

# **Coastal States in the South China Sea and Submissions of the Outer Limits of the Continental Shelf**

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Paper prepared for  
The Sixth ABLOS Conference  
Hosted by the International Hydrographic Bureau  
Monaco 25-27 October 2010

## **Abstract**

The main aim of this study is to examine the submissions of the outer continental shelf made by coastal states of the South China Sea and the potential impact for the developments in the South China Sea. In accordance with the United Nations Convention on the Law of the Sea of 1982 (UNCLOS 1982) and the guidelines of the Commission on the Limits of the Continental Shelf, the establishment of extended continental shelf constitutes an obligation. However, the implementation of the guidelines to extend the continental shelves in the narrow enclosed or semi-enclosed seas where there are maritime disputes such as in the South China Sea is complicated. According to the UNCLOS 1982 coastal states must meet a double requirement: how to fulfil the obligation of making submissions of the outer limit of the continental shelf in time and how to do so without prejudice to the rights of the regional community and other neighbouring states.

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# **Coastal States in the South China Sea and Submissions of the Outer Limits of the Continental Shelf**

## **Introduction**

The main aim this study is to examine the submissions of the outer continental shelf made by states of the South China Sea and the potential impact for the developments in the South China Sea. In accordance with the United Nations Convention on the Law of the Sea of 1982 (UNCLOS 1982) and the guidelines of the Commission on the Limits of the Continental Shelf (CLCS), the establishment of extended continental shelf constitutes an obligation. However, the implementation of the guidelines to extend the continental shelves in the narrow enclosed or semi-enclosed seas where there are maritime disputes such as in the South China Sea is complicated. According to the UNCLOS 1982 coastal states must meet a double requirement: how to fulfil the obligation of making submissions of the outer limit of the continental shelf in time and how to do so without prejudice to the rights of the regional community and other neighbouring states. The best option is cooperation, mutual understanding between regional coastal states based upon on a correct and objective interpretation of the UNCLOS 1982 as well as in line with the guidelines of the CLSC.

## **Continental Shelf beyond 200 nautical miles and the work of the CLCS**

UNCLOS 1982 entered into force over 15 years ago, i.e. in 1994. In accordance with the provisions of the UNCLOS 1982, each coastal state has the right to have a 12-miles territorial sea, 200 nautical miles exclusive economic zone (EEZ), and the continental shelf. The later comprises the sea-bed and subsoil of the submarine areas that extend beyond its

territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.<sup>1</sup> In accordance with the UNCLOS 1982, each coastal member has right to have at least a continental shelf of 200 nautical miles. Depending on the natural characters of its continental margin, a group of coastal states has a right to claim the continental shelf extended beyond the distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. This claim can be established by either:

- (i) a line of the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the continental slope; or
- (ii) line of the outermost fixed points not more than 60 nautical miles from the foot of the continental slope. In both cases, the line of the outermost fixed points shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or either shall not exceed 100 nautical miles from the 2,500 metre isobaths, which is a line connecting the depth of 2,500 metres.<sup>2</sup>

Article 76, paragraph 8, of the UNCLOS 1982 further states that:

“Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographic representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established on the basis of these recommendations shall be final and binding.”<sup>3</sup>

Article 76 of the UNCLOS 1982 refers to coastal States without being qualified as States Parties. It is noted that article 76 of the UNCLOS 1982 refers to two concepts of continental shelves. One is the concept of the continental shelf of 200 nautical miles from the baseline that was already part of customary international law prior to the Third United Nations Conference on the Law of the Sea and which applies to all coastal States, States Parties and non-States Parties to the UNCLOS 1982 may claim a 200 nautical miles continental shelf.<sup>4</sup> The other is the concept of the continental shelf beyond 200 nautical miles from the baseline which is a result of an agreement among the States Parties to the UNCLOS 1982. The continental shelf beyond 200 nm does not come under customary international law. The CLCS is an organ of the Meeting of States Parties to the UNCLOS 1982. This implies that only Coastal States Parties of the UNCLOS 1982 have the right to claim the continental shelf beyond 200 nautical miles. They have obligations to submit the report on outer limit of the continental shelf to the CLCS for examination.

According to Annex II, Article 4, of the UNCLOS 1982, the time of the submission to the CLCS must be within 10 years of the entry into force of the UNCLOS 1982 for coastal States Parties.<sup>5</sup> However, the final deadline was modified and fixed at 13 May 2009 through a decision on 29 May 2001 at the eleventh meeting of the UNCLOS 1982 States Parties.<sup>6</sup> The UNCLOS 1982 and decisions of the meetings of the UNCLOS 1982 States Parties have stipulated that States Parties have 15 years to plan and prepare a legal claim over the continental shelf to the United Nations. Up to 13 May 2009, any country that has not made either a submission or preliminary information indicative will be considered to have no interest to the extended continental shelf over the 200 nautical miles measured from its baselines.

From the above-mentioned analyses the coastal States Parties can choose one of three options to express its intentions relating to the extension of the continental shelf beyond 200 nautical miles.

- 1) Provide the final submission of the outer limit of the continental shelf extending beyond the 200 nautical miles distance measured from the baselines of any given state. A country can make a full or partial submission. It can make one or a number of partial submissions instead of a full submission for the whole area. According to Section 4 of Annex I of the CLCS's Rules of Procedures two or more coastal States can make a joint submission.<sup>7</sup>
- 2) Provide to the Secretary-General of the United Nations preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the CLCS.<sup>8</sup>
- 3) Make objections to submissions of the other coastal States Parties that may prejudice its right.<sup>9</sup>

As stated in Article 76, paragraph 8 and in Art. 4 Annex II of the UNCLOS 1982<sup>10</sup> the process of defining the outer limit of the extended continental shelf encompasses several phases. In the first phase, a coastal state conduct the scientific survey and collect data to assess where it intends to establish, in accordance with article 76 of the UNCLOS 1982 and

the rules of the CLCS, the outer limits of its continental shelf beyond 200 nautical miles. The decision to make a submission or not unilaterally is made by the coastal state by taking into account the collected and analyzed geodetic data as well as the attitudes of neighbouring countries. It is limited also by the obligation of the coastal state to not affect the rights of others, including the interest of world community and concerned states. The interest of the world community will be safeguarded by the consideration of the CLCS. The interest of concerned states will be taken in account by the mutual understanding before submitting a report to the CLCS. However, it is not easy to define those rights due to the different interpretation of concerned parties in regard of the provisions of the UNCLOS 1982. In case there is a dispute in the delimitation of continental shelf between opposite or adjacent coastal States or other states in cases of unresolved land or maritime disputes, the submissions may be made and considered also by the Rule 46 of the Rules of Procedure of the CLCS.<sup>11</sup> In the second phase, the CLCS will evaluate the submission to balance the right of the submitted country and the world community. The received information will be verified by the CLCS from the scientific and technical view in the legal framework of the UNCLOS 1982.

Prior to the second phase, for the submissions to which there are objections from the neighbour countries, the CLCS must evaluate the legal nature and content of those objections. If the objection is accepted by the CLCS the submission will be not examined by the CLCS. The concerned parties must find an acceptable solution before resubmitting the report to the CLCS. If the objection is not accepted by the CLCS then the second phase can be initiated. The submission can be viewed by either the full CLCS or by a Sub-Commission composed of seven members, unless the CLCS decides otherwise. A coastal

State that has made a submission to the CLCS may send its representatives to participate in the relevant proceedings without the right of veto.<sup>12</sup> It may establish the outer limits of its juridical continental shelf wherever the continental margin extends beyond 200 nautical miles by establishing the foot of the continental slope, by meeting the requirements of article 76, paragraphs 4-7, of the UNCLOS 1982 Convention. The CLCS or its Sub-Commission must evaluate whether the formula applied by the coastal state to define the edge of continental shelf is correct, i.e. the Gardiner, or Hedberg formula or the combination of both formulas. For the cases where there is a dispute relating to the delimitation of continental shelf between opposite or adjacent coastal States, the action of the CLCS shall not prejudice matters relating to the delimitation of boundaries between States.<sup>13</sup> In cases where a land or maritime dispute exists, the CLCS may consider one or more submissions in the areas under dispute with prior consent given by all States that are parties to such a dispute. The concerned parties can either join in the prior submission made by one or two parties or agree to make a new joint submission to the CLCS. Moreover, all the submissions made before the CLCS and the recommendations approved by the CLCS thereon shall not prejudice the position of States that are parties to a land or maritime dispute.<sup>14</sup> At the end of the second phase, the Sub-Commission must submit its recommendation to the CLCS. The recommendations approved by the CLCS shall be submitted in writing to the coastal State that made the submission and to the Secretary-General of the United Nations.

