

**PURSUIT OF HEGEMONY BY CHINA:
ANALYSIS OF SOUTH CHINA SEA DISPUTE**

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The South China Sea dispute is a dispute concerning territorial sovereignty having serious implications on international trade and exploration of resources present in the region between six nations namely, China, Malaysia, Vietnam, Brunei, The Philippines and Taiwan. The overlapping of claims and interests of these six disputing claimant countries has aggravated the issue and no solution has been brokered so far. The dispute has brought out a lot of international issues involving sovereignty over the disputed territory requiring clarification on maritime zones and entitlement of various countries over the resourceful area. This paper attempts on expounding the origins of the dispute to the contentions of every country sustaining their claims. It also aims at tackling the larger issue of non-compliance with the universally accepted principles of international law due to lack of sanctions. The profound research exhibits every aspect of Philippines vs. China which is the only case that has tried to decipher the issue at the international domain and how the decision has affected the established laws. Moreover, in addition to widening the scope, it also looks into the involvement of USA and their purpose behind it. Keeping in mind all these factors, we need to examine the inception, evolution, implementation and interpretation of the South China Sea dispute.

Keywords: UNCLOS, Declaration on conduct of parties in South China Sea, ASEAN, UN, Maritime zones, Territorial Sovereignty, Freedom of Navigation

HISTORICAL BACKGROUND AND INTRODUCTION



The South China Sea extends from the Strait of Malacca in the southwest to the Strait of Taiwan in the northeast. Over 500 million people in China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Cambodia, Thailand, and Vietnam reside within 100 miles of its coastline, these claimants clash over their rights and duties in the nearby waters as well as the seabed underneath. The dispute has ignited over the issue of sovereignty in the South China Sea as it is believed to hold astonishing amount of biological diversity, including over 30% of the world's coral reefs and many valuable fisheries. It has a distinctive ecosystem, a repository of vital natural resources, and is a maritime superhighway in the world economy, also known as one of the primary routes for international trade.

The dispute goes beyond the fight for the sea's material wealth and an assortment of flora and fauna but is deeper behind the realm of nationalism, as each country attaches itself to the sea for its symbolic value.

The contentious nature of the dispute reflects that the claimants have argued bitterly over the accurate history of these island chains. Some have tried to attest their modern claims by proving a long and unbroken record of national control over claimed features. These states assert that, for example, their nationals fished around the islands of the Sea or used them for shelter from storms. In particular, Beijing has taken an active role in subsidizing archeological digs to find evidence of exclusive Chinese usage of the Sea's many features since time immemorial.² On September 4, 2012, China's foreign minister, Yang Jiechi, told US Secretary of State Hillary Clinton that there is "plenty of historical and jurisprudence evidence to show that China has sovereignty over the islands in the South China Sea and the adjacent waters."³

¹ <https://chinadaily.com/2012/05/25/chinas-nine-dashed-line-in-south-china-sea/>

² <https://www.lawfareblog.com/south-china-sea-dispute-brief-history>

³ <http://www.worldaffairsjournal.org/article/historical-fiction-china%E2%80%99s-south-china-sea-claims>

The disputes have simmered for decades but they gradually escalated under former Philippine President Benigno Aquino III and culminated in 2012 when China took effective control of the disputed area Scarborough Shoal. The dispute intensified when the Chinese coast guards tried to forcefully block Philippine vessels from bringing food, water, medicines and other supplies to the marines. The Philippines stated that they had no other choice but to elevate the dispute to international arbitration.⁴

The origin of the disputes was recorded back in 1955 and 1956, when China and Taiwan established permanent presences on several key islands, while the Philippine claimed much of the Spratly Island chain as their own. Similarly, shortly thereafter china invaded several islands. In the Battle of the Paracel Islands, china took several features out from under South Vietnam's control, killing several dozen Vietnamese. In response to this both South and North Vietnam seized several other unoccupied feature of the island. In 1988, Beijing moved into the Spratlys and forcibly occupied Johnson Reef, killing several dozen Vietnamese sailors in the process. In 1995, Beijing built bunkers above Mischief Reef in the wake of a Philippine oil concession.

As a result of this, in 2002 ASEAN (Association of South East Nations) and China came together to sign the **Declaration on the Conduct of Parties in the South China Sea**. This Declaration aimed at establishing a framework for the eventual negotiation of a Code of Conduct for the South China Sea. The parties promised-

“to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.”⁵

In May 2009, Malaysia and Vietnam sent a joint submission to the Commission on the Limits of the Continental Shelf setting out some of their claims. This initial submission unleashed a flurry of notes verbals from the other claimants, who objected to the two nation's claims.

