

# Exclusive Economic Zones in the South China Sea and the Eastern Mediterranean Sea: A Comparative Study on a Strategic Issue

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**Abstract:** *Driven by the friction in the South China Sea between China and other coastal states, this article briefly compares the South China Sea to the Eastern Mediterranean Sea and identifies similarities, threats and opportunities between the littoral countries regarding the delimitation of their EEZs as well as risks for global powers to be drawn into a crisis or conflict regarding these matters. It also provides some recommendations to solve friction and disputes based in the United Nations Convention on the Law of the Sea.*

**Keywords:** Exclusive Economic Zones, UNCLOS, South China Sea, Eastern Mediterranean Sea

## 1. Introduction

On November 1994, the United Nations Convention on the Law of the Sea (UNCLOS) came into force and today 167 countries have ratified it.<sup>1</sup> UNCLOS regulates all issues relating to the law of the sea, and defines in detail the legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil, of the exclusive economic zones (EEZ), of the continental shelf, and of the high seas. The convention outlines the boundaries of the above areas and zones and describes what constitutes a state's EEZ and an island (figure 1).

A state's EEZ is the area beyond and adjacent to the state's territorial sea and the high sea limited to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In the EEZ, "the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources."<sup>2</sup> Islands are naturally formed areas of land, which are above water at high tide and have territorial sea, a contiguous zone, their own EEZ and continental shelf as any other land territory.<sup>3</sup> On the contrary, "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

Driven by friction in the South China Sea between China and the other coastal states, this article recounts the significance of the UNCLOS as important contribution to the world's "maintenance of peace, justice and progress."<sup>4</sup> It briefly compares the South China Sea to the Eastern Mediterranean Sea to identify similarities, threats and opportunities between the littoral countries regarding the delimitation of their EEZs. It also examines risks where global powers can be drawn into a crisis or conflict regarding these matters. In the end, it provides some recommendations to solve coastal countries claims or disputes over the delimitation of their EEZ based on UNCLOS provisions.

Mankind has used the sea for millennia. Alfred Thayer Mahan, the great American naval strategist, first described it as a "commons" for use by all.<sup>5</sup> Over time, activity in the

commons became governed by, and rights of those using the sea were developed through, customary practices that become well known as the use of the world's oceans advanced. This customary law of the sea was codified in UNCLOS. The Convention established an agreed to legal framework based on a system of rights and duties for coastal states.<sup>6</sup> Part of the legal framework defined a state's EEZ as a way of recognizing that coastal countries have "sovereign rights" over a portion of their contiguous commons. The concept was first introduced by the Kenyan delegation to the Asian-African Legal Consultative Committee in 1972.<sup>7</sup> The notion of an area in which states exercise some "sovereign rights" extending 200 nautical miles seaward from the coast rapidly gained international acceptance to the point that it was made part of UNCLOS just 22 years later. But like all laws, the concept and definition of an EEZ has led to disagreement and conflict because of dissimilar interpretations by coastal countries.<sup>8</sup> Friction exists mainly in:

- a) Maritime boundary demarcation and EEZ delimitations between coastal countries. The delineation of these maritime zones includes both geographical challenges and legal issues.<sup>9</sup> Countries use different methodologies to solve disputes<sup>10</sup>. Arbitral tribunal rendered award on disputes many times in the past. For example see the Bay of Bengal Maritime Boundary (Bangladesh v. India).<sup>11</sup>
- b) Freedom of navigation and overflight. UNCLOS established a clear framework for freedom of navigation in EEZs through Article 58 which states: "In the exclusive economic zone, all States ... enjoy ... freedoms of navigation and over flight..." Several countries, most notably China, have very different interpretations of this wording and seek to restrict these freedoms. The need exists, therefore, to establish principles of common understanding regarding certain aspects of navigation and over flight in the EEZ.<sup>12</sup> This will likely be accomplished through tribunal.
- c) The protection of marine environment and resources by coastal states in their EEZs.<sup>13</sup> This will become increasingly important of EEZs as the global climate continues to change.

