

## Research Report

**Forum:** Fourth General Assembly

**Issue:** The question of the disputed islands in the East China Sea

**Student Officer:** Fleur van Loo

**Position:** Chair



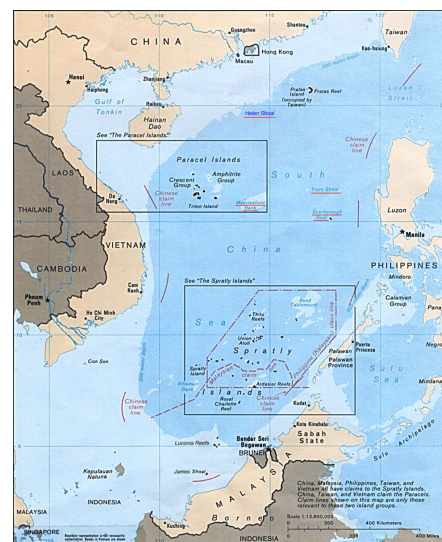
### Introduction

The question of the disputed islands of the East China Sea has been an on-going issue in the area for three centuries, and continues its development to this day. The dispute revolves around the territorial claims to the islands of Spratly, the Paracel Islands and the maritime borders of the Gulf of Tonkin. The countries involved in this issue are The People's Republic of China, Taiwan (Republic of China), the Philippines, Vietnam, Malaysia and Brunei. Reasons for the tensions lie in the suspected crude oil reserves in the South China Sea, as well as the control of strategic shipping lanes in the area.

The People's Republic of China (henceforth China) declares the Spratly and Paracel Islands to be within its territory, and asserts that this claim is founded upon centuries of Chinese control of the islands in the past. However, as a nature of the dispute between China and the Republic of China (henceforth Taiwan), Taiwan offers the exact same reasoning for their claim to the islands.

Vietnam does not recognize this claim by the Chinese and the Taiwanese, as they believe that the Spratly's and Paracel's have been under Vietnamese control since the 17th century. The Philippines claims to have a right to the islands due to its territorial proximity to them, which none of the other disputants have.

Brunei and Malaysia are not heavily concerned with Spratly nor the Paracel Islands, and instead lay claim to certain territory in the South China Sea, which they claim to be theirs due to the areas falling into their exclusive economic zone – a term put forth by the United Nations Convention on Law of the Sea (UNCLOS). It is worth noting, that Malaysia believes that a small number of islands in the Spratly's lie under their economic exclusion area, while Brunei lays no claim to any of the two island groups.



### Definition of Key Terms

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

UNCLOS was signed in 1982 and became effective in 1994, with 157 signatories from UN member states. Its goal is to set certain specifications for national borders in maritime territories. To what extent it does this has been put under question though, and its use has also been scrutinized

due to the United States not being a signatory of the convention. Yet the UNCLOS is a significant treaty that replaced four existing treaties on similar topics.

## **Nine Dash Line**

The Nine Dash Line is the area that China has claimed in the South China Sea. It encompasses both the Paracel and Spratly Islands. Ever since China submitted the map including the Nine Dash Line, the Philippines have been heavily contesting its legitimacy and legal grounds.

## **Exclusive Economic Zone (EEZ)**

The EEZ was introduced through the UNCLOS. It defines a zone in which a country has exclusive rights to use marine resources, stretching 200 nautical miles off the countries coast.

## **Major Parties Involved**

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

China is arguably the most influential country in regards to nations involved in the dispute. Its role in the conflict dates back two centuries. The Association of the Southeast Asian Nations (ASEAN) has deemed China the main aggressor in the South China Sea, and the United States has echoed this concern in regards to its operations in the area. However, the claim made by China cannot be ignored or underestimated. They do have a legitimate claim to some territories in the South China Sea, but whether or not this claim encompasses the entire area is essentially the reason for the dispute in the first place.

