

Forum: Association of Southeast Asian Nations (ASEAN)

Issue: The question of the South China Sea territorial dispute

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Introduction

The South China Sea is a body of water located around the western part of the Pacific Ocean. It is rich in natural resources such as oil and fish, and also serves as an important trade route that carries over $\frac{1}{3}$ of the world's maritime trade, at 3.37 trillion dollars passing through annually. According to the World Bank, it is estimated that the South China Sea Carries over 11 billion barrels of oil and an estimate of over 190 trillion cubic feet of natural gas. These resources offer tremendous economic opportunities to surrounding nations, and with over half a billion people living within 100 miles of the South China Sea coastlines, the rich resources provide crucial aid towards their financial earnings.

At the center of opportunity for economic development, nations around the South China Sea have made efforts to further expand and establish the legitimacy of one's claim over their share of the sea, which has sparked colliding claims of sovereignty. The South China Sea territorial dispute is surrounded by claims around bodies of water, economic zones, and the chain islands, with countries such as Brunei, The Republic of China, Malaysia, the Philippines, and Vietnam involved. Not only that, but due to its heavy influence over maritime trade routes, foreign nations such as the United States and France have and continue to intervene in affairs regarding the territorial dispute. International attention and court rulings are therefore often involved in settling disputes. In recent years, major disputes involve islands and reefs such as the Spratly Islands, Paracel Islands, Scarborough Shoal, and boundaries in the Gulf of Tonkin.

The Nine Dash Line that the Republic of China drew is presently the most controversial territorial claim. Under the line, China claims virtually all of the South China Sea, becoming the source of most if not all all conflicts in the South China Sea. However, due to its powerful economy, international presence, and navels, countries under conflict with China struggle to contest theri claims equally.

Definition of Key Terms

Territorial Dispute

Territorial disputes are conflicts of interest, often related to but not always to the possession of natural resources such as land, river, or minerals, by two or more parties or nations. Territorial disputes are often results of unclear and vague treaties or communication and can ensue military or violent outcomes.

Nine Dash Line

In 2009, in a dispute with Vietnam, the Nine-Dash Line was included in a document that the Republic of China sent to the UN for inspection. Covering over 90% of the South China Sea, the Nine-Dash Line is the basis for China's claim over the South China Sea Territories. However, territories within the line that China has claimed come into conflict with every South Asian country that also claims territories inside the line. In 2013, the Philippines and China came into conflict over China's claims of its sovereignty in the South China Sea. Philippine sought international arbitration on claims that China's sovereignty claims are both illegal and invalid. The tribunal ruling was carried out over a period of three years, with China's declination to participate in the arbitration. The court ruled in favor of the Philippines in almost every case and ruled that China has no historical claims to the areas of the South China Sea it claims to have. China did not recognize and rejected the ruling.

Salami Slicing Tactic

Appearing in a United States Institute of Peace report on the dispute in the South China Sea in 1996, Salami Slicing Tactic, or the Cabbage tactic, refers to small actions conducted by China that culminate into a larger action or result which would have not been possible in one conduct. An example of this would be contesting islands by surrounding them with naval blockades and security layers to ensure no intervention or access is possible by other nations, resulting in a successive claim on the island. Another instance would be the deployment of its Maritime Safety Administration and Fisheries Law Enforcement in petrol boats that slowly advance and "slice" into disputed waters, which was seen used to claim sovereignty over Senkaku Island against the Republic of China.

Island Building

Island building, or artificial human islands, are islands constructed by human means rather than through natural causes. Under UNCLOS, artificial islands are under the jurisdiction of the nearest coastal state with 200 nautical miles. Artificial islands are not considered islands to lay their territorial water or exclusive special economic zones.

ICJ Ruling

ICJ, or International Court of Justice, is a world court established in 1945 that is also one of the six principal organs of the United Nations. It serves to settle disputes and disagreements among nations through international law. It is composed of 15 judges elected by the General Assembly and Security Council, and no more than one judge of a nation may be appointed. Although ICJ rulings are binding among the party concerned, there is no enforcement power from the ICJ that can guarantee the nations involved will follow their resolve.

