

International Court of Justice Judgment Over the South China Sea Dispute

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Requirements for the Degree of

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By

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Date: 07/02/2018

DECLARATION

I hereby declare that the dissertation entitled “**International Court of Justice Judgment over the South China Sea Dispute**” submitted to **Sikkim University** for the award of the degree of **Master of Philosophy** is my original work. This dissertation has not been submitted for any other degree of diploma of this University or any other university.

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“International Court of Justice Judgment over the South China Sea Dispute”

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Abbreviation

ADIZ	Air Defense Identification Zone
ARF	ASEAN Regional Forum
ASEAN	Association for South East Asian Nation
CBM	Confidence Building Measure
CLCS	Commission of Limits of Continental Shelf
DOC	Declaration of the Conduct
EEZ	Exclusive Economic Zone
FONOP	Freedom of Navigation Operation
ICJ	International Court of Justice
IFRI	International Forestry Resources and Institutions
ITLOS	International Tribunal for the Law of Sea
MOFA	Ministry of Foreign Affairs
ONGC	Oil and Natural Gas Cooperation
ORF	Observed Research Foundation
PCA	Permanent Court of Arbitration
PLA	Peoples Liberation Army
PLAN	People Liberation Army Navy
PRC	People Republic of China
SCS	South China Sea
UN	United Nation
UNCLOS	United Nation Convention on the Law of Sea
ZOPFFC	Zone of Peace, Freedom, Friendship and Cooperation

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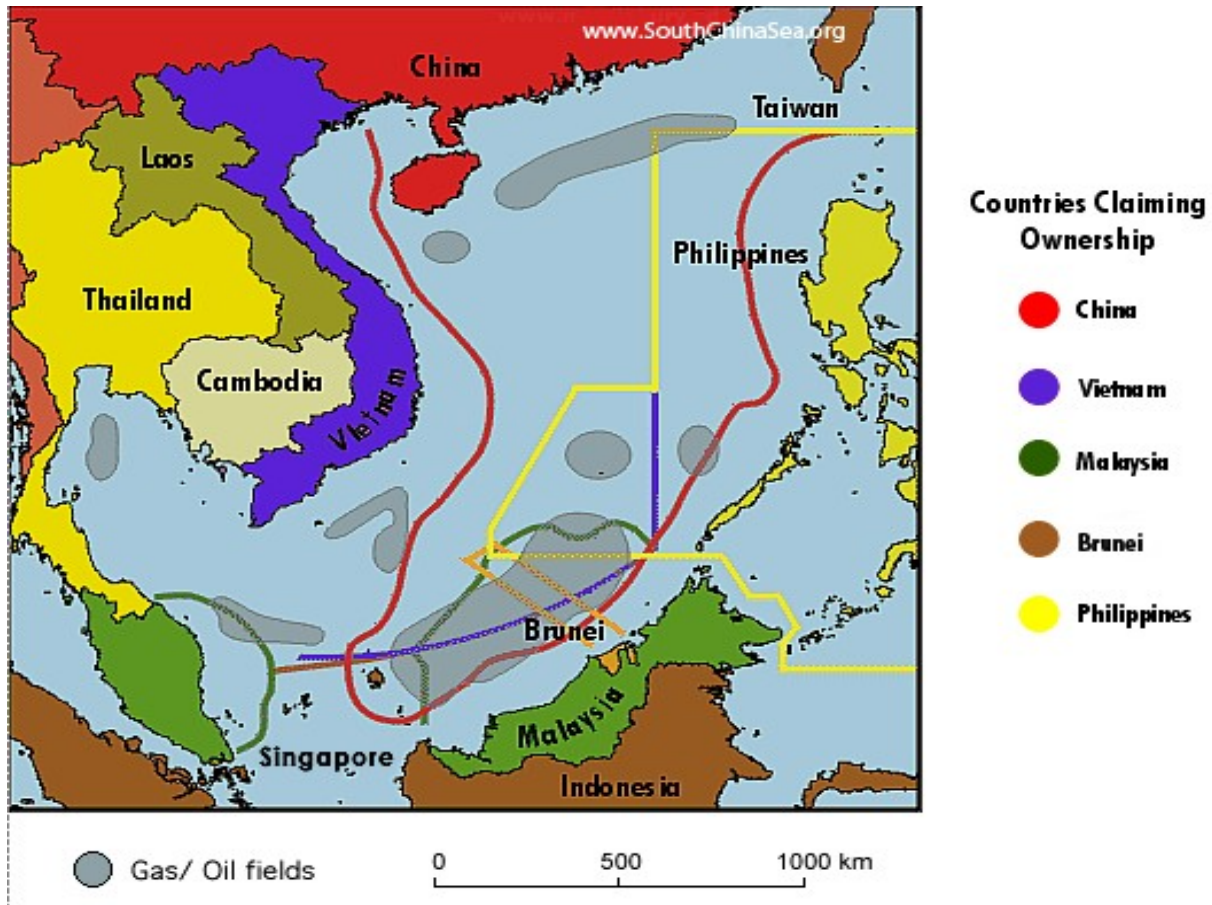
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Chapter I

History and the nature of South China Sea Dispute

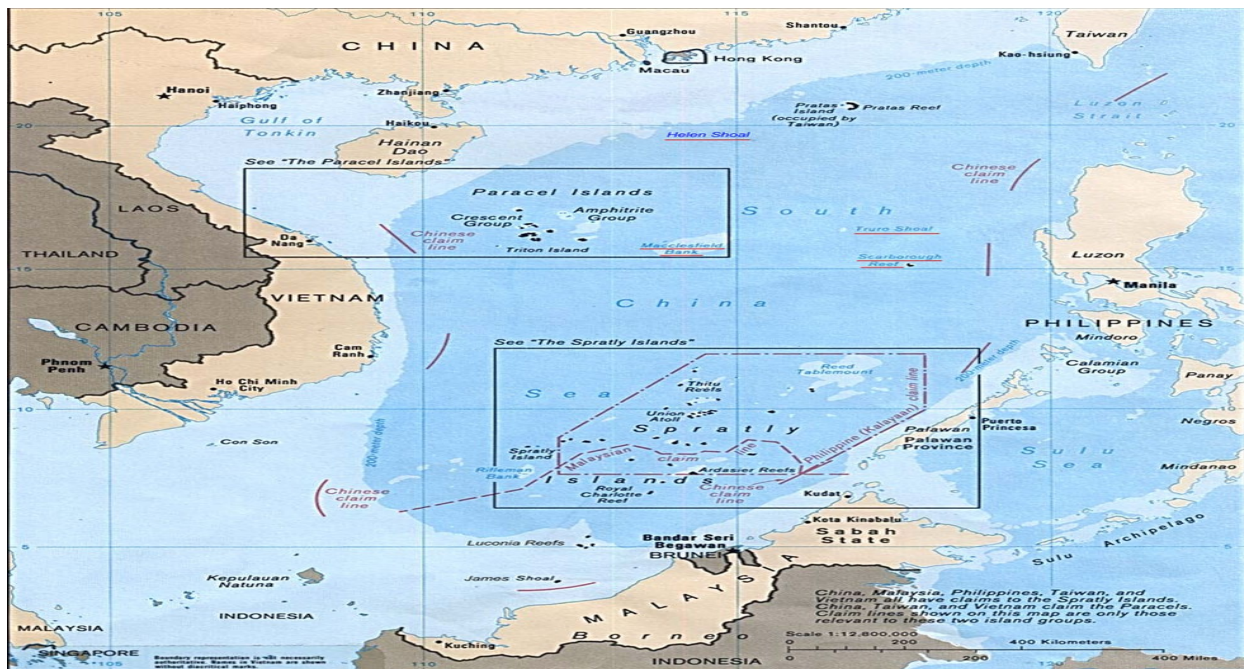
1.1. Introduction

The study attempts to understand the International Court of Justice judgment over the South China Sea dispute between People Republic of China and several Southeast Asian Nations (Philippines, Vietnam, Malaysia, Brunei, and Taiwan). The South China Sea dispute is over territory and maritime claims of Ocean areas: Paracel and Sparty are two Islands chain claimed in whole or in part by a number of countries.



The dispute involves both islands and maritime claims among several Nation within the region, namely nation of Brunei, People Republic of China, Republic of China (Taiwan),

Malaysia, Republic of Philippines and Socialist Republic of Vietnam. The major actors of the South China Sea dispute are between China and Southeast Asian Nations. The problem of South China Sea largely focuses on Spratly Island, Paracel Island and Scarborough Shoal as well. The South China Sea is marginal sea, part of Pacific Ocean having around 3 million square km of its area and almost all islands located in South China Sea which stands in the way of creating regional dispute as well as steadily escalation international tension in recent years. Since South China Sea is located in very significant and strategic location, there is a high proportion of world trade which passes through at a South China Sea. The sea is a major shipping route and home to fishing grounds that supply the livelihood of people across the region. The Islands in South China Sea are very rich in minerals, natural gas, energy, oil deposits on Islands and under their nearly seafloor, also an abundance of sea life, such as fish, animals and vegetation which has becoming one of the major reason behind the dispute.



Chinese Claims over the South China Sea including Paracel and Spratly Island

The strategic location of South China Sea is very important for the economic, military, transportation purpose which led to the maritime and territorial dispute among China and Southeast Asian Nations to develop the national interest in regional as well as international sphere, more precisely by China.

China claims a large portion of territory in South China Sea according to its 'nine dash line'¹ which was initially used by the Republic of China (Taiwan) in Dec 1947, and subsequently People Republic of China also used to justify its claims in South China Sea, which covers almost whole South China Sea and overlap the exclusive economic zones (EEZ) of other Southeast Asian Nations. Almost all islands in South China Sea have been claimed by the People Republic of China since long decade back although it violated the principles of United Nation Convention on the Law of Sea (UNCLOS). Much of disputes are built on Chinese insistence this is so called 'nine dash line'. In 2009 China submitted map to the United Nation that include 'nine dash line' and it was immediately protested by Philippines, Malaysia and Vietnam precisely because the claims by China with nine dash line strongly violated the sovereignty of these Southeast Asian Nations.

Following the defeat of Japan at the end of [World War II](#), the Republic of China (Taiwan) reclaimed the entirety of the Paracel, Pratas and Spratly Islands after accepting the Japanese surrender of the islands based on the [Cairo](#)² and [Potsdam Declarations](#)³. However, under the 1943 Cairo Declaration and 1945 Potsdam Proclamation, the Republic of China's sovereignty over the archipelagos and waters of South China Sea was not stated.

In November 1946, the Republic of China sent naval ships to take control of these islands after the [surrender of Japan](#). When the Peace Treaty with Japan was being signed at the San Francisco Conference, on 7 September 1951, both China and Vietnam asserted their rights to the islands. Later the Philippine government also laid claim to some islands of the archipelagoes.

The Nine-Dash Line was originally an eleven-dash line first shown on a map published by the government of the then [Republic of China \(1912–49\)](#) in December 1947 to justify its claims in the South China Sea. The 1947 map, titled "Map of South China Sea Islands," originated from an earlier one titled "Map of Chinese islands in the South China Sea" (Zhongguo nanhai daoyu tu)

1 Nine dash line is a demarcation line which is in circle almost all islands in South China Sea covers, including Spartly and Paracel islands.

2 Cairo, Egypt's sprawling capital is set on the Nile River.

3 Potsdam Declaration or the Proclamation Defining Terms for Japanese Surrender.

published by the Republic of China's Land and Water Maps Inspection Committee in 1935. After the [Communist Party of China](#) took over mainland China and formed the People's Republic of China in 1949, the line was adopted and revised to nine as endorsed by [Zhou Enlai](#). After evacuating to [Taiwan](#), the [Republic of China](#) has continued its claims, and the Nine-Dash Line remains as the rationale for Taiwan's claims to the Spratly and Paracel Islands.

Under President [Lee Teng-hui](#), Republic of China stated that "legally, historically, geographically, or in reality", all of the South China Sea including Spratly islands comes under the Republic of China's territory and sovereignty, and denounced actions undertaken there by Malaysia and the Philippines, in a statement on 13 July 1999 released by the foreign ministry of Taiwan. Taiwan and China's claims mirror each other. During international talks involving the Spratly islands, People Republic of China and Republic of China have cooperated with each other since both have the same claims.

The Republic of China (Taiwan) rejected all rival claims to the Paracel islands, repeating its position that all of the Paracel, [Spratly](#), [Zhongsha](#) ([Macclesfield Bank](#) grouped with [Scarborough Shoal](#)) and [Pratas Islands](#) belong to the Republic of China along with "their surrounding waters and respective seabed and subsoil", and that Taiwan views other claims as illegitimate, in a statement released by Taiwan's Ministry of Foreign Affairs which added – "There is no doubt that the Republic of China has sovereignty over the archipelagos and waters."

The Nine-Dash Line has been used by China to show the maximum extent of its claim without indicating how the dashes would be joined if it was continuous and how that would affect the extent of the area claimed by China. The Philippines, Vietnam, Malaysia, Brunei and Indonesia have all officially protested over the use of such a line. Immediately after China submitted a map to the UN including the Nine-Dash Line's territorial claim in the South China Sea on 7 May 2009, the Philippines lodged a diplomatic protest against China for claiming the whole of South China Sea illegally. Vietnam and Malaysia filed their joint protest a day after China submitted its map to the UN. Indonesia also registered its protest, even though it did not have a claim on the South China Sea.

In the Permanent Court of Arbitration case number 2013-19, Philippines brought Arbitration case against the People Republic of China under Annex VII to the United Nation Convention on the Law of Sea (UNCLOS) concerning certain issues in South China Sea including the Legality of China's "nine dash line" claim. Philippines contended that "nine dash line" claimed by China is invalid because it violates the United Nation Convention on the Law of Sea agreements about exclusive economic zones and territorial sea. Vietnam states that islands have belonged to it since the 17th century, using historical documents of ownership as evidence. On 11 Dec 2014, Vietnam filed a statement to the tribunal which put forward three points. In the first point Vietnam supported case filed by Philippines against Chinese claimed. Secondly Vietnam rejects China's "nine dash line". And third point asks the Permanent Court of Arbitration tribunal to take note of Vietnam's claims on certain islands such as Paracel. Brunei sent its own United Nation Convention on the Law of Sea claim through a preliminary submission prior to the arbitration. In 2009, Malaysia filed claims to the International Tribunal for the Law of the Sea with regard to islands. In order to protect territorial sovereignty and the exclusive economic zones, Southeast Asian Nations filed case to the International Court of Justice against the People Republic of China's claimed. An exclusive economic zone (EEZs) is an area of ocean stretching 200 nautical miles from the coast, over which any state has authority to right according to the international law. Paracel Island has been under the Chinese control since 2012 despite the fact that they also fall within the Exclusive Economic Zone of Vietnam. Spartly Island situated even in more complex position within which the maritime claims from six countries overlap. In terms of area Spartly Island cover over 100, 60000 square mile but only around 1.5 of these are above sea level. South China Sea itself is an around of 1.4 million sq mile and China seeking 70 percent over the vast majority. Vietnam is specially involve in Paracel island dispute, but also has a strong interest in Spartly situation. Both China and Philippines lay claims to Scarborough Shoal so called Huangyan Island, a little more than 100 miles from Philippines and the 500 miles from China. Philippine is heavily involved in Spartly Islands as well, with the exclusive economic zone of Malaysia and Brunei also drawn into the dispute.

The study attempts to understand the South China Sea dispute according to the United Nation Convention on the Law of Sea (UNCLOS) agreement 1982, how far Law of Sea Convention is successful in its ruling over the maritime and territorial claims between China and

Southeast Asian Nations. The UNCLOS is an International agreement that resulted from third UN Conference on the law of the Sea (UNCLOS III), which took place between 1973 and 1982. Law of the Sea Convention defines rights and responsibilities of the Nations with respect to their use of world's oceans, establishing guidelines for businesses, environment and management of marine natural resources. The Convention encompass a significant number of issues like convention on territorial sea and contiguous zone , continental shelf jurisdiction, high sea, freedom of navigation, exclusive economic zone, deep seabed mining, protection of marine environment, scientific research, archipelagic status and dispute settlement. According to United Nation Convention on the Law of Sea (UNCLOS) 1982, every country has right to exercise its authority within 200 nautical miles of its territorial sovereignty but in case of crossing the exclusive economic zone of the other Sovereign State then it violates the principles of Convention on the Law of Sea.

On Tuesday 12 July 2016, an arbitral tribunal at the Permanent Court of Arbitration in The Hague issued a long-awaited ruling in Manila's case against Beijing's claims in the South China Sea. The five judge tribunal was established under the compulsory dispute settlement provisions of the United Nation Convention on the Law of Sea (UNCLOS), and despite China's refusal to participate in the proceedings; its ruling is final and legally binding. The judges issued a unanimous decision in favor of the Philippines on the overwhelming majority of the claims it made against China. They invalidated Beijing's claims to ill-defined historic rights throughout the nine dash line, finding that any claims it makes in the South China Sea must be made based on maritime entitlements from land features. The tribunal ruled that any others historic rights China might once have claimed in what are now the exclusive economic zones or continental shelves of other countries were invalidated by its ratification of UNCLOS. On the question of specific maritime entitlements over disputed features, the court found that Scarborough Shoal is a rock entitled only to a 12 nautical mile territorial sea. The judges cannot rule on sovereignty over that shoal, but ruled that China has violated the traditional rights of Filipinos by not allowing them to fish at the Shoal. Notably the tribunal said it would have found the same regarding Chinese fishermen if they were prevented access to the shoal by the Philippines.

In the Spratly Island, the court surprised many observers by ruling on the legal status of every feature raised by the Philippines. It found that none of the Spratly, including the largest natural

features- Itu Aba, Thitu Islands, Spratly Island, Northeast Cay, and Southwest Cay is legally islands because they cannot sustain a stable human community or independent economic life. As such they are entitled only to territorial seas, not EEZs or continental shelves. Of the seven Spratly occupied by China, the court agreed with the Philippines that Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are rocks, while Hughes Reef and Mischief Reef are below water at high tide and therefore generate no maritime entitlements of their own. It disagreed with the Philippines on the question of Given Reef, finding that it is a rock, not a low tide elevation, as well as on Kennan Reef (which China does not occupy but was introduced into the case). Additionally, the court ruled that second Thomas Shoal and Reed Bank are submerged and belong to the Philippines continental shelf.

Taken together, these decisions effectively invalidate any Chinese claim within the nine dash line to more than the disputed islets themselves and the territorial seas they generate (excepting around the Paracel further north). In addition, the judges ruled that China violated its responsibilities under UNCLOS by engaging in widespread environmental destruction via its construction of artificial islands. The court also said that China has violated Philippines sovereign rights in its exclusive economic zone by interfering with Philippines fishing and petroleum exploration and failing to prevent Chinese fishermen from fishing in the zone. The tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the nine dash line.

1.2. Background of the Dispute

History always plays a big role when it comes to resolving territorial disputes, before the Second World War, there were small and large ships from many countries have sailed along the South China Sea for nearly two thousand years. There are frequent mentions of the South China Sea and its islands and reefs from those times, mostly in Chinese historical sources. However, it is possible that the main purpose of these charts was not to legally claim the maritime features, but to warn against them, since the reefs and islands were primarily conceived as a danger to shipping. With colonisation in the 18th and 19th century the concepts of territorial sovereignty and freedom of navigation emerged. The British controlled Singapore, Malacca strait, Hong Kong, Malaya and Northern Borneo, the Dutch possessed today's Indonesia and the Spanish had their hold

on the Philippines France later colonised Indochina, Japan acquired Taiwan as a result of Sino-Japanese war in 1895 and the United States won the Philippines from Spain in the Spanish-American war of 1898. In this period, the marine features of the South China Sea continued to be charted as “Dangerous Ground”. Oceanographic expeditions were sent to survey the islands and they found out that islands were inhabited during some parts of the year by nomadic fishermen, most of who spoke Hainanese dialects and lived in Hainan. In 1877 the British made territorial claims on the Spratly and Amboyna Cay, two of the largest islands in the Spratly area, but they did not exploit them or exercise British sovereignty. As for the Paracels, China displayed an interest by sending a mission there in 1909. However, due to the Chinese revolution two years later, they could not exercise effective occupation or utilization. In the 1930-33 France formally claimed the Spratlys and also occupied some of them. After the outbreak of the Sino-Japanese war in 1938, the Japanese established a military presence on those islands, to which the French did not offer active resistance, though they protested it. During the Second World War the South China Sea was surrounded by the Japanese, occupying the area. The Declaration of November 1943, signed by the heads of the governments of China, the United States and the United Kingdom, proclaimed that “all the territories Japan has stolen from the Chinese shall be restored to the Republic of China.”⁴

After the Second World War, incidents at the South China Sea became more frequent⁵. During the time right after the War the most active claimant to the islands was the Republic of China⁶. In 1946-47 they sent naval expedition to the Paracels and the Spratlys, set up sovereignty markers and established a permanent presence on Itu Aba and Woody Islands, the largest feature in each group. In 1947, they renamed a total of 159 islands, islets and sandbanks, including those of the Nansha Islands, historically under

⁴ Manoj Jhoshi (8 Aug 2016). The South China Sea Disputes: Territorial Claims, Geopolitics and International Law, Observed Research Foundation.

⁵ Flashpoint Security in the East and South China Seas, Centre for New American Security <<http://www.cnas.org/flashpoints/timeline>> accessed 8. 8. 2016.

⁶ Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 11.

China's jurisdiction⁷. In 1948 they published a map with a dotted U-shaped line (also known as the eleven-dash line)⁸, which later became a standard claim both in Taiwan and the People's Republic of China⁹. In 1950 the Republic of China's troops were forced to withdraw to Taiwan and the islands remained unoccupied for the next six years¹⁰. Japan formally abandoned its claims to Hainan, Taiwan and other islands in the South China Sea at the San Francisco peace conference in 1951, though it was not made clear, to whom the other islands were ceded¹¹. Since both Chinas were absent from the San Francisco conference, the Republic of China negotiated its own peace treaty with Japan in 1952, which was presided over by the United States¹². This treaty gave the impression that the Spratlys and Paracels were ceded to the Republic of China¹³. However, Japan later exchanged letters with France, in which they denied that the new treaty changed anything from the San Francisco treaty, which added ambiguity on the issue¹⁴. In 1958 the People's Republic of China published the Declaration on South China Sea, in which they claimed the twelve nautical miles territorial sea from "all territories of the People's Republic of

7 The South China Sea – How we got to this stage, The National Interest Magazine

<<http://nationalinterest.org/feature/south-china-seahow-we-got-stage-16118?page=2>> accessed 8. 8. 2016.

8 The South China Sea – How we got to this stage, The National Interest Magazine

<<http://nationalinterest.org/feature/south-china-seahow-we-got-stage-16118?page=2>> accessed 8. 8. 2016.

9 Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 11.

10 Ibid. p. 12.

11 Treaty of Peace with Japan: UNTS 1952 No. 1832 (entry into force 28. 4. 1952). Even though not explicitly mentioned, Taiwan and Hainan were given back to the Republic of China.

12 The South China Sea – How we got to this stage, The National Interest Magazine

<<http://nationalinterest.org/feature/south-china-seahow-we-got-stage-16118?page=2>> accessed 8. 8. 2016.

13 Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 13.

14 Ibid.

China including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands (Pratas), the Xisha Islands (Paracels), the Zhongsha Islands (Macclesfield Bank), the Nansha Islands (Spratlys) and all other islands belonging to China which are separated from the mainland and its coastal islands by the high sea¹⁵. The Philippines were granted independence in 1946 and wanted to claim the Spratlys¹⁶, even though the Spanish American treaty of 1898 clearly limited the Philippine islands do not include the Spratlys. In 1956 a group of Philippine maritime activists, led by Thomas Cloma, had grown tired of their government's passivity and occupied a number of islands in the Spratlys, calling them Freedom land¹⁷. They based their occupation on claim that the islands had become res nullius after Japan abandoned its claims in San Francisco treaty¹⁸. The Republic of China (Taiwan) sent forces to expel Cloma and his supporters, but by the time they got there, the Filipinos were already gone. Taiwan then reoccupied Itu Aba and has since retained a regular presence¹⁹. The People's Republic of China also restated their claim to the Spratlys²⁰. It is commonly accepted that since the People's Republic of China replaced the Republic of

15 Declaration of the People's Republic of China government regarding the South China Sea from September 4 1958
<http://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/yzs_663350/xwlb_663352/W020140608617876545470.jpg> last accessed 8. 8. 2016.

16 Treaty of Peace between the United States and Spain (entered into force 11. 4. 1899)
<http://avalon.law.yale.edu/19th_century/sp1898.asp> last accessed 8. 8. 2016. The contents of this treaty were further confirmed by the Philippines in: Treaty of Manila, UNTS 1947 Vol. 7 (entered into force 4. 7. 1947)

17 Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 13.

18 Ibid.

19 Ibid.

20 Ibid.

China in the UN in 1971²¹, Taiwan held their presence in the Spratlys on the account of mainland China²². In 1973 the United Nations Conference on the Law of the Sea (UNCLOS)²³ started and with it came the possibility of extending continental shelf claims and establishing the EEZ²⁴. At approximately the same time the geological surveys showed prospects of finding vast reserves of oil in the area of South China Sea, stimulating interested states to move fast²⁵.

The Philippines government argued that these Islands should belong to their country on the grounds of the "Cloma discovery"²⁶. In 1978 the president issued an official decree by which the "Kalayaan island group" was pronounced as part of the Philippines²⁷. South Vietnam, Malaysia and Brunei made their own claims and Taiwan continued to occupy Itu Aba. By the mid-1980s virtually all features that were above sea at high tide were occupied²⁸. In the late 1980s the People's Republic of China started to take control over various islands and reefs, for instance by building fishery and sheltering

21 People's Republic of China In, Taiwan Out, at U.N., The New York Times
<http://learning.blogs.nytimes.com/2011/10/25/oct-25-1971peoples-republic-of-china-in-taiwan-out-at-un/?_r=0> last accessed 8. 8. 2016.

22 Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 14.

23 United Nations Conference on the Law of the Sea was held in New York on 3–15 December 1973, and a total of eleven sessions were convened from 1973 to 1982. See more: Yoshifumi Tanaka, The International Law of the Sea, Cambridge University Press 2012, p. 20-30.

24 Ibid. p. 16.

25 Ibid. p. 16-17.

26 The South China Sea – How we got to this stage, The National Interest Magazine
<<http://nationalinterest.org/feature/south-china-seahow-we-got-stage-16118?page=2>> last accessed 8. 8. 2016.

27 41 Presidential decree No. 1596, s. 1978 <<http://www.gov.ph/1978/06/11/presidential-decree-no-1596-s-1978/>> last accessed 8. 8. 2016.

facilities on Maiji Reef in 1994²⁹. Therefore, the area is a part of the dispute between several countries.

The South China Sea dispute is regarded as the most complex and challenging ocean-related regional conflict in East Asia. The security in the South China Sea is a concern for both regional countries, e.g. China, Vietnam, the Philippines, Malaysia, and extra-regional countries, e.g. the United States, Russia, India and Japan due to their strategic and economic interests in this region. The dispute springs from a number of sources, including competing historical claims on sovereignty, competition of access to energy, and the significance of the region geographically, the threat it poses to maritime security, and overlapping maritime claims under the United Nations Convention on the Law of the Sea (UNCLOS). The latter in particular makes the South China Sea dispute even more complex than is the case in other regional disputes, involving the greatest number of parties of any maritime dispute in the world³⁰. Conflict in the South China Sea will pose a threat to regional and international security. Seeking a peaceful solution thus becomes an important agenda for foreign policy makers.

Despite terrific efforts in conflict management, the decades-old maritime disputes in the South China Sea seem to be at a political deadlock. An immediate solution appears to be difficult, if not impracticable to obtain. Small-scale conflicts occurred among the disputant countries in 1970s and 1980s. The South China Sea disputes seem to have remained quiet from 2002 to 2009, which may be attributed to the Declaration of the Conduct of Parties in the South China Sea (DoC) signed by China and the Association of Southeast Asian Nations (ASEAN) states in 2012. The agreement allowed parties to explore ways to build trust and confidence in

²⁸ Stein Tonneson, An international history of the dispute in the South China Sea, EAI Working paper No. 71, 2001, p. 17.

²⁹ The South China Sea – How we got to this stage, The National Interest Magazine <<http://nationalinterest.org/feature/south-china-seahow-we-got-stage-16118?page=3>> accessed 8. 8. 2016.

³⁰ The South China Sea conflict involves mainland China, Vietnam, the Philippines, Malaysia, Indonesia, Brunei and China's Taiwan (Taiwan).

accordance with international principles, including United Nations Charter, and on the basis of equality and mutual respect.

Starting in 2009, several major developments once again stirred up controversy in the South China Sea, highlighting the difficulties of maintaining stability in the region. Various claimant states have attempted to consolidate their claims by passing national legislation and running public relations campaigns. Some disputants have made submissions to the Commission of Limits of Continental Shelf (CLCS)³¹ and, as a result, China submitted to the United Nations (UN) Secretary General a map depicting its U-shape Line³², which continues to arouse heated reaction from other claimant states and stakeholders. The South China Sea became an even muddier pool in 2010 after the China-U.S. spat over China's so-called 'core interest' statement³³ and the following counterpart statement on 'national interests'³⁴ then U.S. Secretary

31 The purpose of the Commission on the Limits of the Continental Shelf (the Commission or CLCS) is to facilitate the implementation of the United Nations Convention on the Law of the Sea (the Convention) in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured.

32 The U-shaped line refers to a line with nine segments off the Chinese coast in the SOUTH CHINA SEA, as marked on Chinese maps. It is also called the nine-dash line and the nine-dotted line, among other names. It was first marked by a Chinese cartographer, Hu Jinjie in 1914, when it included only the Dongsha and Xisha Islands. It was outlined in reaction to the recovery of Dongsha (Pratas) Islands from the Japanese. However, it was later modified due to the cartographer's increased understanding of China's claim to the island features in the South China Sea.

33 In March 2010, as first reported by the Japanese and followed by U.S. media outlets, Chinese officials told two visiting senior Obama Administration officials that China would not tolerate any interference in the SOUTH CHINA SEA, now part of China's "core interest" of sovereignty. Zhu Feng, a Chinese political scientist, clarified that the Chinese officials did use the term "core interest," but the original text is that "the peaceful resolution of the south China sea is the core interest of Chinese government," which was misinterpreted by the media.

34 At a regional security forum in Vietnam in 2010, U.S. Secretary of State [Hillary Rodham Clinton](#) said "The [United States](#) has a national interest" in resolving the claims" (of the South China Sea)

of State Hillary Clinton³⁵. The tension in the South China Sea has continued to escalate, especially since January 2013 when the Philippines initiated an arbitration proceeding (referred to hereafter as the South China Sea Arbitration Case) against China under UNCLOS.

The United States and Japan praised the Philippines for setting the precedent of utilizing a third-party compulsory settlement mechanism for the multiple overlapping claims, while others remained silent, including some ASEAN states. The legal and political implication of this arbitration case thus becomes a debatable question. Will the South China Sea arbitration case resolve the dispute between the Philippines and China? What political and legal consequences would follow a successful resolution? What impact has the Philippines' arbitration initiative had on the negotiation and drafting process of a system of cooperative guidelines for the region? What is the value and role of UNCLOS in maritime dispute settlements both in the South China Sea and more broadly? And lastly, is the recent escalating tension in the South China Sea a consequence—direct or indirect—of the arbitration case?³⁶

1.3. Survey of Literature

The study attempts to understand the International Court of Justice judgment over the South China Sea dispute between People Republic of China and Southeast Asian Nations. In order to understand the nature of the South China Sea dispute, there are ample of literature available, published in international think-tank official site, journals, articles, news, report, documentary etc. Therefore, under the proposed study a number of literatures have been reviewed in order to fulfill the purpose of study.

Dr. H.O Agrawal book (17th edition), International Law and Human Rights (2010), Chapter 10 'Law of the Sea' has presented the discussion about the sources of international law of Sea, whether how far customary practice as a sources has been successful to contribute in

³⁵Some Chinese officials appeared to have floated that idea in early 2010 in private conversations with their American counterparts.

³⁶ Nong Hong (June 2016), the South China Sea Dilemma: A Political Game of international Law, Journal of political Risk, Vol. 4, and N. 6.

