

Resistance to Chinese Nine Dotted Line Claim of the Spratly Islands and Solution Provided by Common Heritage of Mankind

(Tentangn terhadap Tuntutan China ke Atas Pulau Spratly dan Penyelesaian Disediakan oleh Warisan Bersama Manusia)

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ABSTRACT

The Spratly Islands issue has been contentious for many South East Asian countries (namely Malaysia, Vietnam, Philippines and Brunei) mainly because China claims every inch of the Spratly Islands. The problem is further exacerbated when China has taken steps in claiming her rights upon the Spratly Islands which clearly has caused tensions to run high with its Southeast Asian neighbours. This Article views the solution offered by Common Heritage of Mankind which originated from the Islamic International Law (Siyar) in dealing with the issue of the Spratly Islands.

Keywords: Islamic international law; common heritage of mankind; Siyar; Spratly Islands; China; Malaysia; Vietnam; Philippines; Brunei; Taiwan

ABSTRAK

Isu Kepulauan Spratly merupakan isu perbalahan bagi negara-negara Asia Tenggara (iaitu Malaysia, Vietnam, Philippines dan Brunei) terutamanya kerana China menuntut setiap inci Kepulauan Spratly. Masalah ini diburukkan lagi apabila China telah mengambil langkah-langkah dalam menuntut hak-hak mereka ke atas Kepulauan Spratly yang jelas telah menyebabkan ketegangan dengan negara-negara jiran Asia Tenggara itu. Artikel ini melihat penyelesaian yang ditawarkan oleh Warisan Bersama Manusia yang berasal dari undang-undang Islam Antarabangsa (Siyar) dalam menangani isu Kepulauan Spratly.

Kata kunci: Undang-undang Islam antarabangsa; warisan bersama manusia; Siyar; Kepulauan Spratly; China; Malaysia; Vietnam; Filipina; Brunei; Taiwan

INTRODUCTION

China has laid claim to the entire Spratly Islands which countries like Vietnam, Brunei, Philippines and Malaysia do not agree with. The complexity of Chinese Nine Dotted Line Claim is further exacerbated by the introduction of 1982 Law of the Sea Convention (LOSC) regarding offshore territory.¹ The parties to 1982 LOSC are entitled to 200 nautical miles (nm) of maritime and jurisdictional exclusivity.² Thus, the parties to 1982 LOSC are granted access to fishing and mining rights to the Seabed.³ However, Chinese Nine Dotted Line Claim upon the entire Spratly islands is highly debatable because the Spratly Islands is beyond 200 nm from the Chinese mainland.

This article discusses the resistance of the Chinese nine dotted line claim to the entire Spratly Islands by South East Asian countries namely Malaysia, Vietnam, Philippines and Brunei Then, this will provide the basic principles of international law as contained in the 1982 LOSC with an assessment of Chinese position under it. This article will also assess the mechanism available in

Common Heritage of Mankind which originated from Islamic International Law (Siyar) in solving the issue of the Spratly Islands.

CHINESE CLAIM OVER THE SPRATLY ISLANDS

CHINESE CLAIMS AND AMBITIONS

Chinese Nine Dotted Line Claim on the South China Sea is based on its nine-dotted lines map which covers roughly more than 90% of the South China Sea.⁴ At the same time, China also claims that it has historical title upon the South China Sea.⁵ China claims that the discovery of the Spratly Islands started during the Han Dynasty in 2nd century B.C.⁶ China's scholars also contend that Chinese graves could be found on the Spratly Islands but the presence of the graves would not demonstrate continuing presence or administration.⁷

Dzurek⁸ stipulates that in 1902, the Chinese imperial government sent an expedition naval task force to inspect and erect Chinese flags on some islands in the South China Sea, however, it is not clear that whether the

expedition went beyond the Paracel Islands and reached the Spratly Islands. In 1911, the Chinese Republic later placed the Paracel Islands under the administration of a county on Hainan Island but not the Spratly Islands.⁹ Thus, this would clearly signify that China would not have any claim upon the Spratly Islands.

MOTIVATIONS FOR CHINESE NINE DOTTED LINE CLAIM

China's motivation in claiming the Spratly Islands are based on the following factors:

1. Minerals, Oil and Gas Deposits
It is believed that the Spratly Islands contain mineral, oil and gas deposits, and China is known for having insatiable hunger for energy and minerals for the development of China's economy.¹⁰
2. Fishing Rights
The Spratly Islands' waters are a haven for aquatic creatures. As the shores of the mainland China has yielded low numbers of fish, Chinese fisherman would fish at the Spratly Islands for the purpose of feeding its growing population.¹¹
3. Nationalism
The sentiment of national pride is very high in China. China would use this national zeal in order to bolster its populace support to its claims.¹²
4. Shipping Lanes
Many oil tankers ply the route of South China Sea to reach many countries such as Japan and Russia.¹³ Thus, Chinese control of the Spratly Islands would control and monitor the sea lanes and to some extent, interject such oil shipments to other countries.
5. Security Buffer Zones
Chinese Nine Dotted Line Claim of the entire South China Sea is for the purpose of protecting mainland China from foreign naval forces, especially the U.S Naval Forces.¹⁴
6. Ballistic missile submarine bastion
Ronald O'Rourke, the Specialist in Naval Affairs observed that "China has built submarine base at Hainan Island in the South China Sea. Some observers believe that China in coming years will operate ballistic missile submarines from the base as part of China's strategic nuclear deterrent force."¹⁵

RESISTANCE AND COUNTERCLAIM BY CERTAIN SOUTH EAST ASIAN COUNTRIES TO CHINESE NINE DOTTED LINE CLAIM

RESISTANCE AND COUNTERCLAIM BY CERTAIN SOUTH EAST ASIAN COUNTRIES

According to Malcolm N. Shaw,¹⁶ "control, although needing to be effective, does not necessarily have to amount to possession and settlement of all of the territory claimed. Precisely what acts of sovereignty are necessary

to found title will depend in each instance upon all the relevant circumstances of the case, including the nature of the territory involved, the amount of opposition (if any) that such acts on the part of the claimant state have aroused, and international reaction." In furtherance, Malcolm N. Shaw stated that "the states succeeding in its claim for sovereignty over *terra nullius* over the claims of other states will in most cases have proved not an absolute title, but one relatively better than that maintained by competing states and one that may take into account issues such as geography and international responses."

