**Evolution of the disputes in the South China Sea in the 21st century: State policies and international cooperation in the area**

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**Abstract**

The attempt of People’s Republic of China to assert its sovereignty over a large part of the South China Sea starting with the second half of the twentieth century to this day is answered with overlapping claims over the sea coming from several neighboring states and with the opposition of other states, including the United States, emphasizing on the international status of the South China Sea under the United Nations Convention from 1982. Over the past years, Chinese efforts to increase control over its surrounding maritime areas have been considered by the United States and other states in the region as manifestations of a Chinese maritime rise aimed at dominating the international waters of the South China Sea and other neighboring seas. The lack of a concrete diplomatic agenda for a peaceful settlement of the disputes in a predictable timeframe fuels not only insecurity in the South China Sea region, but has also dragged other states in the Asia-Pacific region into the arms spiral, increasing their military spending. Using a qualitative research methodology: case study method, historical method and document analysis, this article aims to present the main foreign policy coordinates of the countries involved in the disputes and of the main states interested in the region, trying to distinguish between the traditional Asian prevalence of national interest and bilateral relations facing the need for collaborative formulas to ensure collective security in the South China Sea region. The distinction is important to avoiding a potentially conflicting crisis at least at regional level, if not global, given the strategic and economic importance of the South China Sea.

Keywords: disputes, foreign policy, South China Sea, United Nations Convention of the Law of the Sea

**Introduction**

The South China Sea is a centuries-old international sea route and an abundant source of fish for the populations surrounding the sea that covers an area of ​​about 3.5 million square kilometres, connecting the West Pacific to the Indian Ocean through straits with strategic positioning. Starting from the second half of the 20th century, the area has become subject to intensive prospects of fossil fuels, amounting a reserve of 190 trillion cubic feet of natural gas and 11 billion barrels of oil and an estimated still to be discovered 160 trillion cubic feet of natural gas and 12 billion barrels of oil [1] may lie under the sea floor.

As early as 1947, the government of the Republic of China drew up a “Map of the South China Sea Islands” comprising a vast surface of the South China Sea. The map was later taken over by the PRC in order to substantiate its territorial claims over the maritime area located on the Southern rim of the country. After the 1952’s compromise with Vietnam regarding PRC's waiver of claims over a portion of the Gulf of Tonkin, the map was officially renamed as the “traditional maritime border line” – “chuantong haijiang xian” [2], currently known as the “Nine-Dash Line”. Originally drawn by the nationalist government of Chiang Kai-shek in 1947 and altered by Mao Zedong in 1952 [3], the map of the South China Sea marked with a U-shape line in nine dashes was first formally communicated in a diplomatic note, CML/17/2009, sent by People’s Republic of China (“China”) to the United Nations in 2009. The map constitutes the ground for China’s claims over 90% of the South China Sea, including Scarborough Reef, Macclesfield Bank, Pratas Island (northeast of the sea, halfway between the Chinese naval headquarters on Hainan Island and Taiwan Island), the Paracel Archipelago (also claimed by Vietnam and Taiwan) and the Spratly Islands (which are also claimed by Vietnam and Taiwan in full, and in part by Malaysia and the Philippines). The Chinese claims were reaffirmed before the United Nations by Diplomatic Note CML/8/2011.

China's claims over a large stretch of the sea and over a significant number of natural features in the sea (islands, reefs, shoals) could lead to Chinese control of important maritime routes and of strategic straits that open access to ocean and over port infrastructure with commercial and military utilities, and have therefore raised concerns coming from the countries surrounding the South China Sea and from other interested states in the Indo-Pacific region. As a result, the sea has become the backdrop for overlapping claims on territorial and maritime rights from several costal countries: the People's Republic of China and Taiwan, Vietnam, the Philippines, Malaysia and Brunei, recently adding Indonesia that dismisses any Chinese claims regarding Natuna, an island under Indonesian jurisdiction. In addition, South China Sea is one of the main sea lines of communication of global importance (SLOCs), largely used in the trade to and from Africa and Europe (via the Gulf of Aden and the Suez Canal) and a vital shipping route for goods exported or imported by the states in South-East Asia, by China, Japan and South Korea. The Chinese claims are also a concern for Indo-Pacific states beyond the proximity of the South China Sea, mainly for Australia and India, as an exclusive Chinese control over virtually the entire South China Sea high seas would open strategic access for China to such states. It is therefore a major priority for a wide number of beneficiary states to preserve the freedom of navigation in the high seas of the South China Sea, as coded in the United Nations Convention on the Law of the Sea from 1982, such endeavour being constantly backed by the United States, on diplomatic level and by U.S. military naval support through Freedom of Navigation operations (FONOPs) initiated in 1981 by the administration of the U.S. President Ronald Reagan.

