

Tales along, across and beyond the 4 10 N parallel: Some Linguistic Strategies used by Counsels Representing Malaysia and the Republic of Indonesia in the Case Concerning Sovereignty over the Islands of Sipadan and Ligitan

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Abstract

Language is frequently used as a persuasive tool among countries as a dispute resolution mechanism either through diplomatic negotiation or through arbitration or adjudication mechanisms such as the International Court of Justice in The Hague, The Netherlands.

Inherent within language are a myriad of speech acts designed to convey either implicitly or explicitly the communicative intent of the speakers involved. This paper seeks to examine some linguistic strategies used in the language of Counsels representing Malaysia and Indonesia in the case concerning sovereignty over the two islands of Sipadan and Ligitan on June 3-12, 2002 at the International Court of Justice.

Data for this paper is extracted primarily from the verbatim records of Sir Elihu Lauterpacht, Q.C., C.B.E. lead Counsel for Malaysia and Sir Arthur Watts, Q.C. Counsel for the Republic of Indonesia.

1. Introduction and Background Information

The long standing dispute between the Government of Malaysia and the Republic of Indonesia concerning sovereignty over the islands of Sipadan and Ligitan came to an end on December 17 2002 when the International Court of Justice in The Hague awarded Malaysia the two islands by an overwhelming 16-1 majority. The case involving international and local legal experts on both sides witnessed the emergence of various linguistic strategies, all with the ultimate goal of effectively persuading the Court in their favour.

This paper focuses on the linguistic strategies used by two Counsels representing the Government of Malaysia and the Republic of Indonesia in relation to the argument and counter-argument between Malaysia and Indonesia with regard to the interpretation of one primary argument brought before the Court; Article IV of the 1891 Convention which reads

From 4' 10" north latitude on the east coast of the the boundary-line shall be continued eastward along that parallel, across the Island of Sebittik: that portion of the island situated to the north of that parallel shall belong unreservedly to the British North Borneo Company, and the portion south of that parallel to the Netherlands

At the International Court of Justice, this disagreement between the two Governments on Article IV of the 1891 Convention was argued primarily between Sir Elihu Lauterpacht, Counsel for Malaysia and Sir Arthur Watts, Counsel for the Republic of Indonesia. A reading of the verbatim records indicate the major disagreement to be the interpretation of the phrase *shall be continued eastward along that parallel, across the island of Sebittik* in Article IV (please refer to text of Article IV above). To Indonesia, the words and phrases used above was interpreted to mean that the boundary line of 4 10' at Sebatik island was extended beyond this island allocating both islands of Sipadan and Ligitan to the south of the 4 10' parallel. Since the 1891 Convention between the Netherlands and Great Britain allocated to the Netherlands territories to the south of the 4 10' N parallel (and now vested in Indonesia) and to Great Britain territories (and now vested in Malaysia) to the north of the 4 10' parallel, territories contained south of the 4 10' parallel in this further extension of the 4 10' line beyond the island of Sebatik out to sea would belong to Indonesia. This would include the islands of Sipadan and Ligitan.

Malaysia, on the other hand, interpreted the words and phrases contained in Article IV to mean that there is no extension of the line beyond the end of Sebatik island in an eastward fashion. This is to say that the 4 10 N parallel stops at the coast of Sebatik and goes no further. Thus, territories to the north of Sebatik island only, would belong to Malaysia, and conversely, territories to the south of Sebatik island only would now be vested in Indonesia. This interpretation would not attribute Sipadan and Ligitan to Indonesia. Hence, Indonesia cannot claim the islands of Sipadan and Ligitan. A closer description and discussion of the the lively

debate between Sir Elihu Lauterpacht and Sir Arthur Watts regarding the linguistic interpretation of the words and phrases in Article IV will be focus of part 2 and part 3 of this paper. Here, too, several linguistic strategies used by both Counsels to convey their arguments in relation to the words and phrases will be highlighted.

The discussion in part 2 of this paper will proceed as follows: The arguments by Sir Arthur Watts for Indonesia on their interpretation of Article IV of the 1891 Convention will be presented and discussed first. This will be followed by an examination of Sir Elihu Lauterpacht's counter-arguements to the Indonesian interpretation and subsequently the Malaysian interpretation of Article IV. The third section conveys Sir Arthur Watts's response to the counter-arguments presented by Malaysia on their interpretation of Article IV. The linguistic strategies used by both Counsels to convince the Court in their favour will be the primary focus of the sections aforementioned. Most of these strategies include convincing, repetition, asserting, criticizing and disagreeing. The final part of this paper summarizes and concludes data analysis by providing an overview of the linguistic strategies found in the texts of both Counsels.

The tools used to examine texts belonging to Sir Elihu Lauterpacht and Sir Arthur Watts in this paper fall under the auspices of content and relational analysis. Generally, content analysis refers to the examination of direct or indirect meanings of particular words or phrases in a text whereas relational analysis, on the other hand refers to the scrutiny of other words and phrases in the environment of the linguistic strategy under investigation and determining what other meanings emerge to contribute to the implicit or explicit meanings of the linguistic strategies investigated. Legal, cultural, historical and social assumptions shared by the participants in this speech event that may have influenced the linguistic strategies used will also be included in the discussion.

We begin with the Indonesian interpretation of Article IV of the 1891 Convention.

1 Interpretation of Article IV of the 1891 Convention

a. The Indonesian interpretation

This section examines and discusses the linguistic strategies used by Sir Arthur Watts with regard to the Indonesian interpretation of Article IV of the 1891 Convention. A closer examination of Sir Arthur's text reveal the primary linguistic strategy used by Sir Arthur to convince the Court of the Indonesian claim to Sipadan and Ligitan is through the repetition of the following; Firstly, the 1891 agreement between the Netherlands and Great Britain. Secondly, the interpretation that the 4 10' parallel line extends out to sea beyond the island of Sebatik as a result of this formal agreement in 1891 and finally that the extension of the 4 10' line out to sea would place both islands of Sipadan and Ligitan to the south of the 4 10' parallel, territories belonging to the Netherlands and now vested in the Republic of Indonesia. Indeed, the assertion and emphasis of all three propositions above are repeated by Sir Arthur at least 14 times in his text. The varying ways in which these propositions are repeated will also be demonstrated in this section.

