CHAPTER I

INTRODUCTION

A. Problem Background

In fact the nation-state today was not always the basis of political affairs. It has been only within the last 350 years that the nation-states assumed its dominant role. The unable of nation-state in settle of several issues and problems between states made the International Organizations began to appear at the last 150 years (in the prior to the 1940s and 1950s). After the middle of the 20th century, hundreds of such international organizations have been created and took important role in international and political affairs until now.[1]

Currently, the modern international organizations or known as IOs arise significantly. It can be divided into two classification: Intergovernmental Organizations (IGOs) and Non-governmental Organization (NGOs) or sometimes called by INGOs (International Non-governmental Organizations) it is done to distinguish international private agencies from those limited to a single country. Moreover, the modern international organizations have made a new dimension beyond the previously existing channels of diplomacy and peaceful settlement. Some famous International Organizations: the United Nations (UN), the specialized agencies and regional organizations provide multiple and continuous contact points through which accommodation can be exercised, moreover, every

International Organizations has several bodies in order to help their actions and cases in specifically.

As an example is the United Nations as known as the biggest International Organization in the world. There are consisting of six principle organs: General Assembly, Security Council, Secretariat, Economic and Social Council, International Court of Justice and Trusteeship Council. Related with an issue above, the writer takes an example of the International Court of Justice (ICJ) as a principle organ of United Nations that handle international problem such as solving dispute between or among countries especially in territorial dispute, which is undeniable that ICJ has a high position and the most influential court in the world. Under the sixth principal organ of the United Nations, the statute of the ICJ itself is an integral part of the UN Charter and is almost identical to the *Statute* of the previous Permanent Court of International Justice (PCIJ). However, unlike the League of Nations arrangement in which the PCIJ and its membership were independent of the League, in United Nations the all members are *ipso facto* (automatically) members of the ICJ and additional states may become parties to the Court Statue under arrangements approved by the General Assembly and the Security Council.[2]

The ICJ is also known as International Adjudication. It is often considered of as the primary means for the resolution of disputes between States.[3] Since the PCIJ functioned in 1922 and continued by ICJ in 1945 had many recorded in

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[2] Ibid p. 78

[3] Michael Young & Yuji Iwasawa. (1996). *Trilateral Perspectives on International Issues:*

dispute settlements around the world. For instance, the Corfu Canal case between United Kingdom and Albania 1947 was the first case registered in ICJ.[4]

In Southeast Asia, the ICJ recorded at least three problems about disputes settlements. The first case was the problem between Thailand and Cambodia in 1959 concerned the *Preah Vihear* Temple. The Second was Indonesia and Malaysia turned to the ICJ in 1998, in order to resolve a dispute over sovereignty over *Pulau Sipadan* and *Pulau Ligitan,* two islands in the Celebes Sea. In 2003, Malaysia and Singapore in a bid to resolve territorial disputes regarded Pedra Branca (*Pulau Batu Puteh* in Malaysia), Middle Rocks and South Ledge. Hence, the Pedra Branca dispute between Malaysia and Singapore will be a focused issue in this undergraduate thesis it talk about the intervention of ICJ as adjudication (court) in this case to make a peaceful settlement for both parties in the future.[5]

In brief of the Pedra Branca/*Pulau Batu Puteh* dispute, it was a territorial dispute between Malaysia and Singapore over several islets (Small Island) at the eastern entrance of the Singapore Strait. The dispute began in 1979 and was largely resolved by the International Court of Justice (ICJ) in 2008. In early 1980, it was started when 1980 Singapore lodged a formal protest with Malaysia in response to a map published by Malaysia in 1979 claiming Pedra Branca/*Pulau Batu Puteh*. In 1989 Singapore proposed submitting the dispute to the ICJ. Malaysia agreed to this in 1994. In 1993, Singapore also claimed the nearby islets: Middle Rocks and South Ledge. In 1998 the two countries agreed on the text of a

[4] Ibid. pp. 189-193.
[5] Ana L. Strachan. (2009). *Resolving Southeast Asian Territorial Disputes: A Role for the ICJ,* IPCS, New Delhi.

