

## **The Conflict in the South China Sea: A Legal Perspective of the Territorial Dispute**

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### **Abstract:**

This study examines the legal foundation of the South China Sea dispute and its implications for the region and the global community. Since ancient times, the South China Sea has been a vital trade route connecting China with Southeast Asia, South Asia, the Middle East, Africa, and Europe. The disputes in the South China Sea among China, Vietnam, Philippines, Brunei, Malaysia, and Indonesia are recent, particularly since 2009. They have expressed and submitted their formal claims and supporting evidence to the UN, asserting their rightful claims and territorial entitlements in the South China Sea by international law. These claims of the member states are examined from the perspective of the UN Convention on the Law of the Sea (UNCLOS) and other relevant international laws and precedents. It has been found that China's claims in the South China Sea are largely inconsistent with UNCLOS and other relevant regimes of international law. The disputes remain unresolved, posing a persistent threat to regional and global stability and potentially escalating into a broader conflict that could undermine international peace and security.

**Keywords:** China, South China Sea, Southeast Asia, Spratly, Paracel, UNCLOS

### **INTRODUCTION**

As evident from its name, the South China Sea is located in South China; other states surrounding the South China Sea include Taiwan, Singapore, Vietnam, Malaysia, Brunei, and the Philippines. All the above-mentioned states have internationally recognized areas and islands in the South China Sea. However, there are portions and areas in the South China Sea over which conflicting claims exist between different states. These conflicting/opposing claims of Vietnam, Philippines, Borneo, Taiwan, Singapore, and Malaysia are not minor. The opposing claims are serious and potentially activate a regional war among the neighbouring states. Even many analysts acknowledge the international significance of the dispute, as it has attracted the attention and interests of world powers such as the United States, Japan, and India, thereby complicating the issue. A Geo-strategist named Robert Kaplan has called this conflict “the 21st century’s defining battleground” and the “throat of global Sea routes” (Kaplan, 2011).

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Nansha (Spratly) Islands, Kalyan, Shisha (Paracel) Islands, Scarborough Shoal, Chungsha (Macclesfield) Islands, Tungsha (Paratas) Islands, Seabed, subsoil, and surrounding waters are the disputed spots among the surrounding states. Among the disputed islands, the Spratly and Paracel islands are the primary source of tension in the region (Cronin, 2013; Sherazi et al., 2020; Zhang, 2022).

The People's Republic of China (PRC) claims the most considerable portion of the sea. It has developed artificial islands and claims islands, as well as the surrounding waters, the respective seabed, and subsoil, in the form of nine dotted-line islands located in the south of Hainan Province, China, extending up to Indonesia, Malaysia, and Singapore. The vast claims of China have brought it to compete with other states, particularly the Philippines and Vietnam, which also claim the areas that China claims in the southeast and southwest portion of the South China Sea. The conflicting states reject the claims of sovereignty and ownership of each other and consider the disputed territory an inherent part of their territory. For instance, China claims sovereignty of the disputed territory based on political history, geographical location, and international law. On the same basis, it rejects the claims of other states to ownership and sovereignty (Asad et al., 2024; Manzoor et al., 2023; Position Paper on ROC South China Sea Policy, 2016). Maintaining sovereignty over the disputed portion of the sea has become a key and integral part of China's foreign policy.

The Republic of China, along with many other states in the region, considers the South China Sea crucial due to its significant trade and strategic importance. Strategic, economic, and political insecurities complicated the dispute, escalating it to a point where a possible war could occur. Due to the significant war risk associated with the issue, it is essential to understand the disputes and claims made by all surrounding states, taking into account their political history, geographical location, and other relevant factors. However, the primary need is to understand the claims from a legal perspective. Since the conflicting obstacles from land possession claims and political ownership do not meet the legal standard, the United Nations Convention on the Law of the Sea (UNCLOS) provides a crucial legal basis for resolving simmering maritime disputes. The UNCLOS has prescribed a few principles to prove the accuracy of claims and the consequent resolution of the issue.

