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# Analyzing the South China Sea Disputes from the Perspective of International Law: The Case Studies of the Spratly and Paracel Islands

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***Analyzing the South China Sea Disputes from the Perspective of International Law: The case studies of the Spratly and Paracel Islands.***

***A Thesis submitted to the faculty of Humanities, International Relations department, University of the Witwatersrand, in partial fulfilment of the degree of***

***Master of Arts in International Relations***

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*15 March 2025*

Figure 1: The South China Sea Picture

Source: Floating offshore oil rig off the coast of Vung Tau Vietnam in the disputed waters of the South China Sea, which fall within Vietnam's exclusive economic zone. (Shutterstock)

**Abstract**

The territorial disputes over the contested islands in the South China Sea (SCS) have been a regular occurrence in the region for some time now. It has recently gained much attention in the international community because of the major impact on the bilateral relationships of SCS disputes claimants and the brewing potential for war that could destabilize the Asian region. The SCS possesses rich natural resources and for this reason, it is important for the geo-strategic interests of countries that share these territorial waters and its associated natural resources features.

China has been more assertive in the SCS contested islands which has escalated tensions and made the SCS waters a hotspot for potential conflict between states that are claiming these contested islands. It has since disturbed the international trade in the SCS region. The territorial disputes of the SCS waters stems from different grounds with certain states basing their claims on history while others base their claim on the application of international law on contested waters.

Tensions in the SCS have been escalated since the 9-dash line map of 1952 produced by China, which in a nutshell afforded China all rights on the contested islands basing their claim on historical evidence which other claimants reject. To this end, the other claimants have called on the Association of Southeast Asian Nations (ASEAN), to solve this dispute through an adoption of a code of conduct that would be applied to the SCS waters. However, the code of conduct has not afforded the claimants any relief to their grievances thus far. This thesis is aimed at analyzing the SCS Disputes from the perspective of international law by specifically focusing on both the Paracel and the Spratly islands.

The objective of the study is to use the three theories of international relations namely, Realism, Liberalism and Constructivism theory in order to answer the main research questions that relates to both China's claim and the application of International Law on the SCS. The thesis examines the role of both ASEAN and non-claimant states in conflict resolution efforts in the SCS disputes; existing security architecture; and the joint efforts of all the parties that are involved in working with China and other claimants with the vison of bringing about a viable code of conduct that will be binding on all parties that are involved in the SCS Disputes.

The thesis concludes by stipulating that although the SCS disputes cannot be resolved overnight, China has a critical role to play and should cooperate with ASEAN Member States in ensuring that the ongoing conflict is effectively managed through negotiations, diplomacy as well as through bilateral and multilateral forums. Since there is unity amongst ASEAN member states cooperation with China is necessary specifically for fostering a long term solution that would be accommodative of all ASEAN member states interests in the SCS waters.

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Dedication,

I dedicate this entire thesis to my late sister, Hlulani Reginah Kholonyane (1983 – 2003) – You whom we were never afforded much time with on earth but nevertheless remain an essential part of our lives. You are deeply missed & loved.

The Sun will rise & we will try again. A nga tsandeki Yehovah…!!!

Disclaimer

I hereby declare that this dissertation is my own original work and has not been submitted before to any institution for assessment purposes. Further, I have acknowledged all sources used and have cited these in the reference section.

Signature: Kholonyane Quincy Masana…… Date….03/09/2025

**Acronyms**

ASEAN – Association of Southeast Asian Nations

UNCLOS - United Nations Convention on the Law of the Sea

EEZs – Exclusive Economic Zones

SCS – South China Sea

US – United States

EU – European Union

CLCS – Commission on Limits of Continental Shelf

ITLS – International Tribunal for the Law of the Sea

PLA – People's Liberation Army

ADIZ – Air Defense Identification Zone

PCA – Permanent Court of Arbitration

CoC – Code of Conduct

PRC – People's Republic of China

FPAs – Framework for Participation Agreements

FON – Freedom of Navigation

FONOPS – Freedom of Navigation Operations

**Illustrations**

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Figure 2: The South China Sea Map

Source: UNCLOS and CIA

## CHAPTER 1: INTRODUCTION

1.1. Background to the South China Sea Disputes.

The South China Sea, herein referred to as SCS, forms part of the Pacific Ocean and is geographically placed in a position that makes it a strategic pathway for ocean trade routes apart from containing large deposits of hydrocarbons, raw material and fossil fuels (Ullah, 2019). Because of this, the region has become an arena for both conflict and competition for influence amongst Asian countries and China (Ullah, 2019). The two islands that are being heavily contested are the Spratly and Paracel Islands of the SCS which are claimed by countries like Malaysia, Philippine, Brunei, China, Taiwan, Vietnam and Indonesia (Ullah, 2019).

These states are either claiming total sovereignty or control over certain parts of the Spratly and the Paracel Islands (Rossiana, 2022). However, what is seemingly the new concern and the roots of the existing conflict in the SCS amongst claimants is the U Shaped Nine-Dashed lines demarcation map that has been produced by China as a method to enforce total control and sovereignty over both the Spratly and Paracel Islands (Rossiana, 2022). Despite a decision being passed by the international court of arbitration in the *Philippines v China* matter, in which the court of arbitration held that

the U-shaped 9 –Dashed lines map of China is inconsistent with the United Nations Convention on the Law of the Sea (UNCLOS) (Agustian, 2021).

The courts' decision was rejected by China on the basis that the decision has no binding force since China controls about 90% of the SCS through China's Nine-dashed line map premised under the historical occupation claims and effectively incorporated rights that were redrawn in 1946 before the UNCLOS came into force in 1982 (Agustian, 2021). All things considered, China proposes that one way of solving this territorial dispute would be through bilateral meetings between itself and claimants while other claimants prefers multilateral meetings that would be open and possibly include external players that are not part of the disputes, which is something China is against (Agustian, 2021).

China overly justifies their claims for sovereignty on both Spratly and Paracel islands on historical grounds stemming from the Han Dynasty period, the period of Song and Yuan respectively which has demonstrated that these islands falls within China's national territories (Ghosh, 2024). Post the Japanese invasion of the SCS, the Spratly Islands and the Parecls were first demarcated in the Chinese 11-dashed line map during the rule of Kuomingtang (Ghosh, 2024). The 11-dashed line map initially covered areas like Macclesfield Bank, the Paracel and Spratly Islands, as well as the Pratas Islands which at the time have been previously regained from Japan post invasion (Ghosh, 2024). The 11-dashed line map was changed in 1952 to become the Nine-dashed line map due to the fact that China gave up its historical claims to the Gulf of Tonkin (Ghosh, 2024). This move was facilitated by president Mao Zedong who had a good relationship with Vietnam and accordingly, in 1953, the two dashed lines were removed from the Chinese 11 –dashed line map symbolizing the transfer of the Bach Long Vi island into the control of Vietnam which has altered the 11-dashed line map into the Nine-dashed line map (Ghosh, 2024).

### 1.2. Approaches to the Territorial Disputes Claims

This research is going to apply a mixture of both the Case Study Approach and the Historical approach. Through the Case Study Approach, I shall conduct an in-depth and thorough analysis of the SCS disputes from the perspective of international law to analyze the complex claims of each claimant state, their historical background and their most contested claims. The historical approach will seek to gain insights from historical developments in the region and the contexts which claimant states come from. I shall specifically analyze the role of regional groupings, colonialism and nationalism in

shaping the identities of claimant states and their associated claims in the SCS Disputes.

### 1.3. The Complexities of the Disputed Claims

The complexity involved in studying the SCS disputes is that the research deals with a large number of stakeholders who have interests in the SCS Disputes and therefore, makes it challenging to gather comprehensive data that would be all encompassing of all players and their interests as well as their contributions to the ongoing SCS disputes. Also, the study's reliance on primary data, government official policies, and expert interviews may be subject to personal biases and limitations.

### 1.4. Aim of the Study

China's assertiveness and the issue of control over the SCS territories has given rise to security threats and potential for regional instability in the SCS territorial waters. Therefore, this research aims to analyze the legitimacy of China's claim to historical rights of the SCS waters under the UNCLOS. Accordingly, the research aims to bring about a nuanced understanding of how the ASEAN bloc and claimant states will balance China's power and influence over the contested islands in the SCS. Most importantly, it aims to look for effective ways in which the conflict in the SCS could be amicably resolved amongst all claimants. By extension, the research aims to explore the ASEAN security architecture, and the limitations and strength of the ASEAN pact in resolving regional security issues and enforcement of the policies that are adopted aimed at promoting peace and cooperation in the Pacific Ocean's SCS.

### 1.5 Significance of the Study.

The SCS is a very important for its potential for military bases and for its strategic trade route passage that facilitates international trade exchanges of valuable goods such as oil, gas, and other natural resources that passes through it to Europe, Middle East and Africa. The SCS accounts for about 80% and 70% of both Japan and Taiwan's oil and raw materials respectively. The South China Sea raises crucial questions about International law, in particular, the UNCLOS and therefore, studying the SCS disputes is of paramount importance in understanding the application, limitations and effectiveness of UNCLOS in solving complex maritime disputes. Accordingly, the SCS involves multiple parties with different interests such as Asian countries, the United States as well as Europe which renders the study important for understanding regional security, stability and cooperation. And lastly, the SCS disputes can be thought of as a proxy war between China and the US, therefore, studying this particular topic helps in clarifying geopolitical interests of major powers such as China and the US in the SCS.

For all the reasons that have been outlined above, the study of SCS territorial disputes is very important given that any conflict that could potentially arise in the SCS will destroy peace and security in the region. Conflict could end up destroying trade transportation passages and the global distribution of energy like oil and gas for other countries of the world.

To this end, this study seeks to look for pathways through which the SCS territorial disputes can be resolved taking each and every pressing factor into account. Secondly, the study of the SCS territorial disputes enables us to rethink ways in which we could refine the international law of the Sea so that it is strengthened, has binding force, and has enforcing mechanisms that ensure that states are bound by courts' decisions and follow a code of conduct that stipulates and regulate the behavior of all states sharing the SCS.

1.6. Research Assumptions.

This thesis will employ four assumptions that are fit and necessary for the management and flow of this research:

Firstly, there has been a shift in Indonesia's stand with regard to claiming the islands which could mean that Indonesia is more inclined to protecting their trade relationship with China than claiming the islands.

Secondly, China's assertive behavior in the contested territorial islands is in part due to the United States increased presence in the Pacific Ocean region that threatens China's ambition of playing a regional leader in the Asian Pacific Ocean.

Thirdly, China's policy towards the SCS will not likely change in the foreseeable future since it is in line with the One China One Policy that China currently promotes that is rooted in the ideals of uniting all Chinese territories as key national points and as part of the rejuvenation of one China.

And lastly, China's quest in the SCS arises from nationalist sentiments that are aimed at redefining China from their period of shame into a formation of China that has sufficient self-pride, China that is strong and unified, and with strong hopes of eventually assuming its regional and global role as a super power and global leader.

Research Limitations

While the thesis understands that there are number of contested islands in the SCS that are currently being contested for under the SCS territorial disputes, this study will be specifically focused on the Spratly and Paracel islands as cases of analysis. The

thesis will not look at any treaty or convention that runs in parallel with the UNCLOS as the research seeks not to divert from the primary cause of the problem that is being studied, namely, the proper application of the UNCLOS 1982 to the SCS territorial waters disputes.

## Conclusion

This chapter has given a brief overview of the SCS territorial disputes under international law which is the primary concern of this entre thesis work. Next, this chapter has offered insights of both the approaches and complexities of analyzing the SCS territorial disputes given the vast characteristics of claimed islands and claimant's states. The chapter has also given the aim and significance of the study which was followed by the research questions that forms part of the research inquiry and a point of departure in probing the SCS territorial disputes. And lastly, a brief background of the research assumptions and limitations of this research has been outlined.

## CHAPTER 2 – LITERATURE REVIEW.

### 2.1 Introduction

The SCS are an important waterway that connects East Asia to the global economy. It has been one of the contentious hotspots for conflict in international relations (Baviera, 2012). This conflict stems from the territorial disputes involving sovereignty, resource exploitation and maritime boundaries that involves countries such as China, the Southeast Asian nations and the United States of America (US) (Baviera, 2012). The literature review aims at discussing the current state of play on the SCS territorial disputes by comparing and contrasting existing scholarly arguments on this subject. In doing so, this section will begin by outlining in detail the background of the existing SCS territorial disputes in order to give context to arguments that will later follow. Next, I shall evaluate the applicable international relations theories which form part of the literature review and a conclusion that integrates the whole discussion will later follow.

### 2.2. Overview of the South China Sea Disputes.

Asia's Pacific Ocean has been the center of an unfolding conflict for some time now between China and ASEAN member states (Ikeshima, 2013). What has initiated the conflict in the SCS territorial waters is China's claim of total sovereignty and control of the maritime islands, specifically the Spratly and the Paracel islands (Ikeshima, 2013). This ongoing conflict has affected the security of the SCS and the region as a whole including the ASEAN member states. Accordingly, conflicting countries have responded to China's historical claims on the contested islands by demonstrating their military power (Boonpriwan, 2012).

Despite the SCS conflict being one of the issues that China and ASEAN member states have been fighting over for the longest time now, the international organizations through the UNCLOS 1982 have been regulating the use, ownership and boundaries of the contested SCS waters (Boonpriwan, 2012). Nevertheless, China still insists that despites the third version of the UNCLOS 1982 regulating the territorial waters, its Nine-dashed line map that collides with other country's borders is the most legitimate map that all claimant's states must recognize (Khan, 2018). One of what the Nine-dashed line map provides is the indisputable sovereignty over the islands in the SCS and adjacent waters which leaves no space for restrictions (Khan, 2018).

Post the Japanese invasion of the SCS, the Spratly Islands and the Parecls were first demarcated in the Chinese 11-dashed line map during the rule of Kuomingtang (Ghosh, 2024). The 11-dashed line map initially covered areas like Macclesfield Bank, the Paracel and Spratly Islands, as well as the Pratas Islands which at the time have been previously regained from Japan post invasion (Ghosh, 2024). The 11-dashed line map was changed in 1952 to become the Nine-dashed line map due to the fact that China gave up its historical claims to the Gulf of Tonkin (Ghosh, 2024). This move was facilitated by president Mao Zedong who had a good relationship with Vietnam and accordingly, in 1953, the two dashed lines were removed from the Chinese 11 –dashed line map symbolizing the transfer of the Bach Long Vi island into the control of Vietnam which has altered the 11-dashed line map into the Nine-dashed line map (Ghosh, 2024).

Needless to say, the Nine-dashed line map of China is vague because it was primarily illustrated as official Chinese map in 1930s and it appeared again in 1947 as part of China's official Chinese strategy in the SCS, and since then prominently featured as part of China's official map (Guilfoyle, 2019). The Chinese Nine-dashed line map indicates that China holds 62% of the SCS. In the northern part of the SCS, China is fighting with Taiwan and Vietnam over the Paracel islands, the islands that China has occupied since 1974 (Guilfoyle, 2019). In the southern part of the SCS, China, Taiwan and Vietnam are claiming all of the 200 Spratly islands. While on the other hand, Malaysia, Brunei and the Philippines (which are United States treaty allies) claim some of the Spratly islands (Guilfoyle, 2019).

In total, Vietnam holds the largest number of claims of these disputed Spratly islands territories of the SCS (Bria, 2018). In the northeast side of the SCS, Philippines, China and Taiwan claim the Scarborough Shoal which has been under the control of China since 2012 (Brai, 2018). The dispute is complicated in its nature and all the countries that are claiming for ownership of the islands have overlapping claims on different regions of the SCS (Fenton, 2021). The claims of these countries are premised on each country's unique national interest in the SCS waters and legal basis. Timo Kivimaki 's book on *War or Peace* in the SCS argues that the root cause of the conflict is not necessarily security reasons but premised on the significant resources of the SCS and the SCS being a source of seafood (quoted by Fenton, 2021).

