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# **CHINA'S STRATEGY ON THE SOUTH CHINA SEA**

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## **ABSTRACT**

The South China Sea dispute is an active and complex issue that has been shadowing the stability of the region for decades. This topic has been widely studied before but rarely from a constructivist perspective. Thus, this paper attempts to prove that Beijing's actions in the region can be more often explained by taking the social concepts and ideas into consideration rather than just China's vast power dominance over the other contestants.

This paper aims to shed light on the reasons behind China's actions by testing whether China is trying to downplay the geo-strategic significance of the South China Sea. This is done by a case study of the effects of China's Belt and Road Initiative in the Philippines, Brunei, Cambodia, and Vietnam, and by a case study of China's conception of the international maritime law and its island-building projects on Paracel islands.

The findings of this paper show that Beijing is using international law to justify its actions and its claim on the South China Sea, while, at the same time, pushing the boundaries of its claim on waters of other states. China has also used the Belt and Road Initiative-associated framework to make states around South China Sea bandwagon China. This thesis concludes that China is efficiently downplaying the geo-strategic importance of the dispute by changing the focus from China's aggressive expansionism to mutual trade opportunities, fully utilising the constructivism-framed concept of shared understandings.

Keywords: South China Sea dispute, ASEAN, UNCLOS, China, Constructivism

## **LIST OF ABBREVIATIONS**

ASEAN - Association of Southeast Asian Nations

BRI - The Belt and Road Initiative

CCP - Chinese Communist Party

CLSC - Commission on the Limits of the Continental Shelf - Limits of the Continental Shelf

EEZ - Economic Exclusive Zone

MOU - Mutual Memorandum of Understanding

NDN - Nine-Dash Line

OBOR - One Belt One Road

PCA - UNCLOS Permanent Court of Arbitration

PRC - People's Republic of China

SCS - South China Sea

TCOB - Two Corridors, One Belt initiative

UNCLOS - United Nations Convention on the Law of the Sea

## INTRODUCTION

The South China Sea (further – SCS) dispute is one of the most noticeable as well as multi-dimensional disputes in the Asia-Pacific that has been ongoing for decades. The maritime epicentre of the dispute represents a semi-enclosed Sea in South East Asia, consisting area of about 3,500,000 square kilometres and ranging from Southern China to the shores of Malaysia and Indonesia in the west. All the coastal states, excluding Singapore, have overlapping claims on the SCS, while the two most contested areas are around the Spratly and Paracel archipelagos. Spratly islands consist of around 100 reefs or small islands, and the area is believed to have large yet undiscovered natural gas and oil reserves (Mubeed 2020, 205). The mainland of the People’s Republic of China (further – China), Taiwan, and Vietnam entirely claim Spratly islands, whilst the Philippines and Malaysia are claiming smaller portions of the archipelago (Ndi 2016, 3-5). Paracel islands consist of 130 small islets and reefs, and the entire area is claimed as well as occupied by China while being also claimed by Vietnam and Taiwan (Ndi 2016, 3).

Arguably, the strong patriotism- and political economy-driven claims of the competing states can be considered reasons that make this dispute so threatening, global security-wise. For China, the authority over the SCS is nearly of a metaphysical nature, and, in 2012, the world’s most populous country declared that it would reclassify the area as its national core interest alongside the already controlled Tibet and Taiwan, which is *de facto* not controlled by Beijing (Wingfield-Hayes 2014). China’s traditional SCS claim, known in the literature as the Nine-Dash Line (further – NDL), is strongly based on historiography and ancient records, and, in the case of the Paracel Islands (the Chinese side calls those ‘West Sand Archipelago’), the NDL goes deep into the 200-mile Exclusive Economic Zone (EEZ) of Vietnam. The public opinion about the dispute in Vietnam is also extremely patriotic, and official Hanoi strongly opposes China’s occupation of the disputed area.

In 2016, the Chinese NDL got a heavy hit when the United Nations Convention on the Law of the Sea (further – UNCLOS) arbitral tribunal ruled that most of the Chinese SCS-associated claims are not valid under international law. The arbitral tribunal ruled that none of the Chinese controlled islands in SCS can be considered as islands and thus China cannot claim the 200-nautical mile EEZ around these territorial units. Since then, objectively, there have been signs of a change in China’s SCS strategy towards a strategy based on administrative control rather than historical rights. At the same time, China’s land reclamation and other outpost building projects in the SCS have steadily accelerated year after year.

The current *status quo* can academically legitimise a hypothesis that **China is predominantly acting in the field of political economy to outmanoeuvre its opponents by developing administrative control over SCS and, in the same time, modifying its area-focused claim to make it compliant with the international law**. The main point to be tested here is whether or not the Chinese side is downplaying the geo-strategic significance of the issue, presenting it like an ordinary routine element of international relations (especially, in the absence of a stable international system and the latter's non-responsiveness to the Russo-Georgian and Russo-Ukrainian wars and further annexations of both Georgian and Ukrainian sovereign territories by Russia). Considering the aforementioned argument, this paper has two research questions: 1) how China is attempting to communicate/cooperate with the other countries around the NDL in the context of gaining leverages in the dispute, and 2) what are the legal measures that China is utilising to make its NDL-bound claim compliant with international law.

This paper tackles the issue of academic comprehension of Beijing's actions in the context of the SCS dispute through the prism of social constructivism, which is usually not a common theoretical framework provider when it comes to discussions on China. It could be argued that the core idea of social constructivism is that the world of international relations consists of a system of thoughts and ideas rather than material force (Jackson, Sorensen 2020). If the SCS issue is reviewed from a materialistic perspective (i.e., neo-realists *et cetera*), it would be easy to assume that China will dominate the other SCS littoral states, actively seeking to and using force, if needed to gain what it wants.

When researching China's actions in the SCS using constructivism-bound parameters and premises (more specifically, the theory's concept of shared understandings), it is easier to understand the reasons why China is, in addition to using force, often seen relying on negotiations and building bilateral discussions-forming channels between the states involved. It could be suggested that China uses these tactics to downplay the SCS dispute in the global arena by changing the focus from its expansionism towards cooperation between the SCS littoral states. China's effort to assert administrative control over SCS is analysed with a case study of China's artificial island-building project in the West Sand Archipelago and China's effort to bend the international law in the process of making its claim compliant with the UNCLOS legislation. Having a glance at these cases will, with necessity, assist to determine the rationale behind China's

actions in the SCS during the past decade and will form a prognosis on how China can act in the nearest future.

