

CHINA AS A RISING POWER AND HER GROWING ASSERTIVENESS IN THE SOUTH CHINA SEA

Ogunnoiki, Adeleke Olumide

Department of Political Science,

Faculty of Social Sciences,

University of Lagos, Akoka, Lagos State, Nigeria.

+234 803 528 63 53

adeleke_ogunnoiki@yahoo.com

Abstract

Ever since Deng Xiaoping's 1978 economic reform began fully in 1979, the People's Republic of China (PRC), for more than three decades now, has been experiencing an unprecedented economic growth rate of 9-10%. The 'economic miracle' that ensued the economic reform has in effect not only transformed the communist State from a Third World country to an emerging economic power, but also an ascending military power which under the leadership of the incumbent President, Xi Jinping, has become more assertive in the disputed South China Sea like never before. The approximately 3.5 square kilometres South China Sea (SCS), is a semi-enclosed geostrategic sea in the Western Pacific region. Over the years, the control and ownership of the sea's waterways, geographic features and natural resources led to contested sovereignty and jurisdiction claims between the heavyweight, China and the diminutive littoral States – Taiwan, Vietnam, the Philippines, Malaysia, and Brunei that imperfectly ring the South China Sea. This paper therefore, take first and foremost, a critical look at whether rising China's growing assertiveness in the disputed South China Sea is legally justifiable, and lastly, to consider the roles international law and diplomacy can play in the peaceful resolution of the multifaceted South China Sea disputes. The research methodology for this paper includes the historical and analytical approach as well as the qualitative method of data collection.

Keywords: People's Republic of China (PRC), South China Sea (SCS), ASEAN, Sovereignty, Jurisdiction, International Law, Diplomacy, Tension

Introduction

Since the Treaty of Westphalia was signed in Münster and Osnabruck in present day Germany on October 24, 1648, which brought an end to the Thirty Years War (1618-1648) in 17th century Europe, the State has traditionally been regarded as the main actor in the international system. Although a number of contemporary International Relations scholars have come out to rebuff such state-centric argument as being obsolete considering the proliferation of non-state actors that are equally a player in the dynamic and complex international system, the State, irrespective of this development, still remains an indispensable player and unit of analysis in international relations (Ogunnoiki, 2017).

“International relations have greatly changed since the end of the Cold War” (Ming-Te and Liu, 2011:97). Ever since the Soviet Union collapsed in the year 1991 which marked the end of the ideological struggle and arms race between the capitalist Western bloc led by the United States and the Eastern bloc led by the communist Union of Soviet Socialist Republic (USSR) during the Cold War, the United States has been the sole super power on the international plane. But no sooner had the United States began policing the globe as the world hegemon than developing countries or middle powers as some would preferably call them, began to rise as world powers to reckon with in a multipolar 21st century international system – Brazil, Russia, India and the People’s Republic of China (Xuetong, 2001, 2006; Yan, 2006; Wang, 2012; Shambaugh, 2013; Hameiri and Jones, 2015).

“China boasts the oldest continuous civilization in the world and has been a major power for most of its history. Although China suffered a period of decline in the late 19th and early 20th centuries, recent decades have seen a remarkable resurgence of Chinese prosperity and power (Pumphrey, 2002:1). The rising importance of China in world affairs and especially in Asian countries represent a major change in Asian Affairs in the early-twenty first century (Sutter, 2006). Much as China’s take-off as a rising power is not a new phenomenon in international politics, it however has brought about the perception of a “China threat” which has been prevalent in the West since the 1990s. Embedded in the logic of traditional realist Western International Relations theories, this perception is that as an unsatisfied rising power, China is bound to challenge the dominant position of the hegemon, the United States and thus, disrupt the international status quo (Wang, 2009). More importantly, there have been concerns in some quarters vis-à-vis China as a rising power and her growing assertiveness over the disputed South China Sea.

China’s recent activities in the South China Sea has become worrisome for the policy makers of neighbouring States and those afar off who have vested interest in South East Asia. The Paracel islands, the Paratas island and Macclesfield Bank, Scarborough Shoal and the Spratly islands are group of marine features which China, Vietnam and Taiwan; China and Taiwan; China, the Philippines and Taiwan; China, Taiwan, Brunei, Malaysia, the Philippines, and Vietnam respectively claim in part or whole (Rosenberg, 2002; Dutton, 2011; Salil, 2012; Department of Defense, 2015; Yung and McNulty, 2015; Ma, 2016; O’Rourke, 2017). Of late, the disputes between China and her Lilliputian neighbouring States over the South China

Sea have heightened the tension in the sub-region which if not properly managed can make the South China Sea in the foreseeable future a flashpoint of a full blown armed conflict. To thoroughly examine further the theme of this research work, this paper has been bifurcated into the introduction, statement of the problems, theoretical framework, China's growing assertiveness in the South China Sea, concluding remarks and lastly, recommendations.

1. Statement of the Problems

China's growing assertiveness in the disputed South China Sea, have led to some problems rearing their ugly head in that regard which needs to be pointed out in this paper.

What can be labeled as the first problem arising from China as a rising power and her growing assertiveness in the South China Sea is the problem of mutual misconception and distrust that has heightened the tension in the sub-region. Presently, there are two subjective and contrary views on China's rise or better put, China's emergence as a world power. The first view is that of pessimistic scholars and analysts alike who perceive a 'China threat' to international order. On the contrary, Chinese officials see their country's emergence as a world power in the light of a peaceful development and not one that would revise the status quo. The second view is that of China which sees the United States alliance with other claimant States to the South China Sea islands and reefs as a plot to encircle it from rising in the region and on the world stage. Left to the United States, its alliance with claimant States to the disputed South China Sea is simply a way of reassuring its treaty ally and strategic partner – the Philippines and Vietnam of its commitment not only to safeguard their sovereignty, territorial integrity and political independence from an 'expansionist' China but also to maintain the peace and security in the sub-region.

The second problem identified in the South China Sea disputes is the problem of overlapping jurisdiction claims to the sea. China in the year 1947 arbitrarily chiseled out for itself on a map, 80-90% of the disputed South China Sea with the U-shaped nine dash line. As Chinese would argue, their country has historically exercised jurisdiction over the sea since ancient times. The other claimant States that imperfectly ring the South China Sea – the Philippines, Vietnam, Malaysia and Brunei, have all based their argument on the provisions of conventional international law i.e. the 1982 United Nations Convention on the Law of the Sea (UNCLOS) which allows them to measure their territorial sea of 12 nautical miles from the baseline, contiguous zone of 24 nautical miles, Exclusive Economic Zone (EEZ) of 200 nautical miles, and lastly the Continental Shelf of at most 350 nautical miles. These overlapping jurisdiction claims over the resource endowed South China Sea by China and the four major claimant States have been a difficult issue to resolve.

Lastly, China's growing assertiveness in the South China Sea has triggered an unnecessary upsurge in the defense spending and arms build-up of most of the claimant States. China is currently modernising its military – the People's Liberation Army (PLA), the People's Liberation Army Air Force (PLAAF) and the People's Liberation Army Navy (PLAN) in

order for it to effectively lay claim to the South China Sea geographical features as well as ensure an undisrupted supply of energy, minerals and other goods to China. Hence, China's defense spending of over \$100 billion has triggered an increase in the money earmarked annually for the defense of most of the claimant States. Consequently, there is a 'security dilemma' in South East Asia owing to the whole military modernisation programme and defense spending in the sub-region.

2. Theoretical Framework

In the discipline International Relations, there exists a modicum of mainstream theories that not only explains the ongoing South China Sea disputes but would guide the researcher in his or her analysis and data gathering. The Constructivist theory of Nicholas Onuf and Alexander Wendt for instance, when applied to the disputes, would explain how the relationship between China and the disputant littoral States as well as between China and the United States is a social construct of knowledge and identity. The Games theory of John von Neumann and Oscar Morgenstern is another theory that can be used to elucidate the 'zero sum game' of the winner takes it all vis-à-vis the contested geographical features between China and the other claimant States as well as the 'win-win' outcome of a 'positive sum game' between them. But having considered the nature of this study, the theory that hammers on a country as a rising power and the pursuit of its core value, middle and, long-range national interest would be the most befitting for this paper. Presently, there are several theories that touch on power one way or the other. But for this study on the rise of China and her growing assertiveness in the disputed South China Sea, the theory Realism would be adopted.

“Realism” it must be stated at this juncture, is not a “theory” per se. It is a “paradigm” that accommodates different theories that share similar assumptions about the international system (Mearsheimer, 2002). However, there are scholars that think otherwise. R. Gilpin for example sees realism as essentially a philosophical position and not a scientific theory that can be subjected to the falsifiability test (Gilpin, 1996).

Realism or political realism is one out of the two traditional theories of international relations. Though its scholars have more often than not criticised Idealism which is the second traditional theory as merely 'utopian' and not a reflection of international reality, both theories have one approach in common and that is, the state-centric approach. Following the outbreak of the First World War (1914-1918) and the Second World War (1939-1945), realism has gained much support than ever before from scholars in the theorisation of international relations, owing to the shortcomings of the prevailing post-WWI & II Idealist thinking (Ogunnoiki, 2017).

