



INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING SOVEREIGNTY OVER
PULAU LIGITAN AND PULAU SIPADAN**

INDONESIA/MALAYSIA

**OBSERVATIONS OF MALAYSIA
ON THE APPLICATION FOR PERMISSION
TO INTERVENE BY THE GOVERNMENT OF
THE REPUBLIC OF THE PHILIPPINES**

2 MAY 2001

**CASE CONCERNING SOVEREIGNTY
OVER PULAU LIGITAN AND PULAU SIPADAN
(INDONESIA/MALAYSIA)**

**Written Observations of Malaysia on the
Application for permission to intervene by the
Government of the Republic of the Philippines**

Introduction

1. These written observations are made by Malaysia in response to the Registrar's letter of 14 March 2001.

2. To summarize, Malaysia categorically rejects any attempt of the Philippines to concern itself with a territorial dispute involving two small islands off the coast of Sabah (formerly North Borneo). The subject of the dispute between Indonesia and Malaysia is not Malaysia's sovereignty over the State of Sabah (which sovereignty Indonesia explicitly accepts and recognises). It is solely the question of title to two small islands off Semporna, Malaysia. Indonesia's claim is based on an interpretation of Article IV of the Convention of 1891 between Great Britain and the Netherlands. Spain had previously expressly recognised British title over the territory which was the subject of the 1891 Convention, by Article III of the Protocol of 1885.¹ The Philippines can have no greater rights than Spain had. The interpretation of the 1891 Convention is thus a matter exclusively between Indonesia and Malaysia, in which the Philippines can have no legal interest. Nor does the Philippines have any legal interest in the subject matter of the specific dispute submitted to the Court by the Special Agreement. The Application completely fails to specify how the Philippines could be affected by the outcome of the case. But even if the Philippines did have a tangential and derivative interest in Malaysia's winning the case against Indonesia (in the

¹ Malaysian Memorial, vol. 2 Annex 15.

sense that this would confirm the territorial extent of the State of Sabah, which State the Philippines claims), such an interest is in no way specific enough to justify the intervention. Malaysia has no need of the Philippines' intervention; Indonesia can gain nothing from it. For the Court to grant the request could appear to give substance to a baseless claim to a much larger territory which is not in dispute between Malaysia and Indonesia. This is wholly outside the purpose of article 62.

3. In these written observations, Malaysia first places in due perspective the "claim" of the Philippines to Sabah, which is the subject of the Philippines application (**Section A**). It then demonstrates that the Philippines has no interest of a legal nature in the dispute submitted to the Court by Malaysia and Indonesia (**Section B**). It shows that there is no specified or legitimate object to the Philippines' request (**Section C**). It submits that, in any event, the Court should refuse that request in the exercise of the power of appreciation given it by article 62 (**Section D**). There follow some brief concluding remarks.

A. The Philippines' claim to Sabah

4. In order to deal with the Philippines' Application, it is not necessary for the Court to pronounce upon its claim to Sabah. However, for the Court to appreciate the issues at stake an outline of the claim may be helpful — the more so since even a brief examination is sufficient to show that the claim is manifestly untenable.²

² In its application, the Philippines has not bothered to explain to the Court the "legal basis" of its claim to Sabah. That claim was first introduced by Philippines' representatives in the General Assembly in 1962. See *General Assembly Official Records*, 1177th mtg., 27 November 1962, pp. 874-877 (attached as Annex 1 to these Observations); *ibid.*, 4th Committee, 1420th mtg., 12 December 1962, pp. 621-622 (attached as Annex 2). The claim was subsequently published as *Philippine Claim to North Borneo, Volume I*, Manila, Bureau of Printing, 1963, 159 pages. Copies of this publication have been lodged with the Court.

5. The Malaysian State of Sabah has a population of 2.6 million and a land area of 73,610 square km. This represents 11% of the population of Malaysia and about 22% of its total area. As a component State of the federation, Sabah has its own legislature, government and public administration. Elections to the State legislature are held every 4-5 years. Altogether 9 elections have been held since 1963. The latest was in March 1999.

6. What is now the State of Sabah has been under the effective control of Malaysia and its predecessors in title since the late-nineteenth century. During this period, it has never been under the control of the Philippines or its predecessors in title. Sabah includes 202 islands, only two of which (Sipadan and Ligitan) are the subject of the present dispute with Indonesia, as specified in the Special Agreement for Submission to the International Court of Justice of the Dispute between Indonesia and Malaysia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan dated 31 May 1997.

7. Unlike Indonesia's claim in the present case, the Philippines' claim extends to the whole of the territory of Sabah. It is presented by the Philippines irrespective of the wishes of the people of Sabah. It is not a claim to two small islands.

8. The Philippines' claim to Sabah was first raised in 1962. It was never presented in any form to the British North Borneo Company. Nor had it been previously presented to Britain. From 1946, Great Britain reported on North Borneo to the Committee established under article 73 (e) of the Charter of the United Nations. During this period the Philippines, as a leader of the decolonization movement and a regular member of the Committee, never once raised any claim to the territory.³ On the contrary it expressly recognised

³ This is despite the fact that a number of claims were made, and annually recorded, by various States to various territories: see e.g. *United Nations Yearbook, 1948-49*, p. 730 and in each successive year until 1961.

British authority over North Borneo in a number of treaties.⁴ It was only after the people of North Borneo agreed in 1961 to consider joining Malaysia that the Philippines' claim was announced. The claim was and is based on an alleged "cession" of sovereignty over North Borneo in 1962. The "cession" was signed as a private law document by a group of persons claiming to be private law heirs of the last Sultan of Sulu, Sultan Jamal Al Alam, who died in 1936. As an international legal act it was and is worthless.

9. In fact and in law, the Philippines' claim to Sabah is totally lacking in foundation, *inter alia* for the following reasons.

- (a) As an international entity, the Sultanate of Sulu disappeared in September 1878, when Spain at last succeeded in conquering the sultanate.⁵
- (b) Great Britain recognised Spanish sovereignty over the Sulu Archipelago in 1885. At the same time, Spain expressly renounced...

"as far as regards the British Government, all claims of sovereignty over the territories of the continent of Borneo, which belong, or which have belonged in the past to the Sultan of Sulu (Jolo), and which comprise the neighbouring islands of Balambangan, Banguay, and Malawali, as well as all those comprised within a zone of three maritime leagues from the coast, and which form part of the territories administered by the company styled the 'British North Borneo Company'."⁶

⁴ See e.g. Philippines-United Kingdom, Agreement for Air Services between and beyond their Respective Territories, Manila, 7 January 1948: *United Nations Treaty Series*, vol. 28 p. 63; Philippines-United Kingdom, Agreement for Air Services between and beyond their Respective Territories, Manila, 31 January 1955: *United Nations Treaty Series*, vol. 216 p. 51; Philippines-United Kingdom (on behalf of North Borneo), Agreement concerning migration of Filipino labor for employment in British North Borneo, Manila, 29 August 1955: *United Nations Treaty Series*, vol. 221 p. 241.

⁵ Malaysian Memorial, vol. 2 Annex 12. The Sultan subsequently confirmed his subjection to the United States in an agreement of 20 August 1899: Malaysian Memorial, vol. 2 Annex 20.

⁶ Malaysian Memorial, vol. 2 Annex 15.

Under the law in force at the time, this was a perfectly lawful and valid renunciation. It extinguished any purported claim of sovereignty over British North Borneo by Spain or by Sulu. Any attempt to revive that claim now is wholly precluded.

- (c) The validity of this transaction was expressly recognised by the United States, in its capacity as sovereign over the Philippines and as successor to Spain. Indeed it did so twice, in the Exchange of Notes of 1907⁷ and then in the 1930 Boundary Convention.⁸
- (d) After 1878, neither the Sultan of Sulu nor his heirs had any capacity to hold or cede sovereignty or sovereign rights. The British Government expressly recognised this in the negotiations leading to the 1907 Exchange of Notes.⁹ In fact the Sultanate as an entity within the Philippines was abolished on the death of the last Sultan in 1936.¹⁰

10. The Philippines' claim is to the whole territory of the State of Sabah. Evidently, this claim cannot be reconciled with the treaties of 1885, 1907 and 1930. It is also completely inconsistent with the principle of self-determination. British North Borneo was a non-self-governing territory under Chapter XI of the United Nations Charter. In 1963, the people of North Borneo exercised their right of self-determination, as was affirmed by the Secretary-General of the United Nations. Pursuant to an agreement between the Federation of Malaya, Indonesia and the Philippines,¹¹ and with the consent of the United Kingdom, the Secretary-General conducted a consultation in North Borneo and Sarawak in August-September 1963. Based on the Report of his Mission, the Secretary-General concluded as follows:

⁷ Malaysian Memorial, vol. 2 Annexes 23-24.

⁸ Malaysian Memorial, vol. 2 Annex 29.

⁹ See Malaysian Memorial, vol. 1, para. 5.35; Malaysian Reply, para. 2.4, third dot point.

¹⁰ See Malaysian Memorial, , vol. 1, para. 5.23.

¹¹ Manila Accord, 31 July 1963, *United Nations Treaty Series*, vol. 550 p. 343; Joint Statement, Manila, 5 August 1963, *ibid.*, p. 356. The Secretary-General's mandate was specified in para. 4 of the Joint Statement.

