The Legal Status of Rocks

Research Proposal

Field: International Law

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I) Introduction

The legal status of rocks has recently gained in significance due to an increasing number of international disputes concerning violations of sovereign rights by way of intrusion into the Exclusive Economic Zone (hereafter: EEZ). According to the United Nations Convention on the Law of the Sea (hereafter: UNCLOS), only islands capable of sustaining human habitation or economic life of their own may serve as a baseline for the delimitation of the controlling state’s EEZ. An EEZ reaches as far as 200 nmi (nautical sea miles\(^1\)) into the open sea, providing the state claiming territorial sovereignty over the island (coastal state\(^2\)) with the exclusive right to exploit the natural resources of the concerned waters, its seabed and its subsoil. Therefore, the “island”-status comes along with substantial economic benefits. This is of particular importance with regard to offshore drilling, the extraction of minerals and access to fishing grounds. Also, small and seemingly insignificant territories have often been claimed by states in order to show political assertiveness\(^3\). In this sense national pride and the desire to exert political influence should not be underestimated. An example of an area where political reasons seem to be playing an important role are the Senkaku Islands\(^4\) in the East China Sea, which are administered by Japan, but also claimed by the People’s Republic of China and the Republic of China (Taiwan). Even though China holds that the islands are Chinese territory since as long as the 14\(^{th}\) century, they have been under Japanese control since 1895\(^5\). Tensions in the area increased in September 2012, when China perceived Japan as having changed the status quo by submitting three of the islands which had formerly been privately owned to governmental control. A further area of dispute between the two nations, which has attracted less international news coverage than the Senkaku Islands conflict, but specifically concerns rocks within the meaning of UNCLOS, is the status of Okinotorishima. The Okinotorishima atoll covers an area of 8 km\(^2\) in the Pacific Ocean and is uninhabited. In an effort to corroborate its claim to an EEZ around the feature, the Japanese government has taken various measures\(^6\). Part of the atoll is therefore encased in concrete, corals have been grafted in order to prevent erosion\(^7\), and a research station has been erected on Okinotorishima. China on the other hand has brought forward the view that these islands constitute mere rocks and are therefore not entitled to an EEZ\(^8\). In addition, Japan is contemplating

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\(^1\) As some controversy remains on the definition of a nautical sea mile, for the purpose of this exposé, the prevalent view that one nautical sea mile corresponds to 1852 meters shall be adopted; see Walker, Definitions for the Law of the Sea (2012) 52.


\(^3\) See also Yahuda, China’s Recent Relations with Maritime Neighbors, The International Spectator, 47 (2012), 30.

\(^4\) The Japanese name ‘Senkaku Islands’ is used in this exposé due the islands being administered by Japan. In China, they are referred to as Diaoyu Islands.

\(^5\) Except for the years 1945-1972 when the islands were controlled by the United States as a result of Japan’s defeat in the Second World War.


\(^7\) The even smaller rocks Japan and China are fighting over, Foreign Policy, September 24, 2012, available at <foreignpolicy.com/>; <blog.foreignpolicy.com/posts/2012/09/24/the_even_smaller_rocks_japan_and_china_are_fighting_over>.

\(^8\) Ibid.
the renaming of three uninhabited islets in the Nagasaki Prefecture whose names include the Japanese term for “rock” (“iwa”) in order to preclude challenges to their status. The status of rocks will also prove a decisive factor in the current arbitral procedure opposing China and the Philippines. Proceedings commenced after a dispute over fishery rights had caused a standoff in the waters surrounding the Scarborough Shoal in the South China Sea between authorities from the two countries in spring 2012. The Philippines would like to see the arbitrators rule on the lawfulness of China’s nine-dash line, a U-shaped demarcation line which was first established by the Chinese government in 1947, and encompasses large parts of the South China Sea. The nine-dash line affects territorial claims in the area of the Scarborough Shoal, which is made up of a chain of reefs and rocks enclosing a shallow lagoon 130 km² in size. In 2009, the Chinese submission of maps showing its maritime zones being oriented along the nine-dash line has been widely protested. There is however disagreement over whether the arbitrators are competent to adjudicate in this matter, due to Chinese reservations with regard to the UNCLOS dispute settlement mechanism. But then it may be precisely because of China’s reservations that the arbitrating body may focus on the distinction between rocks and other islands. After all, the reservation refers to Article 298 para. 1 (a) – (c), which stipulates that member states may chose to be excluded from the compulsory dispute settlement mechanisms of UNCLOS with regard to “disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles”. It can be argued that the definitions of islands and rocks are simply questions relating to the interpretation of UNCLOS’ basic concepts and do not per se cover delimitation questions. Thus, the arbitrators would be entitled to rule on the definition of rocks, which might not resolve the conflict entirely but would still provide a useful basis for delimitation. Yet, given that UNCLOS provides no definition of the term, China might simply argue that the case concerns a “historic bay”. In so doing, the Chinese government could enforce the argument that the case is outside the arbitrator’s jurisdiction. In the event of new islands being created due to volcanic or other seismic activity, it is likewise necessary to differentiate between islands and rocks in order to establish the various maritime zones of these new formations. Such an event recently occurred 539 nmi south of Tokyo, where a volcanic eruption lead to the formation of new territory. Since the island has however merged with Nishinoshima, a previously existing volcanic island, as of December