**The South China Sea and Littoral States' EEZs Friction**

Although UNCLOS provides the analytical legal framework for establishing an EEZ, in the South China Sea, six littoral states have raised overlapping claims to its maritime space. These are China, the Philippines, Vietnam, Malaysia, Brunei, and Taiwan. On May 7, 2009, Vietnam and Malaysia, both signatories to UNCLOS, sought to extend their continental shelves into the South China Sea and exercised their rights in Article 76 and Annex II of UNCLOS, through a submission to the UN Commission on the Limits of the Continental Shelves.<sup>14</sup> China, also a UNCLOS signatory, stated that such a request infringed on its historical rights in the region and submitted to the Commission a map consisting of a nine-dash line (figure 2) encompassing the majority of the South China Sea, including the Paracel and Spratly Islands, claiming their own EEZ and those of other states, as well as a substantial volume of high seas, as territorial waters.<sup>15</sup>

This event signaled the beginning of territorial disputes in the South China Sea and of overlapping EEZ claims. It also triggered a regional response and U.S. involvement because China declared that it had the right, among others, to regulate the activities of foreign military forces operating within its EEZ.<sup>16</sup> UNCLOS is clear that while establishing an EEZ provides some "sovereign rights," EEZs do not produce "territorial sovereignty".<sup>17</sup> This is an important legal distinction. The U.S. has therefore stated that it takes no position on competing claims of sovereignty over disputed areas in the South China Sea which should be resolved under UNCLOS.<sup>18</sup> However, the United States rejected China's claims over its rights on regulating military activities in its declared EEZs as opposed to the application of international law (the U.S. is not a UNCLOS signatory). The U.S. continues to conduct naval and military aviation activities in this zone.<sup>19</sup>

Meanwhile, South China Sea littoral countries as well as the U.S. have been involved in numerous incidents with China in the South China Sea that have increased friction. In an effort to resolve the dispute, the U.S., the Japan, and the Association of Southeast Asian Nations (ASEAN) took initiatives together with states in the region to reach agreement, but without tangible results. Since 2013, China, and a few other littoral countries in the region, have initiated land reclamation efforts in the Spratly Islands, including the construction of military facilities and runways, in attempt to bolster their regional position and enhance power projection capacity in the region.<sup>20</sup> China uniquely complements its land reclamation effort through the aggressive use of its state sponsored fishing fleet of 50,000 vessels and coast guard acting as maritime militia.<sup>21</sup> China is using these hybrid schemes, along with its rapidly modernizing and expanding navy, to pursue a strategy of meeting its maritime security interests in the areas defined by the "first and second island chains."<sup>22</sup> Moreover, China's land reclamation is effectively destroying much of the fragile ecosystem in the region and damaging the maritime environment. In this context, disputes in the South China Sea have expanded to involve various claims from numerous littoral countries. To clarify these claims and disputes, it is essential to determine what islands, e.g. the Spratly Islands, meet UNCLOS criteria in order to be eligible for territorial sea, contiguous zone, and EEZ status. With regard to land reclamation efforts, UNCLOS makes

clear that artificial islands may be constructed but do not possess the status of islands.

**The Eastern Mediterranean Sea and Littoral States' EEZs Friction**

On the other side of the world, the Eastern Mediterranean Sea encompasses eight littoral countries. In this region, Cyprus, Egypt, Greece, Israel, Lebanon, Libya, Syria, and Turkey have EEZ rights under UNCLOS. Uniquely, the Mediterranean Sea contains no waters beyond the 200 nautical mile EEZ limit set by UNCLOS. The determination of EEZ boundaries between the coastal states is therefore a matter of appropriate declarations and delimitation agreements consistent with UNCLOS principles, or tribunal findings. Cyprus has already declared and signed bilateral EEZ delimitation agreements with Egypt, Israel and Lebanon (figure 3) while it participates in a trilateral forum with Egypt and Greece to delineate the respective EEZs.<sup>23</sup> Meanwhile, Turkey (not a UNCLOS signatory), which continues to occupy the northern part of the island Republic of Cyprus, is opposed to the EEZ delineation treaties that Cyprus signed with Egypt, Israel and Lebanon.<sup>24</sup> Turkey considers the Cyprus occupied territories as an alleged "independent state" with its own "territorial rights" under UNCLOS.<sup>25</sup> Turkey also claims that three Greek islands in the Dodecanese that in all probability meet the definitional criteria under the UNCLOS legal regime, namely Kastelorizo, Ro, and Strongyli, should have no influence on the boundaries of the Greek EEZ in the Eastern Mediterranean Sea because they present a lawful barrier to the geographic extension of Turkey's EEZ.<sup>26</sup>

