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Encroachment on Navigational Freedoms

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Introduction

I was asked to address the following four questions:

- Will there be increasing environmentally oriented measures adopted at the International Maritime Organization (IMO) that will encroach on navigational freedoms?
- Will there be increasing coastal State efforts to regulate military-related activities in the exclusive economic zone (EEZ), citing environmental concerns?
- Will excessive coastal State claims continue to proliferate driven primarily by resource needs?
- Will continental shelf disputes proliferate as nations attempt to make broad margin claims beyond 200 nautical miles (nm)?

I believe the unfortunate answer to all four of these questions is most definitely “yes,” and will cite a number of examples supporting my concerns.

IMO Environmental Measures

My criticism of the IMO¹ in this article is not intended to disparage all the great work the IMO has done over the past five decades to improve safety at sea and

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protect the marine environment.² Conventions, such as the International Convention for the Safety of Life at Sea (SOLAS),³ the International Convention for the Prevention of Pollution from Ships and its Protocol (MARPOL 73/78),⁴ the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention)⁵ and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers⁶ have greatly enhanced safe, secure and efficient shipping, while at the same time protecting the marine environment from pollution from ships. However, since the 1990s a growing concern over marine pollution has put greater pressure on the IMO to adopt environmentally based routing measures that encroach on traditional freedoms of navigation guaranteed to all States by the 1982 United Nations Convention on the Law of the Sea (1982 LOS Convention).⁷ That pressure, coupled with the IMO's focus on getting to "yes"—the IMO "spirit of cooperation"—has resulted in the unwillingness of member States to adequately scrutinize other States' proposals for fear that their own proposals may not be supported at a later date. In other words, "you scratch my back and I'll scratch yours." As a result, proposals have been adopted even though they fail to adequately demonstrate that international shipping poses a serious threat of damage to the area or that additional protective measures are truly necessary.

In 1995, SOLAS Chapter V was amended to add a new Regulation 11 that allows coastal States to implement compulsory ship reporting systems that are adopted by the IMO.⁸ The new regulation entered into force on January 1, 1996. Since 1996, there has been a proliferation of mandatory ship reporting systems adopted by the IMO—a total of sixteen. All of the systems were justified, in part, by the coastal State citing the need to protect the marine environment. Although there was clearly a demonstrated need for some of these systems, others were adopted with only minimal scrutiny by the relevant IMO subcommittees and committees that reviewed the proposals.

In effect, mandatory ship reporting systems are nothing more than prior notice and consent regimes for ships transiting coastal State territorial seas and EEZs. Despite long-standing US policy regarding the invalidity of such regimes, the US delegation did not oppose the establishment of any of these systems. In fact, the United States had its own mandatory ship reporting system adopted by the IMO in 1998 to protect the northern right whale from the danger of collision with ships off the US East Coast. The reporting system, which was vehemently opposed by the US Department of Defense (DoD) in the interagency process, became operational in 1999.

There has similarly been a proliferation of IMO-approved particularly sensitive sea areas (PSSA). A PSSA is an area that needs special protection through action by

the IMO because of its significance for recognized ecological (unique or rare ecosystem, diversity of the ecosystem, or vulnerability to degradation by natural events or human activities) or socioeconomic (significance of the area for recreation or tourism) or scientific (biological research or historical value) reasons, and which may be vulnerable to damage by international maritime activities. Guidelines for designating PSSAs are contained in IMO Assembly Resolution A.982(24).⁹ When an area is approved as a PSSA, associated protective measures are adopted to control maritime activities in the area. Such measures can include areas to be avoided (ATBA), mandatory ship reporting or mandatory ship routing systems, no anchorage areas, establishment of vessel traffic services and other IMO-approved routing measures.

