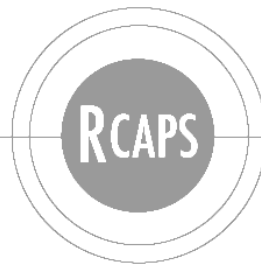


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IMPLICATIONS OF THE SUBMISSION OF CLAIMS FOR
EXTENDED CONTINENTAL SHELF IN THE SOUTH CHINA SEA

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Ana Placida D. Espina

Introduction

One of the recent developments in the South China Sea is the submission of the claims for extended continental shelf (ECS) by Malaysia and Vietnam to the United Nations Commission on the Law of the Sea (CLCS). The submission lays claim on the continental shelf in the southern part of the South China Sea. A separate unilateral submission by Vietnam lays claim on a continental shelf in the northern part of the South China Sea.

This paper explores the implications of the ECS submissions in the South China Sea. First, it provides an overview of the dispute in the South China Sea. Then it discusses the nature of the extended continental shelf (ECS) and the impetus for making a claim for it. Afterwards, it explains the ECS submissions made in the South China Sea and the series of reactions and counter-responses it has generated. Finally, it identifies and discusses the implications of such submissions especially on the dispute in the South China Sea and on the relations of the concerned claimant states.

Overview of the South China Sea Dispute

The South China Sea dispute refers to the conflicting territorial claims over the geological features in the area. Estimates about the number of geological features vary ranging from 190 to as high as 650 depending on the source.¹ A group of about 87² to 190³ geological features, *e.g.* “islands”, atolls, reefs, shoals, etc., called the Spratlys Group of Islands is claimed wholly by the People’s Republic of China (and Taiwan) and Vietnam. The Philippines, Brunei and Malaysia claim part of the Spratlys. The Philippines claims about 60⁴ to 74⁵ geological features, which the country referred to as the Kalayaan Islands Group (KIG). Another group of islands called the Paracels is contested both by China and Vietnam. An island called Scarborough Shoal is claimed both by the Philippines and China. Varying degree of occupation⁶ over the geological features is exercised by the claimant parties, including Taiwan which occupies one island.

China has based its claim on historic title and cited evidences dating back as early as the Yuan Dynasty.⁷ In a recent Note Verbale addressed to the Secretary-General, China has referred to a nine-dashed line map (also called nine dotted line or nine broke line map) produced in 1947 as manifestation of its claim. Vietnam cites historical basis and rights of

succession to France as basis of its claim. The Philippines bases its claim on five grounds: (a) by reason of proximity; (b) by being part of the continental margin; (c) by reason of history; (d) by discovery and effective occupation; and (e) by reason of abandonment.⁸ The Philippines has argued that the features in the South China Sea were *res nullius* or "abandoned" after World War II. Malaysia's claim is based on the concept that the islands in the South China Sea are part of its continental shelf as shown in its 1979 Malaysian Continental Shelf Boundary. Brunei claims certain islands on the ground that these are part of its 200 nautical mile continental shelf and 200 EEZ.

The conflicting territorial claims in the South China Sea make the area a regional flashpoint. In fact, several skirmishes already happened in the past, including a naval clash between Vietnam and China.⁹ To minimize potential conflicts, several efforts were undertaken by concerned parties.¹⁰ But, the most important was the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC-SCS) which was signed between ASEAN and China in 2002.¹¹ The DOC-SCS is a result of protracted five-year long negotiations between ASEAN and China.¹² It is a non-binding agreement that enjoins claimant countries to observe the status quo by refraining from occupying geological features in the area. The agreement also recommends the claimant countries to undertake confidence-building measures (CBMs).

Recently, discussions between ASEAN and China on the possible Code of Conduct (COC) in the South China Sea have commenced at a working level.¹³

Extended Continental Shelf: An Introduction

All claimant countries to the South China Sea dispute are parties to the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS). Described as the "Constitution for the Oceans," UNCLOS provides a comprehensive regime in ocean management.¹⁴ Under UNCLOS, a coastal state is entitled to designate the following maritime jurisdictions: 12 nautical mile (NM) territorial sea, 24 NM contiguous zone, 200 NM exclusive economic zone and 200 NM continental shelf, all of which are measured from a coastal state's baselines. A coastal state exercises varying degree of sovereignty and sovereign rights over the said maritime zones.

The continental shelf is defined as "compris[ing] the sea-bed and subsoil of the submarine areas that extend beyond its [coastal State] 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 margin¹⁵ does not extend up to that distance."¹⁶ Stated in

another way, the continental shelf of a coastal state extends up to 200 NM from its baselines by virtue of UNCLOS, whether or not the continental margin actually extends up to that distance. The coastal state enjoys the exclusive sovereign right to explore and exploit all the resources in this area.

To accommodate a coastal state with a continental margin that extends beyond the 200 NM continental shelf described above, UNCLOS allows that coastal state to claim the outer limits of its continental shelf up to 350 nautical mile from its baselines or 100 nautical miles from the 2500 meter isobaths¹⁷ (see Figure 1). Such claim for extended continental shelf (ECS), accompanied by technical and scientific data as its basis, must be submitted to the Commission on the Limits of Continental Shelf (CLCS), a body created under the United Nations. Based on the scientific and technical data submitted by the coastal State, the CLCS will have to make a determination and recommendation on the ECS claim of a coastal State. The limits of the shelf established by the coastal State on the basis of the CLCS recommendations “shall be final and binding.”¹⁸ A deadline for the submission of ECS claims was set on 13 May 2009.¹⁹ A concession was made for those coastal states especially small island developing states which have technical and financial difficulty meeting the set deadline by allowing the submission of “preliminary information.” This preliminary information must contain “indicative information” of the ECS that a coastal state wishes to claim as well as a “description of the status of preparation and intended date of making a submission.”²⁰ The reason for this continental shelf determination and the deadline is to establish the boundary that would mark the limits of national jurisdictions from the international seabed area which is the common heritage of all mankind.

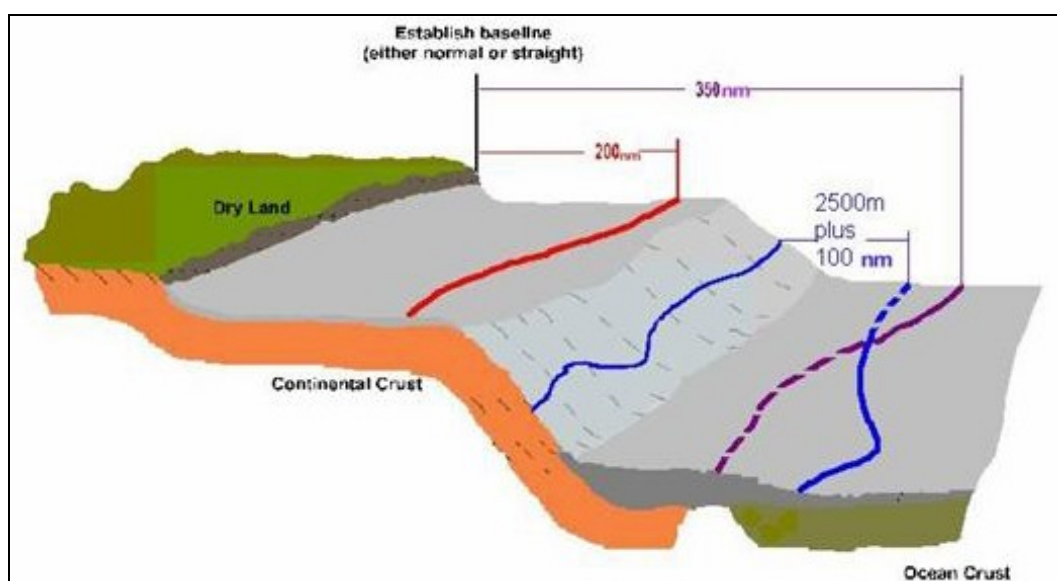


Figure 1. Extended Continental Shelf (ECS)²¹

However, a prevailing argument exists that coastal states making submissions to the CLCS are “merely seeking to confirm their existing sovereign rights over parts of ‘their’ continental shelf beyond 200 nm limit.”²² This contention is premised on a provision in UNCLOS that “the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”²³ Regardless of the existence of such interpretation, many coastal states have submitted and are preparing to submit their claims for ECS. As of 25 May 2011, there are 48 coastal states which already lodged submissions for ECS claims, either jointly or individually.²⁴

