

THE HISTORICAL, GEOPOLITICAL, AND LEGAL BACKGROUND OF THE SOUTH CHINA SEA DISPUTE

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Abstract

The South China Sea has been and will always be part of one of the most vital sea routes in the world. Its strategic location is important not only for regional states but also for extra-regional maritime states. This unanimity disregards the fact that the South China Sea is an area of high tension since there are many disputes among claimant states. Many factors contributed to the creation of the South China Sea dispute. Therefore, in this article, the author will succinctly discuss the historical, geopolitical, and legal background of the South China Sea dispute. One main conclusion that can be drawn is that the dispute is a result of a complex combination of many factors that might be impossible to resolve in the near future. Instead, it seems that states should learn to live with the dispute for a long period of time.

Abstrak

Laut Cina Selatan telah dan akan selalu menjadi bagian dari salah satu jalur laut paling penting di dunia. Lokasinya yang strategis penting tidak hanya bagi negara-negara regional tetapi juga bagi negara-negara maritim di luar kawasan. Kenyataan ini mengabaikan fakta bahwa Laut Cina Selatan merupakan wilayah dengan ketegangan tinggi karena banyak terjadi perselisihan antar negara pengklaim. Banyak faktor yang berkontribusi terhadap terciptanya sengketa Laut Cina Selatan. Oleh karena itu, dalam artikel ini penulis akan membahas secara ringkas latar belakang sejarah, geopolitik, dan hukum sengketa Laut Cina Selatan. Salah satu kesimpulan utama yang dapat diambil adalah bahwa perselisihan tersebut merupakan hasil dari kombinasi kompleks dari banyak faktor yang mungkin mustahil untuk diselesaikan dalam beberapa tahun ke depan. Sebaliknya, tampaknya negara-negara di Kawasan harus belajar untuk hidup dalam perselisihan ini dalam jangka waktu yang lama.

Keywords: South China Sea, South China Sea Geopolitics, South China Sea History, South China Sea Legal Background, South China Sea Dispute.

Methodology: qualitative descriptive

A. INTRODUCTION

The high tension in the Middle East lately threatens the global shipping lane. The Houthi attacks caused shipping companies to re-route their vessels to avoid the Red Sea.¹ The re-routing causes an increase in operational costs and interrupts the global supply chain. The ongoing war between Russia and Ukraine disturbs global trade. The closure of the Sea of Azov and some ports in the Black Sea by Russia disrupts the supply chain of many goods. The world food crisis was partly or mainly caused by the Russia-Ukraine War. The closing of the Sea of Azov and some ports in the Black Sea causes starvation in many countries.² Those events prove the importance of maintaining today's relatively peaceful situation in the South China Sea despite the existence of the ongoing dispute. Once war at sea breaks out in the South China Sea, it is not only regional states that will experience the hardship, but also all states in the world. Therefore, it is important to discuss the background of the dispute itself from historical, geopolitical, and legal perspectives. This article has the function of succinctly discussing all those factors that contributed to the creation of the dispute. The author will elaborate on all those factors in a descriptive manner. One main conclusion that can be drawn is that the dispute is a result of a complex combination of many factors that might be impossible to resolve in the near future. Instead, it seems that states should learn to live with the dispute for a long period of time.

B. HISTORICAL BACKGROUND

Winston Churchill once said, "history is always written by the victors."³ It is important to understand from this quote that all South China Sea claimant states tend to write history to suit their own interests. Each of the claimant states surely has their own historical narratives that fit with their claims. This section will look at the historical background in general and then show in brief each of the claimant states' historical narratives.

1. Historical background of the South China Sea in general

a.. Ancient History of the South China Sea

¹ For an example of the Houthi attack, see Reporter, G.S., 2024. Yemen's Houthi rebels seize cargo ship in Red Sea and call Israeli vessels 'legitimate targets' [WWW Document]. the Guardian. URL

<https://www.theguardian.com/world/2023/nov/20/yemen-houthi-rebels-seize-cargo-ship-galaxy-leader-red-sea-israel>

² See Ochab, Ewelina U, "What Putin's War In Ukraine Has To Do With Starvation In Africa," *Forbes* (July 31, 2022) <https://www.forbes.com/sites/ewelinaochab/2022/07/31/what-putins-war-in-ukraine-has-to-do-with-starvation-in-africa/?sh=1f6896e42636> . Also see Peterside, Z.B., Impacts of the Russian–Ukraine conflict on Food Security in Africa. Also see von Cramon-Taubadel, S., 2022. Russia's invasion of Ukraine—implications for grain markets and food security. *German journal of agricultural economics*, 71(3).

³ Matthew Phelan, "History Is Written by the Victors", *Slate Magazine* (27 November 2019). <https://slate.com/culture/2019/11/history-is-written-by-the-victors-quote-origin.html>>.

Historically, the South China Sea has been an important sea area for many nations. Several old kingdoms once dominated the South China Sea. Based on many ancient manuscripts, Chinese dynasties used the South China Sea for their trade routes and fishing.⁴ However, it was not until the 11th century that the Chinese could make ocean-going ships.⁵ One of the most prominent ones was the sailing of the Cheng He fleet that took place in the 14th century.⁶ The Champa Kingdom, which is now located in modern-day Vietnam (though Champanese are not ethnically related to Vietnamese), once dominated the South China Sea.⁷ Even at that time, the South China Sea was called the Champa Sea.⁸ Various kingdoms in Southeast Asia roam the region and dominate the southern part of the South China Sea.⁹

b. The arrival of European Power and the roam of Chinese Pirates

In the 16th century, Portuguese came to the region.¹⁰ The South China Sea region had been included in several ancient charts since this time.¹¹ The name Paracel is thought to be of Portuguese origin.¹² Then Spain came to the region and colonized today's Philippines. In this era, Portugal and Spain were at their peaks.¹³ They rivalled each other to become the best trader and the best colonial power.¹⁴ Both states traded with nations in the region and started to build their strongholds.¹⁵

Then, the British, French, and the Dutch came to the region and slowly colonized many territories.¹⁶ The British came to survey the guano.¹⁷ It then occupied Amboina Cay and

⁴ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. 32

⁵ Chinese ships in the past were quite small and not ocean-going. Chinese ships at this time were inferior compared to Southeast Asian ships. See: Flecker, Michael. "Early voyaging in the South China Sea: Implications on territorial claims." *NSC [Nalanda-Sriwijaya Centre] Working Paper 19* (2015). https://www.iseas.edu.sg/images/pdf/nscwps19_early_voyaging_south_china_sea_implications_territorial_claims.pdf 20-32

⁶ Shen, J., 2002. China's sovereignty over the South China Sea islands: A historical perspective. *Chinese J. Int'l L.*, 1, p.112.

⁷ Bray, Adam. "The Cham: Descendants of Ancient Rulers of South China Sea Watch Maritime Dispute From Sidelines." *National Geographic* (2014). <https://www.nationalgeographic.com/science/article/140616-south-china-sea-vietnam-china-cambodia-champa>

⁸ Kassim, Yang Razali. "South China Sea: time to change the name." *RSIS Commentary 102* (2015). <https://www.rsis.edu.sg/wp-content/uploads/2015/04/CO15102.pdf>

⁹ Some of those kingdoms are Srivijaya, Funan, Ayutthaya, Angkor, and Melaca. See: Anton, M., Agus, S. and Achluudin, I., 2021. Indonesian Defense Diplomacy in the Resolution of the South China Sea Conflict. *Journal of Political Science and International Relations*, 4(2), p.34.

¹⁰ Souza, G.B., 2004. *The survival of empire: Portuguese trade and society in China and the south China sea 1630-1754*. Cambridge University Press.

¹¹ https://www.raremaps.com/gallery/detail/45822/Asiae_Novissima_Tabula/De%20Jode.html

¹² This is because the name Paracel is used on Portuguese map of 16th century. From etymology, "Ilhas do Pracel" was used to describe sandbanks, or low-lying islets. See 'Paracel Islands - the World Factbook', www.cia.gov <<https://www.cia.gov/the-world-factbook/countries/paracel-islands/>>.

¹³ Both states signed the treaty of Tordesillas, which divided world into two parts, with each state controlled half trade route of the world. Davies, Arthur. "Columbus divides the world." *The Geographical Journal* 133, no. 3 (1967): 337-344.

¹⁴ Boxer, C.R., 2022. Portuguese and Spanish Projects for the Conquest of South East Asia, 1580–1600. In *South East Asia* (pp. 7-42). Routledge.

¹⁵ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. 32

¹⁶ The Dutch came and colonized modern day Indonesia and it also once colonized Taiwan. The Dutch then was repelled from Taiwan by Koxinga, a pirate who took allegiance with Ming Dynasty of China. The British colonized modern-day Malaysia and Singapore. The British found several reefs in Spratly Islands, but only obsessed with the guano. For the British interest for

Spratly Island.¹⁸ Meanwhile, France possessed paracels from its colony, Annam (modern-day Vietnam). France, which had a stronghold in the Annam Islands, began to claim some reefs in the Paracel Islands in the early twentieth century. Following that, the French claimed the Spratlys. The Dutch even though they never claimed any of the islands in the South China Sea, were quite active in the region at that time. At this time, the South China Sea played a key role as a trading route. It was the time when *mare liberum* was recognized as a legal principle governing the ocean.¹⁹ None of the colonial powers at that time, even with their mighty powers, ever claimed the South China Sea.

There was also a time when Chinese junks plied the South China Sea between the 17th and 19th centuries. This was a period of Chinese pirates.²⁰ The pirates effectively controlled the South China Sea. Ships paid some money to the pirates to ensure their safe passage. However, they had no ties to the Chinese government. Those pirates, even though many of them were Chinese, were criminals of the Chinese Empire.²¹ Several times those pirates were involved in sea battles against the Chinese Empire's navy and other European navies.²²

c. Pre-World War II

During pre-World War II, the South China Sea was mainly contested by China, Japan, and France.²³ Private Japanese fertiliser industries claimed several South China Sea islands, including the Paracels and the Spratlys.²⁴ However, the Japanese government did not claim sovereignty since it arguably knew that those islands were likely already claimed by other

Spratly Island and Amboyna Cay, see Tønnesson, S., 2006. The South China Sea in the age of European decline. *Modern Asian Studies*, 40(1), pp.2-3.

¹⁷ "Spratly (or Storm) Island and Amboyna Cay Island, Borneo: Establishment of British Claim to Sovereignty," National Archives of the United Kingdom, date range: January 1, 1931-December 31, 1933, Reference: TS

¹⁸ Cheng-Chwee, K.U.I.K., LAI, Y.M. and Abdullah, A.A., 2021. Pulau Layang-Layang in Malaysia's South China Sea Policy: Sovereignty Meets Geopolitical Reality amid China-US Rivalry. *International Journal of China Studies*, pp.192-193.

¹⁹ It was the time after the Dutch captured Santa Catarina of Portuguese and Hugo Grotius wrote its phenomenal chapter of *mare liberum*. See Van Ittersum, M.J., 2003. Hugo Grotius in Context: Van Heemskerck's Capture of the "Santa Catarina" and its Justification in "De Jure Praedae"(1604—1606). *Asian Journal of Social Science*, pp.511-548.

²⁰ some of them are Zheng Zhilong in 17th century who cooperated with the Dutch but then confronted them. He then cooperated with Ming Dynasty. One of the most prominent is the "female pirate." See Andrade, T., 2004. The company's Chinese pirates: How the Dutch East India Company tried to lead a coalition of pirates to war against China, 1621-1662. *Journal of World History*, pp.415-444.

²¹ Many of the pirates had different interest with the Chinese government. Those pirates also diverged in terms of ethnicity. Regarding piracy in the region in that era, see Antony, R.J., 2013. Turbulent waters: Sea raiding in early modern South East Asia. *The Mariner's Mirror*, 99(1), pp.23-38.

²² Andrade, T., 2004. The company's Chinese pirates: How the Dutch East India Company tried to lead a coalition of pirates to war against China, 1621-1662. *Journal of World History*, pp.415-444.

²³ China firstly claimed the Paracels, then the claim moved south to the Spratlys as well. France claimed the Paracels as a succession of Annam (Vietnam). Japan did not claim sovereignty at first, but it occupied the South China Sea later on.

²⁴ Even at the beginning, Japan fertilizer company ever claimed Pratas Island and named it Nishizawa Reefs. See Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), pp.117-142. In the case of the Spratlys, Japanese government had different attitude. It found out that the Spratlys were relatively free from any claim, whether from China, or the US (which occupied the Philippines), except two features in the Spratlys: Spratly Island and Amboyna Cay were found by the British. See: Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), p. 129.

states.²⁵ The Japanese government also saw the importance of the South China Sea as a military base.²⁶

Japan emerged as a global power with an ambition to become a hegemon in the region.²⁷ In order to expand its economy, Japan looked to the region, including the South China Sea.²⁸ It sent its troops to Pratas Island in 1937 to secure Japan's sea lines of communication.²⁹ Meanwhile, France re-erected a stone marker at Itu Aba in 1938.³⁰ In December 1938, Japan started its move towards the Paracels and the Spratlys, despite protest from France. It built a submarine base at Itu Aba and placed military personnel on Spratly Island.³¹ France insisted on bringing the matter before an arbitration tribunal, but it was rejected by Japan.³² Japan completed its invasion of the South China Sea in March 1939 and administered it under Taiwan.³³ Despite protests from several states, Japan claimed that those islands were *terra nullius*.³⁴

d. After World War II

Soon after World War II, the Japanese must return all of the territories gained through expansionism.³⁵ In 1951, Japan renounced its claim to the Spratlys and Paracels under the San Francisco Treaty.³⁶ However, it was unclear which states would be granted possession of the Spratlys and Paracels. During San Francisco peace conference, there was a disagreement on the ownership of the Paracels and the Spratlys.³⁷

²⁵ Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), pp.128.