International Law of the Sea in recent years. The chapter specially historicized United Nation Convention on the Law of Sea (UNCLOS) since 1909 when Russia claimed territorial zone up to 12 mile and a few other countries claimed 4 miles. The chapter deals an idea and principles of Convention on the Law of Sea more precisely from 1982 onwards expanding territorial claims till 200 nautical miles. The study focused on Convention on the Law of Sea which encompasses Convention on Territorial Sea, Convention on Fishing, conservation of living resources and convention on continental shelf. Study of chapter attempted to understand the discourse of Convention on the Law of Sea which promotes the International Court of justice to rule the case of territorial and maritime claims in several regions. Reviewed of this book is very important requirement to rule maritime claims between China and Southeast Asian Nation over the South China Sea dispute.

In Sacha Amry book (2015), *An analysis of the South China Sea Dispute: Focusing on the Assessment of the Impact of possible solution on the Economies of the region*, published in City University of New Work. His thesis focused on the strategic importance of South China Sea including a rich minerals resource, seafood and in fact these are the primary reason of dispute in the region. The study represents the strategic water ways of South China Sea that how the region became very significant for economic, security and diplomatic issues. The study also attempted to find out the possible way of solution in the region by looking into different prospective from the view point of International Law. He has also discussed about the implication of judgment that how other countries like India, USA and the Southeast Asian nations responds to the disputes, say for example Freedom of Navigation Operation placed by United State.

Report from Permanent Court of Arbitration: *South China Sea Arbitration (Republic of Philippines Vs People Republic of China)*, The Hague, 12 July 2016. The report attempt to study the dispute and ruled case between Philippines and China that the Permanent Court of Arbitration (PCA) gave judgment on Tuesday, July 12, 2016, said an Arbitral Tribunal has ruled in favor of Philippines after being a three years process pursued by Manila, Philippines. Permanent Court of Arbitration assessed how the claimed of Chinese historic rights to resources within the Sea areas falling within 'nine dash line' became invalid. The article represent judgment of the International Court of Justice that how China has behave unlawfully by violating the Sovereignty of Philippines and Exclusive Economic Zone of others Southeast Asian Nations. Over all, the

reports represent how the Permanent Court of Arbitration has settle down the case between China and Philippines over Scarborough Shoal.

Sodhi, Military Implications of China's Reclamation Drive in South China Sea; Centre for Air Power Studies (CAPS), 14 August 2015. The Journal presented the reclamation of land from the sea by several coastal states and major cities around the world which have been engaged in such expansion activities for infrastructure development in the past. The study attempt to understand reclaiming land from the sea is a common activity around the world. There are several countries which has expanded its land area substantially by reclamation from the sea, for instance United State of America and Singapore has been involve in major reclamation activities, major project like; Hong Kong airport and Dubai's Palm Islands are other good examples. The study examine Chinese land reclamation activities in the South China Sea for the last few years, China has been engaged for the construction on several reef, artificial Islands and rock in the South China Sea. The study presented that how the reclamation activities of China in South China Sea bring the military, operational, diplomatic and legal implication.

Dr. Temjenmeren Ao (15 July 2016), Ruling on the South China Sea; Centre for Air Power Studies (CAPS). The review discussed the Permanent Court of Arbitration in Hague recently gave its ruling on the case brought to it by the government of the Philippine which challenged China's historic claims to the South China Sea. The study provides the ruling given by the tribunal dismissed China's claim to the 80 percent of the South China Sea which was based on its nine dashed line and included the various reefs and Islands. The study examines how China has dismissed the ruling given by the arbitral tribunal and also boycotted the ruling and sees it as non binding. It further states that the ruling cannot be enforced and thus, china would not be bound it.

Joseph Chinyong Liow(12 July 2016), what does the South China Sea ruling mean, Brooking Institutions. He has discussed the judgment of the South China Sea Dispute ruled by the Permanent Court of Arbitration on Tuesday July 12, 2016 in the favour of the Philippines about the Scarborough Shoal. The Study examine that how the tribunal ruled the Chinese historical Claims according to the 'nine dash line' is invalid. The study also examine that the China has occupied and ruled the Mischief Reef since 1995 and China has blocked Philippine marines garrisoned an old vessel that was deliberately run aground there, to be within the exclusive economic zone of the Philippines.

Ian Storey (2014), *Dispute in South China Sea: Southeast Asia, trouble water between China and Vietnam*; Political Etrangere, Publisher IFRI. The Journal examines the main reason of dispute by historicizing and highlighting the recent issue of the South China Sea dispute. It attempts to study major interest of China in South China Sea that how the People Republic of China has been successful to expand its territory and parked its largest and most modern oil rig, HD-981, 100 nautical miles off the Vietnamese coast and began drilling. The study of the article also provides the immediate action of the Vietnam resistance against the China after being the violation of their territorial sovereignty.

Dean Cheng (July 20 2016), *South China Sea after the Tribunal Ruling: where do we go from here?* Heritage Foundation: The study of article provides decision made by the Permanent Court of Arbitration at the Hague after being long time the case filed by Philippines against China. This article represents how the Court conclude that China's 'nine dash line' which Beijing regularly references with regard to its claims in the South China Sea does not grant it historic claims to the resources in those water. This article provides the proper definition of the Convention on the Law of Sea and reveals the activities of China which has violated Exclusive Economic Zone of Philippines and Sovereign right of Southeast Asian Nations. The article also expressed comment and reaction of China against the rule made by Permanent Court of Arbitration that Chinese Foreign Ministry Spokesman Lu Kang had made clear that the People Republic China would not accept the findings.

Sodhi (14 August 2015): "Military Implication of China's Reclamation drives in the South China Sea" Centre for the Air Power Studies. The article examines the implication of South China Sea dispute in recent year that Netherlands, United State, Singapore are also heavily involved in dispute beyond others Southeast Asian Nations. The article also define South China Sea dispute under the United Nation Convention on the Law of Sea (UNCLOS) that the Convention does not allow China to claim normal 200 nautical miles Exclusive Economic Zone of the Southeast Asian Nations. The article represent that how China has expand its territory by creating an artificial islands which strongly violated Exclusive Economic Zone of its neighboring countries and which has also violated the Convention on the law Sea.

John W. Foster (January 1909): *The Evolution of International Law*, the Yale Law Journal, and Volume 18. No 3. This article sketches out a history of the evolution of the International Law of

the Seas. The article examines that the Law of Seas were evolved during the time of Grotius and they were observed as customary rule of International Law. The evolution of the international law has been deeply rooted in three various traditions of international law they are Kantian tradition, Hobbesian tradition and Grotian tradition. This article sketches Grotian tradition who was the father of international law and heavily influenced the current international law making process.

Bonnie S Glaser (April 2015): Armed Clash in South China Sea; Council of Foreign Relation. The article represents actors and process of South China Sea dispute which attempts to study the Armed Clash between China and neighboring Southeast Asian Nations. The article provides role and interest of United State significantly for peaceful resolution of South China Sea disputes according to International Law. The Freedom of Navigation Operation placed by United State became a very contentious issue which challenges the major interest of China in South China Sea in recent years. The article also focused major interest of United State in South China Sea in terms of the Political, Economic and Security aspects.

Max Fisher (14th July 2016): The South China Sea, Explaining the Dispute, Asia Pacific. The paper represents about the important of South China Sea dispute between China and several Southeast Asian Nations. The article focused on the Permanent Court of Arbitration whether how the Tribunal Ruled in favor of Philippines which challenge the interest of China over its territorial Claims in different islands. It also says how China had broken International Law by endangering Philippines ships and damaging marine environment. The article attempts to study history of ‘nine dash line’ and the Tribunal largely rejected ‘nine dash line’ that China has used to indicate its South China Sea claims.

1.4. Rational and Scope of the Study

The scope of my research is limited to understand the maritime and territorial dispute in South China Sea between the People Republic of China and Southeast Asian Nation. In order to discuss the International Court of Justice judgment, the study focuses on the historical analytical one. The study encompasses the issues of the South China Sea dispute including the geo-strategic importance of South China Sea, territorial and maritime claims between the People Republic of China and the others Southeast Asian Nations namely the Philippines, Vietnam and Malaysia.

The study focused on the evolution of the Law of Sea that how the Law of Seas were evolve during the time of Hugo Grotius and how far the Grotius tradition has been successful to influence the United Nation Convention on the Law of Sea (UNCLOS).

The convention talk about the limitation of territorial claims, contiguous zone, continental shelf, high seas and the freedom of navigation to rule the South China Sea Dispute. The study discusses the International Court of Justice Judgment over the Scarborough Shoal between the People Republic of China and Philippines that how the Chinese historic claims so called ‘nine dash line’ has violet the territory and the sovereignty of the Philippines. The study also discusses the dispute between the China and the Vietnam over the Paracel Island. The Paracel Island has been under Chinese control since 2012 despite the fact that they also fall within the Exclusive Economic Zone of Vietnam. The Spratly Island situated even in more complex situation within which the maritime claims from six countries overlap. The study discusses the dispute between the China and the Malaysia over the Spartly Island. The study discusses the larger implications over the South China Sea dispute and discusses how the tribunal has reshaped the geostrategic landscape of the vast South China Sea.

1.5. Objectives

- a) To discuss the International Court Justice judgment over the territorial and maritime claims between China and other Southeast Asian Nations.
- b) To understand the nature of the South China Sea dispute.
- c) To study the implications of International Court Justice judgment over the South China Sea dispute.

1.6. Research Questions

- a) What is the nature of International Court Justice judgment over South China Sea dispute?
- b) What is the nature of South China Sea dispute between the People Republic of China and Southeast Asian Nations?
- c) What are the implications of International Court Justice judgment?

1.7. Methodology

The methodology for my study will be a historical- analytical one based on both the primary and secondary sources. The collection of data for primary resources will depend on the

reports and documents from the official site of the International Court of Justice and records from official sites of the government, institutions and archives. Likewise, the secondary sources include the published books, journal, newspaper shall be utilized broadly as a part of the study.

1.8. Chapterization

The study is organised in around five chapters which are as follows:

- I. History and the Nature of South China Sea Dispute**
The introductory chapter deals with the study of the International Court of Justice judgment over the South China Sea dispute. It gives a brief overview of the history and nature of South China Sea dispute between the People Republic of China and other Southeast Asian Nations (Philippines, Vietnam, and Malaysia).
- II. The Evolution of the Law of Seas**
This chapter deals with the Evolution of the Law of Seas. This chapter focused on Grotian tradition that how far this tradition has been successful to influence the United Nation Convention on the Law of Sea (UNCLOS). This chapter encompasses rules, principles as well as the limitation of territorial sea, contiguous zone, continental shelf, high sea, freedom of navigation according to the UNCLOS 1982.
- III. International Court of Justice Judgment over the South China Sea Dispute**
This chapter deals with the judgment, which has been given by the Permanent Court of Arbitration: the case between the People Republic of China and Philippines about the Scarborough Shoal. This chapter also discussed the actors and the factors of the South China Sea dispute.
- IV. Implication of International Court of Justice Judgment**
The fourth chapter deals with the implication of the International Court of Justice judgment over the South China Sea dispute. The chapter deals with the strategic and operational implication and the responses of super power countries including ASEAN response.
- V. Conclusion**
The fifth chapter which is the concluding chapter gives an overview of the study. It gives an overview of the International Court of Justice judgment over the South China Sea dispute.

Chapter II

The Evolution of the Law of Seas

2.1 Introduction

The Laws of Sea were evolved during the time of Grotius and they were observed by the states as customary rules of International Law. This chapter therefore looks into the evolution of International Law and particularly the Law of Seas. As we know the evolution of International Law has been deeply rooted in the three various traditions of International Law they are Kantian tradition, Hobbesian tradition and Gratian tradition. These traditions were heavily influenced by the three major scholars so called Thomas Hobbes, Hugo Grotius who was the father of International Law and Immanuel Kant³⁷.

This chapter is structured into two sections, the first section of this chapter deals with the Evolution of the Law of Seas. This section sketches out the Grotian tradition which is associated with Hugo Grotius, who was the father of International Law and heavily influences the current International Law making process; in fact the laws of seas were evolved during the time of Grotius. The second section of this chapter deals with United Nation Convention on the Law of Sea 1982 (UNCLOS). This section discussed the rules and the responsibility of the coastal states and other states with respect to their use of the world ocean. The entire sea was divided into three parts, Territorial sea which has been defined by the United Nation Convention on the Law of Sea 1982 (UNCLOS)³⁸. Territorial sea is a belt of coastal waters expanding 12 nautical miles starting the baseline of a coastal state. Sovereignty of the coastal states extends to the territorial sea and the coastal states have the exclusive right to appropriate the natural products of the territorial sea and also according to the customary rule of international law that the sea is open to commercial ships of all the state for navigation³⁹. Contiguous zone is a band of water extending from the outer edge of the territorial sea to up to 24 nautical miles (44.4 km; 27.6 mile) from the baseline.

37 Hans Gunter Bruch. *The Three Worldviews of Hobbes, Grotius and Kant; Foundation of Modern Thinking on peace and Security*. University of Berlin, AFES-PRESS.

38 "UNITED NATION CONVENTION ON THE LAW OF THE SEA". Retrieved 27 April 2016.

39 <http://en.m.wikipedia.org/wiki/Territ...>

The limit of the contiguous zone has been defined by the Convention of 1982⁴⁰. High seas is an unblock sea neither it comes under the exclusive economic zone, territorial sea nor inner waters of any state⁴¹. The rule was formulated in 1609 by Grotius in his treatise *mare liberum* by arguing that the sea cannot be owned and cannot become private property.

2.2 Grotian Tradition

Grotian tradition is associated with Hugo Grotius who was the father of International Law and heavily influenced the current International Law making process. Grotius wanted to create a theoretical foundation for a law of war and to develop rules for nations and individuals. For him “a resort to violence was a trait of non rational creatures” and “he saw violent practices as the inevitable result of evil which negated the sociability of men”. But he also validated war “as a tool for fulfilling the natural purposes of men”. In his view “force was allowable to maintain legitimate rights, and as such it was not irreconcilable with law”. If correctly used, war “was an instrument of rational, civilized men and had as its function the preservation of society. In Grotius’ view, war should only be undertaken “for the enforcement of rights” and “within the bounds of law and good faith”. But he also stressed that “authorities generally assign to wars three justifiable causes, defense, recovery of property, and punishment”. Due to the international anarchy and the lack of a superior authority force could be used “as a means for serving justice” but it had “to be moral in accordance with the laws of nature”. Grotius suggested three methods how disputes could be prevented to escalate to wars: a) by conference, b) by arbitration involving a third party, and c) by lot or single combat. In the Grotian view, international law places limits on the means of pursuing war and requires a distinction between combatants and non-combatants, ideas that are reflected in the Hague Conventions of 1899 and 1907, and in modern humanitarian law. Grotius’ work had a lasting impact on both international law and international relations. In 1983, four hundred years after his birth, it still provoked controversial debates on its relevance for the present and future. According to Falk, Grotius provided “a new normative order in international society that acknowledges the realities of an emergent state system while remaining faithful to the shared heritage of spiritual, moral, and legal ideas that any Christian

40 “UNITED NATION CONVENTION ON THE LAW OF SEA”. Retrieved 27 April 2016.

41 CONVENTION ON THE HIGH SEAS- Membership

society could still be presumed to affirm as valid". Falk stated that the Grotian quest remains important "because it is both normatively grounded and future-oriented, synthesizes old and new while it cherishes continuities and legitimizes discontinuities". For Bert Röling, Grotius' doctrine on just war "has not only become obsolete, but outright dangerous". Positive law as the product of interests, power positions, and prevailing values had to be changed once the poor and developing countries formed a majority in the world legal community. But Grotius remained an inspiring figure "who did much to develop a modern international law suitable to meet the needs of the new nation-states which had arisen on the ruins of the medieval world". For Hedley Bull Grotius' work "is one of the great landmarks in modern thinking about international relations." In *The Anarchical Society*, Bull claimed that Grotian perspectives focus on organizations, regimes, networks of co-operation and integration. He argued: the Grotian tradition describes international politics in terms of a society of states or international society. The Grotians contend that states are not engaged in simple struggle, like gladiators in an arena, but are limited in their conflicts with one another by common rules and institutions. The Grotians accept the Hobbesian premise that sovereigns or states are the principal reality in international politics; the immediate members of international society are states rather than individual human beings. International politics expresses neither complete conflict of interest between states nor complete identity of interest⁴².

In the Grotian view states are bound by rules of prudence and by morality and law. These imperatives require coexistence and co-operation in a society of states. Bull argued that Grotius' work is cardinal for international relations: because it states one of the classic paradigms that have since determined both our understanding of the facts of inter-state relations and our ideas as to what constitutes right conduct therein. Grotius advanced the third position, that states and the rulers of states in their dealings with one another were bound by rules and together formed a society. Even without central institutions, rules and peoples might constitute a society among themselves, an anarchical society or society without government. It is this idea which provides the core of what we may call the Grotian tradition. Grotius most propagated the idea of international society that "was given concrete expression in the Peace of Westphalia. Grotius may be considered the intellectual father of the first general peace settlement of modern times".

This peace did "not mark the beginning of the modern international system or states system" but

42 JOHN .T. PARRY (2014). What is the Grotian Tradition in International Law? University of Pennsylvania Journal of International Law, Vol. 35, Iss. 2.

rather “of an international society as distinct from a mere international system, the acceptance by states of rules and institutions binding on them in their relations with one another, and of a common interest in maintaining them”. While Grotius’ concept of such universal international society was a theoretical and normative one, in the 20th century this concept had become political and economic reality. For Bull: The importance of Grotius lies in the part he played in establishing the idea of international society. By raising the most fundamental questions about modern international relations, by assembling all the best that has been thought, and by providing us with a systematic exposition of his own conception of international society, Grotius [is] one of the master theorists of the subject. Both Wight and Bull defined the Grotian tradition “as the via media between the Machiavellian and Kantian positions”. Kingsbury and Roberts remained skeptical “that the literature and practice is sufficiently unified to constitute a ‘Grotian tradition’”.

2.3 United Nation Convention on the Law of Sea (UNCLOS)

Laws on the sea were evolved for the period of the time of Grotius and they were observed by the States as customary rules of International Law⁴³. The whole ocean was divided into three parts, territorial sea, contiguous zone and the high seas. Laws relating them were settled up to nineteenth century. However, since the beginning of the present century a number of developments start to take place. In 1909 Russia assert territorial zone up to twelve miles and a small number of others countries assert four miles⁴⁴. These claims were contradictory with the customary rules. The Hague codification conference made an attempt to codify some aspects of the Laws of the Sea in 1930, but its attempts went in a Second World War, things began to change rapidly. The USA President Trueman’s declaration regarding the jurisdiction over the continental shelf was historic. It was followed by many other states. Economic and military interest led some states to claim the breadth of the territorial sea up to 200 miles. These claims assumed serious problems.⁴⁵

2.4 First and Second United Nations Conference on the Law of Sea

43 Culter A. Claire, The Grotian Tradition in International Relations: Cambridge University Press, Vol. 17, No. 1 (Jan, 1991), pp. 41-65

44 Symmons Clive Ralph, The Maritime Zones of Island in International Law: Brill 22-Jun 1979- Law- 307 Pages

The General Assembly of the United Nation on February 21, 1957 adopted a resolution for convening a Conference on the Law of Sea. Consequently in 1958, a Conference was held in Geneva to consider a number of drafts prepared by the International Law Commission. The Conference was attended by eighty two States. The Geneva Convention implemented four Conventions. They were: Conference on the Territorial Sea and Contiguous Zone; Convention on the High Sea; Convention on the Fishing and protection of Living Resources and the Convention on the Continental Shelf⁴⁶. All the four Conventions came into force. The most significant subject which was missing in doubt was the breadth of the territorial sea. It was so since all the state were not enjoyable to one and the similar boundary of the territorial sea. In order to resolve this precise matter, next that the Second Conference on the Law of the Sea was detained in Geneva in 1960, but it once more unsuccessful due to different assert of the States. Nonetheless, it began to be comprehended that the laws prepare by the Geneva Convention were insufficient in outlook of the concealed cast quantities of minerals, gas and oil deposits in the sea, and the enlarged competence and ability of some of the States to make use of them.

2.5 Convention on the Law of the Sea, 1982

On 30 April 1982, in the Eleventh Session, the Convention approves the draft of the Convention on the law of Sea by an irresistible mass of 130 States. It has also determined that the Convention would be signed on 10 December 1982 at Jamaica. One hundred and Seventeen States signed the Convention on that day. However, the Convention remained open for signature up to December 9, 1984. Total number of signatories by that time was one hundred and fifty nine. Out of them while one hundred and fifty five signatories were the members of the United Nations, four others were: Cook Islands, European Economy Community, and Namibia.

The Convention on the law of Sea of 1982 has 320 Articles. They are divided into XVII parts and IX Annexes. It lays down rules for all parts and virtually all uses of the oceans. Para 1 of Article 308 of the Convention provided that the Convention shall come into force 12 months

45 Dr. H.O Agrawal book (2010), International Law and Human Rights, 17th Edition, Chapter 10 'Law of the Sea'.

46 Treves Tullio, 1958 Geneva Convention on the Law of the Sea, Geneva 29 April 1958, Audiovisual Library of International Law,

after it has been ratified or acceded to by 60 States. Jamaica was the first to ratify the Convention and the 60th instrument of ratification was deposited by Guyana on November 16, 1993. Accordingly, the Convention entered into force on November 16, 1994. By the end of June 2006, the Convention had 149 States parties including the European Union. The widespread acceptance is likely to guide the behavior of nations and narrow the scope of disputes to more manageable proportions.

2.6 Agreement Concerning to the Adoption of Part XI of the United Nation Convention on the Law of the Sea (1994)

Deep sea-bed mining provisions of the Convention were not acceptable to the industrialized states. The United States believed that it, more than any nation, had the most to lose from a restricted deep sea-bed mining regime. The mining regime in the Convention was unsatisfactory because (a) it has place burdensome international regulations on sea-bed mining; (b) it has established a super national mining entity; (c) it has created a one-man, one-vote procedure in the Assembly, disregarding desperate levels of interest and making the Assembly a supreme organ; (d) it has imposed revenue-sharing obligation for deep sea-bed mining on the continental shelf; (e) it lacked provisions for the protecting investment made in deep sea-bed mining; and (f) it has made it possible for national liberation movements to share revenue generated. Due to these reasons the United States was of the view that deep sea-bed mining remains a lawful exercise of the freedom of the high seas open to all nations. The United States will continue to allow its firms to explore for and, when the market permits, exploit these resources.

When it was known that the Convention will not be generally accepted by the States especially by the industrialized countries due to certain problems with some aspects of the deep sea-bed mining provision of Convention, as early in July 1990, the Secretary General of the United Nations Javier Perez de Cuellar took the initiative to convene formal consultation aim at achieving universal participation in the convention. It was considered that the universal participation may best be achieved by the adoption of an agreement. He noted that in the eight years that had elapsed since the Convention was adopted certain significant political and

economic changes had taken place which had a mark effect on the regime for deep sea-bed mining contained in the Convention.

The unofficial conference resulted in the implementation of the agreement concerning to the adoption of part XI of the United Nations Convention on the Law of the Sea of 10 December on 17 August 1994. The conformity came into force on 28 July 1996. By the end of December 2002, 111 States had become parties to the Agreement. The Agreement intended to pave the way for universal participation in the treaty by removing some of the obstacles dealing mainly with the Convention's sea-bed mining provisions which had stood in the way of ratification or accession by many countries particularly the industrialized States.

2.7 Territorial Sea

Sovereignty of the States is confined not only to the waters and land lying within its boundaries. It also extends to a part of the sea which is adjacent to the coastal States. These waters are contained in a certain zone or belt called 'Marginal Zone' or 'Marginal Belt' and the rights which the coastal States enjoy is called the maritime rights. Extension of the sovereignty of the coastal States over the territorial sea or marginal zone is based on the principle which can be summarized as the land dominates the sea. Territorial sea therefore may be defined as that part of the sea which is neighboring to the coast and in excess of which International Law allow the coastal States to work out sovereignty subject only to a common right of blameless way on the part of foreign shipping. The ownership of this territory is neither optional nor dependent upon the will of the State, but compulsory. It is different from the internal waters in the sense that internal waters lie within the boundaries of the States, and they are used exclusively by the States themselves. Right of innocent passage is not available in respect to internal waters. It is also different from the high sea which is free to the commerce and navigation of all the States. The Geneva Convention on Territorial Sea and Contiguous Zone of 1958 had expressly recognized the sovereignty of the coastal States over the territorial waters under Article I which present that the dominion of State enlarge, outside its land territory and its domestic waters, to a belt of the sea neighboring to its coast, explain as the territorial sea. This sovereignty is work out subject matter to the provisions of these Articles and to other set of laws of International Law. The Convention on the Law of Sea of 1982 which put down the sovereignty of a coastal State

extends, outside its land territory and domestic waters to an neighboring belt of sea is depict as territorial sea.

Two important aspects are involved in the concept of territorial sea. They are: breadth of the territorial sea and the rights of States over the territorial sea.

2.7 a) Breadth of Territorial Sea

It has been generally accepted that the State exercises sovereignty over territorial waters, controversy arises as to its breadth. Customary International Law does not prescribe any definite rule in this regard. The extent of the territorial jurisdiction was based on the Cannon Shot rule. Since a cannon ball could travel three miles, this became the accepted territorial waters limit. Bynkershoek in his work *De Dominio Maris*, published in 1702 provided a rationale for that limit: wherefore on the whole it seems a better rule that the control of the land over the sea extend as far as cannon will carry, for that is as far as we seem to have both command and possession. I should have to say in general terms that the control from the land ends where the power of man's weapons ends.

The concept of the territorial sea being three miles in breadth endured until the middle of the twentieth century. But later it was not acceptable to a few States. On 1958, the International Convention on the Law of the Sea held in Geneva could not prescribe the limit in view of the divergent views taken by the States. However, many States were of the view that the territorial sea should extend up to miles from the coast. In view of the uncertainly in this regard, the Second Geneva Conference was convened by the General Assembly in 1960, but again the breadth of territorial sea could not be prescribe. The result was that different States made different claims is clear from the following chart.

Territorial Sea claims	1978
3 miles	20 States
4-10 miles	9 States
12 miles	70 States
12-200 miles	12 States
200 miles	15 States

Nevertheless, Convention of 1982 has settled down the debate by providing under Article 3 with the intention of every States has right to set up the width of its territorial sea up to a boundary not beyond twelve nautical miles deliberate from baseline. The width of the territorial sea as gave under the Convention on the Law of the Sea of 1982 is acceptable to most of the States. About ninety States including India have adopted legislation extending the maximum breadth of the territorial sea to twelve nautical miles. The usual baseline for calculate the breadth of the territorial sea is the low water line along the coast as noticeable on large scale charts formally documented by the coastal States. However in the case of island situated on a toll or islands having fringing reefs, the baseline is the sea word low water mark of the reef, as shown by the suitable sign on charts formally recognized by the coastal States.

Article 15 of the 1982 Convention lays down that in those cases where the coasts of the two States are conflicting or neighboring to each other, neither of the two States are permitted, deteriorating conformity between them to the opposing, to extends its territorial sea outside the center line every point of which is equidistance from the adjacent points on the baselines from which the breadth of the territorial seas of each of the two States is calculated. The above rules are subject to the exception of cases of significant title or other particular position to demarcate the territorial seas of the two States in a way which is at discrepancy therewith. The above provision is identical to Article 12 of the Convention on the Territorial Sea and Contiguous Zone, 1958. In Maritime Delimitation and Territorial Question between Qatar and Bahrain the International Court of Justice noted that equidistance/specially circumstance rule is to be regarded as having customary character. The Court also noted that equidistance line is the string every point of which is equidistance from the adjacent points on the baselines starting which the width of the territorial seas of each of the two States is calculated. This line can only be drawn when the baseline are known. Where the baselines not specified which are to be used for the determination of the breadth of territorial sea, the first task is to determine the relevant coast of the parties from which will be determined the location of the baseline and the pertinent base point which enable the equidistance line to be measured.

In Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean case (Nicaragua and Honduras) the International Court of Justice laid down the reason why the equidistance method is widely used in the practice of maritime delimitation. The Court in the

above case observed that this method has certain intrinsic value because of its scientific character and the relative ease with which it can be applied. The Court stated that the equidistance remains the general rule. However, where the construction of an equidistance line is not feasible because of the special circumstances alternative method should be applied. The Court stated that the use of bisector the line formed by bisecting the angle created by a linear approximation of coastline is a viable substitute method where equidistance method is not possible of appropriate. The justification for the application for the bisector method in maritime delimitation lies in the configuration of and relationship between the relevant coastal fonts and the maritime areas to be delimited. The Court applied the bisector method by stating that it is justified by geographical configuration of the coast, and the geomorphologic features of the areas where the end point of the land boundary is located.

2.7 b) Right of States over Territorial Sea

Although the Coastal State exercises sovereignty over the territorial sea, certain rights are also exercised by other States. Rights of the coastal States as well as of other States are as follows:

- i. **Rights of coastal States:** The sovereignty of the coastal States enlarges to the territorial sea. Consequently they have complete dominion over this part of the sea except that of the right of innocent passage and of transit of vessels of all the nations. It follow from the regime of sovereignty that the coastal State has the exclusive right to appropriate the natural products of the territorial sea, including the rights of fisheries therein, and to the resources of the sea bed and of its sub soil namely, sedentary fisheries and non living resources. Laws could be enacted, for the security of navigation and instruction of maritime traffic, for the protection of navigational aids and facilities and other facilities or installations; for the security of chain and pipelines, for the protection of the living resources of the sea, for the safeguarding of the surroundings of the coastal State and the hindrance, decrease and the control of population thereof. Foreign ships in innocent passage are required to comply with the laws and rules of coastal State. Additional, the Coastal State has a power to take the essential steps, to stop passage which is not guiltless. They may hang up temporarily, in particular region of its territorial sea, the innocent passage of overseas ships, if

- such delay is necessary for the protection of its safety. Additionally, if any warship does not obey with laws and guideline of coastal State relating to passage through the territorial sea, and ignore any request for observance which is made to it, the coastal States may need it to go away from the territorial sea without delay. The flag State is to bear international responsibility for damage caused to the coastal State due to such non-compliance by a warship, or due to the breach by such vessels of the Convention or other rules of International Law. Although the coastal State has a right to suspend the innocent passage in its territorial sea, it has a duty not to hamper the blameless passage; or separate in form or in fact in opposition to the ships of any State or against ships carrying cargoes to, from or on behalf of any State. The coastal State is also under a duty to provide proper advertising to any danger to navigation, of which it has information, within the territorial sea.
- ii. **Rights of other States:** It is a traditional law of International Law that territorial sea is unlock to commercial vessels of all the States for navigation. Such vessels have a right of innocent passage from side to side the territorial sea of a State. Thus, every State has the right to claim that in time of peace its merchantmen may harmlessly pass through the territorial sea of every other State. This is effect of the freedom of the open sea. The above rule was integrated in the Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958 under article 14 which provided that vessel of all States shall enjoy the right of innocent passage through the territorial sea. The similar condition has been laid down under article 17 of the Convention of 1982 by stating that vessel of all States, weather coastal or landlocked, shall enjoy the right of innocent passage through the territorial sea. The outcome of the above right is that no State can charge tolls for the mere passage of foreign ships through it territorial sea. Though the littoral State may use money on the creation and the maintenance of light house and other conveniences for the safe navigation within its territorial sea, it cannot make foreign ships only passing pay for such spend or, indeed, impose any obligation which have the practical achieve of denying or damage the right of innocent passage. Any effort on the part of a coastal State to stop of to harm innocent passage through the territorial sea in time of peace is illegal.

2.8. Contiguous Zone

The Contiguous Zone is that division of the sea which is beyond and neighboring to the territorial waters of the coastal State. The coastal State does not work out sovereignty over this part of the sea; still they may take proper action to defend its revenue and like matters. In other words, police and revenue power of the coastal State enlarge to the contiguous zone. Geneva Convention on Contiguous Zone of 1958 documented the right of coastal States under Article 24, Para I which state that the coastal States may work out the control necessary to (a) stop violation of its customs, financial, migration or hygienic policy within its territory or territorial sea; (b) chastise infringement of the above rules dedicated within the territory of territorial sea. The Convention of 1982 has completed alike provisions under Article 33.

The limit of the contiguous zone was provided in the Geneva Convention of 1958. It was to extend 12 nautical miles from the baseline from which the width of the territorial sea is calculated. Therefore the concept of contiguous zone is meaningless for those States which had claimed the territorial sea up to twelve miles. They assimilated the limit of contiguous zone into the territorial sea. The limit of contiguous zone has been extended by the Convention of 1982 which provide under Para 2 of Article 33 that it cannot enlarge away from twenty four nautical miles from the baseline from which the breadth of the territorial sea is measured. Thus, the area of contiguous zone would be 12 miles beyond the territorial sea.

