KRAKOWSKIE STUDIA MIĘDZYNARODOWE
KRAKOW INTERNATIONAL STUDIES
XXI: 2024 e-ISSN 2451-0610 ISSN 1733-2680

https://doi.org/10.48269/2451-0610-ksm-2024-001

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Legal aspects of the territorial disputes in East Asia – an outline of current problems

I

The developments in international politics taking place in the 2020s confirm the trend, which had already emerged in the previous two decades, towards the depreciation of the role of international law as a regulator of international relations. The result of this state of affairs is the regularity of serious violations of *iuris cogentis* norms of international law, especially violations of the territorial integrity of states by the use of force (i.e. in Syria, Ukraine, and Palestine). This, in turn, gives political scientists reason to argue about the growing turbulence, uncertainty and unpredictability of international politics.

International disputes regarding legal title and legality of jurisdiction over particular land and sea areas are currently ongoing in almost all parts of the world. Rampant economic competition between states and growing technological possibilities mean that some countries pay more and more attention to maritime areas. The seas and oceans constitute not only communication routes, an important element of the food economy, but also a reservoir of natural resources, including hydrocarbons. The importance of particular sea areas is

overwhelmingly determined by their geopolitical location. In light of the abovementioned, territorial disputes concerning land and sea areas taking place in East Asia are of significant importance for contemporary international politics.

Not without significance is the fact that each territorial dispute in the region involves superpowers: the People's Republic of China (the PRC), the Russian Federation, and Japan. The United States is keenly interested in developing the situation because maintaining or distorting East Asia's political status quo may have far-reaching consequences for the entire international order. This article addresses the issue of international legal determinants of the disputes regarding land areas and surrounding maritime areas in a given region, including the dispute over the Takeshima/Dokdo islands located in the Sea of Japan and the Senkaku/Diaoyu islands, Paracel Islands and the Spratly Islands located in the East China Sea.

Due to the limitations of the article, the following paper focuses on the chosen international law conditions of the mentioned disputes and their current state. The important Japanese-Russian dispute over the southern group of Kuril Islands was omitted, since unlike the previously mentioned ones, it has been discussed more extensively recently[1]. Two other disputes already resolved by the International Court of Justice, although important from the perspective of the development of the jurisprudence on territorial issues, were also omitted in the paper: the Indonesian-Malaysian dispute over the islands of Pulau Ligitan and Pulau Sipadan and the Malaysian-Singaporean dispute over the island of Pedra Branca/Pulau Batu Puteh[2]. Territorial disputes are part of the broader context of the competition between the authorities of the People's Republic of China and the Republic of China for the right to act as the sole legal government of China and, therefore, jurisdiction over areas such as the Pratas Islands (Dongsha Qundao) were also not discussed here. Previous studies on this subject have dealt with them mainly from historical and political perspectives[3], to a lesser extent dealing with international law[4].

1 R. Czachor, *Spór o Wyspy Kurylskie w perspektywie prawa międzynarodowego publicznego i stosunków międzynarodowych. Studium krytyczne*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2024.

2 Sovereignty over Pulau Ligitan and Pulau Sipadan (*Indonesia v. Malaysia*), I.C.J. Reports 2002, 625; Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (*Malaysia v. Singapore*), I.C.J. Reports 2008, 12.

3 K. Kubiak, W. Kustra, *Zatargi o archipelagi na Morzu Wschodniochińskim i Morzu Japońskim jako przykłady współczesnych sporów terytorialnych w obrębie obszarów morskich*, "Zeszyty Naukowe Akademii Marynarki Wojennej" 2005, no. 1(160), pp. 57–68.

4 M. Łuszczuk, *Spór o wyspy Diaoyu/Senkaku w świetle zasady efektywnej okupacji*, "Studia Iuridica Lublinensia" 2003, no. 3, pp. 81–94; A. Makowski, K. Kubiak, *Współczesne spo-*

For obvious reasons, this issue is the subject of increased attention from Asian specialists in the field of international law[5].