The body which determines if the ECS claim of a coastal state is technically and scientifically accurate is the CLCS. Its functions are laid out in Annex II of the UNCLOS and further elaborated in its Rules of Procedures. It is worth noting that the CLCS acknowledges that it does not have the competence on matters over disputes.²⁵ And in the event that a land or maritime dispute exists, the CLCS is constrained not to “consider and qualify a submission made by any of the states concerned in the dispute.”²⁶ Nonetheless, submissions on disputed areas can still be made and may be considered by the CLCS as long as these submissions have prior consent from all concerned states and consistent with Annex I of the CLCS Rules. However, the ultimate delimitation of disputed areas still rests with the concerned coastal states and the actions of the CLCS shall not prejudice this.²⁷ CLCS allows a coastal state whose potential ECS areas are located in disputed and non-disputed areas to make a “partial submission” to make a claim for ECS in the non-disputed areas.²⁸

Impetus for submission of claims for Extended Continental Shelf

The preparation for the submission for ECS claim is a rigorous undertaking. A coastal state making a claim has to establish that the area is the natural prolongation of its land territory. This is done through a series of extremely technical and complex process involving an inter-disciplinary collaboration principally among the experts on hydrography, geology, and geophysics. The activity costs a lot. In fact, Japan’s preparation for its submissions is said to have a budget in excess of US\$ 500 million²⁹ and Canada allocated \$109 million for its submission.³⁰ Yet, even after expending resources, a possibility still exists that a coastal state’s submission will be disregarded by the CLCS if another country files a protest against it. In the case of the South China Sea, it is quite obvious from the onset that a submission for ECS claim will be protested by any, if not all, of the riparian states in the area. Considering the foregoing and taking into account the argument that a coastal state’s rights over a continental shelf “do not depend on occupation, effective or notional, or on any express proclamation” consequently raise a question as to what compels coastal states

to make a submission to claim for ECS.

The principal factor that prompted coastal states to file claims for ECS is the exclusive sovereign rights to exploit and explore the resources in the area. The availability of high technology and capability facilitating the exploration and exploitation of resources in the high seas and deep sea induces coastal states to claim these additional areas containing yet untapped resources.

The most valuable potential resources that can be found in the continental shelf are the energy resources such as gas, oil and their variants. Owing to rapid development trend, worldwide energy needs are presumed to increase steadily in the coming years. Specific to the South China Sea claimant countries, it is predicted that oil demands will increase from about 15.1 million barrels per day in 2002 to around 33.6 million barrels per day by 2025.³¹ It goes without saying therefore that ECSs are viewed as great potential source of energy resources. The continental shelf may also contain minerals such gold, diamond, nickel, copper, silver, and platinum. In addition, some living organisms belonging to sedentary species can be found in the area.

A global review of the non-living resources on ECS conducted in 2000 revealed that the major resource potential in the ECS areas are iron-manganese nodules and crusts, oil, gas, and gas hydrates. The study estimated the resources as follows: 13 billion tones of nodules and crusts; 106 b.b.o.e. (billion barrels of oil equivalent) of conventional oil and gas; and 115 b.b.o.e. gas hydrates. In sum, the study stated that resource potential contained in the ECS regions of the world amounts to an estimated US\$ 11,934 trillions (calculated at 2000 raw commodity prices).³²

Submissions of claims for Extended Continental Shelf in the South China Sea

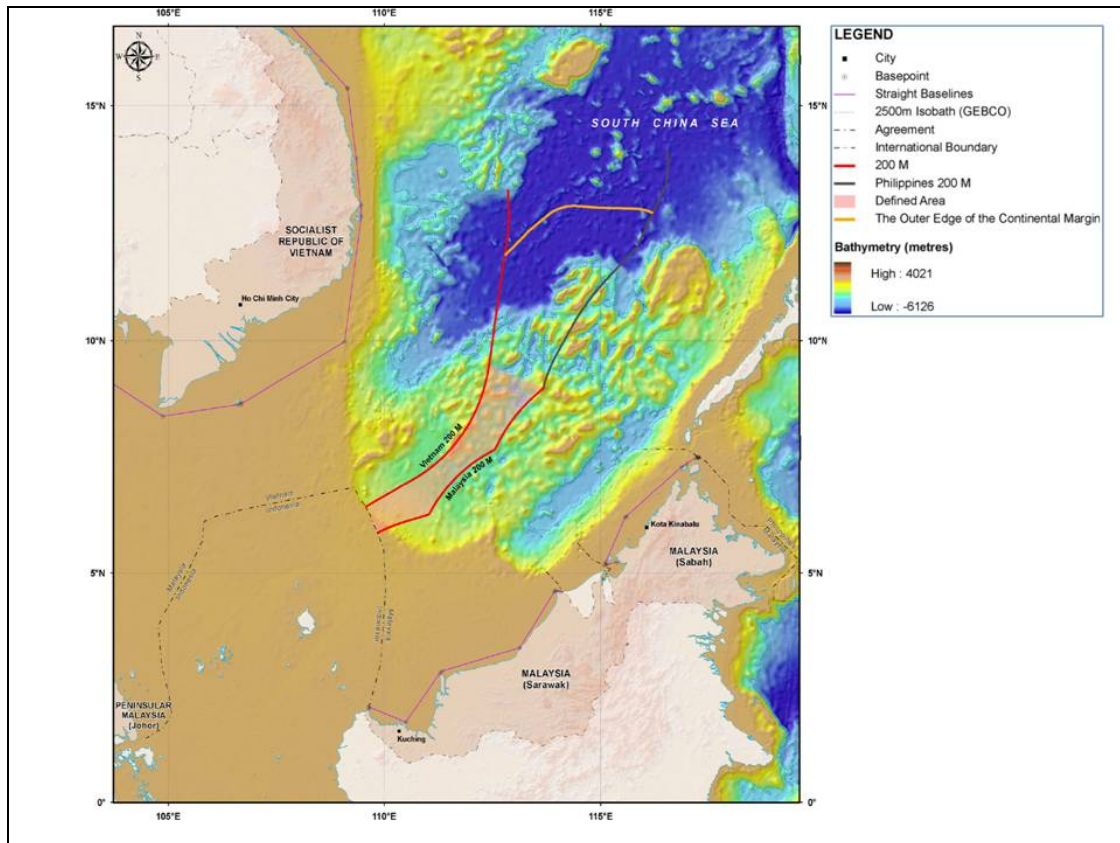
Two submissions for ECS claims in the South China Sea were lodged with the United Nations prior to the 13 May 2009 deadline: a joint submission by Malaysia and Vietnam on 6 May 2009; and a unilateral submission of Vietnam on 7 May 2009. Brunei Darussalam submitted a preliminary information indicative of its ECS claim on 2 April 2009.