Based on the aforesaid quotations, it is said that the successful of a "claim for sovereignty over *terra nullius*" by a state is proved not to have "an absolute title" but a better title than "competing states" but the "geographical and international responses" may take into account to dispute such title. Thus, China's title on the Spratly Islands is "better than the competing states when it comes to *terra nullius* territory" but "geographical and international responses" have to take into account to dispute such China's title on Spratly Island. For example, the geographical location of Spratly Island is beyond 200 nm (as defined by 1982 LOSC) from the Chinese mainland and at the same time, the Spratly Islands is uninhabitable, unable to sustain life and or have non-economic activities. In regards to international response, the Chinese Nine Dotted Line Claim to the Spratly Islands has indeed caused opposition from countries such as Vietnam, Malaysia, Brunei and Philippines. The resistance or opposition to the Chinese nine dotted line claims to the Spratly Islands hinges on the following issues:

1. Actions by China's Predecessor Governments
The actions by China's predecessor governments are very important in order to determine whether the present government of China has the legitimacy to claim sovereignty over the South China Sea, and especially the Spratly Islands. In 1902, the Chinese Imperial Government sent a naval expedition to inspect the islands in the South China Sea. The troops erected the Chinese Imperial Government flags on some islands. However, it was not clear whether the expedition have gone beyond the Paracel Islands.¹⁷ In 1911, the Chinese Republic placed the Paracel Island under the administration of a county of Hainan Island. This action of the Chinese Republic does not show that the Spratly Islands are under the same administration.¹⁸
2. The 1928 Commission Report
This 1928 Commission Report which was released by the Chinese government contended that the Paracel Islands are regarded as the southernmost territory of China. This 1928 Commission Report has weakened the Chinese claim of sovereignty of the Spratly Islands.¹⁹
3. Historic Water Jurisdiction
China claims the sovereignty of the Spratly Islands based on discovery and administration.²⁰ China

- claims the Chinese tradition sea boundary line, which is related to all islands based on the Nine Dotted Lines. On the other hand, Taiwan claims that the U-shaped line in the South China Sea is a body of water under the Jurisdiction of Republic of China, which is based on Historic Waters of China.²¹ Neither China nor Taiwan have exercised control on the “Historic Waters of China.” At the same time, the International Law only recognised the status of internal waters or territorial sea and 200 nm Exclusive Economic Zone (EEZ) territory and not “Historic Waters.”²²
4. Chinese Nine Dotted Line Claim is not Consistent with Customary International Law and LOSC 1982
Chinese Nine Dotted Line Claim is not consistent with the customary International law and LOSC 1982 which must derive from land features. The basic principle of the law of the sea is ‘the land dominates the sea’, meaning that it is the territorial sovereignty of coastal states that generates their sovereign rights and jurisdiction in the EEZ and over the continental shelf.²³ In fact, the Spratly Islands is not within 200 nm off the China coastline which does not give China sovereignty over it or make it part of its territory.
 5. “Rock” as defined in Article 121 of 1982 LOSC
The Spratly Islands is a group of merged and submerged rocks which are unable to sustain habitation or economic life of their own. Thus, it is a misnomer to call them the Spratly Islands, instead they should be called the “Spratly Rocks.” Only Itu Aba Island or Taiping Island is said to have a natural source of fresh water which is capable of fulfilling the requirement of being able to sustain human habitation.²⁴ However, an artificial economic life to sustain human habitation, which is supported by a distant population, in order to gain control over an

extended maritime zone, is not sufficient.²⁵ Thus, a rock which is defined in Article 121 of 1982 LOSC as that which cannot sustain human habitation or economic life of its own shall not have EEZ or continental shelf.²⁶

6. Continuous and Effective Acts of Occupation
China is unable to prove “continuous and effective acts of occupation,” which is required by international maritime law in order for China to claim sovereignty over the Spratly Islands.²⁸ The distance from mainland China exacerbates the problem of China being unable to prove effective occupation.

MALAYSIAN CLAIM

The disputes concerning the Spratly Islands, which are claimed by China, Vietnam, the Philippines, Taiwan, Brunei and Malaysia due to their vital and strategic location, coupled with their rich natural resources i.e. oil and gas and fish resource. Vietnam holds the lion share of the Spratly Islands, which is about 26, followed by the Philippines which holds ten, China holds eight, Malaysia holds seven and Taiwan holds two.²⁹

Malaysia started its claim upon the Spratly Island in 1979, being the most recent among all claimants. Malaysia published a map on 21 December 1979 delimiting its continental shelf claim boundaries,³⁰ the 1979 Malaysian map clearly points out a portion of the Spratly Islands belonging to Malaysia, which includes a dozen tiny reefs and atolls in the south-eastern portion of the Spratly Islands, for example Amboyna Cay, Southwest Shoal, Gloucester Breakers, Barque Canada Reef, Northeast Shoal, Glasgow Shoal, North Viper Shoal, Ardasier Breaker, Mariveles Reef, Lizzie Weber Reef and Commodore Reef. Malaysia also proclaimed the EEZ in April 1980 but Malaysia has not delimited the EEZ.³¹

