



CURRICULUM VITAE

PROFESSOR MOHAMMAD

NAQIB ISHAN JAN



Professor of law at Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM).

Deputy Dean (Postgraduate Studies) and Head of Research at AIKOL.

21 years of teaching and research experience.

Education Background:

LL.B, MCL and Ph.D in Law from IIUM.

Principal Research Area:

“International law” and special research interests in international refugee law, international humanitarian law, use of force in international relations and the law of the sea.

Ongoing research project:

“Formulating Legal Framework for the Employment of Refugees towards Enhancing the Malaysian Economic Growth”, a Fundamental Research (FRGS) funded by the Ministry of Higher Education, Malaysia.

Member of the Advisory Board of International Journal of Business, Humanities and Technology.

Member of the World Trade Organization and Globalization Research Unit, and the International Law and Maritime Affairs Research Unit (ILMA), Alternative Dispute Resolution Research Unit (ADRU) at IIUM.



TENTATIVE PROGRAM

0830 hrs	: REGISTRATION
0900 hrs	: ARRIVAL OF VIP
0905 hrs	: WELCOMING SESSION WITH E3 (M)
0930 hrs	: SALUTATION BY EMCEE
0935 hrs	: DOA RECITAL
0940 hrs	: OPENING REMARKS BY ACP NORISHAM BIN MAARUF, SECURITY LIAISON OFFICER OF MSB, IN RIVADH, SAUDI ARABIA
1000 hrs	: EXCLUSIVE TALK SESSION
1100 hrs	: Q & A SESSION



**SECURITY ISSUES
AFFECTING MALAYSIA:
THE INTERNATIONAL
LAW PERSPECTIVE**

DATE : 19 FEB 2019

TIME : 0930 – 1130 hrs

VENUE : MADOC, COMPLEX 3,

BUKIT AMAN,

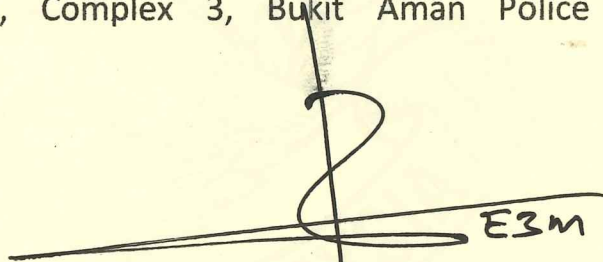
POLICE HEADQUARTERS



PROFESSOR MOHAMMAD NAQIB ISHAN JAN,
PROFESSOR OF LAW AT AHMAD IBRAHIM KULLIYAH OF LAWS (AIKOL),
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

Certificate of Appreciation

I hereby express my sincere appreciation for imparting your valuable insights and inspirations to the officers of Malaysia Special Branch during our exclusive talk on the International Law Perspective. Given this 19th day of February 2019 at MADOC, Malaysian Special Branch, Complex 3, Bukit Aman Police Headquarters.



E3M

(DATO' HJ. ROSLY BIN ABAS) DCP
PRINCIPAL ASSISTANT DIRECTOR
EXTERNAL THREAT DIVISION (E3)
MALAYSIAN SPECIAL BRANCH
BUKIT AMAN POLICE HEADQUARTERS

Date : 19 Feb 2019

Security Issues Affecting Malaysia: The International Law Perspective

Prof. Dr. Mohammad Naqib Ishan Jan

Delivered (by invitation) at Bukit Aman Police Headquarters, Kuala Lumpur, 19th February

INTRODUCTION

- Malaysia is facing numerous security challenges emanating from both State and non-State actors. Chief among them, as highlighted in the invitation letter cc to me, are:
 1. Philippines' Claim to Sabah
 2. Border incursion by the so-call "Sulu Armed Force" in Lahad Datu
 3. Terrorism
 4. Human trafficking
 5. Piracy
 6. South China Sea Tensions
 7. Singapore and Malaysian's territorial Disputes

1. Philippines' claim to Sabah

- Recently former Philippine Senate President Aquilino Pimentel Jr* said he will **propose the inclusion of Sabah in Philippine territory as part of the country's shift to a federal system of government**. He said **Sabah could be the 13th federal state of that nation**. He went on to say that:

“There should be a way that is acceptable under international laws to assert our claim to Sabah...” I think we can defer it a little bit more but to say that we stop doing it is not in the context of my proposal.”**

-
- Pimentel, who is a member of the consultative committee that President Rodrigo Duterte appointed to review the 1987 Constitution

**Daily Express Sabah, 2018

1.1 Philippines' claim to Sabah is Rejected by Malaysia.

- Malaysia has rejected proposal by Philippine government committee to claim Sabah as '13th federal state'
- The former Foreign Minister of Malaysia, Mr. Anifah Aman, while rejecting Aquilino's proposal, stated that:

*“The Government of Malaysia reiterates its position that Malaysia does not recognise and will not entertain any claims by any party on Sabah. Sabah is recognised by the United Nations and the international community as part of Malaysia since the formation of the Federation on 16 September 1963. Therefore, statements such as these will only expose the ignorance of history and international law of those who make them, as well as potentially harming the excellent bilateral relations which Malaysia and the Philippines currently enjoy.”****

****Channel NewsAsia*, 31 Jan 2018 07:17PM (Updated: 31 Jan 2018 07:20PM)
<https://www.channelnewsasia.com/news/asia/malaysia-rejects-proposal-by-philippine-government-committee>.