Realism theoretically sees “world politics” as being driven by States with competing national interest. It holds that “power” and “national interest” are the keys to unlocking the understanding of international relations. The primary national interest of States is their ‘survival’ in a hostile environment. Thus, no means is more important to them for survival than the acquisition of power and no principle is more relevant than self-help (Kegley, 2008).

The theorists of realism can be grouped into two categories – i) those that use the human nature in understanding the behaviour of States and; ii) those that focus on the anarchical structure of the international system. Realists from ancient times till date include Kautilya, Sun Tzu, Niccolò Machiavelli, Thomas Hobbes, Hans J. Morgenthau, Edward H. Carr, Reinhold Neibuhr, John H. Herz, Raymond Aaron, John Mearsheimer, George Kennan, Henry Kissinger, Georg Schwarzenberger etc.

Classical Realism is of the view that States behave the way they do just as it is the nature of human beings to behave in certain ways. Human nature here refers to the selfish and aggressive behaviour of human beings. The fact that the natural resources human beings live on in this world is limited, creates a competition and triggers survival instincts. As a result, men attack others that threaten their survival (Viotti and Kauppi, 2009 cited in Yuan, 2014:16).

Beginning with the British political philosopher and classical realist, Thomas Hobbes, he wrote in his classic book: *Leviathan* (1651) that it is in the nature of Man to endlessly be in pursuit of power. He said:

“I put forth a general inclination of all mankind, a perpetual and restless desire for power after power that ceaseth only in death. And the cause of this is not always that a man does for a more intensive delight than he has already attained to; or that he cannot be content with a moderate power: but because he cannot assure the power and means to live well, which he has present without the acquisition of power” (Curley, 1994).

Similarly, Hans J. Morgenthau, the chief proponent of modern day realism, opined that “International politics like politics is a struggle for power” (Morgenthau 1948:13). In other words, the game of international politics is all about the pursuit of power; how to acquire, increase, and project it, and most importantly, how to use it to bend others to one’s will (Kegley and Wittkopf, 2004). Therefore, a conflict of interest is bound to set in between likeminded States, thereby making war between them inevitable.

Furthermore, the realists see the international system as being anarchical in nature. The international system to them comprises of sovereign States which as autonomous entities, answer to no higher authority. Owing to the absence of a world government, States do resort to self-help in order to advance their national interest and ensure their survival. As

Mearsheimer rightly asserted, “power is a means to an end and the ultimate end is survival” (Mearsheimer, 2001:78). Hence, moral principles are of no value in international politics but interest defined in terms of power (Morgenthau, 1978).

Within the theoretical framework of realism lies a pessimistic explanation of the ascendance of China as a world power and her growing assertiveness in the disputed South China Sea. The realists, adhering to the thrust of realism, see the People’s Republic of China (PRC) augmenting its power for the furtherance of its national interest. In the year 2010, the world got to know that China has added the contested South China Sea to its ‘core interest’ which is to safeguard its territorial sovereignty and integrity as well as the reunification of Tibet and Taiwan to the communist State in line with its ‘One China’ policy.

China for its safety and survival in an adjudged anarchical international system, has taken to self-help over the years, using its civilian, military and paramilitary agencies to lay claim to, occupy and defend the geographical features in the Paracel and Spratly group of islands that fall within the nine dash line which other South East Asian countries equally have legitimate claims over. Thus, the outbreak of armed conflicts between them became inevitable – Sino-Vietnamese naval skirmish in 1974 and 1988; and Sino-Philippines armed confrontation in 1995 and 2012.

China’s repeated actions of maximising its economic and military power to the pursuit of its national interest has made many of the realists perceive of late what they call a ‘China threat’ to the post-World War II international order (Liu, 2010; Clifton, 2011; Dicke and Holbig, 2014). Hence, the United States as the world hegemon is not only bent on counterbalancing China as a rising power but also to preserve the status quo from being revised by China.

3. China’s Growing Assertiveness in the South China Sea

The South China Sea (SCS) is today the most volatile and potentially dangerous security hotspot in Asia’s maritime domain. As a semi-enclosed sea, it encompasses approximately 3.5 million square kilometres of water with China, Vietnam, the Philippines, Malaysia, Brunei Darussalam and Indonesia bordering it (Baruah, 2016; Morton, 2016; Pejsova, 2016).

The South China Sea is a significant maritime space to the aforementioned countries and a number of countries the world over for three major reasons. Firstly, the South China Sea is a geostrategic thoroughfare for commercial vessels shipping over \$5 trillion worth of sea borne goods and crude oil from the Middle East through the Indian Ocean, Malacca Strait to the countries surrounding the South China Sea annually. About two-third of South Korea’s energy supply, nearly 60 percent of Japan and Taiwan’s oil import, and roughly about 80 percent of the energy consumed in China, comes through the South China Sea (Kaplan,

2011). Keeping therefore this strategic sea lane opened continually is in the best interest of China and other countries in the sub-region (Xiaoyan, 2014).

Secondly, the South China Sea has beneath it an untapped reserve of hydrocarbons. None of the technologically advanced countries in the world has been able so far to make known the exact quantity of oil and gas that can be extracted from the seabed of the South China Sea. However, in a 2013 published report, the US Energy Information Administration stated that a total of 11 billion barrels of oil and 190 trillion cubic feet of gas can be gotten from the South China Sea. This differed from the Chinese National Offshore Oil Company (CNOOC) estimate which was put at about 125 billion barrels of oil and 500 trillion cubic feet of natural gas (cited in Morton, 2016:915).

Lastly, the South China Sea is strategic for the bounty of fish than can be caught from the marine environment. Human beings rely so much on fish for their dietary protein (Nguyen 2005; Akiyama, 2014). In the South China Sea, different kinds of fish – tuna, mackerel, shrimp, shellfish etc can be caught for human consumption. According to a United Nations report, the South China Sea accounts for more than 10 percent of global fisheries production (Department of Defense, 2015). The fishing industry behind this statistics has for many years now been a source of livelihood for thousands of people in the coastal community of the littoral States that surrounds the South China Sea as well as a source of foreign exchange earnings for the said littoral States. However, the fish stock in the South China Sea is on a decline owing to serious coastal pollution, unsustainable fishing practices as well as the destruction of the marine system (Morton, 2016). Consequently, the fishermen of the disputant States are left with no other choice but to risk venturing deep into the disputed waters of the South China Sea in order to have a better catch of fish.

3.1 An Historical Overview of China and the South China Sea Disputes

Historically, the People's Republic of China (PRC) has based its claim of indisputable sovereignty over the contested South China Sea territories especially the Spratly islands on discovery, occupation and governance. China claims to have discovered and accordingly exercised sovereignty over the South China Sea from the Han dynasty, Tang dynasty, Song dynasty, Ming dynasty and lastly the Qing dynasty. Prior to the collapse of the Qing dynasty in 1912, China lost her hold over the South China Sea features, during the 'centuries of humiliation' which began with the First Opium War (1839-1842). What followed after this was the invasion, occupation and colonisation of China's territories by imperial powers before World War II (1939-1945) – Great Britain and France in the 19th century and Japan in the 20th century (Tønnesson 2002; Jensen, 2011; Cronin and Kaplan, 2012; Storey, 2012; Roy, 2013; Zhou, 2015; Boston Global Forum, 2015; Morton, 2016).

As the Second World War gradually came to a close, the Cairo Declaration of 1943 stated that all the territories Japan had stolen from China, such as Manchuria, Formosa, and the Pescadores, be restored to the Republic of China (now Taiwan). The Potsdam Declaration of 1945, in accordance with the 1943 Cairo Declaration, stipulated in article 8 the limitation of

Japanese sovereignty to the islands of Honshu, Hokkaido, Kyushu, Shikoku and other minor islands that would be determined. However, the San Francisco Treaty of 1951 that should have addressed fully the ownership of the territories vacated by Japan did not do so in detail following the defeat and unconditional surrender of Japan in World War II. In the terms of the unconditional surrender, Japan under article 2(6) of the peace treaty, gave up its right, title and claim to the Spratly and Paracel islands in the South China Sea without a successor to a number of the islands which consequently has become the bone of contention between China and neighbouring disputant States with competing sovereignty and jurisdiction claims over them (Tønnesson 2002; Jensen, 2011; Baviera, 2012; Cronin and Kaplan, 2012; Storey, 2012; Roy, 2013; Zhou, 2015; Boston Global Forum, 2015; Morton, 2016; Ying and Shicun, 2016; Koury, 2017).

