Reproduced from *The Indonesia-Malaysia Dispute Concerning Sovereignty over Sipadan and Ligitan Islands*, by D.S. Ranjit Singh (Singapore: ISEAS – Yusof Ishak Institute, 2020). This version was obtained electronically direct from the publisher on condition that copyright is not infringed. No part of this publication may be reproduced without the prior permission of ISEAS Publishing. Individual chapters are available at http://bookshop.iseas.edu.sg.

Index

Note: Page numbers followed by "n" refer to endnotes.

A à titre de souverain, 171, 177, 183, 186 Abdul Rahman, Tunku, see Tunku Abdul Rahman Acheh, 19, 110 Alatas, Ali, 12 Alcock, Sir Rutherford, 36, 52 Amboina, 19 American venture, 32–33 Anglo-American Agreement, 1907, 81–86	Anglo-Dutch Treaty, 1824, 22, 112 Anglo-Spanish claims Madrid Protocol, 1885, 48–49 Overbeck-Dent Association, 47 Sandakan region, 47 Sultan of Sulu, 47 anti-cession movement, 115–16 anti-Japanese movement, 114 Association of Southeast Asian Nations (ASEAN), 11–12, 123 Azahari, A.M., 120
Anglo-Brunei Treaty, 1847, 31–32, 113	
Anglo-Dutch boundary	В
boundary delimitation, 61–62	Bacon, Robert, 86, 213
Dutch East Indies Government,	Baguan Island, 72, 79, 80, 88, 96
49-51	Barraut, E.H., 40, 81
land boundary delimitation exercise,	Batavian Republic, 21, 109
62-63	Bates Treaty, 1899, 107, 123n5
Overbeck-Dent Association, 49	Batu Tinagat, 27, 39, 46, 49, 51, 54, 128,
ratification process, 59-61	152, 155
Sebatik island boundary delimitation	bilang-bilang trees, 5
exercise, 1913-14, 63-64	Birch, E.W., 78-81
settlement of the Boundary Dispute,	bird sanctuary, 5, 41, 150, 152, 171
1882–89, 51–54	Bisset, Lieutenant E.L., 78, 80
settlement of the Boundary Dispute,	Boeje, D.A.M.Q., 63
1889-91, 55-58	Bonifacio, Andres, 106
Anglo-Dutch Boundary Convention,	Borneo Island, 4, 156
1891, 39, 58–59, 127, 129–30, 138,	see also North Borneo
145, 147, 154–55, 162–64, 165,	Boughter, Lieutenant Francis, 81, 82,
179	98n2
Anglo-Dutch Boundary Treaty, 1915,	Boundary Demarcation Agreement,
39, 64–67, 156–57	1915, 156–57
Anglo-Dutch Joint Commission,	see also Anglo-Dutch Boundary
1889–91, 55–58, 129, 138, 139	Treaty, 1915

D. W. L. C. L 5 21 110	C
British Crown Colony, 5, 31, 119	Carpenter, Frank W., 108
British Dominion of Southeast Asia, 113	Celebes Sea, 1, 6
British influence, 28–29	China
British North Borneo Company	Opium War, 30
(BNBC)	Philippines' case against, 9
administrative structure, 37–41	Senkaku/Diaoyu Islands, 6, 181
bankrupt, 5, 113	Spratly Islands, 8
charter and formation of, 36-37	trade with, 20, 28
Court of Directors, 57	Clifford, Hugh, 72, 99n4
in North Borneo, 4, 16, 25, 52, 113	Cobbold Commission, 121
in Philippines, 46	Cocos Islanders, 150
1903 map, 135, 136	Colonial Government, 5, 41, 116, 184
protest against US, 137	Colonial Malaysia Scheme, 117
Sabah, 113	colonial powers, 13, 14
Sabah, east coast of, 72	Colony of North Borneo map, 1953,
Sebatik Island, 57	135–36
Taganac Island, 89, 91	Communist Party of Indonesia (PKI),
"Turtle Islands Group", 88	110
United States, 88	Confrontation (Konfrontasi), 120, 123
British North Borneo Provisional	Continental Shelf Convention, 1958, 9,
Association (BNBPA), 36, 52	11, 123,
Broershoek, 56, 57, 129, 138	Contract of Vassalage, 27, 43n35, 49,
Brooke, Charles Vyner, 32, 37, 114	54, 128, 151, 165
Brooke, James, 27, 30, 31, 32, 43n43,	Convention of London, 1814, 21, 109
109, 112	Cook, Alexander, 55, 79
Brunei Empire,	Cowie, W.C., 72, 77-78, 84
British entrenchment in, 31	Currie, Sir Philip W., 55, 56
Brooke's expansionist designs, 32,	1
109	D
expansion of, 23	Dalrymple, Alexander, 24, 28, 42n24
informal empire of Britain, 37	de Villalobos, Ruy Lopez, 18
revival of former Brunei Empire, 120	decolonization theory, 118–19
Treaty of Friendship and Commerce,	Delimitation of the Maritime Boundary
1847, 31, 46	in the Gulf Maine Area, 177
Brunei Grants, 1877, 33–35	Dent, Alfred, 33, 35, 36
Bryce, James, 86, 211	application for Royal Charter, 35–36
Bulungan, 25, 27, 49, 54, 128, 146, 151,	Dewey, George, 74, 106
162, 168	Durand, H.M., 84, 85, 86, 206
102, 100	Durand Line, 86, 87, 91
C	Durand map, 180
Caldwell, John K., 94	Dutch East India Company (DEIC), 18,
Carpenter Agreement, 1915, 108	19, 21, 26, 109, 112
Carpenter Agreement, 1913, 100	17, 21, 20, 107, 112