The first PSSA—the Australian Great Barrier Reef—was designated in 1990. The Great Barrier Reef was clearly an area that warranted designation as a PSSA. However, since 1990 there has been a proliferation of PSSA designations. The ten additional PSSAs that have been designated since 1990 are Sabana-Camagüey Archipelago, Cuba (1997); Malpelo Island, Colombia (2002); Florida Keys, United States (2002); Wadden Sea, Denmark, Germany and the Netherlands (2002); Paracas National Reserve, Peru (2003); Western European Waters (2004); extension of the Great Barrier Reef PSSA to include the Torres Strait (2005); Canary Islands, Spain (2005); Galapagos archipelago, Ecuador (2005); and Baltic Sea Area, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland and Sweden (2005).

The Malpelo Island PSSA is a perfect example of how the IMO “spirit of cooperation” can lead to bad results. The Colombian proposal was initially justified on the need to curtail illegal fishing in and around Malpelo Island—clearly not an adequate basis for a PSSA designation under A.982(24). Although the proposal was initially rejected, “interested States” assisted Colombia in revising its proposal to meet the requirements of A.982(24). The proposal was resubmitted and approved by the IMO the next year.

I would be remiss if I did not take the opportunity at this juncture to say that the United States is its own worst enemy in this area. The United States has recently submitted a proposal to the IMO to designate the Northwestern Hawaiian Islands Marine National Monument as a PSSA. Again, this was done over strenuous DoD objection in the interagency review process. If adopted by the IMO, it will become the largest PSSA in history, encompassing over 140,000 square miles of ocean space. Even though the monument is already protected by six ATBAs that were adopted by the IMO in 1980, the United States is proposing expanding the ATBAs and adding a ship reporting system around the entire monument.¹⁰ In my opinion, the US proposal fails to demonstrate that international shipping poses a threat of damage to the area, demonstrate that additional protective measures are

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necessary, establish that the size of the area is commensurate with that necessary to address the identified need and address how these measures will be monitored and enforced.¹¹

Another area of concern is the issue of compulsory pilotage in international straits. Previous efforts at the IMO to adopt such measures in straits used for international navigation have failed. However, on October 6, 2006, Australia implemented a compulsory pilotage scheme in the Torres Strait. Although the scheme is purportedly being implemented as a condition of port entry, failure to comply with the mandatory pilotage requirement can be enforced against ships transiting the strait the next time the ship enters an Australian port.¹² Several States, including the United States and Singapore, have filed diplomatic protests indicating that the regime is inconsistent with international law because it interferes with the right of transit passage through the strait. The United States, Singapore and other States maintain that the scheme is also inconsistent with the decision of the IMO Maritime Environment Protection Committee (MEPC) that adopted the measure. The MEPC resolution clearly states that it “recommends that Governments . . . inform ships flying their flag that they should act in accordance with Australia’s system of pilotage”¹³ Additionally, the intervention of the US delegation at the Fifty-Third Session of the MEPC stated that the MEPC resolution did not provide an “international legal basis for mandatory pilotage for ships in transit in this or any other strait used for international navigation.”¹⁴ This statement was supported by several other delegations.¹⁵

Perhaps the following quote from a Danish delegate sums up how the IMO will balance environmental protection and navigational freedoms in the future: “The failure of the IMO to shift focus in order to adapt to international opinion and current international priorities that go beyond freedom of the oceans and embrace coastal state environmental interests is regrettable.”¹⁶ I would suggest that this is not an isolated position. There are a number of nations, as well as some individuals within the US government, that think the same way.

Environmental Encroachment in the EEZ

The EEZ is a creature of the 1982 LOS Convention and was created for the purpose of giving coastal States greater control over the resources adjacent to their coasts out to 200 nm.¹⁷ Coastal States were also granted jurisdiction over artificial islands and structures, marine scientific research and protection of the environment in the EEZ.¹⁸ Unfortunately, over the years, some coastal States have attempted to expand their influence in the EEZ by attempting to exercise control over non-resource-related activities, including many military activities. This

encompasses a large area of the ocean that a little over twenty years ago was considered to be high seas. This is particularly true in the Asia-Pacific region, where there are a number of overlapping 200 nm zones.¹⁹