²⁶ Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), pp.131-133.

²⁷ By using a slogan of the greater East Asia Co-Prosperity. See Fisher, C.A., 1950. The Expansion of Japan: A Study in Oriental Geopolitics: Part II. The Greater East Asia Co-Prosperity Sphere. *The Geographical Journal*, 115(4/6), pp.179-193.

²⁸ Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), pp.131-132.

²⁹ Granados, U 2008, 'JAPANESE EXPANSION INTO THE SOUTH CHINA SEA: COLONIZATION AND CONFLICT, 1902—1939', *Journal of Asian history.*, vol. 42, no. 2, pp. 135.

³⁰ Granados, U 2008, 'JAPANESE EXPANSION INTO THE SOUTH CHINA SEA: COLONIZATION AND CONFLICT, 1902—1939', *Journal of Asian history.*, vol. 42, no. 2, pp. 136.

³¹ Storey, Ian. "Japan's maritime security interests in Southeast Asia and the South China Sea dispute." *Political science* 65, no. 2 (2013): 143. Also see: Freeman, C. "Diplomacy on the Rocks: China and Other Claimants in the South China Sea, <https://mepc.org/speeches/diplomacy-rocks-china-and-other-claimants-south-china-sea>

³² Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), p.137.

³³ Granados, U., 2008. Japanese expansion into the south china sea: colonization and conflict, 1902—1939. *Journal of Asian History*, 42(2), pp.137.

³⁴ It is important to note that this was an era when occupation was a rightful way to get a territory. Before the forming of the UN, war was legal, including for occupying other territories.

³⁵ All began with Cairo declaration in 1943.

³⁶ San Francisco Peace Treaty is a treaty to end Japanese occupation in many territories. It concluded in 1951, and then came into force in 1952. see Article 2 (f), 'Treaty of San Francisco' (8 September 1951), available at:

<http://www.taiwandocuments.org/sanfrancisco01.htm>

³⁷ Chen, Hurng Yu. "Territorial Disputes in the South China Sea under the San Francisco Peace Treaty." *Issues & Studies* 50, no. 3 (2014). https://www.researchgate.net/profile/Hurng-Yu-Chen/publication/313566225_Territorial_Disputes_

In 1946, Tomas Cloma, a Filipino, independently claimed his discovery of the Spratlys.³⁸ He declared it a freedom land.³⁹ Ferdinand Marcos then put him in jail in order for Cloma to give the land to the Philippines. After bought the freedom land from Cloma with one peso,⁴⁰ the Philippines acquired the Spratly Islands for its territory under the name Kalayaan Island Group (KIG).⁴¹

2. Historical narratives of claimant states

a. China

The narrative is that China owns the South China Sea from the beginning and has always maintained its possessions throughout Chinese history by all dynasties that ruled China, according to many official letters, statements, and how the Chinese government educates its citizens.⁴² China claims that it is the oldest continuous state in the world.⁴³ As a result, its sovereignty is maintained, including in the South China Sea.⁴⁴ It all began as early as the time of the Han Dynasty, from 206 BC to 220 AD.⁴⁵ Today's Chinese government always maintains the position that the South China Sea has always been part of China from time immemorial. Many Chinese historical relics were found, including a relic that was found in the South China Sea: a tablet that functioned as a customs' pass.⁴⁶ It means that ships would need to get permission to pass through the South China Sea.⁴⁷ Chinese people were the first ones to find and occupy the South China Sea Islands.⁴⁸ Chinese people were also the ones

in_the_South_China_Sea_under_the_San_Francisco_Peace_Treaty/links/589e747daca272046aa93d77/Territorial-Disputes-in-the-South-China-Sea-under-the-San-Francisco-Peace-Treaty.pdf 173

³⁸ Granados, U., 2009. Ocean frontier expansion and the Kalayaan Islands Group claim: Philippines' postwar pragmatism in the South China Sea. *International Relations of the Asia-Pacific*, 9(2), pp.267-294.

³⁹ De Castro, R.C., 2014. The Philippines in the South China Sea dispute. *Australian Journal of Maritime and Ocean Affairs*, 1(3), p.7.

⁴⁰ CHIN, L. and JOANES, J., 2015. Disputes and Overlapping Claims over Spratly Islands, p.9.

⁴¹ Velasco, M.A.M., 2014. Philippines-China Relations: The Case of South China Sea (Spratly Islands) Claims. *Asia Pacific Journal of Multidisciplinary Research*, 2(6), p.80.

⁴² Some of them are Chinese statements before and after 2016 arbitration ruling, some stories and documentaries in Chinese government owned media, such as CCTV.

⁴³ Chinese government never disbanded. Even though it had many encroachments during century of humiliation, but different from many other Asian countries which were colonized, China has never been colonized by other nation. As a comparison, Indonesia for example, had not yet exist before the Dutch colonialism. The ancient Indonesia consisted of various kingdoms scattered across Malay Archipelago. Ancient today's Vietnam, Champa Kingdom, even ethnically different from Viet people. While Champanese were ethnically Austronesian with Hinduism culture, today's Vietnam majority is Viet people who get many influences from Chinese culture.

⁴⁴ The sovereignty continues based on the succession of a state.

⁴⁵ There are many contradictions about which nation found islands in the South China Sea. There is an analysis that said actually Chinese sailors in the past were not that brave enough to sail far from shore. When they sailed, they just used routes along Vietnam shorelines. Other kingdoms in the region, on the other hand, are well known for their bravery and they were truly seafaring nations. Champa Kingdom and Sriwijaya Kingdom were among those which roam the South China Sea.

⁴⁶ 'South China Sea: The Underwater Relics Unveils a Hidden History', [www.youtube.com](http://www.youtube.com/watch?v=h6KUZbeUo98)

⁴⁷ 'South China Sea: The Underwater Relics Unveils a Hidden History', www.youtube.com <>.

⁴⁸ There are also some research and analysis that prove otherwise. Even it is founded that Chinese did not know really well where the exact locations of islands in the South China Sea were. When France claimed Spratly islands in 1933, China protested because it thought that Spratlys was Paracels. China eventually dropped the diplomatic note to protest France acquisition of Spratlys. China also did not have Chinese name for islands and shoals in the South China Sea. Many of names

that roamed the South China Sea. Chinese fishermen have fished in this area since ancient times. The story and history of various Chinese pirates in this area is also proof of this narrative.

China believes in the narrative of a century of humiliation when China was so weak that many strong states encroached on its sovereignty.⁴⁹ It believes that many of its territories were lost during this time.⁵⁰ Some of those territories have already been given back to China, and some others have not yet been given back to China.⁵¹ The South China Sea area is among those territories that have not yet been fully under Chinese control.⁵²

The Chinese government uses a cocktail of history and law in the historic rights and the Four Sha of Nansha Qundao narratives.⁵³ The claim is long and continuous, and it predates UNCLOS 1982. The historic Four Sha means four island groups or archipelagos, which are Dong Sha Qundao, Xi Sha Qundao, Zhong Sha Qundao, and Nan Sha Qundao.⁵⁴ Dong Sha Qundao means East Sand Islands, which encompass Pratas Island, South Vereker Bank, and North Vereker Bank.⁵⁵ The term Xi Sha Qundao refers to the West Sand Islands, which include the entire Paracel Islands.⁵⁶ Zhong Sha Qundao means Middle Sand Islands, which encompass Macclesfield Bank, Helen Shoal, St. Esprit Shoal, Constitution Shoal, and

of islands directly translated to Chinese from English. Early Chinese cartographers also only copied English map into Chinese map. However, Chinese cartographers seemed do not know the difference between islands and shoals. As a result, shoals were depicted as islands, including James Shoal, Macclesfield Bank, and Scarborough Shoal. See Hayton, B., 2019. The modern origins of China's South China Sea claims: Maps, misunderstandings, and the maritime geobody. *Modern China*, 45(2), pp.127-170.

⁴⁹ See Kaufman, A.A., 2010. The "century of humiliation," then and now: Chinese perceptions of the international order. *Pacific Focus*, 25(1), pp.1-33.

⁵⁰ Including Tibet, Manchuria, Mongolia, Taiwan, and Pescadores. Even one Chinese map shows all Chinese territories with title "Old National Boundary" including vassal states from ancient China as far as today's Malaysia. This is because ancient sultan ever went to China to offer a tribute.

⁵¹ Hong Kong and Macau are two examples of Chinese territories which were given back by other states to China. However, there are many other territories which are still beyond the control of Chinese government, such as Tibet, Taiwan, and the South China Sea.

⁵² Some parts of the South China Sea have already been in Chinese effective control, including Paracel Islands and some reefs in Spratly Islands. Some other parts of the South China Sea are under effective control of Republic of China (ROC), including Pratas Islands, and Itu Aba. Meanwhile other parts verily beyond the control of China.

⁵³ Based on many official letters, it can be concluded that China has sovereignty of all four archipelagos in the South China Sea, and it has historic rights of the relevant waters. This is actually beyond the comprehension of UNCLOS 1982. China even uses alien terms such as "relevant waters" even though it is a party of UNCLOS 1982 and know really well terms in UNCLOS 1982.

⁵⁴ *United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea* (United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2022) <>. <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> 11

⁵⁵ *United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea* (United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2022) <>. <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> 11

⁵⁶ *United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea* (United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2022) <>. <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> 11

Scarborough Shoal.⁵⁷ Nan Sha Qundao translates to "South Sand Islands," which includes the entire Spratly Islands group.⁵⁸ Those islands are surrounded by waters that are part of China's historic rights.

b.. Vietnam

Same as China, which claims the South China Sea from the beginning of time, Vietnam's narrative is quite similar. Vietnamese, whether Viet people or Champanese, roamed the South China Sea in ancient time. Then, officially, Vietnam claims that it has possessed the Paracel Islands since the 17th century.⁵⁹ There are also some efforts to look back to the time of the Champa Kingdom in ancient times. Even though Champanese is ethnically different from the majority of Viet people. Also, many of Champanese migrated to Hainan, China after Viet people dominated today's Vietnam. The Vietnamese narratives of the Paracels and the Spratlys as ancestral land can be seen from the commemorations in Ly Son.⁶⁰

c. The Philippines

The historical narrative of the Philippines claim is based on the fact that the Spratlys and Scarborough Shoal are depicted on the official Spanish Kingdom map in 17th and 18th centuries.⁶¹ Spain as the Philippines colonial power was the one that gave the first name to the Spratlys and Scarborough Shoal. Even Scarborough Shoal was named with Tagalog word of Panacot, which means "danger". It shows that Filipino has already familiar with Scarborough Shoal far before Spaniard came to the Philippines. Meanwhile, the Spratlys was named Los Bajos de Paragua, which means stones of Palawan Island.⁶² It shows how entangle the Spratlys with Palawan Island of the Philippines.

⁵⁷ United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea (United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2022) <>. <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> 11

⁵⁸ United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea (United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2022) <>. <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> 11

⁵⁹ THAO-NGUYEN, H. O. N. G. "Vietnam's Position on the Sovereignty over the Paracels & the Spratlys: Its Maritime Claims." https://www.researchgate.net/profile/Nguyen-Hong-Thao/publication/256029683_Vietnam's_Position_on_the_Sovereignty_over_the_Paracels_the_Spratlys_Its_Maritime_Claim/inks/60837e728ea909241e1eda44/Vietnams-Position-on-the-Sovereignty-over-the-Paracels-the-Spratlys-Its-Maritime-Claim.pdf 168

⁶⁰ Roszko, E., 2010. Commemoration and the state: Memory and legitimacy in Vietnam. *SOJOURN: Journal of Social Issues in Southeast Asia*, 25(1), pp.1-28.

⁶¹ Beatty, Dylan Michael. "Re-inscribing propositions: historic cartography and Philippine claims to the Spratly Islands." *Territory, Politics, Governance* 9, no. 3 (2021): 434-454. <https://www.tandfonline.com/doi/pdf/10.1080/21622671.2019.1687325>

⁶² Paragua was the name of Palawan Island during the Spanish colonialism. See Antonio Carpio, 'Defending Philippine Sovereign Rights in the West Philippine Sea', www.youtube.com (4 July 2020). <https://www.youtube.com/watch?v=2GWcgKNMxjo> minutes 33-37. Also see Provincial Information Office, 'General Information - Palawan', www.palawan.gov.ph (2019) <>. https://www.palawan.gov.ph/history_culture.php

d. Malaysia and Brunei

Different from China, Vietnam, and the Philippines, Malaysia and Brunei have no historical narrative. Their claims are based on the modern development of international law. Malaysia's and Brunei's claims are relatively new. Malaysia never looks back to ancient times. These two states believe that some features in the Spratlys were *terra nullius*.

e. Indonesia⁶³

Indonesia has no specific narrative. Its "narrative" is that Indonesia's claim is based on UNCLOS 1982. Even though some of the regions of ancient Indonesian maritime kingdoms were located beyond today's Indonesian territories, this does not allow Indonesia to claim more than what it has achieved during the UNCLOS 1982 negotiations. During negotiations, Indonesia was among the states that fervently proposed the recognition of the archipelagic concept. This is in order to unify all the islands of Indonesia. The Indonesian narrative has always been that the ancient kingdoms of Indonesia were water kingdoms. Indonesia also believes that the EEZ and continental shelf are two different regimes under UNCLOS 1982. Therefore, it is possible to use multiple lines for the EEZ and continental shelf instead of a single line in order to solve its EEZ delimitation with Vietnam.

