



XITH EDITION

Research Dart
International Court of Justice

Chapter I

Facts and Background

1.1 Definitions

Many fundamental principles of international law require an understanding of what a law, concept, or institution is made of. This section aims to outline the ones that Judges to this opinion will rely upon the most.

- ***The International Court of Justice***, also referred to as the World's Court, is the principal judicial organ of the United Nations. Other Courts that rule upon international law that are of concern to this opinion include the Permanent Court of Arbitration (an observer to the UN) and the International Tribunal for the Law of the Sea (an independent entity that was drafted by the UNCLOS).
- ***Sovereignty*** is the right of a state to govern itself. It is the authority of a state in the decision making process and within its government. The United Nations Committee on the Elimination of Racial Discrimination has stated that the right to self-determination involves “the right to all peoples to pursue their economic, social, and cultural development freely without outside interference.”
- ***Freedom of navigation*** is one of the oldest principles governing ocean space. It is considered the right for vessels to navigate streams passing through two or more states.
- ***Exclusive Economic Zone (EEZ)*** under the United Nations Convention on the Law of the Sea is defined as an area of the ocean extending up to 200 nautical miles beyond a nation's territorial sea, within which a state has jurisdiction over the living and nonliving resources of that zone.
- A ***communiqué*** is a formal announcement, report, or statement issued by someone in authority, such as the United Nations, that is then sent to a body of people or a media outlet.
- A ***treaty*** is a legally binding agreement between multiple states.

1.2 Defining the South China Sea

- The South China Sea is located within the Strait of Malacca in the southwest to the Strait of Taiwan in the northwest. It is a water body in the western Pacific Ocean, encompassing China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, Singapore, Cambodia, Thailand, and Vietnam.
- The South China connects world trade throughout the Pacific and Indian Oceans.²³ More than half of world maritime trade passes through the South China Sea as the world's busiest shipping lanes pass through the Islands. In 2023 alone, 10 billion barrels of petroleum and petroleum products and 6.7 trillion cubic feet of liquefied natural gas passed through the Strait of Taiwan. Numerically, the aquatic trade routes account for nearly 75 percent of China's oil imports, between 85 percent to 90 percent of Japanese and South Korean oil imports, and 33 percent of Japanese and South Korean liquefied natural gas.
- As reported in 2016, approximately USD 3.4 trillion worth of international shipping trade passes through the South China Sea each year. Because Northeast Asia is highly dependent on the flow of oil and commerce through the shipping lanes of the South China Sea, maintaining an open flow of trade is an important economic and security concern for many countries.
- Within the sea, there are over 250 islands, atolls, and shoals grouped into three main archipelagos. An atoll is a ring-shaped island that, at its core, has an open lagoon and is bordered by a coral rim. On the other hand, a shoal is a naturally submerged sea, lake, or river that is covered, in part, with sand. The three archipelagos in the South China Sea are namely Pratas (or Dungsha), Paracel Islands (or Xisha), and of greatest significance to this opinion, the Spratly Islands (or Nansha).
- The Spratly Islands consist of more than 100 small islands and reefs surrounded by fishing grounds and oil and gas reserves underneath the islands themselves. The waters adjacent to the Spratly Islands are critical to international trade and foreign interests. The states that surround the South China Sea rely heavily on the region for their economic growth and political stability.
- As a result of its geostrategic position, the Spratly Islands archipelago is claimed by the People's Republic of China (China), the Republic of China (Taiwan), Vietnam, the Philippines, Malaysia, and Brunei. With several countries claiming sovereignty over differing islands in the archipelago since the 1970s, ongoing territorial disputes persist.

1.3 Context w.r.t Spratly Islands

- Before the multi-country claimants over the Spratly Islands, the archipelago was occupied by Japan during World War II, where it was utilized as a submarine base. When Japan revoked its claim over the Islands in 1951, Taiwan, China, and Vietnam all declared themselves the rightful owners across the whole archipelago. Four years later, the Philippines claimed it had ownership as a result of its proximity to the Islands.
- Following extensive geological surveys in 1968 and 1969, a report published by the UN Economic Commission for Asia and the Far East reported there were “substantial energy deposits” in the seabed between Taiwan and Japan known as the East China Sea. Cross-country dialogue on energy exploration prompted consequential oil exploration in the South China Sea. In 1973, major oil fields were found just south, west, and immediately east of the Spratlys, making them extremely desirable to the Southeast Asian countries that border them.
- As the Islands fall geographically between the coast of Vietnam on the west and the Philippines to the east, the position of the Spratlys is a potential blocking spot for ships needing to travel through the South China Sea. An airfield in the Spratlys may establish a military presence that would halt shipping in the South China Sea, creating a blockade to the economic prosperity of states.
- Both of these strategies have become realities within the region as China, Taiwan, Vietnam, the Philippines, and Malaysia physically occupy parts of the islands. From the development of lighthouses and weather stations to the creation of military bases and naval patrols to protect their small claims, hostility in the region has been growing for decades.
- China especially claims to hold ownership over the entirety of the Spratly Islands, asserting that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters.” In essence, China, with the desire to make use of the sea’s estimated eleven billion barrels of oil and 190 trillion cubic feet of natural gas, has antagonized other Southeast Asian countries considered claimants to the Islands. While eleven billion barrels is a considerably small oil reserve—only enough to power China for about 3 years—the natural gas reserves could power China for more than 30 years.

