

National Law and Policy Developments

China's Claim on Traditional Fishing Grounds Located in the South China Sea

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Abstract. The government of the People's Republic of China (PRC) has strongly protested Indonesian fishing in the South China Sea, stating that it considered these waters to be a traditional Chinese fishing area. In fact, however, the area in question is within the Exclusive Economic Zone (EEZ) of Indonesia. This study aims to determine whether the determination of the boundaries of that EEZ was in accordance with the rights and obligations of Indonesia. The research method used was a normative law research, applying statutory and conceptual approaches. This article determines that a State's right within its EEZ is a sovereign right and that the claims of the traditional fishing ground of the South China Sea is not justifiable, from the perspective of international maritime law. The term "traditional fishing ground" is not used in the United Nations Convention on the Law of the Sea. The determination of fishing rights in a country's territorial waters or EEZ should be based on license by the State that has declared the EEZ. This analysis concludes that China's claims to the South China Sea as a traditional fishing ground has no legal basis. It also states that where a coastal country's EEZ includes a sea border with another country, the two should negotiate a bilateral agreement in accordance with applicable international law and make a commitment to mutual understanding and cooperation.

Keywords: EEZ, traditional fishing ground, traditional fishing rights

International law is the set of rules and regulations that bind and regulate the relationship between the State and other legal subjects in international life. International law includes inter-State law covering land, air, and sea. The regulation of a country's sea territory is determined based on international maritime law (Ochoa, 2018). The authorisation and utilisation of the sea by a country should comply with the provisions of international maritime law outlined in the United Nations Convention on the Law of the Sea 1982 (UNCLOS) (Ramlan and Fristikawati, 2018).

Both Indonesia and China have ratified (and agreed to be bound by) UNCLOS. As such, they must fully comply with its provisions. Unfortunately, not all countries that have ratified UNCLOS have in fact fully complied and one such noncompliant country is China. China has claimed

the area bounded by a "nine-dash line", which protrudes into the area which Indonesia has formally declared to be its Exclusive Economic Zone (EEZ). China based these claims on a historical allegation that the area was a "traditional fishing ground" of Chinese fishermen. This statement, however, has no basis in international law. According to Susi Pudjiastuti, Minister of Maritime Affairs and Fisheries of Indonesia, there is no support for this claim of "traditional fishing ground". Specifically, UNCLOS does not recognise the term "traditional fishing ground", using only the known and recognised term "traditional fishing rights" (Ekowati et al., 2018).

Each country must comply with international maritime law, as well as with their own and each other's relevant laws. Indonesia demonstrated its compliance by ratifying UNCLOS through Act No. 17 of 1985. Accordingly, relevant actions and authorisations must comply with UNCLOS. The

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Chinese government has strongly protested against the actions taken by the Indonesian Government, based on the Chinese claim that its fishing boats are operating in an area that was traditionally visited by fishermen of China (Rumata and Sastrosubroto, 2018).

China has claimed that the Chinese fishermen have fished in that region for a very long time, and consider it to be a Chinese traditional fishing ground (Purwono et al., 2018). The Government of Indonesia protested against this claim, alleging three kinds of violations:

- violation of the sovereign rights and jurisdiction of Indonesia on the EEZ and the continental shelf;
- violation of the law enforcement efforts of the Indonesian authorities conducted in the EEZ and on the continental shelf; and
- violation of the sovereignty of Indonesia's territorial sea (Ramlan and Fristikawati).

China's claim over the South China Sea is based only on historical and archaeological arguments. The historical evidence proposed by China supports its statement that country ruled the Spratly and Paracel islands (two island groups in the South China Sea) from 206–220 BC by offering as archaeological evidence the discovery of a number of goods that were apparently merchandise made in China during that time (Ramadhani, 2016).

The purposes of this study are to explain EEZ delimitation in line with the rights and obligations of adjacent or facing countries with regard to a declared EEZ, and also to examine China's claim of traditional fishing grounds in the South China Sea. The theoretical implications of this study are expected to contribute to scientific understanding and to the eventual solution of problems related to the settlement of the disputes in the South China Sea. This research is expected to serve as guidelines for interested parties in resolving this dispute (Ekowati et al.).

1. Research Methodology, Materials, Collection and Analysis

This research was conducted under the normative principle that views law as a rule or norm becoming a behaviour reference of each person or community. Normative legal research focuses on the inventory of positive law, legal discovery in cases *in concreto*, principles, legal doctrine, systematic law,

comparative law, the degree of synchronisation, and legal history. The method used was normative juridical research. This research involved a study of regulations and concepts of international maritime law (Harymawan and Nowland, 2016).

