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The situation in the South China Sea



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Introduction

The South China Sea is characterized by decades of impasse, and it is the site of one of the world's most contentious sovereignty disputes. Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam are all claiming parts of the South China Sea over the continental shelves, islands, islets, reefs, and Exclusive Economic Zones (EEZs), which is of tremendous strategic importance. A third of the world's shipping transits through the contested sea, which also contains fish resources and is believed to have large oil and gas reserves under the seabed. The quarrels have sparked concern that the area is becoming a flashpoint with global consequences, and solutions should be found to solve this issue.

Definition of Key Terms

Territorial dispute

'A territorial dispute is a disagreement over the possession/control of land between two or more territorial entities or over the possession or control of land by a new state and occupying power after it has conquered the land from a former state no longer currently recognized by the new state.'¹

Cairo and Potsdam Declarations

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

South China Sea (SCS)

The South China Sea is a marginal sea that is part of the Pacific Ocean. The sea covers an area of approximately 3,500,000 km² from the Singapore and Malacca Straits to the Strait of Taiwan. There are hundreds of islands situated in the South China Sea, of which Hainan is the largest.

¹ J.A. Frieden, D. A. Lake, K. A. Schultz, 2009, *World Politics: Interests, Interactions, Institutions*



Exclusive Economic Zone (EEZ)

‘An exclusive economic zone (EEZ) is a sea zone extending up to 200 nautical miles from the coast prescribed by the United Nations Convention on the Law of the Sea over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind.’²

Nine-dash-line

The nine-dash-line, also called nine-dotted-line, is a demarcation line used by Taiwan and China for their claims of the China Sea. The contested area includes inter alia the Paracel Islands and the Spratly Islands. The nine-dash-line was published in 1949.

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

An international agreement which 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.

Code of conduct

A 'code of conduct' is a set of rules outlining the social norms and rules and responsibilities of, or proper practices for an individual, party or organization.

Continental shelf

The continental shelf is defined as the natural prolongation of the land territory to the continental margin's outer edge, or 370 km from the coastal state's baseline, whichever is greater. Coastal states have the right to harvest mineral and non-living material in the subsoil of its continental shelf, to the exclusion of others. Coastal states also have exclusive control over living resources attached to the continental shelf, but not to creatures living in the water column beyond the exclusive economic zone.

Strait

A narrow passage of water connecting two seas or two other large areas of water.³

² Exclusive Economic Zone, Article 56, 2011, *United Nations Convention on the Law of the Sea*

³ Oxford Dictionaries, <http://www.oxforddictionaries.com/definition/english/strait>



General Overview

Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam maintain overlapping claims to the waters and tiny land features of the South China Sea, which has been there for centuries. It is a dispute over territory and sovereignty over ocean areas and the Paracel Islands and Spratly Islands - two island chains claimed in whole or in part by a number of countries. The Paracel's and the Spratly's may have reserves of natural resources around them. The sea is also a major shipping route and has a lot of fishing grounds.

The dispute has wrangled between rival countries. However, it was most often China on the one hand and one or more of the other claimants on the other, because China's claims are the most extensive by far, as defined by the nine-dash line. The tension has steadily increased in recent years.

Resources

The South China Sea contains plentiful of the resources. These resources can be divided into two categories: energy resources and fish resources.

Fish resources

The large South China Sea marine ecosystem has a tropical climate with different sub-systems in it. The South China Sea is highly productive in terms of fisheries with 3,300 species of fish alone and it has one of the highest biodiversity levels of the world. Every year, 5 million tons of catch are provided by the South China Sea, which is 10% of the total global catch.⁴

Energy resources

Oil deposit

The attention concerning the South China Sea resources is mainly focused on hydrocarbons and particularly on oil. Although oil depositing sites have been discovered in the areas of almost all the littoral states of the South China Sea, no actual commercial oil or gas reserves have yet been discovered in either one of the Spratly and Paracel Islands. See figure 1 for proved and probable oil and gas reserves in the South China Sea.

