

General Assembly 4 – Special Political and Decolonisation

Determining sovereign rights over the
dispute of the South China Sea



Forum:	General Assembly 4 – Special Political and Decolonisation
Issue:	Determining sovereign rights over the dispute of the South China Sea
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Introduction

The South China Sea (SCS) is a semi-enclosed sea with nine independent states and Taiwan sharing its coasts, making it a conflict prone zone. The territorial disputes rise from the countries' overlapping claims over the continental shelves, islands, islets, reefs, and Exclusive Economic Zones (EEZs). The People's Republic of China, the Philippines, Vietnam, Indonesia, Malaysia, Cambodia, and Brunei, along with the Republic of China (Taiwan) are openly involved in this pressing dispute.

The interests of these nations towards the SCS rise from many factors including the fishing areas, as the fishing industry is increasingly threatened by falling fish stocks. The conflict further involves stakeholders around the globe, attracted by the deposits of natural resources, such as crude oil and natural gas, present under the sea, which are extremely appealing due to a future imminent in energy scarcity. In addition to this, most of the global trade passes through the SCS thus the strategic control of important shipping lanes further increases its international appeal.

The issue at hand is a challenging one to solve, due to many factors making it difficult for the disputant states to come to an agreement. They share hostile historical experiences, including military encounters and the territorial disputes have been further intensified due to the military reinforcements taking position in the SCS. It is important however, to take legislative action in controlling the dispute before it deteriorates further, and determining the sovereign rights each nation has over the SCS is critical to ensure that this happens.

Definition of Key Terms

Territorial Dispute



A territorial dispute is a disagreement over the possession/control of land between two or more territorial entities, usually between a new state and the occupying power.

Exclusive Economic Zone

An area in which a coastal nation has sovereign rights over all the economic resources of the sea, seabed and subsoil extending up to 200 nautical miles from the coast.

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

An International agreement defining the rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources.

Association of Southeast Asian Nations (ASEAN)

An organization established on the 8th of August 1967 trying to promote cooperation and peace amongst Southeast Asian Nations. The ten members of ASEAN include: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

Natural Resources

Materials or substances occurring in nature which can be exploited for economic gain

Cairo and Potsdam Declarations

Declared that all the Chinese territory occupied by the Japanese army had to be returned after the war.

The nine dotted line area

The demarcation line used initially by the government of the Republic of China and subsequently also by the government of the People's Republic of China (PRC), for their claims of the major part of the South China Sea.

Commission on the Limits of Continental Shelves

An international commission that regulates the extent of the continental shelves of nations, to extend their continental shelves



General Overview

Under the United Nations Convention on the Law of the Sea (UNCLOS) various agreements were made which established the rights that a coastal country had over the resources of the waters extending off of its coast. This International agreement generated the EEZ, which declared coastal states had rights over the sea extending up to 200 nautical miles from their coast. In 1983 however, the EEZ conditions were modified thus allowing the extension of the EEZ if it was part of a continental shelf or shallower waters. This is ultimately what is causing the dispute over the SCS as it is creating overlapping claims and conflict over areas of land which could allow countries to extend their EEZs. In addition to this, some of the countries involved are not adhering to the boundaries clarified.

Origins

After World War II, China claimed sovereignty over the whole of the Spratly Islands, as it viewed them as a part of its territory, earlier occupied by the Japanese during the war, which had to be returned to them following the Cairo and Potsdam Declarations. Vietnam, however, disputed the claim, believing it to be within its legal territory. Since the 1970s, Vietnam has been building structures on part of the islands and has declared its authority and the conflict has triggered warfare between the two nations (see timeline of events). After Vietnam, the Philippines, Malaysia, Brunei and Indonesia also declared ownership of part of the Spratly Islands. Currently Vietnam controls 29 islands, the Philippines have seven, Malaysia has three, Indonesia has two and Brunei has one. China only has nine, with one owned by Taiwan. The SCS is greatly contended due to important economic and strategic reasons.

Economic Reasons

The South China Sea is very rich in oil and gas; up to 11 billion barrels of oil and 190 trillion cubic feet of natural gas are estimated to be located under the SCS waters. As fishing is a traditional way of making life in Southeast Asia, countries in the region are very interested in the fishing resources the SCS provides. Furthermore, as fish stocks are decreasing, countries bordering the SCS are putting more value in the disputed areas, which have a relatively higher amount of fish stocks in comparison to the rest of the globe.

Strategic Reasons

Many of the Islands in the SCS are merely submerged islets, rocks, and reefs that are little more than shipping hazards not suitable for habitation. However, they are



important because ownership claims to them are used to bolster claims to the surrounding sea and its resources.