“The Secretary-General referred to the fundamental agreement of the three participating Governments and the statement by the Republic of Indonesia and the Republic of the Philippines that they would welcome the formation of the Federation of Malaysia provided that the support of the people of the territories was ascertained by him, and that, in his opinion, complete compliance with the principle of self-determination within the requirements of General Assembly resolution 1541(XV), Principle IX of the Annex, had been ensured. He had reached the conclusion, based on the findings of the Mission that on both of these counts there was no doubt about the wishes of a sizeable majority of the people of those territories to join in the Federation of Malaysia.”¹²

The text of the Secretary-General’s Report is attached as Annex 3.

11. Even after the choice of the people of the territory was confirmed by the Secretary-General in 1963, the Philippines continued sporadically to raise its claim to Sabah. It has however produced no arguable basis of claim. Discussions with Malaysia have focussed exclusively on ways in which the Philippines might withdraw its claim without offending its own domestic public opinion. It was in this sense that the Malaysian Prime Minister described the claim as a “domestic problem” for the Philippines. There have been no negotiations between Malaysia and the Philippines even on that limited subject since 1987. The Philippines refers to “diplomatic negotiations, official international correspondence, and peaceful discussions that have not been concluded” (Philippines’ Application, para. 4 (b)). There are no such negotiations pending, no unanswered correspondence and no continuing discussions of any kind on the claim.

12. It should be stressed that the Philippines has never made a claim to *parts* of Sabah: its claim is to the territory of the State as a whole. Its claim to

¹² Report of the Secretary-General, 14 September 1963, as set out in *United Nations Yearbook*, 1963, p. 43. See also Annual Report of the Secretary-General on the Work of the Organization, 16 June 1963—15 June 1964, *General Assembly Official Records*, 19th session, Supp. No. 1 (A/5801), pp. 26-28.

Sabah derives from the Sulu grant of 1878. In its view, that grant was only a temporary lease,¹³ and a right of reversion has survived (a) the extinction of the Sultanate as an international person; (b) the express recognition of British rights over North Borneo by Spain in 1885; (c) the express recognition of British sovereignty by the United States in 1930; (d) the complete suppression of the Sultanate by the United States in 1936; (e) the subsequent recognition of British rights to North Borneo by the Philippines after it became independent.

13. Even if (*quod non*) these obstacles could be overcome, the two islands which are the subject of the present dispute were *not* covered by the grant of 1878. Someone claiming a right of reversion to territory covered by that grant would not be entitled to the two islands.¹⁴ Even in its own terms, the Philippines' claim to Sabah gives it no right to the islands.

B. The Republic of the Philippines has no interest of a legal nature in the case before the Court

14. Article 62 requires a State which seeks to intervene to establish "an interest of a legal nature which may be affected by the decision in the case". As the Court has made clear in previous cases...

"...In order to obtain permission to intervene under Article 62 of the Statute, a State has to show an interest of a legal nature which may be affected by the Court's decision in the case or that *un intérêt d'ordre juridique est pour lui en cause* – the criterion stated in Article 62."¹⁵

15. The burden of proof of the existence of an interest of a legal nature lies with the State seeking to intervene. In the *Land, Island and Maritime Frontier*

¹³ In fact the grant (Malaysian Memorial, vol. 2 Annex 9) is expressed to be "for ever" and there is no right of reversion. See also Malaysian Memorial, vol. 2 Annex 10.

¹⁴ Malaysia and Indonesia agree that the two islands were not covered by the 1878 grant. See Malaysian Memorial, vol. 1, p. 39; Indonesian Memorial, vol. 1, p. 14.

¹⁵ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, ICJ Reports 1990*, p. 114, para. 52.

Dispute (El Salvador/Honduras), Application to Intervene case, the Chamber of the Court noted:

“..it is clear, first, that it is for a State seeking to intervene to demonstrate convincingly what it asserts, and thus to bear the burden of the proof; and, second, that it has only to show that its interest ‘may’ be affected, not that it will or must be affected. What needs to be shown by a State seeking permission to intervene can only be judged *in concreto* and in relation to all the circumstances of a particular case. It is for the State seeking to intervene to identify the interest of a legal nature which it considers may be affected by the decision in the case, and to show in what way that interest may be affected; it is not for the Court itself – or in the present case the Chamber – to substitute itself for the State in that respect.”¹⁶

16. The Special Agreement of 31 May 1997 and the submissions of the Parties in the present case define the scope of the dispute before the Court and the decision called for. As the Court remarked in *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene*:

“Normally, the scope of a decision of the Court is defined by the claims or the submissions of the parties before it: and in the case of an intervention it is thus by reference to the definition of its interest of a legal nature and the object indicated by the State seeking to intervene that the Court should judge whether or not the intervention is admissible.”¹⁷

17. The admissibility of the intervention as regards the existence of a legal interest thus depends on a comparison of on the one hand, the scope of the decision sought by the parties under the Special Agreement and their submissions, and on the other hand, the interest alleged by the third party.

18. The Special Agreement between Indonesia and Malaysia of 31 May 1997, Article 2, specifies the “Subject of the Litigation” in the following terms:

¹⁶ *Ibid.*, pp. 117-118, para. 61.

¹⁷ *Continental Shelf (Libyan Arab Jamahiriya/Malta) Application for Permission to Intervene*, ICJ Reports 1984, p. 19, para. 29.

“The Court is requested to determine on the basis of the treaties, agreements and any other evidence furnished by the Parties, whether sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia or to the Republic of Indonesia.”¹⁸

19. The submissions of the Republic of Indonesia, concluding its Memorial, state:

“On the basis of the considerations set out in this Memorial, the Republic of Indonesia requests the Court to adjudge and declare that:

(a) sovereignty over Pulau Ligitan belongs to the Republic of Indonesia; and

(b) sovereignty over Pulau Sipadan belongs to the Republic of Indonesia.”¹⁹

20. The submissions of Malaysia, concluding its Memorial, state:

“In the light of the considerations set out above, Malaysia respectfully requests the Court to adjudge and declare that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia.”²⁰

21. Against this background it is necessary to consider what interest of a legal nature is alleged by the Philippines.

22. The first point to note is that the Philippines Application is extremely vague and indecisive in this respect. As the Chamber in the *Land, Island and Maritime Frontier Dispute case (El Salvador/Honduras), Application to Intervene* stressed, “there needs finally to be clear identification of any legal interests that may be affected.”²¹ But the Philippines is anything but clear. In paragraph 2 (b) of its Application it says that it wishes to state its “view as to how the determination of sovereignty over Pulau Ligitan and Pulau Sipadan

¹⁸ Malaysian Memorial, vol. 1, p. 1.

¹⁹ Indonesian Memorial, vol. 1, p. 187.

²⁰ Malaysian Memorial, vol. 1, p. 114.

²¹ *I.C.J. Reports 1990*, p. 118, para. 62.

may or may not affect” its legal rights and interests (emphasis added). In paragraph 4 (a), it says that...

“The interest of the Republic of the Philippines is solely and exclusively addressed to the treaties, agreements and other evidence furnished by the Parties and appreciated by the Court which have a *direct or indirect* bearing on the matter of the legal status of North Borneo.” (emphasis added)

This is wholly lacking in precision or specificity.²²

23. In any event, the legal status of Sabah as such does not have any relation to the question of sovereignty over Sipadan and Ligitan. As noted already, the Philippines’ claim rests on the grant by the Sultan of Sulu in January 1878 to Baron van Overbeck and Mr. Alfred Dent. The grant concerned territory on the mainland of Borneo, “together with all the islands included therein within nine miles of the coast”.²³ Ligitan and Sipadan lie more than nine miles from the coast and they were not included in the grant. Malaysia’s title to them is completely independent of the grant of 1878 (even if that grant was capable of bearing the interpretation the Philippines puts on it, which it is not).

24. The dispute submitted by Indonesia and Malaysia to the Court rests on the interpretation of the Convention of 20 June 1891, concluded by Great Britain and the Netherlands. Spain was not a party to the Convention. The Convention is *res inter alios acta* as far as the Philippines is concerned.

25. It is significant that not one of the 33 Appendices, appended to the “Philippine Claim to North Borneo, Volume I” published by the Philippines in 1963, is related to the issue presented by the parties in the Special Agreement. Neither the 1891 Convention between Britain and the Netherlands, nor the

²² Subsequently it asserts that the Court’s decision will “inevitably and most assuredly affect the outstanding territorial claim of the Republic of the Philippines to North Borneo”, but it does not say how.

²³ Malaysian Memorial, vol. 2 Annex 9.

1900 Treaty between the United States and Spain, nor the 1907 Exchange of Notes, nor the 1930 Convention between Britain and the United States are included in the lengthy list of appended documents allegedly supporting the Philippines claim.²⁴

26. The interest of a legal nature the Republic of Philippines refers to in its Application is much more general in scope. The Philippines declares:

“A decision by the Court, or that incidental part of a decision by the Court, which lays down an appreciation of specific treaties, agreements and other evidence bearing on the legal status of North Borneo will inevitably and most assuredly affect the outstanding territorial claim of the Republic of the Philippines to North Borneo, as well as the direct legal right and interest of the Philippines to settle that claim by pacific means.”

27. In the *Land, Island and Maritime Frontier Dispute case (El Salvador/Honduras), Application to Intervene*, the Chamber of the Court granted Nicaragua a limited permission to intervene, but did not accept the more general request:

“The Chamber does not however consider that an interest of a third State in the general legal rules and principles likely to be applied by the decision can justify an intervention. Even when, as in the case of Malta’s Application for permission to intervene in the case between Libya and Tunisia, the State seeking to intervene ‘does not base its request for permission to intervene simply on an interest in the Court’s pronouncements in the case regarding the applicable general principles and rules of international law’, but ‘bases its request on quite specific elements’ in the case (*I.C.J. Reports 1981*, p. 17, para. 30), the interest invoked cannot be regarded as one which ‘may be affected by the decision in the case’ (*I.C.J. Reports 1981*, p. 19, para. 33). The consideration urged in paragraph 2 (*d*) of the Application is thus insufficient to show the existence of an interest of a legal nature.”²⁵

²⁴ *Philippine Claim to North Borneo*, Manila, Bureau of Printing, 1963, Volume I, pp. 41-43.

