



Degree Program in *International Relations*

Course of *International Organizations and Human Rights*

THE SOUTH CHINA SEA DISPUTE:
CHINA, THE PHILIPPINES AND THE LIMITS
OF INTERNATIONAL MARITIME LAW

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INTRODUCTION

When observing the earth from space, water dominates the planet. Indeed, about 70% of the Earth's surface is covered by oceans and additional vast areas are covered by frozen water in the Arctic and Antarctica. The problem is that, even if States define clear boundaries of their maritime zones, maritime disputes remain frequent. Conflicts often arise on inhabited and uninhabited islands, maritime features, and overlapping claims to adjacent waters and resources.

The South China Sea has emerged as one of the most contested maritime regions in contemporary international politics. It covers about 3.5 million square kilometres, and this semi-enclosed sea is bordered by Brunei, China, Indonesia, Malaysia, the Philippines and Vietnam.¹ It contains different maritime features, such as islands, islets, shoals, cays, reefs and rocks, categorized into four island groups. They are the Xisha, or Paracel Islands; Dongsha, or Pratas, Islands; Zhongshan Islands, including Macclesfield Bank and certain reefs, sandbanks shoals, and Nansha, or Spratly Islands.²

Historically valued for its rich fishing grounds, the region also holds significant potential reserves of oil, natural gas, and other hydrocarbons beneath the seabed.³ However, the South China Sea is also an essential maritime corridor which links East Asia with South Asia, the Middle East, Africa, and Europe. Thanks to this aspect, it is fundamental for global trade, energy security, and regional stability.⁴

At the centre of the dispute lies a complex interaction among territorial sovereignty on maritime features and different interpretations of maritime entitlements under the United Nations Convention on the Law of the Sea (UNCLOS). In particular, the South China Sea dispute encompasses two interconnected dimensions. A territorial dispute that concerns sovereignty over specific islands, reefs, rocks, and a maritime dispute about the rights and activities of States in the surrounding waters.⁵ The main contested features are:

¹ International Hydrographic Organization, *Limits of Oceans and Seas*, 3^a ed., IHO Publishing, Monaco 1953, pp. 30-31.

² Ibidem.

³ T. CHENG, *The Dispute over the South China Sea Islands*, in «Texas International Law Journal», vol. 10, 1975, pp. 265-267.

⁴ N. H. THAO; R. AMER, *A New Legal Arrangement for the South China Sea?* in «Ocean Development and International Law», vol. 40, 2012, pp. 333-334.

⁵ B. HAYTON, *The South China Sea: Historical and Legal Background*, Council on Geostrategy, China Observatory, London 2024, pp. 1-27.

- The Spratlys, originally called the Nansha Islands, claimed China, Taiwan Malaysia, Vietnam, the Philippines and Brunei.
- The Paracels claimed by China, Vietnam and Taiwan.
- The Scarborough Shoal claimed by China, Taiwan and the Philippines.⁶

As already mentioned, the core problem of the South China Sea dispute is the overlapping of the claims of countries involved. Firstly, the People's Republic of China bases its claims to the Spratly and Paracel Islands on historical narratives of the 15th century.⁷ In 1947, the Kuomintang government introduced the Nine-dash line map which highlighted the majority of the islands in the South China Sea on which China has asserted its sovereignty.⁸ It had evolved over the time; however, this map is still controversial. Critics argue that it lacks consistency with UNCLOS and that the historical evidence presented does not meet contemporary standards of international law.

Then, Vietnam also claims the Spratly and Paracel Islands along with the Gulf of Thailand. However, unlike China, Vietnam has not written its extended claims over the South China Sea in official texts or maps. This State has administrated both the Paracels and the Spratlys since the 17th Century.⁹ But, China, Brunei, Malaysia, and the Philippines opposed Vietnam's claims.

Kuala Lumpur's participation in the South China Sea dispute started in 1979, when the Malaysian Department of Mapping and Survey produced an official map, according to which the Spratly Islands are located within the country's Continental Shelf.¹⁰ This map overlapped the EEZ and Continental Shelf of Malaysia and other States, and this led to several protests from neighbours such as China, Indonesia, Vietnam, and the Philippines.

⁶ CHENG, *The Dispute over the South China Sea Islands*, cit., pp. 265-267.

⁷ U.S. Energy Information Administration (EIA), *Regional Analysis Brief: South China Sea*, March 21, 2024, p. 1.

⁸ T. L. A. NGUYEN, *Origins of the South China Sea Dispute*, in «Territorial Disputes in the South China Sea», London, Palgrave Macmillan, 2015, pp. 15-38.

⁹ S. TONNESSON, *Vietnam's Objective in the South China Sea: National or Regional Security?* Contemporary Southeast Asia 22, 2000, No. 1, pp. 199–220.

¹⁰ A. J. ROACH, *Malaysia and Brunei: An Analysis of their Claims in South China Sea*, CNA Occasional Paper, 2014.

Brunei also released maps in which it declared a 200-nautical mile EEZ that overlaps with the Chinese Nine-dash line.¹¹ It has been a silent claimant for years and its claims are based on UNCLOS.¹²

Finally, Manila's claims are both legal and historical over the Scarborough Shoal and the Kalayaan Island Group (KIG), which has comprised 50 features of the Spratly islands.¹³ These claims clash with China's declarations of ownership.

The United Nations Convention on the Law of the Sea (UNCLOS) constitutes the cornerstone of modern maritime law. Opened for signature on December 10, 1982, in Montego Bay, Jamaica, UNCLOS provides a legal framework that governs maritime zones, navigation, resource exploitation and maritime trade. It entered into force per its Article 308 on November 16, 1994.¹⁴ Nowadays, with 320 articles and nine annexes, ruling all aspects of ocean space, the United Nations Convention on the Law of the Sea is the main regime of the law of the Sea. All the countries involved in the South China Sea dispute have ratified the UNCLOS. In particular, China signed the Convention on June 7, 1996; the Philippines ratified it on May 8, 1984; Brunei started to be bound by UNCLOS since November 5, 1996; Vietnam's signature was on July 25, 1994, and finally Malaysia ratified on October 14, 1996.¹⁵

For the comprehension of the interested dispute, it is fundamental to specify that the overlapping of maritime zones regards the Exclusive Economic Zones (EEZ) of the countries involved. According to art. 57 of UNCLOS, the EEZ, beyond or adjacent to the Territorial Sea, extends seaward up to 200 nautical miles from its baselines.¹⁶ Moreover, UNCLOS does not address the sovereignty of States over land territory. It can deal with disputes between the parties on the legal basis of maritime rights and entitlement; the

¹¹ J. RÜLAND, *The Nature of Southeast Asian Security Challenges*, Security Dialogue 36, No 4, 2005, pp. 545–563.

¹² EIA, *South China Sea*, cit.

¹³ M. E. ROSEN, *Philippine Claims in the South China Sea: A Legal Analysis*, CNA Occasional Paper, 2014.

¹⁴ China is a signatory and ratifying member of the UN Convention on the Law of the Sea (UNCLOS) but its actions in the South China Sea, particularly its expansive nine-dash line claims, are widely seen as being at odds with the convention's provisions for Exclusive Economic Zone (EEZs) and freedom of navigation.

¹⁵ 1982 United Nations Convention on the Law of the Sea, Centre for International Law, National University of Singapore, <https://cil.nus.edu.sg/databasecil/1982-united-nations-convention-on-the-law-of-the-sea-3.com>

¹⁶ UNCLOS, Part. V, Art. 57.

status of maritime features; and the lawfulness of certain actions. For this reason, after failing to solve the conflict through negotiations, the Philippines presented the dispute against China in the South China Sea before the Tribunal of Arbitration. The arbitration started on 22 January 2013. The main problem was China did not recognize the arbitral award as binding. It is indisputable that it failed to settle the dispute or mitigate its escalation. Nevertheless, it was not a complete failure. The award has, for the first time in international jurisprudence, provided clarification on the meaning of historic rights claims and the regime of islands pursuant to Article 121 of UNCLOS. This is important also because, disputant States in the region had not defined which features they believed were islands and what maritime zones they are entitled to claim from such islands.¹⁷

The dispute on the South China Sea has involved also the United States of America and ASEAN. After its independence, the Philippines external defence was assured by the United States. Indeed, in 1947, these two countries concluded a Military Bases Agreement (MBA) that granted the use of military bases on the territory of the Philippines to the U.S. This security partnership was consolidated in 1951 through the Mutual Defence Treaty (MDT). Both parties agreed that an armed attack in the Pacific area against one of them, would lead to a combined action against the common danger.¹⁸ The treaty defined an “*armed attack*” as one directed against the metropolitan territory or island territories under the jurisdiction of either party in the Pacific.¹⁹ The Philippines and the United States were also linked through the 1954 Manila Pact, which created a collective defence arrangement that established the Southeast Asia Treaty Organization (SEATO) in 1955. On the other hand, ASEAN has played the role of intermediary between China and its member States. Thanks to it, the actions taken by the PRC in Mischief Reef were condemned. They risked disrupting the stability of the region, that was crucial for its economic modernization,²⁰ even if China is not its member.

¹⁷ NGUYEN, *The UNCLOS Dispute Settlement System: What Role Can It Play in Resolving Marine Disputes in Asia*, cit., p. 104.

¹⁸ C. P. POBRE, *Military Alliance and the Philippines*, Digest (internal Armed Forces of the Philippines journal), May-June 1997, p. 10.

¹⁹ Ibidem.

²⁰ I. J. STOREY, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, Contemporary Southeast Asia, ISEAS - Yusof Ishak Institute, Vol. 21, No. 1, April 1999, p. 107.

Nowadays, the South China Sea dispute is very relevant due to the possibility of escalation. China now has the world's largest navy which is using to enforce its sovereignty claims.²¹ The full control of the South China Sea aims to reduce vulnerability along China's maritime periphery and to limit US alliance leverage. For this reason, this thesis will analyse the dispute from a legal point of view departing from the historical background which is essential to understand the claims justified by historical title. A focus will be on China-Philippines conflict and the role of third parties including ASEAN and the U.S. Moreover, this study will be based on the provisions of UNCLOS and some similar cases, such as Island of Palmas Case (Netherlands v. United States), Legal Status of Eastern Greenland (Denmark v. Norway) and the Southern Bluefin Tuna Arbitration. The aim is to understand if international law is respected by all parties of the dispute, its evolution and the motivations behind the claims of the countries involved in order to predict the future development of the conflict and a possible resolution of the case. For a deep comprehension, the thesis will be structured as followed:

- CHAPTER I: HISTORICAL BACKGROUND OF THE SOUTH CHINA SEA will highlight how today's tensions are rooted in long-term historical processes, by tracing the evolution of sovereignty positions, colonial involvement, wartime occupations, and post-war legal developments.
- CHAPTER II: THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA will provide the most comprehensive legal framework for all uses of the oceans and their resources, establishing rules of law and order in the world's seas.
- CHAPTER III: INTERESTS OF CHINA IN THE SOUTH CHINA SEA will focus on the dynamics of the dispute, especially on the evolution of the Nine-dash line and the justifications of the parties' claims.
- CHAPTER IV: THE CHINA-PHILIPPINES DISPUTE will describe the dispute between China and the Philippines from the past until now with specific references to the 2016-Arbitration award.

²¹ S. SRIVASTAVA, *Why China is building the world's largest navy and how fast it's growing*, WION, 27 November 2025.

- CONCLUSION will summarize the main findings of this research trying to understand the role of international law and third parties in order to formulate a possible resolution of the specific case.

The dynamic of the South China Sea dispute reflects, as Alfred Thayer Mahan famously argued, that sea power shapes world politics: in the South China Sea, maritime strength increasingly sets the limits of international law and diplomacy.²²

²² M. A. THAYER, *The Influence of Sea Power upon History: 1660–1783*, Boston, Little, Brown and Company, 1890.

CHAPTER I: HISTORICAL BACKGROUND OF THE SOUTH CHINA SEA

SUMMARY: 1. Introduction - 2. Early Historical Background - 3. From the Sino-Japanese War to early colonial rivalry (1895-1931) - 4. Colonial legal Consolidation and Japanese expansion (1931-1945) - 5. Post-war legal vacuum (1945-1972) - 6. Modern Flashpoints (1973-2019) – 7. Recent Developments (2020-today).

1. Introduction

The South China Sea dispute is an ongoing conflict over sovereignty and maritime rights, which involves China, Taiwan, Vietnam, the Philippines, Malaysia, Brunei, and Indonesia. It is centred on islands, reefs, like the Spratlys and Paracels, and vital shipping lanes in a region rich of natural resources. Most of the claims are based on the China's expansive "*Nine-dash line*." It has caused tensions and militarization; despite a 2016 international award that voided China's claims under UNCLOS.

This chapter provides the historical background necessary to understand the contemporary South China Sea dispute. By tracing the evolution of sovereignty positions, colonial involvement, wartime occupations, and post-war legal developments, it highlights how today's tensions are rooted in long-term historical processes. This historical context is fundamental for interpreting the legal and geopolitical dynamics that continue to shape the region. Disputes between China and its neighbours, especially the Philippines and Vietnam, in the South China Sea have intensified in recent decades with the risk of escalation. However, the problems in the region have begun due to the competition with Japan for the control of Senkaku/Diaoyu Islands in the nineteenth century.

2. Early Historical Background

Historically, as several documents and historical maps have demonstrated, the first navigation and fishing activities in the South China Sea were recorded by China during the Han Dynasty, from 2nd century BCE. However, other Southeast Asian States, especially Vietnam and Malaysia, also intervened in some parts of the region. These claims were not clearly defined by international law, because it was not as developed as

its current level. For this reason, without legal basis, these claims have led to a conflict among these countries.

3. From the Sino-Japanese War to early colonial rivalry (1895-1931)

Thanks to the signing of the Treaty of Shimonoseki on April 17, 1895,²³ the Sino-Japanese war, centred on control Korea, concluded with Japan's victory.²⁴ According to this agreement, China was forced to relinquish some territories including Formosa, which is currently known as Taiwan. However, the Treaty did not have specific provisions about the Senkaku Islands, or the Diaoyu Islands, located northeast of Taiwan. China has claimed their discovery and ownership from the 14th century, but Japan exercised effective control over them. On one hand, Beijing's argument was that the agreement contained an implicit clause, according to which the islands remained under its jurisdiction. On the other, Tokyo started to exercise its control on the islands when they were uninhabited lands since January 1895.²⁵ After World War II, the Cairo and Potsdam declarations forced Japan to renounce claims to all territories arising from war. Consequently, China took advantage of the opportunity asserting sovereignty over the same islands.

During the colonial era, European powers expanded into the region. France initially attempted a “peacefully” subjugation of Vietnam. However, these efforts brought to no results. Consequently, French army decided to choose the option of a full-scale military invasion. In 1843, the French strategy in the Far East was publicly explained by Prime Minister Guizot. The aim was the establishment of a permanent naval base in Chinese waters and a stable colony near the Chinese border.²⁶ France was the main colonial authority in Indochina, and it laid claim to the Paracel Islands and Spratly Islands, on behalf of Vietnam. Indeed, both the French government and the colonial administration in Indochina (Vietnam) soon established control over them. This presence was maintained through political, military and economic activities, as well as scientific and diplomatic

²³ Council on Foreign Relations (CFR), *China's Maritime Disputes*, <https://www.cfr.org/timelines/chinas-maritime-disputes>.

²⁴ M. B. JANSEN, *Japan and China: From War to Peace, 1894–1972*, Rand McNally College Publishing Company, 1975, pp 17–29.

²⁵ Ibidem.

²⁶ P. Q. NGUYEN, *Vietnam in the 19th century: 1802-1884*, Ho Chi Minh City, Ho Chi Minh City Publishing House, 2002, p. 264.

initiatives that reinforced French management of the territory. However, this behaviour caused a conflict over the Paracel Islands between France and China. In May 1909, the Admiral of the Qing Navy made a short excursion to the islands. After carrying out symbolic acts of sovereignty, including the raising of a flag on Phu Lam Island, he departed for Guangzhou.²⁷ Despite this violation of sovereignty, France did not intervene to stop the survey because it seemed to be nothing more than a ceremonial naval tradition associated with the expedition.²⁸ On 30 January 1921, the Guangdong government officially annexed the Paracels (Xisha) into Zhuyan District via Document No. 831. This prompted the French colonial government to make its control over the South China Sea stronger.²⁹ On 8 March 1921, the Governor General of French Indochina declared the Paracels and the Spratlys under the control of France because China's annexation of the islands was defined completely unfounded.³⁰

4. Colonial legal Consolidation and Japanese expansion (1931-1945)

In 1931, China granted the Anglo-Chinese Development Company the right to conduct scientific research and exploitation in the region.³¹ France did not agree with the Chinese decision,³² and, by signing Decree No. 156-SC on June 15, 1932, the Governor-General of French Indochina formally created the Delegation of the Paracels (Délégation des Paracels), an administrative district for the islands.³³ In 1939, this legislation was followed by Decree 3282 to split the Paracel delegation into two units. The problem was that these two decrees were not in compliance with the Franco-Chinese Treaty, concluded on June 26, 1887. Signed by China and France (representing Vietnam) to delimit the

²⁷ H. T. NGUYEN, *Vietnam's Position on the Sovereignty over the Paracels & the Spratlys: Its Maritime Claims*, *Journal of East Asia International Law*, 5(1), 2012, p. 186.

²⁸ French Ministry of Foreign Affairs, *Note from the French Ministry of Foreign Affairs to the Chinese Ambassador in Paris*, Paris, Archives nationales de France, 23 November 1936.

²⁹ V. Q. LUU, *Vietnam's sovereignty over Paracel Islands and Spratly archipelagos from 1858 to 1975*, Scientific research project at Vietnam National University Ho Chi Minh City (VNU-HCM), no. B2022-18b-03, 2022, p. 46.

³⁰ Da Nang Institute of Socioeconomic Development Research, *Vietnam's sea and islands: History, Sovereignty, Economy, Culture*, Ho Chi Minh City, Culture and Arts Publishing House, 2012, p. 626.

³¹ H. T. NGUYEN, *Sovereignty over Paracel Islands and Spratly Archipelagos*, Hanoi, National Political Publishing House, 1998, p.43.

³² LUU, *Vietnam's sovereignty over Paracel Islands and Spratly archipelagos from 1858 to 1975*, cit., p. 51.

³³ Q. N. NGUYEN, *Vietnam's sovereignty in Paracel and Spratly, Historical facts and documents*, Hanoi, Hanoi National University Publishing House, 2017, p. 282.

border in the Gulf of Tonkin, the treaty stipulated that all islands east of 105° 43' belonged to China, explicitly including the Paracel Islands.³⁴ Moreover, another argument supported by China was that it gained sovereignty over the Paracels from the French because, at that time, France controlled Vietnam, including the Paracel Islands.

Regarding Japan, it occupied several islands during World War II, using them for military purposes. After the Patenôtre Treaty in 1884, France became a threat to the strategic interests of Japan. For this reason, Japan began expanding its influence in the South China Sea to compete with France and undermine China's position.³⁵ Notably, after asserting exclusive rights over several archipelagos in the region, Japan occupied the Pratas Islands. In July 1937, there was the Marco Polo Bridge Incident. It was a battle between the Republic of China's National Revolutionary Army and the Japanese Imperial Army. This incident represented the beginning of the Japanese Invasion of China. Indeed, the Japanese Imperial Navy landed in the Spratlys in December 1938 and invaded Hainan Island the following February.³⁶

5. Post-war legal vacuum (1945-1972)

Japan was defeated in 1945, and this situation created a legal vacuum regarding the sovereignty over the islands in the South China Sea. The Kuomintang party in China, exploiting Japan's weakness, proposed an eleven-dash line on a map in order to support its territorial claims. The creation and evolution of this line will be explained in depth in Chapter III. According to this map, most of the area, including the Pratas Islands, the Macclesfield Bank, the Paracel and Spratly Islands, should be under the control of China since it has regained them from Japan after World War II.³⁷ Following the rise of the People's Republic of China (PRC) in 1949, thanks to the leader Mao Zedong,³⁸ the Chinese Communist Party (CCP), the majority party of the government, modified the

³⁴ K. ZOU, *Maritime Boundary Delimitation in the Gulf of Tonkin*, Ocean Development and International Law, 1999.

³⁵ T. H. NGUYEN, *The Japanese Factor in the Sovereignty Issue in the South China Sea during the Second World War: Documents from French Archive*, Journal of International Studies, 2016, 1(104), p. 51.

³⁶ Council on Foreign Relations (CFR), *China's Maritime Disputes*, cit.

³⁷ S. GUPTA, *Testing China's, and the State Department's, Nine-Dash Line Claims*, PACNET 88, Centre for Strategic and International Studies, December 15, 2014.

³⁸ M. ZEDONG, *The Writings of Mao Zedong, 1949-1976: September 1945 - December 1955*, New York/London, M.E. Sharpe, Vol. I, p. 10.

eleven-dash line into a Nine-dash line. The aim of this action was to remove the Gulf of Tonkin from the territories owned by the PRC.³⁹ This new line has been used as historical basis for its territorial claims in the South China Sea.

On 8 September 1951, a turning point was the Treaty of Peace signed by the United States and forty-seven other nations with Japan in San Francisco.⁴⁰ Japan paid the highest price because it was forced to renounce to Korea, Formosa, the Pescadores, and the Spratly Islands in the South China Sea.⁴¹ Since the Senkaku or Diaoyu Islands were not explicitly mentioned in the treaty, it is possible to assume that there was a tacit understanding that Japan will administer them as a part of Okinawa Prefecture. In other words, Japan held residual sovereignty over the Ryukyu Islands, which means that while full control was destined to return to Japan in the future, the United States was permitted to maintain its military presence and open bases on Okinawa in the interim.⁴² Consequently, the only remaining issue concerned the sovereignty over the Senkaku/Diaoyu. There were two different interpretations about this problem. The doubt was the consideration of the islands as an integral part of Okinawa or if were ceded to Taiwan. Moreover, a new development occurred on October 1st, 1960, with the signing of the Treaty of Mutual Cooperation and Security between Japan and the United States. This bilateral agreement was renewable every ten years and it stipulated that any attack on territories under Japanese administration needed a joint response to address the common danger.⁴³ The U.S. concluded a similar agreement with the Philippines in 1951 called Mutual Defence Treaty.⁴⁴ According to Washington, the U.S.-Japan treaty also regarded the Senkaku/Diaoyu Islands. In other words, this security alliance could be a deterrent against any attempt to militarily seize the islands.

Between 1968 and 1969, a report published by the UN Economic Commission for Asia was the result of some geological surveys. It confirmed the presence of hydrocarbon

³⁹ GUPTA, *Testing China's, and the State Department's, Nine-Dash Line Claims*, cit.

⁴⁰ Treaty of Peace No. 1832, San Francisco, United Nations- Treaty Series, 8 September 1951.

⁴¹ Ivi, Ch. II, Art. 2.

⁴² Council on Foreign Relations (CFR), *China's Maritime Disputes*, cit.

⁴³ Treaty of Mutual Cooperation and Security between Japan and the United States of America, Ministry of Foreign Affairs of Japan, 1st October 1960, Art. V.

⁴⁴ The Mutual Defence Treaty between the United States and the Republic of the Philippines was signed on August 30, 1951. It is an agreement between the two nations recognizing that an attack in the Pacific on either would endanger the peace of both and agreeing to act in concert to meet the common danger.

deposits beneath the seabed in the waters, between Taiwan and Japan.⁴⁵ This discovery increased the region's strategic value. Although China started to claim the archipelago only in May 1970, which means after Japan, South Korea, and Taiwan's discussions about joint energy exploration in the area.

On June 17, 1971, the United States and Japan concluded the Okinawa Reversion Treaty. Thanks to this agreement, Washington officially restored administrative authority over the Ryukyu Islands to Tokyo.⁴⁶ The aim of the treaty was to make the strategic partnership between the two nations stronger. It was an alliance that President Richard Nixon described as essential to maintain stability and peace in the Pacific region. This agreement implicitly included in the established boundaries the Senkaku/Diaoyu Islands. Indeed, The U.S. government agreed that these territories were administratively part of Okinawa. Nevertheless, the Nixon administration opted for a policy of neutrality on the sovereignty of the islands. The priorities were the securitisation of the military operation in Okinawa and the normalization of diplomatic relations with the People's Republic of China. In response to the reversion treaty, China began asserting its own sovereignty over the islands. Beijing believed that the territory had historically belonged to China since ancient times.⁴⁷ Conversely, Tokyo interpreted the agreement with the United States as a confirmation of its existing sovereignty over the disputed archipelago. Despite these conflicting claims, the significant shift occurred in 1972, when China and Japan officially restored diplomatic relations through a gradual reconstruction of bilateral economic ties.⁴⁸ The failure of Mao's Great Leap Forward (1958–1962) caused famine and doubts on the government's internal policies. For this reason, China was forced to request external aid to Japan.⁴⁹ Contemporarily, there was also a strategic rapprochement between the United States and China.⁵⁰ Indeed, President Richard Nixon visited Beijing in 1972. On September 29, 1972, China and Japan officially re-established diplomatic ties. Notably,

⁴⁵ EIA, *South China Sea*, cit.

⁴⁶ *Okinawa Reversion Treaty between the U.S. and Japan*, Federation of American Scientists (FAS), June 17, 1971.

⁴⁷ Y. SONG, P. K. YU, *China's "Historic Waters" in the South China Sea: an analysis from Taiwan*, R.O.C., *American Asian Review*, 1994, Vol. 12, No. 4, pp. 83-101.

⁴⁸ *Joint Communique of the Government of Japan and the Government of the People's Republic of China*, Ministry of Foreign Affairs of Japan, September 29, 1972.

⁴⁹ Y. HE, *The "Honeymoon" Period: Sino-Japanese Relations, 1972–1981*, Cambridge University Press, 4 August 2010, Ch. 4.

⁵⁰ *Ibidem*.

the expansion of trade between the two countries de-escalated the initial dispute over the Senkaku/Diaoyu Islands, because they started to prioritize regional stability and economic growth.

6. Modern Flashpoints (1973-2019)

The conclusion of American military involvement in the Vietnam War was marked by the signing of the Paris Peace Accords on 27 January 1973. In geopolitical vacuum that followed, Chinese forces seized control of the western Paracel Islands in 1974, symbolically asserting their presence by installing national flags across territory.⁵¹ This regional shift compelled Vietnamese troops to retreat southward, where they subsequently established the first enduring Vietnamese military occupation within the Spratly Islands.⁵² Meanwhile, Beijing built a military installation on Woody Island, the largest island of the Paracels. After the Fall of Saigon and the reunification of Vietnam, the new Socialist Republic of Vietnam reaffirmed the same territorial claims over both the Spratlys and the Paracels. In response to this, China intensified its defence within the Paracel archipelago.

The Philippines identified the Nido oil field off the coast of Palawan Island. It was the first discovery of petroleum in the Northwest Palawan Basin.⁵³ Due to the Manila's need of energy independence, it brought to the implementation of the Oil Exploration and Development Act of 1972, which provided the legal basis for exploring and developing petroleum resources. The new Philippine Cities Service launched commercial production in 1979 with an initial annual yield of 8.8 million barrels.⁵⁴ In 2012, the International Monetary Fund highlighted the potential of the Philippine petroleum industry within the South China Sea. It noted its strategic proximity to the established Northwest Palawan Basin.⁵⁵

⁵¹ S. TONNESSON, *The Paracels: The other South China Sea Dispute*, Paper presented at the South China Sea Panel, International Studies Association, Hong Kong Convention, 26-28 July 2001.

⁵² Council on Foreign Relations (CFR), *China's Maritime Disputes*, cit.

⁵³ E. D. RONALD, *Philippines: A Country Study*, Washington, GPO for the Library of Congress, 1991.

⁵⁴ Ibidem.

⁵⁵ International Monetary Fund (IMF), Country Report No. 12/2019, *Philippines: Reform of the Fiscal Regimes for Mining and Petroleum*, Washington D.C., August 2012.