In the post-World War II era, the Ministry of the Interior under the Kuomintang (KMT) government of the Republic of China, published an official map in 1947 that carved out on paper, its maritime claims in the South China Sea in response to the Truman Declaration on the Continental Shelf. The map which initially contained eleven-dashed-line, became nine-dash-line (NDL) following the removal of two dashes between Hainan and Vietnam in the 1950s (Cronin and Kaplan, 2012; Fravel, 2012; Storey, 2012; Stanzel, 2016; Morton, 2016).

After Chiang Kai-shek, the leader of the Kuomintang (KMT) government, fled mainland China for Taiwan in 1949, the People's Republic of China retained the map with the U-shaped intermittent nine-dash-line (*jiuduanxian*) and has since then used it to lay *de facto* claims to the islands and reefs in the South China Sea and adjacent waters. On May 7, 2009, China attached the map in a *note verbale* which it submitted to the United Nations Secretary-General in opposition to Vietnam-Malaysia joint submission and Vietnam's separate submission concerning the outer limits of the continental shelf beyond 200 nautical miles on the 6th and 7th of May respectively to the United Nations Commission on the Limits of the Continental Shelf (CLCS) (Cronin and Kaplan, 2012; Fravel, 2012; Storey, 2012; Morton, 2016; Stanzel, 2016; Ying and Shicun, 2016).

China's cartographic nine dash line remains unclear and undefined by the Chinese Communist Party (CCP) led government. For some countries, the U-shape line could mean a delineation of China's sovereignty claim over the land features in the South China Sea, a demarcation of its maritime jurisdiction or a combination of both. Despite the different interpretation given its ambiguous nine dash line, China is yet to fully make known to concerned countries around the world what the vague nine dash line really stands for.

The relevance of China's historical rights over the South China Sea has also been questioned legally of late. Going by customary international law, China's claim of historical rights to the South China Sea is baseless *vis-à-vis* having indisputable sovereignty over it. Historical rights, which simply put, are the rights a State have to carry out certain activities such as fishing within the maritime space because it has for long been practicing such activities there, does not in any way make the said State to have, let alone exercise sovereignty over that body

of water or the land features therein. Historical water however, which China might be implying, is a different case entirely. As for historical water, a country can claim inalienable sovereignty because it has continuously exercised for a long period of time, sovereignty over the body of water to the exclusion of other countries that would not challenge its sovereignty over the water owing to their acquiescence. Nevertheless, China cannot still claim sovereignty to most of the South China Sea maritime space on the grounds of historical water, owing to the provisions in conventional international law.

3.2 China's Growing Assertiveness in the South China Sea

China for more than three decades now, has had a few geostrategic interests in the South China Sea which has been the incentive for its creeping assertiveness over the islands, submerged reefs and coral atolls in the South China Sea or what the Philippines would preferably call the 'West Philippines Sea'. Initially, China's geostrategic interest in the South China Sea was mainly to exercise indisputable sovereignty over all the geographical features it claims to have historical rights over in the U-shaped nine dash line. Subsequently, as China's economic growth became increasingly fueled by natural resources from abroad, the second geostrategic interest surfaced which is to secure the sea lanes of communications (SLOCs) that serve as China's trade arteries. Closely linked to the second geostrategic interest of China is the third, which is to have an untrammelled access to the South China Sea natural resources – fisheries, minerals and hydrocarbons in the seabed and sub-soil. This would go a long way in resolving the "Malacca Dilemma" as it would reduce China's over dependency on crude oil from the Persian Gulf and other part of the world that has to travel by ship through the vulnerable Malacca Strait chokepoint to call at China's seaports. It is no wonder that in 2012, Beijing made Sansha, a city on the Woody Island, the prefecture capital of the South China Sea (Storey, 2012; McDevitt, 2014; Zhou, 2015; Morton, 2016; Stanzel, 2016).

China for long has been a vulnerable littoral State from the sea if one is to historically recount its 'centuries of humiliation' that was caused by the naval invasion, occupation and colonisation of Hong Kong, Indochina (Cambodia, Laos and Vietnam), Manchuria etc by the imperial powers – Great Britain, France and Japan from the 19th – 20th century (Tønnesson 2002). Presently, the dominant naval presence of the U.S Pacific Command (PACOM) is not helping matters vis-à-vis China getting over her vulnerability. Thus, China has taken to a self-help approach for the defense of mainland China and the protection of its maritime interests in the South China Sea.

From the month of December, 2013, China has been reclaiming land on five reefs and islets, building hangars and runways, and reclaiming some eight km² in a year and a half – 17 times more land than all the other countries combined have reclaimed over four decades (Stanzel, 2016). In August, 2014, the Chinese foreign minister, Wang Yi, said that China had put on hold its land reclamation activities. But on the contrary, satellite images showed that dredging on Subi and Mischief reefs continued as at September, same year (Mitchell, 2015 cited in Boston Global Forum, 2015:7).

The People's Republic of China (PRC) is not the only claimant State to have carried out the lawful construction of man-made islands in the South China Sea. According to the U.S Department of Defense (DoD):

In the 1970s and 1980s, the Philippines and Malaysia conducted limited land reclamation projects on disputed features, with Vietnam and later Taiwan initiating efforts. At the time, the Philippines constructed an airfield on Thitu Island, with approximately 14 acres of land reclamation to extend the runway. Malaysia built an airfield at Swallow Reef in the 1980s, also using relatively small amounts of reclaimed land. Between 2009 and 2014, Vietnam was the most active claimant in terms of both outpost upgrades and land reclamation. It reclaimed approximately 60 acres of land at 7 of its outposts and built at least 4 new structures as part of its expansion efforts. Since August 2013, Taiwan has reclaimed approximately 8 acres of land near the airstrip on Itu Aba Island, its sole outpost (Department of Defense, 2015:15)

The Chinese government has repeatedly made it known through its officials that, its building of artificial islands in the South China Sea are not simply meant for defense purposes, but also for meeting civilian needs in line with international obligations such as maritime search and rescue, disaster prevention and meteorological observations, ecological environment conservation, navigation safety and lastly, fishery production (Department of Defense, 2015; Morton, 2016). Nevertheless, the stance of the United States on China's artificial islands construction remains that China, no matter how much earth it pours into the sea, cannot 'build sovereignty' over the disputed South China Sea.

3.3 Sino-U.S Relations and the South China Sea Disputes

For more than half a century, the United States has been the architect of the order in East Asia. It has for long provided security, promoted open market and democracy, not to mention, forged military alliances with a few countries in the sub-region. But as at today, this is no longer so owing to the redistribution of power in East Asia that came with the rise of China (Ikenberry, 2015). The United States, obviously, is not an Asian country let alone a claimant State to any of the contested islands and geographical features in the South China Sea. Nevertheless, there is the need to single out the bilateral relationship between China as possibly, a reemerging regional hegemon and the United States, the traditional regional hegemon vis-à-vis the South China Sea disputes.

Ever since the Second World War that started in 1939, came to a close in the year 1945, the United States for 73 years now has maintained a military presence in the Pacific Ocean for the purpose of ensuring freedom of navigation (FoN) and open skies (Burgess, 2016). During the Cold War period, it entered into a few military alliances with countries in the Asian Pacific region – Australia, New Zealand, United States (ANZUS) security treaty in 1951 and the Southeast Asia Treaty Organisation (SEATO) in 1954 in order to prevent the sub-region

from falling into the sphere of influence of its ideological rival, the Soviet Union. With the Cold War over in 1991, the United States in the post-Cold War era, is faced with a new rival – the People’s Republic of China (PRC). In 1971, the U.S National Security Adviser, Henry Kissinger, made a secret visit to China which paved the way for President Richard Nixon’s historic visit to China in 1972. It was not until 1979 that the United States officially established diplomatic relations with China.

In the year 2010, Secretary of State, Hillary R. Clinton addressed the ASEAN Regional Forum (ARF) in Hanoi, Vietnam. In her address, she stated that the United States with a national interest of freedom of navigation, open access to Asia’s commons and respect for international law in the South China Sea, is willing to facilitate multilateral dialogues to the resolution of the South China Sea disputes.

Clinton’s statement of the United States foreign policy vis-à-vis the South China Sea disputes signaled the rekindling of the U.S attention in South East Asia, which in time past was caught in the web of counterterrorism in the Middle East – Afghanistan and Iraq since the Global War on Terror (GWOT) démarche of President George W. Bush Jr. was launched after the 9/11 terrorist attack on U.S soil by the Osama Bin Ladin led Al-Qaeda group. Hence, President Barack Obama, as a follow up of America’s renewed focus on East Asia, took off the protracted attention of the United States from the volatile and conflict-ridden Middle East to the hub of world economics, East Asia, in the year 2012 with his ‘Pivot to Asia’ foreign policy and the ‘rebalancing strategy’ against rising China in the sub-region. The timely move by President Obama served as a reassurance to its treaty allies and strategic partners in East Asia that, the U.S was by no means declining as a regional power in the Asia-Pacific region despite the 2008-2009 economic meltdown that befell it and the cuts it had to make in its defense spending years after.

