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South China Sea Takeover:
Destroying Fisheries and Creating Economic Dead-lands
for Surrounding Coastal States

Aviana Cooper*

Introduction

China's rapid takeover of the South China Sea unequivocally goes against what the United Nations Convention on the Law of the Seas permits. China's control has had, and will continue to have disparaging effects on neighboring countries in their shipment of supplies, food, and other materials. The reclamation of the island land-masses in dispute, the Spratly and Paracel islands, by China has grown about 50% since May 2015.¹ Presently, China has built a 3,000 foot aircraft runway and reformed many of the coral reefs surrounding the islands into artificial islands for the "future" usage to place buildings and homes for future Chinese inhabitants.²

The United States fears that if progress is continued, these islands will be utilized for military purposes and ultimately create instability in one of the prime commercial shipping routes.³ If China ultimately gains complete control of the South China Sea, they will control all trade and untampered access to all resources within and surrounding those islands; devastating the livelihoods of neighboring States such as the Philippines, Malaysia, and Vietnam.

The main issue of dispute here, however, is not territorial, but whether China has the right to stake claim to land in area deemed

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1. Gordon Lubold, *Pentagon Says China Has Stepped Up Land Reclamation in South China Sea*, WALL ST. J (Aug. 20, 2015), <http://www.wsj.com/articles/pentagon-says-china-has-stepped-up-land-reclamation-in-south-china-sea-1440120837> ("In less than two years, China has reclaimed 17 times more land than any other claimant has in the past 40 years—accounting for about 95% of all reclaimed land in the Spratlys, according to the report").
2. *Id.*
3. *Id.*

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“high seas” as interpreted under the United Nations Convention on the Law of the Seas (UNCLOS).⁴ As it is stated in UNCLOS, areas considered high seas permit States free and untampered navigation, therefore the South China Sea, a high seas territory, is not permitted by the UNCLOS to be taken over by China.

What is UNCLOS?

Until the 1970s, there have been many disputes regarding the misuse of waterways by the States.⁵ With an even greater concern over the harm being done to ocean habitats: depletion of resources and fish stock, pollution, and interjection of supply that would be utilized by countries nearby.⁶ Thus, the United Nations Convention on the Law of the Sea (UNCLOS) was created. UNCLOS governs all issues related to “law of the sea” and was created to maintain “peace, justice and progress for all peoples of the world.”⁷ The convention is to assist in establishing equitable international economic order, ensuring to consider interests of all countries: developing, land-locked and coastal.⁸ UNCLOS contributes “to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights.”⁹

States are provided a twelve-mile radius of sea called *territorial sea* where they are permitted to enforce any law, utilize and regulate the use of any resource found.¹⁰ An extra twenty-four miles is further provided to allow regulation and policing of waters, provided for naval and coast guard ships.¹¹ For States composed of small islands, such as the Philippines, there is a twelve-mile “zone” which is ex-

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4. *South China Sea puts pressure on US to ratify UNCLOS*, MARITIME TRADE INTELLIGENCE (Jul. 18, 2015), <http://maritimeintel.com/south-china-sea-puts-pressure-on-us-to-ratify-unclos/>.
 5. *The United Nations Convention on the Law of the Sea (a historical perspective)*, OCEANS & L. OF THE SEAS (1998), [http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm#Settlement of Disputes](http://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm#Settlement%20of%20Disputes) [hereinafter UN Convention].
 6. *Id.*
 7. *Preamble*, United Nations Convention on the Law of the Sea Agreement Relating to the Implementation of Part XI of the Convention, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.
 8. UN Convention, *supra* note 5.
 9. *Id.*
 10. *Id.*
 11. *Id.*

tended from a “line drawn joining the outermost points of the outermost islands of the group.”¹² Considered archipelagic waters, this is where innocent passage of all ships from all States are permitted.¹³

In addition to the distance provided for territorial seas, under the exclusive economic zone (EEZ), coastal States are provided the right to “exploit, develop, manage, and conserve all resources” within an area extending two-hundred miles from its shore.¹⁴

UNCLOS effect on China’s presumption of the islands.

The UNCLOS grants “rights to different maritime features”¹⁵ differentiating between rocks, which are above water but unable to sustain life, and “rocks and shoals underwater at high tide.”¹⁶ Although UNCLOS does not forbid States from creating their own islands, what *is* forbidden is *what* China is doing to these islands.¹⁷ China is attempting to “upgrade” these islands and expand all rights granted to “real” islands by UNCLOS.¹⁸ It is, however, explicitly stated in Article 60, Section 8: “artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.”¹⁹

Similarly, as indicated under UNCLOS, there is an interest to ensure equality to all countries, in particularly those who are landlocked, therefore, “no country has sovereign right over the high seas.”²⁰ In order for a country to seize a right to high seas, permission

12. UN Convention, *supra* note 5.

13. *Id.*

14. *Id.*

15. Jeff M. Smith, *Let’s Be Real: The South China Sea Is a US-China Issue*, THE DIPLOMAT (June 24, 2015), <http://thediplomat.com/2015/06/lets-be-real-the-south-china-sea-is-a-us-china-issue/>.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Part V Exclusive Economic Zone*, United Nations Convention on the Law of the Sea Agreement Relating to the Implementation of Part XI of the Convention, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm [hereinafter Part V].