If the recommendations of the CLCS are accepted by the coastal State, the third phase will follow. In the case of disagreement by the coastal state with the recommendations of the CLCS, the coastal state shall, within a reasonable time, make a revised or new

submission to the CLCS.<sup>15</sup> In the third phase, the coastal state and CLCS cooperate in order to revise the submission in accordance with the recommendations. “The advisory process” can be prolonged several times until the coastal state’s submission (revised or new) is in line with the CLCS’s recommendations.

The fourth phase is the procedure by which the coastal state shall establish the outer limits of the continental shelf in conformity with the provisions of article 76, paragraph 8, and in accordance with the appropriate national procedures.<sup>16</sup> The coastal State and CLCS will report relevant data and map to the Secretary-General of the United Nations and to the Secretary-General of the International Seabed Authority for registration.<sup>17</sup> The revised outer limit of continental shelf beyond 200 nautical miles on the basis of recommendations of CLCS will be recognized as the final delimitation and will be binding for the coastal state and the rest world community.<sup>18</sup>

In theory, such final delimitation is reached only in the area where the distance between the two opposite states is more than 400 nautical miles and the existence of an international seabed in that area is recognized. In the seas, where the overlapping claims exist, the final delimitation in this respect rests with the coastal states. The CLCS has no competence to deal with overlapping claims. The function of the organ is to evaluate the scientific content in the coastal state’s claim to the continental shelf beyond 200 nautical miles from its baseline. The recommendation of the CLCS does not constitute a solution for maritime or sovereign disputes.

Even in case there are no objections from concerned countries to the submissions, the final solution is not easy to reach in a short time frame. The first obstacle for the CLCS is the considerable number of submissions to be considered for the small staff of the CLCS.



From 1994 to 2008, only nine submissions were sent to the CLCS for evaluation. All of them were sent back to the submitted parties by the CLCS for preparations of revised submissions.<sup>19</sup> Until 26 July 2010, the CLCS has received 53 submissions from 46 coastal State Members.<sup>20</sup> The time needed for the CLCS to give recommendation can be illustrated by the following. On 31 March 2009 the CLCS gave its recommendation on the submission of Mexico in respect of the western polygon in the Gulf of Mexico and then on 15 April 2010 the CLCS gave its two latest recommendations on the submission by Barbados and the submission by the United Kingdom of Great Britain and Northern Ireland relating to Ascension Island, respectively. With the current rate of two submissions evaluated each year, it will take until 2037 before the CLCS can verify and give recommendations for all 53 registered submissions.<sup>21</sup> In addition of the full submissions, 45 preliminary information indicatives and 11 Communications relating to preliminary information have been submitted by States to the CLCS.<sup>22</sup>

In fact, the continental shelf is not *unique* for the whole coast of the country. It can be consisted of different portions which require different treatment. In consequence, the number of final submissions will be increased in the future. One country can make several partial submissions from its preliminary information to the CLCS. In addition, it's interesting to note that, there is any deadline for the States parties to make their preliminary information indicatives. It will impact on the work-load of the CLCS and likely extended its timetable for the considerations of a potentially larger number of submissions in the future.

The other difficulty for the CLCS is the consideration of baselines. The continental shelf beyond 200 nautical miles is generally established from the baselines, normal, straight

or archipelagic. In accordance with art. 3, 5, 6, and 7 of the UNCLOS 1982, every coastal state has the right to establish its baseline, normal or straight in accordance with this Convention.<sup>23</sup> For the archipelagic State, the archipelagic baselines fixed in accordance with art. 47 of the UNCLOS 1982.<sup>24</sup> However, the UNCLOS 1982 has not given the detailed criteria for making baselines. The State practice on baselines and historic rights is not uniform. The question of baselines will increase the burden of work for the CLCS.

In summary, while the submission of extended continental shelf is both a right and an obligation for a coastal state, the interpretation of Art. 76 of the UNCLOS 1982 will be shared among the coastal states and CLCS. But the power of interpretation is not necessarily shared equally between them.<sup>25</sup> The coastal States have a tendency to exploit Art. 76 in justifying its sovereign right claim beyond 200 nm continental shelf. The CLCS has the power of interpretation Art. 76 on the basis of the value of scientific data in safeguarding the interest of the world community on the seabed under the UNCLOS 1982. By that reason, the UNCLOS 1982 provides that the CLCS is a neutral organ to any dispute between coastal states. Its recommendations on the submissions of extended continental shelf made by coastal states do not affect to the maritime dispute settlement. In other words, in relationship between the coastal states and the CLCS, the maritime dispute settlement and the definition of extended continental shelf have remained two different things to be considered from different perspectives. This also applies in the context of the maritime disputes and the submissions of extended continental shelf in the South China Sea.

## **Submissions of extended continental shelf made by SCS coastal States to the CLCS**

Ten coastal states and territories surround the South China Sea.<sup>26</sup> Being coastal States but not State members of the UNCLOS 1982, Thailand and Cambodia have no right to make claims to the continental shelf beyond 200 nautical miles from their baselines. Furthermore, the geographic and geomorphologic characters of the Gulf of Thailand would not have given them the opportunity to make such claims. The breadth of the gulf is less than 400 nautical miles. Taiwan is a political territory not being coastal state member. Upon to the deadline of 13 May 2009, Singapore did not indicate any intention to make a submission or preliminary information. Pursuant to article 76, paragraph 8 of the UNCLOS 1982, Brunei, China, Indonesia, Malaysia, the Philippines, and Vietnam – coastal states of the South China Sea and state members of the UNCLOS 1982 – have opted to pursue different approaches in relation to the issues of the outer limit of the continental shelf.

Indonesia, Malaysia, the Philippines, and Vietnam, respectively, have partially chosen the first option: to make submission of its extended continental shelf to the CLCS. Brunei and China, respectively, have chosen the second option relating to the outer limits of the continental shelf, i.e. preliminary information indicative of the outer limits of the continental shelf. The latter two cases will be outlined in the next section.

### **Indonesia**

Indonesia declared itself an archipelagic state in 1957 by the Presidential Declaration of 13 December 1957. By the doctrine of archipelagic state, Indonesia drew its archipelagic

baselines joining the outermost islands and drying reefs of the archipelagos by Law No. 4 of 1960.<sup>27</sup> The doctrine of archipelagic states was accepted by the Third Conference of the United Nations on the Law of the Sea 1973-1982. Indonesia became one of the first state in the Southeast Asia to ratify the UNCLOS 1982 by Law No.17 on 31 December 1985<sup>28</sup> and to deposit the ratification on 3 February 1986.<sup>29</sup> Since 1996, the available bathymetric-, sediment thickness-, and basepoint data to delimitate the outer limits of continental shelf of Indonesia have been collected and analysed through several real surveys such as the Digital Marine Resource Mapping (DMRM)-project 1996-1999; Global Bathymetric Data ETOPO2; Ocean Drilling Program (ODP) and the Deep Sea Drilling Project (DSDP); and seismic reflection profiles archived as part of the IOC's Geological/Geophysical Atlas of the Pacific (GPAPA) Project.<sup>30</sup>

On 16 June 2008 Indonesia made a submission to the CLCS in accordance with Article 76, paragraph 8, of the UNCLOS 1982, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured relating to the continental shelf off North West of Sumatra Island.<sup>31</sup> Indonesia started its preparation to submit the extended Continental Shelf through the collection of existing bathymetric data resulting from the Digital Marine Resources Management Project (DMRM), ETOPO-2 and also global seismic or sediment thickness data since 1999. The outer limit of the continental shelf in the area off North West of Sumatra – under this partial submission – has been determined by the 1 per cent sediment thickness formula (the Gardiner or Irish formula) with respect to the shortest distance to the foot of slope. Accordingly 5 fixed points have been established, which combined with 200 NM limit, forming the outer limit of extended continental shelf in the area of North West of

Sumatra. This area is not the subject of any dispute between Indonesia and any other state. Indonesia reserves the right to make submissions of the outer limits of its extended continental shelf in other areas in the future.