The data suggest, however, that the forms of repetition differ in the choice of words and phrases used by Sir Arthur to regularly repeat, assert and emphasize the propositions mentioned above in his attempt to convince the Court. Occasionally, however, Sir Arthur uses similar words and phrases particularly in relation to the section of Article IV that is interpreted by Indonesia to mean that the 4 10' line extends beyond the island of Sebatik (*shall be continued eastward along that parallel, across the Island of Sebittik*). Indeed, as alluded to in the introduction of this paper, the interpretation of the choice of words in the phrase italicized above is the subject of much debate between Sir Arthur and Sir Elihu (Counsel for Malaysia). This is because the cornerstone of the Indonesian claim is the interpretation of the words aforementioned in italics to mean that the 4 10' line extends out to sea by virtue of the 1891 agreement between the Netherlands and Great Britain, an agreement that both countries recognize.

The discussion of the linguistic strategies used by Sir Arthur in this paper will involve highlighting only the relevant sections from his presentation that concern the Indonesian interpretation of Article IV of the 1891 Convention. These sections will be displayed in the order they occur in the verbatim records of Sir Arthur's. It should also be mentioned that the numbering of these sections in this paper does not necessarily mean that the sections occur immediately one after the other, only that the relevant sections to the goal of this paper is emphasized.

Text 1 below indicates Sir Arthur Watt's initial statement with regard to Article IV of the 1891 Convention:

Text 1

It is Indonesia's submission — particularly given that the settlement embodied in the Convention was a compromise, and that the negotiating parties evidently intended to settle all their territorial differences in the region — that that provision of Article IV was intended to provide, and is properly to be interpreted as providing, a line of division between all Dutch and British territories in the area, and was intended to extend out to sea so far as necessary to separate Dutch and British offshore territories in the area. That agreed parallel of latitude, as is shown on the map on the screen, passes well to the north of Sipadan, and just to the north of Ligitan, thus attributing both islands to the Netherlands.

(3 June 2003, 10am, International Court of Justice)

The sense and meaning contained in the words and phrases used in the first few lines of text 1 such as *submission, settlement embodied, compromise, negotiating parties evidently intended to settle all their territorial differences in the region* strongly suggest Indonesia's view of the serious intent and purpose of the Netherlands and Great Britain to negotiate an agreeable solution in relation to territories belonging to them. This *settlement* and *compromise* between the two *negotiating parties* and of which is *embodied* in Article IV of the 1891 Convention resulted in *a line of division between all Dutch and British territories in the area*. Article IV informs us that this division line is referred to as the 4 10' N parallel.

Sir Arthur proceeds in text 1 above to convey Indonesia's interpretation of the length of the specified 4 10' division line. According to him, the 4 10' line *was intended to extend out to sea so*

far as necessary to separate Dutch and British offshore territories in the area and then passes well to the north of Sipadan, and just to the north of Ligitan, attributing both islands to the Netherlands. By saying so, Sir Arthur infers that the length of the 4 10 line to be *long enough* in Indonesia's interpretation of Article IV to situate the islands of Sipadan and Ligitan to the south of the 4 10 line. Since territories belonging to the Netherlands are now vested in Indonesia as a result of the 1891 agreement between Great Britain and Netherlands, Sipadan and Ligitan should now belong to Indonesia whereas territories situated to the north of the parallel should belong to Malaysia.

The text indicates that one of the other ways Indonesia attempts to convince the Court of the 4 10 N parallel extending out to sea is by drawing their attention to a map on the screen which indicates the location of the 4 10 line for the benefit of the Court and others present at the International Court of Justice on the 3 of June. This map indicates the 4 10' N line as continuing its path around the world as with other existing longitudes and latitudes. The intention of showing this map was to illustrate the location of the two islands to the south of the 4 10 parallel which would support Indonesia's interpretation that the division of territories by the 4 10 line in Article IV would attribute both islands to Indonesia. This interpretation by Indonesia of the intention of the framers of the 1891 Convention to allocate Sipadan and Ligitan through a latitude line that seems to have no end and could therefore extend around the world would be contested by Malaysia later.

For now, how does Indonesia conclude that the 4 10 line extend out to sea *so as far as necessary*? This is articulated in text 2 below.

Text 2 below conveys Sir Arthur's intention to continue asserting and emphasizing the Indonesian claim to the two islands by virtue of the 1891 Convention and the agreed boundary line known as the 4 10' N parallel.

Text 2

It is on the screen now, and at tab 8 in the judges' folders. It is a map which was submitted to the Dutch Parliament during the process leading to the ratification of the 1891 Convention. It shows, with a red line, the line agreed in the Convention. It is clear from this map that the Dutch Government, and Parliament, understood that the 1891 Convention established a line extending out to sea along the 4° 10' N parallel, and beyond the coast of the island of Sebatik —as stipulated in Article IV, the line "continued eastward along that parallel". The map was reported by the British Legation in The Hague back to the Foreign Office in London. The British Government made no protest whatsoever at the depiction of the line on the map, and must be taken to have acquiesced in it.

(3 June 2003, International Court of Justice)

Text two suggests that Indonesia extends their claims to the two islands in two ways to further convince the Court of the legitimacy of the 1891 Convention suggested in text 1; firstly, by indicating the involvement of the Dutch Government and Parliament and secondly, by demonstrating the existence of the 4 10' line on yet another map that Indonesia surmises led *to the ratification of the 1891 Convention* and secondly by mentioning the agreed upon boundary line again but this time as a *red line, the line agreed in the Convention* on the map. In text 2, Sir Arthur repeats the notion stated in text 1 where the extension of the 4 10' line was stated by Indonesia *to extend out to sea so far as necessary* whilst the location of Sipadan and Ligitan to the south of the 4 10 N parallel was indicated.

In text 2, Sir Arthur repeats the notion of the length of the 4 10 line by using words and phrases that suggest to Indonesia that the 4 10' N parallel not only *extends out to sea along the 4 10' N parallel* but that this extension also (emphasis mine) goes *beyond the coast of the island of Sebatik-as stipulated in Article IV, the line "continued eastward along that parallel."* This suggests that the Indonesian claim to the 4 10 line as extending *out to sea along the 4 10' N parallel* as resting on their interpretation of the meaning of the phrase *continued eastward along that parallel*. By this, the 4 10 line would then continue as far as to pass over the two islands to the south of the 4 10 line. This would mean that the line must also go *beyond the coast of Sebatik*. Indeed, by emphasizing that the 4 10 line continues *beyond the coast of the island of Sebatik*, Indonesia asserts and emphasizes the continuation of the line eastward, an argument crucial to the Indonesian case. The use of the word *beyond* by Sir Arthur to justify the

aforementioned carries implications of something situated 'the further side of' or outside the range of' which to Indonesia supports the interpretation Indonesia desires to give to the Court.

