Current International Sea Disputes Based on International Law Framework

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ABSTRACT
The development of navigation and sailing technology had grunted humans the ability to sail freely through the great seas. However, the sea is increasingly viewed by nations as a natural resource. This naturally brings many disputes between countries. To deal with this, the international society created international law to solve these disputes. However, although laws and conventions were established. Problems and conflicts still exist. This paper listed debated topics and specific cases of innocent passage, exclusive economic zone, and island issues. Though recording and summarizing these areas, this paper aims to provide a comprehensive perspective on the problem of international sea disputes.

Keywords: *UNCLOS, EEZ, Passage, International law*

1.INTRODUCTION

The problem of the Innocent passage exits back in the 17th century. Having Preliminary mastered the ability to navigate through open waters. People at that time begin to debate about sea exploitation. One side argues that the sea should be available for navigation and other uses to all humans. Thus, no individual or nation can own the ocean. Another side argues that, like land, the sea should also be divided and exploited. The constant clashes of these two sides shape modern international law [1]. The innocent passage can be seen as a compromise between these two ideologies far apart from each other.

Although the world widely recognizes the concept, the debate around innocent passage has never ceased. One significant disagreement occurs on whether warships possess the right of Innocent passage. Countries such as The United States and Great Britain believe that warships, like other ships, retain the right of Innocent passage. On the other hand, countries such as the People's Republic of China and Vietnam disagrees that warships enjoy Innocent passage.

1.1.UNCLOS

UNCLOS (United Nations Convention on the Law of the Sea) was established in 1982. Replacing the old International Law Commission established in 1955, UNCLOS is now the primary legal basis of international law on sea-related disputes. Although UNCLOS can be seen as significant progress of international law in addressing sea-related international law problems, it is still unclear and debatable in some areas. The area of innocent passage is not well discussed in UNCLOS. This allows both sides to process the ability to justify their claims through addressing different sections of UNCLOS.

1.1.1. UNCLOS' rules about Innocent passage

A warship passing through a foreign territorial sea cannot be judged to violate UNCLOS. Since Section 3, Article 17 of UNCLOS regulates that "Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea." however, Article 19 also claims that ships engaged in "(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (c) any act aimed at collecting information to the prejudice of the defense or security of the coastal State; (d) any act of propaganda aimed at affecting the defense or security of the coastal State [2];" cannot be counted as innocent, thus, cannot enjoy the right of Innocent passage. It is easy

to spot a problem here. Although UNCLOS grants all ships the right of innocent passage, it is hard to judge whether a ship aims to collect information or propaganda purposes. Warships themselves also seem to violate Article 17 (2) in the first place, and it is easy for warships to collect information or be used for propaganda purposes.

1.2."Warships enjoy innocent passage" side claim and US's attitude on innocent passage.

1.2.1. The legal bases of "warships enjoy innocent passage" side claim

The pro innocent passage side uses section 3, Article 17 as their main point. Warships are ships, as the rule of innocent passage applies to all ships; it is natural that warships also enjoy innocent passage. Also, since UNCLOS granted coastal states the right to banish Non-compliance warships with Article 30, coastal states should not work about security issues [2]. (Article 30 Non-compliance by warships with the laws and regulations of the coastal State. Suppose any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance in addition to that which is made to it. In that case, the coastal State may require it to leave the territorial sea immediately.)

1.2.2. The attitude of the United States on the problem of innocent passage

The attitude of the United States has changed over the course of history. Before 1945, the United States took the "warships do not enjoy the freedom of passage" side. The debate of "Do all vessels have the right to innocent passage or just some." broke out during the 1929 Hague Questionnaire. The United States is one of the only three countries that disagrees that all ships, including warships, enjoy innocent passage (The other two are Bulgaria and Poland). However, after 1945, the United States became the biggest advocator for innocent passage of warships. It is hard not to take the robust growth of USN during that period into consideration with This sharp change of idea. Currently, the United States is still a strong supporter of the innocent passage of warships. The exciting part is that the United States claims that its actions are intended to guard the sea border based on international law. United States did not ratify UNCLOS.