The 1979 Malaysian Map and the proclamation of the EEZ in April 1980 caused controversies or frictions with other claimants of the Spratly Island, especially China, the Philippines, Brunei and Vietnam. Malaysia’s prime reason for claiming the Spratly Islands is that the sovereignty of the Spratly Islands falls within Malaysia’s continental shelf³² and 200 nm EEZ. Malaysia claims Pulau Kecil, Amboyna, Terumbu Ibi (Ardasir Reef), Terumbu Layang-Layang (Swallow Reef), Terumbu Samarang Barat Besar (Royal Charlotte Reef) and Terumbu Samarang Barat Kecil (Louisa Reef).³³ Malaysia, in June 1983, instructed its troops to land in Terumbu Layang-Layang which is about 64 km southeast of Amboyna Island and Malaysia placed accommodation structures on the atoll.³⁴ The occupation of the Terumbu Layang-Layang was part of the annual naval exercise in the South China Sea under the Five Power Defence Arrangement involving air and naval units from Malaysia, New Zealand, Australia and Singapore.³⁵ Right after the occupation, Malaysia placed its three F5E jet fighters in Labuan in order to provide cover for the occupying troops. The Government of



MAP 1. Map of the Nine Dotted Lines Submitted by China to the United Nations in 2009²⁷

Malaysia views the placement of its three F5E jet fighters in Labuan and the occupation of the Terumbu Layang-Layang as justified due to indications that Vietnam wanted to occupy the island.³⁶

Malaya's (and later Malaysia) closest foreign ally was her colonial master i.e. the Great Britain, which entered in 1957 a defence pact³⁷ whereby the Great Britain guaranteed the defence of Malaya/Malaysia. The full title of the 1957 defence pact treaty is "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya on External Defence and Mutual Assistance."

In 1967, the military pact with Malaysia ended and the defence pact was replaced in 1971 with the Five Power Defence Arrangements (FPDA) by which Britain, Australia, New Zealand, Malaysia and Singapore agreed to co-operate in the area of defence, and to 'consult' each other in the event of external aggression or the threat of attack on Malaysia or Singapore.³⁸ In the Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Malaysia regarding External Defence (Kuala Lumpur, 1 December 1971, retrospective entry into force: 1 November 1971),³⁹ defence arrangements were made between the Government of Australia and the Government of Malaysia.

However, this defence treaty does not include the defence of the states of Sabah and Sarawak in East Malaysia as it only applies to the defence of West Malaysia i.e. Peninsular Malaysia. Therefore, if there was a military clash between Malaysia and other state(s) over the Spratly Island in the South China Sea, Malaysia could not invoke the FPDA.

CONSEQUENCE OF RESISTANCE

Disputes which arise in South East Asia region are concerning islands, continental shelf and the extended continental shelf claims, EEZ boundaries and natural resources emanating from the sea bed⁴⁰ i.e. oil and gas, and the rich fishing resource, especially in the areas of the disputed Spratly Islands which are highly contested by China, the Philippines, Vietnam, Taiwan, Brunei and Malaysia. If the disputes are not solved amicably, the disputes may turn into a full-out war by the state parties which are involved in the disputes.

The Johnson South Reef Skirmish of 1988 was a bloody naval battle that took place between two countries which were allies during the Vietnam War and shared the same communist ideology i.e. China and Vietnam. Chinese and Vietnamese forces fought over the Johnson South Reef in the highly disputed area of the Spratly Islands on 14 March 1988. The naval dispute is also referred to as the Battle of Fiery Cross Reef.⁴¹ In this naval battle, both China and Vietnam have its own version of events but the aftermath of the naval battle was horrific on Vietnam's side. There were about 75 Vietnamese

personnel killed or reported missing in action. Three Vietnamese naval ships were destroyed.⁴² On the other hand, Chinese casualties were reported to be minor in relation to its huge losses.⁴³ According to some sources, the battle lasted about 28 minutes only.

In 1995, the Chinese forces seized Mischief Reef in the Spratly Islands.⁴⁴ Mischief Reef is a reef within the Philippines' EEZ. China retreated from Mischief Reef in the face of a united ASEAN front.⁴⁵ In order to deter any future conflict in the area of the South China Sea, an ASEAN ministerial meeting was held in Manila in July 1992 and the ministers made the ASEAN Declaration on the South China Sea (the Declaration).⁴⁶

APPLICATION OF THE 1982 LOSC TO RESOLVE THE INEQUITIES REGARDING THE CLAIMS OVER THE SPRATLY ISLANDS

The 1982 LOSC need to be applied in order to resolve the inequities containing in the claim over the Spratly Islands. Due to the position of China, as a superpower and a member of Security Council, regarded the whole of South China Sea as their *Mare Nostrum* or our sea to the Romans.⁴⁷ China's economic and military prowess have made such claim of dominance a reality.⁴⁸ Thus, Chinese Nine Dotted Line Claim over the entire South China Sea would make countries surrounding the Spratly Islands have difficulties in negotiating with China.

A legal resolution⁴⁹ with China would require the application of the 1982 LOSC principle. In addition, an understanding needs to be made with China for the purpose of appointing an external adjudication.⁵⁰ Thus, this presents a hurdle for the parties in getting China to agree to come to an understanding, let alone having it to agree to an external adjudication.

If China agrees to seek a resolution by legal means, China would refer to Articles 74(1) and 83(1) of the 1982 LOSC⁵¹ wherein these Articles stipulate that in the case of overlapping EEZs and continental shelves, delimitation will be effected by agreement on the basis of international law or by the International Court of Justice in order to reach an equitable solution. If such agreement is reached within a 'reasonable period of time' then the parties 'shall resort' to Part XV of 1982 LOSC. The primary obligation of the parties as stipulated under Part XV of 1982 LOSC is to resolve their disputes by peaceful means⁵² where the parties "shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means."⁵³ The states may resort to any means possible in order to resolve their disputes arising under the Convention.⁵⁴ If the parties/states are unable to solve their conflicts, the parties/ states could resort to the compulsory and binding machinery of Section 2 of Part XV.⁵⁵