### **The Philippines**

The Philippines signed the UNCLOS 1982 on 10 December 1982 and deposited the ratification on 8 May 1984. On 8 April 2009, the partial submission of extended continental shelf in the Benham Rise region was made by the Philippines to the CLCS.<sup>32</sup> This area is bounded to the North and East by the West Philippine Basin and to the West and South by the Philippine island Luzon, where there is not any State with opposite and adjacent coast to the Philippines. The outer edge of the continental margin in the Benham Rise Region is determined by application of Article 76, Paragraph 4 (a) (i) of the UNCLOS 1982. The Hedberg formulas has been considered to fix the outer limit of continental shelf, where the connecting fixed points are not more than 60 miles from the foot of the continental slope. They are of 253 points making from ECS-B-1 to ECS-B-253 whose coordinates have been shown in the partial submission of the Philippines to the CLCS.<sup>33</sup> The hydrographic data were collected by survey cruises during 2004-2008.<sup>34</sup> In its submission, the Philippines explicitly reserves the right to make other submissions for other areas of continental shelf beyond 200 nautical miles at the future time in conformity with the provisions of Annex I of the Rules and Procedure of the CLCS.<sup>35</sup>

### **Malaysia and Vietnam joint submission**

Malaysia and Vietnam signed the UNCLOS 1982 on 10 December 1982. Malaysia ratified the UNCLOS 1982 on 14 October 1996 and Vietnam ratified it on 23 June 1994. Malaysia

publicized the extent of its territorial sea and continental shelf of 200 nautical miles claims through two maps in December 1979. Vietnam proclaimed its baseline in May 1977. Both countries found to have the same area of continental shelf in the Southern part of the South China Sea extend beyond 200 nautical miles. On 6 May 2009, Malaysia and Vietnam made a joint submission relating to a defined area in the South of the South China Sea.<sup>36</sup> The area is generated and bound by the intersection point of the envelope of arcs of 200 nautical miles limits of Malaysia and the Philippines in the east (Point A), the intersection of two converging envelopes of the arcs of Malaysia 200 nautical miles limit toward the southwest of the Point A (Point B and C), by the boundary line under the Agreement on the continental shelf concluded by Malaysia and Indonesia in 1969 (Points D and E), the boundary line under the Agreement on the limit of the continental shelf signed by Vietnam and Indonesia in 2003 toward the north west (Points F and G) and the intersection point of the envelope of arcs of Vietnam's 200 nautical miles limits towards the northeast (Point H and I). The Defined area is located completely outside of the 200 nautical miles from the baselines of land territories of both Malaysia and Vietnam, and outside of agreed limits of continental shelves with other concerned countries. Both countries have affirmed that the Joint Submission would not prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.<sup>37</sup>

### **Vietnam partial submission**

On 7 May 2009, Vietnam made a submission relating to the North Area (VNM-N) which is located in the North West of the South China Sea.<sup>38</sup> Vietnam is of the view that it is entitled to exercise the sovereignty, sovereign rights and national jurisdiction in maritime zones and

continental shelf of Vietnam in accordance with the UNCLOS 1982. Pursuant to the provisions of the UNCLOS 1982 – Paragraphs 1, 4, 5 and 7 Article 76 – and the natural setting and characteristics of Vietnam’s coast and continental shelf, Vietnam holds the view that it is entitled to establish the extended continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea of Vietnam is measured. In accordance with Paragraph 3 of Annex I to the CLCS’s Rules of Procedures, this Submission delineates the outer limits of the extended continental shelf: North Area (VNM-N) appurtenant to Vietnam. The VNM-N Area is defined and bound in the North by the equidistance line between the territorial sea baselines of Vietnam and the territorial sea baselines of China; in the East and in the South by the outer limits of the continental shelf as defined in this Submission pursuant to Article 76 (8) of the UNCLOS 1982; in the West by the 200 nautical lines limit from the baselines from which the breadth of the territorial sea of Vietnam is measured. In accordance with Article 76(10) of the UNCLOS 1982, Article 9 Annex II to the UNCLOS 1982, Rule 46 and Annex I of the CLCS’s Rules of Procedure, Vietnam is of the view that the area of continental shelf that is the subject of its Submission is not a subject of any overlap and dispute and it is without prejudice to the maritime delimitation between Vietnam and other relevant coastal States. Vietnam has delineated the outer limits of the Vietnam’s extended continental shelf North Area (VNM-N) by application of both the 1 per cent sediment thickness formula (the Gardiner formula) and the Foot of the slope (FOS) + 60 nautical miles formula (the Hedberg formula).<sup>39</sup> This Submission by Vietnam on the extended continental shelf has been prepared using datasets acquired by dedicated surveys in 2007 and 2008 as well as datasets from the public domain including bathymetry, magnetic, gravity and seismic data.

## **Preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles**

### **China**

China signed the UNCLOS 1982 on 10 December 1982 and ratified it on 15 May 1996. On the same day, the Chinese baseline was proclaimed.<sup>40</sup> The archipelagic baseline applied to the Paracel islands by China has been objected by Vietnam and several other countries.<sup>41</sup> On 11 May 2009, China submitted the preliminary survey findings on the outer limits of its continental shelf to the CLCS.<sup>42</sup> The preliminary survey relates to an extended continental shelf beyond 200 nautical miles up to the western slope of the Okinawa Trough in the East China Sea. In its preliminary information indicative, China states that it reserves the right to make outer continental shelf submissions relating to areas in the East China Sea and elsewhere in the future. It means that the South China Sea may be one of those areas.

### **Brunei Darussalam**

Brunei signed the UNCLOS 1982 on 5 December 1984 and ratified it on 5 November 1996.<sup>43</sup> On 12 May 2009, through its preliminary information indicative, Brunei informed that the country has made significant progress towards preparation of a full submission to the CLCS in accordance with Article 76, paragraph 8, of the UNCLOS.<sup>44</sup> Brunei has researched and analyzed significant amounts of data relating to its continental shelf. This includes extensive morphological, geological, geophysical and tectonic data. However, Brunei can only provide the full submission to the CLCS at a later date 13 May 2009. When Brunei submits its full submission to the CLCS in accordance with Article 76 of the UNCLOS, it will show that there is a continuous natural prolongation from the territory of



Brunei extending across the areas known as the Northwest Borneo Shelf, the Northwest Borneo Trough and the Dangerous Grounds to the edge of the deep ocean floor of the South China Sea Basin. It implies that Brunei's full submission to the CLCS will show that the edge of the continental margin, lying at the transition between the Dangerous Grounds (Spratly Islands) and the deep ocean floor of the South China Sea, is situated beyond 200 nautical miles from the baselines from which Brunei's territorial sea is measured.<sup>45</sup> In its preliminary information submission, Brunei did not provide any maps or geographic coordinates for its continental shelf limits in the South China Sea.

## **Objections made by China and the Philippines**

### **China**

On 7 May 2009 the Permanent Mission of the People's Republic of China send two Notes to the Secretary General of the United Nations to request the CLCS not to consider the joint submission made by Malaysia and Vietnam (CML/17/2009)<sup>46</sup> and the submission made by Vietnam (CML/18/2009)<sup>47</sup>, respectively. The map of the South China Sea including the nine-dotted lines was attached to the two Notes.<sup>48</sup> According to the text and the annexed map, all waters and features within the nine dotted lines are claimed under Chinese jurisdiction. China considers that these submissions infringe upon its sovereignty, sovereign rights and jurisdiction in the South China Sea. The nine dotted lines exclude any possibility to claim a continental shelf beyond 200 nautical miles, measured from the land territory in the South China Sea.

### **The Philippines**

The Philippines has protested against three submissions. The joint submission of Malaysia and Vietnam, Vietnam's individual submission, and an individual submission made by Palau.

