

# The Involvement of the United States in the South China Sea Dispute: The Perspective of International Law

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The South China Sea contains four disputed islands and coral reefs, namely; Paracel, Spratly, Pratas and Macclesfield Islands. The Spratly Islands have attracted multilateral claims by several countries, including Brunei Darussalam, Malaysia, the Philippines, Vietnam and Taiwan. Meanwhile, the Paracel Islands are claimed by Taiwan and Vietnam. The Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas and the Economic Commission for Asia and the Far East stated that since the 1960s potential minerals, especially oil and gas, have been discovered in the region. Conflict in the South China Sea region is the main concern of the United States, who is noted for its "Asia's Balancing" strategy. The involvement of the United States in the perspective of international law is a legal issue that is answered in this study.

**Key words:** *Conflict, South China Sea, International Law.*

## Background

The South China Sea dispute is a very complicated problem, which includes territorial disputes and maritime boundary disputes, which have yet to be resolved. The South China Sea is a marginal sea that is part of the Pacific Ocean, encompassing an area from the Karimata and Malacca straits to the Strait of Taiwan of around 3,500,000 square kilometres. It consists of 4 islands and corals, namely Paracel, Spratly, Pratas and Macclesfield Islands. According to research conducted by The Committees for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas, Economic Commission for Asia and the Far East since the 1960s, this area of water has a lot of potential, including its strategic location and rich natural resources such as fish, gas and petroleum.



It is estimated that the territorial waters of the South China Sea have more than 250 islands, atolls, coral reefs and sand dunes that form shapes like islands. Most of the islands are uninhabited, many are naturally under water at high tide, and some are permanently submerged. The permanently submerged islands include the Spratly Islands, the Paracel Islands, the Pratas Islands, the Macclesfield Bank and the Scarborough Reef.

The permanently submerged islands are the source of the South China Sea conflict related to ownership claims over them. Overlapping claims have made it hard to find a solution for the disputes until today. The Spratly Islands is an archipelago contested by China, Taiwan, Vietnam, Malaysia, Brunei and the Philippines (Territorial Claims in the Spratly and Paracel Islands dalam). The Paracel Islands are fought over by China, Taiwan and Vietnam. Administered by China, the Pratas Islands are contested by China and Taiwan. Administered by Taiwan, the Macclesfield Bank, which only consists of sea level without land, is contested by China, Taiwan and the Philippines. And the Scarborough Coral region which consists only of coral reefs and rocks above sea level is contested by China, the Philippines and Taiwan (Limits in the Seas).

The clashes that occurred in the South China Sea region to date have not contained a bright spot that could resolve the issue thoroughly. Existing efforts to date have only aimed at reducing disputes and preventing greater conflicts. The dispute becomes even more complicated because there is no meeting point between the parties to the dispute. Brunei Darussalam, the Philippines and Malaysia are claiming the area based on the United Nations Convention on the Law of the Sea (UNCLOS) agreement, which states that non-island nations have the right to claim maritime boundaries not exceeding 12 miles measured from the current coastline the lowest position of the water, while archipelago states can claim boundaries based on a straight baseline connecting the island point and the outermost reef. The waters of the archipelago in the form of the sea and the strait located on the inside of the base line belong to the islands.

The territorial sovereignty ownership dispute in the South China Sea actually refers to the territorial sea and land area in the Paracel and Spratly islands. Regional countries involved in the conflict of the South China Sea in general use the historical and geographical basis in fighting over ownership of the sea area and the two islands in the South China Sea. China, for example, claims the disputed territory based on Chinese ownership of the sea and Paracel and Spratly islands for the past 2000 years. The Chinese government claims to have issued a map detailing China's sovereignty over the South China Sea in 1947, known as the "Nine-Dash Line" (Nainggolan, 2013).

Likewise with the Philippines, Vietnam, Taiwan, Brunei Darussalam and Malaysia, who in this case also claim that parts of the South China Sea are included in their Exclusive



Economic Zones (EEZ), based on the geographical approach recognised by the International Law of the Sea Convention 1982. Countries claiming parts of the South China Sea are often involved in physical clashes using their respective military powers. Confrontative efforts in fighting for claims over the ownership of the South China Sea region from each of these countries further complicates the stability of the region, even potentially disturbing the interests of countries around the region that are not directly involved in conflict, such as Indonesia and other ASEAN countries (Nainggolan, 2013).

There are 3 (three) main reasons why countries such as China, Taiwan, Vietnam, the Philippines, Brunei Darussalam, and Malaysia are fighting over the territorial sea and land areas of the two Paracel and Spratly islands in the South China Sea. First, the region contains a very large source of natural wealth, which includes oil and gas content and other marine resources. Second, the territorial waters of the South China Sea serve as passages for international shipping vessels, especially the cross-sea trade routes connecting Europe, America and Asia. Third, Asian economic growth is quite rapid (Nainggolan, 2013).