Since the Convention on the Law of Sea of 1982 has made the concept of the exclusive economic zone, the contiguous zone is no longer being described as being a part of the high seas. Since Article 33 is permissive and since indeed the contiguous zone is entirely in the area of the exclusive economic zone where such a zone is claimed, it is perhaps doubtful whether a State is required to formally claim or proclaim a contiguous zone as a precondition of the contiguous zone jurisdiction⁴⁷.

2.9 Continental Shelf

The concept of continental shelf is mainly correlated with the exploitation of the natural resources from the sea adjacent to territorial sea. It was therefore of little importance until the exploitation of natural resources become technically possible. The concept acquired significance

47 Section 4. Contiguous Zone, Article 33. UNCLOS PART II- Territorial Sea and Contiguous Zone. United Nations. Retrieved 2012.

when it was propounded by U.S. President Truman on September 28, 1945 through two proclamations, after stressing the need for the recourse of petroleum and other materials, laid down that such resources underlie in many parts of the continental shelf of the coast of the United States and with modern technological progress their utilization is possible. The proclamation also claimed the jurisdiction and control of the United State of America in excess of the natural resources of sub soil and sea bed of continental shelf contiguous to the coast of the America. India claimed for the first time in 1955. In fact the world wide adoption of the continental shelf concept has been so rapid that it took less than thirteen years (the time between the Truman Proclamation and the Geneva Convention of 1958) for the extension of national sovereignty to the resources of the continental shelf to be universally accepted. As early as in 1950, Lauterpacht had stated that the concept of the continental shelf had become a part of customary International Law since consistent and uniform usage of States could be established in a short span of time.

2.9 a) Meaning and External limit of Continental Shelf

Physically, continental shelf may be distinct as the zone approximately the continent extending from the low water line the depth at which there is typically a marked boost of declivity to larger depth. The Continental shelf ends at the point where this marked increase occurs. The waters of this so called shelf edge range in depth from fewer than 60 meters to more than 500 meters and average about 130 meters. The seaward extension of the continental shelf is called the continental slope, a zone that extends from the shelf edge to a depth of 1200-3500 meters. The continental rise is a zone that borders the base of many, although not all, continental slopes, with a generally smooth declivity it goes to the depth of 3500 to 5500 meters. The continental shelf, continental slopes and the continental rise together are known as the continental margin. It does not include the deep ocean floor with its oceanic ridges or the sub soil thereof. The continental margin comprises approximately 23 percent of the total ocean floor⁴⁸.

2.9 b) Definition of Continental Shelf under Geneva Convention of 1958

48 Jennifer Frakes, *The Common Heritage of Mankind Principle and the Seabed, Outer Space and Antarctica: Will developed and developing Nation Reach a Compromise?* Wisconsin International Law Journal. 2003; 21: 409.

The Convention on Continental Shelf of 1958 instead of defining the meaning of the term continental shelf defines the area of sea which may be referred to as continental shelf. Under Article 1, the Convention laid down that the Continental Shelf is the sea bed and sub soil of underwater areas neighboring to the coast, but outer surface the area of the territorial sea, to a depth of 200 meters or away from that limit, where the deepness of the superjacent waters confess of the exploitation of the natural resources of the said region. Above definition contains two alternatives criterion for defining the areas of the continental shelf. They are: depth of the sea criterion and the exploitation criterion. The first criterion which was laid down in the definition was that the continental shelf extends to a depth of 200 meters of the sea. This limit prescribes because at that time it was thought that exploitation and exploration of the resources was not possible beyond the depth 200 meters from the baseline. However, the definition was not rigid where the exploitation of the resources could be made beyond that limit; that area could also be referred to a continental shelf on the basis of exploitation criterion.

The definition led to the States to interpret the region of continental shelf according to their personal expediency. The developed States functional the exploitation decisive factor. The United States went to explore oil and gas up to 300 miles on the east coast continental slope at a depth of 4000-5000 feet deep on the Atlantic coast. It is to be noted that if the above definition is accepted, a large part of the sea, if not the whole, would become a part of the continental shelf in view of the fact that some States have become scientifically and technologically so developed that it has become possible for them to explore and exploit the resources of the sea even from the deep sea ocean. If they would be allowed to do so the consequences would be that the international relations shall be burdened with the new set of conflicts.

2.9 c) Continental Shelf and North Sea Continental Shelf Case:

Continental shelf case of the North Sea, International Court of Justice stated the subject concerning to continental shelf in a dissimilar way. In the case, a precise limit of the continental shelf was not laid down. It was detained that the rights of the coastal State in respect of the region of continental shelf that comprise a natural continuation of its land territory into and under the sea survive ipso facto and ab initio, by virtue of its sovereignty in excess of the land, and as the sea bed and make use of its natural resources. In short, there is at this point an intrinsic right.

2.9 d) Meaning of Continental Shelf under the Convention on the Law of the Sea, 1982

The convention of 1982 has clear the term continental shelf under Para I of Article 76 by stating that the continental shelf of a coastal State encompass the sea bed and subsoil of the underwater areas that enlarge away from its territorial sea right through the natural continuation of its land territory to the outer edge of the continental edge, or to a distance of 200 nautical miles beginning the baseline from which the breadth of the territorial sea is deliberate where the outer edge of the continental margin does not enlarge up to that distance. The meaning has laid down one decisive factor for fitting the limit of the continental shelf, i.e., it shall enlarge throughout the natural continuation of its land territory to the outer edge of the continental margin. Where the outer edge of continental margin enlarge away from 200 nautical miles from the baseline from which the breadth of territorial waters is measured, the coastal State, in accordance with Para 7 of Article 76 shall define the self's outer limits by straight lines not more than 60 nautical miles in length, linking fixed points, define by coordinate of latitudes and longitudes. Para 4 of the above mentioned article states that in such cases the coastal State shall recognized the outer edge of the margins moreover (i) a line define in consistency with Para 7 by reference to furthest permanent points at each of which the breadth of sedimentary rocks is at least 1% of the shortest distance from such point to the foot of the continental slope; or (ii) a line define in conventionality with Para 7 by reference to set points not more than 60 nautical miles from the bottom of the continental slope, such foot to be usually the point of greatest change in the incline at its base. Nonetheless, set points under Para 5 of Article 76, under Para (i) and (ii) shall not go beyond 350 nautical miles from the baseline from which the size of the territorial sea is deliberate or shall not go beyond 100 miles from the 2500 meters isobaths. The on top of is the utmost limit of the continental shelf. However, the limit of the continental shelf would be 200 nautical miles where the outer edge of the continental margin does not enlarge up to the distance. Thus, those coastal States shall have continental shelf up to 200 miles whose continental shelf is short or when natural prolongation have an important role to play in defining breadth of the continental shelf. Thus geographical formula has been adopted in the definition than to the reference to its depth or extent.

2.9 e) Rights of Coastal States over Continental Shelf:

The region of continental shelf cannot be accurate by the States, and consequently, States cannot work out sovereignty over this part of the sea. Nevertheless, they may work out sovereign rights over it for the reason of exploring it and exploiting its natural resources. The natural resources consist of non living resources and the minerals of the sea bed and subsoil collectively with living organisms belonging to inactive species, that is to say, organisms which at the harvestable stage, either are static on or under the sea bed or are incapable to move except in stable physical contact with the subsoil or sub bed.

Those coastal States which shall exploit the non living resources of the continental shelf beyond 200 nautical miles from the baseline are required to make payments of contribution in kind to the International Sea bed Authority. The Authority shall distribute them to State Parties to this Convention, on the basis of equitable sharing criterion, taking into account the interests and needs of developing States, particularly the least developed and the landlocked among them. The expenditure and contributions shall be made yearly with respect to all manufacture at a site after the first five years of production at that site. Intended for the sixth year, the rate of disbursement or contributions shall be 1% of the value or amount of production at a site. The charge shall increase by 1 %for each following year until the twelfth year and shall remain at 7 % thereafter. Nevertheless, the production does not include resources used in connection with exploitation. The above right of exploring and exploitation the natural resources are elite in the sense that if the coastal State does not look at the continental shelf or exploit its natural resources, no other State may take on these activities without its express permission. Article 81 of the Convention of 1982 offer that “the coastal States shall have the exclusive right to authorize and control drilling on the continental shelf for all purpose’. It has right to use the subsoil by means of channeling, irrespective of the deepness of water above the subsoil according to the Article 85 of the Convention. The above rights of the coastal States over the continental shelf do not distress the legal status of the superjacent waters or of the air space above those waters. The work out of the right of the coastal States over the continental shelf must not infringe of result in any indefensible intervention with navigation and other rights and freedom of other States. This coastal States are allowed only to construct and operate the needed installation within their continental shelves in accordance with these preserves.

2.9 f) Rights of Other States in the Continental Shelf

The others states have also been offer a few rights over the continental shelf of the coastal States. Therefore, all States are allowed to lay submarine cables and pipelines on the continental shelf. Nevertheless, the right may be exercised only with the permission of the coastal States. The coastal State at the time of openhanded approval may enforce situation for cables of pipelines.

2.10 Exclusive Economic Zone

The concept of EEZ was initiated by Kenya in 1972 at the Geneva Session of the UN working group on the Peaceful Uses of the Sea bed and Ocean Floor away from the confines of National Jurisdiction. Afterward, the concept of EEZ was carefully discussed and considered in different Sessions of the Third Conference on the Law of the Sea. The EEZ lastly set up position in the Convention on the Law of the Sea, 1982. Since then, it becomes a generally accepted institution of the Law of the Sea. In *Tunisia v. Libya*, it was stated that the concept of EEZ can be regarded as a part of customary Laws⁴⁹.

2.10 a) Breadth of the EEZ

The EEZ is a region away from and neighboring to the territorial sea enlarging up to 200 nautical miles seaward from the shore baseline from which the breadth of the territorial sea is measured. The external limit of the EEZ shall be shown in the chart of a scale which shall be given due publicity by the coastal States. It is to be noted that there is a difference between the EEZ and the continental shelf as far as breadth is concerned. While the breadth of EEZ shall extend up to 200 nautical miles from the coast line, the breadth of the continental shelf may extend beyond the limits of EEZ that is 200 nautical miles. In such cases, the continental shelf covers the area of EEZ. It follows that there can be continental shelf where there is no exclusive economic zone, but there cannot be an exclusive economic zone without a corresponding of the continental shelf. Thus, the two institutions- a continental shelf and exclusive economic zone are linked together in modern law since rights enjoy by a State Over its continental shelf would also be overcome by it's over the subsoil and sea bed of any exclusive economic zone which it might declare.

2.10 b) Right of Coastal States over EEZ

49 BIRNIE, P.W, BOYLE, A.E, International Law and the Environment. Published by oxford University press Inc, New York.

The coastal States have sovereign rights in the EEZ for the reason of exploring and exploiting, preserving and organizing the natural resources living and non living resources of the waters superjacent to the subsoil and sea bed. Further action for exploration and the exploitation of the zone, such as manufacture of energy from the water, current and winds may also be passed out therein. The expression of other activity is important in the sense that the coastal States may bring the zone for any other economic uses which may be discovered in future. Thus, the EEZ is limited to the exclusive economic function. Coastal States have authority with regard to the founding and utilize of artificial islands, mechanism and structures, marine scientific study and over the safeguard and conservation of marine surroundings. Coastal States have extra rights and duties given in the Convention at dissimilar places. No doubt, coastal States enjoy the above sovereign rights over the EEZ, the Zone cannot be equated to the territorial sea which is regarded as the part of the State territory and over which they exercise sovereignty. Thus the EEZ cannot be appropriated. The expression sovereign rights signify that EEZ could only be used in the sense of exclusively of the rights of a coastal State over resources contained in its coastal waters. No State can take away these rights unless they themselves transfer them to others.

2.10 c) Rights of Other State over EEZ

The Coastal States, in the exercise of their sovereign rights to explore, exploit, conserve and manage the existing resources in the Zone may make rules and regulations. They may pass a number of regulations prescribing terms and conditions which should be complied by other States. However, they are required to be in conformity with the convention. In order to ensure their compliance, such States may obtain measures together with boarding, examination, capture and legal actions as may be compulsory to make sure conformity with the laws and system. In cases of arrest or detention of foreign vessels, the coastal State shall promptly notify the flag State, through appropriate channels.

Article 56, Para 2 of the Convention of 1982 clearly lay down so as to the coastal States shall offer due regard to the rights and responsibility of other States in exercising their rights in the EEZ. Rights and duties of other States in EEZ are provided under Article 58 of the Convention. All States (coastal as well as land-locked State) be full of freedom of navigation and over flight of the EEZ. They may lay underwater chain and pipelines. In addition to the above, they have freedom of other worldwide legal uses of the sea such as those linked with the process

of the ships, aircraft and submarine cables and pipeline. Under Para 3 of Article 58 general restrictions in the rights of other States have been laid down. It says that while exercising their powers and performing their duties in the EEZ, States shall comprise due regard to the rights and responsibilities of the coastal States. Other States may also conduct the marine scientific research in the EEZ. However, it can be conducted only with consent of the coastal States and exclusively for peaceful purposes. Consent should be granted in normal circumstances. But the coastal States have the discretionary powers to withhold consent on different grounds. Since the coastal States have been given sovereign rights over the resources of the EEZ, the character and the status of the area has been completely change. The area ceased to be a part of the high sea. However, the freedom of high seas that are available to all the States shall not be substantially affected. All States are to enjoy the autonomy referred to in Article 87 of navigation and over flights and of lying of underwater cables and pipelines and other worldwide legal uses of the sea associated to these liberty, such as those related with the action of the shipping, airplane and underwater cables and pipelines and well-suited by the others provisions of this Convention. Article 87 is the one which is entitled, Freedom of high sea, but all State cannot enjoy in the exclusive economic zone those other freedoms referred to in Article 87 but not in Article 58; for example, the freedom of fishing, or constructing artificial Islands or installations, or of scientific research. For these are hardly compatible with the coastal State's sovereign resource rights.⁵⁰The EEZ therefore possesses a special legal status having its own peculiarities. Perhaps, it would not be appropriate to State that the coastal States have quasi sovereignty over the EEZ.

The regime of EEZ has been established by the 1982 Convention on the Law of the Sea which came into force on 16 November 1994. However, a large number of States had already claimed jurisdiction of various kinds in their municipal law much before the Convention came into force. Thus the confirmation of the 200 mile exclusive economic zone had become a definite rule of International Law. It has been rightly stated that the exclusive economic zone has become a part of general International Law, there can now be no doubt. The International Court of Justice in Tunisia/Malta case declared that it was indisputable that the organization of exclusive economic

⁵⁰ BIRNIE, P.W, BOYLE, A. E,' International Law and the Environment', Published by Oxford University press Inc, New York.

zone, with its rule on entitlement by reason of distance, is revealed by the practice of States to have turned out to be a part of customary law.

2.11. High Seas

By the term 'high seas' is meant under customary rule of International Law that part of the sea which are not included in the territorial waters. The rule was formulated in 1609 by Grotius in his treatise *mare liberum* by arguing that the sea cannot be owned. According to him 'the sea is one of those things which is not an article of merchandise, and which cannot become private property'. Hence, it follows to speak strictly that no part of the sea considered as territory of any people whatsoever. Later prominent writer of the 18th century also advocated for the freedom of open sea. The leading author was Bynkershock, whose standard work *De Dominio Maris* appeared in 1702. Vattel, Martens, Azuni and others followed his lead and the principles of the freedom of the open sea was by the end of the first quarter of the 19th century universally recognized in theory and practice. That meaning of the high seas was transformed into treaty rules in the year 1958 when the Geneva Convention on the high seas was accepted. Article 1 of the Convention clear the term high seas by stating that high seas is that branch of the sea that are not built-in the territorial sea or in the domestic waters of a State. Nevertheless, the rule of the high sea has been significantly changed under the 1982 Convention on the Law of the sea which has been put down under Article 86 so as to all parts of the sea has not come in the exclusive economic zone, in the territorial sea or in the domestic waters of the State or in the archipelagic waters of an archipelagic State would comprise high seas. Thus, the area of the high seas has been substantially reduced under the Convention of 1982.

2.11 a) Freedom of High Seas

Under the customary rule of International Law, high seas were free and open to all States. Freedom of high sea was a well recognized principle which means that the high sea being general to all States; no States may claim to subject any part of them to its territorial sovereignty. Since, the open sea is not the territory of any State, no State as a rule has a right to exercise its legislation, administration, jurisdiction of police over parts of the high seas. As a general rule, ships remain under the exclusive jurisdiction of the State, whose flag they fly while on the high

seas. Further, since the high sea can never be under the sovereignty of any State, no State has a right to acquire parts of the high seas through occupation.

Although open sea is not the territory of any State, it is nevertheless an object of the law of nations. Legal order was created through the cooperation of the law of nations and the municipal laws of such States as possess a maritime flag. The following rules of the law of nations were universally recognized. Firstly the every State which has a maritime flag must lay down rules according to which vessels can claim to sail under its flag, and must furnish such vessels with some local voucher authorizing them to make use of its flag, secondly that every State has a right to punish all such foreign vessels as sail under its flag without being authorized to do so; thirdly that all vessels with their persons and goods are, whilst on the open sea, considered under the sway of the flag States, fourthly that every State has a right to punish piracy on the open sea if committed by foreigners, and that with a view to the extinction of piracy warships of all nations can acquire all subject vessels to show their flag. States had freedom as to navigation and fisheries. These freedoms are traditional and well recognized fact of the doctrine of the high seas. In the Fisheries Jurisdiction case the international Court of Justice stated that extension of its fishing zone from 12 to 50 miles constituted a violation of Article 2 of the Geneva Convention on the High Seas, which is generally declaratory of the established principles of International Law. In addition to the above, the open sea might be freely used for other purposes as well by all States. For instance they could conduct scientific research. But, as a measure of necessary control, it was established that all vessels, public or private, on the high seas were subject to the jurisdiction of the State under the flag of which they might sail: The Convention on the High Seas adopted in 1958 confirmed that customary rule on this issues by stating that freedom of the high sea contain freedom to lay underwater cables and pipelines, freedom of fishing, and freedom of over flight, freedom of navigation. The 1982 Convention on the Law of Sea under Article 87 has confirmed that the high seas are open to all States, either coastal or land locked. Nonetheless, its autonomy shall be exercised under the clause laid down by the rules of International Law or Convention.

2.11 b) Constraint on the Freedom of the High Seas

The freedom of high sea may be exercised by States. However, the above basic rule is subject to certain restrictions and limitations which of course are of a complex nature.

Convention of 1982 under Article 87(2) lays down the limitation of the general nature on the freedom of the high seas by stating that freedom of high seas “shall be exercised with due regard for the consent of the other States in their exercise of the freedom of the high sea”. The principle underlying this rule States that the exercise of the freedom of the sea by other States. No preferences are given and the coexistence of the various activities has to be sought through the necessary accommodation. In addition to this general limitation following are the other limitations on the right to exercise the freedom of the seas.

- i. **Freedom of Fishing:** All States have freedom of fishing on the high seas but Article 117 of the Convention of 1982 lays down that all the States comprise the responsibility to take or to collaborate with other States in capturing, such measures for the protection of living resources of the high seas.
- ii. **Freedom of Navigation:** Every state coastal as well as landlocked has freedom of navigation in the high seas but they have certain obligation to perform while exercising the freedom of navigation. Article 94 of the Convention of 1982 sets a group of substantive minimum requirements with which all States must comply as regards safety of navigation especially as regards construction equipment, sea worthiness and manning of ships, labour condition on board, the use of rights maintenance of communication and avoidance of collisions.
- iii. **Freedom of Scientific Research:** States have freedom to carry on scientific research. However, Article 261 of the Convention of 1982 appears to give preference to the exercise of freedom of navigation over the freedom of scientific research, though only as regard deployment of scientific installation and equipment in established international shipping routes.⁵¹

51 Dr. H.O Agrawal book (2010), International Law and Human Rights (17th edition), Chapter 10 ‘Law of the Sea’

Conclusion

The United Nation Convention on the Law of Sea (UNCLOS) also term the Law of the Sea Convention or the Law of Sea agreement which is an international agreement that outcome from the third United Nation Conference on the Law of Sea (UNCLOS III), which was took place between 1973 and 1982. The law of sea convention delineates the rights, duties and the responsibilities of State with respect to their implementation of the world oceans, set up guiding principle for commerce, the environment and the administration of marine natural resources. The entire sea was divided into three parts, territorial sea which has been cleared by the United Nation Convention on the Law of Sea 1982. Territorial Sea is a belt of coastal waters enlarging 12 nautical miles from the base line of the coastal states. According to the Article 3 of the Convention on the Law of Sea, 1982, all states has right to develop the breadth of its territorial sea up to a limit not exceeding twelve nautical miles measured from baseline. It follow from the regime of sovereignty that the coastal states has the exclusive right to appropriate the natural product of the territorial sea, including the rights of fisheries therein and to the resources of the sea bed and of its sub soil namely, sedentary fisheries and non living resources. It is a customary rule of international law that territorial sea is release to commercial vessels of all the states for navigation. Those vessels have a right of innocent way through the territorial sea of state.

Contiguous zone is a band of water extending from the outer edge of the territorial sea to up to 24 nautical miles from the base line. The limit of contiguous zone has been extended by the Convention of 1982 which provide under Par 2 of Article 33 which may not widen ahead of

twenty four nautical miles from the baseline from which the breadth of the territorial sea is deliberate.

A high sea is an open sea which is not part of the exclusive economic zone, internal waters of any state or territorial sea. The rule was formulated in 1609 by Grotius in his treatise *mare liberum* by arguing that the sea cannot be owned. According to him ‘the sea is one of those things which is not an article of merchandise, and which cannot become private property’. Under the customary rule of international law, high seas were free and open to all states. Freedom of high sea was a well recognized principle which means that the high sea being general to all states; no states may declare to issue any part of them to its territorial dominion⁵².

United Nation Convention on the Law of Sea (UNCLOS) replaced the older ‘freedom of the sea’ concept dating from the 17th century; national right were limited to a specified belt of water extending from a nation’s coastlines, usually 3 nautical miles (5.6km), according to the ‘Cannon Shot’ rule developed by the Dutch jurist Cornelius Van Bynkershoek. All waters beyond national boundaries were considered international waters; free to all nations, but belonging to none of them (the *mare liberum* principle promulgated by Hugo Grotius⁵³.

By 1967 only 25 nations still used the old 3 mile (4.8) limit, while 66 nations had set a 12 nautical miles (22km) territorial limit and eight had set a 200 nautical miles (370km) limit. As of 28th may 2008, only two countries still use the 3 miles (4.8km) limit; Jordan and palace⁵⁴.

52 The Freedom of the Seas. Latin and English Version, online library of Liberty.

53 Akoski Kinji (1998). Cornelius Van Bynkershoek; His Role in the History of International Law.

54 Table of claims to maritime jurisdiction (PDF). United Nation Division for Ocean Affairs and the Law of the Sea. Retrieved 1st May 2009.

Chapter III

International Court of Justice Judgment over the South China Sea Dispute

3.1 Introduction

This chapter discussed the judgment given by the International Court of Justice on the case brought by the Philippines over the Scarborough Shoal against the China. This chapter is structured into two sections; the first section of this chapter deals with the strategic value of South China Sea including the actors and the process of the South China Sea disputes. The second section of this chapter deals with the Permanent Court of Arbitration rule over the South China Sea dispute between the Philippines and the China.

On Tuesday, 12 July 2016, the Permanent Court of Arbitration in The Hague gave its ruling on the case brought to it by the government of the Philippines which challenged China's historical claims to the South China Sea. The ruling given by the tribunal dismissed China's claim to the 80 percent of the South China Sea which was based on its nine dashed line and included the various reefs and islands. China was also held accountable for disrupting the other South East Asian nations' freedom of navigation rights by asserting its territorial claims as well as destroying the marine diversity such as corals while building its artificial islands and air strips in the contested sites. The group of eminent international lawyers that made up the tribunal which heard the case stated

that, China's historical claims to the South China Sea does not hold, since there was no evidence that China had historically exercised exclusive control over the waters or their resources⁵⁵.

A verdict issued on 12 July 2016 by a Tribunal set up under the United Nations Convention on the Law of the Seas (UNCLOS) has ruled that there was no evidence that China had exercised exclusive control over the waters and resources of the South China Sea (SCS), and therefore had no legal basis to claim historic rights to sea areas within the so-called 'Nine-Dash Line'. Second, it noted that while small groups of fishermen had used the rocky outcrops of the sea, collectively called the Spratly Islands, none of them were capable of sustaining a stable community and thus could not claim an exclusive economic zone (EEZ). Third, that some of the areas were in fact within the Philippines EEZ and China had violated their rights by interfering with Filipino fishermen and oil exploration teams. Fourth, that Beijing's artificial island programmed had violated UNCLOS obligations on protecting the environment.

The South China Sea is a huge sea of 1.4 million square miles, bordered by nations that contain approximately 2 billion people. About a third of the world's shipping goes through its waters, which also provide vast amounts of food and whose seabed is rich in oil and gas. Scattered through the sea are small land features often tiny, often underwater during high tide. These fall into two main groupings, the Paracel Islands in the northern part of the sea, and the Spratly Islands in the southern part. China, Taiwan, the Philippines, Vietnam, Brunei, and Malaysia all claim sovereignty over some of these land features and waters, and the claims conflict. China, through its "nine-dash line" map and many statements, has claimed at the very least sovereignty over all the islands and rocks in the South China Sea and rights over the adjacent waters. The other five stakeholders have conflicting claims over land features that in turn produce numerous additional overlapping and conflicting claims over adjacent waters and how they are used. Neither the vastness of the sea nor the smallness of the disputed land specks has prevented an escalation in intensity in recent years. Concerns about security and resources

55 DR. Temjenmeren Ao (15 July 2016). RULING ON THE SOUTH CHINA SEA: WILL CHINA ABIDE BY THE RULE OF LAW? Centre for Air Power Studies.

have driven much of the tension, and rival nationalisms in stakeholder countries breathe fire on the waters⁵⁶.

United Nation Convention on the Law of Sea is one of the world's great international treaties, and its preamble begins with the heroic statement expressing "the desire to settle all issues relating to the law of the sea as an important contribution to the maintenance of peace, justice and progress for all peoples of the world." Unlike many other heroic efforts, this one is not a grand gesture, but rather a tedious verbalization of human thoughts about endless minutia that, unaddressed, can cumulatively cause much human misery. UNCLOS provides not only rules but also remedial mechanisms for countries that believe that other parties to UNCLOS have violated its provisions. Both the Philippines and China, along with 164 other countries, are parties to UNCLOS— although the United States is one of the few that is not. In 2013 the Philippines invoked remedial provisions specified in UNCLOS and brought 15 claims against China before an UNCLOS arbitration tribunal at the Permanent Court of Arbitration in The Hague. This is the case referred to by President Obama above. China immediately announced its "resolute opposition" to the Philippines action, called upon the Philippines to "return to the right track of resolving the disputes through bilateral negotiations," and said that "China does not and will never change its position of non-acceptance of and non-participation in the arbitration." China has kept this pledge, although it issued a detailed "Position Paper" on December 7, 2014, that, along with other statements, has functioned as de facto filings in the case.

A threshold question the case presented was whether the UNCLOS arbitration tribunal had "jurisdiction" to decide these 15 claims—jurisdiction being the legal term to indicate that a tribunal has the power to decide the substantive issues in a litigation, a question separate from how the tribunal might decide the "merits" of the substantive issues if indeed it has "jurisdiction" to decide those merits.

On October 29, 2015, the UNCLOS tribunal issued its much misunderstood 151 page ruling on "jurisdiction." The tribunal concluded that it indeed had jurisdiction over the Philippines' case— but concluded that it had jurisdiction over only seven of these claim. It did not accept jurisdiction over the other eight claims, including the critical claims that China's famous "nine-dash line" is

⁵⁶ Paul Gewirtz. Limits of Law in the South China Sea, (8 May, East Asia Policy Paper 8).

inconsistent with UNCLOS. Regarding this and the other eight claims, the tribunal deferred decision on whether it had jurisdiction, concluding that the question of “jurisdiction” was tied up with the “merits” and therefore should be postponed until its decision on the merits.

3.2 Identifying the Claims on Island

The South China Sea disputes involve both island and maritime claims among several sovereign states within the region, namely the Nation of Brunei, the People's Republic of China, the Republic of China (Taiwan), Malaysia, the Republic of the Philippines, and the Socialist Republic of Vietnam.

The Philippines and China have been long engaged in maritime boundary and sovereignty issues in the South China Sea. The issues behind this dispute relate to various uncertainties created due to the rapid growth of China’s maritime capabilities and territorial ambitions. The Philippines is one of the major player along with Vietnam involved in the long running South China Sea territorial dispute with China. It all started in 1995, when China occupied a feature called Mischief Reef, located more than 400 miles from main land China but within the Philippines EEZ.



Territorial and Maritime claims of the China and Southeast Asian Nations

The current legal dispute between the two countries is mainly about the sovereignty issue of Scarborough shoal and economic exploitation of the Philippines EEZ with in the 9-dash line declared by China. Scarborough shoal is a rock feature located about 120 nm from Luzon, Philippines and 460 nm from China. It forms one of the strategic point in the four-point constellation comprising Woody island, Fiery Cross Reef, Scarborough shoal and Mischief Reef. The sovereignty of Scarborough Shoal is contested by China, Taiwan and the Philippines. These features are strategically important because the entire body of the South China Sea can be kept under intense watch by surveillance equipment on them. China had gained effective control of the shoal in 2012, and started land reclamation activities. It is attempting to install radar and other facilities for close monitoring of the US Basa air force base on Pampanga about 300 km off Scarborough Shoal⁵⁷.

57 Sodhi Senior Fellow. South China Sea Dispute, Centre for Air Power Studies, (12 August 2016)

3.2 a) People Republic of China

The People Republic China claims larger portion of territory in South China Sea and views the South China Sea as an exclusive Chinese sea and claims almost the entire territory according to its historic claims so called nine dash lines. Its historical claims are based on the discovery and occupation of the territory. In 1947, the Nationalist government defined China's claims by an area limited by nine interrupted marks that cover most of the South China Sea⁵⁸ signing of the San Francisco Treaty. However, in 1947, the Nationalist Government of the Republic of China had published an 'eleven-dash line' map which subsequently became the basis of the 'nine-dash-line' claim after China removed two dashes as a concession to (North) Vietnam after 1954⁵⁹.¹⁵ China's historic claim covers almost, 80 per cent of the South China Sea, and its ongoing occupation of several island and reclamation activity on several reef and rocks⁶⁰.

In 2009 China submitted map to the United Nation that include nine dash line which covers almost all islands including Spratly and Paracel islands in South China Sea. The historic claims of China overlap the territory and the sovereignty of the Southeast Asian Nations.

