

The South China Sea Dispute: An Overview

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***Abstract---** This research paper talks about the South China Sea dispute and the other countries involved in this dispute which include China in the forefront which claims its sovereignty over majority of the sea, this dispute has involvement of the countries like Brunei, Malaysia, Vietnam, Indonesia and Philippines also. The paper also discusses the key issues involved in the dispute before it discusses the legal perspectives and environmental impacts pertaining to the issues. The paper concludes with discussing about the powerlessness of conventions such as UNCLOS in front of the world powers like China.*

***Index Terms---** SOUTH CHINA SEA, TERRITORIAL CLAIMS, UNCLOS.*

I. INTRODUCTION

The South China Sea spans to 3.5 million square kilometres and is home to oil and natural gas deposits that are estimated to be equal to that of Mexico and only second to Saudi Arabia. The sea also contains profitable fisheries and routes that enable the majority of China's crude imports. The area is often seen as the most strategically important waterway of the 21st Century.

The Geographical location of the Sea is such that it is bound to China towards north. Since time immemorial, the region has been of crucial importance to the neighbouring states of Vietnam, Malaysia, Brunei and Philippines. The shipping lanes within the area provide access to the waters of the Indian Ocean and thus are used by Japan and South Korea as well for meeting out their energy needs. The area, till date, has been subject to numerous disputes among the nations. Beijing has been urged by many nations to abide by the United Nations Convention on the Law of the Sea, which lays down the maritime zones based on the costliness. The International agreement is often used by the U.S in order to settle disputes. But China bases its claim over the region relying upon historical archaeological findings. China regards the UN codes on maritime governance to be incompatible with its domestic laws and sees the codes as a way to establish western hegemony over the world.

China's maritime claims were rejected by a five judge bench in "The Hague". At this, a regulation was issued by the Supreme Court of China stating a "clear legal basis for China to safeguard maritime order". This resulted into Beijing proclaiming that any foreigners found fishing on the disputed land will be prosecuted.

The Association of South East Asian Nations formulated a code of conduct regarding the South China Sea but it has not been very effective in settling the claims of sovereignty over the region. The U.S claims does not have an official position on the disputes but has time and again criticised the actions of China and has stated its plan to form an alliance with the countries having overlapping claims over the sea and which have been in constant disputes with China regarding

the same.

The disputes are likely to carry on until the claim of sovereignty over the region is resolved. A great deal of international trade depends upon the channel and thus it is a crucial pillar of global economy which calls for the settlement of the dispute in an efficient and fast paced manner.

II. COUNTRIES INVOLVED:

II.I. Brunei:

The country has given the following description regarding its claim to the South China Sea:

“Located in Southeast Asia on the north-western coast of the island of Borneo, bordered to the south, east and west by the Malaysian state of Sarawak. Brunei’s north-facing coastline extends for approximately 160 km [about 100 miles] along the South China Sea, including Brunei Bay.”¹

Brunei’s Eastern and Western parts are separated from each other through the Limbang Province located in the Malaysian state of Sarawak. The mainland of Brunei and Vietnam are about 525 miles apart at their closest points.

Brunei achieved independence on January 1, 1984 after being a British province since 1888. The law of the sea convention was signed by the country right after it gained independence, 12 years after which, on May 11, 1996, it ratified the convention and agreed to be bound by it.

Brunei’s claim to the South China Sea includes the maritime features of Bombay Castle, Louisa Reef, Owen Shoal, and Rifleman Bank of the Spratly Island chain. Of these, Bombay Castle is possessed by Vietnam and Malaysia operates a small navigational light beacon at Louisa Reef.

II.II. Malaysia:

Malaysia, as a nation, came into being on September 16, 1963 after the British colony of Singapore, and Sabah & Sarawak joined the federation. After this, Singapore became an independent state in 1965. Today, Malaysia consists of 13 states and one federal territory.

The 1982 UN Convention was signed by Malaysia on December 10, 1982 and was ratified by it in 1996. “Malaysia claims a 12-mile territorial sea (TS), an exclusive economic zone (EEZ), a continental shelf (CS), and an extended continental shelf in the southern part of the South China Sea.”² Malaysia claims a number of features above water at low tide in the southern Spratly Islands within its claimed EEZ from Sabah, North Borneo, all of which lie within China’s nine-dash line.

II.III. Vietnam:

1974 was the year when Vietnam officially made the claims regarding its sovereignty over the South China Sea Islands. It was first claimed through White papers published by the Ministry of Foreign Affairs in 1974. Vietnam claims sovereignty over the same area as China, which is, Hoang Sa (Paracel) and Truong Sa (Spratly) archipelagos. The claims

¹ Brunei Darussalam’s Preliminary Submission concerning the Outer Limits of its Continental Shelf, May 12, 2009, para. 9.

² Executive Summary, Joint [partial] Submission by Malaysia and Viet Nam to the Commission on the Limits of the Continental Shelf in the southern part of the South China Sea

are based on facts such as historical evidence, Economic development, effective administration and international recognition.

Vietnam makes claims of tracing back its imprints on the Paracels to the 17th Century. The Portuguese and Dutch maps from 17th Century identifying the Paracels to be belonging to Vietnam. 3 Western writings from the 19th century likewise support Vietnam's historical evidence. A book published in 1837 by a French missionary in Cochinchina, Monseigneur Jean-Louis Taberd, entitled Note on the Geography of Cochinchina, described the Paracel Islands as part of Cochinchina and said that Cochinchines referred to the Paracels as "Cat Vang".⁴

II.IV. Philippines:

1898 is the year to which the modern history of Philippines can be traced. After the Spanish-American war, the Spanish government ceded the lands and waters to the United States. "In 1933, the United States ceded all the lands it had received under the Treaty of Paris to the people of the Philippines; however, the United States retained residual authority as a protector of the Philippines until such time as the Philippine legislature established self-rule."⁵ Philippine independence was formally identified by the U.S.