*Joint Submission of Malaysia and Vietnam*³³

The joint submission by Malaysia and Vietnam lays claim on continental shelf in the southern part of the South China Sea. The two countries declared that the joint submission involves only a portion of the outer limits of their continental margin, and contended that they reserve the right to make later submissions, either jointly or individually (*see Figure*

2).

Malaysia and Vietnam acknowledged that there are unresolved disputes in the area under the submission, and claimed that efforts were undertaken to obtain non-objection from concerned coastal states. The two emphasized that the submission does not “prejudice matters relating to the delimitation of boundaries between States with opposite or adjacent coasts.”³⁴



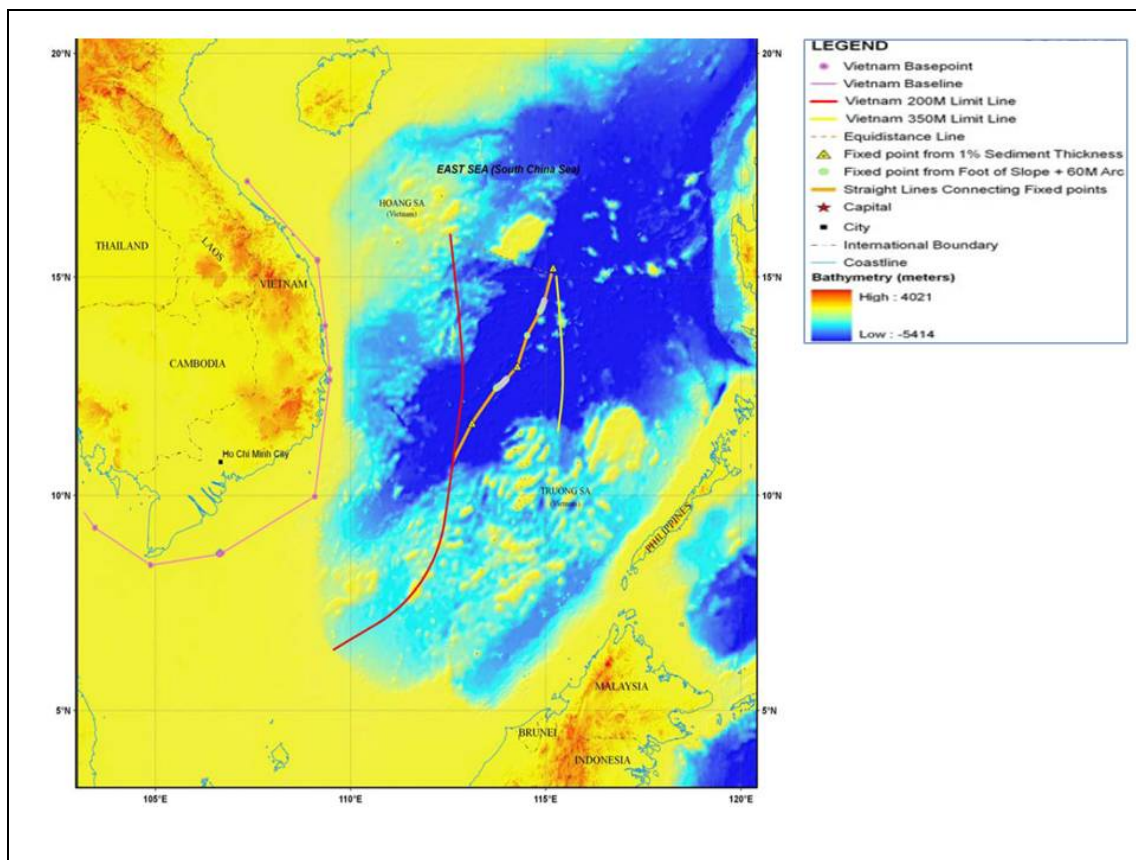
*Figure 2. Joint ECS Submission by Malaysia and Vietnam
(Source: Executive Summary of the Joint ECS Submission)*

Unilateral Submission of Vietnam

Vietnam’s unilateral submission is with respect to the northern part in South China Sea. Vietnam calls the area as North Area (VMN-N) and describes the extent of this as: “the Northern boundary is the equidistance line between the territorial sea baselines of Vietnam and the territorial sea baselines of the People’s Republic of China; the Eastern and Southern boundaries are the outer limits of the continental shelf as defined” (see Figure 3).³⁵

During the presentation before the CLCS, Vietnam declared that contrary to the “common understanding”, Vietnam’s ECS claim does not overlap with those of other coastal states’. Vietnam also stated that the submission is “without prejudice to the maritime delimitation

between Vietnam and other relevant coastal states.”³⁶ Moreover, Vietnam undertook efforts to seek non-objection of Vietnam’s submission from other concerned coastal states.³⁷



*Figure 3. Unilateral ECS Submission by Vietnam
(Source: Executive Summary of ECS Submission by Vietnam)*

Brunei’s Preliminary Information

Brunei submitted preliminary information on its ECS claim. Brunei indicated that it plans to make a submission of its claim for ECS and in that submission Brunei will “show that the edge of the continental margin, lying at the transition between the Dangerous Grounds 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.”³⁸

Brunei recognized the probability that there may be areas of “potential overlapping entitlements” in the ECS that it plans to claim but the submission is without prejudice to any future delimitation of boundaries with other States.

Reactions, Responses and Counter-responses to the Submissions of Claims for ECS

The joint submission by Malaysia and Vietnam and the unilateral submission by Vietnam were both protested by China and the Philippines, and have generated a series of exchanges of counter-responses from all sides. Expectedly, the reactions were not limited to the ECS claims but were also aimed at undermining each other's position or claim over disputed areas. China's reaction to the submissions resulted in a flurry of responses from other claimant countries in the SCS, and even from a non-claimant country like Indonesia. Broadly, the reactions and consequent responses to the submissions of claims for ECS in the South China Sea can be categorized as follows: (1) joint submission by Malaysia and Vietnam; (2) unilateral submission by Vietnam; and (3) China's position as conveyed in its Notes Verbales CML/17/2009 and CML/18/2009.

On Joint Submission

China objected to the joint submission made by Malaysia and Vietnam with respect to the southern part of the South China Sea on the basis that the submission "has seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea." In its Note Verbale CML/17/2009 dated 7 May 2009, China claimed that it has "indisputable sovereignty over the islands in the South China Sea and adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as seabed and subsoil thereof."³⁹ A map that shows a broken line (also known as nine-dashed line) surrounding almost the entire South China Sea was attached to the Note (*see Figure 4*).

