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## The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks For Dispute Resolution

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THE SPRATLY ISLANDS DISPUTE:  
INTERNATIONAL LAW, CONFLICTING CLAIMS, AND ALTERNATIVE FRAMEWORKS  
FOR DISPUTE RESOLUTION

By

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Honors Thesis submitted in partial fulfillment  
for the designation of Departmental Honors

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## Table of Contents

<b>Acknowledgements .....</b>	<b>2</b>
<b>Abstract .....</b>	<b>3</b>
<b>International Law and Maritime Territorial Sovereignty Disputes.....</b>	<b>4</b>
Evolution of International Law and Law of the Sea.....	4
Legal Standards for Maritime Territorial Disputes .....	5
UNCLOS .....	5
General Customs and Principles .....	9
Decisions and Arbitrations.....	11
Mechanisms for Dispute Resolution .....	15
<b>The Spratly Islands Dispute.....</b>	<b>17</b>
Historical Background.....	17
South China Sea and the Spratly Islands.....	19
Significance of the Spratly Islands .....	20
<b>Competing Claims and Analysis .....</b>	<b>23</b>
China .....	23
Taiwan.....	27
Vietnam.....	29
Philippines.....	32
Malaysia .....	35
Brunei.....	38
Summary Analysis .....	40
<b>Alternative Frameworks for Dispute Resolution .....</b>	<b>40</b>
Towards Political and Diplomatic Frameworks .....	40
Semi-Enclosed Sea and Joint Development .....	42
International Marine Peace Park .....	44
Mixed or Joint Commissions.....	47
Functional Framework .....	49
Conclusions .....	50
<b>Appendices .....</b>	<b>52</b>
Appendix A – Diagrams and Maps .....	52
Appendix B - Relevant Provisions .....	65
Appendix C - Treaties .....	78
<b>Bibliography .....</b>	<b>93</b>

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## **Abstract**

By

Robin Emir Gonzales

The Spratly islands dispute is a regional maritime territorial sovereignty dispute which involves six countries in the South China Sea – China, Taiwan, Vietnam, Philippines, Malaysia and Brunei. Underscored by the prospects of large natural energy reserves, control of strategic global maritime areas, and shifting global power dynamics, the dispute has significant international geo-strategic, economic, political and legal implications. This Honors Thesis evaluates the international legal standards for resolving maritime sovereignty disputes, provides a historiography of the six countries' competing claims, and analyzes the legal soundness of their claims. This thesis also proposes and examines potential political and diplomatic frameworks as alternative routes for resolving the Spratly islands dispute.

## International Law and Maritime Territorial Sovereignty Disputes

### Evolution of International Law and Law of the Sea

Western scholars divide the legal universe into two parts – international law and domestic law. While domestic law prescribes rules governing everything within a state, such as conduct or status of individuals, corporations, domestic government units, and other entities, international law prescribes rules that govern the relations of nation-states or simply “states.”<sup>1</sup> International law is further divided into international public law and international private law. For the purposes of this thesis, only international public law will be discussed. In *The Law of Nations*, J.L. Brierly defined international public law as “the body of rules and principles of action which are binding upon civilized states in their relations with another.”<sup>2</sup>

Though great empires have existed in China, India and Japan, as well as throughout Africa, Southeast Asia and the Middle East, and in the course of having relations with other peoples, have developed systems of international law, the contemporary international system of law is a product of Western European political developments over the last four centuries.<sup>3</sup> The concept of states as primary actors in international relations and the concept of state sovereignty, which are all fundamental doctrines in the modern international system, originated from practices and customs of European states and their interactions and communication with each other.<sup>4</sup> Though echoing critiques of whether these western notions should be the standard for

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<sup>1</sup> Barry E. Carter and Phillip R. Trimble, *International Law*, 5th ed. (Gaithersburg [Md.: Aspen Law & Business, 2007), 1.

<sup>2</sup> J. L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (Oxford: Clarendon Press, 1963), 1.

<sup>3</sup> Carter and Trimble, *International Law*, 846.

<sup>4</sup> Ibid.

international law, particularly in resolving disputes between non-western countries, non-western countries have themselves accepted and supported the general notions of this European system.<sup>5</sup>

As it has come to be generally accepted, and as well as incorporated in Article 38 of the International Court of Justice Statutes, the primary sources of international law are “international conventions, international custom and the general principles of law as recognized by civilized nations” and subsidiary sources are “judicial decisions and the teachings of the most qualified publicists of various nations.”<sup>6</sup> As this thesis’ focus is on international law regulating the seas, a brief discussion of the evolution and sources of international law of the seas is appropriate.

Until the twentieth century, the customary law of the sea was premised on the freedom of the seas doctrine. Hugo Grotius’s *Mare Liberum*, published in 1609, argued that “no nation could legitimately exercise sovereignty over any of the world’s oceans.”<sup>7</sup> In the centuries that followed, the concept of freedom of the seas, though universally adhered to, brought about debates, among other things, on the extent to which coastal states could control the waters immediately adjacent to its coast.<sup>8</sup>

At the beginning of the twentieth century, there was growing movement to codify international law. The navies of maritime powers competed to maintain a presence across the globe as there was a movement to extend national claims over offshore resources. The freedom of the seas doctrine was threatening to turn the oceans into another area of conflict and

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<sup>5</sup> R. Haller-Trost, Clive H. Schofield, and Peter R. Hocknell, *The Territorial Dispute between Indonesia and Malaysia over Pulau Sipadan and Pulau Ligitan in the Celebes Sea: A Study in International Law*, vol. 2, series 2 (Durham: International Boundaries Research Unit, University of Durham, 1995), 1.

<sup>6</sup> International Court of Justice, *Statute of the Court*, Article 38, accessed February 10, 2014, <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0&>.

<sup>7</sup> Carter and Trimble, *International Law*, 848.

<sup>8</sup> *Ibid.*

instability<sup>9</sup>. In the 1920s, the League of Nations recognized the need to codify the law of the sea.<sup>10</sup> In 1930, a conference at The Hague was called for this purpose.<sup>11</sup> Though the Hague Convention did not result in any binding agreement, by the time it was called, the main doctrinal features of the law of the sea that are recognizable today had already formed as the products of intellectual trends.<sup>12</sup> Included in this trend were:

the European centrism of the law of the sea, the conceptual division between ownership of ocean areas, and jurisdiction over maritime activities, the notional supremacy of freedom of the seas, the dynamic competition between coastal State and maritime Power interests, and the growing realization that ocean resources were not boundless.<sup>13</sup>

After World War II, the International Law Commission, under the United Nation's direction, produced comprehensive reports on the subject of the law of the sea. Soon after, the first United Nations Conference on the Law of the Sea was called in Geneva, Switzerland in 1958 and resulted in four treaties on the issues, among others, of territorial sea, contiguous zones, continental shelf, and the high seas.<sup>14</sup> In 1960, a second UNCLOS was called to clarify issues that were left unresolved but this convention proved to be unsuccessful in resolving these issues. Between 1972 and 1982, a third UNCLOS was called and eventually resulted in a comprehensive agreement on a codified law of the sea that replaced previous treaties and

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<sup>9</sup> United Nations, Division for Ocean Affairs and Law of the Sea, *The United Nations Convention on the Law of the Sea (A Historical Perspective)*, 2012, A Historical Perspective, accessed February 03, 2014, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Third%20Conference](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference).

<sup>10</sup> Bardo Fassbender and Anne Peters, *Oxford Handbook of the History of International Law* (Oxford University Press: New York, 2012), 372.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, 373.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, 851.



conventions. The third UNCLOS, or as it has come to be known simply as “UNCLOS”, was concluded in 1982 and came into force in 1994, with Guyana becoming the 60<sup>th</sup> state to sign the treaty.<sup>15</sup> Though the third UNCLOS agreement has become widely accepted as the governing document for the law of the sea, with over 165 countries and the European Union having signed the convention<sup>16</sup>, questions as to the legal status of the agreement remain, particularly as the United States has not yet signed the convention and has only selectively endorsed some of its provisions.<sup>17</sup>

### Legal Standards for Maritime Territorial Dispute

#### *UNCLOS*

The 1982 United Nations Convention on the Law of the Sea, which came into force in 1994, is an international treaty that established a “legal order” for the world’s seas and oceans.<sup>18</sup> UNCLOS provides a regulatory framework for addressing, among other things, sovereignty, territorial sea limits, legal status of resources on the seabed beyond the limits of national jurisdiction and a binding procedure for settlement of disputes between States.<sup>19</sup> A short discussion of the major provisions<sup>20</sup> of UNCLOS, as it pertains to the focus of this thesis, follows.

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<sup>15</sup> United Nations, Division for Ocean Affairs and Law of the Sea, *The United Nations Convention on the Law of the Sea (A Historical Perspective)*, 2012, The Convention, accessed February 03, 2014, [http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Third%20Conference](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 851.

<sup>18</sup> United Nations, Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of the Sea (1982)*, Preamble, [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).

<sup>19</sup> United Nations, Division for Ocean Affairs and Law of the Sea, *The United Nations Convention on the Law of the Sea (A Historical Perspective)*, 2012, The Convention, accessed February 03, 2014

<sup>20</sup> See Appendix A.0 for a diagram of UNCLOS legal zones

## Territorial Sea<sup>21</sup>

Though the right of coastal states to extend sovereign control over waters beyond their coastlines was always recognized under international law, the scope and limit of this control was always in contention. Under UNCLOS, a coastal state has sovereignty to set laws, regulate use and exploit resources, up to 12 nautical miles (nm) from its coastlines. This is regarded as sovereign territory of the state and extends to the airspace and seabed within this region. If this zone conflicts with another state's territorial sea, the median point of both state's territorial sea is taken as the border, or it can otherwise be negotiated by the respective states.

Under UNCLOS, archipelagic states, which are states made up of a group of closely spaced islands, have their 12nm territorial sea drawn from the outermost points of the outermost islands of the group, where these islands are in close proximity to each other. The waters in between these islands are under the sovereign control of the archipelagic state, subject to innocent passage by foreign vessels.

## Contiguous Zone<sup>22</sup>

This zone extends the 12nm jurisdiction from territorial sea to up to 12nm more, with limited exercise of sovereignty, when there is no conflict with another state's jurisdiction. This could be more or less if it overlaps with another state's contiguous zone. In this zone, coastal states can implement certain rights to prevent certain violations and enforce their police powers.

## Exclusive Economic Zone (EEZ)<sup>23</sup>

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<sup>21</sup> See Appendix B.5

<sup>22</sup> See Appendix B.5

<sup>23</sup> See Appendix B.5

This confers “sovereign right” to a coastal state to exploit, develop and manage all economic resources below the surface of the sea up to 200nm from the outer limit of its territorial sea. However, the coastal state does not have full sovereignty to the EEZ. The surface waters are still regarded as international waters.

#### Continental Shelf<sup>24</sup>

The continental shelf is a natural prolongation of the land territory to the continental margin’s outer edge. The continental shelf may extend up to 200nm or can exceed up to 350nm from the coastline if it is a natural prolongation, whichever is greater. Coastal states have exclusive rights to resources attached to its continental shelf.

#### *General Customs and Principles*

In relation to territorial disputes, four species of territories exist - sovereign territory, trust territory, *terra nullius* and *res communis*.<sup>25</sup> Since sovereign territory and *terra nullius* are the only ones that apply to the Spratly islands dispute, which is the main focus of this thesis, only these will be discussed.

Sovereignty is a critical principle underlying territorial disputes. States possess the right to control the land located within their territorial boundaries and to exclude other states from being present without their consent.<sup>26</sup> In recent times however, this notion of absolute state sovereignty within its borders has become less absolute and more limited as the world moves towards globalization and states increasingly become interdependent with each other.

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<sup>24</sup> See Appendix B.5

<sup>25</sup> William Slomanson, *Fundamental Perspectives on International Law*, 4th ed. (Belmont: Clark Baxter, 2003), 246.

<sup>26</sup> Ibid.

States also routinely exercise their sovereignty in zones that have traditionally been the heritage of all nations – sea, airspace, and outer space, areas that many states and their citizens simultaneously occupy. Oceans, mountains, and other natural frontiers and barriers ordinarily define territorial boundaries.<sup>27</sup>

*Terra nullius* are territories over which no state has control or exercises control and, therefore, may be legally acquired under certain requirements. As a condition for establishing sovereignty, states must establish that a particular territory was in fact *terra nullius* and therefore available for occupation and a claim to title.<sup>28</sup>

As means for acquisition of sovereignty under international law, the traditional methods of occupation, conquest, cession, prescription, and accretion, and modern methods, which include renunciation, joint decision, and adjudication, are recognized.<sup>29</sup> Since occupation, cession, renunciation, and adjudication are the only ones that apply to the Spratly islands dispute, only these will be discussed.

Exclusive occupation of a particular geographic area over an extended period of time is the most common basis for claiming sovereignty. This mode of acquisition is an original claim to a territory.<sup>30</sup> This is similar to the common law principle of Squatter's rights. Cession, on the other hand, is an international agreement that deeds territory from one state to another. The grantee state's right to claim title to the granted land is a derived claim from that agreement.<sup>31</sup>

Renunciation, sometimes referred to as acquiescence, is when a state relinquishes its territory or claim to a territory. In this method, there is no formal transfer of title as in treaty

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<sup>27</sup> Ibid., 247.

<sup>28</sup> Ibid., 246-247.

<sup>29</sup> Ibid., 247-256.

<sup>30</sup> Ibid., 248.

<sup>31</sup> Ibid., 250.

cession.<sup>32</sup> Finally, adjudication, as a method of legitimizing the transfer of sovereignty, is the result of an international agreement that authorizes a tribunal to resolve the dispute, by examining facts and rendering a decision, between the party states. Resolution through the International Court of Justice falls under the category of arbitration.<sup>33</sup>

### *Decisions and Arbitrations*

International jurisprudence, derived from the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA) and other adjudicated cases, suggests that in the absence of a definitive “legal title,” acquired through treaties and judicial decisions, the exercise of effective authority becomes a decisive element in determining territorial sovereignty claims. The *Eritrea/Yemen* decision from the PCA, which granted Yemen sovereignty over the Hanish islands in the Red Sea, noted that the acquisition of territory in contemporary international law generally requires “an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions on a continuous and peaceful basis.”<sup>34</sup> This legal standard of ascertaining sovereignty claims has also prevailed in most instances against the assertion of historic titles and titles by first discovery. Judge Alejandro Alvarez, who delivered the declaration of the ICJ in *Minquiers and Ecrehos*, wrote that “the task of the Court is to resolve international disputes by applying, not the traditional or classical international law, but that which exists at the present day and which is in conformity with the new conditions of international life, and to develop this law in a progressive spirit.”<sup>35</sup>

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<sup>32</sup> Ibid., 256.

<sup>33</sup> Ibid.

<sup>34</sup> Permanent Court of Arbitration, *Eritrea/Yemen Arbitration*, October 9, 1998, accessed February 03, 2014, [http://www.pca-cpa.org/showpage.asp?pag\\_id=1160](http://www.pca-cpa.org/showpage.asp?pag_id=1160).

<sup>35</sup> *Minquiers and Ecrehos*, ICJ 73 (1953).

Early cases establish that actual displays of authority and evidence of possession outweigh claims of historic sovereignty, when not continuously exercised. In *Minquiers and Ecrehos*, the ICJ awarded the United Kingdom sovereignty over a group of islets and rocks in the English Channel on the basis of evidence which relates directly to the possession of the islands, in this case local administration for a long period of time and exercise of state functions. The Court dismissed France's claims of historic sovereignty during the eleventh and twelfth century.<sup>36</sup> In *Island of Palmas*, the PCA awarded the Netherlands East Indies, now Indonesia, sovereignty over the island of Palmas based on continuous and peaceful display of state authority during a long period of time. The PCA rejected the United States' contention that it had acquired sovereignty over the island because Spain, who ceded its title and claim over the island to the United States in the Treaty of Paris, had acquired sovereignty over the island by being the first to discover it. The PCA ruled that titles of discovery are inchoate titles that need continuous and actual displays of sovereignty, and that inchoate titles cannot prevail over titles based on continuous and peaceful display of sovereignty. The PCA also ruled that contiguity, as a basis for territorial sovereignty claim, has no foundation under international law.<sup>37</sup>

The *Island of Palmas* decision further noted that the principle of "continuous and peaceful display of the functions of state," as an important element in territorial sovereignty, is not only based on established international jurisprudence and widely accepted doctrine, but is recognized and applied even within federal states with internal territorial boundary issues (*Island of Palmas*, PCA 1928). For example in the U.S. Supreme Court decisions of *State of Indiana v.*

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<sup>36</sup> Ibid.

<sup>37</sup> *Island of Palmas*, ICJ (1928).

*State of Kentucky and Rhode Island v. Massachusetts*, prescription founded on length of time<sup>38</sup> is held as a valid and incontestable title<sup>39</sup>.

Even when there was a consideration of historic claims, in the case of inheritance from colonial powers, the continuous and peaceful exercise of effective authority still determined the sovereignty award. In *Land, Island and Maritime Frontier Dispute*, the ICJ considered ancient historic claims of title on the basis of cession, or in this case inheritance, from colonial powers rather than the basis of *terra nullius*, but only with the exercise of sovereignty as confirmation for possession. In the same decision, the ICJ awarded the Meanguera, Meanguerita and the El Tigre islands in the Gulf of Fonseca on the basis of a long standing occupation and control without protest by another, as “pointing to acquiescence.”<sup>40</sup> With this criterion, Meanguera and Meanguerita were awarded to El Salvador while El Tigre was awarded to Honduras.<sup>41</sup>

In some instances, effective authority does not have to be manifested in occupation, although in most cases it is. The *Clipperton Island* arbitration acknowledged that the “actual, and not the nominal, taking of possession” is a necessary condition for sovereignty and that “the acts, or series of acts, by which the occupying state reduces to its possession the territory in question and takes steps to exercise exclusive authority there” should follow.<sup>42</sup> However, the arbitration also acknowledged that in some instances it may be unnecessary to have recourse to this method of perfecting sovereignty, especially where territory is uninhabitable, and that the requirement of effective occupation may be unnecessary. The arbitration concluded:

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<sup>38</sup> *Rhode Island v. Massachusetts*, 37 US 657 (1838).

<sup>39</sup> *State of Indiana v. State of Kentucky*, 136 U.S. 479 (1890).

<sup>40</sup> *Land, Island, and Maritime Frontier Dispute* ICJ 579 (1992).

<sup>41</sup> *Ibid.*

<sup>42</sup> “Arbitral Award on the Subject of the Difference Relative to the Sovereignty over Clipperton Island,” *American Journal of International Law* 26, no. 2 (April 1932): 390, accessed January 02, 2014, <http://www.jstor.org/stable/2189369>.

Thus, if a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that state, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed.<sup>43</sup>

In the *Clipperton Island* case, a sovereignty dispute over an uninhabitable island in the eastern Pacific Ocean between France and Mexico was awarded to France on the basis that it had perfected its sovereignty title by acquiring it under the concept of *terra nullius* and a notice of French occupation, through the Government of Hawaii and published in a Honolulu newspaper, despite the absence of effective occupation. The arbitration rejected Mexico's contention that France had not exercised effective occupation and therefore had not perfected its sovereignty over the island.<sup>44</sup>

In the first instance of a Southeast Asian territorial dispute to be settled at the ICJ, the Court reinforced prior decisions disregarding historic claims and requiring the continuous, peaceful and effective exercise of authority for claiming sovereignty. In *Sovereignty over Palau Ligitan and Palau Sipadan*, the Court awarded Malaysia sovereignty over the islands of Palau Ligitan and Palau Sipadan in the Celebes Sea based on a show of superior "effectivities", that is evidence of actual and continued exercise of authority over the islands.<sup>45</sup> In this case, Malaysia and its predecessor the British colonial government had continually exercised authority for 88 years without protest until 1969. Examples of this exercise of authority included a 1917 ordinance regarding the taking of turtle eggs, a 1933 establishment of bird houses on Sipadan,

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<sup>43</sup> Ibid., 394.

<sup>44</sup> Ibid.