The 1979 conflict represented the main moment of hostility between Beijing and Hanoi. Relations deteriorated after Vietnam's alliance with the Soviet Union, which was China's first Cold War adversary. This breach was particularly important because China had previously provided military assistance to Vietnam during its wars against France and the United States. The war was a direct response to Vietnam's incursion into Cambodia in 1978, which caused the collapse of the Khmer Rouge regime. China tried to penalize Hanoi for this regional expansion, but its campaign had no results. Finally, the intervention failed to achieve its main aim, which was the exit of Vietnamese militaries from Cambodia.⁵⁶

These tensions in Southeast Asia led the international community to ask for more legal safeguards. The third United Nations Conference on the Law of the Sea (UNCLOS) established a comprehensive set of rights and obligations for nations regarding maritime usage, primarily through the definition of Continental Shelves and Exclusive Economic Zones. Formally entering into force on November 14, 1994, UNCLOS has been recognized by the United States as a standard of customary international law, despite Washington's decision not to ratify the treaty. While ratification would arguably provide the U.S. with a stronger multilateral platform to advance its strategic and economic interests, the current status quo persists. Nevertheless, the implementation of these international regulations has not proved sufficient to resolve the deep-seated disputes within the South China Sea. Following nearly a decade of relative regional stability, hostilities erupted once more between China and Vietnam over the Spratly archipelago.⁵⁷ By the late 1980s, Chinese naval forces found that most islets had already been claimed by other regional actors. Consequently, the People's Liberation Army Navy (PLAN) focused on the occupation of submerged reefs and low-tide elevations. The tension culminated at Johnson South Reef in 1988 because China considered the Vietnamese attempt to forestall a Chinese landing as a provocation. The Chinese navy destroyed three Vietnamese vessels and killed seventy-four sailors. Meanwhile, due to Deng Xiaoping's economic reforms, China's economic activity shifted toward its coastal provinces.

⁵⁶ B. BURTON, *Contending Explanations of the 1979 Sino-Vietnamese War*, Sage Publications Ltd, 1979, Vol. 39, No. 4, pp. 699-722.

⁵⁷ S. TONNESSON, *14 March 1988: East Asia's Last Interstate Battle*, The Peace Research Institute Oslo (PRIO), July 24, 2015.

In 1992, Beijing enacted the Law on the Territorial Sea and the Contiguous Zone in order to show its legal position. Through this legislation, China asserted a claim over the entire South China Sea, since its authority was based on historical rights from the Western Han dynasty. This legal framework used methods of territorial determination that were not in compliance with the UNCLOS.⁵⁸ This was interpreted as a strategic attempt by Beijing to guarantee its maritime security. During the original UNCLOS negotiations, China tried to obstruct the U.S. and Soviet Union efforts to guarantee universal freedom of navigation for military vessels. China aimed to create a national legal basis to restrict foreign naval operations within its sovereign waters.

Moreover, In April 1995, aerial surveillance confirmed the presence of a manned Chinese outpost, equipped with satellite communications, on Mischief Reef. This discovery followed a ninety-minute naval skirmish near Capones Island between three Chinese vessels and the Philippine Navy.⁵⁹ his encounter was a significant turning point, as it represented China's first direct military confrontation with an ASEAN member State other than Vietnam. The ensuing crisis over Mischief Reef, part of the Spratly Islands claimed by Manila, triggered a substantial cooling of Sino-Philippine relations and a simultaneous renewal of security ties between the United States and the Philippines.⁶⁰ Following the incident, U.S. Navy SEALs intervened with Philippine forces on Palawan Island. By the middle of 1995, immediate tensions began because both nations signed a nonbinding code of conduct. This agreement highlighted the effort to find a peaceful resolution to territorial disputes.⁶¹

In January 1998, China and the United States established the Military Maritime Consultative Agreement, which was a bilateral military accord. Intended as a trust-building mechanism due to the diplomatic strains of the 1989 Tiananmen Square protests, the agreement aimed to facilitate communication between naval forces and minimize the risk of tactical miscalculations.⁶² During this period, the Clinton administration pursued

⁵⁸ Standing Committee of the National People's Congress, Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, Order No. 55, February 25, 1992.

⁵⁹ Peace Research Institute Frankfurt, *China occupies Mischief Reef*, Jstor, January 1st, 2015, pp. 15-20.

⁶⁰ D. DA CUNHA, *Nodding off, U.S. presence in Asia-Pacific*, Straits Times, 9 March 1995.

⁶¹ *Ramos: Sinos occupying RP reef in Spratlys*, Philippine Daily Inquirer, 9 February 1995.

⁶² Military Maritime Consultative Agreement between China and the U.S., Federation of American Scientists (FAS), January 1998.

security engagement with Beijing.⁶³ Despite the diplomatic intent of this accord to prevent maritime friction, its efficacy was tested in April 2001. In the Hainan Island incident, there was a mid-air collision between a Chinese F-8 interceptor and a U.S. Navy surveillance aircraft. This incident killed a Chinese pilot and led to a significant diplomatic standoff.⁶⁴

Regional diplomacy knew a shift in 2002 when China and the ten member States of ASEAN met in Phnom Penh to finalize the ASEAN-China Declaration on the Conduct of Parties in the South China Sea. This code of conduct was designed to alleviate regional conflicts through the establishment of guidelines for peaceful resolutions.⁶⁵ The signing of this declaration represented a major strategic concession for Beijing. Historically, China had insisted on resolving maritime disputes through bilateral negotiations with individual claimant nations. However, this agreement marked the first time in which China accepted a multilateral approach to address sovereignty issues in the South China Sea.

In 2008, after many contentions over natural gas reserves in the South China Sea, Japan and China entered into a Joint Energy Development Agreement. This accord aimed to facilitate the collaborative exploration of four specific maritime fields, like the potentially lucrative Chunxiao/Shirakaba area. According to the agreement, both nations could independently develop in contested waters, but the priorities should be joint surveys and mutual investment to improve maritime cooperation.⁶⁶ Despite this initial progress, the spirit of the accord resulted fragile. In 2009, China began unilateral development of the Tianwaitian or Kashi field, an action that Tokyo viewed as a violation of the 2008 agreement.⁶⁷ In response to Chinese activity, Japan threatened to bring the case before the International Tribunal for the Law of the Sea. However, these diplomatic tools had no substantial results, and the prospect of integrated energy cooperation remained stalled.⁶⁸

⁶³ President Clinton, *Engaging China to Promote and Protect American Interests*, U.S. Institute for Peace, April 7, 1999.

⁶⁴ D. LEONE, when a US Navy EP-3 collided with a Chinese J-8 interceptor: the Hainan incident and the last flight of Lt. Cdr. Wang Wei, *The Aviation*, April 2, 2021.

⁶⁵ L. SIMOES, *The Role of ASEAN in the South China Sea Disputes*, Asian Territorial and Maritime Disputes: A Critical Introduction, E-International Relations, 23 June 2022.

⁶⁶ J. WATTS, *China and Japan agree on joint gas exploration of East China Sea*, *The Guardian*, June 18, 2008.

⁶⁷ R. A. MANNING, *In Disputes Over Asian Seas, Winner May Take Zilch*, Atlantic Council, January 15, 2013.

⁶⁸ *Ibidem*.

In 2009, there was a new period of friction when Malaysia and Vietnam submitted a joint proposal to the UN Commission on the Limits of the Continental Shelf. This formal application sought to expand their respective maritime jurisdictions beyond the standard two-hundred-nautical-mile limit from their coastlines.⁶⁹ China responded with immediate diplomatic opposition, defining the submission as a challenge to its own territorial boundaries.⁷⁰ Moreover, such claim represented a severe violation of its absolute sovereignty over the features in the South China Sea. Vietnam's specific action was interpreted as a strategic effort to shift the South China Sea dispute into an international spotlight. This campaign to globalize the issue gained further momentum in November 2009, when an international conference dedicated to the maritime dispute was convened in Hanoi.

Meanwhile, China has continued to develop and, according to the International Energy Agency report, it had overtaken the United States as world's premier energy consumer in 2009. With a total consumption reaching approximately billion tons, Beijing also established itself as the second-largest net importer of petroleum.⁷¹ This shift underscored the critical strategic value of maritime trade routes in the South China Sea for the transport of energy resources. In response to this competition for resources, the United States reaffirmed its strategic priorities in the region. During a regional security summit in Hanoi, Secretary of State Hillary Clinton maintained Washington's neutrality regarding specific sovereignty claims in the South China Sea, while simultaneously asserting the fundamental importance of the unrestricted access to Asia's maritime common areas.⁷² This declaration was perceived as a formal challenge to Beijing's preference to solve disputes through bilateral channels. It also signalled an era of increased American involvement in maritime controversies. For Vietnam, this diplomatic shift provided a crucial opportunity to transition the conflict into a multilateral framework, which Hanoi viewed as essential for a balanced resolution.

⁶⁹ Commission on the Limits of the Continental Shelf (CLCS), *Outer Limits of the Continental Shelf beyond 200 Nautical Miles from the Baseline*, Submissions to the Commission: Joint Submission by Malaysia and the Socialist Republic of Viet Nam, 2009.

⁷⁰ Permanent Mission of the People's Republic of China to the United Nations, Note Verbale CML/17/2009, May 7, 2009.

⁷¹ International Energy Agency (EIA), China, website: <https://www.eia.gov/international/overview/country/CHN>

⁷² South China Sea spat fresh threat to Sino-US ties, Reuters, July 27, 2010.

On September 7, 2010, there was a collision involving a Chinese fishing vessel and two Japanese Coast Guard ships near the Senkaku/Diaoyu Islands.⁷³ In response to the Japan's arrest of the fishing crew, Beijing adopted some specific measures. For example, it implemented an embargo on the export of rare earth minerals, which are vital components for high-tech manufacturing, and detained four Japanese citizens because they trespassed a Chinese military base.⁷⁴ China also declined a high-level meeting between Premier Wen Jiabao and Prime Minister Naoto Kan during the United Nations General Assembly. However, both nations moved toward de-escalation and released their respective detained citizens. A formal stabilization of diplomatic relations was finally achieved in October 2010, when the two leaders held an informal discussion on the periphery of the Asia-Europe Meeting Summit in Brussels.

In early 2011, the Philippines formally protested naval incursions by Chinese vessels within its claimed territorial waters. The location of these incidents was near the Spratly Islands and the Amy Douglas Bank.⁷⁵ In particular, in March 2011, Chinese surveillance ships forced a Philippine survey to withdraw from the Reed Bank. According to both parties, these actions were breaches of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea.⁷⁶ Simultaneously, Vietnam expressed its concern on harassment of its offshore energy exploration activities because Hanoi collaborated with major international energy corporations, such as ExxonMobil and Chevron, to develop maritime hydrocarbon resources, but it faced increasing pressure from Chinese naval presence. In response to these challenges, by October 2012, Manila officially renamed the surrounding waters as the "West Philippine Sea" in all government correspondence.⁷⁷ This administrative shift was supported by a new executive order affirming the nation's fundamental authority to define and manage its own maritime territories. The escalating regional tension prompted a significant shift in United States

⁷³ K. BRADSHER, *Amid Tension, China Blocks Vital Exports to Japan*, The New York Times, September 22, 2010.

⁷⁴ Ibidem.

⁷⁵ C. A. THAYER, *China-ASEAN and the South China Sea: Chinese Assertiveness and Southeast Asian Responses*, Routledge, 2016.

⁷⁶ Ibidem.

⁷⁷ President of the Philippines, Administrative Order No. 29, s. 2012, Official Gazette of the Philippines, September 5, 2012.

foreign policy, known as the Pivot to Asia.⁷⁸ During an address to the Australian parliament, President Barack Obama announced that Washington would redirect its strategic focus toward the Asia-Pacific region. This realignment included:

- Military Expansion: the deployment of new American personnel and hardware to strategic hubs in Singapore and Australia.
- Diplomatic Solidarity: Secretary of State Hillary Clinton publicly reinforced the alliance with Manila, acknowledging the challenges to Philippine territorial integrity and adopting the term West Philippine Sea in official dialogues.
- Economic Integration: The advancement of the Trans-Pacific Partnership (TPP), a comprehensive free trade initiative designed to deepen U.S. economic ties with regional partners while notably excluding China from the initial negotiations.⁷⁹

The year 2012 served as a turning point for Northeast Asian geopolitics. It was characterized by different leadership changes in both Tokyo and Beijing. On December 26, Abe Shinzo assumed the office of Prime Minister in Japan for a second term. He expressed his concern that the South China Sea might effectively become an internal Chinese lake and proposed the formation of a “*democratic security diamond*.”⁸⁰ This strategic alliance, involving Japan, the United States, India and Australia, was aimed to protect the shared maritime spaces from the Indian Ocean to the Western Pacific. China was also interested by its own transition with the elections of Xi Jinping as President and Li Keqiang as Premier.⁸¹ Under this new leadership, Beijing has tried to become a dominant maritime power. This strategy was achieved by the consolidation of marine agencies and the recognition of maritime rights as a fundamental national interest.⁸²

The diplomatic relationship between Manila and Beijing deteriorated sharply following the Scarborough Shoal Incident in April 2012. The friction began when the Philippines deployed a naval vessel to intercept Chinese fishing boats operating in the

⁷⁸ Remarks By President Obama to the Australian Parliament, The White House, Office of the Press Secretary, November 17, 2011.

⁷⁹ J. MCBRIDE, A. CHATZKY, A. SIRIPURAPU, *What's Next for the Trans-Pacific Partnership (TPP)?* Council on Foreign Relations (cfr), November 19, 2020.

⁸⁰ A. SHINZO, *Asia's Democratic Security Diamond*, Project Syndicate, December 27, 2012.

⁸¹ L. MAIZLAND AND E. ALBERT, *The Chinese Communist Party*, Council on Foreign Relations (cfr), November 8, 2012.

⁸² Ibidem.

shoal, located north of the Spratly Islands.⁸³ China countered by sending its own surveillance ships to defend the fishermen. The confrontation expanded into a significant economic dispute. Beijing imposed strict quarantine measures on Philippine fruit imports and issued travel warnings against visiting the archipelago.⁸⁴ In May, the Philippine banana industry alone suffered estimated losses of approximately \$34 million. In response to the ongoing Chinese naval presence that prevented Filipino fishermen from accessing the waters, the Philippine government began pursuing multiple avenues for redress. Firstly, the exploration of arbitration options under the framework of UNCLOS; then, an active mediation and the involvement from ASEAN; finally, a security alliance with the United States to have military support.⁸⁵

In June 2012, Vietnam enacted a new legislation that asserted its jurisdiction over the Spratly and Paracel Islands.⁸⁶ At the same time, the foreign naval vessels should provide notification when they traverse these waters. Then, Beijing established a new administrative city on the Paracels called Sansha, and it was designed to govern the Paracels, Spratlys, and Macclesfield Bank.⁸⁷ This administrative issue was followed by military and economic escalation. Following incidents in 2011 where Chinese surveillance ships interfered with Vietnamese oil and gas survey operations, Hanoi increased its defence budget by 70% to approximately \$2.6 billion.⁸⁸ Despite the tension, high-level dialogues in October 2011 led to a bilateral agreement intended to manage maritime disputes.⁸⁹

On September 10, 2012, the Japanese government signed a \$26 million contract to purchase three of the five disputed Senkaku/Diaoyu Islands from their private owner.⁹⁰ This strategy was a proposal of Tokyo Governor Shintaro Ishihara to protect Japanese

⁸³ Department of Foreign Affairs of the Republic of the Philippines, *Philippine Position on Bajo de Masinloc (Scarborough Shoal) and the Waters Within Its Vicinity*, in Official Gazette of the Republic of the Philippines, April 28, 2012.

⁸⁴ Ibidem.

⁸⁵ Ibidem.

⁸⁶ *Country Profile from the Maritime Awareness Vietnam*, The National Bureau of Asian Research (NBR), <https://www.nbr.org/publication/vietnam/>

⁸⁷ Ibidem.

⁸⁸ Ibidem.

⁸⁹ *Vietnam Eyes China Threat, with an eye on China's alleged claims to the South China Sea*, Vietnam is significantly boosting defence spending, The Diplomat, March 28, 2011.

⁹⁰ K. TAKENAKA, *Japan buys disputed islands, China sends patrol ships*, Reuters, September 11, 2012.

sovereignty. But it provoked the largest anti-Japanese protests in China since the normalization of relations in 1972.⁹¹ Consequently, Japanese firms in China reported substantial losses, and commercial air travel between the two nations declined sharply. On September 12, Beijing established formal Territorial Sea baselines around the islands in waters previously controlled by the Japan Coast Guard.⁹² In December 2012, China submitted an official claim to the United Nations, and its argument was that the disputed features in the East China Sea represented a natural geological extension of Chinese continental territory.⁹³

On January 22, 2013, the Republic of the Philippines filed a formal arbitration case against the People's Republic of China under the framework of the United Nations Convention on the Law of the Sea (UNCLOS). This legal action sought a definitive award on Chinese claims of sovereignty over several maritime features, especially the Spratly Islands and the Scarborough Shoal.⁹⁴ Beijing, however, refused to recognize the jurisdiction of the tribunal, it officially rejected the arbitration process and declined to participate in the hearings.⁹⁵ Despite China's absence, the Court proceeded with the case and this event was historically significant because it marked the first time that a sovereign State brought a formal claim against China under the UNCLOS system.

Maritime pressure from China intensified and Japan began a transition away from its historically pacifist foreign and defence policies. Tokyo exported military hardware, such as seaplanes and specialized shallow-water submarines to avoid regional influence and face China's growing presence. In May 2013, Japan announced the provision of patrol vessels to the Philippine Coast Guard to improve Manila's maritime capabilities, in order to make its security role stronger.⁹⁶ This strategic cooperation caused an aggressive response from Beijing, which warned of potential military action against aircraft near

⁹¹ Ibidem.

⁹² *Japan island purchase angers China*, Al Jazeera, September 12, 2012.

⁹³ Beijing submits East China Sea claims to the UN, Taipei Times, December 16, 2012.

⁹⁴ The Permanent Court of Arbitration (PCA), *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award, PCA Case No. 2013-19, 12 July 2016, pp. 74-84.

⁹⁵ Ministry of Foreign Affairs of the People's Republic of China, *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, December 7, 2014.

⁹⁶ M. FACKLER, *Japan is Flexing its Military Muscle to Counter a Rising China*, The New York Times, November 26, 2012.

disputed features, with the risk to extend the territorial friction into the airspace.⁹⁷ Among these rising tensions, U.S. Secretary of Defence Chuck Hagel reaffirmed that the U.S.-Japan Mutual Defence Treaty remained applicable to the disputed islands. It signalled Washington's continued commitment to its regional ally.

On April 28, 2014, U.S. President Barack Obama finalized a new ten-year security agreement with the Philippines.⁹⁸ According to the Enhanced Defence Cooperation Agreement, the U.S. could have the access to various Philippine military facilities, such as ports and airfields.⁹⁹ The pact facilitated higher levels of joint training and improved the interoperability of the two nations' forces. A major diplomatic crisis erupted in May 2014 when Vietnam deployed naval vessels to obstruct China's establishment of a deep-water oil rig in contested waters near the Paracel Islands.¹⁰⁰ The situation escalated when Beijing dispatched a fleet of forty ships to protect the installation, and it led to multiple collisions between Chinese and Vietnamese vessels.¹⁰¹ The incident triggered domestic unrest in Vietnam, where anti-China protests evolved into violent riots. Tension only began to subside on July 15, when China's State-owned energy company announced the withdrawal of the rig.¹⁰²

In Northeast Asia, in November 2014, China and Japan reached a formal four-point consensus about their diplomatic and security relations. This agreement focused on the establishment of crisis-management mechanisms to prevent accidental military escalations over disputed features in the East China Sea. It signalled a mutual effort to stabilize the region's most volatile maritime border.¹⁰³

In 2015, a report of the U.S. Department of Defence documented that China reclaimed about three thousand acres of land within the Spratly Islands. For this reason, the United States Navy conducted a patrol within twelve nautical miles of artificial islands constructed by China to challenge Beijing's expansive maritime claims and assert the

⁹⁷ Ibidem.

⁹⁸ M. FELSETHAL AND M. SPETALNICK, *Obama says U.S. commitment to defend Philippines "ironclad"*, Reuters, April 29, 2014.

⁹⁹ Ibidem.

¹⁰⁰ M. GREEN et al., *Counter-Coercion Series: China-Vietnam Oil Rig Standoff*, Asia Maritime Transparency Initiative, June 12, 2017.

¹⁰¹ Ibidem.

¹⁰² Ibidem.

¹⁰³ J. PERLEZ, *China and Japan, in Sign of a Thaw, Agree to Disagree on a Disputed Island Group*, The New York Times, November 7, 2014.

right of international passage in contested waters.¹⁰⁴ China condemned it as a significant political and military provocation.¹⁰⁵ On February 14, 2016, China deployed surface-to-air missiles on Woody Island, within the Paracel Island chain.¹⁰⁶ U.S. and regional authorities cautioned that this deployment indicated a clear threat to the militarization of the maritime dispute. Beijing defended the installation of the missile systems. Its argumentation was that such measures were legitimate defensive actions within its own sovereign territory.¹⁰⁷

The period between 2016 and 2018 represented a significant era of legal clarification and continued military friction, as international institutions weighed in on the legitimacy of maritime boundaries. On July 12, 2016, the Permanent Court of Arbitration in The Hague delivered a definitive verdict in the case initiated by the Philippines in 2013. The tribunal's findings included several critical determinations. Firstly, the invalidation of the Nine-dash line because the Court ruled that China's expansive historical claims lacked a legal basis under international law.¹⁰⁸ Then, the second problem was about the status of land features. The tribunal concluded that none of the features in the disputed area met the criteria under UNCLOS to justify a 200-nautical-mile Exclusive Economic Zone for China.¹⁰⁹ Finally, the award mentioned the environmental and safety violations, in particular, Beijing was found to have breached its international obligations, as its island-building projects caused significant ecological damage and its maritime manoeuvres created substantial navigational hazards.¹¹⁰ Even if the award condemned some specific actions, the Chinese government refused to accept the Court's authority or the validity of the award.¹¹¹

¹⁰⁴ K. HUNT, *Showdown in the South China Sea: How did we get here?* CNN World, August 2, 2016.

¹⁰⁵ S. LAGRONE, *Pentagon's Asia-Pacific Maritime Security Strategy*, USNI News, August 21, 2015.

¹⁰⁶ G. LUBOLD AND C. H. WONG, *China Positions Missiles on Disputed South China Sea Island*, The Wall Street Journal, February 17, 2016.

¹⁰⁷ Ibidem.

¹⁰⁸ The Permanent Court of Arbitration (PCA), *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, cit.

¹⁰⁹ Ibidem.

¹¹⁰ Ibidem.

¹¹¹ Ministry of Foreign Affairs of the People's Republic of China, *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, cit.

Philippine President Rodrigo Duterte adopted a more conciliatory approach toward Beijing, based on economic cooperation and bilateral dialogue over legal enforcement. In 2016, he declared a portion of the Scarborough Shoal as a protected marine sanctuary and a no-fishing zone to ease local tensions.¹¹² However, regional stability remained elusive. In December 2016, a Chinese naval vessel intercepted a U.S. underwater drone for scientific research. Although the hardware was eventually returned, the incident served as a reminder of the high State of naval alertness in the region.¹¹³

A new milestone was reached in May 2018, when China conducted its first landing of a long-range bomber on a maritime feature.¹¹⁴ Days later, China agreed to return the drone, but criticized the United States. Two years later, a Chinese bomber landed on an island reef in the South China Sea for the first time.¹¹⁵ Specifically, an H-6 aircraft successfully touched down and took off from Woody Island in the Paracels.¹¹⁶ This development expanded Beijing's regional strike capability.

The year 2019 was characterized by a resurgence of maritime friction. Indeed, the Philippines and Vietnam both faced Chinese presence within their jurisdictional waters. A significant escalation occurred near Thitu Island, a Philippine-occupied feature in the Spratly chain.¹¹⁷ Between January and March 2019, the presence of over two hundred Chinese vessels close to the island was recorded. In response, Philippine President Rodrigo Duterte suggested that he would deploy military personnel if Chinese ships continued to infringe upon the territory.¹¹⁸ This escalation coincided with Philippine efforts to improve the island's infrastructure, such as the construction of a ramp to facilitate the delivery of supplies and construction equipment. Later that year, Vietnam faced similar challenges when a Chinese survey ship entered its Exclusive Economic Zone (EEZ) near a strategic offshore oil block. Vietnamese authorities repeatedly called for the immediate withdrawal of the Chinese vessels from their sovereign waters. In

¹¹² J. PERLEZ, *Rodrigo Duterte and Xi Jinping Agree to Reopen South China Sea Talks*, The New York Times, October 20, 2016.

¹¹³ Ibidem.

¹¹⁴ T. M. CRONK, *Chinese Seize U.S. Navy Underwater Drone in South China Sea*, The U.S. Department of War, December 16, 2016.

¹¹⁵ *South China Sea dispute: China lands bombers on island*, BBC, 19 May 2018.

¹¹⁶ Ibidem.

¹¹⁷ B. WESTCOTT and B. LENDON, *Duterte threatens "suicide mission" if Beijing oversteps in South China Sea*, CNN World, April 5, 2019.

¹¹⁸ Ibidem.

August, public frustration culminated in protests outside the Chinese embassy in Hanoi.¹¹⁹ Despite the diplomatic pressure and public outcry, the Chinese survey ship remained in the Vietnamese EEZ until October.¹²⁰

7. Recent developments. (2020 – today)

The tactical environment in the Spratly Islands grew increasingly volatile in February 2020, following reports that a Chinese naval vessel targeted a Philippine ship with its weapons control systems.¹²¹ This manoeuvre was followed by Beijing's new research facilities on Subi and Fiery Cross Reefs.¹²² These installations were composed of military-grade infrastructure such as aircraft runways and defence silos. They signalled a permanent enhancement of China's regional surveillance and strike capabilities.¹²³ In April 2020, a Vietnamese diplomatic protest followed a maritime collision in which a Chinese vessel caused a Vietnamese fishing boat to sink near the Paracel Islands. This incident demonstrated the vulnerability of civilian maritime activities in contested areas and the naval engagement rules of Beijing. China established two new administrative districts to govern the Paracel and Spratly Islands. The aim was to solidify its jurisdictional claims in mid-2020. This administrative action was condemned by Manila and Hanoi, which believed that the creation of these districts was a direct violation of their national sovereignty and an erosion of the regional status quo.

In March 2021, about two hundred Chinese vessels were deployed to Whitsun Reef, a feature located within the Philippine Exclusive Economic Zone (EEZ).¹²⁴ Manila asserted that the vessels were manned by military personnel, and this was a deliberate effort to establish de facto control over the reef.¹²⁵ This incident led to renewed support for the 2016 legal decision from several European powers, including Germany, France,

¹¹⁹ T. LE, *The Vanguard Bank standoff shows China remains undeterred*, The Interpreter, August 16, 2019.

¹²⁰ Ibidem.

¹²¹ R. C. DE CASTRO, *Implications of the Recent Philippines-China Naval Stand-Off*, Asia Maritime Transparency Initiative, 2020.

¹²² H. L. THU, *Fishing While the Water is Muddy: China's newly announced administrative districts in the South China Sea*, Asia Maritime Transparency Initiative, May 6, 2020.

¹²³ Ibidem.

¹²⁴ S. STRANGIO, *In UN Speech, Duterte Stiffens Philippines' Stance on the South China Sea*, The Diplomat, September 23, 2020.

¹²⁵ *South China Sea dispute: Huge Chinese "fishing fleet" alarms Philippines*, BBC, March 21, 2021.

and the United Kingdom. The situation was tense through 2022, exacerbated by incidents involving military hardware. In November 2022, during a visit by U.S. Vice President Kamala Harris to the Philippines, the Philippine Navy reported that the Chinese Coast Guard had seized debris from a suspected Chinese rocket that had landed within Philippine waters.¹²⁶

A historic diplomatic breakthrough was achieved on December 22, 2022, when Indonesia and Vietnam finalized the boundaries of their respective Exclusive Economic Zones after twelve years of technical negotiations.¹²⁷ This agreement addressed long-standing friction regarding fishing and navigation rights near the Natuna Islands. Significantly, the new borders between Hanoi and Jakarta partially overlapped with the historical claims asserted by Beijing. For this reason, they were considered a regional challenge to the legitimacy of the Nine-dash line.¹²⁸

Under the administration of President Ferdinand Marcos Jr., the Philippines transitioned toward a more robust defence posture, which included an increased United States military presence within the country.¹²⁹ The following month, President Xi Jinping entered a third term, and Beijing announced a 7.2 percent increase in military spending. It justified the expansion through a regional threat environment.¹³⁰

On August 18, 2023, U.S. President Joe Biden hosted Japanese Prime Minister Kishida Fumio and South Korean President Yoon Suk Yeol for a historic trilateral summit at Camp David.¹³¹ The three leaders issued a joint Statement that criticized Beijing's conduct in the Indo-Pacific. Moreover, it reaffirmed a shared commitment to the 2016 Hague ruling and the principles of UNCLOS.¹³² This summit followed a similar

¹²⁶ J. GOMEZ, *Chinese coast guard seizes rocket debris from Filipino navy*, AP, November 21, 2022.