1.2 Philippines' claim to Sabah is Baseless

- The Philippines could try to make a formal legal claim through the International Court of Justice. This, however, would require Malaysia agreeing to have the matter go to trial, as the jurisdiction of ICJ rest with the consent of state (**Art., 36, Statute of ICJ**).
- Malaysia will never give consent or agree to have this matter go to trial, as Malaysia rightfully considers Sabah as undisputed part of its sovereign territory.
- Malaysia does not want to waste Court's time and resources to entertain a claim that has no legal basis whatsoever.
- The people of Sabah, by exercising their **right of self-determination**, have already decided in 1963 to join the Malaysian Federation, as it is clear from both the Cobbold Commission Report and the Report of the UN Mission to Borneo.
- In fact the Philippines has defacto accepted Malaysia's undisputed sovereignty over Sabah by recognising Malaysia.
- Moreover, the Philippines government must abide by the international law principle of ***uti possidetis*** that recognizes the stability of frontiers inherited by new States from the previous sovereign of the area as in these circumstances the inclusion of Sabah into Federation of Malaysia by the British colonialists.

1.3 Philippines' unfounded claim to Sabah: A security challenge to Malaysia

- This security challenge should not be taken lightly and that Malaysian security forces should at all time be vigilant in protecting the country's sovereignty and territorial integrity
- This is crucial considering the fact that 'somebody' is having an eye on the portion of Malaysia's territory (Sabah). That body is certainly unable to own it through legal means as its claim has no legal basis whatsoever.
- Now it is also legally not possible to claim territory through the use of force, as the use of force in international relations is strictly prohibited by the UN Charter (Art 2 (4), UN Charter). The obligation not to use force is a principle *jus cogens* (Nicaragua v.US). It is a **peremptory norm** (Art. 53, VCLT) that cannot be derogated – The one who derogate will certainly be the aggressor which enable the aggrressed party to legally defend its territory (Art. 51, UN Charter).

2. The Lahad Datu Border Incursion

- On 11 February 2013 about 200 armed Filipinos, followers of Jamalul Kiram III, the self-proclaimed **Sultan of Sulu**, entered Lahad Datu district of Malaysia's Sabah state, sparking a conflict with Malaysian security forces.
- The response by the security forces was swift, courageous and decisive. The armed group of the so-called **Sulu Sultanate was defeated**
- The misguided armed group were acting on behalf of a so-called sultan who had no people, no territory and sultanate.

- In 1878 the Sultanate of Sulu was no longer in existence as in that year the sovereignty over Sulu was transferred to Spain and later transferred to US in 1898 and finally to the Republic of Philippines. Sabahans were given right of self-determination
- So, North Borneo (Sabah) received the self-governing right on 31st August 1963 and later join Malaysia in September 1963.
- Sultan of Sulu was no longer a sovereign Ruler, *de facto* and *de jure* by 1915. He is only known as a Ceremonial Leader with no power. The self-proclaimed Sultan of Sulu is without a state and people to rule.
- Thus, the misguided followers of Jamalul Kiram III, the self-proclaimed Sultan of Sulu, who committed armed incursion into the Malaysian territory were wrong and their criminal conduct was a clear violation of the accepted legal norms that protect the sovereignty and territorial integrity of a sovereign state.
- The conduct of the armed group that attacked Lahad Datu could be described as act of cross border terrorism. The security forces of Malaysia successfully dislodged the group and defended Malaysia's sovereignty.

3. **Terrorism**: A Threat to National Security

- Malaysia considers terrorism as a threat to its national security and therefore has enacted laws to fight it through legal means
- Initially only **Penal Code** and **Internal Security Act (ISA)** 1960 (Act 82) was deployed against those who posed threat to national security
- In September 2011 **ISA was repealed** and replaced by the **Security Offences (Special Measures) Act (SOSMA)** 2012 (Act 747), which is a law that relates to security offences.
- SOSMA 2012 provides the procedures for arrest for serious offences under Chapter VI and VIA of the Penal Code which include offences against state and terrorism-related offences, among others.
- In 2015, Malaysia also introduced the Prevention of Terrorism Act (**POTA**) and the Special Measures against Terrorism in Foreign Countries Act (**SMATA**)
- These laws give the police greater powers to arrest and detain individuals, as well as designated two detention centers to house terror suspects.
- Whilst legitimate [human rights](#) concerns have been raised over the powers granted to law enforcement agencies, the updated legislation helped the country's security forces to prevent major attacks within Malaysia.

- Both international and domestic counter terrorism laws effectively used to counter
 - **Domestic terror groups**, like Kumpulan Mujahidin Malaysia (**KMM**),
 - **Regional terror groups**, such as Jemaah Islamiyah (**JI**),
 - **Transnational terror groups**, like Daesh and Al-Qaeda
 - Malaysia's security force has **foiled numerous large terrorists plots against the country**
 - **Arrested, persecuted and detained numerous suspected terrorist groups**
- **Malaysia has also adopted laws, in line with its international obligation, to crack down on terrorist financing.** In 2001 it passed the **Anti-Money Laundering and Anti-Terrorism Financing Act (AMLATFA)**, which requires financial institutions to submit suspicious transaction reports (STRs) to the Malaysian Central Bank.

