
SOUTH CHINA SEA CASE: CONTEMPORARY INTERNATIONAL LAW ISSUES

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ABSTRACT

One of the most disputed seas in the entire world is **The South China Sea**. The maritime claims on this river have been made by countries like China, Philippines, Indonesia, Vietnam, Taiwan as well as Malaysia. If we see the geographical location of the **South China Sea** in proximity with the Strait of Malacca in the West and Pacific Ocean in the East, we can say that it becomes an area of interest as important water for both the regional states as well as western states and United States. A large amount of money has been invested by China and a change has even been made in the geo-graphical topography so it can make its claim stronger. While western powers and the United States try to contest China's claims to the South China Sea via international regimes such as the United Nations Convention on the Law of the Seas 1982 (UNCLOS) and regional alliances. The SCS conflict serves as a key case study for students of international law, with the goal of analysing the legalities of the issue in light of the UNCLOS Laws of the Seas.

Adding to the above, it is even important to note that the **United Nation Law of The Seas (UNCLOS)** was first codified in the year 1958 at Geneva. In this respective conference, there were four conventions that were drawn which talked about Territorial Sea and Contagious Zone, Fishing and High Seas Conservation resources and Continental Shelf.¹ These regulations govern the rights to utilise regional resourand navigational freedom, and the right of innocent passage inside an independent and sovereign coastal state's marine realm.

In this research paper, the author has tried to shed light upon the issues arising due to the **South China Sea Case** and has discussed about the issues that have aroused between **China and Philippines, China and Vietnam** as well as **China and Malaysia**

¹ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (New York; Routledge, 1997) p. 173

LITERATURE REVIEW

In modern diplomacy, the maritime territorial boundaries of a sovereign coastal state have been categorised into four types by UNCLOS.

1. Territorial Sea

The limit and scope of territorial boundaries within which any sovereign coastal state can exploit fisheries and natural resources has been established by the UNCLOS. The territorial waters, which are indicated by baselines drawn beyond the coast or low water line, stretch for 12 nautical miles or nearly 22 kilometres; within this area, no foreign vessel can pass through, and no plane can fly-by through the airspace above this area.

2. Contiguous Zone

The area that is close to a state's territorial sea in the open seas is defined as contiguous zone by the UNCLOS. The legality of the contiguous zones is defined by Articles 33(1) and (2) of UNCLOS 1982, which are comparable to Article 24 (1) of the 1958 Convention on Territorial Seas and Contiguous Zones

3. Exclusive Economic Zones

The Exclusive Economic Zones (EEZ), which extend 200 nautical miles or 370 kilometres beyond a state's shore line has been defined under Article 56(1) of The UNCLOS of 1982.² All natural resources and fisheries in the sea, seabed, and subsurface areas are exploitable within the EEZ. A state has the right to control, but it should maintain the freedom of maritime navigation and over-flight in the region.

4. The High Seas

The term "high seas" refers to all areas of the sea which can not be included in the bracket of a state's territorial waters or contiguous zones. States have the freedom to exercise freedom of navigation, trade, fishing, building underwater cables, pipelines, and flying over the high seas, according to Article 2 of the 1958 Geneva Convention on the High Seas. Landlocked states

² Robin R. Churchill, "Law of the Sea International Law (1982)," *Britannica*, December 8, 2006, <https://www.britannica.com/topic/Law-of-the-Sea#accordion-article-history>, (Accessed on May 11, 2019).

have the freedom to sail freely on the high seas under their own flags. These provisions were re-enacted in UNCLOS Article 92 in 1982.

As per the article provided on jstor, a claim of territorial sovereignty has been made by China over Spratly islands. China even claims an EEZ and CS from these islands. There are chances that China claims of some U-shaped line's titles or rights are made by China. All of the islands in this area are claimed by Vietnam, as well as an EEZ and CS from its mainland. From its archipelagic baselines, the Philippines claims the islands of the Kalayaan Island Group, as well as an EEZ and CS. Malaysia claims a dozen minor physical features in the southern Spratlys, as well as an EEZ and CS extending from its mainland. Brunei does not claim any islands, although the sea region surrounding Louisa Reef is claimed by the country.

ANALYSIS

The term **Law of the Seas** is also denoted with the term **constitution for the oceans**. We can define law of the seas as a legal framework which codifies the international laws in order to prevent the sovereignty of internal waters, territorial waters, sea lanes and ocean resources. The respective law was codified in the year 1982 and the same came into force in the year 1984 after around 150 states ratified the law

It has even been observed that China has been practising its influence in the region that is a part of nine-dash line and has even started to build military base on the island in Spratly and Paracel Islands. Furthermore, many oil research and drilling missions off the coast of Vietnam near the disputed Paracel Islands in the South China Sea have been carried out by China which has resulted in a standoff.

These actions of China have been countered by various countries at different instances.

➤ **Permanent Court of Arbitration; A Case Study of Philippines vs China**

In order to counter the actions of China, it was in the year 2013 when **Philippines** initiated an arbitral proceeding against China. It was claimed by **Philippines** that China has been violating the sovereign right of freedom of navigation and has also been jeopardizing the access to the maritime entitlements of the South China Sea as it has been extending the territorial claim present in the **SCS** region as it has been building Artificial islands as well as been looking after the maintenance of the vessels, fishing boats present in that region. In the following matter, it was provided by **The Permanent Court of Arbitration** that there existed no legal basis on

which the China was making a claim over the historic rights of the maritime boundaries as well as resources that are present in the areas that fall under the Nine-Dash line. It was concluded by the Tribunal that the Chinese claim deriving from numerous reefs in the Spratly Islands is without merit because several reefs, such as Mischief and Subi Reefs, and Second Thomas Shoal, are low tied elevations with no maritime zone entitlement. Various shoals, such as Scarborough Shoal, Johnson Reef, and Fiery Rock, are high-tide portions of land surrounded by sea under **UNCLOS Article 121(1)**. They are, however, classified as uninhabitable rocks that do not give rise to any maritime zone claims under **UNCLOS Article 121(3) of 1982**. The verdict in the following case which was given in the favour of **Philippines** was not accepted by China and as a result, China released a White Paper in which it was provided that the issue will be solved by China bilaterally.³