¹²⁷ B. TRAN, *The Significance of the Vietnam-Indonesia Exclusive Economic Zone Demarcation*, Fulcrum: Analysis on Southeast Asia, January 20, 2023.

¹²⁸ Ibidem.

¹²⁹ CFR, *Territorial Disputes in South China Sea*, cit.

¹³⁰ G. WRIGHT, *China discusses military budget while warning of escalating threats*, BBC, March 6, 2023.

¹³¹ U.S. Mission Japan, *Trilateral Leaders' Summit of the United States, Japan, and the Republic of Korea*, United States Embassy in Tokyo Website, August 19, 2023.

¹³² Ibidem.

commitment by President Biden and Indian Prime Minister Narendra Modi to maintain international legal standards in the South China Sea.¹³³

In late 2023, China created an official territorial map that introduced an additional dash to its previous claims. Therefore, it created a ten-dash line.¹³⁴ This new map expanded Beijing's jurisdiction to include the island of Taiwan and most of the Spratly Islands.¹³⁵ This action had immediate and broad opposition. ASEAN nations including Indonesia, Malaysia, Vietnam, and the Philippines officially rejected the map as a violation of their sovereignty. India, Japan, and Taiwan also voiced strong disapproval of the new territorial boundaries.¹³⁶

On April 11, 2024, the leaders of the United States, Japan, and the Philippines convened for a historic trilateral summit. This meeting followed a joint naval exercise conducted by the three nations alongside Australian forces within the Philippine Exclusive Economic Zone (EEZ). The leaders expressed collective concern regarding the increased frequency of Chinese patrols near the Senkaku/Diaoyu Islands and underscored the necessity of a coordinated response to maritime assertiveness.¹³⁷

The most severe physical confrontation occurred on June 17, 2024, near the Second Thomas Shoal, a submerged feature within the Philippine 200-nautical-mile EEZ.¹³⁸ During a Philippine resupply mission, Chinese coast guard personnel engaged in what has been described as the most violent clash between the two nations to date. Manila accused Chinese forces of repeatedly ramming Philippine naval vessels and threatening Filipino crew members.¹³⁹ The U.S. State Department responded by reaffirming the Mutual Defence Treaty, characterizing the actions of the Chinese coast guard as dangerously provocative and destabilizing.¹⁴⁰ In an attempt to mitigate the risk of a broader conflict, Beijing and Manila reached a provisional agreement in July 2024. The

¹³³ E. NAKASHIMA, *Modi's U.S. visit sends a big, if quiet, signal to China*, The Washington Post, June 21, 2023.

¹³⁴ L. ZHOU, *China's new map has riled the region, with "collective concern" over its claims*, South China Morning Post, September 6, 2023.

¹³⁵ Ibidem.

¹³⁶ J. RIÑOZA, B. SEPE and I. M. YUSOF, *China's neighbours reject new territorial map*, Benar News, August 31, 2023.

¹³⁷ *Japan-U.S.-Philippines Summit*, Ministry of Foreign Affairs of Japan Website, April 11, 2024.

¹³⁸ R. RATCLIFFE, *A new flashpoint has emerged at Sabina Shoal in the South China Sea and a new danger*, The Guardian, 5 September 2024.

¹³⁹ Ibidem.

¹⁴⁰ Ibidem.

outcome was the establishment of a direct communication hotline with the aim to prevent future maritime misunderstandings. However, the long-term effectiveness of this mechanism remains uncertain, as both governments have expressed divergent interpretations of the agreement's terms and their respective sovereign rights.

In late 2025, a naval confrontation occurred near the Senkaku/Diaoyu Islands involving a Japanese fishing vessel and Chinese Coast Guard ships, with both Tokyo and Beijing providing conflicting accounts of the interception.¹⁴¹ This event catalysed a fundamental shift in Japan's regional security policy.¹⁴² On November 7, 2025, newly elected Prime Minister Takaichi Sanae signalled a departure from Japan's long-standing strategic ambiguity by suggesting that Tokyo could militarily intervene if China attempted to seize control of Taiwan by force.¹⁴³ Beijing responded by further restricting economic ties and discouraging its citizens from traveling to Japan.¹⁴⁴

Tensions escalated significantly between December 2025 and February 2026 through a series of high-stakes military encounters. In the Spratly Islands, in early January 2026, Chinese forces fired flares at a Philippine patrol aircraft as it flew past a militarized artificial island, illustrating a dangerous new level of aerial confrontation.¹⁴⁵ On January 20, 2026, the Chinese military announced it had mobilized both air and naval units to intercept and expel a Philippine government aircraft operating near Scarborough Shoal. Beijing followed this with sustained patrols in the area on January 31, 2026, to reinforce its military presence.¹⁴⁶ The Philippines hosted a retreat for ASEAN foreign ministers on January 29, 2026, pushing for the finalization of a Code of Conduct intended to reduce active conflict and uphold international legal standards.¹⁴⁷

The beginning of 2026 has been marked by deterrence postures, particularly between China and the Philippines. On January 20, 2026, Beijing reported repelling a Philippine government aircraft that it claimed had illegally entered the airspace over

¹⁴¹ G. BUTLER, *Chinese and Japanese boats face off near disputed islands as feud worsens*, BBC, December 2, 2025.

¹⁴² Ibidem.

¹⁴³ Agence France-Presse, *China advises against travel to Japan amid escalating row over PM's Taiwan comments*, The Guardian, November 15, 2025.

¹⁴⁴ Ibidem.

¹⁴⁵ M. MCCARTNEY, *US Ally Conducts Flyby of China Military Base in South China Sea*, Newsweek, December 8, 2025.

¹⁴⁶ *China Drives Away Philippine Aircraft Over Disputed Shoal*, Reuters, January 20, 2026

¹⁴⁷ M. FLORES, *Thailand proposes "calibrated engagement" with Myanmar's next government*, Reuters, January 29, 2026.

Scarborough Shoal. The Philippine Navy noted that Chinese activities are evolving into a more permanent and aggressive presence intended to deter local operations within the Philippine Exclusive Economic Zone. To counter these pressures, Manila signed new defence agreements with Tokyo in mid-January 2026, including a reciprocal support arrangement for military supplies and a significant security assistance package.¹⁴⁸

As the 2026 chair of ASEAN, the Philippines has prioritized the finalization of a substantive Code of Conduct (COC) for the South China Sea. Manila aims to complete the agreement by the end of 2026. The document must be based on the United Nations Convention on the Law of the Sea (UNCLOS) to have meaningful legal weight. While other ASEAN members like Malaysia and Vietnam have managed pragmatic cooperation with Beijing, the 2026 chairmanship represents a critical window for establishing a unified regional framework to manage maritime disputes.

¹⁴⁸ L. ZHOU and F. CHEN, *South China Sea: Beijing seeks “fair and just maritime order”*, South China Morning Post, December 10, 2025.

CHAPTER II: THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

SUMMARY: 1. Introduction - 2. Definitions - 3. Issue of maritime boundaries - 4. Dispute settlement - 5. UNCLOS and China's Claim in the South China Sea.

1. Introduction

The United Nations Convention on the Law of the Sea (UNCLOS) is the main legal authority for international activities in the sea. It provides a legal framework that manage ocean usage and resources allocation. The core principles of this Convention were first established in 1970 through Resolution 2749 (XXV), and the formal signing of the treaty took place in Montego Bay, Jamaica on December 10, 1982. UNCLOS was supported by over 150 States representing all regions of the world,¹⁴⁹ with different economic and political backgrounds, that ratified it. The treaty officially went into effect on November 16, 1994, following the required deposit of sixty ratification instruments. Today, it consists of 320 distinct articles and nine supplementary annexes. UNCLOS is the globally accepted standard for the governance of the sea.

2. Definitions

The United Nations Convention on the Law of the Sea introduces specific terminology to define international waters and seafloors. In particular, Part II of UNCLOS categorizes maritime space into several distinct zones with different levels of State control. This passage is necessary to understand the sovereignty of coastal States over the sea and its specific sections.

Maritime zones are generated by the coastal state's territory, which includes islands, rocks and low-tide elevations located within the state's Territorial Sea. The breadth of maritime zones is defined from baselines that are drawn along the coast according to specific rules provided by UNCLOS. However, there are some exceptions. This paragraph will explain all the characteristics of the Area; Internal Waters; the Territorial

¹⁴⁹ Despite its status as a signatory, China's maritime activities often spark debate. Specifically, its extensive territorial claims in the South China Sea (the "nine-dash line") are frequently viewed as conflicting with UNCLOS regulations regarding Exclusive Economic Zones (EEZs) and the principle of free navigation.

Sea; the Contiguous Zone; the Exclusive Economic Zone; the Continental Shelf and High Seas.

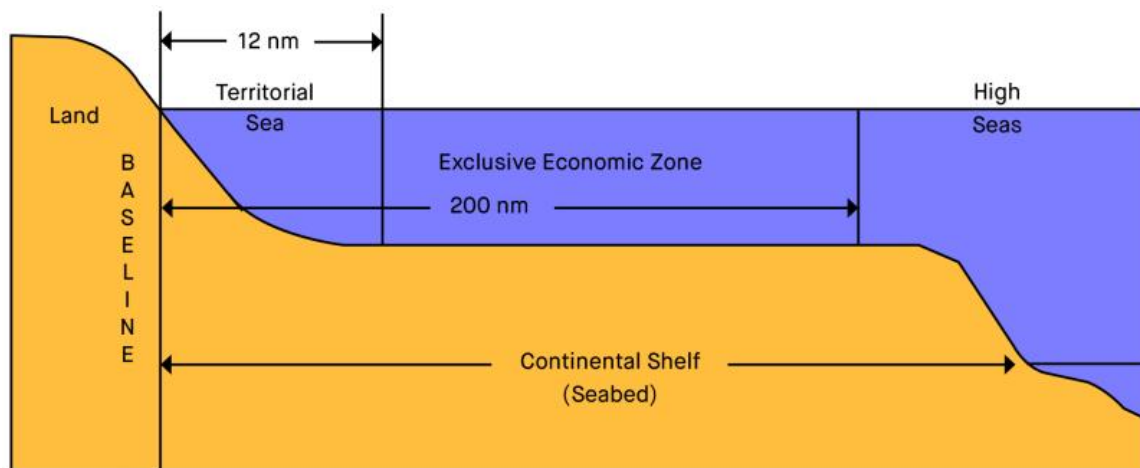


Figure 1: Maritime Areas – Land and Maritime Boundary Office

2.1 Internal Waters

Located on the landward side of a State's baseline, "*Internal Waters*" are considered part of a nation's sovereignty territory.¹⁵⁰ It is possible to think about them not as sea, but as a submerged extension of a country's dry land. According to Article 8, any water which is on the landward side of the normal and the straight baselines is part of "*Internal Waters*". These include also bays, ports and some portions of rivers. Coastal States have full authority here and can restrict foreign vessels since the right of innocent passage is not applicable.¹⁵¹ It means that entry is a privilege and not a right. Consequently, a foreign ship which enters a port is effectively within the country that has jurisdiction over it. However, there is an exception of the no innocent passage rule in Article 8(2) of UNCLOS. In the case in which a State decides to delimitate a portion of the High Sea through a straight baseline, the right of innocent passage is still applied in those specific waters.¹⁵² This is a form of prevention that countries block international traffic.

¹⁵⁰ Ivi, Part. II, Sec. 2, Artt. 2(1), 8(1).

¹⁵¹ According to Article 19(1), Part. II, of UNCLOS, passage is innocent so long as it does not prejudicially affect the peace, good order, or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

¹⁵² UNCLOS, Part II, Sec. 2, Art. 8(2).

2.2 Territorial Sea

Then, Article 3, Section 2, Part. II of UNLOS also establishes the “*Territorial Sea*” of each State. It is the most critical zone in the law of the sea because it presents the balance between a nation’s security and the global concept of freedom of navigation. Before 1982 UNCLOS, the “*Territorial Sea*” could be a zone from 3 to 200 miles, but Article 3 introduced a global standard up to a limit not exceeding 12 nautical miles from the baseline.¹⁵³ It is under the full sovereignty of the coastal State. In particular, it is a vertical sovereignty because countries have control over the airspace above and the subsoil below.¹⁵⁴ However, foreign ships are permitted the right of innocent passage, provided they do not disrupt the peace or security of the coastal nation.¹⁵⁵ To qualify as passage, the navigation must have three characteristics. Firstly, it should be continuous and expeditious, which means that ships cannot circle around. Secondly, purposeful because the passage should have an aim which can be traversing the sea or heading to/from a port. Finally, the last element is that foreign ships can stop in the “*Territorial Sea*” of another country only if it is incidental to ordinary navigation or necessary due to force majeure (an emergency or distress).¹⁵⁶ Finally, the passage is innocent when it does not create any problem to the peace, good order or security of the coastal State.¹⁵⁷ Article 19 provide a list of what makes a passage non-innocent. In particular, it is not allowed the use of force or weapons and activities that damage the environment or are forbidden in this area, like fishing. Despite the right of innocent passage, there is a specific rule for submarines which can be invisible in water. For this reason, they are obliged to navigate on the surface and to show their flag, otherwise the coastal State can intervene, even using force.¹⁵⁸ In case of not innocent passage, there are some compulsory steps that should be followed to block it. The first thing is always a warning to the vessel and then it can be escorted out of the zone.¹⁵⁹ If these two actions do not work, it will be possible to use force in compliance with the principles of necessity and proportionality.¹⁶⁰ UNCLOS

¹⁵³ Ivi, Part. II, Sec. 2, Art. 3.

¹⁵⁴ Ivi, Part. II, Sec. 2, Art. 2(2).

¹⁵⁵ Ivi, Part. II, Sec. 3, Art. 17.

¹⁵⁶ Ivi, Part II, Sec. 3, Art. 18.

¹⁵⁷ Ivi, Part II, Sec. 3, Art. 19.

¹⁵⁸ Ivi, Part II, Sec. 3, Art. 20.

¹⁵⁹ Ivi, Part II, Sec. 3, Art. 25.

¹⁶⁰ Ibidem.

allows warships innocent passage,¹⁶¹ however, many countries, like China or Vietnam, argue that warships should give prior notification before entering. For instance, the United States was one of the first countries to claim a 12-nautical-mile “*Territorial Sea*”.¹⁶² It made this proposal in 1988.

A fundamental aspect of the law of the sea is the determination of the baseline, which is often the low-water line along the coast recognized by the coastal State.¹⁶³ This is the definition of the normal baseline embodied by Article 5 of UNCLOS. The normal baseline is the one that should be always used, with some exceptions provided by the Convention. In other words, the line where the water reaches its lowest point during the tide is the starting point. This baseline is used because it pushes the 12-mile and 200-mile limits as far out to sea as possible. However, there is also the method of straight baselines which do not follow every curve of the beach; instead, there are straight lines between fixed points.¹⁶⁴ They are applied only in cases where there are certain geographical conditions of the coast. Firstly, the coastline should be indented or with a fringe of islands.¹⁶⁵ In addition, according to Article 8, any water on the landward side of these lines is part of the Internal waters.

Article 7 specifies how to draw straight baselines. They usually follow the general direction of the coast, and sea areas must be near the land domain to be under the regime of Internal Waters.¹⁶⁶ The lines must not depart to any appreciable extent from the general direction of the coast. When this method has been used for long time, it is also possible to consider also specific economic interests of the region.¹⁶⁷ Finally, this system does not allow to cut off the Territorial Sea of another State from the High Sea or an Exclusive Economic Zone.¹⁶⁸ However, Article 7 is often abused by States to smooth out their coastline and claim more Internal Waters. For this reason, UNCLOS provides some solutions. For example, there is the General Direction Test, according to which, States

¹⁶¹ Ivi, Part II, Sec. 3, Art. 30.

¹⁶² United States, Presidential Proclamation No. 5928, *Territorial Sea of the United States of America*, 27 December 1988, in Federal Register, vol. 54, No. 3, 1989, p. 777 ff.

¹⁶³ Ivi, Part II, Section 2, Art. 5.

¹⁶⁴ Ivi, Part II, Section 3, Art. 7.

¹⁶⁵ Ivi, Part II, Section 2, Art. 7(1).

¹⁶⁶ Ivi, Part II, Section 2, Art. 7(3).

¹⁶⁷ Ivi, Part II, Section 2, Art. 7(5).

¹⁶⁸ Ivi, Part II, Section 2, Art. 7(6).

lines must follow the general direction of the coast.¹⁶⁹ The problem is that the Convention does not give a mathematical definition for this. If a line is too long or cuts too far into the sea, it is legally invalid, but many States do it anyway to increase their security. Then, the islands must be so close to the coast that they act as a physical shield. If the islands are scattered and far apart, Article 7 technically should not apply. These measures have been introduced thanks to the Fisheries Case (1951). The dispute arose between the United Kingdom and Norway, and it concerned Norway's decision to use straight baselines along its coast instead of following the normal low-water line. The UK argued that this method was unlawful and restricted British fishing rights. However, the Court ruled in favour of Norway and its award led to the establishment of Article 7 of UNCLOS.¹⁷⁰

In the cases where islands are on atolls or have fringing reefs, the baseline is the seaward low-water line of the reef.¹⁷¹ By contrast, a low-tide elevation is defined a “legal ghost” because it appears at low tide and disappears at high tide. In particular, it is a natural area of land that is exposed and surrounded by water at low tide, but completely submerged at high tide.¹⁷² If a low-tide elevation lies within a distance from the mainland or an island that does not exceed the breadth of the “*Territorial Sea*”, its low-water line may be used as the baseline for measuring that breadth.¹⁷³ However, when a low-tide elevation is located beyond the “*Territorial Sea*” limit, it does not generate a “*Territorial Sea*” of its own.¹⁷⁴ A major modern controversy involves countries building artificial islands on top of low-tide elevation, for example in the South China Sea. The Permanent Court of Arbitration ruled in 2016 that building on a low-tide elevation does not change its legal status. It remains a low-tide elevation and cannot generate a 200-mile EEZ.

Another case concerns the drawing of archipelagic baselines, regulated under Part IV of UNCLOS. Not every country with islands can be an “*archipelagic State*”. Article 46 defines it as a State made up of one or more archipelagos, together with other

¹⁶⁹ Ivi, Part II, Section 2, Art. 7(3).

¹⁷⁰ International Court of Justice (ICJ), Fisheries case (United Kingdom v. Norway), International Court of Justice Archive, 1951.

¹⁷¹ Ivi, Part II, Section 2, Art. 6.

¹⁷² Ivi, Part II, Section 2, Art. 13(1).

¹⁷³ Ibidem.

¹⁷⁴ Ivi, Part II, Sec. 2, Art. 13(2).

islands.¹⁷⁵ According to Article 47, this kind of State must meet the water-to-land ratio. The ratio of the area of water to the area of land must be between 1:1 and 9:1.¹⁷⁶ Countries that have too much land, like Japan, or too much empty water, like Kiribati, cannot be archipelagic States. Only States that qualify as archipelagic may establish archipelagic baselines. Since States differ in their geographical characteristics, the Convention also allows for a combination of these baseline methods.¹⁷⁷

2.3 Contiguous Zone

Each coastal State may claim a “*Contiguous Zone*” which is often called a “*functional zone*.” It extends an additional 24 nautical miles from the baseline.¹⁷⁸ This region starts where the Territorial Sea ends, it means that it is effectively a 12-mile-wide strip of water.¹⁷⁹ Unlike the Territorial Sea, which exists automatically, a State must formally claim a “*Contiguous Zone*.” Here, the State acts more like a security guard with a specific list of duties. The State may implement national laws limited to four specific areas, which are customs, immigration, fiscal policies, or sanitation.¹⁸⁰ Moreover, Article 33 gives the State two other powers. Prevention, which is the power to stop a ship that is entering the zone if they suspect it intends to break one of those four laws. And punishment that regards the arrest of a ship which is leaving the zone if it has already broken those laws inside the State's territory.¹⁸¹ While Article 33 focuses on surface activities, Article 303(2) gives the State control on the seabed in this 24-mile zone specifically for archaeological and historical objects. In particular, if someone finds a 17th-century shipwreck 20 miles off the coast, they cannot remove it without the coastal State's permission.¹⁸² According to UNCLOS, the removal of these items without consent is an infringement of the laws mentioned in Article 33. There are also things that the State cannot do there. There is no airspace control because the sky above the “*Contiguous Zone*” is international airspace. A foreign plane can fly 13 miles off your coast without asking, even though a ship can be inspected. The innocent passage is not required, ships

¹⁷⁵ Ivi, Part IV, Art. 46(a).

¹⁷⁶ Ivi, Part IV, Art. 47.

¹⁷⁷ Ivi, Part. II, Sec. 2, Art. 14.

¹⁷⁸ Ivi, Part. II, Sec. 4, Art. 33(2).

¹⁷⁹ Ibidem.

¹⁸⁰ UNCLOS, Part. II, Sec. 4, Art. 33(1).

¹⁸¹ Ivi, Part. XVI, Art. 303.

¹⁸² Ibidem.

enjoy High Seas freedoms of navigation, subject only to the specific FISC. States often try to enforce security even if UNCLOS only lists fiscal, immigration, sanitary, and customs competences in the “*Contiguous Zone*.”¹⁸³

2.4 Exclusive Economic Zone

The “*Exclusive Economic Zone*” (EEZ) is the most significant part of UNCLOS, especially from an economic point of view. It was created as a compromise between coastal nations that want more control over their fish and oil, and maritime powers that prefer to keep the ocean for navigation. The EEZ is a zone sui generis because it is neither the Territorial Sea nor the High Seas. It extends up to 200 nautical miles from the baseline.¹⁸⁴ The first 12 miles are the Territorial Sea, and this maritime zone gives a State exclusive economic control on an additional 188 miles of water. In the EEZ, it is not possible to talk about sovereignty, which means to own the area, but it is focused on sovereign rights, that refers to possess the stuff in the area. In particular, according to Article 56, it grants the coastal State two distinct levels of authority. In the first section, there are sovereign rights for economic purposes, such as the exploitation of natural resources of the seabed and subsoil, and the generation of energy from the water, currents and winds.¹⁸⁵ The second part concerns the power to make and enforce law about artificial Islands where only the coastal State can authorize the building of oil rigs or offshore structures;¹⁸⁶ marine Scientific Research since foreign scientists need the State's consent to conduct research here; and environmental protection because the State can pass laws to prevent pollution and protect the marine ecosystem.¹⁸⁷ In addition, Article 58 embodies the rights of other States because even if the resources belong to the coastal State, the water itself remains international for specific purposes. Therefore, all other States enjoy freedom of Navigation, freedom of Overflight and can lay submarine cables (especially internet/telecom) and pipelines, but with a specific coordination with the coastal State.¹⁸⁸ A unique and often forgotten rule is the surplus one. If a coastal State does not have the capacity to catch fish in its EEZ, it is technically required to give other States access to

¹⁸³ Ibidem.

¹⁸⁴ UNCLOS, Part. V, Art. 57.

¹⁸⁵ Ivi, Part. V, Artt. 55, 56.

¹⁸⁶ Ivi, Part. V, Art. 60.

¹⁸⁷ Ivi, Part. V, Artt. 55, 56.

¹⁸⁸ Ivi, Part. V, Art. 58.

the surplus.¹⁸⁹ In practice, countries usually sell these surplus rights through fishing licenses. For example, many Pacific island nations sell tuna fishing rights to Japan or the EU. Another important aspect of the EEZ concerns artificial Islands and Safety Zones. When a State builds an oil rig or an artificial island in the EEZ, it does not get a new 12-mile Territorial Sea around it; instead, it can establish a Safety Zone of up to 500 meters around the structure.¹⁹⁰ Finally, according to Articles 56(2) and 58(3), the coastal State must have regard for the rights of other States, and other States must have the same for the rights of the coastal State.¹⁹¹

2.5 Continental Shelf

The “*Continental Shelf*” is unique because it is the only maritime zone that is based on geology rather than just geometry because it focuses strictly on the seabed and subsoil. It is the natural prolongation of the land to the continental margin. Its breadth is usually of 200 nautical miles,¹⁹² but it can be limited in the case in which it overlaps with the maritime boundary of another coastal State.¹⁹³ When this zone extends beyond 200 nautical miles, its outer limits are determined according to Article 76 of the Law of the Sea Convention. The part of “*Continental Shelf*” beyond the 200 nautical miles limit is called the “*Extended Continental Shelf*”. However, a State can claim it only if the geology of the continent naturally extends beyond 200 miles, up to a maximum of 350 nautical miles (or 100 miles from the 2,500-meter depth line). The natural resources mentioned before consist of the mineral and non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, which are organisms that either are immobile on or under the seabed or subsoil.¹⁹⁴ States have sovereign rights here specifically for the exploration and exploitation of mineral and non-living resources.¹⁹⁵ The rights of the coastal State over the “*Continental Shelf*” do not affect the legal status of the water above or the airspace.¹⁹⁶ If the shelf extends 300 miles out, the oil in the ground is owned by the State, but the water above that ground (past 200 miles) is

¹⁸⁹ Ivi, Part. V, Art. 62.

¹⁹⁰ Ivi, Part. V, Art. 60.

¹⁹¹ Ivi, Part. V, Artt. 56(2) and 58(3).

¹⁹² Ivi, Part. VI, Art. 76(1).

¹⁹³ Ivi, Part. VI, Art. 76(2-6).

¹⁹⁴ Ivi, Part. VI, Art. 77(4).

¹⁹⁵ Ivi, Part. VI, Art. 77(1).

¹⁹⁶ Ivi, Part. VI, Art. 78.

technically High Seas, which means that foreign ships can fish there and sail there freely. Article 82 has the Solidarity Clause of the Convention. If a State exploits non-living resources, like oil, on its “*Extended Continental Shelf*”, it must pay a small percentage of the value of that production to the International Seabed Authority (ISA). The ISA then distributes this money to other countries, particularly developing nations. The rate starts at 1% in the sixth year of production and increases by 1% each year until it reaches 7%. In addition, when two States are opposite or adjacent to each other, their shelves often overlap. Article 83 mandates that they must reach an agreement based on international law to achieve an equitable solution.

2.6 High Seas

Finally, we have the “*High Seas*.” They include all marine parts not contained within EEZs, territorial, or Internal Waters.¹⁹⁷ It means that this zone is defined by its exclusion from national jurisdiction, consequently, it remains a global common.

There are some fundamental freedoms and restrictions applied to this area. First of all, the “*High Seas*” are open to all nations, whether coastal or land locked. This includes freedoms such as navigation, overflight, the laying of submarine cables and pipelines, and the construction of artificial islands.¹⁹⁸ However, a crucial limitation is that the “*High Seas*” must be reserved exclusively for peaceful purposes.¹⁹⁹ In addition, foreign-flagged vessels generally enjoy freedom of movement in these international waters, provided they comply with international laws relating to safety and environmental protection.

It is also important to distinguish the water column, which is the “*High Seas*,” from the seabed beneath it. The seabed and its subsoil beyond national limits are termed the “*Area*” under Article 1 and are managed by the “*Authority*,” called the International Seabed Authority, as the “*common heritage of mankind*.”

Finally, the “*High Seas*” begin where national sovereign rights end, specifically beyond the 200-nautical-mile limit of the Exclusive Economic Zone (EEZ). While coastal

¹⁹⁷ Ivi, Part. VII, Sec. 1, Art. 86.

¹⁹⁸ Ivi, Part. VII, Sec. 1, Art. 87.

¹⁹⁹ Ivi, Part. VII, Sec. 1, Art. 88.

States have sovereign rights over resources within their EEZ²⁰⁰ and Continental Shelf,²⁰¹ they cannot claim sovereignty over the “*High Seas*” water column.

2.7 Area and Authority

Article 1 describes the concept of “*Area*” which refers specifically to the ocean floor and subsoil located beyond any national jurisdiction. While “*Authority*” refers to the International Seabed Authority, which oversees the “*Area*”.²⁰² This last maritime zone belongs to everyone and it is managed by the international Seabed Authority (ISA),²⁰³ based in Jamaica. The ISA acts on behalf of mankind because according to Article 136, the Area and its resources are the “Common Heritage of Mankind,” and the ISA is the “manager” of these resources. All States Parties to UNCLOS are *ipso facto* members of the Authority, which means that every country that has ratified UNCLOS automatically becomes a member of the ISA. Today, there is a debate about Article 145 of UNCLOS. In particular, doubts are on the “*Deep Sea Mining*”, the extraction of mineral resources from the ocean floor below 200 metres. Article 145 concerns the competences of Authority which has the duty to ensure the effective protection of the marine environment from dangers due to mining activities; the prevention of pollution and the protection of natural resources within the Area, especially flora and fauna.²⁰⁴ Currently, the ISA is trying to negotiate in order to conclude the Mining Code because different countries want to commercialise battery metals found in polymetallic nodules, such as cobalt, nickel and manganese, even if it means to disrupt the ecosystems.