Furthermore, the SCS provides a naval trade route, as it links the Pacific with the Indian Ocean and the Middle East. In fact, it has been estimated that over half of the world's annual merchant-fleet tonnage passes through the area.

In the Spratlys in particular China has been a continuing preoccupying presence as in 2014; it drew increased international attention due to its dredging activities causing speculation as to its planning to further develop its military presence in the area.

Furthermore, in April 2015, satellite imagery revealed that China was rapidly constructing an airfield on Fiery Cross Reef within the Spratlys.

Territorial Disputes

It is important to keep in mind that the goal of this council is to create a resolution aimed at achieving sovereign rights over the SCS dispute, thus it is beneficial to clearly understand the territorial disputes, the prevalent ones being:

1. The dispute among Vietnam, Malaysia, the Philippines, Taiwan, and China over the Spratly Islands (South of SCS).
2. Clashes between and among Vietnam, China, and Taiwan on the issue of the Paracels Islands (North of SCS).
3. Major dispute over the nine-dotted line area claimed by China, which covers most of the SCS and overlaps EEZs of Brunei, Malaysia, Philippine and Vietnam.
4. The dispute between the Socialist Republic of Vietnam (SRV) and the People's Republic of China (PRC) over the maritime boundary in the Gulf of Tonkin, the 12600 km² northern arm of the SCS is located off the coast of northern Vietnam and southern China (Keyuan, 2005).
5. Dispute over the maritime boundary in the waters north of the Natuna archipelago between Indonesia, China, and Taiwan. The dispute started in 1993 when China asserted their claim on a gas field north to the islands, and Jakarta profusely rejected that (Global Security, 2011)
6. The dispute over the maritime boundary along the Vietnamese coast between Vietnam, China, and Taiwan.



7. Maritime boundary dispute between the Philippines, China, and Taiwan of the waters off the coast of central Philippines and Luzon.
8. Dispute over the maritime boundary in the Luzon Strait between the Philippines and Taiwan, including the islands.
9. Dispute between Vietnam, China, Taiwan, Malaysia and Brunei over the maritime boundary north of Borneo. [1]

Major Parties Involved and Their Views

Association of Southeast Asian Nations (ASEAN)

ASEAN is a key organization involved in this conflict, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam are the members of the organisation. In 2002 the Code of Conduct of Parties in the South China Sea was agreed upon, initiating and promoting dialogue and cooperation between the Parties. With the help of ASEAN in 2011, the Parties agreed on a set of guidelines to achieve the tasks in the Code of Conduct. In general, ASEAN's holds an objective, peaceful view on the issue.

Brunei Darussalam

Brunei is claiming regions that lie within its EEZ, thus following the guidelines established in the UNCLOS. Furthermore, it has signed the Code of Conduct and its constituent guidelines. Overall, Brunei has preferred acting through peaceful rather than a military show of force. In fact, the Royal Brunei Navy (RBN) is a small force whose major task so far has been to conduct search and rescue missions.

China

The People's Republic of China firmly believes that the Spratly and Paracel Islands are a historical part of China and have been for at least 2000 years. In 1948 China made the first official claim to the region with the nine dashed lines (see definition of key terms). In addition to this, China argues that claims made by Viet Nam and the Philippines are illegal thus it is against UNCLOS' involvement in the territorial dispute. China prefers holding dialogues between involved parties instead of an international arbitration in the region. However, it has also increased its military presence in the region, increasing its military



spending by 175% in 2003. Furthermore, it is especially in conflict with the Philippines and Vietnam as it was involved in numerous military standoffs with these nations. Overall, China prefers the Code of Conduct as an integral part of the solution to the dispute rather than UNCLOS. , a document that was signed between ASEAN members and China to solve the issue of the South China Sea, should be an integral part of the solution to this issue, instead of UNCLOS.

European Union (EU)

None of the EU countries actually have any territorial claims in the region, however, they value the SCS for its economic role, as the sea is a major area that they can invest in. The EU released its guidelines on the EU's Foreign and Security Policy in East Asia in 2012, encouraging freedom of navigation in the SCS. Furthermore, the EU favors a peaceful solution that is in accordance with UNCLOS, contrasting China's preferences. In addition to this, the EU offered its help to parties involved in the conflict by sharing its skills in settling laws on maritime borders and sustainable management of resources and security measures in the major disputed areas of the SCS.