Action was taken against China in the form of proceedings by the republic of the Philippines regarding its dispute with the country on the jurisdiction over the West Philippine Sea. The arbitration notification was rejected and returned by China to Philippines which stated its position over the South China Sea issues.

II.V. Indonesia:

The country does not claim jurisdiction over the sea but it has been in dispute with China because of the fishing rights in Natuna Islands, detention of fishermen from China and increase of its military presence in the area.

It has over and again asserted that it is a non-claimant state to the South China Sea. Although, the nine dash line which has been unilaterally claimed by China runs over Indonesia's exclusive economic zone. China, has indeed recognized that Indonesia possess sovereignty over the Natuna Islands but also claims that the islands are the traditional fishing grounds of China. Indonesia did not agree with China and claimed that China's assertion regarding the nine dash line has no legal basis. In Philippines v. China,⁶ an arbitration was filed against China in the Permanent Court of Arbitration with respect to China's claim.

III. ISSUES RELATING TO THE SOUTH CHINA SEA

Clashing territorial claims have been made by many countries with respect to South China Sea. These disputes are often said to be Asia's most perilous conflicts. The entire region is claimed over by the Republic of China as well as Taiwan. Both the countries distinguish their areas within the Nine Dash Line. Other claims are as follows:

- Indonesia, China, and Taiwan over waters North East of the Natuna Islands
- The Philippines, China, and Taiwan over Scarborough Shoal.

³ T. Kelly, Vietnamese Claims to the Truong Sa Archipelago [Ed. Spratly Islands], EXPLORATIONS IN SOUTHEAST ASIAN STUDIES, South China Sea Studies, 2012, University of Hawaii Manoa, Vol. 3.

⁴ Nguyen Ba Dien, Historical documents on Vietnam's sovereignty over Paracel and Spratly Islands, ; National Committee Of Border Affairs White Paper

⁵ Hare-Hawes Cutting Act (1933). Philippine National Territory Document No. 21:1 (1933)

⁶ The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)

- Vietnam, China, and Taiwan over waters west of the Spratly Islands. Some or all of the islands themselves are also disputed between Vietnam, China, Taiwan, Brunei, Malaysia, and the Philippines.
- The Paracel Islands are disputed between the China, Taiwan and Vietnam.
- Malaysia, Cambodia, Thailand and Vietnam over areas in the Gulf of Thailand.
- Singapore and Malaysia along the Strait of Johore and the Strait of Singapore.

Both China, as well as Vietnam have been vociferous in putting the points in proof of their claims. The clash in 1974 led to the deaths of 18 Chinese and 53 Vietnamese Army personnel. From then on, the Paracel Islands have been in control of China.

It has been checked by ASEAN as well as Malaysia that the disputes because of the South China Sea do not lead to armed conflicts. Joint Development Authorities have been established in the area of conflict for the task of allotting the profits equally without getting into the issue of sovereignty over the area.

The U.S Secretary of State, Hillary Clinton, in the year 2010 asked China to take steps in order to resolve the issue to which China averted by asking US to stay out of the issue.

IV. LEGAL PERSPECTIVE

Claims in shared domains beyond national boundaries can be expected, the propagation of proprietary at the expense of legal norms to the contrary. These claims will be driven by the exercise of freedoms and the increased use of shared domains, as enabled by technological advancement.

The Customary International Law has since time immemorial recognized the freedom that the high seas enjoy. It has been pondered upon as to how the technological growth and machinery such as ocean fairing ships, the chronometer and the canon can lead to territorialisation of regions such as the high seas which were earlier thought to be beyond capacity to be ceased. The up rise of technology and the common heritage of mankind have been in dispute as regards to the South China Sea.

UNCLOS, after numerous negotiations was adopted and termed as the Constitution of the Oceans and it was hoped that it would be able to settle all the issues which were surrounding or had the potential to surround the oceans and the claims over them. Arbitration proceedings were started by Philippines on January 22, 2013 against China and its claims over the South China Sea. It was held, on July 12, 2016 that China's 'nine dash claim' was not in line with the convention which had a higher authority than any other historical claim.

V. ENVIRONMENTAL IMPACT

There has been a huge environmental impact because of the actions taken to enforce the interests of the countries in dispute.

It was observed during the South China Sea arbitration that China was in violation of its duty to protect and preserve the flora and fauna around the South China Sea. It was observed by the tribunal that "all States with respect to the marine environment in all maritime areas, both inside the national jurisdiction of States and beyond it." It was also observed by the tribunal that the land reclamation and construction undertaken by China led to huge and irreparable harm to the coral

reef ecosystem.

The tribunal also noted that China was unable to prevent the Chinese flagged vessels from “harvesting endangered species on a significant scale”. In holding China responsible, the tribunal cited the precedent of the International Tribunal for the Law of the Sea (Fisheries Advisory Opinion) holding that the flag State must ensure its fishing vessels not be involved in activities which will undermine a flag State’s environmental responsibilities under the Convention.

VI. CONCLUSION

The bringing about of UNCLOS helped clear the fog with regard to the subject matter of the South China Sea and threw light upon the core of the matter and how it could be resolved. It could not be resolved though due to China’s unwillingness to give in to the resolution. The dispute reflects upon how these international conventions and resolutions are rendered powerless in front of the whims and wishes of highly powerful countries like China.

The tribunal in the case of South China Sea dispute laid down that UNCLOS aims to make less severe the “unregulated propagation of claims to maritime rights and jurisdiction” and “the prospect that technological developments would rapidly enable the greater exploitation of the resources of the seabed, which would fall to those States most capable of claiming them.”

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