In addition to the countries bordering the South China Sea region, there are also extra regional powers that have an interest in the South China Sea, such as the United States, Japan and India. Although they do not directly border the South China Sea, countries outside the region also interfere in the conflict, especially the United States. The superpower country feels that it has a national interest in the region, among others to support the strength of the mobility of its military forces and its global dominance. In addition, the United States also has high trade cooperation links with countries in the South China Sea region. According to the United States, the security of the waters of the South China Sea really need to be maintained because it is an international waterway.

The involvement of the United States is also seen in the dispute over ownership of the Spratly Islands. This dispute with the Spratly Islands arises from the overlapping claims of some countries to some or all of the islands and reef clusters in the region. In this dispute, the United States is concerned about China's dominating role in making claims and their provocative actions. According to John McCain, who was a former United States Navy officer, the United States must expand its political and military support to Southeast Asian countries and strengthen its ranks to face China. McCain stressed that the United States has welcomed employment relations between the United States and China, but the United States has questioned China's aggressive attitude in the disputed territory and its unjustified territorial claims.

As the Spratly Islands ownership dispute heated up, the United States wanted to intervene to help resolve the issue. The rejection came from China because it considered the involvement of the United States showed an effort to internationalise the dispute by involving countries



from outside the region, such as the US, Japan, South Korea, Australia and others. The involvement of the United States is expressed through its foreign policies that affect the settlement efforts that are being pursued. The United States has openly rejected China's claims to the disputed region. The United States stated their involvement in this conflict was motivated by its allied countries and partners who asked for help to convince China not to use its economic and military power to denounce neighbouring countries, and instead take action according to international law. The United States is a country that does not have a direct interest in the waters of the South China Sea. However, the country stated that they intervened in the South China Sea conflict solely to maintain peace between China and the warring neighbouring countries and contribute so that the case of the South China Sea claim could be resolved peacefully and in accordance with international law.

### **Problem Formulation**

1. Status of the South China Sea in International Law.
2. The involvement of the United States in the South China Sea Conflict from the Perspective of International Law.

### **Research Method**

#### ***a. Type of Research***

This research is a Doctrinal Research, which is a research into legal rules, principles, concepts or doctrines. It involves a rigorous systematic exposition, analysis and critical evaluation of legal rules, principles or doctrines and their inter-relationship. It also concerns itself with critical review of legislations and of decisional processes and their underlying policy.

#### ***b. Research Approach***

This research uses a conceptual approach which is an approach that moves from the perspective or doctrine in the science of law. These views and doctrines then give birth to notions and concepts of law that are relevant to legal issues in a study (Peter Mahmud Marzuki, 2016).

### **Discussion**

International law, according to Indien Winarwati, is a collection of legal norms and principles which regulate relations and issues that cross national boundaries, but are not civil in nature. The definition of non-civil nature is that not all relations that are included in international



issues are currently referred to as relations or problems between countries. For example, violations of the provisions of the 1949 Geneva Convention by individuals cannot be said to be an interstate issue, because they are committed by individuals.

The issue also cannot be categorised to be a civil matter even though the person who committed the act was an individual. Meanwhile, the definition of international civil law is the whole of the legal principles and principles governing civil relations that cross national borders. What equates international law with international civil law is that both regulate relations or issues that cross national borders. Meanwhile, the difference lies in the nature of the law that governs and the legal subject in carrying out legal actions. Regarding the definition of international law, Indien Winarwati provides a description that legal actions that include international law must be carried out by the State rather than the individual. This is because the subject in international law is the State, in contrast to national law which generally regulates legal subjects, namely humans as individuals and legal entities that support rights and obligations.

International law binds countries that are part of international law itself. One of the theories used is the Winea theory, in which, the binding force of a rule of international law is based on a higher principle and forms a pyramid known as Grundnorm theory and will return to the basic principle. The basic principle which applies absolutely in international law is called the "pacta sunt servanda" principle. (Peter Mahmud Marzuki, 2016).

Dispute resolution through the United Nations is possible for countries that are members of the United Nations. This can be seen in the legis ratio of the UN in article 1 paragraph (1) of the UN charter which reads: (Peter Mahmud Marzuki, 2016)

*“to maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to breach of peace”.*

Based on this article, the implicit ratio legis of the formation of the United Nations is to create peace and serve as a container for international dispute resolution.

Article 2 Paragraph (3) of the UN Charter states, "All members shall settle their international disputes by peaceful means in such a manner that international peace and security are not endangered." The word 'shall' has the connotation of an order or being imperative so that each State is required to take the peaceful means in resolving disputes (Peter Mahmud Marzuki, 2016).

In the dispute resolution process there is a very fundamental principle known as good faith. The principle of good faith in the written perspective of international law is regulated in the Manila declaration, Section 1 paragraph 1. Not only in the Manila declaration, the Treaty of Amity and Cooperation in Southeast Asia (Bali Concord 1976) also applied good faith as a principle in dispute resolution. Article 13 Bali Concord states, *"the high contracting parties shall have the determination and good faith to prevent disputes from arising"* (Peter Mahmud Marzuki, 2016).