In particular, China responded to the joint submission by submitting a map containing the infamous “nine-dash” line. This line snakes around the edges of the South China Sea and encompasses all of the Sea's territorial features as well as the vast majority of its waters. However, Beijing has never officially clarified what the line is meant to signify. Instead, it has maintained “strategic ambiguity” and said only that “China has indisputable

⁴ <http://indianexpress.com/article/explained/south-china-sea-dispute-all-you-need-to-know-explained-philippines-international-court-verdict-world-news-2909187//>

⁵ http://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2 (5th point)

sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.⁶

In January 2013, the Philippines submitted for arbitration a claim against the People's Republic of China for violations of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) after more than a decade of unsuccessful bilateral and multilateral negotiations over territorial claims in the South China Sea (SCS)⁷

GENESIS OF THE DISPUTE: WHO CLAIMS WHAT

The South China Sea which is the home to the Sparty islands and the Paracel islands is one of the most litigious and intricate parts of the world which has seen decades of stalemate and confrontation between six countries, namely China, Philippines, Brunei, Malaysia, Taiwan and Vietnam. All of these countries claim all or parts of the islands present in the South China Sea and as a result, the Sparty islands and the Paracel islands have become the core issue of the dispute.⁸

In order to reach the focal point of the issue and to find out as to what do the respective countries want from the South China Sea and its tiny islands, it is worthwhile to clarify that the dispute does not deal with any security or armed conflict but in fact is a matter of international trade and exploration of natural resources.⁹ The seabed area of the sea houses more than 200 islets, rocks and reefs which makes the area extensively rich in natural resources and takes it to the centre of international stage¹⁰ due to its strategic location and proximity to international trade. The question of who has the rights over the Sparty islands and the Paracel islands which are roughly about 800 square kilometers in area and are surrounded by rich fishing grounds, and more importantly, the potential of large gas and

⁶ <https://www.lawfareblog.com/south-china-sea-dispute-brief-history>

⁷ Greg Torode, Philippines South China Sea Legal Case Against China Gathers Pace, REUTERS (Sept. 27, 2013), <http://www.reuters.com/article/2013/09/27/us-china-philippines-idUSBRE98Q0BX20130927>, archived at <http://perma.cc/8P67-CXGP>; Audio tape: A Discussion on the Philippines' South China Sea Arbitration Case, held by the Center for Strategic & International Studies (Dec. 3, 2013), available at <https://csis.org/multimedia/audio-discussion-philippines-south-china-sea-arbitrationcase>, archived at <http://perma.cc/5XE7-SY35>

⁸ Ralf Emmers, Maritime Disputes in the South China Sea: Strategic and Diplomatic Status Quo

⁹ Timo Kivimäki, War or Peace in the South China Sea?, Copenhagen, Denmark: NIAS Press.

¹⁰ Hung-mao Tien, Tun-jen Cheng, The Security Environment in the Asia-Pacific, (New York: Institute for National Policy Research.

oil deposits, was largely overlooked until the late 1970s when the oil companies began exploring the area.¹¹

In order to solve an international dispute involving several sovereign nations, it is vital that the assistance of principles of International Law should be taken. The United Nations Convention on Law of sea¹² (herein after referred to as UNCLOS) is the sole binding authority dealing with issues of maritime waters to which China and other claimants are signatories to. Unless the convention has nothing to offer to in relation to the territorial claims, the signatories are bound by UNCLOS.

Basis of China's claim

China, being the most populous country in the world¹³ and potentially the next biggest superpower¹⁴ is bound to be a key player in the South China Sea dispute owing to its political, economic and military might. From an outsider's perspective, it can be observed that the rationale behind China's claim is to concurrently expand its military power, reinforce its physical presence in East Asia and to explore options for the requirements of its ever rising population. Over the period, China has developed a "Three No's" policy to deal with the South China Sea dispute.¹⁵ The three no's are no specification of claims, no multilateral negotiations and no internationalization of the issue.