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from the United Nations is required.²¹ However, China has not requested this permission, they are simply trying to seize the right by creating islands which would extend their EEZ to include this passageway in the South China Sea and gain control of all resources. Nevertheless, Article 60, section 7 explains that “artificial islands . . . and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.”²²

What China is attempting to do with these islands is in clear violation of the Convention and should not be permitted. However, China implores that because these islands fall within their EEZ, which, they claim, have held possession since 1947, they are not required to seek permission.²³ Consequently, with China occupying these islands and reefs, the EEZ’s of several other countries such as the Philippines, Vietnam, and Malaysia are being taken, impeaching on their ability to partake in resources located in and around the islands.²⁴

Impact U.S. ratification of UNCLOS would have on dispute

UNCLOS is used for the mediation of territorial disputes between States. Because there is a discrepancy in the actual ownership of the islands between China, Vietnam and the Philippines, the UNCLOS can be used to determine the legitimacy of these claims and who is the rightful owner. The United States has, on several occasions sited their interest in maintaining usage of the South China Sea.²⁵ Because the United States has such a great interest, ratifying

20. James Duglous Crickton, *China’s Shameless Arrogance in South China Sea*, OpEdNews.com (Aug. 22, 2015), http://www.opednews.com/articles/China-s-Shameless-Arroganc-by-James-Duglous-Cric-America_Arbitration_Dominance_Oil-150822-623.html.

21. *Id.*

22. *Part V Exclusive Economic Zone*, *supra* note 19.

23. Christopher Mirasola, Comment, *Why the US Should Ratify UNCLOS: A View from the South and East China Seas*, HARV. NAT’L SEC. J. (Mar. 15, 2015), <http://harvardnsj.org/2015/03/why-the-us-should-ratify-unclos-a-view-from-the-south-and-east-china-seas/>.

24. Crickton, *supra* note 20, at 2.

25. Bonnie S. Glaser, *Armed Clash in the South China Sea Contingency Planning Memorandum No. 14*, COUNCIL ON FOREIGN RELATIONS (Apr. 2012) <http://www.cfr.org/world/armed-clash-south-china-sea/p27883> (China is currently “developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.”).

the UNCLOS would pose to be very beneficial to not only the U.S., but also the neighboring States that claim interests in the islands of the sea.

Ratifying the UNCLOS by the U.S., with the other 166 States, would certainly prove to serve the nations interest in national security, economics, and environment.²⁶ Both the Bush Administration as well as the Obama Administration believe that it would be a disservice to *not* ratify UNCLOS and would disadvantage the nation as a whole, depriving it of needed resources, as well as economic and environmental interests.²⁷ Those who oppose the ratification, several Republican Senators, are going off the belief that the problems of the UNCLOS presented during the Regan Administration still exist and that by joining the Convention, it will impose upon the sovereignty of the U.S.²⁸ During the first draft completed in 1982, President Reagan opted not to sign the treaty due to language indicating that the “international seabed regime [would] gover[n] the mining of the seabed” which he believed would be “contrary to principles of free enterprise.”²⁹ However, if one were to look closely, and as the Bush and Obama administration have explained, those “issues” that once presented a complication with the sovereignty of the nation, have been amended in 1994. For example, on the issue of mandated technology transfer, during the 1994 amendments, although the UNCLOS continues to encourage technology transfer and scientific knowledge to

26. John B. Bellinger, III, *Should the United States ratify the UN Law of the Sea?*, COUNCIL ON FOREIGN RELATIONS (Nov. 11, 2014), <http://www.cfr.org/treaties-and-agreements/should-united-states-ratify-un-law-sea/p31828> (Bellinger is an Adjunct Senior Fellow for International and National Security Law who acted as the legal adviser for the National Security Council for the Bush Administration).

27. Bellinger III, *supra* note 26. (“Bush administration concluded after a careful inter-agency review that the Convention clearly serves U.S. national security, economic, and environmental interests. The Convention provides clear, treaty-based rights for U.S. ships and aircraft to travel through and over the territorial seas of other coastal states. This is why the U.S. Navy, with the largest fleet in the world, has long supported the treaty. In this time of shrinking defense budgets, the Navy wants clear legal rights to freedom of navigation when it cannot have more ships to assert these rights in practice.”)

28. Bellinger III, *supra* 26.

29. Daniel Hollis, *United Nations Convention on Law of the Sea, 1982*, ENCYCLOPEDIA OF EARTH (Feb. 26, 2013) <http://www.eoearth.org/view/article/156775/> (profit-sharing provision of deep seabed mining).

