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## **Spratly Islands**

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## A. Geography

**1** The name Spratly Islands ('Spratlys'), referring to an erratic cluster of various features located in the South China Sea, is based upon accidental historic tradition, not upon compelling geographical reasons: Spratly Island proper, lending the whole agglomeration its name, lies in the extreme south-westernmost corner of the entire group and measures only 13 hectares ('ha'), making it merely the fourth-largest formation among the Spratlys. It is exceeded in size by Itu Aba 46 ha; Thitu 37.2 ha and West York 18.6 ha. There are only 12 fully-fledged islands in terms of solid, not man-made, original substance. The total land area of the cluster is less than 3km<sup>2</sup>. No land area of the South China Sea, Spratlys included, lies more than 200 nautical miles ('nm') from the nearest national baseline. Hence no outer limit of any → *Exclusive Economic Zone* can be delineated without infringing upon a possible claim raised by the respective adjoining or opposite neighbour. Only if Scarborough Reef (labelled by the Chinese as an island: Huangyandao meaning Yellow Rock Island) were indeed a mere rock (→ *Rocks*) in the adverse sense of Art. 121 (3) United Nations Convention on the Law of the Sea, (see also → *Law of the Sea*) entitled to a → *territorial sea* only, would there remain within the South China Sea a small → *high seas* area of 5,500 nm<sup>2</sup> wedged in the gap beyond the 200 nm national claims.

**2** Estimations concerning the Spratlys vary from circa 150 to more than 400 separate drying and/or submerged formations. → *China* and → *Taiwan* (treated as a separate claimant here) plus → *Vietnam* claim → *sovereignty* over the entire Spratlys. The Philippines, Malaysia and Brunei, the latter informally, claim various, differently configured and disturbingly overlapping parts of the Spratlys, while Indonesia is only concerned with the Natuna Archipelago at the South China Sea's southern rim. China asserts that only four countries claim sovereignty over the Spratlys (China and Vietnam in toto, Malaysia and the Philippines extensive parts of them), thus neglecting Brunei and Indonesia. But the Chinese concede that overlapping claims over the Exclusive Economic Zone and the → *continental shelf* between China and eight countries (North- and South-Korea, Japan, Vietnam, Philippines, Malaysia plus Brunei and Indonesia) do exist. The multipartite dispute can only be explained by highly speculative expectations concerning abundant living or non-living resources such as offshore oil, natural gas and minerals situated there. Scientists all over the world are largely at variance as to the realistic quantities that will ever be accessible by technical means.

## B. Territorial Claims

**3** The → *Peace Treaty with Japan (1951)* ('San Francisco Peace Treaty') did not determine a final beneficiary for the Spratlys. The Democratic Republic of Vietnam's ('DRV') Deputy Minister for Foreign Affairs Ung Văn Khiêm's alleged statement of 15 June 1956 (Chemillier-Gendreau 128) and Hanoi's ensuing acts and declarations, such as Premier Phạm Văn Đồng's statement of 14 September 1958 (Chemillier-Gendreau 129) combined with later DRV practice of not merely acquiescing in, but outright supporting China's 1958 Declaration on China's Territorial Sea, applied to both the → *Paracel Archipelago* and Spratlys. This prior waiver devaluated unified Vietnam's (Socialist Republic of Vietnam 'SRV') later legal claims that were accompanied by SRV naval activities. Today Vietnam has the advantage of occupying by far the highest number of Spratly features, ie about 38, 6 among them fully-fledged islands, eg Namyt (occupied by SRV soldiers using a submarine base of 5.3 ha), Spratly Island proper and Southwest Cay, where the SRV erected its first lighthouse in the Spratlys in 1993, (see also → *Lighthouses and Lightships*) built an airstrip and a three-storey garrison building.

**4** China is at present in an inferior position de facto: it allegedly holds nine reefs, but presumably no initially fully-fledged island, man-made ‘upgradings’ and the Itu Aba Taiwan-occupation issue put aside. (see also → *Artificial Islands, Installations and Structures*) The main solid-made bridgeheads among Chinese-held features are Fiery Cross Reef (Yongshujiao), a 14-mile long formation having 1- to 2-metre high rocks—former low-tide elevations, but upgraded with a navy port by piling up and cementing coral structures, building an airstrip and a marine observation station in 1988 where coconut, firs, banyan trees etc are planted; the Gaven Reefs (Nanxunjiao, Duolujiao), part of Tizard Banks, occupied in 1992, then with a 2-metre high sand dune and reefs submerged at high tide, all ‘upgraded’ clandestinely with cement and a raised metal frame, bearing two-storey buildings on top; Mischief Reef (Meijijiao), first claimed by the Philippines, but taken by the Chinese in 1995, who built a wooden hut on stilts here as a makeshift fishermen’s shelter. Until 1999, there was a conflict involving the Chinese and the Filipino navy, the Philippines protesting that Mischief Reef had been modified into a Chinese outpost with a three-storey concrete fortress, the intention being to push forward towards the 130nm distant Philippines proper; and Subi Reef (Zhubidao) with three-storey buildings, wharfs, helipad, all made by China allegedly in order to secure full insular status.