C. GEOPOLITICAL BACKGROUND**1. The Importance of the South China Sea**

a. Natural resources

The South China Sea is an area with abundant natural resources.⁶⁴ Based on Chinese sources, the South China Sea is rich with oil and gas reserves.⁶⁵ However, it needs further exploration to know the exact estimation of oil and gas reserves.⁶⁶ Unfortunately, a thorough exploration is impossible to be done because of the issue of the dispute itself.⁶⁷ From its water column, its fish stock is enormous,⁶⁸ even though it has been depleting lately as a result of overfishing.⁶⁹ These natural resources are found within the waters, not on the South China

⁶³ Even though Indonesia is not a claimant state to any features in the Spratlys and Paracels, but it is a fact that Indonesia has overlapping claims with other states regarding some maritime areas in the South China Sea.

⁶⁴ Some of them are the rich of fishing ground and the potential of oil and natural gas reserves. See Macaraig, Christine Elizabeth, and Adam James Fenton. "Analyzing the causes and effects of the south china sea dispute." *The Journal of Territorial and Maritime Studies* 8, no. 2 (2021): 43-44.

⁶⁵ Fravel, M. Taylor. "China's strategy in the South China Sea." *Contemporary Southeast Asia* (2011): 296.

⁶⁶ Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 23.

⁶⁷ Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 23.

⁶⁸ Kivimäki, Timo, ed. *War or peace in the South China Sea?* No. 45. Nias Press, 2002, p. 44.

⁶⁹ MacKinnon, Jaymes. "Fishery Depletion and the South China Sea." *Flux: International Relations Review* 9, no. 1 (2018), p.51.

Sea islands. That is why the dispute over the South China Sea has risen along the development of the law of the sea. It is the new trend of the law of the sea since the 1970s that gives states the legal basis to generate vast bodies of waters from a small island in the middle of the ocean, such as the creation of the concept of the EEZ, the widespread acceptance of the continental shelf, and the further increase of the width of the territorial sea.⁷⁰

b. International Sea Routes

The South China Sea is one of the main sea routes in the world.⁷¹ The flow of global trade is dependent on its area. The instability in this area would ultimately disrupt the world's supply chain for almost all commodities. The South China Sea is hugely important, particularly for states that receive their energy through the sea.⁷² Therefore, the security of the South China Sea will secure their energy security. China's energy needs, for example, 80 percent of its oil imports flow through the South China Sea.⁷³ Japan and South Korea also depend on the South China Sea to transport their energy. These states are all industrial countries. Once there is a disruption of energy flow in the South China Sea, their resilience as industrial states will surely be disturbed.

c. Strategic Location for Defense Purposes

At the beginning, some states did not appreciate the strategic location of the South China Sea features. The British, for example, abandoned its claim after discovery and effective administration.⁷⁴ The British showed little interest since the features had little economic value. The British lacked consideration regarding the South China Sea values from a military perspective. World War II showed the importance of the South China Sea for security reasons. It is clear from Japan's military strategy in the South China Sea during World War II.⁷⁵

In the post-World War II era, there is a growing awareness of the importance of scattered features in the South China Sea. This can be seen from the incorporation of the

⁷⁰ Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 21-22.

⁷¹ Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 24.

⁷² East Asian States such as China, Japan, and South Korea will be hugely impacted.

⁷³ Anthony Cordesman, *Chinese Strategy, Military Forces, and Economics: The Metrics of Cooperation, Competition And/or Conflict* (Center for Strategic and International Studies, 2018) <>. https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180919_China_Strategy_Metrics_Report.pdf. 171

⁷⁴ The British owned Spratly Island and Amboina Cay from its administration in Labuan. See Cheng-Chwee, K.U.I.K., LAI, Y.M. and Abdullah, A.A., 2021. Pulau Layang-Layang in Malaysia's South China Sea Policy: Sovereignty Meets Geopolitical Reality amid China–US Rivalry. *International Journal of China Studies*, pp.192-193.

⁷⁵ Japan used many features in the South China Sea for defense purposes. One of the most prominent one was when it built submarine base in Itu Aba.

South China Sea in an island chain strategy by the US to contain China.⁷⁶ In reverse, China also includes features in the South China Sea in order to break the containment policy of the US and its allies.⁷⁷

2. Great powers rivalry between the United States and China

From the perspective of realism, one of the main theories in international relations, the emergence of China as a great power will produce a rivalry with another great power, which is the United States.⁷⁸ Rising China will eventually imitate what the US has done in the past. This is because China wants to become a regional hegemon.⁷⁹ As the US kicked all of European powers off the American continent with its Monroe Doctrine,⁸⁰ China, sooner or later, will secure its position as the sole superpower in the western Pacific.

After the era of a bipolar world, which polarised into two powers, the United States and the USSR, in the era of the cold war, the United States has been the sole great power in the world ever since.⁸¹ The world has become unipolar. This is an era that had not happened since the collapse of the Roman Empire.⁸² Today, however, China's power is increasing. Now, China is the US's near-peer competitor. One of the main strategies for the United States to topple the USSR was by using a containment policy.⁸³ On the same token, the US uses containment policy to curb China's growth.⁸⁴

Today, China is growing significantly, both economically and militarily. China is second only to the United States in terms of gross domestic product (GDP). The Chinese government uses the term "Chinese Dream" as a goal to increase people's prosperity.⁸⁵ China tries to increase its GDP per capita in the near future to reach the level of the GDP per capita of developed countries.⁸⁶ A new comprehensive strategic economy and security program was

⁷⁶ Island Chain Strategy is the US and its allies strategy to encircle China. See Yoshihara, T., 2012. China's vision of its seascape: the first island chain and Chinese seapower. *Asian Politics & Policy*, 4(3), pp.297-299.

⁷⁷ See Erickson, A.S. and Wuthnow, J., 2016. Barriers, springboards and benchmarks: China conceptualizes the Pacific "Island Chains". *The China Quarterly*, 225, pp.1-22.

⁷⁸ See Kirshner, J., 2012. The tragedy of offensive realism: Classical realism and the rise of China. *European journal of international relations*, 18(1), pp.53-75.

⁷⁹ See Steinsson, S., 2014. John Mearsheimer's theory of offensive realism and the rise of China. *E-International Relations*.

⁸⁰ Regarding Monroe Doctrine, see Gilderhus, Mark T. "The Monroe doctrine: meanings and implications." *Presidential Studies Quarterly* 36, no. 1 (2006): 5-16.

⁸¹ See Bayley, P., 2007. From the Cold War to the Unipolar World. *Discourse and contemporary social change*, 54, pp.49-71.

⁸² See Krauthammer, C., 2002. The unipolar moment revisited. *The national interest*, (70), p.13.

⁸³ For a discussion of the containment policy by the US to the USSR, see Gaddis, J., 2019. The evolution of US policy goals toward the USSR in the postwar era. In *Gorbachev's Russia and American Foreign Policy* (pp. 303-346). Routledge.

⁸⁴ See Teixeira, V., 2019. The United States' China Containment Strategy and the South China Sea Dispute. *Central European Journal of International & Security Studies*, 13(3).

⁸⁵ See Wang, Z., 2014. The Chinese dream: Concept and context. *Journal of Chinese Political Science*, 19, pp.1-13.

⁸⁶ Chinese government has a goal in its 100-years anniversary, it will reach developed country's GDP per-capita. See Feng, M.X., 2015. The 'Chinese DREAM' deconstructed: values and institutions. *Journal of Chinese Political Science*, 20(2), pp.163-183. Also see Wang, Z., 2014. The Chinese dream: Concept and context. *Journal of Chinese Political Science*, 19, pp.1-13.

launched, called the Belt and Road Initiative (BRI).⁸⁷ Militarily, China is powerful. It is ranked third after the United States and Russia.⁸⁸ China is among the ten countries that have nuclear weapons.⁸⁹

a. Geographically disadvantageous China

As a great power, China's geographical location is disadvantageous.⁹⁰ It is surrounded by other states in the north, west, and south. In total, China has 20 neighbouring states.⁹¹ In the north, it is bordered by Russia and Mongolia. In the east, it is better, since this area has many sea access points. However, it is also surrounded by many of the US's allies, starting with South Korea, Japan, Taiwan, and the Philippines. This geographical condition makes China aware of its vulnerability to the US invasion or blockade.⁹²

b. US containment policy

The US containment or encirclement policy was the one that was most useful to circumvent the USSR during the Cold War era.⁹³ This strategy is believed to be used again as a tool of containment for today's near-peer competitor, China.⁹⁴ The US is attempting to encircle China militarily by stationing military assets near its borders. By doing this, the US hopes that China will not have the freedom to roam and become a global hegemon. In order to contain China, three island chains have been established.⁹⁵ The first island chain encompasses the Kuril Islands in the north, Japan, Taiwan, the western coast of the Philippines, and the north coast of Borneo.⁹⁶

It is important for China to have military bases that are close enough to the first island chain. Because almost all of those islands are already owned by the United States and its

⁸⁷ Belt and Road Initiative (BRI) or One Belt and One Road (OBOR) is a comprehensive program to revive Chinese ancient silk road. Basically, it is an infrastructure program to connect and to integrate many countries with Chinese economy. However, economic purposes arguably are not the only goal. Security is also likely the goal here. See Li, M., 2020. The Belt and Road Initiative: geo-economics and Indo-Pacific security competition. *International Affairs*, 96(1), pp.169-187.

⁸⁸ See Global Firepower, '2021 China Military Strength', www.globalfirepower.com (2022) <>. https://www.globalfirepower.com/country-military-strength-detail.php?country_id=china

⁸⁹ Among those countries are: The United States, Russia, China, the United Kingdom, France, India, Pakistan, South Africa, Israel, and North Korea. Australia will be the only country which use nuclear power for military purpose other than nuclear bomb.

⁹⁰ See Yoshihara, T., 2012. China's vision of its seascape: the first island chain and Chinese seapower. *Asian Politics & Policy*, 4(3), pp.293-294.

⁹¹ See Elleman, B., Kotkin, S. and Schofield, C., 2015. *Beijing's power and China's borders: twenty neighbors in Asia*. ME Sharpe.

⁹² China's vulnerability to blockade, see Yoshihara, T., 2012. China's vision of its seascape: the first island chain and Chinese seapower. *Asian Politics & Policy*, 4(3), p.299.

⁹³ For the discussion of containment policy by the US, see Starr, A.C., 2013. The United States (Mis) Interpretation of Containment Theory. *Foreign Policy Journal*.

⁹⁴ For the discussion of the possibility of the use of containment policy, see Shambaugh, D., 1996. Containment or engagement of China?: Calculating Beijing's responses. *International security*, 21(2), pp.180-209.

⁹⁵ Davis, S., Munger, L.A. and Legacy, H.J., 2020. Someone else's chain, someone else's road: US military strategy, China's Belt and Road Initiative, and island agency in the Pacific. *Island Studies Journal*, 15(2), p.9.

⁹⁶ Horta, L., 2012. China Turns to the Sea: Changes in the People's Liberation Army Navy Doctrine and Force Structure. *Comparative Strategy*, 31(5), p.397.

allies, China will need other islands for military bases and logistical support. Therefore, China can project its power to break the first island chain. The South China Sea offers a solution for China. Even though those features in the South China Sea are of little significance economically, they are important for Chinese security reasons.

c. China Counter-Island Chain Strategy

The China Counter-Island Chain Strategy is a strategy that China needs to have in order to protect itself from the potential of the US containment strategy.⁹⁷ The term itself comes from the US strategy to contain communism, especially in the USSR and PRC.⁹⁸ Traditionally, China is a continental power. Its army has always been a core domain for protecting its security. Sea power was regarded as unimportant. However, China learns from history. Historically, when China was at its weakest point during a century of humiliation, other nations' encroachments and invasions almost always came from the sea. European powers and Japan came from the sea with their huge metal-made ships, which had superior firepower. In this era, it is important to protect the mainland by controlling island chains that can become its first line of defence without disturbing its political and economic center on the mainland. By controlling some of the first island chains, China can break the containment and become a sea power. From Mahanian and Corbettian perspectives on sea power,⁹⁹ China learns how to become a global power from the British and the US.¹⁰⁰

d. South China Sea as part of Counter-Island Chain Strategy

The South China Sea is an integral part of China's Counter-Island chain strategy.¹⁰¹ It is important to occupy the South China Sea.¹⁰² Once China can maintain its stronghold in the South China Sea, it can ensure its sea lane of communication.¹⁰³ In peacetime, China can secure its energy needs, which account for more than 70% of its energy imports. In wartime, it can use this area as a buffer zone to tackle the invasion. War does not need to happen on the mainland. By having this strategy, China's industry can still flourish even in times of war.

⁹⁷ For the discussion how China sees the Island Chain Strategy, and how to counter it, see Yoshihara, T., 2012. China's vision of its seascape: the first island chain and Chinese seapower. *Asian Politics & Policy*, 4(3), pp.293-314.

⁹⁸ Yoshihara, T., 2012. China's vision of its seascape: the first island chain and Chinese seapower. *Asian Politics & Policy*, 4(3), p.297.

