built on international law arguments of self-determination and colonization and concerned the North Borneo territories. As far as the Singapore government was concerned, any question of self-determination had been resolved by the conduct of the 1962 referendum.

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50 *The Government of the State of Kelantan v The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj* [1963] MLJ 355 at 359.

*Indonesia's Konfrontasi*<sup>51</sup>

When Britain first announced its plan to decolonize its South-east Asian territories through the creation of the Federation of Malaysia, the Indonesian Government's reaction was mildly supportive. However, Indonesia's President Sukarno was soon to take a diametrically opposite stance by practically declaring war on the new Federation. Backed by the *Parti Komunis Indonesia* (Indonesian Communist Party) – which was strongly opposed to the creation of Malaysia – Sukarno pursued a belligerent stance against the creation of Malaysia. For Sukarno, who had grandiose visions of a pan-Southeast Asian federation – *Malphilindo*, a federation of Malaya, Philippines and Indonesia – with Indonesia at its centre and himself as leader, the new Federation was a major foil. Indonesian Foreign Minister Dr Subandrio fired the first salvo in January 1963 when he announced that Indonesia would pursue a policy of *Konfrontasi* or Confrontation with Malaysia. In July that year, President Sukarno declared his intention to 'crush Malaysia' (*ganyang* Malaysia).

Sukarno was a nationalist hero who came to power in 1948 and ruled Indonesia with an iron fist till his overthrow in 1967. His challenge to Malaysia was couched in anti-imperialist tones. He argued that Malaysia was nothing more than a British puppet

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51 See generally, Harold James & Denis Sheil-Small, *The Undeclared War: The Story of the Indonesian Confrontation 1962-1966* (Singapore: Asia Pacific Press, 1971); JAC Mackie, *The Indonesia-Malaysia Dispute 1963-1966* (Oxford University Press, 1974); Greg Poulgrain, *The Genesis of Konfrontasi: Malaysia, Brunei, Indonesia 1945-1965* (London: C Hurst & Co, 1998); Matthew Jones, *Conflict and Confrontation in South East Asia, 1961-1965: Britain, the United States and the Creation of Malaysia* (Cambridge: Cambridge University Press, 2002); and David Easter, *Britain and the Confrontation with Indonesia, 1960-1966* (London: IB Tauris, 2004).

state and that British consolidation of its territories would increase its presence, power and influence in the region. In turn, this would threaten Indonesia's independence. At the same time, he argued that the people of North Borneo were being made to join the Federation against their wishes and this was against the principle of self-determination. From the standpoint of international law, Sukarno had no legitimate claims over Malaya's territory, and thus could not use that as an excuse to precipitate hostilities against the new state. Sukarno's strategy was to foment sufficient problems in the Borneo territories to prevent them from merging with the Federation.

In this respect, he was helped by the communist network in Singapore, Malaya, and Brunei. The first shot was fired in Brunei, where AM Azahari, the ambitious leader of the Partai Ra'ayat (or People's Party) won an overwhelming majority of elected seats under its new Constitution in August 1962. Azahari envisioned a new state comprising Brunei, North Borneo and Sarawak known as Kalimantan Utara, with the Sultan of Brunei as its nominal head and had campaigned on the platform of anti-merger. Failing to convene the Legislative Council, the secret wing of his party known as the Tentera Nasional Kalimantan Utara (TNKU) or the North Kalimantan National Army staged a revolt against the Sultan. British troops were called in from Singapore and the revolt was suppressed within a few days. Sukarno saw the revolt as a reflection the North Borneo peoples' objection to the merger with the Federation, and proceeded to drive wedges between the Borneo states and the Federation Government:

With the failure of the Brunei Revolt, Sukarno had to make a more direct move in his plan to 'crush Malaysia!' His main policy from the beginning was to divide the various states, break up the conception of unity, and bring Malaya and Singapore

under a government subservient to Indonesia. His first object was to separate Sarawak and North Borneo from Malaysia based on Nasution's theories of guerrilla warfare. He would alternate military and political pressures, before switching to simultaneous military and political pressures. After raising the political pressure until Malaysia reacted, he would then lower it to the accompaniment of loud protestations of his 'peaceful' intent.<sup>52</sup>

### ***The Philippines Claim on Sabah***<sup>53</sup>

The Philippines' claim on the territory of Sabah was based on Sabah's links to the Sulu Sultanate. In 1877, Baron Gustavus von Overbeck, an Austrian, and his British partner, Alfred Dent, concluded treaties with the Sultan of Brunei under which the Sultan ceded substantial parts of Sabah to them. Overbeck and Dent were then heading the British North Borneo Provisional Association, which eventually became the British North Borneo Company. At this time, the Sultan of Sulu also laid claim to the same territory, arguing that the Sultan of Brunei had ceded it to his ancestor back in 1704 as a reward for helping the latter quell a rebellion. To ensure the sanctity of the cession, Overbeck and Dent concluded an Agreement with the Sultan of Sulu in 1878 under which the Sultan, in turn, ceded the territory to them. In 1881, the British Government issued a Charter to establish the British North Borneo Company, which succeeded to all previous grants and commissions of the British North Borneo Provisional Association, including its sovereign control over Sabah.

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52 See Harold James & Denis Sheil-Small, *The Undeclared War: The Story of the Indonesian Confrontation 1962-1966* (Singapore: Asia Pacific Press, 1971) at p 56.

53 See S Jayakumar, 'The Philippine Claim to Sabah and International Law' (1968) 10 *Malaya Law Review* 306-335.

The Philippines claimed sovereignty over Sabah on the basis that it had sovereignty over Sulu and was thus successor in title to all possessions of the Sulu Sultanate. On 12 September 1962, during President Diosdado Macapagal's administration, a series of instruments were executed by the alleged heirs of the Sultan of Sulu to transfer all sovereignty, rights and interest they may have had in Sabah to the Philippines Government.<sup>54</sup> The Philippines' claim hinged mainly on the interpretation of the 1878 Agreement between Overbeck and Dent and the Sultan of Sulu. It was asserted that this document was merely a lease granted by the Sultan and did not amount to transfer of sovereignty over the territory. Without getting into the merits of the competing claims, the Philippine claim gave the Philippines ammunition to oppose the creation of the Federation of Malaysia on the ground that it violated the principle of self-determination, thereby supporting the objections made earlier by President Sukarno of Indonesia.

To resolve this issue and convince Sukarno of the democratic nature of the federation, a meeting was held in Manila between representatives of the Federation of Malaya, Indonesia

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54 These instruments were: (a) Instrument dated 24 Apr 1962 under which five heirs transferred their claim to North Borneo to the Philippine Government; (b) Resolution of Ruma Bechara of Sulu authorizing the Sultan in Council to transfer his title of sovereignty over North Borneo to the Philippines dated 29 Aug 1962; (c) Document signed by the Philippine President authorizing Vice-President Emmanuel Palaez to accept an instrument of cession of rights over Sabah from one of the heirs dated 11 Sep 1962; and (d) Instrument of cession of North Borneo by Sultan Mohammed Esmail Kiram, Sultan of Sulu, dated 12 Sep 1962. See Jayakumar, *ibid.*, at 308 n14.

and the Philippines from 7 to 11 June 1963.<sup>55</sup> The result was the Manila Accord, signed on 31 July 1963 under which the three representatives reaffirmed their 'adherence to the principle of self-determination for the peoples of non-self-governing territories'.<sup>56</sup> The Philippines and Indonesia agreed to accept the formation of Malaysia provided an independent and impartial authority, the Secretary-General of the United Nations or his representative ascertained the support of the people of the Borneo territories.<sup>57</sup>

Another topic touched on in the Accord was the Philippines' claim on North Borneo (Sabah). The representatives took note of 'the Philippines claim and the right of the Philippines to pursue it in accordance with international law and the principle of the pacific settlement of disputes' and agreed that 'the inclusion of North Borneo in the Federation of Malaysia would not prejudice either the claim or any right there under'.<sup>58</sup> Finally, the representatives agreed to convene a meeting of the Heads of Government of the three states before the end of July 1963.<sup>59</sup>

A cable was sent to the UN Secretary General requesting him to send working teams to Sabah and Sarawak 'in order to ascertain the wishes of these peoples with respect to the proposed

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55 The representatives were: Tun Abdul Razak, Deputy Prime Minister of the Federation of Malaya; Dr Subandrio, Deputy First Minister and Minister of Foreign Affairs of the Republic of Indonesia; and Emmanuel Pelaez, Vice-President and concurrently Secretary of Foreign Affairs of the Philippines.

56 See Article 10, Manila Accord Between the Philippines, the Federation of Malaya and Indonesia, signed at Manila on 31 July 1963 No 8029 (1965) UN Treaty Series 344.

57 Ibid.

58 Article 12, Manila Accord, *ibid.*

59 Article 14, Manila Accord, *ibid.*

Federation.<sup>60</sup> At the same time, the three governments would send observers to the two territories ‘to witness the investigations of the working teams and the Federation of Malaya would do its best to ensure the co-operation of the British Government and of the Governments of Sabah and Sarawak.’<sup>61</sup> The terms of reference were set out in Article 4 of the Joint Statement by the three governments as follows:<sup>62</sup>

Pursuant to paragraphs 10 and 11 of the Manila Accord the United Nations Secretary-General or his representative should ascertain prior to the establishment of the Federation of Malaysia the wishes of the people of Sabah (North Borneo) and Sarawak within the context of General Assembly Resolution 1541 (XV), Principle 9 of the Annex, by a fresh approach, which in the opinion of the Secretary-General is necessary to ensure complete compliance with the principle of self-determination within the requirements embodied in Principle 9, taking into consideration :

- (i) the recent elections in Sabah (North Borneo) and Sarawak but nevertheless further examining, verifying and satisfying himself as to whether
  - (a) Malaysia was a major issue, if not the main issue;
  - (b) Electoral registers were properly compiled;
  - (c) elections were free and there was no coercion; and
  - (d) votes were properly polled and properly counted; and
- (ii) the wishes of those who, being qualified to vote, would have exercised their right of self-determination in the recent elections had it not been for their detention for political

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60 See ‘The Question of Malaysia’ (1963) *United Nations Yearbook* 41.

61 *Ibid.*

62 Joint Statement by the Philippines, the Federation of Malaya and Indonesia, 5 Aug 1963, No 8029 *UN Treaty Series*, 1965 at 356-360.

activities, imprisonment for political offences or absence from Sabah (North Borneo) or Sarawak.

***The 1963 UN Fact Finding Mission***

The fact-finding mission was headed by Laurence V Michelmore and consisted of eight members. It left New York on 13 August 1963 and arrived in Kuching, Sarawak on 16 August. There, the team split into two, with four members going to Sabah and the rest remaining in Sarawak. Both teams remained till 5 September and were joined by observers from the Federation of Malaya, Philippines and Indonesia. On 14 September, the UN Secretary General made his conclusions public and stated that:

After considering the constitutional, electoral and legislative arrangements in Sarawak and Sabah (North Borneo), the Mission came to the conclusion that the territories had 'attained an advanced stage of self-government with free political institutions so that its people would have the capacity to make a responsible choice through informed democratic processes.' Self-government had been further advanced in both territories by the declaration of the respective Governors that, as from 31 August 1963, they would accept unreservedly and automatically the advice of the respective Chief Ministers on all matters within the competence of the State and for which portfolios had been allocated to Ministers. The Mission was further of the opinion that the participation of the two territories in the proposed Federation, having been approved by their legislative bodies, as well as by a large majority of the people through free and impartially conducted elections in which the question of Malaysia was a major issue and fully appreciated as such by the electorate, could be regarded as the 'result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed



through informed and democratic processes, impartially conducted and based on universal adult suffrage.<sup>63</sup>

The Secretary-General concluded that ‘complete compliance with the principle of self-determination within the requirements of General Assembly resolution 1541 (XV) Principle IX of the Annex, had been ensured.’<sup>64</sup>

### ***Reactions of Indonesia & the Philippines***

The Federation came into being on 16 September 1963 but objections were immediately raised by Indonesia and the Philippines. On 17 September 1963, at the opening meeting of the UN General Assembly’s 18<sup>th</sup> Session, the Indonesian representative objected to the fact that the seat of the Federation of Malaya in the assembly hall was occupied by the representative of the Federation of Malaysia. Both the Philippines and Indonesia<sup>65</sup> withheld recognition of the new state, expressing reservations over the findings of the UN’s Malaysia Mission.<sup>66</sup>

While Philippines’ objection to the formation of Malaysia manifested in its breaking off of diplomatic ties with the new federation, Indonesia’s objections took on a more violent dimension. True to his word, President Sukarno was prepared to use force to destroy the new federation. Although there was no all-out war, Indonesia launched numerous raids on Malaysia, which including Singapore. This went on from the time Singa-

63 See ‘The Question of Malaysia’ (1963) *United Nations Yearbook* 41, at 42-43.

64 Ibid, at 43.

65 See ‘Subandrio: Why recognition decision is difficult’ *The Straits Times* 12 Aug 1965, at 1.

66 For the full report, see United Nations General Assembly, Delegation from Malaysia, *United Nations Malaysia Mission: Report* (Kuala Lumpur: Department of Information Malaysia, 1963).

pore joined the Federation of Malaysia in 1963, right up to 1966, just after Singapore seceded from the Federation. Thousands of disgruntled Chinese youths from Sarawak were trained by the Indonesians and sent into different parts of Borneo and Malaysia to begin an armed insurrection. The two countries were technically at war. In Singapore, some 300 Indonesian agents, left-wing Chinese militants and Malay extremists of the Partai Rakyat were taken to Sumatra, trained in terrorist and sabotage tactics and smuggled back into Singapore in barter boats. Eight days after Singapore joined Malaysia, the terrorists set off their first bomb at Katong Park, just opposite the Ambassador Hotel. In the next 20 months, 36 more blasts were unleashed at targets varying from water mains to the perimeter of the Istana (the Yang di-Pertuan Agong's official residence). By the end of *Konfrontasi* in 1966, 60 people were either killed or injured.<sup>67</sup>

At the United Nations, Sukarno continued to protest the seating of Malaysia. Things came to a head in December 1964 when Sukarno announced that Indonesia would withdraw from the United Nations if Malaysia – which had been elected as a non-permanent member of the Security Council – would be allowed to take its seat on the Council. When Malaysia was seated on the Council, Indonesia confirmed its withdrawal in a letter to the Secretary-General dated 20 January 1965.<sup>68</sup> Indonesian was the first state ever to withdraw from the United Nations and stayed out of the world body till September 1966 when it resumed full

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67 See Dennis Bloodworth, *The Tiger and the Trojan Horse* (Singapore: Times Books International, 1985) at 273-274.

