

Expansionism, Projecting Power, and Territorial Disputes: The South China Sea

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Introduction

The South China Sea has become an epicenter of great power contention. While being one of the busiest waterways in the globe, the South China Sea holds a significant role in accessing East Asia from the Indian Ocean through the Straits of Malacca.¹ It has become important economically, politically, and militarily, especially for China which relies on the South China Sea as a major passage for goods and oil to fuel economic development.² This strategically located sea has led to significant problems throughout Southeast Asia, as a majority of the waters are hotly contested with several key territorial disputes and significant Chinese claims to the region. The region has escalated to war several times over territorial claims in the past fifty years, alongside several other smaller skirmishes, and the current situation appears to be continually on the verge of collapsing into conflict.

International organizations have attempted to address the territorial disputes of the region, following national and regional conversations. The most prominent role in place for international arbitration lies within the 1982 United Nations Convention on the Law of the Seas (UNCLOS), of which much of the region has signed on to and brought disputes before the international community for recognition and in one case, arbitration. Still, the issue persists and has become a thorn in the side for China, who

claims much of the sea as its own territory, and the United States, who possesses allies within the region and has advocated for freedom of navigation.³



But what does it mean? China's Nine Dash Line.

Therefore, U.N. involvement through UNCLOS has been tricky as Security Council permanent members are moving at odds against one another, posing the risk of undoing any gains made in the General Assembly, and limited success in arbitration. Although some discussion has been had with the U.N. in the General Assembly and sub-organizations, the South China Sea disputes have continued to brew since the conclusion of the Sino-Vietnamese Wars in

¹ Council of Foreign Relations. Global Conflict Tracker: Territorial Disputes in the South China Sea. September 17, 2020. <https://www.cfr.org/global->

[conflict-tracker/conflict/territorial-disputes-south-china-sea](https://www.cfr.org/global-conflict-tracker/conflict/territorial-disputes-south-china-sea) (accessed September 17, 2020).

² Ibid.

³ Ibid.

1990. Though there has not been much progress made regarding the territorial disputes of the South China Sea within the U.N. framework, the U.N. remains the best placed international organization to address these territorial disputes through its sub-organizations and maritime law frameworks.

Resolving or address this series of disputes between China and neighboring states like, Brunei, Indonesia, Malaysia, Taiwan, the Philippines, Vietnam, and others with major interests in the region like Australia and the United States, is critically important. A crisis would have global implications, since, 3.37 trillion dollars of trade—roughly one-fourth of all trade—passes through the South China Sea, along with forty percent of the global liquefied natural gas. Any significant shift into open conflict could drastically impact the global economy.⁴

Not Just the South China Sea

The dispute over dominance over the South China Sea is just one of many territorial issues where China is pressing its neighbors, threatening instability and armed conflict. China's increasing assertiveness, especially in regions it borders, is reshaping international affairs. Some observers believe the root cause is fear among Chinese leaders that they have a limited window in which to act.⁵

Other major disputes include contested borders with India—where 21 Indian soldiers were killed in June 2020—the disputed Senkaku (Japanese name) or Diaoyu Islands (Chinese name), controlled by Japan, Chinese reengineering of major rivers including the

Brahmaputra which is essential to India and Bangladesh, and the Mekong, essential to Thailand, Laos, Cambodia and Vietnam. Alongside all these issues are China's claims to control the autonomous territory of Hong Kong, and the semi-independent island of Taiwan.

Compared to all these disputes—all serious and vulnerable to violent escalation—the South China Sea dispute stands out for challenging the sovereignty and traditional territory of several regional countries: Brunei, Indonesia, Malaysia, Philippines, and Vietnam. The South China Sea also is where the United States has staked a claim under the principles of international law and freedom of navigation. It is the region where war between China and America are most imaginable.

History

The South China Sea disputes are some of the most prominent territorial disputes in the international system, and some with the highest stakes attached to them given the strategic importance of the sea for global trade. The disputes are linked to the aftermath of the Second World War and the establishment of new borders following the ending of the Japanese occupation of Malaysia, Indonesia, the Philippines, and Vietnam.⁶ The ambiguities surrounding where territorial lines would be drawn regarding the islands of the South China Sea were not wholly addressed by the San Francisco Treaty at the conclusion of the war with Japan. This left open the question of under whose authority this strategically important region would fall that would only become more contested throughout the Cold War.⁷ The significant history of the region is best broken

⁴ Ibid.

