# THE SOUTH CHINA SEA ARBITRATION CASE AND THE CONSEQUENCES FOR THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW REGARDING UNCLOS ARTICLE 121.3

*El caso de arbitraje del mar del sur de China y las consecuencias para el régimen jurídico de las islas en el Derecho Internacional con respecto al artículo 121.3 Convemar*

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**ABSTRACT**: This paper aims to determine whether there is uniformity in the interpretation of the UNCLOS Article 121.3 and whether the Arbitral Award can be considered as a threat to it. The historical context and the ambitions of the involved parties are presented and analyzed. In addition, an analysis of the treatment of the island regime in international case law is carried out, as well as an analysis of the Tribunal's interpretation of Article 121.3. The main finding is that there is no contestation regarding the uniformity its case law interpretation; but a necessary complement given the ambiguity of Article 121.3.

**KEYWORDS**: Law of Sea; Islands; Philippines vs. China; South China Sea.

**RESUMEN**: El presente documento tiene por objeto determinar si existe una unidad de interpretación del artículo 121.3 de la Convemar y si el laudo arbitral la amenaza. Se analiza el contexto histórico y las pretensiones de las partes. También se analiza cómo se ha tratado el régimen insular en la jurisprudencia internacional y cómo el Tribunal interpretó el artículo 121.3. La conclusión principal es que no hay impugnación de la unidad de interpretación de la jurisprudencia, sino un complemento necesario dada la ambigüedad del artículo 121.3.

**PALABRAS CLAVE**: Derecho del Mar; Islas; Filipinas vs. China; Mar del Sur de China.

## INTRODUCTION

In April 2017, publications specialized in security and defense matters reported military deployments in the Philippine-controlled South China Sea Islands. The Philippine president Rodrigo Duterte argued that "You try to be friends with everybody, but we have to maintain our jurisdiction now - at least over areas under our control" (Domínguez, 2017). This behavior is the result of a very complex series of events that create tension in the South China Sea; the Arbitral award (Philippines v. China, 2016) examined in this article is a relevant element for the comprehension of this conflict. This Award can be studied from many different perspectives. For instance, it can be analyzed from with respect to the Tribunal's or law enforcement's jurisdiction and competence of , but this paper's aim is

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to analyze the Tribunal's interpretation of the article 121 paragraph 3 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS)[1].

In order to fulfill this objective, the central research questions are the following: How do International Courts or Tribunals interpret the legal regimen of the Islands according to the UNCLOS article 121.3? Is there uniformity in the interpretation of this article in preceding case law? If so, how does the South China Sea Arbitration challenge that consensus? What repercussions does the South China Sea Arbitration have for the legal regime of islands in International Law? The hypothesis which will guide this analysis and help resolve these questions is the following: The South China Sea Arbitration Case does not necessarily imply a breach in the interpretation and definition of the concept of 'islands' in International Law. This case is merely a clarification of the article 121, especially useful for island regimes in International Law. In pursuance of this objective, solving these research questions and testing this hypothesis, the case antecedents will be studied. Thereafter, the interpretation of the UNCLOS article 121.3 as declared by the Tribunal will be analyzed in order to determine whether the Award presents a challenge for island definition and interpretation in International Law. Finally, the paper will address the possible consequences of the Award regarding the interpretation of islands in International Law.

## 1. PREVIOUS ISSUES TO CONSIDER IN THE SOUTH CHINA SEA ARBITRATION

### *1.1 Introduction*

The geographical area in dispute, the South China Sea, is a peripheral sea that is part of the Western Pacific Ocean. It is delimited by the southern part of mainland China, the Indochinese Peninsula, the Kalimantan island, the Palawan Island, Luzon Island, and the island of Taiwan. According to the demarcation issued by the International Hydrographic Organization (IHO), this area of the South China Sea is approximately 3,500,000 square kilometers large (1,400,000 square miles). The South China Sea contains over 250 small islands, atolls, cays, shoals, reefs and sandbars, most of which were formed by coral reefs[2]. The features are grouped into four archipelagos, which are the *Xisha* Islands (the Paracel Islands)[3], the *Dongsha* Islands (the Pratas Islands), the *Zhongsha* Islands (The Macclesfield Bank, including the Scarborough Shoal), and the *Nansha* Islands (the Spratly Islands)[4].

[1] 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.

[2] The names of the most important features in English, Chinese and Filipino are available in the "Glossary of Geographic Names Mentioned In This Award" of the Award, P. XIX.

[3] The Xisha Islands consist of two archipelagos, which are the Amphitrite group and the Crescent group. The Yongxing Island (the Woody Island) is located in the Amphitrite group, which is the largest of the Paracel Islands in the South China Sea.

[4] YU (2013) p. 26.

Nevertheless, the Award does not concern the sovereign rights over the islands, atolls, cays, shoals, reefs or sandbars of the South China Sea, but rather the disputes between the Parties regarding the legal basis of maritime rights and entitlements in the South China Sea, the status of certain geographic features in the South China Sea, and the lawfulness of certain actions taken by China in the South China Sea (Philippines v. China, 2016, p.1). As has been noted, this paper analyzes the status of features according to the UNCLOS article 121.3, which determines whether or not certain features can be considered as islands, thereby affecting the Tribunal's interpretation and decision in this conflict. Questions regarding the lawfulness of some Chinese actions will not be addressed in this paper.

Given this information, it is possible for the following question to arise: if this case is not related to the sovereignty of the features, then why must the Tribunal interpret whether the features claimed by China are rocks or not? This is because until the second half of the twentieth century, the Spratly Islands were almost entirely ignored by the international community and were considered by sailors as dangerous land. The "only resources the islands offered were small guano and phosphate deposits, seashells, turtle meat, and fish that attracted only occasional exploitation by adventurous fisherman and phosphate miners. The tiny size, remoteness, and vulnerability of the islands to tropical storms made them unattractive to permanent settlement"[5], but signs of oil fields discovered in the 1970's as well as the expansion of the territorial sea and UNCLOS' introduction of new maritime areas in the 1980's changed the circumstances drastically[6].