The fact that some coastal States have attempted to impinge on traditional uses of the EEZ is of particular concern to the Department of Defense. Some recent examples of interference with US military activities in the EEZ based on, *inter alia*, resource-related and environmental concerns include Chinese challenges to a US military survey vessel in the Chinese-claimed EEZ, Indian challenge to a US military survey vessel in the Indian-claimed EEZ, Malaysian and Indonesian opposition at the Association of Southeast Asian Nations Regional Forum meeting in Manila to a proposal by Singapore to conduct a maritime security exercise in the Indonesian EEZ, Indonesian challenge to a US warship operating in the Indonesian EEZ, and Burmese and Indian interference with a US military aircraft in their respective flight information regions.

There are also regional efforts under way to establish guidelines for military activities in the EEZ that are clearly inconsistent with international law. The most recent example is the Nippon Foundation/Ocean Policy Research Foundation Guidelines, which were developed between 2002 and 2005 by a group of individuals acting in their personal capacities.²⁰ The purported need for these non-binding voluntary principles is that naval activities at sea are expanding at the same time that coastal States are attempting to exercise increasing control over their EEZs. These opposing trends, it is argued, will result in a higher frequency and intensity of incidents and guidelines are therefore necessary to de-conflict maritime and coastal State interests in the EEZ. Some of the principles outlined in the Nippon Foundation guidelines that have absolutely no basis in international law include:

- Military activities in the EEZ should not
 - stimulate or excite the defensive systems of a coastal State;
 - collect information to support the use of force against a coastal State;or
 - involve deployment of systems that prejudice the defense or security of a coastal State, or interfere with or endanger the right of the coastal State to protect and manage its resources and environment.
- Major military exercises in the EEZ should be prenotified to the coastal State and the coastal State should be invited to observe the exercise.
- Military exercises should be limited to the adjacent high seas.
- Military activities should not cause pollution or negatively affect the marine environment or marine living resources, including marine mammals.

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- There should be no live fire of weapons, underwater explosions or creation of sound waves that may harm marine life or cause marine pollution.
- There should be no military activities in marine parks and marine protected areas.²¹

Although the Nippon Foundation guidelines are non-binding in nature, they should be of great concern to all maritime nations.

Excessive Claims Driven by Resource Needs

There are a number of island disputes and excessive maritime claims in the Asia-Pacific region that are driven, in part, by resource needs. The fact that China and Japan are involved in many of these disputes is understandable when one recognizes that China is the world's second-largest energy consumer and Japan is the fourth (and the world's second-largest energy importer).

Some of the more prominent island disputes include²²

- Liancourt (Takeshima/Dokdo) Rocks (Japan and Republic of Korea (ROK)),
- Senkaku/Diaoyu Islands (Japan, China and Taiwan),
- Spratly Islands (China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei),
- Paracel Islands (China, Taiwan and Vietnam),
- Kuril Islands (Russia and Japan) and
- Natuna Islands (Indonesia and China).

Liancourt Rocks (Takeshima/Dokdo) are claimed by both Japan and the Republic of Korea. The ROK has occupied the rocks, located 87.4 kilometers (km) from Ulleungdo Island (ROK) and 157.5 km from the Oki Islands (Japan), since 1954 and maintains a police station, lighthouse and helicopter pad. The rocks are surrounded by rich fishing grounds and potential mineral resources. The ROK maintains that the EEZ median line should be between Ulleungdo and the Oki Islands. Japan maintains that the median line should be between the Liancourt Rocks and Ulleungdo Island. Talks between the two governments have been ongoing since 1996, with four rounds between 1996 and 2000, and two rounds in 2006. To date, no resolution has been reached and the ROK has refused third-party intervention (e.g., International Court of Justice, International Tribunal for the Law of the Sea, etc.).