68 UN Doc A/5857 dated 21 Jan 1965. See Egon Schwelb, 'Withdrawal from the United Nations: The Indonesian Intermezzo' (1967) 61(3) AJIL 661-672.

cooperation and participation in the organization's activities at General Suharto's insistence.<sup>69</sup>

### III INDEPENDENCE – 1965

#### Secession of Singapore from Malaysia

Singapore's secession from the Federation of Malaysia on 9 August 1965 has been the subject of much writing and commentary,<sup>70</sup> and I do not propose to enter into a prolonged discussion of the reasons that precipitated such a drastic and dramatic exit. By July 1965, the tension between the central government in Kuala Lumpur and the Singapore government had reached breaking point. A decision was made that Singapore should secede from the Federation, but this decision was known only to a select group of government ministers and civil servants. Such secrecy was necessary to prevent this news from reaching the British High Commissioner, Lord Head, who would certainly have done everything possible to prevent Singapore from seceding. An agreement had to be worked out between the two governments to ensure that things went smoothly and that there would be no legal hiccups. The task of drafting such an agreement fell on Singapore's Law Minister EW Barker, who was a friend and trusted lieutenant of Singapore Prime Minister Lee Kuan Yew. Barker based the draft agreement on the British West Indies Act

69 See RE Elson, *Suharto: A Political Biography* (Cambridge: Cambridge University Press, 2001) at 147–148.

70 See for example, Albert Lau, *A Moment of Anguish: Singapore In Malaysia and the Politics of Disengagement* (Singapore: Times Academic Press, 1998); Noordin Sopiee, *From Malayan Union to Singapore Separation: Political Unification in the Malaysia Region 1945–1965*, 2 ed (Kuala Lumpur: University of Malaya Press, 2005); and Patrick Keith, *Ousted: An Insider's Story of the Ties That Failed to Bind* (Singapore: Media Masters, 2005).

1962,<sup>71</sup> which had been passed to bring about the break-up of the West Indies Federation.<sup>72</sup> As Barker himself recalled:

Our legal documents had provided for us joining the Federation, but not for secession. I made sure I stuck in a provision to allow the state to get out ... I went to the University of Singapore Law Library and looked at the Separation Agreements of the state components of the West Indies. At the time, they had a federation that split up. So I used their model and modified it to fit Singapore's situation.<sup>73</sup>

The preamble of this Agreement – which the parties referred to as the Singapore Independence Agreement 1965<sup>74</sup> signed on 7 August 1965 – reads:

AND WHEREAS it has been agreed by the parties hereto that fresh arrangements should be made for the order and good government of the territories comprised in Malaysia by the separation of Singapore from Malaysia upon which Singapore shall become an independent and sovereign state and nation separate from and independent of Malaysia and so recognised by the Government of Malaysia

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71 10 & 11 Elizabeth 2, c 19.

72 The West Indies Federation, which comprised the former British colonies of Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St Christopher-Nevis-Anguilla, St Lucia, St Vincent & the Grenadines; and Trinidad and Tobago. It lasted from 1958 to 1962. See generally, Gordon Lewis, 'The British Caribbean Federation: The West Indian Background' (1957) 28(1) *Political Quarterly* 49–63.

73 Quoted in Kevin YL Tan, 'The Legalists' in Lam Peng Er & Kevin YL Tan (eds), *Lee's Lieutenants: Singapore's Old Guard* (Sydney: Allen & Unwin, 1999) 70–95, at 87.

74 Singapore Government Extraordinary Gazette No 66 of 1965. This Agreement was registered with the United Nations Secretariat by Singapore on 1 June 1966. See (1966) UN Treaty Series 89–102.

Under Article II of the Act, Singapore ceased to be a State in the Federation on 9 August 1965 ('Singapore Day') and became 'an independent and sovereign state separate from and independent of Malaysia.' Article IV further provided that the Government of Malaysia would 'take such steps as may be appropriate and available to them to secure the enactment by the Parliament of Malaysia of an Act ... providing for the relinquishment of sovereignty and jurisdiction of the Government of Malaysia in respect of Singapore.' Accordingly, Singapore's legal departure from the Federation was thus affected by a series of documents. On the Malaysian side, the Federal Parliament passed the Constitution and Malaysia (Singapore Amendment) Act 1965<sup>75</sup> under which Singapore was allowed 'to leave Malaysia and become an independent and sovereign state and nation separate from and independent of Malaysia.'<sup>76</sup> The executive and legislative powers of Malaysia's Parliament to make laws for Singapore ceased 'to extend to Singapore' and was 'transferred so as to vest in the Government of Singapore.'<sup>77</sup> Under section 4 of this Act, the Singapore government retained its executive authority and legislative powers to make laws and under section 5, the Parliament of Malaysia relinquished all powers to make laws for Singapore. Section 6 transferred the sovereignty and jurisdiction of the Yang di-Pertuan Agong over the island and vested them in the Yang di-Pertuan Negara. Finally, section 7 provided that all laws in force in Singapore immediately before Singapore Day 'shall continue to have effect according to their tenor ... subject however to amendment or repeal by the Legislature of Singapore.'

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75 Act No 53 of 1965 (Malaysia).

76 Article 2, *ibid.*

77 Article 5, *ibid.*

On the Singapore end, two enactments were passed when Parliament sat for the first time, on 22 December 1965, more than four months after Separation. The first of these enactments was the Constitution of Singapore (Amendment) Act,<sup>78</sup> which was passed with retrospective effect to 9 August 1965. This Act amended the Singapore State Constitution 1963, and changed the procedure required for constitutional amendment. To amend to the Constitution, the two-thirds majority was abolished, and only a simple majority was now required. In addition, this Act also changed the relevant nomenclatures to bring the Constitution in line with Singapore's independence status. The second document of importance is the Republic of Singapore Independence Act (RSIA),<sup>79</sup> which was passed immediately after the Constitution (Amendment) Act. This Act was also passed retrospectively and provided, inter alia, that certain provisions of the Malaysian Federal Constitution were to be made applicable to Singapore. The RSIA also vested the powers relinquished by the Constitution and Malaysia Singapore Amendment Act in the executive and legislative branches of government.<sup>80</sup> Section 13 of the RSIA contains a unique provision empowering the President to 'make such modifications in any written law as appear to him to be necessary or expedient in consequence of the enactment of this Act and in consequence of the independence of Singapore upon separation from Malaysia.' This power was to last for three years after the RSIA came into operation.

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78 Act No 8 of 1965 (Singapore).

79 Act No 9 of 1965 (Singapore).

80 For a controversial discussion of the significance of the Constitution (Amendment) Act and the RSIA, see AJ Harding, 'Parliament and the Grundnorm in Singapore', (1983) 25 *Malaya Law Review* 351.

Implementing the Separation Agreement proved more problematic than any lawyer could have imagined. Issues relating to defence, territorial boundaries and water supply surfaced in the ensuing years, and these will be dealt with in the latter part of this volume.

### **The Water Agreements**

One of the most important and unique features of the Independence of Singapore Agreement was the ‘water clause’. Back in 1961 and 1962, when Singapore had yet to become a constituent state of the Federation of Malaysia, the British colony had signed two water supply agreements with the Government of the State of Johore (a constituent state of the Federation of Malaya). Singapore’s Prime Minister Lee Kuan Yew was anxious that these water agreements would continue to be honoured even after Singapore’s independence and asked for it to be worked in. As Law Minister EW Barker recalled:

Lee then told me to stick in the ‘water clause’. At the time, the PUB [sic] in Singapore had 2 agreements with the Johore government which are still in force. I wanted them to guarantee that the Johore Government would abide by the agreements.<sup>81</sup>

Article IV of the Separation Agreement required the Government of Malaysia to enact legislation in the form set out in Annex B to the Agreement, and this took the form of the Constitution and Malaysia (Singapore Amendment) Act.<sup>82</sup> The ‘water clause’ Barker spoke of is found in section 14 of the Act, which reads:

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81 Quoted in Kevin YL Tan, ‘The Legalists’ in Lam Peng Er & Kevin YL Tan (eds), *Lee’s Lieutenants: Singapore’s Old Guard* (Sydney: Allen & Unwin, 1999) 70–95, at 87.

82 Act No 53 of 1965 (Malaysia).

14. The Government of Singapore shall guarantee that the Public Utilities Board of Singapore shall on and after Singapore Day abide by the terms and conditions of the Water Agreements dated 1st September, 1961, and 29th September, 1962, entered into between the City Council of Singapore and the Government of the State of Johore.

The Government of Malaysia shall guarantee that the Government of the State of Johore will on and after Singapore Day also abide by the terms and conditions of the said two Water Agreements.

The importance of these two water agreements to Singapore can never be underestimated. While Singapore had its own catchment areas and reservoirs, Singapore had not been self-sufficient in water since the 1920s. It was thus imperative for the new republic's survival, that its lifeline was guaranteed. What had initially been two commercial contracts – signed between the City Council of Singapore and the State of Johore – had, by the stroke of a pen under the Independence of Singapore Agreement, been elevated to the status of an international bilateral treaty of utmost importance.

Indeed, years later, at the United Nations Conference on the Law of Treaties, the sanctity of this Agreement was reiterated by the Malaysian representative, Mr MO Ariff during a discussion on the proposed Article 60 of what eventually became the Vienna



Convention on the Law of Treaties. In discussing the sanctity of treaties, Ariff said that:

... the principle that treaty obligations between parties to a treaty should continue despite the severance of diplomatic relations between them was rooted in practice. Some treaties might be so fundamental to the very existence of States that they simply could not be dispensed with, whatever political differences might arise. For example, the new island State of Singapore was dependent on Malaysia for its water supply; the treaty under which Malaysia had to supply a certain quantity of water daily to Singapore could not be terminated or suspended between the two States for any political reason ...<sup>83</sup>

Singapore's representative, Chao Hick Tin (now a Judge of Appeal), acknowledged 'with satisfaction' Ariff's statement and expressed the hope that the severance of diplomatic ties between Singapore and Malaysia 'would never occur'.<sup>84</sup>

In subsequent years, Malaysian Prime Minister Mahathir Mohamed argued that the terms of these two water agreements were unfair and Malaysia could unilaterally alter their terms by charging Singapore more for raw water. A discussion of this subsequent development is, however, beyond the scope of this monograph. Suffice to say, when the controversy over the water agreements was discussed in Parliament in 2002 and 2003, reference was once again made to the sanctity of international treaties and the centrality of the promises made under the Separation

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83 See Official Records of the United Nations Conference on the Law of Treaties, First Session, 26 March – 24 May 1968, A/CONF. 39/11, at 383, para 57.

84 *Ibid.*, at 384, para 66.

Agreement.<sup>85</sup> In his oral answer to questions on Singapore's bilateral relations with Malaysia, Foreign Minister Professor S Jayakumar said:

The significance of the water price, for both countries, is Singapore's existence as a sovereign nation separate from Malaysia, and the sanctity of the most solemn agreements that we have entered into with Malaysia.

The two Water Agreements are no ordinary agreements. They are so vital that they were confirmed and guaranteed by both Governments in the 1965 Separation Agreement, also known as the Independence of Singapore Agreement. The Separation Agreement was registered at the United Nations. Both countries have to honour the terms of the agreements and the guarantee in the Separation Agreement. Any breach of the Water Agreements must call into question the Separation Agreement and can undermine our very existence.

Mdm Deputy Speaker, not many people know that Malaysia also gave effect to the Separation Agreement by an amendment to the Malaysian Constitution on 9th August 1965 through an Act of the Malaysian Parliament, Act 53 of 1965....

In other words, the guarantees are an integral part of an international agreement solemnly entered into, adopted by a constitutional amendment in Malaysia and later registered with the United Nations. In international law, both parties must ensure that the Water Agreements are observed and neither side can unilaterally vary their terms and conditions. If Malaysia can unilaterally revise the price of raw water from 3 sen to 60 sen, and then from 60 sen to RM 3, then they can eventually fix it at RM 8, which they said is the price since that is what

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85 On the controversy over the revision of the water agreements, see S Jayakumar, 'Bilateral Relations with Malaysia: Water and Other Issues,' Oral Answer to Questions, *Reports of Singapore Parliamentary Debates*, 25 Jan 2003, vol 75, col 2358.

