

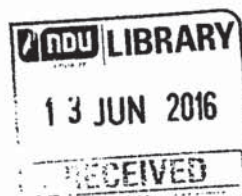
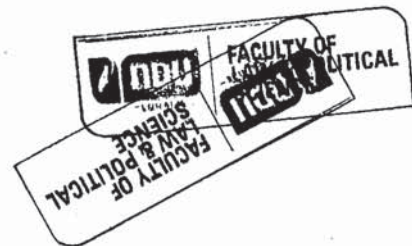
Notre Dame University
FACULTY OF LAW AND POLITICAL SCIENCE

South China Sea Maritime Dispute
Sovereignty over the Paracel and Spratly Islands

M.A. Thesis

By

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Submitted to the Faculty of Law and Political Science
In Partial Fulfillment of the Requirements for the
Degree of the Master of International Affairs and Diplomacy
International Law

Notre Dame University - Lebanon

2015

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LIST OF ABBREVIATIONS

ADIZ	Air Defense Identification Zone
ARF	Asian Regional Forum
ASEAN	Association of Southeast Asian Nations
CBM	Confidence Building Measures
CLCS	Commission on the Limits of Continental Shelf
CNOOC	China National Offshore Oil Company
COLREGS	International Maritime Organization's Regulations for Preventing Collisions at Sea
CUES	Code for Unalerted Encounters at Sea
DoC	Declaration on the Conduct
EEZ	Exclusive Economic Zone
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Law
KMT	Nationalist Party
LOS	Law of the Sea
NM	Nautical Miles
PCA	Permanent Court of Arbitration
PRC	People's Republic of China
SCS	South China Sea
SLOC	Sea Lanes of Communication
TAC	Treaty of Amity and Cooperation
UNCLOS	United Nations Convention on the Law of the Sea
US	United States
WPNS	Western Pacific Naval Symposium

ACKNOWLEDGMENTS

I would like to take this opportunity to express my gratitude to everyone who supported me throughout the course of this MA research. I am thankful for their aspiring guidance, invaluable constructive criticism and friendly advice during the thesis process. I am sincerely grateful to them for sharing their truthful and illuminating views, that without their encouragement and persistent this dissertation would not have been possible.

I express my warm thanks to my supervisor Dr. Dany Ghsoub for his valuable support, comments, and guidance which allowed me to accomplish my thesis.

I would also like to thank Dr. Chady Hajal and Dr. Michel Nehme for their support and constructive suggestions.

Finally, yet importantly, I would like to express my appreciation to my loving family for their continuous encouragement and attention. I am also grateful to the special assistance received from Mr. Joseph Samman who is always in support.

Thanking you

Hoda Al Helou

ABSTRACT

The central subject in the South China Sea is over who has power and rule over the islands and their adjacent waters as well as independent rights and influence in the exclusive economic zone and continental shelf determined from the islands. The 1982 Convention on the Law of the Sea (UNCLOS) provisions on baselines, the regime of islands, low-tide elevations, the exclusive economic zone, the continental shelf, maritime boundary delimitation and dispute settlement are all valid and support in resolving and highlighting the issue of the South China Sea.

The ASEAN claimants, mostly since 2009, have gone through several procedures and modifications in their demands to clarify their claims trying to make them more legal under UNCLOS. They assert that according to the UNCLOS provisions, rights to the natural resources within the waters in the South China Sea can only be acquired through claims intrinsically related to land. China is following a strategy of not fully clarifying its claims widely trying by that to keep the dispute vague internationally. China has explained its claim to some range, but it is quite not enough or clear hoping that with this vagueness it will reach sovereignty over larger areas. It is left for China to better identify its claims and the principle of the nine-dashed line map subsequently for the claimants to be able to establish in-depth negotiations that might lead to overcoming sovereignty rights and pursue cooperative improvement and benefit of the natural resources. A main struggle in the dispute is the gaining authority over the two important islands in the South China Sea which are the Spratly and Paracel. The islands contain a significant amount of resources leading to extensive tensions and competition between the states. Another issue is the classification of such islands that is also still not concluded whether they are recognized as islands and can endure human and economic life or are they only features of rocks. This has resulted in different outcomes to resolve the dispute by either following the extended continental shelf provision, finalizing the sovereignty over the islands or classifying the area to be under High Sea and thus it is governed by the International Seabed Authority. In this regard, having several outcomes to a dispute, it is important to have certain settlements that would lead to a beneficial resolution for all the countries involved.

Chapter 1

Introduction, Literature Review, Methodology

Introduction

Maritime issues have become one of the main concerns of international security. The ocean is seen to be an area of instability mainly due to the economic value and scarce resources such as oil as well as the competition between states to control over such territories. Struggle between states have shifted from the notion of ideological believes and tendencies towards economic gains and power. In relevance to the international legal framework, the Law of the Sea convention was established to resolve and limit disputes raised in this matter. There is an essential need to take into consideration the political dimensions and natural conflict of interests in development of disputes.

One of the massive maritime disputes is experienced in the southern Asian sea, specifically in the East and South China Seas. International legal regimes have lacked the ability to resolve conflicting claims that is widely clear in the South China Sea case. The dispute has risen extensively due to the rise of China as an economic and military power.

The thesis examines maritime dispute that is still occurring in the South China Sea and attempts to analyze possible solution provided highlighting the most effective reasonable and impartial outcome to the case. The research expands within the legal framework set by the International Law of the Sea as well as the United Nation Convention on the Law of the Sea-UNCLOS. The importance of the study lies upon the ongoing struggle between several south Asian countries and affecting the international area. Such an extensive maritime dispute is bound to be reasonably resolved to acquire stability mainly in the area and on international level.

After reviewing the literature and setting the methodology for research in chapter one, the research further develops in chapter two mainly to define the case of the South China Sea dispute through highlighting the different variables and countries included in this maritime dispute. It is important to describe the marine life and resources available in the area to understand the point of dispute and interests of the nations. The research examines the two main islands concerned in the dispute as well as the different demands formulated by various neighboring nations.

Chapter three highlights the UNCLOS III provisions that set the rules and scope of behavior in maritime zones. This section tends to compare between the international maritime regulations and the claims made by the countries in the South China Sea and set certain scenarios in dealing with the different claims and positions. This supports the research in getting to know what the major disputes are and how they contradict or coincide with the convention. The chapter also highlights the ongoing struggle and events that have taken place in the region. This section serves bringing the research up to date.

Chapter four provides alternative solutions discussing also how other similar maritime disputes were solved. It would back up and guide the varying dispute settlement procedures and resolutions proposed. It is also important to highlight the most suitable settlement for the dispute and what can be considered as reasonable and acceptable outcome.

Literature Review

International law as defined by Bentham and Slomanson, is the set of rules commonly observed and recognized as binding through governing the relations between states. It assists in maintaining stable and organized international relations. International law is only bound to states if the state itself ratifies and signs upon the specific treaties. This maintains the principle of state sovereignty by having the authority in choosing to ratify or not on the international laws. International law dates back to the mid 19th century and originates from 16th century philosophers including Francisco de Vitoria, Francisco Suárez, Alberico Gentili, and Hugo Grotius. (Bentham, 1789); (Slomanson, 2011)

The codification of the Law of the Sea started as early as 1609 with Grotius, a jurist in the Dutch Republic, who was behind the outbreak of the international legal doctrines regarding the seas and oceans. "Mare Liberum" meaning the freedom of the seas is the first notion or term used to describe the reality of sea which then became the foundations of the modern law of the sea. Yet and before Grotius had mainly brought up the principle of freedom of the seas when he wrote his *De Jure Praedae* meaning "On the Law of Spoils", all countries in the Asian seas and specifically the Indian Ocean had already been practicing the right of unobstructed navigation. These principles were further expanded with Nussbaum in his book "A Concise History of The Law of Nations" and Magoffin and Armitage. (Nussbaum, 1947); (Magoffin, 1916) (Armitage, 2004)

The attempts for understanding and unifying the sea behavior was a result of long sea struggle between countries. This struggle was discussed by various writers among which are Pritchard, Boxer and lately Boyajian. Ideas of rights of the Sea came in when the captain Jacob van Heemskerck employed at the Dutch East India Company captures the Portuguese carrack Santa

Catarina, a loaded merchant ship during the Dutch war with Spain and Portugal that lasted between 1585 until 1604. Heemskerck had no authorization to capture the ship yet the resources and treasures brought with the ship were not rejected. This behavior of attack and keeping of the ship treasure brought in many questions regarding the legality and morality of such attempt. The Portuguese even commanded the regain of their cargo as their right. This has resulted in an extensive scandal reaching to a public judicial hearing. As a result, Grotius was appointed by the Dutch company to set down a belligerent defense confiscation. As a result, Grotius drafted in 1604 a loaded theory dissertation that was entitled "De Indis" meaning "On the Indies". He wanted to back the defense of the ship confiscation with natural principles of justice. He was also able to move beyond the case itself and reach in general the principles of war's lawfulness. The extended manuscript was published in 1625 entitled "De Jure Praedae" meaning "On the Right of Capture". In these writings, the principles of International Justice "De jure belli ac pacis" were laid. "Mare Liberum" or the "Free Sea" that was published earlier in 1609 denoted that the sea was an international territory used freely by all nations for trade. This work was largely opposed by various maritime states claiming that seas are extension of their lands. Thus, Cornelius Bynkershoek in his writings "De dominio maris" in 1702 restricted the maritime freedom and gave certain domination and sovereignty on a calculated distance resembling the projection of a canon shot range which was internationally developed into the three-mile limit. However, several of these seventeenth century scholars originate much of their motivation in natural law theories or principles of Roman law. (Hartwig, 1989) (Pritchard, 1952) (Boxer, 1948) (Boyajian, 2008)

O'Connell and Tetley talked about the evolution of international law of the sea. In the evaluation of international law regarding the sea and oceans two main theories have risen to take dominance. On one hand, the first theory noted that the sea is common to all human kind as well

as openness to the right of freedom of navigation. This has resulted in restriction to any state of claiming the governance or dominance of any sea territory. This is widely defended by the geophysical nature of the ocean that wouldn't accept any dominance over. This theory sees the freedom of navigation an essential part for its development. On the other hand, the second theory restricts the free use of sea since it regards the sea as being agreeable to dominance by persons or states. In this matter, whoever has brought a part of the sea or ocean under his control can restrict its use by others. Since the struggle between these two theories expanded over the years, a need for a unified law of the sea came in. The importance of marine navigation, trade, commerce and communication between nations and the link that the sea constitutes between states had also brought in the necessity of shaping a legal framework for the use of the sea. These concerns have also contributed to the world economy and alliance as well as lead to wars and friction between nations. (O'Connell, 1971) (Tetley, 1994)

The Law of the Sea, LOS, convention established in 1982, was the foundation for development and emergence of a unitary law of the sea. It resembled a single common treaty governing all uses of the oceans and seas. Yet, it still was based on the seventeenth century scholars and theories. As many laws, customs and customary practices lead to their development. Customary international law was the primary source of the law of the sea. Customary law lays its foundations on the continuous practice of states and courts, and authoritative decision-making bodies. At this period, international courts were limited and cases in relation to maritime disputes were dealt with at national courts of party states. The admiralty courts based their jurisdiction on different sources of law such as ancient codes of maritime law, work of scholars, awards of courts, and the regular practices of states. Yet the reliance on traditional conceptions of customary international law is sometimes seen as a non-stable or weak. States generate and

interpret law in different ways and having more states in a dispute would also result in a more difficult and confusing process of determining common legal factors. Customary development of law, goes through wide uncertain procedures which lead to the affirmation of new norms. It has been realized that customary international law is inappropriate for the proclamation of thorough regulations in technical and practical fields. (Selden, 1972) (Lapidoth, 1974) (Scott J. B., 1916) (Heizen, 1959)