Beijing's official claim is in regards to China's "indisputable sovereignty over the South China Sea dating back over 2,000 years." This reaffirms the belief that China has: that they are the victim of the disputes in the South China Sea. They claim to have had control over the area for centuries, and have records of Chinese fishermen and explorers using the islands all throughout the past millennia. China only recognizes that the dispute started in the 1970's, when oil reserves were found, which spurred several ASEAN nations to lay claims on the islands. Recently, China believes that these nations have become even more aggressive in the region, through the submission of new claims to the United Nations. With this being the foundation of China's claim to the territory, Beijing has shown increasing frustration at US involvement in the area. Specifically, China scrutinizes American involvement in a maritime territorial dispute, when the latter has not even signed the UNCLOS.

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

The Association of the Southeast Asian Nations is an organization formed in 1967, with the motto of "One Vision, One Identity, One Community." It consists of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. The organization works together economically and politically, in a similar way to how the European Union operates. In 2002 ASEAN and China signed the "Declaration on the Conduct of Parties in the South China Sea." However, the tensions between China and ASEAN have recently grown, due to the aggressiveness of China. What happens next is unclear, but the role of ASEAN in the conflict is extremely large. It gives the small states in the region much more negotiation power with China than they would have if they operated individually.

While the nations of ASEAN all have differing ways of claiming the islands of the South China Sea, the majority of them are based on geographical claims through the UNCLOS. For example, the Philippines would have a claim to a large amount of the islands and water territories if the islands

were in fact unclaimed to this point. The disagreement is not that this is not the case, but rather that China claims that these islands are already its sovereign land, and the UNCLOS only refers to land that is not recognized as belonging solely to any state.

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

The United States of America also has a role to play in the conflict. While they have yet to formally support one side or the other, their claims regarding China have been quite axiomatic in their connotations. For example, President Barack Obama asked China to stop “throwing elbows and pushing people out of the way” in the South China Sea. More recently, the United States has been provoking Beijing. In October 2015 an American missile destroyer came as close as 12 nautical miles from one of the Chinese claimed islands, appealing to “freedom of navigation” in the area. The reply from Beijing was that the United States should “not act blindly or make trouble out of nothing.” Two weeks after this, the United States was once again causing uproar when two American B-52 bombers flew close to an artificial island cluster. American officials described the flight as nothing more than a demonstration of the right to freedom of navigation in the area. China on the other hand was not ready to accept this, and called the flight a radical violation of its sovereignty.

The involvement of the United States is not without national interest, however. The United States feels strongly that the freedom of navigation in the South China Sea must be contained, and fears that this would be undermined if the area were to be recognized as Chinese sovereign territory. This is also why the United States has been so provocative in the area: they want to reaffirm the right to freedom of navigation. While China has always claimed that this freedom does exist; Washington has asserts that this is true for commercial vessels, but not for military ones. This belief comes from Chinese harassment of American vessels in the EEZ of China, which according the UNCLOS, is to have complete freedom of navigation. China claims that all forms of navigation vessels must get permission from the country to operate in this area, but most signatories of the UNCLOS do not agree with this. This is where the big problem lies: different nations have different interpretations of laws and treaties, leading to a situation where the dispute is now in danger of getting out of hand, and potentially lead to militarization of the area.

The main reason why the United States feels so strongly about the freedom of navigation in the area, is because of the strategic location of the entire region. All trade from the Pacific Ocean to the Indian Ocean, or vice versa, passes through this region. The United States, as well as several other countries and organizations around the world, feel extremely uncomfortable at the thought of this shipping route suddenly become Chinese territory. It is in the interests of most countries to keep the area international waters, in order to ensure the upkeep of free trade in the area. On the other hand, Chinese control of the area could have ramifications that were much larger than one would expect. It would give China the ability to make the transport of goods through the region much more difficult, through checkpoints or the need for navigation permits in the area. This in turn would cause a rippling effect throughout Asian economies, as the transportation of goods would suddenly become much more burdensome and expensive.

## **International Maritime Organization (IMO)**

The International Maritime Organization states on its website: “As a specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.” Regarding the issue at hand, the IMO is responsible for the enforcement of the UNCLOS. They work together with other UN bodies in order to make the UNCLOS as successful as possible.