4. Human Trafficking

Human trafficking is major issue – not good for good image of the country.

It is a heinous crime that severely affect the human dignity of the trafficked persons

Generally, it is a **the action or practice of illegally transporting people from one country or area to another, typically for the purposes of forced labour or sexual exploitation.**

Malaysia is said to be the country of destination – rather than the source of human trafficking. Irrespective of this, human trafficking, if not curbed, may affect the good reputation Malaysia has abroad and may also affect Malaysia's economic relations with some countries.

On 13th February 2019 Malaysia's Human Resources Minister, M. Kulasegaran warned that the country's economy will face disaster if Malaysia's position continues to slide on human trafficking watch lists.

M. Kulasegaran said the country was presently on the Tier 2 Watch list of the US State Department's Trafficking in Persons report for 2018. He went on to say:

“Malaysia is in a precarious position which could lead to sanctions on local company products if it falls on the human trafficking ladder. Products of local companies would be banned in the United States if we fall to a Tier 3 ranking. It won't take long for other European companies to follow suit if this happens.”

(M. Kulasegaran, The Human Resources Minister)

The US State Department's Trafficking in Persons Report ranks governments around the world based on their perceived efforts to acknowledge and combat [human trafficking](#).

The report divides countries [into tiers](#) based on their compliance with standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000.

Tier 1	TIER 2*	Tier 3
<ul style="list-style-type: none">• Countries whose governments fully comply with the TVPA's minimum standards.	<ul style="list-style-type: none">• Countries whose governments do not fully comply with an TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.	<ul style="list-style-type: none">• Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

***Tier 2 Watchlist:** Countries in which the number of victims of severe forms of trafficking is very significant or is significantly increasing; or there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year would be under the Tier 2 watch list

Human Trafficking and International Law

- The most reputable and recent instruments of international law that deals with the

- definition

- prevention

- prosecution

of human trafficking are

- the UN Convention against Transnational Organized Crime (2000) and its two related protocols:

- the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and

- the UN Protocol against the Smuggling of Migrants by Land, Sea, and Air which entered into force in 2003-2004.

- Later in 2007 The UN Office on Drugs and Crime (UNODC) established the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) in 2007
- **Enforcement: A problem.** No international Court to hear complain - So, national law enforcement and court must deal with the matter.

Malaysia has ratified or accepted the UN treaties against human trafficking and thus obligated to take serious measures to prevent, prosecute and punish those who are involved in this organised crimes.

- Instruments that have dealt with human trafficking date back to the **abolition of slavery**. They include provisions within the **Slavery Convention (1926)** and the **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)**. Additional tools of international law that include segments against the trafficking of persons include: the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and the Convention on the Elimination of all Forms of Discrimination Against Women (1979). These instruments laid the foundation for the contemporary conventions and efforts to eliminating trafficking

5. Piracy and Armed robbery against ships

Piracy is a prevailing problem with no reasonable solution in sight. How safe is your ship or consignment passing through the **seas surrounding Malaysia** and what laws apply to this region?

Piracy (Arts. 100 to 110 UNCLOS 1982)

Art. 101 defines piracy as performing, participating or inciting, illegal acts of violence, detention or depredation (an act of attacking) for private ends by crew or passengers aboard a private ship or aircraft, against another ship or aircraft, or person or property thereon, either on the high seas or other area outside of any state's jurisdiction (i.e., *terra* or *res nullius*).

Limitations of Art. 101

I. The illegal acts must be 'committed for private ends' –

- Not for public or political ends

- Acts committed by recognized governments, belligerents or even insurgents do not constitute *piracy jure gentium*.

- E.g., the seizure in 1961 of the Santa Maria by captain Galvao, the Portuguese political dissident, did not fall within the meaning of piracy in IL

- E.g., The *Achille Lauro* incident in 1985, in which an Italian cruise liner was seized by PLO hijackers who, after holding the crew and the passengers as hostages, demanded Israel to release the Palestinian prisoners, cannot be regarded as piracy because the act of hostage takers were politically motivated

Note: The *Achille Lauro* resulted in promulgation of Rome Convention on the Suppression of Unlawful Acts against the safety of Maritime Navigation

2. The illegal acts **must be on the HS or on a territory which is *terra nullius***).
 - If the illegal acts took place within a State's territorial waters that State (that is not piracy but **armed robbery against ships** . **In the case of armed robbery against ships only the coastal state** would be permitted to prosecute the offenders.
3. In the commission of the illegal acts two ships must be involved, a private ship and the victim ship (I.e., **"two-ship rule"**).
 - So 'mutiny' (i.e., mere seizure of a ship by its crew or passengers) is not piracy in IL.
 - A ship under the control of mutineers may be arrested on the HS only by the flag State and not by other State.
 - If, however, the mutineers, even if they are the crew of warships or government ships, use the ship against another ship for the purpose of carrying out the crime of piracy then they can be regarded as pirates and their offence continues as long as the crew that committed the act of piracy are still in control of the ship [Arts.102-3].