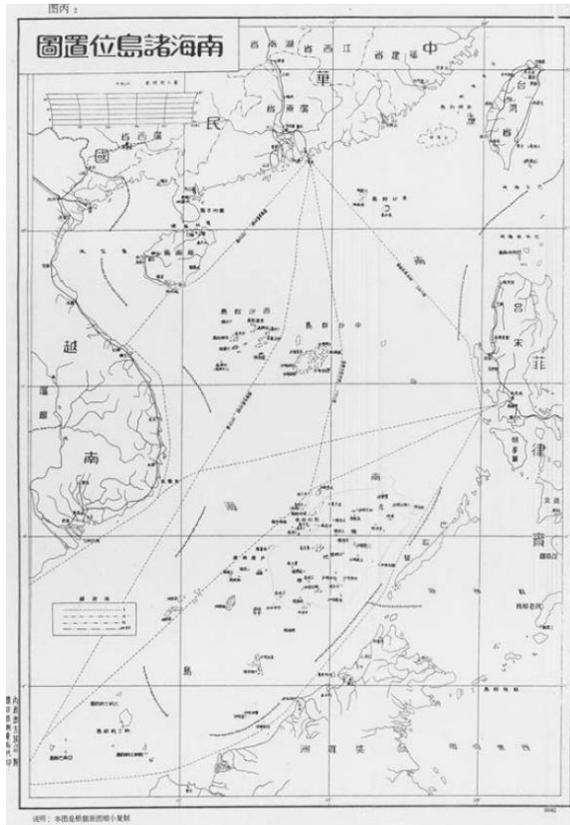
⁵ A short and comprehensive survey is James Kynge, Kathrin Hille and Christian Shepherd, 'China's great power play puts Asia on edge', *Financial Times*, 15 September 2020, <https://www.ft.com/content/de4df609-2599-47cb-ba37-0b754d4f3b57>

⁶ Matsumura, Masahiro. "San Francisco Treaty and the South China Sea." *The Japan Times*, October 13, 2013.

<https://www.japantimes.co.jp/opinion/2013/10/13/commentary/world-commentary/san-francisco-treaty-and-the-south-china-sea/>

⁷ Ibid.

down into three areas of significance: the nine dash line, the resource wealth of the region, and the Sino-Vietnamese Wars.



The original: The *eleven dash* in map created by the Chinese Nationalists (Kuomintang) in 1947.

The first signs of trouble regionally regarding the dispute over who controlled the islands of the South China Sea arose from the Chinese declaration of the nine dash line in 1947.⁸ This declaration asserted the whole of the islands of the South China Sea were historic Chinese territory and the terms of the San Francisco Treaty did not apply to Chinese authority as it was not part of the negotiations. The nine dash

⁸ Beech, Hannah. "Just Where Exactly did China get the South China Sea Nine-Dash Line From?" Time Magazine, July 19, 2016. <https://time.com/4412191/nine-dash-line-9-south-china-sea/>

⁹ U.S. Energy Information Administration. South China Sea. U.S. Energy Information Administration,

line has been a key part of the justification of Chinese action throughout the region and has been routinely criticized as an outsized representation of Chinese authority. Still, the nine dash line has become linked to Chinese identity and is routinely used domestically as a nationalistic rallying cry despite the international chagrin it usually warrants. Importantly, this broad reaching claim inspired other states surrounding the sea to make similar wide-sweeping claims and to come into conflict with China over those claims.

