International Boundaries Research Unit

# MARITIME BRIEFING

**Volume 2 Number 4**

## Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes

***Robert W. Smith and Bradford L. Thomas***

# Maritime Briefing

Volume 2 Number 4
ISBN 1-897643-28-4
1998

## Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes

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# Island Disputes and the Law of the Sea:
## An Examination of Sovereignty and Delimitation Disputes[1]

***Robert W. Smith and Bradford L. Thomas***

## 1. Introduction

> *Islands, within the law of the sea context, often have caused problems in the delimitation of boundaries and the extent of national sovereignty and jurisdiction.*[2]

This was the opening sentence in the preface to a study written on islands in 1973 by Dr Robert D. Hodgson, The Geographer of the United States Department of State. Dr Hodgson knew even then what the potential problems would be in implementing any law of the sea regime and the title of his work was rather prophetic: *"Islands: Normal and Special Circumstances."* The use, or non-use, of islands in establishing national jurisdiction over ocean space has been somewhat inconsistent and troublesome on a global scale over the years. While on the one hand, islands are to be treated in the same manner as any mainland territory (that is, being regarded as an integral part of a coastal state's baseline), the extent of this 'equal' treatment is often disputed. Consideration of islands in the law of the sea is often influenced by their size, their location (particularly in relation to neighbouring states), their political status, and the nature of the island itself (i.e., what's on it, or not on it).

The United Nations Convention on the Law of the Sea (LOS Convention) does address the issue of islands, but does not necessarily answer all questions related to their use in delimiting a state's maritime jurisdiction. Early in the Third United Nations Law of the Sea Conference – following the publication of the Informal Single Negotiating Text (ISNT) by the Conference[3] – issues pertaining to various aspects of islands were raised. Some concerns raised in one analysis, such as how to draw closing lines in certain atolls, perhaps will have minimal impact as states implement the Law of the Sea (LOS) Convention; other issues, such as the application of Article 121(3) on rocks, may be of greater significance.[4]

Disputes involving islands fall under two major categories:

1. a dispute over the sovereignty of the island(s) itself; and,
2. a dispute over the affect the island(s) may have on the delimitation of adjacent maritime space.

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1 This study is adapted from a paper delivered by the authors at a conference titled, *"Security Flashpoints: Oil, Islands, Sea Access and Military Confrontation"*, held in New York City, 7 February 1997 and sponsored by the Center for Oceans Law and Policy, Centre for National Security Law, University of Virginia School of Law, and the Council of Foreign Relations.

2 Hodgson, R.D. (1973) *Islands: Normal and Special Circumstances*, Research Study RGES-3, Washington: US Department of State (10 December).

3 UN Doc.A/Conf.62/W.P.8/Part II, 7 May 1975.

4 Hodgson, R.D. and Smith, R.W. (1976) 'The Informal Single Negotiating Text (Committee II): A Geographical Perspective', *Ocean Development and International Law*, 3, 3: 225-259.

There are important distinctions to be made between these two categories in the relationship between the particular type of dispute and the role that the LOS Convention may, or may not, have on affecting resolution. This paper will seek to give an overview of islands and the law of the sea, highlighting the major types of disputes involving islands.

## 2. Island Sovereignty Disputes

In the last few years, disputes over islands and rocks, many hitherto unknown, have surfaced and gained world-wide attention, sometimes putting severe strain on public knowledge of world geography as people rush to charts, maps and atlases with magnifying glasses to find these nuggets of the oceans. In several instances, bilateral relations have been strained as increased public posturing has created, in some cases, an unwanted public awareness of what had been 'back burner' issues. In virtually all cases, the sovereignty disputes themselves are not new. The respective claims have been around for decades and, if you read all the public statements and 'white' papers of some of the claimant states, probably for centuries.

Nationalism, and the sentiments associated with it, play a large role in the process of managing a dispute over a piece of territory. Regardless of the strength of the legal arguments behind a state's position regarding sovereignty, once the people become aware of the dispute, it is very difficult for the negotiators to do anything but maintain the full claim. Virtually all disputes can be resolved if the *political will* is present, but that certainly is easier said than done.

Table 1 lists the known disputes over island sovereignty around the world. East Asia has a particular concentration of those island disputes making headlines of late, with others in the Middle East and the Aegean Sea contributing further to current news. These disputes are all ostensibly tied to concerns over maritime interests of one kind or another. Three of the East Asian island disputes involve Japan, and have become more visible after Japan ratified the LOS Convention and passed new maritime legislation (Figure 1). Below we briefly describe the more prominent disputes over island sovereignty capturing today's headlines, and some of their implications for maritime interests.

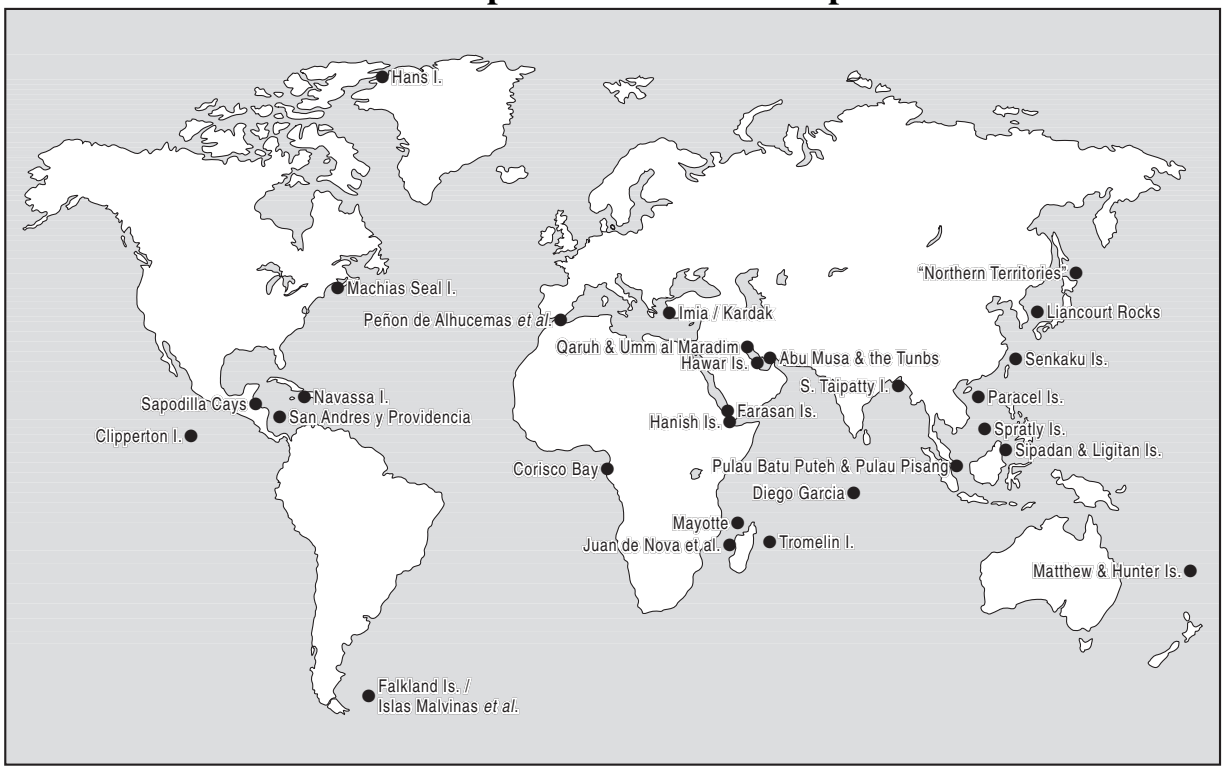
### 2.1 The Senkaku/Diaoyu/Tiaoyu Islands

In the southern part of the East China Sea, Japan, China and Taiwan dispute the Senkaku/Diaoyu/Tiaoyu Islands (Figure 2). Here China, Taiwan, and Japan vie for sovereignty over a group of seven tiny islands (the largest being just 4km in length and 1.5km wide) that could possibly have a pronounced effect on the drawing of maritime boundaries in favour of whomever owns them. China claimed the islands in its 1992 domestic legislation and has conducted geological research near these islands in the last several years.

Unofficial activist groups, however, have taken the lead in asserting their respective countries' claims. Trouble resurfaced in 1996 when a Japanese youth group went to the islands and erected an unofficial navigational beacon.[5] In this dispute, as in the Spratly Islands, China and Taiwan share the same claim. Activist groups from Taiwan and Hong Kong spearheaded

[5] *Sankei Shimbun* (Tokyo), 17 July 1996: 1.

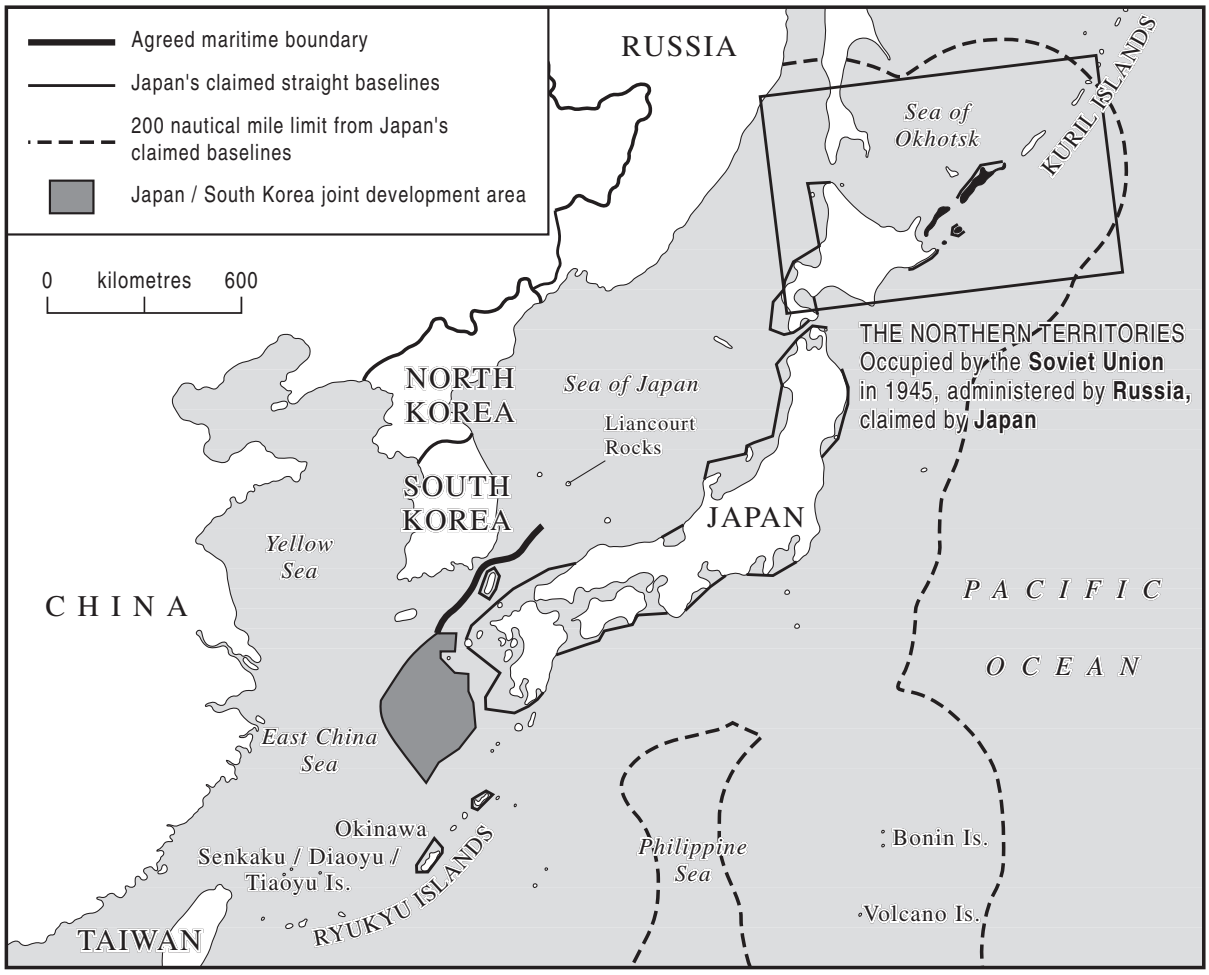
# Table 1: Disputed Islands and Disputants

