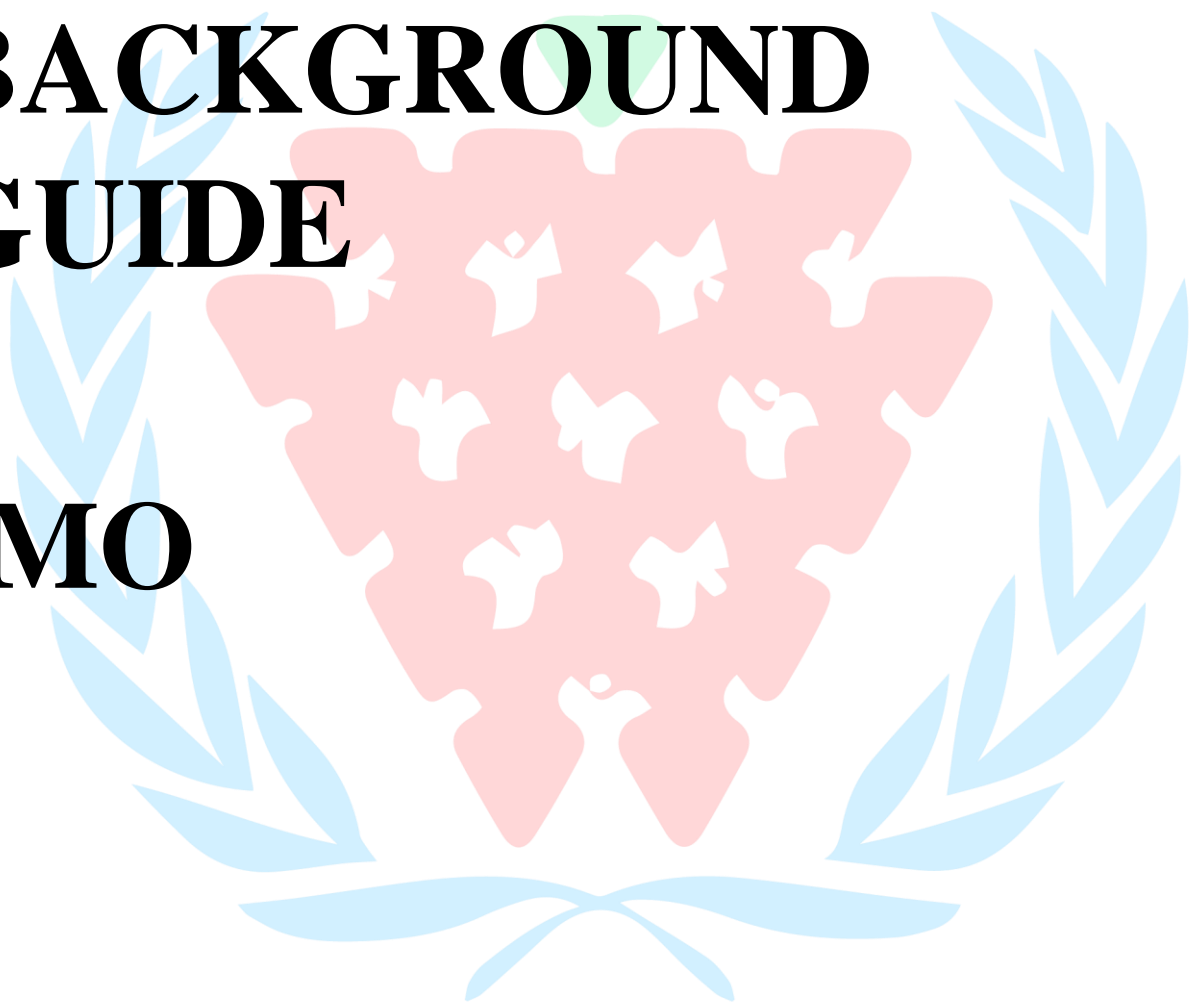


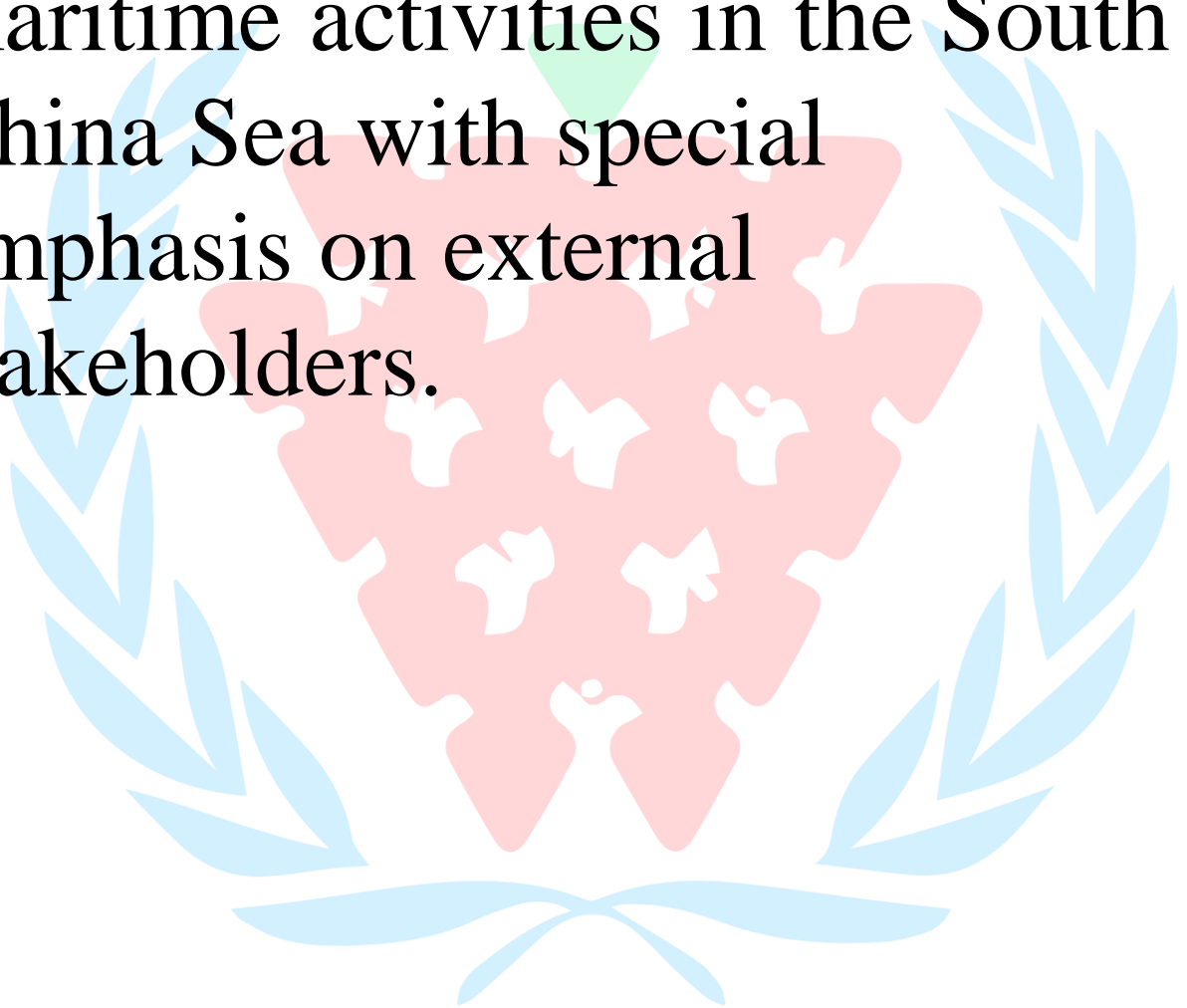
SFHS MUN

BACKGROUND GUIDE

IMO



Agenda: Combatting illicit maritime activities in the South China Sea with special emphasis on external stakeholders.



