

London International Boundary Conference

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**MODES OF ACQUISITION OF
SOVEREIGNTY OVER
ISLANDS**

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Pedra Branca and Middle Rocks

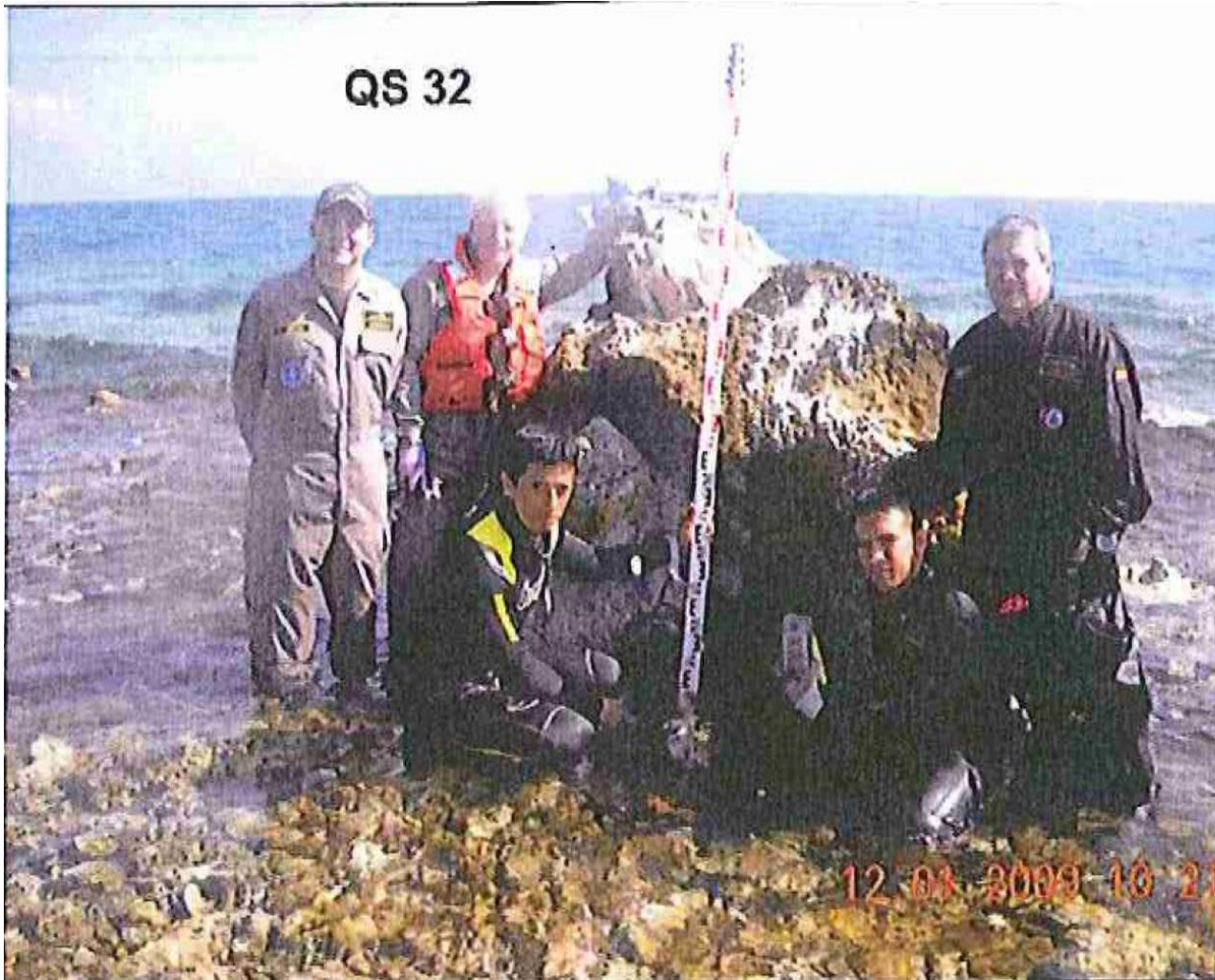
**Photograph of Pedra Branca (foreground)
and Middle Rocks (as labelled)**
(South Ledge is outside the frame of this photograph)



Sipadan and Ligitan



Quitasueño, QS 32



QS 32:

14° 22' 07.2"N;

81° 08' 31.5"W

Coral 1.505 meters
above MSL.

