



**Do the coastal states in the South China Sea have
a continental shelf beyond 200 nautical miles?**

**CIL Roundtable
South China Sea, International Law and UNCLOS**

**Session 6: Legal issues arising from the extended continental
shelf claims**

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* This PowerPoint represents the views of the author and not of any government or other party



Definition of the continental shelf – Art 76(1)

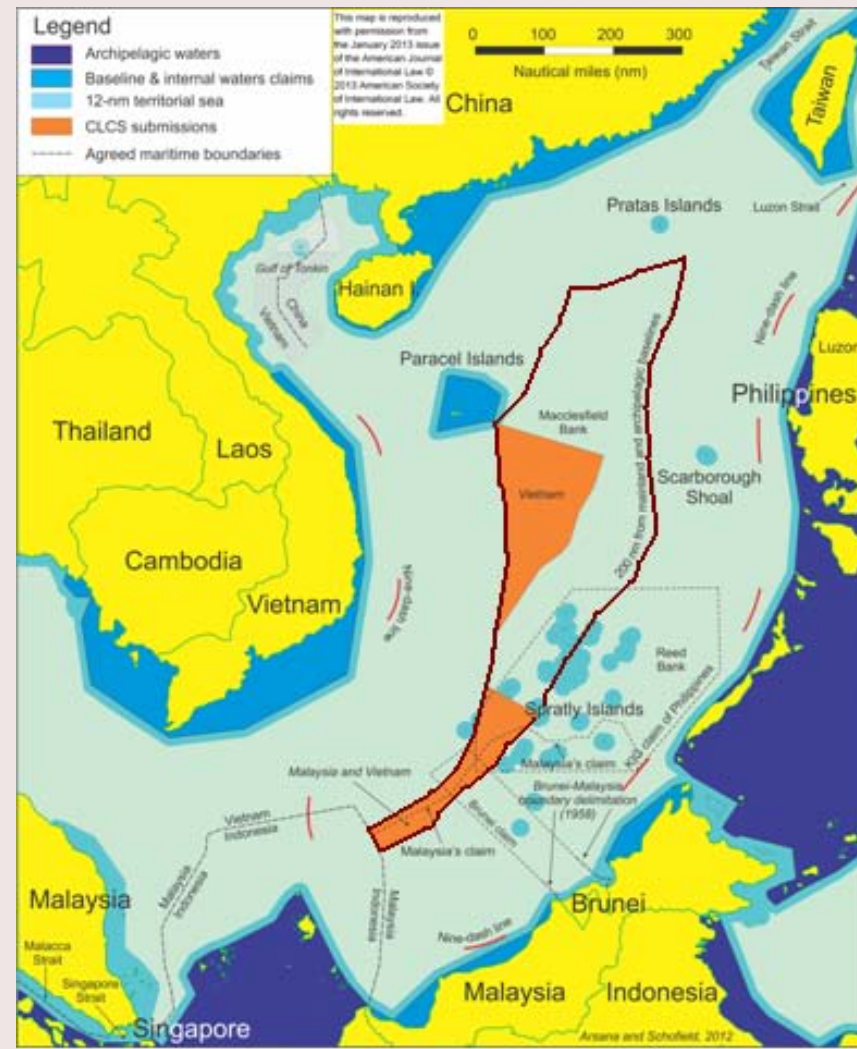
UNCLOS

- The continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the **outer edge of the continental margin**, or to **a distance of 200 nautical miles** from the baselines from which the breadth of the territorial sea is measured **where the outer edge of the continental margin does not extend up to that distance**.
- There is an area beyond 200 nautical miles from the coasts surrounding the South China Sea
- Outer edge of the continental margin extends into that area



Article 76 UNCLOS in context of geography South China Sea

- Map by A. Arsana and C. Schofield available at: http://cil.nus.edu.sg/wp/wp-content/uploads/2013/03/SCS-Agora-Map_wCopyright.gif
- 200-nautical-mile limit enhanced





Questions in relation to continental shelf beyond 200 nautical miles South China Sea

- Implications of the co-existence of the 200-nautical-mile zone of the Paracel and Spratly Islands and the continental shelf beyond 200 nautical miles generated by the surrounding coasts
- Rules applicable to the delimitation of these zones between neighboring states



