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# Maritime Disputes in the South China Sea

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## ABSTRACT

*This paper focuses on Law of the Sea matters and talks about maritime disputes in the South China Sea and how the first world countries have more power over the third world countries and are more dominant when it comes to maritime interests. It also raises the issue on the fact that the countries who aren't a party to this convention take undue advantage of it.*

## I. INTRODUCTION

The legal foundation of regulating all the usage of oceans and the extent to the usage is established by the UN Convention on the Law of the Sea (UNCLOS). All of the states bordering the South China Sea—Brunei Darussalam, China, Indonesia, Malaysia, the Philippines, and Vietnam—are parties to UNCLOS<sup>2</sup>. The territorial sovereignty over the islands in the South China Sea is contested by these states. The UNCLOS does not tackle issues of the territorial sovereignty. These coastal states assert concurrent, competing jurisdiction over the south China sea. This convention informs us about the guidelines regarding maritime zones. According to this convention the right on maritime zone is determined on the basis of island and coastal states. This article emphasises on the fact that even though China has ratified UNCLOS, but it disagrees with certain of its obligatory clauses and if the borderline states would abide by these relevant UNCLOS regulations most of the maritime disputes will be resolved and there will be no threat to territorial sovereignty where there are coexisting claims on the waters. Maritime boundary allocations have always been the major reason for conflicts amongst the states. Such conflicts would be covered by a com-promissory convention provision, but it would only be in use if it allowed for unilateral referral to a 3<sup>rd</sup> party in the event when bilateral processes fail. The aim of compromise clause has been on equations that will only prevent some boundary conflicts. The law of the sea dispute settlement process is a topic of intense intellectual, commercial and political interest because it illustrates how the interaction of public and private law is evolving and posing new problems. East China Sea is connected to the South China Sea

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<sup>1</sup> Author is a student in India.

<sup>2</sup> The dates of ratification of the five claimant states areas follows: Brunei Darussalam, November 5, 1996; China, June 7, 1996; Malaysia, October 14, 1996; the Philippines, May 8, 1984; and Vietnam, July 25, 1994. See United Nations Treaties Collection, Status of Treaties, at <http://treaties.un.org/pages/ParticipationStatus.aspx>. If the Gulf of Thailand is considered to be an arm of the South China Sea, then Cambodia and Thailand would also be bordering states, but since these two states are not involved in the territorial disputes or maritime disputes addressed herein, I have not considered them to be bordering states in this article.

by the straits of Formosa, it was named as Formosa as Thailand was called as Formosa Island. Indian ocean is connected to south China sea through the strait of Malacca. South China Sea is considered to have most amount of traffic for passageways in the world and it fulfils the vital entry point for all the maritime transportation that take place via merchant ships and trade activities. The conflicts in the South China Sea are related to maritime claims and island claims between the states geographically situated in the Indo-pacific zone. Sovereign states like Malaysia, Vietnam, Brunei, Taiwan, Philippines and China are parties to these disputes.

## II. HISTORY OF SOUTH CHINA SEA DISPUTE

In south China sea there is a Paracel group of islands and Spratly group of islands China claims that these islands belong to China on the basis of old historical records it says that during the period of Han dynasty China controlled the entire South China sea including the area of gulf of Tonkin later they dropped the claim on that area. In the year 1935 China declared a 11-dash line it was basically a map in which there were 11 dashes which cover the entire area of south China sea claiming to be their own. Later in the year of 1950's they officially started the 9-dash line policy in which they excluded the area of gulf of Tonkin in an act of communist solidarity with Vietnam. These dashed lines indicate that China holds full sovereignty reefs, oceans and islands. Furthermore, it is interrupting the free passage through the lines for other nations. However, there is a lot of uncertainty around what China's nine-dash line means. Australia wrote to the UN denying the claim on the south China sea and states "*no legal basis for China to draw straight baseline connecting the outermost points of maritime features or 'island groups' in the South China Sea*" since it's violating the rules in UNCLOS which gives the right of exclusive economic zone to the costal states, it gives them the right to extract resources till 200nm from the baseline. China disagreeing to the UNCLOS has caused disputes between China and the other states. By creating nine-dash line China claims more than 80 percent of the waterways which extends as far as 2000 km from the baseline and reaches Indonesia and Malaysian waters. The Philippines, Vietnam, China, Brunei, Taiwan, and Malaysia all have unique, occasionally competing jurisdictional rights on land features in the sea, according to various historical and geological sources. Different national perspectives on sea rights have emerged as a result of the territorial dispute over land features. Vietnam established its claim to the Paracel Islands and the Spratly Islands in the 1970s, when the relationship between Vietnam and China had deteriorated, while the Philippines stated its claim to the Scarborough Shoal and the Spratly Islands. Brunei and Malaysia have proclaimed their sovereignty over several Spratly Islands and the southern parts of the sea, making their claim valid. Over the years, the claims have seized control of several marine objects, including rocks, islands, and low-tide heights.

