

Main Finding 6:

Although the United Nations Convention on the Law of the Sea (UNCLOS) has been ratified by the regional states, it is not respected

The United Nations Convention on the Law of the Sea (UNCLOS), which was signed in 1982 and entered into force in 1994, has been ratified by all states with claims in the Spratly area (except Taiwan, who has unilaterally declared that it will abide by its rules). The responsibility of securing the application of UNCLOS and other important treaties is completely in the hands of the states. However, the states around the South China Sea have not fulfilled their obligation to define their maritime zone claims in accordance with the rules established in UNCLOS. Their claims are vague and ill defined. The precondition for establishing a precise claim to 12 nautical-mile territorial waters, a further 12 nm contiguous zone, a continental shelf and a 200 nm Exclusive Economic Zone is to draw proper baselines along the coasts and utilise straight baselines only where UNCLOS Article 7 is applicable. The Philippines (in the same way as Indonesia) forms a case apart. It has been recognised as an 'archipelagic state' and thus has the right to use archipelagic baselines running between basepoints on the outermost islands. The Philippines has, prima facie, done so in accordance with the rules established in UNCLOS, but has not made clear that it is using the principle of archipelagic baselines. Thus it has also refrained from fulfilling its duty to designate international sea-lanes through its archipelagic waters. Malaysia, although having published a precise claim to a continental shelf and EEZ, has not published any baselines. Vietnam, China (and Taiwan) have all made illegitimate use of straight baselines. Vietnam's 1982 baseline legislation, published just before UNCLOS was signed, is one of the most radical in the world. In 1996, the PRC published an illegitimate system of uniquely straight baselines, and even drew a line around the Paracel archipelago, as if the Paracels themselves were an archipelagic state. The ROC (Taiwan) published a similarly illegitimate system of baselines in 1999. These illegitimate baselines are likely to impede rather than facilitate the resolution of disputes. At the same time they are unlikely to enhance national interests. Zones based on illegitimate baselines will not be respected by other seafaring states. Illegitimate baselines will not be valid in conflicts involving other states. And illegitimate basepoints and baselines will be considered unacceptable by the opposite party in negotiations concerning median lines. Generally, when analysing which legal position is justifiable within the framework of international law, and what the implications of such a position are, an individual state is left with wide discretionary power to distort the international norm, but this makes it more difficult to reach settlements of disputes on the basis of a correct interpretation of the law.

Relevant publications from the project

- **Johan Henrik Nossum**
«[Baselines in the South China Sea](#)» in Knut Snildal (Comp.): Perspectives on the Conflict in the South China Sea, SUM Workshop Proceedings, August 1999
- **Johan Henrik Nossum**
[Straight Baselines of Vietnam](#) A master thesis, submitted to the Department of Public and International Law, University of Oslo, Spring 2000. Published in the SUM Dissertation & Thesis series, No. 12/2000 (ISSN 0806-475X).

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