<sup>45</sup> Haller-Trost et al., *The Territorial Dispute between Indonesia and Malaysia over Pulau Sipadan and Pulau Ligitan in the Celebes Sea*, 1.



construction of lighthouses on the two islands in 1962 and 1963, and various fishing licenses handed out by the government. The Court rejected France's claims based on colonial era maps and vague treaties.<sup>46</sup>

Generally, the judicial decisions and arbitrations point to a pattern that when ambiguity exists, the continuous and actual displays of authority, evidence of possession, and acquiescence by other states to the exercise of sovereignty are of decisive importance in determining sovereignty issues.<sup>47</sup>

### Mechanisms for Dispute Resolution

In accordance with Article 2, Section 3 (Purpose and Principles) of the United Nations (UN) Charter<sup>48</sup>, member states are mandated to seek a peaceful means, that which does not endanger "international peace and security, and justice," for resolving international disputes. In Article 33, it is further elaborated that parties to a dispute can seek a solution through "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>49</sup>

The majority of disputes under international law are resolved through negotiations or negotiations involving aspects of enquiry, mediation and conciliation.<sup>50</sup> Negotiation is typically conducted through "normal diplomatic channels", that is by states' respective foreign affairs office or through the United Nations General Assembly.<sup>51</sup> The use of arbitration and judicial

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<sup>46</sup> Sovereignty over Pulau Ligitan and Pulau Sipadan ICJ (2002).

<sup>47</sup> Lian A. Mito, "The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands," *American University International Law Review* 13, no. 3 (1998): 733, accessed February 10, 2014, Digital Commons.

<sup>48</sup> See Appendix B.1

<sup>49</sup> United Nations, *Charter of the United Nations*, Article 33, accessed February 10, 2014, <https://www.un.org/en/documents/charter/>.

<sup>50</sup> Carter and Trimble, *International Law*, 286.

<sup>51</sup> *Ibid.*, 288.

settlement becomes necessary when diplomacy fails to resolve a contentious international dispute.

UNCLOS established the International Tribunal for the Law of the Sea (ITLOS)<sup>52</sup>, an independent judicial body, specifically to adjudicate disputes arising out of the interpretations and application of the convention.<sup>53</sup> Though signatory states are obligated to peacefully settle any disputes arising from UNCLOS, the ITLOS is not the only means of doing this. Under Article 287 of the UNCLOS provisions<sup>54</sup>, states can also freely choose to settle their disputes, particularly concerning the interpretation and application of UNCLOS provisions, through the International Court of Justice or other arbitral tribunals.

As the “principal judicial organ” of the UN, all member states are also “facto” parties to the International Court of Justice, or otherwise known as the “World Court” and its statutes.<sup>55</sup> Each member of the UN is mandated to comply with ICJ decisions in any case to which they are party. If parties to a case fail to comply with such decisions, the other party can have recourse through the Security Council, which may “make recommendations or decide upon measures to be taken to give to the judgment”.<sup>56</sup> It is however noted that members are not prevented from entrusting their disputes to other tribunals, if so agreed upon by the disputing parties.<sup>57</sup>

During the 1899 Hague Conventions, the Convention on the Pacific Settlement of International Disputes<sup>58</sup> created the Permanent Court of Arbitration with the objective of

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<sup>52</sup> United Nations, Division for Ocean Affairs and the Law of the Sea, *United Nations Convention on the Law of The Sea* (1982), Annex VI, [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).

<sup>53</sup> “The Tribunal,” International Tribunal for the Law of the Sea, accessed February 10, 2014, <https://www.itlos.org/index.php?id=15&L=0>.

<sup>54</sup> See Appendix B.5

<sup>55</sup> United Nations, *Charter of the United Nations*, Article 92-93, accessed February 10, 2014, <https://www.un.org/en/documents/charter/>.

<sup>56</sup> *Ibid.*, 94.

<sup>57</sup> *Ibid.*, Article 95.

<sup>58</sup> See Appendix B.3

“facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy.”<sup>59</sup> It was noted in the convention that in questions of legal nature where international conventions are being interpreted or applied, arbitration was the most effective and equitable means of settling such disputes, where diplomacy has failed.<sup>60</sup> Compared with the ICJ, the system of arbitration settles dispute between states by judges of their own choice and on “the basis of respect for law.”<sup>61</sup> It also noted in the revised 1902 articles of the convention<sup>62</sup> that recourse to arbitration implies “an engagement to submit in good faith to the Award.”<sup>63</sup> The Permanent Court of Arbitration has since become the default arbitral tribunal in resolving UNCLOS provisions, pursuant to Article 287(c) of UNCLOS<sup>64</sup>. Since UNCLOS has come into force in 1994, 9 cases have been acted upon or are pending in the tribunal’s registry.<sup>65</sup>

## **The Spratly Islands Dispute**

### **Historical Background**

Over a hundred years of colonial competition that started in the 1800’s have led to the complication of the ownership of the Spratly islands. Towards the end of the nineteenth century, Britain, France and Japan competed for sovereign control over the South China Sea. As the French and British empires disintegrated throughout the nineteenth and twentieth centuries, and

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<sup>59</sup> Permanent Court of Arbitration, *1899 Convention for the Pacific Settlement of International Disputes*, Chapter I, Article 20, accessed February 10, 2014, [http://www.pca-cpa.org/showpage.asp?pag\\_id=1187](http://www.pca-cpa.org/showpage.asp?pag_id=1187).

<sup>60</sup> *Ibid.*, Chapter I, Article 16.

<sup>61</sup> *Ibid.*, Article 37.

<sup>62</sup> See Appendix B.4

<sup>63</sup> *Ibid.*

<sup>64</sup> See Appendix B.5

<sup>65</sup> “Ad Hoc Arbitration Under Annex VII of the United Nations Convention on the Law of the Sea,” Permanent Court of Arbitration, accessed February 20, 2014, [http://www.pca-cpa.org/showpage.asp?pag\\_id=1288](http://www.pca-cpa.org/showpage.asp?pag_id=1288)

the withdrawal of Japanese forces at the end of World War II<sup>66</sup>, they left in their wake a series of former colonial territories and ambiguous mechanisms to resolve territorial disputes<sup>67</sup>.

In modern times, the first exercise of effective control can be traced back to the Japanese invasion and occupation in 1939. Garrisons were established in some islands and regular naval patrols were carried out. The allocation of sovereignty could have been settled in the 1951 San Francisco Peace treaty<sup>68</sup> and the 1952 Japan-Taiwan Treaty<sup>69</sup>; however, western powers were uninterested in settling ownership of the islands and viewed it as of little significance then. The Japanese claims, along with any prior ones from France and purported Vietnamese claims before France, effectively lapsed.<sup>70</sup>

Long known to navigators as “Dangerous Ground” because of its perilous area, the islands’ former name has ominously described the evolution of the dispute in the South China Sea.<sup>71</sup> The islands drove away ships and vessels until geological studies in the 1970s showed the possible existence of substantial petroleum and natural deposits beneath the seabed.<sup>72</sup> Since then, littoral states have become entangled in a web of overlapping and conflicting claims over the sovereignty of the islands and its resources.<sup>73</sup>

The closure of U.S. bases in the Philippines, the collapse of the Soviet Union and its withdrawal from the Cam Ranh Bay, and the end of the Cold War, left a power vacuum in the

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<sup>66</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, vol. 2, series 1 (Durham: International Boundaries Research Unit, University of Durham, 1996), 7, accessed February 1, 2014.

<sup>67</sup> Xavier Furtado, "International Law and the Dispute Over the Spratly Islands: Whiter UNCLOS?," *Contemporary Southeast Asia* 21, no. 3 (1999): 387, accessed August 28, 2013, ProQuest.

<sup>68</sup> See Appendix C.1

<sup>69</sup> See Appendix C.2

<sup>70</sup> Lee G. Cordner, "The Spratly Islands Dispute and the Law of the Sea," *Ocean Development & International Law* 25, no. 1 (1994): 69, accessed January 05, 2014, Taylor & Francis.

<sup>71</sup> Brantly Womack, "The Spratly: From Dangerous Ground to Apple of Discord," *Contemporary Southeast Asia: A Journal Of International & Strategic Affairs*, 3rd ser., 33 (2011): 373, accessed August 31, 2013, Academic Search Premier.

<sup>72</sup> *Ibid.*, 373.

<sup>73</sup> Christopher Joyner, "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geo-politics in the South China Sea," *The International Journal of Marine and Coastal Law* 13, no. 2 (1998): 193, accessed August 27, 2013, Academic Search Premier.

South China Sea that has prompted littoral states to re-evaluate their national security interests, maritime jurisdiction and territorial sovereignty.<sup>74</sup> While the People's Republic of China (China), the Republic of China (Taiwan) and Vietnam have traditionally claimed the whole of the Spratly islands primarily based on historical grounds, sustained occupations by China since 1956, by Vietnam since 1973, by the Philippines since 1971 and by Malaysia since 1983, complicate the issue of whether ownership of the islands should be decided in whole or by parts.<sup>75</sup>

### The South China Sea and the Spratly Islands

The South China Sea<sup>76</sup> is a semi-enclosed sea that is bordered by Vietnam on the west by the Philippines, Malaysia and Brunei on the east, by Indonesia and Malaysia on the south, and by China and Taiwan on the north. Around 90 percent of its circumference is surrounded by land and its total area is approximately 550-650 nautical miles (nm) in width and 1200 nautical miles (nm) in length.<sup>77</sup>

The Spratly islands are an archipelago located in the South China Sea. The archipelago comprises of over one hundred widely scattered islands, islets, banks and rocks spread across a surface area<sup>78</sup> estimated to be around 410,000 square kilometers (km<sup>2</sup>) of water.<sup>79</sup> Article 121(1) of UNCLOS<sup>80</sup>, defines an island to be "a naturally formed area of land, surrounded by water, which is above water at high tide".<sup>81</sup> Under the UNCLOS definition, only forty of the Spratly

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<sup>74</sup> Ibid., 194.

<sup>75</sup> Womack, "The Spratly", 373.

<sup>76</sup> See Appendix A.1

<sup>77</sup> Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea," *American Journal of International Law* 107, no. 1 (2013): 143, accessed August 31, 2013, LexisNexis Academic.

<sup>78</sup> Monique Chemillier-Gendreau, *Sovereignty over the Paracel and Spratly Islands* (Springer, 2000), 19.

<sup>79</sup> Beckman, "The UN Convention on Law of the Sea," 142.

<sup>80</sup> See Appendix B.5

<sup>81</sup> Ibid., 143.

features are considered islands, with the largest island spanning less than 1.7 kilometers (km). The remaining features of the archipelago are either submerged under water or are above water only during low tide.<sup>82</sup>

China, Taiwan, and Vietnam each claim the entirety of the Spratly island group. The Philippines claims a number of the features that supposedly fall under its Kalayaan Island Group. Malaysia claims some features according to provisions within UNCLOS, and Brunei claims one reef that is within its 200nm EEZ. Over sixty of the Spratly features are reportedly occupied by claimant countries<sup>83</sup>. The largest island, Itu Aba, is occupied by Taiwan. Vietnam reportedly occupies twenty-five, the Philippines occupies eight, China occupies seven, Malaysia occupies three and Taiwan occupies one.<sup>84</sup>

### Significance of the Spratly Islands

The purported large natural reserves beneath the Spratly archipelago seabed and the importance of the South China Sea to global maritime navigation give the dispute significant regional and international importance. Additionally, China's rise to international political and military power has coincided with the relative decline of the United States' global power. Consequentially, the Spratly dispute does not merely revolve around territorial claims but it also revolves around significant geo-strategic, economic, political and legal challenges.<sup>85</sup>

The features within the Spratly archipelago are mostly barren, uninhabitable and contain little land resources. However, the features are strategically, politically and economically important because they serve as legal base points for which claimant states can project

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<sup>82</sup> Ibid., 143.

<sup>83</sup> See Appendix A.2.1 and Appendix A.2.2

<sup>84</sup> Ibid., 144.

<sup>85</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 69.

jurisdiction over water and resources in the South China Sea.<sup>86</sup> Although it is difficult to accurately estimate the amount of oil and natural gas in the South China Sea because of the ongoing territorial dispute and the lack of exploration, the United States Energy Information Agency (EIA) roughly estimates that there are approximately 11 billion barrels (bbl) of oil reserves and 190 trillion cubic feet (Tcf) of natural gas reserves in the South China Sea.<sup>87</sup> Additionally, the USGS estimates that anywhere between 0.8 and 5.4 billion barrels of oil and between 7.6 and 55.1 trillion cubic feet (Tcf) of natural gas reserves are within the Spratly archipelago area.<sup>88</sup>

Asia's rapid economic growth and increased demand for energy sources makes the conflict even more contentious. The EIA estimates that liquid fuel consumption for selected Asian countries, which include all of the Spratly claimants, will rise at an annual rate of 2.6 percent. By 2035, it is estimated that the Asian countries' share of global oil consumption will increase from 20% in 2008 to 30%. China is estimated to account for 43% of the growth. While Southeast Asian oil consumption increases, domestic production is expected to remain flat or decrease throughout this time. China also seeks to increase the share of natural gas in its energy mix from 3% to 10% by 2020.<sup>89</sup>

The Spratly archipelago also holds geopolitical or geostrategic importance in global maritime and military navigation. All maritime traffic traversing the South China Sea passes through this archipelago and no global maritime power can ignore this sea.<sup>90</sup> To the south-west, the South China Sea connects with the Indian Ocean through the Straits of Malacca and

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<sup>86</sup> Joyner, "The Spratly Islands Dispute," 97.

<sup>87</sup> United States, Department of Energy, U.S. Energy Information Administration, *South China Sea* (2013), 2, accessed September 7, 2013, [http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).

<sup>88</sup> *Ibid.*, 4.

<sup>89</sup> *Ibid.*, 1.

<sup>90</sup> Chemillier-Gendreau, *Sovereignty over the Paracel and Spratly Islands*, 16.

Singapore. To the north-east, it connects to the East China Sea, which in turn connects to the Sea of Japan through the strait of Korea.<sup>91</sup> In 2011, approximately 11 million barrels of oil per day<sup>92</sup> and 6 trillion cubic feet of natural gas<sup>93</sup> passed through this area. Additionally, 25% of world shipping, 80% to 90% of Japanese and Chinese oil imports,<sup>94</sup> and military fleets moving from the Pacific to the Indian Ocean transit<sup>95</sup> through here.<sup>96</sup>

Vital human security aspects also exist in the dispute. The South China Sea provides for 80% of the Philippine diet and over 25% of the protein needs of over 500 million people in the region.<sup>97</sup> The Asian diet is protein-heavy and coastal areas that surround the South China Sea have increasingly dense populations.<sup>98</sup>

The Spratly dispute is also underscored by shifting global power dynamics. In July 2010, U.S Secretary of State Hillary Clinton, during a speech to the ASEAN Regional Forum, said that there was an American “national interest” in the area.<sup>99</sup> While the United States does not have a claim in the dispute, the rise of China’s economic and military power has threatened its influence in the region. China may still not compare to the United States’ global military reach but the United States will no longer have unchallenged influence in Asia. As the global power, the United States is concerned about maintaining global order. Thus its interests do not merely lie in conflict resolution; it is also interested in maintaining the balance of power in the region. “The

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<sup>91</sup> Ibid.

<sup>92</sup> See Appendix A.4.1

<sup>93</sup> See Appendix A.4 .2

<sup>94</sup> Alice D. Ba, "Staking Claims and Making Waves in the South China Sea: How Troubled are the Waters?," *Contemporary Southeast Asia: A Journal of International & Strategic Affairs* 33, no. 3 (2011): 270, accessed August 31, 2013, Academic Search Premier.

<sup>95</sup> See Appendix A.3.1 and A.3.2

<sup>96</sup> David Denoon and Steven Brams, "Fair Division: A New Approach to the Spratly Islands Controversy," *International Negotiation* 2 (1997): 307, accessed August 21, 2013, Academic Search Premier.

<sup>97</sup> Scott Snyder, Brad Glosserman, and Ralph Cossa, "Confidence Building Measures in the South China Sea," *Issues and Insights, Center for Strategic and International Studies*, 01st ser., 02 (August 2001): 5, accessed March 7, 2001.

<sup>98</sup> See Appendix A.5

<sup>99</sup> Womack, "The Spratly," 371.



role of global peace-keeping”, as Womack puts it, “is more one of peace-holding than of peace-making”.<sup>100</sup> Finally, the extensive trade and debt connection between the United States and China forces the former to cautiously deal with the latter, despite strong alliances with ASEAN countries, unless it wants to risk domestic economic repercussions.<sup>101</sup>

### **Competing Claims and Analysis**

It is important to note that while China, Taiwan and Vietnam base their respective claims primarily on historic rights over the Spratly archipelago; the Philippines, Malaysia and Brunei base their respective claims on geographic proximity provisions under UNCLOS. Consequently, China, Taiwan and Vietnam claim the whole archipelago, while the Philippines, Malaysia and Brunei only claim certain islands or features in the archipelago<sup>102</sup>.

#### **China<sup>103</sup>**

China’s claims are based on the assertion of historical sovereignty and occupation over the South China Sea. Claims on the archipelago purportedly date back to the ancient Chinese dynasties, with some claims dating back to as early as the Han Dynasty in the Second Century B.C.<sup>104</sup> Ancient Chinese maps, texts and reports of commercial and naval activity in the area<sup>105</sup> show that it was the first to discover and occupy these islands and its surrounding features.<sup>106</sup>

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<sup>100</sup> Ibid., 376.

<sup>101</sup> Ibid., 372.

<sup>102</sup> See Appendix A.6

<sup>103</sup> See Appendix A.7

<sup>104</sup> Daniel J. Dzurek, *The Spratly Islands Dispute: Who's On First?*, vol. 2, series 1 (Durham: International Boundaries Research Unit, University of Durham, 1996), 7, accessed February 1, 2014.

<sup>105</sup> Xavier Furtado, "International Law and the Dispute Over the Spratly Islands: Whiter UNCLOS?," *Contemporary Southeast Asia* 21, no. 3 (1999): 389, accessed August 28, 2013, ProQuest.

<sup>106</sup> Dzurek, *The Spratly Islands Dispute*, 7.

China contends that prior to their discovery and occupation of the archipelago, the Spratlys were *terra nullius*.<sup>107</sup>

China's earliest formal claim came in 1887 when the Convention Respecting the Delimitation of the Frontier Between China and Tonkin was signed.<sup>108</sup> At the conclusion of the Sino-French War, delimitation lines between French and Chinese territories in the South China Sea was outlined. Despite having ambiguous provisions, China used these provisions and made attempts to exert control on the South China Sea towards the end and the early part of the 18<sup>th</sup> and 19<sup>th</sup> centuries.<sup>109</sup> The conclusion of World War II, with ambiguous delimitation of territories, and the collapse of the French empire made the claims more confusing.<sup>110</sup>

Between 1946 and 1947, China published official names for the islands and features in the Spratly archipelago and incorporated them into the Guangdong province. China has since included the Spratly archipelago into the province of Hainan, which was established in July 1987.<sup>111</sup> China also started to publish tongue shaped<sup>112</sup>, interrupted line maps that showed its jurisdiction over all of South China Sea around the late 1940s<sup>113</sup>. In 1951, China's Foreign Minister outlined Beijing's official position in response to the draft of the San Francisco Treaty:

In fact, the Paracel Archipelago and Spratly Island, as well as the whole Spratly Archipelago ... have always been Chinese territory. Though occupied for some time during the war of aggression unleashed by Japanese imperialism, they were taken over by the then Chinese government following Japan's surrender. The Central People's Republic of China declares herewith: The inviolable sovereignty

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<sup>107</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 62.

<sup>108</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 389.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Dzurek, The Spratly Islands Dispute, 18.

<sup>112</sup> See Appendix A.8

<sup>113</sup> Ibid., 7.

of the People's Republic of China over Spratly islands and the Paracel Archipelago will by no means be impaired, irrespective of whether the American-British draft for a peace treaty with Japan should make any stipulations and of the nature of any such stipulations.<sup>114</sup>

The first assertion of effective control over the archipelago came in March 1988, when there was a brief naval engagement with Vietnamese forces that sank three transport vessels and killed 72 Vietnamese troops. China subsequently took possession of several features of the archipelago and established a base and airstrip in Fiery Cross Reef.<sup>115</sup> In February 1992, China further reinforced its legal claims by passing a special territorial sea and contiguous zone act. This legislation identifies the Spratly archipelago as part of Chinese territory. In Article 2, it asserts:

The PRC's territorial sea refers to the waters adjacent to its territorial land.

The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China.

The PRC's internal waters refer to the waters along the baseline of the territorial sea facing the land.<sup>116</sup>

Since 1998, China has also deployed marines and established garrisons on other islands.<sup>117</sup> China continues to maintain occupation on some islands and features, to reinforce its

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<sup>114</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 390.