II

The legal issues related to the territorial disputes discussed in this study are regulated by treaty law, and customary international law – in particular regarding the establishment and exercise of state jurisdiction, and are subject to the legal regime of the United Nations Charter signed in 1945[6] and the United Nations Convention on the Law of the Sea of 1982[7] (UNCLOS), which, by the way, has been adopted by all countries directly involved in the above-mentioned disputes, except the generally unrecognized Republic of China (Taiwan) and the Democratic People's Republic of Korea, which signed but until now did not ratify this act. It should be emphasized that the substantive scope of public international law and the interpretation of its generally recognized norms are not uniform. Contemporary international law is *par excellence* a Western-centric

ry morskie – na przykładzie zatargów o archipelagi na Morzu Wschodniochińskim i Morzu Japońskim, "Prawo Morskie" 2005, vol. 21, pp. 61–73; D.R. Bugajski, *Chińsko-japońskie spory morskie*, "Prawo Morskie" 2013, vol. 29, pp. 197–206; M. Piątkowski, *Chińskie roszczenia terytorialne na Morzu Południowochińskim w świetle prawa międzynarodowego*, [in:] T. Gadkowski (red.), *Bezpieczeństwo XXI wieku. Szanse – zagrożenia – perspektywy. Aspekty prawne*, Silva Rerum, Poznań 2018, pp. 97–109.

5 I.e.: X. Furtado, *International Law and the Dispute over the Spratly Islands: Whither UNCLOS?*, "Contemporary Southeast Asia" 1999, vol. 21, no. 3, pp. 386–404; M. Gjetnes, *The Spratlys: Are They Rock or Islands?*, "Ocean Development & International Law" 2001, vol. 32, no. 2, pp. 191–204; S.Y. Hong, M. van Dyke (eds), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea*, Martinus Nijhoff Publishers, Leiden 2009; N. Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea*, Routledge, London 2012; S. Talmon, B.B. Jia, *The South China Sea Arbitration: A Chinese Perspective*, Bing Bing Jia, Oxford–Portland 2014; C. Budd, D. Ahlawat, *Reconsidering the Paracel Islands Dispute: An International Law Perspective*, "Strategic Analysis" 2015, vol. 39, no. 6, pp. 661–682; J. Kim, *Territorial Disputes in the South China Sea: Implications for Security in Asia and Beyond*, "Strategic Studies Quarterly" 2015, vol. 9, no. 2, pp. 107–141; X. Ma, *The Spratly Islands and International Law: Legal Solutions to Coexistence and Cooperation in Disputed Areas*, Brill–Nijhoff, Leiden–Boston 2022; J. Kraska, R. Long, M.N. Nordquist (eds), *Peaceful Maritime Engagement in East Asia and the Pacific Region*, Brill–Nijhoff, Leiden–Boston 2023.

6 Charter of The United Nations and Statute of the International Court of Justice, San Francisco 1945, https://treaties.un.org/doc/publication/ctc/uncharter.pdf [accessed: 19.03.2024].

7 United Nations Convention on the Law of the Sea, Montego Bay 1982, www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf [accessed: 19.03.2024].

concept, rooted in European legal culture. The result of this situation is its different interpretation or undermining of its legitimacy from axiological positions. This refers especially to the Chinese legal culture, but recently it is also strongly articulated by the Russian legal doctrine[8]. This fact undoubtedly means that potential attempts to resolve the discussed disputes based on, for example, the International Court of Justice or the International Sea Tribunal may fail due to the negative attitude towards it of at least one of the parties involved in the dispute.

III

As the *causa causarum* of the territorial disputes discussed in this article should be considered, firstly, the imprecise treaty regulations regarding the areas under Japan's jurisdiction after the end of World War II, included in the San Francisco Peace Treaty of 1951, and secondly, the territorial claims made by the PRC based on the concept of 'historical rights'. Pertaining to the second issue, although the PRC is a party to the UNCLOS, it consistently challenges the old, Western-centric legal order, promotes the Sinocentric concept of foreign policy and the vision of international law, which implementation was prevented throughout the 20th century by Western expansion and colonialism in East Asia[9].