²⁵ *I.C.J. Reports 1990*, p. 124, para. 76. See also p. 126, para. 82, p. 128, para. 84.

28. Likewise, in the present case, the Philippines have not shown that the alleged interest, their claim to North Borneo, “may be affected by the decision in the case”.

29. The Philippines alleges an even vaguer legal interest as to “an appreciation of specific treaties, agreements and other evidence bearing on the legal status of North Borneo”. Again this is wholly unparticularised, and any interest the Philippines may have is adequately protected by the terms of Article 59 of the Statute.

30. The truth of the matter is that the Philippines is trying, by way of an article 62 intervention, to put before the Court a completely different dispute, which raises against Malaysia the issue of sovereignty over the whole of Sabah and its people. This is unacceptable. In particular, it ignores the basic condition of consent (see Application, para. 7, where the Philippines asserts that consent is irrelevant). As the Report of the Advisory Committee of Jurists stated in 1920:

“The Court is to decide whether the interest is legitimate and consequently whether the intervention is admissible. To refuse all right of intervention, might have unfortunate results. The essential point is to limit it to cases in which an interest of legal nature can be shown, so that political intervention will be excluded, and to give the Court the right of decision.”²⁶

31. This very same reason led the Court to refuse Italy permission to intervene in the *Continental Shelf case (Libyan Arab Jamahiriya/Malta)*. In its judgment on the *Application for Permission to Intervene*, the Court said:

“It has been emphasized above that the Italian Application to intervene tends inevitably to produce a situation in which the Court would be seised of a dispute between Italy on one hand and Libya and Malta on the other, or each of them separately, without the consent of the latter States: Italy would thus become a party to one or several disputes which are not before

²⁶ Quoted by S. Rosenne, *The Law and Practice of the International Court, 1920-1996* (1997) vol. III, p. 1484.

the Court at present. In this way the character of the case would be transformed.”²⁷

32. Again in the *Land, Island and Maritime Frontier Dispute case (El Salvador/Honduras), Application to Intervene*, the Court remarked:

“Intervention under Article 62 of the Statute is for the purpose of protecting a State’s ‘interest of a legal nature’ that might be affected by a decision in an existing case already established between other States, namely the Parties to the case. It is not intended to enable a third State to tack on a new case, to become a new part, and so to have its own claims adjudicated by the Court ... Intervention can not have been intended to be employed as a substitute for contentious proceedings.”²⁸

33. Thus the Philippines’ request fails to demonstrate a legal interest in the subject matter of the particular dispute between Malaysia and Indonesia and is inadmissible *in limine*.

C. The Philippines request has no permissible object

34. In considering a request to intervene under article 62 of the Statute, it is essential to identify the object of the Request. The Philippines clearly understands this, since one of its sections is headed “The Object of the Intervention Requested”. Yet the Philippines fails completely to state any permissible object.

35. In the section in question, the Philippines identifies three objects of its request (para. 5).

(a) “To preserve and safeguard the historical and legal rights... over the territory of North Borneo...”

36. The first and evidently primary “object” of the Philippines is to advance and assist its claim to Sabah (para. 5 (a)). Despite its protestations

²⁷ I.C.J. Reports 1984, p. 25, para. 41.

²⁸ I.C.J. Reports 1990, pp. 133-4, paras. 97, 99.

that “it does not intend to change the subject matter, the nature or the scope of the current proceedings between Indonesia and Malaysia”, that is precisely the effect its intervention seeks to achieve.

37. Indonesia does not dispute Malaysia’s sovereignty over Sabah. It accepts Malaysia’s sovereignty under the 1891 Convention and subsequent instruments; the 1891 Convention is the *basis* of its claim to the two islands. Thus the question sought to be raised by the Philippines (the legitimacy of a claim to Sabah) is precisely *not* an issue in the case between Indonesia and Malaysia. For Indonesia or Malaysia to respond to any substantive statement that might be made by the Philippines would lead them both into questions which have nothing to do with the present case and which would be a pure distraction from the legal issues which the Court is called on to decide.

38. It may also be noted that the Philippines is one of many States which recognises that the two islands are part of Sabah. In connection with the recent hostage crisis arising from the seizure of Malaysians and others from Sipadan, the Philippines repeatedly characterised the abduction as having occurred “in Malaysia”, “from an island resort in Malaysia” and “from a Sipadan diving resort in Malaysia”. Illustrative statements are attached to these Observations as Annex 4.

(b) *“To inform the Honourable Court...”*

39. Secondly, the Philippines states as an object of its intervention “to inform the Honourable Court of the nature and extent of the historical and legal rights of the Republic of the Philippines which may be affected by the Court’s decision” (para. 5 (b)).

40. The Court needs no such information other than the following. The Philippines in 1962 made a spurious and legally unsupportable claim to Sabah as a whole. That claim has nothing to do with the particular islands in dispute.

Indeed, since the Philippines' claim is based on the 1878 Sulu grant, it self-evidently has no application to the islands, which lie beyond the scope of that grant.

41. Information about the Philippines' claim will do nothing to assist the Court in resolving the dispute between the parties to the Special Agreement, Malaysia and Indonesia. The case has now been fully pleaded, over three rounds of written pleadings with some 684 annexes and 136 maps deposited by the two parties. As a result of the extensive research done by the parties, there is not the slightest indication that any information about the alleged "historical and legal rights" of the Philippines has any bearing on this specific dispute. The Court is now fully informed about the dispute and can proceed to decide it, as between the parties, without any reference to the Philippines' claim.

(c) *"Comprehensive conflict resolution"*

42. The third object cited by the Philippines is "to appreciate more fully the indispensable role of the Honourable Court in comprehensive conflict resolution and not merely the resolution of legal disputes". This is a purely abstract and general matter, on which the Court needs no instruction from the Philippines or anyone else. It is a gratuitous and impermissible object for an intervention.

43. Malaysia and Indonesia submitted to the Court a precise legal dispute over two islands, which dispute had arisen between them without any involvement whatever on the part of the Philippines. The resolution of that specific dispute will not be assisted in the slightest by the Philippines' intervention. Nor does any question of "comprehensive conflict resolution" arise. The Court is called on to resolve a specific claim made by Indonesia, not to range around a region comprehensively resolving its many disputes.

44. In any event there can be no resolution of a dispute in respect of a State which does not seek to become a party to a case,²⁹ and could not do so. In this regard it may be noted that the Philippines specifically exempts from the Court's jurisdiction under Article 36 (2) of the Statute all disputes concerning territory of or claimed by the Philippines.³⁰ Its concern for "comprehensive conflict resolution" stands in stark contrast with its own legal actions.

45. It may also be noted that the Philippines could have brought legal proceedings against Great Britain at any time from 1946 until 1962, before the act of self-determination which resulted in the federation of Malaysia. It failed to do so then. It should not be allowed at this late hour to advance its claim through the side door of article 62.

D. In any event the Court ought to reject the request

46. The Court in dealing with requests for intervention under article 62 of the Statute has a power of appreciation. This is clear from the use of the word "may" in article 62 (1), from the terms of article 62 (2), and from the contrast with the word "right" in article 63. It is true that the Court does not have "any general discretion to accept or reject a request for permission to intervene for reasons simply of policy".³¹ But an application to intervene has to be duly justified in the circumstances, and it is for the Court to appreciate whether this is the case.³²

²⁹ See Philippines Application, para. 6.

³⁰ Philippines Optional Clause Declaration of 23 December 1971, proviso (e) (ii): *United Nations Treaty Series*, vol. 808 p. 3. The Philippines' Declaration is attached as Annex 5.

³¹ *Tunisia/Libya (Maltese Request for Intervention)*, *I.C.J. Reports 1981*, p. 3 at p. 12, para. 17; repeated in *Libya/Malta (Italian Request for Intervention)*, *I.C.J. Reports 1984*, p. 3 at pp. 8-9, para. 12.

³² Thus S. Rosenne speaks of "the complete absence of anything automatic" in intervention, whether under article 62 or 63: *Intervention in the International Court of Justice*, Nijhoff, Dordrecht, 1993, p. 185.

47. It is respectfully submitted that, even if the Philippines' request were held to be admissible and to state an object which could be protected by intervention, it should be rejected. This is so, *inter alia*, for the following reasons:

- (a) The Philippines can derive no possible benefit from Indonesia's winning the case. If it has a legal interest, it must be to support Malaysia's claim. Yet its intervention is obviously hostile to Malaysia.
- (b) Malaysia categorically rejects the intervention. A third State should not be permitted to intervene, when its only legal interest can be to support the legal position of a party which rejects its intervention.
- (c) To accept the intervention will be seen as lending credibility to a much broader (and indefensible) claim to the State of Sabah.
- (d) That broader claim is completely unaffected by the case between Malaysia and Indonesia, or by the legal issues as they have been defined in the pleadings.
- (e) That broader claim, based on the 1878 grant, on the face of it does not extend to the two islands in dispute in the present proceedings.
- (f) If the Philippines wishes to inform the Court, the mere fact of its Application sufficiently does so.

