

THE UN CONVENTION ON THE LAW OF THE SEA AND THE MARITIME DISPUTES IN THE SOUTH CHINA SEA

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The UN Convention on the Law of the Sea (UNCLOS)¹ establishes a legal framework to govern all uses of the oceans. All of the states bordering the South China Sea—Brunei Darussalam, China, Indonesia, Malaysia, the Philippines, and Vietnam—are parties to UNCLOS.² Taiwan, which also borders the South China Sea, has taken steps to bring its legislation into conformity with UNCLOS.³

Brunei Darussalam, China, Malaysia, the Philippines, and Vietnam are the *claimant states* that have competing claims to territorial sovereignty over the islands in the South China Sea. UNCLOS does not address questions of sovereignty over land territory. Its provisions on coastal state jurisdiction assume such sovereignty.

The coastal states have also made overlapping, conflicting claims to jurisdiction over the South China Sea itself. These disputes are as important as those over territorial sovereignty and perhaps even more important. Under UNCLOS, entitlement to maritime zones is generated only by land territory, including islands.⁴ The Convention contains rules on the coastal baselines from which maritime zones are to be measured.⁵ It sets out the breadth of the maritime zones that can be claimed,⁶ as well as the rights and obligations of coastal states and other states in each of those zones. The Convention also contains elaborate provisions on settling disputes between parties over the interpretation or application of its provisions.⁷

Therefore, although UNCLOS contains no express provisions to assist states in determining competing claims to sovereignty over land territory, it contains extensive provisions

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¹ UN Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397, *reprinted in* 21 ILM 1261 (1982) [hereinafter UNCLOS]. UNCLOS entered into force on November 16, 1994. As of October 8, 2012, 163 states and the European Union are parties to the Convention. The Convention is available at <http://www.un.org/Depts/los/index.htm>.

² The dates of ratification of the five claimant states are as follows: Brunei Darussalam, November 5, 1996; China, June 7, 1996; Malaysia, October 14, 1996; the Philippines, May 8, 1984; and Vietnam, July 25, 1994. *See* United Nations Treaties Collection, Status of Treaties, at <http://treaties.un.org/pages/ParticipationStatus.aspx>. If the Gulf of Thailand is considered to be an arm of the South China Sea, then Cambodia and Thailand would also be bordering states, but since these two states are not involved in the territorial disputes or maritime disputes addressed herein, I have not considered them to be bordering states in this article.

³ For the action taken by Taiwan to pass legislation claiming maritime zones as provided in UNCLOS, as well as a comparison of the positions of China and Taiwan, see Song Yann-Huei & Zou Keyuan, *Maritime Legislation of Mainland China and Taiwan: Developments, Comparison, Implications, and Potential Challenges for the United States*, 31 OCEAN DEV. & INT'L L. 303, 310–12 (2000).

⁴ Generally, under UNCLOS, coastal states can claim a territorial sea and contiguous zone (Part II), an exclusive economic zone (Part V), and a continental shelf (Part VI).

⁵ *See generally* UNCLOS, *supra* note 1, Arts. 5–14, 47. Waters on the landward side of the baselines are either internal waters or, in the case of an archipelagic states such as Indonesia and the Philippines, archipelagic waters.

⁶ *See* UNCLOS, *supra* note 1, Arts. 3 (territorial sea), 33(2) (contiguous zone), 57 (exclusive economic zone), 76 (continental shelf).

⁷ *See* UNCLOS, *supra* note 1, Pt. XV.

concerning the nature and extent of permissible maritime claims and the settlement of disputes regarding such claims.

It is the thesis of this article that if the states bordering the South China Sea comply in good faith with the applicable provisions of UNCLOS, then the maritime disputes will be clarified, and a framework will be established that will enable the claimants to set aside the sovereignty disputes over land territory and to cooperate in the areas of overlapping maritime claims. By contrast, if one or more states bordering the South China Sea assert maritime claims that are not in conformity with UNCLOS, other states may have no choice but to resort to the Convention's dispute settlement procedures in order to obtain a legally binding determination of the validity of those claims.

I. OVERVIEW OF THE DISPUTE

The South China Sea is a semi-enclosed sea bordered on the west by Vietnam, on the east by the Philippines, Malaysia, and Brunei Darussalam, on the south by Indonesia and Malaysia, and on the north by China and Taiwan. The width of the South China Sea is approximately 550–650 nautical miles (nm), and its length is more than 1200 nm.

The South China Sea is located on the major international shipping route between the Indian Ocean and northeast Asia, including the ports of China, Japan, Korea, and Russia.⁸ Ships from the Indian Ocean pass through either the Straits of Malacca and Singapore Strait (between Indonesia, Malaysia, and Singapore) or the Sunda Strait (between the Indonesian islands of Java and Sumatra) and traverse the South China Sea in the direction of either the Taiwan Strait (between the Chinese mainland and Taiwan) or the Luzon Strait (between Taiwan and the Philippines).

Territorial Sovereignty Disputes in the South China Sea

The Spratly Islands are located on the east side of the South China Sea, west of the island of Palawan in the Philippines and northwest of the northern part of the island of Borneo, which consists of Brunei Darussalam and the East Malaysian states of Sabah and Sarawak. The Spratly Islands consist of more than 140 islets, rocks, reefs, shoals, and sandbanks spread over an area of more than 410,000 square kilometers (km²).⁹ Some are totally or occasionally submerged, whereas others are always dry. Less than forty of its features are islands under Article 121(1) of UNCLOS, which defines an island as “a naturally formed area of land, surrounded by water, which is above water at high tide.”¹⁰ The total land area of the thirteen largest islands is less than 1.7 km².¹¹ (By way of comparison, Central Park in Manhattan is 3.41 km².) The remainder of the features are either completely submerged or are above water only at low tide. Because of the number of submerged reefs and low-tide elevations, the Spratly

⁸ Clive Schofield, *Dangerous Ground: A Geopolitical Overview of the South China Sea*, in SECURITY AND INTERNATIONAL POLITICS IN THE SOUTH CHINA SEA 18 (Sam Batemen & Ralf Emmers eds., 2009).

⁹ See the map printed with the Editors' Introduction, 107 AJIL 95 (2013) [hereinafter South China Sea map].

¹⁰ This compilation is based on the South China Sea map, *supra* note 9, as well as information provided in DAVID HANCOX & VICTOR PRESCOTT, A GEOGRAPHICAL DESCRIPTION OF THE SPRATLY ISLANDS AND AN ACCOUNT OF HYDROGRAPHIC SURVEYS AMONGST THOSE ISLANDS (1995).

¹¹ This figure is based on an analysis of information provided in HANCOX & PRESCOTT, *supra* note 10.

Islands are marked as “dangerous ground” on navigation charts.¹² They lie east of the major international shipping routes.

All of the Spratly Islands are claimed by China, Taiwan, and Vietnam. Many of the features of the Spratly Islands also fall within the Kalayaan Island Group, claimed by the Philippines. In addition, several features are claimed by Malaysia, and one reef lies within 200 nm of Brunei Darussalam.

More than sixty of the geographic features in the Spratlys are reportedly occupied by the claimants.¹³ Itu Aba, the largest island and the only one with a natural water source, is occupied by Taiwan. The other twelve largest islands are occupied by either Vietnam or the Philippines. Another report indicates that a total of forty-four features are occupied with installations and structures as follows: twenty-five by Vietnam, eight by the Philippines, seven by China, three by Malaysia, and one by Taiwan.¹⁴

The Paracels are the second island group whose sovereignty is in dispute. They are located in the northeast corner of the South China Sea, approximately equidistant from the coast of Vietnam and the Chinese island of Hainan. They are claimed by China, Taiwan, and Vietnam. China forcibly ejected South Vietnamese troops from the Paracels in 1974,¹⁵ and since then they have been occupied exclusively by China, which denies the existence of a territorial sovereignty dispute over the Paracels.¹⁶ Nevertheless, the islands are a continuing source of tension between China and Vietnam, especially with regard to the arrest of Vietnamese fishing vessels.¹⁷

The Paracels consist of about thirty-five islets, shoals, sandbanks, and reefs with approximately 15,000 km² of ocean surface.¹⁸ Woody Island, the largest island in the Paracels, is 2.1 km², which is about the same as the total area of the thirteen largest islands in the Spratly Islands.¹⁹ Woody Island is the location of Sansha City, a prefecture-level city that China established in June 2012 as the administrative center for its claims in the South China Sea.²⁰

¹² Schofield, *supra* note 8, at 7–25.

¹³ South China Sea map, *supra* note 9.

¹⁴ DANIEL J. DZUREK, *THE SPRATLY ISLANDS DISPUTE: WHO'S ON FIRST?* 56–57 (1996).

¹⁵ Stein Tonnesson, *Why are the Disputes in the South China Sea So Intractable? A Historical Approach*, 30 *ASIAN J. SOC. SCI.* 570, 574 (2002).

