Energy Dominance in the South China Sea: Legal and Geopolitical Battles over Strategic Resources

***Mohd Haris Abdul Rani**

Senior Lecturer, Faculty of Law, Universiti Teknologi MARA, Malaysia

***Corresponding Author**

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ABSTRACT

Observing the geopolitics of the South China Sea continues with an increasingly delicate and complex dilemma that involves complicated and sensitive territorial claims presented by countries such as China, Vietnam, the Philippines, Malaysia, Brunei, and Indonesia. This is also tied to the economic and social implications, especially on the region's energy resources, mainly natural gas and oil reserves. The Nine-Dash Line, which China claimed, and its move to militarise and expand several coral reefs into artificial islands within the waters have further increased the tensions. China's ignorance and defiance of international laws, namely the United Nations Convention on the Law of the Sea (UNCLOS) and the decision by the 2016 Permanent Court of Arbitration (PCA), hinder peace in that region. The involvement of other foreign parties, like the US, Japan, and Australia, over the matter exacerbates the condition. This article investigates the issue with the insight of energy law over the matter of bountiful energy resources that can be found and the potential roles of all involved parties to come to an agreement to find solutions to the conflict. The analysis emphasises the model of joint development agreements as a means to properly manage the resources to ensure mutual benefits, prosperity, and development, uphold international maritime law, and create a collaborative framework that would result in peace within the territory.

Keywords: Energy Dominance, South China Sea, UNCLOS, Geopolitical Conflict, Energy Resources

INTRODUCTION

The problem of the South China Sea (SCS) has continued for several decades, a serious international law dilemma over a region with immense energy reserves. This is especially true when countries face an ever-increasing energy demand and concerns over their energy security and dependence, raising the bar further, thus increasing the complicity of overlapping territorial claims by disputing parties. Given the approximately 3.5 million square kilometres of the disputed area, the region should hold significant oil and natural gas deposits and other abundant energy resources such as methane hydrates. (W. Liu et al., 2023). Renewable energy, such as solar (Wen & Lin, 2024), tidal (X. Liu et al., 2021), wind (Sajith et al., 2023), and ocean thermal energy (Abdul Rani et al., 2017). Examining oil and natural gas alone, it is estimated that 11 billion barrels of oil and 190 trillion cubic feet of natural gas are within the disputed region, making it a vital area for the energy security of those nations involved. Even though there are no proper figures nevertheless, the potential total amount of energy that can be generated is huge (Wan et al., 2018), as seen in the oil and gas licensing block exploration in Figure 1.0 below.

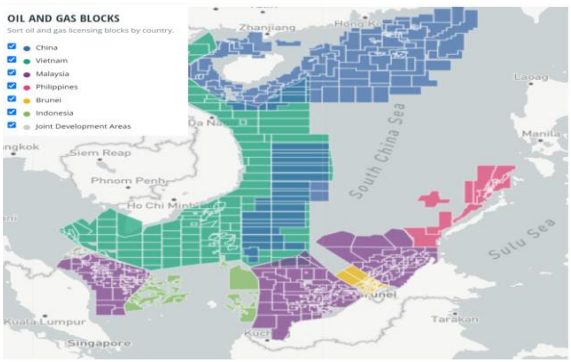

Figure 1.0: Oil and Gas Block within the South China Sea.

(Source: Asia Maritime Transparency Initiative. (2024)).

Energy is one of the most critical issues in the strategy and significance of SCS. Almost a third of the global sea trade, which involves oil transportation from the Middle East, occurs through this region, making it a key route for the worldwide energy trade. (Song & Fabinyi, 2022). It is then apparent that the dispute over the SCS has a perspective on the rule of international law and energy law. The legal concerns relate to issues such as intrusion into lands and water, which are protected under the United Nations Convention on the Law of the Sea (UNCLOS). In contrast, the energy-related concerns relate primarily to the strategies to explore oil and gas and, more generally, energy security in Southeast Asia. (Awan, SI (M), 2023).

Figure 2.0: Nine-dash lines

(Source: CLS Gator Prints. (2024)).

