

AGORA: THE SOUTH CHINA SEA

EDITORS' INTRODUCTION

*By Lori Fisler Damrosch and Bernard H. Oxman**

The disagreements among states bordering the South China Sea pose extraordinarily complex legal issues. Sovereignty over small islands that lie at some distance from the continental and insular coasts that surround the sea is contested. So are the maritime entitlements generated by these features. Notably, rocks that cannot sustain human habitation or economic life of their own generate no entitlement to an exclusive economic zone (EEZ) and continental shelf beyond a twelve-mile territorial sea, which may be the case for many of the disputed islands.¹ Yet another series of questions relates to the delimitation of overlapping maritime entitlements, including the relative effect to be accorded entitlements generated by these small islands vis-à-vis those generated by the continental and insular coasts that surround the South China Sea.²

Quite apart from the legal complexity of the foregoing issues, visualizing the geographic context in which they arise is itself a challenge. To facilitate recognition of differences between types of lines and areas, we present on the next page a map rendered in color (an innovation for the *Journal*), which has been prepared by Clive Schofield and Andi Arsana of the Australian National Centre for Ocean Resources and Security.³

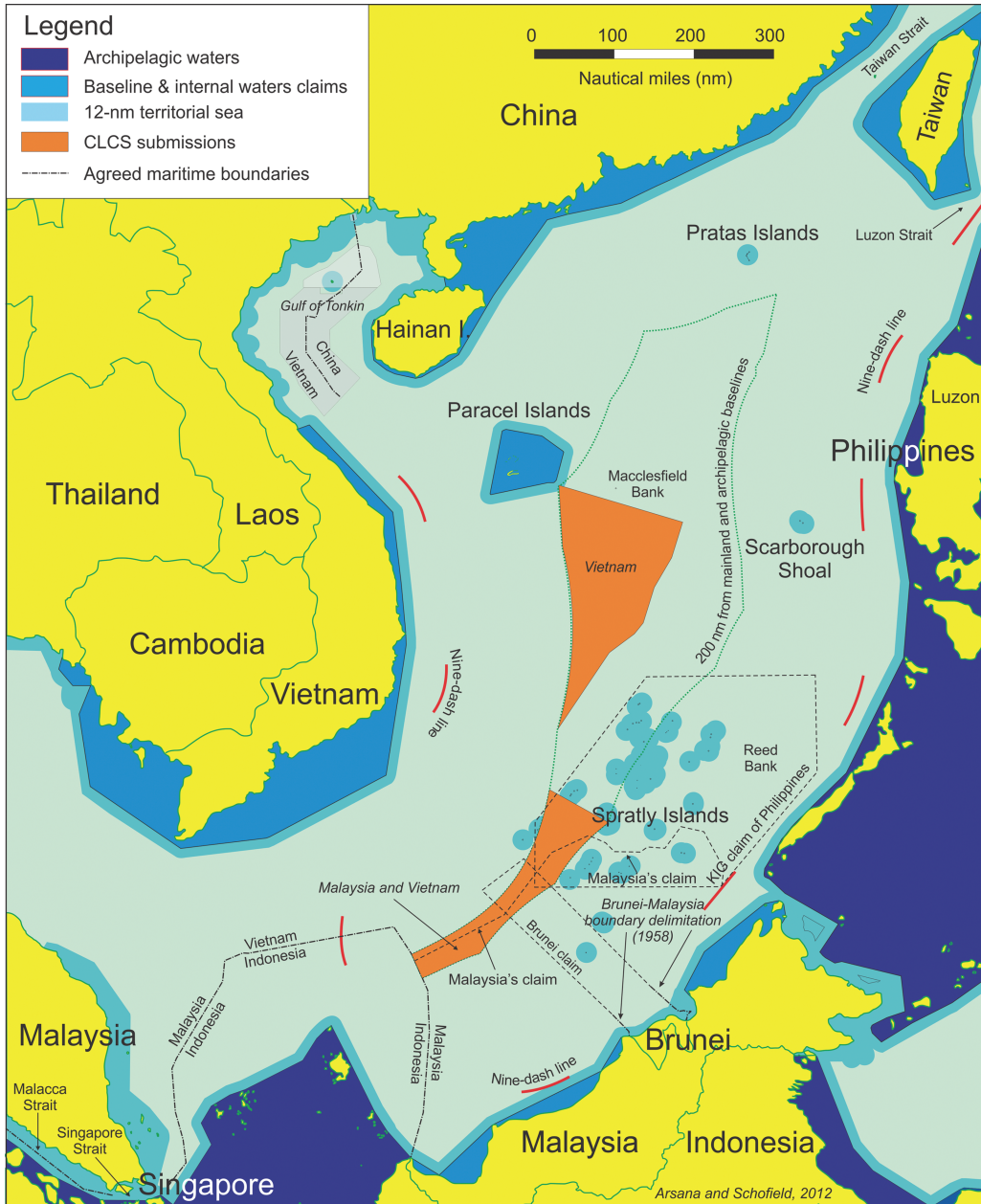
We endeavored to keep the map as simple as possible. The 200-mile limit of the EEZ is illustrated only with reference to baselines drawn by the coastal states along the continental and insular coasts that surround the South China Sea. It is shown in green. Islands and other features are identified by commonly used English names. The same features are known by other