Letter from the Executive Board

Greetings, It is an honour to welcome you all to a session of IMO at SFHS MUN 2022 which shall be discussing Combating illicit maritime activities in the South China Sea with special emphasis on external stakeholders. We expect that while you have fun during research or deliberations upon the issue, you do not undermine their relevance and debate them because they also affect you. This guide has been prepared with the idea that it will brief you about the issues at hand, and give you a good starting point for further research.

As far as the simulation is concerned, we have tried to capture the most important concepts in this background guide in trying to help you gain a better understanding of what debate may look like in this committee; however, having said that, this background is not meant to be and should not be treated as an alternative to further research and analysis.

This background guide, as the name may suggest, is enough to only give a starting point to your research. We look forward to a very spirited and above anything else, well-informed debate on these very topical issues at SFHS MUN 2022.

Regarding the working of the committee, the simulation shall follow the UN Rules of Procedure but with slight modifications. However, the will of the committee shall be of paramount importance. No decision shall be taken arbitrarily by the Executive Board and complete transparency and accountability will be maintained throughout the committee proceedings. If you have any queries, please contact the undersigned via email.

Aditya Sharma (adisharma1976@gmail.com)

Suggested Pattern for Researching

Researching and understanding the United Nations and the Committee/Council being simulated – Its Mandate, including understanding historical work done on the agenda. research on the allotted country. Understanding its polity, economy, military, culture, history, bilateral relations with other countries, ideological position on various other relevant issues related to the agenda etc.

Comprehending the Foreign Policy of the allotted country. It includes understanding the ideology and principles adopted by the country on the agenda. It further includes studying past actions taken by the country on the agenda and other related issues –specifically analysing their causes and consequences. Reading the background guide thoroughly.

Researching further upon the agenda using the footnotes and links given in the guide and from other sources such as academic papers, institutional reports, national reports, news articles, blogs etc. Understanding policies adopted by different blocs of countries (example: NATO, EU etc.) and major countries involved in the agenda. Including their position, ideology and adopted past actions.

Characterising the agenda into sub-topics and preparing speeches and statements on them. It is the same as preparing topics for the moderated caucuses and their content. Preparing a list of possible solutions and actions the UNCLOS can adopt on the issue as per your country's policies.

Assemble proof/evidence for any important piece of information/allegation you will use in committee and keep your research updated using various news sources.

Lastly, we would expect all the delegates to put in serious efforts in research and preparation for the simulation and work hard to make it a fruitful learning experience for all. Feel free to contact me if you have any queries or doubts.

Proof/Evidence in the Council

Evidence or proof from the following sources will be accepted as credible by the committee:

1. News Sources

a. State-operated News Agencies – These reports can be used in the support of or against the State that owns the News Agency. These reports, if credible or substantial enough, can be used in support of or against any country as such but in that situation, they can be denied by any other country in the council. Some examples are,

- i. RIA Novosti (Russia) <http://en.rian.ru/>
- ii. IRNA (Iran) <http://www.irna.ir/ENIndex.htm>

iii. Xinhua News Agency and CCTV (P.R. China)

<http://cctvnews.cntv.cn/>

2. Government Reports: These reports can be used similarly to the State Operated News Agencies reports and can, in all circumstances, be denied by another country. However, a nuance is that a report that is being denied by a certain country can still be accepted by the Executive Board as credible information. Some examples are,

i. Government Websites like the State Department of the United States of America <http://www.state.gov/index.htm> or the Ministry of Defense of the Russian Federation <http://www.eng.mil.ru/en/index.htm>

- ii. Ministry of Foreign Affairs of various nations like India (<http://www.mea.gov.in/>) or the People's Republic of China (<http://www.fmprc.gov.cn/eng/>).

iii. Permanent Representatives to the United Nations Reports <http://www.un.org/en/members/> (Click on any country to get the website of the Office of its Permanent Representative.)

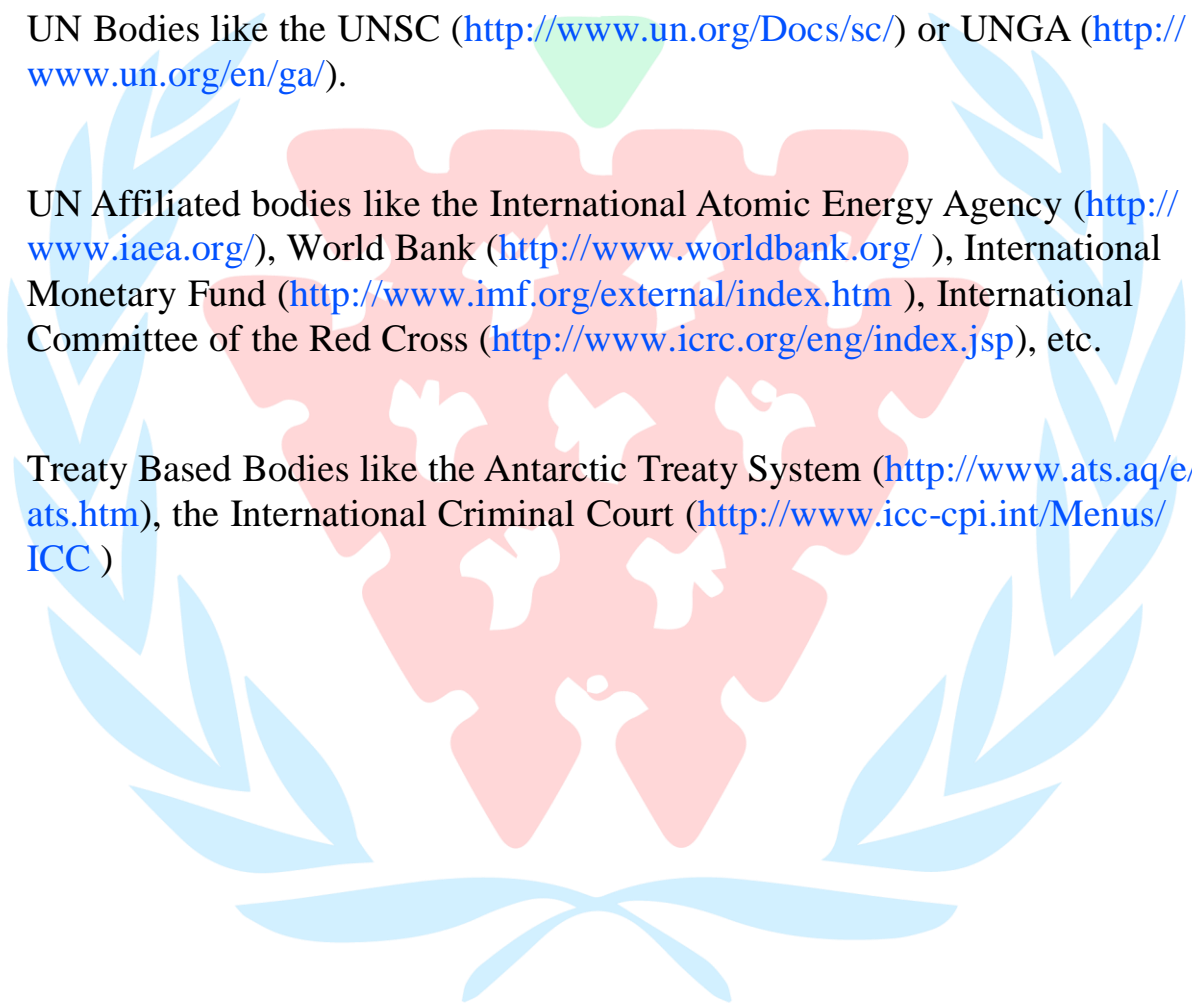
iv. Multilateral Organizations like the NATO (<http://www.nato.int/cps/en/natolive/index.htm>), ASEAN (<http://www.aseansec.org/>), OPEC (http://www.opec.org/opec_web/en/), etc.

