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Limits in the Seas

No. 150

**People's Republic of China:
Maritime Claims in the South China Sea**



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This study is one of a series issued by the Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State. The purpose of the series is to examine a coastal State's maritime claims and/or boundaries and assess their consistency with international law. This study represents the views of the United States Government only on the specific matters discussed therein and does not necessarily reflect an acceptance of the limits claimed.

This study, and earlier studies in this series, may be downloaded from <https://www.state.gov/limits-in-the-seas/>. Comments and questions should be emailed to LimitsInTheSeas@state.gov. This study was prepared by Department of State's Office of Ocean and Polar Affairs, Office of the Legal Adviser, and Office of the Geographer. The principal analysts for this study are Kevin Baumert, Amy Stern, and Amanda Williams.

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Executive Summary

This study examines the maritime claims of the People's Republic of China (PRC) in the South China Sea. The PRC's expansive maritime claims in the South China Sea are inconsistent with international law as reflected in the 1982 United Nations Convention on the Law of the Sea ("Convention").

The PRC asserts four categories of maritime claims* in the South China Sea:

- **Sovereignty claims over maritime features.** The PRC claims "sovereignty" over more than one hundred features in the South China Sea that are submerged below the sea surface at high tide and are beyond the lawful limits of any State's territorial sea. Such claims are inconsistent with international law, under which such features are not subject to a lawful sovereignty claim or capable of generating maritime zones such as a territorial sea.
- **Straight baselines.** The PRC has either drawn, or asserts the right to draw, "straight baselines" that enclose the islands, waters, and submerged features within vast areas of ocean space in the South China Sea. None of the four "island groups" claimed by the PRC in the South China Sea ("Dongsha Qundao," "Xisha Qundao," "Zhongsha Qundao," and "Nansha Qundao") meet the geographic criteria for using straight baselines under the Convention. Additionally, there is no separate body of customary international law that supports the PRC position that it may enclose entire island groups within straight baselines.
- **Maritime zones.** The PRC asserts claims to internal waters, a territorial sea, an exclusive economic zone, and a continental shelf that are based on treating each claimed South China Sea island group "as a whole." This is not permitted by international law. The seaward extent of maritime zones must be measured from lawfully established baselines, which are normally the low-water line along the coast. Within its claimed maritime zones, the PRC also makes numerous jurisdictional claims that are inconsistent with international law.
- **Historic rights.** The PRC asserts that it has "historic rights" in the South China Sea. This claim has no legal basis and is asserted by the PRC without specificity as to the nature or geographic extent of the "historic rights" claimed.

The overall effect of these maritime claims is that the PRC unlawfully claims sovereignty or some form of exclusive jurisdiction over most of the South China Sea. These claims gravely undermine the rule of law in the oceans and numerous universally-recognized provisions of international law reflected in the Convention. For this reason, the United States and numerous other States have rejected these claims in favor of the rules-based international maritime order within the South China Sea and worldwide.

* Islands in the South China Sea over which the PRC claims sovereignty are also claimed by other States. This study examines only the *maritime claims* asserted by the PRC and does not examine the merits of sovereignty claims to islands in the South China Sea asserted by the PRC or other States. The United States takes no position as to which country has sovereignty over the islands in the South China Sea, which is not a matter governed by the law of the sea.

Introduction

This study builds on *Limits in the Seas No. 143* (2014), which analyzed the People’s Republic of China’s (PRC’s) ambiguous “dashed-line” claim in the South China Sea.¹ *Limits in the Seas No. 143* concluded that the PRC’s dashed-line claim was neither a valid national boundary nor a valid claim to historic rights in the South China Sea. The PRC’s maritime claims within the dashed line, the study concluded, are consistent with international law only if they are limited to the maritime zones generated from land features (*i.e.*, the mainland and islands), in accordance with relevant provisions of the 1982 United Nations Convention on the Law of the Sea (“Convention”).²

In 2016, having considered the PRC’s dashed-line claim, an arbitral tribunal convened in accordance with the Convention reached a similar conclusion in *The South China Sea Arbitration (The Republic of the Philippines v. The People’s Republic of China)*. The arbitral tribunal issued a unanimous decision, which is final and binding on the Philippines and the PRC,³ finding that:

China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention [and that] the Convention superseded any historic rights, or other sovereign rights or jurisdiction in excess of the limits imposed therein.⁴

Immediately following the issuance of the tribunal’s award, the PRC released a statement⁵ (Annex 1 to this study) and a white paper⁶ that advanced a new articulation of its maritime claims in the South China Sea. The PRC has also communicated *notes verbales* to the United Nations and its Member States that describe its South China Sea claims in similar terms (Annex 2 to this study). These documents address a range of the PRC’s maritime claims in the South China Sea, including claims related to historic rights, baselines, and maritime zones claimed from islands, island groups, and other maritime features.

This *Limits in the Seas* study examines the PRC’s revised articulation of its South China Sea maritime claims following the issuance of the decision in *The South China Sea Arbitration*. To the extent the PRC’s claims are not specified in domestic laws or regulations, this study relies on the PRC’s official statements, position papers, and diplomatic communications to assess their character and consistency with international law.

¹ [Limits in the Seas No. 143](#), “China: Maritime Claims in the South China Sea,” U.S. Dep’t of State (2014).

² [United Nations Convention on the Law of the Sea](#), opened for signature Dec. 10, 1982, 1833 UNTS 397 (entered into force Nov. 16, 1994).

³ *Id.* art. 296.

⁴ *The South China Sea Arbitration (The Republic of the Philippines v. The People’s Republic of China)*, Permanent Court of Arbitration (PCA) Case No. 2013-19, Award of July 12, 2016, para. 278, available from the PCA [website](#).

⁵ “Statement of the Government of the People’s Republic of China on China’s Territorial Sovereignty and Maritime Interests in the South China Sea,” July 12, 2016, available from the [website](#) of PRC’s Ministry of Foreign Affairs (also Annex 1 to this study).

⁶ “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea,” July 13, 2016 (hereinafter *White Paper*), available from the [website](#) of PRC’s Ministry of Foreign Affairs.

The next section provides a brief [Geographic Overview](#) of the South China Sea. The [Basis for Analysis](#) section that follows summarizes the PRC's maritime claims in the South China Sea and discusses the provisions of the international law of the sea that are relevant to those claims. The [Analysis](#) section then examines PRC maritime claims from a geographic and legal perspective, including their consistency with the international law of the sea. The [Conclusion](#) briefly summarizes the results of this study's analysis of PRC maritime claims in the South China Sea.

Geographic Overview of the South China Sea

The South China Sea is a large, semi-enclosed sea surrounded by Brunei, China, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, and Vietnam (Map 1). There are many small islands in the South China Sea, including groups of islands located at considerable distances from the mainland coast of the nearest littoral State. In their natural state, these South China Sea islands have a total land area of only about 15 square kilometers (km²). There are also numerous low-tide elevations and entirely submerged features in the South China Sea, which are not "islands" as defined by international law.⁷

Map 1 shows geographic features relevant to this study, some of which are briefly described below:

- **Pratas Island.** Pratas Island is a single island that surmounts Pratas Reef and is located in the northeast part of the South China Sea, 130 nautical miles (M) south of mainland China.
- **Paracel Islands.** The Paracel Islands are located in the northwest part of the South China Sea, roughly equidistant from Hainan and Vietnam's mainland.
- **Macclesfield Bank.** Macclesfield Bank is a large and fully submerged feature that lies southeast of the Paracel Islands. The bank is approximately 70-M long and 40-M wide.
- **Scarborough Reef.** Scarborough Reef is a triangle-shaped reef surmounted by very small islands. It is located between Macclesfield Bank and the Philippine island of Luzon.
- **Spratly Islands.** The Spratly Islands are spread across a large geographic area in the southern part of the South China Sea. This island group is interspersed with numerous reefs, banks, and other submerged features. The largest island, Itu Aba Island, has a land area of less than 0.5 km² in its natural state.
- **James Shoal.** James Shoal lies south of the Spratly Islands, approximately 60 M north of Malaysia's coast. This submerged feature lies about 20 meters below sea level.

The PRC claims sovereignty over all of the South China Sea islands (and numerous other maritime features, as discussed below). Each island or group of islands is claimed by at least one other claimant: Philippines (Scarborough Reef and some of the Spratly Islands), Malaysia (some of the Spratly Islands), Brunei (Louisa Reef, within the Spratly Islands), Vietnam (Spratly Islands and Paracel Islands), and Taiwan (all islands and island groups). The geographic features described above are located within the dashed lines that have appeared in various locations on some PRC maps since being published by the Nationalist government of the Republic of China in 1947 (Map 1).⁸ To the south, seemingly outside the dashed lines, are Indonesia's Natuna Islands, the territorial sovereignty of which is not disputed.

⁷ Convention, *supra* note 2, art. 121(1). *See infra*, pp. 6–7.

⁸ With respect to the dashed lines and related historical maps, see *Limits in the Seas No. 143*, *supra* note 1, at 3–7.



Map 1. Overview map of the South China Sea with key features labeled.

Basis for Analysis

The basis for this study's analysis of PRC maritime claims is the international law of the sea, as reflected in the Convention.⁹ The PRC ratified the Convention on June 7, 1996. The Convention is binding on the PRC and other parties to the Convention as a matter of international treaty law.¹⁰ The United States considers the substantive provisions of the Convention cited in this section to reflect customary international law binding on all States, as do international courts and tribunals.¹¹

This section briefly describes the PRC's maritime claims in the South China Sea and the provisions of the international law of the sea relevant to these claims.

Summary of PRC Maritime Claims in the South China Sea

This study addresses four categories of the PRC's maritime claims in the South China Sea: (1) sovereignty claims over maritime features, (2) baselines, (3) maritime zones, and (4) historic rights.

(1) *Sovereignty claims over maritime features.* The PRC claims sovereignty over four "island groups" in the South China Sea. This includes claims to sovereignty over the actual islands, and also claims to sovereignty over maritime features that do not meet the definition of "island" under the Convention,¹² such as low-tide elevations and seabed features that are fully submerged. Only the latter category, namely claims to maritime features, are examined in this study.¹³

(2) *Baselines.* With respect to baselines, the PRC has drawn straight baselines (purporting to enclose all the waters within as internal waters) around one of the island groups in the South China Sea, the Paracel Islands.¹⁴ The PRC's statements indicate, however, that straight baselines "shall apply" to all of its claimed islands and island groups.¹⁵

(3) *Maritime zones.* Through its domestic legislation and statements, the PRC claims a territorial sea, a contiguous zone, an exclusive economic zone (EEZ), and a continental shelf in the South China Sea.¹⁶ The PRC asserts that these maritime zones are "based on Nanhai Zhudao," which

⁹ Convention, *supra* note 2.

¹⁰ Vienna Convention on the Law of Treaties, art. 26, opened for signature May 23, 1969, 1155 UNTS 331 (entered into force Jan. 27, 1980) (stating that, under the principle of *pacta sunt servanda*, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.").

¹¹ See, e.g., J.A. Roach, "Today's Customary International Law of the Sea," 45 *Ocean Dev't & Int'l L.* 239 (2014).

¹² Convention, *supra* note 2, art. 121(1).

¹³ This study makes no attempt to examine the merits of sovereignty claims by the PRC or other States to land features in the South China Sea. The United States has repeatedly reaffirmed that it takes no position as to which country has sovereignty over the islands of the South China Sea, which is not a matter governed by the law of the sea. See *Limits in the Seas No. 143*, *supra* note 1, at 11, note 25.

¹⁴ *Declaration of the Government of the People's Republic of China on the baselines of the territorial sea* (hereinafter *1996 Declaration*) (Annex 5 to this study), May 15, 1996, available from UN Division for Ocean Affairs and the Law of the Sea (DOALOS), at its [website](#) pertaining to the PRC's maritime claims.

¹⁵ See *infra*, notes 55 and 56, and corresponding text.

¹⁶ *Law on the Territorial Sea and Contiguous Zone of 25 February 1992* (hereinafter *1992 Law*) (Annex 3 to this study) and *Exclusive Economic Zone and Continental Shelf Act*, June 26, 1998 (hereinafter *1998 Law*) (Annex 4 to this study), available from DOALOS, *supra* note 14.

consists of the four “island groups” (and associated features) as collective units over which the PRC claims sovereignty.

(4) *Historic rights*. Following the arbitral tribunal’s decision referred to above, the PRC unequivocally asserted a claim to “historic rights in the South China Sea.”¹⁷ The PRC has since repeated this claim in numerous communications to the United Nations and its Member States.¹⁸

Sovereignty Claims over Maritime Features

A fundamental principle of the international law of the sea is that the “land dominates the sea”; *land* is the “legal source of the power” of a coastal State to exercise authority over its adjacent maritime space.¹⁹ Accordingly, it is necessary in the first instance to distinguish between features that are (1) land territory in a legal sense and those that are (2) submerged (*i.e.*, below sea level) in their natural state. The former generates maritime zones, whereas the legal status of the latter depends on the maritime zone in which it is located.

Land territory includes continental landmasses and islands. These can be subject to a lawful sovereignty claim (*i.e.*, capable of appropriation) and are capable of generating maritime zones, namely a territorial sea, contiguous zone, EEZ, and continental shelf (Table 1).²⁰ Article 121 of the Convention defines an “island” as “a naturally formed area of land, surrounded by water, which is above water at high tide.” Islands are generally entitled to the same maritime zones as other (continental) land territory (Article 121(2)). Paragraph 3 of Article 121, however, provides an exception for islands that are “[r]ocks which cannot sustain human habitation or economic life of their own”; this category of islands “shall have no exclusive economic zone or continental shelf.”

Submerged features and low-tide elevations are part of the maritime domain and their status is governed by the law of the sea. The sovereignty of the coastal State extends from its land territory to its adjacent territorial sea. Submerged features and low-tide elevations that lie beyond the territorial sea limit, however, cannot be subject to the sovereignty of the coastal State. Moreover, such features, regardless of their location, do not generate any maritime zones of their own (Table 1).

The descriptive element of a feature’s geographic name—atoll, bank, island, reef, rock, shoal, etc.—is not determinative of its legal status as an island or a submerged maritime feature. Rather, the status of a feature is based on its physical characteristics in relation to the criteria set forth in the Convention, summarized in Table 1. A feature’s status must also be assessed based on its *natural state*.²¹ Land reclamation or other human activities that alter the natural state of a low-tide

¹⁷ PRC Government Statement, *supra* note 5, para. III(iv) (Annex 1 to this study). This statement did not describe the underlying nature of the historic rights claimed or their geographic extent.

¹⁸ See, e.g., communications reproduced in Annex 2 to this study.

¹⁹ *North Sea Continental Shelf (Germany v. Denmark)*, 1969 ICJ Rep. 3, para. 96, at 52 (Feb. 20).

²⁰ See, e.g., *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (merits), 2001 ICJ Rep. 40, paras. 204–207, at 65–66 (Mar. 16); *The South China Sea Arbitration*, *supra* note 4, para. 309.

