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South China Sea Dispute

Jakub Šrámek

Introduction

The dispute in the South China Sea is one of the most contested areas in today's world. Some politicians and journalists even see it as a contradiction that could lead to a war with far-reaching consequences in a relatively short time - this is not only an economic but also a power conflict in which the US is also involved, especially as a counterweight to influence the People's Republic of China (PRC).

China, Vietnam, Brunei, Taiwan, Malaysia and the Philippines are making territorial claims in the South China Sea, which is a source of tension between states. The subject of the dispute is mainly economically significant parts of the sea (i.e. those with natural gas and oil deposits) and strategically important places like Paracel Islands, Spratly Islands, and Scarborough Shoal.

In this paper, I will be looking closer into the dispute. I will describe the importance of the South China Sea and present the claims of all important actors involved. Afterwards, I will outline some possible solutions to the dispute from the United States of America (USA's) perspective.

The importance of South China Sea

The South China Sea is a part of the Pacific Ocean with an area of approximately 3.5 million square kilometers. It includes many islands or bays, the most important of which are the Paracel Islands and the Spratly Islands. The territory of this sea is divided between several countries, namely Brunei, Vietnam, the PRC, Taiwan, Malaysia, the Philippines, Cambodia, Thailand and Indonesia. It is a strategic territory that is important for international trade. As much as one-third of global maritime transport is in the South China Sea, making it one of the world's most important transport hubs. The amount of oil that is transported to East Asia via the South China Sea is three times greater than the amount that passes through the Suez Canal, and fifteen times greater than that of the Panama Canal. In addition, the U.S. Energy Information Administration (EIA) estimates that there are up to 11 billion barrels of crude oil

and 5.4 trillion cubic meters of natural gas in the sea area. According to the Council on Foreign Relations (CFR), more than 5.3 billion USD a year passes through the area, which is capital raised solely from trade, with the United States accounting for about 1.2 billion USD. There are many places in the South China Sea for fishing, which is not only a very important source of food in the region but also a major source of trade income (EIA 2013).

Under the United Nations Convention on the Law of the Sea (UNCLOS), an exclusive economic zone (EEZ) is defined as "an area beyond and adjacent to a coastal sea that is subject to a special legal regime set out in Part V of the UNCLOS under which rights and jurisdictions". The extent of the EEZ is defined as follows: "The exclusive economic zone shall not be wider than 200 nautical miles from the baselines from which the breadth of the coastal sea is measured." it is defined by each state within the UNCLOS, but must respect the rights of other states, which are also covered by the UNCLOS. The scope of the EEZ set out in the UNCLOS does not apply if the historical context plays a role. A State may claim territory above the limits set by the UNCLOS if it has compelling reasons and justifications for doing so. The UNCLOS further defines, among other things, what the EEZ serves and what rights and obligations of states result from it (Phillips 1977: 600 -604).

Mainland China plays a major role in this dispute. In 1947, for the first time, a dashed line (the so-called Nine-Dashed Line) was created and literally sketched, with which China claimed approximately 90% of the territory of the South China Sea. After the creation of the UNCLOS, this line came into conflict with the EEZ of the newly emerging states. In 1953, two commas were removed from the Gulf of Tonkin following an agreement with Vietnam, but nine remained. Although China has defined its territorial claims with this line, to this day there is no written justification on the part of the Chinese side of the shape of this line, nor is there a precise formulation of exactly what territory it claims. However, in some places these zones (Nine-Dashed Line and EEZ) intersect, leading to mutual conflicts (Gau 2012).

History of the Dispute

A major turning point came in the early 1970s when the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) issued a statement mentioning the possible presence of oil and gas in the South China Sea. While China gradually began to occupy key islands throughout the sea, the Philippines declared the Spratly Islands "res nullius," a no man's land, along with a statement that they have the right to settle and farm the islands just like any other country. In 1978, however, the area was declared an integral part of

Philippine territory. South Vietnam also became involved in occupying the Paracel Islands, leading to the first armed conflict over influence in the South China Sea. In 1974, a battle for the Paracel Islands took place between China and Vietnam, resulting in a victorious China. Vietnam has relocated to territories that were still not occupied by China at that time. The occupation of the Paracel Islands by China provoked anti-Chinese protests and riots in Vietnam (Mirski 2015).

