Current Legal Developments

International Court of Justice


The purpose of this contribution is to report on the recent judgment of the ICJ in the Ligitan-Sipadan dispute and to assess whether it has added, even if *obtorto dicta*, any new elements to the law concerning the application of the concepts of dependency, continuity and contiguity in relation to island territories.

The Ligitan-Sipadan Dispute

Pulau Ligitan and Pulau Sipadan are two small islands located in the Celebes Sea, off the north-east coast of Borneo. The former lies 21 nautical miles from Borneo, the latter around 15 nautical miles. In 1969, a dispute between Indonesia and Malaysia arose concerning territorial sovereignty over said islands. The two states, by means of a Special Agreement signed on 31 May 1997, submitted the dispute to the International Court of Justice, which rendered its Judgment on 17 December 2002.1

The *raison d’être* of the dispute lay (a) in the complex history of the area, with various actors intermittently exercising sovereign or quasi-sovereign powers therein,2 and (b) in the very nature of the two islands, both quite small and until recently never permanently inhabited, with the obvious consequences in terms of effective display of state power.

The 1891 Convention

Indonesia’s claim to sovereignty over the islands rested primarily on a Convention signed on 20 June 1891 by the two colonial powers present in

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1 Available at http://www.icj-cij.org.
2 *Inter alia*, the Sultanate of Sulu, the Sultanate of Bulungan, Spain, the United States, the Netherlands, Great Britain. For an overview please refer to paras. 15-31 of the Judgment.

THE INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW, Vol 18, No 2

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Borneo in the 19th century, the Netherlands and Great Britain, with the purpose of “defining the boundaries between the Netherland possessions in the Island of Borneo and the States in that island which were under British protection” (para. 23). This Convention (and its correct interpretation) was one of the main objects of the Court’s reasoning. The relevant and contentious provision was Article IV, which provided that:

“For 4°10’ north latitude on the east coast the boundary-line shall be continued eastward along that parallel, across the Island of Sebittik: that portion of the island situated to the north of that parallel shall belong unreservedly to the British North Borneo Company, and the portion south of that parallel to the Netherlands.”

Indonesia’s stance was that this Article set up a boundary that continued eastwards beyond Sebittik island¹ in the open sea, thereby transforming itself into an allocation line between British and Dutch possessions in the region. By applying this line as a reference criterion, both disputed islands would have fallen under Indonesia’s jurisdiction, as they lie south of the indicated parallel line. Malaysia contended the opposite, i.e. the Convention created a boundary line that stopped at the eastern end of Sebittik island.

The diverging interpretations stemmed from the text of the Convention itself: first, a difference in punctuation in the Dutch and English texts, both equally authentic; secondly, and more importantly, the meaning to be attributed to the expression “the boundary-line shall be continued … across the Island of Sebittik”. In the words of the Court, “a line established by treaty may indeed pass ‘across’ an island and terminate on the shores of such island or continue beyond it” (para. 41, emphasis added).

These ambiguities were dealt with by the Court with a restrictive interpretative approach to the treaty, i.e. in case of doubt, an obligation or an additional use of a boundary line on the part of the contracting states could not be lightly deduced. In fact, the Court observed that any ambiguity in the text could have been avoided had the Convention expressly stipulated that the 4°10’ N parallel constituted, beyond the east coast of Sebittik, the line separating the islands under British and Dutch sovereignty. The fact that this was not done was interpreted as its not being ultimately intended (paras. 42–43). The interpretation given to subsequent boundary agreements between the Netherlands and Great Britain (in 1915 and 1928), which did not refer to or hint at any such development, was also considered a significant element for suggesting that the line established in 1891 terminated on the east coast of Sebittik island (paras. 72–74).

¹ This island is located directly opposite the starting point of the boundary line on Borneo and controls access to rivers leading to its interior. The Court considered that the partition had been deemed necessary in order to provide access to the coastal regions allocated to each party (para. 51). There are variations on its name in several of the relevant documents: Sebittik, Sebatik, etc.