

## **SOUTH CHINA SEA CONUNDRUM: REGIONAL MARITIME SECURITY SURVEILLANCE OF UNCLOS**

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### **ABSTRACT**

The South China Sea has emerged as a hotspot of geopolitical tension, primarily due to competing territorial claims and maritime disputes among littoral states. This research article aims to provide a comprehensive analysis of the South China Sea conundrum through the lens of the United Nations Convention on the Law of the Sea (UNCLOS) by examining the legal framework provided by UNCLOS and assessing its implications on regional maritime security surveillance regime to enhance transparency, deter violations, and promote peaceful resolution in the region. It will further examine the possible alternative legal approaches beyond UNCLOS for resolving these disputes, considering the potential for innovative legal mechanisms, diplomatic negotiations, and regional cooperation by analyzing the strengths and weaknesses of existing frameworks and proposing alternative avenues for dispute resolution, this article aims to contribute to ongoing efforts to achieve a peaceful and sustainable resolution to the South China Sea disputes.

**Keywords:** South China Sea, UNCLOS, Maritime Security Surveillance, Regional Cooperation, Conflict Resolution.

### **Introduction**

The South China Sea (SCS) stands as a vital maritime domain, serving as a gateway to significant global trade routes and hosting abundant natural resources. However, this region is also notorious for its complex geopolitical dynamics, territorial disputes, and security challenges. At the heart of these issues lies the interpretation and application of the United Nations Convention on the Law of the Sea (UNCLOS), a cornerstone legal framework governing maritime rights and responsibilities. The SCS region has witnessed a surge in maritime activities, including shipping, fishing, and resource exploration, which has amplified tensions among coastal states with overlapping territorial claims. These disputes primarily involve China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan, each asserting sovereignty over various islands, reefs, and waters within the SCS. UNCLOS, adopted in 1982, provides a comprehensive legal regime governing all aspects of ocean space, including maritime boundaries, navigation

rights, and resource exploitation. However, despite its significance, the interpretation and implementation of UNCLOS within the SCS have been contentious, exacerbating regional tensions and raising concerns about maritime security and stability. The South China Sea can be rated geopolitically, economically and strategically, as one of the most important seas in the world. It attracts considerable attention in contemporary thinking in international relations and strategic studies, and continues to be seen as a “hot spot” that could be a source of tension or even conflict in East Asia. The need for good order at sea in the South China Sea is a strong common interest of the countries bordering the sea, the United States and the emerging maritime powers of Asia—China, India, Japan and South Korea.<sup>1</sup> The South China Sea (SCS) is a semi-enclosed region, bordered to the north by China and Taiwan, the east by the Philippines, the south by Brunei and Malaysia, and the west by Vietnam. It constitutes a section of the Pacific Ocean, covering approximately 1.4 million square miles from the Karimata and Malacca Straits to the Taiwan Strait.

This research aims to undertake a comprehensive examination of the SCS conundrum through the lens of UNCLOS, focusing on its implications for regional maritime security. By analyzing the legal principles and provisions outlined in UNCLOS, as well as the divergent interpretations and practices of relevant stakeholders & against the assertive power of maritime control, this study seeks to shed light on the underlying factors contributing to the SCS disputes and identify potential pathways towards conflict resolution and enhanced maritime governance. The SCS conundrum presents multifaceted challenges that extend beyond mere territorial disputes, encompassing issues such as freedom of navigation, marine environmental protection, and the preservation of marine biodiversity. Furthermore, the presence of major global powers, including the United States, China, and regional actors, adds another layer of complexity to the security dynamics in the SCS.

