

“Geographical changes and their impact on the legal status of maritime features and in the context of maritime delimitation”

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Outline

- I. General overview
- II. Impact of natural changes on the legal status of maritime features and in the context of maritime delimitation
 - a. State practice and case law
 - b. International Law Association (ILA) Committees
 - i. “Baselines under the International Law of the Sea”
 - ii. “International Law and Sea Level Rise”
- III. Impact of human-induced changes on the legal status of maritime features and in the context of maritime delimitation
 - a. State practice and case law
 - b. ILA Committee on “Baselines under the International Law of the Sea”
- IV. Concluding remarks

I. General Overview (I)

- ❖ Geographical changes produced by:
 - Natural phenomena (*e.g.* erosion, accretion...)
 - Human intervention (*e.g.* human-made structures)
- ❖ Scope of the presentation:
 - Fully entitled islands, rocks and low-tide elevations
 - [*Low lying small island developing states*]
- ❖ Legal effects over :
 - Legal status of maritime features
 - Basepoints and baselines
 - Maritime zones (outer limits)
 - Maritime delimitation

I. GENERAL OVERVIEW (II)



Part VIII
Article 121
Regime of islands

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.

Part II. Territorial sea and contiguous zone
Article 13
Low-tide elevations (LTE)

1. A ***low-tide elevation*** is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line of that elevation may be used as the baseline for measuring the breadth of the territorial sea.
2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

II. Natural changes and their impact on the legal status of maritime features (I): new-born maritime features



Nishinoshima
Island (Japan)

Niijima Island

November 2013



Surtsey Island (Iceland)



