

## China's Approach to Ocean Governance with reference to the South China Sea Arbitration Award

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### Abstract

The South China Sea is a strategically important region for the global trade, projection of the Chinese power, and its territorial ambition. Tensions in the South China Sea are multilateral with multiple countries claiming territory having a geostrategic interest. China is the most powerful player in the region, and has a vital economic interest and need for sustained diplomacy. Thus, keeping in view, the complex rivalry in the region, United Nations Convention on the Law of Sea (UNCLOS) is seen as a way forward to amicably solve the dispute. In this regard, UNCLOS issued an Arbitration Award in 2016 which was largely in the interests of smaller claimants of the region. However, China has rejected the arbitration award and put forward its claim based on historiography. Therefore, this paper seeks to analyse factors involved in the arbitration award of UNCLOS and its impact on ocean governance in the region, and the role and interest of China's approach to the South China Sea.

**Keywords;** South China Sea, Ocean Security, Arbitration Award, Ocean Governance

### Introduction

The South China Sea's topographical isolation and wealth of resources make it essential from a strategic perspective. It is rich in fishing stocks that are vital for the livelihoods of local communities, and it also harbours potential reserves of natural resources and minerals that have yet to be fully explored (Cronin, 2013). Achieving military and commercial dominance in the geostrategic dominance with numerous islands, reefs, cays, shoals, and rocks, which cover about 3.5 million square kilometres and are surrounded by China, Indonesia, the Philippines, Brunei, Malaysia, and Vietnam. (Gao & Jia, 2013). In light of its geographic existence constitutes a crucial maritime route facilitating trade and transportation between East Asia, Southeast Asia, and global trading partners. An array of fisheries could potentially be discovered across the South China Sea and potential reserves of gas, oil and other natural substances located in the seabed and subsoil. At least a total of seven billion gallons of confirmed oil reserves and 900 trillion cubic meters of stored gas are thought to be present in the region (Evers 2014).

### Reasons for the Dispute

Among the greatest in all of humanity, the most difficult and complicated locale is because of conflicting sovereignty claims over mid-ocean islands (Nguyen, 2006). This area has six claimants viz. Vietnam, Philippines, Malaysia, Brunei, China, and Taiwan (LaFond, 2020). The dispute centers on China's contentious Nine-Dotted Line versus the United Nations Convention on the Law of the Sea (UNCLOS) (Smith, & Doe, 2020). Nine-Dash Line asserts almost total control based on China's historical claims, while UNCLOS, signed by 169 countries, aims to resolve international waters disputes (Seymour, 2023). China's first official claim came with its 1958 Declaration asserting sovereignty over islands such as Macclesfield Bank, Paracels, Pratas, and Spratlys (Dupuy & Dupuy, 2013). On May 7, 2009, China reinforced its claims by submitting notes to the United Nations and publishing the Nine-Dash Line map (Mastro, 2021; Sun, 2014). This escalation provoked criticism from