Though the United States is of the neutral stance, not taking a position on the legal merit of the sovereignty claims of any of the disputant States bordering the South China Sea, it has however been challenging China’s ‘excessive’ and ‘illegitimate’ claims of Exclusive Economic Zone (EEZ) and Continental Shelf (CS) in the Spratlys, some of which contravenes article 121(3) of the 1982 UNCLOS which states that, rocks that cannot sustain human habitation or economic life cannot have Exclusive Economic Zone (EEZ) or Continental Shelf (CS). With its Free Navigation Operations (FONOPs) in the contested South China Sea, the U.S naval warships since October, 2015, have been transiting very close to the geographical features claimed by China without the obligatory prior notification and authorisation from China in line with the lawful practice of warship transiting a coastal State’s territorial sea. This, the United States has done and continues doing as it does not recognise the territorial sovereignty of China over those geographical features. China on its part has been vocal in that regard, warning the United States to respect its territorial sovereignty over the features.

Furthermore, the United States has been working hand-in-hand with its treaty allies and regional partners. It has deepened security cooperation with them to the end of improving the capacity and capability of their coastguards, navy and air force vis-à-vis logistics, maritime patrol and law enforcement, intelligence-gathering etc. It has earmarked billions of dollars over the years in that regard. A good example remains the conduct of military drills – ‘Balikatan’ (shoulder-to-shoulder) with the Republic of the Philippines which entered a military alliance with the U.S with the 1951 Mutual Defense Treaty and decades later deepened the alliance with the 2014 Enhanced Defense Cooperation Agreement. Not leaving out the usefulness of multilateral platforms in achieving its goal of tranquility and stability in the maritime domain of East Asia, the United States has also been working closely with other actors in ASEAN Defense Ministers Meeting Plus (ADMM+), ASEAN Regional Forum (ARF), and the Western Pacific Naval Symposium (WPNS) (Department of Defense, 2015; O’Rourke, 2017).

Sino-U.S relations over the years have had moments of fruitful cooperation on different burning issues in contemporary international relations such as climate change. But in relation to the South China Sea, it has been nothing but geopolitical rivalry and competition that is fraught with distrust, misconception, suspicion, provocation, confrontation, harassment and brinkmanship. Prior to and after America’s ‘Pivot to Asia’ in 2012, China and the United States naval and aircraft operations in the South China Sea has led to high profile incidents some of which centres on the problem of interpreting the provisions of the 1982 UNCLOS (which entered into force in 1994) on the Exclusive Economic Zone (EEZ). To China, foreign military ships are restricted by international law from carrying out surveillance in its EEZ. The United States however, believes China only has jurisdiction and not sovereignty over its EEZ in accordance with article 56, and not to hinder the freedom of navigation of other seafaring States as was clearly stated in article 58 of the convention.

In April, 2001, U.S Navy EP-3 Aries intelligence aircraft collided with a Chinese F-8 fighter plane over waters China claims for itself but, the United States sees as international waters (Kivimäki, 2002). In the year 2002, Chinese ships harassed the U.S. Navy surveillance ship *Bowditch*. On March 9, 2009, five Chinese vessels, just 75 nautical miles southeast of Hainan Island manoeuvred and attempted to snag the towed cable of U.S. Navy ocean surveillance ship, the *Impeccable*, when it was operating in China’s Exclusive Economic Zone (EEZ) (Fravel, 2011; Gilboy and Heginbotham, 2013; Morton, 2016). At this juncture, it imperative to mention that China, drawing from its own interpretation of what international law interdicts in its EEZ, happens to be guilty of the same offense it accuses the U.S of committing. In the July 2014 RIMPAC naval exercise, China, despite participating in the joint military exercise, also sent an intelligence gathering ship that observed the naval drill in the waters off Hawaii, which falls within the EEZ of the United States (Bader, Lieberthal and McDevitt, 2014; O’Rourke, 2017).

In December, 2013, a collision between a Chinese warship and the United States USS Cowpens almost took place without due consideration of the 1972 Convention on Preventing

Collision at Sea (COLREG). In 2014, the United States and China joined a number of countries to adopt the Code of Unplanned Encounters at Sea (CUES). However, it did not ebb the incidents at sea between both countries. Same 2014, in the month of August precisely, there was a confrontation between a U.S Navy P-8 Poseidon plane and a PLA Su 27 fighter (Morton, 2016). In order therefore to prevent their operations in the South China Sea from escalating the tension in the sub-region to a full blown armed conflict, the United States and China do have from time-to-time military-to-military contacts as well as high-level diplomatic talks between the leadership of both countries or their representatives.

Maintaining peace in the South China Sea has been for China an important foreign policy goal. It intends avoiding as much as possible any direct armed confrontation with the United States over the South China Sea. This however does not mean that China is backing out as it is still bent on making it clear to the U.S that the South China Sea falls under China's version of its 1823 'Monroe Doctrine' that turned the Western Hemisphere i.e. Latin America to its sphere of influence under President James Monroe (Kim, 2014).

3.4 China's Bilateral Relations with the South China Sea Claimant States

The People's Republic of China, as touching the resolution of the South China Sea disputes, has for long insisted on bilateral negotiations than rounds of multilateral dialogue which by implication would 'internationalise' the disputes. China is well aware that it has a bargaining advantage through bilateral talks with each of the claimant States than with a bunch of diminutive littoral States under the auspice of ASEAN. Though, China still has the upper hand in the asymmetrical power relations with ASEAN, it would rather leverage on one-on-one negotiations with the disputant States.

The claimant States, however, do not buy China's idea of resolving the disputes bilaterally, as they fear China's intension of going about the bilateral dialogue with a 'divide and rule', 'salami slicing', divide and conquer' or 'divide and prosper' strategy whereby they are placated one by one with China's dangling 'carrot' of trade and investment. Should that be the case, China would end up consolidating its occupation and control over the South China Sea features that it claims rightfully belongs to it without triggering a high intensity armed conflict with the smaller disputant States (Cronin and Kaplan, 2012; Storey, 2012; McDevitt, 2014; Kim, 2016; O'Rourke, 2017).

In time past and in recent years, China has made efforts at having bilateral negotiations with some of the disputant States vis-à-vis a lasting solution to the problematic sovereignty and jurisdiction claims that have been causing a friction between them in the South China Sea e.g the Sino-Vietnam negotiations on October 28, 2010. Nevertheless, China, despite playing the good neighbour, smile diplomacy and charm offensive, has not been successful at reaching any substantive bilateral deal with the disputant States which holistically resolves their contesting and overlapping claims in the South China Sea. Hence, China over the years has practically tilted away from bilateral negotiations to multilateral cooperation.

China in the 21st century has outrightly kicked against the continued practice of the Cold War ‘zero sum game’ where the winner takes it all and the loser is left with nothing. In place of this, it has opted for the ‘positive sum game’ with a ‘win-win’ outcome that mutually benefits the players involved. This new thinking of China actually began in 1978 when Deng Xiaoping implored the disputant littoral States to lay aside their competing sovereignty and overlapping jurisdiction claims in the South China Sea for the pursuit of ‘joint development’ (Morton, 2016). His suggestion was given a trial in 2004 when the Philippines National Oil Company (PNOC) and China National Offshore Oil Corporation (CNOOC) agreed to a Joint Marine Seismic Undertaking (JMSU).

In March 2005, what started off as a bilateral agreement became a tripartite agreement following the inclusion of Vietnam’s oil company, PetroVietnam. The purpose for this three years agreement was simply to conduct a seismic exploration for oil in the areas where they had competing and overlapping claims in the South China Sea. Eventually, the agreement elapsed mid way into the year 2008 and has not been renewed ever since following the controversies the initiative sparked off in the political domain of the Philippines regarding why some of the survey were done in the waters close to the Philippines. Currently, there is a proposal before ASEAN from the Philippines which it calls the Zone of Peace, Freedom, Friendship and Cooperation (ZoPFCC). ASEAN, having considered the Philippines’ proposal in 2011 is yet to adopt it (Baviera, 2012; Scott, 2012; Storey, 2012; Karim, 2013).

3.4.1 Sino-Philippines Relations on the South China Sea Disputes

The Philippines has been one of the two key Southeast Asia protagonists (the second being Vietnam) in the long-running South China Sea imbroglio. Manila occupies eight reefs and islands in the Spratly Islands group which it calls the Kalayaan Island Group (KIG) as well as the Scarborough Shoal to the northwest of Palawan. Having lost the Mischief Reef to China in 1995, Manila occupied the neighboring Second Thomas Reef in 1999, completing its ninth holding in the region. In March, 2009, it enacted a law on its archipelagic baseline that allowed it to lay claim to the features in the Spratlys. However, on April 8, 2012, China and the Philippines had a naval standoff in the Scarborough Shoal over what started off as an attempt by the Philippines navy to apprehend Chinese fishermen in eight fishing boats, who went fishing in the Shoal that the Philippines claims (Buszynski 2012; Dupont, 2014; Wei and Falzerano, 2016; Ma, 2016; Ying and Shicun, 2016).

