



STUDY GUIDE

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# INTRODUCTION TO THE SOUTH CHINA SEA DISPUTE

The South China Sea (SCS) is a semi-enclosed sea covering an area of some 800,000 square kilometres and 90 percent of its circumference is rimmed by land. The SCS has long been appreciated for its rich fishing grounds and as a strategic waterway linking the Pacific and Indian Oceans. Motivated by security concerns and economic interests, littoral states began in the late 1950s to make overlapping sovereignty claims to SCS islands. The SCS however, did first attract international attention in the 1970s when geological studies suggested the possibility of large petroleum and natural deposits beneath the seabed. The Littoral States have since engaged themselves in a complex web of competing claims to island territories, maritime jurisdiction and access to fisheries.



Map of the South China Sea with Countries' claims

Four main groups of features are situated in the SCS; the Pratas (Dungsha) and the Macclesfield bank (Zhungsha) to which China and Taiwan claim Chinese sovereignty, the Paracels (Xisha) of which China/Taiwan and Vietnam contest each others claims

and finally the Spratlys (Nansha) which are contested between China/Taiwan, Vietnam, Malaysia and the Philippines. In addition some of the features are situated in the exclusive economic zone (EEZ) claimed by Brunei. Another feature called Scarborough Shoal situated north of the Spratlys, is claimed by China/Taiwan but situated within the claimed EEZ of the Philippines. The existence of overlapping claims to sovereignty over a variety of offshore features makes the SCS dispute extremely complex. The sovereignty dispute in the Spratlys has evolved into stalemate with all the claimant states except for Brunei, having established military garrisons on some of the features. All the littoral states now strive to gain the strongest possible position for the maritime delimitation settlement. However, before the maritime boundary issues can be addressed it must also be decided whether or not the islands can generate any maritime zones of their own. On one hand, if some of the islands can generate maritime zones, and possibly even the extensive 200 nautical mile zone or a continental shelf, this would strongly influence the maritime delimitation in the SCS. If, on the other hand they are not granted maritime zones of their own, the isolated insular outcroppings scattered throughout the sea will have minimal effect on maritime delimitation. Moreover, they will then have less importance to the littoral states since the features themselves are of little value.

The phenomenon of expanding national maritime limits started in the post-World War II era largely stimulated by the desire to exploit offshore oil resources and brought with it the need for legal rules and procedures which would guide States in delimiting overlapping claims. The delimitation of maritime boundaries is however difficult because many countries have not defined their maritime claims and often where they have done so, their claims are subject to multiple overlaps. The importance of this issue is evident considering the enormous economic values at stake. The SCS dispute is a longstanding conflict, which includes elements of non-defined and overlapping claims. This and the fact that at least seven states are involved make it a difficult conflict in which all concerned with stability in the region has an interest.

## CLAIMS OF PARTIES TO THE DISPUTE:

### CHINA

China's claim to sovereignty over the islands in the SCS rest on historical grounds of discovery and occupation, and she has put forward much documentation supporting the Chinese claim. Some records say that Chinese marines discovered the Spratly Islands more than 2100 years ago in the time of the Han Dynasty. The Spratlys are also mentioned in Chinese records from the Sung Dynasty (12<sup>th</sup> century), and China

claims that she began to exercise jurisdiction over the Spratlys as early as during the Ming Dynasty (14-17<sup>th</sup> century). Chinese presence in the Spratly area is even more documented from the 19<sup>th</sup> century onward. Fishermen from Hainan and other parts of southern China often visited these islands, and findings of houses and tombstones on some Spratly islands indicate that some small scale settlement actually have been present in the past.

However, notable problems of authenticity and accuracy exist and moreover the Chinese occupation and use of the islands has been interrupted on several occasions. In the late 18<sup>th</sup> century British troops ran over and destroyed several pirate camps located on some of the islands. The British in 1877 laid down claims to two of the features in the area, Spratly Island and Amboyna cay. Then in 1933, France made a formal claim to all of the Spratly features within an area delineated by specific coordinates. They also established *de facto* physical control of seven of the larger features. Japan was next to establish a presence in the Spratly area basing its claims with sovereignty to Taiwan. By the late 1930s, Japan had a submarine base on both Itu Aba and Namyit Island in the Tizard Bank area so the French and Japanese occupied land side by side. As a result of its defeat in the Pacific War, however Japan renounced all rights to the Spratlys in the Treaty of Peace signed in 1951. This treaty did not however, make any resolution as to who owned the Spratlys. In recent years, China along with other littoral states has backed her claims to the islands with a military presence. When the first feature was occupied in 1988 this lead to a clash with Vietnamese forces resulting in the sinking of three Vietnamese vessels killing 72 people. The Chinese are faced with one crucial problem when trying to establish proof of historical title to validate acquisition of territory in international law. Contemporary international law has construed a rule of discovery accompanied by continuous and effective acts of occupation. The Chinese record does not provide compelling evidence of such effective occupation in the case of China's claim to the Spratlys.

China has also asserted another type of claim, the nine interrupted lines, which seemingly puts the entire SCS under Chinese exclusive jurisdiction. Chiang Kai-Shek's government published this claim in 1947, and the PRC later took it up. The nine dots can now be seen on all maps of China. Chinese statements and actions indicate that China actually claims all the waters and resources within the nine lines that swing deeply into the SCS running along the coasts of the other littoral states. One way of interpreting this claim is to consider it a claim for "historic title", which in very particular circumstances is accepted in international law. The International Court of Justice (Hereinafter I.C.J.) in the *Fisheries case* accepted a similar claim, where Norway was awarded the waters adjacent to its fringing island coast as historic waters. A follow up of this regime was given by the I.C.J. in the *Gulf of Fonseca case*, where the Gulf of Fonseca was accepted as an historic bay and the waters inside as

historic waters. Another way of interpreting the nine dots is to see it as a claim only to all islands within the lines. Maritime zones would then have to be delineated with due consideration to those islands.

The validity of the Chinese nine-dot claim is strongly contested. The international Law Commission prepared a study in 1962, which concluded that three factors should be considered in determining whether a historical claim is valid. Those three factors were the exercise of authority over the area, the continuity over time of this exercise of authority and the attitude of foreign states to the claim. The present evidence does not seem sufficient to support a Chinese historic claim. Claims to historic waters must have been officially announced to the entire world, and a considerable effort must have been made to enforce such claims. The fact that China has never clarified the nature or the legal basis of its claim makes it unlikely that it can be accepted as having any legal foundation. In 1992 China issued a law on the territorial sea and contiguous zone. Article two of this legislation identifies both the Paracels and the Spratlys as Chinese territory, but interestingly enough only states that the maritime zones of the claimed Spratly Islands will be published at another time.