In 1982, the UNCLOS was adopted in Montego Bay-Jamaica, which allowed other states to make de facto claims on certain territories within their EEZs. In 1988, there was another military conflict between China and Vietnam, this time in the Spratly Islands, where China sank 3 Vietnamese ships. Another milestone in the development of the dispute is the year 1992 when the "Law on Territorial Waters and Their Adjacent Zones" was enforced in China. By this law, the entire territory of the "Nine-Dashed Line" was declared the exclusive territory of the PRC. This law went completely against the principles of the UNCLOS, and paradoxical is the fact that in 1996 China ratified the UNCLOS (Suchánek 2020).

The year 1995 saw a cooling of Sino-Philippine relations due to the conflict at Mischief Reef in the Spratly Islands. China began building outposts in the area, claiming that these were only buildings designed to protect fishermen in the area. This provoked a tumultuous reaction from the Philippines and led to an hour-long skirmish, which "bombarded" three Chinese ships and one Filipino. As the Philippines were already a traditional US ally at the time, a joint military exercise took place in the same year. However, both the Philippines and the USA deny that the exercise is in any way linked to the conflict with Mischief Reef (Mirski 2015).

The first multilateral agreement was reached between the states concerned in 2002 through the ASEAN Declaration of Conduct of Parties in the South China Sea. In practice, this is a document in which the signatories declare that refrain from any aggressive conflicts within the South China Sea and from any action that could lead to further conflicts and complications between individual States within the South China Sea. However, the PRC did not adhere to this and within a few years launched another offensive with the aim of gaining strategic territory for itself, especially in the Spratly Islands. In 2007, a Chinese patrol boat hit and sank a Vietnamese fishing boat, even though it was allegedly in the Vietnamese EEZ (Ramses 2014).

In 2009, Vietnam and Malaysia submitted a joint proposal to the Continental Shelf Borders Commission concerning their EEZs, more specifically their extension 200 miles

offshore to reach the southern parts of the South China Sea. However, this outraged China, the Philippines and Brunei, as the proposal included the territories they claimed (Mirski 2015).

The year 2013 was an essential step in addressing the issue of territorial claims. The Philippines has filed a lawsuit with the International Tribunal in The Hague after the occupation of Scarborough by Communist China. This concerned in particular the "Nine-Dashed Line", in which the Philippines requested that China's claim to the territory be declared unfounded and in violation of the UNCLOS and international law. The Tribunal ruled that any historically justified territorial claims of China had been "extinguished" by ratification of the UNCLOS. In addition, it identified some of the territories that China considered islands as low tide ridges and rocks, and therefore China cannot have sole control over them within its EEZ and not at all within the "Nine-Dashed Line". Therefore, any activities in the Philippine EEZ were declared illegal. For all of them, the tribunal cited Mischief Reef as an example, where China built a runway for fighter jets and a dock, which was designated the territory of the Philippines. Despite the tribunal's decision, China refuses to withdraw from the islands and still claims that the "Nine-Dashed Line" is its sovereign territory based on a historical property (Liu 2016).

In 2014, there was another conflict between China and Vietnam. On May 2, the state-owned China National Offshore Oil Corporation (CNOOC) placed its deep sea drilling rig HD-981 in disputed waters south of the Paracel Islands. There was a conflict between Vietnamese and Chinese boats, and one Vietnamese fishing boat sank. This again led to anti-Chinese protests in Vietnam (Kaplan 2015).