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9 Reference is made to Minamiiwa, Iwasenakaiwa and Kitaiwa. See Japan moves to safeguard border islands, The Yomiuri Shim bun, August 5, 2013, available at <asianewsnet.net/>; Japanese moves to safeguard border islands – 49870.html;<br>10 In this arbitration, the Permanent Court of Arbitration acts as Registry. See Permanent Court of Arbitration, Press Release concerning the Arbitration between the Republic of the Philippines and the People’s Republic of China: Arbitral Tribunal Establishes Rules of Procedure and Initial Timetable, August 27, 2013, available at <cpa-cpa.org/>; <cpa-cpa.org/showfile.asp?fil_id=2311>;<br>11 Why Is China Giving the Philippines the Cold Shoulder?, Foreign Policy, November 13, 2013, available at <foreignpolicy.com/>; <foreignpolicy.com/articles/2013/11/12/why_is_china_giving_the_philippines_the_cold_shoulder_typhoon_relief?page=full>; <treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXI–6&chapter=21&temp=mtdsg3&lang=en#EndDec>;<br>12 For the text of the Chinese reservation see <treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI–6&chapter=21&Temp=mtdsg3&lang=en#EndDec>;<br>13 For the purpose of this exposé, all cited articles not followed by the legal act from which they were taken refer to UNCLOS.<br>14 Article 298 para. 1 (a) (i). The articles cited in this provision, Articles 15, 74 and 83 respectively refer to the delimitation of the territorial sea, the EEZ and the continental shelf between states with opposite or adjacent coasts, without alluding to islands or rocks.
2014, the incidence will not lead to an active political debate over the island’s status. Yet, provided that the new landmass doesn’t erode after eruptions cease, the Japanese government intends to expand its territorial waters accordingly\(^{15}\). Other areas where the status of rocks is yet to be determined, include the Paracel Islands\(^{16}\) and the Spratly Islands\(^{17}\), which are located in the South China Sea, the Hawar Islands\(^{18}\) in the Persian Gulf, the Jabal al-Tayr and al-Zubayr Islands\(^{19}\) in the Red Sea and others. In order to ensure peace and stability in regions where the reach of an individual state’s jurisdiction is contested due to uncertainty about the status of islands, it is of vital importance that clear and practical provisions exist in international law. Whether Article 121 (3) presents such a provision may depend on its interpretation, which has however been subject to controversy among scholars.

