



Charting contested waters: The South China Sea and competing state claims

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Abstract

South China Sea (SCS) is a disputed sea between China, Vietnam, Philippines, Malaysia, Taiwan, and Brunei. China is claiming its rights over South China Sea based on its historical facts and China demarcates a line known as nine-dash line in its map which covers the whole of the area of SCS and violating the rights of its neighbouring nations, similarly the states like Taiwan and Vietnam also claiming their rights on its rights over centuries in SCS, Philippines contested some rights on the basis of discovery of some islands in SCS and also on the basis of provisions of UNCLOS but Malaysia and Brunei claiming their rights only on the basis of provisions of UNCLOS. This article explore the different contentions of the states for claiming their sovereignty in SCS based on their own facts the significance of SCS and the relevancy of historical facts under international law.

Keywords: Charting contested, Sea (SCS), UNCLOS

Introduction

China always claims its sovereignty over the South China Sea (SCS) basically on two islands Spratly and Paracel islands. The history and the historical facts related to South China Sea is very disputable. China claimed their sovereignty based on its historical facts which is according to them is strong evidence to claim their sovereignty over South China Sea. But at the same time the littoral states like Malaysia, Vietnam, Philippines, Brunei and Taiwan whose border touches the SCS refused to recognize these historical facts on the basis of their own historical claims and UNCLOS III. According to these nations China is violating their right over the SCS by controlling the whole area of SCS.

The South China Sea has generally been a calm area of sea since ancient times. Until the late twentieth century, it had provided a fertile fishing ground for local fishermen from China and other littoral states, and a crucial route of navigation for the nations of the region and the rest of the international community. This calm area of the sea is disturbed, however, by two recent developments. The first was the physical occupation of the Nansha, or Spratly Islands by some of the coastal states in the 1970s. This process continued through the rest of the century. Now, nearly all the islands and insular features within the Spratly Islands have been subjected to physical control by one littoral state or another.

The South China Sea is a semi-enclosed sea ^[1] that is bordered by Vietnam on the west by the Philippines, Malaysia, and Brunei on the east, by Indonesia and Malaysia on the south, and by China and Taiwan on the north. Around 90 percent of its circumference is surrounded by land and its total area is approximately 550-650 nautical miles (nm) in width and 1200 nautical miles (nm) in length ^[2]. The Spratly islands are an archipelago located in the South China Sea. The archipelago comprises of over one hundred widely scattered islands, islets, banks, and rocks spread across a surface area estimated to be around 410,000 square kilometres (km²) of water ^[3]. Under the UNCLOS definition, only forty of the Spratly features are considered

islands, with the largest island spanning less than 1.7 kilometres (km) ^[4]. The remaining features of the archipelago are either submerged under water or are above water only during low tide ^[5].

The South China Sea is very rich in minerals, natural gas, oil, marine features etc. so the dispute is basically related to the economic interest of each nation in the South China Sea. China is very powerful nation among its neighbouring countries. When the Philippines bring case against China for the territorial dispute the Permanent Court of Arbitration passed its judgement in the year 2016 against China but still China control whole of the sea and refuse to follow or abide by the decision given by Arbitration Court by saying that the Permanent Court of Arbitration has no jurisdiction to decide the matter.

South China Sea is an important sea route. One-third of the world's trade passes through this route. Most of the Southeast Asian regions depending upon South China Sea for its export and import. This is the reason that not only neighbouring nations of China but other states like US, Japan Australia also showing their interest in SCS.

China's claim over South China Sea

The dispute regarding the South China Sea is related to two islands Spratly and Paracel, Sovereignty of China and these islands is challenged by five nations— China (including the local authorities in Taipei), Vietnam, the Philippines, Malaysia, and Brunei. Currently, the Taipei Island is controlling the local authorities of Taipei and its surrounding area also, about seven of these islands, reefs and atolls are in the Chinese mainland's possession; more than twenty are being occupied by Vietnam, two by Malaysia, and about eight by the Philippines.

China's claim over South China Sea is based on historical facts, which may be analysed one by one.

Firstly, China's claims are based on the assertion of historical sovereignty and occupation over the South China Sea. Claims on the archipelago purportedly date back to the ancient Chinese dynasties, with some claims dating back to as early as the Han Dynasty in the Second Century B.C.

Ancient Chinese maps, texts, and reports of commercial and naval activity in the area show that it was the first to discover and occupy these islands and its surrounding features.

China based its claim that it has always taken the Paracel Islands, the Spratly Islands, *Zjiongsha* Islands (Macclesfield Banks) and *Dongsha* Islands (Pratas Reefs) and the adjacent waters as part of the Chinese territory and waters. It is claimed by China that it has established and maintained its sovereignty over these island chains by ways of discovery, naming, mapping, patrol and control, public and private use, administrative allocation of jurisdiction, and other manifestations of exercise of authority throughout history. In the Three Kingdoms Period (220-265), the geographical features of these island were described when they visited these islands^[6].

