

Confidence-Building and the Rule of Law in Asian Seas

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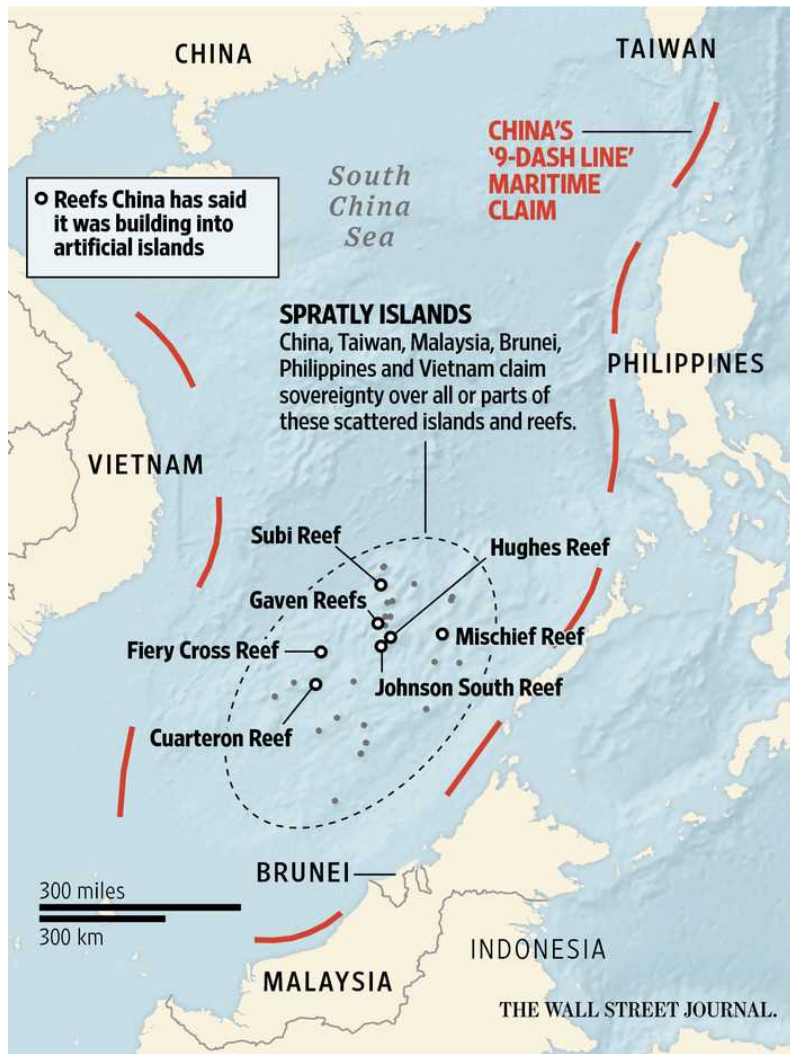
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1. Introduction: Recent Events

- ① Arbitral Award in The Philippines-China South China Sea Arbitration
- ② US Freedom of Navigation (FON) Operation in SCS
- ③ Japan-China Joint Development in East China Sea



The Arbitral Tribunal in *Philippines v. China* (L to R)
Judge Jean-Pierre Cot, Judge Stanislaw Pawlak, Judge Thomas A. Mensah
(President), Judge Rüdiger Wolfrum, Professor Alfred H. A. Soons



USS Lassen

The 2008 Japan-China Agreement on Cooperation for the Development of East China Sea Resources



Conceptual Map of JDZ between Japan and China in East China Sea



Chinese Oil & Gas Rigs / Platforms (●)

2. Needs for Cooperation

Art. 123 of UNCLOS

(Cooperation of States bordering enclosed or semi-enclosed seas)

States bordering an enclosed or semi-enclosed sea **should cooperate** with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the **living resources** of the sea;
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the **marine environment**;
- (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of **scientific research** in the area;
- (d) to **invite**, as appropriate, other interested States or international organizations **to cooperate** with them in furtherance of the provisions of this article.

3. Confidence-building

- Arts. 74(3) and 83(3) of UNCLOS

3. Pending agreement as provided for in paragraph 1, the States concerned, **in a spirit of understanding and cooperation**, shall make every effort to enter into provisional arrangements of a practical nature 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.

▪ Declaration on the Conduct of Parties in the South China Sea between Member Countries of ASEAN and Peoples' Republic of China (2002)

1. The Parties reaffirm their **commitment to** the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally **recognized principles of international law which shall serve as the basic norms governing state-to-state relations;**
2. The Parties are committed to exploring ways for **building trust and confidence in accordance with the above-mentioned principles** and on the basis of equality and mutual respect;

- fundamental requirements for States
 - * **explain and clarify** their position on each of the specific issues by referring to international law, especially 1982 UNCLOS
 - * **duty of cooperation** on information
 - cf. ITLOS Mox Plant case: Order of Provisional Measures
Ireland raised a problem that the UK had been “insufficiently cooperative by limiting distribution of necessary information”
 - * **strategy of ambiguity** shall be refrained from, especially in undertaking activities unilaterally
 - * **excessive claim** shall be restrained

4. The Rule of Law as a Process

- The rule of law **as on-going process**
- wide margin of **domestic measures** allowable
- needs to keep **transparency and accountability**
- **role of international courts** in facilitating the rule of law as a process
- **collaboration** between international courts and States concerned