II) The legal status of islands

A) In General International Law

As not all states affected by its provisions have ratified UNCLOS, it is consequential to give an overview of the status of rocks in general international law. In the absence of customary international law or international treaty law indicating the contrary, it can be concluded that all natural islands were of equal status\(^{20}\) before the three United Nations Conferences on the Law of the Sea took place\(^{21}\). This is corroborated by the Convention on the Territorial Sea and the Contiguous Zone, which was agreed on during the First United Nations Conference on the Law of the Sea in 1958, 24 years prior to the adoption of UNCLOS. The possibility of providing an exception for small features had not yet been up for discussion, therefore the status of islands was based on the legal situation in general international law. Accordingly the relevant provision, Article 10, merely defines islands as a “naturally formed area of land, surrounded by water, which is above water at high tide” without mentioning any kind of differentiation whatsoever. Consequently, departing from the prevalent legal position prior to the adoption of UNCLOS, features such as Okinotorishima or the smaller rocks in the Senkaku Islands group, which (in their natural form) are insignificant in size and completely barren,
would be entitled to the same maritime zones as mainland coasts. However, it is possible that Article 121 (3) UNCLOS has become a rule of customary international law over the years as a result of states acting in accordance with the provision and invoking it in international disputes. Furthermore, it appears reasonable to conceive Article 121 (3) as customary international law on the basis that more than 160 nations participated in the discussion leading to its adoption and 166 nations having so far acceded to UNCLOS. This view has been contested on the grounds that states found it extremely difficult to adopt a version of Article 121 (3) that was convenient to all panel members. However, the members of the conference did in the end adopt the provision in question with the intention of creating a binding international standard. To claim that Article 121 (3) does not reflect the opinio iuris of the states participating in the conference simply because negotiations were tricky, and that the provision therefore has not become a part of international customary law, would be to interpret the outcome of the debate contrary to the expressed intentions of its participants. Whether state practice supporting this opinio iuris is sufficiently extensive and uniform to justify the development of a rule of customary international law, is however questionable. On the one hand, states have referred to Article 121 (3) when contesting other states claims to an EEZ, and in one case a state issued a declaration stating that a certain feature within its territory did not fulfill the criteria of Article 121 (3). On the other hand, a number of states have made claims to EEZs around islands, which at first glance do not seem to meet the criteria of Article 121 (3). Yet, this might be due to misinterpretation of Article 121 (3).

B) According to the Law of the Sea Convention

The status of rocks and islands has given rise to ever more discussion since UNCLOS was concluded in 1982. On the one hand, this is due to the far-reaching economic and political implications of the classification of small marine features. On the other hand, owing to the fact that Article 121 (3) UNCLOS is held in rather general terms, governments and scholars alike have forwarded varying interpretational approaches.

Lengthy negotiations during the three United Nations Conferences on the Law of the Sea led to the adoption of Article 121, which is entitled “Regime of islands” and reads:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

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

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24 Ibd, 684.
25 Such claims have for example been made with regard to Howland Island, Baker Island, Minamitorishima, Okinotorishima and the Spratly Islands.
As can be seen from Article 121 (3), rocks are the only islands not entitled to a 200 nmi (nautical sea miles) EEZ or a continental shelf. It is therefore of vital importance to establish what distinguishes these rocks from other islands.

What kind of features can be described as rocks is dependent on two considerations: One has to establish at what point is it possible to ascertain that a feature can “sustain human habitation” and what is to be understood by an island’s “economic life of its own”.

The criterion of “human habitation” leaves many questions open, such as the number of residents that are required, for how long they need to stay and whether an adjournment of residency is without consequences to the legal status. Most of the islets whose status is currently debated, are too small to support human settlement. The Scarborough Shoal for instance, which has been mentioned above in the context of the pending arbitration opposing China and the Philippines, doesn’t meet this requirement as the larger part of its reef is submerged at high tide. Other features such as the Spratly Islands in the South China Sea, are however - due to conflicting territorial claims - home to military facilities. The Spratly Islands encompass 150 features of varying sizes in the South China Sea. The deployment of military personnel raises the question of whether their temporary residence is to be considered as fulfilling the requirement of “human habitation”. Furthermore, it is left for the interpreter to decide whether any feature above the high water mark can acquire island status, as long as a state is willing to take measures rendering it habitable. Such measures may reach from the fortification of rocks to the installation of lighthouses and road signs. Whether Article 121 (3) intends to enable states to change the status of islands at will through structural solutions or whether such measures can be regarded as wilful circumventions of UNCLOS remains unclear. The relevance of this aspect becomes apparent when considering the fact that states have gone to great lengths in order to alter the natural state of claimed territory. In this context, it has been estimated that the Japanese government dedicated roughly $ 1 billion on measures preventing the erosion of Okinotorishima, the grafting of 40,000 corals included. Changes to an island’s condition can also be effected in the course of the construction of a lighthouse. The challenges arising from the installation of lighthouses are apparent from the UK-French Continental Shelf Case in 1977, during which dispute arose over the question whether the Eddystone Rocks qualified as islands. The Eddystone Rocks are a