## TAIWAN

The involvement of the Republic of China (ROC) to the SCS conflict increases the complexity of the issue as it still officially claims to be the legitimate government of all of China. The legal bases for Taiwan's claims in the SCS are China's longstanding historic ties to the islands and they thus mirror those of China. It could however very well be argued that it is the other way around since the ROC came before the PRC, hence this is the scope of the problem since both governments claim to be the government of China. There are two possible ways of viewing the claims on behalf of the ROC. One is that the actions of the ROC must be considered done on behalf of China, the other that the claims represent a separate unit that Taiwan can pursue when and if they be granted independence. The ROC was the first government to established a physical presence on the Spratlys after the Japanese withdrawal after World War II, and it has occupied the largest island in the Spratly group, Itu Aba, constantly since 1956. The unchallenged physical Taiwanese presence on this island for more than four decades might individually support a legal claim to sovereignty over the feature, however the Taiwanese claim has been rejected consistently by other states. The ROC has further relied on the post-war treaties (San Francisco Treaty of 1951 and ROC-Japan Treaty of 1952) to support claims that Japan relinquished its claims to the Spratlys in favour of China at the end of the war. This assumption is however weak due to that international tribunals have judged Japans occupation illegal under international law and that Japan thus cannot have transferred any legal title upon any other country. It is a general principle of international law that a state

cannot transfer a better right than itself possesses.

As late as 1993 Taiwan issued “Policy Guidelines in the South China Sea, which asserted Chinese sovereignty over the Spratlys, the Paracels, Macclesfield Bank and the Pratas.

## VIETNAM

Vietnam's claims to sovereignty over the SCS islands stem from historic activities during the Nguyen dynasty (17-19<sup>th</sup> century), although court documents from the reign of King Le Thanh Tong (15<sup>th</sup> century) have also been held to prove that at least the Spratlys were considered Vietnamese territory already then. The government of Vietnam issued in 1979 and 1982 two white papers (Vietnam's sovereignty over the Hoang Sa [Paracel] and Trung Sa [Spratly] Archipelagos), where all its historical evidence is compiled. Vietnam's evidence is however weak due to its failure to specifically identify and distinguish between the Spratlys and the Paracels, which are treated generically. As with the Chinese claim, also the Vietnamese claim meets considerable doubt in regard of the authenticity and accuracy of the historical records. Vietnam's sovereignty claim to the Spratlys is also based on a cession of a French claim to the islands made in 1933. However, the French did never achieve acceptance for their claim and it is thus not likely that there exists any lawful title of which Vietnam can claim by right of cession from France. The French did get some kind of recognition of their claim from the British. However, even if the French had established legal title to the features they claimed there is no evidence to support that those rights were passed on to Vietnam when the latter was granted independence in 1954. Vietnam has not laid down claims to maritime zones in the SCS but it has drawn straight baselines along its coast and these baselines are subject to objections by many states. Maybe most important, it is a known fact that the prolongation of the Vietnamese continental shelf covers some of the southern Spratly area. This is an issue that will have to be taken into consideration when delimiting the SCS irrespective of who obtains sovereignty to the features there situated.

## PHILLIPINES

The Philippine claim is more recent than those of China and Vietnam and is principally justified on “discovery” of certain islands by the Philippine businessman, Thomas Cloma in 1947. Cloma proclaimed the creation of a new island State, which he called “Kalayaan” (Freedom-land) in 1957, however no government ever recognised this new State. Moreover it is vital for the Philippines that the islands became *res nullius* after the Japanese had abandoned them after World War II. This is the only way that Cloma could have acquired any legal right to the features. The fact that no

new owner of the islands was identified in the 1951 peace treaty is not, however, sufficient for the islands to become *res nullius*. The Japanese abandonment is non-disputable, but it cannot be presumed on behalf of the other claimants because abandonment cannot be presumed by reason of non-use, but must be effected voluntarily. Cloma's occupation lasted only a couple of months, and the claim was immediately challenged by China, Vietnam and France. Considering the former, and the fact that nothing indicates that Cloma was acting on authority from the government, which is a vital necessity in acquisition of territory, the claim hardly qualifies the modes of acquisition recognised under international law. Nevertheless, the Philippines have supported their claim by gradually occupying features with military garrisons and in 1978 issued a decree formalising their occupations and claims but also making a claim to a territorial jurisdiction over the sea, seabed and airspace within the boundaries of Kalayaan.

The Philippines also asserts that its continental shelf extension is a basis for its claim to the Spratlys. This claim however finds difficulty in meeting the requirements of natural prolongation as stipulated in the LOS Convention because the deep Palawan Trough separates the Spratlys from the Philippine archipelago. Moreover, the continental shelf provisions of the LOS Convention refers only to the seabed and subsoil and is not an instrument for claiming title to features that are permanently above sea level.

## MALAYSIA

Malaysia claims 12 islands and features in the Spratly area and justifies its claim on continental shelf extension and recent discovery and occupation. Malaysia's continental shelf claim stems from its own continental shelf act, which it issued in 1966 and in 1969. It was however, first with its new map on its territorial waters and continental shelf boundaries published in 1979 that it also claimed the islands situated on the shelf. Malaysia's claim to the Spratly features based on its continental shelf seems to suffer from the same misconception as the Philippine claim, namely that a state possessing a continental shelf also possesses sovereign rights over land formations arising from that shelf. Contemporary international law does not honour such a claim. Malaysia's claim based on discovery and occupation is largely based on its 1979 map of its territorial waters and continental shelf boundaries. The presumption in this Malaysian claim may be that the islands were *res nullius* and that the actions by Malaysia constituted effective occupation for the purpose of acquiring sovereignty. The main weakness of Malaysia's claim may be that its occupation and exploitation is relatively recent and that its claim has been consistently rejected by the other littoral states. In 1980 Malaysia declared a 200 nautical mile EEZ but it did not in this proclamation define the outer limits of the continental shelf zone.

## BRUNEI

Sources seem to be at variance in regard of Brunei's claims in the Spratlys. Some say that Brunei claims two features in the spratly group and that its claim apparently is based on the prolongation of its continental shelf, while others say that Brunei does not claim any features but only a continental shelf and an EEZ. This controversy can, however, to some degree be explained with the fact that one (Louisa reef) of the two features situated within the Brunei an claimed continental shelf does not show above sea level, and thus legally is considered part of the continental shelf.

The Brunei an continental shelf claim stretches beyond 200 nautical miles, however its claim to an extended continental shelf does not seem to be in consistence with the provisions of the LOS Convention due to that the Palawan Trough interrupts such a prolongation. In 1982 Brunei claimed a 200 nautical mile fishing zone and in 1984 it claimed a 200 nautical mile exclusive economic zone. This indicates recognition of the LOS Convention provisions and if Brunei also were to define its continental shelf claim according to the convention it would make a good example and could possibly even convince the other claimants to do the same.