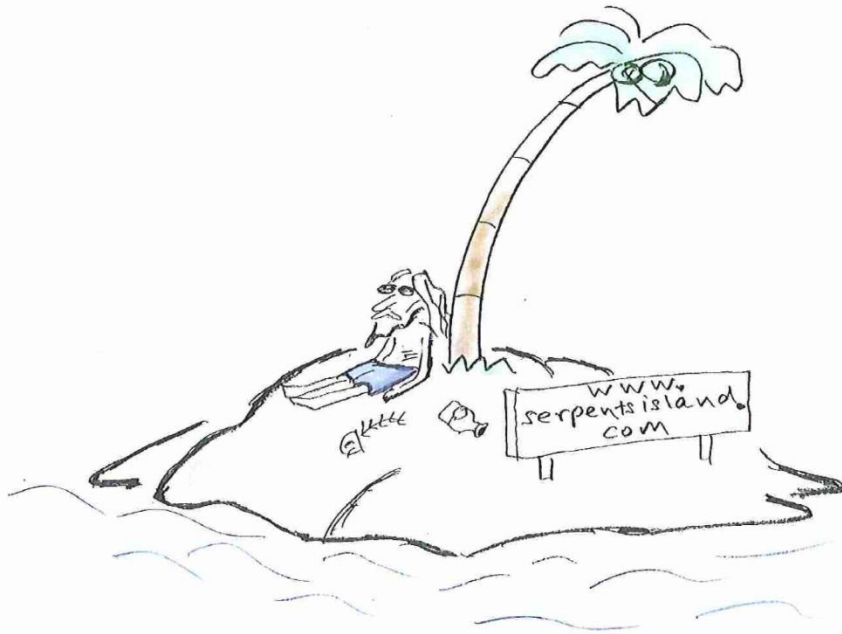
Time 10:25

Date 1 Dec 09

Note the white guano
on the rock indicating
that it is above water
at all times.

What is an island under international law?

"Economic life of its own"



R. Cleverly
(after Artizans)

- Article 121 (1) of the UN Convention on the Law of the Sea (UNCLOS):
 - “An island is a naturally formed area of land, surrounded by water, which is above water at high tide”.

Acquisition of title over an island

- Various modes of acquisition of title:
 - Original or historic title
 - Treaty of cession
 - Display of sovereign authority
- When there is no prior title: the role of *effectivités* in showing the better title
- *Effectivités* involve the exercise of continuous and peaceful sovereign activities

Effectivités in the particular context of islands

- The criteria must be “tempered to suit the nature of the territory and the size of its population, if any” (*Eritrea-Yemen* arbitration).
- “international law is satisfied with varying degrees in the display of state authority, depending on the circumstances of each case” (*Pedra Branca* case).

Effectivités in the particular context of islands

- The maritime features in dispute are often small and uninhabited islands
- Principle of *uti possidetis juris* or other modes of acquisition of sovereignty are therefore often unhelpful (*Honduras-Nicaragua; Nicaragua-Colombia*)
- However, importance of acquiescence of another state to determine acquisition through *effectivités* (*Pedra Branca* case)

Sources of evidence for *effectivités*

- Emphasis on official acts carried out *à titre souverain* versus than private acts (acts of fishermen disregarded in the *Indonesia-Malaysia* case)
- Legislation relating to the island (e.g. environmental regulations in the *Indonesia-Malaysia* case)
- Official infrastructure projects (e.g. construction and maintenance of lighthouses in the *Yemen-Eritrea* case)
- Governments authorisations and permits relating to the island (e.g. regulation of fishing in the *Nicaragua-Honduras* case)
- Policing and other administrative acts

Critical date

- Critical date: date when the dispute can be said to have crystallised.
- Post-critical date activities not relevant unless they constitute the normal continuation of previous acts.

Maps

- Maps are given variable probative value:
 - Privileged status of maps annexed to a treaty (*Burkina Faso-Mali*)
 - Used for treaty interpretation when they form part of *travaux préparatoires* (*Indonesia-Malaysia*)
 - Evidence of pattern of administrative activities
 - Evidence of acquiescence/admissions (*Ethiopia-Eritrea* arbitration, *Indonesia-Malaysia* case)
 - Expression of expert opinions
 - Evidence of general repute (as argued by Yemen in the *Yemen-Eritrea* arbitration)



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