

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

FOR SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE OF
THE DISPUTE BETWEEN INDONESIA AND MALAYSIA CONCERNING
SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN

jointly notified to the Court on 2 November 1998

1998
General List
No. 102

**JOINT NOTIFICATION, DATED 30 SEPTEMBER 1998,
ADDRESSED TO THE REGISTRAR OF THE COURT**

New York, 30 September 1998.

On behalf of the Government of the Republic of Indonesia and the Government of Malaysia, and in accordance with Article 40, paragraph 1, of the Statute of the International Court of Justice, we have the honour to transmit to you:

(1) a certified true copy of the Special Agreement for Submission to the International Court of Justice of the Dispute between the Republic of Indonesia and Malaysia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan, signed at Kuala Lumpur on 31 May 1997;

(2) a certified true copy of the Procès-Verbal of the Exchange of Instruments of Ratification between the Republic of Indonesia and Malaysia, signed at Jakarta on 14 May 1998.

The aforesaid Special Agreement entered into force, pursuant to its Article 6, paragraph 1, on the date of exchange of instruments of ratification, i.e., on 14 May 1998.

In accordance with Article 35 of the Rules of Court, both Governments (the Government of the Republic of Indonesia and the Government of Malaysia) hereby notify the Court of their intention to exercise the power conferred by Article 31 of the Statute of the Court to choose a judge *ad hoc* in these proceedings.

We further have the honour to inform you, in accordance with Article 40 of the Rules of Court, that:

(1) H.E. Mr. Nugroho Wisnumurti, Director-General for Political Affairs, Department of Foreign Affairs of the Republic of Indonesia, and the Ambassador Extraordinary and Plenipotentiary of the Republic of Indonesia to the Kingdom of the Netherlands (whose name will be communicated later to the Court) have been appointed as Agent and Co-Agent for the Republic of Indonesia for the purpose of the present case, and their address for service at the seat of the Court shall be: H.E. Mr. Nugroho Wisnumurti, Agent of the Republic of Indonesia, and the Indonesian Ambassador to the Kingdom of the Netherlands, Co-Agent of the

Republic of Indonesia, before the International Court of Justice, Embassy of the Republic of Indonesia to the Kingdom of the Netherlands, Tobias Asserlaan 8, 2517 KC The Hague.

(2) H.E. Datuk Abdul Kadir Mohamad, Secretary-General of the Ministry of Foreign Affairs, Malaysia, and H.E. Mr. A. Ganapathy, Ambassador Extraordinary and Plenipotentiary of Malaysia to the Kingdom of the Netherlands, have been appointed as Agent and Co-Agent for Malaysia for the purpose of the present case and their address for service at the seat of the Court shall be: H.E. Datuk Abdul Kadir Mohamad, Agent of Malaysia, and H.E. Mr. A. Ganapathy, Co-Agent of Malaysia, before the International Court of Justice, Embassy of Malaysia to the Kingdom of the Netherlands, Rustenburgweg 2, 2517 KE The Hague.

(Signed) ALI ALATAS

Minister for Foreign Affairs
of the Republic of Indonesia.

(Signed) DATO' SERI ABDULLAH HAJI
AHMAD BADAWI

Minister for Foreign Affairs
of Malaysia

1. SPECIAL AGREEMENT

The Government of the Republic of Indonesia and the Government of Malaysia, hereinafter referred to as "the Parties";

Considering that a dispute has arisen between them regarding sovereignty over Pulau Ligitan and Pulau Sipadan;

Desiring that this dispute should be settled in the spirit of friendly relations existing between the Parties as enunciated in the 1976 Treaty of Amity and Co-operation in Southeast Asia; and

Desiring further, that this dispute should be settled by the International Court of Justice (the Court),

Have agreed as follows:

Article 1
Submission of Dispute

The Parties agree to submit the dispute to the Court under the terms of

Article 36, paragraph 1, of its Statute.

Article 2
Subject of the Litigation

The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to the Republic of Indonesia or to Malaysia.

Article 3
Procedure

1. Subject to the time-limits referred to in paragraph 2 of this Article, the proceedings shall consist of written pleadings and oral hearings in accordance with Article 43 of the Statute of the Court.
2. Without prejudice to any question as to the burden of proof and having regard to Article 46 of the Rules of Court, the written pleadings should consist of:
 - (a) a Memorial presented simultaneously by each of the Parties not later than 12 months after the notification of this Special Agreement to the Registry of the Court;
 - (b) a Counter-Memorial presented by each of the Parties not later than 4 months after the date on which each has received the certified copy of the Memorial of the other Party;
 - (c) a Reply presented by each of the Parties not later than 4 months after the date on which each has received the certified copy of the Counter-Memorial of the other Party; and
 - (d) a Rejoinder, if the Parties so agree or if the Court decides *ex officio* or at the request of one of the Parties that this part of the proceedings is necessary and the Court authorizes or prescribes the presentation of a Rejoinder.
3. The above-mentioned written pleadings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the part of the written pleadings corresponding to the said Party.
4. The question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties or, in the absence of that agreement, by the Court. In all cases, however, the order of speaking adopted shall be without prejudice to any question regarding the burden of proof.