¹⁶ See, for example, the response of the Chinese Foreign Ministry spokesperson to a question on Vietnam's objections to Chinese military exercises around the Paracel Islands: “It is known to all that China has undeniable sovereignty over the Xisha Islands and its adjacent islets. China and Vietnam have no dispute over this issue.” Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Qin Gang's Regular Press Conference on 27 November, 2007 (Nov. 28, 2007), at <http://www.fmprc.gov.cn/eng/xwfw/s2510/t385091.htm>.

¹⁷ For example, in March 2010, a Chinese patrol vessel seized a Vietnamese fishing boat and its twelve-man crew around the Paracels. See Leszek Buszynski, *The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry*, 35 *WASH. Q.* 139, 143 (2012).

¹⁸ South China Sea map, *supra* note 9.

¹⁹ HANCOX & PRESCOTT, *supra* note 10.

²⁰ China's Ministry of Foreign Affairs acknowledged the establishment of Sansha in June 2012, see Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on June 25, 2012 (June 26, 2012), at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t945654.htm>, and local government officials took office in July, see *China Establishes Sansha City*, *XINHUANET ENG. NEWS* (July 24, 2012), at http://news.xinhuanet.com/english/china/2012-07/24/c_131734893.htm.

Scarborough Shoal is another disputed feature in the South China Sea. It is located approximately 124 nm from Zambales Province in the Philippines²¹ and is claimed by China, the Philippines, and Taiwan. Scarborough Shoal is a large atoll with a lagoon of about 150 km² surrounded by reef.²² Most of the reef is either completely submerged or above water only at low tide, but it contains several small rocks which are above water at high tide.²³ Scarborough Shoal was the scene of incidents between Chinese and Philippine vessels for several months in 2012.

Two geographic features in the northern part of the South China Sea are claimed by China and Taiwan, but not by any of the other states, all members of the Association of Southeast Asian Nations (ASEAN): the Pratas Islands, which are located in the northern part of the South China Sea, just over 200 nm southwest of Hong Kong, and occupied by Taiwan; and Macclesfield Bank, a large atoll that is totally submerged even at low tide²⁴ and located in the northern part of the South China Sea, south of the Pratas Islands, east of the Paracels, and west of Scarborough Shoal.

Maritime Zones Under UNCLOS

Coastal states have sovereignty over their land territory as well as over a 12 nm belt of sea adjacent to their coasts called the *territorial sea*.²⁵ Coastal states are also entitled to other maritime zones beyond their territorial seas, including a *contiguous zone*, an *exclusive economic zone* (EEZ), and a *continental shelf*.²⁶

Baselines of States Bordering the South China Sea

All of the states bordering the South China Sea, as well as Taiwan, claim a territorial sea, an EEZ, and a continental shelf measured from the baselines along their mainland coasts or, in the case of Indonesia and the Philippines, from their archipelagic baselines.²⁷

²¹ Department of Foreign Affairs, Philippine Position on Bajo de Masinloc (Scarborough Shoal) and the Waters Within Its Vicinity, OFFICIAL GAZETTE OF THE REPUBLIC OF THE PHILIPPINES, Apr. 28, 2012, *available at* <http://www.gov.ph/2012/04/18/philippine-position-on-bajo-de-masinloc-and-the-waters-within-its-vicinity/>.

²² Zou Keyuan, *Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?*, IBRU BOUNDARY SECURITY BULL., Summer 1999, at 71.

²³ *See id.*; Philippine Position on Bajo de Masinloc (Scarborough Shoal) and the Waters Within Its Vicinity, *supra* note 21, at 2.

²⁴ *See* UK Hydrographic Office, South China Sea (Nautical Chart 4508, Edition No. 3; 1:3,500,000) (International Chart Series May 8, 2003) [hereinafter Nautical Chart 4508].

²⁵ UNCLOS, *supra* note 1, Arts. 2, 3.

²⁶ *Id.*, Arts. 33, 55, 76.

²⁷ Brunei Darussalam adopted the Territorial Waters of Brunei Act, 1982; China issued the Law on the Territorial Sea and the Contiguous Zone (Feb. 25, 1992), Declaration on the Baselines of the Territorial Sea (May 15, 1996), and Law on Exclusive Economic Zone and Continental Shelf (June 26, 1998); Indonesia issued Law No. 1/1973 Concerning Continental Shelf (Jan. 6, 1973), Law No. 5/1983 Concerning Indonesia Exclusive Economic Zone (Oct. 18, 1983), Law No. 6/1996 Concerning Indonesian Water (Aug. 8, 1996), Government Regulation No. 38/2002 on the Geographical List of Coordinates of the Indonesian Archipelagic Baselines (June 28, 2002), and Government Regulation No. 37/2008 Amending Regulations No. 38/2002 (May 19, 2008); Malaysia adopted the Baselines of Maritime Zones Act 2006 (Act 660, Dec. 29, 2006), *at* <http://faolex.fao.org/docs/texts/mal70074.doc>, and the Territorial Sea Act 2012 (Act 750, June 18, 2012), *at* http://www.federalgazette.agc.gov.my/outputaktap/20120622_750_BI_Act%20750%20BI.pdf; the Philippines adopted Act No. 9522 to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines and for Other Purposes (Mar. 10, 2009); Vietnam issued the Statement on the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf (May 12, 1977)

There is a question, however, of whether the straight baselines employed by some of the states bordering the South China Sea are consistent with the relevant provisions in UNCLOS. Article 6 of the Convention provides that the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast. Article 7 provides that in particular circumstances states may employ straight baselines. The baselines employed by China, Malaysia, the Philippines, Taiwan, and Vietnam have been, on various occasions, questioned by third parties such as the United States.²⁸ Malaysia enacted a new Baselines Law in 2006²⁹ purporting to revise its baselines but has yet to give official notice of revised baselines as required by Article 16 of UNCLOS. The legality of some of its “inferred baselines”—based on a map it published in 1979 depicting its territorial sea and continental shelf—has been questioned.³⁰ In 2012, Vietnam enacted a new law entitled the Law of the Sea of Vietnam,³¹ but that law did not bring its straight baselines into conformity with the provisions of UNCLOS. The baselines of the Philippines had been questioned in the past, but it enacted a new law to “Define the Archipelagic Baselines of the Philippines” in 2009,³² which establishes archipelagic baselines around its main archipelago; these baselines appear to be in conformity with the provisions in Part IV of UNCLOS. The archipelagic baselines employed by Indonesia are also in conformity with the provisions in Part IV of the Convention.³³

Interestingly, although the straight baselines employed by some of the states bordering the South China Sea are of questionable legality under UNCLOS, the other states bordering the South China Sea have not formally objected to the baselines of their neighbors.

The major issue that arises from the questionable use of straight baselines is whether they limit the rights of passage of foreign vessels. The general rule is that the waters landward of straight baselines are internal waters, where the entry of foreign vessels is subject to the consent

and Statement on the Territorial Sea Baseline (Nov. 12, 1982), and adopted the Law of the Sea of Vietnam (Law No. 18/2012/QH13, June 21, 2012), at <http://www.monre.gov.vn/v35/default.aspx?tabid=675&CateID=80&lD=119716&Code=X7J3119716> (unofficial English translation); and Taiwan adopted the Law on the Territorial Sea and Contiguous Zone of the Republic of China (Jan. 21, 1998), at <http://www.asianlii.org/cn/legis/cen/laws/tsatcz392/>, and the Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China (Jan. 26, 1998), at <http://www.asianlii.org/cn/legis/cen/laws/eezatcs443/>. Unless otherwise indicated, the legal instruments cited above, as well as those cited in subsequent footnotes, are available at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/asia.htm>.

²⁸ For an analysis of the U.S. response to straight baseline claims, see J. ASHLEY ROACH & ROBERT W. SMITH, *EXCESSIVE MARITIME CLAIMS* 98 (China’s baselines), 80 (Philippines’ baselines), 82, 99–101 (Vietnam’s baselines) (3rd ed. 2012). For the U.S. Department of State analysis of the claimant’s baselines, see BUREAU OF INTELLIGENCE & RESEARCH, U.S. DEP’T OF STATE, *LIMITS IN THE SEAS NO. 33, STRAIGHT BASELINES: THE PHILIPPINES* (1973), available at <http://www.state.gov/documents/organization/61546.pdf>; BUREAU OF INTELLIGENCE & RESEARCH, U.S. DEP’T OF STATE, *LIMITS IN THE SEAS NO. 99, STRAIGHT BASELINES: VIETNAM*, available at <http://www.state.gov/documents/organization/58573.pdf>; BUREAU OF INTELLIGENCE & RESEARCH, U.S. DEP’T OF STATE, *LIMITS IN THE SEAS NO. 117, STRAIGHT BASELINE CLAIM: CHINA*, available at <http://www.state.gov/documents/organization/57692.pdf>; and BUREAU OF INTELLIGENCE & RESEARCH, U.S. DEP’T OF STATE, *LIMITS IN THE SEAS NO. 127, TAIWAN’S MARITIME CLAIMS*, available at <http://www.state.gov/documents/organization/57674.pdf>.

