



WARMING UP OF WATERS IN THE SOUTH CHINA SEA

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The South China Sea is a semi-closed sea¹ washing the shores of China, Taiwan, Vietnam, the Philippines, Brunei and Malaysia. Within the waters are certain groups of islands, among which the two most contested ones are the Paracel Islands and the Spratly Islands. There have been numerous squabbles regarding the sovereignty of the islands in the South China Sea, mainly over these islands.

Following are some of the major reasons as to why the South China Sea is significant in the global as well as regional scenario:

- It is the region through which a third of all maritime traffic passes. It is, in short, the 'fulcrum of world trade'.²
- The South China Sea accounts for one-tenth of the world's global fishery catch, playing host to a multi – billion dollar fishing industry.³ Along with this, there are also frequent spats between fishermen of each country with the governments of other countries. For example, the Scarborough Shoal standoff between China and the Philippines in 2012. According to Vietnamese and Filipino sources, the harassment of fisher folk has fuelled strong anti-China sentiment in both the countries.
- One more factor and perhaps the most determining one in the coming future is the 'magnitude' of oil and natural gas reserves, which might be there within the Sea. The

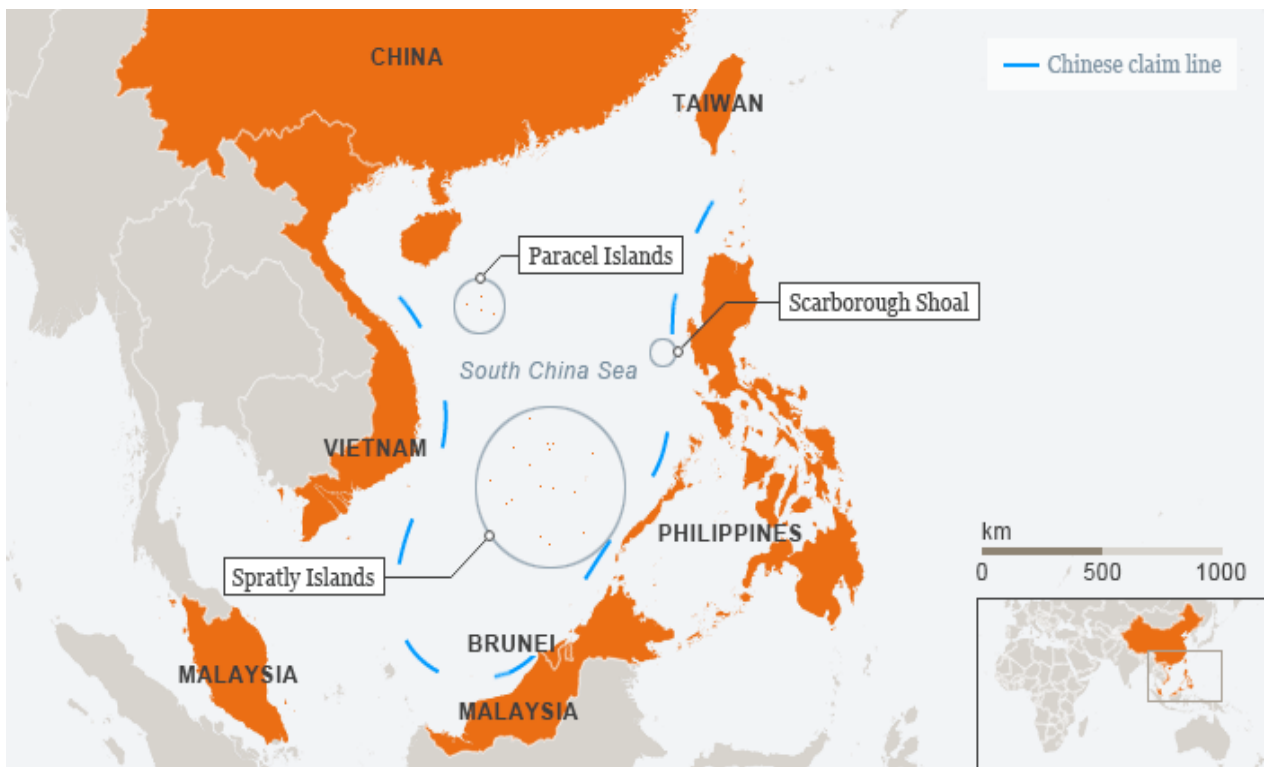
crucial word here is 'might', since the extent of reserves is not fully known and the region is yet to be fully explored. The demand for resources will be a major factor for the littoral states since the growth prospects of the Southeast Asian economies are among the best in the world.⁴

It is mainly this last aspect, the need for hydrocarbons, which has pushed the demand for establishing rights over the waters of the South China Sea. This reason also explains why China has recently gone on an overdrive with reclamation projects in the Sea, especially over the Spratly group of Islands. Disputes, claims and counter-claims among the various regional actors, keep flying back and forth.

