

GERMAN YEARBOOK  
OF INTERNATIONAL  
LAW

VOLUME 56 · 2013



DUNCKER & HUMBLOT · BERLIN

GERMAN YEARBOOK OF INTERNATIONAL LAW

Volume 56 · 2013

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Volume 56 · 2013



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Westring 400, D-24098 Kiel, Germany  
Internet: [www.gvil.org](http://www.gvil.org)

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© 2014 Duncker & Humblot GmbH, Berlin  
Printed by AZ Druck und Datentechnik, Berlin  
Printed in Germany

ISSN 0344-3094  
ISBN 978-3-428-14480-8 (Print)  
ISBN 978-3-428-54480-6 (E-Book)  
ISBN 978-3-428-84480-7 (Print & E-Book)

Printed on no aging resistant (non-acid) paper according to ISO 9706 ☉  
Internet: <http://www.duncker-humblot.de>

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## FORUM

### CONFLICTS IN THE SOUTH CHINA SEA



Stein Tønnesson, China and the South China Sea: A Peace Proposal, Security Dialogue 31 (2000), 307, 308

# China and the South China Sea Conundrum: Any Prospective Solution in Future?

ZOU KEYUAN\*

**ABSTRACT:** The disputes in the South China Sea have attracted serious concerns in the world community and if not well managed, would become a source of conflict and instability in the region. As a key player in curbing and finally solving such disputes, China's role is indispensable. Without China's collaboration and involvement, any resolution to any South China Sea dispute is just an empty word. This article attempts to discuss the recent developments in the South China Sea and the responses of China to them. Significant issues concerning the law of the sea will be analytically discussed and include particularly China's U-shaped line claim and historic rights in international law, China's practice in and position on islands and baselines, and military activities in the EEZ. By looking at these developments in East Asia, possible means for the settlement of the disputes in the South China Sea will be explored.

**KEYWORDS:** China, South China Sea, Law of the Sea, UN Convention on the Law of the Sea (UNCLOS), Islands, Exclusive Economic Zone (EEZ)

## I. Introduction

The disputes in the South China Sea have attracted serious concerns in the world community including the academic world. The South China Sea is a semi-enclosed sea, as defined by the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>1</sup> There are hundreds of small islands in the South China Sea, namely

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<sup>1</sup> United Nations Convention on the Law of the Sea, 10 December 1982, UNTS 1833, 3 (UNCLOS). The UNCLOS was adopted at the Third United Nations Conference on the Law of the Sea on 10 December 1982 and entered into force on 16 November 1994. As of October 2013, it had 166 parties including the European Union. Art. 122 UNCLOS defines "enclosed or semi-enclosed sea" as "a gulf, basin, or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".

uninhabited islets, shoals, reefs, banks, sands, cays and rocks.<sup>2</sup> They are scattered widely throughout the South China Sea in the form of four groups of islands and underwater features, *i.e.*, the Pratas Islands (*Dongsha Qundao*), the Paracel Islands (*Xisha Qundao*), the Macclesfield Banks (*Zhongsha Qundao*),<sup>3</sup> and the Spratly Islands (*Nansha Qundao*). The political situation in the South China Sea is complicated, as it contains potential conflicts with different national interests and claims. The Pratas Islands are under the firm control of Taiwan in the name of the Republic of China (ROC). No competing claims exist there under the current concept of ‘one China.’ For the Macclesfield Banks, the only claimant is ‘China,’ including both the People’s Republic of China (PRC) and Taiwan. Nevertheless, the Scarborough Reef, part of the Macclesfield Banks, has also been claimed by the Philippines. The Paracel Islands are under the PRC’s control, but contested by Vietnam. The most complicated dispute is over the Spratly Islands as it has been lingering on for a long time and involves as many as six parties representing five States, *i.e.*, Brunei, China (PRC and Taiwan), Malaysia, the Philippines, and Vietnam. It is unusual in international history and relations that so many countries make claims over so small islets, in whole or in part, of the Spratly Islands and their surrounding waters.