The study's main research questions include (a) What is the status of the South China Sea, and how is China making developments along the South China Sea? (b) Why is China so concerned about South China Sea Security dynamics? (c) What is the status of the South China Sea in the context of the United Nations' Third Convention on the Law of the Sea (UNCLOS)? The contribution of this research work to the body of literature on the South China Sea is that it has found out the existence of a dispute over the South China Sea, its nature, claims of the states, and most importantly, the analysis of their position from the legal and United Nations Third Convention on Law of Sea (UNCLOS) perspective. In the literature, there were limited details available from the United Nations' Third Convention on the Law of the Sea (UNCLOS) perspective on the South China Sea dispute. Therefore, this in-depth study would significantly contribute to the existing body of knowledge.

This research work has three significant portions. In the first portion, the introduction of the research work, the scope of the research, the nature of the dispute in the South China Sea, claims of different states, the United Nations' Third Convention on the Law of the Sea (UNCLOS), research

question, collection of data, and research methodology are discussed. The second portion focuses on UNCLOS and its efficacy, as well as the interlinkage between maritime claims and those made by China. The final portion explores the relationship between ongoing simmering disputes and the context of the United Nations' Third Convention on the Law of the Sea (UNCLOS).

## LITERATURE REVIEW

A substantial body of literature is available on the South China Sea, discussing the political disputes in the Region, the efforts to resolve the issues, and other related topics. Tønnesson (2015) has discussed the clashes in the South China Sea since 2009 among the surrounding states overfishing, drilling, and naval exercises. Tonnesson argued that China has sometimes become aggressive in the South China Sea over the issues. However, it will remain peaceful and prefer negotiation over conflict, as it favours China's development. The hard war in the South China Sea has significant potential to divert China from economic growth. Further, the author claimed that the nature of the dispute is less likely to lead China to a brutal war with other countries in the South China Sea. In his research work, the author has overlooked other economic and political factors related to the dispute that significantly hinder its resolution.

Song and Zou (2015) and Hong (2012) discussed all the essential maritime disputes and aggressions, including the South China Sea disputes, particularly those over the Islands of the Paracels and Spratlys in the South China Sea. In this article, the legal positions of the relevant states are discussed. More importantly, the opinions of relevant experts, including security specialists, military officers, researchers, academicians, and lawyers, regarding the Martin time dispute and potential solutions to the South China Sea disputes are discussed in detail. The author accepted UNCLOS as the primary source for conflict resolution.

Jayakumar et al. (2014) sought to provide impartial opinions on maritime issues, offering possible alternatives and solutions. They extensively discuss the history, origin, and development of the prevailing and specific maritime laws. This book is an excellent source of information regarding maritime laws. The authors have discussed the various aspects of UNCLOS and their applicability as a potential solution to the South China Sea issues, including access to resources, drilling, and navigational freedom.

Wu et al. (2016) provided a detailed account of the historical use of the South China Sea, laws and traditions, ownerships, common heritage, and scientific research. This study examines the opinions of various scholars on various aspects of sea-related disputes, particularly the South China Sea issue. The author's work is a valuable source of information regarding the South China Sea disputes and the maritime issues of ASEAN countries, as well as potential solutions.

Beckman et al. (2013) discussed natural deposits in oceans and seas, advocating for dispute resolution to manage these resources effectively. The authors have also written about the historical development of maritime laws, UNCLOS, and other currently prevailing laws, as well as their national and international effects on the creation and resolution of disputes.

Buszynski (2014) explains the disputes in the South China Sea. The author has written that the conflicts are six decades old; however, instead of resolving the disputes, they have become more assertive and aggressive over time. Previously, only the disputers were the concern of regional

states around the South China Sea. However, now, the interests of Japan, South Korea, North Korea, Japan, and the USA also lie. Due to the involvement of other countries, the disputes have become challenging to resolve. The author mentioned the potential fault lines in the South China Sea that could lead to a possible war in the region.

Thuy (2015) has also provided numerous suggestions for conflict resolution, based on the interests of world powers, regional states, and international laws. The author strongly favours the peaceful resolution of states' conflicting regional and global interests.

