Conducive political climate makes it easier for Singapore and Malaysia to accept arbitration decision

23 Sep 2010

By Saifulbahri Ismail

Political observers say the more conducive political climate that now exists between Singapore and Malaysia would make it easier for both countries to accept decisions reached through arbitration.

In addition, they believe the previous experiences the countries had in referring disputes to international arbitration will help in managing expectations.

On Monday, the prime ministers of both countries decided to settle the development charge issue for land parcels under the original Points of Agreement amicably through the Permanent Court of Arbitration or PCA at The Hague.

Earlier this week, Singapore and Malaysia sealed a landmark land swap to settle the issue of Malayan railway land in Singapore.
However, one matter remains unsolved.

There's disagreement on whether development charges are payable to the Singapore Government for the three parcels of railway land at Tanjong Pagar, Kranji and Woodlands.

This dispute will now be referred to the Permanent Court of Arbitration.

Associate Professor Alan Chong from the S. Rajaratnam School of International Studies thinks both countries have found comfort in bringing disputes to the international courts:

"Comfort with international legal decisions is often attained after a series of agreements have brought out and accepted by both sides. There was the Pulau Tekong case, there was the Pedra Branca case. So, if both sides can live with these two earlier agreements, then there's very little political difficulty in living with this current decision to send this contentious issue to the international court."

Referring contentious issues to a third party has its benefits.

For one, it provides a better buy-in of the eventual decision.

Eugene Tan is from the Singapore Management University:

"Where you have a situation in which parties agree to resolve the matter between themselves, it is possible that the stakeholders in one country may argue that the leadership may have short-changed the country, the people. So, in a way a third party arbitrator removes the political sting that could accompany such decision. So, it makes the arbitral award more palatable because no interested third party could say that the country has been given the short end of the stick."

The last time Singapore and Malaysia had referred a dispute to the PCA was over the republic's land reclamation project on Pulau Tekong in 2003.

That matter was closed when both countries reached an agreement through negotiations and amicable settlements two years later.

A 28-year row between the two neighbours over Pedra Branca
was also settled in 2008 when the dispute was referred to the International Court of Justice or ICJ.

Professor Simon Chesterman, an international law expert from the National University of Singapore explains the differences of referring disputes to the ICJ and the PCA:

"Arbitration tends to be faster. It might still take a year, but it's unlikely to take a couple of years in a way that International Court of Justice can take. Can be kept confidential, and under more control of the parties than the International Court of Justice, because the appointment of arbitrators is somewhat different from the appointment of judges in the ICJ. It's somewhat a simpler procedure."

Both countries have said they have confidence the PCA is a fair and impartial system of resolving differences.