

DPSH MUN 2024

LEGAL



Letter from the Executive Board

Dear Delegates,

An MUN can be a great space for fostering connections, constructive solutions and even to hone your debating skills. A first MUN might be a bit unfamiliar; and you may perceive a gap between the agenda and your ready knowledge on the topic. That is what the background guide aims to bridge. We hope you enjoy the research and debate process; and look forward to a fruitful discussion!

The status of the Nine-Dash Line and the South China Sea remains a complex and contentious issue with significant geopolitical, economic, and environmental implications. Delegates are encouraged to explore various perspectives, consider potential solutions, and work towards a balanced and constructive resolution. Do not hesitate to reach out to us if you happen to have any queries.

Jibraan Arora (jibraanarora1@gmail.com).

Sincerely,
UNGA Legal Chair.

Background on the Current Situation in the South China Sea

The South China Sea is part of the Pacific Ocean and is surrounded by China, Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. It is of great geopolitical importance for many reasons. It is one of the world's busiest waterways and is a vital shipping route, with over \$5 trillion of trade passing through the region every year. It is abundant in natural resources like fish and is thought to contain vast reserves of oil and natural gas. Given its economic potential, all of the nations that border the South China Sea have disputed the exact maritime boundaries and have made competing claims to certain land features within the sea, such as small islands, reefs, and rocks, in order to legitimize their claims to these natural resource reserves.

Over the past several decades, the severity of these territorial disputes has worsened as claimants have pursued increasingly aggressive tactics to gain control of the land. These actions include the introduction of military forces in the area, the construction of artificial islands, the extraction of natural resources in areas publicly disputed by nations and/or private companies, as well as low-level harassment of rival claimant's economic and naval ships.

The Nine-Dash Line; the largest and most problematic claim to the South China Sea is made by China, which claims about 80% of the sea through a U-shaped Nine-Dash Line. It derives these claims from historical accounts and maps first drawn in 1947 under the pre-Revolution Republic of China government.³ The Nine Dash Line is problematic because it interferes with the exclusive economic zones of several nations such as the Philippines and Vietnam. The claim is also problematic because it is ambiguous, in that China has not clarified whether it claims to control all the waters and seabed within the area, or just to the land features and the surrounding waters.

This distinction is important because it has implications for the extent of China's claim to the South China Sea. The former interpretation suggests that China asserts exclusive maritime control over all waters within the Nine-Dash Line, under which they would have complete authority over all landmasses and natural resources. The latter interpretation is narrower in its scope, instead suggesting that China claims the landmasses within the Nine-Dash Line, as well as the waters and natural resources immediately surrounding those landmasses, but not exclusive maritime control over the region or its natural resources. Regardless, China has used the Nine-Dashed Line to justify the aggressive actions it has been taking to secure its claims in the region, such as the construction of military bases on artificially-built small islands.

However, on July 12th, 2016, the Permanent Court of Arbitration in The Hague ruled that the Nine-Dashed Line could not be used by China to make its maritime claims in the South China Sea. Instead complying with the order, China refused to accept or recognize it, and did not halt its construction of artificial islands nor of military ready airstrips and bases on islands that it already controls.

Competing Territorial Claims in the South China Sea

The Spratly Island Chain

The Spratly Island chain is a disputed major archipelago in the South China Sea. The islands are claimed in totality by China, Taiwan, and Vietnam, and partially by Brunei, Malaysia, and the Philippines. The islands are almost completely uninhabitable, but control of the islands could give the claimant rights to an area that is potentially rich in oil and natural gas, as well as legitimacy in their claims of maritime borders. Each of the claimants, save Brunei, occupies at least one of the Spratly Islands with military forces, which increases the likelihood of military conflict in the region. Satellite images show that China, specifically, has begun to place weapons on the Spratly Islands, with the images showing large anti-aircraft guns and missile defense systems; which could be used to establish further control over the islands as well as nearby islands and ocean.⁸ Vietnam has also been pursuing aggressive actions to secure the Spratly Islands, and has emerged as the most viable challenger to China's claim. In late 2016, it was reported that Vietnam was beginning to build up a disputed reef on the southern tip of the Spratly chain, and that it had fortified several of the islands with weapons capable of hitting Chinese targets in the area.

