

Forum: General Assembly 4

Issue: Territorial disputes in the South China Sea

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Introduction

The South China Sea is a highly disputed sea between China, Philippines, Taiwan, Brunei, Vietnam, Indonesia and Malaysia. It comprises an area of 3.5 millions of kilometers, and has been in conflict since 1951, initiated because of the San Francisco Treaty, which did not accurately establish the sovereignty of each country over the territory.

The corresponding Economic Zones of every party involved in this dispute are not clear, and because of the vast amount of islands in the sea, some countries are trespassing their 'border' in order to exploit the resources available. Myriad resources are to be exploited in this sea such as oil, natural gas and fishing resources.

Egregious problems with world trade and international relations are the inevitable corollary of this issue if not solved as soon as possible, due to the strained relationships between the members of the ASEAN and the People's Republic of China. This would affect not only Asia, but the whole world seeing as the South China Sea is a great source of oil and natural gas.

Definition of Key Terms

Territorial Disputes

A territorial dispute is a conflict involving 2 or more countries which are in dispute of the control of a certain territory. This type of conflicts may or may not involve violence between the respective Member States. In this case the islands and some parts of the South China sea are being disputed by China, Philippines, Taiwan, Brunei, Vietnam, Indonesia and Malaysia.

Exclusive Economic Zone

According to the United Nations¹, an Exclusive Economic Zone or EEZ, is an area that comprises of no more than 200 nautical miles from the correspondent coastline of every Member State. The sovereign state has certain rights over such territory which are all stated in the United Nations Convention on the Law of the sea part V such as the exploration and utilization of all resources inside the 200 nautical miles (370 kilometers) area.

Freedom of Navigation

Freedom of Navigation is an international law that stipulates that every ship which carries a flag of any Member State shall not be attacked or disturbed in any way by any Member State as long as it is innocent passage. Foreign ships can be disturbed and would not go against this law only if it has been authorized by any international organ.

Land reclamation

Land reclamation is the process of creating new islands or territories by filling parts of oceans, lakes or rivers with sand or soil. In the case of the South China Sea, China has been involved in such activities.

Nine-dash line

The term 'Nine-dash line' refers to the way in which the People's Republic of China historically backs its claims for land in the South China Sea. This map originally had 11 dash lines, but two lines which included the Gulf of Tonkin were removed.

Sea Lines of Communication

The Sea Lines of Communication (SLOCs) are the most important maritime routes that connect the biggest and most important ports, facilitating heavy exportation and importation of objects.

Asymmetric conflict

An asymmetric conflict or warfare is any conflict which involves more than one Member State and there is a significant difference between both parties, in which one of the possesses more economic, political and military power than the other party. Generally in this

¹ http://www.un.org/Depts/los/convention_agreements/texts/unclos/part5.htm

type of conflicts, the weaker party does not have the resources to stand up to the more powerful state, therefore leading to an advantageous position for the stronger state.

FONOP

FONOP stands for Freedom of Navigation Operations². The United States of America has been conducting these type of operations in the South China Sea. Their main purpose is to challenge absurde maritime claims, which are not in accordance with the UNCLOS and the Exclusive Economic Zone established by it.

Innocent passage

Innocent passage regarding transit in Exclusive Economic Zones means that those ships that are in innocent passage avoid acting threateningly towards the Member State, as well as not doing any suspicious activity.

Background Information

According to the 9 dash-line map created by the Chinese in 1947, most of the China Sea would belong to the People's Republic of China. During the World War II, Japan forcefully claimed and started administering South China Sea Islands, specially the Spratly and Paracel Islands. That was until 1952, with the San Francisco Treaty. It was signed particularly between the Allied states and Japan, and in such treaty Japan's possession of the Spratly and Paracel Islands was renounced by Japan itself, leaving both group of Islands with no concrete sovereignty at all.³

Further on, in 1982, the United Nations Convention on the Law of the Sea was created, and in this document the Exclusive Economic Zones of each country would be specified (200 NM or 370 KM). However, some of this zones would overlap with each other, making it impossible to know the exact jurisdiction of the territory. Examples are the Spratly Islands, Paracel Islands, Pratas Islands, Macclesfield Bank, Scarborough Shoal, etc. Some of China's claims were not based on their EEZ but on historical claims.

