



Militarization, Power Projection And Territorial Disputes In The South China Sea

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Executive Summary

The escalating tensions and subsequent militarization of the South China Sea (SCS) are fast turning into a flashpoint of international conflict between global superpowers. There are disputes over international law, overlapping claims of territories among multiple nations, aggressive military acts in international waters, and no indication of an initiative to resolve regional conflicts in a multilateral format. To add fuel to the fire, the onset of the COVID 19 pandemic has decimated Sino-US relationship. Now, western media is proclaiming the South-China Sea as ripe for the next big war. But is there indeed the scope of escalation as espoused by the US? Or will this conflict become a self-fulfilling prophecy?

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An Overview Of International Law And Disputes

The United Nations Convention on the Law of the Sea (UNCLOS), also called the “Law of the Sea Convention” or the “Law of the Sea Treaty”, is an international agreement that establishes a legal framework for all marine and maritime activities. 167 countries and the European Union are parties to this convention.

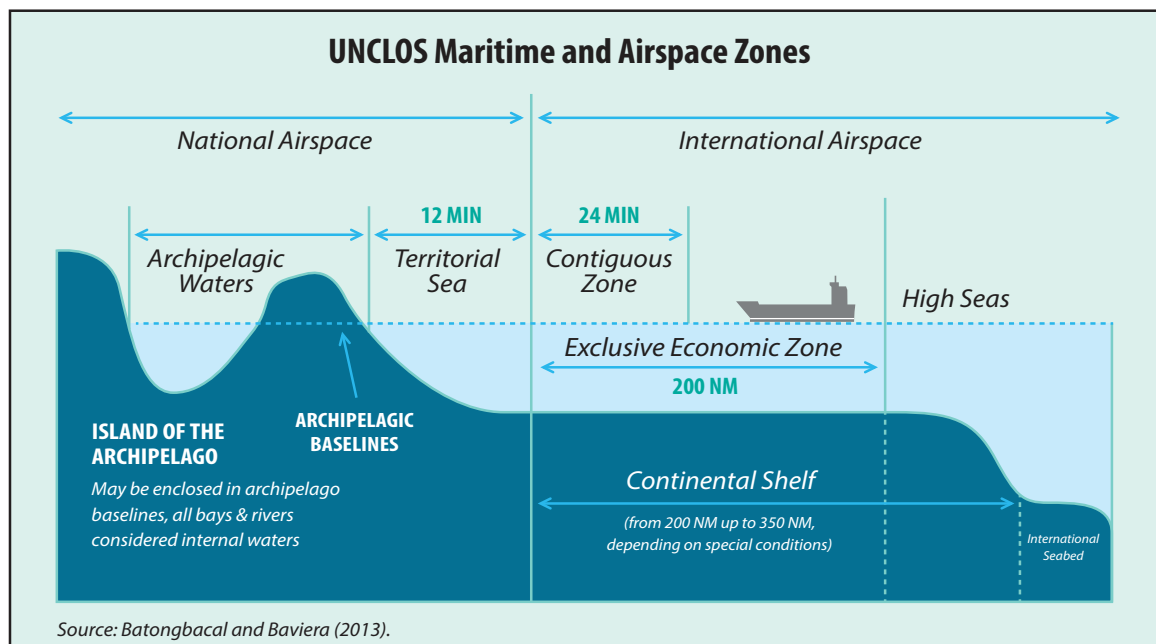
The Convention was formed at the third United Nations Conference on the Law of the Sea (UNCLOS III), which took place between 1973 and 1982. UNCLOS replaced the four treaties of the 1958 “Convention on the High Seas” and came into force in 1994. (UN 1998)

The convention introduced several provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones (EEZs), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

The Convention has created three new institutions on the international scene :

- the International Tribunal for the Law of the Sea,
- the International Seabed Authority,
- the Commission on the Limits of the Continental Shelf.

The ongoing South China Sea (SCS) disputes involve both island and maritime claims by several sovereign states within the region, namely Brunei, the People's Republic of China (PRC), Taiwan (Republic of China/ROC), Indonesia, Malaysia, the Philippines, and Vietnam. All of these nations have ratified UNCLOS. It is important to note that the USA accepts UNCLOS as international law, but is the only nation involved in this dispute that has not ratified the provisions of the convention..