Dutch	T.:: J. J. 17 10
Dutch effectivités, 134, 140	Trinidade, 17–18
Dutch expansion in Borneo, 26–28	Victoria, 17–18
Dutch Explanatory Memorandum Map,	Evans, Admiral R.D., 78, 80
1891, 59–61, 67n11, 130–33, 135,	Everett, A.H., 39
145, 155–56, 164–65, 179	Exchange of Notes, Great Britain
_	and United States, 1907, 81–86,
E	147–48, 168–69, 180, 210, 212
East Coast Residency, 35, 39, 149	by articles, 86
effectivités (state practice)	Durand's Memorandum, 1906, 85,
congruence, 179	206
Court's consideration, 170	Foreign Office Memorandum, 1905,
Dutch, 134, 140	83, 84
Indonesia, 133-134, 170, 184	Lieutenant Francis Boughter, 81, 82
Malaysia, 145, 149, 150, 153, 162,	negotiations by British Ambassador
170, 171–72, 184	to the United States, 84
Emergency period, 116, 125n44	exclusive economic zone (EEZ), 6, 11
Emergency (Essential Powers)	"expansion theory", 118
Ordinance No. 7 of August 1969,	Explanatory Memorandum Map, 1891
11	see Dutch Explanatory
English East India Company (EEIC),	Memorandum Map, 1891
19–22, 26, 28, 29, 112	
European spheres of influence,	F
1529–1824	Federated Malay States, 113
Anglo-Dutch Treaty, 1824, 22, 112	Federation of Malaya Agreement,
China trade, 20	115–16
Concepcion, 17–18	Fendall, H.L., 63
DEIC, 21	France, 17
Dutch and the English, 18–19	Franck, Thomas, 160, 173
EEIC, 19-20	Fraser, F.W., 94
Ferdinand Magellan of Spain, 17	French Revolutionary Wars (1792-95),
French Revolution, 20–21	20–21
indigenous political power, 18	
Kew Letters, 21	6
Malay Archipelago, 19	G
network of ports and commercial	Geddes, Sir A.C., 88
centres, 17	Germany, 137, 146, 168, 181, 193
political control and monopolistic	"Greater Malaya" scheme, 117, 120, 123
trade policies, 21	Guillaume, Guilbert, 160, 173
postcolonial era, 17	Gysberts, M.A.H., 55
Treaty of Saragossa, 1529, 18	
Treaty of Tordesillas, 1494, 17	Н
1824 treaty on Borneo, 22	Hall, D.G.E., 19, 22