Though the importance of the South China Sea from a shipping perspective is relatively apparent, what did not become apparent until the 1960s was the potential for oil reserves under its waves. Given the potential of natural resources like oil to fuel economic growth, the presence of oil within the region is a major boon to control of the South China Sea. The estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas in easily accessible areas fueled the dispute over of the South China Sea.⁹ In that case, the region was quickly transformed from an area of consideration for just its strategic location critical to economic growth to a potential region to assist in making of major economic success. Furthermore, as the populations of states surrounding the sea have grown the fisheries within it have become increasingly important for the future of feeding growing populations.¹⁰

All these actions came to a head during the Sino-Vietnamese Wars which followed the unification of Vietnam in 1979. This set of conflicts included major battles on the land border and several battles in the South China Sea and the

2013. https://www.eia.gov/international/analysis/regions-of-interest/South_China_Sea

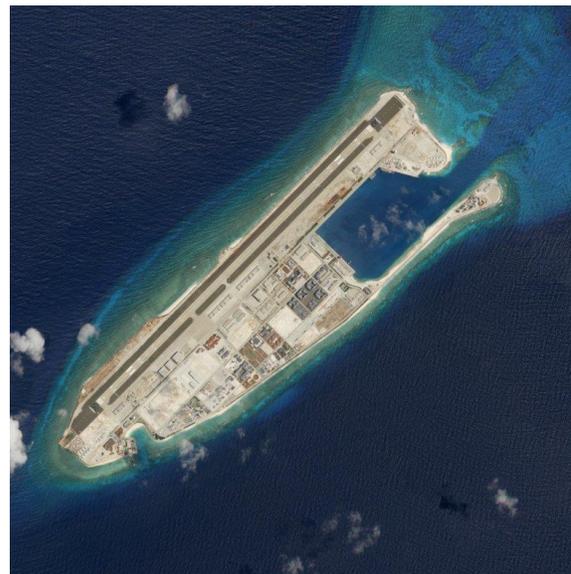
¹⁰ Greer, Adam. "The South China Sea is really a Fishery Dispute." The Diplomat, July 20, 2016. <https://thediplomat.com/2016/07/the-south-china-sea-is-really-a-fishery-dispute/>

Gulf of Tonkin.¹¹ For the disputes at sea, the most important battle occurred over the Spratly Islands in the South China Sea. Known as the Johnson Reef Skirmish, the Vietnamese navy lost three vessels and three score men while the Chinese navy lost only one man in return. This skirmish demonstrated the power of the Chinese military against regional opposition and reinforced previous losses Vietnam had suffered at the Battle of the Paracels in 1972.¹² Thus, this dispute served as a warning to others in the region for engaging militarily against China without aid or assistance from another great power.

Individually any of these reasons would be enough to propel states towards a territorial dispute of significance; however, the culmination of these factors is lending itself into heightening tensions surrounding one of the most strategic shipping lanes on the planet.

Current Problem

The potential of the South China Sea is vast, and it is becoming increasingly important in the context of a changing global dynamic. The relative decline of the United States compared to China in the aftermath of the Cold War has redefined the importance of the South China Sea for China and the states bordering the South China Sea. However, the current situation within the sea does not bode well for a stable future as competition surrounding the disputes of the sea is becoming increasingly tense.



A satellite photo from March 2018 shows the Fiery Cross Reef, one of China's artificial island military bases in the South China Sea.

The fisheries of the South China Sea have become an importance part of the diet of every state surrounding it. Yet, those fisheries are poorly regulated at best and largely held in contestation because of the territorial disputes. Because of those factors, the fisheries of the sea are in danger of completely depleting and leaving potentially millions of people without access to dietary staples.¹³ The complex web of territorial disputes leaves a regional solution to fishery management out of the question, instead China has issued new fisheries management regulations in the hopes of curtailing this specific problem but such unilateral action is considered overreach by other regional parties and complicates enforcement.¹⁴

¹¹ Council of Foreign Relations. China's Maritime Disputes. n.d. <https://www.cfr.org/timeline/chinas-maritime-disputes> (accessed September 17, 2020).

¹² Corr, Anders. "Can Vietnam be America's New Ally Against China?" The National Interest, November 7, 2019. <https://nationalinterest.org/feature/can-vietnam-be-america%E2%80%99s-new-ally-against-china-94901>

¹³ Salleh, Asyura. "The South China Sea: Preventing the Tyranny of the Commons." The Diplomat,

January 4, 2020.