3. UN Reports: All UN Reports are considered credible information or evidence for the Executive Board of the UNSC.

i. UN Bodies like the UNSC (<http://www.un.org/Docs/sc/>) or UNGA (<http://www.un.org/en/ga/>).

ii. UN Affiliated bodies like the International Atomic Energy Agency (<http://www.iaea.org/>), World Bank (<http://www.worldbank.org/>), International Monetary Fund (<http://www.imf.org/external/index.htm>), International Committee of the Red Cross (<http://www.icrc.org/eng/index.jsp>), etc.

iii. Treaty Based Bodies like the Antarctic Treaty System (<http://www.ats.aq/e/ats.htm>), the International Criminal Court (<http://www.icc-cpi.int/Menus/ICC>)



Introduction

Figure 1. Map of East Asia



The South China Sea, covering an area of 800,000 square kilometres (310,000 square miles), is semi-enclosed, with ninety per cent of its circumference rimmed by land. Many of Asia's most influential states are among its littoral countries: the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Thailand; the Indochinese countries of Cambodia and Vietnam; and the People's Republic of China (PRC, or China) and Taiwan (the Republic of China). Freedom of navigation through the South China Sea, particularly through the choke points of the Taiwan Strait in the north and the Straits of Malacca

in the south, remains essential to the region's geo-strategic role in linking northeast Asia's seaborne trade with the rest of the world. The South China Sea is one of the most important waterways in the world and helps facilitate economic activity throughout Asia. Trade passing through the

sea exceeds \$5 trillion per year, with U.S. trade making up more than 20% of this economic activity. For states that ring the South China Sea, its waters represent a zone of rich hydrocarbon and protein resources that are increasingly dear on land as populations exhaust their territories' ability to meet their increasing needs. A disruption of freedom of navigation would significantly affect international economic activity, as well as harm global norms that encourage the peaceful resolution of conflicts. Even so, the South China Sea's significance has been recently highlighted, not just for its strategically important commercial and military sea lanes, but also for furnishing living and mineral resources to the littoral states. As a consequence, over the past two decades competing for claims to island territories, maritime and seabed jurisdictions, and access to fisheries have cast governments into a tangled nexus of regional jurisdictional conflicts and rivalries. The matter of maritime boundary delimitation in the South China Sea is especially problematic, primarily because the present situation is defined in terms of a configuration of overlapping unilateral claims to sovereignty over an assortment of various semi-submerged natural formations scattered throughout the region. These hundreds of islands, islets, cays, reefs, rocks,

shoals, and banks comprise four main archipelagoes in the South China Sea: the Pratas, Macclesfield Bank, Paracels, and Spratlys.

Eight states claim title to these South China Sea islands. Singapore and Malaysia dispute claims over Pisang Island and Pulau Batu Puteh, strategically situated in the congested waters of Malacca and Singapore Straits. China, Taiwan, and Vietnam contest each other's claims to sovereignty over the Paracel Islands, a group of fifteen islets and several reefs and shoals scattered over a 200-kilometre area in the middle of the Gulf of Tonkin. Taiwan also contests China's claims to Pratas Island and the Macclesfield Bank. As for the Spratlys, six states assert claims: China, Taiwan and Vietnam claim the entire archipelago, while the Philippines, Malaysia and Brunei claim sovereignty over portions of the Spratlys. Except for Brunei, all the others have established a military presence in the Spratlys.

The recent heightening of the competition between China and its neighbours over sovereignty, resources, and security in the South China Sea has drawn the attention of diplomatic and military leaders from many countries that seek to promote stability and security in these globally important waters. However, the South China Sea also represents the projection of the cultural consciousness of the centuries-long relationship that each

coastal nation has had with its adjoining seas. This fact fuels competing for modern-day nationalist tendencies among claimant-state populations, tendencies that in turn magnify the importance of the disputes and, during times of crisis, narrow the options for quiet negotiation or de-escalation.

There are several categories of disputes, each with its parties, rule sets, and politics. There are disputes over territorial sovereignty, in the overlapping claims to the South China Sea's islands, rocks, and reefs; disputes over which coastal states claim rightful jurisdiction over waters

and seabed; and disputes over the proper balance of coastal-state and international rights to use the seas.

Any of these situations/incidents can escalate this into a military confrontation between some of the most powerful nations in the world.

Timeline of Events

1946: China announced the Spratly Islands as a part of its Guangdong province.

1951: Japan agreed to the Treaty of San Francisco and renounced its claims to the Spratly Islands

while not leaving a successor.

1969: UN Economic Commission for Asia and the Far East publishes a report about "substantial energy deposits", which arouses new interest in the region.

1974: During the battle of the Paracel Islands, China took control of all of the Paracel Islands. Vietnam had about 50 casualties while China confirmed 18 deaths.

1982: United Nations Convention on the Laws Of The Sea is signed.

1988: During the naval Johnson South Reef Skirmish, about 70 Vietnamese sailors are killed by the Chinese near the Spratly Islands.

