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Separate Opinions and Declarations: The Language Choices of Judges

HAFRIZA BURHANUDEEN

ABSTRAK

Secara tradisinya, apabila sesebuah negara menghadapi pertikaian negara itu akan mengisytiharkan perang. Sebaliknya, pada hari ini, negara tersebut termasuklah negara-negara anggota ASEAN tidak memilih kekuatan senjata tetapi menggunakan bahasa sebagai satu mekanisme untuk menyelesaikan pertikaian sama ada melalui rundingan diplomatik, timbangtara ataupun penghukuman seperti Mahkamah Pengadilan Antarabangsa (ICJ) di The Hague, The Netherlands. Makalah ini akan mengupas konsep kedudukan (concept of positioning) Harre dan Davies untuk mengenal pasti pandangan yang dikemukakan secara tersirat atau tersurat dalam bahasa pilihan tiga daripada para Hakim ICJ yang menghakimi kes permohonan Kerajaan Filipina untuk campur tangan dalam kes antara Indonesia dan Malaysia mengenai kedaulatan ke atas Pulau Ligitan dan Pulau Sipadan. Konteks memainkan peranan yang paling menonjol dan penting dalam penafsiran lakuan bahasa sebegini. Dalam hal ini, konteks merujuk bukan sahaja pada persekitaran bahasa yang dilafazkan, bahkan juga pada andaian sosial dan undang-undang yang mungkin tidak dinyatakan secara jelas di dalam data-data berkaitan. Data untuk kajian ini dipetik daripada pandangan berasingan serta pengisytiharan Hakim Kooijmans, Hakim Koroma dan Hakim Franck dalam penghakiman mereka mengenai permohonan Kerajaan Filipina untuk campur tangan dalam kes antara Indonesia dan Malaysia mengenai kedaulatan ke atas kedua-dua pulau tersebut.

ABSTRACT

Traditionally, when countries have disputes, they go to war. Today, instead of resorting to armed force, countries, including member states of ASEAN use language 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. This paper draws upon Harre and Davies's concept of positioning to ascertain propositions expressed implicitly or explicitly in the language choices of three Judges representing the International Court of Justice in the Philippines' request to intervene in the case between Malaysia and Indonesia concerning sovereignty over Pulau Sipadan and Ligitan. Inherent and crucial in the interpretations of

the speech acts is the role of context. Here, context refers to not only the linguistic environment of the utterances but also to social and/or legal assumptions that may not be explicitly stated in the data. Data for this paper is extracted from the separate opinions and declarations of Judges Kooijmans, Koroma and Franck in the final judgement regarding the case of Philippines' intervention in Malaysia's and Indonesia's dispute over the two islands.

INTRODUCTION AND THEORETICAL FRAMEWORK

Hafriza (2002) in her paper *Reading between the lines: An analysis of the persuasive effects and linguistic styles adopted by Counsels appearing before the International Court of Justice in the Philippines' request to intervene in the case concerning sovereignty over Pulau Ligitan and Sipadan* examined the footings (Goffman: 1981) and the positionings (Harre & Davies: 1990) of Counsels from Malaysia, the Philippines and Indonesia through their spoken discourse with regard to their attempts to position themselves favorably before the International Court of Justice, henceforth referred to as the Court, in The Hague, The Netherlands, in the Philippine's request to intervene in the case concerning sovereignty over Pulau Sipadan and Ligitan between the Governments of Malaysia and Indonesia. Textual evidence was given and discussed in relation to the interplay between the footings and positionings and what each Counsel wished to imply when they stated their oral arguments. In Malaysia's case, the spoken text suggested that for an intervention request to be successful, the country requesting intervention must demonstrate it has some interest of a legal nature that would be affected positively or negatively by the decision of the Court. Additionally, the analysis reflected Malaysia's positioning that the Philippines does not have a rightful claim over North Borneo and furthermore its claims over North Borneo do not have anything to do whatsoever in the dispute between Malaysia and Indonesia over Pulau Ligitan and Sipadan. Hence, Malaysia argued that the Philippines has no legal basis for intervention.

