

## **Brunei and Malaysia resolve outstanding maritime boundary issues<sup>\*</sup>**

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In March 2009 Brunei<sup>1</sup> and Malaysia reached agreement in the contentious matter of their maritime boundaries seaward of the 100 fathom isobath.<sup>2</sup> That is a good thing, as such agreement will ensure commercial certainty for the vital petroleum industries of both States and contribute to geopolitical stability in the region. The agreement follows six years of negotiations and decades of unresolved land and boundary questions between the two former British crown colonies.<sup>3</sup>

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<sup>1</sup> “Brunei” is used here for convenience instead of the formal name Negara Brunei Darussalam.

<sup>2</sup> Malaysia contended for many years that Brunei’s maritime jurisdiction was limited to the 100-fathom line off the coast of Borneo as a result of the last of the British colonial boundary arrangements done in 1958. Brunei’s EEZ and a possible farther reaching continental shelf entitlement remain to be conclusively established, at least until the March 2009 agreement is disclosed.

<sup>3</sup> See generally Renate Haller-Trost, *The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law* (Durham, U.K.: Durham University, International Boundaries Research Unit, 1994). Strictly speaking, Brunei was a protectorate by designated status and as a matter of international law.

The 2009 agreement took the form of an exchange of letters.<sup>4</sup> Neither the letters nor specific details in them have been disclosed publicly or to the international legal community.<sup>5</sup> However, in a joint press statement of March 16, 2009 the governments of the two States disclosed in general terms that the agreement had resolved four matters. The first was an apparent settling of maritime boundaries between Brunei and Malaysia. The second matter resolved was the establishment of a joint petroleum development area off Borneo, a “Commercial Arrangement Area”. The third was the initiation of a frontier survey to define the boundaries of Malaysia’s Limbang district that is nearly enclaved between Brunei’s two separate land areas (with such land boundary issue revealing the complexities resulting from a single colonial power administering the territorial arrangements of two adjoining colonies). The fourth matter to be resolved was the assurance of transit rights for the nationals of both States through inshore maritime area north of Limbang.<sup>6</sup> The clearest expression of the nature of the 2009 agreement can be found in the following statement made by Brunei’s Minister of Foreign Affairs and Trade:

The solution of the maritime delimitation issue ensures certainty with regard to the delimitation of the territorial seas, the continental shelf and the Exclusive Economic Zone of both countries. The two countries would be able to enforce their rules and regulations and embark on new developments in their respective maritime zones.<sup>7</sup>

Shortly after the conclusion of their agreement, both States filed prospective claims for extended continental shelf jurisdictions with the Commission on the Limits of the Continental Shelf (CLCS) as established under the 1982 United Nations *Convention on the Law of the Sea*.<sup>8</sup> Brunei’s submission was in the form of a “Preliminary Information” defining its claim

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<sup>4</sup> Brunei (Ministry of Foreign Affairs and Trade). “Joint Press Statement by Leaders on the Occasion of the Working Visit of Yab Dato’ Seri Abdullah Haji Ahmad Badawi, Prime Minister of Malaysia to Brunei Darussalam on 15-16 March 2009.” (accessed 24 September 2009); available from: [www.mfa.gov.bn/news/20090316a.htm](http://www.mfa.gov.bn/news/20090316a.htm)

<sup>5</sup> Enquiries for the agreement among law of the sea and petroleum industry sources, including Mr. B.A. Hamzah, a noted Malaysian academic, along with requests to the governments involved have been unsuccessful. It is noted the agreement ought to have been filed with the United Nations pursuant to Article 102 of the *Charter of the United Nations*.

<sup>6</sup> “Joint Press Statement by Leaders on the Occasion of the Working Visit of Yab Dato’ Seri Abdullah Haji Ahmad Badawi, Prime Minister of Malaysia to Brunei Darussalam on 15-16 March 2009,” above note 4.