Secondly, the Chinese have lived on the *Xisha* and Nansha islands since the Tang and Song dynasties, as evidenced by recent discoveries at the *Xisha* Islands of "ruins of living quarters, pottery and porcelain utensils, iron knives, iron cooking pots and other articles of daily use belonging to the Tang and Song dynasties." The Chinese Government has exercised jurisdiction over *Xisha* and Nansha since the ninth century, along with the exploitation and development of the islands. During the Song Dynasty (900-1127 A.D.), Chinese Naval Patrols reached the *Xisha* Islands. The Wu Jing Zong Yao (Outline of Military Affairs) recorded that the Northern Song Court "ordered patrols by imperial forces and the building of barracks for naval patrols" in Guangnan (which is now Guangdong), "commissioning the building of keeled sea-faring warships" which "sailing in the southwestern directions from Tunmenshan, with a fair east wind, can reach Jiuruluozhou in seven days." Jiuruluozhou was the name for today's *Xisha* Islands and the dispatch of naval warships to patrol its territories indicated that the Northern Song Court had already put the *Xisha* Islands under its jurisdiction^[7].

It is claimed by China that during the Ming and Qing dynasties, the *Xisha* and Nansha Islands were under the Administration of Wanzhou of Qiongzhou Prefecture (now Wanning and Lingshu counties, Hainan Island) then Guangdong Province. During the reign of Kangxi, (1719-21), of the Qing dynasty, Wu Sheng, Vice-Admiral of the Guangdong Fleet, led a naval patrol and personally went on an inspection tour setting out for Qiongya, rounding Tonggu and passing through Qizhouyang and Sigengsha, covering 3,000 Li^[8].

Guo Songtao, the Chinese Minister of the Qing Dynasty to Britain^[9], recorded his voyage to his post in 1876 by noting that, on his voyage through the South China Sea "nearby to the left were the Paracel Islands (the *Xisha* Islands) which yielded sea slugs, and also coral, which was not of very good quality. These islands belong to China."

In the nineteenth century, China's sovereignty over the *Xisha* and Nansha Islands was recognized by Europe. In 1883, during the reign of Guang Xu, Germany conducted surveys on the *Xisha* and Nansha Islands but stopped after protest by the Qing Government. Besides the books of history, many official maps also provided evidence that the *Xisha* and Nansha Islands have been China's territories: jun, Governor of Guangdong and Guanxi, Li Zhun, Admiral of the Guangdong Fleet, accompanied more than 170 naval officers and men on an inspection tour of the *Xisha* Islands in three warships, the Fubo, the Guangin and Shenhang^[10].

They inspected fifteen islands and set up stone tablets engraved with the names of the islands, hoisted the flag and fired a salute on Yung-Hsing Island as reassertion of Chinese sovereignty.

In 1911, the Chinese Guangdong Province Government announced that the *Xisha* Islands would be put under the administration of Yaxian county, Hainan Island. In 1921, the Ministry of Interior of the Republic of China approved a license for He Ruinian, a merchant of Guangdong Province, for fishing, plantation operation, and mining on the *Xisha* Islands. In 1927, when he was found to have transferred the license to Japanese merchants, the license was revoked by the Chinese government^[11]. British and French books recorded the Chinese living on Nansha Island. The 1923 British publication *China Sea Pilot*, in Volume III, reported that Chinese fishermen from Hainan were making a living on the Nansha Islands and added further that the communication between Hainan and the Nansha Islands had been maintained by boats for the exchange of goods, such as rice, from Hainan, traded for fishermen's catches on these islands. Volume I also reported: "Tizard Bank... Fishermen from Hainan usually visit the islands annually in December and January, and leave again at the commencement of the southwest monsoon^[12]." In 1927, National Sun Yat-Sen University sent a study group to visit *Xisha* Islands by warship and investigate the island's geography. A 1933 French publication^[13], recorded that:

"in the islands, only Chinese (Hainan natives) lived there. At that time, there were residents on Southwest Island. There were residents living on Thi-Tu Island, two of whom were children. There were residents living on Spratly Island. On the Lowan Island there remains a Chinese shrine, huts, and a well. On the Itu Aba Island, although nobody is visible, a Chinese tablet is discovered with the inscription that a shipment of food was made to this island: Since nobody is here, the food is left underneath the metal sheet. On other islands, the remains of the fisherman's living quarters were everywhere."

The French record provides that the Chinese have lived in Nansha Islands for a long time^[14]. The French occupation of the nine islands of Nansha in 1930's, was protested by the Chinese Government. Among these nine islands, three were in the *Xisha* Islands and six were in the Nansha Islands. The Japanese took over all these Islands from France in 1939 and maintained control until the Japanese surrender in 1945. In 1946, the Republic of China took back the Nansha Islands and *Xisha* Islands held during the Japanese occupation^[15].

In 1946, the Administration of Nansha Islands was set under the Kwangtung (Guangdong) Province. When the Hainan Special Administration District was established on April 1, 1946, the Administration of Nansha Islands was placed under its jurisdiction. In April 1947, the Chinese government sent Professor Wang Kuang, as the representative of Kwangtung (Guangdong) Government Compilation Committee on the Book on *Xisha* and Nansha, via warships to inspect *Xisha*, Nansha, and *Zhongsha* Islands^[16]. On December 11, 1947, the Ministry of Interior of the Republic of China announced to the world, the formal names of the islands, reefs, and banks of the four archipelagos of *Dongsha*, *Xisha*, *Zhongsha* and Nansha. At that time, no country presented any objection^[17]. On June 2, 1956, the Nationalist Chinese sent warships to inspect the Nansha Islands, and on June 5, arriving at the Taiping

Island, (Spratly or Storm Islands), set up a stone tablet and hoisted a flag as symbols of the recovery of the Islands. On June 10, they went to inspect the West York Island^[18].

