

Forum: Advisory Panel on Southeast and Central Asia

Issue: Measures to resolve territorial disputes in the South China Sea

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Introduction

The South China Sea territorial disputes are both island and maritime claims among several sovereign states within the region, including Brunei, the People’s Republic of China, the Republic of China, Malaysia, Indonesia, the Philippines, and Vietnam. All mentioned states have laid claim to a part of the South China Sea. The disputes include the reefs, banks, islands, and other features of the sea, including the Paracel Islands, Spratly Islands, and various boundaries in the Gulf of Tonkin. The South China Sea is also rich in natural resources, containing an estimated 11 billion barrels of oil, 190 trillion cubic feet of natural gas, as well as conducting one-third of international maritime trade, with US\$5 trillion worth of global trade passing through the sea. There are further disputes, including the area near the Indonesian Natuna Islands, which many do not regard as part of the South China Sea. In all aforementioned disputes, claimant states are interested in retaining or acquiring the rights to fishing areas, the exploration and potential exploitation of crude oil and natural gas in the seabed of various parts of the South China Sea, and the strategic control of important shipping lanes.



Caption 1: A map of the South China Sea

Over the last 20 years, the feud over the South China Sea has only intensified. Each country has militarised itself to a great extent since the People’s Republic of China first laid claim to the Spratlys and a part of the Paracel Islands in 1946, establishing its presence and interest in the South China Sea. China is arguably the most powerful contender, but the other adversaries have found ways to strengthen their military. For example, the Philippines doubled its defense budget in 2011 and pledged to join the United States in military exercises. Each country’s militarisation has further escalated tensions among the participants involved in this dispute, with clashes in the contested waters often turning violent. An example of this would be the Chinese oil rig HD-981 incident. Days after this oil rig was moved into Vietnam’s Economically Exclusive Zone (EEZ), Vietnamese and Chinese ships rammed into each other, resulting in anti-China protests in mainland Vietnam which led to the deaths of two Chinese citizens and the damage of many Taiwanese-owned factories believed to be Chinese.

Definition of Key Terms

Territorial disputes

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, usually between a new state and the occupying power.

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

The United Nations Convention on the Law of the Sea, a result of the UNCLOS III, is an international agreement that establishes the rights and responsibilities of nations in regards to the world's oceans. The final conference held was in 1982.

Economic Exclusive Zones (EEZ)

Economic Exclusive Zones were created during the Third United Nations Conference on the Law of the Sea (UNCLOS III) in 1982, which stated that a coastal state may assert jurisdiction over and utilise the marine resources found in the territory within a band of 200 miles from the state's shore. The state may exercise their sovereign rights within the boundary. China has attempted to finesse this law by building artificial islands in order to have their 200 miles begin at the islands instead of mainland China.

Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations is a regional intergovernmental organization, recognised as an official United Nations Observer, consisting of ten members and two observers, which include the Philippines, Malaysia, and Vietnam. When the issue of the South China Sea was debated, the ASEAN's joint statement did not reference the sea by its name and only called for "respect for each nation's sovereignty and for international law".

General Overview

History & Developments

Prior to the twenty-first century

The attempts by nations to occupy any part of the South China Sea began after the second world war. In 1946 and 1947, the People's Republic of China began to occupy some areas of the Spratly and Paracel Islands. Around the same time, Vietnam and France attempted to establish ownership over the islands China had occupied, leading to them settling on Pattle Island, a nearby island in the same area. In 1956, a Filipino businessman declared ownership of a new country in the Spratlys, but was driven off the island by Chinese and Taiwanese forces, and forced to give his rights to the island to the government of the Philippines.

Until the 1970's, activity in the area was relatively quiet. Then, it was suggested by reports from the Philippines that there was oil hidden in the waters of the sea, sparking the interest of the claimants who continue to dispute today.

In 1974, South Vietnam failed to take control over the Spratly Islands after losing to China in a naval battle. After the battle, China also gained complete control over the Paracel Islands. In 1988, another battle between China and Vietnam took place, with the aftermath being China gaining control over more parts of the Spratlys. In 1982, the UNCLOS was created; however, it was not specific enough to resolve maritime conflicts or act as a law for which nations could be held accountable to.