The Philippines' text, on the other hand, conveyed the Philippines' assertions that even though it does not claim the two islands, the treaties and agreements that will be used by Malaysia and Indonesia may affect interest of a legal nature where North Borneo is concerned. The Indonesian text, finally, revolves around Philippines' statement that they do not intend to claim Pulau Sipadan and Ligitan. Hence, much of the data here involve repeatedly and consistently, to the positioning of the Philippines as having no legal basis to intervene based on their denial of a claim to the two islands. The Court, in its judgement on the 23 of October 2001, denied the Philippines' request to intervene on several grounds including that it had failed to demonstrate a legal interest that would warrant such intervention.

The Judgement by the Court, however, does not mean that all 13 judges and two ad-hoc judges at the International Court of Justice were unanimous in their decision to disallow Philippines' intervention. Despite having to conform to the decision of the majority, some judges had the opportunity to deliver alternative views either against or extending the views of the majority by offering separate opinions and declarations. A judge with a separate opinion agrees with the overall decision of the Court, but wishes to express an opinion distinct from other members of the Court. These separate opinions are usually based on different points of law or differing interpretations of the arguments presented by Counsels or other members of the Court. Declarations, on the other hand, refer to the clarification of certain points of law, which are regarded as not germane to arriving at the disposition of the particular case.

This paper seeks to complement Hafriza's (2002) paper by focusing on the concluding voices, in this case the judges when they deliver their judgements. It will strive to do so in two ways: firstly, the paper will explore and describe the illocutionary force of several speech acts presented in the separate opinions and declarations of Judges Kooijmans, Koroma and Franck. By illocutionary force, I refer to the multiplicity of performance that can be contained in a single sentence. For instance, the remark *I don't know how to change a flat tire* can have the illocutionary force of a request, that is *Can you help me to change the flat tire?* despite the former having the form and structure of a statement in the English language. Thus, what a speaker says may not necessarily correspond to what he means. Secondly, in tandem with the aforementioned, the paper will also highlight the positioning of the participants involved through the illocutionary force of the speech acts used by the Judges and the participants.

The framework used to document the illocutionary force of utterances and the types of positioning present in a speech event is Davies and Harre's (1990) contention of the interconnection between the illocutionary force of speech acts and the positioning of one's self or others through the speech acts uttered. This can differ according to what both refer to as the 'storyline' and the communicative purpose of the participants in the 'story.' In other words, in whatever type of 'story' or speech event, the 'jointly produced speech acts' (1990: 7) by the participants can produce various levels of positioning by the participants. For example, a confident capable female speaker can position herself to be in a powerless position by uttering the remark *I don't know how to change a flat tire* to encourage the hearer, normally a male, to fulfill the speaker's request (illocutionary force) of assisting her with the flat tire. Simultaneously, the hearer positions the speaker as powerless and himself as having the power to carry out the said request.

In the context of separate opinions and declarations, however, compared to a context where Counsels have to present the best arguments for their clients and then wait for the judgement, here, in the "story" of the Philippines' request to intervene in the case concerning sovereignty over Pulau Sipadan and Ligitan,

the discourse is primarily one way, that is from judges to the other parties in the case. Thus, the positioning that occurs in this paper involves how the judge positions himself in the case in relations to his personal ideology, which may or may not be consonant with the ideologies of his fellow judges. Indeed, it is through their utterances in the separate opinions and declarations that judges can present themselves as individuals. *This reflexive positioning is often in tandem with the interactive position of not only the arguments presented by the Counsels representing Malaysia, Indonesia and Philippines, but also the interactive positioning of the Court itself.* In the latter case, the individual, the judge, can position the Court in an unfavorable manner by criticizing or commenting on judicial policies or procedures that he as an individual believes the Court should improve or discuss to allow the Court to perform its judicial function better in future cases where territorial claims are an issue.

The interconnection between the illocutionary force of the speech acts used and positioning will be illustrated in section 3 of this paper. A cursory look at the data indicates the illocutionary force of some of the speech acts used by the judges to be agreeing, disagreeing, giving opinions, proposing and criticizing. The positioning of self and other through these speech acts will also be discussed in greater detail in section 3 of this paper.