Hong Kong pays to China, or to any other price. The sanctity of the Separation Agreement would have been breached. All other agreements we have signed with Malaysia will become meaningless. Nor will any new agreement we conclude with Malaysia be worth anything. In such a world, there would be no basis for international relations. There would be no foundation for international law, which all UN members have a duty to uphold, in order to maintain a stable and peaceful international order.<sup>86</sup>

The 1961 Water Agreement expires in 2011 and the Singapore Government has already promised to hand over the waterworks to the Johor water authorities 'free of charge and in good working order'. This was duly noted by Malaysian Prime Minister Najib Tun Razak who expressed his appreciation of Singapore's decision in a joint Statement issued during his visit to Singapore in September 2010.<sup>87</sup>

### **Recognition of Singapore's Independence**

Malaysia was, by dint of the Separation Agreement and its attendant legislation, the first country to recognize Singapore as an independent state. It was imperative that support and recognition of Singapore be obtained from as many states as possible. This became all the more urgent as Singapore's departure from the Federation of Malaysia appeared to add fodder to Indonesian

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86 Ibid, at cols 2363–2364.

87 See *Joint Statement for the Meeting Between Prime Minister Lee Hsien Loong and Prime Minister Dato' Sri Mohd Najib Tun Abdul Razak on the Implementation of the Points of Agreement on Malayan Railway Land in Singapore (POA)*, 20 September 2010, Singapore, available at <<http://www.pmo.gov.sg/News/PressReleases/Joint+statement+for+the+meeting+between+PM+LeeHsien+Loong+and+PM+Dato'+Sri+Mohd+Najib+Tun+Abdul+Raza.htm>> (accessed 21 Sep 2010), at para 6.

President Sukarno's attack against the Federation of Malaysia as untenable and nothing more than a neo-colonist plot. At 9:00 am on 9 August 1965, members of the small diplomatic corps – the 30 deputy heads of Commonwealth missions, consuls and trade representatives – were hastily summoned to City Hall and sequestered in a meeting room till Prime Minister Lee could address them. It was a hectic morning for Lee. Just before 10:00 am, Lee strode into the room, and informed the delegates that Singapore was now independent. Each of the delegates had been given a copy of the Government Gazette Extraordinary containing both the Separation Agreement and the Proclamation of Singapore. Lee asked for Singapore to be recognized by the states of all those present.<sup>88</sup> It was, as Lee later recalled, 'emotionally exhausting'.<sup>89</sup>

Having already secured recognition from Malaysia, Lee was now anxious to get Britain's blessings, especially since both he and Malaysian Prime Minister Tunku Abdul Rahman kept the separation discussions and Agreement a secret from the British High Commissioner for Malaysia, Lord Antony Head. On the evening of 9 August, Lord Head flew in from Kuala Lumpur to meet Lee at Sri Temasek (the official residence of Singapore's Prime Minister). Lee asked Head if he had any instructions from his government to extend recognition to Singapore. Head replied in the negative; there had simply been insufficient time to consult with London. The following day, Lee received a message from British Prime Minister Harold Wilson (who was at that time holidaying in the Isles of Scilly). The message was sent

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88 Gretchen Liu, *The Singapore Foreign Service: The First 40 Years* (Singapore: Editions Didier Millet, 2005) at 19 [hereinafter 'Liu'].

89 See Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Singapore: Marshall Cavendish Editions, 1998) at 648.

through the acting British High Commissioner in Singapore and read as follows:

I wanted to let you know that we have decided to recognize Singapore as an independent state right away, and that we are announcing this in tomorrow morning's papers. I have seen your message and I much appreciate your kind words. I am glad to know that you want to work on terms of friendship with us. I must say that I was disappointed that we were not consulted before this important step was taken, because, of course, it has major implications for us. We are now thinking very urgently about this. But you may be sure that we wish you well. I am concerned that Sukarno may try to use this development for his own ends. I am sure you will agree that we must all be careful to avoid anything which might help him to make capital out of it.<sup>90</sup>

Letters of congratulation and recognition began to flow in from Singapore's friends in the Commonwealth and elsewhere. However, many Afro-Asian states were slow to recognize the new state as they were not entirely convinced that Singapore could be considered a genuinely non-aligned state and that the presence of the British military bases on the island were there truly at the Singapore Government's behest. Lee Kuan Yew decided to go on the offensive. During a television interview at the end of August, he told the British that they could be ordered to 'quit' the island within 24 hours if his government so decided.<sup>91</sup> He then launched a vitriolic attack against the US Central Intelligence Agency (CIA) for allegedly obtaining secret information from a Government security officer. These attacks, Chan Heng

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90 Ibid, at 651.

91 See Chan Heng Chee, 'Singapore's Foreign Policy, 1965–1968' (1969) 10(1) *Journal of Southeast Asian History* 177–191, at 181.

Chee suggests, were prompted by Lee's concern over the 'slow response from the African nations to Singapore's independence'.<sup>92</sup> Indeed, after almost a month of independence, 'only 30 Afro-Asian nations had recognized the new state but the majority of the Afro-Asian bloc in the United Nations had not accorded the new state recognition'.<sup>93</sup>

This concern over the lack of recognition by other states was both political and legal. Singapore's secession from Malaysia meant that as long as Malaysia was prepared to recognise Singapore, its status as an independent state vis-à-vis Malaysia was not in doubt. The same can be said with respect to the United Kingdom's quick recognition of Singapore. That said, international law also accepts that the grant of recognition by one state only affects the bilateral relations between that state being recognised and the state affording recognition.<sup>94</sup> More important for Singapore was for her to quickly have the ability to become an active participant in the international community of nations, and in that respect, the more recognition it received from the world's states, the better.

### **Singapore at the United Nations**

By the end of August 1965, barely a month after its separation from Malaysia, Singapore was ready to join the world community

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92 Ibid, at 182. See also, Michael Leifer, *Singapore's Foreign Policy: Coping with Vulnerability* (London: Routledge, 2000) at 62 [hereinafter 'Leifer'].

93 Ibid. Four days after independence, only 10 states recognized Singapore. See 'Three more countries recognize New State' *The Straits Times*, 13 Aug 1965, at 4.

94 See Sir Robert Jennings & Sir Arthur Watts (eds), *Oppenheim's International Law*, 9 ed (London & New York: Longman, 1996), Vol 1, at 130.

of nations by seeking membership in the United Nations. On 2 September 1965, Singapore's Foreign Minister S Rajaratnam sent a cable to the Security Council of the United Nations, applying for membership to the United Nations, and requesting the Security Council to process the application at its next meeting.<sup>95</sup> In addition, Rajaratnam cabled the Security Council a Declaration accepting the 'conditions contained in the Charter of the United Nations' with the undertaking to fulfil them.<sup>96</sup> On 4 September, Prime Minister Lee Kuan Yew made a further declaration, which was sent to the United Nations Secretary-General, echoing the same Declaration Rajaratnam had sent out two days earlier:

I have the honour on behalf of the Government of Singapore and in my capacity as Prime Minister to declare that the independent and sovereign State of Singapore accepts the conditions contained in the Charter of the United Nations and solemnly undertakes to fulfil them.<sup>97</sup>

On the afternoon of 20 September, Singapore's application to be admitted to the United Nations was moved at the Security Council by Malaysia and co-sponsored by the Ivory Coast, Jordan and the United Kingdom.<sup>98</sup> The Singapore delegation was nervous. They feared that the Soviet Union might use its veto as a permanent member of the Council to block Singapore's admission. As Herman Hochstadt, then a young civil servant recalled:

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95 UN Security Council S/6648 dated 2 Sep 1965.

96 Ibid.

97 Singapore: Declaration of Acceptance of the Obligations Contained in the Charter of the United Nations, Singapore, 4 Sep 1965 (1965) UN Treaty Series 152. This declaration was presented to the UN Secretary-General on 13 September 1965.

98 See UN Security Council Official Records, 1243<sup>rd</sup> Meeting, 20 Sep 1965, S/PV.1243.

It took us 36 hours to get to New York ... There was some concern that the USSR would veto our admission because of the British bases but it was smooth sailing because Malaysia backed us up.<sup>99</sup>

Other than Singapore's sponsors, another six delegates spoke up in support of Singapore's application. The Soviet representative Dr NT Federenko noted Singapore's commitment to the UN Charter and supported Singapore's admission.<sup>100</sup> The resolution to admit Singapore to membership in the United Nations was adopted unanimously.<sup>101</sup> The General Assembly's 1332<sup>nd</sup> Plenary Session was held the very next day, on 21 September. The Assembly was presided by the newly elected chairman, Amintore Fanfani of Italy, who took the delegates through to the resolutions to admit three new states – the Maldives, the Gambia and Singapore. The draft resolution to admit Singapore as a member of the United Nations was adopted by acclamation and the Singapore delegation – comprising Deputy Prime Minister Toh Chin Chye, Foreign Minister S Rajaratnam, and Permanent Secretary Abu Bakar Pawanchee – were escorted to their place in the General Assembly Hall. Singapore became the 117<sup>th</sup> member of the United Nations.<sup>102</sup> After receiving good wishes and congratulatory messages from members of the Assembly, Rajaratnam rose to speak. He thanked all the members of the Security Council for scrutinizing Singapore's application and for all the support he received from the sponsoring states. Rajaratnam then added:

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99 Herman Hochstadt, quoted in Liu, n 88 above at 29.

100 See UN Security Council Official Records, 1243<sup>rd</sup> Meeting, 20 Sep 1965, S/PV.1243, at 11, para 69.

101 UN Security Council Resolution 213 (1965), 20 Sep 1965.

102 UNGA Resolution 2010 (XX), 21 Sept 1965.



Now that Singapore has been received into the fold of the United Nations, I would like to assure this Assembly that my country will join with other nations in their efforts to realize the aims and objects of the United Nations Charter. For us, the essentials of the Charter are the preservation of peace through collective security, promotion of economic development through mutual aid and the safeguarding of the inalienable right of every country to establish forms of government in accordance with the wishes of its own people. My country stands by these three essential principles and will give loyal and unflinching support to the United Nations in its efforts to promote them.<sup>103</sup>

Rajaratnam went on to assure the Assembly that the British bases on the island were there with Singapore's consent and were to ensure Singapore's security. Under no circumstances would they be used as a base for aggression.<sup>104</sup> A special ceremony was scheduled for the flags of the Gambia and Singapore to be raised at 10:00 am the next morning just opposite the delegates' entrance.

Abu Bakar Pawanchee, permanent secretary of Singapore's Ministry of Foreign Affairs, and a member of the delegation to New York, was designated Singapore's first representative to the United Nations. He presented his credentials on 29 September 1965, but he could do little else as he had no staff or facilities with which to conduct operations in New York. It was only in November that he found a suitable office for Singapore's mission in New York. In the meantime, he had to work from his hotel room. Abu Bakar returned to Singapore in January 1966 without establishing a permanent office for his successor. It was not till 1967 that Singapore dispatched its first permanent representative

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103 UN General Assembly Official Records, 1332<sup>nd</sup> Plenary Meeting, 21 Sep 1965, A/PV.1332, at 12, para 149.

104 *Ibid*, at para 156.

to the United Nations. Wong Lin Ken, a senior lecturer in history at the University of Singapore was named Singapore's first ambassador to the United States of America and concurrently Singapore's Permanent Representative to the United Nations. He held these posts for two years (1967–1968) before being succeeded in the latter post by Tommy Koh, then a young academic from the Faculty of Law at the University of Singapore, who would later become a major Singapore figure in international law and affairs. Meanwhile, the rest of Singapore's New York delegation proceeded on a two-month Goodwill Mission, visiting 8 African countries, 4 Asian countries, Britain, Russia, and Yugoslavia to establish diplomatic ties and explain Singapore to these foreign governments. The delegation arrived back in Singapore on 23 November 1965.<sup>105</sup>

### **Recognition of Singapore: Indonesia and the Philippines**

Recognition of Singapore became the subject of some controversy when, in April 1966, Indonesia sought to officially recognize Singapore's independence. As noted above, both the Philippines and Indonesia withheld recognition of Singapore on account of their initial opposition to the formation of Malaysia. Pakistan had done likewise in alignment with Indonesia.<sup>106</sup> A few months after Singapore gained her independence, Indonesia entered a state of political turmoil, which resulted in the eclipse of President Sukarno's powers.<sup>107</sup> Singapore's departure from the Federation of Malaysia coincided with a period in which Sukarno's power

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105 See Liu, n 88 above, at 35.

106 See Leifer, n 92 above, at 62.

107 For a discussion on Indonesia's changing policy towards Malaysia, see Franklin B Weinstein, *Indonesia Abandons Confrontation: An Inquiry into the Functions of Indonesian Foreign Policy* (Ithaca: Cornell University Southeast Asian Program, 1969).

and authority was increasingly challenged by the more moderate faction of the military. An abortive coup in September 1965 led to the rise of General Suharto as Indonesia's new strongman and Sukarno was slowly marginalised; he was eventually stripped of his office and placed under house arrest in 1967.

In April 1966, Sukarno continued to oppose Malaysia and determined that Indonesia would 'speed up recognition of Singapore in intensifying confrontation'.<sup>108</sup> This was seen by the Malaysians as an attempt by Sukarno to isolate Kuala Lumpur by courting Singapore.<sup>109</sup> Singapore Prime Minister Lee Kuan Yew played down this argument and issued a statement that Singapore wanted to be a friend to all, including Indonesia and noted:

I don't think the mere act of recognition affects the physical problems of defence. Recognition merely is an act of a foreign state which acknowledges that another state exists and wishes to take official cognizance of the existence of this other state.... I think before there can be diplomatic recognition, there must first be an act of recognition.<sup>110</sup>

This provoked an almost immediate response from Malaysian Prime Minister Tunku Abdul Rahman who told Singapore that it had to choose between friendship with Malaysia or Indonesia:

The Malaysian Government notes Indonesia's decision to recognize Singapore and the Singapore government's decision to welcome this move, fully realizing the fact that the Indonesian Government has stated that the reason behind the decision to recognize Singapore is to intensify confrontation against Malaysia. Singapore, as an independent nation may think that she can

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108 'Jakarta will recognize Singapore' *The Straits Times*, 11 Apr 1966 at 1.

