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Ownership of islands to be settled in The Hague

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THE rulings of the International Court of Justice are taken as an authoritative definition of where international law stands on a particular subject.

Since its formation in 1946, the Court has delivered 60 judgments on disputes concerning land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, and non-interference in the internal affairs of States.

The Court has a dual role - to settle the legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorised international organs and agencies.

Malaysia's and Indonesia's tussle over the Sipadan and Ligitan islands is categorised under a legal dispute between States.

Both countries decided to leave the decision to the World Court on Oct 7, 1996.

The decision came about after a meeting between Prime Minister Datuk Seri Dr Mahathir Mohamad and the then Indonesian President Suharto.

Both countries had until then either reached a stalemate during negotiations or disagreed on the means to resolve the issue.

Steps taken to put forward the dispute to the Court following the decision culminated in the signing of a Joint Notification Letter on Sept 30 in New York between the two countries.

Malaysia was represented by Foreign Minister Datuk Seri Abdullah Ahmad Badawi while Indonesia by his counterpart Ali Alatas.

The letter was submitted for registration at the ICJ on Nov 2, signifying the beginning of formal legal proceedings.

The two countries notified the Court of a Special Agreement signed between them on May 31 last year in Kuala Lumpur and which came into force on May 14 this year.

In the Special Agreement, the parties requested the Court to determine on the basis of the treaties, agreements and any other evidence furnished by them, whether sovereignty over the islands belongs to Indonesia or Malaysia.

They expressed the wish to settle the dispute in the spirit of friendly relations.

Foreign Ministry's territorial and maritime issues under-secretary Noor Farida Ariffin explained the court process.

The Special Agreement, she said, set out Malaysia's and Indonesia's views on the procedure to be followed.

"This was taken into account by the Court when fixing time limits for the filing of written pleadings."

The ICJ decided by an Order of Nov 10, that each of the parties would file a Memorial (written pleading) by Nov 2 next year and a Counter-Memorial by March 2, 2000.

"This means both countries will have to file Memorials within a year from now, and Counter-Memorials four months thereafter.

"There will be at least three more written pleadings subsequent to that. These have been provided for in the Special Agreement."

Once all the pleadings have been filed, oral proceedings will begin.

The date for the opening of hearing is decided by the Court, taking into account other calls on its time and the convenience of the parties.

During hearing, judges wear a black gown and a white jabot and the

registrar, who sits with the judges, a black gown and white bands. Agents and counsel for the parties face the Court dress in accordance with the practice of their own countries.

The parties address the Court in the order in which they have filed their pleadings.

Normally each party has two turns. The Court may be addressed in either one of its official languages. Everything spoken in English is interpreted into French and vice versa.

If other languages are used, the registrar is to be informed in advance and a translation into English or French must be supplied by the party concerned. Hearings last for two or three weeks.

When witnesses or experts are called by either party, the Court will follow the procedure of Common Law countries.

There will be an examination-in-chief by the representatives of the party calling the witnesses, followed by a cross-examination by the other side, a re-examination by the former and replies to any question put by the president or members of the Court.

The Court is empowered to call witnesses but has never done so.

At the end of the last public sitting, the president will ask the agents to hold themselves at the disposal of the Court. Sometimes replies to certain questions may be forwarded in writing to the Court and further written questions may still be put.

After the oral proceedings the Court deliberates in camera and then delivers its judgment, which is final and without appeal, at a public sitting.

Should one of the States involved fail to comply, the other party may have recourse to the UN Security Council.

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