At international conferences, the United States did more than express its pro-innocent passage claim. Since the late 20th century, the United States has committed a series of FONOPs (Freedom of navigation operations) Based on its robust naval power and allies around the globe. The United States can project its maritime power nearly everywhere on the sea. They are serving to demonstrate the United states' understanding of UNCLOS and international law. The US organizes one or several UNCLOS operations when another country shows actions or signs disregarding the Innocent passage claim of the United States' interpretation of UNCLOS. In 1983, the USSR passed laws limiting innocent passage through the USSR's territorial sea. Innocent passage was restricted to three sea lanes. The Soviets justified these actions through UNCLOS, Article 22. 1 "The coastal State may, where necessary having regard to the safety of navigation, require foreign ships exercising the right of innocent passage through its territorial sea to use such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships [2]." Seeing this as a violation of the US's version of interpretation, US responded with two FONOPs. One in 1986, one in 1988. During the second operation, a Burevestnik class Soviet frigate "bumped" the USS Yorktown to drive the US ship to international waters [3].

Another more recent case of FONOPs is staged in the South China sea. From 2015 to 2016, the US navy organized four FONOP operations in the South China sea. Although the status of Triton island, which is the target of one FONOP operation, is debatable. Fiery cross reef and woody island are both features that can undoubtedly generate territorial sea. Such action naturally provokes China, which responded by saying words like "FON patrols carried out by foreign navies in the South China Sea could end in a disaster [4]."

1.3. "Warships do not enjoy innocent passage" side claim and China's attitude on innocent passage.

1.3.1. The legal bases of "warships enjoy innocent passage" side claim

The pro "warships do not enjoy innocent passage" side also used UNCLOS to justify their claim.

Article 19
Meaning of innocent passage

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(c) any act aimed at collecting information to the prejudice of the defense or security of the coastal. State;

(d) any act of propaganda aimed at affecting the defense or security of the coastal State [2].

Warships, due to the purposes they are built, are naturally used as information collectors and propaganda machines. So, the existence of a foreign warship in the territorial sea means nothing but a source of threat. As U.S. delegate Elihu Root declared in 1912, "Warships may not pass without consent into this zone because they threaten. Merchant ships may pass and repass because they do not threaten [5]." Warships carry radars, sonars, and other detection equipment, and it is natural to turn these detection devices on during a performance of "innocent passage" making this action of innocent passage no longer innocent.

1.3.2. Prior notification rule and the attitude of China on the problem. of innocent passage

If the concept of innocent passage can be seen as a compromise between a divided sea and an open sea. The prior notification rule can be seen as a compromise between completely banning the right of innocent passage of warships and granting warships equal rights as other ships. Prior notification rule is applied in China, India, Vietnam, and other several countries. The rule is a very straightforward one. If warships want to pass through the territorial sea, it requires prior notification to the coastal state. Its supporters argue that through this way, the coastal state can be sure that the warship means no harm or intention to threaten the coastal state and the region. Its opposers argue that if this rule is applied, the freedom of innocent passage is no longer freedom. It is a restriction on ships, and it is a violation of international law. Debates continue the rule of prior notification rule.

Since China had not restored its legal position at the UN back in the 1950s. China was not included in any of the discussions before 1971. So, China regards discussions and conventions as "A product of the influence of a few big maritime powers." China will not accept such laws [6].

The main goal for China in sea-related international law areas is to guard its national security and interest. Due to this, China actively joins the establishment of UNCLOS [7]. During the sessions, China submitted a working paper to the committee, which said that.

"a coastal State may, for the purpose of regulation of its territorial sea, enact necessary laws and regulations and give publicity thereto. Ships and aircraft of a foreign State, passing through the territorial sea and airspace there above of another State, shall comply with the laws and regulations of the latter State. Foreign non-military ships enjoy innocent passage through territorial seas. A coastal State may, in accordance with its laws and regulations, require military ships of foreign States to tender prior notification to or seek prior approval from, its competent authorities before passing through the territorial sea of that State [8]."