Additionally, Israel continues to control all the natural resources which would nominally fall under Palestinian Authority jurisdiction (a signatory member to UNCLOS) in the Gaza Strip, e.g., undersea natural gas deposits off the Gaza coastline.<sup>27</sup> Israel also differs with Lebanon over the delimitation of their respective EEZs, a dispute that risks military escalation in the future as undersea natural gas deposits have been confirmed within the Lebanese EEZ.<sup>28</sup> Additionally, the U.S. Navy identified both Egypt and Syria as countries that improperly claim the right to regulate not only economic activities, but also military activities in their EEZs.<sup>29</sup>

In November 2019, Turkey and Libya's internationally recognized government have signed an illegal agreement on maritime boundaries in the Mediterranean Sea that complicates Ankara's disputes over energy exploration with other countries in the Eastern Mediterranean Sea, as it is not taking into account the legal rights of Greece and Cyprus in the region under the UNCLOS context.<sup>30</sup>

**Challenges, Opportunities and Risks in Both Seas**

The reasons behind this friction and the disputes in both the South China Sea and Eastern Mediterranean Sea are numerous, but there are several that stand out. First, there are conflicting economic interests. Both regions potentially contain significant undersea oil and gas exploration areas that motivate the corresponding claims of littoral countries. These undersea oil and gas deposits would provide these littoral countries with energy security and needed economic growth. Both regions contain significant fishing grounds which are of

great importance, especially in the case of the South China Sea. Secondly, both seas involve significant international trade routes. The Strait of Malacca in the South China Sea and the Suez Canal in the Eastern Mediterranean Sea are shipping routes of global importance for commerce and the passage of hydrocarbons from and to all the continents. Lastly, countries in the South China Sea (e.g., China) and Eastern Mediterranean Sea (e.g. Turkey) may seek to increase their diplomatic and economic instruments of national power by exercising a greater degree of control over their adjacent seas at the expense of neighboring littoral states. A fundamental concern is that these actions could then prompt the use of the military instrument of national power, especially in the case of China moving warships and fighter aircraft to artificially built structures in the South China Sea.

The ongoing maritime friction both in the South China Sea and the Eastern Mediterranean Sea could lead to crises or armed conflict between the coastal countries, which in turn may lead to intervention by global powers. In the South China Sea, the ongoing maritime disputes could provoke war between the coastal countries such as China, the Philippines, Vietnam, Malaysia, Brunei, Taiwan, and Japan.

U.S. intervention should be anticipated because of existing collective defense agreements with many countries in the region (e.g., the Philippines Treaty, the Japanese Treaty, and the Southeast Asia Treaty).<sup>31</sup> The rise of China as a maritime power has taken form in a way that is not consistent with the historical rise of Western maritime powers. Even Japan's rise in the interwar years took a Western character replete with battleships and aircraft carriers. China is building conventional hardware, to be sure, but is also building "islands" in the South China Sea to use as ships.<sup>32</sup> China is likewise employing paramilitary forces, anti-access/area denial (A2/AD) weapons, and aggressive diplomatic, informational and legal posturing as part of an inventive hybrid strategy. Only the U.S. can counter China's rise, and the U.S. can only do so with the assistance of its allies and partners. Beijing is driving these allies and partners in East Asia closer to the U.S. by its aggressive actions. The U.S. has been slow to recognize and take advantage of this manifestation which could provide benefits beyond simply building more military hardware to counter China's aggressive actions. By comparison, the situation in the Eastern Mediterranean Sea is more mature and the structure of alliances is more developed. Although U.S. allies are in themselves in disagreement over maritime claims in this region, like in the East China Sea, the U.S. has used the NATO alliance structure to prevent the very behavior the China is undertaking in the South China Sea. The situation with China is unique, and rising power relations must be managed carefully. The same is true on the other side of the world, although in a different way.