John Collier and Vaughan Lower distinguish the definitions of dispute and conflict. John Collier and Vaughan Lower declared 'dispute' as "a specific disagreement concerning a matter of fact, law or policy in which a claim or assertion of one party is met with refusal, counter claim or denial by another". This explanation provides an understanding that the dispute is a special disagreement about a fact, which raises a claim between one State and another and the claim is reciprocated by a reply to a claim or rejection. Whereas 'conflict' is a general term of hostility between parties. Thus, every dispute is a conflict but not all conflicts can be categorised as a dispute (Mangisi Simanjuntak, 2018). The involvement of the United States of America in the South China Sea dispute can be categorised as an international dispute if it refers to John's opinion the dispute involves more than one country.

The settlement of the dispute can be reached by diplomatic channels; one of the methods that can be used is negotiation. Negotiation is the oldest and most widely used and effective way to resolve international disputes (Huala Adolf, 2016).

J.G. Merrills stated that *"...In fact, in practice, negotiation is employed more frequently than all the other methods put together. Often, indeed, negotiation is the 'only' means employed, not just because it is always the first to be tried and is often successful, but also because states may believe its advantages to be so great as to rule out the use of other methods, even in situations where the chances of negotiated settlement are slight."* (Merrills, 1991). Professor J.G. Merrills' opinion show that negotiation is the best choice, not because it is the oldest process used but because the results obtained to create an agreement are very good and the parties are looking for a win-win solution so that a peaceful agreement is produced for all parties.

The negotiation process can involve a third party or commonly known as good offices. Rudolf L. Bindschedler stated that *"the involvement of one or more States or an international organisation in a dispute between states with the aim of settling it or contributing to its settlement."* (Rudolf, 1981) The purpose of good offices is to bring together the parties to the dispute to negotiate. Usually this third party is a country that is not involved in the dispute, an international body, or an international organisation (Rudolf, 1981).



## South China Sea in International Law

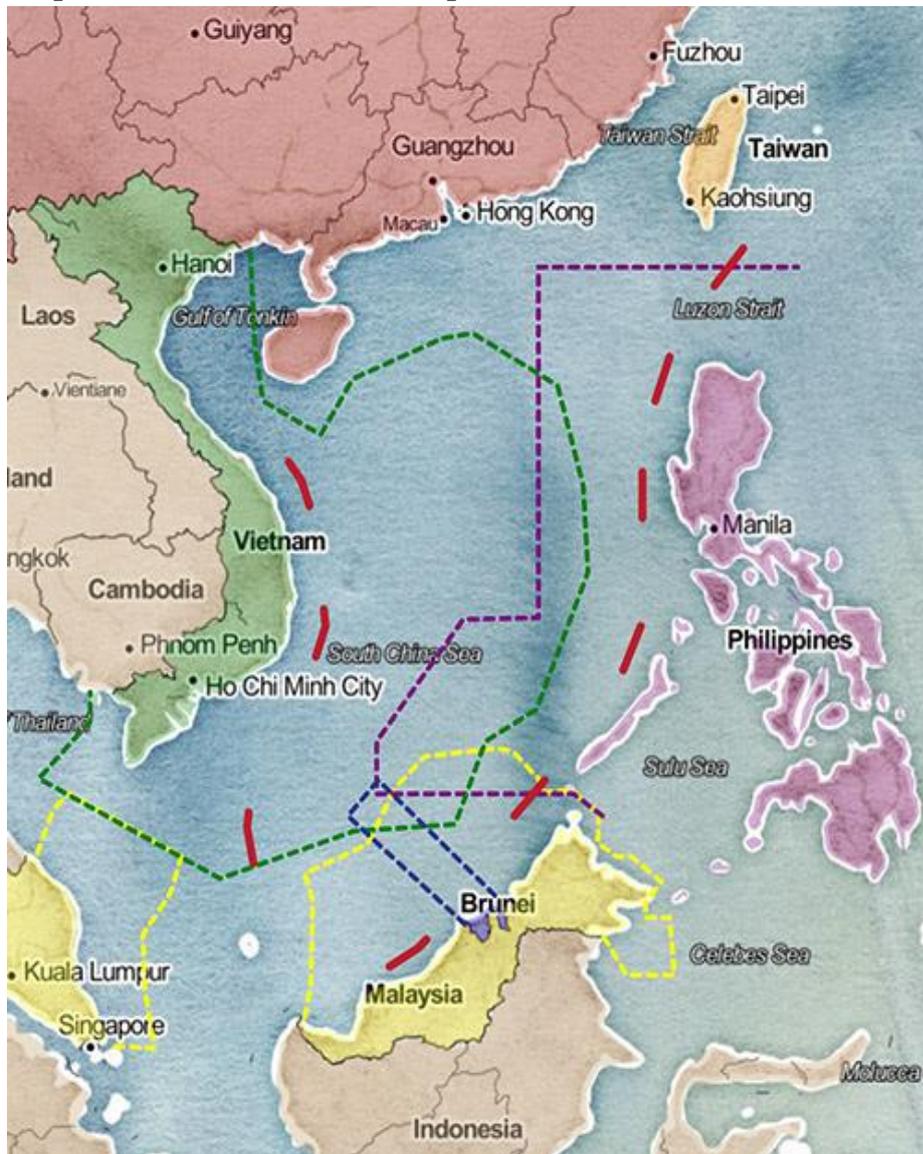
According to *United Nations Convention on the Law of the Sea 1982* (UNCLOS 1982), sea territories that exist in this world are not only a unit of free water that does not have certain borders, but these borders have been set in the rules of international sea law in order to create world peace. These borders, known as zoning in the sea, are contained in the 1982 United Nations Convention on the Law of the Sea or commonly referred to as UNCLOS 1982. The zoning is divided into: (Rudolf, 1981).