## MAJOR ISLAND CHAINS:

### SPRATLY ISLANDS

**Spratly Islands** are in the southern end of the South China Sea, contains some 100-230 scattered islands, isles, shoals, banks, atolls, cays, and reefs that spans some 164,000 square miles.

The Spratlys are too small and barren to support permanent human settlement independently, and few have fresh water or any significant land-based resources. Yet, these islands are still considered strategic, economic, and political assets for littoral states in the South China Sea, principally because they can serve as legal base points for states to project claims of exclusive jurisdiction over waters and resources in the South China Sea. It must be realized, though, that the Spratlys area holds strategic importance for all states in the region, simply because these islands straddle the sea lanes through which commercial vessels must sail en route to and from South Asian ports. The islands are currently occupied by 6 countries: China, Taiwan, Vietnam, Philippines, Malaysia, and Brunei.

### PARACEL ISLANDS

**Paracel Islands** are an archipelago that includes over 30 islands, and many sandbanks, cays and reefs, over a maritime area of around 5,800 square miles. Like the Spratlys most of the islands are too small for permanent settlement. However the islands are contested due to possible oil reserves in the seabed near the islands. China took over the Amphitrite Group in 1950 from Taiwan during the Chinese Civil War, and the Crescent Group from South Vietnam in the Battle of the Paracel Islands in January 1974. In July 2012, China established the city of Sansha, under Hainan Province, to administer the area.

## TIMELINE: MAJOR ACTIONS IN THE SOUTH CHINA SEA

1946: China claims Spratly Islands. China declares the Spratly Islands part of Guangdong province.

1951: Japan officially relinquishes empire. The Treaty of San Francisco, signed by Japan and a host of Allied powers, officially ends World War II and Japan's empire, annulling all of Japan's claims to the South China Sea Islands. However, no official resolution is reached on sovereignty over the Spratlys.

1974: China captures Paracel Islands. China seizes military installations occupied by South Vietnam's armed forces in the Paracel Islands and reasserts its claims of sovereignty over the Spratlys.

1988: Vietnamese sailors killed in skirmish with China. Tensions between China and Vietnam in the South China Sea boil over after 70 Vietnamese sailors are killed in a naval battle between the two nations near the Spratlys.

1991: China invokes international law to expand sea territory. China passes the "Law on the Territorial Sea and the Contiguous Zone of the Republic of China," evoking principles from the United Nations' definition of territorial waters to formalize its claim to the Paracels and Spratlys.

1995: China captures Philippine military installations. China occupies the Philippines-claimed Mischief Reef in the Spratlys, just over 130 miles off the Philippine coast. The reef is roughly 700 miles from China's nearest island, Hainan, and well inside the Philippines' "exclusive economic zone" (EEZ), a term first used in the United Nations' Law of the Sea.

2000: Phillipine troops kill Chinese fisherman, arrest seven A Chinese fisherman is killed and seven others arrested by Philippine troops near the island of Palawan after they crossed into Philippine territorial waters.

2006-2007: Vietnam increases offshore petroleum exploration projects in waters claimed by China.

2006: The State Oceanographic Administration's Marine Surveillance force begins regular patrols in the South China Sea.

2007-2008: China's Ministry of Foreign Affairs issues demarches and threats against foreign oil companies investing in Vietnam.

January 2007: The Fourth Plenum of the Vietnam Communist Party's Central Committee adopts a resolution mandating the development of a national 'Maritime Strategy Towards the Year 2020.' The strategy envisions that maritime industries, especially fishing and petroleum, would account for 55 percent of GDP in 2020, up from 48 percent in 2005.

April 2007: Vietnam establishes one township and two communes in the Truong Sa (Spratly Island) District that administers the Spratly Islands

November 2007: The Philippine legislature begins debate on an archipelagic baselines law, which includes 53 features from the Spratlys as part of the Philippine archipelago.

2008-2009: The number of Vietnamese fishing boats operating near the Paracels increases significantly. China's Bureau of Fisheries Administration detains Vietnamese fishermen operating near the Paracel Islands.

June 2008: China's 2004 joint seismic survey agreement with the Philippines and Vietnam expires and is not renewed.

Nov 2008: A task force from the PLAN's South Sea Fleet conducts circumnavigation exercise in the South China Sea.

February 2009: The Philippine legislature passes an archipelagic baseline law, which included claims to some of the Spratlys. The bill is signed into law in March 2009.

March 2009: Malaysian Prime Minister Badawi makes a public visit to Swallow Reef, a feature in the South China occupied by Malaysia.

May 2009: Vietnam independently and with Malaysia submit claims to the UN Commission on the Limits of the Continental Shelf for extended continental shelves in the South China Sea

May 2009: The Philippines objects to China's claims to the UN

May 2009: China submits a map with the “nine-dashed line” to the UN Commission on Limits of the Continental Shelf.

May 2009: China expands the duration of its annual fishing ban about 12 degrees north in the South China Sea. China links patrols by the Bureau of Fisheries Administration with its claims in the South China Sea.

November 2009: Vietnam’s Foreign Ministry convenes a large international academic conference on the South China Sea to launch its campaign to “internationalize” the dispute.

January 2010: Vietnam assumes the rotating chairmanship of ASEAN and begins a public effort to build consensus within ASEAN on the South China Sea and to engage the major powers, especially the United States.

March 2010: The Vietnamese Prime Minister makes a public visit to one of the Vietnamese-held Spratly Islands.

March 2010: Task Force from the PLAN’s North Sea Fleet conducts training exercises in South China Sea

April 2010: Approximately 20 Vietnamese fishing and coast guard vessels surround a Chinese Bureau of Fisheries Administration patrol vessel.

July 2010: The PLAN conducts an exercise held in the northern portion of the South China Sea with vessels from each of the three fleets in the Chinese navy.

November 2010: Vietnam’s Foreign Ministry convenes a second international academic conference on the South China Sea

November 2010: The PLAN’s South Sea Fleet conducts

an amphibious assault exercise in the northern part of the South China Sea

February 2011: The Philippines begins a seismic survey in the waters near Reed Bank.

March 2011: MSF boats maneuver aggressively around Philippine seismic survey vessel operating at Reed Bank.

March 2011: Vietnam begins seismic surveys in waters claimed by China.

April 2011: The Philippines submits a note verbale to the UN contesting in detail China's claims to territorial sovereignty and maritime jurisdiction.

May 2011: A MSF vessel severs the towed cable of a Vietnamese seismic survey boat off the coast of central Vietnam in waters China claims

June 2011: A Chinese fishing boat becomes entangled in the towed cable of a Vietnamese seismic survey vessel

June 2011: Vietnam holds a live-fire naval exercise in the South China Sea.

June 2011: Five legislators from the Philippines make high profile visit to Thitu Island held by the Philippines in the Spratly Islands.