**Background of the disputes**

The claims of several costal states over the maritime space of the South China Sea, some overlapping, are currently source of increasing tensions. However, historically, the waters and the natural features of the sea have been used constantly by the populations surrounding the sea, mainly for fishing purposes, without being permanently occupied by any of them. The rocks and reefs of the Paracel archipelago have been under Vietnamese and French administration during the 19th century and occupied by Japan the first half of the 20th century.

Many of today’s plaintiff states were formed in the current political formats after the World War II and the decolonization of the area. Following the San Francisco Treaty of Peace from 8th of September 1951, Japan renounced all rights to the Spratly Islands and Paracel Islands (as per article 2 letter f of the Treaty) with no indication regarding a state or entity that would take control of such [4], the island groups in the South China Sea thus becoming *terra nullius*. Both Vietnam and China raised claims over the rocks and reefs of the sea: Vietnam grounded its territorial claim on the historic use of the waters and administration of the maritime features [5] and China, initially on *uti possidetis* principle of the international law [6] - invoking a priority right to occupation formulated as a result of the Japanese surrender, which was subsequently replaced by the concept of “historic rights”, mainly focused on a first arrived privilege, China considering itself as the "first to discover islands in South China Sea" [7]. The Chinese legal construct of “historic rights” was subject to the 2016 arbitration case no. 2013-19 of the Permanent Court of Arbitration under Annex VII of the U.N. Convention on the Law of the Sea, and dismissed by the Court. In time, the Philippines, Vietnam, Malaysia and Brunei have also raised claims over the South China Sea, mainly after the entering into force of the 1982 Convention on the Law of the Sea, a comprehensive United Nations agreement that entitled costal countries to new extensive rights over their shores and neighbouring sea waters.

During 1955 and 1956, the People’s Republic of China occupied several natural features in the sea with strategic geographical positions. After the discovery of oil reserves under the seabed in the early 1970s, a series of direct confrontations took place, which involved use of force, such as: China's occupation of a South Vietnamese outpost on Duncan Island in the Crescent group of the Paracel archipelago in 1974, as a result of which South Vietnam and North Vietnam strengthened their remaining garrisons on the islands [8]; the Fiery Cross Reef Incident from 1987 occurred during a significant rise of economic activity in the coastal provinces during the economic reforms of Deng Xiaoping, when the need to extract crude oil from the sea increased [9]; on March 14, 1988, the Chinese Navy sank three Vietnamese ships in Spratly Archipelago near Johnson Reef, killing seventy-four Vietnamese military sailors [10]; the occupation of Mischief Reef in February 1995 [11], a reef also claimed by the Philippines, which caused concern to the United States, as part of the United States-Philippine Mutual Defense Treaty.

In the early and mid-2000s, China has adopted a soft power strategy [12] and attempted together with the other claimant states to envision a collaborative approach of the disputes. As a result, in 2002 PRC signed with the other claimants, all members of ASEAN (Association of Southeast Asian Nations), the Declaration on the Conduct of the Parties in the South China Sea (DOC) that provided a peaceful settlement of the dispute. However, a Code of Conduct setting out rights and obligations in the task of coastal states with regard to commercial and military navigation, exploration and exploitation of the sea has not yet been adopted to this day.

In 2009, two of the disputed states, Vietnam and Malaysia, resorted to international legal instruments, submitting a joint statement to the Continental Shelf Boundary Commission containing their claims on the limits of the continental shelf beyond 200 nautical miles from the baselines, which provoked widespread rejection from the other states involved, in particular from China, which submitted a verbal note reiterating the sovereignty claims outlined by the Nine-Dash Line.

There are sources who believe that the dynamics of the conflict have changed since 2010, when China began to use simultaneously diplomacy and limited use of force in order to assert its claims [13]. Coercive actions were used by Chinese naval forces in order to deter neighbouring countries from using the rocks and reefs in the sea, culminating in the occupation of the Scarborough Shoal Reef off the coast of the Philippines in 2012. A series of other incidents between the parties occurred in the following years, including: clashes between the Vietnamese and Chinese navies in May 2014, in an attempt to stop the construction of a Chinese oil rig in the disputed waters near the Paracel Islands [14]; in May 2019, actions of intimidation of a Vietnamese offshore support vessels, serving a drilling rig located in an area considered by Vietnam within its territorial waters and providing a significant percentage of oil for a Vietnamese pipeline [15]; harassment for six months, between 2019 and 2020, of a Malaysian energy exploration vessel by the Chinese Navy in the exclusive economic zone declared by Malaysia [16].

In 2013, the Philippines initiated an arbitration proceeding against China under the auspices of the U.N. Convention on the Law of the Sea, the court ruling in the summer of 2016 in favour of the applicant Philippines.

From 2018 to 2020, trade tensions between the U.S. and China have led to a shift in U.S. maritime trade patterns [17], marked by the search for alternative markets and suppliers leading to the diversion of flows from China to other markets, especially to Southeast Asian countries. The 2019 US Indo-Pacific Strategy outlined China's continued efforts to militarize the South China Sea and to employ paramilitary forces in maritime disputes relatively to other claimant states.

