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A New Legal Arrangement for the South China Sea?

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The South China Sea has long been regarded as a major source of tension and instability in Pacific Asia. Since 1990, many bilateral and multilateral efforts to manage the possible conflicts in the region have been recorded. The purpose of this article is to analyze and assess the progress made in terms of conflict management among the claimants.

Keywords dispute management, Spratlys, South China Sea

Introduction

The South China Sea has long been regarded as a major source of tension and instability in the Pacific Asia region. Several factors have contributed to this situation. One is the geostrategic location of the South China Sea. Another is the territorial disputes over the Parcel and Spratly archipelagos as well as over maritime areas in the South China Sea. A third factor is the competition for control over natural resources in the area. A fourth factor is the modernization of the international law of the sea.

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The South China Sea is one of the largest semienclosed seas in the world with an area of 648,000 square nautical miles, which is twice as large as the East China Sea. The South China Sea encompasses vital sea routes linking the Pacific and Indian Oceans. Over half of the world's merchant fleet (by tonnage) sails through the South China Sea every year, especially through the Strait of Malacca, the second busiest strait in the world.¹ A large percentage of fuel transported by sea from the Middle East and Africa to Japan, China, and South Korea passes through the South China Sea.² The importance of the South China Sea is evident when one considers that 90% of China's foreign trade is seaborne.³ For other major distant shipping states, such as the United States, India, and Australia, maintaining freedom of navigation for merchant shipping and naval vessels in the South China Sea is of considerable interest. If the sea lines of communication were to be disrupted due to an armed conflict in the Spratly/South China Sea area, then the economic interests of the countries in the Asia-Pacific region, including the United States, would be adversely affected.⁴ The importance of the South China Sea not only to claimants, but also to global powers like the United States was clearly displayed by the incidents in the South China Sea involving Chinese and U.S. naval vessels in March 2009.⁵

The South China Sea is surrounded by 10 coastal states, including some of the most rapidly industrializing and fastest-growing countries in the world like China. The economic growth in the region depends to large extent on the exploitation of both living (e.g., fish) and nonliving (e.g., oil and gas) resources from sea areas.⁶ The increase in oil prices in mid-2008 further accentuated the drive to gain control over maritime zones and potential resources in the South China Sea. The sovereignty disputes over the two strategically important archipelagos—the Paracels and the Spratlys—are linked to moves for control over maritime zones around them. The claimants have made use of the uncertainties in some of the provisions of the 1982 United Nations Convention on the Law of the Sea (the LOS Convention)⁷ in order to extend their claims to 200-mile economic exclusive zones (EEZs) and to continental shelf areas. This can be seen from the following overview of claims in the South China Sea area.⁸

- Brunei Darussalam claims an EEZ and the natural prolongation of its continental shelf in the southern part of the South China Sea. Brunei claims sovereignty to Louisa Reef in the Spratly archipelago.
- China has the most extensive claims in the South China Sea. China claims sovereignty over the Paracel archipelago (Xisha in Chinese) and the Spratly archipelago (Nansha in Chinese) as well as the Pratas Islands. As shown on official Chinese maps, China claims the major parts of the sea areas of the South China Sea as “historical waters” in a U-shaped area marked by the so-called “nine dotted lines” southward to the east of the Vietnamese coastline, turning eastward to the northeast of the Indonesian-controlled Natuna Islands, and to the north of the Malaysian state of Sarawak, then turning northeastward along the coast of Brunei Darussalam and the Malaysian state of Sabah, and finally northward to the west of the Philippines.⁹
- Indonesia claims an EEZ and the continental shelf extending into the South China Sea to the north of the Anambas Islands and to the north and east of the Natuna Islands.
- Malaysia claims sovereignty over the southern part of the Spratly archipelago. Malaysia also claims an EEZ and the natural prolongation of the continental shelf in the South China Sea off the east coast of Peninsular Malaysia and off the coasts of the states of Sabah and Sarawak on the island of Kalimantan (Borneo). Malaysia claims an EEZ and the natural prolongation of the continental shelf in the Gulf of Thailand

off the northeast coast of Peninsular Malaysia. The extent of Malaysia's claims has gradually been defined since the 1960s. Malaysia extended its territorial sea to 12 nautical miles in 1969. Malaysia publicized the extent of its continental shelf claims through two maps in December 1979. Malaysia proclaimed its 200-nautical-mile EEZ in April 2003. The 1979 maps display the extent of Malaysian claims to the southern part of the Spratly archipelago.

- The Philippines claims sovereignty over the major part of the Spratly archipelago (Kalayaan Island Group [KIG] in the terminology used by the Philippines) with the exception of the Spratly Island itself, Royal Charlotte Reef, Swallow Reef, and Louisa Reef. The formal annexation of the western Spratlys was announced in June 1978. The Philippines also claims an EEZ and the natural prolongation of the continental shelf in the South China Sea to the west of the country.
- Taiwan¹⁰ pursues the same claims as China in the South China Sea.¹¹ It can be argued that both China and Taiwan are pursuing a "Chinese" claim. Among the islands in the South China Sea, Taiwan claims sovereignty over the Parcel and Spratly archipelagos as well as the Pratas Islands. Taiwan also claims major parts of the sea areas of the South China Sea as "historical waters" in a U-shaped area as outlined in the section on China's claims above.
- Vietnam claims sovereignty over the whole of the Parcel archipelago (Hoang Sa in Vietnamese) and Spratly archipelago (Truong Sa in Vietnamese). It has claims to an EEZ of 200 nautical miles and to the natural prolongation of the continental shelf in the South China Sea (East Sea; Bien Dong in Vietnamese). The Government Statement on the Territorial Sea, the Zone Contiguous, the Economic Exclusive Zone and the Continental Shelf of Vietnam of 12 May 1977 and the Government Statement on the Baseline of Vietnam of 12 November 1982 have outlined the extent of Vietnamese claims to maritime areas in the South China Sea.

The island disputes in the South China Sea are bilateral, trilateral, or multilateral. This situation, coupled with the overlapping claims to the maritime areas around the Parcel and Spratly archipelagos, cannot be settled without the addressing the question of island sovereignty. Apart from the disputes directly linked to the sovereignty claims over the island groups, disputes relating to maritime delimitation remain unsettled. Furthermore, piracy and armed robbery have increased in the region, with about half of the world's reported cases of piracy occurring in this area.¹² In addition, the coastal countries are also facing transboundary issues such as marine pollution and management of cross-boundary and highly migratory fish stocks. The South China Sea constitutes an arena for competing security interests. It is in the interest of all the claimants as well as other concerned parties to actively seek solutions to avoid the military actions, to safeguard freedom of navigation, and to promote the peaceful settlement of disputes and cooperation.

From Conflict to Conflict Management

The first wave of occupation in the Paracels occurred in the mid-1950s after France withdrew from Vietnam. The Republic of Vietnam (ROV) (South) moved to take control western part of the Parcel archipelago while China took control over eastern part. In 1974, China seized control of the western part of the Paracels from the ROV. In the Spratlys, the early 1970s saw the ROV move to sustain its claim by occupying some features—the control of which was transferred to the unified Vietnam after 1975. The Philippines also moved into the Spratlys in the 1970s while Malaysia took control of a feature for the first time in 1983.

