



Padjajaran Journal of International Law
International Law Department Universitas Padjadjaran

ISSN: 2549-2152, ESSN: 2549-1296

Volume 7, Number 2, June 2023

DOI: <https://doi.org/10.23920/pjil.v7i2.1486>

South China Sea Dispute: What Alternative Solutions Can be Offered to the International Community?

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Abstract

As the busiest shipping route with a high value of resources under the sea, the South China Sea dispute is one of the unresolved problems in recent world affairs. Claimant states keep on defending their claim over the territory. Several critical factors of the disputed areas, such as the international trade perspective, natural resources aspects, and the security value, did affect the behavior of such states. A lot of alternatives and means have been done to solve the case until the decision of PCA on the Philippines claim over China's nine-dash line. Non-compliance response of China did raise another tension on the issue and complicated the resolution. We offered more alternatives to the international community to act, which combined peace-oriented bilateral and multilateral diplomacy and cooperation to force all claimants to agree on their maritime boundary, seeking mediation from states that can be trustworthy, international sanctions might be an option - but with a highly calculated decision, and stressing the compliance with legal action to gain trust from other parties. to support the diplomacy that takes place in the process.

Keywords: *Dispute Resolution, International Community, Maritime Claims/Delimitation, Peace-Oriented Diplomacy, South China Sea.*

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A. INTRODUCTION

The South China Sea (SCS) is a never-ending story of maritime disputes of the century, with China, Taiwan, Vietnam, Malaysia, Philippines, and Brunei as the main actors of the scene. Mainly because of its strategic significance as the second busiest shipping route in the world economics³, its economic potential under the sea⁴, and the historical memories of the territory. A recent narcissist action to announce their newest national map at the end of August 2023 did raise the tension over the ongoing disputes and question the willingness of Beijing's administration to solve them peacefully.⁵

Geographically, the SCS has more islands and reefs, mostly uninhabited, even submerged at high tide and surrounded by ten coastal countries: China, Taiwan, Vietnam, Cambodia, Thailand, Malaysia, Singapore, Indonesia, Brunei Darussalam, and the Philippines. The SCS categorised a semi-enclosed area, which defined by the United Nations on the Law of the Sea 1982 (UNCLOS 1982) as follows: *"a gulf, basin or*

sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".⁶ The main consequence of the semi-enclosed character in the SCS region and the many countries involved is that their maritime boundary claims tend to overlap.⁷ The area includes four major groups of islands. First, the Pratas Islands, which consist of three islands with a length of 6 km and a width of 2 km, have two basins and are located 170 nautical miles from Hong Kong, 240 nautical miles southeast of Taiwan, and 269 miles north of Paracel Islands. Second, the Paracel Islands consist of two main island groups (the western group, Amphitrite, and the southern group, Crescent), one hundred small islands, atolls, cays, shoals, submerged banks, rocks, and reefs which cover 15,000 km² in the area with Woody Island as the most crucial island in this archipelago. Third, the Spratly Islands consist of more than 235 features that extend 500 nautical miles from north to south and 400 nautical miles from east to west. The Spratlys are 900 nautical miles from Hainan, 230 miles from Vietnam to the east, 120 from the Philippines to the west, and 150 from Malaysia to the northwest. Fourth, Macclesfield Bank, located 60 nautical miles east of the Paracel Islands, is about 75 miles long and 33 miles wide. In the south, the SCS is less than 200 meters deep, but in the Palawan Trench to the southeast, it is up to 2000 meters deep.⁸

³ E. Estu Prabowo, "KEBIJAKAN DAN STRATEGI PERTAHANAN INDONESIA (Studi Kasus Konflik Di Laut Cina Selatan)." *Jurnal Ketahanan Nasional* Vol.19 No.3, 2013, pp. 118-129.

⁴ Gao, Zhiguo. "The South China Sea: From Conflict to Cooperation?." *Ocean Development & International Law* 2 Vol.5 No.3, 1994, pp. 345-359.

⁵ AP News, "China's new national map has set off a wave of protests. Why?" 1 September 2023, <https://apnews.com/article/china-map-territorial-dispute-south-sea-702c45165d7f9cade796700ffa5691e>, Rhea Mogul, "China's new national map has angered its neighbors", *CNN*, 31 August 2023, <https://edition.cnn.com/2023/08/31/india/india-china-map-protest-intl-hnk/index.html>, I. Patrick, "US views China map claims over South China Sea, disputed Indian areas as 'unlawful': State Department", *South China Morning Post*, 6 September 2023, <https://www.scmp.com/news/china/article/3233539/us-views-china-map-claims-over-south-china-sea-disputed-indian-areas-unlawful-state-department#>, K. Purba, "Jakarta's pollution and China's new map haunt ASEAN Summit", *The Jakarta Post*, 2023, <https://www.thejakartapost.com/opinion/2023/09/05/jakartas-pollution-and-chinas-new-map-haunt-asean-summit.html> Zhou, L. "China's new map has riled the region, with 'collective concern' over its claims", *South China Morning Post*, 5 September 2023, <https://www.scmp.com/news/china/diplomacy/article/3233644/chinas-new-map-has-riled-region-collective-concern-over-its-claim>

⁶ Article 122 United Nations on the Law of the Sea 1982.

⁷ Buszynski, Leszek, et al. *The South China Sea and Australia's regional security environment*. Australia: Australian National University, 2009.

⁸ Nguyen, Dong Manh. "Settlement of disputes under the 1982 United Nations Convention on the Law of the Sea: The case of the South China Sea dispute." *U. Queensland LJ* Vol. 25, 2006, pp.145.

South China Sea Dispute: What Alternative Solutions Can be Offered to the International Community?