States' duties under the 1982 LOSC require the states to reach an equitable EEZ boundary agreement within

a reasonable time. If this fails, they are directed to the dispute settlement procedures in Part XV of the 1982 LOSC. This Part XV of the 1982 LOSC prescribes forums for solving delimitation disputes, thereby creating a variety of mechanisms which include mediation, arbitration, conciliation and negotiation. The noble intention of the 1982 LOSC is to provide avenues for states to solve their disputes amicably. However, if a state is unwilling to resolve its dispute through legal means, then such effort to have the dispute settled is futile. Since China is a superpower and a member of Security Council, no country is able to persuade China to abide by the 1982 LOSC principles. China has even resorted to the act of bullying. Since 2009, China's act of bullying has become more serious and dangerous. The acts include "cutting cables of Vietnamese owner or chartered oil and gas exploration vessel, the cutting of nets, arrests of crews and sinking of fishing boats on the part of several countries, and the loss of lives."⁵⁶

China has been insisting on using a different set of principles in claiming maritime boundaries, which is not recognised by the 1982 LOSC.⁵⁷ For example, the 'Rock' as defined in Article 121 of 1982 LOSC as "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." However, China has 'transformed' rocks in the Spratly Island into 'islands' and structures were built on the 'islands' in order to allow human habitation. This 'creative interpretation' of Article 121 of the 1982 LOSC is made possible for the purpose of legitimizing their claims on the Spratly Islands.

As such, disputes continue to persist if the 1982 LOSC principles is being purposely misinterpreted.⁵⁸ Xavier Furtado points out that, "Even in those instances when the claimants have invoked the 1982 LOSC, it was interpreted selectively and, on many occasions, was deliberately misinterpreted. These are a series of issues that are central to this problem and they add to the difficulty of applying the terms of the Convention to the Spratlys dispute."⁵⁹ For example, China resorted to historic waters claim or historic title, however failed to take into account of UNCLOS principle of uninterrupted administrative control over Spratly Islands.⁶⁰

As mentioned, the dispute of the Spratly Islands remains unsolved because the claimants, especially China, Vietnam and Taiwan, resorted to historic waters' claim. China, Vietnam and Taiwan have the similar notions that the 1982 LOSC "supersedes historic rights dating from the 1400s is absurd."⁶¹ Other reasons are that the claimants use 'selective interpretations of the 1982 LOSC.'⁶² The 'selective interpretations of the 1982 LOSC' is probably of the Convention's own vague wording which allows claimants to interpret both ways.⁶³

In fact, some even argued that the rights of China, Vietnam and Taiwan's historical claims over the Spratly Islands have vanished when they have ratified the 1982 LOSC.⁶⁴ In principle, it would be easy to say that none

of the countries including China, Vietnam and Taiwan would use the notion of historical claims, but in practice, China, Vietnam and Taiwan still cling on the notion of historical claims.

The claimants of the Spratly Islands have even placed troops or build administrative cities on some on the Spratly Islands for the purpose of exercising administrative control over the area.⁶⁵ Some claimants have even erected concrete foundations and buildings, built airstrips and other structures on the submerged reef for the purpose of keeping the reef above sea at all times. The reason the claimants built structures on the submerged reefs was because the claimants wanted to claim the territorial waters.⁶⁶

The 1982 LOSC should not be used as an excuse by any states, especially China, to infringe the territorial sovereignty of other states. China attempts to misuse international laws and misinterprets the 1982 LOSC to serve its interests. If China chooses to abuse other claimants of the Spratly Islands, by for example, boarding, harassing and searching foreign-flagged vessels⁶⁷ in the areas of the Spratly Islands, this would exacerbate the problem further.

COMMON HERITAGE OF MANKIND WHICH ORIGINATED FROM ISLAMIC INTERNATIONAL LAW (*SIYAR*) PROVIDES SOLUTION TO THE ISSUE OF THE SPRATLY ISLANDS

ISLAMIC INTERNATIONAL LAW (*SIYAR*) AND COMMON HERITAGE OF MANKIND

Islamic International Law or Siyar *Siyar* in Arabic means the behaviours and conducts of Prophet Muhammad SAW during the time of war and peace which has been used and adapted by Imam Abu Hanifa⁶⁸ for Islamic international law.⁶⁹ Imam Abu Hanifa also developed Islamic international law to use for external relations with other states.⁷⁰

During the times of classical Islamic jurists, *Siyar* was basically developed for the law of war (*Jihad*), which includes the rules and conducts of war, cessation of war, distribution of booties, treatment of prisoners, law of revenue and etc.⁷¹ At the same time, *Siyar* was also developed for the law of peace, such as treaty, diplomatic rights and privileges, and safe-conduct (*Aman*) toward non-Muslim visitors or traders for a temporary period of time.⁷² The period of friendly relationship between the Islamic Caliph Harun al-Rashid and Christian King Charlemagne resulted in *Siyar* being further adapted for external relations with other states.⁷³ Other international relations between Islamic and western Christian states happened many times until the collapse of the Ottoman Empire in 1923, which brought many interactions between *Siyar* and western international law.⁷⁴

This theoretical approach is the application of Islamic principles i.e. Islamic International Law (*Siyar*). Since

Islamic International Law (*Siyar*) is a very huge area, this article would only deal with the notion of Common Heritage of Mankind.

Common Heritage of Mankind Immanuel Kant, in his essay ‘Toward Perpetual Peace’⁷⁵, described the “uninhabitable parts of the earth’s surface” as belonging to the “Common Heritage of Mankind” in the following passage:

The community of man is divided by uninhabitable parts of the earth’s surface such as oceans and deserts, but even then, the *ship* or the *camel* (the ship of the desert) make it possible for them to approach their fellows over these ownerless tracts, and to utilise as a means of social intercourse that *right to the earth’s surface* which the human race shares in common.⁷⁶

Thus, based on the aforesaid quotation, it is said that men who were divided by “uninhabitable parts of the earth’s surface” could interact with each another by using ships (sea) and camels (desert), to meet over such earth’s surface which naturally belongs to the human race i.e. Common Heritage of Mankind.