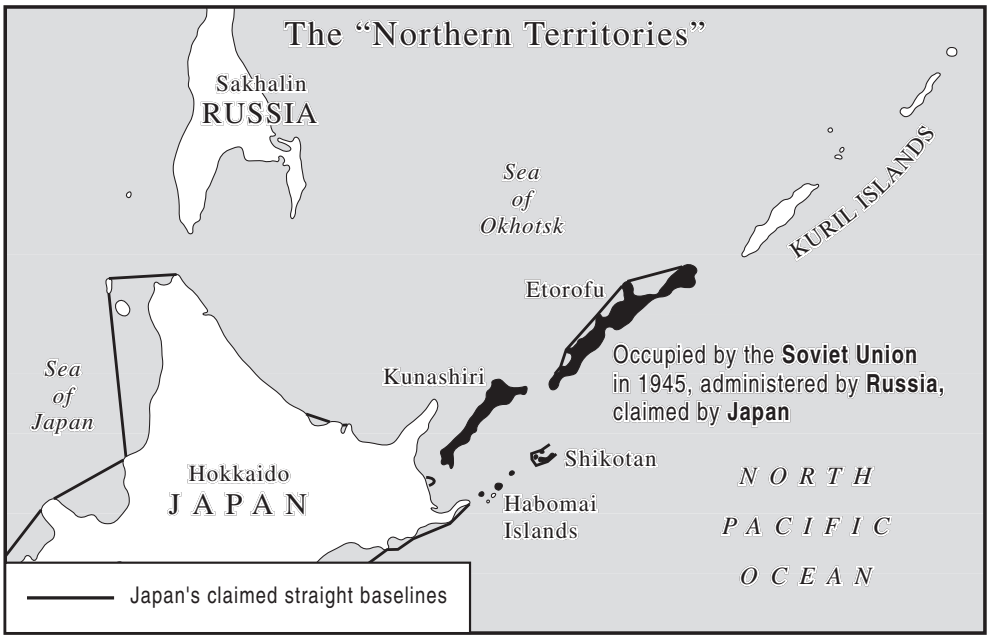



| DISPUTE : | DISPUTANTS : |
|---|---|
| Abu Musa & the Tunbs | Iran - United Arab Emirates |
| Clipperton Island | France - Mexico |
| Corisco Bay, several islets | Equatorial Guinea - Gabon |
| Diego Garcia | Mauritius - United Kingdom |
| Falkland Islands / Islas Malvinas, South Georgia & the South Sandwich Islands | Argentina - United Kingdom |
| Farasan Islands (southern part) | Saudi Araba - Yemen |
| Hanish Islands | Eritrea - Yemen |
| Hans Island | Canada - Denmark |
| Hawar Islands | Bahrain - Qatar |
| Imia (Kardak) Rocks | Greece - Turkey |
| Juan de Nova, Bassas da India, Europa, Glorioso & Tromelin Islands | France - Madagascar |
| Liancourt Rocks (Takeshima or Tok - do) | Japan - South Korea |
| Machias Seal Island / North Rock | Canada - United States |
| Matthew & Hunter Islands | France - Vanuatu |

| DISPUTE : | DISPUTANTS : |
|---|---|
| Mayotte | Comoros - France |
| Navassa Island | Haiti - United States |
| "Northern Territories" | Japan - Russia |
| Paracel Islands | China - Vietnam |
| Peñon de Alhucemas, Peñon de Velez de la Gomera, Isle Chafarines | Morocco - Spain |
| Pulau Batu Puteh, Pulau Pisang | Malaysia - Singapore |
| Qaruh & Umm al Maradim | Kuwait - Saudi Arabia |
| San Andres y Providencia | Colombia - Nicaragua |
| Sapodilla Cays | Belize - Guatemala - Honduras |
| Senkaku Islands (Diaoyu Tai) | China - Japan |
| Sipadan & Ligitan Islands | Indonesia - Malaysia |
| Spratly Islands | China - Malaysia - Philippines - Vietnam |
| South Talpatty Island | Bangladesh - India |
| Tromelin Island | France - Mauritius - Saychelles - Madagascar |

# Figure 1: Japan's Maritime Disputes

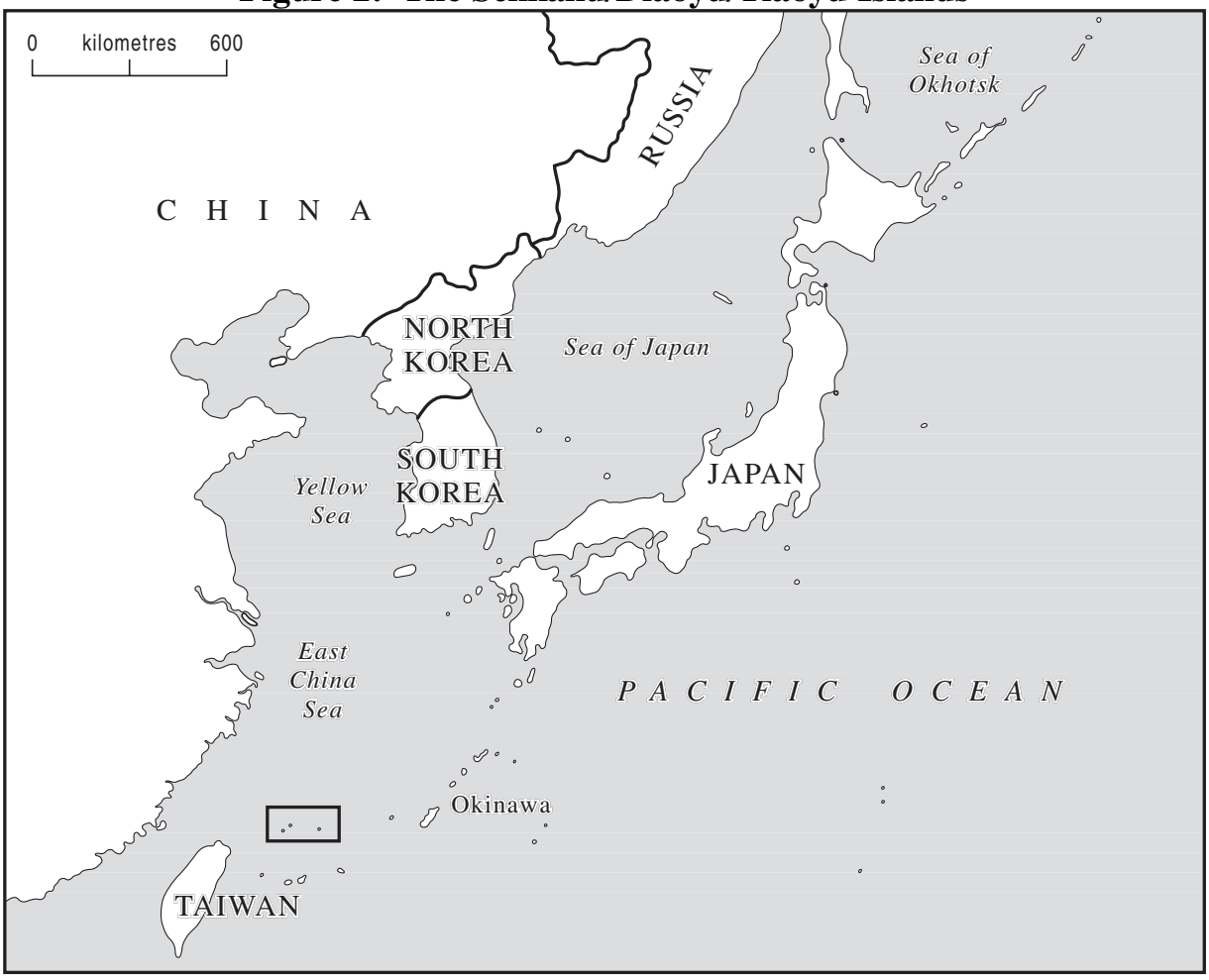



Source: Adapted from United States Department of State

protest voyages to the islands and landings on them, though the PRC Government remained cautiously reserved.[6]