The SCS dispute has been studied by academia since the 1970s.⁹ Throughout the 1970-2023, several research studies have been discussed from various themes, such as international law¹⁰, international politics and foreign policy analysis¹¹, security

studies¹², regionalism or institutionalization¹³, conflict management¹⁴, and the perception in the

⁹ Choon-ho Park, "The south china sea disputes: Who owns the islands and the natural resources", *Ocean Development and International Law* Vol.5 No.1, 1978, pp.27-59, Mark J. Valencia, "South China Sea: Present and potential coastal area resource use conflicts", *Ocean Management*, Vol.5 No.1, 1979, pp.1-38.

¹⁰ Robert Beckman, "The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea." *American Journal of International Law* Vol.10 No.1, 2013, pp.142-163, Christopher C Joyner, . "The Spratly Islands dispute: rethinking the interplay of law, diplomacy, and geo-politics in the South China Sea." *The International Journal of Marine and Coastal Law* Vol.13 No.2, 1998, pp.193-236, Sison III, Maximo Paulino T., "Universalizing the law of the sea in the South China Sea dispute." *Ocean Development & International Law* Vol.49 No.2, 2018, pp. 157-175, Yann-huei Song, and Stein Tønnesson. "The impact of the law of the sea convention on conflict and conflict management in the South China Sea." *Ocean Development & international law* Vol.44.No.3, 2013, pp. 235-269.

¹¹ Yen-Chiang Chang, "Taiwanese position in the south china sea dispute: Before and after the permanent court of arbitration award." *JE Asia & Int'l L.* Vol.9, 2016, pp.467. Renato Cruz De Castro, "The limits of intergovernmentalism: The Philippines' changing strategy in the South China Sea dispute and its impact on the Association of Southeast Asian Nations (ASEAN)." *Journal of Current Southeast Asian Affairs* Vol.39 No.3, 2020, pp.335-358, Andrey Dikarev, and Alexander Lukin. "Russia's approach to the South China Sea territorial dispute: it's only business, nothing personal." *The Pacific Review* Vol.35 No.4, 2022, pp. 617-646, Hasjim Djalal, "Indonesia and the South China Sea Initiative." *Ocean Development & International Law* Vol.32 No.2, 2001, pp. 97-103., John A .Ibarra Edcel, "Issue-Based Cooperation on Conflict Resolution in the South China Sea." *The Journal of Territorial and Maritime Studies* Vol.9 No.1, 2022, pp. 97-115, Robert D Kaplan, "The South China Sea is the future of conflict." *Foreign Policy* Vol.188, 2011, pp.76, Nian Peng, and Chow Bing Ngeow, "Managing the South China Sea dispute: Multilateral and bilateral approaches.", *Ocean Development & International Law* Vol.53 No.1, 2022, pp 37-59, Muhammad Rizky Prawira, "South China Sea Dispute." *Dinamika Global: Jurnal Ilmu Hubungan Internasional* Vol.3.No.02, 2018, pp. 35-54, Sheldon W. Simon "Conflict and diplomacy in the South China Sea." *Asian Survey* Vol.52 No.6, 2012, pp. 995-1018, Ian Storey, "Japan's maritime security interests in Southeast Asia and the South China Sea dispute." *Political science* Vol.65 No.2, 2013, pp.135-156, Siniša Vuković and Paul-Jakob Vuković. "China's Behavior and Ambitions to Become a Norm-maker in the South China Sea Dispute." *Asian Perspective* Vol.47 No.2, 2023, pp 247-265.

¹² Arase, David. "Non-traditional security in China-ASEAN cooperation: The institutionalization of regional security cooperation and the evolution of East Asian regionalism." *Asian Survey* Vol.50 No.4, 2010, pp. 808-833, Liselotte Odgaard, "The South China Sea: ASEAN's Security Concerns about China." *Security Dialogue* Vol.34 No.1, 2003, pp. 11-24, Yizheng Zhou, "China and Indonesia's responses to maritime disputes in the South China Sea: forming a tacit understanding on security." *Marine Policy* Vol.149, 2023, pp.105-502.

¹³ Leszek Buszynski, "ASEAN, the declaration on conduct, and the South China Sea." *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* Vol.25 No.3, 2003, pp.343-362, Kasira Cheeppensook, "ASEAN in the South China Sea conflict, 2012-2018: A lesson in conflict transformation from normative power Europe." *International Economics and Economic Policy* Vol.17 No.3, 2020, pp.747-764, Ralf Emmers, . "ASEAN's search for neutrality in the South China Sea." *Asian Journal of Peacebuilding* Vol.2 No.1, 2014, pp.61-77, Shen Hongfang, "South China sea issue in China-asean relations: an alternative approach to ease the tension." *International Journal of China Studies* Vol.2 No.3, 2011, pp.585-600, Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes." *The Pacific Review* Vol.36 No.1, 2023, pp.119-147, Małgorzata Pietrasiak, "The ASEAN's Attitude to the South China Sea Dispute after the Verdict of the Permanent Court of Arbitration in the Hague." *Przegląd Strategiczny* Vol.10 No.13, 2020, pp.215-227, Carlyle A. Thayer, "ASEAN, China and the code of conduct in the South China Sea." *The SAIS Review of International Affairs* Vol.33 No.2, 2013, pp.75-84, Trystanto, "Assessing the Potential Effectiveness of the ASEAN-China Code of Conduct on the South China Sea in Constraining Chinese Aggressive Actions." *Padjadjaran Journal of International Law* Vol.6 No.2, 2022, pp.136-159.