In January 2013, the Philippines brought its case against China before the Permanent Court of Arbitration, at The Hague, in accordance with Annex VII of the 1982 UNCLOS. Despite China failure to attending the hearings on the case, on the 12th of July, 2016, the Court’s award went in favour of the Philippines as it found China’s claim of having ‘historical rights’ with the nine-dash line demarcation of the South China Sea, null and void as far as modern international law is concerned (Cassarini, 2016). China however, does not recognise the jurisdiction of the Permanent Court of Arbitration over the case, pointing out that following its ratification of the 1982 UNCLOS on June 7, 1996, it stated its ‘reservations’ as regarding

the settlement of disputes in section 2 of Part XV of the Convention vis-à-vis paragraph 1 (a), (b), and (c) of article 298, in its 2006 declaration.

3.4.2 Sino-Vietnam Relations on the South China Sea Disputes

China and Vietnam, despite both countries being communist States in the South East Asia, have been more of foes than friends. Over the South China Sea disputes, their relations have not been any different. They have had more of armed confrontation than mutual cooperation.

Vietnam for more than three decades, have been on the receiving end of China's armed attack owing to its geographical proximity to China as well as their contesting and overlapping claims to the features in the Paracels and Spratlys. In 1974, China occupied the Paracel Islands after an armed attack on Southern Vietnam's forces. In 1988, there was a deadly naval skirmish between China and Vietnam over the Johnson South reef that led to the death of 74 Vietnamese (Dutton, 2011; Fravel, 2011; Ackermann, 2014).

Lately, the exploitation of resources – hydrocarbons and fisheries in the disputed South China Sea, has been a source of friction between China and Vietnam (Thuy, 2016). China has repeatedly spoken up against Vietnam concluding energy deals with foreign oil companies that would allow them conduct oil explorations in waters that it claims. This it did over Vietnam's deals with British Petroleum in 2007, ExxonMobil in 2008, and India's ONGC Videsh in 2011 and 2012 (Scott, 2012). Still in 2012, the State-owned China National Offshore Oil Company (CNOOC) launched a deep water oil rig *Haiyang Shiyou 981* worth \$1 billion. In May, 2014, it began the installation of the oil rig in Vietnam's Exclusive Economic Zone (EEZ) which consequently led to strained Sino-Vietnam relations. Leading up to this period of sore bilateral relations were anti-China protests that broke out in Vietnam which left 21 persons dead and over one hundred injured. Thus, China responded by evacuating her nationals from Vietnam. There was also the incidence of a Chinese vessel ramming a Vietnamese fishing boat at sea and both countries vessel firing water cannon at each other. It was not until July, 2014, that the Chinese removed the oil rig from Vietnam's EEZ (Panda, 2015; Ogunnoiki, 2017).

Regarding fishing in the disputed South China Sea, China since 1999 has unilaterally declared annually, a fishing ban between the months of May and August in order to conserve the dwindling fish stock. Having set up the civilian law enforcement agency called the South Sea Region Fisheries Administration Bureau (SSRFAB), China has been implementing the yearly fishing moratorium in the South China Sea. The Bureau has also confiscated a number of Vietnamese fishermen boats, their catch and equipment, as well as charged fines for their release (Buszynski, 2012; Fravel, 2012; Thuy, 2016).

3.4.3 Sino-Malaysia Relations on the South China Sea Disputes

Malaysia as a claimant littoral State to the South China Sea features in the Spratlys has had bilateral relations like the Philippines and Vietnam with China over the disputed waters. But

unlike the Philippines and Vietnam, Malaysia has had more of a working relation with China than a tensed and confrontational one.

Malaysia, geographically, is suited afar off from mainland China and thus does not perceive a China threat as much as the Philippines and Vietnam let alone having series of armed conflict with China. However in May 2009, Sino-Malaysia relations went sore following Malaysia's joint submission with Vietnam on the outer limits of the continental shelf beyond 200 nautical miles to the United Nations Commission on the Limits of the Continental Shelf (CLCS). In 2013 and 2014 respectively, China conducted a military exercise close to the James Shoal which is about 50 miles away from the coast of Malaysia. China's naval exercise however did not ignite any form of incipient tension between Kuala Lumpur and Beijing.

Malaysia as a country that does not want to jeopardise its warm relations with China by risking a costly armed confrontation with the communist State like the Philippines and Vietnam have done (Dupont, 2014), has been cooperative with its ally, China, most especially in their economic relations. Kuala Lumpur's recent bandwagoning has made it somewhat quiet over its claims in the South China Sea.

3.4.4 Sino-Brunei Relations on the South China Sea Disputes

In comparison to other claimant States to the South China Sea features, Brunei Darussalam is the smallest of them all in terms of geographical size and military strength. It has the smallest jurisdictional claim in the Spratlys of which it has almost completely been silent over (Wei and Falzerano, 2016).

Brunei lays claim to no features in the South China Sea other than the Louisa Reef (Misalucha, 2014; Wei and Falzerano, 2016; Ma, 2016) which is also being claimed by China, Vietnam and Malaysia, and the Riflemen reef by the Philippines. In a map it published in 1988, Brunei laid claim to the Rifleman reef, on the basis of its continental shelf (Roy, 2013). Brunei over the Louisa reef has been passive and reticent over the years, not wanting to be confrontational as the smallest claimant State to the reef, with China. But with Malaysia, it successfully reached an agreement on their maritime boundary in March, 2009.

3.5 China and ASEAN Multilateral Management of the South China Sea Disputes

The Association of Southeast Asian Nations (ASEAN) is a sub-regional organisation of ten South East Asian countries, of which five of them are the founding member States – Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei Darussalam joined the sub-regional bloc in 1984, Vietnam (1995), Myanmar (1997), Lao (1997) and Cambodia (1999). Established with the Bangkok Declaration on August 8th, 1967, ASEAN primarily aims at promoting peace and stability in South East Asia.

ASEAN, despite some countries prior misgivings about its capability to sustain the relative peace and stability of South East Asia, has been playing major roles in the sub-region since

its founding at the peak of the Cold War. The ‘ASEAN Way’, which are its fundamental principles of the non-interference of a member State in the domestic affairs of another as well as arriving at every decision by a consensus, has over the years made ASEAN the preferred multilateral platform for the management of the South China Sea disputes between China and four of its member States – the Philippines, Vietnam, Malaysia and Brunei (Baviera, 2012; Kosandi, 2014).

Since the post-Cold War era began after the dissolution of communist Soviet Union in 1991, the greatest concern of ASEAN has been China’s repeated use of force to gain control over features in the South China Sea – the Sino-Vietnamese armed clash over the Paracel Islands in 1974 and that of the Spratly Islands in 1988. On the 25th of February, 1992, China passed into law its Territorial Sea and Contiguous Zone law that stated it had sovereignty over all the island groups in the South China Sea. ASEAN, that it may prevent an upsurge of tension, unanimously agreed in Manila to the 1992 Declaration on the South China Sea which called on the parties to the declaration not to resort to the use of force but to exercise restraint and resolve all sovereignty and jurisdiction matters in the South China Sea by peaceful means (Ba, 2003; Baviera, 2012).

Few years later, the Chinese forcefully occupied the Mischief Reef in 1995, which the Philippines claim. China’s armed confrontation with the Philippines caught the attention of ASEAN. This time around, with a much stronger reaction. Taking a step further in its creeping assertiveness over the features in the South China Sea, China passed into law the Exclusive and Economic Zone (EEZ) and Continental Shelf (CS) law in 1998.

At the beginning of the 21st century, Sino–ASEAN relations had evolved from one based largely on bilateral relations to a multilateral relationship owing to the expansion of areas of cooperation to include finance, human resources development, health and quarantine as well as judicial matters (Wong, 2007). ASEAN has been able since the start of the century to engage China in a more constructive and cooperative manner. China on its part has also been utilising the fora of ASEAN to shore up Confidence-Building Measures (CBMs) between it and ASEAN’s member States. Hence, China has participated in ASEAN+3 (China, Japan and South Korea) and the ASEAN Regional Forum (ARF) (Ba, 2003; Banlaoi, 2003; Baviera, 2012; Hussain, 2013).

Preventing tension from spiraling out of control in the new millennium over the disputed South China Sea, has been on the front burner in ASEAN. Eventually, an agreement was reached in that regard and China and the ten member States of ASEAN signed the said agreement called the Declaration on the Conduct of Parties in the South China Sea (DoC) on the 2nd of November, 2002. Despite it being a non-binding agreement, the DoC enjoined the parties to the declaration to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force. The legally binding version that should have followed years after the DoC – the Code of Conduct (CoC), is yet to be concluded. This notwithstanding, China acceded to the ASEAN Treaty of Amity and Cooperation (TAC) on

the 8th of October 2003 which stated that disputes were to be settled peacefully (ASEAN DoC, 2002; Ba, 2003; Buszynski, 2012).