Harrison, Francis Burton, 107	island of Sebatik, 139
Hartsen, M., 53	maps, 134-36
Hay, John, 80, 84	Ratification and the Explanatory
Hertslet, Sir Edward, 55	Memorandum Map, 1891,
Holsti, K.J., 15n27	130–33, 140
Horsburgh lighthouse, 184, 185	state practice or effectivités, 133-34
Howard, Sir Esme, 91, 94, 95, 218, 221	Indonesia's claim to a treaty-based title
Hunt, James, 24, 146	Boundary Convention, 1891, 129–30 162–64, 165
I	the Court's verdict, 168
ICJ. See International Court of Justice	Dutch Explanatory Memorandum
ICJ's judgment	Map, 1891, 130–33, 140,
final verdict, 172-73	164–65
Government of Indonesia, 161	maps, 167
Government of Malaysia, 161	subsequent practice, 165-66
Indonesia's claim. See Indonesia's	title by succession, 168
claim to a treaty-based title	Inter-Governmental Committee (IGC),
judges, 160	122
Malaysia's claim. See Malaysia's claim	International Court of Justice (ICJ),
to a treaty-based title	12–13, 16, 98, 139, 145, 175
parties' claims, 161-62	cardinal principles of, 176-79
Special Agreement, 160	Court's verdict, 180
Indian Mutiny, 1857, 22, 112	delimiting National Maritime Zones,
Indonesia, 11, 12	187-88
absence of administration, 153	Indonesia's claims, 179
absence of protest, 153-54	Malaysia's case, 179-80
Indonesia's claim, 127-40	original title, 182-83
Anglo-Dutch Boundary Convention	revision of judgment, 186-87
of 20 June 1891, 129–30	International Law Commission, 1953,
Anglo-Dutch Joint Commission,	10
1889–91, 129, 138–39	international law principles, 176-79
arguments, 127	Irwin, Graham, 27, 31
Article VIII of the Boundary	Island of Palmas case, 177
Convention, 1891, 139-40	
Broershoek, 138	J
colonial powers in the region, 136–37	Jamaluladzam, Muhammad, 26, 34, 47, 119
Dutch effectivités, 134, 140	Jamalulkiram, Haji Muhammad, 72, 79
Dutch Memorandum Map, 1891,	107, 108
130–33, 140	Japanese Occupation, 5, 37, 113, 115
effectivités, 133-34, 170, 184	Java War, 27, 109
historical developments, 127–28	Jones Law, 1916, 107

V	Mahathin Mahamad 12
K Vetinunan 106	Mahathir Mohamad, 13
Katipunan, 106	Malay Archipelago
Keddell, G.V., 62, 201, 205	1824 Anglo-Dutch Treaty, 22, 27
Kellogg, Frank B., 90, 91, 94	British Empire, 21
Kew Letters, 21	Dutch colonies, 21
Kiram Corporation, 120	EEIC, 20
Konfrontasi, 120, 123	partitioning of, 19
Kough, T.N., 40	political and commercial control, 19
т	Malayan Chinese Association (MCA),
L	116
Labuan, 29, 31, 33, 72, 112	Malayan Communist Party (MCP), 114
Lauterpacht, Sir Elihu, 153, 154	Malayan Indian Congress (MIC), 117
Leicester, H.L., 34, 35	Malayan Peoples Anti-Japanese Army
lighthouses, 5, 6, 41, 89, 90, 91, 150–51,	(MPAJA), 114
172, 182, 186	Malayan Union scheme, 115
Ligitan Island, see also Sipadan Island	Malaysia, 11, 12, 13
administration under Semporna	Anglo-Brunei Treaty, 1847, 113
District, 39	Anglo-Dutch Treaty, 1824, 112
acquisition of sovereignty, 146-48	British Borneo, 119–20
hydrographic notes, 81	British Dominion scheme, 113–17
ICJ's judgment, 161, 172	decolonization theory, 118–19
Indonesian inactivity, 151–54	EEIC, 112
Indonesia's claim, 127-40	effectivités, 145, 149, 150, 153, 162,
Indonesia's effectivités, 133-34, 140,	170, 171–72, 184
161, 170–71	Emergency period, 116, 125n44
lighthouse, 5, 6	Federated Malay States, 113
location, 1, 3	realization of Malaysia in 1963,
Malaysia's claim, 144-58	121–22
Malaysia's effectivités, 149–51, 170–72	Tunku's Malaysia, 117–18
Malaysia's sovereignty, 155-57	Unfederated Malay States, 113
map evidence, 157-58, 167	Malaysia's claims
peaceful possession, 149-51	acquisition of sovereignty through
sovereignty claims, 11-13	international treaties, 145-48
treaty-based title dismissed, 170	Anglo-Dutch Boundary Treaty, 1915,
Linggajati Agreement, 1946, 111	156–58
	Boundary Convention, 1891, 154-55
M	Boundary Demarcation Agreement,
Macapagal, Diosdado, 96, 119, 120	1915, 155–58
Macassar, 19	International Acts and Treaties,
MacDonald, Malcolm, 116	145–48
Madrid Protocol, 1885, 37, 47-49,	International Court of Justice, 145
67n5, 146–47, 181, 193–96	map evidence, 157-58

