

## WHOSE SEA IS IT ANYWAY? A PERSPECTIVE OF THE SOUTH CHINA SEA CONFLICT

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It is the 1<sup>st</sup> of April, 2001, a US navy intelligence aircraft, while on its usual route over the South China sea, crashes into a fighter jet of the People's liberation army navy. This incident would later be referred to as the Hainan Island Incident<sup>1</sup>, and would become the first of many disputes over the South China Sea and the airspace above it<sup>2</sup>.

The incident resulted in massive diplomatic tensions between the states, resulting in imprisonment of the US officers, who were only released after the US was forced to write letters of apology and offer compensation for the 'maintenance of the soldiers'<sup>3</sup>.

The dispute involves the following countries Brunei, Cambodia, China, Indonesia, Malaysia, Philippines, Singapore, Taiwan and Vietnam<sup>4</sup>. Interestingly however, the major competing claims over the area are those of China and US over the disputed airspace. The main bone of contention between the countries relates to the militarisation of the South China Sea. China backs its claims relating to control over the area, which it deems as being of military importance with island-building and naval patrols. The US on the other hand has a neutral stance officially however it has sent military ships and planes near disputed islands, calling them "freedom of navigation" operations to ensure access to key shipping and air routes<sup>5</sup>.

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<sup>1</sup> See also <http://www.salon.com/1999/05/10/china/>, last accessed 30/08/16

<sup>2</sup> See also <http://thediplomat.com/2014/03/chinas-newest-maritime-dispute/>;  
<http://edition.cnn.com/2016/04/18/politics/chinese-military-jet-lands-on-island/>, last accessed 18/08/16

<sup>3</sup> Zhang, H. (2001), Culture and apology: The Hainan Island incident. World Englishes, 20

<sup>4</sup> See also <http://graphics.straitstimes.com/STI/STIMEDIA/Interactives/2016/02/turf-wars-on-the-south-china-sea/index.html>, last access 25/08/16

<sup>5</sup> See also <http://www.bbc.com/news/world-asia-pacific-13748349>, last accessed on 24/08/16

Before one can go into the effects of the recent judgement on the South China Sea issue, the actual value of the land must first be established. The issues over the territory range from violation of sovereign integrity to route for international trade and finally a claim upon the resources which the area is assumed to possess. Each of these claims have been discussed below;

There are multiple ways of exerting sovereignty over land, while some countries are claiming the territory under the name of *Terra Nullis*, other claim it under the general practice of proximity or even by showing a history of effective control.

China and Taiwan have similar claims over the territory, stating that right to the area goes back centuries to when the Paracel and Spratly island chains were regarded as integral parts of the Chinese nation. Those claims are mirrored by Taiwan.

This is disputed by Vietnam, which claims the land under its own claim of exercising effective control over the area since before the 1940's

The other major claimant in the area is the Philippines, which invokes its geographical proximity to the Spratly Islands as the main basis of its claim for part of the grouping<sup>6</sup>.

Malaysia and Brunei also lay claim to territory in the South China Sea that they say falls within their economic exclusion zones, as defined by UNCLOS - the United Nations Convention on the Law of the Sea<sup>7</sup>.

China sought to pre-emptively end and issues in relation to this, by executing its 9 dash line (formerly an 11 dash line)<sup>8</sup>, which is a demarcation line which was used by the Peoples Republic of China, expressing their claim over the majority of the South China Sea<sup>9</sup>.

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<sup>6</sup> See also <http://thediplomat.com/2016/08/how-the-us-misjudged-the-south-china-sea-part-i/> last accessed 30/08/16

<sup>7</sup> United Nations Convention on the Law of the Sea 1833 UNTS 3

<sup>8</sup> Martin Riegl, Jakub Landovský, Irina Valko, eds. (26 November 2014). *Strategic Regions in 21st Century Power Politics*. Cambridge Scholars Publishing. pp. 66–68.

<sup>9</sup> Wu, Shicun (2013). *Solving Disputes for Regional Cooperation and Development in the South China Sea: A Chinese Perspective*. Chandos Asian Studies Series. Elsevier Reed.

The earliest issue of the map as published in 1947 showed an eleven-dash line<sup>10</sup>. Two of the dashes in the Gulf of Tonkin were later removed at the behest of Chinese Premier Zhou Enlai, reducing the total to nine. Subsequent editions added a dash to the other end of the line, extending it into the East China Sea<sup>11</sup>.