Immanuel Kant reiterated that the usage of ships and camels would bring distant places or continents closer. This is stated in the following quotation:

Continents distant from each other can enter into peaceful mutual relations which may eventually be regulated by public laws, thus bringing the human race nearer and nearer to a cosmopolitan constitution. . . .⁷⁷

The notion of Common Heritage of Mankind is being adopted in Article 136 of the 1982 LOSC. The notion of Common Heritage of Mankind, despite being discussed by Immanuel Kant, is actually derived from the principle of Islamic law. The notion of Common Heritage of Mankind has parallel concept of Islamic common property rights⁷⁸ which based on the following *Hadith*⁷⁹ of the Prophet Muhammad SAW:

People are partners in three things: water, pasture and salt.
(Abu Dawood)

Thus, water (seas or rivers), pasture (farms or agriculture or arable land) and salt (minerals like gold, diamond, oil and gas) are common property and should not be in the hands of private ownerships but should be benefitting and belonging to all people or mankind.

From the aforesaid *hadith*, the classic Islamic scholars have interpreted their own theories and the teaching of Hanafi school of thought has been codified during the Ottoman Empire between 1869 and 1876 which is called *Majallah al-ahkam al-adliyyah* (the *Majallah*).⁸⁰

For the purpose of explaining the aforesaid *hadith*, which in fact bears the same concept of Common Heritage of Mankind, two examples will be highlighted, namely water and land.

With regard to the definition of water, the *Majallah* explains that water actually belongs to everyone and not to any particular individual as it is the common property

of mankind. Two Articles of the *Majallah* are described below:

1. Article 1235 of the *Majallah*
“Water which flows underground is not the property of anyone”
2. Article 1236 of the *Majallah*
“Wells which are habitually used by the public, and have not been produced by the work and care of any particular person, are things which are the common property of mankind and free to all to use”
3. Article 1237 of the *Majallah*
“Seas and big lakes are free to all to use”
4. Article 1264 of the *Majallah*
“In the same way as everyone has the benefit of the light and air, so also he can take benefit from the seas and big lakes”

With regard to the definition of land, the *Majallah* divides many categories of land which are free to be used by all, including:

1. Abandoned land (*Aradi Matrukah*)⁸¹
“Places which are near towns which are left to be grazing grounds and places for threshing floors, and places for getting wood”⁸² (Article 1271 of the *Majallah*).
2. The dead lands (*Aradi Mawat*)⁸³
“land which are not the property of anyone, and are not the pasture ground of a town or village, or for their collecting firewood . . . and are far from the distant parts of a village or town, that is to say, the sound of a person who has a loud voice cannot be heard from the houses which are at the extreme limit of the town or village”⁸⁴ (Article 1270 of the *Majallah*).

Based on the aforesaid categories of land, it can be deduced that the notion of public ownership of land which should be benefitting and belonging to all people or mankind, should apply to the issue of the Spratly Islands. Based on the interpretation of *Majallah*, the Spratly Islands could be regarded as dead lands (*Aradi Mawat*) where the Spratly Islands are not the pasture ground of a town or village or far from the distant parts of a village or town or extreme location. In other words, the Spratly Islands, which could not sustain human habitation or economic life of their own, would fall under the ownership of all people or mankind i.e. ‘Common Heritage of Mankind.’ Although Itu Aba of the Spratly Islands which has its own water source under Taiwan,⁸⁵ the island is without habitation and left without any population except for Taiwanese coastguard personnel and military personnel stationed on Itu Aba that were brought in by the Taiwanese government.⁸⁶ Therefore, Itu Aba has no independent economic life of its own. Article 121(3) of the 1982 LOSC requires that the relevant “economic life” feature must be “of their own.”⁸⁷ Thus, an artificial economic life supported by a distant population

in order to gain control over an extended maritime zone is not sufficient.⁸⁸

In the beginning of the 20th Century, the international community began to accept the principles of Islamic law of the sea. Elisabeth Mann Borgese⁸⁹ was a world government activist and she was described as the “the Mother of the Oceans” or “the First Lady of the Oceans” for her role in crafting and promoting the principle of Islamic law of the sea in the 1982 LOSC.⁹⁰ Elisabeth Mann Borgese introduced the principle of ‘Common Heritage of Mankind.’ This concept is so much alike to the Islamic law of the sea where the High Sea could not be owned by any nation as it is opened to everyone. In the concept enunciated by Elisabeth Mann Borgese relating to ‘Common Heritage of Mankind,’ poor countries have equal standing with advanced countries whereby poor countries have “a right to share in the resources that had been declared to be the Common Heritage of Mankind.”⁹¹ In furtherance of Article 136, Article 137 discusses the legal status of the area and its resources.

In the 1982 LOSC, the notion of three bodies of seas, which were enunciated by the Islamic law of the sea, was applied. However, the 1982 LOSC allows the coastal states to control “over all resources and economic uses in a 200-mile zone.” The sovereignty over bodies of seas which include the EEZ is borrowed from the Islamic law of the sea.⁹²

In regard to the Common Heritage of Mankind, Elisabeth Mann Borgese might have been inspired by the following Quranic verses where the al-Quran considers everything in nature as the common property of all creatures, be it animals or mankind. There are Quranic verses to support this contention, namely Surah Al-Anam, Verse 6:6 and Surah Ibrahim, Verse 14:19-20. In Surah Al-Anam, Verse 6:6, Allah SWT says:

Have they not seen how many generations before them we have annihilated? We established them on earth more than we did for you, and we showered them with blessings, generously, and we provided them with flowing streams. We then annihilated them because of their sins, and we substituted another generation in their place. (To Succeed them). In Surah Ibrahim, Verse 14:19-20, Allah SWT says: Seest thou not that Allah created the heavens and the earth in Truth? If He so will, He can remove you and put (in your place) a new creation? Nor is that for Allah any great matter.