Article 4
Applicable Law

The principles and rules of international law applicable to the dispute shall be those recognized in the provisions of Article 38 of the Statute of the Court.

Article 5
Judgment of the Court

The Parties agree to accept the Judgment of the Court given pursuant to this Special Agreement as final and binding upon them.

Article 6
Entry into Force

1. This Agreement shall enter into force upon the exchange of instruments of ratification. The date of exchange of the said instruments shall be determined through diplomatic channels.

2. This Agreement shall be registered with the Secretariat of the United Nations pursuant to Article 102 of the Charter of the United Nations, jointly or by either of the Parties.

Article 7
Notification

In accordance with Article 40 of the Statute of the Court, this Special Agreement shall be notified to the Registrar of the Court by a joint letter from the Parties as soon as possible after it has entered into force.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

Done in four originals in the English language at Kuala Lumpur on the thirty-first day of May 1997.

For the Government of
the Republic of Indonesia,

For the Government of
Malaysia,

(Signed) ALI ALATAS,
Minister for Foreign Affairs.

(Signed) DATUK ABDULLAH AHMAD
BADAWI,
Minister for Foreign Affairs.

**2. PROCÈS-VERBAL OF EXCHANGE OF INSTRUMENTS
OF RATIFICATION**

The undersigned have met today for the purpose of exchanging the Instruments of Ratification of the Special Agreement for Submission to the International Court of Justice of the Dispute between Indonesia and Malaysia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan signed at Kuala Lumpur, Malaysia, on the 31st of May, 1997.

These Instruments, having been examined and found to be in due form, have been exchanged today.

In witness whereof, the undersigned have signed the present Procès-Verbal.

Done at Jakarta, this fourteenth day of May, in the year one thousand nine hundred and ninety-eight, in duplicate.

For the Government of
the Republic of Indonesia,
(Signed) NUGROHO WISNUMURTI,

Director-General for Political Affairs,
Department of Foreign Affairs of the
Republic of Indonesia.

For the Government
of Malaysia,

(Signed) DATO' ZAINAL ABIDIN BIN
ALIAS,

Ambassador of Malaysia

to the Republic of Indonesia.

Annex 1

INSTRUMENT OF RATIFICATION OF INDONESIA

Whereas, the "Special Agreement between the Government of the Republic of Indonesia and the Government of Malaysia for Submission to the International Court of Justice of the Dispute between Indonesia and Malaysia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan" was signed by the Minister for Foreign Affairs of the Republic of Indonesia and the Minister for Foreign Affairs of Malaysia at Kuala Lumpur, Malaysia, on 31 May 1997;

And whereas, the Government of the Republic of Indonesia, in accordance with Article 6, paragraph 1, of the Agreement, and having examined and considered the aforesaid Agreement, has decided to ratify the said Agreement;

Now therefore, be it known, that the Government of the Republic of Indonesia do hereby confirm and ratify the said Agreement and undertake to perform and carry out all the stipulations therein contained;

In witness whereof, this Instrument of Ratification is signed and sealed by the Minister for Foreign Affairs of the Republic of Indonesia;

Done at Jakarta this fourth day of May in the year one thousand nine hundred and ninety-eight.

(Signed) ALI ALATAS
Minister for Foreign Affairs
of the Republic of Indonesia.

Annex 2

INSTRUMENT OF RATIFICATION OF MALAYSIA

Whereas, the Special Agreement for Submission to the International Court of Justice of the Dispute between Malaysia and Indonesia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan was signed at Kuala Lumpur on the thirty-first day of May, in the year one thousand, nine hundred and ninety-seven;

And whereas, the Government of Malaysia in accordance with Article 6 of the Agreement has decided to ratify the said Agreement;

Now therefore, the Government of Malaysia, having considered the said Agreement, hereby confirms and ratifies the same and undertakes faithfully to perform and carry out all the stipulations therein contained.

In witness thereof, this Instrument of Ratification is signed and sealed by the Minister of Foreign Affairs, Malaysia.

Done at Kuala Lumpur this 24th day of April, in the year one thousand, nine hundred and ninety-eight.

(Signed) DATO' SERI ABDULLAH HAJI AHMAD
BADAWI

Minister for Foreign Affairs
of Malaysia