⁹⁹ Alfred Thayer Mahan and Julian Corbett are the prominent scholars of maritime strategy. See O'Lavin, B., 2009. *Mahan and Corbett on Maritime Strategy*. NAVAL WAR COLL NEWPORT RI.

¹⁰⁰ From Mahanian theory perspective, China, for example, sees the South China Sea the same as how the US saw the Caribbean Sea and the Gulf of Mexico. See Holmes, J.R. and Yoshihara, T., 2006. China's "Caribbean" in the South China Sea. *The SAIS Review of International Affairs*, 26(1), pp.86-88.

¹⁰¹ Jenner, C.J., 2021. Command, Strategic Contest, and Confidence-building in the South China Sea. *Orbis*, 65(3), p.513.

¹⁰² Jenner, C.J., 2021. Command, Strategic Contest, and Confidence-building in the South China Sea. *Orbis*, 65(3), pp.513-531.

¹⁰³ Holmes, J.R. and Yoshihara, T., 2006. China's "Caribbean" in the South China Sea. *The SAIS Review of International Affairs*, 26(1), pp.79-92.

Because war occurs outside of its mainland territory, morale can be maintained. This is the same as what the US did during World War II. Even though Japan tremendously weakened the US armada at Pearl Harbor, US military strength could easily be regained. This was due to the fact that the United States' industrial power remained intact in Continental United States.¹⁰⁴

3. Century of Humiliation, Chinese nationalism, and the South China Sea

A century of humiliation was an era when China was so weak that it became a prey for other nations. This narrative has been engrained in Chinese people's minds. As a huge kingdom, China has always been at the centre of the world. China calls itself "Zhongguo," which means "middle kingdom." The ancient Chinese saw themselves as the center of the world, surrounded by other barbarian nations.¹⁰⁵ Those barbarians were inferior to the Chinese, who were led by an emperor who had been given a mandate by the heavens. Many of those barbarians were Chinese vassals. Their leaders, including barbarian leaders from the south, came to China to provide gifts as tributes to the emperors.¹⁰⁶

Then, in the 16th century, European powers appeared out of nowhere. These barbarians tried to trade with China.¹⁰⁷ Unfortunately, many times, the Chinese emperor declined them, since there was nothing valuable for China to trade with them.¹⁰⁸ This only lasted for one century. Eventually, a weak China had to open its border for trade. This was the time when China had no power. Slowly, European powers and Japan occupied some of China's territories. Macau was taken over by Portugal, Hong Kong was taken over by the British, and the worst was when Japan occupied Manchuria, Penghu, and Taiwan. Many of the treaties between China and other states at that time were also seen as unequal treaties that were signed under pressure. These conditions persisted until World War II.

After WWII, China gradually awakens from its long slumber. As one of the victors of World War II, China becomes one of the five states that have veto power in the UN. With this new role, China has become a dominant power in global politics. Following the end of World War II, Japan quickly returned all Chinese territories. After Mao Zedong passed away, China

¹⁰⁴ For the Japanese miscalculation that the US could easily recover because of its industrial giant, See: Suzuki, S., 2021. Did the Attack on Pearl Harbor Cost the Axis Powers the War?. *History Today*.

¹⁰⁵ Fairbank, J.K., 1942. Tributary trade and China's relations with the West. *The Journal of Asian Studies*, 1(2), pp.129-149.

¹⁰⁶ Reilly, B., 2013. Southeast Asia: in the shadow of China. *Journal of democracy*, 24(1), pp.156-164. Also read: Stuart-Fox, M., 2021. *A short history of China and Southeast Asia: tribute, trade and influence*. Allen & Unwin.

¹⁰⁷ All began when Portuguese came to China for trade. Read: Souza, G.B., 2004. *The survival of empire: Portuguese trade and society in China and the south China sea 1630-1754*. Cambridge University Press.

¹⁰⁸ Trade with China was a favor to barbarians. See David N Keightley and Kenneth J DeWoskin, *Encyclopædia Britannica* (online at 31 May 2023) 'China - The first Opium War and its aftermath'.

<https://www.britannica.com/place/China/The-first-Opium-War-and-its-aftermath>

transformed to become a global economic power by adopting capitalism for its economic system.¹⁰⁹ Today, China has become a global superpower, second only to the United States. One by one, China reclaimed its territories. The UK gave back Hong Kong in 1997.¹¹⁰ Macau was returned to China in 1999.¹¹¹

Even though China has already acquired capitalism, its political system is still one of authoritarianism, with the Chinese Communist Party as its central institution.¹¹² When global communism collapsed in 1989, marked by the breakup of the USSR, Chinese political leaders were in focus.¹¹³ In order to safeguard its political system, the Chinese government boosts Chinese nationalism.¹¹⁴

With democracy on the rise and communism on the decline, the Chinese Communist Party must act in order to remain relevant and continue to govern the Chinese people. The 1989 Tiananmen Square incident was a wake-up call for the CCP. From that time on, CCP has tried to swing people's nationalism. According to the narrative, the CCP is the one who stands up to heal the wounds of the Chinese century of humiliation.¹¹⁵ Some of the sensitive issues needed to boost Chinese nationalism include those with Taiwan, Japan, and the US.¹¹⁶ Some of the topics for example: the enduring enmity with Japan as a result of what Japan did before and during World War II to China and the issue of border disputes, including the South China Sea dispute.

Unfortunately, the Chinese government pushed the pendulum of nationalism so excessively that it now swings uncontrollably. Chinese government measures to boost Chinese people's nationalism have proven effective in terms of keeping the Chinese Communist Party in power, but they have unintended consequences. When Chinese people believe their leaders have not acted hawkishly enough to protect Chinese pride and interests, they will question their government.

The South China Sea issue is indeed a sensitive one for Chinese people. It can be seen as the continuation of a century of humiliation. Today, Chinese children learn from the

¹⁰⁹ Chen, F., 1995. *Economic transition and political legitimacy in post-Mao China: Ideology and reform*. State University of New York Press.

¹¹⁰ Buckley, R. and Roger, B., 1997. *Hong Kong: the road to 1997*. Cambridge University Press.

¹¹¹ Mendes, C.A., 2013. *Portugal, China and the Macau negotiations, 1986-1999* (Vol. 1). Hong Kong University Press.

¹¹² Pearson, M., Rithmire, M. and Tsai, K.S., 2021. Party-state capitalism in China. *Current History*, 120(827), pp.207-213.

¹¹³ Cheng, J., 2009. Whither China's Democracy? In Commemoration of the Twentieth Anniversary of the Tiananmen Incident. *Commemoration of the Twentieth Anniversary of the Tiananmen Incident*.

¹¹⁴ Xu, B., 2001. Chinese populist nationalism: Its intellectual politics and moral dilemma. *Representations*, 76(1), pp.120-140.

¹¹⁵ Kaufman, A.A., 2011. The "Century of Humiliation" and China's National Narratives. *Testimony before the US-China Economic and Security Review Commission Hearing on China's Narratives Regarding National Security Policy*. Extracted the, 28.

¹¹⁶ Shirk, S.L., 2007. Changing media, changing foreign policy in China. *Japanese Journal of Political Science*, 8(1), p.43.

beginning that almost the whole of the South China Sea belongs to China.¹¹⁷ Indoctrination is massive. It is easy to find videos on social media that teach Chinese children about the South China Sea. The depiction of Chinese territories encompassing the South China Sea in Chinese passports is another significant step by the Chinese government.¹¹⁸ The Chinese government also encouraged Chinese citizens to wear shirts with a nine-dash line map on them when they went on vacation to Southeast Asian States.¹¹⁹ These Chinese government steps will automatically increase the Chinese people's sense of belonging to the South China Sea. Another significant measure is the naming of underwater features in the South China Sea, including those within other states' continental shelves. This measure can be seen as a Chinese way to make a connection between China and those underwater features. Even though the naming of underwater features is out of the ordinary and has no legal effect at all,¹²⁰ by naming those features, future generations of Chinese will have a stronger sense of belonging to the South China Sea. Chinese future generations will feel it does not make sense if features with Chinese names are claimed by other weaker states in the south.

The Chinese public's reaction to the 2016 ruling in the Philippines v. China arbitration case demonstrates the sensitivity of the South China Sea issue to Chinese public nationalism.¹²¹ Chinese people were uneasy about China's loss and the ruling on the illegality of China's nine-dash line. There were many war-mongering comments on social media that were made by Chinese people. To ease the public's anger, the Chinese government even censored the media soon afterward.¹²²

Even though the issue of the South China Sea is sensitive, it is still way below the Taiwan, Japan, or US issues in terms of fueling Chinese public anger.¹²³ While during a century of humiliation, Chinese territories were encroached upon by Japan and western powers, today, the South China Sea, as part of Chinese territories, is encroached upon by

¹¹⁷ Zheping Huang Huang Echo, 'China's Citizens Are Livid at the South China Sea Ruling Because They've Always Been Taught It Is Theirs', *Quartz* (14 July 2016) <>.

<https://qz.com/730669/chinas-citizens-are-livid-at-the-south-china-sea-ruling-because-theyve-always-been-taught-it-is-theirs>

¹¹⁸ Associated Press, 'China Passports Claim Ownership of South China Sea and Taiwan', *The Guardian* (online, 23 November 2012) <>.

<https://www.theguardian.com/world/2012/nov/23/china-passports-ownership-sea-taiwan>

¹¹⁹ Agence France-Presse, 'Chinese Tourists Ordered to Take off T-Shirts at Vietnam Airport', *South China Morning Post* (15 May 2018) <>.

<https://www.scmp.com/news/asia/southeast-asia/article/2146258/anger-vietnam-after-chinese-tourists-arrive-airport-wearing>

¹²⁰ Based on UNCLOS 1982, underwater feature belongs to state which own the continental shelf where the feature lies.

¹²¹ Xi Luo, "The South China Sea Case and China's New Nationalism," *Diplomat*, July 19, 2016, accessed August 12, 2017,

<http://thediplomat.com/2016/07/the-south-china-sea-case-and-chinas-new-nationalism/>.

¹²² Bethany Allen-Ebrahimian, "After South China Sea Ruling, China Censors Online Calls for War," *Foreign Policy*, July 13, 2016, accessed August 12, 2017, <http://foreignpolicy.com/2016/07/12/after-south-china-sea-ruling-china-censors-online-calls-for-war-unclos-tribunal/>.

¹²³ Aliakbar, M.A. and Yoga, P., 2017. *Gauging the potential for armed conflict between China and Indonesia in the South China Sea*. Naval Postgraduate School. 38

several smaller states from the south. This can be aggravated by the involvement of western powers, especially the US, in the South China Sea issue. The US involvement in the South China Sea issue, for example, will definitely burn Chinese nationalism. This is because the issue involving the US rivalry with China is among the most sensitive in Chinese public minds. Moreover, Chinese people perceive the United States as the root cause of the South China Sea dispute.¹²⁴

4. Geopolitics among the claimant states, other ASEAN states, and China

Separated from the great power rivalry between the United States and China, geopolitics among regional states and China deserve a separate discussion. Regional states are states that are located in south-east Asia, China itself, and the separate entity of Taiwan. Nowadays, there are ten members of ASEAN: Indonesia, Malaysia, Singapore, Thailand, the Philippines, Brunei, Vietnam, Cambodia, Laos, and Myanmar.¹²⁵ Five of them are claimant states in the South China Sea dispute.¹²⁶ China and Taiwan have relatively the same claims. However, *de facto*, both entities occupy different features.

a. The Role of ASEAN on the Dispute

ASEAN never intended to solve the problem or take a position in the South China Sea dispute. ASEAN can only play a role as a place to discuss the issue and as a channel of communication among claimant states. Geopolitically, ASEAN states, including South China Sea claimant states, are in the middle of the clash of two great superpowers, the US and China. Some of the regional states have some degree of security cooperation with the US.¹²⁷ Meanwhile, regional states increasingly have good economic relations with China. All of the ASEAN states have close economic relations with China. With its new program, Belt and Road Initiatives (BRI), China invests in a lot of infrastructure projects such as airports, seaports, railroads, roads, etc. in ASEAN states. China is also the biggest trading partner of many

¹²⁴ E- Notes, "The South China Sea Arbitration Decision: China Fought the Law, and the Law Won Or Did It?" Foreign Policy Research Institute, accessed September 12, 2017, <https://www.fpri.org/article/2016/07/south-china-sea-arbitration-decision-china-fought-law-law-won/>.

¹²⁵ Timor Leste will become a new member of ASEAN in the near future. See Mangku, D.G.S., 2017. The Efforts of Republica Democratica de Timor-Leste (Timor Leste) to be a member of Association of Southeast Asian Nations (ASEAN) and take an active role in maintaining and creating the stability of security in Southeast Asia. *Southeast Asia Journal of Contemporary Business, Economics and Law*, 13(4), pp.18-24.

¹²⁶ Malaysia, the Philippines, Brunei, and Vietnam are indeed claimant states; meanwhile, Indonesia even though is not a claimant state to feature in the South China Sea, but some of its claimed EEZ and Continental Shelf areas intersect with Chinese nine dash line and Vietnamese claimed EEZ. For Indonesia's position on the South China Sea dispute, see Weatherbee, D.E., 2016. *Re-assessing Indonesia's Role in the South China Sea*. ISEAS-Yusof Ishak Institute.