### **Historical Evolution of South China Sea Issue**

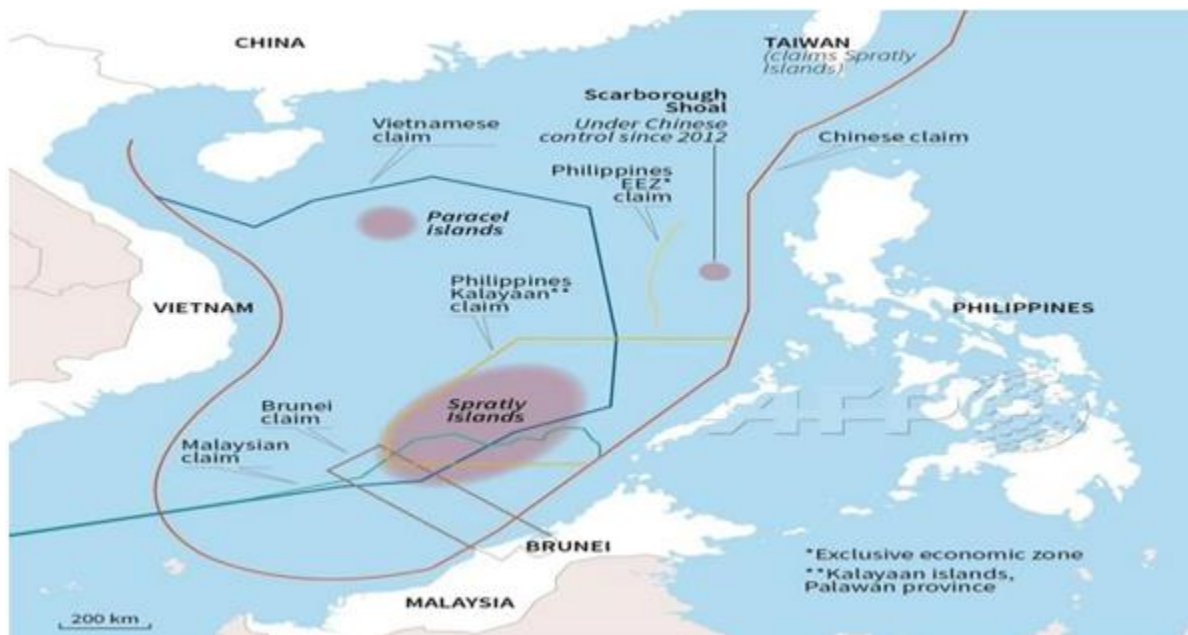
The evolution of South China Sea disputes is a complex saga spanning centuries, marked by intricate geopolitical maneuvering, historical legacies, and shifting power dynamics. Precolonial and colonial times saw indigenous communities and early civilizations navigating these waters, engaging in maritime trade, and occasionally contesting territorial claims. The arrival of European powers in the region during the colonial era further complicated the situation, as various nations asserted control over strategic islands and waterways. Colonial boundaries and treaties laid the groundwork for future disputes, shaping the geopolitical landscape of the South China Sea.

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<sup>1</sup>Bateman, S. (2009). Good order at sea in the South China Sea. In W. U. Shicun & Z. OU. Keyuan (Eds.), *Maritime Security in the South China Sea* (pp. 15-34). Farnham, UK: Ashgate.

Decolonization and the Cold War era, from 1942 to 1968, witnessed a surge in tensions as newly independent nations sought to assert their sovereignty over territories inherited from colonial powers. The emergence of Communist China as a major player in the region further intensified rivalries, with ideological divides exacerbating territorial disputes. The United States' strategic interests in containing communism added another layer of complexity, leading to the establishment of military alliances and the deployment of naval forces in the South China Sea. The period from 1968 to 2017 saw a continuation of these tensions, with conflicting territorial claims, resource competition, and strategic interests fueling ongoing disputes. The 1970s and 1980s witnessed a series of incidents, including clashes between Vietnam and China, as well as the occupation of islands and reefs by multiple claimants. The 1990s saw efforts to manage tensions through multilateral mechanisms such as the Declaration on the Conduct of Parties in the South China Sea (DOC), but these initiatives often faltered in the face of diverging interests and historical grievances. The South China Sea has emerged as a key arena for US-China rivalry in the Western Pacific. However, this was not always the case, and the current situation was not foreseen. Initially, the dispute revolved around maritime territories whose ownership was unclear and thus didn't attract much attention. Traditionally, maritime ownership was not a significant issue as seas were primarily used for trade. China's claim to the Paracel Islands arose in the late 19th century due to French involvement in the region. This claim expanded to the Spratly Islands in response to French and Japanese actions in the early 20th century. In the 1950s, the littoral states began making competing claims to the sea area as they sought to define maritime borders following war and decolonization. China's declaration of the U-shaped line in 1947 expressed its claim to the entire South China Sea, though its exact meaning was unclear. Later, China argued for historical rights to the entire sea without clarifying how these rights aligned with the U-shaped line. Vietnam and the Philippines also made claims to various islands in response to China's actions, based on factors such as historical contact and effective administration. Malaysia later asserted its claim to exclusive economic zones (EEZs) in response to activities by Vietnam and the Philippines.

