

THE DISPUTE OVER THE SOUTH CHINA SEA

Half a dozen nations, including China, are disputing claims to islands, reefs, and surrounding waters in the South China Sea. The disputes draw China and the U.S. into a potential confrontation.

About a third of all the world's maritime (relating to oceans) trade goes through the South China Sea. Half of all oil and gas tankers from the Middle East sail into it on their way to China, Japan, the U.S., and elsewhere. The location of the Sea also makes it militarily strategic, valuable for national security.

Disputes among nations generally center on land features in the South China Sea. Specifically, they dispute who controls the waters around them. The Sea itself is rich in fish. Oil and natural gas reserves below the sea bed are significant.

There are two major clusters of land features in the Sea. The Paracels consist mainly of islands and reefs. Reefs are chains of rocks or coral at or near the surface of the water. The Spratlys have some islands but are mostly reefs and rocks that may not even appear above water at high tide.

Six nations actively claim parts or all of the South China Sea and its land features. These disputes include:

- Paracels: China, Taiwan, Vietnam
- Spratlys: China, Taiwan, Vietnam, Brunei, Malaysia, Philippines
- Almost all the South China Sea, its land features, and resources: China

The Small Country Claimants

Five small nations claim parts of the South China Sea's land features and surrounding waters. Vietnam and the Philippines are the most active claimants.

Vietnam bases its current claims on 17th century maps. Troops from France's colony of Vietnam occupied some Paracel islands in the 1920s. After the Vietnam War, Vietnam occupied the western Paracels and annexed certain Spratly land features. In 2009, Vietnam declared sovereignty (supreme legal authority) over both the Paracels and Spratlys.

After gaining independence from the U.S. in



This map shows the South China Sea, surrounding nations, and the "nine dash line," which indicates the extent of China's claims of control over these waters.

1946, the Philippines took control of several Spratly land features. Later, the Philippines declared all the Spratlys its territory. The Philippines also claimed sovereignty over Scarborough Shoal. This is a minor feature about 150 miles from the Philippines. It is nevertheless important for its strategic location near the Philippines and major shipping lanes.

China's Claims

China claims it occupied South China Sea islands in ancient times. In 1947, the Republic of China published a map with nine dashes. When connected, the dashes form a U that encloses most of the South China Sea. However, the Republic of China did not clearly explain this "nine dash line."

In 1949, Chinese communists defeated the Republic of China in a civil war and drove the anti-communist Chinese to the large offshore island of Taiwan. The communist Peoples Republic of China then took over the mainland. It also adopted the map with the "nine dash line." This is how it is referred to today, although China added a tenth dash in 2013 to include Taiwan.

CartoGIS Services, College of Asia and the Pacific,
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In the 1970s, China began to assert control over different islands, reefs, and waters in the South China Sea, often by force. It drove out Vietnamese troops from the western Paracels in 1974. By the late 1980s, China controlled all of the Paracels.

China built oil-drilling rigs in waters near the Paracels that Vietnam still claimed. This provoked protests and riots against China in Vietnam. In the Spratlys, China won the 1988 Battle of Johnson Reef where about 70 Vietnamese were killed. Afterward, China detained non-Chinese fishermen and harassed foreign ships sailing near its occupied islands and reefs.

China began building artificial islands in the 1990s. This often involved dredging sand from the seabed and crushing coral to “reclaim” land for a reef that in its natural state was underwater at high tide. China claimed the artificial islands were for civilian (non-military) purposes.

One of the first artificial-island projects began in 1995 on Mischief Reef in the Spratlys. At first, the Chinese had to build structures on stilts since the reef was below high tide. Then, as the reclamation of land speeded up, the Chinese constructed a harbor and airstrip capable of handling combat aircraft. The Chinese said these were necessary for self-defense.

Meanwhile, in 2009, China presented the “nine dash line” for the first time at an international conference, making this assertion:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters, as well as the seabed and subsoil thereof.

In 2012, China asserted its “nine dash line” by trying to take Scarborough Shoal as its territory, even though the Philippines had claimed it earlier. A standoff resulted. China remained in control but allowed Filipino fishermen to fish there.

The U.S. Position

The U.S. is officially neutral in the South China Sea dispute. It seeks a negotiated settlement under international law among the claimants. However, it too has national interests in the Asia-Pacific region. These include defense treaties with Japan, South Korea, the Philippines, and Australia, along with defense partnerships with Indonesia and Vietnam.

The chief U.S. national interest is freedom of navigation: the unrestricted passage of commercial

ships as well as military ships and aircraft through and over the South China Sea. The U.S. totally rejects China’s “nine dash line” as a threat to freedom of navigation.

The U.S. has been challenging China’s claims of sovereignty over the South China Sea by “freedom of navigation operations” (FONOPS). The U.S. flies surveillance aircraft over Chinese artificial islands and sails Navy warships close to Chinese occupied islands and reefs. The Chinese complain that the U.S. is using FONOPS as a pretext to curb China’s rise as a great power.