<sup>115</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 64.

<sup>116</sup> China, *Law of the People's Republic of China on the Territorial Sea or Contiguous Zone* (1992), Article 2, accessed March 7, 2014, [https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf).

claims under contemporary international law, while simultaneously claiming sovereignty over the whole archipelago based on historical claims.

### *Analysis*

Ancient records that China claims to show it as first to discover and occupy the archipelago are at best sparse and incomplete. The ancient records do not show compelling evidence of regular occupation administration or sovereign control over the Spratly archipelago.<sup>118</sup> The identification of the Spratly archipelago in ancient records has also been vague because they frequently changed the names. It was not until 1934 when China began to use the name “Nansha islands” to identify the Spratly archipelago. Conflicting records also show that some reports do not include the Spratly archipelago as part of Chinese territory.<sup>119</sup>

Furthermore, China’s assertion of historical discovery seems to have little weight under international law. Discovery does not grant immediate sovereignty, rather it grants an inchoate title which must be substantiated by “continuous acts of occupation”.<sup>120</sup>

While it has claimed ancient and historic sovereignty over the archipelago, issued legal declarations in 1958 and 1992, and consistently lodged diplomatic protests over the activities of other states in the area, “effective control” seems to only be evident from 1988 onwards.<sup>121</sup> PRC’s effective control over some features of the archipelago did not start until this time.

Despite basing its claims on historical arguments, China has nevertheless ratified UNCLOS, as have other countries that have a claim to the archipelago.<sup>122</sup>

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<sup>117</sup> Christopher Joyner, "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geo-politics In the South China Sea," *The International Journal of Marine and Coastal Law* 13, no. 2 (1998): 59, accessed August 27, 2013, Academic Search Premier.

<sup>118</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 65.

<sup>119</sup> *Ibid.*, 69.

<sup>120</sup> Joyner, "The Spratly Islands Dispute," 59.

<sup>121</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 69.

<sup>122</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 390.

Though it seems to have satisfied the concept of effective control of some of the islands that it has occupied since 1988, it is difficult for China to justify its claim to the entirety of the archipelago, as it does not effectively occupy nor control a majority of the islands or features. The only basis for a claim to the whole archipelago comes from an assertion of historical sovereignty, which is not only legally weak but at best sparse and incomplete. While China's case seems to be weak, its recent strong and persistent physical presence, and its rising global power, makes it unlikely that its claims can be ignored.<sup>123</sup>

#### Taiwan<sup>124</sup>

Taiwan's claims are similarly based on Chinese claims of historical discovery and occupation. China and Taiwan both claim that the Spratly archipelago and other islands in the South China Sea have been Chinese territory "since ancient times".<sup>125</sup> Known collectively as the "Tongue of the Dragon", the islands in the South China Sea are seen as inseparable from China<sup>126</sup>. However, since the separation of China and Taiwan, separate attempts at occupying and administering the archipelago have been pursued.<sup>127</sup> Taiwan further claims to be the first government to occupy, through physical presence, part of the Spratly archipelago and the first to assert effective control and authority in the area.<sup>128</sup>

When Japan invaded the island of Hainan in 1939, it placed the nearby Spratly archipelago under Taiwanese jurisdiction. With the withdrawal of Japanese forces at the end of World War II, Taiwan stationed troops on Itu Aba, the largest island in the Spratly

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<sup>123</sup> Ibid.

<sup>124</sup> See Appendix A.7

<sup>125</sup> Ibid, 62.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 390.

archipelago<sup>129</sup>. Taiwanese forces remained until 1948 when they were withdrawn because of the Chinese civil war, but were subsequently redeployed in 1956 and have since remained.<sup>130</sup>

Taiwan has since fortified its Itu Aba presence and erected boundary markers in several other features of the Spratly archipelago.<sup>131</sup>

The 1952 Treaty of Peace between the Republic of China and Japan, which was negotiated by Taiwan because there was no Chinese delegation at the 1951 San Francisco Peace Conference, has also been used to assert that sovereignty over the Spratly archipelago devolved from Japanese to Chinese jurisdiction. Since no Chinese delegation participated in the 1951 San Francisco Treaty because the United States and its allies could not agree on which government represented China, Taiwan (The Republic of China) negotiated a separate peace treaty. The treaty states that Japan has “renounced all right, title, and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratley Islands and the Paracel Islands.”<sup>132</sup>

### *Analysis*

Taiwan appears to have effectively continuously controlled and administered Itu Aba, the largest island in the archipelago, since 1956, if not 1948. This may qualify as a display of continuous and peaceful sovereignty over the island.<sup>133</sup> This control, however, did not extend to the other islands or features and occupation by other states in other parts of the archipelago was not really challenged by Taiwan.<sup>134</sup> As Taiwan claims sovereignty of the whole archipelago, the weaknesses of its claims are similar to that of China – while having effective control and occupation of some islands, it does not extend to the rest of the archipelago. Its claim to the

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<sup>129</sup> Dzurek, *The Spratly Islands Dispute*, 15-16.

<sup>130</sup> Furtado, “International Law and the Dispute over the Spratly Islands,” 390.

<sup>131</sup> Dzurek, *The Spratly Islands Dispute*, 19.

<sup>132</sup> See Appendix C. 2

<sup>133</sup> Joyner, “The Spratly Islands Dispute,” 60.

<sup>134</sup> Cordner, “The Spratly Islands Dispute and the Law of the Sea,” 69.

whole archipelago, similar to China's, is of historical sovereignty, already deemed as insufficient without continuous control and effective administration.

Taiwan has also argued that implicit mention of the Spratly archipelago in the 1952 Japanese-Taiwan treaty implies Japanese recognition of Chinese sovereignty over the islands and its features, particularly because all the other territories mentioned are Chinese territories.<sup>135</sup> This argument is based on the concept of cession, but without an explicit treaty that transfers ownership of the archipelago, back at the time when the Japanese was purported to exercise sovereignty, it is at best speculation.

#### Vietnam<sup>136</sup>

Vietnam's claims are based on historic occupation and administration, as well as colonial inheritance<sup>137</sup>. It claims that Vietnamese emperors have administered the archipelago since the Nguyen dynasty in the 17<sup>th</sup> to 19<sup>th</sup> centuries.<sup>138</sup> Vietnam published white papers and supported its historical claims by including maps and records of ancient activities in the Spratly islands and features since the 17<sup>th</sup> century.<sup>139</sup> In a 1975 government white paper, Vietnam affirmed its sovereignty over the Hoang Sa (Paracel Islands) and Trung Sa (Spratly Islands) archipelagos. It asserts that:

The Republic of Vietnam fulfils all the conditions required by international law to assert its claim to possession of these islands. Throughout the course of history, the Vietnamese had already accomplished the gradual consolidation of their rights on the Hoang Sa Islands. By the early 19th century, a systematic policy of

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<sup>135</sup> Dzurek, *The Spratly Islands Dispute*, 19.

<sup>136</sup> See Appendix A. 9

<sup>137</sup> Joyner, "The Spratly Islands Dispute," 60.

<sup>138</sup> Dzurek, *The Spratly Islands Dispute*, 8.

<sup>139</sup> Joyner, "The Spratly Islands Dispute," 60.

effective occupation was implemented by Vietnamese emperors. The Truong Sa Islands, known to and exploited by Vietnamese fishermen and laborers for many centuries, were formally incorporated into Vietnamese territory by France on behalf of Vietnam. On both archipelagoes, Vietnamese civil servants assured a peaceful and effective exercise of Vietnamese jurisdiction. The continuous display of state authority was coupled with the constant Vietnamese will to remain the owner of a legitimate title over those islands. Thus military defense of the archipelagoes and diplomatic activities were put forth in the face of false claims from other countries in the area.<sup>140</sup>

Vietnam further claims that while it subsequently lost effective administration, following a Chinese invasion, it had regained rights to the archipelago during independence from France when it inherited its territorial holdings in the area.<sup>141</sup> It claims the right of cession from a French claim to the archipelago that dates back to 1933.<sup>142</sup>

In 1973 and 1975, Vietnam moved to secure its claims by occupying thirteen islands of the Spratly archipelago. It further occupied three more in 1989 and has since taken more features<sup>143</sup>, stationed troops on several Spratly formations and published maps incorporating the Spratly archipelago into Vietnamese territory<sup>144</sup>.

### *Analysis*

Vietnam's claims of historic occupation, substantiated by maps and records of activities, suffer from the same problems as antiquated documents put forward by China and Taiwan. Most

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<sup>140</sup> Republic of Vietnam, Ministry of Foreign Affairs, *White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands* (1975), pg. #, accessed March 08, 2014, <http://www.nguyenthaihocfoundation.org/lichsuVN/hsts4.htm>.

<sup>141</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 391.

<sup>142</sup> Joyner, "The Spratly Islands Dispute," 61.

<sup>143</sup> Joyner, "The Spratly Islands Dispute," 61.

<sup>144</sup> Dzurek, *The Spratly Islands Dispute*, 8.



of the ancient maps and records specifically refer to the Paracel archipelago, another disputed archipelago in the region, and only implied reference to the Spratly archipelago exists.<sup>145</sup> There are also doubts on whether or not these documents are authentic and accurate. Such doubts, as Christopher Joyner argues, is why “international law usually regards mere historical claims, without evident occupation and permanent settlement, as only arguably binding and susceptible to legal challenge for assuring valid claim to title over territory in the oceans”.<sup>146</sup>

The claim of right to cession from the French is not supported by the fact that France lacked a legitimate claim over the archipelago. France did not have colonial control or any lawful title to the Spratly archipelago nor was there any French claim to the entire archipelago<sup>147</sup>. The French did not even make any effort in perfecting any title it may have had over the archipelago when it did not return after Japan relinquished its claim over the territories at the end of World War II.<sup>148</sup>

Vietnam has, however, controlled many features and has maintained occupation in the Spratly archipelago since 1973. However, control and occupation, as in China’s and Taiwan’s cases, does not extend to the entirety of the archipelago.<sup>149</sup>

Vietnam, however, potentially has a strong continental shelf claim to the western part of the Spratly archipelago. The continental shelf extending from the south and east part of the Mekong delta is relatively shallow, and as prescribed under UNCLOS Article 76(1)<sup>150</sup>, the area seems to be a “natural prolongation” of the land territory. A continental shelf that extends to 350nm could be justified under UNCLOS Article 76(5).<sup>151</sup>

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<sup>145</sup> Ibid.

<sup>146</sup> Joyner, "The Spratly Islands Dispute," 61.

<sup>147</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 391-392.

<sup>148</sup> Joyner, "The Spratly Islands Dispute," 61.

<sup>149</sup> Ibid.

<sup>150</sup> See Appendix B.5

<sup>151</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 69.

## Philippines<sup>152</sup>

The Philippines' claims are based on discovery of certain islands and features in the Spratly archipelago, subsequent annexation and geographic proximity. In 1956, Tomas Cloma, a private Filipino citizen, claimed he had discovered a group of islands in the South China Sea and declared a new island state called "Kalayaan", which means "freedom" in English.<sup>153</sup> Cloma continued to claim these islands until 1974, when a "Deed of Assignment and Waiver of Rights" was signed to transfer ownership of the islands to the Philippine government.<sup>154</sup>

The Philippine government maintains that before Cloma's discovery of the islands, they were *terra nullius* following the Japanese renunciation over territories in the South China Sea. Therefore, when Cloma laid claims to the islands<sup>155</sup>, which at that point was not under any state's sovereign control, he acquired ownership of the islands under international law.<sup>156</sup>

Due to threats of occupation by other countries in 1968, the Philippines occupied eight of the islands claimed by Cloma. Responding to an incident where Vietnamese troops on Itu Aba fired upon a Philippine fishing vessel in 1971<sup>157</sup>, the Philippine government lodged official protests<sup>158</sup> against Vietnam and moved to lay official claims to the islands.<sup>159</sup> In 1978, the then Philippine President Ferdinand Marcos issued *Decree 1596*<sup>160</sup> and annexed the islands by incorporating them into the Palawan province.<sup>161</sup> The decree asserted:

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<sup>152</sup> See Appendix A.10

<sup>153</sup> Joyner, "The Spratly Islands Dispute," 62.

<sup>154</sup> Ibid.

<sup>155</sup> Dzurek, *The Spratly Islands Dispute*, 14, 19.

<sup>156</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

<sup>157</sup> Joyner, "The Spratly Islands Dispute," 62.

<sup>158</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

<sup>159</sup> Dzurek, *The Spratly Islands Dispute*, 14.

<sup>160</sup> Joyner, "The Spratly Islands Dispute," 62.

<sup>161</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

WHEREAS, these areas do not legally belong to any state or nation but, by reason of history, indispensable need, and effective occupation and control established in accordance with the international law, such areas must now be deemed to belong and subject to the sovereignty of the Philippines<sup>162</sup>

Interestingly enough, the Philippine official position acknowledges that it has no claim to the Spratly archipelago. It asserts, however, that the islands in the Kalayaan group are not part of the Spratly archipelago<sup>163</sup> and are in fact a part of the natural extension of the Philippine continental shelf.<sup>164</sup> Based on the provisions of UNCLOS, the Philippines further argues that the Kalayaan group of islands falls within its legitimate 200nm Exclusive Economic Zone.<sup>165</sup>

The Philippines has continued to maintain its occupation in the Kalayaan group of islands since it was first occupied in 1971. It has also erected garrisons, stationed marines and established an airstrip on one of the islands<sup>166</sup>. These bases have also been fortified with heavy artillery, equipped with radar facilities, weather stations and ammunition depots.<sup>167</sup>

### *Analysis*

The Philippine claim of *terra nullius* discovery by Cloma rests on the argument that before 1956, the Spratly archipelago and more specifically the islands in the claimed Kalayaan group, was not part of or under the sovereign control of any other state<sup>168</sup>; hence, when Cloma discovered the islands, he acquired sovereignty over them. Cloma's claim of sovereignty is however weak. Indeed, Japan relinquished all sovereignty claims in the South China Sea, including the Spratly archipelago, during the 1951 San Francisco Treaty. However, China,

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<sup>162</sup> Philippines, Office of the President, *Presidential Decree No. 1596*, by Ferdinand Marcos (June, 1978), accessed September 6, 2013

<sup>163</sup> Dzurek, *The Spratly Islands Dispute*, 19.

<sup>164</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

<sup>165</sup> *Ibid.*

<sup>166</sup> Joyner, "The Spratly Islands Dispute," 62.

<sup>167</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

<sup>168</sup> *Ibid.*, 392.

Vietnam and Taiwan argue that the Spratly archipelago was not *terra nullius* at that point but was in fact under each states' sovereign authority.<sup>169</sup> Furthermore, no government recognized the lawfulness of Cloma's state<sup>170</sup> and international law gives little value to independent activities of individuals.<sup>171</sup>

The Philippines seems to have, however, sustained and continuously occupied the Kalayaan group since 1971, and effectively administered it since 1978, when it was declared a part of the Palawan province. This occupation and control, however, is only contained within the claimed Kalayaan group of islands and does not extend to the whole Spratly archipelago, to which the Philippines refers as distinct and separate anyway.

The Philippine claim based on UNCLOS seems to have more validity, but not without contention. Article 48 of UNCLOS permits an archipelago state, like the Philippines, to extend an EEZ and a continental shelf from its archipelagic coastlines.<sup>172</sup> As it has argued, the Kalayaan group of islands falls within the Philippines' legitimate Exclusive Economic Zone. Furthermore, UNCLOS deems waters in between the islands of archipelagic states as historical sovereign territory. However, other claimants question this interpretation because they argue that the UNCLOS provisions regarding EEZ apply only to areas or zones that have previously been a part of the high seas. As China, Taiwan and Vietnam continue to argue, these islands were not a part of the high seas and were a part of their sovereign control.<sup>173</sup>

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<sup>169</sup> Dzurek, *The Spratly Islands Dispute*, 19.

<sup>170</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 67.

<sup>171</sup> Joyner, "The Spratly Islands Dispute," 62.

<sup>172</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 70.

<sup>173</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 392.

## Malaysia<sup>174</sup>

Malaysia's claims are based on geographic proximity, specifically continental shelf provisions in UNCLOS. Its claims date back to 1979, when the Malaysian government first published a map showing the country's continental shelf and EEZ extending into the southernmost part of the Spratly archipelago.<sup>175</sup> It asserts that prior to its claims, the islands being claimed were *terra nullius*.

Malaysia asserts that it has sovereign control over all the islands and features within its continental shelf and cites the 1958 Geneva Convention on territorial waters and continental shelf boundaries, as well as UNCLOS provisions, to support its delimitations.<sup>176</sup> In 1984, Malaysia enacted an Exclusive Economic Zone Act (Act 311) and declared that within its EEZ, it has:

- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction with regard to—
  - (i) the establishment and use of artificial islands, installations and structures;
  - (ii) marine scientific research;

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<sup>174</sup> See Appendix A.11

<sup>175</sup> Ibid., 393.

<sup>176</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 67.

- (iii) the protection and preservation of the marine environment; and
- (c) such other rights and duties as are provided for by international law.<sup>177</sup>

Malaysia is also the most recent claimant to the archipelago and the most recent to occupy features within it. It claims sovereignty over twelve islands in the Spratly archipelago. In late 1977, Malaysia stationed troops on Swallow Reef and has since stationed more on some of the features to which it lays claims.<sup>178</sup>

### *Analysis*

Although Malaysia's continental shelf claims, which are based on ocean law principles in UNCLOS, seems to have legitimacy, the use of these continental shelves provisions to assert sovereignty over the Spratly features seems to be misinterpreted and misplaced. UNCLOS allows states with established sovereignty over islands to control living and non-living resources within its continental shelves, but it has no provisions granting sovereignty over islands within the continental shelves<sup>179</sup>, especially if these islands already fall within the jurisdiction of another state.<sup>180</sup>

Article 76 of UNCLOS<sup>181</sup> defines a continental shelf to be "the submerged prolongation of the land mass of the coastal State, [which] consists of the sea-bed and subsoil of the shelf, the slope and the rise."<sup>182</sup> While Malaysia has used this provision to claim the Spratly features, there

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<sup>177</sup> Malaysia, The Commissioner of Law Revision, *Act 311 Exclusive Economic Zone Act 1984*, Part 2, Section 4, accessed February 02, 14.

<sup>178</sup> Joyner, "The Spratly Islands Dispute," 63.

<sup>179</sup> Furtado, "International Law and the Dispute over the Spratly Islands," 393.

<sup>180</sup> Joyner, "The Spratly Islands Dispute," 63.

<sup>181</sup> See Appendix B.5

<sup>182</sup> Division for Ocean Affairs And The Law Of The Sea, *United Nations Convention On The Law of The Sea* (1982), Article 76.

are no provisions within UNCLOS that refers to islands, rocks or other features of the continental shelf that rise above sea-level.<sup>183</sup>

The critical question of the acquisition of sovereignty over island formations, in this case, seems not to be support by UNCLOS. It is also unlikely that the drafters of the provisions envisioned such interpretations<sup>184</sup>. Rather under international law, it is still a demonstration of continuous and effective display of permanent occupation.<sup>185</sup> Indeed, Malaysia has reinforced its claims by establishing garrisons on several of its claimed Spratly features.

Malaysia has effectively controlled one feature since 1983 and two others since 1986. Only Swallow Reef, which is one of the features under its control, is also claimed as an island. The two other features are claimed as “low tide elevations” but are beyond the territorial sea of the mainland. Under UNCLOS Article 13<sup>186</sup>, this cannot form the basis for the extension of the territorial sea.<sup>187</sup> Swallow Reef seems to satisfy the “Regime of Islands”.<sup>188</sup>

While the military garrisons reinforce Malaysia’s claims of effective control, it is the most recent country to occupy features in the Spratly group. The duration of its control in the occupied features is yet to be seen as whether or not “permanent occupation” can be established is still in question because the ability to “sustain human habitation or economic life of its own” is unlikely.<sup>189</sup> Malaysia does not claim an extension of the continental shelf or EEZ based on this feature.<sup>190</sup>

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<sup>183</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 67.

<sup>184</sup> Ibid., 70.

<sup>185</sup> Joyner, "The Spratly Islands Dispute," 63.

<sup>186</sup> See Appendix B.5

<sup>187</sup> United Nations, Division for Ocean Affairs and the Law of the Sea, *United Nations Convention On The Law of The Sea* (1982), Article 13.

<sup>188</sup> Ibid., Article 121.

