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Review Article

### TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA AND REGIONAL SECURITY

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**Abstract:** In recent years, the South China Sea area has been increasingly struck by the territorial disputes between China and Taiwan on one side, and Brunei, Malaysia, Philippines and Vietnam, on the other side. These disputes are the causes of the turbulences that jeopardise peace and security in South-East Asia. The territories over which the states mentioned above dispute against each other are the islands of Sparty, Paracel and Pratas and Macclesfield Bank. Although the specific conditions are different concerning the territorial disputes, all the states see a chance to ensure their economic interests in the global competition for natural resources above all, in the field of energy supply and fishing. As the territorial disputes concern sovereignty, which is by the rule related to psychological factors (nationalistic feelings and dignity of the people) and historical heritage (that not in a small number of cases is coloured by a heavy colonial past) no party to the dispute is willing to make any concession to the other party. This shows that the dispute could not be settled so easily and overcome by peaceful means without the interference of foreign factors. In the study that follows the author does an international legal analysis of the disputes in the South China Sea explaining their impact on the regional security.

**Key words:** Territorial disputes, South China Sea, International law of the sea, UNCLOS, regional security, South-East Asia.

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### **Geographic position of disputed islands in the South China Sea**

The South China Sea is a marginal sea encompassing the area of 3.5 million square kilometres (China's Ocean Development Report, 2011). The Sea is encircled by China, Brunei, Indonesia, Malaysia, Philippines and Vietnam (Djalal, 2001). For its irregular form, the South China Sea is often called 'cow tongue' by the coastal states. It encompasses the area from Singapore and Malacca Straits to the Strait of Taiwan, western coast of Philippines, and northern coast of Indonesia to the eastern part of Vietnam. The distance from the north to the south is about 1,800 kilometres, while from the east to the west it is approximately 900 kilometres. The South China Sea contains over 250 small islands, atolls, cays, reefs, sandbars and rocks, most of which have no indigenous people. They are grouped in four separate entities which are in English and Chinese speaking areas called as follows: *Paracel/Xisha Islands, Spratly/Nansha Islands, Pratas/Dongsha Island, Macclesfield Bank/Zongsha Islands and Scarborough Shoal/Huang Yan*. The islands mentioned above and stacks are situated within the areas which are marked in the sea maps by the coordinates from 3°57' to 21°N (north latitude) and 109°30' to 117°50'E (east latitude). The South China Sea has an extraordinary geopolitical importance since some significant sea routes go through it connecting the Indian Ocean with South-East Asia including important ports in China, Japan, Korea and Russia (Schofield, 2009). The international sea routes are going through the Malacca and Singapore Straits (between Indonesia, Malaysia and Singapore), the Sunda Strait (between the Indonesian islands of Java and Sumatra) crossing each other towards the direction of the Taiwan Strait (between China and Taiwan) or towards the Luzon Strait (between Taiwan and Philippines). It is estimated that half of the trade of East and South-East Asian countries is annually done along these routes.<sup>2</sup> It is believed that there are rich deposits of oil and gas in the seabed of the South China Sea.<sup>3</sup> Based on the preliminary explorations it is estimated that the South China Sea contains one third of the world sea biodiversity.

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<sup>2</sup> As an illustration, through the Malacca Strait three times as many tankers sail as those sailing through the Suez Canal annually, or actually five times as many as those passing through the Panama Canal (UCLMUN, 2012).

<sup>3</sup> According to some estimates, there are 1.1 billion tons of oil in the South China Sea, while according to some Chinese sources there are deposits of 17.7 million tons (as an illustration, Kuwait has some 13 billion tons of oil. As for natural gas reserves the US Energy Information Administration – EIA has estimated that they amount to 25 trillion cube metres, what is equal to the reserves of Qatar. (UCLMUN, 2012).

**Map 1: The South China Sea**

Source: (UCLMUN, 2012)

### **The evolution of disputes in the South China Sea**

From the historical point of view, until recently, most coastal states of the South China Sea, with the exception of China and Taiwan, only sporadically claimed sovereignty over their sea areas. Thus, China, as the biggest power in the region, has considered the South China Sea ‘a natural sphere of its interests’ (Neuman, 2012).

