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The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea

JOHN G. BUTCHER

In the early 1990s Indonesia and Malaysia were locked in a long-running and bitter dispute over the ownership of two tiny islands in the Sulawesi Sea and the associated question of maritime boundaries in this area rich in oil and gas deposits. Neither government had ever referred a dispute with another state to the International Court of Justice but in 1996 President Soeharto agreed to Malaysia's proposal to ask the ICJ to issue a ruling on the dispute between the two countries. In 1998 Indonesia and Malaysia asked the ICJ to rule on the ownership of the islands. They did not, however, ask it to rule on the far more important question of their maritime boundaries in the Sulawesi Sea. The ICJ's judgement in 2002 that the islands belonged to Malaysia therefore left that question unresolved. The article argues that because of Indonesia's experience with the ICJ and the high stakes involved for both countries any resolution of the boundary dispute — which came close to open conflict in 2005 — will almost certainly be the result of state-to-state negotiations rather than a ruling by the ICJ or any outside body.

Keywords: International Court of Justice, Sipadan, Ligitan, Indonesia, Malaysia, maritime boundary disputes.

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In the early 1990s, a long-running and bitter dispute over the ownership of two small islands in the Sulawesi Sea, and rights to the waters and seabed near those islands, was placing ever greater strain on the relationship between Indonesia and Malaysia. In October 1996, just when it appeared that there was no way of resolving the dispute, the governments of Malaysia and Indonesia suddenly agreed to refer the question of ownership of the islands to the International Court of Justice (ICJ). By this time the ICJ had ruled on many disputed sovereignty cases since its establishment under the United Nations (UN) Charter in 1945. The remarkable aspect of this case was that the ICJ was very much a new actor as far as maritime security governance in Southeast Asia was concerned.¹ In fact, the only time Southeast Asian countries had submitted a dispute of any kind to the ICJ was in 1959, when Thailand and Cambodia referred their competing claims to ownership of the Temple of Preah Vihear.

As a general rule, states are reluctant to hand over the settlement of disputes to an outside body, especially when — as is the case when states refer disputes to the ICJ — they must agree to be bound by the ruling of that body no matter what the outcome. Southeast Asian states, however, have been particularly protective of their sovereignty, especially when resolving territorial disputes. All Southeast Asian states experienced colonial rule or interference, all had their borders shaped to some extent — entirely in the case of Malaysia and Indonesia — by the colonizing powers, and two among them — Indonesia and Vietnam — underwent wars of independence. The ICJ's decision in the Preah Vihear case had done little to diminish the reluctance of states in this region to refer their disputes to an outside body: when the court ruled in favour of Cambodia in 1962, the Thai government's first reaction was to declare that the "temple would be defended to the last drop of blood".²

What, then, made the Indonesian and Malaysian governments refer the question of ownership of the two islands to the ICJ? Did the ICJ's ruling resolve the dispute between the two countries? Have the two governments become, as a result of their experience in this case, more willing to have their disputes settled by the ICJ or by any other outside body? Before trying to answer these questions we must examine how the dispute arose in the first place.

The Origins of the Dispute

Sipadan and Ligitan, the two islands at the centre of the dispute, are mere specks in the Sulawesi Sea. Sitting atop a steep extinct volcanic seamount and occupying 12 hectares,³ Sipadan lies about 14 miles south of “mainland” Sabah and 42 miles east of the island of Sebatik, which is divided between Malaysia and Indonesia by the 4° 10’ North parallel as agreed by the United Kingdom and the Netherlands in a treaty signed in 1891. Ligitan, which is even smaller, lies 12 miles to the east of Sipadan and is part of an extensive system of coral reefs. At the time the dispute arose neither island was inhabited. Sipadan was regularly visited by collectors of turtle eggs but otherwise neither island was valued for its natural resources. However, islands can have an importance that transcends their intrinsic value. Despite their size they can be seen as worth fighting for when they are regarded as an indivisible part of a state’s territory. When, as is often the case, they are located on the fringes of a state’s land possessions, they can also serve as the starting point for delimiting the state’s maritime boundaries. It was because this second feature applied to both islands that the dispute between Indonesia and Malaysia first arose.

In 1969 the Malaysian and Indonesian governments began negotiations on the continental shelf boundary between their two countries. There was a great deal to negotiate, both because the two countries shared extensive continental shelves in the Straits of Malacca, South China and the Sulawesi Sea, and because the 1958 UN Convention on the Continental Shelf, which both countries had signed and ratified, gave coastal states “sovereign rights” over their continental shelves “for the purpose of exploring it and exploiting its natural resources”.⁴ For both Malaysia and Indonesia the natural resources of most interest were oil and gas, deposits of which were known to exist in at least some parts of the continental shelves they shared. The convention gave the negotiating teams representing the two governments only limited guidance on how to delimit their continental shelf boundaries. Article 6 simply stipulated that “Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them.” As it happened, the negotiating teams were able to reach agreement over boundaries in the Straits of Malacca and the South China Sea very quickly. This was largely because the Indonesian government was prepared to accommodate Malaysian interests in the hope of gaining Malaysia’s

support in its campaign to gain international recognition of its claim to sovereignty over the waters between the islands making up Indonesia. The negotiations over the boundary in the Sulawesi Sea, however, soon reached an impasse over the ownership of Sipadan and Ligitan. According to Hasjim Djalal, a senior official in the Indonesian department of foreign affairs and an authority on the law of the sea who took part in the negotiations, the Indonesians wanted to use a Malaysian map that did not show the two islands as being part of Malaysia, while the Malaysians wanted to use an Indonesian map that did not show them to be part of Indonesia.⁵

A great deal depended on which nation owned the islands. At the very least the state owning the islands would be able to encircle each of them with a territorial sea, which both governments at this point regarded as being 12 nautical miles wide. But this was a fairly minor issue. What really mattered was the boundary of the continental shelf. According to article 1(b) of the Continental Shelf Convention, an island was entitled to continental shelves in the same way that other land areas were.⁶ Although article 6 left the negotiators free to give relatively little weight to Sipadan and Ligitan in drawing a boundary or to disregard them altogether, neither side was prepared to diminish the importance of the islands since ownership of the two specks of land would place the state owning them in a much stronger position in negotiating the boundary. At stake was not only national pride but also the exclusive right to extract whatever oil and gas that might be found under the seabed at some time in the future. The Indonesian government had in fact already given a Japanese oil company a permit to explore part of the area in question.⁷

The 1969 negotiations were suspended when the Indonesians said that they were not authorized to negotiate on the sovereignty of islands. According to Indonesian accounts, the two parties agreed that their governments would leave the question of the ownership of the islands to be settled later and would in the meantime “maintain the status quo, specifically, that the issue was not yet settled”.⁸ According to the Malaysian version, there was no such understanding, since as far as the Malaysian negotiators were concerned the islands belonged to Malaysia.⁹ In any case, the two governments apparently did not hold any discussions during the next ten years to try to resolve the impasse.