The outbreak of the Covid-19 pandemics at the beggining of 2020 was marked by a surge of tensions in the South China Sea, mainly due to the increasing rivalry between China and the United States [18]. Further degradation of the PRC-US relations may generate tensions over the evolution of the South China Sea disputes, as neither party seems to achieve progress into an amicable solution in the near future. The February 2022 Indo-Pacific Strategy of the United States stipulated that PRC attempts to “transform the rules and norms that have benefitted the Indo-Pacific and the world”,”undermining [...] international law, including freedom of navigation [...]” [19] and the Chinese answer from May 22, 2022 stated that the US “played the "Taiwan card" and "South China Sea card", trying to provoke tensions and mess up the Asia Pacific region after having messed up other regions [20]”. The insufficient dialogue between the two countries emphasizes further more the need to identify colaborative formats that may put an end to the South China Sea disputes to the satisfaction of all parties involved.

**Political coordinates of the claimant states in the South China Sea disputes**

The claims formulated by the parties regarding South China Sea are reflected by multiple interests and needs of the parties, ranging from sovereignty invoked by China over natural features in the sea to vaguely formulated claims regarding maritime rights as in the case of Brunei, that may generate exclusive economic zones rights under the international provisions of the U.N. Convention on the Law of the Sea. Such sovereign rights could thus extend the jurisdiction of an entitled claimant state up to 200 nautical miles beyond its shores, providing a rich economic source for fishing and a fossil fuel resource, as well as strategic defence control over a vital international maritime route and access to oceans.



Fig.1. Map of the overlapping claims in South China Sea (source: U.S. Embassy & Consulates in the United Kingdom, https://uk.usembassy.gov/south\_china\_sea\_territorial\_claims\_voa\_news\_12july2016/)

***People’s Republic of China and Taiwan***

The codification of international rules on maritime rights and navigation on the high seas in 1982 represented a new stage in the struggle to "occupy" the natural features of the sea, in particular due to the emergence of the legal rights for states under the international law to establish sovereign rights over them and adjacent waters, to exploit the biological and mineral resources of nearby marine areas, which has amplified the potential for conflicting claims in the context of growing global demand for oil and gas resources.

A suggestive example is the case of the Spratly archipelago: despite its total area of about five square kilometres of natural land spread over more than 100 islets, coral formations and reefs, the area is of paramount importance for its strategic location East of major sea routes connecting the Pacific and the Indian Oceans. Sovereignty over Spratly’s natural features is of interest for China for patrolling and naval surveillance purposes. In 2014, China began massive dredging operations to build artificial islands around seven reefs that it considers its national territory, currently used as military outposts. In addition to the construction of military infrastructure on man-made islands, in the recent years, China accelerated sea prospects and exploitation of fossil fuels in the sea region despite protests from neighbouring states. Also, in order to enforce the Chinese jurisdiction regarding the sea waters, in 2017, the Supreme People's Court, China's highest court of law, extended its jurisdiction to all areas under China's "sovereign control", including "jurisdictional seas" [21]. The term is not recognized by the international law, but may be used by Chinese courts to apply domestic criminal law, in order to charge foreign vessels legally fishing in the disputed waters of the South China Sea under the international law of the sea.

The current Chinese political perspective over the South China Sea reflect a strategic direction, pursued by PRC since its inception in 1949, inspired by the Chinese nationalistic theories of the early 20th century, regarding its objective to reunite the country with its territories considered lost throughout history. In Chinese culture, the political capacity of the state to achieve such goals is considered of paramount importance to the population.

During the Mao era, no particular defence strategy was designed for the territorial sea, as it was subsumed to the "people's war" strategy [22] that included the defence of coastal areas. In 1954 the Five Principles of Peaceful Coexistence [23] were set in a bilateral treaty between China and India, setting out China’s foreign policy of the time, based on maintaining interdependence between the domestic and foreign policy and using the concept of “national interest” (in a political realist meaning) in the Chinese diplomacy in ways that could assert its national identity on the world stage - it was therefore a priority to manage the domestic affairs before addressing foreign policy challenges.

In the 1970s claims to sea features were primarily focused on the Paracel due to the Vietnamese assertion of maritime rights over the archipelago [24]. In the mid-1980s - after the emergence of UNCLOS provisions, China adopted a strategy of "active defence near the sea" [25], aiming to recover lost maritime natural lands, including Taiwan, to repel sea attacks and to defend energy resources from the maritime area. The strategy was developed in three phases: the first, reached in 2000, regarding the ability to repel other foreign forces from the first island chain, the second phase reached in 2020 regarding the expansion of the Chinese maritime influence beyond the second island chain, and the third phase, to be accomplished by 2050 sets the target of acquiring naval power “capable of making its presence felt in global” [26]. In the mid-2000s the strategy was extended to offshore operations that allowed enhanced development of the Chinese naval military capabilities.