¹⁴ Ku Boon Dar, "The South China Sea Dispute And Sino-Vietnamese Reconciliation" *Journal of International Studies* Vol.19 No.1, 2023, pp.: 37-59., Ralf Emmers, *Ibid.*, at 61-77, Siti Noralia Mustaza and Mohd Irwan Syazli Saidin, "ASEAN, China and the South China Sea territorial disputes: Analysis of conflict management strategies." *Intellectual Discourse* Vol.28 No.2, 2020, pp.577-598, Nian Pengand Chow Bing Ngeow, *supra note* 10 at 37-59, Carlyle A. Thayer, "Vietnam's strategy of 'cooperating and struggling with China over maritime disputes in the South China Sea." *Journal of Asian Security and International Affairs* Vol.3 No.2, 2016, pp.: 200-220, Shicun Wu, "Preventing confrontation and conflict in the South China Sea." *China International Strategy Review* Vol.2 No.1, 2020, pp.36-47.

media and public acceptance¹⁵. However, some papers have coined “conflict” to describe the mentioned problems. Interestingly, publish and perish search from the Scopus database with the enquiry of “South China Sea Dispute” and “South China Sea Conflict” title keywords gave a different result. Most of the publications on this topic used the term “dispute” (200 papers or maybe more) over “conflict” (63 papers). To contribute to the broader discussion, we used the term “dispute” over “conflict” in this paper. It is also logical to say the issue is a “dispute” rather than a “conflict” because a maritime conflict that arose due to a dispute has never happened. All parties tried hard to prevent escalation into an open fire condition that led to conflict.

Gao argued that the dispute itself started in the 1960s. The beginning of military occupation in the Spratly Islands - started in 1945 by Taiwan, followed by Philippines in 1970, Vietnam in 1975, Malaysia in 1977, and the latest by China in 1988 – did initiate the claimants self-claimed over their territory.¹⁶ The SCS issue concerns territorial claims; therefore, a loss in defending its territory will cause domestic problems, so it is deemed necessary by claimant states to defend it by their respective interpretations and views of state sovereignty.¹⁷ The disputes in

the SCS were closely related to the claimant states’ political, economic, and defense interests. Politically, controlling part or all of the SCS will provide high political bargaining power for the international community. This will also have implications economically because SCS has a lot of oil and natural gas deposits which, when exploited, will provide significant economic benefits. Meanwhile, from the defense aspect, controlling part or all of the SCS will provide strategic advantages because the SCS is a link between the Malacca Strait and the East Asia region.¹⁸

Some efforts have been made to bring the case into legal action based on international law principles.¹⁹ The SCS dispute has been brought to the Permanent Court Arbitration (PCA) by law to make the decision legally binding to all parties. On July 12, 2016, the PCA issued a ruling on the Philippines’ lawsuit against China regarding the SCS issue. The PCA clarified China’s claim regarding historical rights concerning the maritime area in the SCS, which is claimed by using the nine-dash line, contrary to the UNCLOS 1982. Even though a legal ruling states that the nine-dash line is not justified under the international law of the sea, China’s reluctance to comply with the ruling should also be a cause for concern for the international community. On that basis, China’s reluctance to comply with PCA decisions and continue to be aggressive in the SCS region could exacerbate relations with countries surrounding the SCS region.

We acknowledge that a lot of papers have discussed the development of the cases in different eras of administrations in each state, not to mention the solutions offered by academia. But, several means that all parties have done did not stop the self-claimed by China. Even further, they released a new claim over the areas. This issue is still relevant because we found out

¹⁵ Fong, Yang Lai, Ramachandran Ponnai, and Antoon De Rycker. "Different countries, different perspectives: A comparative analysis of the South China Sea disputes coverage by Malaysian and Chinese newspapers." *China Report* Vol.56 No.1, 2020, pp.39-59, Lei Guo, Kate Mays, and Jianing Wang. "Whose story wins on twitter? Visualizing the South China Sea dispute." *Journalism Studies* Vol.20 No.4, 2019, p.563-584, Patrik Kristhøpe Meyer, Achmad Nurmandi, and Agustiyara Agustiyara, "Indonesia's swift securitization of the Natuna Islands how Jakarta countered China's claims in the South China Sea" *Asian Journal of Political Science* Vol.27 No.1, 2019, pp.70-87, Sukarno, "Revealing Representation of China and America by the Media of CNBC Indonesia Relating to South China Sea Conflict." *International Journal of Language and Literary Studies* Vol.4 No.2, 2022, pp.189-204.

¹⁶ Zhiguo Gao, *supra* note 4 at 350

¹⁷ Ahmad Almaududy Amry. "Laut Tiongkok Selatan: Problematika dan Prospek Penyelesaian Masalah" *Opinio Juris* Vol.16 No.93, 2014.

¹⁸ E. Estu Prabowo, *supra* note 3, at 119.

¹⁹ Małgorzata Pietrasiak, *supra* note 13 at 220

that all related parties are having a love-hate relationship. They fiercely protested and reacted over each other's claims on the area, but at the same time, they were dependent on the context of economic cooperation and development. Therefore, in the first section, we aim to understand the interest of the claimants that made them behave dynamically in their bilateral and multilateral relations to respond to the issue. The second section of the text will evaluate the means taken by the international community to resolve the dispute in the SCS.

B. THE IMPORTANCE OF THE SOUTH CHINA SEA TO THE INTERNATIONAL COMMUNITY

We understand that the world economy needs the SCS. The importance of the SCS from a geopolitical perspective is also rational. The urgency laid on its function as maritime trade route – with 50% of international maritime trade routes – and highly potential biodiversity and oil reserve beneath the sea with an area of 800,000 km² or 310,000 miles². The interest of each state actors involved in this area is also important to discuss, such as China, Taiwan, Philippines, Malaysia, Vietnam, Brunei, United States, European Union, Japan, and Russia. Controlling this large area would be beneficial to their foreign politics in the near future.