Wu and Zou (2016) conducted a significant study on the laws of the seas, providing an excellent source of information and insight into maritime issues. In particular, the author discusses the decision and proceedings of the International Court of Arbitration in a case filed by the Philippines against China, in light of the United Nations Convention on the Law of the Sea. Apart from discussing and deciding the issue, this decision presented relevant facts, figures, laws, and opinions of American, Asian, and European legal experts. The court's decision consists of five main parts. The first part examines the origins and development of South China Sea disputes. The second portion concerns the court jurisdiction and applicability of the relevant laws. The third part is about the international resolutions of the cases. The fourth part examined the legal issues arising from the case, including the legal position of the U-shaped line, the Islands, and low-tide elevations. The final part of the decision pertains to the case filed by the Philippines against China and its international implications.

Considering primary, secondary, and tertiary literature sources, a more in-depth study of maritime disputes in the South China Sea is necessary, as the existing legal literature provides limited details. This research has examined China's current political, economic, and military standing, its global and regional interests, the interests of the US, and its relationships with states in East Asia and the Northern Pacific regions. The main contribution is the prescription of a more legal understanding of the complex South China Sea issues.

## **RESEARCH METHODOLOGY**

This analytical research has provided a detailed and critical study of the available literature. Furthermore, a qualitative method is adopted for collecting and analyzing primary and secondary data. The primary data comprises unclassified official documents of the People's Republic of China, white papers, official statements, and policies. The secondary data are sourced from relevant research articles, books, academic reports, and news reports.

## **MARITIME ISSUES IN THE LEGAL FRAMEWORK**

According to the legal parameters, a state's sovereignty over a specific island can be recognized if its occupation and administration have been in place for years and have not been met with any indigenous revolt against the occupation and administration. The Permanent Court of Arbitration (PCA) put forward this principle in the *Palmas Case* on April 14, 1928. Spain initially discovered this island, but it was later occupied by the Netherlands, where its administration remained continuous for a considerable period, and the island remained largely peaceful. The United States' claim to this Island as a successor state of Spain in the Philippines was declared insufficient by arbitrator Max Huber, as it failed to qualify for political sovereignty due to the absence of a peaceful

and consistent administration (UN Reports of International Arbitral Awards, 2006). This decision of the Permanent Court of Arbitration (PCA) proved a precedent for resolving disputes of the exact nature in the future. The PCA applied the same principles in deciding the El Salvador/Honduras dispute in 1992 (Shaw, 1993). The Eritrea and Yemen case in 1998 and the dispute over an Island between Indonesia and Malaysia in 2002.

In 1982, another principle was prescribed by the United Nations in Article 76 (part VI) of its Convention on the Law of the Sea, in which it recognized about 200 nautical miles of Exclusive Economic Zone for the state (part VI) (United Nations Convention on the Law of the Sea (UNCLOS) 1982, 1994). Under this principle, the United Nations does not recognize any state's sovereignty claim beyond 200 nautical miles. In the South China Sea, China's specific claims extend beyond its Exclusive Economic Zone (EEZ) and, in some cases, overlap with the EEZs of other Southeast Asian claimant states (Buszynski, 2012).

China's claim is based on the historical association of the area with the state of China. China's claim is once again controversial because the United Nations Convention on the Law of the Sea (1982) accepts the historical association but does not recognize the historic bays under Article 10(6) of the convention (United Nations Convention on the Law of the Sea (UNCLOS) 1982, 1994). Under UNCLOS, the claims based on historic association must meet the criteria of (a) demonstrated authority, (b) recognition of authority by the other states, and (c) Continuity of exercising the authority.

UNCLOS accommodated the demands of developing states, which suggested that the 10-nm limit from the baseline of coastal areas be extended to 80 nm, as later agreed upon in a conference via informal consultation on the laws of the sea. Currently, the nm from the baseline is extended up to 125nm. Similarly, another demand of the developing states during the informal consultation of the conference was that the state's right, recognized under Article 18 of the UNCLOS, should be utilized for lighthouse purposes to mark the enclosing points of an archipelago (Diplomatic conferences, 1958).