The 21st century brought renewed focus on the South China Sea disputes, as the region emerged as a critical geopolitical flashpoint. The rapid economic growth of littoral states and the increasing demand for energy resources intensified competition for control over maritime territories. China's assertive actions, including the construction of artificial islands and the establishment of military outposts, further heightened tensions and drew international scrutiny. Efforts to resolve disputes through legal means, such as the Philippines' arbitration case against China, highlighted the importance of upholding international law in addressing maritime conflicts.



**Fig.1:** Disputed Claims in South China Sea

**Source:** AFP News Agency

### An Overview of Territorial Disputes in South China Sea

Analyzing territorial sovereignty disputes in the South China Sea involves understanding the historical, legal, geopolitical, and economic factors at play. These disputes primarily revolve around the conflicting claims of sovereignty over various islands, reefs, and shoals in the region, with multiple countries, including China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan, asserting overlapping territorial claims. Here's a comprehensive analysis of some of the key disputes and their significance:

- **Spratly Island Issue:** This archipelago is one of the most contentious areas in the South China Sea, claimed wholly or partially by China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan. The significance of the Spratly Islands lies in their strategic location, rich fishing grounds, potential oil and gas reserves, and their role in asserting maritime rights and control over sea lanes. The disputes over the Spratlys have led to heightened tensions, militarization of the area, and frequent confrontations between claimant states.
- **Paracel Island Issue:** Another hotly contested area, the Paracel Islands are claimed by China, Vietnam, and Taiwan. China currently controls the entire archipelago after a brief conflict with Vietnam in 1974. The Paracels are strategically important due to their location near major shipping routes and potential oil and gas reserves. China's control

over the Paracels allows it to project power and assert its territorial claims in the region, leading to tensions with neighboring countries.

- **Scarborough Shoal Dispute:** This feature is claimed by China, the Philippines, and Taiwan. The significance of Scarborough Shoal lies in its rich fishing grounds and strategic location, which could provide control over access to the Philippines' Exclusive Economic Zone (EEZ). The 2012 standoff between China and the Philippines, where China effectively gained control over the shoal, escalated tensions and led to a deterioration in bilateral relations.
- **Natuna Island Issue:** Natuna Island, located in the South China Sea, have been at the center of territorial disputes primarily involving Indonesia and China. Here's an extensive overview of the Natuna Island disputes, their significance, and the claimant countries. Indonesia claims sovereignty over the Natuna Islands based on historical ties, geographical proximity, and the principle of Exclusive Economic Zones (EEZs) under the United Nations Convention on the Law of the Sea (UNCLOS). China's claims in the South China Sea, as defined by its nine-dash line, overlap with Indonesia's EEZ, including parts of the Natuna Islands. Tensions between Indonesia and China escalated in recent years due to Chinese incursions into Indonesian waters around the Natuna Islands. These incursions include illegal fishing activities by Chinese vessels within Indonesia's EEZ. In 2016, Indonesia intercepted and detained a Chinese fishing vessel and its crew within its EEZ near the Natuna Islands, leading to a diplomatic spat between the two countries. The Natuna Islands hold strategic importance due to their location at the southern edge of the South China Sea, making them a gateway to the broader Indonesian archipelago and key shipping lanes. Rich in natural resources such as oil and gas reserves, the Natuna Islands have economic significance for Indonesia's energy industry and regional stability. It also serves as a symbol of Indonesia's commitment to defending its sovereignty and maritime rights, particularly in the face of encroachments by foreign powers. Vietnam, Malaysia, Philippines and Brunei While not direct claimants to the Natuna Islands, these countries have overlapping claims in the broader South China Sea region, contributing to the complexity of the territorial disputes.
- **Mischief Reef:** Claimed by China, the Philippines, and Taiwan, Mischief Reef is significant due to its proximity to the Philippines and its location within the Philippines' EEZ. China's construction of artificial islands and military facilities on Mischief Reef has raised concerns among neighboring countries and the international community about China's assertive behavior and its impact on regional stability.