²⁹ Baselines of Maritime Zones Act 2006, *supra* note 27 (entered into force Dec. 31, 2006); see also Territorial Sea Act 2012 (Malaysia), *supra* note 27.

³⁰ DOUGLAS M. JOHNSTON & MARK J. VALENCIA, *PACIFIC OCEAN BOUNDARY PROBLEMS: STATUS AND SOLUTIONS* 151–54 (1991).

³¹ *Supra* note 27.

³² Act No. 9522, *supra* note 27.

³³ ROACH & SMITH, *supra* note 28 (citing VICTOR PRESCOTT, *MARITIME AND POLITICAL BOUNDARIES OF THE WORLD* 186 (1985)).

of the coastal state.³⁴ Article 8(2) of UNCLOS, however, provides that where the establishment of a straight baseline has the effect of enclosing as internal waters areas that had not previously been considered as such, a right of innocent passage shall exist in those waters. In addition, it is sometimes the case that in actual practice coastal states do not attempt to require consent for the passage of foreign vessels through the waters on the landward side of their straight baselines. Nevertheless, passage on the landward side of questionable baselines is likely to be a matter of concern for the United States and other naval powers.

Maritime Claims of States Bordering the South China Sea

Although all of the states bordering the South China Sea claim a territorial sea, an EEZ, and a continental shelf from their archipelagic baselines or baselines along their mainland coasts,³⁵ the precise locations of the outer limits of some of their EEZ and continental shelf claims remain unclear.

In 2009, Malaysia and Vietnam took actions that had the effect of clarifying their EEZ and continental shelf claims. The impetus for their actions was the need to submit information regarding the limits of the continental shelf beyond 200 nm to the Commission on the Limits of the Continental Shelf (CLCS) before the deadline of May 13, 2009.³⁶ On May 6, 2009, Malaysia and Vietnam made a joint submission to the CLCS with respect to the continental shelf in the southern part of the South China Sea.³⁷ On May 7, 2009, Vietnam made a separate submission to the CLCS with respect to the continental shelf in the northern part of the South China Sea.³⁸ China and the Philippines both submitted *notes verbales* (China, the same day; the Philippines, three months later) to the United Nations objecting to these submissions and asking the CLCS not to consider them because of the existence of a maritime dispute in these areas.³⁹

³⁴ UNCLOS, *supra* note 1, Art. 8(1). Pursuant to Article 35(a), the same rule applies with respect to transit passage of straits used for international navigation.

³⁵ See *supra* note 27 and accompanying text.

³⁶ Pursuant to UNCLOS, *supra* note 1, Annex II, Article 4, coastal states intending to establish the outer limits to their continental shelves beyond 200 nm are required to submit particulars of such limits to the CLCS within ten years of the entry into force of UNCLOS. In 2008, states parties agreed to amend the requirement to allow states to meet the time-period requirement by submitting preliminary information to the CLCS. See UN Doc. SPLOS/183 (June 20, 2008), at http://www.un.org/Depts/los/meeting_states_parties/eighteenthmeetingstatesparties.htm.

³⁷ Joint Submission by Malaysia and the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf, May 6, 2009, at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm.

³⁸ Submission by the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf (May 7, 2009) (partial submission in respect of Vietnam's extended continental shelf north areas (VNM-N)), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm.

³⁹ See Note Verbale CML/17/2009 from the Permanent Mission of the People's Republic of China to the UN Secretary-General (May 7, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (objecting to the joint submission by Malaysia and Vietnam); Note Verbale CML/18/2009 from the Permanent Mission of the People's Republic of China to the UN Secretary-General (May 7, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm (objecting to the submission of Vietnam); Note Verbale No. 000818 from the Permanent Mission of the Republic of the Philippines to the UN Secretary-General (Aug. 4, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm (objecting to the submission of Vietnam); Note Verbale No. 000819 from the Permanent Mission of the Republic of the Philippines to the UN Secretary-General (Aug. 4, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm (objecting to the submission of Vietnam).

Because of the objections to the joint submission of Malaysia and Vietnam and the separate submission of Vietnam, the CLCS is not likely to consider those submissions.⁴⁰ The submissions were significant, however, because they included maps that clarified for the first time the outer limits of the EEZ claims of Malaysia and Vietnam. The map in their joint submission also showed straight baselines along the coasts of Sabah and Sarawak in Malaysia, even though such baselines have not been formally declared by Malaysia.

As noted above, the Philippines took significant steps in 2009 to clarify its maritime claims by passing a new baselines law that is in conformity with the provisions in UNCLOS on archipelagic baselines.⁴¹ The law provides that Scarborough Shoal and the islands that the Philippines claims in the South China Sea (known as the Kalayaan Island Group) will be governed by the regime of islands under Article 121 of UNCLOS. The Philippines also indicated to the CLCS that it intends to make a submission regarding the limits of its continental shelf in the South China Sea.⁴² These actions imply that the Philippines will be making an EEZ claim from the archipelagic baselines of its main archipelago and that it will also be claiming an extended continental shelf into the South China Sea beyond the outer limit of its EEZ. Since China is almost certain to object formally to any submission by the Philippines concerning the continental shelf in the South China Sea, the CLCS will be unable to consider the Philippines submission for an extended continental shelf. As was the case with Malaysia and Vietnam, however, if the map of the extended continental shelf claim that the Philippines submits to the CLCS indicates the outer limit of its EEZ claim, then the Philippines' EEZ claim in the South China Sea will also be clarified.

Both China and Taiwan claim an EEZ of 200 nm and a continental shelf. In 1996, China announced the baselines for the part of its territorial sea adjacent to the mainland.⁴³ It has also declared an EEZ of 200 nm from such baselines⁴⁴ but has not issued any map indicating its EEZ claim. Taiwan has taken similar action.⁴⁵ It is relatively easy to depict the limits of a

www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm (objecting to the joint submission of Malaysia and Vietnam).

⁴⁰ Rules of Procedure of the Commission on the Limits of the Continental Shelf, UN Doc. CLCS/40/Rev.1 (Apr. 17, 2008), at [http://www.un.org/Depts/los/clcs_new/commission_documents.htm#Rules of Procedure](http://www.un.org/Depts/los/clcs_new/commission_documents.htm#Rules%20of%20Procedure). Annex I, para. 5(a), provides:

In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute.

⁴¹ See Act No. 9522, *supra* note 27 and accompanying text.

⁴² See A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the Republic of the Philippines Pursuant to Article 76(8) of the United Nations Convention on the Law of the Sea at 12 (Apr. 21, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/phl22_09/phl_eshummary.pdf, in which the Philippines "expressly reserves its right to make other submissions for such other areas of the continental shelf beyond 200 M at a future time in conformity with the provisions of Annex I to the Rules of Procedure of the Commission."

⁴³ Declaration of the Government of the People's Republic of China on the Baselines of the Territorial Sea, May 15, 1996; see also Maritime Zone Notification 7 (July 5, 1996) (communicating the deposit of lists of geographical coordinates by China), at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CHN.htm>.

⁴⁴ See Exclusive Economic Zone and Continental Shelf Act, *supra* note 27, Art. 2.

⁴⁵ See Song Yann-Huei & Zou Keyuan, *supra* note 3.

200 nm EEZ claim from the straight baselines along the coast of mainland China and from the straight baselines along the coast of Taiwan.⁴⁶

Even if the disputed offshore islands are not taken into account, several agreements would be necessary to delimit the maritime boundaries in the South China Sea. In the north, agreements would be necessary to establish the maritime boundary between the Philippines and mainland China as well as Taiwan. In addition, a maritime boundary agreement will be needed between China and Vietnam extending the partial boundary in the Gulf of Tonkin established by agreement in 2000.⁴⁷ In the east, agreements are required on the adjacent boundaries between Malaysia and Brunei Darussalam and between Malaysia and the Philippines.⁴⁸ In the south, Indonesia has agreements with Vietnam and Malaysia⁴⁹ setting out the limits of the continental shelf boundary between them in this area. Indonesia claims an EEZ, however, that extends beyond the limits of its continental shelf boundary agreements with Malaysia and Vietnam.⁵⁰ Consequently, Indonesia will have to negotiate new boundary agreements with its neighbors in order to delimit the EEZ or fishing zone boundaries in this area.

Maritime Zones Generated by Offshore Features in the South China Sea

UNCLOS makes important distinctions between offshore geographic features such as (1) islands, (2) rocks, (3) low-tide elevations, (4) artificial islands, installations, and structures, and (5) submerged features. The distinctions are significant because different maritime zones can be claimed from different features. Maritime zones can be generated only from land territory over which a state has sovereignty—which is often described as the principle that “the

⁴⁶ See, e.g., South China Sea map, *supra* note 9.