1991: China specifies its claim to the Paracel and Spratly Islands by passing the "Law on the Territorial Sea and the Contiguous Zone of the Republic of China"

1995: China occupies and captures Philippine military installations in the Spratly Islands inside of the Philippines' EEZ Research Report XVIII.

2000: Philippine troops kill and arrest Chinese fishermen because they crossed into the Philippines' waters.

2002: China and ASEAN signed the Declaration on the Conduct of Parties in the South China Sea.

2011: The Philippines and the Vietnamese reinforce their maritime cooperation because of the discovery of oil in a region claimed by China.

2011: The U.S. Senate passes a resolution in which it condemns China's use of force in the conflict.

2012: the U.S. communicates that the country will deploy more ships to the Pacific

2013: The Philippines launched a UN tribunal under UNCLOS against China.

2014: China stationed a drilling rig in Vietnam's EEZ which lead to serious tensions.

Drivers of Competition

East Asia's territorial disputes are decades old, and incidents at sea have taken place for many years. To some, the fact that the disputants have not resorted to large-scale combat since China's 1974 seizure of the Paracel Islands from the faltering Republic of Vietnam (South Vietnam) is a testimony to the region's stability. However, the notable uptick in tensions from 2005-2006 has raised deep concerns in the region and among those who rely on trade routes through the South China Sea and the East China Sea to support economic growth and trade. The explanations for the uptick in tensions in recent years are numerous, and include:

- Competition for energy and fishery resources. Such competition long has been a factor in the South China Sea, but it has been heightened by the greater energy needs of rapidly growing economies, higher energy prices, and more sophisticated offshore exploration and extraction technology that makes offshore development a more realistic prospect. Overfishing in coastal waters has also pushed more fishing vessels to operate in disputed territory. Growing energy demand in the region's expanding economies compels maritime nations, particularly China, the Philippines, and Vietnam, to seek the greatest possible rights to exploit resources.
- China's emergence as a regional power, and deep uncertainty about its strategic intentions. Questions about China include whether its foreign policy has shifted to a fundamentally more assertive stance, whether it is actively seeking a strategic maritime buffer zone in the region, and whether it sees Southeast Asian nations as strategic and economic partners or rivals. Over the past two years, there also have been questions about how China perceives and

will respond to the United States' strategic rebalancing of the region, and whether this will lead to greater or lesser tensions.

- Rising importance of national image in the domestic politics of several of the disputing countries. Many analysts allege that the political importance of national pride appears to be increasing in the politics of China, Japan, the Philippines, South Korea, and Vietnam and that this has made it difficult for their governments to compromise or negotiate, particularly given the increasing frequency of aggressive or assertive actions by other claimants.

- Myriad other factors, including UNCLOS's emergence as a formal diplomatic mechanism that allows claimants to make direct assertions of

claims. Some analysts, including many Chinese observers, argue that moves by claimants to stake formal claims almost inevitably bring a counter-response by other claimants. Combined with the other drivers of competition, they argue that this dynamic raises tensions and makes compromise more difficult.

Resources as a Driver of Competition

Many analysts feel that resource competition has become one of the key drivers of territorial disputes and tension, particularly in the South China Sea and the East China Sea. The South China Sea, for example, is a major source of fish resources for each of the nations that border it, and the largest source of fish for China, the Philippines, and Vietnam. Many energy industry observers believe the sea also has substantial reserves of oil and natural gas. New technologies are making complicated offshore oil and gas development more feasible, and high energy prices are contributing to the desire to control these resources. At the same time, territorial competition has created uncertainties that constrain hydrocarbon development and the smooth management of fishery resources. Two important developments have served as triggers that may be at least partly responsible for greater tensions in these areas. The first is overfishing in coastal waters, which has led fishing boats to work further offshore. The second is rising energy demand in countries with claims in the South China Sea, which has encouraged more offshore energy development in their economic planning.

The South China Sea Islands

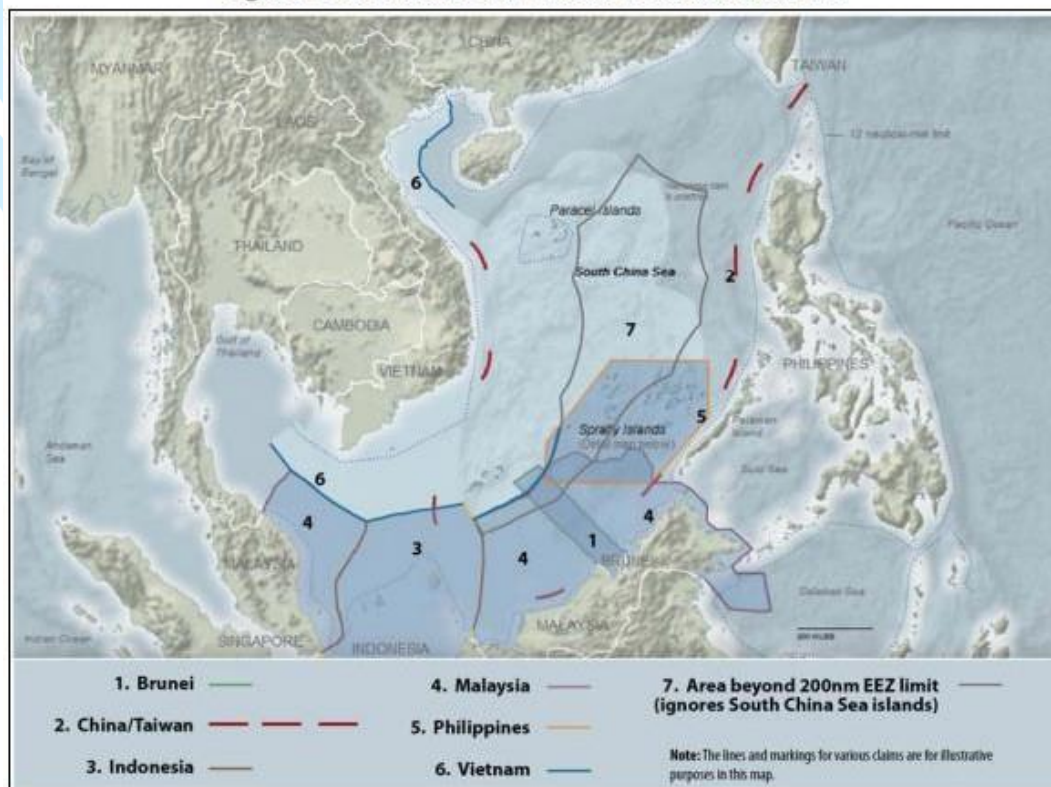
The South China Sea Islands consist of over 250 islands, atolls, cays, shoals, reefs, and sandbars in the South China Sea, none of which have indigenous people, few of which have any natural water supply, and many of which are naturally underwater at high tide, and many of which are permanently submerged. The features are grouped into three archipelagos, plus the Macclesfield Bank and Scarborough Shoal. Collectively they have a total land surface area of less than 15 km² at low tide:

-The Spratly Islands, are disputed between the People's Republic of China, the Republic of China, and Vietnam, with Malaysia, Brunei, and the Philippines claiming parts of the archipelago

-The Paracel Islands, disputed between the People's Republic of China, the Republic of China, and Vietnam, occupied by the PRC

-The Pratas Islands, disputed between the People's Republic of China and the Republic of China,

Figure 3. Territorial Claims in the South China Sea



occupied by the ROC

-The Macclesfield Bank, disputed between the People's Republic of China, the Republic of China, the Philippines, and Vietnam, with no land above sea-level

-The Scarborough Shoal, is disputed between the People's Republic of China, the Philippines, and the Republic of China, with only rocks above sea level.