- a. Inland Water, namely waters that are in the direction of land from the base line.
- b. Territorial Sea, which is 12 miles from the base line.
- c. Additional zone, which is 24 miles from the base line.
- d. Exclusive Economic Zone, which is 200 miles from the base line.
- e. The Continental Shelf, which is the seabed area and the land beneath it that is outside the territorial sea which is a natural continuation from the land to the outer boundaries of the continental shelf.
- f. Archipelago waters, which are waters that lie within the baselines of a country that connects islands or islands that are part of an archipelago.
- g. Free Sea, namely all parts of the sea that are not included in an exclusive economic zone, in the territorial sea or in the inland waters of a country, or in the waters of an island nation.

The South China Sea is a semi-enclosed sea, which, according to the provisions of the Convention, means a bay, basin, or sea surrounded by two or more countries and connected with other seas or oceans by a narrow channel or consisting entirely mainly of territorial seas and the exclusive economic zones of two or more coastal states.

China, who through its policies has unilaterally claimed the "Nine-dash Line" in the South China Sea region, including the Paracel and the Spratly Islands, has clearly passed through the EEZ of the other ASEAN countries. This means that claims made by China violate the provisions of UNCLOS 1982. Globally, the territory claimed by China is actually also the territory claimed by the other five countries.

### Map of the South China Sea Dispute



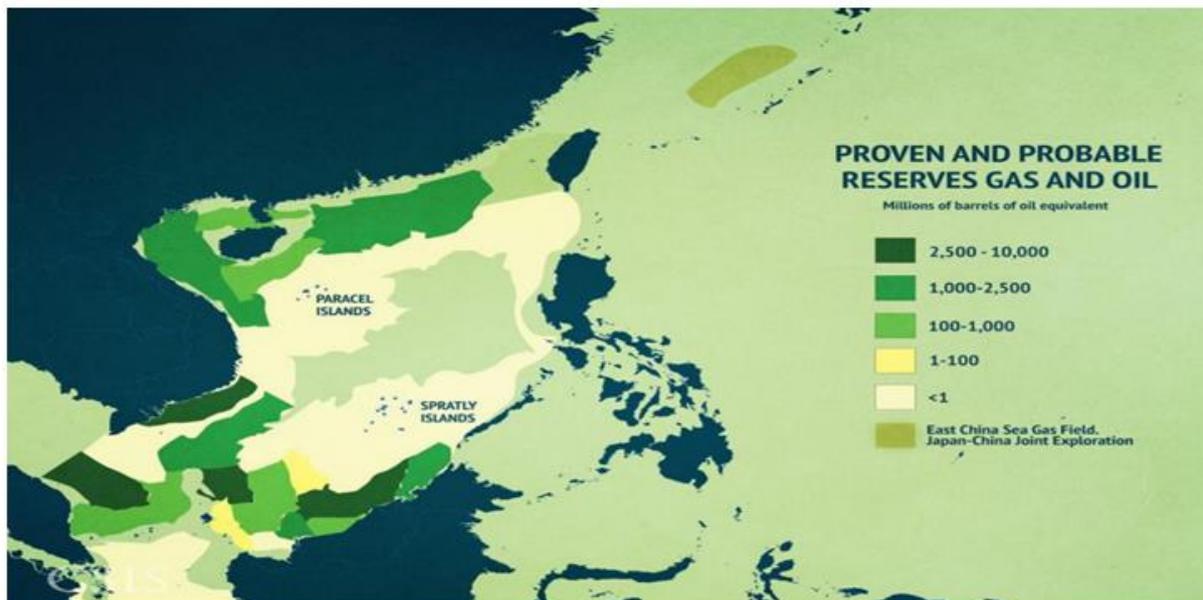
In this sovereignty dispute, the ones who are very aggressive in opposing China's nine-dash line are the Philippines and Vietnam. The concept of the nine-dash line was first introduced in 1914 and was utilised in 1947 by the Chinese national government. In addition, China has also expanded more than 1,200 hectares in the South China Sea islands. Most of the reclamation was carried out on the Spratly Islands, which are islands in waters between Vietnam, Malaysia and the Philippines. Meanwhile, countries such as the PRC, Taiwan and Brunei are fighting over claims in the region. In recent months, China has been very active and also aggressive in its efforts to form an artificial island in the Spratly Islands. The formation of this island is one of China's efforts to claim the region as its own. China uses the principle of effective occupation to claim the region. China also expanded the region by means of accretion of artificial islands. However, as regulated in UNCLOS 1982, underwater

