

LETTER FROM THE EXECUTIVE BOARD

Dear Delegates

A very warm welcome to the United Nations General Assembly First Committee at Jain International Residential School Model United Nations Conference 2017. It is our humble privilege and extreme pleasure to serve as your Executive Board for the duration of the conference. The agendas for this session has been agreed upon as “Proliferation, Development and Stockpiling of Biological and Chemical weapons” and “Situation in the South China Sea”.

Since we are all busy with all our schedules, the Executive Board has put in effort to make this concise document, which true to its name, aims to serve as a background for the committee and the substantive research possible. However, please bear in mind that under no circumstances would we want you to limit your research or learning to this document. Please take a step to use all that is at your disposal to build upon all the substance that is in the guide(and more) to ensure that you are at your best level of preparation when we see you in the meeting.

It is a humble request that first timers and experienced delegates read up the basic rules of procedure of a Model UN before coming to the committee. Although we will be spending a good portion of the first session explaining the same to you, it is necessary that you possess a basic knowledge of the same. We will be following UNA-USA Rules of Procedure in committee as closely as possible.

Additionally, it is emphasised upon greatly that do not trust everything on the internet. Please make sure that the source you are using is legitimate and reliable. To provide a rough overview, a list has been provided.

Valid and Binding:

1. All reports published by the United Nations and its agencies.
2. Reports by the Governments and its agencies (with respect to their country only).

Valid but not binding, in the order of precedence:

1. Reuters
2. Al Jazeera
3. Amnesty International
4. Human Rights Watch
5. Reporters without borders

Not Valid but can be used for reference purposes or substantiate a statement:

1. Any news report published by a recognised news agency or NGO.

Not accepted under any condition:

1. Wikipedia
2. WikiLeaks

3. Blog Articles

4. The Background Guide itself

With that, we assure you that we will help you in whatever way is possible for us to the best of our knowledge and ability. May your words not fail you.

Regards

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IMPORTANT INSTRUCTION

Keeping in mind the technicality and difficulty level of the agenda, the Executive Board feels the need for position papers. Hence, we request you to submit the same by 20th of January, 2017. The same has to be emailed to disec@jirmsun.com.

The position paper has to contain:

1. Introduction to your nation
2. Your Nation's involvement in the issue
3. What aspects of the agenda should be discussed

A sample position paper can be viewed at:

<http://www.unausa.org/global-classrooms-model-un/how-to-participate/model-un-preparation/position-papers/sample-position-paper>

It must be noted that the position paper has to be at least 1 page and at most 3 pages in length. Kindly email the same to disec@jirmsun.com with the subject as your countries name, not later than 20th of January, 2017. **You have to submit one position paper for each agenda.**

Please understand that the nature of this submission is highly formal and plagiarism in any form will not be tolerated. Should there be a need for references, please mention the same with the source and proper citations. Please note that **you will not be eligible for any awards if you fail to submit the position papers.**

Agenda 1: Proliferation, Development and Stockpiling of Biological and Chemical weapons

Proliferation of chemical and biological weapon has been one of the most important issues on the security agenda of United Nations since the years of Cold War. The UN Disarmament Forum has created a powerful platform for the global community to start a constructive dialog on the disarmament and prohibition of chemical and biological weaponry use as the legitimate means of modern warfare. Due to the numerous attempts of UN to outlaw weaponing the chemical and biological industry, the risk of chemical and biological attacks on civilians has been reduced over the last two decades. However, the existence of rogue states and hostile non-state actors, empowered by technological advances of a globalised world, keeps the threat of biological and chemical warfare real. Unparalleled innovations in chemistry and biology, as well as advancement in the systems of international transportation and communications, pose various challenges to the effective non-proliferation regimes sought by the United Nations, and calls upon reinforcement of current normative basis for securing the peace.

The terms “non-conventional weapons” and “weapons of mass destruction” (WMD) relate to nuclear/radiological, chemical, and biological weapons.

Chemical and biological weapons appeared on the scene many years before nuclear weapons and in fact were used in centuries past. In the fourteenth century, the city of Belgrade managed to defeat the Turkish invaders by burning fabric soaked with poison and creating a toxic cloud. Also in the fourteenth century, the Tatars used corpses infected by the bubonic plague to infect their Italian enemies, and in the eighteenth century, British forces spread blankets infected with smallpox among the Indians in America. In the modern period, chemical weapons were used during World War I by Germany, France, and England, and caused more than one million casualties.