The nature of the conflicting claims of sovereignty over the islands within the South China Sea is varied. Some claims are based on history, others on proximity defined through the Law of the Sea (LOS). For example, China claims it through historical records; Vietnam claims the islands as a successor nation-state to the French colony, who, in turn, had won it from the Japanese during the Second World War.

As decolonization spread and new states came into being, the sovereignty claims became complicated again. The Philippines based its claim through Thomas Cloma, a Filipino who 'discovered' the islands. Recent claims, like those of Brunei and Malaysia, were made on the basis of the 1982 UN Convention on the Law of the Sea (UNCLOS).

The unchanging Chinese cartography, coupled with the ambiguity in sovereignty with respect to the islands within the Sea, is the major feature of the 'international' controversy within the South China Sea. Add to this, the recent unconventional measures taken by China to reclaim its sovereignty over the region (such as dredging up sand to expand islands, building airstrips and lighthouses on them and then sending flights to the islands). In short, the South China Sea is a zone of potential conflict, which needs a strong hand in handling the situation delicately.



Source: Google⁵

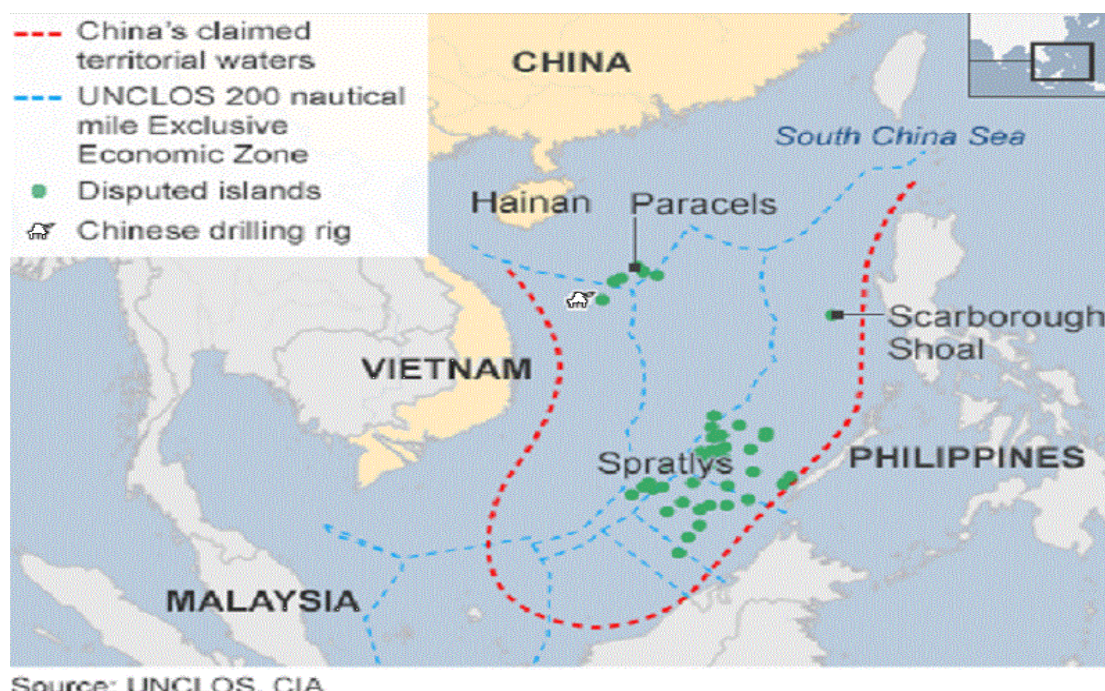
The Philippines and Vietnam are key states to the dispute in the South China Sea, and both have not hesitated from asserting interests that usually go against what the Chinese government says. Consider, the recent spat that occurred on 16th January 2016, between Vietnam and China regarding the Flight Information Region (FIR) map of the International Civil Aviation Organization (ICAO). The map included the Chinese words "Sansha City – China", and had a symbol of an airport on Fiery Cross (Chu Thap) in Truong Sa (Spratly islands) with the English words "Yongshu Airport – Sansha". The Vietnam's Foreign Ministry protested against China's establishment of the 'Sansha City' and claimed 'indisputable sovereignty' over both the Spratly (Truong Sa) and Paracel (Hoang Sa) archipelagos; they also sent in writing an affirmation of the same to the ICAO, while at the same time maintaining that China violated the regulations on aviation safety by sending flights to Fiery Cross Reef, (which the Chinese call Yongshu).⁶