⁴ F. M. Tunvir Shahriar. "South China Sea dispute: Asian Detonator To a global catastrophe?"
ResearchersWorld-Journal of Arts, Science & Commerce.
http://www.researchersworld.com/vol4/issue3/vol4_issue3_2/Paper_02.pdf



Natural gas reserves

Although there is probably more natural gas than oil present in the South China Sea, there is much less talked about. In almost all the hydrocarbon fields in the South China Sea regions of Brunei, Indonesia, Malaysia, Thailand, Vietnam, and the Philippines, gas deposits have been found. Malaysia is the leading producer in both oil and natural gas producer in the region.

Although development of natural gas resources outside of Malaysia was hindered by deficiency of infrastructure, the natural gas exploration activity elsewhere in the region was increasing until the East Asian economic crisis. However, most of the potential oil and gas resources of the South China Sea are still subject to extraction.

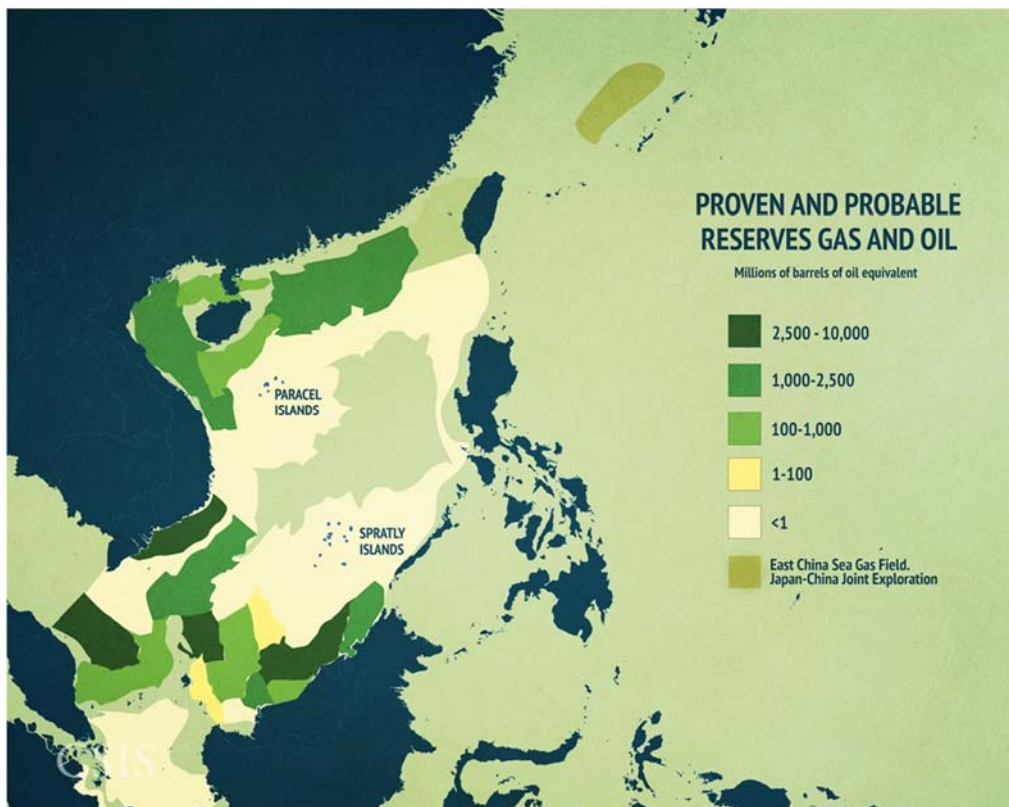


Figure 1. Proved and Probable Oil and Gas Reserves in the South China Sea.

"18 Maps That Explain Maritime Security In Asia." *Asia Maritime Transparency Initiative*. The Center for Strategic and International Studies, 2016. Web. 11 July 2016. <<http://amti.csis.org/atlas/>>.