First, the area is the most comprehensive sea route after the Mediterranean route and is the main gateway for trade routes to and from East Asia, which is calculated to account for 25% of sea cargo trips. In addition, SCS is also a promising fishery area economically and has the potential for hydrocarbons.²⁰ Because the SCS area is part of international sea lanes, both for merchant ships and sometimes military ships, the SCS area is also known as the maritime superhighway (one of the busiest

shipping lanes in the world). The strategic location between the Indian Ocean and northeast Asia, including the ports of China, Japan, South Korea, and Russia, is considered as the other importance of the area. Ships entering from the Indian Ocean pass through the Malacca Strait and the Singapore Strait (between Indonesia, Malaysia, and Singapore) or the Sunda Strait and cross the SCS towards the Taiwan Strait (between mainland China and Taiwan) or the Luzon Strait (between Taiwan and the Philippines).²¹ The number of tankers passing through the SCS is three times more than the Suez Canal and five times that of the Panama Canal. Supplies of imported petroleum from East Asian states (such as China, South Korea, and Japan), the Middle East, and Africa also pass through the SCS. In addition, the SCS area is also frequently traversed by ships transporting coal, liquefied natural gas, and iron ore.²² These various commodities are crucial as industrial drivers for East Asian countries.

Over the next two decades, oil consumption in Asia will increase by an average of 4% per year. If the growth rate is aligned with predictions, the demand for crude oil will increase to 25 million barrels per day. Like it or not, to meet this demand, states in Asia must import oil from the Middle East. After passing through the Malacca Strait, oil tankers from the Middle East to Asian countries must go through the SCS.²³ Regarding the circulation of crude oil, around 14 million barrels of crude oil pass through the SCS and the Gulf of Thailand per day, or nearly a third of the world's oil circulation. More than 90% of the total circulation comes

²⁰ I Nyoman Sudira, "Konflik Laut Cina Selatan dan Politik Luar Negeri Indonesia ke Amerika dan Eropa." *Jurnal Ilmiah Hubungan Internasional* Vol.10 No.2, 2014.

²¹ Robert Beckman, . "The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea." *American Journal of International Law* Vol.107 No.1, 2013, pp. 142-163.

²² Sandy Nur Ikfal Raharjo, "Peran Indonesia Dalam Penyelesaian Sengketa Laut Tiongkok Selatan." *Jurnal Penelitian Politik* Vol.11 No.2, 2016, pp. 16.

²³ Simela Victor Muhammad, "Kepentingan China dan Posisi ASEAN dalam Sengketa Laut China Selatan." *Info Singkat Hubungan Internasional* Vol.4 No.08, 2012.

from the Malacca Strait, while the rest comes from regional trade in Southeast Asia. The reason for passing through the Malacca Strait is because it is the shortest sea route from Africa to Asia. After entering the Malacca Strait, the crude oil is processed to Singapore and Malaysia and then sent out again as a refined petroleum product.²⁴ A study by Japan's Ministry of Land, Infrastructure, and Transport in 2006 estimated that nearly 94,000 ships weighing 100 tonnages or more passed through the Malacca Straits in 2004 of the total global movement of 607,000 ships or 15%. Of this amount, 32% are container ships, 25% tankers, 15% cargo ships, and 15% bulk carriers, while the rest are vessels transporting liquefied natural gas (LNG) and other vessels.²⁵

Second, The SCS's character, a semi-enclosed sea with a tropical climate, makes it a suitable area for the growth of biodiversity. This condition certainly supports fisheries issues, especially those related to the food security of people in states around the SCS, which number hundreds of millions of people. Hence, the issue of access to the SCS for fishing activities and the preservation and protection of the marine environment related to fisheries is one of the main priorities of the states around the SCS. The SCS is one of the most heavily fished areas in the world and is considered by Chinese and Vietnamese fishermen as a traditional fishing zone. The total catch of tuna and shrimp in the SCS region is one of the largest in the world. The University of British Columbia's Fisheries Center notes that it is estimated that fish catches in SCS have increased from 4.7 million tonnes in 1994 to 5.6 million tonnes in 2003. Other sources state that annual catches of yellowfin tuna reach 50 million. dollar.

Other types of fish found in these waters include mackerel, sardines, red snappers, anchovies, and round scads.²⁶

In its development, the United Nations has warned that global fish stocks are in danger due to increased demand, this has made countries around the SCS area increasingly competitive to further exploit fisheries in unexploited locations. Competition for access to unexploited locations has become one of the triggers for clashes or incidents that have occurred in the SCS area, such as the arrest of fishermen and even clashes involving the respective Navy of countries around the SCS area. This incident made the countries around the SCS area involve their Navy to guard the fishermen, which sparked new tensions.²⁷ Utilization of fishery resources in the waters of the SCS through various fishery businesses can improve welfare and security. The welfare aspect is intended to utilize natural resources to increase prosperity or welfare, while the security aspect is to increase efforts to safeguard the waters.²⁸

The natural resources in the SCS area include fishery resources for countries around this area and many types of coral reefs. Coral reefs in the SCS region are known as one of the world's centers of marine biodiversity, with the highest coral diversity (76% of all coral species) and the highest diversity of reef fish (37% of all reef fish).²⁹

While in the aspect of mineral resources. The need for mineral or energy resources can affect a country's foreign policy objectives. A country's sufficient energy reserves are very important to meet its domestic energy needs, guarantee living standards, and assist its development.

²⁴ Mike Natanael Norend Mandagie, and Angel Damayanti. "The Battle of the US and China in Becoming Hegemony Through the South China Sea." *IJRPR International Journal of Research Publication and Reviews* Vol.3 No.10, 2022, pp.1637-1644.

²⁵ *Ibid.*

²⁶ Charles Liu, "Chinese Sovereignty and Joint Development: A Pragmatic Solution to the Spratly Islands Dispute." *Loy. LA Int'l & Comp. LJ* Vol.18, 1995, pp. 865.

²⁷ Leszek Buszynski, *supra note*.13 at 345

²⁸ E. Estu Prabowo, *supra note* 3, at 120.

²⁹ Mark Stephen Blaine, "The geography of territorial disputes in the South China Sea." *Military geoscience: a multifaceted approach to the study of warfare*. Cham: Springer International Publishing, 2022 at 287-303.

