

De dominio maris.
It all starts with the
land in maritime
delimitation.

18 April 2013

Professor Nico Schrijver
Grotius Centre for International Legal Studies,
Leiden University

Islands are a full and integral part of the land territory of a state

- Naturally formed area of land, surrounded by water, which is above water at high tide. (art. 121(1))
- “Islands, regardless of their size, in this respect enjoy the same status, and therefore generate the same maritime rights, as other land territory,” (ICJ, Qatar/Bahrain, §185)



Title to territory remains the starting point of any maritime delimitation

- Original title as part of ancient territorial domains
- Treaty title
- Title based upon judicial or arbitral decisions
- In absence of title: effective manifestation of sovereign authority

Original Title

- no *terra incognita* and no *terra nullius*
- *Ligitan/Sipadan* (2002): insufficient evidence of ties between the islands and the Sultanate of Sulu
- *Malaysia/Singapore* (2008): islands had been part of the territory of the Sultanate of Johor
- *Dokdo/Takeshima*: territorial domain of ancient Korean kingdoms?
- *Diaoyu/Senkaku*: part of the Ming (1368-1644) and Qing (1644-1912) dynasties?

Map of East China Sea



Treaty Title

- *Qatar v. Bahrain* (2001): Hawar Islands (Bahrain) and Janan Island (Qatar)
- *Ligitan/Sipadan* (2002): 1891 Anglo-Dutch Convention?
- *Nicaragua v. Colombia* (2012): 1928 Treaty on Territorial Questions
- *Dokdo/Takeshima*: San Francisco Peace Treaty, 1951?
- *Diaoyu/Senkaku*: Treaty of Shimonoseli, 1895 - unequal treaty?

Effective Manifestation of Sovereign Authority

- *Frontier Dispute. Burkina Faso/Mali*, 1986
- *Qatar v. Bahrain* (2001): only relating to islets
- *Indonesia/Malaysia* (2002): *effectivités* as the only basis of attribution of sovereignty
- *Nicaragua v. Honduras* (2007)
- *Nicaragua v. Colombia* (2012)
- *Dokdo/Takeshima*: Does Korea have the “superior claim”?
- *Diaoyu/Senkaku*: peaceful administration and variety of activities by Japan?

Passing of sovereignty by tacit agreement arising from parties' conduct

- Actual conduct *à titre de souverain* may result in transfer of sovereignty
- *Island of Palmas* (1928): “concrete manifestations of the display of territorial sovereignty by the other State”
- *Ligitan/Sipadan* (2002): no protest against Malaysian acts of sovereignty until critical date of dispute
- *Malaysia/Singapore* (2008): Horsburgh lighthouse 1844, 1953 letters, Singapore's acts after 1953
- *Dokdo/Takeshima*: ‘Japan has nothing to do with them’ (1877)

Role of Islands in the Maritime Delimitation Process

- Islands belong to the land territory and generate maritime rights
- Not every maritime feature
- Three stages in which islands play role in maritime delimitation:
 - Identification of relevant coasts;
 - Selection of base points;
 - Adjustment of provisional delimitation line



De dominio maris.

Thank you for your attention!