Again, the Ministry of National Defense, the Ministry of Interior, and the Headquarters of Chinese Navy jointly sent delegates to inspect the Nansha Islands, including the Itu Aba Island, Thi-Tu Island, and Spratly Island to comfort the Chinese soldiers and Meteorological personnel who were stationed there. Workers were sent by the Veterans Commission to set up the stone tablets on Thi-Tu and other islands, and pictures were taken as evidence. Afterwards, the Chinese Navy frequently sent warships to inspect the Nansha Islands. The Chinese troops were permanently stationed as garrison on Taiping Island (Itu Aba Island). From there they could dispatch patrols to the neighbouring islands as defence against foreign invasion^[19].

On the other hand, the PRC, also claimed jurisdiction over these islands^[20]. According to the argument by Teh-Kuang Chang in his article, it indicates that China's sovereignty over Xisha and Nansha has never been interrupted by any Chinese government. After 1950, the PRC's Hainan Administrative Area of Guangdong Province set up a meteorological station and exercised control over fisherman on the Xisha Islands.

In March 1959, the Hainan Administration Area established on Yongxing Island of the Xisha Islands an "Office of Xisha, Nansha and Zhongsha Islands," which in March 1969, was renamed the "Revolutionary Committee of the Xisha, Zhongsha and Nansha Islands of Guangdong Province," keeping with the changes of the political system during the Cultural Revolution of the PRC^[21]. Based on the traditional concept of national defense of its territory, the PRC took military action in 1974 to oust the invaders of the Republic of Vietnam from the islands of Xisha. In January 1988, the PRC for the first time sent troops to the islands of Nansha. In February 1988, it built a ferry and a helicopter airport on Yung-Shu Island (Fiery Cross or N.W. Investigator Reef). Based on the UNESCO plan and support, the PRC built a Maritime Observation Station on the Island^[22]. On March 14, 1988, the PRC fought against an invasion of the Xisha and Nansha Islands by the Democratic Republic of Vietnam^[23].

If we analyse above historical facts provide recorded evidence of the Chinese discovery, development and administration on the Xisha and Nansha Islands. Chinese jurisdiction over the islands has been consistent, as argued by Teh-Kuang Chang in his article. Thus, China's claim of sovereignty over the Xisha and Nansha Islands is therefore based on the historical record of occupation. However, the historical record of China's claim of sovereignty over the islands was challenged by neighbouring states. To determine whether the Chinese claim of sovereignty based on its historical occupation is valid, it is necessary to review whether the Chinese claim meets the criteria of the international law of State sovereignty and what is the relevancy of historical records or evidence under international law.

It is claimed by the Chinese scholar that the Chinese sovereignty over South China Sea was not disputed until the arrival of invading powers. Chinese government always treated these islands as their own without any intervention of any other power over it.

According to the Chinese history books, China discovered the islands in the South China Sea as early as the second

century B.C.; exploitation and development followed and finally the islands were put under the administrative jurisdiction of the Chinese Government as Chinese Territory. China began to send naval ships to the South China Sea during the sixth year of Yuan-Den, (111 B.C.) under the reign of Emperor Wu Di of the Han Dynasty. Admiral Yang Pu led 100,000 sailors to the islands of the South China Sea^[24].

Chinese Scholars believed that China was enjoying control over South China Sea and the sea surrounding it without any interruption from the other nations until the 1930's when France seized the opportunity to occupy and "annex" several islands in the South China Sea. All this happened at that time when the government of China facing internal conflicts and threatened by the full-scale Japanese aggression, and due to this situation China was unable to defend herself except to lodge protest against the French government of that time. China's sovereignty over the Spratly and Paracel islands was challenged by France before the World War II and by Philippines and Vietnam after the World War II.

China contends that prior to their discovery and occupation of the archipelago, the Spratly were *terra nullius* (territories over which no state has control or exercises control and, therefore, may be legally acquired under certain requirements. As a condition for establishing sovereignty, states must establish that a particular territory was in fact *terra nullius* and therefore available for occupation and a claim to title)^[25]. China's earliest formal claim came in 1887 when the Convention Respecting the Delimitation of the Frontier between China and Tonkin was signed^[26]. At the conclusion of the Sino-French War, delimitation lines between French and Chinese territories in the South China Sea was outlined. Despite having ambiguous provisions, China used these provisions and made attempts to exert control on the South China Sea towards the end and the early part of the 18th and 19th centuries^[27]. The conclusion of World War II, with ambiguous delimitation of territories, and the collapse of the French empire made the claims more confusing^[28].