Under the UNCLOS, it is essential to determine the nature of the areas disputed in this paper. The UNCLOS distinguishes islands and rocks, attaching different rights to both categories of the state having jurisdiction over them. According to art. 121 sec. 1 of the UNCLOS as an island is considered "a naturally formed area of land, surrounded by water, which is above water at high tide". In turn, under art. 121 sec. 3 of UNCLOS, rocks are considered not to be able "to sustain human habitation or economic life of their own". States may establish and exercise jurisdiction over islands and rocks. The inability to inhabit and thoroughly exploit rock and islets for economic purposes is not an obstacle in this matter. The situation of sea waters around both territories is different. In the case of islands, they are surrounded by all the marine areas provided by the UNCLOS, i.e. territorial waters, maritime contiguous zone, exclusive economic zone and continental shelf. In the case of rocks, they are surrounded by

[8] Cf. A. Roberts, *Is International Law International?*, Oxford University Press, Oxford–New York 2017; L. Mälksoo, *Russian Approaches to International Law*, Oxford University Press, New York 2015.

[9] E.L. Enyew, *Sailing with TWAIL: A Historical Inquiry into Third World Perspectives on the Law of the Sea*, "Chinese Journal of International Law" 2022, vol. 21, no. 3, pp. 439–497.

the territorial sea and the adjacent maritime zone, while the coastal state, which exercises jurisdiction over the rock, cannot establish an exclusive economic zone and continental shelf around it (art. 121 sec. 2 of the UNCLOS).

IV

The Japanese-Korean dispute over the islands called Dokdo in Korean, Takeshima in Japanese, and Liancourt Rocks in English concerns a set of islands and rocks, as defined by the UNCLOS, lying in the Sea of Japan. Their small area (less than 0.19 sq. km in total), geomorphological specificity, unfavourable economic conditions and location approximately halfway between the Korean Peninsula and the Japanese island of Honshu have made it unclear from a historical perspective whether any state effectively and persistently maintained the jurisdiction over them. There is a consensus in the literature that the Koreans mainly exploited the islands until 1905 when they were incorporated into the Japanese prefecture of Simane and named Takeshima.

The legal situation of Dokdo/Takeshima has changed due to the results of World War II. In January 1946, the Allied powers suspended Japanese jurisdiction over the area, although stipulating that this action did not determine "the policy of the Allies regarding the final solution of the island problem"[10]. The 1951 San Francisco Peace Treaty confirmed Japan's loss of all territories it had acquired as a result of 'violence and greed', as envisaged in the Cairo Declaration adopted by the Allies in 1943[11], including the loss of all legal titles to Korea. The islands belonging to Korea and to which Japan was losing rights included: Quelpart and Dagelet, even though Dokdo/Takeshima was not mentioned explicitly, such expectations were expressed by Korean diplomacy[12]. In 1952, the Republic of Korea announced the establishment of jurisdiction over Dokdo, designating the so-called Syngman Rhee line, which in turn was protested by the Japanese authorities[13]. The United States recognized the rights of the

[10] Governmental and Administrative Separation of Certain Outlying Areas from Japan (SCAPIN-677), www.cas.go.jp/jp/ryodo_eg/shiryo/takeshima/detail/t1946012900101.html [accessed: 19.03.2024].

[11] The Cairo Declaration, 1943, https://digitalarchive.wilsoncenter.org/document/cairo-declaration [accessed: 19.03.2024].

[12] F. Aandahl (ed.), *Foreign relations of the United States, 1951. Asia and the Pacific (in two parts)*, vol. 6, part 1, US Government Printing, Washington 1977, p. 1206.

