

# Discussion on Practical Options for Territorial Dispute Settlement Mechanisms — Taking the Case of Pulau Ligitan and Pulau Sipadan as an Example

Xiao Liu<sup>1</sup>

<sup>1</sup> Wuhan University China Institute of Boundary and Ocean Studies, Wuhan University, Wuhan, China

Correspondence: Xiao Liu, Wuhan University China Institute of Boundary and Ocean Studies, Wuhan University, Wuhan, China.

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## Abstract

In order to better respond to and deal with territorial disputes, and choose a more rational and appropriate dispute settlement mechanism, this article selects the case of sovereignty dispute between Indonesia and Malaysia over Pulau Ligitan and Pulau Sipadan for analysis, which chose two different dispute settlement mechanisms, namely, bilateral negotiation and judicial settlement, respectively, in the early and late stages of the dispute. The article analyzes the reasons for Indonesia's two different choices at three levels: international system level, domestic level and decision-makers level, and finally draws the conclusion that Indonesia's choice of territory dispute settlement methods was not only restricted by the structure, but also directly affected by the factors at the unit level to a large extent. It is in Indonesia's interest to peacefully resolve the dispute over the two islands under structural pressure. And in this case, the 1997 Asian financial crisis and the ensuing crisis of governance ultimately prompted Indonesia to choose the International Court of Justice. The role played by the state and decision-makers in this case was more direct and critical.

**Keywords:** territorial dispute, sovereignty, dispute settlement mechanism, International Court of Justice

## 1. Introduction

Having definite territory is an indispensable condition for becoming a country in the scope of international law. Territory is one of the material prerequisites for the existence and establishment of a country, and also provides the country with space for exercising sovereignty, which is closely related to national interests. Considering the importance of territory, territorial disputes are often among the disputes between countries that

are most likely to arouse strong reactions and lead to armed conflicts. In the past, countries could resort to war to solve disputes, however, in the contemporary times, war is no longer considered as a legal means. The principle of peaceful settlement of international disputes requires countries to handle disputes through peaceful means such as negotiation, mediation, conciliation, arbitration and judicial settlement. How to choose the most suitable dispute

settlement mechanism is a difficult problem that all countries involved must face.

In order to better respond to and deal with territorial disputes, it is necessary to conduct in-depth analysis on the typical cases of territorial disputes in history, so as to help us choose the way to handle territorial disputes more rationally. This article selects the classic case of sovereignty dispute between Indonesia and Malaysia over Pulau Ligitan and Pulau Sipadan for analysis. This case is a sovereignty dispute between two major Southeast Asian countries, which is also one of the rare classic cases that was finally resolved through the International Court of Justice (ICJ), and the only case in which Indonesia used legal means to resolve territorial disputes with neighboring countries. During the development process of this dispute, Indonesia and Malaysia mainly used bilateral negotiations before the 1990s, but in the late 1990s, both sides agreed to submit the dispute to the ICJ for judicial adjudication. Why did Indonesia choose different dispute settlement mechanism during the early and late stages of the dispute? And what factors influence its choice? While reviewing the dispute process, this article further analyzes the factors that have an impact on Indonesia's choice of dispute settlement mechanism. Through the analysis of this case, we can have a deeper understanding of different dispute settlement mechanism, which is helpful to better choose the appropriate mechanism to deal with disputes in different scenarios.

## 2. Overview of the Case

Pulau Ligitan and Pulau Sipadan are located in the Celebes Sea between Malaysia, Indonesia and the Philippines. Both are very small islands which are uninhabited or not permanently inhabited. Pulau Ligitan is only about 7.9 hectares, mainly sandy land, covered with low vegetation and trees; Pulau Sipadan is slightly larger than Pulau Ligitan, about 10.4 hectares. Pulau Sipadan is a volcanic island with dense forests, surrounded by coral atolls, and also a famous diving tourist attraction.

Before the mid-1960s, Indonesia did not raise any objection to the sovereignty of Pulau Ligitan and Pulau Sipadan, both of which were occupied and managed by Malaysia. Until the mid-1960s, a Japanese petroleum exploration company discovered abundant oil and gas resources in the waters near Pulau Ligitan and

Pulau Sipadan, and the competition between the two countries in the development of offshore oil resources gradually aroused disputes over the sovereignty of the two islands. In addition, as the two islands have gradually developed into tourist attractions and their economic value has increased, the two countries accelerated their competition for sovereignty over the two islands.