All of these issues culminated recently in the 12<sup>th</sup> of July verdict of the Permanent Court of Arbitration at The Hague, by ruling on the issue. The 501 page award was issued unanimously by the tribunal which was constituted under the UNCLOS<sup>12</sup>, in favour of Philippines by stating that “The Tribunal concluded that there was no legal basis for China to claim historic rights within the sea areas falling within the ‘nine-dash line’<sup>13</sup>”. The award has been widely hailed by the international community as a step in the right direction to prevent the aggressive over-expansion by China. The international community has placed much pressure over the Chinese government, asking them to accept the terms of the award<sup>14</sup>, with the US citing this as an instance where China can either choose to work within the liberal order- which is the post-war system of international laws and institutions or seek to overrun it<sup>15</sup>.

Unfortunately, the case is not as cut and dried as it seems. In this particular instance, the case is seen as a victory for peace, however the inconsistencies in the award must also be noted. China and Taiwan have expressly rejected the ruling.<sup>16</sup> China played no part in the proceedings of the arbitration, by categorically refusing<sup>17</sup> the authority of the PCA<sup>18</sup>.

Territorial sovereignty is not within the scope of the UN Convention on the Law of the Sea (UNCLOS), whose preamble states that it establishes a legal order for the seas and oceans

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<sup>10</sup> See also <http://cimsec.org/chinas-nine-dashed-line-faces-renewed-assault/13943>, last accessed 25/08/16

<sup>11</sup> See also <http://www.thanhniennews.com/commentaries/new-tendashed-line-map-revealed-chinas-ambition-28816.html>, last accessed 25/08/16

<sup>12</sup> *Supra n.7*

<sup>13</sup> The South China Sea Arbitration (The Republic of the Philippines V. The People’s Republic of China) can be accessed at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>

<sup>14</sup> See also <http://uk.reuters.com/article/philippines-says-china-needs-to-recognis-idUKL3N1BB18H> last accessed 30/08/16

<sup>15</sup> See also [http://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html?\\_r=0](http://www.nytimes.com/2016/07/15/world/asia/south-china-sea-dispute-arbitration-explained.html?_r=0), last accessed 15/08/16

<sup>16</sup> Phillips, Tom; Holmes, Oliver; Bowcott, Owen. "Beijing rejects tribunal's ruling in South China Sea case". The Guardian.

<sup>17</sup> Accessed on <https://www.documentcloud.org/documents/2165478-phl-prc-china-note-verbale.html>, last seen 30/08/16

<sup>18</sup> Permanent Court of Arbitration, The Hague.

“with due regard for the sovereignty of all States”. China made a clear declaration in 2006 in accordance with UNCLOS to exclude maritime delimitation from compulsory arbitration. More than 30 other countries, including Britain, have made similar declarations<sup>19</sup>.

There have also been allegations levelled against the Philippines of violating the voluntary Declaration on the Conduct of Parties in the South China Sea, made in 2002 between ASEAN and China, which also stipulated bilateral negotiations as the means of resolving border and other disputes<sup>20</sup>.

The entirety of the procedure was rigged with faults<sup>21</sup>, with major emphasis being placed upon a Limits in the Seas report, issued by the United States Department of State, considering the position of the US- China conflict over the area, it may be considered to be an unwise course of action.

As of this moment, there appears to be no real solution to the problem, the bottom line however is that even though Philippines may have been the one to file the case, this is power play between two of the most powerful countries in the world- China and US. The dispute will like aggravate over the next few months, since both parties cannot back down, for the risk of losing face in their respective domestic markets<sup>22</sup>, but at the end of the day, it must be remembered that this is, for all intents and purposes a political problem, wrapped in the garb of a legal one.

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<sup>19</sup> See also <http://www.telegraph.co.uk/news/2016/06/09/stop-playing-with-fire-in-the-south-china-sea/> last accessed 20/08/16

<sup>20</sup> See also <http://www.telegraph.co.uk/news/2016/07/23/south-china-sea-arbitration-is-a-political-farce/>, last accessed 20/08/16

<sup>21</sup> See also <https://amti.csis.org/ArbitrationTL/>, last accessed 30/08/16

<sup>22</sup> See also <http://blogs.reuters.com/great-debate/2015/06/09/everything-you-need-to-know-about-the-south-china-sea-conflict-in-under-five-minutes/>, last accessed 25/08/16