²¹ Convention, *supra* note 2, arts. 13 (low-tide elevations) and 121 (islands) (referring to “naturally formed” areas of land, as distinct from “artificial islands” in article 60).

Table 1. Geographic features and maritime entitlements.

Feature Convention article	Definition or Meaning	Part of land domain?	Maritime Zone Entitlements
Island <i>Art. 121(1)</i>	- a naturally formed area of land - surrounded by water, and - above water at high tide	Yes	All maritime zones, as provided for in the Convention
“Rock” <i>Art. 121(3)</i>	“rock” is a term that refers to an island that “cannot sustain human habitation or economic life of [its] own”	Yes	Only territorial sea and contiguous zone
Low-tide elevation (LTE) <i>Art. 13</i>	- a naturally formed area of land - surrounded by water - above water at low tide, and - submerged at high tide	No	None, but the low-water line of the LTE may be used as the baseline for measuring the breadth of maritime zones if the LTE is “situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island”
Submerged feature	- submerged at low and high tides	No	Not entitled to any maritime zones
Artificial islands, installations, structures <i>Art. 60(8)</i>	- artificially formed	No	Not entitled to any maritime zones ²²

elevation or fully submerged feature cannot transform the feature into an island.²³ Similarly, an island that is a “rock” under Article 121(3) cannot, through enhancement by human activity, be transformed into an island that is fully entitled to maritime zones.²⁴ The Convention provides that “[a]rtificial islands, installations and structures do not possess the status of islands” (Article 60(8)).

Baselines

International law, as reflected in Part II of the Convention, sets forth rules governing the baselines from which the limits of maritime zones are measured.²⁵ Article 5 defines the normal baseline as “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.” Additional related provisions are found in Articles 6 (reefs), 9 (mouths of rivers), 10 (bays), 11 (ports), 12 (roadsteads), and 13 (low-tide elevations).

²² “Safety zones” may be established around artificial islands, installations, and structures, pursuant to articles 60, 80, 147(2), and 260 of the Convention.

²³ This is reflected in the Convention’s definition of an island as a “naturally formed area of land.” *Id. See also The South China Sea Arbitration*, *supra* note 4, para. 305 (“As a matter of law, human modification cannot change the seabed into a low-tide elevation or a low-tide elevation into an island. A low-tide elevation will remain a low-tide elevation under the Convention, regardless of the scale of the island or installation built atop it.”).

²⁴ *The South China Sea Arbitration*, *supra* note 4, para. 511 (noting that the Convention requires the status of a feature under Article 121(3) to be ascertained “on the basis of its earlier, natural condition, prior to the onset of significant human modification”).

²⁵ Convention, *supra* note 2, arts. 3 (territorial sea), 33 (contiguous zone), 57 (EEZ), and 76(1) (continental shelf).

The Convention also permits the method of straight baselines, but only where the coastal geography meets certain conditions, in particular (1) “[i]n localities where the coastline is deeply indented and cut into” or (2) where “there is a fringe of islands along the coast in its immediate vicinity” (Article 7, paragraph 1).²⁶ The International Court of Justice (ICJ) has observed that:

. . . the method of straight baselines, which is an exception to the normal rules for the determination of baselines, may only be applied if a number of conditions are met. This method must be applied restrictively. Such conditions are primarily that either the coastline is deeply indented and cut into, or that there is a fringe of islands along the coast in its immediate vicinity.²⁷

Where the coastal geography allows for the use of straight baselines, Article 7 provides additional requirements for the drawing of straight baselines. Relevant provisions state that “[t]he drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast”; “the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters”; “[s]traight baselines shall not be drawn,” with specific and limited exceptions, “to and from low-tide elevations”; and “[t]he system of straight baselines may not be applied . . . in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone” (Article 7, paragraphs 3 to 6).

Part IV of the Convention contains the rules relating to archipelagic baselines that join the outermost points of the outermost islands and drying reefs of an archipelago. Article 47 provides detailed rules for the drawing of such baselines, including with respect to the lengths of the segments and that the ratio of the area of the water to the area of the land enclosed by the baselines must be between 1 to 1 and 9 to 1. Such baselines, however, may only be drawn by an “archipelagic State,” which is “a State constituted wholly by one or more archipelagos and may include other islands” (Articles 47(1), 46(a)). Decisions of courts and tribunals,²⁸ and the baseline practices of other non-archipelagic States,²⁹ confirm that continental States that also include archipelagos may not draw archipelagic baselines.

The articles of the Convention referred to above comprehensively regulate the baselines that coastal States may establish. Where specific conditions described in those articles are not met, the Convention requires the use of the normal baseline. As stated in Article 5, “[e]xcept where otherwise provided in this Convention, the normal baseline” is the low-water line along the coast.

Waters on the landward side of the baseline are internal waters (Article 8), including the waters within closing lines related to reefs, mouths of rivers, bays, and ports (Articles 6, 9, 10, and 11).³⁰

²⁶ The straight baseline provisions in Article 7 are substantially the same as those found in Article 4 of the 1958 Convention on the Territorial Sea and the Contiguous Zone, opened for signature Apr. 29, 1958, 516 UNTS 205 (entered into force Sept. 10, 1964). Most of those provisions, in turn, were drawn from the ICJ’s 1951 judgment in the *Fisheries Case (United Kingdom v. Norway)*, 1951 I.C.J. 116 (Dec. 18).

²⁷ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, *supra* note 20, para. 212.

²⁸ See, e.g., *id.* paras. 213–14 (evaluating the suitability of straight baselines in reference to Article 7 of the Convention, notwithstanding Bahrain’s assertion that it is a “*de facto* archipelagic State”); *The South China Sea Arbitration*, *supra* note 4, para. 573 (“The use of archipelagic baselines (a baseline surrounding an archipelago as a whole) is strictly controlled by the Convention, where Article 47(1) limits their use to ‘archipelagic states.’”).

²⁹ See [State Practice Supplement](#) to this study.

³⁰ The waters landward of archipelagic baselines are “archipelagic waters.” Convention, *supra* note 2, art. 49.

Maritime Zones

International law, as reflected in the Convention, contains rules governing a coastal State's entitlement to maritime zones.

Part II of the Convention sets forth the rules governing the territorial sea, which may extend up to 12 M from the baselines and in which the coastal State exercises sovereignty subject to the right of innocent passage and other rules of international law (Articles 2, 3, and 17). Provisions related to innocent passage are set forth in Articles 17 to 32. In addition, Part II describes a contiguous zone, which may not extend beyond 24 M from the baselines, within which a coastal State may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea (Article 33).

Part V of the Convention sets forth provisions related to the EEZ, which may extend up to 200 M from the baselines (Article 57). Within the EEZ, the coastal State has enumerated rights, notably, "sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources" and "jurisdiction as provided for" in the Convention with regard to "the establishment and use of artificial islands, installations and structures," as well as "marine scientific research" and "the protection and preservation of the marine environment" (Article 56). At the same time, subject to the relevant provisions of the Convention, all States enjoy the freedoms of navigation, overflight, laying and maintenance of submarine cables, and other internationally lawful uses of the sea related to these freedoms (Articles 58 and 87).

Part VI of the Convention sets forth provisions relating to the continental shelf, which extends to the outer edge of the continental margin or to a distance of 200 M from the baselines, as described in Article 76. The coastal State exercises sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources; these rights are "exclusive" and "do not depend on occupation, effective or notional, or on any express proclamation" (Article 77). However, subject to certain provisions, all States are entitled to lay submarine cables and pipelines on the continental shelf (Article 79).

Historic Rights

No provision of the Convention contains the term "historic rights," nor is there a uniform understanding of what, specifically, the term means as a matter of international law.³¹ The substantive provisions of the Convention refer to "historic bays" or "historic title" in two instances. First, Article 10 (bays) provides that the provisions of that article concerning juridical bays "do not apply to so-called 'historic' bays." Second, Article 15 (delimitation of the territorial sea between States with opposite or adjacent coasts) provides that the general rule governing delimitation of overlapping territorial sea entitlements "does not apply" in certain situations involving "historic title or other special circumstances."³²

³¹ The tribunal in *The South China Sea Arbitration* stated that "[t]he term 'historic rights' is general in nature [. . . and] may include sovereignty, but may equally include more limited rights, such as fishing rights or rights of access, that fall well short of a claim of sovereignty." *Supra* note 4, para. 225.

³² Article 298 pertaining to exceptions to dispute settlement procedures also refers to "historic bays or titles."

These provisions, which are substantially identical to those contained in Articles 7 and 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone,³³ are limited geographically and substantively. They apply only with respect to bays and similar near-shore coastal configurations. They are also drafted as safeguards, such that the provisions of Article 10 and Article 15 “do not apply” with respect to the aforementioned situations of historic bays and title, respectively.

There is no provision in the Convention that safeguards “historic rights.”³⁴ Accordingly, any claim to such rights would need to conform to the Convention’s provisions, including with respect to the areas of EEZ, continental shelf, and high seas. As the *Gulf of Maine* Chamber of the ICJ noted in its 1984 judgment, the advent of exclusive jurisdiction of a coastal State over fisheries within 200 M of its coast overrides the prior usage and rights of other States in that area.³⁵ The tribunal in *The South China Sea Arbitration* reached the same conclusion.³⁶ The Convention’s maritime zones and their geographic limits set forth the framework governing all parts of the sea, a framework from which no reservations are permitted (Article 309). In particular, Articles 56 and 77 of the Convention leave no room for claims by any State that derogate from the exclusive sovereign rights of the coastal state with respect to the EEZ and continental shelf, except as provided in the Convention or by agreement with the coastal State.³⁷

³³ Convention on the Territorial Sea and the Contiguous Zone, *supra* note 26.

³⁴ In this regard, the 1962 study on historic waters commissioned by the Conference that adopted the 1958 Geneva Conventions on the law of the sea states that, if there is no clause included in an article that safeguards historic title, “the provisions of the article must prevail This seems to follow *a contrario* from the fact that articles 7 and 12 [of the 1958 Convention] have express clauses reserving historic rights; *articles without such a clause must be considered not to admit an exception in favour of such rights*” (emphases added). Int’l Law Comm’n, *Juridical Régime of Historic Waters, Including Historic Bays*, 2 Y.B. Int’l L. Comm’n 1 (1962), U.N. Doc. A/CN.4/143, para. 75.

³⁵ *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/U.S.A), 1984 I.C.J. 246, paras. 233, 235, at 340–341 (Oct. 12). With respect to the “invocation of historic rights, though that expression has not been used [by the United States]” the Chamber stated that “to the extent that [areas of U.S. historical fishing predominance] had become part of the exclusive fishery zone of the neighbouring State, no reliance could any longer be placed on that predominance. Clearly, *whatever preferential situation the United States may previously have enjoyed, this cannot constitute in itself a valid ground for its now claiming the incorporation into its own exclusive fishery zone of any area which, in law, has become part of Canada’s*” (emphasis added).

³⁶ *The South China Sea Arbitration*, *supra* note 4, para. 278.

³⁷ In the parts of the Convention directly relating to maritime zones, the Convention contains some provisions relating to historic or traditional uses of the sea. Article 62(3) requires coastal States to take into account “the need to minimize economic dislocation in States whose nationals have *habitually* fished” (emphasis added) in the EEZ. Article 51 also requires archipelagic States, within their archipelagic waters, to recognize “*traditional* fishing rights and other legitimate activities” (emphasis added) of immediately adjacent neighboring States. Such provisions might provide a basis for one coastal State to seek access to the fisheries of another coastal State based on prior usage. They do not, however, provide a basis for sovereignty, sovereign rights, or jurisdiction.

Analysis of PRC Maritime Claims in the South China Sea³⁸

This section analyzes four categories of the PRC’s maritime claims in the South China Sea: (1) sovereignty claims over maritime features, (2) baselines, (3) maritime zones, and (4) historic rights. The analysis of the PRC’s maritime claims is based on the legal rules summarized in the preceding section, [Basis for Analysis](#). The analysis does not address the claims of the PRC or any other country to sovereignty over the islands in the South China Sea (*i.e.*, territorial sovereignty disputes), which is a matter on which the United States takes no position.³⁹

Sovereignty Claims over Maritime Features

The PRC asserts sovereignty over what it calls “*Nanhai Zhudao*,” or the South China Sea islands and other features that consist of “*Dongsha Qundao*,” “*Xisha Qundao*,” “*Zhongsha Qundao*,” and “*Nansha Qundao*.”⁴⁰ The China Geographical Names Committee has issued a list of geographic features associated with each of these four claimed “archipelagos” or “island groups” (*qundao*, 群島).⁴¹ This information is summarized in Table 2, and the geographic extents of the PRC’s claimed “island groups” are shown in Maps 2 to 6.

Table 2. Chinese-named “island groups” and their corresponding geographic features.