Topics presentation

- Overview of article 76 of the UNCLOS (section II paper)
- Steps that Brunei, China, Malaysia, the Philippines and Vietnam have taken to implement article 76 in relation to the South China Sea (section III paper)
- Steps that Malaysia and Vietnam could take to deal with absence of prior consent of China and Philippines to consideration of their submissions by the Commission on the Limits of the Continental Shelf (CLCS) (section IV paper)
- Legal status of the continental shelf beyond 200 nautical miles in absence of limits established in accordance with article 76 of the UNCLOS (section V paper)
- Implications of the presence the Paracel Islands and the Spratly Islands for the entitlement to and delimitation of the continental shelf beyond 200 nautical miles (section VI paper)



Article 76 of the UNCLOS

- Outer edge of the continental margin beyond 200 nautical miles:
 - Extent of continental shelf based on geomorphology and geology
 - Extent of the continental shelf beyond 200 nautical miles varies widely
 - Most or all of the South China Sea within outer edge continental margin
- Steps to determine outer limit of the continental shelf beyond 200 nautical miles:
 - Foot of the slope
 - From foot of the slope: pick points 60 nautical miles seaward or beyond that distance if sediment thickness allows to do so;
 - Point may not extend beyond either 350 nautical miles or 2500 meters isobath + 100 nautical miles
 - Outer limits points may not be more than 60 nautical miles apart
- Before outer limits are established coastal state has to make a submission to the CLCS



CLCS

- 21 experts in the field of geology, geophysics or hydrography
- Commission is required to make recommendations to coastal states on matters related to the establishment of the outer limits of the continental shelf
- Outer limits established by coastal state on basis of recommendations of the Commission final and binding
- Actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between states with opposite or adjacent coasts (UNCLOS, Annex II, article 9)
- Article 9, Annex II operationalized in Rules of Procedure of the Commission



Rules of Procedure of the Commission, Annex I

- Concerned with submissions in relation to which there are land or maritime disputes
- Envisages making of partial submission
- Envisages making of joint submission
- In a case in which a dispute exists, Commission will only consider the submission of a coastal state with the prior consent of all states that are parties to the dispute



Time line for making submission

- UNCLOS, Annex II, article 4: within 10 years of becoming a party to the Convention
 - For many states before 16 November 2004
- SPLOS
 - For states that were a party before 13 May 1999: time started running at that date (decision 2001)
 - Possibility to submit preliminary information: stops the clock (decision 2008)
- Rules of Procedure
 - Partial submission: no specific time limit for further submission(s)



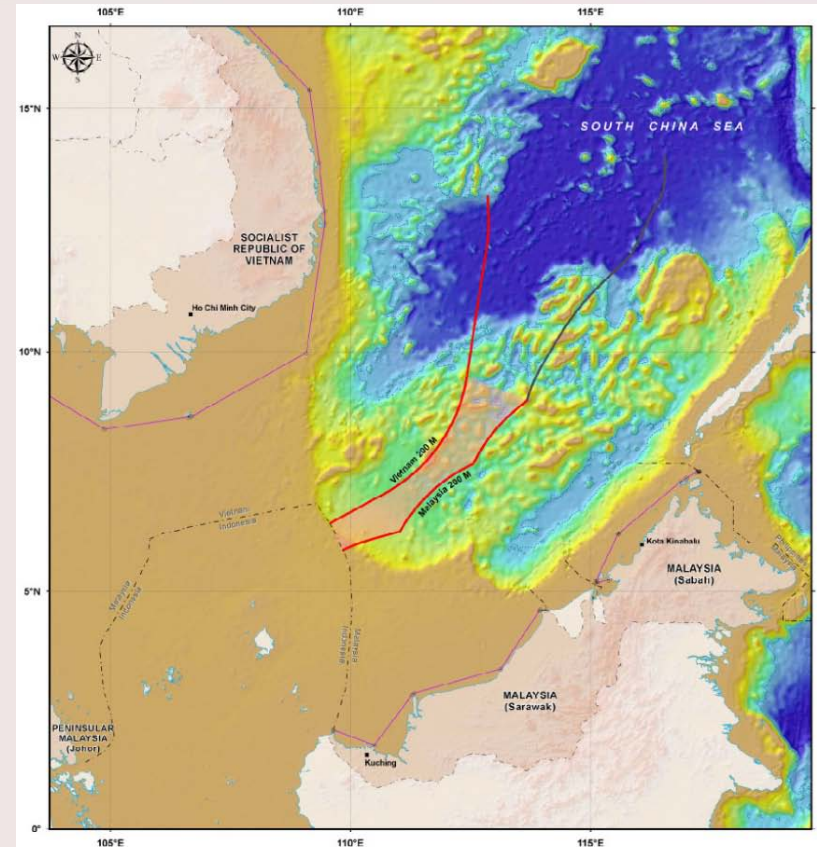
Coastal states of South China Sea and article 76