1.4 Implications of the Nine-Dash Line

- The Chinese government published the first dashed line in 1947 in the shape of a U with eleven dashes encompassing the perimeters of the South China Sea. However, by 1952, the number of dashes was reduced to nine. This was because of a negotiation between China and Vietnam over the Gulf of Tonkin. While Taiwan refers to perimeters as an eleven-dash line, this opinion will follow the widely recognized nine-dash line when referring to China's territorial claims.
- According to Chinese history books, China discovered the islands in the South China Sea as early as the second century B.C., marking the beginning of Chinese exploitation and development. In The Three Kingdoms Period of China in which the nation's regions were at war with each other, the books *Nansho Yi Wu* (Strange Things of the Southern Provinces) by Zhen and *Fu Nan Zhuan* (An Account of Fu Nan) by Kang Tai revealed the geographical features of the Islands post-discovery. Details of the books went so far as to recount the living quarters of those who lived on the Paracel and Spratly Islands. Additionally, China argues it has a historical claim to the South China Sea, due to its previous naval expeditions during the 15th century.
- Beyond the books, Chinese historians argue that maps dating back to the late 1700s and early 1800s provide evidence that the Paracel and Spratly Islands are Chinese territories. It was made official on December 11, 1947, by the Ministry of Interior of the Republic of China when China announced its claim to the Islands. The claim covered the majority of the Sea, including the Pratas Islands, the Macclesfield Bank, and the Paracel and Spratly Islands, which China regained from Japan after World War II.
- The Islands had been in Japanese possession following the signing of the Treaty of Shimonoseki after the Sino-Japanese War on April 18, 1895. While the Sino-Japanese war, fought between China and Japan, was over control of Korea, China was forced to cede territories, including the Islands, to Japan.
- Once Japan revoked its claim to the Islands after World War II, China took advantage of the moment to reclaim it, beginning to draw the dashed line to reflect its territorial claims. China relies on a variety of prior legislation to affirm its claim to the region, including the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf and the 1996 Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea.
- In 1949, Chinese communist leader Mao Zedong established the People's Republic of China (PRC). The Chinese Communist Party (CCP)-led government removed the portion encompassing the Gulf of Tonkin from the eleven-dash line four years later. It was and is known as the nine-dash line.
- The nine-dash line, while criticized and discounted by other South China claimant countries for its illegitimacy, is the standard in official Chinese maps whereas it is almost non-existent in non-Chinese maps. This has sparked public controversy in the media world as producers and

filmmakers alike leave images of maps containing the nine-dash line in the background of scenes. Vietnam banned the Warner Bros studio Barbie movie and the film Uncharted, both of which depicted scenes or maps containing what was seemingly the nine-dash line.



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1.5 Island Building Consequences

- From December 2013 to October 2015, China built artificial islands of nearly 3,000 acres on seven coral reefs in the Spratly Islands. To build these islands, China relies on dredgers, which are pumps that remove huge amounts of sand from the ocean floor to build infrastructure and land reclamation projects. The dredgers gather and deposit sand and gravel on top of the reefs to create man-made islands.
- On the world stage, China is known for having reclaimed the most land from sea through a land reclamation strategy that prioritizes growth relative to the scale of the country. The scale and speed of China's activities in the South China Sea are a major concern to its neighboring Southeast Asian country claimants. By 2015, China had reclaimed 3,000 acres in comparison to Vietnam (80 acres of land), Malaysia (70 acres of land), the Philippines (14 acres of land), and Taiwan (8 acres of land).
- Reclamation efforts are destroying the highly biodiverse aquatic life in the South China Sea as it is home to 571 species of coral reef, with the Spratly Islands carrying 333 coral reef species alone. China's island-building has exacerbated the coral reefs, such as the Fiery Cross Reef and Mischief Reef, destroying coral and other organisms and leading to the dispersion of heavy metals, oil, and other chemicals coming from the ships and shore facilities constructed.
- Chinese dredgers in the Spratly Islands follow a shallow-water dredging process that removes sand, gravel, and the ecosystems of the lagoon and the reef, implicating aquatic life in the region. As the dredgers pump sand, it damages the coral and blocks sunlight that cannot survive without it, such as reef building corals.
- With the damage of the dredgers, the reefs are not able to fully recover for up to ten to fifteen years. Beyond the destruction of these natural ecosystems, the damage may impact fisheries in Southeast Asia, which form a critical food source for coastal populations.
- China intended to use the islands to support fishery production and service, aiming to increase the number of fishing boats to provide shelter, repair, and replenishment services. For example, Fiery Cross Reef, a natural landmass less than 10,000 square meters in size, has been occupied by China since 1988 when it was under a charter to build weather stations for the UN; however, scientists admitted that they had been unaware of the conflicts in the region. Today, it is China's largest airbase in the Spratly Islands. This actualizes a concern that has grown over recent years as Chinese Coast Guard vessels hoping to protect fishing boats clash with those of other Southeast Asian countries.