➤ **China-Vietnam Oil Rig Standoff**

As already stated above, China does not have sufficient natural oil as well as gas resources, it depends upon the Middle Eastern, Gulf and African states in order to reach its demands of energy. It was in the year 2014 when Vietnam detected China's state owned **National Offshore Oil Cooperation (CNOOC)** in the disputed region of SCS which was claimed by Vietnam. It is due to contested territory claims, the rig is sandwiched between China and Vietnam's notional borders. The rig was deployed to undertake exploratory drilling and reconnaissance of the region, according to China, and straddled hydrocarbon rocks in the area until August 15th of that year. China also set a 1 nautical mile boundary and forbade any naval vessel movement in the area. Vietnam despatched six coast guard and surveillance vessels to intercept and prevent the oil rig from establishing a fixed location. China dispatched forty naval, coast guard, and civilian fishing ships to defend its oil expedition vessels. This standoff between the two countries has increased with time. When this issue was still going on between the two countries, people in Vietnam started protest and riots and took them to streets. It was reported that around six Chinese citizens lost their life in these riots. The standoff between the two countries demonstrates the extent to which China is ready to take risks so that it can establish its dominance and hegemony in the SCS region. Although, Vietnam's determination and willingness to take risks over an extended length of time was not recognised by the Chinese leadership

³ PTI, "China releases white paper, reasserts claim over South China Sea," *Economic Times*, July 13, 2016, <https://economictimes.indiatimes.com/news/defence/china-releases-white-paper-reasserts-claim-over-south-china-sea/articleshow/53187848.cms>, (Accessed on May 11, 2019).

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➤ **China-Malaysia Standoff**

The most recent disputes is the **China-Malaysia Standoff**. The dispute between the two countries started when it was observed that Dizhi-8 which was a Chinese survey vessel has been drifted closer to the Malaysian drillship West Capella which was constructed with the help of the Petronas oil firm in EEZ claimed by China, Malaysia and Vietnam in SCS. The respective standoff is regarded as especially notable due to the fact that both the US and China maintained a steady military presence near the disputed area while events unfolded. The USS Bunker Hill, a guided missile cruiser, and the USS America, an amphibious assault ship, were stationed in the area. USAF B-52 and B-1B Lancers, as well as EP-3E, P-3C Orion, P8-A Poseidon, and RC-135W Rivet joint reconnaissance planes, flew flights not just over the SCS

⁴Green, Hicks, Cooper, Schaus, Douglas, Jun, "Counter-Coercion Series: China-Vietnam Oil Rig Standoff," (Accessed on May 11, 2019).

region, but also over the Taiwan Strait and the East China Sea.⁵

➤ **China's Approach of Expansion and Cooperation**

Adding to the abovementioned facts, there has been a sufficient growth in the economic power of China has been observed over the past few years and now China has started to exercise its national interest with the help of soft power. China has been pursuing economic cooperation with the SCS governments in order to advance its interests in the region. A proposal was put forward by China in which it suggested collaborating with Vietnam, the Philippines, and Brunei on oil and natural resource exploration. To resolve territorial issues, China has been working on a framework for drafting a Code of Conduct for SCS through the Association of Southeast Asian Nations (ASEAN). China's economic cooperation policy is reshaping the geopolitical landscape in the South China Sea, which is a setback for Western policy and hegemony. China's continued rejection of international norms and regulations is reflected in its growing power and the weakening of international regimes that are losing the ability to impose their authority.⁶ It has even been observed that the International Law are being shaped by China for its own good and has been prioritising its national interests and has even been deliberately investing in research and scholarly works. If the US wishes to push China to follow international law, it must organise and gain regional and worldwide backing.

CONCLUSION

The western international regimes that govern as well as regulate the behaviour of the states defines the contemporary world order. The objective of the International Law is to look after the establishment of a framework under which all the states have the obligation to work. If we look into the matter discussed in the research paper, we can say that these norms are being challenged and weakened by emerging powers such as **China** who has been playing with the **International Laws**. The recent example which shows the changing behaviour as well as deterioration of the international law is the revocation of the **UNCLS in SCS** by China. If we take into consideration the growth of China in recent years, we can say that it has made a significant growth in a small amount of time. It has even been working on increasing its

⁵ "Two US warships in South China Sea amid China-Malaysia standoff," *Aljazeera*, April 21, 2020, <https://www.aljazeera.com/news/2020/04/warships-south-china-sea-china-malaysia-standoff-200421055333993.html>

⁶ Mercy A. Kuo, "The Geopolitics of Oil and Gas in the South China Sea," *The Diplomat*, <https://thediplomat.com/2018/12/the-geopolitics-of-oil-and-gas-in-the-south-china-sea/>, (Accessed on May 11, 2019).

economic muscles and to do the same it is very dependent on to free transit of oil and the vessels being used for trade through the way of **South China Sea** region till the point of time the Belt and Road initiative is not matured. In order to tackle the challenges that China faces in the South China Sea and beyond, bold actions must be taken by China in order to retain the territorial presence in the South China Sea and beyond. China has effectively resisted the pressures of international systems and rules, indicating the world order's weakness and change. Chinese defiance has called into question the legitimacy of international regimes, and the US is gaining ground and investing in forming alliances in the region to resist and contain Chinese power.