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Disarmament Committee

Determining the sovereign rights over the
dispute in the South China Sea



MODEL UNITED NATIONS
THE INTERNATIONAL SCHOOL OF THE HAGUE

President: Fede Everts
Deputy President: Paloma Mauriès

Forum:	Disarmament Committee
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Student Officer:	Paloma Mauriès
Position:	Deputy President

Introduction

The South China Sea is an area of great debate where it comes to territorial integrity and sovereignty. Neighbouring countries of this body of water are engaged with severe jurisdictional and territorial disputes with regards to the territory in this body of water located in South East Asia. This dispute means that the relations between the countries claiming the jurisdiction of the islands is becoming increasingly strenuous. The main areas of dispute is the Spratly islands and the Paracel islands. There are also debates between other geological formations such as rock formations, sandbanks, reefs, sea beds; one notable example is Shoal reef.

This dispute also carries significant weight with regards to its possible effects on international trade. As a lot of trade passes through this body of water, China's claim on the waters could cause disruption with regards to trade. Their claim could possibly affect the sea lines of communication, and greatly disrupt the sea passage that allow trade and the passing of maritime forces.

Another reason for dispute around this territory is its richness where it comes to natural resources. Both the Paracel and Spratly islands are uninhabited, however they have notable natural resources. This and the fact that they are ideal fishing areas mean that it is an area that a lot of people native to the area rely on.

The Republic of China has played its claims over the largest portion of the island, the nine-dash line, which demarcates an extensive territory in the South China Sea. Vietnam, the Philippines and other South East asian countries have contested China's claims to territory in the South China in hopes of reclaiming control of the area. Vietnam states that they have a historical claim, dating back to the 17th century, whilst the Philippines and other southeast asian countries also have extensive reasons to back up their claims to territory in the South China Sea.

Definition of Key Terms

United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS (United Nations Convention on the Law of the Sea) is an international treaty that took place in 1973 to 1983. The treaty actually came into force in 1994, after modifications had



taken place between 1990 to 1994. The treaty seeks to define the responsibilities and rights of the use of the world's oceans by member states, specifically with regards to the environment, business and the use of its maritime resources. Today 162 countries have ratified the treaty, and the European Union, however, the United States have not ratified it even though they view it as “customary international law”.

Nine-Dash Line

The nine-dash line refers to the territory that the Republic of China had claimed to be their own in 1912 to 1949. This is U shaped territory in the South China Sea that includes the Spratly Islands, the Paracel Islands and other areas such as Scarborough Shoal and Macclesfield Bank.



Economic Exclusive Zones (EEZ)

An economic exclusive zone is the territory or land that a country has the sole access to the exploitation of its natural resources and potential energy production. This zone is also an area that the country can establish businesses, artificial islands and conduct scientific research and maritime conservation.

General Overview

The dispute over the territory in the South China Sea has been ongoing for a long time. This large body of water involves 50% of global trade and a third of all naval traffic passes (*Cameraat*), it is clearly of a large importance to the International community as well as the countries and parties involved in the dispute.

The territory is of a large value to a lot of the countries that lay claims on the water body. This is why they are desperate to reclaim the land; militarily and economically the body of water has a lot of value. As previously stated a lot of global trade is conducted through this body of water, as well as it being an area that is naturally rich in natural resources. Oil and natural gas is what gives the allure to claiming the territory; 5 trillion cubic meters of oil is predicted in the area of the South China sea. It is also an area rich in biodiversity and a prime fishing area. This body of water offers many economical benefits that are a cause for the dispute to the ownership of the territory.

The creation of artificial islands in the area and other tactical locations is another reason for the tense unrest within the parties in this dispute. China having constructed 29 hectares of new facilities and laying a lot of military resources such as munition depots, sensory arrays and missile shelters. This area has a large military allure and value that could cause to an escalation with the arguments between member states. This could have major drawbacks with regards to the relations between nations in the area, as these will become more strained. The small communities in the area will also be negatively affected as the communities rely on fishing and use of the natural



resources that the territory owns for their livelihood. Conflict in the area will affect them greatly and as already said it will cause negative effects on the relations between countries in the South China Sea, which are already tense.

Origin

During WWII Japan had taken control over the Spratly Islands and the Paracel Islands, having conquered them in 1939. After the Potsdam conference and Cairo declaration made at the end of the war to redistribute conquered territory China created the original eleven-dash line (later the nine-dash line). This is what China would later use as historical claim to the land, which is widely disputed by other countries under UNCLOS.

