

UNCLOS Article 76 and the South China Sea Disputes: Implications for the Establishment of Continental Shelf beyond 200 Nautical Miles in respect to the Paracel and Spratly Islands

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国連海洋法条約第 76 条と南シナ海紛争
—パラセル諸島とスプラトリー諸島に関して 200 海里を超える大陸棚設定の含意—

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Abstract

For decades, maritime disputes in the South China Sea have been focusing around the Paracel and Spratly Islands. Due to their unique locations at the center of the semi-enclosed sea, coastal states parties to the dispute have exclusively relied on territorial sovereignty bases for asserting their entitlements to the exclusive economic zone (EEZ) and continental shelf under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The 2009 joint submission by Malaysia and Vietnam regarding the outer limits of the continental shelf beyond 200 nautical miles (nm) to the Commission on the Limits of Continental Shelf (CLCS) was the first sign of changing opinions by coastal states on the maritime delimitation. It brings up important legal questions regarding the feasibility of delimiting the continental shelf beyond 200nm generated by the surrounding coasts in the presence of the disputed islands.

By reviewing provisions under Article 76 of UNCLOS, with insights from the ongoing proceedings by the Commission, this article argues that current provisions under UNCLOS are ineffective in solving the negotiation deadlock between states in the delimitation process. The article also points out the need for remedies to temporarily delimit the continental shelf in the absence of final and binding limits. Finally, the article observes that the entitlements to the continental shelf will play more important roles in the legal consideration of maritime disputes in the South China Sea.

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1. Introduction:

In 1974, the People's Republic of China (China) clashed with the South Vietnamese garrison on the Paracel Islands in the South China Sea. The engagement ended swiftly with China gaining territorial control over the Paracel Islands. A series of small-scale armed conflicts soon followed on the Spratly Islands involving China, the Philippines and Vietnam – setting them to become the earliest contenders to the South China Sea disputes. As of 2015, five states: Brunei, China, Malaysia, the Philippines and Vietnam have declared territorial claims to the two island groups; all of them except Brunei have a military presence on certain features.¹ The last decade saw heightened tensions between China and other coastal states, with a rise in the number of incidents that has put the stability and safety of the region at risk. In a sense, the ongoing tensions and disputes between neighboring states in the South China Sea have been intensified by the resource-oriented interpretation of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Coastal states parties to UNCLOS are recognized to establish their rights over the world's oceans under two categories: the entitlement of an exclusive economic zone (EEZ) up to 200 nautical miles (nm), and the entitlement of a continental shelf up to 200nm or to the outer edge of the continental margin beyond the 200nm limit.² The Convention also recognizes that islands are entitled to an EEZ, and have the same entitlement to a continental shelf as continental coasts. Due to the unique geographic locations of the Paracel and Spratly Islands, the area that is beyond 200nm of the coasts of neighboring states in the South China Sea is within 200nm of the two island groups. Based on this fact, China has laid sovereignty claims to both the Paracel Islands and the Spratly Islands in order to maximize its claim of the sea area. On the other hand, Malaysia and Vietnam have indicated their coasts are entitled to a continental shelf beyond 200nm and submitted their cases to the Commission on the Limits of the Continental Shelf (CLCS). China and the Philippines have protested against the submissions, while Brunei declared its intention to submit a similar claim to the CLCS.

This situation gives rise to a legal question: In case of the continental shelf beyond 200nm exists in the center area of the South China Sea, how effective is the current legal framework in helping to establish the outer limits of continental shelf? This article sets out to examine provisions under Article 76 of UNCLOS on the establishment of the continental shelf, as well as steps taken by the coastal states in implementing Article 76. In doing so, the article finds that the provisions under Article 76 are insufficient to solve the negotiation deadlock between parties during the first stage of the proceedings. In addition, legal remedies are needed to temporarily delimit the continental shelf beyond 200nm in the South China Sea in respect to areas surrounding the two disputed island groups.