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¹ As “a naturally formed area of land, surrounded by water, which is above water at high tide,” such a rock would come within the definition of an island and accordingly would generate a territorial sea extending up to twelve nautical miles; but “[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” UN Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397, Art. 121. The convention is available at <http://www.un.org/Depts/los/index.htm>.

² *See id.*, Arts. 15, 74, 83. The effect of certain small islands on delimitation of overlapping maritime entitlements between states with opposite or adjacent coasts was recently addressed by the International Court of Justice in *Maritime Delimitation in the Black Sea* (Rom. v. Ukr.), 2009 ICJ Rep. 61 (Feb. 3) (reported by Coalter Lathrop at 103 AJIL 543 (2009)), and *Territorial and Maritime Dispute* (Nicar. v. Colom.), 2012 ICJ Rep. 1 (Nov. 19), and by the International Tribunal for the Law of the Sea in *Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal* (Bangl./Myan.), ITLOS Case No. 16 (Mar. 24, 2012) (reported by D. H. Anderson at 106 AJIL 817 (2012)).

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names in different languages and places. The authors of the first essay in the Agora focus on Chinese law and practice; they use the Chinese names of the relevant features but identify the corresponding English names. Occasionally in the pages below, the names used by the Philippines or Vietnam are also mentioned. Since it would not have been feasible to display all the parallel names on the map, we provide here for ease of reference a list of the main features on the map that are sometimes referred to in the essays that follow by other than English names:

Paracel Islands

Xisha Islands = Chinese name for Paracel Islands
Hoang Sa Islands = Vietnamese name for Paracel Islands
Yong Xing = Chinese name for Woody Island

Spratly Islands

Nansha Islands = Chinese name for Spratly Islands
Kalayaan Island Group (KIG) = Philippine name for group in the Spratly Islands
Truong Sa Islands = Vietnamese name for Spratly Islands
Tai Ping = Chinese name for Itu Aba

Dongsha Islands = Chinese name for Pratas Islands

Zhongsha Islands = Chinese name embracing Macclesfield Bank and certain rocks, sandbanks, and reefs

Huang Yan = Chinese name for Scarborough Shoal or Reef

The nine-dash line that surrounds much of the South China Sea has attracted widespread attention since it was shown on a map attached to China's *note verbale* requesting the Commission on the Limits of the Continental Shelf not to consider the joint submission of Malaysia and Vietnam.⁴ The line is illustrated in red on the map prepared for this Agora. Its significance is among the important issues addressed by the essays that follow, each of which was submitted independently of the others.

On January 22, 2013, after the three essays here were already in press, the Philippines initiated arbitration proceedings against China under Section 2 of Part XV and Annex VII of the United Nations Convention on the Law of the Sea.⁵ The notification and statement of claim raise a number of the legal issues highlighted in the Agora, including (non-exclusively) whether China's nine-dash-line claim is consistent with UNCLOS, whether certain of the disputed features qualify as islands or rocks under UNCLOS, and whether China has interfered with the lawful exercise by the Philippines of its rights within its own maritime zones. As indicated, the essays presented here were prepared before the initiation of dispute settlement proceedings and do not take account of them.

⁴ Note Verbale CML/17/2009 from the Permanent Mission of the People's Republic of China to the UN Secretary-General (May 7, 2009), at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf. This request is discussed in all three essays of the Agora.

⁵ The notification and statement of claim are available at http://www.dfa.gov.ph/index.php/downloads/doc_download/523-notification-and-statement-of-claim-on-west-philippine-sea.