METHODOLOGY

Data for this paper is extracted from the verbatim records of Judges Koroma and Franck who presented separate opinions and Judge Kooijmans who presented a declaration. Judges Koroma, Franck and Kooijmans are by no means the only judges who have delivered separate opinions and declarations in the application by the Philippines to intervene in the case between Malaysia and Indonesia concerning sovereignty over Pulau Sipadan and Ligitan. Three other judges, Judge Oda, Judge Parra-Aranguren and Judge Weeramantry delivered dissenting and separate opinions respectively. However, their contribution will not be included in this paper, as I believe data from the three judges can capture the main arguments in this case.

Analysis of the data will involve the reflexive and the interactive positioning in tandem with a discussion of the varying speech acts present in the separate opinions of Judge Kooijmans and in the language choices of both Judges Koroma and finally Judge Franck. Background information relevant to the analysis will be included wherever appropriate.

I shall begin with the language choices of Judge Kooijmans followed by Judge Koroma and finally Judge Franck. Speech samples from each judge will be listed down and subsequently interpreted and discussed. With regard to the aforementioned, it is important to point out that the numbering of each segment of text listed under each section would not refer to the stage of the Judge's

actual presentation before the Court but rather to parts of the text that are relevant to the focus of this section of the paper. These selected segments of texts will be discussed separately in relation to language choices and the interpretation of these languages choices. However, similar implications may be inherent in a few texts. In these cases, the discussion and interpretation of the language choices will be carried out concurrently.

INTERPRETATION OF RESULTS

JUDGE KOOIJMANS

The verbatim record of Judge Kooijmans suggests that he positioned the Philippines as failing not only to demonstrate how legal interest may be affected but also failing to provide clarity about its nature and source. Second, the Philippines was also positioned as failing to address issues which are relevant for plausibility of claim. Third, Judge Kooijmans additionally positioned the Court as needing to reexamine judicial policy in relation to third party intervention.

a) I wholeheartedly agree with the Court's findings that the Philippines has not discharged its obligation to convince the Court that specified legal interests may be affected in the particular circumstances of this case and that consequently the Philippines application for permission to intervene cannot be granted.

In (a) above, Judge Kooijmans, henceforth JKS, first reflexively positions himself as mutually agreeing with the overall decision of the Court to disallow Philippines intervention. The degree of agreement is very strong given his starting phrase of "I wholeheartedly agree" where the word 'wholeheartedly' with 'agree' brings forth connotations of agreement without reservation or doubt. In the same sentence, JKS then positioned the Philippines as failing to convince the Court of "how their legal interests may be affected" in the case concerning sovereignty over Pulau Sipadan and Ligitan between Malaysia and Indonesia. The degree of JKS's attitude towards the former sentiment is also strong primarily in the use of these two words "discharged" and "obligation". "Discharged" according the Oxford English Dictionary carries the connotations of "having successfully fulfilled or performed something" whereas "obligation" conveys the implication of 'complying with an agreement of law'. This suggest that the Philippines was positioned by JKS as failing to perform or fulfill the necessary conditions needed by law in JKS's opinion to succeed in their application to intervene.

b) The Philippines contends that its interest would be affected were the Court to interpret these treaties and agreements as conferring title to the territory of North Borneo on Malaysia or as confirming such title. The Court, however, rightly concludes from the text of the various instruments and from the statements of Indonesia and Malaysia during the oral hearings in the present phase of the proceedings that there is no evidence that the

legal interest of the Philippines may be affected by a decision of the Court in the main case, since none of these instruments is a source of title over the territory of North Borneo.