<sup>7</sup> *Idem*. The agreement had an immediate ramifications for oilfield development, it being subsequently reported that Malaysia would develop a 700 million barrel field, “Kikeh”, extending partly into Brunei’s EEZ. See “Crude Petroleum and Natural Gas Extraction in Brunei Darussalam – Overview” (accessed 4 October 2009); available from: [www.mbendi.com/indy/oilg/ogus/as/bn/p0005.htm#5](http://www.mbendi.com/indy/oilg/ogus/as/bn/p0005.htm#5)

<sup>8</sup> United Nations *Convention on the Law of the Sea*, done at Montego Bay, Jamaica, 10 December 1982 (entered into force 16 November 1994), 21 *International Legal Materials* 1261.

to the seabed beyond 200 nautical miles from its coast.<sup>9</sup> Several weeks later Malaysia and Vietnam delivered a joint submission to the CLCS defining a common continental shelf outer limit also outside their EEZs in an area near the disputed Spratly Islands.<sup>10</sup> The speed of the submissions and the details in each lead to a strong inference that the Brunei-Malaysia exchange of letters resolved matters broadly, with useful ramifications for the South China Sea region.<sup>11</sup>

This was not always the case. 2009 marked a quarter century of Brunei's independence from the United Kingdom, 1984 being the year its status as a protectorate was peacefully concluded.<sup>12</sup> The new State took with her into nationhood unresolved, if minor, land and maritime boundary issues involving her only immediate geographic neighbor, Malaysia.<sup>13</sup> The relations between the two proved sufficiently harmonious over the next two decades that there was little impetus to resolve the status of the area between the two divided land parts of Brunei, and to establish maritime boundaries for a territorial sea extending 12 nautical miles offshore as well as a 200 mile exclusive economic zone.

During these years, Brunei and Malaysia separately developed seabed petroleum deposits in the waters off Borneo. Brunei came to rely heavily on revenue from oil and, later, natural gas. So heavily, in fact, that it took the step of limiting production in the 1980s to about 200,000 barrels per day in a bid to ensure longevity of petroleum reserves.<sup>14</sup> But 2003 found the two States in near armed conflict over a mutually claimed maritime area, when a Malaysian naval vessel forced an oilfield exploration vessel operated by the French petroleum company TotalFinaElf from the "Block J-K" seabed production area considered by Brunei as

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<sup>9</sup> Brunei (government of). "Brunei Darussalam's Preliminary Information concerning the Outer Limits of its Continental Shelf" (accessed 24 September 2009); available from: [www.un.org/Depts/los/clcs\\_new/submissions\\_files/preliminary/brn2009preliminaryinformation.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf)

<sup>10</sup> Malaysia (government of) and Vietnam (government of). "Joint Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the Southern part of the South China Sea" (accessed 24 September 2009); available from: [www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mysvnm\\_33\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm)

<sup>11</sup> The 1982 United Nations *Convention on the Law of the Sea*, above note 8, requires States party to complete and submit claims to an extended continental shelf within 10 years of the coming into force of the Convention on November 16, 1994 (and later, within 10 years following May 13, 1999). After a slow start because of technical challenges in mapping the seabed for many coastal States and the cost of such an exercise, 51 have now made full or part submissions and a further 43 have stated the basis for pending claims. See the website of the CLCS (accessed 28 September 2009); available from: [www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm)

<sup>12</sup> See generally David Leake, *Brunei: The Modern Southeast-Asian Islamic Sultanate* (Jefferson, NC: McFarland & Co., 1989).

<sup>13</sup> *The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law*, above note 3.

<sup>14</sup> See Leszek Buszynski and Iskandar Sazlan, Iskandar. "Maritime Claims and Energy Cooperation in the South China Sea," *Contemporary Southeast Asia*, 29 (2007): 43.

its own.<sup>15</sup> This confrontational stance might have been attributable to the attitude of Malaysia's long-serving autocratic prime minister, Mahathir Mohammed, or to Malaysia's sensitivity over its maritime jurisdiction, a history seen also in the country's disputes with Singapore, or simply to the immense oil wealth in the seabed off Borneo. In the following years, the two States held 39 negotiating meetings that would culminate in the March 2009 agreement. And so the development of petroleum in the South China Sea near Borneo proceeds apace.

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<sup>15</sup> John C. Wu. "The Mineral Industry of Brunei," *U.S. Geological Survey Minerals Yearbook, 2003* (Washington, D.C.: United States Department of the Interior, U.S. Geological Survey, 2003) page 6.1.