One factor that makes the SCS conflict important for the people of the Southeast Asia is that the majority of the Southeast Asians live next to the sea and this close proximity to the sea has both an economic and ecological impact on their livelihoods (Kim, 2018).

*Security Environment in the Asia-Pacific* argues and affirms that the SCS is of great importance especially for its geographical positioning, for sea-lane traffic and for both international and regional security (Kim, 2018). Nevertheless, the international trade facilitated at the SCS becomes problematic given the ongoing conflict (Kim, 2018). All things considered, the SCS ongoing conflict has become a critical global security problem now affecting nations that comprise the European Union (EU), Japan, the US and other states that border the SCS and therefore, threatens security and world peace (Mastro, 2020).

One could argue that the conflict has thus far been ongoing due to China's insistence of wanting to unilaterally extend its borders in the SCS (Leeuwan, 2018). These ambitions are inevitably linked to political, economic and strategic interests and any solution that will bring about a fair outcome would need to take into account strategic, political and historical issues surrounding the SCS territorial disputes (Leeuwan, 2018). What largely accounts for the SCS disputes is the overarching question of sovereignty and authority over the much-contested Spratly and Paracel islands that form part of the SCS (Nguyen, 2005). Initially, in the past there was no recognition of any particular order of maritime delineations in the SCS and the decolonization efforts in the Pacific region especially in the SCS have successfully driven out Japan and France out of the Asia region but left the US as the only superpower (Nguyen, 2005). However, for the longest time the US did not pay much attention to solving maritime delimitations of the SCS and rather focused on exercising its right to freedom of navigation and in so doing, protected their national interest as the only existing naval power in the Pacific Ocean region (Dutton, 2011). Historically, the post-cold war era has left both power and legal vacuum in the Pacific Ocean region and since then South East Asian States began asserting their sovereignty over various islands and inhabitable features of the SCS (Dutton, 2011).

China, Philippines and Vietnam are at the centre of the SCS disputes with both China and Vietnam asserting their sovereignty over the Spratly Islands of the SCS basing their claim on "historical rights" which have recently gained momentum in the international community (Hendler, 2018). In China's thinking, the SCS have been their historical waters which could be traced back to the past navigation practices and trade of both Qing and Han dynasty (Hendler, 2018). Vietnam bases their claim on "colonial inheritance" from France after decolonization to the extent that Vietnam has since named the SCS waters the "Eastern Sea of Vietnam" (Hayton, 2022).

The Philippines do not base their claim on historical rights but rights endowed to them from the application of the UNCLOS which stipulates that under its terra nullis clause, states can annex the islands as their own territories in instances where such islands have no sovereign authority (Herscovitch, 2017). Past colonial power's lack of interest to solve the maritime delimitations have spurred China to put forward their historical rights claim in efforts to try and challenge the legitimacy of the UNCLOS which has enabled it to be more assertive and increased their military power in the SCS (Herscovitch, 2017). The SCS is geographically located in an area that gives it strategic position that offers significant sea lines of communications that connects both the Indian and Pacific Ocean (Dieter-Evers, 2014). These sea lanes are responsible for global commerce of goods and energy shipments that moves from the SCS to other countries like Russia, China, Korea and Japan (Dieter-Evers, 2014).

Therefore, if China could attain full sovereignty over these disputed islands, China would be able to expand its military navigation which would inevitably challenge and limit the US maritime dominance in the SCS (Hor, 2022). The SCS is rich in both living and non-living natural resources which China relies on heavily to support its on economic development and livelihoods such as fisheries activities, China's occupation of these islands gives it a unique advantage that allows the supply value chain of fisheries products that China heavily exports to the international community (Hor, 2022).

The SCS is equally rich on energy resources with estimates of about 12 billion barrel of oil and 190 trillion cubic feet of natural gas which would give China economic power that would enable it to lead both the Asian region and the world (Beukel, 2010). SCS disputes are not just territorial disputes but more of geopolitical rivalry for the control of these islands that would give countries that control the islands economic power deriving from the natural resources that are found in this region (Beukel, 2010). For example, China is trying to control the islands so that it can accrue significant oil and counterbalance the reliance for oil from Arab states. This would mean that China would be able to offer Asian states cheap alternative ways of getting oil which would allow them to develop their own home economies (Bader, 2014).

The core matter that surrounds the SCS is the claims over the islands based on historical rights that China claims it has accrued over time and the interpretation of the UNCLOS primarily concerning the exclusive economic zones (EEZs) and continental shelf (Li, 2017). Accordingly, there are overlapping claims over the SCS that are worsened by the lack of central authority to make a definitive ruling over the historical

rights claim (Li, 2017). China argues that it was the first country to name and rule over the disputed islands and therefore, defends their claim of sovereignty over the SCS islands on the basis of two treaties that were signed with the past colonial rulers (Li, 2017). France signed a boundary agreement that entailed handing over the control of the SCS' Spratly and Paracel islands to China which came after the defeat of Japan and since then, China have sought to use their "nine-dashed line" map to assert their sovereignty over the SCS (Cuong, 2013).

On the other hand, Vietnam claims sovereignty over the whole territories of the SCS and argues that their claim is based on historical rights dating back to the Nguyen Dynasty period from 16$^{th}$ to the 19$^{th}$ century (Cuong, 2013). Vietnam also argues that the SCS' Spratly and Paracel Islands are their inheritance from France given to them after decolonization (Jagtiani, 2015). Despite the growing tensions in the SCS, Vietnam has managed to deal with controversial claimants such as China through signing a maritime agreement in the gulf of Tonkin through bilateral agreements (Jagtiani, 2015).

The Philippines on the other hand are claiming sovereignty over the SCS's Spratly and Paracel islands premised on the UNCLOS "terra nullis" rule which gives it the power to annex the SCS features in the absence of any overriding authority (Khan, 2018). To this end, the Philippines have brought the case of SCS territorial disputes to the International Tribunal for the Law of the Sea (ITLS) supported by the UNCLOS (Khan, 2018). From the 2016 rulings of the tribunal court, the Philippines have gained about 12 nautical miles of territorial sea and are now able to enjoy about 200 nautical miles of EEZ from their national baseline (Ikeshima, 2013).

By extension, in the Spratly islands, the Philippines have only claimed water rights that are generated by these islands (Baviera, 2012). Malaysia's main concern is over the stipulated rights stemming from the EEZ and the continental shelf which overlaps with those of the Philippines, Brunei and Vietnam (Baviera, 2012). However, despite the growing tensions in the SCS, Malaysia was able to conclude delimitation agreements through the Indonesia Tudjuh Archipelago with the Philippines (Fenton, 2021). With Vietnam, the Philippines proposed a joint submission to the commission on the limits of the Continental Shelf (CLCS) which has enabled both countries to acknowledge each other's 200 nautical miles of their EEZ and a possible joint development on the overlapping claims (Beukel, 2010). Interestingly, Malaysia also settled their disputes with Brunei through an agreement that Malaysia would no longer extend their current continental shelf in efforts to try and accommodate Brunei (Beukel, 2010).

For more than two centuries, China has been increasingly focused on expanding its power projection and control in the SCS stemming from various factors (Sacks, 2022). Firstly, China perceives herself as being vulnerable since its security and military strategy failed during the British Opium War and the invasion by Japan respectively (Sacks, 2022). The second compelling reason for China is that essentially, China wants to rethink its security architecture in order to ensure that it maintains regional military capability and presence so as to ensure that no other great power is capable of challenging China and potentially threatens the peace in the pacific region (Temitayo, 2017).

The new China's strategy is premised on enforcing diplomacy over issues that surrounds the SCS (Wong, 2016). However, during the years 2009 to 2011, China has had a relative change in diplomacy approach which significantly increased the tensions in the SCS and in the Asia region (Wong, 2016). During the tenure of President Xi Jinping, China was very assertive with regard to the affairs of the SCS when compared to other leaders (Wong, 2016). Xi's vision follows from what was a belief of the previous leaders that it is about time that China moves from being "land power" to "maritime power" and as such, exercises three foreign policy priorities in the SCS (Wong, 2016).

Firstly, China advocates for settling the SCS disputes bilaterally for a peaceful resolution (Tiong, 2016). Secondly, China advocates strong resistance towards any other organization that comes forward to provide resolutions for the ongoing SCS disputes (Tiong, 2016). And lastly, China advocates for resources sharing and joint development cooperation but insisting on China's sovereignty over the whole of Spratly islands (Sakamoto, 2021). China policy in the SCS was more of a crisis management of some sort which often diverted from finding resolutions that could ease tensions but strategically secures China's foreign policy goals that are linked to sovereignty and balance of power (Sakamoto, 2021).

Following the incident of Japan's purchasing three of the five Senkaku islands in 2012 through nationalization processes from one Kurihara family who were private owners of the islands (Congress Research Services, 2021). Effectively, the nationalization of the Senkaku islands from the Kurihara family was one of the efforts by Japan to strengthen their claim in the Senkaku islands who were also being claimed by China and Taiwan which has significantly escalated tensions between China and Japan (Congress Research Services, 2021). The Senkaku Islands were not inhibited until around 19$^{th}$ century when they were occupied by Japan post the Chinese invasion but

after the world war II, they were in the administration of the US of which the US returned ownership and control back to Japan in 1972 (Congress Research Services, 2021).

China, Taiwan and Japan all alleges that these islands are part of their own individual countries' national territories and since Japan purchased them back, China has responded by establishing the Air Defense Identification Zone (ADIZ) which has lead Japan to respond through engaging in military exercises in the region (Congress Research Services, 2021). China then adopted the "Open confrontation policy" which asserts that no foreign nation is allowed to come and occupy what is considered the nation's national assets (Sakamoto, 2021). Since then, China has been regularly sending the People's Liberation Army (PLA) navy patrols over the SCS islands and have intensified their presence in the Air Defense Identification Zone (ADIZ). An ADIZ is a created airspace by a country where a country is able to identify, control and locate aircrafts in the interest of the country's national security interests (Welch, 2020). ADIZ are made so that country can be able to detect and identify threats and provide early warnings for any possible potential airborne threats. Today, China's policy towards the SCS is at a turning point because of its direct military confrontation and show of military power (Welch, 2020).

Despite growing concerns from both Japan and China, China deliberately continues to exert control over the SCS islands and demonstrated various military deployments, policy proclamations and provocative naval maneuvers that poses security challenges and threatens regional stability in the Pacific Ocean (Thornton, 2022). In the landmark judgement of the Permanent Court of Arbitration (PCA) in the case brought by the Philippines against China's "nine dashed line" map claims, the court decided that China has no legal basis for claiming historic rights in the SCS. However, China has since blatantly disregarded the court's judgement (Thornton, 2022).

**2.**3. Theories of International Relations applicable to SCS.

This research thesis combines the three International Relations theories, namely, Realism, Liberalism and Constructivist as analytical tools of the SCS Disputes from the perspective of international law and specifically with respect to the two case studies, namely, the Paracels and Spratly Islands.

### 2.3.1. Realism Theory

Realism contends that states are in a struggle for power and therefore are engaging in competition for power with other states so that they can survive (Anteczak, 2020). For example, the balance of power between the Soviet bloc and the United States of America is the classic case of the realist claim of states behavior for struggle of power

(Walt, 1998). Realism's core assumptions are such that states are sovereign in the international system and therefore their innate will for sovereignty in the international system is in many cases the root causes of conflicts (Walt, 1998).

Realism contends that the international system is anarchic in nature, lacks world government and therefore by its very setup shapes and forms the different behaviors of States (Weber, 2013). The absence of world government that would have been the engine to create international norms and a world order that all States would abide by has created a security vacuum. This stimulates states to maximize their powers and compete that ends up creating a world of uncertainties. Smaller states will form alliances and balance the dominating states power in their regions in order to manage potential conflicts (Qianqian, 2010). In short, the anarchic nature of the international system is the permissive cause of conflicts and wars (Qianqian, 2010).

Therefore, applying the realism theory to the SCS Disputes, it stands to reason that the sudden realization of the economic value of oceans and sovereign controls of their territories have created an immense competition for goods and resources (Yee, 2011). Therefore, by extension, realists contend that the case of SCS Disputes can be explained in two perspectives, namely, the first one being the struggle for power in the SCS and the second one being the struggle for scarce natural resources and strategic importance of the SCS (Yee, 2011).

China's rise according to realists presents itself in the Pacific Ocean as its seeking to maximize presence and dominate the region. This then causes other states to balance this with regional alliances in order to balance China's power and its strong assertiveness over the SCS territories' sovereignty (Kaplan, 2010).

Analyzing China's behavior in the SCS Disputes, the realists' perspective of understanding China's behavior is through the lenses of power maximization and struggle for resources (Kaplan, 2010). From this angle, China has the biggest growing economy in Asia that needs support for its continued development from the energy sectors that support its industrialization processes (Mearsheimer, 2014). Predictions from realist scholars are such that to keep China's economy thriving and still dominant in Asia, China will have to compete for resources like oil with its surrounding neighbors. Since the SCS contains roughly oil and gas reserves that are 20% larger than those of Kuwait, and it serves as a strategic passage for sea lanes and goods transportation for oil importers like Japan and Korea, oil dependent China will have to secure its energy security from the SCS (Mearsheimer, 2014).

Realists are also of the view that China's behavior in the SCS can be interpreted as a struggle for their economy's survival and the country's welfare for other reasons and not just mere energy security (Calder, 1996). China's assertiveness over the total sovereignty of the SCS Islands guarantees China energy security from the oil and gas reserves that are drawn from the SCS. By extension, this guarantees China's leverage, they will also be able to control trade routes that transport oil from the Pacific Ocean to Indian Ocean for the Arab countries that imports SCS oil (Mearsheimer, 2014). Secondly, the control of these disputed islands fits correctly to the realist assumption of struggle for survival since China currently suffers from over population and therefore, these Islands could be an extra space for occupation by Chinese citizens, creates potential livelihoods and economies of Chinese citizens especially those who are heavily reliant on fisheries economy (Mearsheimer, 2014).

If China continues with aggressive assertiveness it is likely to create a security competition with the United States and its Pacific neighbors over these disputed Islands, namely, Spratly and Paracels. This could eventually lead China to come up with Monroe policies to push out the US outside of the Pacific which will obviously be met by a total resistance in a form of a pro US-balance of power by regional actors against China's rise and its associated assertiveness of the SCS territories and islands (Mearsheimer, 2014).

Therefore, in conclusion, the realists are of the view that China's economic rise has to be supplemented by large amounts of energy (both oil and gas) that they can easily exploit from their SCS Islands. China will therefore engage in measures to protect this energy security chain supply by increasing their military expenditures to counteract Japan's and Korea's military presence in these regions (Yee, 2011). Secondly, increased military expenditures, military deployments and patrols of SCS by China will create a security dilemma that will warrant an immediate balance of power by Pacific regional actors to counteract China's behavior (Yee, 2011).

### 2.3.2. Liberalism Theory

Liberals choose to see the anarchical nature of international system where States exists not as a permissive membrane of conflicts and wars, but rather a medium that can enforce cooperation amongst states (Walt, 1998). Liberals are of the view that International Institutions and regional organizations can play a crucial role that will enable states to find common interests over their own individual self-interests. This will enable the reduction of states selfishness and allow for them to cooperate and focus on relative gains as opposed to immediate gains (Weber, 2013). Therefore, it is

assumed that states can use cooperation as a medium to understand other states' behavior and intentions which will bring about certainty in the international community and reduce potential for conflicts (Tan, 2016).