Finally, the involvement of the British Government in relation to the red line on the map is also mentioned. This is to evoke and repeat the intention of the Netherlands and Great Britain to settle their territorial differences (see text 1). Here, also by saying that *The British Government made no protest whatsoever at the depiction of the line on the map, and must be taken to have acquiesced in it*, we can infer through the underlined phrases (emphasis mine) that Sir Arthur means to convey the interpretation by Indonesia of Great Britain's agreement to divide both land and maritime territories belonging to both countries. Since there was no formal protest by Great Britain of the intended division line, their consent can be taken for granted. The 4 10 division line, thus, stands.

It should be mentioned that at the International Court of Justice, the red line indicated on the map, however, extends only about 6 inches beyond the coast of the island of Sebatik. This was apparent to members of the Court, the Malaysian and Indonesian delegation and other members of the public present at the International Court of Justice on 3 June 2003 when said map was projected on a screen. Nevertheless, the interpretation by Indonesia of their confidence of the line continuing eastward beyond this demonstrated 6 inches appears to be maintained. The demonstration of the two maps thus far, one showing the 4 10 line as continuing around the globe and the other as a 6 inch line but both interpreted by Indonesia as justification for their claim to the two islands by virtue of the 1891 Convention was counter-argued against by Malaysian Counsels. Such instances will be discussed later in this paper.

Repetition is again demonstrated in text 3 below as the chosen strategy used to assert the main ingredients of the Indonesian claim, that is the 1891 Convention and the resulting territories belonging to the Netherlands and Great Britain. All this can be supported in the use of the phrase *as already explained*. Here, however, compared to the information contained in texts 1 and 2, the assertion that territories belonging to the Netherlands and Great Britain as now being vested in Indonesia and Malaysia is now explicitly stated through the phrase *inheritance from their colonial predecessors ,now serves as the boundary between Indonesian and Malaysian*

possessions and in particular the word *inheritance* which connotes something that is given or passed down to rightful heirs.

Text 3

The 1891 Convention having established the 4°10'N line of latitude as the limit of Dutch and British possessions in the area, it is that line which, by virtue of Indonesia's and Malaysia's inheritance from their colonial predecessors, now serves as the boundary between Indonesian and Malaysian possessions. That treaty line, as already explained, attributed to the Netherlands sovereignty over the two islands now in dispute, since both lie to the south of the agreed line: they thus now belong to Indonesia. That title, being treaty-based, has overriding legal effect in establishing Indonesia's present sovereignty over Ligitan and Sipadan.

(3 June 2003, International Court of Justice)

Through the concept of inheritance, Sir Arthur emphasizes Indonesia as the rightful heir to territories situated south of the 4 10' parallel. This assertion of being the rightful heir was primarily implied in the earlier two texts. Text 3 also states clearly the *overriding legal effect* of the *title, being treaty-based* to territories south of the line to Indonesia. Also not directly mentioned before, Indonesia's strategy of asserting the legal effect of the title is to convey and emphasize the point that the rights of a country due to a treaty must be respected in accordance with law. Malaysia, the Court, and members of the legal community must then also respect a treaty's provision as binding. Thus, it would be disrespectful and improper to question Indonesia's right to territories once belonging to the Netherlands due to the 1891 agreement. Indonesia has now only to argue that the agreement also serves to delimit maritime areas to the Court.

Texts 4-9 below demonstrates Indonesia's attempt to persuade the Court of the line *extending out to sea going so as far as necessary* along the 4 10 line by focusing on words and phrases contained in Article IV which in their interpretation *does* extend out to sea to situate both islands of Sipadan and Ligitan to the south of the 4 10 parallel. Examination of these texts will be done in reasonable portions for the convenience of analysis and readership.

In Text 4 below, Sir Arthur begins the focus on language by again repeating the section of Article IV regarded crucial to the Indonesian case

Text 4

That that was the intention behind Article IV is evident from its very language. It refers to the line, which started at 4°10' N on the coast, as being "continued eastward along that parallel". The whole notion of linear "continuation", particularly when reinforced by the word "along", does not embrace a line of only limited extent with a nearby terminal point, but signifies rather a line of indeterminate length.

*To see that this is so, one has only to compare the terms of Article IV with the language specifying the terminal point of the land boundary running westwards from its starting point on the east coast of Borneo. Article II described in some detail the course of the westward-running boundary, and then the relevant part of Article III stated that the boundary runs "[f]rom the summit of the range of mountains mentioned in Article II, to Tandjong-Datoe on the west coast of Borneo". Here, it is evident that, where the parties intended the boundary to terminate at a point on the coast, they found no difficulty in saying so. "Continues to" a specified point is very different from "continues along" a specified line. By saying, in relation to the eastern end of the line, that it "continues along" the specified parallel the parties must be taken to have said, not only in terms but also by comparison with what they said in Article III, precisely what they mean—the line was to "continue along" the parallel.
(3 June 2003, 3 pm, International Court of Justice)*

In text 4, the phrase that is selected to be emphasized is *continued eastward along that parallel* with particular reference to the words *continue* and *along*. Prior to text 4, the importance of the sense of the two words had been repeatedly alluded to by Indonesia. Here, in text 4, emphasis is given to the two words *continue* and *along* as the interpretation of these words is considered important to the Indonesian case. These phrases above imply that the interpretation Indonesia would like to convey is that the use of these phrases refer to a line of *indeterminate* length and not a *a line of only limited extent with a nearby terminal point*. All this to emphasize the length of the line to be long enough offshore to pass to the north of Sipadan and Ligitan which would attribute both islands to Indonesia. The interpretation of the line going beyond the island of Sebatik is also repeated for emphasis and Indonesia's continuous attempts to convince the Court of this to persuade the Court in their favour. Here, repetition is demonstrated in the phrase *the line which started at 4 10 N on the coast*, that is the coast of Sebatik after which the line

continued eastward along. If the Indonesian Counsel can convince the Court of this interpretation, then they regard their case stronger for the two islands.