The DoC as a non-binding agreement, has been instrumental in bringing about the relative peace being enjoyed in the South China Sea, as there has been no new record of *de facto* occupation of unoccupied features in the Spratlys by either China or the other claimant States (Percival, 2011). However, there were a few incidents as China did not fail to take necessary countermeasures whenever other disputant States ventured into territories or areas of the sea it claims to have indisputable sovereignty and jurisdiction over.

In 2007 for instance, a Chinese vessel fired a shot against Vietnamese fishermen around the Spratlys which led to the death of one of them (Salil, 2012). In the year 2009, the Chinese navy and fishermen harassed a U.S naval surveillance ship in its EEZ. On May 26, 2011, two Chinese vessels cut the cables of a Vietnamese survey vessel carrying out a seismic exploration for hydrocarbons in an area that the Chinese considers as under its maritime jurisdiction. Despite ASEAN and China adopting the guidelines for the implementation of the DoC in July, 2011 (Ying and Shicun, 2016), 2012 turned out to be a year of unabated tension owing to China and the Philippines standoff at the Scarborough Shoal. By 2014, the tension in the sub-region took a different twist over China stationing of an oil rig platform in the EEZ of Vietnam and also her swift construction of artificial islands in the Spratlys.

Thus far, ASEAN with the ‘Gulliver Strategy’ has been successful at enmeshing China in its multilateral fora with the hope that it would subject itself to international norms and law which on the long run would further sharp its behaviour into that which conforms to civilised States in the international community. Nevertheless, ASEAN, not wanting to leave anything to chance, has also taken to the ‘hedging strategy’ of soft-balancing by involving regional powers – the United States, Japan, and South Korea in its multilateral fora e.g ASEAN+3 or 10+3. This strategy as time goes on, might become problematic, as China on one hand and the United States, Japan, and South Korea on the other, are well known regional rivals with a trust deficit (Hussain, 2013).

Currently, there is an impasse in ASEAN which has made some scholars and analysts to question the relevance of ASEAN as an international organisation in the 21st century and indeed its effectiveness in the management of the South China Sea disputes. The efficacy of ASEAN has greatly been undermined by not only the in-house division among its member States but also it being an easily manipulated sub-regional body (Kim, 2016). The source of the disunity among its membership can be traced to some member States – Cambodia, Myanmar Thailand and Laos, not wanting to sacrifice their economic gains from the cordial relationship they have with China, for the sake of reaching a consensus with the four claimant States that are ASEAN member countries – the Philippines, Vietnam, Malaysia and Brunei, on the management and possible resolution of the South China Sea disputes.

3.6 The Roles of International Law and Diplomacy in the South China Sea Disputes

The fundamental roles international law can play in the ongoing disputes in the South China Sea are three in number. Firstly, conventional international law would clarify for the disputant States the different ways a State can acquire the 'title' to a territory. Secondly, modern international law, precisely the 'Law of the Sea', would help the disputant littoral States know the portions of the South China Sea that they have jurisdiction over in accordance with the measurement of the breadth of the marine environment. Lastly, international law plus diplomacy this time around, has a central role to play in the peaceful resolution of the South China Sea disputes with the different options under the diplomatic and judicial method that can be employed by the claimant States.

3.6.1 International Law and States Acquisition of Territories

A territory simply put, is that portion of the globe which is subject to the sovereignty of a State (cited in Umzurike, 2005). In international law, there are five ways States have acquired the 'title' to a territory. i) *Occupation* – A State can acquire a territory and according exercise sovereignty over it if and only if it has a physical presence and administrative control over the said territory to the exclusion of other States. This is what is known as 'effective occupation' over a *terra nullius* (no man's land). ii) *Cession* – The acquisition of a territory by cession takes place when there is a transfer of territory from one sovereign State to another with a treaty in some cases. Such transfer of territory from the former to the latter could be an exchange of territory, a purchase or gift (Umzurike, 2005; Shaw, 2008; Crawford, 2012). iii) *Conquest* – In time past, a territory can be acquired by a State(s) as part of the gains of being victorious over the vanquished State(s) in a concluded war. But as at today, modern international law prohibits such means of acquiring a territory especially through the use of force as stated in article 2(4) of the United Nations charter of 1945. iv) *Prescription* – By prescription, a State can gain the title to a territory having exercised *de facto* sovereignty over it for a long period of time (Umzurike, 2005). v) *Accretion and Avulsion* – It is possible for the forces of nature to suddenly make available a new swath of land which a State can add to its existing territory. Should a river for example, naturally change its course or dries up, what is left is an open dry land which can be added to a State's existing territory (Brierly, 1963). Another good example is the formation of an island following a volcanic eruption underneath a body of water. This natural process of land formation is what is known as Accretion (Shaw, 2008; Crawford, 2012). Avulsion on the other hand refers to a sudden or violent change in the course of a river (Hillier, 1998; Umzurike, 2005; Shaw, 2008).

3.6.2 International Law and States Jurisdiction in the Maritime Environment

In international law, the maritime environment has been zoned in a way that a State can and cannot have jurisdiction over the entire maritime domain. i) *Territorial Sea* – The territorial sea of a State is that part of the sea, 12 nautical miles from the baseline (i.e from the shoreline) which a coastal State can exercise its sovereignty over. In a littoral State's territorial sea, commercial vessels have the right of 'innocent passage' to traverse through it in a continuous and expeditious manner. Should they however encounter any life threatening

difficulty on board their ship while observing the right of innocent passage, such a commercial vessel is permitted by international law to drop anchor on the grounds of *force majeure* (a state of distress) (Article 3 and 18, 1982 UNCLOS). ii) *Contiguous Zone* – A contiguous zone is that maritime area 24 nautical miles from the baseline. It is so called because of its proximity to a coastal State's territorial sea. A coastal State therefore, in its contiguous zone, can exercise jurisdiction over the following issues – customs, fiscal regulation, immigration, and sanitary management (Article 33, 1982 UNCLOS). iii) *Exclusive Economic Zone (EEZ)* – Littoral States the world over, enjoy the exclusive rights to explore, exploit, conserve and manage the living and non-living resources in the zone called the Exclusive Economic Zone (EEZ). Besides this, it has jurisdiction over the building of artificial island, marine scientific research and the protection of the marine environment. The EEZ is measured at 200 nautical miles from the baseline (Article 56, 1982 UNCLOS). iv) *Continental Shelf* – The continental shelf is the natural prolongation of a coastal State's landmass from the coastline deep into the seabed area of a sea. The Continental shelf that lies beneath the superjacent EEZ, is a maritime area for offshore exploration of hydrocarbons and minerals in the seabed and sub-soil. It is measured, at most, 350 nautical miles from the baseline of a coastal State (Article 76, 1982 UNCLOS). v) *High Sea* – The high sea otherwise known as international waters, is that maritime area of the sea that is called *res communis* which practically means, no State has jurisdiction over it let alone can they appropriate any part of it. It follows immediately after the EEZ of a coastal State and it is opened to all countries. The rights enjoyed by all countries, be they coastal or landlocked States in the high sea are: freedom of navigation, freedom of overflight, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations, freedom of fishing, and lastly freedom of scientific research (Article 87, 1982 UNCLOS).

3.6.3 International Law and Diplomacy and the Peaceful Settlement of the South China Sea Disputes

In international law and diplomacy, there are basically two methods for the peaceful resolution of disputes – i) diplomatic method and ii) judicial method. Under the diplomatic method category are four options: a) *Negotiation* – Disputant States are most likely to settle for negotiation when there is a shared belief in each other's capacity to resolve their conflicting interests without the involvement of a third party i.e a mediator. Succinctly, negotiation has to do with series of round table dialogue between the leadership of the disputant States or their representatives to the end of resolving the dispute(s) that brought about the negotiation. Such negotiations could either be opened or closed to the public depending on how sensitive the issue is. b) *Mediation* – Disputes resolution by mediation involves a neutral mediator who would use his/her 'good office' in facilitating effective communication between the disputant States in the process of negotiation. Such a mediator is usually chosen on bases of integrity and must be accepted by the disputant States. c) *Inquiry* – An inquiry as the third diplomatic method option for the pacific settlement of disputes, is all about accurate facts finding at instances when the facts presented by the disputant States contradict one another (Shaw, 2008). Here, a commission is instituted to search for all necessary facts that would aid an objective and unbiased resolution of the dispute(s) between

the concerned States. d) *Conciliation* – Conciliation shares certain features with mediation and inquiry as it involves a third party and the setting up of a commission to look into the dispute (Umozurike, 2005; Shaw, 2008). However, it differs with the recommendations documented in the report that would be tabled before the disputant States.