There are minerals, natural gas, and oil deposits on the islands and under their nearby seafloor, also an abundance of sea life, such as fish, animals and vegetation, traditionally exploited as food by all the claimant nations for thousands of years—mostly without disputes that could risk war. In the 20th century, since the WW2 settlements failed to resolve ownership of such lesser areas of land, seas and islands—and because of the economic, military, and transportation importance—their control, especially that of the Spratlys, has been in dispute between China and several Southeast Asian countries, such as Vietnam, from the mid-20th century onwards. True occupation and control are shared between the claimants.

South China Sea Claims

Maritime boundaries in the South China Sea are particularly problematic because they involve six separate claimants in a mostly enclosed body of water with a large number of disputed land features. The South China Sea, one and a half times the size of the Mediterranean Sea, is ringed by Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam, and dotted with hundreds of small islands, shoals, reefs, and rocks, many of them occupied by the disputants. China, Taiwan, and Vietnam each claim the Paracel Island chain in the northern part of the sea. China controls them in practice, having forcibly taken control of the group in 1974 from the

former Republic of Vietnam (South Vietnam). Further south, the Spratly Island chain is claimed in totality by China, Taiwan, and Vietnam, and partially by Brunei, Malaysia, and the Philippines. Each of the claimants except Brunei occupies at least one of the Spratly islands or shoals. Virtually none of the landmasses in the Spratlys is habitable, but control over them could give a

claimant rights to an area thought to be potentially rich in energy resources. Some claimants have gone to the extent of building extensive structures atop small rocks or basing troops or other personnel on islets with no fresh water. Most observers say these actions are intended to demonstrate control and in some cases even habitability. The most problematic set of disputes derives from the broad and ambiguous claim that China makes to around 80% of the sea through a U-shaped nine-dash line that overlaps with the claim of each of the other claimants. Over the years, Chinese officials have been ambiguous about what the line means—whether China is claiming the entire sea and seabed, or just the landmasses

within the line and whatever adjacent waters it is entitled to under international law. The nine-dash line overlaps with exclusive economic zones (EEZs) that other states draw from their mainland territory, citing UNCLOS. This creates uncertainty about what the coastal states have the authority to do in these waters. As an example, in 2012, the state energy companies of China and Vietnam issued overlapping tenders for offshore energy exploration in areas that lie within both Vietnam's claimed EEZ and the nine-dash line. Similarly, China and the Philippines engaged

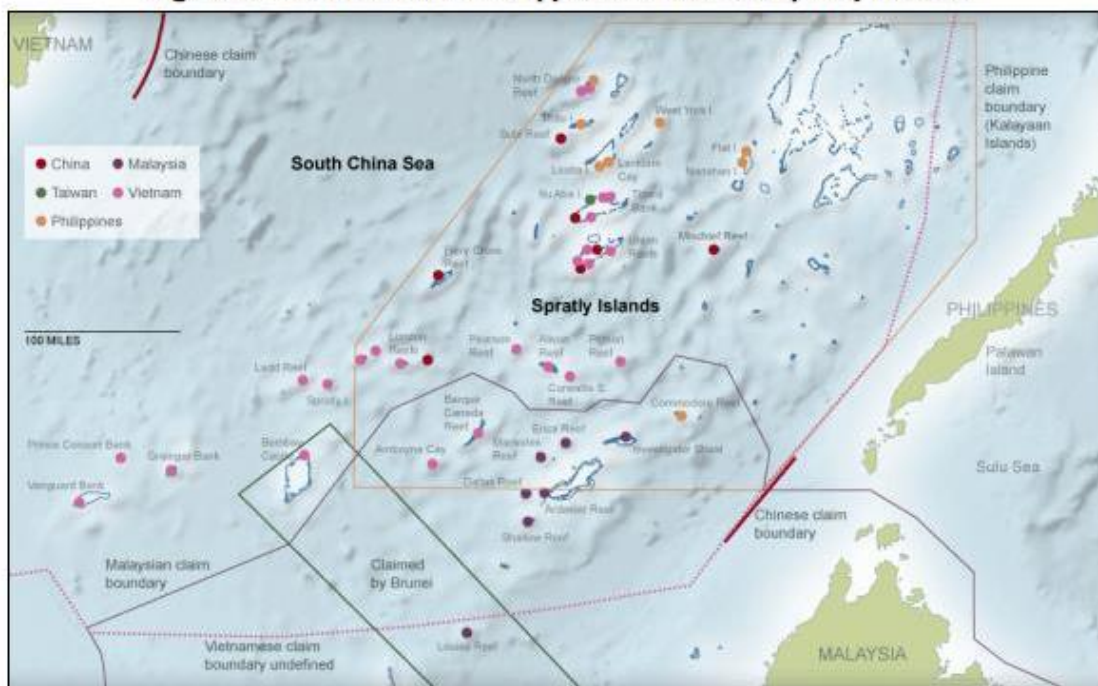
in a prolonged standoff in 2012 over a dispute about which nation has the right to police Scarborough Shoal, an outcropping of rocks that lies within the Philippine EEZ and also inside China's nine-dash-line claim.

The territorial disputes have been made more complicated over several decades by frequently aggressive behaviour by rival claimants. Claimants have harassed fishing, exploration, and naval vessels in disputed waters, publicly disputed resource exploration by other nations or companies working under contract, and instituted measures to assert legal or administrative control over

disputed waters and landmasses outside their actual control. The following is a claimant-by-claimant discussion of claims in the South China Sea.

People's Republic of China

Figure 2. Five Claimants Occupy Portions of the Spratly Islands



The PRC contends that China was the first country to discover and name the islands in the South China Sea (which it calls Nanshai or South Sea). China asserts

that it developed these landmasses, islets and shoals, and exercises political jurisdiction over them. The PRC maintains that people from China started to fish around the Spratly Islands during China's Ming Dynasty (1368-1644) and that the Spratly Islands first came under the political jurisdiction of China during the Yuan Dynasty (1271 to 1368, when the Mongolian empire conquered and ruled China).