3. Issue of maritime boundaries

Nowadays, maritime boundary delimitation is a common challenge, particularly when the maritime zones of neighbouring States overlap UNCLOS sets out four key provisions governing the delimitation of maritime boundaries between States with opposite or adjacent coasts. The first is Article 15, which concerns the delimitation of the Territorial Sea and establishes that, in principle, a State may not extend its Territorial Sea

²⁰⁰ Ivi, Part. V, Artt. 55-57.

²⁰¹ Ivi, Part. VI, Art. 76.

²⁰² United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, entered into force 16 November 1994, in United Nations, «Treaty Series», vol. 1833, 1994, Part I, Art. 1.

²⁰³ UNCLOS, Part. XI, Art. 156.

²⁰⁴ Ivi, Art. 145.

beyond the median line, measured from the baselines of both States.²⁰⁵ However, this provision does not apply where it is necessary, by reason of historic title or other special circumstances, to delimit the Territorial Seas of the two States.²⁰⁶ This rule, however, does not apply where delimitation must instead take account of historic title or other special circumstances. Articles 74 and 83 provide that delimitation should be achieved through a negotiated agreement and on basis of international law, in accordance with Article 38 of the Statute of the International Court of Justice, with the aim of reaching an equitable solution.²⁰⁷ Where no agreement is reached within a reasonable time, the States involved are required to resort to the dispute settlement procedures contained in Part XV of UNCLOS.²⁰⁸ When two States overlap, the equitable solution is achieved through a specific Method of three steps which is used by international courts:

1. The equidistance line: the court draws a mathematically perfect middle line.
2. Relevant Circumstances: the court looks for things that make the middle line unfair.
3. The disproportionality test: the court checks if the final water ratio is similar to the land-coastline ratio.²⁰⁹

This methodology has been introduced by one of the cases that has currently become the authoritative statement of modern international law on this issue. It is the Black Sea case which involved Romania and Ukraine. On 16 September 2024, the International Court of Justice (ICJ) was called to analyse the establishment of a maritime boundary that had the duty to define the Continental Shelf and the Exclusive Economic Zone of these two countries in the Black Sea.²¹⁰ The judgement was delivered on 3 February 2009 and, for the first time, it mentioned the three-step approach.

An example is the case of the enclaving of Islands, in which if a tiny island, that belongs to a certain country, sits right in front of another country's coast, the Court might

²⁰⁵ Ivi, Part. II, Sec. 2, Art. 15.

²⁰⁶ Ibidem.

²⁰⁷ Ivi, Part. V, Art. 74(1); Part. VI, Art. 83(1).

²⁰⁸ Ivi, Part. V, Art. 74(2); Part. VI, Art. 83(2).

²⁰⁹ Ivi, Part. V, Art. 74; Part. VI, Art. 83.

²¹⁰ International Court of Justice (ICJ), Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgement, International Court of Justice Archive, General List No. 12, February 3, 2009, p. 61.

ignore the island or give it only a small 12-mile zone to prevent it from stealing the entire EEZ.

4. Dispute settlement

Part XV of UNCLOS establishes a framework for the settlement of disputes about the interpretation or application of the Convention. It is structured into three sections: Section 1 outlines the basic principles that governs dispute settlement; Section 2 sets out the compulsory procedures that lead to binding decisions; and Section 3 specifies the limitations and exceptions applicable to Section 2. Based on this system, States Parties are required to resolve their disputes by peaceful means, as provided in Article 2(3) of the Charter of the United Nations.²¹¹ In particular, they must seek a solution through the methods listed in Article 33(1) of the UN Charter, such as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, the use of regional agencies or arrangements, or any other peaceful means of their own choice. UNCLOS preserves the freedom of Member States to settle disputes at any time through negotiation or other diplomatic channels.²¹² However, where the parties fail to reach an agreement by such peaceful means, they are obliged, subject to certain limitations, to submit the dispute to compulsory procedures resulting in binding decisions.²¹³ According to Article 287, States can choose one or more of the following means to solve its disputes:

- The International Tribunal for the Law of the Sea (ITLOS).
- The International Court of Justice (ICJ).
- An Arbitral Tribunal constituted in accordance with Annex VII.
- A Special Arbitral Tribunal constituted in accordance with Annex VIII.²¹⁴

However, there are two specific situations where it is possible to present the case directly before ITLOS. The first one is described in Article 292, and it is the prompt release of vessels. If a coastal State detains a foreign ship and its crew, for example due to illegal fishing, and refuses to release them even after a reasonable bond is posted, the flag State can go directly to ITLOS to demand their immediate release.²¹⁵ The second

²¹¹ Ivi, Part. XV, Sec. 1, Art. 279.

²¹² Ivi, Part. XV, Sec. 1, Art. 280.

²¹³ Ivi, Part. XV, Sec. 1, Art. 281(1).

²¹⁴ Ivi, Part. XV, Sec. 2, Art. 287(1).

²¹⁵ Ivi, Part. XV, Sec. 2, Art. 292.

case is about provisional measures. Article 290 explained that, if a State's actions are causing irreversible damage to the environment or the rights of another State while a case is pending, the Court can issue an urgent order to stop those actions immediately.²¹⁶ Moreover, access to the courts mentioned before is not unlimited. A State cannot easily sue a coastal State regarding its sovereign rights over fisheries or marine scientific research within the EEZ. These are considered highly sensitive domestic matters.²¹⁷

With specific reference to the South China Sea, it is necessary to clarify the arbitration regime established under UNCLOS. Where no declaration has been made under Article 287, or where the parties are unable to agree on a common dispute settlement forum, the dispute is automatically submitted to arbitration under Annex VII.²¹⁸ Moreover, as already mentioned, there are two distinct types of tribunals: one established under Annex VII and another under Annex VIII. The Annex VIII procedure is designed for disputes on technical matters, in particular, issues related to the protection and preservation of the marine environment. It relies on the participation of experts and specialists in the relevant fields and may also incorporate fact-finding and conciliation elements. However, only a small number of States (eleven) have chosen this option. By contrast, Annex VII establishes a five-member Tribunal, where each party appoints one arbitrator, while the other three members are selected thanks to an agreement between the parties.²¹⁹ If one party refuses to cooperate in the constitution of the Tribunal or if no agreement can be reached on the appointment of neutral arbitrators, the necessary appointments may be made by a third State chosen by the parties, or by the President of the International Tribunal for the Law of the Sea (ITLOS).²²⁰ The Tribunal determines its own procedural rules, although the parties may agree on specific rules, thereby preserving a degree of party autonomy. Importantly, the proceedings may continue even if one party does not appear or fails to present its case.²²¹ The award must remain within the scope of

²¹⁶ Ivi, Part. XV, Sec. 2, Art. 290.

²¹⁷ Ivi, Part. XV, Sec. 2, Art. 297.

²¹⁸ Article 282 provides that:

“If the States Parties which are parties to a dispute concerning the interpretation or application of this Convention have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure” that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in this Part, unless the parties to the dispute otherwise agree.

²¹⁹ UNCLOS, Annex VII, Art. 3(b; d).

²²⁰ Ivi, Annex VII, Art. 3(e).

²²¹ Ivi, Annex VII, Art. 5.

the dispute and include the reasons on which it is based.²²² Tribunal members may also add separate or dissenting opinions.²²³ Therefore, any member of the Tribunal may attach a separate or dissenting opinion to the award.²²⁴ Once issued, the award is final, binding, and not subject to appeal. Where disagreement arises regarding its interpretation, the parties may refer the matter back to the same Tribunal for clarification, in accordance with the procedures set out in Annex VII.²²⁵ For the comprehension of the Arbitral Tribunal jurisdiction under Annex VII, it is important to mention “*The Southern Bluefin Tuna Arbitration*”. This dispute concerned the management of Southern Bluefin Tuna stocks, a highly migratory species. From the 1980s, these stocks declined due to overfishing and inadequate management. In response, Australia and New Zealand (together) and Japan negotiated the 1993 Convention for the Conservation of Southern Bluefin Tuna, which created the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and introduced a system of total allowable catch (TAC) and national quotas. During the 1990s, Japan experimented a new fishing programme to develop scientific knowledge and contribute to the assessment of tuna stocks. Australia and New Zealand opposed the initiative. Their argument was that it led to additional catches that exceeded Japan’s agreed quota levels and was therefore inconsistent with the conservation framework of the CCSBT. Moreover, the scientific uncertainty of stock conditions led to the adoption of a precautionary approach that was necessary because additional catches could jeopardise recovery efforts. Then, Japan, contested the Tribunal’s jurisdiction, and it claims that the dispute arose under the CCSBT, not under UNCLOS.²²⁶ In other words, Japan argued that the CCSBT provided its own dispute settlement mechanism, and it excluded the application of UNCLOS procedures. Nevertheless, the Tribunal held that the dispute fell within the scope of the CCSBT and UNCLOS and affirmed that the parties were free to choose the method of dispute settlement that they prefer, in accordance with Article 281 of UNCLOS. A controversial element was that the Tribunal concluded that the CCSBT implicitly excluded the application of the compulsory procedures set out in Part XV of UNCLOS. This Statement

²²² Ivi, Annex VII, Art. 9.

²²³ Ivi, Annex VII, Art. 10.

²²⁴ Ibidem.

²²⁵ Ivi, Annex VII, Art. 12.

²²⁶ Arbitration Tribunal, *Southern Bluefin Tuna Arbitration*, August 4, 2000, parr. 44-72.

was in contrast with the CCSBT which did not contain an explicit clause to that effect. Therefore, the case shows how the interpretation of one treaty is used to define limitations on dispute settlement procedures under another instrument. Overall, the arbitration mechanisms described by UNCLOS are fundamental to the resolution of maritime disputes. Annex VII constitutes the default procedure, while Annex VIII offers a specialised alternative for technical disputes. In particular, the Southern Bluefin Tuna Arbitration illustrates the complexity of dispute settlement under UNCLOS.

Article 298 allows State Parties to declare that they do not accept one or more of the compulsory procedures leading to binding decisions provided for in Section 2 of Part XV.²²⁷ This declaration is valid if they make it when they sign, ratify or access UNCLOS, or at any later stage. Many powerful States, such as Italy, France, and China, have signed a declaration stating they do not accept compulsory arbitration for maritime boundary delimitation. This means they can only be taken to court if they agree to it voluntarily. Therefore, this exception does not concern the obligations of Section 1.²²⁸ Consequently, where no settlement is achieved even if they respect the requirements of Section 1, the exception under Article 298 may still be invoked. Moreover, paragraph 1 of Article 298 addresses disputes about the interpretation or application of Articles 15, 74, and 83, that concern the delimitation of maritime boundaries.²²⁹ In these cases, at the request of any party to the dispute, the States concerned are required to accept the submission of the matter to conciliation in accordance with Annex V, Section 2.²³⁰

First of all, a declaration made by a State Party does not mean that it is released from any obligation to settle disputes about maritime boundary delimitation. Then, where negotiations between the parties do not produce an agreement within a reasonable period of time, each party can initiate conciliation proceedings under Annex V, Section 2. Article 283 requires States Parties to exchange views on the settlement of the dispute, to impose the duty to engage in negotiations.²³¹ The nature of this obligation has raised some doubts. The Permanent Court of International Justice (PCIJ) addressed this issue in the *Railway Traffic between Lithuania and Poland* case. The dispute concerned the railway

²²⁷ Ivi, Part. XV, Sec. 3, Art. 298(1)(a).

²²⁸ Ivi, Part. XV, Sec. 3, Art. 298(1).

²²⁹ Ivi, Part. XV, Sec. 3, Art. 298(1)(a)(i).

²³⁰ Ibidem.

²³¹ Ivi, Part. XV, Sec. 1, Art. 283(2).

line between Vilnius and Kaunas. According to Lithuania, Poland had obstructed transit traffic, while Poland argued that the matter involved sovereignty and security concerns. The disagreement was linked to the broader conflict over the Vilnius region, and the railway was used as a tool of political pressure. In its judgment, the PCIJ affirmed that States have a duty not only to enter negotiations, but also to pursue them to reach an agreement.²³² At the same time, the Court clarified that this duty does not amount to an obligation to conclude an agreement.²³³ Therefore, the decision implies a reasonable conduct throughout the negotiation process. Finally, about conciliation, proceedings may be commenced only where the parties have failed to reach an agreement within a “reasonable time”.²³⁴ This suggests that a court or tribunal may assess whether negotiations were genuinely meaningful,²³⁵ to ensure that the parties have exhausted realistic possibilities of settlement.²³⁶

5. UNCLOS and China’s Claim in the South China Sea.

China’s sovereign rights in the South China Sea derive from long-standing State practice, not from UNCLOS. It means that China’s sovereignty over the South China Sea Islands, which are the Dongsha Islands, the Xisha Islands, the Zhongsha Islands and the Nansha Islands, and on the adjacent waters predates the Convention. It was the first State to discover, name, explore, and exploit these features and their resources, and the first to exercise continuous authority over them.²³⁷ This mode of territorial acquisition was recognised in earlier international practice. Moreover, no objections were raised by the international community to the Nine-dash line, and no diplomatic protests were made by neighbouring Southeast Asian coastal States, at least until the mid-1990s. Li Jinming argues that this situation may be interpreted as tacit acceptance. In other words, China’s claim is based on historic rights. In the context of maritime law, they are claims made by a State over maritime areas because the State has exercised authority over those waters

²³² International Court of Justice, Judgment of 18 July 1966, *Southwest Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, in *ICJ Reports*, 1966, p. 46, para. 85.

²³³ Ibidem.

²³⁴ Ivi, Part. XV, Sec. 3, Art. 298(1)(a)(i).

²³⁵ Ivi, Part. XV, Sec. 2, Art. 294(1).

²³⁶ Ivi, Part. XV, Sec. 2, Art. 295.

²³⁷ Ministry of Foreign Affairs of the People’s Republic of China, *Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, December 7, 2014.

for a very long period. However, UNCLOS was designed to create a universal set of rules. Under Article 311, the Convention generally prevails over other agreements or historical customs. Indeed, UNCLOS replaced any historic rights. Once a State ratifies UNCLOS, it agrees that its maritime claims must be based on land features (islands/coasts), not ancient maps like the Nine-dash line map. Moreover, historic rights to resources are incompatible with the EEZ regime established by UNCLOS.²³⁸ This is because the term “Exclusive” in Exclusive Economic Zone is the key legal barrier. Under Article 56, within the 200-mile zone, the coastal State has sovereign rights for the purpose of exploring and exploiting natural resources. If a certain country has an EEZ based on its coast, but another one claims historic rights to fish in that same area based on an ancient map, the zone is no longer exclusive.

In this historical context, the Chinese government did not consider it necessary to define the legal status of the waters enclosed by the dashed line in terms of UNCLOS.²³⁹ In addition, it was not expected that China complied with legal standards that had not yet been codified at the time.

The relationship between historic rights and the general rules of international law was a major issue during the negotiations of UNCLOS. A 1962 report of the Secretariat of the International Law Commission examined this relationship. The result was that the concept of historic waters developed from the historical reality that States often asserted sovereignty over maritime areas they regarded as vital, without evolving interpretations of general international law.²⁴⁰ The report also suggested that a long-standing exercise of sovereignty could not be invalidated because it did not align with emerging rules. States could not be expected to accept legal norms that would deprive them of extensive maritime areas over which they had previously exercised sovereignty.²⁴¹

As part of the compromise, UNCLOS largely avoided explicit regulation of historic rights or historic waters. Nevertheless, the preamble emphasises the desirability of establishing a legal order for the seas and oceans “with due regard for the sovereignty of

²³⁸ UNCLOS, Part XVII, Art. 311.

²³⁹ SONG, YU, *China's “Historic Waters” in the South China Sea: an analysis from Taiwan*, cit.

²⁴⁰ Z. KEYUAN, *Historic Rights in International Law and in China's Practice*, Ocean Development & International Law, Vol. 32, 2001, pp.149-168.

²⁴¹ International Law Commission, *Juridical Regime of Historic Waters, Including Historic Bays*, Document A/CN.4/143: Study Prepared by the Secretariat, in International Commission, Yearbook of the International Law Commission, 1962, UN: New York, 1964, Vol. 2.

all States. Therefore, it is possible to argue that respect for sovereignty is a prerequisite for the application of the Convention to determine maritime entitlements. On this basis, UNCLOS cannot be used to negate a State's historic rights claims. According to this point of view, the argument that China's historic rights claim is unlawful has been questioned, with Sourabh Gupta contending in 2014 that China is neither more nor less culpable than other claimants.

Another important element of the legal discussion involves land reclamation. In particular, China turned tiny reefs into military bases. According to Article 60 of UNCLOS, artificial islands do not have the status of actual islands.²⁴² For this reason, they do not have a Territorial Sea, and they do not affect the delimitation of the EEZ. The only maritime zone an artificial island is allowed to have is a 500-meter safety zone.²⁴³ This is intended only for the safety of navigation, to prevent ships from crashing into the structure. If a feature was a low-tide elevation before the sand was poured, it remains a feature with zero maritime rights, even if it now has a 3-kilometer runway on it.²⁴⁴ China also violated its duty to protect marine environment,²⁴⁵ embodied by Articles 192 and 194, by destroying coral reefs to build these bases. In particular, Article 192 concerns the mandatory duty for States to protect and preserve the marine environment.²⁴⁶ While Article 194 requires States to take all necessary measures to prevent, reduce, and control pollution.²⁴⁷ Therefore, China failed to conduct an adequate Environmental Impact Assessment (EIA) and lacked diligence because it follows destructive fishing and construction practices. An EIA is a formal process used to predict the environmental consequences of a proposed plan, policy, or project. Under Article 206, if a State has proofs to believe that planned activities may cause substantial pollution of the marine environment, it must assess the potential effects of such activities.²⁴⁸ According to Article 206, an EIA must satisfy three specific steps:

1. The State must determine if the project might cause substantial or significant harm. If it might, an EIA is legally required.

²⁴² Ivi, Part V, Art. 60(8).

²⁴³ Ivi, Part V, Art. 60(4).

²⁴⁴ Ivi, Part V, Art. 60(5).

²⁴⁵ Ivi, Part XII, Section 1, Art. 192.

²⁴⁶ Ibidem.

²⁴⁷ UNCLOS, Part XII, Section 1, Art. 194.

²⁴⁸ Ivi, Part XII, Section 4, Art. 206.

2. The State must conduct a scientific study to quantify the potential damage to coral reefs, water quality, fish stocks, and biodiversity.²⁴⁹
3. Once the assessment is finished, Article 205 requires States to publish the results or provide them to the relevant international organizations so that other nations can review them.²⁵⁰

China argued it had done internal studies, but under Articles 205 and 206, these studies cannot be secret. They should have been shared with the international community to ensure the protection of the Common Heritage of Mankind.

The most technical part of the dispute concerns Article 121, which means the identification of the tiny points of land in the South China Sea as islands or rocks. The main difference is that islands can produce 430,000 square kilometres of EEZ,²⁵¹ while rocks have only 12 nautical miles of Territorial Sea.²⁵² According to Article 121(3), an island must have the characteristics necessary for human habitation and economic life. The Spratly islands, for example, are too small and lack fresh water or vegetation to support a community. Therefore, they are all rocks. This has been the most famous application of Article 121 in history. The status of a feature determines how much water it owns.

As already mentioned about access to courts, China filed a declaration in 2006 using Article 298 to exclude disputes over maritime delimitation and military activities from compulsory arbitration. Due to this exception, China argued the Tribunal before which the Philippines brought the case of the South China Sea Dispute, had no jurisdiction about this problem and refused to participate. In addition, UNCLOS does not have the competence on territorial sovereignty, but exclusively on maritime zones. However, the case was not about boundaries delimitation, but about the status of features and the interpretation of the Convention, which Article 298 does not protect.

²⁴⁹ *Ibidem*.

²⁵⁰ UNCLOS, Part XII, Section 4, Art. 205.

²⁵¹ *Ivi*, Part VIII, Art. 121(2).

²⁵² *Ivi*, Part VIII, Art. 121(3).

CHAPTER III: INTERESTS OF CHINA IN THE SOUTH CHINA SEA

SUMMARY: 1. Introduction - 2. Territorial claims of the countries involved in the South China Sea Dispute – 3. History of the Nine-dash line - 4. The legal purpose and status of the Nine-dash-line - 5. Issues of Law in this context - 6. Historic Title and Prescription - 7. Acquiescence, recognition and estoppel - 8. The Issue of Temporal Law - 9. The Issue of Two Legal Systems - 10. Freedom of Navigation in the South China Sea - 11. Future Prospects - 12. Geo-economic dimension of China's interests in the South China Sea.

1. Introduction

The South China Sea covers about 3.5 million square kilometres, and it is bordered by many coastal States, such as Brunei, China, Indonesia, Malaysia, the Philippines, and Vietnam.²⁵³ In this semi-enclosed sea there are numerous maritime features like islands, reefs, shoals, cays, and rocks. They are commonly divided into four main groups. The Xisha (Paracel) Islands; the Dongsha (Pratas) Islands; the Zhongsha Islands, which include Macclesfield Bank and various reefs and sandbanks; and the Nansha (Spratly) Islands.²⁵⁴

For much of the twentieth century, the region's value was given by rich fishing grounds and reserves of oil and natural gas beneath the seabed.²⁵⁵ In addition, it has been one of the world's most important maritime corridors because it has facilitated trade and navigation among the surrounding States and between East and South Asia and their commercial partners in Africa and other regions.²⁵⁶ In recent decades, however, two major developments have intensified disputes in the area. First, during the 1970s Vietnam, the Philippines, and China began to occupy features in the Spratly Islands (historically called the Nansha Islands).²⁵⁷ Today, nearly all of the islands and maritime features in this group are controlled by one State or another. Second, under Article 76(8) of the United Nations Convention on the Law of the Sea (UNCLOS), coastal States can submit claims for an

²⁵³ International Hydrographic Organization, *Limits of Oceans and Seas*, cit., pp. 30-31.

²⁵⁴ Ibidem.

²⁵⁵ CHENG, *The Dispute over the South China Sea Islands*, cit., p. 266.

²⁵⁶ THAO, AMER, *A New Legal Arrangement for the South China Sea?* cit., p.334.

²⁵⁷ Z. GAO, B.B. JIA, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, in «American Journal of International Law», vol. 107, fasc. 1, 2013, pp. 98.

extended Continental Shelf beyond 200 nautical miles from their baselines.²⁵⁸ States around the South China Sea made submissions to the Commission on the Limits of the Continental Shelf, and the result was of the overlapping of emerged claims. In particular, in May 2009, Malaysia and Vietnam presented a joint submission. In response, China attached a map with the so-called Nine-dash line, that highlights the legal and political significance of that claim. Moreover, it also shifts the focus of the controversy toward its validity according to international law.

2. Territorial Claims of the Parties of the South China Sea Dispute.

First, it is important to summarize claims of each country in the South China Sea. They will be later mentioned in order to define their evolution and justification. This paragraph is necessary to have a general overview of the dispute before describing it in depth.

These claims can be divided into two main categories: some rely on assertions of historic rights, while others are grounded in the provisions of UNCLOS. The existence of different territorial claims reflects the absence of a shared understanding among the parties and has contributed to a regional dispute that has persisted for decades. These claims are assessed considering the 1982 UNCLOS framework, particularly given that all Southeast Asian coastal States have ratified the Convention.

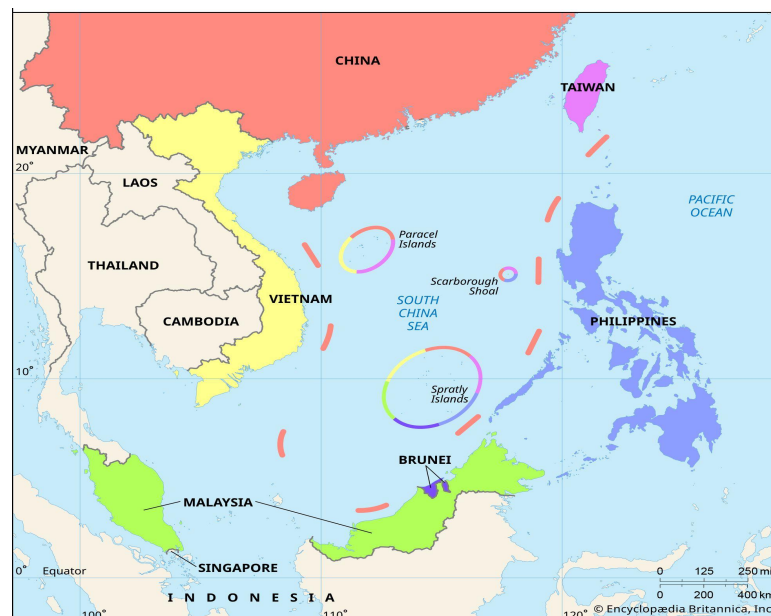


Figure 2: Territorial Claims - Britannica

²⁵⁸ UNCLOS, Part. VI, Art. 76.

2.1 Vietnam

Vietnam asserts sovereignty over the Spratly and Paracel Islands. Unlike China, however, Vietnam has not formally articulated claims to the South China Sea through official maps or written declarations. Regarding the Spratly Islands, in the 1970s Vietnam incorporated them into the administrative structure of Khanh Hoa Province. During the same decade, China obtained the control of the Paracel archipelago through the Battle of the Paracel Islands.²⁵⁹ China has consistently maintained that it has exercised effective control over both the Paracels and the Spratlys since the seventeenth century.²⁶⁰ Consequently, China, Brunei, Malaysia, and the Philippines oppose Vietnam's claims.

In 2009, Vietnam and Malaysia submitted information on their claims in the South China Sea to the United Nations Commission on the Limits of the Continental Shelf (CLCS).²⁶¹ The submission required the States involved to clarify both the legal status of relevant features and the geographical extent of their maritime entitlements.²⁶² In addition, Vietnam adopted a specific legislation in 2012 that asserted jurisdiction over the Paracel and Spratly Islands. It also Stated that foreign naval vessels should register with Vietnamese authorities when transiting the area.²⁶³

2.2 Malaysia

Malaysia's involvement in the South China Sea dispute began in 1979, when the national Department of Mapping and Survey published an official map with parts of the Spratly Islands within Malaysia's Continental Shelf.²⁶⁴ The map overlapped with the EEZ and Continental Shelf claims of other States, and it caused protests from neighbours, such as China, Indonesia, Vietnam, and the Philippines. Although Malaysia's position is

²⁵⁹ US Energy Information Administration (EIA), *South China Sea*, 2013.

²⁶⁰ TONNESSON, *Vietnam's Objective in the South China Sea: National or Regional Security?* cit., pp. 199–220.

²⁶¹ Commission on the Limits of the Continental Shelf (CLCS), *Outer Limits of the Continental Shelf beyond 200 Nautical Miles from the Baseline*, Submissions to the Commission: Joint Submission by Malaysia and the Socialist Republic of Viet Nam, 2009.

²⁶² H. T. NGUYEN, *Extended Continental Shelf: A Renewed South China Sea Competition*, Maritime Issues, April 19, 2020.

²⁶³ EIA, *South China Sea*, cit.

²⁶⁴ A. J. ROACH, *Malaysia and Brunei: An Analysis of their Claims in South China Sea*, CNA Occasional Paper, 2014.

legally weak, it has never been considered comparable to other regional claims to the Spratly archipelago.²⁶⁵

In 2009, according to Article 76, paragraph 8 of UNCLOS,²⁶⁶ Malaysia and Vietnam jointly submitted to the CLCS information concerning the outer limits of their Continental Shelf beyond 200 nautical miles, with respect to the southern part of the South China Sea.²⁶⁷ This Commission did not issue recommendations on the establishment of those outer limits.