The background information relevant to the text chosen in (b) above is that JKS personally believed that the Philippines had a *prima facie* interest in this case given the Treaties, agreements and other evidence that could have a direct or indirect bearing on the matter of the legal status of North Borneo. In the beginning of (b), JKS positioned the Philippines as similarly having the same opinion primarily encapsulated in the phrase “contends” which conveys the implication of “holding to be fact or asserting”, and which naturally led to their desire to intervene in the Pulau Sipadan and Ligitan case. However, later, JKS positioned the Court as justifiable and proper, “rightly concluding” in judging that the Philippines had not shown evidence of a legal interest that might be affected by the decision. This judgement by the Court is supported by the evidence given by Malaysia and Indonesia which the Court had positioned to be convincing of an absence of legal interest. Thus, in JKS’s view, the Philippines had not succeeded in persuading the Court of which he is a member, even though personally, he felt they have a *prima facie* interest in the case as stated earlier. Here, in the text, we also witness the opposing tensions of the individual “I” versus “We the Court”. As “I”, JKS exercised his right as an individual to have a separate judicial opinion separate from the rest of his colleagues, but when equally convinced of a lack of evidence from statements from the parties in this case, joined the powerful “we”, an objective group representing a powerful organization. This type of dichotomy, often cited as prevalent in language of judgements is also present in the texts of Judges Koroma and Franck.

c) The fact that the existence of the claim is recognized does not, however, relieve the Philippines of the obligation to explain that claim with sufficient clarity and the legal instruments on which it is said to rest, and I am not at all convinced that the Philippines has complied with that obligation.

d) The failure to explain with sufficient clarity and the underlying legal instruments is therefore an argument which is additional to the Court’s findings that the treaties and agreements furnished by the parties either form no part of the arguments of the Parties in the main case or do not bear on the issue of retention by the Sultanate of Sulu of sovereignty over North Borneo; in combination, both lead to the conclusion that the Philippines has not been able to demonstrate that its legal interest may be affected by the Court’s decision.

In (c) and (d) above, JKS positioned the Philippines again of failing to comply with the inherent agreement to try and convince the Court of their legal interest in the case. This is the “obligation” (in c) that he referred to twice. The assertion that even he as an individual was not convinced by the arguments put forth by the Philippines was captured in the last sentence in “I am not at all convinced that the Philippines has complied with that obligation”. The strength

of this lack of conviction is indeed captured in the phrase “not at all” which carries connotations of absoluteness.

The sense of the total lack of conviction on JKS’s part as per the Philippines’ arguments is echoed and emphasized in (d). Here, JKS articulated clearly his opinion of the failure by the Philippines to “explain with sufficient clarity underlying legal instruments”. The use of the phrase “with sufficient clarity” suggestively positioned the Philippines’ arguments as not being presented clearly and with the depths required to make a compelling case. This and with the assertion discussed in (b), that is the decision by the Court of the convincing evidence by Malaysia and Indonesia that the treaties and agreements brought up in the Sipadan/Ligitan case do not affect the Philippines’ claim to North Borneo has convinced JKS to position the Philippines as again failing “to demonstrate that its legal interest may be affected by the Court’s decision”.

e) In the present case the Philippines, has, in my opinion, failed to make its claim sufficiently plausible by not providing answers to highly pertinent questions which were put during the oral proceedings. I regret that the Court has not explicitly said so. A State which wishes to intervene should know that, in order to be allowed to do so, it must establish with fully convincing arguments the legal interest which may be affected by the Court’s decision.

In (e) finally, JKS again repeated his positioning of the Philippines as having ‘failed’, this time failing to make “its claim sufficiently plausible” and secondly, by providing a reason why he felt, in his opinion, contributed to the Philippines’ failure to convince the Court. The use of the phrase ‘to make its claims sufficiently plausible’ is interesting to compare with an earlier phrase used in (d) above to express similarly, the notion that the Philippines has failed to explain their case by the use of the phrase “sufficient clarity”. The word “plausible” conveyed the sense of something being acceptable or seemingly true. The joining of the two words “sufficiently plausible” in conjunction with the word ‘fail’ in (e) above carries the understanding that JKS positioned the Philippines as failing to also make their arguments acceptable to the Court in addition to failing to present their arguments clearly with “sufficient clarity”.