Since then chemical and biological weapons have changed in many ways, but they have remained a constant threat. During World War II and the Cold War, these two types of weapons constituted an integral part of the superpowers’ strategic weapons packages. The United States and Soviet Union developed and armed themselves with large quantities of chemical and biological weapons of various kinds on a range of armaments, including aerial bombs, artillery shells, sprayers, and missile warheads. Additional countries, such as France and England, also equipped themselves with chemical and biological weapons and considered them part of their strategic power.

In recent years, the chemical-biological threat has assumed a new, dangerous turn involving global terror. On many levels, chemical and biological weapons are suitable for the goals and modus operandi of terrorist organisations, including the drive to sow fear and panic and cause demoralisation. Indeed, various global terrorist organisations, led by non state actors such as al-Qaeda, have declared that they will not hesitate to use chemical and biological weapons, and there is evidence of their efforts to obtain them. Consequently, contemporary defence and nonproliferation efforts must address this new non-state threat on top of existing state threats.

Over the years, major changes have taken place in chemistry and biology. As a result, it is possible today to develop poisonous chemical materials that are more durable and lethal, with simpler and cheaper production methods. In biology, the revolution in the realm of genetic engineering, biotechnology, and synthetic biology likewise makes it possible to produce deadlier microorganisms through relatively simpler and cheaper means. This development constitutes a major challenge in the related realms of prevention, self-defence, and nonproliferation.

1. Chemical Weapons

The modern use of chemical weapons began with World War I, when both sides to the conflict used poisonous gas to inflict agonising suffering and to cause significant battlefield casualties. Such weapons basically consisted of well known commercial chemicals put into standard munitions such as grenades and artillery shells. Chlorine, phosgene (a choking agent) and mustard gas (which inflicts painful burns on the skin) were among the chemicals used. The results were indiscriminate and often devastating. Nearly 100,000 deaths resulted. Since World War I, chemical weapons have caused more than one million casualties globally.

As a result of public outrage, the Geneva Protocol, which prohibited the use of chemical weapons in warfare, was signed in 1925. While a welcome step, the Protocol had a number of significant shortcomings, including the fact that it did not prohibit the development, production or stockpiling of chemical weapons. Also problematic was the fact that many States that ratified the Protocol reserved the right to use prohibited weapons against States that were not party to the Protocol or as retaliation in kind if chemical weapons were used against them. Poison gasses were used during World War II in Nazi concentration camps and in Asia, although chemical weapons were not used on European battlefields.

The Cold War period saw significant development, manufacture and stockpiling of chemical weapons. By the 1970s and 80s, an estimated 25 States were developing chemical weapons capabilities. But since the end of World War II, chemical weapons have reportedly been used in only a few cases, notably by Iraq in the 1980s against the Islamic Republic of Iran.

The history of the serious efforts to achieve chemical disarmament that culminated in the conclusion of the Chemical Weapons Convention began more than a century ago. Although toxic chemicals have been used as a method of warfare throughout the ages, it is clear from some of the earliest recorded incidents that such weapons have always been viewed as particularly abhorrent. A thorough account of the history of the negotiations of the CWC is found in Julian Perry Robinson, 'The negotiations on the Chemical Weapons Convention: An historical overview', in M. Bothe et al. (eds.), *The New Chemical Weapons Convention: Implementation and Prospects*, 17-36 (1998).

The first international agreement limiting the use of chemical weapons dates back to 1675, when France and Germany came to an agreement, signed in Strasbourg, prohibiting the use of poison bullets.

Almost exactly 200 years later, in 1874, the next treaty or agreement of this sort was concluded: the Brussels Convention on the Law and Customs of War. The Brussels Convention prohibited the employment of poison or poisoned weapons, and the use of arms, projectiles or material to cause unnecessary suffering. Before the turn of the century, a third agreement came into being; an international peace conference held in The Hague in 1899 led to the signing of an agreement that prohibited the use of projectiles filled with poison gas.

The efforts of the twentieth century were rooted in the 1899 Hague Peace Conference. The contracting parties to the 1899 Hague Conventions declared their agreement to abstain from the 'use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases'. Their intentions unfortunately proved futile. The rules of warfare agreed at the Hague Conference and its successor (the 1899 and 1907 Hague Regulations) prohibited the use of poisoned weapons. Nonetheless, Chemical Weapons were used on a massive scale during World War I, resulting in more than 100,000 fatalities and a million casualties.