In the latest Chinese historiography the South China Sea area has been mentioned as the territory which had served various Chinese dynasties to collect tributes all until the 3rd century A.D. when the area was taken over by ‘the barbarians from the south seas’. The term ‘South Sea’ (*NanHai*) was mentioned in the book ‘Classic of Poetry’ (*Shi Jing*), which had been published in the period from 475-221 B.C. (Shen, 2002). At the time when the Jin and Han dynasties had ruled (from 618-1279 A.D.) the term ‘maritime silk route’ through the South China Sea was first mentioned. ‘The maritime silk route’ was a match for the silk route which passed across the Chinese land all to the coasts of the Mediterranean. The term had been used all until the late period of rule of the Ming dynasty and

the early period of reign of the Qing dynasty (from 1474-1551 A.D.). After the outbreak of the First Opium War between China and Great Britain in 1840 the use of the maritime routes that designated the 'maritime silk route) ceased. In the early 20th century in its sea maps and atlases, China presented the largest part of the South China Sea as a part of its territory. In 1935, China officially announced the delineation line in the South China Sea, which encompassed four groups of islands, and stacks and they are as follows: Paracel/Xisha Islands, Spratly/Nansha Islands, Pratas/Dongsha Island, Macclesfield Bank/Zongsha Islands and Scarborough Shoal/Huang Yan. After World War II referring to the Cairo Declaration and the Potsdam Proclamation of the Allies China reclaimed rights over the Paracel/Xisha and Spratly/Nansha Islands, which had been occupied by Japan. No coastal state in the South China Sea reacted to the Japanese dereliction and in order to establish effective control China sent troop shipments, which set stone border markers on the Young Xing/Woody Islands, the Paracel/Xisha Islands as well as on Tai Ping/Itu Aba. In 1947, the Chinese Government internally distributed the sea atlas, which contained the borders of the Chinese territory that were drawn with eleven dotted lines in the area of the South China Sea. That same year the Ministry of Internal Affairs of China published the list of 172 Chinese islands in Chinese and English languages. In May 1949, the four groups of islands mentioned above were already brought under control of the Henan district within Guangdong Province in China.

After gaining its independence in 1946 the Philippines started to show its aspirations towards the establishment of a new balance of powers in the South China Sea. As early as in 1949 the small islands in the Spratly/Nansha archipelago were claimed by the Philippines. China responded by issuing a statement repeating the claims of Chinese Minister of Foreign Affairs Zhou Enlai of August 1951 saying that the Xisha, Nansha, Dongsha and Zongsha Islands were 'an inherent part of the Chinese territory' which Japan had returned to the Chinese control after it had unconditionally surrendered after the end of World War II.

With warming up of China-Vietnam relations in 1953, China had deleted two out of eleven dotted borderlines in its sea maps and sea atlases. Since that moment, the Chinese territorial positioning in the South China Sea encompassed the territory that was marked with a 'nine-dash line'. According to the Chinese point of view the delimitation with a 'nine-dash line' was based on the codified international law, but also on the rules that remained beyond the official codification of the 1982 Convention on the Law of the Sea. This includes customary rules resulting from discoveries, occupation and 'historical rights' over territories (Zhiguo, Bing Bing, 2013; Jinming, Dexia, 2003, pp. 287-295).

In order to consolidate its population on 4 September 1958 China unilaterally proclaimed the Declaration on China's Territorial Sea, thus confirming its sovereignty over the mentioned groups of islands in the South China Sea. For the purpose of implementing the provisions of the 1982 Convention on the Law of

the Sea on 7 July 1996, China deposited the instrument of ratification to the United Nations. The instrument confirmed the sovereign rights over the islands and archipelagos which were included in the Chinese Law on Territorial Sea and Continental Shelf that was adopted on 25 February 1992. Thus, China, included in its sea area, *inter alia*, Xisha, Nansha, Dongsha and Zongsha Islands. For the purpose of affirmation of its sovereign rights over the sea, underwater and underground which encircling the islands mentioned above, on 26 June 1998 China also promulgated the Law on Exclusive Economic Zone and Continental Shelf, which was denied by the coastal states and especially by Vietnam that issued official protest (Hong Thao, 1998, p. 21).