²

<https://thediomat.com/2019/01/us-navy-conducts-first-freedom-of-navigation-operation-of-2019-in-south-china-sea/>

³ Chen, H.-y. (2014). Territorial Disputes in the South China Sea under the San Francisco Peace Treaty. En *Issues & studies* (págs. 169-196).

The Declaration on the conduct of parties in the South China Sea was created in 2002, which stated how the parties should behave regarding this conflict. It specifies that Member States should refrain from activities which could affect local peace between parties, as well as reaching a peaceful solution to the issue. Nevertheless, in 2012, the Scarborough Shoal Standoff arose. China stopped fishers from getting into the Shoal, re-creating tension in the area. Philippines later on filed a case in the Permanent Court of Arbitration, and the Philippines won, while concluding that China (PRC) did not have the right to make any historical claims in the area, due to the lack of sources on whether China did actually have complete sovereignty over those lands in the past. According to the Court, China's claims were unfounded, and that the fact that China had exercised its sovereignty in the area had nothing to do with current claims. China and the Republic of China (Taiwan), dismissed this arbitration and did not take it into account whatsoever.

The case of China:

Nine dash-line map

China's claims on the South China Sea are all based on the Nine dash-line map, created in 1947. There are several interpretations for this map, ranging from whether China is claiming only the islands to if China is claiming the whole 'territory' including reefs, etc. There are several Member States that protest against the use of this map such as the Philippines, Vietnam, Malaysia, Brunei and



Map showing the Chinese Nine-Dash Line

Indonesia. The EEZs of these Member States coincide with China's dash-line map. Clearly, China's claims go against the UNCLOS, in which it states specifically the length of the EEZs of a Member State (200 nautical miles). Such line is no sea border due to the fact that its coordinates are not clear and that borders should be established with full lines, not dashed lines.

Land Reclamation

China has been engaged in activities of land reclamation in the area since 2013-2014, when China started a land reclamation program. This involves filling water beds with either sand or soil to create new islands for several purposes. Some of the 'Chinese' Reefs that have been through this process include: Hughes, Subi, Fiery Cross, Gaven Johnson, Mischief and Cuarteron. This type of islands according to the Philippines⁴ should not be considered as real islands, due to the fact that nature itself did not form them, as they are product of mankind.

Disputed Islands:

Spratly Islands

The spratly Islands are being disputed between China, Taiwan, Malaysia, the Philippines, Vietnam and Brunei. These Islands are strategically important due to the fact that they have reserves of oil and gas, which could be exploited by the sovereign state if their claims were to be recognized, as well as providing prime maritime trade routes and a place to install military bases and



Both the Spratly and the Paracel Islands.

forces. The Spratly Islands are also a great area for fishing. Claims on these Islands vary on different reasons, but China's and Vietnam's are based on historical reasons, such as the China's discovery and conquest of the islands in 2 BC. On the other hand, Brunei, the Philippines, Vietnam and Malaysia only claim the islands that are part of their respective Exclusive Economic Zones (EEZ), due to the fact that they overlap in that territory.

Recently, China has been militarizing these Islands, more particularly Fiery Cross Reef, Subi Reef and Mischief Reef with missile platforms. This puts in risk the peace in which all the 7 Member States claiming these islands as their own have been up to date.

⁴ <https://amti.csis.org/what-makes-an-island-land-reclamation-and-the-south-china-sea-arbitration/>

Paracel Islands

The Paracel Islands are an archipelago in the South China Sea and are also one of the most contested sections of the Sea. These islands are formerly ‘controlled’ by China, but Taiwan and Vietnam are also contesting its sovereignty, seeing as the islands are part of their respective EEZs. Most of the islands are inside the 200 NM territory of the three countries. They consist of 130 smaller islands and reefs. During the Battle of the Paracel Islands, in 1974, China claimed complete control over the Paracel Islands, expelling Vietnam from the territory. This Islands, as well as the Spratly, are prone to Oil and gas exploitation, as well as the fact that they have a great environment for fishing.⁵

The Woody Island is part of this archipelago, and it is the chosen by the People’s Republic of China to introduce the first missiles in the South China Sea in 2016. By having placed such missiles there, China has ensured protection of the Paracels, as well as having defense mechanisms against



Aerial view of Woody Island

possible U.S hostile attacks and the posterior collocation of missiles in the Spratly Islands, which are a more hostile territory, due to the larger amount of Member States that are in dispute for those precise Islands.