India

India is gradually becoming more influential and getting more involved in the issue as almost 55% of its trade with the Asia Pacific transits through the SCS. India has a strong interest in keeping the sea-lanes open for secure energy supplies to states like Japan and Korea. India's Oil and Natural Gas Corp (ONGC) and PetroVietnam signed a three-year agreement for cooperation in oil and gas exploration and production in the SCS in October, 2011, which was severely opposed by China.

Japan

In 1951 Japan officially relinquished its empire through the treaty of San Francisco thus annulling all of Japan's claims to the South China Sea Islands. Japan has a strong bilateral defence treaty with the United States thus is likely to support the allies of the US in this conflict.

Malaysia

Malaysia is making claims to regions under its own EEZ and also some islands in the Spratlys. It has ties with Viet Nam due to a joint submission to the Commission on the Limits



of Continental Shelves (see definition of key terms), which consequently caused conflict with China and the Philippines who opposed the commission.

The Philippines

The Philippines made its claim to the Spratly Islands in 1978. The Philippines argue that the Chinese nine dashed lines are a violation of UNCLOS, which the Philippines have ratified. Several disputes occurred throughout 1995 to 2012 between China and the Philippines, both military and in court. A few examples of these are China capturing Philippine military installations in their EEZ, the Philippines taking China to a UN Tribunal under the UNCLOS and also the seizure of Chinese fishing vessels in the disputed Scarborough Shoal. The United States of America is a major ally of the Philippines.

Republic of Korea

The Republic of Korea doesn't have any claims in the region. It is a strong ally of the United States, however, historical resentment has kept relations between ROK and Japan distant. Although ROK has ties with China as well, the country is more likely to not take a stance with China in the conflict in SCS. South Korea has also recently increased its defense cooperation with the Philippines.

The United States of America (USA)

The USA has no territorial claims in the SCS. It is, however, an increasingly important party to the conflict because of its aims to prevent the Chinese influence in the region. The United States doesn't accept any unilateral method in settling this conflict. An important factor to be aware of is that the US is backing a solution under international law, however, it hasn't yet ratified the UNCLOS. Furthermore, the USA has conducted numerous military drills in cooperation with Viet Nam, and it has announced that it will be deploying more ships in the Pacific to hinder China's advance. Lastly, the US has a defence treaty with the Philippines, as they are major allies.

Vietnam

After the Vietnam War, which ended on the 30th of April in 1975, Vietnam made its claim to parts of the South China Sea. In 1988, Vietnam had a military encounter with China, resulting in the death of dozens of Vietnamese soldiers. Vietnam and China conducted bilateral talks and made an agreement to work towards achieving the Code of Conduct. Vietnam has further conducted joined military drills with the United States of America.



Between 2005 and 2008, Vietnam, China and the Philippines formed the Joint Marine Seismic Undertaking (JMSU), a tripartite agreement to conduct seismic exploration in an area of the SCS belonging to the Philippines.

Timeline of Events

Date	Description of event
1946	China claims Spratly Islands.
1948	Nine dashed line map first published by the Republic of China's Interior Ministry in Taiwan staking its sovereignty claims.
1951	Japan officially relinquishes empire through the treaty of San Francisco thus annulling all of Japan's claims to the South China Sea Islands.
1974	China captures Paracel Islands.
1988	70 Vietnamese sailors killed in naval battle with China.
1991	China invokes International law to expand sea territory.
1995	China captures Philippine military instalments.
May 2000	Philippine troops kill Chinese fishermen and arrest seven.
June 2011	US Senate condemns China's use of force in South China Sea.
July 2011	US Vietnam engage in joint naval drills.
October 2011	Gas discovered in oil field off Vietnam's coast.
November 2011	US ASEAN press China on South China Sea policy.
June 2012	US announces that more ships will be deployed in the Pacific.
July 2012	China announces the creation of Sansha city, headquartered in the Paracel Islands.



January 2013	The Philippines announces that it will take China to a UN tribunal under the UNCLOS.
2014	Vietnamese and Chinese vessels collide because of a new drilling rig introduced near the Parcel Islands.
2015	According to the Pentagon's Annual Report to Congress China has started an infrastructure project on four reclamation sites.