China has nominated its territorial lands in the national legislation according to the Law of the Territorial Sea and the Contiguous Zone from February 25, 1992 stating that the territorial land of the P.R.C. includes mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island (Senkaku), Penghu Islands (Pescadores), Dongsha Islands (Pratas), Xisha Islands (Paracel), Nansha Islands (Spratly) “and other islands” belonging to the republic [27]. The Law was issued the same year with the Declaration on the South China Sea that regulates cooperation between the member states on issues related to environment, joint rescue activities, piracy, drug trafficking and international navigation in the area.

The China's Military Strategy, launched in May 2015, has set a priority in its long-term task of protecting the state’s maritime rights and interests, in consideration of the U.S. Rebalance to Asia policy of president Obama’s administration and the strengthening military presence of neighbouring states "on China's reefs and islands, which they have illegally occupied" by "surveillance and constant air and sea reconnaissance activities against China". For these reasons, China added "protecting the security of China's overseas interests" as a new strategic task in its military evolution, embodied in the gradual shift from "offshore water protection" to combining offshore water defence with the protection of the high seas, focusing on the Chinese sovereignty over all natural features within the Nine-Dash Line and sovereign rights jurisdiction over the waters of the sea, the seabed and its subsoil. Earlier in his speech at the Fifth Working Reunion on Defence of the Frontiers and Coasts in Beijing (June 2014), President Xi asked for the construction of an "impenetrable wall for the protection of the border and the ocean" [28] as a top priority for the protection of the country's sovereignty, rights and interests.

More recent indications of the Chinese political strategy regarding the South China Sea disputes are provided by the 2019 “Military strategic guidelines for the new era” White Paper [29] stating the commitment of China to resolving the disputes through negotiations with the directly involved regional states. This positioning is consistent with the call for a new Asian regional security architecture expressed by President Xi Jinping in his “Asia for Asians” speech from May 20, 2014 [30] pleading for regional cooperation and pointing out that “it is disadvantageous to the common security of the region if military alliances with third parties are strengthened [...]” [31]. It is also in accordance with several texts of official documents of the Chinese Communist Party implemented starting from 2017 referring to bilateral cooperation and peaceful settlement of sea disputes concluded with Vietnam (Joint Communique of the People’s Republic of China and the Socialist Republic of Vietnam from May 15, 2017) and with the Philippines (Joint Statement between the Government of the People’s Republic of China and the Government of the Republic of the Philippines from November 16, 2017).

Taiwan supports the Nine-Dash Line argument invoked by P.R.C., formally claiming sovereignty over all four island groups in the South China Sea (the entire Spratly and Paracels archipelagos, Macclesfield Bank and Pratas Island [32]), acting as heir to Chinese dynastic history and grounding its claims on the „historic rights” similar to R.P.C.’s reasoning. Legally, Taiwan never declared its independence, nor did invoke the right to self-determination, as most of the islanders claim Han Chinese descent. In 1978, when the United States and P.R.C. formally established diplomatic ties, U.S. recognized the government of P.R.C. "as the sole legal government of China" stating that "the United States government recognizes the Chinese position that there is only one China and that Taiwan is part of China". As a result, Taiwan's claims to the South China Sea cannot be individualized as belonging to a sovereign state, as for the other claimant parties to the dispute. In addition, Taiwan is not a member of the United Nations and therefore cannot accede to the UN Convention on the Law of the Sea or cannot rely on its provisions, which is why its claims remain unclear and their grounds cannot be effectively upheld before any international court. Despite these shortcomings, the Taiwanese government has been taking a stand on the claims of the neighbouring countries regarding the territorial sea and exclusive economic zones starting from 1979 [33].

***The Republic of the Philippines***

The Philippines has been claiming natural features in Spratly, meaning the Kalayaan Island Group and Scarborough Shoal, since April 1972, when the archipelago officially became part of the Philippine province of Palawan. In 1978, President Ferdinand Marcos asserted by decree the legitimacy of the state of Philippines over the characteristics of the sea and over its exclusive economic zone and continental shelf that interfere with China and Taiwan’s claims. As for the Scarborough Shoal Reef, the Philippines claims to have a historical title based on the transfer of all Spanish maritime features to the United States in 1898, after gaining independence from the United States, with the Philippines inheriting the reef title [34].

China's forced occupation in 1988 of six natural features in the South China Sea claimed by the Philippines and Vietnam's unilateral occupation in 1995 of the Mischief Reef, considered by the Philippines within its exclusive economic zone, despite the Manila Declaration of 1992 (regarding the parties consent to resolve their conflicts through peaceful means and cooperation), constituted incidents that led to changes in the foreign policy of the Philippines.