In a significant addition, this paper examines the Belt and Road Initiative's (further – BRI) framework in the context of the SCS dispute, observing China's BRI-bound efforts in the Philippines, Brunei, Cambodia, and Vietnam. These interlinkages were selected so that each state represent a different viewpoint to the SCS dispute, and each state has implemented different strategies to handle the bilateral relations with China when it comes to SCS dispute. Focusing on one state would not bring enough evidence to build a solid point of academic departure in regards to China's plans on the SCS. The case study of Cambodia represents an ASEAN state that has no claim on SCS but has a great need for foreign investments, Brunei for a state that had a claim to SCS but has since withdrawn from the game and the Philippines represents a state that has tried to constraint China's advancements in SCS by bringing the matter to the UNCLOS Permanent Court of Arbitration to be decided. Vietnam represents a state that has been most actively stepped down to protect its interests when China has taken an aggressive stance in its SCS strategy. The case study of China's artificial island-building project was selected to this paper study China's effort to assert administrative control over SSC and to emphasise the lengths of how far China is willing to go to prove that its claim to SCS is not to be questioned, even in the eyes of the international maritime law. This case study also gathers evidence needed for the discussion part where this paper tries to build a bridge between the lawfare tactics and China's goal to downplay the aggressive nature of the dispute and make not to appear as an aggressor, but as a legal owner of the SCS region. These case studies will help to understand the rationale behind China's actions in SCS in the past decade and will form an expectation of how China will act in the future.

This paper is structured as follows. The first chapter is divided into three parts. The first part of this paper studies the Chinese actions in the SCS, in terms of the use of China's economic resources. The first part of the chapter introduces the economic differences and interdepends of China and the other claimant states in the dispute. The second part of the chapter introduces China's Belt and Road initiative and the actions of both China and other SCS states are explained with the context of the Belt and Road initiative. The last part of the first chapter explains China's artificial islands building projects with a case study of Sansha city. The first chapter of this paper will provide an answer to the first research question of this paper.



The second chapter of this paper tackles the legal aspect of China's NDL claim. The first part of the chapter introduces the legal background of China's NDL claim and how it relates to international law. The second part of this chapter introduces THE UNCLOS framework that acts as a constitution of the oceans and thus is the main international law related to this subject. This chapter will introduce two occasions where China has applied lawfare strategies in an attempt to give justification for its actions in SCS. The last part of this chapter explains the Four Sha's theory and its importance in understanding China's legal strategies in SCS.

The last part of this paper concludes on the findings of the previous chapters while discussing the paper's main claim through social constructivism theory and attempting to outline the underlying motives that guide China's decision making in the SCS dispute.

# **1. CHINA'S POLITICAL ECONOMY IN THE SOUTH CHINA SEA**

China's economy has been one of the fastest-growing economies in the world since the 1980s, the Chinese GDP growth has been double digits from 1978 to 2017, and China's trade surplus in 2019 was around USD 421 billion (Kuyucu 2020). From an SCS' perspective, the inevitable outcome of China's economic growth is that China has significantly more resources at its disposal than other states in South-East Asia and this has an impact on the China policies of the other SCS littoral states. All other SCS littoral parties, except China and Taiwan, are members of the Association of Southeast Asian Nations (ASEAN). China and ASEAN are in a highly peculiar relationship where the latter's different members apply different strategies when interacting with China. From the perspective of this paper, it could be observed that bilateral trade between China and the ASEAN states is a factor of global significance – it has increased fifteen-fold between 2000-2018, and the growth rate has been steadily increasing since 2009 (Tran 2020). The key catalyst for the rapid increase of China-ASEAN trade has been the BRI and the first part of this chapter will focus on revealing the impact of BRI on the prospective outcome of the SCS dispute.

The BRI that was formerly known also as One Belt One Road (OBOR) was officially launched by President Xi Jinping in 2013 as the 21<sup>st</sup>-century version of the Silk Road to, like its historical equivalent, facilitate trade and cultural exchange between China and Eurasia (Huang 2016). In 2014, President Xi announced that in addition to a land-based 'Silk Road', China would invest in a new maritime route of the 21<sup>st</sup> century that would expand from South East Asia to the Mediterranean Sea (Fallon 2015).

As argued, this gigantic geo-strategic initiative aims at sustaining China's economic growth and development, increasing China's international influence and infrastructure development (Huang 2016), but it also has a strong security dimension. Brown (2018) argues that China is using the BRI to build a zone of "economic commonality" based on the interconnectivity of trade, infrastructure and finance where the participants enjoy win-win outcomes. This is China's attempt to gain more strategic space in the international arena with a wide array of soft power methods (Brown 2018, 215).

The concept of soft power is a concept created by Joseph Nye that refers to states' ability to "get others to want what you want" without a use of force but rather affecting other state actors through non-aggressive terms (Nye 2002). Historically, it has been the United States that has been the hegemonies leader in terms of soft power in the world arena with the idea of an American Dream and most of the world's population watching American movies, but China has emerged in this arena with lucrative trade and finance possibilities. It is unlikely that China would have similar cultural soft power as the United States has, but in terms of trade, China has already overtaken the USA as the richest nation in the world and might become the largest economy in terms of GDP by 2028 (World economic... 2020). As suggested, the soft power capabilities of the BRI have been in extensive use in SCS lately, and the SCS plays a crucial part in China's BRI as the following examples will reveal. In addition to the land-based infrastructure projects, China has invested heavily in the 21<sup>st</sup> Century Maritime Silk Road that connects China to the rest of the world (Huang 2016).

The SCS and BRI are both core interests of China, and all SCS littoral states are BRI signatories. The area has significant strategic importance for China as the main sea routes to Africa, Europe, the Middle East and the Atlantic side of the Americas all go via the SCS, the total amount of BRI investments by 2027 has been estimated to be around 1.2 trillion-1.3 trillion USD (Refinitiv 2020). This part of the paper will explain the behaviour of a trio of regional actors related to the SCS dispute and how China's economic power has moulded the actions of these countries.

## **1.1. The Philippines**

When the Philippines announced the arbitral tribunal case against China after the Scarborough Shoal incident, China's attitude towards the Philippines become increasingly hostile (Roberts 2017). China actively tried to isolate the Philippines from the ASEAN, and high-level meetings between China and the Philippines were cancelled (Ibid). China's BRI-associated strategy in the SCS area has been evident in China-Philippines relations since 2016 when President Rodrigo Duterte took office from Benigno Aquino III (Nie 2016). He assumed his office at about the same time when the UNCLOS arbitral tribunal gave its verdict on the Philippines vs. China case. Duterte's administration has seen the benefits of the BRI from how the Chinese investments via the framework boosted economic development in Myanmar, Laos, and Cambodia, and thus

promised to improve the China-Philippines relations, so Manila could get its share of the BRI investments (Ibid).

When Duterte entered his office in 2017, he announced the ambitious ‘Build, Build, Build’, a plan that Duterte’s regime called as “Golden Age of Infrastructure” is the largest infrastructure project in the Philippines history with a goal to spend an amount equal to 5,3 per cent of the country’s GDP to build a new infrastructure for itself (Estrada 2018). It is evident that the lack of proper infrastructure is one of the main reasons why the Philippines is falling behind in economic development compared to other ASEAN countries, but it is equally obvious that the Philippines cannot sustain such a huge project without foreign investment.