**Figure 2: The Senkaku/Diaoyu/Tiaoyu Islands**




Source: Adapted from United States Department of State

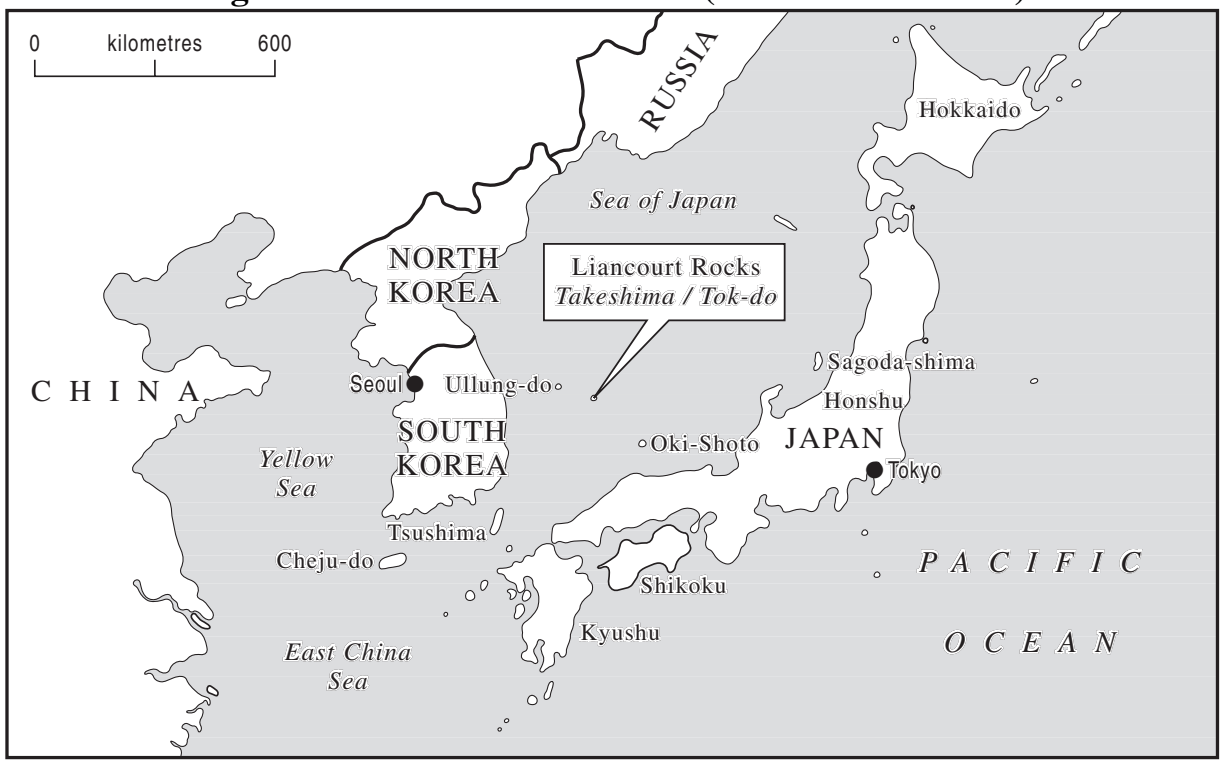
6 'Protester Dies in Defense of Disputed Asian Islands', *The Washington Post*, 27 September1996: A32; 'Premier of China Joins Fray', *The Washington Post*, 1 October 1996: A15.

## 2.2 Other Japanese Island Disputes

A similar dispute re-surfaced in 1996 between Japan and South Korea over tiny islets, the Liancourt Rocks (Takeshima/Tok-do), in the south-central section of the Sea of Japan when Japan protested the construction of harbour facilities by South Korea. These 250 square metre rocks, again, could have a profound effect on the delimitation of maritime boundaries. (Figures 1 and 3).

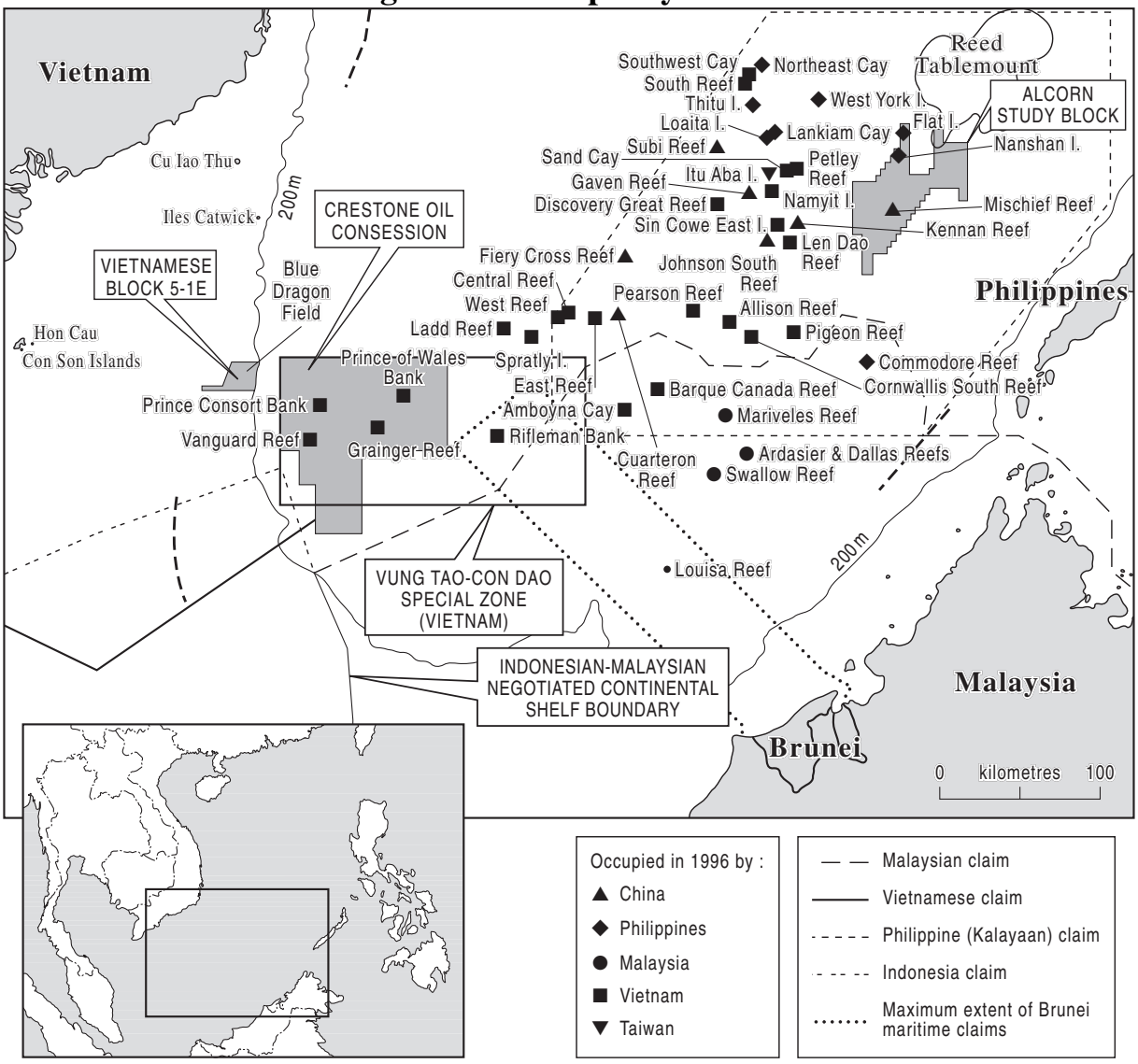
Northeast of Japan, a long-standing sovereignty dispute between Japan and Russia over a group of islands (known in Japan as the 'Northern Territories' and in Russia as the southern Kuril Islands) originally involved a Soviet takeover of the islands in 1945 and displacement of resident Japanese. In the last several years, the dispute has plagued the activities of Japanese fishermen, who have had repeated run-ins with Russian border guard units off these islands (Figure 1). Recently, talks have occurred between these two states seeking resolution to this long-standing problem in their bilateral relations.

**Figure 3: The Liancourt Rocks (Takeshima/Tok-do)**




Source: Adapted from United States Department of State

**Figure 4: The Spratly Islands**




Source: Adapted from united States Department of State

## 2.3 The Spratly Islands

One of the most complex disputes in East Asia, if not in the world, is that in the South China Sea, where five claimants dispute all, or some, of the islands collectively known as the Spratly Islands (Figure 4).[7] The People's Republic of China (PRC, hereafter China), Taiwan, and Vietnam have laid claim to all of the islands in the South China Sea, while the Philippines and Malaysia have each claimed overlapping portions of the Spratly Island group. In addition, Brunei has made claims to maritime jurisdiction in the region but has made no claims to sovereignty over any of the islands.[8]

---

7 Hancox, D. and Prescott, J.R.V. (1995) *A Geographical Description of the Spratly Islands and an Account of Hydrographic Surveys Amongst Those Islands*, Maritime Briefing, 1, 6 (Durham: International Boundaries Research Unit); Dzurek, D.J. (1996) *The Spratly Islands Dispute: Who's On First?*, Maritime Briefing, 2, 1 (Durham: International Boundaries Research Unit).

8 Brunei is reported to claim the marine area around Louisa Reef, but does not appear to view the feature as an island capable of generating claims to extended maritime zones. It is unclear whether Brunei regards Louisa Reef as a 'rock' capable of generating a territorial sea claim.

Chinese (PRC) forces occupy the Paracel Islands, also claimed by Vietnam, and Taiwan forces occupy Pratas Reef, but each of the claimants has established other military outposts in the Spratly Islands, except Brunei. Malaysia has also established a resort on Swallow Reef (Figure 4). Given that China and Taiwan share the same claim, that still leaves four claims on some of the islands. No other island dispute has as many.

The Spratly Island claims are especially critical for China and Taiwan, since, without sovereignty over these islands, they would have no credible basis for claiming jurisdiction over offshore resources in the southern part of the South China Sea. Recent Chinese foreign ministry statements about China's claim to the islands have consistently included reference to their *"adjacent waters."* Vietnam, in turn, refutes Chinese claims to potential hydrocarbon areas southwest of the Spratly Islands by insisting that they are on Vietnam's continental shelf.[9] Some Vietnamese statements even argue that the Spratly Islands deserve no extended maritime jurisdiction at all.

In the spring of 1995 tensions flared between the Philippines and China over Mischief Reef, a small, uninhabited reef located in the eastern part of the Spratly Island group (Figure 4). The reef is claimed by both states. Following occupation of the reef by China, the Philippines sponsored a media trip to the reef and later arrested 62 Chinese fishermen for alleged illegal fishing in the area.

## 2.4 Malaysia's Island Disputes

To the south, Malaysia finds itself disputing island sovereignty with two of its neighbours.[10] With Singapore it disputes Pulau Pisang and Pulau Batu Puteh. To the east, Malaysia disputes with Indonesia the sovereignty of the islands of Sipadan and Ligitan, off the coast of Borneo at the land boundary terminus between Malaysia's Sabah State and Indonesia's Kalimantan Province (Figure 5). In both sovereignty disputes the countries have agreed to take the matter to third party arbitration. Again, each of these disputes has some implications for the location of maritime boundaries.

## 2.5 The Red Sea

Following hostilities which erupted in December 1995 between them, Eritrea and Yemen have recently agreed to take their sovereignty dispute over the Hanish Islands to arbitration (Figure 6).