In 2013, after a series of unsuccessful bilateral talks, on the background of dredging works and the construction of artificial islands, carried out by China, on reefs claimed by the Philippine state, the Philippines initiated an arbitration procedure against China (known as the “South China Sea Arbitration”) before the Permanent Court of Arbitration in The Hague, under the UN Convention on the Law of the Sea of ​​1982 (UNCLOS). China initially agreed with the arbitration and invoked “historic rights” over the sea and its natural features in support of its Nine-dash Line map. However, it later refused to participate in the proceedings arguing that the issues at stake is political and that the dispute concerned the P.R.C. territorial sovereignty and it was not subject to interpretation or application of UNCLOS. For these reasons, China argued that the Court had no jurisdiction to examine and resolve the case. The court found invalid the Nine-dash Line invoked by China on the basis of alleged "historic rights," forcing it to respect the rights and freedoms of the Philippine state. China rejected the Court’s award and declared it “null and void” and of “no binding force” [35].

***Socialist Republic of Vietnam***

Vietnam's interest to acquire maritime space and natural features in the South China Sea has manifested immediately after its national reunification in July 1976, when the Vietnamese government asserted sovereignty over the Paracel and Spratly archipelagos within the 1977 Declaration. Vietnam grounds its claims over Spratly on the historical dominion established there between 1650 and 1653, as well as on the geographical location of the archipelago within the boundaries of the Vietnamese mainland. Following the conclusion of the UN Convention on the Law of the Sea in 1982, the state has consistently maintained its claims regarding the sea rights and over the natural features, in consideration of the episodic clashes with the Chinese navy experienced during the Cold War rivalry between P.R.C. and the U.S.S.R. [24]

Vietnam's national security strategy could not be based on special military capabilities due to its low economic power. As a result, Vietnam embraced a constant, longstanding neutrality policy.

Being called a "friendless country" after the demise of the USSR in 1990 and the withdrawal of Russian naval forces in 1992, Vietnam had to identify new foreign policy strategies to ensure its survival in the vicinity of its great northern neighbour. In 1986 a series of reform policies, "Doi Moi" [36], have been initiated, in order to transition from a centralized economy to a free market one: in 1991, Vietnam normalized its diplomatic relations with China and with the United States in 1995. The same year it became a full member of ASEAN and in 1998 Vietnam joined APEC (Asia-Pacific Economic Cooperation). In the Vietnamese vision, ASEAN and APEC are regarded as the core elements of the regional architecture.

In terms of cooperation under APEC, the results are rather modest due to the very different general interests of the major powers members (the United States, China, Russia, Japan), its BOGOR objectives being shadowed by the December 2020 RCEP free trade agreement (Regional Comprehensive Economic Partnership), whilst ASEAN asserts increasingly international recognition and centrality in the Indo-Pacific politics, mainly attributed to its non-alignment policy and commitment to neutrality in response to the great powers competition.

In 1998, the Hanoi government adopted the "three nos"[37] enduring defence strategy, requiring it not to form military alliances, not to allow the placement of foreign military bases on Vietnamese territory and not to allow any another state to use Vietnamese soil to carry out military activities against other countries. The said strategy was doubled by the Vietnamese constant plead for international cooperation regarding the sea resource management, supporting an internationally recognized legal regime of South China Sea based on the provisions of the UN Convention on the Law of the Sea.

Vietnam has concluded a bilateral agreement with P.R.C. regarding the South China Sea disputes, the “[Agreement on the Basic Principles Guiding the Settlement of Sea-Related Matters between the Socialist Republic of Viet Nam and the People’s Republic of China](http://www.mofa.gov.vn/en/nr040807104143/ns111013131225/view)” from October 11, 2011. Currently, the dispute over fishing rights, exploration and exploration of the area's natural energy resources is fuelling tensions between China and Vietnam in the South China Sea, despite the Sino-Vietnamese agreement from 2011. Vietnam consistently protests against China's claims over South China Sea, responding to China's diplomatic and verbal notes from 2009 and 2011 through the Notes 86/HC/2009 and 77/HC/2011.

Most of the documented incidents regarding the claimant states in the South China Sea disputes have occurred during clashes between Vietnamese and Chinese naval forces. In this respect, in 2021, the 13th National Congress of the Vietnamese Communist Party has set a "cover-up strategy" in its foreign policy [38], oriented against any security risks, embodied by building stable partnerships with all major powers, especially with China and the United States. Vietnam has also set a priority in the continuation of its strategic partnership with the United States for economic reasons, but also in order to strengthen the strategic deterrence against China’s claims and actions in the South China Sea, while constantly promoting the primacy of the provisions of the U.N. Convention on the Law of the Sea and rules based conduct of the parties regarding the South China Sea.