Between 1946 and 1947, China published official names for the islands and features in the Spratly archipelago and incorporated them into the Guangdong province. China has since included the Spratly archipelago into the province of Hainan, which was established in July 1987^[29]. China also started to publish interrupted eleven dash line maps that showed its jurisdiction over all South China Sea around the late 1940s. In 1951, China's Foreign Minister outlined Beijing's official position in response to the draft of the San Francisco Treaty: In fact, the Paracel Archipelago and Spratly Island, as well as the whole Spratly Archipelago ... have always been Chinese territory. Though occupied for some time during the war of aggression unleashed by Japanese imperialism, they were taken over by the then Chinese government following Japan's surrender. The Central People's Republic of China declares herewith: The inviolable sovereignty of the People's Republic of China over Spratly islands and the Paracel Archipelago will by no means be impaired, irrespective of whether the American British draft for a peace treaty with Japan should make any stipulations and of the nature of any such stipulations.

These claims show that China considers the whole of SCS as its own. In the above paragraph the China first time outlined the SCS in its map by eleven dash line later on it is nine dash line and officially it published its map in the year

1951, it is clear that China is refusing all claims by other nations over SCS and even do not consider the UNCLOS III. They claim SCS as whole based on its historical claims and said that in between disputes does not harm its sovereignty when Japan renounce all its claim again it falls in the hands of China.

The first assertion of effective control over the archipelago came in March 1988, when there was a brief naval engagement with Vietnamese forces that sank three transport vessels and killed 72 Vietnamese troops. China subsequently took possession of several features of the archipelago and established a base and airstrip in Fiery Cross Reef.

In February 1992, China further reinforced its legal claims by passing a Special Territorial Sea and Contiguous Zone Act. This legislation identifies the Spratly archipelago as part of Chinese territory. In Article 2, it asserts:

The PRC's territorial sea refers to the waters adjacent to its territorial land. The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including *Diaoyu* Island, *Penghu* Islands, *Dongsha* Islands, *Xisha* Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China. The PRC's internal waters refer to the waters along the baseline of the territorial sea facing the land. Since 1998, China has also deployed marines and established garrisons on other islands. China continues to maintain occupation on some islands and features, to reinforce its claims under contemporary international law, while simultaneously claiming sovereignty over the whole archipelago based on historical claims.

If we analyse the above discussion, we can conclude that the ancient records that China claims to show it as first to discover and occupy the archipelago are scattered and incomplete. These ancient records do not show strong evidence which compel us to believe of its regular occupation administration or sovereign control over the Spratly archipelago though China says that though the control over SCS is not in continuation but at the end it falls in the hands of China. The identification of the Spratly archipelago in ancient records has also been vague because they frequently changed the names. It was not until 1934 when China began to use the name "Nansha islands" to identify the Spratly archipelago. Conflicting records also show that some reports do not include the Spratly archipelago as part of Chinese territory. Even the nine-dash line and is questionable because the map was publish by China in the year 1951 which looks not relevant and legal. Discovery does not grant immediate sovereignty, rather it grants an inchoate title which must be substantiated by "continuous acts of occupation". While it has claimed ancient and historic sovereignty over the archipelago, issued legal declarations in 1958 and 1992, and consistently lodged diplomatic protests over the activities of other states in the area, "effective control" seems to only be evident from 1988 onwards. PRC's effective control over some features of the archipelago did not start until this time. Despite basing its claims on historical arguments, China has nevertheless ratified UNCLOS, as have other countries that have a claim to the archipelago. Furthermore, China's assertion of historical discovery seems to have little weight under international law.

China has not provided an official account, the first dashed-line map is widely reported by scholars and commentators

to pre-date the existence of the People's Republic of China, having been published in 1947 by the Nationalist government of the Republic of China. China previously mark eleven dashed line around the SCS and later it marked nine-dash line which covers whole of SCS. Nine dash line is unlawful and has no relevancy in international law and China violating the rights of its neighbouring states by marking these lines in its map.

South China Sea and its claimants

China claimed its sovereignty based on their historical facts which is according to them is strong evidence to claim their sovereignty. But at the same time there are the claimant states who refused to recognize these historical facts, which is claimed by China over south China sea and reject it because according to them it is against the provisions of UNCLOS III, and they have right over that part of the sea which is their own according to UNCLOS territorial claims. The South China Sea before the presence of colonies in the region was a trade route for the Persians, Arabs, Indians, Chinese, and the people of Southeast Asia. The present dispute over the islands and the territories of the sea was the trading networks and navigational markers for those who were doing trading through the SCS. The sovereignty over the islands and the territories of SCS was never raised by these people though they were using these routes for their trading purposes but in the beginning of sixteenth century the colonial footprint emerged over the region. The United Kingdom, France, Netherlands, and Spain entered the South China Sea with the aim of establishing trading stations and natural resource suppliers in the region. Western colonialism established empires in Southeast Asia due to the maritime routes in the South China Sea. Several archipelagos in the South China Sea were marked and named on world maps by Western adventurers and colonisers^[30]. But in the nineteenth century the Europeans established their rule over South China Sea. After 19th century the South China Sea was dominated by Britishers and French navies, who made a common cause in subduing China and opening it up to European trade and missionary activities. This shows that China was not in continuous possession of South China Sea

After the Europeans, the sovereignty over the South China Sea challenged by many states because of so much dispute over the islands and territories of South China Sea. Since China's claim of Spratly and Paracel Islands is challenged by its neighbouring countries, the ownership of the islands in the South China Sea is an unsettled international dispute. An understanding of both China's claim over South China Sea based on their historical claims, and the international reaction to it, is an important aspect where we can formulate some peaceful resolutions in the region. China discovered and has exploited the islands in the South China sea for over two thousand years. Since the Chinese settled in these islands prior to any other people, China's claim of sovereignty over the islands in the South China Sea islands predates that of other nations.