1.6 Past Infringement on Territorial Claims

- Although Taiwan, China, Vietnam, and the Philippines all declared themselves rightful owners of the Spratly Islands, many claimants are willing to go to combat over what they perceive to be their territory. Vietnam claims it has had possession over the Paracels and Spratly Islands since 1650, having maintained troops on at least twenty-two parts of the Spratly Islands since 1973. Despite Chinese military units claiming sovereignty over the Spratly Islands in 1974, South Vietnam occupied part of the Islands in 1975. North and South Vietnam unify in 1976.
- In 1978, China launched a war against Vietnam for invading and occupying the communist-Chinesebacked Khmer Rouge regime in Cambodia. Tensions between China and Vietnam rose in what became the Sino-Japanese War, with China failing to coerce Vietnam to leave Cambodia. This was the first in a series of conflicts between the two states over border disputes. On March 14, 1988, conflict broke out on the Johnson Reef between China and Vietnam, marking China's first armed conflict over the Spratly Islands. A Chinese navy ship sank three Vietnamese ships, killing seventy-four sailors. This comes right after China occupied Fiery Cross Reef in January 1987. In retaliation, Vietnam occupied several reefs to watch over China's moves.
- Around the same time, the Philippines built an airstrip in 1976 on Pagasa Island in the Spratly archipelago, one of the many islands that the Philippines claims. In September 1994, the Philippines armed forces detained fifty-five Chinese fishers, charging them with illegal entry and possession of explosives. In response, China detained thirty-five Filipino fishers for a week in January 1995. Just one month later, on February 8, 1995, Philippine authorities identified eight Chinese ships near Mischief Reef.
- In April 1995, Philippine authorities published the arrest of sixty-two Chinese fishermen, calling upon both the international community and media outlets to demonstrate China's disregard for the Philippine's claims and sovereignty as it fell within the Philippines exclusive economic zone under the United Nations Convention on the Law of the Sea (see more on EEZ and UNCLOS in Chapter II). Sovereignty is defined as the ability of a state to govern itself.
- By laying Chinese markers in the form of protected species of sea turtles and other Chinese materials, the Philippines contested that China violated Filipino and international law. This marked the first conflict between China and an ASEAN (Association of Southeast Asian Nations) member other than Vietnam.
- On March 18, 1995, ASEAN Foreign Ministers issued a joint statement expressing concern over the growing regional instability in the South China Sea, making it the first time issues in the South China Sea have been discussed multilaterally. China and ten ASEAN states reached an agreement, releasing the ASEAN-China Declaration on the Conduct of Parties in the South China Sea to create guidelines for resolving conflict. The agreement follows six years of negotiations.
- Despite attempts at reconciliation following a series of clashes in the South China Sea between China and ASEAN states, tensions started to rise again as the islands became more militarized. In 2012, a decade after the agreement was signed, China invaded Scarborough Shoal, a Philippine-controlled chain of reefs and rocks that is the largest atoll in the South China Sea.

Chinese coast guard ships set up barriers to the entry point of the shoal, employing what is known as the cabbage strategy.

- The cabbage strategy is a form of swarming and overwhelming other states' territories into pressuring a state to cede their territory. By surrounding Scarborough Shoal, which is located 124 miles off the Philippines and inside its EEZ, with Chinese coast guard ships, China left the Philippines in a standoff for the shoal. Chinese dinghies were tied together to block the lagoon's entrance despite a commitment to pull out all vessels inside the shoal. Although the Philippines appealed to ASEAN to "take a stand," failure to resolve the conflict diplomatically escalated the situation.
- Ultimately, China, with the constant deployment of coast guard and fishing boats, seized Scarborough Shoal. The conflict at Scarborough Shoal prompted the Philippine government to appeal China's violation of the Philippine's sovereignty to the International Court of Justice (see more on the ruling in Chapter II), where the Permanent Court of Arbitration made its ruling.

1.7 Past Reactions & Mediations

On July 12, 2016, the Court ruled in favor of the Philippines, determining that major elements of China's claim over the South China Sea, such as the validity of its nine-dash line, land reclamation efforts, and infringement on Philippine waters, constitute violations of international law. Mediation attempts have been made by ASEAN states to hold China accountable despite pushback.

- After the ruling was released, the Chinese government issued a White Paper that declared no participation, no recognition, no acceptance, and no compliance. Chinese Foreign Minister Wang Yi states that the Court lacked jurisdiction as the initiation of the arbitration, formation of the ruling, and its eventual outcome were all illegal.
- China's rejection of the ruling comes from its need to make due on its promise to the Chinese people that they would be able to recover all of its rightful territory and grow as a superpower on the world stage. Backing down would risk China's loss of the resources in the South China Sea.
- To undermine the ruling, Beijing claimed that the arbitration was part of an anti-China plot between Washington D.C. and Tokyo. This tactic, in which a state blames another country for its troubles to redirect the public's attention, is commonly used by the Chinese government. Xinhua News Agency, the official state press agency of China, published an article alleging that the ruling was a trap between Japan, the United States, and the Judges of the Court, all of which were bribed by the Philippines.
- Media campaigns by the Chinese government were spread throughout the world, including a New York City Times Square broadcast featuring Beijing's position over its claim to the South China Sea. To further delegitimize the ruling, China sent strategic bombers to fly over Scarborough Shoal, announced tourist cruises to its claims in the South China Sea, and revealed new military combat. In this show of Chinese power, China hoped to discourage the Philippines, the United States, Japan, and other claimants from taking action against China.
- By reaffirming its "territorial sovereignty and maritime rights" in the South China Sea militarily, the Chinese government expressed that the ruling had no binding force. China's failure to acknowledge the validity of the ruling is an important burden for the international community at large. If China is unwilling to follow the Court's decision, it sends a signal to the rest of the world that adherence to international law is optional.
- While advisory opinions are non-binding on the respective parties they concern, Article VII, Section 30 of the General Convention iterates that parties must accept the ICJ's advisory opinion as decisive. China's unwillingness to accept the decision bodes unwell for the international community.
- Foreseeable conflict in the South China Sea and across Southeast Asia led to the creation of ASEAN, an agreement between countries devoted to transnationalism and to form regionalism. Transnationalism is the exchange of economic, political, and cultural processes that contribute to globalizing a state. Slowly, ideas of self-determination and national interest were exchanged for solidarity and regional cohesion.

