



# INTERNATIONAL COURT OF JUSTICE

Peace Palace, 2517 KJ The Hague. Tel.(31-70-302 23 23). Cables: Intercourt, The Hague.  
Telefax (31-70-364 99 28). Telex 32323. Internet address : [http:// www.icj-cij.org](http://www.icj-cij.org)

**Communiqué**  
unofficial  
for immediate release

No. 2001/28  
23 October 2001

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

### **The Court finds that the Application of the Philippines for permission to intervene** **cannot be granted**

THE HAGUE, 23 October 2001. Today the International Court of Justice (ICJ), principal judicial organ of the United Nations, delivered its Judgment on the Application of the Philippines for permission to intervene in the case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia).

In its Judgment, the Court finds that “the Application of the Republic of the Philippines, filed in the Registry of the Court on 13 March 2001, for permission to intervene in the proceedings under Article 62 of the Statute of the Court, cannot be granted”.

#### **Reasoning of the Court**

After recalling the procedural history of the case, the Court considers the contention by the Parties that the Application for permission to intervene should not be granted because of its late submission by the Philippines and because of the failure of the Philippines to annex documentary or other evidence in support of the Application. The Court observes that, notwithstanding that the Application was not filed “as soon as possible”, as contemplated by Article 81 of the Rules of Court, the Philippines cannot be held to be in violation of the requirement of that same Article, according to which an Application for permission to intervene should be filed “not later than the closure of the written proceedings”. In fact, on the date of the filing of the Philippine Application, neither the Court nor third States could know whether the written proceedings had come to an end since the Special Agreement (the document by which the Parties brought the dispute to the Court) provided for the possibility of one more round of written pleadings, which eventually were not filed. The Court further emphasizes that, while Article 81 of the Rules of Court indeed provides that the application shall contain a list of any documents in support, there is no requirement that the State seeking to intervene should necessarily attach such documents to its application. The Court therefore concludes that the Philippine Application was not filed out of time and contains no formal defect.

The Court then considers the objections based on the absence of a jurisdictional link. It recalls that the Philippines specified that it was seeking to intervene in the case as a non-party. Hence, the Court finds that the absence of a jurisdictional link between the Philippines and the Parties to the main proceedings does not present a bar to the Philippine intervention.

The Court finally considers the arguments of the Parties that the Application to intervene cannot be granted for the reasons, first, that the Philippines has not established the existence of an “interest of a legal nature” justifying the intervention sought, and, secondly, that the object of the intervention would be inappropriate. It begins by recalling that the Philippines does not seek to intervene in the

case because it has a territorial interest on Sipadan and Ligitan islands, but because it believes that its claim of sovereignty over North Borneo might be affected by the Court's reasoning or interpretation of treaties in issue in the dispute between Indonesia and Malaysia.

The Court finds that the interest of a legal nature to be shown by a State seeking to intervene is not limited to the dispositif alone of a judgment, but may also relate to its reasons. It goes on to consider the question whether the interest invoked by the Philippines might be affected within the sense of Article 62 of the Statute. It notes that, in outlining its claim, the Philippines has emphasized the importance of a document dated 22 January 1878 by which the Sultan of Sulu, with whom title, at least to part of Sabah (North Borneo), lay, had made a grant in that part to Messrs. Overbeck and Dent (which grant did not include Pulau Ligitan and Pulau Sipadan). This instrument, according to the Court, is said by the Philippines to be its "primal source" of title in North Borneo and is interpreted by it as a lease and not as a cession of sovereign title. The Court however observes that neither Indonesia nor Malaysia relies on the 1878 grant as a source of title to Ligitan and Sipadan islands.

After consideration of other instruments invoked by the Philippines in support of its claim, the Court observes that, as regards none of them, has the Philippines been able to discharge its burden of demonstrating that it has an interest of a legal nature specific to it that may be affected, within the meaning of Article 62, by reasoning or interpretations of the Court in the main proceedings. According to the Court, either such interests form no part of the arguments of Indonesia and Malaysia or those Parties' reliance on those arguments does not bear on the issue of retention of sovereignty by the Sultanate of Sulu in respect of its claim to North Borneo. Accordingly, and notwithstanding that the first two of the objects indicated by the Philippines for its intervention are appropriate, the Court cannot grant the Application. It adds, however, that it remains cognizant of the positions stated before it by Indonesia, Malaysia and the Philippines.

#### Composition of the Court

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

Judge Oda appends a dissenting opinion to the Judgment of the Court; Judge Koroma appends a separate opinion to the Judgment of the Court; Judges Parra-Aranguren and Kooijmans append declarations to the Judgment of the Court; Judges ad hoc Weeramantry and Franck append separate opinions to the Judgment of the Court.

---

A summary of the Judgment is given in Press Communiqué No. 2001/28bis, to which a summary of the declarations and opinions is annexed. The full text of the Judgment, of the declarations and opinions is available on the Court's website (<http://www.icj-cij.org>).

---

#### Information Department:

Mr. Arthur Witteveen, First Secretary (+31 70 302 23 36)

Mrs. Laurence Blairon, Information Officer (+31 70 302 23 37)

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