neighboring states, especially Vietnam, the Philippines, and Malaysia (Beckman, 2010). Until the 20th century, China's historical claim and control over the Spratlys and other islands was unchallenged with disruptions during French and Japanese occupations (Shen, 2002; Dobson & Fravel, 1997). China regained these islands after Japan's defeat in 1946 (Zou, 2021). However, Brunei and Malaysia have restricted claims closest to their coasts, whereas Vietnam claims the entirety of the Spratly and Paracel Islands, the Philippines' western portions (Kalayaan Island Group) (Sea, 2016; Herscovitch, 2017). 'Nan Hai' Chinese terminology used for the Southern Sea from the classic 'Shi Jing' (The Classic of Poetry) underpins China's historical claims (Gao & Jia, 2013). The main points of contention are the United Nations Convention and the Chinese contentious Nine-Dash Line (Lien, & Purinton, 2023). With 169 signatory states, the International Law of the Sea—including Beijing—also non-observer states to resolve disputes in international waters peacefully, is the latter. Based on historical accounts, the former represents China's nearly exclusive possession to seize authority over golden waterways (Seymour, 2023). Even with overlapping claimants and increasing militarization of the area, it wasn't until the early 1970s that it is an essential component of worldwide debate and conflict (Hong, 2013). China made its initial formal assertion on September 9<sup>th</sup>, 1958, when it released its Declaration on the territorial boundary proclaimed by the Chinese. In this region, Macclesfield Bank (Zongsha), Paracels (Xinsha), the Pratas (Dongsha), and Spratly (Nasha) are under Chinese control, and this was recognized in the 1958 Declaration (Dupuy and Dupuy, 2013). China recently announced to the UN Secretary-General on May 7<sup>th</sup>, 2009, that it had unquestionable sovereignty over the Islands and that had the ultimate authority and control on them. This was done through two *verbales notes* (Mastro, 2021). To bolster this assertion, China released its contentious Nine-Dash-Line map, staking out its exclusive ownership and sovereign control over the golden waters (Sun, 2014). As a ramification, tension escalated in the region among the neighboring states against China, with heavy criticism of China's legal position as irrational (Beckman, 2010). Prior to the advent of an occupying force in the vicinity, China's superiority across the Spratly Islands and other island groups was unchallenged (Shen, 2002). The Chinese government maintained peaceful and unbroken authority until France "annexed" and occupied a number of its islands in 1930. However, in 1939, Japanese rule over the South China Sea drove away the French colonizer. (Dobson & Fravel, 1997). With the end of the Japanese empire in 1946, the islands in the South China Sea, particularly the Spratly were officially returned to the Chinese government in physical ownership (Zou, 2021). China is the primary claimant in the region, with Vietnam being the second largest, asserting responsibility over every aspect of the Spratly and Paracel Islands (Sea, 2016). Conversely, the Philippines solely asserts sovereignty over the occidental regions of the South China Sea, commonly referred to as the Spratly Islands or Kalayaan Island Group (Herscovitch, 2017), only the Spratly Islands that are nearest to each country's coast are covered by the similar and restricted claims that Brunei and Malaysia have made in the region (Dupuy & Dupuy, 2013). To put it briefly, there is no peaceful way to resolve the unavoidable tension caused by the hostile relationships between sovereign governments in the South China Sea over formal recognition and authority display. Chinese government bases its sovereign rights in the area on terms like "historical rights," "historic title," and "historic water" (Dupuy & Dupuy, 2013). As an illustration, the name "Nan Hai" also known as the Southern Sea in the Western world first appears in the classic poetry book *Shi Jing*, which has continued to serve as the fundamental basis of the conventional appellation for China's claim (Gao & Jia, 2013).

#### **Importance of United Nations Convention on the Law of Sea**

The United Nations Convention Law of the Sea, or UNCLOS as it is sometimes abbreviated, is a convention that was formed in 1982. UNCLOS, which went into effect globally on November 16, 1994, outlines the righteousness and obligations of the countries with regard to their accessibility of all waters. It also creates standards for enterprise and environmental behaviour and oversees the management of marine natural resources. Article 3, of the UNCLOS, cedes nation-states the entitlement to establish sovereign jurisdiction, which is twelve nautical miles or less coming from the baselines (Beckman, Townsend-Gault, Schofield, Davenport, Eds. 2013). UNCLOS establishes particular definitions, such as in Article 47, which defines archipelagic States and sets a maximum baseline length of 100 nautical miles between islands, in recognition of the significance of geography in setting these baselines. Under UNCLOS, deepwater areas including the Continental Shelf, Internal Waters, Contiguous Zone, Exclusive Economic Zone (EEZ), and Archipelagic Waters are specified, as well as maritime exploration and management (Kirton, 2016). These classifications help manage state sovereignty control on ocean space and resources, providing guidelines for orientation rights and liberty to maintain security and geopolitical stability both in the regional and international waters (Bateman, 2007).

### *Internal Waters*

Within the borders set by convention, a coastline state maintains its sovereignty. Within 12 nautical miles, the nation has no constraint to enact laws and regulate its use, and foreign ships are not permitted to travel through the Internal Water (UNCLOS, 1892). However, Article 45 of the agreement emphasizes the freedom of roaming without interference as long as the foreign ships do not jeopardize the coastal state's safety, tranquillity, or order. The rule's justification is that a foreign vessel that infiltrates the coastal state implicitly acknowledges its jurisdiction since the coastal nations have the authority to form the requirements for entry into its sovereign domination (Bodansky, 1991).