Concluding remarks and submissions

48. In effect what the Philippines seeks from the Court is recognition that "the legal status of North Borneo [*sic*] is a matter that the Government of the Republic of the Philippines considers as its legitimate concern". It is not the function of intervention to allow third States, without any legal risk to themselves, to pursue separate (and untenable) territorial claims. For these

reasons it is the case, as it was in *El Salvador/Honduras*, that the Philippines' request is "too general" to justify intervention.³³

49. The present case is the first Asian territorial dispute brought to the Court for 40 years. It is the first dispute ever brought to the Court by a Special Agreement between two Asian States. It is respectfully submitted that the Parties to the Special Agreement should be allowed to deal with their own particular dispute without the gratuitous intervention of a third State, seeking to advance its own unfounded claims to a much wider territory.

50. In short, not merely has the Philippines no right to intervene, it has no claim to make. Malaysia urges the Court to reject the request.

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Agent of Malaysia

Kuala Lumpur

2 May 2001

³³ *ICJ Reports 1990*, p. 125, para. 37.

LIST OF ANNEXES

Annex No.

1. *General Assembly Official Records*, 1177th mtg., 27 November 1962, pp. 874-877
2. *General Assembly Official Records*, 4th Committee, 1420th mtg., 12 December 1962, pp. 621-622
3. United Nations Malaysia Mission Report, "Final Conclusions of the Secretary-General", 14 September 1963
4. Recent Philippines statements pertaining to Sipadan
5. Philippines Optional Clause Declaration, 23 December 1971

ANNEX 1

General Assembly Official Records, 1177th mtg., 27 November 1962

who have grown accustomed to basing their prosperity largely on the exploitation of other peoples are consumed by hatred of the peoples of the socialist States, which have given an example of how to eject foreign plunderers from one's home and how to manage one's own wealth and build one's own life.

120. Certain international circles interested in fanning hatred of the Soviet Union and in attempting to undermine its prestige often try to shift this thankless task to others who are prepared to oblige them. I regret to say that among those who often prove obliging are some Canadian politicians with a markedly anti-Soviet bent. There is no need to go into the details of the Canadian representative's unsavoury insinuations about the Soviet peoples, including the Ukrainians. We should merely like to say that his was a pitiful attempt at substituting for the genuine problem of the peoples' liberation from colonialism, which calls for immediate solution, "problems" fabricated by the colonialists, who have lost their self-possession and their heads and are fighting a hopeless rearguard action against the national liberation movement.

121. It is interesting to note that his statement, in which slander alternated with hypocritical sighs, the Canadian representative also tried to play on the pride of the Soviet peoples, upon whom he showered high-sounding epithets in an attempt to make the insincerity and tendentiousness of his remarks more palatable. He called the Ukrainian peoples "freedom-loving", apparently not realizing that from the lips of a champion of colonialism even well-deserved recognition of a people's qualities may sound like an insult. Let the Canadian delegation make no mistake about it: our peoples is aware of the true motives which impel Canadian statesmen, when addressing international or domestic audiences, to echo the tunes of imperialist reaction whenever reference is made to the Ukrainians and the other Soviet peoples. The Ukrainian people is truly freedom-loving, and that is precisely why it will not permit the imperialists and their yes-men to interfere in the internal affairs of our close-knit fraternal family of socialist peoples, which have attained independence, freedom and power and are confidently building their bright communist future.

122. The threat to world peace and security will persist until all the peoples of the world are ensured equality and independence and until the last link in the colonial chain has been smashed. The right of every people to put an end to foreign oppression is sacred and inalienable. We are certain that that right will inevitably triumph throughout the world.

123. My delegation will support any proposals aimed at the attainment of the noble objective proclaimed in the Declaration on the granting of independence to colonial countries and peoples—that of the immediate and complete elimination of colonialism in all its forms and manifestations.

Mr. Plimsoll (Australia), Vice-President, took the Chair.

124. Mr. RAMOS (Philippines): The process of decolonization set in motion at the end of the Second World War constitutes one of the brightest chapters in the story of man's perennial quest for freedom. It has brought about a revolution which in scope and import ranks with other great political developments which have profoundly affected the quality of civilization and the course of history.

125. Two powerful forces have made this revolution possible. The first is the rise of nationalism which, pervading all ranks of society, supplied the motive power for the militant assertion of the right to self-determination and other basic human rights. The second is the growth of modern communications which speeded up the widespread dissemination of the libertarian principles embodied in the Charter of the United Nations.

126. The United Nations itself has played a vital role in this revolution. It has served as a catalyst in the process of decolonization, channelling independence movements along peaceful lines and ensuring that the newly independent nations should immediately find their rightful place in a community of free States professing allegiance to the rule of law. The work of the Special Committee of Seventeen reflects the profound concern of the United Nations for the speedy liberation of the remaining colonial territories. The progress reported by that Committee is encouraging.

127. We have reason to feel gratified by this development, but the intensity of the debates on the issue of colonialism suggests that our work is far from done. For colonialism is a parasitic infection which does not respond uniformly to a given treatment. It follows the classic phases of apparent cure and sudden reversal, and its outstanding characteristic is the tenacity with which it clings to its chosen victims. Thus in our own time, even as we strive to hasten the liquidation of old-style colonialism, we have seen the emergence of subtler forms of subjection which are as dangerous in their implication as they are clever in disguising their true character. It is an essential part of our task to be on our guard against all manifestations of this newer form of colonialism, to expose them wherever they may arise, and to oppose their perpetuation with the same energy and determination that we have devoted to the liquidation of the older forms of colonialism.

128. Let us never forget that colonialism in any form is never justified. For all forms of colonialism assume, as a first principle, the evil doctrine that one group of people is superior to another. In its grossest form, colonialism violates the fundamental human rights of the subject people, distorts and perverts their personality, and ruthlessly exploits their national patrimony.

129. My country's special concern with the issue of colonialism arises from the fact that for over 400 years we Filipinos were a subject people. We were a colony of Spain for more than 300 years and were under the United States of America for nearly half of a century. To a greater or less degree, we therefore share with the peoples of the former colonies the traumatic experience of having been ruled against our will by alien Powers.

130. The Filipino people are among the oldest revolutionaries in the world. During the almost four centuries of Spanish rule, we rose in revolt on an average of once every two years. The last of those persistent uprisings finally succeeded in 1898.

131. On 12 June of that year, the leader of the Philippine revolutionary forces proclaimed the Republic of the Philippines—the first free democratic State to emerge in colonial Asia. In defence of that first Philippine Republic, our people fought the United States of America in a war that lasted for more than three years and ended only when we had nothing

left with which to resist the superiority in arms and numbers of the United States forces.

132. Thereafter, our people embarked upon a determined and uncompromising campaign for immediate, absolute and complete independence. This campaign was carried on peacefully through constitutional means, thanks to the adoption by the United States of America of a policy based on the recognition of the Filipino people's right to self-determination. However, it took our people more than thirty years of peaceful struggle for that policy to be embodied in legislation setting a definite date for the recognition of Philippine independence. And after those thirty years, another decade passed before the Republic of the Philippines was finally re-established.

133. This historic event took place on the fourth of July, 1946, at the very beginning of the process of decolonization to which I have referred. The re-established Philippine Republic, a Charter Member of the United Nations, was the first of the former colonies in Asia to function as a free and independent State. In that sense, it may be said to have ushered in the era of emancipation of colonial peoples which we are now seeking to consolidate and bring to fulfilment.

134. After this brief historical review of the independence movement in the Philippines, highlighting the position of my Government on the question of colonialism, I now wish to address myself to a part of the report of the Special Committee of Seventeen which is before us in document A/5238. I refer to that part which affects our sovereignty over North Borneo in relation to a project to establish a new federation called the Federation of Greater Malaysia.

135. These two subjects—sovereignty over North Borneo and Federation of Greater Malaysia—are of particular interest to the Philippines because the establishment of this new Federation of Greater Malaysia would involve the transfer of sovereignty over North Borneo. The Philippines has put forward a formal claim of sovereignty over North Borneo. A dispute has arisen between the Philippines and the United Kingdom over this issue, a dispute which yet remains unsettled.

136. The Vice-President and Secretary of Foreign Affairs of the Philippines, in a policy statement made before this Assembly in the morning of 27 September 1962, referred briefly to the claim of the Philippine Government to the territory of North Borneo. He said among other things, and I quote:

"Our claim has been put forward with sincere assurances that the issue should be settled by peaceful means, and without prejudice to the exercise of the right of self-determination by the inhabitants of North Borneo, preferably under United Nations auspices." [1134th plenary meeting, para. 25.]

137. Later in the same meeting, the representative of the United Kingdom said:

"... with regard to the claim to North Borneo, I must place it on record that the United Kingdom has no doubt as to its sovereignty over the territory" (*ibid.*, para. 127).

By these statements of representatives of the two Governments concerned, the issue of sovereignty over North Borneo was clearly joined.

138. The dispute between the Philippines and the United Kingdom regarding sovereignty over North Borneo stems mainly from the different interpretations which the two countries have placed on a deed that was signed on 22 January 1878 by Sultan Jamal Al Alam, the head of the Sultanate of Sulu. Before this date, the Sultan of Sulu was the undisputed sovereign and ruler of North Borneo. The deed is in Arabic characters, and the text is in the Malayan language. The key word is the Malayan word "padjak", which means "lease" and which in our view clearly indicates that the territory was leased, not sold or ceded as the United Kingdom Government erroneously claims.

139. The manner of payment, which is made annually, bears out our conviction that that agreement was a lease agreement. So does the amount of rental money, which was 5,000—later increased to 5,300—Malayan dollars per annum, about 1,800 United States dollars a year or 150 United States dollars a month, for a territory comprising 29,388 square miles, approximately the size of Ireland.