Economic activity become the integral part of European imperialism, and "money-making was part of the imperial impulse". In the late 19th and early 20th century known as the period of "new" imperialism the Western business was extended to Asia which resulted in increased rivalries between steamship companies that each sought to gain a share in the lucrative freight markets. Among the imperialist

powers, France engaged in a new expansionist policy in East Asia starting in the 1880s. The scene was set with France's earlier military involvement in the First and Second Opium Wars (1839–1842 and 1856–1860, respectively), the opening of the Suez Canal (1869), and the defeat of France by Germany (1870–1871), which coincided with the gradual decline of the Qing Empire in China, creating an active dynamic for powers that were afraid of losing out to rivals in Asia. For French policy makers finding themselves in constant rivalry with Great Britain in Asia, one of the major goals was the creation of a French sphere of interest in southwest China, especially in the Chinese provinces of Yunnan, Kwangsi, and Kwangtung, along with neighbouring French Indochina. In the wider geographical context, France's sphere of interest in southwest China was the Gulf of Tonkin region, stretching in the west from the French port Haiphong across the Gulf of Tonkin and the island of Hainan into the northern part of the South China Sea, or Nan Hai (which precisely defined the eastern part of the Gulf of Tonkin), to the British crown colony of Hong Kong in the east^[31].

Following is the discussion related to the claims which is made by the other states based on their history over South China Sea and on the provisions of UNCLOS.

Vietnam

Chinese dynasties used to invade Vietnam from the sea on several occasions. A more recent historical example that shows the importance of the SCS to Vietnam's defence was the invasion by France, which started with a seaborne attack on Da Nang in 1858 securing a favourable foothold in the SCS will help Vietnam constrain China's superior military advantage, thereby mitigating the adverse effects of the power asymmetry between the two countries on its national security.

First, in the past, Vietnam had hardly been a seafaring people. Its traditional economic activities were mainly restricted to the mainland with wet rice agriculture being the most important source of livelihood for the people. Second, although maritime foreign trade used to blossom in Vietnam during certain historical periods, Vietnamese feudal economy was mainly autarkic, and the small scale of maritime foreign trade could hardly turn it into a significant source of wealth for the country. Third, as maritime disputes with China only emerged since the early twentieth century, Vietnam for a long time had taken its uncontested maritime economic benefits from the SCS for granted. Fourth, after maritime disputes over the sea became more visible, Vietnam, at least until the 1970s, was mired in its own domestic problems, such as seeking independence and fighting for national unification. Such historical conditions prevented Vietnam from pursuing economic development and diverted its attention away from the SCS's economic resources. The situation also caused its disputes with foreign countries over the sea to remain a matter of relatively low priority for an extended period of time.

Since the late 1980s, Vietnam's reliance on the SCS for its economic development has been increasing. In particular, the sea plays a vital role in the development of Vietnam's oil and gas and fishery industries, which in turn help boost the country's economic growth under Doi Moi significantly. The current section therefore uses these two key industries as case-studies to examine the importance of the sea to the country's economic well-being and explain why Vietnam is

taking measures to protect its interests there. The section will also shed light on how Vietnam's economic considerations have added to growing bilateral rivalry over the sea during recent decades.

As Vietnam is one of the claimant of South China Sea. It has its own geopolitics issues and economic issues also. When Vietnam started effective exploitation of the sea's resources for economic development and China's moves to counter such an effort have generated constant tensions for their relations. At the same time, Vietnam's perception of the SCS in terms of economic interests has also strengthened. It is therefore adopting measures to protect and advance its legitimate interests in the sea against China's expansive claims. These measures include various policies and strategies to develop a marine economy, and considerable investments in naval modernization and maritime enforcement capacity building. Meanwhile, the growing economic interdependence between Vietnam and China under Doi Moi is not likely to provide pacifying effects on the disputes due to the asymmetrical nature of the relationship.

Meanwhile, the control of the Paracels and the Spratlys is also geo-strategically important for Vietnam. As the SCS is the only gateway for Vietnam to access international maritime trade routes in both the Pacific and Indian oceans, if Vietnam loses control of the two archipelagos, its vital sea lanes of communication would be subject to serious threats as its enemy might use forces on and around the two archipelagos to impose a naval blockade on the country. Moreover, the two archipelagos, especially the Spratlys, are strategically vital for Vietnam's essential military assets, such as Cam Ranh Port and the submarine base there. If Vietnam loses control over the Spratlys and the surrounding waters, for example, the safety and accessibility of Cam Ranh Port as well as the maneuverability of its submarine fleet would be significantly constrained. The SCS's geo-strategic importance for Vietnam is shaped by its particular geographical conditions, and to a lesser extent, its historical experience. On the contrary, from a historical perspective, Vietnam's traditional perception of the sea in economic terms seems to have been much less pronounced.