The Senkaku (Japan)/Diaoyu (China) Islands are claimed by China, Japan and Taiwan. The islands, located about 120 nm northeast of Taiwan, lie astride key

shipping routes and oil reserves and have been the source of a century-old dispute. Currently, the issue is linked to the ongoing EEZ and continental shelf dispute between China and Japan. The continental shelf dispute is over delimitation principles; China claims natural prolongation, while Japan claims equidistance and has proposed a median line as the demarcation line for the respective EEZs and continental shelves. The Shirakaba oil field straddles Japan's proposed median line.

China began oil and gas development west of the proposed median line in the 1980s. However, with China's development of the Shirakaba oil field, the EEZ dispute has become more prominent. Additionally, when Japan promulgated its law on the EEZ and continental shelf in 1996 to include the Senkakus/Diaoyus, incursions by Chinese oil exploration vessels, warships and ocean research vessels into Japan's claimed EEZ around the Senkaku/Diaoyu Islands increased. Bilateral talks between the two countries have been on-again, off-again since 2004, with three unsuccessful rounds in 2005. Talks resumed in 2006, but again failed to reach a resolution. In the short term, Japan wants China to stop drilling and has proposed a joint project. China has rejected Japan's demands to suspend exploration, indicating that it is developing resources in an area that is not in dispute.

The Spratly Islands consist of well over one hundred islands, cays, reefs and shoals scattered over an ocean area of nearly five hundred thousand square miles in the center of the South China Sea.²³ Although most of the islets that make up the Spratlys are uninhabitable, they lie astride some of the most important and busiest maritime routes in the world. The waters surrounding the Spratlys are also potentially rich in hydrocarbon and mineral deposits, and contain some of the region's most abundant fishing grounds. Since 1950, the South China Sea has been one of the world's most productive offshore oil- and gas-producing areas. Over thirty oil and natural gas fields have been developed in the region by the various littoral States.²⁴

The Spratlys are claimed in their entirety by China, Taiwan and Vietnam and in part by Brunei, Malaysia and the Philippines.²⁵ At least forty-three of the fifty-one major islets in the Spratlys are occupied by five of the six claimants.²⁶ Each claimant has offered separate justifications for its claim, including historic title, discovery, occupation, maritime law, and proximity and indispensable need.²⁷ The historical claims of China and Taiwan are the most substantive in terms of abundance and time. However, neither claimant has exercised effective, continuous and undisputed peaceful control over the entire region. Only Japan has effectively, albeit temporarily, occupied the disputed islands, from 1939 until its defeat in 1945. However, following World War II, Japan was forced to renounce its claims to the Spratlys and the Paracels in the San Francisco Treaty of Peace (1951). Unfortunately, a successor sovereign was not designated in the treaty.²⁸

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Similarly, the Paracel Islands lie astride rich fishing grounds and potential oil and gas deposits. The islands are claimed by China, Taiwan and Vietnam, and have been occupied by China since 1974 when Chinese military forces expelled the South Vietnamese garrison from the islands. Vietnam, however, has not abandoned its claim, reaffirming its position on April 11, 2007.²⁹

The Kuril Islands have been the source of a dispute between Russia and Japan since the end of World War II. Prior to the war, Japan occupied the southern portion of Sakhalin Island and all of the Kuril Islands from Hokkaido to the Kamchatka Peninsula. Following Japan's defeat in 1945, Russia occupied all of Sakhalin Island and all of the Kurils down to Hokkaido. Japanese fishermen, however, have continued to fish in Russian-claimed waters around the islands. In August 2006, a Japanese fisherman was killed after a Russian border patrol boat fired on a Japanese fishing vessel in disputed waters north of Hokkaido. The boat was seized and its three surviving crew members were taken to Kunashir Island, one of the Northern Territory islands controlled by Russia.³⁰

Global warming and the world's insatiable appetite for more resources have brought a renewed focus on the Arctic. The thawing of the polar ice is opening the Arctic, creating access to new shipping routes, creating new fishing grounds, providing new tourism opportunities, and allowing exploitation of new oil and gas fields. A recent US Geological Survey report concluded that 25 percent of the world's energy reserves lie north of the Arctic Circle.³¹ Record energy prices, coupled with the melting ice cap, are therefore creating renewed interests in projects that had not been considered cost-effective.