China's viewpoint was expressed in the paper above. Which are, an ask of separation between warships and other ships, and prior notification is needed for warships before they enter coastal states' waters in order to protect the independence and sovereignty of coastal states. This position was widely supported by many other countries, and a joint proposal was made. However, this proposal was rejected by the marine time powers with the United States and USSR at the lead. Clearly not satisfied with this result, the Chinese delegate express concern about UNCLOS during the end session. When China ratified UNCLOS in 1996, it made the following statement.

"The provisions of the United Nations Convention on the Law of the Sea concerning innocent passage through the territorial sea shall not prejudice the right of a coastal State to request, in accordance with its laws and regulations, a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State [9]."

1.4 Conclusion and possible solution.

Both sides got their point based by UNCLOS and both are reluctant to back up from their claim. However, there are possible solutions. The dispute can be solved by an agreement between both sides just like the Joint Statement of 1989 between the US and USSR. Or, Hopefully, after a new round of forums and negotiations, a new set of rules could be established by the UN.

2.EXCLUSIVE ECONOMIC ZONE

2.1.Exclusive Economic Zone

The exclusive economic zone is a new system established at the Third Law of the Sea Conference. The exclusive economic zone refers to an area that measures the baseline of the territorial sea by 200 nautical miles and outside the territorial sea. Coastal countries in this region have sovereign rights and other jurisdictions over their natural resources and other countries enjoy the freedom of aviation and flight, which should give due regard to the rights and obligations of coastal countries and comply with the laws and regulations formulated by coastal countries in accordance with the provisions of the United Nations Convention on the Sea and other rules of international law.

Within the exclusive economic zone, coastal states also enjoy administrative jurisdiction, civil jurisdiction, criminal jurisdiction, and other rights conferred by international law. The legal status of this area is neither in the territorial seas nor in the high seas, but in a separate and specific legal status. The exclusive economic zone is not inherent. A country's exclusive economic zone needs to be officially declared by the state.

Under Part V of the United Nations Convention on the Law of the Sea (effective 6 November 1994, adopted by the Third United Nations Conference on 1994), it is the "Exclusive Economic Zone". Article 58 of the International Convention on the Law of the Sea provides that "When countries exercise their rights and perform their obligations under the Convention within their exclusive economic zones, they shall take due account of the rights and obligations of coastal States and comply with the laws and regulations formulated by coastal States in accordance with this Convention and other rules of international law".

2.2.Overlap problem of exclusive economic zones

At present, there are two main problems with EEZ: overlap and excessive maritime claims. As an international system, EEZ is still an international political hotspot. In the process of implementing the so-called "free cruise" operation, one of its core views is to oppose the so-called "excessive maritime claims". In the view of the United States, the so-called "excessive maritime claims" include that many countries have expanded their jurisdiction over the exclusive economic zone. For example, many countries such as India and Brazil stipulate that the military activities of foreign ships in the exclusive economic zone need to be approved by their own countries. The United States believes that the United Nations Convention on the law of the sea has no prohibition in this regard, so it belongs to "excessive maritime claims". According to the annual report issued by the U.S. State Department, U.S. warships will carry out the so-called "free cruise" operation around the world to challenge the "excessive maritime claims" of allies and quasi allies with good relations with the United States, including Japan and Vietnam. Most of these free cruises take place in the exclusive economic zone of these countries, making the jurisdiction of the exclusive economic zone a hot issue in international politics.