In the wake of World War I, during which the world witnessed the horrors of large-scale chemical warfare, international efforts to ban the use of chemical weapons and prevent such suffering from being inflicted again, on soldiers and civilians, intensified. The result of this renewed global commitment was the 1925 Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare. The Geneva Protocol does not, however, prohibit the development, production or possession of chemical weapons. It only bans the use of chemical and bacteriological (biological) weapons in war. Furthermore, many countries signed the Protocol with reservations permitting them to use chemical weapons against countries that had not joined the Protocol or to respond in kind if attacked with chemical weapons. Since the Geneva Protocol has been in force, some of these States Parties have dropped their reservations and accepted an absolute ban on the use of chemical and biological weapons.

During the first half of the twentieth century many developed countries spent considerable resources on the development of Chemical Weapons, particularly after the discovery of powerful nerve gases renewed interest in the field. Chemical Weapons were used by a number of countries in the inter-war period, and all the major powers involved in World War II anticipated that large-scale chemical warfare would take place. Contrary to expectations, however, Chemical Weapons were never used in Europe in World War II. The reasons are uncertain, and historians still debate whether it was fear of retaliation in kind, the level of protection of enemy troops, or moral reasons that deterred their use. The fate of some of the stockpiles built up in anticipation of World War II is also uncertain. Many Chemical Weapons were abandoned, buried or simply dumped at sea. In any event, following World War II, and with the advent of the nuclear debate, several countries gradually came to the realisation that the marginal value of having Chemical Weapons in their arsenals was limited, while the threat posed by the availability and proliferation of such weapons made a comprehensive ban desirable. After 12 years of negotiations, the Chemical Weapons Convention (CWC) was adopted by the Conference on Disarmament in Geneva on 3 September 1992. The CWC allows for the stringent verification of compliance by State Parties. The CWC opened for signature in Paris on 13 January 1993 and entered into force on 29 April 1997. The CWC is the first

disarmament agreement negotiated within a multilateral framework that provides for the elimination of an entire category of weapons of mass destruction under universally applied international control.

In order to prepare for the entry-into-force of the CWC, a Preparatory Commission of the Organisation for the Prohibition of Chemical Weapons (OPCW) was established with the responsibility to prepare detailed operation procedures and to put into place the necessary infrastructure for the permanent implementing agency provided for in the Convention. Headquarters for this organization were established in The Hague, the Netherlands. The CWC entered into force on 29 April 1997, 180 days after deposit of the 65th instrument of ratification.

The types of chemical weapons include:

1. Nerve Agents

- a. GA (Tabun)
- b. GB (Sarin)
- c. GD (Soman)
- d. GF
- e. VX (methylphosphonothioic acid)

2. Blister Agents

- a. HD-sulphur mustard (Yperite)
- b. HN - nitrogen mustard
- c. L-Lewisite
- d. CX - phosgene oximine

3. Choking Agents

- a. CG phosgene
- b. DP diphosgene
- c. Cl chlorine
- d. PS chloropicrin

2. Biological Weapons

Biological Weapons of Mass Destruction were first used the United States in 1763 when British officers planned to distribute blankets with smallpox. Attempts such as this continued during war as soldiers were steadfast in killing off their enemies. Today, however, the use of biological weapons have been used primarily by individuals, rather than groups. Types of biological weapons include bacterial, which is plague, anthrax or Q fever. Viruses, including smallpox, hepatitis, the avian influenza, and toxins, such as botchalism, ricin and staff. There are three ways biological weapons work: One is contact with the skin, two is gastrointestinal, and three is pulmonary. This type of weapon is quite hazardous and easy to create or get a hold of.

There are, however, two types of biological weapons of mass destruction. They are:

Category A agents

Easily disseminated or transmitted from person to person

Result in high mortality rates and have the potential for major public health impact

Might cause public panic and social disruption

Require special action for public health preparedness

Example: Anthrax, Botulism, Smallpox

Category B agents

Moderately easy to disseminate or transmit from person to person

Result in moderate public health impact and low death rates

Require enhancements of CDC's diagnostic and disease surveillance abilities

Example: Viral encephilitis

HISTORY OF MISUSE OF BIOLOGICAL WEAPONS:

Man has used poisons for assassination purposes ever since the dawn of civilization, not only against individual enemies but also occasionally against armies. However, the foundation of microbiology by Louis Pasteur and Robert Koch offered new prospects for those interested in biological weapons because it allowed agents to be chosen and designed on a rational basis. These dangers were soon recognized, and resulted in two international declarations—in 1874 in Brussels and in 1899 in The Hague—that prohibited the use of poisoned weapons. However, although these, as well as later treaties, were all made in good faith, they contained no means of control, and so failed to prevent interested parties from developing and using biological weapons. The German army was the first to use weapons of mass destruction, both biological and chemical, during the First World War, although their attacks with biological weapons were on a rather small scale and were not particularly successful: covert operations using both anthrax and glanders attempted to infect animals directly or to contaminate animal feed in several of their enemy countries. After the war, with no lasting peace established, as well as false and alarming intelligence reports, various European countries instigated their own biological warfare programmes, long before the onset of the Second World War.

In 1985, Iraq began an offensive biological weapons program producing anthrax, botulinum toxin, and aflatoxin. During Operation Desert Storm, the coalition of allied forces faced the threat of chemical and biological agents. Following the Persian Gulf War, Iraq disclosed that it had bombs, Scud missiles, 122-mm rockets, and artillery shells armed with botulinum toxin, anthrax, and aflatoxin. They also had spray tanks fitted to aircraft that could distribute agents over a specific target.

Shinrikyosari (chemical weapons) attack and failed attempt to disperse anthrax, Japan has increased its focus on bioterrorism defences. Although Japan has a growing biotechnology industry, it is still small in comparison with its chemical industry. As a member of the Australia Group, Japan's biotech industry is subject to a comprehensive set of export controls.

DOCUMENTS GOVERNING USAGE:

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, commonly known as the Biological Weapons Convention (BWC) or Biological and Toxin Weapons Convention (BTWC), opened for signature in 1972 and entered into force in 1975.

It was the first multilateral disarmament treaty banning an entire category of weapons, as States Parties to the Biological Weapons Convention undertook “never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

1. microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

2. weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.”

The Convention effectively prohibits the development, production, acquisition, transfer, retention, stockpiling and use of biological and toxin weapons and is a key element in the international community’s efforts to address the proliferation of weapons of mass destruction.

REFERENCE LINKS:

<https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/media/C4048678A93B6934C1257188004848D0/file/BWC-text-English.pdf>

<https://c.aarc.org/resources/biological/history.asp>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3148622/>

Position of Stakeholders

Numerous nations have voiced their opinions on this issue and clarified their stance:

USA: USA signed and ratified the CWC on 29th April, 1997. Deadline for destruction of chemical weapon stockpile was initially 29th April 2012. USA condemns the use of chemical weapons and intends to destroy its stockpile by 2023.

From 1941 onwards USA weaponized variety of pathogens and toxins against Humans and plants. On 25 November 1969, President Nixon renounced biological weapons and unilaterally placed restrictions on further production of such weapons. Then on 10 April 1972 Nixon signed the BWC, followed by the deposit of ratification on 10 April 1975. Between May 1971 and February 1973, the United States destroyed its entire BW stockpile (including over 40,000 litres of anti-personnel biological warfare agents and 5,000 kilograms of anti-agricultural agents) at the Pine Bluff Arsenal, Rocky Mountain Arsenal, and Fort Detrick. The United States has played a key role in furthering global norms against the proliferation of biological weapons by creating the Proliferation Security Initiative (PSI). In December 2009, the Obama Administration released its National Strategy for Countering Biological Threats, which seeks to strike a balance between countering current threats and preventing the misuse of science.

Russia: The USSR's CW program produced most types of known chemical warfare agents in immense quantities, and developed the world's largest chemical warfare infrastructure. At its height, the Soviet chemical warfare infrastructure involved 4 research facilities, 2 test facilities, and 8 storage facilities. Despite decades of efforts by Russia, the CTR program, and the OPCW, challenges persist in eliminating what was at one time a vast stockpile. Russia Signed and ratified the CWC on 5th December 1997. Destruction deadline initially 29th April 2012. Russia intends to destroy its stockpile by December 2020.

The Russian government asserts that it does not maintain a stockpile of biological weapons or engage in any illegal development or production activities. As the legal successor of the Soviet Union, Russia inherited its status as a party to the Geneva Protocol and the BWC in 1992. The

Soviet Union signed the BWC in 1972 and ratified it in 1975, the year the treaty entered into force.