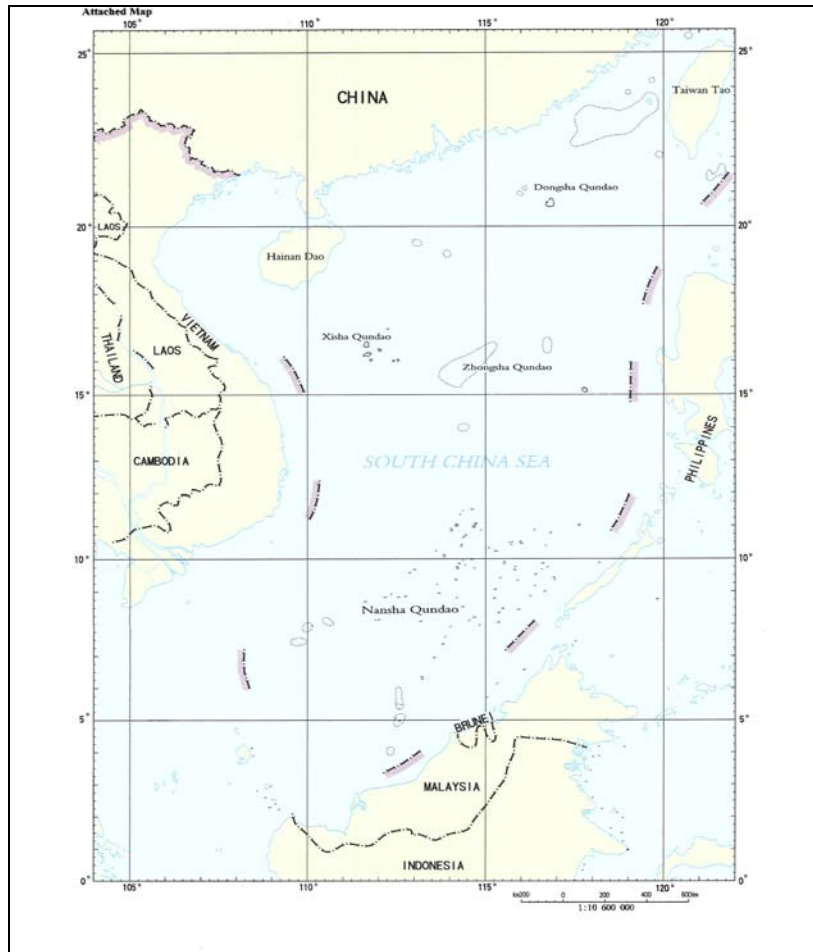


Figure 4. Nine-dashed line map of China

(Source: Attached map to Note CML/17/2009 of China to UN Secretary-General)

The Philippines lodged a Note to the United Nations conveying its position on the joint submission. In particular, the Philippines asked the CLCS to “refrain from considering” the joint submission by Malaysia and Vietnam.⁴⁰ The country stated that the ECS claim under the said submission overlaps with that of the Philippines. Moreover, the Philippines cited the “controversy arising from the territorial claims on some of the islands in the area, including North Borneo.”⁴¹

Responding to the objection of China, Vietnam reaffirmed its sovereignty over Hoang Sa (Paracels) and Truong Sa (Spratlys). In Vietnam’s view China’s claim is “null and void” and “has no legal, historical or factual basis.”⁴² Furthermore, Vietnam declared that the joint submission is a “legitimate undertaking” of the two countries as parties to the UNCLOS. This latter argument was echoed by Malaysia in its response to China’s Note. Malaysia also reiterated that the joint submission is without prejudice to the continental shelf delimitation between opposite or adjacent coastal states, and to the positions of states which are parties to a land or maritime dispute. Malaysia also stated that China was

informed of the planned submission.⁴³

The above contentions about the legitimacy of the joint submission under UNCLOS and about the lack of basis for China's claims were reiterated during the presentation of the joint submission to the CLCS on its 24th Session on 27 August 2009.⁴⁴

In regard to the objection of the Philippines, Vietnam reiterated two main points: (1) that the submission is a legitimate undertaking; and (2) that it has sovereignty over Paracels and Spratlys. Vietnam also indicated that disputes must be settled through peaceful negotiations in accordance with UNCLOS and the DOC-SCS.⁴⁵ The foregoing arguments were repeated in response to the Philippines Note on Vietnam's unilateral submission.

Malaysia's reply to the Philippines also conveyed the same arguments it had expressed to China's objection; and further stated that the Philippines was informed and was invited by both countries to participate in the joint submission. Specific to the issue of North Borneo, Malaysia declared that the Philippine claim has never been recognized by Malaysia. Quoting the *Judgment of the International Court of Justice dated 23 October 2001 in the Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan and the Application by the Philippines to Intervene*, Malaysia asserted that the Philippine claim to Sabah has no basis under international law and thus asked the CLCS to consider the joint submission.⁴⁶

On Unilateral Submission

China also objected to the submission made by Vietnam in the northern part of the South China Sea. It cited the same positions conveyed as response to the joint submission by Malaysia and Vietnam. The map of nine-dashed line was likewise attached.⁴⁷

The Philippine protest was premised on the argument that the ECS being claimed by Vietnam overlaps with that of the Philippines. Citing the pertinent provisions under UNCLOS and the Rules of Procedures of the CLCS, the Philippines requested the CLCS not to consider the submission by Vietnam "unless and until after the parties have discussed and resolved their disputes."⁴⁸

Vietnam reiterated the same positions previously made in regard to both China's and Philippines' objections against the joint submission.

On China's claim to the South China Sea as conveyed in its Notes Verbales CML/17/2009

and CML/18/2009

China's reaction to the submissions for ECS claims in the South China Sea has caused a number of responses. Expectedly, the first to respond were Vietnam and Malaysia. Both countries' arguments are discussed under the section on joint submission above. The next to lodge a reply was Indonesia, a non-claimant state in the South China Sea dispute. In its Note, Indonesia stated that because there is a lack of clarity as to the basis of the "nine-dotted-line map," it may be supposed that the said map manifests the maritime zones generated from the geological features in the South China Sea. However, rocks cannot generate a 200 NM EEZ and 200 NM continental shelf, a position shared by China based on the statements of its representatives during official meetings. According to Indonesia:⁴⁹

“...it is only correct to state that those remote or very small features in the South China Sea do not deserve exclusive economic zone or continental shelf of their own. Allowing the use of inhabited rocks, reefs and atolls isolated from the mainland and in the middle of the high sea as basepoint to generate maritime space concerns the fundamental principles of the Convention and encroaches the legitimate interest of the global community.”

Indonesia conveyed that the “nine-dotted-line map” “lacks international legal basis and is tantamount to upset the UNCLOS 1982.”⁵⁰

On 5 April 2011 or two years after China made its protest to the ECS submissions, the Philippines transmitted its reaction to China's position through Note Verbale No. 000228. Basically, the Philippines reaffirmed its sovereignty over some islands and geological features in the South China Sea which it called Kalayaan Island Group (KIG); claimed that it exercises sovereignty and jurisdiction over adjacent waters on the basis of the Roman notion of dominium maris and the international law principle of “la terre domine la mer” and Article 121 of UNCLOS; and rejected China's claim over “relevant waters as well as the seabed and subsoil” in the South China Sea as without basis under international law, specifically UNCLOS.⁵¹

Predictably, China responded to the Philippines by declaring that the contents of the Philippine Note are “totally unacceptable.” China also stated that Philippine domestic laws prior to 1970s did not include the said islands. In China's view, the Philippines started to invade and occupy some islands in the Spratlys in the 1970s.⁵²

Reacting both to the Philippines and China, Vietnam reasserted its sovereignty over the

Paracels and Spratlys and averred that it has “sufficient historical evidences and legal foundation” on this matter.