According to Duterte’s admission, one of the main reasons why the Philippines’s economy lags behind its peers in South East Asia is the poor state of infrastructure (Heydarian 2018). This made the Philippines a great subject for China’s BRI strategy and Duterte’s seemingly pro-China attitude provided a perfect opportunity for Beijing to use its political economy to strengthen its position in the SCS. In order to enhance the Chinese investments-originated initiatives, China’s Foreign Ministry warned the Philippines to discontinue any arbitration formalities in 2016, and Duterte’s administration response was to comply with China’s wishes, downplaying the tribunal’s verdict to the minimum and refraining from asking China to abide the tribunal’s decision (Ibid).

China-Philippine’s relations seemingly soared during the first’s years of Duterte’s regime, and the Philippines become a member of the BRI in 2017 (Rabena 2020). In 2018, President Xi paid a Chinese leader’s first visit to the Philippines in 13 years, followed by the signing of the Memorandum of Understanding (MOU) on the BRI, where China and the Philippines agreed to “encourage infrastructure cooperation and interconnectivity in transportation, telecommunication, and energy sectors” until end of the Duterte’s term in 2022 (Ibid).

The Philippines’ actions in the early years of Duterte’s era show that the BRI framework is an efficient tool for China to persuade other states to change their foreign policies to a more China-friendly direction. The rapid change of the Philippines-China policy is an evidence-gathering example of the soft power capability of the BRI framework as China’s lucrative investment promises were able to restrain the Philippines from defending its sovereignty in the contested areas. However, it has to be argued that the Philippines China policy has taken steps back since

the early dates of Duterte's regime as the promised Chinese BRI-originated investments are nowhere to be seen (De Castro 2020).

## **1.2. Brunei Darussalam**

Although Brunei cannot be classified as a major disputant in the SCS issue, the Chinese NDL claim still penetrates Brunei's EEZ in the maritime region north of the islands of Borneo (Putra 2020). The amount of natural resources of the small nation of Brunei is rather limited, the question arises why Brunei has been so silent about China's NDL claim that penetrates deeply in its EEZ. Brunei's foreign policy towards China is a political anomaly as states are not usually silent when other state claims a majority of their EEZ with a claim that is not based on international law (Oba 2019). The reasons for Brunei's reluctance to oppose the Chinese NDL claim are visible when analysing the importance of Brunei's trade with China for its economy. Brunei is an active participant in the OBOR initiative, and the bilateral trade of these states has been steadily increasing with an astonishing 49 per cent yearly rate since 1996 (Putra 2020). For Brunei, China is a major key in its attempt to diversify its economy while making it less dependent on oil drilling from where the nation's wealth originates from (Putra 2020). Arguably, Brunei is an example of China's evident economic assertiveness in a form where a state adjusts its foreign policy to be aligned with China's wishes without China's persuasion.

## **1.3. Cambodia**

Cambodia is one of the closest allies of China in South East Asia and China has invested approximately USD 500 million to Cambodia each year since 2010 and China is also the largest trade partner and source of foreign aid for Cambodia (Chen 2019). The OBOR framework has significant meaning for Cambodia's economic development and for China, Cambodia has been the crown jewel of OBOR's success since the initiative began in 2013 (Chen 2019). Cambodia itself does not play any role in the SCS, nor it has any contradicting claims with any other state in the region. Cambodia has still played an important part for China in its SCS strategy as a Chinese ally in ASEAN that has been trying to form a Code of Conduct for the SCS since the early 2000s. Cambodia's statements and actions in the ASEAN-led SCS Sea frameworks propose a good viewpoint for China's economic assertiveness policy in the SCS dispute.

When ASEAN tried to form a Joint communique (during the 2012 ASEAN Foreign Ministers meeting) to address China's actions in the Scarborough Shoal incident, it was blocked by Cambodia that acted as an ASEAN chair at the time (Roberts 2017). This was the first time in the ASEAN history when the organisation failed to deliver a Joint communique that is usually always given after all major ASEAN events (Roberts 2017). Also, when the Permanent Court of Arbitration gave its verdict on the Philippines Versus China tribunal in 2016, the Philippines and Vietnam wanted to issue a Joint communique by ASEAN Foreign Ministers to emphasise the need for respect of the rule of law referring to the verdict, but the communique was blocked by Cambodia (Mogato 2016). It is clear that in these instances, Cambodia acted as China's pivot state in the ASEAN meetings. For Cambodia, the price of China's investments in its economy is larger than ASEAN unity, and China does not hesitate to use this as leverage against ASEAN based SCS framework when needed. Cambodia's economic independence from China assures that Cambodia will remain loyal to China in the SCS dispute.

These three examples show us how China uses, either passively or actively, its economic resources to assert its dominance in the SCS. These examples also prove that this strategy works for third party states like Cambodia that has no reason to turn against China for sake of SCS or ASEAN unity, and also for states like the Philippines and Brunei that have overlapping claims with China in the SCS. The key asset in this Chinese soft power strategy is the BRI framework.

## **1.4 Vietnam**

Similar to the Philippines Vietnamese economy suffers from inadequate infrastructure. However, implementing the BRI initiative in Vietnam has not been an easy task for China. Vietnam is a perfect subject for China's BRI framework. Vietnamese officials have estimated that the country would need USD 105 billion for its infrastructure improvements projects during the next 10 years and up to USD 605 billion until 2040 (Duong 2020). Vietnam's distrust of backing mainly on Chinese investments on covering these enormous investments is understandable as Vietnam has seen how China other states have ended up in a debt trap with China and losing important infrastructure hubs to Chinese ownership. Vietnam has lagged behind in terms of Chinese investments under the BRI umbrella but in a survey made for top public and private sector leaders in the ASEAN region majority of the respondents saw Vietnam as a country that would benefit most from the BRI framework out of the ASEAN states (Ibid).

After two years of active negotiations, China and Vietnam signed the Memorandum of Understanding (MOU) on promoting the BRI and Two Corridors, One Belt initiatives (later TCOB) (Hiep 2018). TCOB initiative is a bilateral framework proposed by China in 2003 to integrate Northern Vietnam into China's Yunnan and Guansi regions (Ibid). The fact that it took 14 years to sign the TCOB shows the level of Vietnamese mistrust of China's development schemes. The implementation of these frameworks has not been a great success either, Vietnam has been the forefront actor within ASEAN states on pushing China back in the SCS territorial disputes. However, at the same time, Hanoi acknowledges China's importance as its main trading partner and source of much-needed funding especially for Vietnam's infrastructure projects the Vietnamese China relations can be described as "cooperation and struggle" (Grossman 2020). China's economic importance to Vietnam has however impacted how Vietnam responds to China's aggressions in SCS and it tends to downplay its responses to China in order to protect the bilateral relations with China (Ibid). This puts Vietnam in a difficult position where it has to balance between the SCS territorial disputes and the Chinese investments and trade relations.

## 2. CHINA’S CONCEPTION OF LAW OF THE SEA

United Nations Convention on the Law of the Sea (UNCLOS) is an international maritime legal framework that governs the uses of the ocean and its resources. It was signed and adopted in 1982. It has sometimes been referred to as a constitution of the oceans because of its broad scope that contains everything from fishing and oil drilling to maritime environment protection. Most importantly, it sets up a legal codification on different sea zones and the rights and duties of states in these zones. UNCLOS has been ratified by 154 states, including China and other coastal states around the SCS. However, the United States of America has never officially ratified UNCLOS, but it is one of the most focal defenders of UNCLOS, especially on the SCS. The UNCLOS-bound framework defines five maritime zones that form the UNCLOS regulation basis. These zones are Internal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), and high seas.