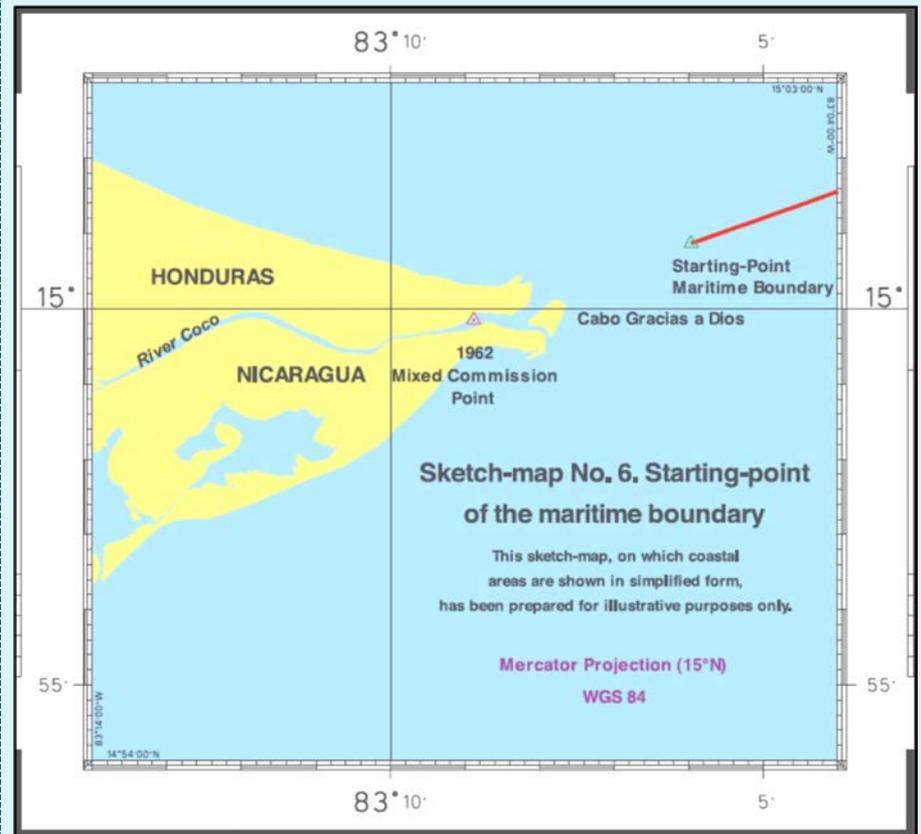
December 2014



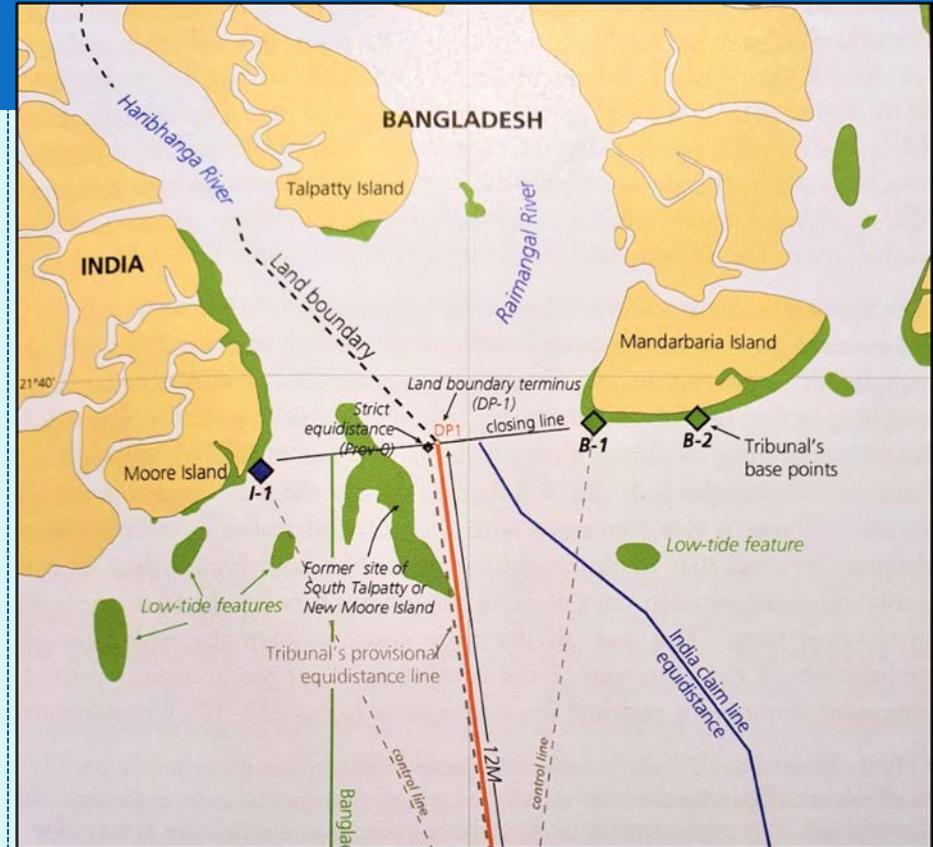
II. Natural changes and their impact on the legal status of maritime features (II): appearing and disappearing maritime features



Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras) (2007)



The Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India) (2014)



International Law Association (ILA) Committees



Baselines under the International Law of the Sea (2008-2012)

- **Mandate:** a) to identify the existing law on the normal baseline (Art. 5 UNCLOS), and b) to assess if there is a need for further clarification or development of that law.
- **Proposals:** If current predictions of sea level rise are realized, some States will become completely submerged. The resulting deterritorialization will likely mean, among other things, a total loss of baselines and of the maritime zones generated by coastal territory and measured from those baselines. Should the issue of deterritorialization fall to be considered by the International community at least in part as a baseline issue, the existing law of the normal baseline does not offer an adequate solution. The loss of a State's territory to rising sea levels is not primarily a baselines or law of the sea issue: statehood, National identity, refugee status, state responsibility, access to resources, and international peace and security. Establishment of a Committee for the specific purpose of addressing this range of concerns.

International Law and Sea Level Rise (2012-2018)

- **Mandate:** a) to study the possible impacts of sea level rise and the implications under international law of the partial and complete inundation of state territory, or depopulation thereof, in particular small island and low-lying states and elaboration of proposals for the interpretation and development of international law regarding maritime limits and boundaries impacted by sea level rise, and b) to develop proposals for the progressive development of international law in relation to the possible loss of all or of parts of state territory and maritime zones due to sea level rise, including the impacts on statehood, nationality, and human rights.
- **Proposals:** 1) on the grounds of legal certainty and stability, provided that the baselines and the outer limits of maritime zones of coastal or an archipelagic State have been properly determined in accordance with the 1982 LOSC, these baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline, and 2) the interpretation of the 1982 LOSC in relation to the ability of coastal and archipelagic States to maintain their existing lawful maritime entitlements should apply equally to maritime boundaries delimited by international agreement or by decisions of international courts or arbitral tribunals.