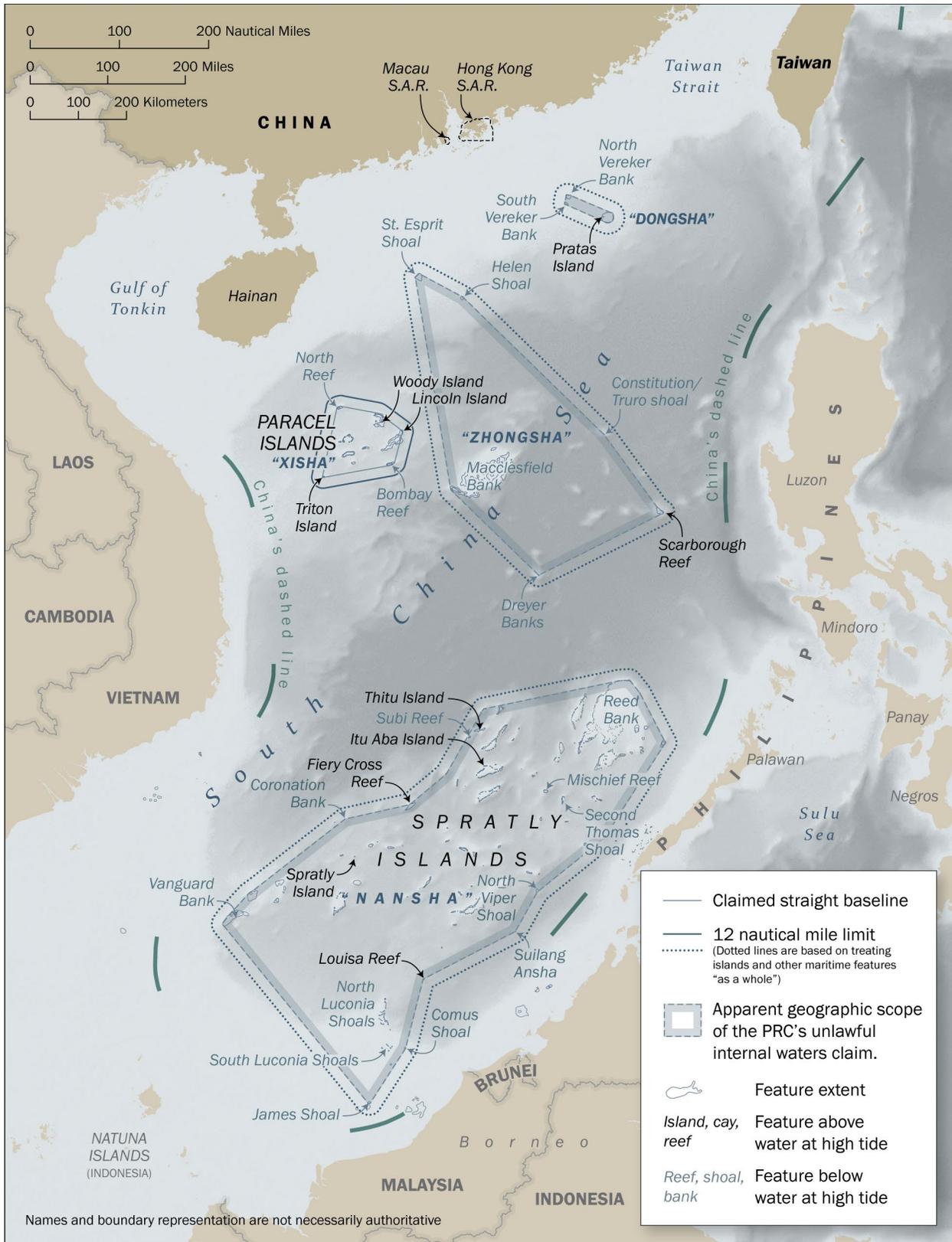
Chinese Name	Corresponding geographic features
<i>Dongsha Qundao</i> (东沙群島)	Pratas Island, Pratas Reef, North Vereker Bank, and South Vereker Bank.
<i>Xisha Qundao</i> (西沙群島)	Paracel Islands, which are composed of approximately two dozen small islands, and other submerged features in the vicinity.
<i>Zhongsha Qundao</i> (中沙群島)	Scarborough Reef, Macclesfield Bank, and other submerged features such as Saint Esprit Shoal and Helen Shoal (north), Constitution shoal (central), and Dreyer Banks (south).
<i>Nansha Qundao</i> (南沙群島)	Spratly Islands, which include approximately 40 small islands with a total land area of approximately 2 km ² , as well as approximately 150 low-tide elevations and fully submerged features within and surrounding these islands, such as James Shoal and Vanguard Bank. <i>Nansha Qundao</i> is the largest of the PRC’s claimed “island groups,” covering approximately 351,000 km ² of maritime space.

³⁸ Geographic analysis was completed using tools in Esri ArcGIS 10.7.1 and CARIS LOTS 4.1.1.

³⁹ See *supra*, note 13, describing U.S. policy on disputed islands.

⁴⁰ PRC Government Statement, *supra* note 5, para. III (Annex 1 to this study); see also PRC communication [CML/14/2019](#) of December 12, 2019 (Annex 2.A to this study); *1992 Law*, *supra* note 16, art. 2 (Annex 3 to this study). The United States takes no position on these sovereignty claims to the extent they pertain to features that are lawfully subject to sovereignty claims by any State. See *supra*, note 13.

⁴¹ “Standard Place Names of the South China Sea Islands,” China Geographical Names Committee (1983), reproduced online at, *inter alia*, [unanhai.com](#), [nansha.org.cn](#), and [spratlys.org](#). In its 2020 [announcement](#) of additional names of South China Sea features, the PRC’s Ministry of Civil Affairs confirmed that this 1983 publication “continues to be valid” (继续有效). For additional information, see “Summary of Records of Nanhai Zhudao,” *Beijing Daily*, July 25, 2016, available [online](#); “South China Sea Islands,” Institute of Geographic Sciences and Natural Resources Research, Chinese Academy of Sciences, Mar. 26, 2007, available [online](#); “Dongsha Islands,” China Borderlands Research Institute, Chinese Academy of Social Sciences, Sept. 14, 2014, available [online](#).



Map 2. Illustrative map of the apparent geographic extents of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, and Nansha Qundao, from which the PRC claims its maritime zones.

Although the PRC has long claimed sovereignty over *Dongsha Qundao*, *Xisha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao*,⁴² its recent statements make clear that the PRC’s sovereignty claims extend to features that are not “islands” as defined in Article 121(1) of the Convention and not located within a lawful territorial sea. According to the PRC, for the purposes of claiming sovereignty and maritime zones, the island groups are each to be regarded “as a whole.”⁴³ Thus, according to the PRC, “[t]hese Islands include, among others, islands, reefs, shoals and cays of various numbers and sizes.”⁴⁴ As characterized by the Chinese Society for International Law, “China’s position” is that an archipelago is to be treated “as a unit” for purposes of sovereignty and maritime entitlements.⁴⁵ Further, the Chinese Society states that “[s]overeignty over an archipelago as a unit naturally covers sovereignty over each and every component part,” namely “all component features and the interconnecting waters.”⁴⁶

For instance, as part of the PRC’s claim to sovereignty over the *Nansha Qundao* “as a whole,” it claims sovereignty over nearly 200 features, most of which are submerged.⁴⁷ This includes entirely submerged features, such as Reed Bank, Vanguard Bank, and James Shoal,⁴⁸ as well as features like Mischief Reef⁴⁹ and Second Thomas Shoal that are low-tide elevations in their natural state and located beyond the lawful limits of any State’s territorial sea (Map 2).

As discussed above in the [Basis for Analysis](#) section, the acquisition of “sovereignty” over features that are part of the seabed derives from the law of the sea and not from the rules for the acquisition of sovereignty over land territory. The status of submerged features in the South China Sea, such as those claimed by the PRC within its “island groups,” depends upon the maritime zone in which they are situated (*e.g.*, territorial sea, continental shelf). Thus, while taking no position on the PRC’s sovereignty claims to particular islands in the South China Sea,⁵⁰ the United States has rejected assertions of sovereignty based on features that do not meet the definition of an island or

⁴² *Declaration on China’s Territorial Sea*, reprinted in [Limits in the Seas No. 43](#): “Straight Baselines: People’s Republic of China,” U.S. Dep’t of State (1972), para. 4.

⁴³ *See, e.g.*, Position Paper of the Government of the PRC on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines, Dec. 7, 2014, available from the [website](#) of the PRC’s Ministry of Foreign Affairs (MFA) (referring to “China’s sovereignty over the Nansha Islands as a whole”). *See also* Foreign Ministry Spokesperson Hua Chunying’s Remarks on Relevant Issue about Taiping Dao, June 3, 2016, available from the MFA [website](#) and Foreign Ministry Spokesperson Hua Chunying’s Regular Press Conference, Mar. 24, 2016, available from the MFA [website](#) (both referring to “the Nansha Islands as a whole”).

⁴⁴ *White Paper*, *supra* note 6, para. 2.

⁴⁵ Chinese Society of International Law, “The South China Sea Arbitration Awards: A Critical Study,” 17 *Chinese J. Int’l L.* 207, 475 (2018).

⁴⁶ *Id.* at 476.

⁴⁷ For the geographic scope of *Nansha Qundao*, *see supra*, note 41 and corresponding text.

⁴⁸ Despite it being a submerged feature, numerous Chinese sources refer to James Shoal as the southernmost point of China’s territory. *See Limits in the Seas No. 143, supra* note 1, at 16, note 49 and corresponding text.

⁴⁹ Permanent Mission of the People’s Republic of China to the United Nations, communication [CML/1/2021](#), Jan. 28, 2021 (excerpt reproduced in Annex 2.G of this study); *The South China Sea Arbitration, supra* note 4, paras. 374–78 (concluding that Mischief Reef is a low-tide elevation).

⁵⁰ *See supra*, note 13, describing U.S. policy on disputed islands.

are not within the lawful limits of the territorial sea.⁵¹ Other countries have similarly rejected the PRC's claims related to submerged features and low-tide elevations.⁵²

It is notable that the PRC claims sovereignty over the submerged features within its claimed "island groups," even without establishing baselines.⁵³ The PRC's assertions in this regard have no support in either the Convention or the practice of States. Even for an archipelagic State, sovereignty over the waters and submerged features within an archipelago is not automatic; it exists only when "enclosed by the *archipelagic baselines* drawn in accordance with article 47,"⁵⁴ or where islands are so closely spaced such that the waters between them lie entirely within the territorial sea limits. As a non-archipelagic State, the means for the PRC to assert sovereignty over the waters and submerged features within its claimed "island groups" would be to establish lawful baselines and maritime zones measured from the baselines. As discussed below, the PRC has not done this.

Baselines

The PRC's *1992 Law* provides that the PRC uses "the method of straight baselines," and this legislation does not refer to the normal baseline or other baseline methods set forth in the Convention.⁵⁵ As discussed in the [Basis for Analysis](#) section, straight baselines may only be used in particular geographic circumstances. Following the issuance of the arbitral tribunal's decision in 2016, the PRC stated expressly that "the straight baselines method . . . shall apply to all territories of the People's Republic of China, including 'Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, Nansha Qundao and all the other islands belonging to China.'"⁵⁶

Accordingly, this section analyzes the suitability of straight baselines for *Dongsha Qundao*, *Xisha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao*. To date, the *Xisha Qundao* (Paracel Islands) is the only "island group" in the South China Sea around which the PRC has formally claimed straight baselines.⁵⁷ These baselines are shown on Maps 2 and 3A. Maps 2, 4A, 5A, and 6A depict lines surrounding *Dongsha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao*. These depictions, however, are not authoritative and are not baselines formally asserted by the PRC. Rather, they

⁵¹ Letter from the Permanent Representative of the United States of America to the United Nations, [UN Doc. No. A/74/874-S/2020/483](#), June 1, 2020 ("China may not assert sovereignty over, or claim maritime zones derived from, entirely submerged features Such features do not form part of the land territory of a State in a legal sense, meaning that they are not subject to appropriation and cannot generate a territorial sea or other maritime zones under international law.").

⁵² See, e.g., Australian Mission to the United Nations, [diplomatic note No. 20/026](#), July 23, 2020 (rejecting "China's claims to maritime zones generated by submerged features, or low tide elevations in a manner inconsistent with UNCLOS"); Permanent Mission of the Socialist Republic of Viet Nam to the United Nations, [Note No. 22/HC-2020](#), Mar. 30, 2020 (protesting China's claims and stating "low-tide elevations or submerged features are not capable of appropriation and do not, in and of themselves, generate entitlements to any maritime zones"); see also New Zealand Permanent Mission to the United Nations, [Note No. 08/21/02](#) (Aug. 3, 2021).

⁵³ This argument is advanced further in Chinese Society, *supra* note 45, at 477 (stating that the tribunal failed to recognize "the fact that the interconnecting waters within the [Spratly] archipelago are under China's sovereignty").

⁵⁴ Convention, *supra* note 2, art. 49 (emphasis added).

⁵⁵ *1992 Law*, *supra* note 16, art. 3 (Annex 3 to this study).

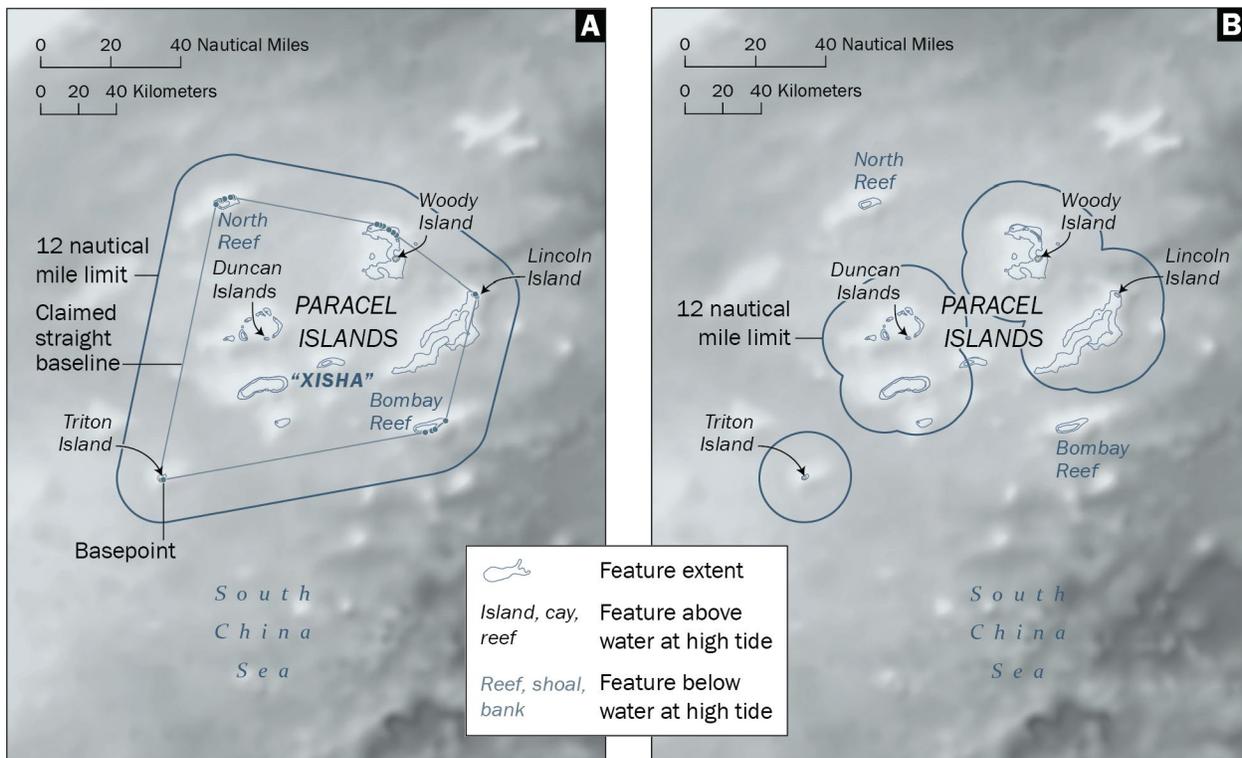
⁵⁶ *White Paper*, *supra* note 6, para. 34.

⁵⁷ *1996 Declaration*, *supra* note 14 (Annex 5 to this study).

illustrate the “apparent geographic scope of the PRC’s unlawful internal waters claims,” as described in the map legends. Consistent with the PRC’s approach with *Xisha Qundao*, the lines depicted for *Dongsha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao* are based on (1) the geographic extents of these “island groups” (as defined by the PRC⁵⁸), (2) the PRC’s assertion that it “shall” use straight baselines, and (3) the PRC’s assertion that its claimed island groups are each to be treated “as a whole.”⁵⁹

Xisha Qundao

Xisha Qundao corresponds to the Paracel Islands (Maps 2 and 3), which are spread out over approximately 80 M by 80 M of maritime space. The largest of the Paracel Islands, Woody Island, has a land area in its natural state of approximately 1.6 km². The remaining features in this area are smaller islands and submerged reefs and banks.