<sup>189</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 70.

<sup>190</sup> Joyner, "The Spratly Islands Dispute," 63.

Amboyna Cay, the other feature for which Malaysia claims a 12nm territorial sea, raises questions of effective control. A Vietnamese garrison was established on the feature several years prior to Malaysia's claims and remains to the present. This legal claim is harmed by the prolonged occupation of another state.<sup>191</sup>

#### Brunei<sup>192</sup>

Similarly to Malaysia, Brunei bases its claims solely on geographic proximity provisions under UNCLOS. Brunei, however, only claims Louisa Reef, which is a naturally submerged formation in the archipelago. It also only claims maritime jurisdiction around the Reef, without contesting the sovereignty of the formation or any other Spratly features.<sup>193</sup>

Brunei uses continental shelf provisions within UNCLOS to claim Louisa Reef and exclusive right to exploit the resources of the reef.<sup>194</sup> Brunei claims that because Louisa Reef is a naturally submerged formation that falls within its 200nm EEZ, it is legally subject to an extension of its continental shelf.<sup>195</sup>

Its claim originated from continental shelf delimitation first established by the United Kingdom in 1954. Though there have been a series of negotiations, Malaysia and Brunei continue to have incompatible delimitations between its adjacent maritime boundaries, consequently Louisa Reef falls within those disputed delimitations.<sup>196</sup> To date, Brunei remains the only claimant without a military or physical presence in the Spratly archipelago. It is also the most recent claimant, so documentation about its claims are lacking.

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<sup>191</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 70.

<sup>192</sup> See Appendix A.12

<sup>193</sup> Dzurek, *The Spratly Islands Dispute*, 20.

<sup>194</sup> Joyner, "The Spratly Islands Dispute," 64.

<sup>195</sup> *Ibid.*

<sup>196</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 68.



## *Analysis*

Unlike Malaysia's claim to the Spratly features, Louisa Reef is a naturally submerged formation that falls within a prescribed continental shelf. Under UNCLOS provisions, a "natural prolongation seaward from the coastal territory" of Brunei would fall within its maritime jurisdiction. Settlement is neither needed nor possible to demonstrate ownership<sup>197</sup>. With this particular interpretation, Brunei seems to have a strong legal claim to Louisa Reef.

Brunei's claim on Louisa Reef however suffers from practical limitations. Though there is no need to establish continuous and effective occupation, as permanent occupation is impossible in submerged formations, Malaysia has been in control of Louisa Reef since 1984.<sup>198</sup> While Brunei has also expressed willingness to invoke Article 83 of UNCLOS<sup>199</sup>, which enjoins parties to refer unsuccessful bilateral negotiations to the International Court of Justice, to bring a solution to Malaysia and Brunei's disputed delimitations, the multilateral nature of this dispute make this solution impractical.<sup>200</sup>

Brunei's claim over the Louisa Reef area seems to be consistent with the provisions of UNCLOS Article 76(1), subject to the resolution of a delimitation agreement with Malaysia, as prescribed by Article 83. While the Louisa Reef area is within 200 nautical miles of its coast, Brunei has also recently made claims beyond Rifleman Bank. Rifleman Bank lies approximately 250nm off the shore and seems to be in excess of the "natural progression" of the continental shelf, which is broken by East Palawan Trough, 60 to 100nm off the coast.

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<sup>197</sup> Joyner, "The Spratly Islands Dispute," 64.

<sup>198</sup> Ibid.

<sup>199</sup> See Appendix B.5

<sup>200</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 68.

## Summary Analysis

Historic claims made by China, Taiwan and Vietnam, seem to have little basis under contemporary international law. These countries' maps, records and antiquated evidence of purported control at some point in time or some part of the geography of the Spratly archipelago have certainly not been continuous or unqualifiedly effective. The United Nations Convention on Law of the Sea, whose provisions the Philippines, Malaysia and Brunei heavily rely upon for their claims, does not contain clear guidelines that can decisively resolve the states' conflicting claims. Rather, UNCLOS provisions are selectively used by each state to advance its respective claims, leading to more contention. While each of the claimant states have conspicuously tried to bring their claims in line with the modern principles of acquisition of sovereignty under international law, that is display authority, establish continuous control of the islands or features, and the relevant UNCLOS provisions, any ongoing exercise of sovereignty has not been without contention or peaceful acquiescence other states, as a condition for reinforcing the legality of claims.

## Alternative Frameworks for Dispute Resolution

### Towards Political and Diplomatic Frameworks

Though all the states disputing Spratly ownership are obliged under UNCLOS to resolve their dispute and are all de facto parties to the ICJ by virtue of being a UN member, the jurisdiction of the ICJ, as described in Article 36 of its statute<sup>201</sup>, primarily relies on consent of the parties.<sup>202</sup> Due to the complexity of the claims and the number of countries involved, it is

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<sup>201</sup> See Appendix B.2

<sup>202</sup> Carter and Trimble, *International Law*, 301.

difficult for the disputing states to find a consensus to accept an ICJ settlement, as its precedents run contrary to the claims of the most powerful states involved, particularly China. The ICJ's effectiveness is also hampered by enforcement concerns, rigid procedures and the long time periods it takes to make decisions.<sup>203</sup> China is also a veto-wielding member of the Security Council and can block any measures by the ICJ to enforce a decision contrary to its claims. The same problems can be seen with the International Tribunal for the Law of the Sea (ITLOS).

Arbitration, though holding some potential to resolve the Spratly dispute, is limited by the complexity of the dispute. Though arbitration is seen as procedurally less formal and rigid, easier to enforce, generally more expeditious and employing a more neutral decision making body than an international judicial body, since arbitrators of equal number come from the respective parties to a case, the complexity of claims and the number of disputing parties in the Spratly dispute complicate a resolution through this means.<sup>204</sup> In a recently instituted arbitral proceeding filed by the Philippines against China in the PCA over claims to certain parts of the Spratly archipelago, China refused to consent to the arbitration.<sup>205</sup> Even if China did submit to a binding arbitration, the bilateral resolution would not solve the multilateral dispute at hand.

In 2002 the Association of South East Asian Nations (ASEAN), which the Philippines, Malaysia and Brunei are members of, and China signed a declaration of conduct in the South China Sea and committed to pursuing efforts to "resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned."<sup>206</sup> This declaration

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<sup>203</sup> Ibid., 336.

<sup>204</sup> Carter and Trimble, *International Law*, 368.

<sup>205</sup> Permanent Court of Arbitration, "The Republic of the Philippines v. The People's Republic of China," news release, The Hague, 2013 (PCA).

<sup>206</sup> Association of Southeast Asian Nations. *Declaration on the Conduct of Parties in the South China Sea*. Accessed March 7, 2014. <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.

affirmed already established obligations to resolve their dispute through peaceful means under the United Nations Charter. It is logical then that alternative methods of dispute resolution, particularly political and diplomatic solutions, should be explored.

### Semi-Enclosed Sea and Joint Development

An approach to a settlement would be to declare the South China Sea as a semi enclosed sea, setting aside the sovereignty questions, to allow a mutually beneficial development and exploitation of resources. UNCLOS Article 123<sup>207</sup> urges bordering states in a “semi-enclosed sea” to cooperate in the “coordination” of resource management, environmental preservation and scientific research. The northern and southern extremities of the South China Sea are “connected to another sea or ocean (the Pacific and Indian oceans) by a narrow outlet (Malacca, Sunda Straits and straits between Taiwan, PRC and Philippines)” which is “surrounded by two or more States,” and will ultimately consist “primarily of the territorial seas and EEZs of two or more coastal states.”<sup>208</sup>

The Timor Gap Treaty<sup>209</sup> between Australia and Indonesia serves as an example of a successful joint development area. In 1972, a gap was created in the seabed boundary between Eastern Timor and Australia after Australia and Indonesia signed treaties establishing boundaries east of Papua New Guinea and an area south of the West Timor. Unsuccessful boundary negotiations between Portugal, which controlled East Timor at the time, and Australia resulted in

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<sup>207</sup> See Appendix B.5

<sup>208</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 71.

<sup>209</sup> See Appendix C.4

the gap in the Timor Sea. In 1974, reports of significant potential of oil and gas production in the region spurred new rounds of boundary negotiations to permanently close the gap.<sup>210</sup>

Australia claimed that the Timor Trough, a submarine trench located 40nm to 70nm from the coastline of Timor, was a natural prolongation of the outer boundary of the Australian continental shelf. Indonesia, on the other hand, claimed that a single continuous continental shelf separated Australia and Timor, and argued that a median line from each country's coastline should be used as the boundary. With neither parties willing to compromise claims, Australia suggested a joint development zone.<sup>211</sup> In 1989, the Timor Gap Treaty resolved a seventeen-year dispute over seabed boundary delimitations<sup>212</sup> by establishing a "zone of cooperation" for exploring further possibilities of and exploiting natural resources.<sup>213</sup>

The classification of the South China Sea as a semi-enclosed sea is still highly debatable. The northern extremities of the sea do not easily fit the description of "narrow outlets"<sup>214</sup> and joint development ventures could be achieved anyway without the legal designation of a semi-enclosed sea. However, a joint development area in itself may hold promise but not without serious difficulties. The Timor Gap Treaty between Australia and Indonesia served as an alternative compromise because neither Australia nor Indonesia were willing to concede or compromise their territorial claims over the Timor gap<sup>215</sup>, a situation familiar to the uncompromising positions of the Spratly claimants. While China has shown willingness to discuss joint development ventures, other countries such as the Philippines, are adamant about

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<sup>210</sup> Lian A. Mito, "The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands," *American University International Law Review* 13, no. 3 (1998): 750-753, accessed February 10, 2014, Digital Commons.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid., 750.

<sup>213</sup> Ibid., 753.

<sup>214</sup> Cordner, "The Spratly Islands Dispute and the Law of the Sea," 71.

<sup>215</sup> Ibid., 754.

sovereignty claims.<sup>216</sup> Furthermore, while bi-lateral treaties for a joint development authority such as that in Timor Gap may have been successful, a joint development authority among six states would raise serious difficulties in organization and management.

### International Marine Peace Park

Another approach to settlement is establishing a “peace park” where sovereignty claims would be temporarily suspended, for a defined period with optional renewal and extension. As the International Union for Conservation of Nature has defined it, peace parks are “transboundary protected areas that are formally dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and to the promotion of peace and cooperation.”<sup>217</sup>

In 1932, the Waterton-Glacier International Peace Park (WGIPP) was created between the governments of Canada and the United States and became the first peace park ever created. The previously separated Waterton Lakes National Park in the U.S. and Glacier National Park in Canada was designated as units of a single international peace park. While the designation of the area as a “peace park” did not impact any country’s national sovereignty, the effective management of this park required close coordination and collaboration between the two countries. As such, the cooperation has led to improved research on natural resources, expedient search and rescue operations, enhanced tourism, and partnerships extending beyond the peace park.<sup>218</sup>

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<sup>216</sup> VOA News, “China Willing to Pursue Joint Development in Disputed Waters,” VOA, July 31, 2013, accessed March 30, 2014.

<sup>217</sup> John W. McManus, Shao Kwang-Tsao, and Lin Szu-Yin, “Toward Establishing a Spratly Islands International Marine Peace Park,” *Ocean Development & International Law* 41, no. 3 (2010): 275, accessed August 31, 2013, Academic Search Premier.

<sup>218</sup> Saleem H. Ali, *Peace Parks: Conservation and Conflict Resolution* (Cambridge, MA: MIT Press, 2007), 185.

In, 1994, the Red Sea Marine Peace Park (RSMPP) was established between Israel and Jordan in the northern gulf of Aqaba. As an effort to normalize relations between the two countries, Jordan's Aqaba Marine Peace Park and Israel's Coral Reef Reserve were incorporated into the RSMPP. Similar to the WGIPP, the designation called on the two countries to coordinate research on marine biology and coral reefs, and coordinate policies on marine resource preservation. This resulted in full partnerships between resource management agencies and marine research institutions in Jordan and Israel, increasing information sharing, coordination of activities, and regular discussion and meetings regarding ongoing trends.<sup>219</sup>

The WGIPP between the United States and Canada and the RSMPP between Israel and Jordan show the tangible benefits of peace parks between transnational boundaries. While the United States and Canada may already have had a long history of peaceful interaction before the WGIPP was created, the same could not be said of Jordan and Israel before RSMPP. Regardless of the countries' relations before these peace parks were established, the focus on cooperation in research and marine preservation served to de-escalate tensions between borders and coordinate policies in order to achieve common goals. This framework might well serve the Spratly dispute and its claimants because the exploration and preservation of resources vital to the surrounding countries are goals that all the disputing states share.

It is worth noting that any peace park framework must take into account the challenges posed by the number of countries involved in the Spratly dispute and the unusual complexity of claims and interests at play. The 1959 Antarctic Treaty<sup>220</sup> serves as an example of a successful multilateral peace park that can be modeled after. Similar to the conditions of state relations in

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<sup>219</sup> Marine Affairs Research and Education (MARE), "Marine Peace Parks: Establishing Transboundary MPAs to Improve International Relations and Conservation," *MPA News* 8, no. 8 (April 2008): 2, accessed March 30, 2014.

<sup>220</sup> See Appendix C.5

the Spratly dispute, the Antarctic Treaty was brought about as a result of several states' rising tensions and overlapping claims to the region. In 1948, the United States spearheaded an initiative to peacefully resolve the conflicting claims over Antarctica<sup>221</sup>. Though the initial proposals were unsuccessful because of significant differences of opinion in the acquisition and maintenance of territorial sovereignty, circumstances again closely resembling that of the Spratlys dispute, this eventually lead to the successful signing of the Antarctic Treaty between twelve countries in 1959.<sup>222</sup>

The Antarctic Treaty is built on multilateral cooperation on scientific research and conservation activities while at the same time promoting de-escalation of conflict. The legal importance of a framework such as this, specifically for the Spratly dispute, would be for disputing states to be able to halt their assertions and protests during the duration of the treaty and reduce regional tensions, without prejudicing their legal positions.<sup>223</sup> As Kuan Ming-Sun argues, "the present problem [Spratly dispute] does not lie in the detailed techniques of demarcation of maritime boundaries".<sup>224</sup> Rather, the problem is the "fundamental question – who owns what?"<sup>225</sup>

Because of historical, cultural and psychological aspects of the Spratly dispute, it is difficult to reach a legal and political arrangement while tensions are continuously rising. The Antarctic Treaty serves as a successful multilateral model for building an international peace park that would temporarily hold off on the contentious questions of sovereignty and focus on the promotion of peace and development efforts in the interim. However, it is not yet seen how

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<sup>221</sup> John Hanessian, "The Antarctic Treaty 1959," *The International and Comparative Law Quarterly* 9, no. 3 (July 1960): 436, accessed March 30, 2014, JSTOR.

<sup>222</sup> Ibid.

<sup>223</sup> Kuan-Ming Sun, "Freeze The Tropical Seas. An Ice-cool Prescription for the Burning Spratly Issues!," *Southeast Asian Affairs*, 2000, 204, accessed September 1, 2013, ProQuest.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.



such an arrangement could be arrived since none of the disputing states have expressed an interest to lead an initiative to develop such an arrangement, as the United States did during the negotiation of the Antarctic Treaty. Perhaps the United Nations or a neutral third party state could take the lead and be the catalyst for such an arrangement. This has yet to happen.

### Mixed or Joint Commissions

In similar disputes that have been continuously problematic, a situation that may require “continuous supervision”, mixed or joint commissions have been created as a means of institutionalizing negotiations. These commissions usually consist of an equal number of representatives from parties that may be given the task of dealing with a specific problem or a broad brief for an indefinite duration. The Canadian-United States International Joint Commission (CUIJC), as an example, has dealt with a large number of issues concerning industrial development, air pollution and boundary waters since its creation in 1909.<sup>226</sup>

The CUIJC was established as a six-member quasi-judicial body, where Canada and the United States appoint three commissioners each.<sup>227</sup> Recognizing the need to find a permanent mechanism to continuously resolve problems and motivated by the desire to resolve tensions along the Canadian-United States border with equal treatment for both sides, the CUIJC was set up to adjudicate, investigate and arbitrate disputed issues during the late nineteenth and early twentieth centuries.<sup>228</sup> It has since developed into a successful framework for dealing with changing bilateral issues and concerns, and has been internationally recognized as an innovative model for dispute resolution.

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<sup>226</sup> Carter and Trimble, *International Law*, 288.

<sup>227</sup> David Lemarquand, "International Joint Commission and Changing Canada-United States Boundary Relations," *Natural Resources Journal* 33, no. 59 (1993): 65-66, accessed April 03, 2014, HeinOnline.

<sup>228</sup> *Ibid.*, 62.

The CUIJC has been a successful framework because of the legitimacy it has achieved by being impartial. Though there are three commissioners from each side, decisions are rarely split along national lines. Instead, the six commissioners seek consensus in making decisions. Even though the commissioners are citizens of their respective countries and are in many cases former government officials of their respective countries themselves, the independence of the commission from government control promotes a collegial approach to resolving conflicts.<sup>229</sup>

While holding similar promises as arbitration, the joint or mixed commission framework, which is exemplified by the CUIJC, has more advantages for the Spratly dispute. Having commissioners coming from each country sit on a permanent independent body that continuously arbitrate and adjudicate sovereignty claims and border tensions as they arise may serve to slowly but sustainably diffuse the conflict in the long term. This has more advantages than simple arbitration, where contentious questions of sovereignty would be decided all at once. Deciding specific but limited issues of contention as they come up, such as boundary delimitations or sovereignty claims over individual islands, and having the decisions be made by an independent regional commission that equally represents all the parties concerned, may have more legitimacy and weight than an international arbitration body. However, the challenges lie in organizing a commission between six countries and working out the specifics of whether all countries are going to be represented or not, since not all disputing countries claim the whole Spratly archipelago. While the CUIJC has handed out decisions based on near unanimous consensus of all commissioners, it is not yet seen if a joint or mixed commission between four to six countries can arrive at decisions with the same unanimity, or if this dispute, because of deep historical and cultural tensions in the region, may hinder the impartiality of the commissioners and split the

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<sup>229</sup>Ibid, 68.

voting block down national lines. A joint or mixed commission holds promise but not without serious challenges in structure and jurisdiction that must be worked out based on the consensus and agreement of all the disputing states beforehand.

### Functional Framework

Another possibility is a functional approach to a resolution, to identify and split different strands of the issues at the heart of the dispute to allow each state to obtain satisfactory settlements. In a solution to a disputed maritime delimitation in the Torres Strait between Australia and Papua New Guinea, the parties negotiated an agreement that separately dealt with interests of native inhabitants of the islands in the strait, the status of the islands, seabed jurisdiction, fisheries jurisdiction, conservation and maritime rights.<sup>230</sup> The 1978 Torres Strait Treaty<sup>231</sup> took almost a decade to be negotiated and agreed upon but it resolved “many social, legal, political and economic questions”<sup>232</sup> that were being disputed in the Torres Strait area.

Similar to the Torres Strait area before the 1978 treaty, the Spratly islands dispute has yielded unsuccessful attempts to negotiate a single maritime boundary resolution for the competing states because of the different strands of interests at play. A functional framework that seeks to negotiate and resolve individual strands of the conflict may well serve to minimize the complexity and overlapping contentions of the Spratly claimants.

While a functional framework might serve to minimize the complexity of the Spratly dispute by dissecting the different political, legal and economic issues at play and seeking to specifically address all of them, it does not seem that the disputing states are, at least at this point

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<sup>230</sup> Carter and Trimble, *International Law*, 289.

<sup>231</sup> See Appendix C.6

<sup>232</sup> "Torres Strait Treaty between Australia and Papua New Guinea 1978," *Common Law Bulletin* 11:1044, accessed April 5, 2014, HeinOnline.

in time, ready for the intense negotiations that this kind of framework needs. Because of the current trend of rising tensions and animosity between the disputing states, this framework may hold greater promise after a temporary cessation to the rising tensions. Only after a period of de-escalation of tensions in the region may this framework become relevant and perhaps hold greater promise for pacifically resolving the dispute.