### 2.1 The Dispute Process

From the first dispute over the sovereignty of Pulau Ligitan and Pulau Sipadan in 1969 to the final judgment of the ICJ in 2002, Indonesia and Malaysia, the countries involved in the dispute, experienced a long dispute settlement process of more than 30 years, which could be mainly divided into two stages according to the different dispute settlement mechanism: the bilateral negotiation stage from 1969 to 1996 and the judicial settlement stage from 1996 to 2002.

#### 2.1.1 Bilateral Negotiation Stage

In 1969, Indonesia and Malaysia conducted negotiations to determine the limits of the continental shelf, and the dispute over the sovereignty of Pulau Ligitan and Pulau Sipadan appeared clearly for the first time. However, the two sides did not reach any agreement on this issue, only agreed to maintain the status quo.

In 1989, the two countries discussed the issues of Pulau Ligitan and Pulau Sipadan again. Negotiations were held between Indonesian President Suharto and Malaysian Prime Minister Mahathir Mohamad, but no agreement was reached.

In 1991, Malaysia tried to develop tourism industry in the two islands, but was strongly opposed by Indonesia, which believed that it violated the obligation of maintaining the status quo. In retaliation for Malaysia's actions, Indonesia detained a 100-ton fishing boat from Malaysia.

In 1992, the two countries agreed to solve the issue of the two islands through bilateral diplomatic channels and held a meeting between senior officials of the two countries. During the meeting, they agreed on the need to establish committees and joint working groups. However, since then, a series of meetings have ended in vain. Both sides only insisted on their own claims and positions without making concessions to each other, and failed to reach an agreement for a long time.

### 2.1.2 Judicial Settlement Stage

On 7 October 1996, Suharto and Mahathir agreed to submit the dispute to the ICJ. On 31 May 1997, the two countries signed a 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, which came into effect on May 14, 1998.

On 2 November 1998, Indonesia and Malaysia jointly notified the special agreement to the ICJ, and filed the Memorials, Counter-Memorials and Replies within the time limit. In addition, in 2001, the Philippines filed a request for permission to intervene in the case, claiming that it also has sovereignty over the two islands, but was rejected by the judgment of the ICJ on 23 October 2001.

From 3 to 12 June 2002, the Court held public sittings on the case, with Indonesia as the plaintiff and Malaysia as the defendant. On 17 December 2002, the ICJ delivered its final judgment, and found that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia by 16 votes to 1. At this point, the dispute between the two countries over the sovereignty of Pulau Ligitan and Pulau Sipadan, which lasted for more than 30 years, finally came to an end.

### 2.2 The Impact of the ICJ Judgment

Although the sovereignty dispute over Pulau Ligitan and Pulau Sipadan between the two countries was finally resolved under the judgment of the ICJ, it also left some lasting negative impacts. On the one hand, Indonesia's failure in the case was related to its weakness in external influence and evidence collection. Affected by this losing experience, Indonesia also became more aware of its shortcomings and weaknesses in using international law to resolve disputes, and therefore no longer willing to resort to international law in the subsequent issue of ownership of the Ambalat region. On the other hand, Indonesian people expressed strong dissatisfaction with the judgment. Not only did public dissatisfaction with the domestic government rise, but the relationship between Indonesia and Malaysia also became tense.

## 3. Factors Affecting the Choice of Dispute Settlement Mechanism

In this article, Indonesia's choice of settlement mechanism in the dispute over Pulau Ligitan

and Pulau Sipadan is placed in the framework of analytic hierarchy process, and the reasons why Indonesia chose bilateral negotiation in the early stage and judicial settlement in the late stage are explored from three dimensions: international system level, domestic level, as well as decision-makers level.

### 3.1 The International System Level

#### 3.1.1 The Sensitive Situation in Southeast Asia During the Cold War

Located at the crossroads between Asia and Oceania, the Pacific and the Indian Ocean, Southeast Asia's geographical position is extremely important. Coupled with its rich resource conditions, Southeast Asia plays an important role both economically and militarily. Especially during the Cold War, Southeast Asia was one of the focus battlefields between the United States and the Soviet Union. The spread and containment of communist forces in Southeast Asia was an important part of the competition between the United States and the Soviet Union. The behavior of Southeast Asian countries had to be affected by the interference of the United States and the Soviet Union during the Cold War. Therefore, the territorial dispute between Indonesia and Malaysia cannot be separated from the influence of the bipolar structure in the context of the Cold War.