Universal jurisdiction

- Art. 105, UNCLOS 1982:

- Any state may seize pirate ships or aircraft and punish the crew.

- Art. 107, UNCLOS 1982:

- this seizure must be made with a state's warships or clearly marked government vessels

Art. 106, UNCLOS 1982:

- The seizing state will be liable to compensate the flag state of a ship that has been seized without adequate grounds

- Pirates lose the protection of national state

In *Re Piracy Jure Gentium* [1934] AC 586], Privy Council held: a person guilty of such piracy has placed himself beyond the protection of any State. He is no longer a national, but *hostis humani generis*

- Many States have enacted special statute to deal with the crime of piracy

- In **Malaysia** the crime of piracy falls within the ambit of the Penal Code

- punish them under the Penal Code

- Cts in Malaysia confirmed that piracy *jure gentium* is an offence committed on the high seas and all States can exercise jurisdiction over such offence^[1].

(*Regina v Tunku Mahomed Saad & Others*, [1840] 2 Ky.Cr. 18; *Regina v Nya Abu & Others*, (1885-1890) 4 Ky 169; *Muka Bin Musa v Public Prosecutor*, [1964] 30 MLJ 275).

- Piracy still occurs in **south China sea**

-

6. South China Sea (SCS) Tensions



- **SCS** is a highly contested area
 - The contesting states are:
 1. China
 2. Malaysia,
 3. Philippines,
 4. Vietnam,
 5. Brunei and
 6. Taiwan (itself is claimed by China).
 7. Indonesia
- All the contesting or disputing States are parties to the 1982 UNCLOS
- **SCS** dispute represents a “**security flashpoint**” with **global consequences**
 - A dispute that may potentially escalate into armed conflict between regional states over territory or marine resources
 - It may even lead to military confrontation between China and the U.S
 - Recently, the tensions have amplified since the **U.S. Air Force commenced flying daily missions over the SCS**, whilst at the same time **China keeps building up its surface- to- air missiles and fighter jets** (The Associated Press, 2016)

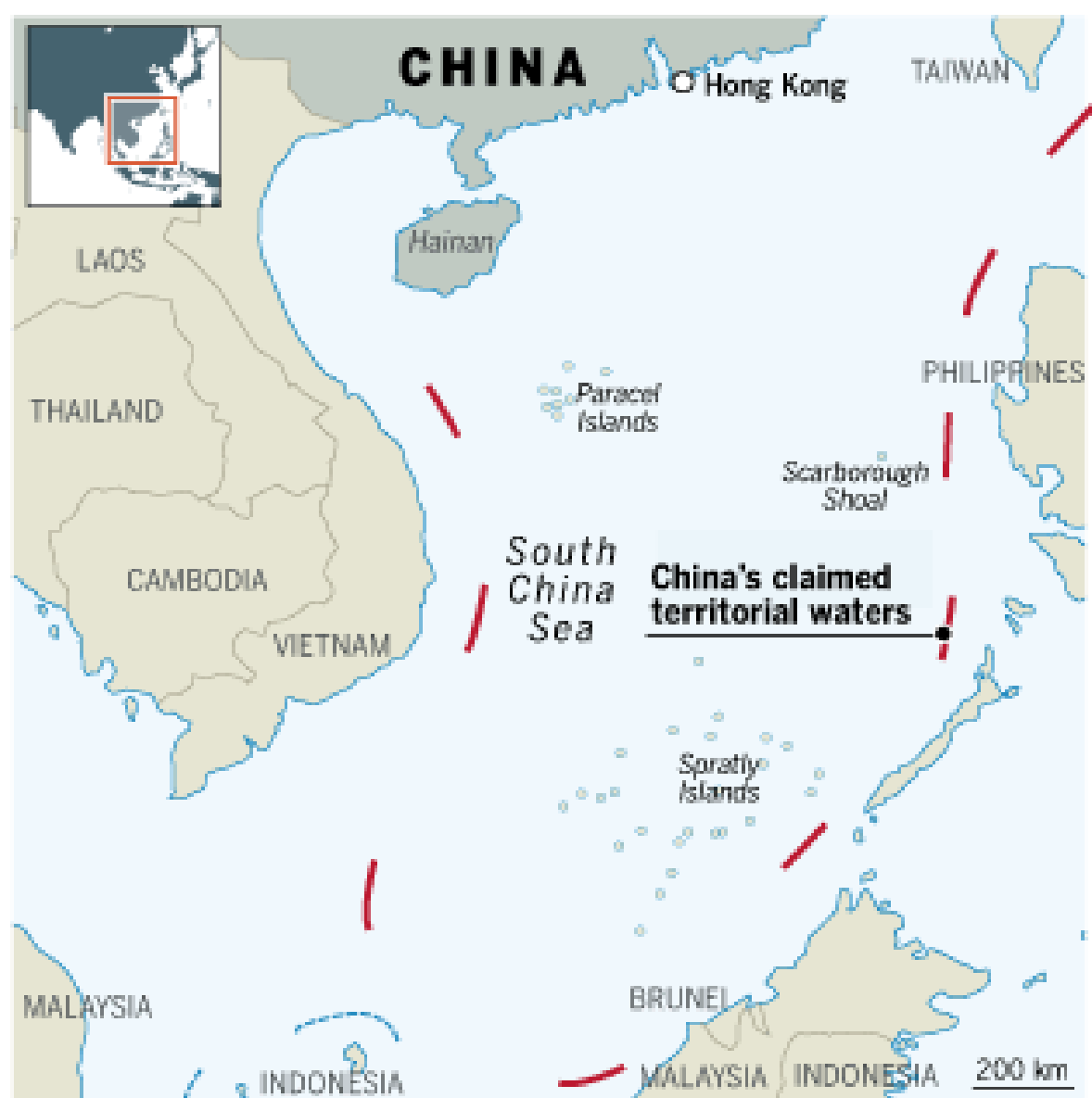
2. Why the South China Sea is so hotly contested?