Liberal scholars argue that it is the ignoring of the roles institutions are designed for that leads to wars and conflicts amongst states by putting states self-interest first at the expense of other states (Tan, 2016). Cooperation can be achieved by adopting liberal values and its associated free markets and trade liberalization (Tan, 2016). By extension liberals also argue that countries with the same political and economic ideology models are less likely to go to war with each other and this particular claim is supported by the Democratic Peace theory that argues that democracies do not fight one another and therefore are by their nature inherently peaceful (Buszynski, 2003). Liberals also argue that free trade and economic independence then become an enforcer for cooperation and limits competition since all states benefit from these consortium and free trade arrangements (Buszynski, 2003).

In applying the Liberalism theory to the SCS Disputes, the liberals are of the view that cooperation can be achieved by involving and engaging China to participate in regional institutions so that shared interests of the SCS by all claimants can be achieved (Koo, 2009). To this end, liberal thinkers suggest ASEAN as the regional actor and a forum that could bring about an open dialogue that engages China and other SCS claimants, with hopes that this open dialogue will remind China that their unilateral approach to the SCS disputes will be heavily costly to their rising economy. Moreover, continued aggressiveness in the Pacific Ocean could lead them to lose their ASEAN support and their link to external world (Koo, 2009).

The liberals assume that China will come to this realization and change their foreign policy towards a joint development foreign policy where all parties or rather claimants will share in their common interests and relative gains over their unilateral approach (Tan, 2016). An example of this realization is China's Joint Development open dialogue offer to Malaysia, Japan and Philippines. Economic interdependence could act as a filter that allows for cooperation in the SCS and reduces the likelihood of wars (Tan, 2016). For example, one could talk about the cold politics of China and Japan in the SCS, arguing that the costly economic incentives for war has kept the two countries out of war since their economic relationship is profitable to both States and therefore economic interdependence restrains China's behavior in the SCS (Tan, 2016).

### 2.3.3. Constructivism Theory

Constructivism theory argues for the importance of ideas and therefore gives primacy to non-state actors as the main actors of international relations (Walt, 1998). The Constructivist argue that collective norms, ideas and identities are the main drivers that shapes states' behaviors (Friedberg, 2005). Constructivist scholars argue that identities are socially constructed and is a continuing process that dates back to the past and carries on in recent times (Walt, 1998).

This therefore, helps with the creation of common understanding of the self and the perception of others amongst States (Goldstein, 2011). Constructivists are also of the view that ideas and beliefs can be used as the foundation that will build up international norms that will detail the right and appropriate actions of states. Once ideals become the key determinants of the anarchic system that states exist upon a conducive environment will be created for states to cooperate and live in harmony through the understanding of one another through their shared ideas and beliefs (Goldstein, 2011).

Applying the Constructivism theory in the case of SCS Disputes, the constructivists argues that if one looks at an example dating from the past in order to evaluate the effectiveness of ideas to institute a positive change, one example is the shift of the Soviet Union's foreign policy that led to the Post-Cold War era (Wang, 2013). The Soviets changed their ideas and perception of the West from perceiving them as the enemy into embracing them as international partners that can cooperate and share common security interests and therefore, brought about the new conception of the self and others as the constructivism assumptions demands (Wang, 2013). In the case of the SCS disputes, it is evident that China's foreign policy in the SCS is changing and with continued engagements with other claimants, it is likely that the reciprocal approaches of counter-claimants of the SCS will change and therefore, ultimately reduces China's assertiveness over the disputed Islands (Friedberg, 2005).

The second feature that applies to China in the SCS is that constructivists emphasize that the role of norms created by regional institutions like ASEAN can help in creating an order like environment that can help China changes its foreign policy objectives and goals in the SCS (Wang, 2013). It is assumed that the norms created by these regional institutions will help curtail behavior that is unacceptable to the standards of international community and therefore, would act as a medium that restricts aggressive behaviors of states and on this case, China in the SCS (Friedberg, 2005).

Constructivists argue that ASEAN will be able to help change China's strategy in the SCS and engage them in norm building dialogues that will restrain China from the use

of force in the SCS disputes (Wang, 2013). For example, they premise their claim on the 2002 Declaration on the Code of Conduct (CoC) on the SCS as a progressive step towards proper establishment of norms and conducts that could eventually see China aligning with multilateral open forums over their insistence on bilateral negotiations on the SCS Disputes with other claimants.

Constructivists argue that although they are optimistic of the effect of ideas for a positive change, they are nevertheless mindful that it is a difficult process that select a few cases to back up these claims (Jie, 1994). For example, they argue that China and Korea still view Japan as "hostile Japan or aggressive Japan" because of Japan's past experiences with these countries. Likewise, in the case of the SCS, one way of understanding China's perception and identity stems from the historical basis of the SCS Islands that argues that China was basically the first country to identify and occupy the islands (Jie,1994). Throughout generations of China's existence, the Chinese have perceived the SCS islands as their motherland territories and therefore, bound to protect these islands from any external infringements by the surrounding neighbors. It therefore, perceives itself as the victim whose islands are being stolen from it by its competing claimants (Anteczak, 2020).

And lastly, constructivist contends that China's behavior in the SCS can be understood through interpreting China's perceptions, identities and ideas that the Chinese have created over a period of time such as their historical archives, cultural elements and their education system (Anteczak, 2020). The stories emanating from Chinese cultures, their educational system and related historical texts have posited China as the victim whose islands are being stolen by its surrounding neighbors coupled by its war with Japan (Anteczak, 2020). Therefore, constructivists argue that social interactions between China and claimants of the SCS might help build some positive intersubjective ideas that will likely counteract negative ideas and perceptions of other states, especially Japan, and therefore, eliminate threats and security dilemma in the SCS (Anteczak, 2020).

While the SCS disputes can be understood through the three theories of International Relations that offers a critical dissection in line with their own assumptions, these theories, namely, realism, liberalism and constructivism are limited in fully accounting for the SCS disputes. Firstly, while realism offers a critical explanation of the security dilemma as well as the competition of power in the SCS, the theory however falls short of capturing and accounting for China's legal and historical claims in the SCS (Amrullah 2024). Realism is a western dominated theory that posits China as a threat mainly so

through the eyes of the US which is a hegemony and effectively characteristics its relationship with China as constituting a Thucydides trap where China's rise poses a serious threat to the US dominance (Allison 2017). For example, China's construction of artificial islands around the SCS as seen as militarary expansion and a strategic move to secure its SCS claims (Allison 2017). Effectively, such as efforts from a realist perspective are seen as strategies to expand China's power and security in an environment that is very competitive and fragile such as the SCS as opposed to interpreting China's actions on the SCS as part of China's identity which informs all their activities in the SCS (Amrullah 2024).

Liberalism theory emphasizes both institutional mechanisms and cooperation in resolving the SCS disputes but from its approach, it seemingly tends to underestimate the power dynamics complexities that exists in the SCS disputes and nationalist sentiments that surrounds the whole SCS region (Cole et al 2024). The liberalism theory fails to full grasp the assertive nature of China in the SCS disputes for example, Liberalism theory is of the view that ASEAN as a regional grouping in the SCS disputes can play a crucial role in fostering peace and cooperation which would lead to stability in the region (Cole et al 2024). Effectively, the Liberals proposes that a Code of Conduct for the SCS is one way in which institutions can in an effective way facilitate cooperation and mitigate the existing conflict (Cole et al 2024). Economic independence that exists between China and other countries in the Region including the US may become grounds for incentives for cooperation and the process reduces the likelihood of conflict but this has not been the case since China unilaterally condones its assertive behavior at the SCS at the expense of all other economic benefits with which such a behavior is likely to have a negative impact on China (Cole et al 2024).

And lastly, the constructivist theory highlights the importance of identities, ideas as well as perceptions that are involved in shaping state behavior which is generally a theory that is better suited to explain historical events as opposed to predictive future events (Freundlieb 2019). The constructivist theory in its approach fails to overlook the impact of external factors contributing to the ongoing SCS conflicts such as the role and influence of the United States in the region (Freundlieb 2019). For example, the constructivists interpretation of the "Nine-Dash Line" reflects its perceived historical rights and sovereignty of China in the SCS region while simultaneously nullifying the existence of FANOPS as a legitimate treaty (Freundlieb 2019).

While all the three theories partially account for the SCS disputes, the most appropriate theory that is best suited to offer a critical and robust account for the SCS disputes is

the constructivist theory. The constructivist theory best captures the significance of historical narratives, perceptions and national identities in forming and shaping state behavior. Accordingly, China's assertive behavior in the SCS can be attributed to its historical history of injustices and of being a long term victim in its century of humiliation. As such, China's actions in the SCS must be read off as efforts that are aimed at restoring both its national dignity and as a way to claim their rightful place through its enforcement of sovereignty in the SCS region. For example, China's construction of artificial islands in the SCS must be seen as responses to its perceived historical grievances and nationalist sentiments while noting that the perception gap between China and other countries such as the US causes tensions since China sees its actions in the SCS as legitimate while other countries sees such actions as contributing to regional threat and instability.

## 2.4 Conclusion

In conclusion, the SCS territorial disputes presents a set of very complex, multifaceted challenges that shape both regional politics of East Asia and international politics by and large. The literature review underscores the interplay of economic, political, legal and historical factors that are the root causes of possible war and suggests a need for a multidisciplinary approach that would lead to long term viable solutions of the contested waters. In the search for an elusive solution to the SCS territorial disputes, the stakes in the ongoing conflict extend far beyond regional interests and affects environmental sustainability of the region, security and global trade. As such, concerted efforts of all stakeholders, regional leaders, and interested parties is essential to mitigating the conflict and bringing about regional stability and cooperation amongst all claimants' states.

## Chapter 3: RESEARCH METHODOLOGY.

### 3.1 Introduction

This chapter is aimed at giving a brief account of the research methodology that the research will employ in the development and synthesizing this entire thesis. The first section of the chapter will give a brief background of the theoretical approaches of international relations theories which are the foundational pillars and analytical lenses that this research applies in analyzing the SCS Disputes from the perspective of international law. Secondly, the section that follows will give a brief account of the applied research methods that the researcher has used in collecting and analyzing the data that would have led to certain conclusions being guided by the research questions that the researcher was trying to establish throughout the construction of this entire thesis.

### 3.2 Applied Theoretical Approaches of International Relations

This research thesis combines the three International Relations theories, namely, Realism, Liberalism and Constructivist as the foundation of research methodology of the thesis in order to paint a complete picture of the SCS Disputes from the perspective of international law and with respect to the two case studies, namely, the Paracels and Spratly Islands.

### 3.3. Research Design.

Research methods are general procedures and methods of collecting & analyzing data so that the findings and the conclusions that the researcher in this thesis draws is from systematic thinking that the research methodology requires from the researcher. In efforts to provide the scope of this systematic thinking and for convenience purposes, the research will employ the following research methods:

### 3.4. Qualitative Research Methods.

This research is purely qualitative and will therefore apply the qualitative research methods techniques in synthesizing this entire thesis. Qualitative research methods are most ideal in the SCS disputes since it provides for non-numerical data analysis which would be most helpful in analyzing the behavior of claimant states and their actions in the SCS disputes. Most importantly, the qualitative research methods allow for a case study which in this case we would applying the SCS dispute as a case study that the researcher analyses and uproots its complexities and possible solutions.

Secondly, the researcher would apply the Historical Approach Research Method: The Historical Approach research methods is aimed at collecting the data in the SCS disputes in order to make systematic thinking and reconstruction of the historical events that happened in the SCS disputes so as so make value judgement of the claims on the SCS disputes that are based on the historical records and accounts.

The research aims with this historical approach to collect historical data of the SCS disputes, evaluate and verify claims in order to gather compelling evidence that will support the objective conclusions that will later be made on this research. The research on this thesis seeks to use the historical approach research method in order to find the root cause of the conflict in the SCS, its causes, past and recent developments of the conflicts and lastly, future predictions of what is likely to happen in the SCS Disputes.

3.5. Data Collection Methods.

The research will make apply both primary and secondary data sources of information as part of its data collection. Firstly, it is going to apply primary data such as document analysis interpretation of the SCS Disputes, International treaties such as the United Nations Convention Law of the Sea (UNCLOS), claimant states government policies and their domestic laws, the PCA judgment and rulings, as well as diplomatic correspondences from countries like China, the US and other states.

Secondly, the research will make use of secondary data in the form of academic articles, opinion pieces, policy briefs, expert interviews, think tanks and online government platforms of reporting current affairs pertaining the SCS Disputes.

3.6. Research Questions.

The central theme of this research will be to answer the main research question of whether the historical rights that China bases its claims on has the same legitimacy as UNCLOS when analyzing the SCS territorial disputes. The research questions are subdivided into sub questions that are part and parcel of the primary research question.

1). Why despite the enactment of the UNCLOS 1982 that set limits to territorial waters are the SCS Disputes still continuing? I shall explore the foundational causes of the SCS territorial dispute and its underlying issues that are currently unresolved by the UNCLOS 1982.

2). To what extent is China’s claims in the SCS consistent or inconsistent with international law? This question will take a careful look on the interpretation of the UNCLOS 1982 against China’s historic claim of the islands and makes a value judgment of the case currently being discussed.

3). On what legal grounds can China justify its claims of sovereignty over the SCS territorial disputes? This question will investigate the possible grounds that could built up China's case of SCS territorial claims, if there are any, under the UNCLOS.

4). What are the possible solutions to the SCS disputes? This section will look at both the bilateral and multilateral arrangements of prospects for peace in the SCS territorial disputes. It will also evaluate the code of conduct and its viability in enforcing certain standards for all claimant states in peacefully resolving the disputes amongst themselves over the contested SCS territorial waters.

**3.7. Expected Outcomes.**

The researcher hopes to comprehensively analysis the SCS Disputes from the perspective of international law. The researcher also wishes to bring about nuanced understanding of the complex issues and interests in the SCS Disputes. Lastly, the research wishes to meaningfully contribute to the development of international law of the sea and its implication for regional stability in the Pacific Ocean politics.

3.8. Limitations:

Methodological limitations.

The study's chosen qualitative research methods are likely to limit the generalization of findings and the complexities of a number of stakeholders involved in the SCS dispute makes gathering comprehensive data a challenging task.

Data limitations.

Access to primary data sources from claimant states government is limited and considered classified information by most claimant states. Also, the study's reliance om document analysis is subject to personal biases.

3.9. Ethics.

The study will apply ethics waiver because it does not deal with human participants. In the case of primary data gathered, the study will apply the principles of an anonymity and confidentiality, as well as storing and protecting this data in terms of appropriate data protection methods.

In conclusion, this section was aimed at detailing the research methodology that will be employed throughout this whole entire thesis. Firstly, it started with the research design that gave three International Relations theories assumptions and their applications to

the SCS is the foundational research methodology of this thesis. Next, the chapter gave a brief overview of the research methods applied in this thesis and their relevance. And lastly, the section gave an account of data collection and interpretation of findings, research questions, research limitations as well as ethics.

## Chapter 4: The interpretation of the Law of the Sea (UNCLOS) in the South China Sea Disputes.

### 4.1. Introduction

Wars between states have been a fundamental feature of state formation since ancient times and has overtime arguably helped forged new rules and systems of government that characterize the modern international system of states. However, the most daunting effect of wars is the destruction of peace and international security especially when they do not get immediate attention towards a resolution from the international community and non-state actors. Currently, one such conflict is the ongoing SCS disputes where nations that share the SCS maritime features are fighting for sovereign rights of the SCS islands and maritime features. While the tensions in the SCS escalate due to competing claims over rights to the islands, the states have sought to reach out to the United Nations Convention on the Law of the Sea (UNCLOS) in efforts to use the UNCLOS as a mechanism that could help alleviate the territorial disputes and offer clarity on which claims are legitimate and must be given recognition.

