

The Ocean Law Daily

"Security, Sovereignty, Sustainability - the Law of the Sea Convention"

August 19, 2010

*The Trifecta of LOS issues today comprises
the Arctic, the South China Sea and Piracy.*

*Each of these issues has a strong, even critical, role in US
strategic interests. Each area is high in the public's awareness.*

*Each is worthy of study in and of itself, but they are linked
together by the reliance on international law in determining
rights and obligations at sea.*

*By chance, informative articles on all three topics appear in the press today,
Lawson Brigham's article in Foreign Policy is a 'realist's' view of the near term
future of the Arctic, shorn of hype and fear-mongering. Capt. Brigham
focuses on the 10 most popular themes of recent years and
discusses their truth and falsehood. David Glazier, writing on the
Opinio Juris blog, addresses the piracy decision earlier this week
of the federal district court much more clearly than I did in yesterday's
newsletter. Finally, two articles on the South China Sea:
a view of China as an aggressive threatening rights of others
and an assessment of Chinese interests and claims in
the South China Sea that examines China's claims
in more detail than has been available from other authors.*

In today's issue:

- **Lawson Brigham's Realist View of the Arctic**
- **David Glazier on the Piracy and "law of nations" Decision**
- **Two articles on the South China Sea**

Two articles on the South China Sea

Writing in the Asia Times, Abraham Denmark and Daniel Kliman of the Center for a New American Security address the issue of China and the South China Sea as a China-United States matter. The article presents a rather simple model of an aggressive China as a threat to regional peace; I am pleased that the authors recommend US accession to the LOS Convention as part of US policy toward the region, but I think they make the issue more US-centric than it should be.

[Asia Times source: <http://www.atimes.com/atimes/China/LH20Ad02.html>](http://www.atimes.com/atimes/China/LH20Ad02.html)

In contrast to the Denmark-Kliman article, **Robert Beckman, director of the Centre of International Law at the University of Singapore**, points out that one of the factors driving attention in the region is the process of claiming areas of the seafloor under the continental shelf provisions of the LOS Convention, particularly the joint Malaysia-Viet Nam submission to the Commission on the Limits of the Continental Shelf. Beckman points out how this claim, and others, and China's responses can help clarify a complicated political situation.

Beckman points out that the Chinese map of the South China Sea, with its nine dashes that enclose virtually all of the sea, is not a claim to an overextended territorial sea, though China has been unclear about exactly what the dashes signify and what authority they claim within that area. He points out that China's official claims to sovereignty are limited to the 12 mile territorial sea surrounding islands in the Sea (keeping in mind that sovereignty is different from the authority to manage the resources of the EEZ and continental shelf). Here is a paragraph from the article:

While much attention has been given to the dotted-line map attached to China's *Note Verbale*, it should be remembered that the Note does not assert sovereignty over the waters in the dotted-line except for the waters "adjacent" to the islands which arguably only refers to a 12 nm territorial sea. The Note contains no language suggesting that China claims that all the waters inside the dotted-line are its territorial waters or historic waters, or that it has any historic rights in the waters inside the dotted-line. This suggests that China's claim is only to the islands inside the dotted-line, and to the maritime zones that can be generated from such islands, a position consistent with UNCLOS.

Law of the Sea is a key element of Beckman's article, and not just with regard to the seabed claims:

The fact that the claimant states appear to be taking steps to make their claims in the South China Sea consistent with UNCLOS is a very positive development. However, fundamental differences remain. The continental shelf submissions have not resolved the underlying disputes on sovereignty over the islands. In addition, disputes are likely to arise on the issue of whether any of the islands are entitled to an EEZ and continental shelf of their own. There are also potential disputes on how to reconcile the overlapping maritime zones measured from the islands with those measured from the mainland. Nevertheless, the fact that all of the claimants are making their claims consistent with UNCLOS establishes a common framework which should make it easier to explore possible solutions.

I found this to be one of the most informative articles on the South China Sea available in that it presents China's claims in a way that is consistent with Chinese support for UNCLOS in other issues and areas. I am reading it a second time and recommend it be read with the Denmark-Klimer article to better inform you about this regional hot spot of ocean law.

[Beckman source: <http://cil.nus.edu.sg/wp/wp-content/uploads/2009/08/RSIS-C-90-2010-Robert-Beckman.pdf>](http://cil.nus.edu.sg/wp/wp-content/uploads/2009/08/RSIS-C-90-2010-Robert-Beckman.pdf)