In the second paragraph of text 4, the justification of the length of the 4 10 line is elaborated upon further. This time, Sir Arthur uses what is stated in Articles II and III as a comparison to legitimize the interpretation of the phrase *continues along*.

Firstly, the phrase in text 4 above, by stating that the parties concerned was able to definitely state that the boundary runs *[f]rom the summit of the range of mountains mentioned in Article II, to Tandjong-Datoe on the west coast of Borneo* suggest Sir Arthur's assertion that the interpretation of the phrase *continued along* earlier is justified due to the conscious decision by the two parties of the 1891 Convention to delimit territories such as that mentioned above in the second paragraph of text 4. This conscious decision, hence, indicates the two parties to have the clear intention, when desired, to state the specifications of a boundary. Given this, by deciding on the phrase *continues along* which in Indonesia's interpretation does not specify a specific destination conveys the intention of the two parties to consider the line as *continuing along* an *indeterminate* line and not a *limited* line. This tension between the definiteness and indefiniteness of the 4 10' line is further addressed in text 5 below.

In text 5 below, the importance of the length of the 4 10 line for Indonesia is again the focus.

Text 5

The lack of a fixed terminal point for the line does not, of course, mean that the line goes on forever, following the 4°10' N parallel right round the earth: an indefinite line is not the same as an endless line. Like all treaty provisions, it has to be interpreted in its context, and in the light of the treaty's object and purpose. Seen in that light, the line continues only so far as necessary to settle definitively the whole problem of potentially competing Dutch and British territorial claims in the area: it continues so far as necessary to divide islands or territories whose attribution might give rise to future dispute. That certainly included going as far east as Ligitan —and for present purposes there is no need to consider whether there was any further particular point which the line needed to reach. That Article IV does deal with Sebatik is not denied by Indonesia. That Article IV stipulates that the 4°10' N line passes "across" Sebatik, and divides that island along that line is equally not denied

by Indonesia. But that, as Malaysia maintains, Article IV provides for a line which only deals with Sebatik, and goes no further than its east coast, is most emphatically denied.

In text 5 above, Indonesia extends even further their argument that the length of the 4 10 line is long enough to attribute both islands to Indonesia. So far, the line has been primarily referred to as continuing *eastward along that parallel, going so as far as necessary, an indeterminate line and not a line of only limited extent with a nearby terminal point*. Here, Sir Arthur adds to the corpus above by distinguishing between an *indefinite line* and an *endless line*. By asserting that the line is not *endless* suggests that the *line* does stop *somewhere*. It is thus not an *infinite* line. Where is this *somewhere* though? According to text 5, it is a location along the 4 10 line that settles *definitively the whole problem of potentially competing Dutch and British territorial claims in the area: it continues so far as necessary to divide islands or territories whose attribution might give rise to future dispute. That certainly included going as far east as Ligitan*. The phrase *continues only so far as necessary* is evoked again in text 6 (see also text 2 and implicit in texts 1, 3-5). This is to repeatedly emphasize Indonesia's view that the length of the line is long enough to attribute Sipadan and Ligitan to Indonesia. Then by saying that *for present purposes there is no need to consider whether there was any further particular point which the line needed to reach* and in particular with the meaning suggested in the use of the word *needed*, Indonesia also suggests that the length of the 4 10 line must have a destination. This destination suggested by the use of the word *reach* should not in Indonesia's view, be a mitigating factor in the case as it should be sufficient that the line passes *as far east as Ligitan* as according to their interpretation of Article 1V. This would then dispute Malaysia's interpretation of the line stopping on the east coast of Sebatik and going no further offshore. Since this interpretation does not serve the Indonesian case well, it is of course *most emphatically denied* and refuted before the Court. The issue of the 4 10 line and the island of Sebatik is elaborated by Indonesia in text 6 below.

Text 6

But dealing with the island in that way, in what is a subsidiary clause in the single sentence which constitutes Article IV, does not serve to place a limit on the principal thrust of the text: that is that the line "continue[s] eastward along" the stipulated

parallel of latitude. The terms of Article IV, while undoubtedly dealing with Sebatik, are equally appropriate for covering also other offshore islands in the area. I say "other" offshore islands for two reasons in particular. The first is that Sebatik itself is of course an island. It cannot be assimilated to the mainland of Borneo — there is a stretch of water several miles wide between it and the mainland. That alone is enough to show that the Convention cannot be regarded as dealing only with the mainland of Borneo

It is also highly relevant that the 4°10' N line, as it continues eastwards from the coast, crosses only one island — Sebatik. That eastward continuation of the line therefore called for special treatment for only that one island, which is an added reason for it being dealt with in the way it was in Article IV. That the 4°10' N line as described in Article IV is said to continue "across" the island of Sebatik does nothing to establish that the parties' intention was that it should stop at the east coast of that island. "Across" is a term which, in its ordinary meaning, carries the meaning of "through and beyond" the object being crossed. The line, in being "continued eastward along" the stipulated parallel of latitude, does indeed cross the island. But that in no way implies that it stops there — and certainly does not do so when there are many other indications, not least of which is the parties' evident purpose of comprehensive dispute avoidance, that in using the words "continued eastward along" they meant exactly that. Those words are to be applied as they stand.

In text 6 above, Indonesia further argues for the continuation of the line beyond the island of Sebatik by repeating and reemphasizing their interpretation of the phrase *continued eastward along that parallel*. Here, the reiteration of the necessary length of the 4 10 line is conveyed through further grammatical and linguistic analysis. Firstly the status of a main clause and then the status of a subsidiary clause in a sentence. By saying that the *a subsidiary clause in the single sentence which constitutes Article IV, does not serve to place a limit on the principal thrust of the text: that is that the line "continue[s] eastward along" the stipulated parallel of latitude*, Sir Arthur seeks to remind the Court of the general nature and status of a subsidiary clause in an English sentence is its primary support of the meaning conveyed in the main clause. Consistent with the earlier texts, this would also mean that the line would continue beyond the coast of Sebatik and as far as necessary over the two islands. To further support Indonesia's view of the length of the 4 10 line, the word *across* in the subsidiary clause of the first sentence is selected as supporting data. According to text 6, Indonesia interprets the word *across* to convey the meaning of *through and beyond*. This meaning when coupled with the phrase *continuing eastward along*

reemphasizes the Indonesian view of the length of the line being *long enough* beyond Sebatik island to attribute both islands to Indonesia.