The dispute first gained public attention in December 1979 when the Malaysian government published a map, the *Peta Baru*

Menujukkan Sempadan Perairan dan Pelantar Benua Malaysia (usually translated as *New Map Showing the Territorial Waters and Continental Shelf Boundaries of Malaysia*), often referred to as the *Peta Baru* (New Map). That map showed Sipadan and Ligitan to be part of Malaysia. It also delimited Malaysia's continental shelf boundary in this area. It did this by, on the one hand, giving full weight to these islands, regarding them as if they were part of the "mainland" of Sabah, and on the other, it appears, simultaneously ignoring certain islets belonging to Indonesia.¹⁰ As a result, the boundary followed a line jutting south-easterly from the eastern point of the land border dividing Sebatik. A few weeks later, in February 1980, the Indonesian government "formally objected to the new map".¹¹ Discussions between President Soeharto and Prime Minister Hussein Onn the following month failed to resolve the question.¹² In October 1982 the Malaysian foreign minister, Ghazali Shafie, "discussed the border problem of the two islands" with President Soeharto during a visit to Jakarta, but that conversation merely reaffirmed a commitment by both governments to resolve the dispute by negotiations.¹³

In December 1982 another dimension was added to the dispute with the signing of the UN Convention on the Law of the Sea (UNCLOS). Under UNCLOS a coastal state exercises "sovereign rights" over the resources in the water column as well as in and under the seabed in an area known as the exclusive economic zone (EEZ) extending up to 200 nautical miles out from the same baselines used to define its territorial sea. In keeping with UNCLOS, Indonesia and Malaysia enacted legislation establishing their EEZs in 1983 and 1984 respectively. As a result, the dispute now concerned not only the oil and gas resources of the disputed area but also the fishery stocks in that area. Another consequence was that any resolution of the dispute would now require the two states to agree on a boundary between their continental shelves and EEZs in this area or, conceivably, separate boundaries for the two types of jurisdiction.¹⁴ In the short term this was not a problem, mainly because the Indonesian government did not announce the precise limits of its EEZ in the disputed area, but the dispute had now become even more difficult to resolve than before. There the matter rested for several more years until it finally blew up into a major source of tension between the two countries.

The fuse was lit in 1991 when it came to the attention of the Indonesian government that a private dive company had built

a number of chalets and a pier on Sipadan, which was becoming renowned for the splendour of its marine environment. At that point the Indonesian government sent the Malaysian government what the foreign minister, Ali Alatas, called a “reminder” of what he said was the understanding of the two governments to maintain the status quo until negotiations had resolved the question of ownership. On this basis the Indonesian government asked the Malaysian government to halt the development of Sipadan.¹⁵

By this time the Indonesians had become far more convinced than they had been in 1969 that the two islands in fact belonged to Indonesia. Their principal argument concerned the line drawn across Sebatik in the 1891 treaty between Britain and the Netherlands. According to the Indonesians, that line, the 4° 10' North parallel, extended directly eastward far out into the Sulawesi Sea, marking the boundary between, first, Dutch and British colonial possessions and, later, between Indonesian and Malaysian territories. Since Sipadan and Ligitan lie just to the south of that line, so the Indonesian argument ran, the two islands belonged to Indonesia. President Soeharto and Prime Minister Mahathir Mohamad discussed the question of ownership during meetings in 1992 and 1993. At the second of these, a “four-eyes” meeting in Langkawi, the leaders agreed to “avoid internationalising their overlapping claims ... but to resolve these through neighbourly bilateral discussions”.¹⁶

Even so, the two sides were becoming increasingly entrenched in their positions. In October 1993, newspapers reported that the Indonesian navy had stepped up patrols around the islands, while the navy’s commander declared that “We are determined to defend the islands from any outside threats. Sipadan and Ligitan islands are an integral part of our territory.”¹⁷ When, a couple of weeks after this declaration, the Malaysian tourism ministry published a guidebook that promoted Sipadan as a diving site, Ali Alatas stated that the Indonesian government would “immediately react by sending protest notes” whenever the Malaysian government showed that it was failing to adhere to “the status-quo agreement”.¹⁸ In December the Indonesian defence minister told a parliamentary hearing that Sipadan “fully belongs” to Indonesia “as long as there is no agreement” between the two governments on ownership.¹⁹ The dispute seemed beyond resolution in January 1994 when a meeting of senior officials representing Indonesia and Malaysia broke up after just half an hour.²⁰

Looking for a Solution: The Involvement of the ICJ

A government has many ways to resolve a territorial dispute with another government. One of these is to employ military force. If it already occupies the territory in question, it can try to build up its military presence in that territory to the point where the other government will eventually abandon its claim. Alternatively, if the territory is occupied by the other government, it can try to seize the territory by force and compel that government to relinquish any claim to it. Despite the inflammatory language of a few Indonesian military leaders, however, there is no evidence that either government ever seriously considered the use of military force.

Both governments regarded themselves as bound by the principles set out in the Treaty of Amity and Cooperation in Southeast Asia (TAC), which they and all other members of the Association of Southeast Asian Nations (ASEAN) had signed in 1976. The TAC proclaimed that parties should make every effort to avoid disputes among themselves, but that if one should arise “they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations”.²¹ In any case, the two governments did not want to destroy their generally good relationship on a wide range of other matters. Nor, for that matter, did they want to start a conflict that might invite the interference of some outside power. Thus, it appears, they were determined to find a peaceful solution. How they should go about doing this, however, was itself a source of considerable disagreement.

