

Committee: Legal Committee

Issue: The legality of artificial islands for military use

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Position: Co-Chair

PERSONAL INTRODUCTION

Dear delegates,

My name is Maria Deliporanidou and I am a high school student at the German School of Thessaloniki. It is my honor to serve as one of your Co-Chairs in the Legal Committee and I would like to hereby welcome you all and to congratulate you for participating in the 2nd ACGMUN. I am really excited about the upcoming conference on March and I am looking forward to a fruitful and heated debate.

As you probably know, the Legal Committee is responsible for the consideration of legal questions in the United Nations General Assembly and thus it is one of the most challenging and substantial committees. The two topics of the agenda are of a great importance since they both deal with the application of both national and international laws.

The purpose of this Study Guide is to provide you with some useful information about the already existing legal framework regarding the creation of artificial islands, the background and some example of cases where artificial islands were created for military use. However, I encourage you all to examine the topic and your country's policy deeper, so as to get an analyzed grasp of the topic and to be able to participate during lobbying and debate.

This conference can be your chance to engage in heated conversations with your fellow delegates and finally find solutions to contemporary and serious issues that affect the global community.

Should any question arise, feel free to contact me at mdeliporanidou@gmail.com! I wish you good luck with your research and I hope you have a great time preparing for the conference.

Sincerely,
Maria Deliporanidou

TOPIC INTRODUCTION

Artificial islands can be defined as floating states. The eruptive spread of the creation of artificial islands in the end of the 20th century created the need of the adoption of laws which will regulate their use and the circumstances under which such islands can be created.

Artificial islands should not be considered as permanent harbor works. The rights and obligation of States that use artificial islands are determined by their position and by the use for which they are identified. Currently, nations are building military bases on the artificial islands and thus neighboring countries are suspicious. International organizations have tried to regulate the military activity in the islands by establishing laws. However, the already existing law does not give answers to new escalating problems. For example, what happens when the zones of nations overlap those of others? And what happens in cases where the international law does not provide specific regulations regarding minor conflicts that can escalate to an international dispute?

DEFINITION OF KEY TERMS

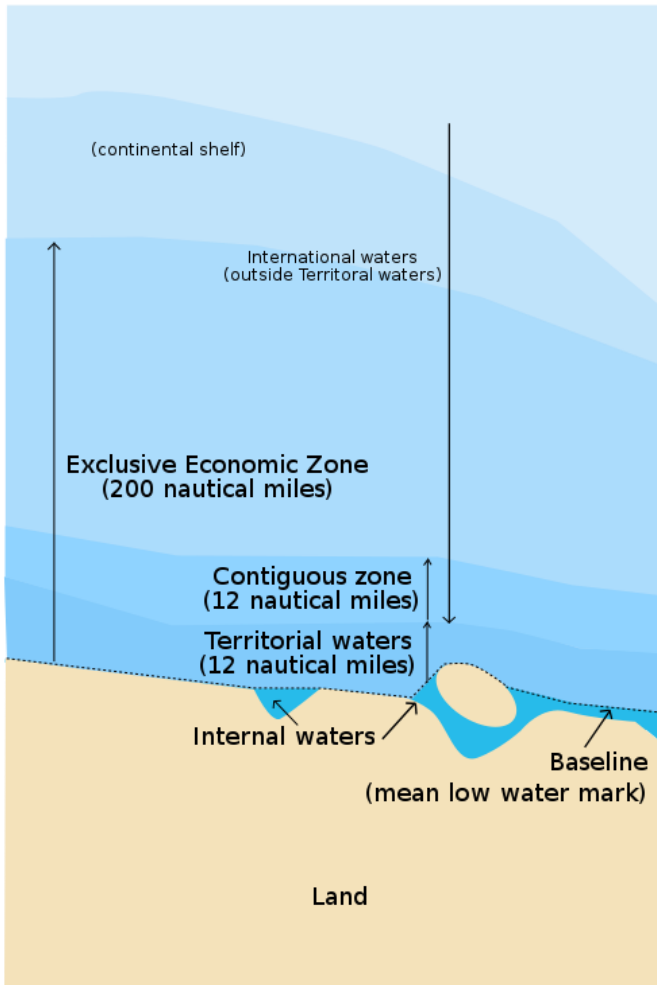
Artificial Island

"An artificial island is a man-made island or other structure surrounded by or floating on water".¹ They are structures in the marine environment, which have been created from the anthropogenic deposition of natural and artificial materials. Such islands showcase variations in size and form, as they have been created by expanding and building onto other natural constructions such as smaller islands or already existing reefs.