The PRC makes the most expansive claims of any of the South China Sea claimants, marking its maps with a broad U-shaped, nine-dash line that includes around 80% of the sea. It adopted the dashed line from maps with an 11-dash line first drawn in 1947 under the pre-revolution Republic of China government, which is also the basis of Taiwan's claim.¹² China

has not clarified whether it is claiming sovereignty over the entire sea and seabed enclosed by the nine-dash line or is making a more limited set of claims, such as to the land features within the line or historical rights, such as fishing or navigation rights. This ambiguity has been an important driver of tensions and has made negotiations with other South China Sea claimants difficult.

In a 2009 submission to the U.N. Commission on the Limits of the Continental Shelf, a UNCLOS body, China included a map with the nine-dash line in a response to a claim by Malaysia and Vietnam, and asserted "indisputable sovereignty over the islands in the South China Sea and the adjacent waters." This raised questions among legal observers about the nature of the Chinese claim, and whether it comports with international law, as embodied in UNCLOS. PRC maps call the nine-dash line a "national border," and PRC officials commonly refer to the South China Sea as China's territory. In March 2012, the commander of a PLA Navy submarine base discussed the South China Sea as China's "maritime national territory" and called the nine-dash

line China's "intermittent national boundary in the South China Sea," while stating that actions to assert China's jurisdiction were needed to support the marking of the national boundary. In June 2012, the PRC announced it was upgrading the administrative level of Sansha, a city located on an island in the Paracels, to administer disputed areas of the South China Sea, and in July 2012 it announced it would set up a People's Liberation Army (PLA)

garrison there.

In 1999, the PRC first imposed a unilateral fishing ban in the northern part of the South China Sea. This ban has been re-imposed annually, and PRC maritime patrol ships have periodically detained foreign fishermen, expelled fishing boats, or confiscated the catch of fishermen operating in this part of the sea, particularly

from Vietnam. On January 1, 2014, amended regulations announced by China's Hainan province took effect, to implement the PRC Fisheries Law. Article 35 requires foreigners to seek permission from authorities of the State Council to fish in Hainan's "jurisdictional waters," which were not defined but appeared to cover more than half of the South China Sea. The amended regulations applied the PRC law explicitly to foreign

nationals and PRC citizens. Like each of the claimants except Brunei, the PRC occupies some land features in the South China Sea, including the entire Paracel Island chain, which the PLA Navy forcibly took over from South Vietnam in 1974, and a set of reefs in the Spratlys, including Subi (Zhubi in Chinese), Gaven (Nanxun), Kennan (Dongmen), Johnson (Chinua), Fiery Cross (Yongshu), Cuarteron (Huayang), and Mischief (Meiji).¹⁶ In 1995, the PRC used naval ships to take over Mischief Reef, which was previously inhabited by the Philippines. The PRC occupies the small rocks that makeup make up Mischief Reef using large hexagonal platforms built above the rocks below.

Other Chinese actors have indirectly made territorial assertions for China, including China's national oil companies. On May 2, 2014, the state-owned China National Overseas Oil Corporation (CNOOC) moved a large exploratory oil rig into waters that Vietnam says to lie on its continental shelf. The rig was less than 20 miles from one of the Paracel Islands claimed by both China and Vietnam. Around 80 Chinese ships reportedly entered the area escorting the rig, and some used water cannons to disperse Vietnamese patrol boats. Yi Xianliang, deputy director general of the Department of Boundary and Ocean Affairs of China's Foreign Ministry, was quoted as saying the rig is in "China's inherent territory."

The PLA also has appeared to challenge the U.S. military in international waters and airspace. In an incident on December 5, 2013, a PLA Navy ship reportedly placed itself in the path of the cruiser USS Cowpens, forcing the cruiser to take evasive action to avoid a collision. The incident occurred in the South China Sea, in an area widely considered to be international waters,

at a time when the Cowpens reportedly were about 30 miles from the Chinese aircraft carrier the vessel was accompanying. The actions of the Chinese ship, like those of Chinese ships in earlier incidents with U.S. ships in 2001 and 2009, may have violated China's obligations under the October 1972 multilateral convention on the international regulations for preventing collisions at sea, to which both China and the United States are a party.

Taiwan

Taiwan (as the Republic of China, or ROC) has asserted “historical claims” to the four groups of islands, reefs, and atolls in the South China Sea. In terms of occupation, Taiwan has controlled the Pratas Islands since 1946. In 1947, the ROC’s Ministry of Internal Affairs printed the “Location Map of the South China Sea Islands,” with an 11-dash line around the Pratas Islands, Paracel Islands, Macclesfield Bank, and the Spratly Islands. In 1948, the Ministry of Internal Affairs published a second map indicating the ROC’s territory with an 11-dash line in the South China Sea. Taiwan has occupied Itu Aba Island (Taiping Island), the largest island in the Spratlys, since 1956. Since 2000, Taiwan has stationed Coast Guard personnel on the Pratas and Taiping Islands, though the military has supplied weapons to and

trained the Coast Guard. Although Taiwan maintains its historical claims in the South China Sea, it has generally refrained from interdicting ships from other nations that enter the disputed waters or detaining fishing boats of other nations found fishing in these waters.

The Philippines

The Philippines, a U.S. treaty ally since 1952, has emerged as a key player in the disputes. Philippine claims in the South China Sea include much of the Spratly chain, and overlap with claims made by China, Malaysia, Taiwan, and Vietnam. In the Spratlys, the Philippines cites historical exploration of the area by Filipinos in the 1940s and 1950s. Philippine historians also

respond to China’s claims of centuries-old administrative control of the region by noting that Philippine fisherman fishermen have also fished in the South China Sea for centuries. The Philippines has taken numerous steps to assert its claims. In 1972, the Philippine legislature formally designated 53 islands and shoals in the Spratly chain as part of Palawan Province and defines them as a special “regime of islands” distinct from the rest of the Philippines archipelago.

In 1999, it grounded a vessel at a landmass called Second Thomas Shoal and based Philippine troops there, where they continue to be based. In 2009, the Philippines passed a law clarifying the baselines that the country uses to demark its maritime borders and bringing its Spratly claims closer into compliance with UNCLOS by stating that all maritime claims derive from land

features. The Philippines has waged notably acrimonious disputes with China. These flared particularly in the mid-1990s when China seized Mischief Reef, a landmass in the Spratly chain, and have arisen again over the past four years as the Philippines announced new energy exploration in its claimed EEZ and then engaged in the prolonged 2012 Scarborough Shoal standoff, which began with

the Philippines using a naval vessel to arrest Chinese fishermen, and ended with China essentially taking de facto control of the atoll. More recently, in 2014, Chinese vessels blocked supplies

being shipped to Philippine personnel on Second Thomas Shoal. Manila has explored several means for resolving disputes. In 2012, the Philippines offered China the opportunity to take their dispute over Scarborough Shoal to several dispute settlement mechanisms, including the International Tribunal under the Law of the Sea (ITLOS) or other international bodies, a move to which China declined to respond. Then, on January 22, 2013, the

The Philippines formally requested that an ITLOS Arbitral Tribunal rules on whether China's claims and its actions within the nine-dash line comply with UNCLOS. Foreign Secretary Albert del Rosario said the Philippines had exhausted diplomatic and military approaches to the dispute and had resorted to a legal approach.