- ASEAN, or the Association for the Southeast Asian Nations, was founded under principles of non-interference, quiet diplomacy, no use of force, and decision-making through consensus. These four pillars form the basis of the ASEAN Way. The principle of non-interference and the basis of quiet diplomacy ensures that countries do not interfere with another state's internal issues and when handling external issues, they are dealt with diplomatically. ASEAN states include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

1.8 International Response

- As it concerns the South China Sea, ASEAN remains divided over how to approach China's assertiveness and dominance. China's fight in its geopolitical battle with the Philippines, dismissing the verdict as illegitimate and revealing strategic bombers and ballistic missiles placed on its man-made islands in the region.
- Part of its willingness to disregard the ruling alongside China stems from a state's necessity to maintain diplomatic relations with China. In the case of Cambodia, relations with China are crucial for Cambodian security, with China allocating economic funding, political support, and military assistance. While Cambodia is an ASEAN state that should, in theory, practice the ASEAN Way, it prioritizes its ties with China to better its own country.
- In July 2016 at the ASEAN summit following the Permanent Court of Arbitration's decision, many ASEAN states, including the Philippines and Vietnam, wanted the group to adopt a separate statement on the ruling or issue a joint statement on the need to respect international law.¹⁰⁸ However, before the meeting, Cambodia opposed the proposed wording, supporting Beijing's opposition to any ASEAN stance on the South China Sea.
- Despite the disagreement, ASEAN adopted a joint communique that highlighted regional and international issues, including the South China Sea. Still, the language used waters down the language needed to hold China accountable. The phrase "full respect for legal and diplomatic processes" within a list of principles appeared in a draft of the communique yet was noticeably removed in its entirety from the South China Sea section. Although China is not an ASEAN member-state, it reflects its influence on those who are, halting the regional group from reaching widespread agreement.
- Relations between China and the Philippines changed entirely after Rodrigo Duterte, who intended to reach a compromise with China, was elected President of the Philippines in May 2016. After a series of foreign visits between the two countries, China President Xi Jinping exclaimed that China and the Philippines were brothers who would "appropriately handle disputes" through bilateral talks.
- In response to the Philippines' dramatic shift towards China, Beijing offered the Philippines 9 billion dollars in low-interest loans and permitted Filipino fishermen to resume fishing at Scarborough Shoal. President Duterte stopped pressing China about the arbitration and ignored China's militarization in the South China Sea.
- Ignoring China's dredging and reclamation activities on reefs within the Philippines EEZ, President Duterte expressed that it was fruitless to pressure Beijing over its maritime activities. As the Philippines hosted the 2017 ASEAN summit, calls for halting land reclamation and militarization in the South China Sea that were initially introduced were later dropped.
- China effectively silenced the Philippines and ASEAN at large over the ruling that was heavily contested. Even the United States, a champion for diplomatic relations, backed away from its initially strong position to avoid confrontation with China. John Kerry, then United States Secretary of State, expressed to Chinese Foreign Minister Wang Yi that "the international

community needs to be patient and flexible and not put China in a corner, while China must reformulate its policy in line with international law.”

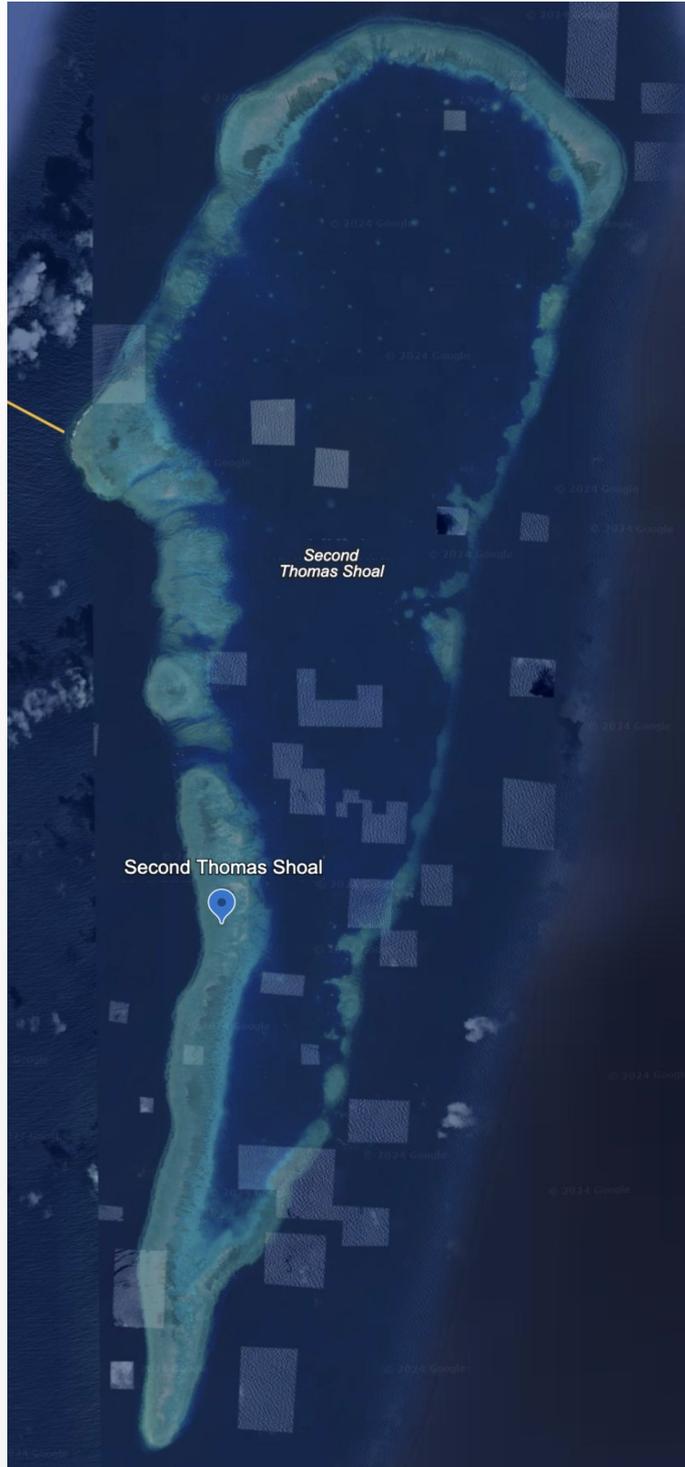
1.9 Recent Infringement on Territorial Claims