It could be inferred that China's assertion of its sovereignty over all of the SCS throughout the Nine-Dash Line (Figure 2.0 above) claim is driven mainly by the region's energy wealth. (Gao & Jia, 2013). This is due to China's rising energy demand and heavy reliance on maritime imports and exports, which has made controlling the SCS a strategic imperative. (Tang et al., 2024). At the same time, other claimant states that they have better claims in utilising the SCS for their energy needs. This is even more evident ever since energy resources became more difficult to extract or there was a depletion from current wells. (International Energy Agency, 2023), This has intensified competition for these resources, further complicating the legal and diplomatic landscape (Salimi & Amidpour, 2022).

Historically, the origins of the SCS dispute can be traced back to the colonial era, where territorial demarcations occurred, and the post-World War II geopolitical restructuring of the region. China's Nine-Dash Line, over which China asserts sovereignty, was loosely identified and drawn up in 1947 by the Republic of China. Beijing further inherited the expansive territorial claim after the Chinese Civil War, when the People's Republic of China was established in 1949. However, since then, it has been rejected by international courts and the other claimant nations based on existing legal mechanisms of international agreements and conventions in which China participates (Fravel, 2011; Wood, 2021; Haris et. al, 2017).

Legal Framework Governing the South China Sea and Energy Resources

The SCS dispute falls under the jurisdiction of international maritime law, particularly UNCLOS. Where China rectified the document with 167 other countries back in 1982, it provides the necessary legal framework for determining maritime zones like the territorial seas, Exclusive Economic Zones (EEZs), and continental shelves of coastal states. These coastal states are entitled to a 12-nautical-mile territorial sea plus a 200-nautical-mile EEZ, whereby they can utilise and have the exclusive rights to explore and exploit their natural resources, including every type of energy resource. (United Nations, 2019).

The energy potential of the SCS has been the centre of legal disputes on resource rights and sovereignty. UNCLOS has helped resolve issues related to establishing the state's maritime boundaries. However, it is not in any way able to accept the historical argument put forward by China's Nine-Dash Line. This is the decision made in the 2016 PCA ruling that those legal rights belong to, in this case, to the Republic of the Philippines and against China. Reviewing the judgement itself, one would discover the legal reasoning of the case and the

impact it has over the breach of the sovereign rights of the Philippines over its exclusive economic zone (EEZ) (Permanent Court of Arbitration, 2016).

Even though UNCLOS provided the affected nations with the necessary legal rights over their claims of all the energy resources within their EEZ, the continuing overlapping of EEZ's claims has started to see an increase in confrontations between China and other states and states themselves. This situation allowed China to disregard the PCA ruling and use the situation to expand its energy and territorial claims, mainly because the UNCLOS and PCA never offer means for enforcement. In the end, due to this legal and political irregularity, China has increased its disobedience towards the ruling and has explored and developed energy in contested areas (Strangio, 2024).

Therefore, considering energy law in this case cannot be overlooked. An energy law deals with subsurface incorporation for natural resources, including extraction and controls exerted over disputed waters in the SCS. Ethically speaking, under the law of the sea, the coastal states are exclusively given the liberty of Laws and guidelines related to exploration and carting of the seas EEZ. However, in instances where it is illustrated that there exists more than one state with an overlapping engaged in the activities of clipping any such framework, joint development treaties that do not settle claims in terms of sweeps are sometimes used. Notwithstanding their potential, joint development agreements (JDAs) have been challenging to take off in the SCS due to the low level of faith between China and other states with economic claims over the region (Beckman, 2013; Gao & Jia, 2013; Hong, 2012; Joyner, 1998; Schofield & Storey, 2009; Song & Zou, 2014; Valencia et al., 1999).

Besides UNCLOS, various international legal regimes also govern maritime activities in the South China Sea, including exploration and extraction of resources and protection of the environment. Establishing maritime dangers and preventing ship collisions in such a busy area is regulated by the International Maritime Organization (IMO) connected bodies and their fathomless variety of declarations. In particular, however, the International Regulations for Preventing Collisions at Sea (COLREGS) is formulated chiefly and incorporated in such a body of laws governing positions of sea ships and movements of naval forces to minimise the risk to merchant and military vessels. (Convention on the International Regulations for Preventing Collisions at Sea - 1972, 1977). Such regulations are extremely useful in an environment where territorial disputes are common and provoke naval confrontations due to both parties seeking custody of specific waters. Also, energy law deals with the unavoidable issue of energy shipments, with the importance of secured energy infrastructure, oil platforms, and drilling rigs protected under the law of the sea.