UN involvement, Relevant Resolutions, Treaties and Events

- United Nations Convention on the Law of the Seas, 10 December 1982 (UNCLOS)
- Oceans and the law of the sea, 5 April 2012 (A/RES/66/231)
- Oceans and the law of the sea adopted in November 2012, 29 January 2013 (A/RES/67/5)
- Implementation of the Declaration of the Indian Ocean as a Zone of Peace, 9 December 2013 (A/RES/68/24)
- Oceans and the law of the sea, 27 February 2014 (A/RES/68/70)

Evaluation of Previous Attempts to Resolve the Issue

ASEAN

ASEAN was created to promote regional peace and stability and active collaboration and assistance between the Nations involved in the SCS dispute. Many consider it as being extremely successful and Malaysian Foreign Minister Abdullah Haji Ahmad Badawi explains why: "there is a very strong commitment among ASEAN members to cooperation and pragmatism". Also, "ASEAN Leaders and Ministers are never tired of seeking consensus". It helps that ASEAN, the Asia-Pacific Economic Cooperation (APEC) and the recently established Asia-Europe Meeting (ASEM) processes are effectively promoting a more constructive and cooperative approach to international relations in this part of the world.

However, ASEAN faces some issues with resource conservations, including environmental protection. Greater mobility of people, goods and capital also demands sophisticated border security measures and closer collaboration among States. In addition to this many of the ASEAN partners are distracted with their own problems, for example



Indonesia is undergoing political change and Myanmar, the host country, has been making the transition from military rule to civilian governance.

The future plans of the organization will be difficult to carry out as according to the third ASEAN Economic Community (AEC) scorecard, issued by the ASEAN Secretariat, “ASEAN achieved around 80 per cent of its targets in the last four years. The remaining 20 per cent of targets are the most difficult to achieve”. A further difficulty ASEAN could face in the future is the need to address the issue of its relations with its dialogue partners: the United States, Canada, Russia, China, EU, India, Japan, Australia, New Zealand and South Korea. This will be difficult due to the tension that is building up between the nations as the dispute carries on over the years. Furthermore, ASEAN must be attentive in ensuring that it does not get dragged into conflicts, however, must also explore exactly what it wants from its partners at a time when they themselves are trying to come to grips with their own problems.

UNCLOS

UNCLOS defines the “rights and responsibilities of nations with respect to their use of the world's oceans, establishing guidelines for businesses, the environment, and the management of marine natural resources”. The division of the sea areas was done through the creation of EEZs, Contiguous Zones, Territorial Waters and continental shelves, however, the zones overlapped creating clashes and overlapping claims over the SCS.

The treaty relies heavily upon national legislation to implement its provisions. This allows the national autonomy however nations may not view such legislation as a priority. Furthermore, some countries have shown a willingness to excuse violations that have happened abroad. In addition to this, the way in which control of ocean resources has been divided does not reflect the natural order of the marine environment. These divisions have in fact been accused of hampering cohesive management of resources in favor of respecting national sovereignty. Lastly, the deep seabed-mining regime is heavily criticized and is the reason keeping the United States from signing UNCLOS.

Possible Solutions

What is of uttermost importance to realize in order to solve this issue is that China's unwillingness to collaborate is destabilizing to the peace and security of the region, thus it is

necessary that claimant countries and the rest of the international community come together and confront China's aggressive actions. At stake are the territorial integrity and ownership claims of claimant countries and freedom of navigation for non-claimant countries as well as safe passage of about \$5 trillion worth of goods that navigate through the sea routes annually through the South China Sea. For successful resolution of this conflict, claimant countries and the rest of the international community should consider the following courses of action:

1. ASEAN could propose the establishment of an ASEAN-China forum that could act as a platform for continuous discussions and negotiations on the dispute.
2. Each claimant country in the South China Sea dispute should issue an official declaration of its claims based on the requirements of international law, to be endorsed by the UN and ASEAN. This would allow an official map to be drawn, which the claimant countries can use to determine their maritime territories.
3. Using the official map the countries can then invest in laser-powered virtual fences or other installations that can mark the limits of their maritime claims. Outposts or watchtowers can also help determine and protect boundary lines.
4. China's aggression should be countered as it is aggravating the dispute. Enforcement capabilities should include sharing of military resources, training, and operations among claimant countries in the region and with the United States, Japan, India, and Australia.
5. Offer incentives to China to encourage the nation to renounce its claims on the majority of the SCS and instead, communicate with other nations to determine a fair share of the maritime area, through the ASEAN-China forum earlier discussed. As an Asian superpower, China should weigh the costs against the benefits of its aggression in the region. China can furthermore use its military resources on the high seas towards productive and profitable activities and help eliminate tensions in the region and it could win the cooperative support of its neighbours.

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Appendices

Appendix I

More detailed timeline and useful facts and figures:

http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#!/?cid=ppc-Google-grant-infoguide-chinas_maritime_disputes-map#!%2F&qclid=Cj0KEQjwk7msBRCJj67khY2z_NIBEiQAPTFjv2gEzMcScMOTH4MpaPV0ScfBE3TN5qTuDSLXpKM_vPAaApvm8P8HAQ%23historical-context