### Conclusions

International law obligates the pacific settlement of and offers several methods for resolving territorial sovereignty disputes. However, the Spratly islands dispute poses significant challenges for traditional methods of conflict resolution. This dispute is embedded with numerous conflicting parties and conflicting claims, and laden with significant international legal, political, historical, and economic interests. As Dzurek puts it, the ongoing conflict is “a complex tapestry”, the threads of which “stretch into antiquity.”<sup>233</sup>

While judicial and quasi-judicial avenues, through the International Court of Justice or international arbitration bodies, have been limited in bringing about a successful resolution, there are several political and diplomatic frameworks that can be explored and applied to resolve the Spratly dispute. Joint development areas, peace parks, joint commissions and functional frameworks offer alternative routes for conflict resolution. They have been applied successfully in resolving disputes across the world.

The path to resolution, however, will ultimately depend on the willingness of the disputing states to set aside their uncompromising claims and work on mutual interests and priorities to find a fair and equitable settlement for all the states involved. China, as the regional

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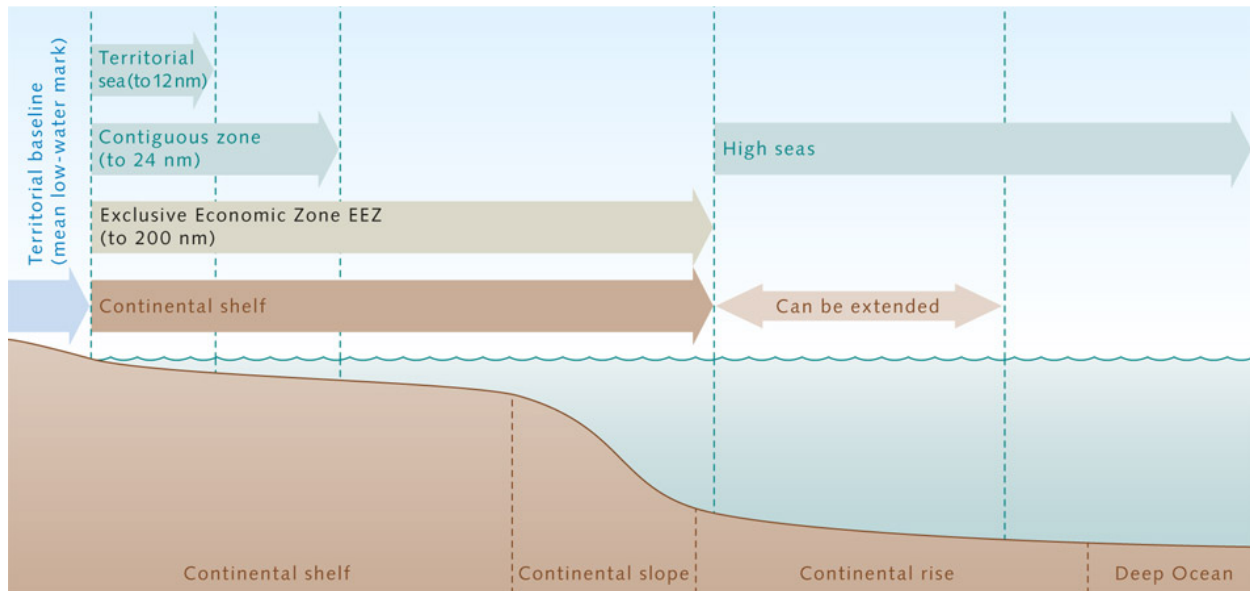
<sup>233</sup> Dzurek, *The Spratly Islands Dispute*, 7.

hegemon and a growing international power, will be key to either a resolution or an escalation of this current conflict.

## APPENDIX A – DIAGRAMS AND MAPS

### Appendix A.0 – UNCLOS Legal Zones<sup>234</sup>

This diagram shows the legal maritime zones as established by the major provisions of the United Nations Convention on Law of the Sea (UNCLOS).



<sup>234</sup> "A Constitution for the Seas," chart, in *Living with the Oceans. A Report on the State of the World's Oceans*, vol. 1 (World Ocean Review, 2010), accessed April 04, 2014, <http://worldoceanreview.com/en/wor-1/law-of-the-sea/a-constitution-for-the-seas/>.

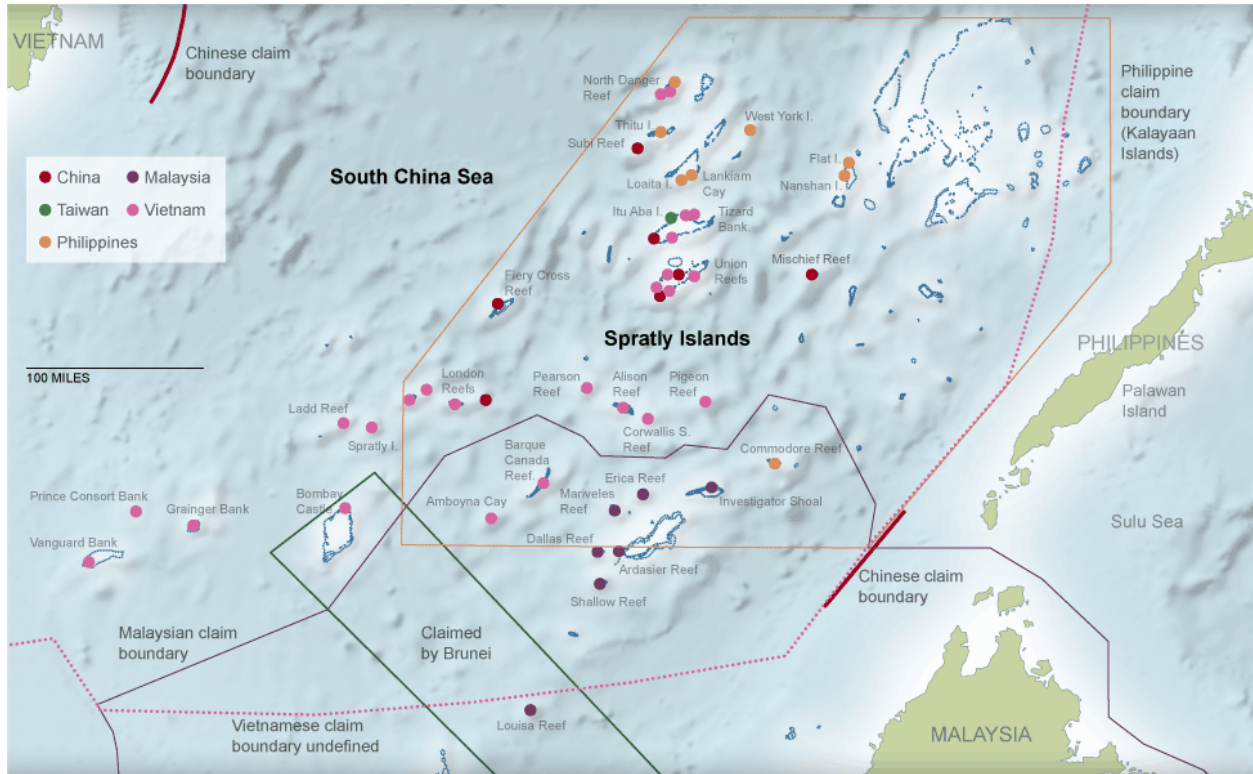
## Appendix A.1 – South China Sea<sup>235</sup>



<sup>235</sup> United States, Department of Energy, U.S. Energy Information Administration, *South China Sea* (2013), accessed September 7, 2013, [http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).

### A.2.1 - Occupied Spratly Territory.<sup>236</sup>

This map shows the occupied features in the Spratly archipelago with the conflicting boundary claims of the six countries claiming sovereignty over parts of the South China Sea.



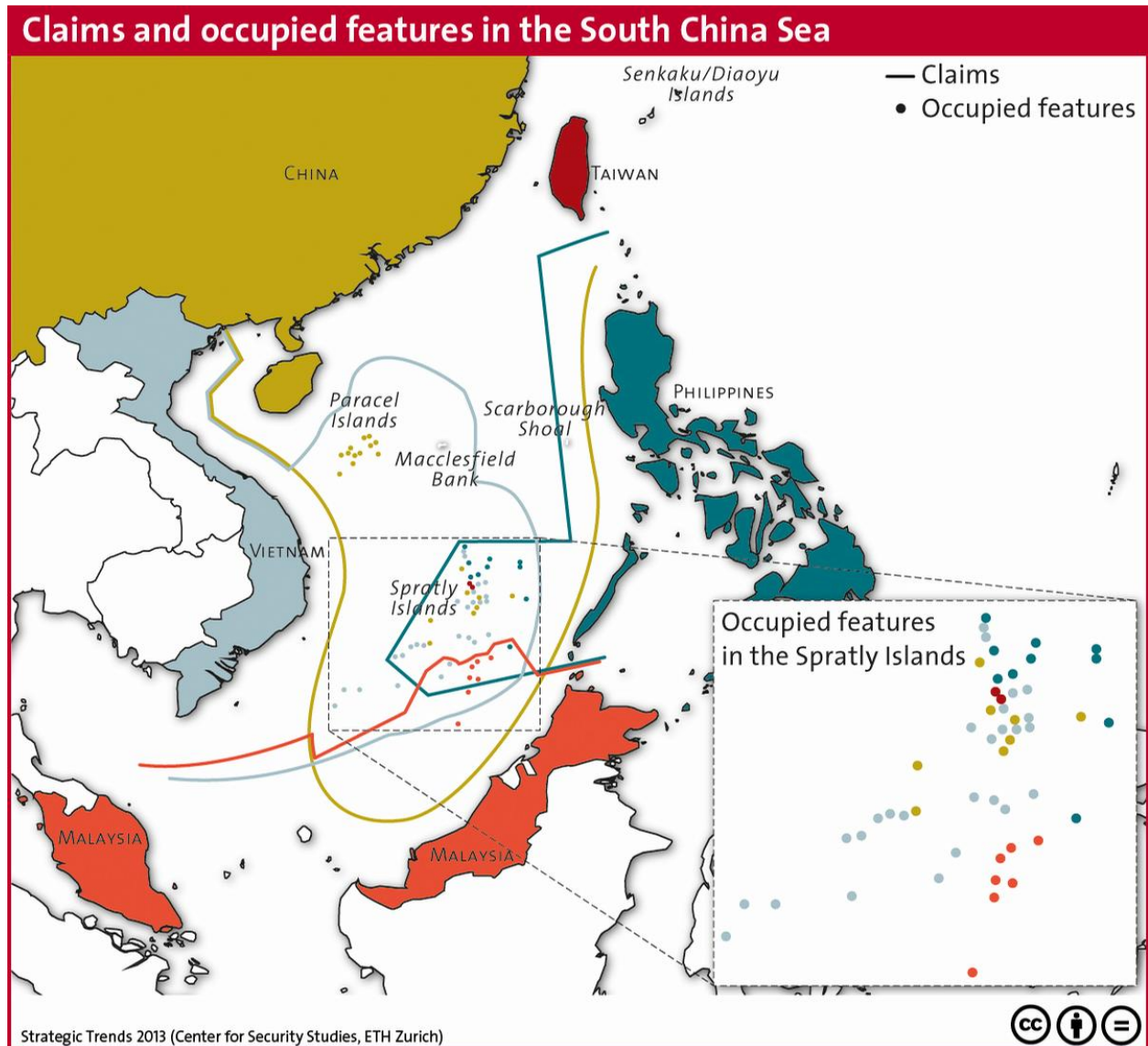
<sup>236</sup> Joe Burgess, "Territorial Claims in South China Sea," The New York Times, May 30, 2012, accessed March 08, 2014, [http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?\\_r=0](http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?_r=0).



### A.2.2 – Occupied Spratly Territory within Conflicting Claims<sup>237</sup>

This map shows the Spratly occupied features within the conflicting boundary claims.

Brunei is not included as it does not have any occupied Spratly feature.



<sup>237</sup> Prem Mahadevan, "Claims and Occupied Features in the South China Sea," map, in *Maritime Insecurity in East Asia* (Zurich: Strategic Trends, 2013), accessed March 7, 2014, [http://www.css.ethz.ch/publications/DetailansichtPubDB\\_EN/covers/ST\\_2013\\_SouthChinaSea.jpg](http://www.css.ethz.ch/publications/DetailansichtPubDB_EN/covers/ST_2013_SouthChinaSea.jpg).

### A.3.1 – Main Shipping Lanes passing through the Spratlys<sup>238</sup>

This map shows the major shipping lanes that flow through the Spratly area waters. Half of the world's merchant fleet and one third of its crude oil pass through the Spratly waters yearly.

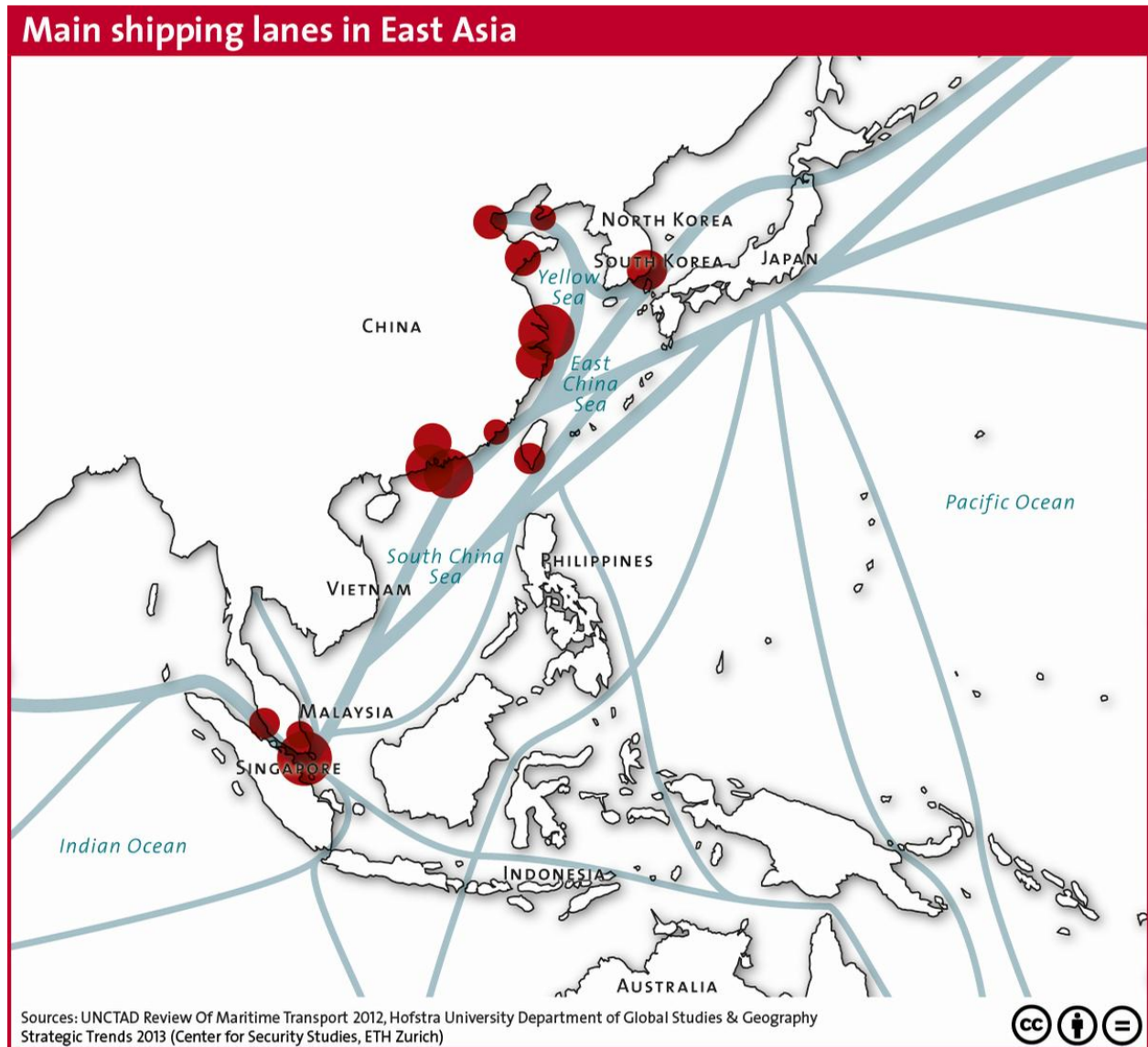


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<sup>238</sup> Jeff Himmelman and Ashley Gilbertson, "A Game of Shark and Minnow," *New York Times*, October 24, 2013, accessed November 1, 2013, <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>.

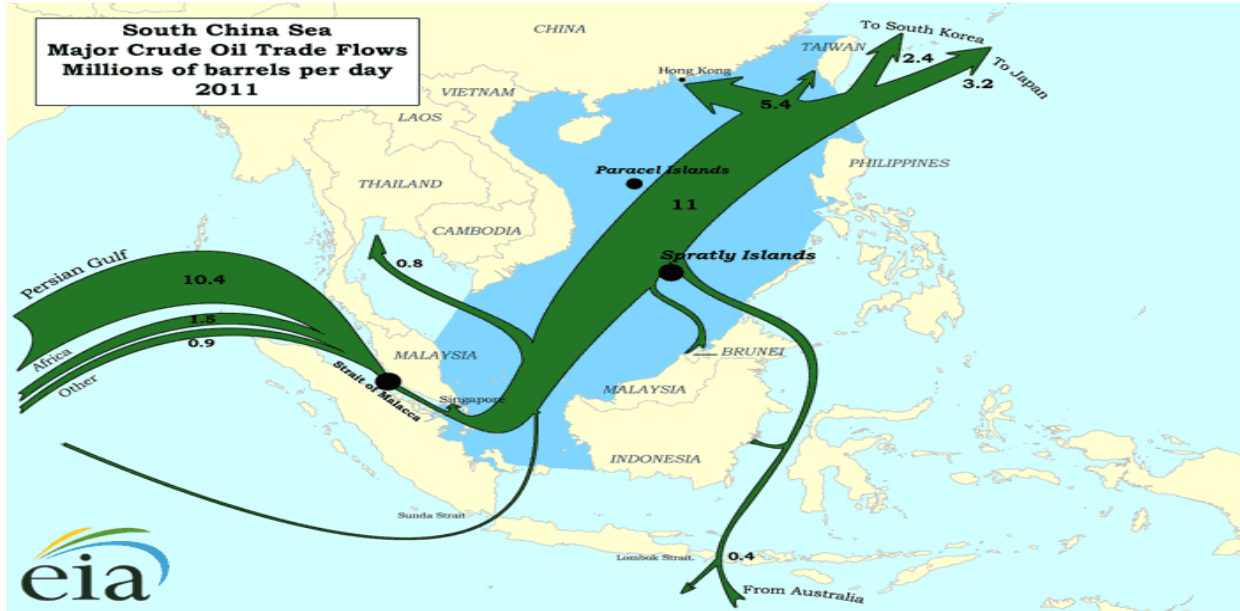
### A.3.2 – Main Shipping Lanes around the Spratlys<sup>239</sup>

This map shows major shipping lanes from around the world that flow through the South China Sea and the Spratly area.



<sup>239</sup> Prem Mahadevan, "Main Shipping Lanes En East Asia," map, in *Maritime Insecurity in East Asia* (Zurich: Strategic Trends, 2013), accessed March 7, 2014, [http://www.css.ethz.ch/publications/DetailansichtPubDB\\_EN?rec\\_id=2453](http://www.css.ethz.ch/publications/DetailansichtPubDB_EN?rec_id=2453).