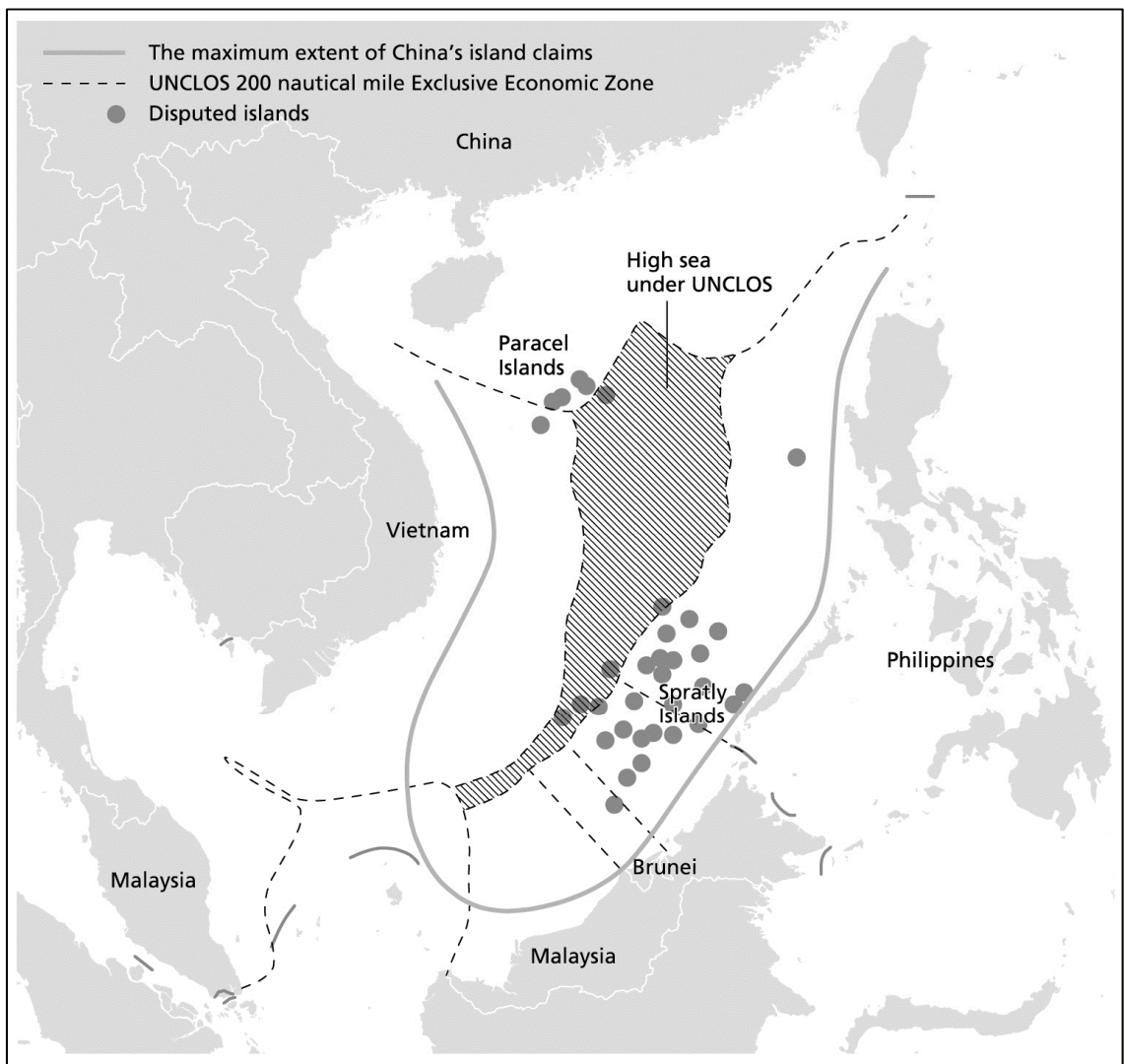
2. The ongoing South China Sea disputes:

According to Park (1978, pp. 34-35), following the event of 1974, the interactions between China and Vietnam would play the key role in setting the course of the South China Sea disputes. Park observed that a legal solution would not be encouraging at the moment, largely due to the limitation of international legal practice and unfinished negotiations on the Law of the Sea in 1978. In order to end the disputes in their favor, China had to remove the Filipinos and Vietnamese from the Spratly Islands, while Vietnam had to remove the Chinese and Filipinos from both the Paracel and Spratly Islands (Park 1978, pp. 43-44). Hoping to justify the use of force, China had tried to provoke stronger military reaction from Vietnam through a series of incidents, which had proved unsuccessful (Valencia 1988, p.440). With the establishment of UNCLOS in 1982, the Philippines and Vietnam were given options to reconsider their strategies while avoiding confrontations with China. The *fait accompli* posed by Brunei, Indonesia and Malaysia in the Spratly Islands had further complicated the issue, obstructing the unilateral use of force by the concerned parties (Buszynski & Sazlan 2007, p.147).

Both Hyer (1995) and Tønnesson (2000) pointed out that China would continue to rely heavily on its claims of historic waters and title over the South China Sea, as it allows China to maximize national interests in the region. Still, this is a very risky interpretation of UNCLOS. The geographical characteristics of the Paracel and Spratly Islands pose the largest risk of all. Judging from UNCLOS provisions, it is unlikely to draw a single legitimate baseline to cover both archipelagoes, and even more unlikely for any of the tiny islands in the Spratly area to gain the rights of the continental shelf or EEZ (Tønnesson 2000, p. 209). This results in China's vagueness regarding the exact coordinates for measuring the baseline, a point well illustrated in the nine-dash line map of the South China Sea. The nine-dash line map was known to exist in China's archives before the 1990s, yet China only decided to include the map in its Note Verbale since 2009, citing it has indisputable sovereignty over the area but provided no further comments on its effect in international law (McDorman 2014, pp. 147-148). Zhiguo and Jia (2013) stated that the nine-dash line did not contradict with China's obligations and rights under UNCLOS. The apparent lack of explanation as to the legal basis, the drawing method, and its legal status under UNCLOS were the main reasons why legal analysts of the South China Sea disputes continue to disregard the validity of the nine-dash line until now.