***The Federation of Malaya (Malaysia)***

Malaysia's claims in the South China Sea concern 11 natural features in the Spratly archipelago, eight of which are already occupied by the Malaysian state, the other three being occupied by Vietnam and the Philippines. However, no incidents were recorded between the three states. Tensions were registered with China in February 1995 when a Malaysian military facility was built in response to the construction of Chinese bunkers on the Mischief Reef, claimed by Malaysia and occupied by China in the same year [39]. The first violent incident between the two states took place on March 23, 1995, when a Malaysian navy ship opened fire on a Chinese ship, injuring four members of the Chinese crew [39].

Malaysia is considered a "remarkably stable political order" [40], it is the world's third largest exporter of liquefied natural gas (after Qatar and Australia) and has good diplomatic and trade relations with China, focusing its foreign policy strategy towards avoiding all involvement in the rivalry between the great powers - named "coverage" policy. Malaysia prefers the peaceful management of the disputes over the military options. Its diplomatic approach aims at consolidating the concept of Zone of Peace, Freedom and Neutrality within ASEAN, according to the Declaration of the Foreign Ministers of Indonesia, Malaysia, Philippines, Singapore and Thailand from 1971. In 2009, Malaysia and Brunei settled their overlapping claims through bilateral agreement. Malaysia advocates for the non-alignment of ASEAN to any great power, while it is committed to supporting the diplomatic efforts of the United States and China in amicably resolving the dispute, without renouncing its maritime claims.

In 2019, the government of former Malaysian Prime Minister Mahathir Mohamad expanded the country's foreign policy directions, stressing that the government will continue its non-aligned position with the major powers and announcing plans to take the lead in promoting cooperation in the Muslim world. Malaysia's formal non-alignment strategy allows it to engage in important trade with China while benefiting from the protection provided by U.S. warships patrolling the South China Sea according to the Freedom of Navigation operations.

***Negara Brunei Darussalam (Brunei)***

Also known as the "silent plaintiff", Brunei has created an exclusive fishing zone in 1984, comprising three disputed formations in the South China Sea that are not formally claimed: Louisa Reef, Owen Shoal and the Rifleman Sandbank, all locate in the southern Spratly Islands. The state has no military presence in the area claimed as part of its exclusive economic zone [41].

Brunei is a small state with weak economic and military forces and little political influence in the area, which is why it has chosen to cooperate closely with China and depending on the 6 billion USD Chinese investments in the small Bornean state, constituted as a sultanate.

More recently, in the summer of 2020, the Brunei Ministry of Foreign Affairs gave a favourable voice to the positions expressed by the Philippines and Vietnam in ASEAN, considering a collective approach to ensuring free maritime traffic in the region under a long awaited Code of Conduct for the South China Sea under the auspices of ASEAN.

**Bilateral approaches**

A peaceful collaborative solution depends largely on China's will, given that an amicable settlement also depends on the Taiwan variable. The unification of this island with mainland China, regardless of the manner it is done, will redraw Chinese territorial waters and will provide a basis for enhanced Chinese claims over the South China Sea. In recent months, Chinese military officials have repeatedly asserted that the Taiwan Strait in East China Sea is not “international waters” [42]. Consequently, it should be noted that China's occupation of the high seas and natural features within the Nine-Dash Line in South China Sea is not an excluded scenario, as non-war military operations outside PRC can now be undertaken under a new six-chapter Chinese government order authorized by president Xi Jinping in June, 2022 [43] that represents the domestic legal framework for the Chinese army regarding the protection of Chinese interests abroad. The current global context is favourable to China that has the land, naval and air forces required to occupy the sea should the United States chooses not to intervene mainly due to the nuclear danger resulting in case of Chinese retaliation. As for the international community, it is today in a clearly different stance comparing to the 1990s (a suggestive example is the international cohesion during the invasion of Kuwait by Iraq in 1991) varying in a wide array of positions in order to maximize their interests (mainly economic and commercial ones) vis-a-vis China and the U.S.A. Possible economic sanctions would be of little impact on the world's second largest economy if not detrimental for many other countries relying their consumption on imports and exports from/to China. A Chinese quest for a peaceful collaborative solution would largely be determined by the prestige element that the Chinese ruling party relies on in its current foreign policy.

The most obvious stake for the non-Chinese disputed states in the South China Sea is to maintain regional stability and self-censorship capacity so as to comply with the principles of international maritime law, accepted and practiced by ASEAN members on disputes in the South China Sea (the 2016 Philippines arbitration case versus China being fully suggestive in this regard). As aforementioned, most of the claimant states are constantly advocating the preservation of the sovereign independence of coastal states, the joint rejection of any unilateral territorial expansion by a disputed party and maintaining the current status quo and the freedoms of the high seas as per the provisions of the U.N. Convention on the Law of the Sea.

For China, the main stake seems to be to gain regional supremacy, doubled by the need to increase the maritime area of ​​exclusive access to sea and subsoil resources, civil and military control over the sea, over the international maritime trade routes and relevant natural features down to the Straits of Singapore and Malacca and unhindered access to the Indian and Pacific Oceans.

