

Maritime Profile – South China and Eastern Archipelagic Seas¹

INTERNATIONAL LAW OF THE SEA

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) and its implementing agreements, Part XI of UNCLOS and the 1995 UN Fish Stocks Agreement, form a comprehensive legal regime for all maritime activities. UNCLOS has several key provisions. Firstly, it defines maritime zones such as the territorial, contiguous, and exclusive economic zones (EEZ) of all littoral states. Crucially, the convention also defines the right of navigation and passage. The conditional right to innocent passage for foreign ships in territorial waters is upheld and conditional rights of transit passage are also granted to all ships and aircraft through straits used for international navigation. UNCLOS also forms a basis for maritime peace and security, defining piracy, whilst also setting out a framework for littoral and flag states in relation to the exercising of criminal jurisdiction and cooperation against illicit activities. The convention also forms a framework for the protection, conservation and preservation of marine life, environments and resources.²

UNCLOS also established two intergovernmental organisations: The International Seabed Authority and the International Tribunal for the Law of the Sea. The former is responsible for the regulation of activities carried out in the international seabed and ocean floor beyond any limits of national jurisdiction.³ The International Tribunal for the Law of the Sea is an independent judiciary body and has jurisdiction over any disputes concerning the interpretation or application of the UNCLOS.⁴

Currently, 168 entities, including the EU, are party to the Convention. Non-parties include the landlocked central-Asian states, such as Tajikistan, but also Turkey and Venezuela. The US has signed the agreement but objected to the Convention based upon Part XI. However, it implements much of the Convention based on customary maritime law.

BUSINESS OVERVIEW

The South China and Archipelagic Seas have extreme geopolitical and economic importance owing to the area's crucial role in global trade. The Strait of Malacca and those straits through the Indonesian Archipelago, such as Sunda, Lombok and Makassar, are the shortest sea lines of communication to south-east and east Asian countries from the EMEA region, and thus provide these nations with economic lifelines. Between US\$3.4-5.3 trillion of trade passes through the South China Seas alone each year, representing 21-36% of global trade. Almost 40% of China's traded goods passes through these seas, alongside 19% of Japan's.⁵ The seas are also crucial for the energy security of the East Asian nations, many of which are heavily reliant on oil and gas imports from the Middle East.

Indeed, in 2016 almost 80% of China's oil imports passed through the South China Sea, whilst 40% of the global liquefied natural gas (LNG) trades moves through the area; Almost half of Qatar's LNG shipments, and between 84% and 100% of the UAE's shipments pass through the South China Sea.⁶ As such, the area is crucial to global trade, and the stability of this trade is vital not only to the economies

¹ For specific details concerning the Malacca and Singapore Straits please see their respective report.

² http://www.un.org/depts/los/convention_agreements/pamphlet_unclos_at_30.pdf;
http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

³ <https://www.isa.org.im/authority>.

⁴ <https://www.itlos.org/en/the-tribunal/>.

⁵ <https://chinapower.csis.org/much-trade-transits-south-china-sea/>; <https://www.eia.gov/beta/international/regions-topics.cfm?RegionTopicID=WOTC>.

⁶ <https://www.eia.gov/todayinenergy/detail.php?id=33592>.

of East and South-East Asia, but also the global import-export trade beyond that of South China and Eastern Archipelagic Seas.

Furthermore, the South China Sea contains potentially vast reserves of untapped natural resources, which could be exploited under if discovered within a nation's EEZ, hence the numerous claims to such island chains as the Spratlys and Paracels. The South China Sea has proven oil reserves of at least seven billion barrels and an estimated 190 trillion cubic feet of natural gas. For smaller nations such as Malaysia, the Philippines and Vietnam, these resources are a significant economic opportunity, whilst China would gain increased energy security for its large industrial economy.⁷ Indeed, it is no accident that China's claimed territories and seas includes Reed Bank and the northern Natuna Sea. The former is positioned 85 nautical miles from the Philippines' coast and is believed to hold large reserves of oil and natural gas; previous attempts to explore there by the Philippines have been stopped by Chinese threats or patrol vessels. Similarly, the Chinese-claimed northern Natuna Sea, which falls under Indonesia's EEZ, contains the East Natuna gas fields, which is believed to be one of the largest gas fields in the world.⁸

Outside of mineral wealth, these waters also contain an abundance of marine life and high value fishing species, which has sustained the regions' nations in the past. Indeed, the South China Sea is thought to contain up to one third of the world's marine biodiversity and is thus one of the world's most important fisheries. Nevertheless, fishing is wildly unregulated and each nation fiercely defends fishing grounds in both their real and perceived EEZs; it is in each countries' national interest to violate their competitors' fishing laws. This is not only for food security, but also to reject other nations' jurisdiction over the sea. Thus, these seas are heavily overfished, and increasing land reclamation and reef destruction means the entire biodiversity of the South China and Archipelagic Seas is on the brink of collapse.⁹