Ten years later, in 2019, Malaysia filed a partial submission to the CLCS concerning the remaining portion of its Continental Shelf beyond 200 nautical miles in the northern part of the South China Sea.²⁶⁸ Previously, Malaysia's approach had often been characterised by "quiet diplomacy" and a preference for maintaining cooperative bilateral relations with China rather than openly challenging Beijing.²⁶⁹ Following the 2019 submission, however, Malaysia appeared to adopt a more UNCLOS-oriented strategy, signalling greater distance from China's position. At the same time, Kuala Lumpur strengthened its external partnerships, including closer ties with the United States, and supported efforts to reinforce a more unified ASEAN approach.²⁷⁰

2.3 Brunei

After achieving independence in 1984, Brunei issued maps declaring a 200-nautical-mile Exclusive Economic Zone (EEZ) that overlapped with China's Nine-dash line, as well as a Continental Shelf extending toward a hypothetical median line with Vietnam. Brunei has also asserted rights on a portion of the Spratly archipelago closer to

²⁶⁵ Ibidem.

²⁶⁶ In Article 76, paragraph 8 of the UNCLOS it is provided that information on the limits of the Continental Shelf beyond 200 nautical miles from the baselines from which the breadth of the Territorial Sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. Further, the Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their Continental Shelf and such established limits shall be final and binding.

²⁶⁷ CLCS, *Outer Limits of the Continental Shelf beyond 200 Nautical Miles from the Baseline*, cit.

²⁶⁸ Malaysia, *Malaysia Partial Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations on the Law of the Sea 1982 in the South China Sea*, 2017, Kuala Lumpur: Malaysia.

²⁶⁹ Ibidem.

²⁷⁰ NGUYEN, *Extended Continental Shelf: A Renewed South China Sea Competition*, cit.

its EEZ.²⁷¹ This country has always been a quiet claimant, because it has based its maritime claims primarily on UNCLOS.²⁷² Brunei has adopted a cooperative measure in the South China Sea disputes.²⁷³ At the same time, it has limited military capacity and economic dependence on hydrocarbon resources, so the Sultanate has agreed with China's preference to resolve disputes through bilateral arrangements.²⁷⁴

2.4 China

The People's Republic of China (PRC) grounds its claims to the Spratly and Paracel Islands largely on historical narratives, including references to naval activity dating back to the fifteenth century.²⁷⁵ In 1947, the Kuomintang government drew a line enclosing these island groups, producing what later became known as the Nine-dash line map. Through this depiction, China asserted sovereignty over the islands located within the enclosed area.²⁷⁶

After the establishment of the PRC by the Communist Party in 1949, the new government continued to use the Nine-dash line in official communications to claim rights in the waters within it.²⁷⁷

In 2009, the joint CLCS submission by Vietnam and Malaysia led China to submit the Nine-dash line map to the Commission. It wanted to reinforce its claims and extend their legitimacy beyond 200 nautical miles. China's assertions have been directly challenged by Malaysia, Vietnam, Brunei, and the Philippines, because they have declared the existence of overlapping rights over maritime zones in the region.²⁷⁸ However, China's Nine-dash line claim is not in compliance with UNCLOS. The Convention has rules on baselines, the breadth of the Territorial Sea, the legal regime of islands, low-tide elevations, the EEZ, the Continental Shelf, maritime delimitation, and

²⁷¹ RÜLAND, *The Nature of Southeast Asian Security Challenges*, cit., pp. 545–563.

²⁷² EIA, *South China Sea*, cit.

²⁷³ Brunei's Ministry of Defence, *Defence White Paper: Defending the Nation's Sovereignty, Expanding Roles in Wider Horizons*, 2011.

²⁷⁴ B. A. PUTRA, *Comprehending Brunei Darussalam's Vanishing Claims in the South China Sea: China's Exertion of Economic Power and the Influence of Elite Perception*, Cogent Social Sciences, 2021.

²⁷⁵ EIA, *South China Sea*, cit.

²⁷⁶ T. L. A. NGUYEN, *Origins of the South China Sea Dispute*, in *Territorial Disputes in the South China Sea*, edited by J. Huang and A. Billion, London: Palgrave Macmillan, 2015, pp. 15–38.

²⁷⁷ EIA, *South China Sea*, cit.

²⁷⁸ *Ibidem*.

dispute settlement. These provisions are applicable to the South China Sea.²⁷⁹ This means that the legal foundation of China's claim on the islands and maritime spaces is contested, because it is in contrast with UNCLOS standards and because it lacks enough historical evidence.

In addition, China started to build artificial island, enlarge existing features and transform reefs and islets into larger installations in the contested region. It was useful to support its maritime claims like potential EEZ entitlements extending 200 nautical miles.²⁸⁰ In practice, China tried to claim rights over features that cannot naturally sustain human habitation. However, the construction of new landforms guarantees to reinforce its control over the region.

These actions are against Article 121(3) of UNCLOS, which provides that uninhabited rocks have not an Exclusive Economic Zone or a Continental Shelf. China's position has complicated relations with neighbouring States, and it has contributed to serious escalation, with incidents and military exercises to protect competing sovereignty claims.²⁸¹

2.5 The Philippines

The Philippines bases its claims on both legal and historical grounds, particularly about Scarborough Shoal and the Kalayaan Island Group (KIG), which consists of approximately fifty features in the Spratly Islands.²⁸² These claims are not in compliance with China's declarations of ownership. In 1956, the Philippine government began the exploration of the South China Sea, and the justification of its actions was that the relevant islands and shoal were *terra nullius*. It subsequently occupied several features and called them the Kalayaan Island Group. The Philippines also argued that these islands constitute

²⁷⁹ UNCLOS in Article 121 defines an island as a naturally formed area of land, surrounded by water, which is above water at high tide. It further provides that the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory. The exception of the latter are rocks which cannot sustain human habitation or economic life of their own and which, therefore, have no Exclusive Economic Zone or Continental Shelf.

²⁸⁰ Council on Foreign Relations (CFR), *Territorial Disputes in South China Sea*, 2017.

²⁸¹ EIA, *South China Sea*, cit.

²⁸² M. E. ROSEN, *Philippine Claims in the South China Sea: A Legal Analysis*, CNA Occasional Paper, 2014.

a special regime because even if they are geographically separate from the main Philippine archipelago, they belong to Manila.²⁸³

According to UNCLOS, the Philippines' maritime entitlements are stronger. An EEZ may extend up to 200 nautical miles from the baseline. The relevant island groups are closer to the Philippines than to China and fall within the Philippines claimed EEZ. Nevertheless, despite the apparent compatibility of Manila's position with UNCLOS provisions, China, Malaysia, and Vietnam have challenged Philippine claims.²⁸⁴

3. History of the Nine-dash line

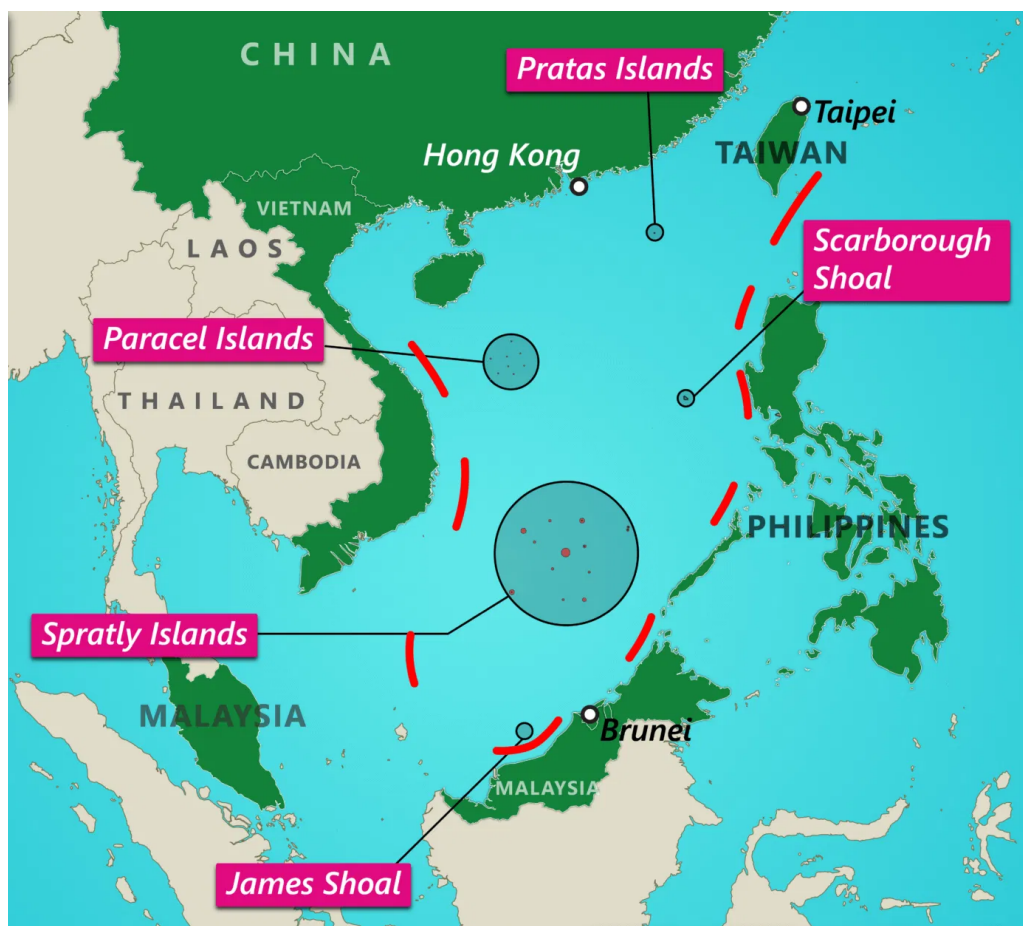


Figure 2: The Nine-Dash Line - PMF IAS

In 1935, the Chinese authorities established a commission that had the aim to create an official list of geographic names for islands in the South China Sea.²⁸⁵ In the beginning,

²⁸³ EIA, *South China Sea*, cit.

²⁸⁴ CFR, *Territorial Disputes in South China Sea*, cit.

²⁸⁵ J. SHEN, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, in *Chinese Journal of International Law*, vol. 1, 2002, pp. 94-105.

Chinese sources often based their sovereignty over certain maritime features on earlier period facts, when polities described as “*southern sea barbarians*” sent tribute to successive imperial courts before the third century AD. Then, many of these maritime areas were associated with routes that formed part of what is known as the Maritime Silk Road.²⁸⁶ This maritime route of trade and commerce were defined during the Qin and Han dynasties (221 BC–220 AD). They gained importance under the Tang and Song dynasties (618–1279 AD).²⁸⁷ In particular, during the Han period, maps embodied all territories considered as part of China at the time. The Maritime Silk Road linked China to distant markets, especially the northern shores of the Mediterranean.²⁸⁸ Chinese vessels departed from ports in southeastern China, continued along the coasts of Philippines, Vietnam, Malaysia, and Thailand, passed through the Strait of Malacca, until India and the Mediterranean region.²⁸⁹ Therefore, the importance of this maritime route gradually diminished between 1474 and 1551. This decline reflected changes in imperial priorities during the late Ming dynasty, when more isolationist policies were adopted. In 1840, the end of the First Opium War between China and Great Britain, the route had largely fallen out of regular use.²⁹⁰

In 1914, two private Chinese cartographers, Bai Meichu and Sun Jing, created a map with China’s territory that included both the Paracel Islands (Xisha) and the Spratly Islands (Nansha).²⁹¹ Then, the boundary shown on Chinese maps were expanded. In 1935, all four principal island groups in the South China Sea fell under China’s jurisdiction.²⁹² That same year, the government of the Republic of China (ROC) established the Land and Water Maps Inspection Committee to review and standardize geographic information of private atlases. The committee released a catalogue with 132 place names, in both Chinese and English, for islands and other maritime features in the South China Sea.²⁹³

²⁸⁶ Ivi, p. 95.

²⁸⁷ Ivi, p. 96.

²⁸⁸ Ibidem.

²⁸⁹ Ivi, p.104.

²⁹⁰ Ivi, p.105.

²⁹¹ WO GUI NAN HAI ZHU DAI SHI LIAO HUI BIAN, *Collection of Historical Materials Concerning Our Country’s Islands in the South China Sea*, Han Zhenhua, Lin Jinzhi & Wu Fengqi eds., 1988.

²⁹² Ibidem.

²⁹³ Ibidem.

This initiative was considered as a formal response to France that tried to assert claims over some of these islands.

After the end of the Second World War, China regained control of the Xisha (Paracel) and Nansha (Spratly) Islands from Japan in 1946, thanks to the Cairo Declaration and the Potsdam Proclamation.²⁹⁴ At the same time, other coastal States, Vietnam, did not raise immediate objections, and Chinese naval forces installed stone markers on Yongxing (Woody) Island in the Paracels and on Taiping (Itu Aba) Island in the Spratlys to symbolize their presence.²⁹⁵

In 1947, the Chinese government introduced a U-shaped demarcation line, later called the “*eleven-dash line*”, to have a geographical representation of its claimed authority in the South China Sea. This line extended until Zengmu Ansha (James Shoal), located at approximately 3° 58' N latitude and 112° 17' E longitude.²⁹⁶ This line reaffirmed China's sovereignty over the island groups in the emerging postwar order. That same year, the Ministry of the Interior issued a broader list with 172 geographical names for maritime features in the South China Sea.²⁹⁷ These elements were part of a national administrative atlas published in February 1948 by the Commercial Press in Beijing. Finally, in May 1949, the four island groups and their associated features were formally placed under the administrative jurisdiction of the Hainan District within Guangdong Province.²⁹⁸

The Philippines gained independence in July 1946. In 1949, it began to express interest in certain features of the Nansha (Spratly) Islands.²⁹⁹ This interest was justified by the safeguard of Filipino fishermen that operated in nearby waters. On October 1, 1949, Mao Zedong proclaimed the establishment of the People's Republic of China (PRC). Several years later, on May 29, 1956, the PRC formally responded to claims of the Philippines on parts of the Nansha Islands due to their geographic proximity.³⁰⁰

²⁹⁴ SHEN, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, cit., p. 120.

²⁹⁵ WO GUI NAN HAI ZHU DAI SHI LIAO HUI BIAN, *Collection of Historical Materials Concerning Our Country's Islands in the South China Sea*, cit.

²⁹⁶ Ivi, pp. 212.

²⁹⁷ Ivi, pp. 37-38.

²⁹⁸ Ibidem.

²⁹⁹ Ivi, pp. 270-271.

³⁰⁰ ZHONG HUA REN MIN GONG HE DUI WAI GUAN XI WEN JIAN JI, *Collection of Documents on the Foreign Relations of the People's Republic of China*, vol. 54 (1956–1957), 1961, pp. 61-62.

China's position was explained in its Statement issued on August 15, 1951, by Foreign Minister Zhou Enlai. He affirmed that the Xisha (Paracel) Islands and Nanwei Dao (part of the Spratly group), with the Nansha, Zhongsha, and Dongsha island groups, constituted Chinese territory. According to the Chinese narrative, these features had fallen under Japanese occupation during the war, and they were given to China when Japan surrounded.³⁰¹

In 1953, the cartographic representation of China's claim was modified. Two of the original eleven dashes were removed from the U-shaped line. The result was the Nine-dash line that subsequently appeared in official atlases published in mainland China.³⁰² To understand how the Nine-dash line evolved between 1958 and 2011, it is essential to consider relevant legislative and administrative measures adopted by China. On September 4, 1958, there was the promulgation of the Declaration on the Territorial Sea.³⁰³ This declaration shaped China's maritime legal framework. Article 1 established a Territorial Sea breadth of twelve nautical miles measured from the baselines and explicitly Stated that this regime applied to the mainland and its coastal islands, but also to offshore island groups (Dongsha, Nansha, Penghu, Taiwan, Xisha, and Zhongsha).

In 1959, administrative responsibility for the Xisha, Zhongsha, and Nansha Islands was assigned to a governmental office established on Yongxing (Woody) Island under the authority of the Hainan District.³⁰⁴ In 1969, this administrative body was placed under the jurisdiction of Guangdong Province. Then, in 1984, the National People's Congress incorporated the "islets, reefs, and surrounding sea areas" of the Xisha, Nansha, and Zhongsha Islands into the territorial scope of the new Hainan Administrative Region.³⁰⁵

China signed the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 and formally ratified it on May 7, 1996. Before its ratification, on February 25, 1992, it established the Law on the Territorial Sea and the Contiguous Zone.³⁰⁶ Article 2

³⁰¹ Ivi, p. 30.

³⁰² Y. JIA, *Nan Hai "Duan Xu Xian" de fa lu di wei*, Legal Status of the "Broken Line" in the South China Sea, in *China's Borderland History and Geography Studies*, vol. 15, 2005, pp. 112-113.

³⁰³ ZHONG HUA REN MIN GONG HE DUI WAI GUAN XI WEN JIAN JI, *Collection of Documents on the Foreign Relations of the People's Republic of China*, cit., pp. 162-163.

³⁰⁴ Ibidem.

³⁰⁵ Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China, *The Laws of the People's Republic of China (1983-1986)*, 1987, p. 146.

³⁰⁶ Ivi, 1993, p. 343.

of that law explicitly included the four island groups in the South China Sea within China's land territory. It also affirmed that other islands located within China's twelve-nautical-mile Territorial Sea formed part of its sovereign domain. In addition, Article 3 authorized the adoption of straight baselines in order to determine the breadth of the Territorial Sea.

When China deposited its ratification of UNCLOS on June 7, 1996, it reaffirmed its claims according to Article 2 of the 1992 Law on the Territorial Sea and the Contiguous Zone.³⁰⁷ Then, on June 26, 1998, China promulgated the Law on the Exclusive Economic Zone and the Continental Shelf. Article 14 of that statute recognizes and safeguards historical rights in relevant maritime areas, the ones used by China to assert its sovereignty in the South China Sea.³⁰⁸

Beyond domestic legislation and administrative measures, China has also advanced its claims at the international level. Interest in the South China Sea intensified in the late 1960s, when studies highlighted its significant oil and natural gas potential. Tensions escalated in the early 1970s. In July 1971, the Philippines asserted sovereignty over the Kalayaan Island Group, part of the Spratly (Nansha) Islands.³⁰⁹ In January 1974, China obtained the control of the Xisha (Paracel) Islands. It was able to do so due to an armed confrontation with the Republic of Vietnam (South Vietnam).³¹⁰ Before that conflict, South Vietnam had asserted claims on more than ten features in the Nansha Islands and had controlled several of them. In 2004, unified Vietnam was occupying twenty-nine features in the Spratly group. During the Third United Nations Conference on the Law of the Sea (1973–1982), China repeated its claims. It also objected to actions by other States that it considered violations of its sovereignty on islands or maritime features in the South China Sea.³¹¹

One of the most significant disputes involved Vietnam. On December 25, 2000, China and Vietnam signed the Agreement on the Delimitation of the Territorial Seas,

³⁰⁷ United Nations, Division for Ocean Affairs and Law of the Sea, *Declarations and Statements*.

³⁰⁸ Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China, 1998, p. 61.

³⁰⁹ CHENG, *The Dispute over the South China Sea Islands*, cit., pp. 270-271.

³¹⁰ Z. GAO, *The South China Sea: From Conflict to Cooperation?* in *Ocean Development and International Law*, vol. 25, 1994, pp. 345-348, p. 348.

³¹¹ S. WU, X. LI, T. ZHONG, Y. WU, Y. FU, *Nan Hai wen ti wen xian hui bian*, Collection of Documents on the Issue of the South China Sea, 2001, pp. 63-69.

Exclusive Economic Zones, and Continental Shelves in the Beibu Gulf (known in Vietnam as the Bac Bo Gulf, and internationally as the Gulf of Tonkin).³¹² In the course of negotiations, both sides debated if they should use the meridian line embodied by the 1887 Sino-French Treaty. Vietnam supported its use to delimit maritime boundaries in the Gulf of Tonkin, while China rejected this approach. The argument was that the 1887 line had the aim to allocate islands and not to establish a maritime boundary. Finally, the parties agreed not to apply the 1887 treaty's meridian for maritime delimitation due to the fact that it would have placed the boundary disproportionately close to China's Hainan Island. It would have produced an inequitable outcome.

On May 7, 2009, China submitted Note Verbale CML/17/2009 to the United Nations in response to the joint submission made the previous day by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf (CLCS).³¹³ In that communication, China affirmed again its sovereignty over the islands in the South China Sea and the adjacent waters, as well as its sovereign rights and jurisdiction over the seabed and subsoil of these portions.³¹⁴ The claim to an extended Continental Shelf advanced in the joint submission violated its rights and interests in the region. The note also included a map depicting the so-called Nine-dash line. Then, Vietnam replied on May 8, 2009, through Note Verbale No. 86/HC-2009. The Paracel and Spratly archipelagos formed part of its national territory.³¹⁵ In addition, China's claims to the islands and surrounding waters lacked a valid legal and historical foundation and therefore should be regarded as without effect. Malaysia subsequently addressed the issue through Note Verbale HA 24/09.³¹⁶ On May 20, 2009, its Permanent Mission clarified that the joint submission was made without prejudice to the eventual delimitation of Continental Shelves between States with opposite or adjacent coasts, in accordance with Article 76(10) of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). It also emphasized that

³¹² Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and the Continental Shelves, Beibu Gulf, June 30, 2004, in United Nations, Treaty Series, vol. 2336, 2004, p. 179.

³¹³ Permanent Mission of the People's Republic of China to the United Nations, Note Verbale CML/17/2009, May 7, 2009.

³¹⁴ *Ibidem*.

³¹⁵ Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General, Note Verbale No. 86/HC-2009, May 8, 2009.

³¹⁶ Permanent Mission of Malaysia to the UN Secretary-General, Note Verbale HA 24/09, May 20, 2009.

the submission was without prejudice to the positions of States involved in land or maritime disputes, as provided in paragraph 5(b) of Annex I to the CLCS Rules of Procedure.³¹⁷ However, Malaysia did not directly engage with the substantive arguments raised in China's earlier note.

The Philippines, another key actor in the South China Sea dispute, did not immediately respond to China's 2009 note verbale. However, in Note Verbale No. 000819 dated August 4, 2009, Manila raised concerns about the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf.³¹⁸ Vietnam replied on August 18, 2009. It repeated that it has sovereignty on the Nansha (Spratly) and Xisha (Paracel) Islands, but it also wanted to resolve disputes through peaceful negotiations in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) and the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC).³¹⁹

In July 2010, Indonesia also focused on the implications of the map attached to China's 2009 note. Indonesia is not a claimant to the disputed island groups, but its Note Verbale No. 480/POL-703/VII/10 challenged the idea that small features in the South China Sea could generate an Exclusive Economic Zone (EEZ) or Continental Shelf. Indonesia concluded that the so-called "*Nine-dotted line*" map lacked a clear basis in international law and was inconsistent with the framework established by UNCLOS.³²⁰

On April 5, 2011, the Philippines submitted Note Verbale No. 000228. It claimed the Kalayaan Island Group (KIG) and the waters around each feature according to Article 121 of UNCLOS.³²¹ The Philippines also criticized the Nine-dash line map because it had no legal basis under international law. In support of its position, the Philippines used Articles 3 and 4 (on the Territorial Sea), Articles 55 and 57 (on the Exclusive Economic Zone), and Article 76 (on the Continental Shelf) of UNCLOS. According to Manila's interpretation, maritime zones belong to the relevant State.

³¹⁷ Ibidem.

³¹⁸ Permanent Mission of the Republic of the Philippines to the UN Secretary-General, Note Verbale No. 000819, Aug. 4, 2009.

³¹⁹ Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General, Note Verbale No. 240HC-2009, Aug. 18, 2009.

³²⁰ Permanent Mission of the Republic of Indonesia to the UN Secretary-General, Note Verbale No. 480/POL-703/VII/10, July 8, 2010.

³²¹ Permanent Mission of the Republic of the Philippines to the UN Secretary-General, Note Verbale No. 000228, Apr. 5, 2011.

On April 14, 2011, China issued another note verbale (Chinese Note II) in reply to the Philippines' April 5 communication.³²² The Kalayaan Island Group (KIG) forms part of China's Nansha (Spratly) Islands. China also argued that the treaties on the territorial boundaries of the Philippines did not include the Nansha Islands or any of their features. China had publicized its claims to these islands since at least the 1930s. Consequently, the Philippines' occupation of certain islands since the 1970s constituted an infringement of Chinese sovereignty.

On May 3, 2011, Vietnam submitted its own note verbale in response to both the Philippines and China. Hanoi possessed sufficient historical evidence and legal grounds to substantiate its position with respect to both archipelagos.³²³

4. The legal purpose and status of the Nine-dash-line.

The Nine-dash line is generally presented by China to show its sovereignty over the principal island groups in the South China Sea because they have historically formed part of Chinese territory. In addition, the line has also been associated with assertions of “*historical rights*,” such as fishing, navigation, and other maritime activities, as well as the exploration and exploitation of natural resources in the surrounding waters and seabed. Some interpretations further suggest that the dashed line could perform a residual or indicative function in the context of potential maritime delimitation.³²⁴

Chinese legislative measures, from the 1958 Declaration on the Territorial Sea, emphasized sovereignty over the four island groups and other maritime features in the South China Sea. Then, official Statements, like China's 2009 note verbale to the United Nations (Chinese Note I), clarified that the dashed line has not the aim to assert sovereignty over maritime areas beyond what is permitted under international law.³²⁵ This position has been reinforced by China's promulgation of straight baselines around the

³²² Permanent Mission of the People's Republic of China to the UN Secretary-General, Note Verbale CML/8/2011, Apr. 14, 2011.

³²³ Permanent Mission of the Socialist Republic of Viet Nam to the UN Secretary-General, Note Verbale No. 77/HC-2011, May 3, 2011.

³²⁴ GAO, JIA, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, cit., p. 108.

³²⁵ Office of Policy, Legislation and Planning, State Oceanic Administration (a cura di), *Zhong hua ren min gong he guo hai yang fa gui xuan bian* [Collection of Select Maritime Laws and Regulations of the People's Republic of China], 1998, p. 8.

Xisha (Paracel) Islands in June 1996 and by the consistency between its administrative measures, and official cartographic representations.³²⁶

Second, for decades, disputes in the South China Sea have been about sovereignty over specific islands and insular features. The result was a series of explicit objections to the implications of the Nine-dash line, in particular, in the notes verbales exchanged after 2009. It was only in that context that the legal significance of the dashed line became a central point of contention among the claimant States.

Third, China has never provided a clear definition of the term of “*adjacent waters*,” in Chinese Note I. China claims sovereignty over such waters and they include also the seabed and subsoil.³²⁷ China ratifies UNCLOS, consequently, any claim to maritime areas must necessarily be assessed within the framework of the Convention.³²⁸ Moreover, there is no indication that China has treated those waters as its Internal Waters, according to domestic legislations.³²⁹

Fourth, it is possible that the Nine-Dash Line historically reflected a concept of historic waters.³³⁰ This interpretation is supported by the resolution adopted at the 1947 inter-ministerial meeting. It extended the relevant limits to Zengmu Ansha (James Shoal).³³¹

Finally, the dashed lines were formulated at a time when the concept of the Continental Shelf was still emerging. It means that they may have been influenced by the geographical characteristics of the South China Sea. In particular, the 200-metre isobath are close to the coasts of most littoral States. In this case, the main exceptions are China and Vietnam.³³² According to Li Jinming and Li Dexia, the dashed lines were drawn in 1948 in order to define median lines between the offshore island groups and the opposite

³²⁶ D.J. DZUREK, *The Spratly Islands Dispute: Who's on First?* Centre for Naval Analyses, Alexandria (VA), 1996, pp. 12, 14, 46-47, 49.

³²⁷ Permanent Mission of the Republic of Indonesia to the UN Secretary-General, Note Verbale No. 480/POL-703/VII/10, cit.

³²⁸ Ibidem.

³²⁹ Ministry of Foreign Affairs of the People's Republic of China, *Nan Hai Zhuan Ti*, The Issue of the South China Sea, Part. II, November 22, 2000.

³³⁰ T. GAU, *The U-Shaped Line and a Categorization of the Ocean Disputes in the South China Sea*, in «Ocean Development and International Law», vol. 43, 2012, pp. 57-62.

³³¹ WO GUI NAN HAI ZHU DAI SHI LIAO HUI BIAN, *Collection of Historical Materials Concerning Our Country's Islands in the South China Sea*, cit.

