

# **Malaysia's Claims and Positions over Maritime Features In the South China Sea**

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# **Disclaimer**

**The information contained in this presentation  
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# Outline of Presentation

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- **Malaysia's position in the South China Sea**
- **Extended continental shelf claim in the Defined Area in the South China Sea**
- **Lessons from Philippines Arbitration relating to Malaysia's Claim in the South China: Possible Consideration**

# **Malaysia's Claims in the South China Sea**





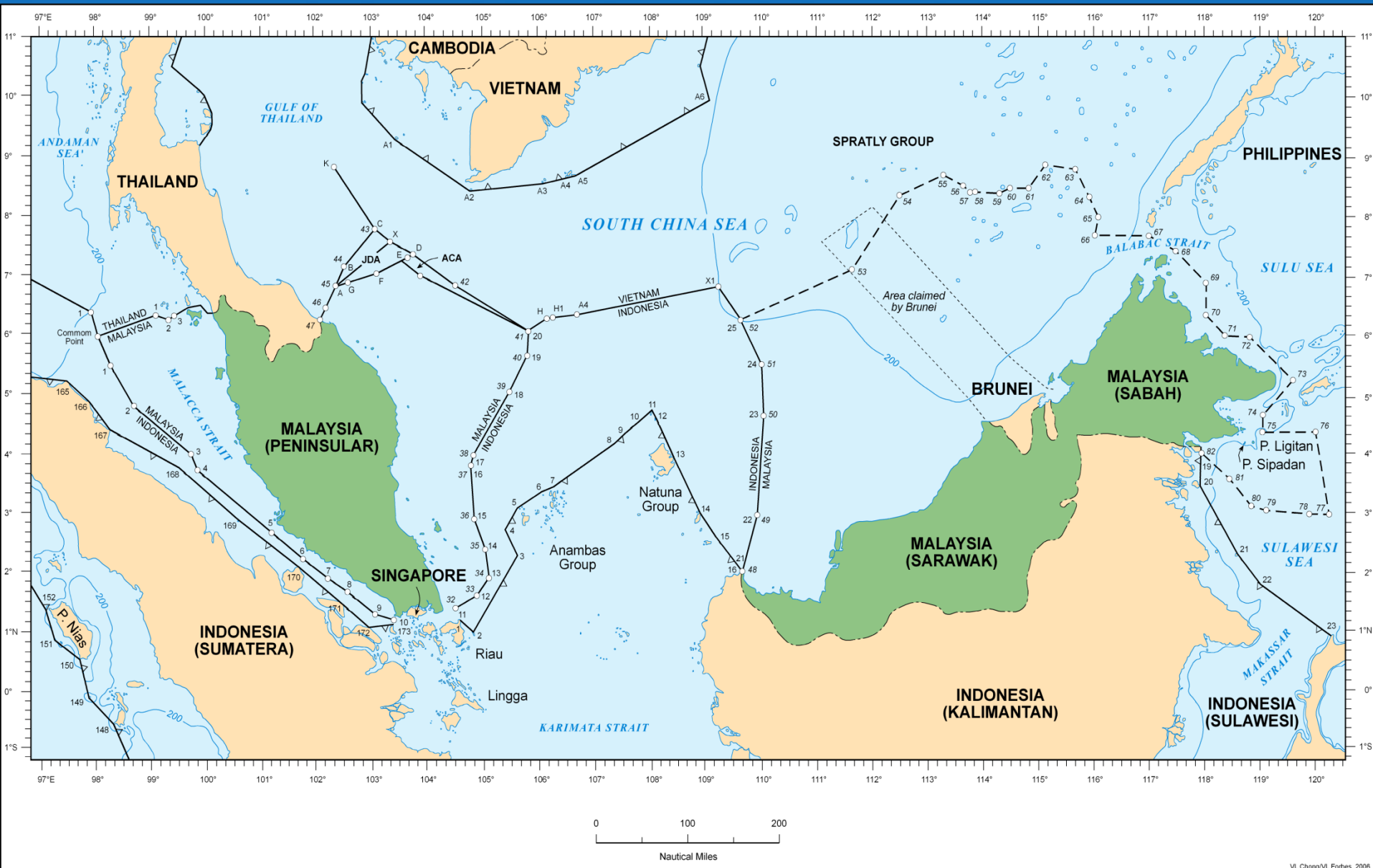
Map showing the aerial view of the South China Sea  
Source: Malaysia Airport Berhad