According to Keyuan, Columbus and Ngantcha in relevance to this struggle, there were early attempts to codification of law. In the twentieth century, the idea of codifying international law came in. It was necessary to codify major topics of law to ensure peace and security. Through the writing and unifying of rules, regulations will become more predictable and their enforcement less controversial. As a result, the second Hague Peace Conference adopted a resolution to codify topics that were ready for being represented in international regulation. However, the First World War had prevented this codification. Rosenne considered this as the foundations for codification. The law of the sea was one of the first topics seen important to codify. During the 1856 Declaration of Paris, there was an establishment of international rules in topics regarding the naval warfare, neutrality, barriers and privateering. These topics were further developed in treaties adopted in the two Hague Peace Conferences in 1899 and 1907 and afterwards at the International Naval Conference in London in 1909. The main concern was on military aspects of the law of the sea. During the 1920s law of the sea rules were further established by private institutions and individuals, such as the International Law Association, the German Society for International Law, the American Institute of International Law, the Japanese Society for International Law, and Harvard Law School. These private enterprises were rapidly shadowed by state efforts at codification. In 1924, the Council of the League of Nations originated a course for

the codification of international law. The 1930 Codification Conference was to be the only major multilateral attempt to codify international law but was a failure for establishing considerable results since the main concern was given to the political crisis. (Keyuan Z. , 1998) (Columbus, 1967) (Ngantcha, 1990)

Scobbie, Scott, Sohn, and Shearer discussed the emergence of the three conventions on the law of the sea. After the Second World War, the International Law Commission was recognized by the UN General Assembly in 1947 for the determinations of proceeding the codification and development of international law. In 1949, the Commission recognized a list of fourteen topics agreeable to codification including the rule of high seas and territorial seas. It decided to prioritize the codification of the regime. The draft articles shaped by the basis for negotiations at UNCLOS I which was convened by the General Assembly in order to examine the law of the sea. UNCLOS I took place in Geneva in 1958 with eighty-six states and specialized agencies. The principal treaties that were discussed included the principle of territorial sea, the contiguous zone, the continental shelf, the high seas and fishing. Thus, UNCLOS I had taken an important step advancing from the previously only customary rules. During this period, there were four practical and functional treaties on the law of the sea. Afterwards, UNCLOS II came in 1960 to fill the gaps left out in UNCLOS I such as the width of the territorial sea and the important aspects of fishing rights. It was not established to follow or extend on new issues. However the eighty-eight participating states did not agree on a suitable and common formula of measurements, leaving no important establishments brought by UNCLOS II. Later attempts resulted in the 1970, when the General Assembly decided to organize another conference on the law of the sea. UNCLOS III was enabled to assume a convention dealing with all concerns relating to the law of the sea. In this matter, the General Assembly authorized the improvement

of the law of the sea to meet the worries of states over the 1958 Conventions. According to one Scobbie, nothing was kept as it was yet; everything was to be examined again under new political, economic and technological advancements. The UNCLOS III was seen as the greatest complete legislative work assumed by the United Nations since its first years of establishment. UNCLOS III resembled a different project of international politics and international relations under the practice of international law. (Scobbie, 2006) (Scott S. , 2005) (Shearer, 1989) (Sohn, 1985)

Several authors based on the United Nation convention on the Law of the Sea have defined the maritime zones accordingly. The outcome of UNCLOS III was a treaty which formally creates legal obligations only for those states which consented to be bound. It constitutes the beginning of a new era in the law of the sea. In general; the Convention sets policies for the principal features of international oceans affairs. It founds and regulates the bounds of maritime zones as well as sets the rights and duties of states in these zones. It also highlights on the law related to the international seabed area in relevance to the principle of common heritage of mankind. Not just limited to this, the treaty forces states to protect the marine environment and limit water pollution as well as states the means of dispute settlement. UNCLOS III has also divided and set up measurements of maritime zones and provided definitive definitions to such areas. (Anderson, 2001) (Johnston, 1988) (Platzöder, 1982) (White, 1985) (United Nations Convention on the Law of the Sea, 1982)

Starting with maritime border; it is defined as a separation enclosing a fragment in the ocean where a nation has rights over the mineral and living resources, maritime features, limits and

zones. Maritime borders exist only in the setting of territorial waters, contiguous zones, and exclusive economic zones.

The baseline is the very first point of reference to be defined. The baseline trails the low-water line, but when the coastline is deeply concave, straight baselines may be used.

Internal waters resemble all water and waterways towards the landward side of the baseline. It might also contain waterways such as rivers and canals, as well as water within small inlets. The coastal state has the full authority in this area to set laws and regulate and monitor the use of any resource. It is strictly forbidden for foreign vessels to reach within the internal waters.

Measuring from the base-line, Territorial waters extend up to 12 nautical miles (22 kilometers; 14 miles). Here as well, the coastal state is free to set laws, regulate use, and use any resource. However, vessels are given the right of innocent passage through the area. Innocent passage is defined as fleeting through waters in a quick and nonstop manner; passage should be peaceful under good order and security of the coastal state. If the vessel is witnessed in fishing, polluting, weapons practice, and spying behavior then it is no more resembling innocent passage. Even submarines are required to navigate on the surface and to show their flag in the region. If a coastal state sees a necessity for protection and maintaining its security, it has the right to provisionally stop any passage in specific areas of its territorial seas.

Contiguous zone is measured within an extra 12 nautical miles beyond the territorial waters meaning that the area reaches a 24 nautical-mile (22 km) limit from the base line. The coastal state can continue to enforce laws that are bound to specific categories including customs, taxation, immigration and pollution. This makes the contiguous zone a hot pursuit area.

Another classified region is the exclusive economic zones (EEZs) which reach a 200 nautical miles (370 kilometers; 230 miles) from the baseline. The coastal state has the unique privilege in exploitation rights over all natural resources. Territorial sea and continental shelf may also be included generally in the EEZ. Foreign nations can practice navigation and over flight as well as lay submarine pipes and cables, yet in accordance to the regulation of the coastal states.

Continental shelf is defined as the natural prolongation of the land territory to the continental boundary's outer edge, or 200 nautical miles (370 km) from the coastal state's baseline, whichever is greater. In this matter, the continental shelf may go beyond 200 nautical miles until the natural prolongation ends. Still, it may never exceed 350 nautical miles (650 kilometers; 400 miles) from the base line if a coastal State has a broad shelf off its coast. In this region, coastal states have the right to extract mineral and non-living material in the subsoil of its continental shelf, in privilege to other states. In addition to that, coastal states also have special control over living resources "attached" to the continental shelf, but not to creatures living in the water column past the exclusive economic zone.

Landlocked states, a sovereign state entirely enclave by land, are given a right of access to and from the sea, without taxation of traffic through transit states.

In addition to the measurements and definitions of ocean areas, the convention also highlights in general the rights and duties of protecting the marine environment as well as regulating the freedom of scientific research on the high seas. It also sets the rules for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority and the Common heritage of mankind principle.

An archipelagic state is any internationally recognized state or country that comprises a series of islands that form an archipelago. These states are formed of a series of islands yet resembling a single unit, with the islands and the waters within the baselines as internal waters. This makes the waters around, between, and connecting the islands of the archipelago form part of the internal waters of the state and are under full sovereignty of the state.

High seas are defined as all parts of the mass of saltwater surrounding the globe that are not part of the territorial sea or internal waters of a state. Oceans, seas, and waters beyond the jurisdiction of the state are also referred to as the high seas. Ships sailing the high seas are generally under the jurisdiction of the flag state. In certain circumstance of law violation such as criminal acts or piracy, any state can practice jurisdiction over the ship under the regime of universal jurisdiction.

Vessels have the right under freedom of navigation principle set in treaties and agreements to navigate streams passing through two or more states. It is seen as one of the oldest and most recognized principles in the legal regime leading ocean space.

Methodology

The methodology used is the unobtrusive research, specifically the comparative and historical research of claims of sovereignty, exploration and occupation. Unobtrusive research helps in this research paper since it serves the need of continuing relationship between data collection, analysis and theory. This method includes the use of historical methods by political scientists and scholars to examine how the Law of the Sea can influence decision and govern maritime disputes. Qualitative analysis helps best in this research paper since it serves the need of continuing relationship between data collection, analysis and theory.

Concerning the illustrated case, it seems to be highly appropriate to focus on the maritime dispute in the South China Sea case between southern Asian Countries in connection with the related measures. Moreover, it is important to emphasize the non-numerical examination and interpretation of observation and analysis for the Southern Asian responses toward the maritime dispute in relation to the UNCLOS. The research also highlights the procedures and arguments or decisions taken based on the Law of the Sea and relative international treaties consistent with our case.

A major section of the study deals with the importance of international law mainly in regulating sea communications, rights and duties as well as the international governing bodies.

Certain aspects of frequencies, structure, processes, causes and consequences would shape up the important basics of the field of study. The research focuses on the different variables of time and countries taking part throughout the development of the maritime dispute. The dispute among countries in concern has risen in relevance to the structure of claims and maritime divisions and the consequences of such claims on the neighboring countries.

The research methodology requires gathering relevant data from the specified international laws including the UNCLOS, books, and databases in order to analyze the material and arrive at a more complete understanding and important latest events and proposed solutions in the South China Sea dispute in comparison to the international law.

To go into further details a grounded theory method gives a practical method for observing interrelated South China Sea dispute in which international law of the sea theories applicable would be generated solely from an examination of data and analyzing updated events. Through such an in-depth research study a main conclusion would be derived as an answer to the research question: How can the South China Sea maritime dispute be concluded with respect to applying the United Nation Convention on the Law of the Sea?

Chapter 2

The South China Sea: Maritime Dispute

One of the most complicated and intense maritime dispute is the South China Sea case. In this case there are several variables and strategic plans and techniques that play a role in shaping the dispute claims. What makes it an important area leading to such a struggle are the natural resources abundantly found in the waters. Such resources hold a great deal of energy possible in gas and oil found as well as the fishery reserves that are highly important and consumed by the Southeast Asian people.

Lying in the south-east of the Asian continent, South China Sea is bounded by several Asian countries including mainly China to the south and Hainan Island to the north as well as Vietnam to the west, Malaysia and Brunei to the south and Philippines and Taiwan to the north and north east. It still includes and covers an area of Pacific Ocean extending from Singapore and the Strait of Malacca in the south west. Two hundred small islands, rocks and reefs are also part of the South China Sea having most of such lands situated in the Paracel and Spratly Island chains.

This chapter delivers and covers the main study covering the South China Sea disputes. It is important to highlight in this section the essential variables that make up and influence the dispute events in different fields including tactical, legal, and the interests of the countries in concern. (Gendreau, 2000)

2.1 The Spratly and the Paracel Islands

These islands included in the South China Sea are one of the main reasons behind the long struggle. The Spratly islands are constituted of more than one hundred hugely distributed and dispersed islands, islets, banks and rocks it is found hard to classify the archipelago. They extend

to around 160,000 square kilometers massively situated underwater in the middle of the South China Sea. The area is important having reserves of phosphorus projected to reach at 370,000 tons. Some of these small lands are controlled by Vietnam, Malaysia, Taiwan, China, and the Philippines. The Amphitrite and the Crescent group, lying about 70 kilometers away from each other, of small islands makes up the second most important island, Paracel islands. They include Woody Island being the largest extending at a 4 kilometers long and 2 to 3 kilometers wide. Most importantly the area includes offshore oil deposits as well as highly rich in phosphate reserves. The Paracel is known to be disputed by Vietnam while China has occupied and controlled the Woody Island in 1974 establishing an airfield and extended harbour. Even though these islands have small extended connected territories of less than 3 square miles and it is rather unbearable to establish any structural bodies, yet they constitute a strategic and political advancement to the region. Nevertheless, these archipelagos are of a big concern and dispute between China, Malaysia, Philippines, Brunei, Taiwan and Vietnam. (Bateman & Emmers, 2009)

Adding to the importance of islands found in the area, the Sea Lanes of Communication (SLOC) in the SCS are major connection lanes that connect Northeast Asia and the western Pacific to the Indian Ocean and the Middle East. The South China Sea is classified universally as one of the most important sea transportation routes. As a prove on that, more than 41,000 ships that resembles over half the world's shipping tonnage pass through this sea annually. (Snyder, Gloseserman, & Cossa, 2001) As a result, having one state taking control over a part of these waters or islands brings in the chance for becoming the major controlling and authoritative power in the region. It has been realized that the strategic checkpoints extending from the

Western Pacific to the Indian Ocean and Persian Gulf gives control over fleeing maritime powers such as United States. (Wang, 2001)

The many Islands in Spratly and Paracel were used by the Japanese to mine guano since 1918. Later, the region was seen as a strategic location, for certain acts in the Southeast Asia, mainly against the Philippines by Japan. Moreover, South China Sea islands constitute areas for observation and monitoring and naval acts. Controlling the area would result threatening Vietnam, the Philippines, Malaysia, Brunei and Indonesia. The interests and position of the United States and Japan naval will also be affected with the control over the sea lines of communication (SLOCS) considering them as naval powers. (Emmers, 2010)

