

**Forum:** Legal Committee

**Issue:** The question of maritime borders in the South China Sea

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## Introduction

The South China Sea has been recognized as one of the most disputed areas in the world; the South China Sea is situated in South East Asia and is surrounded by nations who raise claims to parts of the area or the whole area itself. The South China Sea is of around 3.5 million km<sup>2</sup> and encompasses an area from Vietnam to Philippines and from China to Borneo.

Although this dispute is not new, interest in the issue has been reinvigorated following new oceanographic discoveries. The issue has assumed greater importance not only because of the possible economic benefits that a country may gain by controlling and exploiting the resources present in the South China Sea. The South China Sea also sees an annual trade worth up to an estimated 5.3 trillion USD.

There are seven main claimant countries; PR China, Taiwan, Philippines, Vietnam, Malaysia, Brunei and Indonesia. Although most disputes are between ASEAN Nations and China there are also disputes within ASEAN nations. The dispute has attracted global attention not only because of the economic impacts of the resolution of this conflict on the world economy but also because of the global political implications. Countries including but not limited to USA and India, have taken actions to influence the current situation and the possible impact. The political and economic consequences of any decision have made the area a potential flashpoint for armed conflict for territorial gains.

There are large economic implications of the sovereignty of the South China Sea due to the newly discovered natural resources – exploitation of which can be seen as a significant economic benefit to the country which manages to obtain the largest pockets of oil and natural gas reserves. Billions of dollars' worth reserves are thought to be buried inside the South China Sea.

There are political implications of the South China Sea too. The South China Sea dispute is seen by many as a symbol of conflict between the rising superpower China and the USA. The USA to counteract the dominance of China has taken measures to support the claims of nations which oppose China's territorial claims. India too to counteract China's growing influence in Asia has taken steps to ensure and show globally that she too is a nation with international interests.

Due to the economic and political significance of the issue, which have to be resolved on legal grounds, the United Nations (UN) Legal Committee has been enlisted to ensure a legally correct resolution to the issue is reached.

## **Definition of Key Terms**

### **Claimant Countries**

Countries which stake a claim to some or all of the South China Sea include the main seven bordering nations: PR China, Taiwan, Philippines, Vietnam, Malaysia, Brunei and Indonesia. There are disputes between these countries regarding the setting of the maritime borders in the South China Sea.

### **Maritime Borders**

The limits of a country's sovereign rights over a particular body of water. These borders are often decided on the basis of historical, geographical and political arguments. These borders determine much like land borders where a country can carry out acts including but not limited to military operations or permission to conduct business activity. Encroachment beyond a country's maritime borders is treated similarly to the encroachment of a land border –with armed intrusion being seen as an act of war.

### **Association of Southeast Asian Nations (ASEAN)**

The Association of Southeast Asian Nations is a geo-political and economic organization comprised of ten South East Asian nations. They are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam The organization aims to not only boost the economic growth of the region but also to provide a platform for peaceful resolution to all disputes within the ASEAN region.

## Territorial Dispute

A disagreement between nations due to the existence of opposing claims to a particular territory the example in this case being the South China Sea. These disputes can be between two nations or between multiple countries.



*Caption #1: A map showing countries that have raised claims to major parts of the South China Sea, and the extent of the claims of each claimant country.*

## UN Convention on the Laws of the Sea (UNCLOS)

The UNCLOS is a treaty signed in 1994 regarding maritime laws signed by over 150 countries. The treaty outlines countries can use their oceans, their rights and responsibilities, and establishes guidelines for how countries can resolve disputes.