The word ‘failed’ is again used in a reason why JKS positioned the Philippines to have “failed” to make a case. According to JKS, the Philippines had done so by ‘not providing answers to highly pertinent questions which were put during the oral proceedings’. The use of the word ‘highly’ and ‘pertinent’ suggested that JKS regarded the questions that were raised by the other parties in the case to be very relevant and crucial to the Philippines’ case, so crucial that JKS positioned the Court as responsible for being explicit in stating that ‘a state which wishes to intervene’ “must establish with **fully** (emphasis added) convincing arguments the legal interest which may be affected by the Court decisions’ before an application to intervene is granted. In stating “I regret the Court has not explicitly said so”, JKS repositioned himself as an individual with a separate judicial opinion being that the desirability of strict requirements for

specification of legal interest *vis a vis* third party intervention. In this regard, he expressed his disappointment at the Court for not having considered this before allowing third parties like the Philippines to intervene.

The language choices in Judge Kooijmans's text indicate that while he was concerned with clarity of the nature of legal interest in his Separate Opinion, Judge Koroma's text below expresses doubt about the Court's interpretation of 'decision' in Article 62 to include reasoning.

JUDGE KOROMA

a) Although I voted in favour of the Judgement, I cannot, however, express unqualified adherence to some of the positions taken in the Judgement.

The use of the personal pronouns "I" in (a) above signal Judge Koroma's, henceforth JKA's, initiation of a separate and individual judicial opinion. Compared to Judge Kooijmans agreeing "wholeheartedly" with the overall decision of the Court albeit with comments and suggestions, JKA simply stated he "voted in favour of the Judgement". The semantics of the word 'vote' connoting a choice being made without further qualification on the speaker's part, can suggest a difference in attitude between Judge Kooijmans and JKA in the degree of 'agreeing' with the overall decision of the Court. The comparative data between the language choices suggest that the degree of agreement is higher for Judge Kooijmans.

The second difference between Judge Kooijmans and JKA's text is the presence of a main and supporting clause in the beginning of JKA's text. The supporting clause began with "although", one word used in the English language to introduce a statement which will contrast with the statement in the main clause to come. Normally, in such an instance, the information contained in the main clause is of primary importance. Here, in the main clause, JKA positioned himself as not being able to provide total, or unlimited, as implied by the word "unqualified", support (as implied in the word adherence) to "some of the positions taken in the Judgement". The major position JKA could not adhere to was the interpretation of Article 62, a primary Statute that provided the possibility for third party intervention. This is stated in (b) and (c) below. The discussion of the language choices in both these sections will be after category (c).

b) Article 59 of the Statute of the Court notwithstanding, under Article 62 of the Statute a State may seek to intervene on a matter before the Court if it considers that it has a legal interest that may be affected by the decision of the Court in a case before it. The *raison d'être* for a State so seeking to intervene under Article 62 is to ensure that its interest will not be affected or jeopardized by the decision in the dispute before it.

c) However, in construing "decision" in relation to "interest of a legal nature" in Article 62 of the Statute, the Court stated in paragraph 47 of the Judgement that "the word 'decision' in the English version of this provision could be read in a narrower or broader sense". The Court adopted the broader meaning stating that:

“the French meaning clearly has a broader meaning. Given that a broader meaning is the one that would be consistent with both language versions and bearing in mind that this Article of the Statute of the Court was originally drafted in French, the Court concludes that this is the interpretation to be given to this provision”.

I shall begin with (b). Judge Koroma restated the condition of Article 62 in (b) above. The implications in the statement about Article 62 above can simply be rephrased as for an intervention request to be successful, the country requesting intervention must demonstrate it has some interest of a legal nature that would be affected positively or negatively by the decision of the Court. In the case of the Philippines, seeking to intervene was to ‘ensure that its interest will not be affected or jeopardized by the decision’ in the case regarding sovereignty over the two islands when treaties and agreements in relation to the aforementioned between Malaysia and Indonesia were discussed.

The context of the implications in JKA’s statements in (c) is the decision by the majority to adopt the interpretation of the word ‘decision’ in the French text. Their reason being the original drafting of Article 62 was in French. The interpretation of ‘decision’ in the French text, compared to the interpretation of ‘decision’ in the English text, in Article 62, allows for a broader interpretation of the requirements to fulfill Article 62, allowing, hence, the implication that more latitude would be available for the presentation of legal arguments from all parties involved.