Energy resources often change from a problem related only to domestic production and consumption to a problem related to national security. The availability of energy resources will affect a country's economic strength and political position towards other countries. In contrast, the scarcity of energy resources will cause a country to become vulnerable and dependent on other countries. Increased energy needs in the face of reduced availability of energy reserves can exacerbate tensions between countries and lead to conflict. The need for energy has become a fundamental factor in building alliances with other countries, expansion policies, and causes of conflict.³⁰ To minimize conflict, the desire to obtain energy sources and natural resources in disputed offshore and maritime areas is regulated in the 1982 Law of the Sea Convention.

Information regarding the existence of oil and gas reserves in SCS has been known for a long time. It is noted that there was research conducted in 1969 that stated that there were oil and gas reserves in the SCS. However, technological developments to carry out offshore drilling at depths of up to 600 meters where oil and gas reserves are located were only developed in the late 1970s. In March 1976 there was the first company to start operating to look for gas and oil resources off Palawan Island, Reed Bank which involved a combination of three Swedish companies and seven Filipino companies. Furthermore, there

research in 1995 by Russia's Research Institute which stated that the Spratly Islands were predicted to have 6 billion barrels of oil, and 70% of the resource content there contained natural gas. In March 2002, the German Chamber of Commerce published a report stating that the SCS is rich in tin, copper, cobalt, and nickel and is estimated to contain 70,000 tonnes of phosphorus.³¹

Third, due to the first and second reasons, all states had their national interest in the area, either directly in the dispute or indirectly through their relations with the claimants' states. Full control over most of the SCS area is a way for a country to strengthen its position so that it becomes a large country due to access to the exploitation of oil, gas, fisheries, and other resources. This is possible because at least the country can claim around 40,000 km² to become its EEZ area so that the country has the right to exploit the natural resources in it.³²

From China's perspective, the number of Vietnamese vessels involved in illegal fishing around the Paracel Islands increased from 21 cases in 2001 to more than 900 cases in 2007. It was also reported that between 1989 and 2010, there were more than 380 incidents involving assault and detention by foreign countries against Chinese fishermen.³³

For Malaysia and Vietnam, oil production from SCS became one of their national interests against China's claim over the territory. Petronas company of Malaysia is the main oil producer in the SCS area, in 2011 they were able to produce 500,000 barrels of oil per day and 600

³⁰ Ralf, Emmers, "The changing power distribution in the South China Sea: Implications for conflict management and avoidance." *Political Science* Vol.62 No.2, 2010, pp.118-131.

³¹ Nishant Nair, "China in South China Sea: Evolving geopolitical interests and opportunism." *Maritime Affairs: Journal of the National Maritime Foundation of India* Vol.18 No.2, 2022, pp.58-70.

³² Andy Yee, "Maritime territorial disputes in East Asia: A comparative analysis of the South China Sea and the East China Sea." *Journal of Current Chinese Affairs* Vol.40 No.2, 2011, pp.165-193.

³³ Jian Zhang, . "China's growing assertiveness in the South China Sea: a strategic shift?." in Buszynski and Roberts, *The South China Sea and Australia's Regional Security Environment*, 2013, at 19.

billion m³ of natural gas. Meanwhile, the PetroVietnam company in the same year can produce 300,000 barrels of oil per day and 100 billion m³ of natural gas. On the other hand, China was carrying out offshore drilling in the Pearl River basin, at that time the area was not originally disputed territory. However, because the oil and gas reserves at the initial drilling locations for Petronas Malaysia and PetroVietnam were depleted, while the demand was increasing, they had to find a new location, the location which was initially not disputed became a new area of tension with China.³⁴

Even the United States did involve as their support to their allies, Philippines, and to put pressure on China dominance in Southeast Asia. The United States needs this region because it is interested in supporting its military forces' mobility in carrying out its global domination. In addition, the United States also has a high number of trade cooperation with states in the SCS region. The interests of the United States in the SCS were once expressed by former United States Secretary of State Hillary Clinton:

"The United States has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea. We share these interests not only with ASEAN members or ASEAN Regional Forum participants but with other maritime nations and the broader international community".

The overall wealth of natural resources in SCS provides strong reasons why countries like China and even the United States often carry out policies that can disrupt peace and security in the region. SCS has 213 billion barrels (10 times more than the United States oil reserves) of oil reserves and natural gas, equal to the natural gas reserves owned by Qatar. Estimates of the oil content in the SCS area are pretty diverse. China is very active in

claiming the SCS area because it once issued an estimate of the oil content in the SCS area of 213 billion barrels. In comparison, the United States estimated the oil content in the SCS at 28 billion barrels. Like petroleum, the natural gas content in the SCS area also varies with extraordinary figures.

The oil and gas reserves still need to cover the waters around the Spratly Islands and the Paracel Islands because, so far, exploration has yet to be carried out in the two disputed island waters. The size of the oil and gas reserves certainly strengthens the attitude of countries around the SCS region to uphold their claims in the SCS. In its development, according to several experts, it is said that the oil and gas resources in the SCS are being exploited at an alarming rate by countries surrounding the SCS area. Therefore, based on current exploitation activities, it is forecasted that the energy resources in SCS will be depleted in the next 20 years.³⁵ This dynamic created a more complicated situation in the SCS because states became increasingly aggressive in utilizing energy resources before these energy reserves ran out.

As for the military perspective, command and control over the SCS will strengthen the state's position in terms of the maritime regime considering that the region is the heart of Southeast Asia in terms of maritime activities. Therefore the SCS area also has important meaning for military strategy, especially for nuclear submarine maneuvers and deterrence. The placement of several military bases around the SCS waterfront such as in Hainan, Guam, the Philippines, Okinawa, and several other military bases has a positive correlation between the strategic location of the region and the security of this region.³⁶

China's presence, for example, in this region does not only want to create a

³⁴ Leszek Buszynski, *supra* note 12 at 6.