China did not gain a foothold in the Spratlys until early 1988 following a naval battle with Vietnam in the area. Despite full normalization of relations between China and Vietnam in November 1991, the disputes in the South China Sea caused serious tension for much of the 1990s.¹³ More widely publicized was the dispute and tension between China and the Philippines following the Chinese seizure of Mischief Reef in 1995.¹⁴

The claimants have also made other moves to reinforce and sustain their claims. In 1978, the Philippines proclaimed limits of the KIG. As already noted, Malaysia produced maps illustrating its claims to territorial seas and continental shelves in 1979. Vietnam proclaimed a 200-mile EEZ and continental shelves in 1977. On February 25, 1992, the Standing Committee of the National People's Congress of China adopted the Law of the People's Republic of China on Its Territorial Waters and Their Contiguous Areas, which stipulated that the Paracel and Spratly archipelagos and most of the South China Sea waters were regarded as part of China's national territory.¹⁵ On May 15, 1996, China issued a statement defining the baselines of its territorial sea adjacent to the Chinese mainland and in relation to the Paracel islands. China stated that this was done in accordance with the 1992 law.¹⁶ On June 26, 1998, the National People's Congress of China adopted the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf.¹⁷

The 1988 naval clash between China and Vietnam in the Spratlys raised a fear among the member states of the Association of Southeast Asian Nations (ASEAN) that the South China Sea situation was a significant threat to regional security. The first regional attempt to manage the situation was the initiative by Indonesia and Canada to hold a workshop on managing potential conflicts in the South China Sea in 1990. What followed was a series of workshops designed as an informal process for policy-oriented and cooperation discussions. It was considered to be one of the confidence-building measures for the region. The ASEAN countries, Vietnam, China, and Taiwan sent participants to the workshops on an informal basis as part of a track-two process. The workshops resulted in statements stressing the need to settle the South China Sea disputes through peaceful means and that the parties should exercise restraint in order not to exacerbate the disputes.¹⁸

The second regional attempt to manage the South China Sea situation came with the adoption in 1992 of the ASEAN Declaration on the South China Sea.¹⁹ The Declaration emphasizes the "necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force" and urges "all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes."

The LOS Convention had not yet come into legal force and some claimant countries had not yet become a party. Claimants implemented and applied the Convention in their own interests and, in some cases, in contradiction with the spirit of the package deal that the Convention represented. It can be argued that the mechanisms of peaceful settlement of disputes provided in the Part XV of the LOS Convention were not being implemented.

The Chinese-Filipino Mischief Reef incident of 1995 led ASEAN to promote its own, more formal, confidence-building measures. ASEAN issued the 1995 Statement of the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, which contended that all parties must apply the principles contained in the Treaty of Amity and Co-operation in Southeast Asia (TAC)²⁰ as the basis for establishing a code of international conduct for the South China Sea to create an atmosphere of security and stability in the region. Bilateral talks between China and the Philippines and the Philippines and Vietnam resulted in two codes of conduct: an eight-point code of conduct in the Joint Statement of the Republic of Philippines and People's Republic of China Consultations on the South

China Sea and on Other Areas of Cooperation on August 1995;²¹ and a nine-point code of conduct in the Joint Statement of the Fourth Annual Bilateral Consultations Between the Philippines and Vietnam, November 1995.²²

The admission of Vietnam into ASEAN in 1995 pushed the association to be more active in response to the South China Sea situation. The ASEAN Code of Conduct prepared by the Philippines and Vietnam was adopted and sent to China in 1999. The ASEAN Code was based on ASEAN documents such as: the five principles of peaceful coexistence, the Treaty of Amity and Cooperation, the Declaration on the South China Sea of 1992, the ASEAN-China Joint Statement of 16 December 1997, the Joint Statement Between the Philippines and the PRC on the South China Sea and Other Areas of Cooperation of August 1995, the code of conduct agreed upon between Vietnam and the Philippines in November 1995, and the Hanoi Plan of Action at the Sixth ASEAN Summit 1998.²³ At the beginning, an initiative to have an ASEAN-China Code of Conduct was rejected by Beijing. The dialogue, however, led to an understanding about the necessity to have a regional code of conduct in the future. In the short term, it was easier to agree to have a joint document. As a result, at the Eighth ASEAN Summit in Phnom Penh, Cambodia, ASEAN and China adopted the Declaration on the Conduct of Parties in the South China Sea.²⁴ It is the first political document relating to the South China Sea concluded between ASEAN and China and is seen as a necessary step in the longer-term process aiming at establishing and agreeing on a “code of conduct” in the South China Sea.

The ASEAN-China Declaration on Conduct is a framework for the conduct of all parties (ASEAN members directly or indirectly concerned with the disputes and China) aimed at avoiding military actions and promoting mutual understanding between ASEAN and China and the adoption of confidence-building measures in less-sensitive fields. The parties are encouraged to explore or undertake cooperative activities in the fields of marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operations; and combating transnational crime, including but not limited to trafficking in illicit drugs, piracy, and armed robbery at sea and illegal traffic in arms.²⁵

Bilateral negotiations between Vietnam and the neighboring countries of China, Indonesia, Malaysia, and Thailand have led to positive results in settling maritime delimitation of their overlapping claims in areas adjacent to the South China Sea.²⁶ On June 5, 1992, Malaysia and Vietnam concluded an agreement on joint development in areas of overlapping claims to continental shelf areas to the southwest of Vietnam and to the east-northeast off the east coast of Peninsular Malaysia in the Gulf of Thailand.²⁷ On August 9, 1997, Thailand and Vietnam reached an agreement delimiting their continental shelf and EEZ in the Gulf of Thailand.²⁸ On June 11, 2003, Vietnam and Indonesia signed an agreement on the delimitation of their continental shelf boundary in the area to the north of the Natuna Islands.²⁹ Also notable are the two agreements concluded between China and Vietnam relating to the Gulf of Tonkin on December 25, 2000: the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin³⁰ settled the maritime boundary disputes in the Gulf, and the agreement on fishery cooperation in the Gulf of Tonkin established a “common fishing area” in the Gulf, a “buffer zone” for small fishing boats, and a 4-year “transit fishing zone.”³¹

The ASEAN-China Declaration on Conduct and the 1982 LOS Convention served as the basis for the Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea (JMSU) signed on March 14, 2005, between the national oil companies of China, the Philippines, and Vietnam (the Chinese National Offshore Oil Corporation [CNOOC], the Philippines National Oil Company [PNOC], and

the Vietnam Oil and Gas Corporation [PETROVIETNAM]).³² This Agreement shows the determination of the involved parties to abide by the ASEAN-China Declaration on Conduct. The tripartite Agreement covered 3 years of seismic survey and research over a 143,000-km² area in the South China Sea, which included parts of the disputed Spratly area. The three national oil firms were to share equally the costs involved in conducting seismic research within the agreed area, which came to around \$7.14 million over the 3-year period.³³ Philippine president Gloria Macapagal-Arroyo called the tripartite Agreement “a historic event” and a “breakthrough” in implementing the provisions of the ASEAN-China Declaration on Conduct.³⁴ A Vietnamese Foreign Ministry spokesperson noted that the Agreement “would not undermine the basic position held by the Government of each party on the South China Sea issue” and the parties expressed their “resolve to transform the South China Sea into an area of peace, stability, cooperation and development.”³⁵ The cooperation undertaken by the three national oil companies was to be within the framework of marine scientific research and it did not include any arrangements relating to the exploitation of resources in the area.