## List of major disputes concerning maritime borders in the South China Sea and the countries involved in specific disputes:

- Maritime border between Vietnam and China in the Gulf of Tonkin
- Maritime border along the Vietnamese coast between China, Vietnam and Taiwan
- Maritime boundary north of the Natuna Islands between Indonesia, China, and Taiwan
- Maritime boundary north of Borneo between Vietnam, China, Taiwan, Malaysia and Brunei
- Maritime boundary off the coast of central Philippines and Luzon between the Philippines, China, and Taiwan
- Maritime boundary in the Luzon Strait between the Philippines and Taiwan, including islands

- Nine-Dash area which is claimed by China and covers most of the South China Sea

## History

Though the South China Sea has always been of importance and has been a bone of contention between the claimant countries purely because of historical and geographic claims, recently the economic implications have stoked fresh interest into the issue as there are significant reserves of natural resources present in the area.

### *The Initial Conflict*

The initial conflict started before the founding of the People's Republic of China in 1949 and originates in the 'eleven-dotted line' created by the former Kuomintang government which outlined the maritime claims of China and encompassed by and large all of the South China Sea. The real conflict however started in 1876 when there was a between dispute Vietnam and China regarding the Paracel islands. The islands were the starting point for the dispute which is now known as the South China Sea dispute.

### *The Paracel Islands*

The Paracel Islands have symbolized the true nature of the conflict in the region with multiple countries including Vietnam (1816) and China (1876), staking their claims to the island. Japan and France too have raised claims to the islands and have in turn issued statements concerning their sovereignty of the islands. The sovereignty of the islands is an issue which has not been resolved as of date. However after the 1974 Battle of the Paracel Islands; China has taken sovereign control of parts of the Paracel Islands.

### *The focus shifts from Paracel*

Until the start of the World War II the only real dispute in the South China Sea concerned the Paracel Islands. However, in World War II Japan occupied not only the Paracel islands but also annexed all of the South China Sea as its own territory. Following the end of World War II – the vacuum left by China led to multiple claims regarding maritime borders from different countries. In the late 80's and early 90's exploration into the South China Sea led to the discovery of large oil and natural gas reserves resulting in the 1992 Chinese claim to all of the South China Sea. This claim led to widespread protests and has defined the conflict as we know it today. The increase in

the freighter ship traffic in the particular region has also added to the significance of the conflict as controlling key shipping routes translates into economic and political power.

### ***Current Situation***

The situation in the South China Sea has escalated since the creation of the UNCLOS. UNCLOS provides legal ground for states to have sovereign right to all territory 200 miles of the coast. Due to UNCLOS, conflicting claims have gained further legal weight in addition to the historical reasons pursued by claimant nations.

Due to the lack of clarity regarding the international agreement on the resolution of such an issue; nations have been involved in obtaining de-facto control of islands in the South China Sea to ensure that any legal findings take this control into account and possibly increasing the proportion of the division of the South China Sea allotted to a particular country,

The conduct of parties declaration between ASEAN nations and China provides a guideline for the resolution of the disputes in China – but has been flouted by both parties in view of hostile action or to make a political statement.

The conflict in the South China Sea have provided opportunities for India and USA to assert their dominance in the region with both countries opposing Chinese claims by supporting ASEAN Nations. These actions are seen as measures to counteract the dominance of China in the South East Asia region with both countries carrying out naval operations and exercises in the disputed areas with the support of claimant countries.

## **Major Parties Involved and Their Views**

### ***People's Republic of China***

China has claimed the largest territorial portion of the South China Sea raising claims to an area which encompasses most of the South China Sea region. Tensions between China and other claimant countries have escalated due to the financial implications of the control of the area and also because of third party involvement from countries such as India and USA.

China claims that the region historically belongs to the Chinese and argues that there

are no grounds for any concessions to be given to any other claimant country regarding the sovereignty of the islands. The natural resources present in the region give large financial incentives to China for obtaining the area as the resources showcase an opportunity for China to fuel its economic growth. The control of key shipping lines also gives to China political and economic power in the region.

China believes that they should have full sovereignty of the territorial waters. In the past, China has refused to accept UNCLOS at the same time, paradoxically using UNCLOS as the basis of some of its own arguments. China has also in the past refused to engage in dialogue with the ASEAN nations regarding the conflict.