¹²⁷ The Philippines is the US ally. See Baviera, A.S., 2014. Implications of the US-Philippines enhanced defense cooperation agreement. Singapore is also significantly close to the US. See Teo, A.G. and Koga, K., 2022. Conceptualizing equidistant diplomacy in international relations: the case of Singapore. *International Relations of the Asia-Pacific*, 22(3), p.396. Vietnam, even though close enough to the US, but it quite strict with its "three nos", marking a non-alignment principle of Vietnam. See Dunst, C., 2021. Chinese aggression pushes Vietnam ever closer to Washington. *Nikkei Asia*, 6.

ASEAN states.¹²⁸ Some of the smaller ASEAN states, such as Cambodia and Laos, with low economic strength, depend on China for their economies. As a result, China has quite a strong influence in the region. China can easily divide ASEAN states, including regarding the South China Sea issue. As a result, it is difficult for ASEAN member states to reach a common understanding when dealing with China.¹²⁹

China never agrees to negotiate in the framework of ASEAN. China wants the negotiation on a bilateral basis. It is important to keep ASEAN separate. Since China has much bigger tools of negotiation at its disposal to deal with other claimant states bilaterally, it can easily make an “unequal treaty.”¹³⁰

In modern times, high tensions in the South China Sea have happened many times. Several tensions even escalated into armed conflicts. China and Vietnam have the highest level of tension. In 1974, both states were involved in armed conflict, which is well known as the Battle of the Paracel Islands. In this battle, China took over all the Paracel Islands. In 1988, there was a skirmish between Vietnam and China. At the end of the skirmish, China occupies Johnson South Reef. China is also involved in several high-tension situations with the Philippines. In 2002, China took over Mischief Reef from the Philippines. It also took over the Scarborough Shoal from the Philippines in 2012. Several times, China blocked the logistical support for a grounded warship, the BRP Sierra Madre. China is involved in a standoff with Malaysia’s exploration ship, West Capella, in 2019. In 2018, the Chinese Coast Guard faced the Indonesian Navy in an effort to release Chinese fishermen who were apprehended by Indonesian authorities. High tensions occurred not only between China and other claimant states but also among claimant states other than China. For example, Vietnamese authorities and Indonesian authorities have also been involved in several incidents.¹³¹

So far, China can tolerate the exploration or even exploitation of oil and gas in the disputed South China Sea as long as other claimant states cooperate with the Chinese

¹²⁸ One of the examples is Indonesia as the largest ASEAN states. China is the first rank of Indonesia’s trading partners. Indonesia exports a lot of goods to China, including raw materials, coal, etc. See Siqi, J., 2022. China-Indonesia trade: how important is it, and what are the main exports?. *South China Morning Post*.

¹²⁹ Of course, another factor is that ASEAN claimant states sometimes have the same claims on particular features or sea areas in the South China Sea. But, even if all ASEAN claimant states agree on something, Laos and Cambodia can just act as China’s proxy to block ASEAN common understanding. See Odgaard, L., 2003. The South China Sea: ASEAN’s Security Concerns about China. *Security Dialogue*, 34(1), pp.11-24.

¹³⁰ China itself often uses term “unequal treaty” to address many treaties between a weak China and other stronger states, mainly western powers, Russia, and Japan in the past, during century of humiliation. See Fung, E.S., 1987. The Chinese nationalists and the unequal treaties 1924–1931. *Modern Asian Studies*, 21(4), pp.793-819.

¹³¹ Nabbs-Keller, G., 2019, “Indonesia-Vietnam maritime clash a sign of rising Indo-Pacific tensions” *The Strategist*, <https://www.aspistrategist.org.au/indonesia-vietnam-maritime-clash-a-sign-of-rising-indo-pacific-tensions/>

company.¹³² Some of China's aggressive behaviors happened when other claimant states cooperated with companies other than Chinese ones.¹³³ In terms of fishing, China enacts legislation to regulate fishing in certain areas of the South China Sea. Coast Guard has the authority to enforce the law, even for foreign fishermen from other claimant states.¹³⁴ High tension regarding fisheries also happened many times among other claimant states.¹³⁵

b. DOC and COC

High tension in the South China Sea has made regional states including claimant states realized the need of principles to ease the tension. Soon after the Mischief Reef incident between China and the Philippines, regional states realized the need of common understanding to reduce the tension in the South China Sea. Declaration on the Conduct of the parties (DOC) was created in 2002. This is the first document ever signed between ASEAN and China. This is not a solution to the dispute, but how to manage the dispute itself so not to escalate into undesirable situation. However, the DOC itself merely contains principles without any specific and detail rule. It is even only a declaration without any legally binding instrument. After the creation of DOC, there were some worrying events. In 2012, another standoff happened between China and the Philippines. This time, it took place in the area of Scarborough Shoal.¹³⁶ This declaration serves as the foundation for future rules, the Code of Conduct (COC), which is expected to be detailed, specific, and have some level of mandatory settlement, if not be legally binding.¹³⁷

There are still many issues with the discussion of the Code of Conduct. There are at least five problems that hinder.¹³⁸ The first one, it is still ongoing disagreement whether the COC will be a binding treaty or not. China as a great power shows reluctance of a binding COC. The second one, the scope of activities that will be governed by COC. Whether it includes among other things, the military activities, the detainment of fisherman, or even the

¹³² China does not want companies other than China's to be involved in the exploration, let alone exploitation. For Chinese government resistance to other companies, see Fravel, M.T., 2011. China's strategy in the South China Sea. *Contemporary Southeast Asia*, pp.292-319.

¹³³ West Capella of Malaysia, and Vietnam are examples of it. See Nagy, S. and Nguyen, H., Opportunism and miscalculation by claimants in the South China Sea.

¹³⁴ Many times, Chinese Coast Guard enforced its law to the Philippines and Vietnamese fisherman. See Fravel, M.T., 2011. China's strategy in the South China Sea. *Contemporary Southeast Asia*, pp.292-319.

¹³⁵ some of examples are between Indonesia and Vietnam. See McRae, D., 2019. Indonesia's South China Sea diplomacy: A foreign policy illiberal turn?. *Journal of Contemporary Asia*, 49(5), pp.759-779. The tension also happens between Malaysia and Vietnam. See Buszynski, L., 2010. Rising tensions in the South China Sea: Prospects for a resolution of the issue. *Security Challenges*, 6(2), p.91.

¹³⁶ For analysis of Scarborough Shoal Standoff, see Luzak, P., 2022. The Scarborough Shoal Standoff and the Policy of the People's Republic of China Towards Territorial Disputes in the South China Sea. *Przegląd Strategiczny*, (15), pp.245-263.

¹³⁷ However, after so many years, not much progress has been made.

¹³⁸ ABS-CBN News, '5 Issues Hinder Conclusion of South China Sea Code of Conduct - Expert | ANC', [www.youtube.com <>](https://www.youtube.com/watch?v=TyAoSKAg07U). <https://www.youtube.com/watch?v=TyAoSKAg07U>

construction of the disputed features.¹³⁹ The next one is the geographical scope of COC. It is difficult to define the geographic scope where the COC will prevail. China is on the position that COC will prevail in the Spratlys where there is a dispute among claimant states. China does not recognize the dispute in the Paracels, since China is the only state that occupy all features in the Paracels. Vietnam objects this view, since Vietnam also claims the Paracels and does not want to accept Chinese *Fait Accompli* in the Paracels. Another one is the problem of non-regional states which use South China Sea, will they be governed by COC as well? States such as Japan, the US, and Australia are frequent users of the South China Sea. If so, how far they will govern by COC? The last one is the accountability of COC violation by the parties. After more than twenty years of discussion, CoC has not reached any agreement.

c. Claimant States Alliances with Extra-Regional Powers

The alliance of claimant states with great powers from outside the region complicates regional geopolitics. One of the claimant states is the Philippines. The Philippines has long been a US ally.¹⁴⁰ The US even had a military base in Clark, the Philippines. However, historically, when it comes to the South China Sea dispute, the US has not paid much attention to it. When the Mischief Reef incident and the Scarborough Shoal standoff happened, the US did not take firm action to deal with the situations. It was mainly because the US does not take any position regarding the dispute itself. Furthermore, the US did not want to take any chances by confronting China over uninhabited rocks of little value. The US could evade its obligation since the content of the Mutual Defense Treaty itself is rather ambiguous.¹⁴¹

Taiwan's position is rather unique. It occupies quite significant features, which are Itu Aba, the largest feature in the South China Sea, and Pratas Island. However, it has not been involved in any discussions regarding the South China Sea dispute. This is because no state has the courage to invite Taiwan. All of the regional states, including all claimant states, recognize the "One China Policy."¹⁴² China has always blocked Taiwan's opportunity to be involved in various discussions on the international stage.¹⁴³ There is also the potential for

¹³⁹ Carlyle A. Thayer, ASEAN, China and the Code of Conduct in the South China Sea, 77.

¹⁴⁰ Both states have Mutual Defense Treaty (MDT) of 1951. See UNITED STATES of AMERICA and PHILIPPINES Mutual Defense Treaty. Signed at Washington, on 30 August 1951 ÉTATS-UNIS D'AMÉRIQUE et PHILIPPINES <https://treaties.un.org/doc/Publication/UNTS/Volume%20177/volume-177-I-2315-English.pdf>

¹⁴¹ Kim, T., 2016. *US alliance obligations in the disputes in the East and South China seas: Issues of applicability and interpretations* (Vol. 141, p. 34). DEU.

¹⁴² Hsieh, P.L., 2020. Rethinking non-recognition: Taiwan's new pivot to ASEAN and the one-China policy. *Cambridge Review of International Affairs*, 33(2), pp.204-228.

¹⁴³ See Song, Y.H., 2005. Cross-strait interactions on the South China Sea issues: a need for CBMs. *Marine Policy*, 29(3), pp.265. Also see <https://www-jstor>

armed conflict between China and Taiwan in the South China Sea in the future. When the tension across the Taiwan Strait is high, there is a huge chance for China to attack features that are occupied by Taiwan instead of attacking the main island of Taiwan.¹⁴⁴ There is a possibility for China to take over Pratas Island and/or Itu Aba Island, which are located in the Spratlys.¹⁴⁵ This is because China wishes to reduce the possibility of the United States intervening to defend Taiwan. In the case of the Philippines, which had to deal with a Chinese standoff in the past (for example, during the Mischief Reef incident of 1995 and the Scarborough Shoal standoff of 2012), the US was proven not to take any action to deal with China when the incidents happened in the South China Sea. In those two examples, the US was reluctant to get involved in the standoff between China and the Philippines because the US did not want to risk going to war with China for the sake of an uninhabited feature in the middle of the ocean with little or no strategic value. Therefore, the alienation of Taiwan from the South China Sea discussion will in and of itself increase the potential for tension or even the eruption of armed conflict in the South China Sea.

5. The Involvement of Extra-Regional Powers

Other parties with relatively significant roles in the South China Sea are the Quad, AUKUS, and European powers. The majority of other extra-regional states' involvement in the South China Sea is sponsored by the US. Quad and AUKUS are two clear examples. The Quad comprises four states: the United States, India, Japan, and Australia. This is not an alliance; instead, this is an umbrella of states with common goals to curb Chinese influence in the Indo-Pacific. China's status as an adversary is not clearly stated in any official statements of the Quad. There is no formal structure of the Quad, such as a treaty. Its main goal is to provide public goods such as disaster relief assistance in the Indo-Pacific. However, if the Chinese military threat is real, Quad may eventually become a military alliance. India is China's Himalayan neighbor. Because of their similar size but vastly different political systems, both states are natural rivals.¹⁴⁶ China and India have had several episodes of high tension along their land border. In the 1950s, both states were involved in a border war. China has built its influence in many states in the Indian Ocean. Its strategy of "string of pearls" makes

org.ezproxy.uow.edu.au/stable/pdf/2645651.pdf?refreqid=excelsior%3A86b0394937ab7c931f569900eda5fefb&ab_segments=&origin=&acceptTC= 326-328

¹⁴⁴ There is a precedence when China did a military training to take over Pratas Island, which is occupied by Taiwan. See <https://www.japantimes.co.jp/news/2020/05/14/asia-pacific/china-military-drill-taiwan/>

¹⁴⁵ Taiwan occupies Itu Aba, the largest feature in the South China Sea, and Pratas Island, a feature that is only claimed by China and Taiwan.

¹⁴⁶ For analysis of China and India rivalry, see Malik, J.M., 1995. China-India relations in the post-Soviet era: the continuing rivalry. *The China Quarterly*, 142, pp.317-355. Also see Frankel, F.R., 2011. The breakout of China-India strategic rivalry in Asia and the Indian Ocean. *Journal of international affairs*, pp.1-17.

India worry.¹⁴⁷ Therefore, it is logical for India to join other states in curbing Chinese influence, particularly in the Indian Ocean. Other than that, India has a “Look East Policy” and an “Act East Policy” to pay attention to a much greater area than the Indian Ocean. However, the Wuhan Consensus with China prevents India from interfering too much in the South China Sea dispute.¹⁴⁸ Japan is an important state actor in the South China Sea. Almost all of Japan’s trade flows through the South China Sea. Another important geopolitical factor is the relationship between Japan and China. Both states see each other with huge enmity. China sees Japan as a country that treated China severely during a century of humiliation. Japan is also the US’s strategic ally in the region vis-à-vis China. Australia vehemently supports the US in the region. Australia is a state that is a member of both AUKUS and the Quad.

