

THE SOUTH CHINA SEA DISPUTES AND THE UNITED NATIONS ORGANIZATION

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Abstract : South China Sea is an arm of Western Pacific Ocean in southeast Asia. This region has been disputed since the middle of the Cold War period and has never shown a declining trend in the level of tension. Conflict is on maritime and islands claims between different sovereign countries surrounding the region. The country parties to these disputes are China, the Philippines, Vietnam, Brunei, Indonesia, Malaysia and Taiwan. International Institutions such as the UNO, UNCLOS are trying to address the South China Sea dispute with China. This article highlights the UNCLOS as well as UN's position on the issues, also examines China's approaches in asserting sovereignty over the disputed waters and further the responses of other claimant countries towards China's actions.

Keywords: dispute, South China Sea, UN, UNCLOS, maritime, EEZ, natural resources

Introduction: The South China Sea has become an epicentre of great power. While being one of the busiest waterways in the globe, the South China Sea holds a significant role in accessing East Asia from the Indian Ocean through the straits of Malacca. It is an arm of Western Pacific Ocean in southeast Asia. It is bounded on the northeast by the Taiwan Strait (by which it is connected to the East China Sea); on the east by Taiwan and the Philippines; on the southeast and South by Borneo, the southern limit of the Gulf of Thailand; and the east coast of the Malay Peninsula; and on the west and north by the Asian mainland. The South China Sea and the East China Sea together form the China Sea. The southern boundary of the South China Sea is a rise in the seabed between Sumatra and Borneo, and the northern boundary stretches from the northernmost point of Taiwan to the coast of Fujian province, China, in the Taiwan Strait. It encompasses an area of about 1,423,000 Square miles, with a mean depth of 3,976 feet.

The South China Sea disputes are maritime and island claims between different sovereign states in the region. This area has thus become a locus of Conflicts among its claimants for the past several decades. The competing claims by China, Brunei, Malaysia, the Philippines, Vietnam, Taiwan. The assertive stance of China on Sovereignty over the entire South China Sea has escalated tensions in the southeast Asian region. As the potential of the South China Sea is vast, and it is becoming increasingly important in the context of a changing global dynamic, the current situation within the Sea does not bode well for a stable future as competition surrounding the dispute of the sea is becoming increasingly tense.

History of South China Sea Territorial Disputes:

Among the prominent territorial disputes in the international system, the South China Sea disputes are the most prominent ones. The disputes are linked to the aftermath of the Second World War and the establishment of new borders following the ending of the Japanese occupation of Malaysia, Indonesia, the Philippines, and Vietnam. The ambiguities surrounding where territorial lines would be drawn regarding the islands of the South China Sea were not completely addressed by the San Francisco Treaty at the conclusion of the war with Japan. This left open the question of under whose authority this strategically important region would fall that would only become more contested throughout the Cold War. The significant history of the region is best broken down into three areas of significance. These three areas are: the nine dash line, the resource wealth of the region, and the Sino-Vietnamese wars.

The first sign of trouble regionally regarding the disputes over who controlled the islands of the South China Sea arose from the Chinese declaration of the nine dash line in 1947. The nine dash line refers to the undefined, vaguely located, demarcation line used by China for their claim of the major part of the South China Sea. This declaration of the nine dash line asserted the whole of the islands of the South China Sea were historic Chinese territory and the term of the San Francisco Treaty didn't apply to Chinese authority as it was not part of the negotiations. The nine dash line has been a key part of the justification of Chinese action throughout the region and has been routinely criticised as an outside representation of Chinese authority. Even now, the nine dash line has become linked to Chinese identity and is routinely used domestically as a nationalistic rallying cry despite

the international dissatisfaction it usually warrants. And importantly, this broad reaching claims inspired other states surrounding the sea to make similar wide sweeping claims and to come into conflict with China over those claims.

Though the importance of the South China Sea from shipping perspective is relatively apparent, the potential for oil reserves under its waves did not become apparent until the 1960s. The presence of oil within the region is a major boon to control of the South China Sea, as natural resources like oil have the potentiality to fuel the economic growth of any country. The South China Sea has estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas in its easily accessible areas. This fact fuelled the dispute over the South China Sea. In consideration of that case, the region was quickly transformed from an area of consideration for just its strategic location critical to economic development to a potential region to assist in making economic success. Besides, as the population of countries surrounding the sea have grown the fisheries within it have become increasingly important for the future of feeding the growing population.