According to Vietnam, China's flights over the South China Sea (or the East Sea as they call it), go against Annex 2 to the Convention on International Civil Aviation, which is 'Rules of the Air' and is to be applied 'without exception' over the high seas.⁷ These flights were also not intimated to the Ho Chi Minh Flight Information Region's management agency, which is again a violation of Annex 11 to the Convention on International Civil Aviation, which demands that,

for any action (such as taxiing on the maneuvering area, taking off, landing etc), that will take place at the destination aerodrome, flight information service has to be provided to aircraft operating centre located there.⁸

The Chinese, on the other hand, claim that sending flights to Fiery Cross Reef was a part of their own “national aviation activities”⁹ and therefore, these flights were not bound by the Convention on International Civil Aviation and the regulations of the ICAO. The Chinese Ministry of Foreign Affairs asserted that the air corridor from China's Hainan Island through the Ho Chi Minh FIR to Fiery Cross Reef was within China's air sovereignty and hence these airplane operations were totally within the country's freedom¹⁰ and in line with the international laws and practices. China has also stated that the airport that they are developing at Yongshu was only for “humanitarian purposes, including emergency landing and maritime rescue.”¹¹

Here is another recent example of the on-going scuffle between Vietnam and China. On 18th January 2016, the Vietnamese government demanded that China withdraw the oil rig Haiyang Shiyou 981 from the over-lapping area of the Continental shelf between Central Vietnam and Hainan island of China. However, in this area, both the countries have not delimited their zones.¹²



Interestingly, between all this back and forth, on the very same day (18th January), both these countries also celebrated the Sixty-sixth year of bilateral diplomatic ties. (January 18, 1950 – January 18, 2016)¹³

China even went on to state that Vietnam has ‘booming cooperation’ with China, especially in the field of bilateral trade. China has been Vietnam’s biggest trading partner for twelve consecutive years and Vietnam is China’s second largest partner in the ASEAN (Association of Southeast Asian Nations).¹⁴ Along these lines, China also acknowledged its support for Vietnam’s efforts to improve relations with other countries. However, China also declared (what could be seen as a slight warning), to Vietnam that these diplomatic overtures should not come at the cost of the Vietnam’s “hard-won traditional friendship”¹⁵ with China. At the same time, China also put the blame for the flaring up of bilateral tensions in the South China Sea on the “meddling hands of some specific Western countries and parochial and nationalist voices in Vietnam.”¹⁶

Coming to the Philippines, which unlike Vietnam, has the ‘weakest defence capability in Southeast Asia’;¹⁷ and hence, instead of directly confronting China’s military might, has chosen the legal recourse. It is the Philippines which has taken the case of the Chinese Nine-Dash Line¹⁸ in the South China Sea to the Permanent Court of Arbitration under the UNCLOS.

The UNCLOS and the South China Sea

The UN Convention on the Law of the Sea (1982) has become centre stage to the ongoing conflict within the South China Sea; this is because on 22nd January 2013, the Philippines officially notified China that they had instituted Arbitration against China under Article 298, Annex VII of UNCLOS. On the 29th of October 2015, the Permanent Court of Arbitration ruled that it has the right of Jurisdiction to decide whether the Nine-Dashed Line of China was against the 1982 UN Convention or not.¹⁹



Source: Google²⁰

Another aspect that the Tribunal will look into is whether to classify the formations in the Sea as 'islands, rocks, low tide elevations or submerged banks'; thus, determining whether Chinese activities (such as claiming the area within the U-shaped Line as its Exclusive Economic Zone), violate the Convention. This is important because if the Court decides to name the land features as 'rocks' instead of 'islands', then China will have to redraw (in effect, reduce) its Exclusive Economic Zone within the South China Sea.²¹ The UNCLOS also recognises only 'naturally' formed islands; thus, leaving hollow China's reclamation efforts to the islands.