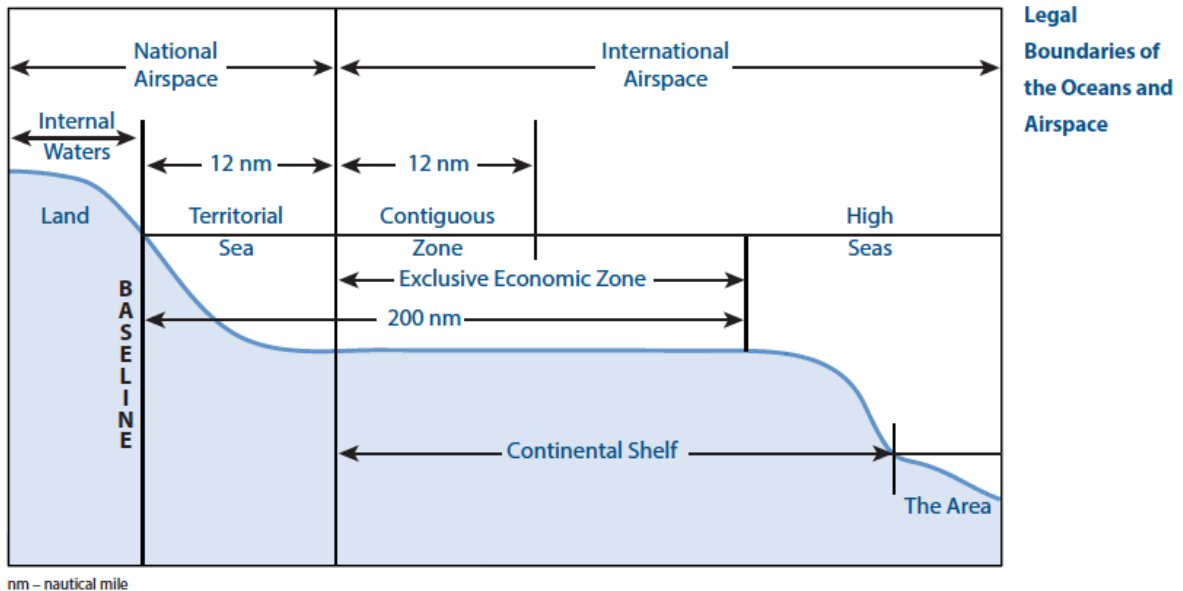


Figure 1. UNCLOS Legal boundaries of the Oceans and Airspace

Source: TUFTS university

**Baseline** is the “low-water line along the coast” from where the sea area widths are calculated (United...1982). Internal waters include all littoral areas between the shoreline and the baseline. Inward water areas from the coastline like bays and deltas are considered as internal waters that are considered to be inside the baseline (United...1982). **Territorial Sea** is a 12 nautical mile area that every littoral state has the right to and it is calculated from the baseline (United...1982). The Territorial Sea area includes the air space over the area and the subsoil beneath the seabed (Ibid). The state has an "unlimited jurisdiction" in its territorial waters’ overall activities in the area



(Williams 2014). Freedom of overflight or for freedom of navigation does not apply to the territorial waters except for innocent passage (Ibid). UNCLOS Article 18 states that ships of all states enjoy the right of innocent passage through the territorial sea of other states if the meaning of the passage is traversing the sea without stopping or proceeding in or out from a port facility inside the internal waters area (United 1982). UNCLOS chapter two, article 19 defines that “passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State” (1982). Article 19 further defines the activities that are not considered innocent passage. These activities include the use of weapons, research and surveillance activities, launching or landing aircraft or military devices, loading or unloading commodities, and fishing (Ibid). Innocent passage applies to all ships regarding cargo or armament, so warships are allowed to traverse through territorial seas of other nations as long as they comply with the meaning of innocent passage stated in article 19.

**Contiguous zone** is an extension of the territorial sea area that can reach up to 24 miles from the baseline. States have the right to exercise control of contiguous zone if it is necessary to prevent or punish violations of “infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea” (United...2014). **Exclusive Economic Zone (EEZ)** is an intermediary zone between territorial sea and high seas, and it can extend a maximum of 200 nautical miles from the baseline (United 1983). The coastal state has the exclusive right to explore, exploit and preserve all-natural resources inside its EEZ (Ibid). The coastal state has the right to establish and use artificial islands and structures inside its EEZ (Ibid). States are allowed to establish reasonable safety zones around the artificial islands and installations to ensure navigation safety and the safety of the artificial islands themselves (Ibid).

**Continental shelf zone** comprises the natural prolongation of coastal state land territory (United 1983). The continental shelf's maximum width is the outer edge of the continental margin and it shall not exceed 350 nautical miles (Ibid). The continental margin is the shallow water area that starts from the coastline and ends where deep seafloor or abyssal plains begin (Webb 2019). **High Seas** consist of all sea areas outside the 200-mile radius from coastal- and archipelago states (United 1983). High seas are freely open for everyone, and no state can claim areas of high seas to its sovereignty (Ibid). Article 13 of the UNCLOS defines Low-tide elevations as naturally formed areas where the landmass is above water during low tide but is submersible during high tide (United...1982). Article 13 is essential in the SCS dispute because most of the contested areas in the SCS are low tide elevation reefs or sandbanks. When low-tide elevation is wholly or partly

inside the territorial sea area calculated from the mainland or an island, “elevation may be used as the baseline for measuring the breadth of the territorial sea” (Ibid). When low-tide elevation is located outside of the territorial sea calculated from mainland or island, “it has no territorial sea of its own” (Ibid).

The definition of islands in UNLOS is that islands are “naturally formed area of land, surrounded by water, which is above water at high tide” and that the UNCLOS marine zones are calculated for an island like they would be calculated for any other land territory (United...1983). Article 121 also states that rocks that cannot sustain “human habitation or economic life of their own” are not entitled to EEZ or continental shelf but will only generate the 12-mile territorial waters area around it (United...1983). Article 121 makes a clear division of three types of land features in the sea, Low-tide elevations and two types of high-tide elevations that will be further divided with the capability for sustaining human habitation on their own.