Exclusive Economic Zone (Article V of UNCLOS)

The Exclusive Economic Zone (EEZ) is a maritime zone, set by the United Nations Convention on the Law of the Sea, seaward of the territorial sea and can extend for up to 200 nautical miles (370 km.) from the territorial sea's baselines. Over that zone, a State has the autonomy and the sovereignty to explore and exploit all the recourse –natural and non-living- and has privileges related to the construction of installation and artificial islands.

¹ "Artificial Island | Definition Of Artificial Island In English By Oxford Dictionaries." Oxford Dictionaries | English. N.p., 2017. Web. 21 Dec. 2017.



#1 Visual explanation of Territorial waters, Contiguous Zone, EEZ and Continental shelf

As you can see in the following figure, there are 5 traditional marine zones, all of which were set by the United Nations Convention on the Law of the Sea and the Exclusive Economic Zone.

Territorial Waters

The territorial waters of a State may be up to 12 nautical miles from the baseline. In those waters the coastal State has the right to set laws, regulate use, use any resource and establish artificial islands. The sovereignty of coastal State over its territorial waters is almost as extensive as its sovereignty over its land territory.

Contiguous Zone

The Contiguous Zone is a maritime zone that may extend up to 24 nautical miles from a States coastal baseline, in which the State has the right to explore and exploit its natural

resources but it does not have sovereignty over artificial islands in that area.

Continental Shelf

The Continental Shelf may be at least 200 nautical miles from a States coastal baseline and it does not extend 350 nautical miles. (Article 76, Law of the Sea Convention)

The waters that do not fall under the Territorial waters, the Contiguous Zone, the EEZ, or the continental shelf are considered, according to the UN, international waters and are shared by everybody.

Areas beyond National Jurisdiction (ABNJ)

According to the United Nations Convention on the Law of the Sea (UNCLOS) the areas beyond the limits of national jurisdiction are: "the water column beyond the Exclusive Economic Zone (EEZ),..., called the High Seas (Article 86);"

BACKGROUND INFORMATION

The human-sea relationship started thousands of years ago. The creation and development of waterborne resources and interventions have marked new paths in the human-sea relationship. Land reclamation, which is rather the most significant method of creation of artificial islands, was developed in the 16th century by the Dutch, when such islands had only defense and extension purposes; later it became known in West Europe. In the 20th century, this method became known all over the world and today it is mostly used in Asian countries.

Artificial islands

The creation of artificial islands is closely connected with the technological evolution of the 20th century, during which new techniques and methods that enabled their creation were developed. There are multiple uses of artificial islands such as public, recreational or military use, economic use related to tourism, research needs, the extension of airport runways, or the wish of creating oil and petroleum drilling platforms. Two prime examples of airports built on artificial islands are the Kansai International Airport in Japan and the Hong Kong International Airport.

The problem is that interests related to a State's presence in the marine environment sometimes lead to the circumvention of the existing international law. Countries try to avoid the application of the regulation and they want to extend their national territory without taking into consideration potential prohibitions or restrictions. That causes problems since the site selection of a potential artificial island also depends on the existing legislation and if countries avoid its limitation conflicts may arise. A suitable example is the situation in the South China Sea, which will be analyzed later.

EEZ (Exclusive Economic Zone)

In the EEZ (Exclusive Economic Zone), defense measures, the creation of defense facilities, and conducting military exercises are allowed.