Vietnam

Vietnam makes a broad claim that includes both the Spratly and Paracel Island chains, although the full extent of Vietnam's claims has never been formally delimited on maps or in text. The historical basis of many of these claims dates to activity by Vietnamese vessels in the 17th-19th centuries. Vietnam also argues that a claim to the Paracel chain made in 1933 by French colonial administrators has passed to the present-day Vietnamese government. In June 2012, Vietnam's National Assembly passed a Maritime Law that delineated its claims, based on baselines that had been drawn in 2003, laying out its formal claims to the Paracel and Spratly chains. In 2009, Vietnam and Malaysia submitted a joint claim to UNCLOS's Commission on the Limits of the Continental Shelf, which manages claims to areas beyond their 200 nautical mile EEZ.¹⁹ It was this claim that prompted the PRC response that included the submission of the map including its nine-dash line. Vietnam's navy regularly patrols its claimed EEZ and has periodically detained fishing vessels of other nations found fishing in disputed waters.

Hanoi walks a difficult line in balancing its increasingly active public diplomacy against China's broad claims with its need to maintain reasonably positive ties with Beijing because of their shared land border and extensive economic links. In recent years, Vietnam has been very active in soliciting international support for its claims, including from the United States. During its 2010 chairmanship of ASEAN, Vietnam was effective in bringing maritime security onto ASEAN's agenda and encouraging the United States and

other ASEAN partners to be more vocal on this issue. However, at the same time, Vietnam has urged others to become more active in promoting maritime security and freedom of navigation in the South China Sea, Vietnam has also maintained regular government-to-government, military-to-military, and Party-to-Party communications with Beijing. Many analysts believe Hanoi's diplomatic mechanisms to manage

disputes with China are more developed than those of other claimants, particularly the Philippines. Analysts note that Vietnam is the only Southeast Asian nation to have successfully delineated any of its maritime boundaries with China when the two marked out their territory in the Gulf of Tonkin, which lies between northern Vietnam and the southernmost parts of the PRC.

Malaysia

Malaysia drew its continental shelf claim in the South China Sea in 1979, and it includes islets that Malaysia, the Philippines, and Vietnam each occupy. Malaysia does not claim the entire Spratly chain, but its claims to parts of the region overlap with claims made by China, Taiwan, the Philippines, Vietnam, and Brunei. Until recently, Malaysia's disputes with China have not

been as hotly contested as Vietnam's or the Philippines's, most likely because Malaysia is located farther from the PRC and presents less economic competition. Malaysia's fishing industry, for instance, is much smaller than that of Vietnam or the Philippines. However, Chinese maritime law enforcement vessels reportedly have interfered with the operation of vessels operated or contracted by Malaysia's state energy company Petronas. Malaysia itself has occasionally detained Vietnamese fishing vessels found operating in its claimed waters, causing some tensions

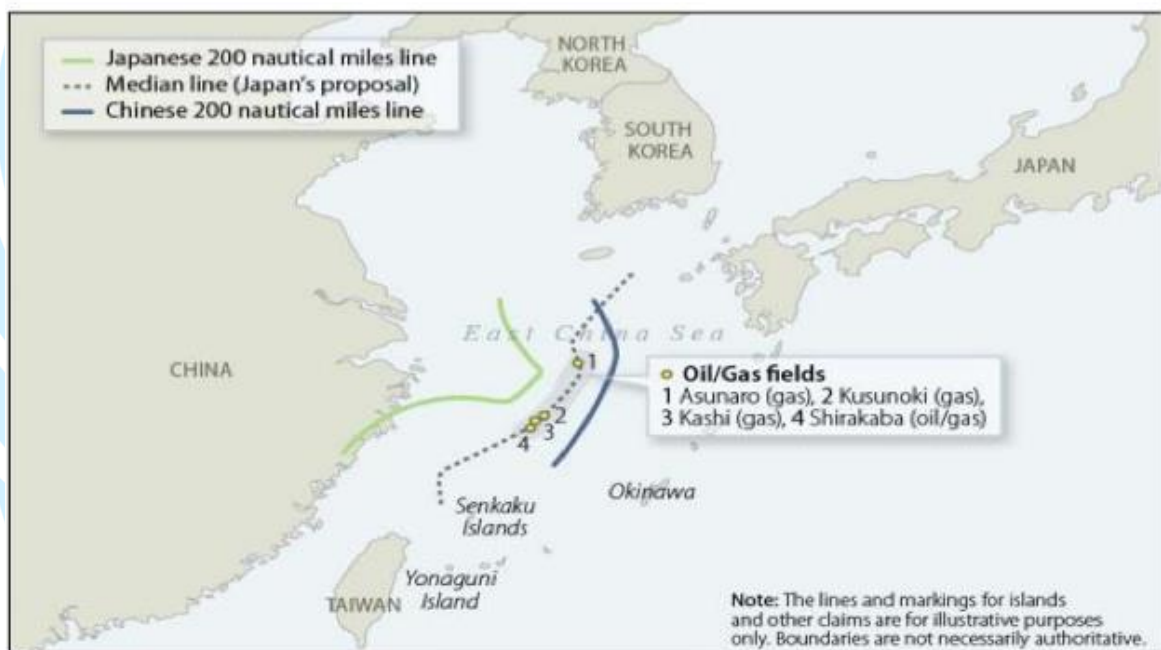
between the two nations. Malaysia has sought to foster more cooperation among Southeast Asian claimants. For example, its competing claims with Vietnam did not preclude it from joining Vietnam in submitting a joint extended continental shelf claim to the U.N. Commission on the Limits of the Continental Shelf. Malaysia's territorial dispute with Brunei was resolved when the two countries signed a boundary agreement in April 2009, which was followed in 2010 by an agreement between Malaysia's state energy company, Petronas, and the Brunei government to develop jointly two blocks offshore Borneo Island. Some observers have pointed to this resource-sharing arrangement as a potential model for others to resolve maritime territorial disputes. Malaysia will serve as chair of ASEAN in 2015 and will have considerable authority over the degree to which

maritime disputes are discussed at ASEAN-centered fora such as the ASEAN Regional Forum (ARF) and the East Asia Summit (EAS).

Brunei

Brunei has narrow claims in the South China Sea that primarily consist of the claimed EEZ extending 200 nautical miles from its marked coastline. As noted, its claims overlap with those made by China and Taiwan, and there is a small overlap with claims made by the Philippines. It has resolved disputes with Malaysia through a 2009 agreement providing for the joint development of energy resources.

Figure 4. East China Sea Claims and Resources



East China Sea Claims

There essentially are two disagreements over territory and boundaries in the East China Sea (known in China as Dong Hai, or East Sea). The first, and most acrimonious, is the territorial dispute over the Senkaku islets (called the Diaoyu islets by the PRC and the Diaoyutai islets by Taiwan), which are administered by Japan but also claimed by China and Taiwan.