In the analysis, it is significant to note that since the late 1960s big deposits of oil and gas have been discovered in the South China Sea area. This made the Philippines claim the Kalayaan Islands and the western sector of the Spratly/Nansha Islands. After Vietnam had occupied the group of the Paracel/Xisha Islands together with dozen of islands from the group of Spratly/Nansha Islands China responded by using force. After a short war in 1974, it managed to bring back these islands under its control.<sup>4</sup> By signing the Agreement on Delimitation Boundary of Maritime Territorial Sea, Exclusive Economic Zones and Continental Shelf in the Bac Bo Gulf/Tonkin Gulf on 25 December 2000, the two parties regulated their open border issues and problems of fishing rights (Keyuan, 2005, p. 13).

In the latest period, the disputes between the coastal states of the South China Sea have been intensified. Actually, a true 'verbal war' started between China, on one side, and the other coastal states, on the other.

On 6 May 2009, Malaysia and Vietnam had jointly submitted a request to the Commission on Limits of Continental Shelf. A day after attaching the sea map of the South China Sea with the 'nine-dash line' border China reacted severely by delivering a verbal note against the unilateral expansion of their continental shelves up to 200 nautical miles in width. China emphasised that by taking the act its sovereignty over the islands was violated including its rights in the seabed and underwater. Then Vietnam responded that it had sovereign rights over the Hoang Sa Islands, the Paracel/Xisha Islands as well as over the Truong Sa Islands and the Spratly/Nansha Islands.

Malaysia also responded to the Chinese verbal note in the way that it stated on 20 May 2009 that its request it had jointly submitted with Vietnam did not prejudice drawing of the border between the continental shelves of the neighbouring states. However, Malaysia submitted territorial claims similar to those of Vietnam, which concerned the parts of the Spratly/Nansha Islands.

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<sup>4</sup> Until 2004, Vietnam took over by force 29 islands from the group of Spratly/Nansha Islands (Zhiguo, 1994, pp. 345–348).

The Philippines soon joined the debate mentioned above by making a conclusion on 18 August 2009 that the territorial claims of Malaysia and Vietnam were groundless.

In July 2010, Indonesia delivered a verbal note to the United Nations emphasising that the Chinese ‘nine-dash line’ sea map was unfounded in international law.

Then, in April 2011 responding to the Chinese note delivered in 2009 the Philippines openly claimed sovereignty over the Kalayaan Islands and relevant sea shelves in accordance with the 1982 UN Convention on the Law of the Sea. At the same time it denied China enjoying of sovereign and jurisdiction rights in the undersea areas and underground within the ‘nine-dash line’ territory. China responded to the citations mentioned above by delivering a new verbal note on 14 April 2011 rejecting all claims made by the Philippines considering them very unacceptable from the aspect of historical facts and legal arguments. China pointed out that no instrument of agreement regulating the borders of the Philippines had included the Kalayaan Islands within its territory. Those islands were a part of the Spratly/Nansha Islands, which belonged to China, while the invasion and occupation, which had been carried out by the Philippines in the 1970s, was a violation of the Chinese sovereignty that had been publicly proclaimed forty years before. In early May 2011, Vietnam responded to China and the Philippines by delivering a verbal note reaffirming its rights over the Paracel/Xisha and Spratly/Nansha Islands (Zhiguo, Bing Bing, 2013, pp. 105-108).