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27 Article 121 UNCLOS.
28 The present exposition follows the UNCLOS terminology which implies that rocks are islands lacking the characteristics of “human habitation” and “economic life of their own”. Article 121 UNCLOS is suggestive of this definition. See Charney, Rocks that Cannot Sustain Human Habitation, The American Journal of International Law, 93 (1999), 863 (864) [hereinafter Charney, The American Journal of International Law (1999)].
29 According to Charney rocks are however entitled to a 12 nmi zone of territorial waters and an adjacent contiguous zone which is also 12 nmi wide. See Charney, The American Journal of International Law (1999) 865, supra note 28.
30 China, Vietnam, Taiwan, Malaysia, the Philippines and Brunei have raised claims to certain parts of the Spratly Islands. See Wong, Who Owns the Spratly Islands? The Case of China and Vietnam, China Report, 38 (2002), 345.
group of rocks just large enough to support a lighthouse. They are located off the coast of Cornwall, England. During the UK-French litigation it turned out difficult to establish with certainty whether or not ‘House Rock’, one of the features appertaining to the Eddystone Rocks, had been above sea level prior to the installation of a lighthouse. These changes to the natural environment of an island already in place are in any case to be distinguished from purely artificial structures. In the case of elevations which have in their entirety been created by mankind, such as the Northstar Island in the Beaufort Sea, which was erected for the purpose of oil exploration, UNCLOS specifies that “Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf”. Such structures are merely entitled to “reasonable safety zones”.

According to Article 121 (3) a feature needs to be able to “sustain” human habitation. It is debatable whether this expression is at odds with dependence on external supplies provided for by the mainland. Requiring the feature to be autarkic is evidently excessive, yet a basic contingent of goods or services that the island can provide seems reasonable. Some of the larger features of the Spratly Islands Group would definitely fulfill this condition. Shelter, fresh water and foodstuff in the form of fish are readily available. The Spratly Islands are however to date devoid of indigenous population.

With regard to the requirement of the island having an “economic life of its own”, it is necessary to establish what represents an economically worthwhile activity, and whether such economic activity needs to be profitable or not. It is debatable whether the presence of environmental institutions or offices belonging to a non-profit organization qualify as “economic life”. A plant reducing the CO₂ content of the earth’s atmosphere does not per se attain profits. Still, our carbon-intensive economy and the effects of climate change are estimated to cost the global economy roughly $1.2 trillion a year, offering governments a strong financial incentive for CO₂ reduction. The research station built on the artificially enhanced surface of Okinotorishima may be an example of a facility pursuing non-commercial aims. Assuming however that the activity has to be profitable, does the profit have to be realized by the subsidiary on the island? Whether the incorporation of the economic activity on the island into the production chain of a larger enterprise on the mainland is also sufficient, must be considered. A helpful solution might be to consider whether the establishment of the activity was economically sensible, or whether a reasonable entrepreneur would have chosen another, perhaps less costly or more accessible location. The installation of lighthouses raises the question whether their value to shipping is relevant in light of Article 121 (3). Additionally, should maintenance

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33Article 60 (8) UNCLOS.
34Article 60 (4) UNCLOS.
personnel be required to regularly spend a certain amount of time living on the island, this might lead to the conclusion that the feature is capable of sustaining human habitation. For the purposes of classifying a rock under Article 121 (3), the wording of UNCLOS does not seem to attach any legal relevance to a state’s claim of an island merely for representative ends. In this manner activities aimed at emphasizing the cultural affiliation of a region or deterring potentially adversarial forces, such as erecting road signs, flags or unmanned military facilities appear immaterial.