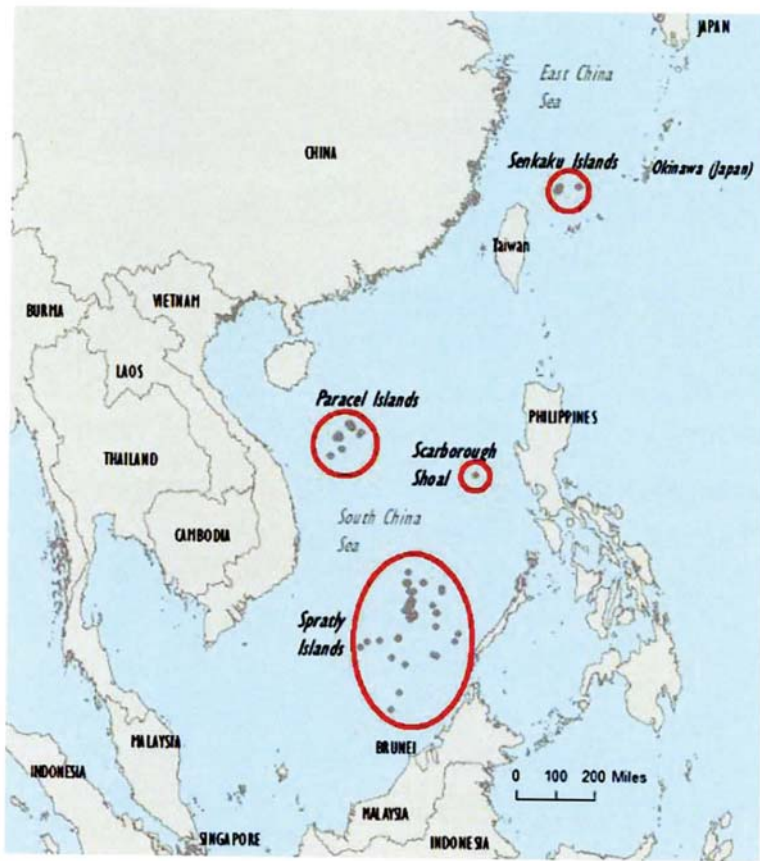


Figure 1: Spratly and the Paracel Islands

2.2 Important Sea Resources: Oil, Gas and Fishery in the South China Sea.

Huge oilfields were found in 1987 by the Chinese experts. Further studies directed by the Chinese in 1989 estimated a 25 billion cubic meters of oil deposits in the Spratly as well as 370,000 tons of phosphorus and 105 billion barrels of oil and yet around Borneo coast still a further 91 billion barrels of oil. (Kreil, 2002)

The most important resource that is found in the South China Sea is the oil and gas, and as such resources constitute an essential role in the international world so does in the region. According to the studies done in 2006 for the South China Sea by the Canadian company Husky Energy the gas barrels could be able to provide 60-70 MMcfd of gas. In 2009, China National Offshore Oil Company Limited (CNOOC) also highlighted the production activation of another gas reserve. (Wan, 2009) Estimations of production set 30,000 cubic feet to reach an increase to 150 million cubic feet per day in the full activation of another gas reserve in the area. (PennWell, 2010) 55 million cubic feet of natural gas daily capacity production in another deep water gas reserve was also discovered in 2009 by the two companies. This gave direct boost and more importance to the South China Sea in being the emerging boundary area for deep water drilling (Snyder C. , 2010)

Such rare resources examined in the South China Sea put the area into more struggle and conflict. As an example, China has enabled Creston, an American company, in 1992 to explore the oil in the area of Spratly Island. This area is considered by Vietnam as being within its continental shelf. This, and further oil exploration in 1992 in the region and constant drilling of oil increased tensions between the two countries while the Vietnamese condemning China for such explorations being done in its water regions distained at 133,134 and 135 blocks. The government of Vietnam in 2004 has demanded from China to directly stop all oil exploration

activities close to the Paracel Islands of the South China Sea in the Gulf of Beibu. (Song Y. H., 2007) On another approach, in 2003 China and Philippines have joined efforts to explore the oil and gas deposits in the Spratly Islands through the state owned companies PNOOC (Philippines) and CNOOC. The agreement started as a three year study of gas and oil reserves in the area. However, Vietnam claimed that this conducted contract was against its rule and authority. Yet, later, as a result of the mutual negotiations in 2005 between China and the Vietnamese authorities, Vietnam reached to engage as well in the agreement as a third active party in the explorations. Taking into consideration the internal political arguments, the Philippines has limited the continuity of this agreement not leading to any major development. But this also showed that agreements are possible between the states to reach common gains. Interests also project in the phosphorous reserves that are studied to be about 370,000 tons. (Snyder C. , 2010) The fisheries resources constitute an important aspect of the living organic resources that are estimated to be 140,000 tons of fish stock in the Spratly Islands region among which are 80,000 tons of permissible catch. Depending on just the tuna schools in the sea, annual income value of fishing would reach a 50 million US \$. (Song Y. H., 2002) These fishery activities are also important in the employment sector. In the Philippines and Malaysia almost 5 million people are employed in this domain as for Taiwan, it employs more than 300,000 fishermen. Not only fishing activities constitute an important economic gain to the countries but also are the main source of food. As a result and due to the important fishing characteristics of the region, Taiwan, China, Malaysia, Philippines, Indonesia, Thailand, and Vietnam are classified as the main fishing nations in relevance to both consumption and catch. (Wang, 2001) Thus, the fishing stocks should be well managed and organized in the South China Sea to maintain this notable activity and its international and regional importance and impact.

2.3 The regional and international impact of the sea lanes of communication (SLOCS)

When it comes to discussing the sea lanes of communication one must take into consideration the strategic military and naval aspect that comes hand in hand with controlling such areas. The security of certain deep sea areas is very essential in terms of military strategists. Being in control of SLOC will lead to having the ability of securing and monitoring the passage between oceans and maritime activities. Even though the methods and tools of maritime activities or naval war has developed and changed, parties in control of the area will have a power privilege over other states. This similarly applies in the case of the South China Sea because of the strategic gateways and passage lanes that connects the world mostly economically. The sea lanes of communication connect the channel towards Malacca, Lombok and Sunda Straits. These straits are also highly essential and beneficial since the Strait of Malacca which is situated among Indonesia, Malaysia, and Singapore, joins the Indian Ocean to the South China Sea and Pacific Ocean. It is measured to be 600 mile long being the primary strip between the Indian Ocean and the South China Sea. (Lindsey, 1988) Based on this fact and importance, the United States, China and Japan are highly concerned with the area and all ongoing activities concluded there. Even more the Strait of Malacca is the least far sea route access for Persian Gulf traders and the Asian markets remarkably including China, Japan, South Korea, and the Pacific Rim. In capacity and usage, boats that are passing daily through the Malacca Strait count to more than 200 boats and being more than 63,000 mainly transporting about 80% of the oil reaching Northeast Asia. In calculation, the total ships carry through the Malacca Strait 525 million metric tons, worth a total 390 billion US\$. Accordingly this makes the passage the second busiest strait in the world. Another important channel is the Lombok Strait connecting the Southeast Asian and Northeast

Asian countries. The Lombok Strait is wider and deeper than the Malacca Strait. This makes it the most secured passage in regards to super tankers and huge eastbound ships. In estimation, 418 ships pass annually carrying 36 million metric tons of shipment. Most notably, the ships that transit iron from Australia reaching China also enter the Indonesian archipelago using the Lombok Strait. Still another important channel in the area is the Sunda Strait expanding up to 50 miles long constituting another passage for annual ship transit of about 2,300 ships carrying 111 million metric tons. (Guan & Skogan, 2007) After studying the important lanes in the sea, one can conclude and link the economic development and power given to the neighboring states to the Southeast Asian sea lanes of communication. These facts and studies bring us to understand the importance of the area and its results in to the South China Sea maritime disputes and their influence on the surrounding and global economies.

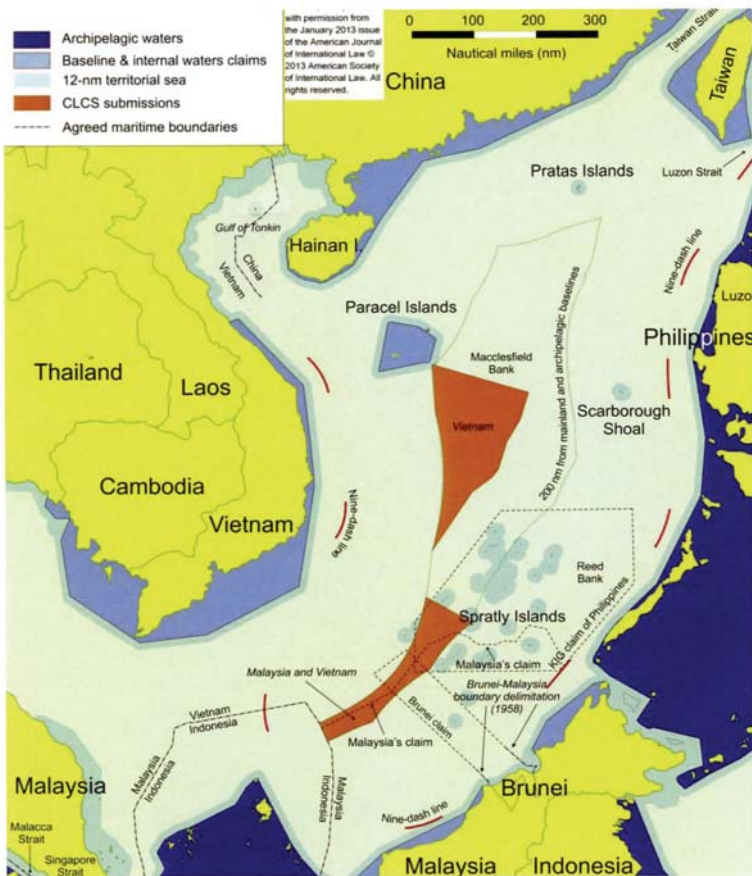


Figure 2: South China Sea maritime divisions

2.4 The UNCLOS III General Principles

The intensity of conflicts grew with the increase of demands for “territorialization” of certain parts of the sea as well as the continental shelf after the World War II. In this regard there was a need for an international regulatory system whereby rules are set to understand the flow of maritime issues. Thus, the first United Nations Conference of the Law of the Sea was established in Geneva in 1958 to reach UNCLOS III in 1973 resulting in agreed upon treaty. The main regulations and maritime subjects dealt with by UNCLOS were those concerning rights of navigation, economic jurisdiction, territorial sea boundaries, legal status of resources on the seabed outside the restrictions of national jurisdiction, passage of ships through straits, protection

and supervision of living marine resources, protection of the marine environment, scientific marine research rule and a binding procedure for settlement of disputes between states. As mentioned before in the first chapter the treaty also divided the maritime zones into different region including the internal waters, territorial waters, archipelagic waters, contiguous zone, exclusive economic zone (EEZ), and Continental shelf. This had a significant influence on the coastal countries most importantly here is the Southeast Asia region. The impact is superior in this regard because of the geographical position of the coastal states on the South China Sea. Almost all neighboring states are located on a circular layer around the sea having circular patterned bays reaching to a common center of territorial claims. Yet, even more complex claims are in regards to the numerous islands and reefs in the region triggered by the UNCLOS's provisions. (Buchholz, 1987)

2.5 Struggles and Claims of Regional States

Due to the several reasons mentioned before including important sea lanes and transit transportation, rich islands and reefs as well as common maritime zones, there are significant competing territorial claims over the South China Sea demanding limited or total sovereignty over that area. In overall analysis the claims can be divided into two major principles: historical and legal foundation. The Chinese and Vietnamese claims are classified under historical features while, Malaysia's claims are essentially legal. Yet, Philippines' claims are seen to be both historical and legal. The following section highlights the main territorial claims in the region. (Emmers, 2007)