## **General Overview**

In order to understand the topic in its entirety, it is important to consider the historical aspects of the dispute. These territories have been under contention for a long time, and the only way that an appropriate solution can be found today, is by first understanding how the quarrel has started and developed.

### *The 19th and 20th centuries*

The foundations for the conflict were laid out in the 19th and early 20th centuries.

#### *19th Century*

In 1887, following the Sino-French War, China and France signed a border agreement in which it was stated that the islands of Spratly and the Paracel Islands were owned by China. Vietnam was a French colony at the time, hence why Vietnam is not mentioned in this agreement. It is the foundation, along with the aspect of Song Dynasties control of the islands, for the claim of the islands by China today.

#### *Post World War Two*

Following the Chinese and French agreement, tensions stayed low in the area, as many countries were prioritizing conflicts in other areas of the world. However, following the end of the Second World War, the dispute started to become topical. At the end of the war, no country had laid any claims to any of the islands. In 1946 China started to branch out, and claimed a few islands that belonged to the Paracel Islands. A decade later, both China and Taiwan started increasing their presence in the area, which naturally caused some tensions between the two.

#### *Indications of Crude Oil*

By the 1970's, indications of oil reserves within the South China Sea started. Naturally, this caused a frantic battle for the territories. The Philippines and China were the first to take action, with the latter conducting several calculated invasions of strategic locations in the area. This culminated to the Battle of the Paracel Islands, where China killed tens of South Vietnamese soldiers and gained substantial territory in the area. In return, both North and South Vietnam responded by fortifying their defences and seizing control of several unclaimed islands in the region. As tensions eased, China was to be the one to continue the aggression in 1988 and 1995, with an invasion of the Spratly's and the building of bunkers in strategic locations, respectively.

## **Recent Developments**

### *Declaration of the Conduct of Parties in the South China Sea*

In 2002, the involved countries – including China – came together and signed the Declaration of the Conduct of Parties in the South China Sea, with a promise to “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.” This led to an immediate decrease in military movements in the area, but instead spurred political action from some nations, with several countries submitting diplomatic claims for islands and territories, while simultaneously denying their rivals' claims.

## *Nine Dash Line*

The “Nine Dash Line” was created by the Chinese government, in response to the territorial claims of the South East Asian countries. Beijing’s statement read as follows: “China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.”

## *Artificial Islands*

In the past two years China has been constructing infrastructure and machines in the Spratly Islands, such as harbours, airstrips, and most notably, cranes to help the construction of artificial islands in the region. In May 2015, China had increased landmass in the islands by about 2000 acres, according to US officials. This, in addition to the extremely controversial building of a Chinese airstrip on one of the islands, has done naught but increase tensions between China, ASEAN and the United States.

## *Chinese Assertiveness and the Philippines*

The Nine Dash Line naturally created a lot of antagonism within the countries of South East Asia. In 2012 China confirmed the validity of the worries, when it seized Scarborough Shoal from the Philippines. A few months later, after on-going negotiations, both countries agreed to leave the Shoal. While the Philippines withdrew, China did not. This spurred the former to sue China on the basis of the UNCLOS at the start of 2013. China has been extremely unwilling to take part in the case, claiming that maritime laws cannot be considered before territorial claims are agreed upon. Following this, China has continued being aggressive in the region, which leaves the future of the area unclear and precarious.

## **Previous Attempts to solve the Issue**

The issue has had many proposed solutions, yet their efficiency and usefulness has been limited. The first attempt, which was not specifically related to this dispute, was the UNCLOS. It was an attempt at creating an international groundwork off of which several maritime disputes could be solved. Admittedly, it provides extremely specific rules for how maritime resources can be used, and what the territorial claims of countries can be. The issue in regards to the dispute of the South China Sea is that China is not willing to follow the laws set out in the convention, making it essentially futile.

The first time the involved parties got together, namely China and ASEAN, was in 2002 when both parties signed the Declaration of Conduct of Parties in the South China Sea. This was the first time there had been negotiation and agreement, and many hoped that at the very least the main territorial disputes could be solved through the declaration. This was not to be however, as China continued their aggressive manoeuvres in the area. Its effectiveness has thus been quite poor.