This increased attention on Arctic resources has brought several territorial disputes to the forefront, including a disagreement between Russia and Norway over the Barents Sea, a disagreement between Russia and the United States over the Bering Sea, a disagreement between Canada and Denmark over Hans Island, and a disagreement between Canada and the United States over the Beaufort Sea. As Arctic oil and gas become more readily available, it is likely that the territorial claims and tension between the various claimants will increase.

The Bering Sea is home to the oil-rich Navarin Basin and is rich in pollock, salmon, halibut and crab. It yields nearly 50 percent of the US seafood catch and nearly one-third of Russia's seafood catch. Fishing opportunities will increase as sea ice cover begins later and ends sooner in the year as a result of global warming. There have been ongoing discussions between the United States and Russia since 1981 in an effort to agree on a maritime boundary. The issue was apparently resolved on June 1, 1990 when the United States and Russia signed a maritime boundary agreement. The agreement was submitted to the US Senate for advice and consent and to the Russian Duma for ratification. However, before the Duma

could act, the Soviet Union collapsed. Russian officials now say that the proposed boundary agreement gives the United States too much of the Bering Sea's fish stocks. The Russians want to use the rhumb line (as opposed to the great circle path) as the boundary. The difference in area using the rhumb line or the great circle path is over twenty-thousand square miles.³²

The Beaufort Sea also contains significant energy resources. Although it is currently frozen year-round, increasing temperatures are expected to open the Beaufort Sea to oil and gas exploration (and increased fishing) in the future. The Beaufort Sea is claimed by both the United States and Canada.

Continental Shelf Disputes

As discussed above, the Arctic contains an estimated 25 percent of the world's energy reserves. Competing continental shelf claims exist among Denmark, Canada, United States, Russia and Norway. The Russian submission to the Continental Shelf Commission, for example, claimed nearly half of the Arctic Ocean. The Russian claim clearly overlaps portions of the Arctic that the United States could claim. In August 2006, the Canadian Prime Minister announced a series of measures to secure Canada's sovereignty claims in the Arctic, including plans to construct a deepwater port for submarines on Baffin Island near Iqaluit; build three military icebreakers; install underwater sensors in Arctic waters to detect foreign submarines; and station unmanned aerial vehicles and more aircraft in Yellowknife to carry out regular surveillance of the northern region.³³

The Arctic is not the only place where we see continental shelf disputes brewing. For example, encroachment by India and Burma (i.e., surveys and overlapping gas blocks in the Bay of Bengal) on the Bangladeshi continental shelf has created great concern in the Bangladesh Ministry of Defense. The Foreign Minister has been quoted as saying that no one will be allowed to explore hydrocarbon within Bangladesh's EEZ without permission.³⁴

Conclusion

Military organizations need to do a better job both domestically and at the IMO to ensure proposed measures are really necessary to address the stated environmental and safety of navigation threats and concerns. The focus must be on protecting military equities by ensuring that proposals are consistent with the 1982 LOS Convention and that the balance between coastal State and user State interests is properly maintained.

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In order to preserve operational and training flexibility, militaries must continue to operate in foreign EEZs without coastal State notice or consent. Conducting lawful military activities in foreign EEZs avoids adverse precedents and preserves navigational rights and freedoms for all ships and aircraft.

It is inevitable that resource needs will result in excessive coastal State claims and increasing confrontations at sea. The same is true for continental shelf disputes among the broad-margin States in the Arctic and elsewhere. Although the underlying territorial or maritime boundary disputes may not be resolvable in the near term, joint development may provide a short-term solution that defuses tensions and allows for peaceful exploitation of resources.

Notes

1. The author served as the DoD representative to the US delegation to the IMO from 1995 to 2001. He was a member of the US delegation to numerous meetings of the IMO Assembly, Maritime Safety Committee, Legal Committee, Facilitation Committee, Sub-committee on Safety of Navigation and the Sub-committee on Dangerous Goods, Solid Cargoes and Containers. He also served as the Chairman of the IMO Working Group that drafted the IMO Guidelines for the Suppression of Illegal Transport of Migrants by Sea.