In the Eastern Mediterranean Sea, the friction over EEZs and their actual and potential undersea energy resources could result in active confrontations where the militaries of Greece, Turkey or Israel could be called upon to play appropriate roles. Hellenic Navy warships have intervened a number of times when Turkish Navy warships attempted to interfere with lawful undersea seismic energy exploration within the Greek EEZ. The dispute over the delimitation of the Israel-

Lebanon EEZs could also escalate to conflict. These potential clashes would draw the attention of NATO because Greece and Turkey are members, of the U.S. because it has a vital interest in Israel's security, and of Russia that has established strong A2/AD capability in the Eastern Mediterranean Sea due to its ongoing involvement in the Syrian crisis.<sup>33</sup>

### The Way Forward

To avoid escalation in both regions, coastal countries should seek to solve their claims and disputes through UNCLOS and established International Law mechanisms. UNCLOS provides a legal framework to solve disputes but it does not have a coercive mechanism to bring disputing countries before a court, nor does it have an enforcement mechanism to implement judgements once they are reached. The U.S., as the world's superpower, should support UNCLOS and its system of international order to be successful.<sup>34</sup> U.S. participation in UNCLOS bolsters a potential United Nations effort to create an enforcement mechanism to bring coastal disputing countries to court and administer its verdicts.<sup>35</sup> In this context the U.S. should ratify UNCLOS to have a "seat at the table," support its mechanisms and influence coastal countries to solve their disputes peacefully.<sup>36</sup> The active diplomatic dialogue would enable the U.S. and the disputing countries to obtain "real knowledge of each other" and reach consensus easier.<sup>37</sup> The U.S. has clearly denounced coercive and assertive behavior in the air and maritime environment in the South China Sea, which should also create an analogy for the Eastern Mediterranean Sea.<sup>38</sup> Such a stance would increase U.S. credibility and set the example for countries to avail themselves of the universally accepted legal framework in UNCLOS. It also would facilitate countering transnational organized crime on high seas as well as in countries' exclusive economic zones or territorial sea (e.g., countering piracy off Somalia), or better regulating the constant changing sea status in the Arctic Ocean.<sup>39</sup> Driven by U.S. example, disputing coastal countries would more easily accept the UNCLOS governing legal framework to solve their disagreements over various maritime issues such as use of their EEZs in accordance with the Convention's legal regime. The U.S. should also take advantage of willing partners and allies in East Asia to collectively and cooperatively counter China's aggressive expansion.

## 2. Conclusion

This article briefly compared the South China Sea to the Eastern Mediterranean Sea and identified potential disputes over the delimitation of EEZs that can escalate into armed conflict. UNCLOS provides the legal framework for disputing coastal countries to resolve their claims and disputes. A credible mechanism compelling countries to bring their disputes before the International Court to resolve their claims, and enforce where necessary, is essential for the treaty to remain relevant. U.S. participation in UNCLOS could facilitate the creation of such a mechanism and process. Moreover, U.S. leadership, which has proven so vital in maintaining international order in both regions examined, should be reasserted to maintain it into the future. Standing up to China proactively and in concert with allies and partners, is surely a better approach than spectating. The same is the case in the Eastern Mediterranean Sea, where

U.S. engagement could make the difference in EEZ arrangements. In the age of globalization, crafting coherent strategy at sea will prove just as vital as doing so on land.