One possible way of resolving the dispute, though neither government had ever taken this path, was to ask the ICJ to settle the dispute. It must be emphasized that as an actor the ICJ has a number of distinctive characteristics that are of significance in regard to its role in settling disputes. Unlike, say, a foreign government eager to meddle in a dispute, the ICJ will become involved only if invited to do so by the parties to the dispute. Moreover, it will confine its role to considering only the question asked of it by the parties. But unlike a mediator, who can always be dismissed if one of the parties to the dispute believes that he or she has failed to perform properly as a mediator, the ICJ cannot be dismissed or ignored. Once it is asked to make a ruling it is subject to no influence except for its own interpretation of international law. Of course, the losing party can refuse to honour its pledge to accept the court’s ruling, but such a response will almost certainly diminish

that party's international standing. For this reason, governments generally give a great deal of thought to any decision to invite the ICJ to become involved in a dispute. As a general rule, governments do so only when they are confident of winning or if they believe the cost of losing is less than the cost of prolonging the dispute. No government is likely to agree to refer a dispute to the ICJ if a negative result could threaten its very existence. Nevertheless, in a world of nation-states conceptualized as having definite borders, even the "loss" of the tiniest piece of territory can be regarded as a great blow to the nation.

One of the first reported references to the possibility of taking the case to the ICJ appeared in an article published in the 31 January 1994 edition of the Indonesian newspaper *Merdeka*, suggesting that the Malaysian government was apprehensive about taking this step in case the ICJ ruled against Malaysia. According to the article, the Malaysians feared (unreasonably, so the paper claimed) that if this happened Indonesia would control the sea lanes leading to the Malaysian town of Tawau.²² During the course of 1994, however, Malaysian officials became convinced that the ICJ offered Malaysia the best opportunity for resolving the dispute in its favour. According to a Malaysian account, Mahathir, who had initially opposed this approach, also came around to the view that the ICJ offered the best solution.²³ Thus, when yet another round of talks between officials in September failed to resolve the dispute, the Malaysian government proposed that Malaysia and Indonesia refer their dispute to the ICJ.²⁴

The Indonesian government was less than enthusiastic about taking this step. During the talks in September, the leader of the Indonesian delegation stated immediately afterwards that the government would not completely reject the possibility of referring the dispute to the ICJ. However, he said, the government very much preferred to continue bilateral negotiations, at the level of ministers or the two heads of government if necessary. If those negotiations failed to find a solution, he continued, the Indonesians would very much prefer to have the dispute considered by the ASEAN High Council than by the ICJ.²⁵ The TAC had created the High Council as a mechanism to settle disputes among members of ASEAN when "friendly negotiations" between the parties had failed to resolve them.

The High Council — which to date has never been convened — would comprise a minister representing each of the ASEAN governments, including those involved in the dispute. The TAC

gave the High Council a wide range of options for trying to resolve disputes. It could recommend “appropriate means of settlement such as good offices, mediation, inquiry or conciliation” or, if the parties concerned agreed, constitute itself as “a committee of mediation, inquiry or conciliation”.²⁶ Significantly, however, the High Council had no authority to impose a decision on the parties even if they had agreed beforehand to be bound by its ruling.²⁷ Thus, in September 1994, there appeared to be three possibilities for resolving the dispute: to continue bilateral negotiations; to refer the dispute to the ICJ for a binding ruling; or to ask the ASEAN High Council to propose a solution that would involve some form of mediation or conciliation.

The Indonesian government had powerful reasons for not wanting to refer the dispute to the ICJ. Publicly, it proclaimed the need to find a “peaceful, just, neighbourly solution”²⁸ in keeping with the ASEAN spirit. Privately, officials were extremely discomforted by the idea that once the government agreed to hand the matter over to the ICJ it would then have no control whatsoever over the outcome. The court could, if asked by Indonesia and Malaysia, decide the case *ex aequo et bono*, according to what was “right and equitable”,²⁹ but apparently the two governments did not give this possibility serious consideration. Instead, it would be bound by both its statute and its very composition as a panel of eminent lawyers, to decide the case according to international law. The two pre-eminent Indonesian authorities on the law of the sea, Hasjim Djalal and the previous foreign minister, Mochtar Kusumaatmadja, both opposed referring the dispute to the ICJ for this reason. And so too did Ali Alatas. In 1995 he instructed his negotiating team to reject any proposal to refer the case to the ICJ when officials from the two countries met yet again.³⁰

Whatever qualms it may have had about referring the dispute to the ICJ, the Malaysian government was vehemently opposed to referring it to the ASEAN High Council. In public statements Malaysian officials professed that Malaysia did not want to “burden” its ASEAN partners by asking them to consider the dispute. Even then, however, it was clear their greatest worry was that the High Council would side with Indonesia, since at that time Malaysia, located right in the middle of Southeast Asia, had territorial disputes with all the other then members of ASEAN, namely, Thailand, Singapore, the Philippines and Brunei, all of which had formally objected to the *Peta Baru* at about the same time Indonesia did.³¹ The upshot of the situation in 1995 was that unless bilateral

negotiations led to a breakthrough each government was left with two choices: it could either acquiesce to the approach favoured by the other, or allow the dispute to drag on indefinitely hoping that the other side would make concessions first but also risking the possibility that the dispute might become even worse.

At this point, when a resolution appeared extremely remote, Hasjim Djalal, as he recalled in a 2003 article, suggested to Ali Alatas that the Indonesian government should appoint someone “who is experienced and understands the legal problem” as an interlocutor to hold informal discussions with an interlocutor appointed by the Malaysian government.³² As he noted in the same article, interlocutors have often been used as a method of trying to find a way to resolve seemingly intractable international disputes. Both governments quickly endorsed Djalal’s proposal. As a result, Soeharto appointed State Secretary Murdiono as the Indonesian interlocutor, while Mahathir appointed the deputy prime minister, Anwar Ibrahim, as the Malaysian interlocutor.³³ These two men held a series of four meetings beginning in June 1995. At their final meeting on 21 June 1996 they signed a report that they then submitted to their governments.³⁴ That report recommended that the two governments should refer the dispute to the ICJ. This was of course precisely what the Malaysians had wanted (and what Hasjim Djalal, among others, had strongly opposed).

The work of the two interlocutors appears to have carried a great deal of weight. Already, on 19 June, Ali Alatas had announced that the Indonesian government would agree to refer the dispute to the ICJ if bilateral talks failed to resolve the issue. But the final decision about whether to refer the dispute to the court or to try to make yet another attempt at resolving it bilaterally ultimately lay with the president. Sometime over the next few months Soeharto decided that Indonesia would indeed agree to ask the ICJ to rule on the dispute. Exactly why Soeharto made this decision is far from clear. Hasjim Djalal has speculated that in his efforts to promote development in Indonesia, Soeharto believed he needed to maintain close economic cooperation with Malaysia and that he wanted “to show the people [of Indonesia] that Indonesia is a law-abiding country”.³⁵ Whatever his reasons, Soeharto agreed to refer the dispute to the ICJ when he met with Mahathir in October 1996. Spokespersons for both sides emphasized that the two leaders wanted to avoid burdening future generations with the issue.³⁶

The agreement between Soeharto and Mahathir was welcomed in both countries. There was a widespread belief that the court’s

judgement would settle the matter once and for all. There was a general confidence in the impartiality of the court. "No need to worry about collusion", noted an international law professor at Hasanuddin University in Makassar in a thinly veiled reference to Indonesia's judicial system.³⁷ And, not least, each side appears to have been confident of winning the case.