Islands and seamounts comprised

The South China Sea Islands comprise over 250 islands, atolls, cays, shoals, reefs, and sandbars. Many of them are naturally under high tide water, and some are permanently



submerged too. On almost all of these islands there is not any indigenous habitat. There are three different archipelagos, and a few shoals and banks, of which the most important ones are listed below. They could also be found in Figure 2 below.

Spratly Islands

Although these islands offer rich fishing grounds and are suspected of containing significant oil and natural gas reserves, they do not have native inhabitants. Among the Spratly Islands, China, Taiwan, Vietnam, the Philippines, and Malaysia have shared 45 islands through military forces in small numbers. One area of small islands in the south-eastern part of the Spratly Islands is also claimed by Brunei as its Exclusive Economic Zone.

Paracel Islands

The fishing grounds around the islands are very productive. Besides that, there is a high probability of oil and natural gas reserves. The sovereignty of the Paracel islands is disputed between China, Taiwan, and Vietnam.

Pratas Islands

Dongshalsland, the main island of the archipelago, is the biggest island in the South China Sea and the first to be developed. Although the China claims sovereignty over these islands, they are still under the government of Taiwan.

Macclesfield Bank

The Macclesfield Bank is situated to the east of the Paracel Islands, southwest of the Pratas Islands and north of the Spratly Islands. It is one of the largest atolls of the world though completely submerged. There are some questions regarding the legality of the claims by both China and Taiwan, in whole and in part, upon Macclesfield Bank in accordance with the United Nations Convention on the Law of the Sea, since the bank is entirely underwater.

Scarborough Shoal

Scarborough Shoal or Scarborough Reef, which is located between the Macclesfield Bank and Luzon Island of the Philippines in the South China Sea is actually a group of rocks or very small islands and reefs. It is. This territory is claimed by China, Taiwan, and the Philippines.





Figure 2. Disputed Islands and claimed waters of countries.

"Why Is the South China Sea Contentious?" *BBC News*. BBC, 11 July 2016. Web. 11 July 2016. <<http://www.bbc.co.uk/news/world-asia-pacific-13748349>>.

Historical background

Before World War II, the South China Sea dispute was mostly centred to the Paracel Islands dispute. In the 15th century, the Chinese were the first to claim the Paracel Islands. In the 18th century, several claims from both China and Vietnam followed. The Spratly Islands made its entrance to the scene when Japan placed its claim over both the Paracel and Spratly Islands in 1927. In 1928, Taiwan declared that the Paracel Islands are the southernmost limits of its territory. France also stood up with its repeated claim on the Paracels in 1931. Finally when World War II started, Japan annexed all the islands and took control over the entire South China Sea in 1939.

After the World War, China claimed sovereignty over the Spratly Islands, and Japan had to return it following the In 1949 the nine-dash line, the former called the eleven-dash line, was published in the Public's Republic of China. Cairo and Potsdam Declarations. Vietnam, however, disputed the claim, believing it to be within its legal territory. 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. 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. 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 7, Malaysia has 3, Indonesia has 2 and Brunei has 1. China only has 9, with one owned by Taiwan. The SCS is greatly contended due to important economic and strategic reasons.

Since 1988, no massive clashes have been reported in the South China Sea region but small scale fighting, bush-wars, and overall the hot oral diplomatic wars have always been on.

Frontages of the conflict

There are actually three different frontages of this conflict, or they might be viewed as the reasons of the conflict: Each frontage is related to the other two.

1. *The territorial disputes*

Territorial disputes are the major problem in the South China Sea dispute. The following nine disputes are playing the biggest roles at the moment. They also include disputes about EEZ's.

1. Dispute among Vietnam, Malaysia, the Philippines, Taiwan, and China over the islands in the southern reaches of the South China Sea, most importantly the Spratly Islands.
2. Clashes between and among Vietnam, China, and Taiwan on the issue of the islands in the northern reaches of the South China Sea, mainly the Paracels.
3. Major dispute over the nine-dash line area claimed by China, which covers most of the South China Sea and overlaps EEZs of Brunei, Malaysia, Philippine and Vietnam. EEZs of Brunei, Malaysia, Philippine and Vietnam.
4. After that, the dispute between Vietnam and the China over the maritime boundary in the Gulf of Tonkin, the 12600 km² northern arm of the South China Sea is located off the coast of northern Vietnam and southern China.
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.