The Convention on Biological Diversity (CBD) also introduces an environmental dimension to electricity exploration. The SCS is one of the most biodiverse marine regions globally, and the CBD mandates that countries conducting resource extraction should also take steps to preserve marine ecosystems. (The Convention on Biological Diversity, 1992). This is especially applicable in oil and gas extraction, where the stability of electricity safety and environmental sustainability ought to be cautiously controlled. The CBD requires energy projects to include biodiversity safety measures and restrict dangerous practices like overfishing or the destruction of coral reefs due to electricity infrastructure tendencies. This prison framework guarantees that power exploration activities within the SCS recall lengthy-term environmental effects, aligning with international biodiversity conservation efforts.

China's Energy Strategy and its Legal Justifications

The SCS is the front line of China's broader energy strategy. China, the largest energy importer in the world, particularly in oil and natural gas, has a significant stake in the territorial sea of this region. Underlying these plans requires China to gain some control over both regions' energy resources to attain the ultimate strategic prize on Beijing's wish list: Chinese "energy security." The exporting economy of China is officially stated as the first reason. Secondly, it will secure access to energy reserves and power-projection space with dominance over SCS, particularly the Spratly and Paracel Islands. (Wood, 2021).

China mostly used historical justifications to support its claims in the SCS. Because the area has been a part of China's jurisdiction for centuries before the UN Convention on the Law of the Sea's formation, it asserts sovereignty over the islands and seas of the SCS (UNCLOS). They contend that the Nine-Dash Line is consistent with the historical entitlements. This is accurate regarding its attempts to assert and implement its rights in that region rich in critical waterways and energy resources. Building artificial land on top of coral

reefs, like those found on Reed Bank and Luconia Shoals, in claiming island status with sovereignty rights will allow the acquisition of energy reserves and further asserting authority over a vital maritime commerce route by employing intimidation tactics to weaken the independent sovereignty rights of coastal states by coercing them into relinquishing access to offshore resources, particularly energy-based resources.

Energy Security and Geopolitics in the South China Sea

The strength and safety size of the SCS dispute is one of the primary drivers of the struggle. For many Southeast Asian international locations, the SCS is a critical source of hydrocarbons, which can be necessary to fuel their rapidly growing economies. China, the sector's biggest strength purchaser, is likewise closely depending on the SCS for its power needs, both in terms of the oil and fuel reserves beneath its waters and the sea lanes that bring strength imports from the Middle East to China's Japanese seaboard.

Energy protection refers to the availability of dependable and low-cost energy components, and the SCS performs a critical function within the strength safety strategies of both nearby and international powers. The approximate shipment of oil and gas amounts to 1/3 of the world's shipment for oil, and 34% of global liquefied natural gasoline (LNG) shipments pass through the SCS, and 94% of it is for imports by China, Japan, Taiwan and Korea (U.S. Energy Information Administration, 2017), thus making it the busiest and most crucial energy transit route. Any disruption to the loose waft of electricity through the vicinity might significantly affect worldwide power markets and the economies of countries that rely on those energy substances. (Schenk et al., 2020).

China's growing call for strength has made securing access to the SCS's assets a strategic priority for Beijing. As China's financial system keeps increasing, its reliance on imported strength has improved, specifically from the Middle East. The SCS, consequently, represents both a source of untapped energy reserves and a crucial transit path for energy imports. China's construction of synthetic islands and the militarisation of disputed areas, including the Spratly Islands, are visible as efforts to claim control over these energy-rich waters and ensure the security of its power delivery lines.

For different claimant states, particularly Vietnam and the Philippines, entry into the energy resources of the SCS is equally crucial. Both countries depend heavily on hydrocarbons for their energy wishes, and the ability to generate electricity wealth for the SCS represents an opportunity to reduce their reliance on imported energy. The dispute over regions like the Reed Bank and the Spratly Islands is driven, in part, by the desire to steadily get the right of entry to these substantial resources. Vietnam, for instance, has engaged in offshore drilling and power exploration sports in regions claimed by China, mainly due to common confrontations among Chinese and Vietnamese vessels.