During the Sino-Vietnamese war which followed the unification of Vietnam in 1979, the all above actions came to one head. This set of conflicts included major battles on the land border and several battles in the South China Sea and the Gulf of Tonkin. For the disputes at sea, the most important battle occurred over Spratly island in the South China Sea. Known as the Johnson Reef Skirmish, the Vietnamese navy lost three Vessels and three scoremen while the Chinese navy lost only one man in return. This Skirmish demonstrated the power of the Chinese military against regional opposition and reinforced precious losses Vietnam had suffered at the Battle of Paracels in 1972. Thus, this dispute served as a warning to others in the region for engaging military forces against China without aid or assistance from another great super power.

What are those countries involved in South China Sea disputes:

Modern international laws and proofs from history explain how the different territories are raising their concerns and claims on the sea regions. The intersection of sovereignty claims and territorial jurisdiction in the South China Sea region involves: China, the Philippines, Vietnam, Brunei, Malaysia, Taiwan. The characteristics of the conflict in this region are due to each countries interest towards the South China Sea region with the narrative of arguments and the country's legal basis. Given below are the various claims raised by different countries involved in the disputes:

China: China is one of the most prominent belligerents involved within the South China Sea disputes. It has the capacity to outstretch all other claimants currently involved in the disputes. The Chinese government has been unwavering in its commitment to the nine dash line it uses to justify its actions. It has rearmed its navy to project power regionally, and also used its fishing fleet as a foreign policy mechanism to coerce other claimants. The country claims that ancient history records show that China held control over the entire waterways since the Han Dynasty and it was only during the modern era that the disputes began. The country reises legal concerns and rights over the Sea. However, China has not yet been successful in proving its claims over the region.

The Philippines: After gaining independence from the USA in 1946, the Philippines took control of several Spratly land features. Later, the Philippines declared all the Spratlys its territory. The Philippines also claimed sovereignty over Scarborough Shoal. This is a mirror feature, about 150 miles from the Philippines. It is an important strategic location near the Philippines and major shipping lanes. Over the past twenty years, the Philippines have submitted cases to UNCLOS for consideration and worked with China to bring a case of arbitration before the ICJ (INTERNATIONAL COURT OF JUSTICE). And with the support of ICJ Manila has maintained their position on territorial claims on the Spratly Island.

Vietnam: Among the major actors within the South China Sea disputes Vietnam is one. The country raises its claims based on inheritance grounds. It was only in the 1970's that Vietnam raised its claim after its relationship with China deteriorated. The country claims much of the South China Sea as its territory, though it has shown a strong willingness to comply with international law and arbitration. Following repeated defeats by China regionally, the Vietnamese military has continued efforts to modernise in order to counter Chinese aggression but has also acquiesced to Chinese coercion to halt economic activity or retreat from contentious areas. Until now, Vietnam remains committed to their territory claims and has submitted such claims to UNCLOS for consideration though it has not sought arbitration to its territorial claims with any other state.

Brunei, Indonesia, Malaysia: These three countries represent smaller claims to the South China Sea of specific portions of the region rather than the whole of the Sea. The country Brunei has its claims based on EEZ as mentioned by the UNCLOS. Similarly, Indonesia claims only the part of the Sea which comes under its EEZ.

Malaysia claims the features in the southern Spratly falls inside the border of Malaysia's continent which makes their claim acceptable on legal ground. Collectively these three countries have aligned against China, often working through international organisations like ASEAN and submitting claims to UNCLOS for acknowledgement. However, these countries have yet to begin to develop their own military capabilities to counter Chinese aggression which has in turn assisted in the development of an arms race regionally.

Taiwan: For Taiwan, the Spratly island not only serves as traditional fishing grounds for its small vessels but is recognized as potentially rich in oil and gas deposits. Taiwan has quietly retreated from being an active claimant, which has something to do with Taiwan's complicated relationship with China. At present the country is advocating its East China Peace Initiative, which calls on parties to shelve disputes and promote joint exploration.