### **Territorial claims of coastal states and a possibility of implementation of international law in settlement of disputes in the South China Sea**

Based on the considerations mentioned above it is clear that the disputes in the South China Sea are long historical phenomena, which escalated with the development of international relations and international law. In the 20th century, the world was taken by surprise by the dialectics of changes that were characterised by the lasting antagonism of individual and general interests. The South China Sea area reflects itself a reality since it is in this area that individual territorial claims of the coastal states overlap as well as the needs for the development of regional co-operation. Within the context of exercising the state sovereignty over the sea area the two coastal states, China and Taiwan, have made their maximalist claims for the islands and stacks in the South China Sea and these are as follows: Paracel/Xisha Islands, Spratly/Nansha Islands, Pratas/Dongsha Island, Macclesfield Bank/Zongsha Islands and Scarborough Shoal/Huang Yan.<sup>5</sup>

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<sup>5</sup> China claims sovereignty over the Pratas/Dongsha Island which is under the Taiwanese rule.

On the other hand, however, the territorial claims mentioned above are opposed to the claims of other coastal states of the South China Sea. In this way, Vietnam claims the Hoang Sa (Paracel/Xisha) Island, then the Truong Sa (Spratly/Nansha) Islands and the Macclesfield Bank/Zongsha Islands. The Philippines claims sovereignty over the western sector of the Spratly/Nansha Islands, which it calls the Kalayaan Islands. Malaysia has some similar claims, which include the parts of the Macclesfield Bank/Zongsha Islands and the Scarborough Shoal/Huang Yan sandbank. Brunei claims the parts of the Spratly/Nansha Islands which are situated in the vicinity of its coast (Dupy, 2013, p. 125). The overlapping territorial claims mentioned above do not include only the islands and stacks but also some sea areas around those islands such as exclusive economic zones and continental shelves.

**Map 2: Disputed territories in the South China Sea**



Source: (Neuman, 2012)

We have already mentioned that the Chinese territorial claims include the unilaterally drawn ‘nine-dash line’ border. According to China, this border is founded on international law and above all, on the rules of customary law which include the acquired ‘historical rights’. China takes as a starting point the fact that it had acquired before other coastal states the historical title for the islands and sea areas in the South China Sea. China derives the sovereignty over the islands and

stacks from the rules of traditional international law which regulates acquiring of territories on the basis of discovery, peaceful occupation and prescription. If one assumes the hypothesis that in the past, China was the first that discovered the islands and sea areas mentioned above, then it is not quite clear whether China has managed to expand its sovereignty over all islands and sea areas in the South China Sea which until then belonged to no other state (*terra nullius*)? Although it is not disputable that by the ‘nine-dash line’ border China publicly notified that it intended to beowner (*animus domini*) of the islands and sea areas in the South China Sea, it is disputable whether it fulfilled the second condition which is required by international law and this includes peaceful, continuous and effective exercise of power over the occupied territory.<sup>6</sup> This even more, because for the change in the level of the South China Sea (hide tide and ebb tide) and the inaccessibility resulting from the configuration of the coast exercising of effective power over some islands and stacks by any state is factually not possible to achieve in any way but through the adoption of symbolic state legal acts.

Concerning what has been said above there is also an open issue of public exercise of authority (*à titre de souverain*) over the islands on the basis of prescription. The factual state of affairs, which has been established by prescription or acquisition of the right of ownership, could be consolidated only if it is established that China has exercised peaceful and effective power over time, which has not been expressly denied or hindered by the other coastal states.<sup>7</sup> The evidence on tacit or implicit acquiescence of exercising effective power over the islands and stacks or actually the sea areas as well as the recognition of the unilaterally proclaimed sovereignty based on discoveries, occupation or prescription would be an evidence for China on convalescence of its territorial claims in the South China Sea. However, this has not been the case so far.

Also, the Chinese territorial claims based on discoveries, occupation or prescription or actually on the acquired ‘historical rights’ are not compatible with the

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<sup>6</sup> As for the dispute over the Palmas Island between the United States of America and The Netherlands in 1928, famous judge May Huber pointed out that ... ‘Acquisition of title to territory in international law is based on the conception of effectivity whose core lies in the lasting power which has been established peacefully. At the same time, effectiveness is an integral part of territorial sovereignty and the condition to be fulfilled for the establishment of an independent state. Before the establishment of international law, borders had been defined on the basis of exercise of territorial power. After the establishment of international law, the fact of peaceful and continuous display of territorial sovereignty was and still is one of the reasons for defining international borders’ (Island of Palmas Case, 1928, p. 867). In several cases, the International Court of Justice has confirmed the relevance of effectivity. For example, in the French-British dispute on determining which party was the owner of the Minquiers-Ecrehos canal islands the Court found that the British effectivity was the basis for ownership since the Middle Ages. (Minquiers and Ecrehos Case, 1953, pp. 47-72).