The geopolitical size of the SCS dispute is intently tied to strength protection. Control over the place's electricity resources, now not most effective, presents financial blessings; however, it also enhances a rustic's strategic role inside the vicinity. China's growing naval presence inside the SCS and its strategic partnerships with countries like Russia have raised worries about Beijing's long-term intentions amongst other claimant states and outside actors, including the United States and Japan.

Legal Precedents in Energy Disputes Solutions

The SCS dispute is not the first to involve issues related to energy sources as its central issue within a territorial dispute. Other precedents exist regarding the handling of energy issues within a disputed maritime area, which provides an essential context for the current conflict.

One of the most applicable precedents is the North Sea Continental Shelf case, adjudicated with the International Court of Justice (ICJ) aid in 1969. The case involved a dispute between Germany, Denmark, and the Netherlands over the delimitation of their respective continental cabinets within the North Sea, which have been believed to include widespread oil and fuel reserves. The ICJ's contentions that such delimitation must be based on equitable standards, considering the proportionality of shoreline and limiting excessive encroachment by disputing states (North Sea Continental Shelf, 1969).

This case is closely related to the SCS as it illustrates the importance of equitable principles of justice in

settling maritime disputes, especially regarding energy resources. Even though the SCS dispute involves a rather complex situation of a fusion of sovereignty and historical claims, ensuring the principle of equity will provide a foundation for negotiation, eventually allowing the ability to share available energy resources without resolving to engage in territorial claims. However, the SCS case involved a unilateral action by the Philippines compared to the Nort Sea Continental Shelf case, where parties mutually consented to bring the case to ICJ jurisdiction.

Another case is the Timor Sea Treaty between Australia and Timor-Leste (International Court of Justice, 2014; Permanent Court of Arbitration, 2016). Signed in 2002, it provides the establishment of joint development activities for exploring and exploiting oil and gas resources in the Timor Sea. Such a treaty determines the nature of the legal framework for both countries. Both would benefit from the disputed resources by sharing them now rather than waiting for an amicable permanent solution. In this case, a permanent solution was achieved in 2018 after 16 years of gaps. This treaty showcases how legal cooperation and international law could be utilised to adopt practical solutions to energy disputes between countries and to share resources without engaging in territorial disputes, tensions, degradation of relationships, or even war.

The oil and gas production from the Bayu-Udan field was estimated to be approximately 400 million barrels of condensate and a trillion cubic feet of natural gas from 2004 to 2021 alone (Sandle, 2021). This is evidence of mutual economic benefits and energy security for both countries. This model signifies the potential of sharing resources elsewhere, especially for the SCS, where disputing countries can work together and adequately manage joint resources over the disputing area.

Therefore, looking at the instance above, the stakeholders in the SCS issue can jointly use this model to develop a way of solving disputes. Such a move would encourage stability in the relationship between neighbouring countries, thus ensuring the ability of each country to tackle its energy crisis, which is more urgent compared to political tensions and more grounded in the principle of justice, fairness and equality that is the aim and goals of UNCLOS to have a peaceful coexistence both in the economic and geopolitical of SCS.

The Role of ASEAN and Regional Energy Diplomacy

It is the role of ASEAN to play a key role in a bilateral relationship between conflicting countries by utilising a diplomatic approach to resolve the SCS dispute. ASEAN has played a key role in using its diplomatic efforts to help resolve the SCS dispute and prevent it from escalating further. ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002 as a framework to seek solutions in resolving disputes peacefully while hoping to promote bilateral engagement and cooperation in areas such as energy exploration. Sadly, the non-binding effects of DOC, with no enforcement mechanisms to prevent confrontations, are seen as a setback.

Talks for a more substantive and legally binding Code of Conduct (COC) have occurred for nearly 20 years, but progress remains slow. China's financial influence on a few ASEAN members, including Cambodia and Laos, makes it even more difficult for the place to barter en bloc. After all, the claimant states in the vicinity, such as Vietnam and the Philippines, have been depending for a long time on uploading electricity, plenty of which needs to be transported by way of sea through the regions claimed by Beijing. The lack of a regulatory device for the exploration and manufacturing of power within the SCS has exacerbated opposition and conflicts over electricity resources.