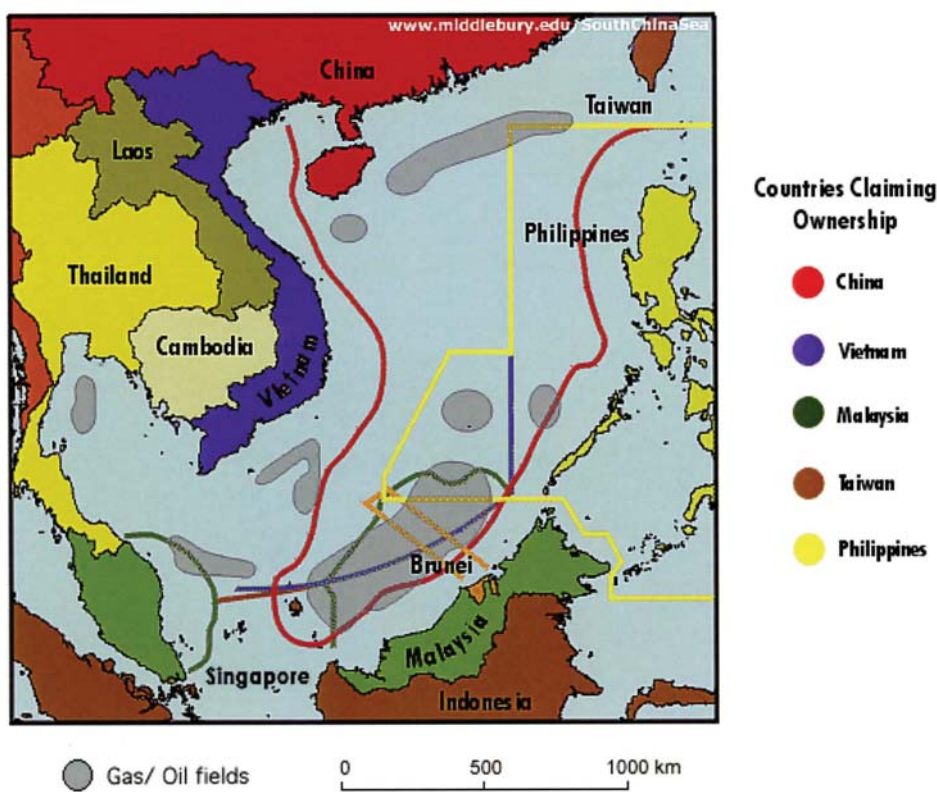


Figure 3: Maritime Claims
 Source: The South China Sea Virtual Library

A) Brunei's Claims

Based on the interpretations of the UNCLOS III, Brunei Darussalam subjected its claim in one direction in the South China Sea towards the Louise Reef. The sultanate use legal source from the UNCLOS III concerning the continental shelf provisions. The Louise Reef is a share of the seabed and practically a legal extension of a continental shelf. The main conflict regarding the Brunei's claims is the legality of considering the continental shelf as a natural prolongation seaward from its territory.

B) China's Claims

China declared claims to the Spratly and Paracel islands in the 19th and early 20th century. The South China Sea is considered to be under the sovereignty of People's Republic of China, PRC, as China claims the area to be. It seeks to exert an exclusive control over the Chinese sea and claims almost the whole territory. China includes the Paracel Islands or known as the Xisha Islands to be part of its Hainan Island jurisdiction. The reason for the PRC in claiming upon all of the islands and most of the South China Sea is referred back to historical causes. During the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD several continuous naval excursions to the Spratly Islands were in occurrence. (Baker & Wiencek, 2002) Claims of Spratly and Paracel islands in reference to experts lack much of legitimacy and accuracy regardless of all determination exerted by China towards these islands. Official Chinese claims were declared in 1947 under the Nationalist rule (KMT) and even more formalized in 1951 with Premier Zhou En-Lai. Yet, the simple discovery of a territory is not efficient and adequate enough under legal bases to determine authority and ownership of the area and even Beijing has not submitted a legal clarification for its territorial claims. For locating maritime baselines in the Paracel islands, the PRC followed the archipelagic regime in May 1996 although the Philippines and Indonesia are the only archipelagic states in the region. At first the islands during the World War II period were claimed by the Japanese but after years of clashes in 1992, Chinese law reaffirmed its claims. To impose its claims China has occupied 8 of those islands. Furthermore, in 1974, China detained the Paracel Islands from Vietnam. The trajectory of the Chinese claims in the South China Sea makes it difficult for the application CBMs and persistence of diplomatic negotiations. (Joyner, 2002)

C) Vietnam's Claims

Based on discovery and occupation, Vietnam has claimed the two islands since 1975. It defends its case on historical grounds and the continental shelf principle of the UNCLOS. During the colonization of Vietnam in the 1930s, France took control over the Spratly and Paracel Islands. Since then, as a result the Vietnam has occupied part of the Spratly Islands to continue the rule. The entire Spratly Islands are under Vietnam claims considering it as an offshore region of the province of Khanh Hoa. Not only the Spratly islands but also the Paracel are allegedly under Vietnam jurisdiction known as the Hoang SA in Vietnamese. However, the Spratly islands were seized by the Chinese in 1974. Still not clearly defined, the claims extend to reach a widespread area of the South China Sea. Using the relative defends and principals claimed by the Chinese, Hanoi has also used archaeological evidence to support its claims. According to the UNCLOS, in 1977 Vietnam has followed the rule of 200-nautical mile EEZ. (Gendreau, 2000)

D) Malaysia's Claims

Moving on to another country's claim, Malaysia has prolonged its continental shelf in 1979 to cover some landscapes of the Spratly. Even more extension was applied to include 6 more small reefs within its continental shelf. Similarly it has considered the principle of continental shelf to support the Spratly claims. Unlike other coastal countries it has clearly defined the coordinates. Moreover, Malaysia has taken a further step through constructing one isle by bringing soil from the land and has built a hotel. (Pan, 2009)

E) Philippines's Claims

Similar to the Malaysian claims, the Philippines have certainly defined its claims with supporting coordinates in the Spratly islands. In comparison to the ASEAN members, the Philippines claims

are the most extended in relative to the Spratly Islands. It is known by the Philippines as Kalayaan. Claims are supported using the closeness principle as well as on the explorations done by a Philippine explorer in 1956. According to the exploration the Philippines formally claimed 8 islands in 1971. It even declares that the islands are not part of the Spratly Islands and they even do not fall under the ownership of any state thus they can be taken under its authority. Therefore, in 1972, the islands were considered as part of Palawan Province, and have been subject to the same rule. To follow this, in 1978 Kalayaan territory was declared to be included in the national land of the country through a presidential decree. (Joyner, 2002)

F) Taiwan's Claims

It has been noticed that both the Taiwanese and Chinese have similar claims and arguments when it comes to the sovereignty over the Spratly and Paracel Islands. The similarity lies in the common border line that extends to the south and passes the western shore of the Philippines reaching Malaysia at Sawawak. The Chinese also claim sovereignty over the Zengmu Reef in their maps, which lies 130 kilometers off Sarawak. On a different level the Taiwanese used the principle of the "nine-dotted line" in their map unlike the Chinese who defend their case through the "U-shaped Line" clearly shown in their maps. (Buchholz, 1987)

In similar manners to China, the Taiwanese also defend their argument on historical events. Adding to that Taiwan claims are also fortified by its insistent occupation of Itu Aba Island. In the same sense as other countries, Taiwan uses the occupation principle to set its claims. Itu Aba, the largest island in the Spratly islands was first founded and inhabited by the Taiwanese. (Gau, 2011) On all cases there was never a resilient objection from other claimants regarding the presence of more than 4 decades of Taiwan in the island. Taiwan sees that it has maintained constant peace and security in the region so it gives it some rights as well. It even uses the

principle of discovery as China to claim on the lands. However, founding and being on the land is not enough to acquire a legal authority and sovereignty. (Emmers, 2010)

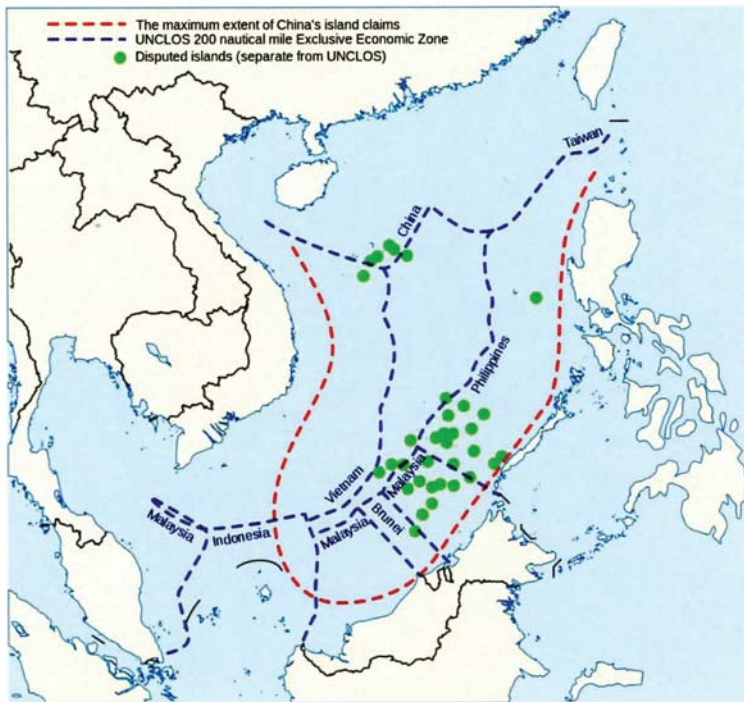


Figure 4: UNCLOS EEZ divisions

2.6 The United States Interests

Because of the importance of the region, politically and economically, the super power states cannot prevent themselves from looking into the region. Hillary Rodham Clinton, and during her term as a U.S. Secretary of State, declared the involvement in the South China Sea maritime disputes at the Asian Regional Security Meeting. However the involvement does not cover the dispute itself or claims in the region. To the contract, the U.S. will remain neutral according to Clinton. Yet, there must be a preservation of the area in securing the notion of free shipping that is seen to be in the National interests of the U.S. Thus they privilege support to enable multilateral negotiations regarding the conflict. (Song Y. H., 2002) In 1996 the U.S. presented a declaration of maintaining the principle of non-involvement in the territorial conflicts. Thus the

United States is neutral when it comes to the direct conflicting claims attained by the states. However, its concerns are based upon the maritime claims in the South China Sea interfering with maritime activity opposing the 1982 International law of the Sea. The U.S. also bases its interest on the freedom of navigation concept that was mainly established in the 18 century and strengthened after the World War II. (Mingliang & Fang, 2010) After removing the dominance of Japanese over the SLOC in the South China Sea, the U.S. was able to maintain the free navigation activity in the area and became part of its interests. But the Chinese have argued that the South China Sea is under its authoritative interests hindering the principle of freedom of navigation. To ensure the U.S. interests, the US Department of Defense reported in 2001 that the state is willing to put all efforts needed to secure important strategic areas for maintaining the US territorial honor, freedom, and sovereignty, as well as the safety of US citizens at home and abroad and defense of US infrastructure. The report included the notion of respecting the international responsibility by protecting the allies, preventing aggressive control of critical areas. Third, the report discussed the will to enhance economic field through enhancing international economy and protecting the global space and sea and precisely the communication information lines. Lastly the U.S. emphasized on the importance of being able to reach main global markets and resources. (US Department of Defense, 2001) In relation to this report, the Asia-Pacific region and SCS region are part of the US interests based on its trade and trade routes, oil commercial, security, and freedom of navigation. Accordingly it is highly important to maintain the peace in the region. Thus, the US is constantly calling for cooperative negotiations by the claimants for concluding the various territorial disputes without resource to the use of force. (US Department of State, 2010)

This is clear that with the US interference in the regional dispute, the Chinese control and demand relatively to the other claimants would alter accordingly. This will subsequently have a massive impact on the power of the Chinese in the area. The dispute will be directed according to how the conflicting ASEAN countries respond to the interference of the US in the areas. It has been concluded that the ASEAN countries approve on the US presence since the US has agreed on the ASEAN Treaty of Amity and Cooperation (TAC) and thus, the US affirms in the report that with its support and engagement, the South East Asia's political structure and influence will be enhanced and given more power in front of the increasing Chinese control. (Guanqun, 2010) Moreover, during the second U.S. - ASEAN Leaders Meeting held on September 24, 2010, Washington and ASEAN have agreed on cooperative points of prosperity, peace, and stability in Southeast Asia and the larger East Asia region. The cooperation will be reinforced in concentration and opportunity and is anticipated to be more advanced in the five-year Plan of Action for 2011-2015. The main issues considered in the agreement include human rights, agriculture, education, health, trade and investment, and energy efficiency. (The White House, 2010)