Special Agreement that was needed to submit the dispute to the ICJ.[6]

On the dispute, Singapore argued that Pedra Branca was *terra nullius* (belongs to no one), that there was no evidence the island had ever been under the sovereignty of the Johor Sultanate. In the event the Court did not accept this argument. Singapore contended that sovereignty over the island had passed to Singapore due to the consistent exercise of authority over the island (*a titre de soverain*) by Singapore and its predecessor, the United Kingdom. Malaysia had remained silent in the face of these activities. In addition, it had confirmed in a 1953 letter that Johor did not claim ownership of the island and had published official reports and maps indicating that it regarded Pedra Branca as Singapore territory. Furthermore, Middle Rocks and South Ledge should be regarded as dependencies of Pedra Branca. Malaysia's case was that Johor had original title to Pedra Branca, Middle Rocks and South Ledge. Johor had not ceded Pedra Branca to the United Kingdom, but had merely granted permission for the lighthouse to be built and maintained on it. The actions of the United Kingdom and Singapore in respect of the "Horsburgh Lighthouse" and the waters surrounding the island were not actions of the island's sovereign.

Singapore has administered Pedra Branca since Horsburgh Lighthouse was built on the island by its predecessor, the United Kingdom, between 1850 and 1851. Singapore was ceded by Sultan Hussein Shah and *Temenggung* Abdul Rahman Sri Maharajah of Johor to the British East India Company under a Treaty of Friendship and Alliance of August 21, 1824 (the Crawfurd Treaty) and became

part of the Straits Settlements in 1826. At the time when the lighthouse on the island was constructed, the Straits Settlements were under British rule through the Government of India.[7] On December 21, 1979 the Director of National Mapping of Malaysia published a map entitled *Territorial Waters and Continental Shelf Boundaries of Malaysia* showing Pedra Branca to be within its territorial waters. Singapore rejected this "claim" in a diplomatic note of 14 February 1980 and asked for the correction of the map. Furthermore, the dispute was not resolved by an exchange of correspondence and intergovernmental talks in 1993 and 1994. In the first round of talks in February 1993 the issue of sovereignty over Middle Rocks and South Ledge was also raised. Malaysia and Singapore agreed to submit the dispute to the International Court of Justice (ICJ). The Special Agreement was signed in February 2003 and the ICJ formally notified of the Agreement in July that year. The hearing before the ICJ was held over three weeks in November 2007 under the name *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore).*

B. Purposes of Writing

There are several purposes on writing this thesis;

- To fulfill the requirement as one of subjects in International Relations studies.
- To know the role of ICJ (International Courts of Justice) as the United

[7] International Court of Justice, (23 May 2008). *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore).* Retrived January 12, 2013 ,from

Nations/International Organizations body and also as an International Adjudication (court).

- To explain the Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore.
- To find for the factors influencing Malaysia and Singapore in claiming Pedra Branca/*Pulau Batu Puteh*.
- To understand the ICJ mechanism or process in making decisions over Pedra Branca dispute.
- To record the responses of Malaysia and Singapore after the final decision of ICJ on Pedra Branca/*Pulau Batu Puteh* dispute.

C. Research Questions

From the background of this undergraduate thesis, the writer is likely to stand the research question on, **"How was the process of ICJ decision toward Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore?"**

D. Theoretical Framework

There is a concept and a theory that will be explained in order to describe this phenomenon. They are the concept of International Adjudication and the theory of Rules and Procedure within the ICJ.

1. International Adjudication

In general, international arbitration and international adjudication are

decision that is legally binding upon the parties.[8] They differ primarily in the degree of flexibility that they afford. Arbitral tribunals are often created *post hoc* to address a specific class of disputes and the parties are frequently permitted to determine, by agreement the tribunal's terms of reference or compromise, composition, seat and procedural rules.[9]

The Court or Adjudication is often created to deal with future disputes. Accordingly, the subject-matter jurisdiction, judges, procedural rules and seat are all generally pre-determined. Courts are also regarded as being more independent than arbitral tribunals and to that end, the judges are frequently appointed for fixed periods of time.[10] The use of standing judges is also believed to promote the development of jurisprudence. Compared to arbitration, the granted relief is commonly non-monetary and the options for confidentiality are more limited. Three international courts of adjudication possessing these characteristics are the ICJ, the World Trade Organization Dispute Settlement Body (WTO) and the International Tribunal for the Law of the Sea (ITLOS). All of those courts primarily decide non-monetary claims between states. Another interesting feature shared by the forums is that they all primarily deal with multilateral rather than bilateral international legal obligations.