- Indonesia not in a position to make a submission
- Joint partial submission by Malaysia and Vietnam
- Partial submission by Vietnam
- Submission of preliminary information by Brunei
- China and the Philippines have reserved the right to make a submission in the future as indicated in their submissions for respectively the East China Sea and the Benham Rise region



Joint partial submission by Malaysia and Vietnam

- 6 May 2009
- Based on view that Spratly Islands, Paracel Islands and Scarborough Reef do not have an exclusive economic zone and continental shelf
- Equidistant point with Philippines determines northern limit



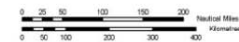
DEFINED AREA IN THE SOUTHERN PART OF THE SOUTH CHINA SEA

LEGEND

- City
- ◊ Basepoint
- Straight Baselines
- 2500m Isobath (GEBCCO)
- - - Agreement
- - - International Boundary
- 200 M
- Philippines 200 M
- Defined Area

Bathymetry (metres)

- High : 4021
- Low : -6126



Geodetic Datum : WGS84
 Spheroid : WGS84
 Semi major axis, a : 6 378 137.000 m
 Semi minor axis, b : 6 356 752.314 m
 Flattening, 1/f : 298.257 223 563
 Eccentricity squared, e² : 0.006 694 379 980 13
 Projection : Mercator
 Central Meridian : 111° 00' 00" E
 Latitude of Origin : 7° 00' 00" N
 False Easting : 950 000.000 m
 False Northing : 800 000.000 m
 Scale Factor : 1.000000 (along 7° 00' 00" N)
 Linear unit : Metre