### ***United States of America (USA)***

Although the USA has no direct geographic claims and interests in the issue, there are large political and economic implications for the USA regarding the issue and have hence attracted its interest. The USA argues that free access to the seas is critical for trade and hence it is the duty of the USA to get involved in such a situation where international agreements such as UNCLOS are being threatened.

Given the desire of the USA to maintain its political standing in South East Asia (SEA) – involvement has become necessary and hence the USA has issued strong warnings to China regarding the issue. China has not taken well to these warnings. The involvement of the USA brings to the table a noteworthy opponent capable of impeding China's ability to suppress the requests of smaller nations in the region. USA has been making statements by conducting military exercises in the region and by stationing American Naval ships in the region. Although there are no legal implications as the waters are international it does make a political statement and asserts that China will not be able to act on its whims and fancies.

### ***Philippines***

The Philippines on the basis of the UNCLOS and other historical reasons claims sovereignty over parts of the South China Sea. These claims have resulted in military stand-offs between China and the Philippines in the past year. These stand-offs have resulted in major issues for both countries. They have supported involvement of the Indian Navy in the region.

## ***Vietnam***

Vietnam stakes a claim to a large part of the South China Sea and like China bases its claims on UNCLOS and historical facts. Vietnam as a country has had the longest standing claims to the region and whilst not claiming the whole region does seem to be interested in large parts of it. The National Assembly of Vietnam (the Vietnamese Parliament) has aggressively been pursuing the national goal of control over large parts of the South China Sea and has also passed a resolution demarcating large parts of the region as Vietnamese. They too have appreciated the involvement of the Indian Navy in the dispute as India is seen as an independent country acting in the interests of trade.

## ***India***

As a rising superpower India too has interests in the natural reserves of the South China Sea. As a means to assert its growing power globally India has taken a decision to deploy its Navy in the disputed waters eliciting mixed responses. Most countries see the act as an act in the interests of trade and also in the interests of India's own economic growth. Countries see the acts of the Indian Navy positively because the presence of India ensures that China can not partake in forceful decisions solely on its whims. Due to the economic rivalry with China, India has sided with the other claimant countries and has deployed navy vessels in the region. As part of its foreign policy however India advocates a peaceful resolution to the issue. The main involvement by India is due to the growing Chinese influence on the region.

## **Timeline of Relevant Resolutions, Treaties and Events**

<b>Date</b>	<b>Description of event</b>
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1992	China stakes claims to the whole South China Sea
1994	Passing of the UNCLOS
2002	Agreement on ASEAN-CHINA Code of Conduct regarding the conduct of parties in the South China Sea
2005	Chinese ships fire on Vietnamese Vessels
2009	The UNCLOS deadline for countries to make seabed hydrocarbon claims – this causes claims and conflicts to intensify
2009	Chinese claims and actions in the region start to intensify

## Evaluation of Previous Attempts to Resolve the Issue

Previous attempts to solve the conflict have largely been ineffective as the current situation in the South China Sea continues to be a source of regional disagreement and is even today a very real potential flash point for armed conflict as seen in the past through the recent standoffs for example the recent standoff between China and Vietnam. Furthermore, almost all countries involve continually issue statements regarding their claims over the South China Sea to reassert their claims. These claims are more often than not conflicting in nature and highlight how the South China Sea issue is one that has not been solved through previous attempts.

## Possible Solutions

It is evident that China is not willing to give too many concessions to other claimant countries. This assertion may prove to be true given the power of China in comparison to the other member nations. It seems that a real solution concerning the division may only be reached if all ASEAN nations decide to act as one and pursue a policy wherein the division of the South China Sea is decided on through a proportional method of some sort or simply through a previous UN framework. Another option is to take control of the area and make it UN controlled zone given the volatility and the fact that the region is heavily disputed on many grounds.



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