On the other hand, the Philippines and Vietnam had decided to promote their approach to realize national interests within the confines of the justifiable interpretation of UNCLOS. The first significant attempt was the conclusion of a Declaration on the Conduct of Parties in the South China Sea (DOC), which was signed by China and ASEAN members in 2002. Despite high hopes for setting behaviors and facilitating multilateral negotiations, the DOC contained neither specific geographic scope nor binding regulations for involved parties

(Buszynski & Sazlan 2007, p. 154). According to Park (1978) and Elferink (2014), even if the territorial disputes over the two island groups persist, it is still possible to delimit the seabed and continental shelf through multilateral agreements and international law. It is for this reason that Malaysia and Vietnam submitted their cases to the CLCS, hoping to facilitate new solutions for the ongoing disputes.



Map 1: Disputed claims in the South China Sea.
Source: Author's creation based on UNCLOS documents.

3. The establishment of continental shelf under UNCLOS Article 76:

Article 76(1) deals with the definition of continental shelf for a coastal state. The continental shelf, which comprises of the seabed and subsoil of the submarine features, is a prolongation of a coastal state's land territory to the outer edge of the continental margin. Alternatively, it can be measured up to 200nm, where the outer edge of the continental margin does not add up to that distance. Subsequent paragraphs of Article 76 then provide detailed criteria for the establishment of the outer edge of the continental margin beyond 200nm.

Article 76(4) places the important requirement for a coastal state to determine the foot of the continental slope before establishing the outer limits of the continental shelf beyond the 200nm limit.³ In particular, the paragraph of Article 76(4)(b) specifies that the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base, in the absence of evidence to the contrary. A coastal state can then determine fixed points to define the outer limit of the continental shelf by measuring from the foot of the slope. Two methods were given to identify the positions of fixed points. A fixed point is established at a distance up to 60nm from point at the foot of the continental slope. If the sedimentary rocks of the continental margin have a thickness of at least 1% of the shortest distance from such point to the foot of the continental slope, a specific fixed point might be placed beyond the 60nm limit.⁴ In addition, fixed points must meet specific criteria before they are used to measure the outer limits of the continental shelf. Fixed points are not allowed to exceed 350nm from the baseline where the breadth of the territorial sea is measured, or 100nm from the 2500-meter *isobath*.⁵ They are also not allowed to be more than 60nm apart.⁶ In the South China Sea, it is more logical for coastal states to only have the entitlement of the 350nm line. The criteria from paragraph (4) to (6) are expected to have little significance in defining the continental shelf outer limits.

A coastal state intends to establish the outer limit of the continental shelf beyond 200nm, in accordance with Article 76, is required to submit its claims with supporting scientific and technical data to the CLCS. In any case, the submission should be done within 10 years of the entry into force of UNCLOS for that state.⁷ The 11th Meeting of States Parties to the Convention in 2001 decided that states which had become parties to the Convention before May 13th 1999 would have their 10-year limit started to run from that date.⁸ All coastal states in the South China Sea had become parties to the Convention during 1990s. Therefore, they are automatically enrolled under this provision of Annex II of UNCLOS. Another decision reached in the 18th Meeting of Parties to the Convention in 2008 further added the possibility for states to submit preliminary documents before their final submissions. Regarding the preliminary information, it neither requires a coastal state to give specific coordinates of the outer limits of the continental shelf, nor will such data be used against the state before the final submission.⁹ Article 76(8) declares that the Commission would only

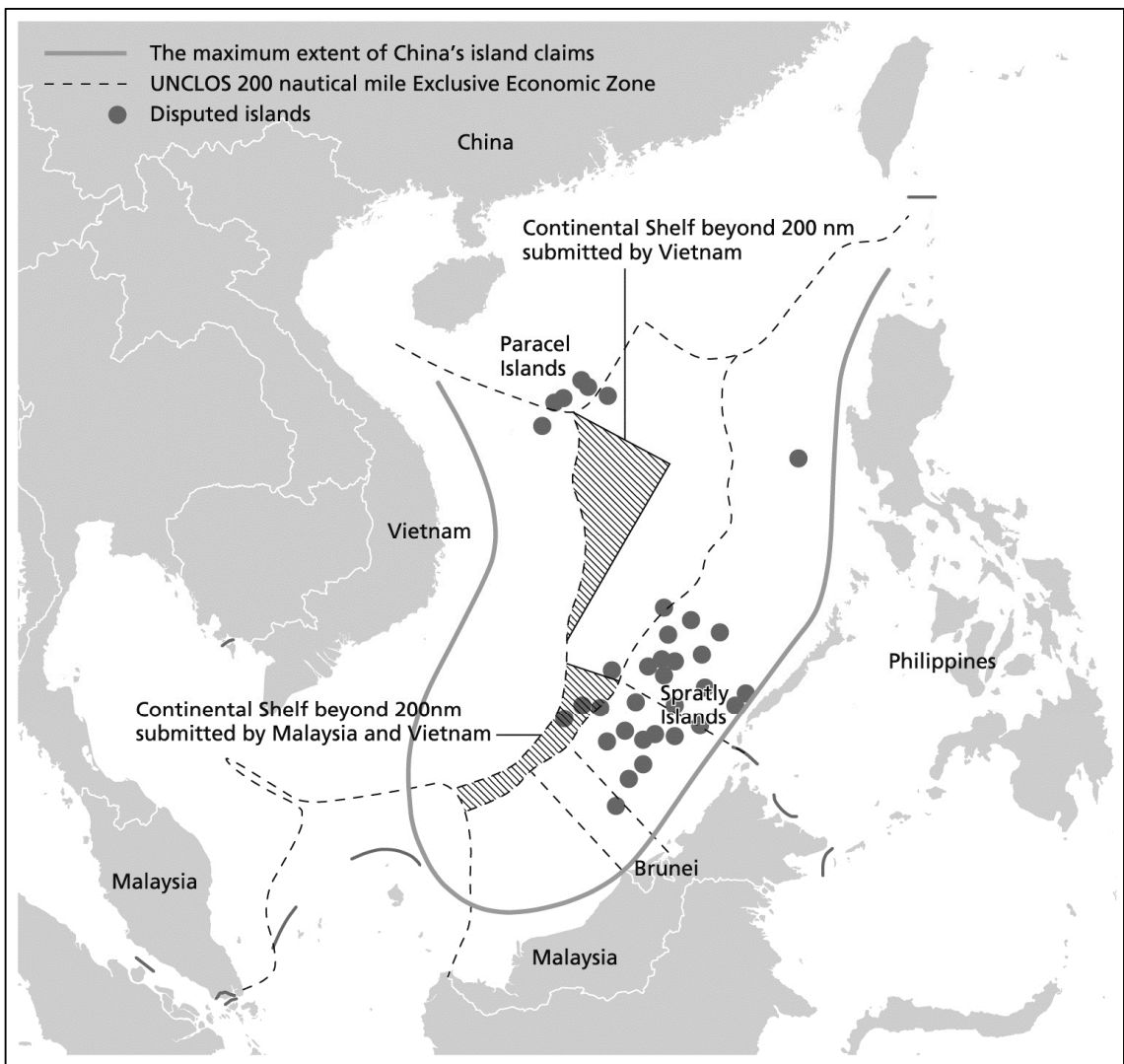
make recommendations to the final submission by a coastal state. Once established, the limits of the continental shelf are final and binding. In case a coastal state disagrees with the recommendations of the Commission, it would be allowed to revise the submission within a reasonable time.¹⁰