The War Over Natural Resources

The U.S. Energy Information Agency estimates that the SCS holds about 190 trillion cubic feet of natural gas and 11 billion barrels of oil in proved and probable reserves, most of which lie along the margins of the SCS rather than under disputed islets and reefs. The U.S. Geological Survey in 2012 estimated that there could be another 160 trillion cubic feet of natural gas and 12 billion barrels of oil undiscovered in the SCS. Beijing's estimates for hydrocarbon resources under the sea are considerably higher but still modest compared to China's overall demand—the country's oil consumption in 2018 is expected to top 12.8 million barrels per day. (CSIS n.d.)

Competing claims in the oil and the gas-rich SCS have also stifled the development and exploitation of these resources. To break from this, the Philippines and China agreed to a Memorandum of Understanding (MoU) on Cooperation on Oil and Gas Development in November 2018, where joint-use of, and not ownership over assets underlies the agreement. In the past, aggressive Chinese naval patrols deterred Manila from exploring gas deposits in disputed waters, like the Reed Bank, such that this type of agreement may allow for the claimant states to jointly develop the natural gas in the offshore area. The mechanism of joint agreements is not new, with Malaysia and Vietnam having forged a similar mechanism in 1992, while Malaysia and Thailand reached understandings in 1979 and 1990 over the development of gas-rich disputed waters. (Trajano 2019)

The other big conflict in the SCS and perhaps the largest source of loss of life and damage to property in the SCS is due to conflicts over rights to fish. Before the territorial disputes, fishermen from involved countries tended to enter each other's controlled islands and (EEZ) leading to conflicts with the authorities that controlled the areas as they were unaware of the exact borders. As well, due to the depletion of the fishing resources in their maritime areas, they were forced to fish in the neighbouring countries' areas.

There is also well-documented issues of overfishing and rapid depletion of maritime biodiversity as fishermen struggle to keep up with the increasing demand for the growing population of their respective countries.

The SCS lacks the multilateral Regional Fisheries Management Organizations (RFMO) that successfully manage fisheries elsewhere. And unlike the East China Sea and the Yellow Sea, there are no bilateral or multilateral fishing agreements in the SCS. Furthermore, because the region's EEZs remain hotly contested, UNCLOS fails to provide adequate governance. Currently, China is the sole authority that has set forms of fishing restrictions to ensure sustainable fishing practices.

China's numerous efforts at regional governance include ongoing seasonal SCS fishing bans (1999); the administrative upgrade of Sansha city from a county to a prefecture-level city (2012); the complete overhaul of China's maritime bureaucracies into a new China State Oceanic Administration (2013); Hainan province's law requiring foreign fishermen to seek State Council approval before entering Chinese-claimed SCS waters (2013); and most recently, China's massive island-building projects in the Spratly Islands (2013-2015). (Greer 2016)

China perceives its access to disputed fisheries as declining. Common grievances cited include that China's fishing bans and sustainability efforts are commonly ignored by foreigners, leading to complaints that Chinese restrictions allow foreigners free access to fish without Chinese competition. Fishermen from China, Vietnam, the Philippines, and Indonesia all claim instances of violent interference and harassment from rival fishermen and coast guards of competing nations. This has led China and Vietnam to allow the formation of large militia fishing fleets which routinely clash and standoff against one another over contested fishing spots.

China's Perspective: Nationalism And Historic Claims

The disputes in the SCS 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. The ambiguities surrounding where territorial lines would be drawn regarding the islands of the SCS were not wholly addressed by the San Francisco Treaty (1951) at the end 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. (Matsumara 2013)

Before the peace treaty was signed between China and Japan via the UN, the then Chinese nationalist government (The current Republic of China in Taiwan) took the initiative to demark a U-shaped border on their national map which encompassed around 90% of the SCS. This U-shaped line was declared in 1947 and is now known as the nine-dash line. This declaration asserted the whole of the islands of the SCS 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. (Beech 2016)

The nine-dash line has been a key part of the justification of Chinese action throughout the region and has been routinely criticized by western media as an exaggerated representation of Chinese authority. Still, the nine-dash line has become linked to Chinese national identity and is routinely used domestically as a nationalistic rallying cry despite the international chagrin it usually warrants.



