

CHAPTER I

INTRODUCTION

1.1 Background

The South China Sea (SCS) dispute has been an ongoing topic of discussion in international agendas in the past decades, especially for the countries in the Southeast Asia region and other countries that have a border dispute with China. This dispute escalated as China accelerated its infrastructure development, technological advancement, and military presence in the SCS region. Indeed, this has brought concerns and criticisms from countries that are directly involved in the dispute such as the Philippines, Vietnam, Malaysia, Brunei Darussalam, and Taiwan.¹ The disputed islands or group of islands which are Spratly Islands, Paracel Islands, Pratas Islands, Scarborough Reef, James Shoal, and the Macclesfield bank are highly contested because of their abundance in oil, natural gas, and an important shipping lane in the region. This brings many reasons why this issue went into conflict, not only because of economic reasons but also political ones. The tensions in the SCS have several times resulted in rivalries and clashes in its maritime domain such as collisions between ships, several cases of fishermen abductions, expulsion, and warning shots on foreign ships that tried to get near the claimed maritime region.²

¹ SCMP Reporter, "Which Are the Key Countries in the South China Sea Dispute?," South China Morning Post, last modified February 16, 2019, <https://www.scmp.com/week-asia/article/2186449/explained-south-china-sea-dispute>.

² Cristopher Harres, "South Tiongkok Sea Dispute Timeline: A History of Chinese and US Involvement in the Contested Region," International Business Times, last modified November 18, 2012, <https://www.ibtimes.com/south-Tiongkok-sea-dispute-timelinehistory-chinese-us-involvement-contested-region-215849>.

The SCS dispute dates back to 1895 when the Sino-Japanese War ends, and China started to claim islands since 1974 which then they claimed Paracel Islands that were formerly parts of South Vietnam. However, because of early ambiguity and with the fall of Saigon, the negotiations for the United Nations Convention on the Law of the Sea (UNCLOS) did not address the issues concerning sovereignty in the SCS. The UNCLOS was finalized in 1982 with 167 countries ratifying as of now and China has ratified it in 1996.³ Despite their commitment by ratifying it, China had passed their own *Law on the Territorial Sea and the Contiguous Zone* in 1992. The set of laws that China made laid claims to the entire maritime zones, maritime features, islands, and baselines in the South China Sea that is based on its historical rights dating back to the Xia dynasty.⁴ These set of laws is not recognized nor justified by the UNCLOS.

Although the dispute mainly concerned with the maritime sovereignty of certain countries, extra-regional countries have also got involved, one of which is the United States (US). The US has been involved indirectly in the dispute since 1998, when China and the US sign a Military Maritime Consultative Agreement which aimed to build confidence-building measures and to prevent misunderstandings between both countries' naval forces. However, the stance changed when a US intelligence aircraft and China's Navy interceptor fighter jet

³ Xinmin Ma, "China and the UNCLOS: Practices and Policies," *The Chinese Journal of Global Governance* 5, no. 1 (2019): 15, doi:10.1163/23525207-12340036.

⁴ CFR, "Timeline: China's Maritime Disputes," Council on Foreign Relations, last modified July 15, 2020, <https://www.cfr.org/timeline/chinas-maritime-disputes>.

collided mid-air in the waters of SCS in 2001.⁵ Tensions have escalated since then, the US became more assertive in SCS in 2010, when former Secretary of State Hillary Clinton affirms America's interest in the "open access to Asia's maritime commons" during the Asian Regional Security Meeting in Hanoi.⁶

The SCS has emerged as an important issue for the US to pay attention to as US observers asserted that China is becoming more effective in gaining control in SCS which could affect the strategic, political, and economic interests of the US specifically in the Indo-Pacific region.⁷ Moreover, the SCS is the most heavily trafficked waterways in the world with an estimated \$3.4 trillion ship-borne commerce including shipment of supplies to US allies such as Japan and South Korea.⁸ Moreover, it is important to note that the US has important allies that are involved in the dispute which are the Philippines and Vietnam. The former US Secretary of State Mike Pompeo voiced US support for both the Philippines and Vietnam in his personal Twitter stating that 'America agrees with our Southeast Asian friends: the PRC's military exercise in disputed waters of the South China Sea is highly provocative,' and 'We oppose Beijing's unlawful claims.'⁹ They are

⁵ NY Times, "US. Plane In China After It Collides With Chinese Jet" (Published 2001), The New York Times - Breaking News, US News, World News and Videos, last modified April 2, 2001, <https://www.nytimes.com/2001/04/02/world/us-plane-in-china-after-it-collides-with-chinese-jet.html>.

⁶ "Remarks at Press Availability," US. Department of State, last modified July 14, 2010, <https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/07/145095.htm.2>.