Flight positions are predictive based on published flight times and typical durations.  
Kedudukan penerbangan adalah anggaran berdasarkan waktu dan jangka masa penerbangan yang dipaparkan.

Google Earth





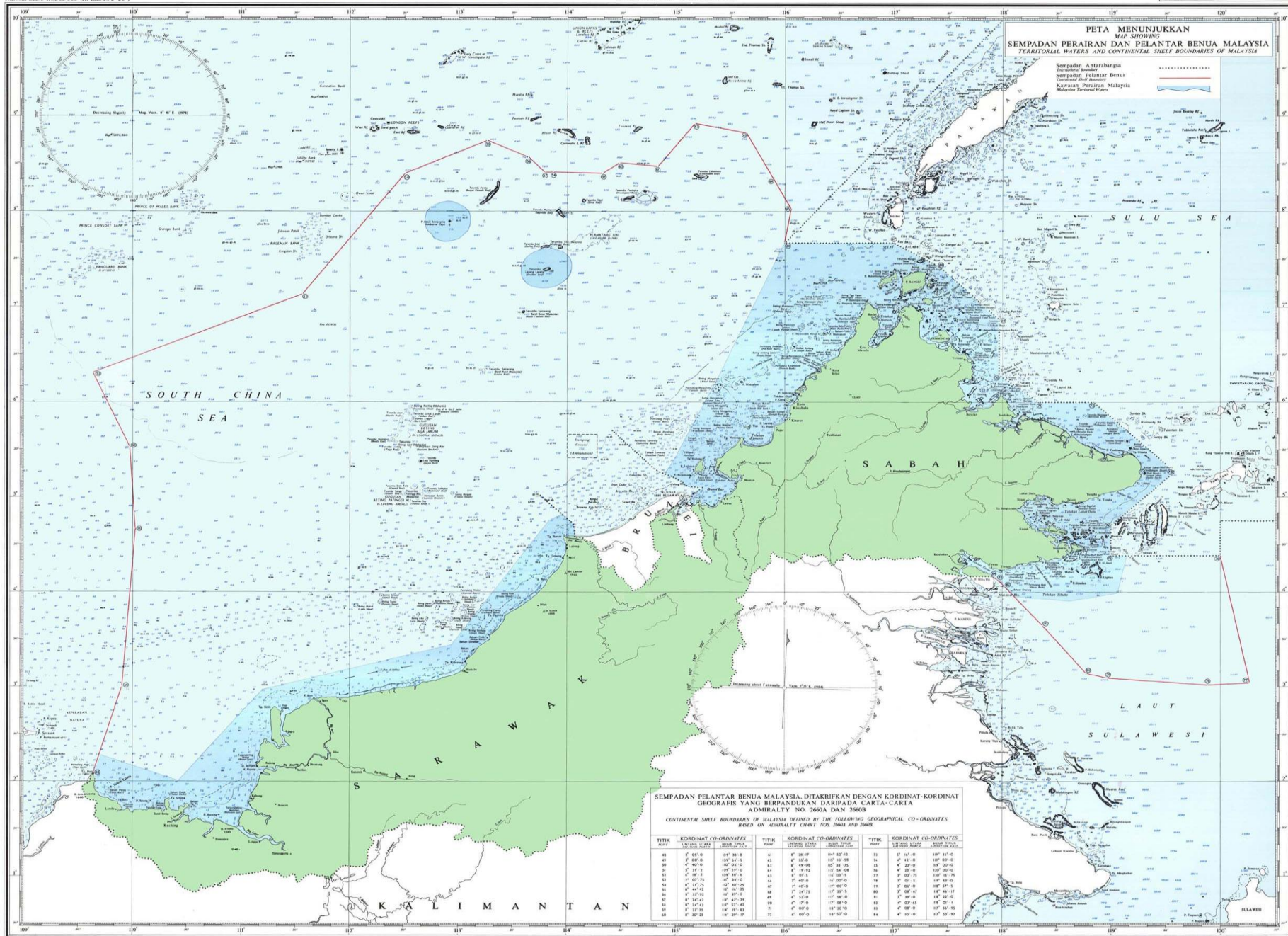




- This map shows in general the overlapping claims in the South China Sea

Map of the Competing Claims of the South China Sea by Arsana and Schofield, 2012  
from *Agora: South China Sea* (2013), Vol. 107:95, American Journal of International Law (AJIL) .







# Malaysia's claims in the South China Sea

- Malaysia's claim are encapsulated in Malaysia's *Peta Baru 1979*.
- The Map was drawn based on the 1958 Geneva Convention, bilateral treaties and customary international law
- Malaysia's claim is based on the fact that the features are part of its continental shelf and thus entitles Malaysia to an extended continental shelf based on the natural prolongation of the continental shelf.
- Malaysia can claims the respective maritime zones namely territorial sea, EEZ and continental shelf.

## Malaysia's claims in the South China Sea

- (1) Malaysia's claims as stated in the *Peta Baru 1979* in the South China Sea:
- (i) Pulau Layang-Layang (Swallow Island) (occupied by Malaysia)
  - (ii) Terumbu Mantanani (Mariveles Reef) (occupied by Malaysia)
  - (iii) Terumbu Ubi (Ardasier Reef) (occupied by Malaysia)
  - (iv) Terumbu Siput (Erica Reef) (occupied by Malaysia)
  - (v) Terumbu Peninjau (Investigator Reef) (occupied by Malaysia)
  - (vi) Terumbu Perahu (Barque Canada Reef) (also claim by Vietnam)
  - (vii) Pulau Kecil Amboyna (Amboyna Cay): (also claim by Vietnam)