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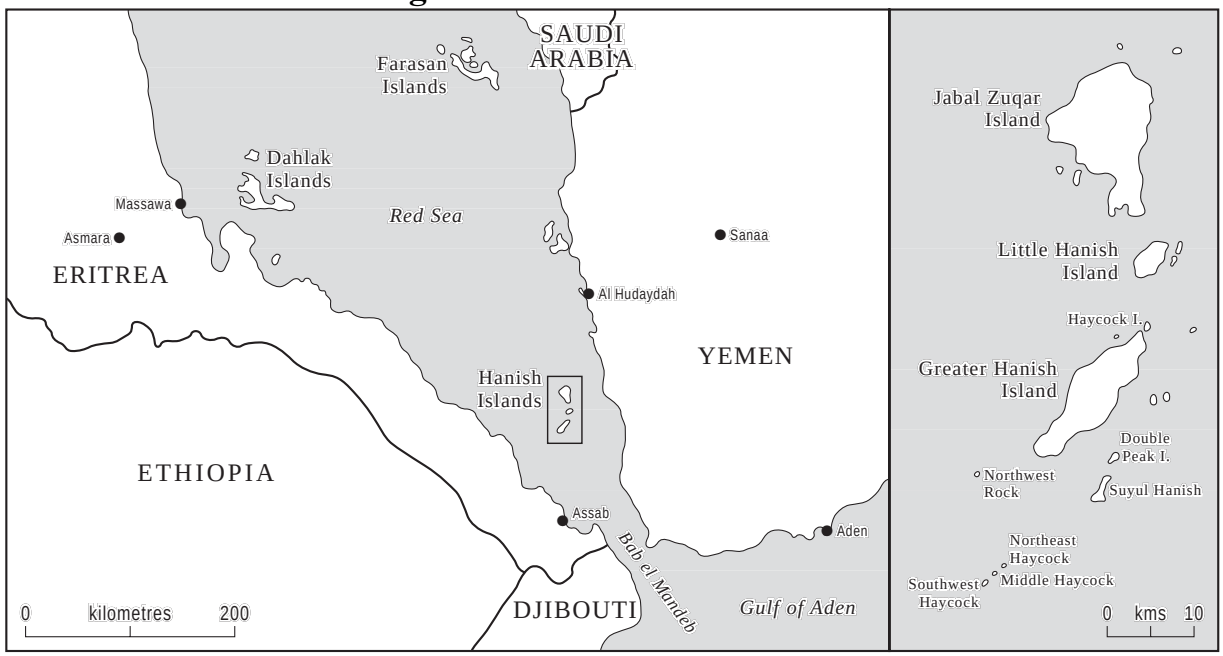
9 Huynh Minh Chinh (1992) 'Tu Chinh Bank is on Vietnam's Continental Shelf', *Vietnam Courier*, 34 (August); *Idem*. (1994) 'The Vietnamese Continental Shelf', *Tap Chi Quoc Toan Dan*, (July): 10-15.

10 The Malaysian Government published its continental shelf boundaries in a 1979 map *Peta Menunjukkan Sempadan Perairan Dan Palantar Benua Malaysia* [Map Showing Territorial Waters and Continental Shelf Boundaries of Malaysia], 1: 1,500,000 on 2 sheets. By deduction from this map, Malaysia apparently used Sipidan and Ligitan Islands as basepoints in its hypothetical straight baseline system (Malaysia has never officially claimed straight baselines). See Haller-Trost, R. (1995) *The Territorial Dispute between Indonesia and Malaysia over Pulau Sipadan and Pulau Ligitan in the Celebes Sea: A Study in International Law*, Boundary and Territory Briefing, 2, 2 (Durham: International Boundaries Research Unit): 24. More indicative is the fact that the islands lie within the claimed continental shelf, an argument for sovereignty that has been used fallaciously by Malaysia (see footnote 25).

## Figure 5: Sipadan and Ligitan Islands


Source: Adapted from United States Department of State

## Figure 6: The Hanish Islands




Source: Adapted from United States Department of State

Both sides have cited history to support their respective claims. Yemen has demanded that the maritime centreline of the Red Sea be determined as part of the dispute resolution. Yemen's position that the delimitation of the maritime boundary with Eritrea *"in line with international laws and charters"* be part of the final determination of the status of the Hanish Islands was well publicised near the end of 1995.[11] The international community has a special interest in this dispute as the disputed islands are situated in the Red Sea just north of the important international strait of the Bab el Mandeb.

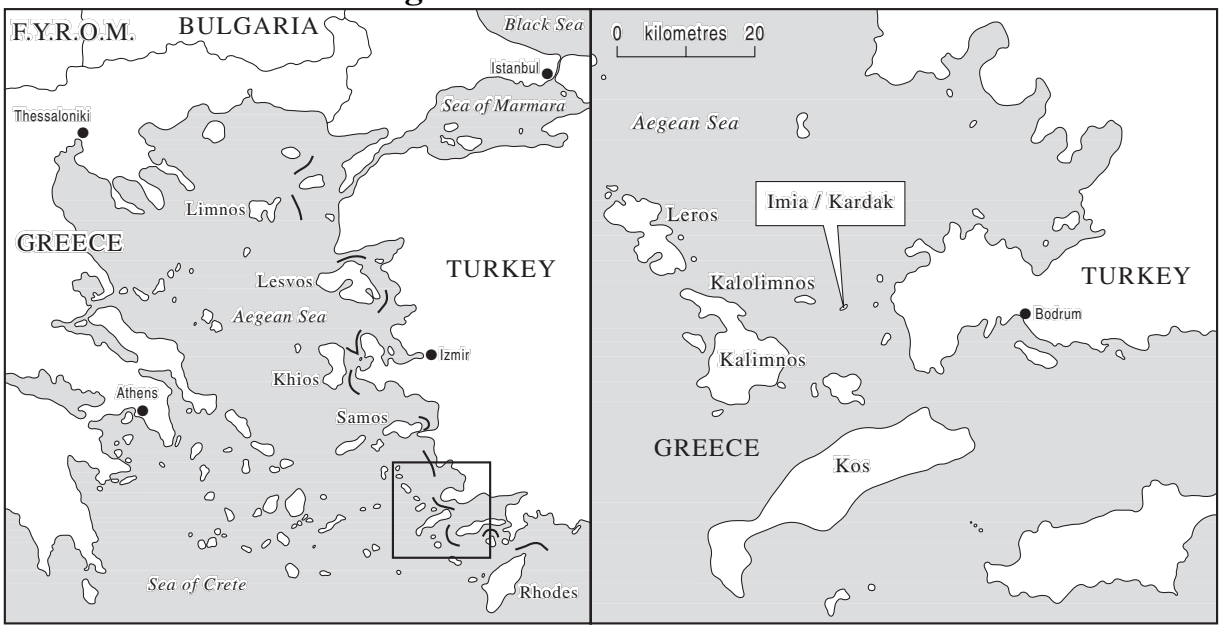
### 2.6 Aegean Sea

The dispute between Greece and Turkey over the uninhabited Imia (Greek name)/Kardak (Turkish name) rocks in the Aegean, hemmed in all around by nearby Greek and Turkish islands, or the Turkish mainland (Figure 7), has almost no relation to jurisdiction over maritime resources. Other than a question of national pride, it is probably more related to apprehensions over the extent of claimed territorial seas and their implications for unhindered navigation.

Greek claims to this particular island derive from Italian claims which passed to Greece under the 1947 Treaty of Paris following World War II. The Italian claims began with military occupation of the Dodecanese Islands prior to World War I, in 1912. In the 1923 Treaty of Lausanne, Turkey renounced, in favour of Italy, all rights and title to the Dodecanese Islands, and the adjacent islands *"dependent"* on them. Greece also points to a 1932 Protocol to support its claim. Turkey counters Greece's claims by disputing the validity of the 1932 Protocol and arguing the issue of whether or not these islands are *"dependent on"* or *"adjacent to"* any of the islands ceded to Italy in 1923, and subsequently passed to Greece in the 1947 Treaty.

[11] See, for example, *Al Wasat* (London) 8-14 January 1996: 10-12 (Foreign Broadcast Information Service (FBIS) report).

## Figure 7: Imia/Kardak Rocks




Source: Adapted from United States Department of State

Yet, perhaps more importantly, this dispute is taking place against the broader backdrop of one over the extent of maritime and airspace jurisdiction by both sides. This part of the dispute will be discussed later in this *Briefing*.

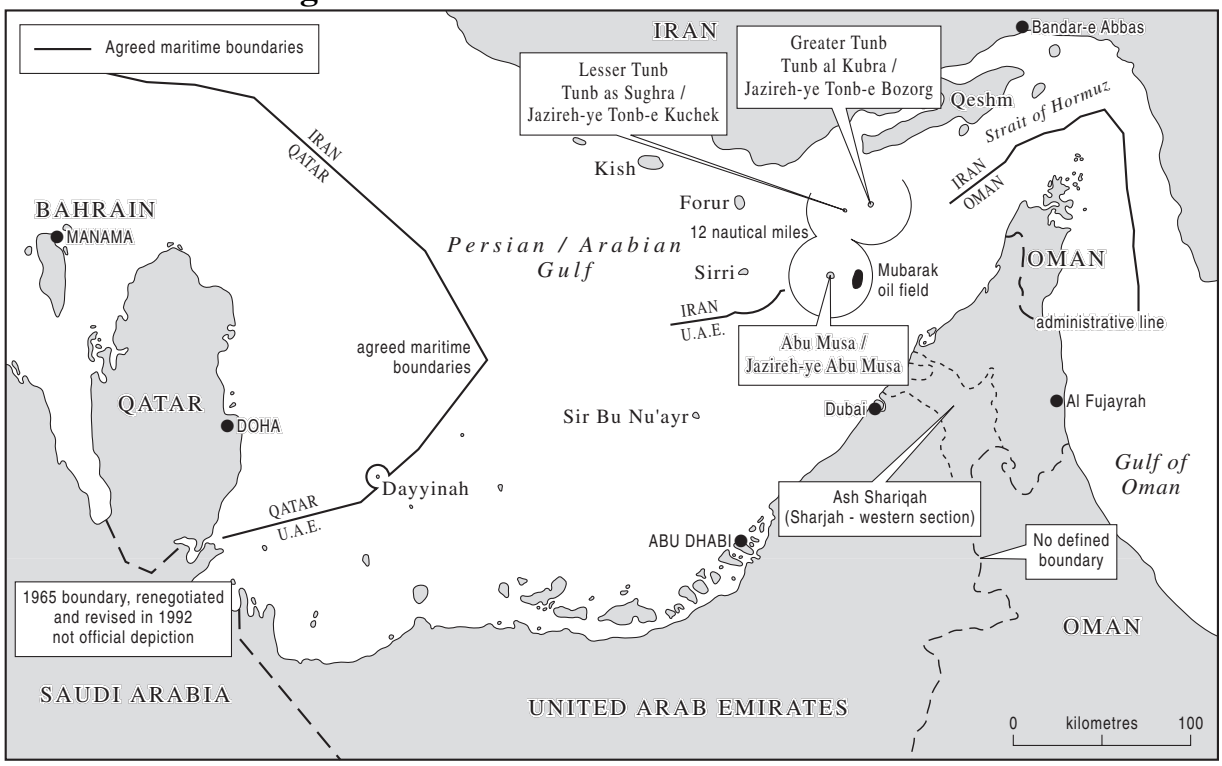
### 2.7 Abu Musa and the Tunbs Islands

Iran presently occupies a strategic cluster of islands that lie along the major shipping lanes in the western approaches to the Strait of Hormuz in the Persian/Arabian Gulf (Figure 8).[12] Nearly all vessels entering or leaving the Persian Gulf use the shipping lanes that pass near these islands. While Iranian sovereignty over Sirri, Forur, and Bani Forur is uncontested, control over Abu Musa and the Tunbs has been the subject of a long-standing dispute between Iran and the United Arab Emirates, specifically Sharjah and Ras al- Khaymah.