<sup>7</sup> Land, Island and Maritime Frontier Case, 1992, p. 351.



implementation of the codified rules of the UN Convention on the Law of the Sea (UNCLOS). This does not mean that China has renounced their implementation but on the contrary, the rules from the Convention are applicable in parallel with the customary rules in international legal practice. For China, the 'nine-dash line' means confirmation of its 'historical title' concerning fishing, navigation, exploration and exploitation of natural resources, by which China does not prejudice the final delineation in the South China Sea (Zhiguo, Bing Bing, 2013, p. 124). The approach mentioned above has, as has already been said, brought about confusion and mutual disputes and incidents which occur not so seldom.

Most claims made by the coastal states of the South China Sea are based on the provisions of the UN Convention on the Law of the Sea. According to the provision of Article 2 of the Convention, the sovereignty of a coastal State extends, beyond its land territory and internal waters, to an adjacent belt of sea, described as the territorial sea, and then, this sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.<sup>8</sup> The adopted solution confirms that sovereignty over sea areas depends on sovereignty over land, according to which sea is its part or accessorium (*mare est ejus, cuius est terra*). At the same time, this is the international legal foundation upon which all claims of coastal states for defining of states borders are based. Since parties to the dispute, which have made their claims, have not specified what stacks in the South China Sea they regard as island or natural parts of their land in accordance with the provisions of Article 121 of the Convention and what they regard as other kinds of sea forms (for example, rocks, cliffs, reefs or elevations that remain dry during the low waters, etc.) the borders of their sea shelves keep on being unclearly limited. This is even more, because rocks and other stacks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. The establishment of sovereignty over islands is therefore, a preceding legal question in delimitation (Beckman, 2013, p. 150; Smith, 2010, p. 227). Concerning the things that have been mentioned above it is important to note that according to the Convention there are special rules regulating the rights of archipelagic states. Actually, by their interpretation one could conclude that the general rule of the codified law of the sea could not be applied to the archipelagic states of the South China Sea (Taiwan, the Philippines,

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<sup>8</sup> Sovereignty over the territorial sea is yet limited by the rule on the right of innocent passage through the territorial sea. According to the international law codified by the 1982 UN Convention on the Law of the Sea ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea for traversing, proceeding to and from internal waters, this also including stopping and anchoring but only in exceptional cases. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. The legal regime of the territorial sea must be in conformity with the Convention and the so called right of innocent passage.

Indonesia) and the power of coastal states reduces successfully in every next lane going from land to high seas. Sovereignty of archipelagic states over the sea area, which is called ‘archipelagic sea’ in the Convention, together with sovereignty over land makes the territory of the archipelagic state.<sup>9</sup> The conception of ‘archipelagic state’, which is incorporated in the provisions of the Chapter IV of the UN Convention on the Law of the Sea, emerged as a result of the progressive development of international law in the 20th century. It includes states constituted wholly by one or more archipelagos and may include other islands, by which ‘archipelago’ means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

The collision of territorial claims of China (and Taiwan) on one side, and of other coastal states, on the other, points to the fact that as basis of international law of the sea the UN Convention on the Law of the Sea can serve as an appropriate framework for the regulation of the open territorial issues in the South China Sea. However, the particular way of their settlement will depend on the agreement of the parties concerned, what does not exclude the possibility of applying the rules of general international law, which are also contained in other documents besides the Convention mentioned above. They are generally mentioned in Article 38 of the Statute of the International Court of Justice in The Hague (Oda, 1969, pp. 373-401). Until some concrete agreement is reached, the parties to the disputes can make additional efforts in the spirit of understanding and co-operation in order to reach temporary arrangements that would be practical and would imply the so-called joint development arrangements.<sup>10</sup>