For the judicial method, there are only two legal options for the peaceful settlement of disputes. They are: a) *Arbitration* – Arbitration as a legal option under the judicial method has to do with an arbitral tribunal which the disputant States must accept the jurisdiction of the tribunal over their case. A good example of an international arbitration remains the Permanent Court of Arbitration (PCA). The *ad hoc* judges making up the panel are nominated by the contracting parties of the PCA who are entitled to nominate a maximum number of four judges. The judges, having looked into the claims of the disputant States would issue a binding “award” that resolves the dispute(s). b) *Adjudication* – The adjudication of a dispute(s) between States is done through a judicial organ of an intergovernmental organisation (IGO) such as the International Court of Justice (ICJ) of the United Nations. The ICJ is made up of 15 judges that are elected for a renewable nine year term by the United Nations General Assembly (UNGA) and the United Nations Security Council (UNSC). The ruling of the Court on a case brought before it is binding on the disputant States as was stated in article 94 of the United Nations Charter (1945). But before a case can be filed for hearing at the ICJ, article 34 of the ICJ Statute must be fulfilled which states that the disputant parties must be sovereign States. They are also to accept the compulsory jurisdiction of the Court over the dispute according to article 36(2) of the ICJ Statute.

Concluding Remarks

China as a rising power on the international plane is gradually changing the geopolitics and regional security architecture in South East Asia. As this paper revealed, China’s growing assertiveness in the South China Sea is not one born out of an aspiration to replace the United States as the regional hegemon *per se*, but simply for its survival and security as a prosperous sovereignty entity in the 21st century. In a nutshell, the South China Sea disputes is most likely to last for a long period of time as not all the disputant States are willing to concede any part of their territorial sovereignty and jurisdiction claims to the other. Nevertheless, the South China Sea disputes for China as a rising global power remains a litmus test of its peaceful rise rhetoric in a rule-based-order as against revising the status quo that would put at stake the peace, security and stability in the Asia-Pacific region.

Recommendations

The heightened tension in South China Sea and the security dilemma in South East Asia have made the future of the Asia-Pacific region uncertain. Taking into account the unpredictable future of the Asia-Pacific region, a number of countries and international organisations the world over have called on China and the other claimant States to peacefully resolve the South

China Sea disputes, which is only possible if they all make concessions in their territorial sovereignty and jurisdiction claims and that such concessions made are in conformity with conventional international law. Unfortunately, not all of them are ready to make a compromise. Hence, the South China Sea disputes can only be managed overtime especially taking into consideration following recommendations:

- i) ASEAN member States should resolve their in-house schism if they are to effectively engage China over the management of the South China Sea disputes;
- ii) China and the United States should desist from testing each other's limit in the South China Sea of which a miscalculation from either of them could trigger a hegemonic war in the Asia-Pacific region.
- iii) As part of the Confidence Building Measures (CBMs) in ASEAN, China should become more transparent in its foreign and military policy vis-à-vis the South China Sea;
- iv) China should in place of its unilateral stance, cooperate with the other disputant States in the conservation of the declining fish stock in the South China Sea;
- v) The 'win-win' solution vis-à-vis the joint development of the South China Sea should continuously be pursued and renewed in the mutual interest of all the claimant States;
- vi) ASEAN member States should intensify their effort at reaching a workable and legally binding Conduct of Conduct (CoC) for the South China Sea.

References

- [1] Ackermann, M. (2014). China's Rise to Power: An Examination of Domestic, Regional and Global Impacts. Published M.Sc Thesis, John Hopkins University.
- [2] Akiyama, M. (2014). Ocean Governance in East Asia' in Pearson, R. (ed.) East South China Sea Tension: Perspectives and Implications. *The Maureen and Mike Mansfield Foundation*.
- [3] ASEAN Declaration on the Conduct of Parties in the South China Sea (DoC), November, 02, 2002.
- [4] Ba, A. D. (2003). China and ASEAN: Renavigating Relations for a 21st-Century Asia. *Asian Survey*, 43:4, pp. 622–647.
- [5] Bader, J., Lieberthal, K. & McDevitt, M. (2014). Keeping the South China Sea in Perspective. *Brookings Foreign Policy Brief*.
- [6] Banlaoi, R. C. (2003). Southeast Asia Perspectives on the Rise of China: Regional Security after 9/11. *Parameters*, pp. 98-107.
- [7] Baruah, D. M. (2016). India as a Middle Power in the SCS Dispute. *National Asian Security Studies Program (NASSP)*, NASSP Issue Brief No. 4.2, pp. 1-9.
- [8] Baviera, A. S. P. (2012). China-ASEAN Conflict and Cooperation in the South China Sea: Managing Power Asymmetry. A paper presented at the Annual Convention of the International Studies Association, San Diego, USA.
- [9] Boston Global Forum (2015). Chinese Disputes in the South China Sea: Risks and Solutions for the Asia-Pacific, *Boston Global Forum Report*, pp. 1-25.
- [10] Brierly, J. L. (1963). *The Law of Nations: An Introduction to the International Law of Peace*, 6th edition. Oxford: Oxford University Press.
- [11] Burgess, S. F. (2016). Rising Bipolarity in the South China Sea: the American Rebalance to Asia and China's Expansion. *Contemporary Security Policy*, Vol. 37, No. 1, pp. 111–143.
- [12] Buszynski, L. (2012). Chinese Naval Strategy, the United States, ASEAN and the South China Sea. *Security Challenges*, Vol. 8, No. 2, pp. 19-32.
- [13] Cassarini, N. (2016). Maritime Security and Freedom of Navigation from the South China Sea and Indian Ocean to the Mediterranean: Potential and Limits of EU-India Cooperation. *Istituto Affari Internazionali (IAI)*, pp. 1-22.

- [14] Clifton, J. K. (2011). Disputed Theory and Security Policy: Responding to the “Rise of China” Senior Thesis, Claremont McKenny College.
- [15] Crawford, J. (2012). *Brownlie’s Principles of Public International Law*, 8th edition. Oxford: Oxford University Press.
- [16] Cronin, P. M. & Kaplan, R. D. (2012). Cooperation from Strength: U.S. Strategy and the South China Sea’ in Cronin, P. M. (ed.). Cooperation from Strength: The United States, China and the South China Sea. *Centre for a New American Security*.
- [17] Curley, E. (ed.) (1994). Hobbes’s (1651). *Leviathan*. Indianapolis: Hackett Publishing Company.
- [18] Department of Defense (2015). Asia-Pacific Maritime Security Strategy Achieving U.S. National Security Objectives in a Changing Environment. United States, pp. 1-35.
- [19] Dicke, V. & Holbig, H. (2014). Rising Sino-Vietnamese Tensions in the South China Sea. *German Institute for Global and Area Studies (GIGA)*, GIGA Focus No. 8, pp. 1-8.
- [20] Dupont, A. (2014). ‘Maritime Dispute in the South China Sea: ASEAN Dilemma’ in Hiebert, M.; Nguyen, P. & Poling, G. B. (eds). Perspectives on the South China Sea: Diplomatic, Legal and Security Dimensions of the Dispute. *Center for Strategic & International Studies (CSIS)*.
- [21] Dutton, P. (2011). Three Dispute and Three Objectives: China and the South China Sea. *Naval War College Review*, Vol. 64, No. 4, pp. 42-67.
- [22] Fravel, T. M. (2011). China’s Strategy in the South China Sea. *Contemporary Southeast Asia*, Vol. 33, No. 3, pp. 292–319.
- [23] Fravel, T. M. (2012). ‘Maritime Security in the South China Sea and the Competition over Maritime Rights’ in Cronin, P. M. (ed.). Cooperation from Strength: The United States, China and the South China Sea. *Centre for a New American Security*.
- [24] Gilboy, G. L. & Heginbotham, E. (2013). Double Trouble: A Realist View of Chinese and Indian Power. Center for Strategic and International Studies. *The Washington Quarterly*, 36:3, pp. 125-142.
- [25] Gilpin, R. (1996). No One Loves a Political Realist. *Security Studies* 5, No. 3.
- [26] Hameiri, S. & Jones, L. (2015). Rising Powers and State Transformation: The Case of China. *European Journal of International Relations* pp.1–27.