Implications of the Submissions of Claims for ECS

Broadly, the submissions of claims for ECS made by Malaysia and Vietnam can be categorized as affecting two aspects: (1) the South China Sea territorial disputes; and (2) the relations among concerned countries.

On the South China Sea Territorial Disputes

Legal Status of the Islands in the SCS

When Malaysia and Vietnam made their submissions, jointly and unilaterally, the complexity of the situation in the South China Sea was once again highlighted. The unilateral ECS submission by Vietnam was reckoned from the baselines from its main coast. The joint ECS of Vietnam and Malaysia was also measured based on their respective baselines from the main coasts, in Malaysia’s case from the baselines of Sabah or North Borneo. Experts on the issue were quick to point out the telling implications of these actions on the legal status of islands in the disputed area.⁵³

Under the Regime of Islands (Article 121) of the UNCLOS, an “island” is entitled to maritime zones, including the 200 NM EEZ and 200 NM continental shelf.⁵⁴ A “rock,” on the other hand, shall have no EEZ or continental shelf. Describing the distinction between the two, UNCLOS states that an island is “a naturally formed area of land, surrounded by water, which is above water at high tide” while a rock is that “which cannot sustain human habitation or economic life of their own.”⁵⁵

The joint submission of Malaysia and Vietnam, therefore, can be interpreted as the two countries’ implicit acknowledgement that the geological features in the Spratlys are not “islands” capable of having 200 NM EEZ and continental shelf. The same can also be surmised with respect to Paracels noting that a 200 NM continental shelf from these islands would cover the ECS in the northern area that is being claimed by Vietnam in its ECS submission. While it may be viewed that the ECS submissions made by Malaysia and Vietnam may have undermined their position in the South China Sea, the same moves can also be interpreted as the two countries’ conscious decision to cover all grounds, so to speak. Because if the geological features in the South China Sea are “rocks” capable of generating up to a maximum of 24 NM contiguous zone only, then Malaysia and Vietnam, on the basis of their ECS claims, would still have sovereign rights over the continental

shelf in the South China Sea that is outside from that which is projected from the geological features. Of course, this is on the assumption that the CLCS will consider and make recommendations on the ECS submissions.

China itself has been noted to strongly support the Regime of Islands provision in UNCLOS. In its protest against Japan's ECS submission, China specifically objected to the use of Oki-No-Tori Shima as a basis for projecting an ECS on the ground that the feature is a rock and therefore rock cannot project a 200 NM EEZ and 200 NM continental shelf.⁵⁶ China has reiterated the said position in several occasions, some instances of which were enumerated in Indonesia's Note 480/POL-703/VII/10 of 8 July 2010 to the Secretary-General of the United Nations. In the same Note, Indonesia expressed its opinion that the geological features in the South China Sea are rocks. The Philippines has also indicated its subscription to the applicable application of the Regime of Islands in the South China Sea as indicated in its recent Note Verbale to the United Nations regarding China's claim to the South China Sea.

Based on the foregoing discussions, it may be deduced that once the geological features are proven and accepted (implicit acceptance at this time by Malaysia and Vietnam) as rocks and not islands, then four of the claimant countries to the dispute (China, Philippines, Malaysia and Vietnam) have already recognized that those should not generate EEZ and continental shelf. This would consequently minimize the expanse of disputed area in the South China Sea.

China's Claim to the South China Sea

Another significant implication of the ECS submissions concerns with China's claim to the South China Sea. Depending on whose perspectives, the ECS submissions have either contributed to the further confusion or clarity of China's claim to the South China Sea. The fault or credit is attributed to China's position that is contained in the Note and the attached nine-dashed line map transmitted to the United Nations in reaction to the ECS submissions by Malaysia and Vietnam.

The nine-dashed line is not new information. The international community has known about it but was unclear as to what it exactly means in relation to China's claim in the South China Sea. Regardless of the interpretations, other claimant states to the dispute could not react to it as there was no avenue to do so. The nine-dashed line had not been officially submitted by China to the United Nations until it was used as attachment to the Note as mentioned above. Neither had China elaborated on the said nine-dashed line until it

did so in the Note. In effect, the ECS submissions prompted China to officially explain its claim to the South China Sea, and provided an avenue for other coastal states to react to China's claim.

The interpretations and concomitant reactions to China's position are diverging. One interpretation is that, based on the nine-dashed line map, China's claim is not limited to the geological features in the South China Sea but includes the entire areas covered in the said lines. In effect, China, it seems, is claiming almost the whole of the South China Sea. This expansive claim is seen by the United States as a threat to the freedom of navigation and overflight and presumed to be the reason why U.S. Secretary of State Hillary Clinton made a statement during the 17th ASEAN Regional Forum in Hanoi last year articulating the United States' position that it has "national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea."⁵⁷

The above interpretation is shared by the Philippines. As can be gleaned from its Note Verbale No. 000228 dated 5 April 2011 to the UN Secretary-General, the Philippines is of the view that China is also claiming the area outside of the geological features and their appurtenant maritime zones.⁵⁸ The Philippines based this observation on the phrase "relevant waters as well as the seabed and subsoil thereof" contained in China's Notes. The Philippines renounced China's position as contrary to international law and inconsistent with the UNCLOS. Malaysia and Vietnam also saw China's claim as having no basis under the UNCLOS.

A contrary interpretation is that China's claim is limited only to the islands inside the nine-dashed line and the "adjacent waters" to these islands. This contention is based on the observation that China's Note "contains no language suggesting that China claims that all the waters inside the dotted line are its territorial waters or historic waters, or that it has any historic rights in the waters inside the dotted line."⁵⁹ In this regard, China's claim to the South China Sea is consistent with the UNCLOS and thus a positive development.⁶⁰ Indonesia also shares the same interpretation that China's claim is only restricted to the features. However, Indonesia is of the view that the features in the South China Sea are not islands therefore the maritime extent indicated in the nine-dashed line map "lacks international legal basis and is tantamount to upset UNCLOS."⁶¹

Adding further confusion is China's Note CML/8/2011 dated 14 April 2011 which states:
"Since 1930s, the Chinese Government has given publicity several times the geographic scope of China's Nansha Islands and the names of its components. China's Nansha Islands is therefore clearly defined. In addition, under the

relevant provisions of the 1982 United Nations Convention on the Law of the Sea as well as the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (1992) and the Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China (1998), China's Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone and Continental Shelf.

Based on the above, one can reasonably interpret that China claims only the geological features and the maritime zones that China believes the features are entitled under UNCLOS. However, the Note also cites that the "geographic scope" has been "clearly defined" since 1930s, which clearly refers to the nine-dashed line map. Considering that the concept of exclusive economic zone and continental shelf had not yet emerged at that time, one wonders as to what is the basis of China's geographic claim since the waters inside the nine-dashed line could not be attributed as maritime entitlements from the islands.

On Bilateral Relations Among Concerned States

The bilateral relations among claimant states have predictably been affected by the ECS submissions. As earlier indicated, the preparations for ECS submission entail huge resources from a country making an ECS submission. Therefore, getting an objection from another coastal state which will put the submission at a risk of not being considered by the CLCS is a position that a submitting country does not wish to be in.