Despite the breakthrough, the two foreign ministries still had to work out several matters before formally submitting the case to the court. By far the most consequential of these was to agree on exactly what issue to ask the court to consider. One possibility was to ask the ICJ to make a ruling not only on the ownership of Sipadan and Ligitan but also on their disputed maritime boundaries. There were recent precedents for asking an outside body to issue such a ruling. In 1986 El Salvador and Honduras had asked the court both to delimit their frontier line and to "determine the legal situation of the islands and maritime spaces". And in 1996, at nearly the same time Soeharto agreed to submit the Indonesia-Malaysia dispute to the court, Eritrea and Yemen asked an arbitral tribunal first to rule on the sovereignty of disputed islands in the Red Sea and then to issue an award "delimiting maritime boundaries".³⁸ At some point, however, the two sides decided that they would simply ask the ICJ to decide which nation owned the two islands. Thus, when they submitted their Special Agreement to the ICJ in September 1998 they formally asked the court "to determine on the basis of 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".³⁹ The hope was that once the question of sovereignty had been settled, the two governments would then be able to reach agreement on their maritime boundaries without a great deal of trouble. It is also possible that the two governments wanted to avoid any mention of maritime boundaries since a case involving such boundaries would almost certainly have brought the Philippines into the dispute.

Once the court agreed to hear the dispute, each government began preparing its case and hiring (at great expense) distinguished international lawyers to help it present their case in court. Since there was no Indonesian or Malaysian judge on the court, each government was able to appoint a judge *ad hoc* to the court to join the fifteen elected members in hearing the case. The case proceeded roughly according to the timetable that the two governments had agreed on in 1998. The two sides completed written pleadings in

March 2001, oral proceedings took place between June 2001 and June 2002, and the court issued its judgement on 17 December 2002. The only major disruption to the original timetable occurred in 2001 when the Philippine government asked to be allowed to intervene in the case on the grounds that the case had a direct bearing on its own interests, specifically, its maritime boundaries on the south-western fringe of the Philippines, but the court rejected this request.

The Indonesian case rested mainly on the argument that the 4° 10' North parallel had delimited the boundary not only between Dutch and British territory on Sebatik but also between the islands to the east of Sebatik that also then belonged to the two colonial powers. However, the court could find no convincing evidence that the 1891 treaty between the two powers had been intended to apply to these islands. Having rejected Indonesia's main argument, the court then considered whether either Indonesia or Malaysia had obtained title to the islands by succession, but the court could find no convincing evidence either, as Indonesia claimed, that the Netherlands Indies had acquired the islands from the Sultan of Bulungan or, as Malaysia claimed, that British North Borneo had acquired them from the Sultan of Sulu. The court then had no choice but to decide the case on the basis of *effectivités*, meaning the extent to which either government (or its colonial predecessor) had exercised actual administrative control of the islands.

The court noted that the colonial authorities in British North Borneo had regulated the collection of turtle eggs on Sipadan from as early as 1917 and that during the post-war years had built lighthouses on both Sipadan and Ligitan. It also observed that neither the Netherlands Indies nor Indonesian governments before the dispute "crystallized" in 1969 had ever protested against any of these exercises of authority. The Indonesian legal team noted that Indonesian fishermen had long fished in this area and that Dutch and Indonesian naval vessels had patrolled around Sipadan. However, it was unable to provide any evidence that either the Dutch or the Indonesian government had ever exercised any authority on the islands themselves. The team's case was also weakened by the fact that the map attached to the 1960 law that proclaimed Indonesia's system of straight baselines encircling the country did not use either island as a base point. Its plea that this was merely a reflection of the haste with which the map had been prepared made no impression on the court. In a sixteen-to-one ruling the court decided on the basis of *effectivités* that Sipadan and Ligitan

belonged to Malaysia. The court did acknowledge, however, that “in the case of very small islands which are uninhabited or not permanently inhabited — like Ligitan and Sipadan, which have been of little economic importance (at least until recently) — *effectivités* will ... generally be scarce”. Thus, in the end, it all came down to turtle eggs and lighthouses.⁴⁰

Accompanying the court’s judgement was a “declaration” by Judge Shigeru Oda, a leading authority on maritime boundary issues. Oda had voted in favour of the judgement but was troubled by the failure of the case to address what he believed was the real cause of the dispute. He noted that in 1969 the dispute had had nothing to do with the two islands but with the continental shelf boundary between Malaysia and Indonesia. At this point, he observed, the two sides “suddenly realized that sovereignty would strengthen their hand in respect to the continental shelf negotiations”.⁴¹ According to Oda, the two governments had failed to understand that the Continental Shelf Convention, the prevailing international law at the time, allowed them to disregard “these two extremely small, socially and economically insignificant islands” during their negotiations. After suggesting that the issue should now be approached from a new angle by trying to achieve “an equitable solution” as stipulated in UNCLOS, Oda concluded with the observation that the judgement “determining sovereignty over the islands does not necessarily have a direct bearing on the delimitation of the continental shelf”.⁴² In short, he came close to saying, the whole case had achieved almost nothing.

The Aftermath of the ICJ’s Ruling

Malaysians greeted the ICJ’s ruling with joy and relief. The Malaysian government was careful not to appear triumphant. Mahathir expressed the belief that resolution of the question of sovereignty would not harm relations between the two countries. The court’s decision, he emphasized, “could have been against us. Even if it did not favour us we would have still accepted the decision.”⁴³ Yet the government clearly felt vindicated. “Historically, the two islands have always been part of the group of islands off Sabah”, declared the foreign minister, Syed Hamid Albar, immediately after the ruling.⁴⁴ The result also filled the government with confidence in the ICJ as a means of resolving another dispute it was involved in. The Malaysian and Singapore governments had already decided in 1998 to refer to the ICJ a dispute between them over the ownership of Pedra

Branca (called Pulau Batu Puteh by Malaysians), Middle Rocks, and South Ledge at the eastern entrance to the Singapore Straits. But for reasons that are unclear, they had not yet submitted the case to the court. Whatever the reason for the delay, the Malaysian government now decided that the case should be submitted to the ICJ as soon as possible. "Pulau Batu Puteh will be next", the deputy prime minister, Abdullah Ahmad Badawi, declared the day after the ruling.⁴⁵ A few months later the Malaysian and Singapore governments ratified their earlier agreement to refer the dispute to the ICJ and deposited their special agreement with the ICJ in The Hague.

