A. Introduction

The dispute between Malaysia and Singapore over sovereignty of some rocks and low tide elevations at the entrance of the Strait of Singapore from the South China Sea appears only to be a minor territorial dispute. The judgment of the International Court of Justice of 23 May 2008 offers, however, interesting insights into general aspects of the rules governing the acquisition of territorial sovereignty in international law. Questions such as the existence of an original title of sovereignty over uninhabited islands belonging to non-European local rulers or their qualification of *terrae nullius*, the possibility of an abandonment or transfer of sovereignty through unequivocal conduct over a period of time and the consequent role of acquiescence in this regard, the evaluation of maps and other evidence to prove title, particularly the exchange of letters related to the territory that formed the object of the controversy, as well as the role of *effectivités*, are among the most important of these aspects.

The International Court of Justice declared by 12 votes to 4 that sovereignty over Pedra Branca/Pulau Batu Puteh (hereinafter *Pedra Branca/PBP*)...
belongs to Singapore, while finding by 15 to 1 that sovereignty over Middle Rocks belongs to Malaysia. As regards South Ledge, the Court decided also by 15 to 1 that sovereignty over this low-tide elevation belongs to the State in the territorial waters of which it is located. Malaysia invoked the existence of an original title over all those features vested since time immemorial on the Sultanate of Johor, one of the components of the present Malaysian federation. Singapore, for its part, after some vagueness in its position, finally considered that Pedra Branca/PBP was *terra nullius* and that the East India Company acquired sovereignty on behalf of the British Crown by taking possession of the rock at the time of the construction of the Horsburgh Lighthouse on it, between 1847 and 1851. When it filed its Memorial, Singapore carefully avoided the use of the words *terra nullius*. It was only in its Reply and during the oral pleadings that Singapore invoked “by inference” that the British authorities built the lighthouse on Pedra Branca/PBP on the basis that the island was *terra nullius*. It further considered that the other maritime features constituted a single group together with Pedra Branca, and consequently it argued that Singapore had sovereignty over all of them.

The Court endorsed Malaysia’s argument concerning the status of Pedra Branca/PBP as originally belonging to the Sultanate of Johor, but considered that at an unspecified moment in time Malaysia had abandoned its sovereignty and that the United Kingdom/Singapore had acquired it. By disregarding the Singaporean contention about the existence of an insular group, and by narrowly construing Malaysia's purported abandonment (i.e. as only limited to Pedra Branca/PBP), the 23 May 2008 judgment considered that the original title over Middle Rocks remained unchanged, its sovereignty consequently belonging to Malaysia. It is worth noting that the Court was almost unanimous in holding that Malaysia had an original title; only the *ad hoc* judge appointed by Singapore was in disagreement.

The present article will focus on the analysis made by the parties and the Court about the existence of an original title of sovereignty over the maritime features in the area at the time of the arrival of, and colonisation by, the European powers, and its implication for the outcome of the

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2) Singapore Reply, para. 3.7; CR 2007/21, p. 35, para. 5 (Brownlie).