Figure: Original Submission of The Nine-Dash Line to UN by PRC (Source : Wikimedia)

This narrative about Zengmu Ansha (James Shoal) as China's "southernmost point" is not some new propaganda from the CCP. James Shoal is a small bank in the SCS, lying under the water at a depth of 22 meters (72 feet). It is located about 80 km (50 mi) from the Malaysian coast and about 1,800 km from the Chinese mainland. China's first official SCS map with interrupted lines was published in 1948 (though drawn in 1947 for internal purposes) by the Republic of China's (ROC) Kuomintang (KMT) government. There are also documents reporting that a map created by cartographer Bai Meichu in 1936 used solid lines to encircle the Paracel Islands, the Macclesfield Bank, and the Spratly Islands. This 1936 map marked Zengmu Ansha in the Spratly Islands as China's southernmost boundary in the SCS. Since the 1940s, generations of Chinese have learned from their geography textbooks that Zengmu Ansha is the southernmost point of China's territory (Wang 2014). It is important to note however that the Republic of China did not survey the sea before it published the map of the 'U-shaped line' but simply copied existing British maps. (Hayton, China's false memory syndrome 2014)

An arbitration case was brought to the UN by the Republic of the Philippines against the People's Republic of China (PRC) concerning certain issues in the SCS, including the nine-dash line introduced by the Republic of China (Taiwan). On 12 July 2016, the UN special arbitral tribunal ruled in favour of the Philippines on most of its submissions. The tribunal also concluded that China's historic rights claims over the maritime areas (as opposed to land territories and territorial waters) inside the "nine-dash line" have no lawful effect if they exceed what's entitled to under UNCLOS. (Permanent Court of Arbitration 2016)



Figure: Fiery cross reef is a rock located in the Spratly islands. China first took possession of the feature in 1988. Since then it has been terraformed into a fully functional airbase. (Source: CSIS-AMTI)

China has rejected the ruling, as has Taiwan. There is no indication of China backing down from its claims in the SCS. The current conservative and nationalistic people of China would not allow such compromise from their government. Significant investment has also been made to make the islands and features of SCS habitable and defensible. This kind of militarization and development doesn't seem to be slowing down, and there are all indications of China continuing to consolidate its grasp of the SCS by military might.

ASEAN PERSPECTIVE: BETWEEN A ROCK AND A HARD PLACE

A key factor to consider in the ongoing dispute is that several members of ASEAN also have historic claims to portions of the SCS.

SCS territorial claims

Country	SCS	Spratly Islands	Paracel Islands	Gulf of Thailand
Brunei	UNCLOS	no formal claim	no	-
Cambodia	-	-	-	UNCLOS
China	all*	all	all	-
Indonesia	UNCLOS	no	no	-
Malaysia	UNCLOS	3 islands	no	UNCLOS
Philippines	significant portions	8 islands	no	-
Taiwan	all*	all	all	-
Thailand	-	-	-	UNCLOS
Vietnam	all*	all	all	UNCLOS

Source: U.S. Energy Information Administration

In the face of escalating Chinese encroachment of SCS, lawfare has been the primary response of ASEAN members. Since December 2019, Malaysia, Vietnam, Indonesia and the Philippines have all submitted note verbales to the UN rejecting China's nine-dash line and its claims to "historic rights" in the SCS to be inconsistent with UNCLOS. (Storey 2020a).

It is important to note that ASEAN claimant members do not fully obey the awards entitled by the 2016 arbitration. The tribunal determined that all land features in the Spratly cannot generate Exclusive Economic Zones (EEZ) (The Republic of Philippines [PH] v. The People's Republic of China [PRC], 2016). This means they are rocks or low tide elevations. If the land features are low tide elevations, they are not eligible to generate sovereignty and thus belong to the states whose EEZs they are located within. Vietnam occupies 27 land features in Spratly. However, although Vietnam has been pressuring China to obey the award, so far, Vietnam has not conceded its occupied low tide elevations within the Philippine or Malaysian EEZs. (Hu 2021).