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other States, it no longer mandates that a State do so; this was one of the many issues the Reagan Administration had that was addressed.³⁰

Under the current UNCLOS, it will allow the U.S. to protect their interests in the resources³¹ provided in the territorial seas as well as assist in limiting claim and protecting innocent passage.³² By protecting innocent passage and usage of the South China Sea, it will prevent China's complete control of the area and ultimately protect neighboring States' interest in their claimed territories while continuing to permit free travel of U.S. Naval ships innocent passage.

Who is this really affecting?

The dispute over control of the South China Sea could become a worldwide crisis. However, the people being affected by this presently are the neighboring States: Vietnam, the Philippines, Malaysia, Taiwan, and Brunei. Being one of the world's largest commercial shipping routes with untapped resources such as oil and gas; if China were to gain control, their power would be unlimited. China would control any trade that would occur through those waters, denying access to fishing, access to gas and oil, as well as safe travel of other States' military ships or aircraft. As discovered Paracels and Spratly islands have a great deal of natural resources.³³ For years, the water surrounding these islands have been the premier location for fishing which has supplied food and livelihoods to the people in the neighboring States, especially the Philippines.³⁴

August 2015, the Philippines called on the United States to assist in their fight against the Chinese Coast Guard who blockaded their ships which carry military personnel, food, and other supplies.³⁵ The

30. Scott G. Borgerson, *The National Interest and the Law of the Sea*. COUNCIL ON FOREIGN RELATIONS. (May 2009), <http://www.cfr.org/oceans/national-interest-law-sea/p19156>.

31. Bellinger III, *supra* note 26 (“joining the Law of the Sea Convention would codify U.S. sovereignty over vast new oil and gas resources in the Arctic”).

32. Bellinger III, *supra* note 26.

33. *O&A: South China Sea dispute*, BBC (Apr. 17, 2015), <http://www.bbc.com/news/world-asia-pacific-13748349>.

34. *Id.*

1951 Mutual Defense Treaty, signed by both the U.S. and the Philippines, states that “an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety . . .”³⁶ Through this treaty, the U.S. agreed to assist the Philippines in times of armed attack. This, however, is not the first time the Philippines or another country has tried to take on China and retrieve their rightfully owned land. In 2012, there were claims, although unverified, that the Chinese navy interfered with two exploration operations by the Vietnamese, leading to anti-China protests in Vietnam.³⁷ Again in May 2014, while China was introducing a drilling rig near the Paracel Islands, multiple collisions between the Chinese and Vietnamese ships occurred.³⁸

Presently, the employment and livelihoods of the fisherman in the small village of Manilla in the Philippines have been completely altered.³⁹ Many of the fisherman have had to find alternative modes of employment just to make ends meet because of China’s blockade of the Sea. In a more recent study, scientist indicated that not only are the fisherman losing their jobs due to the blockade, they may not have jobs in the future once the blockade ends due to the development by China.⁴⁰ China, in creating these artificial islands, has completely ruined the coral reefs, which has consequently led to the death of many of the fish that would reside in this area, altering the entire ecosystem.

Conclusion

Total reclamation of the islands will provide the groundwork for China to become the “ultimate military power.” Controlling one of

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35. Jim Gomez, *Philippines seeks US help to protect troops in disputed seas*, YAHOO! NEWS (Aug. 26, 2015), <http://news.yahoo.com/philippines-seeks-us-help-protect-troops-disputed-sea-100618900.html> (“[To] help protect the transport of Filipino troops and supplies to Philippine-occupied reefs in the disputed South China Sea by deploying American patrol planes to discourage Chinese moves to block the resupply missions. The tense standoff at the shoal has lasted two years”).
 36. Glaser, *supra* note 25.
 37. *O&A: South China Sea dispute*, *supra* note 33.
 38. *Id.*
 39. Raul Dancel, *Death of a fishing village*, THE STRAITS TIMES (Aug. 4, 2015), <http://www.straitstimes.com/asia/se-asia/death-of-a-fishing-village>.
 40. Yasmin Tayag, *China’s Artificial Islands in the South China Sea Are Killing Ocean Life*, INVERSE (Sept. 25, 2015), <https://www.inverse.com/article/6465-china-s-artificial-islands-in-the-south-china-sea-are-killing-biodiversity>.

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the world's largest trade routes will not only permit China to be in complete control of all and any trade done through the South China Sea, preventing hundreds of nations from having easy access to this route, it will also permit China to continue to control the oil, gas, and fishing resulting in China becoming stronger economically.

Solving this problem could pose to be a very difficult and timely issue, however the U.S. must intervene and must ratify the UNCLOS. Ratifying the UNCLOS will allow them a permanent "seat at the table" when discussing the issues such as EEZ rights.⁴¹ Not only would this permit them a seat, it would also bolster their position on uniformity within the seas.⁴² Upon ratifying the treaty, the U.S. should also mediate "an information sharing center" and "a joint fisheries committee"⁴³ to assist with preventing the blockades China has implemented over the Philippines, in turn assisting in returning food and employment to the citizens of the boarding States.

41. Glaser, *supra* note 25.

42. *Id.*

43. *Id.*