In the South China Sea, the Philippines protest against the joint submission by Malaysia and Vietnam was made on 4 August 2009 shortly before the 90-day deadline from 13 May 2009. In Note N.000819, the Philippine stated that the:

“Joint Submission for the Extended Continental Shelf by Malaysia and Vietnam lays claim on areas that are disputed not only because they overlap with that of the Philippines, but also because of the controversy arising from the territorial claims on some of the islands in the area including North Borneo.”<sup>49</sup>

The statement did not identify the allocation of area affecting the Philippine. However, it can be understood that the southern part of the Philippine claim in the Spratlys overlaps with the defined area under the joint submission made by Malaysia and Vietnam.<sup>50</sup> The other reason of its objection seems to deeply be in the territorial dispute between the Philippines and Malaysia over North Borneo (Sabah State).

Through Note N.000818, the Philippines protested against Vietnam individual submission. The note states that the areas covered by Vietnam's submission relating the northern part of the South China Sea are “disputed because they overlap with those of the Philippines.”<sup>51</sup> This seems to refer to a possible continental shelf claim by the Philippines from Scarborough Shoal.

In both Notes the Philippines requested the CLCS to refrain from considering the aforementioned Joint Submission by Malaysia and Vietnam and the individual submission of Vietnam “unless and until after the parties have discussed and resolved their disputes.”

### **Responses to the objections**

Vietnam responded to the Chinese Notes by stating that the map “has no legal, historical basis, [and is] therefore null and void.” It also asserted that the Spratlys archipelago or Truong Sa is part of its territory and that it “has indisputable sovereignty over these archipelagos.”<sup>52</sup>

In its response to the Chinese Note Malaysia argued that the joint submission of Malaysia and Vietnam:

“constitute legitimate undertakings in implementation of the obligations of State Parties to the United Nations Convention on the Law of the Sea 1982, which conform to the pertinent provisions of the UNCLOS 1982 as well as the Rules of the Procedure of the Commission on the Limits of Continental Shelf”.<sup>53</sup>

Malaysia argued that the joint submission is made without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coast in consonance with the provisions of the UNCLOS 1982 as well as of the Rules of the Procedure of the CLCS. According to Malaysia, the joint submission is also made without prejudice to the positions of States which are parties to the land or maritime disputes in the South China Sea. Malaysia also stated that it had informed China of its position prior to the submission to the CLCS.<sup>54</sup>

In response to the Philippines' objections the Permanent Mission of Malaysia to the United Nations submitted Note No. 41/09 on August 21, In this Note Malaysia reconfirmed its sovereignty over Sabah.<sup>55</sup>

In Note No. 240/HC-2009 Vietnam reaffirmed its consistent position that it has indisputable sovereignty over the Truong Sa (Spratlys) and Hoang Sa (Paracels) archipelagos.<sup>56</sup>

Vietnam and Malaysia share the position that the Joint Submission is made without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts in accordance with Article 76 (10) of the UNCLOS 1982, Article 9 of Annex II of the UNCLOS 1982, Rule 46 to the CLCS's Rules of Procedure and Paragraphs 1, 2 and 5 of Annex I to the CLCS's Rules of Procedure. In its note, Malaysia revealed the fact that Malaysia and Vietnam had proposed to the Philippines to consider joining the Joint Submission.<sup>57</sup> In their joint submission, Vietnam and Malaysia also said they "may make further submissions, either jointly and unilaterally, in respect to other areas."<sup>58</sup>

### **Perspective after May 2009**

Like all members of the UNCLOS 1982, the coastal states bordering the South China Sea have obligation to implement article 76 of the UNCLOS 1982. They have the right to make interpretations and applications of it to identify the outer limit of their continental shelf. The legal value of the outer limit of the continental shelf must be evaluated by the CLCS based on scientific data provided by submitting countries. However, the extension of the

continental shelf beyond 200 nm from the baselines claimed by coastal States in the South China Sea is not simple. This South China Sea is well-known due to the sovereignty disputes over the two strategically important archipelagos – the Paracels and the Spratlys.<sup>59</sup> The other disputes are dealing with the claims on waters and spaces surrounded those maritime features. Obviously, the status of islands and the related maritime delimitation issues have constituted obstacles to the possibility of the extension of continental shelf in the South China Sea.

The UNCLOS 1982 have uncertainties over the status of islands. Article 121 (3) states that “rocks which cannot sustain human habitation or economic life of their own shall not have an exclusive economic zone or continental shelf”.<sup>60</sup> Unfortunately, the UNCLOS 1982 is silent on the definition of rocks. What are their dimensions, perimeter and height? There is also no guidance on rocks sustaining human habitation. Uninhabited rocks with the willingness of the peoples and governments to artificially rebuild and provide food and water can meet the provisions of Art. 121 (3)? What constitutes an economic life of rocks? Lighthouses, aircraft runways, meteohydrographic and bird observation stations, oil and gas stations built now on the small rocks do they have an economic value? Some studies note that most of features in the South China Sea are submerged banks and shoals and perhaps only about 36 features are above water at high tide.<sup>61</sup> Can any of them be granted equal status with mainland, i.e. to generate full maritime zones? The uncertainty of the provision has caused an active dilemma among researchers. Some consider that the features in the Spratlys archipelago cannot generate an EEZ or a continental shelf. Others suggest that some of the features in the Archipelago – which are above water at high tide – can generate

more than just territorial waters.<sup>62</sup> R. W. Smith noted that many law of the sea experts would argue that most, if not all, the islands in the South China Sea should be considered Article 121, paragraph 3 rocks, and thus could not be able to generate full maritime zones.<sup>63</sup>

The status of rocks in the South China Sea affect directly on the extension of the continental shelf beyond 200 nautical miles from the coastal baselines. Presumed that the rocks in the South China Sea cannot generate a continental shelf, the possibility of extension of the continental shelf without prejudice to the maritime delimitation will be granted to the coastal States. The number of submissions to the CLCS will increase and the CLCS can consider them immediately without protest from other states. In case rocks are granted the full status of islands, their own continental shelf will overlap with the continental shelf extended from the mainland of the coastal shelf. The number of maritime delimitation cases will be multiplied. The submissions will be fever. The maritime disputes will seriously affect the possibility of the CLCS to make its recommendations on the submissions made by some coastal States.

Before the deadline of 13 May 2009, all concerned countries in the South China Sea have shown their attitudes to the issue of fixing the outer limit of extended continental shelf beyond 200 nautical miles in different ways. Their attitudes on the status of islands in the South China Sea have been shown explicitly also in their respective submissions, preliminary information indicative to the CLCS or in their protests.

Indonesia and the Philippines have made submissions relating to areas outside the South China Sea, where there is not any overlapping claim with their neighbouring countries. Both countries expressly retain the right to make submissions relating to other areas of continental shelf beyond 200 nautical miles from their baselines, this may include

areas in the South China Sea. However, through their submissions the two countries have not taken the opportunity to clarify their respective attitude on the issue of the status of islands in the South China Sea. The Philippines explicitly reserves the right to make other submissions for other areas of continental shelf beyond 200 nautical miles at the future time in conformity with the provisions of Annex I of the Rules and Procedure of the CLCS.<sup>64</sup> In its objections to the Joint Submission of Malaysia and Vietnam and to the individual submission of Vietnam, the Philippines also displayed its willingness to have discussions and seek a resolution to its disputes with Malaysia and Vietnam before the CLCS can consider their submissions. Vietnam and Malaysia also said they “may make further submissions, either jointly and unilaterally, in respect to other areas.”<sup>65</sup> If agreements could be reached, then the Philippines can either submit unilaterally or jointly with the country concerned.

Vietnam and Malaysia have made submissions relating to areas in the South China Sea. They pursue the policy to separate the submission of outer limit of extended continental shelf beyond 200 nautical miles from the sovereignty disputes over islands. They claim the extended continental shelf from their land territories only. The Paracels and Spratlys islands, subjects of sovereign claims in the South China Sea have not been mentioned as basepoints for the extension of the continental shelf. This policy is displayed in both the joint submission of Malaysia and Vietnam and in the individual submission by Vietnam to the CLCS. For Malaysia and Vietnam the submissions constitute legitimate undertakings in implementation of the obligations of States Parties to the UNCLOS 1982, which conform to the pertinent provisions of the UNCLOS 1982 as well as the Rules of Procedure of the CLCS. The submissions are made without prejudice to the question of

delimitation of the continental shelf between States with opposite or adjacent coasts. The disputed islands remain subject of negotiations to find the long-lasting acceptable solution in conformity with the UNCLOS 1982.