The study used the case/statute and conceptual approaches. The case approach performed was by examining the case of China's claim over the South China Sea and the incident with Indonesia; and the conceptual approach by reviewing the concept of international law, particularly the law of the sea (Nasih, 2014).

Primary legal materials used in this research were UNCLOS and two Indonesian laws: Law Number 17 of 1985 on Ratification of UNCLOS, and Law Number 45 of 2009 on the Amendment of Act No. 31 of 2004 on Fisheries. The study included, as sources of secondary law, books, the internet and law journals, as discussed below. Legal materials/documents referred to in this research, both primary and secondary, were then collected.

Those legal materials were then analysed, commencing with actions such as searching for the rule of law, classification, and systematisation of all legal materials so that there was a harmony to the issues discussed. The analysis of legal materials in this research used an inductive-qualitative method (Niyobuhungiro, 2019).

2. Literature Review

2.1 Exclusive Economic Zone

Article 56 of UNCLOS outlines the rights of coastal States to carry out exploration and exploitation of natural resources in their respective EEZs. This includes rights to conduct research on natural resources; to take measures for the conservation of natural resources; to exploit natural resources; and to establish and use artificial islands, structures and installations. Other countries also have rights regarding any EEZ, as well as responsibilities to the country that has declared the EEZ. The rights and obligations are in the form of having to comply with provisions that have relevance to the Convention (Basar and Zulkifli, 2019).

The sovereign rights granted to the country declaring an EEZ are based on international law – which again is UNCLOS, in this case as well. Those rights (exploration and exploitation, conservation,

and management of natural resource wealth from the waters, seabed, and the ground beneath it) are matters of sovereignty, and include exploration and exploitation activities such as water and wind energy production (Ramlan and Fristikawati).

2.2 Coastal State

Weatherbee argued that the coastal State's sovereign rights are essentially privileges to conduct the exploration of natural resources in the EEZ, in line with Article 56 of UNCLOS. As noted in Article 57, the maximum width of each coastal State's EEZ is 200 nautical miles. These limits can be used as a reference for coastal States to determine their sovereign rights over an EEZ region (Weatherbee, 2017).

2.3 Other Users within a State's EEZ

As explained in UNCLOS Article 62, users from other States are allowed to explore the natural resources in a country's EEZ only if they are granted permits to do so and comply with those permits, as well as the conservation measures, provisions and other requirements in the laws of the coastal State. Fishermen of other countries desiring to catch fish in the EEZ of coastal States must ask permission in advance. As noted in UNCLOS Article 58, other countries must respect and implement the rules applied by Indonesia as a "coastal State". Therefore, Indonesia has the authority to carry out arrest and security measures in its EEZ, in accordance with UNCLOS Article 73 (Adam and Chapsos, 2019).

According to Ramadhani, the process of determination of a country's EEZ must involve consideration of other factors – it should not be limited only to the will and claims of a country declaring the EEZ. This necessity is based on the simple fact that such a unilateral imposition of national will on an area beyond national jurisdiction would disturb the peace between the declaring country and other countries. As noted above, UNCLOS Article 57 states that the EEZ may not exceed 200 miles from the coastal base line from which the width of the territorial sea is measured.

2.4 Facing and Adjacent Countries

For countries whose beaches face each other, the first step is to determine territorial sea boundaries.

Starting from that territorial boundary, the determination of the EEZ must be based on agreement between the facing countries while still adhering to the international law (Ramadhani). As summarised by Yoshihara and Holmes, each coastal State has a territorial sea of up to 12 miles breadth, an EEZ, and may additionally claim a continental shelf of 200–350 miles.

To avoid various problems, UNCLOS and international maritime law practices have attempted to help in governing the determination of sea areas for coastal States that face each other across a narrow sea area, and coastal States that are adjacent. These rules are particularly relevant to Indonesia. The division of these sea areas is addressed in UNCLOS Articles 15, 74 and 83 (Yoshihara and Holmes, 2011).

3. Results and Discussion

3.1 No "Traditional Fishing Ground" Concept is Stated in International Maritime Law

The recognition of traditional fishing rights is stated in UNCLOS Article 47(6) as follows:

If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighboring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected.

The section also explains that the rights involved are those that are carried out traditionally.

Recognition of traditional fishing rights must be outlined in an agreement. Also related to the traditional fishing rights, UNCLOS Article 51(1) provides,

Without prejudice to article 49, an archipelagic State shall respect existing agreements with other States and shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States in certain areas falling within archipelagic waters. The terms and conditions for the exercise of such rights and activities, including the nature, the extent and the areas to which they apply, shall, at the request of any of the States concerned, be

regulated by bilateral agreements between them. Such rights shall not be transferred to or shared with third States or their nationals.