Al-Quran regards all elements found in nature as belonging to Allah SWT and all creatures have rights upon them as they are common property for all. According to Islamic law, the basic elements of nature such as land, water, air, fire, forests and sunlight are considered to be the common property of all creatures.⁹³ Thus, human beings’ right to use the natural resources is regarded as usufruct.⁹⁴

Although Common Heritage of Mankind is a concept derived from Islamic principles, the authorship of the term ‘Common Heritage of Mankind’ is somehow

controversial.⁹⁵ There are two other individuals that claim authorship of Common Heritage of Mankind, namely:

1. A.A Cocca, an Argentinean ambassador⁹⁶; and
2. Dr. Arvid Pardo, a Maltese ambassador.⁹⁷

A.A Cocca refers to the 75th Meeting of the 5th Session of the Legal Subcommittee of Committee on the Peaceful Uses of Outer Space (COPUOS) which was held on 19 June 1967 where he said that “the international community has recognized the existence of a new subject of international law, namely mankind itself and had created a *ius humanitatis* (...) the international community has endowed that new subject of international law-mankind-with the vested common property (*res communis humanitatis*), which the human mind could at present conceive of, namely, outer space itself, including the Moon and other celestial bodies.”⁹⁸ Thus, A.A Cocca refers to mankind and common property.⁹⁹

Dr. Arvid Pardo made a speech proposal on 1 November 1967 before the General Assembly’s first Committee that the deep seabed beyond national jurisdiction and the resources thereof should be declared as the ‘Common Heritage of Mankind’ and used for only peaceful purposes.¹⁰⁰

THE APPLICATION OF COMMON HERITAGE OF MANKIND IS AN ALTERNATIVE OPTION TO DISPUTE SETTLEMENT

The Notion of Common Heritage of Mankind is an alternative option to dispute settlement arising on the issue of Spratly Islands. The Notion of Common Heritage of Mankind is relation to the natural resources of the seabed and subsoil beyond the outer limit of 200 nm EEZ is generally governed by the provisions on the deep seabed in Part XI of 1982 LOSC. According to Article 136 of the 1982 LOSC, the area which is the outer limit of 200 nm and the resources that rest in the deep seabed are regarded as the common heritage of mankind. Furthermore, Article 137(1) says that no state can claim or exercise sovereignty over the resources. Article 137(2) stipulates that the resources of the area are vested in mankind as a whole. Article 137(3) stipulates that no states shall acquire or exercise rights upon the minerals recovered from the area.

The role of China in the claim concerning the Spratly Islands is relatively huge as China claims the largest portion of territory based on the Chinese definition of “nine-dash line” which stretches hundreds of miles south and east from its most southerly province of Hainan.¹⁰¹

Colonel (L) Syed Abdillah bin Dato Syed Hussein Alkaff, a retired high ranking officer from Royal Navy of Brunei,¹⁰² was of the view that the status of the Spratly Islands should be regarded as common heritage of mankind which no nation could own the Spratly Islands. All countries including China should waive its rights in claiming the Spratly Islands as the problem with China is that China claims every inch of the Spratly Islands. He

further stressed that any oil exploration conducted on that area should have a mandate from the United Nations and any proceeds obtained shall be shared equally with states which have common maritime borders with the Spratly Islands.¹⁰³ However, if nations which have common maritime borders with the Spratly Islands do not agree on the proportion of the oil proceeds, the Spratly Islands shall be left untouched. Any developments, explorations of minerals and fishing activities should not be allowed. The Spratly Islands, he further stressed, should be regarded as a sanctuary or haven for many species of fish.¹⁰⁴ Thus, the principle of Common Heritage of Mankind which Elisabeth Mann Borgese¹⁰⁵ promoted as the principle of Islamic Law of the Sea in the 1982 LOSC¹⁰⁶ could be applied in the issue of the Spratly Islands.

CONCLUSION

The solution provided by the Common Heritage of Mankind which originated from Islamic International Law (*Siyar*) provides solution to the issue of the Spratly Islands would provide the best solution to the dispute of the Spratly Islands. It is, with hope, that the solution provided by the Common Heritage of Mankind which originated from Islamic International Law (*Siyar*) is palatable to all state parties, namely Vietnam, Brunei, the Philippines, Malaysia, China and also Taiwan and would provide peace and stability to the region as a whole and be a win-win solution for all.

NOTES

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- ² Sean Fern Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute, *Stanford Journal of East Asian Affairs*, Volume 5, Number 1 Winter 2005 p 79; Article 57 of the United Nations Convention on the Law of the Sea 1982, "Breadth of the Exclusive Economic Zone."
- ³ Sean Fern Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute, *Stanford Journal of East Asian Affairs*, Volume 5, Number 1 Winter 2005 p 79; Article 56 of the United Nations Convention on the Law of the Sea 1982, "Rights, jurisdiction and duties of the coastal State in the exclusive economic zone."
- ⁴ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p 3, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.
- ⁵ Ronald O'Rourke, Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 10-11.
- ⁶ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, at p 7.
- ⁷ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit p 8.