2.7 Japan's Interests

When it comes to Japan, intervention is not quite similar to the US in a direct sense. Yet Japan has certain concerns to take into consideration at the South China Sea disputes. Almost 70% of the Japanese transit ships pass through the South China Sea lanes delivering oil to the country. A daily 40% of Japanese goods are exported and imported through these lanes as well. A disturbance in the flow of these transit ships will affect the behavior of the most active and powerful nations in the world economy. (Rowan, 2005) These disputes in the South China Sea among the Southern ASEAN countries have given Tokyo the chance and position to exert

diplomatic load and economic supremacy to direct the possible negotiations in the Southeast Asia. Despite the doubtful thoughts of the Southeast Asian countries regarding the success of the Japanese influence in the region, yet, any attempt for mediation and dispute resolution would be beneficial to the two sides and gives Japan a new regional status. In comparison to the increasing Chinese economic power, Japan is concerned about China succeeding in the South China Sea and taking even more power and influence over the region and Asia in general. In this matter, the Chinese shipments and Japanese marine security has progressively increased in the East China Sea. (Finnegan, 2009)

2.8 Common Interests versus Common Aversion in the South China Sea

In a certain issue, a state finds itself unable to achieve specific benefits or gains being the only state working independently in this matter therefore it sees itself as being obliged to cooperate with other states to pursue the needed outcome; this concept is known as the dilemma of common interests. In this regard, states decide to force one another to assure that no single state would take lead or advantage of another's collaboration by absconding from the deal and rejecting to work together. (Sheng, 2003) Accordingly, in the South China Sea dispute, the common interest established is the attempts to limit any open conflict between the nations. States are not willing to start any direct friction or military attack in the region despite the deep disagreements in the overlapping territorial claims and sovereignty claims. In this regard, there exists no common interest in any military activity that would negatively affect the economies and security of the states. This aspiration has resulted in a tendency towards regional negotiations that triggered in 1992 during the Declaration on the South China Sea which was later known as the subject of concern under the ARF organization. (Quilop, 2002)

Another important dilemma in this subject is the dilemma of common aversion. Unlike the dilemma of common interest of having a common outcome to reach at, here states agree in the common outcome that they don't wish to reach at. Thus, states urge each other into managing and forming their policies and movements attempting to avoid this specific common consequence. It is not assured that all states would reach the same consequence or chooses the same principles but still all states would want to avoid reaching that certain outcome. Thus this implies on the states to collaborate and agree on the principles and set the behaviors in order to make this possible. In comparing this dilemma to the South China Sea case, all the Southeast Asian countries have a common concern in China reaching total control and power over the region. (Stein, 1990) Thus, through slight hidden cooperation or at least common principles and behaviors states in the region find themselves collaborating or heading towards trying to limit the Chinese power and dominance which is seen to be as a no benefit for the stability of the region.

2.9 Chapter Conclusion and Analysis

In this chapter, it was important to highlight the main conflict in the South China Sea. As any existing conflict, there are certain clear reasons behind it, and the importance or the weight that these reasons play exert a heavy pressure on the direction and outcome of events. In this chapter, the important variables causing these conflicts were presented and studied. Yet and due to the diplomatic difficulty between the regional states, the South China Sea conflict remains one of the most debated and argued territorial dispute and political case. The importance of the region lies in its natural resources of oil and gas reserves providing energetic potential as well as the living resources of fishery zones of high value. Nevertheless, the Sea Lanes of Communication (SLOC) has given the area a strategic location for transportation of massive transit of goods and profits through the Straits of Lombok, Malacca, and Sunda. Not only the region has attracted the interest

of the surrounding states but also to international players such as the US and Japan whose economies seem to somehow depend on the routes of the South China Sea. The US has argued upon the principle of freedom of navigation to secure its interests in the region and to preserve itself as a naval superpower against any dominance of a regional state. It is rather understandable to have all these countries struggling over the sovereignty and extension of territory under their authority especially when it comes to the Paracel and Spratly rich Islands.

Even though in 1982 the UNCLOS III had defined and managed the all features involving the internal waters, territorial waters, archipelagic waters, contiguous zone, exclusive economic zone (EEZ), and Continental shelf, the states were able to set their own interpretation to these legal principles to defend their claims in the South China Sea. Such modifications or clarifications done on the Law of the Sea were for the single benefit of every state alone serving the national interests.

Even the increasing interest of the US in the region changing from having a neutral position to intervention gave the dispute a more international aspect and attention. Some countries have seen a benefit in bringing together their interests with the US superpower state's interests. In this method, weaker states in the region will have some defending powers and as well limit the emergence of a single dominance exerted by the Chinese such strategies are known as the principles of common aversion and common interests. The proposed solution concluded in this chapter is certainly not allowing for one state to take absolute dominance over the others in the region over all the resources. The outcome to be achieved is focusing on reaching common gains and division of benefits among all states in concern. It is seen impossible to have single gains for a dominating country and multiple losses for all others. As well, it is important not to include

more powers in the region such as the US otherwise it will be more complex to host both Chinese and US interests in the South China Sea.

Chapter 3

UNCLOS and South China Sea Dispute

Developments since 2009 in relevance to extended continental shelf claims have resulted in a pattern of alteration events in the South China Sea disputes. Formerly the dispute was mainly concerning who had better and more defended claim to gain power and authority over the islands. The struggle is built upon the principle that the state gaining sovereignty over the islands would consequently be able to exploit the natural resources in and under the waters of the South China Sea.

A legal framework governing all the oceans was set with the establishment of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as a result of 9 years negotiations and enforced in 1994. (Schofield, 2009) UNCLOS is almost internationally recognized. With respect to the disputed areas in and around the South China Sea, China, Brunei, Malaysia, Vietnam, and the Philippines are all parties to the treaty. (Jennings & Watts, 1998)

In general UNCLOS lacks specific regulations and provisions dealing with sovereignty over offshore islands. In this matter, it is rather hard to determine which country has provided legally supported claims in sovereignty over the islands. But in regards to the South China Sea, there are several laws to monitor the different claims established by the countries. This chapter explains the significance of those provisions, and studies the effect of UNCLOS in influencing the events in the South China Sea disputes. It is by default and obligation that any party state to the UNCLOS must deal with its maritime disputes and deliver its maritime claims in accordance with the convention principles. If a state's national rules contradict the international law, it's then hard for the country to only follow its national laws. (Vienna Convention on the Law of Treaties, Article 27, 1969)

3.1 Maritime Zones Classified By UNCLOS and South China Sea Zones

Distinctions

Baselines drawn in the South China Sea are causing the first disputes between the countries, since the baselines are what determine the measurement of other maritime zones. The United States has rejected the baseline that was set by Vietnam varying from that defined UNCLOS using a straight baseline. (Roach & Smith, 1996) Furthermore, and not allowable by UNCLOS, China has affirmed straight baselines around the Paracel islands. Yet China as a continental state has no authority to fix straight baselines around mid-ocean archipelagoes. (US State Department, 1996) On another comparison, the archipelagic baselines confirmed by the Philippines in 2009 are dependable upon UNCLOS regulations. (Republic Act , 2009) Studying Malaysian claims it was noticed that no clear baseline was brought up as a reference to the measurements of maritime zones, even though it has published a map clarifying its continental shelf claim off the States of Sabah and Sarawak.

UNCLOS in the territorial sea offers coastal states sovereignty in the 12 nautical mile (nm) belt of sea next to their coast line but still freedom of innocent passage is legal in this area. (UNCLOS, art. 2, 3, 48)

UNCLOS also gave more national rights within the EEZ a region extending to 200 nm from the baselines of the coastal state for exploitation and exploration activities. (UNCLOS, art. 56, 57) This has also provided the coastal states jurisdiction over the zone's fishing resources and hydrocarbon resources.

Similarly the coastal state has certain sovereignty of exploration and exploitation within the continental shelf. (UNCLOS, art. 77, 76(1), 76(4) and 76(8))As a party to UNCLOS a state is

supposed to exploit and explore in this region under the governance of the provisions set by UNCLOS. (UNCLOS art. 51)

3.2 Islands and Other Topographies and Their Maritime Zones

In this section it is important to highlight the different regimes and distinctions set by UNCLOS when it comes to islands, rocks and low-tide elevations because of the varying maritime zones that can be measured relatively. Similar to land territory, islands experience same maritime zones of 12 nm territorial seas, a 200 nm EEZ and a continental shelf which might go further than 200 nm (UNCLOS, art. 121(2)). As in rocks territories, they only enjoy a 12 nm territorial sea. (UNCLOS, art. 121(3)) Third distinction are the low-tide elevations enjoying no territorial sea of their own, but are still used as reference points to measure the territorial sea if they are within 12 nm from the mainland or an island. (UNCLOS, art. 13)

The geographic features in the South China Sea are still not clear in the full classification of islands. It has been examined that the area includes more than 170 geographic features among which only 36 are islands above water at high tide. (Hancox & Prescott, 1995) The United States Government through the Office of the Geographer in the State Department has declared that there are only 14 area categorized as islands in Spratly Islands while others are reefs, shoals or atolls. (Dzurek, 1996) Under the principle of sustaining human habitation to be entitled to an EEZ, it is still unclear concerning the number of islands in the Spratly Islands that can have an EEZ. Occupied by Taiwan, the Itu Aba which is considered to be the largest island in the region covers an area of about 0.46 square kilometers. The issue of islands or rocks being capable of sustaining human or economic life of their own is still in negotiations. (Gjetnes, 2001) Yet, there

are certain possibilities of human life in certain larger islands whether in the Paracels or the Spratlys with vegetation capabilities.

The South China Sea dispute also includes the status of topographies being always under water even at low tide. Under the UNCLOS treaty this region would be considered as part of the seabed and subsoil. Being in a state's EEZ or continental shelf then the state itself has certain ruling rights over as well as over their natural resources. Otherwise they will be considered as in the deep seabed known as the "Area" under the authority of the International Seabed Authority. This is naturally the issue of Maccles field Bank being completely submerged but yet claimed by China. (Elferink, 2010)

3.3 Claims and Rules of Extended Continental Shelf in the South China Sea

Within the continental shelf a state cannot go beyond 200 nm in its jurisdiction. As stated in Article 76 of UNCLOS and under a certain recommendations and permissions issued only by the Commission on the Limits of Continental Shelf - CLCS a state can claim up to 350 nm (UNCLOS, art. 76(4)) The CLCS establishes the outer limits of their continental shelf.

As a result, both Malaysia and Vietnam requested an extension to their continental shelf in 2009 in the SCS. Yet China objected on this submission to the CLCS stating that this is interfering with its sovereignty in the SCS over certain islands, the adjacent waters, the applicable waters, and the seabed and subsoil. (Keyuan Z. , 1999) This objection was considered legal because of the continuous disputes in the South China Sea that this extension cannot be made legal. Even the Philippines rejected this extension demanding that it overlaps with its claims in the SCS and conflicts with its sovereignty over North Borneo islands. (Gao, 1994)



Figure 6: China Map Submitted

According to the map, China has submitted its claims through highlighting the nine-dash line to indicate its spread of authority in the South China Sea. Yet, Indonesia and the Philippines considered this as inconsistent with UNCLOS. The case is only valid if the sovereignty was restricted to maritime zones claimed from the islands. The Philippines, in 2011, stressed upon the standard that the land rules the sea, and specified that UNCLOS offers no legal source for any claim to autonomous privileges and authority over 'relevant' waters inside the nine-dashed lines separate of that presented in Article 121 of the claims to waters that are 'adjacent' to the islands. (Benson, 2015) In 2011, China's declaration proposes that its claim involves only a claim to the islands yet permitted to a territorial sea, an EEZ and continental shelf of their own. In the report there was no proposal of having the waters inside the nine-dashed lines being historical waters or

historical rights. In this regards China is trying to bring its claims over the Spratly Islands under the jurisdiction and provisions of UNCLOS even though it still uses the nine-dashed line map through the principle of being cautiously doubtful. This is also defended in the monitoring behavior and jurisdiction implementation within the nine-dash line that China is undergoing through the intervention in the seismic survey activities in the EEZ of the Philippines and Vietnam in 2011. (Thayer, 2011)

When Malaysia and Vietnam requested an extended continental shelf, they clarified the limits of the EEZ and thus indicating the baselines as references. Yet, China in 2011 still didn't indicate any baseline references for the islands claimed or any maritime zone. This makes it impossible to examine the real measurements of areas of the overlapping claims between the disputing countries.