  - (viii) Terumbu Laksamana (Commodore Reef): (also claim by Philippines)
  - (ix) Terumbu Laya (Dallas Reef)
  - (x) Terumbu Semarang Barat Besar (Royal Charlotte Reef)
  - (xi) Luconia Shoals: Gugusan Beting Raja Jarum (North Luconia Shoals)  
Gugusan Beting Patinggi Ali (South Luconia Shoals)  
Hempasan Betin (Luconia Breakers)
  - (xii) Beting Serupai (James Shoal)
- These maritime features are within Malaysia's EEZ and continental shelf.

## Malaysia's claims in the South China Sea

- Malaysia's Statement in 1988 pertaining to the *Peta Baru 1979* in relation to its claim in the South China Sea that:

*“the islands and atolls are under Malaysian sovereignty, and Malaysia has in the past reaffirmed its jurisdiction ... They are within Malaysia's continental shelf area and Malaysia's sovereignty over them has been officially declared through the new Map of Malaysia, published on December 21st 1979 ... The claim is in line with the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries, and the UN Convention on the Law of the Sea, as well as other international practices”.* [Statement by former Deputy Foreign Minister Abdullah Fadzil Che Wan].

- Based on the 1979 Map, 12 nm territorial sea is drawn around Pulau Layang-Layang and Amboyna Cay.
- Activities by Malaysia in Pulau Layang-Layang includes military stationed, beacon installed, marine and scientific station, a diving resort and a 1.5km airstrip. The latest, in 2015, special postal code 88005 for Pulau Layang-Layang with an underwater mailbox of Pos Malaysia allows divers at Pulau Layang-Layang to share their experience with family and friends via waterproof postcards stamped.