109 'Facing a choice' *The Straits Times*, 13 Apr 1966 at 10.

110 'We want to be friends to all, says Lee' *The Straits Times*, 12 Apr 1966 at 1.

make friends with whomsoever she likes, but in this instance she has to choose between Indonesia and Malaysia.<sup>111</sup>

Deputy Prime Minister Tun Razak was more direct. He stated that Singapore's welcoming of Indonesian recognition was 'quite clearly ... an unfriendly act because diplomatic relations between Singapore and Indonesia in the light of Indonesia's intentions towards us is an unfriendly act because it would bring the Indonesians right at our doorstep.'<sup>112</sup> Razak threatened to close down the Causeway if diplomatic ties between Singapore and Indonesia were established.<sup>113</sup> Lee quickly moved to reassure the Malaysian leadership of Singapore's solidarity with Malaysia on the issue of Confrontation. His cable to the Tunku assured the Malaysian premier that Singapore would 'not do anything to injure Malaysia's interests.'<sup>114</sup> In addition, Lee noted:

Singapore is not negotiating for recognition. They can recognize us or not recognize us as they wish. But it would be absurd to say publicly that I do not want them to recognize Singapore. Even if they recognize Singapore without negotiations or conditions, no move against Malaysia's interests will ever be made.<sup>115</sup>

This statement calmed the Malaysian leaders and the Tunku issued a statement stating that 'Singapore's welcome of Indonesian recognition is not prejudicial to Malaysian security' but

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111 'Tengku: Lee must choose' *The Straits Times*, 13 Apr 1966 at 1.

112 'We must regard it as an unfriendly act ...' *The Straits Times*, 16 Apr 1966 at 18.

113 'Controls: Cabinet "yes"' *The Straits Times* 21 Apr 1966 at 1.

114 'Lee-to-Tengku pledges' *The Straits Times*, 26 Apr 1966 at 1.

115 Ibid.

that Malaysia would nonetheless ‘take appropriate measures to safeguard’ its sovereignty.<sup>116</sup>

In the midst of this diplomatic furore, Indonesia told Malaysia that it kept an open door to a peaceful solution to the diplomatic standoff between the two states. Tentative moves were made towards an eventual end to Confrontation. Suharto declared on 5 May 1966 that there was ‘no longer need for physical confrontation.’<sup>117</sup> This was followed ten days later by a proposal by President Sukarno for peace talks to be held between Malaysia and Indonesia between their respective Foreign Ministers.<sup>118</sup> Talks between Malaysian Deputy Prime Minister Tun Razak and Indonesian Foreign Minister Adam Malik in Bangkok were organized by Thai Foreign Minister Thanat Koman, which led to the signing of the Agreement to Normalize Relations Between the Republic of Indonesia and Malaysia on 11 August 1966 in Bangkok. On 19 September 1966, Indonesia rejoined the United Nations.

Although Indonesia’s recognition of Singapore was officially proclaimed in June 1966,<sup>119</sup> diplomatic recognition (leading to establishment of embassies in both countries) was announced only on 7 September 1966.<sup>120</sup> In June 1966, the Philippines also recognized Singapore.<sup>121</sup>

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116 ‘Choice of friendship “It’s clear now” – Tengku’ *The Straits Times* 27 Apr 1966 at 1.

117 ‘Suharto and Confrontation’ *The Straits Times* 5 May 1966 at 1.

118 ‘Call for “direct talks”’ *The Straits Times*, 16 May 1966 at 1.

119 ‘Recognition: Jakarta proclamation’ *The Straits Times*, 7 Jun 1966 at 11.

120 ‘Now it’s full ties with Singapore’ *The Straits Times*, 8 Sep 1967 at 1.

121 ‘Manila move: Singapore tells Jakarta’ *The Straits Times*, 29 Jun 1966 at 11.

The most important post-Confrontation development was the formation of the Association of Southeast Asian Nations (ASEAN) in 1967. The creation of this regional grouping can be attributed to Sukarno's Malphilindo concept as well as the failure of Confrontation and the revival of the idea of a regional cooperative body. The first such body was the Association of Southeast Asia (ASA), formed in 1961 and comprising Thailand, the Philippines and Malaysia. However this organization became defunct a year later as a result of Confrontation. The normalization of relations between Singapore, Malaysia and Indonesia paved the way for the establishment of ASEAN. While brokering peace talks between Indonesia and Malaysia, Thai Foreign Minister Thanat Khoman broached the idea of forming a new regional organization. In anticipation of a positive response, Thanat had the Thai Foreign Ministry prepare a draft charter of this new institution. Initially, it was to be a pure revival of ASA with the inclusion of Indonesia, but when Singapore got wind of the plan, Foreign Minister Rajaratnam called on Thanat to see if Singapore could be included.<sup>122</sup> The first meeting of foreign ministers took place in the Thai Foreign Ministry. Later, the delegates moved to Bangsaen where, between rounds of golf and work, they finalized the Bangkok Declaration under which ASEAN was created. The establishment of regional cooperation under the auspices of ASEAN in 1967 brought to an end one of the most tumultuous periods in the history of Malaysia and Singapore.

### **The 'Prisoner-of-War' Cases and Relations with Indonesia**

As we noted above, Sukarno's *Konfrontasi* resulted in a 20-month undeclared war between Indonesia and Malaysia (and Singapore).

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122 See Thanat Khoman, 'ASEAN Conception and Evolution,' available at <<http://www.aseansec.org/thanat.htm>> (accessed 1 Sep 2010).

During the Confrontation period, some 43 Indonesians had been detained, charged and convicted in Singapore for a miscellany of armed offences.

On 10 March 1965 a bomb was set off at the Hongkong and Shanghai Bank premises along Orchard Road in a building known as MacDonald House. The bomb had been placed near the lift on the mezzanine floor of the building, and the explosion killed 2 persons and injured another 33. Two Indonesian marines – Osman bin Haji Mohammed Ali and Harun bin Said Alias Tahir – were arrested and each charged with three counts of murder.

The second incident was the arrest of two Indonesians, Stanislaus Krofan and Andres Andea at Tanjong Rhu on the night of 15 April 1965. They were found in possession of 20 kg of explosives and were charged under the Internal Security Act for illegally carrying explosives without authority.<sup>123</sup>

The trials of Krofan and Andea in one instance; and Osman and Harun in another, made legal history when their defence counsels argued that they were prisoners of war within the meaning of the Geneva Convention Relative to the Treatment of Prisoners of War, 1949.<sup>124</sup> In *Krofan Stanislaus v PP*<sup>125</sup> the Federal Court had occasion to consider whether the 1949 Convention was part of Singapore's domestic law on 14 April 1965. The Court held that the four Geneva Conventions became part of the United Kingdom's domestic law in July 1957 by virtue of the UK Geneva Conventions Act, 1957. In April 1962, these Conventions became part of the domestic law of the Federation of Malaya by

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123 '2 Indons accused of having explosives' *The Straits Times* 16 Apr 1965 at 20.

124 75 UNTS 135.

125 [1965–1968] SLR 135.

virtue of the Malayan Geneva Conventions Act, 1962. At that time, Singapore was not part of the Federation. When Singapore joined the Federation of Malaysia on 16 September 1963, section 74 of the Malaysia Act empowered the Yang di-Pertuan Agong to extend the operation of the Geneva Convention Act to Singapore, but did not do so. The Court further noted that prior to 16 September 1963, while the Queen of England was empowered under section 8 of the UK Geneva Conventions Act 1957 to direct by order in council that any of the provisions of that Act shall extend to any colony, she failed to issue any such order. Notwithstanding these facts, the Court then proceeded to decide the case on the assumption that the Geneva Conventions applied to Singapore:

The facts and circumstances on which this new argument has been based are unusual and unique and in all probability will remain unique. To decide it would involve a consideration of many aspects of International Law on which there seems to be no clear consensus of views and a consideration of the nature of multipartite international treaties and the extent to which they are or should be applied by domestic courts. It seems to us, in all the proceedings that the proper course for us to adopt would be to decline to decide it and to proceed to deal with this appeal on the assumption that the 1949 Geneva Conventions are applicable in Singapore at all material times.<sup>126</sup>

In applying the Conventions, the Court was faced with the question as to whether or not 'members of the armed forces of a party to the conflict who enter enemy territory dressed in civilian clothing as saboteurs' were in fact prisoners of war in the sense anticipated in the Geneva Conventions. Since the Regulations Respecting the Laws and Customs of War on Land ('Hague Regu-

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126 Ibid, at 138.



lations’) were silent on this point, the Court likened saboteurs dressed as civilians to spies who had been apprehended:

We are of the opinion that this view does not offend against the rules of the law of nations respective warfare and indeed states the position under customary international law. It seems to use to be consistent with reason and the necessities of war to treat a regular combatant in disguise who acts as a saboteur as being in the same position as a regular combatant in disguise who acts as a spy. Both seek to harm the enemy by clandestine means by carrying out their hostile operations in circumstances which render it difficult to distinguish them from civilians. In the case of the ‘soldier’ spy it is universally accepted that he loses his prisoner of war status and need only be treated as any other spy would be treated. There seems no valid reason therefore why a ‘soldier’ saboteur, who by divesting himself of his uniform cannot readily be distinguished from a civilian, should not also be treated as any other saboteur would be treated. Both, by reason of their having purposely divested themselves of the most distinctive characteristic of a soldier, namely his uniform, have forfeited their right to be treated as other soldiers would be treated ie as prisoners of war.<sup>127</sup>

This ruling was affirmed by the Privy Council in the case of *Osman & Anor v Public Prosecutor*.<sup>128</sup> It is interesting to note that in *Osman’s* case, the Federal Court also refused to consider whether the Geneva Conventions were part of Singapore law at the relevant date but nonetheless proceeded on the assumption that they applied.<sup>129</sup> Any remaining doubt as to the applicability of the Geneva Conventions to Singapore was laid to rest by the

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127 Ibid, at 139–140.

128 [1965–1968] SLR 19.

129 *Osman & Anor v PP* [1967] 1 MLJ 137.

enactment in 1973 of the Geneva Conventions Act.<sup>130</sup> In moving the Bill, Minister for Health and Home Affairs Chua Sian Chin stated:

The Geneva Convention Bill is to give effect in Singapore to the four Conventions adopted at the Diplomatic Conference of Plenipotentiaries held in Geneva in 1949. It is the intention of the Singapore Government to accede to the four Conventions, the texts of which are set out in the Schedules to the Bill.

To-date, the Conventions have been acceded to by 132 countries. It is considered desirable that Singapore should now formally join in with those countries in upholding the fundamental objective of the Conventions, which is the observance of certain principles of human rights in situations of armed conflict.<sup>131</sup>

Returning to the *Osman* case, the Privy Council dismissed the appeal in July 1968. Their appeals exhausted, Osman and Harun would hang unless Singapore's President Yusof Ishak granted them clemency. On 15 October 1968, a personal appeal was made on their behalf by President Suharto on the advice of General Ali Murtopo,<sup>132</sup> who had received numerous letters from Singaporeans supporting the reprieve of the two marines.<sup>133</sup> The Singapore Government was in a quandary, and, after consideration, was

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130 Cap 117 Singapore Statutes, Act 15 of 1973.

131 Speech at the Second Reading of the Geneva Conventions Bill, 3 Jul 1973, *Singapore Parliamentary Debates Official Reports*, vol 32, col 544.

132 Murtopo was Deputy Head of the National Intelligence Coordinating Agency and one of Suharto's closest advisers in the early years of Suharto's presidency.

133 See Lee Khoo Choy, 'Solving Two Diplomatic Challenges' in Tommy Koh & Chang Li Lin (eds), *The Little Red Dot: Reflections by Singapore's Diplomats* (Singapore: World Scientific & IPS, 2005) 71–83, at 79.

not prepared to budge. As Lee Kuan Yew, who was then Prime Minister recalled:

When their appeals were dismissed by the Privy Council in London, Indonesian President Suharto sent his close aide, a brigadier-general, to petition our president for clemency, and to commute the death sentence to imprisonment.

The cabinet had met earlier to decide what advice to give the president. We had already released 43 Indonesians detained for offences committed during Confrontation. In response to Indonesian pleas we had also released two Indonesians convicted and sentenced to death for carrying a time bomb in Singapore. But these persons had been arrested before they could do harm, unlike the other case, where three civilians had been killed. We were small and weak. If we yielded, then the rule of law not only within Singapore but between our neighbours and Singapore would become meaningless as we would always be open to pressure. If we were afraid to enforce the law while British forces were still in Singapore, even though they had announced that they would be withdrawing by 1971, then our neighbours, whether Indonesia or Malaysia, could walk over us with impunity after 1971. So we decided not to abort the due process of law by acceding to the petition.<sup>134</sup>

President Suharto felt deeply humiliated by this rebuff and the Indonesian public reacted violently. The date set for their hanging was 17 October 1968. That morning, angry mobs – made up mainly of students – attacked and ransacked the Singaporean Embassy at 28 Jalan Indramayu, as well as the residences of embassy staff at 27 Jalan Maluku and 15 Jalan Jambu. None of the Embassy staff were hurt as they had been warned of possible

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134 Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (Singapore: Singapore Press Holdings & Times Media, 2000) at 37.

violence and had taken refuge in Hotel Indonesia. On 7 November, Singapore's ambassador to Indonesia, PS Raman handed the Indonesian Government a protest Note over the sacking of the Embassy and its diplomatic homes, stating that the attacks had been a serious violation of diplomatic immunity and called for discussion 'on principles on which compensation could be based.'<sup>135</sup> The Singaporean Embassy continued to function out of Hotel Indonesia till 27 November when it moved to an Indonesian Foreign Ministry guest house in central Jakarta provided by the Indonesian authorities.<sup>136</sup>

On 18 October 1968, the Indonesian armed forces announced that it would hold manoeuvres in the territorial waters off the Riau islands close to Singapore, and the Indonesian marine commander said that he would personally lead a task force to invade Singapore.<sup>137</sup> Later, General Ali Murtopo told Lee Khoon Choy, Singapore's ambassador to Indonesia, that he personally prevented the Indonesian marines on Batam island from invading Singapore.<sup>138</sup> The situation was tense and Indonesia also announced trade sanctions against Singapore.