The economic interdependence between Vietnam and China has been growing continuously over the past two decades. This particular trend, according to the liberal peace theory, may hold significant implications for future bilateral relations. The growing economic interdependence between Vietnam and China will prevent them from pushing their SCS disputes to the point of another armed conflict in the future.

Philippines

Philippines claiming the Spratly islands – the “*Kalayaan*” in English it means “*freedom*” which was an uninhabited island discovered by Tomas Cloma in 1950s. Cloma continued to claim rights over these islands until 1974 when a “Deed of Assignment and Waiver of Rights” was signed to transfer ownership of the islands to the Philippine government. Since then, the Philippines has promulgated laws on archipelagic baselines and the geographic scope of its exclusive economic zone (EEZ), and placed the Kalayaan Island Group or KIG under the administrative jurisdiction of Palawan province. In 1978, the then Philippine President Ferdinand Marcos issued Decree and annexed the islands by incorporating them into the Palawan province. The decree asserted

“WHEREAS, these areas do not legally belong to any state or nation but, by reason of history, indispensable need, and effective occupation and control established in accordance with the international law, such areas must now be deemed to belong and subject to the sovereignty of the Philippines.”

The Philippine official position acknowledges that it has no claim to the Spratly archipelago. It asserts, however, that the islands in the Kalayaan group are not part of the Spratly archipelago and are in fact a part of the natural extension of the Philippine continental shelf. Based on the provisions of UNCLOS, the Philippines further argues that the Kalayaan group of islands falls within its legitimate 200nm Exclusive Economic Zone. The Philippines has continued to maintain its occupation in the Kalayaan group of islands since it was first occupied in 1971. It has also erected garrisons, stationed marines, and established an airstrip on one of the islands. These bases have also been fortified with heavy artillery, equipped with radar facilities, weather stations and ammunition depots in 1971. It has also erected garrisons, stationed marines and established an airstrip on one of the islands. These bases have also been fortified with heavy artillery, equipped with radar facilities, weather stations and ammunition depots [32].

The Philippine claim based on UNCLOS seems to have more validity, but not without contention. Article 48 of UNCLOS permits an archipelago state, like the Philippines, to extend an EEZ and a continental shelf from its archipelagic coastlines. As it has argued, the Kalayaan group of islands falls within the Philippines’ legitimate Exclusive Economic Zone. Furthermore, UNCLOS deems waters in between the islands of archipelagic states as historical sovereign territory. However, other claimants question this interpretation because they argue that the UNCLOS provisions regarding EEZ apply only to areas or zones that have previously been a part of the high seas. As China, Taiwan and Vietnam continue to argue, these islands were not a part of the high seas and were a part of their sovereign control [33].

Philippines in its submission before the arbitration requested that the issue between China and Philippines regarding waters, seabed, and maritime features of the South China Sea are governed by the Convention not on basis of historic rights and also requested for a declaration that China’s claims to sovereign and historic rights with respect to the maritime areas encompassed by the ‘nine-dash line’ are contrary to the Convention and therefore without lawful effect.

The tribunal found that China had violated the Philippines’ sovereign rights in its exclusive economic zone by interfering with Philippine fishing and petroleum exploration, constructing artificial islands and failing to prevent Chinese fishermen from fishing in the zone. At Scarborough Shoal, where it said fishermen from the Philippines and China had traditional fishing rights, it said China had restricted these rights. It added that China had created a serious risk of collision when its patrol boats had physically obstructed Philippine fishing vessels.

When the award was passed the Chinese president, Xi Jinping, said in one his statement that China’s “territorial sovereignty and marine rights” in the seas would not be affected by the ruling, which declared large areas of the sea to be neutral international waters or the exclusive economic zones of other countries. He insisted China was still “committed to resolving disputes” with its neighbours [34].

And China still continue to build its military operations and did not found itself bound by the decision which was passed by the arbitral tribunal.

Malaysia

The claim of Malaysia over South China Sea is recent one. Malaysia claims a portion of the South China Sea north of Borneo, which encompasses at least 12 features in the Spratly Islands chain, including Vietnam-occupied Amboyna Cay and Barque Canada Reef, along with Commodore and Rizal reefs, which are both occupied by the Philippines. Of the low-tide elevation features claimed by Malaysia, only three completely submerged reefs are on its continental shelf [35].

Malaysia’s claims to certain maritime features in the South China Sea are based on its corresponding claim to a continental shelf, as defined by a 1966 law, a 1979 map, and a 2009 joint submission with Vietnam to the Commission on the Limits of the Continental Shelf. In addition, Malaysia has exercised effective control of the features on which it has maintained a presence. On occasion, Malaysian officials have also claimed that the country enjoys rights to certain maritime features because they fall within its exclusive economic zone, although this claim is inconsistently referenced. While several of the features claimed by Malaysia could generate territorial waters of their own, Malaysia has heretofore only claimed a twelve-nautical-mile territorial sea around two features: Swallow Reef, which it controls, and Amboyna Cay, which is controlled by Vietnam. Swallow Reef, the only clear island among Malaysia’s controlled claims, was occupied in 1983, while the remaining features were gradually occupied through the course of the 1980s [36].