6. Then, 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.

2. *Clashes over the control of the straits*

The South China Sea is located extremely strategically. Connecting two of the most important oceans of the world, the Pacific Ocean and the Indian Ocean, this sea lies diagonally from northeast to southwest and links six straits on its margin. All these straits are very important sea routes for international trade and commerce. The South China Sea is the second busiest sea lane in the whole world, just next to the Mediterranean. Over 40,000 super tankers and business ships use the route per year. Besides that, the huge amount of shipping through the South China Sea has made the sea a seriously vulnerable spot for piracy attacks too. In the past decades, almost half of the world's total cases of piracy were reported from the South China Sea. This phenomenon also has drawn attention of the littoral states to keep these waters under control even to protect their ocean-trading.

3. *Contests on the resource reserve.*

It is understandable that the claimants are all seeking for the resources in the South China Sea. They understand the economic importance of the maritime resources and the fact that these resources are not unlimited. Therefore it is quite apparent that energy struggle has severely heightened the regional tensions in the past decades.

Claims

All the claimants have based their claims on the ground of modern international laws, while historical evidences are used too. China claims an area defined by the "nine-dash line" which stretches hundreds of miles south and east from its most southerly province of Hainan, and it is the biggest claim by far. The following picture, Figure 2, shows which parts of the South China Sea are claimed by which country.