The interpretation of Article 76(8) creates a specific problem. If two or more coastal states decide to submit their outer limits to the CLCS, it is crucial to determine whose outer limits are to be considered final and binding for the whole area. Two different interpretations were proposed at the 2013 Center of International Law (CIL) Roundtable on the South China Sea. The first interpretation suggests that the outer limits only have final and binding effects on the coastal state making the submission in the first place. The second interpretation challenges the former by questioning whether a developing state would spend considerable time and effort just for the purpose of binding itself. It should be viewed as an attempt to have its outer limits recognized and respected by all members of the Convention. The statement made by the chairperson of the Committee on Legal Issues of the Outer Continental Shelf also supported this view, pointing out that ‘... only the coastal State is competent to establish the outer limit of its continental shelf. It would thus be impossible for an outer limit line that is final and binding on the coastal State not to be binding on other States or subjected to change’ (Elferink 2014, p.168).

Article 76(10) safeguards the impartiality of Article 76, stating that the article is without prejudice to the delimitation of the continental shelf between states with adjacent or opposing coasts – a common feature in the South China Sea. It is implied that the final and binding outer limits are not opposable in relation to a neighboring state. Article 9 of UNCLOS Annex II also establishes that the actions of the Commission shall not prejudice matters related to the delimitation of boundaries between neighboring states. Article 76(10) indicates that Article 76 as a whole is without prejudice to the delimitation of boundaries, but no specific course of action is prescribed for the coastal state making the submission. In contrast, Article 9 of UNCLOS Annex II instructs the Commission to ensure no prejudice arises from its actions. This requirement by Article 9 is explained in Rule 46 to the Rules of Procedure of the Commission on the Limits of the Continental Shelf.¹¹ It lays out a specific procedure to follow in case of disputes over delimitation of continent shelf or unresolved territorial and maritime disputes.¹² The procedure allows a coastal state to make a joint submission with other states and to limit its submission to a specific area. Paragraph 5 of Annex I clearly states that the submission containing a dispute will only be considered by CLCS with the prior consent of all states that are parties to the dispute. An executive summary of the submission must be published to notify other states of the submission, giving them the opportunity to establish whether there exists a dispute related to the submission.¹³

4. The outer limits of continental shelf beyond 200 nautical miles in the South China Sea:

In May 2009, Malaysia and Vietnam made a joint submission to the CLCS regarding the Spratly Islands.¹⁴ Vietnam also made a separate submission on the North Area of the Paracel Islands.¹⁵ Brunei has submitted preliminary data on the outer limits of its continental shelf. China and the Philippines have yet to make any submission regarding their outer limits in the South China Sea. China, however, has submitted its outer limits for the continental shelf in the East China Sea in 2012. The executive summary specified that the submission be without prejudice to any future submission of China in the East China



Map 2: The outer limits of continental shelf submitted by Malaysia and Vietnam.

Source: Author's creation based on UNCLOS documents.

Sea and other seas.¹⁶ The only ‘other sea’ for China to make another submission is the South China Sea. In its submission for the Benham Rise area in the Pacific Ocean, the Philippines stated that it reserved the rights to make submissions for other areas of continental shelf beyond 200nm.¹⁷ Similar to China, the Philippines implicitly points to possible submissions in the South China Sea.