SCS, which comprises a stretch of roughly 1.4 million square miles in the Pacific Ocean, is globally important for 3 reasons:

1. the SCS is a prominent shipping passage with **\$5.3 trillion worth of trade cruising** through its waters every year. Almost **50% of global oil tanker shipment passes through SCS** which sees **3 times more tankers traffic than the Swiss Cannel** and **more than 5 times then that of Panama Cannel** making it **one of the most busiest international sea lanes**. Moreover, more than half of the world's top 10 shipping port are also located around SCS.
2. Below the surface of SCS lies **oil** and natural **gas reserves**. According to the world Bank the South China Sea holds a proven oil reserve of at least **7 billion Barrels of oil** and **an estimated 900 trillion cubic of natural gas**, **which offers tremendous economic opportunity for smaller nations, like Malaysia, Philippines and Vietnam and energy security to china's larger economy**.
3. The South China Sea also contains rich **fishing grounds**.

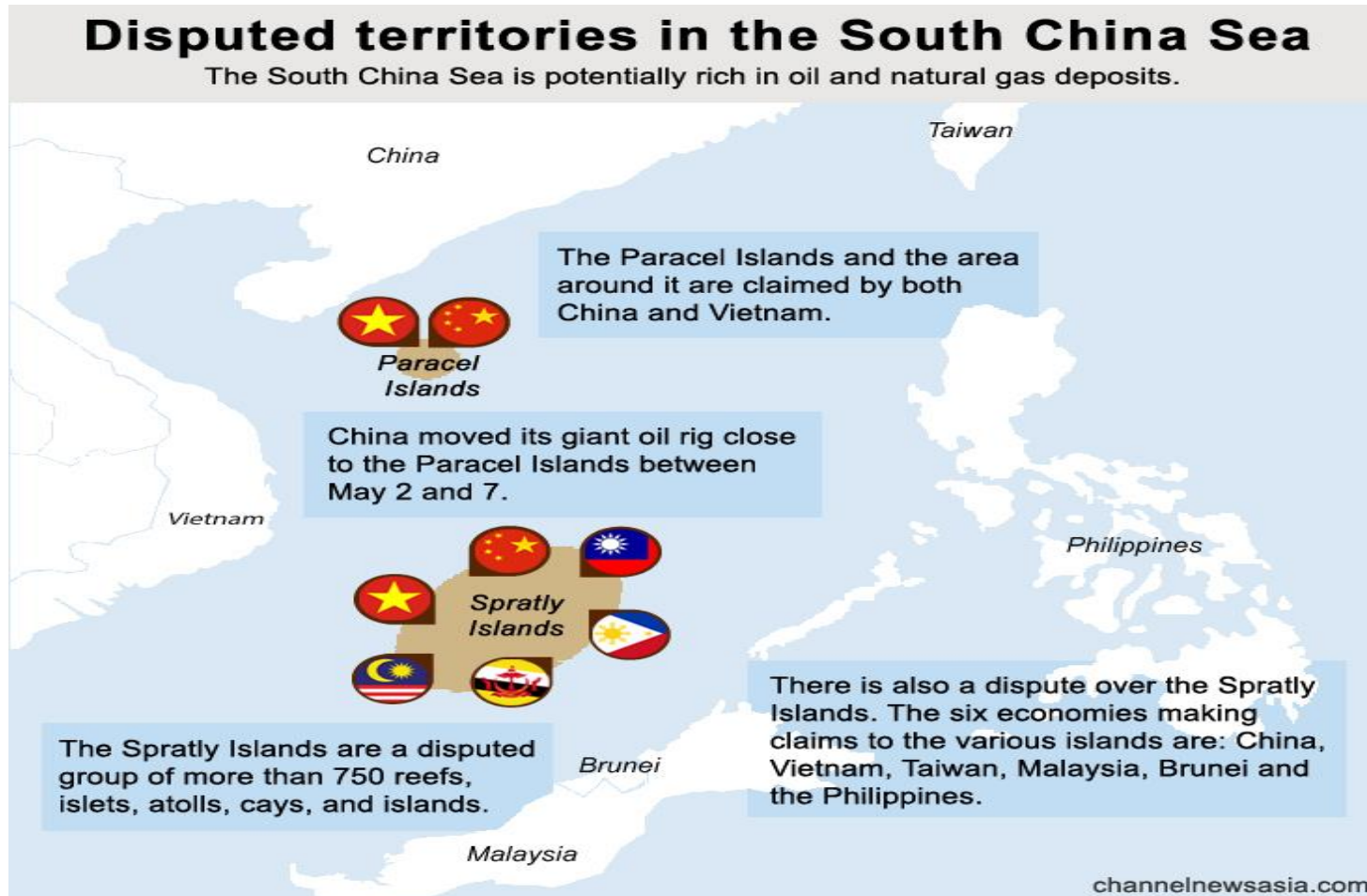
These are the reasons why the claimant states, particularly, China are assertive in their claims. China, as demonstrated by its **9 Dash Lines**, claims sovereignty almost over all the SCS.