Pratas Islands

The Pratas Islands can also be known as the Dongsha Islands and Tungsha Islands, in the north section of the South China Sea. They consist of three atolls (coral rings which encircle a lagoon or lake) which are the Pratas Atoll, North Vereker Atoll and South Vereker Atoll. This Islands are currently controlled by Taiwan, as well as China. Both countries regard this islands as of their sovereignty.

⁵ https://www.cia.gov/library/publications/the-world-factbook/geos/print_pf.html

Macclesfield Bank

The Macclesfield Bank is one of the largest atolls in the world and is located east of the Paracel Islands. According to the People's Republic of China, this atoll is part of the Zhongsha Islands. There are no inhabitants of the Macclesfield Bank and it is administered by China but claimed as well by Taiwan and the Philippines.

Scarborough Shoal

Scarborough Shoal is shoal (sand or soil covered ocean, river, lake or lagoon) near Macclesfield Bank in the South China Sea. The territory was formerly In the past, the territory had been administered by the Philippines, but in 2012, with the Scarborough Shoal standoff, China got its administration, by attacking and invading the area. No actions were taken by the United States, even when Philippines' territorial claims were at risk, straining United States' diplomatic Relationships with Philippines. As well as being contested by China and the Philippines, Taiwan also claims the territory.

All tensions in the zone arose with the Scarborough Shoal Standoff, between China and the Philippines, in which Philippines placed under arrest several Chinese fishing boats which were in the area. In response to this, China placed 8 vessels surrounding the shoal, in order to prevent Philippines to get into the territory. This case was later on taken to the Permanent Court of Arbitration⁶, which ruled in favor of the Philippines.

Economy

Clearly one of the most important factors for this dispute is the economy. The South China Sea, precisely the Spratly Islands, are areas rich to exploit. Oil and gas are not the only richness of the area, seeing as it is an optimum place for fishing. It is estimated that the value of everything in the area would be a trillion dollars. That is more than a incentive for Member States to claim their own part of the South China Sea, which would be inside their EEZ. Furthermore, the SCS is a great area for traffic and trade. It can even be considered as a SLOC, meaning that it is one of the world's biggest trading routes, and also exports half the world's unrefined oil. It can be compared to both the Suez and Panama canals, but the

⁶ <https://pca-cpa.org/en/cases/7/>

South China Sea has 3 times more traffic than the first and five times more traffic than the latter.

Major Countries and Organizations Involved

People's republic of China

The People's Republic of China claims most of the South China Sea, due to apparent historical reasons, such as the nine dash line, and has been recently introducing arms into the area, so as to defend their zone from possible attacks.

Philippines

The Philippines claims all islands in their EEZ. The country has filed and won a case against the PRC against China's nine-dash line claims, and also due to tensions in the area because of the Scarborough Shoal Standoff but China has not stuck to the sentence.

Vietnam

Vietnam, as well as the Philippines, claims all territory that is of its rightful jurisdiction, meaning that it is inside the 200 NM established by the UNCLOS.

Republic of China (Taiwan)

The Republic of China (ROC) claims all territory within its Exclusive Economic Zone and is willing to take action if any Member State puts in risk its maritime territory or Exclusive Economic Zone.

Brunei

Brunei has claims on the South China Sea islands that correspond to Brunei's Exclusive Economic Zone.

Malaysia

Malaysia claims territories of the South China, but only those that would belong to Malaysia's Exclusive Economic Zone.

United States of America

The United States of America does not have any claims regarding the jurisdiction of any territory of the South China Sea. The U.S. has been conducting FONOPs in the sea, getting negative responses from states such as China.