⁷ Ronald O'Rourke, US. -China Strategic Competition in South and East China Seas: Background and Issues for Congress, (Congressional Research Service, 2022), <https://crsreports.congress.gov/product/pdf/R/R42784>.

⁸ Ben Dolven, Susan V. Lawrence, and Ronald O'Rourke, *China Primer: South China Sea Disputes*, (Congressional Research Service, 2021), <https://crsreports.congress.gov/product/pdf/IF/IF10607>.

⁹ US. Mission Laos, "Statement by Secretary Michael R. Pompeo, US. Position on Maritime Claims in the South China Sea," US. Embassy in Laos, last modified July 21, 2020,

also concerned about the fast-paced developments of China in the SCS that can further harm the region. The US interests in SCS can be structured into three categories including (1) economic interests, (2) defense ties with allies, and (3) implications to the balance of power.¹⁰ Thus, this proves that the US has always been interested and involved in the region's dispute since the very beginning.

However, the US is mostly concerned that China, by claiming historical rights, baselines of islands, maritime features, and maritime zones of the SCS through its nine-dash-line, China is violating international law, namely UNCLOS.¹¹ The US position on China's maritime claims in SCS is strict and fixed, that the US is and will continue to strengthen its policy in the SCS to make clear to China that its "claims to offshore resources across most of the SCS are unlawful, as it is a campaign of bullying to control them."¹² The US has upheld their *US Policy on the Spratly Islands and the South China Sea* since 1995 which seeks "to preserve peace and stability, uphold freedom of the seas in a manner consistent with the international law, maintain the unimpeded flow of commerce, and oppose any attempt to use coercion or force to settle disputes."¹³

<https://la.usembassy.gov/statement-by-secretary-michael-r-pompeo-u-s-position-on-maritime-claims-in-the-south-china-sea/>.

¹⁰ Wilson Center, "The South China Sea in Strategic Terms," Wilson Center, accessed November 23, 2022, <https://www.wilsoncenter.org/blog-post/the-south-china-sea-strategic-terms>.

¹¹ U.S. Department of State, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, LIMITS IN THE SEAS No. 150 People's Republic of China: Maritime Claims in the South China Sea, (U.S.: U.S. Department of State, 2022), <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf>.

¹² U.S. Mission Laos, "Statement by Secretary Michael R. Pompeo, U.S. Position on Maritime Claims in the South China Sea," U.S. Embassy in Laos, last modified July 21, 2020, <https://la.usembassy.gov/statement-by-secretary-michael-r-pompeo-u-s-position-on-maritime-claims-in-the-south-china-sea/>.

¹³ U.S. Mission Laos, "Statement by Secretary Michael R. Pompeo, U.S. Position on Maritime Claims in the South China Sea."

US has an important role in Asia, not only they are one of the countries that have formal defence/security alliances with its main allies such as South Korea, Japan, the Philippines, and Thailand, but also Southeast Asian nations such as Vietnam, Indonesia, and Malaysia, the US has an important role in working together with the Association of Southeast Asian Nations (ASEAN) to address regional challenges such as the SCS. The US stress the importance of close cooperation with its allies in Southeast Asia, whilst also promoting its Free and Open Indo-Pacific which further upholds the international rules-based order in the SCS region, hence its current strategy in countering China's claims through FONOPs.¹⁴

However, there are indeed multilateral efforts that have been made by the ASEAN and China through the Declaration of Conduct (DoC) in 2002, which the US supports the importance of it, however, it is not generally agreed upon. This declaration changed China's approach in SCS and created a foundation for ASEAN to negotiate diplomatically with China through dialogue. However, the declaration fell short of what ASEAN expected and seeks, which was China's commitment to establishing the Code of Conduct (CoC). Moreover, the declaration had a hard time establishing itself because of internal disagreements between Malaysia and the Philippines. Furthermore, there are also several bilateral efforts from the involved parties and China, for example, The Philippines under former President Rodrigo Duterte, formally established a Bilateral Consultative Mechanism (BCM) with

¹⁴ "The United States-ASEAN Relationship," United States Department of State, last modified August 4, 2022, <https://www.state.gov/the-united-states-asean-relationship/>.

China on the SCS dispute which was considered a game-changer in the approach between both countries in handling the dispute, through peaceful means.¹⁵ However, these efforts are still lacking in the eyes of the US, not only that the results of these efforts still fell short of ASEAN and the involved countries, China still takes the upper hand in this dispute, despite the unlawful claims.