Given the complex situation in the South China Sea, there was a widespread perception that any submission in the area would encounter an objection from any other littoral states, particularly China. This apprehension about potential objection was the reason why the Philippines opted to make a partial submission in a non-disputed area – the Benham Rise region in the Pacific Ocean.⁶² Malaysia and Vietnam have both claimed that they tried to obtain non-objection from other coastal states. Despite these attempts, the joint ECS submission and the unilateral ECS submission were still protested by China and the Philippines.

Indeed, the objections of China and the Philippines were considered when the CLCS, at its 24th Session in August 2010, made a decision to "defer further consideration of the submission and the notes verbales until such time as the submission is next in line for consideration as queued in the order in which it was received." In taking such decision, the CLCS took the possibility that the concerned states would "take advantage of the avenues available to them including provisional arrangements of a practical nature as contained in annex I to its rules of procedure."⁶³

ASEAN Unity vs China

One identified impact of the ECS submissions has reference to the notion of ASEAN unity against China. Apparently, as the Philippine objection unsettled the idea of “unity” among ASEAN members in dealing with China on the South China Sea issue, a perception has prevailed that “China has succeeded in preventing Vietnam and the Philippines from showing a “united front.”⁶⁴ An ASEAN “united front” against China on the issue of the South China Sea is what ASEAN has been trying to attempt for the past years. China’s assertive stance on the South China Sea in the 1990s prompted some claimant countries to use the ASEAN forum to counter-balance China which resulted in the signing of the DOC-SCS between ASEAN and China. Since then, ASEAN has tried to treat the issue as between ASEAN and China, a policy that has been repeatedly rejected by China, preferring the bilateral approach instead. For the most part, concerned ASEAN member states have opted to deal with China on South China Sea issue in ASEAN setting. Since the signing of DOC-SCS, the ASEAN and China have been working on the necessary guidelines to implement the envisioned CBM activities in the DOC-SCS. Recently, due to the heightening tensions in the South China Sea, ASEAN has pushed for a binding Code of Conduct (COC) in the South China Sea. Establishing a legally binding Code of Conduct in the South China Sea has been a goal of ASEAN since the beginning of its discussions with China. The DOC-SCS is merely a watered-down version of the envisioned COC that provides for sanctions or penalties on erring state. At present, ASEAN and China have commenced discussions on the matter at a working level.⁶⁵

However, the ECS submissions in the South China Sea should not be analyzed from the lens of “ASEAN dealing with China on the South China Sea issue” alone as there are other issues beyond this. For instance, apart from the territorial dispute in the South China Sea, the Philippines objected to the ECS because the ECS is reckoned from the baselines of Sabah over which the Philippines has outstanding claim. The Sabah dispute is of primordial national interest to the Philippines, and understandably, the Philippines would not jeopardize its interest on this aspect. Furthermore, it must be remembered that the ECS submissions in the South China Sea is not an issue about ASEAN countering China. Rather it is an issue that has far-ranging implications affecting not only the claimant states but also other countries (hence, Indonesia’s Note and the United States’ statement). Nevertheless, a “united front” can only be achieved if one’s own interest is not prejudiced. When these vested interests are undermined, a country would readily eschew the notion of “unity” to protect its own interests. ASEAN member states have been known to have departed from its policy of dealing with China on the South China Sea issue as a bloc. The case of the Joint Marine Seismic Undertaking (JMSU) between China, Vietnam and the Philippines in

2005 is alleged as an instance of this nature.⁶⁶

Interestingly, one of the provisions in the DOC-SCS is for claimant countries to refrain from conducting activities that may “complicate or escalate disputes.”⁶⁷ The DOC-SCS only cites the occupation of geological features as an example of such an activity. Whether the ECS submissions can be interpreted as inconsistent with the DOC-SCS has not been exactly deliberated in the many discussions on the ECS submissions. But, it certainly cannot be denied that the ECS submissions have made the dispute in the South China Sea far more complicated.

Revival of the Sabah Dispute

Another consequent impact of the ECS submissions is the revival of the territorial dispute between the Philippines and Malaysia over Sabah (North Borneo). The Philippines, as earlier stated, has indicated its outstanding claim to Sabah as one reason for its objection to the ECS joint submission. Malaysia categorically renounced this Philippine claim. While there has been no apparent effect on the bilateral relations between the two countries, it is worth recalling that the Sabah dispute was a cause for the cooling of diplomatic relations in the past resulting even to the temporary closure of the Philippine Embassy in Malaysia. The cordial situation at this time, however, may be due to the fact that the CLCS has not outrightly disregarded the joint ECS submission by Malaysia and Vietnam giving the two countries more time and opportunity to discuss with the Philippines on the issue. Had the CLCS, on the basis of China and the Philippines objections, not considered the joint ECS submission by Malaysia and Vietnam, the bilateral relations between the Philippines and Malaysia would have been seriously affected.

Conclusion

The foregoing discussions show that there are two positive implications of the ECS submissions. First, it unraveled Malaysia’s and Vietnam’s position with regard to the legal status of the geological features in the South China Sea. Second, it prompted China to officially explain its claim to the South China Sea.

China’s claim to the South China Sea has been a subject of several suppositions owing to its confusing nature. The most perplexing aspect was China’s nine-dashed line map which provoked the questions whether China claims all the waters and geological features inside the nine-dashed line or whether China’s claim is only limited to the geological features found inside the said lines? China’s inconsistent actions, *i.e. claiming historic title to the waters in the South China Sea and protesting the exploration activities of other claimant states even if such exploration activities are far from the disputed area on one hand, and*

reassuring the freedom of navigation in the South China Sea, a right that is not observed in the territorial waters, on the other hand, did not exactly help make its claim clear to other claimant states. China had maintained this ambiguous claim until it was constrained to object to the ECS submissions by Malaysia and Vietnam. China's Note however generated two opposing views. To the perspectives of the Philippines, Indonesia and the United States, China's Note clarified that China is claiming almost the entire South China Sea. In the view of noted experts on the South China Sea issue like Robert Beckman and Mark Valencia, China's claim is limited only to the geological features and maritime zones generated by these features. In effect, it seems that nothing has yet been clarified; China's claim remains as vague as ever.

The ECS submissions have managed to make the situation in the South China Sea more complicated. The ECS regime has added a new layer to a multi-faceted dispute involving overlapping maritime jurisdictions, conflicting ownership of geological features, and a dubious "historic" claim to almost the entire South China Sea. In addition, the ECS submissions affected the relations among claimant states, reviving even a territorial dispute that has been long put at the backburner. The submissions also untangled the notion of ASEAN unity, which is somewhat anticipated since the ECS issue impacts on all claimant states in the South China Sea. Although, in hindsight, ASEAN claimant states to the South China Sea missed an opportunity to make a joint ECS submission in the South China Sea. A joint ECS submission among all ASEAN claimant states would probably have more chance of being considered as it would only get objection from China. It would also send a strong statement of ASEAN claimant states' unity and cooperative spirit. To a certain extent, such move would also have undermined China's claim. Although, quite frankly, it would have been hard for ASEAN claimant states to make a joint submission because of competing interests and different concerns, *e.g.* Malaysia-Philippines territorial dispute over Sabah. However, the ASEAN claimant states would have no recourse but to cooperate if only to balance China. In this regard, ASEAN claimant states should take advantage of the opportunity provided by the CLCS which deferred the consideration of the ECS submissions to give concerned parties the chance to arrive at an arrangement.