<https://thediplomat.com/2020/01/the-south-china-sea-preventing-the-tyranny-of-the-commons/>

¹⁴South China Sea Expert Working Group. A Blueprint for Fisheries Management and Environmental Cooperation in the South China Sea. Washington, D.C.: Center for Strategic and International Security: Asia Maritime Transparency Initiative, 2017. <https://amti.csis.org/coc-blueprint-fisheries-environment/>; Zhou, Lauara. "Beijing's

Further complicating current issues within the region has been the rising naval development race. Of particular note has been the development of the Chinese navy as a force capable of projecting Chinese authority throughout the region. In past maritime disputes, China has readily used civilian fishing vessels as tools to enact foreign policy, and in the South China Sea that is also the case. However, over the past year tensions have flared with nearly every state surrounding the sea because of the actions of Chinese fishermen, who are often supported by Chinese coast guard vessels in their actions.¹⁵

In this case as well, the Chinese government is funding GPS systems for fishermen alongside financing new vessels for the Chinese navy. Famously China has also been constructing various naval installations throughout the regions to further its claims to territory and contributing to their regional military presence. Still, China is not alone in developing naval military capabilities to reinforce territorial claims, as other prominent Southeast Asian states have increased their military budgets from 24 billion dollars to 35 billion dollars to counter Chinese developments.¹⁶

Coupled with unresolved territorial disputes these naval arms developments pose major problems for the small states also claiming the South China Sea as their own territory. Still, two prominent relationships within the region are

experiencing heightened tensions in the midst of the already high-stake territorial disputes. The relationship between China and Vietnam within the South China Sea is the most explosive of the variety of contested bilateral relationships, with contested stationing of oil rigs for exploration, fishery contestation, and clashes between coast guard vessels using less-than-lethal means occurring regularly since 2011.¹⁷

The tension simmers under the surface and could boil over at a moment's notice, yet the more dangerous pairing for global security is the regional dynamic between Manila and Beijing. The mutual defense clause in the Philippine constitution for the United States to come to the aid of Manila in case the state is attacked poses the risk of aggression in the South China Sea to bring the American military into the conflict that arises.

While American forces are within the region already as part of regular patrols, the U.S. has maintained a neutral position on all territorial disputes in order to maintain freedom of navigation. Still the actions of China during the 2012 Scarborough Shoal Standoff, 2017 Benham Rise incident, and 2019 Reed Bank incident have each served to raise tensions between the two states, despite the success the Philippines held in the 2016 Philippines v. China UNCLOS ruling and further support from ASEAN in 2020 regarding the ruling.¹⁸

South China Sea fishing ban threatens to raise tensions with rival claimants." The South China Morning Post, May 8, 2020.

<https://www.scmp.com/news/china/diplomacy/article/3083572/beijings-south-china-sea-fishing-ban-threatens-raise-tensions>

¹⁵ Denyer, Simon. "How China's fishermen are fighting a cover war in the South China Sea." The Washington Post, April 12, 2016.

https://www.washingtonpost.com/world/asia_pacific/fishing-fleet-puts-china-on-collision-course-with-neighbors-in-south-china-sea/2016/04/12/8a6a9e3c-fff3-11e5-8bb1-f124a43f84dc_story.html

¹⁶ Dominguez, Gabriel, and Srinivas Mazumdar. "Are South China Sea tensions triggering an arms

race?" Deutsche Welle, December 18, 2015.

<https://www.dw.com/en/are-south-china-sea-tensions-triggering-an-arms-race/a-18927467>

¹⁷ Kurlantzick, Joshua. "A China-Vietnam Military Clash." Council of Foreign Relations, September 23, 2015. <https://www.cfr.org/report/china-vietnam-military-clash>; Lau, Mimi. "Chian says Vietnamese fishing boat rammed coastguard ship before sinking." South China Morning Post, April 4, 2020. <https://www.scmp.com/news/china/military/article/3078452/china-says-vietnamese-fishing-boat-rammed-coastguard-ship>

¹⁸ Permanent Court of Arbitration. "The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)." Permanent Court of



French frigate on patrol in the South China Sea, 2018.

Taken as a whole, the ongoing developments of the South China Sea appear to be teetering towards potential powder keg rather than just a series of territorial disputes.