It is likely to distinguish a mutual policy among the ASEAN claimant States with respect to the Spratly Islands from their suggestions and proposals to the CLCS. The ASEAN claimant States are declaring that any claim to independent rights and authority in and under the waters in the South China Sea must be built on maritime zones claimed from land grounds. They will not distinguish any claim by China to autonomous rights and control having the maritime areas inside the nine-dashed lines on China's map. (Wang, 2010) Accordingly, ASEAN claimants declare that a large area in the South China Sea is not to be disputed as being within the EEZ or continental shelf of the ASEAN claimant States. This leaves only for those areas of the 12 nm territorial sea adjacent to the features of islands subject for dispute.

China claims that there are some topographies in the SCS likely to be considered as islands having a traditional EEZ and continental shelf and since all islands are claimed to be under its jurisdiction then there will be a clear extensive overlap between the EEZ of those islands and the

EEZ of the other ASEAN coastal countries. If these topographies are to be considered as normal islands then the claim of continental shelf extension submitted by Malaysia, Vietnam and the Philippines cannot be seen legal since they overlap with the EEZ of these islands. China is also seeking towards another scenario in claiming that it has authority over all the waters within the nine-dash lines set as historical rights. But this will lead to a direct dispute with all the other Asian coastal states being inconsistent with the UNCLOS regulations. The argument raised by the other states would be that any historical principles or rights that China is using to defend its case are illegal in front of the UNCLOS regime and authority. (Sun K. M., 1998)

Thus the dispute would still be unclear and unresolved having unclear claims as well as unclear categorization or delimitation of maritime zone in the region. It is essential to have the parties to the dispute set their claims in the South China Sea according to the customary international law, and more precisely the Law of the Sea Convention. In this regard claims are supposed to be legitimate internationally to be taken into consideration.

3.4 Latest Developments

3.4.1 Introduction

Not considering the Vietnamese claimed EEZ, in May 2014 the China National Offshore Oil Corporation (CNOOC) organized and settled its major most progressed oil rig, HS-98, in the area. This activity was considered to be one of the triggering events in the crisis between the two countries causing greater tensions subjected in the whole South China Sea. Such independent behavior resulted in the strengthening of undesirable developments as well as reducing the hope in the projections of reaching a negotiated resolution to the dispute. The incident also destructed the ability and success and value of the ongoing struggle and efforts put to achieve a solution and dispute settlement through negotiations by the conflicting parties. Since 2000 the tensions in the

South China Sea started to augment after passing through a period of calmness in the region. Increasing pressures remain the invention of a compound interaction and relationship of internal political and global influences. It is the argument that was constantly stated in this paper that China pursues to prevail the maritime area as much as possible reaching an 80% of the South China Sea in its nine-dash line claims. More recently and to attain this leading point of dominant player, China is following a policy to ensure this expansion in authority as well as to weaken US influence and reliability in Southeast Asia and more generally in the Asia-Pacific. China also sees that the US will not interfere militarily to defend its ally the Philippines to maintain its claims. As a consequence to escalating Chinese confidence America sees itself in a conflicting situation. On one hand, if the allies in the South China Sea realize the unwillingness of the US to engage in developed activities then the US will lose its role in the area. On another hand, the US cannot be using force in the meantime, trying to limit any escalation and intensity in the tensions between the conflicting parties or between the US and China. Even though there might be some strong hold upon claims in the region especially by China, the Chinese government still declared that it is dedicated to ensure peaceful growth under the notion of good neighborliness kept in the Southeast Asia. But this will not lead it to give in its territorial and authoritative claims. Due to the conflicting and overlapping claims of the countries a near resolution is rather impossible with such determinacies. Seeing these activities and persistence of China to rule over the region, the dispute will be a complicated task on both regional international grounds. The conflict resolution and mediation efforts are mostly blocked during this period.

3.4.2 Rising Tensions: The Responsibility Dilemma

This rising tensions between the claimants is subject to certain responsible players. China has put the responsibility of the rising tensions and worsening of the disputes on the Southeast Asian

claimants and more precisely the Philippines and Vietnam. Even the powerful states such as the US and Japan are also concerned by the matter. Despite the recent deploy of the oil rig HS-981 into the disputed waters without prior notice and having full protection by the Chinese vessels, China still works on maintaining the notion of limit and persistence in the South China Sea. In addition to this and at the first high-level conference established to deliberate on the SCS crisis, Chinese State Councilor accused the Vietnamese for the anxious condition prevailed in harassing the oil rig and advertising the issue. (Reuters, 2014) China also blamed the Philippines and Vietnam of continuously exploiting China's resources in the South China Sea and increasing pressures in this behavior. (Qiang, 2012) China has recently also accused the US of having a neutral position on one hand while promoting the Philippines and Vietnam to assume more confrontational movements on the other hand. (China Daily, 2014) Moreover, the Foreign Ministry of China has lately pointed out on the Japanese interference in the dispute as being an unnecessary action. (Reuters, 2014) The US officials themselves have admitted through the Obama administration that the ASEAN disputed countries' movements are not directed against China, and that China must not react upon this to regain or maintain its rebalance in the area. To assure this declaration or believe, the Director of National Intelligence, James Clapper, informed the US Senate of China's actions as being directed to assure the important power and position that China plays in the region especially when it comes to territorial and maritime boundary disputes. (Straits Times, 2013) In 2012 during an interview with a Singapore press, Vice Foreign Minister Fu Ying clarified the relation between the Chinese actions and the increasing military presence from the Americans. He has linked the relation between the two in analyzing that the Chinese precautions and force is being directed towards the American more than towards any ASEAN country. (PRC Embassy of Singapore, 2012) When it comes to UNCLOS regulations

and arguments, the US falls weak in this matter as referred to by the Secretary of State Hillary Clinton in stating that the US would have had been more credible in its arguments if it had ratified the UNCLOS. Even President Obama in 2014 has declared that the US finds it hard to try to resolve the maritime dispute in the South China Sea while not itself ratifying the UNCLOS. (Wall Street Journal, 2012)

The governments of the Philippines and Vietnam have, obviously, placed the responsibility for intensifying pressures resolutely at China's part. (New York Times, 2011) Philippine Foreign Secretary Albert del Rosario has criticized China, condemning it of exerting strains due to its extreme and extensive maritime claims and hostile forms of conduct which in return threatens regional peace and stability. (Reuters, 2014) During the Shangri-La Dialogue in 2013, Vietnamese Prime Minister Nguyen Tan Dung assessed China's performance, yet deprived of openly specifying the country, that during the HS-981 crisis, and China's placement of the oil rig has caused a threat to the peace, stability, security and freedom of navigation, as well as to the support and growth in the region and the globe. (Nien, 2014) The Philippines and Vietnam's associated ASEAN members have been more cautious in their remarks, but furthestmost have been disturbed by China's actions. As the condition in the South China Sea has worsened, the United States has become more uttered in stating its worries and is now more eager to direct the responsibility at the Chinese. Since the mid-1990s, the US strategy set for the South China Sea dispute has been steady. (Today Singapore, 2014) It is mostly found that America attempts to keep neutral in not taking certain parts towards rivalry territorial claims and doesn't opposes the use of force or pressure to resolve it. But it supports a negotiated settlement of dispute through negotiations and in relevance to the international law. In 2008, when pressures began to increase and build up, US officials began to highlight upon the principle of coercive diplomacy being

practiced in the region but not directly mentioning the Chinese specifically, even though that were the clear intentions. (International Institute for Strategic Studies, 2008) During the ASEAN Regional Forum (ARF) meeting in 2010, the Secretary of State Clinton affirmed that the South China Sea was essential to local security and that America had a domestic attention and interest in freedom of navigation that is having an open access to Asia's maritime areas in reverence for international law in the South China Sea. (Clinton, 2010) Nevertheless, in 2014, the Assistant Secretary of State for East Asian and Pacific Affairs, Danny Russel, was accusing China openly for increasing the pressures as well as not giving any legal weight to the nine-dash line principle. (U.S. Department of State, 2014) The US State Department termed China's efforts to block the supply and routes of Filipino Marines on Second Thomas Shoal in March 2014 as unpredictable and against the principles of freedom of navigation. To add up on this matter, Deputy Secretary of State, William J. Burns, has stressed on how the South China Sea disagreement is controlled in this regard claiming that it exposes whether the risk of power and force or the rule of law will direct disputes and whether the similar regulations and outcomes will equally be applied on all countries not differentiating in being big or small. (US Department of State, 2014)

3.4.3 China's Game Plan in the South China Sea

China's further forceful actions in the South China Sea and elsewhere is seen to be challenging. China is accused of increasing tensions and friction with its neighboring countries while confronting the international legal order and making these neighboring weaker states look for support and partnership elsewhere and especially from the United States. This has spoiled its worldwide status. (Glosserman, 2014) Some analysts have claimed that Chinese confidence is triggered by the lack of a unified strategy on maritime disputes consequential to internal and regional competition. (International Crisis Group, 2012) Others have suggested that China has

assumed a strategy of non-argumentative insistence and confidence in a reaction to the challenging actions of the Philippines and Vietnam. (Mingjiang, 2011) Current proceedings, though, propose that China's plans in the South China Sea is comprehensible, integrated and practical, and that its intentions are to spread the country's territorial and jurisdictional claims while concurrently damaging the US power and authority in Asia but deprived of frustrating obvious American armed interference. The HS-981 event delivers a notable clear image of China's policy and approach that the existence of warships, a huge fleet of civilian patrol ships, trawlers and CNOOC boats shows a high-degree of national collaboration. China must have recognized that the occurrence of a Chinese drilling stand in Vietnam's EEZ would trigger a disaster in Sino-Vietnamese affairs, thus the process must be abandoned at the chief levels of the Chinese government, as there was no Vietnamese event that could have motivated China's behavior and especially when it was made just after the President Obama's trip to Southeast Asia. Some see that the HS-981 was planned to focus on the America's restricted choices in replying to China's actions in the South China Sea. (Huy, 2012)

Still and since earlier year and until in 2013, Gao Zhiguo, China's judge on the International Tribunal on the Law of the Sea (ITLOS) which is referred as the dispute resolution mechanism established under UNCLOS claimed that the nine-dash line was very identical with a claim of rule over the islands that constantly were belonging to China as well the link with historical rights of fishing, navigation, including other marine activities on the islands and in the in line waters. (Gao & Jia, 2013) Moreover, the Foreign Minister Wang Yi specified that in his thought the right solutions to the dispute should be initiated through discussion, cooperation and negotiation more than through legal arbitration. (Yi, 2013) However, still no other country believes in the nine-dash line or of having any legal foundation. Even Indonesia was the leading

country to formally encounter the nine-dash line principle through sending a letter to the UN Secretary-General affirming that it had no foundation under international law and was in violation of UNCLOS. (Agence France-Presse, 2013) In this matter states has used the legal principle that UNCLOS succeeds over customary international law and that this international law does not recognize historical rights and authority in the EEZ of other states. (Koh, 2014) On February 2014 the US interrogated the map to declare that all maritime claims shall be resulting from land topographies and that explained by the Chinese using the nine-dash line principle is irrelevant to the international law (Russel, 2014).

In order to create more authority and spread its sovereignty in the region China has put its efforts in certain areas including advancement of the managerial status of the Sansha in 2012. This is subjected in the stricter implementation of a yearly fishing prohibition that China has required in northern regions of the South China Sea since 1999. In January 2013 a new and different fishing regulations were presented by the Hainan government. In 2012 china requested from foreign energy firms to cooperatively establish nine offshore blocks at the external edge of the nine-dash line within Vietnam's EEZ. In 2013 it also delivered new maps to explain more its claims, thus extensive and clear naval movement was practiced in 2013 and 2014. China is also allowing for launching of an Air Defense Identification Zone (ADIZ) comparable to that affirmed over the East China Sea in November 2013. (Straits Times, 2014) There can be little doubt that China's attempts to push its claims have damaged its international image and created anxiety across the region. According to the census established by the Pew Research Center during March to June 2014 concluded that in the neighboring countries there are a high percentage of people concerned about an emerging conflict with China example in the Philippines the concern reached to a 93 percent, 85 percent in Japan, 84 percent in Vietnam, and about 66 percent in Malaysia.