The principle behind no specification of claims is that it claims sovereignty over the entire South China Sea and declines to particularize its claim except the historical nine dashed line map it has produced. China also realizes the fact that if it specifies its South China Sea policy, then it will be difficult for it to shield its policy under current International Law. China further opposes any multilateral organizations getting involved in the negotiations as it believes that The United States and other western powers want to strengthen their presence in Asia where China exerts reasonable control. As a result, China favors bilateral negotiations which it can dominate and if necessary, develop bilateral joint agreements¹⁶ in order to pacify the dispute.

The paramount argument offered by China to support its claim for the Spratly and Paracel islands present in the South China Sea is the historical connection the mainland possesses with the islands. The Chinese scholars and historians present an argument that the control

¹¹ Snyder, Scott, The South China Sea Dispute: Prospects for Preventive Diplomacy. The United States Institute of Peace.

¹² United Nations Convention on Law of Sea, December 10, 1982.

¹³ <http://www.internetworldstats.com/stats8.htm>

¹⁴ Isaac Stone Fish, Is China Becoming the World's Most Likeable Superpower?, The Atlantic, June 2, 2017

¹⁵ Valencia, Ludwig, Dyke. Sharing the Resource of the South China Sea. pg 77

¹⁶ Valencia, Ludwig, Dyke. Sharing the Resource of the South China Sea. pg 77

of the islands by the mainland can be traced back even before the Han, Ming and Qing dynasties which ruled over the mainland for centuries through ancient publications in books, records, poems, and classical Chinese text. It has also been argued by the great Chinese scholar Jianming Shen that China may have traced the islands during the 770 BC-221 BC period during the reign of the East Zhou dynasty.¹⁷ It was during Chiang Kai Shek's supervision that Republic of China exercised its authority over the Spratly islands by means of military personnel, exploitation of natural resources, published maps, and the construction of structures.

The concern of disintegration and the fear of losing its control and prominence in the region is an added explanation for China's aggressive pursuance of the South China Sea islands of Spratly and Paracel. If China loses its claims in the South China Sea, this would see China losing its dominance in the East Asia region and will definitely open a can of worms in relation to other controversial territories of Tibet, Uighur provinces and Hong Kong.

Basis of Brunei's claim

Brunei's arguments are relied upon the international law norms of the law of the sea. It does not assert its claim over any of the islands but claims part of the South China Sea nearest to it as its Continental Shelf and Exclusive Economic Zone.¹⁸ The UNCLOS seconded Brunei's claims due to its continental shelf arguments and therefore giving it rights to the islands under the convention.

Basis of Malaysia's claim

Malaysia's arguments are also based upon the principles defined under the law of sea convention. The nation claims a 12 mile territorial sea, an Exclusive Economic Zone and a continental shelf in the southern part of the South China Sea. At this very time, Malaysia controls three of the islands it considers to be a part of its continental shelf but claims the entire string of islands present in the South China Sea as part of its continental shelf.¹⁹

Basis of Republic of China's (Taiwan) claim

Taiwan's argument follows the line of China's assertion of claim over South China Sea due to its historical stature with the islands. The islands are claimed by Taiwan based upon its

¹⁷ Shen, Jianming, Territorial Aspects of the South China Sea Island Disputes. Security Flashpoints: Oil,

Islands, Sea Access and Military Confrontation, Martinus Nijhoff Publisher. 1998. pg 150

¹⁸ Territorial claims in the Spratly and Paracel Islands. GlobalSecurity.org. Retrieved from <http://www.globalsecurity.org/military/world/war/spratly-claims.htm>.

¹⁹ Spratly Islands Dispute, American University: Trade and Environment Database. Retrieved from <http://www1.american.edu/projects/mandala/TED/SPRATLY.HTM>.

argument that Taiwan is the true China and as a result, it controls the Itu Aba, which is the largest island in the Spratly chain of islands. The major concern behind Taiwan's claim is that if China gets control over these islands, it will have a monopoly on the South China Sea.²⁰ Therefore, it can be said that Taiwan as the Republic of China claims exactly what the mainland China claims.