Another set of disputes took place between the People's Republic of China and the Philippines. In 1995, China built bunkers above a reef during an oil concession in the Philippines, leading to a naval battle and further escalated tensions between both nations. The Philippines retaliated in 1997 when they obstructed Chinese boats from entering a certain reef. China then signed the Military Maritime Consultant Agreement (MMCA) with the United States in 1998, aiming to avoid collision between their respective naval and air forces. However, the agreement came under scrutiny when an American aircraft collided with a Chinese interceptor over the South China Sea. The conflicts that occurred during the twentieth century were violent and militaristic, as shown by the various maritime battles between China, Vietnam, and the Philippines.

During the twenty-first century

The dispute over the South China Sea seemed to take a turn for the better in 2002 when China joined the ASEAN to sign a code of conduct which would create guidelines for conflict resolutions and seek ways to ease tensions in the area. Although the agreement failed to be a binding code of conduct, it proved that China recognised the possibility of U.S. intervention should tensions escalate into war. In 2009, Malaysia and Vietnam submitted appeals to the UN Commission on the Limits of the Continental Shelf with the intentions of extending their EEZ's beyond the standard of 200 miles. China objected to the submission and perceived it as an infringement on their sovereignty. In 2011, the Philippines renamed the South China Sea as the West Philippine Sea. The United States affirmed their stance on the dispute when Hillary Clinton, the Secretary of State of the Obama Administration, referred to the sea as the West Philippine Sea. China retaliated in 2012 by taking control of Scarborough Shoal (a territory previously claimed by the Philippine's and Taiwan) and impeding the Philippine's economy through quarantining their imported fruits. In the same year, Vietnam passed a maritime law that affirmed their control over the Spratly and Paracel Islands and required any foreign ships passing through their section of the South China Sea to report to Vietnamese stations. China responded by announcing the construction of a new city in the Paracels, which further deteriorated the relations between both countries. To make matters worse, the ASEAN also failed to come up with a decision in regards to resolving the South China Sea.

Additionally, in 2012, Japan bought the Senkaku/Diaoyu Islands from their “private owner”, further angering China and causing anti-Japan protests to erupt throughout the nation. This significantly impacted the profits of Japanese companies stationed in China and air travel between both countries. In 2013, the Philippines took the dispute with China to the Permanent Court of Arbitration in The Hague, despite China’s refusal to participate. The ruling, which arrived in 2016, declared that China had no historic rights over the South China Sea. As of 2017, all contesting nations are still at odds with each other and are still feuding over the South China Sea. It can be seen that the dispute in the twenty-first century has turned more political than militaristic, with nations participating in conferences and submitting cases to the UN instead of using military force to achieve their desired outcomes.

Key Players

People’s Republic of China

In terms of area, People’s Republic of China has the largest claim to the South China Sea. China has also been building artificial islands in the South China Sea to increase their EEZ boundaries. They have argued that the sea has been navigated by the Chinese since the Han dynasty, and therefore, China has historical rights to the territory. Chinese pottery and coins have been found on the shores of some islands, suggesting their claims have some substance. The Spratly Islands have been mentioned in Song dynasty poetry as well. Despite China’s long history with the sea and occupation of the islands, their jurisdiction over the South China Sea has not been recognised, mainly due to the lack of evidence to support their claims and also the inconsistency of their occupation of the islands. China’s weak arguments are unlikely to aid them in the fight over the South China Sea, but it is certain they will continue to fight for ownership of the territory, as shown by the government’s firm rejection of the Permanent Court of Arbitration’s ruling. China’s relations with the United States has also weakened from the latter’s military presence in the South China Sea, especially since the US is heavily opposed to Chinese control over the sea. The relations between the two superpowers will affect the outcome of this dispute heavily.

The Republic of Philippines

The Republic of Philippines has been at odds with China ever since the ruling of the Permanent Court of Arbitration in 2016. Due to China’s refusal to accept or acknowledge the ruling, the Philippines has found other ways to establish its presence and jurisdiction over their part of the sea. In an attempt to strengthen US-Philippines relations, both China and the Philippines have signed The Enhanced Defense Cooperation Agreement (EDCA). The United States now has access to multiple Filipino bases, with one especially close to the South China Sea. In addition to the military agreement with the US, the Philippines is also receiving military aid from Japan, another country with whom China is currently feuding with.