### **The impact of disputes in the South China Sea on regional security**

The territorial disputes in the South China Sea are related to the fight for natural resources. The existing political ferment is an unavoidable consequence of ‘the

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<sup>9</sup> Sovereignty over the archipelagic sea is considerably more limited than sovereignty over the territorial sea. Here, the right of innocent passage is extended to warships of foreign states, then to the possibility of defining the navigation routes (as well as air routes), then the possibility of establishing special systems of separate traffic (with the agreement of the International Maritime Organization) where analogous rules are applied on transit passage through international straits as well as some rights of the neighbouring states.

<sup>10</sup> According to the 1982 UN Convention on the Law of the Sea for the delineation of continental shelves and exclusive economic zones the neighbouring states are obliged in parallel to fulfil some obligations, which should, within a reasonable deadline, reach a particular agreement or at least a temporary practical agreement without detriment to the final drawing of borders on the sea. (Davenport, 2011, p. 7).

Asian industrial revolution' (Rosenberg, 2010). According to the data of the *World Bank*, there are at least 9 billion barrels of oil in South China Sea and about 900 trillion cube feet of natural gas, what creates undreamed-of possibilities for the economic development of small states such as Malaysia, the Philippines and Vietnam, while for China, too, the deposits of oil quite certainly mean a secure energy future. However, in spite of the fact that the coastal states are above all, most interested in the settlement of the territorial disputes, the possibilities of exploitation of some of numerous resources in the South China Sea have not passed unnoticed by some big world powers. For this fact, the participation of big powers in the settlement of the territorial disputes in the South China Sea is imposed as 'a natural necessity', although, at first sight, big powers have not direct interests because they are not parties to the dispute. This is supported by the fact that by its protector role and engagement in the defence alliances which were created after World War II with some states that have been involved in the disputes the United States of America has decided to build a quite new network of partnerships in order to avert China. This is because it dislikes its increasingly prominent influence in the world since it is an obstacle for achieving the US strategic interests.<sup>11</sup>

The United States of America defined its policy towards the existing disputes in the South China Sea in the mid-1990s (Neuman, 2012). The framework of this policy included peaceful settlement of disputes, respect of international law, ensuring of free navigation, neutrality as well as peace and stability. In 2010, as a response to more and more frequent conflicts of the parties to the disputes (for example, the conflict between Vietnam and China for the exploitation of oil and gas, then the conflict for the fishing in the Paracel/Xisha waters, the dispute on the unilateral drawing of the 'nine-dash line' border, etc.) the United States announced the implementation of a new, improved policy in East Asia.<sup>12</sup> Simultaneously with the new foreign policy approach, the United States of America has strengthened its military presence in the region by making stronger the alliance relations with the Philippines and Vietnam, thus encouraging these countries in achieving their territorial aspirations. Formulating its interests in the region by offering assistance to its allies and by controlling the most important and the most frequent sea routes the United States of America has made it clear that the Chinese foreign policy undermines the American influence in the region (for example, in case of Vietnam) and that it does not take a benevolent position to

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<sup>11</sup> In 1951, the United States of America concluded the Mutual Defense Treaty with Japan, South Korea and with the Philippines (Lum, 2012).

<sup>12</sup> Taking part in the regional forum of ASEAN member states Secretary of State, Hillary Clinton announced that in the forthcoming period the United States of America would shift its focus from the Middle East to the Far East and that it would impartially support a peaceful settlement of the existing disputes, with no coercion and under the auspices of multilateral fora (Bower, 2010).

the outstandingly pragmatic Chinese foreign policy which endeavours to settle all open territorial issues bilaterally.<sup>13</sup>