structures such as clusters of corals and artificial islands cannot be claimed as a measurement line for their own coastal areas and made into their country's territory. Artificial islands should not be established in recognised sea lanes because they are very important for international shipping. The making of artificial islands by China has also caused damage to the coral reef environment.

The islands themselves are still in dispute between China and some of its neighbours. China's claim to these waters was denied by Vietnam which stated that China had never claimed the island's sovereignty until the 1940s and said the two islands were still part of their territory. Besides that, Vietnam also said that since the 17th century they had controlled the Paracel islands. The Philippines also claims the Spratly Islands on the grounds that geographically the Philippines began to pay attention to Spratly after gaining independence from America and filed a claim for ownership in the UN General Assembly session in 1946. Malaysia and Brunei Darussalam also claimed some areas in the South China Sea. According to the two countries, parts of China's "Nine-dash Line" region belong to the Exclusive Economic Zone (EEZ) set by UNCLOS 1982. Brunei Darussalam itself does not claim ownership of the two islands, but Malaysia states that a small number of areas in the Spratly Islands are theirs ([http://www.bbc.com/indonesia/laporan\\_khusus/2011/07/110719\\_spratlyconflict](http://www.bbc.com/indonesia/laporan_khusus/2011/07/110719_spratlyconflict)).

The claims also involve natural resources contained in the islands and waters. The natural resources in the South China Sea are in the form of gas and oil reserves where the energy content in the region is very large and will be a great capital asset for the economies of bordering countries (Figure I).

**Figure 1.** Map of Gas and Oil Content in the South China Sea



In addition, the South China Sea has also become a free shipping strategic route for shipping energy and goods. Through this region, ships in East Asian countries transport fuel in high volumes (Figure II).

**Figure 2.** Map of the Strategic Pathway of the South China Sea Free Shipping



In the context of the South China Sea, several countries have a common interest in territorial sea disputes such as Malaysia, Brunei Darussalam, the Philippines and Vietnam. These four countries are dealing with China, which is none other than the big power that claims almost all of the South China Sea region. This is what provokes and is a concern for other countries, especially the United States, which is also involved and has become one of the important actors in the dispute.

### **The Involvement of the United States in the South China Sea**

The increasing economic, diplomatic, and military power of China in the Asia Pacific region became the centre of attention of the United States, especially regarding the South China Sea conflict. Conflicts that occur in the South China Sea will increasingly develop and the United States feels the need to continue to be actively involved or will lose its influence in the world. The United States feels its strength and policies are needed to maintain the economic, diplomatic and military strength of the superpower country.

Many argue that China will become a country that can replace the United States as a superpower, not only in the economy, but also in culture, politics and defence. These are the reasons why the United States is involved in the South China Sea conflict. In addition, the



growing power of China or Chinese global hegemony has frightened the United States. The US also believes that the South China Sea region is a trade or business route connecting America with other continents. That is why the US has an interest in getting involved in the South China Sea Conflict. In this case the involvement of the United States is called "PIVOT TO ASIA", which aims to balance the power of China as a superpower country in the ASIA region and to uphold freedom of navigation for the US and other continental trade routes.

US involvement in the South China Sea is not only based on national interests in the region. As with the concept of foreign policy, the domain besides national interests is national power. National power becomes a bargaining tool in establishing contact with other countries. US involvement in the region is also based on confidence in the ownership of its power. The US believes ownership of a greater force than China could trigger armed conflicts. Therefore, the US is trying to be a counterweight to China in the region in order to stem all forms of territorial expansion by China.

Tensions that occur in the increasingly heated South China Sea conflict attract the attention of the United States to get involved in the conflict to prevent tensions from becoming an open conflict. The United States is indeed legitimately not involved in the South China Sea dispute. The waters of the South China Sea are outside the limits of US territory, which is quite far away. However, this does not mean that the US does not take part in conflicts in the region. Even today the United States is one of the important actors in the conflict in this region. United States' involvement in this conflict began in the mid-1990s, when the United States first articulated its policies when there was tension due to Chinese development in Mischief Reef in 1995. One of the reasons of US involvement in this conflict was not free from the US's concerns in the Chinese military power in this conflict zone and its dependence in this region as an international shipping route to establish relations with other continents. Secretary of State Hillary Clinton while in office stated that the United States felt an interest in ensuring freedom of navigation in the South China Sea.