According to the provisions of the United Nations Convention on the law of the sea, the exclusive economic zone is an area outside and adjacent to the territorial sea of a country. It shall not exceed 200 nautical miles (about 370km) from the baseline from which the width of the territorial sea is measured. Since the concept was put forward, it has been a hot issue in international politics, because it involves the ownership of huge marine rights and interests. If all countries delimit the exclusive economic zone according to 200 nautical miles, one-third of the world's sea areas (37 million square nautical miles) will be divided, and only the remaining 67 million square nautical miles belong to the high seas. In accordance with the provisions of the Convention, coastal states have sovereignty over various living and non-living resources in the exclusive economic zone, that is, sovereignty for the purpose of exploration and development, conservation, and management of the natural resources (whether living or non-living resources) of the waters overlying the seabed and the seabed and its subsoil, as well as for economic development and exploration in the zone, such as the use of seawater The sovereign rights of other activities such as current and wind energy production. However, due to the limitation of geographical issues, many coastal states do not actually have the jurisdiction area stipulated in the United Nations Convention on the law of the sea in the jurisdiction of EEZ, so there is a problem of overlap in the jurisdiction of some countries facing EEZ [10].

2.3.Philippines Indonesia Exclusive Economic Zone Negotiations

Because the Philippines and Indonesia belong to the island countries, in addition to the announcement of the islands baseline enjoy the territorial sea, adjacent area, also advocate two hundred nautical miles of exclusive economic zone, but as adjacent countries, in the Mindanao Sea, Celebes Sea and the Pacific Philippine Sea exclusive economic zone overlapping problems.

However, in accordance with Article 74 of the United Nations Convention on the Law of the Sea, the boundaries of the exclusive economic zone between coast or adjacent countries should be fairly settled by agreement on the basis of international law referred to Article 38 of the Statute of the International Court of Justice. Subsequently, from 23 to 25 June 1994, the Philippines and Indonesia officially decided to open the negotiations on the overlap of the exclusive economic zone between the two countries. Among them, due to the firm attitude of the Philippines' "historic" rights on the waters within the "Philippine Treaty boundary", the two countries fell into a long stalemate in the process of border negotiations. Until the historic agreement on the temporary maritime border was signed on 24 February 2014, the two sides finally agreed to separate their exclusive economic zones and finally determine the boundaries acceptable to both parties [11].

2.4. Northern Bay of Bengal

In this case, because the United Nations Convention on the law of the sea has no clear provisions on the overlap of the exclusive economic zone when dealing with this case, we should flexibly deal with the overlap of the exclusive economic zone in the North Bay of Bangladesh based on the principle of "fairness and justice" according to the special geological landform and in combination with the existing provisions of the United Nations Convention on the law of the sea.

2.4.1. Case introduction

Myanmar and Bangladesh are close to the coast of the Bay of Bengal, and their claims on the boundary between the exclusive economic zone and the continental shelf overlap in the Bay of Bengal. On February 14, 1974, Bangladesh formulated the Bangladesh territorial sea and sea area act in accordance with the relevant provisions of the national constitution, which regulates the territorial sea of Bangladesh, India, and Myanmar in the Bay of Bengal. The boundaries of the exclusive economic zone and the continental shelf are defined. In the same year, Myanmar proposed to Bangladesh that the two countries delimit the maritime boundary in the Bay of Bengal according to the principle of "equal distance". However, Bangladesh rejected Myanmar's proposal and advocated using the "principle of fairness" to delimit Myanmar's maritime boundary in the Bay of Bengal, because if Bangladesh's territorial sea and sea area law is based on the "principle of equal distance" In 1982, the United Nations Law of the sea was formally formed, and the participating countries signed the Convention. The Convention stipulates the boundaries of the territorial sea, exclusive economic zone, and continental shelf of coastal countries.

Coastal countries can have 12 nautical miles of the territorial sea, 200 nautical miles of exclusive economic zone, and 350 nautical miles of the continental shelf from the coastal baseline. In 1996 and 2001, Myanmar and Bangladesh ratified the Convention respectively and became parties Convention According to the provisions on the width of the territorial sea, exclusive economic zone, and continental shelf, Bangladesh's sea area reaches 207000 square kilometers, which is 1.4 times the total land area. According to the Convention, Myanmar also has the same right in the Bay of Bengal. Both countries hope to delimit the sea boundary between the two countries in the Bay of Bengal according to the relevant provisions of the Convention [12]. However, despite the Convention, It provides a set of legal frameworks for maritime delimitation disputes, but the principles and legal provisions of the Convention on maritime delimitation are not clear enough. Therefore, Myanmar and Bangladesh have overlapped in the Bay of Bengal Sea area according to the rights and claims stipulated in the Convention, aggravating the differences between the two countries.