It took the diplomatic skills of Lee Khoon Choy and the passage of five years before relations between the two countries returned to normalcy. In a highly symbolic gesture, Prime Minister Lee Kuan Yew paid a state visit to Indonesia in May 1973

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135 'Embassy sacking: Singapore envoy's protest Note' *The Straits Times*, 8 Nov 1968 at 13.

136 'S'pore envoy moves out of his hotel' *The Straits Times*, 28 Nov 1968 at 24.

137 Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (Singapore: Singapore Press Holdings & Times Media, 2000) at 38.

138 Lee Khoon Choy, n 133 above, at 79.

and scattered flowers on the graves of the two executed marines (who had been buried with full military honours).

### **Entrenching Singapore's Sovereignty**

With the end of *Konfrontasi* in 1966, the most salient external threat to Singapore's sovereignty was removed. However, the Singapore Government was convinced that an internal, more insidious threat existed in the form of political parties campaigning for reunification with Malaysia. In August 1967, the Alliance Party Singapura (APS),<sup>139</sup> an alliance of several opposition parties announced an 8-point manifesto, one of which was to seek an eventual reunification of Singapore and Malaysia 'or a partnership in a form acceptable and beneficial to both the peoples.'<sup>140</sup> The APS did not contest a single election and its manifesto faded with the party. However in February 1971, a new political party was formed with the same avowed objective. The National Party of Singapore (NSP) vowed 'to work for the eventual reunification of Singapore with Malaysia on the basis of equal partnership and to this end co-operate with Malaysia in all matters affecting the welfare and security of both countries.'<sup>141</sup> The NSP was formed in anticipation of general elections, which had to be held by 1973. However, the Party splintered almost immediately after it was

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139 The Alliance Party Singapura was made up of the Singapore People's Alliance and the UMNO-MCA-MIC alliance. It did not contest any election under this banner. It remains a registered but dormant political party.

140 See 'Reunification: This is one of our eight aims says Alliance Singapura' *The Straits Times*, 4 May 1967, at 5.

141 See 'New political party is formed in Singapore' *The Straits Times* 28 Feb 1971, at 5.

formed,<sup>142</sup> and did not in fact contest the 1972 general elections or any election thereafter.

Even so, the Government grew increasingly concerned over proposals for reunification with Malaysia. The concern grew out of the fact that in 1965, just shortly after independence, Parliament had amended Singapore's State Constitution of 1963 such that a simple majority in Parliament could effect an amendment to the Constitution. In other words, the Singapore Constitution was as easily amendable as ordinary legislation. No thought had been given to making any provision relating to Singapore's sovereignty any more impervious to amendment than that. Furthermore, with the British troop withdrawals slated to be completed by 1971, a number of foreign-funded newspapers suggested that reunification with Malaysia was the best option to maintain Singapore's economic viability.

This led to the passage of the Constitution (Amendment) (Protection of the Sovereignty of the Republic of Singapore) Act in November 1972. The Act made it clear that if Singapore were to surrender or transfer its sovereignty, this could only be done after securing at least a two-thirds majority at a national referendum held specifically on this issue.

In moving the Bill, Law Minister EW Barker explained that the amendment was necessary to safeguard Singapore's sovereignty and protect it from foreign interference and machinations:

Sir, in the methodology of the destruction of a nation by its foes, war by force of arms is not necessarily the only means employed. The independence of a nation may, by more subtle means, be

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142 See PM Raman, 'National Party is as good as dead' *The Straits Times* 6 Mar 1971, at 2; and 'No place for farces' *The Straits Times* 7 Mar 1971, at 10.

subverted. Although more time-consuming, propaganda, especially from within, could work just as well. The gradual erosion of the mind of a nation may well be achieved by persuasive arguments stemming from vested interests, often foreign. Again, an even more subtle method – that of manipulating political parties within a country – may be employed. This is especially attractive in a country like Singapore. In such circumstances, we can never be over-cautious in safeguarding our integrity as an independent sovereign nation. It is possible with unlimited funds at one's command to gain control of political parties, succeed at the polls and thereafter bring about the surrender or transfer of the sovereignty of our Island-Republic by fusion with another country.

Singapore, with its industrious and skilled population, its vast financial resources and expertise, its high standard of living and social amenities, its superb port facilities and economic infrastructure and its know-how and the skilled services in almost every field that it can provide from banking to the ship-repairing business, would indeed be a worth-while plum. Foreign interests with vast resources might find it advantageous to advocate, with smooth blandishments and in euphemistic terms, a 'merger' when such merger would in reality be a take-over. These foreign interests could attempt to persuade Singaporeans that a surrender of its sovereignty might be advantageous to Singapore. This could be done by infiltrating into political and other bodies, by pumping in funds into these bodies for nefarious purposes and by the use of modern mass media, so that in time the climate of public opinion may be moulded.

The seductive blandishments of foreign agents must not be allowed to succeed. It must be made impossible for outside inimical interests to jostle Singapore into incorporation with any country when it is not to Singapore's benefit. We must accordingly seek to ensure that any Government of the future

seeking to merge with a foreign country, may only do so with the sanction of a clear and undoubted majority of the people of Singapore.<sup>143</sup>

These amendments were duly passed and are now entrenched as Part III of the Singapore Constitution. Article 6 of the Constitution provides:

6(1) There shall be —

- (a) no surrender or transfer, either wholly or in part, of the sovereignty of the Republic of Singapore as an independent nation, whether by way of merger or incorporation with any other sovereign state or with any Federation, Confederation, country or territory or in any other manner whatsoever; and
- (b) no relinquishment of control over the Singapore Police Force or the Singapore Armed Forces,

unless such surrender, transfer or relinquishment has been supported, at a national referendum, by not less than two-thirds of the total number of votes cast by the electors registered under the Parliamentary Elections Act (Cap 218).

Article 8 further entrenched the Part III provisions by requiring any amendment to this Part be passed in Parliament with the support at least two-thirds the total number of votes cast at a national referendum.

## **Territorial Boundaries**

### ***Malaysia***

When Singapore was part of the Johor Sultanate, it did not possess an international or even a sub-national boundary. This

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143 *Singapore Parliamentary Debates Reports*, 3 Nov 1972, Vol 32, cols 308–309.



changed in 1824 following the cession of Singapore to the British East India Company and British recognition of Johor as a sovereign state. On 10 March 1855, under an agreement signed with Temenggong Daeng Ibrahim, Sultan Ali (who succeeded Sultan Hussein as Sultan of Johor.) surrendered all claims of sovereignty over Johor to Temenggong Ibrahim in consideration of 5,000 Spanish dollars (lump sum) and a monthly stipend of 500 Spanish dollars. However, he was to remain Sultan of Johor in name and would exercise sovereign power over Kesang territory near Muar.<sup>144</sup> Britain recognized Johor's sovereignty under The Agreement on Certain Points Touching the Relations of Her Majesty's Government with the Government of the Independent State of Johore.<sup>145</sup> However, Johor could not resist British intervention for very long. In 1909, Sultan Ibrahim (who succeeded Sultan Abu Bakar) accepted a British advisor seconded from the Malayan Civil Service, and in 1914 he was forced to accept a British General Advisor.

Constitutionally, Johor was on equal footing with the Federated and Unfederated Malay States after 1914. As such, the boundary between Singapore and Johor became that of two British territories. Even so, it was determined that an agreement be signed between the Straits Settlements and Johor to specify

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144 The intricate details of how the independent sovereign state of Johor came under British control and rule have been told in Nesamalar Nadarajah, *Johore and the Origins of British Control: 1895–1914* (Kuala Lumpur: Arenabuku, 2000); CM Turnbull, 'British Colonialism and the Making of the Modern Johor Monarchy' (2009) 37(109) *Indonesia and the Malaya World* 227–248; and RO Winstedt, *A History of Johore*, MBRAS Reprint No 6 (Selangor: Malaysian Branch of the Asiatic Society, 1992) at 98–137.

145 This treaty was signed by the Secretary of State for the Colonies on behalf of Queen Victoria and Abu Bakar, Maharajah (later Sultan) of Johore on 11 Dec 1885.

the nature and extent of their respective territorial waters. On 19 October 1927, Sir High Clifford, Governor of the Straits Settlements, entered into an Agreement with Sultan Ibrahim of Johor under which the boundary between the territorial waters of Singapore and Johor were demarcated. This treaty was entered into as a 'token of the friendship' between King George V of England and the Sultan. Acknowledging the cession of Singapore to the British under the 1824 Treaty, the Agreement nonetheless was signed to reflect the King's desire 'that certain of the said seas, straits and islets' should 'be retroceded and shall again form part of the State and Territory of Johore'.<sup>146</sup>

Article 1 of the 1927 Agreement provides that the boundary between the territorial waters of Singapore and Johor shall

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

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146 See Straits Settlements and Johore Territorial Waters (Agreement) Act 1928, 18 & 19 Geo 5 c 23. The Agreement is found in the Schedule to this Act.

through the centre of the deep-water channel between Johore Shoal and the mainland of Johore, Southward of Johore Hill, and finally turning Southward, to intersect the 3-mile limit drawn from the low water mark of the mainland of Johore in a position bearing 192 degrees from Tanjong Sitapa. The boundary as so defined is approximately delineated in red on the map annexed hereunto and forming part of this Agreement. Should, however, the map, owing to alterations in the channels, etc., appear at any time to conflict with the text of this Agreement, the text shall in all cases prevail.

In 1957, under the Federation of Malaya Agreement, Johor became a constituent state of the independent Federation of Malaya and the boundary demarcated under this 1927 Agreement became an international boundary. When Singapore joined the Federation of Malaysia in 1963, this border ceased to be an international boundary but a state boundary, and when Singapore seceded from the Federation in 1965, it once again became an international border.

It is interesting to note that when Singapore became part of the Federation of Malaysia in 1963, the Straits Settlements and Johore Territorial Waters (Agreement) Act of 1928 remained in force to demarcate the northern boundary of the state of Singapore and that of the state of Johore. Its continued application in the post-independence period was confirmed in 1968 when a Member of Parliament, P Selvadurai posed a Parliamentary Question on whether any studies had been done on the adequacy of Singapore's territorial water limits in light of Singapore vital interests in fishing, defence and administration of revenue laws, and the matters of claim of neighbouring states. Responding to this, Minister of State for Foreign Affairs and Labour, Mr Rahim Ishak stated:

Mr Speaker, Sir, in international law the question of the width of territorial waters is one subject upon which there is unfortunately a divergence of views among states. The present position is that the vast majority of states claim territorial waters varying from three miles to 12 miles.

So far as Singapore's territorial waters are concerned, their delimitation to the north is governed by agreement delimiting the territorial waters midway between Singapore Island and the State of Johore and which has been given effect to in our municipal law under the provisions of the Straits Settlements and Johore Territorial Waters Agreement Act of 1928.

As for our remaining territorial waters, this is conditioned by our geographical position. In the absence of any specific agreement with neighbouring countries to the contrary, the line equidistant between Singapore and the adjacent territory would, therefore, constitute the limits of our territorial waters under the provisions of the Geneva Convention on Territorial Sea. However, since claims to territorial waters made by neighbouring states will have some implications for Singapore, the departments concerned are presently examining this question.<sup>147</sup>

The exact delimitation of the border between Singapore and Malaysia remained unclear for many years because of shifting physical features. It was not till 7 August 1995 that the two states resolved the exact extent of their territorial boundaries. The new treaty, the Agreement Between the Government of Malaysia and the Government of the Republic of Singapore to Delimit Precisely the Territorial Waters Boundary in Accordance with the Straits Settlement and Johore Territorial Waters Agreement 1927 is based on a hydrographic survey conducted in the 1980s,

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147 *Singapore Parliamentary Debates Report* Vol 27, 11 Jul 1968, cols 508–509.

and it delineates the border as straight lines joining a series of 72 geographical coordinates along the deepest channel or *thalweg* between the western and eastern entrances of the Straits of Johor.

### *Indonesia*

Singapore's border with Indonesia first came into being with the signing of the Anglo-Dutch Treaty of 1824. The imaginary line that divided the region between the British and Dutch spheres of influence formed the basis of this border. Under the Treaty, the British had influence and control over lands north of this imaginary line, which included the Malay Peninsula, Singapore, and the northern portion of the island of Borneo. The Dutch controlled what was then called the Dutch East Indies (modern-day Indonesia). When Singapore joined the Federation of Malaysia in 1963, this imaginary line became the boundary between Malaysia and Indonesia.