Text 6 also reveals Indonesia's attempt again to convince and persuade the Court in their favour by confidently asserting that *the 4°10' N line as described in Article IV is said to continue "across" the island of Sebatik does nothing to establish that the parties' intention was that it should stop at the east coast of that island.* This suggests that Indonesia believes that in the absence of a specific terminus on the east coast of Sebatik, the continuation of the 4 10 N parallel line *across* and *beyond* the island of Sebatik can be inferred. The words in Article IV in their opinion are thus to be *applied as they stand.*

Texts 1-6 above demonstrated the segments containing the Indonesian interpretation of Article IV of the 1891 Convention. In summary, the data indicates that the crux of the Indonesian case for the two islands rest primarily on persuading the Court to accept their argument of the 4 10 parallel line as not only the division line between land and maritime territories now belonging to Malaysia and Indonesia but that Sipadan and Ligitan belong to Indonesia because this division line extends as far as necessary as agreed by Parties to the 1891 Convention to attribute both islands to Indonesia. These two basic arguments was repeated and expanded upon in various ways by Sir Arthur throughout his presentation. These various ways of articulating their basic claim were the focus of examination in this section of this paper.

2. Interpretation of Article IV of the 1891 Convention

b. The Malaysian case

The next few texts, 7a-7c highlight Sir Elihu's responses to arguments presented by Indonesia in their bid to be awarded Sipadan and Ligitan. In this context, Sir Elihu addresses the Indonesian interpretation of the 1891 Convention and the Indonesian argument of the agreed extension of the 4 10 line continuing off the coast of Sebatik by the Netherlands and Great Britain. Sir Elihu's

response is rather long. It is thus divided into 3 sections; texts 7a, 7b and text 7c for convenience of discussion.

Sir Elihu, lead Counsel for Malaysia criticizes and refutes primarily Sir Arthur's grammatical and linguistic analysis of the words and phrases in Article IV. He begins this task in text 7a below by *respectfully* inviting the *Court to reflect on a number of questions that identify some significant weaknesses in Indonesia's arguments relating to the interpretation of the 1891 Convention*. By drawing the court's attention to the *significant weaknesses* in the Indonesian argument, Sir Eli aims to convince members of the Court to question the validity of the Indonesian argument surrounding their interpretation of Article IV of the 1891 Convention.

Text 7a below indicates the strategy used by Sir Elihu to use questions to show the implausibility of the premises used by Sir Arthur as the basis of his arguments for the two islands. The first query (question 1, text 7a, second paragraph) by Sir Elihu questions the Indonesian interpretation of the length of the 4 10 line. Here, he queries the validity of the aforementioned by highlighting the discrepancy between the evidence Indonesia presented to the Court and the claim Indonesia makes with regard to the length of the 4 10 line. This discrepancy of evidence was shown in one map presented by Indonesia where Sir Elihu states that the —*the areas of their respective claims to possession were limited to an area of the island of Borneo nowhere near the maritime region and islands in question*. By drawing the Court's attention to the aforementioned, Sir Elihu questions the legitimacy of Indonesia's own argument viz indicating claims to maritime areas but yet showing illustrative evidence that appear to contradict their claim to maritime areas in the vicinity of Sipadan and Ligitan. Thus Indonesia's own evidence, their *Indonesia's own illustrative map — which is tab No. 6 in their judges' folder of 3 June* cannot even support their case. If this is so, then, in Sir Eli's view, the Court should also agree that Indonesia has no case for Sipadan and Ligitan.

Text 7a

My distinguished colleague, Professor Jean-Pierre Cot will respond to this argument in systematic detail. In the meantime, I will respectfully invite the Court to reflect on a number of questions that identify some significant weaknesses in Indonesia's

arguments relating to the interpretation of the 1891 Convention. On Monday, Sir Arthur Watts pointed to the Preamble of the Convention as defining its object and purpose. The words he relied on were: "being desirous of defining the boundaries between the Netherlands possessions in the Island of Borneo and the States in that Island which are under British protection". Sir Arthur said that nothing limited those boundaries to the land in the island.

Question 1: Why should the definition of the boundaries between the possessions of the Parties "in the Island" extend into the sea more than 50 miles to the east, south of the Semporna Peninsula, when, according to Indonesia's own illustrative map — which is tab No. 6 in their judges' folder of 3 June — the areas of their respective claims to possession were limited to an area of the island of Borneo nowhere near the maritime region and islands in question?

Question 2: In the same order of enquiry, how does a boundary described as running from the east coast of Borneo across that island from east to west come to extend eastwards across the sea more than 55 nautical miles? How is that extension or continuation to be established? Is it achieved only by the use of the words "across the island of Sebatik"? Why after providing that the boundary should continue across the island of Sebatik, was the whole of the rest of that Article, Article (4), concerned only to allocate that portion of the island to the north of that parallel unreservedly to the company and the portion south of that parallel to the Netherlands? If the intention had also been to divide territories lying in the sea, why did the Article not say also, and I invent a quotation: "and those islands situated to the north of that parallel shall belong to the BNBC and those to the south shall belong to the Netherlands"? That would have been the complete and logical way of expressing the objective which Indonesia now says that the Article was intended to achieve.

In question 2 of text 7a, Sir Elihu casts aspersions on the Indonesian contention that the 4 10 N parallel line *extend eastwards across the sea more than 55 nautical miles* when this is not explicitly stated in Article IV in Malaysia's judgement. The words and phrases in question 2 indicate Malaysia's view that Article IV specifically provides for the land boundary only to be divided specifically into two portions (*allocate that portion of the island to the north of that parallel unreservedly to the company and the portion south of that parallel to the Netherlands*). Logically if, the Parties to the 1891 Convention wished that the maritime boundary be so divided, they would have made specific provisions such as *and those islands situated to the north of that parallel shall belong to the BNBC and those to the south shall belong to the Netherlands*. Since the Parties to the Convention did not do so, then, in Malaysia's interpretation, there was no specific desire by them to do so. This suggests to Malaysia that Indonesia is interpreting a line out to sea when no line has been drawn by the two Parties. This

second *significant weakness* in the Indonesian argument demonstrates to Malaysia that Indonesia has no case for the islands and hence has to resort to their own interpretation of words and phrases in Article IV to justify their claim.