2.4.2. case settlement result

"the minutes of the meeting signed in 1974 and re-signed and confirmed in 2008 between the two countries are no longer valid" Legal effect". Therefore, Myanmar and Bangladesh still have differences on whether the territorial sea boundary between the two countries in the Bay of Bengal has been delimited. The court comprehensively considered the "wording" of the relevant provisions of Article 15 of the Convention, the relevant jurisprudence of the International Court of justice, the wording of the "minutes of the meeting" signed by Myanmar and Bangladesh, and whether the two countries have ratified the Convention through domestic legislative procedures "Minutes of meeting"

Finally, it concludes that the evidence presented by Bangladesh cannot prove that "it is related to Myanmar “There is already an actual boundary agreement on the territorial sea boundary in the Bay of Bengal That is, the minutes of the meeting signed by Myanmar and Bangladesh in 1974 and reconfirmed in January 2008 are not binding in international law, and Myanmar's actions do not constitute estoppel. Therefore, it is necessary for the court to decide on the demarcation of the territorial sea boundary between Myanmar and Bangladesh in the Bay of Bengal. The court then conducted a decision on the case in accordance with Article 15 of the Convention Investigation of "historical ownership" and "other special circumstances". Based on the evidence submitted by Myanmar and Bangladesh, the oral proceedings of the representatives of the two countries and the relevant cases of the International Court of justice, the court finally held that there was no problem of "historical ownership" and "other special circumstances" in the case. Then, according to the "equal distance principle" The territorial sea boundary between Myanmar and Bangladesh in the Bay of Bengal is divided. The final result is that Bangladesh's St Martin Island can have a territorial sea width of 12 nautical miles in an area that does not overlap Myanmar's territorial sea width of 12 nautical miles. However, the judgment has a green road result, which is different from Bangladesh's Territorial Sea sovereignty in contrast, Myanmar's sovereign rights in the exclusive economic zone and continental shelf have received more attention and consideration.

The delimitation results of Myanmar and Bangladesh in the exclusive economic zone of the Bay of Bengal and the continental shelf within 200 nautical miles are due to the Convention It stipulates that if the continental shelf of the coastal state is less than 200 nautical miles from the baseline from which the width of the territorial sea is measured to the outer edge of the continental edge, it will be extended to 200 nautical miles. Therefore, the boundary of the exclusive economic zone of Myanmar and Bangladesh in the Bay of Bengal coincides with the boundary of the continental shelf within 200 nautical miles. The court is dividing the 200 nautical mile exclusive economic zone and the continental shelf of Myanmar and Bangladesh in the Bay of Bengal. The following problems must be solved first when defining the boundary: the nature of the boundary (whether it is a single boundary or not). length and delimitation principle of relevant coastlines. As for the nature of the boundary, Myanmar and Bangladesh agree to adopt the single delimitation principle. Therefore, the tribunal will use the single delimitation principle to draw a boundary between