According to UN's charter article 33, about Procedures and Methods of Peaceful Settlement of Disputes. Adjudication or judicial settlement is "a process of submitting a dispute to an international court for decision". In other definition,

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[8] Peter Malanczuk. (1997). *Akehurst's Modern Introduction to International Law.* Routledge. London. p. 281

[9] Ian Brownlie, (2008). *Principles of Public International Law.* Routledge. London. p. 703.

"International adjudication is a method of international dispute settlement that involves the referral of the dispute to an impartial third-party tribunal, normally either an arbitral tribunal or an international court for binding decision, usually on the basis of international law."[11] Courts have the primary advantage of being readily available. They are permanent entities, paid for by the international community and staffed with experienced and committed full-time judges. Moreover, parties may be unwilling to risk losing a case in such a public and prestigious forum. Sometimes parties may lack confidence in the courts' competency or impartiality.

Compared to other dispute resolution techniques, adjudication has a number of advantages. It makes a final disposition of the dispute. Submitting it to adjudication reinforces the international rule of law. Adjudication proceedings are impartial, impersonal, principled, orderly, serious and authoritative. Adjudication may reduce tensions by "depoliticizing" an issue. Its may offer guidance to other nations. Drawbacks to adjudication include the risk of losing the possibility of biased judges and the often unpredictable outcomes. Adjudicative settlements are imposed and focus narrowly on the legal issues. They tend to freeze the dispute in tits submitted form and often overlook win-win or compromise solutions. Adjudication proceedings are adversarial and so potentially escalatory. They are conservative thus they apply existing law as it is, without addressing deeper legal flaws. States may raise "nuisance suits" for purposes of

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[11] Richard Bilder (1997), *"Adjudication: International Arbrital Tribunals and Courts"*,

propaganda or harassment. Without effective enforcement the adjudication may be ineffective.[12]

International adjudication is most appropriate in cases, such as minor border disputes, that are emotionally volatile but do not involve significant national interests, complex technical or factual disputes, or as politically acceptable way of buying time in dangerous disputes. The existence of international courts with compulsory jurisdictions can encourage parties to negotiate mutually acceptable solutions, rather than risk being in brought to court. Finally, it is important to note that, for many people throughout the world, international adjudication symbolizes civilized and ordered behavior and the rule of law in international affairs.[13] When powerful states refuse to submit to the court's jurisdiction or to comply with their awards, it can undermine public respect and support for the rule of law.

In the case of Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore, whole agreed to submit this case to International Adjudication (ICJ) in order to create peace in settle territorial dispute. Moreover, both Malaysia and Singapore believe that submitting this case to the International Adjudication such as ICJ it will make effective solutions for them and the result will be better rather than other ways or technique in settle territorial dispute because the Court decision are finally binding and the judges in the Court are experts.

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[12] Article Summary of "*Adjudication: International Arbrital Tribunals and Courts*". Retrived March 13, 2013, from http://www.crinfo.org

[13] Richad Bidle. op.cit, p. 180.

2. The Rules and Procedure within the ICJ

In order to be credible the ICJ needs to be sure of its jurisdiction, as well as that the claim is reasonable in terms of laws and facts. The mechanism for dispute settlement within the ICJ are governed by ICJ *Statute* [14] and the *Rules of the Court* of which the latter have evolved more recently, partly to deal with shortcomings. At the highest level, according to Article 66 of the UN Charter, if a dispute remains unresolved for 12 months, then other procedure are to be followed.[15] Since the ICJ is an organ of the UN, it is bound to follow these procedures. If the dispute involves Articles 53 or 64 (*jus cogens*), any party can submit a written application to the ICJ, this is referred to as the voluntary jurisdiction of the Court (as *oppodes* to its compulsory jurisdiction).

State parties can begin a case by informing the ICJ Registrar. The Registrar will then inform all relevant parties. Formally, at the United Nations, the UN Secretary General will inform the UN Members.[16] In particular, Article 38 (1) lays out what law is to be referred to in deciding cases. First, some reference to historic development is made here to set the context for the preceding analysis. The *Rules of the ICJ* were instituted in 1946, but revised in 1972 and 1978.

According to section II, Rules of Court which usually used in dispute settlement in ICJ, the steps or "procedure" of ICJ is as follows:[17]

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[14] *Statute of the International Court of Justice.* (1945). Articles 39-64, Retrived March 9, 2013, from http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0.