The United States stated that its role and involvement in the South China Sea conflict was only to maintain freedom of navigation of ships in international waters, maintain peace and reduce the risk of disputes in the region. This is because the US is very dependent on the region as an international shipping navigation lane to establish relations with countries on other continents. The United States' effort was followed by various military cooperations in conflict areas, such as military cooperation with the Philippines and Vietnam. The form of the involvement of the United States with the Philippines was to make the Philippines an ally based on the 1951 Mutual Defence Treaty. Both countries had carried out a lot of military activities to increase the readiness and ability of the Philippine military to respond to security threats.



In 2009, the United States began to pay more attention to the South China Sea disputed area. This was caused by two factors. First, the Chinese threat to US oil companies operating in Vietnam's offshore seas in 2008 marks the first time China has directly challenged US commercial and corporate interests. Second, Chinese harassment of the USNS Impeccable ship and United States naval vessels.

Another form of involvement of the United States is it carried out economic cooperation with Vietnam through the sale of weapons to the country and military cooperation marked by joint naval exercises. The United States also increased Vietnam's professionalism by conducting peacekeeping, environmental, security and disaster response activities.

In addition to military cooperation, the United States also engaged in the conflict areas through resource exploration activities. For example, in 2011 the United States company ExxonMobil conducted an oil drilling survey on block 119, which was run by a Vietnamese national company.

The United States involved itself in the South China Sea conflict by cooperating with countries involved in the conflict with the aim of offsetting China's power and preventing various forms of claims that deviate from international sea law. The main involvement of the United States is the shift of military forces to the Asia Pacific, demands on ASEAN, and cooperation with the Philippines and Vietnam. In early 2012 the United States Department of Defense issued a strategy entitled Sustaining U.S. Global Leadership: Priorities for 21st Century Defense. In the document the United States states that:

“U.S. economic and security interests are inextricably linked to developments in the arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia, creating a mix of evolving challenges and opportunities”.

This form of US involvement was also seen when President Barack Obama was still in office. He said he would stop the reclamation, infrastructure development and militarisation in the region. The reason the United States cooperates with the navies of other countries is that the United States needs an approach to stay ahead of the world by raising awareness about freedom of navigation. The involvement and activities of the United States in the South China Sea conflict area show the seriousness of the country in increasing its presence in this conflict zone. Directly or indirectly, the United States has an influence on the development of disputes in the region. The United States opposes any form of intervention by China, increasingly escalating conflicts in the region. Regarding China's claim that it does not pay attention to international sea law in the South China Sea region, the United States insists that under UNCLOS, every country has the right to navigate as long as it does not jeopardise peace and security.

Previously, the United States also attempted to ratify UNCLOS. In 2012, the US Secretary of State vowed to fight for the ratification of the agreement. President Bill Clinton said that, “Joining the convention would secure our navigation right and our ability to challenge other countries’ behaviour on the firmest and most persuasive legal footing, including in critical areas such as the South China Sea and the Arctic. Only as a party to the convention can the United States protect the navigational freedom enshrined in the Convention and exert the level of influence that reflects our status as the world’s foremost maritime power.”

According to Clinton's testimony above, the United States' actions to ratify the UNCLOS agreement would benefit the country and strengthen its ability to legally prevent other countries' claims. This ratification process showed the direct involvement of the United States in the South China Sea conflict. To ratify the agreement the United States needed the approval of two-thirds of the senate and Clinton sought to urge the senate to approve this ratification, even though none of them was able to secure his voice in the senate. To date, neither President Donald Trump nor his cabinet has issued an official statement regarding the ratification of the UNCLOS agreement.

Although the United States cannot resolve conflicts directly, it can contribute to facilitating, balancing and supporting international efforts to create solutions that can have long-term benefits for all parties involved. The United States also feels that in order to realise its national interests, its national strength is needed. United States' involvement in this conflict zone is based on its confidence in its strength.

The United States has its own foreign policy in the involvement of the South China Sea Conflict, including 6 elements, as stated by the US State Department spokesperson:

1. *Peaceful Resolution of The Disputes: “The United States strongly opposes the use or threat of force to resolve competing claims and urges all claimants to exercise restraint and avoid destabilising actions”*
2. *Peace and Stability: “The United States has abiding interest in maintenance of peace and stability in the South China Sea”*
3. *Freedom of Navigation: “Maintaining freedom of navigation is a fundamental interest of US Unhindered*
4. *Navigation for all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia-Pacific region, including the US.*
5. *Neutrality in disputes: “The United States takes no position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays in the South China Sea”*



6. *Respect of International Principles: "The US would, however, view with serious concern any maritime claim or restriction on maritime activity in the South China Sea that was not consistent with international law, including the 1982 UNCLOS".*

Freedom of Navigation is one of the freedoms for each country to navigate in an open waterway to establish relations with other countries to meet their national needs. Freedom of Navigation is a principle in international law that is recognised internationally. This freedom of navigation has also been guaranteed in Chapter 'De mare Liberum' (on the freedom of the sea) and regulated in the international judiciary on the law of the sea.