- On May 18, 2018, a Chinese bomber landed on an island reef in the South China Sea for the first time in history. The long-range H-6K bomber was among those in a Chinese military drill to test whether China could reach all of its territories.
- Experts from the Asia Maritime Transparency Initiative said a video from the Chinese Community Party's People's Daily newspaper revealed an H-6K landing and taking off from a base on Woody Island, the largest of the Paracel Islands.
- Nearly a year later, on April 5, 2019, President Duterte warned China that he would send a "suicide mission" if Beijing did not stop interfering with the Philippines-occupied island after as many as 275 Chinese boats and ships had been spotted by the Island in the past few months.
- Between China and the Philippines' long-shared history in the South China Sea, President Duterte is unwilling to tolerate China's swarming tactics. Of the ships swarming the Philippines Thitu Island, some of these ships have been identified as fishing vessels, Chinese Coast Guard ships, and Chinese military navy ships. The Asia Maritime Transparency Initiative speculated that the increase in ships acted as a response to the reclamation and construction of a beaching ramp by the Philippines government. The beaching ramp would make it easier to deliver construction equipment and supplies to the island.
- On July 3, 2019, Chinese survey ship, Haiyang Hizhi 8, and escort ships entered Vietnam's EEZ near an offshore oil block. Vietnamese officials demanded China remove the ships, but the ship did not leave until October. This standoff prompted international members to view this as China demonstrating its influence in the region, reducing the Vietnamese government to passively calling for reconciliation whilst maintaining its independence.
- Throughout the coronavirus pandemic in 2020, China became more assertive in its claims, especially those against the Philippines and Vietnam. In February, a Chinese naval ship reportedly aimed its weapon control system at a Philippine naval ship in the Spratly Islands. China opened new research stations containing defense silos and military-grade runways on Fiery Cross and Subi Reefs in March, and, by May, Beijing established two administrative districts to watch over the Paracel and Spratly Islands. At this point, both the Philippines and Vietnam have written formal complaints calling China out for its actions considering that a Chinese vessel ram and sunk a Vietnamese fishing boat by the Paracels Islands.
- After four years of siding in and out with China on the 2016 Court ruling, President Duterte voiced strong support for the decision, arguing that China was violating its sovereignty by claiming islands within the Philippines EEZ. In an opening speech to the 75th session of the General Assembly on September 22, 2020, President Duterte addressed the significance of the ruling in international law, which reflects a hardening of the Philippines' position on maritime disputes.
- Duterte recognized the number of countries, including France, Germany, and the United Kingdom, who have come forward offering their support for the ruling. In March 2021, China deployed two hundred ships to Whitsun Reef, part of the Philippines' EEZ; it is not until 2023,

with new Philippine President Ferdinand Marcos Jr. in office, that the state welcomes the U.S. military onto its bases.

1.10 Second Thomas Shoal

- The Second Thomas Shoal is a submerged reef in the Spratly Islands possessed by the Philippines since 1999. It is located less than 200 nautical miles from the Philippines' province of Palawan and is in its EEZ. The outpost is the BRP *Sierra Madre*, a Philippine Navy transport ship grounded on the reef and regulated by Philippine marines.
- While the Philippines regularly rotates and resupplies missions to deliver supplies and troops to the outpost, China has harassed its mission since 2013. However, since 2022, Chinese coast guard and militia ships have sought to block resupply missions more regularly, employing aggressive tactics to prevent Philippines vessels from reaching the Sierra Madre. In 2023, the average yearly number of ships during resupply missions jumped by nearly an additional ten ships by China.
- China's repeated attempts to blockade the Second Thomas Shoal have made it significant to both sides. Chinese forces seized two Philippine rubber boats delivering food and other supplies in a confrontation that left Filipino navy members injured. United States Secretary of State Kurt Campbell discussed China's actions with his Philippine counterpart, Maria Theresa Lazaro, in which the pair agreed that China's actions threatened regional stability. Campbell reaffirmed that the 1951 U.S.-Philippine Mutual Defense Treaty obliges the U.S. to defend the Philippines in times of conflict, including that at Second Thomas Shoal.
- The BRP Sierra Madre remains an actively commissioned military vessel, meaning an attack on it would be determined as an act of war by China against the Philippines. To be more specific, Philippine President Marcos Jr. explained that if a Philippine citizen were to be deliberately killed in a clash with the Chinese Coast Guard, it would constitute war.
- As tensions continue to grow, it is imperative that action be taken, whether it be denouncing China's actions in the South China Sea or clarifying the rights of claimants over their sovereignty and territory. In resolving this issue, it is important to keep in mind global interests and allies when discussing issues such as freedom of navigation and the right to self determination.