The Law of the Sea

In 1982, the United Nations adopted the Convention on the Law of the Sea. All the claimants in the South China Sea dispute, including China, signed and ratified this international law. The U.S. signed the Convention, but the Senate never ratified it. The Senate feared that it could weaken American sovereignty. Nevertheless, the U.S. considers the Convention part of “customary international law.”

The Convention defines certain terms that are extremely relevant to the South China Sea dispute:

- A **true island** must be a “naturally formed area of land, surrounded by water, which is above water at high tide” and is capable of sustaining human or economic life on its own.
- A coastal nation’s islands each have their own **territorial** sea. This is a maritime zone that extends 14 statute miles out from each island’s coastline. This sea, its living and non-living resources, and the airspace above are part of the coastal nation’s sovereign territory. All nations have the right of peaceful passage through this zone.
- An **Exclusive Economic Zone** (EEZ) extends up to 230 miles out from the territorial sea of each coastal nation’s island. The coastal nation has the exclusive right to the sea life and other natural resources in this zone. All nations have the right of freedom of navigation and overflight through an EEZ.
- **Rocks**, including natural reefs, cannot sustain human life or economic activity on their own. Those that are above the high tide, however, have a territorial sea but no EEZ. Those that are underwater at high tide have no territorial sea or EEZ.
- Coastal nations have the right to build **artificial islands**. But, they are not true islands and have no territorial seas or EEZs if they are under water at high tide in their natural state. ▶

In the South China Sea, what really matters is who controls the 14-mile territorial seas and the 230 mile EEZs.

The South China Sea Arbitration Case

In 2013, following the Scarborough Shoal standoff, the Philippines appealed to a special arbitration court authorized by the Convention on the Law of the Sea. In international law, these courts make decisions that are binding on the nations involved.

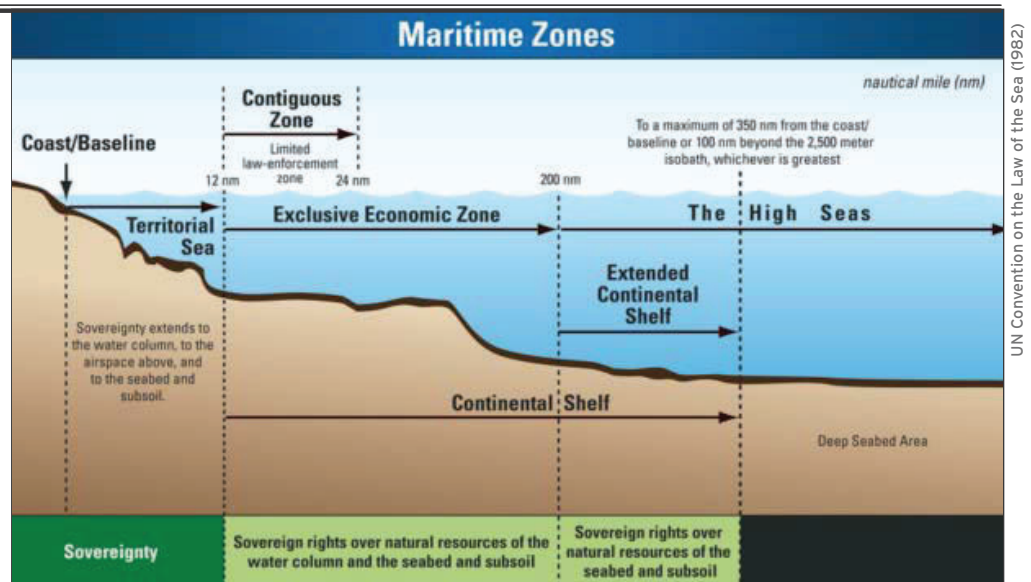
The Philippines case was limited to deciding the legal status of *waters* extending from a number of reefs and other land features, including Scarborough Shoal, that were controlled by China.

The court did not consider who *owned* the disputed land features. It only decided whether China had the right to control and benefit from the *waters* around them. China refused to recognize the arbitration court's authority and did not participate in the case.

On July 12, 2016, the law of the sea arbitration court issued its decision. The two key rulings went badly for China:

1. The court decided that six of the disputed land features, including Scarborough Shoal, are "rocks" that appear above water at high tide. Thus, they qualify for 14-mile territorial seas, but not the 230 mile EEZs. Five land features, including Mischief Reef, appear above water only at low tide in their natural state. Therefore, they do not qualify for either territorial seas or EEZs.
2. The court also ruled that because the Convention of the Law of the Sea does not recognize historical claims to oceans and seas, China's "nine dash line" is "without lawful effect."

Since none of China's disputed land features qualified for an EEZ and only some for a much smaller territorial sea, its legal control over most of the disputed waters was nearly obliterated. Even more explosive was the ruling that China's "nine dash line" was illegal under the Convention on the Law of the Sea. The Philippines won the decision, but the Convention provides no way to enforce it.