The second major East China Sea disagreement is a maritime sovereignty dispute between China and Japan. While China claims the whole continental shelf to the

Okinawa Trough, Japan claims the same shelf to a median line between its undisputed territory and that of China.

Role of ASEAN

ASEAN has played an assuaging role in the mitigation of the SCS dispute. The treaty of Amity and Cooperation of 1976 has been the blueprint for a conscious effort toward conflict avoidance. Article 10 of this treaty discourages participation in any activity perceived as a threat to the political or economic sovereignty of a member state whilst Article 17 emphasizes the resolution of disputes

through friendly negotiations before resorting to other means. However, it must be borne in mind that while this treaty may be regionally acknowledged, it is ultimately a non-binding code of conduct (COC). The 2002 declaration on the COC of parties in the SCS dispute, hopes to fructify a more binding official agreement while managing tensions through the support of the tenets of 1982 UNCLOS such as freedom of navigation, over-flight and MSR. More prominently, the declaration also urges states to give due notification on any impending joint military exercise albeit voluntarily.

Risk of Conflict

The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing for territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ). These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary

forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific. Also, new details surfaced a few weeks back outlining Chinese military activities in the South China Sea where construction on several thousand acres of disputed islands is now the centre of Beijing's bid to gain control of the strategic waterway.

Despite appeals from US leaders to halt the island construction and militarization of them, the build-up of military facilities by China in the South China Sea is continuing.

And the volume level of US and Chinese military posturing on the matter is increasing. Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, the United States along with other parties to the conflict have a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.

Admiralty Law

Admiralty law or maritime law is a distinct body of law that governs maritime questions and offences. It is a body of both domestic law governing maritime activities and private international law governing the relationships between private entities that operate vessels on the oceans. It deals with matters including marine commerce, marine navigation, marine salvaging, shipping, sailors, and the transportation of passengers and goods by sea. Admiralty law also covers many commercial activities, although land based or occurring wholly on land, that is maritime in character.

Admiralty law is distinguished from the Law of the Sea, which is a body of public international law dealing with navigational rights, mineral rights, jurisdiction over coastal waters and international law governing relationships between nations.

Although each legal jurisdiction usually has its own enacted legislation governing maritime matters, admiralty law is characterized by a significant amount of international law developed in recent decades, including numerous multilateral treaties.

Seaborne transport was one of the earliest channels of commerce, and rules for resolving disputes involving maritime trade were developed early in recorded history. Early historical records of these laws include the Rhodian law (Nomos Rhodion Nautikos), of which no primary written specimen has survived, but which is alluded to in other legal texts (Roman and Byzantine legal codes), and later the customs of the Hanseatic League. In southern Italy, the Ordinamenta et consuetudo maris (1063) at Trani and the Amalfian Laws were in effect from an early date.

Bracton noted further that admiralty law was also used as an alternative to the common law in Norman England, which previously required voluntary submission to it by entering a plea seeking judgment from the court.[1]

Islamic law also made major contributions to international admiralty law,[2] departing from the previous Roman and Byzantine maritime laws in several ways. These included Muslim sailors being paid a fixed wage "in advance" with an understanding that they would owe money in the event of desertion or malfeasance, in keeping with Islamic conventions in which contracts should specify "a known fee for a known duration." (In contrast, Roman and Byzantine sailors were "stakeholders in a maritime venture, since captain and crew, with few exceptions, were paid proportional divisions of a sea venture's profit, with shares allotted by rank, only after a voyage's successful conclusion.") Muslim jurists also distinguished between "coastal navigation, or cabotage", and voyages on the "high seas", and they made shippers "liable for freight in most cases except the seizure of both a ship and its cargo". Islamic law "departed from Justinian's Digest and the *Nomos Rhodion Nautikos* in condemning slave jettison", and the Islamic *Qirad* was a precursor to the European commenda limited partnership. The "Islamic influence on the development of an international law of the sea" can thus be discerned alongside that of the Roman influence.[3]

Admiralty law was introduced into England by the French Queen Eleanor of Aquitaine while she was acting as regent for her son, King Richard the Lionheart. She had earlier established admiralty law on the island of Oleron (where it was published as the *Rolls of Oleron*) in her lands (although she is often referred to in admiralty law books as "Eleanor of Guyenne"), having learned about it in the eastern Mediterranean while on a Crusade with her first husband, King Louis VII of France. In England, special admiralty courts handle all admiralty cases. These courts do not use the common law of England but are civil law courts largely based upon the *Corpus Juris Civilis* of Justinian.

Admiralty courts were a prominent feature in the prelude to the American Revolution. For example, the phrase in the Declaration of Independence "For depriving us in many cases, of the benefits of Trial by

Jury" refers to the practice of Parliament giving the Admiralty Courts jurisdiction to enforce The Stamp Act in the American Colonies.[4] Because the Stamp Act was unpopular, a colonial jury was unlikely to convict a colonist of its violation. However, because admiralty courts did not (as is true today) grant trial by jury, a colonist accused of violating the Stamp Act could be more easily convicted by the Crown.[citation needed]

Admiralty law became part of the law of the United States as it was gradually introduced through admiralty cases arising after the adoption of the U.S. Constitution in 1789. Many American lawyers who were prominent in the American Revolution were admiralty and maritime lawyers in their private lives. Those included are Alexander Hamilton in New York and John Adams in Massachusetts.

In 1787 John Adams, who was then ambassador to France, wrote to James Madison proposing that the U.S. Constitution, then under consideration by the States, be amended to include "trial by jury in all matters of fact triable by the laws of the land [as opposed the law of admiralty] and not by the laws of Nations [i.e. not by the law of admiralty]". The result was the Seventh Amendment to the U.S. Constitution. Alexander Hamilton and John Adams were both admiralty lawyers and Adams represented John Hancock in an admiralty case in colonial Boston involving the seizure of one of Hancock's ships for violations of Customs regulations. In the more modern era, Supreme Court Justice Oliver Wendell Holmes was an admiralty lawyer before ascending to the bench.

Relevant Treaties and UN Resolutions

- • San Francisco Peace Treaty of 1951
- • United Nations Convention on the Law of the Seas, 10 December 1982 (UNCLOS)
- • Oceans and the law of the sea, 27 February 2014 (A/RES/68/70)
- • Declaration on the Conduct of Parties in the South China Sea 4.12. 2002

Points to remember:

- ➤ Kindly take note this is just the beginning guide to your research for the committee and we hope for in-depth and more informative research.
- ➤ Also, this Background Guide can not be at any point in time used as a reference during the committee.

- ➤ Seeing the shortage of time for this conference, we request you to kindly reach the conference before time to utilize the committee time in hand.
- ➤ For any further queries/research tips/information kindly contact the Chairperson whose contact details have been mentioned in the beginning.

X-----