Thus, UNCLOS's recognition of the traditional fishing rights does not amount to a blanket protection of "traditional fishing grounds". Based on these articles, Minister Susi Pudjiastuti has stated that China's claim was a one-sided action and was not in accordance with UNCLOS which should be used as a legal basis for all the actions of all countries (Djakman et al., 2017).

3.2 Characteristics of "Traditional Fishing Rights"

UNCLOS does not explain the characteristics that can be used in the identification of traditional fishing rights. The lack of explanation is reasonable, in light of the fact that, under UNCLOS the determination of traditional fishing rights is based on agreements between the relevant countries (Guotu and Wangbo, 2010). The existence of traditional characteristics does not necessarily mean that a country is free to fish in another country – rights must be based on bilateral agreements.

Where their countries do not enter into bilateral agreements, foreign fishermen may not be allowed to catch fish operating in those parts of their traditional fishing territories that are within another country's EEZ, unless they individually obtain permission from the EEZ-holding country. That is what happened to eight Chinese fishermen who entered Indonesian waters and were then arrested around Natuna Island by the Indonesian Coastguard, as further described in part 4, below.

That arrest was justified based on the fact, as noted in a statement by the Indonesian Minister of Maritime Affairs and Fisheries, that Indonesia has entered into only one traditional fishing rights agreement – with Malaysia. China's failure to negotiate such an agreement with Indonesia, coupled with the fact that no claim of "traditional fishing grounds" is authorised in international maritime law (Adam and Chapsos), this meant that those fishermen were not authorised to fish in Indonesian waters.

UNCLOS, which has become a guideline for international maritime law, clearly does not recognise the concept of traditional fishing ground, but only recognises the term "traditional fishing rights". Its mention of "traditional fishing rights" emphasised the rights to fisheries carried out in an

area that is in the jurisdiction of a coastal State. This clearly applies to fishing in the waters of the Indonesian archipelago and EEZ (Basar and Zulkifli).

3.3 Comparing the Nine-Dash Line with Traditional Fishing Rights and their Limits

The term "nine-dash line" is a term used by China to denote its claim to an area that covers most of the territorial waters in the South China Sea. The nine-dash line map and its use have been rejected by several countries, including Indonesia on the basis that UNCLOS does not allow its underlying concept of "traditional fishing rights" to be used as justification for a unilateral claim of additional territorial waters, as China has attempted to do in the South China Sea (Weatherbee). Figure 1 shows the "nine-dash line" setting out the marine area that is claimed by China.

Like China's use of the term "traditional fishing ground", this use of the "nine-dash line" also applies principles unknown under UNCLOS. Interpretatively, in referencing the traditional fishing ground, it appears that China was attempting to reinterpret the concept of "traditional fishing rights", found in UNCLOS Article 51. As noted above, the nine-dash line is a unilateral claim to the ocean in the South China Sea; however, China has never given a concrete explanation about the status of the nine-dash line sufficient to enable all Parties to make their own interpretations.

Beyond this, the nine-dash line does not have a clear and binding legal basis, so it is sometimes nicknamed the "nine imaginary lines of China". Many countries feel disadvantaged by, and do not recognise, China's claim to these sea areas. One such country is the Philippines, which sued China in the Permanent Court of Arbitration (PCA) in the Hague (Ochoa). In that instance, the PCA refused to recognise China's claim, concluding that there was no legal basis for China in claiming its historical rights to extract natural resources in the maritime territory delineated by the nine-dash line.

On the map, the entire nine-dash line takes the shape of the letter U. It encircles 90 percent of the South China Sea, including the Spratly and Paracel islands in Viet Nam's territory and the Scarborough Reef in that of the Philippines, in addition to the Natuna Sea, which is within the Indonesia's EEZ.³³

According to the provisions of UNCLOS, the Natuna Sea is within Indonesia's EEZ and subject to