According to its preliminary information indicative to the CLCS, Brunei Darussalam will make the submission to CLCS in due time. Such a submission of extended continental shelf beyond 200 nautical miles will be based on the continuous natural prolongation from the territory of Brunei extending across the Dangerous Grounds (Spratlys Islands) to the edge of the deep ocean floor of the South China Sea Basin. Brunei seems to share the same view on the continental shelf with Vietnam and Malaysia. The Spratlys Islands seems not to have any role on the extension of the continental shelf beyond 200 nautical miles.

The status of islands was debated in the Congress of the Philippines and in the media in connection with the passing of House Bill 3216 on February 2, 2009, on the archipelagic baselines as well as during the process leading to the Archipelagic Baseline Law (Filipino Republic Act 9522) on March 10, 2009, the Kalayaan Islands Group (KIG) and Scarborough Shoal are classified as “regimes of islands”. Those islands are subject of sovereign disputes between the Philippines and other countries to the West of the Philippines. It can be noted that China, Vietnam issued protests against the House Bill<sup>66</sup> and Archipelagic Baseline Law. Indonesia also protested against the inclusion of Palmas island located 47 nautical miles east-northeast of Saranggani islands off Mindanao in the Philippines.<sup>67</sup> Had the KIG and Scarborough Shoal been included in the archipelagic baselines all outermost rocks and islands in the KIG and Scarborough Shoal would have been basepoints from which the continental shelf will be measured. Through the Archipelagic Baseline Law of 10 March 2009 this situation was avoided, but by



establishing that KIG and Scarborough Shoal were “a regime of islands under the Republic of the Philippines” some uncertainties remain. The Philippine’s objections to the joint submission of Malaysia and Vietnam and the individual submission by Vietnam to the CLCS seem to be formulated from its deliberations on the regime of islands and whether or not they can generate their own continental shelves or only territorial seas.

The Chinese position on the status of islands is unclear. On 6 February 2009, three months before the deadline of May 13, 2009, in a Note verbal to the General Secretary of the United Nations<sup>68</sup> the Permanent Mission of the People’s Republic of China protected against the Japanese inclusion of the small island in its Submission dated 12 November 2008.<sup>69</sup> Oki-no-Tori Shima is the name of that Island what is used as the basepoint for the three areas of Japanese claimed extended continental shelves beyond 200 nautical miles, namely SKB, MIB and KPR. According to China, the so-called Oki-no-Tori Shima is in fact a rock as referred in Article 121 (3) of the UNCLOS.<sup>70</sup> China claims that the Japanese rock is entitled to only a 12 nautical miles territorial sea while Japan claims that the feature can sustain more maritime area than just the territorial sea.

At the 19<sup>th</sup> meeting of the State parties on the Law of the Sea (SPLOS) held on 22-26 June 2010 in New York, the Chinese delegation reminded that: “According to Article 121 (3) of the UNCLOS, rocks which cannot sustain human habitation or economic life of their own shall not have an exclusive economic zone or continental shelf”.

However, this position is not consistent with the one taken in relation to the South China Sea. In the Notes of 7 May 2009 objecting to the Malaysia-Vietnam Submission and to the individual submission by Vietnam, respectively, China claims the “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys

sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil”.<sup>71</sup> A map with the nine dotted lines is attached to the Notes. This is the first time China has presented the dotted line to a United Nations body in the context of China’s claims in the South China Sea. In this statement, the legal nature of the “relevant waters” has not been specified by China. It is interesting to note that the Chinese Government has never published a law or decree giving the nine dotted lines any domestic legal significance.<sup>72</sup> No map of this nature was attached to the official laws and regulations before such as Declaration on China’s Territorial Sea in 1958, Declaration of the People’s Republic of China on the Territorial Sea and Contiguous Zone in 1992, Declaration of the People’s Republic of China on Baselines of the Territorial Sea in 1996, and the Law of the People’s Republic of China on the Exclusive Economic Zone and Continental Shelf in 1998.<sup>73</sup> In the Notes of 7 May 2009, China claims the “relevant waters” within the nine dotted lines with no coordinates. The term “relevant waters” does not specify whether or not they relate to EEZ and continental shelf. Furthermore, there is no clear explanation as to the legal basis, the method of drawing, and the status of those dotted lines, as noted by Indonesia.<sup>74</sup> The nine dotted lines will continue to arouse both political and scholarly debates.

Given the uncertainties in interpreting the Chinese claims its full impact cannot be ascertain. However, would the area within the nine dotted lines be considered Chinese then it would exclude any possibility to claim a continental shelf beyond 200 nautical miles, measured from the land territory such as the Vietnam-Malaysia joint submission and Vietnam’s individual submission to the CLCS. In such a situation China would not need to

declare the outer limit of the continental shelf beyond 200 nautical miles in the South China Sea.

The scientific aspect of the definition of the outer limit of the continental shelf has been linked by China to the territorial disputes over the Paracels and Spratlys in the South China Sea. In the East China Sea, the Chinese submission states that China will “through peaceful negotiation, delimit the continental shelf with States with opposite or adjacent coasts by agreement on the basis of the international law and the equitable principle”.<sup>75</sup> However, in the two Notes of 7 May 2009 relating to submissions by other states made in the South China Sea, China does not mention the possibility to have talks with those states.

### **The future of submissions made in the South China Sea**

Fixing the outer limit of the continental shelf beyond 200 nautical miles is a scientific matter. The task of the CLCS’s would be facilitated if Vietnam and Malaysia can persuade the concerned countries to have no objection to their submissions. However, even if there had been no objections – with the number of submissions to the CLCS – it would possibly not be until 2035 before Vietnam’s individual submission and the joint submission by Malaysia and Vietnam would be considered by the CLCS, in other words in 26 years time. The definition of outer limit of the continental shelf is not a solution for the islands disputes in the South China Sea. First, this task cannot prejudice any land or maritime disputes. Second, the evaluation of reports demands a lot of time and patience of concerned parties.

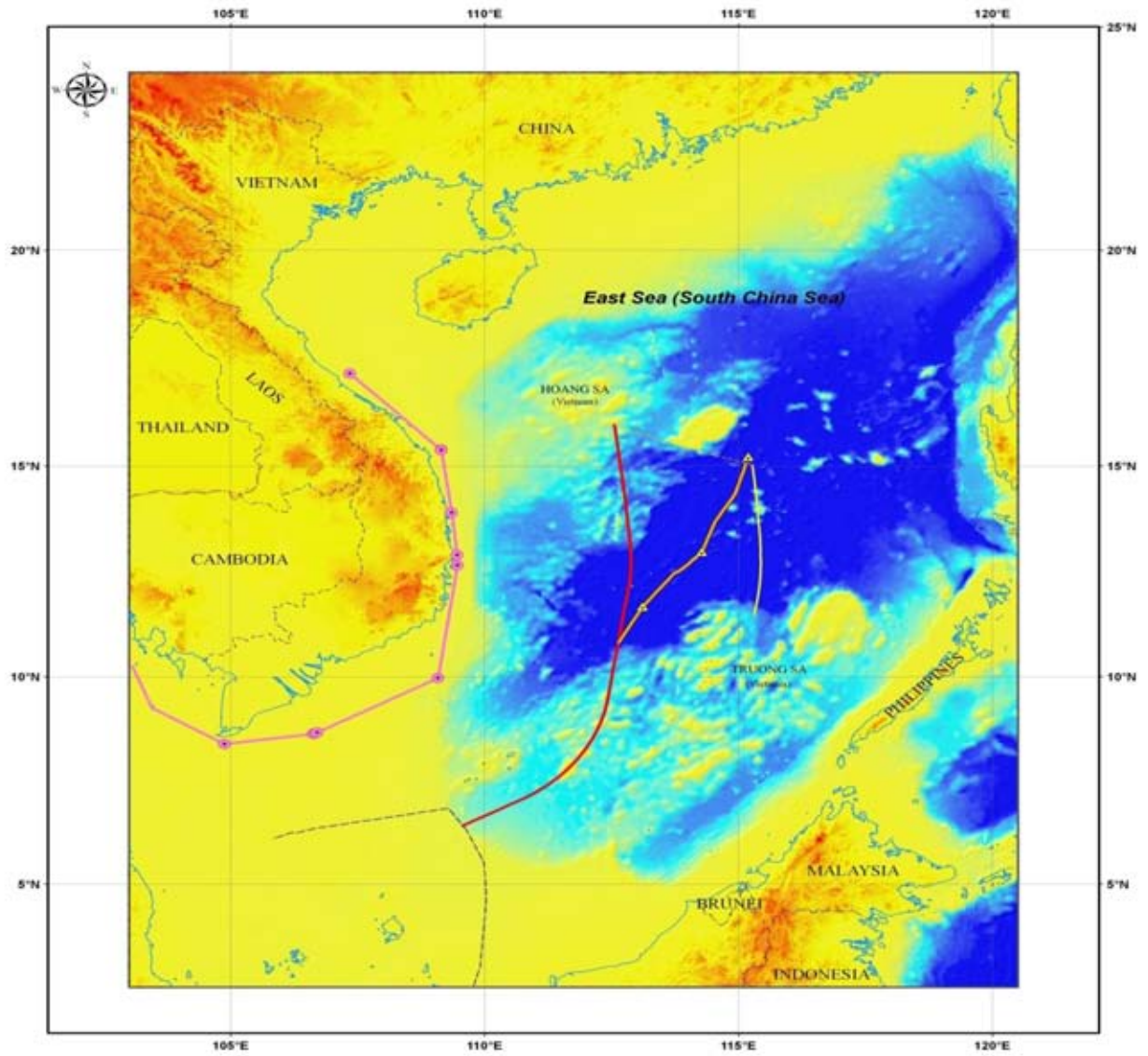
However, as seen from another perspective, the submissions to the CLCS and the objections can bring the claimant countries in the South China Sea to cooperate. First, they