The status of Malaysia’s claim to Louisa Reef, which Malaysia and Brunei disputed until 2009, is still not so clear. In the year 2009 a joint press statement, the two countries announced that they had reached agreement in an exchange of letters on delimitation of maritime boundaries and modalities for the final demarcation of their land boundary. Brunei subsequently claimed in its preliminary submission to the Commission on the Limits of the Continental Shelf that the exchange of letters delimited its territorial sea, exclusive economic zone, and continental shelf, implying that Brunei also claimed Louisa Reef. Malaysia’s claim therefore seems to have lapsed implicitly, although this remains to be confirmed.

In addition, two submerged systems, the James Shoal and the Luconia Shoals, lie within Malaysia’s claimed continental shelf region, but are claimed by China.

Taiwan

Taiwan’s claims are similarly based on Chinese claims of historical discovery and occupation. China and Taiwan both claim that the Spratly archipelago and other islands in the South China Sea have been Chinese territory “since ancient times”. Known collectively as the “Tongue of the Dragon”, the islands in the South China Sea are seen as inseparable from China. However, since 1949, both sides have attempted to occupy the archipelago separately. The separation of China and Taiwan, separate attempts at occupying and administering the archipelago have been pursued. Taiwan further claims to be the first government to occupy, through physical presence, part of the Spratly archipelago and the first to assert effective control and authority in the area.

When Japan invaded the island of Hainan in 1939, it placed the nearby Spratly archipelago under Taiwanese jurisdiction. With the withdrawal of Japanese forces at the end of World War II, Taiwan stationed troops on Itu Aba, the largest island in the Spratly archipelago. Taiwanese forces remained until 1948 when they were withdrawn because of the Chinese civil war but were subsequently redeployed in 1956 and have since remained. Taiwan has since fortified its Itu Aba presence and erected boundary markers in several other features of the Spratly archipelago. The 1952 Treaty of Peace between the Republic of China and Japan, which was negotiated by Taiwan because there was no Chinese delegation at the 1951 San Francisco Peace Conference, has also been used to assert that sovereignty over the Spratly archipelago devolved from Japanese to Chinese jurisdiction. Since no Chinese delegation participated in the 1951 San Francisco Treaty because the United States and its allies could not agree on which government represented China, Taiwan (The Republic of China) negotiated a separate peace treaty. The treaty states that Japan has "renounced all right, title, and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands^[37].

Brunei

Like Malaysia Brunei's claim over South China Sea is also recent one. Brunei claiming the features of Spratly islands on its geographical basis and according to the provisions of UNCLOS. Brunei asserts its claim only over Louisa Reef which is a naturally submerged formation in the archipelago. Brunei's claim is only to establish maritime jurisdiction under the provisions of UNCLOS around the Louisa Reef, rather than contesting sovereignty over it or any other Spratly features. Brunei claims that they have exclusive right which is given under UNCLOS to exploit the resources on the continental shelf. If we look into the continental shelf on the basis of which Brunei is claiming is legal according to international law of sea.

Relevancy of historical evidence under international law

The historical evidence has its value under the law, but the history cannot prevail over the law. Here, we need to understand the value of historical evidence under the international law. China is claiming its rights on the basis of historical facts by giving reference of their different dynasties over South China Sea, records of sovereignty on South China Sea in some of its books, nine dash line etc. but the question here arises how the international law dealing with the historical evidence? What is the law relating to historical evidences under international law? and which historical evidence can be accepted by the International Court of Justice and Permanent Court of Arbitration. The answer to these questions is that firstly, these historical facts have no relevance under the international law as decided by the Permanent Court of Arbitration in the judgment passed in the year 2016 in favour of Philippines against China. Secondly, Chinese map of nine-dash line is not something where the China can claim its continuous control or occupation over that area. After the World War II Japan surrender all its rights from South China Sea to China. In the year 1947 China released its map of eleven dash line. Scholarly accounts place its publication from 1946 to 1948 and indicate that it originated from an earlier one titled "Map of Chinese Islands in the South China Sea" published

by the ROC Land and Water Maps Inspection Committee in 1935^[38]. It shows that the China do not have any continuous control over SCS. History and historical facts have its own value under the law but not having continuous and consistent control over SCS because of the control by Japan, France shows that the China cannot come with its historical facts to enjoy its sovereignty over the islands. When Japan in the year 1951 signed the San Francisco treaty it did not specify to which country or to which government the Japan renounced its claim over SCS^[39]. Here, China cannot argue that after the treaty the whole full rights over the SCS is its own but China claiming that it started controlling over South China Sea.

In the year 2016, Philippines instituted arbitral proceedings^[40] against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the sea award given by Permanent Court of Arbitration decided against the China and said that China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention; and further DECLARES that the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein.

The main purpose of the international law is to bring peace between the nations and the treaty on the law of sea which was signed by the different states should abide by it. States should not violate each other's rights to enjoy their sovereignty over SCS.

Conclusion

The above discussion related to South China Sea and the claim which is made by the different States on the basis of historical evidence based on their dynasties, occupation etc. and on the basis of provisions of United Nations Convention for the law of sea (UNCLOS). It is found that every nation has their own economic and geo-political interest in the South China Sea because of its rich natural resources. As we have seen even after passing of the award by the tribunal against China, it continues to make its military operations and somewhere violating the law and the right of the Philippines over the island. We need to know the relevance of historical evidence under international law based on which China claiming whole of the island as its own. It is found that there is no relevancy of Chinese claims and other states claims based on historical facts in international law. These evidences are weak and incomplete.