The US further emphasizes that even though the dispute has been settled down through multilateral and bilateral efforts, the SCS issue is still considered a dispute under international law. As a response, China firmly opposes the US, claiming that their statements and condemnations as provocations. The US is geographically not involved in the dispute, however, with their presence in the region, China warns that the US' "provocations" will lead to a bigger conflict.¹⁶ Seeing these dynamics, the international community assumed that the issue is considered to be another US-China rivalry.¹⁷ However, the US has gained support from countries in Southeast Asia to help counter China, as a powerful country that upholds international law. Therefore, US involvement in the region is not a matter of the "US vs China" issue but a "China vs international law" issue.¹⁸

¹⁵ Rommel C. Banlaoi, ""The Bilateral Consultative Mechanism on the South China Sea and Philippines-China Relations", " ISEAS-Yusof Ishak Institute, last modified April 28, 2021, <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2021-51-the-bilateral-consultative-mechanism-on-the-south-china-sea-and-philippines-china-relations-by-rommel-c-banlaoi/>.

¹⁶ The Jakarta Post, "China Warns Top US General off 'arbitrary Provocations'," The Jakarta Post, last modified July 8, 2022, <https://www.thejakartapost.com/world/2022/07/08/china-warns-top-us-general-off-arbitrary-provocations.html>.

¹⁷ Wu Shicun, "US-China Rivalry Must Not Become Great Power Game in South China Sea," South China Morning Post, last modified April 19, 2021, <https://www.scmp.com/comment/opinion/article/3129895/us-china-rivalry-south-china-sea-must-not-turn-great-power-game>.

¹⁸ U.S. Department of State, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, LIMITS IN THE SEAS No. 150 People's

In 2016, the US stated that its involvement in the SCS is to make sure that the Freedom of Navigation (FON) is still operating. The US approach to FON is based on the UNCLOS and its national interest to preserve peace, freedom, and stability in the SCS. To support UNCLOS' FON policy, the US conducts its Freedom of Navigation Operations (FONOPs) which is a military operation backed by UNCLOS that the US has not yet ratified.¹⁹ The FONOPs program has existed since 1979 and was designed to challenge maritime claims that the US found inconsistent under international law.²⁰ This operation gives the US a right and immunity to sail and transit, been given navigational rights in every Exclusive Economic Zone (EEZ), archipelagic waters, and high seas.²¹

FONOPs are conducted in order to affirm that oceans are 'global commons' as it provides economic opportunities that lies beyond national jurisdiction and have a contested legal definition.²² China is one of the countries accused by others of violating UNCLOS with their unlawful claims in SCS, in response, the US justifies and asserts to keep tabs on SCS by conducting regular FONOPs to give a diplomatic

Republic of China: Maritime Claims in the South China Sea, (U.S.: U.S. Department of State, 2022), <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf>.

¹⁹ U.S Department of State, "Maritime Security and Navigation," U.S. Department of State Archive, last modified January 20, 2017, <https://2009-2017.state.gov/e/oes/ocns/opa/maritimesecurity/index.htm>.

²⁰ Tanya Mittal, "Troubled waters: FONOPS, UNCLOS, and global commons," Observer Research Foundation, last modified June 30, 2022, <https://www.orfonline.org/expert-speak/troubled-waters-fonops-unclos-and-global-commons/#:~:text=FONOPS%20gives%20the%20US%20the,waters%20anywhere%20in%20the%20wor.>

²¹ Mittal, "Troubled waters: FONOPS, UNCLOS, and global commons."

²² World Sustainable Development Summit, "Global Commons Beyond Sovereign Domains: Oceans, Atmosphere, Biodiversity and Our Heritage," World Sustainable Development Summit - WSDS 2023, last modified February 17, 2022, <https://wsds.teriin.org/global-common-beyond-sovereign-domains.php>.

messaging and conduct military deterrence in SCS.²³ However, FONOPs is technically not designed to do such, it is legal exercises to reinforce UNCLOS, FON, and the US' or the international community's interpretations of UNCLOS. China has escalated its sabotage on international treaties by not abiding to *The 2016 Permanent Court of Arbitration in The Hague* which was released after the Philippines filed a report to the UNCLOS. Moreover, China's activities in SCS has become more and more frequent, if not, regular in SCS. The US means to ensure and demonstrate FON as strategic partners in the region such as Japan, Taiwan, Indonesia, Malaysia, the Philippines, and Vietnam had grown concerned of China's island building and construction of military facilities such as airstrips in the islands of SCS.