#### A.4.1 - 2011 Major Crude Oil Flow in the South China Sea<sup>240</sup>



#### A.4.2 – 2011 Major Natural Gas Trade Flow in the South China Sea<sup>241</sup>



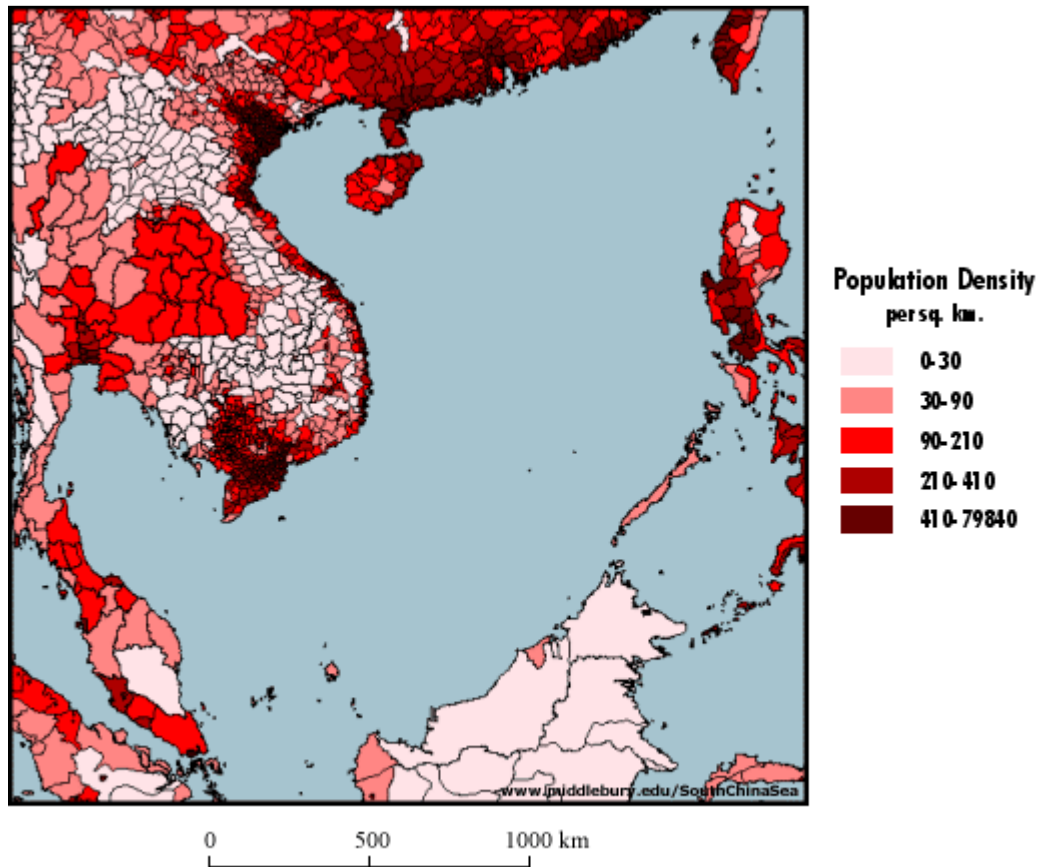
<sup>240</sup> "Crude Oil Trade Flows, 2011," map, in *U.S. Energy Information Administration*, accessed March 7, 2014, <http://www.southchinasea.org/maps/economy/>.

<sup>241</sup> "Natural Gas Trade Flows, 2011," in *U.S. Energy Information Administration*, accessed March 7, 2014, [http://www.southchinasea.org/files/2013/02/LNG\\_trade\\_flows-US-EIA-2011.png](http://www.southchinasea.org/files/2013/02/LNG_trade_flows-US-EIA-2011.png).



### A.5 – Population Densities in Coastal Areas around South China Sea<sup>242</sup>

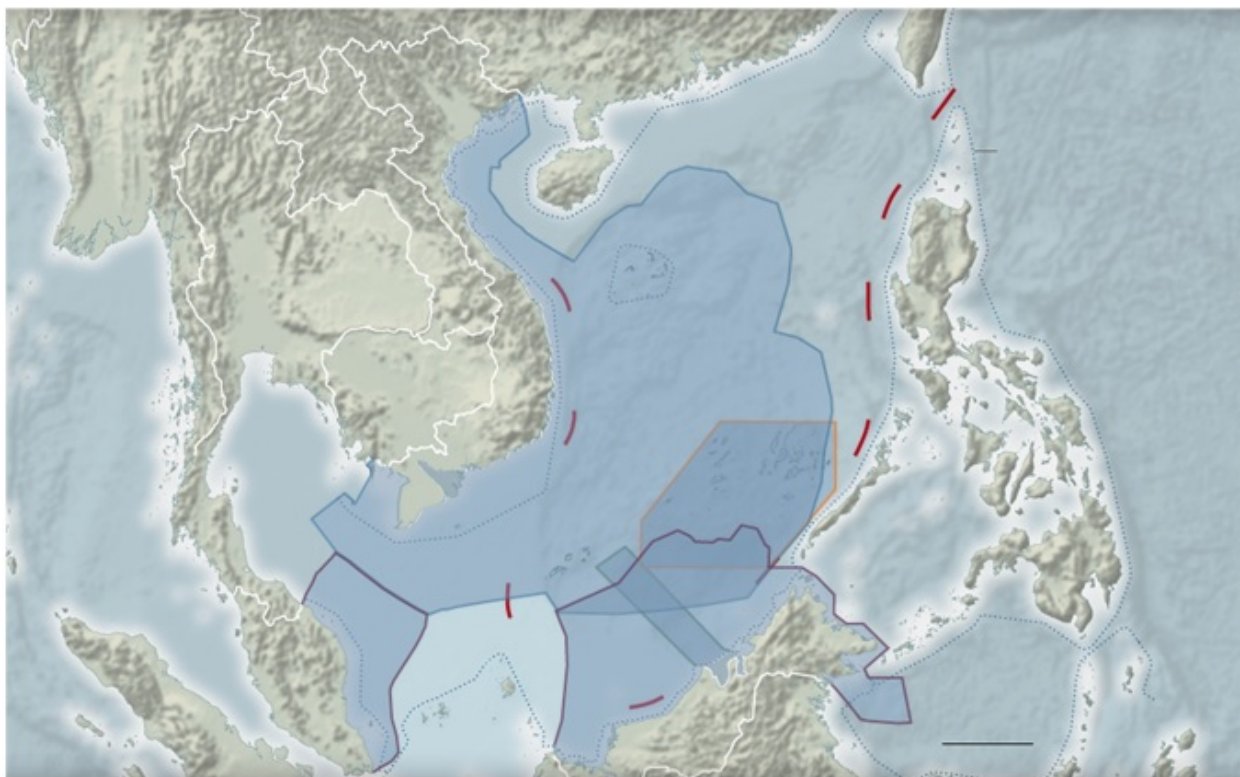
This map shows the population densities around the coastal areas surrounding the South China Sea and Spratly Archipelago.



<sup>242</sup> "Population Densities of Coastal States," map, accessed March 7, 2014, <http://www.southchinasea.org/files/2011/08/density.gif>.

## A.6 – Conflicting Claims in South China Sea<sup>243</sup>

This map shows the combined maritime boundary claims of the six different countries disputing Spratly sovereignty in the South China Sea. The Spratly archipelago falls in between conflicting jurisdictional claims.

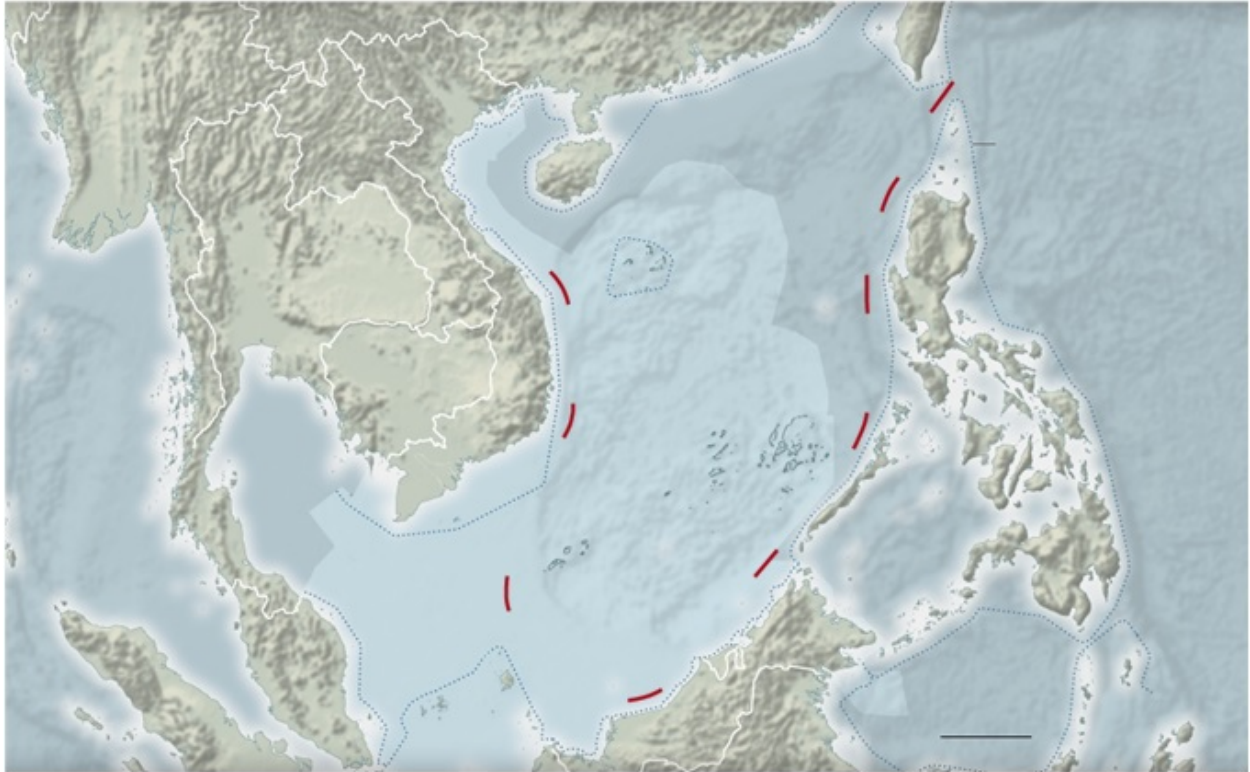


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<sup>243</sup> Burgess, "Territorial Claims in South China Sea,".

### A.7 – Chinese Maritime Boundary Claims in the South China Sea<sup>244</sup>

The People's Republic of China (China) and the Republic of China (Taiwan) have the same maritime boundary claims over the Spratly Archipelago.

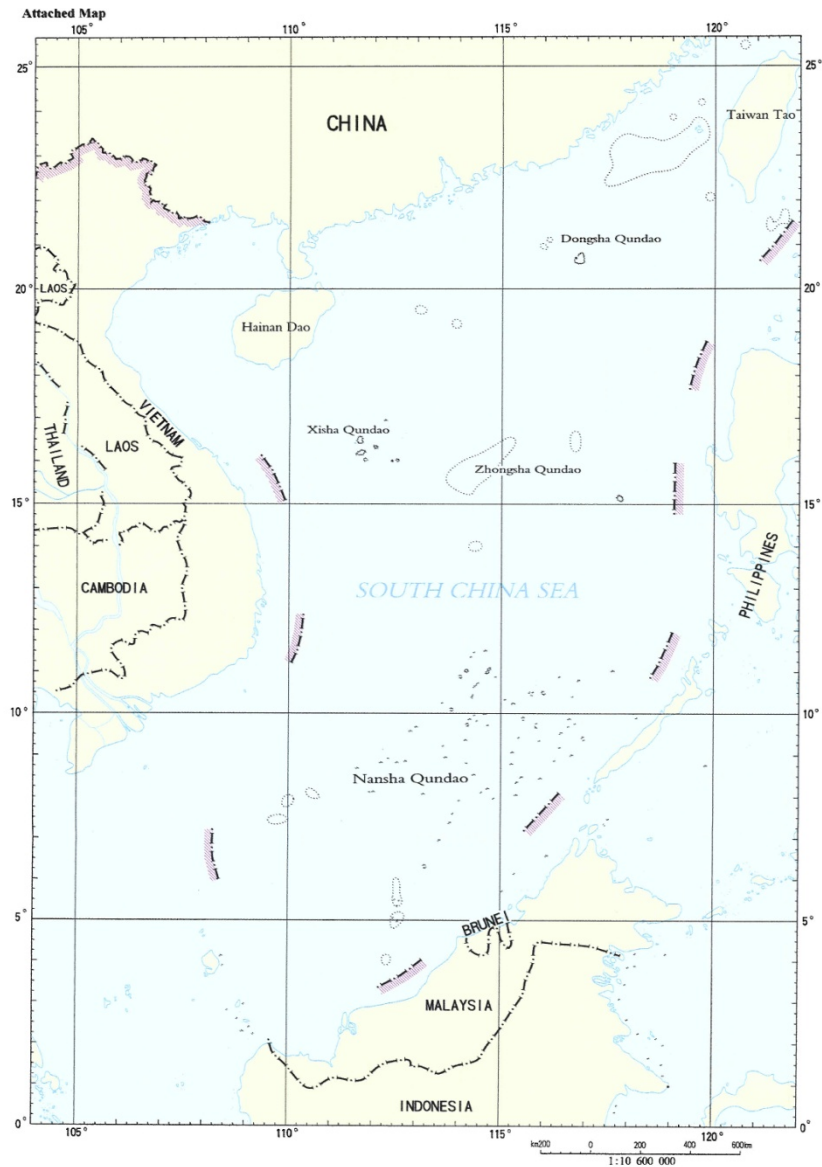


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<sup>244</sup> Ibid.

## A.8 - China's 9 Dash Line<sup>245</sup>

This map was submitted by the Permanent Mission of the People's Republic of China to the United Nations in 2009 to indicate the extent of the territory, which includes the whole Spratly Archipelago ("Nansha") that it claims in the South China Sea.



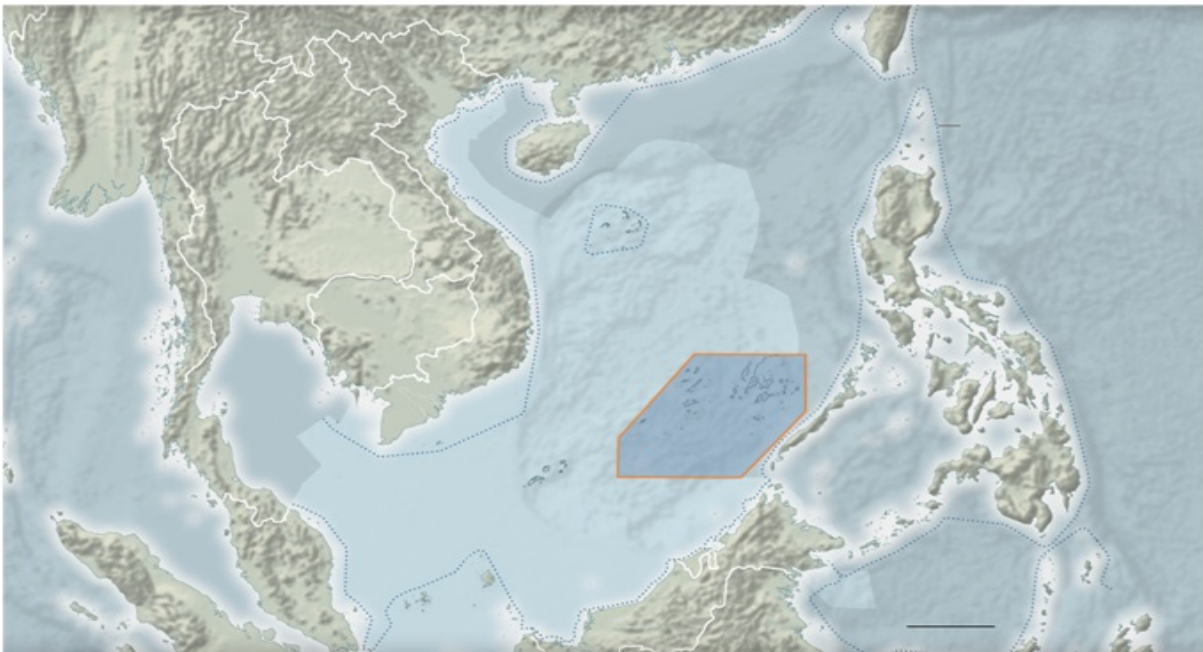
<sup>245</sup> United Nations, Division for Ocean and Affairs and Law of the Sea, *Chinese Note Verbale CML/18/2009*, pg. #, accessed March 7, 2014, [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf).



### A.9 – Vietnam's Maritime Boundary Claims in the South China Sea<sup>246</sup>



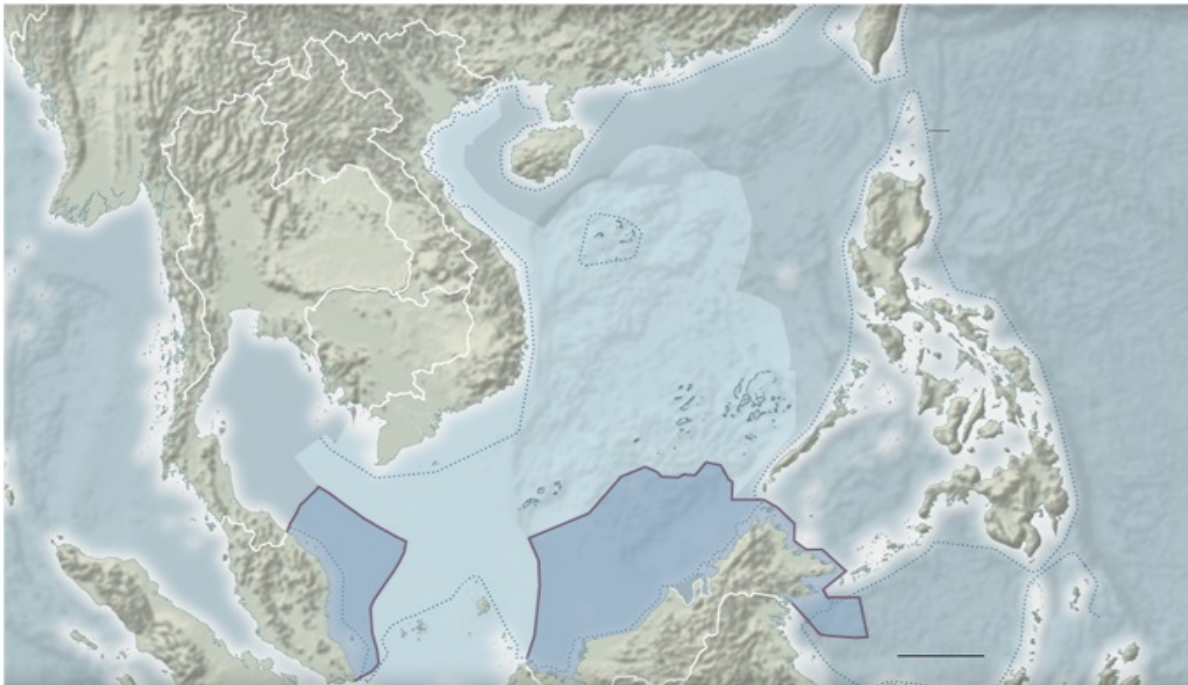
### A.10 – The Philippines' Maritime Boundary Claims in the South China Sea<sup>247</sup>



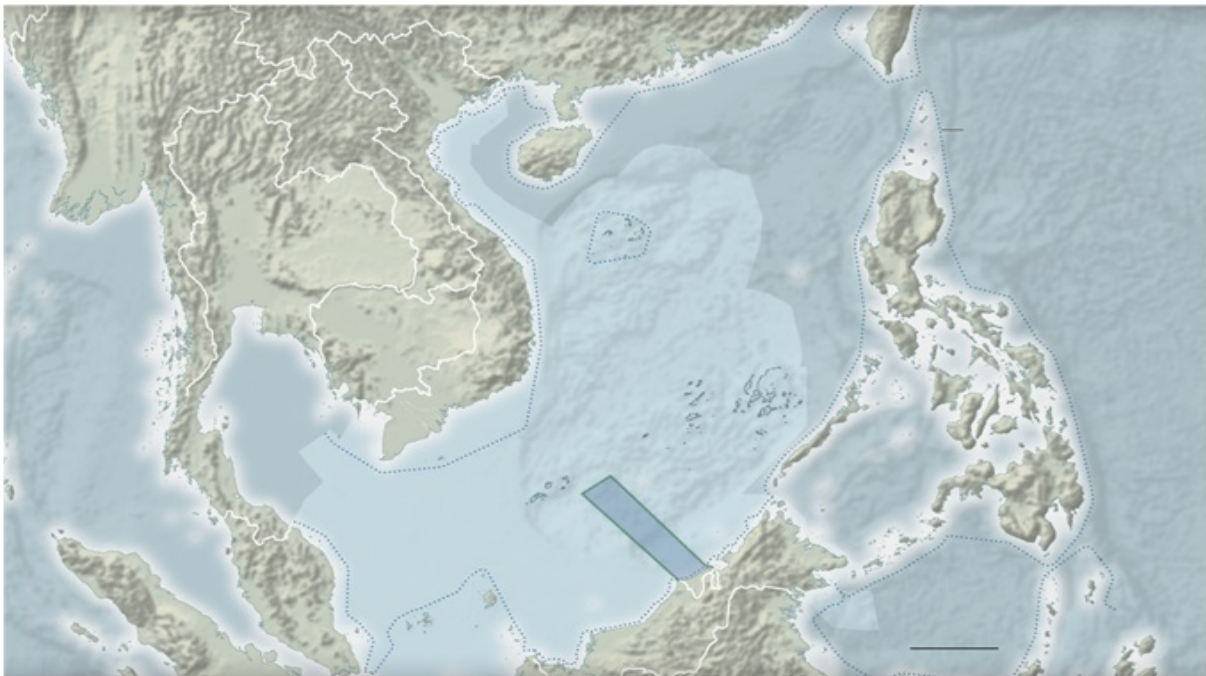
<sup>246</sup> Burgess, "Territorial Claims in South China Sea,"

<sup>247</sup> Ibid.