Basis of The Philippines claim

The primary attention given by the Philippine government is to claim the Scarborough Shoal and the Kalayaan island group which encompasses a variety of notable islands, shoals and reefs in the Spratly Island chain, which includes Reed Bank, Mischief Reef, Itu Aba, Second Thomas Shoal, and Fiery Cross Reef. The Scarborough Shoal is considered to be a part of the 12 mile territorial sea. The Philippines' claim the Spratly Islands and the Scarborough Shoal based on economic need, proximity and abandonment of rights by all other nations which led the Philippines to claim the islands in 1947 and therefore *terra nullius* is in effect when the Kalayaan group of islands were discovered by Tomas Cloma.²¹

THE EXISTENCE OF CONTEMPORARY INTERNATIONAL LAW IN QUESTION: THE PHILIPPINES V. PEOPLE'S REPUBLIC OF CHINA

The relations between China and Philippines have been greatly affected and construed to be deeply strained due to the jurisdictional claims over the islands present in the South China Sea. The dispute is related to conflicting and contrasting territorial claims over these islands by both China and The Philippines. China claims jurisdiction over the disputed territory on the basis of "historical ties" argument whereas The Philippines alleges its right over the islands on the basis of the principles of contemporary international law enshrined under the United Nations Convention on the Law of the Sea. In order to settle the dispute in a more pacific and peaceful manner, The Philippines moved the Permanent Court of Arbitration under annexure VII of the United Nations Convention on the Law of the Sea following a tense standoff between Chinese and Philippines' ships at Scarborough shoal in 2012²² after exhausting all political and diplomatic avenues.

Averments of Philippines are based upon the denial of China's claims of historical links with the islands and based upon the map circulated in 1946-1947 fixing a nine-dash line.²³ The reliance of Philippines' claim is based upon the universally accepted principle that

²⁰ <https://www.wcl.american.edu/journal/ilr/15/saleem.pdf>

²¹ Shen Jianmen. South China Sea Dispute . pg 144

²² Matikos Santos, Philippines wins arbitration case vs. China over South China Sea, INQUIRER.NET, July 12, 2016

²³ Zhiguo Gao & Bing BingJia, "The Nine-Dash Line in the South China Sea: History, Status, and Implications", (2013) 107 AM. J. INT'L L.

treaty law overpowers history.²⁴It argues that China should not be allowed to implement what it calls “historical rights” beyond the limits of United Nations Convention on the Law of the Sea, a convention to which both the nations are signatories to and therefore the nine-dash line map presented by China should not be given any significance.²⁵ Philippines have also contended since most of the islands in the South China Sea cannot sustain life, they cannot be given their own continental shelf as defined in the convention.²⁶This contention is supported by UNCLOS under Article 121(1) which provides that “An island is a naturally formed area of land, surrounded by water, which is above water at high tide”²⁷ and it has been observed that most of the formations in the South China Sea don’t fulfill this condition which makes them rocks which are therefore incapable of sustaining human life and therefore should not be given their own continental shelves.

People’s Republic of China, in its response to the arbitration petition filed by Philippines, stated that the tribunal has no jurisdiction to even hear the issue and as a result, it declared that it won’t participate in the arbitration process.²⁸ The refusal is based upon the contention that several treaties which have been undertaken over the time stipulate bilateral negotiations to be used in order to solve border disputes.²⁹ China also accused The Philippines of violating the voluntary declaration on conduct of parties in the South China Sea made between ASEAN and China which also insisted upon bilateral negotiations as the norm to resolve territorial disputes.³⁰ It has also challenged the legality of this arbitration on the grounds that this matter is not subjected to arbitration as it is a matter of sovereignty and not exploitation rights.³¹

²⁴ Statement by the Secretary of DFA on the UNCLOS Arbitral Proceedings against China < <http://www.imoa.ph/statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-theunclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps/>> accessed on 10 February 2016;

²⁵ <http://news.abs-cbn.com/news/07/12/16/facts-on-philippines-vs-china>

²⁶ Del Cappar, "ITLOS completes five-man tribunal that will hear PHL case vs. China", *GMA News One*, October 24, 2013.

²⁷ United Nations Convention on the Law of the Sea (adopted 28 July 1994, entered into force 28 July 1996) Dec. 10, 1982, 1833 U.N.T.S. 397, Article 121(1)

²⁸ Chinese Society of International Law. The Tribunal’s Award in the "South China Sea Arbitration" Initiated by the Philippines Is Null and Void (Report)

²⁹ Grege Torode, "Philippines South China Sea legal case against China gathers pace", Reuters, October 24, 2013

³⁰ "DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA", 2002

³¹ Ben Blanchard, "China also says U.S. is trying to influence Philippines' sea case", Reuters, July 24, 2015