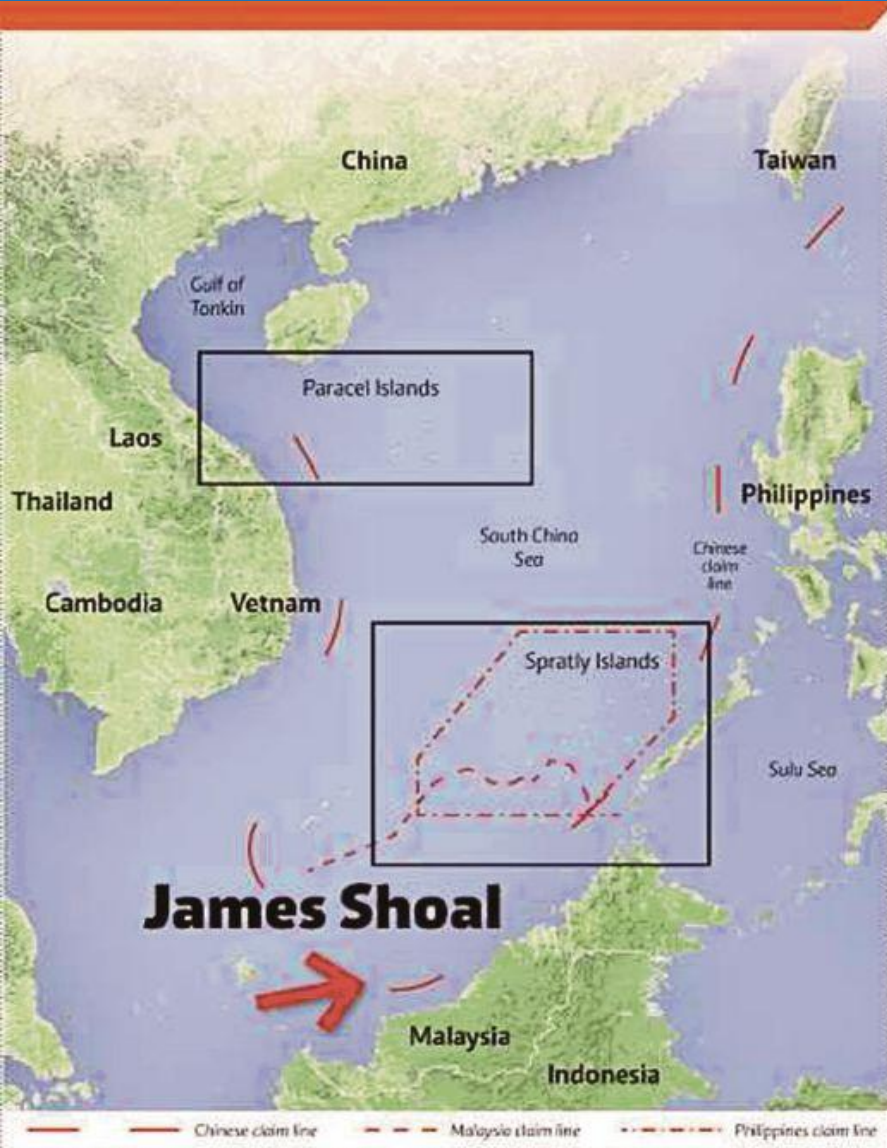












Source: Illustration Map of James Shoal Location from BA Hamzah (2014), James Shoal Not Disputed Territory, New Straits Times, p. 18 and 19, 26 June 2014

Malaysia's claims in the South China Sea

- Beting Serupai, a feature permanently 22 metres under water located in Malaysia's water.
- It is 63 nm from Batuan Likau on Sarawak coast and within 200 nm of Malaysia's EEZ.
- It is not an LTE or island but a permanently submerged feature. Not subject to sovereignty claim as a permanently submerged feature is not entitled to any maritime zone and it cannot be appropriated.