The joint submission by Malaysia and Vietnam and the single submission by Vietnam contained an interesting feature. Both states defined their 200nm outer limits without making any reference to the disputed islands in the South China Sea. The defined areas are still within 200nm of either island groups. Malaysia and Vietnam, through their submissions, seemed to send a message that they considered the disputed islands as having no relevance in the delimitation of continental shelf boundaries for them. A different interpretation suggests that both coastal states might have wanted to demonstrate that their continental shelves rightfully extend into the area, regardless of who is in control of the island groups. The two submissions drew immediate attention from China. In its Note Verbale to the CLCS, China indicated that the submissions are serious infringements of China’s rights in the South China Sea, and requested the Commission not to consider the two submissions.¹⁸ The Philippines indicated that the joint submission covered areas under dispute in the North Borneo region. The Philippines also made a separate claim of existing dispute for Vietnam’s single submission, citing overlapping claims of continental shelf. The Philippines then requested the Commission not to consider the two submissions until after the disputes had been discussed and resolved.¹⁹

China and the Philippines’ Notes Verbales made no comment on the fact that Malaysia and Vietnam’s claims are located within 200nm of the two island groups in the South China Sea. For the Philippines, it could be interpreted as a lack of interest in arguing over the significance of the islands in relation to delimitation and maritime entitlements. For China, two elements should be considered. Firstly, China is well known for its main argument based on historic waters and title in the South China Sea. If China wishes to persist with this argument, then the status of the islands under Article 121(3) of UNCLOS is not an issue. Secondly, China has taken the position that its continental shelf beyond 200nm extends into the area within the 200nm limit of Japan. If China were to take a different position in the South China Sea, it would face the risk of being inconsistent in its legal position. Malaysia and Vietnam responded to China and the Philippines’ objections through diplomatic notes and in the presentations to the Commission in August 2009.²⁰ The two states held that the submissions follow the obligations for states parties to UNCLOS. Both states indicated that the disputes mentioned by China and the Philippines had no basis under international law to challenge the submissions. Vietnam, in addition, made a comment that it had indisputable sovereignty over the Paracel and Spratly Islands. Therefore, any territorial

dispute claimed by China should not be considered as a dispute under paragraph 5 of the Rules of Procedure.

After the 24th session, the Commission made the decision to ‘...defer further consideration of the submission and the Notes Verbales until such time as the submission is next in line for consideration as queued in the order to take into consideration any further developments that might occur throughout the intervening period during which States may wish to take advantage of the avenues available to them’.²¹ The postponement of a decision until its turn is a typical response for submissions containing territorial and/or maritime disputes. As of 2015, the joint submission by Malaysia and Vietnam is ranked 33rd, and the submission by Vietnam is ranked 37th on the List of Submissions to the CLCS through the Secretary-General of the United Nations. Elferink (2014) predicted that the Commission would have to consider the question whether or not to establish a sub-commission for the two submissions within a few more years. During this period, states parties to the disputes may negotiate to get the prior consent from all members. Upon acquiring the prior consent, the Commission will be able to give the final decision, in accordance with paragraph 5(a) of Annex I to its Rules of Procedure, on the question whether these are disputes related to the submissions. Considering the statements given by China and the Philippines, it is unlikely for this turn of events to be realized in the near future. In the absence of prior consent, the CLCS will have to decide on two matters: whether the dispute is related to the submissions, and whether it has jurisdiction to consider those submissions. Article 9 of UNCLOS Annex II again calls for a careful approach by the Commission in interpreting the matter.

From its Notes Verbales, China clearly indicates there exists a dispute related to territorial sovereignty over the islands and the status of waters in the South China Sea. The Philippines also considers there to exist a dispute concerning the delimitation of maritime boundaries regarding Vietnam’s submission and a territorial dispute regarding the joint submission by Malaysia and Vietnam. Based on the text of Annex I to the Rules of Procedure, there is little doubt that the provision is intended to cover the types of dispute mentioned by China and the Philippines. The Commission will likely find that there are disputes related to the submissions, and subsequently trigger paragraph 5 of the Rules of Procedure. In case paragraph 5 is triggered, the Commission will decide to reject further proceeding.²² It is possible that the Philippines may decide to change its position on its claims. Subsequently, China alone will have to handle two pending legal cases: the East China Sea case versus Japan, and the South China Sea case versus Brunei, Malaysia, the Philippines and Vietnam. In such an event, China will need to be particularly careful of its statements submitted to the CLCS to prevent any inconsistency. At the moment, the attempt to establish outer limits of continental shelf in South China Sea seems to end in a deadlock.

5. The need for temporary outer limits of continental shelf beyond 200 nautical miles and the status of individual islands in the absence of final and binding limits:

The focus now shifts to what options a coastal state can take in case of a negotiation deadlock over existing territorial and/or maritime disputes. Article 279 of Part XV instructs states to make efforts in solving any dispute concerning the interpretation or application of the Convention. If no settlement has been reached after the exhaustion of all options, the dispute may be submitted for compulsory dispute settlement methods. Section 3 of Part XV places the limitations and exceptions on the applicability for compulsory dispute settlement remedies. Unfortunately, matters related to the establishment of the outer limits of continental shelf in Article 76 are not covered within Section 3. A submission by either Malaysia or Vietnam for compulsory dispute settlement will not pass the preliminary proceeding phase, for it does not explicitly refer to ‘disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations’.²³ Moreover, China has invoked its reservation against procedures provided in Section 2 with respect to all categories of dispute listed under Article 298. This means China will be able to challenge the competence of many arbitrary mechanisms provided by UNCLOS.