encourage the concerned states to follow the UNCLOS 1982 in fixing the outer limit of the continental shelf. Countries that have not yet finalised their submissions will push up their efforts to complete their work and make submissions to the CLCS. There can be new partial or final submissions or joint submissions as well as new objections. Through those activities, the concerned parties will generate more understanding about each other positions and policies, this can help clarify their positions and policies in regard to questions that are raised. The outer limit of continental shelf can be a subject of discussion in the existing forums like the Workshop on the Managing the disputes in the South China Sea, and also contribute to create new forums. Second, they encourage the parties to have serious discussions about the status of islands in the Article 121 (3) of the UNCLOS 1982. Objectively, the islands in the South China Sea cannot be compared with the land territory in terms of generating maritime zones under the UNCLOS 1982. The islands cannot be treated as Archipelagic States in drawing the archipelagic baseline. What is the status in detail for the rocks, reefs and atolls in the South China Sea. That question requires concerned parties to have more effort and cooperation in finding a mutual agreement. Third, the deadline of 13 May 2009 encouraged the parties to clarify their claim limits. The tendency to fix the claim limits in accordance with the UNCLOS 1982's scientific and neutral criteria are clearer. There are some efforts to prevent the influence of islands in disputes on the other field of activities under the UNCLOS 1982. Claims that are not made from land features will not be in line with the basic principles of the UNCLOS 1982.

In conclusion, the UNCLOS 1982 should serve as a common ground for all maritime activities. The disputes in the South China Sea are not an obstacle for conducting other obligations of coastal states in implementing the UNCLOS 1982. The key to settle the

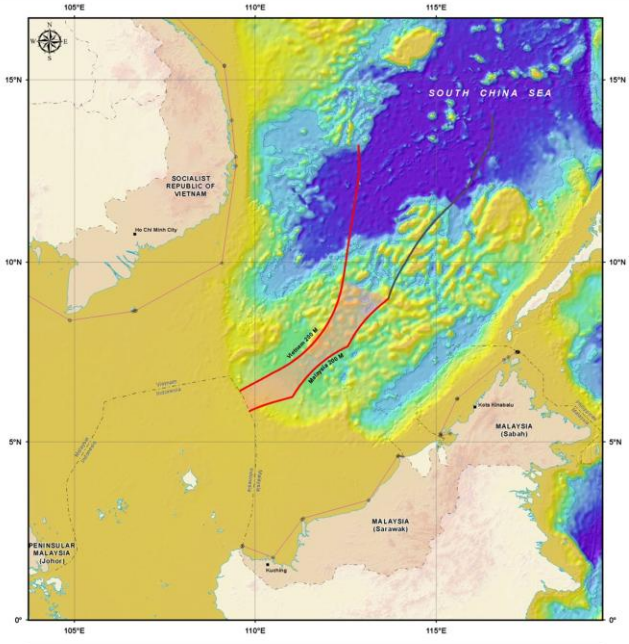
disputes in the South China Sea is to build trust and goodwill among concerned parties. Working together assures enhanced collaborations in managing and eventually settling the disputes. The claimant states should talk, listen to each other and work together on the basis of respect of equal and mutual interest and in accordance with international law in order to contribute to peace and security in the region.

**Annex: Maps of the submissions (joint and individual) of Vietnam and Malaysia**



**Vietnamese individual submission (VNM-N)**

# VIETNAM-MALAYSIA JOINT SUBMISSION



**DEFINED AREA IN THE SOUTHERN PART OF THE SOUTH CHINA SEA**

<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li>• City</li> <li>○ Seaport</li> <li>— Straight Dashed</li> <li>— 200m Isobath (SEBOD)</li> <li>--- Agreement</li> <li>--- International Boundary</li> <li>— 200 M</li> <li>— Philippines 200 M</li> <li>■ Defined Area</li> </ul>	<p><b>Bathymetry (metres)</b></p> <table border="0"> <tr><td style="background-color: yellow; width: 10px;"></td><td>High +021</td></tr> <tr><td style="background-color: blue; width: 10px;"></td><td>Low -6126</td></tr> </table>		High +021		Low -6126	<p>Geodetic Datum : WGS84          Spheroid : WGS84          Semi major axis, a : 6 378 137 000 m          Semi minor axis, b : 6 356 752 314 m          Flattening, 1/f : 298 257 223 563          Eccentricity squared, e<sup>2</sup> : 0.006 694 379 950 13          Projection : Mercator          Central Meridian : 111°00' 00" E          Latitude of Origin : 7°00' 00" N          False Easting : 800 000 000 m          Scale Factor : 1.00000 (along 7°00' 00" N)          Linear unit : Metre</p>	<p>Scale 1:100,000</p> <p style="text-align: center;">Joint Submission</p> <p style="text-align: center;">This map is for illustrative purposes only</p>
	High +021						
	Low -6126						

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## Notes

<sup>1</sup> Article 76, par. 1, Definition of the continental shelf, United Nations, The Law of the Sea, United Nations Convention on the Law of the Sea with Index and Final Act of the Third United Nations Conference on the Law of the Sea, New York 1983, p. 27 (hereafter *UNCLOS 1982*)

<sup>2</sup> *Ibid.* p. 27

<sup>3</sup> *Ibid.*, p. 28.

<sup>4</sup> International Tribunal for the Law of the Sea, “The Outer Continental Shelf: Some considerations concerning Applications and the Potential Role of the International Tribunal for the Law of the Sea”, H.E. JUDGE RÜDIGER WOLFRUM, 73<sup>rd</sup> Biennial Conference of the International Law Association, Rio de Janeiro, Brazil, 21 August 2008. [http://www.itlos.org/.../ILA\\_Rio\\_de\\_Janeiro\\_Outer%20Continental%20Shelf%20E.pdf](http://www.itlos.org/.../ILA_Rio_de_Janeiro_Outer%20Continental%20Shelf%20E.pdf), date of access 13 May 2009.

<sup>5</sup> Article 4 Annex II. Commission on the Limits of the Continental Shelf in United Nations, UNCLOS 1982, p. 112.

<sup>6</sup> 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 (29 May 2001), SPLOS/72. [http://www.un.org/Depts/los/meeting\\_states\\_parties/SPLOS\\_documents.htm#Documents%20of%20the%20Meetings%20relating%20to%20the%20Commission%20on%20the%20Limits%20of%20the%20Continental%20Shelf%20and%20its%20functions](http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm#Documents%20of%20the%20Meetings%20relating%20to%20the%20Commission%20on%20the%20Limits%20of%20the%20Continental%20Shelf%20and%20its%20functions). Date of access 13 May 2009.