Joint Submission

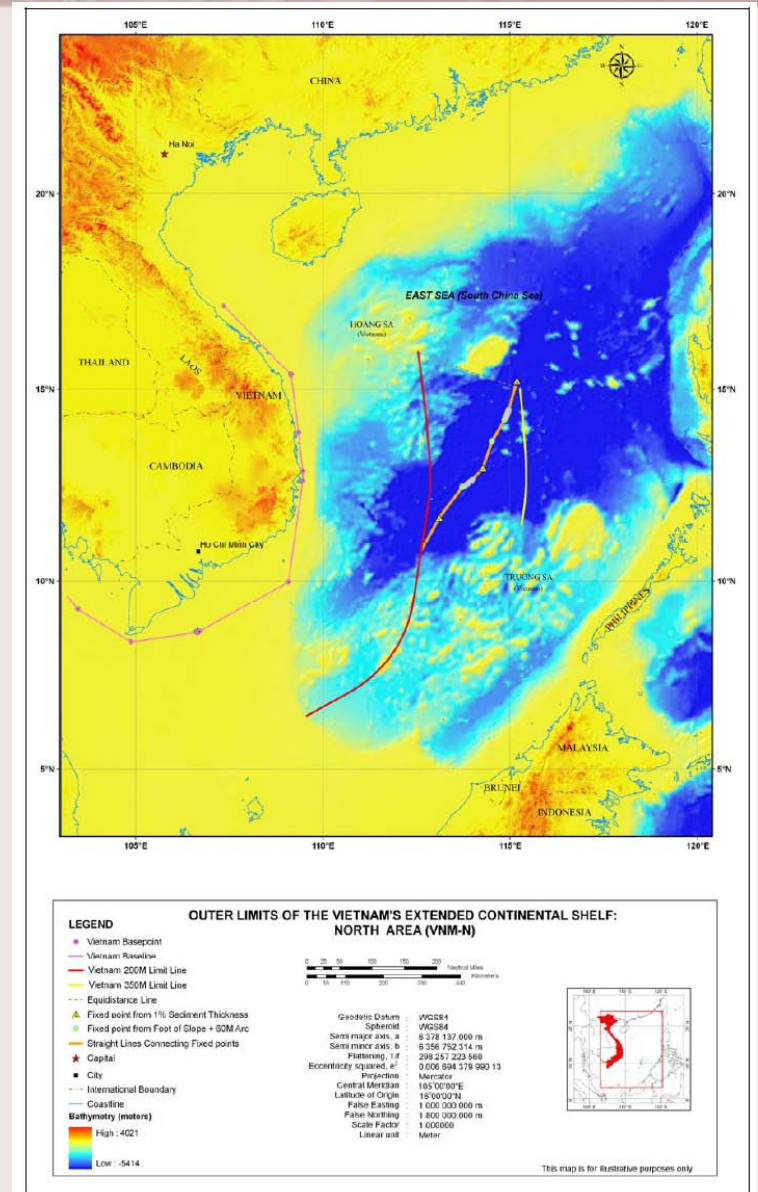


This map is for illustrative purposes only



Partial submission by Vietnam

- 7 May 2009
- Based on view that Paracel Islands and Spratly Islands do not have an exclusive economic zone and continental shelf
- Equidistant point with China (Hainan Island) determines northern limit





Prospects for dealing with the submissions of Vietnam and Malaysia (1)

- China and the Philippines have not given their prior consent to consideration of the submissions, as is required by the Rules of Procedure of the CLCS
- Vietnam and Malaysia have taken the position that the Commission nonetheless should consider the submissions
- Commission has deferred its decision on this point for the moment
- In view of practice of the Commission not likely that it will consider the submissions without the prior consent of China and the Philippines
- States may still reach agreement concerning consideration of submissions but this is not likely in light of their positions



Prospects for dealing with the submissions of Vietnam and Malaysia (2)

- Dispute concerning the refusal of China and the Philippines to give their prior consent to consideration of the submissions can be addressed under Part XV of the Convention
- Article 76 can be subject of compulsory dispute settlement procedures
- Unlikely that court or tribunal would find that CLCS has acted *ultra vires* by not considering the submissions
- Court or tribunal might find that UNCLOS does not entitle third state to block the submission of a coastal state and that the Rules of Procedure of the Commission are not intended to change that situation



Status of the continental shelf beyond 200 nautical miles in the absence of final and binding limits

- Rights of the coastal state over the continental shelf do not depend on occupation, effective or notional, or any express proclamation (UNCLOS, article 77(3))
- Procedure involving the CLCS premised on the presence of a pre-existing continental shelf entitlement
- Commission is only required to determine whether the outer limits of this entitlement have been established in accordance with article 76
- Article 76(2) provides that the continental shelf of a coastal state shall not extend beyond the limits provided for in article 76(4)-(6)
 - No reference to procedure involving CLCS



Paracel Islands and the Spratly Islands and the continental shelf beyond 200 nautical miles

- First question: relation between continental shelf beyond 200 nautical miles and 200-nautical-mile zone
 - International Tribunal for the law of the sea in Bangladesh/Myanmar (judgment of 14 March 2012)
 - 200-nautical-mile zone does not take precedence over continental shelf beyond that distance
 - Delimitation of continental shelf beyond 200 nautical miles does not affect the water column rights of Myanmar in its exclusive economic zone



Paracel Islands and the Spratly Islands and the continental shelf beyond 200 nautical miles

- Second question: weight of islands in maritime delimitation involving surrounding coasts
 - Islands likely to receive no weight in a delimitation involving the coasts surrounding the South China Sea
 - But straight baselines and offshore islands of Vietnam an issue
 - Islands and low-tide elevations within 12 nautical miles of them would have a 12-nautical-mile territorial sea
 - Islands that do not fall under the definition of article 121(3) of the UNCLOS have water column rights in areas that are not within 200 nautical miles of the surrounding coasts



Conclusions

- Continental shelf beyond 200 nautical miles co-exists with the 200-nautical-mile zones of the Paracel and Spratly Islands
- Continental shelf entitlement is not dependent on the establishment of outer limits
- Delimitation as just discussed
- Delimitation in accordance with law factor that would seem to be to the advantage of all states involved save China
- Interesting to note that China has left open the option to make a submission
 - Would be from Hainan Island
- Refusal of China and the Philippines to give their consent to the consideration the submissions of Malaysia and Vietnam unlikely to negate their significance
- While other disputants block the consideration of the submissions difficult to credibly argue that the case of Malaysia and Vietnam is not in accordance with article 76 of the UNCLOS
- In that light little interest for Malaysia and Vietnam to litigate refusal of other states to give their prior consent