AUKUS consists of three states: Australia, the United Kingdom, and the US. AUKUS is also quite progressive. This alliance plans for Australia’s acquisition of several strategic military deterrents, including nuclear-powered submarines. The UK is an ally for two of the claimant states, which are Malaysia and Brunei Darussalam, and another non-claimant state in the region, Singapore.¹⁴⁹

Other European powers also have interests in the South China Sea. France, as one of the US’s allies, has several times conducted patrols in the South China Sea. France has territories in the Pacific. Russia remains neutral on the South China Sea issue. It maintains close ties with Vietnam. On the other hand, relations between Russia and China are improving. Germany is relatively neutral in its comments on the South China Sea issue.¹⁵⁰

D. LEGAL BACKGROUND OF CLAIMS

Each of the claimant states has relatively different legal claims. The law of acquisition, such as occupation, discovery, *effectivite*, and the law of the sea, are some of the legal claims that claimant states use to claim wholly or partially of the South China Sea.

¹⁴⁷ Khurana, G.S., 2008. China’s ‘String of Pearls’ in the Indian Ocean and its security implications. *Strategic Analysis*, 32(1), pp.1-39.

¹⁴⁸ Abhijith Singh, ‘China’s Assertive Behavior in the South China Sea and the Implications for India’, *The National Bureau of Asian Research (NBR)* (12 May 2020) <>.

<https://www.nbr.org/publication/chinas-assertive-behavior-in-the-south-china-sea-and-the-implications-for-india/>

¹⁴⁹ The UK, Singapore, and Malaysia are members of FPDA (Five Power Defence Arrangements). Other members are New Zealand and Australia. For discussions and analysis of FPDA, see Thayer, C.A., 2007. The five power defence arrangements: The quiet achiever. *Security Challenges*, 3(1), pp.79-96.

¹⁵⁰ Compared to other US allies of Europe, Germany has relatively moderate position towards China. This is due to the fact that China is Germany’s key trading partner. See Reuters, ‘Germany to Send Two Warships to Indo-Pacific in 2024 amid South China Sea Tensions’, *Reuters* (online, 4 June 2023) <>. Also see Schnellbach, Christoph, and Joyce Man. “Germany and China: Embracing a Different Kind of Partnership?.” *Center for Applied Policy Research, Working Paper, Munich* (2015): 1-21.

1. **De facto occupation and control of features in today's South China Sea**

There are more than 200 features in the South China Sea. Those features include rocks, low tide elevations, and underwater features. Those rocks are occupied by various claimant states, as well as some low tide elevations and underwater features that have already been changed to become artificial islands. Meanwhile, some other relatively unchanged low tide elevations and underwater features are effectively controlled by various claimant states. There are also a few low tide elevations and underwater features that are not effectively controlled by any claimant states.

a. Occupied or Controlled by China

China has occupied many features of the Paracel Islands since 1974. China effectively rules the entire Paracel archipelago. Nowadays, it stations troops on 22 features in 20 outposts in the Paracels. Meanwhile, the rest of Paracel's features remain unoccupied, though their surrounding waters are effectively controlled by China. China also effectively occupies seven features of the Spratly Islands.¹⁵¹ Many of those features have been upgraded from low-tide elevation to artificial islands with military facilities.

b. Occupied by Taiwan

Taiwan occupies Pratas Island, the northernmost high tide feature in the South China Sea, and Itu Aba Island in the Spratlys. The military build-up on Pratas Island is ongoing. It also conducted minor reclamation in Itu Aba, which is the largest feature in the Spratlys.¹⁵² Pratas Island is only disputed between China and Taiwan. It can be said that the dispute over Pratas Island is more of a government legitimacy dispute between the PRC and ROC than a territorial dispute.

c. Occupied or Controlled by Vietnam

Vietnam occupies many features in the Spratlys. It has built a lot of outposts on top of those features. In fact, Vietnam has more outposts than China.¹⁵³ Previously, Vietnam also occupied the Paracels before China took over in 1974. It has 51 outposts in total in the Spratlys, including outposts that have been built on submerged features.¹⁵⁴

d. Occupied or Controlled by The Philippines

¹⁵¹ Four of them are rocks, and three of them are low-tide elevations.

¹⁵² Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science* 22 (2017): 229-250. <https://link.springer.com/content/pdf/10.1007/s11366-017-9470-2.pdf?pdf=button>

¹⁵³ Those outposts spread on three low-tide elevations, 18 rocks, and seven submerged features.

¹⁵⁴ Vietnam has seven outposts which built on submerged features. They are called DK1 Stations.

Nowadays, the Philippines occupies nine features in the Spratlys.¹⁵⁵ On top of each feature, the Philippines established outposts. One outpost is a grounded navy ship, BRP Sierra Madre, which lays on Second Thomas Shoal. Even though Second Thomas Shoal is occupied by the Philippines, the surrounding waters are effectively controlled by China.¹⁵⁶ The number of features that are effectively occupied or controlled by the Philippines is decreasing. This is because China and Vietnam have taken over. Two features that have been taken over by China are Mischief Reef and Scarborough Shoal. Meanwhile, a feature that has been taken over by Vietnam is Southwest Cay.¹⁵⁷

e. Occupied or Controlled by Malaysia

Nowadays, Malaysia occupies five features in the Spratlys.¹⁵⁸ Two of them are rocks, which are Erica Reef and Swallow Reef; meanwhile, three of them are low-tide elevations: Ardasier Reef, Investigator Shoal, and Mariveles Reef.¹⁵⁹ However, the occupied low-tide elevations have already been reclaimed into artificial islands.¹⁶⁰ Malaysia started to occupy the features in 1983 with the occupation of Swallow Reef, and the latest were Investigator Shoal and Erica Reef in 1999.¹⁶¹ Malaysia has also previously occupied Louisa Reef, a rock claimed by Brunei. However, Malaysia eventually dropped the claim and emptied the rock.¹⁶²

f. Occupied or Controlled by Brunei

Brunei occupies none of these features, even though it potentially claims two: Louisa Reef and Rifleman Bank.¹⁶³

g. Controlled by Indonesia

Indonesia does not occupy any single disputed feature of the South China Sea.¹⁶⁴ From a geographical perspective, some of the Indonesian islands in the Natuna Sea are within the

¹⁵⁵ Eight are rocks, and one is a submerged feature.

¹⁵⁶ Therefore, the logistic support for military personnel onboard BRP Sierra Madre is an issue.

¹⁵⁷ Katchen, M.H., 1977. "The Spratly Islands and the Law of the Sea: "Dangerous Ground" for Asian Peace." *Asian Survey*, 17(12), pp.1179.

¹⁵⁸ Center for Strategic and International Studies, 'Malaysia Archives | Asia Maritime Transparency Initiative', *Asia Maritime Transparency Initiative* (2016) <>.

¹⁵⁹ Center for Strategic and International Studies, 'Malaysia Archives | Asia Maritime Transparency Initiative', *Asia Maritime Transparency Initiative* (2016) <>.

¹⁶⁰ Center for Strategic and International Studies, 'Malaysia Archives | Asia Maritime Transparency Initiative', *Asia Maritime Transparency Initiative* (2016) <>.

¹⁶¹ Center for Strategic and International Studies, 'Malaysia Archives | Asia Maritime Transparency Initiative', *Asia Maritime Transparency Initiative* (2016) <>.

¹⁶² Roach, J. Ashley. *Malaysia and Brunei: an analysis of their claims in the South China Sea*. Virginia, VA: CNA Corporation, 2014, 15.

¹⁶³ See Rowan, Joshua P. "The US-Japan security alliance, ASEAN, and the South China Sea dispute." *Asian Survey* 45, no. 3 (2005): 419-420. Also see Vuving, Alexander L. "South China Sea: Who Occupies What in the Spratlys?." *The Diplomat* 6 (2016). Also see Storey, Ian. *President Xi Jinping's Visit to Brunei Highlights Progress and Problems in Bilateral Relations*. ISEAS-Yusof Ishak Institute, 2018, p.5.

geographical scope of the South China Sea. However, those islands are not disputed and are within the archipelagic baseline of Indonesia. Indonesia arguably effectively controls its EEZ and continental shelf claim, which are measured from its various base points that intersect with the Chinese nine-dash line. Only rarely did Chinese fishermen and Chinese Coast Guard vessels trespass into areas that intersect with the Chinese nine-dash line. However, some EEZ areas north of its agreed continental shelf delimitation with Vietnam are not so effectively controlled by Indonesia, since those areas are in dispute with Vietnam. In 2022, Indonesia and Vietnam signed EEZ boundary treaty.¹⁶⁵ However, up until the author writes this thesis, the document of the treaty itself has not been released to the public.

h. Unoccupied and Uncontrolled Features

There are quite a few unoccupied features in the South China Sea. However, only 19 of them are high-tide features. The rest are either low-tide elevations or submerged features. Six of the 19 high tide features are in the Paracels, which is effectively under Chinese control.¹⁶⁶ Twelve of those high-tide features are located in the Spratlys. One feature left is the Scarborough Shoal, which is controlled by China. China controls the area by selectively only choose smaller Philippines boat that can fish inside the Scarborough Shoal Lagoon.¹⁶⁷ Louisa Reef, a low-tide elevation that is located in the Spratlys, is relatively free from the control of claimant states, even though, to some extent, Brunei occasionally controls the surrounding waters. The fact that Bruneians visited the rock on occasion demonstrates this.¹⁶⁸

2. Each claimant states' legal claims

a. China

China never clearly defines its legal claim to the South China Sea. China used the eleven-dash line in 1947, which was then replaced with the nine-dash line in 2009.¹⁶⁹ The change is mainly because of the disappearance of the two dashed lines in the Gulf of Tonkin

¹⁶⁴ From geographical scope perspective, some of Indonesian islands in Natuna Sea are within the geographical scope of the South China Sea. However, since those islands are not disputed, and within the archipelagic baseline of Indonesia, they are excluded.

¹⁶⁵ Sebastian Strangio, 'After 12 Years, Indonesia and Vietnam Agree on EEZ Boundaries', *thediplomat.com* (23 December 2022) <https://thediplomat.com/2022/12/after-12-years-indonesia-and-vietnam-agree-on-eez-boundaries/>

¹⁶⁶ The Paracels is heavily defended by China. It is extremely difficult for other claimant states, which are Taiwan and Vietnam to occupy unoccupied features in the Paracels.

¹⁶⁷ Buena Bernal and Darrelle Ng, 'Philippine Fishermen Hope to Fish Freely at China-Guarded Scarborough Shoal, as President Marcos Visits Beijing', *CNA* (4 January 2023) <>.

¹⁶⁸ One of the visits, see: ponidiversbrunei17, 'First Louisa Reef Expedition in Decades', *Poni Marine* (4 September 2014) <>. <https://ponimarine.com/2014/09/04/first-louisa-reef-expedition-in-decades/>

¹⁶⁹ China officially showed its nine-dash line in 2009 when Malaysia and Vietnam submitted joint ECS submission. It was Republic of China (ROC) not People's Republic of China (PRC) which created and used eleven dash line for the first time. However, PRC then acquires its concept and made some adjustments. The first apparent adjustment is the elimination of two dash line in the Gulf of Tonkin, after PRC's bilateral agreement with Vietnam. The second adjustment is the changing position of nine dash line closer to other coastal states.

when China and Vietnam agreed on maritime borders in the past.¹⁷⁰ However, this is not the only change. The positions of those two dashed lines are different.¹⁷¹ In 1996, it established a straight baseline around Paracels.¹⁷² Up until now, this is the only area in the South China Sea that has had official baselines. In 2009, after Vietnam and Malaysia submitted a joint submission regarding the Extended Continental Shelf (ECS), China officially showed its nine-dash-line claim in the South China Sea for the first time. However, it is still unclear what kind of exact regime of waters China claims, whether the EEZ, the territorial sea, or internal waters. On the one hand, it says that waters within nine dashes are Chinese historic waters that are equal to territorial waters or even internal waters. On the other hand, China accepts that freedom of navigation prevails in the South China Sea, including within the bodies of waters inside the nine-dash line.¹⁷³ However, it can be said that China clearly claims all features in the South China Sea, but it never provides a crystal-clear claim regarding the status of waters inside the nine-dash line.¹⁷⁴

In the post-2016 arbitration, China seems to have adjusted its claim to be more aligned with international law. China never openly announced its claim. Therefore, it is important to look at how China behaves and China's official diplomatic notes and statements. Lately, China uses the "four-sha" narrative to potentially replace the nine-dash line narrative in the future.¹⁷⁵ In the four-sha narrative, China establishes four straight baselines in four sand bars: Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, and Nansha Qundao.¹⁷⁶ Those four Sha archipelagos have a land-to-water ratio way too far from what is permitted in UNCLOS 1982.¹⁷⁷ China's argument is that the archipelago of continental states is not governed by UNCLOS 1982, therefore, it is governed by "general international law."¹⁷⁸

b. Taiwan

At first, it is easy to conclude that Taiwan's legal claim to the South China Sea resembles China's claim, since both parties across the Taiwan Strait are the same China which have the

¹⁷⁰ Gao, Z. and Jia, B.B., 2013. The nine-dash line in the South China Sea: History, status, and implications. *American Journal of International Law*, 107(1), p.103.

¹⁷¹ In many ways, 2009 nine dash line are closer to neighboring states than 1947 eleven dash line.

¹⁷² ponidiversbrunei17, 'First Louisa Reef Expedition in Decades', *Poni Marine* (4 September 2014) <>. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> , 108.

¹⁷³ From practices, China recognizes freedom of navigation in the South China Sea.

¹⁷⁴ China only conveys that it is the historic rights of waters, term that absent in UNCLOS 1982.