Map 3. *Xisha Qundao* (Paracel Islands), (A) showing the PRC’s claimed straight baselines and territorial sea limits and (B) showing the approximate 12-M territorial sea limits from lawful baselines. For location, see Map 2.

In 1996, the PRC promulgated a baseline system for the *Xisha Qundao* consisting of 28 basepoints and segments.⁶⁰ The basepoints are located in five clusters along the outermost reef edges and are connected by straight lines to form a kite-shaped baseline system that encloses the Paracel Islands and other submerged features in the vicinity (Map 3A). Along the outer reef edges, baseline

⁵⁸ See *supra*, note 41 and corresponding text (regarding the geographic extents of the PRC’s claimed island groups).

⁵⁹ Notwithstanding the PRC’s approach of treating *Dongsha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao* each “as a whole,” the PRC may ultimately decide to not declare baselines enclosing the entire areas depicted as internal waters in Maps 2, 4A, 5A, and 6A.

⁶⁰ 1996 Declaration, *supra* note 14 (Annex 5 to this study).

segments are short (0.2 to 3.9 M). Longer segments connect the outermost reefs to one another, including segments of 78.8 M (segment 14-15) and 75.8 M (segment 7-8). These baselines (and claimed territorial sea limits) are depicted in Map 3A; Annex 6 to this study lists the lengths of each segment.

The coastlines of the Paracel Islands are generally smooth with fringing reefs and therefore do not meet the geographic requirements in Article 7 of the Convention for the use of straight baselines. As stated in *Limits in the Seas No. 117*, “[w]hile it is possible for an island to meet the requirements of article 7 and to have straight baselines drawn, these standards are not met here. The proper baseline would be the low-water line of the islands and reefs.”⁶¹ Numerous States, including Australia, Japan, New Zealand, the Philippines, Vietnam, the United Kingdom, and the United States have protested the PRC’s baselines around the Paracel Islands as inconsistent with international law as reflected in the Convention.⁶² Map 3B shows the approximate 12-M territorial sea limits pertaining to the Paracel Islands that would result from lawful baselines, as permitted by the Convention.

Dongsha Qundao

Dongsha Qundao is the “northernmost and smallest archipelago of the South China Sea Islands” and includes Pratas Island, Pratas Reef, North Vereker Bank, and South Vereker Bank (Maps 2 and 4).⁶³ Pratas Island has a land area of approximately 2 km² and lies on the western edge of a large, circular atoll (Pratas Reef) having a diameter of approximately 24 km. In its statements, the PRC translates *Dongsha Qundao* as Dongsha Islands (plural), although Pratas Island is the only island in the vicinity. The submerged features of North Vereker Bank and South Vereker Bank are located approximately 45 M northwest of Pratas Island.

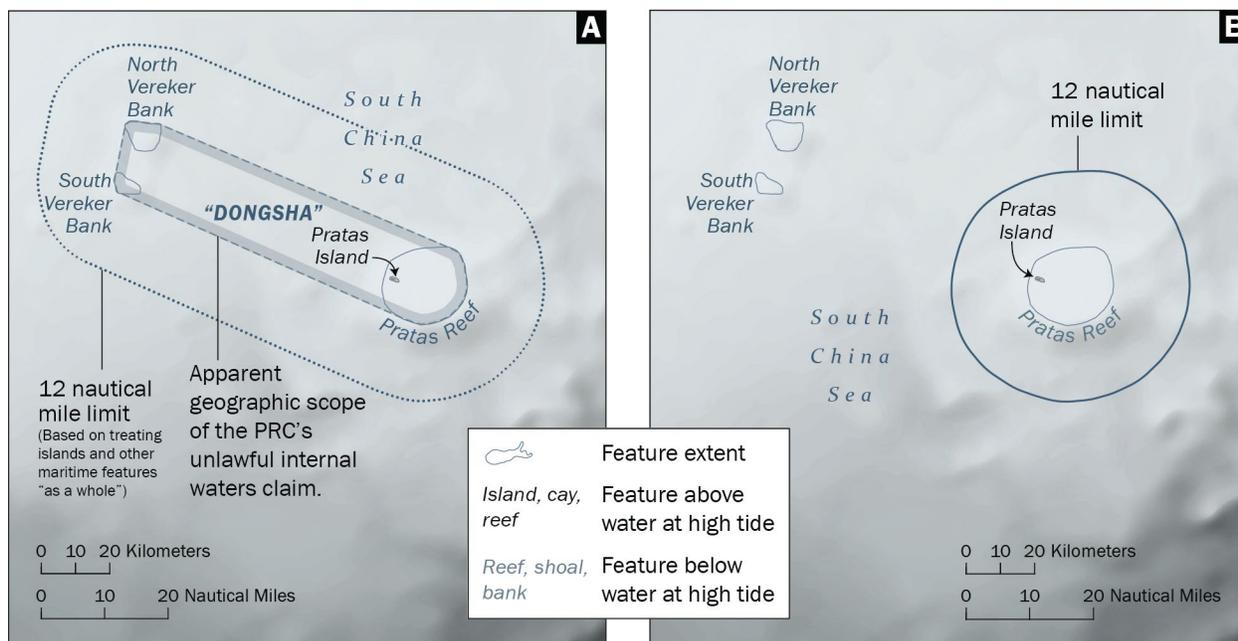
Dongsha Qundao is not suitable for the application of straight baselines. The baseline of Pratas Island and Pratas Reef should be determined in accordance with Article 5 (normal baseline) and Article 6 (reefs). Waters inside the lagoon of Pratas Island may appropriately be characterized as internal waters, and a closing line could be drawn across the atoll entrance to designate the separation between internal waters and territorial sea.⁶⁴ Because they are submerged features, North Vereker Bank and South Vereker Bank cannot form part of a “fringe of islands” for purposes of applying Article 7 of the Convention, and these features do not generate any maritime zones of their own. Map 4B shows the approximate 12-M territorial sea limits in this area that would result from lawful baselines, as permitted by the Convention.

⁶¹ *Limits in the Seas No. 117*, “Straight Baselines Claim: China,” U.S. Dep’t of State (1996), at 8.

⁶² See communications of Australia, New Zealand, and Vietnam, *supra* note 52; Permanent Mission of Japan to the United Nations, [communication SC/21/002](#), Jan. 19, 2021; *Law of the Sea: Report of the Secretary-General*, UN Doc., A/51/645 (1996), at 14–15 (describing protests of Vietnam and the Philippines); *Law of the Sea Bulletin* No. 32, at 91 (1996) (protests of Vietnam); U.S. Embassy Beijing, diplomatic note no. 335, Aug. 21, 1996 (U.S. protest), excerpted in J.A. Roach and R. Smith, “Straight Baselines: The Need for a Universally Applied Norm,” 31 *Ocean Dev’t & Int’l L.* 47, 62–63.

⁶³ Chinese Academy of Sciences and China Geographical Names Committee, *supra* note 41.

⁶⁴ DOALOS, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea*, at 10–12 (1989) (noting that “it may . . . be inferred [from Article 6] that the enclosed waters [within a lagoon] can be regarded as internal waters” and that “[i]f the lagoon waters of atolls are to be considered as internal waters, it follows that it will be necessary to construct closing lines across the entrance channels.”).



Map 4. *Dongsha Qundao*, (A) showing the apparent scope of the PRC's unlawful internal waters claim and (B) showing the approximate 12-M territorial sea limits from lawful baselines. For location, see Map 2.

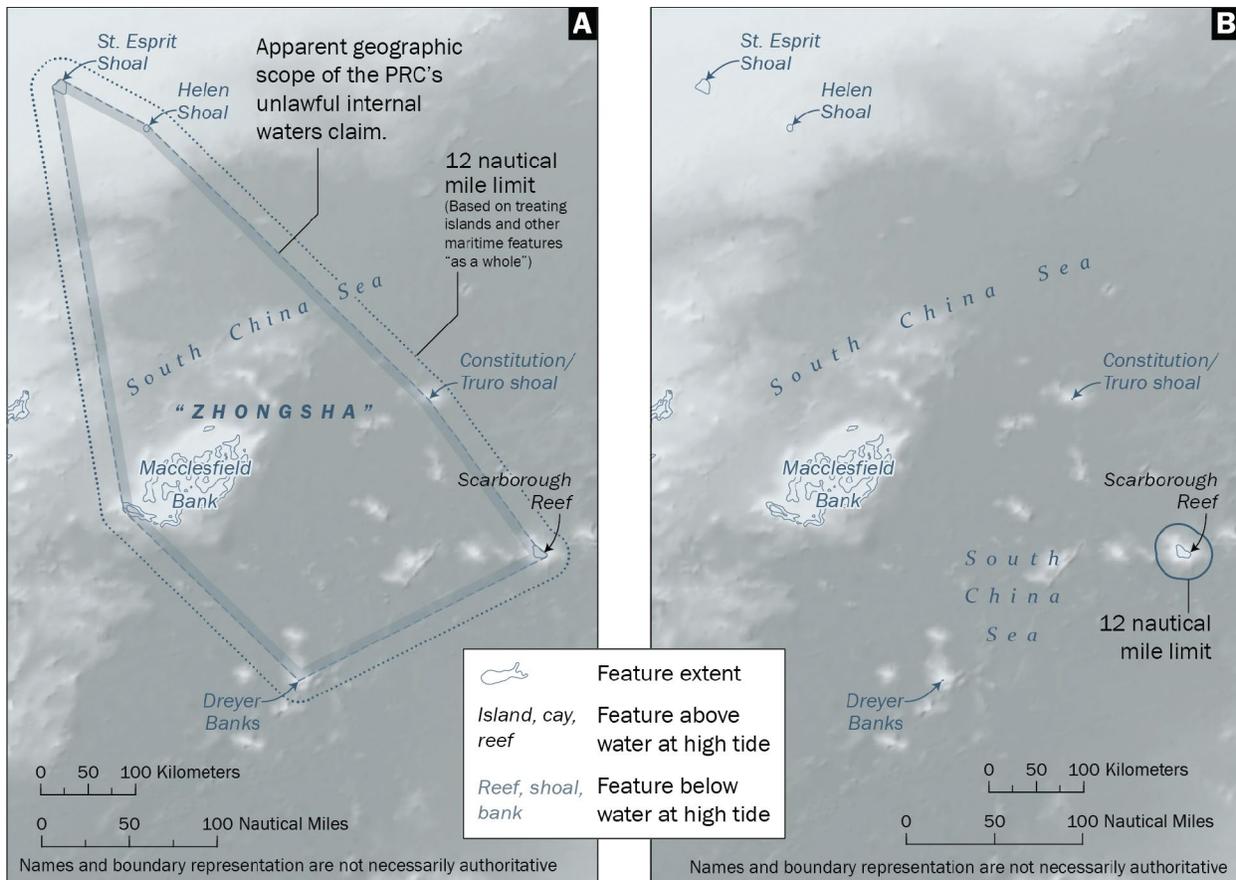
Zhongsha Qundao

Zhongsha Qundao includes Scarborough Reef, Macclesfield Bank, and other submerged features in the north and central parts of the South China Sea, including Saint Esprit Shoal and Helen Shoal (north), Constitution shoal (central), and Dreyer Banks (south) (Maps 2 and 5).⁶⁵ Macclesfield Bank is a large, shallow bank that is entirely submerged, with depths typically less than 100 meters; its shallowest part is Walker Shoal, which is approximately 8 meters below sea level. To the east, Scarborough Reef is mostly submerged, with just a few miniscule features protruding only a few feet above the sea surface at high tide. The reef is approximately 18 km in length at its widest location and has a total area of about 130 km² (including the waters within the lagoon).

Zhongsha Qundao cannot be considered a unit from either a geographic or legal perspective, including for purposes of drawing straight baselines. The two main features, Macclesfield Bank and Scarborough Reef, are geographically isolated from one another. They are separated by a distance of approximately 180 M, and the water between the two features reaches a depth of more than 4000 meters. Saint Esprit Shoal is located on the shelf of mainland China, approximately 135 M from the mainland coast, more than 200 M from Macclesfield Bank, and more than 350 M from the only islands in *Zhongsha Qundao* (Scarborough Reef). Although the PRC translates *Zhongsha Qundao* as *Zhongsha Islands* (plural), this “island group” is more accurately characterized as a vast ocean area with a few tiny islands on its easternmost edge, on Scarborough Reef.

Accordingly, Scarborough Reef is the only feature within *Zhongsha Qundao* that is capable of generating maritime entitlements of its own. The baseline of Scarborough Reef should be determined in accordance with Article 5 (normal baseline) and Article 6 (reefs). The edges of

⁶⁵ See sources, *supra* note 41.

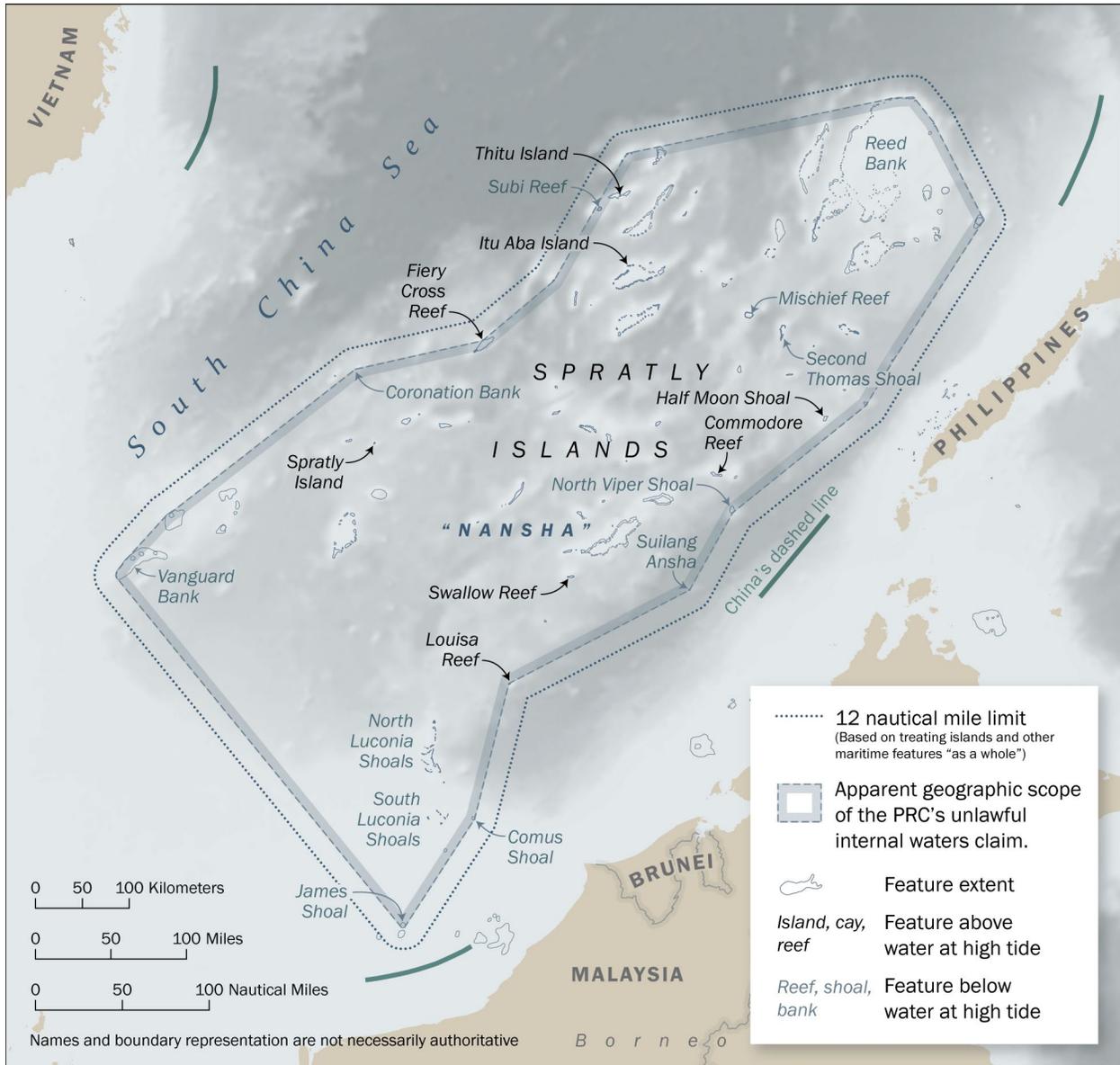


Map 5. Zhongsha Qundao, (A) showing the apparent scope of the PRC's unlawful internal waters claim and (B) showing the approximate 12-M territorial sea limits from lawful baselines. For location, see Map 2.