Indonesia maintains an exclusive economic zone in the South China Sea near the Natuna Islands notwithstanding the rights there; the government only claims the portion of the area that falls within its EEZ. Chinese fishermen have made attempts to fish there. This year in protest at a Chinese coastguard ship accompanying Chinese fishing boats in the area.

### **Cause of South China Disputes**

The future of the world is dependent on access to and availability of natural resources. Asia in particular, as the world's most resource-poor continent, considering its size and population, has an insatiable appetite for natural resources.<sup>3</sup> The resources which are available in the South China Sea is the major source for economy for a lot of costal states. The scholars have showed a lot of interest in the relation between natural resources and disputes. The relevant authorities must address the disagreement given that it affects a number of areas in order to prevent impeding the countries' industrial progress. Additionally, rather of increasing the conflict, the contending parties must endeavour to negotiate a settlement through international treaties. Historically, it is said that access to resources has been a critical factor in war and peace.<sup>4</sup> Historic examples demonstrate that court decisions regarding issues of disputed sovereignty may result in a nationalistic backlash. It is essential to consider viable approaches to this dispute. The states which have over lapping jurisdiction are generally involved in this disputes. The UNCLOS has made certain rules regarding the EEZ and expects compliance with it. Most of the countries involved in the maritime dispute assert their claims on the basis of the UNCLOS, which provides a common legal framework for maritime holdings and jurisdictions.<sup>5</sup> Many countries hold the view that this war is primarily due to the Sea and the territorial division of the Sea. among the states. The South China Sea is a key source of natural resources for many different regions, not only those that border it. This is the main determining factor. There, 10% of the nation's fisheries are caught, providing hundreds of people with a crucial supply of food. This is an important consideration in the claims to ownership of the sea made by people from different countries.

The islands and rocks have also been a point of conflict. Countries find it difficult to do business through this waterway because to disputes about who is the rightful owner of certain islands, which might lead to the confiscation of their trading ships. There are a lot of claims which say that China has been trying to make include a lot of artificial lands which are not on the maps

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<sup>3</sup> Steve Mollman, "The U.S. Says China Is Blocking \$2.5 Trillion in South China Sea Oil and Gas," Quartz, August 25, 2019, <https://qz.com/1694322/south-china-seas-oil-and-natural-gas-pretty-important-after-all>.

<sup>4</sup> Steve Mollman, "The U.S. Says China Is Blocking \$2.5 Trillion in South China Sea Oil and Gas," Quartz, August 25, 2019, <https://qz.com/1694322/south-china-seas-oil-and-natural-gas-pretty-important-after-all>.

<sup>5</sup> Ba2011, pp.269–291.

just to have jurisdiction over new zones of the South China Sea. China started creating these manmade islands in the year 2014. The place where these islands were built was not considered in territorial waters in the international waters. This space is now used by China for its military capability. China using these resources have been expanding its military. China's next step can be occupying Taiwan's island. And all these activities that are taking place in the South China sea need international attention.

### **Effects of South China Dispute**

The dispute has had repercussions beyond only the fragile ties between China and Vietnam. The South China Sea's increased military activities and commercial fishing have severely depleted the area's ecology. The South China Sea is a biodiversity epicentre of the planet. China has been the most active island builder and is in charge of most environment degradation. These man-made islands' construction requires extensive digging, which has adverse environmental effects. Coral reefs are destroyed by dredging, which also alters wave patterns and interrupts many species' migratory routes. Additionally, in order to support their territorial claims, China and Vietnam have intensified commercial fishing. Fish supplies have been declining as a result of overfishing in the South China Sea.

Despite the fact that they both have a stake in keeping the region's natural resources accessible. But if they cannot work together, neither nation will have much left considering how quickly the violence is degrading the ecosystem.