¹⁷⁵ This is of course there is no clear announcement from PRC.

¹⁷⁶ It is only Paracels which has official baselines in 1996. This is because other "archipelagos" are not in effective occupation and effective control of PRC.

¹⁷⁷ United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs Limits in the Seas No. 150 People's Republic of China: Maritime Claims in the South China Sea (January 2022) <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> . p.23.

¹⁷⁸ United Nations Division for Ocean Affairs and the Law of the Sea, https://www.un.org/Depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_09_18_CHN_NV_UN_009_e.pdf

same claims. However, it is not as simple as that. Even though the origin of nine dash line came from the same root, which is from Chinese nationalist government of Kuomintang, but the legal claims of both China evolve separately. Basically, Taiwan uses the 20th century discovery and continuous patronage in the post-World War II. Taiwan occupied many features in the South China Sea after World War II. This was because Chiang Kai Sek was the one that accepted the surrender of Japanese troops in the region.¹⁷⁹ Then when San Francisco Peace Treaty was signed and ratified, it was Taiwan which occupied many features of the South China Sea. Even though the content of San Francisco Peace Treaty is rather ambiguous when it comes to which state would take over many features in the South China Sea after the Japanese renunciation. Treaty of peace in 1952 between Japan and ROC (Treaty of Taipei) is interpreted by Taiwan as the handover of features in the South China Sea to Republic of China. Taiwan protested when Tomas Cloma claimed discovery of Spratlys, then stations troops in Itu Aba ever since.

Gradually, Taiwan changes its South China Sea claim. Taiwan moderates its claim to only islands, no more about the historic rights of waters surrounding within nine dash line.¹⁸⁰ This is because the main reason of the drawing of U-shape nine dotted line in 1946 is used to leave some room of negotiation with other states.¹⁸¹ Taiwan was the first China that used U-shape dashed line concept to claim almost the whole of the South China Sea.¹⁸²

Taiwan's South China Sea policy is evolving with Taiwan's national indigenous identity in this modern era.¹⁸³ The US pushes Taiwan to look back at its South China Sea narrative, which in turn will undermine China's South China Sea claim. On the other hand, China wants Taiwan to always be in line with its South China Sea policy, though it has never included Taiwan in any discussion or negotiation with other states. This is, of course, because China wants to block Taiwan from international political recognition. The DPP, led by Tsai Ing-wen, believes that Taiwan must abandon its South China Sea claim in order to be completely free of

¹⁷⁹ Schaller, Michael. "The Japanese Surrender." In *The US Crusade in China, 1938–1945*, pp. 251-290. Columbia University Press, 1979.

¹⁸⁰ Wang, Kuan-Hsiung. "The ROC's maritime claims and practices with special reference to the South China Sea." *Ocean Development & International Law* 41, no. 3 (2010): 237-252. https://www.tandfonline.com/doi/pdf/10.1080/00908320.2010.499282?casa_token=cQ6arh7E3zsAAAAA:fNNeZ70_EHCZdE64NnUEbPf4irYLxe4CFMoMzl6hl2jk6i_BDWs9TmbCOuRs_-Q0Vx8Y0agAKO7j

¹⁸¹ Wang, Kuan-Hsiung. "The ROC's maritime claims and practices with special reference to the South China Sea." *Ocean Development & International Law* 41, no. 3 (2010): 237-252. https://www.tandfonline.com/doi/pdf/10.1080/00908320.2010.499282?casa_token=cQ6arh7E3zsAAAAA:fNNeZ70_EHCZdE64NnUEbPf4irYLxe4CFMoMzl6hl2jk6i_BDWs9TmbCOuRs_-Q0Vx8Y0agAKO7j

¹⁸² Jinming, Li, and Li Dexia. "The dotted line on the Chinese map of the South China Sea: a note." *Ocean Development & International Law* 34, no. 3-4 (2003): 287-290.

¹⁸³ Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science* 22 (2017): 229-250. <https://link.springer.com/content/pdf/10.1007/s11366-017-9470-2.pdf?pdf=button> 235

Chinese influence in the past.¹⁸⁴ The Tsai government uses the term “The Map of the Location of South China Sea Islands” for referring to the 1947 map, with highlighting on features only.¹⁸⁵ However, DPP’s compliance with the 2016 arbitration ruling will decrease DPP’s popularity among its constituents.¹⁸⁶ This is particularly true regarding the status of Itu Aba as a rock.¹⁸⁷ As a result, it does not recognise the 2016 arbitration result.

c. Vietnam

Vietnam claims all of the Paracels and the Spratlys. However, Vietnam’s legal basis for claiming the Paracels is different from its claim to the Spratlys. Vietnam’s claim for the Paracels came from old Vietnamese dynasties.¹⁸⁸ Vietnam’s Emperor, Gia Long, then in 1816, officially acquired the Paracels.¹⁸⁹ Meanwhile, its claim to the Spratlys came from French discovery, which passed on to Vietnam as a successor state.¹⁹⁰ However, France never claimed Spratly on behalf of Indochina but for itself.¹⁹¹ However, France let it lapse afterward.¹⁹² Since it was Annam in the 18th and 19th centuries, Vietnam has included Paracels in its territory. However, Chemillier’s analysis asserts that France was the one that occupied Spratlys by itself, not as a successor to Annam in 1930.¹⁹³ Also, she states that Vietnam’s claim to the Paracels is ancient and stronger than China’s claim. Even so, there are some old Chinese sources that state that the Paracels and the Spratlys belong to Vietnam.¹⁹⁴ At that time, China never legally owned those two islands. This is because Chinese rulers at that time did not know about the concept of sovereignty. China never truly claimed a territory.

¹⁸⁴ Gragnani, Lucia. "Assessing Tsai Ying-Wen's strategy in the South China Sea." (2022). Also read: Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science*22 (2017): 229-250.

¹⁸⁵ Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science*22 (2017): 240.

¹⁸⁶ Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science*22 (2017): 238-245.

¹⁸⁷ Lee, Wei-chin. "Taiwan, the South China Sea dispute, and the 2016 arbitration decision." *Journal of Chinese Political Science*22 (2017): 242-243.

¹⁸⁸ THAO-NGUYEN, H. O. N. G. "Vietnam's Position on the Sovereignty over the Paracels& the Spratlys: Its Maritime Claims." https://www.researchgate.net/profile/Nguyen-Hong-Thao/publication/256029683_Vietnam's_Position_on_the_Sovereignty_over_the_Paracels_the_Spratlys_Its_Maritime_Claim/inks/60837e728ea909241e1eda44/Vietnams-Position-on-the-Sovereignty-over-the-Paracels-the-Spratlys-Its-Maritime-Claim.pdf 168

¹⁸⁹ Chiu, H. and Park, C.H., 1975. Legal status of the Paracel and Spratly Islands. *Ocean Development & International Law*, 3(1), p. 7.

¹⁹⁰ Chiu, H. and Park, C.H., 1975. Legal status of the Paracel and Spratly Islands. *Ocean Development & International Law*, 3(1), pp.8-9.

¹⁹¹ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 35

¹⁹² Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 35

¹⁹³ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 98

¹⁹⁴ VietNamNet News, 'Báo VietnamNet', *VietNamNet News* (21 September 2019) <>.

<https://vietnamnet.vn/en/ancient-chinese-books-say-hoang-sa-truong-sa-belong-to-vietnam-569730.html>

d. The Philippines

The Philippines' claims to the South China Sea can be divided into two parts. The first one is the claim regarding an island group called the Kalayaan Island Group (KIG). The second one is the claim to a high-tide feature of Scarborough Shoal. Both claims are outside the Philippine archipelagic baseline. Those two claims have different legal bases. The legal basis for claiming Kalayaan Island Group (KIG) is the discovery of "Freedom Land" by Tomas Cloma in 1946. Later in 1978, the Philippines government acquired KIG, and the Philippines conducted effective occupation and administration from that point forward. The Philippines' KIG encompasses some of the Spratly Islands, but not all.¹⁹⁵

Scarborough Shoal is also claimed by the Philippines. The legal basis of the claim is the Washington Treaty, which is an addendum to the Treaty of Paris.¹⁹⁶ However, in those two treaties, there is nothing explicitly mentioned regarding the Scarborough Shoal. Another legal basis for claiming Scarborough Shoal dates back to when it was an independent state and involved the exercise of effective occupation and jurisdiction.¹⁹⁷ The Philippines also claims traditional fishing rights within Scarborough Shoal (12 NM), regardless of the ownership of the feature. The claim is backed by the 2016 arbitral tribunal decision in the South China Sea case, which states that fishermen from the Philippines and China alike can fish within the Scarborough Shoal territorial sea.¹⁹⁸

Based on the 2016 arbitral tribunal, the Philippines legally claims that its EEZ and continental shelf encompass 200 nautical miles to the west of its archipelagic baseline. This is because there is no feature in the Spratlys that is considered a full island based on Article 121 of UNCLOS 1982. It means that all submerged features and low-tide elevation in the Spratlys that fall within the Philippines' continental shelf legally belong to the Philippines. This includes Mischief Reef, Subi Reef, and Hughes Reef, which in their natural form are low-tide elevations.¹⁹⁹

¹⁹⁵ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 97

¹⁹⁶ Mark Rosen, *Unlimited Distribution Cleared for Public Release a CNA Occasional Paper Philippine Claims in the South China Sea: A Legal Analysis with a Foreword by CNA Senior Fellow Michael McDevitt* (2014) <<https://www.cna.org/reports/2014/iop-2014-u-008435.pdf>>. 11-15. The location of Scarborough Shoal is outside the box which were drawn in the treaty of Paris. In the later treaty, treaty of Washington, even though it is mentioned that Spain also relinquishes all islands belong to the Philippines archipelago to the US, but it is not clearly mentioned whether Scarborough Shoal is included or not. It is different from other islands which clearly mentioned, such as the islands of Cagayan Sulu and Sibutu.

¹⁹⁷ Mark Rosen, *Unlimited Distribution Cleared for Public Release a CNA Occasional Paper Philippine Claims in the South China Sea: A Legal Analysis with a Foreword by CNA Senior Fellow Michael McDevitt* (2014) <<https://www.cna.org/reports/2014/iop-2014-u-008435.pdf>>. 11.

¹⁹⁸ PCA Award of 2016, paragraph 805.

¹⁹⁹ These three features are now occupied by China. China has reclaimed those features to become artificial islands which can support live.

e. Malaysia

Malaysia's claim to some features in the Spratlys is based on discovery, effective occupation, and proximity.²⁰⁰ For starters, Malaysia claimed features in the Spratlys as a continuation of its continental shelf.²⁰¹ Then Malaysia occupied and administered some of the unoccupied features at the time. This act of occupation can then be considered an act of discovery and effective occupation. This is based on the assumption that the Spratlys are not one single entity but have numerous different features, not all of which have already been discovered and occupied by other states. In other words, Malaysia's legal claim is based on its effective occupation of features that were left unoccupied by other states.²⁰² Even though China or Vietnam might have discovered the Spratlys in the past, those were merely inchoate titles. The occupied features of Malaysia clearly include some features that were previously occupied by Vietnam. Also, it is based on the features, which are atolls located within its continental shelf.²⁰³

The UK has claimed features in the Spratlys in the past as Malaysia's colonizer, but Malaysia does not use this as its legal basis for claiming some of the Spratlys.²⁰⁴ The UK discovered and then occupied Amboyna Cay and Spratly for a short period of time. At that time, the UK saw the potential of guano mining on those two features. However, it was later discovered that those features had little economic value. The UK's claim has lapsed over time.²⁰⁵

f. Brunei

Different from other claimant states, whose claims feature features based on the acquisition of sovereignty, Brunei's claim is based on UNCLOS 1982. Brunei does not claim any sovereignty over the features in the South China Sea. Rather, Brunei claims these features as parts of its sovereign right to the continental shelf. There are two features that Brunei claims: Louisa Reef,²⁰⁶ and Rifleman Bank.²⁰⁷ Both features are claimed by Brunei as

²⁰⁰ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> p.98.

²⁰¹ Malaysia used this argument in 1960s. See Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> p.98.