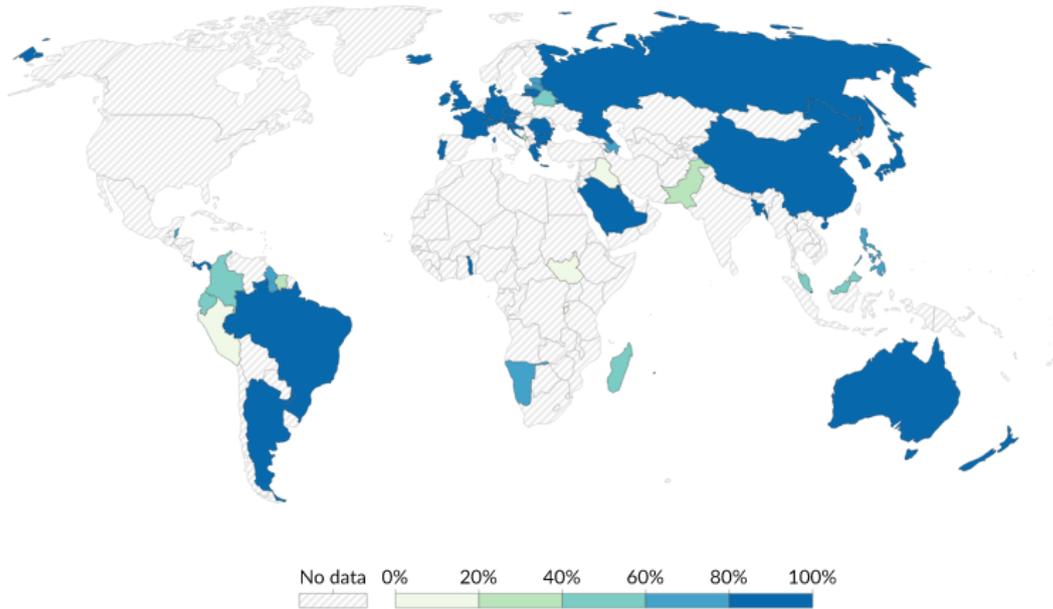
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Progress towards the implementation of UNCLOS, 2023



Progress in implementing the United Nations Convention on the Law of the Sea through legal, policy and institutional frameworks. Higher values indicate greater progress.



Data source: UN Office of Legal Affairs

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Chapter II

Matters in lieu for legal consideration

2.1 Adherence to International Law

- In crafting a world order, one respected and bolstered by the member states of the United Nations, a balance must be struck that honors a state's sovereignty yet holds its political and social decisions accountable. As the UN was created to promote international cooperation and dialogue after World War II, its resolutions and treaties actively work towards reaching that balance. While international law is a set of rules and obligations that states and non-state actors recognize as "binding" on each other, there is no mechanism to enforce these laws.
- The UN Security Council (UNSC) is the exception in enforcing binding legislation and treaties as it can impose sanctions and authorize the use of force through peacekeeping missions. Considering that the United States, France, United Kingdom, China, and Russia are permanent members with veto power over proposed missions and resolutions, it perpetuates a lopsided balance of power. To enact any meaningful change, unanimous support is needed, a daunting task for many a sensitive issue.
- According to Article 23 of the UN Charter, ten non-permanent members are elected by the General Assembly for a term of two years. Under Resolution 1991 A (XVIII), the General Assembly in its eighteenth session decided that the non permanent members should be elected in a pattern that promotes equal opportunity and representation between African, Eastern European, Latin American, and Western European States.
- As it is very difficult for any resolution to find support across all members, accountability rests in the hands of the international community. By drawing attention to abuses, threatening state sanctions, relying on diplomatic pressure, and appealing to international courts, like the ICJ, victimized states and communities may defend their rights.
- Despite China's effort to minimize dialogue both over the South China Sea and its arbitration against the Philippines in 2016, maintaining discourse is imperative for addressing the issue. In a summary of the Legal Committee's meeting coverage from its seventy-fourth session (GA/L/3597), delegates noted that implementation of the rule of law principle on the international level, specific to the area of conflict resolution, "was being undermined by States failing to adhere to their international obligations, along with selective enforcement and exploitation of existing frameworks and mechanisms."
- In that same statement, the representative of Vietnam recognized that the State's failure to follow international law perpetuates global tensions as he urged parties in the South China Sea to be courteous of international law, specifically the UNCLOS. Action cannot be compensated for urgency, thus bringing forth this opinion.

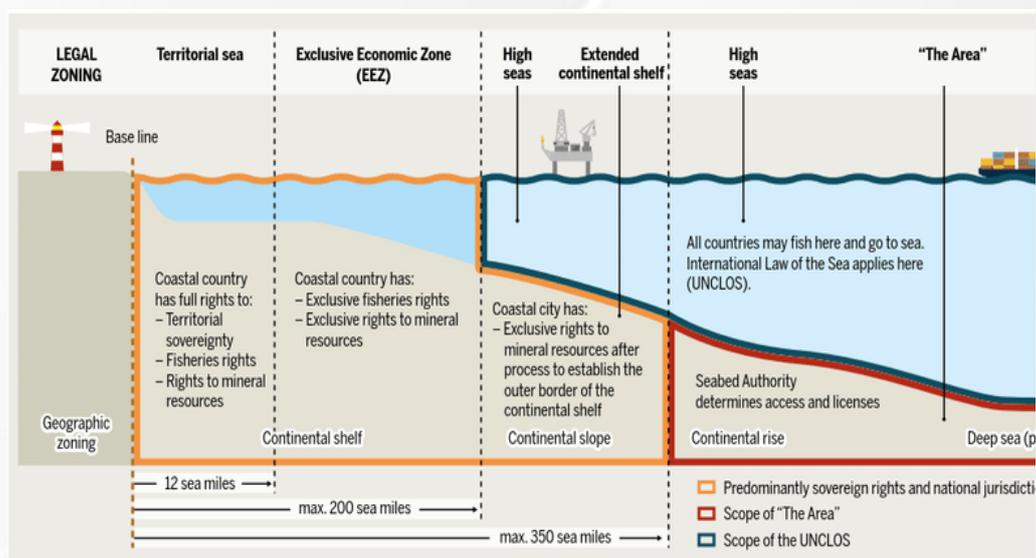
2.2 Navigating Jurisdiction to Interpret UNCLOS