Justification of territorial claims

The first reason underlying the divisions between China, Vietnam and the Philippines precedes the creation of the UNCLOS. It is based on international law and its principle of "continuous and de facto occupation and use" of the disputed territory, according to which the territory (in this case especially the islands) practically belongs to the state whose inhabitants de facto reside in the territory for a certain period of time. It was based on this right that military conflicts arose between the above-mentioned states when these states sought the de facto occupation of the claimed territories for the purpose of international recognition of territorial claims (Rustandi 2016).

The second reason, no less important, which has given rise to the claims of Brunei, Malaysia and Taiwan, is the aforementioned UNCLOS and the introduction of EEZs and the obligations associated with them. It is the intersection of the individual zones, together with the intersection of China's "Nine-Dashed Line", that is the source of the dispute between all six states. However, it is also important that the area that can be delimited within the EEZ does not include low tide or rock ridges and therefore cannot be claimed. For this reason, China in particular is taking steps to artificially extend the ridges and rocks so that they can be considered islands. As part of the expansion, it is building military bases, docks and similar units in these areas (Dolven – Manyin – Kan 2014).

The third, and probably the most current reason is the strategic position of the South China Sea from a military and economic point of view. The national attitude of individual states also plays a role, which attaches a certain historical and thus symbolic value to the South China Sea. There are also major disputes over fishing rights in these areas (Rustandi 2016).

Territorial claims of individual states

People's Republic of China (PRC)

The Chinese government places territorial demands on the history of the area. More specifically, they base them on the claim that the Paracel and Spratly Islands were discovered by the Chinese and therefore belong to them. China is even engaged in archaeological research to prove that there was Chinese culture on these islands since ancient times (Liu 2016).

The Chinese government claims all Nine-Dashed Line territories, and thus the entire Paracel and Spratly Islands; of the 230 territories within the Spratly Islands, all claim, but in fact control only eight (8). The Paracel Islands have been controlled since 1974 after the conflict with Vietnam as a whole. It is currently working to build artificial islands throughout the area and to expand those parts that have been identified by the tribunal as "non-islands", in order to control the areas there. They build runways, battleship docks, etc. on the islands. Construction activity on these islands is intended to support their declaration as islands in connection with the UNCLOS. Although several decisions have been made against China's territorial claims several times in history, China refuses to back down (Buszynski 2012).

Vietnam

Vietnam also bases its territorial claims primarily on history. The paradox is that it is also involved in archaeological research in the area of the disputed areas. According to information from Vietnam, there are no signs of Chinese on the islands, but of ancient Vietnamese culture. Vietnam claims the entire territory of the Paracel Islands. It further claims all 230 parts of the Spratly Archipelago, effectively controlling twenty seven (27) of them. At the time of the trial in The Hague, it supported the Philippine proposal, but only in those parts that did not directly concern the Spratly Islands. An important part of Vietnam's requirements is the international recognition of its defined EEZ, especially from the Chinese side (Ramses 2014).

Philippines

The Philippines is trying to defend the claims in the disputed territories by falling within the territory of its continental shelf and at the same time the EEZ. Unlike the previous ones, it claims only fifty three (53) parts of the Spratly Islands, of which it effectively controls only seven (7). Apart from the Spratly Islands, it claims no other territory outside its demarcated EEZ. There is a dispute with China over the Scarborough Shoal, which is in the Philippines' EEZ but is still occupied by China. The mainland Chinese military is still located in the area (Miks 2012).

Malaysia

Malaysia's territorial claims are based solely on its EEZ and the borders of the continental shelf. It claims only those parts of the Spratly Islands that fall into them - a total of twelve (12) parts, while in fact, it controls only five (5) of them. These are mainly disputed territories between China, the Philippines and Vietnam (Cobus 2020).

Brunei

Brunei is specific in this dispute in that it relies solely on the UNCLOS, and therefore its EEZ. It claims relatively small territory within its EEZ and is the only one of the six states to claim no part of the Spratly Islands. Brunei gets into a dispute with China and the "Nine-Dashed Line" (Cobus 2020).