²⁰² Roach, J. Ashley. *Malaysia and Brunei: an analysis of their claims in the South China Sea*. Virginia, VA: CNA Corporation, 2014. <https://www.cna.org/reports/2014/iop-2014-u-008434.pdf>

²⁰³ Roach, J. Ashley. *Malaysia and Brunei: an analysis of their claims in the South China Sea*. Virginia, VA: CNA Corporation, 2014. <https://www.cna.org/reports/2014/iop-2014-u-008434.pdf> 27

²⁰⁴ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 37

²⁰⁵ Keyuan, Zou, ed. *Routledge Handbook of the South China Sea*. Routledge, 2021. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=6624629> 35

²⁰⁶ Roach, J. Ashley. *Malaysia and Brunei: an analysis of their claims in the South China Sea*. Virginia, VA: CNA Corporation, 2014. <https://www.cna.org/reports/2014/iop-2014-u-008434.pdf> 39

part of its continental shelf. However, officially, Brunei never claims Louisa Reef.²⁰⁸ It's a little ambiguous. Even in 1992, the Brunei Foreign Minister stated that Brunei only claimed the waters surrounding Louisa Reef but not the reef itself.²⁰⁹ Brunei claims that both features must be at least low tide elevations in order to use its claim. Rifleman Bank is clearly an underwater feature. However, it is located beyond 200 NM from Brunei's baseline. As a result, Rifleman Bank's claim is based on the Extended Continental Shelf.²¹⁰ Brunei considers Louisa Reef as a low tide elevation.²¹¹ Therefore, Louisa Reef may not be claimed by other states.²¹² Louisa Reef was once claimed by Malaysia as well. However, Malaysia dropped its claim in return for Brunei's abandonment of Limbang.²¹³

g. Indonesia

Indonesia's position in the South China Sea dispute is rather unique. In the sense that it does not claim any features of the South China Sea, nor does it claim any historic waters or historic rights. However, since its claimed EEZ and continental shelf, which are drawn from its base points, intersect with the Chinese claim of the nine-dash line, those base points were drawn from various outermost, uncontested islands.²¹⁴ Also, Indonesia has not reached any deal with Vietnam regarding EEZ delimitation.²¹⁵ Diplomatically, Indonesia recognizes its unfinished EEZ boundary with Vietnam but never recognizes any dispute with China, even though China admits that it has a maritime dispute with Indonesia. This is due to two factors. First, this is a way for Indonesia to nullify China's claim. Indonesia bluntly conveyed in diplomatic notes after the Malaysia-Vietnam Extended Continental Shelf Joint Submission to CLCS in 2009 that the nine-dash line has no legal basis.²¹⁶ The second reason is that

²⁰⁷ Ian Storey, *Singapore |28 December 2018 President Xi Jinping's Visit to Brunei Highlights Progress and Problems in Bilateral Relations* (28 December 2018) <>.

https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_83@50.pdf 5

²⁰⁸ Ian Storey, *Singapore |28 December 2018 President Xi Jinping's Visit to Brunei Highlights Progress and Problems in Bilateral Relations* (28 December 2018) <>.

https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2018_83@50.pdf 5

²⁰⁹ "Brunei seeks security network," *The Borneo Bulletin*, 27 January 1992.

²¹⁰ Storey, Ian. *President Xi Jinping's Visit to Brunei Highlights Progress and Problems in Bilateral Relations*. ISEAS-Yusof Ishak Institute, 2018, 5.

²¹¹ Storey, Ian. "Brunei's Contested Sea Border with China." In *Beijing's Power and China's Borders*, pp. 55-64. Routledge, 2014. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=1900201&ppg=56> 38

²¹² Based on international law, it is unclear whether low tide elevation can be claimed or not. There is a case of Robert C. Beckman and Clive Schofield, "Moving beyond disputes over island sovereignty: ICJ decision sets stage for maritime boundary delimitation in the Singapore Strait," *Ocean Development and International Law*, Vol. 40, No. 1 (2009), 1-35.

²¹³ Storey, Ian. "Brunei's Contested Sea Border with China." In *Beijing's Power and China's Borders*, pp. 55-64. Routledge, 2014. <https://ebookcentral.proquest.com/lib/uow/reader.action?docID=1900201&ppg=56>

²¹⁴ China recognizes that Natuna Island is an integral part of Indonesia. See Miles Yu, 'Inside China: China Clarifies Natuna Islands Sovereignty to Indonesia', *The Washington Times* <<https://www.washingtontimes.com/news/2015/nov/19/inside-china-china-concedes-natuna-islands-to-indo/>>.

²¹⁵ Both states have reached an agreement in 2022 but have yet published the result to the public.

²¹⁶ United Nations Division of Ocean and Law of the Sea, https://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf

Indonesia has always called itself an honest broker in the South China Sea dispute.²¹⁷ Other than having an unfinished EEZ delimitation with Vietnam and overlapping claims to bodies of water with China, Indonesia also has a sliver of an unfinished EEZ boundary with Malaysia in the South China Sea.

3. San Francisco Peace Treaty of 1951

The San Francisco Peace Treaty of 1951 is one of the legal milestones of the South China Sea dispute.²¹⁸ This treaty serves as a potential critical date.²¹⁹ This treaty arguably declared two South China Sea islands, the Spratlys and the Paracels, *terra nullius*.²²⁰ As Britain put it, "*This treaty will leave the sovereignty open to dispute between Britain, France, and any other nations who choose in the future to interest themselves in the islands, until the vacuum is filled and some claimant becomes able to exercise a more real and permanent sovereignty than has been possible hitherto.*"²²¹ In this treaty, Japan renounced its possessions, including the Paracel Islands and the Spratly Islands of the South China Sea. However, the delegates could not come to a conclusion regarding which state would succeed.

At that time, China had just finished the civil war.²²² The world was divided on whether China should be recognized. The communist-based ideology of the People's Republic of China was recognized by other communist states. Meanwhile, the Republic of China, or today's Taiwan, was recognized by the US, the western world, and other US allies. Then it was decided that no one from China, on either side, would be invited. The USSR, however, tried to raise the issue for the sake of the PRC. Delegates from France and Vietnam at the conference also claimed sovereignty over the Paracels and the Spratlys. However, the issue of to whom Japan handed over the sovereignty of the Paracels and the Spratlys was ignored.²²³

²¹⁷ Laksmana, E.A., 2018. Drifting towards dynamic equilibrium: Indonesia's South China Sea policy under Yudhoyono. *Aspirations with limitations: Indonesia's foreign affairs under Susilo Bambang Yudhoyono*, pp.153-75.

²¹⁸ San Francisco Peace Treaty or Japan Peace Treaty 1951 is a treaty which was signed in 1951 in order to end Japanese occupation during world war II.

²¹⁹ Chen, Hurng Yu. "Territorial Disputes in the South China Sea under the San Francisco Peace Treaty." *Issues & Studies* 50, no. 3 (2014). https://www.researchgate.net/profile/Hurng-Yu-Chen/publication/313566225_Territorial_Disputes_in_the_South_China_Sea_under_the_San_Francisco_Peace_Treaty/links/589e747daca272046aa93d77/Territorial-Disputes-in-the-South-China-Sea-under-the-San-Francisco-Peace-Treaty.pdf

²²⁰ Chen, Hurng Yu. "Territorial Disputes in the South China Sea under the San Francisco Peace Treaty." *Issues & Studies* 50, no. 3 (2014). https://www.researchgate.net/profile/Hurng-Yu-Chen/publication/313566225_Territorial_Disputes_in_the_South_China_Sea_under_the_San_Francisco_Peace_Treaty/links/589e747daca272046aa93d77/Territorial-Disputes-in-the-South-China-Sea-under-the-San-Francisco-Peace-Treaty.pdf

²²¹ Chen, Hurng Yu. "Territorial Disputes in the South China Sea under the San Francisco Peace Treaty." *Issues & Studies* 50, no. 3 (2014). https://www.researchgate.net/profile/Hurng-Yu-Chen/publication/313566225_Territorial_Disputes_in_the_South_China_Sea_under_the_San_Francisco_Peace_Treaty/links/589e747daca272046aa93d77/Territorial-Disputes-in-the-South-China-Sea-under-the-San-Francisco-Peace-Treaty.pdf 189

²²² Chinese civil war happened from 1945 to 1949. However, technically, both China are still at war since there is still no peace treaty, only ceasefire.

²²³ Shen, J., 2002. China's sovereignty over the South China Sea islands: A historical perspective. *Chinese J. Int'l L.*, 1, p.99.

4. Development of the Law of the Sea

The creation of UNCLOS 1982 is an important part of the South China Sea dispute. By having UNCLOS 1982 as a new law of the sea, states can claim maritime entitlements. UNCLOS 1982 creates a new regime of "exclusive economic zones." It also clarifies the island's regime. In the post-UNCLOS 1982 negotiations, the claimant states needed to recalculate their legal basis. After UNCLOS 1982, there was a trend to claim maritime features in order to claim the vast maritime entitlements of the EEZ and the continental shelf.²²⁴ The lack of a binding dispute settlement mechanism is also another factor that exacerbate the situation.²²⁵

In contrast to other areas, the South China Sea only has a few islands that serve no purpose. The South China Sea dispute occurred at the turn of the twentieth century.²²⁶ However, the dispute never came to such a heated level. At that time, except for security reasons, there was practically no other use of features in the South China Sea. One little exception was the potential of guano as an ingredient in fertilizer. This is because the maritime entitlement had not yet been made clear enough. When states claimed those features, claimant states could only take advantage of those features and a three-NM radius of territorial waters. Once UNCLOS 1982 resumed, with a new 12 NM of territorial sea, a new regime of EEZ, and a clear definition of the continental shelf, then claimant states started to realize the importance of a tiny feature in the middle of the ocean. A small island can not only have a territorial sea of its own but also potentially have 200 nautical miles of EEZ and the continental shelf.

5. 2016 The Philippines V. China Arbitration Ruling

The South China Sea arbitration ruling is one of the legal milestones in the South China Sea dispute. After the Scarborough Shoal standoff, the Philippines, which felt that no other measure remained, filed the case of the South China Sea dispute under the UNCLOS 1982 default procedure. The result is the ruling in the 2016 South China Sea arbitration case. Even

²²⁴ This is because UNCLOS 1982 makes it clear that one tiny feature in the middle of nowhere can have maritime entitlements of 12 NM territorial sea, and up to 200 NM of EEZ and Continental Shelf. Even the trend of the law of the sea prior to UNCLOS 1982 had already influenced many states positions. Read: Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 21-22.

²²⁵ Nguyen, Thi Lan Anh. "Origins of the South China Sea Dispute." *Territorial disputes in the South China Sea: navigating rough waters* (2015): 22. Indeed, part XV has compulsory measures, but China has made declaration in 2006 for not to accept any procedures in Section 2 of Part XV. See 'United Nations Treaty Collection', https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec. Even though the 2016 Arbitration Ruling clearly states that it has jurisdiction, but China still does not accept such a jurisdiction. At the end of the day, these legal procedure only becomes a legal acrobatic without any enforcement.

²²⁶ China and France have already claimed and have made counter claims for each other at the beginning of 20th century.

though China does not accept the ruling, in terms of the law, the dispute is much clearer than before. The ruling does not touch the sovereignty of the features. The ownership of the features is still up in the air. However, the decision clarifies the status of some features that are below the water at high tide and are located on the continental shelves of coastal states.

Some of the most important conclusions of the ruling are as follows: The first one, this verdict, makes Chinese claims to historic rights within a nine-dash line in the South China Sea null and void.²²⁷ The ruling also asserts that there is no full-fledged island in the Spratlys.²²⁸ It means that there are no features in the Spratlys that can have maritime entitlement to the EEZ and continental shelf. The verdict also touches upon the issues of Second Thomas Shoal and Mischief Reef. Since those features are Low Tide Elevations, and they are located within 200 NM of the Philippine baselines, both features are part of the Philippines' continental shelf.²²⁹ As a result, China's occupation and construction on Mischief Reef are illegal.²³⁰

The arbitration also recognises the traditional fishing rights of fishermen from the Philippines and China at Scarborough Shoal without deciding which state owns the Shoal.²³¹ The arbitration did not consider the military build-up of Subi Reef, along with other features, are not military activities.²³² The rationale for this is straightforward, as China denies any intention to militarise the features in the Spratly Islands.²³³

E. CONCLUSION

Many different factors have contributed to the creation of the South China Sea dispute. From a historical perspective, it is important to understand the root cause of the dispute not only from the point of view of the history itself but also from the standpoint of the historical narratives of each of the claimant states. Each claimant state offers different historical narratives of the South China Sea based on their respective interests to their respective target audience, which is their own public. This, in turn, will become ingrained in the public's mind. The geopolitical perspective is not merely related to the importance of the strategic location of the South China Sea but also to the role of the United States as today's biggest empire on

²²⁷ PCA Award, Section V(F)(d)(277), pp.116-117.

²²⁸ The Philippines submitted questions to the arbitral tribunal regarding the status of several features in the Spratlys, including the biggest feature in the Spratlys, or even the biggest feature in South China Sea, which is Itu Aba. The ruling states that even Itu Aba, the largest feature in the South China Sea is not a full-fledged island which can have maritime entitlement based on article 121 of UNCLOS 1982.

²²⁹ PCA Award, Section VI(C)(5)(f)(647), p. 260.

²³⁰ PCA Award, Section VII(E)(5)(c)(1043), p. 415.

²³¹ PCA Award of 2016, paragraph 805.

²³² Arbitration Award, para.1203(A)(4).

²³³ Recent judgments, awards and orders: Permanent Court of Arbitration: The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China), 12 July 2016 (No. Bulletin no. 91), 2017. , UNDOALOS. United Nations, New York, https://www.un.org/depts/los/doalos_publications/LOSBulletins/bulletinpdf/LOS_91_WEB.pdf p.35

earth. The rise of China is also a huge contribution to the creation of the dispute since it is used as part of the victim narrative that develops based on the Chinese history of the century of humiliation in the past. States in the region, to some extent, should choose between bandwagoning or balancing strategies with China. On the one hand, they depend on China economically, but on the other hand, their security is threatened by China. From a legal perspective, there are at least three milestones that contribute to the escalation or de-escalation of the dispute: the San Francisco Treaty of 1951, the creation of UNCLOS 1982, and the 2016 China v. Philippines Arbitration Ruling. The San Francisco Treaty arguably makes (at least as a pretext) the Paracels and the Spratlys terra nullius and open for any new claims from states. The development of the law of the sea provides more incentives for states to claim small and scattered features that states might have had no appetite to claim in the past. Therefore, it can be concluded that the South China Sea dispute is a complex combination of different historical narratives and geopolitical and legal factors that develop over time and might be impossible to resolve in the near future. Instead, it seems that states should learn to live with the dispute for a long period of time.

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