At present, it is equally important to identify which country the features lawfully belong to, a complex debate[7], as well as to determine whether the features are islands or not, thus determining whether they should obtain all of the rights established in the UNCLOS article 121, including rights over the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. This was the Tribunal's challenge and this too is this paper´s objective. As a result, it is necessary to analyze the Chinese position according to different elements on account of this country's absence from the trial (Philippines v. China, 2016, p. 3) as well as the Philippine position *vis-à-vis* the Award.

### *1.2. The Chinese perspective*

Generally speaking, China considers itself as the "Middle Kingdom"[8], which can be a useful tool for understanding its geopolitical actions. To put it another way, Henry Kissinger stated that the "Chinese saw it [this Middle Kingdom] [as] a host of lesser states that imbibed Chinese culture and paid tribute to China´s greatness, [this being] constituted

[5] MURPHY (1995) p. 188.
[6] There are other factors to take into account regarding the importance of the Spratly Islands. Professor Melisa CASTAN (1998) p. 94 explains that these countries' interest in this area is related not only to the right to control economic resources in the Exclusive Economic Zones (EEZ), but also to their interest in the control of shipping routes that pass through the area as well as the preservation of prestige and political power, both at domestic and international levels.
[7] Regarding topics of ownership and sovereignty: CORDNER (1994) pp. 61-62; SALEEM (2000) pp. 527-582; GONZALES (2014).
[8] JOHNSON, (2017) pp. 8 and ss.

the natural order of the universe"[9]. The consequence of this approach is that the organizing principle of Asia´s historical international system would no longer be sovereign equality - as it was established diplomatically at the end of World War II[10] - but rather hierarchy. The Chinese vision of international relations after the establishment of the communist regime in 1948 also takes into account the concept of peaceful coexistence[11] which refers to the acknowledgment of dialogue as a powerful tool for preventing negative consequences in foreign affairs, such as the use of force. Nevertheless, there are significant differences in the application of this peaceful coexistence to the land and maritime border disputes. As professor ODGAARD states, "China has succeeded in reaching some kind of settlement for the majority of its land border disputes but not to its disputes over islands"[12].

In accordance with China's view of the international community, many scholars have tried to prove that China has total sovereignty in the South China Sea Islands because it was the first country to find, name, develop and administrate the islands in the South China Sea. China's sovereignty over the islands in the South China Sea and in the surrounding sea areas has sufficient historical and legal basis[13]. Due to this, China considers that its sovereignty in the South China Sea is under threat and that the countries belonging to the Association of Southeast Asian Nations (ASEAN)[14] arbitrarily interpret the UNCLOS for their own benefit and adopt laws allowing them to occupy islands and reefs and to develop natural resources in this region. Furthermore, China considers that some Southeast Asian countries are colluding with the United States and other regional powers against itself[15].

Thus, the actions of the United States and the ASEAN member States affect the Chinese concept of the "nine-dash line"[16]. Though the Chinese authorities have not clearly articulated this concept in legal or diplomatic terms, China has claims over the waters and features enclosed within this line. The ambiguity regarding the definition of this "nine-dash line" leaves plenty of room for possible over-interpretation, particularly when coupled with some of the actions that China has taken in response to perceived incursions within the area

[9] KISSINGER (2011) p. 10.

[10] KISSINGER (2014) pp. 178-179.

[11] The concept of peaceful coexistence was used by the Soviets at the beginning of the October Revolution as a renunciation of interference in internal affairs of other countries. It means that political and economic relations must be based on complete equality and mutual benefit (Kennan, 1960, p. 173). The Chinese concept of peaceful coexistence is very similar and "involves mutual respect for sovereignty and territorial integrity, mutual nonaggression, noninterference in the internal affairs of others, and equality and mutual benefit" ().

[12] ODGAARD (2012) p. 88.

[13] YU (2013); SHEN (2002).

[14] The ASEAN original counties are: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The newest members are Brunei, Cambodia, Laos, Myanmar, and Vietnam (http://asean.org/asean/asean-member-states/)

[15] GONG (2013) pp. 258-259.

[16] The origin of the "nine-dash line" appeared in: "a Chinese map as an 11-dash line in 1947 as the then Republic of China's navy took control of some islands in the South China Sea that had been -occupied by Japan during the second world war. After the People's Republic of China was founded in 1949 and Kuomintang forces fled to Taiwan, the communist government declared itself the sole -legitimate representative of China and inherited all the nation's maritime claims in the region" ("What's China's 'nine-dash line' and why has it created so much tension in the South China Sea?", *South China Morning Post*, 2016. Retrieved from http://www.scmp.com/news/china/diplomacy-defence/article/1988596/whats-chinas-nine-dash-line-and-why-has-it-created-so, date of consultation: May 15, 2020).

bounded by that line[17]. In any case, the "nine-dash line" has received neither international recognition, nor the acquiescence of States. On the contrary, it has been widely and consistently disapproved[18].

With the end of the Cold War and the withdrawal of the former Soviet Union and the United States, there is security vacuum in the South China Sea and the Spratly Islands offer a perfect place for China to flex its muscles in the region[19]. This global display of power also took place in 2010, when Vietnam indicated its willingness to involve the United States in the South China Sea dispute, to which China immediately responded by declaring that the South China Sea was part of its 'core interests', indicating that Chinese interest in this area had to be protected at all cost[20]. By the same token, a report from the 18th National Congress of the Communist Party of China held in 2012 states that: "We should enhance our capacity for exploiting marine resources, resolutely safeguard China's maritime rights and interests, and build China into a maritime power"[21].

In accordance with the above, China thus claims "historic rights" over the islands and other maritime features in the South China Sea. The Chinese authorities affirm that China has indisputable sovereignty over the South China Sea Islands and the adjacent waters. China's sovereignty and relevant rights in this region, formed over a long historical course, are supported by successive Chinese governments, reaffirmed by China's domestic laws on many occasions, and protected under international law including the UNCLOS (Ministry of Foreign Affairs People's Republic of China, 2015b). The Philippines contested these claims on the grounds that they were incompatible with UNCLOS and initiated arbitration under Annex VII of the (UNCLOS) for a declaratory judgment to that effect. China rejected the arbitral procedure in part because of its 2006 Declaration[22] which excludes all such disputes from the compulsory dispute settlement procedure of the Convention[23].