It was only in 1973, after the restoration of diplomatic relations between Singapore and Indonesia that the two states officially agreed on the demarcation of its maritime boundary. Indeed, the signing of this boundary agreement – the ‘Agreement Stipulating the Territorial Sea Boundary Lines Between Indonesia and the Republic of Singapore in the Strait of Singapore’ – was the first order of business during Prime Minister Lee Kuan Yew's official visit to Indonesia on 25 May 1973.<sup>148</sup> The Agreement established six-reference coordinates as the basis for the boundary. Of these coordinates, three are equidistant from Indonesian and Singaporean shores while the rest are ‘negotiated’

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148 This agreement was ratified by Indonesia and Singapore on 3 Dec 1973 and 29 Aug 1974 respectively.

points. Two lie closer to Indonesia while the last one lies toward the landward side of Indonesia's baseline.

Indonesia and Singapore signed a second border agreement on 10 March 2009, which extended the delimitation of their common boundary in the west. Significantly, this second agreement uses Singapore's Sultan Shoal as a base point instead of the new shorelines that were created by land reclamation. This treaty was ratified on 30 August 2010.<sup>149</sup> Singapore's eastern boundary with Indonesia remains to be determined on a tripartite basis as Malaysia will need to be brought into the negotiations.<sup>150</sup>

### Extradition

In May 1968, Parliament passed the Extradition Act to provide for the extradition of fugitives. Up to this point, two English statutes had governed the law on extradition that applied to Singapore: the Extradition Act of 1870 and the Fugitive Offenders Act of 1881. Both these acts deal with extradition among Commonwealth countries but not beyond. Moving the Extradition Act Bill at its Second Reading, Minister for Law EW Barker offered the Government's rationale for this new legislation:

Both these Statutes have outlived their usefulness. Not only is their continued existence incompatible with the independent and sovereign status of Singapore but also, since they belong to another age, they fail to take into account modern concepts

149 See 'Singapore and Indonesia Define Sea Borders', Channel News Asia, 31 Aug 2010, available at <<http://www.todayonline.com/World/EDC100831-0000078/Singapore-and-Indonesia-define-sea-borders>> (accessed 20 Sep 2010).

150 For a fascinating proposal on how the borders might be resolved, see Robert Beckman & Clie Scholfield, 'Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait' (2009) 40 *Ocean Development & International Law* 1–35.

that have now become part of extradition laws in the Commonwealth. For example, they do not provide for a state to refuse extradition of a person who is to be charged with or surrendered for political offence or for an offence of a political character. Apart from anything else, it is clearly right and proper that Singapore should now be able of its own accord to enter into extradition treaties with foreign states though the treaties already made by the United Kingdom and Malaysia on behalf of Singapore will continue to apply until such time as the Government decides that they should cease so to apply.<sup>151</sup>

Beyond giving the Singapore Government discretion over whom they may enter into extradition agreements with, the Act incorporated an updated list of agreed extraditable offences, and provides for a simplified procedure for extradition to Malaysia.

### **Succession to Treaties**

After securing recognition and acceptance by the international community, Singapore's leaders' next concern was to consider the extent of its international obligations. The subject of Singapore's succession to treaties upon independence has been dealt with in some detail by two earlier papers,<sup>152</sup> and it is not proposed at this point to do more than recount the salient issues. In the case of Singapore, the question of state succession in relation to treaties is complicated by the fact that issues of secession arose twice with respect to Singapore: first in 1963 when it gained its

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151 EW Barker, Speech at the Second Reading of the Extradition Bill, 22 May 1968, *Singapore Parliamentary Debates Official Reports*, vol 27, cols 426–427.

152 See Jayakumar, n 14 above; and Chao Hick Tin, 'Singapore and International Law: A Brief Survey of the Questions Relating to Singapore's Membership of International Organizations, State Succession and the Law of the Sea' [1979] 1 MLJ cxxxv [hereinafter 'Chao'].

independence from Britain by joining the Federation of Malaysia, and second in 1965 when it left the Federation of Malaysia to become an independent unitary state. As such, Singapore's treaties obligations need to be considered at two junctures. Difficulties arise mainly out of the wording of Clause 13 of Annex B to the Separation Agreement. To recap, Annex B of the Separation Agreement contains a draft statute that Malaysia agreed to enact into law to effect Singapore's secession and independence. This draft statute was enacted *in toto* as the Constitution and Malaysia (Singapore Amendment) Act by the Malaysian Parliament on 9 August 1965.<sup>153</sup> The first part of section 13 of the Act reads:

**International agreements etc. relating to Singapore**

13. Any treaty, agreement or convention entered into before Singapore Day between the Yang di-Pertuan Agong or the Government of Malaysia and another country or countries, including those deemed to be so by Article 169 of the Constitution of Malaysia shall in so far as such instruments have application to Singapore, be deemed to be a treaty, agreement or convention between Singapore and that country or countries, and any decision taken by an international organisation and accepted before Singapore Day by the Government of Malaysia shall in so far as that decision has application to Singapore be deemed to be a decision of an international organisation of which Singapore is a member.

This clause covers treaties, agreements, conventions as well as decisions of international organizations (like the UN) that were accepted prior to 9 August 1965. The treaties or agreements that would continue to bind Singapore would be any treaty entered into by the Malaysian King or Government, or by the British

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153 Act No 53 of 1965 (Malaysia).



Government (under Article 169 of the Federal Constitution)<sup>154</sup> ‘in so far as such instruments have application to Singapore.’ Similarly, decisions of international organizations are binding ‘in so far as that decision has application to Singapore.’ Though this provision was enacted as a Malaysian statute that had no corresponding accepting enactment in Singapore, it is an integral part of the Malaysia Agreement and technically binds Singapore. The question for Singapore is: exactly what treaties bind Singapore when it became independent in August 1965?

Writing in 1970, Jayakumar considered the complicated legal history of Singapore’s emerging statehood and concluded that the only treaties to which Singapore ‘may clearly be considered as successor’ were: (a) treaties and agreements concluded before Malaysia Day by the self-government State of Singapore ‘with the assent of the United Kingdom’; (b) treaties and agreements concluded or extended by the United Kingdom Government before Malaysia Day after having consulted, or having obtained the consent of, the Singapore Government; and (c) treaties and agreements concluded or extended by Malaysia (when Singapore was part of the Federation) after having consulted, or having obtained the consent of the Singapore Government.<sup>155</sup> In all other cases, Jayakumar added, ‘the position of the Singapore Government is that the Separation Agreement has not determined with finality

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154 Under Article 169 of the Federal Constitution, ‘any treaty, agreement or convention entered into before Merdeka Day’ between the UK or the UK on behalf of the Federation of Malaya, ‘shall be deemed to be a treaty, agreement or convention between the Federation and that other country’. Likewise, ‘any decision taken by an international organization and accepted before Merdeka Day by the Government of the United Kingdom on behalf of the Federation or any part thereof shall be deemed to be a decision of an international organization of which the Federation is a member.’

155 See Jayakumar, n 14 above, at 406–407.

all questions of succession and that Singapore is still entitled to state its position and to express its willingness to succeed or to make reservations.<sup>156</sup>

Chao – who by 1979 was the senior-most government legal officer specialising in international law matters and who had the benefit of the work of the International Law Commission on the matter – also arrived at the same conclusion. He opined that the effectiveness of a devolution agreement – specifically section 13 of the Constitution and Malaysia (Singapore Amendment) Act – appears doubtful since ‘such an agreement cannot establish any treaty relation between the successor State and third States.’<sup>157</sup> Chao added:

It seems to be no more than a purported assignment by the predecessor to the successor State of the former’s obligations and rights under treaties previously having application to the territory. But such an assignment by itself cannot change the legal position of any of the interested parties.

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In so far as Singapore is concerned she does not appear to consider the devolution clause in the Separation Agreement of 1965 as constituting an obligation on her part to accept all previous treaties which applied to Singapore. In response to the usual letter of inquiry from the UN Secretary-General Singapore did not reply that she considered herself bound by all previous treaties. Instead she said that Singapore was reviewing her position vis-à-vis multilateral treaties entered into by either the UK or Malaysia and whose application was extended to Singapore at a time when those countries were responsible for the external relations of Singapore.<sup>158</sup>

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156 Ibid at 407.

157 See Chao, n 152 above, at cxxviii.

158 Ibid at cxxviii–cxxix.

The modern law on state succession to treaties has, to a large extent, been codified in the Vienna Convention on the Law on the Succession of States in Relation to Treaties 1978.<sup>159</sup> However, this Treaty only binds its signatories after it was adopted in 1978<sup>160</sup> and is thus inapplicable in our consideration of Singapore's position in 1963 and 1965. Even so, this Treaty may well be said to codify much of international state practice and is thus instructive. Article 16 of the Treaty stipulates that:

16. A newly independent State is not bound to maintain in force, nor to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

This article reflects the 'traditional view' that 'a newly independent State begins its life with a clean slate, except in regard to "local" or "real" obligations.'<sup>161</sup> This was indeed the same view advocated by both Jayakumar and Chao.

### **The Japanese War Debt**

In 1963, just as Singapore was about to become a part of the Federation of Malaya, the Singapore Chinese Chamber of Commerce issued a demand that Japan should make reparations of at least

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159 Done at Vienna on 23 Aug 1978 and entered into force on 6 November 1996. See 1946 UNTS 3 (1978).

160 The Treaty came into force only in 1996.

161 See Draft Articles on Succession of States in Respect of Treaties with Commentaries, 1974, (1974) vol II *Yearbook of the International Law Commission*, Part One, at 211.

S\$50 million to atone for its aggression during World War II.<sup>162</sup> Legally speaking, Japan was not obliged to make payment to either Malaya or Singapore for what happened during the Japanese Occupation (1942–1945) as this had been settled by the Treaty of Peace with Japan in 1951. Under Article 14 of the Treaty, Japan was obliged to ‘pay reparations to the Allied Powers for the damage and suffering caused by it during the War.’ For the next three years, no progress was made in negotiations for reparations till the visit of Japanese Foreign Minister E Shiina in October 1966. At the end of his visit, Shiina and his Singapore counterpart, S Rajaratnam, issued a joint communiqué. In the communiqué, both parties recognized ‘that an early and complete settlement of questions regarding the unhappy events in Singapore during the last war would contribute constructively to the furtherance of the friendly relations between Japan and the Republic of Singapore.’<sup>163</sup> A formal Agreement was signed on 21 September 1967 between Singapore and Japan in which the Japanese Government would pay a grant of S\$25 million and extend a loan of a further S\$25m to the Singapore Government.<sup>164</sup>

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162 See Lim Beng Tee, ‘Atonement will cost \$50 mil: Chamber’ *The Straits Times*, 10 Aug 1963, at 20. A similar demand was made by the Associated Chinese Chambers of Commerce of Malaya. See ‘Pay \$50m debt of blood call by Malaya’ *The Straits Times*, 24 Aug 1963, at 9.

163 ‘\$25m Grant, \$25m Loans settle Singapore’s Blood Debt’ *The Straits Times*, 267 Oct 1966, at 20.

164 Agreement of 21 September 1967 Between Japan and the Republic of Singapore, UNTS, No 9720.

## The Defence of Singapore

### *Building Singapore's Army: Conscription and National Service*<sup>165</sup>

In the colonial period, Singapore's defence was the responsibility of the British. In the early years of the Malayan Emergency, the British introduced conscription in Singapore through the National Service Ordinance in 1952.<sup>166</sup> This Ordinance – under which all male citizens of the United Kingdom and Colonies and Federal Citizens between the ages of 18 and 20 were liable to register for part-time National Service – was to have become effective in 1954. The legislation provoked a violent response from the Chinese-educated youth in Singapore, who rioted and barricaded themselves in their schools in protest. As a result of these vehement reactions, the scheme died a natural death.

Although conscription was temporarily abandoned, the British worked to establish a small standing army made up of career soldiers in preparation for Singapore's self-government. The first battalion of regular soldiers was formed on 12 March 1957 and was known as the First Singapore Infantry Regiment (1 SIR). Only Singapore citizens and those who were born and raised in Singapore were eligible to enlist, and only 237 persons were recruited from among over 1,400 applicants. The British planned to place 1 SIR and another battalion as part of a regiment within a Brigade Group in the Singapore Military Forces. However, training was slow due to the lack of adequate training facilities and instructors. By July 1959, 1 SIR had some 650 men under the command of Lieutenant-Colonel RW Stephenson and

165 For the historical part of this chapter, I have relied on the Ministry of Defence's own accounts available at their website <[http://www.mindef.gov.sg/imindef/about\\_us/history/birth\\_of\\_saf.html](http://www.mindef.gov.sg/imindef/about_us/history/birth_of_saf.html)> (accessed 20 Sep 2010).

166 Ordinance No 37 of 1952.

was based in Ulu Pandan Camp. It was not till March 1963 that 1 SIR reached its full strength of 816 men. In the meantime, a second battalion was raised in 1962 and this was known as the Second Singapore Infantry Regiment (2 SIR). When Singapore became a part of Malaysia, 1 SIR was placed under the command of the 4<sup>th</sup> Malaysian Infantry Brigade (4 MIB) at the 1<sup>st</sup> Malaysian Infantry Regiment (1 MIR). It reverted to being 1 SIR when Singapore became independent in 1965.

At the time of Singapore's sudden departure from the Federation of Malaysia, she did not possess her own military force. The only military force in Singapore were two battalions – the 1<sup>st</sup> and 2<sup>nd</sup> Battalions of the Singapore Infantry Regiment (SIR) – both of which were under the control of the Malaysian armed forces commanded in Singapore by Brigadier Syed Mohamed bin Syed Ahmad Alsagoff. The rank and file of these two battalions – with about 1,000 men each – comprised primarily of Malaysians as well. This presented a major problem for the newly independent state for while Singapore was legally independent, the Malaysian military continued to hold sway. There was thus an urgent need to build up Singapore's own defence force and the task fell on Defence Minister Goh Keng Swee. This would take some time, and in the interim, there were many opportunities for the Malaysian army to create trouble.