## Malaysia's claims in the South China Sea

- **Gugusan Beting Patinggi Ali (Luconia Shoal), about 80 nm from Tanjung Baram, Sarawak is within Malaysia's EEZ and continental shelves.**
- **Being 200 nautical miles from Sarawak, the shoals are within Malaysia's EEZ, as set by international law.**  
**[Statement by former Minister of Foreign Affairs, Dato' Sri Anifah Hj Aman, November 2015].**
- **Literature from various sources indicates that LTE's and submerged features not subject to appropriation that rise from Malaysia's continental shelf. Therefore, Malaysia clearly has sovereign rights over them, i.e., the low-tide elevations Terumbu Laya (Dallas Reef) and Terumbu Ubi (Ardasier Reef), and the submerged features Betung Serupai (James Shoal), Gugusan Beting Raja Jarum (North Luconia Shoals) and Beting Patinggi Ali (South Luconia Shoals).**

# Malaysia's Position in the South China Sea

## Malaysia's Position in the South China Sea

*“Malaysia’s policy is not to have battleships and warships in the South China Sea as tensions in the region will escalate into armed conflict and subsequently war if vessels are stationed in the area”*

[Statement by Prime Minister Tun Dr Mahathir Mohamad during the interview with BBC Hardtalk Programme, 2 October 2018]



**JOINT STATEMENT**  
**BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA**  
**AND THE GOVERNMENT OF MALAYSIA**  
**20 AUGUST 2018, BEIJING**

**13. Both sides underscored the importance of maintaining peace, security and stability, as well as safety and freedom of navigation in the South China Sea. Both sides emphasized the need for all sovereign states directly concerned to resolve their differences by peaceful means through friendly consultations and negotiations, in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea. Both sides further emphasized the need for all parties to exercise self-restraint in the conduct of activities, and to avoid actions that would complicate or escalate tensions in the South China Sea. Both sides, together with the ASEAN Member States, will work for the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) and encourage maritime cooperation, as well as actively push forward consultations on a Code of Conduct (COC) to see early conclusion of an effective COC.**

## Malaysia's Position in the South China Sea

*“Malaysia will maintain its presence and retain the features that are within her claims in the South China Sea”*

[Statement by Prime Minister Tun Dr Mahathir Mohamad during the interview with South China Morning Post, 20 June 2018]

## **MALAYSIA, JAPAN AGREE TO KEEP MELAKA STRAIT, SOUTH CHINA SEA FOR NAVIGATION FOR ALL COUNTRIES**

**KUALA LUMPUR, June 12 (Bernama) - Malaysia and Japan have agreed to keep the Strait of Melaka and the South China Sea free for navigation for all countries.**

**Japan Prime Minister Shinzo Abe said the Indo-Pacific (region), including the South China Sea, should be free and open based on the rule of law and to be maintained as a global public route for regional peace and prosperity.**

**"Japan is willing to cooperate with any country to support this concept with Malaysia. I am resolved to further strengthening cooperation for regional peace and stability, including in the maritime safety area," he said at a joint press conference with visiting Malaysian Prime Minister Tun Dr Mahathir Mohamad in Tokyo.**

**At the joint press conference, Dr Mahathir said: "We agreed that we should keep the Strait of Melaka and the South China Sea for navigation for all countries".**



## Malaysia's Position in the South China Sea

*“Preferred if there were no warships within its waters in the South China Sea and Straits of Malacca”*

[Statement by Prime Minister Tun Dr Mahathir Mohamad after weekly Cabinet Meeting, 8 June 2018]

# **Extended Continental Shelf Claim in the Defined Area in the South China Sea**

105°E

110°E

115°E



15°N

15°N

SOUTH CHINA SEA

SOCIALIST  
REPUBLIC OF  
VIETNAM

Ho Chi Minh City

10°N

10°N

Vietnam 200 M

Malaysia 200 M

Vietnam  
IndonesiaMalaysia  
Indonesia

5°N

5°N

MALAYSIA  
(Sabah)