[15] *Rules of Procedure of the International Court of Justice* (1978). Article 33. Retrived March 9, 2013, from http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0.

[16] *United Nations Conference on Trade and Development, Dispute Settlement.* (2003). International Court of Justice, p.17. Retrived March 9, 2013 from, [illegible] en.pdf.

1. The proceedings shall consist of written pleadings and oral hearings.
2. Without prejudice to any question as to the burden of proof, the Parties agree, having regard to Article 46 of the Rules of Court, that the written proceedings should consist of:
   a) A Memorial shall contain a statement of the relevance facts, a statement of law and the submissions,
   b) A Counter-Memorial shall contain: an admission or denial of the facts stated in the Memorial; any additional facts, if necessary, observations concerning the statement of law in the Memorial, a statement of law answer thereto and the submissions.
   c) A Reply and Rejoinder, whenever authorized by the Court, shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divided them.
   d) Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submission previously made.[18]
3. The above-mentioned parts of the written proceedings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the part of the proceedings corresponding to the said Party.
4. The question of the order of speaking at the oral hearings shall be decided by mutual agreement between the Parties but in all case the order of

[18] Rules of Court. Op.cit. Article. 49.

speaking adopted shall be without prejudice to any question of the burden of proof.

In the other explanation, the first step in the proceedings is an application by the claimant state party to the ICJ's Registrar. This includes a statement of the jurisdiction *presumed* by the party and it sent to all Court members and the respondent party. As regards written pleadings, these are initially contained in the memorial, where the claimant argues legal points and states facts. The facts are accepted by the ICJ unless challenged by the respondent.[19] This serves to prevent one-sided statement of events. The respondent files a counter-memorial, stating merits, covering law and facts. Next, the claimant replies in which the respondent gives a rejoinder to the reply. The next stage after written pleadings is oral pleadings and then the consideration and finally the judgment of the Court. In the oral stage, the order of statements is a repeating sequence of claimant followed by respondent. Witnesses are allowed, but in practice oral evidence has been rare. In making revision of ICJ decision, the Court allowed the parties to make any revision until 10 years after the ICJ final decision.

However in many cases, the respondent party might question the Court's jurisdiction. For example, such an objection can be made up to the deadline for the counter-memorial. In this condition, the ICJ holds a preliminary hearing. If the ICJ finds that it does not have jurisdiction, the case ends. Otherwise, the case proceeds. At the end of the hearing, the judges confer privately.[20] One or two of

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[19] Collier, J. and Lowe, V. (1999). *The Settlement of Disputes in International law*. Oxford University Press. Oxford. P.176.

the judges then draft the judgment. This is modified, until all agreeing judges approve the case. According to Article 58 of *Statute*, the judgment is stated in open court. However, judges are permitted to give dissenting judgments.

In fact, a majority decision of 8 to 7 judges is permitted. Where there is a tie, when the President's vote decides the outcome. Broadly, the *Statute* and *Rules* of the ICJ together invest the ICJ with a range of powers affecting rules and procedures for dispute settlement. In the proceedings, the parties can be required to summon witnesses or experts. Any other evidence regarding facts where the parties disagree can also be demanded. Specifically, Article 30 (2) of the ICJ *Statute* enables the appointment of assessors to accompany court sittings and is designed to make sure that decisions incorporate current scientific knowledge and to eliminate technical deficiencies. Article 50 of the *Statute* allows the ICJ to commission a special inquiry (expert opinion).[21] Moreover, in Article 41 of the ICJ *Statute*, the ICJ can state provisional interim measures to protect the rights of one of the parties. This usually occurs on the request of the party. Interestingly, Article 66 of the new *Rules* allows a request for interim measures to be made at any time. Also, if new facts come to light, the ICJ can change its previous decision. In this way, the ICJ may send a signal to parties to maintain their confidence as the proceedings continue. As a recurrent theme, when granting such measures, the Court should establish its jurisdiction.