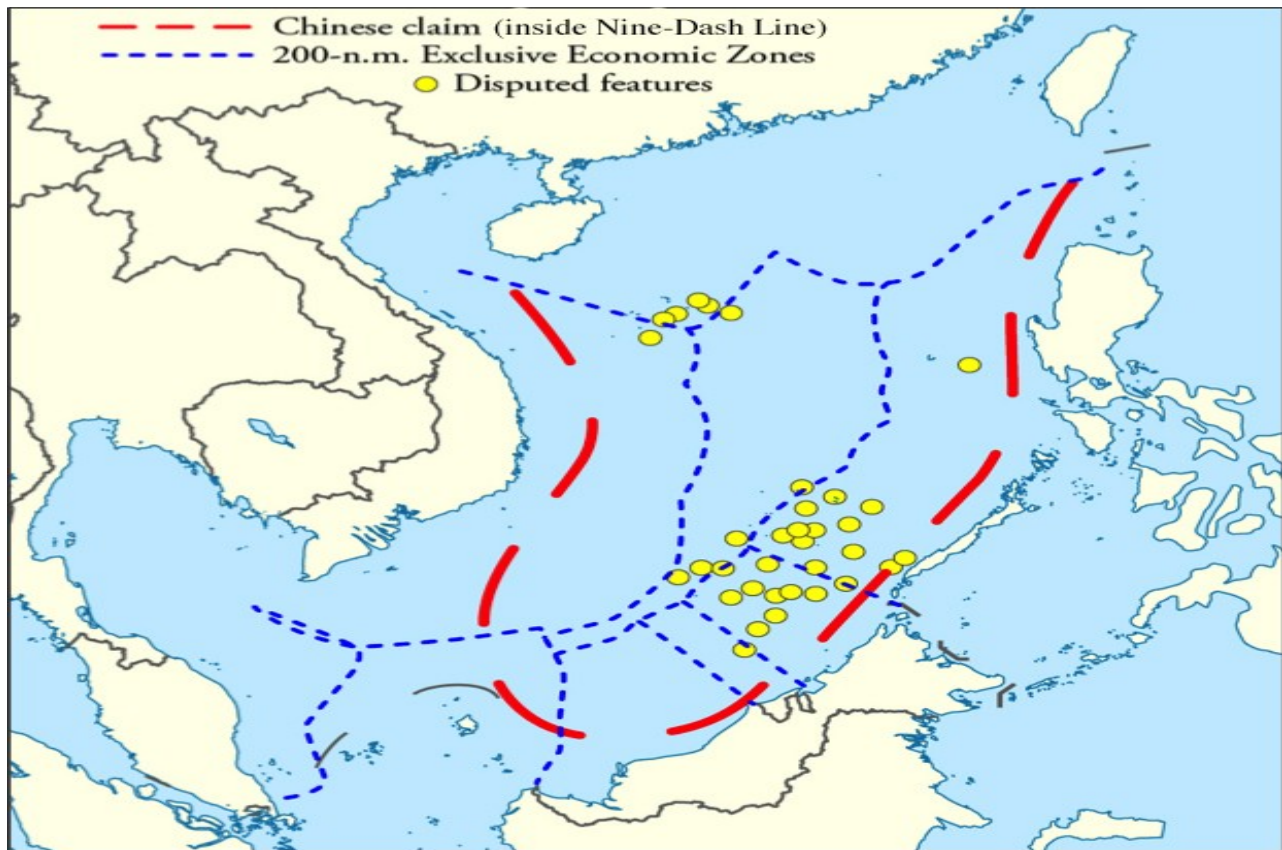
The islands and reefs in the South China Sea are Chinese territory since ancient times, Chinese President Xi Jinping declared [in an exclusive interview](#) during his visit to London last year. Evoking a sense of historical duty, the Chinese leader explained how the contested land features are "left to [modern China] by our ancestors," vowing that the "Chinese people will not

⁵⁸ Law Teacher, South China Sea Dispute and resolution, a company registered in England and Wales. Company Registration No: 4964706. VAT Registration No; 842417633, Registered Data Controller No: Z1821391. Registered office: Venture House, Cross Street, Arnold, Nottingham, and Nottinghamshire, NG5 7PJ.

⁵⁹ Leszek Buszynski, 'The Development of the South China Sea Maritime Dispute', in Buszynski and Roberts, *The South China Sea and Australia's Regional Security Environment*, p. 6; also Zhiguo Gao and Bing Jia, 'The Nine Dash Line in the South China Sea: history, status and implications', *The American Journal*.

⁶⁰ Buszynski and Roberts, *Indo pacific Strategic paper, South China Sea Dispute*, Commodore Agus Rustandi (April 2016) Jian Zhang, 'China's Growing Assertiveness in the South China Sea: a strategic shift?', in *The South China Sea and Australia's Regional Security Environment*, p. 19

allow anyone to infringe on China’s sovereignty and related rights and interests in the South China Sea.”



Overlapping claims in the South China Sea

It was a defiant justification [of China’s massive reclamation activities](#) and [increasingly frequent](#) deployment of naval vessels, Para-military forces, and [militia-cum-fishermen](#) contingents across what [it calls](#) its national “blue soil”. In a span of two years, China has built a sprawling network of dual-purpose (civilian and military) facilities on artificial islands, which [have been hosting](#) a growing number of uniformed personnel and advanced military hardware like mobile artilleries, high-frequency radars, jet fighters, and surface-to-air-missile systems⁶¹. Under President Xi Jinping, Beijing has undertaken more assertive policies that have greatly improved Beijing’s position in the South China Sea. China remains uncompromising on sovereignty, has increased its capability to enforce its de facto control in disputed areas, and has

61 Recharad Javad Heydarian. Duterte’s South China Sea Dilemma. Tuesday July 5, 2016. Brooking Institution.

sought to advance its claims while staying below the threshold for direct military conflict with the United States. China has steadily built capabilities and infrastructure, most notably military facilities on artificial islands that enable greater control of the South China Sea. The growing size and capability of the Chinese air force, navy, and coast guard allow Beijing to consistently monitor and exercise de facto control over most of the South China Sea. China's island outposts will increase this advantage as Chinese aircraft, ships, and paramilitary vessels will be able to rest and resupply in the southern portion of the South China Sea. China is already providing indications of how it might act when it controls the South China Sea. China has harassed U.S. Navy ships operating in the South China Sea, warned military flights to stay away from its artificial islands, and recently seized a U.S. drone operating in the exclusive economic zone of the Philippines. These actions suggest that China might undermine freedom of navigation and over flight, principles of fundamental importance to the United States. China has shown it is willing to accept substantial risk to achieve its ends, and has engaged in outright coercion against weaker neighbors like the Philippines and Vietnam. U.S. allies and partners in the region are drawing lessons from Chinese coercive behavior and the limited U.S. response to it, and some are beginning to doubt U.S. resolve and adjust their foreign policies in response⁶².

3.2 b) Increasing Chinese Assertiveness, Rising Tension

Over the past few decades, tensions in the South China Sea have been cyclical. China's behaviour has been the key variable, though of course the actions of the other claimants have also been a contributory factor. But as the most powerful actor, it is China that has set the tone for the dispute. Thus in the early 1990s tensions began to rise when China became more assertive in trying to uphold its claims, but eased considerably in the first half of the 2000s when it adopted a more accommodating stance as part of its so-called "Charm Offensive" in Southeast

62 Amy Searight (Jan 26, 2017). The South China Sea-some fundamental strategic principle, Centre for Strategic and international Studies.

Asia. Since 2008, tensions have once again been on the upswing and the primary reason is renewed Chinese assertiveness.

Buoyed by its sustained economic growth, China's confidence on the world stage has been steadily growing, and the 2008 Beijing Olympics was widely seen as its coming out party as a Great Power. China's confidence was bolstered during the 2008-09 Global Financial Crisis, from which it emerged essentially unscathed. With America distracted by the economic crisis and preoccupied with its military interventions in Iraq and Afghanistan, China saw an opportunity to press home its claims. The rapid modernization of China's navy, together with the expansion of its civilian maritime enforcement agencies, have enabled Beijing to increase its presence in the South China Sea and bring coercive pressure to bear on the Southeast Asian claimants, especially the Philippines and Vietnam. China's growing thirst for energy resources and food security has also provided an additional incentive for the government to press its "historic rights" within the nine dash line.

The new leadership under President Xi Jinping has bolstered China's new-found confidence and assertive posture in the South China Sea. The Xi government's message to its Asian neighbours is that while China remains committed to "peaceful development" it has no intention of compromising its sovereignty claims and will respond firmly to countries that challenge those claims. However, China's words of reassurance that its rise will be peaceful have been undercut by its assertive some would argue aggressive actions in the South China Sea over the past few years, moves which have fuelled anxiety across the region regarding Beijing's future intentions and how it intends to wield its growing economic, political and especially military power. Such fears have led some countries in the region to strengthen their strategic ties with the United States and thus facilitated America's "pivot" to Asia, which China sees as part of a policy of containment. Growing US-China competition is thus a cause and effect of rising tensions in the South China Sea and will therefore likely become a major source of contention in future bilateral relations⁶³.

The Republic of China (Taiwan) rejected all rival claims to the Paracel islands, repeating its position that all of the Paracel, [Spratly](#), [Zhongsha](#) ([Macclesfield Bank](#) grouped with [Scarborough Shoal](#)) and [Pratas Islands](#) belong to the Republic of China along with "their surrounding waters

63 Ian Storey, *Politique étrangère*, 2014, page-35-47

and respective seabed and subsoil", and that Taiwan views other claims as illegitimate, in a statement released by Taiwan's Ministry of Foreign Affairs which added – "There is no doubt that the Republic of China has sovereignty over the archipelagos and waters."

The Nine-Dash Line has been used by China to show the maximum extent of its claim without indicating how the dashes would be joined if it was continuous and how that would affect the extent of the area claimed by China. The Philippines, Vietnam, Malaysia, Brunei and Indonesia have all officially protested over the use of such a line. Immediately after China submitted a map to the UN including the Nine-Dash Line's territorial claim in the South China Sea on 7 May 2009, the Philippines lodged a diplomatic protest against China for claiming the whole of South China Sea illegally. Vietnam and Malaysia filed their joint protest a day after China submitted its map to the UN. Indonesia also registered its protest, even though it did not have a claim on the South China Sea.

3.2 c) Philippines

In January 2013, the Philippines submitted a Statement of Claim in the Permanent Court of Arbitration (PCA) under the 1982 UNCLOS challenging the validity of China's nine-dash line claim to almost the entire South China Sea. The Philippines submitted a total of 15 claims to the tribunal, of which five pertain to the Scarborough Shoal and balance deal with the maritime right within the South China Sea. In its petition, it has brought out that China has unlawfully prevented Filipino fishermen from pursuing their livelihoods by interfering with traditional fishing activities at Scarborough Shoal. The Tribunal convened a hearing on jurisdiction and admissibility in July 2015 and rendered its award on 29 Oct 2015, unanimously deciding that it has jurisdiction to consider seven of Philippines' Submissions concerning the status of various rocks, reefs and islands in the South China Sea and the traditional fishing rights of the Philippines nationals⁶⁴.

Whereas recent adjustments to Malaysia's maritime claims involved only a small change to its continental shelf, the task is much more difficult for the Philippines. This is partly because

64 Sodhi Senior Fellow (13 June 2016). SHANGRI-LA DIALOGUE (2016) – ANOTHER ATTEMPT TO FIND SOLUTION, Centre for Air Power Studies.

Manila's former South China Sea claims were woefully out of step with accepted international law, and UNCLOS in particular. For years, the Philippines maintained the lines established by the Treaty of Paris and treated them as if they were a claim to territorial waters. As such a claim is possible only within 12 nautical miles of a country's shores; the position was in desperate need of change. The same was true of the randomly drawn box surrounding the Kalayaan Islands Group in the Spratlys.

Luckily, Manila recognized that the illegality of its own claims was undermining its position in the South China Sea by opening it to the same charges it was leveling against Beijing. To remedy this, it passed its landmark baseline law in 2009. The law took two critical steps towards clarifying Philippines claims:

Firstly, it declared that Manila claims as 12-nautical mile territorial sea and an EEZ of up to 200 nautical miles from straight territorial baseline between coordinates enumerated in the law. It is worth noting that the Philippines' baseline, though not above reproach, have not drawn the charges of illegality that Vietnam's and China's have.

Secondly, the law did away with the "Kalayan box", declaring that, although Manila still lays claim to the islands and other features within it, it does so only via UNCLOS's "Regime of Islands". This means that the Philippines claim only the waters generated by the land features within the Kalayan Group, not all the Waters in the former box. Manila has not defined which features are above water at high tide and therefore generate a 12 nautical mile territorial sea or which, if any, also generate an EEZ and continental shelf by meeting the UNCLOS definition of an "island".

As a result of the 2009 baseline law, the Philippines legal maritime claims in the South China Sea are now much clearer. A section of its southern boundary with Malaysia remains determined by the Treaty of Paris. But the vast majority of its South China Sea claims are now determined by the EEZs generated from its territorial baseline.

Most of the Philippines' legal maritime claim in the South China Sea extends a full 200 nautical miles. The two areas where this is not the case are in the south and north, where it runs into the claims of Malaysia and China/Taiwan, respectively. Malaysia and the Philippines have not demarcated the majority of their EEZs and continental shelves in the South China Sea. The same is true of the Philippines on the one hand and Taiwan and China on the other. Because this is the case, Manila could in theory put forth a claim to an EEZ of 200 nautical miles or to the limit of an adjacent or opposite country's territorial sea, whichever is closer. But it would do so recognizing full well that the claim is not really "legal".

Under UNCLOS, every coastal state has the right to an EEZ and continental shelf, a right of which no other country can deprive it. The convention calls on states with overlapping claims to delimit these boundaries in such a way as to "achieve an equitable solution". This means that in the case of two opposing coastlines, one country laying claims to 80 percent of the intervening waters is illegal because it is clearly not equitable. The principle of equality has been enshrined repeatedly by international tribunals as the legally necessary determinate in delimiting EEZs and continental shelves, most recently in the International Tribunal for the Law of the Sea's 2012 ruling on the boundary between Myanmar and Bangladesh in the Bay of Bengal.

Admittedly, equity can be a slippery concept. A claim to 80 percent of the waters between two states is not equitable, but does that mean that a 50-50 split necessarily is? If one opposing coast is considerably longer than another, it could warrant a larger maritime claim. This was the principle on which Vietnam and China agreed in 2004 to delimit their maritime boundaries in the Gulf of Tonkin, with Vietnam receiving 53.23 percent of the areas and China 46.77 percent. The same is true if one coast is so deeply concave that an equidistant line of delimitation would severely disadvantage it. The severe concavity of the Bangladeshi coastline is the reason that the International Tribunal for the Law of the Sea (ITLOS) chose to adjust the equidistant line between it and Myanmar.

Nevertheless, ITLOS, the International Court of Justice (ICJ), and Arbitral Tribunals set up under UNCLOS have all rules repeatedly that equidistance must be taken as the starting point for delimitation of maritime boundaries and adjusted only if the resulting line is that found to be

inequitable. Therefore, the Philippines' maritime claims in the South China Sea overlap with those of Malaysia and Taiwan, a 50-50 split must be assumed equitable unless proven otherwise.

Concavity is not an issue in the case of the Philippines' coastline opposite Malaysia or Taiwan. The effect of the length of opposing coastlines on equity is impossible to gauge unless decided by an international court or through bilateral negotiation. None of the countries in question have ever argued that their coastline make an equidistant line unfair. Any outside attempt to do so is further complicated by the Philippines' declared archipelagic baseline, which may or may not be deemed legal by an international body or by its neighbors. The Philippines' legal claim in the areas in question is therefore a line of equidistance until and unless that line is adjusted via arbitration or negotiation.

In its Notification and Statement of Claims, the Philippines makes four distinct claims: (1) China's nine-dash line is invalid; (2) China has occupied mere rocks on Scarborough Reef rather than significant features; (3) China's structures on submerged features are illegal; and (4) Chinese harassment of Philippine nationals at sea is also illegal.

Within the opening of the hearing on jurisdiction and admissibility, the Philippine's submission on the merits of the Parties' dispute as follows:

- First, that China is not entitled to exercise what it refers to as 'historic rights' over the waters, seabed and subsoil beyond the limits of its entitlements under the Convention;
- Second, that the so-called 'nine-dash line' has no basis whatsoever under international law insofar as it purports to define the limits of China's claim to 'historic rights';
- Third, that the various maritime features relied upon by China as a basis upon which to assert its claims in the South China Sea are not islands that generate entitlement to an exclusive economic zone or continental shelf. Rather, some are 'rocks', within the meaning of Article 121(3); others are low-tide elevations; and still others are permanently submerged. As a result, none are capable of generating entitlements beyond 12 miles, and

some generate no entitlements at all. China's recent massive reclamations activities cannot lawfully change the original nature and character of these features;

- Fourth, that China has breached the Convention by interfering with the Philippines' exercise of its sovereign rights and jurisdiction; and
- Fifth, that China has irreversibly damaged the regional marine environment, in breach of [the Convention], by its destruction of coral reefs in the South China Sea, including areas within the Philippines' [exclusive economic zone], by its destructive and hazardous fishing practices, and by its harvesting of endangered species.

3.2 d) Vietnam

Vietnam's claims in the South China Sea have been the most overstated of those among the Southeast Asian claimants. Hanoi has taken considerable steps in recent years to clarify its claims in line with UNCLOS, but those developments have been largely overlooked.

The first major step toward clarifying Vietnam's claim occurred in 2003, when it signed a treaty with Indonesia delimiting the continental shelf and EEZ boundaries between southern Vietnam and the Tudjuh Archipelago. That was followed the next year by the agreement with China delimiting their boundaries in the Gulf of Tonkin.

The next step in clarification was the dual submissions for Vietnam's continental shelf made to the CLCS in 2009. The joint submission with Malaysia for much of Vietnam's southern continental shelf received the lion's shares of attention because it provoked China into presenting the nine dash line map as an official protest. But equally important for the clarification of claims was the separate submission that Vietnam made for a section of its extended continental shelf farther to the north.

The submission of these two claims to the CLCS implicitly proved that Hanoi no longer makes the vast claim shown on the textbook map, if it ever did, because they both fall short of that claim. This was confirmed by Vietnam's 2012 Law of the Sea, which, like the Philippines' 2009 baseline law, expressly declares that Vietnam claims only an EEZ of 200 nautical miles and a continental shelf of up to 350 nautical miles from its baseline.

Aside from the maritime boundaries agreed to by treaty and the submissions made to the CLCS, there are two instances in which Vietnam's legal maritime claims do not match the 200 nautical miles EEZ enumerated in its Law of the Sea. The first is the area between the mouth of the Gulf of Tonkin, where the agreement with China ends, and the northern end of Hanoi's individual extended continental shelf claims. Hanoi's EEZ and continental shelf overlap with that of China's Hainan Island in much of this area. Under the same principles earlier applied to the Philippines claim, a legal claim by Hanoi here must be determined to be an equidistance line with Hainan. Once beyond China's potential 200 nautical mile EEZ, a straight line connecting the limits of Vietnam's 200 nautical mile EEZ to the northern end of its shelf submission is the only option in the absence of a further submission to the CLCS.

The second instance where Vietnam's remaining claim is not identical shelf claims. Again, in the absence of a further submission, Vietnam's claims must be assumed to be as limited as possible. Therefore, it is limited to 200 nautical miles wherever possible. The limits of that EEZ must then be connected to the two continental shelves by the shortest possible distance.

3.2 e) Malaysia

Malaysia's actual claims to the South China Sea are relatively easy to clarify. Malaysia has delimited much of its maritime boundary with Indonesia's Tudjuh Archipelago and with the Philippines. No progress has been made in delimiting the boundary between Vietnam's continental shelf and that of mainland Malaysia made on the west of its boundaries with the Tudjuh Archipelago. The claim that Malaysia made on that section of continental shelf in 1979 therefore still stands. It should be noted, though, that this claim is roughly halfway between Vietnam's baselines and the Malaysian coast, so it is likely close to the spot of any final settlement.

The only real change in Malaysia's claims is the shift in the extended continental shelf it claims from the states of Sabah and Sarawak on the island of Borneo. As noted, Vietnam and Malaysia in 2009 made a joint submission to the CLCS, which covered this section of continental shelf. The two did not actually delimit the boundary between them. Both instead agreed to claim the other's 200 nautical mile EEZ limit as the border of their own continental shelf. The area of resulting overlap has been set aside for joint development in lieu of demarcation.

The status of the boundaries between Malaysia's and Brunei's continental shelf claims remains ambiguous. Both countries have agreed that Brunei is entitled to a 200 nautical mile EEZ, but Malaysia has never conceded that Brunei is also entitled to an extension of its continental shelf beyond 200 nautical miles. Malaysia's joint submission of its continental shelf claim with Vietnam shows an unbroken line, implicitly denying Brunei's right to extend its shelf to the same distance, much less beyond it. Common sense says this is impossible under UNCLOS: the geography of the island of Borneo cannot generate an extended continental shelf for Malaysia but fail to do so for Brunei. Malaysia's continental shelf claim must therefore have a gap to accommodate Brunei's shelf.

3.3 Factor in the dispute

The South China Sea dispute is between China and several Southeast Asian nations over territorial control in the South China Sea, which includes some of the most strategically important maritime territory on earth. China, for the past few years, has been asserting ever greater control over faraway waters that were previously considered international or were claimed by other countries. For example, it has seized small land formations or reefs, sometimes [dredging up underwater sediment](#) to make the islands large enough to support small military installations. China's naval forces have also grown more aggressive in patrolling these claims and chasing off non-Chinese ships. That is part of why its neighbors see this as an effort by China to dominate the region. This is also about whether China will comply with international laws and norms, which Beijing sometimes views as a plot to constrain the country's rise.

3.3 a) Strategic values

The South China Sea is a marginal sea that is part of the Pacific Ocean, encompassing an area from the Karimata and Malacca Straits to the Strait of Taiwan of around 3,500,000 square kilometers (1,400,000 sq mi). The sea carries tremendous strategic importance; one-third of the world's shipping passes through it carrying over \$3 trillion in trade each year, it contains

lucrative fisheries that are crucial for the food security of millions in Southeast Asia, and huge oil and gas reserves are believed to lie beneath its seabed. China claims most of the South China Sea, through which more than \$5 trillion of world trade passes every year. Vietnam, Malaysia, Brunei, the Philippines and Taiwan have rival claims. In addition to substantial natural resources, the South China Sea is of paramount strategic significance to the Asian security paradigm and to global stability

The South China Sea functions as the throat of the Western Pacific and Indian oceans — the mass of connective economic tissue where global sea routes coalesce. Here is the heart of Eurasia’s navigable rim land, punctuated by the Malacca, Sunda, Lombok, and Makassar straits. More than half of the world’s annual merchant fleet tonnage passes through these choke points and a third of all maritime traffic worldwide. The oil transported through the Malacca Strait from the Indian Ocean, en route to East Asia through the South China Sea, is triple the amount that passes through the Suez Canal and fifteen times the amount that transits the Panama Canal. Eighty per cent of Japanese and 39 per cent of Chinese oil imports pass through the Indian Ocean en route from the Middle East. Chinese firms also have billions of dollars of investments in East Africa, concentrated primarily in the oil and gas, railways and roads, and other mining sectors. Roughly two thirds of South Korea’s energy supplies, nearly 60 per cent of Japan’s and Taiwan’s energy supplies, and 80 per cent of China’s crude oil imports come through the South China Sea. Whereas in the Persian Gulf only energy is transported, in the South China Sea you have energy, finished goods, and unfinished goods.

The area’s greatest value is as a trade route. According to a 2015 Department of Defense [report](#), \$5.3 trillion worth of goods moves through the sea every year, which is about 30 percent of global maritime trade. That includes huge amounts of oil and \$1.2 trillion worth of annual trade with the United States.

3.3 b) Natural Resources

Though the US is not reliant on “Pacific oil”, many of the US’ allies in the region are dependent on South China Sea production. China is capable of threatening energy reserves in the region, and the need for energy is a primary reason the “South China Sea has become a focal point for U.S. – China rivalry in the Western Pacific”. As China demonstrates a disregard to

territorial claims by its neighbors, the control being exerted over these energy sources is of concern to the US. The United States [Energy Information Agency](#) estimates there are 11 billion barrels of [oil](#) and 190 trillion cubic feet of natural gas in deposits under the sea — more than exists in the reserves of some of the world’s biggest energy exporters. The waters also contain lucrative fisheries that account for, according to [some estimates](#), 10 percent of the global total. But this means that a lot of fishing boats are cruising around in waters contested by several different navies, increasing the risk of conflict.

It is estimated the South China Sea’s annual transshipment worth amounts to over \$5 trillion in goods and natural resources. This includes energy resources in areas under dispute, commercial fishing, and shipping lanes which handle the bulk of the region’s resources. If the region was devoid of resources, and territorial claims were simply historic points of argument, the US would likely re-evaluate its level of engagement. China is arguably invoking its own take on the Monroe Doctrine, by implying it is the region’s primary power and therefore it should be allowed to control regional affairs without undue external intervention. Understanding this premise forces the US to decide if vital interests are at stake. The huge resource pool supplying ASEAN nations to which the US is sympathetic underscores the importance of this burgeoning issue. Heeding Corbett, US strategy should focus on “the objective of controlling maritime communications” to protect “one’s own commerce” while causing “interference with the enemy’s economic interests”. While not directly engaging China, naval forces can deter aggression through control of the sea

The United States has gotten involved, sending the Navy to patrol waters it insists are international and backing international mediation efforts. Washington says it wants to maintain free movement and rule by international law. The risk of outright conflict is [extremely low](#), but the militarization of these heavily trafficked and heavily fished waters is still [dangerous](#).

In addition to centrality of location, the South China Sea has proven oil reserves of seven billion barrels, and an estimated 900 trillion cubic feet of natural gas. If Chinese calculations are correct that the South China Sea will ultimately yield 130 billion barrels of oil (and there is some serious doubt about these estimates), then the South China Sea contains more oil than any area of the

globe except Saudi Arabia. Some Chinese observers have called the South China Sea “the second Persian Gulf.”

Five different countries control some land features in the Spratly Islands, while just one state controls the Kuril Islands, Liancourt Rocks, Senkaku Islands, and Paracel Islands. If there really is so much oil in the South China Sea, then China will have partially alleviated its “Malacca dilemma” — its reliance on the narrow and vulnerable Strait of Malacca for so much of its energy needs coming from the Middle East. And the China National Offshore Oil Corporation has invested \$US20 billion in the belief that such amounts of oil really do exist in the South China Sea. China is desperate for new energy. Chinese oil reserves account for only 1.1 per cent of the world total, while it consumes over 10 per cent of world oil production and over 20 per cent of all the energy consumed on the planet. It is not only location and energy reserves that promise to give the South China Sea critical geostrategic importance; it is the territorial disputes surrounding these waters, home to more than two hundred small islands, rocks, and coral reefs, only about three dozen of which are permanently above water.

The South China Sea is the site of several ongoing ‘Exclusive Economic Zone’ disputes between neighbors. Yet these specks of land, buffeted by typhoons, are valuable mainly because of the oil and natural gas that might lie nearby in the intricate, folded layers of rock beneath the sea. Brunei claims a southern reef of the Spratly Islands. Malaysia claims three islands in the Spratlys. The Philippines claims eight islands in the Spratlys and significant portions of the South China Sea. Vietnam, Taiwan, and China each claim much of the South China Sea, as well as all of the Spratly and Paracel island groups.

3.4 Permanent Court of Arbitration rule over the South China Sea Dispute

The South China Sea Arbitration between the Philippines and China concerned an application by the Philippines for rulings in respect of four matters concerning the relationship between the Philippines and China in the South China Sea. First, the Philippines sought a ruling on the source of the Parties’ rights and obligations in the South China Sea and the effect of the United Nations Convention on the Law of the Sea (“Convention”) on China’s claims to historic rights within its so-called ‘nine-dash line’. Second, the Philippines sought a ruling on whether certain maritime features claimed by both China and the Philippines are properly characterized

as islands, rocks, low-tide elevations or submerged banks under the Convention. The status of these features under the Convention determines the maritime zones they are capable of generating. Third, the Philippines sought rulings on whether certain Chinese actions in the South China Sea have violated the Convention, by interfering with the exercise of the Philippines' sovereign rights and freedoms under the Convention or through construction and fishing activities that have harmed the marine environment. Finally, the Philippines sought a ruling that certain actions taken by China, in particular its large-scale land reclamation and construction of artificial islands in the Spratly Islands since this arbitration was commenced have unlawfully aggravated and extended the Parties' dispute⁶⁵.

The Permanent Court of Arbitration (PCA) is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. The PCA has 121 Member States. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding, and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties. The PCA's International Bureau is currently administering 8 interstate disputes, 73 investor-State arbitrations, and 34 cases arising under contracts involving a State or other public entity. The PCA has administered 12 cases initiated by States under Annex VII to the United Nations Convention on the Law of the Sea.

In July 2013, the Tribunal in the South China Sea Arbitration appointed the PCA to serve as Registry for the proceedings. The Tribunal's Rules of Procedure provide that the PCA shall "maintain an archive of the arbitral proceedings and provide appropriate registry services as directed by the Arbitral Tribunal." Such services include assisting with the identification and appointment of experts; publishing information about the arbitration and issuing press releases; organizing the hearings at the Peace Palace in The Hague; and the financial management of the case, which involves holding a deposit for expenses in the arbitration, such as to pay arbitrator

65 Permanent Court of Arbitration, Press Release, The Hague, 12 July 2016.

fees, experts, technical support, court reporters etc. The Registry also serves as the channel of communications amongst the Parties and the Tribunal and observer States⁶⁶.

A unanimous Award has been issued on Tuesday, 12 July 2016 by the Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (the “Convention”) in the arbitration instituted by the Republic of the Philippines against the People’s Republic of China⁶⁷.

An arbitral tribunal at the Permanent Court of Arbitration in The Hague issued a long-awaited ruling in Manila’s case against Beijing’s claims in the South China Sea. The five judge tribunal was established under the compulsory dispute settlement provisions of the United Nation Convention on the Law of Sea (UNCLOS), and despite China’s refusal to participate in the proceedings; its ruling is final and legally binding. The judges issued a unanimous decision in favor of the Philippines on the overwhelming majority of the claims it made against China. They invalidated Beijing’s claims to ill-defined historic rights throughout the nine dash line, finding that any claims it makes in the South China Sea must be made based on maritime entitlements from land features. The tribunal ruled that any others historic rights China might once have claimed in what are now the exclusive economic zones or continental shelves of other countries were invalidated by its ratification of UNCLOS. On the question of specific maritime entitlements over disputed features, the court found that Scarborough Shoal is a rock entitled only to a 12 nautical mile territorial sea. The judges cannot rule on sovereignty over that shoal, but ruled that China has violated the traditional rights of Filipinos by not allowing them to fish at the Shoal. Notably the tribunal said it would have found the same regarding Chinese fishermen if they were prevented access to the shoal by the Philippines.

In the Sparty Island, the court surprised many observers by ruling on the legal status of every feature raised by the Philippines. It found that none of the Sparty, including the largest natural features- Itu Aba, Thitu Islands, Smartly Island, Northeast Cay, and Southwest Cay is legally islands because they cannot sustain a stable human community or independent economic

66 ABSCBN NEWS, 12 JULY 2016

67 Permanent Court of Arbitration, The Hague, 12July 2016.

life. As such they are entitled only to territorial seas, not EECs or continental shelves. Of the seven Spartly occupied by China, the court agreed with the Philippines that Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are rocks, while Hughes Reef and Mischief Reef are below water at high tide and therefore generate no maritime entitlements of their own. It disagreed with the Philippines on the question of Given Reef, finding that it is a rock, not a low tide elevation, as well as on Kennan Reef (which China does not occupy but was introduce into the case). Additionally, the court ruled that second Thomas Shoal and Reed Bank are submerged and belong to the Philippines continental shelf.

Taken together, these decisions effectively invalidate any Chinese claim within the nine dash line to more than the disputed islets themselves and the territorial seas they generate (excepting around the Paracel further north). In addition, the judges ruled that China violated its responsibilities under UNCLOS by engaging in widespread environmental destruction via its construction of artificial islands. The court also said that China has violated Philippines sovereign rights in its exclusive economic zone by interfering with Philippines fishing and petroleum exploration and failing to prevent Chinese fishermen from fishing in the zone. The tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the nine dash line⁶⁸. (*Pacific Forum, CSIS, Honolulu Hawaii, and 12 July 2016*).

3.5 The Final Verdict

The tribunal constituted by PCA under Annex VII to the UNCLOS gave its unanimous award in favour of the Philippines with the following significant rulings:

(a) China’s Historic Rights. The UNCLOS comprehensively allocates rights to maritime areas and China has no legitimate claims to exercise maritime control over areas within its 9-D line in the South China Sea. The Tribunal concluded that the historic maritime rights claimed by China were extinguished to the extent they were incompatible with the maritime zones provided for in the Convention.

68 Pacific Forum, Center for Strategic and International Studies, Honolulu Hawaii, 12 July 2016.

(b) Status of Features. None of the Spratly Islands is capable of generating extended maritime zones. This is based on the fact that the current presence of official personnel on many of the features is dependent on outside support and not reflective of the capacity of the features. The Tribunal emphasised that the provisions of UNCLOS depends upon the original capacity of the feature, in its natural condition, to sustain a stable community of people. It further declared that maritime areas around Mischief Reef and Second Thomas Shoal are within the EEZ of the Philippines.

(c) Unlawful Chinese Actions. China has violated the Philippines sovereign rights in its EEZ by interfering in their fishing & petroleum exploration activities and constructing artificial islands. Fishermen from the Philippines had traditional fishing rights at Scarborough Shoal and China had interred with these rights in restricting access. China has a positive obligation not to impede Filipino fishing vessels from exercising their rights.

(d) Effect on Marine Environment. China has caused severe harm to the marine environment by resorting to large scale land reclamation and construction activities at seven features in the Spratly Islands. By doing this, China has violated its obligations under the UNCLOS to preserve the marine eco system⁶⁹.

Conclusion

⁶⁹ Capt HPS Sodhi Senior Fellow, Centre for Air Power Studies, 12 August 2016.