Myanmar and Bangladesh's exclusive economic zone and continental shelf. Myanmar and Bangladesh have differences on the length of relevant coastlines: Bangladesh believes that it is involved in the delimitation The coastline of the delimitation of the economic zone and the continental shelf is 421km long, while Myanmar believes that the relevant coastline of Bangladesh is only 364km; Myanmar believes that the coastline involved in the delimitation is 740km long, while Bangladesh disagrees, and believes that the relevant coastline of Myanmar is only 370km long. The court ruled that Bangladesh is involved in the delimitation according to relevant laws and relevant cases of the International Court of justice The coastline of maritime delimitation is 413km long, while the coastline of Myanmar involving maritime delimitation is 587km long. Myanmar and Bangladesh also have fundamental differences on the principle of dividing the exclusive economic zone and the continental shelf within 200 nautical miles: Myanmar advocates the principle of "equal distance" and Bangladesh advocates the principle of "angular bisector". It is up to the Convention The principle of the delimitation of the exclusive economic zone and continental shelf of adjacent or opposite coastal States is not directly stipulated; it is only stipulated that the same requirements are made for the delimitation results in articles 74 and 83, "the delimitation of the exclusive economic zone and continental shelf shall achieve a fair result". Therefore, after learning from the experience of relevant cases of the International Court of justice, the tribunal took "three steps" The strategy is to divide the exclusive economic zone between Myanmar and Bangladesh in the Bay of Bengal and the continental shelf boundary within 200 nautical miles. Firstly, the court has drawn a temporary "equidistance line"; secondly, it is to investigate whether there are factors affecting the achievement of fair demarcation results, and evaluate the temporary boundary according to the factors affecting the achievement of fair demarcation results The "equidistant line" shall be adjusted accordingly; finally, it shall be tested whether the adjusted "equidistant line" can enable the end of the year to obtain an equal proportion of the sea area according to the length of its coastline, so as to achieve the result of fair demarcation. The exclusive economic zone between Myanmar and Bangladesh in the disputed sea area of the Bay of Bengal and the continental shelf within 200 nautical miles is an "adjusted equidistant line", which is an adjusted "equidistant line" according to the particularity of four within the coastline of Bangladesh.

With regard to the results of the delimitation of the continental shelf between Myanmar and Bangladesh beyond 200 nautical miles in the Bay of Bengal, Myanmar and Bangladesh have different opinions on whether it is necessary for the tribunal to make a ruling on the continental shelf boundary between the two countries beyond 200 nautical miles in the Bay of Bengal. Myanmar believes that "although the tribunal has jurisdiction over the delimitation of the continental shelf boundary beyond 200 nautical miles", but "This jurisdiction is not suitable for the demarcation of the continental shelf boundary between itself and Bangladesh 200 nautical miles away from the Bay of Bengal." Bangladesh believes that the tribunal should also make a ruling on the continental shelf boundary between Myanmar and Bangladesh 200 nautical miles away from the Bay of Bengal. The tribunal considers that it has jurisdiction over all continental shelf delimitation in accordance with articles 77 and 88 of the Convention In accordance with the requirements of the Convention and relevant international law cases, Myanmar and Bengal have ruled on the boundary of the continental shelf beyond 200 nautical miles in the Bay of Bengal. Its delimitation method is consistent with the boundary of the exclusive economic zone and the continental shelf within 200 nautical miles, using the "adjusted equidistant line" As the continental shelf boundary beyond 200 nautical miles, it is also the extension of the exclusive economic zone and the continental shelf boundary within 200 nautical miles, which extends to the sea area that coincides with the maritime claims of the third country (India). The division of the continental shelf boundary beyond 200 nautical miles has produced a "grey area" , located within the continental shelf boundary within 200 nautical miles of Myanmar and within the continental shelf boundary beyond 200 nautical miles of Bangladesh, and on the Bangladesh side of the continental shelf boundary beyond 200 nautical miles of the two countries. Myanmar and Bangladesh competed for the jurisdiction of the "gray zone", and the court required Myanmar and Bangladesh according to the spirit of the Convention "Establish a cooperation mechanism to jointly exercise jurisdiction in the 'gray area [13]".

2.4.3. Summary

On 23 May 2014, after 20 years of border negotiations, the Philippines and Indonesia finally signed a border agreement dividing the overlapping exclusive economic zones in the Silibus Sea and the Mindanao Sea. The adjustment of domestic maritime-related laws between the Philippines and Indonesia, the practical needs to manage the security of maritime boundaries, and the economic demands for the development of offshore natural resources are the driving forces for border negotiations from long-term stagnation to rapid settlement. As both the Philippines and Indonesia have interest demands in the South China Sea, the successful demarcation of the border of the exclusive economic zone between the Silibus Sea and the Mindanao Sea has brought great importance to the settlement of the South China Sea dispute and further enhanced the role of the Convention in the process of resolving the disputes in the South China Sea.