³³² Ibidem.

coasts of neighbouring States, with the purpose of the delimitation of maritime zones.³³³ This approach was a response of the Chinese government to the Continental Shelf claims in the Truman Proclamation.³³⁴

The Nine-dash line is a potential maritime boundary between China and the States located opposite its claimed features. In addition to the maritime entitlements granted by UNCLOS, China has also invoked historic rights, under Article 14 of its 1998 Law on the EEZ and the Continental Shelf, about fishing, navigation, the exploration and exploitation of natural resources.³³⁵ The official Chinese atlases now represent a ten-dash line, where the traditional nine dashes are in the South China Sea and an additional dash in the East China Sea.³³⁶

5. Issues of Law in this context

The main involved States are China, Vietnam and the Philippines, and the dispute is about two island groups, Xisha and Nansha Islands. Vietnam and the Philippines have used the doctrines of discovery and occupation to support their claims.³³⁷ However, there are two main problems with this approach. First, in earlier international practice, mere discovery was sufficient to establish sovereignty.³³⁸ Since China's alleged discovery of the relevant South China Sea features predates that of Vietnam and the Philippines, this reasoning would tend to favour Chinese title.³³⁹ Second, as confirmed by the 1928 Island of Palmas arbitration, international law treats discovery as a title which must be perfected through peaceful and continuous displays of State authority.³⁴⁰ While about the acts of

³³³ J. LI, D. LI, *The Dotted Line on the Chinese Map of the South China Sea: A Note*, in *Ocean Development and International Law*, vol. 34, 2003, p. 290.

³³⁴ Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China (a cura di), *The Laws of the People's Republic of China (1983–1986)*, 1987, p. 146.

³³⁵ *Ibidem*.

³³⁶ National Administration for Surveying, Mapping and Geo-Information, *Ji chu ditu: guo jie*, Basic Map: National Borders, 2005, scala 1:4.000.000.

³³⁷ CHENG, *The Dispute over the South China Sea Islands*, cit., pp. 265, 266–267.

³³⁸ I. BROWNLIE, *Principles of Public International Law*, Oxford University Press, Oxford 2008, 7^a ed., p. 140.

³³⁹ Y. CHEN, *Lun Hai Shang Xi Chou Zhi Lu yu Zhong Wai wen hua jiao liu*, The Maritime Silk Road and Sino-Foreign Cultural Relations, in *Zhong Guo yu Hai Shang Si Chou Zhi Lu*, China and the Maritime Silk Route: Proceedings of the UNESCO Quanzhou International Seminar on China and the Maritime Routes of the Silk Roads, 1991, pp. 1-4.

³⁴⁰ Permanent Court of Arbitration, Island of Palmas Case (Netherlands v. United States), Award of 4 April 1928, in *Reports of International Arbitral Awards*, vol. 2, 1928, pp. 829-869.

occupation of a territory, sovereignty may be acquired only over territory that is *terra nullius*.³⁴¹ This concept refers to land not subject to the authority of any State, or territory that has been abandoned through a clear and definitive renunciation by the former sovereign.³⁴² This abandonment must be complete and accompanied by the intention to withdraw permanently.³⁴³ Once occupation begins, it should be completed peacefully and maintained on a continuous basis.³⁴⁴

The South China Sea dispute involves both discovery and occupation, and even a limited exercise of sovereign authority may be sufficient to support China's claim.³⁴⁵ For example, when France occupied nine islets in the Nansha Islands in 1933 with the justification that they were *terra nullius*, this action did not establish valid title, because China had previously discovered them and exercised authority over them.³⁴⁶ Similarly, when in September 1947 the Chinese Ministry of the Interior formally declared that four island groups fell under the administration of Guangdong Province, no State issued a formal protest.³⁴⁷ This lack of reaction was because France had never obtained valid title over those Nansha features. Indeed, the 1887 Sino-French treaty allocated the relevant South China Sea islands to China.³⁴⁸

The same reasoning can be applied to the Philippines strategy on the Nansha Islands in 1971. The Philippine thought that the Kalayaan area was *terra nullius* after the Second World War, and it was supported by the publication of a 1948 atlas.³⁴⁹ In addition, in the post-1945 international legal order, occupation carried out by force was an unlawful threat.

³⁴¹ Permanent Court of International Justice, Legal Status of Eastern Greenland (Denmark v. Norway), Judgment of 5 April 1933, Series A/B, No. 53.

³⁴² *Ibidem*.

³⁴³ J. VAN DYKE, R.A. BROOKS, *Uninhabited Islands: Their Impact on the Ownership of the Ocean's Resources*, in *Ocean Development and International Law*, vol. 12, 1983, pp. 265-270.

³⁴⁴ Permanent Court of Arbitration, Island of Palmas Case (Netherlands v. United States), cit., p. 829.

³⁴⁵ Permanent Court of International Justice, Legal Status of Eastern Greenland (Denmark v. Norway), cit., para. 98.

³⁴⁶ K.C. FU, *Nan (Zhong Guo) Hai fa lu di wei zhi yan jiu*, Legal Status of the South (China) Sea, 1995, pp. 43-44.

³⁴⁷ *Ivi*, p. 94.

³⁴⁸ Convention Concerning the Delimitation of the Border Between China and Tonkin, June 26, 1887.

³⁴⁹ DZUREK, *The Spratly Islands Dispute: Who's on First?* cit., p. 49.

The Philippines also attempted an effective occupation of the Huangyan Island, also known as Scarborough Shoal (which forms part of the Zhongsha Islands), since 2009.³⁵⁰ However, this position was weak because the Philippines did not establish that the feature was *terra nullius*, and its claim is not grounded in the 1898 Treaty of Paris between the United States and Spain.³⁵¹ The Treaty of Paris defined the territorial limits of the Philippines and Scarborough Shoal was not included among the territories ceded by Spain to the United States. Therefore, it did not form part of the territory transferred to the Philippines.³⁵²

Finally, China can point to legislative and administrative measures on the relevant maritime areas of the South China Sea and the islands themselves, with other historical displays of sovereignty.³⁵³ The same consistency is far less evident in the practice relied upon by either the Philippines or Vietnam.

6. Historic Title and Prescription

China's position may also be framed in terms of historic title, supported by general and long-standing knowledge of its possession of the relevant territory. Its claim is the only one that could be described as ancient.³⁵⁴ By contrast, Vietnam's reliance on historic title had no legal relevance according to the 1887 Sino-French treaty. The earliest clear evidence of Philippine involvement is generally traced to the 1971 Statement by the Philippine President.³⁵⁵

The doctrine of historic title has also been invoked to support the Nine-dash line. Nevertheless, historic title used by China is playing a supplementary role, which reinforces a long-standing possession matured into title through discovery and

³⁵⁰ Department of Foreign Affairs of the Republic of the Philippines, *Philippine Position on Bajo de Masinloc (Scarborough Shoal) and the Waters Within Its Vicinity*, cit.

³⁵¹ Treaty of Peace Between the United States and Spain (Treaty of Paris), 10 December 1898.

³⁵² *Ivi*, Art. III.

³⁵³ Permanent Court of International Justice, *Legal Status of Eastern Greenland* (Denmark v. Norway), cit., part II.

³⁵⁴ Permanent Court of Arbitration, *Eritrea v. Yemen, First Stage, Territorial Sovereignty and Scope of the Dispute*, 9 October 1998, 114 ILR 2.

³⁵⁵ WO GUI NAN HAI ZHU DAI SHI LIAO HUI BIAN, *Collection of Historical Materials Concerning Our Country's Islands in the South China Sea*, cit., pp.450–51.

occupation.³⁵⁶ In this context, China's claim is further supported by the concept of historical consolidation.

The historic title is connected to the doctrine of prescription. Prescription could be an alternative basis for claims by Vietnam and the Philippines. It faces significant legal obstacles in the South China Sea context. In particular, the acquisition of territory through force is no longer acceptable under the contemporary international legal order established by the UN Charter. Article 2(4) confirms that territorial acquisition from the threat or use of force is not lawful.³⁵⁷ In relation to the South China Sea, Vietnam in 1970 and the Philippines in 1971 occupied certain features of the Nansha Islands.³⁵⁸ In any event, prescription requires peaceful, continuous, and uninterrupted possession exercised as sovereign authority, without effective opposition by other States. It also demands possession over a prolonged period.³⁵⁹ Based on the history of the dispute over the islands in the South China Sea, prescription does not provide a convincing legal basis for either Vietnamese or Philippine title.

7. Acquiescence, recognition and estoppel

Recognition and acquiescence play an important role in the consolidation of territorial title where sovereignty is exercised peacefully, effectively, and continuously. In particular, when a claim is on areas considered part of a *res communis*, such as maritime spaces, it is generally necessary to show some degree of recognition or acquiescence by other States.

In contemporary international law, the initial act of taking possession is not sufficient to establish ownership. The validity of a claim also depends on the reaction of other States. Although recognition and acquiescence do not in themselves create title, they may reinforce a situation of effective control, which allows acts of State authority to mature into an *erga omnes* title.³⁶⁰

³⁵⁶ M. VALENCIA, J. VAN DYKE, N. LUDWIG, *Sharing the Resources of the South China Sea*, Martinus Nijhoff Publishers, The Hague, London, Boston 1997, pp. 24-28.

³⁵⁷ UN Charter, Art. 2(4).

³⁵⁸ DZUREK, *The Spratly Islands Dispute: Who's on First?* cit., pp. 46-47.

³⁵⁹ D.H.N. JOHNSON, *Acquisitive Prescription in International Law*, in «British Yearbook of International Law», vol. 27, 1950, pp. 332-349, pp. 345-346, 349.

³⁶⁰ GAO, JIA, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, cit., p. 115.

Recognition may be expressed through unilateral Statements or through treaty provisions, only if one State acknowledges another's authority over a territory.³⁶¹ In *Legal Status of Eastern Greenland*, the Permanent Court of International Justice accepted that Denmark could use recognition of its title to Greenland evidenced through treaties concluded with other States.³⁶² Those agreements reflected the willingness of third States to accept Denmark's sovereignty.³⁶³

A parallel is the French and Vietnamese recognition of China's claim of sovereignty over the islands in the South China Sea between 1887 and 1959.³⁶⁴ Vietnam has not provided a persuasive explanation for this position. It began to assert claims to the Xisha and Nansha Islands after national reunification in 1975.³⁶⁵ Furthermore, China's ownership of these island groups has frequently been reflected in maps produced internationally, like the *China Sea Pilot* issued by the British Admiralty in 1912.³⁶⁶

Acquiescence produces effects similar to recognition, but it also arises not from express Statements but from conduct and it is generally understood as tacit or implied consent.³⁶⁷ The Philippines and Vietnam did not formally protest the Nine-dash line between 1948 and 2009.³⁶⁸ In addition, other States concerned also failed to assert an interest in the line.³⁶⁹ Consequently, there was a presumption that the situation was tolerated, and it contributed to a form of historical consolidation of the Nine-dash line.³⁷⁰ Similarly, the 1898 Treaty of Paris between Spain and the United States confined Philippine territory within precise geographical coordinates, which may be interpreted as evidence that Scarborough Shoal (Huangyan Island) was not considered part of Philippine territory, and that the Philippines acquiesced in that position.

³⁶¹ *Ibidem*.

³⁶² Permanent Court of International Justice, *Legal Status of Eastern Greenland* (Denmark v. Norway), cit., pp. 51–52.

³⁶³ *Ivi*, p. 68.

³⁶⁴ In particular, by the 1887 Sino-French boundary treaty and the Vietnamese recognition of the 1958 Chinese Declaration on the Territorial Sea.

³⁶⁵ K. ZOU, *The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands*, in *International Journal of Marine and Coastal Law*, vol. 14, 1999, p. 37.

³⁶⁶ United Kingdom Hydrographic Department, *The China Sea Pilot*, 1912, p. 106.

³⁶⁷ GAO, JIA, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, cit., p. 115.

³⁶⁸ *Ibidem*.

³⁶⁹ ZOU, *The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands*, cit., 27–37.

³⁷⁰ *Ivi*, p. 38.

Recognition and acquiescence may also produce the legal effect of estoppel. It means to prevent a State from a contradiction of a prior Statement or conduct upon which other States relied. The essential elements of estoppel are a clear and unambiguous representation of fact, made voluntarily and unconditionally, and reliance in good faith by another party. Estoppel operates to preclude a State from denying a position where such denial would be inconsistent and legally unacceptable.³⁷¹

In the Temple of Preah Vihear case, the ICJ held that Thailand's conduct prevented it from the contestation of the validity of a frontier that had been known to it and affirmed through the actions of its representatives.³⁷²

8. The Issue of Temporal Law

A situation or act must be evaluated, and a treaty interpreted, in accordance with the rules of international law in force at the time when the act occurred or the treaty was concluded.³⁷³

China's sovereignty over the South China Sea islands must be assessed according to the international legal rules applicable at the time it first asserted sovereignty. At the same time, the preservation of such title is a continuing process.³⁷⁴ This reflects the requirements of the doctrine of intertemporal law, which has developed since 1928, and helps explain why the original meaning attributed to the Nine-dash line changed over time. For instance, when the eleven-dash line map was issued in 1948, it was a comprehensive claim. However, subsequent practice in the context of the South China Sea dispute shows that China has not enforced a historic title to the sea itself.³⁷⁵ It means that the content and legal nature of the rights associated with dash lines evolved after China's ratification of UNCLOS.

³⁷¹ I. Brownlie, *Principles of Public International Law*, Oxford University Press, Oxford 2008, 7^a ed., p. 140.

³⁷² International Court of Justice, Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962, in ICJ Reports, 1962, pp. 6-106, pp. 32-33

³⁷³ Permanent Court of Arbitration, Island of Palmas Case (Netherlands v. United States), cit., p. 845.

³⁷⁴ Permanent Mission of the Republic of Indonesia to the UN Secretary-General, Note Verbale No. 480/POL-703/VII/10, cit.

³⁷⁵ Gao; Jia, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, cit., p. 118.

However, it should be recalled that a necessary condition of intertemporal law is that the claimant State must have asserted sovereignty over the relevant area at an earlier point in time.³⁷⁶

9. The Issue of Two Legal Systems

The Philippines' position is framed within the UNCLOS legal framework. The evaluation of that position requires the consideration of the structure of the international legal order.

Historic title and the doctrines of discovery and occupation belong to customary international law. No treaty instrument can fully codify or exhaust international law, because custom derives from evidence of State practice. It is accepted that treaty rules and customary rules may coexist and operate in parallel.³⁷⁷ For this reason, any legal assessment of the South China Sea disputes involves both treaty law and customary international law. However, China has not wholly rejected UNCLOS provisions but has used historical material to support its claims. It means that it used both law and fact.³⁷⁸

UNCLOS does not regulate the acquisition of sovereignty over land territory. It establishes maritime entitlements through regimes such as the territorial sea and archipelagic waters. However, the South China Sea disputes concern territorial sovereignty on specific island groups, while the legal character of the surrounding maritime areas is largely governed by UNCLOS.

10. Freedom of Navigation in the South China Sea

Two of the central issues of the South China Sea disputes are freedom of navigation and freedom of overflight.³⁷⁹ Article 11 of China's 1998 Law on the EEZ and the Continental Shelf provides that all States enjoy the freedom of navigation and overflight within China's Exclusive Economic Zone. However, the United States questioned what specific activities fall within the scope of freedom of navigation in those parts of the South

³⁷⁶ Ibidem.

³⁷⁷ International Court of Justice, *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States), Merits, Judgment of 27 June 1986, in ICJ Reports, 1986, pp. 14-150, para. 177.

³⁷⁸ Permanent Mission of the Republic of Indonesia to the UN Secretary-General, Note Verbale No. 480/POL-703/VII/10, cit.

³⁷⁹ H. R. CLINTON, *Remarks at the ASEAN Ministerial Meeting*, New York, 27 September 2012.

China Sea that China considers to be within its EEZ. In particular, the dispute between the United States and China centres on the China's regulatory authority in its EEZ. In particular, if it respects U.S. surveys, especially because these activities have been challenged by China and have affected U.S. Freedom of Navigation Operations (FONOPs).³⁸⁰

11. Future Prospects

In the 2002 Declaration on the Conduct of Parties in the South China Sea, States reaffirmed their commitment to the UN Charter, UNCLOS, and other fundamental principles of international law, such as the freedoms of navigation and overflight in the South China Sea.³⁸¹ They also highlighted the exercise of self-restraint and the avoidance of actions that could complicate disputes.³⁸² In this context, diplomatic negotiation is the most appropriate avenue for achieving a settlement.³⁸³

All the coastal States concerned are parties to UNCLOS, consequently, the Convention provides a framework for dispute settlement in which arbitration or adjudication is optional. States should resolve disputes about the interpretation or application of UNCLOS through peaceful means, but this obligation does not concern the issue of South China Sea on questions of sovereignty over land territory.³⁸⁴ Independently of UNCLOS, however, all South China Sea littoral States are bound by Article 33(1) of the UN Charter to use the peaceful settlement of any dispute that is dangerous for international peace and security.³⁸⁵

China has therefore insisted on the importance of an additional element.³⁸⁶ Chinese populations have historically exercised certain rights in the South China Sea, and they do not necessarily derive from UNCLOS. In the Eritrea/Yemen arbitration, the Tribunal suggested that comparable rights could be enough to form a legal basis for communities

³⁸⁰ R. PEDROZO, *Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone*, in *Chinese Journal of International Law*, vol. 9, 2010, pp. 9-44, pp. 12-18.

³⁸¹ Declaration on the Conduct of Parties in the South China Sea (DOC), Phnom Penh, 4 November 2002, points 1 and 3.

³⁸² Ivi, point 5.

³⁸³ Ivi, point 4.

³⁸⁴ UNCLOS, Art 279.

³⁸⁵ UN Charter, Art 33(1).

³⁸⁶ Lord Commissioner for the Admiralty, *The China Sea Directory*, 5^a ed., vol. 2, 1906, pp. 113-114, 116.

on both sides of the Red Sea.³⁸⁷ Each party had sovereignty over specific islands, and the Tribunal emphasised that this conclusion also required the continuation of the traditional fishing regime in the area.³⁸⁸ In particular, Yemen was expected to guarantee the free access for fishermen from both Eritrea and Yemen. The Tribunal's reasoning reflected the will of parties to conclude a cooperation between the two States.³⁸⁹

Although the Tribunal did not explicitly differentiate between “*historic rights*” and “*historic title*,” it accepted the idea of historic rights as a category of entitlement that falls under territorial sovereignty.³⁹⁰ A viable solution, here, requires a balance between history and reality. Historical considerations are particularly significant in this part of Asia, where civilizations have existed and interacted since ancient times. One possible way could be joint development, especially in relation to resource exploitation, maritime safety, and broader security cooperation.³⁹¹ UNCLOS encourages provisional solutions in the context of maritime delimitation.³⁹² Whether similar mechanisms could be applied to sovereignty disputes over islands, however, remains uncertain. It may be preferable for the States concerned to conclude separate agreements on these matters, but this approach could also generate additional challenges.

12. Geo-economic dimension of China's interests in the South China Sea.

The South China Sea is one of the world's most consequential maritime corridors because it sits between the Indian Ocean and the Western Pacific and it links East Asia's manufacturing hubs with markets and suppliers across Southeast Asia, the Middle East, Europe, and Africa. Most internationally traded goods move by sea, indeed, UNCTAD summarizes that over 80% of world trade by volume is carried by maritime transport.³⁹³

³⁸⁷ Permanent Court of Arbitration, *Eritrea v. Yemen*, First Stage, Territorial Sovereignty and Scope of the Dispute, para. 126.

³⁸⁸ *Ivi*, para. 526.

³⁸⁹ *Ivi*, para. 525.

³⁹⁰ BROWNLIE, *Principles of Public International Law*, cit.

³⁹¹ GAO, JIA, *The Nine-Dash Line in the South China Sea: History, Status, and Implications*, cit., p. 123.

³⁹² UNCLOS, Art. 74(3), and Art. 83(3), provides:

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

³⁹³ UNCTAD, *Review of Maritime Transport 2024*, 2024.

Consequently, disruption in key sea lanes can quickly become a global macroeconomic shock. In addition, the South China Sea is also especially important for global value chains because it is a principal route for containerized trade that carries intermediate inputs, such as components, parts, sub-assemblies, and final products. When this corridor is delayed or becomes riskier, the effects cascade through “just-in-time” production networks: longer transit times, higher freight and insurance costs, and forced inventory buffers reduce efficiency and can interrupt manufacturing schedules.

It is a one of the main routes for energy flows, which are foundational to value chains, which are electricity generation, industrial heat, petrochemicals, shipping fuel. The U.S. Energy Information Administration (EIA) estimates that in 2023 about 10 billion barrels of petroleum and petroleum products and 6.7 trillion cubic feet of LNG transited the South China Sea.³⁹⁴ These volumes underline why even partial disruption—through conflict, heightened military risk, or severe congestion—can influence commodity prices and shipping markets well beyond Asia.

12.1 Strategic chokepoints: the Strait of Malacca

A “chokepoint” is a narrow passage where shipping concentrates and where disruption forces rerouting, often at significant cost and delay. For the South China Sea, the key gateways from the Indian Ocean are the Strait of Malacca and the alternative Indonesian passages, called Sunda and Lombok. The majority of maritime trade through the South China Sea passes through the Straits of Malacca, Sunda, and Lombok.³⁹⁵

In particular, Malacca is central for China for different reasons. First, it is the most direct sea route between the Middle East, an important source of crude and LNG, and the major energy-consuming and manufacturing economies of East Asia. EIA’s chokepoints analysis describes Malacca as the primary chokepoint in Asia and the world’s largest oil transit chokepoint by volume in many recent years.³⁹⁶ Second, the scale is large enough that even modest disruption can create global price effects. EIA estimates Malacca oil flows around ~23.7 million barrels per day, in 2023, and provides high figures in its rolling updates, for example the first-half 2025 estimates.

³⁹⁴ U.S. EIA, *Regional Analysis Brief: South China Sea*.

³⁹⁵ Ibidem.

³⁹⁶ U.S. EIA, *World Oil Transit Chokepoints*, March 3, 2026.

For China, economic and energy security is about avoiding supply interruptions and price spikes that could undermine industrial output and inflation control. Due to the fact that many China-bound cargoes, especially energy, are most efficiently routed through Malacca, China faces a structural vulnerability. A disruption may require longer reroutes, for example via Lombok/Makassar, which raise higher costs and lengthen transit times. That risk has been discussed for years under the label of “*Malacca dilemma*,” cited for the first time by academic analyses of China’s dependence and policy responses.³⁹⁷

In the last years, China has tried to eliminate chokepoint exposure, but it was able only to reduce it. Policy responses commonly described in the literature include the diversification of suppliers, strategic reserves, the expansion of overland pipelines and corridors, and stronger maritime capabilities and logistics.³⁹⁸ These measures can reduce marginal vulnerability, but they do not change the basic geography. Indeed, Malacca remains the most efficient maritime gateway for a large share of trade and energy into the South China Sea and to China’s coastal industrial centres.

12.2 The Maritime Silk Road and China’s international projection

China’s 21st-Century Maritime Silk Road (MSR) is the sea-based component of the Belt and Road Initiative (BRI). Official Chinese policy documents frame BRI and MSR around connectivity and trade, and they emphasize infrastructure links, trade facilitation, and cooperation along the main routes.³⁹⁹

The South China Sea-Malacca corridor is not only a highway for finished goods, but it is also a system of tightly timed supply chains.⁴⁰⁰ Practically, the MSR tries to make China-centred trade more robust through the improvement of the physical and institutional infrastructure that keeps goods moving. Ports, terminals, logistics parks, shipping services, and digital/administrative connectivity can reduce transaction costs and improve reliability.⁴⁰¹ If a corridor becomes riskier or congested, better logistics networks can help re-optimize flows, even if geography still constrains ultimate route options.

³⁹⁷ X. ZHANG, *China’s energy security, the Malacca dilemma and responses*, Science Direct, Elsevier, Vol. 39, December 2011, pp. 7612-7615.

³⁹⁸ U.S. EIA, *Regional Analysis Brief: South China Sea*, cit.

³⁹⁹ People’s Republic of China (PRC) Government, *Vision for Maritime Cooperation under the Belt and Road Initiative*, 2017.

⁴⁰⁰ Ibidem.

⁴⁰¹ Ibidem.

Energy transits are so large through the South China Sea and its approaches, MSR investments in port infrastructure and maritime services can be interpreted as part of a broader effort to improve the reliability of sea lines of communication and reduce operational friction across the Indo-Pacific trading system.⁴⁰² Moreover, ports and logistics nodes can also have strategic implications. They can expand diplomatic influence and potentially support non-commercial functions, such as maintenance, replenishment, evacuation support in crises.⁴⁰³

⁴⁰² U.S. EIA, *Regional Analysis Brief: South China Sea*, cit.

⁴⁰³ R. GHIASY, F. SU, L. SAALMAN, *The 21st Century Maritime Silk Road, Security implications and ways forward for the European Union*, Sipri, 2018.

CHAPTER IV: THE CHINA-PHILIPPINES DISPUTE

SUMMARY: 1. Description of the Dispute - 2. The 2016-Arbitration Award - 3. Cooperation between the United States and the Philippines - 4. The role of the U.S. in the South China Sea - 5. The role of ASEAN - 6. Recent Developments - 7. Power Transition Theory.

1. Description of the Dispute

The dispute between China and the Philippines is about the sovereignty on fifty small islands, reefs, and other features within the Spratly archipelago in the South China Sea. The Spratlys comprise more than 230 maritime formations of different sizes. The features claimed by the Philippines are located 230 nautical miles west of Palawan Island and are called the Kalayaan Island Group (KIG).⁴⁰⁴

The strategic significance of these features is not limited to their land area. Their importance derives from the maritime zones they may generate, and the resources associated with them, such as rich fishing grounds and potential reserves of oil and natural gas.⁴⁰⁵

China traces its claims in the South China Sea back more than two millennia. Its arguments are based on historical discovery and occupation. The People's Republic of China created historical maps during the Han Dynasty (206 BC–220 AD), which interpret the Spratly Islands as part of Chinese territory. Thanks to the archaeological evidence, it is possible to demonstrate the historical presence of Chinese fishermen on the islands.⁴⁰⁶ On the other hand, the Philippine claim emerged in the twentieth century. In 1956, Filipino national Tomas Cloma proclaimed sovereignty on part of the Spratlys. This portion has been called the “Kalayaan” Islands, and they were defined *res nullius*, because Japan renounced its claims to them in the 1951 San Francisco Peace Treaty.⁴⁰⁷ Subsequently, in 1974, the Philippine government formally incorporated these islands into its national domain. Then, this position was consolidated in June 1978 through

⁴⁰⁴ International Hydrographic Organization, *Limits of Oceans and Seas*, cit., pp. 30-31.

⁴⁰⁵ CHENG, *The Dispute over the South China Sea Islands*, cit., p. 266.

⁴⁰⁶ SHEN, *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, cit., p. 96.

⁴⁰⁷ M. MAKINANO, *Understanding the South China Sea Dispute*, Philippines. Quezon City, Office of Strategic and Special Studies, Armed Forces of the Philippines, 1998, p. 11.

Presidential Decree No. 1596, which officially declared the Kalayaan Island Group to be part of Philippine territory. It emphasized their geographic proximity to the Philippine mainland.⁴⁰⁸

In April 1988, Philippine President Corazon Aquino met the Chinese leader Deng Xiaoping and discussed the question of the Kalayaan Island Group. During the meeting, Deng proposed a joint exploration and development of maritime resources. It used this cooperation to ensure stability and avoid escalation.⁴⁰⁹ In May 1994, the Philippine Department of Energy authorized the U.S.-based company Vaalco to undertake preliminary “desk study” activities for oil exploration near Reed Bank, located about 400 nautical miles west of Palawan. Beijing strongly objected and considered it as a violation of Chinese sovereignty and as contrary to the principle of joint development that had previously been suggested.⁴¹⁰

Relations between China and the Philippines reached a critical point in 1995. In January of that year, the captain of a Philippine fishing vessel reported the presence of several stilted platforms on Mischief Reef, situated about 135 nautical miles west of Palawan and within the Philippines claimed 200-nautical-mile Exclusive Economic Zone.⁴¹¹ The structures included octagonal bunkers and were equipped with satellite communications devices. President Fidel Ramos denounced the installations because they were inconsistent with international law and contrary to the spirit of the 1992 ASEAN Manila Declaration on the South China Sea, to which both China and the Philippines were parties.⁴¹² The incident led to two rounds of bilateral talks between Philippine and Chinese officials. Additionally, ASEAN collectively raised the matter with China during meetings held in Hangzhou in April 1995.