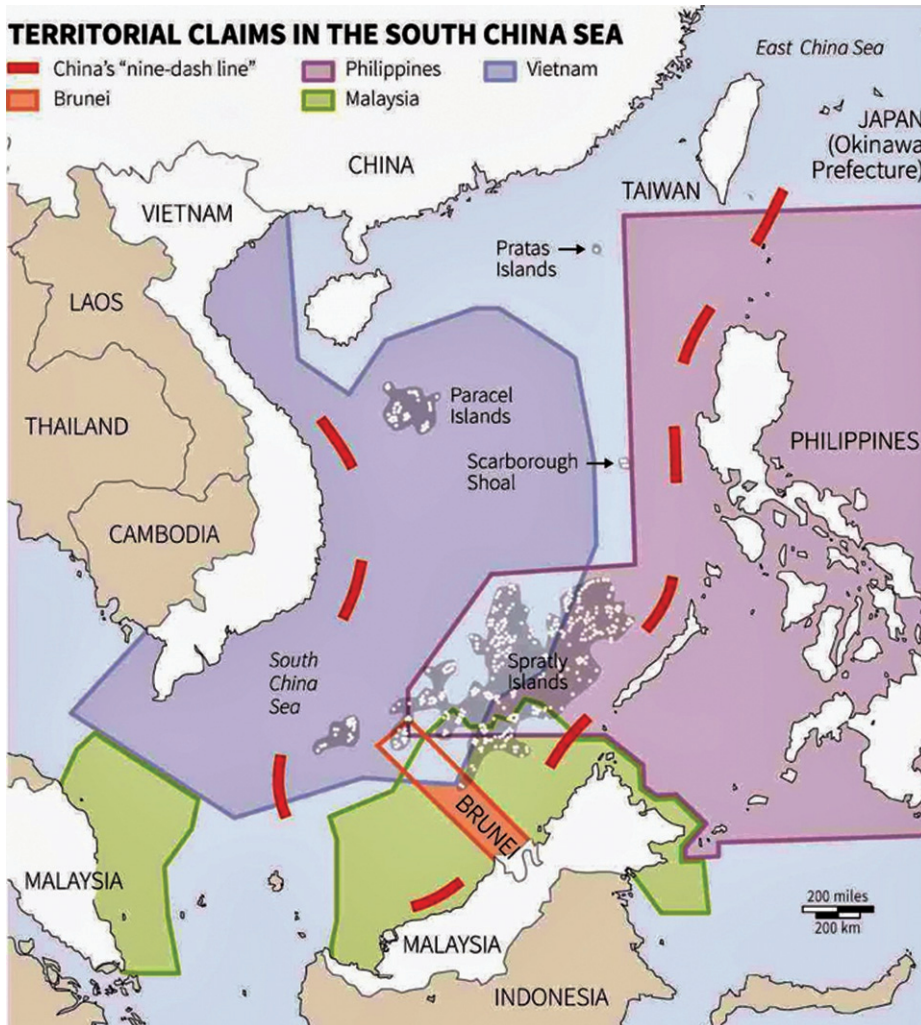


Fig. 1. The "Nine-Dash Line".

Indonesia's management authority. Thus, Indonesia rejects China's claim to the Natuna waters on the basis of its allegation that the area has long been used as fishing areas by Chinese fishermen. China's use of the term "traditional fishing ground" and the nine-dash line is contrary to international maritime law. At best, areas used by foreign persons with agreed traditional fishing rights within an EEZ would still be considered to be fishing within the territory of the country that has successfully claimed that EEZ. China is using the nine-dash line to claim that the seas it encompasses are part of China's territory, and thus give it the ability to implement its own policies within an area already allocated to Indonesia.

4. Indonesia's Action against China's Claim on EEZ in the South China Sea Region

The maritime disputes between Indonesia and China began with China's claim to the nine-dash line. This claim is not particularly new, but has always been based on historical reasons that had no international basis. As noted, the line juts into Indonesia's EEZ. Ramadhani stated that the nine dashes had unclear coordinates, sometimes China called them nine, ten, even eleven dashed lines. Incidents have often occurred in Indonesia's EEZ, in which Chinese fishermen were suspected that of fishing there without permission. For example, the Chinese fishing boat Kway Fey was arrested by

officers of the Ministry of Fishery and Marine Affairs (KKP), although the arrest was delayed until the ship was about to enter Indonesia's territorial sea. The ship was commandeered, and the captain and crew were taken for legal proceedings. While being towed by the KKP, the ship was rammed by the Chinese Coastguard, after which the Indonesian patrol boat abandoned the ship to the care of the Chinese authorities. Similarly, on 27 May, the Chinese fishing boat *Gui Bei Yu* was arrested by Indonesian Navy Frigate *Oswald Siahaan*. The captain, ship and crew were brought in for legal proceedings (Ramadhani).

The Chinese government responded to the incident by stating that Chinese fishermen should not have been caught by the KKP, because they were fishing in China's traditional fishing grounds. This claim is unjustified as discussed above. As noted, traditional fishing rights in another country's EEZ must be reflected in a bilateral agreement. To date, Indonesia's only bilateral agreement related to traditional fishing rights is with Australia (Scanlon, 2017). The dispute over the territorial boundaries of Chinese and Indonesian waters is only a continuation of China's claims of a traditional fishing ground and China's position is contradicted by international maritime law and Indonesian jurisdiction (Tarigan, 2018).