### *1.3. The Philippine perspective*

For the Philippines, China's exaggerated maritime claims and its attempts to enforce them have violated the Philippines' rights under the UNCLOS. Furthermore, it claims that over the course of the past 20 years, China has seized physical control of maritime features in the South China Sea that fall within the EEZ and continental shelf of the Philippines.

[17] TSIRBAS (2016).
[18] BAUTISTA (2013) p. 516.
[19] SCOTT (1995) p. 38.
[20] PAN (2012) p. 214.
[21] JINTAO (2012)
[22] China made a statutory declaration on August 25, 2006 to the UN Secretary-General in which it does not accept any international court or arbitration in disputes over sea delimitation, territorial disputes and military activities. The position of China against the Arbitration is explained in Song (2015). As a result, in the "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" of 7 December 2014 (Ministry of Foreign Affairs of the People's Republic of China, 2014), China rejected any jurisdiction over this case, and then rejected it again in 2015 in the "Press Release: Arbitration between the Republic of the Philippines and the People's Republic of China" (Ministry of Foreign Affairs of the People's Republic of China, 2015a).
[23] SREENIVASA (2016).

Additionally, China has also constructed installations on these features and has acted in a calculated manner, aiming to methodically consolidate control over huge portions of the South China Sea, including its seabed and subsoil (Permanent Court of Arbitration Memorial of Philippines, 2014, p. 8). Moreover, the Phillipines argued that the "dispute between the Parties concerning their maritime entitlements in the South China Sea escalated significantly following the official espousal of the nine-dash line claim to the United Nations in 2009. In April 2012, Chinese vessels dislodged Filipino fishermen from Scarborough Shoal, an area around which they had historically fished without protest from China. After dislodging the Philippine presence, China erected a physical barrier around the entrance to the shoal and has generally prevented Philippine vessels from navigating anywhere in the vicinity" (Permanent Court of Arbitration Memorial of Philippines, 2014, p. 8). In addition, "China has also obstructed Philippine oil and gas exploration activities in areas indisputably within the EEZ and continental shelf of the Philippines, including at Reed Bank and elsewhere. It has not only repeatedly protested the legitimate activities of the Philippines, it has also directly approached private companies investing in the oil and gas industry in the Philippines to dissuade them from carrying out exploration activities within the area encompassed by the nine-dash line" (Permanent Court of Arbitration Memorial of Philippines, 2014, pp. 8-9)[24].

As can be seen, the foundation of the Philippines´s demands is solely contingent on the interpretation of the UNCLOS article 121.3. For instance, if the different features in the South China Sea are considered as islands, China's arguments and actions could gain legitimacy; however, if the features are considered as rocks, the Chinese argumentation becomes invalid and the Philippines' demands valid. In the following section, an analysis of the Tribunal's interpretation of the article 121.3 will be carried out, studying the legal consequences of this position.

## 2. ISLANDS AND ROCKS; WHAT IS WHAT ACCORDING TO THE ARBITRAL AWARD?

### *2.1 How has the article 121.3 been interpreted?*

One of the most important issues to consider with a case in International Law that involves islands is that no absolute rule exists that sets out the exact effect to be given to islands. On the contrary, much will depend on the particular characteristics of the islands in question,

[24] According to these arguments, the Philippines considers that China has undertaken illegal actions in the region, such as the following:
– restriction of the right of innocent passage for foreign military ships through the 12 nautical miles territorial sea;
– attempts to expand its security responsibilities within the 24-mile contiguous zone;
– non-recognition of freedom of navigation for foreign warships within the 200-mile Exclusive Economic Zone (EEZ);
– non-recognition of airspace over the EEZ as international one in order to limit the flights of the US reconnaissance aircraft (the introduction of the Air Defense Identification Zone in the East China Sea is an example of this policy);
– introduction of a strictly regulated system for carrying out marine scientific research within the Chinese EEZ, which goes beyond the scope of conventional regulations (GUDEV (2017) p. 148; Permanent Court of Arbitration Memorial of Philippines, 2014, pp. 271-272).

including their location in the area to be delimited[25]. With the new maritime zones defined by UNCLOS, islands are given a special status because they can include territorial seas, contiguous zones, exclusive economic zones and continental shelves, including all of the economical and territorial benefits that this entails. For this reason, islands are a very delicate topic in the current Law of the Sea. Before starting an analysis of the Award, it is necessary to study how International Tribunals have considered the UNCLOS article 121.3 in the past because this allows for comparison and helps establish the importance of the Award for future cases. The next part of this paper focuses on cases where the Article 121.3 could have potentially been applied, in order to establish a pattern for its interpretation by the International Bodies.

The UNCLOS had not yet entered into effect during the case "Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen" (Denmark v. Norway, 1993). Consequently, Denmark raised the question regarding the status of Jan Mayen[26] as either a rock or an island, and the International Court of Justice (ICJ) took in account this argument in order to make an adjustment of the median delimitation line, without interpreting the article 121.3[27]. As professor FRANCKX states, the ICJ "simply took note of the agreement between the parties that Jan Mayen was an island and decided that it would not give full effect to Jan Mayen as requested by Denmark, thereby disposing of the issue as to whether paragraph 3 formed part of customary international law. The Court in other words did not look into the customary law nature of paragraph 3"[28].

On the other hand, despite the fact that the Tribunal's task in the Eritrea-Yemen Maritime Boundary Delimitation Award was to determine the extent of the dispute between the Parties over certain islands in the Red Sea and their maritime delimitation (Eritrea v. Yemen, 1999, p. 231), the parties included in their arguments elements such as "[these islands] sustain human habitation or economic life", according to the UNCLOS article 121.3. For instance, Yemen claimed that for generations, Yemeni fishermen had enjoyed virtually exclusive use of the Islands, even establishing, in contrast to Eritrean fishermen, permanent and semi-permanent residence there (Eritrea v. Yemen, 1999, p. 223). Also, Yemen further asserted that the islands were home to a number of Yemeni holy sites and shrines, including the tombs of several venerated holy men. It pointed to a shrine used

[25] SOHN *et al*. (2014) p. 293.

[26] "Jan Mayen has no settled population; it is inhabited solely by technical and other staff, some 25 in all, of the island's meteorological station, a LORAN-C station, and the coastal radio station. The island has a landing field, but no port; bulk supplies are brought in by ship and unloaded principally in Hvalrossbukta (Walrus Bay). Nonvegian activities in the area between Jan Mayen and Greenland have included whaling, sealing, and fishing for capelin and other species. These activities are carried out by vessels based in mainland Norway, not in Jan Mayen" (Denmark v Norway, 1993, p. 46).