This paper proposes that JDA is a possible solution. With a JDA, claimant states can put aside their territorial claims and concentrate on cooperation over finding and using energy resources in disputed waters in the short term. Others have worked in the past, such as in the Malaysia-Thailand Joint Development Area (MTJDA). The core for JDAs to take place is trust. However, China's attitude of ignoring international legal rulings hinders any such initiatives that take place by Southeast Asians.

Utilising JGAs in resolving territorial disputes is to take advantage of the energy resources within the region by engaging in joint exploration and exploitation of natural resources without the need to address the issue of sovereignty. MTJDA is an example of such collaboration efforts by Southeast Asian nations in the effort to conduct energy exploration. Their willingness to cooperate is core to the JDAs success. Similarly, the Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT) is another economic cooperation framework that

aims to enhance economic development on energy and infrastructure, tourism, agriculture, trade, and investment across the three neighbouring countries. This cross-border collaboration stimulates economic growth in less-developed regions of the participating countries.

This ASEAN spirit of enabling joint efforts in managing conflicts while maintaining peace and regional security is admirable. Despite not being seen as a united front because of its various members' specific interests, it has been a crucial forum for regional diplomacy. The ongoing effort on a Code of Conduct (COC) for the SCS is seen as its commitment to the peaceful resolution of the conflict. This effort could be further promoted to achieve its goal with the participation and involvement of stakeholders like the US, Japan, and Australia.

China's expansive claims have challenged energy exploration and development, especially for energy companies that initiate development operations within the SCS. Major oil companies are reluctant to engage in and conduct any energy exploration within the region as the risk of conflict and clear legal protection are unclear (Asia Times, 2019; The Diplomat, 2024). This was especially true when the Chinese military intervention assisted the China National Offshore Oil Corporation (CNOOC) in the energy exploration within the disputed areas.

Therefore, the ramifications of the energy law over SCS are beyond UNCLOS's immediate legal framework. Energy resources are vital for Southeast Asian countries' energy security, and it calls for how these shared resources in disputed areas can be managed under international law. As identified, the potential remedy is to acknowledge the role of JDAs, which let states benefit from energy exploration while postponing the settlement of territorial disputes.

The same cooperative approach was adopted elsewhere in other regions of the world, Saudi Arabia and Kuwait (1965), the Japan-South Korea Joint Development Agreement in the East China Sea (1974) and the Nigeria-São Tomé and Príncipe Joint Development Zone (JDZ) Treaty (2001), which have seen successful implementation. These agreements enable a joint exploration and exploitation of energy resources to be conducted peacefully within the disputed areas while providing a legal framework for cooperation for mutual economic benefits without compromising underlying sovereignty claims. JDAs can give disputing states a chance to work together on energy exploration in the framework of the SCS.

The available International maritime safety conventions can help regulate energy exploration in the area. The aim is to reduce pollution from oil spills and other hazardous discharges. All energy companies operating nearby or within the disputed region are legally required to abide strictly by the current stringent environmental regulations under the IMO's International Convention for the Prevention of Pollution from Ships (MARPOL) (IMO, 1973). Energy companies must have pollutant control systems under MARPOL, which immediately affects how power regulation controls offshore drilling operations. After all, this ensures the sustainability of all biodiversity and marine ecosystems within the area.

Additionally, the Convention on Biological Diversity (CBD) has significantly prevented environmental degradation due to energy exploration. It is a requirement for states to use sustainable methods whenever dealing with natural resources, given that SCS is home to multiple species that are significant in maintaining global marine biodiversity (United Nations, 1992). Environmental impact assessments, investigations, and reports that enable strategies to reduce biodiversity loss must be the core of this effort.

The Role of ASEAN in Renewable Energy Initiatives

The SCS represents one of the most essential complex geopolitical and economic challenges in contemporary international relations. Since territorial disputes, legal contentions, and geopolitical rivalry, energy discord is the focal point of this regional discord. In addition to the JDAs, fostering regional collaborations through an ASEAN-led multilateral energy forum offers a pragmatic avenue to address the multifaceted challenges while promoting sustainable development. An ASEAN-led framework should focus on fostering trust among stakeholders through equitable participation. Collaborative renewable energy projects could serve as confidence-building measures, shifting the discourse from territorial dominance to sustainable resource management. Moreover, these forums could enhance technical cooperation, capacity building and financial investment in renewable technologies, enabling all participating nations to benefit equitably.