Iran and Sharjah have jointly administered Abu Musa since a Memorandum of Understanding was signed in 1971. Tensions arose in 1992 when Iran tightened its control over Abu Musa. While Iran and Sharjah have shared in the revenue of an offshore oil concession, the dispute over this and the other islands is essentially a sovereignty issue rather than a maritime resource issue. Similar to the Red Sea island dispute, the international community is keenly interested in the state of play in this area because of the vital shipping interests in the region.

12 These islands include the Greater Tunb (Tunb al Kubra/Jazireh-ye Tonb-e Bozorg), the Lesser Tunb (Tunb as Sughra/Jazireh-ye Tonb-e Kuchek), Abu Musa/Jazireh-ye Abu Musa, Sirri (Jazireh-ye Sirri), Forur (Jazireh-ye Forur), and Bani Forur (Jazireh-ye Bani Forur).

## Figure 8: Abu Musa and the Tunbs Islands




Source: Adapted from United States Department of State

### 2.8 Falkland Islands/Islas Malvinas

This dispute has been a source of contention between Argentina and the United Kingdom since Britain occupied the islands in 1833 (Figure 9). After years of ineffectual United Nations resolutions and unsuccessful negotiations between the two countries, the dispute erupted into a short war in 1982. Argentina invaded and briefly occupied the islands, to be expelled by the British at a cost of several hundred lives on both sides. Sovereignty remains unresolved, but it has become more of a maritime resource issue.

In 1986, the UK formed a 150-mile fisheries protection zone, with an announcement of the *"entitlement of the Falklands under international law, to a fisheries limit of 200 miles."* Then, in 1990, after Argentina and the UK agreed to cooperate over fisheries conservation in the South Atlantic, the UK proclaimed a joint *"outer fishery conservation zone"* between 150 miles and 200 miles around the islands. The two countries have since signed an agreement on the framework for joint oil exploration in a *"Special Area"* southwest of the Falklands/Malvinas, and oil exploration is proceeding to the north of the islands, with participation by an Argentine firm in consortium with a British firm in the bidding, and Argentina slated to share in duties from the development.[13]

[13] Allcock, J.B. et al. (1992, eds) *Border and Territorial Disputes*, 3rd edition, Harlow: Longman: 552-561; Armstrong, P. (1994) 'Falklands Oil', *Boundary and Security Bulletin*, 2, 2 (July, Durham: International Boundaries Research Unit) 58-62; *Reuters*, 22 November 1996; *TELAM* (Buenos Aires), 28 October 1996 (FBIS report); Armstrong, P. and Forbes, V. (1997) *The Falkland Islands and Their Adjacent Maritime Area*, Maritime Briefing, 2, 3 (Durham: International Boundaries Research Unit).

## Figure 9: The Falkland Islands/Islas Malvinas


Source: Adapted from United States Department of State

### 2.9 United States – Canada

In the northern section of the Gulf of Maine, the United States and Canada have a two-century old dispute over Machias Seal Island and adjacent North Rock. It is the view of the United States that these territories have been part of the US since the founding of the Republic. US sovereignty over these islands was recognised in the 1783 Treaty of Paris, when Article II of the Definitive Treaty of Peace between the United States and Great Britain assigned to the United States:

> *all islands within twenty leagues of any part of the shores of the United States...excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia.*[14]

To further its argument, the United States notes that the Arbitration between the United States and Great Britain undertaken pursuant to the 1814 Treaty of Ghent confirmed that the grant of Nova Scotia by the British Crown under the terms of a 1621 Charter to Sir William Alexander did not include either island.

Canada, however, maintains a different interpretation of these historical treaties, also basing its claim to the island on the 1814 Treaty. Canada constructed a lighthouse on the island in 1832,

[14] 8 Stat. 80, TS 104, 12 Bevans 8.

and has since declared it a national bird sanctuary. When the United States protested the landing of two Canadian law enforcement officers on the island, in June 1984, Canada stated that the island – inhabited by two Canadian lighthouse keepers and their families, as well as a wildlife protection official – was Canadian territory, and anyway the officers were enforcing bird protection laws adhered to by both countries.

Both states acknowledge the disputed status of the islands, and because of the complexity of the dispute, and the fact that the claims are based on treaties not associated with the law of the sea, the US and Canada agreed, in the early 1980s, not to include th is sovereignty dispute in the ICJ Arbitration that settled the maritime boundary to the south, in the Gulf of Maine.

## 3. Island Sovereignty Disputes and the Law of the Sea Convention

So, why are these islands, many of which are only tiny pieces of territory, receiving all this recent attention? Some point to the LOS Convention and its coming into force in late 1994. The LOS Convention provides for a territorial sea of up to 12 nautical miles measured from the baseline in conformity to the provisions of the Convention. It allows for exclusive jurisdiction over maritime resources out to 200 nautical miles except from a *"rock"* as defined by Article 121(3).[15]

An exclusive economic zone (EEZ) of 200 miles around a small island can encompass about 125,660 square nautical miles of ocean space. Within this zone, a state may enjoy, *inter alia*, jurisdiction over, *"the living and non-living resources [such as fisheries and hydrocarbon deposits], the waters superjacent to the seabed and of the seabed and its subsoil."*[16] Similarly, a state could claim the continental shelf surrounding an island, which could, under certain circumstances, extend beyond the limits of an EEZ claim.[17] At a minimum the outer limit of the continental shelf is coincident with the limit of the EEZ. Where specific conditions are met in accordance with Article 76 of the LOS Convention, states may be entitled to exclusive jurisdiction over the continental shelf beyond 200 miles.

A recent *Wall Street Journal* article has stated that the dispute between China and Japan over the Senkaku/Diaoyu/Tiaoyu Islands is a result of the *"claim-staking mania inspired by the UN Convention on the Law of the Sea..."*[18]

The LOS Convention did enter into force on 16 November 1994, for those states party to the Convention.[19] While this event placed a capping stone on a construction many years in the making, many of the building blocks of the structure itself (i.e., the LOS Convention) were not entirely new to the international community. The right of states to make claims to the extended maritime zones included in the Convention, it can be argued, has been around for many years.

---

15 All miles in this paper, unless otherwise noted, are nautical miles. One nautical mile equals 1,852 meters. Article 121(3) states that *"Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."*

16 LOS Convention, Article 56.

17 LOS Convention, Article 77.

18 *Wall Street Journal* editorial, 'Waved Off', dated 26 September 1996,

19 As of 23 December 1997, 123 States had deposited their instruments of ratification/accession with the United Nations, and were party to the LOS Convention.

The concept of the continental shelf entered the realm of international law with the proclamation by President Truman of the US continental shelf in 1945[20] and was codified in the 1958 Geneva Convention on the Continental Shelf. It was rapidly instituted around the world, with 52 such claims issued by 1971 (before the first negotiating text of the Third LOS Convention) along with 35 claims to fishing zones.[21] A similarly extensive state practice of claiming the more comprehensive exclusive economic zone (EEZ), following adoption of that concept by the Third UN LOS Conference in the mid-1970s, suggests the growing acceptance in international law for extended maritime zones. By 1990, there were 80 EEZ claims.[22] However, though the LOS Convention has now entered into force and 100 states claim EEZs,[23] there remains the question of exactly what constitutes an Article 121(3) *"rock"* which cannot generate an EEZ or continental shelf.[24]

It would be safe to assume, however, that some states have held off claiming an EEZ until such time that they had completed their domestic process of ratifying (or acceding to) the LOS Convention and the Convention had entered into force for them. To this extent, the LOS Convention could be viewed as a catalyst for a state to review its offshore situation. In those situations where disputes have involved islands, it appears that those islands have gained renewed attention.

It is fair to say that maritime resource jurisdiction is at least an implicit issue in almost all island disputes, whether or not openly stated in the publicity surrounding those disputes, and regardless of when and over what issue the dispute originated. This aspect of island disputes is clearly more pronounced than it was three or four decades ago. It is obviously related to the awakening interest by the world's states in developing offshore food and energy resources to meet the demands of burgeoning populations and their economies as land-based resources dwindle or fall short of needs. The development of the LOS Convention was a response to this rising interest in the oceans, and represented an attempt to set rules and standards for the exploitation of those offshore resources.

However, it is simply not correct to place the blame for the recent flurry of activity over these disputed islands on the LOS Convention, or to pronounce the Law of the Sea Convention the cause of the sovereignty disputes themselves. First, it would be well to remember that almost all of the island disputes that now interfere with certain bilateral relations predate the development of many, if not most, of the LOS concepts, and the conventions that have attempted to codify them. China, for example, states that its claims in the South China Sea date back to the second century BC.

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20 Whiteman, M. (1965) *Digest of International Law*, 4: 752-764; von Glahn, G. (1996) *Law Among Nations: An Introduction to Public International Law*, 7th Ed., Boston: Allyn & Bacon: 383.

21 Smith, R. (1990) 'The State Practice of National Maritime Claims and the Law of the Sea', Table 1, presented to *State Practice and the 1982 Law of the Sea Convention* conference, Cascais, Portugal.

22 *Ibid.*

23 Smith, R. *Summary of Maritime Claims As of July 22, 1997*, US Department of State, Office of Ocean Affairs, unpublished factsheet.