June 2011: Philippines unveils new plan to resolve disputes in the South China, known as a Zone of Peace, Freedom, Friendship and Cooperation. (ZoPFFC), that would limit claims to maritime jurisdiction from contested islands.

June 2011: Calls grow in the Philippines for inclusion of contested land features in the 1951 Mutual Defense Treaty with the United States

June 2011: The Philippines names the South China Sea as the West Philippine Sea.

November 2011: Vietnam's Foreign Ministry hosts a third international academic conference on the South China Sea.

November 2011: Philippines pushes at its ZoPFFC at the East Asian Summit

February 2012: The Philippine pushes for ASEAN to negotiate a code of conduct

before entering into any talks with China.

March 2012: The Philippines and Vietnam reach an agreement to hold joint patrols in a portion of the Spratly Island.

April 2012: The Philippines moves to arrest Chinese fishermen in Scarborough. China dispatches MSF and Fisheries Administration vessels to the shoal and quarantines fruit imports from the Philippines.

June 2012: Vietnam begins to use advanced Su-27 fighter aircraft to patrol the skies over the South China Sea.

June 2012: Vietnam's National Legislature passes a Maritime Law that reiterates its claims to sovereignty over the Paracel and Spratly Islands.

June 2012: China's State Council upgrades the administrative status of the Paracels and Spratlys from county to prefectural-level city named Sansha.

June 2012: CNOOC invites bids for exploration blocks located within Vietnam's 200nm EEZ.

June 2012: China's Ministry of Defense announces that China has already established a "combat-ready" patrol system in the South China Sea.

June 2012: Four MSF ships conduct patrol in the Spratlys

July 2012: A large fishing fleet from Hainan conducts a high profile trip to the Spratly Islands.

July 2012: The Sansha military garrison is established in Sansha city.

November 2012: State-run media announced that police in Hainan Province, China will have the authority to board and search vessels deemed to be violating Chinese territorial waters beginning January 1, 2013.

November 2012: Chinese fishing boats severed the seismic survey cables of a Vietnamese ship near Con Co Island between the Vietnamese coast and China's Hainan Island

March 2013: Malaysia displayed no concern over China conducting a military exercise

at James Shoal on March 2013.

January 2014: China imposes a "fishing permit" rule in the South China Sea, over the objections of the United States, the Philippines, and Vietnam.

March 2014: Two Philippine ships are expelled by the Chinese Coast Guard from Ayungin Shoal in the Spratly group of islands.

March 2014: The Republic of the Philippines files a case to an international tribunal in The Hague in its case against China over competing South China Sea claims.

May 2014: Vietnamese naval ships and Chinese vessels collide in the South China Sea. The incident occurred as China set up an oil rig in an area to which both nations lay claim. On May 26, a Vietnamese fishing boat sank near the oil rig, after colliding with a Chinese vessel.

June 2014: US plans to establish 3-5 military bases in Philippines under a 10 year military cooperation plan.

August 2014: American Boeing P-8 Poseidon of VP-5 harassed by Chinese Shenyang J-11.

November 2014: China constructs 3000m runway at Woody Islands on the Paracel Islands.

February 2015: Beijing has completed advanced stages of construction for six different island reefs throughout the sea with construction starting on a seventh. The islands will serve as forward operating bases for the Chinese military.

March 2015: China constructing a 3000m runway at the Fury Reef in the Spratly Islands.

# EAST CHINA SEA DISPUTE

## INTRODUCTION

There are essentially two disagreements over territory and boundaries in the East China Sea (known in China as Dong Hai, or East Sea). The first, and most acrimonious, is the territorial dispute over the Senkaku islets (called the Diaoyu islets by the PRC and the Diaoyutai islets by Taiwan), which are administered by Japan, but also claimed by China and Taiwan. The second major East China Sea disagreement is a maritime sovereignty dispute between China and Japan. While China claims the whole continental shelf to the Okinawa Trough, Japan claims the same shelf to a median line between its undisputed territory and that of China.



Maritime claims in the east China sea

# Claims, Issues and Positions

## CHINA'S CLAIMS:

The PRC makes the following principal claims:

1. straight baselines connecting base-points on the mainland coast and the outermost coastal islands;
2. a territorial sea extending 12 nautical miles from these baselines and from offshore islands, including specifically the Diaoyu Islands (Diaoyutai);
3. a contiguous zone extending 12 nautical miles from the territorial sea;
4. a continental shelf extending throughout the natural prolongation of its land territory to the outer edge of the continental margin, i.e., presumably to the Okinawa Trough, although no precise limits of the claim have been published;
5. sovereignty over the Diaoyu Islands, but not a continental shelf or EEZ extending from the features.

All of China's claims apply to Taiwan since China claims Taiwan as part of China. China ratified the UNCLOS on June 7, 1996. And on June 26, 1998 it declared a 200-nautical mile Exclusive Economic Zone and a continental shelf. However, China has behaved for some time before that as if an EEZ and continental shelf were in effect in the East China Sea.

## TAIWAN'S CLAIMS:

Taiwan's claims are:

1. a 12-nautical mile territorial sea;
2. a continental shelf extending throughout the natural prolongation of its land territory to the edge of the continental margin;
3. a 200-nautical mile Exclusive Economic Zone; and
4. sovereignty over the Diaoyu Islands, but not a continental shelf or EEZ extending from the features.

Taiwan did not sign the 1982 UNCLOS because it had no diplomatic relations with Jamaica, the host of the conference, and because its credentials would not be accepted by the United Nations Credentials Committee. Thus Taiwan has not ratified the convention. Nevertheless it has said that it will comply with its terms

## REPUBLIC OF KOREA (SOUTH KOREA) CLAIMS:

The ROK claims the following:

1. a system of straight baselines;
2. a 12-nautical mile territorial sea (3 nautical miles in the Korea Strait), including the entire Cheju Strait;
3. a continental shelf extending throughout the natural prolongation of its land territory to the edge of the continental margin, apparently as far south as 28° 36' N latitude in the vicinity of the Okinawa Trough, over 250 miles from the nearest Korean territory; and
4. a 200-nautical mile EEZ.

South Korea ratified the 1982 Convention on the Law of the Sea on January 29, 1996. In January 1952, by a decree called the Presidential Proclamation of Sovereignty over the Adjacent Sea, South Korea placed under its jurisdiction all living and mineral resources within a line ranging from 20 to 200 nautical miles from the Korean coast. The "sovereignty" thus claimed was delimited by this line, which came to be called "the Peace Line" in South Korea (supposedly to maintain peace with Japan) and "the Rhee Line" (after the name of the proclaimer) in Japan. Originally, the Peace Line was intended to prevent Japanese fishermen from returning to the fishing grounds around Korea once they were freed from the restrictions of the MacArthur Line (proclaimed by the Allied commander, General Douglas MacArthur, in 1945, forbidding Japanese fishing craft to operate beyond the line). Although the Peace Line was superseded by the Japan-South Korea fisheries agreement of 1985, and Japanese fishermen have since been allowed to operate in South Korean waters outside of South Korea's 12-nautical mile fishing zone, it has not been formally withdrawn. Until recently, conflict was avoided by maneuvers by both parties to avoid a situation in which ex post facto recognition (by Japan) or derecognition (by South Korea) of the Peace Line could be implied. The Peace Line is included in this analysis because, first, in connection with the controversy over Tokdo/Takeshima, Seoul has considered reintroducing this line, and second, because the Rhee Line extends well into the East China Sea.