The United States, and Russia issued a joint statement affirming their support for the BWC and called on all remaining countries not party to the BWC to implement and comply with the convention.

PRC: China is a party to the major international agreements regulating chemical weapons. China acceded to the Geneva Protocol in 1952 and ratified the CWC in 1997. While China declared upon ratification of the CWC that it had once operated a small chemical weapons program for offensive purposes, it has consistently maintained that the program has since been dismantled. The OPCW has conducted more than 300 inspections in China to confirm Beijing's declarations.

China is a party to most of the major international agreements regulating biological weapons, including the Geneva Protocol and the BWC. China is not a member of

the AG, nevertheless, China's export control regulations currently bring its laws in line with the AG guidelines and control lists.

Syria: Israel's presumed acquisition of nuclear weapons, provided impetus for Syria to pursue a strategic deterrent against the conventional and nuclear Israeli threats. Since embarking on a chemical warfare (CW) program in the 1970's, Syria obtained both chemical agents and CW-capable missiles from foreign suppliers, remaining heavily dependent on them for materials and expertise. There has been speculation that the Assad regime had used chemical weapons in the on-going civil war. In fall 2013, Syria joined the CWC. As of June 23, 2014, all of Syria's chemical weapons production facilities have been rendered inoperable and all reported chemical weapons and their precursors have been removed from Syria.

Agenda 2: Situation in the South China Sea

1. UNITED NATIONS CONVENTION ON LAWS OF SEAS(UNCLOS)

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), which came into force on November 16, 1994, is an international treaty that provides a regulatory framework for the use of the world's seas and oceans, inter alia, to ensure the conservation and equitable usage of resources and the marine environment and to ensure the protection and preservation of the living resources of the sea. UNCLOS also addresses such other matters as sovereignty, rights of usage in maritime zones, and navigational rights. As of January 10 2014, 166 States have ratified, acceded to, or succeeded to, UNCLOS. The full text and status of UNCLOS can be accessed through the United Nations Division for Oceans Affairs and the Law of the Sea.

MARITIME ZONES

Under the Convention, a coastal State is entitled to a territorial sea not exceeding 12 nautical miles measured from its baselines. Within its territorial sea, the coastal State exercises sovereignty, including over its resources. Subject to the provisions of the Convention, ships of all States enjoy the right of innocent passage through the territorial sea. The Convention also grants a coastal State the right to establish a contiguous zone not extending beyond 24 nautical miles from the baselines. Within its contiguous zone, the coastal State may exercise the control necessary to prevent and punish infringement of customs, fiscal, immigration or sanitary laws and regulations that have occurred within its territory or territorial waters and to control, in specified circumstances, the tracking of archaeological and historical objects. The Convention also states the rights and obligations of the states on managing and governing their activities including protection and preservation natural resources in the zones. Furthermore, the states enjoy their rights in the Area and high sea which are beyond their national jurisdiction, for the purpose of exploitation and exploration. This chapter will look the general interests of states in those zones and their rights and obligations over those areas.

1.1 Internal Waters

Internal waters solely belong to the coastal state. All waters on the landward side of the baseline are called internal waters. The coastal state has the right to formulate laws, govern usage of resources in that region. No other country's vessel has a right to passage within internal waters.

1.2 Territorial Waters

In the Territorial Sea, a coastal state has unlimited jurisdiction over all (including foreign) activities unless restrictions are imposed by law. All coastal states have the right to a territorial sea extending 12 nautical miles from the baseline.

In the maritime security context, it remains debated as to whether the coastal state can set and enforce laws to restrict movement of PCASP, forbid maritime security operations (including

making illegal the carriage or discharge of weapons) within the territorial sea, or if enacting such legislation would be prejudicial to general freedom of navigation and the regime of innocent passage.

1.3 Contiguous Zone

The Contiguous Zone is an intermediary zone between the territorial sea and the high seas extending enforcement jurisdiction of the coastal state to a maximum of 24 nautical miles from baselines for the purposes of preventing or punishing violations of customs, fiscal, immigration or sanitary (and thus residual national security) legislation.

In the maritime security context, this can certainly include monitoring any activities which can result in armed violence or weapons import into the state. Therefore the coastal state can take measures to prevent or regulate armed maritime security activities out to 24 nautical miles under the reasoning that it is undertaking customs enforcement operations to prevent movement of arms into its waters/ports.