[27] "The particular characteristics of Jan Mayen which Denmark regards as justifying this view are that it is small in relation to the opposite coasts of Greenland, and that it cannot sustain and has not sustained human habitation or economic life of its own (Convention on the Law of the Sea, 1982, Article 121); more broadly Denmark has referred in this connection to factors of geography, population, constitutional status of the respective territories of Jan Mayen and Greenland, socio-economic structure, cultural heritage, proportionality, the conduct of the Parties, and other delimitations in the region. The Court will therefore consider whether these are factors requiring an adjustment or a shifting of the median line." (Denmark v. Norway, 1993, p. 64).

[28] FRANCKX (2014) p. 118.

primarily by fishermen, who had developed a tradition of leaving unused provisions in the tombs to sustain their fellow fishermen (Eritrea v. Yemen, 1999, p. 224).

In this case the Tribunal found that the evidence presented showed little or no landing activities on the islands by either side (Eritrea v. Yemen, 1999, p. 285) and did not explicitly explain why the content of the article 121.3 was not applied to some of the features belonging to Yemen. According to the opinion of some scholars such as Professor Erik FRANCKX, "by referring to the 'barren and inhospitable nature' of these features the Tribunal may have meant to hint at Article 121.3, but never said so"[29]. Furthermore, there is a change in the Tribunal's point of view during the delimitation phase, in which it stated that it was assigning value to factors such as size, habitability and actual habitation for purposes of influencing the location of the boundary, but with respect to mid-sea islands, the determining factors were "size, importance and like considerations in the general geographical context"[30]. Hence, the article 121.3 was not applied to the case nor was it interpreted.

Other cases concerning islands in which the UNCLOS article 121.3 was left up to interpretation was the case "Concerning Maritime Delimitation" (Qatar v. Bahrain, 2001). In this case, the ICJ stated that "In accordance with Article 121, paragraph 2, of the 1982 Convention on the Law of the Sea, which reflects customary international law, islands, regardless of their size, in this respect (determination of the maritime rights of a coastal State) enjoy the same status, and therefore generate the same maritime rights, as other land territory (Qatar v. Bahrain, 2001, p. 97), but did not interpret article 121.3.

After these cases, the ICJ had the opportunity to interpret the article in question in the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras). Over the course of the oral proceedings ad hoc Judge Gaja asked the Parties whether the cays[31] would qualify as islands within the meaning of Article 121, paragraph 1, of UNCLOS. The parties agreed that Media Luna Cay is no longer an island due to the fact that it is now submerged, but the parties could not come to a consensus regarding the status of the other cays. The ICJ declared that it was "not in a position to make a determinative finding on the maritime features in the area in dispute" (Nicaragua v. Honduras, 2007, p. 704), and thus avoided interpreting the UNCLOS article 121.3.

In the case of the Maritime Delimitation in the Black Sea (Romania v. Ukraine, 2009), the application of the UNCLOS article 121.3 was essential due to the argumentation of the two parties. According to Ukraine, Serpents Island was indisputably an "island" under Article 121.2 of UNCLOS rather than a "rock". It contended that the evidence showed that Serpents' Island could readily sustain human habitation and that it was well established that it could sustain an economic life of its own (Romania v. Ukraine, 2009, p. 64). On the contrary, Romania claimed that Serpents Island was a rock incapable of sustaining human habitation or an economic life of its own, and therefore had no exclusive economic zone or continental shelf, as stated in Article 121.3 (Romania v. Ukraine, 2009, p. 63). The ICJ

[29] FRANCKX (2014) p. 121
[30] REISMAN (2000) p. 734.
[31] Logwood Cay, also called Palo de Campeche, and Media Luna Cay.

established that given the "geographical configuration and in the context of the delimitation with Romania, any continental shelf and exclusive economic zone entitlements possibly generated by Serpents Island could not project further than the entitlements generated by Ukraine's mainland coast because of the southern limit of the delimitation area as identified by the Court" (Romania v. Ukraine, 2009, p. 65).

Due to this argument, the ICJ found that it did not need to consider whether Serpents Island fell under paragraphs 2 or 3 of the UNCLOS Article 121 nor was this relevant for this case. In other words, the status of Serpents Island was irrelevant for the ICJ and had no effect on the delimitation. An interpretation of said article was not carried out by the ICJ. Determining the meaning of this article in a real case scenario remained a mystery, despite the fact that some scholars found the Romania v. Ukraine case useful for the South China Sea case, especially with respect to the delimitation methodology[32].

The most recent case that passed before the ICJ is the Territorial and Maritime Dispute (Nicaragua v. Colombia, 2012). In this case, the ICJ determined that Colombia had not provided enough evidence to classify the features on *Quitasueño* as anything more than low-tide elevations. It stands to note that the ICJ accepted the status of every other feature in dispute without scientific support based on consensus of Nicaragua and Colombia[33]. In addition, the ICJ made an important declaration regarding the definition of an island that was later used in the Award, stating that in International law, an island is defined depending on whether it is "naturally formed" and whether it is above water at high tide, rather than being defined by its geological composition (Nicaragua v. Colombia, 2012, p. 645).

This statement is essential for the definition of a 'rock' in accordance with the article 121.3. However in this case just as in the previous cases, the article itself was not clearly interpreted, and this may be the most important conclusion to be taken from all of these cases: prior to the Award, the ICJ had not articulated a precise interpretation of the article 121.3. To this lack of judicial interpretation, one must add the absence of clear State practice[34]. Hence, International Law analysts have benefited from this loophole concerning the differentiation of a rock from an island in the Law of Sea. This is precisely why the Arbitral Award is so important, because it interprets the article 121.3 for the first time and sheds light on this complex issue.

### *2.2 How was the article 121.3 interpreted in the Award?*

During the 1990's, some scholars considered the features of the South China Sea as islands[35]. This viewpoint, greatly favors the Chinese position, since the island regime articulated in UNCLOS includes the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf according to UNCLOS article 121.2. In the case of the Award, the Tribunal´s position is different; in order to substantiate its arguments, the

[32] BAUTISTA (2012).
[33] RIESENBERG (2013).
[34] FRANCKX (2014) p. 121. As will be seen, other scholars consider that there is a clear state practice (SYMMONDS (2014)).
[35] MURPHY (1995) p. 187.