The United Nations Laws of the Sea have accepted the passage facility of foreign ships in section 3 of the UNCLOS, which includes anchoring overseas ships and the right to stop. Under UNCLOS, the innocent passage of ships and passengers is permitted unless it poses a threat to the host state's maritime security. For security purposes, the host state has the right to inspect and regulate traffic and passengers to ensure safety and freedom of navigation. For the same reasons, halting navigation in the Malacca Strait would be considered illegal, whereas in the case of the Spratly Islands, it would be legal (Diplomatic conferences, 1958).

## **CHINA AND THE LAW OF THE SEA**

The states extensively recognize UNCLOS provisions regarding the maritime areas. However, specific provisions of UNCLOS, such as particulars on straits and 200 nm EEZ, are questioned by states such as Brazil, Peru, Ecuador, and China. Contrary to the provisions of UNCLOS, China has extended its claim to 200 nautical miles and has supporters of its claim, such as Peru, Brazil, and Ecuador. The shift in China's claim is recent. Earlier, the claim was up to 12 nautical miles, as mentioned in a letter to the Japan-China Fishery Council in 1963, to establish the limits of the Chinese government's jurisdiction at sea.

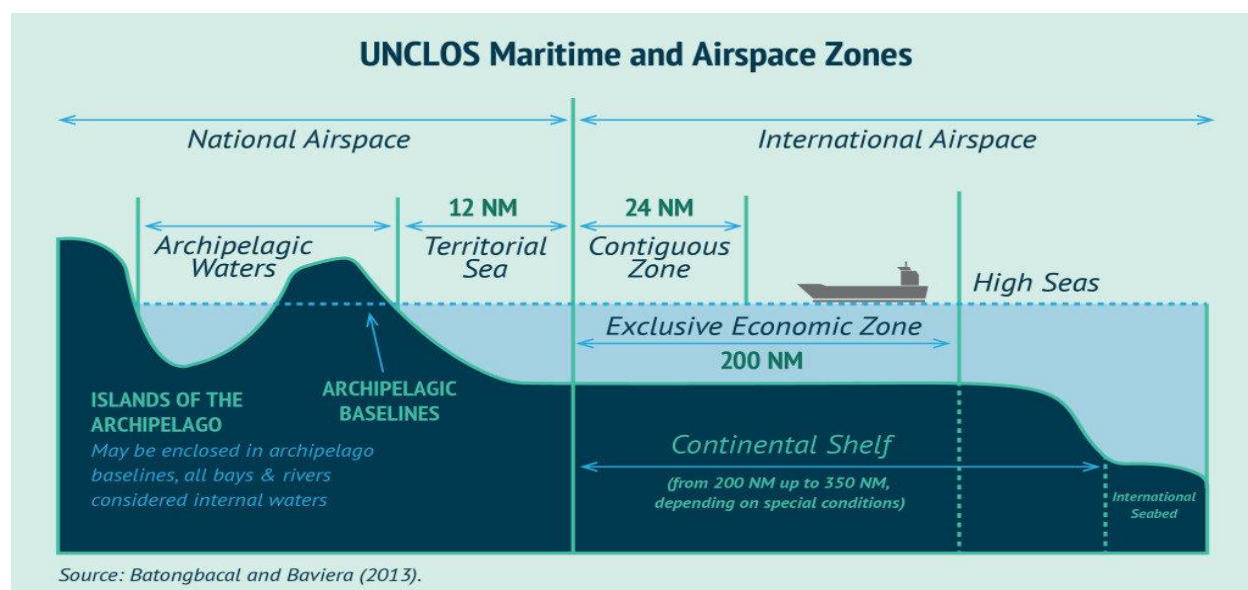
The UNCLOS, with its particular focus on straits and 200 nm EEZ, was extensively accepted by the developing states except for a few states like Brazil, Peru, and Ecuador, which supported China in opposing it. It did not extend its territorial sea to 200 nm during China's period. Earlier, China wrote a letter to the Delegation of the Japan-China Fishery Council in 1963, which mentioned China's 12 nm territorial limit. The letter discussed only two security Zones beyond the territorial limits of China, where the state of China has the sovereignty and authority to ban or allow navigation (Chiu, 1963). In addition to these zones, the Chinese government has established another zone, known as the South Zone, 27 Degrees east of the mainland, to prevent Japan's fishing boats from entering military operation areas.