In the fierce competition between the United States and the Soviet Union, Southeast Asian countries gradually realized the importance of unity. In 1967, they established the Association of Southeast Asian Nations (ASEAN), opposing any form of external interference, hoping to turn Southeast Asia into a peaceful, free and neutral region. Especially after the United States shrunk its presence in the Far East, in order to prevent the Soviet forces from taking the opportunity to expand, ASEAN's status gradually strengthened and it paid more attention to maintaining peace and stability in the region. ASEAN vigorously promoted the principle of peaceful settlement of international disputes in the region. In addition, the Treaty of Amity and Cooperation in Southeast Asia stipulates that states parties shall refrain from the threat or use of force and shall at all times settle disputes among themselves through friendly negotiations. At the request of ASEAN to prevent conflicts, the dispute between Indonesia and Malaysia has been promoted to be settled peacefully, and the armed conflict has been avoided.

### 3.1.2 The Enhanced Status of the International Court of Justice After the Cold War

Since the 1960s, with the rise of economic power of Europe and Japan, as well as the growth of Third World, the trend of multipolarization has been developing continuously. Especially after the end of the Cold War, the situation of bipolar opposition has ended, the world that was once divided into two camps by ideology has gradually merged into a whole. Peace and development became the theme of times, and the principle of peaceful settlement of international disputes was gradually accepted by most countries.

Since its establishment in 1946, the ICJ has been facing a crisis of trust for a long time, especially during the Cold War when a few major powers manipulated the United Nations. It was also difficult for the ICJ, as its subordinate agency, to be trusted. However, since the mid-1980s, due to changes in the international situation and the role played by the ICJ in past cases, more and more countries are willing to submit disputes to the ICJ for judicial settlement. The ICJ received 11 cases from 1976 to 1985, 13 cases from 1986 to 1995, and rapidly increased to 49 cases from 1996 to 2005. In terms of the number of cases involving territorial, maritime and continental shelf delimitation disputes, the ICJ handled only 7 relevant cases in the 34 years from its establishment in 1946 to 1980, while it handled 6 related cases in just 10 years of 1980s and 7 in the decade of 1990s. It can be seen that the number of cases submitted to the ICJ has increased at the end of the Cold War and after that. The ICJ has also gradually formed a set of legal principles on territorial disputes, and its past experience in case settlement has earned it the trust of small and medium-sized countries. In short, the rising status and influence of the ICJ would help attract Indonesia to choose legal means to resolve the dispute over the two islands.

### 3.2 Domestic Level

#### 3.2.1 The Need to Ease Relations After the Indonesia-Malaysia Confrontation

In 1963, Malaya, with the support of Britain, united with North Borneo, Sarawak and Singapore to become Malaysia. The creation of Malaysia threatened Indonesia's status and security in Southeast Asia, and was regarded by Indonesia as the resurgence of colonialism. Therefore, Indonesia adopted a fierce

confrontational policy and severed diplomatic relations with Malaysia. As the situation developed, the United States came to the side of Malaysia, while Indonesia under the leadership of Sukarno gradually turned left and adopted a series of radical revolutionary diplomatic actions against Western colonialism, which made its external environment even more unfavorable. Until Suharto came to power in the 30 September Movement, Indonesia still adhered to the non-aligned policy in name, but actually sought economic and technical assistance from western countries. Indonesia also tried its best to suppress and ban the Communist Party at home, moving towards a pro-Western road and gradually improving its diplomatic relations with Malaysia. In 1966, Indonesia proactively announced the end of its confrontation with Malaysia, and they formally resumed diplomatic relations on August 30, 1966. The easing of relations between Indonesia and Malaysia also promoted the establishment of the ASEAN.

The dispute over Pulau Ligitan and Pulau Sipadan broke out shortly after the resumption of diplomatic relations between the two countries. At that time, Indonesia experienced the change of government and the confrontation between Indonesia and Malaysia, resulting in a decline in its strength. In order not to harm the newly repaired bilateral relations, it maintained a high degree of restraint and insisted on solving the dispute through peaceful settlement of bilateral diplomacy.

#### 3.2.2 Economic Demand Under the Financial Crisis

In 1997, the outbreak of Asian financial crisis directly promoted Indonesia's final decision to submit the dispute to the ICJ. For a long time, the heavy foreign debt burden and unbalanced economic structure had laid hidden dangers for Indonesia. Under this financial crisis, Indonesia became one of the countries that suffered the most, and also one of the countries affected for the longest time.