Despite voting with the majority on the outcome of the case, JKA took exception to the majority decision to adopt the interpretation of Article 62 from the French text. JKA marked his separate opinion on this issue by highlighting this issue due to the importance of Article 62 for intervention and to make certain (see (a)) that the interest of other states seeking to intervene under Article 62 “will not be affected or jeopardized by the decision of the Court in the dispute before it”.

The implications in JKA’s statements above and in (d) below is that the final judgement should not rest solely on the interpretations made from one language or the other. This disagreement he had with the rest of the Court was stated politely in the beginning of (d) particularly with reference to the words ‘respect’ and ‘I’m afraid’ in “with respect, I am afraid that what is at stake is more than just the rendition of the provision in one language or another, the matter is more one of substance, or at least more complex”. The word “afraid” also signals his apology for having to disagree, but in a polite way.

The corresponding statements in (d) below introduce the crux of the matter. The matter that is ‘more of substance or at least more complex’ than the language issue is whether the parties can effectively demonstrate an interest of a legal nature that will be affected by the decision of the Court. If the Court thus restricts itself to interpretations of Article 62 from French only, then it would not be free of the doubts a narrower meaning of Article 62 can contribute to a party’s presentation of legal arguments. The Philippines, thus, could have presented an

interest of a legal nature in the narrower definition, but the Court having decided to adopt the broader version may never get the opportunity to weigh evidence from the former's perspective. This is why JKA ends his statements in (d) by stating his individual judicial opinion in "I do not think the Court should impose such burdens or constraints on itself as to prevent it from making a proper determination or judgement of the issues involved in a case before it". By not imposing constraints on itself, that is weighing findings and reasonings based on a singular interpretation of a Statute, the Court allows itself to focus on the multitude of findings and reasonings that may have a bearing on a State seeking to intervene.

d) With respect, I am afraid that what is at stake is more than just the rendition of the provision in one language or another; the matter is more one of substance, or at least more complex. From my perspective, even if the Court's reading is not wrong, it is however not free from doubts or difficulties, which may prevent the Court from carrying out its function of declaring the law in adjudicating a concrete dispute by giving due consideration to the issues before it, or may constrain it from giving interpretation to a legal instrument related to a concrete dispute before it for fear that such determination will come to haunt it in a prospective or future dispute yet to be submitted to it. I do not think the Court should impose such burdens or constraints on itself as to prevent it from making a proper determination or judgement of the issues involved in a case before it.

JUDGE FRANCK

The selected texts indicate that while Judge Franck agreed with the Court's decision to disallow Philippines' intervention, he questioned whether the Philippines' claim of historic title over North Borneo amounted to legal interest and the impact of self-determination of the people of North Borneo on historic title.

Judge Franck, henceforth JF, "wholly" "supports" the Court's Judgement and "entirely" "agree" with its disposition of the legal issues. The words highlighted in parentheses from (a) below indicated the high level of agreement and support JF had in relation to disallowing Philippines' intervention. JF however, would like to introduce a statement (evident in the beginning phrase of (b) "At the same time.") that he believed would complement and strengthen further decisions involving third party intervention. The propositions in the text contained in (b) and (c) below imply the speaker's positioning the Philippines as having the right to intervene, but JF is of the opinion that the Court had to be certain that the intervention was not contrary to international law. In this case, under international law and modern law of decolonization, the population of an area has the right to self-determination. This right of self-determination is superior to the claim of historic sovereignty.

a) I wholly support the Judgement of the Court and entirely agree with its disposition of the legal issues considered by it.

b) At the same time, I wish to explicate a legal basis for the Court's decision which, while consistent with it, has not been advanced by the Court, perhaps because it was sufficiently advanced by the Parties, although discussed in passing by Malaysia and the Philippines. I shall endeavor to demonstrate why that legal basis is of some importance and why the Court need not have been deterred from making this clear. The point of law is quite simple, but ultimately basic to the international rule of law. It is this: historical title, no matter how persuasively claimed on the basis of old legal instruments and exercises of authority, cannot-except in the most extraordinary circumstances—prevail in law over the rights of non-self-governing people to claim independence and establish their sovereignty through the exercise of bona fide self-determination.