The major question at hand before the permanent court of arbitration was whether it had jurisdiction to hear The Philippines' case as China had refused to participate in the proceedings as it asserted that the permanent court of arbitration was not empowered to hear the case as it was a matter of sovereignty and not exploitation rights in the sea. On October 29, 2015, the arbitral tribunal held that it did have the jurisdiction and power under the convention to hear the case but only agreed to take up 7 of the 15 submissions made by Philippines into consideration.³² The tribunal decided in favor of The Philippines and held that China does not have historical rights to the South China Sea and their nine-dash line map has no legal foundation.³³ The tribunal established that certain areas within the South China Sea were within the Exclusive Economic Zone (EEZ) of the Philippines and further stated that China had infringed upon Philippines' sovereign rights in its EEZ by interfering with Philippine fishing and petroleum exploration, constructing artificial islands and by not preventing the Chinese fishermen from fishing in the disputed zone.³⁴ China, on the other hand has rejected the ruling and has refused to abide with the arbitral award.³⁵

ANALYSIS OF THE INTERNATIONAL PERSPECTIVE INVOLVED IN THE SOUTH CHINA SEA DISPUTE

The Permanent court of arbitration rejected China's expansive assertion of sovereignty in the contested waters and ruled that China had violated the Philippines' sovereign rights under the United Nations Convention on the Law of the Sea Treaty (UNCLOS)³⁶. Since china is a signatory to the UNCLOS this decision is binding but china has clearly reflected no intention to abide it. This non compliance clearly shows that The People Republic Of China does not fear the consequence of this act. China being the second largest nation is not be bothered by fear of diplomatic isolation or economic sanctions that could be imposed as a result.

The United Nations and individual countries often use sanctions to coerce non-compliant countries, but this case is different. Sanctions would simply be ineffective against the

³² "Philippines asks tribunal to invalidate China's sea claims", The Philippine Star

³³ Matikas Santos, "key points of arbitral tribunal's verdict on PH-China dispute", Inquirer.net, July 12, 2016

³⁴ "FULL TEXT: Permanent Court of Arbitration ruling on Philippines case vs China", The Philippine Star, July 12, 2016

³⁵ Phillips, Tom; Holmes, Oliver; Bowcott, Owen, "Beijing rejects tribunal's ruling in South China Sea case", The Guardian, 26 July, 2016.

³⁶ UN Convention on the Law of the Sea, opened for signature Dec. 10, 1982, 1833 UNTS 397, reprinted in 21 ILM 1261 (1982) [hereinafter UNCLOS]. UNCLOS entered into force on November 16, 1994. As of October 8, 2012, 163 states and the European Union are parties to the Convention. The Convention is available at <http://www.un.org/Depts/los/index.htm>

world's second largest economy – not to mention the immense challenges in applying such measures. China not only sits as one of five permanent members on the UN Security Council, but is also among the largest contributors to the United Nations' budget, making it highly unrealistic for the international organization to levy sanctions against it. Equally important, both the United Nations and the United States rely on Chinese cooperation to deal with North Korea, which is arguably a more pressing security threat. It was noted that recently, Chinese Foreign Minister *Wang Yi* announced that China and the Association of South East Asian Nations (ASEAN) have formulated a first draft of a “Code of Conduct” for the South China Sea. In his remarks, he also mentioned that tensions in the South China Sea had eased “notably,” completely ignoring the Permanent court of arbitration's ruling. Based on China's persistent defiance of the arbitral ruling, it is unlikely that the Code of Conduct takes the ruling as its basis, demonstrating the power China has over its neighbors.³⁷

Claim of Maritime Zone under the UNCLOS

It is noted that Philippines have previously asserted that the dispute is not exclusive of territorial sovereignty but also of the status related to various features in the South China Sea. Therefore it's important to understand them under UNCLOS. Under the convention, “islands” are entitled to the full range of maritime zones prescribed by the Convention³⁸. An island is defined as “a naturally formed area of land, surrounded by water, which is above water at high tide”³⁹. However, certain kinds of islands, namely those consisting of “rocks which cannot sustain human habitation or economic life of their own”⁴⁰, are not entitled to a continental shelf or exclusive economic zone. This definition of the islands which fall into the category of “rocks” is unclear, and the International Court of Justice has twice avoided the issue when it might have given guidance⁴¹.