Sovereignty

sovereignty is the authority or claim of a state or nation over a certain territory. It is the right for a governing body to have autonomy over itself, without interference from foreign or extraneous power or body. Under territorial dispute, a nation's sovereignty is usually challenged or violated.

Militarization

militarization refers to the act of preparing a nation conducts to engage in conflict or war. It can be but not limited to the characteristics such as arming civilians, police force acquiring military-grade weapons or uniforms, active patrolling, and maneuver of warships or tanks. Through militarization around foreign nation borders or territories, it can be interpreted as a declaration of war, however, militarization can also be a display of power to acquire a certain goal or territory.

Innocent Passage

Defined in the United Nations Law of the Sea (UNCLOS), it allows ships and vessels to pass through territorial waters and Exclusive Economic Zones under the circumstance that they abstain from violating the peace and security of the area.

Exclusive Economic Zones

Exclusive Economic Zones (EEZ), under the 1982 United Nations Convention of the Law of the Sea, is the special right a state or nation has over the area's marine resources and exploration. 200 nautical miles is granted from the baseline towards the coast to the state, and countries are allowed to establish artificial islands or other infrastructure implementation.

Background Information

Cause of Conflict

Oil and other natural resources

It is believed that a vast amount of oil reserves and other forms of natural resources, with an estimate of 11 billion barrels of untapped oil and 190 trillion cubic feet of natural gas, are present and undiscovered in the South China Sea. Due to this vast amount of resources, the conflict of territorial claim is ultimately a fight for natural resources. Amid all the territorial claims, Red Bank is believed to be holding the largest reserve of oil and natural gas reserves. Smaller nations, such as Malaysia and Vietnam, view this huge source of material as a means and opportunity for economic growth and development and are willing to contest with China over them. In 2011 for example, after an accusation from Vietnam claiming that Chinese fishing boats cut off oil cables in Vietnam's special economic zone, Chinese vessels fired at Vietnamese ships that were approaching its drilling rigs near the Paracel Islands, which affected Vietnam's stock market and caused economic repercussions.

Fishing

Due to the heavy amount of fishing necessary and the high demand for supply, fishermen are constantly moving outwards and expanding their field of conduct searching for more fish. With a rich and vast fishing ground, the South China Sea holds over 10% of the world's catch fish annually. However, it is because of this rich resource in fish that competing fishermen often venture into dispute territories and infringe on the sovereignty of other nations. In April 2012, for example, Philippine naval forces and Chinese fishing vessels came under a two-month standoff over the illegal passing of Chinese fisherman.

Island Claims

Controlling multiple islands, China has become one of the only countries present in the South Asia Sea to militarize its territories. Due to all the conflicts and continuous clashes, the militarization in the region China holds control over has continued to increase. Surrounding China, the islands hold an important role in its naval power projection. To this day, China has completed three military bases in the South China Sea, and through these military bases, allow China to fire at Spratly Island, making the entire region a potential war zone and pose a military

threat to those sailing under the freedom of passage. Through the claims of freedom of passage, the US warship has come under the Radar of China and receive a warning from China for sailing into its territorial waters. Recently, Vietnam and Malaysia have also increased their military buildup in retaliation to China's increasing presence. Through arm trade with nations like India and Russia, while acquiring warships from the USA, these countries seek to contest China in their claims over these islands.

Island and territorial disputes

Paracel Islands

Paracel Islands, or also known as Xisha Islands, are archipelagos in the South China Sea. Including about 130 small coral islands, reefs, and banks, they are distributed across 15,000 square kilometers. The archipelago is equidistant from the coastline of the People's Republic of China and Vietnam, with a population of around 1000 people. In the 1930s, French Indochina established telecommunication and weather stations on islands such as Pattle Island and Woody Island within the archipelago, driving Taiwanese forces off Woody Island and abandoning their claims after 4 years. By 1995, South Vietnam held control over the archipelago, but with the Battle of the Paracel Islands in 1974, PRC took over control of the archipelago and claim sovereignty over it

Today, the Paracel Islands are still heavily contested, with China, Vietnam and Taiwan claiming sovereignty over it. China currently holds control over it, with a report of over 20 outposts and small harbours having capability to dock naval and ships built over the islands.