China had boycotted the proceedings of the Tribunal, refusing to recognize the jurisdiction of the international tribunal. However, the Court said that according to Article 296 of UNCLOS, by being a signatory to the UNCLOS, the decision of the Tribunal would be binding on both China and the Philippines.

Another point made by China is its desire to solve issues bilaterally. This is one of the reasons why China has chosen to ignore the case filed against it by the Philippines and one of the many factors why ASEAN as a multilateral grouping has failed to elicit any response from China with respect to South China Sea. ASEAN also has members like Laos, Cambodia and

Singapore that are non-claimants to the region and who do not want their deep (especially economic) relations with the regional superpower jeopardized.

Specifically, the Philippines is asking for their right to the 'West Philippines Sea' and not to the whole South China Sea. However, since the Nine-dash line encompasses the whole of the South China Sea, the Philippines is left without its rights to the marine resources that is guaranteed to it under the UNCLOS and other international conventions. Accordingly, they took the case to the Permanent Court of Arbitration, since China stopped considering their requests to give them what is actually theirs in the first place. The Philippines also pointed out that China has never made the Nine-'dash' line a 'continuous' line because China does not claim the whole of the Sea, but only those parts which can further its national interest.

Consider the other side of the argument. According to China, the area within the Nine-dash Line has been theirs historically. Taiwan claims the region as specified by the Line and since China claims that Taiwan is a part of mainland China, by default, the Taiwanese claims and rights over the resources are China's too. China claims that the dispute that the Philippines is talking about is a territorial issue about sovereignty and hence the Permanent Court has no jurisdiction over the matter. Nonetheless, what could be seen as a setback to China's stand on the matter, the Permanent Court ruled that it, in fact, has jurisdiction to rule over the disagreement. The other parts of the case, such as the validity of the Nine-dash line and the consideration of the land forms as Reefs, Rocks or Islands, are being awaited.

The Chinese stand on the topic of reclamation of islands (such as Fiery Reef), is that they are just building upon what was theirs in the first place. To the Chinese, the case brought by the Philippines to the UNCLOS was actually pushed by the US and other external players who have a geopolitical interest in the region. What needs to be noted is that despite being a strong ally to the Americans, the Philippines had indeed taken the matter to an international court of their own volition²². Hence implicit within this fact is that they do not expect a strong stand or help from the US regarding their sovereignty rights over the West Philippines Sea. To declare a firm stand on the Freedom of Navigation of the Seas and to actually make sure about that freedom to the concerned states are too different things. A point in support of this is that the Philippines has diversified its basket of cooperation with many powers, such as Russia,

Japan, India and France. This action of the Philippines and the Vietnamese action of strengthening its maritime security and defence²³ are not viewed favourably by China.

Conclusion:

For the Philippines, if the Court rules in their favour, then it would be a moral victory for them. The way China is moving forward, it does not seem that China will adhere to the verdict of the Permanent Court. But for the former, this would mean that though China is able to dominate militarily, on grounds of International Law, China would lose face. With the need to have a positive international image as a growing global super power, how much the Chinese are prepared to give up on its international repute remains to be seen.

If the Court rules that the Nine-dash line is not in accordance with UNCLOS, then China will have to shrink its maritime sovereignty claims within the region, bringing it in conformity with the UNCLOS; this would be a relief to not only the Philippines, but also to the other littoral states which had their exclusive economic zones claimed by China (namely, Brunei, Malaysia, and Vietnam).

But if China remains adamant on its stance it does not seem that the conflict within the South China Sea will be resolved anytime soon. If the conflict cannot be solved, can it at least be contained? It should be, since the legal framework states that the coastal states *should* cooperate with each other.²⁴

Further, just as all international disputes go, the sovereignty dispute of the waters of the South China Sea is just one of the aspects of the relations between the concerned parties. Both Vietnam and the Philippines have not only good economic ties with China, but also historical and cultural relations. It would be in everybody's interest to solve the issue amicably. China must understand that by acceding to recognise the rights of other states is not losing face, but actually gaining a stand as a fair international player. Being the main power in the region, it can afford to give an inch (since it is sure that the others would not and could not take a mile).