Under UNCLOS, the sovereign state has full legal authority to halt, permit, and prohibit any innocent passage across its territorial waters. Similar provisions apply to straits; the state has sovereignty and ownership over the strait, allowing it to control the traffic passing through. They can allow, halt, and permit the innocent passage across the strait. This provision regarding the strait was adopted as a law during the third Law of the Sea Conference in 1973.

Suppose the Chinese government adopts the position of a 200 nm territorial sea instead of 125 nm. In that case, it will create conflicting conditions among the states surrounding the South China Sea, as East Asian states support the UNCLOS provisions of 12 nautical miles. This conflicting situation has led to a discussion of whether China should adopt 200 nautical miles of territorial sea instead of 125 nautical miles of exclusive economic zone (Katchen, 1977).

Although the concept of a modern sovereign state dates back to the seventeenth-century Treaty of Westphalia, laws regarding maritime sovereignty are a relatively recent development, particularly after the Second World War, when the United States claimed sovereignty over its territorial waters. To settle the issues arising from claims to the sovereignty of seawater, the United Nations has developed conventions, laws, and agreements governing maritime sovereignty. Under these UN conventions, claims of sovereignty over seawater based on historical association did not receive formal recognition. The issue is that China historically claims almost 80% of the Sea, which has no support in UNCLOS.

In ancient times, the invasion and occupation of weak nations and territories were considered a common practice. The same thing happened in China as well. China saw a rise during the rule of the Qin, Han, Tang, Song, and Ming dynasties (Malik, 2013). During this time, the political sovereignty expanded beyond its national borders, making Tibet, Xinjiang, and certain areas in southern China part of the Kingdom of China. According to this ancient Chinese rule, China asserts maritime sovereignty over approximately 80% of the South China Sea. The opposing states claim that in ancient times, occupation was the norm, and boundaries used to go back and forth; therefore, sovereignty on a historical basis is illegitimate. The Chinese base of claim seems insufficient, as the Malay people can use the same logic to claim political sovereignty over Taiwan. The nature and basis of China's claim in the South China Sea share similarities with those of the Persian claim in the Persian Gulf, the Mexican claims in the Gulf of Mexico, and India's claim in the Indian Ocean (Malik, 2013).

**Figure 1:** UNCLOS: Specific Articles and their Application on the South China Sea

Source: (Mirasola, 2015)

The jurisdiction of states in seas differs because different criteria are established under the United Nations Convention on the Law of the Sea (UNCLOS) to determine the jurisdiction of various states with varying physical conditions. Three aspects of the United Nations Convention on the Law of the Sea (UNCLOS) are crucial in determining seawater jurisdiction and claims.

An island is a landmass surrounded by water and permanently above sea level. For the rightful claim of the territorial sea, contiguous sea, continental shelf, and Exclusive Economic Zone, it is essential that the island is habitable and can support and sustain human life. The UNCLOS Part VIII, Article 121 states that sovereignty in the sea in respective areas having islands of the mentioned qualities (United Nations Convention on the Law of the Sea (UNCLOS) 1982, 1994).

Reefs are another type of landmass that exists permanently above the sea but cannot support and sustain human life. In the case of the Reef, the United Nations conventions recognize sovereignty over the territorial sea and adjacent contiguous zone, but do not accept the right to the continental shelf and the exclusive economic zone due to the reef's inability to support human life. Thus, the states concerned have no right to claim an exclusive economic zone (EEZ) and the continental Shelf.

In the case of a Low tide, the state is not entitled to claim sovereignty over the sea, continental shelf, or exclusive economic zone (EEZ) if the island only appears during the low tide period (United Nations Convention on the Law of the Sea (UNCLOS) 1982, 1994). Certain articles of UNCLOS deal with maritime issues. According to Article 121, an island is a landmass in the sea surrounded by water on all sides, and it maintains its existence and visibility during high tides. Such an Island is entitled to all the rights enjoyed by land territory, such as territorial sea, the contiguous zone, EEZ, and right over the continental shelf. Under Article 2, the rock surrounded by water from all sides that cannot sustain human life and can maintain self-visibility during high tide time is not entitled to enjoy rights such as the right of territorial sea, EEZ, contagious Zone, and continental shelf.