[13] Presidential Declaration of Sovereignty and Adjacent Seas, 1952, trans. S. Rhee, https://en.wikisource.org/wiki/Presidential_Proclamation_of_Sovereignty_over_Adjacent_Seas [accessed: 19.03.2024].

Republic of Korea to this area, treating it as part of this state during the Korean War and guaranteeing maritime security within the so-called gen. MacArthur's line[14]. The existence of a bilateral territorial dispute was confirmed by both directly involved countries in the basic act regulating their relations of 1965[15].

Currently, the authorities of the Republic of Korea derive the legal title to the disputed area from the priority of exploitation of the islands, which remained unknown to the Japanese until the 17th century, and the historical consolidation of the legal title. The Japanese authorities argue that the incorporation of Takeshima into Japan as a result of the use of armed force at the date of its implementation, in 1905, remained a legal and even basic method of acquiring territory recognized by international law. This argument is undermined by recalling the fact that gaining control over the disputed area was part of Japanese expansionist activities directed against Korea, the final result of which was its conquest in 1910. Thus, the provision of the San Francisco Peace Treaty regarding Japan's loss of legal title to areas acquired as a result of 'violence and greed', as formulated in the Cairo Declaration, applies to this area. The contested territory actually remains under the control of the Republic of Korea. The islands are not inhabited, they are under the permanent control of Korean security authorities, and they are a tourist attraction visited by Koreans. Under the UN Charter, the Dokdo/Takeshima problem should be classified as an international situation within the meaning of art. 34 of the UN Charter, which currently does not pose a threat to international peace.

V

Located halfway between the PRC, Taiwan and the Japanese Ryukyu archipelago, the uninhabited Senkaku Islands consist of five small volcanic islands and a group of rocks. This area remains under the control of Japan, although claims to it are made by the authorities of the PRC and the unrecognized Republic of China (Taiwan). The islands have been known and used by Chinese fishermen for centuries, but no state has had continuous jurisdiction over them. Due to this fact, their occupation by Japan in 1895, during the war with China, was treated

[14] Security guarantees for the Korean territory within the so-called gen. MacArthur's line should remain in force until the San Francisco Peace Treaty entered into force, what took place on April 28, 1952. The authorities of the Republic of Korea, which was not a party to this treaty, announced the Syngman Rhee Line on January 18, 1952.

[15] Japan and Republic of Korea Treaty on Basic Relations, Tokyo 1965, https://treaties.un.org/doc/Publication/UNTS/Volume%20583/volume-583-I-8471-English.pdf [accessed: 19.03.2024].

as a lawful *terra nullius* occupation. The Shimonoseki Peace Treaty concluded in 1895 mentioned the Chinese territories transferred to Japan, including Formosa (Taiwan) and the Pescadores, although it did not explicitly mention the Senkaku Islands. They remained under Japanese rule until the end of World War II.

As mentioned, depriving Japan of areas acquired through militarism, 'violence and greed' was stipulated by the Cairo Declaration of 1943 and the Potsdam Declaration of 1945. Although Japan was not a party and did not know about the existence of the first document, after the capitulation it agreed to fulfil the obligations arising from the second one. The San Francisco Peace Treaty repealed the provisions of the Treaty of Shimonoseki and defined the areas that Japan lost – Taiwan and the Pescadores, although this document was again silent on the Senkaku issue (art. 2 of the San Francisco Peace Treaty). According to the position of the PRC and the Republic of China, this means that Japan has lost its legal title to them. The Japanese authorities express an opposite view, claiming that obtaining the legal title to Senkaku took place in the form of occupation of *terra nullius*, and also citing the norm of art. 3 of the mentioned San Francisco Peace Treaty. It provides for the transfer of the Ryukyu Islands to the jurisdiction of the United States. Not without significance for the legal position of the PRC and the Republic of China in the dispute is that they are not parties to the San Francisco Peace Treaty. The Japanese side may therefore argue that, following the principle of *pacta tertiis nec nocent nec prosunt*, this act does not produce any legal effects for the two Chinese states. Moreover, on the date the Senkaku Islands were incorporated into Japan's jurisdiction, the islands remained uninhabited and the then-Chinese authorities implicitly, without making any opposite claims, recognized the acquisition of legal title by Japan as a result of the occupation of the territory beyond any jurisdiction. The return of the Senkaku Islands as part of the Ryukyu Islands, along with the entire Okinawa Prefecture to Japanese jurisdiction took place under the bilateral U.S.-Japanese agreement of 1971[16] and coincided with two important events: the identification of significant energy resources in the seabed of the South China Sea in the vicinity of Senkaku and the raise of claims to it by the PRC. There are different positions of the parties of the dispute regarding the nature of the area under art. 121 of the UNCLOS. While the PRC and the Republic of China authorities claim that these are not islands and therefore not surrounded by a territorial sea and an exclusive economic zone, the Japanese authorities express an opposite