- Advisory opinions are distinct from contentious cases, such as the *Philippines v. China*, in their jurisdiction. Under Article 96, paragraph 2, of the Charter states that “other organs of the UN and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.” The International Maritime’s mission is “to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation.”
- In a contentious proceeding, jurisdiction is reliant upon the consent of the States. However, in which a treaty contains clauses relating to the jurisdiction of the Court, as does the UNCLOS, the Court may interpret this. Under Article 287 Section 2, UNCLOS outlines the choice of procedure: “When signing, ratifying, or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of written declaration, one or more of the following means for settlement of this Convention: The International Tribunal for the Law of the Sea was established in accordance with Annex VI; The International Court of Justice; An arbitral tribunal constituted in accordance with Annex VII; A special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.”
- While this opinion is not a contentious case in that it does not prosecute or charge a certain state or does not address a conflict between solely two parties, it is important to recognize how the functions of the ICJ overlap with each other. Additionally, it is important to understand how, in past ICJ precedent, states have failed to consent to the Court’s jurisdiction. This was the case for China in the *Philippines v. China*.
- China interprets compulsory jurisdiction as against its state sovereignty. The state views it as an attack on their institutions. China follows the practice of state immunity, which is a principle of international law that states employ to claim that a particular court or tribunal does not have jurisdiction over it. China often avoids ratifying treaties that require compulsory jurisdiction, which would require it to adhere to the Court’s ruling. In cases in which it has submitted to that jurisdiction, China attempts to control and influence the panel of judges deciding its case.
- Although China has ratified the UNCLOS, it fails to submit to its provisions. China is not the only state that has disputes over the specifics of the Convention, such as the boundaries of the EEZ and military operations. The Judges of this Court must not overlook the state’s scrutiny of the provisions and clarify the interpretation of the Convention for all claimants of the South China Sea and, at large, territorial waters.

2.3 Clarifying UNCLOS Provisions

After advisory opinion requests have been filed, the Court calls upon states and international organizations to introduce relevant information on the questions before the Court. Judges may anticipate that written statements and oral proceedings will be introduced during the Committee Session. Judges need to be familiar with some of the more specific provisions of UNCLOS.

- Under UNCLOS, offshore maritime features can either be islands, rocks, or low-tide elevations (LTEs). Under Article 13, low-tide elevations are maritime features that are only visible at low tide. Because they are submerged at high tide, they do not generate any maritime zones around themselves.
- Under Article 121, any natural high-tide feature at sea that can either support permanent life or provide economic materials independent from the mainland is considered an island. However, if a maritime feature lacks both of these elements, it is considered a rock. While islands can generate maritime territory over their territorial sea and EEZ, states may only claim a 12 nautical mile territorial sea around it.
- Most significantly, while states can claim sovereignty over offshore rocks and islands, LTEs do not bear any legal status. If an LTE is located within a territorial sea or EEZ of a state, it automatically belongs to that state.
- Regarding the aforementioned Second Thomas Shoal, the Court ruled that it is an LTE. While this means that no country can claim sovereignty over the shoal, it is within the EEZ of the Philippines. Therefore, the Court ruled that the Philippines has sovereignty over the Shoal. This analysis is important to determine what an offshore maritime feature constitutes and how UNCLOS interprets it.



Arjen Richard Boon via Researchgate

2.4 Legal Violations

- The principle of freedom of the seas is defined as the treatment of the world's seas under international law in international waters. Freedom of the seas is often interchangeable with freedom of navigation, which is the right to the use of the sea guaranteed to all countries. Article 89 of the UNCLOS states regarding the freedom of the seas that “no state may validly purpose to subject any part of the high seas to its sovereignty.”
- China's interpretation of UNCLOS prompts its violation of the freedom of the seas through its use of the nine-dash line and belief that coastal states have the right to regulate activities of foreign military forces in their EEZ. This prompted international concern as a challenge to a principle in international law, if accepted, may serve as a precedent for challenging the principle in other parts of the world.
- Some states are concerned that China's actions in the South China Sea and, on the international stage, Russia's actions in Ukraine, follow a “might makes right” principle. By using what is otherwise referred to as the law of the jungle, Judges need to recognize that these constitute violations against treaties and conventions like the UNCLOS.
- There are several methods in the international field to acquire state territory. These include discovery, occupation, prescription, and conquest. China's claims over the Islands in the South China Sea are based on discovery and occupation.
- Effective occupation is a doctrine in international law that holds that a country can only claim sovereignty over a territory it has effectively occupied. It can also encompass free newly discovered territory exercised by a power with no sovereign title to the land. Under international law, the peaceful acquisition of territory must either not belong to any state or, if occupied, be in a visible and effective manner.
- While the question became whether China exercised “continuous and peaceful occupation of state authority after discovery,” the reality seemingly shifted after the ratification of the UNCLOS. The Judges must deliberate on this regarding its interpretation.
- The law of occupation under international humanitarian law oversees when a foreign power takes control of a territory during armed conflict. China's reliance upon its cabbage and salami strategies, in which its coastal navy encompasses a territory until it secedes, exacerbates this law as China essentially bullies its neighbors. Judges must consider how this factors into the legal consequences for states that employ such strategies.