- ⁸ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit p 9.
- ⁹ Daniel J. Dzurek quoted Samuels, M.S. (1982) *Contest for the South China Sea*, New York: Methuen.
- ¹⁰ Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹¹ Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹² Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹³ Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹⁴ Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹⁵ Ronald O'Rourke Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress, Congressional Research Service, December 10, 2012, p 14-15.
- ¹⁶ Malcolm N. Shaw, *International Law*, p. 511.
- ¹⁷ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 9.
- ¹⁸ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 9.
- ¹⁹ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 9.
- ²⁰ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 12.
- ²¹ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 13.
- ²² Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, p 13.
- ²³ N.S.M. Antunes, *Towards the Conceptualisation of Maritime Delimitation; Legal and Technical of a Political Process* (2003), page 195
- ²⁴ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p3, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.
- ²⁵ Mark J. Valencia, Jon M. Van Dyke, Noel A. Ludwig, *Sharing the Resources of the South China Sea*, University of Hawaii Press, 1997, p 43; Seoung Yong Hong, Jon M. Van Dyke, *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Publications On Ocean Development, Martinus Nijhoff Publishers, 2009, p 68.
- ²⁶ Article 121 of the 1982 LOS Convention stipulates: "An island is a naturally formed area of land, surrounded by water, which is above water at high tide [and it enjoys its territorial sea, EEZ and continental shelf]. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."
- ²⁷ Map of the Nine Dotted Lines Submitted by China to the United Nations in 2009. http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm Accessed: 27th of December 2012.
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- ³⁰ Dr. K.R. Bolton quoted Malcolm Moore, "China's neighbours protest its passport map grab," *The Telegraph*, 22 November 2012, Retrieved from <http://www.telegraph.co.uk/news/worldnews/asia/china/9695732/Chinas-neighbours-protest-its-passport-map-grab.html>.
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- ³² India-China Border Dispute. Retrieved from http://www.globalsecurity.org/military/world/war/india-china_conflicts.htm Accessed: 28th of December 2012.
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- ³⁴ Dr. K.R. Bolton, China's Passport Map Controversy: The Intransigence of Territorial Ambitions, *Foreign Policy Journal*, November 26, 2012 p 1.
- ³⁵ Dr. K.R. Bolton, China's Passport Map Controversy: The Intransigence of Territorial Ambitions, *Foreign Policy Journal*, November 26, 2012 p 1.
- ³⁶ Dr. K.R. Bolton, China's Passport Map Controversy: The Intransigence of Territorial Ambitions, *Foreign Policy Journal*, November 26, 2012 p 1.
- ³⁷ Dr. K.R. Bolton, China's Passport Map Controversy: The Intransigence of Territorial Ambitions, *Foreign Policy Journal*, November 26, 2012 p 4.
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- ³⁹ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, at p 7.
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- ⁴⁵ On February 24, 1976, TAC was signed into force by the members of ASEAN including Lee Kuan Yew, Suharto, Datuk Hussein Onn, Kukrit Pramoy and Ferdinand Marcos.
- ⁴⁶ Japan acceded on 2 July 2004.
- ⁴⁷ South Korea acceded on 27 November 2004.
- ⁴⁸ Australia acceded on 10 December 2005.
- ⁴⁹ China acceded on 8 October 2003.
- ⁵⁰ China acceded on 29 November 2004.
- ⁵¹ Papua New Guinea acceded on 5 July 1989.
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- ⁵³ Mark E. Manyin, Michael John Garcia, Wayne M. Morrison, U.S. Accession to the Association of Southeast Asian Nations' Treaty of Amity and Cooperation (TAC), July 13, 2009, Congressional Research Service, 7-5700, at 1.
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- ⁵⁵ Richard Cronin and Zachary Dubel, *Maritime Security in East Asia: Boundary Disputes, Resources, and the Future of Regional Stability*, Stimson's East Asia Program, August 2012 at page 10.
- ⁵⁶ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, at p 20.
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- ⁵⁸ Daniel J. Dzurek, The Spratly Islands Dispute; Who's On First?, IBRU Maritime Briefing 1996, International Boundaries Research Unit, at p 50.
- ⁵⁹ Mark J Valencia, *Malaysia and the Law of the Sea, The Foreign Policy Issues, The Options and their Implications*, Institute of Strategic and International Studies (ISIS) Malaysia, 1991, at 66.
- ⁶⁰ Mark J Valencia, *Malaysia and the Law of the Sea, The Foreign Policy Issues, The Options and their Implications*, Institute of Strategic and International Studies (ISIS) Malaysia, 1991, at 66.
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- ⁶³ The Anglo-Malayan Defence Agreement (AMDA) was set up in 1957 to provide a security umbrella for the newly independent Malaya. AMDA was a bilateral defence agreement.
- ⁶⁴ Abdul Razak Baginda (1992). *Five Power Defence Arrangement: Two Decades and Beyond*. *Journal of Strategik Studies and International Relations*. Vol.1 (1). February. At pages 47-66.
- ⁶⁵ Material obtained from <http://www.ehu.es/ceinik/tratados/14TRATADOSDEALIANZASPOLITICOMILITARES/TAPM148.pdf>. Accessed: 13 January 2013.
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- ⁶⁷ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p 4, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.
- ⁶⁸ Leszek Buszynski, *Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue, Security Challenges*, Vol. 6, No. 2 (Winter 2012) at page 95.
- ⁶⁹ Leszek Buszynski, *Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue, Security Challenges*, Vol. 6, No. 2 (Winter 2012) at page 95.
- ⁷⁰ Articles 74(1) and 83(1) of 1982 LOSC stipulate:-
Article 74(1):- Delimitation of the exclusive economic zone between States with opposite or adjacent coasts; and
1. The delimitation of the exclusive **economic zone** between States with opposite or adjacent coasts shall be effected by

agreement on the basis of international law, as referred to in Article 38 of the Statute of ICJ, in order to achieve an equitable solution.

Article 83(1):- Delimitation of the continental shelf between States with opposite or adjacent coasts

1. The delimitation of the **continental shelf** between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of ICJ, in order to achieve an equitable solution.

⁷¹ UNCLOS, supra note 1, at art. 279. Article 279 also refers to the obligation of peaceful dispute settlement set forth in the UN Charter; Howard Schiffman, *The Dispute Settlement Mechanism of UNCLOS: A Potentially Important Apparatus for Marine Wildlife Management*, *Journal of International Wildlife Law & Policy*, 1998, at 296.

⁷² Howard Schiffman (fn 71) at 296.

⁷³ Article 280 of UNCLOS.

⁷⁴ Article 281 of UNCLOS

⁷⁵ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p 4, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.