- **James Shoal:** This submerged feature is claimed by China and Malaysia. While it may seem insignificant compared to other disputes, James Shoal holds symbolic importance for China as it marks the southernmost extent of China's territorial claims in the South China Sea. China's assertion of sovereignty over James Shoal reflects its broader strategic ambitions and its desire to establish dominance in the region.

Overall, territorial sovereignty disputes in the South China Sea are multifaceted and have far-reaching implications for regional stability, maritime security, and international law. The competing claims over islands, reefs, and shoals have led to tensions, militarization, and increased competition for control over strategic resources. Efforts to resolve these disputes through diplomatic means, such as arbitration or negotiations, have been challenging due to entrenched positions, power asymmetries, and geopolitical rivalries. The South China Sea remains a potential flashpoint for conflict, highlighting the need for peaceful resolution mechanisms and multilateral cooperation to manage competing interests and uphold the rule of law in the region.

### **UNCLOS & South China Sea Disputes**

United Nations Convention on the Law of the Sea lays down a comprehensive regime of law and order in the world's oceans and seas establishing rules governing all uses of the oceans and their resources. It enshrines the notion that all problems of ocean space are closely interrelated and need to be addressed as a whole.<sup>2</sup>"The evolution of UNCLOS and the South China Sea dispute" represents a complex interplay of international law, geopolitics, and maritime interests. The United Nations Convention on the Law of the Sea (UNCLOS), established in 1982, after nine years of negotiations serves as the primary legal framework governing maritime rights and responsibilities among nations. It entered into force in 1994 and has been almost universally accepted.<sup>3</sup>The objective of the Convention is to promote the peaceful use of the global ocean, utilizing the ocean's resources on normative principles of equity, sustainability and sovereignty.<sup>4</sup>

However, the South China Sea dispute, involving overlapping territorial claims by China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan, has tested the effectiveness and adaptability of UNCLOS in resolving maritime conflicts. Despite UNCLOS providing a

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<sup>2</sup>United Nations Convention on the Law of the Sea of 10 December 1982 Overview and Full Text. Retrieved 5 November 2013, from Oceans and Law of the Sea, United Nations.  
[https://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm)

<sup>3</sup>UNCLOS presently has 164 parties: See online: United Nations Treaty Collection. <https://treaties.un.org/>

<sup>4</sup>Preamble of UNCLOS. For full text, see UN document A/CONF.62/122 (1982)

mechanism for states to delineate their exclusive economic zones (EEZs) and continental shelves, disputes over sovereignty, historical claims, and strategic interests have hindered its implementation in the South China Sea. China's assertive actions, including the construction of artificial islands and military installations, have exacerbated tensions and raised concerns about the militarization of the region. This section will first review this policy under general international law on peaceful settlement of disputes, bearing mind that China is bound by Article 2(3) and Article 33(1) of the Charter of the United Nations (hereafter the UN Charter).<sup>5</sup>Article 2(3) of the UN Charter obliges states to settle their international disputes by peaceful means in a certain manner so that international peace, security, and justice are not endangered. Efforts to address the dispute through multilateral mechanisms, such as the Association of Southeast Asian Nations (ASEAN) and the United Nations, have been hindered by competing interests and power dynamics among involved parties. The arbitration case brought by the Philippines against China in 2013, based on UNCLOS provisions, highlighted the potential for legal avenues to resolve disputes peacefully, yet China's refusal to recognize the ruling demonstrated the limitations of legal mechanisms in the absence of political will. The evolving nature of UNCLOS and the South China Sea dispute underscores the need for concerted diplomatic efforts, adherence to international law, and cooperative frameworks to ensure stability and maritime security in the region.