The Joint Oceanographic Marine Scientific Expedition in the South China Sea (JOMSRE-SCS) is another example of cooperation in the spirit of ASEAN-China Declaration on Conduct. This initiative was launched by the agreement entered into in 1994 by then Philippine president Fidel V. Ramos and Vietnamese president Le Duc Anh to cooperate in marine scientific research and environmental protection of the South China Sea. Since 1996, there have been four expeditions in: April 1996, May 2000, April 2005, and April 2007. The participants to the marine research expeditions have been expanded beyond Filipinos and Vietnamese to include Chinese, Americans, and Canadians.³⁶

Cooperation in less-sensitive fields is an important outcome of the ASEAN-China Declaration on Conduct. At the Second Meeting of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea, held in Sanya City, Hainan, on February 8–9, 2006, it was agreed to establish the following six projects:³⁷

- A Joint ASEAN-China Table Top Maritime Search and Rescue Exercise. The Philippines was in charge of preparing the paper on this project.
- A Workshop on Marine Ecosystems and Biodiversity. This workshop will be funded by the ASEAN-China Cooperation Fund (ACCP).
- A Workshop on Regional Oceanographic and Climate Exchanges in the South China Sea. Vietnam was responsible for preparing and circulating the paper on this project.
- A Workshop on Disaster Prevention and Reduction, Establishing Disaster Monitoring and Warning System in the South China Sea.
- A Training Programme on Ecosystem Monitoring and Monitoring Technology.
- Regional Oceanographic Exchange around the South China Sea.
- China was to take charge to provide further details on the last three projects.

The ASEAN-China Declaration on Conduct provides that the parties are to display self-restraint when conducting activities that could cause or escalate disputes and affect the peace and stability. This includes, among other things, refraining from inhabiting presently uninhabited islands, reefs, shoals, cays, and other features. Furthermore, the parties are to handle their differences in a constructive manner. However, the Declaration does not give a clear answer as to what kind of activities could be considered to complicate or escalate a dispute. The claimant states have pursued various activities in the Paracel and Spratly archipelagos (e.g., research, tourist tours, granting of petroleum blocks, prohibiting

fishing, constructing an air runway, and erecting new or consolidating existing structures on features already occupied). Such activities can be seen as civilian actions, although they clearly contribute to reinforcement of control and claims. Moreover, such activities indirectly play a role in the military plans of the claimants.³⁸

Until 2008, the cooperative projects developed pursuant to the ASEAN-China Declaration on Conduct existed primarily on paper. There was a shortage of funds and lack of willingness among the concerned parties to take action. The unclear provisions of the Declaration also complicated the situation. To achieve the objective of the Declaration, the concerned parties must develop guidelines for its implementation or seek to achieve an ASEAN-China Code of Conduct for the South China Sea. The current situation calls for new efforts to establish a legal arrangement for cooperation between the concerned parties in the South China Sea.

Toward an ASEAN-China Code of Conduct for the South China Sea

The sharp increase in the price of oil in mid-2008 could have caused an increase in tension the South China Sea. The price of oil is a major issue for China and the other regional states. China needs energy to support its rapidly growing economy. With an oil consumption level of 6,534,000 bbl/day (the second in the world after the United States), China's imports of oil rose nearly 13% in the first 5 months of 2008.³⁹ If the trend continues, China's consumption is expected to equal that of the United States by the mid-2020s.⁴⁰

It seems likely that China wants to push for an expansion of oil exploration and exploitation, in particular, in the East China Sea and South China Sea. Chinese studies have estimated that the potential oil resources of the Spratly and Paracel Archipelagos range from 105 billion up to 213 billion barrels of oil, and the potential production levels for the Spratly Archipelagos could be 1.4 million to 1.9 million barrels per day.⁴¹ For China, having control over these maritime areas is a policy of oil assurance. China has reiterated its claims to most of the South China Sea within the so-called "nine dotted lines."⁴² This claim overlaps with Indonesia's claims to the northeast of the Indonesian Natuna Island group, which is said to have considerable natural gas deposits. It also partly overlaps with the Philippines' Malampaya and Camago natural gas and condensate fields, with Malaysia's natural gas fields off shore Sarawak, and with Vietnam's Tu Chinh and Dai Hung fields. In 2007 and 2008, China put pressure on British Petroleum (BP), Conoco Phillips, Exxon Mobil, and the Oil and Natural Gas Corporation (ONGC) working off the southern coast of Vietnam to stop their joint activities with Vietnam.⁴³ It is also notable that, in November 2008, the CNOOC together with its partners launched a plan to invest 200 billion yuan (US\$29 billion) to develop the exploration and exploitation of oil deposits in the South China Sea.⁴⁴

The plan adopted by the People's Congress of China to create the Sansha administrative zone to manage the Paracels, Spratlys, and the Macclesfield Banks with the status of a "county-level city" within Hainan Province caused an angry and spontaneous public demonstration by several hundred Vietnamese outside the Chinese embassy in Hanoi and consulate in Ho Chi Minh City on December 9, 2007.⁴⁵ It has also been disclosed through satellite pictures that China has built an underground nuclear submarine base near Sanya, on Hainan Island.⁴⁶ This is quite likely linked to China's desire for control of the South China Sea and the strategically vital sea-lanes in the area.

The position of ASEAN on the South China Sea dispute must become more consistent, united, and effective. The ASEAN-China Declaration on Conduct should be replaced by a stronger political and legal document. The first step might be an ASEAN-China Code of Conduct of Parties in the South China Sea with more detailed and precise commitments.

Such an ASEAN-China Code of Conduct must overcome the limitations in the Declaration on Conduct as well as respond to the present challenges and provide an effective orientation for settling the South China Sea disputes in the future.

The LOS Convention Provisions on Maritime Delimitation and Cooperation

Pacific Asia contains a number of disputes over islands. As already noted, in Southeast Asia, these are the *Paracels* and the *Spratlys*. In Northeast Asia, there are the disputes between China and Japan over the *Diaoyu/Senkaku Islands* (*Pinnacle Islands*), between Japan and South Korea over *Dokdo/Takeshima Island*, and between Japan and Russia over the *Kuril Islands*.⁴⁷ The disputes concern both sovereignty over islands and the consequent maritime delimitation of adjacent ocean areas. The claimants usually declare that they are ready to resolve the island disputes on the basis of international law, particularly, the 1982 LOS Convention.