Brunei

Brunei claims the territory of their EEZ in accordance to the UNCLOS and is the only claimant to not currently occupy a maritime feature or have some form of military presence in the Spratly Islands. Although less prominent as a contender, Brunei has firmly objected to any nation infringing upon their EEZ, namely Malaysia and China. Brunei and Malaysia have strengthened their relations after signing an agreement on exploring and exploiting natural gases in 2009. Malaysia also agreed to retreat from a Brunei-claimed feature, Louisa Reef. As Brunei supplies China with their vast hydrocarbon reserves, their relations have been mostly stable; however, as Brunei's resources have decreased, the urgency for exploiting the South China Sea's gas reserves has grown.

Indonesia

Indonesia has been an active peacemaker in the past. Recently, they have turned to protecting Indonesian interests and their own EEZ zone instead of attempting to strengthen relations with other nations in the area. This change occurred under the new president, President Jokowi. Jokowi has expressed interest in building Chinese infrastructure in Indonesia, and therefore, has been purposely avoiding provoking China. This unilateral approach, however, leads to the decreased chance of the east Asian nations collaborating together to reduce pressure from China.

United States of America

The United States of America is not a contesting nation, however, due to their influence on many of the countries involved in the dispute, can become a key player in either resolving or escalating tensions. The former Secretary of State of the Obama Administration, Hillary Clinton, had expressed the country's interest in the freedom of navigation and access to Asia's open waters. Additionally, the US has signed defense treaties with both Japan and the Philippines and will most certainly be involved if a war over the South China Sea was to occur. The US's interest in Asia's maritime commons has caused it to conduct Freedom of Navigation Operations (FNOPs), meant to promote the accessibility of the South China Sea. An unintended consequence of the operations is that it only added to the tensions between nations. Under the Trump Administration, the United States is opposed to militarising the South China Sea and is attempting to open up the air and waters of the South China Sea.

Japan

Japan has formed alliances and strengthened ties with the United States, the Philippines, Vietnam, and the ASEAN member states. Their involvement in this dispute is mainly to create a "united front" consisting of south and east Asian countries to stabilise the region and reduce the assertiveness of China's claims. Japan is a key player in reducing tensions between the contesting nations. China has reacted negatively towards Japan's involvement, urging them to "refrain from causing trouble in the region."

Previous Attempts to Solve the Situation

ASEAN Code of Conduct

In 2002, the ASEAN and China met together to sign a Declaration on the Code of Parties (DOC) which required all signatories to respect the freedom of navigation in the South China Sea, as well as to refrain from all military confrontations. However, the DOC was not enforced successfully as it was not legally binding, although it may have acted as a moral constraint for some countries. The ASEAN has also attempted to create a code of conduct designed specifically for the South China Sea, but the lack of unanimity caused it to fail. As of May 2017, China and the ASEAN have come together again to establish a code of conduct for the South China Sea.

The South China Sea Arbitration (The Republic of Philippines vs. The People's Republic of China)

In 2013, the Philippines submitted proceedings against China to the Permanent Court of Arbitration, seeking to declare China's 9-Dash Line void and that all claims in the South China Sea must comply with the UNCLOS. Vietnam also submitted a statement supporting the Philippines in their case against China. The outcome of this ruling came in favour of the Philippines; the court declared the 9-Dash Line void. However, China refused to acknowledge the ruling and claimed that engaging in bilateral negotiations would be the only effective way to discuss the issue.

Timeline of Events

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| 1937~1938 | After claiming exclusive rights over several South China Sea archipelagos, Japan invades series of islands to take control. On September 3, 1937, Japan occupies the Pratas Islands. Furthermore, the Japanese Imperial Navy lands on the Spratlys in December 1938 and invades Hainan Island the following February. |
| 1947 | China, under the rule of the nationalist Kuomintang party, claims the majority of the South China Sea with an eleven-dash line on a map. This includes the Pratas Islands, the Macclesfield Bank, and the Paracel and Spratly Islands, which China regained from Japan after World War II. In 1953, the Chinese Communist Party removes a portion encompassing the Gulf of Tonkin, simplifying the eleven-dash lines to nine-dash lines. Even until today, China utilizes the nine-dash line as the historical basis for its territorial claims in the South China Sea. |
| 1968~1969 | The UN finds high probability of oil in South China Sea. After extensive geological surveys, the UN Economic Commission for Asia and the Far East finds "substantial energy deposits" in the seabed between Taiwan and Japan. Due to this, many countries |

surrounding the South China Sea reignited their interest within this region.