### A.11 – Malaysia’s Maritime Boundary Claims in the South China Sea<sup>248</sup>



### A.12 Brunei’s Maritime Boundary Claims in the South China Sea<sup>249</sup>



## APPENDIX B – RELEVANT PROVISIONS<sup>250</sup>

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<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

## **B.1– UN Charter**

### *Purpose and Principles*

#### *Article 2*

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and, justice, are not endangered.

### *Pacific Settlement of Disputes*

#### *Article 33*

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of a, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

### *The International Court of Justice*

#### *Article 92*

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

#### *Article 93*

1. All Members of the United Nations are facto parties to the Statute of the International Court of Justice.

2. A state which is not of the United Nations may become a party to the Statute of the International Court of Justice on to be determined in each case by the General Assembly upon the recommendation of the Security Council.

#### *Article 94*

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<sup>250</sup> United Nations, *Charter of the United Nations*, accessed February 10, 2014, <https://www.un.org/en/documents/charter/>.

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give to the judgment.

*Article 95*

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future

## **B.2 – Statutes of the International Court of Justice<sup>251</sup>**

### *Article 36*

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes 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.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

### *Article 38*

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

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<sup>251</sup> International Court of Justice, *Statute of the Court*, accessed February 10, 2014, <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0&>.

### **B.3 – 1899 Convention for the Pacific Settlement of International Disputes<sup>252</sup>**

#### *CHAPTER I. On the System of Arbitration*

##### *Article 15*

International arbitration has for its object the settlement of differences between States by judges of their own choice, and on the basis of respect for law.

##### *Article 16*

In questions of a legal nature, and especially in the interpretation or application of International Conventions, arbitration is recognized by the Signatory Powers as the most effective, and at the same time the most equitable, means of settling disputes which diplomacy has failed to settle.

##### *Article 17*

The Arbitration Convention is concluded for questions already existing or for questions which may arise eventually.

It may embrace any dispute or only disputes of a certain category.

##### *Article 18*

The Arbitration Convention implies the engagement to submit loyally to the Award.

##### *Article 19*

Independently of general or private Treaties expressly stipulating recourse to arbitration as obligatory on the Signatory Powers, these Powers reserve to themselves the right of concluding, either before the ratification of the present Act or later, new Agreements, general or private, with a view to extending obligatory arbitration to all cases which they may consider it possible to submit to it.

#### *CHAPTER II. On the Permanent Court of Arbitration*

##### *Article 20*

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Signatory Powers undertake to organize a permanent Court of Arbitration, accessible at all times and operating, unless otherwise stipulated by the parties, in accordance with the Rules of Procedure inserted in the present Convention.

##### *Article 21*

The Permanent Court shall be competent for all arbitration cases, unless the parties agree to institute a special Tribunal.

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<sup>252</sup> Permanent Court of Arbitration, *1899 Convention for the Pacific Settlement of International Disputes*, accessed February 10, 2014, [http://www.pca-cpa.org/showpage.asp?pag\\_id=1187](http://www.pca-cpa.org/showpage.asp?pag_id=1187).

## **B.4 - 1907 Convention for the Pacific Settlement of International Disputes<sup>253</sup>**

### *Chapter I. The System of Arbitration*

#### *Article 37*

International arbitration has for its object the settlement of disputes between States by Judges of their own choice and on the basis of respect for law.

Recourse to arbitration implies an engagement to submit in good faith to the Award.

### *Chapter II. The Permanent Court of Arbitration*

#### *Article 41*

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by diplomacy, the Contracting Powers undertake to maintain the Permanent Court of Arbitration, as established by the First Peace Conference, accessible at all times, and operating, unless otherwise stipulated by the parties, in accordance with the rules of procedure inserted in the present Convention.

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<sup>253</sup> Permanent Court of Arbitration, *1907 Convention for the Pacific Settlement of International Disputes*, accessed February 10, 2014, [http://www.pca-cpa.org/showpage.asp?pag\\_id=1187](http://www.pca-cpa.org/showpage.asp?pag_id=1187).

## **B.5- United Nations Convention on Law of the Sea<sup>254</sup>**

### **Territorial Sea**

#### *Article2*

*Legal status of the territorial sea, of the air space  
over the territorial sea and of its bed and subsoil*

1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.
2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.
3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

#### *Article3*

#### *Breadth of the territorial sea*

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

#### *Contiguous Zone*

#### *Article33*

#### *Contiguous zone*

1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:
  - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
  - (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

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<sup>254</sup> United Nations, Division for Ocean Affairs and the Law of the Sea, *United Nations Convention On The Law of The Sea* (1982),  
[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).



2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

### *Archipelagic States*

#### *Article 46*

##### *Use of terms*

For the purposes of this Convention:

- (a) "archipelagic State" means a State constituted wholly by one or more archipelagos and may include other islands;
- (b) "archipelago" means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

#### *Article 49*

##### *Legal status of archipelagic waters, of the air space*

##### *over archipelagic waters and of their bed and subsoil*

1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.
3. This sovereignty is exercised subject to this Part.
4. The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

### *Exclusive Economic Zones*

#### *Article 55*

##### *Specific legal regime of the exclusive economic zone*

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

#### *Article 56*

##### *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

#### *Article 57*

##### *Breadth of the exclusive economic zone*

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

#### *Article 58*

### *Rights and duties of other States in the exclusive economic zone*

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

### *Article 59*

#### *Basis for the resolution of conflicts*

#### *regarding the attribution of rights and jurisdiction*

#### *in the exclusive economic zone*

In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

### *Continental Shelf*

### *Article 76*

#### *Definition of the continental shelf*

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

### *Article 77*

### *Rights of the coastal State over the continental shelf*

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

### *Article 78*

#### *Legal status of the superjacent waters and air space*

#### *and the rights and freedoms of other States*

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.
2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

### *Regime of Islands*

### *Article 121*

#### *Regime of islands*

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

## *Enclosed or Semi-Enclosed Seas*

### *Article 122*

#### *Definition*

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

### *Article 123*

#### *Cooperation of States bordering enclosed or semi-enclosed seas*

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;
- (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

#### *Settlement of Disputes*

### *Article 279*

#### *Obligation to settle disputes by peaceful means*

States Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter.

### *Article 280*

#### *Settlement of disputes by any peaceful means chosen by the parties*

Nothing in this Part impairs the right of any States Parties to agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice.

#### *Article 281*

##### *Procedure where no settlement has been reached by the parties*

1. If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed to seek settlement of the dispute by a peaceful means of their own choice, the procedures provided for in this Part apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.
2. If the parties have also agreed on a time-limit, paragraph 1 applies only upon the expiration of that time-limit.

#### *Article 282*

##### *Obligations under general, regional or bilateral agreements*

If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

#### *Article 286*

##### *Application of procedures under this section*

Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

#### *Article 287*

##### *Choice of procedure*

1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention:

- (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI;

- (b) the International Court of Justice;
- (c) an arbitral tribunal constituted in accordance with Annex VII;
- (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

## APPENDIX C – TREATIES

### C.1 - Treaty of Peace with Japan (excerpt)<sup>255</sup>

Signed at San Francisco, 8 September 1951  
Initial entry into force: 28 April 1952

#### TREATY OF PEACE WITH JAPAN

WHEREAS the Allied Powers and Japan are resolved that henceforth their relations shall be those of nations which, as sovereign equals, cooperate in friendly association to promote their common welfare and to maintain international peace and security, and are therefore desirous of concluding a Treaty of Peace which will settle questions still outstanding as a result of the existence of a state of war between them;

WHEREAS Japan for its part declares its intention to apply for membership in the United Nations and in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights; to seek to create within Japan conditions of stability and well-being as defined in Articles 55 and 56 of the Charter of the United Nations and already initiated by post-surrender Japanese legislation; and in public and private trade and commerce to conform to internationally accepted fair practices;

WHEREAS the Allied Powers welcome the intentions of Japan set out in the foregoing paragraph;

THE ALLIED POWERS AND JAPAN have therefore determined to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries, who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

#### CHAPTER II

#### TERRITORY

##### *Article 2*

*(a) Japan recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.*

*(b) Japan renounces all right, title and claim to Formosa and the Pescadores.*

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<sup>255</sup> *Treaty of Peace with Japan* (US-China Institute, 1951), <http://china.usc.edu/%28S%28hvmzvbinmivm4055yhpumv45%29A%28IDCJpSXwzQEkAAAAANjc0YTA4MWMtZTczOS00MDk5LTg4MjgtODk5NGY1NjdlZDIzJmsPYAeSYMpopmJHclQ7cxrGEBM1%29%29/ShoWArticle.aspx?articleID=427&AspxAutoDetectCookieSupport=1>.



*(c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905.*

*(d) Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of 2 April 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.*

*(e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.*

*(f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.*

## C.2 - 1952 Treaty of Peace Between the Republic of China and Japan (excerpt)<sup>256</sup>

Signed at Taipei, 28 April 1952

Entered into force, 5 August 1952, by the exchange of the instruments of ratification at Taipei

### TREATY OF PEACE

The Republic of China and Japan,

Considering their mutual desire for good neighbourliness in view of their historical and cultural ties and geographical proximity; Realising the importance of their close cooperation to the promotion of their common welfare and to the maintenance of international peace and security; Recognising the need for a settlement of problems that have arisen as a result of the existence of a state of war between them; Have resolved to conclude a Treaty of Peace and have accordingly appointed as their Plenipotentiaries,

His Excellency the President of the Republic of China: Mr. YEH KUNG-CHAO;  
The Government of Japan: Mr. ISAO KAWADA

Who, having communicated to each other their full powers found to be in good and due form, have agreed upon the following Articles:—

#### *Article 2*

*It is recognised that under Article 2 of the Treaty of Peace which Japan signed at the city of San Francisco on 8 September 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title, and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratley Islands and the Paracel Islands.*

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<sup>256</sup> *Treaty of Peace between Japan and the Republic of China* (Institute of Oriental Culture, University of Tokyo), pg. #, accessed March 7, 2014, <http://www.ioc.u-tokyo.ac.jp/~worldjpn/documents/texts/docs/19520428.T1E.html>.

### **C.3 - 2002 Declaration on the Conduct of Parties in the South China Sea<sup>257</sup>**

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

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<sup>257</sup> Association of Southeast Asian Nations, *Declaration on the Conduct of Parties in the South China Sea*, accessed March 7, 2014, <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
- b. ensuring just and humane treatment of all persons who are either in danger or in distress;
- c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
- d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

- a. marine environmental protection;
- b. marine scientific research;
- c. safety of navigation and communication at sea;
- d. search and rescue operation; and
- e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;

9. The Parties encourage other countries to respect the principles contained in this Declaration;

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.

#### C.4 – 1982 Timor Gap Treaty (excerpt)<sup>258</sup>

### 1989 TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF INDONESIA ON THE ZONE OF COOPERATION IN AN AREA BETWEEN THE INDONESIAN PROVINCE OF EAST TIMOR AND NORTHERN AUSTRALIA

Adopted in Timor Sea (Zone of Cooperation) on 11 December 1989

#### AUSTRALIA AND THE REPUBLIC OF INDONESIA

**TAKING INTO ACCOUNT** the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and, in particular, Article 83 which requires States with opposite coasts, in a spirit of understanding and cooperation, to make every effort to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of the continental shelf;

**DESIRING** to enable the exploration for and exploitation of the petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia yet to be the subject of permanent continental shelf delimitation between the Contracting States;

**CONSCIOUS** of the need to encourage and promote development of the petroleum resources of the area;

**DESIRING** that exploration for and exploitation of these resources proceed without delay;

**AFFIRMING** existing agreements on the delimitation of the continental shelf between their two countries;

**DETERMINED** to cooperate further for the mutual benefit of their peoples in the development of the resources of the area of the continental shelf yet to be the subject of permanent continental shelf delimitation between their two countries;

**FULLY COMMITTED** to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between their two countries through existing agreements and arrangements, as well as their policies of promoting constructive neighbourly cooperation;

**MINDFUL** of the interests which their countries share as immediate neighbours, and in a spirit of cooperation, friendship and goodwill;

**CONVINCED** that this Treaty will contribute to the strengthening of the relations between their two countries; and

**BELIEVING** that the establishment of joint arrangements to permit the exploration for and exploitation of petroleum resources in the area will further augment the range of contact and cooperation between the Governments of the two countries and benefit the development of contacts between their peoples;

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<sup>258</sup> 1989 *Timor Gap Treaty* (National University of Singapore, 2011), accessed April 2, 2014, <http://cil.nus.edu.sg/1989/1989-treaty-between-australia-and-the-republic-of-indonesia-on-the-zone-of-cooperation-in-an-area-between-the-indonesian-province-of-east-timor-and-northern-australia/>.

## C.5 – 1959 Antarctic Treaty<sup>259</sup>

### THE ANTARCTIC TREATY

*Signed at Washington December 1, 1959*

*Ratification advised by U.S. Senate August 10, 1960*

*Ratified by U.S. President August 18, 1960*

*U.S. ratification deposited at Washington August 18, 1960*

*Proclaimed by U.S. President June 23, 1961*

*Entered into force June 23, 1961*

The Governments of Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America,

Recognizing that it is in the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord;

Acknowledging the substantial contributions to scientific knowledge resulting from international cooperation in scientific investigation in Antarctica;

Convinced that the establishment of a firm foundation for the continuation and development of such cooperation on the basis of freedom of scientific investigation in Antarctica as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind;

Convinced also that a treaty ensuring the use of Antarctica for peaceful purposes only and the continuance of international harmony in Antarctica will further the purposes and principles embodied in the Charter of the United Nations;

Have agreed as follows:

#### Article I

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.
2. The present treaty shall not prevent the use of military personnel or equipment for scientific research or for any other peaceful purposes.

#### Article II

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present treaty.

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<sup>259</sup> *Antarctic Treaty* (United Nations), accessed April 1, 2014, <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280136dbc>.

### **Article III**

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present treaty, the Contracting Parties agree that, to the greatest extent feasible and practicable:

- (a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations;
- (b) scientific personnel shall be exchanged in Antarctica between expeditions and stations;
- (c) scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

### **Article IV**

1. Nothing contained in the present treaty shall be interpreted as:

- (a) a renunciation by any Contracting Party of previously asserted rights of or claims to territorial sovereignty in Antarctica;
- (b) a renunciation or diminution by any Contracting Party of any basis of claim to territorial sovereignty in Antarctica which it may have whether as a result of its activities or those of its nationals in Antarctica, or otherwise;
- (c) prejudicing the position of any Contracting Party as regards its recognition or non-recognition of any other States right of or claim or basis of claim to territorial sovereignty in Antarctica.

2. No acts or activities taking place while the present treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the present treaty is in force.

### **Article V**

1. Any nuclear explosions in Antarctica and the disposal there of radioactive waste material shall be prohibited.

2. In the event of the conclusion of international agreements concerning the use of nuclear energy, including nuclear explosions and the disposal of radioactive waste material, to which all of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX are parties, the rules established under such agreements shall apply in Antarctica.

### **Article VI**

The provisions of the present treaty shall apply to the area south of 60° South Latitude, including all ice shelves, but nothing in the present treaty shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within that area.

## **Article VII**

1. In order to promote the objectives and ensure the observance of the provisions of the present treaty, each Contracting Party whose representatives are entitled to participate in the meetings referred to in Article IX of the treaty shall have the right to designate observers to carry out any inspection provided for by the present Article. Observers shall be nationals of the Contracting Parties which designate them. The names of observers shall be communicated to every other Contracting Party having the right to designate observers, and like notice shall be given of the termination of their appointment.

2. Each observer designated in accordance with the provisions of paragraph 1 of this Article shall have complete freedom of access at any time to any or all areas of Antarctica.

3. All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers designated in accordance with paragraph 1 of this Article.

4. Aerial observation may be carried out at any time over any or all areas of Antarctica by any of the Contracting Parties having the right to designate observers.

5. Each Contracting Party shall, at the time when the present treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of

(a) all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory;

(b) all stations in Antarctica occupied by its nationals; and

(c) any military personnel or equipment intended to be introduced by it into Antarctica subject to the conditions prescribed in paragraph 2 of Article I of the present treaty.

## **Article VIII**

1. In order to facilitate the exercise of their functions under the present treaty, and without prejudice to the respective positions of the Contracting Parties relating to jurisdiction over all other persons in Antarctica, observers designated under paragraph 1 of Article VII and scientific personnel exchanged under subparagraph 1(b) of Article III of the treaty, and members of the staffs accompanying any such persons, shall be subject only to the jurisdiction of the Contracting Party of which they are nationals in respect of all acts or omissions occurring while they are in Antarctica for the purpose of exercising their functions.

Without prejudice to the provisions of paragraph 1 of this Article, and pending the adoption of measures in pursuance of subparagraph 1(e) of Article IX, the Contracting Parties concerned in any case of dispute with regard to the exercise of jurisdiction in Antarctica shall immediately consult together with a view to reaching a mutually acceptable solution.

## **Article IX**



1. Representatives of the Contracting Parties named in the preamble to the present treaty shall meet at the City of Canberra within two months after the date of entry into force of the treaty, and thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica, and formulating and considering, and recommending to their Governments, measures in furtherance of the principles and objectives of the treaty, including measures regarding:

- (a) use of Antarctica for peaceful purposes only;
- (b) facilitation of scientific research in Antarctica;
- (c) facilitation of international scientific cooperation in Antarctica;
- (d) facilitation of the exercise of the rights of inspection provided for in Article VII of the treaty;
- (e) questions relating to the exercise of jurisdiction in Antarctica;
- (f) preservation and conservation of living resources in Antarctica.

2. Each Contracting Party which has become a party to the present treaty by accession under Article XIII shall be entitled to appoint representatives to participate in the meetings referred to in paragraph 1 of the present Article, during such time as that Contracting Party demonstrates its interest in Antarctica by conducting substantial scientific research activity there, such as the establishment of a scientific station or the despatch of a scientific expedition.

3. Reports from the observers referred to in Article VII of the present treaty shall be transmitted to the representatives of the Contracting Parties participating in the meetings referred to in paragraph 1 of the present Article.

4. The measures referred to in paragraph 1 of this Article shall become effective when approved by all the Contracting Parties whose representatives were entitled to participate in the meetings held to consider those measures.

5. Any or all of the rights established in the present treaty may be exercised from the date of entry into force of the treaty whether or not any measures facilitating the exercise of such rights have been proposed, considered or approved as provided in this Article.

## **Article X**

Each of the Contracting Parties undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in Antarctica contrary to the principles or purposes of the present treaty.

## **Article XI**

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present treaty, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent, in each case, of all parties to the dispute, be referred to the International Court of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this Article.

## **Article XII**

1. (a) The present treaty may be modified or amended at any time by unanimous agreement of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX. Any such modification or amendment shall enter into force when the depositary Government has received notice from all such Contracting Parties that they have ratified it.

(b) Such modification or amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification by it has been received by the depositary Government. Any such Contracting Party from which no notice of ratification is received within a period of two years from the date of entry into force of the modification or amendment in accordance with the provisions of subparagraph 1(a) of this Article shall be deemed to have withdrawn from the present treaty on the date of the expiration of such period.

2. (a) If after the expiration of thirty years from the date of entry into force of the present treaty, any of the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX so requests by a communication addressed to the depositary Government, a Conference of all the Contracting Parties shall be held as soon as practicable to review the operation of the treaty.

(b) Any modification or amendment to the present treaty which is approved at such a Conference by a majority of the Contracting Parties there represented, including a majority of those whose representatives are entitled to participate in the meetings provided for under Article IX, shall be communicated by the depositary Government to all the Contracting Parties immediately after the termination of the Conference and shall enter into force in accordance with the provisions of paragraph 1 of the present Article.