Role of the United Nations

The United Nations is committed to the peaceful resolution of international disputes and presents itself as the preeminent institution to address such concerns.¹⁹ In terms of implementation on maritime disputes, the UN has created a series of organizations geared towards assisting in the arbitration, mediation, and examination of territorial disputes. This has been most recently made apparent within the South China Sea territorial disputes through the Philippines v. China arbitration case brought before the International Court of Justice; through the results of that arbitration remain contested. Still, the UN has a role to play in resolving or at least cooling the tensions within the region through UNCLOS though problems remain within the Security Council.

Arbitration, July 12, 2016. <https://pca-cpa.org/en/cases/7/> ; Pitlo III, Lucio B. "ASEAN stops pulling punches over South China Sea." Asia Times, July 3, 2020. <https://asiatimes.com/2020/07/asean-stops-pulling-punches-over-south-china-sea/>

¹⁹ United Nations. "United Nations Convention on the Law of the Seas." United Nations, December 10, 1982. Part XV, Section 1, Article 279.

The most prominent way the U.N. has to become involved within the maritime disputes of the South China Sea lies within UNCLOS. As an international convention with nearly all states involved within the disputes in the South China Sea as signatories, the UN can play the role of international arbiter on several issues within the region like maritime zone rights, navigational rights, and sovereignty.²⁰

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

The most prominent case involving these arbitration powers under UNCLOS has been Philippines v. China, though before states enter into this process it is possible for states to signal their commitment to their territorial claims through submissions to the Commission on the Limits of the Continental Shelf, a sub-organization of UNCLOS serving primarily as a forum for states to declare claims to 200 nautical mile mark provided within UNCLOS as an addition to territorial sea measurements.²¹ However, that 200 mile exclusive economic zone provided within UNCLOS is one of the factors actively contributing to the territorial disputes within the region. UNCLOS grants exclusive control of marine economic activity to the state controlling that economic zone, including rights to oil and gas exploration and

²⁰ Permanent Court of Arbitration. *United Nations Convention on the Law of the Sea*. n.d. <https://pca-cpa.org/en/services/arbitration-services/unclos/> (accessed September 17, 2020)./

²¹ Division for Ocean Affairs and the Law of the Sea. Commission on the Limits of the Continental Shelf: Purpose, functions and sessions. 2012. https://www.un.org/Depts/los/clcs_new/commission_purpose.htm (accessed September 17, 2020).

extraction, fishery access, and other undersea resources.²²

These provisions extend beyond normal territorial sea considerations under UNCLOS, and the normal territorial considerations are predicated on inhabited islands with minimal regulations regarding how those islands are inhabited.²³ These relatively loose regulations have prompted some of the island building measures by China, which have contributed to arms racing within the region. Beyond these issues, the lack of a significant enforcement mechanism within UNCLOS regarding the results of arbitration makes it difficult for UNCLOS to have significant teeth in resolving territorial disputes that are highly contested and have large stakes for state power.²⁴

There are provisions within the United Nations to assist in developing a binding resolution or a more significant statement that a settlement of arbitration on issues like territorial disputes, through resolutions passed by both the General Assembly and the Security Council. Unfortunately, in the specific case of the South China Sea there are significant problems in getting any resolution passed within the Security Council due to China's veto power as outlined in the UN Charter.²⁵ Essentially, because China has much to gain regionally it will not allow any kind of resolution through the Security Council that threatens its regional territorial claims, effectively hamstringing any kind of resolution that could be passed against China's interests or in favor of a differing state. Furthermore, this calls into question the ability of the UN to respond to territorial disputes that are highly politically charged as the lack of enforcement mechanisms from UN arbitration and the veto

power combined make it possible for permanent members of the Security Council to abuse UN authority to support their claims in territorial disputes as China has within its dispute with the Philippines by not acquiescing to the Permanent Court of Arbitration ruling under Annex VII of UNCLOS.

Together, these points illustrate the breadth of power the UN has within maritime disputes as a principle power in setting maritime regulation for states. However, it also illustrates how the structures and regulations of the UN themselves hamper the ability of the organization to address the disputes it hopes to resolve. In essence, the UN reliance on voluntary cooperation makes it difficult for the UN to resolve the disputes it asserts relevance over, leaving the door open for resolution only if both states agree to respect the UN arbitration decision.