Generally speaking, there are three layers of disputes in the South China Sea. The first and most fundamental is that of overlapping claims of sovereignty over the geographic features between/among littoral states, the second is that of overlapping claims to the maritime zones generating either from the islands or from the coasts of the littoral states basically in terms of sovereign rights and jurisdiction as stipulated under the UNCLOS, and the third one is that of disputes in relation to the use of the oceans including conflicting uses of marine resources and development between/among littoral states, the use of sea lanes and the conduct of military activities in the name of the freedom of navigation between littoral states and user states. These disputes are entangled with one another, thus rendering the South China Sea situation one of the most complicated of all territorial and maritime disputes in the world.

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<sup>2</sup> According to *Hungdah Chiu*, there are 127 islands in the South China Sea based upon a survey conducted in 1946–1947 sponsored by the then Chinese Ministry of Internal Affairs, see *Hungdah Chiu*, *South China Sea Islands: Implications for Delimiting the Seabed and Future Shipping Routes*, *China Quarterly* 72 (1977), 756.

<sup>3</sup> This author uses the term ‘Macclesfield Banks’ to refer to the Chinese terminology *Zhongsha Qundao* which includes not only the Macclesfield Bank itself but also other dozens of surrounding shoals and banks, such as the Scarborough Reef (*Huangyan Island* in Chinese).

As a key player in curbing and finally solving such disputes, China's role is indispensable. Without China's collaboration and involvement, resolution to any South China Sea dispute is simply an empty word. This article attempts to discuss the recent developments in the South China Sea and China's responses to them. Significant issues concerning the law of the sea will be analytically discussed and include particularly China's U-shaped line claim and historic rights in international law, China's practice in and position on islands and baselines, foreign military activities in the exclusive economic zone (EEZ), and also the implementation of the 2002 Declaration of the Conduct of Parties in the South China Sea (DOC).<sup>4</sup>

It is recalled that during the Third United Nations Conference on the Law of the Sea (1973–1982) China supported the drafting of the UNCLOS. Due to the fact that the PRC was not involved in the negotiations of the four 1958 Geneva Conventions on the law of the sea, it regarded them as the so-called 'old law of the sea;' and treated the UNCLOS as the representative of the 'new law of the sea.' China signed the Convention on the day it was opened to signature in 1982 and finally ratified it in 1996. Based on the UNCLOS, China enacted two basic ocean laws: the 1992 Law on the Territorial Sea and the Contiguous Zone<sup>5</sup> and the 1998 Law on the Exclusive Economic Zone and the Continental Shelf.<sup>6</sup>

The 1992 Law on the Territorial Sea and the Contiguous Zone has improved the territorial sea regime established under the 1958 Declaration on the Territorial Sea.<sup>7</sup> China has set its territorial sea at a breadth of 12 nautical miles (nm) and the contiguous zone at 24 nm, measuring from its baselines. Merchant ships enjoy the right of innocent passage through China's territorial sea but foreign warships are subject to

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<sup>4</sup> ASEAN/China, Declaration on the Conduct of Parties in the South China Sea (DOC), 4 November 2002, available at: <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea> (accessed on 11 October 2013).

<sup>5</sup> Law on the Territorial Sea and the Contiguous Zone, 25 February 1992, reprinted in: *Zou Keyuan*, China's Marine Legal System and the Law of the Sea (2005), 338 *et seq.*, also available at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN\\_1992\\_Law.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf) (accessed on 12 October 2013).

<sup>6</sup> Law on the Exclusive Economic Zone and the Continental Shelf, 26 January 1998, reprinted in: *Zou Keyuan* (note 5), 342 *et seq.*, also available at: [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn\\_1998\\_eez\\_act.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf) (accessed on 12 October 2013).

<sup>7</sup> Declaration on China's Territorial Sea, 4 September 1958, reprinted in: Office of Policy, Law and Regulation, State Oceanic Administration (ed.), Collection of the Sea Laws and Regulations of the People's Republic of China (3rd ed. 2001), 197, also available at: <http://www.law.fsu.edu/library/collection/limitsinseas/ls043.pdf> (accessed on 12 October 2013).