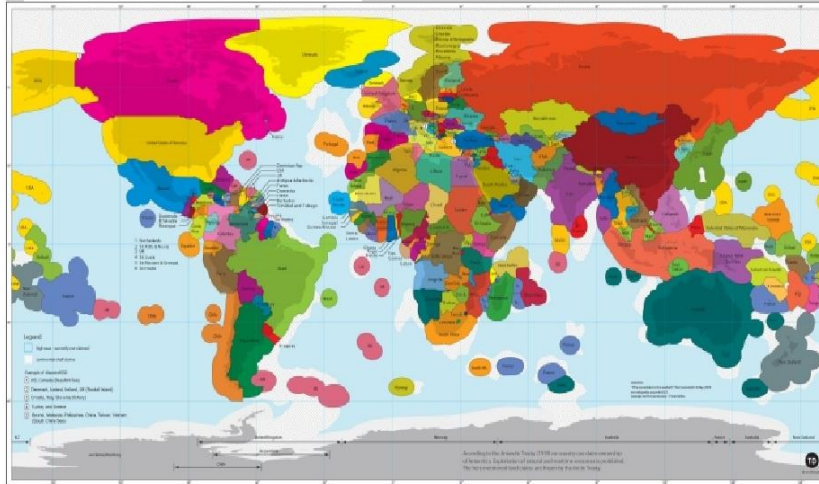
No matter the economical situation, natural resources are hot. Since many of the easy accessible resources on the main land are exhausted more and more afford is done for off-shore exploitation.

Today a countries marine economic area is defined by its Exclusive Economic Zone (EEZ), a 200 nautical miles (370 km) wide offset from the countries national coast line. This regulation, which was installed by the "UN Convention on the Law of the Sea" in 1982 grants a state

special rights to explore natural (e.g. oil) and marine (e.g. fish) resources, including scientific research and energy production (e.g. wind-parks).

Practically this means that if a country owns a minuscule rock somewhere in the ocean, this rock has an actual exploitable surface of 430.000km². In the case EEZ's overlap, it is up to the involved states to delineate the actual boundary; a rule which led in certain case to decennia's of dispute. Yet there is more land to

claim and more squabbles ahead, since the 200 nautical miles definition got supplemented by a clause which allows its expansion till the continental shelf. The first deadline for this so called 'continental shelf submissions' passed May 2009 and land (seabed) allocation started soon after. If underwater land grabbing goes on like this the 'Freedom of the Seas' might soon shrink to the 'Freedom of the Ponds'.



#2 The EEZ of every State.

However, other states often complain about these actions, since they think they are in danger. Moreover, the use of nuclear weapons is prohibited, since all actions in the marine environment should not be violent. According to the Article 59 of the LOSC (Law of the Sea Convention), if a conflict between two or more States arises, "the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole."

According to the fifth part of the Law of the Sea Convention (LOSC) in the exclusive economic zone, the coastal State has the right to create and use artificial islands (Article 56).

The Article 60 sets regulation regarding artificial islands in the EEZ and the coastal State's rights. The parts of Article 60 set regulations related to the fiscal and immigration laws over the islands, the safety measures that should be followed after the abandonment or disuse of the islands (these measures should be in accordance with international standards and should respect the marine environment, fishing, and the rights and duties of other States and also take into consideration the depth, position, and dimension of the island).

It should be noted that artificial islands do not possess the status of an island which means that they do not have their own traditional zones or an exclusive economic zone.

Life cycle of artificial islands



#3 Reef in the disputed Spratly Islands in the South China Sea.

There are multiple methods of creation of artificial islands, such as the expansion of already existing islets, land reclamation, and poldering, whose purpose is the extension of territorial jurisdiction and the exploitation of the surrounding land. An example of a polder is the Flevopolder islands in the Netherlands which was drained 1950s-60s and is currently used for residential and recreational purposes. In some cases, man-made islands can also be constructed on reefs.