the Netherlands and Indonesian	North Borneo, 113
inactivity, 151-54	Anglo-Dutch boundary. See Anglo-
possession and administration of	Dutch boundary
islands since 1878, 144, 149-51	Anglo-Spanish claims of suzerainty.
Malaysia's claim to a treaty-based title	See Anglo-Spanish claims
the Court's verdict, 170	colonial spheres, 46
succession and chain of transfers,	1907 Exchange of Notes, 147-48
168–69	formation of Malaysia on 1963, 148
Malaysia Solidarity Consultative	Madrid Protocol, 1885, 47
Committee (MSCC), 121	Malaysia acquired sovereignty, 148
Mangsee Islands, 96, 169	map of, 87
maritime claims, 6	territorial rights in, 146
Martin, Richard B., 72, 81	transfer of, 148
Marudu, 24, 25, 26, 33	North Borneo–Philippines Sea
Massacre of Amboina, 19	Boundary
Matthews-Northrup Company, 75,	BNBC, 97
100n14	Boundary Convention, 1930,
Mayne, Rear-Admiral R.C., 55	94–96
McIntyre, Major General Frank, 94	Company's jurisdiction, 72-74
Metzger, Jacob A., 94	Exchange of Notes, 1907, 81–86
Middle Rocks case, 175, 178, 180-81,	Malaysia, 98
187	negotiations for, 90-94
Mohamed Shahabuddeen, 160	proclaimed sovereignty, islands,
Mohammad Hatta, 110, 111	80-81
Moody, M.H., 80	transfer of islands by the Sultan of
Moreau, Captain O., 55	Sulu to BNBC, 1903, 79-80
Muhammad Jamaluladzam, 26, 34, 47,	Treaty of Paris, 1898, 74-79
119	Turtle Islands group, 86-90
Muhammad Jamalulkiram, Haji, 72, 79,	United States, 71
107, 108	
Mundy, Captain G. Rodney, 31	0
, -	Oda, Shigeru, 160
N	opium, 20, 24, 88
Nanukan Island, 166, 168	Opium War, 30, 43n41
Napoleonic Wars, 20-21, 109	Osmena, Nicasio, 120
Natuna Sea, 6	Osmena, Sergio, 107
Nehru, Jawaharlal, 111	Overbeck, Gustavus Baron von, 32–36
Netherlands	Overbeck-Dent Association (ODA), 4,
absence of administration, 152	26, 33–36, 119, 136, 181
absence of any claim, 151-52	in North Borneo, 47, 49
absence of protest, 152	Sultan of Sulu, 54
Noordin Sopiee, 118	validity of, 47
-	

P Pangkor Agreement, 1874, 113 Papal Bull of 1493, 17 Party Rakyat Brunei (PRB), 119	Root, Elihu, 85, 86, 101n40, 209 Roxas, Manuel, 107, 108 Rumbold, Sir Horace, 61, 132, 140
Patani, 19 Pearson, A.C., 89 Pedra Branca case, 11, 175, 181, 182, 185–87 see also Pulau Batu Puteh case Peel, Sir Robert, 30 Perak, 113 Permanent Court of Arbitration (PCA), 8–9 Persarekatan National Indonesia (PNI), 110 Peta Baru, 11 Philippines, 8, 9 claim over Sabah, 17, 48, 120, 122,	S Sabah divided into Brunei and Sulu spheres, 24–25 formerly North Borneo, 4, 113 Malaysia scheme 1963, 121 Philippines' claim, 17, 48, 120, 122, 181 Sultan of Sulu's rights, 33 Sarawak Anti-Cession Movement, 115 British protectorates, 37–38 British sovereignty, 43
Claim over Saban, 17, 48, 120, 122, 181 Commodore George Dewey, 106, 107 Hong Kong, 106 Jones Law, 1916, 107 Katipunan, 106 Spanish rule, 105–6 the US Era, 1898–1946, 107–8 "police action", 111 Pretyman, William, 34, 35, 44n55 Protectorate Agreement with North Borneo, 1888, 37–38	establishment of James Brooke, 29–31 Greater Malaya, 120 Malaysia scheme 1963, 121 rebellion in, 43n43 self-government, 122 "White Rajahs", 112, 124n26 Sarawak Communist Clandestine Organization, 119 Sarekat Islam (SI), 110 Schepers, J.H.G., 62, 200 Sebatik Island, 28, 57, 66 boundary delimitation exercise,
Pryer, William B., 34, 39, 47, 49 Pulau Batu Puteh case, 175, 177, 178, 182 see also Pedra Branca case Pulau Pisang, 185	boundary definitiation exercise, 1913–14, 63–64 boundary line, 66, 130, 139, 155, 166 partitioning of, 58 "security theory", 118 Semporna Region map, 7
Q Quezon, Manuel L., 107, 108	Separan Island, 25 Sibuku Bay map, 83 Sibuku Island, 49
R Raffles, Thomas Stamford, 21, 27 Rizal, Jose, 106	Sibuku River, 33, 39, 49, 51–54, 146 Sino-Japanese War, 1894–95, 181, 188n9