## JAPAN'S CLAIMS:

Japan makes the following claims:

1. a system of straight baselines;
2. a 12-nautical mile territorial sea extending from these straight baselines (but only 3 nautical miles in the Korea Strait and other straits);
3. an unspecified continental shelf;

4. a 200-nautical mile EEZ from the straight baselines, although the claim to the west and north of the Diaoyu/ Senkaku features has purposely been left vague (one option considered by Japan was to exempt waters bordering South Korea and China from its EEZ claim); and
5. sovereignty over the Senkaku features.

Japan ratified the UNCLOS on June 20, 1996.

### The Senkaku/Diaoyutai Sovereignty Dispute:

The background to the dispute begins with the fact that Japan possesses the Senkaku Islands, which are also claimed by China. The Senkaku Islands are called Diaoyutai by the Chinese. The total area that might be claimed from the islands is about 20,500 square nautical miles. The Diaoyutai/Senkaku Islands consist of five uninhabited islets and three barren rocks, located approximately 120 nautical miles southwest of Okinawa.

### HISTORY-BASED VERSUS MODERN INTERNATIONAL LAW-BASED CLAIMS

Japan bases its sovereignty claim on the fact that it incorporated the islands as terra nullius (vacant territory) on the 14 January 1895 and has been continuously occupying the islands since then. China, however, argues that it discovered the islands long before and quotes several historical documents going back to the Ming Dynasty (1368-1644) which mention the islands as part of Taiwan, although Taiwan was incorporated by the Qing Dynasty only in 1683.

After Japan's incorporation of the islands in 1895, a private person (Koga Tatsushiro) used some of the islands for commercial purposes for several decades until World War II, also providing habitation for workers who were employed in his fish processing plant. The government of the PRC claimed the islands only in December 1971 after a report in 1969 by an UN-related organization mentioning the possibility of substantial oil and gas reserves around the area. This late claim was also very much in response to the Guomindang government in Taiwan (Republic of China, ROC) which had already in February 1971, and again on the 11 June 1971, publicly opposed the return of the Senkaku Islands (called by the ROC 'Diaoyutai') as part of the reversion of Okinawa to Japan in 1972. Applying contemporary rules of international law, the Japanese side has a strong claim to the sovereignty over the islands because of the incorporation as vacant territory, and Japan's effective control which went unchallenged for such a long time. China's argument about 'discovery' is not very strong in terms of modern

international law because it never exercised effective control and Chinese never inhabited the islands. In a recent publication of the State Ocean Administration, however, it is argued that China not only discovered the islands and used them, but also exercised long-term control over them. 'Discovery' according to the Chinese accounts simply means that the islands were mentioned in records written by people who passed them and used them as orientation points on their sea voyage between China and Okinawa/Japan, and considered them as part of China's coastal defence. Moreover, the assertion that Japan acquired the islands as the result of the SinoJapanese War 1894-95, which was ended by the signing of the Treaty of Shimonoseki in April 1895, depends on whether one considers the Senkaku Islands part of Taiwan or part of Okinawa. The Shimonoseki Treaty included the cession of Taiwan and the Pescadores but did not mention the Senkaku Islands. The latitude and longitude of the Pescadores were given and a joint committee for demarcating territories was set up. In the map of Taiwan printed at the time the Senkaku Islands were not included. China, however, states that the Treaty included also the Senkaku Islands since they belong to Taiwan, which Japan refutes.

## HISTORY OF THE EAST CHINA SEA DISPUTE

Sino-japanese war 1894-1895: japan argues that the islands were 'terra nullius' before 1895 (i.e. islands that no nation claimed sovereignty over) and "showed no trace of having been under the control of china". Furthermore, to support its claim, Tokyo points out that a fisherman from Okinawa Prefecture made an application for the lease of the islands in 1884. For Japan, the island's sovereignty starts in 1895 when its government adopted a Cabinet Decision on January 14th to formally incorporate the islands into the territory of Japan. This decision was taken a few weeks before the end of the first Sino-Japanese War and the signing of the Treaty of Shimonoseki. However a look through historical evidence from a Chinese perspective would find that before 1885 there were no Japanese records of the Diaoyu islands as being under Japanese control. On this ground, China reject Japan's terra nullius claim.

July 1945: In the Potsdam Declaration, the US, UK and China agree on the terms of a Japanese surrender. It is agreed that Japan must return all the territories it had occupied in China (such as Manchuria, Taiwan and the Pescadores Islands) after the Allied victory. The Senkaku Islands are not specifically mentioned.

September 1951: The Treaty of San Francisco, which officially ends the occupation of Japan by the victorious powers and returns sovereignty to Japan, does not mention the

Senkaku Islands. The People's Republic of China, the Soviet Union and India refuse to sign the document.

Like Okinawa, the Senkaku Islands are initially administered in trust by the US. The United States pays rent to a private owner, as it uses the islands for target practice for bombers. This is an implicit US recognition of Japanese sovereignty over the islands.

May 1969: Okinawa prefecture ERECTS a marker on the main island of the Senkaku group to emphasize Japan's territorial claims. Neither the People's Republic of China nor the Republic of China (Taiwan) protests.

Both Chinas only lodge claims when Japanese scientists discover an underwater oil field in the vicinity of the islands.

1972: Washington returns Okinawa and the southwestern islands, including the Senkaku Islands, to Japan. Since the Nixon administration is also negotiating with China at this time, the US is noncommittal on the status of the islands, leaving the question of ownership open.

1978: In negotiations on a peace treaty between Japan and China, both sides agree, as in 1972, to set aside the question of the islands. April - Between 80 and 140 partly armed Chinese fishing boats enter the disputed waters of the Senkaku Islands. The Chinese fishermen display posters that express a claim to the islands.

1996: China and Japan join the United Nations Convention on the Law of the Sea (UNCLOS). Japan's nationalist youth organization builds a lighthouse on one of the disputed Senkaku Islands. A group of Chinese people departs Hong Kong to tear it down. When the captain of the ship reverses course because of an approaching storm, some activists jump overboard. A young man drowns and is the first "martyr" of the island dispute.

January 2004: Japanese security forces fire water cannon on Chinese fishermen near the Senkaku Islands, injuring one.