There are three stages of life of manmade islands. First of all, there is the planning phase. The weather conditions of the area, the water depth, the legal aspects, the risks of natural disasters etc. are very important factors and that is why this planning phase takes time. The second stage is the first use, the first activity on the island which aims to fulfill the purpose of its creation. The last stage can be different from island to island. After the aim of its creation has been completed, there are four options which can be followed by its constructors: Abandonment, Disarmament (when the islands is created for military use), change of use, and in some cases even change of location, but this one can be costly and specialized knowledge and can also be very challenging.

Pros and Cons of artificial islands

There are many opposing points of view about the creation and the use of such islands. On the one hand, countries that use man-made islands claim that they provide them with place for better infrastructure for new buildings and constructions in general, that they can be created anywhere, and that the fact that those islands can be reused can prevent negative effects on the environment. Moreover, artificial islands can boost a country's economy, like in Dubai, UAE, which uses artificial islands for tourism. Another strong advantage of such islands is that land reclamation can increase the area of a country's land.

On the other hand, a very serious problem that many constructors face is that the creation of artificial islands can cause damages to the environment. Processes like land reclamation can cause serious damages to the corals, reefs and to

the marine environment in general. Additionally, the construction of such islands can be very costly since many ships and personal is required for a long time. Furthermore, artificial islands are exposed to waves, winds, underwater currents, tsunamis, hurricanes, and earthquakes etc. which threaten their existence since they are foreign constructions and their location was not naturally created for such reasons.

Naval Powers² have been using the seas for military activities. Specifically, the continental shelf has been used for the emplacement of military installations, although these activities are well-guarded secrets.

Dispute in the South China Sea

The South China Sea dispute is considered to be one of the most critical contemporary conflicts, often described by politicians and journalists as an issue which may lead to warfare with grave consequences in the near future. The South China Sea is of significant political and commercial importance, since one-third of the world's maritime traffic is headed by the area and as it is rich in natural resources. In the middle of the South China Sea there are the disputed Spratly Islands and the Paracel islands, which are controlled by China and claimed by Taiwan and Vietnam.

Seven Asian nations (China, Vietnam, the Philippines, Malaysia, Brunei, Taiwan and Indonesia) have been in dispute over the South Chinese Sea for nearly the past 60 years, because the zones claimed by the countries overlap those of others. The countries insist on claiming sovereignty over those islands, because by occupying them, they can extend their Exclusive Economic Zone and in that way gain the right of exploration and exploitation of natural resources. Countries often express their discontent by bringing the situation to the court, like the Philippines has done in 2016. Not only neighboring countries but also European countries are concerned (UK, France and Germany) or have disregarded China's actions (Greece, Hungary).