Japan resigned all sovereignty to the South China Sea in the Peace treaty of San Francisco in 1952. However, after the creation of UNCLOS and subsequently the creation of EEZ's, China held no legal claim on the territory. This means that according to the law, China can not claim the land. This is why bordering countries have laid claims on the islands under their EEZ's through the UNCLOS.

Major Parties Involved

People's Republic of China

China is a key party involved in this dispute. They have claimed territory in the South China sea in 1947 that they have demarcated using their nine-dash line. This territory has little historical ties to China and geographically the islands and territory that they claim is significantly further away from China than to the other countries that want to reclaim the territory. This has caused several protest from other countries that have historical or geographical claims on the land. Until the Philippines took China to Permanent Court of Arbitration in the Hague to reclaim territory in 2013. On the 12th of July 2016 an arbitration court rules that China has no historic claim on the land, but the Republic of China does not recognise this. Instead they insist that they negotiate with plaintiffs directly as they believe that the panel has no jurisdiction on the case.

Philippines

Philippines is one of the countries that want to reclaim territory from China in the South China Sea. They believe that China is claiming territory that belongs to their EEZ. This is why they have taken action by bringing China to the Permanent Court of Arbitration in an attempt for them to give back the sovereignty and control of the waters that they believe are theirs. The Philippines strongly agrees with the ruling of the arbitration, and is thoroughly disappointed with the lack of recognition that this ruling is getting from China.

USA

The United States of America and China are currently in disagreement with regards to the South China Sea. The United States wants it to remain an International zone that they will have access to, which is what China wants to prevent by declaring their sovereignty over the zone. The USA is currently standing by its manoeuvres claiming that under the convention (UNCLOS) it is allowed to execute "peaceful surveillance activities and other military activities without permission in a countries' Exclusive Economic Zone (EEZ)".



Timeline of Key Events

Date Description of Event

1947 China demarcates territory in the South China Sea in the form of a

U shape with a dotted line. Nine dashes mark the territory that China marks as theirs.

1994 The UN convention of the Law of the Sea goes into effect after 60

countries ratify it. China and the Philippines later join the convention, the USA has never ratified it.

1995 China builds huts on the disputed Mischief reef. The Philippines

make a complaint through the Association of Southeast Asian nations.

1997 The Philippines block Chinese boats from approaching

Scarborough shoal. This causing China to protest. The shoal is 230km from the Philippines and 1,000km from China. In the future the Philippines will detain Chinese fishermen for “Illegal fishing” in the area near the shoal.

2009 Vietnam and Malaysia apply for recognition of several continental shelves, this prompts China to submit their nine-dash line map to the UN stating that it: “has indisputable sovereignty over the islands in the South China Sea and adjacent waters”.

2011 Philippines file a diplomatic protest as a result of alleged

harassment by Chinese patrol boats of a chartered ship searching for oil and gas near the Spratly Islands.

2012 China takes control of Scarborough shoal after a standoff a

Philippine naval vessel had stopped a Chinese fishing boat to inspect it.

2013 The Philippines take their dispute with China to the Permanent

Court of Arbitration in the Hague.

2014 China ignores protests made by Philippine government with

regards to the firing of a water canon by the Chinese government to drive away Filipino fishermen from Scarborough shoal. China repeats their belief that their “sovereignty is indisputable”.

December 2014 China issues a paper stating that the panel has no jurisdiction on

the case, as it only concerns boundary and sovereignty definitions that are not covered by the UN convention. They will only settle the dispute through negotiations.

2015 The panel in the Hague rules that it does have jurisdiction on at

least 15 claims made by the Philippines.

12th July 2016 The arbitration court rules that China has “no historic claims” to

islands in the South China Sea.



UN involvement, Relevant Resolutions, Treaties and Events

The UN has been involved in this issue and has had a large part to play when it comes to this territorial dispute. The UN has made also made several conventions and resolutions trying to establish protocol and implementing order for territorial disputes such as these. China has made declarations claiming the disputed territory as well, separately from the UN.

