

*The  
Diaoyu / Senkaku  
Islands in the East  
China Sea: Islands  
or Rocks?*

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- A description of the Diaoyu/Senkaku Islands dispute
- An analysis of Article 121 taking into cognisance the views expressed in literature and the decision of the Tribunal.
- An application of this analysis to the Diaoyu/Senkaku Islands dispute.
- Argument: Diaoyu/Senkakus are more likely to be considered as rocks and consequently, not entitled to an EEZ and a continental shelf within the contemplation of Article 121.

# *The East China Sea Dispute*



- Parties: **China**, Taiwan, **Japan** and South Korea
- Continental shelf delimitation: Interpretation of Article 76(1)- **natural prolongation v distance**
- **Sovereignty dispute over the Diaoyu/Senkaku Islands**
- Maritime jurisdictional rights connected with title

# *The Diaoyu / Senkaku Dispute*

- 8 tiny insular formations—5 islets and 3 barren rocks
- Three largest islets have some vegetation, others are barren
- Combined land area of less than 7 square kilometres
- Uninhabited and no evidence of human economic activity on them
- No intrinsic value
- Various clashes between China and Japan



# Article 121 UNCLOS



- 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.
- 3. Rocks which **cannot sustain human habitation or economic life of their own** shall have no exclusive economic zone or continental shelf.

# *Literature*



# *South China Sea Dispute*



# *South China Sea Arbitration*



Philippines



China

## Three Sets of Claims

- Interpretation of the 'nine-dash' line which China claims represents its historic rights to the South China Sea
- Whether certain offshore features, particularly the Spratlys, are islands or rocks and on the basis of this, whether these offshore features should generate an EEZ and a continental shelf.
- Allegations of violations of UNCLOS relating to interference by China with certain rights of the Philippines in the South China Sea

# *Arbitral Tribunal Award*



- The two conditions in Article 121(3) are disjunctive but linked
- Excludes a dependence on outside supply
- 'Human habitation' was taken to mean 'stable community of people'
- Only natural ability of the maritime feature counts
- Economic activities must be oriented around the feature itself
- Only extractive activities unacceptable

# *Itu Aba*

*1) Physical features*

*2) Historical use*



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[www.birdlife.org](http://www.birdlife.org)



[GloboTreks](#)



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# *Application to the Diaoyu / Senkaku Islands*



- Diaoyu/Senkaku Islands similar to Itu Aba
- Diaoyu/Senkaku Islands are likely to be held to be rocks
- Therefore, Diaoyu/Senkaku Islands not entitled to generate EEZ and continental shelf

Merci  
beaucoup