An arbitral tribunal at the Permanent Court of Arbitration in The Hague issued a [long-awaited ruling](#) in Manila's case against Beijing's claims in the South China Sea. The five-judge tribunal was established under the compulsory dispute settlement provisions of the United Nations Convention on the Law of the Sea (UNCLOS), and despite China's refusal to participate in the proceedings; its ruling is final and legally binding⁷⁰.

The judges issued a unanimous decision in favor of the Philippines on the overwhelming majority of the claims it made against China. They invalidated Beijing's claims to ill-defined historic rights throughout the nine-dash line, finding that any claims it makes in the South China Sea must be made based on maritime entitlements from land features. The tribunal ruled that any other historic rights China might once have claimed in what the exclusive economic zones (EEZ) are now or continental shelves of other countries were invalidated by its ratification of UNCLOS. On the question of specific maritime entitlements over disputed features, the court found that Scarborough Shoal is a rock entitled only to a 12-nautical-mile territorial sea. The judges cannot rule on sovereignty over that shoal, but ruled that China has violated the traditional fishing rights of Filipinos by not allowing them to fish at the shoal. Notably the tribunal said it would have found the same regarding Chinese fishermen if they were prevented access to the shoal by the Philippines.

In the Spratly Islands, the court surprised many observers by ruling on the legal status of every feature raised by the Philippines. It found that none of the Spratlys, including the largest natural features—Itu Aba, Thitu Island, Spratly Island, Northeast Cay, and Southwest Cay—are legally islands because they cannot sustain a stable human community or independent economic life. As such, they are entitled only to territorial seas, not EEZs or continental shelves. Of the seven Spratlys occupied by China, the court agreed with the Philippines that Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are rocks, while Hughes Reef and Mischief Reef are below water at high-tide and therefore generate no maritime entitlements of their own. It disagreed with the Philippines on the question of Gaven Reef, finding that it is a rock, not a low-tide elevation, as well as on Kennan Reef (which China does not occupy but was introduced into the case).

⁷⁰ Center for Strategic and International Studies, 12 July 2016.

Additionally, the court ruled that Second Thomas Shoal and Reed Bank are submerged and belong to the Philippine continental shelf.

Taken together, these decisions effectively invalidate any Chinese claim within the nine-dash line to more than the disputed islets themselves and the territorial seas they generate (excepting around the Paracels farther north). In addition, the judges ruled that China violated its responsibilities under UNCLOS by engaging in widespread environmental destruction via its construction of artificial islands; violated Philippine sovereign rights by interfering with oil and gas exploration at Reed Bank; and illegally constructed a facility on Mischief Reef, which sits on the Philippine continental shelf. The only questions on which the tribunal found that it lacks jurisdiction were those involving China's blockade and other harassment of Philippine troops upon the BRP *Sierra Madre* at Second Thomas Shoal. Those questions fell within the exception to arbitration relating to military matters, which China claimed under article 298 of UNCLOS. The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line'⁷¹. It further concluded that Beijing's activities within the Philippines' two-hundred-nautical-mile exclusive economic zone (EEZ), such as illegal fishing and environmentally damaging artificial island constructions, constituted an infringement of Manila's sovereign rights⁷².

Chapter IV

⁷¹ Centre for Air power Studies, 15 July 2016.

⁷² Abhijit Sing, Observed Research Foundation, 31 Jan 2017.

Implications of International Court of Justice Judgment

4.1 Introduction

This chapter studies the implication of the International Court of Justice judgment over the South China Sea Dispute. This chapter is structured into different sections; the first sections deals with the strategic and operational implications that the scope of the lawful maritime claims has been greatly reduce by the Court. The second sections deals with responds of super power countries over the South China Sea dispute including the ASEAN response. The third section deals with the critical analysis on the International Court of Justice judgment.

The Permanent Court of Arbitration is not a ‘court’ per se, in true legal sense but an intergovernmental organisation established by the 1899 Hague Convention to facilitate arbitration, fact-finding and other dispute resolution proceedings. The tribunal has brought larger implication over the South China Sea dispute and reshaped the geostrategic landscape of the vast South China Sea. The tribunal greatly reduced the scope of maritime entitlements that states can claim in the South China Sea. First, the tribunal concluded that China cannot lawfully, under the UN Convention on the Law of the Sea, claim historic rights to resources within the nine-dash line that appears on Chinese maps. Second, the tribunal interpreted Article 121 of the convention, which outlines the “regime of islands.” In particular, the tribunal offered a four-part test for determining what constitutes an “island” and not a rock. This matters greatly because under the convention islands are entitled to a two-hundred-nautical-mile Exclusive Economic Zone, while a mere rock is entitled only to a twelve-nautical-mile territorial sea. An arbitration panel has handed an unequivocal victory to the Philippines in its case against China, which it first filed in early 2013 but China refused to participate in the arbitration and made it clear through the publication of a Position Paper in Dec 2014, that the Tribunal under PCA lacks jurisdiction in the matter. The judgment has also given the United States a chance to once again enhance its presence in Asia and after months of internal debate within the Obama administration, the guided missile destroyer USS *Lassen* transited within 12 nautical miles of Subi Reef, one of China’s artificially-built features in the South China Sea, on October 27 in what is termed a “freedom of navigation” (FON) operation. The member countries of ASEAN are using UNLCOS as a means to pursue their own interests and oppose China's U-shaped line. They are interpreting UNCLOS Article 121, "Regime of Islands," particularly strictly. Malaysia-Vietnam application to the

Commission on the Limits of the Continental Shelf, both countries made reference to Article 121 in defining islands for purposes of territorial designation in the South China Sea.

4.2 Operational Implications

It is clear that the verdict has brought in a great deal of clarity to the strategic landscape of the vast South China Sea. Operationally, a major portion of the South China Sea now falls in to the category of international waters, within which all states have rights of passage and over flights. This will encourage the US and other countries to embark on more frequent freedom of navigation operations (FONOP). To counter these activities and make its presence felt in the region, China may decide to establish an ADIZ in the South China Sea. In the coming days, Chinese maritime security forces may have to confront more and more of Filipino fishermen venturing out to sea in the troubled areas. With no decision on the sovereignty of features, China is likely to continue its ongoing construction and militarisation activities on reclaimed islands. Meanwhile, the PLA Air Force has commenced regular South China Sea combat patrols, practicing tactics and increasing response capabilities to all kinds of security threats. As per the Chinese Defense Ministry , China and Russia will hold joint naval exercises in the South China Sea in September 2016, just like the one held in 2014 few months after a flare-up in a territorial dispute between Beijing and Tokyo over a cluster of islands⁷³.

4.3 Freedom of Navigation Operation by USA

After months of internal debate within the Obama administration, the guided missile destroyer USS *Lassen* transited within 12 nautical miles of Subi Reef, one of China's artificially-built features in the South China Sea, on October 27 in what is termed a "freedom of navigation" (FON) operation. It was accompanied by two maritime surveillance aircraft, a P-8A Poseidon and a P-3 Orion. US Navy had dispatched one of the most powerful destroyers within 12 nm of the Chinese occupied Subi Reef, to demonstrate the much publicized freedom of navigation operations (FONOP) in the Spratly Islands. The FONOP is an integral part of US policy since

73 . Capt HPS Sodhi Senior Fellow, Centre for Air Power Studies, 12 August 2016.

1983 to assert its navigation and over flight rights on a worldwide basis in a manner that is consistent with the balance of interests reflected in the Laws of the Sea Convention⁷⁴.

Freedom of navigation operations are intended to challenge maritime claims that the United States considers excessive under international law. The U.S. military has been conducting these operations regularly all over the world since 1979; in 2014 U.S. forces used FON operations to contest claims made by most of the South China Sea claimants, including China. However, the United States has not conducted FON operations inside 12 nautical miles of any feature in the South China Sea since 2012, according to Assistant Secretary of Defense David Shear. This particular operation was intended to assert that the United States does not recognize a 12-nautical-mile territorial sea or any other maritime entitlements generated by reefs that were originally submerged but on which China has built artificial islands. It was not meant to challenge China's claim to Subi Reef itself.

FON operations are not primarily about military deterrence or diplomatic messaging, though in a politically charged atmosphere like the South China Sea those play a role. At its root, FON operations are legal exercises to reinforce the United States'—and in this case the overwhelming majority of the international community's—interpretations of international maritime law. They are a means to ensure that U.S. naval, coast guard, and civilian ships, and by extension those of all nations, maintain unrestricted access to their rights at sea. In this particular case, the United States also needed to demonstrate its commitment to freedom of navigation as regional allies and partners had grown concerned in the wake of China's massive island building and construction of potential military facilities [including airstrips](#) in the Spratlys.

The U.S. government takes no position on the territorial disputes in the Spratly Islands, but does take a strong position on what kinds of claims are made to the waters surrounding those features. The United States shares the concerns of regional states that the intentional ambiguity of China's claims to vast stretches of water and seabed are a leading driver of tensions in the South China Sea. U.S. officials regularly call on all parties to the dispute to bring their claims into accordance with international law. The FON operation around Subi is part of that overall strategy—it is a

⁷⁴ Centre for Air Power Studies, 26 Nov 2015.

practical demonstration that the United States will not accede to maritime claims that violate international law, and it places pressure on China's leaders to give a legal rationale for their objections to the operation.

China has been deliberately ambiguous about its claims to waters in the South China Sea. Although it has not specified exactly what its claim is around each of the built-up rocks or low-tide elevations in the Spratlys, China's 1992 law on the territorial sea claims 12-nautical-mile territorial waters from all Chinese territory without distinction. In addition, the Chinese foreign ministry has implied that China claims territorial sovereignty over waters and airspace surrounding submerged reefs. In a statement on October 9, a foreign ministry spokesperson said that China does not "condone infringement of China's territorial sea and airspace by any country under the pretext of maintaining freedom of navigation and over flight." People's Liberation Army Navy (PLAN) ships have warned U.S. surveillance aircraft flying near its artificial islands, including Subi Reef, to stay away from its undefined "military alert zone."

A3: Two PLAN vessels, the *Lanzhou* (a Type 052C missile destroyer) and *Taizhou* (a Type 053 frigate), shadowed the *Lassen* and issued warnings to get out of the waters around Subi, but apparently did not interfere with the operation. Since U.S. media has been reporting that the Obama administration was considering conducting a FON operation for the past six months, China was well prepared for this eventuality, even though Washington did not notify Beijing in advance.

China's foreign ministry spokesman Lu Kang criticized the exercise, saying the U.S. Navy ship "illegally entered" the waters near the islands "without receiving permission from the Chinese government," "threatened China's sovereignty and security interests," and "endangered regional peace and stability." This language suggests that China in fact does claim a 12-nautical-mile territorial sea around formerly submerged reefs that it has built into artificial islands, which is contrary to the United Nations Convention on the Law of the Sea. In addition, the spokesman warned that China would "firmly respond to any deliberate provocation by any country." Vice

Foreign Minister Zhang Yesui summoned U.S. ambassador to China Max Baucus to protest what he claimed was a “serious provocation⁷⁵.”

4.4 Beijing rejects the Tribunal

In a [long-awaited ruling](#) prepared under the United Nations Convention on the Law of the Sea (UNCLOS), an arbitration panel has handed an unequivocal victory to the Philippines in its case against China, which it first filed in early 2013. The arbitration panel deemed invalid virtually all of Beijing’s asserted claims to various islands, rocks, reefs, and shoals in the South China Sea, determining that Chinese claims directly violated the provisions of UNCLOS, which China signed in 1982.

From the outset of Manila’s initiation of the arbitration process, Beijing has refused to participate. However, it did issue [a position statement of its own](#) in late 2014, claiming that the arbitration panel violated various UNCLOS provisions and additional agreements signed by the two governments. As the arbitration neared its conclusion, China released a steady stream of editorials and commentaries, [claiming that the ruling sought](#) “to deny China’s territorial sovereignty and maritime rights and interests in the South China Sea.”

China refused to participate in the arbitration and made it clear through the publication of a Position Paper in Dec 2014, that the Tribunal under PCA lacks jurisdiction in the matter. China draws its claim, known as a nine-dash line, from historical use of the sea by Chinese vessels as far back as the Han Dynasty about 2,000 years ago. China feels that the dispute does not concern the interpretation or application of the Convention, but pertains to the territorial sovereignty over several maritime features in the South China Sea, which is beyond the scope of the UNCLOS. Further, China and the Philippines have agreed through the ‘Declaration on the Conduct of Parties in the South China Sea’ to settle their disputes through negotiations. By unilaterally initiating the arbitration, the Philippines have breached its obligation under the international law.

75 Center for Strategic and International Studies, 27 Oct 2016.

A statement issued by the Ministry of Foreign Affairs (MoFA) of the PRC said that the conduct of the tribunal as well as its award was unjust and unlawful⁷⁶.

China has said it will not accept a ruling against it in a key international legal case over strategic reefs and atolls that Beijing claims would give it control over disputed waters of the [South China Sea](#).

The judgment by an international tribunal in The Hague came down overwhelmingly in favour of claims by the [Philippines](#) and is likely to increase global diplomatic pressure on Beijing to scale back military expansion in the area. By depriving certain outcrops of territorial-generating status, the ruling from the permanent court of arbitration effectively punches holes in China's all-encompassing "nine-dash" line that stretches deep into the South China Sea.

The Chinese president, Xi Jinping, said China's "territorial sovereignty and marine rights" in the seas would not be affected by the ruling, which declared large areas of the sea to be neutral international waters or the exclusive economic zones of other countries. He insisted [China](#) was still "committed to resolving disputes" with its neighbours. Chinese state media reacted angrily to the verdict. Xinhua, the country's official news agency, hit out at what it described as an "ill-founded" ruling that was "naturally null and void". The Communist party mouthpiece newspaper the People's Daily said in [an editorial](#) that the tribunal had ignored "basic truths" and "trampled" on international laws and norms.

"The Chinese government and the Chinese people firmly oppose [the ruling] and will neither acknowledge it nor accept it," it added.⁷⁷

Beijing [has repeatedly stated](#) that "it does not accept any means of third party dispute settlement or any solution imposed on China." At the same time, UNCLOS has no enforcement mechanism for carrying out the panel's judgments. But Beijing's repeated efforts at shaming and

76 Capt HPS Sodhi Senior Fellow, Centre for Air Power Studies, 12 August 2016.

77 The Guardian, 12 July 2016.

stonewalling have imposed an undoubted cost on its political standing in the region. Moreover, China's signing of UNCLOS obligated Beijing to compulsory third party determination, though it is not the only power contesting this commitment⁷⁸.

China has dismissed the ruling given by the arbitral tribunal, as it would seek to expand its control over the South China Sea. China has boycotted the ruling and sees it as non-binding. It further states that the ruling cannot be enforced and thus, China would not be bound by it. During an interview with the BBC, Japan's Ambassador to the UK, Mr. Koji Tsuruoka stated that the tribunal's ruling is binding on China since it is a signatory to the UN Law of the Sea Convention, which stipulates that any ruling given by an international tribunal is binding on all the signatory States. He further added that China needs to respect and abide by the rule of law since it will set a bad precedence for any future disputes. However, despite China's assertive stance post the verdict, it would seek to ensure that the issue does not escalate as it could damage China's international image. This could compel China to facilitate engagements amongst all the parties involved in this dispute in order to reach some sort of settlement, keeping in mind its other long term strategic interests.⁷⁹

4.5 Strategic Implication

On July 12, the tribunal hearing the case issued its ruling that can only be described as a huge win for the Philippines. Digesting all 507 pages of the award will take time, allowing only for preliminary judgments to be made. Below, a several strategic implications have been discussed.

4.5 a) The Scope of Lawful Maritime Claims in the South China Sea

In assessing the Philippine submissions, the tribunal greatly reduced the scope of maritime entitlements that states can claim in the South China Sea. First, the tribunal concluded that China cannot lawfully, under the UN Convention on the Law of the Sea, claim historic rights
78 Jonathan D. Pollack, and 12 July 2016, BROOKINGS INSTITUTION.

79 Dr. Temjenmeren Ao, 15 July 2016, Centre for Air Power Studies.

to resources within the nine-dash line that appears on Chinese maps. Although China has not clarified the nine-dashed line or even explained officially what it means, the tribunal indicated that one potential explanation, as a claim to historic rights, was inconsistent with the convention. The tribunal reasoned that whatever historic rights or high-seas freedoms China enjoyed were “extinguished” when it acceded to the convention.

Second, the tribunal interpreted Article 121 of the convention, which outlines the “regime of islands.” In particular, the tribunal offered a four-part test for determining what constitutes an “island” and not a rock. This matters greatly because under the convention islands are entitled to a two-hundred-nautical-mile Exclusive Economic Zone, while a mere rock is entitled only to a twelve-nautical-mile territorial sea. The tribunal ruled that none of the naturally formed land features satisfied its four-part test and that no “islands” exist in the Spratlys from which China, or any other claimant state, can claim a two-hundred-nautical-mile EEZ.

Taken together, these two elements of the tribunal’s award greatly restrict what maritime zones China can claim. In fact, China can claim only a twelve-nautical-mile sea around those naturally formed land features in the Spratlys that would be deemed to be rocks or above high tide. According to the tribunal, any claim to either historic rights or to an EEZ would be inconsistent with the convention, and unlawful. In so doing, the tribunal decreased the value of claiming sovereignty over offshore islands by limiting the economic value that they create. If a land feature cannot generate a two-hundred-nautical-mile EEZ, giving states the exclusive right to resources in the water column and seabed, then the value at stake in these disputes has also declined.

4.5 b) Meaning of an “Island”

Whether intended or not, the tribunal’s ruling on lawful claims to maritime zones in the South China Sea has much broader implications for all parties to UNCLOS. By offering an interpretation of what constitutes an “island” that can generate a two-hundred-nautical-mile EEZ, the tribunal created an international legal precedent about what constitutes a lawful EEZ claim from naturally formed land features.

That is, the tribunal has not only limited China’s lawful claims in the South China Sea under the convention. It has also potentially limited the lawful claims that other states can make from land

features that would fail the test offered by the tribunal. Many states claim a two-hundred-nautical-mile EEZ from land features that would clearly be rocks and not islands according to the tribunal's ruling. Japan, for example, claims a two-hundred-nautical-mile EEZ from Okinotorishima, a coral reef that consists of three rocks that are above high tide. The United States, too, claims EEZs from similar features, such as Kingman Reef in Micronesia. Under the precedent established by the tribunal, these features may not be entitled to the EEZ that states claim from them. In this way, the tribunal's ruling has much broader implications for how all states interpret lawful claims under the convention.

4.5 c) Endurance of Territorial Disputes in the South China Sea

The final strategic implication is that the tribunal's award could not address the fundamental issue at stake in the South China Sea, which is the competing claim to territorial sovereignty over the Spratly Islands. The reason is simple: as a tribunal constituted under UNCLOS, it can only consider questions relating to the interpretation of the convention, such as the kinds of maritime zones states can claim. Because the treaty specifically omits territorial disputes, the tribunal lacks jurisdiction to adjudicate on the claims between China and the other claimants in the South China Sea over the sovereignty of the Spratlys.

Ironically, perhaps, by reducing what states can lawfully claim from the land features in the Spratlys, the tribunal's ruling may have the unintended effect of intensifying the dispute over these land features even though the tribunal sought to minimize their importance⁸⁰.

4.6. Respond of super power countries over the South China Sea dispute.

80 M. Taylor Fravel, and July 13, 2016. THE NATIONAL INTEREST.

4.6 a) American and Indian responses

China's rigid attitude toward the South China Sea problem in recent years has given the United States a chance to once again enhance its presence in Asia. Discussions about the American response to the South China Sea problem produced the following main points⁸¹.

Firstly on July 2010 ASEAN Regional Forum (ARF), US Secretary of State Hillary Clinton indicated that the national interest of the United States includes free transit through the region, freedom of access to Asian ocean commons, and strict observance of international law regarding the South China Sea problem.

Secondly the American strategic approach to the Asia Pacific region and adjacent waters is composed of the following three components: first, emphasizing and strengthening relations with treaty allies in the Asia Pacific while also strengthening contributions to multilateral organizations in the region; second, maintaining a strong military presence in the region in order to maintain access to the ocean and freedom of actions that adhere to international law; and third, positioning American naval power as the main actor promoting an international rules-based order. Basically, President Barack Obama's "pivot to Asia" security strategy says that the United States, as an Asia Pacific country, aspires for an international order in the region that provides a foundation for peace and prosperity, in which all countries have rights and responsibilities, and in which free trade and free transit are not infringed upon. Conference participants also expressed the view that the development of cooperative relations between the United States and ASEAN countries, along with American involvement in the South China Sea problem based on this strategy, have influenced China's calculations regarding the matter.

Thirdly American policy toward South China Sea sovereignty has been fairly consistent since the late 1990s. Although Secretary of State Clinton said at the July 2010 ARF that the United States would not get involved in any territorial disputes, it has maintained a clear position on the establishment of maritime borders. Secretary Clinton stated that the origin points used for maritime claims must be on land--a challenge to China's "nine-dotted line" claims. America has

81 THE SASAKAWA PEACE FOUNDATION, JUN10, 2013. Based on Discussions at the "Security Environment of the Seas in East Asia" International Conference.

said that the South China Sea problem must be discussed in main regional forums such as the ARF, the East Asia Summit, and the ASEAN Defense Ministers' Meeting Plus. China, however, has refused to internationalize the issue and is pressing for bilateral negotiations with each of the relevant countries.

Fourthly the United States is well aware that although members of ASEAN expect it to take a role in strengthening security in the South China Sea, those countries are also not hoping for increased Sino-American discord. Therefore, the American military role remains minor, and escalated US military involvement is inconceivable. The United States has provided patrol boats to the Philippines and has declared support for Manila, but has also taken serious care to deal in such a way that it will not be trapped into backing the Philippines and other allied countries in the event of a conflict in the South China Sea. Since these territorial issues did not come officially to the fore until 1978, the Spratly Islands are not covered by the 1951 US-Philippines Mutual Defense Treaty. America would likely be hesitant to help the Philippines regarding the Spratlys.

The United States has reiterated its neutrality on the matter of competing claims in the South China Sea. Nevertheless, by way of former Secretary of State Hillary Clinton's statement at the 2010 ASEAN Regional Forum meeting, the United States has also stated that the South China Sea is a matter of national interest. Specifically, the U.S. interest in the South China Sea is related to stability, freedom of navigation, and the right to lawful commercial activity in East Asia's waterways. The declaratory policy on the South China Sea has gathered strength with the Obama administration's strategy of a 'pivot' (or 'rebalance') to Asia. This declaratory policy has been accompanied by a deepening of U.S. diplomatic, military, and economic ties with key Southeast Asian claimant states, notably the Philippines and Vietnam. Unilaterally, the United States has also adopted a more robust position on the South China Sea. This is evident in its conduct of several high-profile Freedom of Navigation Operations (FONOPs) after a hiatus of two years, designed to demonstrate the commitment of the United States to stability in the area.

While the South China Sea is a matter of national interest for the United States, its explicit interest is freedom of navigation and unimpeded commerce. Both of these are things China has guaranteed although, granted, both parties have still to arrive at agreement as to

acceptable military activities under the rubric of freedom of navigation, especially in the South China Sea. Commerce however, has little if anything to do with the concerns that both parties have. Underlying their differences on this matter is their competing interpretations of the United Nations Convention on the Law of the Sea (UNCLOS) in relation to military activities within a state's exclusive economic zone (EEZ). Whereas Washington has taken the position – despite not having ratified UNCLOS – that military activities in EEZs are permitted under the Convention, Beijing has opposed this.

India views the South China Sea as a secondary sphere of influence, the most important sphere being South Asia and the broader Bay of Bengal area. It also realizes that it does not have the naval capability to stake any kind of claim as a significant military power in the South China Sea. Increasing tensions in the South China Sea, however, are viewed as affording India certain benefits. First, China's assertiveness in the South China Sea belies China's "peaceful rise" narrative within Southeast Asia and this raises India's value as a strategic counterweight to China amongst Southeast Asian states and the United States (as well as Japan, by proxy). Second, and related to the previous point, this allows India to exert some amount of strategic pressure on China in response to the latter's drive to bolster its strategic reach into the Bay of Bengal and the wider Indian Ocean region. In a nutshell, India considers the Indian Ocean region and the Bay of Bengal specifically, as its sphere of influence. China's challenge to this Indian dominance has led India to make references to the South China Sea in joint statements with the United States and with several claimant and non-claimant ASEAN states. India views this as a low-cost and useful tit-for-tat strategy thus far.

India's relationship with Vietnam implicates India, to some extent, directly in the South China Sea dispute. India's state-owned ONGC started a joint oil exploration project in 1988 in Vietnam's territorial waters in the South China Sea. For a long time, China did not make any significant reference to this joint project. However, from the early 2000's China has objected to India's role in this venture. India has responded in two ways. First, it has asserted the right of its state-owned enterprise to carry out this venture as part of India's legitimate economic interests. Second, it has begun to sell patrol boats to Vietnam in order to bolster the latter's coast guard capability. India's warships have also made port calls to Vietnam and defended its right to do so. India has asserted that it will use its navy to defend installations related to this venture in the

eventuality that these come under any threat. The Indian perception is that China will not risk an open confrontation.

The United States and India can take several steps to stabilize the South China Sea situation:

Firstly India and the United States should continue to assert that both freedom of navigation and UNCLOS should be adhered to in the South China Sea. This should be done unilaterally but also bilaterally. Freedom of navigation operations by the United States should continue, and India should seriously consider the conduct of such operations as well.

Secondly the United States should regularly reassure regional states of its commitment to the region. This is crucial because of prevailing anxieties in many Southeast Asian states that the United States may not be able to sustain the attention it accorded to the region under the rubric of the 'pivot.' Moreover, regional states are also fearful of a U.S.-China condominium in which the United States might be prepared to compromise Southeast Asian interests in exchange for Chinese compromise on a broad range of global issues that could conceivably involve global trade and finance, nuclear proliferation, and North Korea. The United States should bear such concerns in mind.

Thirdly for some time, India has consistently stated that the South China Sea dispute should be settled peacefully through negotiation. In April 2016, India, Russia and China released a joint statement which asserted that "all related disputes should be addressed through negotiations and agreements between the parties concerned." This was seen as a slight departure from the earlier Indian position and closer to the Chinese position against internationalization of the dispute. This interpretation has been disputed by India and they have re-asserted that their position is that the dispute should be resolved peacefully via a mechanism agreed to between the claimant states, which potentially allow ASEAN and the United States a role in managing the dispute.

Fourth both India and the United States can work together to build coast guard capabilities of claimant states, particularly Vietnam, to deal more effectively against non-traditional threats like piracy and terrorism⁸².

82 Joseph Chinyong Liow, Saturday June 4, 2016. Brookings India.

4.6 b) ASEAN Response

The following points were made in discussions on the ASEAN response.

First on 2002 Declaration of Conduct between China and ASEAN was intended to freeze the situation as a means of managing the conflict. The eight guidelines for implementation of the DOC, issued in 2011, are lacking in specificity and do not exceed the statements of the DOC. Nevertheless, implementation of the guidelines is theoretically possible on two fronts. The first is by realizing confidence-building measures; the second is via official negotiations for a legally binding Code of Conduct. ASEAN has decided to begin drawing up a draft COC, but there are many points of contention, and there is doubt over whether it will be able to guarantee effectiveness even if enacted.

Second, the member countries of ASEAN are using UNLCOS as a means to pursue their own interests and oppose China's U-shaped line. They are interpreting UNCLOS Article 121, "Regime of Islands," particularly strictly. For example, in a 2009 joint Malaysia-Vietnam application to the Commission on the Limits of the Continental Shelf, both countries made reference to Article 121 in defining islands for purposes of territorial designation in the South China Sea. The Philippines, meanwhile, made use of Article 121 in claiming the Kalayaan islands (the Philippine name for the Spratlys) and the Scarborough Shoal as Philippine territory in its March 10, 2009, Archipelagic Baseline Law on Oceans. China does not agree with the use of Article 121 to buttress territorial claims, as seen in the actions of ASEAN members. By making territorial claims using its vague U-shaped line, China is trying to maximize the amount of South China Sea territory under dispute.

Third, the Philippines have proposed a Zone of Peace, Freedom, Friendship, and Cooperation (ZoPFFC) in order to resolve the conflict. The ZoPFFC is composed of two measures. The first is to separate the portion of the South China Sea that is under dispute from the portion that is not. The second is for the countries making territorial claims to move ahead with demilitarizing occupied islands and to construct a joint commission for managing ocean and sea floor resources. While this plan does have its merits, it is unlikely to proceed smoothly. China has refused the proposal, while some countries that oppose Chinese interests, such as Vietnam, are in favor of it. Malaysia has expressed concern that this proposed zone could be the seed of new

conflict. The ZoPFFC has merit and does make cooperation possible, but it will require strong political will from all involved countries to resolve the situation. As of now, despite the fact that such will is nowhere to be seen, the Philippines is working hard to win support for ZoPFFC. But it will be difficult to build consensus with a lack of Chinese support; meanwhile, other countries are complaining about a lack of prior explanation. This plan therefore does not appear likely to come to fruition. The Philippines has also been threatening to file a petition with the International Tribunal for the Law of the Sea opposing China's territorial claims, to which China has yet to make a response.

Other countries have in principle avoided opposing Chinese suggestions for joint development of ocean resources. However, the question of which areas in the disputed territory of the South China Sea to designate for joint development is a thorny one⁸³.

4.7 Critical Analysis on ICJ judgment

None of the fiercely disputed Spratly Islands, the UN body found, were “capable of generating extended maritime zones and having found that none of the features claimed by China was capable of generating an exclusive economic zone, the tribunal found that it could without delimiting a boundary declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China.”

The tribunal found that China had violated the Philippines’ sovereign rights in its exclusive economic zone by interfering with Philippine fishing and petroleum exploration, constructing artificial islands and failing to prevent Chinese fishermen from fishing in the zone. At Scarborough Shoal, where it said fishermen from the Philippines and China had traditional

83 THE SASAKAWA PEACE FOUNDATION, JUN10, 2013. Based on Discussions at the “Security Environment of the Seas in East Asia” International Conference

fishing rights, it said China had restricted these rights. It added that China had created a serious risk of collision when its patrol boats had physically obstructed Philippine fishing vessels.

The tribunal also condemned China's land reclamation projects and its construction of artificial islands at seven features in the Spratly Islands, concluding that it had caused "severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species".

Land reclamation "was incompatible with the obligations on a state during dispute resolution proceedings", it added, since it involved causing "irreparable harm to the marine environment", building a "large artificial island in the Philippines' exclusive economic zone", and destroying "evidence of the natural condition of features in the South China Sea that formed part of the parties' dispute".

Paul Reichler, of the law firm Foley Hoag LLP, who coordinated the Philippines' legal team, said: "The tribunal's ruling not only benefits the Philippines, it also benefits other states bordering the South China Sea like Indonesia, Malaysia and Vietnam. If China's nine-dash line is invalid as to the Philippines, it is equally invalid to those states and, indeed, the rest of the international community."

Beijing claims 90% of the South China Sea, a maritime region believed to hold a wealth of untapped oil and gas reserves and through which roughly \$4.5tn of ship-borne trade passes every year. Vietnam, Malaysia, Brunei and Taiwan also contest China's claims to islands and reef systems closer to their territory than Beijing's.

China says it follows a historical precedent set by the "nine-dash line" that Beijing drew in 1947 following the surrender of Japan. The line has been included in subsequent maps issued under Communist rule.

Sporadic violence between Chinese vessels and those of south-east Asia militaries have broken out in recent decades and the verdict, the first international legal decision on the issue, could have unpredictable consequences.

Ashley Townshend, a scholar at the University of Sydney's United States Studies Centre, said the tribunal's decision to disqualify China's "nine-dash" claim on the basis of historic rights was "a huge setback for Beijing". China had stirred up so much nationalism over the South China Sea issue that it would now have to respond in some way.

"In terms of China's domestic politics [the ruling] is unacceptable to the regime and unfortunately the regime will perceive that the Chinese people view that as unacceptable," Townshend predicted.

"So there will be huge pressures on Beijing to respond, to save face, to demonstrate with more than just words that it doesn't abide by and doesn't credit the ruling with any legal validity and will not adhere to it and will defend its 'sovereign space' in the South China Sea."

Townshend said he did not expect Beijing to lash out militarily but believed further military drills in the South China Sea were possible as well as the establishment of an air defense identification zone somewhere over the region.

Xu Liping, a pro-Beijing scholar from China's National Institute of International Strategy, told the Guardian he believed the ruling was "biased and unfair", "absolutely terrible" and "a joke".