Award analyzes the majority of the words contained in article 121.3 to find the legal sense pertinent to the case, applying the provisions of articles 31 and 32 of the Vienna Convention on the Law of Treaties (Philippines v. China, 2016, p. 205)[36]. The following is the Tribunal's interpretation of the concepts contained in the article 121.3 (Philippines v. China, 2016, p. 205), and is based on what was analyzed by Villamizar[37]:

(a) "rocks": In the analysis of the word "rocks", the key issue was whether "rock" had to be interpreted in geological terms. The issue regarding the composition of the rock worried many scholars who were interested in the interpretation of the UNCLOS article 121.3. One of these scholars was professor FRANCKX, who explained that the term 'rock' had to be interpreted in its generic, non-restrictive sense, including fairly small islands composed of rock or sand indiscriminately[38]. The Tribunal, just as the ICJ had declared in the Nicaragua v. Colombia case[39], considered that the use of the term 'rock' did not depend on its material or geological composition. Consequently, and for the purposes of Article 121.3, 'rocks' did not necessarily have to be composed of rock (Philippines v. China, 2016, p. 206); but could be composed of biological debris, sand or any other type of composition. With this interpretation, the concerns regarding the composition of the feature disappeared completely, due to the fact that material was now inconsequential in this debate. The Tribunal's interpretation notwithstanding, many scholars wondered whether it was necessary to interpret the term in this way.

For authors such as Alex G. OUDE ELFERINK, the *travaux préparatoires* and the negotiating record make it clear that the term "rock" was used to refer to one specific type of island and was not intended to be a synonym of the term "island". According to him, it "was clear to the drafters of the Convention that by introducing the term "rock" in paragraph 3 of article 121, the provision would not be applicable to islands above a certain size (…) the fact that rocks were distinguished from islets at UNCLOS III suggests that a figure of less than 1 square kilometer might be relevant to define the upper size of a rock under article 121(3)"[40]. This critique could have some legal validity, but there are numerous arguments that dismiss it. The interpretation of the *travaux préparatoires* is an important application of article 32 of the Vienna Convention on the Law of Treaties; however, the Tribunal found that "the negotiating history clearly demonstrates the difficulty in setting, in the abstract, bright-line rules for all cases" (Philippines v. China, 2016, p. 225). In addition to the difficulty of creating generic rules in such a problematic field, the special circumstances of this case make the Tribunal's interpretation quite useful for many reasons.

[36] The Tribunal concludes according to the *travaux préparatoires* that the article 121.3: (i) is a provision of limitation (p. 224); (ii) the definitions in Article 121(3) were not discussed in isolation, but were frequently discussed in the context of other aspects of the Convention (p. 224); (iii) the drafters accepted that there are diverse high-tide features: vast and tiny; barren and lush; rocky and sandy; isolated and proximate; densely and sparsely populated, or not populated at all (p. 225).

[37] VILLAMIZAR LAMUS (2018) p. 13.

[38] FRANCKX (2014) p. 115.

[39] In the case Territorial and Maritime Dispute (Nicaragua v Colombia, 2012, p. 645) the ICJ stated: "International law defines an island by reference to whether it is "naturally formed" and whether it is above water at high tide, not by reference to its geological composition… The fact that the feature is composed of coral is irrelevant."

[40] OUDE ELFERINK (2016).

First off, the complex geopolitical and military contexts in the South China Sea as well as China's behavior[41] make having a clear and precise interpretation of this article crucial. Complementing the above, the Award´s interpretation could be used by other Courts or in future negotiations, since this interpretation could define what a rock is or isn't, without resorting to special scientific arguments or discussions about its material composition. Finally, the debate regarding the minimum size needed for a feature to be considered a rock, islet or island is solved with the Award itself: "international law does not prescribe any minimum size which a feature must possess in order to be considered an island" (Philippines v. China, 2016, p. 226). This statement was also made by the ICJ in the cited case "Concerning Maritime Delimitation (Qatar v. Bahrain)". As OUDE ELFERINK argues, it is logical that a little feature measuring less than 1 square kilometer is considered a rock, but with all of the geological and geographical changes that the Earth undergoes, such as volcanic activity and climate change, it is not easy to define a rule for the case of islands, nor is it easy for the Tribunal take into account these considerations.

(b) "cannot": the interpretation of this term is not very extensive. The Tribunal merely expressed that it indicates a concept of capability. If the feature in its natural form has the capability of sustaining human habitation or an economic life, it is an island, if not, it is a rock (Philippines v. China, 2016, p. 206).

(c) "sustain": the Tribunal considers that the ordinary meaning of "sustain" has three components. The first is the concept of support and provision of essentials. The second is a temporal concept: this support and provision must be over a period of time and not one-off or short-lived. The third is a qualitative concept, entailing at least a minimal "proper standard". Thus, in connection with sustaining human habitation, to "sustain" means to provide that which is necessary to keep humans alive and healthy over a continuous period of time, according to a proper standard. In relation to economic life, to "sustain" means to provide that which is necessary not just to commence, but also to continue, an activity over a period of time in a way that remains viable on an ongoing basis (Philippines v. China, 2016, p. 207).

(d) "human habitation": this is one of the most polemic terms of the trial. Although China did not participate in this trial, its academics had made it very clear that there had been Chinese habitation in the area up to the present time. Scholars such as Choon-ho Park expressed during the 1970's that the islands were inhabited by a Chinese population[42], and many current authors share the same idea[43]. As a State external to the Award procedures, China released in December of 2014 a "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" (Ministry of foreign affairs of the people's Republic Of

[41] For Marie-France Chatin, a French expert in Geopolitics, one of the most important and tense issues of the world politics is the situation in the South China Sea (Podcasts *Radio France International* Géopolitique, le débat. Assiste-t-on á une revanche du national dans les affaires du monde?. Retrieved from: http://www.rfi.fr/emission/20170520-geopolitique-assiste-on-une-revanche-national-affaires-monde, date of consultation: May 12, 2020..

[42] PARK (1978) p. 29.