³⁵ Jian Zhang, *supra* note 33 at 22.

³⁶ Ahmad Almaududy Amry, *supra* note 17, at 93.

broad EEZ but also wants to control the seas to achieve further power projections, both around the Pacific Ocean and the Indian Ocean. At present the main missions of the Chinese military or People's Liberation Army are: securing ships entering Taiwan, carrying out operations in the West Pacific to deter the enemy, protecting China's sea lines of communication, and cutting off enemy lines of communication.³⁷

Sea-based nuclear deterrence capabilities are a priority in China's military strategy. China is expected to gain second-strike capability by introducing the JL-2 SLBM missile which has a range of 8,000 km. China's deterrent capabilities, especially its silent nuclear-powered submarines, can be used to counter enemy submarine operations. China's aircraft carriers can also be used to silence neighbors who also have territorial claims. Small islands in the SCS can be used as bases for intelligence, surveillance, and reconnaissance.³⁸

China's defense strategy is called Offshore Defense which has two defense zones, namely two island chains. The first island chain is a continuous line covering the Kuril Islands, Japan, Ryukyu Islands, Taiwan, and Indonesia (Kalimantan Island to Natuna Besar Island). Meanwhile, the second island chain is a line that stretches from Japan, Bonin, Marianas, Carolines, and Indonesia. The two island chains cover a maritime area of approximately 1800 nm from the coast of China including most of the East China Sea and major maritime routes in East Asia. From these conditions, it is illustrated that the SCS is part of China's defense strategy.

The interests of these shipping lines and resources also have implications for defense interests. Almost all countries claim SCS (except Brunei) always use defense instruments to defend their interests. This can be seen from several

incidents between the Philippines and China in the SCS, especially in the Spratly Islands. The strategic value of the SCS region in terms of economic, political, and security interests is what, among other things, encourages the disputing countries to maintain their demands. On the other hand, countries outside the SCS area still want their ships' traffic to pass through the SCS area without being disturbed.

Several states in the SCS region have modernized their defense forces, supported by better economic growth. The aim is not only to achieve equality and achieve standardization with the alliance system but also to anticipate possible contingencies due to the uncertainty of the strategic situation. Modernization of weapons systems and provocative placements can lead to miscalculations and misperceptions. Misjudgment or perception of an event can create a complex and dangerous situation. Just to give you an idea, in China, they are developing a new fighter and revamping the old Cold War-era command structure. China's first domestically built aircraft carrier with a displacement of 50,000 tons is under construction. As for Japan, its 2019 budget includes submarine building, sonar development, and sophisticated destroyers equipped with Aegis radar with missile defense capabilities. Future hardware purchases include three US-made Global Hawk reconnaissance drones and 42 Lockheed Martin F-35 Joint Strike fighter jets. At sea, the Japanese fleet now has its largest warship since World War II, the 248-meter-long helicopter carrier Izumo. India was upgrading its navy with 40 new warships, 12 additional submarines, and the first aircraft carrier designed and built by India. South Korea is creating a modern blue-water navy capable of projecting power far beyond the country's coasts. Meanwhile, Australia is unveiling a 20-year plan to boost its naval strength by increasing its defense budget by up to IDR 283.5 trillion (\$21.6 billion) over the next decade by buying new frigates, armored

³⁷ Simela Victor Muhammad, *supra* note 23, at 7.

³⁸ *Ibid.*

personnel carriers, aircraft strike fighter jets, drones, and submarines.³⁹ Several of the above countries said that the military power they developed in the SCS region was a reaction to China's increasing aggressiveness.

Combined, militaries across the Indo-Asia-Pacific spent about IDR 1.31 Quadrillion or USD 100 billion more per year in 2020 than they spent in 2016, up from a total of IDR 5.71 Quadrillion or IDR 435 billion United States dollars in 2016 is estimated to reach IDR 6.99 Quadrillion or the equivalent of 533 billion United States dollars in 2020.⁴⁰

Based on the data showing such great potential, it is no exaggeration if the SCS becomes the object of multilateral debate. One thing that can be agreed upon is that in the SCS, all states enjoy the freedom of the sea rights, including navigation and the right to fly in the air space above them as well as other uses of the sea that are lawful under international law. Therefore, disputes involving countries around the SCS affect the international community.⁴¹ Mastery of the SCS region which is represented as the maritime heart of Asia by certain parties absolutely without any legal basis will have strategic consequences influencing geopolitics thereby creating regional instability and of course, inviting countries inside and outside the region to get involved because it has disrupted their interests.⁴²

C. ALTERNATIVE SOLUTIONS TO DISPUTE RESOLUTION IN THE SOUTH CHINA SEA

The disputes in the SCS area have aroused vital concern from the international community as many parties or actors are involved. In particular, the region has become an essential space where many experts argue that a military conflict between China and the United States has the potential to occur to defend its interests in the region. If countries with special interests in China continue to maintain their ego as a country, the potential for armed conflict will become more open. Disputes in the SCS region have become a severe challenge in every effort made by various parties to reach a mutual agreement. The realistic thing to do now is to build political relations both at the bilateral and regional levels. Prolonged disputes and tensions will become an obstacle for countries around the SCS region to increase national development.

From 1990 to 2001, ASEAN members did the Managing Potential Conflicts in the South China Sea Workshops - initiated by Indonesia - which suggested behaving accordingly not to insult the neighbors and put aside different power capabilities, prioritizing cooperation in the region to prevent a more significant conflict to exist, and respecting the result of legal action based on the international law principles.⁴³ Although ASEAN was criticized for being too neutral and not solving the problem, the issue of SCS became one of their top priority matters to discuss at every meeting level.⁴⁴ One of their phenomenal solutions was establishing a code of conduct on the SCS.⁴⁵

The presence of the PCA ruling in the SCS dispute between the Philippines and China gave hope that would ease the tension due to its legally binding decision based on international law principles. However, China's reluctance to comply with the PCA decision created a new

³⁹ Widya Setiabudi Sumadinata, "Analysis of the AUKUS Agreement on Security in the South China Sea Region." *Neo Journal of economy and social humanities* Vol.1 No.4, 2022, pp.265-271.