Without the final and binding limits established through the recommendation of the CLCS, under what legal regime should Brunei, Malaysia and Vietnam follow? On this matter, UNCLOS does not provide a meaningful prescription. Nevertheless, articles under Part VI of the Convention may be interpreted as supporting the idea that a coastal state is entitled to exercise its rights over the continental shelf beyond 200nm before final and binding limits have been established. For instance, Article 77(3) mentions that the rights of a coastal state over the continental shelf do not depend on occupation or on any express proclamation. In the context of the South China Sea, it means the rights of coastal states in the area do not depend solely on the establishment of the outer limits of the continental shelf in accordance with Article 76. The role of the Commission is not to pronounce or validate the entitlement to the continental shelf beyond 200nm, but rather to determine and supervise whether the outer limits have been established in accordance with Article 76. In other words, the determination of the outer edge of the continental margin is conducted under the assumption of a pre-existing continental shelf entitlement. If the entitlement does not exist in the first place, then the Commission has to conclude that it cannot recommend any coastal state to establish the outer limits beyond 200nm. Article 76(2) declares that the continental shelf of a coastal state shall not extend beyond the limits provided for in paragraph 4 to 6: beyond 200nm but not exceeding 350nm at maximum range. By supporting paragraph 4, it is again suggesting that a continental shelf entitlement exists up to the limits contained in paragraph 4 to 6, even before the coastal state is required to establish its outer limits and submit the information to the CLCS.

Two matters must be considered if the rights to continental shelf beyond 200nm do not depend on Article 76. The first matter is how states may define the temporary outer limits. It is suggested that in the absence of final and binding limits, the limits documented in the submission by a coastal state to the CLCS could be considered to be the temporary outer limits of its continental shelf (Elferink 2014, p.185). The Commission might not adopt these limits to be the final and binding limits in accordance with Article 76(8). The second matter is whether a coastal state is allowed to exercise its rights over the continental shelf beyond 200nm without the final and binding limits. Provisions under Part VI of UNCLOS, again, do not point to a clear-cut distinction between exercise rights within or beyond 200nm. In case of disputes over the exercise of continental shelf rights, it will be up to the concerned states to seek suitable solutions for such disputes. The International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS) and compulsory settlement mechanisms provided by UNCLOS would be competent to deal with questions regarding Article 76.

As pointed out above, Malaysia and Vietnam implied that their outer limits extended close within the 200nm area of the Paracel Islands and Spratly Islands. This fact constitutes an important problem to be considered: the relation between the entitlements to the islands up to 200nm and the continental shelf entitlement beyond 200nm. ITLOS's judgment in the case of Bangladesh vs. Myanmar regarding the Bay of Bengal might be useful as reference points. Bangladesh stated that part of its continental shelf extended well beyond 200nm and requested the delimitation for this part in relation to Myanmar's EEZ. Myanmar objected to Bangladesh's claim, citing such a continental shelf entitlement would infringe the rights of Myanmar's EEZ and its entitlement to the continental shelf beyond 200nm limit. The Tribunal observed that there was no dispute on the matter of delimiting the EEZ between Bangladesh and Myanmar due to the lack of overlapping points. It reminded both states that UNCLOS made a clear distinction between the rights of a coastal state over islands and water column versus the rights over the seabed and subsoil. Therefore, it was concluded that both parties have their rights in respect to the seabed and subsoil delimited through the continental shelf boundary, but such delimitation does not infringe upon Myanmar's rights over the water column or its EEZ.²⁴

Under Article 121(3) of the Convention, maritime features that stay above the water at high tide and not under the definition of rocks are considered islands and entitled to have EEZs. However, small size maritime features that cannot sustain human habitation or economic life of their own shall not be considered for the entitlement of EEZ. Few islands from both the Paracel and Spratly Islands can fulfill all criteria set out by Article 121, and claimants in the territorial disputes have occupied most of them. In the case of an overlapping EEZ of an island with the continental shelf beyond 200nm, the coastal state that has sovereignty over the concerned island is entitled to exercise its water column right

within the 12nm territorial sea of the island. In the case of overlapping continental shelf, a different delimitation is required between the mainland coasts and the islands concerned. In light of the jurisprudence of ICJ and ITLOS, it is unlikely that individual islands in the South China Sea will be considered more important than the EEZs, median lines or distances from the coasts during delimitation proceedings. Consequently, individual islands in the South China Sea would only be entitled to a 12nm territorial sea at best.

6. Conclusion:

The existence of a continental shelf beyond 200nm miles from the territorial coasts of neighboring states in the South China Sea has important implications for the maritime disputes in the South China Sea. In the absence of this continental shelf entitlement, international law would recognize the center of the South China Sea as part of the continental shelf of the Paracel and Spratly Islands. However, there is in fact a co-existed area between the continental shelf beyond 200nm and the 200nm zones of the two island groups. This put the provisions of Article 76 of UNCLOS into focus for legal proceedings in delimitation of maritime entitlements.