[43] ZHANG (2016); YU (2013); SHEN, (2002); GONG (2013).

China, 2014). In this document China argues about the sovereignty of the features, the permanent presence of its troops in the area, the lack of jurisdiction of the Tribunal and establishes its position apropos the arbitration procedure. Strangely, the paper does not mention the Chinese people's habitation of these features, an essential issue in this debate.

Nevertheless, the Tribunal did not consider historic elements in its interpretation of the concept of "human habitation". It was obligated to seek an interpretation in accordance with the meaning of the words. From the Tribunal's point of view, the use of the term "habitation" in Article 121.3 implies a qualitative element that is reflected particularly in the notions of settlement and residence which are inherent to this term. The mere presence of a small number of persons on a feature does not constitute permanent or habitual residence there and does not equate to habitation. Rather, the term habitation implies a non-transient presence of persons who have chosen to stay and reside on the feature in a settled manner. In this sense, human habitation not only require the presence of all of the elements necessary for survival but also requires the existence of conditions sufficiently conducive for human life and livelihood, allowing for people to inhabit rather than merely survive on the feature (Philippines v. China, 2016, p. 208).

Prior to the Tribunal´s interpretation, there were two contrary ways of understanding this concept in an academic sense. On one hand, the standard definition for this concept was "a stable community of permanent residents" living on the feature and using the surrounding maritime area. On the other hand, there was also the perception that an abstract capacity for habitation in the present or even in the future was sufficient enough to fulfil this criterion[44]. With the Tribunal´s interpretation, the mere presence of habitants is not enough to prove "human habitation" on a given feature. Furthermore, the possibility of habitation is not sufficient in itself. The presence of habitants is necessary, as well as the presence of elements and resources that allow the population to inhabit the feature. In this sense, the Award´s interpretation is closer to the first position.

(e) "or": This word causes serious problems for the interpretation of UNCLOS article 121.3. The article states: "rocks which cannot sustain human habitation **or** economic life of their own shall have no exclusive economic zone or continental shelf." The Tribunal must decide whether the criteria regarding the capacity to sustain "human habitation" as well as an "economic life of their own" are both required for a feature to be entitled to an exclusive economic zone and continental shelf, or whether one of these two suffices (Philippines v. China, 2016, p. 209).

The Tribunal observes, however, that economic activity is carried out by humans and that humans will rarely inhabit areas where no economic activity or livelihood is possible. The two concepts are thus linked in practical terms, regardless of the grammatical construction of Article 121(3). Nevertheless, the text remains open to the possibility that a feature may be able to sustain human habitation while at the same time offering little or no resources to support an economic life, or that a feature may sustain an economic life while lacking the conditions necessary to sustain habitation directly on the feature itself (Philippines v. China, 2016, p. 210).

[44] FRANCKX (2014) p. 115.

Taking this into consideration, the Tribunal concluded that "or" must be interpreted as follows: "the text of Article 121.3 is disjunctive, such that the ability to sustain either human habitation or an economic life of its own would suffice to entitle a high-tide feature to an exclusive economic zone and continental shelf. However, as a practical matter, the Tribunal considers that a maritime feature will ordinarily only possess an economic life of its own if it is also inhabited by a stable human community. One exception to that view should be noted for the case of populations sustaining themselves through a network of related maritime features. The Tribunal does not believe that maritime features can or should be considered in an atomized fashion. A population that is able to inhabit an area only by making use of multiple maritime features does not fail to inhabit the feature on the grounds that its habitation is not sustained by a single feature individually. Likewise, a population whose livelihood and economic life extends across a constellation of maritime features is not disabled from recognizing that such features possess an economic life of their own merely because not all of the features are directly inhabited" (Philippines v. China, 2016, p. 228).

In other words, the conditions "human habitation" and "economic life of their own" do not have to be met at the same time because the word "or" demonstrates the disjunctive nature of these conditions. The issue now at hand is the definition of the condition "economic life of their own". Since this term is too broad to be interpreted precisely, the mere potential of offshore fisheries or mineral resource exploitation would be sufficient enough for a feature to fall within the limits of paragraph 2[45]. Hence, some Chinese authors believe that while Scarborough Shoal has an economic life of its own, it can be considered as an Article 121(2) island, and therefore is entitled to the right to generate an EEZ or a continental shelf[46]. In the following paragraphs the Tribunal's interpretation will be examined.

(f) "economic life of their own": This is another polemic concept and in this case the Tribunal contradicts itself in its own interpretation[47]. This is because the interpretation of the word "or" establishes a disjunctive sequence between the terms "human habitation" and "economic life of their own". However, when the Tribunal analyses the concept "economic life of their own", it concludes that the two terms must be interconnected and the term "economic life of their own" is in direct correlation with "human habitation". The statement made by the Tribunal is the following:

"the term "economic life of their own" is linked to the requirement of human habitation, and the two will in most instances go hand in hand. Article 121(3) does not refer to a feature having economic value, but to sustaining "economic life". The Tribunal considers that the "economic life" in question will ordinarily be the life and livelihoods of

[45] FRANCKX (2014) p. 115.
[46] SONG (2015) p. 355.
[47] The Tribunal recognizes this contradiction in the following terms: "(…) the text of Article 121(3) is disjunctive, such that the ability to sustain either human habitation or an economic life of its own would suffice to entitle a high-tide feature to an exclusive economic zone and continental shelf. However, as a practical matter, the Tribunal considers that a maritime feature will ordinarily only possess an economic life of its own if it is also inhabited by a stable human community." (Philippines v. China, 2016, p. 228).

the human population inhabiting and making its home on a maritime feature or group of features. Additionally, Article 121(3) makes clear that the economic life in question must pertain to the feature as "of its own". Economic life, therefore, must be oriented around the feature itself and not focused solely on the waters or seabed of the surrounding territorial sea. Economic activity that is entirely dependent on external resources or devoted to using a feature as an object for extractive activities without the involvement of a local population would also fall inherently short with respect to this necessary link to the feature itself. Extractive economic activity to harvest the natural resources of a feature for the benefit of a population elsewhere certainly constitutes the exploitation of resources for economic gain, but it cannot reasonably be considered to constitute the economic life of an island as its own" (Philippines v. China, 2016, p. 228). "A feature that is only capable of sustaining habitation through the continued delivery of supplies from outside does not meet the requirements of Article 121(3). Nor does economic activity that remains entirely dependent on external resources or that is devoted to using a feature as an object for extractive activities, without the involvement of a local population, constitute a feature's "own" economic life" (Philippines v. China, 2016, p. 229).