With respect to the discussion of the propositions presented in (a), (b) and (c) above, the intention on JF's part to emphasise these implications to the Court can be captured in (b) in statements such as 'I wish to explicate a legal basis for the Court's decision' and "I shall endeavour to demonstrate why that legal basis is of some importance" and also in "why the Court need not have been deterred from making this clear". What JF would try very hard (implied in the word "endeavour") to explain or make clear (implied in the use of the word "explicate") and what the Court should have done is to state a point of law basic to international law, that is "*historic title, no matter how persuasively claimed cannot-except in the most extraordinary circumstances-prevail in law over the rights of non-self-governing people to claim independence and establish their sovereignty through the exercise of bona fide self-determination*". The words, italicized by the writer indicates JF's strength of his conviction that it is for the people to determine the fate of their land and not the land to determine the fate of the people.

The proposition that self-determination should prevail over historic title is expanded upon in (d) and (e) below:

d) The independence of North Borneo was brought about as a result of the expressed wish of the majority of the people of the territory in a 1963 election. The Secretary-General of the United Nations was entrusted under the Manila Accord of 31 July 1963 with the task of ascertaining the wishes of the people of North Borneo, and reported that the majority of the peoples of North Borneo had given serious and thoughtful consideration to their future and:

"had concluded that they wish to bring their dependent status to an end and to realize their independence through freely chosen association with other peoples in their region with whom they feel ties of ethnic association, heritage, language, religion, culture, economic relationship, and ideals and objectives (United Nations, 27 September, 1963)."

e) The lands and people claimed by the Philippines formerly constituted most of an integral British dependency. In accordance with the law pertaining to colonization, its population exercised their right of self-determination. What remains is no mere boundary issue. It is an attempt to keep alive a right to reverse the free and fair decision taken almost 40 years ago by the people of North Borneo in the exercise of their legal right to self-determination. The Court cannot be a witting party to that.

In (d), JF informed us that it was self-determination by the people of North Borneo that “.....after serious thoughtful consideration to their future” “concluded that they wish to bring their dependent status to an end.....”. In 1963, the people of North Borneo achieved independence through the process of self-determination consonant with international law. Given the information given by JF in (b), JF positioned the Philippines as not conforming to the legal right of self-determination in their attempt “to keep alive a right to reverse the free and fair decision taken almost 40 years ago by the people of North Borneo” despite the process of self-determination extinguishing any historical claim they, the Philippines, may or may not have had to territory in North Borneo.

JF finally positioned the Court as understanding that it “cannot be a witting party” to the Philippines’ attempt to claim historic title to North Borneo as judicial correctness must prevail. This is implied in his statement in (f) below that interest that “would still be solely political, perhaps susceptible of historic, perhaps of political” does not amount to having the legal foundation for claiming territory. Hence, the Philippines cannot be allowed to intervene in the Pulau Sipadan and Ligitan case between Malaysia and Indonesia.

f) To allow the Philippines to proceed to intervene in the merits phase of this case, when the legal interest it claims would have no chance of succeeding by operation of law, cannot discharge the Court’s duties. Even if the probity of all the Applicant’s evidence were to be wholly confirmed, its interest would still be solely political: perhaps susceptible of historic, perhaps of political, but in any event not of judicial, vindication. For this and for all the other reasons stated in the Court’s Judgement, I concur in the decision of the Court.

CONCLUSION

This paper has discussed the positionings of three judges in relation to the Philippines’ request for intervention in the Pulau Sipadan and Ligitan case between Malaysia and Indonesia through their language choices. Amidst the backdrop of these positionings and speech acts, different linguistic strategies emerged from the participants with regard to agreeing, disagreeing, criticizing, suggesting, asserting, convincing, arguing and informing.

However, despite many differences in the performance of the speech acts mentioned, all three participants consonant with research done by Philips (1998) and Solan (1993), were prone to advancing long sentences, some with multiple conjoined and embedded clauses, others with formal and archaic words. This made the interpretation of the literal meaning and the speaker meaning challenging. However, in the seeming environment of wordiness and redundancy, judgements were made and laws were passed. Here, the Philippines was denied by the Court to intervene in the case concerning sovereignty over Pulau Ligitan and Sipadan.

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