And countries adjacent to the coast or opposite each other are usually difficult to reach bilateral sea boundary demarcation agreements due to the special geographical and geological conditions of the "concave" bay. According to research statistics, in the 24 years after the party to the Convention, there were nine boundary disputes involving opposite or adjacent countries, and five cases applied for international arbitration in the past five years alone. With the progress of technological means, the improvement of legal mechanism and the increase of successful precedents, the trend of coastal or adjacent national sea boundary disputes submitted to international maritime arbitration organizations will gradually increase.

The successful settlement of boundary disputes in the northern bay of Bangladesh will not only promote the progress of international Marine law judicial practice, but will also promote the bilateral relations between Bangladesh and Myanmar, Bangladesh and India, and the progress of South Asian cooperation, and will also affect Bangladesh with national maritime cooperation regional economic and technological cooperation.

3.THE ROLE OF ISLANDS

3.1. Context and legality

The role of the island is at the center of controversy in the South China Sea dispute. China claims two major rights regarding the right to build artificial islands and the role of artificial islands in generating territorial sea and exclusive economic zones. While the United Nations Convention on the law of the sea defines the legal position of artificial islands sufficiently, challenges arise as countries compete for interest in strategically important regions. Multiple countries use their capability of building artificial islands for environmental, military, or economic purposes, yet the island-building projects in the South China Sea are predominantly political. This section would examine the role of islands in legal disputes in the South China Sea and outline the need for further clarification.

United Nations Convention on the law of the sea clearly differentiates the legal positions of artificial islands and naturally formed islands. Part VIII regime of islands Article 121 states that “an island is a naturally formed area of land, surrounded by water, which is above water at high tide” while Part V exclusive economic zone Article 60 clarifies “Artificial islands, installations, and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.” The situation in the South China Sea is also disputable because of the definition of rocks. As stated in Article 121, islands would generate “territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf” by provisions that are “applicable to other land territory”. However, “Rocks which cannot sustain human habitation or economic life of their own” would be an exception, generating only territorial sea and contiguous zone.

3.2. Political implication

By the aforementioned definition, the vast majority of South China Sea artificial islands prior to the construction would not be able to generate exclusive economic zone or continental shelf because they are either considered rocks or low-tide elevations. In the cases discussed, countries would seek to circumvent these obstacles by carrying out land reclamation and establishing habitations or military bases.

Chinese artificial island project on the Subi reef, which was claimed simultaneously by Taiwan, the Philippines, and Vietnam, is one such example. Subi Reef is submerged at high tide and does not qualify as an island under UNCLOS definition. In 2014, China began building housings and military base on the Subi reef and transforming it into an artificial island that is above water even at high tide. Subi reef’s island status was rejected by the Permanent Court of Arbitration tribunal in 2016, based on its natural condition. China, however, refused to acknowledge the tribunal and continued to intrude on freedom of navigation in the adjacent area by pressing against Freedom of Navigation Operations carried out by the United States. China’s objection is not baseless. With China’s reservation to exclude “the compulsory dispute settlement procedures of UNCLOS disputes concerning, among others, maritime delimitation, historic bays or titles, military and law enforcement activities” in 2006, the binding power and jurisdiction of the tribunal are greatly limited. Island building consolidates China’s claim over the reef by making other nations’ claims implausible in the face of military presence. It would be difficult to practically remove Chinese de-facto control over the islands, albeit Philippine Presidential Spokesperson Harry Roque once claimed optimistically in 2018 that "eventually, those artificial islands will be ours if we can ask China to leave [14]”. Politically, the artificial islands would serve as footholds to project Chinese influence in the region. Due to their significance, military bases would continue to escalate tension in the region, evoking a response from the Association of Southeast Asian Nations and the United States.

