
The UNCLOS and the US-China Hegemonic Competition over the South China Sea

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The South China Sea is a semi-enclosed sea with a complex set of territorial claims by a number of Southeast Asian nations and China being the dominant claimant country. The United States is not a party to such claims. However, the US has great concerns pertaining to peace and stability of the region as far as freedom of navigation in the SCS is concerned, which has significant repercussions for its strategic interests. In addition to the utilization of the SCS as an important international trade route, the US is also committed to protect the interests of its allies in the region, as well as those of its companies involved in offshore hydrocarbon activities. In the aftermath of the September 11 terrorist attack, the dynamics of a new world order push the US to strengthen its presence in the region in order to combat any security threats against its interests. This article investigates China-US relations in the SCS and highlights the law of the sea prescriptions that facilitate the understanding of the legal nature of the tensions between China and the US.

Keywords

UNCLOS, South China Sea, US-China Conflict, U-shaped Line, Strategic Partner, Security Interest

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I. Introduction

Geopolitical and maritime interests in and around the South China Sea (“SCS”) have created a complex set of claims concerning rights, obligations and jurisdiction over the sea. The potential for hydrocarbon resources, importance in maritime navigation, significance for international trade and transport security in the sea, as well as strategic interests pertaining to balance of power, are the driving forces that mark the significance of these dynamics. In particular, territorial claims over the SCS are among the most contested ones in the whole world. By nature, the SCS is a semi-enclosed sea rich in diverse living and non-living resources. It is located in the south of China, bordering Vietnam and Malaysia in the west; Brunei, Malaysia, and Indonesia in the south; the Philippines in the east; and Taiwan in the north. Six of these seven countries bordering the sea are involved in the conflicts pertaining to the territorial claims and contestations over the SCS.¹

While geographically the US is not a part of these territorial disputes, it still has significant maritime interests in the SCS in terms of both freedom of navigation and security for maritime trade and transportation. For the US, the SCS, because of its maritime route connecting the Pacific Ocean in the east and Indian Ocean in the south, also promotes strategic cooperation - both military and economic - with the nations in the region. In addition, there are other elements directly linked to US interests in the SCS. These include the protection of the interests of American companies involved in hydrocarbon exploration and exploitation activities; the US is strategically present in the region in order to pre-emptively combat any potential security threats against its interests,² as well as those of its allies. These factors have propelled the US to engage itself in the tensions surrounding the SCS disputes.

Primarily, therefore, the objective of this research is to investigate the on-going competition between the two hegemonic powers—the US and China—over the SCS within the limited context of the law of the sea. It is important to note that in the SCS region, geopolitical dynamics, while motivated by numerous facts, are largely

¹ J. Burgess, *The Politics of the South China Sea: Territoriality and International Law*, 34 SECURITY DIALOGUE 8 (2003). This complexity is grounded on a number of reasons: First, because of the number of parties involved in the disputes either directly or indirectly; second because of its geo-political and strategic importance; and third because of its economic resource potential. See L. Bautista, *Thinking Outside the Box: The South China Sea Issue and the United Nations Convention on the Law of the Sea (Options, Limitations and Prospects)*, 81 PHILIPPINE L. J. 707 (2006).

² After the September 11 attacks that destroyed the twin tower in the US, the dynamics of a new world order push the US to strengthen its presence in the region in order to act pre-emptively to combat security threats. See “State of Union” address delivered by the President Bush, Jan. 28, 2002, available at <http://whitehouse.georgewbush.org/news/2003/012803-SOTU.asp> (last visited on Apr. 6, 2013).