Establishing a Neutral Oversight Mechanism

A neutral oversight body dedicated to monitoring adherence to international laws, such as the UNCLOS and environmental standards, is crucial for ensuring the success of collaborative initiatives. This body would be a guarantor of fair practices, offering transparent evaluation of compliance and mediating disputes. By adhering to international norms, such a mechanism could strengthen trust among the disputing parties and reinforce the legitimacy of ASEAN-led initiatives.

The Role of External Mediators

External mediators, such as the United Nations (UN), facilitate negotiations and maintain neutrality. The UN could provide a platform of dialogue that transcends regional affiliations and ensure an equitable approach to resource-sharing. Mediators can also introduce international best practices for joint resource management, enhancing the legal and operational framework of JDAs and multilateral energy forums. The involvement of external actors like the United States and Japan, which maintain strategic interests in the region, must be cautiously managed. While their participation can balance power dynamics and provide technical and financial support, care must be taken to prevent external influence from undermining the autonomy of ASEAN-led initiatives.

Building Trust Through Multilateral Approaches

The primary challenge to implementing JDAs and ASEAN-led or external mediators is the persistent mistrust among claimant states. China's historical assertions and unilateral actions in the SCS complicate collaborative efforts. Addressing these issues requires a transparent and inclusive framework where all parties feel equally represented. Confidence-building measures, such as joint training programs, shared environmental conservation efforts and transparent governance mechanisms, can gradually erode suspicion and encourage cooperation.

CONCLUSION

The SCS has become more than traditional territorial claims, which now encompass complex geopolitical and economic dimensions. It is not as much the issue of sovereignty that is the basis of the dispute but the number of available resources within the area. Adding to the stress is that the area is also seen as the strategic maritime trade route to all the coastal states and the international countries that rely on the ability to utilise the vital waterways.

International law, especially UNCLOS, might offer the basis for a framework that could resolve maritime disputes. However, there are flaws in how states can adhere to or deny the rights provided by the legal institution, such as the PCA's ruling. Focusing on the provisions of international law alone is impractical, mainly when it involves power dynamics.

There must be a pragmatic approach to the problem. Adopting the mechanism of JDAs would be the best solution in allowing joint cooperative exploration and development of resources within the disputed areas without resolving sovereignty issues. This is the case for jurisdictions like those of Malaysia and Thailand, those adopted by Japan and South Korea's JDA in the East China Sea, and recently by Timor-Leste and Australia's JDA. They have enabled disputing countries to distress themselves and be able to focus on development without the need to resolve complex maritime boundary issues.

Applying the JDA model to the SCS will produce a practical framework for de-escalating tensions. This would set aside the sovereignty disputes and focus on more mutual economic gains. Countries like Vietnam, the Philippines, Brunie, Indonesia, and Malaysia could mutually gain access to the region's energy resources, which are critical to its economic growth and energy security. This cooperative approach reduces the possibility of military confrontations that currently plague the waters of SCS. The platform to do so must utilise ASEAN as a means to the negotiations as the leverage that ASEAN would have against China in negotiations, given China's economic influence against these countries.

However, JDAs' success in the SCS depends on several factors. First and foremost is the willingness of

claimant states to engage in cooperative development, which would require significant political will and compromise. Secondly, China's participation is crucial. As the dominant power in the region, China's engagement or at least passive acceptance of JDAs would be necessary for the agreements to function effectively. External actors like the United States and Japan also play a pivotal role. Their involvement could provide the required balance of power and ensure that joint development initiatives remain fair and equitable.

In conclusion, the South China Sea dispute manifests broader global challenges that involve balancing sovereignty, resource control, and regional stability. While international law provides a necessary foundation, it is evident that a more pragmatic approach is required to manage the competition over resources in the SCS. JDAs, which have proven successful in other contested maritime regions, offer a feasible solution that could enable the equitable development of the SCS's energy resources while reducing the risk of conflict. Ultimately, the success of this approach will depend on the cooperation of claimant states, the involvement of external powers, and a shared commitment to prioritising economic development over territorial confrontation.

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