III) Current State of Research

Individual aspects of the interpretation of Article 121 (3) UNCLOS have already been dealt with. As the wording of Article 121 (3) only requires that an island “can” sustain human habitation in order to be entitled to an EEZ, it has been argued that no actual population is needed, but merely the capacity for habitation. This view has however attracted criticism, as such an interpretation of Article 121 (3) seems to enable states to easily circumvent UNCLOS. A territory potentially affected by such an understanding of Article 121 (3) are the Spratly Islands, parts of which, as has already been mentioned above, hold the capacity for human settlement. Furthermore, the necessary size of the population actually or theoretically inhabiting a feature is in dispute. It has been suggested that islands shall only create EEZs if they support “stable” communities. While the opinion has been voiced that the feature in question must be able to sustain a specific number of inhabitants, others have insisted that this has yet to be clarified and that Article 121 (3) merely requires that it is possible “to prove some kind of physical presence of human beings”. The threshold for determining the sustainability of human habitation is supposed to be correspondingly low and certainly beneath the requirement of a “stable community”. Another subject having received attention from scholars regards the question of what is to be understood by an island being capable of “sustaining” a population. Does this requirement imply that the natural resources of the island alone must be sufficient in order to feed its inhabitants, thereby excluding the possibility of mainland supply shipments? In this context, the availability of food, fresh water and shelter have been cited as necessary characteristics of an island capable of supporting human habitation. While features such as the Senkaku Islands or the Scarborough Shoal cannot fulfill this requirement, it might well be met by newly formed volcanic islands. The question has been raised whether conditions enabling human habitation (and economic life) have to exist naturally. This has been denied on the basis that these conditions can change due to human development in the area. According to this view, the

39 Elferink, supra note 6.
socioeconomic circumstances at the time of the claim are all-important factors. The question whether the current economic and demographic conditions are still equally relevant if the installation of a population or an economy was solely motivated by the prospect of acquiring an EEZ and rights to the continental shelf, remains open. What however has been addressed is the issue of the characterization of the term “economic life”. Scholars have concerned themselves with the question whether activities usually associated with non-profit organizations can constitute an “economic life”. Some regard even the creation of protected areas for the preservation of marine wildlife around rocks as sufficient, arguing that environmental causes should not be discriminated and can also entail economic benefits. A similar idea might have been at the basis of the endeavors of Bahrain, when the state filed an application for the Hawar Islands to become a World Heritage Site in 2002, pointing out its diversity in species, especially its extensive sea grass bed and large sea cow population. Yet, scholars largely agree that profitability is indeed essential, and have moved on to assessing the economic value of specific installations and facilities, such as lighthouses. Furthermore, the opinion has been voiced that the required profit does not necessarily have to be realized through activities on the island itself, such as the cultivation of agricultural land, but that the exploitation of resources in the adjacent waters is equally sufficient. The real value of many disputed islands lies indeed in the associated fishing rights. This is illustrated by the fact that the differences leading to the arbitration concerning the waters in the area of the Scarborough Shoal were brought about by the apprehension of Chinese fishing vessels by the Philippine navy. Similar to the debate with regard to the criterion of “human habitation”, the issue of an island’s economy depending on mainland supplies has been dealt with. In this context, it has been argued that the precondition of economic life is fulfilled if the feature can generate revenues sufficient to purchase the missing commodities necessary for the success of its enterprise. This view is of interest with regard to the Paracel Islands group. These hotly contested islands consist of an archipelago of more than 30 individual features in the South China Sea, some of which yield substantial profits from tourism. Among international scholars, views on the significance of Article 121 (3) vary greatly. While some see the norm as providing a “clear definition”, others have held it to be “void of any objective test”. This is due to the fact that no specific size applying to rocks is mentioned in the provision and

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46 Ibid.
47 Furtado, International Law and the Dispute over the Spratly Islands: Whither UNCLOS?, Contemporary Southeast Asia, 21 (1999), 386.
48 Smith, Maritime Delimitation in the South China Sea: Potentiality and Challenges, Ocean Development & International Law, 41 (2010), 214 (221).
due to the difficulty of unequivocally determining what is meant by a feature being able to sustain human habitation or economic life of its own.

Aspects not yet taken into account by some of the abovementioned views result from recent developments regarding the status of rocks in international law. During the past years, states have increasingly submitted claims to EEZs and continental shelves founded on different interpretations of Article 121 (3). In this manner, France submitted information indicating that it claimed an EEZ and continental shelf for Clipperton Island to the UN in 2009. Whether Clipperton Island is entitled to an EEZ and continental shelf is however doubtful, as it consists of an uninhabited 9 km² coral atoll which is largely barren. In 2008, Japan filed its proposed maritime delimitation for the Okinotorishima and Minamitorishima Islands. Minamitorishima is a coral formation in the northwestern Pacific Ocean with a size of roughly 1 km². While being devoid of any civilian population, it is equipped with an airport and is occasionally visited by Japanese government officials. Okinotorishima is a likewise uninhabited island, which has been described in more detail above. Shortly after Japan filed its submission for these two features, China and the Republic of Korea protested Japan’s submission on the grounds that Okinotorishima did not fulfill the requirements of Article 121 (3).