Moreover, even in China the survey recorded a 62 percent of concerned respondents. (Wall Street Journal, 2014) Even though this shows a bad reputation for China yet it is still ready to go through the entire struggle bearing in mind that the benefits are exceeding the costs in this case. (Sun Y. , 2014) Even if one wants to study the historical rights that China is trying to bring in to defend its case, UNCLOS is not retroactively applicable to the sovereign rights and maritime administrative rights formed throughout history prior to its establishment. (Yew, 2014) Current reports propose that in reply to growing Chinese actions in the Spratlys, the United States will extend its military surveillance events in the South China Sea. (Financial Times, 2014)

Singapore Prime Minister Lee Hsien Loong declared in September 2013, that the South China Sea dispute is a case that cannot be resolved. (Alcuaz, 2013) Yet, even if just in theory, no international dispute is unable to be resolved. In practice, still, several features condense the dispute mainly determined the most important of which is China's inflexibility. Universal lawful settlement delivers a clear answer to the dispute. The International Court of Justice (ICJ) could inspect opposing claims to rule of the islands and subject an obligatory award. But the ICJ could solitary observe the situation with the consensus of all parties. China, though, has constantly lined out from international legal arbitration as a way to decide its disputes with other countries. This makes the ICJ presently not an option keeping the same position for China. China's resolute refusal of legal methods to resolve the South China Sea dispute was made clear in January 2013 when the Philippines requested ITLOS to subject a ruling on the compatibility of the nine-dash line with UNCLOS. (Department of Foreign Affairs, Manila, 2013) In different manners to the ICJ cases, proposals to ITLOS do not necessitate the consensus of both parties who have previously ratified UNCLOS. Obviously, still, China directly declined to contribute in the reports quoting its undeniable authority over all the islands in the South China Sea. The judgment was

affirmed in 2006 to exclude itself from obligatory dispute resolution measures concerning maritime boundaries claiming that the Philippines' case being accurately defective and included incorrect charges. (Xinhua, 2013) China correspondingly stated the Philippines proposal to be a desecration of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC) even still in that contract all parties approved to resolve their territorial and jurisdictional disagreements by peaceful methods in relevance to the generally recognized doctrines of international law, as well as the 1982 UN Convention on the Law of the Sea. (DOC art. 4) Even though China still refuses to cooperate, the case is happening and Arbitral Tribunal has been established with the appointment of five judges under the Permanent Court of Arbitration (PCA). The Philippines and on 30 March 2014, delivered the legal debates and documentations, Memorial, to defend its proposal. Subsequently the PCA provided China pending 15 December 2014 to give in its counter-Memorial, but it directly repeated that it would not contribute. (Lei, 2014) If the PCA gains jurisdiction, it is likely to subject a conclusion in 2015. If the Tribunal rules that the nine-dash line is discordant with UNCLOS, that ruling is binding on China because it is a signatory of UNCLOS. China seem confident that it has undeniable authority over the islands is the confidence that adjudication is solely needless.

3.5 Chapter Conclusion

Through the analyses of China's self-confident conduct in the South China Sea since the increase in pressures in 2008 until recent days enables us to draw several conclusions. First, China's main goal is to attain supremacy inside the nine-dash line by developing its territorial and jurisdictional claims. Second, to accomplish that purpose, and upsurge its control and effect in Asia more generally, China pursues to weaken the assurance in America's safekeeping affairs with its partners thus reducing the US influence. Third, China's forceful strategy reveals a rising

logic and belief of national self-assurance. Fourth, domestic politics progressively affects China's program, rule and plans expressly through growing belongingness over control of the Paracels and Spratlys islands. Fifth, China's policy is active, synchronized and government based decisions which is not affected by the reaction and claims of other ASEAN countries. Finally, China seeks to attain the sovereignty inside the nine-dash line having full freedom of navigation and maritime supremacy that are provided by UNCLOS.

Chapter 4

Recommendations and Suggested Solutions

The only way that China can exert control over the region if it bases its claims upon the provisions of UNCLOS. The point that China looks to be enduring a strategy of deliberate uncertainty by declining to explain the nature of its claim and the implication of the nine-dashed line map has elevated uncertainties and alarms about whether China is ready to stand in good faith with its rights and responsibility under UNCLOS.

The fear about whether China aims to conform in good faith with UNCLOS must be seen in the concerns frequently spoken in the worldwide media about the recent activities of China which is establishing a blue water navy and is extensively backing up the number of enforcement vessels in the South China Sea. The ultimate way for China to ease the uncertainties and fears of the ASEAN countries is for it to explain its claim in a method that is recognized by the ASEAN claimants and the global community as regular and legal under UNCLOS. If China maintain its activities, struggles will carry on to grow over the disputed areas in the South China Sea, as well as the constant fears and concerns of the neighboring coastal countries will prevail. As a consequence, certain ASEAN claimants are expected to sense it essential to intensify their collaboration with the United States so that the United States will create a superior existence in the area.

4.1 Delimitation of Maritime Boundaries

In some cases coastal States find themselves unable to claim the full extent of their maritime zones because of having other states' close maritime territories. Where maritime zones join, a possible maritime border claims occur. UNCLOS sets out principles for the demarcation of

maritime boundaries among such opposite and neighboring States where the maritime zones overlap. (Brown, 1992)

The rules for the delimitation of the territorial sea boundary are set in Article 15 when neighboring states fail to agree. The rules suggests of having a median line as boundary, following that every point is equidistant from the nearest points on baselines. South China Sea dispute could have been resolved through the Article 15 if it remained obvious that different claimant States had authority over dissimilar islands, and there was a space of less than 24 nm among the islands. Both Articles 74 and 83 correspondingly rule the delimitation of the EEZ and continental shelf limitations between opposite or adjacent States. The phrasing of both articles is almost the same and offers that the overall norm is that demarcation shall be achieved by agreement on the foundation of international law in order to attain an equitable resolution. These articles were between the final articles to be decided upon throughout the negotiation of UNCLOS because of a split between States which favored the principle of equidistance-special situations rule and other States which desired a rule to mark out on the base of principles of equity. (Vidas & Ostreng, 1999) To overcome this separation the outcome of the provision was a concession on a writing which is unclear and imprecise and which does not cover the verbal wordings chosen by either group. The obligation that the delimitation is to attain a reasonable and impartial solution sets importance on the outcome of the delimitation, thus varying from the use of equitable values as a system or practice for demarcation. (ICJ Reports, 2002)

The methods mentioned in articles 74 and 83 are denoted by the courts to be the equitable strategies to pertinent conditions method. Likewise; they have specified that this technique is very comparable to the equidistance-special circumstances regulation that is described in Article 15 of UNCLOS concerning the demarcation of regional sea boundaries.

The ICJ and during the 2009 *Black Sea Case* established a three step method to demarcate the boundaries. At the beginning the Court will create a temporary demarcation line, using methods that are geometrically objective and also suitable for the layout and natural features of the area in which the delimitation is to take place. So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in a particular case. In this matter, when opposite coasts are in regard, the temporary delimitation line will involve of a median line between the two shores. At the second level, the Court will deliberate whether there are issues reaching for the change or fluctuating of the provisional equidistance line for it to realize an equitable outcome. Throughout this stage the Court will study aspects including the formation of the relative coasts and the availability of islands. During the last stage, the Court will confirm that the line demarcated properly does not result in an unfair outcome by logic of any noticeable inequality among the proportion of the relative coastal lengths and the ratio between their maritime areas in accordance to the delimitation line. It is essential to undergo through this final stage to make sure that there is no inequality among the delimited maritime. (ICJ Reports, 2009)

When it comes to the presence of islands, there has been no imposing rule on how Article 121(3) of UNCLOS is understood. The delimitation of maritime zones differs when islands are present and this principle was faced in various cases in front of the international courts and tribunals. Being a large island and having an EEZ of its own does not entitle it of acquiring complete influence in a maritime delimitation. The fact of demarcating an equidistance line is not enough between the island and the mainland territory. The island is given reduced or less influence in comparison to the mainland when measuring between the EEZ of both lands and setting their maritime boundary during an overlap of maritime claims. In comparison to the Spratlys and

Paracels islands, the larger islands included in both features are to be provided with reduced influence in the sense of the mainland coasts of the claimant states. Though, several of the greater islands are situated near the 200 nm EEZ limits of the ASEAN claimant States. Islands' EEZ could range through the zones beyond the outer edges of the 200 nm EEZ of the claimant States and consequently decrease or entirely remove the concise of high seas in the middle of the South China Sea.

The high seas beyond the 200 nm are governed under Part VII of UNCLOS. (UNCLOS, art. 86) This area is under the principle of freedom of navigation and fishing managed articles 116 to 119 of UNCLOS. (UNCLOS art. 87) In this case the natural resources of seabed and subsoil beyond the outer limit of 200 nm EEZ is ruled by the provisions on the deep seabed in Part XI of UNCLOS.

4.2 Different Consequences

The extent of high seas and deep seabed in the South China Sea rest on two aspects. First, if the islands situated there have any EEZ and continental shelf of their own. Second, if the ASEAN claimants are permitted to having an extended continental shelf. Still if the ASEAN coastal states in the region all claim an EEZ from the baselines lengthways their mainland coast or from their archipelagic baselines, there exists an area similar to a kite shape beyond the 200 nm EEZ restrictions. In approving on the extent of the disputed areas, there has been argued of the possibility of four situations or settings that can occur. In this section there will be an explanation about the different possible scenarios.

As a simple outcome, if no island is recognized as being fully an island but rather only rocks then they don't have EEZ and continental shelf of their own. And if none of the states can claim

an extended continental shelf in the area, then the whole kite-shaped area will be governed by the high seas and deep seabed rules. This is classified as the first possible alternative.

In another scenario, if the land features are still classified as rocks but extended continental shelf claims of the certain states are recognized then this area would be under their authority. Malaysia and Vietnam have made a cooperative proposal for an extended continental shelf claim in the southern section. The Philippines and China have given in initial information. If the claimants decide to distinguish all those claims as lawful, then that previously considered as high seas will be under the jurisdiction of those states which have the exclusive right to the resources of the seabed and subsoil. However, for separating these areas under certain maritime boundaries would be in their decisions or they would want to establish a joint venture to collect the resources. It will be up to them to agree on maritime boundaries separating their claims, or to develop the resources jointly.

In the third scenario, if the states decided that certain islands in the Spratlys and in the Paracels can endure human habitation or economic life of their own, then consequently those islands would be permitted to an EEZ of their own. However, the EEZ from those islands would reach into many areas beyond the 200 nm EEZ claims from the mainland coast or from particularly the archipelagic starting point of the Philippines. In this scenario the southern two-thirds of the kite-shaped area would turn out to be the EEZ of the islands, keeping the dispute over who is ruling over the islands. This will bring the extended shelf claims to be unlawful. Yet, nearly all of the kite-shaped region would be still a disputed area under this situation.

According to the fourth setting some states can agree upon the extension of EEZ of the islands that are under their authority. China, Taiwan, Vietnam and the Philippines could arrange that it would be in their mutual interest to decide that the EEZ from the disputed islands reaches the

entire kite-shaped region. Then, they could decide that the whole northern three-quarters of the kite-shaped region ought to be share of the area in dispute which is claimed by China, Taiwan, the Philippines and Vietnam. By that it will be possible to establish joint development arrangements between those states for several maritime activities including fishing activities and hydrocarbon extraction. In this scenario only these states are able to benefit from the area's resources and other states would have to demand the freedom of fishing if it were reflected to be a region of the high seas. In the same analyses the southern one-quarter could be distinguished, with changing one country that is the Philippines replaced by Malaysia. This setting distinguishes the areas beyond the 200 nm from the mainland coasts not containing hydrocarbon resources, but do have significant fisheries resources.

By these analyses the different alternatives are possible if the political will is available. By that if the disputed states take into consideration other states' interests as their own and reach for common interest they would be able to finally reach and settle for an agreement.