Through information submitted to the CLCS on the outer limits of the continental shelf beyond 200nm, Malaysia and Vietnam have promoted an interesting opinion towards the disputes in the South China Sea. This new opinion suggested that maritime delimitation of the South China Sea might be achievable by focusing on the delimitation of continental shelf. It also implied that islands under Malaysian and Vietnamese control in the overlapping area have no importance in the delimitation of the continental shelf. If the ICJ, ITLOS and other tribunals were to play their parts in the settlement of the disputes involving the islands, it would allow Malaysia and Vietnam to gain large shares of the continental shelf at the center of the South China Sea. It will be hardly surprising if Brunei and the Philippines decide to follow suit in the near future, for their interests lie in the seabed and subsoil of the South China Sea, not over the sovereignty of a few islands. It is unclear whether China will consider moving towards the same approach for the South China Sea disputes. On one hand, by claiming a continental shelf that extends into 200nm of Japan's continental shelf in the East China Sea, China cannot openly reject similar claims by other states in the South China Sea. On the other hand, changing from its historic waters and title claim to the new approach will greatly diminish China's maximum range of claim. Still, China would be able to claim a substantial part of the continental shelf measuring from the southeast of Hainan Island. It is possible to conclude that there will be no decisive change on China's part in the near future.

Meanwhile, without the prior consent by all concerned states, it is impossible for the CLCS to judge the two submissions. This presented significant challenges for coastal states in South China Sea to exercise their rights in relation to the seabed and subsoil of disputed

areas. UNCLOS does not provide direct answer on the matter, but hints at the possibility to draw up temporary outer limits of the continental shelf until the final and binding limits are concluded. As states parties to UNCLOS have the primary obligations to submit the information on the outer limits of their continental shelf, it helps to bring in a new approach for peaceful resolution of the sovereignty disputes. The consideration for the entitlement of the continental shelf will continue to play a role in the legal debate of the disputes in the South China Sea.

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Notes

- ¹ Although Taiwan has occupied a number of features in the Spratly Islands, it will not be considered for entitlement of continental shelf in this article.
- ² UNCLOS, Article 76(1).
- ³ The continental margin is comprised of the seabed and subsoil of the continental shelf, the slope and the rise as defined by Article 76(3). It does not include the deep ocean floor thereof.
- ⁴ UNCLOS, Article 76(4)(a).
- ⁵ UNCLOS, Article 76(5).
- ⁶ UNCLOS, Article 76(7).
- ⁷ UNCLOS, Annex II, Article 4.
- ⁸ SPLOS/72. 2001.
- ⁹ SPLOS/183. 2008.
- ¹⁰ UNCLOS, Annex II, Article 8.
- ¹¹ Rules of Procedure of the Commission on the Limits of the Continental Shelf (CLCS/40/Rev.1 2008) herein after referred to as Rules of Procedure.
- ¹² Rules of Procedure, Rule 46(1).
- ¹³ Rules of Procedure, Rule 50.
- ¹⁴ Malaysia and Vietnam. 2009. Joint submission executive summary.
- ¹⁵ Vietnam. 2009. Partial submission executive summary.
- ¹⁶ China. 2012. Submission executive summary.
- ¹⁷ The Philippines. 2009. Partial submission executive summary.
- ¹⁸ Note Verbale CML/17/2009 reaction to Malaysia, and Note Verbale CML/18/2009 reaction to Vietnam.
- ¹⁹ Note Verbale No 000818 on the joint submission, and Note Verbale No 000819 on the North Area submission by Vietnam.

²⁰ Note Verbale HA 24/09 reaction of Malaysia to China, Note Verbale HA 43/09 reaction of Malaysia to the Philippines, Note Verbale 86/HC-2009 reaction of Vietnam to China, and Note Verbale 240/HC-2009 reaction of Vietnam to the Philippines.

²¹ See paragraphs 87-92 and paragraphs 102-106 of the Statement by the Chairman of the Commission on the progress of work in the Commission at the 24th session (CLCS/64, 2009).

²² There is an exception to this pattern, as in the case between Venezuela versus Guyana. There is a standing territorial dispute between Guyana and Venezuela; therefore no prior consent was given by Venezuela for Guyana's submission to the CLCS. The Commission, however, decided to establish a sub-commission for considering Guyana's case. See paragraph 41 of CLCS/74 of 2012 for the full decision.

²³ Article 298(1)(a)(i).

²⁴ ITLOS Bangladesh/ Myanmar Judgment 2012, para. 471-476.