Spratly Islands

The Spratly Islands are an archipelago in the South China Sea. Composed of more than 100 reefs, with islands, islets, and cays present, the archipelago is located off the coast of the Philippines, Malaysia, and Southern Vietnam. The island currently has no record of indigenous inhabitants, but due to its rich fishing ground and unexplored natural resources such as oil and gas reserves, it is one of the most complicated and disputed areas of the South China Sea.

Currently, 45 islands, cays, and reefs are occupied by different countries. Military forces from Malaysia, Taiwan, China, the Philippines, and Vietnam all hold control and have established bases upon islands. In Addition, Brunei has claimed an exclusive economic zone located around the southeastern part of the Spratly Islands.

Scarborough Shoal

Scarborough Shoal is two rocks that are located between the Macclesfield Bank and Luzon Island. The land is under heavy dispute, with complicated historical claims from China and the Philippines.

In a report in 2016 by SIS Asia Maritime transparency Initiative, it is noted that there are no signs of land reclamation or construction activities, with only vessels and ships present around the shoal. However, in the same year, the Philippines government claimed that the Republic of China has construction activities active at the shoal, which was questioned by the US administration as the United States did not detect any activities abroad at Scarborough Shoal. In 2017, the South China Sea and East China Sea Sanctions Act was introduced to sanction anyone helping the construction of South and East China Sea projects, including the Scarborough Shoal area.

Major Ruling and Agreement

2011 Agreement

In 2011, major countries involved in the South China Sea, such as the People's Republic of China, Brunei, Malaysia, the Philippines, Vietnam and the Republic of China all agreed on a set of guidelines in the Declaration of Conduct of Parties in the South China Sea (DOC), which was aimed to help resolve major disputes. The document acknowledges and covers many aspects of conflict, including marine environmental protection, safety of navigation and communication, scientific research and search and rescue of combating transnational crime. However, one of the core issues, oil and natural gas drilling, was not resolved.

Permanent Court of Arbitration at The Hague

Over a three day period, the Permanent Court Of Arbitration has ruled that there was no legal basis toward China's claim to sovereignty in the South China Sea. The Nine Dash Line, China's main claim in the issue, was discredited, as the court considered that a history of active navigator and fisherman was invalid, and China did not actively exercise exclusive control over the waters. Spratly Islands, one of the archipelago at the center of the dispute, was also determined unable to generate maritime zones and considered it neutral international water instead. The Philippine fishermen were also recognized in their fishing rights in the Scarborough Shoal and the Court issued that China had interfered with their rights by preventing access. The Court issued that China violated the Philippines' sovereign rights in its EEZ, as it interfered with fishing and petroleum exploration conducted by the Philippines, constructed artificial islands and did not prevent Chinese fishermen from violating their sovereignty.

Security Summits

Shanghai-La Dialogue is the “Track One” exchange forum on Asia-Pacific region’s security issue, and the issue in South China Sea has been constantly in its proceedings. The Council of Security Cooperation in the Asia Pacific is the “Track Two” regarding security issues.

In 2016, United States president Barack Obama also initiated the US-ASEAN Summit at California in order for the Association of Southeast Asian Nations, an international governmental organization of ten Southeast Asia countries, to form closer bonds and engagement with one another. Through the summit, the Sunnyland Declaration was issued, which did not actively sought to settle China’s maritime disputes and conflicts with other nations but instead only called for the “respect of each nation’s sovereignty and international law”

Major Countries and Organizations Involved

China

With its major sea ports located around the South China Sea, China’s exportation economy and source of natural resources heavily relies on control over the South China Sea. Due to its industrial and military power, China has continued to expand its territorial claims through artificial land and military deployment on various islands under the claim of the Nine Dash Line. By doing so, it has sparked both domestic and international conflict with different nations also laying claims on territories across the South China Sea. In 2011, in an effort to amend these conflicts, China drafted the 2011 version of the Declaration of Conduct of Parties in the South China Sea (DOC), which was aimed to help settle disputes within the countries in the South China Sea.

