



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel: +31 (0)70 302 23 23. Cables: Intercourt,  
The Hague. Fax: +31 (0)70 364 99 28. Telex: 32323. E-mail address:  
mail@icj-cij.org. Internet address: <http://www.icj-cij.org>.

---

Press Release

Unofficial

No. 2002/39  
17 December 2002

**Sovereignty over Pulau Ligitan and Pulau Sipadan  
(Indonesia/Malaysia)**

**The Court finds that sovereignty over the islands of Ligitan and Sipadan  
belongs to Malaysia**

THE HAGUE, 17 December 2002. The International Court of Justice (ICJ), principal judicial organ of the United Nations, has today given Judgment in the case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia).

In its Judgment, which is final, without appeal and binding for the Parties, the Court finds, by sixteen votes to one, that “sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia”. Ligitan and Sipadan are two very small islands located in the Celebes Sea, off the north-east coast of the island of Borneo.

Reasoning of the Court

The Court begins by recalling the complex historical background of the dispute between the Parties. It then examines the titles invoked by them. Indonesia’s claim to sovereignty over the islands is based primarily on a conventional title, the 1891 Convention between Great Britain and the Netherlands. Indonesia thus maintains that that Convention established the 4° 10' north parallel of latitude as the dividing line between the British and Dutch possessions in the area where Ligitan and Sipadan are situated. As the disputed islands lie to the south of that parallel, “[i]t therefore follows that under the Convention title to those islands vested in The Netherlands, and now vests in Indonesia”. Malaysia, for its part, asserts that the 1891 Convention, when seen as a whole, clearly shows that Great Britain and the Netherlands sought by the Convention solely to clarify the boundary between their respective land possessions on the islands of Borneo and Sebatik, since the line of delimitation stops at the easternmost point of the latter island.

After examining the 1891 Convention, the Court finds that the Convention, when read in context and in the light of its object and purpose, cannot be interpreted as establishing an allocation line determining sovereignty over the islands out to sea, to the east of the island of Sebatik, and as a result the Convention does not constitute a title on which Indonesia can found its claim to Ligitan and Sipadan. The Court states that this conclusion is confirmed both by the travaux préparatoires and by the subsequent conduct of the parties to the Convention. The Court further considers that the cartographic material submitted by the Parties in the case does not contradict that conclusion.

Having rejected this argument by Indonesia, the Court turns to consideration of the other titles on which Indonesia and Malaysia claim to found their sovereignty over the islands of Ligitan and Sipadan. The Court determines whether Indonesia or Malaysia obtained a title to the islands by succession. The Court begins in this connection by observing that, while the Parties both maintain that the islands of Ligitan and Sipadan were not terrae nullius during the period in question in the present case, they do so on the basis of diametrically opposed reasoning, each of them claiming to hold title to those islands. The Court does not accept Indonesia's contention that it retained title to the islands as successor to the Netherlands, which allegedly acquired it through contracts concluded with the Sultan of Bulungan, the original title-holder. Nor does the Court accept Malaysia's contention that it acquired sovereignty over the islands of Ligitan and Sipadan further to a series of alleged transfers of the title originally held by the former sovereign, the Sultan of Sulu, that title having allegedly passed in turn to Spain, the United States, Great Britain on behalf of the State of North Borneo, the United Kingdom of Great Britain and Northern Ireland and finally to Malaysia.

Having found that neither of the Parties has a treaty-based title to Ligitan and Sipadan, the Court next considers the question whether Indonesia or Malaysia could hold title to the disputed islands by virtue of the effectivités cited by them. In this regard, the Court determines whether the Parties' claims to sovereignty are based on activities evidencing an actual, continued exercise of authority over the islands, i.e., the intention and will to act as sovereign.

Indonesia cites in this regard a continuous presence of the Dutch and Indonesian navies in the vicinity of Ligitan and Sipadan. It adds that the waters around the islands have traditionally been used by Indonesian fishermen. In respect of the first of these arguments, it is the opinion of the Court that "it cannot be deduced [from the facts relied upon in the present proceedings] that the naval authorities concerned considered Ligitan and Sipadan and the surrounding waters to be under the sovereignty of the Netherlands or Indonesia". As for the second argument, the Court considers that "activities by private persons cannot be seen as effectivités if they do not take place on the basis of official regulations or under governmental authority".

Having rejected Indonesia's arguments based on its effectivités, the Court turns to consideration of the effectivités relied on by Malaysia. As evidence of its effective administration of the islands, Malaysia cites inter alia the measures taken by the North Borneo authorities to regulate and control the collecting of turtle eggs on Ligitan and Sipadan, an activity of some economic significance in the area at the time. It relies on the Turtle Preservation Ordinance of 1917 and maintains that the Ordinance "was applied until the 1950s at least" in the area of the two disputed islands. It further invokes the fact that the authorities of the colony of North Borneo constructed a lighthouse on Sipadan in 1962 and another on Ligitan in 1963, that those lighthouses exist to this day and that they have been maintained by Malaysian authorities since its independence. The Court notes that "the activities relied upon by Malaysia . . . are modest in number but . . . they are diverse in character and include legislative, administrative and quasi-judicial acts. They cover a considerable period of time and show a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands". The Court further states that "at the time when these activities were carried out, neither Indonesia nor its predecessor, the Netherlands, ever expressed its disagreement or protest".

The Court concludes, on the basis of the effectivités referred to above, that "sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia".

Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal and Elaraby; Judges ad hoc Weeramantry and Franck; Registrar Couvreur.

Judge Oda appends a declaration to the Judgment of the Court; Judge ad hoc Franck appends a dissenting opinion to the Judgment of the Court.

---

A fuller summary of the Judgment will subsequently be given in Press Communiqué No. 2002/39bis. The full text of the Judgment, Judge Oda's declaration and Judge ad hoc Franck's opinion, together with the Press Communiqués, is available on the Court's Internet site ([www.icj-cij.org](http://www.icj-cij.org)).

---

Information Department:

Mr. Arthur Th. Witteveen, First Secretary of the Court (tel.: +31 70 302 2336)

Mrs. Laurence Blairon and Mr. Boris Heim, Information Officers (tel.: +31 70 302 2337)

E-mail address: [information@icj-cij.org](mailto:information@icj-cij.org)