### *Archipelagic States*

According to UNCLOS (1982), an archipelagic state is made up of groups of islands that together create a single sovereign state. The state's internal water is the water surrounding, wrapping, and interconnecting all of the archipelago's islands, regardless of how massive or very little.

### *Contiguous Zone*

Coastal states have limited control over this zone compared to their full sovereignty enjoyed in the parochial waters, but they can still enjoy rights like protecting their immigration and sanitary laws and forbidding the infringement of their customs. A belt is a contiguous zone of the coastal waters that stretches from the end of the parochial water to 24 nautical miles from the coastal state threshold (Nguyen, 2006). Contiguous zones are those that are next to the boundaries of the country's territorial waters. The nation may nonetheless enforce laws in this zone to stop people from breaking laws related to immigration, customs, taxes, and sanitary standards inside its borders (UNCLOS, 1982). As to the UNCLOS (1982), Article 33 states that the territorial sea's breadth cannot be measured more than 24 nautical miles from the border.

### *Exclusive Economic Zone*

Exclusive Economic Zones are defined as areas of 200 nautical miles or more of water off the baseline, within which the states are free to use and explore their maritime resources. Within, this the shoreside nation is autonomous and has to be permitted to reconnoitre, utilize, conserve, and superintend natural resources, whether they are subsistence or not (UNCLOS, 1982). The Economic Exclusive Zone, according to UNCLOS "Article 57," is specifically stated to the degree further on to 200 nautical miles from any coastal nation's baseline. Article 69 of the treaty stipulates that landlocked states have the right to investigate coastal states' exclusive economic zones and to engage in such exploration; the states must choose the terms of their involvement. According to UNCLOS Article 71, Article 69 is not pertinent to coastal states whose thrift is primarily reliant on the exploration of means of supporting natural resources within their Exclusive Economic Zone (UNCLOS, 1982).

### *Continental Shelf*

The continental shelf denotes the submerged prolongation of a coastal state's landmass, extending from its shoreline. The width of the continental shelf is subject to variation along different segments of the seabed and may reach up to 350 nautical miles contingent upon specific geographical and geological factors (UNCLOS, 1982).

### **Arbitration Award of 2016**

The 1882 seventh appendix sets up a court for solving disagreements in the Maritime Legislation. This court is officially known internationally as the United Nations Convention on the Law of the Sea. On June 12, 2016, the Philippines filed a petition contesting China's assertion of ownership of a sizable portion of the South China Sea's territorial waters and maritime boundaries, arguing that the areas were contradictory with the 1982 UNCLOS (Smith, & Doe, 2020). This ruling undoubtedly represents the most significant body of international jurisprudence in the region's legislative history. In four sets of inquiries, the Arbitral Tribunal rendered decisions. The "nine-dash line" that China defended, was first decided upon in the Tribunal. Secondly, the Court of Inquiry considered the legal standing of different islands, elevations at low tide, submerged reefs, and "rocks." Thirdly, it also examined the validity of different Beijing acts herewith. Lastly, the Court tackled the issue of whether China and its actions were responsible for worsening the equilibrium (Schoenbaum, 2016). A total of fifteen proposals were made by the Filipino government. Chinese historical claims within the 'nine-dash line' were deemed illegal, according to Submissions 1-2. The claim made in Submissions 3-7 was that the Philippines' continental shelf and exclusive economic zone includes multiple territorial seas in the South China Sea. China was accused in

Submissions 8–9 of illegally infringing on the Philippines’ sovereign rights over both living and non-living resources. China allegedly meddled in the conventional casting practices with the local Filipino population, according to Submission 10. China was accused of violating its commitments with regard to manmade islands in Submission 11. The significance of South China Sea maritime safety was emphasized in Submission 12. Ultimately, responses 13–15 declared that China was the one who started and intensified the dispute and that it was required to stop engaging in any more illegal activity in the region (Cogliati-Bantz, 2016). Notwithstanding the 2006 Declaration, which excludes all disputes that would give rise to issues of mandatory dispute resolution as outlined in Chapter II of the fifteenth Part and is liable to the shortfalls and exclusions discussed in the former chapter of the Convention, the Chinese declined to participate in the convention (Pemmaraju, 2016). The country’s ancient entitlements to information supplies, both living and inanimate within the cow tongue-shaped boundary, according to the judgment of the Court, “is incompatible with the United Nations Convention on Law of Sea, 1982,” and a biased decision is unlikely to help resolve the dangerous disputes in the said region (Schoenbaum, 2016).