Once a nation ratifies UNCLOS, it must ensure that its maritime claims and domestic laws align with the rights and duties outlined in the agreement. After UNCLOS takes effect for a country, its interactions with other signatories are regulated by the treaty's terms. It's a basic tenet of international law that a country cannot cite its domestic legislation to evade its responsibilities under a global treaty.<sup>6</sup>

### **Disputes Related to UNCLOS**

All the nations bordering the South China Sea and asserting ownership of its islands are signatories to UNCLOS. Thus, UNCLOS plays a pivotal role in assessing the legal conflicts in the region. UNCLOS operates under the presumption of established sovereignty over land territories, including offshore islands. It delineates the permissible maritime zones that states can claim from their land and islands, as well as outlining the rights and responsibilities of coastal and other states within these maritime zones. By joining UNCLOS, a state agrees to the dispute settlement procedures laid out in Part 15. This part allows either country in a disagreement

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<sup>5</sup>It is noted that they were also codified in UNCLOS Article 279.

<sup>6</sup>Vienna Convention on the Law of Treaties, 22 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), Article 27.

concerning how UNCLOS is interpreted or applied to bring the case to an international court or tribunal, without needing the other country's consent (Article 286). The decision reached by this court or tribunal is then legally binding on both parties involved (Article 287).

### **Court or Tribunal Authorized to Resolve Disputes: UNCLOS, Part XV**

Upon a State's accession to UNCLOS or thereafter, it possesses the prerogative to preselect its desired forum for resolving disputes (Article 287, UNCLOS). Through a formal declaration to the UN secretary-general, a State Party can specify its preference for one or more of the following judicial bodies: (1) the International Tribunal for the Law of the Sea (ITLOS); (2) the International Court of Justice (ICJ); (3) an arbitral tribunal constituted under Annex VII of UNCLOS; or (4) a specialized arbitral tribunal established under Annex VIII of UNCLOS. In case both parties in a dispute opt for the same court or tribunal, that specific court or tribunal will be responsible for hearing the case, unless there's a different agreement between the parties (Article 287(4) of UNCLOS). If the states involved in the dispute haven't selected the same court or tribunal, or haven't made any selection, the matter will be subject to arbitration as per Annex VII, unless there's a different agreement between the parties (Article 287(5) of UNCLOS). As far as China & Philippines disputes is concerned Both China and the Philippines have not declared a preference for a specific court or tribunal. Consequently, the Philippines initiated arbitration proceedings against China under Annex VII. Article 296 stipulates that any judgment issued by a court or tribunal within Section 2 must be accepted as final and adhered to by all involved parties, as per UNCLOS. Additionally, such rulings hold no obligatory authority beyond the disputing parties and the specific matter at hand, mirroring the protocol for decisions made by the ICJ.

### **Establishing the legal basis for maritime claims: UNCLOS**

With regard to maritime claims, the doctrine of "land dominates the sea" codified in UNCLOS provides that a nation's sea territory can only be generated from the title of territorial sovereignty.<sup>7</sup> Thus, the coastal territories of states can produce various maritime zones, including inland waters, territorial seas, contiguous zones, Exclusive Economic Zones (EEZs), and continental shelves. Similarly, islands can establish similar maritime zones if they possess independent economic activity or can support human habitation. When the maritime zones of neighboring or opposing states intersect, equitable delimitation procedures are employed. Analyzing the implementation of these UNCLOS provisions in the South China Sea context provides the following observations: The controversy surrounding maritime zones generated

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<sup>7</sup>Judgment of the North Continental Shelf Case, Judgment, ICJ Reports (1969), 3, para. 96.



from islands arises from the vague language of the Convention. Disputing parties often exploit the broad interpretation of Article 121(3) to maximize their claims over full maritime zones in the South China Sea, based on the criteria of economic activity and human habitation. However, this approach contradicts the intended purpose of Article 121(3), which aims to mitigate disparities between mainland and island territories in generating maritime zones. Thus, Article 121(3) should not be manipulated to extend maritime zones for islands.

