



HA 41/09

The Permanent Mission of Malaysia to the United Nations presents its compliments to the Secretary-General of the United Nations and, with reference to the Note Verbale No. 000819 dated 4 August 2009 from the Permanent Mission of the Republic of the Philippines to the United Nations, has the honour to state the position of the Government of Malaysia as follows:

The Joint Submission of Malaysia and the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf (hereinafter referred to as "the Joint Submission") to establish the limits of the continental shelf appurtenant to Malaysia and the Socialist Republic of Vietnam beyond 200 nautical miles from their baselines from which the breadth of their respective territorial seas are measured in respect of the southern part of the South China Sea, constitutes legitimate undertakings in implementation of the obligations of States Parties to the United Nations Convention on the Law of the Sea 1982 (UNCLOS 1982). The Joint Submission conforms to the pertinent provisions of UNCLOS 1982 as well as the Rules of Procedure of the Commission on the Limits of the Continental Shelf.

The Joint Submission is made without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts in consonance with Article 76 (10) of UNCLOS 1982, Article 9 of Annex II of UNCLOS 1982, Rule 46 of the Commission's Rules of Procedure, and Paragraphs 1, 2 and 5 of Annex I to the Commission's Rules of Procedure. Similarly, the Joint Submission is without prejudice to the position of States which are parties to a land or maritime dispute in consonance with Paragraph 5 (b) of Annex I to the Commission's Rules of Procedure.

The Government of Malaysia has informed the Republic of the Philippines of its position prior to the submission of the Joint Submission to the Commission on the Limits of the Continental Shelf. In addition, both the Governments of Malaysia and the Socialist Republic of Vietnam had proposed to the Government of the Republic of the Philippines to consider joining the Joint Submission.

With respect to the assertion of the Philippines to "... territorial claims on some of the islands in the area including North Borneo.", as stated in the second paragraph of its Note Verbale, the Permanent Mission wishes to inform the Secretary-General that Malaysia has never recognised the Philippines' claim to the Malaysian state of Sabah, formerly known as North Borneo.

In this respect, the Permanent Mission of Malaysia wishes to draw the attention of the Secretary-General to the Judgment of the International Court of Justice dated 23 October 2001 in the *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan and the Application by the Philippines for permission to Intervene*. On the issue of the Philippine claim to North Borneo, Judge Ad-hoc Franck, in a Separate Opinion stated that "in light of the clear exercise by the people of North Borneo of their right to self determination, it cannot matter whether this Court, in any interpretation it might give to any historic instrument or efficacy, sustains or not the Philippines claim to historic title. Modern international law does not recognise the survival of a right of sovereignty based solely on historic title: not in any event, after an exercise of self-determination conducted in accordance with the requisites of international law, the bona fides of which has received international recognition by the political organs of the United Nations. Against this, historic claims and feudal pre-colonial titles are mere relics of another international legal era, one that ended with the setting of the sun on the age of colonial imperium".

In light of the above, the Philippine's claim to North Borneo clearly, has no basis under international law.

In view of the foregoing, Malaysia respectfully requests the Commission to consider the Malaysia-Vietnam Joint Submission.

The Permanent Mission of Malaysia has further the honour to request that this note be circulated to all members of the Commission on the Limits of the Continental Shelf (CLCS), all States Parties to the United Nations Convention on the Law of the Sea 1982 as well as all Members of the United Nations.

The Permanent Mission of Malaysia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

**Secretary-General
of the United Nations
New York**