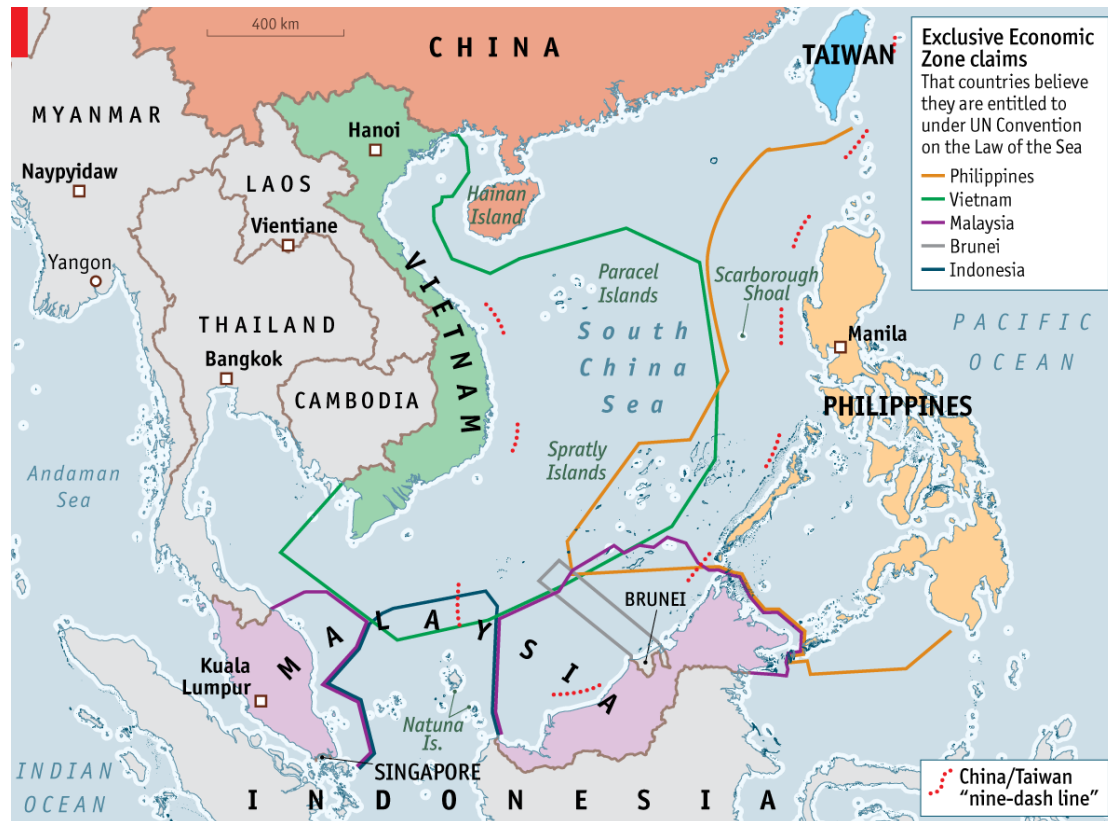
In 1953, China demarcated its territorial claims in the South China Sea with a nine-dash line on a map³. In 1982, the UN established the EEZ but China was not willing to quit its claims. Currently, China argues that all the Spratly Islands belong to them with an argument that stands against the UNCLOS. They, and to some extend also Vietnam, are building artificial islands in the region in order to justify their territorial claims.

The three nations that have taken advantage of the Spratly islands by placing military installations are China (Fiery Cross Reef), Vietnam (San Cay Islands, which

² USA, North Korea, China, Russian Federation, Egypt, India are the strongest Naval Powers.

³ China established the nine-dash line to define borders in South China Sea over which they claim sovereignty

has been expended and enforces with gun emplacements) and Taiwan (Taiping Island).



#5 The EEZ of the disputed nations in the South China Sea and the international waters

The dispute became more serious when China started building military bases on the islands, wanting to control the whole area and using the Cabbage Strategy. The name Cabbage Strategy has a metaphorical meaning. China sends dozens of ships and fishermen and in that way it is wrapping the island. (The boats can be seen as layers of cabbage)



#4 Shots of the Fiery Cross Reef in 2006 and in 2015

They are constructing islands and they send fishing and navigation boats around the Spratly Islands and they try to take control of the area. Due to the

current militarized character of the South China Sea, other foreign nations have started gaining interest on the region. There are countries like Australia, Japan and India who worry about the conflict and its consequences regarding their trading operations there.

One other aspect of the dispute is the question whether China can control, under the international law, the military operation of foreign States within its EEZ, since States disagree on what military actions are allowed in another state's EEZ. Undeniably, in the High Seas, all countries have the right of freedom of navigation. The UNCLOS does not specify the issue of military activity and thus some states support the freedom of navigation overflight (USA) and others claim that they can control all actions within their EEZ due to national security reasons (Malaysia, India). All in all, military activity in another State's EEZ depends on many circumstances and differs from case to case. In the South China Sea, China wants to fully control the activities in the claimed region.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

China

China has built military bases on seven spots in the South China Sea with the purpose of gaining control over the area. It bases its territorial claims on historical reasons, as it relies on the assertion that many of the disputed islands were discovered by the Chinese and thus belong to them and thus they are not willing to negotiate. The Paracel Islands are included in their Exclusive Economic Zone. However, they argue that their purposes have no military character.