## **2.1 Chinese interpretation of the UNCLOS**

China’s legal actions in the SCS dispute can be best explained with the idea of legal warfare. Legal warfare is one of the three categories of China’s Three warfare’s doctrine framework, in addition to public opinion warfare, psychological warfare (Livermore 2018). The function of the three warfare’s is to strengthen the Chinese Communist Party’s (CCP) legitimacy (Livermore 2018). For China, legal warfare is a function where China is “leveraging of existing legal regimes and processes to constrain adversary behaviour, contest disadvantageous circumstances, confuse legal precedent, and maximize advantage in situations related to the PRC’s (People’s Republic of China) core interests” (Livermore 2018). Because China sees the SCS as its core interest (Wingfield-Hayes 2014), any attempt to undermine China’s claim on the SCS is viewed in China as an attempt to challenge CCP’s legitimacy (Guilfoyle 2019)

China has tried to justify the NDL claim under UNCLOS with the reasoning that the islands in SCS are forming an archipelago, and China is then able to draw a baseline from the archipelago as one, not from the islands separately (United...1982). In the first draft of UNCLOS in 1975, China was able to push an article that stated that archipelagic states were “without prejudice to the status of oceanic archipelagos which form an integral part of the territory of a continental State” (unofficial...1972). If this sentence would have been in the final version of UNCLOS, China could

draw the baselines from mainland China around the alleged Chinese archipelagos of Paracel and Spratly islands, and so the NDL claim would have been somewhat compliant with the international law. However, this sentence was removed from further drafts from UNCLOS (Guilfoyle 2019) and the final version of UNCLOS states that only archipelagic states are allowed to draw the baselines around the archipelago itself, and the definition of an archipelagic state is a “state constituted wholly by one or more archipelagos and may include other islands” (1982).

## **2.2 China’s view on continental self**

In 2009 Malaysia and Vietnam sent a joint submission to the United Nations Commission on the Limits of the Continental Shelf (CLSC) to claim the area exceeding the 200-mile EEZ zone based on the UNCLOS Article 76, paragraph 8 (United...2011). China's response to the claim was that "China has indisputable sovereignty over the islands in the SCS and the adjacent waters and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" and the response continues that this position is widely acknowledged in the international community (United...2009). China also claims that the joint claim has “seriously infringed” China’s sovereignty in the SCS and that under article 5 of annexe I of Rules of Procedure of the Commission on the Limits of the Continental Shelf Commission should not proceed with the joint submission (United...2009). Article 5 of Annex I in Rules of procedure on CLSSC states that “in cases where a land or maritime dispute exists, the Commission shall not consider and qualify a submission made by any of the States concerned in the dispute” (United...2008).

In 2011, Chinese Foreign Ministry Spokesperson Jiang Yu stated that the Chinese claim in the SCS is based on historical evidence of Chinese presence in the area and that UNCLOS does not permit any state to extend its EEZ or continental shelf zone “to the territory of another country” and that UNCLOS “restrain or deny a country's right which is formed in history and abidingly upheld” (Embassy of...2011). The Chinese response reveals that China sees the whole SCS as its territory, and so it sees the claims made by other countries as direct violations against its territory and sovereignty. In the response, China provides a map of the 9-dash claim area, but it does not specify the exact coordinates of the area's edges or even the baseline where the Chinese area should be calculated.

### **2.3 The Nine-Dash claim in the eyes of UNCLOS: the Philippines versus China Arbitration**

China and the Philippines have overlapping claims on SCS, and China's NDL penetrates deep into the Philippines 200 nautical mile EEZ in Macclesfield Bank or what China calls Zhongsha Islands as part of its four Sha's claims (Guilfoyle 2019). China has also built a military installation in Mischief reef in Spratly islands, located just 130 nautical miles from the Philippines' Island of Palawan (Guilfoyle 2019). In July 2013, the Philippines commenced a case against China into UNCLOS Permanent court of arbitration (PCA) with a claim that China's NDL based on historical rights is not valid in UNCLOS legislation and that none of the islands in the contested area is large enough to generate the 200 nautical mile EEZ (Arbitration...2013).

Chinese lawfare strategies were instantly evident after the arbitration was commenced. First of all, China refused to participate in the arbitral tribunal and stated that the tribunal lacked jurisdiction to handle such claims because the case concerned two matters outside UNCLOS jurisdiction, historical titles that the NDL is based on, and sovereignty over maritime features (Arbitration...2013). By undermining the jurisdiction of the tribunal, China made clear that whatever the outcome of the tribunal is, it does not have any legitimacy, and it will not be obeyed by China. However, the Chinese attempt to undermine the juridical authority of the PCA failed on all accounts. When the Philippines brought the case to the PCA, it worded it so that the dispute is about the legal characterization of the maritime features and not about who has sovereignty over those features (Ibid). Tribunal's answer for China's claim that UNCLOS does not have jurisdiction over historical titles was that the exclusion of historic titles applies only to territorial seas or internal waters, and China has not claimed that the area inside NDL would be neither of those (Guilfoyle 2019).

The Chinese lawfare approach of not giving specified details about the limits of the NDL forced the tribunal to develop the limits of the Chinese claim by analysing the Chinese actions in SCS with respect to the UNCLOS. The convention ruled that China on many occasions assured that it would respect the freedom of navigation and overflight in the SCS, so it does not consider that area as its internal waters or territorial waters because freedom of navigation and overflight only applies to EEZ and continental shelf areas (Permanent court...2016). Tribunal also noted that China's actions are not in line with the historical reasons narrative because China has declared the baseline and territorial waters in Paracel islands, and China would not have to do that if China

would treat the whole NDL claim area as its territorial or internal waters (Permanent court...2016). Tribunal concluded that China's NDL claim considers Chinese sovereignty to the living and non-living resources in the SCS, so it can be assumed that China sees the NDL area as its EEZ and continental self-zones (Ibid).

Tribunal concluded that historical rights are not valid in UNCLOS and that by signing the UNCLOS, all historical rights China might have had are no longer legitimate (Ibid). Tribunal also conducted that the Chinese islands on Spratly cannot sustain human habitation so those will not generate EEZ around them and that the Chinese land reclamation in Mischief Reef inside Philippines EEZ is a violation against UNCLOS and causes severe harm to the maritime ecosystem (Ibid).

The Philippines vs. China arbitration case undermined the Chinese legal position significantly in the SCS. When China lost the case against the Philippines in the Spratly islands, it meant that the Chinese claim on Paracel islands as well because the Chinese claim there is based on the same historical rights narrative, and it reaches deep beyond the Vietnamese EEZ. The inconsistency of the NDL claim makes it weak and easily invalidated. However, regardless of the outcome of the Tribunal, it still is a great example of how flexible the Chinese NDL claim is and how China will always come up with new tricks in its lawfare game in an attempt to flex the law in Chinas favour.

## **2.4 From NDL & historical titles to Four Sha's & archipelagos**

After the lost arbitration case, Chinese lawfare tacticians have attempted to rephrase the NDL claim to make it more UNCLOS complainant. Instead of the approach of the historical title that took a heavy hit in the eyes of UNCLOS in the 2016 tribunal, China has built its SCS claim based on four islands groups, or Sha's in Chinese (Nguyen 2020). These island groups are Xisha (Paracel Islands), Nansha (Spratly Islands), Dongsha (Pratas islands), and Zhongsha (Scarborough Shoal and Macclesfield Bank) (Nguyen 2020). The reviewed claim, also known as four Sha's claims, was officially revealed in 2018 in a study published in the Chinese Journal of International law, and the new approach looks seemingly similar to the Chinese attempt made in the first draft of UNCLOS in 1972 as mentioned earlier in this paper, the argument being that China could draw a baseline from the mainland around each of the four archipelagos and then calculate the 200 nautical mile EEZ from that baseline (Guilfoyle 2019). However, like mentioned earlier, this approach is

blocked in UNCLOS from other than archipelago states (United...1983) and China by no means can qualify as one.

