

## **JOINT DECLARATION OF JUDGES *AD HOC* HOSSAIN AND OXMAN**

Our decisions to join in supporting the unanimous Order of the Tribunal are informed by a fundamental principle on which the Convention is built. The right of a State to use marine areas and natural resources subject to its sovereignty or jurisdiction is broad but not unlimited. It is qualified by the duty to have due regard to the rights of other States and to the protection and preservation of the marine environment.

Nowhere is the importance of this principle more evident than in and around a narrow strait bordered by each party throughout its length. We discern in the final statements of both parties, in particular that Malaysia accepts the importance of land reclamation and does not claim a veto over Singapore's activities and that Singapore is prepared to make the specific commitments noted in the Order to accommodate Malaysia's concerns, a sincere effort by each party to apply this principle in the circumstances of this case.

What is most urgently required to protect the respective rights of the parties pending a decision by the Annex VII arbitral tribunal is the establishment of a joint process for addressing their most immediate concerns in this regard that builds on their respective statements and implements their duty to cooperate. Two elements are particularly important. The first is the establishment of a common base of information and evaluation regarding the effects of the land reclamation projects that can command the confidence of both parties. The second is that they are expected to consult with a view to reaching a prompt agreement on such temporary measures with respect to Area D at Pulau Tekong, including suspension or adjustment, as may be found necessary to ensure that the infilling operations pending completion of the joint study with respect to that area do not prejudice Singapore's ability to implement its commitments.

In view of our appointments to the Annex VII arbitral tribunal, we note that our respective decisions to vote in favor of the Order in no way prejudice our respective conclusions on any question that may come before that tribunal, including the

question of the jurisdiction of the Annex VII arbitral tribunal to deal with the merits of the case, or any question relating to the admissibility of the claim or relating to the merits themselves.

*(signed)*  
Kamal Hossain

*(signed)*  
Bernard H. Oxman