Reference

1. UNCLOS III, art.122, For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.
2. Robert Beckman, The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea, American Journal of International Law art.no.107, at 143 (2013).
3. Id.

4. Robin Gonzales, *The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks for Dispute Resolution*, Thesis, at 20 (2014).
5. UNCLOS III, art.121(1) defines an island to be “a naturally formed area of land, surrounded by water, which is above water at high tide”.
6. Document of the ministry of foreign affairs of the people's republic of china [hereinafter document of the ministry] *China's Indisputable Sovereignty over the Xisha and Nansha Islands 3* (1980), (Cited in Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 403(1991).
7. *Ibid* at 404.
8. The Qizhouyang (Sea of Seven Islands) refers to the sea around the Xisha Islands.
9. in his book *Shi Xi Ji Cheng* (Travel Notes of an Envoy to the West).
10. Huang Qing Zhi Sheng Fen Tu (Map of the Provinces Directly under the Imperial Qing Authority) made in the fifteenth year of Emperor Qianlong (1775), *Da Qing Wan Nian Yi Tong Di Li Quan Tu* (Map of the Eternally United Great Qing Empire) made in the twentieth year of Emperor Jiaqing (1810), and *Da Qing Yi Tong Tian Xia Quan Tu* (Map of the Unified Territory of the Great Zing Empire) made in the twenty second year of Emperor Jiaqing (1817).
11. *Supra* 8.
12. *china sea pilots 124* (1923) (reprinted in, ministry of foreign affairs, republic of china, the notes on international conflicts related to nansha islands 20 (1990)) (cited by Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*”, *Case western Reserve Journal of International law*, at 406 (1991).
13. *Le Monde Coloniale Illurts Vinielle: Les lots desmers de Chine*.
14. *United Daily News*, Feb. 25, 1974 (cited by Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 406(1991).
15. *ibid*.
16. Professor Wang discovered underneath the coral reefs of Rockey Island, coins from the Kai-Yuan Reign of Emperor Suan Zhong of the Tang Dynasty (713-742 A.D.), the Hung-Wu Reign of Emperor Cheng Zu of the Ming Dynasty (1368-1390 A.D.), and the Yong-Lo Reign of Emperor Cheng Zu of the Ming Dynasty (1403-1425 A.D.). Professor Wang's collection from the Xisha Islands was publicly exhibited on June 11, 1947, in Canton.
17. *The Historical Record of China's Exploration and Administration of the Islands in South China Sea*, *United Daily News*, Feb. 25, 1974 (cited by Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 407 (1991).
18. *Ibid*.
19. Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 407 (1991).
20. Document of the Ministry, *supra* 6 at 408.
21. Memorandum of the Ministry of Foreign Affairs of the People's Republic of China on the Question of Xisha and Nansha Islands, May 12, 1988 [hereinafter Memorandum] (cited by Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 408 (1991).
22. H. Chen, *An-Chao Hsiung Yung TiNansha Hsing-Shih* (The Rise of Storm over the Nansha Solution), *Central Daily News*, Nov. 16, 1988, at 1 (cited by Teh-Kuang Chang, *China 's Claim of Sovereignty over Spratly and Paracel Islands: A Historical and Legal Perspective*, *Case western Reserve Journal of International law*, at 408 (1991).
23. *ibid*.
24. In the Three Kingdoms Period (220-265), the books *Nansho Yi Wu Zhi* (Strange Things of the Southern Provinces) by Zhen and Fu Nan Zhuan (An Account of Fu Nan) by Kang Tai described the geographical features of these Islands after they visited in the South China Sea.
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26. Furtado, *International Law and the Dispute over the Spratly Islands*, 389 (cited by Robin Gonzales, *The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks For Dispute Resolution*, at 24 (2014,).
27. *ibid*.
28. *Ibid*.
29. Dzurek, *The Spratly Islands Dispute*, 18 (cited by Robin Gonzales, *The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks For Dispute Resolution*, at 24 (2014).
30. Nguyen, T.L.A. *Origins of the South China Sea Dispute. Territorial Disputes in the South China Sea*, In: Huang, J., Billo, A. (eds), 15, at 15 (2015), https://doi.org/10.1057/9781137463685_2.
31. Bert Becker, *France and the Gulf of Tonkin Region: Shipping Markets and Political Interventions in South China in the 1890s*, 4 *Cross-Currents: East Asian History and Culture Review E-Journal* No. 16, at 560-561 (2015) available at <http://cross-currents.berkeley.edu/e-journal/issue-16>).
32. Robin Emir Gonzales, ‘*The Spratly Islands Dispute: International Law, Conflicting Claims, and Alternative Frameworks For Dispute Resolution*’ (2014), (Departmental Honors thesis at University of Nevada, Las Vegas) available at <https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1094&context=award>
33. *ibid* 4.
34. Tom Philips, Oliver Holmes &Owen Bowcott, *Beijing rejects the tribunal’s ruling in South China Sea Case*, *The Guardian*, (Jul.12, 2016), <https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china>
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