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# The Second United Nations Convention on Law of the Sea: South China Sea



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## Background on the Current Situation

A region of the Pacific Ocean, the South China Sea is surrounded by China, Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. As one of the world's busiest waterways, the South China Sea is an area teeming with international trade, facilitating over \$5 trillion of trade every year. It is abundant in natural resources with its massive contributions to seafood production and extensive oil and natural gas reserves.

Given its economic potential and geopolitical significance, mostly all nations surrounding the South China Sea have long engaged in disputes over precise maritime boundaries. Competing claims over various features within the sea, such as islands, reefs, and rocks, have been asserted to legitimize access to these valuable resource reserves. In recent decades, the severity of these territorial disputes has escalated, marked by the adoption of increasingly assertive tactics by claimant nations. These measures include the deployment of military forces, the construction of artificial islands, resource extraction in areas publicly contested by nations or private entities, and the low-level harassment of rival claimants' economic and naval vessels.

## The Nine-Dash Line

China presents the most expansive and contentious claim to the South China Sea, asserting approximately 80% of the region under its domain through a delineation known as the Nine-Dash Line, forming a U-shape. This claim finds its roots in historical records and maps dating back to 1947, originating from the pre-Revolution Republic of China government. The Nine-Dash Line, however, poses challenges as it encroaches upon the exclusive economic zones—areas where a state has sovereign rights over economic



activities—of several nations, including the Philippines and Vietnam.

Compounding the issue, the claim lacks clarity, as China has not explicitly specified whether it extends its control over all waters and seabeds within the defined area or solely over the land features and their immediate surrounding waters. This ambiguity is critical as it impacts the extent of China's assertion in the South China Sea. The broader interpretation implies China's claim to exclusive maritime control over all waters within the Nine-Dash Line, granting complete authority over landmasses and natural resources. Conversely, the narrower interpretation suggests China claims the landmasses within the Nine-Dash Line, along with the adjacent waters and resources, without asserting exclusive maritime control over the broader region.

Despite the ambiguity, China has utilized the Nine-Dash Line to justify assertive actions aimed at securing its claims, such as constructing military bases on artificially created small islands. However, a significant development occurred on July 12th, 2016, when the Permanent Court of Arbitration in The Hague ruled that China could not employ the Nine-Dash Line to substantiate its maritime claims in the South China Sea. Despite the ruling, China declined to accept or acknowledge it, continuing the construction of artificial islands and military facilities on the islands it already controlled, with its establishment of multiple airstrips and bases.

## Competing Territorial Claims

### The Spratly Island Chain

Situated in the South China Sea, the Spratly Island chain is a heavily disputed archipelago. Multiple nations, including China, Taiwan, and Vietnam, assert complete or partial claims over these islands. Despite their inhospitable nature, control over the Spratly Islands holds strategic significance due to potential access to valuable resources such as oil and natural gas. The presence of military forces from several claimant nations, excluding Brunei, heightens the risk of military conflicts. Satellite imagery reveals China's placement of weaponry, including anti-aircraft guns and missile defense systems, indicating efforts to assert control over the islands and adjacent areas.

Vietnam has actively contested China's claim, engaging in aggressive actions. Reports from late 2016 indicated Vietnam's fortification of a disputed reef in the southern Spratly chain, along with the deployment of weapons capable of targeting Chinese interests. Despite tensions, Vietnam temporarily halted oil drilling in a contested region known as Block 136/3 after China's threat of military action. However, Vietnam maintained its claims to the Spratly Islands and left open the possibility of resuming the oil exploration venture in the future.

### The Scarborough Shoal

Located in the eastern South China Sea, just 140 miles off Manila's coast, the Scarborough Shoal is a contested area claimed by China, Taiwan, and the Philippines. Its calm waters make it attractive for fishing, and control over the shoal would strengthen China's claims under the Nine-Dash Line. China's military presence in the Spratly Islands further enhances its ability to exert de facto control over the Scarborough Shoal. The Philippines, considering it within its exclusive economic zone, attempted to halt alleged illegal fishing by intercepting Chinese vessels in 2012. A standoff and subsequent negotiations led to a withdrawal of Philippine ships, but China established a blockade, triggering legal action. The Permanent Court of Arbitration delegitimized China's Nine-Dashed Line claim in 2016, but tensions persist, with no formal agreement reached between the Philippines and China.