⁴⁷ Agreement Between the People’s Republic of China and the Socialist Republic of Vietnam on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Beibu Gulf/Bac Bo Gulf (Gulf of Tonkin), Dec. 25, 2000 (entered into force June 30, 2004); see 5 INT’L MAR. BOUNDARIES 3755–58 (David Colson & Robert Smith eds., 2005) (unofficial English translation). A discussion of the boundary agreement is provided in Zou Keyuan, *The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin*, 36 OCEAN DEV. & INT’L L. 13, 14 (2005).

⁴⁸ In an exchange of letters dated March 16, 2009, Malaysia and Brunei Darussalam agreed to maritime boundaries for the territorial sea, the EEZ, and continental shelf out to 200 nm. Although the letters are not publicly available, the exchange was disclosed in a joint press release by the two countries. See Joint Press Statement by Leaders on the Occasion of the Working Visit of Yab Dato’ Seri Abdullah Haji Ahmad Badawi, Prime Minister of Malaysia, to Brunei Darussalam on 15–16 March 2009 (Mar. 17, 2009) at <http://bn.chineseembassy.org/eng/wlxw/t542877.htm>. It was also mentioned in Brunei Darussalam’s Preliminary Submission Concerning the Outer Limits of Its Continental Shelf at 3–4 (May 12, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf. The territorial sea and continental shelf between Brunei Darussalam and Malaysia had been delimited as far as the one hundred fathom isobath by two 1958 British orders in council, see 1 INT’L MAR. BOUNDARIES 915–28 (Jonathon I. Charney & Lewis M. Alexander eds., 1993). The adjacent maritime boundary between the Philippines and Malaysia will be especially difficult to negotiate because of the Philippine claim to Sabah.

⁴⁹ Agreement Between the Government of the Republic of Indonesia and the Government of Malaysia Relating to the Delimitation of the Continental Shelf Between the Two Countries, Oct. 27, 1969, 9 ILM 1173 (1970) (entered into force Nov. 7 1969); Agreement Between the Government of the Socialist Republic of Vietnam and the Republic of Indonesia Concerning the Delimitation of the Continental Shelf Boundary, June 26, 2003 (entered into force May 29, 2007), at 67 LAW OF THE SEA BULLETIN 39 (2008).

⁵⁰ See the map of Indonesia’s fisheries management area (Wilayah Pengelolaan Perikanan), which appears as Appendix (Lampiran) I (on page 7) of Indonesia’s Ministry of Marine Affairs and Fisheries, Fishery Regulation No. 1, at http://www.infohukum.kkp.go.id/files_permen/PER%2001%20MEN%202009.pdf. The map’s coordinates are generally indicative of Indonesia’s EEZ claim.

land dominates the sea.” The maxim is long-standing and has often been cited with approval by international courts and tribunals.⁵¹

Islands and rocks. The land territory of a state includes its mainland territory and islands under its sovereignty. Article 121(1) of UNCLOS defines an island as a naturally formed area of land, surrounded by water, which is above water at high tide. The general rule is that every island is entitled to the same maritime zones as land territory—that is, to a territorial sea, a contiguous zone, an EEZ, and a continental shelf.⁵² The same baseline rules apply to islands as to the territorial sea. The normal rule is that the baseline is the low water line along the coast.

An important exception applies, however, to certain types of islands. Article 121(3) provides that rocks that cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf. In other words, they are entitled only to a territorial sea and contiguous zone.

Low-tide elevations. Low-tide elevations are naturally formed areas of land surrounded by and above water at low tide, but submerged at high tide.⁵³ Low-tide elevations are not islands and are not entitled to any maritime zones of their own. If they are within 12 nm of any land territory, however, including an island, they can be used as part of the baseline from which the breadth of the territorial sea is measured.⁵⁴

The status of low-tide elevations was considered by the International Court of Justice (ICJ) in its 2001 judgment in *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*.⁵⁵ The Court stated that international treaty law is silent on the question of whether low-tide elevations can be considered to be “territory.”⁵⁶ The Court further stated that it is not aware of a uniform and widespread state practice that might have given rise to a customary rule that unequivocally permits or excludes appropriation of low-tide elevations.⁵⁷ The Court also pointed out that the difference in effects that the law of the sea attributes to islands and to low-tide elevations is considerable. It concluded that it is not established that low-tide elevations can, from the viewpoint of acquiring sovereignty, be fully assimilated to islands or other land territory.⁵⁸ Finally, the Court stated that a low-tide elevation that is situated beyond the limits of the territorial sea does not have a territorial sea of its own and, as such, does not generate the same rights as islands or other territory.⁵⁹ In its 2012 judgment in *Territorial and Maritime Dispute* (Nicaragua v. Columbia), the ICJ further clarified its position by expressly stating that “low-tide elevations cannot be appropriated.”⁶⁰

⁵¹ See *Territorial and Maritime Dispute* (Nicar. v. Colom.), 2012 ICJ REP. 1, para. 140 (Nov. 19); *Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal* (Bangl. v. Myan.), ITLOS Case No. 16, para. 185 (Mar. 14, 2012). The judgments and decisions, as well as other materials, of the International Court of Justice are available on its website, <http://www.icj-cij.org>, and of the International Tribunal for the Law of the Sea, on its website, <http://www.itlos.org>.

⁵² UNCLOS, *supra* note 1, Art. 121(2).

⁵³ *Id.*, Art. 13.

⁵⁴ *Id.*, Art. 13(2).

⁵⁵ *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain*, *supra* note 51.

⁵⁶ *Id.*, para 205.

⁵⁷ *Id.*

⁵⁸ *Id.*, para 206.

⁵⁹ *Id.*, para 207.

⁶⁰ *Territorial and Maritime Dispute*, *supra* note 51, para. 26.

Artificial islands, installations, and structures. Artificial islands, installations, and structures are not islands and are not entitled to any maritime zones of their own.⁶¹ Within the territorial sea, they are subject to the sovereignty of the coastal state. In the EEZ and on the continental shelf,⁶² a coastal state has the exclusive right to construct and to authorize and regulate the construction, operation, and use of (1) artificial islands, (2) installations and structures for economic purposes, and (3) installations and structures that may interfere with the exercise of the coastal state's rights in the zone.⁶³ Coastal states have exclusive jurisdiction over such artificial islands, installations, and structures.

Geographic features in the South China Sea. The application of the provisions of UNCLOS to the offshore geographic features in the South China Sea raises several important issues. As stated earlier, it is estimated that less than forty of the features in the Spratly Islands meet UNCLOS's definition of an island. In addition, the total land area of the thirteen largest islands is only about 1.7 km². Several questions thus arise. First, how many of the features are islands because they are naturally formed areas of land surrounded by and above water at high tide? Second, how many of the islands are entitled only to a territorial sea and contiguous zone because they are rocks that cannot sustain human habitation or economic life of their own? Third, how many of the islands are in principle also entitled to an EEZ and continental shelf because they can sustain human habitation or economic life?

There are some easy cases. Many of the features in the South China Sea are completely submerged, even at low tide. They are not islands, are not capable of a claim to sovereignty, and cannot generate any maritime zones. Also, it seems reasonable to conclude that the tiny uninhabited rocks on Scarborough Shoal are rocks that cannot sustain human habitation or economic life of their own, so they would be entitled only to a territorial sea and contiguous zone. It also seems clear that Woody Island, the largest island in the Paracel Islands, is an island that is entitled to an EEZ and continental shelf of its own. For many other features, there is likely to be no consensus.

None of the claimants in the South China Sea have clarified which features they consider to be islands, rocks, low-tide elevations, artificial islands, and so on. The resulting uncertainty is noteworthy since the majority of features are not above water at high tide. Furthermore, there appear to be cases in which a claimant state has built installations and structures on low-tide elevations or submerged features within 200 nm of another claimant. The claimant states have also not clarified which features they believe are islands. Nor have they clarified what maritime zones they are entitled to claim from such islands.

⁶¹ A safety zone of limited breadth, as specified in UNCLOS or applicable international regulations, may be established around artificial islands, installations, and structures beyond the territorial sea. UNCLOS, *supra* note 1, Arts. 60(4)–(5), 147(c), 260, Annex III, Art. 17, para. 1(b).

⁶² UNCLOS, *supra* note 1, Arts. 60, 80. The term *artificial island* is not defined in UNCLOS. However, it generally refers to a feature that is above water at high tide because of land reclamation or other human activity. In other words, it fails to meet the definition of an "island" under Article 121 because it is not a "naturally formed" area of land but rather is a man-made feature. Installations and structures are also not defined, but they would refer to things like buildings, lighthouses, research stations, and oil platforms. Installations and structures are often built on low-tide elevations or submerged features.