Furthermore, at the risk of angering China, Vietnam began oil drilling expeditions in a region southwest of the Spratly Islands in summer 2017.¹¹ This region, known to Vietnam as Block 136/3, is also claimed by China, who had already leased the area's drilling rights to a different company. In response, China threatened to attack Vietnamese bases in the Spratly Islands if the drilling did not stop.¹² Instead of risk the escalation of military conflict with a more powerful regional power, Vietnam suspended the project for the time being. However, it also reiterated its claims to the Spratly Islands and left open the possibility of continuing the oil exploration venture in the future.

The Scarborough Shoal

The Scarborough Shoal is a shoal located in the eastern part of the South China Sea, just 140 miles off the Coast of Manila, the Philippine capital. It is claimed by China, Taiwan, and the Philippines. The Scarborough Shoal is attractive to claimant nations in part because of its calm waters, which make it easy for fisherman to reach the abundance of fish in the surrounding area. It is also enticing to China specifically because establishment of control over the shoal would strengthen its claims in the South China Sea under the Nine-Dash Line.

Additionally, since China already has military personnel stationed in the Spratly island chain, similar development of the Scarborough Shoal would allow it to exert de facto control of the region, since rival claimants do not have the military capability to deter China by themselves. Since the shoal is located within 200 miles of its coastline, it is considered by the Philippines to fall within its exclusive economic zone. For this reason, in April 2012, the Philippine Navy intercepted eight Chinese fishing vessels in the Scarborough Shoal to halt what it viewed as illegal fishing. However, before any arrests could occur, two Chinese maritime surveillance ships approached and began to protect the Chinese fishing vessels.

After a tense standoff and two months of multilateral negotiations, the Philippines agreed to withdraw its remaining ships out of Scarborough Shoal, under the assumption that China would do the same.¹⁶ However, the Chinese vessels did not leave and instead established a blockade of the area, effectively preventing Philippine fishing boats from reaching the shoal. This blockade triggered legal action by the Philippine government, which appealed to the Permanent Court of Arbitration in The Hague in 2013, a move which infuriated Beijing and had the aforementioned result of having the Court delegitimize China's Nine-Dashed Line claim.

Nonetheless, the Chinese Navy continued its blockade of the Scarborough Shoal for four years, until October 2016, when China started allowing Filipino fisherman to access the area following a visit to China by then newly-elected Philippine President Rodrigo Duterte.¹⁸ While this gesture, along with Duterte's friendlier attitude towards China, may signal a warming of relations between Manila and Beijing, the Scarborough Shoal situation remains unresolved and there has been no formal agreement reached between the two countries.

The Paracel Island Chain

The Paracel Island Chain is an island chain in the northern part of the South China Sea, and is claimed in totality by China, Taiwan, and Vietnam. Today, they are under the control of China, since China forcibly seized the islands from what was formerly the Republic of Vietnam (South Vietnam) in 1974. In May of 2014, China took further measures to legitimize their control of the islands. On May 2nd, China's state-owned oil company, the China National Overseas Oil Corporation (CNOOC), moved in a large exploratory oil rig in waters less than 20 miles from the Paracel Island Chains. It was reported that around 80 Chinese ships entered the area escorting the rig, and some used water cannons to disperse Vietnamese patrol boats.²²

Background on Territorial Disputes in the East China Sea

The Senkaku Islands

The Senkaku Islands (called Diaoyu by China and Diaoyutai by Taiwan) are a group of uninhabited islands roughly located east of Mainland China, northeast of Taiwan, and southwest of Japan. The islands are currently under Japanese control, and it is the official position of the Japanese government that there is no territorial dispute over the Senkakus.²³ China, on the other hand, argues that when Japan surrendered in 1945 at the end of World War II, and gave up Taiwan to China, the Senkaku Islands should have also been turned over to Chinese control. From the early 1950's to 1972, the islands were formally under US control and administration, in accordance with the terms of the 1951 peace treaty with Japan.²⁴ The United States then gave Japan administrative control of the islands in 1972. China has described the US Japan dealings related to the islands as "backroom deals" that remain "illegal and invalid".²⁵ The Senkaku Island dispute is of great international importance in part because the United States is bound by treaty to defend Japan in the event of an attack.²⁶ So avoiding the escalation of conflict over the Senkakus is vital to avoid military conflict between China and the United States.