2. Convention on the Intergovernmental Maritime Consultative Organization, Mar. 6, 1948, 9 U.S.T. 621, T.I.A.S. 4044, 289 U.N.T.S. 48. The Convention entered into force in 1958. The IMO first met in 1959. The organization was originally called the Intergovernmental Maritime Consultative Organization (IMCO), but changed its name in 1982 to the IMO.

3. International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, 164 U.N.T.S. 113, *available at* http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647.

4. Nov. 2, 1973, 1313 U.N.T.S. 3. The Convention was modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, Feb. 17, 1978, 1340 U.N.T.S. 184. The MARPOL Convention is the main international convention governing the prevention of pollution of the marine environment by vessel operations or vessel accidents. It consists of two treaties adopted in 1973 and 1978 and has been updated by amendments through the years. *See* International Convention for the Prevention of Pollution from Ships, http://www.imo.org/conventions/contents.asp?doc_id=678&topic_id=258 (last visited Feb. 7, 2008).

5. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, Dec. 29, 1972, 26 U.S.T. 2403, 1046 U.N.T.S. 120.

6. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, July 7, 1978, *available at* http://www.imo.org/conventions/contents.asp?doc_id=651&topic_id=257.

7. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3 [hereinafter 1982 LOS Convention].

8. A similar amendment was made in 1996, adding a new Regulation 10 which allows for coastal States to implement compulsory ship routing systems adopted by the IMO. The new regulation entered into force on January 1, 1997 and allows coastal States to channelize maritime

traffic based on cargo or category of ship. Since 1997, three mandatory ship routing systems have been adopted by the IMO.

9. Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, IMO Assembly Resolution A.982, 24th Session, Agenda Item 11, *available at* http://www.imo.org/includes/blastDataOnly.asp/data_id%3D14373/982.pdf.

10. The ship reporting system will be mandatory for ships bound for US ports and recommendatory for ships not bound for US ports.

11. Neither the US Coast Guard nor the National Oceanic and Atmospheric Administration have the assets to monitor and enforce the proposed PSSA.

12. A fine of up to one hundred thousand Australian dollars can be imposed for failure to take on a pilot. [Australian Government] Marine Notice 8/2006 (May 16, 2006), as amended by Marine Notice 16/2006 (Oct. 3, 2006), *available at* http://www.amsa.gov.au/Shipping_Safety/Marine_Notices/2006/Marine_Notice_16-2006.asp.

13. Designation of the Torres Strait as an Extension of the Great Barrier Reef Particularly Sensitive Sea Area, IMO Resolution MEPC.133(53), July 22, 2005, para. 3, *available at* http://www.imo.org/includes/blastDataOnly.asp/data_id%3D18030/133%2853%29.pdf.

14. MEPC 53 Delegation Report, Report of the IMO Marine Environment Protection Committee (MEPC), London, 53rd Session para. 3A, July 18–22, 2005, *available at* http://www.uscg.mil/hq/g-m/mso/docs/MEPC53_report_cable.doc.

15. *Id.*

16. Author's notes taken at a meeting of the MEPC.

17. 1982 LOS Convention, *supra* note 7, Part V.

18. *Id.*, art. 56.

19. In the Asia-Pacific region, there are nine nations that assert excessive coastal State jurisdiction in their EEZs: India, Indonesia, Malaysia, China, Burma, Bangladesh, North Korea, Maldives and Mauritius. *See* UNDER SECRETARY OF DEFENSE FOR POLICY, MARITIME CLAIMS REFERENCE MANUAL, DoD 2005.1-M, June 23, 2005, <http://www.dtic.mil/whs/directives/corres/html/20051m.htm>.