⁶³ *Id.*, Art. 60(1).

II. THE EVOLVING POSITIONS OF THE STATES BORDERING THE SOUTH CHINA SEA

The Evolving Position of Malaysia, the Philippines, and Vietnam on Offshore Islands

As explained earlier, the southern half of the South China Sea lies primarily off the mainland coasts of China, Malaysia, the Philippines, and Vietnam. In addition, most of the hydrocarbon resources in this part of the South China Sea are likely to be located in areas near the coasts of these countries. Therefore, it is in the national interests of these states for the 200 nm EEZ measured from their coasts to be determinative in allocating sovereign rights over the natural resources in and under the waters of the South China Sea.

Malaysia, the Philippines, and Vietnam view the South China Sea through the lens of international law, especially UNCLOS. They have determined that when dealing with a rising superpower like China whose claims may extend beyond those permitted under UNCLOS, it is in their interests to bring their claims and positions into conformity with UNCLOS and to base their claims exclusively on the Convention.

In this context, it would be in the interests of Malaysia, the Philippines, and Vietnam to take the position that the small features in the South China Sea that are beyond their mainland and archipelagic baselines and that meet the definition of an island because they are above water at high tide should be entitled only to territorial seas and not to EEZs or continental shelves. In other words, they should argue that all of the islands should be treated as falling within the exception in Article 121(3) concerning rocks that cannot sustain human habitation or economic life of their own. Given that only one island in the Spratly Islands has natural water and that the total land area of the group's largest thirteen islands is only about 1.7 km², this position is not unreasonable. If the three states adopted this position, the only maritime areas in dispute would be the 12 nm territorial sea areas surrounding the disputed islands. The maritime areas closest to the coasts of the ASEAN claimant states, where most, though not all, of the hydrocarbons are located, would be outside the areas in dispute. These hydrocarbon resources would be within the EEZs of these states, which would enjoy sovereign rights to explore and exploit them.

It would also be in the interests of Malaysia, the Philippines, and Vietnam to take the position that any offshore features that do not meet the definition of an island are under the jurisdiction and control of the coastal state in whose EEZ they lie, and that those features and the surrounding waters are subject to the coastal state's sovereign rights over the natural resources of its EEZ. That said, since both China and Vietnam occupy several features in the Philippines' EEZ, this concession would, for them, be a major one.⁶⁴

The available evidence suggests that Malaysia, the Philippines, and Vietnam are gradually moving to adopt a position similar to that outlined above. First, in their submissions to the CLCS, Malaysia and Vietnam claimed an EEZ only from their mainland coasts. They did not assert any claim from any of the islands beyond their mainland coastal baselines over which they claim sovereignty. Second, the Philippines' 2009 Baselines Law draws baselines only around

⁶⁴ The point being made here can be understood more concretely by referring to a map of the South China Sea—map no. 803426A1, (G02284) 1–10, published by the Office of the Geographer, U.S. Department of State in January 2010—that can be downloaded from the Centre for International Law's website, at http://cil.nus.edu.sg/wp/wp-content/uploads/2011/06/75967_South-China-Sea-1.pdf (see insert on the map entitled “Paracel and Spratly Islands Occupation Status”).

the main islands in the Philippines archipelago, not around the small islands claimed by the Philippines in the South China Sea west of the main archipelago. Further, the same legislation states that the islands in the South China Sea over which the Philippines claims sovereignty shall be governed by the regime of islands in Article 121 of UNCLOS. This position suggests that the Philippines will be claiming an EEZ and continental shelf only from the archipelagic baselines drawn around its main islands. Third, in a 2012 statute, Vietnam includes a provision intended to make it clear that the islands over which Vietnam claims sovereignty will also be governed by Article 121. The statute specifically provides that islands that cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.⁶⁵

If the evolving position of Malaysia, the Philippines, and Vietnam is, indeed, as presented above, it would be in their common interests to further clarify their position. First, the three states should give official notice of the outer limit of their EEZ claims by publishing charts or lists of geographic coordinates, as required by UNCLOS.⁶⁶ In addition, if they have measured their 12 nm territorial sea and 200 nm EEZ from straight baselines along their coasts, they should ensure that they have given official notice of such baselines by publishing charts or lists of geographic coordinates, as required by the Convention.⁶⁷ Second, they should identify the names and locations of the islands in the South China Sea over which they claim sovereignty. Third, if they believe that any of the islands over which they claim sovereignty are entitled to EEZs and continental shelves of their own, they should identify such islands and give notice of the EEZ claim from them by publishing official charts or lists of geographic coordinates of the limits of such claims, as required by the Convention.⁶⁸ If, however, they believe that none of the islands over which they claim sovereignty are entitled to more than a 12 nm territorial sea, they should officially state that to be their position.⁶⁹

The Evolving Position of China on the South China Sea

Whereas Malaysia, the Philippines, and Vietnam seem to be taking steps to bring their claims into conformity with UNCLOS, China seems to be moving to assert maritime claims based not just upon UNCLOS but also upon history.

China has a historic claim to sovereignty over what it refers to as four major archipelagic groups in the South China Sea—Spratlys (Nansha), Paracels (Xisha), Pratas (Dongsha), and Macclesfield Bank (Zongsha)—as well as to Scarborough Reef (Huangyan Island). Articles summarizing China's historic claim make it clear that China has claimed the geographic features in these areas since ancient times. They do not purport to assert that China has a historic claim to all of the waters in the South China Sea.⁷⁰

⁶⁵ Law of the Sea of Vietnam, *supra* note 27, Art. 20(2).

⁶⁶ UNCLOS, *supra* note 1, Art. 75.

⁶⁷ *Id.*, Art. 16.

⁶⁸ *Id.*, Art. 75.

⁶⁹ If Malaysia and the Philippines can reach agreement on their adjacent EEZ boundary, most of the maritime space within the EEZs of Malaysia, the Philippines, and Vietnam will be clear. The only maritime areas in dispute will then be the 12 nm territorial sea surrounding the disputed islands, unless China claims EEZs and continental shelves from some or all of the islands.

⁷⁰ For excellent summaries of the historic claim of China, see Jiangming Shen, *International Law Rules and Historical Evidences Supporting China's Title to the South China Sea Islands*, 21 HASTINGS INT'L & COMP. L. REV. 1

One of the issues raised by China's sovereignty claim in the South China Sea is whether it is claiming sovereignty over geographic features that do not meet the definition of an island under UNCLOS. Some statements suggest that China's historic sovereignty claim is to all of the islands, rocks, reefs, and shoals in the four archipelagos, whether or not the features meet the definition of an island under international law. For example, one of the four archipelagos over which China claims sovereignty is Macclesfield Bank. Macclesfield Bank, however, is reported to be a sunken reef that remains completely submerged even at low tide.⁷¹ If so, it could not be subject to a claim of sovereignty because, as discussed earlier, claims to sovereignty can be made only to land territory—that is, to features that meet the definition of an island.

The *notes verbales* that China submitted to the UN secretary-general in 2009—regarding the joint submission of Malaysia and Vietnam and the separate submission of Vietnam to the CLCS—shed some light on China's official position. China stated that those submissions “seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea.”⁷² The map attached to both of the notes depicted what is commonly referred to as the “nine-dash” or “u-shaped” line. By attaching the map to an official communication that would be circulated to all members of the United Nations, China had for the first time indicated that its claim in the South China Sea was linked in some way to the map. This use of the map, which raised suspicions in ASEAN countries about the nature of China's claim in the South China Sea, resulted in a series of communications to the UN secretary-general by Indonesia, Malaysia, the Philippines, and Vietnam, as well as China.

A main source of controversy in the *notes verbales* and in the legal literature on the South China Sea⁷³ has been the extent to which China's claims are based on the nine-dash line. In 1947, the Republic of China published an official map of the archipelago of the South China Sea using eleven interrupted lines drawn in a u-shape around most of the features of the Spratly Islands.⁷⁴ Interestingly, the title of this map was “Map on Location of Islands in the South China Sea.” The title suggests that the map was originally intended only to depict the location of the islands claimed by China in the South China Sea. Two of the interrupted lines in the Gulf of Tonkin area were later deleted, leaving the nine dashes or interrupted lines. The map was subsequently adopted by the People's Republic of China. Absent any contemporaneous law, declaration, or formal statement that the map was intended by the successive Chinese governments to do anything other than depict the location of the islands claimed in the South China Sea, it is difficult to see how China can now assert that it has rights to, and jurisdiction over, the natural resources in and under all the waters inside the nine-dash line.

(1997–98); Jiangming Shen, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, 1 CHINESE J INT'L L. 94 (2002).

⁷¹ See Nautical Chart 4508, *supra* note 24.

⁷² See Notes Verbales CML/17/2009 & CML/18/2009, *supra* note 39.