For China, the influence of the United States of America in the South China Sea region is a factor of instability. According to the Chinese point of view, the American military presence and strengthening of the alliances with the states in the region (with the Philippines and Vietnam) is the continuance of the previous policy of ‘subduing’ China. By the approach mentioned above, the United States of America strives towards limiting further economic prosperity of China by exerting a direct political influence and interfering in its internal affairs, considerably influencing its trade with the countries in the region. By all this, it ignores the fact that China is a regional rising power whose ‘soft power’ is increasingly turning into ‘hard power’ on a daily basis. Under the conditions mentioned above, it cannot be expected that China will take an indifferent position on the protection of its vital interests, which certainly include the protection of sovereignty over the island areas in the South China Sea. Its policy of competition with the United States of America in this region is based on the knowledge that the USA does not ignore the fact that China has a significant influence on the world economic trends and that its political influence is constantly growing in international relations. Also, China’s influence in the most important international organisations and regional fora is not negligible, and it seems especially dangerous for the protection of the American interests, which were established after World War II, and especially under the conditions when the United States of America lacks economic potential for a long-term and more powerful military engagement in the region. China possesses the largest army in the world and it continuously invests in the development of the space programme.<sup>14</sup> The results of the investment are reflected in the application of the latest technologies in the military and defence industry.<sup>15</sup> China strengthens its influence in the region and in the world, too, in a subtle way – through various kinds of assistance and support, which are not a blind for a conditionality policy. Maybe the best illustration for this was the statement of Xi Jinping at the time when he had not yet taken the post of President of the Communist Party of China. During his visit to Mexico in 2009, Jinping regarded the growing concern over the rising Chinese power saying the following: ‘China does not, first, export revolution; second, export poverty and hunger; or third, cause unnecessary trouble for you’ (*China Daily*, 29.11.2012). By

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<sup>13</sup> In 2011, Vietnam and China signed *the Agreement on Basic Principles for the Settlement of Border Territory Issues between the Socialist Republic of Vietnam and the People’s Republic of China (1993)* (Vietnamplus, 12.10.2011).

<sup>14</sup> According to the data presented by SIPRI, in 2000, China’s military budget had amounted to \$30 billion, while in 2012, it amounted to \$160 billion. (*Economist*, 7.4.2012).

<sup>15</sup> For example, China possesses Dong Feng 21D missiles, which are popularly called ‘carrier killers’. (Office of the Secretary of Defense, 2012).

broadening of the network of states which are willing to co-operate, then by acquiring their support for resolving of open issues, by the consolidation of co-operation with the leadership of Taiwan in resolving the territorial disputes, by permanent insisting on the implementation and respect of principles of international law China's position in the world is progressively becoming stronger.

Although China suffered a lot from its political opponents, which consider that after a long time of 'smile diplomacy' it has started to use its superior military and economic power for achieving of its strategic targets, it has remained determined to keep on pursuing the way of peace, development and co-operation which is not only in its interests but also in the interests of the states in the region. In this way, its approach is substantially different from the approach of some other great powers. China's encroaching on the exclusive economic zones and continental shelves of the neighbouring states which undermines the cohesiveness of ten member states of the Association of the Southeast Asian Nations (ASEAN) could be observed as the accelerated positioning of this state as the leading country in Asia.<sup>16</sup> This is even more, because China, too, considers itself a dominant regional power of the Eastern hemisphere. In this regard, it reminds a lot of the United States of America which, during the rule of American President James Monroe and his famous foreign policy doctrine from 1823, proclaimed itself the leading power of the Western hemisphere. The Chinese wish to achieve domination in the South China Sea region is primarily founded on economic reasons. Regarding the expansion of the Chinese economy, which is followed by the increasing consumption of sources of energy, China's efforts to achieve its territorial claims are politically understandable. Finally, in spite of the fact that the United States of America has remained the most powerful world power after the end of the Cold War period, China has certainly become its biggest political rival, but also its creditor in the field of global finances.<sup>17</sup>

### Instead of a conclusion

All the disputes mentioned above point to the fact that achieving of the regional stability in the South China Sea has become too much a big and difficult task. The settlement of the territorial disputes is *per se*, the issue of the greatest

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<sup>16</sup> China as a regional power, which has direct territorial claims in the states to which the United States of America offers its assistance, makes great efforts to show that it advocates reaching of a solution that would be in accordance with international law and would considerably contribute to peace and security in Asia. By all this, China also demonstrates its growing power in the routine operations of limiting the freedom of navigation to warships of other states and freedom of flight of their reconnoitring planes in the disputed areas (Cronin, Dubel, 2013, p. 6).