This approach of the Tribunal implies that some activities such as offshore fisheries or mineral resource exploitation are insufficient in fulfilling the requirement of "economic life of their own", because the feature itself (or group of related features) must have the ability to support an independent economic life without relying predominantly on outside resources or serving purely as an object for extractive activities without the involvement of a local population (Philippines v. China, 2016, p. 211). This also implies that temporary populations, such as military troops, or transient populations such as those resulting from tourist activities, are not enough to prove neither human habitation nor sovereign presence. It is necessary that the population is permanently established on the feature in order for it to be considered an island for International Law purposes, if this condition applies.

## 3. THE POTENTIAL CONSEQUENCES OF THE AWARD FOR THE INTERPRETATION OF ISLANDS IN INTERNATIONAL LAW

The law enforcement of the Award presents many difficulties. First off the president of the Philippines, Rodrigo Duterte, set aside the Award stating that "in the play of politics, now, I will set aside the arbitral ruling. I will not impose anything on China"[48] (The Guardian, 2016). Secondly, China strongly rejects the Award´s legal procedure as well as the jurisdiction of the Tribunal. In addition, the development of military activity in the region makes the South China Sea one of the most sensitive zones on the planet with very delicate geopolitical balances[49], hence any forceful application of the Award's decisions could trigger an unprecedented military escalation with global consequences. This is due to the South China Sea's position as a vital route for international commerce. Taking this into account, the involved States must act with caution in this area.

[48] "Philippines to 'set aside' South China Sea tribunal ruling to avoid imposing on Beijing", *The Guardian*, 2016. Retrieved from: www.theguardian.com/world/2016/dec/17/philippines-to-set-aside-south-china-sea-tribunal-ruling-to-avoid-imposing-on-beijing, date of consultation: May 15, 2020.
[49] LIFF and IKENBERRY (2014).

Despite the delicate situation, one of the consequences of this Award is that it affects not only Chinese interests but also the Philippines' who expect to claim the EEZ and continental shelf of Bajo de Masinloc, also called Scarborough Shoal[50]. Taking into account the entirety of the Award´s interpretation, the Tribunal considers the features involved in this case as rocks according to the UNCLOS article 121.3, therefore denying an exclusive economic zone or continental shelf (Philippines v. China, 2016, p. 254). In theory, the Award, coupled with the excessive claims of both parties, it is necessary for new considerations to be made due to the fact that both islands and rocks are entitled to territorial seas that extend up to 12 nautical miles (nm) from a coastal baseline, and they provide full sovereignty for both sea and air space[51].

The Award´s interpretation of article 121.3 limits the excessive ambitions of both parties and applies the UNCLOS provisions, which could prove useful for future cases. In this context, the Award provides a frame of reference for negotiating a diplomatic solution and could serve as a catalyst to encourage dialogue for meaningful and peaceful resolution in a region fraught with disputes[52]. Realistically speaking, China will not give up its aspirations regarding the South China Sea, but avoiding military conflict is in the best interests of all States in the Asian Pacific, especially China[53]. Following the Award, the concerned States can apply the interpretation made by the Tribunal in order to determine whether a feature should be considered an island or a rock, and then start negotiations according to that framework.

Another consequence of the Award concerns the considerations regarding a feature's capacity to sustain human habitation or an economic life of its own. This issue will be determinant for the classification as a rock or as an island, but given the diversity of cases that can occur, it must be assessed on a case-by-case basis (Philippines v. China, 2016, p. 229). Therefore, it is difficult to establish a general rule and International Tribunals must take into account the different particularities of each case. Each case depends on many different factors such as geography, local customs, etcetera. It is important to note that in future cases it will not be necessary to consider geological arguments but rather other kinds of arguments - such as the length of time that the population has been present on the island, or how they obtain resources necessary for survival from the island - in order to prove that a feature has the capacity to sustain human habitation or an economic life of its own.

The third consequence concerns the question of whether the interpretation of the Award could be used by International Tribunals. Answering this question is no small feat as a result of the many issues involved. For instance, nowadays there is a growing tendency to settle territorial disputes in international tribunals or courts. This allows for the availability of multiple jurisdictions as precedents for judging similar cases, as it so happened with Chile and the European Community in the case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South - Eastern Pacific Ocean (Chile v.

[50] BAUTISTA (2013) p. 499.
[51] WAKEFIELD SMITH (2016-2017) p. 31.
[52] WAKEFIELD SMITH (2016-2017) p. 41.
[53] LIFF and IKENBERRY (2014) p. 91.

European Community, 2000) and the Case on Measures Affecting the Transit and Importing of Swordfish (European Community v. Chile, 2000). For Chile, the main issue of the trial was an ecological one, whereas for the European community it was a commercial issue. Nevertheless, the facts were the same.

More recently, in 2014 Somalia sued Kenya at the ICJ, in the case concerning Maritime Delimitation in the Indian Ocean. As professors Benatar and Franckx argue, whereas Somalia trusted the jurisdiction of the ICJ, Kenya raised an objection rooted in Part XV[54] of the UNCLOS[55]. Once again, two different Tribunals could be competent for the same facts[56] and this raised the issue the respect of the legal criteria from one tribunal to another. Up until 2014, the ICJ "often referred back to its own previous judgments while the International Tribunal for the Law of Sea did not distinguish between courts and tribunals and cited both ICJ and arbitral decisions"[57].

The potential multiplicity of jurisdictions available could generate a possible lack of unity in legal criteria for similar facts, since there is always a possibility of finding special circumstances that allow one to argue from a different point of view[58]. One good example is the case concerning the delimitation of maritime areas between Canada and France (Canada v. France, 1992). In this case, the parties demanded the application of the same criteria used for the Channel Islands in the 1977 decision in Anglo – French Arbitration, but the Court argued that the circumstances were different[59], and consequently applied other legal criteria.