In question 3 of text 7b below, the specific intention of the Parties to the 1891 Convention is again the focus when Sir Elihu wonders *why were the words across the island of Sebatik" included at all when the meaning for which Indonesia argues could have been achieved simply by saying "from the east coast the boundary line shall be continued eastward along that parallel.* By saying so, Sir Elihu repeats the criticism contained in question 2 to emphasize the Malaysian argument that a division of maritime areas would have been stipulated by the Parties if there was such an intention. As a reminder, this is contrary to the Indonesian view where interestingly the fact that no clear provision was made by the Parties to divide maritime areas suggest the line as continuing eastward along and in so doing, divide maritime areas. Here for Malaysia, however, the assertion of Indonesia having no strong case for the two islands is again repeated in the absence of a clear provision dividing maritime areas in Article IV.

Text 7b

Question 3: Or, if a shorter form of words would have been preferred, why were the words "across the island of Sebatik" included at all when the meaning for which Indonesia argues could have been achieved simply by saying "from the east coast the boundary line shall be continued eastward along that parallel"? Do not the words "across the island of Sebatik" act as words of limitation, restricting the line to the breadth of that island? And what about the ordinary meaning of the word "across" which means "across", and not "across and beyond"? If you mean a line to stretch "across and beyond" an area, you need to state its ultimate destination in that way—and again I invent a quotation: "across the island of Sebatik to somewhere specific beyond it". It is not enough to leave the line as indefinite but yet not endless.

In question 3 above, Sir Elihu continues to cast aspersions and doubt on the Indonesian interpretation of Article IV by criticizing and disagreeing with the Indonesian view of the word *across*. To recapitulate, the Indonesian interpretation of the word *across* in tandem with the phrase *continued eastward along* was that the 4 10 N parallel line continues beyond the coast of Sebatik. This conveyed a sense of the 4 10 line then going *across and beyond* an *indeterminate line* rather than an *endless line*. In question 3, text 7b, Sir Elihu refutes this argument by saying

that *Do not the words "across the island of Sebatik" act as words of limitation, restricting the line to the breadth of that island? And what about the ordinary meaning of the word "across" which means "across", and not "across and beyond.* In Malaysia's view, thus, *across* conveys that the 4 10 line is not *indeterminate* nor *endless* but limited to the island of Sebatik and not *beyond* it. This would also be consistent in Sir Elihu's interpretation with the ordinary meaning of the word *across* which would imply a line beginning at on point and ending at the other. By casting recurring doubts about the Indonesian interpretation before the Court, Sir Eli hopes to convince the Court that Indonesian interpretation of the words 'across' and 'continued eastward along' in Article IV is invalid.

Sir Elihu further attempts to convince the Court of significant weaknesses in the Indonesia case continues with his statements in questions 4 and 5 below.

Question 4: Why, if the line was intended to be a specific line of allocation, is there no consistency between the various later maps on which it appears —particularly on a map which bears the signatures of Dutch representatives, the map of 1915?

Question 5. By what stretch of interpretation can a line that is spoken of in the Indonesian pleadings as a "boundary" line when drawn across land, and even across the water between the main island of Borneo and Sebatik, suddenly without a variation of wording change its character to a line of allocation in the sea east of Sebatik? It must be recalled, this was at a time —the 1890s —when the concept of an allocation line was clearly understood. Yet the Indonesian Reply contends that an allocation line may be extracted from the language of the 1891 Treaty. In the case of the land delimitation, (to use the words of Indonesia) "the Convention resulted in a boundary line". In the case of the line at sea "it resulted in an allocation of islands on either side of the line". One expression; two different meanings! That is a strange result, to say the least

Yet another significant weakness in the Indonesian argument is Sir Elihu's criticism of what he sees as Indonesia's confusion of a boundary line versus an allocation line. To provide a general schema for the purposes of readership, both a boundary line and an allocation line are determined by two or more parties and then bound by law. Generally, a boundary line is different from an allocation line in that the former's limit is only three nautical miles off the coast of a land area. The limit of an allocation line, however, can extend further than 3 nautical miles depending on agreements of the parties involved. In Indonesia's earlier argument of the length of

the 4 10 line, they had emphasized the phrase *boundary-line* in Article IV and indicated that this boundary line extended as far as necessary passing over the two islands. This suggest their interpretation of a boundary line as extending beyond three nautical miles contrary to the expected understanding of a boundary line and an allocation line in international law.

Here in question 5 of text 7b above, Sir Elihu questions the validity of the Indonesian case when a boundary line, when having to stop three nautical miles will locate it nowhere near Sipadan and Ligitan. An allocation line, on the other hand cannot be evoked in Article IV as the intention of the Netherlands and Great Britain for an allocation line beyond Sebatik is not stated explicitly in Article IV. Moreover, there is *no consistency between the various later maps on which it appears —particularly on a map which bears the signatures of Dutch representatives, the map of 1915*. This is the *stretch of interpretation* Sir Elihu refers to in question 5 above. All this suggests that should the two parties have clearly desired an allocation line in 1891, this allocation line would have been a feature of later maps by both the Dutch and the British. Since the indication of an allocation line is absent in later maps, its presence should be doubted in Sir Elihu's view. Therefore, in evoking an allocation line out to sea when it is not clearly stipulated in the 1891 Convention or any other agreement thereafter should prove to the Court again of the unconvincing case that Indonesia has presented before them.

The final paragraph, text 7c below, continues to demonstrate *significant weaknesses* in the Indonesian case.

Text 7c

Sir Arthur has sought to lend force to his argument by comparing the language of Articles III and IV of the Convention. He points to the express statement in Article III that the boundary runs "from the summit of the range of mountains mentioned in Article II, to Tandjong-Datoe on the west coast of Borneo". So, Sir Arthur continues, "it is evident that when the Parties intended the boundary to terminate at a point on the coast, they found no difficulty in saying so". And this he contrasts with the language of Article IV. So we come to the next question □ which I seem to have forgotten to number, let us say it is question 7 (a): Is it true that Article III described the western terminus of the boundary by saying that it ran to the coast? The answer is that it did not. The boundary ran to a named place, Tandjoeng Dato, which happened to be on the west coast. It reached that town by following the watershed

between two identified sets of rivers, those reaching the sea north of Tandjoeng Dato and those reaching the sea south of it. There is no way in which the boundary across Sebatik could have been described in a similar way because there was no named town or place on the eastern coast of that island which could have been identified as its eastern terminus. In any case, in that eastern sector the boundary was formed.