Timeline of Events

Date	Description of event
December 9th, 1946	Republic of China's recovery of the Taiping Island
1947	Creation of the 11-dash line. (which would later become the 9-dash line in 1952)
September 8 th , 1951	San Francisco Treaty.
December 10 th , 1982	Creation of the United Nations Convention on the Law of the sea.
November 4th, 2002	Declaration on the conduct of parties in the South China Sea.
April 8th, 2012	Scarborough Shore tensions between Philippines and China.
January 22nd, 2013	Arbitral proceedings against the People's Republic of China by the permanent court of Arbitration instituted by the Philippines.
2013- 2014	Initiation of a Chinese Land Reclamation program.
May 1st, 2014	Chinese installation of an oil rig in Vietnam's Exclusive Economic Zone.
April 2015	Chinese construction of an airfield in Fiery Cross Reef.

Relevant UN Treaties and Events

- San Francisco Treaty, September 8th, 1951.

- Convention on the Law of the Sea, December 10th, 1982.
- Declaration on the conduct of parties in the South China Sea, November 4th, 2002.

Previous Attempts to solve the Issue

There have been two such attempts:

1. Convention on the law of the sea, typically known as UNCLOS, is a treaty by the United Nations which was signed the 10th December 1982 and came into action the 16th November 1994, with 157 signatories and 60 ratifications.
2. Declaration on the conduct of parties in the South China Sea, is a declaration between all ASEAN member states and the People's republic of China, which was signed on November 4th, 2002.

Neither of these were really successful, because of the disregard of the parties involved to this measures.

Possible Solutions

As Linh Tong (2016) states, this issue is be considered an asymmetric conflict or warfare, and therefore, should be treated as such. Previous solutions such as the Declaration on the conduct of parties in the South China Sea have been resultless, and this is no coincidence. China, as a global superpower, has established a sort of hegemony in the area, doing as it wishes, without caring for the smaller and less powerful states. As in almost every conflict where a superpower is involved, international law would only be followed if it is in the state's interest, but if not, would be completely disregarded. That is why all parties involved should reach a consensus on how to redistribute the sea correspondingly.

Another of the biggest problems of this issue is the void intervention of the United Nations. Without having support of such an important international peace organ, this issue is not treated as seriously as it should. Introducing this issue into the UN agenda would be a salient solution because it would not only be a place for safe debate, but also there would be intervention by unbiased states and organizations which would help in order to solve this issue in the most fair and quick way.

Biannual reports by the Secretary General of the UN would be key in order to spread awareness on this issue. These reports would allow other non-party states to be updated on how the issue has evolved and to seek for new solutions to it. They should include the sea's

distribution up to when it is done, the land reclamation implemented, and the resources available in the zone.

Regarding a fair distribution of the territories, an outstanding idea would be to create a commission in charge of analysing the respective economic zones of other countries and compare them to the ones of the countries in the China Sea. Although this will take time and resources, it would help in order to reach a fair decision to all parties involved. After analysing all the factors, the committee would also be in charge of the redistribution of the Exclusive Economic Zones in the South China Sea, but also in accordance with every State involved as well.

Furthermore, the institution of annual meetings with ASEAN and China and the commission would also be necessary in order to express the wishes of every Member State and reach an agreement. Therefore, all parties should sign a document which establishes that violators of the agreement would be economically penalized, with sanctions of all types, in accordance to the infraction that had been committed, as well as updating the Declaration on the conduct of parties in the South China Sea to the present.

Another magnificent way to improve this problem if the previous solutions do not work, is to strengthen ASEAN. This way China will not be able to establish its 'hegemony' in the South China Sea so easily if it meets with a solid and unified entity as ASEAN would be. In order to achieve that, all Members of ASEAN should leave their singular interests apart, and act like an entity.

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Appendices

- I. United Nations Convention on the Law of the Sea.
http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf
- II. San Francisco Treaty or Treaty of Peace with Japan
<https://treaties.un.org/doc/publication/unts/volume%20136/volume-136-i-1832-english.pdf>
- III. 'China's actions in south and east china seas: implications for U.S. interests.'
<https://fas.org/sgp/crs/row/R42784.pdf>
- IV. South China Sea Arbitration: Permanent Court of Arbitration
<https://pca-cpa.org/en/cases/7/>
- V. Declaration on the conduct of parties in the South China Sea
<https://cil.nus.edu.sg/wp-content/uploads/2017/07/2002-Declaration-on-the-Conduct-of-Parties-in-the-South-China-Sea.pdf>