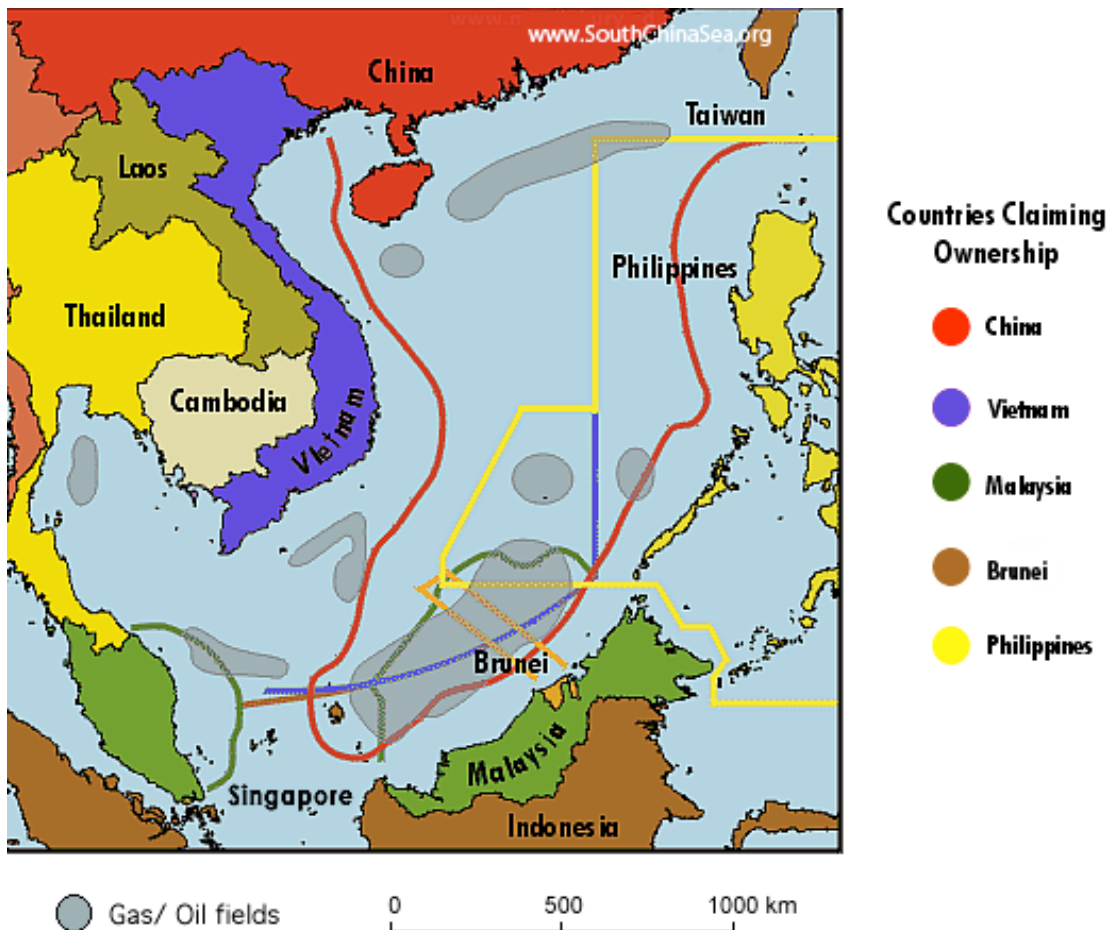


Figure 3. The claims of South China Sea claimants.

"The South China Sea." *The South China Sea*. WordPress, n.d. Web. 11 July 2016. <<http://www.southchinasea.org/maps/territorial-claims-maps/>>.

China's Island Building

Satellite imagery has shown that China has constructed artificial islands and infrastructure, such as runways, support buildings, loading piers, and possible satellite communication antennas, of which the government says that they are strictly for civilian purposes. However, neighbouring countries and the United Nations question whether this is true. China's is developing most islands on the Paracel and Spratly Island chains. It is said that this artificial island building and infrastructure construction are increasing its potential power projection capabilities in the region. The United States called in late 2015 for a halt to China's artificial island building. However China has not responded to this call and continues building islands in the South China Sea.

Major Parties Involved and Their Views

People's Republic of China

China has claimed by far the biggest part of the South China Sea, around 90%, and the nine-dash line defines its claims. It bases the claim primarily on historical background, because according to Chinese history the Paracel and Spratly Islands were first discovered by China around 300 AC. China's EEZ does not overlap with that of any other country.

China has refrained from using legal terminology to specify its demands. China has made clear that it does not plan to accept a likely unfavourable decision, forthcoming in a month or so, by the Permanent Court of Arbitration in The Hague. Moreover, China has so far refused to discuss any sort of multilateral negotiations over the many overlapping, conflicting territorial claims. The country considers itself as a victim of the aggressions of imperialism and the conflict between superpowers, which deprives it of its historical claims.

Philippines

The Philippines bases its claim on both the continental shelf and on historical arguments. The Philippines never claimed the main island of Spratly, which is outside the EEZ of the Philippines. In 2011 the Philippines renamed the South China Sea as the 'West Philippine Sea'. The Philippines is trying to pursue China at a UN tribunal, because it believes that China's nine-dash line is a violation of UNCLOS. But even if this is successful, China would not be obliged to abide by the ruling.

Malaysia

Malaysia claims some regions since they fall inside the borders of its EEZ and continental shelf, and some of the Spratly Islands as well. Therefore, its claim is primary on legal ground.

Brunei Darussalam

Brunei's claim is based on a straight-line projection of its EEZ. Brunei has not officially made claims neither to any reef nor to any of the Spratly islands.

Indonesia

Indonesia's claim to the South China Sea is limited to the Exclusive Economic Zone and continental shelf. Indonesia claims neither the Spratly nor the Paracel Islands.



Vietnam

Vietnam claims to have ruled over the Paracels and the Spartlys since the 17th century, and therefore believes these island chains are theirs. It also strongly contests China’s claims over the South China Sea. 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.

United States of America

The United States itself has no claims in the South China Sea, however, it maintains important interests in ensuring freedom of navigation and securing sea lines of communication, and says it opposes restrictions on freedom of navigation and unlawful sovereignty claims. The United States doesn’t accept any unilateral method in settling this conflict and will support an agreement on a binding code of conduct and other confidence-building measures. However, it has not yet ratified the United Nations Convention on the Law of the Seas. The USA has an alliance with the Philippines with whom it has a defence treaty as well.

Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations is a very important organization in this conflict. Member of ASEAN include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The Declaration on the Conduct of Parties in the South China Sea was created in 2002, which intended to promote and initiate dialogue and cooperation between the parties.

Timeline of Events

Date	Description of event
1949	Nine-dash line was published in China
1969	UN report finds high probability of oil in East China Sea
1974	China claims Paracel islands
1976	Philippines discovers the Nindo oil field, which is adjacent to the SCS. This indicates significant potential in the SCS itself
1982	UNCLOS established
2002	The Declaration on the Conduct of Parties in the South China Sea,

	set up by ASEAN
2009	Malaysia and Vietnam file a joint submission to the UN Commission on the Limits of the Continental Shelf to extend their continental shelves
2010	USA affirms interest in the South China Sea
2011	The Philippines renamed the South China Sea as the 'West Philippine Sea'
2015	The United States called for a halt to China's artificial island-building
7 th of December 2014	The United States State Department released a report concluding that China's 9-dash-line claim does not accord with the international law of the sea.
19 th of November 2015	The United States called for a halt to China's artificial island-building China is transforming Mischief Reef, a reef which is situated in the South China Sea, into an island
8 th of April 2015	Philippines v. China is a pending arbitration case concerning the legality of China's "nine-dash line" claim. Philippines asked the Permanent Court of Arbitration at The Hague to invalidate China's claims. The hearings were also attended by observers from Indonesia, Japan, Malaysia, Thailand and Vietnam.
3 th of January 2016	Vietnamese Foreign Ministry spokesperson Le Hai Binh said that the landing of a civilian aircraft in Fiery Cross Reef, which is a group of reefs in the Spratly Islands, is "a serious infringement of the sovereignty of Vietnam on the Spratly archipelago".
13 th of January 2016	China has finished construction on a 10,000-ton cutter destined for patrols in the South China Sea.
13 th of February 2016	Satellite images shows that China is currently expanding the North Island and Tree Island, both part of the Paracel Islands.
14 th of February 2016	China Deploys Missiles to Paracels
14 th of March 2016	Beijing will set-up an International Maritime Judicial Centre similar to the United Nations Convention on the Law of the Sea (UNCLOS) in order to help protect sea rights of countries.



UN involvement, Relevant Resolutions, Treaties and Events

- United Nations Convention on the Law of the Seas (UNCLOS), 10 December 1982
- The Declaration on the Conduct of Parties in the South China Sea, 4 November 2002
- 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

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

This international agreement set up by the United Nations in 1982 was the result of the United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. It is also called the Law of the Sea Convention or the Law of the Sea treaty.

UNCLOS divided the sea areas through the creation of EEZs, Contiguous Zones, Territorial Waters and continental shelves. However, the zones overlapped creating clashes and overlapping claims over the South China Sea. The convention calls on states with overlapping claims to delimit these boundaries in such a way as to “achieve an equitable solution.” This means that in the case of two opposing coastlines, one country-laying claim to 80 percent of the intervening water is illegal because it is clearly not equitable.

The nine-dash line, which is used by China to define its claims, is incompatible with the United Nations Convention on the Law of the Sea, which rejects historically based claims. Also, the deep seabed-mining regime of UNCLOS is heavily criticized and is the reason keeping the United States from signing UNCLOS.

The Declaration on the Conduct of Parties in the South China Sea

In 2002, is a declaration established in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned. All member states of the Association of Southeast Asian Nations (ASEAN) signed the declaration in November 2002. Analysts say that it was essentially a compromise between



two positions; doing nothing and having a legally-binding agreement. The declaration has three main purposes, namely; promoting confidence-building measures, engaging in practical maritime cooperation, and setting the stage for the discussion and conclusion of a formal and binding so-called 'code of conduct', which was actually the primary goal of ASEAN.