Taiwan

As far as Taiwan is concerned, it claims exactly the same territories as mainland China (given its historical background), is everything in the "Nine-Dashed Line", but unlike it, it does not take any active steps to occupy individual territories. In fact, it controls only one island in the Spratly Islands, the largest. Taiwan is also competing with China on diplomatic soil for the Pratas Island in the north-eastern part of the South China Sea (Sands 2019).

The position of the United States of America (USA)

At the heart of the USA's current position in this conflict is a peaceful solution, based on international law. The USA does not recognize the "Nine-Dashed Line" as China's legitimate delimitation of territorial claims. While it relies on a mix of historical rights and legal bases, other states have been able to at least partially substantiate their claims, both on their own borders and under the UNCLOS. For the USA, international law is the basis of all negotiations. It is also in the US interest to maintain the right of free passage, which is central to international trade. If the conflict reached a stage where it would be impossible, if not downright dangerous, to cross the South China Sea, it would have a huge impact on the economy, not only in the areas but also in the USA. As already mentioned, it is the USA that contributes a really significant amount to the profit from trade in the South China Sea. In addition, rerouting would cause a huge increase in shipping and insurance costs, which is undesirable (McDevitt 2014).

Officially, the USA is not on either side of the dispute, it does not support the territorial claims of one state at the expense of another. On the other hand, the US has committed itself to a positive response should one of the US allies or so-called "strategic partners" request a strengthening of patrols and military presence on its territory and the EEZ. Such countries include the Philippines (since 1951), Indonesia, Vietnam and Malaysia. Maintaining stability

and alliances is an important factor. The smaller states look at the USA as a superpower guaranteeing and ensuring free trade and security in the South China Sea. Most states see the US military presence as necessary to ensure action. If the USA loses this privileged position, it would have an impact on China's influence, which would increase several times over (Liu 2016).

Although the USA does not agree with China's position in this area, maintaining the stability of Sino-American relations is absolutely crucial for it. The USA cannot afford to jeopardize these relations, especially in order to solve other problems on the international stage (McDevitt 2014).

Possible solutions

First possible solution could be closer military cooperation. In this case, the main focus is on cooperation with the Philippines, with which the USA has a defence agreement for many years. In order to maintain a balance of power in the South China Sea, the USA can support the Philippines with weapons, ships, military exercises, or funding. The same can be done in the case of Vietnam or Taiwan, with which the USA has relatively warm relations. But it must be considered whether these steps would lead to provocation by China or other actors in the South China Sea. It must not be forgotten that, in fact, the USA is not officially on anyone's side.

Patrols

Since October 2015, the USA has undertaken a total of three Freedom of Navigation Operations (FONOPs) to verify national rights in the most disputed areas of the South China Sea, notably China. The first took place in the Spratly Islands, the second at Triton Island in the Paracel Islands and the last at Fiery Cross Reef, in May 2016. However, these "peaceful passages" were condemned by China as a provocation by the USA because the US ships were moving on the border of Chinese territorial waters. It is possible to continue these or "support" these "checks", but it is only a matter of time before Beijing runs out of patience, which could escalate into an even more serious conflict. However, FONOPS operations are crucial because they provide the US with up-to-date and objective information on the state of the conflict, thus giving the US the opportunity to respond adequately (Smith 2019).

Military presence in the South China Sea

One of the most radical practices would be a direct US military presence in the South China Sea. It may be justified by the interest in maintaining and guaranteeing the right of free passage for the good of other states. The ships and crew could be stationed in the Philippines or Taiwan by prior arrangement. However, this solution would most likely lead to disputes on diplomatic soil, especially between the US and China. Beijing could also go to sea with its own ships, which could sooner or later lead to armed conflict.