Here, Sir Eli disputes the validity of the argument conveyed repeatedly by Indonesia that first, if the Parties had really desired the 4 10 N parallel to stop at Sebatik island, they would have done so and second, the fact that they did not specify a terminus was indicative in Indonesia's interpretation of the fact that they did not intend for the 4 10 N parallel line to stop at the coast but instead to continue out to sea. This would certainly support their claim of attribution to the two islands. By disputing that *there is no way in which the boundary across Sebatik could have been described in a similar way because there was no named town or place on the eastern coast of that island which could have been identified as its eastern terminus*, Sir Elihu criticizes and downplays Sir Arthur's argument before the Court by indicating that the framers of the 1891 Convention did not specify a terminus not because they intended for the 4 10 parallel to continue beyond Sebatik but because there was no named location on the edge of Sebatik island that could be specified as a terminus point, unlike in Article III where a terminus was named at a point which happened to be on the west coast. During the case, Sir Elihu likens the Indonesian argument referred to in text 7c as their attempt to make what is not implicit into something that is explicit. By saying so, Sir Elihu persuades the Court to jointly agree that the Indonesian case for Sipadan and Ligitan is significantly weak. Their claim to Sipadan and Ligitan is thus not justified.

Texts 8-9 below demonstrates Sir Arthur's response to the counter-arguments by Sir Elihu and Prof. Jean-Pierre Cot. For the purposes of readership, Prof. Jean-Pierre Cot is one of four Counsels representing Malaysia in the case concerning sovereignty over the islands of Sipadan and Ligitan. In text 8 below, Prof. Jean-Pierre Cot downplays and discredits Prof Alain Pellet's (Counsel for Indonesia) attempt to dismiss Malaysia cartographic evidence by discarding through a power point presentation various elements that support Malaysia's arguments one by one until virtually there was nothing left on the screen. Prof. Cot likens this to a magic show by Prof. Alain Potter.

Text 8

ARTHUR Watts=10 June 10am

Professor Cot then had a lot of fun with what he tried to laugh off as Professor Alain Potter's cartographic magic show: it was all an illusion, Professor Cot said. So entranced was he by the magic, however, that he missed the real show which was on stage. He was at pains to try to show that a particular British proposal – the one, the Court will recall, with the line going south-east between Sebatik and Nanoekan and then due east along the 4 – parallel to point D – had never been put to the Dutch. But that missed the point completely. Indonesia was not trying to establish that the Dutch had in the negotiations seen and agreed to such a line, as put forward by the British. The point was rather that, contrary to the position taken by Malaysia, the British themselves were not thinking solely of a line on land, but had in mind also a line going out eastwards to sea. For that purpose, British proposals – and whether or not conveyed to the Dutch – are directly relevant: they show beyond question that some significant degree of maritime extent for the line eventually to be agreed was in the minds of the British. And that matches what we also clearly know of the Dutch view, since we have, in the Explanatory Memorandum map, their understanding of the outcome. And it is probably no coincidence that the point D line which the British had in mind extended eastwards to almost exactly the same distance as did the eastward line on the Dutch Explanatory Memorandum map – in both cases the line goes about 10 nautical miles beyond Sipadan

In text 8, by changing Prof Alain Pellet's surname to "Potter," Prof. Cot likens him to the character Harry Potter who exists only in a world of magic, fantasy and illusion. By doing so, Prof. Cot mocks and ridicules Prof. Pellet's attempts to discredit Malaysia's argument as devoid of reality and has to resort to illusion and magic ala Harry Potter to convince the Court. In text 8 also, Sir Arthur refutes the suggestion made by Malaysia through Prof. Cot by implying that he,

Prof. Cot was deluded by his own fantasy and magic that he missed the point that Indonesia was trying to make. Sir Arthur clarifies that Indonesia was not trying to prove that the Dutch had agreed to the British proposal. Rather, Indonesia was trying to demonstrate that there was an intention at least in the minds of the British for the line to extend to some distance from the shore. This intention was inferred by Indonesia's observation that the British proposal was similar in extent to the Dutch proposal in terms of the length of the line. This to Indonesia confirmed that the British *themselves were not thinking solely of a line on land, but had in mind also a line going out eastwards to sea* and in so doing legitimizing the intention of the Parties to the 1891 Convention to delimit maritime areas. Thus, Malaysia's attempt to downplay and mock said British proposal should not be an issue to be argued before the Court as the real issue is the 4 10 N parallel going beyond Sebatik island.

In text 9 below, Sir Arthur refutes Malaysia's counter-argument of Indonesia's view of the word *across* in Article IV.

Text 9

1891 Convention

As for the 1891 Convention itself, Malaysia briefly discussed the meaning of the word "across". In its Memorial and Counter-Memorial¹⁶ Indonesia set out its, different, view as to the meaning of that word, as involving movement over and beyond the object being crossed. And as I showed a few minutes ago, that is the perfectly natural meaning of the word as I happened to use it in relation to sailing across the waters above a reef.

What was most significant about Professor Cot's discussion of the word "across" was that he took it on its own, without reference to its context. That word accompanies the phrase requiring the agreed Convention line to be "continued eastward along". That phrase, in the main clause of the sentence, gives the context within which the word "across" is to be understood. "Across" is in no way inconsistent with the natural meaning of the treaty requirement that the line "be continued eastward along" the agreed parallel: indeed it confirms it. Second, Sir Elihu asked how the boundary came to extend more than 50 miles out to sea, and pointed to the word "across" as not itself having that effect. Answer: "across" is perfectly consistent with that consequence, particularly when read with the immediately preceding words "continued eastward along". That is the treaty basis for extending the line seawards □ indeed, it is the treaty requirement for doing so. It might have been expressed differently: so might almost any treaty provision. But it wasn't, and the way it was expressed in Article IV was entirely sufficient to achieve the intended purpose of continuing along the agreed parallel.