(c) If any such modification or amendment has not entered into force in accordance with the provisions of subparagraph 1(a) of this Article within a period of two years after the date of its communication to all the Contracting Parties, any Contracting Party may at any time after the expiration of that period give notice to the depositary Government of its withdrawal from the present treaty; and such withdrawal shall take effect two years after the receipt of the notice of the depositary Government.

## **Article XIII**

1. The present treaty shall be subject to ratification by the signatory States. It shall be open for accession by any State which is a Member of the United Nations, or by any other State which may be invited to accede to the treaty with the consent of all the Contracting Parties whose representatives are entitled to participate in the meetings provided for under Article IX of the treaty.

2. Ratification of or accession to the present treaty shall be effected by each State in accordance with its constitutional processes.

3. Instruments of ratification and instruments of accession shall be deposited with the Government of the United States of America, hereby designated as the depositary Government.

4. The depositary Government shall inform all signatory and acceding States of the date of each deposit of an instrument of ratification or accession, and the date of entry into force of the treaty and of any modification or amendment thereto.

5. Upon the deposit of instruments of ratification by all the signatory States, the present treaty shall enter into force for those States and for States which have deposited instruments of accession. Thereafter the treaty shall enter into force for any acceding State upon the deposit of its instrument of accession.

6. The present treaty shall be registered by the depositary Government pursuant to Article 102 of the Charter of the United Nations.

#### **Article XIV**

The present treaty, done in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited in the archives of the Government of the United States of America, which shall transmit duly certified copies thereof to the Governments of the signatory and acceding States.

**IN WITNESS WHEREOF** the undersigned Plenipotentiaries, duly authorized, have signed the present treaty.

**DONE** at Washington this first day of December, one thousand nine hundred and fifty-nine.

## **C.6 – 1979 Torres Strait Treaty (excerpt)<sup>260</sup>**

### **TREATY BETWEEN AUSTRALIA AND THE INDEPENDENT STATE OF PAPUA NEW GUINEA CONCERNING SOVEREIGNTY AND MARITIME BOUNDARIES IN THE AREA BETWEEN THE TWO COUNTRIES, INCLUDING THE AREA KNOWN AS TORRES STRAIT, AND RELATED MATTERS**

#### **AUSTRALIA AND PAPUA NEW GUINEA,**

**DESIRING** to set down their agreed position as to their respective sovereignty over certain islands, to establish maritime boundaries and to provide for certain other related matters, in the area between the two countries including the area known as Torres Strait;

**RECOGNISING** the importance of protecting the traditional way of life and livelihood of Australians who are Torres Strait Islanders and of Papua New Guineans who live in the coastal area of Papua New Guinea in and adjacent to the Torres Strait;

**RECOGNISING ALSO** the importance of protecting the marine environment and ensuring freedom of navigation and overflight for each other's vessels and aircraft in the Torres Strait area;

**DESIRING ALSO** to cooperate with one another in that area in the conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources;

**AS** good neighbours and in a spirit of cooperation, friendship and goodwill;

**HAVE AGREED as follows:**

#### **PART 1**

#### **DEFINITIONS**

##### **Article 1**

##### **Definitions**

1. In this Treaty-

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<sup>260</sup> *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters, 18 December 1978* (United Nations), accessed April 04, 2014, <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-PNG1978TS.PDF>.

- (a) "adjacent coastal area" means, in relation to Papua New Guinea, the coastal area of the Papua New Guinea mainland, and the Papua New Guinea islands, near the Protected Zone; and, in relation to Australia, the coastal area of the Australian mainland, and the Australian islands, near the Protected Zone;
- (b) "fisheries jurisdiction" means sovereign rights for the purpose of exploring and exploiting, conserving and managing fisheries resources other than sedentary species;
- (c) "fisheries resources" means all living natural resources of the sea and seabed, including all swimming and sedentary species;
- (d) "free movement" means movement by the traditional inhabitants for or in the course of traditional activities;
- (e) "indigenous fauna and flora" includes migratory fauna;
- (f) "mile" means an international nautical mile being 1,852 metres in length;
- (g) "Protected Zone" means the zone established under Article 10;
- (h) "Protected Zone commercial fisheries" means the fisheries resources of present or potential commercial significance within the Protected Zone and, where a stock of such resources belongs substantially to the Protected Zone but extends into an area outside but near it, the part of that stock found in that area within such limits as are agreed from time to time by the responsible authorities of the Parties;
- (i) "seabed jurisdiction" means sovereign rights over the continental shelf in accordance with international law, and includes jurisdiction over low-tide elevations, and the right to exercise such jurisdiction in respect of those elevations, in accordance with international law;
- (j) "sedentary species" means living organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil;
- (k) "traditional activities" means activities performed by the traditional inhabitants in accordance with local tradition, and includes, when so performed-
- (i) activities on land, including gardening, collection of food and hunting;
  - (ii) activities on water, including traditional fishing;
  - (iii) religious and secular ceremonies or gatherings for social purposes, for example, marriage celebrations and settlement of disputes; and
  - (iv) barter and market trade.

In the application of this definition, except in relation to activities of a commercial nature, "traditional" shall be interpreted liberally and in the light of prevailing custom;

(l) "traditional fishing" means the taking, by traditional inhabitants for their own or their dependants' consumption or for use in the course of other traditional activities, of the living natural resources of the sea, seabed, estuaries and coastal tidal areas, including dugong and turtle;

(m) "traditional inhabitants" means, in relation to Australia, persons who-

(i) are Torres Strait Islanders who live in the Protected Zone or the adjacent coastal area of Australia,

(ii) are citizens of Australia, and

(iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities; and

in relation to Papua New Guinea, persons who-

(i) live in the Protected Zone or the adjacent coastal area of Papua New Guinea,

(ii) are citizens of Papua New Guinea, and

(iii) maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities.

2. Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6,378,160 metres and a flattening of  $100/29825$  and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude  $25^{\circ}56'54.5515''$  South and at Longitude  $133^{\circ}12'30.0771''$  East and to have a ground level of 571.2 metres above the spheroid referred to above.

3. In this Treaty, the expression "in and in the vicinity of the Protected Zone" describes an area the outer limits of which might vary according to the context in which the expression is used.

## Bibliography

- 1989 Timor Gap Treaty*. National University of Singapore, 2011. Accessed April 2, 2014. <http://cil.nus.edu.sg/1989/1989-treaty-between-australia-and-the-republic-of-indonesia-on-the-zone-of-cooperation-in-an-area-between-the-indonesian-province-of-east-timor-and-northern-australia/>.
- "Ad Hoc Arbitration Under Annex VII of the United Nations Convention on the Law of the Sea." Permanent Court of Arbitration. Accessed February 20, 2014. [http://www.pca-cpa.org/showpage.asp?pag\\_id=1288](http://www.pca-cpa.org/showpage.asp?pag_id=1288).
- Ali, Saleem H. *Peace Parks: Conservation and Conflict Resolution*. Cambridge, MA: MIT Press, 2007.
- Antarctic Treaty*. United Nations. Accessed April 1, 2014. <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280136dbc>.
- "Arbitral Award on the Subject of the Difference Relative to the Sovereignty over Clipperton Island." *American Journal of International Law* 26, no. 2 (April 1932): 390-94. Accessed January 02, 2014. <http://www.jstor.org/stable/2189369>.
- Armstrong, David, ed. *Routledge Handbook of International Law*. 2009.
- Association of Southeast Asian Nations. *Declaration on the Conduct of Parties in the South China Sea*. Accessed March 7, 2014. <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>.
- Ba, Alice D. "Staking Claims and Making Waves in the South China Sea: How Troubled Are The Waters?" *Contemporary Southeast Asia: A Journal Of International & Strategic Affairs* 33, no. 3 (2011): 269-91. Accessed August 31, 2013. Academic Search Premier.
- Beckman, Robert. "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea." *American Journal of International Law* 107, no. 1 (2013): 142-63. Accessed August 31, 2013. LexisNexis Academic.
- Bennet, Michael. "The People's Republic of China and the use of International Law in the Spratly Islands Dispute." *Stanford Journal of International Law* 28 (1991-1992): 425-50. Accessed August 24, 2013. HeinOnline.
- Brierly, J. L. *The Law of Nations: An Introduction to the International Law of Peace*. Oxford: Clarendon Press, 1963.
- Burgess, Joe. "Territorial Claims in South China Sea." *The New York Times*. May 30, 2012. Accessed March 08, 2014. [http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?\\_r=0](http://www.nytimes.com/interactive/2012/05/31/world/asia/Territorial-Claims-in-South-China-Sea.html?_r=0).

- Carter, Barry E., and Phillip R. Trimble. *International Law*. 5th ed. Gaithersburg [Md.: Aspen Law & Business, 2007.
- Chemillier-Gendreau, Monique. *Sovereignty over the Paracel and Spratly Islands*. Springer, 2000.
- China. *Law of the People's Republic of China on the Territorial Sea or Contiguous Zone*. 1992. Accessed March 7, 2014.  
[https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf).
- Chiu, Hungdah, and Choon-Ho Park. "Legal Status of the Paracel and Spratly Islands." *Ocean Development & International Law* 3, no. 1 (1975): 1-28. Accessed February 01, 2014. Taylor and Francis.
- Cohen, Maxwell. "Canada and the United States: Dispute Settlement and the International Joint Commission - Can this Experience Be Applied to Law of the Sea Issues?" *Case Western Reserve Journal of International Law* 8, no. 1 (1976): 69-83. Accessed April 04, 2014. HeinOnline.
- "A Constitution for the Seas." Chart. In *Living with the Oceans. A Report on the State of the World's Oceans*. Vol. 1. World Ocean Review, 2010. Accessed April 04, 2014.  
<http://worldoceanreview.com/en/wor-1/law-of-the-sea/a-constitution-for-the-seas/>.
- Cordner, Lee G. "The Spratly Islands Dispute and the Law of the Sea." *Ocean Development & International Law* 25, no. 1 (1994): 61-74. Accessed January 05, 2014. Taylor & Francis.
- "Crude Oil Trade Flows, 2011." Map. In *U.S. Energy Information Administration*. Accessed March 7, 2014. <http://www.southchinasea.org/maps/economy/>.
- Denoon, David, and Steven Brams. "Fair Division: A New Approach to the Spratly Islands Controversy." *International Negotiation* 2 (1997): 303-29. Accessed August 21, 2013. Academic Search Premier.
- Dzurek, Daniel J. *The Spratly Islands Dispute: Who's on First?* Vol. 2. Series 1. Durham: International Boundaries Research Unit, University of Durham, 1996. Accessed February 1, 2014.
- Fassbender, Bardo, and Anne Peters. *Oxford Handbook of the History of International Law*. Oxford University Press: New York, 2012.
- Fravel, Taylor M. "China's Strategy in the South China Sea." *Contemporary Southeast Asia: A Journal Of International & Strategic Affairs* 33, no. 3 (2011): 292-319. Accessed August 31, 2013. Academic Search Premier.



- Furtado, Xavier. "International Law and the Dispute over the Spratly Islands: Whiter UNCLOS?" *Contemporary Southeast Asia* 21, no. 3 (1999): 386-404. Accessed August 28, 2013. ProQuest.
- Haller-Trost, R., Clive H. Schofield, and Peter R. Hocknell. *The Territorial Dispute between Indonesia and Malaysia over Pulau Sipadan and Pulau Ligitan in the Celebes Sea: A Study in International Law*. Vol. 2. Series 2. Durham: International Boundaries Research Unit, University of Durham, 1995.
- Hanessian, John. "The Antarctic Treaty 1959." *The International and Comparative Law Quarterly* 9, no. 3 (July 1960): 436-80. Accessed March 30, 2014. JSTOR.
- Himmelman, Jeff, and Ashley Gilbertson. "A Game of Shark and Minnow." *New York Times*, October 24, 2013. Accessed November 1, 2013. <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/>.
- Huth, Paul K., Sarah E. Croco, and Benjamin J. Appel. "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts since 1945." *American Political Science Review* 105, no. 2 (2011): 415-36. Accessed September 7, 2013. Cambridge Journals.
- International Court of Justice. *Statute of the Court*. Accessed February 10, 2014. <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0&>.
- Jessup, Philipp. "The Palmas Island Arbitration." *American Journal Of International Law* 22, no. 4 (1928): 735-52. Accessed August 27, 2013. JSTOR.
- Joyner, Christopher. "The Spratly Islands Dispute: Rethinking the Interplay of Law, Diplomacy, and Geo-politics In the South China Sea." *The International Journal of Marine and Coastal Law* 13, no. 2 (1998): 193-236. Accessed August 27, 2013. Academic Search Premier.
- Lemarquand, David. "International Joint Commission and Changing Canada-United States Boundary Relations." *Natural Resources Journal* 33, no. 59 (1993): 59-92. Accessed April 03, 2014. HeinOnline.
- Mahadevan, Prem. "Claims and Occupied Features in the South China Sea." Map. In *Maritime Insecurity in East Asia*. Zurich: Strategic Trends, 2013. Accessed March 7, 2014. [http://www.css.ethz.ch/publications/DetailansichtPubDB\\_EN/covers/ST\\_2013\\_SouthChinaSea.jpg](http://www.css.ethz.ch/publications/DetailansichtPubDB_EN/covers/ST_2013_SouthChinaSea.jpg).
- Mahadevan, Prem. "Main Shipping Lanes En East Asia." Map. In *Maritime Insecurity in East Asia*. Zurich: Strategic Trends, 2013. Accessed March 7, 2014. [http://www.css.ethz.ch/publications/DetailansichtPubDB\\_EN?rec\\_id=2453](http://www.css.ethz.ch/publications/DetailansichtPubDB_EN?rec_id=2453).
- Malaysia. The Commissioner of Law Revision. *Act 311 Exclusive Economic Zone Act 1984*.

- Accessed February 02, 14. [http://www.kpdnkk.gov.my/kpdnkk-theme/images/pdf/311\\_ExclusiveEconomicZoneAct1984.pdf](http://www.kpdnkk.gov.my/kpdnkk-theme/images/pdf/311_ExclusiveEconomicZoneAct1984.pdf).
- Marine Affairs Research and Education (MARE). "Marine Peace Parks: Establishing Transboundary MPAs to Improve International Relations and Conservation." *MPA News* 8, no. 8 (April 2008): 1-6. Accessed March 30, 2014.
- "Maritime Delimitation Dispute Decided." *Environment Policy and Law* 43, no. 1 (2013): 22-25. Accessed September 6, 2013. ProQuest.
- McManus, John W., Shao Kwang-Tsao, and Lin Szu-Yin. "Toward Establishing A Spratly Islands International Marine Peace Park." *Ocean Development & International Law* 41, no. 3 (2010): 270-80. Accessed August 31, 2013. Academic Search Premier.
- Mito, Lian A. "The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands." *American University International Law Review* 13, no. 3 (1998): 728-64. Accessed February 10, 2014. Digital Commons.
- "Natural Gas Trade Flows, 2011." In *U.S. Energy Information Administration*. Accessed March 7, 2014. [http://www.southchinasea.org/files/2013/02/LNG\\_trade\\_flows-US-EIA-2011.png](http://www.southchinasea.org/files/2013/02/LNG_trade_flows-US-EIA-2011.png).
- Permanent Court of Arbitration. *1899 Convention for the Pacific Settlement of International Disputes*. Accessed February 10, 2014. [http://www.pca-cpa.org/showpage.asp?pag\\_id=1187](http://www.pca-cpa.org/showpage.asp?pag_id=1187).
- Permanent Court of Arbitration. *1907 Convention for the Pacific Settlement of International Disputes*. Accessed February 10, 2014. [http://www.pca-cpa.org/showpage.asp?pag\\_id=1187](http://www.pca-cpa.org/showpage.asp?pag_id=1187).
- Permanent Court of Arbitration. *Eritrea/Yemen Arbitration*. October 9, 1998. Accessed February 03, 2014. [http://www.pca-cpa.org/showpage.asp?pag\\_id=1160](http://www.pca-cpa.org/showpage.asp?pag_id=1160).
- Permanent Court of Arbitration. "The Republic of the Philippines v. The People's Republic of China." News release, The Hague, 2013. PCA.
- Philippines. Office of the President. *Presidential Decree No. 1596*. By Ferdinand Marcos. June, 1978. Accessed September 6, 2013. <http://www.chanrobles.com/presidentialdecrees/presidentialdecreeno1596.html#.UirhNz9ujKc>.
- "Population Densities of Coastal States." Map. Accessed March 7, 2014. <http://www.southchinasea.org/files/2011/08/density.gif>.
- Republic of Vietnam. Ministry of Foreign Affairs. *White Paper on the Hoang Sa (Paracel) and Truong Sa (Spratly) Islands*. 1975. Accessed March 08, 2014.

- <http://www.nguyenthaihocfoundation.org/lichsuVN/hsts4.htm>.
- Rhode Island v. Massachusetts, 37 US 657 (1838).
- Slomanson, William. *Fundamental Perspectives on International Law*. 4th ed. Belmont: Clark Baxter, 2003.
- Snyder, Scott, Brad Glosserman, and Ralph Cossa. "Confidence Building Measures in the South China Sea." *Issues and Insights, Center for Strategic and International Studies*, 01st ser., 02 (August 2001): 1-25. Accessed March 7, 2001.
- State of Indiana v. State of Kentucky, 136 US 479 (1890).
- Sumner, Brian T. "Territorial Disputes at the International Court of Justice." *Duke Law Journal* 53 (April 2004): 1779-812. Accessed September 5, 2013. JSTOR.
- Sun, Kuan-Ming. "Freeze The Tropical Seas. An Ice-cool Prescription for the Burning Spratly Issues!" *Southeast Asian Affairs*, 2000. Accessed September 1, 2013. ProQuest.
- "Torres Strait Treaty between Australia and Papua New Guinea 1978." *Common Law Bulletin* 11:1000-046. Accessed April 5, 2014. HeinOnline.
- Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters, 18 December 1978*. United Nations. Accessed April 04, 2014.  
<http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/AUS-PNG1978TS.PDF>.
- Treaty of Peace between Japan and the Republic of China*. Institute of Oriental Culture, University of Tokyo. Accessed March 7, 2014. <http://www.ioc.u-tokyo.ac.jp/~worldjpn/documents/texts/docs/19520428.T1E.html>.
- Treaty of Peace with Japan*. US-China Institute, 1951.  
<http://china.usc.edu/%28S%28hvmzvbinmivm4055yhpumv45%29A%28IDCJpSXwzQE kAAAANjc0YTA4MWMtZTczOS00MDk5LTg4MjgtODk5NGY1NjdlZDIzJmsPYAeSYMpopmJHclQ7cxrGEBM1%29%29/ShowArticle.aspx?articleID=427&AspxAutoDetectCookieSupport=1>.
- "The Tribunal." International Tribunal for the Law of the Sea. Accessed February 10, 2014.  
<https://www.itlos.org/index.php?id=15&L=0>.
- United Nations. *Charter of the United Nations*. Accessed February 10, 2014.  
<https://www.un.org/en/documents/charter/>.
- United Nations. Division for Ocean Affairs and Law of the Sea. *The United Nations Convention*

- on the Law of the Sea (A Historical Perspective)*. 2012. Accessed February 03, 2014.  
[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Third%20Conference](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Third%20Conference).
- United Nations. Division for Ocean Affairs and the Law of the Sea. *United Nations Convention On The Law of The Sea*. 1982.  
[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).
- United Nations. Division for Ocean and Affairs and Law of the Sea. *Chinese Note Verbale CML/18/2009*. Accessed March 7, 2014.  
[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf).
- United States. Central Intelligence Agency. *Spratly Islands Map*. 1995. Accessed September 4, 2013. <http://www.loc.gov/item/95685289>.
- United States. Central Intelligence Agency. *The World Factbook*. Accessed September 7, 2013.  
<https://www.cia.gov/library/publications/the-world-factbook/geos/pg.html>.
- United States. Department of Energy. U.S. Energy Information Administration. *South China Sea*. 2013. Accessed September 7, 2013.  
[http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).
- Valencia, Mark J. "The Spratly Islands Dispute." *Far Eastern Economic Review* 166, no. 1 (2003): 21. Accessed August 28, 2013. ProQuest.
- VOA News. "China Willing to Pursue Joint Development in Disputed Waters." VOA. July 31, 2013. Accessed March 30, 2014.
- Womack, Brantly. "The Spratly: From Dangerous Ground to Apple of Discord." *Contemporary Southeast Asia: A Journal Of International & Strategic Affairs*, 3rd ser., 33 (2011): 370-87. Accessed August 31, 2013. Academic Search Premier.