COUNTRY OVERVIEW

The South China and Eastern Archipelagic Seas¹⁰ are marginal seas of the Pacific Ocean. The area can be further broken down into twenty-three smaller and separate seas, gulfs, and straits including the Straits of Singapore, Gulf of Thailand, Java Sea and Celebes Sea.¹¹

The area covered by the South China and Eastern Archipelagic Seas can be roughly defined by the following boundaries: the Malacca and Sunda Straits to the west; the southern Indonesian archipelago and East Timor through a line joining the southernmost point of Selaru to the mouth of the Torassi River; the western coastlines of Western New Guinea and the Philippines including their adjoining straits form the eastern boundary; and to the north the limit is defined by a line across the Luzon and Taiwan Straits.¹² The coastal territories of the South China and Eastern Archipelagic Seas consist of Singapore, Malaysia, Thailand, Cambodia, Vietnam, China, Taiwan, the Philippines, Brunei, Indonesia and East Timor.

Of these, Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan and Vietnam all have competing claims over the jurisdiction and sovereignty of ocean areas, as well as the Paracel and Spratly island chains, and thus the potential EEZs surrounding them. Dozens of atolls, reefs and designated rocks are also claimed such as Scarborough Shoal.¹³ Most notably, China claims almost the entire South China

⁷ <https://www.cfr.org/backgrounder/south-china-sea-tensions>.

⁸ <https://qz.com/1037896/south-china-seas-untapped-oil-and-natural-gas-back-in-focus/>.

⁹ <https://news.nationalgeographic.com/2016/08/wildlife-south-china-sea-overfishing-threatens-collapse/>.

¹⁰ Area defined for Administrative Convenience in line with that of the International Hydrographic Organisation.

¹¹ Names and Limits of Oceans and Seas, International Hydrographic Organisation, Special Publication No. 23 (2002), Chapter 6.

¹² Names and Limits of Oceans and Seas, International Hydrographic Organisation, Special Publication No. 23 (2002), Chapter 6.

¹³ <http://www.bbc.co.uk/news/world-asia-pacific-13748349>.

Sea, an area defined by the 'nine-dash line', which stretches for hundreds of miles south of Hainan province.

Owing to the importance of the South China and Eastern Archipelagic Seas in terms of energy, food and economic security the various disputes over sovereignty have long been a source for tension. Since 1956 over 80 separate military incidents have occurred in the South China Seas between the region's rivals.¹⁴ Beijing has also previously threatened the Philippines and Vietnam with war in the past over oil exploration in claimed areas.¹⁵ The US also continues to carry out Freedom of Navigation Operations through disputed waters and waters surrounding artificial islands, which regularly draws harsh criticism from Beijing.

As such, there are fears that potential clashes could lead to naval blockades or the closing of key straits in the region, which would significantly affect the area's shipping routes and shipping costs. Whilst a short-term sea line of communication closure is likely to be manageable, a long-term closure or disruption could precipitate international trade disruptions. Nevertheless, currently, given the region's economies are tightly interwoven and heavily reliant on maritime trade through the South China and Eastern Archipelagic Seas efforts to disrupt rivals' trade is likely to also affect any protagonists' trade.¹⁶ As such, currently there is a low risk to international shipping in sea lanes, although vessels sailing within perceived territorial waters or engaged in fishing may face hostility and apprehension.

Piracy continues to pose a threat to shipping in the South China and Eastern Archipelagic Seas. In 2017 the region was the most heavily pirated and robbed in the world; the International Maritime Bureau (IMB) received 180 reports of piracy and armed robbery in 2017, of which 78 were from the South China and Eastern Archipelagic Seas. Although only three attacks resulted in hijackings, this was half the global total.¹⁷ Of these attacks, the majority were in the waters of Indonesia and the Philippines. Whilst attack figures for the Philippines, 22 attacks, are at a five-year high, regional maritime piracy has significantly fallen since 2013. As of 14/03/18, nine of the 44 attacks this year have occurred in the region.¹⁸ Attacks usually occur at night and target bulk carriers or tankers; knives are the most commonly used as weapons, although firearms have also been involved in attacks.

Patrols by littoral authorities have significantly contributed to the decline in regional attacks, particularly where joint patrols have been carried out. Indonesian Marine Police have established 11 patrolled anchorages and advises all ships intending to anchor to do so at one of these locations.¹⁹ The guidance provided by the International Maritime Organisation in MSC.1/Circ.1334 23 June 2009 'Piracy and Armed Robbery Against Ships' should also be adhered to reduce risk as much as possible.²⁰

¹⁴ <https://worldview.stratfor.com/article/risky-business-south-china-sea>.

¹⁵ <https://qz.com/1037896/south-china-seas-untapped-oil-and-natural-gas-back-in-focus/>.

¹⁶ <https://worldview.stratfor.com/article/risky-business-south-china-sea>.

¹⁷ IMB Piracy Report 2017.

¹⁸ <https://www.icc-ccs.org/index.php/piracy-reporting-centre/live-piracy-map>.

¹⁹ <https://www.icc-ccs.org/piracy-reporting-centre/prone-areas-and-warnings>.

²⁰ <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/MSC.1-Circ.1334.pdf>.