This guarantee of freedom of navigation gives a country the responsibility to provide maritime security within that area. Some things that become elements of fulfilling maritime security include security against the threat of violence at sea, the danger of navigation, difficulties in fulfilling natural resources and violating laws in the sea area.

In using Freedom of Navigation in relations between countries, rules are set to anticipate all the worst possibilities regarding free access in the sea area. Based on the agreement of all countries in the United Nations, an international convention on sea law was born, which was later called the United Nations Convention on the Law of the Sea 1982 (UNCLOS). This convention aims to regulate the rights and obligations of every country in the use of seas in the world. This convention has even become a guideline for natural resource use in the ocean for business, research or exploration and exploitation.

The contents of this convention specifically regulate various matters regarding activities on the sea and efforts to deal with the sea. All activities carried out on the sea including Freedom of Navigation become one of the top priorities. Freedom of Navigation rules are related to sea area boundaries including free sea or international waters and even territorial sea. So, as referred to in part VII of article 87 of UNCLOS 1982, "The high seas are open to all States, whether coastal or land-locked". In other words, a high sea area is defined as an area that has the same function to all countries in the world, meaning that every country has the same rights to the region, including in its utilisation to realise its national interests.

The high sea area is an area outside the exclusive economic zone as explained in article 86: "The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of 34 an archipelagic State.". High sea is an area where no country can impose restrictions or related regulations in the region. The high seas are defined in article 1 of the 1958 Geneva convention, that all parts of the sea that are not included in the territorial sea are defined as the international waters of a country. In conclusion, the region can be categorised as a Freedom of Navigation region to any country.



One of the foreign policies used by the United States in mediating conflicts in the South China Sea region is to carry out the freedom of navigation operation. This operation is carried out with the aim of opposing the China's claim that the South China Sea area is its territory. Based on UNCLOS international law which is held in high esteem and is one of the cornerstones of United States interference, the US has a perception that any country has the right to use the high seas including for navigation. Based on articles 57 and 58 of UNCLOS, any country has the right to use the high seas for both trade and military development. For this reason, the US feels an interest in securing the South China Sea region, which is an international trade channel. Another reason is to secure the American military which often operates around the world, including through the South China Sea region.

UNCLOS fulfils the right of transit passage through the strait by formulating that "if the strait was formed by an island nation that borders the strait and its land, the transit passage does not apply. If there is a direction to the sea from the island, the route will be via the high seas or via EEZ".

The involvement of the United States in disputes that occur in the South China Sea region even invites a big question mark for the international world, because the area involved in the dispute is not around the United States and is located far from US territory. The dispute also has no relationship that would interfere with the position of the United States. This leads to a question that often arises in discussing this issue: why is the United States willing to be involved in the dispute?

In the political arena or the interests of the international world, the behaviour exhibited by international figures or actors is a natural attitude aimed at the security and existence of the actors in securing their national and international interests. In this case, the United States certainly has a reason to be involved in the South China Sea dispute. The attitude of the United States as an international actor shows it seeks to achieve security, national interests and the existence of the country in the international world.

The first point is about national interests. The southern China Sea region is historically an international trade route. Formerly the South China Sea area was called the silk route by Chinese traders who used this route to trade silk fabrics. Until now, the route has always been actively traversed by many countries that carry out international trade. The control of the South China Sea area by China has led to contradictions in international trade activities, because after China claimed the region, many countries had to ask permission to pass through this route. This is why the United States strongly opposed the decision. The US voiced that the South China Sea area is an international waterway and each country is free to pass



through the region without having to obtain permission from any country. The US thinks that China's claims to the region will disrupt its trade routes.

The second point is national security. In this case the United States is a superpower and is very calculating on the international scene. Even though it is called a superpower, it is not impossible that the US has concerns. The greater the strength of a country, the greater the competition that the US will face. In the case of the South China Sea, the US is worried about the rise of China. The United States is well aware that the current development and progress of China will hamper its steps to exert its influence and power internationally. The presence of a new competing power and authority, which in this case is China, makes the US feel threatened so it feels the need to ward off and suppress the pace of China's influence in the international world.

The third point is existence. We all know that the United States is a superpower and is always trying to exert its influence in all regions of the international world. To achieve that goal, the United States is not half-hearted. In order to get the opportunity to improve its image in the eyes of other countries, especially countries or regions that have added value to the fulfillment of its interests, the US will reach out to help countries that need help under the pretext of creating international peace.