The nationalistic Global Times tabloid attacked the ruling [in an English language editorial on Tuesday night](#) as "more radical and shameless than many people had ever expected", saying it had "brazenly violated China's territorial sovereignty and maritime rights."

The newspaper, which is controlled by the Communist party and sometimes reflects its thinking, also warned of a military escalation. "If the US and Japan use [the ruling] to pile military and political pressure on Beijing, Chinese people will firmly support our government to launch a tit-for-tat counterpunch," it said. "We trust Chinese law enforcement and military forces have been well-prepared."

The case at the permanent court of arbitration in The Hague, the UN-appointed tribunal that adjudicates in international disputes over maritime territory, has been running since 2013.

Philippe Sands QC, who represented the Philippines in the hearing, said: “This is the most significant international legal case for almost the past 20 years since the Pinochet judgment.”

The judgment does not allocate any of the outcrops or islands to rival countries but instead indicates which maritime features are capable under international law of generating territorial rights over surrounding seas.

Last year, US officials claimed the Chinese had built up an extra 800 hectares (2,000 acres) on their occupied outposts across the South China Sea over the previous 18 months. The main focus of activity has been on Mischief Reef, where satellite images reveal the island is growing bigger, and is surrounded by fleets of dredgers and tankers.

China has previously stated that it “will neither accept nor participate in the arbitration unilaterally initiated by the Philippines”. The tribunal ruled, however, that China’s refusal to participate did not deprive the court of jurisdiction⁸⁴.

Conclusion

The dispute on South China Sea can be solved with measures which have been used in successful settlement of other disputes. For example, a legal solution will be quick and lasting. By adopting a legal solution, all claimants will agree to submit the dispute for arbitration to the International Court of Justice (ICJ) who will judge the dispute according to the international laws applicable. A political solution which is also called one track approach will be time consuming but lasting. By adopting a political solution, all parties will discuss the dispute in formal occasions, either at bilateral or multilateral levels. Other measures such as Confidence Building Measures (CBM) can also be applied to avoid further conflict and promote understanding among claimants. Confidence Building Measures can include two track approaches such as the workshop approach or undergoing joint projects in the disputed areas, as well as cooperation in energy exploration. Two track approaches is supplements to one track approach. By holding

⁸⁴ The Guardian, 12 July 2016.

informal meetings and carrying out cooperative projects, claimants can accumulate confidence and understanding.

In the case of the South China Sea dispute, since most of the claimants are reluctant to resolve the sovereignty issue through any of the approaches, a permanent peace is unlikely to achieve for the time being. However, temporary peace is possible. Peace can be obtained when claimants' interests are attended to. Comparing to the interest of sovereignty, the other two interests are comparatively easier to accomplish, namely security of sea lanes and exploration of natural resources. First, stability and security of the South China Sea are necessary for the economic development of all claimants. Second, previous efforts of all claimants have laid foundation to further carry on negotiations cooperation on issues except territorial claims. In this regard, China's proposal of setting aside dispute will be a wise choice for all claimants.

Due to the complexity of the dispute, no single approach can achieve the permanent peace. A combination of the available approaches is necessary for obtaining peace. In this regard, the approaches which have been adopted by the claimants are in the right direction. First, the Declaration on the Conduct of Parties in the South China Sea signed in 2002 shows the signs of all claimants' will to demilitarize the dispute. This effort ensures that the dispute develop into a political issue which can be solved by political approach in the future. Second, the two track approaches, including the ASEAN Regional Forum and other informal meetings will be playing more important role in providing ideas and suggestions to solve dispute and exchanging information to avoid further conflict due to misunderstanding and lack of communications. Other two track approaches, like the economic integration and energy co-exploration can further closer the ties between claimants. Third, the one track approaches, including the 10+1 Summit between ASEAN and Chinese leaders and other regular ministerial-level meeting mechanisms can review and co-ordinate each country's behavior to enhance understanding and cooperation. The ideal goal of the combined approaches is that even though it cannot ensure permanent peace, when the loss of economic interests and political risk outweigh the military gain, according to realist theory, state will act rationally to avoid conflict. Peace is thus sustained

Chapter V

Conclusion

The maritime and the territorial disputes in the South China Sea have recently grown-up more difficult and passionate, given the issues at hand, the number of countries involved, and reluctance among these countries to fully cooperate with each other to find diplomatic solutions to their problems⁸⁵. The major actors involved in the South China Sea dispute are, People Republic of China, Philippines, Malaysia, and Vietnam, all countries belongs to the Southeast Asian region and include claimed overlapping maritime zones in the region⁸⁶. There is large number of archipelagos in the area which has been categorized in to three groups, Spratly Island

85 Boston Global Forum (June 2015), Recent Trends in the south China Sea Dispute, Center for international Studies, Universities of Social Science and Humanities. <<http://bostonglobalforum.org/wp-content/uplo...>

Paracel Island and Scarborough Shoal. China and Vietnam claimed sovereignty over all maritime features in Paracel Island including islets and reefs. On the other hand, China and the Philippines has been Claimed all the maritime features in Macclesfield Bank and Scarborough Shoal. The Spratlys are one of the major archipelagos in the South China Sea which complicate governance and economics in this part of Southeast Asia due to their location in strategic shipping lanes. The island has no indigenous inhabitants, but offer rich fishing grounds and may contain significant oil and natural gas reserves^{87/88}. The rule of islands, as given in Article 121 of the United Nations Convention on the Law of the Sea which remains ambiguous as it governs that “an island is a naturally created area of land, bounded by water, which is on top of water at high tide⁸⁹. The vague conditions of article 121 of the Convention, has resulted in the claimants in the South China Sea having conflicting views on the function and interpretation of the article with regard to the meaning of an island. China’s place is that all the maritime features in the Paracel and Spratly “islands” are noticeable at high tide, are in China’s view islands; hence, they are allowed to claim not only the territorial sea nearby but also the Exclusive Economic Zone (EEZ) as well as continental shelf⁹⁰. But Philippines strongly disagreed and reject this viewpoint. In fact, two of the claims, Philippines brought before the arbitral tribunal under annex VII to the Convention against China that some of the features in Scarborough Shoal and the Spratly area do not be eligible as islands or even rocks⁹¹.

Furthermore, Vietnam, in a letter to the Secretary-General of the United Nations on 18 May 2009, has implemented the position that “the Spratly Islets do not produce exclusive economic 86 Fensom, Antony. 5 Trillion Meltdown:” What if China Shuts Down the South China Sea?”. The National Interest. Retrieved 2017-03-21.

87 Owen, N. A. and C.H. Schofield, 2002, Disputed South China Sea hydrocarbons in perspective. Marine policy. Vol. 36, no.3, pp. 809-822.

88 “Q and A: South China Sea dispute”. Retrieved 30 October 2013.

89 http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm, access on 28 September 2014.

90 Thao, Nguyen Hong, ‘Vietnam and the Code of Conduct for the South China Sea’, Ocean Development & International Law, vol.32, issue 2, 2001, p. 109.

zones and continental shelves and that any zones around these islands should be restricted to territorial seas⁹². Additionally, according to the Vietnam government, the maritime features in the Paracel “islands” should not be given full effect⁹³.

Malaysia and Brunei have not specifically declared their position toward the legal status of those maritime features in the Spratly “islands”. Nevertheless, owing to their claims of 200 nautical mile EEZs based on their most important coastal areas, one could presume that Malaysia and Brunei have no curiosity in giving the maritime features in this region full effect or to regard them as islands⁹⁴.

91 In the submission to the Arbitral Tribunal established under Annex VII of UNCLOS, the Philippines hold the view that: Michief Reef, McKennan Reef, Gaven Reef and Subi Reef are submerged features which are not above sea level at high tide and thus do not qualify as islands or rocks in terms of Article 121 UNCLOS. None of them are located on China’s continental shelf, while Mischief Reef and McKennan Reef are part of the continental shelf of Philippines. China’s occupation of and construction activities on these four maritime features are unlawful and shall be terminated. (See Republic of the Philippines (RP), Department of Foreign Affairs (DFA), Notification and Statement of Claim (22 January 2013) Annex I, Doc B.2, Bullet points 3-5.) Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef shall be considered as rocks under article 121(3) UNCLOS, and may only generate entitlement to a territorial sea. Having unlawfully claimed maritime entitlement beyond 12 nautical miles from these features, China shall refrain from preventing Philippines vessels from exploiting the living resources in the waters adjacent to Scarborough Shoal and Johnson Reef, and from undertaking other activities inconsistent with UNCLOS at or in the vicinity of these features. (See Republic of the Philippines (RP), Department of Foreign Affairs (DFA), Notification and Statement of Claim (22 January 2013) Annex I, Doc B.2, Bullet points 6-7). See also Gau, Michael Sheng-Ti, ‘Issues of jurisdiction in cases of default of appearance’, in Stefan Talmon and Bing Bing Jia, *The South China Sea Arbitration: A Chinese Perspective*, Oxford and Portland, Oregon, 2014, p. 81.

92 Nien- Tsu Alfred Hu, Ted L. McDorman (2013): *Maritime issue in th e South China Sea*, Routledge.

93 McDorman, Ted L., ‘The South China Sea after 2009: clarity of claims and enhanced prospects for regional Ccooperation?’, *Ocean Yearbook Online*, Volume 24, Issue 1, p. 517. 6

94 Ibid, pp. 517, 521. cccc

The main dispute in the South China Sea has been started after China carried historic claim so called nine dash lines over the South China Sea which strongly violate the sovereignty and the territory of the Southeast Asian Nation. China, has attached a map to the Note Verbale with a nine-dash line which confirm to indicate its maritime claim in the South China Sea⁹⁵. Nonetheless, in the Note Verbale of 2009, China confirmed that: “China has incontrovertible sovereignty over the islands in the South China Sea and the neighboring waters, and enjoys sovereignty rights and rule over the relevant water as well as subsoil thereof. At the time of this report, though, China had not formally explained its positions towards this map. Two reasonable clarifications for China’s nine-dash map exist. A first explanation of the map would be that China claimed sovereignty over all the maritime features (most of them would be islands, in the South China Sea); consequently, China would be allowed to enjoy the maritime zones, including the EEZs and continental shelves, recognized to them. This quarrel is also based on China’s domestic laws and statement. In addition, China has continual such an outlook in its 2011 Note Verbale stating: “China’s Nansha Islands are completely entitled to Territorial Sea, (EEZ), and Continental Shelf”. The maritime zones claimed by China, according to this vision, would not be generating from the main ground, but clearly from the archipelagos in the area. Second, China has articulated curiosity in the so-called “historic claims”, and the nine-dashed line map confirmed China’s sovereignty over the maritime places lying inside those lines under the name of “historic water” or “historic title”. Also in its 2011 Note Verbale, China stated that “China’s sovereignty and related rights and authority in the South China Sea are supported by plentiful historical and legal facts”.

Nonetheless, no matter what it is, the nine-dashed line of China demonstrate undeniably that the “maritime spaces” claimed by China overlap with its neighboring countries’ maritime zones extended from their mainland’s and point out the continuation of a dispute. Furthermore, China unilaterally releases a prohibition on fishing in the disputed region challenging the jurisdiction of other neighbouring countries and infuriating muscular reactions⁹⁶. Against such a background,

95 United States Department of State, Limits in the Sea – No.143 China: Maritime Claims in the South China Sea, p. 5

96 Thao, Nguyen Hong, ‘Vietnam and the Code of Conduct for the South China Sea’, Ocean Development & International Law, vol.32, issue 2, 2001.

the Philippines brought the dispute concerning freedom of navigation between it and China to an annex VII arbitral tribunal. One of these assert concern China unfairly interfere the Philippines navigational and fishing rights approved by UNCLOS within and outside its EEZ. Since the compliance of the Philippine case in 2013, China has in use the position of “no recognition, no participation, no acceptance, and no execution,” as express by Chinese professor Shen Dingli. Beijing maintains to remain to this position, and is possible to dig in its heels given the complete character of the court’s refusal of China’s claims. This, in turn, will provide for the conspiracy theories whirl more or less Beijing that the court is nothing but a conspiracy in opposition to China.

Along with other things, the court has ruled China’s nine-dash line claim to the South China Sea is invalid since Beijing’s former verification of the United Nations Convention on the Law of the Sea (UNCLOS). The court also attempt a ruling on the position of each feature in the Spratly Islands, clarifying that none of them were islands and therefore do not generate an exclusive economic zone (EEZ). Considerably, it ruled that Mischief Reef, which China has captured since 1995, and China has blockade Philippine marines garrisoned on an old vessel that was intentionally run beached there, to be within the EEZ of the Philippines⁹⁷.

The Tribunal considered the Philippines’ request for a declaration that, going forward, China shall respect the rights and freedoms of the Philippines and comply with its duties under the Convention. In this respect, the Tribunal noted that both the Philippines and China have repeatedly accepted that the Convention and general obligations of good faith define and regulate their conduct. The Tribunal considered that the root of the disputes at issue in this arbitration lies not in any intention on the part of China or the Philippines to break on the lawful rights of the others, but slightly in basically different understandings of their own rights under the Convention in the waters of the South China Sea. The Tribunal recalled that it is a fundamental principle of international law that bad faith is not presumed and noted that Article 11 of Annex VII provides that the “award shall be complied with by the parties to the dispute.” The Tribunal therefore considered that no further declaration was necessary⁹⁸. The Tribunal concluded that, to the extent

97 Liow Joseph Chinyong (12 July 2016), Brooking Institutions

98 Permanent Court of Arbitration, The Hague, 12 July 2016.

China had historic rights to resources in the waters of South China Sea, such rights were put out to the coverage they were unsuited with the exclusive economic zones provided for Convention. There was no fact that China had historically work out exclusive power over the waters or their resources. The Tribunal find out that there was no permissible for China to claim historic rights to resources inside the sea areas which comes within the ‘ninedash line’⁹⁹. The court ruled that China doesn't have the right to resources within its "nine-dash line," which extends hundreds of miles to the south and east of its island province of Hainan and covers some 90% of the disputed waters¹⁰⁰.

The Tribunal found that none of the Spratly Islands is competent of producing extended maritime zones. The Tribunal also detained that the Spratly Islands cannot create maritime zones jointly as a unit. Having originate that none of the features claimed by China was competent of producing an exclusive economic zone, the Tribunal set up that it could devoid of restrict a edge assert that certain sea areas are within the exclusive economic zone of the Philippines, since those areas are not overlapped by any possible right of China. It has been found that certain areas are within the exclusive economic zone of the Philippines, the Tribunal has also found that China has strongly dishonored the Philippines’ sovereign rights in its exclusive economic zone by (a) get in the way of Philippine fishing and petroleum exploration, (b) building an artificial islands and (c) deteriorating to put off Chinese fishermen from fishing in the zone. The Tribunal found that China had caused brutal injury to the coral reef surroundings and violated its compulsion to protect and care for fragile ecosystems and the habitat of exhausted, endangered, or scarce species. The Court found that China’s current large-scale territory reclamation and construction of artificial islands was unsuited with the compulsion on a State during dispute declaration proceedings, insofar as China has impose permanent harm to the marine environment, built a large artificial island in the Philippines’ exclusive economic zone, and shattered facts of the natural condition of features in the South China Sea that formed part of the Parties’ dispute¹⁰¹.

99 . House of Commons Library, Jon Lunn, 12 July 2016.

100 The South China Sea: Court rules Philippines over China, Katie Hunt, and 12 July 2016.

101 Jon Lunn, 12 July 2016, House of Commons Library.

On July 12 judgment of the tribunal at the Permanent Court of Arbitration regarding Manila's case against Beijing's South China Sea claim has reshaped the geostrategic landscape of Southeast Asia¹⁰². The verdict doesn't just affect China and the Philippines, but also affect other countries and that have challenging claims with the nation over large regions of the sea. Malaysia, Vietnam and Indonesia have also taken exemption to China's increasing existence in the region and could now be make confident to take further action. "If China's nine-dash line is unacceptable as to the Philippines, it is evenly unacceptable to those States and, in fact, the rest of the global society," the attorney who led the Philippines' lawful team said in a statement. Vietnam, which like China claims the Paracel and Spratly islands, powerfully supports Tuesday's ruling, the country's foreign affairs ministry said. The Spratlys in exacting are deeply challenge, with China, Taiwan and Vietnam claiming all of them, and parts claimed by the Philippines, Malaysia and Brunei. "Vietnam powerfully supports the declaration of the disputes by diplomatic means, including ambassadorial and lawful processes and abstaining from the use or pressure to use power, in agreement with international law," ministry representative Le Hai Binh said¹⁰³.

Arbitration also involves the interests of the United States, particularly with regard to freedom of navigation, international norms, law and relations with important partners and allies, and the expectation of the peaceful resolution of clash. The United States is a key player in the area and has sent warships and armed force approximately the South China Sea, together with close to disputed reefs and shoals; citing global law and autonomy of movement but elicit callous warnings from China. Washington gets no place on the territorial disputes in the South China Sea but has called for a direct end to territory reclamation. President Barack Obama has advocated a nonviolent resolution to the dispute [while visiting Vietnam in May](#) said that big country shouldn't oppress small ones¹⁰⁴. The United States has sought to uphold freedom of navigation and support other nations in Southeast Asia that have been affected by China's assertive territorial claims and land reclamation efforts. According to the United States, countries should have freedom of

102 Truong-minh Vu. 19 August, 20. The National Interest.

103 Katie Hunt, 12 July 2016. The South China Sea: Court rules Philippines over China.

104 Katie Hunt, 12 July 2016, The South China Sea: Court rules Philippines over China.

navigation through EEZs in the sea and are not required to notify claimants of military activities; the United States encourages all claimants to conform their maritime claims to international law and challenges excessive maritime claims through U.S. diplomatic protests and operational activities¹⁰⁵. China's rising power and capabilities make PRC actions more consequential and unsettling than those of others, so they deserve particular attention but need to be evaluated in the broader context of the motives and actions of others as well¹⁰⁶. American policies have contributed mightily to enabling Asia to become an engine of both global and American growth for the last 35 years. The American security presence and associated actions have reduced the chances of large-scale conflict over this period, facilitating Asia's economic emergence. Unfortunately, maritime and territorial clash in East China Sea and the South China Sea increasingly threaten these critical U.S. interests.

The Court also found that none of the sea features claimed by China were competent of generating what's called exclusive economic zones which provide nation maritime rights to possessions such as fish and oil and gas within 200 nautical miles of that land gathering. It considers they were rocks or low-tide increase such as reefs, rather than islands. Since China had no rights to the region as an exclusive economic zone, the Court found that a number of its actions in the area were in break of the Philippines' sovereign rights. China had dishonored those rights by snooping in fishing and oil exploration, building artificial islands and deteriorating to stop Chinese fisherman from fishing the zone. The Jury found China had cause "cruel hurt" to coral around the location of its artificial islands. It has also "dishonored its compulsion to protect and protect breakable ecosystems"¹⁰⁷. In accord with the provisions of the United Nations Convention on the Law of the Sea, the People's Republic of China shall benefit from sovereign rights and authority over an exclusive economic zone of 200 nautical miles and the continental shelf¹⁰⁸.

105 Peace Palace library, South China Sea Territorial Dispute

106 Jeffrey Bader, August 2014, The Foreign Policy Brief, Brookings.

107 Katie Hunt, and 12 July 2016, The South China Sea: Court rules Philippines over China.

108 [Sreenivasa Rao Pemmaraju](#) , June 2016, Chinese Journal of International Law.

APPENDICES

The use or Threat of Force in the South China Sea Disputes since 1945: A Timeline

Prepared by the South China Sea Chronicle Initiative

According to Ian Brownlie in his classic book *International Law and the Use of Force by States*, the use of force is conducted not only by military forces but also by law enforcement agencies¹⁰⁹. Brownlie's view has been widely accepted. Based on his perspective, the following activities are considered for the timeline:

- + Fire opening or fire exchange between state forces or from a state force against civil activities on the sea (for example: fishing)
- + Armed ships (either military or other law enforcement agencies) blocking unarmed forces of another state to peacefully occupy an island/feature (for example, the Spratlys in 1988 or Mischief Reef in 1995)
- + Armed ships (either military or other law enforcement agencies) blocking civil activities, attacking, ramming and sinking unarmed fishing vessels of another state.
- + Other confrontation involved armed forces of states.

Timeline

July 1971: A Philippine fishing vessel was fired by Taiwanese forces stationed on Itu Aba.¹¹⁰

January 1974: Battle of Paracel islands: According to Bill Hayton citing Chinese navy's official history and US military documents¹¹¹, China had planned the battle some time earlier than 1974. Mao Zedong and Zhou Enlai issued the order for the operation since 1973. The Chinese military secretly started training around September 1973 and a tightening of security was observed in the Chinese port of Beihai. From mid-December, six fishing trawlers with hundreds of Chinese commandos were observed leaving the port each day and returning in the evening. This

109 "There can be little doubt that 'use of force' is commonly understood to imply a military attack, an 'armed attack' by the organised military, naval, or air forces of a state; but the concept in practice and principle has a wider significance. The agency concerned cannot be confined to the military and other forces under the control of a ministry of defense or war, since the responsibility will be the same if a government acts through 'militia', 'security forces', or 'police forces' which may be quite heavily armed and may employ armored vehicles. Moreover, governments may act by means of completely 'unofficial' agents, including armed bands, and 'volunteers', or may give aid to groups of insurgents on the territory of another state." Cited from Ian Brownlie (1963): *International Law and the Use of Force by States*, p. 361.

110 Park Hee Kwon, "The Law of the Sea and Northeast Asia: A Challenge for Cooperation," Kluwer Law International Publisher, 2000: p. 92

111 Bill Hayton, "The South China Sea: The Struggle for Power in Asia," Yale University Press 2014: p. 73

phenomenon continued for around ten days. Some other researches also note that the number of Chinese fishing vessels entering the waters of the Crescent group controlled by Republic of Vietnam suddenly increased in the second half of 1973.¹¹²

A Chinese report on the events of the Paracel battle says the conflict originated when the Vietnamese "illegally" arrested Chinese fishermen during November 1973¹¹³.

On 9 January 1974, Chinese fishermen moved to Robert Island close to Pattle Island occupied by Republic of Vietnam.¹¹⁴

On 11 January 1974, China's Foreign Ministry claimed its sovereignty over Paracels and Spratlys. On 12 January 1974, the spokesperson of the Republic of Vietnam rejected Chinese claim. In the following days, China sent people and ships into the waters around the Robert, Duncan and Drummond islands and land on these islands, erected tower and hoisted Chinese flag.¹¹⁵

On 16 January 1974, Vietnamese Navy saw two Chinese "armored fishing trawlers" were laying off Drummond Island supporting troops from the PLA that have occupied the island. Chinese troops were also observed on Duncan Island, with a PLAN landing ship moored on the beach¹¹⁶. In the evening of the same day, the Council of Cabinet of the Republic of Vietnam Government convenes a meeting, concluding that "the situation in Paracel has become alarming" and announced the Directive of the RVN President ordering the navy to use "to the maximum

112 Alan Dupont and Christopher G. Baker, "East Asia's Maritime Disputes: Fishing in Troubled Waters," *The Washington Quarterly* vol. 37 (1): p. 84

113 China Navy Encyclopedia, vol. 2, Beijing: Sea Tide Press, 1998: p. 1747. Cited in Bruce A. Elleman, "China's 1974 naval expedition to the Paracel Islands," in the book "Naval Power and Expeditionary Wars: Peripheral Campaigns and New Theatres of Naval Warfare," Routledge 2010: p. 145

114 Xu Ge, "Tiemao gu haijiang: gongheguo haizhan shiji" [Steel anchors consolidating maritime frontiers: Record of the republic's naval battles] Beijing: Haichao chubanshe, 1999: pp. 289-290. Cited in M. Taylor Fravel, "Power Shifts and Escalation Explaining China's Use of Force in Territorial Disputes," *International Security*, vol. 32 (3), Winter 2007/08: p. 75

extent the international law and other measures to chase them away.” “If they use force, we respond with force,” written the Directive.¹¹⁷

On 17 January, 15 Vietnamese navy soldiers were landed on Money Island. By the morning of Friday, 18 January, four Vietnamese warships consisting of three destroyers and a corvette were on station in the islands and the flotilla’s commander, Captain Ha Van Ngac attempted to land on

115 Statement dated 16 January 1974 on the Communist China's violation of the Sovereignty of the RV over Hoang Sa and Truong Sa Archipelagoes. File No 4617-DII-CH, National Archives Center II, Ho Chi Minh City: “On 11 January 1974, the Foreign Ministry of the Communist China suddenly and falsely claimed its sovereignty over Paracel and Spratly of the RV. One day after that, the spokesperson of the RV rejected that groundless claim. However, in the past few days, the Chinese Communist Government not only did not withdraw its irrational claim but also brazenly infringed on the territory of the RV by sending people and ships encroaching in the waters around the Robert Island, Duncan Island and Drummond of the Paracel Archipelago of the RV. These people also dared to land on these islands, erected tower and hoisted the flag of the Communist Chinese, thus flagrantly violated the sovereign and territorial and territorial integrity of the RV.” Cited in Luu Anh Ro, “China's use of "Fishermen disguise - strange boat" tactic to gradually take the upper hand bển launching a strike to seize Vietnam's Paracel archipelago - as reflected in the archives of the Republic of Vietnam (1954-1974),” Proceedings of the conference "Paracel - Spratly Archipelagoes: Historical truth," Da Nang 19-21 June 2014

116 Bill Hayton, *Ibid.*, supra note 3: p. 74 Vinh Truong. "Vietnam War: The New Legion." Volume 2. Trafford Publisher 2010: p. 471

117 Minutes No 32/55 of the Cabinet Council's Meeting on 16 January 1974, File No 6375 - DII-CH "The Foreign Ministry shall make every possible international and legal effort to reaffirm for the last time our sovereignty over Paracel, from historical aspect to international public law of international conferences... Use all channels to communicate with the violating countries; solemnly and widely publicize the actions and statements... of the Government within today, 16 July 1974. For foreign ships and boats currently present at the islands, the navy uses to the maximum extent the international law and other measures to chase them away. If they use force, we respond with force. Naval troops land on Robert and Duncan, take away foreign flag, install the Vietnamese flag and chase the foreigners away. The Navy is responsible for preventing all acts of installing flag and landing of people in the remaining islands, such as Drummond and Money. If necessary, the Navy must mobilize

Duncan Island. Two Chinese corvettes steamed into the path of the Vietnamese vessels. Ngac aborted the landing.¹¹⁸

The main battle officially started on 19 January, after Chinese troops opened fire at the Vietnamese troop arriving on Duncan Island and waving a white flag, signaling a desire to talk. Two Vietnamese soldiers were killed. The Vietnamese troop retreated. Two hours later, Vietnamese ships opened fire on the Chinese vessels. At the end, the China's PLA-N fleet made up of four Hainan class fast attack craft, two mine sweepers and two fishing boats defeat the South Vietnamese force of three destroyers and a corvette. Saigon also said that China used air planes to bomb Vietnamese positions on Pattle, Robert and Money islands. By the afternoon of 20 January, Chinese forces successfully seized the three islands previously occupied by Vietnamese forces. The two Chinese fishing boats participating in the battle were found to be the same boats that had been in secret training in Beihai a month before.¹¹⁹

1976: Vietnamese forces garrisoned on Southwest Cay fire on a Philippines aircraft that flew close to the island.¹²⁰

28 July 1980: According to Vietnamese sources, the Philippine troops launch Operation Polaris-I to occupy Commodore Reef in the Southern Spratly archipelago. On August 11, 1980, the

additional vehicles for the maximum protection of the Vietnamese sovereignty over Crescent Island and take all necessary measures."

118 Bill Hayton, *Ibid.*, supra note 3: pp. 74-75

119 Bill Hayton, *Ibid.*, supra note 3: pp 75-76 Vinh Truong, *Ibid.*, supra note 8: pp. 472-473
Janes Fighting Ships. 1989-90 (London: Janes Defense Data, 1990), pp. 109, 111. Cited in John W. Garver. "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests." *The China Quarterly* No. 132 (Dec., 1992): p. 1001
"Saigon Says China Bombs 3 Isles and Land Troops," *The Associated Press*, 20 January 1974
David K. Shipler, "Saigon Forces Pull Back," *The New York Times* 20 January 1974
David K. Shipler, "Saigon Says Chinese Control Islands, But Refuses to Admit Complete Defeat," *The New York Times* 20 January 1974

120 Mark J. Valencia, "The Spratly Islands: Dangerous Ground in the South China Sea" *Pacific Review*, Vol. 1, No. 4, 1988: p. 439. Cited in Clarence J. Bouchat. "Dangerous Ground: The Spratly Islands and U.S. Interests and Approaches." *United States Army War College Press* 2013: p. 14

Vietnamese Government sends diplomatic notes to protest the above-use-of-force actions by the Philippines.

During 1988-1989: Several dozen Chinese warships conduct large naval exercises coinciding with its occupation of several reefs in the Spratlys, consisting of Fiery Cross Reef, Huges Reef, Cuarteron Reef, Gaven Reef and Subi Reef¹²¹. Vietnamese media reports that China occupies these reefs after successfully using several warships to block Vietnamese transport ships from entering the features¹²². 14 March 1988: China forces Vietnam out of Johnson South Reef in a skirmish in which 64 allegedly unarmed Vietnamese navy engineers were killed.¹²³

March 1992: In response to reports of oil drilling, Chinese marines land on Da Ba Dau reef, near the Vietnamese-held island of Sin Cowe East, triggering a military clash on 19 March 1992. Four months later, Chinese marines landed on Da Lac reef on Tizard Bank¹²⁴. June to September 1992: China seizes 20 Vietnamese cargo ships coming from Hong Kong.¹²⁵

121 Keith Jacobs, "China's Military Modernization and the South China Sea," *Jane's Intelligence Review* 4, 6 (June 1992, pp. 278-281. Cited in Sam Bateman & Ralf Emmers, "Security and International Politics in the South China Sea: Towards a Co-operative Management Regime," *Routledge* 1 December 2008: p. 49

122 Mai Thanh Hai, "Giữ Trường Sa trước tham vọng bá quyền - Kỳ 4: Những cuộc đối đầu căng thẳng," *Thanh Nien Online* 24 October 2014, available online at <http://www.thanhvien.com.vn/chinh-tri-xa-hoi/giu-truong-sa-truoc-thamvong-ba-quyen-ky-4-nhung-cuoc-doi-dau-cang-thang-504848.html> (accessed date: 10 November 2014)

123 Lt. Colonel Zumwalt, "The Massacre "Not Heard Around the World," *US Daily Review* 2014. See also the video released by China: <https://www.youtube.com/watch?v=uq30CY9nWE8>

124 Tai Ming Cheung, "Fangs of the Dragon," *Far East Economic Review* (13 August 1992): p. 19. Cited in Lt. Michael Studeman, U.S. Navy, "Calculating China's Advances in the South China Sea Identifying the Triggers of "Expansionism," *Naval War College Review* 51, no. 2 (Spring 1998): pp. 68-90 Sujit Dutta, "Securing the Sea Frontier: China's Pursuit of Sovereignty Claims in the South China Sea," *Strategic Analysis*, vol. 29 (2), Apr-Jun 2005: p. 288 Da Ba Dau is currently unoccupied, according to Vietnamese journalists who visited Spratly islands

July 1994: China sends naval ships to blockade operations of a Vietnamese oil rig within Vietnam's internationally recognized territorial waters over Tu Chinh (Vanguard Bank) oil exploration blocks 133, 134, and 135. China claims the area as part of their Wan' Bei-21 (WAB21) block.¹²⁶

February 1995: Sino-Filipino conflict over Mischief Reef. China forces start occupying Mischief Reef and establish several buildings there. They claim the buildings are "shelters for fishermen". However, the Philippine government publishes pictures of several Chinese navy supply vessels and a submarine-support ship around the reef¹²⁷. Chinese warships drive off Philippine ships attempting to reach the island.¹²⁸

16 March 1995: Malaysian navy boats fire on a Chinese trawler found to be fishing off Sarawak, reportedly within Malaysian EEZ, injuring four Chinese crewmembers¹²⁹.