⁴⁰ Nguyen Huu Quyet, "CHINESE STRATEGY IN THE SOUTH CHINA SEA: A Growing Quest for Vital Economic and Strategic Interests." *World Affairs*, 2023, 00438200231181141.

⁴¹ Mark Raymond and David A. Welch. "What's Really Going On in the South China Sea?." *Journal of Current Southeast Asian Affairs* Vol.41 No.2, 2022, pp. 214-239.

⁴² Strating, Rebecca. "Norm contestation, statecraft and the South China Sea: defending maritime order." *The Pacific Review* Vol.35 No.1, 2022, pp.1-31.

⁴³ Hasjim Djalal, *supra* note 11, at 100

⁴⁴ Ralf Emmers, *supra* note 13, at 587

⁴⁵ Trystanto, *supra* note 13, at 145

problem. The provisions in the UNCLOS 1982, especially in Annex VII, which is the basis for the PCA's settlement of SCS disputes between the Philippines and China, only have an enforcement mechanism if one party respects the PCA's decision. China's non-compliance with the PCA decision can be used as a lesson for the international community regarding the UNCLOS 1982 where it can adopt a regulatory mechanism regarding compliance with a state party to a dispute at the International Court of Justice. Provisions regarding this matter are contained in Article 94 paragraphs (1) and (2) of the UN Charter.⁴⁶ The absence of an enforcement mechanism such as that of the International Court of Justice makes PCA expect good faith from the disputing parties to comply with the decision. If one of the parties persists in not complying with the PCA decision, then one of the solutions to resolve the SCS dispute is to use methods outside the PCA mechanism. We argue that what is left is to evaluate and expect a fresh new diplomacy among the states involved to ease the tension.

Given that there are no appeals against the PCA decision in the SCS dispute, while resolving tensions in the SCS region must be a priority, China and the Philippines must make diplomatic efforts to reach an agreement regarding the SCS dispute. Without efforts to resolve through diplomatic channels, the PCA decision may not have any meaning. In resolving a dispute, various parties, both directly and indirectly involved, in resolving disputes in the SCS area must continue to process finding the best form of dispute resolution for the security and stability of the region.

Of the various provisions governing peaceful dispute resolution, there is no obligation from the disputing countries to choose one particular procedure. However, the obligation of the parties to the dispute is to settle the dispute peacefully. The failure of the parties to resolve as quickly

as possible obliges them to continue seeking an amicable settlement, consulting each other in mutually agreed ways. Disputing countries or those with interests in the SCS region must refrain from any actions that may exacerbate the problem, threaten international peace and security, and complicate efforts for a peaceful settlement.

This obligation is not only to use peaceful dispute resolution methods but to guard and refrain from actions that could exacerbate the situation. In other words, if the dispute still cannot be resolved, countries with an interest in the SCS region can at least manage and control themselves so as not to exacerbate the situation which could pose a threat to regional peace and security so that it can harm countries that use the SCS area for trade and so on.

Regional stability, apart from creating the Asia Pacific region as a safe and peaceful area, is also a prerequisite for the development of the countries surrounding the SCS region itself. By being in a stable region, these countries can internally carry out development for the progress and welfare of the people. SCS disputes that have the potential to become conflicts will have negative implications for these countries. Externally, the negative implications will create regional instability as well as make the Asia Pacific region a place of conflict.

Disputes in the SCS have the potential to become armed conflicts for three reasons. The first is that the parties involved in SCS disputes often use military instruments to strengthen their claims. Second, there is the involvement of countries outside the region in the conflict. Third, there are no credible international institutions or organizations in resolving disputes. On the other hand, armed conflict will not occur if ASEAN member countries and China commit to resolving conflicts not by armed violence, but through dialogue and brotherhood based

⁴⁶ Article 94 paragraph (1) and (2) United Nations Charter

on mutual understanding, respect, and trust.

The ongoing modernization of armed forces throughout the Asia Pacific region can contribute to maintaining regional stability provided these countries continue to reach out and strengthen their security and defense relationships. Strengthening security and defense relations between countries with an interest in the SCS region can also prevent military conflicts because it further reduces feelings of distrust between these countries. The creation of peace in the context of defense and security includes not only the absence of open conflict but also security in the economy, society, energy, environment, and other fields.

The function of international dispute resolution in the event of a dispute is with the main principles of international dispute resolution law, which prohibits the use of force and promotes peaceful settlement. Prevention and avoidance of confrontation and conflict is a must (Wu, 2020). We cannot deny that the dynamics in the SCS region have the potential for open conflict. Therefore, we argue that assertive and peace-oriented diplomacy, either bilateral or multilateral, is needed to support international dispute resolution law, regulations, applicable principles, and international dispute resolution institutions. Several alternatives can be made, such as bilateral diplomacy, imposing international sanctions, diplomatic pressure, multilateral diplomacy to negotiate and agree on their maritime border, and mediation.

First, we argue that the short and simple action that can be done is the Philippines as a party to the dispute in the PCA, which can give China time to accept and study the PCA decision before conducting bilateral negotiations. Meanwhile, the Philippines can continue to seek support from ASEAN and Asia Pacific countries to jointly find ways to resolve disputes in the SCS peacefully.