All claimant countries affirm their need to access resources from the sea, fisheries and energy, as well as access to the maritime trade routes, including the benefits of collecting customs and port duties as a result of the significant transit of goods through the South China Sea (roughly one third of the world shipping transits the South China Sea [44]). Other additional issues, which are secondary to the disputes, but which are no less important, are the protection of the marine habitat in fishing and fossil fuel extraction activities, as well as the fight against very intense piracy, drug trafficking and Islamic terrorism on the sea routes.

It is therefore a major challenge to obtain an amicable solution that excludes unilateral occupation of the maritime area or unsatisfactory outcomes for one or more claimant states. Bilateral agreements are the foreign policy and trade instruments preferred in the countries of the Indo-Pacific region [45] with enduring national policies based on neutrality for the Southeast Asia states emerged from colonialism and in absence of traditional multilateral institutions.

China's preference for resolving disputes through bilateral dialogue exclusively with each of the complaining parties reflects its position to exclude third parties from talks or negotiations. Also, China's growing economic, financial-banking and trade influence in the region is a strong factor in modulating the will of the states involved in the disputes.

In recent years, China has stepped up its cooperation regarding environmental or safety of navigation themes with the other claimant states within the ASEAN framework (through ASEAN-China Dialogue Relations, ASEAN Regional Forums or the format ASEAN+3, meaning China, Japan and Republic of Korea). However with regard to the South China Sea disputes, China maintains a strong preference for agreements with each of the claimant member states of the Association, insisting that ASEAN is not a party to the dispute and that the issue can only be discussed on bilateral level with the actual claimants. Factually, the disputes concern various arrogated rights over sea and land areas, interfering or not with one another. It is easily noticeable that engaging relations on bilateral level allows China to defend its interests from the position of a higher economic power engaged in asymmetric relations with smaller claimant countries, depending on the Chinese trade and investments, which provides China with the ability to negotiate different terms with each individual claimant according to the Chinese objectives. The bilateral agreements have both an economic and a strategic importance for China, as in the construction of the 21st Century Maritime Silk Road, an essential component of the "One Belt, One Road" Initiative (BRI), designed to stimulate economic cooperation for common development in the South China Sea. The Initiative also aims to create maritime corridors, called "blue economic passages" that facilitate China's access to the oceans, such as the China-Indian Ocean-Africa-Mediterranean Sea, China-Oceania-South Pacific and the “Polar Silk Road” [46] through the Arctic Ocean, reflecting China's foreign policy strategy targeting open access to virtually the entire oceanic areas and capabilities to build port infrastructure on four continents.

**Multilateral dialogue and the need for cooperation**

A multilateral consensus reached by ASEAN and China regarding the Code of conduct of the parties in the South China Sea would represent a solid move towards cooperation, but it will not solve the overlapping claims. A synergetic legal commitment to solving the disputes would be required to all parties in order to reflect cooperation into amicably resolve the situation of the overlapping claims. Even in case of such cooperative demonstration, as there are no coercion instruments or entities under the international customary law destined to enforce the settlement, an enforcement authority may be created for such purposes.

China has good economic relations with its disputed coastal neighbours, sustained trade and investments. However, there is a worrying atmosphere about possible escalating conflicts in the South China Sea for the ASEAN complainants, who are divided in their positions on the issue of disputes, as Vietnam and the Philippines ascertain with clarity on international levele their respective claims; Malaysia is less vocal as it holds a significant Chinese minority comprising 23% of the country’s total population; Brunei is entirely dependent of China on economic and foreign investments levels and its claims are less consistent.

On a multilateral level, China is the initiator of a supranational zonal mechanism called the Spratly Resource Management Authority (SRMA), which proposes to the claimant states plus Indonesia to join. Indonesia has a clear reservation to the as it maintains its position of non-involvement into the disputes, in the sense that it does not claim any features of the South China Sea and therefore has no maritime boundaries with China, in response to China's claims that Indonesia's exclusive economic zone and continental shelf off Natuna Island overlaps Chinese Nine-Dash Line [47]. SRMA is developed through a set of joint schemes proposed by China to its coastal neighbours, consisting in economic incentives for the construction of the Hainan Free Trade Area, the construction of a common market for the exploitation of offshore oil and gas resources and future economic integration between coastal states and strategic incentives [48]. China's declared goal is of becoming a major maritime power, aiming to strengthen China's constructive role in maintaining a peaceful and stable sea, reducing the intensity of competition between China and the U.S. in the South China Sea and aiming to cooperation in order to develop good relations between coastal states.

The South China Strategic Sea Situation Survey Initiative (SCSPI) is a Chinese project launched in April 2019, destined to analyse the causes and manifestations of divergent claims made by the disputed coastal states over the South China Sea, in order to identify possible amicable solutions. However, no results of this project are available yet, except for the intensified Chinese survey activities in the sea [49].