Scarborough Reef are generally smooth and form a triangular shape. Because the tiny islands surmounting Scarborough Reef do not have coastlines that are “deeply indented and cut into,” nor is there “a fringe of islands along the coast in its immediate vicinity,” they do not meet the geographic requirements in Article 7 for the use of straight baselines. As with Pratas Reef, waters inside the lagoon of Scarborough Reef may appropriately be characterized as internal waters, and a closing line could be drawn across the atoll entrance (on the southeast side) to designate the separation between internal waters and territorial sea. Map 5B shows the approximate 12-M territorial sea limits pertaining to *Zhongsha Qundao* that would result from lawful baselines, as permitted by the Convention.

Nansha Qundao

Nansha Qundao roughly corresponds to, but is geographically more expansive than, the Spratly Islands (Map 6A). *Nansha Qundao* includes several dozen small islands with a total land area in their natural state of approximately 2 km², as well as numerous underwater banks, reefs, and atolls. Taking into account the outlying submerged features that are part of *Nansha Qundao*, such as James Shoal and Vanguard Bank, this “island group” covers approximately 351,000 km² of maritime space.



Map 6A. Nansha Qundao, showing the apparent scope of the PRC's unlawful internal waters claim. For location, see Map 2.

The coastlines and reef edges of the Spratly Islands are generally smooth. Aside from islands that surmount the same reef systems, most islands are separated by considerable distances, such that they cannot be said to fringe one another. For instance, along the eastern side of the Spratly Islands, Commodore Reef is separated from the nearest islands by 70 M to the northeast (Half Moon Shoal) and 100 M to the southwest (Swallow Reef). Swallow Reef, in turn, is located 70 M from Louisa Reef, which is the southernmost of the Spratly Islands (Map 6A). Because the coastlines of the Spratly Islands are not “deeply indented and cut into” nor is there “a fringe of islands along the coast in its immediate vicinity,” they do not meet the geographic requirements in Article 7 for the use of straight baselines.

For such a geographic setting, the appropriate baseline rules are found in Articles 5 (normal baseline), 6 (reefs), and 13 (low-tide elevations) of the Convention. The normal baseline lies on the low-water line of the outermost coastlines and reef edges of the islands within the Spratly Islands (Articles 5, 6). In cases of islands situated on atolls, the waters inside the lagoon may appropriately be characterized as internal waters, and closing lines could be drawn across the atoll entrances to designate the separation between internal waters and territorial sea (Article 6). Finally, some islands have low-tide elevations that lie within 12 M. In such instances, the low-water line on such elevations may be used as the baseline for measuring the breadth of the territorial sea generated by the islands (Article 13). Map 6B shows the approximate 12-M territorial sea limits pertaining to *Nansha Qundao* that would result from lawful baselines, as permitted by the Convention.

Although the PRC has not officially promulgated straight baselines around the areas it describes as *Nansha Qundao*, its statements asserting the right to draw such baselines have led to opposition by numerous States, including Australia, France, Germany, Japan, New Zealand, the Philippines, the United Kingdom, the United States, and Vietnam.⁶⁶ Considering that very few States publicly protest excessive maritime claims,⁶⁷ these protests by a relatively large number of States are a particularly forceful rejection of the PRC's legal position. The arbitral tribunal in *The South China Sea Arbitration* also considered the lawfulness of such baselines with respect to the Spratly Islands, and rejected them, stating the following:

The use of archipelagic baselines (a baseline surrounding an archipelago as a whole) is strictly controlled by the Convention, where Article 47(1) limits their use to “archipelagic states”. . . . China, however, is constituted principally by territory on the mainland of Asia and cannot meet the definition of an archipelagic State. * * *

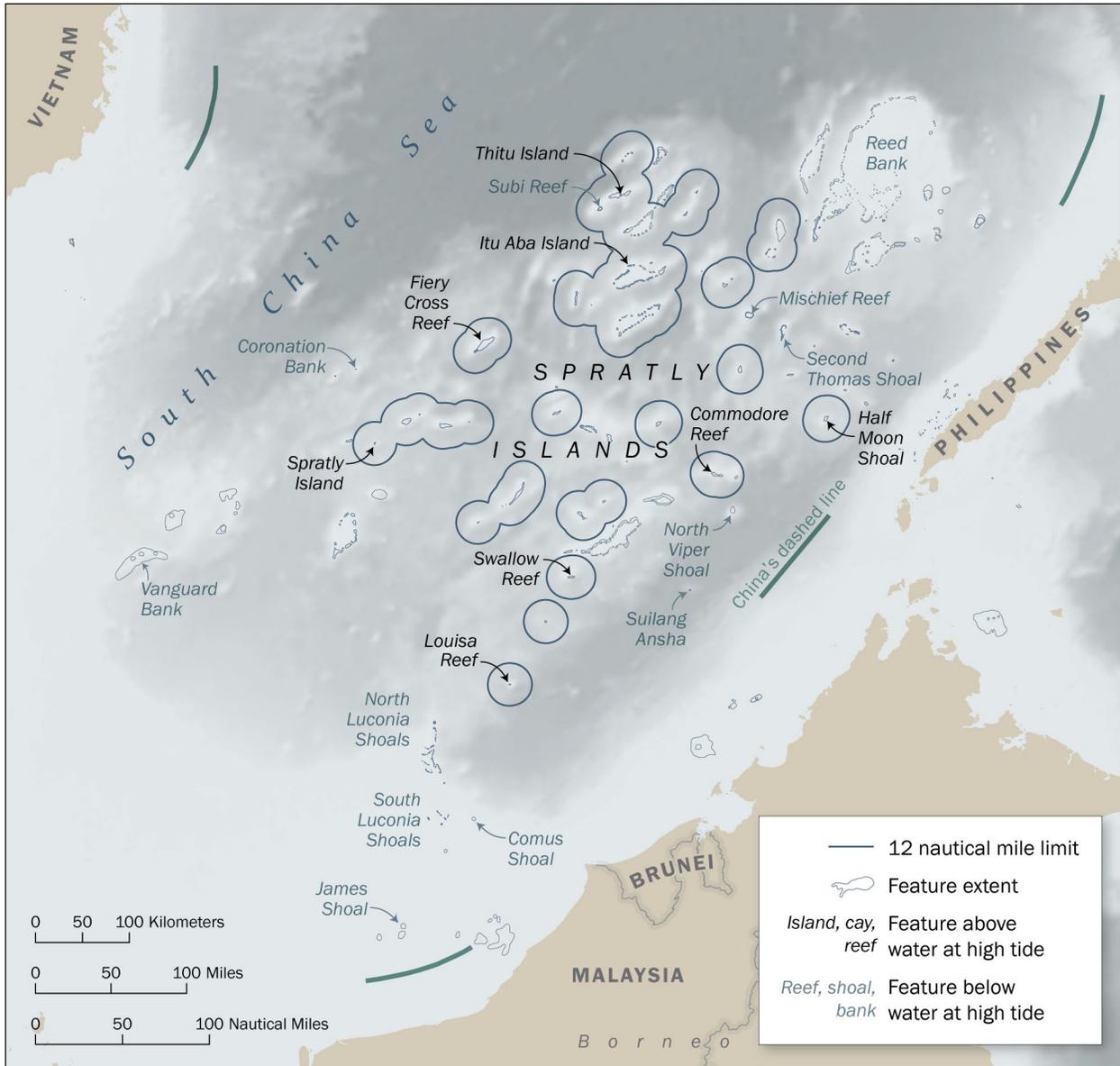
The Convention also provides, in its Article 7, for States to make use of straight baselines under certain circumstances, and the Tribunal is aware of the practice of some States in employing straight baselines with respect to offshore archipelagos to approximate the effect of archipelagic baselines. *In the Tribunal's view, any application of straight baselines to the Spratly Islands in this fashion would be contrary to the Convention.*⁶⁸

⁶⁶ See [State Practice Supplement](#), sections pertaining to Australia (note 48 and corresponding text), France (note 76 and corresponding text), Japan (note 89 and corresponding text), New Zealand (note 96 and corresponding text), Philippines (note 105 and corresponding text), United Kingdom (notes 125 and corresponding text), United States (note 127 and corresponding text), and Vietnam (note 128 and corresponding text); Permanent Mission of the Federal Republic of Germany to the United Nations, [Note Verbale No. 324/2020](#), Sept. 16, 2020 (stating that there “is no legal ground for continental States to treat archipelagos or marine features as a whole entity without respecting the relevant provisions in Part II of UNCLOS or by using those in Part IV applicable only to archipelagic States”). These protests, along with the practice of States described in the *Supplement* to this study, also foreclose the possibility that the subsequent practice of the Convention's parties could be considered to have established an agreement pursuant to Article 31(3)(b) of the Vienna Convention on the Law of Treaties that supports an interpretation of the Convention that allows a non-archipelagic State to use straight baselines to enclose outlying island groups, even in situations where the criteria in Article 7 are not met. Vienna Convention, *supra* note 10.

⁶⁷ For discussion, see, e.g., R.R. Churchill, “The Impact of State Practice on the Jurisdictional Framework Contained in the LOS Convention,” in A.G.O. Elferink (ed.), *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (2005), at 101, note 26 and corresponding text.

⁶⁸ *The South China Sea Arbitration*, *supra* note 4, paras. 573–75 (emphasis added).

Considering the Convention’s clear and comprehensive language relating to baselines, the preemptive protests of States, and the findings of the tribunal, it is clear that any straight baselines promulgated by the PRC around the Spratly Islands would be unlawful and be rejected by other States.



Map 6B. Nansha Qundao, showing the approximate 12-M territorial sea limits from lawful baselines. For location, see Map 2.

Customary International Law

The Convention’s preamble states that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law.”⁶⁹ The PRC has invoked this provision to argue that there is an alternative legal basis, separate from the Convention, for its position regarding straight baselines and outlying island groups. Specifically, the PRC has stated the following:

... The regime of continental States’ outlying archipelagos is not regulated by UNCLOS [*i.e.*, the Convention], and the rules of general international law should continue to be applied in this field. There is sufficient international practice serving as a basis of this regime.⁷⁰

... China attaches great importance to the provisions and applicable conditions set forth in UNCLOS for the drawing of territorial sea baselines. At the same time, China believes that the long established practice in international law related to continental States’ outlying archipelagos shall be respected. . . .⁷¹

This argument disregards the comprehensive scope of the Convention’s baseline provisions. As discussed in the [Basis for Analysis](#) section, baselines are in fact “regulated by th[e] Convention,” which provides rules that cover all geographic circumstances, with Article 5 providing that the normal baseline is the low-water line along the coast “[e]xcept where otherwise provided *in this Convention*” (emphasis added).

Even if one were to assume, despite the clear language in the Convention, that the drawing of baselines pertaining to continental States’ outlying archipelagos is not regulated by the Convention and is instead governed by general international law (specifically, customary international law⁷²), the existence of such rules would need to be demonstrated. To demonstrate the existence of a rule of customary international law, there must be evidence of a general and consistent practice of States; the practice must be “settled practice,” as described by the ICJ.⁷³ Moreover, the relevant practice must have “occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.”⁷⁴

⁶⁹ Paragraph 8 of the Convention’s preamble was modeled after the final paragraph in the preamble to the Vienna Convention on the Law of Treaties, which refers to customary international law (“*Affirming* that the rules of customary international law will continue to govern questions not regulated by provisions of the present Convention.”). The language ultimately adopted in the preamble to the Law of the Sea Convention was expanded from the parallel provision of the Vienna Convention to include a reference to “principles” of international law, “as this found support in article 38 of the Statute of the International Court of Justice.” UNCLOS XIII *Official Records* 80, [A/CONF.62/L.49/ADD.2](#) (1980).

⁷⁰ Permanent Mission of the People’s Republic of China to the United Nations, communication [CML/32/2021](#), Aug. 16, 2021 (excerpt reproduced in Annex 2.H of this study).

⁷¹ Permanent Mission of the PRC to the United Nations, communication [CML/63/2020](#), Sept. 18, 2020.

⁷² *Official Records*, *supra* note 69; *see also* International Law Commission (ILC), *Draft Conclusions on Identification of Customary International Law with Commentaries*, UNGA Doc. No. [A/73/10](#) (2018), at 123 (noting that the term “general international law” may be used to refer to customary international law).

⁷³ *North Sea*, *supra* note 19, paras. 74, 77, at 44–45. For a discussion of the requirements that must met to demonstrate the formation of a rule of customary international law, *see* [State Practice Supplement](#) to this study, at 2.

⁷⁴ *North Sea*, *supra* note 19, para. 74, at 44 (referring to the requirement of *opinio juris*).

The PRC has not demonstrated that any such rules exist. Although the PRC argues that “[t]here is sufficient international practice serving as a basis of this regime,”⁷⁵ the overwhelming weight of evidence does not support this position. The *State Practice Supplement* to this study summarizes the “international practice” and attitudes of States with respect to baselines and outlying archipelagos. The findings show that most States rely expressly on the provisions of the Convention (*i.e.*, not separate rules of customary international law) with respect to outlying archipelagos.

Many States use the normal baseline (Article 5) and do not use straight baselines at all with respect to outlying island groups. Where States do draw straight baselines in reliance on Article 7 of the Convention, they rarely use straight baselines to enclose an entire group of islands “as a whole” spread across a large maritime area. In the few cases where States have engaged in such practice, other States have objected to such practice through formal protests (see *State Practice Supplement*).