This chapter will argue that Chinese claims of total sovereignty over the Spratly and Paracels islands based on historical rights and encompassed in its nine-dashed line map have no legal basis in terms of the UNCLOS. Accordingly, the chapter comes to a conclusion that China has no legal basis to claim total sovereignty and resources on the maritime territories that fall within the nine-dashed line map. Following from this, the chapter will begin by giving an account of the North Sea disputes of 1959 in order to draw parallels on the important lessons the SCS claimant states can draw from the resolution advanced in the North Sea disputes. Secondly, a section on how the UNCLOS was developed would following detailing its genesis, important provisions and guidelines on how sea conflicts are supposed to be dealt with. Next, the chapter would offer a section on the application of UNCLOS on the SCS disputes drawing from the recent *Philippines v China* case by the Permanent Court of Arbitration (PCA) and a conclusion that integrates the whole discussion would later follow.

International law seeks to provide an alternative to fully fledged war approach that China has recently been taking (Fenton, 2021). The provisions of the Law of the Sea strategically exists together with other treaties to offer mechanisms of resolving disputes and also ensuring that states do not resort to the use of hard power tactics (Fenton, 2021). The countries that are currently embroiled in the SCS territorial disputes could learn lessons to learn from the parallel situation of how the North Sea was divided

by Norway, Germany, United Kingdom, Denmark and the Netherlands (Guilfoyle, 2019). In the case of the North Sea, the competing claims by countries was smoothly & peacefully negotiated around 1959, before oil was discovered in the region around 1965 (Guilfoyle, 2019). The implementation of the Law of the Sea is a reflection of successful negotiations of maritime disputes of competing interest such as access to sea resources, trade routes and shipping lanes, as well as access to fishing activities dating back to 400 years ago (Guilfoyle, 2019).

In the history of the North Sea claims over sovereignty were shelved in favor of joint resource development. Although it took time, the resolution in the North Sea disputes was reached through a number of claimants compromises, and implementation of various treaties that were entered into by competing parties. Roach (2014) is of the view that given that the Law of the Sea defines an island as a place that is able to sustain life, is situated above water level at all times it is therefore subject to sovereignty claims over associated maritime zones. The provisions of the UNCLOS stipulates that a maritime zone entitlement includes at least a 12 nautical mile (nm) territorial sea, 200 nm mile exclusive economic zone (EEZ) and also a continental shelf (Roach, 2014).

Under the creation of an EEZ, freedom of navigation and communication is available to the state that is adjacent to the waters and by extension, privileges to extract, explore, manage and exploit resources belong to the state with sovereign rights (Beckman, 2013). Importantly, it must be mentioned that the median principle that was applied to the North Sea Disputes, namely, that every point equidistant from the baseline of the contested waters can be exploited for its natural resources by claimant states, was an approach that worked for the North Sea Disputes (Beckman, 2013). This method of median line principle was agreed in 1965 and allowed production licenses and exclusive rights to explore, drill and produce oil to different companies belonging to all claimants of the North Sea (Beckman, 2013).

Although the UNCLOS supposes that the median line in maritime settlements has always mediated claimants' states' rights of drawing and constructing the line, other analysts have argued that it was only the management and governance, sharing philosophy and setting limits that have led to the successful governance of the North Sea (Batongbacal, 2016). Governance at its roots level is composed of three features, namely, regional and international treaties, conventions and legislations, as well as formal institutions that are designed to map out national policy, and shared information systems that are able to help in administration (Batongbacal, 2016).

4.2. The genesis of the UNCLOS?

The call for the “constitution on the seas’ which later materialized in the current UNCLOS was first made by the then Maltese ambassador to the UN, namely, Arvid Pardo, during his speech in the General Assembly. He sought to address burning issues at the time such as the emerging rivalry between states pertaining to islands features, the pollution of seas, the potential richness of seabed and the conflicting legal claims on maritime disputes (United Nations, 1967). After much deliberation by the General Assembly members through three consecutive UN conferences on the law of the sea, the UNCLOS was born in 1982. The UNCLOS legally came into effect on the 14th of November 1994 and was ratified by about 60 states (Grid-Arendal, 2014). The central purpose of the UNCLOS was to strengthen peace and cooperation, security and friendly-relations amongst states which conformed to the principles of international justice and equal rights (United Nations, 1982). What remains outstanding 43 years later is the UNCLOS dispute resolution system that is compulsory and indispensable to all solutions pertaining to maritime disputes (United Nations, 1982).

4.3. Main provisions of the UNCLOS?

The UNCLOS seeks to establish rules, principles and guidelines for all the sea activities such as fishing, navigation, and resource exploitation in maritime zones (Bean, 2015) – Following from this, the UNCLOS is aimed at providing a legal framework that would allow for the use and preservation of oceans and their natural resources through stipulating maritime boundaries, resource management, freedom of navigation, scientific research and the preservation of the natural environment for the sea (Bean, 2015). The main provisions of the UNCLOS are that it establishes 12 nautical miles as the breadth of territorial sea from the baseline that was previously 3 nautical miles and effectively, giving right of innocent passage through these waters by other states (Kausar, 2023).

The UNCLOS strategically protects coastal states sovereign rights of exploring and exploiting the natural resources of the sea as well as managing and conserving their sea environment in an up to 200 nautical miles EEZ by entrusting coastal states with rights to control, prevent and reduce marine pollution from vessels circulating in ice covered areas within the limits provided for by the EEZ (Kausar, 2023). Coastal states are further entrusted with jurisdiction by the UNCLOS over both living and non-living resources of the seabed and subsoil in both their continental shelf and extended continental shelf of their EEZ (Kausar, 2023). Importantly, the UNCLOS stipulates the crucial process of delineating and archiving international recognition for the outer limits of the continental shelf in cases where they lie beyond the stipulated 200 nautical mines

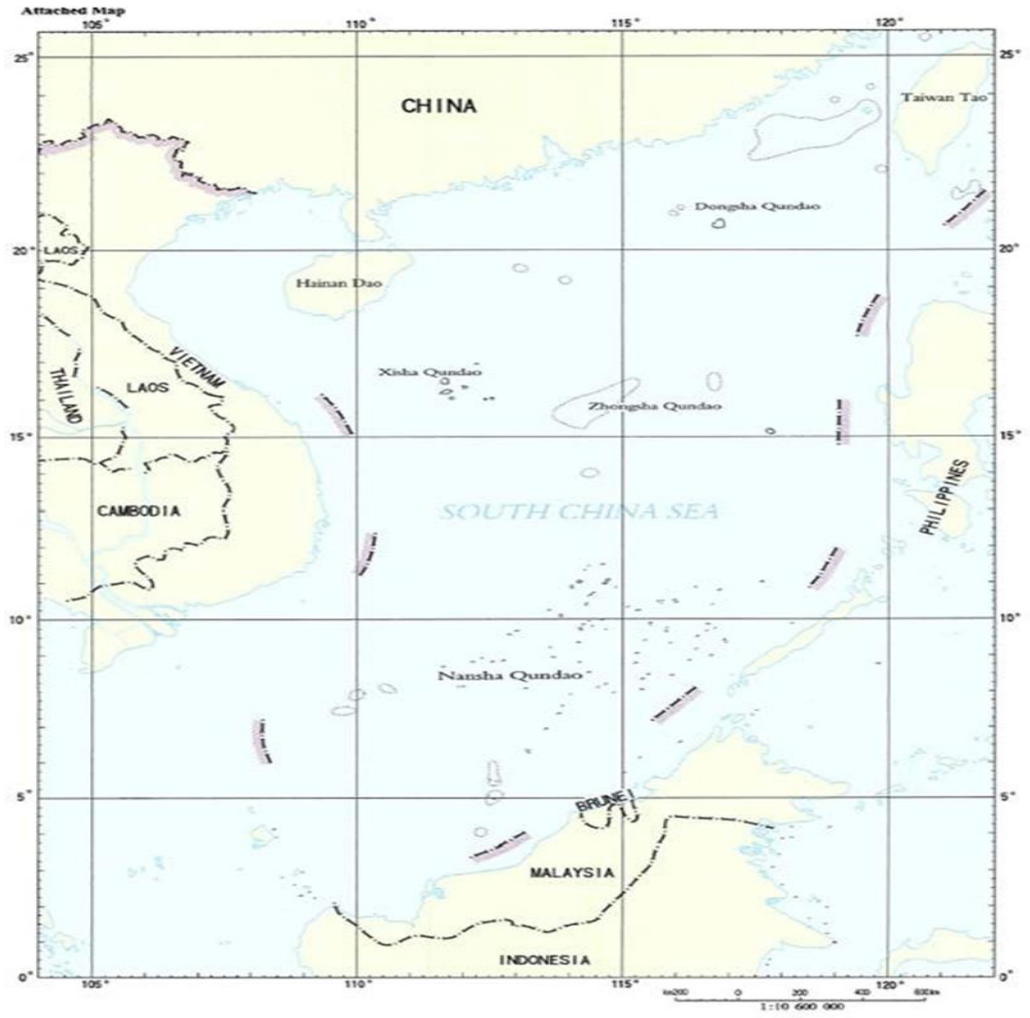
limit (Bean, 2015). On parallel lines, it provides a legal framework for the joint development of the natural resources of the deep seabed and joint exploration for sharing of resources and benefits for areas that are situated beyond state coastal jurisdiction (Bean, 2015).

The UNCLOS has been tailored to create a politically realistic system with various means of resolving disputes and is embedded with exceptions and limitations within its own approach (Maijak, 2022). Part XV, Section 3 of the UNCLOS details the exceptions and limitations to compulsory dispute settlement, for instance that before such a step can be taken, all the affected parties must first attempt to resolve their differences through all means stipulated in Part XV, Section 1 (Maijak, 2022). Article 279 to 285 of section 1 of the UNCLOS states that is mandatory for all states to resolve their disputes in a peaceful manner and effectively set out procedures that provide for when no settlement can be reached by claimant states, as well as certain obligations on bilateral and regional agreements as well as rules that need to be followed for conciliation (Nguyen, 2017b).

Furthermore, article 283 of the UNCLOS provides that member states of the UNCLOS have got an obligation to attempt and exchange their different views pertaining settlements disputes through proper application of the UNCLOS by negotiation carried out through peaceful means (United Nations, 1982). In an event of a failure to meaningfully address the sea disputes through peaceful means and negotiations, states are then empowered to invoke Section 2, Part XV of the UNCLOS which stipulates the methods and channels of addressing disputes between claimant states that arises out of the interpretation of the UNCLOS (Nguyen, 2017b). Therefore, article 287(1) read with Part XV of Section 2 of the UNCLOS empowers states that upon ratifying and signing the UNCLOS, to elect to choose either the International tribunal for the Law of the Sea, or the International Court of Justice, they can seek ad hoc arbitration or special arbitration tribunals as appropriate forums to raise grievances and to seek resolve from recognized tribunals that have got the legitimacy to enforce the UNCLOS (Nguyen, 2017b).

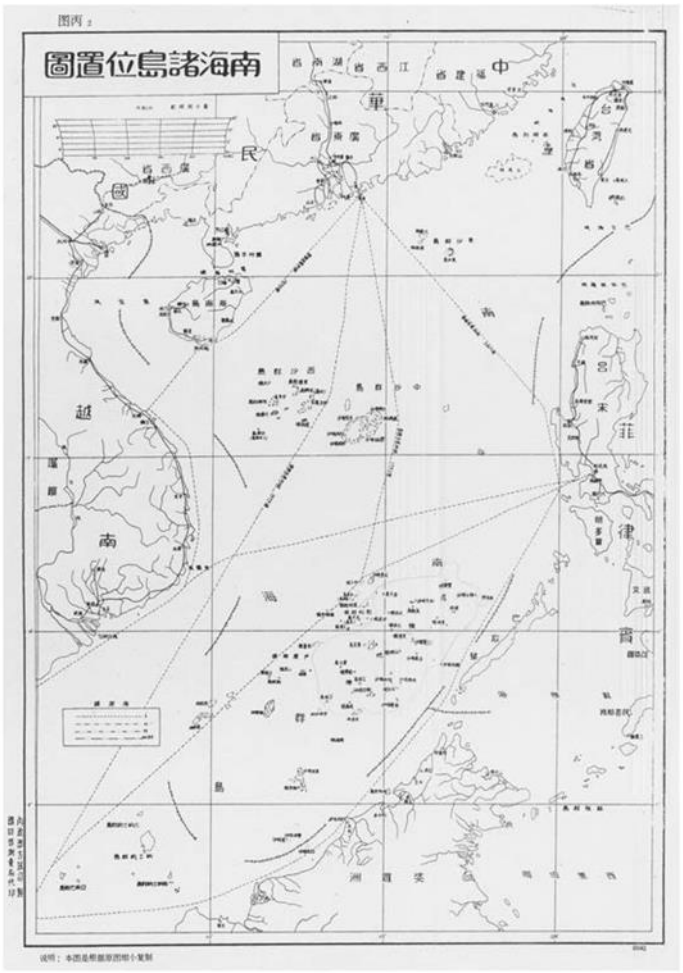
4.4. Interpretation of the UNCLOS in the SCS Disputes.

Figure 8: The Nine Dashed Line Map Notes Verbales 2009



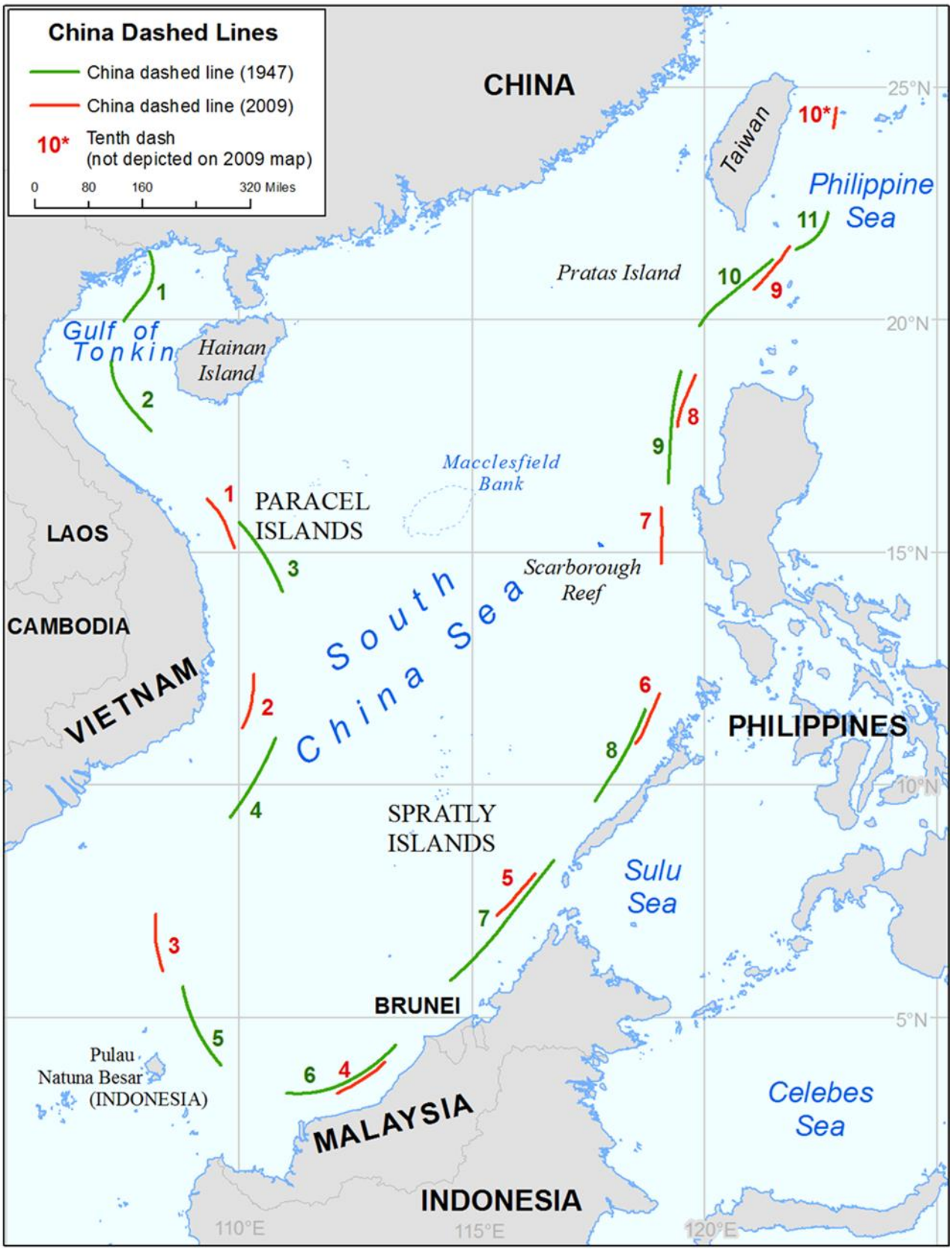

Source: Map showing China's nine-dash line and Indonesia's territorial waters... | Download Scientific Diagram

Figure 9: China's (Kuomintang) 11-Dash Line Map of 1947 entitled "Map of South China Sea Islands"




Source: https://sl.bing.net/kHuJNYurGGi

Figure 10: The Comparison of the Dashed Line Map in 1947 and 2009 Maps.