USA

The United States of America is the one of the strongest naval powers and they are defending international waters in the South China Sea, by patrolling the area. Steve Bannon, who is a member of the US National Security Council and is working closely with President Donald Trump, said: "We're going to war in the South China Sea in five to 10 years". Secretary of State Rex Tillerson has also stated that "Building islands and then putting military assets on those islands is akin to Russia's taking of Crimea. It's taking of territory that others lay claim to". However, USA has not taken the side of any of the disputed nations but it cares about the "freedom of navigation" (FON) in the area. Freedom of navigation is a principle under which States have the right to navigate in the High Seas and in the EEZ. With the Freedom of Navigation Operations (FONOPS's) the USA tries to reinforce that recognized right. Those freedom of navigation operations were authorized by the Obama

administration in 2015. They strongly believe that the disputes should be resolved peacefully and always in accordance with the international law.

In the 2017 National Security Strategy Report (USA), it is stated that China's "efforts to build and militarize outposts in the South China Sea endanger the free flow of trade, threaten the sovereignty of other nations, and undermine regional stability."

Undeniably, the dispute in the South China Sea is a priority for Mr. Trump in 2018.

Vietnam

Vietnam controls a big part of the Spratly islands, and has strengthened its military presence in the area to emphasize its presence and claim. It is claiming the Spratly as well as the Paracel Islands which are also in Vietnam's EEZ, which overlaps with China's.

The Philippines

They claim its rights in the South China Sea based on the EEZ and they deny China's claim on the region and have accused China of invading their territory. Philippine President Benigno Aquino is worried that China's military actions could lead to a conflict and thus he is searching for support in other Southeast Asian leaders.

ASEAN (Association of Southeast Asian Nations)

ASEAN is an organization established in 1967 to promote peace and cooperation of nations of Southeast Asia. The ASEAN established, after six years of negotiations, a Declaration on the Conduct of Parties in the South China Sea, where China and the ten ASEAN members agreed on peaceful and trustful way of exploration in accordance with the principles of the Charter of the United Nations, the UNCLOS III and principles of international law as well as on the basis of equality and mutual respect. However, this document has not prevented inappropriate actions by the nations.

Permanent Court of Arbitration (PCA) in Hague

The court didn't recognize China's historical claims on the region and ruled in favor of the Philippines, when the Philippines blamed China for controlling a region which did not belong in its EEZ. However, China ignored the Court's decision.

European Union

The European Union is currently neutral towards the dispute in the South China Sea and has agreed with PCA's decision. The Legal Affairs Committee of the European Parliament noticing the growing use of artificial islands urged the States to "define a common attitude to the problem of legal status of artificial islands" in peaceful ways.

Qatar

A luxurious artificial island in Qatar is the Pearl-Qatar with a total population of 12,000 citizens. It was initially created for recreational and residential use.

UAE

One of the largest artificial islands in the world are the Palm Islands, located in Dubai. These islands were constructed for mainly tourism purposes, but seem to cause damages to the environment.

Japan

Japan started constructing artificial islands in 1232 (Wakae Island) and has managed to cover a total area of over 1000 km. Some examples of Japanese artificial islands are the Kansai Airport, the Chubu Centrair International Airport, and the Okinotori Islands. However, some nations, like China, claim that the Okinotori Island is not an island but a rock. The UNCLOS does not give specific answers to that question with the only point being that an island is "a naturally formed area of land, surrounded by water, which is above water at high tide". Moreover, Japan claims that the Okinotori Island has the right to have 200 nautical miles EEZ. However, under the UNCLOS, in order for an island to have EEZ it should be "inhabited or self-sustaining economic activity" and the Okinotori Islands is an uninhabited atoll.

TIMELINE OF EVENTS

Date	Description of event
1893	Fur Seal Arbitration ⁴
1930	League of Nations Codification Conference in Hague
1953	China published the nine-dash line

⁴ The "Fur Seal Arbitration" refers to the case of the dispute between USA and Great Britain. This dispute arose due to the countries disagreement over rights to fish in seal-rich waters but there is also reference to the regime of artificial structures.