The declaration has not worked out as planned. The reason is that it did not have the legal power to restrain any claimant party's behaviour in the South China Sea. The declaration also did not have a mechanism to monitor. Furthermore, because there was a relatively stable situation in the South China Sea before 2008 the claimant parties were not stimulated to actively implement the declaration. However, some believe that it did help to maintain the overall stability in the South China Sea.

Possible Solutions

Firstly, all assumptions should be codified in law, both in domestic legislation and in a multilateral framework, to clarify what is and what is not in dispute under international law. This does not necessarily mean that claimants have to give up anything regarding their claims in the South China Sea. Instead, it would allow them to strengthen the legal basis of their claims. It would also result in legitimately support of the international community, since it would mean not defending claims of a specific nations but supporting international law itself. And most important, it would show that the only acceptable basis for maritime claims in the South China Sea must be international law, especially UNCLOS.

Secondly, South China Sea claimants could cooperate on the development of resources in the South China Sea, for instance on fisheries, gas and oil. An agreement to jointly develop disputed resources could *inter alia* mitigate risk by sharing economic benefits. However, claimants are unwilling to offer joint development of resources just miles off their shores, since fellow claimant China will not do the same.

Thirdly, dialogue should be increased, because dialogue between military forces has the potential to reduce the risk of conflict escalation. Communication mechanisms like military hotlines to manage maritime emergencies could be established and implemented among all claimants. It could also support greater military transparency and help develop shared rules in the South China Sea.



Fourthly, a multilateral, binding code of conduct between all ASEAN countries is seen as a way to ease territorial disputes in the South China Sea. The parties have already agreed upon multilateral risk reduction and confidence-building measures in the 2002 Declaration on the Conduct of Parties in the South China Sea, but none have actively implemented them so far.

Bibliography

Anna Scolamiero. "Determining sovereign rights over the dispute of the South China Sea". Model United Nations International School of The Hague Research Report GA4. <http://munish.nl/pages/downloader?code=ga403&comcode=ga4&year=2015>

BBC. "Q&A: South China Sea dispute". British Broadcasting Cooperation. <http://www.bbc.com/news/world-asia-pacific-13748349>

EIA. South China Sea review. US Energy Information Administration. https://www.eia.gov/beta/international/analysis_includes/regions_of_interest/South_China_Sea/south_china_sea.pdf

F. M. Tunvir Shahriar. "South China Sea dispute: Asian Detonator To a global catastrophe?" ResearchersWorld-Journal of Arts, Science & Commerce. http://www.researchersworld.com/vol4/issue3/vol4_issue3_2/Paper_02.pdf

Global Security. "South China Sea". Global Security. <http://www.globalsecurity.org/military/world/war/south-china-sea.htm>

Gregory B. Poling. "The South China Sea in Focus, Clarifying the Limits of Maritime Dispute". Center for Strategic and International Studies. https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/130717_Poling_SouthChinaSea_Web.pdf

Law Teacher. "South China Sea Disputes and Resolution". Law Teacher. <http://www.lawteacher.net/free-law-essays/international-law/south-china-sea-disputes-and-resolution-international-law-essay-law-international-essay.php>



Mingjiang Li. "Managing Security in the South China Sea: From DOC to COC". Kyoto Review of Southeast Asia. <http://kyotoreview.org/issue-15/managing-security-in-the-south-china-sea-from-doc-to-coc/>

Robert D. Kaplan. "The South China Sea will be the battleground of the future". Business Insider UK. <http://uk.businessinsider.com/why-the-south-china-sea-is-so-crucial-2015-2?r=US&IR=T>

Shen Dingli, Elizabeth Economy, Richard Haass, Joshua Kurlantzick, Sheila A. Smith, Simon Tay. Council on Foreign Relations. "China's Maritime Disputes". 2013. Web. 28 June 2015. <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/territorial-disputes-in-the-south-china-sea>

Appendices

I. For a more interactive map of the overlapping claims of different countries in the South China Sea:

<http://graphics.straitstimes.com/STI/STIMEDIA/Interactives/2016/02/turf-wars-on-the-south-china-sea/index.html>

II. More info about the South China Sea:

<http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#!/p31345>