Furthermore, the process of maritime delimitation typically involves two steps: initially establishing an equidistant line, then adjusting it to ensure fairness. One crucial factor in this adjustment is the proportional length of coastlines. Some international court rulings have even introduced a third step, involving a test of proportionality, to ensure fairness. Despite claims that islands in the South China Sea warrant full maritime zones, their small size means their coastline ratio is much lower than mainland states. Therefore, adjustments are necessary to achieve fairness in maritime delimitation among littoral states. Recent judgments, such as the Romania-Ukraine case, indicate that considering certain islands as such under specific articles may not always be required for delimitation. For instance, in the Nicaragua-Columbia case, the Serrana Island was only granted a 12-nautical-mile maritime zone due to its size and remoteness. Considering the geographical features of South China Sea islands, it's probable that claims to mid-ocean islands will similarly result in a 12-nautical-mile maritime zone. UNCLOS defines the territorial sea as the zone extending up to 12 nautical miles from a coastal state's baseline, over which the state exercises sovereignty, including the right to regulate activities and enforce laws. Additionally, UNCLOS provides guidelines for establishing baselines and determining the breadth of territorial seas, ensuring clarity in maritime boundaries. Moreover, UNCLOS delineates EEZs, extending up to 200 nautical miles from a coastal state's baseline. Within this zone, states have exclusive rights to explore and exploit marine resources, including fisheries and hydrocarbons. Understanding UNCLOS provisions regarding EEZs enables researchers to analyze the legal parameters governing economic activities in maritime zones. Thereafter, UNCLOS addresses the delimitation of continental shelves beyond 200 nautical miles, facilitating the establishment of extended maritime claims based on geological and geomorphological criteria. This aspect of UNCLOS underscores the importance of scientific evidence in defining the outer limits of continental shelves and resolving disputes over overlapping claims.

Thirdly, according to UNCLOS, the creation of a maritime zone based on historical grounds is not acknowledged, except for instances involving historic bays, as mentioned in Article 10. Presently, historical waters or bays are only admissible for claiming internal waters under specific circumstances: the continuous, peaceful exercise of a coastal state's authority over the area and acknowledgment of the claim by foreign states. Such conditions are (1) the actual,

peaceful and long-lasting exercise of a coastal state's authority over the claimed area, and (2) foreign states' recognition of the claim.<sup>8</sup>

### **Major Shortcomings of UNCLOS in SCS Disputes**

The United Nations Convention on the Law of the Sea (UNCLOS) is a crucial international legal framework governing maritime rights and responsibilities. However, its effectiveness, especially in resolving disputes like those in the South China Sea, is subject to scrutiny due to several significant shortcomings.

- *Lack of Enforcement Mechanisms:* UNCLOS lacks robust enforcement mechanisms to ensure compliance with its provisions. While it establishes principles for maritime boundary delimitation, territorial sovereignty, and exclusive economic zones (EEZs), it relies heavily on voluntary adherence by member states. In the South China Sea, this has led to disputes over interpretation and implementation, as countries like China assert territorial claims inconsistent with UNCLOS. For *Examples:* Despite an international tribunal ruling in 2016 against China's expansive territorial claims in the South China Sea, China continued to build artificial islands and militarize the region, demonstrating the limited enforcement power of UNCLOS. China's repeated harassment of fishing vessels from other claimant states in the South China Sea showcases the absence of effective mechanisms to prevent such unilateral actions.
- *Ambiguity in Legal Interpretation:* One of the primary shortcomings of UNCLOS is its ambiguity in certain key provisions, leaving room for different interpretations by member states. This ambiguity exacerbates tensions in regions like the South China Sea, where overlapping territorial claims are rife. For instance, UNCLOS does not clearly define what constitutes a "rock" versus an "island," leading to disputes over the entitlements of certain features. For *Instance,* the controversy over whether certain features in the South China Sea, such as Scarborough Shoal and Mischief Reef, qualify as "rocks" or "islands" under UNCLOS has led to conflicting interpretations and prolonged disputes among claimant states & like also disputes over the extent of maritime entitlements, particularly exclusive economic zones (EEZs), have arisen due to differing interpretations of UNCLOS, contributing to tensions in the region.
- *Limited Dispute Resolution Mechanisms:* While UNCLOS provides avenues for dispute resolution through mechanisms like the International Tribunal for the Law of the Sea

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<sup>8</sup>UN Doc. A/CN.4/143, 9 March 1962, titled "Judicial Regime of Historic Waters, including Historic Bays," 2 Yearbook of the International Law Commission, 3 at 13.