⁷⁶ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p 26, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.

⁷⁷ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999, p 397.

⁷⁸ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999, p 397.

⁷⁹ Richard P. Cronin, Stimson Center, Washington, DC, Hearing on Beijing as an Emerging Power in the South China Sea, Before the House Committee on Foreign Affairs, September 12, 2012, p 7, Retrieved from <http://foreignaffairs.house.gov/112/HHRG-112-FA00-WState-CroninR-20120912.pdf>. Accessed: 28th of December 2012.

⁸⁰ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 396.

⁸¹ China, Vietnam and Taiwan resorted to historic waters claim or historic title, however failed to take into account of UNCLOS principle of uninterrupted administrative control over Spratly Islands.

⁸² Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 393.

⁸³ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 395.

⁸⁴ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 395; Article 57 states the length and breadth of the Exclusive Economic Zone. Article 57 of the 1982 LOSC states as follows:-

“The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

⁸⁵ Ibid; Article 12 stipulates as follows:-

“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant

from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.”

⁸⁶ Ibid; Article 311 of the 1982 LOS Convention stipulates:

“2. This Convention shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Convention and which do not affect the enjoyment by other States Parties of their rights or performance of their obligations under this Convention...”

5. This article does not affect international agreements expressly permitted or preserved by other articles of this Convention.”

⁸⁷ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 395; Article 121 of the 1982 LOS Convention stipulates:

“An island is a naturally formed area of land, surrounded by water, which is above water at high tide [and it enjoys its territorial sea, EEZ and continental shelf]. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

⁸⁸ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 395; Article 51 (1) of the 1982 UNCLOS stipulates:-

“Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.”

⁸⁹ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, *Contemporary Southeast Asia*, Volume 21, Number 3, December 1999 p 395; Territorial Sea Zone is defined in Article 15 of the 1982 LOSC stipulates:

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

Article 57 states the length and breadth of the Exclusive Economic Zone. Article 57 of the 1982 LOSC states as follows:-

“The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

The Equidistance Line is stipulated in the Article 12(1) of 1958 Territorial Sea Convention,

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

- ⁹⁰ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, Contemporary Southeast Asia, Volume 21, Number 3, December 1999 p 395; Territorial Sea Zone is defined in Article 15 of the 1982 LOSC stipulates:
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 The Equidistance Line is stipulated in the Article 12(1) of 1958 Territorial Sea Convention,
 “Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.”
- ⁹¹ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, Contemporary Southeast Asia, Volume 21, Number 3, December 1999 p 396.
- ⁹² Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, Contemporary Southeast Asia, Volume 21, Number 3, December 1999 p 397.
- ⁹³ Xavier Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, Contemporary Southeast Asia, Volume 21, Number 3, December 1999 p 398.
- ⁹⁴ Activities including boarding, harassing and searching foreign-flagged vessels is against Article 19 of UNCLOS. Article 19 is relating to the Meaning of Innocent Passage, where it stipulates:
 “1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.
 2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:
 (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 (b) any exercise or practice with weapons of any kind;
 (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;
 (d) any act of propaganda aimed at affecting the defence or security of the coastal State;
 (e) the launching, landing or taking on board of any aircraft;
 (f) the launching, landing or taking on board of any military device;
 (g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
 (h) any act of wilful and serious pollution contrary to this Convention;
 (i) any fishing activities;
 (j) the carrying out of research or survey activities;
 (k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;
 (l) any other activity not having a direct bearing on passage.”
- ⁹⁵ Nu‘mān ibn Thābit ibn Zū‘ā ibn Marzubān better known as Imām Abū Ḥanīfah, (year 699 – 767 CE / 80 – 148 AH) was the founder of the Hanafi school of Islamic jurisprudence.
- ⁹⁶ Dr Anowar Zahid and Dr Rohimi, Custom as a Source of *Siyar* and International Law: A Comparison of the Qualifying Criteria,” (American) International Journal of Civil Society Law, (January 2010) Vol. 8 issue 1, p 36.
- ⁹⁷ Dr Anowar Zahid and Dr Rohimi, Custom as a Source of *Siyar* and International Law: A Comparison of the Qualifying Criteria,” (American) International Journal of Civil Society Law, (January 2010) Vol. 8 issue 1, p 36.
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- ⁹⁹ Dr Anowar Zahid and Dr Rohimi, Custom as a Source of *Siyar* and International Law: A Comparison of the Qualifying Criteria,” (American) International Journal of Civil Society Law, (January 2010) Vol. 8 issue 1, p 37; M. Khadduri, *The Islamic Law of Nations: Shaybani’s Siyar* (trans.) (Baltimore, Maryland: The Johns Hopkins Press, 1966), p 15.
- ¹⁰⁰ Dr Anowar Zahid and Dr Rohimi, Custom as a Source of *Siyar* and International Law: A Comparison of the Qualifying Criteria,” (American) International Journal of Civil Society Law, (January 2010) Vol. 8 issue 1, p 36; H. Moinuddin, *The Charter of the Islamic Conference and Legal Framework of Economic Co-operation among its Member States*, (Oxford: Clarendon Press, 1987), at page 38.
- ¹⁰¹ Dr Anowar Zahid and Dr Rohimi, Custom as a Source of *Siyar* and International Law: A Comparison of the Qualifying Criteria,” (American) International Journal of Civil Society Law, (January 2010) Vol. 8 issue 1, p 38 and 39; H. Wheaton, *History of the Modern Law of Nations* (New York, 1845), at page. 555 quoted in M. Khadduri, *War and Peace in the Law of Islam*, (Baltimore: The Johns Hopkins Press, 1955), at page 270.
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- ¹⁰⁶ Hadith obtained from Dr. Reem Meshal, Assistant Professor, Department of Philosophy and Religious Studies, College of Humanities & Social Sciences, Louisiana State University. Interview conducted on 17 May 2014 via e-mail correspondences.
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