International Approaches to Solving Maritime Disputes

The United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) went into force on November 14th, 1994, after the minimum threshold of sixty nations signed the treaty. It supposedly establishes the guidelines that nations are supposed to follow when in use of the world's oceans. It is also generally considered the primary means for making legitimate maritime territorial claims, and resolving competing maritime territorial disputes. Though each claimant state involved in these territorial disputes is party to UNCLOS, there remains disagreement over the correct interpretations of its provisions since many of them are insufficiently clear. Furthermore, UNCLOS, as a governing document, has several shortcomings.

The first is that the United States, the world's largest naval power, is not party to the treaty. While the United States signed the Convention in 1984, it has yet to ratify the treaty. Many argue that having the United States ratify UNCLOS would give it greater legitimacy. Another concern is that UNCLOS does not have sufficient mechanisms for enforcement, since it mainly relies on individual nations to comply with its rules. Naturally, this presents several difficulties when nations make opposing claims to the same territory, either using their own interpretation of UNCLOS or disregarding it altogether, as China did when making its claim to the Scarborough Shoal. Another problem with UNCLOS is how nations interpret the definitions of certain terms that determine the amount of territory that can be claimed.

Under UNCLOS, nations can claim up to 12 nautical miles of territorial waters around uninhabitable rocks and shoals, but a 200 mile exclusive economic zone around islands that can support "permanent habitation". Many view this provision as exacerbating the competition between nations to turn uninhabitable rocks and shoals into artificially-built islands.

The Association of Southeastern Asian Nations (ASEAN)

The Association of Southeastern Asian Nations (ASEAN) is a regional body that seeks to foster economic, political, and security cooperation among its members. The member nations of ASEAN include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Some experts see ASEAN as a potential counterbalance to China's strong influence and power in the region. Indeed, one of the Association's most difficult tasks is to address China's increasingly aggressive actions in the South China Sea.

There have been times where ASEAN and China have tried to negotiate a solution to the territorial disputes in the South China Sea. Most recently, in August 2017, ASEAN and China adopted an outline for a code of conduct in the South China Sea, which builds off of the largely-ignored 2002 Declaration of Conduct of Parties in the South China Sea.³² However, many critics see the move as nothing more than a symbolic gesture, because the framework is neither legally-binding nor enforceable.³⁴ It also lacks an official venue through which aggrieved parties can resolve disputes, and only "urges commitment" to UNCLOS, instead of requiring adherence to it. Given the lack of substance in the proposed framework, some critics view the negotiations as nothing more than means for China to buy more time to solidify its control in the South China Sea through the construction of more artificial islands, airstrips, and military bases.

Questions to Answer

1. What role (if any) should the international community play in helping to resolve maritime territorial disputes between nations?
2. Is the most effective way to address such territorial disputes through multilateral international organizations or through bilateral talks between rival nations?
3. Is your government willing to take a stance in favor of or against certain claims made by competing countries in the Eastern Asian region?
4. What can be done to make international efforts to solve maritime territorial disputes more effective?
5. Is it possible for the international community to ensure compliance with these measures? If so, by what means?
6. Do you believe that there is a feasible way to determine the country with the most legitimate claim to a disputed maritime territory? If so, how? Through the concept of exclusive economic zones or by other means?
7. Do you think that there is a possibility for rival claimant nations to adopt “joint sovereignty” over a disputed territory and its natural resource reserves? If so, what would be the method for determining this?
8. Consider the interests of your assigned country, especially in relation to the US and China. Is your country ideologically aligned with one or the other? Or is it economically? When push comes to shove, who is your country more likely to support?
9. Most nations in this committee have a coastline. How does your country approach its EEZ in its own territories with those of its neighbors? What takeaways can you draw from your country’s approach with respect to its own EEZ to the discussion over EEZs in the South China Sea?
10. Historically the UN was created in part to prevent the imperial expansion and territorial acquisition seen during World War II. How has your country approached these controversies in the past? Look into examples including the Suez Canal Crisis, the Senkaku Islands Dispute, and the Russian Invasion of Ukraine. Focus on the rhetoric and reasons behind your country’s response. How would your country respond to a potential military action to enforce Chinese claims in the South China Sea