## **Possible Solutions**

It is clear that the past attempts to solve the problem have been largely ineffective. The dispute is on-going to this very day, and it seems as if there is potential for even more tensions considering the American provocations of late. It is thus vital that an effective and viable solution is introduced, which will allow the territorial dispute to be solved for once and for all.

One possible solution is the reinforcement of the UNCLOS laws. The international community would assert that China and ASEAN would have to follow the UNCLOS, which would mean that China would have to give up several areas included in the Nine Dash Line, while several ASEAN countries

would gain territory in the area due to the EEZ's. This type of solution would likely lead to heavy resistance from China. There are two ways of approaching Chinese disgruntlement: through incentives or through sanctions. The terms and conditions for the placing of the sanctions or incentives must be decided in a manner that gives as much possibility as possible for negotiation and diplomacy between the involved parties, before any drastic decisions are made. Yet, the placing of sanctions or incentives could serve as a strong tool in order to help bring peace and calm to the area.

A more creative solution involves making the entire area "international waters." This would mean that no country has legal jurisdiction over the sea areas, as well as no right to the resources found in the area. This is a solution that would have none of the countries "win" the dispute, as the waters would just be deemed to not belong to anyone. The issue with this is the fact that it leaves the question of the islands in the area untouched. The islands would still be contested for. One way to solve this would be to divide the islands on a geographical basis, but China would be likely to dispute any such attempt.

If the aforementioned solutions seem unreasonable, there is always a case to be made that the dispute can be solved through negotiations and diplomacy. The construction of annual meetings for China and the ASEAN countries to meet would be helpful in reducing tensions. The aim of these meetings would be to determine defined rules over the area. Creating dialogue between the two parties is essential in order for them to reach a diplomatic solution. However, the utility of such discussions is sure to come under scrutiny, as the past already shows how the Declaration of Conduct of Parties in the South China Sea has failed to keep Chinese aggression in check. In addition, the International Tribunal on the Law of the Sea (ITLOS) could be considered as an arbitrator in the negotiations.

## Timeline of Events

Date	Event
1974	China seizes the Paracel Islands from Vietnam – 70 Vietnamese troops dead.
1988	China and Vietnam battle over the Spratly's – 60 Vietnamese sailors dead.
2002	Involved parties sign Declaration of Conduct of Parties in the South China Sea
7 <sup>th</sup> of May 2009	China submits map to the UN with the Nine Dash Line.
2012	Scarborough Shoal standoff.
22 <sup>nd</sup> of January 2013	Philippines files arbitration case regarding the standoff, appealing to UNCLOS.
April 2015	Satellite images show a Chinese airstrip being built on a Spratly Island.
October 2015	American missile cruiser provokes China.

## Appendix

- Timeline of events by BBC (<http://www.bbc.co.uk/news/world-asia-pacific-13748349>)
- Discussion between a Chinese and American discussant (<http://nationalinterest.org/feature/what-does-china-really-think-about-the-south-china-sea-13943>)
- Breaking news on the dispute (<http://www.breakingnews.com/topic/south-china-sea-dispute/>)

## **Bibliography**

- <http://www.theguardian.com/world/2015/oct/27/tensions-and-territorial-claims-in-the-south-china-sea-the-guardian-briefing>
- <https://www.lawfareblog.com/south-china-sea-dispute-brief-history>
- <http://www.bbc.com/news/world-asia-pacific-13748349>
- <http://nationalinterest.org/feature/what-does-china-really-think-about-the-south-china-sea-13943?page=2>
- <http://www.lowyinstitute.org/issues/south-china-sea>
- <http://www.reuters.com/article/2015/11/06/us-southchinasea-usa-warship-idUSKCN0SV05420151106>
- [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)
- <http://www.theguardian.com/world/2015/nov/13/us-b-52-bombers-flew-near-disputed-islands-in-south-china-sea-says-pentagon>
- <http://www.wsj.com/articles/u-s-military-aircraft-flew-close-to-chinese-built-artificial-islands-1447389444>