The Four Sha's claim, however, argues that there is a regime of archipelagos outside of UNCLOS that allows states to draw baselines around a group as a unit without any exclusion whether the state is an archipelago state or not (Chinese...2018). The study gives several examples of such occasions like Denmark and Faroe Islands, Ecuador, and Galapagos islands (Chinese...2018). All the examples given by Chinese scholars are from the early 20<sup>th</sup> century, way before UNCLOS was ratified, but the Chinese argument is that UNCLOS "has not exhausted this matter and does not address the regime of continental States' outlying archipelagos, as such" and that the "concept of the archipelago as a unit is well established in international law" (Chinese...2018).

The four Sha's claim can be seen as some kind of supplement for the NDL claim, and although it is based on islands rather than line painted at sea, it is still rather vague and leaves room for China's legal warfare strategies. If the claim is unclearly delimited, it also means that it is harder for other states to prove that it is invalid because China can and will come up with new definitions and laws that will suit its course. The Four Sha's claim is clearly framed in accordance with the Sansha city administrative control initiative. It is evident that the Sansha city administrative areas are going to be the baselines for China's SCS claim in the future. Combined with the development of the Sansha city project, the Four Sha's claim is going to be a true challenge for Vietnam and the Philippines, because, instead of the historical titles, the new claim is going to be based on Chinese civilians living in the contested islands and that makes the claim much more concrete.

## **2.6 Asserting administrative control through artificial islands**

The most eminent Chinese effort to legalise the NDL claim under UNCLOS legislation is China's island-building projects in the SCS. Since 2013, China has reclaimed at least 3200 acres of land in Paracel islands where the land reclamation projects have been mostly located but China has also reclaimed land in Spratly islands as well (China island...2021). The crown jewel of these projects is the Sansha city project on Woody Island in the Paracels, and the following part of this paper will explain how China has used its vast economic resources to build a fully functioning city in the SCS that will act as a juridical and administrative base for China's SCS operations. The land area of Woody Island itself is about 2,5 square kilometres, but according to China, the area that Sansha

city governs is more than two million square kilometres that effectively is the size of the whole of SCS within the Chinese claim (Haver 2021a). The Sansha city administrative area encompasses three of the four Sha's, Paracel's islands, Spratly islands and Zhongsha islands, also known as Macclesfield Bank and Scarborough Shoal (Haver 2021a), so the Sansha city is the administrative system built on the four Sha's idea.

Sansha city is a prefecture-level city that is second-level administrative level in the Chinese administrative system below the province (Chansoria 2020), so the Sansha city has an extraordinarily high position in the Chinese administrative system for being an island with around two thousand inhabitants. In early 2020 Sansha city got two new third level districts, Xisha and Nansha, Xisha district controls Zhongsha (Macclesfield Bank) and Paracel islands, and the Nansha District governs islands and reefs on Spratly islands (Xi 2020). The districts are further divided into four Townships and ten residential communities, being fourth and fifth levels of the Chinese administrative system. When the two districts were announced in 2020, Chinese officials stated that this action should not be "over-interpreted" because the reason for it is normal city development" and safeguarding territorial sovereignty (Xi 2020).

When the Sansha city administrative area was unveiled in 2012, the Hainan prefecture secretary stated that Sansha city was established to improve China's "administrative management" over Paracel, Spratly, and Zhongsha islands and the surrounding waters around these island groups (Haver 2021a). Since the establishment of Sansha city, Chinese officials repeatedly mentioned the concept of normalised administrative control over the SCS (Ibid).

Normalised administrative control is a system where China is building a fully functioning civilian society to the SCS with an administrative system like any other city in mainland China (Ibid). By creating the system of administrative control, China is stating that the SCS is a Chinese territory where Chinese officials enforce Chinese laws. The civilian administrative control is a vital part of China's Four Sha's strategy. First, it causes less harmful public interest in the international community than resorting to a show of military force. The second purpose of administrative control is to strengthen China's sovereignty in the disputed islands. The UNCLOS tribunal decision in 2016 affirmed that administrative control of an area is a sign of sovereignty that strengthens states claim on the area (United...2016).

To enforce administrative control, China has invested heavily in civilian and military infrastructure within the Sansha city framework. When Sansha city was established in 2012, the Woody islands where the actual city is located was largely undeveloped and heavily reliant on an external supply of food, water, fuel, and other necessities and the environment is hostile to human habitation due to the extreme weather conditions with constant typhoons and strong winds, and scarce natural resources (Haver 2021). After establishing Sansha city, Chinese officials launched a large-scale project to improve living conditions on Woody Island and in the neighbouring islands that the Sansha city governs, including harbours, hospitals, civilian housing projects, schools, etcetera (Ibid).

One of the most impressive achievements of China in Woody Island is the Smart microgrid system that provides a clean and stable source of locally made electricity by utilising wind, solar and wave energy generators. Smart microgrids are systems that enable local power generation, storage, and distribution without connection to a conventional centralised power grid, including modern smart Greentech control and sensor system that improves the efficiency of the system by optimising the control of the system. (Haver 2021) The smart grid system in Sansha city offers a model for other Chinese settlements in the SCS.

In addition to fishing and hydrocarbon resource exploitation China has invested heavily in tempting all kinds of Chinese businesses to do business in Sansha city. In 2019, there were 491 Chinese companies registered in Sansha city, and around 60 per cent of these companies are part of the "register in Sansha, pay taxes to Sansha, brand as Sansha, operate elsewhere" system where a company operates in mainland China but is registered in Sansha and pays the taxes to Sansha (Ibid). Chinese companies have also invested significantly in developing aquaculture in Paracel and Spratly islands with the "companies plus fishermen" initiative. For example, Hailan Blue Pearl Culturing Company Limited invested 3 million US dollars in developing an aquaculture project to farm sea cucumbers and pears in Spratly islands (Ibid).

Compared to the more traditional fishing industry where fishing boats and fishermen are constantly moving, the aquaculture industry is bound to a location and enables the development of permanent civilian establishments where they are located. With the use of aquaculture, China can populate smaller land formations in the Sansha city administrative area and thus enforce its claim in both Paracel and Spratly islands.



In addition to aquaculture, the second main interest of Chinese officials has been the promotion of tourism in the SCS. In 2016 Sanya International Cruise Development Co Ltd announced that it will buy five to eight ships that will operate solely in the SCS, and the first ship called Nanhai dream, (Nanhai is the Chinese name for the SCS) started cruises to Paracels soon after (Blanchard 2016). A good recent example of China's effort to promote tourism in the SCS was that the first commercial cruise after the 10-month covid-19 cruise halt was destined to the SCS when two Chinese ships Nanhai Dream and Changle Gongzhu, left the port of Sanya towards Paracel islands in December 2020 (Xu 2020). SCS cruises have a strong patriotic propaganda element and reports have stated that the cruise includes flag-raising ceremonies on islands claimed by China and patriotic history lessons (Wang 2021).