### 3. Acknowledgements

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- [3] UNCLOS, Article 121.
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- [17] Brian Wilson, “An Avoidable Maritime Conflict: Disputes Regarding Military Activities in the Exclusive Economic Zone,” 433.
- [18] Although the U.S. is not a UNCLOS signatory, it respects the EEZs of other countries including the EEZ of nearby Cuba with its undersea hydrocarbon energy resources. The U.S. abides by the UNCLOS legal framework and encourages its allies and partners to do so. For more see Steven Groves, “U.S. Accession to U.N Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources,” *Backgrounders* no. 2688 (May 14, 2012): 1-16.
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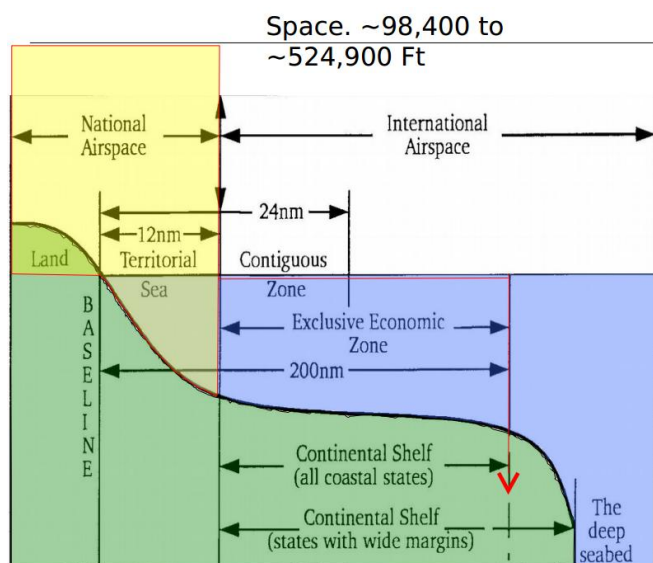
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**Author Profile**

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**Figure 1: Sovereignty and Domain Overlaps.** Source: U.S. Army War College Department of Military Strategy, Planning, and Operations (DMSPO), December 11, 2015. Notes: "Lines in red highlight areas where sovereignty is in play and generally accepted...unless areas overlap (Spratly Islands) or there is no or limited enforcement means (Somalia) or evolving (Arctic)."



**Figure 2: EEZs Overlapping Zone Enclosed by Map of Nine-Dash Line.** Source: UNCLOS and CIA, citing in Ronald O'Rourke, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*.

"Notes: (1) The red line shows the area that would be enclosed by connecting the line segments in the map of the nine-dash line. Although the label on this map states that the waters inside the red line are "China's claimed territorial waters," China has

maintained ambiguity over whether it is claiming full sovereignty over the entire area enclosed by the nine line segments. (2) The EEZs shown on the map do not represent the totality of maritime territorial claims by countries in the region. Vietnam, to cite one example, claims all of the Spratly Islands, even though most or all of the islands are outside the EEZ that Vietnam derives from its mainland coast.”

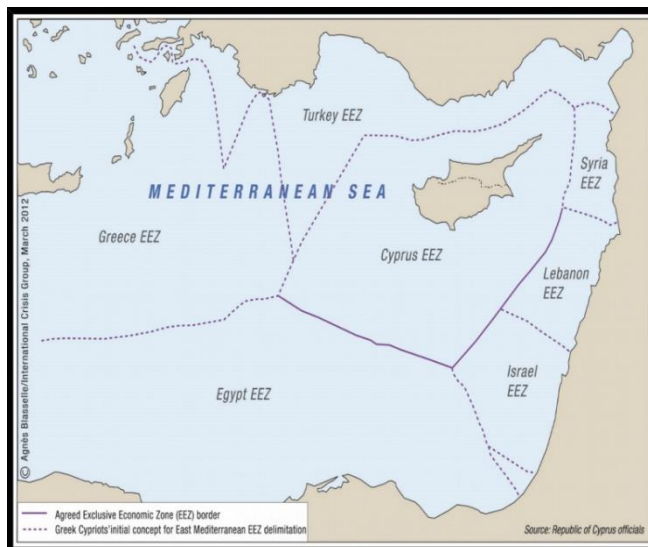


Figure 3: Cyprus EEZs in the Eastern Mediterranean Sea. Source: Republic of Cyprus