[16] Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands [The Okinawa Reversion Agreement], Washington–Tokyo 1971, http://ryukyu-okinawa.net/pages/archive/rev71.html [accessed: 19.03.2024].

opinion[17]. Currently, the area remains under the jurisdiction of Japan, although the dynamic political situation related to the increased and bolder international activity of the PRC threatens to develop into a *casus belli*. Nevertheless, the PRC will choose the military means as a last resort.

VI

The Paracel Islands, which consist of over 20 small islands, atolls and reefs, are located at a similar distance from the island of Hainan, which belongs to the People's Republic of China, and the coast of the Socialist Republic of Vietnam (SRV). Until 1974, this territory remained under the jurisdiction of South Vietnam, which continued the legal legacy of the previous French colonial rule. Since the 1930s, China has been making claims, recalling an ancient legal title and the use of the islands by Chinese fishermen for navigation, and the Philippine authorities have been doing the same, although with less insensitivity and mainly regarding the Scarborough/Panatag shoal, citing the Velarde map of 1734 as evidence of historical justification of the jurisdiction. During World War II, the Paracel Islands were occupied by Japanese troops. In the San Francisco Peace Treaty, Japan renounced all rights to the Paracel Islands and Spratly Islands mentioned therein (art. 2 of the Peace Treaty). Since 1974, as a result of the use of armed forces, they have been under the jurisdiction of the PRC. Currently, together with the Spratly, the disputed area is located within the so-called 'nine-dash line' marking the scope of China's territorial claims in the South China Sea. The PRC is strengthening its presence on the islands by expanding its military infrastructure. Therefore, it is difficult to expect a change in the position of the PRC authorities regarding the legal situation of a given area.

VII

The above-mentioned Spratly Islands are located in the southern part of the South China Sea, lying between the southern coast of the Indochina Peninsula and the islands of Borneo and Palawan. They constitute from 150 to 500 physiographic forms of various types – islands, atolls, reefs, and sandbanks, covering a total of approximately 250,000 sq. km. In the light of the 2016 ruling of the Permanent Court of Arbitration in the case of Philippines vs. PRC,

[17] H. Nasu, D.R. Rothwell, *Re-Evaluating the Role of International Law in Territorial and Maritime Disputes in East Asia*, "Asian Journal of International Law" 2014, no. 4, pp. 55–79 (here: p. 76).