140. When the original lessee, a private company called the British North Borneo Company, transferred its rights to the territory to the United Kingdom on 26 June 1946, it transferred leasehold rights, not sovereign rights, for the simple reason that the company could not transfer rights that it did not itself have. And when, with understandable haste, the United Kingdom Government annexed the territory of North Borneo as a Crown colony on 10 July 1946—six days after the re-establishment of the Republic of the Philippines—the United Kingdom Government performed an act of questionable legality.

141. Seven years before, a British court had handed down an opinion, which reads:

"It is abundantly clear that the successor in sovereignty of the Sultan of Sulu are the Government of the Philippine Islands...".

This quotation, which throws a revealing light on the question of sovereignty over North Borneo, is from a decision by Chief Justice Macaskie of the High Court of North Borneo in a suit that was brought by the heirs of Sultan Jamalul Kiram, the head of the Sulu Sultanate from 1894 until his death in 1936. While we are not prepared to accept all the pronouncements made by Justice Macaskie, we are making reference to his decision for the purpose of bringing out the reason which impelled the present Sultan of Sulu to cancel the lease over the territory a few years later.

142. The suit before the Borneo courts was in the nature of an interpleader initiated for the purpose of getting a judicial pronouncement as to who were the heirs of the late Sultan Jamalul Kiram entitled to receive the rental provided for in the deed of 1878. In his decision Justice Macaskie made a distinction between what he called "the private heirs" of the deceased Sultan, who were entitled to the annual payment of 5,300 Malayan dollars, and the "successors in sovereignty" of the Sultan. Justice Macaskie declared Princess Tarhata Kiram and eight others the private heirs of the Sultan and the Philippine Government as the successors in sovereignty.

143. The United Kingdom Government was fully aware of the opinion of Justice Macaskie that the successors in sovereignty of the Sultan of Sulu were the Gov-

ernment of the Philippine Islands. It was likewise aware of the fact that Princess Tarhata Kiram and eight other had been declared by the High Court of North Borneo as the private heirs of the said Sultan. But when it annexed North Borneo on 10 July 1946, and five days later assumed sovereignty over the territory, the United Kingdom Government notified neither the Philippine Government nor the Sultan's heirs of the annexation and the assumption of sovereignty. A distinguished American, a great advocate of the principle of self-determination, none other than the Honourable Francis Burton Harrison, who has made a legal study of the North Borneo case, has called the annexation of North Borneo by the United Kingdom Government an act of political aggression. In 1957 Sultan Esmail Kiram issued a proclamation cancelling the lease of 1878. A formal notice of the cancellation was sent to the United Kingdom Government in London, to the British North Borneo Company in Jesselton and to the Secretary-General of the United Nations in New York.

144. Let us consider another portion of the report of the Special Committee which deals with the question of self-determination for the people of North Borneo. The Committee has circulated a number of petitions concerning colonial territories. Among these petitions is one ^{4/} dated 9 September 1962 from political parties in North Borneo, Sarawak and Brunei, requesting the United Nations "to intervene in the proposed transfer of sovereignty in Sarawak and Sahah". North Borneo is also known as Sabah—"on the ground that such a transfer is a denial to the peoples in these territories of their right to self-determination and of their right to complete independence". Alternatively, the petition asks the United Nations to organize and conduct a plebiscite before the transfer of sovereignty.

145. The petition reads in part as follows:

"13. The assessment of the [Cobbold] Commission was that about one third of the population strongly favoured realization of Malaysia without conditions, one third favoured it with conditions and safeguards and the rest against. This assessment was totally wrong and could not be supported by facts and cannot be accepted by independent impartial observers."

46. The Cobbold report ^{5/} itself makes this admission:

"In assessing the opinion of the peoples of North Borneo ... we have only been able to arrive at an approximation. We do not wish to make any guarantee that it may not change in one direction or the other in the future. Making allowances for all the difficulties and for our inability to reach every part of these large territories, we have arrived at a general consensus of opinion with reasonable confidence, based on individual and representative evidence presented before us."

147. Another part of the Cobbold report contains the admission that because of "insufficient time" the inhabitants of the territory could not make a "careful study" regarding the implications of the

Malaysia proposals for North Borneo. Still another part states:

"There had been no elections. ... Only recently have plans been made for election to District Councils and Town Boards." ^{6/}

148. In other words, since the year 1881, when the British North Borneo Company started administering North Borneo for the Sultan of Sulu, and even as late as 1946, when the United Kingdom Government annexed North Borneo as a Crown colony the inhabitants of the territory have not been given the opportunity to elect even local officials.

149. A parallel situation obtains in the field of education. The figures given in the Cobbold report show that out of the total population aged ten years or over there are only 72,000 literate; 227,000 are illiterate. From the indigenous population of over 300,000, only two persons have gone through college.

150. It is also noteworthy that the so-called "Calendar of Constitutional Advance" [A/5238, annex I] records the fact that a decision in principle has already been arrived at by the Governments concerned that the proposed Federation of Greater Malaysia, which will include North Borneo, will come into being on 31 August 1963, but makes no mention whatsoever of an important part of the decision, namely, the accord reached by those Governments that within six months they will enter into a formal agreement providing for the transfer of sovereignty over North Borneo to the proposed Federation of Greater Malaysia. The six-month period presumably started on the day the decision was arrived at—about the end of July or early August of this year.

151. The schedule of steps leading to the incorporation of the territory into the proposed Federation of Greater Malaysia, the terminal date of which is 31 August 1963, makes it virtually certain that the people of the territory will, after that date, have forfeited their right to express their real opinion on the all-important question of self-determination.

152. Before that happens we earnestly hope that the Philippine claim to North Borneo will have been settled on the basis of legality and justice. For under that claim the right of the people of North Borneo to self-determination would be assured.

153. The territory of North Borneo is very close to the Philippines. There are many islands in the Philippine Archipelago—the Turtle Islands and the Mangsee Islands—which lie within a stone's throw of North Borneo. From the southernmost islands of the Philippine Archipelago, one can paddle to North Borneo in small wooden boats or canoes.

154. Thus, from the point of view of national security, the Philippines has a vital stake in the future of North Borneo. The territory is like a cork that closes our great inland sea, the Sulu Sea, and is therefore of great strategic importance for the Philippines.

155. However, in putting forward its valid claim to sovereignty over North Borneo, the Philippines has no desire or intention to ignore the wishes of the people of the territory. North Borneo is not a Pacific atoll inhabited by gooney birds, or an Antarctic island inhabited by penguins. It is inhabited by nearly a

^{4/} A/AC.109/PET.46, mimeographed only.

^{5/} Report of the Commission of Enquiry into North Borneo and Sarawak, 1962 (London, Her Majesty's Stationery Office, Command Paper 1794, chap. 3, para. 143).

^{6/} *Ibid.*, para. 104.

half-million people whose right to self-determination must be considered and respected.

156. It is for this very reason that President Macapagal of the Philippines, on 27 July 1962, gave the following solemn assurance:

"The Philippines is loyally committed to the principle of self-determination of peoples. Therefore, if the necessity of ascertaining the wishes of the inhabitants of North Borneo regarding their future should arise at any time, the Philippines would support their desire to exercise this right, preferably in a plebiscite under the auspices of the United Nations."

157. This solemn assurance was reiterated [1134th meeting, para. 25] by the Vice-President and Secretary of Foreign Affairs of the Philippines in his policy statement before this Assembly, which I have already referred to.

158. My Government has spared no effort to have this dispute over North Borneo settled amicably and speedily on a bilateral basis.

159. In response to the growing pressure of public opinion in the Philippines, the House of Representatives of the Philippine Congress unanimously approved, on 24 April 1962, a resolution urging the President of the Philippines to claim sovereignty over North Borneo. However, before the President could implement that resolution, the Government of the United Kingdom informed the Philippine Government that it would oppose and resist any such claim, in an effort to forestall the presentation of the claim even before its merits had been examined.

160. On 22 June 1962, My Government took the first step towards a negotiated solution of the North Borneo problem. It informed the United Kingdom of the Philippine claim to sovereignty over the territory and requested of the United Kingdom that conversations be held either in Manila or London to discuss all the relevant points at issue.

161. This request was pointedly ignored. The Philippine Government found it necessary to send an aide-memoire reiterating its request for bilateral talks. It was not until 8 August 1962 that the Philippine Government received an aide-memoire from the United Kingdom. That aide-memoire, however, was completely silent on the Philippine request for bilateral talks. On 12 September, shortly before the present General Assembly session, another note was sent to the British Government reiterating for the second time the Philippine request for bilateral talks.

162. My Government is seriously concerned about the somewhat cavalier treatment which our successive requests over a five-month period have received from the United Kingdom. We are finding it increasingly difficult not to draw the conclusion that the United Kingdom is deliberately ignoring our claim in an apparent effort to present us with a fait accompli.

163. For, in the meantime, the six-month period during which the transfer of the territory of North Borneo to the projected Federation of Greater Malaysia is contemplated is about to expire. My Government cannot accept this situation with equanimity, particularly because, as we have pointed out, the transfer arrangements contain no provisions for the effective exercise of the right to self-determination by the people of North Borneo. We have, therefore, informed

the Governments concerned that we can in no way accept the London Agreement affecting the territory of North Borneo as a fait accompli tending to set aside the Philippine claim of which those Governments are fully aware. We have likewise informed them that the claim of the Philippines to North Borneo subsists, and will continue to subsist, until the dispute is resolved by peaceful means in accordance with the Principles of the United Nations Charter.