Previous UN Action

When it comes to maritime disputes, resolutions, and regulation the UN is well equipped to handle any crises that arise. UNCLOS is renewed each year with a great amount of support from the General Assembly alongside resolutions to address sustainable fisheries, development, and environmental practices when it comes to the world's oceans. Since UNCLOS came into force in 1995, these actions have been a substantial chunk of UN policy making regarding maritime regulations and developing a framework for maritime dispute resolution. As part of these developments, several sub-organizations have arisen to assist states in navigating territorial disputes including

²² United Nations. "United Nations Convention on the Law of the Seas." Part V. https://www.un.org/Depts/los/convention_agreements/texts/unclos/part5.htm

²³Ibid. Part VIII, Article 121. https://www.un.org/Depts/los/convention_agreements/texts/unclos/part8.htm

²⁴ Ibid. Annex VI, Article 33, Section 3 https://www.un.org/Depts/los/convention_agreements/texts/unclos/annex6.htm

²⁵ Security Council Report. UN Security Council Working Methods: The Veto. September 3, 2020. <https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php> (accessed September 17, 2020).

The International Tribunal for the Law of the Sea represents one of the principle mechanisms for dispute resolution when it comes to concerns based within UNCLOS.²⁶ There has been a history of success through the International Tribunal for the Law of the Sea in address disputes between signatories on the Convention, with twelve multilateral agreements having been reached mostly regarding fisheries, cultural heritage, and marine resource exploitation.²⁷ Additionally, the Tribunal has had success in delineating the Maritime boundaries between several states through bilateral agreements, though this has mostly been between two states of roughly equal power.²⁸ Still among all of the frameworks set out by UNCLOS, the Tribunal has had the most success in addressing issues of maritime territorial disputes.

UNGA Resolution 72/249 initiated the development of an international binding mechanism on conservation, sustainable use of marine biological areas beyond national jurisdiction to improve the preservation of these areas.²⁹ While less relevant for the territorial issues of the South China Sea, action such as this assists in the development of legal frameworks to protect fisheries and assist in preserving the economic benefits of fishery access for all interested states.

UNGA Resolution 74/19 is the most recent affirmation of UNCLOS, approved in 2019. This resolution reaffirms the UN commitment to UNCLOS and all affiliated mechanisms

including Resolution 72/249.³⁰ This resolution mentions efforts to assist in the peaceful resolution of disputes, particularly pertaining to legal conferences to discuss norms and behaviors that could be presented as part of such activity while also reaffirming traditional UNCLOS structures like the International Tribunal for the Law of the Seas and the International Court of Justice.

UNGA Resolution 74/18 is the most recent affirmation of UN efforts within the sub-organization Oceans and the law of the sea: sustainable fisheries initiative.³¹ This affirmation includes language calling upon states to report over-fishing and other illegal activity from fishermen and to ensure proper reporting is pursued to prevent continued overfishing.³²

Country and Bloc Positions

Brunei, Indonesia and Malaysia represent smaller claims to the South China Sea of specific portions of the region rather than the whole of the Sea. Collectively these states have aligned against China, often working through international organizations like ASEAN and submitting claims to UNCLOS for acknowledgement. However, these states still have begun to develop their own military capabilities to counter Chinese aggression which has in turn assisted in the development of an arms race regionally.

²⁶ International Tribunal for the Law of the Sea. The Tribunal. n.d. <https://www.itlos.org/the-tribunal/#:~:text=The%20International%20Tribunal%20for%20the,and%20application%20of%20the%20Convention> (accessed September 17, 2020).

²⁷ International Tribunal for the Law of the Sea. International Agreements Conferring Jurisdiction on the Tribunal. n.d. <https://www.itlos.org/en/jurisdiction/international-agreements-conferring-jurisdiction-on-the-tribunal/> (accessed September 17, 2020).

²⁸ Ibid.

²⁹ International Maritime Organization. United Nations Convention on the Law of the Sea. 2020.

<http://www.imo.org/en/OurWork/Legal/Pages/UnitedNationsConventionOnTheLawOfTheSea.aspx> (accessed September 17, 2020).