As a last resort, there is an option to impose an embargo or other economic (or diplomatic) sanctions on China. But the result could be very similar to an open military conflict. Moreover, it is not clear whether all countries would support this approach, given China's economic importance (and not just in the South China Sea). In economic terms, the US could suffer more than China. The solution may be the exact opposite, i.e. the complete withdrawal of ships from the South China Sea and the end of all military exercises or operations in the area.

Reaching multilateral agreements with the US guarantee

The US could support negotiations on the conflict on the international stage, or support the solution of this problem through the International Tribunal in The Hague. Most likely, China would oppose this. It is also possible to conclude generally binding rules of conduct (Code of Conduct), the observance of which could be supervised by the USA. A similar charter was approved in 2002, but only in the form of a declaration and is therefore not legally enforceable. However, a similar solution could be to develop an agreement with the US guarantee (e.g. within ASEAN) that would allow all states in the South China Sea to freely use the local resources, territorial waters or airspace (Hayton 2022).

Alternatively, an agreement could be signed defining the limits of sovereignty over this territory (probably with a preference for the PRC's claims), but at the same time allowing all other states to use local resources and guaranteeing the right of free passage. The same agreement was reached in 1920 in the case of the Spitsbergen when sovereignty fell to Norway, but all those who signed the agreement gained the right to use local resources. However, the applicability of this version to the South China Sea is somewhat more

problematic. In addition, an agreement could also be reached on the establishment of "hotlines" between all states affected by the conflict, so that any problems can be addressed as soon as possible (LawTeacher 2013).

Let the conflict run its course

This is one of the solutions supporting the "status quo" on the part of the USA. It is possible to issue a statement stating that the USA will not interfere in the affairs of the states in the South China Sea. However, this could greatly weaken US influence in the region, making China a much easier negotiating position (Smith 2019).

Ratification of the UNCLOS

Although the United States adheres to the principles of the UNCLOS, and despite the Obama administration's efforts, the United States has not yet ratified the UNCLOS. This leads in particular to China's belief that the USA is following international law and conventions only if it suits its interests. The signing of the UNCLOS could reduce the weight of this argument. In addition, the US could be directly involved in the discussions on EEZs and everything covered by the UNCLOS, and thus has a direct impact on what is happening in the South China Sea, at least in this respect (LawTeacher 2014).

Creation and support of communication mechanisms

In this case, it means the existence of forums and organizations that would allow direct communication between the direct actors in the dispute and potential observers. An example is the Western Pacific Maritime Symposium (WPNS), which has been in existence since 1988 and includes China, the USA and all ASEAN countries except Laos and Burma (Myanmar), and ways of communicating with each other in the event that ships or aircraft come into contact. However, the established mechanisms according to this document are almost not used and were overshadowed by the course of later disputes. A forum has also been set up to provide participants with sufficient space to express themselves and present their demands

and, if necessary, to reach an acceptable solution. Recently, however, this Forum has hardly worked - there are no negotiations or attempts to reach a constructive solution. Its resumption should contribute to the mutual cooperation of all states affected by the conflict in some way (Hayton 2022).

Conclusions

The South China Sea is one of the most important areas of the world in terms of trade and fisheries. Therefore, this area is a dispute zone between China, Vietnam, Brunei, Taiwan, Malaysia and the Philippines. These include access to trade routes (one-third of the world's maritime traffic runs through the area), access to strategic points (islands, shoals, bays) and, last but not least, fishing rights in the disputed areas. The main player in this dispute is China, whose territorial requirements conflict with the territorial requirements of all other states affected by the conflict. The US should serve as a counterweight to Chinese influence in the region, for which it can use various tools; from the mediation of diplomatic ground for an agreement between states to direct military intervention. The US is currently pursuing a "status quo" policy.

Given that this serious dispute directly affects the USA, as well as other countries in the world (for example, due to trade routes). The United States should take a clear position on this issue and begin to address it actively in its legislation. However, it should be borne in mind that the final decision of the US on a specific outcome in this dispute is most likely to affect not only trade but above all international relations and the possibility of negotiating other disputes on the international stage.

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