Despite China's claim to total sovereignty over the Spratly and Paracel islands, it would be important to first try and interpret China's "nine-dashed line map" which is one of the

indirect causes of conflict since it encompasses both the Spratly and Paracel islands as historical territories of China (Bader, 2014). China has been a great power in East Asia and much of its power comes from its control of the SCS features through its historic claim to special rights over these features through its "nine-dashed line map" which asserts these territories as historically belonging to China (Bader, 2014).

The first interpretation of the "nine-dashed line map" rests on it as the "line of attribution" of control over islands that are contained in the Nine-dashed line map (Ikeshima, 2013). One could therefore, argue that the dashed line of the map is the representation of China's intention to possess all SCS island features that falls inside the dashed line map as its own territories.

Secondly, the line that was used to draw the nine-dashed line map is the same line that was used to draw the Chinese official territorial land map borders with its neighboring states, indicating China's total sovereignty and control of all natural resources falling within the line (Ikeshima, 2013). The second interpretation of the "nine-dashed line map" is that it indicates the scope of China's *historic* rights asserting sovereignty over the islands, atolls as well as reefs (Ikeshima, 2013). This interpretation presupposes that historic rights gives China the power to determine other countries' freedom of navigation and overflight operations within the contested islands and as such, poises China as rightfully exercising its rights within the ambit of international law (Bader, 2014). However, this interpretation might not pass the test of international law since China uses the historical right claim argument in international law but has not ratified it in its domestic law (Nguyen, 2005a).

Lastly, the nine dashed line map is interpreted as the China's traditional border line map which can be considered the national boundary line that exclusively indicate all features falling inside the map as features and islands belonging to China (Nguyen, 2005a). This interpretation is inconsistent with international law and effectively lacks support from other claimant states since it is incompatible with state practices as well as associated laws and regulations pertaining to China's treatment of maritime features (Feng, 2016).

### 4.5. The Application of the UNCLOS on the SCS Disputes.

Following on from the South China Sea disputes, the Philippines took the People's Republic of China (PRC) to the Permanent Court of Arbitration (tribunal) on the 22th January of 2013 after failing to resolve these territorial disputes through peaceful diplomacy and negotiations (Hui-Yi, 2016). it is quite important to note that the

UNCLOS does not have the power to address issues of sovereign rights of states on territorial disputes but rather deals with the legal basis within which maritime rights and entitlements can be claimed by a state (Hui-Yi, 2016). The Permanent Court has analyzed the Philippines case and categorized it into four categories that warrant resolution. The first one is the dispute that centers largely on maritime rights and entitlements in the SCS. Secondly, the disputes that would feature on the entitlements to maritime zones under the UNCLOS at the Scarborough shoal and other maritime features found in the Spratly islands which are being claimed by the Philippines and China (Nankivell, 2016). Thirdly, there are a number of disputes that pertains to China's unlawful actions in the SCS (Nankivell, 2016). And lastly, the fact that China has continuously been aggressive in the SCS during the course of the arbitration in the sense that they have been limiting access of Philippines marines in the SCS and creating enormous artificial islands and annexing land at a number of reefs of the Spratly islands (Nankivell, 2016).

Analyzing all the events that have transpired since a case was brought against China in the PCA, one can argue that China has equivocally made it clear that it was not going to participate in the arbitration processes nor would it comply with the PCA award on the Philippines case. This was communicated by China in many of its diplomatic *notes verbales* and public statements made by policy makers that were also communicated to both the PCA and Philippines (Churchill, 2017). By extension, China has objected to compulsory dispute settlement provided for by the UNCLOS when they made a declaration that excluded maritime boundary from their acceptance of compulsory dispute settlement in 2006 (Churchill, 2017). In 2014, China has through their Position Paper on the matter of jurisdiction in the SCS openly communicated that they will not be complying with the PCA's decision (PRC 2014).

Nevertheless, the PCA on its award of jurisdiction and admissibility held that it was against China's argument of asserting total control on the islands based on historical rights claim. The PCA in the case of *Phillipines vs China* has ruled in favour of the Philippines on the 12$^{th}$ of July 2016 that the Chinese claims based on historical rights and in particular, its nine-dashed line map had no legal basis in terms of the UNCLOS (Maijak, 2022). Alternatively, China has no legal basis to claim resources on the maritime territories that falls within its nine-dashed line map (Maikaj, 2022). Even though China has historically made use of the islands as part of its territories in the SCS together with other states, there was no concrete evidence to suggest that China has exclusive control over the resources and territories of the SCS (PCA, 2016). China's "nine-dashed line map" and claims of historical rights on the SCS waters was

found to be inconsistent with the UNCLOS in terms of the allocation of rights and maritime zones by the UNCLOS (Singh, 2016).

The PCA came to a conclusion that the Spratly islands could not generate their own Exclusive Economic Zone (EEZ) historically due to the fact that they cannot be inhabited. Under the UNCLOS, islands that are uninhabited or are unable to sustain human habitation on their own cannot have an EEZ nor continental shelf (Singh, 2016). The Philippines EEZ is not overlapping with any of the Chinese entitlements on the sea (Tribunal, 2016). Post the judgement of the SCS case by the PCA, China has nevertheless continued opposing the court's ruling and in no single case have they ever recognized the court's ruling. But critically assessing China's thinking on the judgement, its rationale centers around the fact that the PCA continued with its arbitration processes despite China not being part of the process and as such, China's refusal to participate nullified the judgement of the arbitration court (Singh, 2016). There is no legal basis in the 'nine-dashed line map" of China that allowed it to claim historic rights to SCS waters and its resources over and above the rights that were provided for by the UNCLOS for areas that fall within the 'nine-dashed line map" (Singh, 2016)

China is of the view that its sovereignty claim to the islands and maritime rights in the SCS territories remains unaffected by the PCA's judgement on the Philippines case (Batongbacal, 2016). China strategically uses its "nine-dashed line map" to expand its own territories which encompasses economic, political and strategic interests (Nankivell, 2016). Therefore, by definition the delimitation of maritime boundaries need to take into account these factors which are beginning to be the new source of conflict in the SCS. The mere fact that islands like the Spratly islands are temporarily being controlled by Chinese fisherman who have been involved in island reconstructions, land reclamations and construction of artificial infrastructure around these islands does not suggest that these islands in their condition could sustain life and viable communities. This then makes them susceptible to article 121 of the UNCLOS which would give a state entitlement to islands provided they are able to support life (Klein, 2014). In this case, there could be no entitlements to Spratly islands by China because they do not support viable communities in their current state to an extent that they could generate maritime zones (Klein, 2014).

China's rising aggressiveness in the SCS waters especially the current land reclamations, construction of artificial islands and militarization of the Spratly Islands has caused enormous harm on the coral reef environment which has substantially violated its obligations entrenched on article 192 of the UNCLOS entrusting states to

protect and preserve marine environments (Feng, 2016). By extension, the Chinese fisherman have been harvesting endangered species such as turtles and giant clams applying methods that have been proven to be inflicting real damage on the maritime environment without regulation and due diligence from the Chinese government (Feng, 2016). One could therefore, advance the argument that China does not understand that the UNCLOS was designed to establish rules and regulations of how states should conduct themselves along their maritime environments and these rules ought to be interpreted without giving due regard to historical and traditional practices of states (Hui-Yi, 2016).

## 4.6. Conclusion

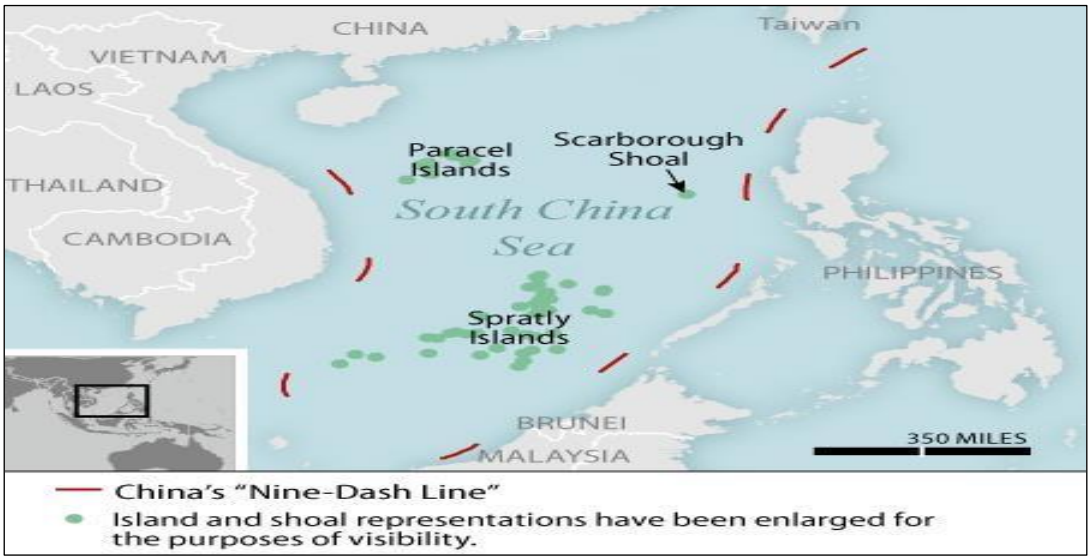
In conclusion, the UNCLOS provides generals rules and principles that are aimed at governing the different aspects of the sea such as sovereignty of coastal states over the sea, maritime zones jurisdiction, resource exploitation and management, as well as the conservation and preservation of the sea coastal environment from threats such as pollution. The UNCLOS therefore, provides a legal framework for all maritime activities such as fishing, freedom of navigation, scientific research and other use while simultaneously offering dispute resolution mechanisms aimed at solving any potential sea conflict. The biggest conundrum for China was internalizing the fact that the UNCLOS entrusts states with sovereign rights to exploit and explore both living and non-living resources that are within the 200 nautical mile EEZ which is measured from their respective countries' mainland coast. This then presupposes that China's claim to historic rights under the "nine-dashed line map" was inconsistent with the UNCLOS provisions (Feng, 2016). China's continued aggressiveness in the SCS fundamentally violates the UNCLOS and undermines the principles of cooperation that are enclosed in the UNCLOS for coastal states.

## Chapter 5: THE SOUTH CHINA SEA (SCS) DISPUTES.

### 5.1. Introduction

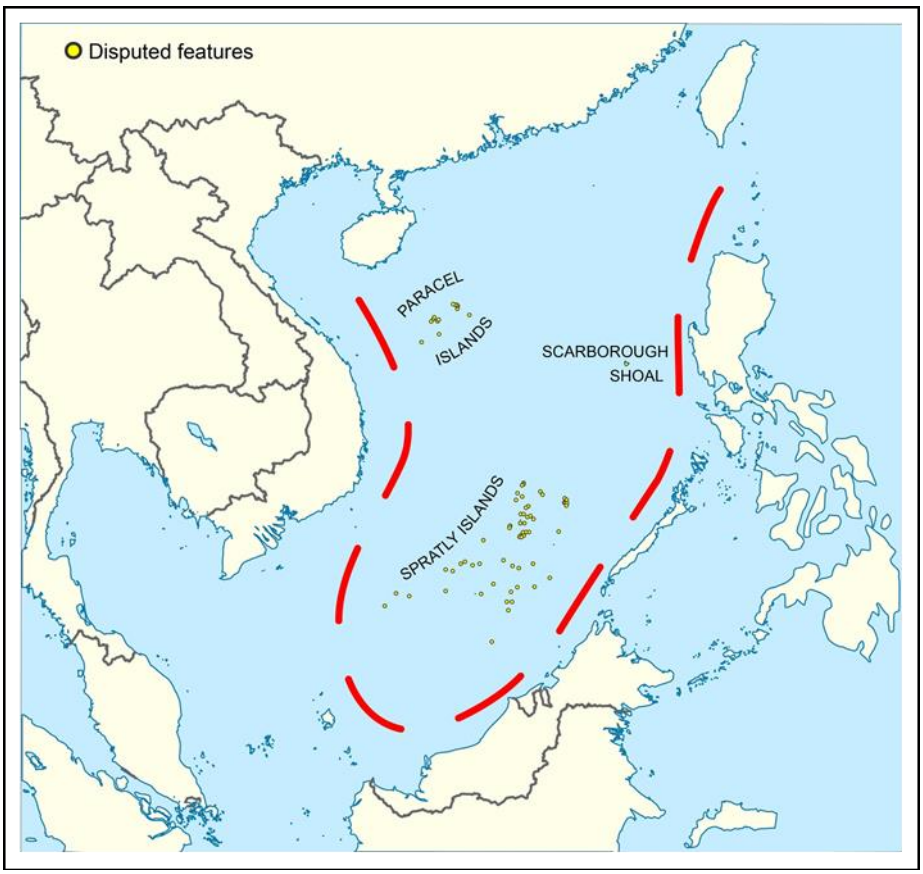
This chapter is aimed at giving a detailed background of the SCS Disputes in order to familiarize the reader with the essential topographical features of the SCS. This is very essential and necessary as it gives a complete picture of the territories and Islands that are being disputed and by which claimant State and the bases in which such territorial features of the SCS are claimed. The first part will discuss the different characteristics of the SCS and its resources, SCS's strategic importance and the associated United Nations Convention on the Law of the Sea that guards and regulates activities in the SCS. The last part of this chapter will give historical and ongoing accounts of the conflicts in the SCS.

Figure 3: The South China Sea Map with its surrounding Countries.




**Source:** CRS graphic .

Figure 4: The South China Sea Map and the Disputed Features.