Kota Kinabalu

Philippines  
MalaysiaPENINSULAR  
MALAYSIA  
(Johor)MALAYSIA  
(Sarawak)

Kuching

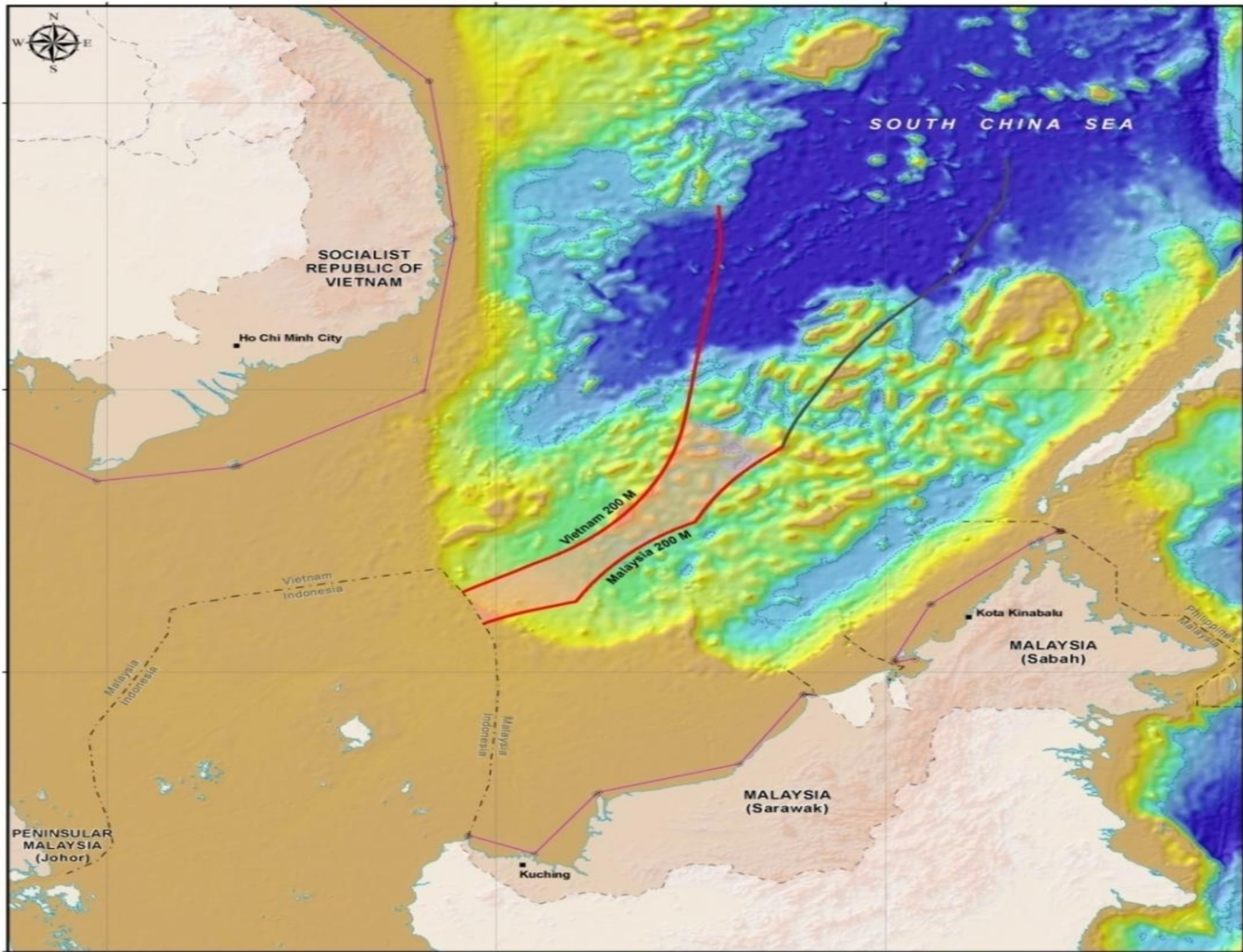
0°

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105°E

110°E

115°E





## Issues on Malaysia - Vietnam Joint Submission

### Malaysia–Vietnam Joint Submission to CLCS

- ▶ Submission on **6 May 2009**
- ▶ 7 May 2009 – PRC submitted 1<sup>st</sup> note verbale (NV) protesting the joint submission and inserting the 9–dash map.
- ▶ 8 & 20 May 2009 – Vietnam and Msia's NVs on states' 'legitimate undertakings' in implementing obligations under UNCLOS and without prejudice to delimitation.
- ▶ 4 Aug 2009 – the Philippines protested to the joint submission asserting their claim to some islands and historic claim over North Borneo.
- ▶ 18 Aug 2009 – Vietnam's 2<sup>nd</sup> NV reiterating position.
- ▶ 21 Aug 2009 – Malaysia's 2<sup>nd</sup> NV reiterating position and reply to the Philippines' claim over Sabah
- ▶ 8 July 2010 – non claimant, Indonesia submitted NV protesting to China's claim based on the map.
- ▶ 5 April 2011 – the Philippines' NV in reply to China's 1<sup>st</sup> NV protesting the map.
- ▶ 14 April 2011 – China's 2<sup>nd</sup> NV reiterating China's claim in the SCS but this time the 9–dash line conspicuously missing.
- ▶ 3 May 2011 – Vietnam's NV reiterating their claims to the Paracel and Spratly Archipelagoes as being integral parts of Vietnamese territory.

## Issues on Malaysia - Vietnam Joint Submission

- Cuarteron Reef is located in the “Defined Area” of the Malaysia-Vietnam Joint Submission in respect of the southern part of the South China Sea which was submitted to the Commission on the Limits of the Continental Shelf (CLCS) in May, 2009. However, this submission has been deferred due to the Note Verbale from China and the Philippines.
- Philippines Submission No. 7 states that Cuarteron Reef does not generate entitlement to an EEZ or CS. The Tribunal stated that any dispute concerning status of these features as “islands” or “rocks” is within the meaning of Article 121 and relates to entitlement to maritime zones generated by that feature, not to the delimitation of such entitlements in the event that they overlap.