<sup>17</sup> China possesses the biggest financial reserves in the world and the most of these reserves are American securities. (Van Ness, 2013).

significance for the security of South East Asia. The settlement of the dispute over the sovereignty of the disputed islands and of the delimitation of the sea shelves in the South China Sea would not only make resolve an open territorial issue between China and Taiwan, on one side, and Brunei, Malaysia, the Philippines and Vietnam, on the other, but it would resolve numerous and accumulated problems of the exploitation of fishing and mineral resources and sources of oil and gas, what exerts a direct impact on the regional stability. Therefore, judging by all things, the resolution of the open issues in the South China Sea should be done as soon as possible through consultations and with the agreement of the parties concerned. This would particularly mean that in establishing the sea border the wills of the parties to the dispute should be considered, which should be manifested in reaching of an agreement by which the states concerned would be free to draw the delineation lines of their exclusive economic zones and continental shelves in the South China Sea on the basis of the rules of international law. If in drawing of borders between them the states assumed the basic rule according to which land prevails over sea, then they would be free to point to the criteria that should be applied in the delineation of the inherent sea areas. Actually, this would mean that the parties to the dispute would be obliged to establish all relevant facts based on the international law which is codified by the 1982 United Nations Convention on the Law of the Sea that offers a basis for drawing of borders in the South China Sea. Apart from what has been said above, the coastal states should comprehensively consider all principles and rules of customary international law which is not included in the Convention mentioned above. The international law of the sea provides the application of the equidistance principle and various 'just principles' of delineation (for example, delineations based on 'historically acquired rights' or those based on some other particular conditions such as geographic configuration, geomorphological and geological factors of the seabed and underworld, economic factors, political and security factors, environment, presence of third states, etc.). In the near future, the states concerned should make more efforts in order to reach a solution on the sovereignty over the disputed islands by negotiations. If they do not reach an agreement on the delineation and sovereignty over the disputed islands, the states should resort to applying one of the procedures for the peaceful settlement of disputes provided by the Charter XV of the 1982 United Nations Convention on the Law of the Sea. Each state could present the dispute to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration.

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## TERITORIJALNI SPOROVI U JUŽNOM KINESKOM MORU I REGIONALNA BEZBEDNOST

**Apstrakt:** Područje Južnog kineskog mora, poslednjih godina, sve više potresaju teritorijalne razmirice između Kine i Tajvana s jedne, i Bruneja, Malezije, Filipina i Vijetnama sa druge strane. Ove razmirice predstavljaju uzrok nemira koji ugrožava mir i bezbednost u jugoistočnoj Aziji. Teritorije oko kojih se navedene države međusobno spore obuhvataju ostrva Spratli, Parasel i Prata, te sprud Maklesfild. Iako se konkretne okolnosti u vezi teritorijalnih sporova razlikuju, sve države u njima vide šansu za osiguranjem svojih ekonomskih interesa u globalnoj utakmici za prirodnim resursima, pre svega u oblasti energetike i ribarstva. Pošto se teritorijalni sporovi tiču pitanja državnog suvereniteta koje je po pravilu vezano sa psihološkim činiocima (nacionalističkim osećanjima i dostojanstvom naroda) i istorijskim nasleđem (koje je u ne malom broju slučajeva obojeno teškom kolonijalnom prošlošću), nijedna strana u sporu ne želi da napravi ustupke drugoj strani. To ukazuje da se sporovi neće moći tako lako rešiti i prevazići mirnim putem bez infiltracije spoljnog faktora. U studiji autor iznosi međunarodnopravnu analizu sporova u Južnom kineskom moru sa objašnjenjima o njihovom uticaju na regionalnu bezbednost.

**Ključne reči:** Teritorijalni sporovi, Južno kinesko more, međunarodno pravo mora, UNCLOS, regionalna bezbednost, jugoistočna Azija.

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