In essence, other than clarifying and reaffirming certain positions on claims to the South China Sea there have been no other significant impacts of the ECS submissions to resolving the dispute. This is also expected as the CLCS is not a legal body and has no competence on matters of dispute, land or maritime.

However, beyond the issue of ECS submissions, ASEAN claimant states and also non-claimant states should focus on how to respond to the threat of an aggressive China in

the South China Sea. Pushing for the adoption of COC is not enough. Taking the case of the DOC-SCS, the process leading to the adoption of the COC would probably be another long-drawn-out negotiation. Moreover, in an asymmetrical relations of ASEAN and China, a COC regardless of the provisions on sanctions, would only be effective if China is willing to be bound by it. But based on China's actions, a binding agreement is only effective as long as it serves China's interest. For instance in regard to UNCLOS, China has been invoking the good faith principle in its protest against Japan's use of Oki-No-Tori Shima while at the same time failing to observe the same principle since it continues to assert its claim for historic waters over the entire South China Sea – a claim that is not recognized by UNCLOS, except for historic bays. Meanwhile, China has been exercising a more assertive policy in the South China Sea. Unless ASEAN finds soon a solution that is palatable to China, China would continue doing so.

In this regard, an important factor to note is that China is currently pursuing an aggressive strategy to secure supplies of oil and gas and its international and foreign policies have reflected this.⁶⁸ Allegations even abound that China fosters alliances with countries in the Middle East in order to secure its oil imports and allows the sale of arms to Iraq and Iran.⁶⁹ In the East China Sea, China is reported to have started oil production in the continental shelf that is still subject to maritime boundary delimitation with Japan.⁷⁰ China's assertiveness policy in the South China Sea may be due to its pursuit of energy resources in the area which China itself estimates to contain hydrocarbon deposits ranging from 105 billion barrels to 213 billion barrels.⁷¹

Thus, if ASEAN requires an interim and effective solution to the current situation in the South China Sea, then the solution should have to do with the exploration and exploitation of energy resources in the area such as joint development. Cooperation on energy resources among claimant states may be an interim solution to avert what seems to be an incipient conflict in the South China Sea.⁷²

END NOTES

- ¹ See Leszek Buszynski, "Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue," *Security Challenges* 6, no. 2 (Winter 2010): 85.
- ² See Digital Gazetteer of the Spratly Islands, <http://community.middlebury.edu/~scs/macand/gazetteer.htm> (accessed June 1, 2011).
- ³ See Ralph A Cossa, "Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict," *A Pacific Forum CSIS Special Report*, Honolulu, Hawaii, March 1998; The Central Intelligence Agency Factbook describes the Spratly Islands as consisting of more than 100 small islands or reefs. See <https://www.cia.gov/library/publications/the-world-factbook/geos/pg.html> (accessed June 1, 2011).
- ⁴ See Christopher C. Joyner, "The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation," *Investigating Confidence Building Measures on the Asia Pacific Region*, Report No. 28, ed. Ranjeet Singh (Washington DC: Henry L. Stimson Centre, 1999), 66.
- ⁵ See Digital Gazetteer Digital Gazetteer of the Spratly Islands.
- ⁶ Leszek Buszynski claims that the term occupation is ambiguous as it could mean a permanent presence or just a token presence in the area. See Buszynski, 2010, 85.
- ⁷ Chiu and Park, 1978 as cited in Haydee B. Yorac, "The Philippine claim to the Spratly Islands Group," *Philippine Law Journal* 58 (1983): 48-49.
- ⁸ See R.A. Arizala, "Claim to Kalayaan: Its Legal Aspects and Options," *The Lawyers Review*, (31 October 2004): 2-9; See also Presidential Decree No. 1596 "Declaring Certain Areas Part of the Philippine Territory and Providing for their Government and Administration [1978], <http://www.chanrobles.com/presidentialdecrees/presidentialdecreeno1596.html> (accessed June 1, 2011).
- ⁹ For instance, in 1988, Chinese naval vessels clashed with Vietnamese naval vessel near Johnson Reef in South China Sea. Also in 1995, the Chinese occupation of Mischief Reef in the Philippine claim zone led to a diplomatic tension between the two countries and prompted the Philippines to rally the "internationalization" of the South China Sea territorial dispute. See, Leszek Buszynski and I. Sazlan, "Maritime Claims and Energy Cooperation in the South China Sea," *Contemporary Southeast Asia* 29/1 (2007): 143-171 ; See also "Military Clashes in the South China Sea," <http://www.globalsecurity.org/military/world/war/spratly-clash.htm> (accessed May 30, 2011).
- ¹⁰ These efforts range from informal (track two) to formal (track one) initiatives. See Yann-huei Song, "Codes of conduct in the South China Sea and Taiwan's stand," *Marine Policy* 24, (2000): 449-459.
- ¹¹ See Declaration on the Conduct of Parties in the South China Sea (DOC-SCS), <http://www.aseansec.org/13163.htm> (accessed May 30, 2011).
- ¹² See Chien-peng (C.P.) Chung, "Southeast Asia-China Relations: Dialectics of 'Hedging' and 'Counter-Hedging'," *Southeast Asian Affairs*, (2004): 39.
- ¹³ See http://www.chinadaily.com.cn/china/2010-09/30/content_11371512.htm.
- ¹⁴ See United Nations Convention on the Law of the Sea, Montego Bay, Jamaica, 10 December 1982, in force 16 November 1994, http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf. (hereafter referred to as UNCLOS.)
- ¹⁵ The continental margin is defined as comprising the ... "submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise ... it does not include the deep ocean floor with its oceanic ridges or the subsoil thereof." See UNCLOS Article 76(3).
- ¹⁶ UNCLOS Article 76 (1)
- ¹⁷ UNCLOS Article 76 (5)
- ¹⁸ UNCLOS Article 76 (8)
- ¹⁹ The 13 May 2009 deadline is a deferred deadline. The original deadline set for the submission of ECS claim is within 10 years from entry into force of UNCLOS for that State, which for several coastal States, would have been on 16 November 2004. However, in the 11th Meeting of State Parties under the General Assembly of the United Nations in 2001, the deadline was adjusted to 13 May 2009, 10 years after the CLCS adopted its Scientific and Technical Guidelines. See "SPLOS/72 - 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," <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/387/64/PDF/N0138764.pdf?OpenElement> (accessed May 30, 2011).
- ²⁰ See "SPLOS/183 - Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a)." At <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/398/76/PDF/N0839876.pdf?OpenElement>.
- ²¹ See "Defining Canada's Extended Continental Shelf," http://www.international.gc.ca/continental/limits-continental-limités.aspx?lang=eng&menu_id=20&view=d

(accessed June 5, 2011).

²² See Clive Schofield and I Made Andi Arsana, "Beyond the Limits?: Outer Continental Shelf Opportunities and Challenges in East and Southeast Asia," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* (Institute of Southeast Asian Studies) 31, no. 1 (April 2009): 28-63.

²³ UNCLOS, Article 77 (2)

²⁴ See http://www.un.org/Depts/los/clcs_new/commission_submissions.htm (accessed June 3, 2011).

²⁵ Paragraph 1 of Annex I to the Rules of Procedures of the Commission on the Continental Shelf states that "the Commission recognizes that the competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States." Para 5 (a) of the same further states that "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission 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." See CLCS Rules of Procedures at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement> (accessed June 3, 2011).