September 2005: A Chinese warship is discovered near a disputed gas field. A vessel of the Japan Coast Guard finds two Chinese patrol boats that have spent more than nine hours in Japanese waters. At the controversial Chunxiao gas field northeast of the Senkaku Islands, Japanese planes spot five Chinese vessels, among which is a

destroyer.

October 2006: A submarine of the People's Liberation Army of China pursues the US aircraft carrier Kitty Hawk in the East China Sea.

April 2010: Ten Chinese warships carry out a naval exercise to ward off submarines in the Strait of Miyako, northeast of the Senkaku Islands.

September 2010: A Chinese fishing boat rams a Japan Coast Guard boat.

March 2011: A helicopter of the Chinese fishery authorities buzzes and obstructs a Japanese destroyer near a disputed gas field.

August 2011: Chinese fishery patrol boats penetrate the 12-nautical-mile zone surrounding an island in the Senkaku group claimed by Japan.

November 2011: The Japan Coast Guard arrests a Chinese fishing boat captain after a pursuit in the Goto Islands, south of the main Japanese island Kyushu.

March 2012: The Japanese Parliament gives names to 39 previously nameless islands in the Senkaku group and adjacent islands. The People's Republic of China responds promptly with its own names and descriptions for a total of 70 islands in the region. Taiwan also rejects Japan's naming.

April 2012: It becomes known that conservative hard-line Tokyo Governor Shintaro Ishihara is negotiating the purchase of eight of the Senkaku Islands with their private Japanese owner.

September 2012: The Japanese government buys three of the Senkaku Islands also claimed by China and Taiwan from their Japanese owner. It wants to forestall Ishihara's initiative and defuse the affair. Nevertheless, the move results in massive protests in China.

Dozens of Taiwanese fishermen and coast guard vessels approach the Senkaku Islands in a convoy. The Japan Coast Guard uses water cannon to try to stop the fleet. The Taiwanese fleet ultimately turns around.

December 2012: A Chinese surveillance aircraft enters the airspace over the Senkaku Islands. According to Japanese statements, this is the first such incident since 1958. Japan sends eight F-15 fighters.

January 2013: Multiple Chinese aircraft penetrate the airspace over the Senkaku Islands.

February 2013: Japan lodges a protest because a Chinese frigate has allegedly locked its fire control radar onto a ship of the Japanese Maritime Self-Defense Force. China denies the allegations.

November 2013: China establishes Air Defense Identification Zone over the East China Sea. USA accuses China of altering the status quo of the East China Sea. Japan, USA, Taiwan and Japan flout the regulations proclaimed by China. Aircrafts of all these countries fly through the Zone without informing China.

## IMPORTANT PROVISIONS OF THE UNCLOS REGARDING THE SOUTH CHINA SEA DISPUTE

### THE DEFINITION OF AN ISLAND

#### 3.1. General

Article 121.1 of the LOS Convention, which reads “*an island is a naturally formed area of land, surrounded by water, which is above water at high tide*” provides us with the legal definition of an island. Yet there is still some doubt related to what is covered by the definition. What lies within the meaning of the conventional text as to, “an area of land, a natural formation, surrounded by water and above water at high tide”, can and has been interpreted differently by various nations

#### Which maritime zones can be generated by islands

In general, according to article 121 paragraph 2 of the LOS Convention, islands can generate ocean space just as continental landmasses do. Any island coming within the “island definition” in Article 121.1 is entitled to its own territorial sea and contiguous zone. However, the entitlement to the more extensive zones, the exclusive economic zone and the Continental shelf, are limited due to the exceptions stated in Article 121.3 of the UNCLOS.

#### Territorial sea and Contiguous zone

According to Article 3 of the LOS Convention,<sup>96</sup> the territorial sea of an island stretches to a maximum of 12 nautical miles measured from the baseline of that

island. The territorial sea is legally an extension of the State's territorial sovereignty. According to Article 2, the State is given exclusive sovereignty to the airspace over this area as well as its waters, seabed and subsoil. One modification to this exclusive sovereignty is stated in Article 17 which states that ships of all States has a right to innocent passage through the territorial sea.

The Contiguous zone, however, according to Article 33 of the LOS Convention, stretches to a maximum of 24 nautical miles measured from the baseline, but the jurisdiction in this zone is limited to exercising rights concerning customs, fiscal issues, immigration or sanitary laws and regulations. Thus this zone is irrelevant in terms of access to natural resources found in the waters, the seabed or the subsoil.

### **Exclusive economic zone**

According to Article 57 of the LOS Convention, the Exclusive Economic Zone of an island stretches to a maximum of 200 nautical miles from the baseline of that island. Most importantly, the state has sovereign rights for the purpose of exploiting and exploring the natural resources, whether living or non-living, of the sea, seabed and subsoil in that area. Rights in regard of construction and use of artificial islands, scientific research and preservation of the environment as well as obligations in regard to conservation and utilisation also apply. In this zone however, other States have the freedom of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms.

### **Continental shelf**

According to Article 76 of the LOS Convention, the Continental Shelf of an island also stretches to a distance of 200 nautical miles from the baseline, but has the potential to take up even greater areas seaward if it is naturally prolonged beyond 200 nautical miles. The natural prolongation according to Article 76, is the outer end of the continental margin, which comprises the submerged prolongation of the landmass of the coastal State, and consists of the seabed and subsoil of the shelf, the slope and the rise. The natural prolongation is further limited to 350 nautical miles from the baselines from which the breadth of the territorial sea is measured, or 100 nautical miles from the 2500 metre isobath, which is a line connecting the depth of 2500 meters. The right to the shelf and its resources does not include the superjacent waters or the air space above those waters.

### **Internal waters**

Islands do also hold the possibility of generating internal waters. According to Article 8 of the LOS Convention, "*the waters on the landward side of the baseline of the territorial sea form part of the Internal Waters of the State.*" The State, in these waters, has sovereignty equal to its land territory and the territorial sea. The internal waters

however differ from the territorial sea primarily in that there does not exist any right of innocent passage in these waters. One modification to this rule is stated in Article 8 (2), which allows innocent passage through internal waters where those waters are effectuated by straight baselines and was not previously considered internal waters.

## INTERNATIONAL LAW:

### INTERNATIONAL LEGAL CLAIMS RECOGNIZED AT INTERNATIONAL COURT OF JUSTICE (ICJ):

**Treaty Law:** As compared to the other bases for territorial claims, the treaty justification is more legal in nature—that is, it is less emotionally persuasive than an historical claim might be. Nevertheless, claims based on treaty law are particularly persuasive at the ICJ because Article 38 of the ICJ Statute obligates the court to consider treaties. Moreover, through treaties parties agree to relinquish their historical or other claims to the property subject to the treaty. Thus, it is no surprise that treaties (unless defective) are binding on the parties that have ratified them.

