

International Seminar on Geographic Features in the East Asia Seas and the Law of the Sea

**Academia Sinica, Taipei, Taiwan
20-21 September 2012**

Session 1. Geographic Features under International Law

Legal Status of Low-Tide Elevations and Submerged Features

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Part 1

Historical Context

Sovereignty over land territory

- Sovereignty is the exclusive right of a State to exercise the authority and carry out the functions of a State within its territory
- A state has sovereignty over :
 1. Land Territory – mainland and islands
 2. Territorial Sea - including airspace above and seabed and subsoil, subject to rights passage of other States

Breadth of Territorial Sea originally 3 nautical miles but extended to 12 nm in 1982 UNCLOS

Continental Shelf

- The submerged offshore seabed and subsoil beyond the limits of the territorial sea which is the natural prolongation of the land territory of the mainland
- International law governing continental shelf in early 20th Century was not clear
- 1945: Truman Proclamation –asserted **“jurisdiction and control”** over natural resources of the continental shelf
- Chile: Asserted **“sovereignty”** in patrimonial sea off its coast
- International Law Commission & 1958 Convention – after debate, used the term **“sovereign rights”** to explore & exploit the resources

Islands

- Law uncertain until codified in 1958 Convention on the Territorial Sea
- Article 10.
 - 1. An island is a naturally formed area of **land**, surrounded by water, which is above water at high tide.

Low-tide Elevations

- Until 1958 Convention were known as **drying rocks** and **shoals** – features which were submerged at high tide but above water (dry) at low tide
- Article 11.
 1. A **low-tide elevation** is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.

Low-tide Elevations and Baselines

- Article 11, paragraph 2
 1. Where a low-tide elevation is wholly situated at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline. . .
 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own

Submerged Features

- Not subject to a claim of sovereignty because not “land”, but seabed and subsoil
- If within territorial sea, subject to the sovereignty of the coastal State because the sovereignty of the coastal State extends to the seabed and subsoil
- If beyond limits of territorial sea, part of seabed and subsoil - continental shelf
 - Coastal State has sovereign rights to explore and exploit the natural resources

Part 2

Significance of UNCLOS

Importance of UNCLOS

- Legal Framework for all uses of the oceans
- 162 parties, including all States in NE Asia except DRK
- Legally binding on States Parties
- Two significant changes:
 1. Breadth of Territorial Sea agreed upon at 12 nm
 2. **Exclusive Economic Zone** extending to 200 nm
- Definition of island and definition of low-tide elevation same as in 1958 Convention

Exclusive Economic Zone

- Art 55 – “specific legal regime”
- Art 56 – Rights and Jurisdiction of coastal State
 - “**sovereign right**” to explore and exploit the living and non-living resources – in the water column and of the seabed and subsoil
 - **jurisdiction** of coastal State limited to resources & research
- Art 57 – Breadth out to 200 nm from baselines
- Art 58 – Rights and Freedoms of other States
- Art 59 – Residual matters

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.

Article 121 Regime of Islands

- Practical effect of Article 121 was to increase the potential importance of tiny, uninhabited offshore islands
- Following the start of the negotiations for the Third UN Conference of the Law of the Sea in 1973, States began to carry out acts to demonstrate their claims to sovereignty over offshore islands

Artificial Islands, Installations & Structures

- Not defined in UNCLOS
- **Artificial island** is a feature which is above water at high tide because of land reclamation or other activities of man
- it fails to meet the definition of an “island” because it is not a “naturally formed” area of land, but a man-made feature
- **Installations and structures** are things like buildings, lighthouses, research stations and oil platforms which are constructed on the seabed or on low-tide elevations

Articles 60 & 80 of UNCLOS

- artificial islands, installations and structures in the EEZ or on the continental shelf **do not possess the status of islands**
- they have **no territorial sea of their own**, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.
- The coastal State may, where necessary, establish reasonable **safety zones** around such artificial islands, installations and structures (limit of 500 metres)

Installations and Structures

- Coastal State has **jurisdiction** over installations and structures used for economic purposes or for marine scientific research
- Installations and structures for research purposes must interfere with international shipping routes and must have warning signals

Submerged features & UNCLOS

- No provisions in UNCLOS on submerged features
- But all provisions on islands, low-tide elevations, baselines, etc, imply that submerged features are **not capable of a claim of sovereignty** because they are seabed, not land
- Submerged features within the territorial sea are under the sovereignty of the coastal State because its sovereignty extends to the seabed and subsoil
- Submerged features outside the territorial sea are part of the seabed — coastal State has sovereign right to explore & exploit the natural resources of the seabed & subsoil

Qatar v Bahrain case (2001)

- International treaty law is silent on the question whether low-tide elevations can be considered to be 'territory'.
- The Court aware is not aware of a uniform and widespread State practice which might have given rise to a customary rule which unequivocally permits or excludes appropriation of low-tide elevations
- The few existing rules do not justify a general assumption that low-tide elevations are territory in the same sense as islands.
- The difference in effects which the law of the sea attributes to islands and low-tide elevations is considerable
- It is thus **not established that** in the absence of other rules and legal principles, **low-tide elevations can, from the viewpoint of the acquisition of sovereignty, be fully assimilated with islands or other land territory."**

Part 3

Low-Tide Elevations & Submerged Features in Areas of Overlapping Claims

Overlapping Territorial Sea claims

- A LTE or submerged feature in an area of overlapping territorial sea claims belongs to the State in whose territorial sea it lies
- This was the decision of the ICJ in the *Pedra Branca case* between Malaysia and Singapore
- If it is in an area of overlapping territorial sea claims, it is part of the area in dispute
- The status cannot be finalized until there is agreement on the territorial sea boundary

Overlapping EEZ & CS claims

- No State can claim sovereignty over LTE or submerged features in an area of overlapping EEZ claims or CS claims
- The LTE or submerged feature is part of the seabed of the State in whose EEZ or on whose CS it lies
- The coastal State in whose EEZ or on whose CS it lies has jurisdiction over it
- The issue of which State has sovereign rights and jurisdiction cannot be finalized until there is agreement on the maritime boundary

Articles 74 and 83 on the Delimitation of EEZ & CS Boundaries

- 1. The delimitation of the EEZ or CS between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the ICJ Statute, in order to achieve an **equitable solution**.
- 2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

Dispute Settlement in Part XV

- The general rule is that disputes on the interpretation or application of any provision in UNCLOS, including articles 74 and 83, are subject to the compulsory procedures entailing binding decisions in section 2 of Part XV – court or arbitral tribunal
- However, article 298 of UNCLOS permits States to formally declare that they do not accept the procedures in section 2 for disputes concerning the interpretation of Article 74 & 83 on maritime boundaries

Other obligations in Arts 74 & 83 in areas of overlapping EEZ & CS claims

- 3. Pending agreement between the 2 States establishing the maritime boundary, the States concerned, **in a spirit of understanding and cooperation, shall**
 - make every effort to enter into **provisional arrangements of a practical nature** and,
 - during this transitional period, not to undertake unilateral actions which would **jeopardize or hamper** the reaching of the final agreement
- Such arrangements shall be without prejudice to the final delimitation.

Thanks for Your Attention

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