Philippine

Since modeling its claims over the South China Sea in 1982 to follow the UN Law of the Sea convention, Philippine claims sovereignty over Scarborough Shoal and a collection of features under Spratly Island under the name of Kalayaan Island Group ((KIG). Due to those claims, Philippine comes into conflict with China, who also claim those islands through its nine-dash line policy. Under its president Rodrigo Duterte since 2016, Philippine has adopted a moderate approach towards settling the dispute in the South China Sea. In 2018, the Memorandum of Understanding on Cooperation in Oil and Gas Development between Philippine and China serves as an establishment of common ground towards the issue at hand.

Vietnam

Vietnam’s claims in the South China sea is over the control of Paracel Island. In 1974, the naval conflict between China and Vietnam resulted in 18 Chinese and 53 Vietnamese dead, and since then China has remained in control over the island. Furthermore, Vietnam’s government is under constant

pressure over China's expanding presence surrounding its territorial waters. Through a claim over the preservation of fish stock in the South China Sea, China has regularly harass and sink Veitnamese vessels. Through diplomatic protest and statements, Vietnam has made efforts in order to combat the expanding presence of China's claims over the sea, but has not succeeded in lowering China's activities in its territorial waters.

United States

Putting the sovereignty of the Southeast countries first, The United States stands in strong opposition to China's claim over the South China Sea territories. Under President Trump, the "freedom of navigation operations" (FONOPs), exercising the right for vessels to sail through open sea, has increased drastically throughout the years in order to challenge China's sovereignty claims. With direct military encounters , tensions between the two global superpowers continue to accumulate. The United States declares China's claim over the Nine Dash Line unlawful, and has placed a sanction on Beijing on 1/16/2021 over its territorial claims.

Malaysia

Rejecting China's claims over the Nine Dash Line, Malaysia is under conflict with China over its hydrocarbon exploration. China's, under its Cabbage Tactic, has repeatedly preached the Exclusive Economic Zones of Malaysia, claiming that it is under the boundary of the Nine Dash Line. In response, Malaysia has and continues to deploy its naval vessels when necessary, securing its claims over its body of war.

Timeline of Events

Date	Description of event
1982	UNCLOS (United Nations Convention for the Law of the Sea) becomes effective
2009	China submits a UN map of the Nine Dash Line and its claims.
May, 2009	Vietnam and Malaysia issues a joint statement accusing China's infringement upon the UNCLOS and the sovereignty of other nations

July 2012	ASEAN produced an official statement drafting the Code of Conduct within the South China Sea
May, 2014	Vietnamese fleet under fire by Chinese vessels under that claim that the Vietnamese fleet approached the Chinese drilling rigs near Paracel Island
July, 2016	Permanent Court of Arbitration at The Hague issue its ruling in favor of the Philippines against China in regards of China's claim over its ownership on the Nine-Dash line
May, 2017	United States conduct its first FONOPS under UNCLOS limitation in territory China has claimed in the South China Sea
September 17, 2020	France, Germany, and the United Kingdom issued a joint note verbale that recognize the Permanent Court of Arbitration's ruling and challenges China's territorial claims

Relevant UN Resolutions and Treaties

- United Nations Convention for the Law of the Sea, 16, November 1982
- Declaration of Conduct of Parties in the South China Sea, 20, July 2011

Possible Solutions

One possible solution is for ASEAN to strengthen its resolve in settling the dispute. Under the clearly disputed Nine Dash Line that has allowed China to virtually claim all of the South China Sea, drafting a new legislation and code of conduct is necessary to outline and clarify all claims by all parties involved. By overseeing this issue, the UN should issue an official map outlining the individual territories and EEZs of all parties involved in this dispute. Signatories should and will uphold the map's guidelines and respect other nation's sovereignty. Foreign nations and parties should also support ASEAN's outline for the dispute, and by conducting operations through the South China Sea, ensure that diplomacy and sovereignty of all nations involved are recognized. However, due to the lack of enforcement and follow through, rulings by international organizations like the PCA have not been historically recognized by the

Republic of China, and there is also no guarantee that even under a new legal framework that POC will follow its guidelines.

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