This illustration shows the degrees of sovereignty (control) nations may claim over waters along their shorelines according to the Law of the Sea. Maritime means relating to the sea.

Reactions to the Court Decision

The Chinese called the court decision "illegitimate." They proceeded to ignore it. China's President Xi Jinping stated, "We are strongly committed to safeguarding the country's sovereignty and security, and defending our territorial integrity."

The Chinese continued their preferred way of handling the dispute by negotiating with other claimants separately. They did resume talks with the other claimants on a "Code of Conduct" for the South China Sea. But this has been going on for decades. China criticized the U.S. for "meddling" in the dispute.

The U.S. noted that after the arbitration-court ruling, China speeded up building and militarizing its seven artificial islands in the Spratlys. Mischief Reef and two others have airbases. Most worrisome for the U.S., China doubled down on its "nine dash line."

The U.S. declared that its military forces will "fly, sail or operate wherever international law allows." Under President Trump, the U.S. has persisted in its freedom of navigation operations, intentionally sailing Navy vessels near Chinese occupied disputed reefs and artificial islands. Secretary of Defense James Mattis warned China about militarizing artificial islands and pursuing excessive claims in the South China Sea.

Complicating matters, the Philippines had a change of government after the court decision in its favor. The new President Rodrigo Duterte sought warmer relations with China. Currently, the two nations have put the court decision "on hold."

Negotiation or Confrontation?

A negotiated settlement of the South China Sea dispute is not likely in the near future. A draft of the “Code of Conduct” was recently approved. But it did not mention the arbitration-court decision, which criticized China’s aggressive actions and damage to the marine environment. None of the claimants want war, but none are willing to back away from their claims.

On August 10, 2017, a U.S. Navy ship participated in another freedom of navigation operation. This time, the Navy ship sailed within seven miles of China’s Mischief Reef artificial island in the Spratlys.

The Chinese Defense Ministry declared that China “holds indisputable sovereignty” over the Spratlys under the “nine dash line.” China further charged that the U.S. wanted “to pick quarrels and make troubles under the banner of ‘freedom of nav-

igation.’ ” The U.S. State Department repeated its position that American forces will fly and sail “wherever international law allows.”

The Mischief Reef incident once again demonstrated that the Chinese “nine dash line” and American “freedom of navigation” are vital national interests in direct conflict with one another.

WRITING & DISCUSSION

1. When the American Navy ship sailed within seven miles of Mischief Reef, the Chinese said it violated China’s sovereignty. The Americans said the ship was in international waters. According to the law of the sea, who was right? Why?
2. Why does China vigorously defend its “nine dash line” around the South China Sea?
3. Why does the United States vigorously reject China’s “nine dash line”?

ACTIVITY: Crisis in the South China Sea

This activity is a hypothetical case about what the U.S. should do in a national-interest crisis in the South China Sea sometime in the future.

The Crisis

Scarborough Shoal in the South China Sea is within China’s “nine dash line.” But, it is only about 150 miles from the Philippines where the U. S. has air and naval bases.

Over objections from the Philippines, China claimed and made Scarborough Shoal an artificial island, constructing military facilities there. These include an airstrip and its first nuclear submarine base in the South China Sea. China has modernized and built up its air, naval, and military personnel forces to equal those of the U. S. in the Asia-Pacific, changing the balance of power there.

China previously proclaimed the South China Sea within its “nine dash line” was its sovereign territory. After making Scarborough Shoal a manmade island, China stated that no military ships or aircraft will be permitted to fly over or sail these waters without first notifying and getting the permission of the Chinese government. The U. S. replied that this was a violation of the law of the sea.

Develop a Strategy

You are a member of the U.S. National Security Council that advises the president. Meet in a group with three or four other members of the council. Each group will develop a strategy to resolve this crisis. The strategy should consist of a sequence of at least four specific U.S. actions ranked from the most to least preferable. The sequence *could* include actions that involve some or all of the following:

- U. S. freedom of navigation operations,
- diplomacy,
- compromise,
- trade relations,
- the United Nations,
- war,
- an international court, or
- some other approach.

Each group should select a spokesperson to defend its strategy before the class.

Standards Addressed

SOUTH CHINA SEA

National World History Standard 44. Understands the search for community, stability, and peace in an interdependent world. High School: (13) Understands how global political change has altered the world economy.

California History-Social Science Standard 10.10. Students analyze instances of nation-building in the contemporary world in at least two of the following regions or countries: the Middle East, Africa, Mexico and other parts of Latin America, and China. (1) Understand the challenges in the regions, including their geopolitical, cultural, military, and economic significance and the international relationships in which they are involved.

Common Core State Standards: SL.1, SL.3, RH.6, RH.8, SL. 4, WHST.7, WHST.9, WHST.10.

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Constitutional
Rights
Foundation

601 South Kingsley Drive, Los Angeles, CA 90005
213.487.5590 • Fax 213.386.0459
crf@crf-usa.org • www.crf-usa.org