1.4 Exclusive Economic Zone (EEZ)

The EEZ is another intermediary zone, lying between the territorial sea (12 nautical miles) and the high seas to the maximum extent of 200 nautical miles. Although high seas freedoms concerning general navigation principles remain in place, in this zone the coastal state retains exclusive sovereignty over exploring, exploiting and conserving all natural resources. The coastal state therefore can take action to prevent infringement by third parties of its economic assets in this area including, fishing, bio-prospecting and wind-farming.

In order to safeguard these rights, the coastal state may take necessary measures including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the international laws and regulations.

1.5 High Seas

The High Seas, which lie beyond 200 nautical miles from shore, are to be open and freely available to everyone, governed by the principle of equal rights for all. In agreeing to UNCLOS, all state parties acknowledged that the oceans are for peaceful purposes as the Convention's aim was to maintain peace, justice and progress for all people of the world. On the High Seas, no state can act or interfere with justified and equal interests of other states.

The Convention establishes freedom of activity in six spheres: Navigation, Overflight, Laying of cables and pipelines, Artificial islands and installations, Fishing, Marine scientific research.

Freedom of navigation is of utmost importance for all, and maritime security activities can be considered part of navigational activities as they protect vessels from interference by third parties.

1.6 Continental Shelf

It can be defined as the natural prolongation of the State's territory, to the edge of the continental margin or a distance of 200 Nautical miles from the territorial waters, whichever is greater. The continental shelf can exceed 200 nautical miles till the natural prolongation ends. But it cannot exceed 350 nautical miles or 100 nautical miles from the 2500m isobath (line connecting a depth of 2500m). Coastal states have the right to harvest minerals and non living resources attached to the subsoil in the continental shelf. They also have the exclusive right over living resources till the end of EEZ.

2. THE REGION

The South China Sea is home to over 30,000 small islands and reefs, distributed across three archipelagos. The vast majority are not permanently occupied. Disputes over their sovereignty involve numerous countries across the region. Apart from national pride, access to fisheries and oil and gas resources is at also stake. The South China Sea consists mainly of two archipelagos that are contested: the Spratly and the Paracel Islands. The South China Sea is a part of one of the most important water routes in the world, and trade in Asia heavily depends on this region. The amount of trade every year is nearly \$5 trillion, and the USA accounts for 20% of this. Competition for control of potential energy resources and key energy transit routes through the South China Sea and Malacca Strait stands out as one critical factor that has heightened the stakes in the complex matrix of maritime disputes. Energy security has become a top national security priority throughout the region over the past decade due to the combination of extremely high and volatile energy prices, China's rapid emergence as a huge oil and gas importer, Japan and Northeast Asia's total and continuing dependence on imported oil and gas, and Southeast Asia's emergence as a net oil and gas importer. The atmosphere is highly competitive and almost always zero-sum. There has been little detailed exploration of the area, so estimates are largely extrapolated from the mineral wealth of neighbouring areas.

3. THE CLAIMANTS

Disputes over their sovereignty involve numerous countries across the region. The Paracel Islands are disputed by China, Taiwan and Vietnam. The Spratly Islands are disputed by China, Taiwan, Malaysia, The Philippines, Vietnam, and Brunei. The Scarborough Shoal, just to the west of the Philippines, which is sometimes considered to be part of the Spratly Islands, is claimed by The Philippines, China and Taiwan. The maritime boundaries of the Gulf of Tonkin are also disputed by China and Vietnam. Apart from national pride, access to fisheries and oil and gas resources is at also stake. The area is also one of the world's major shipping routes.

China has been involved in the majority of the direct clashes between rival claimants in the South China Sea dispute. The relationship between China and Vietnam is perhaps the most volatile of those between the rival claimants.

China is opposed to greater US involvement in the resolution of disputes in the South China Sea, preferring bilateral negotiations. The other countries favour greater US involvement and prefer multilateral negotiations through the Association of Southeast Asian Nations (ASEAN). However, China has not been entirely hostile to more multilateral approaches. In 2002 China and ASEAN agreed a Declaration on the Conduct of Parties in the South China Sea in which all countries agreed to seek peaceful solutions to disputes in the South China Sea. Since 2011, there has been talk of agreeing a legally binding Code of Conduct for all parties but to date no progress has been made towards one.

The last six years or so have seen rising tensions over rival claims in the South China Sea. The countries involved in the dispute have been strengthening their military capabilities, with some also exploring legal avenues. In addition, there have been intermittent efforts to reduce tensions through dialogue.