³⁰ United Nations General Assembly. "Resolution adopted by the General Assembly on 10 December 2019- 74/19." New York City: United Nations, December 10, 2019. <https://undocs.org/en/A/RES/74/19>

³¹ United Nations General Assembly "Resolution Adopted by the General Assembly on December 10 2019- 74/18." New York: United Nations, December 10, 2019. <https://undocs.org/en/A/RES/74/18>

³² Ibid., 22

China is one of the most prominent belligerents involved within the South China Sea, with capabilities far outstretching all other states currently involved in the disputes. The Chinese government has been unwavering in its commitment to the nine dash line it uses to justify its actions, rearmed its navy to project power regionally, and used its fishing fleet as a foreign policy mechanism to coerce other claimants.³³ In terms of addressing UN bodies regarding the disputes, China has submitted documentation to UNCLOS regarding the extent of its claims in the South China Sea for sole economic access under the Convention.³⁴ Following its defeat at the International Court of Justice in 2016 in *Philippines v. China*, China claimed the ruling implemented by the Court to be unjust and would therefore be ignored.³⁵ With this in mind, China remains committed to protecting its holdings regionally and defying international efforts to calm the situation.

France and United Kingdom will be concerned primarily with international norms and principles, in this case freedom of navigation and the responsibility to resolve conflict. They have been increasingly critical Chinese assertiveness. France has sent its naval vessels on show-of-the-flag missions to demonstrate its commitment to freedom of navigation in the region. NATO obligations do not require Britain or France to support the United States in the South China Sea, but have moved closer to the

US position in the region. They will propose mediation when feasible.

Non-Aligned Movement has stakes in the territorial disputes in the South China Sea, particularly members of both NAM and ASEAN. Particularly, the chair of ASEAN has protested the removal of proposed updates to the NAM Final document in 2018 which would have brought in statements regarding the South China Sea to the document.³⁶ While not surprising given the power of China within the international community, this has severely hamstrung the ability of NAM to adequately advocate for the peaceful resolution of the South China Sea disputes through international arbitration through UNCLOS.

The Philippines is in a tough position on the South China Sea, with significant territorial claims to the Spratly Islands. Over the past twenty years, the Philippines have submitted cases to UNCLOS for consideration and worked with China to bring a case of arbitration before the International Court of Justice. Despite a court room victory, the Philippines are in a lurch due to the failure of China to abide by the ruling of the International Court of Justice with no true resolution to the territorial dispute over the contested islands.³⁷ Coupled with aggression from Chinese fishermen, military vessels, and coast guard, Manila has maintained their position on territorial claims though now with

³³ Council on Foreign Relations *Global Conflict Tracker: Territorial Disputes in the South China Sea*.

³⁴ Division for Ocean Affairs and the Law of the Sea. "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982." United Nations, September 3, 2020.

³⁵ Kuok, Lynn. How China's Actions in the South China Sea undermine the rule of law. Brookings Institution, 2019. <https://www.brookings.edu/research/how-chinas-actions-in-the-south-china-sea-undermine-the-rule-of-law/>

³⁶ ASEAN Singapore. "Chairman's Statement of the 32nd ASEAN Summit." ASEAN Singapore. Singapore: ASEAN, 2018. 23-24

<https://asean.org/wp-content/uploads/2018/04/Chairmans-Statement-of-the-32nd-ASEAN-Summit.pdf>; Thayer, Carl. "Consensus by Deletion: Reviewing the 32nd ASEAN Leaders' Summit and the South China Sea." The Diplomat, April 30, 2018.

<https://thediplomat.com/2018/05/consensus-by-deletion-reviewing-the-32nd-asean-leaders-summit-and-the-south-china-sea/>

³⁷ Kuok, Lynn. How China's Actions in the South China Sea undermine the rule of law.

the support of the International Court of Justice behind them on the Spratly Islands.

Russia has only a small direct interest in the region, mostly relating to freedom of navigation and the global oil markets. The price of Russian oil exports is heavily influenced by events in the South China Sea, through which most of the oil to Asia passes. Russia tends to cooperate with China in the Security Council, where it strives to strengthen national sovereignty. It also might welcome an opportunity to weaken the United States.