- Declaration of the Government of the People's Republic of China on China's Territorial Sea, September 4th, 1958
- United Nation Convention on the Law of the Seas (UNCLOS), December 10th 1982
- Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea, 1997-1998 **(A/RES/52/251)**
- Declaration on the Conduct of Parties in the South China Sea, November 4th 2002
- Implementation of the Declaration of the Indian Ocean as a Zone of Peace, December 9th 2013 **(A/RES/68/24)**
- Oceans and Law of the Sea, December 5th 2017 **(A/RES/72/73)**

Previous Attempts to Resolve the Issue

In January 2013 the Philippines took the Republic of China to an arbitration proceeding against their claim of territory in the South China Sea (which they claimed through the nine-dash line). Philippines claimed that the act of claiming such territory was unlawful under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS), which the Republic of China was part of. However, China refused to participate in the arbitration.

On the 12th of July 2016 the arbitrators on the tribunal agreed unanimously that the Philippines was right with their claim and that the Republic China had no historical claim to the territory that it had demarcated with their nine-dash line. The country never had historically exercised control over the territory, meaning that there was no legal basis for China to claim historic rights over the territory. They had also ruled that under the UNCLOS China had violated several rights of the Philippines including their right to sovereignty and that China had damaged the environment stating that it had caused "severe harm to the coral reef environment".

The Republic of China, however, did not accept the ruling. They rejected the ruling the President Xi Jinping saying: "China's territorial sovereignty and marine rights in the South china Sea will not be affected by the so-called Philippines South China Sea ruling in any way". They were open to resolving the issue in other ways, namely by the means of direct discussions with the plaintiffs.

Possible Solutions

An obvious, yet extremely taxing solution would be the redivision of the territory between



the member states that are disputing the territory. Doing this equitably through the appropriate redivision of resources, both militarily and economically, whilst bearing in mind the historical claims to the land. This will allow the countries hopefully to dissolve the dispute within the area. It is important to bear in mind the importance of paperwork, such as the creation of a treaty so that the guidelines and redistribution of territory is clear and for future reference in possible disputes regarding resources and territory in respective EEZ's.

Highlighting the importance of finding a solution with regards to the maritime passageway that the disputed territory allows. The ownership of the waterway should be carefully clarified and acknowledged by member states as this passageway as previously stated creates a large revenue to the country, with regards to taxes and the distribution of trade.

A clear division of the territory will allow for more clarity with regards to the dispute with over the territory and it will also give more stability that can allow debate and discussion with member states towards a more permanent solution. It is also important to stress the need of regulations of the creation of artificial islands and military activities in EEZ's by countries that are passing through the body of water. In order for the solution to be clear and have a permanent effect it is important that another treaty or clarification on the UNCLOS is made. This will also allow for guidelines of any other future dispute like this should come up.

Appendices

Annex VII of UNCLOS

Article 1

Institution of proceedings

Subject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.

Article 2

List of arbitrators

1. A list of arbitrators shall be drawn up and maintained by the Secretary-General of the United Nations. Every State Party shall be entitled to nominate four arbitrators, each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity. The names of the persons so nominated shall constitute the list.
2. If at any time the arbitrators nominated by a State Party in the list so constituted shall be fewer than four, that State Party shall be entitled to make further nominations as necessary.
3. The name of an arbitrator shall remain on the list until withdrawn by the State Party which made the nomination, provided that such arbitrator shall continue to serve on any arbitral tribunal to which that arbitrator has been appointed until the completion of the proceedings before that arbitral tribunal.

Article 3



Constitution of arbitral tribunal

For the purpose of proceedings under this Annex, the arbitral tribunal shall, unless the parties otherwise agree, be constituted as follows:

- A. Subject to subparagraph (g), the arbitral tribunal shall consist of five members.
- B. The party instituting the proceedings shall appoint one member to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national. The appointment shall be included in the notification referred to in article I of this Annex.
- C. The other party to the dispute shall, within 30 days of receipt of the notification referred to in article I of this Annex, appoint one member to be chosen preferably from the list, who may be its national. If the appointment is not made within that period, the party instituting the proceedings may, within two weeks of the expiration of that period, request that the appointment be made in accordance with subparagraph (e).
- D. The other three members shall be appointed by agreement between the parties. They shall be chosen preferably from the list and shall be nationals of third States unless the parties otherwise agree. The parties to the dispute shall appoint the President of the arbitral tribunal from among those three members. If, within 60 days of receipt of the notification referred to in article I of this Annex, the parties are unable to reach agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the President, the remaining appointment or appointments shall be made in accordance with subparagraph (e), at the request of a party to the dispute. Such request shall be made within two weeks of the expiration of the aforementioned 60-day period.
- E. Unless the parties agree that any appointment under subparagraphs (c) and (d) be made by a person or a third State chosen by the parties, the President of the International Tribunal for the Law of the Sea shall make the necessary appointments. If the President is unable to act under this subparagraph or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties. The appointments referred to in this subparagraph shall be made from the list referred to in article 2 of this Annex within a period of 30 days of the receipt of the request and in consultation with the parties. The members so appointed shall be of different nationalities and may not be in the service of, ordinarily resident in the territory of, or nationals of, any of the parties to the dispute.
- F. Any vacancy shall be filled in the manner prescribed for the initial appointment.
- G. Parties in the same interest shall appoint one member of the tribunal jointly by agreement. Where there are several parties having separate interests or where there is disagreement as to whether they are of the same interest, each of them shall appoint one member of the tribunal. The number of members of the tribunal appointed separately by the parties shall always be smaller by one than the number of members of the tribunal to be appointed jointly by the parties.
- H. In disputes involving more than two parties, the provisions of subparagraphs (a) to (f) shall