20. EEZ GROUP 21, OCEAN POLICY RESEARCH FOUNDATION, GUIDELINES FOR NAVIGATION AND OVERFLIGHT IN THE EXCLUSIVE ECONOMIC ZONE, Sept. 16, 2005, *available at* <http://www.sof.or.jp/en/report/index.php#0509>; then follow Guidelines for Navigation and Overflight in the Exclusive Economic Zone hyperlink.

21. That begs the question—what about military activities and exercises in a PSSA? Remember, the Northwestern Hawaiian Islands PSSA, if adopted by the IMO, will encompass over 140,000 square miles of ocean space.

22. The United States does not take a position on the question of the ultimate sovereignty of any of these islands, but expects that the claimants will resolve their differences through peaceful means.

23. Richard D. Fisher Jr., *Brewing Conflict in the South China Sea*, THE HERITAGE FOUNDATION ASIAN STUDIES CENTER, Oct. 25, 1984, at 3, *available at* http://www.heritage.org/Research/AsiaandthePacific/upload/90517_1.pdf. The Spratly archipelago encompasses nearly 38 percent of the waters of the South China Sea. THE PHILIPPINES AND THE SOUTH CHINA SEA ISLANDS: OVERVIEW AND DOCUMENTS 8 (Neil F. R. Ferrer ed., 1993) [hereinafter OVERVIEW AND DOCUMENTS].

24. Zhiguo Gao, *The South China Sea: From Conflict to Cooperation?*, 25 OCEAN DEVELOPMENT AND INTERNATIONAL LAW 345 (1994).

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25. Brunei only claims a fishing zone in the southern reef. Omar Saleem, *The Spratly Islands Dispute: China Defines the New Millenium*, 15 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 527, 576 (2000).

26. China (6), Malaysia (3), Philippines (8), Taiwan (1) and Vietnam (25). Gao, *supra* note 24, at 347.

27. OVERVIEW AND DOCUMENTS, *supra* note 23, at 20.

28. *Id.*

29. *Vietnam claims sovereignty over Parcel, Spratly Islands*, ORGAN OF THE MILITARY CENTRAL COMMISSION AND VIETNAMESE MINISTRY OF NATIONAL DEFENSE, April 12, 2007, <http://www.qdnd.vn/army/vietnam.Policy-Society.pnews.5605.qdnd>.

30. Richard Lloyd Parry, *Fisherman shot dead for sake of a haul of crab in islands dispute*, TIMES (London), Aug. 17, 2006, at 31, available at <http://www.timesonline.co.uk/tol/news/world/asia/article611347.ece>.

31. US Geological Survey Fact Sheet, Assessment of Undiscovered Oil and Gas Resources of the East Greenland Rift Basins Province, Aug. 2007, available at http://pubs.usgs.gov/fs/2007/3077/pdf/FS07-3077_508.pdf.

32. For a history of the boundary dispute with Russia and the negotiation of the 1990 maritime boundary agreement, see John H. McNeill, *America's Maritime Boundary with the Soviet Union*, NAVAL WAR COLLEGE REVIEW, Summer 1991, at 46, reprinted in READINGS ON INTERNATIONAL LAW FROM THE NAVAL WAR COLLEGE REVIEW 1973–1994, at 219 (John Norton Moore & Robert F. Turner eds., 1995) (Vol. 68, US Naval War College International Law Studies).

33. The measures announced by Prime Minister Harper were those contained in the “Canada First” defense plan of the Conservative Party during the 2005/2006 election campaign. For the details of the measures, see Dianne DeMille & Stephen Priestley, *Stephen Harper announces the new defence policy put forward by the Conservative Party of Canada*, CANADIAN AMERICAN STRATEGIC REVIEW, Dec. 2005, <http://www.sfu.ca/cast/ft-harper1-1.htm>.

34. *Dhaka won't allow anyone to explore hydrocarbon within its maritime boundary*, SHWE GAS MOVEMENT, May 16, 2006, <http://www.shwe.org/docs/dhaka-won-t-allow-anyone-to-explore-hydrocarbon-within-its-maritime-boundary>.