discussed below[18], the Spratly Islands are not islands within the meaning of the UNCLOS and therefore do not extend around them the marine areas provided by this convention. Indeed, the issue of legal title and exercise of jurisdiction over the Spratly Islands is a central element of the broader problem of territorial disputes in the southern South China Sea. The PRC, the SRV, the Republic of China, the Republic of the Philippines, Malaysia, and the State of Brunei Darussalam are participating in it, raising various claims. The first four countries share control over some parts of the Spratly Islands, with the largest of the islands, Taiping (other name: Itu Aba), which only has a military base and an airstrip, under the jurisdiction of the Republic of China. As in the case of the Paracel Islands, both Chinese countries – being the furthest countries from the Spratly Islands – derive their legal title from a priority of fishing exploitation and navigation purposes. The SRV refers to the establishment of authority over them during the French colonial power, the Republic of the Philippines derives its legal title from historical rights, based on the mentioned Velarde map, and the occupation of the area before 1930 (when it was occupied by France) and after 1945 (when the Japanese occupation ended), treating the Spratly Islands as *terra nullius*. The claims of Malaysia and the State of Brunei Darussalam mainly concern the boundaries of their exclusive economic zones. From the perspective of contemporary international relations, the most important are the claims made by the PRC, which fall within the framework of 'the nine-dash line' doctrine (identical claims based on the same doctrine are formulated by the authorities of the Republic of China). Military infrastructure has been built and artificial islands are being constructed in the part of the Spratly Islands occupied by the PRC.

VIII

The PRC has been a party to UNCLOS since 1997, although it has made some reservations regarding its content. 'The nine-dash line' doctrine proclaimed by its authorities (which was initiated and is also articulated in a slightly modified version by the authorities of the Republic of China) is not compatible with the UNCLOS regulations regarding the scope of state sovereignty exercised over maritime areas, because it does not coincide with rights to internal waters and

[18] South China Sea Arbitration (*The Republic of Philippines v. The People's Republic of China*), 2013, https://pca-cpa.org/en/cases/7 [accessed: 19.03.2024]. Cf. a special volume of the journal "Chinese Society of International Law": *The South China Sea Arbitration Awards: A Critical Study*, "Chinese Society of International Law" 2018, vol. 17, no. 2, pp. 207–748.

the territorial sea established by the UNCLOS. This is the result of the specific practice of the PRC authorities, which in the area inside 'the nine-dash line' allows ships of other countries to exercise the right of innocent passage and freedom of overflight, while periodically prohibiting fishing for foreign ships. They thus exercise certain sovereign rights on the continental shelf and the high seas in a manner not provided by the UNCLOS. Such activity of the PRC should be understood in the broader geopolitical context of the South China Sea as an important communication route that connects with the Indian Ocean through the Strait of Malacca. Recognition of any Chinese rights related to the discussed doctrine would mean not only recognition of the political and military supremacy of the PRC over the South China Sea but also the international legal liquidation of the high seas enclave, i.e. an area beyond the jurisdiction of any state, located in the middle of the South China Sea, outside the 200-mile exclusive economic zones of all coastal states.

The other states claiming rights to the Spratly Islands have no own demands in this respect. As members of the Association of Southeast Asian Nations, they have a relatively permanent mechanism for political resolution of differences through consensus (the so-called ASEAN way). The above means that the main line of dispute regarding the Spratly Islands and the overlapping claim areas divides the PRC and other countries.

IX

The problem of legal title to the Spratly Islands and adjacent maritime areas is important not only from the point of view of the geopolitics of the Southeast Asian region but also from the practice of international law. This is because, in 2013, the government of the Republic of the Philippines sued the PRC before the Permanent Court of Arbitration (hereinafter PCA). The PRC did not recognize the jurisdiction of the PCA in this case, recalling the thesis about historical rights to the disputed portion of the South China Sea and the islands located therein and other physiographic objects. In its 2016 decision, the PCA generally ruled in favour of the Republic of the Philippines[19]. The PCA concluded that most of 'the nine-dash line' area encompasses the PRC's exclusive economic zone and continental shelf, demarcating them from the Spratly Islands, to which the PRC makes claims. It found that by establishing the above-mentioned line, the PRC does not claim rights to the South China Sea within the UNCLOS meaning of the territorial sea, so any claims, i.e. the exercise of certain

[19] South China Sea Arbitration, *op. cit*.

sovereign rights of the coastal state, are from the international law standpoint ineffective. The PCA found that the PRC's argumentation of historical rights or the claims to the South China Sea as 'historical waters' can only be recognized in relation to the area that constitutes the exclusive economic zone and continental shelf of the PRC (par. 225 and 298.1 of the judgment). Moreover, the UNCLOS does not provide for the establishment of any maritime areas not listed in the convention, that could limit the freedoms of the high seas, including the non-conventional concept of 'historical rights' (par. 261–262 of the judgment). At the same time, the PCA ruled that it is impossible to draw a baseline from the coast of the Spratly Islands, because none of the physiographic objects, *nomen omen* called islands, is an island within the meaning of the UNCLOS (par. 540–551).