Causes of disputes in the South China Sea:

The maritime disputes in the South China Sea impact on a series of regional bilateral relations and continue to trouble ties between China, nations directly participating in the dispute and more precisely the ASEAN (Association of SouthEast Asian Nations). Given below are some reasons can be considered as the major causes for disputes in the region of the South China Sea:

- ***Lack of territorial demarcation:*** The main cause of these disputes is the lack of proper territorial demarcation of the South China Sea region. This led to claims raised by different countries over the Sea areas.
- ***Sources of natural resources:*** Nowadays, natural resources like oil, natural gas have enormous capacity to fuel the economic growth of any country. The South China Sea has estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas in its easily accessible areas. This can be enough to be a reason for disputes in that area.
- ***Fishery:*** The region of South China Sea is a source of about 10 percent of the country's fisheries. Which makes it an essential source of food for hundreds of people. This is also a major reason why people from different countries are claiming their rights over the Sea.
- ***Islands and rocks:*** The islands and rocks have also been a cause of disputes. Country's claim their rights over the different islands, which makes it tougher for countries to trade through these waterways as it may lead to seizing their trading ships.
- ***Overlapping EEZ:*** An Exclusive Economic Zone (EEZ), as prescribed by the UNCLOS(United Nations Convention on the Law of Sea), is an area of the Sea in which a sovereign state has special rights regarding the exploration and use of marine resources, including energy production from water and wind. It stretches from the baseline out to 200 nautical miles (nmi) from the coast of the state in question. Mostly in the case of water bodies, these zones overlap for different territory. And is one of the major causes of disputes among different countries surrounding the South China Sea region.

UN, UNCLOS and the South China Sea disputes:

The United Nations Organization is the world's largest and most familiar intergovernmental organisation aiming to maintain international peace and security, develop friendly relations among nations, achieve international cooperation, and be a centre for harmonising the actions of nations. It is committed to the peaceful resolution of international disputes and presents itself as the foremost institution to address such concerns. In term of implementation on maritime disputes, the UNO has created a series of organisations geared towards assisting in the arbitration, mediation, and examination of territorial disputes. This has been most recently made apparent within the South China Sea Territorial Disputes through the Philippines v. China arbitration case brought before the International Court of Justice; though the results of that arbitration remain contested. Yet, the UNO has a role to play in resolving or at least cooling the tension within the region through UNCLOS.

The most prominent way the UNO has to become involved within the maritime disputes of the South China Sea lies within UNCLOS. As an international convention with nearly all states involved within the disputes in the South China Sea as signatories, the UNO can play the role of international arbiter on several issues within the region like maritime zone rights, navigational rights and sovereignty.

This can be accomplished through a number of different forms and institutions including the International Tribunals for the Law of the Sea, the International Court of Justice, ad hoc arbitration pursuant of Annex VII of the United Nations Convention of the Law of the Sea (UNCLOS) or several at once.

UNCLOS is also known as the Law of the Sea Convention or the Law of the Sea Treaty that defines the rights and responsibilities of nations towards the use of the world's Oceans. UNCLOS, that is the United Nations Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's Oceans and seas establishing rules governing all uses of the Ocean and their resources.

The most prominent case involving these arbitration powers of the UNO under UNCLOS has been the Philippines v. China, though before states enter into the process it is possible for state to signal their claims through submission to the commission on the limits of the continental shelf, a sub organisation of UNCLOS serving primarily as a forum for states to declare claims to 200 nmi mark provided within UNCLOS as an addition to territorial Sea measurement. However, that 200 nmi EEZ provided within UNCLOS is one of the factors actively contributing to the territorial disputes within the region. UNCLOS grants exclusive control of marine economic activity to the state controlling that economic zone, including rights to oil and gas exploration and extraction, fishery across, and other under sea resources.

These provisions extended beyond normal territorial Sea considerations under UNCLOS, and the normal territorial considerations are predicted on inhabited islands with minimal regulation regarding how those islands are inhabited. These relatively loose regulations have prompted some of the island's building measures by China, which have contributed to arms racing within the region. Beyond, these issues, the lack of a significant enforcement mechanism within UNCLOS regarding the result of arbitration makes it difficult for UNCLOS to have significant teeth in resolving territorial disputes that are highly contested and have large stakes for state power.