China's Claim: The 9-dashed Lines



- As indicated in the 9-dashed Lines, China claims almost all of the SCS.
- The 9 Dashed Lines submitted by China to UN in 2009 **without** explaining its legal basis
- China's intention is ambiguous and unclear
- The 9 Dashed Lines may mean
 1. A claim of sovereignty over all the enclosed islands - **Islands have territorial sea, contiguous zone, EEZ & CS of their own** (Art. 121 (1), (2), UNCLOS 1982)
 2. Drawing a de facto national boundary which in effect **make the entire SCS either China's territorial sea** with right of innocent passage but not freedom of navigation OR
 3. Treating the entire SCS as China's **internal water, over which it will have full sovereignty**

China's 9 Dashed Lines encloses the **Paracel Islands, Spratly Islands & most of the waters around these islands.**

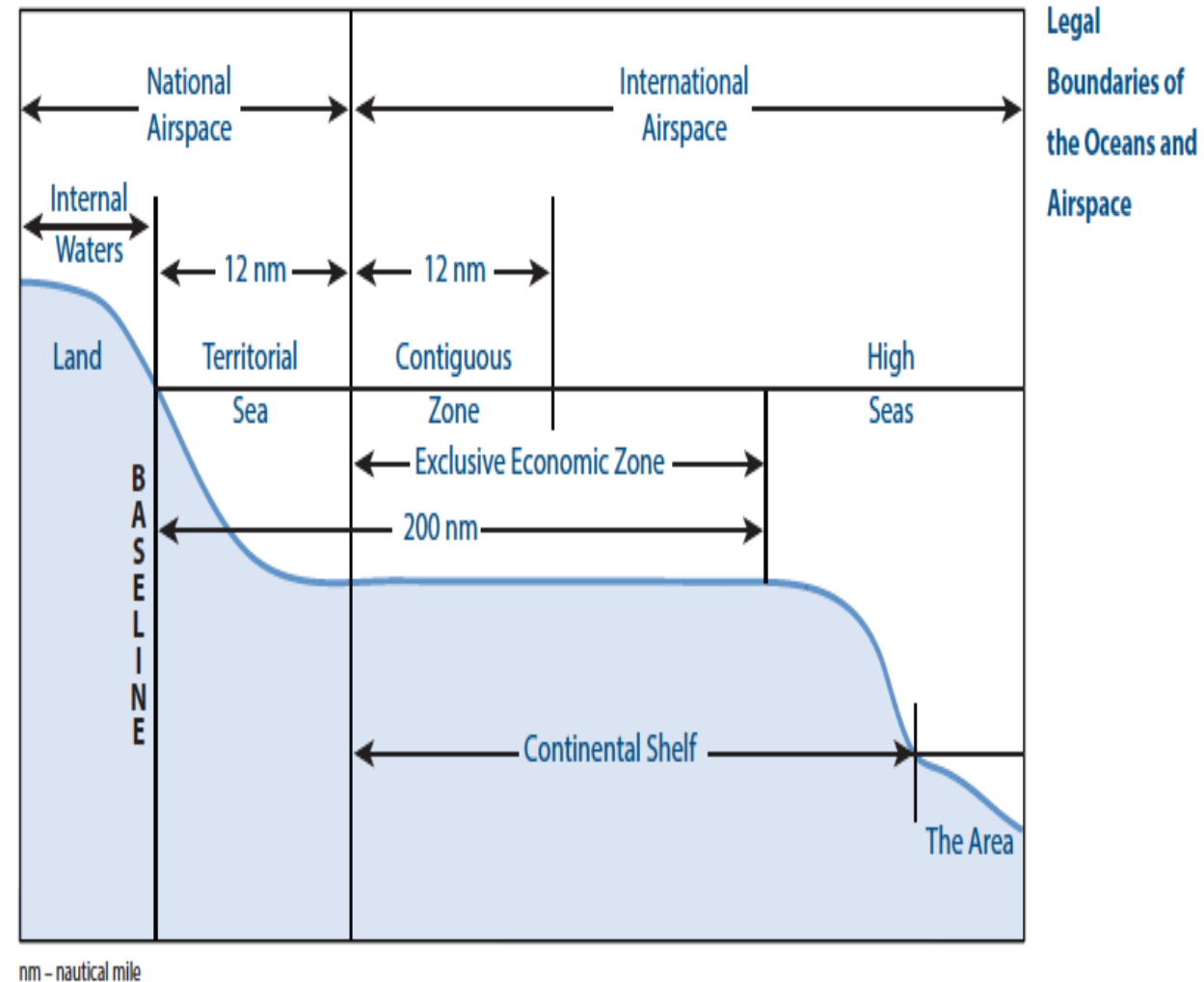


- An island is a naturally formed area of land surrounded by water, which is above water at high tide.
- **Islands have territorial sea, contiguous zone, EEZ and CS of their own** (Art. 121 (1), (2), UNCLOS 1982)