Source: https://us.sagepub.com/en-us/nam/open-access-at-sage)

**5.2. The Geographical extent of the South China Sea (SCS).**

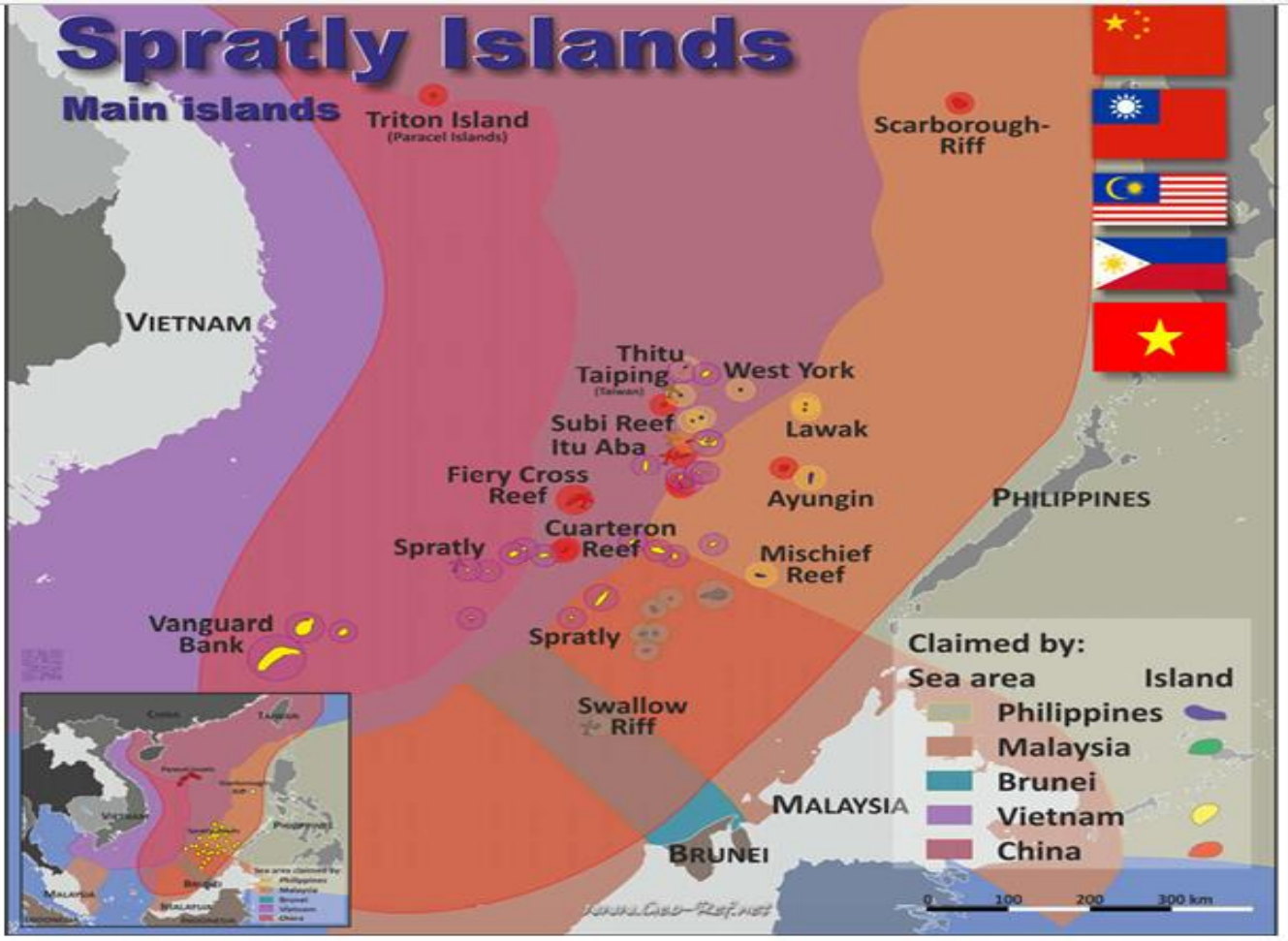
The SCS is an ocean that forms part of the Pacific Ocean and generally covers an area of around 1.4 million square miles (Fels, 2016). The SCS has a length that extends at about 1200 nautical miles and breadth that extends from 550 to 650 nautical miles (Fels, 2016). The SCS is surrounded by China on its Northern Side, then Singapore and Vietnam on its Western Side, Indonesia, Brunei and Malaysia on its Southern side, and the Philippines on its Eastern offshores (Li, 2015). The SCS has a width that extends from the Gulf of Tonkin in the western side and stretches to the Eastern Philippines Islands and consequently, stretched from the Eastern Taiwan Strait up to the Malacca Strait in the Southwest side of the ocean (Li, 2015).

The SCS has about 250 Islands, reefs, sandbars, and shores that ultimately forms a shape that resembles the gathering of islands (Duong, 2015). However, the Paracel and Spratly islands occupies a significant part of the SCS and therefore, of strategic interests since their control amounts to equal control of EEZs that are found within the parameters of the SCS (Duong, 2015). The SCS has other land territories which includes the Pratas Islands, the Scarborough Shoal and the Macclesfield Bank that are

however submerged and all year soaked in by high waters. However, the landscape of the SCS has in recent times been changing owing to the developments of 8-million-meter square of artificial or human made islands that are being built by China in the Sea which ends up uncovering huge corals deposits and sand from the base of the ocean (Duong, 2015).

5.2.1. The Spratly Islands.

Figure 5: The Spratly Islands.



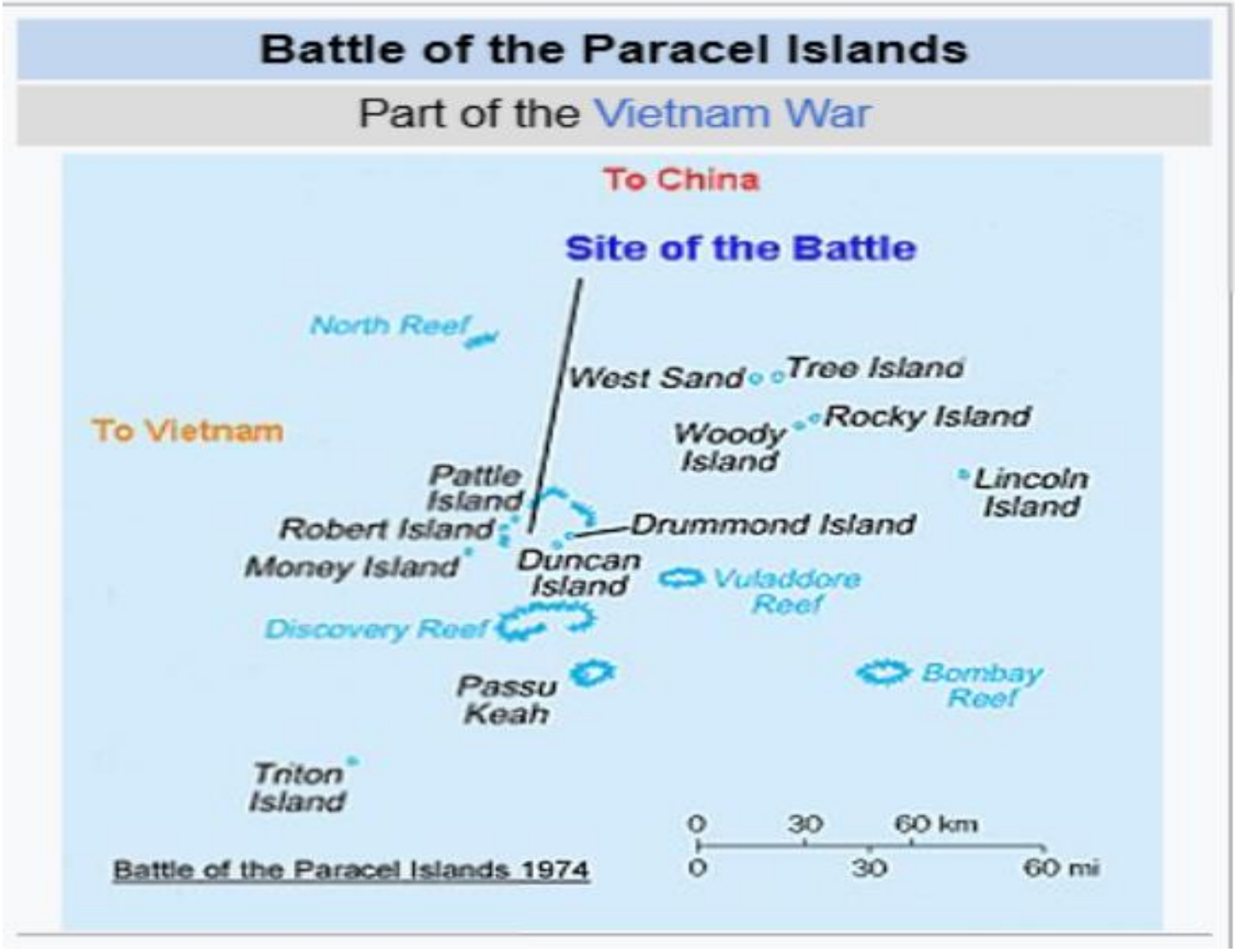

Source: spratly.pdf

The Spratly Islands are the biggest archipelago situated in the SCS from the Eastern side of the SCS and Southern Side of Vietnam (Fels, 2016). The Spratly Islands also lies on the Western side of Philippines and the northern side of Borneo (Fels, 2016). The Spratly Islands consist of about 140 small islands, shales and reefs (Fels, 2016). However, for the most time, the Spratly Islands parts are found below water surfaces but the Spratly's biggest Isle, namely, the Taiping Island or rather the Itu Aba, happens

to be the main island of the Spratly that is made in such a way that it has its own water assets, battalions and what looks like a small airbase (Katchen, 1977). The Spratly Islands were not really occupied until late 1960s because they had drifting vessels that would often fall on sea routes and disturbs boats on their missions and expansion (The World Factbook: Spratly Islands, 2016). Therefore, because the Spratly Islands were previously underexplored because of the mentioned difficulties, the curiosity to control the islands have gone up and they are currently being claimed by China, Taiwan, Vietnam, Malaysia, Brunei and the Philippines (The World FactBook: Spratly Islands, 2016). The Spratly Islands are not inhabited.

5.2.2. The Paracel Islands

Figure 6: The Paracel Islands.



Source:https://www.alamy.com/south-china-sea-islands-political-map-paracel-islands-and-spratly-islands-partially-claimed-by-china-and-other-neighboring-states-illustration-image208060067.html

The Paracel Islands are the second large group of Islands that are situated in the SCS and have about 45 isles, reefs, rocks and other features that are currently being claimed by Vietnam, China, and Taiwan (Fels, 2016). The Paracel Islands are situated on the Northern Side of Spratly Islands and extends further to the eastern side of Vietnam, and the Western side of the Philippines (Fels, 2016). The Chinese have established a city on the Paracel Islands' Woody Island named Sasha city that has military airplane terminal, mail station and ocean port (The World Factbook: Paracel Islands, 2016). Unlike the Spratly Islands, the Paracel Islands have a population but of generally scattered Chinese battalions. Throughout history, the Paracel islands have been used as key transport centre points (The World Factbook: Paracel Islands, 2016).

### 5.3. Characteristics of the South China Sea (SCS).

#### 5.3.1. Natural Resources.

The SCS has in recent times been termed the new Persian Gulf because in a 2013 investigation by an American Oil Company, the region was evaluated as containing unrefined petroleum stores of about 7.7 billion barrels under its seabed and an estimate of about 28 billion barrels of oil and also a 226 trillion billion barrels of gaseous petrol (Rowan, 2005). Therefore, the SCS is of strategic value to the countries in Asia since the demand of energy for everyday life comforts in China and amongst the Asian tigers is growing as an exponential rate, with an estimates that until 2025, oil demand in Asia will rise at an exponential rate of 4% with Asia utilizing about 25 million barrels of oil every day (Rowan, 2005).

#### 5.3.2. Maritime Biodiversity.

The SCS is one of the richest regions when it comes to biodiversity, comprising about 33% of the world's maritime biodiversity (Li, 2015). For example, the SCS has about 76% of coral species, 37% of reef-angle classes that were estimated to have a value of about three billion US dollars. However, in the past 20 years angling have accounted illegal activities in the SCS like exploding ropes, explosives and cyanide (Li, 2015). The SCS also gives a great opportunity by its waters for fisheries and allows about 300 million people to occupy its coastal areas (Singh, 2016). The SCS houses about 55% of the world's angling and therefore gives about 12% of the worldwide fish supplies (Singh, 2016).

### 5.3.3. The Strategic Importance of the South China Sea (SCS)

#### The Importance for International Trade.

The SCS is of strategic importance because it produces multiple transportation paths that connects the Indian and the Pacific Ocean, also connecting Africa, Asia and Europe (Rowan, 2005). About 90% of the world transnational trade exchange is facilitated through delivery while 45% of the transnational exchange is delivered using the SCS waters to different destinations in Africa, Europe and other regions and therefore, making it the second most utilized transportational path for goods (Saleem, 2000). For example, the waters of the SCS are the second most utilized transformational routes for goods and it is evidenced in the Strait of Malacca, together with the Strait of Sunda and Lombok Strait that allows the super tanker cargo to pass through it that supplies vast raw petroleum, condensed gas, coal and iron to regions such as Japan, China, Korea, South Korea and Taiwan (Hayton, 2014).

About 80% and 70% of Japan and Taiwan oil and crude respectively, are transported by the SCS waters transportation system (Hayton, 2014). Jointly, the SCS transports about 25% of worldwide oil that goes to the United States, Africa and the Middle East. And therefore, control over these territories has a serious effect on how the world trade, particularly oil will ought to be managed and fundamentally affects powerful nations that imports the most goods and utterly reliant on the SCS Trade & transportation routes (Hayton, 2014).

#### Importance for Military Base.

The Paracel and the Spratly Islands are important for their potential as military bases (Saleem, 2000). For example, Japan during the second World War used the Spratly Islands as an army installation where barricades and intrusions were carried out(Saleem, 2000). The historical occupation of the Spratly islands by Japan provides enthusiasm for a new revival by any super power with the ambition of installing new military bases (Saleem, 2000).

## 5.4. Territorial Claims of Particular Countries.

Figure 7: The Different Claims of the Coastal States in the South China Sea.

Source: Flickr/naturalflow.

5.4.1Territorial Claim of China.

China is one of the largest economies in the Asian region and the world in general, controlling about 52 sea ports and 16 inland river ports that promotes navy and mercantile fleet in the world. However, its movement and expansion eastward from the Pacific Ocean towards the Indian Ocean is locked by the Strait of Singapore-Malacca, Lombok and Sunda (Muhibat, 2015). While on the North-eastern side of the Pacific Ocean, there is a potential of a lock by Osumi, Tsungaru and Tsushima Straits that are all regulated by Japan. One could therefore, argue that China is the most disadvantaged state in the Pacific Ocean (Muhibat, 2015).

China bases its claim in the SCS on historical records that go back to the year 110 during the reign of Han Dynasty that occupied the Spratly Islands (Rowan, 2005). The second exploration of the Spratly Islands happened during the reign of the Ming Dynasty during the 15th century that kept historical accounts of the level of elevation above the water level (Rowan, 2005). The second claim of the SCS by China are the Paracel Islands that were first claimed in 1876 (Muhibat, 2015). In 1947, China released the 9-dashed Chinese Map that included baselines demarcation around the Paracel and since then have erected so many policies that ensures their control over these disputed SCS territories (Muhibat, 2015). The U-Shaped Nine-dashed lines lies downwards to the Philippines and Vietnamese's shores and has its end in the Malaysian coast, the Nine-dashed lines of China covers Taiwan and its surrounding waters and end up covering about 90% of SCS territories (Muhibat, 2015). However, Chinese historical claims over the SCS are entrenched in article 14 of China's national legislation on the EEZs that stipulates non-intervention in the new delimitation of the EEZs (Vuving, 2016). China also has historical claims of an existence of historical rights to Oil, fishing, exploitation of gas and the expansion that all falls within the ambit of the Nine -dashed lines (Vuving, 2016). China wholly controls the Paracel Islands (Duong, 2015).

### 5.4.2. Territorial Claim of Taiwan.

Taiwan places its claim on the following four Islands, namely, the Paracel islands, Spratly Islands, Macclesfield Bank and the Pratas Islands (Rowan, 2005). Taiwan has its troops stationed at the largest Spratly Isle, namely, Itu Aba, due to the fact that Taiwan was the first state to occupy the Spratly archipelago (Riegl, 2014). Taiwan is said to have entered the SCS in 1949 right after it seceded from mainland China. It therefore bases its territorial claim of the SCS on historical records, occupation, discovery and what is termed extended continental shift (Riegl, 2014). Therefore, Taiwan's strongest claim is based on the longest occupation of the Spratly islands.