Within the UNO, these are provisions to assist in developing a binding resolution or a more significant statement that a settlement of arbitration on issues like territorial disputes, through resolutions passed by both the General Assembly and the Security Council. Unfortunately, in the case of the South China Sea disputes, there are significant problems in getting any resolution passed within the Security Council due to China's veto power in the UNO charter. Necessarily, because China has much to gain regionally it will not allow any kind of resolution through the Security Council, that threatens its regional territorial claims, effectively hamstringing any kind of resolution that could be passed against China's interest or in favour of a different country. Furthermore, this calls into questions the ability of the UNO to respond to territorial disputes that are highly politically charged as a lack of enforcement mechanism from the UNO arbitration and the veto power combined make it possible for permanent members of the Security Council to abuse UN authority to support their claims in territorial disputes as China has within its disputes with the Philippines by not acquiescence to the Permanent Court of Arbitration ruling under Annex VII of UNCLOS.

Together, these points illustrate the breath of power the UNO has within maritime disputes as a principle power in setting maritime regulation for countries. It also illustrates how the structure and regulations of the UNO themselves hamper the ability of the organisation to address the disputes it hopes to resolve.

Suggestive course of Actions that the UNO can take to resolve the disputes over the South China Sea:

The issues surrounding the UNO's action in the South China Sea are impenetrable, bedded deep with the structure of the UNO and immersed in the Power Politics. Given below are some suggestive options that can be pursued to assist in resolving the layered disputes over the South China Sea region:

- ***Modifications of areas of veto power:*** By modifying the veto power of members of the Security Council in disputes where they stand to gain power, territory or wealth. This would mean a fundamental reform of the UNO charter, a proposal long sought by many member countries. It would require the cooperation of all five Permanent Members of the Security Council, who would surrender their veto power.
- ***Introducing provisions for veto override:*** By reforming the Security Council to include veto override provisions through the widening of the Security Council to include smaller, less powerful countries. Again this would require a fundamental reform of the UNO charter, a proposal long sought by many member states/countries. It would also require the cooperation of all five permanent members of the Security Council, who would surrender some degree of their veto power.
- ***Binding Mechanism under UNCLOS:*** By creating a binding mechanism for territorial disputes resolution under UNCLOS through the International Criminal Court or the International Tribunals on the Law of the Seas. If that is too ambitious, if China's veto and maybe the vetoes of other P5 countries remain hurdles, the Security Council could simply recommend that Member states use such Mechanisms.
- ***UNO 's maritime task force:*** By creating an UNO maritime task force to serve as peacekeepers in the region to prevent conflict from spiralling out of control. This would have been financed, organised, provided with bases and forces seconded from member states, some of whom might not be enthusiastic

about Volunteering. To be effective, it would require cooperation from all member states bordering the South China Sea.

- **Clarify the role of man made islands:** By modifying the provisions provided by UNCLOS regarding the role of man made islands in the development of EEZs. This is now understood to be a major oversight in the 1982 Treaty.
- **Mechanism for multilateral solutions:** By providing a mechanism for a multilateral solution to the territorial disputes of the South China Sea by bringing together all the claimants into one of the arbitration clauses of UNCLOS.
- **By doing nothing:** It is not the role of the UNO to resolve disputes that have already been arbitration under UNCLOS, let the country parties figure out their borders by themselves. As the veto makes it impossible to act against China's will. But many Security Council members might think it enough just to raise the issue and make a speech criticising China's behaviour, making a point, with no expectation of actually passing a resolution.

Conclusion:

This article has discussed the importance of the South China Sea, economically and geopolitically as well as elaborated on the background of the disputed areas and highlighted on the origin of the claims based on the historical and legal basis of claimant countries. This article also elaborated the different reasons that caused the dispute in that maritime region since the Cold War period and how these territorial disputes started affecting the participants' countries particularly and the whole world generally.

The article also underscored the UN's existing mechanisms, such as UNCLOS and its role in addressing the South China Sea disputes. By being the world's largest intergovernmental organisation, the role played by the UNO in addressing the most prominent maritime disputes over the South China Sea, how it's working, and what the hurdles the institutions have to face, all discussed in the article. The article includes some suggestive measures for the UNO to cope up with the hurdles that may arise during the time of maritime disputes resolution.

The South China Sea disputes have adversely affected the territories involved in the disputes but along with them other countries involved in the trade with them are also affected. It is one of the most vital trade routes and it is important to end the disputes over the South China Sea. So that trade and economic activities of the country are not disrupted, and the countries of that region can reside with peace and harmony.

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