Current Legal Developments
South China Sea

Responses to Sovereign Disputes in the South China Sea

Introduction

A number of topical issues have emerged in relation to disputed territory within the South China Sea, affecting China's relationship with its seafaring neighbours, and even its relations further afield with the USA, which has expressed its discontent with China's recent actions. This note briefly explains the context to the current disputes in the South China Sea before reviewing each issue in turn.

This area of the ocean is notoriously problematic, with rival claims to various islands and maritime zones being made by States, not least of which is China's claim, which extends over almost all of the South China Sea. The South China Sea is a semi-enclosed sea of approximately 1.4 million square miles. First published in 1947, China's claim over the South China Sea is signified on its maps by a U-shaped line composed of nine dashes. This nine-dash line has come to be infamous, and marks China's claim to territorial waters which

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2 Article 122, LOSC: “Enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States. United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982, in force 16 November 1994) 1833 UNTS 396.
reach well beyond what most States consider to be its legitimate 12-nautical-mile (nm) zone. This line encroaches upon the 200-nm exclusive economic zones (EEZ) of Vietnam, the Philippines, Malaysia, Indonesia and Brunei, and so, unsurprisingly, has caused friction amongst these States and China. Rival claims from States, such as Vietnam and the Philippines, have gone unrecognized by China despite the provisions of the United Nations Convention on the Law of the Sea (LOSC or the Convention), which maintain that States bordering a semi-enclosed sea should cooperate with each other in the exercise of their rights and the performance of their duties under the Convention. The nucleus of the dispute is two archipelagos, the Paracel Islands and the Spratly Islands, over which both China and Vietnam claim they have historical rights. There are other rocky outcrops and atolls, such as the Scarborough Shoal, to which both China and the Philippines lay claims. These claims are territorial claims, and can generate potential maritime issues in the surrounding waters.

The stakes for any successful claim to sovereignty over islands and any resulting maritime zones in the South China Sea are high. This body of water is believed to be rich in crude oil and natural gas. In addition to containing vast and vital reserves of living resources, it is one of the world’s busiest shipping lanes; some estimated USD$5.3 trillion worth of trade passes through it.

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4 Article 3, LOSC: Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

5 All these States are party to the LOSC.

6 As provided in Article 123 LOSC, such cooperation should include the coordination of: the management, conservation, exploration and exploitation of living resources, the implementation of [States’] rights and duties with respect to the protection and preservation of the marine environment, and scientific research policies.

7 Other disputes relate to the Pratas Islands, which are disputed between China and Taiwan, and also the Macclesfield Bank, which is disputed between China, Taiwan, the Philippines and Vietnam. It may be that some of these islands are not islands under the LOSC. Article 121 LOSC stipulates that an island is a naturally formed area of land, surrounded by water, which is above water at high tide. The provision distinguishes islands from mere rocks, which cannot sustain human habitation or economic life of their own, and thus “shall have no EEZ or continental shelf”.