The 1982 LOS Convention provides mechanisms for the settlement of maritime disputes, but has no provisions regarding the settlement of sovereignty disputes over offshore islands. The main articles of the Convention relating to maritime delimitation and cooperation are Articles 15, 74, 83, 121, and 123. These provisions need to be interpreted and implemented in relation to the particular situations (e.g., in the South China Sea). What kind of equitable solution will be acceptable to all in the settlement of maritime disputes? What kind of cooperation is most suitable for claimants prior to final delimitation? One of the major uncertainties in the Convention is the provision on island status. Article 121 (3) says that “rocks which cannot sustain human habitation or economic life of their own shall not have an exclusive economic zone or continental shelf.” Not surprisingly, claimants have different views on the application of Article 121(3) to the features in the South China Sea. Some consider that the features in the *Spratly* archipelago cannot generate an EEZ or a continental shelf, that the features are not islands. Others suggest that some of the features, those that are above water at high tide, can generate more than just 12-mile territorial waters.⁴⁸ The position of China is that the features in the *Paracel* and *Spratly* archipelagos can generate full maritime zones.⁴⁹

The interpretation and application of Article 7 of the LOS Convention regarding straight baselines has recently again become an issue in the South China Sea. Bill 3216 adopted by the House of Representatives of the Philippines on February 2, 2009, was aimed at defining the archipelagic baselines of the Philippine archipelago and reportedly included both the *KIG* and *Scarborough Shoal*.⁵⁰ China responded by reiterating its sovereignty claim to *Huangyan Island* (*Scarborough Shoal*) and to the *Nansha Islands* (*Spratly Islands*) and to “their adjacent waters.” China also expressed “hope that the relevant country can earnestly abide by” the Declaration on Conduct and “refrain from taking actions that may complicate and increase disputes” in the South China Sea.⁵¹ Vietnam’s response was to maintain its established position on the *Paracel* and *Spratly* archipelagos (i.e., that they belong to Vietnam), and to state the “parties concerned should observe” the Declaration on Conduct and “refrain from taking actions to complicate the situation.”⁵² In further developments relating to the baselines of the Philippines, President Macapagal-Arroyo signed the Republic Act No. 9522 on March 10, 2009, which did not include the *KIG* and *Scarborough Shoal* within the archipelagic baselines of the Philippines.⁵³ China responded by reiterating its statement of February 3, 2009,⁵⁴ and by protesting against the Republic Act No. 9522 after it was submitted by the Philippines to the United Nations.⁵⁵

Articles 74 and 83 of the LOS Convention places states that have overlapping ocean claims under an obligation to make an effort to enter into provisional arrangements of

a practical nature and ensure that such arrangements are without the prejudice to a final delimitation solution. Article 123 places claimant states under an obligation to cooperate in the exercise of their rights and performance of their obligations under the LOS Convention in semienclosed sea areas such as the South China Sea. Implementation of these imprecise obligations is a political and legal challenge.

Dispute Settlement Jurisprudence

Although Southeast Asia is known as a region with a tradition of nonadjudication, this tradition has undergone important changes. The International Court of Justice has recently dealt with two sovereignty disputes over islands between Southeast Asian countries. The first concerned the dispute over Pulau Ligitan and Pulau Sipadan between Indonesia and Malaysia (Judgment of 17 December 2002).⁵⁶ The second concerned the dispute over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge between Malaysia and Singapore (Judgment of 23 May 2008).⁵⁷ Both disputes related to small features. The land area for Sipadan is 0.13 km² smaller than for Ligitan, and 2,000 m² for Pedra Branca/Pulau Batu Puteh, whereas Middle Rocks and South Ledge are above water only at low tide. None of these features were permanently inhabited.

The cases display similarities. They both concerned disputes relating to sovereignty over the small islands and reefs, where the original titles were based on historical arguments and maps, title passed through different historical periods from feudal and colonial to the recent claimant states, and there were arguments over the “critical date” and the effectiveness of title.

In the *Case Concerning Pulau Ligitan and Pulau Sipadan*, the International Court noted that the measures taken to regulate and control the collecting of turtle eggs and the establishment of a bird reserve were to be seen as regulatory and administrative assertions of authority over claimed territory. In the words of the Court, these activities are:

modest in number but that they are diverse in character and include legislative, administrative and quasi-judicial acts. They cover a considerable period of time and show a pattern revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands.⁵⁸

The fact that the Indonesian authorities did not protest the construction of lighthouses by the Colony of North Borneo and by Malaysia after 1963 was considered as unusual by the Court.⁵⁹ On the basis of effectiveness of authority, the Court concluded that Malaysia had title to Ligitan and Sipadan.

In the *Case Concerning Pedra Branca*, the Court found that the original title to Pedra Branca/Pulau Batu Puteh was with Malaysia as the successor to the Sultan of Johor. However, the Court ultimately found that Singapore had sovereignty over the island. Some activities to manage the Pedra Branca/Pulau Batu Puteh and its surrounding waters were carried out by the Singapore authorities in 1978, such as the investigation of shipwrecks within the island’s territorial waters, or surveying the waters surrounding the island. However, Malaysian authorities did not take any measure to protest these activities in 1978. The protest was made only in June 2003, after the Special Agreement signed by Singapore and Malaysian authorities submitting the dispute to the Court had come into force, Malaysia had just protested against the Singapore conduct in 1980. Taking the conduct of the two parties into consideration, the Court concluded that sovereignty over Pedra Branca/Pulau

Batu Puteh had passed to Singapore.⁶⁰ However, the Court found that title to Middle Rocks remained with Malaysia as the successor to the Sultan of Johor.⁶¹ For the South Ledge, the Court concluded that it belonged to the state in the territorial waters of which it is located.⁶²

The International Court did not have the opportunity to address the question of the relation between the disputes over sovereignty of islands and reefs and low-tide elevations and the conflict over maritime zones around them. In the Special Agreement submitted to the Court, Malaysia and Singapore asked for only a ruling on the issue of sovereignty regarding each of the three maritime features. They did not ask for the drawing of a line of maritime delimitation.

The conclusions of the International Court in the two cases can serve as a basis for initiatives to submit the various South China Sea disputes to international juridical agencies like the International Court or the International Tribunal for the Law of the Sea (ITLOS). However, there are a number of complications and realities. First, matters can be referred to the International Court (or other third-party adjudicative bodies) only if all the parties agree. Only the Philippines recognizes the International Court's compulsory jurisdiction, but not for disputes regarding the KIG (i.e., the major parts of the Spratlys). The proposal made by the Philippines in 1999 relating to the submission of its dispute over the major part of the Spratlys with China to a tribunal was rejected by China.⁶³ China declared that the dispute should be settled through bilateral negotiations. Second, the finality of a decision of the International Court on sovereignty over islands and other maritime features might discourage some claimants from bringing their case to the Court where they fear that a ruling of the Court might not be to their advantage. Finally, the Court has jurisdiction only to resolve legal disputes. However, a resolution of the disputes over the Paracels and Spratlys involves and must satisfy political, economical, and social concerns as well as legal concerns. The outcome of negotiations could be a compromise solution in which the political, economic, and security factors can be taken into account.⁶⁴