Article 3 of UNCLOS concerns the breadth of the territorial sea; it recognizes a state's right to establish the breadth from the baseline to a limit of 12 nautical miles. Article 6 of UNCLOS regarding reefs situated on atolls states that to determine the territorial sea, the baseline should be the seaward low water line of the reef as shown by the officially recognized charts and symbols of the coastal state. Article 13 of the UNCLOS defines the low tide elevation. It is said that low tide elevation refers to the area of land surrounded by water that is above water level during low tide but submerged at high tide. Where a low-tide elevation is situated entirely or partially at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

Regarding low tide elevation, which is wholly located at a distance exceeding the breadth of the territorial sea, the UNCLOS says that it has no right to claim a territorial sea of its own. Article 33 of the Convention pertains to the Contiguous Zone. The Zone of the sea located contiguous to the territorial sea is called the Contiguous Zone. In this Zone, the coastal state may exercise its sovereignty to maintain necessary control, including enforcing customs duties, fiscal policies, sanitary and immigration laws, and regulations within its territorial sea or territory. Furthermore, the law acknowledged the state's right to punish those who violate its laws within its territorial sea. Regarding the length of the contiguous Zone, the laws that it may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Article 76 of UNCLOS is about the Continental Shelf. It says that continental shelf means sub-marine areas, subsoil, and sea bed that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Article 55 of UNCLOS deals with the exclusive economic zone (EEZ). An EEZ is an area adjacent to and beyond a state's territorial sea. The laws regarding EEZ recognize the jurisdiction of the coastal state in the EEZ. However, the laws also provide freedom to other states to navigate. Article 56 deals with the rights, duties, and jurisdiction of the coastal state in the EEZ.

In the EEZ, the coastal state has the sole right to use, manage, conserve, explore, and dig natural resources, whether living or non-living. The coastal state also has the right to produce energy from water currents and tides. The UNCLOS has also provided coastal states with the exclusive right to establish artificial Islands, develop other structures, conduct scientific research, and take measures to protect and preserve the marine ecosystem. While exercising rights in the EEZ, UNCLOS calls upon the coastal state to use its jurisdiction responsibly. It is directed under law to maintain due regard for the rights of other states in the EEZ. Further, regarding seabed and subsoil, UNCLOS Part VI provides legal guidance. In the exclusive economic zone, the coastal State has (United Nations Convention on the Law of the Sea (UNCLOS) 1982, 1994). Since the 1970s, China has occupied several northern islands in the South China Sea. In the 1980s and 1890s, the Vietnamese and other countries were forcefully expelled from these areas and were occupied by the state of China. In the South China Sea, the Chinese government controls seven (07) out of two hundred (200) Reefs. China has also taken control of the Scarborough Shoal in the South China Sea.

**Table 1:** Status of Various Islands and Reefs

S. No.	Name of Feature	Country	Status
1	Johnson South Reef	China	Rock installed radar and guns
2	Subi Reef	China	LTE, runway, and telecom facilities
3	Mischief Reef	China	LTE, runway, and telecom facilities
4	Fiery Cross Reef	China	Rock built a 3000m runway and a port
5	Cuarteron Reef	China	Rock Built operates a lighthouse
6	Gaven Reef	China	LTE built a heliport
7	Hughes Reef	China	LTE installed radar and other facilities
8	Thitu Island	Philippines	Inhabited by civilian and military personnel
9	Spratly Island	Vietnam	Upgraded electricity supply
10	Itu Aba Island	Taiwan	Dock for large warships
11	Swallow Reef	Malaysia	Runway and resort

Source: (Manoj, 2016)