The Philippines’ diplomatic approach appeared to obtain some results later that year. In August 1995, the two countries reached an understanding on a code of conduct

⁴⁰⁸ Presidential Decree No. 1596: *Declaring Certain Areas Part of the Philippines Territory and Providing for their Government and Administration*, Asia Maritime Index, The Philippines, June 11, 1978.

⁴⁰⁹ *Aquino returns from China*, Kyodo International News, 17 April 1988.

⁴¹⁰ R. TIGLAO, *Troubled Waters*, Far Eastern Economic Review, 30 June 1994, p. 20.

⁴¹¹ MAKINANO, *Understanding the South China Sea Dispute*, cit., p. 20.

⁴¹² Ramos: *Sinos occupying RP reef in Spratlys*, cit.

designed to prevent similar incidents and to promote confidence-building measures in the South China Sea.⁴¹³

In April 1997, eight Chinese naval vessels were observed operating near Mischief Reef, and a new structure was identified on a reef located approximately six miles northeast of Kota Island, which was under Philippine control.⁴¹⁴ At the same time, the Philippine Navy intercepted two vessels that belonged to the Chinese State Oceanic Administration near the Scarborough Shoal, about 130 nautical miles west of Luzon. The Chinese captains stated that the People's Republic of China regarded Scarborough Shoal as part of its territory. This position was rejected by the administration of President Fidel Ramos. To prevent another escalation, the Chinese vessels eventually withdrew from the area.⁴¹⁵

The situation intensified again in October 1998, when the Philippine government released photographs of the Chinese ships that unloaded construction materials at Mischief Reef. Additional images indicated that Chinese personnel were building a substantial structure next to the earlier installations.⁴¹⁶ Manila denounced these activities as a breach of the 1995 bilateral understanding with the aim to manage disputes in the South China Sea. The Chinese Ministry of Foreign Affairs, however, dismissed the allegation and rejected the claim that its actions violated the agreement.⁴¹⁷

At the November 1998 Asia-Pacific Economic Cooperation (APEC) summit in Kuala Lumpur, the new Philippine President Joseph Estrada brought the South China Sea issue to the attention of Chinese President Jiang Zemin. Both leaders agreed to consult a joint panel of experts and to explore the possibility of shared use of the facilities in dispute.⁴¹⁸ In 1999, Estrada reportedly informed U.S. Vice President Al Gore that he was encouraging the Philippine Senate to ratify the Visiting Forces Agreement (VFA) with the United States, while also seeking American assistance in modernizing the Armed Forces of the Philippines (AFP).⁴¹⁹ Later that year, on November 29, the Philippine Navy

⁴¹³ International Crisis Group, *The Philippines' Dilemma: How to Manage Tensions in the South China Sea*, Asia Report No. 316, 2 December 2021, p. 4.

⁴¹⁴ *Manila drafting protest over China Spratly moves*, Reuters News Service, 30 April 1997.

⁴¹⁵ *Ramos asserts claim to outcrop*, South China Morning Post, 22 May 1997.

⁴¹⁶ *Erap to tackle Spratlys with Chinese leader*, Philippine Daily Inquirer, 7 November 1998.

⁴¹⁷ *China: No violation of code of conduct*, Philippine Daily Inquirer, 8 November 1998.

⁴¹⁸ *Estrada, Jiang discuss Mischief*, Philippine Daily Inquirer, 18 November 1998.

⁴¹⁹ *Erap wins US support on Mischief*, Philippine Daily Inquirer, 19 November 1998.

detained twenty Chinese fishermen near Mischief Reef due to illegal fishing.⁴²⁰ In addition, Estrada reinforced the Philippines' position at Second Thomas Shoal by grounding the BRP Sierra Madre there in 1999. Then, it establishes a permanent military presence. However, a similar attempt to assert control over Scarborough Shoal did not materialize.⁴²¹

Under President Gloria Macapagal-Arroyo, who succeeded Estrada, relations between the Philippines and China entered a cooperative phase often described as a "golden age" of bilateral relations.⁴²² It coincided with a broader warming of ties between the United States and China after September 11 attacks, as counterterrorism cooperation.

President Gloria Macapagal-Arroyo's attempt of diplomatic engagement contributed to the adoption of the 2002 China–ASEAN Declaration on the Conduct of Parties in the South China Sea (DOC). It aimed to reduce tensions and promote confidence-building measures among claimant States. Manila supported the idea of a framework that would stabilize the disputed area through cooperative arrangements in the field of resource development.

As early as 2003, the Philippine government concluded a regional agreement for the joint exploration of energy resources in the South China Sea. This initiative took the form of the Joint Maritime Seismic Undertaking (JMSU), a preliminary step toward joint development. The arrangement focused on surveys to assess hydrocarbon potential, without the commercial extraction of oil and gas.⁴²³ However, domestic political instability caused problems about the application of the agreement and the JMSU was not renewed.⁴²⁴

Relations between Manila and Beijing improved during parts of Gloria Macapagal-Arroyo's presidency, but tensions persisted in the area of Scarborough Shoal.⁴²⁵ Indeed, the Philippine Navy arrested Chinese fishermen suspected of illegal fishing. During Arroyo's second term, the Philippine Congress enacted the 2009 Baselines Law (Republic

⁴²⁰ *Philippine Navy nabs 20 Chinese fishermen*, Philippine Daily Inquirer, 1 December 1998.

⁴²¹ M. D. VITUG, *Rock Solid: How the Philippines Won Its Maritime Case Against China*, Manila, 2018, p. 18.

⁴²² *Speech of Gloria Macapagal-Arroyo during the 30th Anniversary Celebration of RP-China Diplomatic Relations*, Official Gazette of the Philippines, 9 June 2005.

⁴²³ Crisis Group Asia Reports No. 275, *Stirring Up the South China Sea (IV): Oil in Troubled Waters*, 26 January 2016, No. 267, pp. 18-21.

⁴²⁴ International Crisis Group, *Online Interview*, 25 September 2020.

⁴²⁵ VITUG, *Rock Solid*, cit., p. 55.

Act No. 9522), which revised the country's archipelagic baselines in conformity with UNCLOS.⁴²⁶ The Philippines would assert claims over specific islands and their corresponding maritime zones, and not on the Spratly Islands as a single collective entity.⁴²⁷

President Benigno Aquino III's administration (2010–2016) faced two challenges in the South China Sea. In 2011, Chinese law of the sea enforcement vessels forced a Philippine survey ship to leave Reed Bank, within the Philippines claimed Exclusive Economic Zone. Beijing was trying to apply its Nine-dash line claim.⁴²⁸ However, there a Scarborough Shoal standoff in 2012. After a confrontation between Chinese and Filipino fishermen in the area, the Philippine Navy deployed a vessel to arrest Chinese fishermen accused of poaching.⁴²⁹ Manila later replaced the naval ship with a coast guard vessel to diminish tensions, and China responded with additional maritime assets to the area.⁴³⁰ The United States mediated through the application of a mutual withdrawal arrangement.⁴³¹ However, both sides initially pulled back some vessels. Chinese ships subsequently returned and established effective control over the shoal.⁴³² Manila started to have concerns about the reliability of U.S. support, even if the Philippines was a treaty ally. Efforts by the Philippine government to secure a clearer U.S. commitment in the event of armed conflict did not produce the guarantees it had sought.⁴³³

2. The 2016 - Arbitration Award

Bilateral negotiations between China and the Philippines failed to produce a settlement of their disputes in the South China Sea. Consequently, President Benigno Aquino III used a legal remedy. On 22 January 2013, the Philippines initiated arbitral

⁴²⁶ Philippine Congress, *Republic Act No. 9522: The Philippine Archipelagic Baseline Law*, Philippine Laws and Jurisprudence Databank, 10 March 2009.

⁴²⁷ Ibidem.

⁴²⁸ International Crisis Group, *Online Interview on South China Sea researcher*, 23 September 2020.

⁴²⁹ International Crisis Group, *The Philippines' Dilemma: How to Manage Tensions in the South China Sea*, cit., p. 4.

⁴³⁰ Ibidem.

⁴³¹ Crisis Group Asia Reports No. 267, *Stirring Up the South China Sea (III): A Fleeting Opportunity for Calm*, 7 May 2015, p. 16.

⁴³² H. HAWKSLEY, *Asian Waters: The Struggle Over the South China Sea and the Strategy of Chinese Expansion*, New York, Overlook Press, 2018, p.71.

⁴³³ Crisis Group Asia Reports No. 229, *Stirring up the South China Sea (II): Regional Responses*, 24 July 2012, p. 9.

proceedings against China under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). The case was brought before a Tribunal constituted under the Permanent Court of Arbitration framework.

As already mentioned, UNCLOS does not rule the sovereignty on land territory. However, the arbitration could decide about issues related to the interpretation and application of the Convention. In particular, it could analyse the status of maritime features claimed by the States involved and the legality of China's actions.

China reacted to the initiation of arbitration with a travel advisory that affected tourism to the Philippines. The Philippine officials described it as excessive and disproportionate in response to the legal action.⁴³⁴

On 12 July 2016, the Tribunal of Arbitration delivered a ruling in the Philippines' favour. The Tribunal organized Manila's submissions into four principal categories:

- The source of maritime rights and entitlements in the South China Sea, such as the legal validity of China's claims based on the Nine-dash line and historic rights.
- The maritime entitlements of specific features, in particular if Scarborough Shoal and a part of the Spratly Islands could generate an EEZ or a continental shelf under UNCLOS.
- The legality of China's actions, which interfered with the Philippines' sovereignty within its claimed EEZ.
- China has aggravated the dispute between the parties during the proceeding because it restricted access to the Philippines' ships to the Second Thomas Shoal. China also built artificial islands at seven reefs in the Spratly Islands.⁴³⁵

China declared that it would not participate in the arbitration nor recognize the Tribunal's jurisdiction. On 19 February 2013, it delivered a Note Verbale to the Philippine Department of Foreign Affairs that formally rejected the arbitral proceedings.⁴³⁶ The fundamental issue between China and the Philippines concerns territorial sovereignty on the Nansha (Spratly) Islands.⁴³⁷ It means that the dispute is primarily about competing

⁴³⁴ International Crisis Group, *Online Interview*, cit.

⁴³⁵ The Permanent Court of Arbitration (PCA), *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award, PCA Case No. 2013-19, 12 July 2016, pp. 74-84.

⁴³⁶ Embassy of the People's Republic of China in Manila, Note Verbale No. (13) PG-039 to the Department of Foreign Affairs, Republic of the Philippines, 19 February 2013, Annex 3.

⁴³⁷ Ibidem.

claims to land features. China has also acknowledged that the two countries hold overlapping maritime claims in parts of the South China Sea. However, both sides had previously agreed to address such disagreements through bilateral negotiations.⁴³⁸

In China's 2006 declaration under Article 298 of UNCLOS, there was the exclusion of the disputes about maritime boundary delimitation and historic titles from compulsory dispute settlement procedures. On 12 July 2014, China issued a Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration with its main arguments:

- The lack of jurisdiction of the Tribunal because the dispute concerns sovereignty over islands and maritime delimitation, not the scope of UNCLOS arbitration.
- Historical rights and sovereignty claims reaffirmed by China. In particular, these are guaranteed by UNCLOS and should be respected.
- Both countries agreed to settle disputes through direct negotiations, and that arbitration violated prior commitments.
- Article 298 UNCLOS excluded disputes about maritime delimitation, historic titles, and military activities.
- The Philippines was accused because it did not respect previous commitments on negotiations and escalated tensions.⁴³⁹

In its Award on Jurisdiction and Admissibility, the Tribunal rejected China's objections because it possessed jurisdiction under the compulsory dispute settlement mechanism established by Annex VII of UNCLOS. The Philippines' submissions concerned the interpretation and application of the Convention.⁴⁴⁰ China argued that the case involved also sovereignty and maritime boundary delimitation, but the Tribunal found that it could determine the legal status of specific maritime features and clarify the maritime entitlements under Articles 56 and 121 of UNCLOS without deciding which State holds sovereignty over them.⁴⁴¹ Moreover, China's 2006 declaration under Article 298 did not exclude the matters of the case because the claims concerned the existence

⁴³⁸ Ibidem.

⁴³⁹ People's Republic of China (PRC), *Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, Beijing: People's Republic of China, 12 July 2014.

⁴⁴⁰ Permanent Court of Arbitration. *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*, Award on Jurisdiction and Admissibility, PCA Case No. 2013-19, 29 October 2015.

⁴⁴¹ Ibidem.

and scope of maritime entitlements and the lawfulness of certain conduct, and not the maritime delimitation or historic titles embodied by Article 298(1)(a).⁴⁴² Regarding procedural requirements, the Convention does not require negotiations before recourse to arbitration, provided that diplomatic efforts have reached a deadlock.⁴⁴³ Finally, China's refusal to participate did not stop the proceedings. Article 9 of Annex VII expressly allows arbitration to proceed in the absence of one party.⁴⁴⁴

The Tribunal's conclusion was that China's Nine-dash line and its claim to "historic rights" lack a legal foundation under international law.⁴⁴⁵ First, Chinese fishermen and those from the Philippines and Vietnam, had historically used various features and waters in the South China Sea. However, there is no evidence that China had exercised exclusive control over the waters in a manner sufficient to establish historic rights under international law. About Scarborough Shoal, it has been a traditional fishing ground for Chinese (including Taiwanese), Filipino, and Vietnamese fishermen. Finally, China had violated the Philippines' sovereign rights because it forbidden the access to the area to Filipino fishermen. The Tribunal also held that none of the features qualified as "islands" could generate an Exclusive Economic Zone (EEZ) or Continental Shelf under Article 121(3) of UNCLOS. These features were considered "rocks" or "low-tide elevations," because they were unable to sustain human habitation or an economic life of their own.⁴⁴⁶ Therefore, the relevant maritime areas fall within the Exclusive Economic Zone (EEZ) of the Philippines and they do not overlapped with the entitlements of China.⁴⁴⁷ At the same time, the Tribunal lacked jurisdiction to rule on questions of territorial sovereignty over the Spratly Islands or Scarborough Shoal. Consequently, sovereignty over these land features remains unresolved.

⁴⁴² UNCLOS, Art. 298(1)(a).

⁴⁴³ Permanent Court of Arbitration. *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*, Award on Jurisdiction and Admissibility, cit., paras 335–346.

⁴⁴⁴ The Permanent Court of Arbitration (PCA), *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award, cit.

⁴⁴⁵ Ibidem.

⁴⁴⁶ UNCLOS, Art. 121(3).

⁴⁴⁷ Ivi, p. 10.

The Award is legally binding only on the parties to the dispute, but its significance extends beyond the bilateral context. In practical terms, the Tribunal's findings can influence future negotiations, and potential litigation about the South China Sea.⁴⁴⁸

Despite the decisive legal victory of Manila, the Aquino administration underestimated the possibility that China would reject the ruling.⁴⁴⁹ Beijing declared the Award “*null and void*” and refused to recognize its validity.⁴⁵⁰ Furthermore, the Philippines pursued arbitration without the support of the Association of Southeast Asian Nations (ASEAN) due to its members' economic and political ties with China.⁴⁵¹ For this reason, Manila faced Beijing on its own. The European Union also adopted more cautious language.⁴⁵² However, some States, such as Australia and Japan, expressed strong support for the Award and its legal conclusions.

The election of Rodrigo Duterte in 2016 saw a more conciliatory stance toward Beijing and greater distance from Washington. The Philippines announced that it was willing to pursue direct negotiations with China.⁴⁵³ Despite his earlier efforts to improve relations with Beijing, by 2019, Duterte began to respond to growing tensions in the South China Sea. Incursions by vessels linked to the People's Liberation Army Navy and the presence of numerous Chinese fishing boats near Pag-asa Island (Thitu Island), the administrative centre of the Kalayaan Island Group, intensified the dispute. The Philippines affirmed that continued pressure could escalate into armed confrontation to protect the island.⁴⁵⁴ In 2020, during his address to the 75th session of the United Nations General Assembly, Duterte described the 2016 arbitral award as part of international law.⁴⁵⁵ Consequently, any attempts by China to undermine the award would be rejected and fought off. The United States reiterated its support for the Philippines because its mutual defence obligations would apply in the event of an armed attack on Philippine

⁴⁴⁸ International Crisis Group, *email correspondence with legal scholar*, 25 September 2020.

⁴⁴⁹ International Crisis Group, *online interview with South China Sea expert*, 14 August 2020.

⁴⁵⁰ International Crisis Group, *online interview with a former diplomat*, 11 September 2020.

⁴⁵¹ International Crisis Group, *email correspondence with legal scholar*, cit.

⁴⁵² R. EMMOTT, *EU's Statement on South China Sea reflects divisions*, Reuters, 15 July 2016.

⁴⁵³ The Guardian, *Philippines to “Set Aside” South China Sea Tribunal Ruling to Avoid Imposing on Beijing*, December 17, 2016.

⁴⁵⁴ The Guardian, *South China Sea: Duterte Warns Beijing of “Suicide Missions” to Protect Disputed Islands*, 5 April 2019.

⁴⁵⁵ R. DUTERTE, *President Duterte's Speech at 75th UN General Assembly*, Rappler, 2020.

forces in the South China Sea.⁴⁵⁶ In conclusion, the South China Sea dispute remains unresolved. It can escalate to armed conflict, which would bring insecurity and instability to the region.

3. Cooperation between the United States and the Philippines.

After its independence, the Philippines relied on the United States for its external security. In 1947, the two countries signed a Military Bases Agreement (MBA), which granted the United States the right to establish and operate military bases on Philippine territory. This security partnership was consolidated in 1951 through the Mutual Defence Treaty (MDT). Both parties agreed that an armed attack in the Pacific area against either State, that would have been dangerous to its peace and safety, would lead to a combined action against the common danger.⁴⁵⁷ The treaty defined an “*armed attack*” as one directed against the metropolitan territory or island territories under the jurisdiction of either party in the Pacific, as well as against their armed forces, public vessels, or aircraft in the region.⁴⁵⁸ The Philippines and the United States were also linked through the 1954 Manila Pact, which created a collective defence arrangement that established the Southeast Asia Treaty Organization (SEATO) in 1955.⁴⁵⁹ SEATO eventually became inactive, but the Manila Pact itself formally remains in force. Two main U.S. military installations, Clark Air Force Base and Subic Bay Naval Base, were central pillars of this alliance. They were a deterrent against external threats and placed responsibility for the Philippines’ external defence in American hands. The result was that the Armed Forces of the Philippines (AFP) were able to focus on internal security challenges, for example, communist insurgencies and separatist movements.⁴⁶⁰ However, the presence of U.S. bases led to domestic controversy. The bases exposed the Philippines to be a potential nuclear target during the Cold War. it caused social problems on the exploitative conduct of U.S. servicemen toward Filipino workers.⁴⁶¹ Filipino nationalists in particular viewed

⁴⁵⁶ S. STRANGIO, *In UN Speech, Duterte Stiffens Philippines’ Stance on the South China Sea*, The Diplomat, 23 September 2020.

⁴⁵⁷ POBRE, *Military Alliance and the Philippines*, cit., p. 10.

⁴⁵⁸ Ibidem.

⁴⁵⁹ Ibidem.

⁴⁶⁰ Ibidem.

⁴⁶¹ STOREY, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, cit., p. 102.

the American military presence as a symbol of increasing dependence on the United States.⁴⁶² With the end of the Cold War and the decline of the Soviet threat, Manila asked the removal of U.S. bases. In September 1991, the Philippine Senate voted against the renewal of the U.S. agreement for the bases. The United States ultimately chose not to renegotiate. This closure reflected its strategy to face military forces in the Asia-Pacific following the Cold War.⁴⁶³

The Philippines' long-standing dependence on the United States for external defence had limited the capacity of the AFP to develop a credible external defence. During the 1970s, after President Ferdinand Marcos declared martial law in 1972, the role of the military became increasingly politicized. Carolina Hernandez noted that, under martial law, the armed forces became a central instrument to implement government policies.⁴⁶⁴ The institutional transformation of the AFP produced two main consequences. First, in the absence of U.S. bases, the Philippines lacked a credible external defence capability. Second, the politicization of the armed forces contributed to negative public perceptions, that weakened trust in the military among ordinary Filipinos. Indeed, by the early 1990s, the Philippine Navy⁴⁶⁵ and its air force⁴⁶⁶ material capabilities had deteriorated. In addition, there was also an underinvestment in defence. Compared with other ASEAN member States, Philippine military expenditure remained low.

For this reason, in 1990, President Corazon Aquino proposed a ten-year, US\$1 billion military modernization program to upgrade the capabilities of the Philippine Air Force and Navy. However, the proposal was not approved by the Congress. The Philippine economy had been weakened during the Marcos era and citizens believed that financial resources should instead be directed toward poverty alleviation and the essential public services. At the time, there was no external threat that justified a substantial

⁴⁶² Ibidem.

⁴⁶³ Ivi, p. 103.

⁴⁶⁴ C. HERNANDEZ, *The Role of the Philippine Military During Martial Law 1972-1980*, Background paper, 12th World Congress, International Political Science Association, Rio de Janeiro, August 1982.

⁴⁶⁵ L. J. JANSSEN, *ASEAN navies extend their regional reach*, Jane's Defence Weekly, 27 November 1996.

⁴⁶⁶ *ASEAN Defence Spending 1989-1995*, Institute of International and Strategic Studies, *The Military Balance*, London, Oxford University Press, 1989-1995.

increase in defence spending.⁴⁶⁷ Furthermore, the Philippines continued to rely on its Mutual Defence Treaty with the United States as a security guarantee.

In May 1992, Fidel Ramos was elected President and adopted a more security-focused policy. The withdrawal of U.S. forces from Philippine bases exposed to external threats. Defence Secretary Renato de Villa acknowledged the armed forces' vulnerability. The Philippines possessed only limited capability to defend its airspace and maritime domain.⁴⁶⁸ This situation became clear during the Kalayaan Island Group (KIG) incident. It was not only a strategic asset but also as an economic one because the surrounding waters are rich in fish stocks.⁴⁶⁹ In addition, potential offshore oil and natural gas reserves were vital to achieve greater energy security and energy self-sufficiency in the early twenty-first century.

President Fidel Ramos focused on military modernization even if limited financial resources and political resistance hindered substantial progress. The 1995 Mischief Reef incident highlighted the urgency to make national defence capabilities stronger. At the same time, Foreign Minister Roberto Romulo promoted a peaceful resolution instead of the use of force.⁴⁷⁰

After the construction of Chinese structures on Mischief Reef, Congress introduced a comprehensive fifteen-year, US\$12.6 billion defence modernization program.⁴⁷¹ The first phase of the program, five years, allocated about US\$1.9 billion.⁴⁷² However, despite the urgent need for the Philippines to upgrade its military forces, the bill was not enacted until December 1996.

4. The role of the U.S. in the South China Sea.

in 1992, Defence Secretary de Villa believed that the United States would help the Philippines militarily in the South China Sea. He refers to the 1951 Mutual Defence Treaty (MDT), and he Stated that in the event of an external attack, Washington would

⁴⁶⁷ STOREY, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, cit., p. 104.

⁴⁶⁸ *U.S. exit poses problems for Philippine defence*, Reuters News Service, 3 March 1992.

⁴⁶⁹ A. San Pablo-Baviera, *Philippine Security in the South China Sea*, in *Security Implications of Conflict in the South China Sea: Perspectives from Asia Pacific*, Manila, Institute for Strategic and Development Studies, 1995, p. 69.

⁴⁷⁰ *Diplomacy in Spratly issue urged*, Manila Chronicle, 14 March 1995.

⁴⁷¹ *Spratlys tension helps push forces upgrade*, Jane's Defence Weekly, 25 February 1995.

⁴⁷² *A bolt from the blue*, FEER, 3 August 1995.

be obliged to come to the Philippines' defence.⁴⁷³ Nevertheless, the U.S. position on a potential crisis in the Kalayaan Island Group (KIG) was ambiguous. On the one hand, American officials reiterated the MDT. U.S. Ambassador Frank Wisner declared that the United States would not remain passive if peace in the region were threatened, particularly if a U.S. ally were affected.⁴⁷⁴ On the other hand, Washington did not provide an unequivocal guarantee that the Kalayaans were covered under the 1951 Treaty. At times, U.S. officials suggested that because the Kalayaan Island Group was only formally incorporated into Philippine territory in 1978, it might not fall within the treaty's scope.⁴⁷⁵ The U.S. interpretation of the MDT was not clear about whether a crisis directly implicated the national interests of both countries. Historical precedents reinforced doubts in Manila. In 1974, when the People's Liberation Army seized the Paracel Islands from South Vietnam, Washington did not intervene militarily. The United States also declined to provide direct support to the Philippines in its internal conflict with Muslim separatist groups.⁴⁷⁶ Following the final withdrawal of American military personnel in November 1992, President Fidel Ramos proposed to clarify the specific circumstances under which Washington would provide military assistance.⁴⁷⁷ The Philippine government was disappointed when it became evident that the United States was reluctant to apply the MDT provisions to the Mischief Reef issue. Manila was also unsettled by reports that U.S. authorities had known about the construction of Chinese structures on Mischief Reef months before Philippine officials were informed. Initially, U.S. military officials denied knowledge of the structures.⁴⁷⁸ However, in March 1995, Admiral Richard Macke, Commander-in-Chief of the U.S. Pacific Command, confessed.⁴⁷⁹ This failure was interpreted in two possible ways. Some argued that the intelligence lapse resulted from the diminished U.S. surveillance network after the closure of its military bases in the Philippines.⁴⁸⁰ Others believed Washington deliberately withheld information to

⁴⁷³ *U.S. exit poses problems for Philippine defence*, Reuters News Service, 3 March 1992.

⁴⁷⁴ *U.S. says its options limited to Spratlys*, Reuters News Service, 12 March 1992.

⁴⁷⁵ *Philippine senators question US defence pact*, Reuters News Service, 9 November 1992.

⁴⁷⁶ F. B. MIRANDA AND R. F. CIRÓN, *The Philippines: Defence Expenditures, Threat Perception and the Role of the United States*, in *Defence Spending in Southeast Asia*, edited by Chin Kin Wan, Singapore: Institute of Southeast Asian Studies, 1987, p.157.

⁴⁷⁷ *U.S. quits last base in Philippines*, Reuters News Service, 24 November 1992.

⁴⁷⁸ *Interview conducted with an anonymous senior AFP official*, March 1998.

⁴⁷⁹ *Who Knew What?* FEER, 6 April 1995.

⁴⁸⁰ DA CUNHA, *Nodding off, U.S. presence in Asia-Pacific*, cit.

underscore the strategic value of continued American military access. However, the implicit message was that Mischief Reef was not vital to U.S. national security interests. The U.S. State Department also justified its behaviour by the fact that the probability of an armed confrontation between China and the Philippines was low.⁴⁸¹

Stephen Wrage, an Associate Professor at the U.S. Naval Academy, defended Washington's approach during a seminar in Singapore. Direct U.S. military intervention on behalf of the Philippines could have escalated tensions. It would be preferable for the Association of Southeast Asian Nations (ASEAN) to engage China collectively.⁴⁸² However, ASEAN members were reluctant to raise the issue formally to Beijing.⁴⁸³

The U.S. forces' presence in the Philippines remained politically sensitive. Within the Philippine Congress, one faction opposed the return of American troops because its presence was a symbol of dependency. Another one supported closer defence ties and a stronger U.S. military presence as a deterrent against Chinese actions in the Kalayaan Island Group.⁴⁸⁴ The problem was that the limited capabilities of the Armed Forces of the Philippines (AFP) underscored Manila's need for external support, particularly in maritime defence.

This tension emerged during negotiations over the Visiting Forces Agreement (VFA). Initially, Washington sought legal immunity for U.S. military personnel in the Philippines, a condition Manila rejected. A compromise was reached in January 1998. Crimes committed by U.S. personnel while on official duty would fall under U.S. jurisdiction, whereas off-duty offenses would be subject to Philippine courts.⁴⁸⁵ Despite this compromise, many members of the Philippine Senate viewed the arrangement as unequal.

5. The role of ASEAN

The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization founded on 8 August 1967 in Bangkok, Thailand, through

⁴⁸¹ Ibidem.

⁴⁸² *ASEAN "in best position" to defuse tension over Spratlys*, Straits Times, 13 May 1995.

⁴⁸³ Ibidem.

⁴⁸⁴ *Ramos trying to get US military back, say lawmakers*, Straits Times, 22 October 1995.