As detailed in the *State Practice Supplement* to this study, the practice and attitudes of States demonstrate that there are no customary international rules that provide a different, and more permissive, legal framework for establishing baselines pertaining to outlying island groups. The tribunal in *The South China Sea Arbitration* reached the same conclusion, finding that there is “no evidence that any deviations from this rule [*i.e.*, Article 7] have amounted to the formation of a new rule of customary international law that would permit a departure from the express provisions of the Convention.”⁷⁶

Table 3. *Water-to-land ratios and water areas enclosed by treating each PRC claimed “island group” as a whole.*

“Island Group”	Water-to-land area ratio ¹	Water Area “as a whole” (km ²)
Xisha Qundao ²	37 to 1	18,600
Dongsha Qundao ³	5 to 1	2,400
Zhongsha Qundao ³	1282 to 1	167,100
Nansha Qundao ³	951 to 1	350,800

¹ This ratio has been calculated conservatively by treating the waters within the fringing reefs of islands and atolls as “land.”

² Figures pertaining to *Xisha Qundao* are based on the PRC’s straight baselines (Map 3A).

³ Figures are not authoritative; they are based on (1) the geographic extents of the PRC’s claimed “island groups,” (2) the PRC’s assertion that it “shall” use straight baselines, and (3) the PRC’s assertion that the island groups are to be treated “as a whole.”

It bears mentioning that, despite the fact that the Convention does not permit continental States, such as China, to use archipelagic baselines (Article 47), the PRC attempts to argue that customary international law somehow permits it to draw baselines around its claimed archipelagos far in excess of what is permitted for archipelagic States. Whereas Article 47 provides that the maximum ratio of water area to land area that may be enclosed within archipelagic baselines is 9 to 1, the ratio within the PRC’s baselines around *Xisha Qundao* is approximately 37 to 1.⁷⁷ Were the PRC to attempt to enclose *Nansha Qundao* “as a whole” with straight baselines, the ratio would be

⁷⁵ Communication of the PRC, *supra* note 70.

⁷⁶ *The South China Sea Arbitration*, *supra* note 4, para. 576.

⁷⁷ The ratios in this paragraph and in Table 3 have been calculated conservatively by treating the waters within the fringing reefs of islands and atolls as “land,” as described in Article 47 with respect to archipelagic baselines.

approximately 950 to 1 (*i.e.*, 950 km² of maritime space for each 1 km² of land) (Maps 2 and 6A; Table 3). Similarly, straight baselines enclosing *Zhongsha Qundao* “as a whole” would have a water-to-land ratio of almost 1300 to 1 (Maps 2 and 5A; Table 3). Such water-to-land ratios are far in excess of any straight baseline system asserted by any State, including any archipelagic State.

Maritime Zones

The PRC claims internal waters, a territorial sea, a contiguous zone, an EEZ, and continental shelf in the South China Sea. The PRC claims these maritime zones “based on Nanhai Zhudao” (*i.e.*, the PRC’s four claimed island groups in the South China Sea), each of which are to be regarded “as a whole.”⁷⁸

Internal Waters

Waters on the landward side of the baseline are internal waters.⁷⁹ Thus, the validity of the PRC’s internal waters claim depends upon establishing lawful baselines. As discussed above, the PRC’s baselines around the *Xisha Qundao* (Paracel Islands) are inconsistent with international law. Accordingly, the PRC’s internal waters claim within those baselines is not valid (Map 3A).

The PRC has not defined any baselines relating to its three other claimed “island groups”—*Dongsha Qundao* (Pratas Island and other features), *Zhongsha Qundao* (Scarborough Reef and other features), and *Nansha Qundao* (Spratly Islands and other features). Accordingly, within these three “island groups,” the PRC has not made an actual claim to internal waters under either the Convention or its *1992 Law*.⁸⁰

Notwithstanding this, in its recent statements the PRC has repeatedly claimed that “China has internal waters” that are based on each of its claimed “island groups,” including *Dongsha Qundao*, *Zhongsha Qundao*, and *Nansha Qundao*.⁸¹ As the Chinese Society of International Law has argued in support of the PRC’s position on *Nansha Qundao*, since it “is fully qualified as an archipelago,” the “interconnecting waters within the archipelago are under China’s sovereignty over *Nansha Qundao*.”⁸² The PRC has not clarified the geographic extent of these internal waters claims. Based on the PRC’s statements, including the view that the “island groups” are each to be treated “as a whole,” Map 2 and panel A of Maps 4, 5 and 6 depict the apparent geographic scope of these unlawful internal waters claims.⁸³

As discussed above, to validly claim internal waters with respect to an island group “as a whole,” the PRC must establish straight baselines consistent with Article 7 of the Convention, which is not possible with respect to *Xisha Qundao*, *Dongsha Qundao*, *Zhongsha Qundao*, and *Nansha*

⁷⁸ PRC Government Statement, *supra* note 5, para. III(ii) (Annex 1 to this study); PRC statements, *supra* note 43.

⁷⁹ Convention, *supra* note 2, art. 8; *1992 Law*, *supra* note 16, art. 2 (Annex 3 to this study).

⁸⁰ *1992 Law*, *supra* note 16, art. 3 (Annex 3 to this study).

⁸¹ *See, e.g.*, PRC Government Statement, *supra* note 5, para. III(ii) (Annex 1 to this study).

⁸² Chinese Society of International Law, *supra* note 45, at 477, 499.

⁸³ Regarding the geographic extents of the PRC’s four claimed “island groups,” *see supra* note 41.

Qundao. The appropriate baseline rules for the South China Sea islands claimed by the PRC are found in Articles 5 (normal baseline), 6 (reefs), and 13 (low-tide elevations) of the Convention.

Territorial Sea

The PRC's 1992 *Law* asserts a 12-M territorial sea.⁸⁴ A claim of sovereignty over a 12-M territorial sea, including the airspace above and the seabed and subsoil below, is generally consistent with international law. However, the PRC's assertion of a territorial sea measured from unlawful straight baselines or otherwise based on treating entire South China Sea island groups as collective units is not permitted by international law and is not recognized by the United States (Maps 3 to 6, panel A). Likewise, the PRC may not assert a territorial sea generated by any South China Sea feature that is not an island as defined in Article 121(1). This includes submerged features, such as Macclesfield Bank, Vanguard Bank, and James Shoal, as well as low-tide elevations that are beyond any lawful territorial sea entitlement, such as Mischief Reef and Second Thomas Shoal. As noted in the [Basis for Analysis](#) section above, features that are not islands in their natural state cannot be artificially altered to meet the definition of an island and are not entitled to a territorial sea of their own.

Panel B of Maps 3 to 6 depicts the approximate 12-M territorial sea extent that would be consistent with international law with respect to the islands and island groups claimed by the PRC in the South China Sea.

The PRC's 1992 *Law* also contains unlawful restrictions on the right of innocent passage within the territorial sea. Specifically, it contains a requirement that foreign military ships obtain permission from the PRC prior to entering its territorial sea.⁸⁵ In addition, in 2021, the PRC revised its Maritime Traffic Safety Law in a manner that unlawfully restricts the right of innocent passage.⁸⁶ Under international law as reflected in Article 17 of the Convention, the ships of all States, including warships, enjoy the right of innocent passage through the territorial sea. The right of innocent passage cannot be subject to advance notification or permission requirements. The United States has protested the PRC's unlawful restrictions on innocent passage both diplomatically and operationally.⁸⁷

Contiguous Zone

The PRC's 1992 *Law* asserts a contiguous zone of 12 M that is "outside of, but adjacent to, its territorial sea."⁸⁸ Within the contiguous zone, the PRC asserts the authority to "exercise powers

⁸⁴ 1992 *Law*, *supra* note 16, art. 3 (Annex 3 to this study).

⁸⁵ *Id.* art. 6 (Annex 3 to this study) (referring to the purported right to request a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warship through the territorial sea).

⁸⁶ *Maritime Traffic Safety Law of the People's Republic of China*, Order No. 79 of the President of the PRC (2021), unofficial version available [online](#). U.S. Embassy Beijing protested certain requirements described in this law to the PRC's Ministry of Foreign Affairs on Sept. 23, 2021.

⁸⁷ *Id.*; *Maritime Claims Reference Manual*, People's Republic of China (2017), U.S. Dep't of Defense, available from the [website](#) of the Navy Judge Advocate General's Corps; Department of Defense Annual Freedom of Navigation (FON) Reports, available from the Department of Defense [website](#).

⁸⁸ 1992 *Law*, *supra* note 16, art. 4 (Annex 3 to this study).

. . . for the purpose of preventing or punishing infringement of its security, customs, fiscal [and] sanitary laws and regulation or entry-exit control within its land territories, internal waters or territorial sea.”⁸⁹ The PRC’s asserted authority to prevent and punish infringement of its “security” laws exceeds the coastal State’s powers in the contiguous zone as it is not consistent with international law as reflected in Article 33 of the Convention. The United States has protested this claim.⁹⁰

Exclusive Economic Zone and Continental Shelf

The PRC’s 1998 *Exclusive Economic Zone and Continental Shelf Act (1998 Law)* asserts a 200-M EEZ and a continental shelf that extends “. . . to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”⁹¹ Within its EEZ and continental shelf, the PRC claims “sovereign rights” related to natural resources and economic activities and “jurisdiction” related to artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment.⁹² These jurisdictional provisions relating to the EEZ and continental shelf are generally consistent with international law as reflected in Parts V and VI of the Convention.

The PRC’s assertion of EEZ and continental shelf authority, however, exceeds what is provided for in the Convention in a number of other respects. Within the EEZ, the PRC also asserts “jurisdiction with regard to customs, fiscal, health, security and immigration laws and regulations.”⁹³ Such jurisdiction is not consistent with international law as reflected in the Convention and is not recognized by the United States. The United States has protested efforts by the PRC to assert such jurisdiction in connection with incidents relating to U.S. military vessels and aircraft operating in the PRC’s claimed EEZ.⁹⁴ The PRC’s *Surveying and Mapping Law*, promulgated in 2002, also exceeds the scope of EEZ and continental shelf authority provided for under the Convention by requiring that any surveying and mapping by a foreign entity in “sea areas under the jurisdiction of the People’s Republic of China” are subject to approval by the PRC.⁹⁵ Although the Convention provides for coastal State jurisdiction in the EEZ and continental shelf over “marine scientific research,” this authority does not extend to *all* surveying and mapping activities, such as military surveys and hydrographic surveys. Accordingly, the United States has protested this claim, including through operational assertions, numerous times.⁹⁶

⁸⁹ *Id.* art. 13.

⁹⁰ *Maritime Claims Reference Manual*, *supra* note 87; J.A. Roach and R.W. Smith, *Excessive Maritime Claims*, 3rd ed. (2012), at 154–55, note 16.

⁹¹ *1998 Law*, *supra* note 16, art. 2.

⁹² *Id.* art. 4.

⁹³ *Id.* art. 8. This assertion also exceeds what is provided for in Article 60(2) of the Convention, which states that “[t]he coastal State shall have exclusive jurisdiction over . . . artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.”

⁹⁴ *See Maritime Claims Reference Manual*, *supra* note 87.

⁹⁵ *Surveying and Mapping Law of the People’s Republic of China*, 2002 (English translation available at China.org.cn), art. 7. The geographically imprecise phrase “sea areas under the jurisdiction of the People’s Republic of China” is used in several PRC laws and sometimes in reference to the PRC’s historic rights claim in the South China Sea.

⁹⁶ *See Maritime Claims Reference Manual*, *supra* note 87.

Regarding the geographic extent of the PRC's EEZ and continental shelf in the South China Sea, the PRC asserts that it has EEZ and continental shelf, "based on Nanhai Zhudao," including "Zhongsha Qundao" and "Nansha Qundao." As discussed above, this is not consistent with international law, as the PRC cannot lawfully claim baselines (from which maritime limits are measured) enclosing each of its claimed island groups "as a whole." The tribunal in *The South China Sea Arbitration* also concluded that all of the islands within the Spratly Islands fall within the definition of "rocks" set forth in Article 121(3) and are, thus, incapable of generating an EEZ or continental shelf. The tribunal's award is final and binding on the PRC and the Philippines pursuant to Article 296 of the Convention.⁹⁷

The PRC's 1998 Law provides that any State enjoys the freedom to lay submarine cables and pipelines in the PRC's EEZ and on its continental shelf "provided that it observes international law and the laws and regulations of the People's Republic of China."⁹⁸ It further provides that "[t]he laying of submarine cables and pipelines must be authorized by the competent authorities of the People's Republic of China."⁹⁹ A coastal State may not restrict the freedom to lay submarine cables and pipelines in the EEZ or on the continental shelf except in accordance with the provisions of Article 79 of the Convention. The PRC's requirement of prior authorization for the laying of submarine cables in its EEZ and on its continental shelf exceeds its authority over those activities as set forth in the Convention.

Historic Rights

In the context of the 2016 decision in *The South China Sea Arbitration*, the PRC stated unequivocally for the first time that "China has historic rights in the South China Sea," and that such a claim is "[b]ased on the practice of the Chinese people and the Chinese government in the long course of history."¹⁰⁰ Although the PRC has not provided specific information regarding the geographic extent of its historic rights claim, it appears that this claim may coincide with the dashed lines on PRC maps (see Maps 1 and 2).¹⁰¹

Although these statements have put the international community on notice that the PRC claims some type of "historic rights" in the South China Sea, the PRC has not provided any additional information about the substantive content of this claim. For instance, it is not known what specific rights are claimed by the PRC, or whether such rights are exclusive or, alternatively, rights that

⁹⁷ The United States has not taken a position on whether specific islands in the South China Sea are "rocks" under Article 121(3) of the Convention.

⁹⁸ 1998 Law, *supra* note 16, art. 11.

⁹⁹ *Id.*

¹⁰⁰ PRC Government Statement, *supra* note 5, para. III (Annex 1 to this study); *see also* Remarks by PRC Foreign Ministry Spokesperson Hong Lei, July 6, 2016, available from the MFA [website](#) ("China's historic rights in the South China Sea are formed along the course of history, and are solidly founded on historical and jurisprudential grounds."). The PRC has since made similar statements in numerous communications to UN member States, some of which are excerpted in Annex 2 to this study.

¹⁰¹ "A Preliminary Report of the Facts Related to the Issue of Historic Rights Involved in the South China Sea Arbitration and the Applicability of Laws in This Case," June 30, 2016, available from the [website](#) of the Mission of the PRC to the European Union (referring to China's historic rights "over the maritime space enclosed by the dotted line in its entirety"). The PRC has not, however, included or typically referred to a map or the "dotted line" in its statements claiming historic rights.

are shared with other coastal States.¹⁰² The PRC has stated that its historic rights are “protected by international law,”¹⁰³ but it has not provided a legal justification for such a claim.