To recapitulate, Malaysia and Indonesia's argument of the word *across* differed in the latter suggesting that in conjunction with the context and the phrase "*continued eastward along* in Article IV, the word *across* is interpreted to convey that the 4 10 N parallel line as continuing beyond the coast of Sebatik. This is repeated and emphasized in the phrase *In its Memorial and Counter-Memorial, Indonesia set out its, different, view as to the meaning of that word, as involving movement over and beyond the object being crossed.*

Here, the sense contained in the words *movement over and beyond* is used to further augment the Indonesian interpretation of the 4 10 line as extending beyond Sebatik island. The importance, indeed, of the phrase "*continued eastward along* is also repeatedly emphasized in text 9 by Sir Arthur to discredit Sir Elihu and Prof. Cot's argument of their meaning of the word *across* which in Sir Arthur's view is *without reference to its context* the context being the agreement by the Parties in the 1891 Convention for the line to be *continued eastward along*.

This line of argument can also be demonstrated in Sir Arthur's response to Sir Elihu's counter-argument that the line extending some 50 miles out to sea beyond Sebatik cannot be inferred by just the word *across* and the phrase *continued eastward along* but must be made explicit to be applied. Again, Indonesia insists, in tandem, with the phrase "*continued eastward along, "Across" is in no way inconsistent with the natural meaning of the treaty requirement that the line "be continued eastward along" the agreed parallel: indeed it confirms it.* By repeating and asserting their interpretation of the 4 10 line as extending out to sea through grammatical and linguistic analysis of words and phrases in Article IV, Sir Arthur attempts to strongly position the Malaysian argument as invalid before the Court whilst reemphasizing the Indonesian argument as legitimate to persuade the Court in their favour.

In the second paragraph of text 9 below, Sir Arthur responds to Sir Elihu's criticism of Indonesia's confusion between the characteristics of a boundary line versus an allocation line in international law (please refer to text 7b)

Sir Elihu noted the apparent confusion between a "boundary" line and an "allocation" line. Answer: read Indonesia's Counter-Memorial²¹. There Indonesia showed that a line is often termed a "boundary" line even though it is in fact what may be called a line of attribution To return now to Sir Elihu's questions, in his seventh he noted that, as regards the distinction between Articles III and IV, there was an identifiable place on the west coast □Tandjong Datoe □"to" which Article III could say that the line ran, while there was no such named town on the east coast of Sebatik. Answer: you do not need a town: it would have been very easy to say "follow the 4□10' N parallel until it meets the east coast of the island" □which, in fact, is exactly what the parties did in Article I in identifying the starting point for the line: "shall start from 4□10' N latitude on the east coast of Borneo". But they carefully did not say that in Article IV, because that was, in that context, not what they intended

By doing so, he refutes and criticizes Sir Elihu's attempt to question the validity of the Indonesian argument in this case by reminding him of Indonesia's Counter-Memorial where it was stated that *a line is often termed a "boundary" line even though it is in fact what may be called a line of attribution* which did not raise any objection from the Malaysian side at that time. Malaysia's reaction now is thus unjustified on this issue. By reminding Malaysia and the Court of the Counter-Memorial Indonesia also asserts that they are fully recognizant of the difference between a boundary line and an allocation line and had interpreted Article IV within this context. In the second paragraph of text 9, Sir Arthur again also responds to Sir Elihu's repeated criticism of Indonesia's argument that the Parties to the Convention intended for the 4 10 parallel line to extend out to sea beyond Sebatik as no named terminus was specified as the point of destination. Here, Sir Arthur again refutes Sir Elihu's arguments by stating that had the Parties of the agreement intended the 4 10 line to end on the east coast of Sebatik they would have done so but *they carefully did not say that in Article IV, because that was, in that context, not what they intended*. By saying the aforementioned, Sir Arthur repeats the crux of the Indonesian case to the Court, that is, the length of the 4 10 N parallel as being long enough to attribute both islands of Sipadan and Ligitan to Indonesia.

Conclusion

This paper focused on some linguistic strategies used by Sir Elihu Lauterpacht, Counsel for Malaysia, and Sir Arthur Watts, Counsel for Indonesia in relation to the interpretation of Article

IV of the 1891 Convention between the Netherland and Great Britain in the case concerning sovereignty over the islands of Sipadan and Ligitan.

To summarize, the data reveal Article IV to be the cornerstone of the Indonesian case; specifically the interpretation of the words and phrases contained in Article IV to indicate the 4 10 N parallel line as continuing beyond the island of Sebatik and passing to the north of the islands of Sipadan and Ligitan. Being that the 1891 Convention specified that territories to the north of the 4 10 N parallel line would belong to Malaysia, Sipadan and Ligitan would hence belong to Indonesia. Malaysia, on the other hand, interpreted the language of Article IV to mean the 4 10 N parallel line stopping at the coast of Sebatik and going no further as envisioned by Indonesia. Hence territories located to the north of Sebatik island only, would belong to Malaysia. Vice versa, territories located to the south of the 4 10' line south of Sebatik island only would now be vested in Indonesia. This means that the Malaysian interpretation of Article IV does not allow for Indonesia to possess both islands.

Both views were argued and counter-argued by Sir Elihu Lauterpacht and Sir Arthur Watts. Data analysis indicate the use of the following speech acts as strategies used to persuade the Court in their favour; repetition, refuting, disagreement, asserting, persuading, mocking, criticizing, hinting and convincing. This paper has shown that Indonesia used the strategy of repetition dominantly followed by other speech acts to assert and emphasize their interpretation of Article IV to persuade and convince the Court in their favour. Instances of the various ways the Indonesians used repetition to persuade the Court was also displayed.

It should also be mentioned that Article IV was not the only instrument used by Malaysia and Indonesia to attempt to gain sovereignty over the islands of Sipadan and Ligitan. Although not a focus in this paper, the issue of effectivities was also a major point of argument and counter-argument between Malaysia and Indonesia. Additionally, in this paper, the verbatim records of two Counsels are examined and discussed. In actuality, there were three other Counsels representing Malaysia, Mr James Crawford, Prof. Jean-Pierre Cot and Prof. Nico Schrijver and four other Counsels representing Indonesia namely Mr. Rodman R. Bundy, Prof. Alain Pellet, Ms. Loretta Malintoppi and Prof. Alfred H.A. Soons.

The case concluded with Malaysia being awarded sovereignty over Sipadan and Ligitan on 17 December 2002 by an overwhelming majority of 16-1.

The 4 10 N parallel thus, just goes *across* Sebatik island and not *beyond* it.

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