(ITLOS) and arbitration, these processes are often lengthy, complex, and ultimately non-binding. In the case of the South China Sea, countries like China have been reluctant to engage in arbitration, preferring bilateral negotiations or asserting historical claims, thereby undermining the effectiveness of UNCLOS in resolving disputes. For Examples, China's refusal to participate in the arbitration process initiated by the Philippines in 2013 regarding their maritime dispute demonstrates the limitations of UNCLOS dispute resolution mechanisms in resolving disputes involving major powers. Despite international pressure, parties involved in the South China Sea dispute have often opted for bilateral negotiations or unilateral actions rather than engaging in binding arbitration or adjudication through UNCLOS mechanisms.

- *Inadequate Protection of Environmental Rights:* UNCLOS includes provisions for the protection and preservation of the marine environment, such as measures to prevent pollution and conserve marine resources. However, these provisions are often overshadowed by geopolitical interests in regions like the South China Sea. Rampant overfishing, destruction of coral reefs, and marine pollution continue unabated due to the lack of effective enforcement mechanisms and cooperation among member states. For Example, the widespread destruction of coral reefs and marine ecosystems in the South China Sea due to illegal fishing, dredging activities, and pollution highlights the failure of UNCLOS to effectively protect the marine environment in disputed areas& the lack of cooperation among claimant states to address environmental challenges in the South China Sea, such as oil spills and marine debris, reflects the insufficient implementation of UNCLOS provisions related to environmental protection.
- *Failure to Address Power Asymmetry:* UNCLOS does not adequately address power asymmetry among member states, leading to unequal implementation and enforcement of its provisions. In the South China Sea, this is evident in China's assertive behavior, which disregards the rights of smaller coastal states and undermines the principles of UNCLOS. The absence of mechanisms to address power imbalances hampers efforts to achieve a peaceful resolution to maritime disputes. For Instance, China's assertive actions in the South China Sea, including the construction of military facilities on disputed features and the establishment of an Air Defense Identification Zone (ADIZ), underscore the failure of UNCLOS to address power imbalances among member states& also another potential example is smaller coastal states, such as Vietnam and the Philippines, have limited capacity to challenge China's maritime assertiveness, highlighting the inequities in implementing UNCLOS principles and ensuring compliance with international law.

While UNCLOS serves as a cornerstone of international maritime law, its shortcomings are glaringly evident in the context of the South China Sea dispute. The lack of enforcement

mechanisms, ambiguity in legal interpretation, limited dispute resolution mechanisms, inadequate protection of environmental rights, and failure to address power asymmetry have contributed to escalating tensions and instability in the region. Addressing these shortcomings requires collective efforts by the international community to strengthen UNCLOS and promote adherence to its principles, thereby fostering stability, cooperation, and sustainable development in the South China Sea and beyond.

### **Beyond UNCLOS: Alternatives to SCS Disputes**

All systems aimed at maintaining maritime order rely on the structure outlined in UNCLOS. However, UNCLOS has some significant limitations in this regard, including its numerous “built-in” ambiguities, which allow states scope to adopt flexible interpretations of their rights and duties under the convention.<sup>9</sup> Along with the stability and predictability of UNCLOS over good order at sea other important international law has been working to give a stable order at sea. These are as follows. 1974 Safety of Life at Sea (SOLAS) convention, Convention on Maritime Search and rescue, 1979 (SAR convention), 1998 Convention for the Suppression of Unlawful Acts against the Safety of Navigation (SUA Convention), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf 1988; and convention for the Suppression of unlawful acts against the Safety of navigation 2005.<sup>10</sup>