⁷³ Zou Keyuan, *China's U-Shaped Line in the South China Sea Revisited*, 43 OCEAN DEV. & INT'L L. 18 (2012); Masahiro Miyoshi, *China's "U-Shaped Line" Claim in the South China Sea: Any Validity Under International Law?*, 43 OCEAN DEV. & INT'L L. 1 (2012); Nguyen-Dang Thang & Nguyen Hong Thao, *China's Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes Between the Philippines and China*, 43 OCEAN DEV. & INT'L L. 35 (2012); Michael Sheng-Ti Gau, *The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea*, 43 OCEAN DEV. & INT'L L. 57 (2012).

⁷⁴ See Li Jinming & Li Dexia, *The Dotted Line on the Chinese Map of the South China Sea: A Note*, 34 OCEAN DEV. & INT'L L. 287, 289–90 (2003).

China's position on the nature of its maritime claims in the South China Sea has been ambiguous. Its *notes verbales* of May 7, 2009, stated that "China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map)."⁷⁵ The first phrase suggests that China is claiming sovereignty only over the islands and their "adjacent waters," which could refer to the territorial sea—a position that is consistent with UNCLOS.⁷⁶ The reference to "sovereign rights and jurisdiction" in the second phrase, however, involves language that UNCLOS uses to refer to the coastal state's rights and jurisdiction in the EEZ and on the continental shelf.⁷⁷ The phrase "relevant waters" is not a legal term of art. If read together with the reference to the map, it could mean that China was claiming sovereign rights and jurisdiction over all the maritime space within the nine-dash line.

In a *note verbale* of April 5, 2011, the Philippines emphasized the principle that the land dominates the sea and stated that UNCLOS provides no legal basis for any claim to sovereign rights and jurisdiction over "relevant" waters (and the seabed and subsoil thereof) within the nine-dash line—other than claims to waters that are "adjacent" to islands as defined in Article 121.⁷⁸ In its April 14, 2011, *note verbale* in response to that of the Philippines,⁷⁹ China asserted the following in regard to its claims in the South China Sea:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence.

. . . .

Since 1930s, the Chinese Government has given publicity several times the geographical scope of China's Nansha Islands and the names of its components. China's Nansha Islands is therefore clearly defined. In addition, under the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, as well as the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (1992) and the Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China (1998), China's Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.⁸⁰

Like its 2009 *note verbale*, China's above note is not free from ambiguity. On the one hand, it suggests that its claim to sovereignty consists only of a claim to the islands and their adjacent waters, which is likely to be referring to the territorial sea. It also suggests that the islands are

⁷⁵ See Notes Verbales CML/17/2009 & CML/18/2009, *supra* note 39.

⁷⁶ Article 2(1) of UNCLOS, *supra* note 1, states: "The sovereignty of a coastal State extends, beyond its land territory and internal waters, to an *adjacent* belt of sea, described as the territorial sea" (emphasis added).

⁷⁷ See *id.*, Arts. 56, 77.

⁷⁸ Note Verbale No. 000228 from the Permanent Mission of the Republic of the Philippines to the UN Secretary-General (Apr. 5, 2011), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm (objecting to the statements made in China's Notes Verbales CML/17/2009 & CML/18/2009, *supra* note 39, regarding the joint submission of Malaysia and Vietnam to the CLCS, *supra* note 37, and the separate submission of Vietnam to the CLCS, *supra* note 38).

⁷⁹ Note Verbale CML/8/2011 from the Permanent Mission of the People's Republic of China to the UN Secretary-General (Apr. 14, 2011), at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm.

⁸⁰ *Id.*

entitled to EEZs and continental shelves of their own, and it makes no reference to the nine-dash-line map. These statements suggest that China may be making a maritime claim in conformity with UNCLOS. On the other hand, the statement that “China’s sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence” suggests that it may also be basing its maritime claim on historical evidence. Taken together, these two potential interpretations suggest that China is maintaining a policy of “strategic ambiguity” with respect to its maritime claims in the South China Sea.

The ambiguity of China’s policy is also evident in its domestic legislation that seeks to regulate activities conducted by other states in waters that China deems to be under its jurisdiction. For example, the Regulations of the People’s Republic of China on the Management of Foreign-Related Marine Scientific Research⁸¹ seek to regulate marine scientific research activities conducted in the “internal sea, territorial sea and *other sea areas under the jurisdiction* of the People’s Republic of China.”⁸² Of note is that the regulations are formulated for the purpose of “safeguarding the State’s *security* and its maritime rights and interests.”⁸³ Similarly the Surveying and Mapping Law of the People’s Republic of China⁸⁴ purports to regulate “all surveying and mapping activities in the territorial air, land and waters of . . . China, as well as *other sea areas under its jurisdiction*.”⁸⁵ In this legislation, surveying and mapping are deemed to be basic undertakings for the “development of the national economy, building up of national defence, and progress of the society.”⁸⁶

One question that arises is whether the provisions of China’s domestic regulations go beyond the scope of the authority afforded to coastal states by UNCLOS for the purposes of regulating activities associated with marine scientific research and with mapping and surveying. A far more crucial question is whether China, taking the view that waters within the nine-dash line comprise “other sea areas under its jurisdiction,” will seek to enforce its domestic legislation within that area.

Incidents in May and June of 2011—Chinese vessels interfered with seismic surveys that Vietnam was conducting in its own EEZ, and undertook seismic survey activities in the Philippines’ EEZ—indicate that some Chinese agencies appear to have a policy of enforcing China’s “rights and jurisdiction” in all ocean areas within the nine-dash line, notwithstanding the language in its official *notes verbales* to the United Nations.⁸⁷

⁸¹ These regulations were promulgated June 18, 1996, and effective as of October 1, 1996.

⁸² *Id.*, Art. 2 (emphasis added).

⁸³ *Id.*, Art. 1 (emphasis added).

⁸⁴ Surveying and Mapping Law of the People’s Republic of China (Order of the President No. 75) (adopted August 29, 2002; effective as of December 1, 2002).

⁸⁵ *Id.*, Art. 2 (emphasis added).

⁸⁶ *Id.*, Art. 3.

⁸⁷ See Carlyle A. Thayer, China’s New Wave of Aggressive Assertiveness in the South China Sea (paper presented at the Conference on Maritime Security in the South China Sea, sponsored by the Center for Strategic and International Studies, Washington DC (June 20–21, 2011)), at <http://dotchuoinon.files.wordpress.com/2011/06/thayer-csis-south-china-sea.pdf>; see also Vietnam Ministry of Foreign Affairs, Press Conference on Chinese Maritime Surveillance Vessel’s Cutting Exploration Cable of PetroViet Nam Seismic Vessel (May 29, 2012), at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110530220030; Vietnam Ministry of Foreign Affairs, Vietnam Oil and Gas Body Opposes Chinese Acts (June 9, 2011) at <http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110608175949/view>; *Philippines Halts Tests After China Patrol Challenge* (Mar. 8, 2011), at <http://www.bbc.co.uk/news/world-asia-pacific-12672889>; Ian Storey, *China and the Philippines: Implications of the Reed Bank Incident* (May 6, 2011), at <http://web1.iseas.edu.sg/?p=3512>.

China's actions from 2009 are evidence that it is pursuing its claims in the South China Sea along three tracks. First, it is claiming sovereignty over the islands and their adjacent waters, which presumably refers to the territorial sea. Second, it is asserting that the islands are entitled to EEZs and continental shelves of their own. Third, based on some form of historic rights, it is also asserting rights, jurisdiction, and control over the resources in and under the waters inside the nine-dash line.⁸⁸

Evidence for the third assertion is found in China's objections to the Philippines' announcement that it is issuing new contracts for oil exploration in Reed Bank, off the island of Palawan,⁸⁹ and in the issuance by the Chinese national oil company (CNOOC) of new oil concession blocks just inside the nine-dash line, very close to the coast of Vietnam and very far from any island claimed by China.⁹⁰ These CNOOC oil blocks are too far from any island over which China claims sovereignty for it to assert rights and jurisdiction on the basis of the blocks being within an EEZ of Chinese islands. The Chinese action can be justified, if at all, only on the basis that China has rights, jurisdiction, and control over the natural resources in and under the waters inside the nine-dash line, notwithstanding that those areas are within the EEZ of Vietnam. This conclusion is supported by the statements of a Chinese Ministry of Foreign Affairs spokesperson in September, 2011, in response to questions relating to China's objections to joint exploration arrangements between Vietnam and India in Vietnamese petroleum blocks off Vietnam's coast.⁹¹ On September 15, the spokesperson declared:

We oppose any other country's oil and gas exploration activity in the waters under China's jurisdiction and hope relevant foreign company do not involve itself in the South China Sea dispute.

....