- Suggested, alternatively, Malaysia and Vietnam could explore securing a ruling under Annex VII (Arbitration). Most importantly, in making the Joint Submission, Malaysia and Vietnam have clearly marked the existence of continental shelf entitlement beyond 200 nm.
- For example, despite the deferment by the CLCS, states such as Bangladesh, India and Nicaragua have sought the option of seeking judicial and arbitral bodies, namely the International Tribunal for the Law of the Sea (ITLOS), International Court of Justice (ICJ) and Permanent Court of Arbitration (PCA) to delimit the continental shelf beyond 200 nm.
- These requests have triggered the evolution of jurisprudence for the continental shelf beyond 200 nm with the three cases, namely *Dispute Concerning the Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) Judgment of 14 March 2012*, the *Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgment of 19 November 2012*; and the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*.

## Lessons from Philippines Arbitration relating to Malaysia's Claim in the South China: Possible Consideration

- Suggest that other maritime features in the South China Sea within Malaysia's EEZ be assessed in relation to its interpretation under Article 121 as well as its entitlement in generating maritime zone.
- Malaysia – Vietnam may seek to work towards an arrangement that would allow all the protesting States to give their prior consent to the Joint Submission.
- Malaysia and Vietnam could explore securing a ruling under Annex VII (Arbitration). Most importantly, in making the Joint Submission, Malaysia and Vietnam have clearly marked the existence of continental shelf entitlement beyond 200 nm.
- For example, *Dispute Concerning the Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) Judgment of 14 March 2012*, the *Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgment of 19 November 2012*; and the *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*.



**TERIMA KASIH**  
**THANK YOU**

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