## **The Paracel Island Chain**

Situated in the northern South China Sea, the Paracel Island Chain is fully claimed by China, Taiwan, and Vietnam. China forcibly seized control of these islands from South Vietnam in 1974. In 2014, China further legitimized its control by deploying a state-owned oil rig near the Paracel Islands, accompanied by a significant naval presence. This move heightened tensions, leading to clashes with Vietnamese patrol boats. The contested nature of the Paracel Islands underscores the complex geopolitical landscape in the South China Sea.



## Background on Territorial Disputes

### The Senkaku Islands

The Senkaku Islands, known as Diaoyu in China and Diaoyutai in Taiwan, comprise an uninhabited group located to the east of Mainland China, northeast of Taiwan, and southwest of Japan. Presently, these islands are under Japanese control, and the official stance of the Japanese government asserts the absence of any territorial dispute concerning the Senkakus. Contrarily, China contends that when Japan surrendered at the conclusion of World War II in 1945 and relinquished Taiwan



to China, the Senkaku Islands should have also been transferred to Chinese jurisdiction. From the early 1950s to 1972, the islands were under formal US control and administration, following the terms outlined in the 1951 peace treaty with Japan. Subsequently, in 1972, administrative control of the islands was handed over to Japan by the United States. China characterizes the US-Japan transactions related to the islands as "backroom deals," deeming them "illegal and invalid." The Senkaku Island dispute holds significant international importance, especially as the United States is obligated by treaty to defend Japan in the event of an attack. Therefore, preventing the escalation of conflict over the Senkakus is crucial to avoid potential military clashes between China and the United States.



## **International Approaches to Solving Maritime Disputes**

### **The United Nations Convention on the Law of the Sea (UNCLOS)**

Enacted on November 14th, 1994, following the endorsement of at least sixty nations, the United Nations Convention on the Law of the Sea (UNCLOS) ostensibly sets forth guidelines for nations navigating the world's oceans. It is generally regarded as the principal framework for establishing legitimate maritime territorial claims and resolving conflicting maritime territorial disputes. Despite the participation of each claimant state in these disputes being a party to UNCLOS, there persists a lack of consensus on the accurate interpretations of its provisions due to their insufficient clarity.

Additionally, UNCLOS, as a governing document, is not without shortcomings. Foremost among them is the absence of the United States, the world's preeminent naval power, as a signatory. Although the United States signed the Convention in 1984, it has yet to ratify it, and many argue that U.S. ratification would enhance its legitimacy. Another concern is the inadequacy of enforcement mechanisms within UNCLOS, relying mainly on individual nations to adhere to its rules. This creates challenges when nations assert opposing claims to the same territory, either by interpreting UNCLOS differently or disregarding it entirely, as exemplified by China in its claim to the Scarborough Shoal. Another issue with UNCLOS is the varied interpretations of certain terms determining the extent of claimable territory. According to UNCLOS, nations can claim up to 12 nautical miles of territorial waters around uninhabitable rocks and shoals, but a 200-mile exclusive economic zone around islands supporting "permanent habitation." Many view this provision as intensifying competition among nations to transform uninhabitable rocks and shoals into artificially constructed islands.

### **The Association of Southeast Asian Nations (ASEAN)**

The Association of Southeast Asian Nations (ASEAN) is a regional organization dedicated to promoting economic, political, and security cooperation among its member nations. ASEAN's roster includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Some experts see ASEAN as a potential

counterbalance to China's influential presence in the region, particularly in addressing China's increasingly assertive actions in the South China Sea.

Efforts have been made by ASEAN and China to negotiate resolutions to territorial disputes in the South China Sea. In August 2017, they adopted an outline for a code of conduct, building on the largely disregarded 2002 Declaration of Conduct of Parties in the South China Sea. However, critics view this move as symbolic, as the framework lacks legal binding and enforceability. It also lacks an official dispute resolution venue and merely "urges commitment" to UNCLOS instead of mandating adherence. Skeptics argue that these negotiations provide China with a strategic window to fortify its control in the South China Sea through the construction of more artificial islands, airstrips, and military bases.

## Questions to Consider

- How can the international community balance the competing claims in the South China Sea while upholding the principles of sovereignty and territorial integrity?
- What role should regional organizations like ASEAN play in mediating and resolving the crisis?
- How can the United Nations and UNCLOS be leveraged to promote a peaceful resolution to the disputes in the South China Sea?
- To what extent do historical factors contribute to the current tensions, and how can these historical grievances be addressed in diplomatic efforts?
- What measures can be implemented to ensure the sustainable management of resources in the South China Sea, considering environmental concerns?

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