### **III. ANALYSIS**

Economies of all the Southeast Asian states is heavily dependent on innocent passage through the South China sea as it is one of the major route for trading and if nine dash line comes into picture in these circumstances then that would lead to collapse of economy for these states. Since one third of the worlds shipping is carried out in this area it would create a major impact on everyone. This area is very important statistically, it has become a chess board for China. The fishing areas, suspected crude oil, natural gas are very important for all shipping lanes. The United States has rightly apposed the Chinese companies for building an artificial Island as these islands can destroy the stability of the sovereign countries and it can also cause environmental degradation. This policy of China is called Salami slicing/ cabbage wrapping strategies. Salami slicing is basically a technique where China performs numerous small activates in succession to achieve a much great action or outcome that would be difficult to carry out in one go. In simple words create a ruckus about something so much that at some point people start believing you be involved in it. And whereas the cabbage tactic is something used

by China specially in the South China sea, in this multiple military ships will be surrounded a particular island and try to get status quo on that area which in long run can give them the sovereignty of that island. The United States contends that claimant nations should have freedom of navigation across exclusive economic zones in the sea and aren't obligated to inform claims of military involvement under the UN Convention of the Law of the Sea (UNCLOS). The US has opposed China's aggressive land reclamation and territorial claims by conducting FONOPs and bolstering support for Southeast Asian partners. In an attempt to improve their naval security mechanisms and deter Chinese encroachment, Japan has also sent military equipment and ships to the Philippines and Vietnam in response to China's assertive behaviour in the disputed region. The UN is in support of a legally obligatory ethical code of conduct as well as other tightening initiatives.

The South China Sea Dispute has been impacting several regions; thus, the responsible parties need to resolve it so that the economic development of the nations is not hampered. Furthermore, it is crucial that the nations making the claims do not worsen the situation rather than attempting to reach an agreement via diplomatic means. A nationalist backlash has historically been brought on by judicial decisions on matters of disputed sovereignty. Therefore, it's crucial to think about potential answers to this disagreement. In order to resolve the disputes amicably, the claimants in the region should be prepared to give up their combative attitude and rather than agree to find a middle ground, even if this means renouncing part of their rights. The 200 nautical mile Special Economic Zone is where all claimants must limit their claims under the United Nations Convention on the Law of the Sea (UNCLOS). As a result, by adopting such a proposal, the claimants may also consent to allow for the restoration of unfettered passage in international waters. A further alternative could be for the participants to the issue to achieve a shared possession of the contested territories, in which case any earnings connected to the South China Sea would be equitably dispersed among the littoral countries. Other approach might be for the disputing countries to provide a thorough explanation of respective assertions and hand over judgement call authority to a foreign entity who will apply the UNCLOS or any other relevant international laws.

For bilateral discussions, China has put up a position, but the other countries have not accepted it. This is because the other nations believe that China's size may provide it an unspoken advantage in the distribution of the water body. Despite ASEAN's involvement in the dispute settlement procedure, no decision has yet been made. Finding a resolution is now essential because the crisis is hurting international trade and, notably, US security concerns. Article 15 of the UNCLOS which states “*Where the coasts of two States are opposite or adjacent to each*

*other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith”<sup>6</sup>.*

there has historically been agreement on the fundamental ideas underpinning article 15 of the Convention, there are still two issues that need to be resolved before that provision may be applied to actual delimitation situations. What qualifies as "historical title" or "special circumstances" to preclude the use of the equidistance criterion in the delimitation of adjacent or opposing territorial seas is one matter that has to be addressed. Countries might refer to the extensive body of literature on the subject of historical claim on nearby waters to find just and legitimate answers. Article 15 leaves an ambiguity for historical claims since we cannot identify what exactly comes under it.

#### IV. CONCLUSION

The extent of specific regulations that are now accessible, the significant rise in interest in marine resources and their preservation, and the threat of mandatory dispute resolution hanging over State actors have all contributed to a recent surge in the resolution of maritime disputes.

Now that disputes are beginning to take new shapes, Sea levels are increasing due to the melting of glaciers, arctic ice, and general water expansion brought on by worldwide climate change, which is also causing a substantial number of conflicts. As a result, baselines are altering. Some countries, such as island States, could one day even vanish. Hence all the states should follow the guidelines and not breach the UNCLOS, it would reduce the issues and concerns of overlapping. UNCLOS should amend the articles where it lets a state have historical claim on the territorial waters because this will lead to a lot of ambiguity and will lead to issues such as states claiming rights on EEZ of others. The legality of China's maritime claim must be challenged.

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<sup>6</sup> Convention on the Law of the Sea, Dec. 10, 1992, 1833 U.N.T.S 397. Enacted as: entered into force as the "United Nations Convention on the Law of the Sea"

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