25 March 1995: Taiwanese artillery on Itu Aba fire on a Vietnamese supply ship, Bien Dong 80 that was approaching the island¹³⁰. According to Vietnam's Ministry of Foreign Affairs, the

125 Stein Tonnesson, "Vietnam's Objective in the South China Sea: National or Regional Security," *Contemporary Southeast Asia*, Vol. 22 No. 1, April 2000: p. 210

126 Michael Klare, "Resource Wars: The New Landscape of Global Conflict," Macmillian Publisher 17 May 2001: p. 124 US Energy Information Administration, Analysis Briefs, "South China Sea", March 2008. Cited in Adam B. Lowther, "The Asia-Pacific Century: Challenges and Opportunities," Taylor & Francis, 28 August 2013: p. 122 Philip Shenon, "China Sends Warships to Vietnam Oil Site," *The New York Times* 21 July 1994

127 "China's Military Threat Increasing," *Taiwan Communiqué* No. 65, April 1995

128 US Energy Information Administration, *ibid.*, supra note 18: p. 122 B.Raman, "Chinese Assertion of Territorial Claims- The Mischief Reef: A case Study," *South Asia Analysis Paper* No. 24 14 January 1999 Ian J. Storey, "Creeping Assertiveness: China, the Philippines, and the South China Sea Dispute," *Contemporary Southeast Asia*, Vol. 21, No.1, April 1999: pp. 95-118

129 Michael Klare, *ibid.*, supra note 18: p. 124

Vietnamese ship was approaching Ban Than Reef where Taiwan was attempting to conduct construction activities.¹³¹

March 1997: China sends three warships to survey the Philippine-occupied Lankiam Cay and Loaita Island in the Spratly archipelago.¹³²

April 1997: The Philippine navy orders a Chinese speedboat and two fishing boats to leave Scarborough Shoal; Philippine fishermen remove Chinese markers and raise their flag.¹³³

January 1998: The Philippine Navy arrests 22 Chinese fishermen close to Scarborough Shoal.¹³⁴

January 1998: Vietnamese soldiers fire on a Philippine fishing boat near Vietnam-controlled Tennent (Pigeon) Reef, injuring a Filipino fisherman¹³⁵. 1 May 1999: Chinese naval ships are accused of harassing a Philippine naval vessel after being stranded near the Spratly Islands.¹³⁶

130 R. L. Chen, Vietnam, "Spratly Protest Rejected," China Post (Taipei), Apr. 3, 1995; Tammy C. Peng, "ROC Will Protect Its Air and Sea Zones," Free China Journal (Taipei), Oct. 16, 1992. Cited in Christopher Joyner, "The Spratly Islands Dispute: What Role for Normalizing Relations Between China and Taiwan," The New England Law Review, 1998

131 Vietnam News Agency 4 April 1995

132 "Chinese Refuse to Leave Philippine Waters," Courier Mail, 3 May 3 1997. Cited in CNAS Flashpoints Timeline US Energy Information Administration, *Ibid.* supra note 18: p. 122

133 US Energy Information Administration, *Ibid.*, supra note 18: p. 122

134 Michael Klare, *Ibid.*, supra note 18: p. 124

135 US Energy Information Administration, *Ibid.*, p. 122 "Philippines Lodges Protest Over Shooting in Spratlys," Deutsche Presse-Agentur, January 19, 1998. Cited in "The West Philippine Sea, The Territorial and Maritime Jurisdiction Disputes from a Filipino Perspective: A Primer." The Asian Center and Institute for Maritime Affairs and Law of the Sea University of the Philippines April 2013: p. 57

136 US Energy Information Administration, *Ibid.*, p. 122

May 1999: A Chinese fishing boat is sunk after colliding with a Philippine warship off Scarborough Shoal.¹³⁷

19 July 1999: Another Chinese fishing boat is sunk in a collision with a Philippine warship off Scarborough Shoal.

October 1999: According to Philippine defense sources, two Malaysian fighter planes and two Philippine air force surveillance planes nearly engaged over a Malaysian-occupied reef in the Spratlys. The Malaysian Defense Ministry states that it was not a standoff.¹³⁸

13 October 1999: Vietnamese forces on Tennent Reef fire at a Philippine Air Force reconnaissance plane flying over the reef.¹³⁹

2 February 2000: Philippine Navy ship fires warning shots into the air to drive Chinese vessels away from Scarborough Shoal. Philippine Armed Forces Chief Gen. Angelo Reyes says that the ship tried to contact the vessels but they engaged in some evasive maneuvers. China's Ambassador Fu Ying later informs Foreign Secretary Domingo Siazon Jr. that Beijing would file a diplomatic protest over the said incident. DFA orders probe on the incident and asks China to prevent its fishing vessels from venturing into disputed islands.¹⁴⁰

17 April 2000: The Philippine Navy apprehends a Chinese fishing boat at the Scarborough Shoal and confiscates eight tons of corals.¹⁴¹

137 US Energy Information Administration, *Ibid.*, p. 122Sol Jose Vanzi, "Chinese Fishing Boat Sinks After Colliding with RP Navy Ship," Philippine Headline News Online, May 25, 1999

138 1 US Energy Information Administration, *Ibid.*, p. 122

139 John McLean. "World: Asia-Pacific Philippines protests at Vietnam Spratly 'attack'." BBC News 28 October 1999

140 Scaborough shoal standoff: A timeline. Inquirer.net 9 May 2012 Cynthia D. Balana, "Navy ship fires warning shots," Philippine Daily Inquirer 5 February 2000

141 *Ibid.*

26 May 2000: Philippine troops open fire on Chinese fishermen, killing one and arresting seven.¹⁴²

January-March 2001: The Philippine navy board's 14 Chinese-flagged boats, confiscated their catches, and eject the vessels out of the Spratlys.

March 2001: The Philippines sends a gunboat to Scarborough Shoal to "ward off any attempt by China to erect structures on the rock."¹⁴³

1 April 2001: A U.S. EP-3 reconnaissance plane collided with a Chinese F-8 fighter jet near Hainan Island¹⁴⁴. Two Chinese-built F-8 fighters approach an EP-3 US reconnaissance plane flying over the South China Sea about 80 miles southeast of Hainan Island, and one of them accidentally colliding with the EP-3. While the EP-3 landed safely on Hainan, the Chinese plane crashed. Although the US plane was well outside China's 12-mile territorial limit and was flying over international waters and Chinese officials agreed that the collision took place nearly 80 miles from Hainan, the Chinese government still claimed sovereignty over these waters.¹⁴⁵

Since 2002: Chinese ships have occasionally harassed the US Navy's Bowditch, an oceanographic survey ship, as it operated in China's EEZ in the Yellow, East China and South China Seas.¹⁴⁶

142 "China Makes Representations to the Philippines on Killing of Fisherman." People's Daily 02 June 2000 US Energy Information Administration, Ibid., p. 122

143 US Energy Information Administration, Ibid., p. 122 Malou Talosig, "Manila sends gunboat to keep China off shoal", Gulf News 29 March 2001

144 Bonnie S. Glaser. "Armed Clash in the South China Sea". Council on Foreign Relation April 2012

145 "U.S. Aircraft Collides with Chinese Fighter, Forced to Land" CNN 1 April 2001 Sam Bateman, Ralf Emmers. "Security and International Politics in the South China Sea: Towards a Co-operative Management Regime." Routledge, 1 Dec 2008: p.54

146 Mark Valencia, "The Impeccable Incident: Truth and Consequences," China Security, 5(2), Spring 2009: p. 23

August 2002: Vietnamese troops fired warning shots at Philippine military reconnaissance planes circling over Spratlys.¹⁴⁷

8 January 2005: A Vietnamese fishing boat is assaulted by Chinese fishery officers in the Western part of the demarcation zone of the Gulf of Tonkin (shared area)¹⁴⁸. Vietnam's state media reports that nine fishermen were killed, eight were detained, two of which were wounded.¹⁴⁹

9 July 2007: A Chinese navy ship fired at Vietnamese fishing vessels near disputed Spratly islands, injuring five Vietnamese fishermen.¹⁵⁰

8 March 2009: Five Chinese vessels, including a naval intelligence ship, a government fisheries patrol vessel, a state oceanographic patrol vessel, and two small fishing trawlers harass the USNS Impeccable approximately 75 miles south of Hainan Island in the South China Sea. The Pentagon states this is the latest of several instances of "increasingly aggressive conduct"¹⁵¹ in the past week.

11 June 2009: A Chinese PLAN submarine collides with the sonar sensor of the destroyer USS John S. McCain near Subic Bay off the coast of the Philippines.¹⁵²

147 Tran Dinh Thanh Lam, "Bird Watchers, Divers, Tourists Ignite Spratlys Row." Asia Times Online, 7 April 2004 US Energy Information Administration, *Ibid.*, p. 122 Ralf Emmers. "Cooperative Security and the Balance of Power in ASEAN and the ARF." Routledge Publisher, 12 Nov 2012: p. 144

148 Vietnamese fishermen killed in territory dispute. ABC News 13 January 2005

149 Phía Trung Quốc phải xử lý những kẻ bắn ngư dân VN," Vietnamnet 18 January 2005

150 Chinese navy fires at Vietnamese fishing ship, injuring 5," Kyodo 21 July 2007

151 "Pentagon Says Chinese Vessels Harassed U.S. Ship." CNN, 9 March 2009

152 "China sub collides with array towed by U.S. ship: report." Reuters, 12 June 2009

June 2009: The Indonesian Navy detains 75 Chinese fishermen in eight boats for “illegally” fishing in the EEZ of the Natuna, which provokes demand from Beijing for their immediate return.¹⁵³

In 2009: According to Vietnamese media reports, China detains or seizes 33 Vietnamese fishing boats and 433 crew members, several of which were detained while they sought shelter in the Paracel islands during storms in August and October.¹⁵⁴

May to July 2010: Indonesian and Chinese navies each capture several of the others sides’ fishing boats, accusing them of illegal fishing. In one incident, an Indonesian naval ship detains ten Chinese fishing boats north of the Natunas, but reportedly within the 200 nautical mile EEZ. Indonesian officials maintain the Chinese fishing boats had encroached in a “deliberate and coordinated manner.” During the few hours of their detention, two frigate-sized ships “armed with heavy guns” appear and engage in a tense confrontation before the fishing vessels are released.¹⁵⁵

23 June 2010: Indonesian patrol boats confront China’s fishing vessels escorted by heavily armed fisheries management vessels approximately 65 miles northwest of Natuna islands. An unverified report from Japan’s Mainichi Shimbun suggests that the Yuzheng-311 and another Chinese fisheries-enforcement vessel had confronted an Indonesian naval patrol boat. Having been ordered to leave, the Yuzheng-311 refused and trained its guns on the Indonesian vessel, demanding the release of a recently detained Chinese fishing boat. No shots are fired and the Chinese trawler is released.¹⁵⁶

153 Keith Loveard, “The Thinker: Caution Over Natuna,” The Jakarta Globe, 2 July 2009

154 “China Seizes Vietnamese Fishing Boat,” Deutsche Presse-Agentur, April 19, 2010

155 Alan Dupont and Christopher G. Baker. “East Asia’s Maritime Disputes: Fishing in Troubled Waters”. The Washington Quarterly 37:1 p. 86 Lilian Budianto, “South China Sea Dispute a Potential Rift in RI-China Ties: Envoy,” The Jakarta Post, 9 January 2012

In 2010: Vietnam News Agency reports that when Vietnam conducted surveys in 2010 to complete its dossier on boundaries of the continental shelf for a report to the United Nations, Chinese vessels also cut Vietnamese ships' survey cables.¹⁵⁷

In 2010: According to Vietnamese report, Chinese authorities detained at least 30 Vietnamese boats with more than 200 fishermen in disputed areas in the South China Sea.¹⁵⁸

25 February 2011: According to a report by the Armed Forces of the Philippines (AFP), three Philippine fishing vessels, F/V Jaime DLS, F/V Mama Lydia DLS and F/V Maricris 12 were fishing near Jackson Atoll off the Spratly islands, 140 nm from Palawan Island when a Chinese frigate approached. The Chinese frigate, a Jianghu-V Class missile frigate, Dongguan 560, broadcasted over its marine band radio: "This is Chinese Warship 560. You are in the Chinese territory. Leave the area immediately." Then the frigate repeatedly broadcast, "I will shoot you." even though the Philippine boat replied through a marine band radio to "please wait for a while" as it was experiencing trouble removing its anchor. As the fishing vessels began to withdraw, the Chinese frigate fired three shots that landed 0.3 nautical miles (556 meters) from F/V Maricris 12¹⁵⁹. The Chinese ambassador to the Philippines, Liu Jianchao later denied that any Chinese vessel had fired on Filipino fishermen.¹⁶⁰

2 March 2011: The Government of the Philippines reports that two patrol boats from China have attempted to ram one Philippine surveillance ships: Two Chinese white-painted patrol boats, No.

156 SITC-NWC Policy Briefs, *Ibid.*, supra note 30: p. 5 Christian Le Mière. "Maritime Diplomacy in the 21st Century: Drivers and Challenges." Routledge Publisher, 24 April 2014: p. 32

157 "National, world security closely linked: minister." Vietnam News 7 June 2011

158 Nga Pham, "Vietnam puts Paracel row on summit agenda," BBC News 8 April 2010

159 Tessa Jamandre. "China Fired at Filipino Fisherman in Jackson Atoll." ABS-CBN News 3 June 2011

160 Jim Gomez, "China warns neighbors: Stop oil search in Spratlys," Associated Press 9 June 2011

71 and No. 75, order MV Veritas Voyager, a Forum Energy Plc. survey vessel operating in the Reed Bank area off Palawan Island, to leave and maneuvered twice close in what the Government of the Philippines reported a threat to ram the MV Veritas Voyager. The survey ship was French-owned and registered in Singapore. The Philippines respond by dispatching two OV-10 aircraft to investigate. The Chinese boats depart without further incident.¹⁶¹

21-24 May 2011: Chinese maritime surveillance vessels and PLAN ships are suspected of unloading building materials near Philippine-occupied West York and Flat islands in the disputed Spratly archipelago.¹⁶²

26 May 2011: Three Chinese maritime surveillance ships molest the Bình Minh 02, a Vietnamese seismic survey ship operating in Block 148. China's Maritime Surveillance Ship No. 84 cuts a cable towing seismic monitoring equipment by the Vietnamese ship. The incident lasts for three hours and takes place in an area called Block 148 about 120 km (80 miles) off the south-central coast of Vietnam from the beach town of Nha Trang and 600 kilometers south of China's Hainan province. In Vietnam's view, the location is within the exclusive economic zone of Vietnam.¹⁶³ After the incident, China argues that "the law enforcement activities by Chinese maritime surveillance ships against Vietnam's illegally operating ships are completely justified. We urge Vietnam to immediately stop infringement activities and refrain from creating new troubles."¹⁶⁴

161 H.Res. 714, Introduced at 113th U.S. Congress, 2013-2015, Passed on 3 Dec 2014 "Philippines halts tests after China patrol challenge." BBC News 8 March 2011

162 Carlyle A. Thayer, "China's New Wave of Aggressive Assertiveness in the South China Sea." Paper presented at Maritime Security in the South China Sea Conference and Papers, Washington, June 20-21, 2011: p. 8; "Manila Daily Berates China Over Violation of South China Sea Code of Conduct," The Philippine Star 4 June 2011. Cited in CNAS Flashpoints Timeline.

163 Press Conference on Chinese maritime surveillance vessel's cutting exploration cable of Petro Vietnam Seismic Vessel, Vietnam's Ministry of Foreign Affairs 29 May 2011, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110530220030 on 11 May 2015 "Vietnam accuses China in seas dispute." BBC News 30 May 2011, accessed online at <http://www.bbc.com/news/world-asia-pacific-13592508> on 11 May 2015

31 May 2011: Three Chinese military vessels use guns to threaten the crews of four Vietnamese fishing boats while they were fishing in the waters of the Spratly Islands.¹⁶⁵

9 June 2011: According to the spokeswoman of Vietnam's Ministry of Foreign Affairs, at 6 a.m., "the Viking II, a vessel hired by Vietnam National Oil and Gas Group, was conducting 3D seismic exploration in Block 136/03 (coordination: 6 degrees 47.5' North and 109 degrees 17.5' East), within the continental shelf of Viet Nam when Chinese fishing vessel No 62226, supported by two Chinese Yuzheng fishery administration vessels No. 311 and No. 303, cut off Viking II, then veered with acceleration. Despite warning flares from the Vietnamese side, vessel 62226 headed on and rammed exploration cables of the Viking II. Its specialized cable slashing device was consequently trapped in the Viking II's cables, jamming Viking II operation. As soon as that happened, Chinese Yuzheng 311 and 303, together with several Chinese fishing vessels, rushed to rescue Vessel 62226." Vietnam view is that the location where Viking II was operating is located "within Viet Nam's 200-nautical mile-continental shelf."¹⁶⁶ The location is approximately 1,000 kilometers off China's Hainan Island.

17 June 2011: China dispatches one of its largest patrol ships, the Haixun 31, on a voyage through disputed areas of the South China Sea in a deliberate show of force en route to a port call in Singapore. China's official media stated that the sailing route of the Haixun 31 in the South China Sea was determined to protect its "rights and sovereignty"¹⁶⁷

25 June 2011: Chinese PLA Major General (Ret.) Peng Guangqian states in a television interview that "China once taught Vietnam a lesson. If Vietnam is not sincere, it will receive a

164 China's Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on 31 May 2011

165 H.Res. 714. Ibid., supra note 55 "East Sea undercurrents." Thanh Nien News 10 June 2011, accessed online at <http://www.thanhniennews.com/society/east-sea-undercurrents-11927.html> on 11 May 2015

166 Regular Press Briefing by Vietnam MOFA's Spokesperson Nguyen Phuong Nga on 9 June, 2011

167 H.Res. 714. Ibid., supra note 55

bigger lesson”, adding that “if Vietnam continues to act tough, play with the knife, sooner or later it will get cut”.¹⁶⁸

5 July 2011: Chinese soldiers reportedly punch and kick a Vietnamese captain and threatened nine other crew members before expelling them from waters near the disputed Paracel Islands.¹⁶⁹

22 July 2011: An Indian naval vessel, sailing about 45 nautical miles off the coast of Vietnam, is warned by a Chinese naval vessel that it is allegedly violating Chinese territorial waters.¹⁷⁰ An unidentified caller who claims to be from the Chinese Navy, but who is speaking in English, tells the INS Airavat that the Indian ship is entering Chinese waters and must leave.¹⁷¹

22 February 2012: Vietnam says Chinese authorities used force to prevent 11 Vietnamese fishermen trying to seek refuge from a storm from reaching the Paracel Islands. Vietnam lodges a protest with the Chinese Embassy in Hanoi.¹⁷² China denies the allegations.¹⁷³

23 March 2012: According to reports citing Vietnamese officials, China detains 21 fishermen near the Paracel Islands and demands \$11,000 for their release.¹⁷⁴ Viet Nam asks China to

168 H.Res.352 - 112th U.S. Congress (2011-2012). Introduced on 15 July 2011

169 “Vietnam: Chinese Soldiers Attack Fishermen,” Philippine Inquirer, 14 July 2011

170 Ibid., supra note 55

171 "Chinese warship confronts Indian naval ship: Report." IBN Live 1 September 2011, accessed online at <http://ibnlive.in.com/news/chinese-warship-confronts-indian-naval-ship-report/180479-3.html> on 11 May 2015

172 "Vietnam protests China's acts against fishermen." Vietnam's Ministry of Foreign Affairs 1 March 2012, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns120301165106 on 10 May 2015

173 Jeremy Page, “Beijing in Fresh Sea Row With Hanoi,” The Wall Street Journal, 1 March 2012; “Vietnam Says China Assaulted Fishermen,” Associated Press, 1 March 2012. Cited in CNAS Flashpoints Timeline

174 Edward Wong, “China: Vietnamese Fishermen Detained,” The New York Times, 23 March 2012

immediately and unconditionally release all fishermen.¹⁷⁵ April-June 2012: After a Philippine reconnaissance plane identifies Chinese fishing boats at Scarborough Reef, the Philippine Navy sends in its biggest warship, the BRP Gregorio del Pilar, arguing that the fishermen are fishing illegally. China also sends ships. There is a stalemate. The Filipino fishermen later leave the area because of the impending typhoon season. The Chinese boats likewise leave following the Filipino withdrawal.¹⁷⁶

18 July 2012: Philippine DFA official says China blocks Philippine ships and fishing vessels from the shoal by setting up barriers to its entry point. Since then, vessels belonging to the China Marine Surveillance and Fisheries Law Enforcement Command have been observed in the nearby disputed shoal and Chinese government vessels have been turning away Filipino vessels sailing to the area.¹⁷⁷

30 November 2012: Chinese fishermen have again cut the seismic survey cables of the Vietnamese oil exploration ship Binh Minh 02. The incident reportedly occurred at 17.26 degrees

175 "Vietnam asks China to immediately and unconditionally release all fishermen." Vietnam's Ministry of Foreign Affairs 22 March 2012, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns120322165528 on 10 May 2015

176 Jim Gomez. "Philippines, China Commit to Diplomacy in Standoff." Associated Press, 11 April 2012; James Hookway, "Philippine Warship in Standoff with China Vessels" The Wall Street Journal, 11 April 2012; Jane Perlez, "Philippines And China Ease Tensions In Rift at Sea." The New York Times, 18 June 2012. Cited in CNAS Flashpoints Timeline

177 Michaela Del Callar. "DFA: China boats blocking PHL vessels from Panatag Shoal". GMA News 18 July 2012, accessed online at <http://www.gmanetwork.com/news/story/265889/news/nation/dfa-china-boats-blocking-phlvessels-from-panatag-shoal> on 10 May 2015 Joshua Keating. "China has the Philippines on the rope." Foreign Policy 4 September 2012, accessed online at <http://foreignpolicy.com/2012/09/04/china-has-the-philippines-on-the-ropes/> on 11 May 2015 Fat Reyes. "3 Chinese government vessels spotted at Scarborough Shoal — DFA". Global Nation Inquirer 27 July 2012, accessed online at <http://globalnation.inquirer.net/45761/3-chinese-government-vessels-spotted-at-scarboroughshoal-dfa> on 11 May 2015

North latitude and 108.02 degrees West longitude, about 43 nautical miles southeast of Vietnam's Con Co Island and 20 miles west of the median line between Vietnam and China.¹⁷⁸

In 2012: Vietnam's media quoting An Hai Fishery Union Chairman Nguyen Quoc Chinh, says that there were 300 fishermen in Quang Ngai province detained by China authorities.¹⁷⁹

20 March 2013: An unidentified Chinese vessel chases and fires the flare on a Vietnamese fishing boat near the Paracel Islands, according to the Vietnamese government, which calls the incident "very serious". It lodges a formal complaint with the Chinese embassy in Hanoi. Chinese foreign ministry spokesman Hong Lei says China has taken unspecified but "legitimate and reasonable" actions against Vietnamese boats working illegally in Chinese waters. He denies that any boats have been damaged, but gave few other details.¹⁸⁰ On this incident, US state department spokesman Patrick Ventrell said that the United States "strongly oppose the threat or use of force or coercion by any claimant to advance its claims in the South China Sea"¹⁸¹ 9 May 2013: A Philippine Navy ship fired at a Taiwanese fishing vessel, killing one crew member on board. Philippines say the incident took place in the Balintang channel, just north of the island of Luzon, within Philippine territorial waters. Taiwan says the location was 180 nautical miles southeast of the southern tip of Taiwan.¹⁸²

178 "Chinese boats cause cable cut to Vietnam's ship." Tuoi Tre News 4 December 2012, accessed online at <http://tuoitrenews.vn/society/4755/chinese-boats-cause-cable-cut-to-vietnam%E2%80%99s-ship> on 10 May 2015

179 "Lính Trung Quốc đã chữa súng uy hiếp ngư dân Việt Nam," Sống Mới 18 March 2013

180 Hanoi accuses Chinese of firing at boat. The Associated Press 26 March 2013, accessed online at <http://www.ft.com/intl/cms/s/0/5d14a1da-963d-11e2-9ab2-00144feabdc0.html?siteedition=uk> on 10 May 2015

181 Patrick Ventrell. "Daily Press Briefing." U.S. Department of State 26 March 2013, accessed online at <http://www.state.gov/r/pa/prs/dpb/2013/03/206703.htm#CHINA> on 10 May 2015

182 6 "Philippines admits shooting of Taiwanese fisherman," The Deutsch Welle 10 May 2013 "PHL Navy ship fires upon Taiwan fishing boat, one dead - report," GMA News 10 May 2013

5 December 2013: While the USS Cowpens is reportedly operating in international waters in the South China Sea, a auxiliary vessel of the PLAN aircraft carrier Liaoning reportedly crosses its bow at a distance of less than 500 yards and stops in the water, forcing the USS Cowpens to take evasive action in order to avoid a collision.¹⁸³

In 2013: Dozens of Vietnamese fishing boats were chased, rammed or shot, fishing gears were destroyed, catches were confiscated by Chinese authorities, according to Vietnamese Fishery Society.¹⁸⁴

1 May 2014: China's state-owned energy company, CNOOC, places its deep water semisubmersible drilling rig Hai Yang Shi You 981 (HD-981), accompanied by over 25 Chinese ships, in Block 143, 120 nautical miles off Vietnam's coastline.¹⁸⁵ China declares a 3 nautical mile security radius around the oil rig, while United Nations Convention on the Law of the Sea only allows 500 meter safety zone.

1 May - 15 July 2014: The number of Chinese vessels escorting HD-981 increased to more than 80, including seven military ships, which patrolled and harassed Vietnamese coast guard ships, reportedly intentionally ramming multiple Vietnamese vessels as well as using helicopters and water cannons to obstruct others.¹⁸⁶ The oil rig is withdrawn on 15 July 2014.

183 S.Res.412 - 113th Congress (2013-2014). Agreed to Senate on 07 October 2014 "Trust-building needed to cut Gordian Knot of China-US military ties." Global Times 18 December 2013, accessed online at <http://www.globaltimes.cn/content/832838.shtml> on 11 May 2015 Christopher Bodeen. "After sea incident, China praises ties with US." The Associated Press 18 December 2013, accessed online at <http://www.philstar.com/world/2013/12/18/1269571/after-sea-incident-china-praises-ties-us> on 11 May 2015

184 Website of Vietnamese Fishery Society, accessed online at <http://www.hoinghecavietnam.org.vn/tinchitiet.aspx?newsid=194&&cateid=11> on 23 January 2014

185 S.Res.412 - 113th Congress (2013-2014). Ibid

26 May 2014: A Chinese vessel rams and sinks a smaller Vietnamese fishing boat, and then flees the scene. The incident occurs around 30 kilometers south-southwest of the oil rig HD-981 that China deployed on 1 May, reportedly in Vietnam's EEZ.¹⁸⁷

March-August 2014: On 19 August 2014, Pentagon spokesman John Kirby says that “an armed Chinese fighter jet conducted a dangerous intercept of a U.S. Navy P-8 Poseidon aircraft, patrol aircraft, that was on a routine mission. The intercept took place about 135 miles east of Hainan Island, in international airspace.” Kirby says that was the fourth “close intercept” involving Chinese jets since March 2014: “On three different occasions, the Chinese J-11 crossed directly under the US aircraft with one pass having only 50-100 feet separation between the two aircraft”.¹⁸⁸ The spokesman of China’s Defense Ministry issues a statement in which he describing the US accusations as “groundless”. He says China was conducting “routine identification and verification” flights. Yang said the Chinese jet “kept a safe distance from the US planes”.¹⁸⁹

186 S.Res.412 - 113th Congress (2013-2014). Ibid. Phan Hậu & Đan Hạ. "Trung Quốc đã tăng lên 99 tàu ở khu vực đặt giàn khoan trái phép." Thanh Niên Online 12 May 2015, accessed online at <http://www.thanhnien.com.vn/chinh-tri-xa-hoi/trung-quoc-da-tang-len-99-tau-o-khu-vuc-dat-gian-khoan-trai-phep-79788.html> on 11 May 2015
“Cận cảnh vũ khí Trung Quốc ở khu vực giàn khoan Hải Dương 981.” VTV1/So Ha News 8 June 2014, accessed online at <http://soha.vn/quan-su/can-canhh-vu-khi-trung-quoc-o-khu-vuc-gian-khoan-hai-duong-981-20140608072515105.htm> on 11 May 2015

187 Manabu Ito. “Chinese ship sinks Vietnamese fishing boat in South China Sea.” Nikkei Asian Review 27 May 2014

188 Rear Admiral John Kirby. "Department of Defense Press Briefing by Admiral Kirby in the Pentagon Briefing Room." U.S. Department of Defense 22 August 2014, accessed online at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493> on 10 May 2015

189 “China defends interception of US Navy aircraft.” Deutsche Welle 24 August 2014, accessed online at <http://www.dw.de/china-defends-interception-of-us-navy-aircraft/a-17874119> on 10 May 2015
Liu Sha. "US urged to scale back surveillance." Global Times 25 August 2014, accessed online at <http://www.globaltimes.cn/content/877938.shtml> on 10 May 2015

In 2014: Vietnam's media reports several incidents in which Chinese armed ships attack ram three Vietnamese fishing boats near disputed Paracel islands.¹⁹⁰

December 2014 – April 2015: Philippine Marine 1st Lt. Mike Pelotera says Chinese coast guard vessels blocked or chased Filipino and Vietnamese fishermen for at least eight times near the Second Thomas Shoal. There are reports that similar incidents also take place near Scarborough Shoal where Chinese government ships threaten by gun or fire water cannon on the fishermen to take their properties and drive them away.¹⁹¹

January 2015: Vietnam's media reports that Chinese armed fisheries surveillance ships attack three Vietnamese fishing boats near disputed Paracel islands smash their fishery equipment and confiscate all the property on board.¹⁹² April 2015: China is accused of challenging a US plane

190 Viên Nguyễn, "Ngu dân tố bị kiểm ngư Trung Quốc phá tàu, cướp hải sản," Dan Viet 6 January 2014, accessed online at <http://danviet.vn/xa-hoi/ngu-dan-to-bi-kiem-ngu-trung-quoc-pha-tau-cuop-hai-san-178523.html> on 6 January 2014 "Chủ tịch Nghiệp đoàn Nghề cá xã An Hải, huyện Lý Sơn kêu gọi giúp đỡ ngư dân bị tàu Trung Quốc đập phá, cướp cá," Lao Dong 6 January 2014, accessed online at <http://laodong.com.vn/xa-hoi/chu-tich-nghiep-doan-nghe-ca-xa-anhai-huyen-ly-son-keu-goi-giup-do-ngu-dan-bi-tau-trung-quoc-dap-pha-cuop-ca-171945.bld> on 6 January 2014 "Ngu dân lại bị cướp ngư cụ ở biển Hoàng Sa," ANTV 3 March 2014, accessed online at <http://www.antv.gov.vn/tintuc/an-ninh-trat-tu/ngu-dan-lai-bi-cuop-ngu-cu-o-bien-hoang-sa-2984.html> on 5 March 2014 David Tweed, "Vietnam Says Chinese Vessels Attacked Fishermen Near Paracels," Bloomberg News 10 September 2014, accessed online at <http://www.bloomberg.com/news/articles/2014-09-10/vietnam-says-chinese-vessels-attackedfishermen-near-paracels> on 28 November 2014 "Chinese ships reportedly ram, fire water cannons at Vietnamese fishing boats," Tuoi Tre News 29 November 2014, accessed online at <http://tuoitrenews.vn/society/24354/chinese-ships-reportedly-ram-fire-water-cannons-atvietnamese-fishing-boats> on 14 December 2014

191 Jim Gomez, "Filipinos saw China blocking fishermen from shoal," Associated Press 23 April 2014 Randy V. Datu, "PH fisherfolk: Living with Chinese coastguards' hostility," Rappler 15 March 2014 Joel Guinto, "Philippines accuses China coast guard of armed robbery," Agence France-Presse 23 April 2015

192 "Chinese armed forces destroy equipment, steal property from Vietnamese fishing boat: report," Tuoi Tre News 10 January 2015 "Two more Vietnamese fishing boats attacked by Chinese vessels," Tuoi Tre News 13 January 2015

flying over a Chinese-occupied area.¹⁹³ 19 April 2015: Philippine media reported that a Chinese Navy frigate ordered a Fokker plane of the Philippine Air Force that was conducting maritime patrols to stay away from Subi Reef. The Chinese frigate also blinked its lights. The recorded Chinese audio message repeatedly stated: "Foreign airplane you are approaching my military security area. Please go away quickly in order to avoid misjudgment."¹⁹⁴

19 April 2015 – 7 May 2015: Philippine's Westcom chief Vice Admiral Alexander Lopez At accuses China of harassing Philippine air patrols in six separate incidents.¹⁹⁵

193 China challenges US plane during Balikatan war games." Rappler 9 May 2015, accessed online at <http://www.rappler.com/newsbreak/inside-track/92637-us-plane-south-china-sea> on 10 May 2015

194 Carmela Fonbuena. "China continues to harass Phi air patrols in West PH Sea." Rappler 7 May 2015, accessed online at <http://www.rappler.com/nation/92415-china-harassment-air-patrols-west-ph-sea> on 10 May 2015

195 Ibid.

BIBLIOGRAPHY

1.1 Primary Sources

Hayton Bill (June 21, 2016), *China's Historic Rights in the South China Sea: Made in America?*
The Diplomat

Klein Joseph (August 20th 2016), *South China Sea: UN Law of the Sea Arbitration Tribunal sinks the rule of Law*, Foreign Policy Journal.