If China's 9-dashed lines claim successful it would have huge implication on other claimant states:

- **Malaysia** would lose about 80% of its EEZ in Sabah and Sarawak facing the SCS, as well as most of its active gas and oil fields in the same area
- **The Philippines would** lose also about 80% of its EEZ facing the West Philippine Sea
- **Vietnam would lose** about 50% of its total EEZ.
- Brunei loses about 90% of its total EEZ.
- **Indonesia** would lose about 30% of its EEZ facing the SCS in Natuna Islands, whose surrounding waters comprise the largest gas field in Southeast Asia.
- **China says history backs up its claim, as prior 1930 nobody claim to have sovereignty except China over these waters and islands.**

However, China's claim is not legally defensible simply because most of the islands or maritime features it claims are located within the maritime zone of other claimant states. **China's 9-dashed lines are not measured from land & thus China cannot claim TS, EEZ or CS.**



China's claim of historic rights over the maritime zones in the SCS has no legal basis

- legally speaking, historic rights or historic title cannot be invoked to claim EEZs or CSs.
- The creation of the EEZ under UNCLOS, with “sovereign rights” granted to the adjacent coastal state, extinguished all historic rights or claims by other states to the EEZ of a coastal state.
- The word “exclusive” in the term EEZ means the economic exploitation of the zone is exclusive to the adjacent coastal state. No one may exploit the natural resources in the EEZ without the express consent of the coastal state (Art. 77[3], UNCLOS).

China's 9-dashed lines are not measured from baselines along its coast, and thus do not comply with the basic requirement under UNCLOS for validly drawing maritime zones.

- The well-entrenched doctrine in the law of the sea is that **“the land dominates the sea.”**
- This means that for non-archipelagic states like China, **all maritime zones must be “measured from baselines” “along the coast”** of continental land, island or rock (Arts. 3, 57 & 76, UNCLOS).
- China cannot claim to have sovereignty over the sea.

China cannot erect artificial Islands on the maritime features that are within the EEZ of another State

Mischief Reef (in EEZ of Philippine)
Chinese “Naval Base”

1990s



2010s



Artificial Islands:

- Only the adjacent coastal state has the right to create artificial islands, or erect structures on LTEs, within its EEZ or CS (Arts. 60 & 80, UNCLOS)
- Thus, such artificial islands or structures put up by other states within the EEZ or CS of a coastal state are illegal under UNCLOS.
- Artificial island have no TS, CZ, EEZ or CS of its own

All the Islands, rocks and other maritime features in the SCS which **Malaysia** controls or have a claim, china also claim them.

• The following features are controlled by Malaysia but claimed by others:

• — **ISLAND** → (An Island has TTS, CZ, EEZ & CS of its own)

- **Swallow Reef** (Within Malaysia's EEZ) – Controlled by Malaysia but claimed also by Philippines, China & Vietnam

- **Commodore Reef/Rizal Reef** (Now is under control of Philippine)

- **Amboyna Cay and -Barque Canada Reef** (Now Vietnam control both islands)

• — **ROCKS** →

- **Erica Reef**

- **Investigator Shoal**

- **Mariveles Reef**

• Rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or CS but can have territorial sea

(Art. 121 (1), (2) & (3), UNCLOS 1982)

• Any **artificial creation** of the conditions of “human habitation” or ‘economic life’ does not elevate rocks to the status of islands.

• — **LOW-TIDE ELEVATIONS (LTE)** (others also have claim) →

- **Dallas Reef**

- **Ardasier Reef**

• LTE has no territorial sea or other maritime zone (Art. 13, UNCLOS)

• An LTE beyond the territorial sea is not subject to appropriation by any state (**Nicaragua v. Colombia**, ICJ 2012)

U/r IL a state's border must either be a land territory, a river or a territorial sea – which are all subject to its full sovereignty. A state cannot appropriate as its sovereign territory a fully submerged area beyond its territory

The maritime features in the SCS which Malaysia claims are within its EEZ

- This means Malaysia can
 - Exercise right of **hot pursuit**
 - combat terrorism
 - catch Fish
 - conduct scientific research, ect

Sadly, however, the SCS area is a disputed area – a dispute that should be resolved by peaceful means, as required by international law.

- **Peaceful dispute resolution mechanism**
 - Direct talks between the parties (**negotiation**).
 - If they fail:
 - submission of the dispute to the **International Tribunal for the Law of the Sea**
 - adjudication by the **International Court of Justice**
 - submission to binding **international arbitration** procedures
- **Coercive means is not a good option to settle this dispute**
- **Smaller claimant states may invoke their collective self-defence** (Art. 51, UN Charter)

In 2002 **China** and the ten **ASEAN** states signed the non-binding **Declaration** of the **Conduct** (DoC) of Parties in the South **China** Sea which noted that **the South China Sea dispute shall be resolved “in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea.”**

But after the Philippines filed in January 2013 its arbitration case against China under UNCLOS, China’s Foreign Minister Wang Yi declared that the South China Sea dispute should be resolved in accordance with “historical facts and international law.” China Insists on Respect for Historical Facts

7. Singapore and Malaysian's territorial and Water Supply Disputes

- Issues:
 - Land Reclamation
 - Territorial claim
 - Airspace
 - Water Supply
-
- All these disputes have to be settled through peaceful means.