164. My Government has viewed with composure what appears to be a studied indifference to our repeated requests for bilateral talks. But we are confident that the United Kingdom, which the Philippines considers an ally in the cause of world peace, will not continue to ignore our just claim. Simple justice and the best interests of the peoples concerned dictate that our dispute with the United Kingdom over North Borneo be settled before the creation of a Federation of Greater Malaysia, in order to ensure the exercise of the right of the people of North Borneo to self-determination and, at the same time, to secure the peace, friendship and good will of the peoples in that part of the world.

Mr. Muhammad Zafrulla Khan (Pakistan) resumed the Chair.

165. The PRESIDENT: I recognize the representative of the United Kingdom in exercise of his right of reply.

166. Sir Patrick DEAN (United Kingdom): The representative of the Philippines, in the course of the speech he has just delivered, referred to a claim by his Government to the territory of North Borneo. He supported his claim with a number of statements, arguments, and quotations.

167. My delegation will study these arguments, statements, and quotations with the care which they no doubt deserve. Meanwhile, I would say only this: this is an entirely new claim. Both the Philippine Constitution of 1946 and the 1961 resolution of the Philippine Congress on territorial waters, defined the boundaries of the Philippines to the exclusion of North Borneo. Moreover, there is strong opposition to the Philippine claim from the population of North Borneo. Leaders of all five political organizations in North Borneo sent an open letter to the President of the Philippines last month in which they said:

"We do not believe—and our people do not believe—that the Government of the Republic of the Philippines has any claim over any land whatsoever because of the former Sultan of Sulu, or in any other way. We believe that, no matter what anyone may say about this so-called claim, not one of the peoples of North Borneo has any wish to become part of the Republic of the Philippines, nor would any of them consent to this."

168. In this connexion, I am authorized by my Government to state once again that the United Kingdom Government has no doubt as to its sovereignty over the territory of North Borneo, and I wish formally to reserve its rights in this connexion.

169. Perhaps I may add that if, after a closer study, any further reply seems to be required to the recent statement of the representative of the Philippines, my delegation reserves the right to intervene later in this debate.

ANNEX 2

***General Assembly Official Records, 4th Committee, 1420th mtg.,
12 December 1962***

ment and pointed out that his delegation, which always placed credence in statements of the same kind made by other delegations, would like to feel that such an attitude was reciprocal.

42. Mr. ACHKAR (Guinea) emphasized that it was in reply to a question from his delegation that the petitioner had given the information concerned. The petitioner had not, however, said that he was referring to soldiers of the Spanish army. In the opinion of the delegation of Guinea, the statement had not been unconsidered, as all the petitioners had confirmed it. What would be unconsidered would be to authorize Spanish nationals to fight for Portugal. The delegation of Guinea was not questioning the statement of the representative of Spain, but it would like the Spanish Government to know that Spaniards were fighting against Africans in Africa.

43. Mr. DE PINIES (Spain) said that he had no intention of allowing himself to be drawn into a sterile argument. He wished to point out that Spaniards were not the only persons to speak Spanish, and that when Spanish soldiers were referred to, that did not necessarily mean that such persons were members of the Spanish armed forces. If they were mercenaries, that put an entirely different complexion on the matter, and the Spanish Government was not responsible for their existence. At all events, it was intolerable to hear petitioners making statements without producing any proof.

44. Mr. ACHKAR (Guinea) said that although it might be very easy for nationals of certain countries to leave their countries, even without passports, that was not the case everywhere. Spaniards, in particular, who wanted to become mercenaries, would have to leave Spain without their passports, and it was consequently impossible for the Spanish Government not to be aware of their departure.

45. The CHAIRMAN called on the representative of Spain and Guinea not to persist with an acrimonious discussion.

46. Mr. DE PINIES (Spain) said that he wished to make clear that his country was open to all persons who wanted to enter it or leave it, but the question was completely unconnected with that raised by the petitioner.

AGENDA ITEMS 49, 50, 51, 52, 53 AND 55

Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations: reports of the Secretary-General and of the Committee on Information from Non-Self-Governing Territories (A/5078 and Add.1-19, A/5079 and Add.1-6, A/5080 and Add.1-19, A/5081 and Add.1-5, A/5120, A/5215) (continued):

- (a) Political and constitutional information on Non-Self-Governing Territories;
- (b) Information on educational, economic and social advancement;
- (c) General questions relating to the transmission and examination of information

Dissemination of information on the United Nations in the Non-Self-Governing Territories: report of the Secretary-General (A/5244 and Add.1) (continued)

Offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories: report of the Secretary-General (A/5242 and Add.1) (continued)

Preparation and training of indigenous civil and technical cadres in Non-Self-Governing Territories: report of the Secretary-General (A/5122, A/5125, A/5215, A/5235) (continued)

Racial discrimination in Non-Self-Governing Territories: report of the Secretary-General (A/5215, A/5249 and Add.1) (continued)

Election to fill vacancies in the membership of the Committee on Information from Non-Self-Governing Territories (continued)

GENERAL DEBATE (continued)

47. Mr. QUINTERO (Philippines) said that he wished to express the reservation of his Government with regard to the transmission of information by the Government of the United Kingdom on the Territory of North Borneo.

48. The Philippine claim of sovereignty over North Borneo had been mentioned by the Secretary of Foreign Affairs of the Philippines in his statement at the 1134th plenary meeting of the General Assembly, on 27 September 1962. On 27 November, in the same forum (1177th plenary meeting), the Chairman of the Committee of Foreign Affairs of the Philippine House of Representatives had explained the position of the Philippine Government in its dispute with the United Kingdom Government regarding sovereignty over North Borneo. He would therefore limit himself to drawing the attention of the Committee to the nature of the possession by the United Kingdom Government of the Territory in question.

49. The Philippines recalled that sovereignty over the Territory had remained vested in the Sultanate of Sulu until that sovereignty had been ceded by the Sultanate in favour of the Republic of the Philippines. The occupation of the Territory, first by Baron Overbeck and Mr. Dent, and later by the British North Borneo (Chartered) Company, had been occupation by a lessee or an administrator, not occupation by an owner or sovereign. The present possession of the Territory by the United Kingdom Government, which had succeeded the British North Borneo Company, was possession by a lessee or administrator, not possession by an owner or sovereign.

50. He wished to show, through three documents coming from United Kingdom sources—namely, an instrument signed by the Sultan of Sulu, another instrument signed by Baron Overbeck and Mr. Dent, and a third document signed by the head of the United Kingdom Foreign Office—that Baron Overbeck and Mr. Dent, and the British North Borneo Company which had succeeded them, had been exercising governmental powers which had been delegated to them by the Sultan of Sulu, sovereignty remaining vested in the Sultan. The United Kingdom Government, which claimed to have acquired sovereign rights from the British North Borneo Company in an instrument called "Agreement for the Transfer of Borneo Sovereign Rights", had in reality succeeded only to the leasehold rights of the British North Borneo Company. The United Kingdom Government was therefore exercising governmental powers in North Borneo only as an administrator of

the Sultan of Sulu, in whom sovereignty had remained vested.

51. The first of the three documents which he had mentioned, appointing Baron Overbeck "Datu Bandahara" and "Rajah of Sandakan", had been issued by the Sultan of Sulu on 22 January 1878, and in that document, the Sultan of Sulu had very plainly stated that he was delegating to Baron Overbeck his powers of government.

52. Secondly, there was the application for a Royal charter filed with the United Kingdom Government on 2 December 1878 by Baron Overbeck and Mr. Dent on behalf of the British North Borneo Company. In that application, they called the instrument of 22 January 1878 a delegation of powers and rights of government, and in paragraph 31 of the instrument they stated that powers of government had been delegated to them by the Sultan of Sulu.

53. Thirdly, there was an official letter dated 7 January 1882 and signed by Earl Granville, the then head of the United Kingdom Foreign Office, in which it was stated that the British Crown assumed no dominion or sovereignty over the territories occupied by the British North Borneo Company, did not grant the Company any powers of government, and recognized the delegation of powers by the Sultan, in whom sovereignty remained vested.

54. Consequently, according to the Foreign Office statement of 1882 the British North Borneo Company had had no governmental power not delegated to it by the Sultan of Sulu. Moreover, in granting the Company a Royal charter the United Kingdom Government had not vested it with governmental powers. It followed that, when the British North Borneo Company had transferred its rights to the United Kingdom Government on 10 June 1946, the British Crown had acquired only the powers delegated by the Sultan of Sulu, who had retained sovereignty over the Territory.

55. The Philippine delegation desired to express the anxiety it felt at the fighting in Brunei that had been reported in the Press. Brunei was near the territory of North Borneo. Although the Philippine Government claimed sovereignty over North Borneo and not over Brunei, the conflict there was bound to cause it anxiety. It was opposed to the use of force for the settlement of international disputes, and that principle was part of the country's Constitution as well as of the United Nations Charter. Its respect for that principle had led it six months earlier to request of the United Kingdom Government repeatedly that representatives of the two Governments might hold a conference in a friendly spirit to study the problems and settle the dispute concerning North Borneo. No answer had so far been given to that request for a conference. The Philippine delegation had no information on the actual cause of the troubles in Brunei. The press reports said that the population of Brunei was fighting because it had been refused self-determination. The Philippine Government had no means of determining who was responsible for the present regrettable situation, but it knew that history was full of cases in which a people had fought because its just claims had not been met or its essential rights had been ignored.

56. Mr. WALL (United Kingdom) said that his Government had no doubt concerning its sovereignty over North Borneo, and reserved its rights in respect of that question.