X

In the light of the above findings, several theses can be presented that are important for the political situation in the East Asian region in the third decade of the 21st century:

a) attempts to establish primary legal titles to disputed areas are unproductive due to the complexity of history and the ineffectiveness of invoking the concept of historical rights or ancient legal title before international judicial bodies[20];
b) while the source of disputes in the South China Sea is primarily the possibility of designating exclusive economic zones based on the disputed territories (the Spratly Islands), the current position of the PCA is clearly against this, as it does not recognize them as islands within the meaning of the UNCLOS;
c) it is reasonable to doubt at least some of the PRC's claims to the areas of the South China Sea under the UNCLOS and the legal validity of 'the nine-dash line' doctrine. Indeed, there is a general tendency of all parties to the disputes in the East Asian region to refer to the concept of historical rights when justifying their legal titles to these areas (referring to both land and sea areas) and effective occupation from which adverse titles can be derived. This circumstance makes it difficult to resolve the above disputes based on generally recognized norms of international law;

[20] Cf. R. Kwiecień, *Prawa historyczne*, [in:] J. Symonides, D. Pyć (red.), *Wielka encyklopedia prawa*, t. 4, *Prawo międzynarodowe publiczne*, Fundacja "Ubi societas, ibi ius", Warszawa 2014, p. 365.

d) the importance of international courts for the development of the situation in the East Asian region is limited, mainly due to the attitude of the Chinese authorities, which strives for a political solution to disputes in bilateral relations, also conducting the so-called salami tactics, i.e. during bilateral talks with individual countries. Contemporary international law does not provide a clear answer as to how to resolve the territorial disputes discussed above. This is because, in the case of overlapping maritime areas claimed by individual countries, the UNCLOS does not contain any instructions. Under art. 123 of that act, states bordering enclosed and semi-enclosed seas are only recommended to "cooperate with each other in the exercise of their rights and in the performance of their duties" under the UNCLOS. Hence, the UNCLOS provides its member states with a vast number of dispute settlement opportunities: under the jurisdiction of the International Court of Justice, the International Tribunal for the Law of the Sea, by arbitration and special arbitration (annexes VI–VIII to the UNCLOS)[21].

The above allows us to conclude that possible resolution of territorial disputes over island areas in East Asia may be achieved through the use of force or the threat of its use, and therefore contrary to the provisions of art. 2 sec. 3 and 4 of the UN Charter.

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[21] J. Barcik, T. Srogosz, *Prawo międzynarodowe publiczne*, wyd. 3, C.H. Beck, Warszawa 2017, pp. 296–298.

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Abstract

The following paper delves into the legal problems of the East Asian territorial disputes around islands located in the Japan Sea and the South China Sea (Takeshima/Dokdo, Senkaku Islands, Paracel Islands, and Spratly Islands). It discusses the content of the legal claims raised by every part of the disputes and critically assesses its validity under public international law. The paper concludes that the widely accepted legal mechanisms of settling territorial disputes rely on the UN Charter provisions of good faith and by peaceful means. The UN Convention on the Law of the Sea does not fully regulate the issue of concurrent claims regarding maritime areas. What is more, the recent political developments that took place in the third decade of the 21st century allow us to assume that contemporary, Western-centric international law would not be effective in the resolution of these territorial disputes.

Key words: public international law, international law of the sea, territorial disputes in East Asia, political rivalry in East Asia