However, another category of maritime feature is mentioned in UNCLOS and that is “**low-tide elevation**”. UNCLOS defines this as “a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide”⁴² and prescribes that it may be used as a baseline for the measurement of the territorial sea where it is situated within the limits of the territorial sea⁴³. There is some question as to whether “low-

³⁷ http://www.huffingtonpost.com/entry/international-law-vs-realpolitik-in-the-south-china_us_58d08d1ee4b07112b647313c

³⁸ Article 121(2) of UNCLOS

³⁹ Article 121(1) of UNCLOS

⁴⁰ Article 121(3) of UNCLOS.

⁴¹ Romania v. Ukraine, ICJ Reports 2009, page 61, at paragraph 187; Nicaragua v. Colombia, ICJ Reports 2012, page 624, at paragraph 180

⁴² Article 13(1) of UNCLOS

⁴³ Articles 13(1) and (2) of UNCLOS.

tide elevations” can be the subject of territorial appropriation by States. In fact, the Court in *Qatar v. Bahrain* was keen to emphasize that: “the decisive question for the present case is whether a State can acquire sovereignty by appropriation over a low-tide elevation situated within the breadth of its territorial sea when that same low-tide elevation lies also within the breadth of the territorial sea of another State”⁴⁴that is obviously a rather special situation and it is submitted that it was premature for the Court in the subsequent *Nicaragua v. Colombia* case to deduce any general rule from what had been said in *Qatar v. Bahrain*. The better view would seem to be that the question whether low-tide elevations can be appropriated remains open.

USA’s involvement in South China Sea

US perceive South China Sea as the ultimate source of mineral supply considering it’s anticipated to be rich in resources. The current US Secretary of State *Rex Tillerson* stated that: “We’re going to have to send China a clear signal that, first, the island-building stops. And second, your access to those islands also is not going to be allowed.” Tillerson’s comments clearly indicate that President Donald Trump and his administration are willing to use military force if Chinese activities continue. This comment is similar in tone to Steve Bannon’s during a podcast in March 2016 when he clearly stated, “We’re going to war in the South China Sea in five to 10 years.” (Bannon is now senior adviser to President Trump.)⁴⁵ US have also stated that it will promote *Free Navigation* and if the Chinese ships do not allow US ships the passage they will take a strong military action against china.

CONCLUSION

A deep and thorough analysis of the South China Sea dispute clearly depicts that the various claimants of the disputed islands have complex overlapping claims which are backed by their own respective arguments which provide an insight into their respective causes. A profound scrutiny made into the claims by the disputing countries makes it apparent that the dispute in question is related to territorial sovereignty which further has drastic implications on international trade and exploration of natural resources and not any security issues or armed conflict.

Since it has been established that the dispute is in relation international trade and territorial sovereignty of the vast seabed of the South China Sea, it becomes imperative to examine

⁴⁴ *Ibid.*, paragraph 204. The Court stated that low-tide elevations are not to be treated as “islands” (paragraphs 206-7), although this point seems in any event clear from the respective definitions in UNCLOS: an island is “above water at high tide” (Article 121(1)), whereas a low-tide elevation is “submerged at high tide” (Article 13(1)).

⁴⁵ <http://nationalinterest.org/blog/the-buzz/china-vs-america-the-south-china-sea-what-should-donald-19598>

the United Nations Convention on the Law of the Sea which primarily provides a mechanism to deal with such issues. The UNCLOS prescribes a country's jurisdiction of territorial sovereignty of 12 nautical miles of territorial sea and a further 200 nautical mile exclusive economic zone from their respective continental shelves. Through these established universal principles, it should be easy to define and determine territorial sovereignty, but it is not. In this particular case, where there are overlapping territorial claims, it has become extremely difficult to provide any universally accepted solution to territorial sovereignty.

There have been multiple attempts to resolve the dispute through the decades but all have failed. The predominant reason why no solution could be brokered is due to China's pursuit to gain hegemony and dominance in the East Asian region. In order to aggravate the dispute, China has developed a "Three No's" policy where it provides no specification of claims, allows no multilateral negotiations and tolerates no involvement of outside powers to resolve the dispute as it considers itself in a much stronger position while dealing with the disputing countries bilaterally.

There are many solutions possible to resolve the dispute, which are subject to all the disputing countries coming together to settle the issue for once and for all. One alternative could be to develop a joint authority comprising all the disputing claimants which could administer the region to develop and explore the resources. Another view could be to resolve the bilateral disputes individually first and then the multilateral negotiations should begin. Whatever the result or solution may be, the claimant countries should understand that an armed conflict is not the solution to the South China Sea dispute.