China's sovereignty, rights and relevant claims over the South China Sea have been formed in the long course of history and upheld by the Chinese government. Our sovereignty over the islands in the South China Sea is based on discovery, preoccupation as well as long-term, sustained and effective management. The UN Convention on the Law of the Sea does not entitle any country to extend its exclusive economic zone or continental shelf to the territory of another country, and it does not restrain or deny a country's right which is formed in history and abidingly upheld.⁹²

On September 19, the spokesperson made the following comment:

China has also developed, utilized and administered relevant waters of the South China Sea for a long stretch of time since antiquity. China's sovereignty, rights and relevant claims over the South China Sea have been formed in the long course of history and persistently upheld by the Chinese government.

⁸⁸ Hong Nong, *Interpreting the U-shape Line in the South China Sea*, CHINA US FOCUS, May 15, 2012, at <http://chinausfocus.com/print/?id=15964>.

⁸⁹ *China Urges Philippines Not to Escalate Tensions*, GLOBAL TIMES, July 13, 2012, at <http://www.globaltimes.cn/content/720964.shtml>.

⁹⁰ See, e.g., China National Offshore Oil Corporation, Notification of Part of Open Blocks in Waters Under Jurisdiction of the People's Republic of China Available for Foreign Cooperation in the Year of 2012 (June 23, 2012), at <http://en.cnooc.com.cn/data/html/news/2012-06-22/english/322127.html>.

⁹¹ See Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on September 15, 2011 (Sept. 16, 2011), at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t860126.htm>.

⁹² *Id.*

....

I want to stress that any country or company's oil and gas exploration activity in the waters under China's jurisdiction without the permission of the Chinese Government is an infringement upon China's sovereignty, rights and interests, and is thus illegal and invalid.⁹³

The Philippines and Vietnam have made it clear that they do not accept any claim by China to maritime rights to, and jurisdiction over, the natural resources in and under the water on the basis that those resources lie within the nine-dash line. The Philippines, in particular, has made it clear that under the principle that the land dominates the sea, it will not recognize any claim to maritime space that is not measured from land territory, including islands.⁹⁴ In other words, the Philippines and Vietnam (and presumably Malaysia) reject any assertion by China that the latter has historic rights and jurisdiction within their EEZs.

Malaysia, the Philippines, and Vietnam can assert that prior to UNCLOS, the maritime space outside the 3 nm territorial sea of coastal states was high seas and was subject to the right of all states to exercise freedom of fishing and other high seas freedoms. UNCLOS specifically gives a coastal state the right to claim an EEZ out to 200 nm. In this area the coastal state has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and subsoil and of the water column above the seabed.⁹⁵ To that extent it extinguished prior high seas rights. UNCLOS does not recognize historic fishing rights within the EEZ based on prior fishing activities. It merely requires coastal states to consider giving access to any surplus fisheries in their EEZs to states whose nationals have habitually fished in those waters.⁹⁶ There are, therefore, no residual historic rights in UNCLOS that China could rely upon to support a claim to jurisdiction over natural resources in and under the waters inside the nine-dash line.

III. PROSPECTS FOR JOINT DEVELOPMENT

Prospects for Joint Development in Disputed Waters Around the Spratly Islands

It is generally believed that it is unlikely that the parties to the sovereignty disputes over the Spratly Islands in the South China Sea will agree to refer the question of sovereignty to an international court or tribunal. Most observers believe that the only realistic prospect is to follow the advice of the late Deng Xiaoping of China to set aside the sovereignty disputes and pursue joint development.⁹⁷ This option would also be consistent with UNCLOS articles providing for "provisional arrangements of a practical nature": pending agreement on a maritime boundary, "the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional

⁹³ See Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on September 19, 2011 (Sept. 20, 2011), at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t861146.htm>.

⁹⁴ See, for example, the Philippines' Note Verbale No. 000228, *supra* note 78, in response to the China's Notes Verbales CML/17/2009 & CML/18/2009, *supra* note 39.

⁹⁵ UNCLOS, *supra* note 1, Arts. 56, 57.

⁹⁶ *Id.*, Art. 62(2), (3).

⁹⁷ Ministry of Foreign Affairs of the People's Republic of China, Set Aside Dispute and Pursue Joint Development (Nov. 17, 2000), at <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm>.

period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”⁹⁸

The negotiations for provisional joint-development arrangements would be difficult but not impossible. This approach could be more easily implemented if all of the claimant states bring their claims into conformity with UNCLOS. Doing so would clarify the location of the areas of overlapping entitlements under UNCLOS and set the stage for negotiations between the concerned claimant states to attempt to reach provisional arrangements for joint development in those areas.

Like the other claimant states, China would have to limit its claims of entitlement to maritime zones measured from islands in conformity with UNCLOS. It would not claim sovereignty over features other than islands as defined in UNCLOS or claim historic rights to marine areas or resources as such. It could claim entitlement to an EEZ and a continental shelf measured from at least some of the larger disputed islands in accordance with UNCLOS, and that entitlement would overlap with the EEZ and continental shelf entitlements claimed by the other states concerned. These areas of overlapping claims would be areas where the states could enter into provisional arrangements of a practical nature, pending a final agreement on the sovereignty claims and the maritime boundaries. The provisional arrangements could include the joint development of resources. The starting point, however, would have to be that China refrain from claiming historic rights to, and jurisdiction over, the waters and seabed and subsoil of the South China Sea.

For their part, the Philippines and Vietnam may have to agree that some of the larger islands in the South China Sea are able, in principle, to generate EEZs. They could maintain that, given their small size and location, such islands should be entitled to generate only a 12 nm territorial sea in the direction of their mainland coasts, but also accept that the larger islands may generate entitlements to EEZs in the direction of the high seas, especially if they are located outside the 200 nm EEZ limit of any state. It should be noted that most of the larger islands in the Spratlys are located in the Philippines’ claim to the Kalayaan Island Group—and therefore either just inside or just outside the EEZ measured from its archipelagic baselines. Only one larger island, Spratly Island, is located outside the Kalayaan Island Group—just within the EEZ limit of Vietnam.

Prospects for the Scarborough Shoal and the Paracels

Prospects for cooperative arrangements would also be possible in Scarborough Shoal and the Paracel Islands if China brings its maritime claims into conformity with UNCLOS and avoids any claim to historic rights and jurisdiction regarding the waters and seabed and subsoil inside the nine-dash line.

Compared to the Spratlys, the dispute over Scarborough Shoal is relatively simple.⁹⁹ The dispute is between only two states, China and the Philippines, with Taiwan taking the same position as China. It involves fishing resources rather than oil and gas. It is reasonably clear that Scarborough Shoal is a submerged reef with four to six “rocks” above water at high tide that

⁹⁸ UNCLOS, *supra* note 1, Arts. 74(3), 83(3).

⁹⁹ See *supra* note 21; Embassy of the People’s Republic of China in the Republic of the Philippines, China has Sovereignty over Huangyan Island (June 8, 2012), at <http://ph.china-embassy.org/eng/xwfb/t939694.htm>.

cannot sustain human habitation or economic life and that it is, as such, is entitled to a territorial sea, but not to an EEZ or continental shelf, under Article 121 of UNCLOS. If China and the Philippines were willing to follow China's preference to set aside the disputes and jointly develop the resources, it should be easier to reach an arrangement in this area than over the Spratlys or the Paracels. The two states could negotiate an agreement to set aside the sovereignty disputes indefinitely, and enter into an arrangement to share the fisheries resources in the 12 nm territorial sea measured from the four to six "rocks" that are above water at high tide. To establish trust and confidence, they could begin by undertaking a joint survey of the features in order to establish the basepoints from which the territorial sea would be measured. They could also undertake discussions on the common fishing regulations that each of them could apply to their nationals fishing in the waters inside the territorial sea around the shoal. The regulations could include joint fishing bans during certain seasons and a maximum annual catch for the nationals of each country. Each side would agree to enforce the regulations against its own nationals. A mechanism could be included for consultations in the event one side believed the other was not fulfilling its obligations under the arrangement.

With respect to the Paracels, the major problem is that China refuses to acknowledge that a dispute exists, with the consequence that, in its view, there is no dispute to be set aside. Vietnam sees the situation differently, and its nationals continue to fish in waters around the Paracels. Vietnam protests the annual unilateral fishing ban that China has imposed in the waters surrounding the Paracels.¹⁰⁰ Vietnam is also likely to protest if China begins to take unilateral measures to explore for hydrocarbon resources—in particular, exploratory drilling—in the waters around the Paracels.

The dispute over the status of the Paracels makes it difficult for the two states to reach agreement on extending much further south the current agreed maritime boundary in the northern part of the Gulf of Tonkin.