24 Since the drafting of this paper, the UK, with its accession to the LOS Convention on 25 July 1997, declared that the feature called Rockall, in the north Atlantic, over which it has claimed sovereignty and from which it had claimed a 200nm fisheries zone, was not capable of sustaining human habitation and therefore not entitled to an extended maritime zone. The UK, in consequence, announced its intention to redraw its fisheries limits. This may be the first public official application of the criteria of Article 121(3) of the LOS Convention to a specific feature. (Source: International Boundaries Research Unit e-mail list 'int-boundaries' posting, 29 July 1997.)

In addition, many of the world's disputed islands actually may have had some intrinsic value in earlier times. Some islands were used as transitory bases for fishermen. Other islands were sought for siting navigational aids, for refuelling and provisional stations, for strategic control of shipping lanes, or for the resources found on the islands themselves, such as mineral deposits or bird droppings (guano).

With regard to *sovereignty disputes over islands*, it must be made quite clear that the LOS Convention ***does not*** contain any provisions in any of its articles for resolution of disputes over any territory, including islands. While the LOS Convention provides for several international bodies to adjudicate disputes, and for a Commission to oversee national claims to continental shelves beyond 200 miles, there is nothing in the body of the LOS Convention that deals with sovereignty issues. The LOS Convention addresses the establishment of maritime jurisdiction zones. In fact, the application of the LOS Convention is premised on the assumption that a particular state has undisputed title over the territory from which the maritime zone is claimed.

There have been cases where countries have used declarations of maritime jurisdiction to assert claims on islands, even though the LOS Convention has no provision for such practice. Malaysia, for example, has publicly based its claim to certain Spratly Islands on the fact that they fall within the continental shelf limits that it proclaimed in 1979.[25] Periodically, China has implied that the Senkaku (Diaoyutai/Tiaoyut'ai) Islands are part of the *"natural prolongation of the Chinese mainland"* (i.e., its continental shelf claim).[26]

There is no rule in international law that prescribes sovereignty over islands on the basis of making a maritime claim. To make such a claim to an island by citing the LOS Convention as a source of law is not correct and distorts the provisions and intent of the LOS Convention.

## 4. Resolution of Island Sovereignty Disputes

If the LOS Convention does not provide a basis for settling island sovereignty disputes, then what mechanisms do states have? While this issue might be more fully addressed by legal scholars, a few observations may be in order.

For example, the first attempt to resolve sovereignty disputes should be by bilateral negotiation. Failing this, several types of third party arbitration are available. Usually, resolution of sovereignty disputes does impact marine space allocation. Often, the *compromis* to a third

25 In 1983, and again in 1988, the Malaysian Government claimed title to certain Spratly Islands and reefs on the basis of the 1979 continental shelf map that it produced (see fn.10). See Haller-Trost, R. (1994) *The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law*, Maritime Briefing, 1, 3 (Durham: International Boundaries Research Unit): 48-49. The statements were probably in support of Malaysian occupation of some Spratly reefs, which began in 1983, and ended in 1986. The occupation was reported in *New Straits Times*, Kuala Lumpur, 28 June 1988:7 (FBIS report).

26 Lee, Wei-chin (1987) 'Troubles under the water: Sino-Japanese Conflict of Sovereignty on the Continental Shelf in the East China Sea', *Ocean Development and International Law*, 18, 5: 586, 593-4; *Xinhua*, Beijing, 8 May 1980 (FBIS report).

party settlement process will consist of questions relating to both sovereignty issues and to marine jurisdiction.

The 1992 International Court of Justice (ICJ) decision on the El Salvador-Honduras boundary dispute decided the sovereignty of territory on the mainland as well as some of the islands in the Gulf of Fonseca. The decision also had major implications for the location of the maritime limits in that Gulf, as well as Honduran access to the Pacific Ocean.[27]

An earlier dispute between Argentina and Chile over islands in the Beagle Channel, off Tierra del Fuego, held major ramifications for Chilean access to the Atlantic Ocean. After rejection by Argentina in 1978 of a decision rendered through arbitration by a panel of former ICJ judges selected by the United Kingdom, this dispute was submitted to the Vatican for arbitration. In 1984, the Vatican ruled in favour of Chilean sovereignty over the islands, but limited Chile's exclusive economic zone in the area.

The role of the ICJ in resolving island sovereignty issues appeared as early as 1953 with the decision on the islets of Minquiers and Ecrehos located between France and the British Crown Dependency of Jersey.[28] At least four prominent island disputes appear to be heading to arbitration or adjudication. In East Asia, Malaysia has agreed with both Singapore and Indonesia to submit their respective island disputes to the ICJ.[29] Bahrain and Qatar may be settling their dispute over the Hawar Islands in the ICJ.[30] Lastly, Eritrea and Yemen have agreed to take their dispute over the Hanish Islands to arbitration by an international panel.[31]

Another method of addressing sovereignty issues is to place the dispute on hold and to devise other means to utilise the maritime area around the island. Again, this suggests that the interest of the parties is less on the piece of territory itself and more on the potential marine area to be generated by it. Attempts to finesse the sovereignty question by seeking a solution based on resource considerations, for example, are usually driven by commercial interests in the marine area – be it fisheries or oil and gas development. Oil companies, for example, are reluctant to invest money in an area in which there is no clear title. If a workable scheme can be devised whereby resource development can occur and which benefits both countries, as with the Argentina-United Kingdom joint fisheries conservation zone, then the sovereignty issue is minimised.

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27 See Highet, K. (1993) 'The Gulf of Fonseca and St. Pierre and Miquelon Disputes', *Boundary and Security Bulletin*, 1, 1 (April, Durham: International Boundaries Research Unit): 87-91; see also Allcock (1992: 594-595).

28 *ICJ Pleadings, The Minquiers and Ecrehos Case (United Kingdom/France)*, Judgement of November 17th, 1953 (The Hague, 1955).

29 *RTM* Television Network 3 (Kuala Lumpur), 7 October 1996 (FBIS report). See also Haller-Trost (1995: 32, fn.10), with respect to Malaysia's preference for the ICJ over ASEAN arbitration for resolving the Sipadan and Ligitan dispute.

30 Qatar has unilaterally submitted the dispute to the ICJ, and the ICJ has declared that it is competent to rule on the issue, but it is not clear that Bahrain has agreed to the ICJ venue, preferring to settle the matter through Saudi Arabian mediation. See, for example, 'Qatar Says Bahrain Agreed to World Court Arbitration on Islands', *Agence France Presse*, 24 January 1996, and 'Source Defends Bahraini Stand on Dispute With Qatar', *Wakh* (Manama), 24 January 1996. Bahrain has pressed Qatar to drop the ICJ submission in favour of the Saudi mediation, but Qatar has said that it would do so only if that mediation succeeded; 'Qatar Keeps Dispute With Bahrain at World Court', *Reuters* (Dubai), 1 June 1996.

31 'Eritrea, Yemen Sign Red Sea Arbitration Accord', *Reuters* (Paris), 21 May 1996.

## 5. Islands and the Law of the Sea Convention

As noted, resolution of island sovereignty disputes normally does not settle *only* the question of title over that particular piece of territory. Sovereignty disputes submitted to third party arbitration often include a request to delimit the maritime area adjacent to the island in question. It is in this context of maritime delimitation that the LOS Convention may properly be used as one source for guidance.

Delimitation takes on two related meanings. In the first instance, delimitation pertains to the establishment and definition (and depiction on charts) of maritime zones to which States are entitled under the provisions of the LOS Convention. This would include the territorial sea, contiguous zone, exclusive economic zone, and the continental shelf. A second meaning pertains to the delimitation of maritime space between two neighbours in areas where potential jurisdictions overlap.

In the LOS Convention, in Article 121(1), an island is defined as:

> *...a naturally formed area of land, surrounded by water, which is above water at high tide.*

And, the LOS Convention clearly leads a state to think that islands are to be accorded the same maritime zones as mainland areas. Articl e 121(2) states:

> *Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention* ***applicable to other land territory****.* [emphasis added].

In this regard, many states have held fast to their sovereign claims to these often small pieces of territory, sometimes far from the mainland, with the prospect that a large maritime area could possibly be claimed as an extension of this ownership. Once states get serious in their desire to resolve the sovereignty dispute, it is quite likely that the question of the maritime area allocated to that territory will be significant. Often, it is the desire of a state(s) to develop the marine resources (usually fish or hydrocarbons) in the vicinity of the disputed island that becomes the driving force behind the state's desire to seek resolution. This idea gets back to the point that in many of the island sovereignty disputes the value of the land is less than the maritime zone that, under the provisions of the LOS Convention, possibly could be claimed from that island.

Thus, as a starting point, it should be recognised that the drafters of the Convention viewed islands in the same light as any other part of a state's territory. Maritime sovereign rights and jurisdiction flow from sovereignty over the land domain, be it from mainland territory, or from insular territory. The only exceptions to this entitlement are rocks, however they are to be defined, which cannot sustain human habitation or economic life of their own, whatever these concepts may mean, and which shall have therefore no exclusive economic zone or continental shelf.[32]

[32] See Hodgson and Smith (1976: 230-235), for a discussion of this aspect of Article 121.

Bowett provides a general categorisation for islands under the broad heading of *"islands enjoying separate entitlement"* describing them as features that act:

> *(a) as the sole unit of entitlement; or*
> *(b) in conjunction with the entitlement of a large territorial unit,*
> *(i) lying proximate to a mainland coast under the same sovereignty;*
> *(ii) straddling a median or equidistant line between 'mainland' coasts; or*
> *(iii) proximate to a mainland coast under a different sovereignty.*[33]

While the above categorisation strongly emphasises the geographical location as fundamental in how an island is to be treated in its legal maritime entitlement, Bowett does agree with the present authors that consideration of islands must also look to the island's size, political status, and the nature of the island itself.

Most islands in the world have no disputes associated with them, either with the legal title over the islands themselves, or with the maritime zones generated from them. In cases where states which are essentially dominated by a main island or two – such as Cuba, Iceland, and Nauru – there is no question of their entitlement to the various LOS zones being limited because of their size, political status (independent countries) or relative location.

The numerous islands found along mainland coastal areas of many states, and that are an integral part of that mainland state, would be a part of the mainland's baseline (either by using the low-water mark of the islands, or, in certain geographical circumstances, as a part of a straight baseline system). The relevant maritime zones would be generated from these islands. Virtually every state has nearby adjacent islands – obvious examples include the islands off the Maine, Louisiana, Florida, and Alaskan coasts for the USA and the numerous islands off the Norwegian and Chilean coastlines.

There are situations, however, where, due to the location of particular islands, extension of maritime jurisdiction from those islands poses potential problems that have both international and domestic ramifications. In several instances around the world islands lie astride key international straits and vital routes used for international navigation. Full territorial sea claims made from these islands (and often from the opposing mainland) would impact the navigation regime through these international straits.

