

AFFIDAVIT OF ADMIRAL ADI SUMARDIMAN*
(before the International Court of Justice – October 8, 1999)

Ir. Adi Sumardiman, S.H.

My name is Adi Sumardiman. I am currently retired from my last government position as Head of Law Bureau of Department of Defence at the age of 60 with the rank of First Admiral. Formerly, I acted as Geodetic Engineer in the Oceanographic Section of Naval Hydrographic Office.

In 1969, I was positioned as the head of planning section in the Hydrographic Office with the rank of Major and during the boundary meeting I was appointed on behalf of the Hydrographic Office as Indonesian delegation.

During the month of September 1969, delegations from Indonesia and Malaysia met in Kuala Lumpur to negotiate the continental shelf boundary between them in four different areas : the Straits of Malacca, the eastern and western sectors of the South China Sea, and the area lying off East Kalimantan and Sabah in the Sulawesi Sea. The Indonesian delegation was comprised of two groups, legal and technical. In my capacity as representative of the Indonesian Naval Hydrographic Office, I headed up the technical group whose task it was to discuss the precise course of the delimitation lines. Professor Mochtar headed the Indonesian delegation as a whole.

Prior to arriving in Kuala Lumpur, I was in charge of organising the geographical data on Indonesia, including hydrographical or topographical survey reports and maps of neighboring States showing the location of islands and delimitation constructions. I asked the Head of the Group for the opportunity to collect abroad those informations for a last check of Indonesian territory and delimitation lines based on foreign maps. Malaysian maps were made by the British who had been using datum that were different from those of the maps of the former Netherlands East-Indies. In this connection, I was aware of numbers of foreign maps which showed the international boundary between Indonesia and Malaysia running due east from the Island of Sebatik along the 4° 10' N parallel established by the 1891 Convention between The Netherlands and Great Britain.

At the outset of the discussions in Kuala Lumpur, it was agreed in principle that a median line approach would be used for delimitation purposes. Following this, the meeting decided that a team from the Indonesian Naval Hydrographic Office would meet separately with their Malaysian counterparts from the National Mapping Department to designate the coordinates of such lines for submission to the plenary meeting.

From 10-13 September 1969, I, together with my Indonesian colleagues - Major Oemarijoto and Mr. Soembarjono - met with the Malaysian technical group, consisting of Mr. Hadji Yatim (Director of Malaysia's National Mapping), Kok Swee Tuck and several other Malaysian Cartographers, to plot the continental shelf boundary in the Straits of Malacca and the South China Sea.

In drawing those construction lines, we encountered two major problems. First, the Malaysian side questioned the use by Indonesia of three outermost islands which was used as Indonesian base points that were not included in Indonesia's Act No.4 of 1960. Those islands were Batu Mandi island in the Malacca Straits, Tokong Pyramid island and Tokong Burung island in the South China Sea. Nevertheless, after discussions, the Malaysian side agreed to use these Indonesian islands as the location of base points. The second problem was about the dividing line in the northern part of Tanjung Datuk (West Kalimantan). In this regard, based on the geographical configuration of the islands, I proposed to maintain our position on the median line. This proved difficult for Malaysia in view of the fact that Malaysia had already entered into a concession agreement with Shell Oil Company before the adoption of the Geneva Convention of 1958 which was inconsistent with a median line.

The two delegations engaged in bargaining on the median line and the Shell concession line and finally agreed on a meridian line of 110 degrees East. I also gave the Head of Malaysian Mapping team the list of median points coordinates which had been calculated by the Indonesian team. The technical teams of Indonesia and Malaysia worked at the Ministry of Land and Mines while the negotiating team for drafting the agreement, headed by Prof. Mochtar, met with their Malaysian counterparts at Wisma Putra (the Ministry of Foreign Affairs of Malaysia). The two teams could only be together when they attended a plenary session.