5.4.3. Territorial Claim of Vietnam.

Vietnam currently controls about 21 reefs; 11 of them generates EEZs and therefore, bases their claims on historical rights and extended continental shelf (Vuving, 2016). For example, the Spratly Islands were governed by Vietnam and the claim is evidenced by the 17th century map and extended its rule through the French colonialism that ensured its control over the Spratly & Paracel Islands (Rowan, 2005). The second Vietnamese claim is based on the extended continental shelf that completely encompasses the occupied islands, namely, the Spratly and Paracel Islands (Rowan,

2005). Vietnam claims both the Spratly and Paracel Islands, exerting total sovereignty and stationing its soldiers and installations of garrisons (Vuving, 2016).

5.4.4. Territorial Claim of the Philippines.

Unlike other claimants, the Philippines have always had permanent control of the nine islands after they were abandoned after the World War 2 and later rediscovered by the Philippines (Vuving, 2016). Philippines bases their claims on the existing colonies that were set up on these islands and therefore claim Spratly Islands as terra nullis and therefore, claimed the sea-bed, airspace and continental margin (Rowan, 2005).

5.4.5. Territorial Claim of Malaysia.

Malaysia currently occupies about 5 reefs and ultimately claims another six that are also being contested for by other claimants (Roach, 2014). Malaysia also claims the low tide elevation and the submerged low tide (Roy, 2016). However, unlike other claimants, Malaysia does not base their claims on historic records but on its Exclusive Economic Zones, extended continental shelf and the long occupation of the Spratly Islands (Shicun, 2013). Since then, Malaysia has built a 50-acre artificial island that has a hotel, driving resort ad a small airstrip that boosts its economic zones and cements its control over the Islands by stationing more than 70 soldiers (Ang, 2010).

5.4.6. Territorial Claims of Brunei.

Brunei is in principle a minor actor in the SCS Dispute and therefore, bases their claims on its 200 nautical miles of the EEZs that is measured from the coastal areas (Dolven, 2014). However, Brunei has not stationed any troops or built any structure in any of the disputed islands but nevertheless claims the Louisa reef (Dolven, 2014). Brunei's claim on Rifleman Bank is based on a document that was produced in 1954 where Britain gave certain portion of isle Borneo to Brunei so that it affirms its boundaries (Shicun, 2013).

5.4.7. Territorial claim of Indonesia.

Indonesia is currently not part of the SCS dispute but it has a potential of being the seventh claimant because of overlapping maritime boundaries with China and Vietnam and therefore, Indonesia's EEZs extends to the SCS (Hyer, 2015).

5.4.8. Conclusion.

This chapter was aimed at detailing the SCS Dispute in great detail in order to give full detailed background and efforts to contextualize and locate this study. The chapter have described the SCS's topography, its geographical characteristics and natural resources that are found within this region. The Chapter has given a discussion of the

disputed SCS territories, namely the Spratly and Paracel Islands. By extension, the chapter also offered the strategic importance of the SCS and lastly, the chapter ended up by detailing each States' claims of the disputed SCS territories and bases within which these particular claims are based, either ads historical or occupational reasons for territorial claims of the SCS.

## CHAPTER 6: THE ROLE OF INTERNAL & EXTERNAL POWERS IN THE SOUTH CHINA SEA DISPUTES.

### 6.1. Introduction

This chapter will argue that both the EU and the US shape the security architecture of East Asia in varying ways and recently their engagements in East Asia security affairs have increased. The US has adopted an approach of building its regional bilateral security arrangements with its allies in the Pacific region while the EU uses its economic and diplomatic power to aid regional actors to their advantage in matters pertaining to security. Therefore, the EU in a nutshell promotes the socialization of China mostly in regional multilateral arrangements and institutions while the US perception of the threat from China positions the US as the desecuritizing actor in the Pacific region.

East Asia's regional security is characterized by a plethora of interconnected regional disputes that continues to shape the security landscape of the region (Klose, 2017). The security architecture of East Asia is framed by three historical processes that are intertwined and shape both the recent cooperation and ongoing conflict in the region (Klose, 2017). Firstly, Japanese expansionism before 1945 and the occupation of the both North and South-East Asia which has caused anxiety and total dislike of Japan throughout the region that extends till today. Japan has not reconciled herself with its own history which as a result causes friction when it comes to its relations with China and South Korea. These two countries resent Japan's securitization identity (Nurhakmi, 2015). Secondly, Asia's regional security is premised on historical superpower rivalry between the Soviet Union and the United States which continues till today that has divided Asia into North and South-East Asia along alliance systems which has persistently shaped Asia's regional security architecture (Nurhakmi, 2015).

It is only Southeast Asia that has been able to break free from its cold war legacy security arrangements while North-East Asia is still deeply rooted in cold war heritage and the embrace of cross-strait relations as well as divisions of the Korean peninsula (Winanda-Kusuma, 2021). By extension, the US on the other side has continued to maintain its own regional alliance system with countries such as South Korea, Japan and Taiwan whilst East Asia maintains ties with Philippines, Malaysia and Thailand (Winanda-Kusuma, 2021). Thirdly, the new Chinese rise and assertiveness in the SCS coupled with its booming economic development and military expenditure has since constituted new threats to Asia's regional stability and concerns amongst Asian countries (Winanda-Kusuma, 2021). All these processes together, continues to shape

East Asia's regional security arrangements and transformation over time wherein the desecuritization of China as the most prominent rising power has become the major force for regional desecuritization (Wardhana, 2021).

China's rise which is characterized by growing economy and military expenditure continues to cause anxiety and mistrust amongst regional security actors. China has ambitions of being political elites in the region through increased securitization evidenced through its assertive behavior in the SCS (Wardhana, 2021). However, China's assertive behavior has been mostly securitized in the politics of regional actors who are directly affected by Chinese territorial claims such as Taiwan, Japan, Philippines and Vietnam (Zhang, 2017). In North-East Asia, the growing securitization politics are more evident in territorial disputes of China and Japan over the Senkaku Islands which has significantly deteriorated the relations these two countries have (Zhang, 2017).

In the case of South-East Asia, regional actors have since securitized China's regional behavior most in China's claims of the island and land reclamation activities in most of the disputed reefs (Zhang, 2017). Other regional security actors such as Singapore and South Korea have adopted a more balanced approach directed towards China and Japan (Swanstrom, 2017). Accordingly, ASEAN has also emerged as one of the crucial regional security actors that continues to play an active role in the setup of both economic and security organizations such as the ASEAN Regional Forum and the East Asia Summit (Swanstrom, 2017). Highlights of the Asian pact include the promotion of multilateralism and diplomacy which plays the fundamental role of strengthening regional security connectivity and formal institutionalization (Swanstrom, 2017).

There is growing influence by external actors which also forms part and parcel of Asia's security arrangements and groupings (Simoes, 2022). The US engagements in the East Asian region under its 'Rebalance-Policy' talks much of US involvement in East Asian regional security (Simoes, 2022). The second player that is also involved is the EU which has made significant efforts towards managing the East Asian regional security (Simoes, 2022). Other states such as Russia and India are not so active despite the potential role that they can play (Simoes, 2022).

Juxtaposed to both Russia and India, there is the European Union (EU) which poses a considerable potential of playing a more meaningful role in the security praxis of East Asia although there remains a window of skepticism and doubts surrounding the EU's ability to play an active part beyond its immediate borders (Peter Van Ham, 2016). Much of the skepticism of the EU's ability to manage East Asia's security comes from

how the EU employs soft power approach and aligning more with non-traditional security in their response to security threats in regional security issues (Peter Van Ham, 2016).

### 6.2. The Role of ASEAN in the Regional Security Issues of East ASIA

The ongoing SCS dispute has drastically changed ASEAN focus. It was traditionally centered around regional cooperation mainly on shielding the region from terrorism. This has evolved into a new focus on descalation of conflicts in the SCS (Wardhana, 2021). ASEAN has since become fully aware of security threats in the SCS waters when Philippines and Vietnam started issuing statements respectively on ownership of SCS territorial features which has raised the eyebrows of member states of ASEAN especially those who are supporting life across the SCS shores and on its islands (Wardhana, 2021).

When ASEAN member states joined the UNCLOS, around 1979, ASEAN entrusted Brunei and Malaysia with partial ownership of the Spratly Island archipelago. Such a declaration began fueling tensions in the whole SCS region and arguably this is what prompted China to unilaterally issue its own statement arguing against claims of ownership in the SCS and warning that such a move has a potential to affect all states that share the SCS (Wardhana, 2021).

Because of the aggressiveness of China's actions in the SCS and their producing their 'nine dashed line' map with demarcation that draws in SCS islands as territories of China that are historically claimed, ASEAN members heeded the signs that China was sending as constituting serious security breach in the region and tailored a number of policies that were aimed at desecuritising china (ASEAN, 2018). One such policy was the Trilateral Cooperation involving China, the Philippines and Vietnam that focused on which areas of the SCS with natural resources can be exploited in conflict prone zones (ASEAN, 2018).

On the same footing, Indonesia issued a similar policy that prohibited China's fishing vessels that were conducting fisheries activities in Natuna without authorization (Widianto, 2020). Since China started deploying its military in the SCS to guard their unilateral claims and interests, security threats have been maximized. This poses a huge threat to regional stability in the SCS waters to the extent that ASEAN began securitizing China's actions in the SCS opening themselves to the possibility that if urgent action is not taken fast enough China's aggressive behavior would lead to a full blown war (Widianto, 2020).

ASEAN is confronted with a unique position in the SCS disputes because it was founded on principles on non-interference and such a founding principle has carried ASEAN through its entire existence (Grossman, 2020). However, the current SCS disputes requires ASEAN to neutralize China's influence and actions in the SCS in some form of interference militarily and otherwise (Grossman, 2020). Nevertheless, the first point of engagement by ASEAN has been through mediation through UNCLOS and therefore, consistent with ASEAN's vision of resolving disputes peacefully, without using any pressure (Grossman, 2020).

Secondly, ASEAN has been using its Regional Forum Work Plan For Maritime Strategy to devise action within its framework that provides for procedures and ways in which ASEAN should defend territorial waters threats from culprits (ASEAN Regional Forum Work Plan, 2018). ASEAN has also been engaged in multilateral cooperation in efforts to ease off tensions which includes championing of the code of conduct in 2016 between ASEAN and the Peoples Republic of China which is still work in progress with its success hinging on member states political willingness and national interests (ASEAN Regional Forum Work Plan, 2018). However, in overall effect, ASEAN have been employing non-traditional security strategies that seeks to bring about stability in the SCS region.

6.3. The Role of the United States in Regional Security Issues of East Asia.

The Obama Administration in the United States (US) introduced the US 'Rebalance policy towards East Asia' in one of the official government articles titled America's Pacific century which has since been the blueprint for the US policy towards East Asia (Shikata, 2022). This US policy towards East Asia is characterized by the US' willingness and actively encouraging solid connectivity amongst its traditional allies in the Pacific region and also forging economic relations with East Asia allies through agreements such as the Trans-Pacific Free Trade deal which essentially connects Vietnam, Japan, Brunei, Malaysia and Singapore with the US, Australia and New Zealand from the thee South Pacific (Shikata, 2022).

Of equal magnitude is the growing interconnectedness of stronger military connections with its East Asia allies which have been more evident in countries like Japan and Australia (Synder, 1996). The second tenant of its East Asia policy is the modernization of its traditional allies in a form that its allies are encouraged to take greater responsibility in their security issues and chart their own defense policy (Synder, 1996). To this end, the US-Japanese defense guidelines were revised and allowed Japan to

defend itself outside of the Japanese territories followed by the US decision to lift off the arms embargo sales on Vietnam (Synder, 1996).

Thirdly, the US anti-China sentiments have led them to take a decisive step on China-led regional initiatives in East Asia such as the One Belt and Road initiative and the Asian Infrastructure Investment Bank where the US encourages its East Asia regional allies not to join the bank and the One Belt initiative which were viewed by the US as Chinese instruments to expand its hegemony in the Pacific region (Rossiana, 2022). And lastly, the US has poised China's land reclamation in the SCS disputes islands as constituting a threat to freedom of navigation which has intensified tensions on the Sino-US relations when the US sailed its warships in the very same disputed islands through exercising its freedom to navigation (Rossiana, 2022).

Given the escalation of conflicts caused by China's nine-dashed line map and disobedience to the ruling of the PCA, the US has recently been increasing its Freedom of Navigation operations in the SCS in efforts to try and enforce international law by carrying with operations along in parallel lines with China (Marek, 2021). The US has through their operations been persistent in enforcing UNCLOS and adherence to rules through FON in the SCS waters and airspace within the Chinese nine-dashed line (Marek, 2021). However, a challenge remains that the US is not party to the UNCLOS and has not ratified it as law on its domestic laws which makes it difficult in some instances to completely to gain full legitimacy and recognition from its missions. The same missions that China alleges infringes the UNCLOS since US FON operations use military ships and aircrafts (Marek, 2021)

All things considered, the recent US engagement in East Asia politics with SCS disputes indicates the changing contours of US' Rebalancing Policy" in East Asia. The initial focus on the securitization of China has now turned into a regional security threat and continuously shapes the East Asian's regional security patterns of both conflict and cooperation. The US rebalancing policy continues to play out indirectly through offering support to its traditional allies who are in direct confrontation with China over its land reclamation programmes in the Spratly and Paracel islands respectively.

6.4. The Role of the European Union (EU) in the East Asian Regional Security.

The role of the EU in the regional security of East Asia needs to be understood under three thematic areas of engagement (Peter Van Ham, 2016). To begin with, the EU's prominence as one of China's important trading partners with trade between EU and China reaching 739 billion euros has made the whole EU trading bloc to be largely dependent on the regional stability especially trading routes that has since been the

avenues for cooperation with China (Peter Van Ham, 2016). The second thematic area is the EU's Lisbon Treaty that has positioned the EU as a prominent security actor backed up by its newly established key security institutions (Peter Van Ham, 2016). Chief amongst these institutions is the European External Action Service and the EU High Representative who are empowered to foster EU competencies in both military and foreign affairs which have been very instrumental institutions that seek to strengthen security issues of the EU especially those of the EU's strategic partners (Peter Van Ham, 2016).

And thirdly, the EU's newly found interest in the politics of East Asia 's security architecture has been recalibrated by the US' rebalancing policy in the East Asia which in part lays out the position that the EU must assume in the East Asia security agenda (Shikata, 2022). To this end, the US balancing policy in the East Asia has challenged the EU to reclaim its position in East Asia's security agenda and become one of the credible partners. They are in one way or another impacted by the regional security instability of East Asia and as such, see themselves as actors that can meaningfully shape the security architecture through their five (5) pillars of engagement through what they have termed 'pivot to Asia" 2012 European council guidelines evolving foreign and security policy with East Asia (Shikata, 2022).

Firstly, the EU drawing on lessons from its own domestic politics in Europe has sought to intensify its engagement in the East Asian security agenda by promoting East Asian multilateralism aimed at improving regional stability and integration (Nicole, 2017). The EU has been lobbying for the support of ASEAN and showing its desire to be included in East Asia Security summits which are basically high level platforms where security matters are discussed (Nicole, 2017). Therefore, one can argue that inclusion of the EU in such summits would give the EU credibility as a regional security actor in the East Asia and opens up avenues for mediation roles in conflict management (Nicole, 2017).