The LOS Convention provides for transit passage through international straits which allows for the *"freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait."*[34] Thus, aircraft can fly over the international strait, and submarines can navigate submerged. There are several instances where, for various reasons, the coastal state has opted, in certain areas off its coasts – particularly the coasts of some of its islands, not to claim the full 12-mile territorial sea allowed under international law. A few examples will illustrate this point.

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33 Bowett, D (1993) 'Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations', pp.131-151 in Charney, J. and Alexander, L. M. (1993) (eds) *International Maritime Boundaries*, Dordrecht: Martinus Nijhoff Publishers (hereinafter, referred to as *International Boundaries*).

34 LOS Convention, Article 38(2).

*Japan*, for example, extended its territorial sea limit to 12 miles in 1977.[35] Such extension would have created a territorial sea overlap between its islands in five 'international straits': Soya Strait, Tsugaru Strait, eastern and western channels of the Tsushima Strait, and the Osumi Strait. Japan's desire to maintain a high seas corridor in these straits was achieved by maintaining a 3-mile limit drawn from defined straight lines.[36] (See Figure 10 for territorial sea limits in the eastern and western channels of the Tsushima Strait).

In its 1996 Territorial Sea and Contiguous Zone Law, in which Japan claimed straight baselines, Japan has slightly altered the territorial sea in these five international straits. But, the limit remains less than 12 miles and high seas corridors remain in all of them.

*South Korea*, in similar fashion, claimed a 12-mile territorial sea in 1977, but maintained a 3-mile limit in the Korea Strait (Figure 10).[37] With both Japan and South Korea maintaining a 3-mile territorial sea in the western channel of the Tsushima/Korea Strait a high seas corridor has been maintained.

*Finland*, in a 1995 law, extended its territorial sea to 12 miles. Because of the numerous islands situated along its coast, such a 12 mile extension from all the islands would have pushed its territorial sea to the middle of the Gulf of Finland. This area is an important shipping route for vessels headed to and from Russian ports, particularly St Petersburg. Thus, to maintain a high seas corridor, and not to deal with transit passage issues, Finland opted to maintain only a 3-mile territorial sea in that area.

## 6. Islands and Maritime Boundary Delimitation

In addition to the impact islands – or more correctly the maritime zones generated from these islands – may have on navigation regimes in the adjacent waters, islands have played an instrumental role in many maritime boundary negotiations, and are often the focus of delimitation disputes. Several years ago a compilation was made of 'all' the boundary situations in the world.[38] In this world survey, it became evident that with the advent of 200-mile exclusive economic zones every coastal and every island state would have at least one maritime boundary to negotiate with at least one neighbour. Thus, it is no surprise that all coastal states took a great interest in the development of the LOS Convention pertaining to boundary delimitation.

At the time of this boundary study, in 1990, approximately 420 maritime boundary situations were identified. Of this number, 154 boundary agreements had either entered into force or had been signed. While the LOS Convention does address boundary delimitation, it does not provide concrete answers for all situations. Boundary delimitation is found in Articles 15 (territorial sea boundaries), 74 (exclusive economic zone boundaries), and 83 (continental shelf boundaries). Article 15 states the following:

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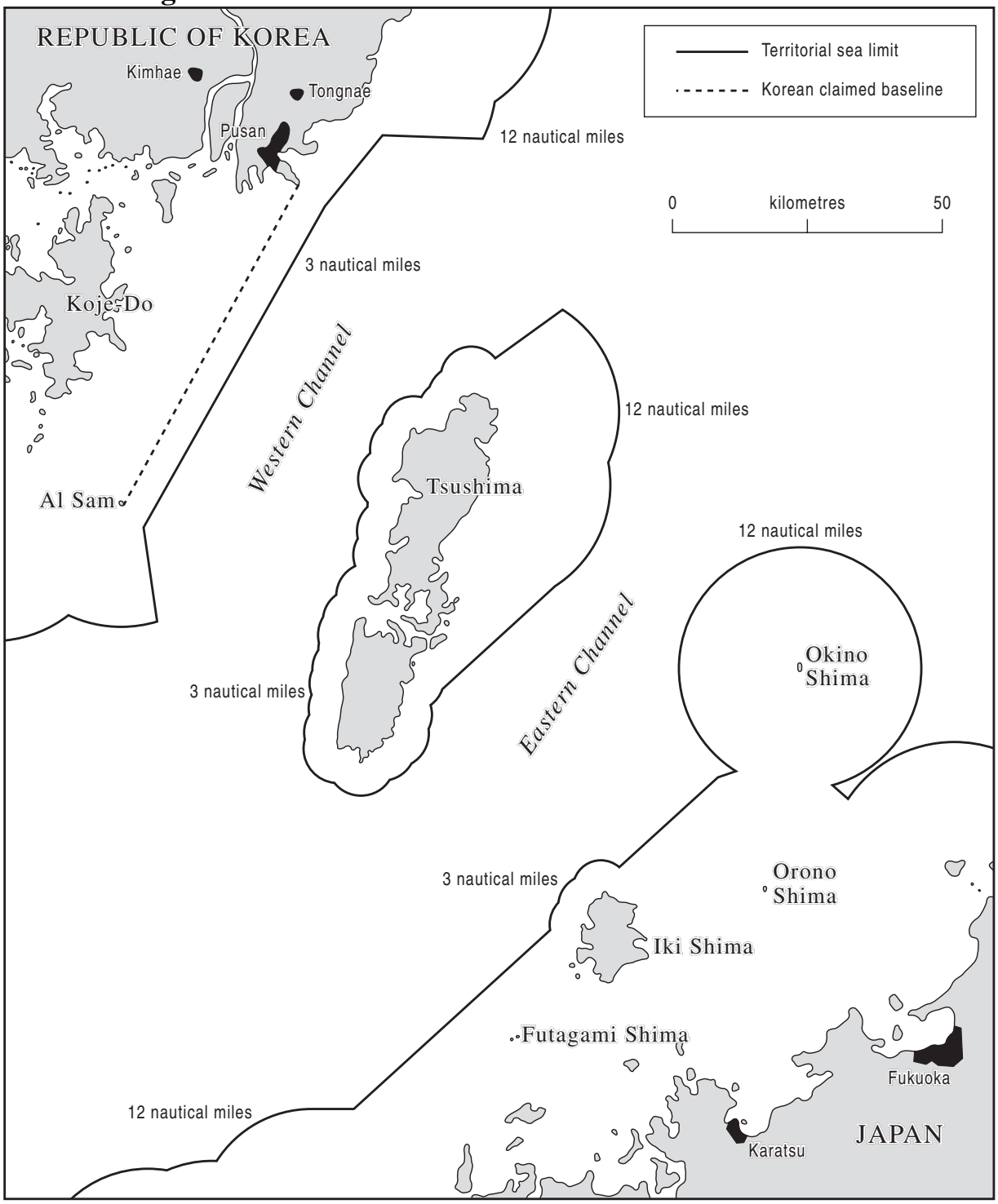
35 Law No. 30 of 1977.

36 See Annexes to the Supplementary Provision No. 2 to Law No. 30 of 1977.

37 Territorial Sea Law No. 3037.

38 US Department of State (1990) 'Maritime Boundaries of the World', *Limits in the Seas*, No. 108 (First Revision), 30 November.

## Figure 10: Territorial Sea Limits in the Tsushima Strait




Source: Adapted from United States Department of State

> *Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.*

Article 74 states:

> *1. The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statue of the International Court of Justice, in order to achieve an equitable solution.*
> *2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.*
> *3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, and during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.*

Article 83 is identical to Article 74, substituting the term *"continental shelf"* for *"exclusive economic zone."*

## 7. Islands and Agreed Maritime Boundaries

In the development of state practice of maritime boundary delimitation, islands have played an important role. In many cases, islands have been treated no differently than any mainland territory. In many of the situations involving islands where the equidistance method is viewed as offering an equitable solution, the islands have not 'distorted' the course of the line. Often, islands of both states have balanced each other out.

For example, in 1976 as the United States was developing its law to extend its fisheries jurisdiction to 200 miles, it was recognised that a stroke of a pen putting the Magnuson Fishery Conservation and Management Act into force would immediately create approximately 28 maritime boundary situations that formerly did not exist. The extension of maritime jurisdiction to 200 miles brought boundary situations for the United States ranging from boundaries with Kiribati and Tonga in the Pacific, to the then Soviet Union in the North Pacific, Bering Sea, and Arctic Ocean, to Canada off four different coastal areas, to Mexico in the Pacific Ocean and Gulf of Mexico, and to Cuba and Venezuela, in the Caribbean.

A comprehensive and consistent ocean policy was needed that addressed all the boundary situations in which the United States found itself.[39] In several of the boundary areas off the

[39] See Smith, R.W. and Krezcko, A. (1989) 'United States Maritime Boundary Claims and the Protection of United States Interests', paper presented at the conference on *Contemporary Issues in United States*

USA, islands (both US and those of its neighbour) affect boundary delimitations. It was decided that in those situations in which the equidistance method provided an equitable solution, all territory would be given equal weight in the determination of the boundary.[40]

It is not the intent of the authors in this paper to present an encyclopaedia of island boundary situations. For those seeking a fuller understanding of the state practice of maritime boundary delimitation, and the roles played (or not played) by islands, readers are guided to the study produced by a team of experts under the guidance of Professors Charney and Alexander and sponsored by the American Society of International Law.[41] In particular, Professor Derek Bowett, in a chapter in Volume I of this study, gives a valuable overview of islands in maritime boundary delimitation.

Islands have been viewed in different fashions in the maritime boundaries that have been negotiated or arbitrated. They have been treated as an integral part of states, with no special treatment given to (or taken from) them. They have been given special consideration, and, in some circumstances, they have been given no consideration at all.

A word of caution regarding the relevance of the equidistance methodology should be expressed at this point. When terms such as 'full weight' or 'partial effect' are used in conjunction with a discussion of islands, the inference is that the equidistance method is being considered as the means to delimit the boundary. An equidistant line is mathematically derived using identified locations along the coastline. Its calculation can be by mathematical means (usually applying a computer-generated program) or by manually developing it on a chart (although the accuracy of this method may be suspect). The resulting line, from a technical perspective, will be only as accurate and precise as the source data.

Reviewing state practice it is evident that the equidistance method is frequently used. However, international law does not make the use of equidistance mandatory for exclusive economic zone or continental shelf boundaries although there is some preference given to equidistance in Article 15 for the determination of territorial sea boundaries. There are many boundary agreements which use lines other than equidistant lines. In these cases islands have often not been considered as factors in the delimitation. However, the non-use of these islands in the delimitation usually is not due to attributes of the island itself, such as its size or location, but to other considerations by the states concerned.