Joint Development or Development Through Cooperation

The South China Sea is a region that has made a significant contribution to joint development as a means of overcoming bilateral overlapping maritime claims. Some of the bilateral agreements reached on joint development (e.g., between Malaysia and Thailand in 1979⁶⁵ and between Vietnam and Malaysia in 1992⁶⁶) primarily relate to oil exploration while the agreement between China and Vietnam in the Gulf of Tonkin in 2000 relates to the fishery.⁶⁷ Joint development was mentioned in the so-called "donut hole" theory proposed by Professor Hasjim Djalal in 1989–1990, by which the zone beyond 200 miles from coastal lines and islands claimed by the concerned parties would be a zone for cooperation of all states around the South China Sea.⁶⁸

In 1990, China proposed that the sovereignty issue should be shelved and that the parties should work together in the context of joint development in the South China Sea.⁶⁹ Critics argued that the proposal served to legitimize China's sovereignty claim of the "nine dotted national boundary line" that encompasses over 8% of the South China Sea.⁷⁰ China did not specify the exact scope of the proposed joint development or the area, form, content, and governing mechanism for joint development. However, China's joint development proposal does not seem to include the Paracels, although it is a disputed archipelago. It would not be acceptable to Vietnam if parts of the maritime zones claimed by China to the west of the Paracel and Spratly archipelagos that overlap with Vietnam's claims to maritime zones to the east of the Vietnamese coast were part of areas that China proposed to be included in a

possible joint development scheme. The Chinese proposal would be perceived as a scheme to turn areas to which Vietnam's claim was previously uncontested into a contested one.⁷¹ The Indonesian reaction undoubtedly would be similar in the area to the northwest of the Natuna Islands where China's claim overlaps with an Indonesian claim.

The 2005 JMSU, the tripartite agreement among national oil companies of the Philippines, China, and Vietnam to jointly survey in a certain area in the South China Sea,⁷² has not been considered as a joint development arrangement because it was not a government-level memorandum of understanding. Moreover, the JMSU dealt only with exploration data and not exploitation of resources and the 3-year term of the JMSU ended on July 1, 2008 without renewal.

The media in the Philippines continue to debate the legal aspects of a 2004 bilateral agreement between the PNOC and the CNOOC that allowed China to conduct data gathering over an area in the South China Sea, including the Spratlys, in exchange for Chinese-funded loans for Philippine projects.⁷³ The Senate of the Philippines was not informed about the content of the deal.⁷⁴ Now, the Philippines-China deal of 2004 to allow Chinese exploration in the Philippines' "territorial waters and resources" has been labeled a violation of constitutional provisions governing the country's national territory and patrimony.⁷⁵ The critique has also been extended to the terms of JMSU.⁷⁶

It can be noted that Vietnam reacted to the September 2004 agreement by reiterating its claims to sovereignty over both the Spratly and the Paracel archipelagos. It also stated that the agreement was concluded without consulting other parties, and thus was not in the spirit of the ASEAN-China Declaration on Conduct.⁷⁷

In June 2008, China and Japan reached an agreement on cooperation in the East China Sea. The Chinese Foreign Ministry spokeswoman Jiang Yu said that this was the first step in the joint development of the East China Sea between China and Japan.⁷⁸ She also called it "an important step" in the transitional period prior to delimitation without prejudicing their respective legal positions. According to Japan's minister of foreign affairs Masahiko Koumura, the agreement is the first step toward realizing a common understanding between the leaders of the two countries that the East China Sea should be a "Sea of Peace, Cooperation and Friendship."⁷⁹ He also stated that the content of the agreement is "mutually beneficial to both sides."⁸⁰ Japan delimits its claim in the East China Sea using a median line. China claims jurisdiction over the entire East China Sea based on the natural prolongation of its continental shelf. China began test drilling in the area in 2003, provoking Japanese protests. Japan rejected China's proposal for joint development of two gas fields near the Japanese-controlled Senkaku Islands (Diaoyu) while China turned down Japan's proposal to jointly develop four gas fields near the Japanese median line in the East China Sea. China claims that Japan has no right to protest its Chunxiao (Shirakaba in Japanese) operations because the production sites are within the area of the Chinese EEZ that is not disputed. Both the Japanese policymakers and public are concerned that the Chunxiao field may extend into the Japanese EEZ, thereby costing Japan valuable resources.⁸¹

Pursuant to the 2008 Agreement, an area for joint development has been defined in which the two sides will, through joint exploration, select by mutual agreement areas for joint development under the principle of mutual benefit. Through consultations, the two sides will decide on other specific matters. Japanese companies will be able to jointly develop with China the Shirakaba/Chunxiao gas field and an area south of the Asunaro gas field. Shirakaba/Chunxiao is located mainly on the Chinese side of a Japanese-claimed median line. The two countries have problems to solve such as deciding the ratio of capital contributions to be made by Japan and China in the Shirakaba/Chunxiao gas field

and what to do with three other gas fields—Asunaro/Longjing, Kashi/Tianwaitian, and Kusunoki/Duanqiao.

The 2008 Agreement was sharply criticized by Chinese Internet users and the Hong Kong media immediately after its announcement. They criticized the Chinese authorities for betraying the national interests, humiliating the nation, and forfeiting its sovereignty.⁸² In an effort to calm the public protest, the Chinese foreign minister Yang Jiechi clarified the Chinese position on the issue.⁸³ First, the sovereign rights of Chunxiao oil and gas field belong to China. Second, both China and Japan have agreed that Japanese enterprises would participate in the relevant cooperation in the Chunxiao oil and gas field in accordance with the Chinese laws governing external cooperation on offshore oil resources development and accept Chinese jurisdiction. What the Chinese and Japanese companies will carry out in the Chunxiao oil and gas field is development through cooperation, an act that will be done in accordance with Chinese laws.⁸⁴

The Japanese-Chinese Agreement as well as the challenges encountered both in reaching the agreement and in implementing it will be keenly examined by the concerned parties in the South China Sea disputes.⁸⁵

Conclusion

The South China Sea dispute has been and still is a matter of concern to regional and nonregional parties. Many potential solutions to the impasse have been suggested such as sharing the resources,⁸⁶ the Antarctic scheme,⁸⁷ the donut hole model,⁸⁸ joint development, development through cooperation, and third-party intervention. However, the suggested solutions have not been implemented due to lack of confidence and trust among the concerned parties. ASEAN, through a dialogue with China, concluded the 2002 Declaration on Conduct. This can be regarded as a midway point in a process to establish a full-fledged Code of Conduct for the South China Sea. The ASEAN-China Declaration on Conduct has created an important platform for the reduction of tension and for cooperation between the claimants. The Declaration is a clear signal to the international community that ASEAN and China can work together in looking for a peaceful and acceptable solution to the disputes in the South China Sea. However, the Declaration has some limitations. There are no guidelines and no enforcement provisions; thus, it depends on only the “bone fois” of all claimants.

The development of new legal arrangements is a necessity. ASEAN and China should actively move forward to an ASEAN-China Code of Conduct or a similar binding agreement, which would contain guidelines for self-restraint, cooperation, and the application of international law.