**Geography:** Geographical justifications for territorial boundaries are neither novel nor uncommon. Mountain ranges, rivers, oceans, and other bodies of water and physical formations have perennially separated political entities. Natural borders create a clear dividing line between two states, offer a buffer of security (or at least the appearance thereof), often do not require active patrolling by border guards, and historically have been more difficult to dispute than borders less easily identifiable by a physical landmark.

**Economic:** Economic justifications for territorial claims assert that the territory in question is “necessary to the viability or development of the state.” For example, the territory may be necessary to facilitate internal and international transportation routes for goods (including pipelines, roads, railways, and ports), to exploit raw materials, to cultivate land, and the like. Similarly, states may desire the territory to attract foreign investment, which requires the existence of land, sea, and aerial passages.

**Culture:** Cultural justifications are based on the “ethnic nation” argument, which underlies any justification for drawing a border in a specific place because of a common

language, religion, kinship, or other cultural characteristic that defines the group of people living in a particular territory. At the core of the cultural claim is a sense of belonging, but the characteristic creating this belonging varies by group and region. In modern Western history, language has been the chief unifier, whereas in the Middle East religion has played that role. Language has also been used as a distinguishing characteristic that has enabled ruling classes to emerge to the detriment of minority groups. In a territorial claim based on culture, the claimant state contends that because of shared pasts, the inhabitants of the disputed territory share the “same national background and aspirations” as the inhabitants of the claimant state.

**Effective Control:** A claim based on effective control is one in which a group claims certain land because the group has “uncontested administration of the land and its resident population.” Many scholars believe that under international law, effective control is the shibboleth—indeed, the sine qua non—of a strong territorial claim. Under property law generally, possession is a large factor in the determination of a property right. Professor Andrew Burghardt acknowledges that the principal questions surrounding any such claim are twofold: (1) what constitutes an abandonment of the land by the last governing entity, and (2) what constitutes administration of the land. The status of abandonment as a precondition to effective control is highly debatable. Norman Hill would require that the land be *terra nullius*—a “territory not belonging to any particular country.” Previously, only discovered land was *terra nullius*; now, the term encompasses land over which no state exercises sovereign control. Another scholar defines abandonment as a “failure to maintain a minimum degree of sovereign activity.” When the rightful sovereign acquiesces in the control of territory by the infringing sovereign, the requirement of abandonment is inapplicable altogether. This is the legal doctrine of acquisition by acquiescence, generally accepted by common lawyers and rejected by civil lawyers. In many ways, it is analogous to the common law principle of title by adverse possession

**History:** Historical claims to territory are based on historical priority (first possession) or duration (length of possession). Although effective control (possession) presents the strongest claim under property law, historical claims create an underlying entitlement to territory, regardless of whether a state has actual or constructive possession of the land at the time of the claim. Thus, historical claims tend to be most common, compared to the other claims discussed here. A claim of historic right is bolstered by the passage of time; when the encroached state does not act to counter the claimant’s right, it is deemed to have acquiesced in that right and is stopped from rejecting the title for lack of consent. Claims based on historical priority are most closely related to claims based on historic title because such titles are generally derived from first-in-time claims to land.

***Uti Possidetis:*** a principle used to define postcolonial boundaries in Latin America, Asia, and Africa, is a doctrine under which newly independent states inherit the pre-independence administrative boundaries set by the former colonial power. The doctrine posits that title to the colonial territory devolves to the local authorities and prevails over any competing claim based on occupation. Thus, *uti possidetis* is predicated on a rejection of self-determination and assumes that internal, administrative boundaries are functionally equivalent to international boundaries.

**Elitism:** Elitist claims to territory contend that a “particular minority has the right or duty to control certain territories.” Conquerors—who, historically, made such claims most frequently—often shaped them in terms of divine rights to rule certain territory. Such claims have become rarer over time because they “run counter to the democratic ideal.” Nevertheless, elitist claims have a modern and public incarnation in arguments for territory based on superior technological ability—a particular group claims control over a territory by virtue of having the capacity to develop the land’s potential most fully. Such claims are consistent with a labor theory of property law, which grants property rights to the person (or entity) investing labor in the land, thereby making it productive. But for the capable person’s labor or technological ability, the territory’s resources and potential would not be tapped.

## What is at stake?

The regional States effort in regard of obtaining maritime jurisdiction in the SCS is not so much founded upon the desire to exploit newly discovered resources. On the contrary the waters of the SCS are and have been used by the littorals for centuries and thus represent a vital element of the region’s basis of existence. Much is at stake for all parties involved and it is thus not likely that anyone will ease their attitude towards “bagging a peace of the lot”

### 1 - Fisheries

The South China Sea and the East China Sea encompasses a dense system of several hundred coral reefs in what is often claimed to be the most bio-diverse of the world’s seas, and the Seas represents the main source of the animal protein for all the littoral states. More significantly the animal protein from fisheries is said to contribute approximately 65 % of the total animal protein consumed in states such as The Philippines and Malaysia, moreover the need for animal protein in the region is steadily rising with population growth and urbanisation. The total catch of tuna and shrimp in and around the South China Sea is amongst the largest in the world, and thus represents a vital resource for the region both for domestic consume and export. Conclusively if vast areas of the South China Sea should fall within one of the states’

national jurisdiction giving that one state exclusive rights to the resources therein, it would have enormous consequences for the other claimant states.

## 2 - Hydrocarbon resources

The U.S. Energy Information Administration (EIA) projects total liquid fuels consumption in Asian countries outside the Organization for Economic Cooperation and Development (OECD) to rise at an annual growth rate of 2.6 percent, growing from around 20 percent of world consumption in 2008 to over 30 percent of world consumption by 2035. Similarly, non-OECD Asia natural gas consumption grows by 3.9 percent annually, from 10 percent of world gas consumption in 2008 to 19 percent by 2035. EIA expects China to account for 43 percent of that growth. With Southeast Asian domestic oil production projected to stay flat or decline as consumption rises, the need for access to imported/offshore oil sources will become greater. China in particular promotes the use of natural gas as a preferred energy source and set an ambitious target of increasing the share of natural gas in its energy mix from 3 percent to 10 percent by 2020. Thus all the South East Asian nations are determined to establish sovereignty over these islands and establish Exclusive Economic Zones in the South and East China Seas to gain access to oil and natural gas reserves.

It is difficult to determine the amount of oil and natural gas in the South China Sea because of under-exploration and territorial disputes. EIA estimates the South China Sea contains approximately 11 billion BARRELS OF OIL and 190 trillion cubic feet of natural gas in proved and probable reserves. Conventional hydrocarbons mostly reside in undisputed territory. USGS estimates may contain anywhere between 5 and 22 billion BARRELS OF OIL and between 70 and 290 trillion cubic feet of gas in as-yet undiscovered resources (not including the Gulf of Thailand and other areas adjacent to the South China Sea. These additional resources are not considered commercial reserves at this time because it is unclear how economically feasible it would be to extract them). In November 2012, the Chinese National Offshore Oil Company (CNOOC) estimated the area holds around 125 billion BARRELS OF OIL and 500 trillion cubic feet of natural gas in undiscovered resources, although independent studies have not confirmed this figure.