Panda Ankit (May 19, 2017), *China, ASEAN come to Agreement on a Framework South China Sea code of conduct*: The Diplomat

Pham Trung, Vu Trung-Minh (December 22nd 2014), *International Law and the South China Sea*:
The Diplomat <https://thediplomat.com/2014/12/>

Press Release, Permanent Court of Arbitration (12 July 2016): *The South China Sea Arbitration (The Republic of the Philippines V. The People's Republic of China)* <<https://pca-cpa.org/newa/pca-pressrelease>>

Rustandi Agus (August 2015), *The Impact of China's nine dash line claims on ASEAN's role in the Indo-Pacific Region*, Australian Defense College, Centre for Defense Strategic Studies.

Santos Matikas (July 12, 2016), *Philippines wins Arbitration case vs. China over South China Sea*. <https://m.inquirer.net/globalnation>

Talmon Stefon (24th August 2016). *The South China Sea Arbitration: Observation the Award on Jurisdiction and Admissibility*, Chinese Journal of International Law, Volume 15, Issue 2, 1st June 2016, pages 309-391. <<https://doi.org/10.1093/chinesejil/jmwo25>>

Zou, K., "[Historic Rights in the South China Sea](#)", in Wu, S., Valencia, M. and Hong, N. (eds.), *UN Convention on the Law of the Sea and the South China Sea*, Farnham, Ashgate, 2015, pp. 239-250

1.2 Secondary Sources

1.2 a) Books

Beckman, Robert (2013), *Beyond Territorial Disputes in the South China Sea; Legal Frameworks for the Joint Development of Hydrocarbon Resources*: Edward Elgar Publishing, NUS Center for International Law Series.

BIRNIE, P.W, BOYLE, A. E, *International Law and the Environment*, Published by Oxford University press Inc, New York.

BROWNLIE, IAN (1966), *International Law*, Published in United State by Oxford University press New York.

D, EVANS. MALCOLM (2003), *'International Law'*, Published in United State by Oxford University Inc. New York.

Fels Enrico (2016), *Power Politics in Asia's Contested Waters; Territorial Disputes in the South China Sea*, ISBN 978-3-319-26152-2, Springer International Publishing Switzerland.

HONG NONG (2012), *UNCLOS and Ocean Dispute Settlement Law and Politics in the South China Sea*, Routledge, 2 Park Square, Milton Park Abingdon, Ox14 4RN.

Kivimaki Timo (April 2, 2002), *WAR OR PEACE IN THE SOUTH CHINA SEA?* Publisher: Nordic Institute of Asian Studies, ISBN-13: 978-8791114014.

Jayakumar S, Koh Tommy, Beckman Roberty (2014), *The South China Sea Disputes and Law of the Sea*, Edward Elgar Publishing, [NUS Centre for International Law series](#). ISBN: 978 1 78347 726 5.

J. HUANG, A. BILLO (2015), *Territorial Disputes in the South China Sea; Navigating Rough Waters*, Palgrave Macmillan UK ISBN 978-1-137-46367-8.

Lu [Zijian \(1989\)](#), *China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands*, Routledge, ISBN 0415009278, 9780415009270.

Martin Riegl, Jakub Landovský, Irina Valko, eds. (26 November 2014), [Strategic Regions in 21st Century Power Politics](#): Cambridge Scholars Publishing. pp. 66–68. [ISBN-9781443871341](#)

N, SHAW. MALCOLM (1997), 'International Law', Published in United State by Cambridge University press New York.

Poling, Gregory B (July 2013), *The South China In Focus; Clarifying the Limits of the Maritime Disputes*, Center for Strategic and International Studies: 1800 K Street, New York, Washington DC.

RAINE SARAH, LE MIERE CHRISTIAN (2013), *Regional Disorder: The South China Sea Disputes*, Routledge, Volume: 2013, Edition number: 436-437, ISBN: 978-0-415-70262-1.

SAMUELS. MARWYN S (2005), *Contest for the South China Sea, China: History, Philosophy, Economics*, Routledge (Volume 15), ISBN-13: 978-0415361699.

SHICUN WU, ZOU KEYUAN (2013), *Maritime security in the South China Sea; Regional Implication and International cooperation*, Routledge.

Shicun Wu (2013), *Solving Disputes for Regional Cooperation and Development in the South China Sea*, 1st Edition, Chandos Publishing, Oxford Cambridge Philadelphia New Delhi, ISBN: 9781843346852.

Shicun Wu, Hong Nong (2014), 'Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime', Routledge, ISBN: 978-0-415-73505-6.

[Shicun](#) Wu, Zou [Keyuan](#) (2016), *Arbitration Concerning the South China Sea; Philippines versus China*, Routledge T&F India Showroom 109 Basement, Prakash Mahal, Near Ansari Road Gurudwara Daryaganj, Delhi, 110 002, IN.

SONG YANN-HUEI , ZOU KEYUAN (2014), *Major Law and Policy Issues in the South China Sea; European and American Perspectives*, Ashgate Publishing Limited, Wey Court East, Unoin Road England.

STOREY IAN, LIN. CHENG-YI (2016), *The South China Sea Dispute: Navigating Diplomatic and Strategic Tensions*, Publisher: ISEAS – Yusof Ishak Institute.

TALMON STEFAN, JIA BING BING (2014), *The South China Sea Arbitration: A Chinese Perspective*, United Kingdom, ISBN-13: 978-1849465472.

1.2 b) Article/ Journal

A.O TEMJENMEREN (15 July 2016), *RULING ON THE SOUTH CHINA SEA: WILL CHINA ABIDE BY THE RULE OF LAW?* CENTRE FOR AIR POWER STUDIES.

BADER JEFFREYA, Mc DEVITT, LIEBERTHAL KENNETH.G (Tuesday, September 2, 2014), *Challenges in the South China Sea*, BROOKINGS INSTITUTION.

BADER JEFFREYA, Mc DEVITT, LIEBERTHAL KENNETH.G (Tuesday, September 2, 2014), *Keeping the South China Sea in Perspective*, BROOKINGS INSTITUTION.

BACKMAN ROBERT (2014), ‘*Defining EEZ claims from Islandes: A potentiel South China Sea change*’. University of Wollongong, International Journal of Marine and Coastal Law, 29 (2), 193-243.

BROOKES PETER (Aug 7th, 2012), *China targeting South China Sea*: HERITAGE FOUNDATION.

BUSZYNSKI LESZEK (2012), *The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

BUSZYNSKI LESZEK, ROBERT CHRISTOPHER (5 September 2013), THE SOUTH CHINA SEA AND AUSTRALA’ S REGIONAL SECURITY ENVIRONMENT: National Security College Occasional Paper | No, Australian National University.

CAPT HPS SODHI (14 Aug 2015), *MILITARY IMPLICATIONS OF CHINA'S RECLAMATION DRIVE IN SOUTH CHINA SEA*: CENTRE FOR AIR POWER STUDIES.

CAPT HPS SODHI (26 NOV 2015), *FREEDOM OF NAVIGATION OPERATIONS IN SOUTH CHINA SEA – WHY INNOCENT PASSAGE*, CENTRE FOR AIR POWER STUDIES

CAPT HPS SODHI (13 JUNE 2016), *SHANGRI-LA DIALOGUE – ANOTHER ATTEMPT TO FIND SOLUTION*: CENTRE FOR AIR POWER STUDIES.

CAPT. HPS SODHI (12 August), *THE PCA VERDICT AND ITS IMPLICATIONS*, CENTRE FOR AIR POWER STUDIES.

CHACKO JEETHU ELZA CHERIAN (18th FEB 2016), *WARMING UP OF WATERS IN THE SOUTH CHINA SEA*, INDIAN COUNCIL OF WORLD AFFAIRS.

CHENG DEAN, GROVES STEVEN (April 24, 2014), *A National Strategy for the South China Sea*: HERITAGE FOUNDATION.

CHENG DEAN (Nov 5th, 2015), *How China Views the South China Sea: As Sovereign Territory*: HERITAGE FOUNDATION.

CHENG DEAN (Jul 20th, 2016), *South China Sea After the Tribunal Ruling: Where Do We Go From Here?* HERITAGE FOUNDATION

COLLIN KOH SWEE LEAN (2017), *Security dynamics in the South China Sea – A view from Singapore*, OBSERVER RESEARCH FOUNDATION.

DESKER BANY (Wednesday, July 29, 2015), *China's conflicting signals on the South China Sea*: BROOKINGS INSTITUTION.

FISHER RICHARD (October 25, 1984), *Brewing Conflict in the South China Sea*, HERITAGE FOUNDATION.

GEWIRTZ PAUL (Friday, May 6, 2016), *Limits of law in the South China Sea*: BROOKINGS INSTITUTION.

GLASER, BONNIE. S (2015), *Armed Clash in the South China Sea*, Contingency Planning Memorandum No. 14, Center for Strategic and International Studies.

GLASER BONNIE S (April 15, 2014), *A Role for Taiwan in Promoting Peace in the South China Sea*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

GODBOLE SHRUTI (Tuesday, September 6, 2016), *Event Report Troubled waters: Demystifying the South China Sea ruling*, BOOKINGS INSTITUTION.

GODBOLE AVINASH (22 July 2016), *The South China Sea Arbitration; Reactions and Aftermath*, INDIAN COUNCIL OF WORLD AFFAIRS.

GREEN J MICHEAL, BOWER ERNEST Z (May 29, 2015), [Carter Defends the South China Sea at Shangri-La](#): CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

HAI DO THANH (August 11, 2015), *A joint strategy for pacifying the South China Sea*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

HAO SU (September 12, 2011), *China's Positions and Interests in the South China Sea: A Rational Choices in its Cooperative Policies*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

Hayton Bill, (November 18, 2014), *Maritime Disputes in the South China Sea*: [George Town Journal of International Affairs](#).

HEIBERT MURRAY (May 16, 2014), *China's Push in the South China Sea Divides the Region*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

HEIBERT MURRAY (September 30, 2015), *Examining the South China Sea Disputes, Papers from the Fifth Annual CSIS South China Sea Conference*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

HEYDARIAN RICHARD JAVAD (Tuesday, July 5, 2016), *Duterte's South China Sea dilemma*: BROOKINGS INSTITUTION.

HONG NONG (June 2016), *The South China Sea Dilemma: A Political Game of International Law*, *Journal of Political Risk*, Vol. 4, No. 6.

HONGFANG SHEN (December 2011, pp. 585-600), *'South China Sea Issue in China-ASEAN Relations: An Alternative Approach to Ease the Tension*, *International Journal of China Studies* Vol.2, No.3.

JAISHANKER DHARUVA (Wednesday, July 13, 2016), *The South China Sea arbitration ruling, and why it matters to India*, BROOKINGS INSTITUTION.

JAPAN CHAIR PLATFORM (August 1, 2016), *A New Phase for Japan-China Ties After the South China Sea Ruling*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

JHA PANKAJ (25 January 2017), *Regional Security Outlook for Indo-Pacific Region*: INDIAN COUNCIL OF WORLD AFFAIRS.

JIA BING BING (January 2013), GAO ZHIGUO, *THE NINE-DASHLINE IN THE SOUTH CHINA SEA: HISTORY, STATUS, AND IMPLICATIONS*, Source: *The American Journal of International Law*, Vol. 107, No. 1 pp. 98124 Published by: American Society of International Law.

JOHNSON CHRISTOPHER.K (August 31, 2012), *Decoding China's Harder Line on the South China Sea*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

JOSHI MANOJ (2016), *Sense of urgency over South China Sea explains*, OBSERVER RESEARCH FOUNDATION.

KLEIN JOSEPH (Aug 20, 2016), *South China Sea: UN Law of the Sea Arbitration Tribunal Sinks the Rule of Law*, Foreign Policy Journal.

KUOK LYNN (Monday, December 15, 2014), *Overcoming the Impasse in the South China Sea: Jointly Defining EEZ Claims*, BROOKINGS INSTITUTION.

KUOK LYNN (Monday, August 24, 2015), *Taiwan and the South China Sea: More steps in the right direction*, BROOKINGS INSTITUTION.

KUOK LYNN (September 1, 2016), *Assessing the rule of law after the South China Sea arbitration: Will the G-20 be a turning point in China's behavior?* BROOKING INSTITUTION

KUOK LYNN (July 10, 2016), *Beijing's Defiance in the South China Sea', China refuses to abide by the laws of the sea, even though it ratified the convention*, BROOKING INSTITUTION.

KUOK LYNN (Tuesday, June 7, 2016), *The U.S. FON Program in the South China Sea*, BROOKINGS INSTITUTION.

KUOK LYNN (Thursday, May 7, 2015), *Tides of change: Taiwan's evolving position in the South China Sea*, BROOKINGS INSTITUTION.

LOHMAN WALTER (September 22, 2010), *Not the Time to Go Wobbly: Press U.S. Advantage on South China Sea*, HERITAGE FOUNDATION.

LOHMAN WALTER (June 20, 2011), *Sorting American Priorities in the South China Sea*, HERITAGE FOUNDATION.

LIOW JOSEPH CHINYONG (Tuesday, July 12, 2016), *What does the South China Sea ruling mean, and what's next?* BROOKINGS INSTITUTION

LIOW JOSEPH CHINYONG (Friday, June 10, 2016), *What the United States and India can do together on the South China Sea*, BROOKINGS INSTITUTION.

LIOW JOSEPH CHINYONG (Saturday, June 4, 2016), *India-US relations: The South China Sea*, BROOKINGS INSTITUTION.

MARTINEZ-BARCELON ALEGA (July 12, 2016), *The ASEAN way in the South China Sea disputes*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

Mc DEVITT MICHAEL (April 16, 1999), *China and the South China Sea--A Conference Summary Report*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

MING GUANPEI (September 15, 2015), *Issues and Insights Vol. 15, No. 8 - Making an Island in the South China Sea: Sansha and Chinese Foreign Policy*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

MISHRA RAHUL (16 June 2016), *China's Land Reclamation in the South China Sea: Implications for the Region*: INDIAN COUNCIL OF WORLD AFFAIRS.

PANT HARSH.V (December 18, 2012), *Understanding India's Interest in the South China Sea: Getting into the Seaweeds*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

PARAMESWARAN PRASHANTH (June 24, 2016), *After China meeting, ASEAN must heed early South China Sea warning*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (April 3, 2014), [*The Philippines' South China Sea Memorial: Sailing into the Wind*](#), CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY, GREEN MICHAEL, GLASER BONNIE, HIEBERT MURRAY, JOHNSON CHRIS, SEARIGHT AMY (July 12, 2016), *Critical questions: Judgment Day: the South China Sea Tribunal issues its ruling*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY B, GREEN J MICHEAL, GLASER BONNIE .S (October 27, 2015), [*The U.S. Asserts Freedom of Navigation in the South China Sea*](#): CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (July 12, 2016), *Judgment Day: The South China Sea Tribunal Issues Its Ruling*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (January 24, 2013), [*Manila Begins Legal Proceedings over South China Sea Claims*](#), CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (December 9, 2014), [*Beijing's and Washington's Dueling South China Sea Papers*](#): CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (June 4, 2015), *Australia Has a Larger Role to Play in the South China Sea*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (June 13, 2013), *Recommendations from the CSIS South China Sea Conference*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (February 18, 2016), *A Tumultuous 2016 in the South China Sea*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (December 9, 2014), *Beijing's and Washington's Dueling South China Sea Papers*: CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLING GREGORY.B (July 23, 2015), *The Dual Policy Challenge of the South China Sea*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

POLLACK JONATHAN.D (Tuesday, July 12, 2016), *How will China respond to the South China Sea ruling?* BROOKINGS INSTITUTION

POLLACK JONATHAN.D (Wednesday, June 3, 2015), *The United States, China, and the South China Sea: Is regional order at risk?* BROOKINGS INSTITUTION

RANADE JAYADEVA (26 July, 2016), *CHINA'S NEW CENTRAL MILITARY COMMISSION AFTER THE 18TH PARTY CONGRESS AND ITS IMPLICATIONS*: CENTRE FOR AIR POWER STUDIES.

RODRIGUEZ RONALD A (May 21, 2004), *Conduct Unbecoming in the South China Sea?* CENTER FOR STRATEGIC AND INTERNATIONAL STUDIE

RUSTANDI AGUS (August 2015), *The Impact of China's 'Nine-Dash Line' Claim on ASEAN's Role in the Indo-Pacific Region*, INDO-PACIFIC STRATEGIC PAPERS. Australian Defense College, Centre for Defense and strategic Studies.

SALIL SALONI (2011), *China's strategy in the south China sea; role of the united states and India*, CENTRE FOR AIR POWER STUDIES, KW Publishers Pvt Ltd New Delhi.

SCHWARTZ H.ANDREW (July 12, 2016), *The Evening CSIS: South China Sea Special, Didn't He Ramble & More*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

SEARIGHT AMY (January 27, 2017), *South China Sea Guidelines for the New Administration*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

SEARIGHT AMY (January 26, 2017), *The South China Sea – Some Fundamental Strategic Principles*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

SEVERINO RODOLFO (August 17, 2012), *A Code of Conduct for the South China Sea?* CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

SHEN JIANMING (2002), *China's Sovereignty over the South China Sea Islands: A Historical Perspective*, Chinese Journal of International Law (01 March 2002) 1 (1): 94-157. Volume 1.

SINGH ABHIJIT (31st JAN 2017), *Arbitration on the South China Sea – Implications for Maritime-Asia*: OBSERVER RESEARCH FOUNDATION.

SINGH ABHIJIT (3rd March 2016), *India and the South China Sea dispute*: OBSERVER RESEARCH FOUNDATION.

SINGH Dr. PUYAM RAKASH (28th OCT 2016), *PHILIPPINES’ SEARCH FOR MANOEUVERING SPACE*, CENTRE FOR AIR POWER STUDIES.

SINGH. Dr. PUYAM RAKASH (12 January 2017), *QUESTIONING THE ‘ONE CHINA’ PRINCIPLE?* CENTRE FOR AIR POWER STUDIES.

SINGH ABHIJIT (25 JAN 2017), *Line in the waters: The South China Sea dispute and its implications for Asia*, OBSERVER RESEARCH FOUNDATION.

STEINBERG JAMES.B, O’HANLON MICHEAL.E (January 20, 2017), *Can Donald Trump avoid a dangerous South China Sea showdown?* BROOKINGS INSTITUTION

STOREY IAN (2014,), *Disputes in the South China Sea : Southeast Asia’s Trouble Waters*, Politique étrangère, ISBN : 9782365673044, Publisher : I.F.R.I.

SUKUMAR ARUN MOHAN (ON [12/07/2016](#)), *South China Sea Case: A Guide to the Verdict*, THE WIRE.

SYNDER CRAIG (2004), *Maritime Security in the South China Sea*: THE JOURNAL OF CONFLICT STUDIES, Vol. XXIV No. 1.

TAN HUILENG (Thursday, 30 Jun 2016), Beijing defiant on South China Sea as international court nears judgment on Philippines case: Centre for Strategic and International Studies.

WAGURI HIROSHI (6 July 2016), *Countering China's Gradual Creation of a Fait Accompli in the South China Sea Providing Civilian Air Patrol Capability by Utilizing the U.S.-Japan Alliance*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES.

WARD. DANEIL.E (August 30 2016), *The South China Sea: Containing a Regional Conflict*, Small Wars Journal.

XIAOMING LIU (20th MAY 2016), *Perspectives on the South China Sea*: INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES.

XINCHANG LIU, KEYUAN ZOU (December 2014), [*The Legal Status of the U-shaped Line in the South China Sea and Its Legal Implications for Sovereignty, Sovereign Rights and Maritime Jurisdiction*](#); Chinese Journal of International Law, 05.

YEE ANDY (2011), *Maritime Territorial Disputes in East Asia: A Comparative Analysis of the South China Sea and the East China Sea*, Journal of Current Chinese Affairs, Vol.40. No 2.

YOON SUKJOON (December 2014), [*Xi Jinping's "True Maritime Power" and ESCS Issues*](#), Chinese Journal of International Law.

1.2 c) Newspaper/ Magazine

ABS CBN NEWS (The Hague, 12 July 2016), *THE SOUTH CHINA SEA ARBITRATION (THE REPUBLIC OF THE PHILIPPINES VS THE PEOPLE'S REPUBLIC OF CHINA)*'.

ABS CBN NEWS (Jul 02 2016 03:23 PM), *Vietnam urges 'fair' ruling in Philippines-China arbitration*'.

ALMOND RONCEVERT GANAN (July 16, 2016), *Interview: The South China Sea Ruling; International law expert Ronceverte Ganan Almond on the recent ruling by the Permanent Court of Arbitration.*’, THE DIPLOMAT.

ASIA PACIFIC (August 02, 2016), *Beijing tightens maritime rules after South China Sea case*'.

ASIA PACIFIC (Feb 1, 2017), '[Duterte asks China to help patrol piracy-prone southern waters](#)'.

BBC NEWS (12 July 2016), '*Why is the South China Sea contentious?*'

CRISPIN SHAWN. W (August 03, 2016), '*Will Vietnam File a South China Sea Case Against China?*' *Hanoi may yet take Beijing to court*, THE DIPLOMATE.

FISHER MAX (July 14, 2016), *The South China Sea: Explaining the Dispute*, [Asia Pacific](#).

FRAVEL M.TAYLOR (July 13, 2016), *The Strategic Implications of the South China Sea Tribunal's Award*, The National Interest, Foreign Policy Expert Roundtable.

JOHNSON JESSE (16Feb 2017), '[China warns U.S. against more patrols in disputed South China Sea](#)', ASIA PACIFIC,

JOHNSON JESSE (10Feb 2017), '[United State-Chinese military planes in unsafe encounter over disputed South China Sea](#)': ASIA PACIFIC.

MATSUMURA MASAHIRO (8 Feb 2017), '[Japanese arms exports can boost regional stability](#)', THE JAPAN TIMES.

Mc DEVITT MICHAEL, BADER JEFFREY, LIEBERTHAL KENNETH (Aug 2014), *Keeping the South China Sea in Perspective*, the Foreign Policy Brief.

ODOM G JONATHAN (March 09, 2016), *South China Sea and Freedom of Navigation, Taking a closer look at the freedom of navigation "myth"*: THE DIPLOMATE.

PRASAD JAYANT (August 01, 2016 00:52 IST), '*All at the South China Sea*', THE HINDU

PERAMESWARAN PRASHANTH (July 13, 2016), *What the South China Sea Ruling Means; A look at the potential implications of the verdict on the Philippines' South China Sea case*, THE DIPLOMAT.

STASHWICK STEVEN (February 15, 2017), *Expect a Heavier US Presence in the South China Sea, But What Can It Achieve?* THE DIPLOMAT

THE ECONOMIC TIMES (By PTI, 3 Jan 2017), '*China shows its military might in South China Sea*',

THE ECONOMIC TIMES (By Reuters | Updated: Dec 22, 2016, 06.03 PM IST), '*China begins daily civil charter flights to South China Sea outpost*'.

THE GUARDIAN (Wednesday 13 July 2016), '*China attacks international court after South China Sea ruling*', *Beijing warns of possible military escalation after UN tribunal overwhelmingly rejects its claims to ownership of strategic waterway*.

THE GUARDIAN (12 July 2016), "*Beijing rejects tribunal's ruling in South China Sea case; Xi Jinping says China's 'territorial sovereignty and marine rights' in the seas will not be affected*".

THE GAURDIAN (8 September 2016), '*Beijing warns US to stay out of South China Sea dispute*'.

TONG LINH (July 21, 2016), *Seeking a Solution to the South China Sea Disputes; Pressuring China won't solve anything, Time for an alternative path*, THE DIPLOMAT.

WORLD AFFAIRS (7 Feb 2017), '[Philippines: China's Attempt to Fortify Coastal Reef 'Unacceptable'](#)', Manila Standard Today. Philippines. 01:36 PM EST.

WORLD AFFAIRS (19 Jan 2017), [Vietnam Police Halt Anti-China Protest Over Islands](#): Channel News Asia. Singapore. 01:43 PM EST.

WORLD AFFAIRS (15 Sep 2016), [Japan to Boost South China Sea Role with Joint US 'Training Patrols](#), Asia Times. 03:40 PM EDT.

WORLD AFFAIRS (8 Sep 2016), [China's Obstinacy on the Islands](#): The Korea Times. 03:57 PM EDT.

WORLD AFFAIRS (7 Sep 2016), [Manila Shows Images of Chinese Ships at Disputed Shoal Before Summit](#), Asia Times, Hong Kong, 04:45 PM EDT.

WORLD AFFAIRS (7 Sep 2016), [ASEAN, China Adopt Protocols to Prevent South China Sea Clashes](#): Malaysiakini. Malaysia. 04:45 PM EDT.

WORLD AFFAIRS (6 Sep 2016), [China, Japan to Hold Talks September 12](#): China Daily 05:10 PM EDT.

WORLD AFFAIRS (6 Sep 2016), [China's Non-Chinese Approach to the South China Sea](#), The Diplomat 05:10 PM EDT.

WORLD AFFAIRS (18 Aug 2016), [Philippines Accepts First Japanese-Funded Patrol Boat For South China Sea Defense](#), The Japan Times. 01:29 PM EDT.

WORLD AFFAIRS (17 Aug 2016), [Why Australia's Luck May be Running Out](#): Straits Times. Singapore. 02:02 PM EDT.

WORLD AFFAIRS (17 Aug 2016), [China, ASEAN to Complete Framework of South China Sea Rules Next Year](#): Asia Times, Hong Kong, 01:59 PM EDT.

WORLD AFFAIRS (16 Aug 2016), [China Denies Vietnam Fisherman Shelter in Paracel Islands During Storm](#), Anadolu Agency. Turkey. 01:30 PM EDT.

WORLD AFFAIRS (16 Aug 2016), [Indonesia's President: We Will Defend 'Every Inch' Of Territory In South China Sea](#), The Straits Times. Singapore. 01:28 PM EDT.

WORLD AFFAIRS (16 Aug 2016), [ANALYSIS, China, India and The South China Sea At G-20 Summit](#): The Diplomat. Japan. 01:26 PM EDT.

WORLD AFFAIRS (16 Aug 2016), [China Urges Singapore To Stay Out Of South China Sea At China-ASEAN Meeting](#), South China Morning Post, Hong Kong, 01:25 PM EDT.

WORLD AFFAIRS (12 Aug 2016), [Philippines Seeks Formal Talks with China: Ramos](#), Asia Times, Hong Kong, 02:22 PM EDT.

WORLD AFFAIRS (10 Aug 2016), [Vietnam 'Moves New Rocket Launchers' into South China Sea](#), Asia Times, Hong Kong, 02:33 PM EDT.

WORLD AFFAIRS (9 Aug 2016), [*US Destroyer Visits China for Drills Amid Island Tensions.*](#) China Daily, 12:47 PM EDT.

WORLD AFFAIRS (8 Aug 2016), [*Ex-Philippine Leader Ramos to 'Rekindle' Ties with China.*](#) Bangkok Post. Thailand. 02:38 PM EDT.

WORLD AFFAIRS (8 Aug 2016), [*China and the Philippines: Sea of Troubles?*](#), Norwegian Institute of International Affairs. Norway. 01:32 PM EDT),

WORLD AFFAIRS (4 Aug 2016), [*Taiwan's Ongoing South China Sea Saga.*](#) George Koo, Asia Times, 01:23 PM EDT.

WORLD AFFAIRS (3 Aug 2016), [*After the Ruling: Law fare in the South China Sea.*](#) The Diplomat. Japan. 02:35 PM EDT.

WORLD AFFAIRS (3 Aug 2016), [*China Launches Website to Highlight its Case on South China Sea.*](#) Asia Times, Hong Kong, 02:29 PM EDT.

WORLD AFFAIRS (2 Aug 2016), [*Fast-Track Talks On the Code of Conduct in the South China Sea: An Opportunity to Move Forward.*](#) Institute of Southeast Asian Studies. Singapore. 02:45 PM EDT.

WORLD AFFAIRS (2 Aug 2016), [*Indonesia Says It Will Not Claim Land in South China Sea.*](#) Channel News Asia. Singapore. 02:21 PM EDT.

WORLD AFFAIRS (29 Jul 2016), [*Asia: A Community Governed by Law or Power?*](#) Straits Times, Singapore, 02:35 PM EDT.

WORLD AFFAIRS (28 Jul 2016), [*Ex-Presidents Urge Philippine President Duterte To Exercise Restraint On South China Sea Fight.*](#) The Philippine Star. 01:18 PM EDT.

WORLD AFFAIRS (28 Jul 2016), [*Unnamed Diplomat: Most Of ASEAN Wants To Stay Out Of China-Philippines Dispute.*](#) South China Morning Post, Hong Kong, 01:15 PM EDT.

WORLD AFFAIRS (27 Jul 2016), [Who Supports China in the South China Sea and Why](#): The Diplomat. Japan. 02:24 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [China Thanks Cambodia For Watering Down ASEAN South China Sea Statement](#): The Phnom Penh Post. Cambodia. 01:53 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [Australia Joins US, Japan in Statement to China on South China Sea](#): The Sydney Morning Herald. 01:52 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [US National Security Advisor: South China Sea Tensions Needs To Decrease](#): The Philippine Star. The Philippines 01:50 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [Japanese FM Presses Chinese FM to Accept South China Sea Court Ruling](#): The Japan Times. 01:46 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [ASEAN Member States and China: Joint Statement on the Implementation on the Conduct of Parties in the South China Sea](#), China, And JOINT STATEMENT. 01:44 PM EDT.

WORLD AFFAIRS (26 Jul 2016), [Secretary Kerry: Conference on the South China Sea](#), Laos, and PRESS CONFERENCE. 01:42 PM EDT.

WORLD AFFAIRS (25 Jul 2016), [Kerry Meets Southeast Asia Ministers after Chinese Win](#), Korea Herald. 02:57 PM EDT.

WORLD AFFAIRS (25 Jul 2016), [China Sets Up South China Sea Environment Protection Fund](#), Straits Times, Singapore, 02:52 PM EDT.

WORLD AFFAIRS (25 Jul 2016), [ASEAN Breaks Deadlock on South China Sea at Laos Meeting](#), Asia Times, Hong Kong, 02:40 PM EDT.

WORLD AFFAIRS (22 Jul 2016), [Philippines Oil Still in Troubled Waters after South China Sea Ruling](#), Asia Time, Hong Kong, 02:53 PM EDT.

WORLD AFFAIRS (19 Jul 2016), [Philippine Naval Weakness Hampers Response to South China Sea Award](#), Institute for Defense Studies and Analysis. India. 03:23 PM EDT.

WORLD AFFAIRS (19 Jul 2016), [China's Hunger For Sea Dominance Has Historical Ties](#), Jeon Seo, Joong Ang Daily, South Korea, 01:52 PM EDT.

WORLD AFFAIRS (19 Jul 2016), [Philippines Will Not Yield Territorial Rights in South China Sea](#): The Philippine Star, 01:48 PM EDT.

WORLD AFFAIRS (19 Jul 2016), [Philippines Rejects South China Sea Talks After China Imposes No-Tribunal Condition](#), Reuters. 01:47 PM EDT.

WORLD AFFAIRS (14 Jul 2016), [China Announces 'Decisive Response' To Any Provocations in South China Sea](#), Asia Times, 04:10 PM EDT.

WORLD AFFAIRS (14 Jul 2016), [Taiwan Finalizes South China Sea Claims, Avoids Previous 'U-Shaped Line'](#): Taipei Times. Taiwan. 03:30 PM EDT.

WORLD AFFAIRS (14 Jul 2016), [ASEAN Will Not Issue Statement on South China Sea Ruling](#): The Bangkok Post, Thailand. 03:30 PM EDT.

WORLD AFFAIRS (14 Jul 2016), [Australia's Hypocrisy with the South China Sea and East Timor](#): Tom Clarke, The Sydney Morning Herald, Australia, 03:28 PM EDT.

WORLD AFFAIRS (14 Jul 2016), [China Calls On US, Japan To Stop Twisting 'Facts' On South China Sea For Political Gain](#), China Daily. 03:26 PM EDT.