One possible option would be for the two states to maintain the status quo with respect to jurisdiction and control in the Paracels, but without Vietnam formally relinquishing its claim to sovereignty over the islands or recognizing the legitimacy of China's sovereignty claim. In return for Vietnam acknowledging a status quo pursuant to which, as a practical matter, China exercises control over the Paracels and the 12 nm territorial sea around them, the two states could agree to develop jointly the fisheries and hydrocarbon resources in and under the waters in the EEZ measured from Woody Island and the other large islands in the Paracels. Under this arrangement, the Paracels, though given only a 12 nm territorial sea in the direction of the coast of Vietnam, could be given a full 200 nm EEZ to the east. The arrangement would create a large joint-cooperation area in which Vietnam and China would share the fishing resources from the Paracels to Macclesfield Bank. Establishing such a joint cooperation area would be important to China, especially since other states are unlikely to accept its claim to sovereignty over Macclesfield Bank because the bank is completely submerged even at low tide and is not amenable to a claim to sovereignty.¹⁰¹

¹⁰⁰ For a discussion of the seizure of Vietnamese fishing boats and China's imposition of an annual unilateral fishing ban, see Carlyle A. Thayer, *Recent Developments in the South China Sea: Grounds for Cautious Optimism?* 24–28 (S. Rajaratnam Sch. of Int'l Stud., Singapore, Working Paper No. 220, 2010).

¹⁰¹ Such an arrangement may require China to employ normal baselines in the Paracels. China currently employs straight baselines around the Paracels, connecting the outermost points of the outermost islands. Under UNCLOS

The UNCLOS Dispute Settlement Regime and the Maritime Disputes in the South China

From the above analysis it appears that unless China decides to bring its maritime claims into conformity with UNCLOS, serious differences will remain between the position of China and that of the Philippines and Vietnam on how UNCLOS applies to the maritime claims in the South China Sea. If China continues to assert its claims to maritime space in a manner that the Philippines and Vietnam believe is not consistent with UNCLOS, their only recourse may be to attempt to bring China before an international court or tribunal to obtain a legally binding decision that China's actions are contrary to UNCLOS. The issue that would then arise is whether any of the legal disputes regarding the interpretation or application of UNCLOS would be subject to compulsory procedures entailing binding decisions under UNCLOS.

The general principle is that any dispute concerning the interpretation or application of any provision in UNCLOS that is not settled by other means may be submitted by any party to the dispute to binding settlement under Section 2 of Part XV.¹⁰² Article 298 provides, however, that states parties have the option to declare formally that they do not accept Section 2 for certain categories of disputes, "including disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles."¹⁰³ China has made a declaration pursuant to Article 298 exercising its right to opt out of the compulsory procedures entailing binding decisions for all of the categories of disputes in Article 298.¹⁰⁴

Notwithstanding China's declaration, it is possible that legal disputes could arise concerning the interpretation or application of UNCLOS provisions in the South China Sea that are not within the exclusion under Article 298. Such disputes include the following:

1. A dispute on whether a feature meets the definition of an island under Article 121(1) because it is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. A dispute on whether an island is a rock that cannot sustain human habitation or economic life of its own within Article 121(3) and is therefore not entitled to an EEZ or continental shelf of its own.
3. A dispute on whether a feature is a low-tide elevation within Article 13 and, if so, whether it can be used as a basepoint in measuring the territorial sea of a nearby island.
4. A dispute on whether a state's use of straight baselines is consistent with Article 7.
5. A dispute on how Article 6 on reefs applies to a particular reef in the South China Sea.
6. A dispute submitted by the coastal state challenging the right of Chinese fishermen to continue to fish within the EEZ of that state because they have "historic fishing rights" that must be recognized by the coastal state.

the right to draw baselines encircling an island group at some distance from the mainland is reserved to archipelagic states made of exclusively of islands. *See* UNCLOS, *supra* note 1, Art. 46,

¹⁰² *Id.*, Art. 286.

¹⁰³ *Id.*, Art. 298(1)(a)(i).

¹⁰⁴ See China's declaration of August 25, 2006, made after its ratification of UNCLOS, at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China%20after%20ratification.

7. A dispute on whether China has historic rights and jurisdiction to explore and exploit the oil and gas resources of the seabed and subsoil in what is now the EEZ of another coastal state.
8. A dispute on whether a state has interfered with the sovereign rights of another state to explore and exploit the natural resources in its EEZ pursuant to Article 56.
9. A request for prompt release of a vessel and crew under Article 292.

The court or tribunal that has jurisdiction to hear a dispute under Section 2 of Part XV depends in part on whether the parties to the dispute have exercised their right to select a particular court or tribunal for resolving disputes to which they are parties.¹⁰⁵ None of the states bordering the South China Sea has made an election under Article 287.¹⁰⁶ They are therefore deemed to have accepted arbitration under Annex VII of UNCLOS.¹⁰⁷

The Role and Relevance of Taiwan

It is not clear how Taiwan fits into possible solutions to the maritime disputes in the South China Sea. All of the states bordering the South China Sea have a one-China policy. The fact that Taiwan is not present at meetings or discussions on the South China Sea disputes does not seem especially important to the other claimants because, in practice, Taiwan's claims and policies on the South China Sea seem to be completely in line with those of the Beijing government.

If Taiwan was to review its position on the nine-dash line and declare that it only claims maritime zones measured from the islands inside the nine-dash line and that it does not make any maritime claim based on historic waters or historic rights, Beijing would then have a good reason to clarify its maritime claim in a similar manner and thus bring its claim into conformity with UNCLOS. After all, it was the government of the Republic of China that originally published the map prior to the establishment of the People's Republic.¹⁰⁸

Another possibility might be for China and Taiwan to enter into joint development arrangements in the waters around the Pratas Islands. If they were successful, these joint development arrangements could be used as a model for joint development arrangements in other parts of the South China Sea.

It must be remembered that Taiwan occupies Itu Aba (the largest island in the Spratlys), which is located close to most of the other larger islands in the Spratlys. Any discussions to define areas for joint cooperation would have to take Itu Aba into account. Also, since Taiwan

¹⁰⁵ UNCLOS, *supra* note 1, Art. 288.

¹⁰⁶ The up-to-date official texts of declarations and statements that contain the choice of procedure under Article 287 of UNCLOS are available under "status of treaties" at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

¹⁰⁷ UNCLOS, *supra* note 1, Art. 287(2). In any event, arbitration under Annex VII would be the applicable procedure unless the parties to the case agreed otherwise or had both filed declarations under Article 287 accepting the International Court of Justice or the International Tribunal for the Law of the Sea. *Id.*, Art. 287(5). However, ITLOS may be asked to prescribe provisional measures pending the constitution of an Annex VII arbitral tribunal. *Id.*, Art. 290(5).

¹⁰⁸ If the successors of that government in Taiwan decided to take the lead in bringing their maritime claims into conformity with UNCLOS, they might also recognize that Macclesfield Bank is not amenable to claims of sovereignty.

is a major fishing entity, regional cooperation on fisheries will not be possible without its participation.

Even so, the other claimants are likely to leave it to the governments in Beijing and Taipei to work out what role Taiwan will play in any discussions or negotiations to resolve the sovereignty or maritime disputes in the South China Sea.

IV. CONCLUSIONS

Although UNCLOS is of no assistance in resolving the territorial sovereignty claims to islands in the South China Sea, it contains important rules and principles that govern the validity of claims with respect to the South China Sea itself, including marine features and areas, and has important provisions regarding the management and resolution of disputes that may arise in that respect.

If all of the states bordering the South China Sea would bring their maritime claims into conformity with the provisions in UNCLOS, it would clarify the areas of overlapping maritime claims. That would, in turn, set the stage for negotiations between the concerned claimant states to reach provisional arrangements for joint development agreements and other cooperative arrangements in the areas of overlapping maritime claims. As recognized many years ago by the late Deng Xiaoping, this approach seems to be the best for dealing with the underlying sovereignty and maritime disputes in the South China Sea.

But China itself has created a major obstacle to implementing this approach. It appears to be asserting jurisdiction over the waters and seabed and subsoil of the South China Sea based on historic rights and entitlements that predate UNCLOS and the modern law of the sea. If so, it is asserting rights and jurisdiction in the EEZs of other states even though those states, under UNCLOS, enjoy sovereign rights and jurisdiction to explore and exploit the natural resources in their EEZs.

China seems to be asserting that UNCLOS does “not restrain or deny a country’s right which is formed in history and abidingly upheld.”¹⁰⁹ That position, applied to a large marine area bordered by many states, threatens the entire legal regime established under UNCLOS. By the same token, it engages the fundamental interests in the law of the sea not only of the states bordering the South China Sea but of all states with an interest in the law of the sea and in the continuing vitality of UNCLOS. Therefore, unless China is willing to bring its maritime claims into conformity with UNCLOS, it will continue on a legal collision course. In that event its ASEAN neighbors may conclude that, because they cannot match the political, economic, and military power of China, they have no recourse but to attempt to invoke the dispute settlement system in UNCLOS in order to challenge the legality of China’s maritime claims.

¹⁰⁹ See Foreign Ministry Spokesperson Jiang Yu’s Regular Press Conference on September 15, 2011, *supra* note 91.