With this evidence, this paper argues that tourism in the SCS is targeted at mainland China residents, and it has two purposes. First, it enhances the local economy and provides working opportunities in the Chinese islands in the SCS. The second purpose is to promote patriotism and awareness of the SCS in China. Woody island can be seen as a showcase of China's greatness, and Chinese officials are utilizing local tourism to reap its benefits.

Sansha city is the least populated and smallest prefecture of China when the second least populated prefecture has 50 times more population and the second smallest has 83 times more land area (CGNT 2020). However, when the Sansha city water area is taken in the calculation, Sansha is the largest prefecture in China (CGNT 2020). It is evident that the Sansha city administrative system does not exist only to govern the local residents. It is hard to argue that the 2000 civilians that mostly live in the same 2,5 square meter island would need a four-level administrative system. The purpose of the Sansha city administrative area is to strengthen the Chinese claim in the three Sha's that Sansha governs. The administrative system's size hints that the Woody Island project could serve as an example of what China wants to achieve in the Spratly islands later on. This case study confirms that the administrative system for this expansion already exists.

### **3. THEORETICAL APPROACH AND DISCUSSION**

Social constructivism is an international relations' theoretical approach that focuses on "human awareness or consciousness" in the world political system (Jackson, Sorensen 2015, 210-215). Constructivism emphasises the importance of ideas instead of material power in international relations (Jackson, Sorensen 2015, 210-215). Constructivism sees that the international system does not exist by itself like a natural phenomenon, but it is a living and constantly evolving idea that is constructed by different ideas, beliefs, and concepts (Wendt 1992). The core idea of constructivism is that political actors do not always make rational decisions based on material or economic benefits or trade, but that identities and history are constantly shaping international relations (Ibid). From a constructivist perspective, ideas are shaping international relations, and international law is one tool for a state to promote or change the ideas (Guilfoyle 2019).

Constructivists think that shared understanding or intersubjectivity plays a key role in relations between political actors. That means that the relations between political actors are perceived by the shared understanding among the political community. The intersubjectivity downplays the dominance of the material and military power of a state in international relations since the shared understanding of ideas and concepts play a significant role in how states see each other (McGlinchey, Walters, Scheinpflug 2018). Contrariwise, if political actors do not have similar ideas and concepts on a particular matter, it causes mistrust and conflicting behaviour between the actors. For example, states sharing the idea of democracy and equal human rights have less tendency to end up in a conflicting situation with each other than a democratic state with a non-democratic state.

In another way, international laws are constructed by ideas, and if a state can promote new ideas, it can also then change international law. In the context of this research work's main theme, constructivism provides for a useful point of academic departure, claiming that different states (including those that are disputing something) can have a shared understanding in regards to how the other side can behave (Theys 2017, 36). As this paper points out, China sees international law, as well as the UNCLOS on this occasion, as a tool to justify its actions and, most importantly, its sovereignty over the SCS area.

Constructivists argue that states have multiple identities that are constructed through social interaction with other states and political actors. The idea that the state is acting based on a socially

constructed identity that can and will change over time leads to an assumption that states can influence other states and political actors by modifying their ideas and identities and thus creating Intersubjectivity between the states.

China's claim and interest towards the SCS are based on historical reasons and thus cannot be properly understood by realism or liberal IR theories that do not put much emphasis on the social construct of a state when analysing its motives. According to Chinese officials, China has a historical right to govern the SCS, and so all claims made by other states are direct threats to China's sovereignty (Panda 2015). If we studied this issue through realism, it would argue that China is motivated and guided by the power (Jackson, Sorensen 2015, 140-145) and the Chinese actions adventurous in the SCS can be explained by China's relative strength compared to the other states in the region. From a realism perspective, however, international law does not have any meaning for a strong political actor, but for China, it does. It could be argued that, for China, international law is a crucial way to strengthen its control over SCS. The realism viewpoint does not take the historical reasons in the count and studying China without understanding China's historical background and its great importance in policy making of China cannot achieve great results. For Beijing, the process of geo-strategically 'looking after' the SCS is almost a sacred duty and part of Chinese identity thus, China is not willing to scale back its activities even though the cost of the activities would exceed the rational level. Constructivism argues that "anarchy is what states make of it (Wendt 1992) whereas realists see that an anarchistic international system is the determining factor of states behaviour (McGlinchey, Walters, Scheinflug 2018).

This paper claims that China is downplaying the geo-strategic importance of the SCS issue. The case studies presented in this paper can be analysed with a constructivist perspective that what China does it does for changing the ideas and thinking of China and the SCS dispute to a form that suits China's needs. The first aspect of this question is China's soft power capability through its BRI framework. For China, the BRI framework is a soft power tool that in SCS dispute can be used to downplay the conflicting nature of the issue and promote the positive sides of the bilateral relations between the SCS littoral states. Unquestionably, none of other the SCS disputants could have any kind of chance against China in a military conflict but still, China is hesitant to cross the line that could escalate the issue to an armed conflict. The BRI framework that functions as China's main soft power tool for promoting its expansionism around the globe is a significant tool in the SCS dispute as well. The best way to promote cooperation and strengthen the ties between states is to promote trade and create win-win scenarios for all parties.

The data presented in this paper shows that China is using the BRI framework to divert the focus of bilateral relations towards trade and finance rather than the ongoing geopolitical issues in the SCS region. The data collected in this paper shows that when China uses force in SCS to gain an advantage in the dispute, the target states are tending to downplay their response toward China in order to protect the Chinese investments pouring into their economies.

The Philippines under Rodrigo Duterte's regime is a great example of China's BRI initiative in action on shifting the focus from China's expansionism to Chinese investments to the Philippines PPP program. When the Philippines took the SCS dispute to the UNCLOS tribunal, China's response was clear and strong, the SCS dispute is a bilateral issue between China and the Philippines, and no third-party actors should be involved. The Philippines paid the price of the tribunal on deteriorating China relations and increasing hostilities (De Castro 2020). With the Strategy of carrot and stick China made it clear that when President Duterte took office in 2016 he can either be a friend of China and drop further arbitration formalities or lose the Chinese trade and finance opportunities that were already offered within the BRI framework. In the case of the Philippines, this strategy has worked in China's favour and the Philippines has shifted closer to China's sphere of influence and further away from the United States that the Philippines has relied on for decades. If the Philippines has to choose whether to defend its rights to its EEZ or to get billions of Chinese investments to boost its economy the difficulty of the decision is just what China wants and so far, the Philippines's response has been to comply with China's wishes.

For China, the BRI framework is a soft power tool that in SCS dispute can be used to downplay the conflicting nature of the issue and promote the positive sides of the bilateral relations between the SCS littoral states. Unquestionably, none of other the SCS disputants could have any kind of chance against China in a military conflict but still, China is hesitant to cross the line that could escalate the issue to an armed conflict. China has had military clashes with Vietnam, but armed clash has followed a more peaceful time. The BRI framework that functions as China's main soft power tool for promoting its expansionism around the globe is a significant tool in the SCS dispute as well. The best way to promote cooperation and strengthen the ties between states is to promote trade and create win-win scenarios for all parties.