1956-1960	United Nations Convention on the Law of the Sea I and II (UNCLOS I), and the four Treaties
1973-1982	United Nations Convention on the Law of the Sea III (UNCLOS III),
1982	EEZ (Exclusive Economic Zone)
1984	The Philippines ratify the UNCLOS and they claim sovereignty over the Spratly Islands
1987	The construction of Kansai International Airport in Japan
1994	LOSC (Law of the Sea Convention) enters into force
2002	Declaration on the Conduct of Parties in the South China Sea
2014	China published a new ten-dash line
2015	China threatened to declare an air identification zone over the South China Sea
2015	The Philippines The Permanent Court of Arbitration (PCA) : China Vs. The Philippines, the court ruled against China
2016	The UN Arbitral Tribunal ruled in favor of the Philippines
2017	Code of Conduct between ASEAN nations and China

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

UN Convention on the Law of the Sea (I, II)

The first UN Convention on the Law of the Sea was held in 1956 and the second in 1960. After the first Convention, four Treaties entered into force in the following years. Those four Treaties tried to establish regulations related to the territorial waters and the contiguous zone, the continental shelf, the international waters (known as High Seas) and the fishing activity and the living natural resources of those waters.

The second Convention tried to cover some inefficiencies of the Treaties of the first Convention. However, the States didn't come to a new agreement.

United Nations Convention on the Law of the Sea III (1973- 1982)

The third and last Convention on the Law of the Sea resulted in the Law of the Sea Convention which regulates the activities in the maritime environment. The Law of the Sea Convention defines maritime zones and sets regulations for activities

in the Exclusive Economic Zones. China and the Philippines have signed it and also ratified it.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

The four treaties of the UNCLOS I

Name of the Convention	Entered into force	Decisions
Geneva Convention on the Territorial Sea and Contiguous Zone of	1964/ Ratified by 52 States 1958 (e.g. Malaysia, UK, USA)	Regulation regarding customs, fiscal, immigration or sanitary matters.
Geneva Convention on the Continental Shelf	1964/Ratified by 58 States (e.g. USA, Russian Federation)	Rights of states in the Continental Shelf (Exploring and exploiting of natural Resources)
Geneva Convention on the High Seas	1962/Ratified by 63 States (e.g. Netherlands, USA)	Freedoms in the international waters (navigation, fishing etc.)
Geneva Convention on Fishing and Conservation of Living Resources of the High Seas	1966/Ratified by 39 States (e.g. Indonesia, UK, USA)	Protection of living natural resources in the High Seas

The 2011 agreement

The agreement between China and four ASEAN countries, namely Vietnam, the Philippines, Malaysia and Brunei, sets standards for a calm spirit in the South China Sea. They agreed on issues regarding marine protection and freedom of the seas. This agreement has been characterized as a milestone document, since it based on cooperation between the disputed nations and there is hope that they will negotiate in a peaceful manner.

Code of Conduct

In 2017 China and the ASEAN nations began drafting a code that rules the military activities in the South China Sea and tries to solve the dispute in accordance with the international law.

POSSIBLE SOLUTIONS

When submitting your resolution, I advise you to take into consideration the following points.

- a. The regulation of the UNCLOS III and other previous Conventions and Agreements. You can look into whether we can add something in order to make them more sufficient.
- b. Reinforcement of ASEAN nations and their cooperation with China and also other nations (for example European) in order to gain their trust and help
- c. Historical claims or claims legally supported by UNCLOS (e.g. EEZ)?
- d. A possible demilitarization of the artificial islands in the South China Sea and artificial islands that are used for military use in general
- e. A new set of principles which will set the conduct of the negotiations regarding zones that overlap others between the disputed nations
- f. What happens to demilitarized areas and to the neutrality of some countries during armed conflicts?
- g. Should the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA) or the International Tribunal for the Law of the Sea get involved in cases of a dispute like the one in the South China Sea? How far can the tribunal's decision influence the dispute?
- h. Do nations respect and follow the standards of the Law of the Sea Convention?
- i. The creation of a UN monitors committee which will be responsible for monitoring the activity on artificial islands and conduct surveillance as well as examining reports by nations.

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