Sipadan Island, see also Ligitan Island acquisition of sovereignty, 146–48	Sulu Protocol, 1877, 48 Sulu Sea, 6, 48
administration under Semporna District, 39	Sulu Sultanate, 145–46 Overbeck-Dent Association, 136
bird sanctuary, 5, 41, 150, 152, 171	regional power, 24–25
hydrographic notes, 81	sovereignty over islands, 146, 180s
ICJ's judgment, 161, 172	surrendered sovereignty, 107–8
Indonesian inactivity, 151-54	Swettenham, J.A., 72
Indonesia's claim, 127-40	
Indonesia's effectivités, 133-34, 140,	T
161, 170–71	Taft, W.H., 78
lighthouses, 5, 41, 150–51, 172	Taganac Island, 72, 79, 80, 88-91
location, 1, 3	Tarakan Island, 166, 168
Malaysia's claim, 144–58	Tawau Residency, 39, 149
Malaysia's effectivités, 162, 171–72	Tawau River, 27, 46, 49, 54, 55, 128, 152
Malaysia's sovereignty, 155–57	Tempasuk, 24, 26, 35
map evidence, 157–58, 167	Territorial Waters and Continental
peaceful possession, 149–51 sovereignty claims, 11–13	Shelf Boundaries of Malaysia, 11
treaty-based title dismissed, 170	three marine leagues limit, 39, 72, 78,
turtle eggs collection, 4, 40–41	94, 97, 98n2, 136, 147, 155
Sipadan Water Village, 5	Torrey, Joseph W., 32
South China Sea, 8, 9, 11, 12	Treaty of Amity and Cooperation
South Ledge case, 175, 187	Treaty of Amity and Cooperation (TAC), 1976, 12
Southeast Asia	Treaty of Nanking, 1842, 30
European powers, arrival in, 16	Treaty of Paris, 1898, 49, 67n9, 74–77,
European spheres of influence, 17–22	80, 107, 137, 147, 168, 181
Japanese Occupation, 113	Treaty of Saragossa, 1529, 18
maritime claims, 6	Treaty of Shimonoseki, 1895, 181
successor states, 105	Treaty of Tordesillas, 1494, 17, 18
territorial disputes, 12	Tregonning, K.G., 20
Spanish-American War, 1898, 48-49,	Truman, Harry S., 10
74, 137	Tunku Abdul Rahman, 113, 117, 118,
Spanish rule over the Philippines,	119, 120
105–7	Turtle Islands
Spanish sphere, 16, 17, 25–26, 46	American takeover, 88, 90, 96, 108
Spratly Islands, 8, 11	Boundary Convention, 1930, 94
Straits of Malacca, 6, 11	location, 98n2
Straits of Singapore, 22 Straits Settlements, 112, 114	Philippines takeover, 97 turtle eggs collection, 3–5, 40, 78, 152
Suharto, 13	regulation and control, 149–50,
Sulu Grants, 1878, 4, 33–35, 146	171–72
outu Grants, 10/0, 4, 33-33, 140	1/1 /2

Turtle Preservation Ordinance, 1917, Treaty of Paris, 1898, 49, 76, 107, 41, 150, 153-54 137, 147 Tydings-McDuffie Act, 1934, 89, 108 Turtle Islands takeover, 88, 90, 96, 108 U war with Spain, 106 Unfederated Malay States, 114 United Malays National Organization (UMNO), 115 Vienna Convention, 165 United Nations (UN), 10 Villiers, F.H., 82, 84 United Nations Conference on the Law Vreede, E.A., 62 of Sea (UNCLOS), 6, 9, 10, 123, 176 W United Nations Continental Shelf Washington Naval Treaty, 90 Watts, Sir Arthur, 128-133 Convention, 1958, 9, 123 United States, 8, 10, 13, 32 Weedon, W.C. Moores, 63 cession of the Philippines from Weeramantry, Christopher Gregory, 160 West Coast Residency, 35, 39 Spain, 49, 107 sovereignty over North Bornean "White Rajahs", 112, 113, 124n26 islands, 80-81 Witti, Ference Xavier, 51-52, 68n17 takeover of the Philippines, 71, Wong Kim Min, James, 122, 126n57 Wood, Leonard, 108 74 - 79