#### **China’s Reaction to the Award China’s Reaction to the 2016 Arbitration Award**

The administration of China unequivocally refuses to recognize the arbitral power and authority of the 2016 Arbitration Award. Beijing questioned the tribunal’s professionalism and competency, criticizing its goals (Kardon, 2018). Chinese Vice-Foreign Minister Liu Zhenmin was particularly vocal, dismissing the award as “nothing more than a piece of paper” and insisting that it “will not be enforced by anyone”. Liu Zhenmin’s remarks went further, challenging the expertise and historical knowledge regarding the tribunal members. He suggested that the judges lacked a proper understanding of the region’s historical context, which is a crucial element in Beijing’s territorial claims (Hayton, 2014). Liu Zhenmin also accused the Philippines of manipulating the tribunal process by bribing the judges, thereby undermining the legitimacy and impartiality of the tribunal’s decision. This accusation was part of a broader narrative by the Chinese legitimacy to delegitimize the arbitration process and its outcomes. In its official statements, the administrative officials unequivocally announced the so called Arbitration Award to be ‘null and void’. This stance was intended to signal China’s firm ascertain of the tribunal’s conclusions and its unwillingness to comply with the ruling. Beijing’s official position was that the arbitration had no binding force and did not alter China’s locale claims and South China Sea rights of navigation (Schoenbaum, 2016). By dismissing the arbitration process and its outcome, China aimed to reinforce its sovereignty claims and its stance on resolving disputes through bilateral negotiations rather than international legal mechanisms. This reaction also reflected China’s broader strategy of asserting its influence and command of the entire South China Sea, despite international legal challenges and opposition from other claimant states and the broader international community. In refusing to participate in the Arbitration Award of 2016, the Chinese government denied the legitimacy and prominence of the autonomous entity and attacked the aim and professional efficiency of the Tribunal itself (Kardon, 2018). The official response from the Chinese government to the Arbitration Award 2016 was rendered explicitly when the Chinese Vice-Foreign Minister Liu made a personal attack on the judges with multiple questions about whether the members of the tribunal knew anything about the historical records and accused the Philippines government of bribing the judges on the judgement (Hayton, 2014). The Chinese Government denounced the Award as ‘null and void’ (Schoenbaum, 2016).

#### **Conclusion**

There may be multiple justifications for China’s endeavours across the region’s water, such as ancient asserts, strategically important goals, economic essentials, and security concerns (Schmidt, 2020). While China may wish to proclaim its autonomy and extend its in close proximity, its actions have raised concerns among neighbouring nations and the international community (Xu, 2022). To alleviate the tension, it is essential to engage in diplomatic dialogue and negotiations among the states making the claims (Storey, 2010). Direct talks, multilateral dialogues, and confidence-building measures can help to establish mutual understanding, build trust, and support the peaceful resolution of conflicting claims (Gertz, 2005). Encouraging regional cooperation and dialogue mechanisms like the ASEAN, local events, and the Southeast Asian Summit can offer an arena for constructive engagement, dialogue, and cooperation on maritime security issues (Raymond & Welch, 2022). The UNCLOS provides an arrangement for resolving disputes in the South China Sea. The claimants can also adopt a Code of Conduct that establishes rules of behaviour, mechanisms for dispute resolution, and measures to enhance maritime security and cooperation. Bringing attention to the relevance of sustainable resource conservation and restoration of monitoring preservation in the South China Sea can assist in injecting instability into the vicinity and create a common ground

for collaboration amongst the claimant states (Scott,2016).

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