Not surprisingly, the court's ruling stunned many Indonesians. Losing the case was bad enough, commented the *Jakarta Post*, but to lose in a sixteen-to-one decision was "downright embarrassing", suggesting that Indonesia had never really had a chance of winning.⁴⁶ For many Indonesians the "loss" of the two islands was particularly humiliating because it came so soon after the "loss" of East Timor. Various members of the People's Representative Assembly (DPR) demanded that the government "safeguard ... the country's sovereignty" and "abide by its ultimate duty to foster the territorial integrity of the Republic of Indonesia".⁴⁷ Both President Megawati Sukarnoputri and Vice President Hamzah Haz tried to assure Indonesians that the government would do everything in its power to prevent any further "losses" of territory.⁴⁸ These assurances appear to have gone some way in alleviating the feeling that the Unitary State of the Republic of Indonesia — the term used to emphasize the inherent territorial integrity of Indonesia — was under grave threat. By about March 2003 the issue had begun to fade from public attention but did not disappear altogether. In June the DPR used its right of interpellation to ask the government to explain its conduct in the case.

When the Indonesian and Malaysian governments had asked the ICJ to rule on the question of who owned the two islands, both had hoped that once they had resolved that question they would then be able to reach agreement on their maritime boundaries in the Sulawesi Sea. Immediately after the ruling the Malaysian deputy foreign minister expressed the same hope. "The most important thing is that sovereignty has been settled", he said. "Now, we can look at our maritime boundaries and our bilateral relations can progress smoothly."⁴⁹ As Judge Oda had noted, however, the court's ruling had made little difference as far as the original dispute over a continental shelf boundary was concerned. In fact, a resolution

of the dispute seemed further away than ever. Politically, the issue had become more difficult to resolve by diplomatic means because of democratization in Indonesia and the far greater freedom the press and the public had to express their opinions. Economically too, there was far more at stake than there had been in 1969, as it was becoming increasingly certain that the area to the south of the two islands contained large oil and gas deposits.⁵⁰ As Oda had proposed, the two governments could, if they chose to do so, ignore the two islands when negotiating their seabed boundary. In fact, they were free to agree on any “equitable solution”. But the Malaysian government had apparently given full weight to the islands when drawing boundaries on its 1979 map, the *Peta Baru*.

Now that it had undisputed sovereignty over the islands, the government was more certain than ever of the validity in international law of the boundary it had drawn. For its part, the Indonesian government had never recognized the validity of the *Peta Baru*. Moreover, it regarded itself as having jurisdiction over the area just south of Sipadan and Ligitan. The full extent of this area was not clear but it included a large rectangular area that it called the Ambalat Block that contained large deposits of oil and gas. Most critically, the northern part of the Ambalat Block overlapped the Malaysian claim. It would take little to bring the dispute out into the open again.

That happened with a vengeance just two years after the ICJ's ruling. Late in 2004, the Indonesian government granted a licence to the US oil company Unocal to explore for oil and gas in the Ambalat Block. Then, in February 2005, the Malaysian government granted a licence to Royal Dutch/Shell to do the same in an area that overlapped the area where the Indonesian government had licensed Unocal to undertake explorations. This action caused outrage in Indonesia. A spokesman for the Foreign Ministry declared that “the granting of the concession ... is an inappropriate and unlawful act. ... Malaysia has no right to give any concession to anyone to operate in Indonesian territorial waters”. He also announced that the government had written to Royal Dutch/Shell warning them not to enter “our waters”. In the meantime, a spokesman for the Indonesian navy announced that a fourth ship was about to join the three already patrolling the “Ambalat area” (apparently a broader area than the block itself) and that the navy was considering sending a submarine as well. “They're there to maintain the security and defend our sovereignty”, he declared. “We will not let an inch of our land or a drop of our ocean fall into the hand of foreigners.”⁵¹

The overwhelming sentiment within the political and military elite was that the government could never allow what happened in 2002 to happen again. Adding to the tension, the Malaysian navy had its own warships patrolling in the same area. In an effort to prevent the issue from escalating out of control, representatives of the two governments held talks in March 2005. Though declared to be “very cordial and friendly”, these talks failed to reach a resolution.⁵² Then, on 8 April a Malaysian patrol boat and an Indonesia warship had some sort of collision in the disputed area, leading each government to summon the other’s ambassador to lodge a formal protest. In the years since then the tension has waxed and waned. The most recent flare-up occurred in May 2009 when, according to the Indonesian version of events, an Indonesian warship “managed to drive away a Malaysian warship ... which had tried to trespass Indonesian waters in the Ambalat Block”.⁵³ At the height of tension, crowds attending rallies in Indonesia chanted “Ganyang Malaysia” or “Crush Malaysia”, the slogan Sukarno used during the *Konfrontasi* with Malaysia in the 1960s. Throughout these years the politics of the Ambalat dispute have been closely tied to other sources of tension between the two countries, such as the treatment of Indonesian workers in Malaysia and the alleged “theft” by Malaysians of Indonesia’s cultural heritage.

One possible way of resolving the dispute would be to create a joint development zone in the area. Such an arrangement would allow the two countries to exploit the resources in the disputed area before agreeing on their maritime boundaries. Indeed, UNCLOS declares that any agreement regarding joint development “shall be without prejudice to the final delimitation”.⁵⁴ The Malaysian government first suggested some form of joint development soon after the Ambalat issue blew up in March 2005, but a high official in the Indonesian Foreign Ministry immediately rejected this proposal out of hand.⁵⁵ The following year the Indonesian foreign minister, Hassan Wirajuda, reaffirmed that position. “We have an interest in solving the dispute once and for all first”, he declared. “A joint development is out of the question.”⁵⁶

A great impediment to joint development is the Indonesian view that the dispute has much more to do with Indonesia’s sovereignty and territorial integrity than it does with natural resources. From a strictly legal perspective, the dispute is concerned with “sovereign rights” over natural resources in certain areas of the sea rather than “sovereignty” over territory, since the waters and seabed in question lie beyond both states’ territorial seas.⁵⁷ For most Indonesians,

however, this distinction means nothing. For them sovereignty is not a matter of degree but an absolute.⁵⁸ Any form of sharing would, from that perspective, be anathema. Even those such as Hassan Wirajuda who are aware of the distinction regard the question of boundaries as a “matter of principle” that takes precedence over the exploitation of resources.⁵⁹