HEARING OF PETITIONERS (concluded)

At the invitation of the Chairman, Mr. Louis Joseph Maho, representative of the Mouvement pour l'indépendance de la Guinée équatoriale, and Mr. José Perea Epota, representative of the Partido Político Idea Popular de la Guinea Ecuatorial, took places at the Committee table.

57. Mr. MAHO (Mouvement pour l'indépendance de la Guinée équatoriale) thanked the Committee for permitting him to submit his views on the situation in Equatorial Guinea. He was confident that the movement he represented would receive from the United Nations the support which would enable Equatorial Guinea rapidly to achieve independence.

58. After summarizing the history of the Spanish occupation of Fernando Póo and Río Muni, he dwelt on certain aspects of Spanish domination in the two territories. Since Equatorial Guinea was essentially an agricultural country, the Spaniards had from the outset started to occupy the most fertile land. The indigenous inhabitants, ejected from that land and reduced to servitude, had no longer been able to compete with the Spanish farmers. In spite of their poverty they had continued to cultivate their lands industriously until in 1942 the Spanish authorities had passed a law on land clearance precluding Guineans from possessing or cultivating more than four hectares except under certain conditions. In practice the law benefited Europeans at the expense of the Guineans.

59. The progress of a country could be measured by the degree of its inhabitants' education. Since the Spanish occupation, education had been totally neglected. Primary schooling, in both government and mission schools, was inefficient and aimed at training lower-grade employees and workers. Secondary education was equally useless, because of the notorious incompetence of the teachers and the racial segregation practised in the schools. An ordinance of the Governor-General obliged Guineans to leave school at the age of fifteen, for the local authorities considered that indigenous inhabitants seeking an education at that age became dangerous. The only Guineans who could continue their studies were those chosen for the government service, to do the most work for the least pay. Otherwise the physical and financial difficulties were so great that few Guineans could stay at school, even if they so desired, and in general education was reserved for Europeans. The education problem would be hard to solve under Spanish rule: every scheme for reform that had been submitted to the Governor-General had been rejected. Nevertheless, in spite of the difficulties, Equatorial Guinea had enough young men capable of filling all indispensable posts once the country had been set free from Spanish oppression.

60. Society in Equatorial Guinea was divided into two completely separate groups, white and black. Admittedly some abuses were disappearing and some mingling of the population was taking place, but generally speaking those changes could deceive only the casual visitor, and the difference between the two categories of the population remained. The racial problem would not be solved while the Spaniards went on treating the indigenous inhabitants as beasts of burden and not as human beings. The Africans of Equatorial Guinea lived in a humiliating situation at an extremely low social level. The wages paid to a white worker and to a black worker for the same job differed enormously. The Mouvement pour l'indépendance de la Guinée équatoriale desired for its country the benefit of article 23,

ANNEX 3

**United Nations Malaysia Mission Report, "Final Conclusions of the
Secretary-General", 14 September 1963**

UNITED NATIONS MALAYSIA MISSION REPORT

Final Conclusions of the Secretary-General

In response to the request made by the Governments of the Federation of Malaya, the Republic of Indonesia, and the Republic of the Philippines, on 5 August 1963, I agreed to ascertain, prior to the establishment of the Federation of Malaysia, the wishes of the people of Sabah (North Borneo) and Sarawak. As foreseen in my communication of 8 August 1963, a Mission was established, comprising two teams, one for Sarawak and the other for Sabah (North Borneo), working under the supervision of my personal representative. The Mission has now completed the inquiry assigned to it, and has reported to me.

I wish, first of all, to express my gratitude to the three Governments for the confidence they placed in me by requesting that I should undertake the task of ascertaining the wishes of the population of Sarawak and North Borneo (Sabah) prior to the establishment of Malaysia. I also wish to express my appreciation to the Government of the United Kingdom and to the authorities of the two territories for having given their agreement to the inquiry and their full co-operation to the Mission.

It was always understood that the ascertainment would be completed within a limited period of time, and my communication of 8 August noted that every effort would be made to complete the task as quickly as possible. I later informed the Governments concerned that I would endeavour to report my conclusions to them by 14 September. During the course of the inquiry, the date of 16 September 1963 was announced by the Government of the Federation of Malaya with the concurrence of the British Government, the Singapore Government and the Governments of Sabah and Sarawak, for the establishment of the Federation of Malaysia. This has led to misunderstanding, confusion, and even resentment among other parties to the Manila agreement, which could have been avoided if the date could have been fixed after my conclusions had been reached and made known.

There was no reference to a referendum or plebiscite in the request which was addressed to me. I was asked to ascertain the wishes of the people "within the context of General Assembly resolution 1541 (XV), Principle IX of the Annex, by a fresh approach" which in my opinion was necessary "to ensure complete compliance with the principle of self-determination within the requirements embodied in Principle IX", taking into consideration certain questions relating to the recent elections. The Mission accordingly arranged for consultations with the population through the elected representatives of the people, leaders of political parties and other groups and organizations, and with all persons who were willing to express their views, and every effort was made to ascertain the wishes of the special groups (political detainees and absentees) mentioned in the Manila Joint Statement. The Mission gathered and studied all available documents, reports and other material on the governmental institutions, political organization, electoral processes in the two territories, and other matters relevant to its terms of reference.

The Governments of the Federation of Malaya, the Republic of Indonesia and the Republic of the Philippines deemed it desirable to send observers to witness the carrying out of the task, and the Government of the United Kingdom decided that it also wished the same facility. Although I did not consider the arrangements for observers to be part of the Secretary-General's responsibility, I endeavoured to help the Governments concerned to reach agreement, and I am pleased that an understanding was finally arrived at so that observers of all the Governments concerned could be present during at least part of the inquiry. It is a matter for regret that this understanding could not have been reached earlier, so that all observers could have been present in the territories for the entire period of the inquiries and that questions of detail pertaining to the status of the observers unnecessarily delayed even further their arrival. A more congenial atmosphere would have been achieved if the necessary facilities had been granted more promptly by the Administering Authority. The Mission, however, made its records, including tape recordings of all its hearings, available for the use of the observer teams to enable them to inform themselves as fully as possible of what had occurred before their arrival.

The basic assessment which I was asked to make has broader implications than the specific questions enumerated in the request addressed to me by the three Governments. As mentioned previously, I was asked to "ascertain, prior to the establishment of the Federation of Malaysia, the wishes of the people of Sabah (North Borneo) and Sarawak within the context of General Assembly resolution 1541 (XV), Principle IX of the Annex, by a fresh approach, which in the opinion of the Secretary-General is necessary to ensure complete compliance with the principle of self-determination within the requirements embodied in Principle IX"

Concerning the integration of a non-self-governing territory with an already independent State, Principle IX provides:

"Integration should have come about in the following circumstances:

- (a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;
- (b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

I have given consideration to the circumstances in which the proposals for the Federation of Malaysia have been developed and discussed, and the possibility that people progressing through the stages of self-government may be less able to consider in an entirely free context the implications of such changes in their status, than a society which has already experienced full self-government and the determination of its own affairs. I have also been aware that the peoples of the territories are still striving for a more adequate level of educational development.

Having reflected fully on these considerations, and taking into account the framework within which the Mission's task was performed, I have come to the conclusion that the majority of the peoples of Sabah (North Borneo) and of Sarawak, have given serious and thoughtful consideration to their future, and to the implications for them of participation in a Federation of Malaysia. I believe that the majority of them have 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. Not all of these considerations are present in equal weight in all minds, but it is my conclusion that the majority of the peoples of the two territories, having taken them into account, wish to engage, with the peoples of the Federation of Malaya and Singapore, in an enlarged Federation of Malaysia through which they can strive together to realize the fulfilment of their destiny.

With regard to the more specific questions referred to me, my conclusions, after the examination and verification reported by the Mission, are:

- (a) Malaysia has been the subject of wide-spread and intensive public debate, and was a major issue in the recent elections in the two territories;
- (b) Electoral registers were properly compiled;
- (c) The elections took place in an atmosphere free enough to enable the candidates and political parties to put their case before the electorate, and the people were able to express themselves freely by casting their votes in a polling system which provided the basic safeguards for secret balloting, and measures for the prevention and correction of abuses;
- (d) The votes were properly polled and counted.

(e) Persons otherwise eligible to vote but who were unable to do so because of detention for political activities, or imprisonment for political offences numbered somewhat less than 100 in Sarawak, and even less in Sabah (North Borneo) at the time of the elections. Testimony given by this group, especially in Sarawak, indicated that they would have opposed the Federation of Malaysia if they had participated in the election. The actual votes of this group would not have been sufficient to have had a material effect on the result. The Mission has given much attention to the possible effect which the absence of these persons, some of whom were officials of the anti-Malaysia party, might have had on the campaign. The Mission considered the similar question concerning some 164 persons whose activity was restricted to some extent, but who retained the right to vote. Noting that the anti-Malaysia party scored convincing electoral victories in many of the areas to which those persons belonged, I accept the Mission's conclusion that a substantial limitation of the campaigning potential of the group opposed to the Federation of Malaysia has not occurred, so as seriously and significantly to have affected the result of the election.

(f) The Mission made special efforts to obtain reliable information regarding persons who were absent from the territories at the time of the election, particularly as a result of possible political or other intimidation. The evidence available indicated that the number of such persons, otherwise qualified to vote, did not exceed a few hundred, and that their number could not have affected the results of the election. I note that the principal officials of the party in Sarawak opposed to the Federation of Malaysia, agree with this assessment, and I accept it.