Conscription was re-introduced in 1964 when Singapore was part of Malaysia. The Malaysian National Service Act, 1952 applied to Singapore and at the height of Confrontation with Indonesia, the Malaysian Parliament passed the National Service (Amendment) Act in 1964 to provide for the conscription of youths between the ages of 21 and 29. Some 400 Singapore youths were called up during this time. This legislation continued to apply to Singapore as the National Service Act when Singapore

became independent, and in 1967, the Singapore Parliament passed the National Service (Amendment) Act<sup>167</sup> to provide for compulsory conscription of all male Singaporeans aged 18 and above. The Amendment Act was passed on 14 March 1967 and enlistment commenced two weeks later on 28 March. All male citizens born between 1 January and 30 June 1949 were required to report for registration.

### ***Malaysian Forces in Singapore***

Although the Separation Agreement had provided for a defence treaty to be entered into between Singapore and Malaysia, no treaty was concluded in the immediate aftermath of separation. Article V of the Agreement provided that Singapore and Malaysia 'will enter into a treaty on external defence and mutual assistance' complete with a 'joint defence council'. Under such a treaty to be signed, the Government of Malaysia would 'afford to the Government of Singapore such assistance as may be considered reasonable and adequate for external defence' and Singapore will 'contribute from its own armed forces such units thereof as may be considered reasonable and adequate for such defence.' In addition, the Government of Singapore was expected to 'afford to the Government of Malaysia the right to continue to maintain the bases and other facilities used by its military forces within Singapore' and 'permit the Government of Malaysia to make such use of these bases and facilities as the Government of Malaysia may consider necessary for the purpose of external defence.'<sup>168</sup>

Shortly after Separation from Malaysia, Singapore sent the entire 2 SIR battalion for Confrontation duties in Sabah. This was

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167 Act No 2 of 1967.

168 Article V(3), Separation Agreement.

done at Malaysia's request and Singapore's leaders wanted to show good faith and solidarity even though there was no defence treaty between the two states.<sup>169</sup> Its base, Camp Temasek in Ulu Pandan was left vacant and the Malaysians proposed sending one Malaysian regiment to occupy the vacant camp. Arrangements were made to have the Malaysian regiment return back to Malaysia once 2 SIR completed their tour of duty in Sabah and returned to Singapore, which was anticipated to be by February 1966. However, the Malaysian Defence Minister had other ideas.

On 17 February 1966, Malaysian Prime Minister Tunku Abdul Rahman publicly expressed shock at the Singapore Government's sudden demand that the Malaysian battalion vacate Camp Temasek. This was disingenuous since the Malaysian battalion was due to move out of Singapore to Tapah in the Malaysian state of Perak. Indeed, its advance party had already decamped to Tapah in January.<sup>170</sup> The Malaysian Minister of Defence and Deputy Prime Minister, Tun Razak had obviously changed his mind about the rotational schedule. As then Defence Minister Goh Keng Swee told Parliament:

The first step was taken by the Malaysian Ministry of Defence. In a letter dated 4<sup>th</sup> February, 1966, ie nearly two weeks before the Tengku's public statement, the Deputy Prime Minister of Malaysia and Minister of Defence wrote to me proposing that a Malaysian infantry battalion remains stationed in the island. This particular battalion had been in occupation of Camp Temasek, following upon the posting of the 2<sup>nd</sup> Battalion, Singapore Infantry Regiment, to defence duties in Sabah. In

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169 See Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (Singapore: Singapore Press Holdings & Times Media, 2000) at 32.

170 See Jackie Sam, 'S'pore "yes" to talks: Statement explains why camp is needed' *The Straits Times* 18 Feb 1966, at 1.



February the battalion had completed its tour of duty and was scheduled to return to its own camp by stages. Advance parties of the battalion had already arrived in Singapore and were in occupation of Camp Temasek to prepare for the arrival of the rest of the battalion. At the same time, the Malaysian battalion in Camp Temasek was scheduled to move to another battalion camp in Tapah and, in like manner, advance parties of this battalion had moved to Tapah.

The request of the Malaysian Defence Minister was therefore an unexpected move not in conformity with the schedule of rotation of troops previously laid down. It constituted an obvious departure from policy.<sup>171</sup>

Former Prime Minister Lee Kuan Yew 'believed the Malaysians had changed their minds because they wanted to keep one battalion of Malaysian forces in Singapore to control us.'<sup>172</sup> In practical terms, the refusal by the Malaysian forces to vacate Camp Temasek meant that the returning troops of the 2<sup>nd</sup> Battalion SIR had to be accommodated elsewhere. And since there was no other available military facility, the troops were put up in tents in a fenced-off corner of Farrer Park.

In any case, the Malaysian Government invoked Article V(3) of the Separation Agreement to argue that the Singapore Government was obliged to 'allow Malaysian troops to stay in the present bases or, if they require these bases for their own troops, to provide suitable alternative accommodation.'<sup>173</sup> On 18 February, the Singapore Government issued a statement disputing the Malaysian interpretation of Article V(3) on two grounds:

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171 'Malaysian Infantry Battalion in Singapore', *Singapore Parliamentary Debates Report*, 23 Feb 1966, Vol 25, col 16.

172 Ibid.

173 Ibid, at col 17.

First, Article V stipulates that the two Governments will enter into a treaty of external defence and mutual assistance to provide for matters in four separate sections. The two Governments have not yet entered into any such treaty.

Second, when such a defence treaty is agreed and signed, it will provide, in accordance with paragraph (3) of Article V, that 'the Government of Singapore will afford to the Government of Malaysia the right to continue to maintain the bases and other facilities used by its military forces within Singapore and will permit the Government of Malaysia to make such use of these bases and facilities as the Government of Malaysia may consider necessary for the purpose of external defence.

The operative words are 'right to continue' bases and facilities 'used' by Malaysia's military forces. Camp Temasek was not 'used' by Malaysia's military forces on the date of the Separation Agreement – 7<sup>th</sup> August, 1965, or the date of separation, 9<sup>th</sup> August, 1965. By section 9 of the Constitution of Malaysia (Singapore Amendment) Act, 1965, passed by the Parliament of Malaysia, all property which before Malaysia belonged to Singapore reverted to Singapore once again.<sup>174</sup>

The Malaysians disagreed. On 21 February, the Parliamentary Secretary to the Deputy Prime Minister and Minister of Defence issued a public statement in which he stated that the Singapore Government had agreed to the Malaysian Government stationing troops in Singapore under the Separation Agreement, and that under this Agreement, Singapore had agreed to Malaysia being responsible for Singapore's defence.<sup>175</sup> The Singapore Government offered to submit the issue to arbitration by an independent Commonwealth or international tribunal to resolve the disagreement over the interpretation of the Separation Agreement, but the

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174 Ibid at cols 17–18.

175 Ibid, at col 18.

Malaysian Government did not respond.<sup>176</sup> The issue was settled when the British moved out of Khatib Camp in the Nee Soon (Yi-shun) area. The Singapore Government offered the camp to the Malaysian troops who agreed to move out in mid-March 1966. They remained there till November 1967 when they withdrew on their own accord. In March 1966, Singapore withdrew from the Combined Defence Council and the Combined Operations Committee. No bilateral treaty for external defence has ever been signed between the two states.

As can be seen from this early encounter, the Singapore Government had determined from its earliest days, that any intractable international dispute was best referred to a third party for resolution on the basis of international law before an international court or arbitral tribunal. This approach to international dispute settlement manifested itself in later disputes Singapore encountered with her neighbours, including the *Pedra Branca* case, which was resolved in the International Court of Justice in 2008.<sup>177</sup>

### ***British Bases in Singapore***

Article VI of the Malaysia Agreement provides for the continued application of the Agreement on External Defence and Mutual Assistance between the United Kingdom and the Government of the Federation of Malaya dated 12 October 1957.<sup>178</sup> Among other things, this Agreement provided that

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176 See 'Singapore: Let third party decide ... parting pact and Camp Temasek' *The Straits Times*, 19 Feb 1966 at 1.

177 See *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)* ICJ Reports 2008, p 12.

178 HMSO Cmd 263.

... the Government of Malaysia will afford to the Government of the United Kingdom the right to continue to maintain the bases and other facilities at present occupied by their Service authorities within the State of Singapore and will permit the Government of the United Kingdom to make such use of these bases and facilities as that Government may consider necessary for the purpose of assisting in the defence of Malaysia, and for Commonwealth defence and for the preservation of peace in South-East Asia.

When Singapore became independent in 1965, Article 13 of the Constitution and Malaysia (Singapore Amendment) Act provided for the continuation of these obligations in exactly the same words. The Singapore Government clearly saw an advantage in keeping British forces on the island since it had yet to build up a sufficiently strong military capability. As we noted earlier, compulsory national service was only introduced in 1967 with the passage of the National Service (Amendment) Act.

Unfortunately, it was the presence of these British bases in Singapore that gave fuel to Indonesia's President Sukarno to accuse the British of neo-colonist intentions when the Federation of Malaysia was proposed. However, the British would not remain in the region for long. Deteriorating economic circumstances forced the British to beat a hasty retreat. In July 1967, the British made public their intention to pull their forces out of Southeast Asia by the end of the 1960s. Prime Minister Lee Kuan Yew and his ministers lobbied hard to get the British to remain as long as possible. Although he did not succeed in getting the British troops to remain to 31 March 1973, he gained nine months for

Singapore by prolonging the proposed final withdrawal from March 1971 to December 1971.<sup>179</sup>

With the final British withdrawal, the Agreement on External Defence and Mutual Assistance between the United Kingdom and the Government of the Federation of Malaya effectively came to an end, to be replaced by a consultative Five-Power Defence Arrangement (FPDA) involving Britain, Malaysia, Singapore, Australia and New Zealand. These series of bilateral exchange of notes do not provide any guarantees for either Malaysia or Singapore in case of attack as the ministers of Australia, New Zealand and the United Kingdom are required only to 'consult' with each other to decide what measures to be taken jointly or separately in relation to such a threat or attack.

## **Foreign Relations & Policy**

### ***Creating a Foreign Ministry***

The appointment of S Rajaratnam as Singapore's first Foreign Minister was but the first step in establishing an infrastructure under which Singapore's foreign policy and relations would be conducted. Since foreign affairs had always been handled by either Britain (before 1963) or the central government of Federation of Malaysia (between 1963 and 1965), Singapore had to build up its own foreign ministry from scratch. In the heady days of Singapore's cession from Malaysia, things moved at a break-neck pace. Prime Minister Lee Kuan Yew had simply called up Rajaratnam and told him, 'Now we need a foreign minister. You

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179 For a detailed, blow-by-blow account of these negotiations, see Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (Singapore: Singapore Press Holdings & Times Media, 2000) at 47–65.

are the foreign minister.<sup>180</sup> He had no foreign ministry nor civil servants to rely on for advice, and Lee told him that he would have to face the world press on 12 August to announce Singapore's foreign ministry. In his typically candid fashion, Rajaratnam informed the press that he was working full-time

to build up a Ministry which will brighten Singapore's image abroad ... I am now establishing the Ministry. I am recruiting and finding and re-apportioning staff for my new Ministry. These basic matters have to be done before you get things really going. I will still need a few days to get these basic things done.<sup>181</sup>

On his plans to appoint ambassadors to other countries, Rajaratnam said:

It is still too early. We are waiting for the various countries to send in their official recognitions of the new State of Singapore. After receiving them, we will appoint Ambassadors and establish missions abroad, in order of our priority.<sup>182</sup>

Among the countries, which would receive priority, are the Afro-Asian capitals of Adis Ababa, Cairo, New Delhi, Colombo, Tokyo, Phnom Penh, Bangkok and Rangoon; and the Commonwealth capitals of London, Canberra and Wellington.<sup>183</sup> Space was quickly found in City Hall to accommodate the new ministry, and Rajaratnam began poaching officers from the other ministries. The first was Abu Bakar bin Pawanchee, one of the few senior civil servants with any diplomatic experience. He was brought in from the Finance Ministry to be the first permanent secretary of

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180 Quoted in Liu, n 88 above, at 21.

181 'Minister to brighten image of Singapore' *The Straits Times*, 13 Aug 1965, at 4.

182 Ibid.

183 Ibid.

the Foreign Ministry. Others included Francis D'Costa, Herman Hochstadt, Anwar Ibrahim and Yap Pow Choy.<sup>184</sup> Singapore's first mission was, quite naturally, established in Malaysia where the small staff of its first High Commissioner, Ko Teck Kin operated out of the garage of Sri Temasek, the house bought by Singapore's government back in 1961.<sup>185</sup> After just a year, several important foreign relations milestones had been achieved. The Ministry had missions in Malaysia as well as at the United Nations, and 50 countries had formally recognized Singapore. Furthermore, 11 foreign high commissioners and ambassadors, as well as 15 consular and trade missions had presented their credentials.<sup>186</sup> By October 1966, missions had been opened in Australia, Cambodia, Malaysia, New Zealand, Thailand and the United Kingdom.<sup>187</sup>

Running on a very tight budget, the Ministry of Foreign Affairs did not have on its staff any specialist to advise on international law in the same way the legal advisers to the Foreign

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184 See Liu, n 88 above, at 21.

185 Ibid, at 25.

186 Ibid, at 41.

187 'High Commissions and Embassies (Personnel and Expenditure), Oral Answer by S Rajaratnam, *Singapore Parliamentary Debates Reports*, 26 Oct 1966, col 348.

and Commonwealth Office in the United Kingdom do.<sup>188</sup> Instead, matters involving public international law would be referred to the Attorney-General's Chambers. As Chao Hick Tin recalls in his article 'Early Forays in International Law',<sup>189</sup> there was no legal officer in the Attorney-General's Chambers specializing in international law. Indeed, when he joined the Chambers in 1967, just one and three quarter years after Singapore became independent, he was assigned to the Civil Division where, on an ad hoc basis, international law work began to be assigned to him. Eventually, he became the principal legal officer handling international law issues within the Chambers. There were only six or seven officers within the Civil Division, and this division continued handling international law issues right up to the establishment of the International Affairs Division on 1 July 1995.