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The Views expressed are that of the Researcher and not of the Council.*

End Notes

¹ The UN Convention on the Law of the Sea (1982) defines in Article 122 an ‘enclosed or semi-enclosed sea’ as a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

² Bill Hayton (2014), *The South China Sea: The Struggle for Power in Asia*, Cornwall: Yale University Press, p. xvi.

³ Jing Huang and Jagtiani, Sharinee (2015), “Introduction: Unknotting Tangled Lines in the South China Sea Dispute,” in Jing Huang and Andrew Billo (Eds.) *Territorial Disputes in the South China Sea: Navigating Rough Waters*, (Hampshire: Palgrave Macmillan), p. 5 and

<http://iilj.org/courses/documents/BeckmanGeopoliticsILandSCS.pdf>, (Accessed on 07/01/2016).

⁴ <http://www.globalsecurity.org/military/world/war/spratly.htm>, (Accessed on 05/01/2016).

⁵ http://www.dw.com/image/0,,18570509_401,00.gif, (Accessed on 29/01/2016)

⁶ “VN asks ICAO to correct Sanya map”, <http://vietnamnews.vn/politics-laws/281274/vn-asks-icao-to-correct-sanya-map.html>, accessed on 19/01/2016

⁷ http://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf

⁸ http://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf

⁹ “Viet Nam rejects China statements”, <http://vietnamnews.vn/politics-laws/281103/viet-nam-rejects-china-statements.html>, accessed on 19/01/2016

¹⁰ Viet Nam rejects China statements”, <http://vietnamnews.vn/politics-laws/281103/viet-nam-rejects-china-statements.html>, accessed on 19/01/2016

¹¹ “China rejects Vietnam’s accusations of threatening civilian air traffic”, http://news.xinhuanet.com/english/2016-01/14/c_135010107.htm, accessed on 21/01/2016

¹² “VN demands China withdraw oil rig from overlapping area”, <http://news.chinhphu.vn/Home/VN-demands-China-withdraw-oil-rig-from-overlapping-area/20161/26488.vgp>, accessed 20/01/2016

¹³ “VN, China mark 66th years of diplomatic ties”, <http://news.chinhphu.vn/Home/VN-China-mark-66th-years-of-diplomatic-ties/20161/26484.vgp>, accessed on 20/01/2016

¹⁴ “Commentary: Deepening cooperation with China conducive to Vietnamese development vision”, http://news.xinhuanet.com/english/2016-01/20/c_135028404.htm, accessed on 21/01/2016

¹⁵ “Commentary: Deepening cooperation with China conducive to Vietnamese development vision”, http://news.xinhuanet.com/english/2016-01/20/c_135028404.htm, accessed on 21/01/2016

¹⁶ “Commentary: Deepening cooperation with China conducive to Vietnamese development vision”, http://news.xinhuanet.com/english/2016-01/20/c_135028404.htm, accessed on 21/01/2016

¹⁷ Yang Fang (2015), “The South China Sea Disputes: Whither a Solution?” in Jing Huang and Andrew Billo (Eds.) *Territorial Disputes in the South China Sea: Navigating Rough Waters*, (Hampshire: Palgrave Macmillan), p 171

¹⁸ The Nine-Dashed Line is a U-shaped line drawn in the Chinese maps of 1947. In 2009, China made an official submission to the UN, a map containing the U-shaped line. Accepting this line means accepting Beijing’s claim to about 90 percent of the South China Sea.

¹⁹ Timmons, Heather (2015), “It’s Official: The Philippines can Sue over China’s South China Sea Claims”, <http://qz.com/537304/its-official-the-philippines-can-sue-china-over-its-south-china-sea-claims/>, (Accessed on 11 January 2016).

²⁰ <http://s4.freebeacon.com/up/2015/06/CHINA-map.jpg>

²¹ Article 121 of UNCLOS, states that 'rocks' will only have access to 12 nautical mile territorial sea, but not to the 200 nautical mile limit of Exclusive Economic Zone.

²² Information from Interview with Fernando V. Beup, Jr., Second Secretary and Consul, Embassy of the Republic of the Philippines, New Delhi on 20th January 2016.

²³ Such as the purchase of six submarines and the construction of more Offshore Patrol Vehicles

²⁴ According to Article 123 of UNCLOS, “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties”.