These political developments show how contentious the status of rocks remains. The fact that states are facing difficulties finding common ground also becomes apparent when considering that the only event of a state renouncing from its claim to an EEZ and a continental shelf due to Article 121 (3) occurred in the case of Rockall. Rockall, a 20 meters high uninhabitable rock, is located in the North Atlantic Ocean. It is of economic relevance due to the possible exploitation of crude oil and fishing rights in its surrounding waters. Apart from the United Kingdom, it is also claimed by Iceland, Ireland and Denmark. After becoming a party to UNCLOS, the UK has officially declared Rockall an Article 121 (3) rock.

All in all, international scholars have established differing criteria for the classification of islands. Which criteria are to be considered relevant, whether the status of a feature should be determined on a case-by-case basis or whether Article 121 is at all capable of providing a reasonable solution, however remains uncertain.

IV) Objectives

The thesis will analyze Article 121 from the relevant historical, current and political perspectives and attempt to establish a more coherent, convincing and practical solution to its interpretation than the heterogeneous mixture of ideas that have been floated so far. A workable view of Article 121 is
needed if it is to further the settlement of disputes, rather than leaving them hanging in the air because the parties involved cannot even agree on the provision’s basic meaning. If the years of work leading up to its conclusion are not to be ultimately rendered meaningless, such a new approach is sorely needed and shall be ventured by this thesis. To achieve this, a part of the thesis will also be dedicated to the regime of islands and rocks in customary international law\textsuperscript{53}, as well as in general international law before the Convention’s conclusion and with regard to those states that have yet to accede to it.

The focal point of the thesis will be the analysis of the two criteria of Article 121 (3): the capacity of an island to sustain human habitation or economic life of its own. All aspects to these questions that have been brought forward so far shall be addressed and their merits explored. Yet more importantly, the multitude of questions that have up to now been left untouched\textsuperscript{54}, shall be analysed in detail.

Following the examination of the scope and meaning of Article 121 (3), its value in terms of the ability to resolve ongoing disputes and creating unambiguous legal conditions shall be assessed. Finally, an alternative schematic approach for determining the status of rocks shall be suggested.

\textbf{V) Method of Research}

When interpreting Article 121 (3) UNCLOS, the principles established by the Vienna Treaty Convention 1969 shall be applied.\textsuperscript{55} Furthermore, a comprehensive analysis of the status of rocks is not possible without considering the relevant judgments from international and national courts as well as publications from international scholars. Additionally, the numerous official statements made by governments concerning their legal position on the delimitation of maritime zones around small islands and rocks shall also be given attention. This approach will contribute to an understanding of the underlying financial and political implications of the discussion and allow the author to address different legal opinions.

\textbf{VI) Preliminary Content}

I) Introduction

II) The legal status of islands and rocks according to general international law

1) Historical perspective

\hspace{1em} a) Treaties

\textsuperscript{53} To what extent the provisions of UNCLOS concerning maritime elevations have passed into customary law has partly been dealt with by the International Court of Justice in the Qatar \textit{v.} Bahrain litigation. See International Court of Justice, \textit{Maritime Delimitation and Territorial Questions between Qatar and Bahrain}, judgement of March 16, 2001, para. 201.

\textsuperscript{54} Such as the relevance of a state’s intention when altering the natural state of an island, the question whether the incorporation of the economic activity on the island into a company from the mainland impacts on its status under international law and whether - in order to fulfill the condition of “human habitation” - an island’s community is required to live on the feature throughout the year or whether an adjournment of residency is possible.