- [27] Hillier, T. (1998). *Sourcebook on Public International Law*. London: Cavendish Publishing Limited.
- [28] Hussain, N. (2013). Sino–ASEAN Relations: Implications of a rising China for ASEAN. *Centre for Development and Peace Studies*.
- [29] Ikenberry, J. G. (2015). Between the Eagle and the Dragon: America, China, and Middle State Strategies in East Asia. *Political Science Quarterly*, Vol. XX, NO XX, pp. 1-35.
- [30] Jensen, J. C. (2011). China and South China Sea Disputes. Unpublished M.Sc Thesis, Aalborg University.
- [31] Kaplan, R. D. (2011). The South China is the Future of Conflict: The 21st Century's Defining Battleground is going to be on Water" *Foreign Policy*, Sept / Oct.
- [32] Karim, M. A. (2013). The South China Sea Disputes: Is High Politics Overtaking?. *Center for International Studies*, pp. 99-119.
- [34] Kegley, C. (2008). *World Politics: Trends and Transformation, 2007-2008*. Cengage Learning.
- [35] Kegley Jr. C. W. & Wittkopf, E. R. (2004). *Theories of World Politics in World Politics: Trends and Transformation*. Boston: Bedford/St.Martin's.
- [36] Kim, J. (2016). Possible Future of the Contest in the South China Sea. *The Chinese Journal of International Politics*, Vol. 8, No 1, pp. 27–57.
- [37] Kim, S. P. (2014). Future Scenarios of the South China Sea Maritime Disputes, *Center for Risk Research (CRR)*, Discussion Paper No. A-12, pp. 1-22.
- [38] Kivimäki, T. (ed.) (2002). War or Peace in the South China Sea *Nordic Institute of Asian Studies (NIAS)*, pp. 1-214.
- [39] Kosandi, M (2014). Conflicts in the South China Sea and China-ASEAN Economic Interdependence: A Challenge to Cooperation. *ASEAN-Canada Research Partnership Working Paper Series*, Working Paper No. 7, pp. 1-16.
- [40] Koury, E. (2017). Recent Trends in the South China Sea Disputes, *Institut de Relations Internationales et Stratégiques (IRIS)*, Asian Focus No. 16, pp. 1-11.
- [41] Liu, Q. (2010). China's Rise and Regional Strategy: Power, Interdependence and Identity. Vol. 5, No. 4, *Journal of Cambridge Studies*, pp. 76-92.

- [42] Ma, X. (2016). The South China Sea Dispute: Perspective in International Law. *Atlantische Perspectief*, Vol. 40, pp. 39-41.
- [43] McDevitt, M. (2014). The South China Sea: Assessing U.S. Policy and Options for the Future *CNA Occasional Paper*, pp. 1-92.
- [44] Mearsheimer, J. J. (2001). *The Tragedy of Great Power Politics*. New York: W. W. Norton & Company.
- [45] Mearsheimer, J. J. (2002). "Realism, the Real World, and the Academy" in Brecher, M. & Harvey, F. P. (eds.). *Realism and Institutionalism in International Studies*. Ann Arbor: The University of Michigan Press, pp. 23-33.
- [46] Ming-Te, H. & Liu, T. T. (2011). Sino-U.S. Strategic Competition in Southeast Asia: China's Rise and U.S. Foreign Policy Transformation since 9/11. *Political Perspectives*, Vol. 5 (3), pp. 96-119.
- [47] Misalucha, C. G. (2014). 'Locating Southeast Asia in Debates on the South China Sea' in Hiebert, M.; Nguyen, P. & Poling, G. B. (eds). Perspectives on the South China Sea: Diplomatic, Legal and Security Dimensions of the Dispute. *Center for Strategic & International Studies (CSIS)*.
- [48] Morgenthau, H. J. (1948). *Politics Among Nations*. New York: Alfred A. Knopf.
- [49] Morgenthau, H. J. (1978). *Politics Among Nations: The Struggle for Power and Peace*. New York: Alfred A. Knopf.
- [50] Morton, K. (2016). China's Ambition in the South China Sea: Is a Legitimate Maritime Order Possible?. *The Royal Institute of International Affairs*, 92:4, pp. 909-940.
- [51] Nguyen, D. M. (2005). Settlement of Disputes under the 1982 United Nations Convention on the Law of the Sea: The Case of the South China Sea Dispute. New York: UN-Nippon Foundation.
- [52] Ogunnoiki, A. O. (2017). State Transformation and the Rise of China as a World Power: A Discourse on the Realist Paradigm. *The International Journal of Humanities and Social Studies (IJHSS)*, Vol. 5, Is. 6, pp. 76-83.
- [53] O'Rourke, R. (2017). Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress. *Congressional Research Service*, pp. 1-73.

- [54] Panda, A. (2015). 1 Year Later: Reflections on China's Oil Rig 'Sovereignty-Making' in the South China Sea, *The Diplomat*, available online at hediplomat.com/.../1-year-later-reflections-on-chinas-oil-rig-sovereignty-making-in-t...
- [55] Pejsovo, E. (2016). 'Introduction: Light at the End of the Tunnel' in Pejsovo, E. (ed). Sense and Sensibility: Addressing the South China Sea Disputes. *Institute for Security Studies* (ISS), Report No. 28, pp. 1-74.
- [56] Percival, B. (2011). 'The South China Sea: An American Perspective' in Thuy, T. T. (ed.). *The South China Sea: Towards a Region of Peace Security and Cooperation*. Hanoi: Thế Giới Publishers.
- [57] Pumphrey, C. W. (2002). 'Introduction' in Pumphrey, C. W. (ed.). The Rise of China in Asia: Security Implications. *Strategic Studies Institute* (SSI), United States Army War College, pp. 1-307.
- [58] Rosenberg, D. (2002). 'The Rise of china: Implications for Security Flashpoints and Resource Politics in the South China Sea' in Pumphrey, C. W. (ed.). The Rise of China in Asia: Security Implications. *Strategic Studies Institute* (SSI), United States Army War College pp. 1-307.
- [59] Roy, N. (2013). *Managing Conflict in Troubled Waters: The Case of the South China Sea*. Published Ph.D Thesis, The University of New Jersey.
- [60] Salil, S. (2012). *China's Strategy in the South China Sea: Role of the United States and India*. New Delhi: Centre for Air Power Studies, pp. 1-47.
- [61] Scott, D. (2012). Conflict Irresolution in the South China Sea. *Asian Survey*, Vol. 52, No. 6, pp. 1019–1042.
- [62] Shambaugh, D. (2013). *China as a Global Power: Understanding Beijing's Competing Identities*, Sigur Center for Asian Studies, Elliot School of International Affairs, George Washington University.
- [63] Shaw, M. (2008). *International Law*, 6th edition. Cambridge: Cambridge University Press.
- [64] Stanzel, V. (2016). Danger on the High Seas: The East Asia Challenge. *European Council on Foreign Relations*, Policy Brief, pp. 1-12.
- [65] Storey, I. (2012). 'China's Bilateral and Multilateral Diplomacy in the South China Sea' in Cronin, P. M. (ed.) *Cooperation from Strength: The United States, China and the South China Sea*. *Centre for a New American Security*.

- [66] Sutter, R. G. (2006). China's Rise: Implications for U.S Leadership in Asia. *East-West Centre Policy Studies* 21, pp. 1-80.
- [67] Thuy, T. T. (2016). Rebalancing: Vietnam's South China Sea Challenges and Responses. *National Asian Security Studies Program (NASSP)*, NASSP Issue Brief No. 2.3, pp. 1-18.
- [68] Tønnesson, S. (2002). 'The History of the Dispute' in Kivimäki, T. (ed.). War or Peace in the South China Sea *Nordic Institute of Asian Studies (NIAS)*, pp. 1-214
- [69] Umojurike, U. O. (2005). *Introduction to International Law*, 3rd Edition. Ibadan: Spectrum Law Series.
- [70] United Nations Charter (1945).
- [71] United Nations Convention on the Law of the Sea (1982).
- [72] Wang, J. (2009). China's Peaceful Rise: A Comparative Study. *EAI Fellows Working Paper Series*, No. 19.
- [73] Wang, V. W. (2012). 'The Rise of China, the Rise of India, and the Changing Geopolitics of Asia: Contending Perspectives on India-China Relations' in Ahmed, A.; Panda, J. P. & Singh, P. K. (eds). *Towards a New Asian Order*. New Delhi: Institute for Defense Studies and Analysis.
- [74] Wei, C. N. & Falzerano, J. (2016). Making Waves: Recent Development of the South China Sea Disputes. *Yonsei Journal of International Studies*, 8 (1), pp. 79-101.
- [75] Wong, L. F. (2007). China-ASEAN and Japan-ASEAN Relations during the Post-Cold War Era. *Chinese Journal of International Politics*, Vol. 1, 2007, 373-404.
- [76] Xiaoyan, W. (2014). China's "Sea Power Nation" Strategy. *Institute for Security & Development Policy*, Asian Paper, pp. 7-25.
- [77] Xuetong, Y. (2001). The Rise of China in Chinese Eyes. *Chinese Journal of International Politics*, 10(26), pp. 33-39.
- [78] Xuetong, Y. (2006). The Rise of China and its Power Status. *Chinese Journal of International Politics*, Vol. 1, pp. 5-33.
- [79] Yan, X. (2006). The Rise of China and its Power Status. *Chinese Journal of International Politics*, Vol. 1.

[80] Ying, F. & Shicun, W. (2016). South China Sea: How we got to this Stage.

[81] Yuan, Z. (2014). Why do some Asia Pacific Countries Balance a Rising China and some do not?. Unpublished M.Sc Thesis, Ritsumeikan Asia Pacific University.

[82] Yung, C. D. & McNulty, P. (2015). An Empirical Analysis of Claimant Tactics in the South China Sea. Institute for National Strategic Studies (INSS), Strategic Forum, SF No. 289, pp. 1-12.

[83] Zhou, W. (2015). China's Growing Assertiveness in the South China Sea. *Elcano Royal Institute*, pp. 1-10.