State practice offers many examples of states agreeing to use equidistant lines giving full consideration to islands. The United States, for example, has concluded agreements with Mexico, Venezuela, the Cook Islands, New Zealand (for Tokelau), the United Kingdom (two agreements: British Virgin Islands and Anguilla), and Niue in which some form of equidistant lines are used and the islands of each side are treated equally and given full weight in the

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*Law of the Sea Policy*, sponsored by the Center for Oceans Law and Policy and the University of Virginia School of Law (March).

40 There are three boundary areas in which an equidistant line is not viewed by the United States Government as leading to an equitable solution: the boundary with the Soviet Union (Russia), the boundary with Canada in the Gulf of Maine, and a portion of the boundary with The Bahamas north of the Strait of Florida.

41 *International Boundaries*, *op cit.*

calculation of the equidistant lines.[42] Virtually all of the negotiated boundaries in the Pacific, which involve island states, are based on the equidistance method. As Bowett notes, in cases where islands of both states have been given full effect in calculating an equidistant line, it is usually due to the fact that both parties have offshore islands that balance or offset each other.[43]

Alternatively, there are situations where, for various reasons, islands have been given special treatment in boundary agreements. Not only have states negotiated boundary agreements giving islands less than full weight in determining an equidistant line, but arbitral panels and the ICJ also have rendered judgements in which islands have been key issues.

In the 1982 Libya-Malta decision, for example, the ICJ did not allow Malta, an independent island-state, to receive full consideration in the establishment of its boundary with Libya.[44] In the 1977 Anglo-French Award, the British Scilly Islands were not given full weight in the delimitation.[45] In the Italy-Tunisia agreement the Italian islands, which are situated near the Tunisian coast, were not considered in the boundary delimitation *per se*. The island of Lampione (which is uninhabited) was accorded a territorial sea of 12-miles while the other islands of Lampedusa, Linosa, and Pantellaria were given territorial seas and a one-mile band of continental shelf.[46]

A further example is the agreement between the Netherlands and Venezuela of March 1978 on a boundary between the Dutch islands of Aruba, Bonaire, and Curacao and the Venezuelan mainland.[47] In that area where the Dutch islands are only about 30 miles opposite the mainland, the boundary approximates an equidistant line giving full weight to the islands. But, in the central Caribbean where the marine area is adjacent to the islands and Venezuelan mainland, the line deviates from the equidistant line, in Venezuela's favour.

There are a couple of cases where rocks or islands were ignored in the maritime boundary delimitation. In the 1988 UK-Ireland delimitation the British islet of Rockall was not used.[48] Similarly, Canada and Denmark have delimited a continental shelf boundary between the eastern Arctic islands of Canada and Greenland based on equidistance. Points 122 and 123 of the boundary lie on the north and south coasts of Hans Island, respectively. Problems of sovereignty and the effect this disputed island would have on the delimitation resulted in the parties ignoring the island completely.[49]

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42 It can be noted that the United States, and the Netherlands, in their respective maritime boundary treaties with Venezuela, have been criticised by several of the smaller Caribbean states for giving the Venezuelan Aves Island full consideration in the calculation of the equidistant line that serves as the maritime boundary.

43 *International Maritime Boundaries*, *op.cit.*: 138.

44 1985 I.C.J. Report 13. See *International Boundaries*, *op. cit*: 1649-1162.

45 Decision of Court of Arbitration, 30 June 1977. See *International Boundaries*, *op.cit*: 1735-1754.

46 See US Department of State (1980) 'Continental Shelf Boundary: Italy-Tunisia', *Limits in the Seas*, No. 89 (7 January); *International Boundaries*, *op. cit*: 1611-1626.

47 See US Department of State (1986) 'Maritime Boundaries: Colombia- Dominican Republic & Netherlands (Neth.Antilles)-Venezuela', *Limits in the Seas*, No. 105 (22 January); *International Boundaries*, *op.cit.*: 615-638.

48 *International Boundaries*, *op.cit.*: 1767-1780.

49 See US Department of State (1976) 'Continental Shelf Boundary: Canada-Greenland', *Limits in the Seas*, No. 72 (4 August).

## 8. Islands and Disputed Maritime Boundaries

Although many boundary agreements have been reached, there are even more that remain to be concluded. Some of these will be easy and the lack of negotiations may merely reflect that the parties concerned have no pressing need to create a boundary. Other situations, however, may reflect an on-going dispute between the parties. In a couple of these cases islands could very well be the cause of the disagreement. Table 2 lists several disputes in which islands play a prominent role in the disagreement. This table is different from Table 1 in that the cited islands themselves are not disputed, rather it is the potential influence on the boundary delimitation that is at issue.

Colombia and Venezuela have periodically entered into negotiations to settle their boundary dispute in the Gulf of Venezuela and Caribbean Sea. The stumbling block is the presence of the tiny Venezuelan Los Monjes islands, strategically situated at the mouth of the Gulf of Venezuela. When applying the equidistance method, these islands do have a significant impact on the course of the line.

In the southern part of the South China Sea, Indonesia and Vietnam have had boundary discussions over many years. One of the issues appears to be Indonesia's insistence that its Natuna Islands be given full consideration in delimiting the boundary.

One of the most complex boundary areas in the world is in the Aegean Sea, where Greece and Turkey have several topics to resolve, including the delimitation of territorial seas, continental shelf, and the exclusive economic zone. The location of Greek islands in proximity to the Turkish mainland has caused the dispute to be viewed on many levels, from issues of maritime jurisdiction to overflight rights to international transit rights. It should be noted that both Greece and Turkey claim only a 6-mile territorial sea in the Aegean, and neither claims an EEZ here.

**Table 2: Disputes over the Role of Islands in Delimitation**

| Area | States | Island(s) |
|---|---|---|
| **South China Sea** | Indonesia / Vietnam | Natuna Islands (Indonesia) |
| **North Atlantic** | Denmark / Iceland / UK | Rockall (UK) |
| **South Pacific** | Australia / New Zealand | Lord Howe Island (Australia) |
| **Aegean Sea / Black Sea** | Greece / Turkey | Various Greek Aegean islands |
| | Romania / Ukraine | Serpents Island |
| **Caribbean Sea** | Colombia / Venezuela | Los Monjes (Venezuela) |
| | Venezuela / Dominica / St. Kitts & Nevis / St. Lucia / St. Vincent & the Grenadines / UK (Montserrat) | Aves Island (Venezuela) |

Table compiled by Robert Smith and Bradford Thomas using best available information as of 1 June, 1997.

## 9. Conclusion: Interim and Long-Term Solutions

This paper does not offer solutions to the disputes cited. Answers for these complex and difficult issues involving islands are not given. An attempt has been made to distinguish different types of island disputes – from those involving the fundamental question of sovereignty over the island to the effect the island should have on delimiting the adjacent marine area shared with neighbouring states. The distinction between the two types of dispute does get hazy when one looks at the means states are adopting to resolve the disputes. As states refer their sovereignty disputes to third party arbitration often they are asking for a judgement on the maritime delimitation as well. This was the case in the 1992 ICJ decision affecting the Gulf of Fonseca where both island sovereignty and maritime jurisdiction was resolved in the Gulf.

While there seems to be an element of nationalism involved in virtually all sovereignty disputes, it appears that with regard to at least the island disputes identified in this paper, jurisdiction over the resources in the adjacent marine areas has more frequently become the driving force behind the claims. To the extent that states are willing to place their sovereignty claims 'on hold', then several mechanisms seem to be available to allow both sides to get on with exploring and exploiting the offshore area. Argentina and the United Kingdom, for example, have created a joint fishery conservation zone around the disputed Falkland Islands/Islas Malvinas, in response to the desire to exploit the important living resources in the region.

With respect to offshore oil and gas production a precedent has been set by several countries in creating joint development zones. While disputed islands have not necessarily led to the creation of current joint development zones – such as those created by Malaysia and Thailand, Australia and Indonesia, Japan and South Korea, Bahrain and Saudi Arabia, Malaysia and Vietnam – there is no reason to think this mechanism can't resolve, at least in the near term, some of the disputes involving islands.

Alternatively, countries could adopt a Canada-Denmark approach of just ignoring the island and delimit the maritime boundary around it. This could provide a basis for the US-Canada Machias Seal Island and North Rock dispute in the Gulf of Maine. This island is an important nature preserve. Both sides do work together each summer in limiting the number of people allowed to visit the island. A possible solution could be (1) to develop a permanent joint management scheme for preserving the island, (2) to ignore the island in the delimitation of a maritime boundary, and (3) to acknowledge that each side preserves its respective claim to the island.

Islands could also be given a limited extent of jurisdiction. The Italy-Tunisia continental shelf boundary agreement is a good example where islands of one state (Italy), which are situated close to a neighbouring state (Tunisia), were given some maritime jurisdiction, but otherwise ignored in the boundary delimitation. The examples given for those countries which limited their territorial sea claims in certain strategic international straits, could have application in boundary delimitation situations, as well. This possibly could be considered in the Aegean Sea. It is interesting to note that Turkey presently claims a 12-mile territorial sea off its Black Sea and Mediterranean Sea coasts, but maintains only a 6-mile limit in the Aegean. Greece also claims a 6-mile territorial sea. If each of these states considered developing zones of territorial seas, ranging from 3 miles (in the Aegean) to 12 miles elsewhere, then they might have a basis for further talks.

There is no doubt that much truth lies behind the observation made by Dr Hodgson in 1973 that islands often have caused problems in the delimitation of boundaries and the extent of national sovereignty and jurisdiction. Much has occurred since the publication of the Hodgson monograph – the international community has negotiated the most complex and comprehensive treaty ever. The Law of the Sea Convention has come into force for the 123 states having ratified or acceded to it.

Substantial state practice has occurred involving islands. Maritime claims of all types – territorial sea, exclusive economic zone, continental shelf – have been made from islands, large and small. In one recent instance a coastal state has specifically applied the LOS Convention's Article 121(3) and not used a rock as the basis for a maritime claim. To what extent, if any, the decision by the United Kingdom not to claim extended fishing jurisdiction from the uninhabitable Rockall has set a precedent to be followed by other countries owning Article 121(3) features remains to be seen.

Maritime boundaries have been negotiated and arbitrated in which islands have been key to the outcome. It is unclear, however, if a predictable pattern and trend has been set as to the treatment of islands in bilateral situations. There is a substantial body of state practice, as well as legal and technical writing, that addresses islands, from which states can analyse their own situations. The premise remains: if the *political will* exists between the affected parties, then resolution should be achievable for any given dispute.