Affected by the 1997 Asian financial crisis, Indonesia's economy rapidly deteriorated. Specific manifestations of the deterioration included the depreciation of Indonesian Rupiah, severe inflation, the collapse of a large number of enterprises, the decline of imports and exports, and the outflow of foreign investment. In 1998, Indonesia's annual economic growth rate reached -13.1%, while the inflation rate was



as high as 58%, and the real gross domestic product dropped by 13.2% compared with 1997, equivalent to the level before 1995. According to the data provided by the International Labour Organization, nearly half of Indonesia's population lived below the poverty line at the end of 1998. The damage caused by the financial crisis to Indonesia's economy lasted for a long time even after Suharto stepped down.

Under the economic downturn, Pulau Ligitan and Pulau Sipadan, with great development value in oil resources, biological resources and tourism resources, had become more attractive to Indonesia. Resolving the territorial dispute quickly could help alleviate the decline caused by the financial crisis. However, the bilateral negotiation method that had taken nearly 30 years with no progress was obviously not suitable, and the use of force would arouse opposition and even sanctions from other countries around the world. For Indonesia, submitting the dispute to the ICJ for a fair and speedy judgment was the most attractive option at that time.

### *3.3 Decision-Makers Level*

The dispute over Pulau Ligitan and Pulau Sipadan began in the 1960s, when Suharto came to power in the 30 September Movement. However, by the time it was decided to submit the case to the ICJ in the 1990s, the Suharto government had reached the end of its rule. It can be said that the way of dealing with the dispute over Pulau Ligitan and Pulau Sipadan was closely related to the different situation and governance style of the Suharto government in the early and late stages.

#### *3.3.1 Emphasis on Stability in the Early Stage of Taking Office*

After the 30 September Movement, Suharto successfully replaced the previous Sukarno government and established a new regime. At that time, Indonesia was deeply affected by inflation. Its per capita national income was only 90 dollars, and the inflation rate was as high as 650%, which meant its economy was on the verge of collapse. Suharto's first priority when he came to power was to stabilize the domestic economy. The rich oil and gas resources of Pulau Ligitan and Pulau Sipadan could bring a lot of economic benefits, which was obviously related to Indonesia's economic interests. Therefore, the Suharto government proposed its sovereignty claim over the two islands and began the

sovereignty dispute with Malaysia.

On the other hand, Suharto's main goal during this period was stability. In order to ensure the healthy development of economy, Suharto tried his best to maintain political stability, focusing mainly on domestic affairs, projecting less power on international affairs, and striving for a stable and peaceful international environment. Although involved in a territorial dispute with Malaysia, Suharto did not intend to give up the stable external environment, and chose to deal with this issue through peaceful bilateral negotiations rather than force.

#### *3.3.2 Expedient Measures to Rescue Governance Crisis*

During the thirty years of Suharto's rule, although Indonesia had achieved economic development and maintained long-term stability, there were serious hidden dangers in politics, economy and other aspects. The 1997 Asian financial crisis finally caused these hidden dangers to erupt together. Under the financial crisis, Suharto's government failed to respond effectively, leaving the people with rising prices, unemployment and poverty. Coupled with the rigid system, serious corruption, and lack of democratic freedoms under Suharto's reign, people's dissatisfaction with the government rose sharply. The accumulated anger in the past few decades quickly became prominent, which brought about a serious political crisis.

At the same time, the world was in the third wave of democratization, many countries were moving towards democratic transformation, and Suharto's authoritarian rule was also threatened by hostile political parties and external forces. Under the economic crisis and political crisis, the Suharto government must put forward a series of crisis response methods as soon as possible. Under such circumstances, an early resolution of the dispute over Pulau Ligitan and Pulau Sipadan could enhance Suharto's reputation, regain public support, and strive for a greater chance of survival. Compared with bilateral negotiations that had not made progress for a long time, judicial settlement with faster results was obviously more suitable for Suharto at this time.

### **4. Conclusion**

Today, the peaceful settlement of international disputes has become one of the basic principles of international law. To choose the most suitable specific dispute settlement mechanism, relevant

countries need to evaluate the situation they face from the three levels of the international system, domestic, and decision-makers. Comparing the two stages, we can see that armed conflict was never the best choice under the pressure of international system, while peaceful settlement of the dispute over the two islands was more in Indonesia's interest. The domestic level and the decision-makers level played a more critical role in the final settlement of the case. The 1997 Asian financial crisis and the subsequent governance crisis directly prompted Indonesia to choose a more effective judicial approach.

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