\textsuperscript{55} Gjetnes, Ocean Development & International Law (2001) 193, supra note 17.
b) Case law

c) Declarations

III) The legal status of islands and rocks within the framework of the Law of the Sea Convention

1) Article 121 (3) UNCLOS
   a) Content of Article 121 (3) UNCLOS
   b) Political significance

2) Rules of interpretation
   a) The Vienna Treaty Convention
   b) Particularities concerning the interpretation of UNCLOS

3) The requirements of “human habitation” and/or “economic life of their own” in Article 121 (3) UNCLOS
   a) “and” or “or”
   b) “human habitation”
      aa. Continuity and duration of habitation
      bb. Number of inhabitants
      cc. Dependence on external supplies
      dd. Inducement of settlement for the sole purpose of acquiring “island”-status
   c) “economic life of their own”
      aa. Ecologically worthwhile activity
         ➢ Realization of profits
            • by the facility located on the island itself
            • through incorporation of the economic activity on the island into the production chain of a larger economic undertaking situated on the mainland
         ➢ Availability of less costly alternatives
      bb. Requirements as to the size of the economic activity
      cc. Continuity and duration
      dd. Launching of economic activity for the sole purpose of acquiring “island”-status
      ee. Classification of “Wildlife preservation” as an “economic activity” - For the greater good?

IV) The impact of UNCLOS on customary international law

V) Alternative schematic approach for determining the legal status of islands and rocks

VI) Conclusion
VI) Time Schedule

09-12/ 2013: participation in international law seminar where the area of doctoral research will be presented, participation in other outstanding courses

01/2014: application for approval of doctoral subject

02/2014: final research, commencement of writing

02/2016: completion of thesis, start of revision

05/2016: completion of revision, submission of the thesis for approbation

VII) Bibliography

A) Monographs

Walker, K. George, Definitions for the Law of the Sea (2012);

B) Commentary


C) Articles

Charney, Jonathan I., Rocks that Cannot Sustain Human Habitation, The American Journal of International Law, 93 (1999), 863;

Elferink, Alex G. Oude, The Islands in the South China Sea: How Does Their Presence Limit the Extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts?, Ocean Development & International Law, 32 (2001), 169;

Furtado, Xavier, International Law and the Dispute over the Spratly Islands: Whither UNCLOS?, Contemporary Southeast Asia, 21 (1999), 386;

Gjetnes, Marius, The Spratlys: Are They Rocks or Islands?, Ocean Development & International Law, 32 (2001), 191;


Kozyris, Phaedon John, Islands in the Recent Maritime Adjudications: Simplifying the Aegean Conundrum, Ocean Development & International Law, 39 (2008), 329;

Kwiatkowska, Barbara/Soons, Alfred H. A., Entitlement to Maritime Areas of Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own, Netherlands Yearbook of International Law, 21 (1990), 139;


Reisman, W. Michael, Eritrea-Yemen Arbitration (Award, Phase II: Maritime Delimitation), The American Journal of International Law, 94 (2000), 721;

Smith, Robert W., Maritime Delimitation in the South China Sea: Potentiality and Challenges, Ocean Development & International Law, 41 (2010), 214;


Yahuda, Michael, China’s Recent Relations with Maritime Neighbours, The International Spectator, 47 (2012), 30;

Zou, Keyuan, How Coastal States Claim Maritime Geographic Features: Legal Clarity or Conundrum?, Chinese Journal of International Law, 11 (2012), 749;

D) Decisions from International Courts

Court of Arbitration, Delimitation of the Continental Shelf, decision of June 30, 1977;

International Court of Justice, Maritime Delimitation and Territorial Questions between Qatar and Bahrain, judgement of March 16, 2001;

E) Reports
DARA/the Climate Vulnerable Forum, Climate Vulnerability Monitor - A Guide to the Cold Calculus of a Hot Planet (2012);


F) Press Releases and Newspaper Articles


Japan moves to safeguard border islands, The Yomiuri Shimbun, August 5, 2013, available at <asianewsnet.net>; <asianewsnet.net/Japan-moves-to-safeguard-border-islands-49870.html>; 

Japanese ‘Snoopy’ island created by volcanic eruption, the Guardian, December 30, 2013, available at <theguardian.com/uk>; <theguardian.com/world/2013/dec/30/japan-snoopy-island-volcanic-eruption>; 

The even smaller rocks Japan and China are fighting over, Foreign Policy, September 24, 2012, available at <foreignpolicy.com>; <blog.foreignpolicy.com/posts/2012/09/24/the_even_smaller_rocks_japan_and_china_are_fighting_over>; 

Why Is China Giving the Philippines the Cold Shoulder?, Foreign Policy, November 13, 2013, available at <foreignpolicy.com>; <foreignpolicy.com/articles/2013/11/12/why_is_china_giving_the_philippines_the_cold_shoulder_typhoon_relief?page=full>;