<sup>7</sup> Rules of Procedure of the Commission on the Limits of the Continental Shelf , CLCS/40/Rev.1, Twenty-first session New York, 17 March-18 April 2008, [http://www.un.org/Depts/los/meeting./commission\\_rules.htm](http://www.un.org/Depts/los/meeting./commission_rules.htm), date of access 13 May 2009 (hereafter *CLCS Rules of Procedure*).

<sup>8</sup> CLCS, 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) Decision dated 20 June 2008 (SPLOS/183) taken during the eighteenth meeting of UNCLOS States Parties. [http://www.un.org/Depts/los/meeting\\_states\\_parties/SPLOS\\_documents.htm#Documents%20of%20the%20Meetings%20relating%20to%20the%20Commission%20on%20the%20Limits%20of%20the%20Continental%20Shelf%20and%20its%20functions](http://www.un.org/Depts/los/meeting_states_parties/SPLOS_documents.htm#Documents%20of%20the%20Meetings%20relating%20to%20the%20Commission%20on%20the%20Limits%20of%20the%20Continental%20Shelf%20and%20its%20functions), date of access 13 May 2009.

<sup>9</sup> *CLCS Rules of Procedure*.

<sup>10</sup> *UNCLOS 1982*, p. 27 and 112.

<sup>11</sup> *CLCS Rules of Procedure*.

<sup>12</sup> Art. 5 Annex II in *UNCLOS 1982*, p. 113. See Note 1

<sup>13</sup> *CLCS Rules of Procedure*.

<sup>14</sup> Point 5, Annex I, *CLCS Rules of Procedure*.

<sup>15</sup> Art.8 Annex II. Commission on the Limits of the Continental Shelf in *UNCLOS 1982*, p. 113.

<sup>16</sup> Art. 7 Annex II, in *UNCLOS 1982*, p. 113.

<sup>17</sup> Rule 54, Rules of Procedure of the Commission on the Limits of the Continental Shelf see note 7; International Tribunal for the Law of the Sea, “The Outer Continental Shelf: Some considerations concerning Applications and the Potential Role of the International Tribunal for the Law of the Sea”, H.E. JUDGE RÜDIGER WOLFRUM, 73<sup>rd</sup> Biennial Conference of the International Law Association, Rio de Janeiro, Brazil, 21 August 2008. [http://www.itlos.org/.../ILA\\_Rio\\_de\\_Janeiro\\_Outer%20Continental%20Shelf%20E.pdf](http://www.itlos.org/.../ILA_Rio_de_Janeiro_Outer%20Continental%20Shelf%20E.pdf), date of access 13 May 2009.



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<sup>18</sup> Rule 53, par. 5, *CLCS Rules of Procedure*.

<sup>19</sup> UN, Division for Ocean Affairs and the Law of the Sea, Recommendations issued by the Commission on the Limits of the Continental Shelf, [http://www.un.org/Depts/los/clcs\\_new/commission\\_recommendations.htm](http://www.un.org/Depts/los/clcs_new/commission_recommendations.htm), date of access 10 April 2010.

<sup>20</sup> UN, Division for Ocean Affairs and the Law of the Sea, Submissions to the Commission on the Limits of the Continental Shelf, [http://www.un.org/Depts/los/clcs\\_new/commission\\_submissions.htm](http://www.un.org/Depts/los/clcs_new/commission_submissions.htm), date of access 29 August 2010.

<sup>21</sup> Ron Macnab calculated that if the rate is two submissions per year, The CLCS will have verified 51 submissions by 2059. The timetable will be 2034 with the rate of four submissions per year and 2022 with the rate of eight per year. See Ron Macnab, “Complications in delimiting the outer continental shelf”, Geological Survey of Canada 2008. <http://www.virginia.edu/colp/pdf/Macnab-outer-c.s.pdf>, date of access 13 May 2009.

<sup>22</sup> UN, Division for Ocean Affairs and the Law of the Sea, Preliminary Information to the Commission on the Limits of the Continental Shelf, [http://www.un.org/Depts/los/clcs\\_new/commission\\_preliminary.htm](http://www.un.org/Depts/los/clcs_new/commission_preliminary.htm), date of access 29 August 2010.

<sup>23</sup> *UNCLOS 1982*, p.3 and 4.

<sup>24</sup> Art. 47 in *UNCLOS 1982*, p.15.

<sup>25</sup> Suzette V. Suarez, Chapter 8, “The Outer limit of the continental shelf”, in *Baitrage zum ausländischen ofentlichen Recht und Volkerrecht*, Max-Planck-Institut für Ausländisches Öffentliches Recht und Völker, Band 199, 2008, p. 239-252.

<sup>26</sup> This name of the South China Sea used internationally doesn't make any prejudice to the national claims in this Sea.

<sup>27</sup> Continental Shelf Submissions of Indonesia – Partial Submission in respect of the area of the North West of Sumatra to the Commission on the Limits of the Continental Shelf (CLCS) Executive Summary [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/idn08/Executive](http://www.un.org/Depts/los/clcs_new/submissions_files/idn08/Executive), p. 4, date of access 20 August 2008. (hereafter *Indonesian Submission*)

<sup>28</sup> Sobar Sutisna, T. Patmasari and Khafid, *Indonesian Searching for It's Continental Shelf Outer Limits*, National Coordinating Agency for Surveys and Mappings (BAKOSURTANAL), <http://www.gmat.unsw.edu.au/ablos/ABLOS05Folder/SutisnaPaper.pdf>, date of access 13 May 2009 .

<sup>29</sup> [http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en](http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI~6&chapter=21&Temp=mtdsg3&lang=en). Data of access 30 April 2010.

<sup>30</sup> Sutisna et.al, op. cit.

<sup>31</sup> *Indonesian Submission*.

<sup>32</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: “The partial submission of data and information on the outer limit 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, Part I, Executive Summary”, par. 34, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_phl\\_22\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_phl_22_2009.htm). date of access 13 May 2009). (hereafter *Philippines Submission*)

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Joint submission by Malaysia and the Socialist Republic of Viet Nam to the CLCS pursuant to Article 76, paragraph 8 of the UNCLOS in the southern part of the South China Sea,

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Executive Summary ;  
[http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mysvnm\\_33\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm), date of access 13 May 2009. (Hereafter *Malaysia-Vietnam Joint Submission*)

<sup>37</sup> Ibid.

<sup>38</sup> Permanent Mission of the Socialist Republic of Vietnam to the United Nations, Vietnam's Submission on its Outer Limits of the Continental Shelf <http://www.vietnam-un.org/en/news.php?cid=3&id=83>, date of access 3 August 2009.

Nguyen Duy Chien, "Vietnam delimits its continental shelf in UN report", <http://www.monre.gov.vn/monrenet/Default.aspx?tabid=211&idmid=&ItemID=72209>, date of access 09 August, 2009.

<sup>39</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission, Submission of Socialist Republic of Vietnam to the CLCS pursuant to Article 76, paragraph 8 of the UNCLOS in the North Area of the South China Sea Executive Summary, VNM, Executive Summary, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm). date of access 13 May 2009.

<sup>40</sup> Daniel J. Duzek, The People Republic of China's Straight Baseline Claim, IBRU Boundary and Security Bulletin Summer 1996, [www.dur.ac.uk/ibru/publications/download/?id=92](http://www.dur.ac.uk/ibru/publications/download/?id=92).

<sup>41</sup> Ibid.

<sup>42</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Preliminary Information to the Commission, Preliminary Information Indicative of the Outer Limit of the Continental Shelf beyond 200 nautical Miles of the People's Republic of China, on 11 May 2009. [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/preliminary/chn2009preliminaryinformation\\_english.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chn2009preliminaryinformation_english.pdf), Date of access 02 May 2010.