⁴⁸⁵ *US-Philippines settles dispute over visiting forces*, Defence News, 19 January 1998.

the ASEAN Declaration, or called the Bangkok Declaration.⁴⁸⁶ Its primary objectives are to foster economic development, strengthen regional cooperation, and promote peace and stability in Southeast Asia.⁴⁸⁷ ASEAN was originally established by five countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Over time, its membership expanded. Brunei joined on 7 January 1984, followed by Vietnam on 28 July 1995. Laos and Myanmar became members on 23 July 1997, and Cambodia acceded on 30 April 1999. Most recently, East Timor joined on 25 October 2025 and now ASEAN's total membership is of eleven States.⁴⁸⁸

Since its establishment in 1967, ASEAN promoted stability in Southeast Asia, a region marked by conflict and rivalry. Through the "ASEAN Way", an approach that emphasizes consensus and peaceful dialogue, the organization has contributed to the emergence of a de facto security community in which armed conflict among member States has become highly unlikely.

China is not a member of ASEAN, but it maintains extensive political and economic ties with the organization and its member States. For this reason, Beijing's actions at Mischief Reef in the mid-1990s were perceived within ASEAN as destabilizing, at a time when regional stability was considered essential for economic development and modernization.⁴⁸⁹ Philippine President Fidel Ramos sought ASEAN's support and on 18 March 1995, ASEAN foreign ministers issued a declaration. All parties should act in accordance with the 1992 Manila Declaration on the South China Sea, which emphasized peaceful dispute resolution, to have developments in the South China Sea.⁴⁹⁰ The Statement was also approved by Vietnam.⁴⁹¹

In 1995, during the first China–ASEAN Forum held in Hangzhou, the South China Sea dispute was not formally included on the official agenda, but it was discussed informally prior to the formal sessions. Representatives from ASEAN referred to the Chinese delegation that Beijing's conduct in the South China Sea was a risk for the

⁴⁸⁶ *Association of Southeast Asian Nations*, website, <https://asean.org/about-asean/>, (accessed on 25 January 2026).

⁴⁸⁷ E. TEEKAH, *ASEAN international organization*, in Britannica, 25 January 2026.

⁴⁸⁸ *Association of Southeast Asian Nations*, website, cit.

⁴⁸⁹ STOREY, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, cit., p. 107.

⁴⁹⁰ *ASEAN Ministers Express Concern Over Spratlys*, Reuters News Service, 18 March 1995.

⁴⁹¹ *Vietnam Echoes ASEAN Statement on Disputed Spratlys*, Reuters News Service, 22 March 1995.

stability in the Asia-Pacific region. According to the principles of the 1992 Manila Declaration, disputes should be resolved through peaceful means.⁴⁹²

At the ASEAN Regional Forum (ARF) meeting held in Brunei in May 1995, President Fidel Ramos and Under-Secretary Rodolfo Severino hoped that ASEAN would collectively raise the issue with China again.⁴⁹³ However, the majority of ASEAN member States were reluctant to adopt a confrontational approach due to the fear to antagonize Beijing. Lim Jock Seng, who led the ASEAN delegation chose to use “the spirit of ASEAN” to manage the situation, which means consensus, and quiet diplomacy.⁴⁹⁴ It helped prevent an early rift between the organization and China because Beijing did not want to discuss the Mischief Reef incident within the ARF framework, and there were practical limits to how far ASEAN could challenge it without the risk of escalation.⁴⁹⁵

The Mischief Reef issue was not formally debated during the first ASEAN Regional Forum (ARF). Nevertheless, at the second ARF meeting held in Brunei in August 1995, ASEAN organized a consultative session prior to the official proceedings with China, where Indonesia suggested a multilateral approach to address the South China Sea.⁴⁹⁶ As a response, China was willing to resolve its territorial disputes with the other claimants based on UNCLOS.⁴⁹⁷ But, ASEAN optimism on China’s intention to solve the territorial dispute through UNCLOS procedures was short-lived because, in May 1996, the Chinese government established straight baselines around the Paracel Islands.⁴⁹⁸ The Philippines condemned this measure because it was legally questionable. Since China is not an archipelagic State and it could not apply archipelagic principles.⁴⁹⁹ ASEAN again raised the issue during the second China–ASEAN Forum, held in Bukit Tinggi, Indonesia, in June 1996. This other attempt demonstrated the effort of the organization to engage China diplomatically and guarantee regional cohesion.⁵⁰⁰

⁴⁹² *Why China is Creating Mischief in the Spratlys*, Straits Times, 7 April 1995.

⁴⁹³ *Ibidem*.

⁴⁹⁴ *ASEAN will not raise Spratlys issue collectively*, Straits Times, 23 May 1995.

⁴⁹⁵ *China warns ASEAN against bringing up Spratlys*, Reuters News Service, 25 May 1995.

⁴⁹⁶ *ASEAN warms up to China after moves in Spratly row*, Asian Wall Street Journal, 31 July 1995.

⁴⁹⁷ *China says ready to solve Spratly dispute by law*, Reuters News Service, 30 July 1995.

⁴⁹⁸ STOREY, *Creeping Assertiveness: China, the Philippines and the South China Sea Dispute*, cit., p. 109.

⁴⁹⁹ *Manila rebuffs territorial claim by Beijing*, Financial Times, 18 May 1996.

⁵⁰⁰ *China backs further dialogue but proves wary about change*, Bangkok Post, 14 June 1996.

In 2002, ASEAN and China adopted the Declaration on the Conduct of Parties in the South China Sea (DOC). The document embodied principles similar to those embedded in ASEAN's foundational norms and recognized UNCLOS as the legal framework to address maritime claims and disputes between China and ASEAN member States.⁵⁰¹ However, the DOC is a political declaration, consequently, it is not legally binding. For this reason, compliance depends on the voluntary commitment of the signatories, and disputes cannot automatically be referred to international judicial or arbitral bodies under its framework.

The DOC also failed to generate a unified ASEAN position on China's claims. Divergent national interests among ASEAN members have limited the organization's ability to present a cohesive stance.⁵⁰² For this reason, negotiations have long aimed at replacing the DOC with a more robust and legally binding Code of Conduct (COC). Discussions on a COC began as early as 1999, with the intention of creating clearer rules, and dispute resolution mechanisms. However, China has been cautious about the adoption of a binding code that could constrain its strategic flexibility or limit its claims in the region.⁵⁰³ In August 2017, ASEAN foreign ministers and China discussed the general principles and structure of a COC. Nevertheless, the proposed code was not explicitly framed as legally binding. Consequently, it did not resolve the structural weaknesses that have limited ASEAN's ability to manage disputes in the South China Sea.⁵⁰⁴

To summarize, ASEAN's response to the South China Sea dispute had limited effectiveness. This weakness is based on the differences in member States' national interests and their reluctance to delegate authority to stronger regional. From this perspective, ASEAN's consensus-based decision-making model appears insufficiently robust to address complex disputes such as those in the South China Sea.

⁵⁰¹ SIMOES, *The Role of ASEAN in the South China Sea Disputes*, cit.

⁵⁰² R. C. SEVERINO, *The Philippines and the South China Sea*, in *Entering Uncharted Waters? ASEAN and the South China Sea*, edited by Pavin Chachavalpongpun, Singapore, ISEAS-Yusof Ishak Institute, 2014, pp. 166–207.

⁵⁰³ C. A. THAYER, *ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community-Building?* *The Asia Pacific Journal* 10, no. 34, August 2012.

⁵⁰⁴ I. STOREY, *Assessing the ASEAN-China Framework for the Code of Conduct for the South China Sea*, *Perspective*, No. 62, pp. 1–7, 2017.

6. Recent Developments

When Ferdinand Marcos Jr. assumed the Philippine presidency in June 2022, he adopted a stronger strategy toward China, especially about the Second Thomas Shoal collision. It is in the Spratly Islands and lies within the Philippines' 200-nautical-mile Exclusive Economic Zone (EEZ). Throughout 2023, encounters between Philippine vessels that conduct resupply missions and units of the China Coast Guard (CCG) became confrontational.⁵⁰⁵ Chinese vessels engaged in aggressive manoeuvres. It used dangerous blocking tactics and water cannons.⁵⁰⁶ In particular, there have been two incidents near the Second Thomas Shoal. One particularly serious incident occurred on 6 February 2023, when the Philippine Navy carried out a routine rotation and resupply mission to deliver provisions to personnel stationed aboard the BRP Sierra Madre at Second Thomas Shoal.⁵⁰⁷ A China Coast Guard vessel obstructed the Philippine ship's movement and directed a green laser beam toward it.⁵⁰⁸ On 14 February 2023, the Philippine Department of Foreign Affairs lodged a diplomatic protest against China's action.⁵⁰⁹ It was an act of aggression, but it did not meet the threshold necessary to invoke the 1951 Mutual Defence Treaty with the United States.⁵¹⁰ China defended its action, describing it as a response to an "intrusion" of the Philippines side to its territory.⁵¹¹ China, for its part, defended its actions. Philippine vessels had intruded into waters it considers under its jurisdiction, and the laser device was a green light pointer to measure distance and ensure navigational safety. Moreover, it did not hurt the personnel.⁵¹²

Secondly, on 15 June 2024, the China Coast Guard implemented guidelines for its 2021 Coast Guard Law. They authorized officers to use force against foreign vessels that enter waters claimed by China. The guidelines also provide for the detention of foreign

⁵⁰⁵ Centre for Preventive Action, *Territorial Disputes in the South China Sea*, CFR: Global Conflict Tracker, 17 September 2024.

⁵⁰⁶ Ibidem.

⁵⁰⁷ K. VALMONTE, *Chinese Coast Guard aims laser at PCG vessel on resupply mission*, The Philippine Star, 13 February 2023.

⁵⁰⁸ Ibidem.

⁵⁰⁹ C. VALENTE, B. TAMAYO, F. J. BARONA, *Marcos summons Chinese envoy*, The Manila Times, 15 February 2023.

⁵¹⁰ A. PERALTA-MALONZO, *Marcos not inclined to invoke Mutual Defence Treaty following Ayungin incident*, Sunstar, 19 February 2023.

⁵¹¹ N. PRICE, *U.S. Support for the Philippines in the South China Sea*, United States Department of State, 20 February 2023.

⁵¹² *China says lasers for "navigation safety" denies pointing at PH crew*, GMA News, GMA Integrated News, 16 February 2023.

nationals suspected of the violation of China's entry and exit regulations for up to 60 days without formal charges.⁵¹³ These developments have intensified the risk of escalation in the disputed maritime areas. On 17 June 2024, another serious confrontation occurred near Second Thomas Shoal when a Chinese vessel and a Philippine resupply ship were involved in a collision.⁵¹⁴ As in previous incidents, both governments blamed the other side for provoking the encounter. According to Manila, the Armed Forces of the Philippines (AFP), with support from the Philippine Coast Guard, were conducting a routine rotation and resupply (RORE) mission to deliver provisions to personnel stationed aboard the BRP Sierra Madre. China Coast Guard (CCG) vessels interfered with the operation through hazardous manoeuvres. Chinese personnel boarded Philippine boats, damaged communication and seized seven firearms.⁵¹⁵ Filipino troops had standing instructions not to use firearms during such missions, and claimed that Chinese coast guard personnel were armed during the confrontation.⁵¹⁶ Beijing presented a different account. A Philippine vessel had approached and deliberately collided with a Chinese ship that was, in their view, navigating within waters claimed by China.⁵¹⁷ The incident marked one of the biggest physical confrontations in recent years between the two sides at Second Thomas Shoal.

⁵¹³ N. J. MORALES, B. ORR, *China and Philippines quarrel over South China collision*, Reuters, 23 June 2024.

⁵¹⁴ M. SANDONGDONG, *Gavan: PCG had limited role during the Ayungin resupply mission*, Manila Bulletin, 19 June 2024.

⁵¹⁵ *Ibidem*.

⁵¹⁶ *Ibidem*.

⁵¹⁷ C. JIANG, *China Coast Guard says Philippines caused a collision in the South China Sea*, China Daily, 17 June 2024.



Figure 3: Second Thomas Shoal - BBC News

Only weeks after Manila and Beijing announced their willingness to reduce tensions at Second Thomas Shoal, a new crisis born. On 19 August 2024, Chinese and Philippine vessels were again involved in collisions in the Spratly Islands, this time near Sabina Shoal.⁵¹⁸ Another confrontation occurred on 25 August, with both sides once again trading accusations.⁵¹⁹ The renewed clashes caused reactions from the United Kingdom, Japan, Australia, South Korea, and the European Union which publicly criticized China's conduct and called for restraint and adherence to international law. On 26 August, about forty Chinese vessels had blocked two of the Philippines' boats that were conducting what a humanitarian mission to resupply the BRP Teresa Magbanua, a Philippine Coast Guard vessel deployed to Sabina Shoal.⁵²⁰ Tensions around Sabina Shoal had been building

⁵¹⁸ T. WONG, J. GUINTO, *Sabina Shoal: The new flashpoint between China and the Philippines*, BBC News, Singapore, 30 August 2024.

⁵¹⁹ Ibidem.

⁵²⁰ Ibidem.

since April 2024, when the Philippines stationed a coast guard vessel there to monitor activity of China that might attempt land reclamation in the area.⁵²¹

Sabina shoal holds strategic importance for Manila because it lies close to Reed Bank, an area that contains significant oil and gas reserves, and it serves as a key logistical point for resupply missions to Second Thomas Shoal.⁵²² The Shoal has also acquired symbolic weight. President Ferdinand Marcos Jr. faced domestic pressure not to appear weak on sovereignty issues.⁵²³

Since the rise in tensions with China, the Philippines has improved security cooperation with Indo-Pacific partners. Under President Ferdinand Marcos Jr., Manila has expanded defence ties with the United States through new arrangements.⁵²⁴ In March 2024, U.S. Secretary of Defence Lloyd Austin reaffirmed the 1951 Mutual Defence Treaty, and this clarification was interpreted in Manila as a stronger and more explicit commitment of the U.S. In addition, Japan has provided military equipment and maritime surveillance assets to the Philippines and Vietnam.

In 2025, the Philippines is intensifying efforts to reinforce its defence partnerships. Manila aims to finalize defence agreements with Canada and New Zealand and is exploring joint military exercises with the United States.⁵²⁵ These initiatives form part of a strategy to deter China's maritime actions in the South China Sea, while the Philippines is trying to strengthen its own external defence capabilities.⁵²⁶

As already mentioned, ASEAN and China have been negotiating for many years on a proposed Code of Conduct (COC) for the South China Sea. During the 2026 ASEAN Foreign Ministers' Meeting in Cebu, member States reiterated their commitment to conclude a COC to prevent maritime disputes, especially between China and the Philippines, from escalating into armed conflict. They are trying to finalize negotiations by the end of 2026.⁵²⁷ However, progress remains slow and uneven.⁵²⁸ One of the main

⁵²¹ R. RATCLIFFE, *A new flashpoint has emerged at Sabina Shoal in the South China Sea and a new danger*, The Guardian, 5 September 2024.

⁵²² Ibidem.

⁵²³ R. RATCLIFFE, *Interview with Collin Koh, a senior fellow at the S. Rajaratnam School of International studies in Singapore*, The Guardian, 5 September 2024.

⁵²⁴ Centre for Preventive Action, *Territorial Disputes in the South China Sea*, cit.

⁵²⁵ YANG, *Philippines increases defence efforts amid ongoing tension with China*, cit.

⁵²⁶ Ibidem.

⁵²⁷ J. GOMEZ, *ASEAN top diplomats under pressure to end the Myanmar war and finalize South China Sea pact*, Associated Press News, 28 January 2026.

⁵²⁸ Ibidem.

doubts is the legal nature of the agreement. China prefers a flexible, non-binding framework grounded in political commitments and diplomatic dialogue.⁵²⁹ By contrast, many ASEAN claimant States, especially the Philippines and Vietnam, are supporting a more robust and legally binding instrument. Moreover, the COC would help constrain actions that violate internationally recognized maritime rights.⁵³⁰ In other words, the Philippines has pushed for the COC to be explicitly anchored in international law, in particular the United Nations Convention on the Law of the Sea (UNCLOS). China, however, continues to resist interpretations that rely heavily on the 2016 arbitral award and maintains its preference for political negotiation. Beijing also continues to reject the 2016 ruling that invalidated much of its Nine-dash line claim.⁵³¹ In principle, a meaningful COC could serve as a mechanism to constrain actions and reinforce respect for internationally recognized maritime rights.

7. Power Transition Theory.

Power Transition Theory, formulated by A.F.K. Organski in 1958, argues that the international system becomes more unstable when a rising power approaches parity with a dominant State. In particular, this is true if the emerging power is dissatisfied with the existing order and seeks to revise it. According to this framework, the likelihood of conflict increases during periods of relative power shift.⁵³² Applied to the South China Sea dispute, China can be considered a rising power which can contest aspects of the regional order. It did not directly confront the dominant power, the United States, but it has gradually consolidated its presence and influence without armed conflict.

China does not reject the international system, but it challenges a U.S.-centric structure of global governance⁵³³ Control of adjacent maritime spaces in the South China Sea has strengthened Beijing's ability to project power and assert claims in contested waters. China now operates the world's largest navy in terms of fleet size.⁵³⁴ In other

⁵²⁹ *Philippines will insist South China Sea code is based on international law, foreign minister says*, Reuters, 22 January 2026.

⁵³⁰ *Ibidem*.

⁵³¹ J. BORTON, *Philippine leadership puts ASEAN at centre of South China Sea rivalry*, UPI, 8 January 2026.

⁵³² CIRIS, *Power transition theory*. Centre for International Relations and International Security.

⁵³³ Council on Foreign Relations, *China's approach to global governance*.

⁵³⁴ SRIVASTAVA, *Why China is building the world's largest navy and how fast it's growing*, cit.

words, greater control over the South China Sea is necessary to enhance maritime security along China's periphery, protect sea lines of communication, safeguard access to resources, and reduce the U.S. alliances in the region. The dispute, therefore, can be viewed as a structural transition in the regional balance of power.

This strategy has been applied in a period characterized by a relative decline in U.S. influence in the region. American decline is more focused on relative shifts in power distribution rather than on absolute capabilities.⁵³⁵ There are two principal explanations for hegemonic decline. The first concerns structural changes in relative power because rising States accumulate economic, technological, and military capabilities, and the dominant power's share of influence naturally diminishes. The second explanation is based on domestic political dynamics. Internal polarization, and strategic priorities can limit a hegemon's ability to translate material resources into coherent global leadership.

Within the South China Sea context, this dynamic contributed to a selective engagement. U.S. freedom of navigation operations (FONOPs) demonstrates continued commitment to international maritime norms and reassure allies such as the Philippines. However, they are carefully calibrated to avoid escalation. While allies may interpret them as signs of continued support, Beijing may perceive them as restrained and predictable. This can create potential risks. Limited and episodic responses may prevent immediate confrontation, but they can also invite gradual advances by a rising power. Practically, the South China Sea illustrates the tension between stability and effective hegemonic leadership during a period of relative power transition.

According to structural realism, in an anarchic international system, where no central authority guarantees security, States rely on self-help to safeguard their interests.⁵³⁶ The result is that measures taken by one State for defensive purposes may be interpreted by others as offensive or coercive. This dynamic generates a security dilemma.⁵³⁷ In the South China Sea, Chinese maritime patrols are often perceived by neighbouring States as expansionist. On the other hand, the U.S. military presence is viewed by China as containment. The combination of overlapping territorial and maritime

⁵³⁵ K. KANJI, *Fractured consensus: Domestic polarization and the erosion of U.S. global leadership*, Honours thesis, University of British Columbia. UBC Open Collections, 2025, p. 5.

⁵³⁶ J. W. TALIAFERRO, *Security under anarchy: Defensive realism reconsidered*, Paper presented at the 40th Annual Convention of the International Studies Association, Washington D.C., 16–20 February 1999.

⁵³⁷ *Ibidem*.

claims intensifies mutual suspicion and misperception. For this reason, States continually adjust their policies in response to perceived threats. They employ strategies that fall short of conventional warfare, referred to as “grey zone” operations. China’s approach exemplifies this pattern because it often relies on coast guard vessels, maritime militia, administrative regulations, and legal narratives to consolidate control. This strategy exploits asymmetries in escalation tolerance. It applies pressure while remaining below the threshold of a large-scale military response.⁵³⁸

The Philippines has experienced the practical effects of this dynamic. The 2016 arbitral award clarified legal entitlements under UNCLOS, but it did not produce effective results. Incidents between Philippine and Chinese vessels illustrate the continued friction.⁵³⁹ Manila defines these actions as unsafe and inconsistent with international law, while Beijing frames them as legitimate measures within waters it claims. These episodes suggest that tensions in the South China Sea reflect an ongoing structural competition shaped by power transition, and the logic of the security dilemma in an anarchic regional order.

Another element of the South China Sea dispute is Taiwan’s security. Control over the South China Sea has direct implications for regional power projection and operational access. The People’s Republic of China (PRC) possesses the naval and coast guard capabilities necessary to impose a maritime blockade around Taiwan.⁵⁴⁰ Given Taiwan’s dependence on maritime trade for energy supplies, food imports, and economic stability, this blockade would affect its resilience and the capacity of external partners to provide timely assistance. For this reason, Taiwan’s defence views the South China Sea as part of an integrated maritime security environment across the First Island Chain.

The Philippines operates under structural constraints typical of smaller powers that navigate in an asymmetric competition.⁵⁴¹ It lacks the capacity to match China’s military strength. Consequently, survival and influence often depend on a combination of legal

⁵³⁸ M. J. MAZARR, *Mastering the grey zone*, U.S. Army War College Press, 2015.

⁵³⁹ Associated Press, *Philippines says 3 fishermen injured by Chinese coast guard’s water cannons off disputed shoal*, AP News, 2025.

⁵⁴⁰ Atlantic Council, *A maritime blockade of Taiwan by the People’s Republic of China: A strategy to defeat fear and coercion*, Atlantic Council, 2023.

⁵⁴¹ C. MISALUCHA-WILLOUGHBY & R. J. MEDILLO, *The tragedy of small power politics: The Philippines in the South China Sea*, Bandung Journal, 7(1), 2020.

instruments and diplomatic engagement.⁵⁴² For this reason, Manila has adopted a multi-layered strategy. It relies on the 2016 arbitral award under UNCLOS in order to contest expansive Chinese maritime claims. At the same time, it strengthens bilateral and multilateral partnerships. The Philippines also publicized incidents involving Chinese maritime actions against Filipino vessels and fishermen to frame the dispute within an international legal context.⁵⁴³ Collectively, these measures aim to enhance the legitimacy of Philippine claims. Manila seeks to safeguard its interests and to avoid escalation into direct armed conflict.

⁵⁴² Z. HAN, K. JIANG & F. PENG, *The Philippines' hedging strategy against China in the South China Sea dispute*, Marine Policy, 2023, p. 151.

⁵⁴³ E. J. A. IBARRA, & A. A. ARUGAY, *Something old, something new: The Philippines' transparency initiative in the South China Sea*, Fulcrum, 6 May 2024.

CONCLUSION

The South China Sea dispute concerns a fundamental clash among the coastal States located in this region, which are China, Vietnam, the Philippines, Brunei, Taiwan and Malaysia. This has been caused due to rich fishing grounds and the availability of natural resources.⁵⁴⁴ Its historical background is necessary to understand the contemporary South China Sea dispute. By tracing the evolution of sovereignty positions, colonial involvement, wartime occupations, and post-war legal developments, it highlights how today's tensions are rooted in long-term historical processes. This historical context is fundamental for interpreting the legal and geopolitical dynamics that continue to shape the region. Disputes between China and its neighbours, especially the Philippines and Vietnam, in the South China Sea have intensified in recent decades with the risk of escalation. However, the problems in the region have begun due to the competition with Japan for the control of Senkaku/Diaoyu Islands in the nineteenth century.

In particular, the focus is on the conflict between China and the Philippines which presented the case before the Tribunal of Arbitration under Annex VII of UNCLOS. Nowadays, the 2016 Arbitral Award is very important, also for future maritime disputes, because for the first time, it defined features in the sea according to international law. In particular, according to Article 121 of UNCLOS, the Tribunal defined artificial islands built by China in the South China Sea as rocks and not islands. The main difference is that islands can produce 430,000 square kilometres of EEZ, while rocks have only 12 nautical miles of Territorial Sea. According to Article 121(3), an island must have the characteristics necessary for human habitation and economic life. The Spratly islands, for example, are too small and lack fresh water or vegetation to support a community. Moreover, China claims based on historic rights have not been recognized by this Convention. It was the first State to discover, name, explore, and exploit these features and their resources, and the first to exercise continuous authority over them. The problem is that, under Article 311, the Convention generally prevails over other agreements or historical customs.⁵⁴⁵ Indeed, UNCLOS replaced any historic rights. Once a State ratifies UNCLOS, it agrees that its maritime claims must be based on land features

⁵⁴⁴ CHENG, *The Dispute over the South China Sea Islands*, in *Texas International Law Journal*, cit., p. 266.

⁵⁴⁵ UNCLOS, Part XVII, Art. 311.

(islands/coasts), not ancient maps like the Nine-dash line map. The 2016 Award has demonstrated that the South China dispute does not concern only territorial sovereignty. The main issue involves the definition of maritime features, and this procedure does not regard the determination of which State exercise sovereignty over them.⁵⁴⁶

In addition, the construction of artificial islands violated Articles 192 and 194, because China caused irreparable harm to the marine ecosystem. This shows that, today, maritime disputes are no longer just about territory, but also about ecological responsibility and prevention.

The South China Sea dispute is also a central point of global tension which has involved third parties, such as the United States and ASEAN. The U.S. alliance with the Philippines through the Mutual Defence Treaty (MDT) guaranteed the external security of this Asian country. Both parties agreed that an armed attack in the Pacific area against either State, that would have been dangerous to its peace and safety, would lead to a combined action against the common danger.⁵⁴⁷ Freedom of Navigation Operations (FONOPs) also represent a commitment to maintain a balanced international order. Meanwhile, even if China is not its member, ASEAN has played the role of intermediary between it and the other countries involved. Its ongoing efforts to conclude the Code of Conduct (COC) reflect the difficult search for a multilateral solution in an asymmetric power dynamic. For two main reasons.⁵⁴⁸ Firstly China did not agree on a multilateral confrontation since it has always preferred negotiation. Then, it has been cautious about the adoption of a binding code that could constrain its strategic flexibility or limit its claims in the region.⁵⁴⁹

Based on all these assumptions, it is possible to understand that China does not reject the international system, but it challenges a U.S.-centric structure of global governance⁵⁵⁰ Control of adjacent maritime spaces in the South China Sea has strengthened Beijing's ability to project power and assert claims in contested waters.

⁵⁴⁶ The Permanent Court of Arbitration (PCA), *The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)*, Award, PCA Case No. 2013-19, 12 July 2016, pp. 74-84.

⁵⁴⁷ POBRE, *Military Alliance and the Philippines*, cit., p. 10.

⁵⁴⁸ SEVERINO, *The Philippines and the South China Sea*, cit.

⁵⁴⁹ THAYER, *ASEAN's Code of Conduct in the South China Sea: A Litmus Test for Community-Building?* cit.

⁵⁵⁰ Council on Foreign Relations, *China's approach to global governance*, cit.

China now operates the world's largest navy in terms of fleet size and it took the global position of the U.S.⁵⁵¹ In other words, greater control over the South China Sea is necessary to enhance maritime security along China's periphery, protect sea lines of communication, safeguard access to resources, and reduce the U.S. alliances in the region. The dispute, therefore, can be viewed as a structural transition in the regional balance of power. Moreover, China's behaviour can be explained through the security dilemma,⁵⁵² which means that measures taken by one State for defensive purposes may be interpreted by others as offensive or coercive. Practically, Chinese maritime patrols are often perceived by neighbouring States as expansionist. On the other hand, the U.S. military presence is viewed by China as containment. The combination of overlapping territorial and maritime claims intensifies mutual suspicion and misperception. For this reason, States continually adjust their policies in response to perceived threats.

In conclusion, the South China Sea remains a test for the effectiveness of international law. As Alfred Thayer Mahan suggested, sea power continues to shape world politics.⁵⁵³ The resolution of this conflict will not come from a single court case, but from a combination of legal persistence, diplomatic restraint, and multilateral cooperation.

The survival of a rules-based order depends on whether States choose to align their national interests with the collective obligations of UNCLOS, ensuring that the South China Sea remains a sea of peace rather than a theatre of escalation.

⁵⁵¹ SRIVASTAVA, *Why China is building the world's largest navy and how fast it's growing*, cit.

⁵⁵² Ibidem.

⁵⁵³ THAYER, *The Influence of Sea Power upon History: 1660–1783*, Boston, cit.

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