In any case, the international tribunals are not isolated entities and can apply the same interpretation used for the Arbitral Award if the UNCLOS article 121.3 is considered as Customary Law. According to the article 38 of the Statute of the ICJ, to define a conduct as a custom of international law, it should be "a general practice accepted by law" of which two elements emanate: on one hand, there is an external or physical element that is a reiterated or common practice and, on the other hand, there should exist a psychological element called *opinio juris sive necessitatis*, that consists in the conviction among the states that this determined type of conduct is demanded by international law, namely that it is an obligatory practice.

Professor Clive SYMMONDS believes that both of these elements are required for the UNCLOS article 121.3 because "state practice also shows that in the case of delimitation, the status of a small insular feature may be circumvented without any clarification of article

[54] Settlement of disputes.
[55] BENATAR and FRANCKX (2017).
[56] In this case the ICJ upheld that it could proceed to the merits phase, thereby rejecting the respondent's submissions. (Somalia v. Kenya, 2017).
[57] SOHN *et al.* (2014) p. 325.
[58] SOHN *et al.* (2014) p. 320.
[59] The Court said: "In the course of these proceedings repeated reference was made by the Parties to the treatment given to the Channel Islands in the 1977 decision in the Anglo – French Arbitration. This Court does not consider that decision to provide a precedent for the present case. The situation of the Channel Islands is substantially different from the present one, because of the proximity of the English coast. The Channel Islands were seen by the Court as an incidental feature in a delimitation between two mainland, and approximately commensurate, coasts" (Canada v. France, 1992, p. 283).

121.3"[60]. In other words, the external element must be a common practice in order to constitute customary law. Symmonds also stated that the same situation is reflected in existing case law, where international tribunals have tended to sidestep the interpretation of article 121.3, while at the same time recognizing the new UNCLOS legislation regarding the augmentation of territorial seas to from 3 to 12 nautical miles, as was the case in the cited trial between Nicaragua and Colombia. Therefore, it is possible to contemplate the existence of an *opinio juris.*

The problem with this consideration is that the UNCLOS article 121.3 could be considered customary law; however this is not necessarily the case for the Award´s interpretation. Generally speaking, the interpretation made by the Tribunal must provide more elements for future trials regarding the application of the same criteria, although there is no certainty that this will occur due to the multiplicity of jurisdictions and to the special circumstances that international courts may identify, causing them to distance themselves from the specific interpretation of the Award. All things considered, the Award´s interpretation of the article 121.3 must be taken into account in the future and it is to be expected that in future cases where this article applies, the international courts or tribunals will use the criteria set forth in the Award, despite the fact that all cases must be assessed on an individual basis.

## CONCLUSIONS: IS THIS AWARD A CHALLENGE FOR THE INTERPRETATION OF ISLANDS IN INTERNATIONAL LAW?

As seen in the introduction, the main aim of this research paper is to determine whether this Award constitutes a breach in the interpretation of the UNCLOS article 121.3. Taking into account all of the arguments exposed above, the answer to this question is contingent on the point of view of the Tribunal. When presented with the same arguments, some scholars could consider that the Award´s interpretation does not pose a challenge because the UNCLOS article 121.3 had not been interpreted before this specific case, hence this interpretation is considered simply as a complement. On the contrary, others could consider that this is precisely the reason why the interpretation of this award is so challenging. As a result, it is very important to analyze these two possibilities.

Generally speaking, there are many legal cases involving islands in international law and the main dispute in these trials concerns the sovereignty of these islands[61]. However, it wasn't until the case of the South China Arbitration that a Tribunal or Arbitrator had to interpret the UNCLOS article 121.3. This is because some of the previous cases were presented before UNCLOS 1982 came into effect, and in others cases, the Tribunals simply did not find it necessary to apply this legislation. In other terms, the interpretation of the article 121.3 was not addressed before the Award, therefore the answer to the question:

[60] SYMMONDS, (2014) p. 64. As shown before, this is a conflict point because many scholars consider the opposite, like FRANCKX (2014) p. 113; CHURCHILL and LOWE (1999) p.163; BROWN (1994) p.151; KOLB (1994) p. 899.

[61] Some examples are the classic cases of The Island of Palmas (Netherlands v. USA, 1928), The Legal Status of Eastern Greenland (Danemark v. Norvege, 1933), The Clipperton Island (France v. Mexico, 1931), Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia, 2002), as well as the cases cited in this paper.

Does the article's interpretation pose a challenge for the definition and interpretation of an island in International Law with this Award? can only be negative. This Award does not present a challenge, but rather it serves as a complement for the interpretation of an island's regime, since it is the first case of its kind that required an interpretation of the UNCLOS article 121.3. Without it, this article is ambiguous in practice and the Award is very important because it sheds light on the interpretation of the article for future cases. Nonetheless, the Award is susceptible to criticism, as is almost everything in Law; yet the argumentation about the difference between an island and a rock is solid and clear, and will be helpful for future cases and for diplomatic negotiations involving islands or rocks.

On the other hand, it is possible that some authors might consider this Award as a challenge or even a breach for the interpretation of UNCLOS article 121.3, precisely because it had not been addressed before. This Award represents a turning point for maritime law, providing it with new information and material for the interpretation of article 121.3, therefore causing a deep impact on similar cases in the future. This position may be questioned in the case that the article 121.3 is considered customary law, because this would imply that this Award is not a turning point, but merely a clarification of aspects that were previously ambiguous. The cited case "Territorial and Maritime Dispute (Nicaragua v. Colombia)" as well as prior explanations of international customs in case law give clear guidelines for understanding article 121.3 as customary law.

Under these circumstances, the South China Sea Arbitration Case does not necessarily imply a breach in the interpretation and definition of the concept of 'islands' in International Law. This case is merely a clarification of the article 121, one that will especially be useful for island regime cases in International Law. After all, the South China Sea Arbitration Case will likely take into account other conflicts, as is currently the case with the dispute between Mauritius and France regarding the Tromelin Island (located in the Indian Ocean, north of Mauritius and the French Reunion Island and east of Madagascar). According to professor Dupont, in the negotiation over this island "the determination of the status of Tromelin with regards to Article 121.3 of UNCLOS would necessarily impact the localization of maritime boundaries" (Dupont, 2017). This Award provides the necessary highlights needed to ensure a just determination of maritime borders, which will most likely change the existing geopolitical landscape; this is also a very probable outcome for other maritime disputes regarding features that involve the determination of the status of a specific island.

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