It was thus perhaps more than fortuitous that two men who were chosen as permanent representatives to the United Nations – the arena where international law is most discussed – were legal scholars who could more than hold their own without the strong support needed or available from Singapore. As noted above,

188 Among the functions of FCO legal advisers is to 'provide legal advice to Ministers and officials within the FCO on matters of public international law, European Union law, human rights law, constitutional law, the law relating to the British overseas territories, and domestic law (including public law/judicial review and freedom of information, data protection, employment etc)' as well as to act 'for the Government before international tribunals (including the International Court of Justice, the European Court of Human Rights and inter-State arbitrations), and frequently attend conferences both in the UK and abroad as members of the UK delegation.' See <http://collections.europarchive.org/tna/20080205132101/www.fco.gov.uk/servlet/Front%3Fpagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1129039341663> (accessed 1 Mar 2010).

189 See Kevin YL Tan (ed), *Singapore & International Law: The Early Years* (Singapore: Centre for International Law, 2011).



Singapore's permanent mission to the United Nations had been established in September 1965 at the time when the Republic was admitted as a member of the UN. Its first representative Abu Bakar Pawanchee served a year before being replaced by Wong Lin Ken, a history academic in 1966.

In 1968, just as he turned 30 years of age, Tommy Koh, then a young academic at the Faculty of Law of the University of Singapore, was called up by Prime Minister Lee Kuan Yew and offered the post as permanent representative to the United Nations. Koh was dumbfounded, feeling totally inadequate for the job, Koh was reluctant to accept the job as he was newly-married and his wife was still in her final year of medical school.<sup>190</sup> But it was his wife Siew Aing who encouraged him to take the job. Although he had studied international law while he was a student at the then University of Malaya, he lost interest in the subject because of the dry way in which the subject was taught. Graduating top of his class to the secure the first-ever first class honours of the Faculty of Law of the University of Singapore, Koh went on to specialize in criminal law and land law. Although he did not study international law while doing his LLM at Harvard, Koh subsequently worked as an intern at the United Nations for six weeks. This could well be what prompted the Government to seek him out for the UN posting.

When Koh turned up at the Foreign Affairs Ministry for a briefing, he was simply told by Foreign Minister Rajaratnam to 'go and listen and to report back and help us understand better how the UN works, to make friends for Singapore.'<sup>191</sup> There was

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190 Oral History Interview, Tommy Koh, 23 May 1998, National Archives of Singapore, Reel 5.

191 Ibid.

little else in the way of preparations or briefing at the Ministry of Foreign Affairs:

I still remember the Foreign Ministry, in City Hall, just a suite of a few rooms with Mr Rajaratnam, as the Minister ... And just a few fellows. We had no UN division, no desk officer-in-charge of the UN. So they knew as little about the UN as I. So they were in no position to help me.<sup>192</sup>

In New York, Koh had some assistance from See Chak Mun who had been cross-posted from Washington DC and the two-man mission set about doing the best they could under those circumstances. As Koh recalled:

During my first tour of duty at the UN (1968 to 1971) there was no one at MFA's HQ or at AGC to help me on international law issues. I had to do my own research and then recommend a position to HQ.<sup>193</sup>

In 1971, Koh returned to Singapore after a three-year tour of duty. Initially, the Government refused to allow him to return, and Koh was told that unless he found a successor, he was not to return home. It was at this point that he recommended his good friend at the Law Faculty, Shanmugam Jayakumar.<sup>194</sup> When he returned, he further convinced Prime Minister Lee Kuan Yew to set up a specialized Foreign Service instead of seconding government servants to the Foreign Ministry on a rotational basis.<sup>195</sup>

Like Koh, Shanmugam Jayakumar graduated top of his class in 1964. Unlike Koh, he specialized in international law, an area he enjoyed. While doing his LL.M. at Yale Law School,

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192 Ibid.

193 Tommy Koh to Kevin Tan, email dated 11 Sep 2009.

194 Oral History Interview, Tommy Koh, 23 May 1998, National Archives of Singapore, Reel 6.

195 Ibid. See also Liu, n 88 above at 107.

Jayakumar studied under the great Myres McDougal, and, following his graduation from Yale, worked for six months in the UN Secretariat as an Assistant Human Rights Officer. By the time he left to replace Koh at the United Nations, Jayakumar had already established a formidable reputation as a scholar of international law and constitutional law. In 1970, he was appointed as a Singapore delegate at the UN's 25<sup>th</sup> General Assembly.<sup>196</sup> Jayakumar served one term at the United Nations, returning in 1974 to resume teaching at the University. Koh was then re-appointed as permanent representative to the United Nations, a post he held till 1984.

### ***Diplomatic and State Immunity***

At independence, Singapore inherited two pieces of colonial legislation dealing with diplomats. The first was the Diplomatic Privileges (Commonwealth Countries and Republic of Ireland) Act, which had first been promulgated in 1957;<sup>197</sup> and the Consular Conventions Act, which was enacted in 1951<sup>198</sup> to confer on consular officers of foreign states the power to administer estates and properties of deceased persons. Practice relating to diplomatic immunity was thus primarily regulated under the common law and customary international law.

It is interesting that while the Vienna Convention on Diplomatic Relations had been in force since 1964; and the Vienna Convention on Consular Relations since 1967, Singapore did not consider acceding to either convention. Malaysia, on the other hand, acceded to the Vienna Convention on Diplomatic

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196 'Our new man in the United Nations' *The Straits Times* 10 Jun 1971 at 8.

197 Ordinance No 37 of 1957.

198 Ordinance No 44 of 1951.

Relations on 9 November 1965 and the Convention on Consular Relations on 1 October 1991. It would take Singapore another 40 years before she acceded to both Conventions on 1 April 2005. Speaking at the second reading of the Diplomatic and Consular Relations Bill in January 2005, Senior Minister for Foreign Affairs Zainal Abidin stated that although Singapore had hitherto not been a signatory of either Convention, Singapore follows 'closely the provisions of both Conventions' in its 'dealings with foreign missions in Singapore and in managing' its overseas missions.<sup>199</sup> Zainal added:

The two Conventions are universally recognised as customary international laws governing the protection and granting of privileges and immunities by the receiving State to diplomatic and consular missions and members of the missions so as to facilitate the smooth functioning of the foreign missions in the receiving State. To bring ourselves in line with international practices, Singapore has decided to accede to both the Vienna Convention on Diplomatic Relations, as well as the Vienna Convention on Consular Relations, without any reservations.<sup>200</sup>

It is thus clear that even though Singapore did not accede to these two conventions till 2005, it regarded them as codification of customary international law that practically bound Singapore in its conduct of international relations.

The law on state immunity in Singapore was likewise based on English common law. The main problem was that the doctrine of absolute sovereign immunity had come under heavy attack by the British courts in an age where states engage in commercial

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199 *Singapore Parliamentary Debates Reports*, 25 Jan 2005, vol 79 at col 574.

200 *Ibid.*

activity. As Law Minister EW Barker noted during the second reading of the State Immunity Bill:

At present, the matter [of state immunity] is governed by common law, where under the doctrine of absolute immunity, a foreign state or any of its agencies is immune from virtually all legal proceedings before our courts. This doctrine has been the subject of a great deal of criticism in the courts in the United Kingdom as well as the Privy Council. These courts have shown a tendency to modify the doctrine to prevent injustice and to bring the common law more in accord with present-day conditions. Many states and agencies of state are nowadays engaged in commercial or trading activities and there is little justification to preclude persons dealing with these states or state agencies in such activities from any legal redress.<sup>201</sup>

In 1977, the United Kingdom had enacted a State Immunity Act to codify the law on this issue. It was not entirely clear if this legislation would apply in Singapore by virtue of the continuing reception provision in section 5 of the Civil Law Act, and, therefore, Singapore's Parliament considered it expedient to pass similar legislation to put the matter beyond dispute.

### ***Active Participation in International Organizations***

Soon after independence, Singapore began signing a series of bilateral and multilateral treaties. In 1965, Singapore signed the Charter of the United Nations and the Statute of the International Court of Justice; the Constitution of the International Labour Organization (ILO) and at least 20 ILO Conventions; and the International Convention Relating to the Limitation of Liability for Ship Owners of Sea-going Ships. In 1966, Singapore

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201 *Singapore Parliamentary Debates Reports* 7 Sep 1978, vol 39 at col 408.

also joined the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank). This was done in June 1966 when then Finance Minister Lim Kim San moved the Bretton Woods Agreements Bill under a Certificate of Urgency.<sup>202</sup> At that time, Singapore was not a member of the IMF, but had received two World Bank loans for the construction of the Pasir Panjang Power Station (Phase 1) (of US\$15 million) and the Johore River Water Project (of US\$6.5 million) in 1963 and 1965 respectively. A third loan, negotiated by the Port of Singapore Authority for US\$15 million had been held in abeyance until Singapore could be admitted to the World Bank as a member. Explaining the desirability of acceding to the Bretton Woods Agreements, Lim stated:

The International Monetary Fund and the International Bank for Reconstruction and Development were founded at the United Nations Monetary and Financial Conference held at Bretton Woods in June 1944. The Fund was designed to stabilise exchange rates and promote a freer system of world trade and payments by assisting member countries over temporary difficulties in their international balances of payments. The Bank was intended primarily to make available capital which could not be obtained from private sources to finance productive investments in member countries.

...

Singapore is now an independent and sovereign nation. We must become a member of the World Bank before the Government or statutory bodies can obtain further loans...

One pre-requisite of membership of the World Bank is membership of the International Monetary Fund. It is necessary, therefore, that Singapore should also be a member of the

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202 *Singapore Parliamentary Debates Reports*, 22 Jun 1966, vol 25, col 122 and following.

IMF Membership of the IMF gives Singapore some advantages. Should we encounter temporary difficulties in our balance of payments position, we can purchase the necessary gold or other currencies from the Fund with our own currency. Otherwise we would probably have to pay a premium or institute drastic measures at home which might have undesirable long-term effects. By accepting the Articles of Agreement of the IMF, the Singapore Government will be indicating that it will abide by acceptable practices regarding the par value of the currency of Singapore and exchange control. This will instil in other countries further confidence in Singapore. Besides, Singapore will be able to get competent and objective assessments of its own economy and advice on economic problems from both the Fund and the Bank.<sup>203</sup>

The cost of subscription to the IMF was US\$30 million and to the World Bank was US\$32 million, although the latter was a derivative of the main IMF subscription. In all, Singapore was required to pay US\$7.5 million in gold; US\$320,000 in gold or US dollars; and US\$25.38 million in local currency.<sup>204</sup> The Bretton Woods Agreements Act<sup>205</sup> came into force on 4 July 1966, and Singapore became a member of the IMF on 3 August 1966. Between 1966 and 1969, she signed 14 air services agreements,<sup>206</sup> 8 World Bank loan agreements and guarantees, and some 30-odd miscellaneous conventions.

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203 *Singapore Parliamentary Debates Reports*, 22 Jun 1966, vol 25, at cols 123–124.

204 *Ibid*, at col 125.

205 Cap 27, Singapore Statutes.

206 These agreements were with: Netherlands (1966); Australia, Belgium, France and Japan (1967); India, Indonesia, Lebanon and Thailand (1968); and Bulgaria, Cambodia, West Germany, Switzerland, and the USSR (1969).

Entry into these various agreements was necessary for Singapore to secure urgently needed loans for infrastructure development as well as to maintain and expand aviation routes to destinations all over the world. The creation of incentive schemes to entice foreign direct investments and Singapore's entry in bilateral investment agreements saw the rise of the importance of international law. In these instances, international law provided the best platform for a small state like Singapore to negotiate with and participate in international meetings and forums. It also provided an excellent basis for securing understanding between Singapore and other states in the international community.

Singapore also joined the International Postal Union and the World Meteorological in 1966, and acceded to the Convention of the International Maritime Organization; the Convention on International Civil Aviation, and the Constitution of the World Health Organization in 1966.

## CONCLUSION

Singapore's interactions with international law were most intense in its early years. This is not surprising since statehood was achieved in rather difficult and complicated circumstances. Constant challenges from within and abroad left Singapore with no choice but to look to international law for a solution in defending its sovereignty. These experiences hammered home the lesson that for a small state like Singapore, international law provided the best protection against the raw exercise of political and military power. This was especially so in a volatile region like Southeast Asia during the 1950s and 1960s, when the Cold War was at its height. From its earliest days, Singapore's leaders looked to international law and international organizations to



safeguard Singapore's interests and third-party adjudication to settle international disputes.

Seen from the distance of almost half a century, the challenges confronting Singapore were enormous and were made all the more difficult as Singapore did not have at her disposal experienced experts and diplomats. The Foreign Ministry had to make up rules and policy as it went along, and the absence of specialists in international law both in the Ministry of Foreign Affairs and the Attorney-General's Chambers meant that diplomats, especially the permanent representative to the United Nations, had to do their own legal research to recommend positions to the Ministry. The fact that Singapore succeeded and grew from strength to strength as a state and was able to achieve great prominence at the United Nations and gain a formidable reputation in the conduct of international affairs is testimony to the fact that Singapore was able to find within its ranks, young Singaporeans of great talent, grit and fibre to blaze the trail for others to follow.