1. Land Reclamation

- Since its independence in 9 August 1965 has **increased its land mass**, through land reclamation, by **23-25%**
- **Marina Bay** is a good example of land reclamation.
- UNCLOS 1982 is silent about land reclamation. It neither allows nor prohibit land reclamation
- ICJ's jurisprudence recognises land reclamation as an act 'à titre de souverain'
- In *Pedra Branca, Middle Rocks and South Ledge (Malaysia/Singapore)* [2008] ICJ Reps [274] the court stated that land reclamation within internal waters is sovereign right
- Another case at point is *Straits of Johor (Malaysia v Singapore)* **ITLOS Case No. 12 2003**
- In this case Singapore's land reclamation project at either end of the [Straits of Johore](#), which separate the two countries, was challenged by Malaysia. Malaysia claimed that Singapore's plans infringed on Malaysian dominion and were detrimental to both the environment and the livelihoods of local fishermen, and legally challenged Singapore under the [UN Convention on the Law of the Sea](#). The dispute was settled after arbitration in 2005 – Malaysia agreed to drop the case and Singapore agreed to take reasonable steps not to harm marine environment.

2. Territorial Disputes: Should be settled bilaterally

- Normally a country can claim up to 12 miles (19.31km) of sea limit from its coastline, a line that is drawn at the time when the water is at low tide.
- However, Malaysia and Singapore who are close together, they do not have that luxury and that is where the problem lies.
- The two neighbouring countries yet to properly delimit their territorial sea (TS).
- Delimitation of the TS of the neighboring Sts. is governed by **Art. 15, UNCLOS**:
 - - delimited by agreement (**No agreement bet. M & S**)
 - -in the absence of agreement do not *extend TS beyond the median line every point of w/ch is equidistant from the nearest points on the baselines from w/ch the breadth of the TS is measured.*
- **Malaysia's alteration to the Johor Port limits** is within its own maritime territory. As sovereign state, Malaysia has the right to expand its port within its waters. Malaysia's position is in line with its international obligation under international law.
- However, Singapore disagrees with Malaysia's position. Singapore contends that its borders had been extended through land reclamation and that Johor Baru port alteration encroached into its territorial area. In a tit-for-tat action, Singapore decided to extend the Singapore Port Limits off Tuas – an extension which Malaysia does not recognise considering it as a violation of its sovereign right, as the extension encroaches into Malaysia's TS. Malaysia has the right to protect and defend its territorial sovereignty.
- Malaysia rightfully contends that under international law land reclamation does not extend a state's baselines. ,
- *"It is trite law that land reclamation does not extend a state's base points and/or baselines."* Anthony Loke, Minister of Transport Malaysia, Malaysia Today, December 5, 2018 <https://www.malaysia->

3. Airspace:

- **Since 1974, air traffic in southern Johor State, near the Singaporean border, has been handled by Singapore.** Singapore's plan to expand Seletar Airport, the city-state's second airport, which is currently used for international charter flights, private flights, medical evacuation, maintenance, repair and overhauls, as well as airfreight.
- Malaysia says Seletar Airport, located in northern Singapore near the Malaysian border, extension plan means the increase in air traffic could harm Johor's development. "We are not against Seletar Airport, but as far as the descent flight path, it cannot be over [the southern Johor district of] Pasir Gudang," Loke said.
- "It is now time that we regain our control of airspace in Malaysian territory. Over the years we have upgraded our air traffic control and we are capable to do so."
- Malaysia rightfully claims that the expansion of the Seletar Airport harms sovereignty and the national interest of Malaysia
- Malaysia will discuss its plans in greater detail with Singapore, and if necessary refer the matter to the International Civil Aviation Organization.
- In November, the Malaysian government rejected a plan by Malaysia Airlines' budget carrier Firefly to operate out of Seletar.
- Singapore's Transport Ministry, in a statement released Tuesday, said, "The current airspace arrangements have been working well and have facilitated growth. Hence, any proposed changes will impact many stakeholders."

Water supply agreement between Malaysia and Singapore

- There have been 3 water supply agreements between Malaysia and Singapore:
- **1927 Agreement** (no longer valid-, as it was declared void by the 1961 agreement)
- **1961 Agreement** (was valid for 50 years. Expired on 2011)
- **1962 Agreement** (Valid for **99 years**- will **expire in 2061**)
- **1990 agreement**
This was signed on 24 November 1990 between the Public Utilities Board (PUB) of Singapore and the government of the state of Johor.²⁴ It was supplementary to the 1962 pact and would also expire in 2061.

Dispute Resolution

- All the disputes highlighted above have to be settled peacefully
- By diplomatic means
 - Negotiation
- Or by legal means
 - Arbitration
 - Or
 - Judicial Decision
- Not by coercive means

Thank you
For your Kind attention