A collective solution, even if more difficult to achieve, would be largely more satisfactory for all the parties involved and therefore able to provide stability on longer term than in the case of separate bilateral talks that may generate stalemates in the enforcing process.

The cooperation platform provided by the ASEAN framework would be efficient if the claimant states - ASEAN members, would first solve the differences regarding the delimitations of their maritime borders, in bilateral settlements, as in the case of Malaysia and Brunei in 2009 (the Exchange of Letters from March 16, 2009) and subsequently attempt resolution with China.

A vehicle to accommodate cooperation is the Comprehensive Regional Economic Partnership (RCEP) of November 2020, the largest free trade bloc in the world, considered an instrument that encourages pan-Asian regionalism, meant to reduce the influence of the United States in the region, which could offer a framework for the sea disputes resolution, as it hosts all the claimant states that are parties of the respective free trade agreement.

Another cooperative vehicle that may put in place an amicable solution is the Council for Security Cooperation in the Asia-Pacific (CSCAP), as the disputes represent a potential threat for the regional maritime security that becomes a central issue in the Indo-Pacific region, due to the importance of international maritime flows and the arsenal of port infrastructures for the ships from around the world available in the South China Sea. The use of such a dialogue vehicle require an arrangement or a subcommittee regarding Brunei, which is not a party of CSCAP.

Despite the Chinese preference to solve the South China Sea disputes only inside the claimants arena, effective cooperation tools could also be coagulated together with other states with interests in the area, such as the United States, along with Japan, Australia and India or the European Union. They could have a say in future developments in the South China Sea disputes, through joint political and diplomatic action to support ASEAN, by redirecting trade from China and by intensifying trade with ASEAN countries, consisting of ten states with a combined GDP of about 3 trillion USD and an aggregate population of over 681 million.

**Conclusions**

The disputes in the South China Sea have multileveled nature and reverberates over the dynamics of the Southeast Asia area international relations, with implications throughout Indo-Pacific. One of the levels, captured in this paper, is represented by the need for the claimant parties to act beyond the choice between bilateral or multilateral settlements for the South China Sea disputes. The national interests of the concerned states encapsulated in their national policies do not constitute directions towards solving the disputes, but only foreign policy unilateral objectives. It is therefore of great importance that the claimant countries to engage into realistic cooperative dialogue in order to make steps into an amicable and satisfactory peaceful outcome for all states involved.

Some of the peaceful ways to deal with the dispute may become stressors, as in the case of (i) a possible postponement of the adoption of a Code of conduct by the parties in the South China Sea, long awaited by the complaining ASEAN Member States; or (ii) lack of binding nature of such, mandatory for its parties, or (iii) the proposal of a “leonine” formula (in the sense that its provisions would, in fact, benefit only one of the parties), which could be a factor in straining relations between some coastal states and China. Another stalemate in an amicable attempt to solve the disputes would be (iv) the initiation of arbitration or court proceedings by any claimant state, in order to capitalize on its claims under the provisions of the international law. In case of arbitral proceedings before the Permanent Court of Arbitration, the parties must agree in advance on the initiation of arbitration and are free to choose the arbitrators. The Court award is final and binding for all parties, but it requires voluntary compliance of the disqualified party, which may reject the award, as no effective sanctioning system is in place.

Also, the continued Chinese policy of postponing the identification of a fair solution for the parties involved, doubled by the increase in trade and Chinese lending to coastal states, could be a strategy to significantly increase the dependence of the claimant states on China, which could generate vital influence in future negotiations of the claims, with China even being able to acquire natural features of their sea in exchange for dropping claims.

Given the importance represented by the South China Sea as a main international maritime route, the need of real enhanced cooperation for China and the other claimant countries in order to maintain good trade relations between each other and with the rest of the world is essential for the wellbeing of their nations. The perspective of a military confrontation in the South China Sea relating to the overlapping claims is reduced. However, a unification of China with Taiwan could lead to a more assertive posture of China before the other claimants in the South China Sea disputes and may be accompanied by unilateral imposition of the Nine-Dash Line maritime space, resulting into the occupation of the natural features without any bilateral or multilateral agreement concluded with other coastal states.

Developing cooperation mechanisms designed to foster dialogue based on mutual respect between all parties involved and on enduring compromise seems to be the peaceful manner to deal with the divergent claims. Many of the documented sources consider the Nine-Dash Line as a key geographical landmark for Chinese claims, but this author would appreciate that a compromise on its demarcation is not impossible, as the “line” *per se* has no international historical use (it was only recently asserted internationally, as of 2008). The use of sea routes and fishery resources in the sea over the centuries, along with other coastal states - in their various forms of organization - are of notoriety and documented over time and a peaceful continuation of such legacy would stabilize the area and strengthen the relations between the coastal countries around South China Sea.

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