A United Nations-led geological survey in 1969 has found that large oil and natural gas reserves are at stake under the East China Sea, lying around the Senkakus and beyond. Just how much oil and natural gas is at stake in the East China Sea is unclear. The territorial disputes have so far prevented any reliable survey. China estimates that one of the world's largest natural gas deposits, containing some 250 trillion cubic feet, lies under the waters of the East China Sea. US energy analysts appreciate the "proven and probable" reserves there at only 1 to 2 trillion cubic feet.

### 3 - South China Sea Shipping Lanes

More than half of the world's annual merchant fleet tonnage passes through the Straits of Malacca, Sunda, and Lombok, with the majority continuing on into the South China Sea. Tanker traffic through the Strait of Malacca leading into the South China Sea is more than three times greater than Suez Canal traffic, and well over five times more than the Panama Canal. Virtually all shipping that passes through the Malacca and Sunda Straits must pass near the Spratly Islands. The large volume of shipping in the South China Sea/Strait of Malacca littoral has created opportunities for attacks on merchant shipping; in 1995, almost half of the world's reported cases of piracy occurred in this area. Shipping (by tonnage) in the South China Sea is dominated by raw materials en route to East Asian countries. Tonnage via Malacca and the Spratly Islands is dominated by liquid bulk such as crude oil and liquefied natural gas (LNG), with dry bulk (mostly coal and iron ore) in second place. Nearly two-thirds of the tonnage passing through the Strait of Malacca, and half of the volume passing the Spratly Islands, is crude oil from the Persian Gulf. Oil flows through the Strait of Malacca rose to 8.2 million barrels/day in 1996, and rising Asian oil demand could result in a doubling of these flows over the next two decades.

China also relies on the East China Sea for trans-Pacific trade. From its ports at Shanghai, Qingdao, Ningbo, Fuzhou and Wenzhou, access to the Pacific Ocean passes through Japan's Ryukyu Island chain.

#### **Increased Militarization of Islands and Civilian Patrols:**

Many South East Asian nations, buoyed both by GDP growth in the previous decade and lobbying by arms companies, are expanding their militaries in response to China's position on the South China Sea issue and its military modernization. While increased military power is likely to raise the threshold for, as well as cost of, armed conflict, it could also embolden countries to be more proactive in their territorial claims, making skirmishes harder to resolve.

There is a risk that in seeking to flex their military muscle, claimant states will engage in brinkmanship that could lead to unintentional escalation. Recognizing the need to improve their ability to safeguard coastlines and maritime zones, some South East Asian countries are also beginning to modernize their coast guard and maritime law enforcement forces. Compared with China's powerful and expanding agencies, other claimant countries' coast guard and civilian agencies are small and ill-equipped. Vietnam's Marine Police, for example, only became independent of the military in 2008, and has only about 1,000 personnel. The Philippine coast guard lacks ocean-going capacity and is comprised of a small fleet of patrol boats, although other

countries, notably Japan and the U.S., have respectively provided patrol vessels and funding for a radar system. Despite their paramilitary and civilian nature, coast guard and other maritime law enforcement vessels may stoke, rather than diminish, tensions. Because each country believes their territorial claims to be indisputable, governments are having their maritime law enforcement agencies aggressively assert jurisdiction in disputed areas. This brings them into regular contact with civilian vessels and other paramilitaries. The involvement of paramilitary vessels lowers the threshold for confrontation. As they operate under more relaxed rules of engagement than the navy, they have more often been involved in aggressive actions such as ramming or cutting cables and fishing nets on other boats. Moreover, when facing law enforcement rather than military ships, fishermen and other civilian vessels may be more likely to resist or try to escape.

Major players in the East China Sea have sharply increased their defense budgets. In 2015 Japan increased its defense budget to 4.98 trillion yen, an increase of 2% from the defense budget of 2014. South Korea has increased its defense budget by 5.2 % in 2015. China has a massive increase in its defense budget to 145 billion dollars, an increase of 10% to its previous year's defence budget. The United States inspite of budget cuts in defense has an increase of eight percent in Asia-Pacific maritime defense spending. Confrontations between naval and coast gurard vessels of Japan and China near the Senkaku islands have increased drastically. Japan claims that incursions by Chinese military aircraft into its airspace is at an all time high. According to Japanese Defense Ministry figures, Japanese fighters scrambled 944 times, a 16-percent increase on the same period the previous year to confront Chinese incursions,

## CONCERNS TO BE CONSIDERED BY THE SECURITY COUNCIL

- China is a major economic and a military power not only in South East Asia, but the world. China's neighbors and other states that are involved in the dispute, namely Vietnam, Philippines, Japan are concerned by China's aggressive use of civilian and military vessels to force China's will on its neighbors. Should the UNSC seek to condemn Chinese actions in the South and East China Sea as an attempt to forcibly take over disputed territories? Or, should the UNSC condemn all actions and hostilities taken by all parties involved that take place in disputed waters?
- Currently, China controls and administers the Paracel Islands in the South China Sea as part of Chinese sovereign territory. Vietnam claims that these islands were

forcibly taken illegally by China some years ago. Should the UNSC recognize that China is the current and sovereign owner the Paracel Islands, thus delegitimizing Vietnam's claim to the islands, or should China have to return the Islands to Vietnam? (Remember, there is currently a sizeable Chinese population and military forces on the Paracels, and forcing China to remove its installations could result in an escalation of military conflict.)

- The Spratly Islands are currently under dispute between China, Vietnam, Taiwan, Philippines, Malaysia and Brunei. The Senkaku islands of the East China Sea are claimed by China, Japan and Taiwan. Although there has not been fighting between the states, there have been aggressive and political actions that result in increasing patrols and maneuvers on the open seas. Furthermore, states have been building up military bases, including artificially constructing islands to create military airfields and bolster their claims. Should the UNSC order a halt to expansion or military installations on any islands in the South China Sea until issues of sovereignty over the islands are resolved? Or should the UNSC remain silent on the issue?
- Should the UNSC design and promote negotiations among the sovereign states involved, especially in regards to joint exploration of resources and oil in disputed territory and waters?
- Does the UNSC have the authority to settle disputes and compel parties to settle the disputes through the International Court of Justice?
- In case of armed conflict between states in the South and East China Sea, does the UNSC have an action plan to deal a crisis? Should it? What would such a plan look like?
- As a permanent member of the UNSC, will China frustrate all progress towards addressing concerns about peace and security in this risky situation, or can China be a constructive partner in UNSC decision-making with regard to this situation?