**5** In addition to five reefs and one shoal, Malaysia occupies Swallow Reef, around which it established a territorial sea zone that includes neighbouring heavily fortified Amboyna Cay (1.6 ha). Swallow Reef was ‘upgraded’ excessively by metamorphosing it into an ‘island’ tourist resort with an 1.5 km airstrip, gardens, plantations and fishing port, guarded by 100 soldiers. Many other features and low-tide elevations claimed by Malaysia were surreptitiously upgraded in the past for leisure activities such as diving, and were kept tightly under military surveillance. Behind this cover, Malaysia has meanwhile developed 18 oil fields and 40 gas fields.

**6** The Philippines control seven fully-fledged islands (terra firma of at least 84 ha) and two reefs, using as headquarters Thitu Island, the second-largest Spratly island, according to Manila’s statements, permanently inhabited by several hundred Filipinos who allegedly elect municipal councils there on a regular basis. Brunei claims Borneo’s offshore Louisa Reef and presumably (SRV-claimed) Rifleman Bank, under its own 1984 Fishery Zone, (see also → *Fishery Zones and Limits*) but has not occupied any feature so far. Taiwan has kept Itu Aba, the largest island of the Spratlys—which has supplies of fresh water and vegetation—occupied uninterruptedly since 1956 by an armed Taiwanese garrison, compounds and solid houses inhabited by soldiers and auxiliary civilians.

**7** An assessment suggests that all claimants are firmly determined to stick to the → *status quo*, continuing to hold occupied, as effectively as natural conditions in situ allow, any feature they are holding now, be it a fully-fledged island or not (in the latter case using platforms, sand bar buildings, huts on stilts, etc). They stress permanent occupation by their own personnel, ‘administration-based sovereignty’, and usually commercial life thereon (often it is unclear whether the latter argument applies to the features themselves or the marine resources around them) and, more informally, strategic vital national interests (see also → *Sea Lanes*). Claimants invoke principles applicable to most remote mini-features such as those adjudicated in the → *Clipperton Island Arbitration*, the → *Minquiers and Ecrehos Case*, and the → *Eritrea-Yemen Arbitration*. An enigmatic concept is that of the ‘U-shaped nine-segments broken line’ encircling virtually the entire South China Sea as having been Chinese ‘for ages and ages’ on relevant maps for decades. Repeating the ‘U-line formula’, China has never officially clarified its legal standpoint in this

affair, but uses references such as ‘vested historic rights of China’ over the South China Sea and/or at least the features found therein.

## C. Outlook

8 There is no consensus among the claimants to seek adjudication by a supranational or neutral judicial body or arbiters. (see also → *Judicial Settlement of International Disputes*) The large number of disputed issues demands at least an economically fruitful political arrangement, preferably by way of equally sharing energy resources without prejudice to respective territorial or maritime claims, rather than a verdict allotting final land and sea sovereignty titles based on precarious ‘territorial *effectivités*’ of long ago, cf parts of the *Eritrea-Yemen Arbitration*. Any strict adjudication would bear the risk of splitting and antagonizing winners and losers within the consensus-based → *Association of Southeast Asian Nations (ASEAN)*. The ASEAN achieved one first encouraging step in the right direction by agreeing, on 4 November 2002, on the legally non-binding ASEAN Declaration on the Conduct of Parties in the South China Sea. (see also → *Non-Binding Agreements*) A crucial point was that China for the first time participated in such multilateral bargaining. The ASEAN Declaration on the Conduct of Parties in the South China Sea reflects a common interest in upholding the status quo: signatories pledged to refrain from ‘action of inhabiting on the presently uninhabited ... features’ (at para. 5). It was a beginning, yet regrettably no ban on erecting new structures or augmenting already stationed staff on occupied features was pronounced. A yet more reliable *modus vivendi* promising a → *peaceful change* for longer periods within the area might develop within the framework of the ‘ASEAN plus’ process, ie with the slowly increasing participation of China. In the meantime interim accords could be construed, whether on the basis of Joint Development Areas (similar to that which covers the Gulf of Thailand), or by transient multipartite gentlemen’s agreements on equitably sharing exploration or extraction models. (see also → *Non-Binding Agreements*) Such provisional transient arrangements are all the more rewarding at the moment, when the prices of hydrocarbon products are soaring. A cost-benefit analysis could reveal that exorbitant investment efforts in far offshore, deep-sea and oil-sands reservoirs, all of them very difficult and costly to extract, may turn out to be economically reasonable enough for all partners involved. Genuine condominium models might not be a viable and reliable option now (see also → *Condominium and Coimperium*). But at the same time, unilateral activities of any claimant may generate incalculable political risks (eg on 11 April 2007 China expressed its ‘firm determination’ to extract oil in the Spratlys’ area unilaterally in 2008). There are reports of a tripartite Sino-Filipino-Vietnamese seismic survey currently in progress, with the target of exploring deep-sea hydrocarbon deposits with no prejudice to any territorial and/or maritime claims. In the long run, however, Irish experts O’Hagan and Long may turn out to be right with their 2005 statement: ‘Joint development of offshore hydrocarbons with neighbouring states in disputed areas has proven unsuccessful and it remains to be seen if states in the China Seas region are committed to adopting an integrated approach to resolve outstanding issues at a regional level’ (Long and O’Hagan at 109).

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