Notes

1. David Rosenberg and Christopher Chung, “Maritime Security in the South China Sea: Coordinating Coastal and User State Priorities,” *Ocean Development and International Law* 39 (2008): 51.

2. About 70% of the fuel imports of Japan, China, and South Korea are transported by sea throughout the South China Sea. *Ibid.*, at 51, 56, and 58; and Hasjim Djalal and Ian Townsend-Gault, “Preventive Diplomacy: Managing Potential Conflicts in the South China Sea,” in *Herding Cats: Multiparty Mediation in a Complex World*, ed. C. A. Crocker, F. O. Hampson and P. Aalland (New York: United States Institute of Peace Press, 1999), 107–133.

3. Rosenberg and Chung, *supra* note 1, at 59; and Vijay Sakhujia, “Maritime Power of People’s Republic of China: The Economic Dimension,” *Strategic Analysis: A Monthly Journal of the IDSA*

26 (February 2001), available at www.ciaonet.org/olj/sa/sa_feb01sav01.html (accessed on 22 October 2008).

4. Rosenberg and Chung, *supra* note 1, at 51–52.

5. For an analysis of the incident and its repercussions, see Sam Bateman, “Clashes at Sea: When Chinese Vessels Harass US Ships,” *RISIS Commentaries* (27/2009), available at the Web site of the S. Rajaratnam School of International Studies, Nanyang Technological University, Singapore at www.rsis.edu.sg/publications/Perspective/RSIS0272009.pdf (accessed on 5 May 2009). China’s official explanation was that a “US naval surveillance vessel” had operated in China’s EEZ without the authorization of the Chinese authorities and, consequently, China had reacted in accordance with the LOS Convention. See “Foreign Ministry Spokesperson Ma Zhaoxu’s Remarks on US Navy Surveillance Vessel’s Activities in China’s Exclusive Economic Zone” (13 March 2009), available at the Web site of the Ministry of Foreign Affairs of the People’s Republic of China at www.fmprc.gov.cn/eng/xwfw/s2510/t542172.htm (accessed on 5 May 2009).

6. Bruce Blanche and Jean Blanche, “Oil and Regional Stability in the South China Sea”, *Jane’s Intelligence Review* 7, no. 11 (1995): 511. In 1987, the South China Sea Institute of Oceanology conducted a geophysical survey of portions of the Spratlys area and confirmed strong evidence of commercial oil fields. In 1989, China sent a survey vessel through the South China Sea and estimated that the Spratlys area held deposits of 25 billion cubic meters of natural gas, 370,000 tons of phosphorous, and 105 billion barrels of oil, with an additional 91 billion barrels of oil in the James Shoal area off the North Borneo coast. In 1988, U.S. geologists estimated reserves of 2.1 billion to 15.8 billion barrels of oil while Russian estimates were 7.5 billion barrels of oil equivalents, 70% of which probably are gas resources.

7. U.N. Convention on the Law of the Sea, 1833 *U.N.T.S.* 397.

8. For a more detailed overview of the claims, see Nguyen Hong Thao and Ramses Amer, “The Management of Vietnam’s Maritime Boundary Disputes,” *Ocean Development and International Law* 38, no. 3 (2007): 306–309.

9. For an analysis of the “nine dotted lines,” see Li Jinming and Li Dexia, “The Dotted Line in the Chinese Map of the South China Sea,” *Ocean Development and International Law* 34, no. 3–4 (2003): 287–295.

10. In this article, Taiwan is synonymous with Chinese Taipei, Taiwan Province of China, and the Republic of China (ROC).

11. For a detailed comparison between China’s and Taiwan’s claims and policies, see Chen Hurng-yu, “A Comparison Between Taipei and Peking in Their Policies and Concepts Regarding the South China Sea,” *Issues and Studies* 29, no. 9 (1993): 22–58.

12. On the issue of piracy in Southeast Asia, see Joshua Ho and Jane Chan, *Report on Armed Robbery and Piracy in Southeast Asia 2006* (Singapore: S. Rajaratnam School of International Studies, 2007). More generally on piracy, see Zou Keyuan, “Seeking Effectiveness for the Crackdown of Piracy at Sea,” *Columbia Journal of International Affairs* 59, no. 1 (2005): 117–134.

13. For details, see Ramses Amer, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, Maritime Briefing 3, no. 5 (Durham: International Boundaries Research Unit, University of Durham, 2002), 8–29.

14. For an analysis of the 1995 Mischief Reef incident, see Daniel J. Dzurek, “China Occupies Mischief Reef in Latest Spratly Gambit,” *Boundary and Security Bulletin* 3, no. 1 (1995): 65–71.

15. For the full text of “The Law of the People’s Republic of China on Its Territorial Waters and Their Contiguous Areas,” see *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, 1316 C1/1-2 (28 February 1992). See also “People’s Republic of China—Law of the People’s Republic of China on the Territorial Sea and Contiguous Zone.” *International Journal of Marine and Coastal Law* 8, no. 1 (1993): 158–161.

16. *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, 2614 G/10-12 (17 May 1996).

17. *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, 3283 B/6 (20 July 1998). For a reproduction of the Chinese language version as well as an unofficial English language translation of the law, see Zou Keyuan, *Maritime Jurisdiction over the Vessel-Source*

Pollution in the Exclusive Economic Zone: The Chinese Experience, EAI Working Paper No. 6 (Singapore: East Asian Institute, National University of Singapore, 1998), 29–36.

18. See Hasjim Djalal, “The South China Sea—The Long Road Towards Peace and Cooperation,” in *Security and International Politics in the South China Sea: Towards a Co-operative Management Regime*, ed. Sam Bateman and Ralf Emmers (London: Routledge, 2008), 175–189.

19. The text of the 1992 Association of Southeast Asian Nations (ASEAN) Declaration is reproduced as an appendix to Nguyen Hong Thao, “Vietnam and the Code of Conduct for the South China Sea,” *Ocean Development and International Law* 32, no. 3–4 (2001): 124–125.

20. Treaty of Amity and Cooperation in Southeast Asia, available at the ASEAN Web site at www.aseansec.org/1217.htm (accessed on 13 November 2008).

21. Reproduced in Nguyen, *supra* note 19, at 125–126.

22. Reproduced in *ibid.*, at 126–127.

23. See *ibid.*, at 113–115. See also Nguyen Hong Thao, “Declaration on Parties’ Conduct in South China Sea (the East Sea)—A Step Towards the Establishment of the Code of Conduct for the Region,” *Vietnam Law and Legal Forum* 9, no. 99 (2002): 19–21; and Nguyen Hong Thao, “The Declaration on the Conduct of Parties in the South China Sea: A Vietnamese Perspective, 2002–2007,” in Bateman and Emmers, *supra* note 18, at 207–222.

24. The text of the 2002 ASEAN-PRC Declaration on the Conduct of Parties is reproduced as an appendix to Nguyen Hong Thao, “The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note,” *Ocean Development and International Law* 34, no. 1–2 (2003): 282–285; and at the ASEAN Web site at www.aseansec.org/13165.htm (accessed on 28 October 2008).