²⁶ Para 5 (a) Annex I to the Rules of Procedures of the Commission on the Continental Shelf states that "In cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute. However, the Commission 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." See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/309/23/PDF/N0830923.pdf?OpenElement> (accessed June 3, 2011).

²⁷ Ibid.

²⁸ Paragraph 3 of Annex I to the Rules of Procedures of the Commission on the Continental Shelf states that "a submission may be made by a coastal State for a portion of its continental shelf in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later, notwithstanding the provisions regarding the ten-year period established by article 4 of Annex II to the Convention."

²⁹ See Schofield and Arsana, 2009, 51.

³⁰ See *Defining Canada's Extended Continental Shelf*,

<http://www.international.gc.ca/continental/limits-continental-limités.aspx?lang=eng> (accessed June 3, 2011).

³¹ Energy Information Administration. South China Sea.

http://www.eia.doe.gov/emeu/cabs/South_China_Sea/Background.html (accessed June 3, 2011).

³² Bramley J. Murton, "A Global review of non-living resources on the extended continental shelf," *Revista Brasileira de Geofísica* 18, no.3, Sao Paulo (2000), doi: 10.1590/S0102-261X200000300007 .

³³ See Joint submission by Malaysia and the Socialist Republic of Viet Nam (Executive Summary), 31p (6 May 2009),

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009executivesummary.pdf (accessed June 3, 2011).

³⁴ Ibid. At p. 2.

³⁵ See Submission of the Socialist Republic of Viet Nam (Executive Summary), 10p, .

http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/vnm2009n_executivesummary.pdf (accessed June 3, 2011).

³⁶ Ibid. At p. 3.

³⁷ See Item 24 of United Nations CLCS (Commission on the Limits of the Continental Shelf), "CLCS/64 - Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work in the Commission - Twenty-fourth session," Issued on 01 October 2009 (hereinafter referred to as CLCS/64),

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/536/21/PDF/N0953621.pdf?OpenElement> (accessed June 3, 2011).

³⁸ See Brunei Darussalam's Preliminary Submission Concerning the Outer Limits of its Continental Shelf, 8p, http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf (accessed June 3, 2011).

³⁹ See Note No. CML/17/2009 of 7 May 2009 from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations referring to the Joint Submission of Malaysia and the Socialist Republic of Vietnam to the

Commission on the Limits of the Continental Shelf. At

http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

⁴⁰ See Note No. 000819 of 4 August 2009 from the Permanent Mission of the Republic of the Philippines to the Secretary-General of the United Nations referring to the Joint Submission of Malaysia and the Socialist

Republic of Vietnam to the Commission on the Limits of the Continental Shelf.
http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/clcs_33_2009_los_phl.pdf (accessed June 3, 2011).

⁴¹ Ibid.

⁴² See Note No. 86/HC-2009 of 8 May 2009 from the Permanent Mission of the Socialist Republic of Vietnam to the Secretary-General of the United Nations referring to Notes Verbales CML/12/2009 dated 13 April 2009, CML/17/2009 dated 7 May 2009 and CML/18/2009 dated 7 May 2009 of the People's Republic of China, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/vnm_re_chn_2009re_vnm.pdf (accessed June 3, 2011).

⁴³ See Note No. HA 24/09 of 20 May 2009 from the Permanent Mission of Malaysia to the Secretary-General of the United Nations referring to Note Verbale CML/17/2009 dated 7 May 2009 of the People's Republic of China
http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_chn_2009re_mys_vnm_e.pdf (accessed June 3, 2011).

⁴⁴ See Item 21 of CLCS/64.

⁴⁵ See Note No. 240HC-2009 of 18 August 2009 from the Permanent Mission of the Socialist Republic of Vietnam to the Secretary-General of the United Nations referring to Notes Verbales 000818 and 000819 dated 4 August 2009 of the Republic of the Philippines, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_re_phl_2009re_mys_vnm_e.pdf (accessed June 3, 2011).

⁴⁶ See Note No. HA 41/09 of 21 August 2009 from the Permanent Mission of Malaysia to the Secretary-General of the United Nations referring to Note Verbale No. 000819 dated 4 August 2009 of the Republic of the Philippines, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_phl_2009re_mys_vnm_e.pdf (accessed June 3, 2011).

⁴⁷ See Note No. CML/18/2009 of 7 May 2009 from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations referring to the Submission by the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf (accessed June 3, 2011).

⁴⁸ See Note No. 000818 of 4 August 2009 from the Permanent Mission of the Republic of the Philippines to the Secretary-General of the United Nations referring to the Submission by the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/clcs_37_2009_los_phl.pdf (accessed June 3, 2011).

⁴⁹ See Note No. 480/POL-703/VII/10 of 8 July 2010 from the Permanent Mission of the Republic of Indonesia to the Secretary-General of the United Nations referring to Note Verbale No. CML/17/2009 dated 7 May 2009 of the People's Republic of China, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf (accessed June 3, 2011).

⁵⁰ Ibid.

⁵¹ See Note No. 000228 of 5 April 2011 from the Permanent Mission of the Republic of the Philippines to the Secretary-General of the United Nations referring to Notes Verbales CML/17/2009 dated 7 May 2009 and CML/18/2009 dated 7 May 2009 of the People's Republic of China, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf (accessed June 3, 2011).

⁵² See Note No. CML/8/2011 of 14 April 2011 from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations referring to Note No. 000228 dated 5 April 2011 of the Republic of the Philippines, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf (accessed June 3, 2011).

⁵³ See Sam Bateman and Clive Schofield, "Outer Shelf Claim in the South China Sea: New Dimension to Old Disputes," *RSIS Commentaries* 65/2009, 1 July 2009, accessed 2 June 2011, <http://www.rsis.edu.sg/publications/Perspective/RSIS0652009.pdf>.

⁵⁴ UNCLOS Article 121 (2).

⁵⁵ UNCLOS Article 121.

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- ⁵⁷ Robert Beckman, "South China Sea: How China Could Clarify its Claims," *RSIS Commentaries 116/2010*, 16 September 2010, accessed 5 June 2011, <http://dr.ntu.edu.sg/bitstream/handle/10220/6596/RSIS1162010.pdf?sequence=1>.
- ⁵⁸ See Note No. 000819 of 4 August 2009 from the Permanent Mission of the Republic of the Philippines to the Secretary-General of the United Nations referring to the Joint Submission of Malaysia and the Socialist Republic of Vietnam to the Commission on the Limits of the Continental Shelf, accessed 3 June 2011, http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/clcs_33_2009_los_phl.pdf.
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- ⁶⁰ Beckman, "South China Sea: Worsening Dispute or Growing Clarity in Claims?,"²; See also Mark J. Valencia, "The South China Sea: Back to the Future?," *Global Asia (Journal of the East Asia Foundation)*, (December 2010), accessed 5 June 2011, <http://www.globalasia.org/l.php?c=e344>.
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- ⁶³ See Items 21 and 24, CLCS/64.
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- ⁶⁶ See Barry Wain, "Manila's Bungle in The South China Sea," *Far Eastern Economic Review*, (January 1, 2008): 45-48.
- ⁶⁷ See Para 5, DOC-SCS.
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- ⁷² Leszek Buszyński claims that energy cooperation would offer positive incentives to the Chinese to negotiate in view of their increased demand for energy. See Buszyński, 2010, 103.

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