<sup>43</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission, Brunei Darussalam's Preliminary Submission concerning the Outer Limits of its Continental Shelf. [http://www.un.org/Depts/los/clcs\\_new/.../brn2009preliminaryinformation.pdf](http://www.un.org/Depts/los/clcs_new/.../brn2009preliminaryinformation.pdf) , date of access 2 May 2010.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Permanent Mission of the People's Republic of China to the United Nation, New York, Note CML17/2009, May 7, 2009 With reference to the Joint Submission by Malaysia and the Socialist Republic of Vietnam and dated of 6 May 2009 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf) date of access 13 May 2009.

<sup>47</sup> Permanent Mission of the People's Republic of China to the United Nation, New York, Note CML18/2009, May 7, 2009 With reference to the Submission by the Socialist Republic of Vietnam dated of 7 May 2009 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/chn\\_2009re\\_vnm.htm](http://www.un.org/Depts/los/clcs_new/chn_2009re_vnm.htm) date of access 13 May 2009.

<sup>48</sup> CML17/2009.

<sup>49</sup> Permanent Mission of the Republic of Philippines to the United Nations, Note N. 000819, New York on August 4, 2009. With reference to the Joint Submission by Malaysia and the Socialist Republic of Vietnam dated of 6 May 2009 to the Commission on Limits of the Continental Shelf concerning the outer limit of

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continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/clcs\\_37\\_2009\\_los\\_phl.htm](http://www.un.org/Depts/los/clcs_new/clcs_37_2009_los_phl.htm) date of access 13 May 2009.

<sup>50</sup> Teas Amender, VERA Files “RP hit Kahayan claims” date published 11 August 2009 [http://verafiles.org/RP hit Kahayan claims/.pdf](http://verafiles.org/RP_hit_Kahayan_claims/.pdf), date of access 13 May 2009.

<sup>51</sup> Permanent Mission of the Republic of Philippines to the United Nations, Note N. 000818, New York on August 4, 2009. With reference to the Submission by the Socialist Republic of Vietnam dated of 6 May 2009 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/clcs\\_38\\_2009\\_los\\_phl.htm](http://www.un.org/Depts/los/clcs_new/clcs_38_2009_los_phl.htm) date of access 13 May 2009.

<sup>52</sup> Permanent Mission of the Socialist Republic of Vietnam to the United Nations, Note N. 86/HC-2009, New York 8 May 2009 with reference to the Note verbal CML/12/2009 of 13 April 2009, CML/17/2009 of 7 May 2009 and CML/18/2009 of 7 May 2009 addressed to the General Secretary of United Nations by the Permanent Mission of the People’s Republic of China to the United Nations [http://www.un.org/Depts/los/clcs\\_new/...files/.../vnm re\\_chn\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/...files/.../vnm_re_chn_2009re_vnm.pdf) date of access 13 May 2009.

<sup>53</sup> Permanent Mission of Malaysia to the United Nations, Note HA 24/09, New York on May 20, 2009 with reference to the Note verbal CML/17/2009 of 7 May 2009 addressed to the General Secretary of United Nations by the Permanent Mission of the People’s Republic of China to the United Nations, [http://www.un.org/Depts/los/clcs\\_new/...files/.../mys re\\_chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/...files/.../mys_re_chn_2009re_mys_vnm_e.pdf) date of access 13 May 2009.

<sup>54</sup> Ibid.

<sup>55</sup> Permanent Mission of Malaysia to the United Nations, Note N. 41/09, New York on August 21, 2009. With reference to the Note Verbal N. 000819 dated August 4, 2009 from the Permanent Mission of the Republic of Philippines to the United Nations [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/mys\\_re\\_phl\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_phl_2009re_mys_vnm_e.pdf) date of access 13 May 2009

<sup>56</sup> Permanent Mission of the Socialist Republic of Vietnam to the United Nations, Note N. 240/HC-2009, New York 18 August 2009 with reference to the Note verbal N. 000818 and N. 000819 dated on 4 August 2009 and addressed to the General Secretary of United Nations by the Permanent Mission of the Republic of Philippines to the United Nations [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/vnm\\_re\\_phl\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_re_phl_2009re_mys_vnm_e.pdf), date of access 13 May 2009.

<sup>57</sup> See note 54.

<sup>58</sup> *Malaysia-Vietnam Joint Submission*.

<sup>59</sup> 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*, Vol. 38, Issue 3 (2007), pp. 306-309.

<sup>60</sup> Ibid.

<sup>61</sup> Daniel J. Dzurek, “The Spratly Islands Dispute: Who’s on First?” *Maritime Briefing*, Vol. 2, No. 1, International Boundaries Research Unit, 1996, p.1-2.

<sup>62</sup> Van Dyke and Bennett propose a 12-mile territorial sea for rocks in the Spratlys islands (J. M. Van Dyke and D.L. Bennett, "Islands and the Delimitation of Ocean Space in the South China Sea", *Ocean Yearbook*, Vol. 10, Edited by Elisabeth Mann Borgese, Norton Ginsburg, and, Joseph R. Morgan (Chicago: The University of Chicago Press, 1993), p. 54). 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*, Vol. 12, Issues 3-4 (1983), p. 265.

<sup>63</sup> R. W. Smith, “Maritime Delimitation in the South China Sea: Potentiality and Challenges”, *Ocean Development and International Law*, 41:214–236, 2010, p. 227.

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<sup>64</sup> *Philippines Submission.*

<sup>65</sup> *Malaysia-Vietnam Joint Submission.*

<sup>66</sup> For details see Nguyen Hong Thao and Ramses Amer, “A New Legal Arrangement for the South China Sea,” *Ocean Development and International Law*, Vol. 40, Issue 4 (2009), pp. 340, 347-348.

<sup>67</sup> Ellen Tordesillas, “Tempest in high seas”, in *Malaysia Opinion*, <http://www.malaya.com.ph/mar13/edtorde.htm>, date of access 13 May 2009.

<sup>68</sup> Permanent Mission of the People’s Republic of China to the United Nation, New York, Note CML2/2009, Feb 2, 2009 With reference to the Japan’s Submission dated of 12 November 2008 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/jpn08/chn\\_6feb09\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/jpn08/chn_6feb09_e.pdf)

date of access 13 May 2009

<sup>69</sup> Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission, Japan’s Submission to the CLCS pursuant to Article 76, paragraph 8 of the UNCLOS, Executive Summary, [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/jpn08/jpn\\_execsummary.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/jpn08/jpn_execsummary.pdf) Date of access 13 May 2009.

<sup>70</sup> Permanent Mission of the People’s Republic of China to the United Nation, New York, Note CML2/2009, Feb 2, 2009 With reference to the Japan’s Submission dated of 12 November 2008 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/jpn08/chn\\_6feb09\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/jpn08/chn_6feb09_e.pdf) date of access 13 May 2009.

<sup>71</sup> Permanent Mission of the People’s Republic of China to the United Nation, New York, Note CML17/2009, May 7, 2009 With reference to the Joint Submission by Malaysia and the Socialist Republic of Vietnam and dated of 6 May 2009 to the Commission on Limits of the Continental Shelf concerning the outer limit of continental shelf beyond 200 nautical miles [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf) date of access 13 May 2009 and

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<sup>72</sup> Smith, op. cit., p. 224.

<sup>73</sup> Carlyle A. Thayer, “Recent development in the South China Sea: Implications for Peace, stability and cooperation in the region”, in *Diplomatic Academy of Vietnam: Proceeding of the International Workshop on “The South China Sea: Cooperation for Regional Security and development”* 26-27 November 2009, Hanoi – Vietnam, p. 121.

<sup>74</sup> Permanent Mission of the Republic of Indonesia to the United Nations, Note N. 480/POL-703/VII/10, New York 8 July 2010 with reference to the circulate Note CML/17/2009 of 7 May 2009 addressed to the General Secretary of United Nations by the Permanent Mission of the People’s Republic of China to the United Nations [http://www.un.org/Depts/los/clcs\\_new/...files/.../idn\\_2010re\\_mys\\_vnn\\_e.pdf](http://www.un.org/Depts/los/clcs_new/...files/.../idn_2010re_mys_vnn_e.pdf), date of access 13 May 2010

<sup>75</sup> James Manicom, “China’s Claims to an Extended Continental Shelf in the East China Sea: Meaning and Implications”, *China Brief*, Volume: 9 Issue: 14, July 9, 2009.