25. *Ibid.*

26. For a detailed overview and analysis of the management of Vietnam’s maritime disputes, see Nguyen and Amer, *supra* note 8, at 305–324.

27. The text is reproduced as an appendix to T. L. McDorman, “Malaysia-Vietnam,” in *International Maritime Boundaries*, ed. J. I. Charney and L. M. Alexander (The Hague: Martinus Nijhoff, 1998), 2341–2344.

28. The text is reproduced in *Law of the Sea Bulletin* 39 (2000): 23.

29. This agreement is not yet available in English.

30. The text is reproduced as an appendix to Nguyen Hong Thao, “Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf,” *Ocean Development and International Law* 36, no. 1 (2005): 41–44.

31. The text is reproduced as an appendix to *ibid.*, at 35–41.

32. Information derived from “Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea. Answer to Correspondent by Mr. Le Dzung, the Spokesman of the Vietnamese Ministry of Foreign Affairs on 14th March 2005,” available at the Web site of the Vietnam Ministry of Foreign Affairs at www.mofa.gov.vn/en/ttbaochi/pbnfn/ns050314164241/ (accessed on 22 March 2005).

33. Abigail L. Ho, “RP, China, Vietnam Pursue Spratlys Project,” *Philippines Daily Inquirer* (2 November 2007), available at the Web site of *Inquirer.net* at business.inquirer.net/money/topstories/view_article.php?articleid=48824 (accessed on 22 October 2008).

34. “China, Philippines, Vietnam Sign Joint South China Sea Oil Search Accord,” *Manila Times*, 14 March 2005.

35. “Tripartite Agreement: Le Dzung, Answer,” *supra* note 32.

36. Nguyen, “Declaration 2002–2007,” *supra* note 23.

37. “Report of the Second Meeting of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea,” Sanya City, Hainan, China, 8–9 February 2006.

38. See Nguyen, “Declaration 2002–2007,” *supra* note 23.

39. According to MarketWatch, China’s imports of crude oil in the period from January through May totaled 75.97 million metric tons (659.8 million barrels). Douglas McIntyre, “China Oil Consumption Jumps,” posted 11 June 2008, available at www.bloggingstocks.com/2008/06/11/china-oil-consumption-jumps/ (accessed on 22 October 2008).

40. *Ibid.*

41. "Oil Gas Resources and Shipping Terminals in South China Sea," 9 May 2006, available at www.oilgasarticles.com/articles/474/1/Oil-Gas-Resources-and-Shipping-Terminals-in-South-China-Sea/Page1.html (accessed on 22 October 2008). See also *supra* note 6.

42. See *supra* note 9.

43. Brian McCartan, "Roiling the Waters in the Spratlys," *Asia Sentinel* (4 February 2008), available at www.asiasentinel.com/index.php?option=com_content&task=view&id=1026&Itemid=31 (accessed on 22 October 2008). Regarding BP-Conoco Phillips, see "Vietnam's Action on Nansha Islands Infringe in China's Sovereignty, FM Spokesman," 10 April 2007, available at the Web site of the *Peoples Daily* (English ed.) at english.peopledaily.com.cn/200704/10/eng20070410_365316.html (accessed on 16 January 2009). See also Andrew Symon, "China, Vietnam Spar over Gas," *Asia Times Online* (1 May 2007), available at www.atimes.com/atimes/Southeast_Asia/IE01Ae01.html (accessed on 22 October 2008). On the ONGC, see Anupama Airy, "ONGC's Vietnam Foray Illegal Says China," available at the Web site of *The Financial Express* at www.financialexpress.com/news/ONGCs-Vietnam-foray-illegal-says-China/246000/ (accessed on 16 January 2009). On Exxon, see "China Confirms Telling Exxon to End Vietnam Oil Deal" (22 July 2008), available at the Web site of Reuters at www.reuters.com/article/rbssEnergyNews/idUSPEK26391320080722 (accessed on 16 January 2009).

44. Wang Yin, "CNOOC Plans \$29 Billion South China Sea Exploration (Update 2)" (last updated 24 November 2008), available at the Web site of Bloomberg at www.bloomberg.com/apps/news?pid=20601080&sid=aXVBShwT6cbY&refer=asia (accessed on 2 February 2009).

45. McCartan, *supra* note 43.

46. "Secret Sanya—China's New Nuclear Naval Base Revealed," *Jane's Security News* (21 April 2008), available at www.janes.com/news/security/jir/jir080421_1_1_n.shtml (accessed on 22 October 2008).

47. For a recent study on the maritime disputes in Northeast Asia, see Suk Kyoong Kim, "Understanding Maritime Disputes in Northeast Asia: Issues and Nature," *International Journal of Marine and Coastal Law* 23, no. 2 (2008): 213–247.

48. J. M. Van Dyke and D. L. Bennett, "Islands and the Delimitation of Ocean Space in the South China Sea," *Ocean Yearbook* 10 (1993): 54, propose a 12-mile territorial sea for all rocks and other features in the Spratly Islands area. See also John M. Van Dyke and Robert A. Brooks, "Uninhabited Islands: Their Impact on the Ownership of the Ocean's Resources," *Ocean Development and International Law* 12, no. 3–4 (1983): 265.

49. This can be seen from the Chinese line of argumentation in its disputes with Vietnam in the South China Sea in the 1990s in relation to areas located to the east of the Vietnamese coast and to the west of the Parcel and Spratly archipelagos. For details and analysis, see Amer, *supra* note 13, at 8–28 and 43–45.

50. Lira Dalangin-Fernandez, "House OKs Baselines on 3rd Reading: Disputed Islands Included in Nat'l Territory" (2 February 2009), available at the Web site of *Inquirer.net* at newsinfo.inquirer.net/breakingnews/nation/view/20090202-187025/House-OKs-baselines-bill-on-3rd-reading (accessed on 2 February 2009).

51. "Foreign Ministry Spokesperson Jiang Yu's Remarks on the South China Sea Issue" (3 February 2009), available at the Web site of the Ministry of Foreign Affairs of the People's Republic of China at www.fmprc.gov.cn/eng/xwfw/s2510/t535094.htm (accessed on 6 February 2009).

52. "Regular Press Briefing by MOFA's Spokesman on 5th February 2009," available at the Web site of the Vietnam Ministry of Foreign Affairs at www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090205173454 (accessed on 6 February 2009). The question put to the spokesman referred not only to the House bill, but also to the Bill SB 2699 passed by the Senate of the Philippines on 27 January 2009 which, according to the question, "does not include these islands in the baseline and accordingly these islands are managed under the 'regime of islands' as enshrined in Article 121 of the UN Convention of the Law of the Sea." In this context, the term "islands" refers to "some islands of the Spratly archipelago."

53. The text of the Republic Act No. 9522 can be found as one of the documents submitted by the Philippines to the United Nations as part of the “Deposit by the Republic of the Philippines of a List of Geographical Coordinates of Points, Pursuant to Article 47, paragraph 9, of the Convention,” M.Z.N.69.2009.LOS (Maritime Zone Notification) (21 April 2009), available at the Web site of the United Nations at www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PHL.htm (accessed on 5 May 2009), and at www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html (accessed on 5 May 2009). In relation to KIG and Scarborough Shoal, the Republic Act No. 9522 was in line with SB 2699 and not with HB 3216.