Another possible method of resolving the dispute, of course, would be to refer it to the ICJ. However, in 2005 President Susilo Bambang Yudhoyono flatly rejected this suggestion — “Ambalat is Indonesian territory”, he declared — and in 2009 the Foreign Ministry stated that there was “little possibility” of taking the dispute to the court.⁶⁰ Short of armed conflict, which seems extremely unlikely, the only resolution will therefore have to be the result of bilateral negotiations. This in fact appears to be the path the two governments have agreed to take. Between March 2005 and October 2011 a “technical committee” made up of officials from the two governments met a total of twenty times.⁶¹ The negotiations have probably been even tougher than those conducted in the 1990s, for the Indonesians insist on negotiating several other maritime boundary disputes at the same time. The government’s aim, Mark Valencia and Nazery Khalid explain, is “to force Malaysia to yield on the Ambalat issue and accept only territorial seas [extending out 12 nautical miles] around Sipadan and Ligitan”.⁶² Nevertheless, in October 2011 Prime Minister Najib Razak announced that the technical committee had managed to narrow down some of the differences between the two sides.⁶³ At the same time, he and President Yudhoyono issued a joint statement expressing their commitment to resolve their various border disputes through negotiations.⁶⁴ A further sign that the two governments were trying to find a solution came in January 2012 when they signed a memorandum of understanding on the treatment of fishermen caught in disputed waters.⁶⁵ I Made Andi Arsana points out that in order to agree on precisely where their claims overlap each side would need to recognize the extent of the other’s claim, thereby potentially lending it a degree of legitimacy. He argues, however, that “both [governments] must have been aware that such ‘recognition’ should not complicate the finalization of maritime delimitation in the future”.⁶⁶

Conclusion

Following the ICJ’s ruling in favour of Malaysia in 2002, the Malaysian government was, as we have seen, eager to make use of the court

to resolve its territorial dispute with Singapore.⁶⁷ In contrast, the Indonesian government has shown no desire to refer any more territorial disputes to the ICJ. This is not simply because Indonesia lost the case but because the Indonesian polity has changed considerably since 1996. At that time, the government's decision to refer the Sipadan-Ligitan dispute to the ICJ was in the end made, for reasons that are still not entirely clear, by one person, President Soeharto. Now the cabinet and parliament would have to take a far more active part in making such a decision, and would be deeply conscious of the feelings of the Indonesian electorate when doing so.⁶⁸ If anything, the Indonesian government is even more protective of its sovereignty than it was under Soeharto. "In the case of a violation of our sovereignty there will be no compromise", President Yudhoyono declared in June 2009. "Sovereignty is sovereignty and it is about the state's existence no matter whether we are close neighbours or brothers."⁶⁹ The Indonesian state has changed in some important ways since the 1990s, but the idea that Indonesian territory is, and must always remain, part of Indonesia is stronger than ever. The government may not go to war to hold on to or seize disputed territory, but neither is it likely again to agree to invite some outside institution to resolve any territorial dispute. Belief in the territorial integrity of Indonesia has transcended a fundamental change in regime.

The aspect of the case that reveals the most about the involvement of the ICJ in the dispute is that the court's ruling, as Judge Oda observed, settled so little. This was not because of any failure on the ICJ's part — it did exactly what it was asked to do — but because of the specific question the two governments asked it to answer. While the two governments were prepared to hand over the resolution of their dispute over Sipadan and Ligitan to the ICJ, they were unwilling to ask it to rule on the far more important question of their maritime boundaries in the Sulawesi Sea. The prospect of "losing" two tiny islands was, it appears, bearable, but neither government was willing to risk "losing" sovereign rights over the resources in and under a vast area of sea. Thus the decision to hand over the dispute over the two islands, momentous though it was, did not mark a radical change in the way either government approached the resolution of disputes with other states. Instead it was like a trial run, one that appears to have taught the Indonesian government in particular to be wary of ever referring a dispute to the ICJ again. As suggested by the recent joint statement and MoU, any resolution of the boundary dispute will almost certainly be

the result of old-fashioned state-to-state negotiations rather than a decision by the ICJ or any other outside body.

Whatever path they take, the two governments have compelling reasons for finding a long term resolution to the dispute. As well as hampering the exploitation of oil and gas resources in the area, maintaining the potential for some kind of naval incident, and providing a constant irritant to relations between the two states the uncertainty over jurisdiction undermines the regulation of fishery stocks and hampers cooperation in dealing with piracy, smuggling and the activities of groups such as Abu Sayyaf. At least until recently each government appears to have taken the view that these problems are more tolerable than the economic and particularly political problems that would arise from any resolution of the dispute that failed to give it all of what it claimed. If recent developments are any guide, however, that calculation may be changing on the part of both states. If so, the day may come when Indonesia and Malaysia finally resolve this dispute that has already encumbered their relationship for forty-four years.

NOTES

- ¹ Borrowing from the 2009 Club of Rome definition of global governance, maritime security governance may be defined as “the collective effort to identify, understand, and address” security concerns in the maritime sphere. Quoted in *Who Governs the Globe?*, edited by Deborah D. Avant, Martha Finnemore, and Susan K. Sell (Cambridge, MA: Cambridge University Press, 2010), p. 1.
- ² *Rosenne’s The World Court: What It Is and How It Works*, 6th ed., edited by Terry D. Gill (Leiden and London: Martinus Nijhoff, 2003), p. 38.
- ³ Different sources give wildly different areas. This figure is taken from the Tourism Malaysia website, <<http://www.tourism.gov.my>>.
- ⁴ Convention on the Continental Shelf, Article 2 (1), <http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_continental_shelf.pdf>. Indonesia had signed and ratified this convention. Because Indonesia made a reservation on an aspect of the convention that the convention itself declared could not be subject to reservation, the UN had not accepted Indonesia’s ratification. Nevertheless, except in relation to its reservation, which concerned the Indonesian government’s archipelagic claim, the Indonesian government regarded itself as bound by the convention. St. Munajat Danusaputro, *Wawasan Nusantara*, vol. 2 (Bandung: Alumni, 1978–84), pp. 47–48.
- ⁵ Interview with Professor Hasjim Djalal, Jakarta, November 2008.
- ⁶ According to the 1958 Territorial Sea Convention, which defined an island as “a naturally formed area of land, surrounded by water, which is above water at high tide”, both Sipadan and Ligitan were islands.