The sovereignty of a state over its territorial waters is a complex matter. In this regard, there are two significant aspects to mention. The first aspect consists of features that establish sovereignty. The second aspect concerns the features necessary to recognise the state as a coastal state. Under UNCLOS, the breadth of the territorial sea in the low line along the coast of the state is taken as a normal baseline for determining the coastal state's sovereignty (PART V: Exclusive Economic Zone, 1982). The low-tide line is also called dry shoals or dry rocks, which cannot be considered islands. The high tide elevations are considered islands and are taken as naturally formed land areas. In the EEZ and territorial sea, a coastal state can erect artificial Islands for security purposes; however, under international law, they would not be considered islands and would not be entitled to the rights reserved for natural islands (PART V: Exclusive Economic Zone, 1982). Furthermore, within the EEZ and territorial seas, the coastal state has the exclusive right of sovereignty to develop infrastructure, installations, and artificial islands, among other things. However, under international law, other countries should first obtain permission from the coastal state. If the coastal state permits foreign states, officials, passengers, and ships, they can do what they require. Otherwise, they should refrain from violating the jurisdiction of the coastal state. It is said that, in the EEZ, the coastal state also has the right to establish a safety zone for the safety of artificial Islands and installations. However, this safety zone must not extend beyond 500 meters in length.

Under UNCLOS, coastal states have a territorial zone of up to 12 nautical miles and a contiguous zone of an additional 12 nautical miles. Under the law, up to 200 nm of seawater would be the state's exclusive economic zone. This economic zone can be extended up to 350 nm if the continental shelf exists on the land of the coastal state. In the case of an Island, the coastal state, under UNCLOS, would be entitled to the territorial sea, EEZ, while in the case of rocks, the claim of territorial sea is permissible; however, the claim of EEZ is not considered legitimate (PART V: Exclusive Economic Zone, 1982).

Regarding UNCLOS, the state of China argued that at the time of UNCLOS' ratification in June 1996, the United Nations, in consultation with neighbouring states, had already defined the maritime boundaries and thus reaffirmed its claim. Earlier, in February 1992, Article 2 of the Law on the Territorial Sea and Contiguous Zones affirmed China's claims and

sovereignty over all its islands and archipelagos. All the disputed islands within the territories of Taiwan, the Philippines, Japan, and Vietnam were included. Substantial discussions and negotiations led China to deal with Vietnam on the Gulf of Tonkin. The current dispute arose after the United Nations Commission on the Limits of the Continental Shelf gave a deadline to the states to present their claims beyond 200 nm of EEZ. In response, many states submitted bold claims based on uninhabited maritime features to solidify their claims (PART V: Exclusive Economic Zone, 1982).

In this regard, in 2009, a joint Vietnamese-Malaysian reference under Article 76, paragraph 8, of the UNCLOS was submitted to the UN Commission on the Limits of the Continental Shelf, detailing certain unresolved disputes in the southern part of the South China Sea, accompanied by a map. At the same time, a verbal note by the Permanent Mission of China to the UN, accompanied by a map based on the Nine Dashes, announced that China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters. This joint submission has infringed upon Chinese sovereignty, sovereign rights, and the jurisdiction of the South China Sea. The Chinese government requested the UN Commission under Article 5 (a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf (CLCS); the Chinese did not consider the joint reference made by Vietnam and Malaysia.

In response to the Chinese government's claims, the government of Vietnam also sent a verbal note to the United Nations Secretary-General on 8 May 2009, arguing that Vietnam's claims over the Islands Truong Sa (Spratly) and Hong Sa (Paracel) are legitimate and according to the Rules of Procedure of the Commission on the Limits of the Continental Shelf. The Vietnamese government rejected the Chinese government's claims on the grounds of legality and history, which were deemed misleading (The permanent Mission of Peoples Republic of China to UN, 2009).

The claim of sovereignty over the islands of Truong Sa (Spratly) and Hong Sa (Paracel) originated purely from UNCLOS and requires no further scrutiny of its origin. The Philippines also expressed its displeasure over the claims of Vietnam, Malaysia, and China. It called upon the United Nations Commission on the Limits of the Continental Shelf to disregard the joint Vietnam-Malaysia submission, as it overlaps with the Philippines' claim. The government of the Philippines also has a Sabah area from the state of Malaysia. All these claims appeared to arise in response to China's claim in the South China Sea.