References

- Beckman, R., Townsend-Gault, I., Schofield, C., Davenport, T. & Bernard, L. (Eds.). 2013. *Beyond Territorial Disputes in the South China Sea*. Northampton: Edward Elgar Publishing.
- Buszynski, Leszek & Sazlan, Iskandar 2007. Maritime claims and energy cooperation in the South China Sea. *Contemporary Southeast Asia*. Vol. 29. No. 1. pp. 143-171.
- Elferink, Alex O. 2014. 'Do the coastal states in South China Sea have a continental shelf beyond 200 nautical miles?' in Jayakumar, S., Koh, T. & Beckman, R. (Eds.). 2014. *The South China Sea Disputes and Law of the Sea*. pp. 164-191. Northampton: Edward Elgar Publishing.
- Hyer, Eric 1995. The South China Sea Disputes: Implications of China's Earlier Territorial Settlements. *Pacific Affairs*. Vol. 68. No.1. pp. 34-54.
- Jayakumar, S., Koh, T. & Beckman, R. (Eds.). 2014. *The South China Sea Disputes and Law of the Sea*. Northampton: Edward Elgar Publishing.
- Kaplan, Robert D. 2014. *Asia's cauldron: the South China Sea and the end of a stable Pacific*. New York: Random House.
- Malaysia and Socialist Republic of Vietnam. 2009. *Joint Submission to the Commission on the Limits of Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect of the southern part of the South China Sea*. Executive summary. http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009executivesummary.pdf (April 8, 2015).
- McDorman, Ted L., 'Rights and Jurisdiction over resources in the South China Sea: UNCLOS and the nine-dash line' in Jayakumar, S., Koh, T. & Beckman, R. (Eds.). 2014. *The South China Sea Disputes and Law of the Sea*. pp. 144-163. Northampton: Edward Elgar Publishing.
- Nguyen, Thao H. 2000. Vietnam and the Code of Conduct for the South China Sea. *Ocean Development & International Law*. Vol. 32. No. 2. pp. 105-130.
- Nishimoto, Kentaro 2014. 'Strategies and Prospects for Settlement of Maritime Disputes in the South China Sea under Part XV of UNCLOS.' Japan Chapter of the Asian Society of International Law, Conference paper, Tokyo.
- Park, Choon-ho 1978. The South China Sea disputes: Who own the islands and the natural resources? *Ocean Development & International Law*. Vol. 5. No.1. pp. 27-59.
- People's Republic of China. 2012. *Submission by the People's Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 nautical miles in part of the East China Sea*. Executive summary. http://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/executive%20summary_EN.pdf (April 8, 2015).

- Republic of the Philippines. 2009. *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*. Executive summary. http://www.un.org/depts/los/clcs_new/submissions_files/phl22_09/phl_esummary.pdf (April 8, 2015).
- Roque, Harry L. 2014. 'Challenging UNCLOS: the Chinese Snub of the Philippines Arbitral Claim to the West Philippine Sea.' Japan Chapter of Asian Society of International Law, Conference paper, Tokyo.
- Schofield, Clive. 2013. 'What's at stake in the South China Sea? Geographical and Geopolitical Considerations' in Beckman, Robert et al (Eds.). *Beyond Territorial Disputes in the South China Sea*. pp. 34-44. Northampton: Edward Elgar Publishing.
- Socialist Republic of Vietnam. 2009. *Submission to the Commission on the Limits of Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 – Partial submission in respect of Vietnam's extended continental shelf: North Area (VNM-N)*. Executive summary. http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/vnm2009n_executivesummary.pdf (April 8, 2015).
- Song, Yann-huei & Tønnesson, Stein D. 2014. 'The Impact of the Law of the Sea Convention on Conflict and Conflict Management in the South China Sea.' *Ocean Development and International Law*. Vol. 44. pp. 235-269.
- Talmon, Stefan & Jia, Bing Bing (Eds.). *The South China Sea Arbitration: A Chinese Perspective*. Portland: Hart Publishing.
- Talmon, Stefan. 2014. 'The South China Sea Arbitration: Is There a Case to Answer?' in Talmon, Stefan & Jia, Bing Bing (Eds.). *The South China Sea Arbitration: A Chinese Perspective*. pp. 15-80. Portland: Hart Publishing.
- The International Tribunal for the Law of the Sea. 2012. *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*. Hamburg. https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/1-C16_Judgment_4_02_2012.pdf (April 8, 2015).
- Tønnesson, Stein D. 2000. Vietnam's Objective in the South China Sea: National or Regional Security? *Contemporary Southeast Asia*. Vol. 22. No.1. pp. 199-220.
- United Nations. 1982. United Nations Convention on the Law of the Sea. New York. http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (April 1, 2015).
- United Nations. 2001. *Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea*. SPLOS/72. New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/387/64/PDF/N0138764.pdf?OpenElement> (April 8, 2015).

- United Nations. 2008. *Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfill the requirements of article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph(a)*. SPLOS/183. New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement> (April 8, 2015).
- United Nations. 2008. *Rules of Procedure of the Commission on the Limits of the Continental Shelf*. New York. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement> (April 1, 2015).
- United Nations. 2013. *Declarations or Statements upon UNCLOS ratification*. New York. http://www.un.org/depts/los/convention_agreements/convention_declarations.htm (April 1, 2015).
- Valencia, Mark J. 1988. The Spratly Islands: Dangerous ground in the South China Sea. *The Pacific Review*. Vol. 1. No. 4. pp. 438-443.
- Zhiguo, Gao & Jia, Bing Bing 2013. The Nine-Dash Line in the South China Sea: History, Status, and Implications. *The American Journal of International Law*. Vol. 107. No. 1. pp. 98-124.