- ⁷ Hasjim Djalal, “Penyelesaian sengketa Sipadan–Ligitan: interpelasi?” [Settlement of the Sipadan-Ligitan dispute: interpellation?], *Hukum dan Pembangunan* 33, no. 1 (January–March 2003): 129.
- ⁸ Interview with Professor Hasjim Djalal, November 2008.
- ⁹ R. Haller-Trost, *The Contested Maritime and Territorial Boundaries of Malaysia: An International Law Perspective* (London, The Hague, and Boston: Kluwer Law International, 1998), p. 251. Chapter 6 provides a thorough description and analysis of the dispute up to 1997.
- ¹⁰ Mark. J. Valencia and Nazery Khalid, “The Sulawesi Sea Situation: Stage for Tension or Storm in a Teacup?”, *The Asia-Pacific Journal* 28-1-09 (13 July 2009), <http://www.japanfocus.org/-Mark_J_-Valencia/3184>.
- ¹¹ Asri Salleh, Che Hamdan Che Mohd Razali and Kamaruzaman Jusoff, “Malaysia’s Policy towards its 1963–2008 Territorial Disputes”, *Journal of Law and Conflict Resolution* 1, no. 5 (October 2009): 110.
- ¹² *Ibid.*
- ¹³ “Border issue to be resolved by talks”, *Straits Times*, 29 October 1982.
- ¹⁴ During a meeting of the UN Conference on the Law of the Sea in August 1980, by which time both concepts were well established, Hasjim Djalal noted that in the Indonesian view the boundaries of the continental shelf and the EEZ were not necessarily the same, “since they were governed by two different legal regimes”. Third United Nations Conference on the Law of the Sea, *Official Records*, vol. 14, p. 29.
- ¹⁵ “Jakarta asks KL to stop developing disputed island”, *Straits Times*, 6 June 1991.
- ¹⁶ Kalimullah Hassan, “KL upbeat on boosting ties with Indonesia”, *Straits Times*, 19 July 1993.
- ¹⁷ “Indonesia steps up patrols off disputed islands”, *Reuters*, 14 October 1993; “Indonesian Navy will defend two disputed islands”, *Straits Times*, 14 October 1993.
- ¹⁸ “Jakarta irked by KL plan to promote disputed isle”, *Straits Times*, 30 October 1993.
- ¹⁹ “Sipadan belongs to us as long as there is no accord”, *Straits Times*, 14 December 1993.
- ²⁰ “Talks on islands dispute”, *Business Times*, 28 January 1994. Leading the Malaysian delegation was the foreign ministry secretary-general, Ahmad Kamil Jaafar, while the leader of the Indonesian delegation was Izhar Ibrahim, director-general of political affairs in the department of foreign affairs.
- ²¹ Treaty of Amity and Cooperation in Southeast Asia, Article 13, <<http://www.aseansec.org/1217.htm>>.
- ²² “‘Fresh evidence’ to be examined in islands dispute with Indonesia”, *Merdeka* report broadcast by Radio Republik Indonesia, 31 January 1994, BBC Monitoring Service, 1 February 1994.
- ²³ Salleh et al., “Malaysia’s Policy”, *op. cit.*, p. 115.
- ²⁴ Paul Jacob, “Isles row: Jakarta to study mediation proposal”, *Straits Times*, 9 September 1994. The leaders of the Malaysian and Indonesian delegations were again Ahmad Kamil Jaafar and Izhar Ibrahim respectively.

- ²⁵ Ibid.
- ²⁶ Treaty of Amity and Cooperation in Southeast Asia, Article 15, op. cit.
- ²⁷ Rudolfo C. Severino, *ASEAN* (Singapore: Institute of Southeast Asian Studies, 2008), p. 16.
- ²⁸ Jacob, “Isles row”, op. cit.
- ²⁹ Gill, ed., *Rosenne’s The World Court*, op. cit., p. 122.
- ³⁰ Djalal, “Penyelesaian sengketa Sipadan–Ligitan”, op. cit., p. 131.
- ³¹ Haller-Trost, *Contested Maritime and Territorial Boundaries of Malaysia*, op. cit., p. 7. So too had the People’s Republic of China, while a statement by the Vietnamese government regarding its baselines implied that it had as well. Ibid.
- ³² Djalal, “Penyelesaian sengketa Sipadan–Ligitan”, op. cit., p. 131.
- ³³ Ibid.
- ³⁴ “Kesepakatan Soeharto–Mahathir bawa Sipadan–Ligitan ke Mahkamah Internasional” [Soeharto–Mahathir agreement to take Sipadan–Ligitan to International Court], *Kompas* online, 8 October 1996; “Sipadan–Ligitan diserahkan ke Mahkamah Internasional” [Sipadan–Ligitan handed over to International Court], *Suara Pembaruan* online, 7 October 1996.
- ³⁵ Interview with Professor Hasjim Djalal, November 2008.
- ³⁶ “Kesepakatan Soeharto–Mahathir bawa Sipadan–Ligitan ke Mahkamah Internasional”, op. cit.; Vijayan Menon, “Dispute over islands referred to World Court”, *New Straits Times*, 8 October 1996.
- ³⁷ “ICJ Best Arbitrator on Islands Rift — Experts”, *Jakarta Post*, 14 October 1996.
- ³⁸ Malcolm N. Shaw, “Case concerning the land, island and maritime frontier (El Salvador/Honduras: Nicaragua intervening), judgment of 11 September 1992”, *International and Comparative Law Quarterly* 42 (1993): 930; W. Michael Reisman, “Government of the Republic of Yemen: award of the arbitral tribunal in the first stage of the proceedings”, *American Journal of International Law* 93 (1999): 668. By 1996 the ICJ had ruled on a total of eight maritime boundary disputes. Donald R. Rothwell and Tim Stephens, *The International Law of the Sea* (Oxford and Portland, Oregon: Hart Publishing, 2010), pp. 393–97.
- ³⁹ “Special Agreement for Submission to the International Court of Justice...Jointly Notified to the Court on 2 November 1998”, <<http://www.icj-cij.org/docket/files/102/7177.pdf>>.
- ⁴⁰ “Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment of 17 December 2002”, in ICJ, *Reports of Judgments, Advisory Opinions and Orders*, 2002, p. 682 (for quote). I have made use of excellent summaries of the judgment by David A. Colson, “Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)”, *American Journal of International Law* 97 (2003): 398–406; and J.G. Merrills, “Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), merits, judgment of 17 December 2002”, *International and Comparative Law Quarterly* 52 (2003): 797–802, as well as the court’s own summary in ICJ, “The Court Finds that sovereignty over the islands of Ligitan and Sipadan belongs to Malaysia” (Press Release 2002/39), 17 December 2002, <<http://www.icj-cij.org>>. The court’s judgment, written and oral proceedings, and other documents related to the case are all available on the court’s website <<http://www.icj-cij.org>>.