The government of Indonesia expressed its concerns and opinion in a note to the United Nations Commission on the Limits of the Continental Shelf in 2009, stating that although Indonesia is not a claimant to the Islands, the claims over the nine-dash line islands of all states have no legal basis. Commenting on the Chinese claim, the Indonesian government, in a note, declared that the small and faraway islands in the South China Sea do not deserve an Exclusive Economic Zone and continental shelf of their own and making these uninhabited rocks, atolls, and reefs would be a matter of significant problem for the world community and United Nations Convention on Laws of Seas.

In response to the Philippines' claim, the Chinese government submitted another note to the United Nations Commission on the Limits of the Continental Shelf to substantiate its claim based on substantial historical and legal evidence of long-standing Chinese claims and sovereignty over these Islands. The note argued that the government of the Philippines claimed these islands in 1970, whereas China's association with these islands dates back centuries. The Chinese note also argued that in 1930, the Chinese government even outlined the geographical scope of Nansha with the territorial sea, continental shelf, and EEZ.

Although the government of China claims the entire nine-dash line of the island, it does not have any supporting legal provisions under the United Nations Convention. Furthermore, the claims also appear to be based on its territorial claim that these islands were and are part of Chinese territory. There appears to be a lack of clarity in the Chinese claim. The confusion arises from China's claims within the 'nine-dash line' as a national boundary, or whether it only seeks to claim the seabed and its resources. Regardless of China's intentions, it declares the disputed island chain an indisputable part of its territory.

The analysis reveals that the Chinese government's claims are politically motivated. The Chinese government has presented historical accounts from the past, including those of travellers and ancient notes from ambassadors, to support the truth of the claim. However, the claim becomes confusing because it overlaps with those of Brunei, Vietnam, Malaysia, the Philippines, Taiwan, and Indonesia. The Chinese government representative officially discussed the political claims drawn in 1947, which were rejected immediately by the neighbouring states, as mentioned by the Freedom of Navigation Department of the US Department of Defence (DoD Releases 2015 Fiscal Year Freedom of Navigation Report, 2016). Under international law, claims based on historical records lack justification, as China took control of the eastern part of the Paracel Islands in May 1950. In 1974, Chinese vessels clashed with Vietnamese vessels and ousted them from the western part of the Paracel Islands, gaining control of the entire Paracel Islands. However, in the case of the Spratly, China did not make any occupation in 1988 until it took control of Vietnam after a naval clash when it planted the flag on seven rocks and atolls. Meanwhile, China could benefit from occupying the island. To strengthen its case, China justifies these claims based on its occupation since ancient times. Nevertheless, Max Huber, in the 'Palmas case,' tested the proposition that occupations based on an archaic period would not be accepted if they were not recognized by modern international law. In other words, it also had to meet the occupation requirement of contemporary law (Buszynski, 2014).

## CONCLUSION

The disputes over islands in the South China Sea are serious. All the parties claim the political ownership of the nine Dish Line islands. The claim of China covers a large portion of the South China Sea, on which the surrounding countries have serious reservations and have presented their counterclaims. The claims of China are based on ancient Chinese rule, ancient association, and occupation of certain areas since the 1970s. The Chinese government's claim lacks proper support in international law and the United Nations Convention on the Laws of the Sea. Even the decision of Max Huber in the Palmas case does not serve as a precedent, as this issue requires continued peaceful administration for years, which is lacking in China regarding these islands. In 2016, in a dispute over the island between China and the Philippines, the International Court of Justice issued

a decision in favour of the Philippine government, based on the United Nations Convention. Contrary to the Chinese claim, the claims of other states are primarily legal, although they also have elements of ancient association and rule. These claims have developed with time and have been in the national interests of each state. Thus, a critical dispute that has the potential to become a significant future conflict should be addressed by all parties with a sense of responsibility and mutual understanding. A peaceful solution is highly required based on the mutual consensus of the parties involved in the dispute.

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