III. Human-induced changes Okino-Tori-Shima (Japan)



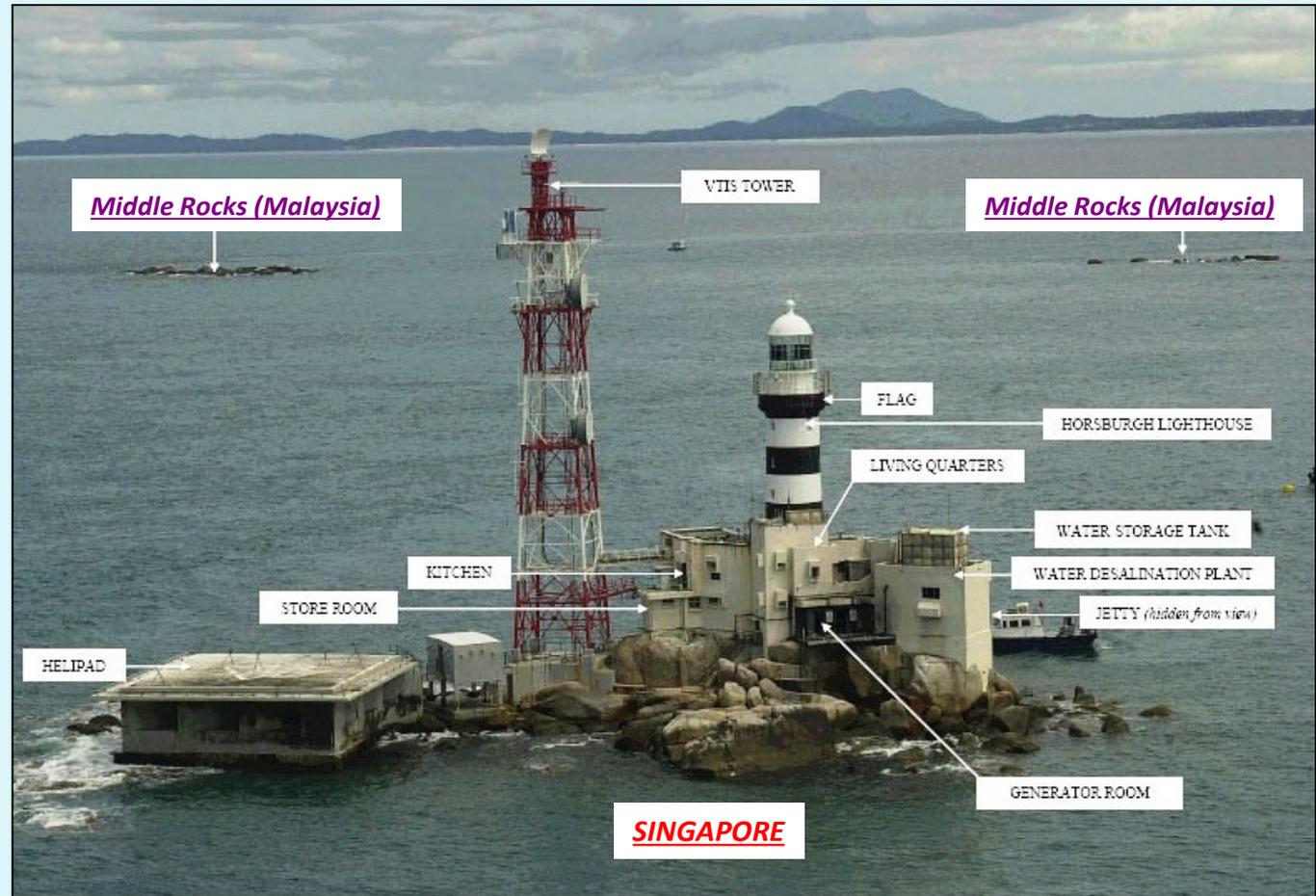


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Pedra Branca / Pulau Batu Puteh (Singapore)



International Court of
Justice:

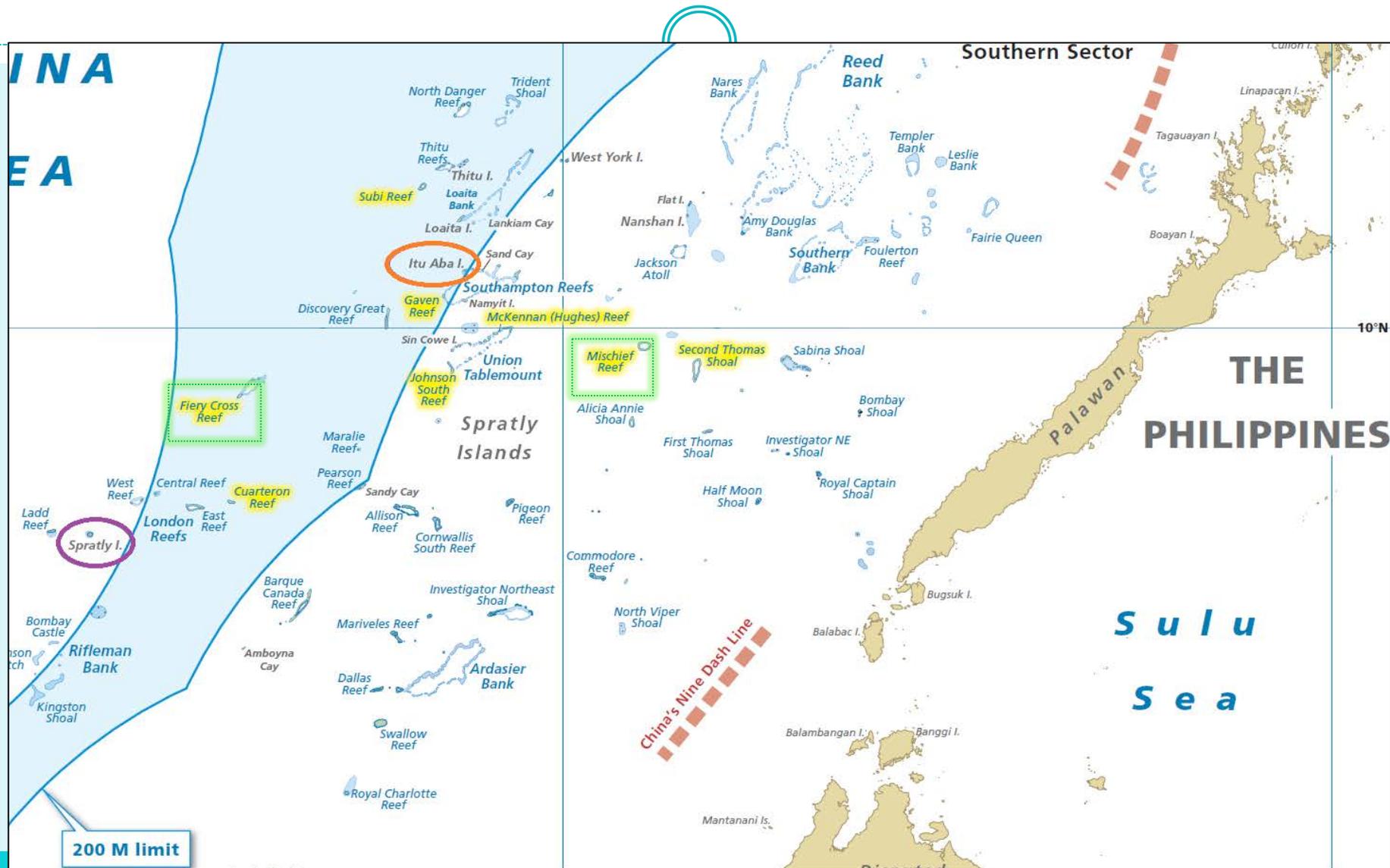
“...a tiny uninhabited and
uninhabitable island”*

*Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008, par. 66, p. 12.

South China Sea – Maritime Features



Spratly Islands



Fiery Cross



2014



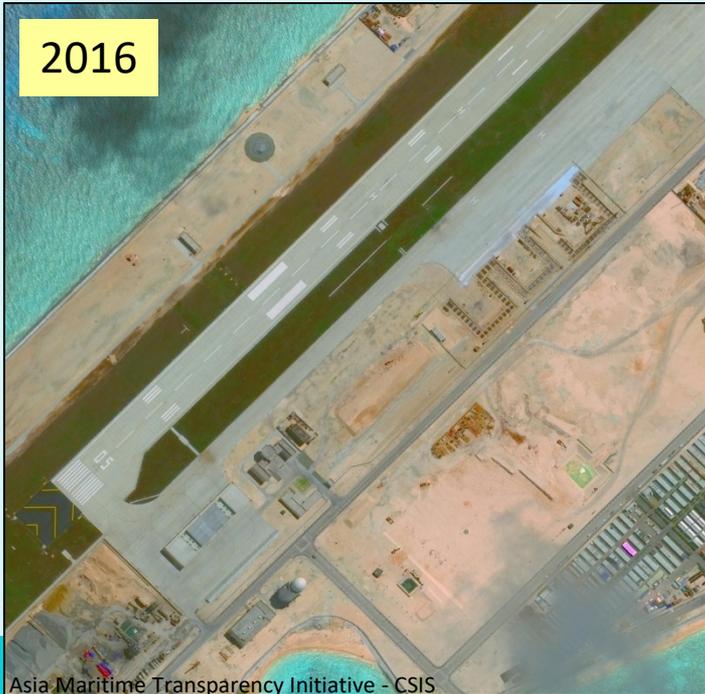
CSIS

2016



Asia Maritime Transparency Initiative - CSIS

2016



Asia Maritime Transparency Initiative - CSIS



2014

Mischief reef



2012



Asia Maritime Transparency Initiative - CSIS

1995



gettyimages
ROMEO GAGADY

2015



Asia Maritime Transparency Initiative - CSIS

2015



CHINESE STRUCTURE SITE "2"

ONE (1) CUTTER SUCTION DREDGER
AND TWO (2) TUGBOAT

CSIS

Palm Islands (United Arab Emirates, Dubai)



Itu Aba Island



Spratly Island

2014



2016



SPRATLY ISLAND
July 15, 2015