- ⁴¹ “Declaration of Judge Oda”, <<http://www.icj-cij.org/docket/files/102/7716.pdf>>.
- ⁴² Ibid.; United Nations Convention on the Law of the Sea, Article 83.
- ⁴³ “Dr M relieved issue over islands solved”, *New Straits Times*, 18 December 2002.
- ⁴⁴ Carolyn Hong, “Decision won’t hurt ties, says Syed Hamid”, *New Straits Times*, 18 December 2002.
- ⁴⁵ “Malaysia to focus on dispute with Singapore over Pulau Batu Puteh”, *Bernama*, 18 December 2002.
- ⁴⁶ “Licking our Wounds”, *Jakarta Post*, 19 December 2002.
- ⁴⁷ Openg Onn, “Indon legislators to demand explanation over Sipadan”, *Bernama*, 18 December 2002; “MP on interpellation on Sipadan & Ligitan Islands”, *Antara*, 9 January 2003.
- ⁴⁸ “Sipadan and Ligitan case should not repeat — Megawati”, *Antara*, 31 December 2002; “VP says no more Indonesian islands to secede”, *Antara*, 5 January 2003.
- ⁴⁹ Hong, “Decision won’t hurt ties”, op. cit.
- ⁵⁰ See, for example, “Malaysia, Indonesia make overlapping claims in offshore blocks”, *Platt’s Commodity News*, 29 September 2004.
- ⁵¹ “Indonesian warships sent into maritime dispute”, Laksamana.Net, 2 March 2005 (*Indonesia News Service*, vol. 22, no. 11 (18 March 2005), pp. 7–8); Bill Guerin, “Sulawesi Sea row dredges up defenses”, *Asia Times*, 9 March 2005, <http://www.atimes.com/atimes/Southeast_Asia/GC09Ae02.html>.
- ⁵² R. Manirajan, “Ambalat talks end ‘cordially’”, *The Sun*, 24 March 2005.
- ⁵³ “Ambalat under control: Chief Security Minister”, *Antara*, 6 June 2009.
- ⁵⁴ Clive Schofield and I Made Andi Arsana, “Ambalat revised: the way forward?”, *Jakarta Post*, 9 June 2005, in *Beyond Borders: Multi Dimensions of the Indonesian Borders*, by I Made Andi Arsana (Yogyakarta: Department of Geodetic Engineering, Universitas Gadjah Mada, 2009), pp. 47–50.
- ⁵⁵ “RI Rejects Joint Development/Cooperation with M’sia in Sulawesi Sea”, *Antara*, 26 March 2005.
- ⁵⁶ “RI Rejects Malaysian Proposal for Joint Operation in Ambalat”, *Antara*, 13 January 2006. At a joint press conference with the Malaysian prime minister, Abdullah Badawi, President Yudhoyono did not dismiss the proposal altogether, saying that “it is possible that cooperation on energy can be done on the waters”. “Indonesia, Malaysia may work together on disputed waters”, *Reuters*, 12 January 2006.
- ⁵⁷ On the distinction between sovereignty and sovereign rights see two pieces by I Made Andi Arsana: “Ambalat: a spatial and technical perspective”, Geospatial Resource Portal, <<http://www.gisdevelopment.net/application/miscellaneous/ma0543.htm>>; and “Membela Ambalat dengan nasionalisme cerdas” [Defend Ambalat with intelligent nationalism], *Antara*, 2 June 2009, <<http://www.antaranews.com>>.
- ⁵⁸ On the importance Indonesians place on sovereignty in this dispute, see Andi Abdussalam, “Malaysia claims Ambalat for its oil reserves”, *Antara*, 7 June 2009.

- ⁵⁹ “RI rejects Malaysian proposal”, op. cit. For Hassan Wirajuda’s comments on the distinction between sovereignty and sovereign rights, see “Menlu: Blok Ambalat itu hak berdaulat Indonesia” [Foreign Minister: Indonesia’s sovereign rights over the Ambalat Block], *Antara*, 26 June 2009, <<http://www.antaranews.com>>.
- ⁶⁰ “President Susilo Bambang Yudhoyono: ‘Ambalat is ours’”, *Tempo*, special edition, 17 August 2005, p. 64; “Indonesia says Territorial Dispute with Malaysia unlikely to be referred to ICJ”, *Bernama*, 2 June 2009. On this point see also, Valencia and Nazery, “The Sulawesi Sea Situation”, op. cit.
- ⁶¹ Ahmad Fuad Yahya, “Win-win situation to resolve maritime border dispute, says Najib”, *Bernama*, 20 October 2011.
- ⁶² Valencia and Nazery, “The Sulawesi Sea situation”.
- ⁶³ Ahmad Fuad Yahya, “Win-win situation to resolve maritime border dispute”, op. cit. The prime minister referred specifically (and somewhat vaguely) to progress in relation to “to the continental shelf in the 12-nautical mile area”.
- ⁶⁴ Ibid. See also “Desy Nurhayati, “Indonesia speeds up border negotiations with neighbors”, *Jakarta Post*, 24 June 2011.
- ⁶⁵ Fuad Yahya, “Malaysian, Indonesian fishermen will no longer be nabbed in unresolved waters”, *Bernama*, 27 January 2012.
- ⁶⁶ I Made Andi Arsana, “Indonesia-Malaysia deal is good news for fishermen”, *Jakarta Post*, 30 April 2012.
- ⁶⁷ In 2008 the ICJ awarded Pulau Batu Puteh to Singapore and Middle Rocks to Malaysia. Because (as in the dispute between Indonesia and Malaysia) the court had not been asked to decide on the location of any maritime boundaries, it awarded South Ledge, which is a low-tide feature, to “the State in the territorial waters of which it is located”.
- ⁶⁸ I am indebted to Greta Nabbs-Keller of the Griffith Asia Institute for this insight.
- ⁶⁹ “President: no compromise on RI border in Ambalat”, *Antara*, 2 June 2009.