2.5 Legal Consequences

- The distress of claimants whose territorial claims may be stripped from them as a result of the military efforts of another state is an important factor for Judges to weigh. Whether it is a one-time incident or a perpetual conflict, it may determine the extremity of the consequences regarding how the Court advises claimants and future claimants on this issue.
- As the IMO is responsible for ensuring there is a safe and secure oversight over international shipping, the boiling tensions in the South China Sea pose a risk to those activities. As Kerem Cosar and Benjamin Thomas of the University of Virginia found, a military conflict in the South China Sea would result in diverted trade routes that would be detrimental to the economy of many Southeast Asian states.
- About 80 percent of global trade is carried by sea, with about 20 percent to 33 percent of that being traversed through the South China Sea. While the study assumes a complete closure of the Malacca Strait, an important trade passage connecting the Pacific and Indian Oceans through the South China Sea, would be shut down, this theory would do more than shut down the Strait. The rerouted trade routes would freeze international shipping for Southeast Asian states, causing double-digit shutdowns on the economy ranging in drops of 10 percent to 30 percent.
- Despite the study being hypothetical, the reality showcases how dependent the economies of states in the region are on international shipping in the South China Sea and the Malacca Strait. Ensuring that these means of transit and transportation remain open and accessible globally is important for fulfilling the IMO's mission and a concern for the Judges of this Court to keep in mind.
- The ICJ in its advisory opinion on states' obligation to respect climate change laid a precedent that ensures states consider their duties towards minimizing their global footprint. The environmental concerns, in this case, stem from land reclamation and dredgers used to build claimants' capacity, whether it be economically or militarily, in the islands. More about this specific topic can be found in Section 4.5.
- With speculation over unexplored fishing and gas deposits in the region, the race to discover whether that is true or not will inevitably harm the environment it's searching in. The Judges should consider how States violate their obligation through marine exploration as another legal consideration before the Court. Striking a balance between respecting state sovereignty and promoting accountability under international law will be one of the many challenges the Judges face in drafting the opinion.

Chapter III

Questions in consideration

- **Legal Framework and Precedent:** Beyond UNCLOS, what international conventions and customs elaborate on states' sovereign rights at sea and their ability to expand their maritime territories through peaceful or forceful acquisition? How might these play a role in this non-contentious opinion?
- **Historical Accounts:** What weight should the Court assign historical accounts, particularly those with only one perspective? How should the Court treat consistent behavior regarding territorial claims? How should the Court view consistent resistance to actions potentially violating international law?
- **Environmental:** In light of the Court's Advisory Opinion on Climate Change, how can state obligations towards transboundary harm be translated to disputed territories?
- **Mechanisms for Enforcement:** Are there any violations that can be defined? How can states be held accountable without the Court having coercive powers? What diplomatic or legal frameworks could the Court recommend to facilitate long-term compliance with international rulings in the South China Sea dispute, particularly in light of China's resistance to third-party arbitration?
- **Differing Views of Power:** How should the Court weigh one-sided claims to land? How should differing perspectives be reconciled under international law? Can the Court develop criteria for the balancing and fact-finding of these views?
- **Application of this Issue:** Can this advisory opinion be informed by and the decision expanded to other geographical regions? What other areas have experienced (and possibly remedied) similar issues?
- **Acquisition:** Are there any consequences for states that acquire territory with non-prescribed methods? How do the peaceful and militaristic acquisition strategies play different roles under international law? To what extent does China's development of infrastructure on artificial islands impact the balance of rights over the Exclusive Economic Zones (EEZs), and what role should the Court play in regulating such constructions within the disputed areas?

Chapter IV

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Official Procedure & Flow of Debate

Day 1 : Opening Proceedings & Presentation of Arguments

Session 1: Inauguration & Oath-taking (30 minutes)

- The session will commence with opening remarks by the President & Vice President.
- Introduction of the case and the participating delegates:
 - Judges
 - Counsels (Advocates) representing the Applicant and Respondent nations
- Oath-taking ceremony : Judges will take an oath to remain impartial and uphold justice.

Session 2: Jurisdiction & Preliminary Objections (1.5 hours)

- The Applicant's Counsel will argue why the ICJ has jurisdiction over the South China Sea dispute.
- The Respondent's Counsel will raise any objections to ICJ jurisdiction.
- Judges will question both sides regarding their arguments.
- A short deliberation (10 minutes) will be conducted by judges to decide whether the case proceeds.

Session 3: Opening Statements (1.5 hours)

- The Applicant's Counsel presents their case, focusing on violations of UNCLOS, EEZ rights, and legal precedents.
- The Respondent's Counsel counters with historical sovereignty claims and the Nine-Dash Line argument.
- Judges may ask clarifying questions.

Session 4: Evidence Submission & Witness Testimony (1.5 hours)

- Both parties submit evidence (maps, treaties, case laws, expert opinions).
- Opposing counsels may cross-examine the presented evidence.
- Judges deliberate on the admissibility of evidence and accept or reject submissions.

Day 2: Arguments, Counter-arguments & Rebuttals

Session 1: Legal Precedents & International Law Analysis (1.5 hours)

- The Applicant presents past ICJ rulings and legal interpretations supporting their claim.
- The Respondent rebuts with counter-precedents and legal justifications.
- Judges will assess the relevance and validity of cited precedents.

Session 2: Cross-Examination & Judge-Advocate Interactions (1.5 hours)

- Judges will intensely question both counsels on inconsistencies and legal reasoning.
- Advocates must defend their legal positions under pressure.

Session 3: Judicial Conference (Private Discussion) (1 hour)

- Judges will deliberate privately on arguments presented so far.
- Judges will debate potential legal conclusions and may request further clarifications from advocates.

Session 4: Final Arguments (1.5 hours)

- Each side presents their final legal argument summarizing key points (30 min each).
- Judges ask last-round questions.
- Each side provides a 5-minute closing statement.

Day 3: Deliberation & Judgment Announcement

Session 1: Judge Deliberations (1.5 hours)

- Judges will discuss and analyze the case based on:
 - Legal standing
 - Evidence
 - International law applications
- Each judge will provide their opinion on the ruling.

Session 2: Drafting the Judgment (1.5 hours)

- Judges will draft their decision, which will include:
 - Majority Opinion (final ruling of the court)
 - Dissenting Opinion (if any judge disagrees with the ruling)

Session 3: Announcement of Judgment (1 hour)

- The Presiding Judge will deliver the final ruling.
- Explanation of how the court reached its decision.
- Questions (if any) from counsels regarding the ruling.

Session 4: Closing Ceremony (30 minutes)

- Evaluation and feedback from the Executive Board.
- Final remarks and closing statements.