// Bearing in mind the fundamental agreement of the three participating Governments in the Manila meetings, and the statement by the Republic of Indonesia and the Republic of the Philippines that they would welcome the formation of Malaysia provided that the support of the people of the territories was ascertained by me and that, in my opinion, complete compliance with the principle of self-determination within the requirements of General Assembly resolution 1541 (XV), Principle IX of the Annex, was ensured, my conclusion, based on the findings of the Mission, is that on both of these counts there is no doubt about the wishes of a sizeable majority of the peoples of these territories to join in the Federation of Malaysia.

// In reaching my conclusions, I have taken account of the concern expressed with regard to the political factors resulting from the constitutional status of the territories and about influences from outside the area on the promotion of the proposed Federation. Giving these considerations their due weight, in relation to the responsibilities and obligations established in Article 73 and General Assembly resolution 1514 (XV) in respect of the territories, I am satisfied that the conclusions set forth above take cognizance of the requirements set forth in the request addressed to me on 5 August 1963 by the Foreign Ministers of the Republic of Indonesia, the Federation of Malaya and the Republic of the Philippines.

- Before concluding, I would like to pay a tribute to my Personal Representative, Mr. L. Michelmore, my Deputy Representative, Mr. G. Janacek, and to all the members of the United Nations Malaysia Mission who accomplished a sensitive and difficult task in a relatively short period, but at the same time in a thorough and wholly adequate manner. In a sense, it was a pity that the work of the Mission had to be accomplished within certain deadlines. But I do feel that, while more time might have enabled the Mission to obtain more copious documentation and other evidence, it would not have affected the conclusions to any significant extent.

From the beginning of this year I have been observing the rising tension in South East Asia on account of the differences of opinion among the countries most directly interested in the Malaysia issue. It was in the hope that some form of United Nations involvement might help to reduce tension that I agreed to respond positively to the request made by the three Manila powers. I would hope that the exercise in which my colleagues and I have been involved in this regard will have this effect, and that the coming into being of Malaysia will not prove to be a continuing source of friction and tension in the area.

The emergence of dependent territories by a process of self-determination to the status of self-government, either as independent sovereign States or as autonomous components of larger units, has always been one of the purposes of the Charter and the objectives of the United Nations. Whatever the origins of the proposal of Malaysia may have been, it seems to me in the light of actual events, including the present exercise, that we have witnessed in Sarawak and North Borneo the same process leading to self-government. I fervently hope that the people of these territories will achieve progress and prosperity, and find their fulfilment as component States of Malaysia.

ANNEX 4

Recent Philippines statements pertaining to Sipadan

MEMORANDUM FROM THE PRESIDENT

TO : Secretary, Department of National Defense
Chief-of-Staff, Armed Forces of the Philippines
Commanding General, Southern Command

DATE : 26 April 2000

Please be informed that I have today directed Prof. Nur P. Misuari, Governor, Autonomous Region of Muslim Mindanao (ARMM) and Chairman, Southern Philippines Council for Peace and Development (SPCPD), to negotiate in behalf of the Government of the Philippines, for the release of nineteen (19) hostages, mostly foreign nationals, who were recently abducted in Malaysia and have now been reported as being held in Sulu and in Tawi-tawi.

In this connection, you are hereby directed to extend to Prof. Misuari all necessary assistance for the successful accomplishment of this mission.

For immediate and direct compliance.


JOSEPH EJERCITO ESTRADA



BE Memorandum 16977

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NEWS RELEASE

No. 4

May 4, 2000

MALAYSIA EXPRESSES SUPPORT FOR RP EFFORTS TO RESCUE SULU HOSTAGES

A delegation of Malaysian officials relayed to President Joseph "Erap" Ejercito Estrada Wednesday night their support for the Philippine government's handling of the hostage situation in Sulu.

Press Secretary Ricardo "Dong" Puno Jr. said the delegation relayed this message after receiving a briefing from top Philippine police and military officials in Malacañang about the latest update on efforts to ensure the safe release of the Sulu hostages, which include a Filipino, 10 Malaysians, three Germans, two French nationals, two South Africans, two Finns, and one Lebanese.

The hostages were kidnapped from an island resort in Malaysia and later brought by their captors to Talipao town in Jolo, Sulu.

"The Malaysian delegation expressed their support for the steps that the Philippine government is taking to resolve the situation," Puno said at a press briefing after the meeting in Malacañang of the Cabinet Cluster E, which tackles political affairs and national security concerns.

Puno, who is also the presidential spokesman, said the Malaysian delegation will proceed to Zamboanga Thursday to meet with Governor Nur Misuari of the Autonomous Region in Muslim Mindanao (ARMM).

Misuari, according to Puno, will continue to be the chief government negotiator tasked to ensure the safe release of the hostages. Puno added that the military continues to cordon off the area in Talipao where the victims are being held.

Puno stressed anew that the negotiations concerning the release of the hostages are "basically the function of the Philippine government."

"Hopefully this can be resolved in a peaceful manner," he added.

Puno pointed out that the Estrada administration has also received several "expressions of support" from the other foreign governments whose nationals are now being held hostage in Sulu.

Just two days after the last four European hostages grabbed from Sipadan were released, the Abu Sayaf struck again in Malaysia, taking with them three Malaysians from another diving resort not far from Sipadan.

Puno earlier noted that chief government negotiator Secretary Robert Aventajado was assured by Abu Sayyaf Commander Ghalib Aidang alias Commander Robot that negotiations for the two French hostages and Ullah will continue, despite the abduction of the three Malaysians.

Aventajado, according to Puno, is optimistic that the remaining hostages will be released soon.

"Secretary Aventajado is confident that this matter is going to be resolved in the next several days. We'll await that. Let's see what happens," he said.



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NEWS RELEASE

Of. Dir. Puno

No. 4

September 13, 2000

ALL OPTIONS OPEN TO PALACE IN DEALING WITH ABU SAYYAF BUT HOSTAGES' SAFETY IS STILL PRIORITY

All options remain open to Malacanang in dealing with the Abu Sayyaf's kidnapping rampage but the safe release of the hostages remain a top consideration.

Emerging from the Cabinet Cluster F meeting at Malacanang's Mabini Hall Wednesday, Press Secretary and Presidential Spokesman Ricardo "Dong" Puno, Jr. said no options have been ruled out so far even as the government is as determined as ever to ensure the safety of the captives.

"No military action was discussed. We just simply reviewed the options. But as we said, we would rather simply await the developments and then at that point, maybe discuss the matter again," Puno said.

But Puno declined to say what options were presented during the meeting of the Cabinet cluster assigned to tackle concerns involving national security and peace and order.

Asked if Malacanang has ruled out any military option in handling the hostage crisis, the Press Secretary said "no option is out of the picture at this time."

Of the 21 hostages snatched by the Abu Sayyaf from a Sipadan diving resort in Malaysia last April, only Filipino national Roland Ullah remains in captivity. Also in the hands of the extremist group are two French journalists who were taken hostage after they entered the lair of the Abu Sayyaf to do a special report on the hostage crisis.

American Jeffrey Craig Schilling who reportedly went to Sulu to meet with Abu Sayyaf leaders was also taken as captive by the Muslim group early this month.

ANNEX 5

**Philippines Optional Clause Declaration,
23 December 1971**

No. 11523

PHILIPPINES

Declaration recognizing as compulsory the jurisdiction of the International Court of Justice, in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice. Manila, 23 December 1971

Authentic text: English.

Registered ex officio on 18 January 1972.

PHILIPPINES

Déclaration reconnaissant comme obligatoire la juridiction de la Cour internationale de Justice, conformément au paragraphe 2 de l'Article 36 du Statut de la Cour internationale de Justice. Manille, 23 décembre 1971

Texte authentique : anglais.

Enregistrée d'office le 18 janvier 1972.

DECLARATION¹ BY THE PHILIPPINES RECOGNIZING AS
COMPULSORY THE JURISDICTION OF THE INTER-
NATIONAL COURT OF JUSTICE, IN CONFORMITY
WITH ARTICLE 36, PARAGRAPH 2, OF THE STATUTE
OF THE INTERNATIONAL COURT OF JUSTICE

I, Carlos P. Romulo, Secretary of Foreign Affairs of the Republic of the Philippines, hereby declare, under Article 36, paragraph 2, of the Statute of the International Court of Justice, that the Republic of the Philippines recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes arising hereafter concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to any dispute

- (a) in regard to which the parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement; or
- (b) which the Republic of the Philippines considers to be essentially within its domestic jurisdiction; or
- (c) in respect of which the other party has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purposes of such dispute; or where the acceptance of the compulsory jurisdiction was deposited or ratified less than 12 months prior to the filing of the application bringing the dispute before the Court; or
- (d) arising under a multilateral treaty, unless (1) all parties to the treaty are also parties to the case before the Court, or (2) the Republic of the Philippines specially agrees to jurisdiction; or

¹ Deposited with the Secretary-General of the United Nations on 18 January 1972.

- (e) arising out of or concerning jurisdiction or rights claimed or exercised by the Philippines—
- (i) in respect of the natural resources, including living organisms belonging to sedentary species, of the sea-bed and subsoil of the continental shelf of the Philippines, or its analogue in an archipelago, as described in Proclamation No. 370 dated 20 March 1968 of the President of the Republic of the Philippines; or
 - (ii) in respect of the territory of the Republic of the Philippines, including its territorial seas and inland waters; and

Provided, further, that this declaration shall remain in force until notice is given to the Secretary-General of the United Nations of its termination.

DONE at Manila this 23rd day of December 1971.

CARLOS P. ROMULO
Secretary of Foreign Affairs