China's claims in SCS through its nine-dashed-line roots back to the Sino-Japanese War in 1895, however, China started to become more aggressive in claiming SCS started in 2013 after several years of releasing documents, maps, and unclear historical rights claims.²⁴ Recognizing the concern, the US started its FONOPs in SCS in 2014 under the Obama administration until recently in July 2022 under the Biden administration. The presence of the US and FONOPs in SCS is important as an effort to not only challenge China's claims but also to support ASEAN, Asia-Pacific, Indo-Pacific, and most importantly the five countries that are directly involved in the dispute. As a reminder and reinforcement of an

²³ CSIS, "The US. Asserts Freedom of Navigation in the South China Sea," Asia Maritime Transparency Initiative, last modified October 27, 2015, <https://amti.csis.org/the-u-s-asserts-freedom-of-navigation-in-the-south-china-sea/>

²⁴ Baruch Boxer, "China's island frontier. Studies in the historical geography of Taiwan," *Journal of Historical Geography* 9, no. 3 (1983): 333-359, doi:10.1016/0305-7488(83)90205-0.

international law that is present to oversee and manage China's aggressiveness, FONOPs became an ideal method while searching for a solution to this dispute. Hence forth, noticing that US' FONOPs strategy started in 2014 and is still ongoing until now it is appropriate to put the year 2014-2022 as this research's time frame. Therefore, this paper will explore and analyze "The United States Freedom of Navigation Operations (FONOPs) in Confronting China's Claims in The South China Sea (2014-2022)".

1.2 Research Question

Based on the described background, it is understood that China's claims over the SCS region have been a concern since 1974, especially for the regional states. However, it is not until 2013 that the FONOPs started its routine operations in the SCS region alongside President Obama's Pivot to Asia. Henceforth, this research aims to answer the following research questions that focus on the year 2014-2022:

1. What are the reasons for the US in choosing FONOPs as its strategy in confronting the dispute in SCS?
2. In what ways does the US use FONOPs in confronting China's unlawful claims in the SCS?

1.3 Research Objective

The research is conducted with objectives as follows:

1. To explore China's unlawful claims in SCS and the US' position, approach, and strategy by choosing FONOPs in countering the dispute.

2. To examine the US policy in using FONOPs including their developments, results, and implications over its activities in the SCS from 2014-2022.

1.4 Research Significance

The research and its findings will provide an understanding of FONOPs' significance specifically within the context of the dispute in SCS. Besides explaining FONOPs in SCS, this research will explore China's unlawful claims in SCS, when it begins, and examine the recent situation in SCS. By doing so, this research will provide a detailed explanation of China's inconsistency with international law which will create a foundation (or reason) to explain the importance of FONOPs. Furthermore, this research will examine both China's and US national interests in this dispute. As well as exploring the support, interests, and concerns of the regional players such as ASEAN and the five involved countries namely the Philippines, Malaysia, Vietnam, Brunei Darussalam, and Taiwan.

The findings in this research will provide a deeper understanding of the ongoing dispute and how China's unlawful claims are becoming more and more alarming to the region. Moreover, this research's explanation of FONOPs in SCS and their importance in the region will provide an understanding of the US and international law's position towards the SCS dispute. Most importantly, this research aims to be helpful and informative for international relations students, lecturers, and researchers for additional knowledge and references for future research related to topics on the SCS dispute and FONOPs.

1.5 Structure of Writing

This research will be structured following the requirement of thesis writing requirements provided by the International Relations Department, Faculty of Social and Political Sciences, Universitas Pelita Harapan. This sub-Chapter will provide an outline that aimed to help the readers to understand the flow of the thesis, its discussions, and its arguments. The thesis is divided into five Chapters which are as follows:

Chapter I: Introduction

This Chapter includes the background of the SCS dispute and a brief introduction to the US involvement in the dispute. Followed by a background of the US' strategy to uphold UNCLOS through its FONOPs. This Chapter also includes the research questions, research significance, and the structure of the thesis.

Chapter II: Literature Review

This Chapter will provide the foundations for the research, by collecting scholarly writings to construct the literature review. This Chapter reviews previous research, scholarly data, and government publications and/or documents regarding similar/related issues of China's unlawful claims in SCS and the US' FONOPs in SCS. This Chapter will also include theoretical and conceptual basis such as key terms and definitions to support analysis in the upcoming Chapters.

Chapter III: Research Methodology

The third Chapter explains the process of creating this research. This Chapter will provide information on the research approach, data collection process, identification of sources, and the analysis method for this research.

Chapter IV: Result and Discussion

This Chapter will be the heart of this research as it will provide discussion and analysis on the topic. This Chapter will dive deeper into an analysis of the SCS dispute and FONOPs' contributions and efforts, results, and implications in confronting China's unlawful claims in SCS. It will be analyzed using the relevant theories and concepts that are explained in Chapter II of this research and answer the formulated research questions in Chapter I.

Chapter V: Conclusion and Recommendation

The last Chapter will be the conclusion to the findings and analysis of this research. This Chapter will conclude this research by restating the findings and main arguments of the research that is compiled and analyzed from the Chapter I to Chapter IV.

Moving forward, the next chapter will further delve into the substantial part of the research and the findings from the collected secondary data that relates to this research's topic in order to provide a strong foundation for analysis in the upcoming chapters.