China is not the only country conducting land reclamation in the South China Sea. Chinese officials have repeatedly cited Vietnamese and Philippine land reclamation on Sand Cay, West London Reef and Thuti island as proof of double standards. Regarding the Philippines, Thuti island qualifies as a naturally-formed island. It lies within the 200-mile exclusive economic zone of the Philippines but is claimed by China, Taiwan （Provence）, and Vietnam simultaneously. While

UNCLOS outlines countries' right to build artificial islands within their exclusive economic zone, it does not have adjudication over the sovereignty of the island. Regarding this issue, there is a similarity between the case of Subi reef and Thuti island. Therefore, whether the Philippines have the right to construct on the island that is still being disputed would bring focus to the need for consistency and clarification over sovereignty issues.

According to the Center for Strategic and International Studies, Vietnam also slowly expanded its foothold in the South China Sea, reclaiming "new land at 8 of the 10 rocks it occupies and built out many of its smaller outposts on submerged reefs and banks [15]". For instance, it was reported to expand the disputed Sand Cay and West London Reef "by 21,000 and 65,000 square meters, respectively since 2010"(Thayer). The scale of Chinese and Vietnamese land reclamation differs greatly due to Chinese technological advancements. Though currently constrained by technological difficulties, Vietnam could have immense prospective interest in other features under her control in the spratly islands.

Major actors in the South China Sea, including China, Vietnam and the Philippines all conducts construction projects on disputed territories. Despite technological differences, Vietnam and China are both converting reefs and rocks into artificial islands. It is true China is unique in its more aggressive approach and assertion of exclusive economic zone and air identification zone, which does not align with the provisions in UNCLOS. Yet Vietnam and the Philippines may not be in the moral position to accuse China's island-building projects. This would create obstacle in reducing island-building and creating the code of conduct in South China Sea.

3.3.Approach

"Since 2002, ASEAN and China have been drafting the Code of Conduct for the South China Sea [16]". China's diplomatic strategy of seeking separate agreements with ASEAN may provide a practical solution. Optimistically, whether successful or not, the presence of the negotiation process would ease tension and stabilize the region. Although diplomats and the frameworks of the Code of Conduct repeatedly stated it will abide by international laws and the UNCLOS, we should beware of the possibility that Chinese leverage and nations' interests could cause deviation from UNCLOS. After all, the declared framework of the Code of Conduct in 2016 made no mention of the rulings of the Permanent Court of Arbitration tribunal, which many scholars would argue, mostly align with UNCLOS [17]. The potential of developing regional agreements instead of restoring to international legal system and the important role regional block plays could reflect the phenomenon of fragmentation in the era of great power competition. This could be harmful to international organizations by weakening their authority and relevance.

To foster more stability and prevent the outcome of international dispute from being disproportionately affected by nations' military or economic power, the international legal system could further clarify. For instance, the right to "establish safety zones around such artificial islands, installations and structures" could be relevant in the South China Sea. The provision that "the breadth of the safety zones shall be determined by the coastal State…Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 meters around them" would be prone to ambiguity. The criteria of "nature and function" would imply a consideration of intent. Concept of intent is complex because it is subjective and easily lead to political display like the government-organized fishermen activities that already took place in the South China Sea. Consistency would be an important priority for highly politicized issues. Otherwise, it could leave loopholes and incentivize countries to discredit international legal system for inconsistent application. Safety zone may not be highly impactful as the limit is set to a distance of "500 meters", yet it draws attention to possible area of further clarifications.

4.CONCLUSION

The problems and conflicts listed above are complex and difficult to solve. It had been nearly forty years since UNCLOS was established and this forty-year-old convention had clearly not covered some of the most debated issues today. From an optimistic perspective, nations across the globe are willing to use international law such as UNCLOS as a major tool to solve the problem. This provided soiled ground for future negotiations and results that will possibly satisfy all. However, the lacking of conversation between nations is troublesome. A new "UNCLOS" is needed now for the peace of the high seas and the nations.

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