- 1979 China wages a short but bloody war with Vietnam from February 1979 ~ March 1979. China launches an offensive move in response to Vietnam's invasion and occupation of Cambodia in 1978, which ended the reign of the communist, Chinese-backed Khmer Rouge. China withdraws from Vietnam after less than a month after failing to coerce Vietnam to leave Cambodia. Roughly 30,000 were killed during the conflict, which marks the beginning of many border disputes between Beijing and Hanoi.
- January 1998 China and the USA sign the Military Maritime Consultative Agreement. This serves as a confidence-building measure after the period of frozen relations following the 1989 Tiananmen Square Incident. From the mid-to-late 1990s, China's People's Liberation Army Navy (PLAN) begins to shift from being a mostly coastal defense force to operating a blue-water fleet beyond Chinese territorial waters. The agreement between China and the USA aims to promote defense dialogue between naval forces to prevent misunderstandings. However, its efficacy is questioned in April 2001, when a Chinese F-8 interceptor and a U.S. Navy surveillance aircraft collide over the South China Sea, killing a Chinese pilot.
- November 2002 ASEAN and China Code of Conduct, a code of conduct that seeks to ease tensions and created guidelines for conflict resolution
- May 2009 Malaysia and Vietnam file a joint submission to the UN Commission on the Limits of the Continental Shelf to extend their continental shelves beyond the standard two hundred nautical miles from their coastlines. This renews conflict over maritime sovereignty in the South China Sea. China views this as a challenge to its territorial claims and objects to the submission.
- October 2011 The Philippines renames the South China Sea to "West Philippine Sea". The US Secretary of State at the time, Hillary Clinton, also begins to refer to the South China Sea as the West Philippine Sea.
- June 2012 Vietnam passes a maritime law asserting its jurisdiction over the disputed Spratly and Paracel Islands, demanding notification from any foreign naval ships passing through the area. China issues a strong response, announcing the establishment of a city, Sansha, on the Paracels that would administer the Paracels, Spratlys, and Macclesfield Bank.
- September 10, 2012 The Japanese Prime Minister Yoshihiko Noda signs a contract, worth \$26 million, to

purchase three of the five disputed Diaoyu/Senkaku Islands from private landowner Kunioki Kurihara. Japan says the decision was to prevent Kurihara from developing the islands, but the purchase provokes an angry response from China. In the subsequent weeks, some of the largest anti-Japanese protests since the countries normalized relations in 1972 erupt across China, with thousands marching in more than eighty-five cities. The rupture also has economic consequences, with Japanese companies in China reporting significant losses and air travel between the two countries dipping dramatically.

April 28, 2014

U.S. President at the time Barack Obama signs a new ten-year military pact with the Philippines. Under the Enhanced Defence Cooperation Agreement, the U.S. military would gain increased rotational troop presence in the country, engage in more joint training, and have greater access to bases across the archipelago, including ports and airfields.

July 12, 2016

The Permanent Court of Arbitration in The Hague rules in favor of the Philippines in a case opened in 2013 against the People's Republic of China. The tribunal finds that China has no legal basis for its claims to historic rights to resources in the South China Sea. The court also rules that none of the land features fit requirements under UNCLOS to generate a 200-nautical-mile EEZ for China; many of the features are the result of extensive Chinese land reclamation. The court says Beijing violated its obligations as a member of UNCLOS, saying its island-building activities harmed the marine environment and its vessels' unsafe practices heightened navigational risks. China's foreign ministry says it "neither accepts or recognizes" the court's award.

Possible Solutions

To resolve this issue, an agreement protecting the interests of all nations involved in the South China Sea dispute must be reached. First, **all contesting parties should demilitarise the maritime features they currently occupy**, for example through an overlooking third party or nation. After demilitarisation, the **dispute can then be taken to a strictly political level**, where **nations may freely discuss and negotiate without the threat of violence**.

Additionally, **strong communication must be established between all nations**, either through a third party such as the ASEAN or through direct talks between leaders of the countries involved. Seeing as the ASEAN had not been successful with supporting peaceful communication between nations before, another code of conduct that legally binds the contesting nations to resolving conflict and creating solutions could possibly be proposed. **Stronger relations can also be achieved through joint marine explorations and**

shared resources found in the South China Sea. The resources found should be split in a way that may bring equal benefit to the countries involved, and if a nation were to mishandle or wrongfully divide the resources, they could be subject to penalisation. The ultimate goal is to reduce geopolitical tensions in East Asia but if issue of the South China Sea can be resolved without complications, the likelihood of another world war will decrease considerably.

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