apply to the maximum extent possible.

Article 4

Functions of arbitral tribunal

An arbitral tribunal constituted under article 3 of this Annex shall function in accordance with this Annex and the other provisions of this Convention.

Article 5

Procedure

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case.

Article 6

Duties of parties to a dispute

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, in accordance with their law and using all means at their disposal, shall:

- (a) provide it with all relevant documents, facilities and information; and
- (b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 7

Expenses

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Article 8

Required majority for decisions

Decisions of the arbitral tribunal shall be taken by a majority vote of its members. The absence or abstention of less than half of the members shall not constitute a bar to the tribunal reaching a decision. In the event of an equality of votes, the President shall have a casting vote.

Article 9

Default of appearance

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and law.

Article 10

Award

The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state



the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

Article 11

Finality of award

The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

Article 12

Interpretation or implementation of award

1. Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

2. Any such controversy may be submitted to another court or tribunal under article 287 by agreement of all the parties to the dispute.

Article 13

Application to entities other than States Parties

The provisions of this Annex shall apply mutatis mutandis to any dispute involving entities other than States Parties.

UNCLOS

https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

Map of the South China Sea

<https://media1.britannica.com/eb-media/18/3318-004-59ADF8E0.gif>

Claims Made in the South China Sea

https://upload.wikimedia.org/wikipedia/commons/thumb/d/de/South_China_Sea_claims_map.jpg/300px-South_China_Sea_claims_map.jpg

Nine-Dash Line

https://ichef-1.bbci.co.uk/news/624/cpsprodpb/18105/production/_90356589_south_china_sea_spratlys.png

Bibliography

- Almond, Roncevert Ganan. "U.S. Ratification of the Law of the Sea Convention." *The Diplomat*, *The Diplomat*, 25 May 2017, thediplomat.com/2017/05/u-s-ratification-of-the-law-of-the-sea-convention/.
- Ap. "Timeline: The China-Philippines South China Sea Dispute." *The Indian Express*, Thursday, May



03, 2018, 12 July 2016, [indianexpress.com/article/world/world-news/timeline-the-china-philippines-south-china-sea-dispute-2909055/](https://www.indianexpress.com/article/world/world-news/timeline-the-china-philippines-south-china-sea-dispute-2909055/).

- Asia, Out of. "Making Sense Of The South China Sea Dispute." Forbes, Forbes Magazine, 11 Sept. 2017, www.forbes.com/sites/outofasia/2017/08/22/making-sense-of-the-south-china-sea-dispute/#7e83b3291c3b
- Beech, Hannah. "South China Sea: Philippines Awaits Tribunal Decision." Time, Time, 11 July 2016, time.com/4400671/philippines-south-china-sea-arbitration-case/?xid=homepage..
- Buijs, Saskia. "Disarming the Conflict in the South-China Sea." 28 Jan. 2017.
- Cameraat, Wisse. "Measures to improve the tenuous situation created by territorial disputes in the South-China Sea" 9. March. 2018
- "U.S.China Relations: Policy Issues." Google Boeken, Google, books.google.nl/books?id=wr5pB1m1eooC&pg=PA26&redir_esc=y#v=onepage&q&f=false.
- "United Nations Convention on the Law of the Sea." Wikipedia, Wikimedia Foundation, 19 Dec. 2017, en.wikipedia.org/wiki/United_Nations_Convention_on_the_Law_of_the_Sea.

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