From the three points above, it can be seen that the freedom of navigation operation conducted by the United States is based on strategic interests for the country. The steps taken by the United States in politics must always be based on the interests of the country.

Another reason cited by the United States is to maintain regional security and stability, which in this context is the Southeast Asian region. The United States believes that regional stability and security in the Southeast Asian region can have a positive impact on both the Southeast Asian region and the US. The threat of potential military conflicts arising from the dispute over the South China Sea has caused disruption to development, economic development, trade and foreign investment. By interfering in the South China Sea conflict, the US can create peace and stability in the Southeast Asian region in order to maintain international stability and maintain good cooperation with the countries.

It is these reasons of securing the economy of both the Southeast Asian region and the international world that make the US feel it is important to participate in the South China Sea conflict.



## Conclusion

The South China Sea dispute involving China, Brunei, Malaysia, the Philippines, Taiwan and Vietnam, which has been going on for a long time, now attracts international attention. Even many countries outside the South China Sea region were also involved in the dispute, such as the United States.

Conflicts that occur in the South China Sea are conflicting claims that overlap between one country and another that share an interest in it, including countries whose sovereignty includes the region and those whose sovereignty do not include the region. This conflict is still heating up since it first appeared until now, which was in the 1990s. This conflict is still an international issue whose solution is still being sought.

As explained before, China has for several years been trying to take control of the waters of the South China Sea. Claims made by China cover most of the area. China uses the "nine-dash line" as a reference to their claims. This is what triggers a conflict because previously these waters were considered as international waters, meaning that no country could claim the region.

Geographically, the South China Sea plays an important role as a link between Asian and European countries. Economically the South China Sea contains a lot of natural wealth whose value has not been calculated exactly. This is what makes the countries involved in the conflict try to protect their claims. Actions taken by China by reclaiming and building runways on the Fiery Cross Reef in the Spratly Islands of the South China Sea region and deploying its military fleet in the region prompted rival countries to ask for help from outside the region, namely the United States.

The United States, which in this case is a country outside the South China Sea conflict area, feels obliged to resolve this conflict. The involvement of the United States in this conflict is inseparable from the interests that the country wants to achieve. The United States wants the South China Sea to remain an international waterway. The United States has been involved both politically and militarily in this conflict.

In dealing with China, the United States cooperates or provides assistance to countries directly involved in the conflict. An example is the collaboration carried out with the Philippines and Vietnam. This strategy is used by the United States because it is located far from the South China Sea region. Another reason the United States uses this strategy is to not be directly involved. The aim is to minimise the risk it will accept if there is an open war.



The strategy undertaken by the United States through its allies is to show that it remains active, monitors the development of Chinese actions in the conflict, and maintains its existence as a hegemonic country in the Asia Pacific region. The United States also has a Freedom of Navigation policy, which is a policy for freedom of navigation in these waters. According to former president Barack Obama, the United States is free to fly, sail, or operate as long as international maritime law allows. The United States finally engaged by carrying out the Freedom of Navigation operation and voicing freedom to navigate in the South China Sea region whose status is an international waterway, in which a country is free to pass without permission from any country. The purpose of the United States intervening in dealing with this dispute case is to secure the South China Sea waters, which is an international trade route, especially for the Asia Pacific region. In addition, the aim is also to limit China's influence in the region.

The policy is also one of the interests of the United States in this conflict, namely to maintain freedom of navigation in these waters. The United States has an interest in maintaining unhindered access to these waters, for example on international trade routes. The United States, as one of the countries with the largest exports and imports in the world, needs such access because these waters are the link of trade routes.

In addition, the United States also wants to maintain its influence in the Asia Pacific region and its status as a superpower. The United States wants to show China that it still has hegemonic powers in the Asia Pacific; it also wants to show its relevance by resolving conflicts in the South China Sea.

Based on the description above, it can be concluded that the purpose of the United States interfering in the South China Sea dispute is to not allow China to act freely and undermine the US' influence in the Asia Pacific region.



## REFERENCES

- Huala, A. (2016). *Hukum penyelesaian sengketa internasional*, Sinar Grafika, Jakarta.
- Indien, W. (2016). *Hukum Internasional*, Setara Press, Malang.
- Mangisi S. (2018). *Hukum internasional perjuangan Negara-negara Bwekwmbang Dalam Mencapai Persamaan Hak*, Mitra Wacana Media, Jakarta.
- Merrils, J.G. (1991). *International Dispute Settlement*, Cambridge Publication.
- Nainggolan, P.P. (2013). “Konflik laut china selatan dan implikasinya terhadap kawasan”. Jakarta: P3DI Setjen DPR Republik Indonesia.
- Peter, M. M. (2016). *Penelitian hukum edisi revisi, Cet.12*, Prenadamedia Group, Jakarta.
- Rudolf L. B. (1981). *Good offices*, in r.bernhardt, *encyclopedia of public international law*, (Instalment 1, 1981)