Vietnam also disputes Chinese ownership of the Paracel Islands, a group of small but strategically important features that lie between the Vietnamese coast and China's Hainan Island. The islands have long been claimed by Vietnam, but Chinese forces first occupied features in the Paracels in 1955 in the wake of Vietnam's war for independence against France. In 1974 China fought a short sea battle against South Vietnamese forces to take full control over the last remaining Vietnamese positions. Since then, China has consolidated control over the islands, built up a military garrison, and harassed or arrested Vietnamese fishermen who try to continue fishing there. (Dutton 2020)

The Philippines have a military alliance with the United States and also has the strongest claim to their portion of the SCS as awarded by the 2016 arbitration. However, the current Philippine President Duterte at the time of writing has taken a pro-China stance and chosen to not push the claims. A decision that has caused outrage among the Filipino people. In his State of the Nation Address in July 2020, he said the Philippines could not afford to go to war with China to defend its claims. A week later, he banned the Philippine Navy from conducting combined exercises in Philippine waters with its US counterpart. (Storey 2020b)

Following its long-standing policy, Indonesia reiterated its rejection of the nine-dash line and China's offer to negotiate their 'overlapping' claims near the Natuna Islands. In July, the Indonesian armed forces conducted a major naval and air exercise off the Natunas in a show of resolve to defend the country's maritime rights. (Storey 2020b)

Malaysia has taken a characteristically low-key approach to the rising tensions. Kuala Lumpur has called on all parties to cooperate to ensure peace and stability and warned of the dangers of accidental incidents caused by the presence of foreign warships. (Storey 2020b)

Based on the shared interests of its members, ASEAN has formed a common policy to manage SCS disputes. The common policy is the Code of Conduct for the SCS (COC), which is the only dispute management mechanism that allows ASEAN members to reach a consensus. Even Cambodia, which is recognised as China's ASEAN ally, has endorsed the COC.

Negotiators from ASEAN and China have so far produced a "Declaration" on a code of conduct (in 2002), "Guidelines on the Implementation of the Declaration" (in 2011), a "Framework" for a code (in 2017), and a "Single Draft Negotiating Text" (in 2018), but the various parties have not managed to come to an understanding and form a final binding code of conduct. (Hayton 2021)

Meanwhile, from 2013 to 2016, ASEAN's joint communiqués for the AMMs were increasingly hardline regarding the SCS disputes despite China's opposition. For instance, while the 2013 communiqué was generally positive (ASEAN 2013), the 2014 communiqué expressed a 'serious concern over recent developments which had increased tension in the SCS' (ASEAN 2014). This hinted at China's deployment of an oil rig in the waters that China claimed to be an overlapping area between the Paracel Islands and Vietnam's EEZs but over which Vietnam claimed exclusive EEZ rights. Compared to the 2014 joint communiqué, the 2015 version was more specific in noting the events that caused regional tensions. It expressed 'serious concerns...on the land reclamations in the SCS, which...may undermine peace...in the SCS' (ASEAN 2015). The 2016 communiqué also noted a 'serious concern' over land reclamations in the SCS (ASEAN 2016).

Even though multiple conflicting interests are preventing ASEAN nations from truly coming to a proper multilateral solution to the problem, they are still united in the shared goal of ensuring that the SCS doesn't embroil into a battleground between rival superpowers China and the USA. To this end, they are all open to international arbitrations and allowing the US navy to conduct operations in contested waters, while at the same time accepting bilateral negotiations and trade deals with China to come to mutual terms about disputes.



Figure : Overlapping claims among asean members and China (Surce: Wikimedia)

Usa Perspective: Deterrence Theory



Figure : US Trade route going through the South China Sea (Source: Bloomberg)

Official statements from The United States makes it clear that their primary motivation for action in the SCS is in ensuring freedom of navigation and securing sea lines of communication (SLOCs). The US has expressed support for an agreement on a binding code of conduct and other confidence-building measures. From the US perspective, China's claims threaten SLOCs, which are important maritime passages that facilitate trade and the movement of naval forces. (CFR n.d.)