4.1 Territorial Boundaries of Chinese Waters

The territory of China does not cover the entire South China Sea, which stretches from the Southwest to the Northeast, from Singapore to the Taiwan Strait. In addition to Hong Kong and Macau, nine countries' territories border on this sea: Taiwan, Philippines, Malaysia, Brunei, Indonesia, Singapore, Thailand, Cambodia and Viet Nam. The area includes, *inter alia*, 200 islands and coral reefs that form the Spratly archipelago, across 810–900 km (Ramlan and Fristikawati). China's unilateral claim to the entire South China Sea area, based only on historical arguments, was therefore opposed by other countries who also felt they had rights to a portion of the South China Sea. These matters were canvassed on 30 November 2010, in an expert meeting initiated by Indonesia with the theme "Development in the South China Sea and Its Impact on Political Stability and Security in the Asia Pacific Region" in Bandung (Djakman et al.).

4.2 Territorial Boundaries of Indonesian Waters

Indonesia, as an archipelago, has the second-longest coastline in the world (81,900 km). Its sea area is bordered by at least ten countries, namely India, Thailand, Viet Nam, Malaysia, Singapore, Philippines, Palau, East Timor, Australia, and Papua New Guinea. The agreed boundaries of the Indonesian sea area directly bordering other countries can be seen in Fig. 2.

One country with which Indonesia does not share a (land or water) border, is China; although the nine-dash line has created a border dispute between the two countries.

5. Implications of South China Sea Claims for Indonesia

Although China and Indonesia are actually not neighbouring countries, China's claim to the South China Sea as a whole has implications for terrestrial Indonesia because it includes one of Indonesia's islands, the Natuna Island. In this way, China's claim to the South China Sea has disrupted Indonesia's political and economic interests.

According to the KKP report, Indonesia's economic interests in the South China Sea region include income from the oil, gas and fisheries sectors, as well as other marine biodiversity. In the oil and gas sector, Indonesia's EEZ in the South China Sea region holds a total reserve of 222 trillion cubic feet (TCF) and hydrocarbon gas of 46 TCF, which is one of the largest sources in Asia. From the fisheries sector, the KKP reported that the potential wealth of Indonesia's EEZ fisheries in the South China Sea region was 15,057.05 tons, of which only 379.90 tons were exploited.

The huge potential of oil and gas has provided an incentive to many countries to struggle for and claim the waters of the South China Sea. The large potential of Indonesia's EEZ fisheries in the South China Sea region has drawn many fishermen from several countries to come and catch fish, as shown by the two examples mentioned above. In those examples, Indonesia's apprehension of those Chinese fishermen led to protests from the Chinese government, claiming that the fishermen were fishing in the traditional Chinese fishing grounds. The protest from China over the arrest of its



Fig. 2. Territorial Boundaries of Indonesian-Chinese Sea. Source: Master Plan for Management of State Boundaries and Border Areas in 2011–2014.

fishermen was a diplomatic measure to protect its citizens (Grima and Thalassinou, 2018).

Indonesia further protested China's actions when, during the arrest process, the Indonesian patrol boat was disturbed by the Chinese Coastguard. Resource person, Intan I Soeparna, said that the actions of the Chinese ship proved that China did not have the goodwill to implement the provisions of UNCLOS. On this basis, Indonesia's Minister of Foreign Affairs formally protested through China's embassy in Jakarta. China's response appeared at least to acknowledge that Natuna was Indonesian (Springborg, 2018).

Indonesia's action at that time was to rely on diplomacy. In 2014, the Ministers of Foreign Affairs of Indonesia and China agreed to prioritise diplomatic efforts in completing the South China Sea disputes (Edy and Castleberry, 2019).

6. Conclusion

The rights and obligations of countries whose sea borders are adjacent to or face a country's EEZ are formally addressed through agreements between those countries, in accordance with applicable international law and commitments of mutual

understanding and cooperation. China has no such agreement with Indonesia regarding its claim of to "traditional fishing grounds" in Indonesian waters within the South China Sea. International maritime law recognises only the term "traditional fishing rights", and includes nothing indicating a unilateral right to claim "traditional fishing grounds". Accordingly, this analysis concludes that there is no legal basis for that claim.

Clearances

Ethical Clearance

This study does not involve any participants in the survey; instead it is a literary analysis study from a theoretical point of view. The present study was carried out in accordance with the research principles. This study implemented the basic principles of respect, beneficence, non-maleficence and justice.

Conflict of Interest

The authors believe that there is no conflict of interest.

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