The status of these Conventions as well has not showing that much productive because major littoral parties of UNCLOS have not been ratified yet. For instance China, Singapore, and Vietnam are the sole participants of the SAR Convention. Indonesia and Malaysia have not ratified the 1988 SUA Convention and its Protocol. Additionally, Singapore, lacking fixed offshore oil or gas platforms, has not ratified the 1988 Protocol. As of now, no coastal country has ratified SUA 2005. While all regional countries have ratified the SOLAS and MARPOL Conventions, certain key protocols and annexes remain unratified. To maintain maritime stability in the South China Sea, it's crucial for littoral nations to prioritize adherence to maritime conventions, improve legal education, and enact stronger domestic laws. Emphasizing the advantages of these conventions and recognizing that collective benefits surpass individual costs is essential. Effective legislation is essential for maritime security, as these conventions rely on domestic implementation rather than self-execution.

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<sup>9</sup>Sam Bateman, “UNCLOS and its Limitations as the Foundation for a regional Maritime Security regime”, Korean Journal of Defense analysis, 19:3 (Fall 2007), pp. 27–56.

<sup>10</sup>Articles 1–16 of the 1988 SUA convention, as revised by the 2005 SUA Protocol, together with articles 17–24 of the 2005 Protocol and its annex, are to constitute and be called the convention for the Suppression of unlawful acts against the Safety of navigation.

Given the complex situation in the South China Sea, to achieve maritime security cooperation in this region requires that the relevant states work hard to reach consensus and build up mutual confidence, and eliminate the concern that maritime cooperation will affect the claim of sovereign right (Wu, S., & Zou, K. (2010)). Beyond UNCLOS, exploring alternative legal approaches to the South China Sea disputes requires innovative thinking and multilateral cooperation. One potential possibility is the development of a regional maritime code of conduct, encompassing principles of dispute resolution, resource management, and freedom of navigation. Such a code could provide a flexible framework for addressing evolving challenges in the South China Sea while accommodating diverse interests and concerns of claimant states. Another alternative is the establishment of specialized dispute resolution mechanisms, tailored to the unique characteristics of the South China Sea disputes. These mechanisms could involve hybrid approaches combining legal, diplomatic, and technical expertise to facilitate negotiations, manage conflicts, and prevent escalation. Furthermore, fostering dialogue and cooperation among claimant states through Track II diplomacy, confidence-building measures, and people-to-people exchanges can contribute to building trust and reducing tensions in the region. Civil society engagement, academic collaboration, and grassroots initiatives can complement official diplomatic efforts and promote a culture of peace and cooperation in the South China Sea. In addition, the claimant states of the South China Sea should enhance cooperation through the international organizations in this region, such as IMO, ASEAN, to deepen the mutual understanding and confidence, eventually pave the way for maritime security cooperation (Wu, S., & Zou, K. (2010)). These enlightened perspectives may offer a basis for substantive cooperation for South China Sea conundrum.

## **Conclusion**

South China Sea disputes represent a complex challenge that requires innovative and flexible approaches to achieve a peaceful and sustainable resolution. While UNCLOS provides a valuable legal framework, exploring alternative legal approaches beyond UNCLOS is essential to address the inherent limitations and complexities of the disputes. Establishing this framework requires commitment from regional states and a willingness to prioritize a rules-based approach to maritime security. As we look to the future, it is essential for all parties involved to remain committed to dialogue, compromise, and constructive engagement to chart a course towards stability, prosperity, and mutual respect in the South China Sea. Meanwhile, the South China Sea, which contains a unique, rich and diverse marine environment, as well as the world's most complicated sovereignty disputes, has become a crucible of maritime security in the twenty-first century.<sup>11</sup> Two major Pacific powers, the U.S. and China have a critical role to play in this

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<sup>11</sup>Nguyễn Tuấn Anh. (2016). UNCLOS and maritime security in the South China Sea. 171–185.

process. Effective bilateral communication in this regard will maximize prospects for positive results in this conundrum.

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