The SCS is strategically important to the US as it allows them access to trade with the middle east through the Strait of Malacca. An estimated \$3.37 trillion total international trade along with 40 Percent of global liquefied natural gas trade transit through the SCS. The US cannot afford to lose access to such a vital trade route. The US claims that if China establishes control over the SCS, it could declare and enforce military exclusion zones, which would disrupt or obstruct international lines of communication and crucial supply chains.

The United States has a role in preventing military escalation resulting from the territorial dispute. Washington's defence treaty with Manila could draw the United States into a potential China-Philippines conflict over the substantial natural gas deposits or lucrative fishing grounds in disputed territory.

Many partners and allies of the United States, such as Japan and South Korea, rely on unfettered access to the SCS to trade with the outside world. A minor military clash between China and a claimant could escalate to a larger conflict involving multiple claimants and likely

the United States if one of its military allies, like the Philippines, is involved. Furthermore, preserving freedom of navigation in the SCS and upholding the norm of peaceful resolution of conflict is central to the United States' ability to maintain its position as a Pacific power and its credibility as the security partner of choice to many countries in the region. (CFR 2020)

To challenge the nine-dash line claim by China and ensure freedom of navigation on SCS waters, the US has adopted a policy of

conducting Freedom of Navigation Operations (FONOPS) where navy combat vessels are sent across contested regions where china claims sovereignty. (U.S. Department of State 2021)

The U.S. claims that its military's presence in these waters protects trade, deters aggression, and maintains peace and stability in the region. Conceding to China's position on its maritime rights in the SCS would not only put regional prosperity and security at risk but could also set a precedent that could inspire other states to exercise restrictive control over other international waters.

In order to provide more diplomatic and military pressure on China, the US and its allies have erected multiple minilateral security pacts such as the quadrilateral Security Dialogue (QUAD) and between Japan, Australia, India, and the US; and the more recent AUKUS trilateral security pact between Australia, UK and US. Through these types of pacts, the US and Japan claim to bring about proper democracy in the Southeast-Asia region. However, the exclusion of China from all such pacts also indicates indirectly that this is also a means to counter growing Chinese power and influence in the region. (Ching 2008)

From the point of view of ASEAN countries, this kind of buildup of military pressure from the west is a double-edged sword. On one hand, south-east Asian nations with military ties to the US is entirely dependent on the presence of the US military to deter hostility from China and allow them a seat at the negotiating table. On the other hand, this kind of foreign policy is being identified as similar to cold-war era buffer state formation such as NATO. Southeast Asian nations have been far from eager enlistees to the U.S. efforts to build a regional anti-China coalition. While they have points of tension with China – from maritime and territorial disputes to questions relating to Beijing's ties to overseas Chinese diaspora communities – they also benefit greatly from trade with Beijing and foreign direct investment from Chinese firms. (Strangio 2021)

The biggest fear of ASEAN nations is being sidelined from regional policy-making and security dialogue and fall victim to the outcome of another cold war between China and the US. ASEAN nations have the imperative to maintain the status quo and defend their cumulative bargaining power with both superpowers. However, this kind of diplomatic non-partisanship may not be in the US interest. Foreign policy experts view AUKUS as at least in part an expression of American frustration with the region's perceived strategic fence-sitting.

Relevance In The Context Of Bangladesh

This issue brief has hopefully managed to contextualise the three disparate vantage points in the issue and highlight the motivating factors behind recent actions in the SCS. The two superpowers seem to be in a collision course of military escalation while the smaller ASEAN nations are trying their best to play both sides against each other and maintain a semblance of agency in their native waters. Policymakers and diplomats in Bangladesh have much to learn from the events that have transpired and will transpire in the coming days. After all, the Bay of Bengal is not too far from the troubled waters of the South China Sea. Economically Bangladesh has stakes riding on both the powers. Bangladesh's main export market is to the west, and its main import market is to the east. Militarily, Bangladesh is a blank slate with no defensive alliance with any party. If military confrontations become unavoidable, Bangladesh might be forced to pick a side and potentially lost access to either the big export or import routes. However, if the cards are played right, Bangladesh may yet manage to maintain neutrality while simultaneously sliding under the crossfire between two giants.

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