Recognizing that the claim itself is deficient for its vagueness, *Limits in the Seas No. 143* continues to reflect the views of the United States regarding the PRC’s claim to historic rights in the South China Sea. The study’s conclusions stated that any such historic rights claim is:

. . . not within the narrow category of historic claims recognized in Articles 10 and 15 of the LOS Convention. The South China Sea is a large semi-enclosed sea in which numerous coastal States have entitlements to EEZ and continental shelf, consistent with the LOS Convention; the law of the sea does not permit those entitlements to be overridden by another State’s maritime claims that are based on “history.” To the contrary, a major purpose and accomplishment of the Convention is to bring clarity and uniformity to the maritime zones to which coastal States are entitled.¹⁰⁴

The international community, including littoral States of the South China Sea, has made clear that it rejects the PRC’s historic rights claim. Australia,¹⁰⁵ France,¹⁰⁶ Germany,¹⁰⁷ Indonesia,¹⁰⁸ Japan,¹⁰⁹ Malaysia,¹¹⁰ New Zealand,¹¹¹ the Philippines,¹¹² the United Kingdom,¹¹³ the United

¹⁰² The PRC has stated the following, which suggests the rights claims are broad but unspecified: “Such historic rights should not be any specific right or an assembly of certain rights; rather, they should be the rights over the maritime space enclosed by the dotted line in its entirety.” *Id.*

¹⁰³ Remarks, *supra* note 100.

¹⁰⁴ *Limits in the Seas No. 143*, *supra* note 1, at 23.

¹⁰⁵ Australia Diplomatic Note, *supra* note 52 (“Australia rejects China’s claim to ‘historic rights’ or ‘maritime rights and interests’ as established in the ‘long course of historical practice’ in the South China Sea.”).

¹⁰⁶ Permanent Mission of France to the United Nations, [Note Verbale No. 2020-0343647](#), Sept. 16, 2020 (“claims with regard to the exercise of ‘historic rights’ over the South China Sea waters do not comply with international law and UNCLOS provisions”).

¹⁰⁷ Communication of Germany, *supra* note 66 (“claims with regard to the exercise of ‘historic rights’ over the South China Sea waters do not comply with international law and UNCLOS provisions”).

¹⁰⁸ Permanent Mission of Indonesia to the United Nations, communication [No. 126/POL-703/V/20](#), May 26, 2020 (“Indonesia reiterates that the Nine-Dash Line map implying historic rights claim clearly lacks international legal basis and is tantamount to upset UNCLOS 1982.”).

¹⁰⁹ Ministry of Foreign Affairs, [Diplomatic Bluebook 2020: Japanese Diplomacy and International Situation in 2019](#), at 82 (“Japan has pointed out that China’s claims to ‘historical rights’ over the South China Sea lack a clear basis under international law . . .”).

¹¹⁰ Permanent Mission of Malaysia to the United Nations, [Note Verbale HA 26/20](#), July 29, 2020 (rejecting “China’s claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ as they are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention”).

¹¹¹ Communication of New Zealand, *supra* note 52 (“There is no legal basis for states to claim ‘historic rights’ with respect to maritime areas in the South China Sea.”).

¹¹² *The South China Sea Arbitration*, *supra* note 4, paras. 192–199 (summarizing the Philippines’ argument rejecting the PRC’s historic rights claim).

¹¹³ United Kingdom Mission to the United Nations, [Note Verbale No. 162/20](#), Sept. 16, 2020 (“claims with regard to the exercise of ‘historic rights’ over the South China Sea waters do not comply with international law and UNCLOS provisions”). For a more extensive statement, see *UK government’s position on legal issues arising in the South China Sea*, deposited in House of Commons, September 3, 2020, available from the UK Parliament [website](#).

States,¹¹⁴ and Vietnam¹¹⁵ have all publicly objected to the PRC's historic rights claim, which is inconsistent with international law.

The tribunal in *The South China Sea Arbitration* also rejected the PRC's claims to historic rights in the South China Sea. Specifically, its 2016 decision stated:

[A]s between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention. The Tribunal concludes that the Convention superseded any historic rights or other sovereign rights or jurisdiction in excess of the limits imposed therein.¹¹⁶

Conclusion

In the years since the Department of State published *Limits in the Seas No. 143* in 2014 and the arbitral tribunal issued its decision in *The South China Sea Arbitration* in 2016, the PRC has advanced a new articulation of its maritime claims in the South China Sea. These expansive maritime claims are plainly inconsistent with international law as reflected in the Convention.

First, the PRC's claims to sovereignty over maritime features that do not meet the international law definition of an "island" and fall entirely beyond a lawful territorial sea are inconsistent with international law and not recognized by the United States and other States. This includes any claim to sovereignty over entirely submerged features like James Shoal, Vanguard Bank, and Macclesfield Bank. It also includes any claim to sovereignty over low-tide elevations, such as Mischief Reef and Second Thomas Shoal, which fall entirely beyond a lawful territorial sea entitlement and which are not subject to appropriation under international law.

Second, the PRC's baselines enclosing *Xisha Qundao* (Paracel Islands) and its asserted intention to establish baselines around other "island groups" in the South China Sea are also inconsistent with international law. None of the four islands or island groups that the PRC considers to comprise "Nanhai Zhudao" meet the geographic criteria for straight baselines reflected in Article 7 of the Convention. Notwithstanding the Convention's comprehensive regulation of baselines, the PRC also attempts to argue that there is a separate body of customary international law, outside of the Convention, that justifies its straight baseline claims in the South China Sea. This PRC

¹¹⁴ U.S. Diplomatic Note, Dec. 28, 2016, reprinted in *Digest of U.S. Practice in International Law 2016*, at 520–22 (rejecting the PRC's historic rights claim as unlawful); U.S. communication, *supra* note 51 ("[t]he United States objects to China's claim to 'historic rights' in the South China Sea to the extent that the claim exceeds the maritime entitlements that China could assert consistent with international law as reflected in the Convention.").

¹¹⁵ Communication of Vietnam, *supra* note 52 ("Viet Nam protests China's claims as contained in the aforementioned Notes Verbales [claiming, *inter alia*, historic rights in the South China Sea]"; ". . . the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the sole legal basis for and defines in a comprehensive and exhaustive manner the scope of their respective maritime entitlements in the East Sea [South China Sea].")

¹¹⁶ *The South China Sea Arbitration*, *supra* note 4, para 278. This conclusion is consistent with the judgment of the ICJ's Chamber in *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, *supra* note 35 and corresponding text.

position, which is examined in the *State Practice Supplement* to this study, has no merit. The evidence compiled in the *Supplement* demonstrates conclusively that the requirements for the formation of customary international law relating to outlying island groups have not been met and, therefore, there are no customary international law rules that provide an alternative legal basis for continental States, such as China, to claim straight baselines around outlying island groups.

Third, the PRC's claim to maritime zones "based on Nanhai Zhudao" is similarly inconsistent with international law. Any assertion of internal waters, territorial sea, exclusive economic zone, or continental shelf based on treating South China Sea island groups "as a whole" is not permitted by international law. Within its claimed maritime zones in the South China Sea, the PRC also makes numerous jurisdictional claims that are inconsistent with international law. These include the PRC's requirement of prior permission for warships exercising innocent passage in the territorial sea; its asserted authority to prevent and punish violations of its "security" laws in the contiguous zone; and its restrictions on military activities in the EEZ.

Finally, consistent with the findings in *Limits in the Seas No. 143*, the PRC's claim to "historic rights in the South China Sea" is plainly inconsistent with international law to the extent it exceeds the PRC's possible maritime entitlements provided for in the international law of the sea, as reflected in the Convention. The PRC's historic rights claim has been protested by the United States and many other States and was rejected by the tribunal in *The South China Sea Arbitration*.

The overall effect of these maritime claims is that the PRC unlawfully claims sovereignty or some form of exclusive jurisdiction over most of the South China Sea. These claims, especially considering their expansive geographic and substantive scope, gravely undermine the rule of law in the oceans and numerous universally recognized provisions of international law reflected in the Convention.

Annexes

Annex 1

Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea

July 12, 2016

To reaffirm China's territorial sovereignty and maritime rights and interests in the South China Sea, enhance cooperation in the South China Sea with other countries, and uphold peace and stability in the South China Sea, the Government of the People's Republic of China hereby states as follows:

I. China's Nanhai Zhudao (the South China Sea Islands) consist of Dongsha Qundao (the Dongsha Islands), Xisha Qundao (the Xisha Islands), Zhongsha Qundao (the Zhongsha Islands) and Nansha Qundao (the Nansha Islands). The activities of the Chinese people in the South China Sea date back to over 2,000 years ago. China is the first to have discovered, named, and explored and exploited Nanhai Zhudao and relevant waters, and the first to have exercised sovereignty and jurisdiction over them continuously, peacefully and effectively, thus establishing territorial sovereignty and relevant rights and interests in the South China Sea.

Following the end of the Second World War, China recovered and resumed the exercise of sovereignty over Nanhai Zhudao which had been illegally occupied by Japan during its war of aggression against China. To strengthen the administration over Nanhai Zhudao, the Chinese government in 1947 reviewed and updated the geographical names of Nanhai Zhudao, compiled Nan Hai Zhu Dao Di Li Zhi Lue (A Brief Account of the Geography of the South China Sea Islands), and drew Nan Hai Zhu Dao Wei Zhi Tu (Location Map of the South China Sea Islands) on which the dotted line is marked. This map was officially published and made known to the world by the Chinese government in February 1948.

II. Since its founding on 1 October 1949, the People's Republic of China has been firm in upholding China's territorial sovereignty and maritime rights and interests in the South China Sea. A series of legal instruments, such as the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf and the 1996 Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea, have further reaffirmed China's territorial sovereignty and maritime rights and interests in the South China Sea.

III. Based on the practice of the Chinese people and the Chinese government in the long course of history and the position consistently upheld by successive Chinese governments, and in accordance with national law and international law, including the United Nations Convention on the Law of the Sea, China has territorial sovereignty and maritime rights and interests in the South China Sea, including, inter alia:

i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao;

- ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;
- iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;
- iv. China has historic rights in the South China Sea.

The above positions are consistent with relevant international law and practice.

IV. China is always firmly opposed to the invasion and illegal occupation by certain states of some islands and reefs of China's Nansha Qundao, and activities infringing upon China's rights and interests in relevant maritime areas under China's jurisdiction. China stands ready to continue to resolve the relevant disputes peacefully through negotiation and consultation with the states directly concerned on the basis of respecting historical facts and in accordance with international law. Pending final settlement, China is also ready to make every effort with the states directly concerned to enter into provisional arrangements of a practical nature, including joint development in relevant maritime areas, in order to achieve win-win results and jointly maintain peace and stability in the South China Sea.

V. China respects and upholds the freedom of navigation and overflight enjoyed by all states under international law in the South China Sea, and stays ready to work with other coastal states and the international community to ensure the safety of and the unimpeded access to the international shipping lanes in the South China Sea.

Annex 2

Excerpts from Diplomatic Communications of the Government of the People's Republic of China

A. Communication [CML/14/2019](#) of December 12, 2019, addressed to the Secretary-General of the United Nations (concerning the communication of Malaysia)

. . . China has sovereignty over Nanhai Zhudao [South China Sea Islands], consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao; China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao; China has exclusive economic zone and continental shelf, based on Nanhai Zhudao; China has historic rights in the South China Sea. The above positions of China comply with relevant international law and practice. They are clear and consistent, and are known to the international community including the Government of Malaysia.

B. Communication [CML/11/2020](#) of March 23, 2020, addressed to the Secretary-General of the United Nations (concerning the communication of the Philippines)

. . . China has sovereignty over Nansha Qundao and its adjacent waters, and over Huangyan Dao [Scarborough Reef] and its adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China has historic rights in the South China Sea. China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence.

. . . Being part of China's Zhongsha Qundao, Huangyan Dao [Scarborough Reef] is China's inherent territory.

C. Communication [CML/42/2020](#) of April 17, 2020, addressed to the Secretary-General of the United Nations (concerning the communication of Vietnam)

. . . China has sovereignty over Xisha Qundao, Nansha Qundao and their adjacent waters. China has sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China has historic rights in the South China Sea. China's sovereignty over Nanhai Zhudao [South China Sea islands] and its maritime rights and interests in the South China Sea are established in the long course of historical practice. They have been upheld by successive Chinese Governments and are consistent with international law, including the Charter of the United Nations.

D. Communication [CML/46/2020](#) of June 2, 2020, addressed to the Secretary-General of the United Nations (concerning the communication of Indonesia)

. . . China has sovereignty over Nanhai Zhudao (including Nansha Qundao) and their adjacent waters. Based on Nanhai Zhudao, China has internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf. China has historic rights in the South China Sea. China's sovereignty over Nanhai Zhudao and its maritime rights and interests in the South China Sea are established in the long course of historical practice and consistent with international law, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea (UNCLOS).

E. Communication [CML/54/2020](#) of July 29, 2020, addressed to the Secretary-General of the United Nations (concerning the communication of Australia)

. . . The drawing of territorial sea baselines by China in the South China Sea conforms to the United Nations Convention on the Law of the Sea and general international law. It is China's inherent right as a sovereign country to carry out construction activities on relevant islands and reefs in the South China Sea.

F. Communication [CML/63/2020](#) of September 18, 2020, addressed to the Secretary-General of the United Nations (concerning the communications of France, Germany, and the United Kingdom)

. . . UNCLOS does not cover everything about the maritime order. Paragraph 8 of the preamble of UNCLOS emphasizes that “matters not regulated by this Convention continue to be governed by the rules and principles of general international law”.

. . . China attaches great importance to the provisions and applicable conditions set forth in UNCLOS for the drawing of territorial sea baselines. At the same time, China believes that the long established practice in international law related to continental States' outlying archipelagos shall be respected. The drawing of territorial sea baselines by China on relevant islands and reefs in the South China Sea conforms to UNCLOS and general international law.

G. Communication [CML/1/2021](#) of January 28, 2021, addressed to the Secretary-General of the United Nations (concerning the communication of Japan)

. . . The drawing of territorial sea baselines by China on relevant islands and reefs in the South China Sea conforms to UNCLOS and general international law.

. . . China has sovereignty over Nansha Qundao, including Meiji Jiao [Mischief Reef], and their adjacent waters and airspace.

H. Communication [CML/32/2021](#) of August 16, 2021, addressed to the Secretary-General of the United Nations (concerning the communication of New Zealand)

. . . China's territorial sovereignty and maritime rights and interests in the South China Sea are established in the long course of history. They have been upheld consistently by successive Chinese Governments and are consistent with international law, including the Charter of the United Nations and the United Nations Convention on the Law of the Sea (UNCLOS).

. . . It must be pointed out that UNCLOS is not the whole of the maritime order. The States Parties to UNCLOS affirm that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law".

. . . UNCLOS does not exclude a coastal State's historic rights that have been established in the long-term practice. Relevant international judicial cases have recognized the historic rights.