54. “Foreign Ministry Spokesperson Ma Zhaoxu’s Remarks on Philippine President Arroyo Signing Baselines Act” (13 March 2009), available at the Web site of the Ministry of Foreign Affairs of the People’s Republic of China at www.fmprc.gov.cn/eng/xwfw/s2510/t542168.htm (accessed on 5 May 2009).

55. Letter from the Permanent Mission of the People’s Republic of China to the Secretary General of the United Nations, 13 April 2009, CML/12/2009 (in both Chinese original and English translation) as part of M.Z.N.69.2009, supra note 53.

56. *Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment of 17 December 2002, available at the Web site of the International Court of Justice at www.icj-cij.org/docket/files/102/7714.pdf (accessed on 22 October 2008).

57. *Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment of 23 May 2008, available at the Web site of the International Court of Justice at www.icj-cij.org/docket/files/130/14492.pdf (accessed on 22 October 2008).

58. *Case Concerning Pulau Ligitan*, supra note 56, para. 149.

59. *Ibid.*, paras. 147–148.

60. *Case Concerning Pedra Blanca*, supra note 57, para. 276.

61. *Ibid.*, para. 290.

62. *Ibid.*, para. 299.

63. Nguyen, supra note 19, at 109.

64. See Robert C. Beckman, “Legal Regimes for Cooperation in the South China Sea,” in Bateman and Emmers, supra note 18, at 222–236.

65. See Choon-ho Park, “Malaysia-Thailand (Gulf of Thailand Continental Shelf) (1979)” in J. I. Charney and L. M. Alexander, *International Maritime Boundaries* (Dordrecht: Martinus Nijhoff, 1993), 1099–1110; and Kriangsak Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia* (Oxford: Oxford University Press, 1987), 100–103 and 189–194.

66. See supra note 27; and Nguyen Hong Thao, “Vietnam and Joint Development in the Gulf of Thailand,” *Asian Yearbook of International Law* 8 (1998–1999): 142–148.

67. See supra note 31.

68. Djalal and Townsend-Gault, supra note 2. Ji Guoxing, *Jurisdiction in the Three China Seas: Options for Equitable Settlement*, IGCC-PP No. 19 (November 1995), 25–26, available at the Web site of the Institute on Global Conflict and Cooperation (IGCC) at igcc.ucsd.edu/pdf/policypapers/pp19.pdf (accessed on 16 January 2009), refers to the “Doughnut Formula” as an Indonesian proposal.

69. China’s then prime minister Li Peng launched the Chinese proposal and model for joint development in 1990. For information about the proposal as well as a detailed overview of China’s policies toward the South China Sea in the 1990s, see Lee Lai To, *China and the South China Sea Dialogues* (Westport, CT: Praeger, 1999).

70. See, for example, Nguyen Hong Thao, “China’s ‘Nine Broken Line’ in the Bien Dong Sea (South China Sea) in the Light of International Law,” *Vietnam News*, 18 May 1997, 4; and Long Bao, “The Spratly Islands Question Surfaces Again,” *Vietnam Law and Legal Forum* 1, no. 88 (January 1998), pp. 19–21.

71. See Amer, supra note 13, at 43–45.

72. See supra note 32.

73. Ma Paola J. Syyap, "PNOC Submits Disputed Oil Exploration to House, Confidentiality Clause Prevents Exposure" (3 May 2008), available at the Web site of GMA News and Public Affairs at www.gmanews.tv/story/93049/PNOC-submits-disputed-oil-exploration-to-House-confidentiality-clause-prevents-exposure (accessed on 22 October 2008).

74. *Ibid.*

75. Abigail L. Ho and Juliet Labog-Javellana, "Arroyo Hit on Spratlys Deal. Drilon: Her Lawyer Worried Pact Basis to Impeach," *Philippines Daily Inquirer* (7 March 2008), available at the Web site of *Inquirer.net* at newsinfo.inquirer.net/inquirerheadlines/nation/view/20080307-123244/Arroyo-hit-on-Spratlys-deal (22 October 2008); and Nerijavier Colmenares, "Spratlys Deal Unconstitutional: Joint Marine Seismic Undertaking Void" (17 March 2008), available at the Web site of GMA News and Public Affairs at www.gmanews.tv/story/85173/Spratlys-deal-unconstitutional-Joint-Marine-Seismic-Undertaking-void (22 October 2008).

76. See supra note 75.

77. "Answer to Correspondent by Mr. Le Dzung, the Spokesman of the Vietnamese Ministry of Foreign Affairs on 9 September 2004," available at the Web site of the Vietnam Ministry of Foreign Affairs at www.mofa.gov.vn/en/tt_baochi/pbnfn/ns041028222202 (accessed on 29 September 2004).

78. "China, Japan Reach Principled Consensus on East China Sea Issue" (18 June 2008), available at the Web site of *China View* at news.xinhuanet.com/english/2008-06/18/content_8394206.htm (accessed on 22 October 2008).

79. "Joint Press Conference by Minister for Foreign Affairs Masahiko Koumura and Minister of Economy, Trade and Industry Akira Amari (Regarding Cooperation Between Japan and China in the East China Sea)" (18 June 2008), available at the Web site of the Ministry of Foreign Affairs of Japan at www.mofa.go.jp/announce/fm_press/2008/6/0618.html (3 November 2008).

80. *Ibid.*

81. Zhou Shan, "China and Japan Agree on Joint Gas Exploration in East China Sea, Agreement Met with Online Criticism and Group Protest," *Epoch Times* (27 June 2008), available at the Web site of the *Epoch Times* at en.epochtimes.com/news/8-6-27/72597.html (accessed on 22 October 2008).

82. *Ibid.*

83. "CNOOC to Share Investment, Risk on Development of East China Sea" (*China Daily*) (27 June 2008), available at the Web site of *China Daily* at www.chinadaily.com.cn/bizchina/2008-06/27/content_6801444.htm (accessed on 3 November 2008); and "China's Rights over Chunxiao Not Negotiable" (*China Daily*) (updated 25 June 2008), available at the Web site of *China Daily* at chinadaily.com.cn/bizchina/2008-06/25/content_6794064.htm (accessed on 3 November 2008).

84. See supra note 83.

85. For a discussion relating to the potential challenges posed by joint development efforts with a focus on the East China, see Gao Jianjun, "Joint Development in the East China Sea: Not an Easier Challenge than Delimitation," *International Journal of Marine and Coastal Law* 23, no. 1 (2008): 39–75.

86. See, for example, Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea* (The Hague: Martinus Nijhoff, 1997).

87. See, for example, Mark J. Valencia, *Malaysia and the Law of the Sea: The Foreign Policy Issues, the Options and Their Implications* (Kuala Lumpur: Institute of Strategic and International Studies (ISIS Malaysia), 1991).

88. See Djalal and Townsend-Gault, supra note 62.