In the SCS dispute, China has a problem that it has to deal with both ASEAN and the SCS littoral states that excluding Taiwan are all members of ASEAN. It is evident that China wants to negotiate

with each state bilaterally but China's soft power through BRI helps it to deal with ASEAN as well. ASEAN member states that are not contestants in the SCS are fruitful targets for China's soft power. For Cambodia, the significance of Chinese investments and trade outpowers the Cambodian sympathy to ASEAN unity and China can count on that Cambodia will not support any multilateral statements against China in the ASEAN community. Thus, Brunei and Cambodia are both heavily bandwagoning on China and will not cause any problems for China in the SCS dispute. It can be argued that both countries have bought the Chinese idea of Chinese SCS and China seeks to reaffirm this behaviour to keep Brunei and Cambodia on China's side if ASEAN would try to unite its front against China. Like the evidence in this paper proves Cambodia is willing to sacrifice ASEAN unity to please China and then when ASEAN makes a joint statement about the SCS dispute Cambodia will make sure that the tone is within the limit that Beijing approves.

Both countries have the same reason for this behaviour, they have a lot to lose but not much to get when it comes to SCS dispute. Brunei and Cambodia are in a very different economic situations, but the similar behaviour is evidence that China's soft power in a form of economic opportunities is a universal tool. In the case of Vietnam, the effect of BRI soft power capability is not that significant from China's perspective but still, Vietnam holds a certain line in their response to Chinese aggression in Vietnamese EEZ.

The second aspect of the question of downplaying the geo-strategic importance of SCS is the lawfare tactics that China is applying on making the NDL claim to be compliant with the international law and thus changing the focus of the dispute from aggressive expansionism to question of interpretation the UNCLOS legislation. Constructivism is evident in China's actions in SCS in many ways as the previous chapters of this paper prove. China is willing to pour enormous amounts of resources to gain an advantage in the region, like, for example, the artificial island-building projects. These projects cannot be justified for economic or security reasons. This is a classic example of constructivism when the actions of a state are guided by social identity and history, and in the case of China, the SCS region has a significant role in China's identity. China is also strongly bolstering the nationalistic view of SCS.

When it comes to the question of legal measures that China is utilising to make NDL claim compliant with international law the Constructivism is evident in China's actions in SCS in many ways as the previous chapters of this paper prove. China is willing to pour enormous amounts of

resources to gain an advantage in the region, like, for example, the artificial island-building projects. These projects cannot be justified for economic or security reasons. This is a classic example of constructivism when the actions of a state are guided by social identity and history, and in the case of China, the SCS region has a significant role in China's identity. China is also strongly bolstering the nationalistic view of SCS. Because China's actions are based on national identity, it will not, nor cannot, make any concessions when it comes to SCS because that would be a blow against China's national identity and sovereignty.

China also seeks to exploit the weakness of the UNCLOS legislation that is an integral part of lawfare tactics. The fact that UNCLOS states that the commission will not consider submissions made by a state concerned in the dispute (United... 2008) in China's eyes renders the credibility of the tribunal decisions made on the SCS dispute. Because China evidently sees the SCS as an integral part of its territory that has belonged to China for hundreds of years its responses it can theoretically argue that no other state can make claims on SCS since UNCLOS states that EEZs cannot be claimed on the territory of another state. When it comes to China's effort to legitimise its NDL claim China is often seen relying on UNCLOS as a source of the legitimacy of the NDL claim.

The lost arbitration case against the Philippines due to China's failure to define its NDL claim properly has increased the phase of Beijing's effort to establish administrative control over SCS. As of today, the Philippines could not even bring the issue to the UNCLOS tribunal since China has enhanced its NDL claim and constructed island bases on the contested reefs and thus making sure that any following tribunals would be rejected based on the same technicalities that the Philippines used to make the tribunal happen. However, like the Philippines vs. China arbitral tribunal shows, China's lawfare strategies are not foolproof but still, China does not see that it would be doing anything wrong in the eyes of international law. From a constructivist perspective, this can be explained by the historical aspect of China's SCS claim. China does not say that international law does not matter, but it implies that other states are attempting to undermine China's authority through international law with false accusations.

China's effort to assert administrative control over SCS with its land reclamation and island-building projects are heavyweight examples of the magnitude of China's lawfare efforts. The core point of UNCLOS legislation on assessing the legal nature of an island is can it sustain human life without significant external help. When UNCLOS was drafted it is unlikely that anyone would

have foreseen that a state is willing to build a modern-day Atlantis in the middle of the ocean to just prove a point that the island is habitable and thus can be used as a baseline to draw maritime boundaries. The lengths of how far China is going on proving that SCS belongs to it shows that the reasons are not always based on reasoning. For China, it is about building an idea and reinforcing the historical claim that the sea has always belonged to China, and it will be part of China in the future as well.

## CONCLUSION

This paper had two research questions: 1) how China is attempting to communicate/cooperate with the other countries around the NDL in the context of gaining leverages in the dispute, and 2) what are the legal measures that China is utilising to make its NDL-bound claim compliant with international law.

To conclude, the findings of this paper argue that China is efficiently downplaying the geostrategic importance of the SCS dispute. Based on the research made in this paper it can be concluded that the answer for the first research question lays in Beijing's favourite BRI project that is used widely in Southeast Asia to sift the focus from China's expansionism in SCS to the benefits of Chinese investments and trade to the economies of the SCS littoral states. However, the future of the BRI framework as a main soft power tool for China is not necessarily that bright because, like this paper has shown, the implementation of the Chinese investments in the Philippines, Vietnam and Cambodia have all been a disappointment in all cases. If a significant portion of the investments made under the umbrella of BRI will fail and when the majority of the promised investments will never occur the BRI participant states begin to question the significance of the framework and seek investments from elsewhere. If the quality of the Chinese investments will not improve it is possible that both Vietnam and the Philippines will begin bandwagoning on the United States and that would be the worst-case scenario for Beijing.

For the second research question, this paper has provided solid evidence that China is using lawfare tactics to mend the UNCLOS legislation to its will in order to legitimise its claim on SCS. Differing from typical lawfare tactics China is also mending the natural form of SCS with its Sansha City Island building project that lays a foundation for China administrative control over the SCS. For China SCS is its own backyard that has always belonged to China and any actions against China's claim is an attack against China's sovereignty. This evidence strengthens the claim of this paper that Chinese actions are best described from a constructivist perspective. SCS is a sacred duty for China, and it will go to extreme lengths to defend its honour on the subject.

Due to the limitations of the scope of this paper further research of this issue could be conducted on how Beijing is pushing SCS contestant states from forming a mutual stance against China under the umbrella of ASEAN. The same tools that this paper has revealed for Beijing to shape the ideas and concepts of the SCS littoral states can be used to achieve a large variety of different political



goals and a deeper understanding of this phenomenon could make it easier to foresee what China might be doing in the future.

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