China has internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf, based on Nanhai Zhudao. . . . The regime of continental States' outlying archipelagos is not regulated by UNCLOS, and the rules of general international law should continue to be applied in this field. There is sufficient international practice serving as a basis of this regime. It is consistent with international law, including UNCLOS, and international practice.

Annex 3

Law on the Territorial Sea and the Contiguous Zone of 25 February 1992

The Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China, adopted at the 24th meeting of the Standing Committee of the National People's Congress on 25 February 1992.

Article 1

This law is formulated in order to enable the People's Republic of China (PRC) to exercise its sovereignty over its territorial sea and its rights to exercise control over its contiguous zone, and to safeguard State security as well as its maritime rights and interests.

Article 2

The PRC's territorial sea refers to the waters adjacent to its territorial land.

The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Islands, Dongsha Islands, Xisha Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China.

The PRC's internal waters refer to the waters along the baseline of the territorial sea facing the land.

Article 3

The extent of the PRC's territorial sea measures 12 nautical miles from the baseline of the territorial sea. The PRC's baseline of the territorial sea is designated with the method of straight baselines, formed by joining the various base points with straight lines.

The outer limit of the PRC's territorial sea refers to the line, every point of which is at a distance of 12 nautical miles from the nearest point of the baseline of the territorial sea.

Article 4

The PRC's contiguous zone refers to the waters that are outside of, but adjacent to, its territorial sea. The extent of the contiguous zone has a width of 12 nautical miles.

The outer limit of the PRC's contiguous zone is a line, every point of which has a nearest distance of 24 nautical miles from the baseline from which the territorial sea is measured.

Article 5

The People's Republic of China exercises sovereignty over its territorial sea and the airspace over the territorial sea, as well as its seabed and subsoil.

Article 6

Non-military foreign ships enjoy the right of innocent passage through the territorial sea of the People's Republic of China according to law.

To enter the territorial sea of the People's Republic of China, foreign military ships must obtain permission from the Government of the People's Republic of China.

Article 7

While passing through the territorial sea of the People's Republic of China, foreign submarines and other underwater vehicles shall navigate on the surface of the sea and show their flags.

Article 8

While passing through the territorial sea of the People's Republic of China, foreign ships shall abide by the laws and regulations of the People's Republic of China and shall not impair the peace, security and good order of the People's Republic of China.

Foreign nuclear-powered ships and other ships carrying nuclear, toxic or other dangerous substances must carry certain documents and observe special precautionary measures when they pass through the territorial sea of the People's Republic of China.

The Government of the People's Republic of China has the right to adopt all necessary measures to prevent and stop the passage of a ship which is not innocent through its territorial sea.

Foreign ships which violate the laws and regulations of the People's Republic of China shall be dealt with according to law by relevant departments of the People's Republic of China.

Article 9

To ensure the safety of navigation and satisfy other requirements, the Government of the People's Republic of China may require foreign ships passing through its territorial sea to use the designated sea lane or prescribed traffic separation scheme. Concrete methods should be issued by the Government of the People's Republic of China or its relevant responsible departments.

Article 10

The relevant responsible organs of the People's Republic of China shall have the right to order an immediate eviction of foreign military ships or ships owned by foreign Governments and operated for non-commercial purposes that violate the laws or regulations of the People's Republic of China while passing through the territorial sea of the People's Republic of China. Losses or damage caused shall be borne by the nations whose flag is being flown by the ship in question.

Article 11

Any international, foreign organization, or individual who intends to conduct activities connected with scientific research or marine survey shall first seek the consent of the People's Republic of China or its relevant responsible departments and abide by the laws and regulations of the People's Republic of China.

Whoever is found illegally entering the territorial sea of the People's Republic of China to conduct activities connected with scientific research or marine survey in violation of the preceding provisions shall be dealt with by the relevant organs of the People's Republic of China according to law.

Article 12

Foreign aircraft may not enter the air above the territorial sea of the People's Republic of China unless they do so in accordance with agreements or accords which the Governments of their countries have signed with the Government of the People's Republic of China, or they have been approved or accepted by the Government of the People's Republic of China or organs it has authorized.

Article 13

The People's Republic of China has the authority to exercise powers within its contiguous zone for the purpose of preventing or punishing infringement of its security, customs, fiscal sanitary laws and regulations or entry-exit control within its land territories, internal waters or territorial sea.

Article 14

When competent authorities of the People's Republic of China have good reasons to believe that a foreign ship has violated the laws and regulations of the People's Republic of China, they may exercise the right of hot pursuit.

The hot pursuit commences when the foreign ship, or one of its small boats, or other craft working as a team and using the ship pursued as a mother ship is within the limits of the internal waters, territorial sea or contiguous zone of the People's Republic of China.

If the foreign ships are in the contiguous zone of the People's Republic of China, the hot pursuit may proceed only when the rights of the relevant laws and regulations set forth in article 13 above have been violated.

As long as the hot pursuit is not interrupted, it may continue outside the territorial sea of the People's Republic of China or the contiguous zone. The hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third country.

The right of hot pursuit in this article is exercised by warships or military aircraft of the People's Republic of China, or by ships or aircraft authorized by the Government of the People's Republic of China to that effect.

Article 15

The baseline of the territorial sea of the People's Republic of China shall be established by the Government of the People's Republic of China.

Article 16

The Government of the People's Republic of China shall draw up relevant regulations in accordance with this law.

Article 17

This law becomes effective upon promulgation.

Annex 4

Exclusive Economic Zone and Continental Shelf Act

(Adopted at the third session of the Standing Committee of the Ninth National People's Congress, 26 June 1998)

Article 1

This Act is adopted with a view to safeguarding the sovereign rights and jurisdiction exercised by the People's Republic of China over the exclusive economic zone and the continental shelf and to protect China's maritime rights and interests.

Article 2

The exclusive economic zone of the People's Republic of China is an area beyond and adjacent to the territorial sea of the People's Republic of China extending to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

The continental shelf of the People's Republic of China comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Conflicting claims regarding the exclusive economic zone and the continental shelf by the People's Republic of China and States with opposite or adjacent coasts shall be settled, on the basis of international law and in accordance with the principle of equity, by an agreement delimiting the areas so claimed.

Article 3

In the exclusive economic zone the People's Republic of China shall exercise sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, current and winds.

The People's Republic of China shall have jurisdiction in the exclusive economic zone with regard to the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment.

The natural resources of the exclusive economic zone referred to in this Act include living and non-living resources.

Article 4

The People's Republic of China shall exercise sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources.

The People's Republic of China shall have jurisdiction over the continental shelf with regard to the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment.

The People's Republic of China shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes.

The natural resources of the continental shelf referred to in this Act consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.

Article 5

Any international organization, foreign organization or individual entering the exclusive economic zone of the People's Republic of China to engage in fishery activities must have the approval of the competent authorities of the People's Republic of China and comply with the laws and regulations of the People's Republic of China and any treaties or agreements concluded by the relevant States and the People's Republic of China.

The competent authorities of the People's Republic of China shall have the right to take any necessary conservation and management measures to ensure that the living resources of the exclusive economic zone are not endangered by over-exploitation.

Article 6

The competent authorities of the People's Republic of China shall have the right to conserve and manage the straddling fish stocks, highly migratory fish stocks and marine mammals of the exclusive economic zone, anadromous stocks originating in the rivers of the People's Republic of China and catadromous species that spend the greater part of their life cycle in the waters of the People's Republic of China.

The People's Republic of China shall have the primary interest in anadromous stocks originating in China's rivers.

Article 7

Any international organization, foreign organization or individual engaging in the exploration or exploitation of the natural resources of the exclusive economic zone or continental shelf of the People's Republic of China or to carry out drilling in the continental shelf of the People's Republic of China must have the approval of the competent authorities of the People's Republic of China and comply with the laws and regulations of the People's Republic of China.

Article 8

The People's Republic of China shall have exclusive rights in the exclusive economic zone and the continental shelf to establish and to authorize and regulate the establishment, operation and use of artificial islands, installations and structures.

The People's Republic of China shall have exclusive jurisdiction over the artificial islands, installations and structures in the exclusive economic zone and the continental shelf, including jurisdiction with regard to customs, fiscal, health, security and immigration laws and regulations.

The competent authorities of the People's Republic of China shall have the right to establish safety zones around the artificial islands, installations and structures in the exclusive economic zone and continental shelf in which they may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

Article 9

Any international organization, foreign organization or individual engaging in marine scientific research in the exclusive economic zone and continental shelf of the People's Republic of China must have the approval of the competent authorities of the People's Republic of China and shall comply with the laws and regulations of the People's Republic of China.

Article 10

The competent authorities of the People's Republic of China shall have the right to take the necessary measures to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment of the exclusive economic zone and the continental shelf.

Article 11

Any State, provided that it observes international law and the laws and regulations of the People's Republic of China, shall enjoy in the exclusive economic zone and the continental shelf of the People's Republic of China freedom of navigation and overflight and of laying submarine cables and pipelines, and shall enjoy other legal and practical marine benefits associated with these freedoms. The laying of submarine cables and pipelines must be authorized by the competent authorities of the People's Republic of China.

Article 12

The People's Republic of China may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources of the exclusive economic zone, take such measures, including boarding, inspection, arrest, detention and judicial proceedings, as may be necessary to ensure compliance with its laws and regulations.

In the event of a violation of the laws and regulations of the People's Republic of China in the exclusive economic zone or the continental shelf, the People's Republic of China shall have the right to take the necessary investigative measures in accordance with the law and may exercise the right of hot pursuit.

Article 13

Rights enjoyed by the People's Republic of China in the exclusive economic zone and the continental shelf that are not stipulated in this Act shall be exercised in accordance with international law and the laws and regulations of the People's Republic of China.

Article 14

The provisions of this Act shall not affect the historical rights of the People's Republic of China.

Article 15

The Government of the People's Republic of China may, in accordance with this Act, enact relevant regulations.

Article 16

This Act shall enter into force on the date of promulgation.

Annex 5

Declaration of the Government of the People's Republic of China on the baselines of the territorial sea, 15 May 1996

In accordance with the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone adopted and promulgated on 25 February 1992, the Government of the People's Republic of China hereby announces the baselines of part of its territorial sea adjacent to the mainland and those of the territorial sea adjacent to its Xisha Islands as follows:

I. The baselines of part of the territorial sea adjacent to the mainland are composed of all the straight lines joining the adjacent base points listed below:

...

II. The baselines of the territorial sea adjacent to the Xisha Islands of the People's Republic of China are composed of all the straight lines joining the adjacent base points listed below:

1. Dongdao (1)	16° 40.5' N	112° 44.2' E
2. Dongdao (2)	16° 40.1' N	112° 44.5' E
3. Dongdao (3)	16° 39.8' N	112° 44.7' E
4. Langhuajiao (1)	16° 04.4' N	112° 35.8' E
5. Langhuajiao (2)	16° 01.9' N	112° 32.7' E
6. Langhuajiao (3)	16° 01.5' N	112° 31.8' E
7. Langhuajiao (4)	16° 01.0' N	112° 29.8' E
8. Zhongjiandao (1)	15° 46.5' N	111° 12.6' E
9. Zhongjiandao (2)	15° 46.4' N	111° 12.1' E
10. Zhongjiandao (3)	15° 46.4' N	111° 11.8' E
11. Zhongjiandao (4)	15° 46.5' N	111° 11.6' E
12. Zhongjiandao (5)	15° 46.7' N	111° 11.4' E
13. Zhongjiandao (6)	15° 46.9' N	111° 11.3' E
14. Zhongjiandao (7)	15° 47.2' N	111° 11.4' E
15. Beijiao (1)	17° 04.9' N	111° 26.9' E
16. Beijiao (2)	17° 05.4' N	111° 26.9' E
17. Beijiao (3)	17° 05.7' N	111° 27.2' E
18. Beijiao (4)	17° 06.0' N	111° 27.8' E
19. Beijiao (5)	17° 06.5' N	111° 29.2' E
20. Beijiao (6)	17° 07.0' N	111° 31.0' E
21. Beijiao (7)	17° 07.1' N	111° 31.6' E
22. Beijiao (8)	17° 06.9' N	111° 32.0' E
23. Zhaoshudao (1)	16° 59.9' N	112° 14.7' E
24. Zhaoshudao (2)	16° 59.7' N	112° 15.6' E
25. Zhaoshudao (3)	16° 59.4' N	112° 16.6' E
26. Beidao	16° 58.4' N	112° 18.3' E
27. Zhongdao	16° 57.6' N	112° 19.6' E
28. Nandao	16° 56.9' N	112° 20.5' E
1. Dongdao (1)	16° 40.5' N	112° 44.2' E

The Government of the People's Republic of China will announce the remaining baselines of the territorial sea of the People's Republic of China at another time.

Annex 6

“Xisha Islands” Baseline Lengths

Start Point	End Point	Length (M)
1. Dongdao (1)	2. Dongdao (2)	0.49
2. Dongdao (2)	3. Dongdao (3)	0.35
3. Dongdao (3)	4. Langhuajiao (1)	36.28
4. Langhuajiao (1)	5. Langhuajiao (2)	3.89
5. Langhuajiao (2)	6. Langhuajiao (3)	0.95
6. Langhuajiao (3)	7. Langhuajiao (4)	1.99
7. Langhuajiao (4)	8. Zhongjiandao (1)	75.79
8. Zhongjiandao (1)	9. Zhongjiandao (2)	0.49
9. Zhongjiandao (2)	10. Zhongjiandao (3)	0.29
10. Zhongjiandao (3)	11. Zhongjiandao (4)	0.22
11. Zhongjiandao (4)	12. Zhongjiandao (5)	0.27
12. Zhongjiandao (5)	13. Zhongjiandao (6)	0.23
13. Zhongjiandao (6)	14. Zhongjiandao (7)	0.31
14. Zhongjiandao (7)	15. Beijiao (1)	78.80
15. Beijiao (1)	16. Beijiao (2)	0.50
16. Beijiao (2)	17. Beijiao (3)	0.41
17. Beijiao (3)	18. Beijiao (4)	0.65
18. Beijiao (4)	19. Beijiao (5)	1.43
19. Beijiao (5)	20. Beijiao (6)	1.80
20. Beijiao (6)	21. Beijiao (7)	0.58
21. Beijiao (7)	22. Beijiao (8)	0.43
22. Beijiao (8)	23. Zhaoshudao (1)	41.50
23. Zhaoshudao (1)	24. Zhaoshudao (2)	0.88
24. Zhaoshudao (2)	25. Zhaoshudao (3)	1.00
25. Zhaoshudao (3)	26. Beidao	1.91
26. Beidao	27. Zhongdao	1.48
27. Zhongdao	28. Nandao	1.11
28. Nandao	1. Dongdao (1)	27.99

* Names are from the 1996 *Declaration of the Government of the People's Republic of China on the baselines of the territorial sea* (Annex 5 to this study) and are not necessarily official U.S. geographic names.