Secondly, the EU has through their 2012 council guidelines vowed that in their engagements as a mediator that they would never take sides in territorial disputes, and this has since been the practice even in their involvement in the SCS disputes (Council of the European Union, 2012). Additionally, the EU has positioned themselves as one of the supporters of international law and multilateral solution mechanisms that can be drawn out from International law (Council of the European Union, 2012). To show and demonstrate their support for institutions and power of negotiations, the EU has taken a bold stance on the SCS disputes alluding to the unilateral actions of individual

member states and not only those of the Chinese which could be seen as efforts to further militarize the region and scale up the tensions in the East Asia region (Wiranto, 2015). To this end, the EU has adopted a neutral position that not only targets China but all states that are claiming territorial islands of the SCS as opposed to the US and Japan which are allies in their own rights and totally against China in the SCS disputes (Wiranto, 2015).

The third tenet pertains to free trade policy towards east Asian states that the EU has adopted. The EU's approach is balanced towards east Asian regional powers and it is now negotiating free trade agreements with Japan and China respectively to foster deeper inclusivity and trade integration. This could also be viewed as contrasting the with the US stand which seeks to marginalize China in all possible ways with the help of their regional allies (Wiranto, 2015). Next, the EU has been proactively positioning themselves as a formidable security actor in the East Asian politics that seeks to address non-traditional security threats through its crisis management missions that are being aided by the formation of global coalitions (Schoik, 2021). For example, the EU has been involved in anti-piracy campaigns with joint military operations with China and South Korea off the coast of Somalia. Therefore, the EU is promoting its Framework Participation Agreements (FPAs) that are aimed at fostering cooperation on crisis management missions that are EU-led (Schoik, 2021).

Other areas where the EU has sought cooperation with ASEAN members through its FPAs is on issues of climate change, cyber security, anti-terrorism, environmental and non-traditional security affairs (Schoik, 2021). However, despite these efforts by the EU mostly through bilateral summits, there are discrepancies at a more practical level in a sense that there has been diverging norms, lack of trust amongst partners and lack of competencies especially from the side of the EU (Schoik, 2021). And lastly, the EU members have been largely attracted to the Chinese economic rise and its economic initiatives like the China-led AIIB that the US has been opposing. Member states like Germany, France, Italy to mention a few amongst others have declared their willingness to join the bank (Schoik, 2021). The EU member states appetite for deeper cooperation with ASEAN states and China would also encourage other member states in Asia to join Chinese led initiatives such as joining the AIIB bank and the Chinese OBOR initiative which seeks to join and improve infrastructure links between Asia and Europe through land and also through sea (Schoik, 2021).

All of these areas of engagement in the East Asian region on security matters by the EU symbolizes its unwavering commitment to wanting to be an instrumental security

actor in the East Asian security architecture (Sacks, 2022). EU's efforts and approaches stood both in parallel and in contrast with that of the US, parallel in a sense that they both see themselves as instrumental to the security architecture of the East Asian given their close proximity to the region, national interest and for the stability of the whole region (Sacks, 2022). Contrast in the sense that as opposed to the US balancing policy with their allies in the east Asian region, the EU has taken a holistic approach of promoting multilateralism, diplomacy and cooperation through coalitions, as well as in joint efforts in averring nontraditional security threats that currently confront the global common and maintaining a neutral position in matters relating to the SCS disputes (Sacks, 2022). In conclusion, despite forging cooperation in security and economic issues and integration, the EU's support for institutions and multilateralism that extends to promotion of regional actors such as China as opposed to isolating them as it is seemingly the case with the current US approach is arguably one of the landmark achievements of the EU in East Asia desecuritisation efforts.

### 6.5. Conclusion

The SCS disputes present a significant challenge not only to ASEAN states that are in direct confrontation with China but also for superpowers such as the United States and the European Union who have vested interests in the SCS regional security and therefore, positioned to respectively play their own unique roles in tailing out solutions that will descalate the conflict in the SCS. The US has been conducting the freedom of navigation through FONOPs in efforts to challenge China's assertiveness and claim to SCS territorial claims and also ensuring that the SCS waters remain open to all states despite china's claims. Both the EU and the US have committed and emphasised the need to adhere to the UNCLOS in efforts to prevent further conflict escalation. Alternatively, both the EU and US have also encouraged claimant states to resolves their disputes through diplomatic channels, bilateral and multilateral forums through peaceful means of which the two superpowers have offered assistance in ensuring that regional security dialogues take place and reduce the potential for a full blown conflict. However, despite few challenges such as china's growing aggressiveness in the SCS, divergent state interest and limited military and economic leverages in their interventions, both these two superpowers must strengthen their partnerships with ASEAN claimant states in efforts to bring about a robust regional response capable of ending the conflict.

## CHAPTER 7: RECOMMENDATIONS AND CONCLUSION.

### 7.1. Recommendations.

It must be noted from the onset that a solution to the SCS disputes does not necessarily need to be confined to the legal judgement on China's 'nine-dashed map' which was issued on the ambit of the application of UNCLOS but rather on a long term plan rooted in maintaining peace and stability in the SCS, most importantly, in ensuring that all factors contributing to the ongoing conflicts are eliminated. All claimants of the SCS disputes must thrive for a long-lasting peace that would scale down the tensions in the SCS, restore stability and normalization of all the day to day activities of the SCS such as trade and freedom of navigation, fisheries activities and exploration of the SCS natural resources without interference of any dominant state. One such measure that could calm the tensions in the SCS it is through an adoption of the Code of Conduct (CoC) that would foster unity and cooperation amongst all claimant states.

As such, the CoC would be the legal framework that bans states from acting unilaterally in the domain of other states where they have influence. Additionally, this CoC must provide within its framework both bilateral and multilateral mechanism for solving conflicts so that states such as China that prefer bilateral forums to solve disputes can be accommodated, while also accommodating other state claimants that prefer multilateral cooperation forums. In so far as fostering a peaceful environment to solve issues such as sovereignty, states must be encouraged to sign the declaration of CoC that would provide for all states to peacefully solve their differences and find ways to avoid escalation of tensions that has potential to destabilize the whole pacific region. Additionally, although the CoC is a political document, it could be effective in establishing certain rules that will deter states from acting unilaterally during dispute resolution.

China and ASEAN should work together in upholding the rule of law and law-based order in the SCS, in particular, by always referring to the UNCLOS whenever there is a dispute since the UNCLOS provides a foundation that seeks to establish order in the SCS. China unilaterally supports the UN Convention on Biological Diversity which advocates for safeguarding the principles and purpose of the UN Convention on Biological diversity while ASEAN supports the UNCLOS and its framework in dealing with issues of the sea which an overall effect of both treaties seeking to establish and maintain order in the SCS when properly applied.

Moving beyond the CoC, ASEAN member States and China must thrive to build mutual trust and confidence building in order to minimize trust deficit in solving conflict and maintaining peace in the SCS. This could lead to fruitful preventative diplomacy and reduction of fear amongst ASEAN member states of any hegemonic state abruptly applying military force to achieve its national interest in the SCS in the expense of other states. Preventative diplomacy could also mean states being more transparent and advocating for multilateral forums for negotiating disputes and claims since bilateral forums give the hegemonic state more bargaining powers than other smaller claimant states.

Additionally, confidence building measures are very effective in making the behavior of states more predictable and reducing violent military confrontations. The claimants should also seek for mediation partners in conflict resolution such as the EU and not only the US since the US tends to alienate China. Partners like EU could be the neutral voice of reason that can facilitate the diplomatic negotiations between all claimant states and also ensure that all states come to a compromise in times of a deadlock during negotiations.

In the case of the US that has significant national interest in the SCS as an outside party to the negotiations with other allies that are also claiming the SCS maritime territories, the US must limit using military FONOPs full form and its surveillance agencies as it gives the impression of meddling in domestic affairs of other states and is viewed by China as provocative and deserving of being met with matched military capabilities from China. Such an approach by the US only seeks to cause more instability and tensions in the SCS. Given that Sino-US relations are intensifying; it then reduces the prospects of cooperation towards maintain long lasting peace in the SCS. But at the very least, in the most contested Spratly islands, cooperation for long lasting peace could take the following shape.

The US and China must have bilateral meetings facilitated under diplomatic means to present both their positions in SCS disputes and associated claims about military activities, natural resources exploration and resource management. It would be in the best interests for China to clear confusion with regard to access to military vessels in the SCS while maintain its claims within the nine dashed line map, by extension this would mean aligning China’s interpretation of EEZ to align with those of the UNCLOS that EEZ does not require permission from China for both military activities and as passage for territorial seas. China’s interpretation seeks to compromise freedom of

navigation and such a change in China's position will likely bring more stability and peace.

Another key issue that deserves more attention in descaling the potential for conflict or rather as a solution to the ongoing SCS disputes would be for China and the US to have diplomatic meetings and separate their interest in the Taiwan Strait, Aleutian Island as well as military maneuvers in waterways of the SCS. Such moves would help with regaining control of both Spratly and Paracels islands and in particular, limiting military maneuvers and conflict escalation as the most disputed islands since most of the concern for US and its allies such as reducing the military presence and limiting the freedom of navigation would be addressed and therefore afford each claimant states its rights in terms of the EEZs.

## 7.2 Conclusion

This thesis has thoroughly examined the SCS disputes from the perspective of International law with the help of the constructivist theory approach. The thesis analysis has demonstrated that international sea disputes such as the SCS are not really a matter of competing territorial interests but rather an exploration of very complex interplay of social constructs, historical and cultural processes that have shaped the perceptions of all claimant states over a given period of time. The constructivist theory has highlighted the need to take into account both social and historical context in analyzing the SCS disputes and how claimant states have shaped their identity in relation to the SCS waters over time. Effectively, the constructivist theory has demonstrated that the narratives of social identity, historical processes, identity and sovereignty have been constructed and strategically utilized by claimants' states in the SCS in order to justify their claims and activities in the SCS.

The analysis of International Law has demonstrated that practical challenges as well as current limitations in fully applying the legal framework to the complex nature of the SCS disputes. The thesis has demonstrated that international law that guard against violation of normal sea practices such as the UNCLOS provides workable framework for resolving conflict but its effectiveness is dependent upon the willingness of states to both cooperate and comply with it. Therefore, the findings of this thesis suggest that the constructivist theory approach to the SCS disputes from the lenses of international law can provide valuable insights that takes into account the historical, social and cultural context that has shaped the perceptions of claimant states including that of china. Accordingly, policy makers and academics can develop more nuanced understanding of claimants states actions in the SCS and develop strategies that would

work towards promoting long term peace and stability. Effectively, the thesis develops to a deep under understanding of SCS disputes and the role of international law in bringing in the dimension for the nee dot take into account the historical, social and cultural processes that have shaped thee identities of claimant states over time and the influence it continues to hold in their interactions with other states in the SCS.

The SCS disputes have been going on for the longest of time with no solution in sight. These disputes have drawn global attention because of the potential security crisis they pose in the Asian region and even in other regions that are largely dependent on the SCS for trade and its natural resources for their daily operations in their domestic economies. Claimant states, namely, China, Brunei, Vietnam, Indonesia, Philippines, Malaysia, Japan and Taiwan base their claims on either historical or legal rights. Therefore, they prefer different modes of solving these disputes such as relying on UNCLOS, regional groupings, as well as bilateral negotiations amongst themselves to come up with a long lasting peace solution that will seek to appease all claimant states and addresses their individual grievances.

In the contemporary period, the burning issue is China's aggressiveness and "nine-dashed" Chinese map that claims both Spratly and Paracel islands as China's territories over which China has complete sovereignty. China has nevertheless denied any challenges to its historical and unilateral claims of these islands which has forced the ASEAN security pact to issue a code of conduct aimed at pushing claimants states to bilaterally and multilaterally solve their issues along the lines of the code of the conduct. These processes have been somewhat slow due to lack of political willingness of the main actors such as China and other claimants' states which is proving to prolong the ongoing SCS disputes.

The PCA has held a ruling that China's historic claim to the Spratly and Paracel islands is inconsistent with the International Law of the Sea and therefore invalid, by extension invalidating its "nine dashed line map" that sought to encompass both the Spratly islands and Paracels as China's own territories that they have complete sovereignty over. From my analysis throughout this thesis, the SCS conflict will continue because there are no pragmatic and clear solutions at sight to all territorial claims but regional groupings such as ASEAN-China cooperation have the responsibility to maintain diplomatic progress of all claimant states. The regional grouping's efforts must be focused on curtailing the Chinese growing military presence in the SCS which is now giving the Chinese relative advantage to continue being aggressive coupled by new

military technology developments, defensive spending and geographical proximity to the SCS waters.

This paper has applied the three theories of International Relations, namely, realism, liberalism and constructivism as theoretical lenses in efforts to try and analyze China's aggressive behavior and their historical claims in the SCS maritime territories in order to gain deeper insights. The paper's first conclusion is that the SCS disputes are rather complex and both realism and liberalism theories fall short of fully accounting for China's behavior and claims in the SCS maritime territories. While the realists highlight the pursuit of power as China's ambition, and the liberalist claim that democracies do not often go into war, history has somewhat proved them to be inadequate in explaining the power struggles and complexities of states sometimes compromising their large economic gains in pursuit of power. Realism partially accounts for China's behavior in a sense that they argue that China's behavior in the SCS is attempts of regaining lost power and position the pacific region.

China seeks to use all its military power in pursuit of control over the islands even when it means compromising the benefits it accrues from its fellow ASEAN member states and also forgetting about the principles of democracy such as the rule of law when dealing with SCS disputes. The paper comes to the second conclusion that although realism and liberalism partially account for some of the behavior of the China in the SCS, neither of these theories sufficiently provide any explanation for China's behavior and for its unilateral claims for sovereignty over the SCS maritime territories.

Therefore, the most appropriate theory in the SCS disputes that appropriately accounts for China's aggressive behavior and unilateral claims for sovereignty over the SCS maritime territories is the constructivist approach. However, it needs to be noted that the constructivist theory as well has its weaknesses such as focusing more on ideas which then construct states behaviors based on those ideas which in some cases does not prove to be fully correct.

Nevertheless, constructivism offers a much better explanation that whenever we think of China's aggressive behavior and its historical claims for sovereignty over SCS maritime disputes they are not divorced from China's history of "Century of Humiliation" which has tailored China's outlook, its policies and these ideas that continuously shape their identity as a state. The constructivists have argued that there is some kind of perception gap that exists between China and other ASEAN member states pertaining to the SCS disputes. For example, China considers itself as a peace-loving nation that is living in harmony with its neighbors while majority of ASEAN member states view

China’s policy in the SCS as an exercise of both political and military power that China seeks to use to bully smaller states that are involved in the disputes.

The constructivist argues that China’s own creation of “others” and its intent to protect their ancestral land in the SCS is a government strategy to drive out western influence from China. It also prompts Chinese to always remember the century of humiliation which invoke strong nationalist sentiments by presenting their past as the victim of western dominance and influence during the century of humiliation, as well as Japan’s aggression. As such, China continuously creates its identity under the lenses of being a victim in the SCS and is therefore, prompted to protect its ancestral land.

**SCS implications for UNCLOS?**

The UNCLOS was strategically enacted to provide general rules and principles that are aimed at governing territorial sea disputes such as sovereignty issues, maritime rights of states over the sea, powers and limitations that states have on their maritime zones as well as ensuring that the sea is preserved and protected from all harmful activities such as pollution and illegal use of the sea. However, despite the UNCLOS carefully tailored in its approach to provide a legal framework for the governance of all sea issues and conflict resolution mechanisms, the SCS disputes and in particular, China’s continuing aggressiveness in the SCS fundamentally violates the UNCLOS and contributes to regional instability of the Pacific Ocean. Not only is China violating the UNCLOS but also detrimentally violating the rights of its neighbouring states by claiming total sovereignty and control of both the Spratly and Paracel islands to the exclusion of other states deserving to equally share in these SCS features. Therefore, China in its current approach in the SCS challenges the principles and rules entrenched in the UNCLOS and by extension, regional cooperation of states in the use of the SCS, and in particular, the exploration of natural resources, freedom of navigation as well as other sea uses.

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