On 18 September, the Indonesian technical team went to the Malaysian Ministry of Land and Mines to discuss the continental shelf

boundary lines in the Sulawesi Sea with the Malaysian team. Mr. Hadji Yatim, Head of Malaysian Mapping, presented the concept of the Malaysian construction line and described the basis for calculating the resulting lines. Judging from the Malaysian position as presented, it seemed that the concept of the Malaysian construction had overlooked the territorial sea position offshore of Sebatik island as well as the existence of Indonesian sovereignty over Sipadan and Ligitan islands. After the Malaysian team concluded their explanations on their concept of mapping the continental shelves in the Sulawesi Sea, it was my turn to present to them the concept of Indonesia's continental shelf proposal in the area.

Immediately after the Malaysian team saw that the Indonesian delimitation proposal used Sipadan and Ligitan islands as basepoints, Hadji Yatim, Head of the Malaysian Mapping Team, asked me about the status of ownership over the islands of Sipadan and Ligitan. I indicated that this was based on the Netherlands East Indies ownership supported by Article IV of the 1891 Convention. I showed the Malaysian team the direction of the boundary line on British maps published by UK Military Survey which supported this position and which reflected the 1891 line which left the islands on the Indonesian side of the boundary.

After seeing the Indonesian construction line, the Malaysian Technical team asked for a postponement of the joint delimitation work in the Sulawesi Sea as the Head of Malaysian Mapping team had to report the matter of Sipadan and Ligitan islands, as presented by the Indonesian side, to the Head of the Malaysian Delegation who was still in a meeting with the Indonesian delegation at Wisma Putra. In the meantime, I contacted the Head of the Indonesian Delegation in Wisma Putra to report the same matter.

In the afternoon session, Prof. Mochtar and Mr. Hasjim Djalal came to the Ministry of Lands and Mines, and I explained to our Head of Delegation about the developments in our technical meetings at the Ministry of Land and Mines. At that time, Prof. Mochtar had an informal conversation with the Head of the Malaysian Technical Team. During the conversation, Hadji Yatim told Prof. Mochtar that in Indonesian Act No.4 of 1960, which had been the legal basis of Indonesian territory, the Sipadan and Ligitan islands were not included. In reply, Prof. Mochtar explained that all islands belonging to the former Netherlands Indies, according to the succession of States, should belong to Indonesia. And the flaw in that particular Indonesian Act was the result of injudicious haste in the legislative process as well as the use of small-

scale maps which were not able to depict certain Indonesian islands. This was also the reason why Act No.4 had omitted certain Indonesian islands in the Straits of Malacca which Malaysia now accepted should be taken into account. During the meeting after lunch, Mr. Hadji Yatim said that the Malaysian side was trying to find evidence of ownership and therefore the delimitation work should be postponed.

On 19 September, at the plenary session at Wisma Putra, the head of the Malaysian Delegation stated that the work of the mapping teams at the Ministry of Land and Mines had to be postponed, in order to await the result of the search for documentary evidence of the ownership of Sipadan and Ligitan islands. The plenary session was then suspended, and when it was re-convened, Enche Mahyuddin stated that, according to the historical evidence, the two islands belong to Malaysia, without presenting any evidence as previously promised. The closing of the meeting which was scheduled of Friday had to be postponed until Monday, 22 September 1969. The Malaysian delegation said that on Saturday and Sunday they would still work on finding the evidence regarding the ownership of Sipadan and Ligitan islands.

On Saturday, 20 September which was supposed to be a holiday, the mapping teams started to work again at the Ministry of Land and Mines to prepare maps as annexes to the agreement on the Malacca Strait and South China Sea area, which was scheduled to be initialed on Monday, 22 September 1969.

In this technical meeting, Mr. Hadji Yatim told me that the Malaysian side had not yet found concrete evidence about the status of Sipadan and Ligitan islands.

The initialing of the Agreement (for the Malacca Strait and the South China sea) was conducted on Monday, 22 September at Wisma Putra Kuala Lumpur.

Due to the impasse that had been reached as a result of Malaysia's claims over Pulau Ligitan and Pulau Sipadan, the matter of delimitation east of Kalimantan had to be put off without prejudice to the position of the Parties.

Jakarta 8 October 1999

Signed

Adi Sumardiman (65)
(Former member of the Indonesian Delegation)

*this affidavit had been delivered before the International Court of Justice on the case of *Ligitan and Sipadan*.