Another solution that can be made is by imposing sanctions that come from other states and international organizations. States, either independently or with interest groups in the SCS region, can impose sanctions on China, which continues to act aggressively and tends to ignore international law, in this case, the PCA ruling. These sanctions can be in the form of demands for an apology, compensation, and restoration of the situation to its original condition. This is because, in the PCA decision in the SCS dispute, there were also environmental issues that China violated. In addition, the next type of sanction that can be given is the termination of diplomatic relations, embargoes in the field of international trade, acts of retaliation, and up to the war. With the imposition of these sanctions, the state accepts international law as law not only from its awareness (internal) but also from the external side in the form of these sanctions. Although it is not without risk, learning from Russia's invasion of Ukraine and the sanctions from the European Union and the United Nations did not stop the Kremlin's move. It is also possible that Russia will be willing to assist China to overcome the sanctions as their repayment of China's support during the Russia-Ukraine crisis.

Third, diplomatic pressure. The international community might ask China to take the following steps: publish to the international community, especially countries around the SCS area, a list of geographical coordinates of China's claims in the SCS under articles 16 and 75 UNCLOS 1982, agreed to respect the claims of countries around the SCS area and if there are overlapping maritime claims willing to settle peacefully, work with ASEAN and other regional organizations to manage the SCS, ensure that all interested parties in the area SCS can be given the opportunity and active participation to jointly resolve disputes that occur in SCS.

Fourth, the solution is to use the PCA decision as a starting point for settlement

but not force China to accept the entire contents of the decision. Three steps can be used. The first is to start negotiations in which states affected by the nine-dash line could use Article 62 paragraph (3) of the UNCLOS 1982 as a basis for recognising the rights of traditional Chinese fishermen in areas included inside the nine-dash line. China can see this recognition as a soft attitude from other parties around the SCS region to start negotiations going forward. Using Article 62 paragraph (3) of the UNCLOS 1982, states around the SCS area can also still have complete regulatory control over natural resources in their EEZ, which is affected by the nine-dash line.

The second step is to resolve the issue of sovereignty over crucial features in SCS. China and claimant countries in the SCS region should work together to resolve sovereignty issues over the Spratly Islands, Paracel Islands, Scarborough Shoal, and Pratas Islands. Based on the PCA decision, all the features in the SCS area are only rocks that make it impossible to obtain maritime rights. Thus, if the claimant countries of the SCS area want to negotiate between them regarding sovereignty over features in the SCS, they must provide evidence in the form of historical conquests, occupations, transfer agreements regarding territories, or anything else that can be used to strengthen arguments about sovereignty. This process will indeed be very long and complicated, but for the sake of creating peace and stability in the SCS region, these steps are worth fighting for between countries around the SCS region.

The final step is to enter into a multilateral agreement among all the states with interests in the SCS area for the management of natural resources and minerals, as well as environmental protection in the SCS. This is because SCS is a semi-enclosed sea. Therefore, Article 123 of the UNCLOS 1982 mandates that the sea which is of the type of semi-enclosed sea must have cooperation between bordering states in exercising their rights and

obligations based on the 1982 Law of the Sea Convention.⁴⁷ All parties need to emphasize the need for compliance with the 1982 Law of the Sea Convention on the principles of semi-enclosed sea which requires cooperation between countries in the SCS region to minimize the use of a security approach.

This solution can be useful for building a sustainable and comprehensive collaboration process in managing natural resources in SCS. From the Chinese side, it does not rule out opportunities for cooperation, this can be seen from the Chinese side's statement shortly after the issuance of the PCA decision.

Cooperation at the regional level can overcome or accommodate conflicting claims related to maritime boundaries, conflicting interpretations of international agreements in the field of natural resource management in the SCS area, the interests of countries around the SCS area in terms of managing existing petroleum potential, and interests of countries outside the SCS region. For example, this cooperation can be carried out in Scarborough Shoal where there are fishery and oil and gas resources in this area. In this case, China and the Philippines can set aside disputes to make it easier to jointly manage resources in this area. The two countries could, for example, negotiate to determine the maximum amount of fish each country can catch in one year and build a commitment to enforce rules against their citizens if they violate this cooperation. Building cooperation is very important for both parties so that they can take advantage of the natural wealth in the SCS without tension between the respective countries with an interest in the SCS.

Fifth, we think this solution might also be visible in the current situations and based on a best practice. From lessons learned of the Indonesia-China relations during their tension over the North Natuna

⁴⁷ Article 123 the United Nations on the Law of the Sea 1982

Sea or the southern part of SCS, we could suggest that using economic diplomacy would also be beneficial to enhance a positive outcome in resolving the disputes.⁴⁸ Both states maintain their harmonic economic relations, especially during COVID-19, while at the same time doing their deterrence strategies to guard their territory in the Natuna dispute. Malaysia, the Philippines, Vietnam, and Brunei could also ask for Indonesia's help to mediate the diplomacy that we suggest as the fourth alternatives. An understanding between Jakarta and Beijing in their bilateral diplomacy would establish trust during the negotiation in SCS because China is approached by someone they trust.

D. CONCLUSION

SCS is highly important to the states in the area, their allies, and the world economy. Several factors defined the urgency of the area, such as vital international maritime routes, oil and natural gas reserves, the biodiversity under the sea, and the security of the states. Preventing a wide scale of conflict or even war is the primary goal of all actors. Much has been done this decade to resolve the dispute, including taking the case to PCA as a legal action. China's non-compliance with the decisions issued by the PCA regarding the SCS dispute has indeed become a problem in itself. Their action could lead to innovation and consideration for the international community in the future to regulate more strictly law enforcement in the 1982 Law of the Sea Convention. We then suggest combining bilateral and multilateral diplomacy among the alternatives to force all claimants to agree on their maritime boundary. In addition, mediation from "friends" they trust will be beneficial. International sanctions might be an option, but with a highly calculated decision. Moreover, compliance with legal action, such as the PCA decisions, will be an extra

boost to each other trust to support the diplomacy that takes place in the process. We also argued that peace-oriented diplomacy and cooperation among states involved in this issue have to be prioritised.

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⁴⁸ Zou, Yizheng. *upra* note 12

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