It is only possible to negotiate upon maritime boundary delimitation if the sovereignty issues over the islands are resolved and cleared out in the South China Sea. In articles 74(3) and 83(3) UNCLOS would offer a solution to this case. The articles state that if restriction cannot be achieved by certain agreement then the involved states shall endure all possible energy in a circumstance of understanding and cooperation to establish provisional measures of an applied nature and throughout the temporary period, not to risk or hinder the accomplishment of concluding agreement. This provision is intended to endorse temporary rules and practical procedures that could open the way for provisional operation of disputed areas awaiting delimitation and establishes an implicit credit of the significance of escaping the interruption of economic expansion in a disputed maritime area. (UN Law of the Sea, 2007) The responsibility

to make every effort to come in into provisional measures of a applied nature was deliberated by an Arbitral Tribunal established under Annex VII of UNCLOS when dealing with the case between Guyana and Suriname. (UN Law of the Sea, 2007)

Because China has not yet identified its claims openly and clearly, the overlapping areas are hard to locate and measure in the South China Sea. Even the EEZ of the islands are not yet claimed by China. On all cases once China indicates the EEZ of the islands that it claims then there would be an overlapping area between the islands' EEZ and the EEZ and continental shelf claimed by the other coastal claimants from their mainland coast or archipelagic starting point.

Though, the islands concerned are also demanded by several states, a dispute will rise between China and the ASEAN claimant States on the understanding and submission of Article 121 on the rule of islands, rather than a maritime delimitation dispute. Additionally, having different states claiming authority over the same islands currently it would be a difficult task to negotiate boundary delimitation at this stage. Moreover it is impossible for Malaysia and Philippines to discuss and overcome the dispute of maritime boundary between their overlapping claims having adjacent EEZ boundary. They need to resolve the issue of sovereignty over the East Malaysian State of Sabah claimed by Philippines first.

4.3 Provisions on Regional Cooperation

In this particular case of the South China Sea part IX of UNCLOS is the most revealing description and outcome for the situation. This section deals with semi-enclosed seas which is similar to the SCS of entailing completely or mainly of the territorial seas and exclusive economic zones of several coastal States. (Fox, McDade, & Reid, 1989) It is highly recommended on these states as mentioned in Article 123 to work together in the application of their rights and in the performance of their duties under the Convention. When it comes to

several maritime activities and ensuring the organization, preservation, exploration and exploitation of the living resources, the guard and protection of the marine environment, and marine scientific research these States must attempt to manage their activities directly or through a suitable regional organization.

4.4 Recommendation Based On Similar Trials and Examples

The Permanent Court of Arbitration (PCA) has finally ruled on the maritime dispute between India and Bangladesh in the Bay of Bengal. The total disputed area is 25,602 km by which the court awarded 19,467 square kilometers to Bangladesh. What was concluded, that both countries were satisfied with the resolution. India's Ministry of External Affairs declared that through this ruling over the maritime boundary will more improve joint understanding and goodwill between India and Bangladesh by ending the long dispute. The settlement will also lead the way for economic improvement in the Bay of Bengal, benefiting both countries. In this case, the maritime boundaries had been under dispute by the countries for decades, and this overwhelmed the superior joint relationships. Furthermore, the mutual discussions and negotiations did not succeed in settling the issues. The disappointment of these struggles is what made Bangladesh reach for international arbitration. This case is seen to be similar and useful to mention in this paper because of the powerful state that India is in comparison to Bangladesh and still it went in and abided by the international law proceedings. India had realized the value of the disputed waters and acknowledged the fact that ongoing dispute will not allow both states from the resource benefits.

Maritime East Asia should consequently track South Asia's case in reaching for international legal paths to resolve the matters of authority in the South China Seas. Comparable to India in

South Asia, the most important part is to lead China, considered as the most dominant state between the conflicting parties, into joining this process. All at once, other ASEAN states are already working on resolving their own arguments mutually which would also assist and force China to hold this opportunity of conflict resolution. China might find it as in its interest to seek for international tribunals that would most probably protect its legitimate claims. The fact that China has long developed maritime techniques and machinery will enable it with a stronger beneficial side in reaching for massive financial resources and guarantee it a prestigious and satisfactory place in the shared development of the resources in the waters. Not only this, but more importantly, if China puts efforts for resolving the disputes among neighboring countries and through international law it would significantly comfort the ASEAN countries who will no longer seek for foreign interference or protection specially from the US. China will gain trust in the region keeping the US and Japan particularly with reduced and weakened role in the region.

4.5 Protective Choices

Meanwhile, the United States should concentrate on reducing the risk of possible armed clashes rising from either inaccuracy or unintentional growth of a dispute. There are numerous precautionary possibilities presented to policymakers in the United States and other states to avoid a crisis and battle in the South China Sea. These opportunities are to be discussed in the following section.

Extended naval collaboration among the United States and China can benefit to decrease the threat of clash between their ships. Communication strategies can offer methods to soothe pressures in a crisis and try to limit intensification of outcomes. Combined naval practices to

improve the capability of the two parties working together in fighting piracy, humanitarian support, and crises aid acts would intensify collaboration and help avoid a U.S.-China clash.

Actions could be taken to improve the ability of the Philippines' military to guard its territorial and maritime boundaries and enhance its native area consciousness, which might discourage China from taking violent actions. Likewise, the United States could increase the maritime monitoring proficiencies of Vietnam, allowing its military to more successfully follow a strategy for non-access. Such events would exert the danger of inspiring the Philippines and Vietnam to further insistently confront China and could promote those countries' potentials of U.S. support in a disaster.

The United States could reach for taking the territorial disagreements to the International Court of Justice or the International Tribunal for the Law of the Sea for settlement, or inspire an external group or mediator to be demanded to resolve the dispute. Though, the vision for accomplishment in these cases is vague having China more likely to opposition to such possibilities. Other choices happen to resolve the authority dispute that would be seen the hardest is to negotiate. This option was proposed by Jon Van Dyke, Mark Valencia, and Noel Ludwig in "Sharing the Resources of the South China Sea", reaching to what is called "regional authority and rule" among the islands in the South China Sea between the six claimants, letting them to cooperatively organize and control the islands and the territorial seas. Peter Dutton has presented an alternative possibility for resolution of the dispute over Svalbard which is an island located between Norway and Greenland. The Treaty of Spitsbergen, signed in 1920, awarded main authority and rule over Svalbard to Norway however gave rights on resources to all parties. This resolution escaped clash over resources and allowed for the development of marine scientific research. In comparison to the South China Sea and using this method, it would likely require

providing sovereignty to China while allowing other countries to use the resources. Through the current activities this would be a satisfying solution for the time being.

Together China and the Association of Southeast Asian Nations (ASEAN) agreed upon mutual outlines of reducing risk and building and preserving confidence in the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), however have neither obeyed its principles to resolve territorial and jurisdictional disputes without resorting to the threat or use of force, nor applied its suggestions to assume supportive trust-building events. The renewal of discussions among China and ASEAN after an interruption of an era makes it a good chance for reviving and strengthening supportive and mutual activities through the DOC.

Mutually, current strategies and activities recently occur to support effective security between local fleets; a new preparation plan is needless. China, the United States, and almost all ASEAN members disregarding Laos and Burma are members of the Western Pacific Naval Symposium (WPNS). WPNS was established in 1988 to bring together regional naval governments every two years to discuss maritime safety. The Code for Unalerted Encounters at Sea (CUES) was introduced in 2000 to promote and regulate safety procedures and actions and put methods to ease communication when ships and aircraft interact. Many mechanisms and associations exist to monitor sea activities and bring together neighboring states these include the International Maritime Organization's Regulations for Preventing Collisions at Sea (COLREGS) and the International Civil Aviation Organization's rules of the air. Moreover, local navies can collaborate in different marine activities including; sea environment safety, marine scientific research, rescue activities, and justification of damage caused by natural catastrophes. The establishment of new negotiation machineries is also important at this stage. The formation of a

South China Sea center for the sharing of information would also deliver a policy to develop consciousness and dialogue among parties of concern.

Among the claimants in the South China Sea the cooperation for resource activities is not yet operated and used, but is highly considered being another preventive possibility. Combined progress of petroleum resources, for instance, could decrease pressures among China and Vietnam, and among China and the Philippines, on subjects linked to energy safety and access to hydrocarbon resources. This type of progress would be thought as to be one of the several cooperative improvement measures that can occur in the region. Coastal ASEAN countries could moreover unite and collaborate on increasing the use of substitute energy sources in order to cut the dependence on hydrocarbons as much as possible.

The countries in the South China Sea are anxious concerning the diminishing fish stocks in sea, and this is a point to promote the cooperation to enhance preservation and sustainable development in the region. It is better for the states to establish joint fisheries. There are already some fishing agreements between China and its neighbors. Such agreements could be expanded to reach disputed areas to inspire better cooperation.

4.6 Conclusion

The ASEAN claimants have acknowledged the significance of UNCLOS in defining who has sovereign privileges to explore and exploit the natural resources of the South China Sea while trying to make claims to an extended continental shelf. Therefore, the ASEAN claimants prepared and determined their claims meeting the regulations of UNCLOS, and made demands to maritime zones identified from their mainland territory or main archipelago. They have also recognized and understood the norms in UNCLOS that the land controls the sea, and that the

rights to the resources in selected areas can only be requested in maritime zones defined from the mainland coasts or from islands.

The ASEAN claimants are completely conscious of the reality that the authority disputes over the topographies will not be easily determined in the predictable future. They are moreover conscious that they cannot individually apply supreme rights and influence in and under the waters next to disputed islands within their EEZ because such parts are still undetermined and unclear. Accordingly, they have acknowledged that the only maritime areas which are in dispute are the zones neighboring to disputed geographic landscapes which verify the description of an island in article 121 of UNCLOS. In addition, concerned states recognize that almost all of the features which do apparently verify the definition of an island are so small that they are not proficient of supporting human habitation or economic life of their own, and are therefore not permitted to an EEZ or continental shelf of their own. Thus, utmost all of the islands are rocks under article 121(3). In this regard, and if states fully acknowledge these facts and the significant role of UNCLOS in the South China Sea, the ASEAN claimants uphold that great maritime regions in the South China Sea are exclusively inside the EEZ or continental shelf of the coastal claimant States. This result in the analysis and understanding that the merely overlapping parts, or zones in dispute, are the founded islands having their 12 nm territorial sea. They might allow that a slight sum of islands may be big enough to acquire an EEZ of their own, but they are likely to sustain that the total of such structures is highly minor, and most of them are situated in the same area. Therefore, the areas in dispute are still comparatively limited and small.

China seems to be uncertain of how to react to these improvements. China's official declarations in its Verbal Notes to the UN Secretary-General with respect to the CLCS claims are wisely shaped so as not to be conflicting with UNCLOS. However, in real setting China appears to have

decided to keep its strategy of thoughtful vagueness regarding the nature of its demands to sovereign rights over resources in and under the waters within the nine-dashed line map.

China could explain its decision regarding its rights in the South China Sea without deserting the nine-dashed line map. Consequently China needs to make it clear, as indirect by its words in its Verbal Notes and in its historic reports that it is claiming authority over the islands and their nearby waters within the nine-dashed line, as well as dominant rights and power in the EEZ and continental shelf established from the islands. Moreover, it could also submit a map of its EEZ in the South China Sea grounded on an estimated median line among the islands and the baselines established by the ASEAN claimants from their mainland or focal archipelago. As a result this would then explain and identify which areas of the South China Sea are in dispute, and which are not. When countries of power as China set aside the dominance rule over the region, a possibility for mutually developing the resources will be feasible.

Through these interpretations they would direct a significant indication to the ASEAN States that China is ready to conform with its rights and duties under UNCLOS in good faith. This would be the most essential way to establish confidence and would set the foundation required to empower China to work with the ASEAN States to implement the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea. (You, 2008) Surely it would be an important step headed for putting apart the authority disputes and mutually developing the resources, which was recommended by the late Deng Xiaoping. In conclusion, all these activities would be without preconception to China's claims to sovereignty over the islands and to the concluding demarcation of the maritime borders. On the long run China must bear in mind that it needs to finally clarify its claims according to UNCLOS provisions. (Ndiaye, 2010) If China still urges to keep its claims on authority over the South China Sea and doesn't clarify its claims and defend

its case clearly, the disputant states would rather seek the support of international courts or tribunal in resolving the issue. This is feasible either through raising the required binding dispute settlement arrangement in section 2 of Part XV of UNCLOS or entering into an agreement which will provide them with the right to seek an advisory opinion from ITLOS.

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