On the Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore. The parties agreed submitted the case to the ICJ's Registrar on and

[21] Shawn, M. N., op.cit. p. 699.

signed a Special Agreement. Following the procedure and the Special Agreement results of the Court, two parties are joined Exchange-Memorial. In the Memorial, Malaysia claim the sovereignty over three features; *Pulau Batu Puteh*, Middle Rocks and South Ledge because those islets belongs to Johor before 1824. In other side, Singapore argued that Pedra Branca and two others features was *terra nullius* (belongs to no one), then Singapore and the predecessor (UK) constructed the "lighthouse" on Pedra Branca. In this Counter-Memorial, Malaysia said that the construction of the lighthouse clearly differs from a formal taking of possession of those islets by British and Singapore. In response, Singapore said that there is no evidence showed the Johor was the owner of Pedra Branca and two other features and there is no protest from Malaysia toward the Singapore activities on Pedra Branca. Furtehrmore, a Reply of Parties presented 10 months after the Counter-Memorial. Both, Malaysia and Singapore agreed that Rejoinder is unnecessary in this case. After presented Oral Pleadings, the Court Judgement decided Pedra Branca/*Pulau Batu Puteh* belongs to Singapore, because as the original title Johor/Malaysia did not protested to the Singapore's activities until 1979 (map published).

The Court considered that there are no activities conducted by Singapore in that area, so the Court decided that Middle Rocks belongs to Malaysia as the original title. Meanwhile, the Court adressed the South Ledge as a special problem as it presented special geographical feature as alow-tide elevation and the Court

territorial waters generated by the mainland Malaysia, Pedra Branca and Middle Rocks.

E. Hypothesis

The process of International Court of Justice (ICJ) toward Pedra Branca/*Pulau Batu Puteh* dispute is consist of several stages: The first is the parties (Malaysia and Singapore) should agreed to submitted their case to the Registry of International Court of Justice (ICJ) and signed a Special Agreement to determine the time-limits of every pleadings (Written and Oral Pleadings. The Second, followed direction issued by the court, the parties (Malaysia and Singapore) are joined Written Pleadings that consist of: a.) Exchange-Memorials, b.) Conter-Memorials, c.) Reply and Rejoinder. Furthermore, the parties (Malaysia and Singapore) are joined the Oral Pleadings or Public Hearings to presenting the patries (Malayisa and Singapore) arguments/statements to the Court. The last is the ICJ Judgement with several considerations toward Pedra Branca/*Pulau Batu Puteh* dispute between Malaysia and Singapore. It is allowed the parties to make any revision until 10 years after the final decision of Court.

F. Methods of Writing

The Method of writing this thesis is using the qualitative method. However, in this writing, the writer uses several ways to collect the data in order

Chapter one is introduction chapter of the problem. This consist of: the problem background, purpose of writing, research question, theoretical framework, hypotheses and methods of writing, the research area and also the systematic of writing.

Chapter two explains the general profile of ICJ, functions and the recorded or achievement of ICJ in dispute settlement.

Chapter three discusses the general description of *Pulau Batu Puteh*/Pedra Branca Island. Including its geographical situation and it history of dispute.

Chapter four is used to explain the answer of the research question of this undergraduate thesis, to discuss the process or mechanism of dispute resolution has been took by ICJ toward Pedra Branca dispute between Malaysia and Singapore and also to explore several responses from the parties.

Chapter five is the final chapter of this thesis. It talks about the result of [illegible] will be explained for this chapter.

CHAPTER II

THE DYNAMIC OF INTERNATIONAL COURT OF JUSTICE IN TERRITORIAL DISPUTES SETTLEMENT

According to international law, one of the alternatives in dispute settlements between countries in a law or judicial settlement may go through the International Court institutions such as: PCIJ or now is International Court of Justice (ICJ), International Criminal Court (ICC), or International Tribunal for the Law of the Sea.[22] However, in line with the focus on this undergraduate thesis, in this chapter the writer would like to explain deeply one of International Courts or institutions in judicial settlements, the International Court of Justice (ICJ), it is UN's organ and has many recorded in handled dispute settlement cases around the world.

A. General Profile of International Court of Justice (ICJ)

The International Court of Justice (ICJ) was established under Chapter XIV of the United Nations Charter. It replaced the Permanent Court of Justice (PCIJ), which existed under the UN's predecessor, the League of Nations. The ICJ is the only major UN body whose headquarters is not in New York City, the Court sits in The Hague, Netherlands. The Court is the principal judicial organ of the UN and all members of the UN are *ipso facto* (automatically) parties to the Statute of the ICJ. The ICJ is consist of fifteen judges of different nationalities,