The United States posture on territorial disputes in the South China Sea is that it does not become involved in any such disputes. However, concerns of Chinese aggression regionally have sparked concerns about freedom of navigation and the threat of a regional war have peaked American interests.³⁸ The US Navy regularly patrols the South China Sea and has worked with several regional governments on arms deals and in other international forums on security issues, so while the US presents a neutral appearance there is growing concern over Chinese action regionally.

Vietnam is the other major actor within the South China Sea dispute, as Vietnam also claims much of the South China Sea as its territory, though it has shown a strong willingness to comply with international law and arbitration.³⁹ Following repeated defeats by China regionally, the Vietnamese military has continued efforts to modernize in order to counter Chinese aggression but has also acquiesced to Chinese coercion to halt economic activity or retreat

from contentious areas.⁴⁰ Still, Vietnam remains committed to their territory claims and has submitted such claims to UNCLOS for consideration though it has not sought arbitration to its territorial claims with any other state.⁴¹

Proposals for Action

The issues surrounding UN action in the South China Sea are complex, bedded deep within the structures of the UN, and seeped in power politics. But there are options that can be pursued to assist in resolving the layered disputes.

- **Modify Security Council permanent member veto power** in disputes where they stand to gain power, territory, or wealth. This would mean a fundamental reform of the UN Charter, a proposal long sought by many Member States. It would require the cooperation of all five Permanent Members of the Security Council, who would surrender their veto power.
- **Reform the Security Council to include a veto-override provision** through the widening of the Security Council to include smaller, less powerful states. Again, this would mean a fundamental reform of the UN Charter, a proposal long sought by many Member States. It would require the cooperation of all five Permanent Members of the Security Council, who

³⁸ Pompeo, Michael R. "U.S. Position on Maritime Claims in the South China Sea." Press Statement. U.S. Department of State, July 13, 2020. <https://www.state.gov/u-s-position-on-maritime-claims-in-the-south-china-sea/>

³⁹ Diep, Vo Ngoc. "Vietnam's Note Verbale on the South China Sea." Center for Strategic and International Security: Asia Maritime Transparency Initiative, May 5, 2020. <https://amti.csis.org/vietnams-note-verbale-on-the-south-china-sea/>

⁴⁰ Ives, Mike. "Vietnam, Yielding to Beijing, Backs off South China Sea Drilling." New York Times, April 4, 2017. <https://www.nytimes.com/2017/08/04/world/asia/vietnam-south-china-sea-repsol.html>

⁴¹ Division for Ocean Affairs and the Law of the Sea. "Submissions, through the Secretary-General of the United Nations, to the Commission on the Limits of the Continental Shelf, pursuant to article 76, paragraph 8, of the United Nations Convention on the Law of the Sea of 10 December 1982."

would surrender some degree of their veto power.

- **Create binding mechanisms for territorial dispute resolution under UNCLOS** through the International Criminal Court or the International Tribunal on the Law of the Seas. If that is too ambitious—if China’s veto and maybe the vetoes of other P5 countries remains a hurdle—the Security Council could simply recommend that Member States use such mechanisms.
- **Create a UN maritime task force to serve as peacekeepers** in the region to prevent conflict from spiraling out of control. This would have been financed, organized, provided with bases and forces seconded from Member States, some of whom might not be enthusiastic about volunteering. To be effective, it would require cooperation from all Member States bordering the South China Sea.
- **Modify UNCLOS to clarify the role of man-made islands** in the development

of exclusive economic zones. This is now understood to be a major oversight in the 1982 Treaty. The Security Council cannot alter treaties—the provisions for amending the Law of the Sea are in the Treaty itself—but the Security Council could recommend such action.⁴²

- **Provide mechanisms for a multilateral solution to the territorial disputes of the South China Sea** by bringing together all claimants into one of the arbitration clauses of UNCLOS.
- **Do nothing**, it is not the role of the UN to resolve disputes that have already been arbitrated under UNCLOS, let the states figure out their borders by themselves. And the veto makes it impossible to act against China’s will. But many Security Council Member States might think it enough just to raise the issue and make speeches criticizing China’s behavior, making a point, with no expectation of actually passing a resolution.

⁴² Alan Boyle, ‘Further Development of the Law of the Sea Convention: Mechanisms for Change’, *The International and Comparative Law Quarterly*,

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