China's claim is defined by a 'nine-dash line' which stretches hundreds of miles to the south and east of Hainan, which is its most southerly province, although it has been claimed that China "has never clarified the jurisdictional intent of the U-shaped line." Taiwan's claim is identical to that of China, although this does not mean that they cooperate on the issue.

Vietnam occupies 21 islands, the Philippines and Malaysia eight apiece, China seven and Taiwan one, albeit the largest island, Itu Aba. Brunei does not occupy any of the islands, although it does claim sovereignty over two.

China, Taiwan and Vietnam each make historically-based claims of sovereignty. The claims of the others are primarily based on geographical proximity and economic rights. All seek to back up their claims with a range of legal arguments.

The occupied islands all have some form of either military or paramilitary presence on them and the rival countries have been entrenching their physical occupation of specific islands by expanding their military assets and building artificial islands. For example, China maintains a military garrison in the Paracel islands, in recent years, it has been building artificial islands in the Spratlys. Taiwan has completed construction of a runway on Itu Aba; while Malaysia has also built a runway on Swallow Reef.

4. Chinese Nine Dash Line

China has not precisely articulated – in terms familiar to sea lawyers or diplomats – what its nine-dash line in the South China Sea means. That ambiguity leaves plenty of room for possible over-interpretation, particularly when coupled with some of the actions that China has taken in response to perceived incursions within the area bounded by that line.

At one end of the spectrum, the line could be read as a maximalist claim to sovereignty and control over all of the features, land, water, and seabed within the area bounded by the

nine-dash line. This is indeed what many states fear. In terms of the law of the sea, this doesn't make much sense because it appears as a conflation of the concepts of sovereignty and jurisdiction – and no coordinates for islands or baselines have been provided, as is required under law.

5. THE ARBITRATION

The Parties to this arbitration were the Republic of the Philippines (and the

People's Republic of China. This arbitration concerned disputes between the Parties regarding the legal basis of maritime rights and entitlements in the South China Sea, the status of certain geographic features in the South China Sea, and the lawfulness of certain actions taken by China in the South China Sea.

The basis for this arbitration was the 1982 United Nations Convention on the Law of the Sea (the "Convention" or "UNCLOS"). Both the Philippines and China are parties to the Convention, the Philippines having ratified it on 8 May 1984, and China on 7 June 1996. The Convention was adopted as a "constitution for the oceans," in order to "settle all issues relating to the law of the sea," and has been ratified by 168 parties. The Convention addresses a wide range of issues and includes as an integral part a system for the peaceful settlement of disputes. This system is set out in Part XV of the Convention, which provides for a variety of dispute settlement procedures, including compulsory arbitration in accordance with a procedure contained in Annex VII to the Convention. It was pursuant to Part XV of, and Annex VII to, the Convention that the Philippines commenced this arbitration against China on 22 January 2013. The Convention, however, does not address the sovereignty of States over land territory. Accordingly, the Tribunal has not been asked to, and does not purport to, make any ruling as to which State enjoys sovereignty over any land territory in the South China Sea, in particular with respect to the disputes concerning sovereignty over the Spratly Islands or Scarborough Shoal. None of the Tribunal's decisions in this Award are dependent on a finding of sovereignty, nor should anything in this Award be understood to imply a view with respect to questions of land sovereignty.

5.1 Filipino Claims

Philippines had asked the Tribunal to resolve a dispute between the Parties concerning the source of maritime rights and entitlements in the South China Sea. Philippines sought a declaration that China's claim to rights within the 'nine-dash line' marked on Chinese maps are without lawful effect to the extent that they exceed the entitlements that China would be permitted by the Convention.

The Convention provides that submerged banks and low-tide elevations are incapable on their own of generating any entitlements to maritime areas and that rocks which cannot sustain human habitation or economic life of their own" do not generate an entitlement to an exclusive economic zone of 200 nautical miles or to a continental shelf. The Philippines sought a declaration that all of the features claimed by China in the Spratly Islands, as well as Scarborough Shoal, fall within one or the other of these categories and that none of these features generates an entitlement to an exclusive economic zone or to a continental shelf. The Philippines had asked the Tribunal to resolve a series of disputes between the Parties concerning the lawfulness of China's actions in the South China Sea. The Philippines sought declarations that China has violated the Convention by:

- (a) interfering with the exercise of the Philippines' rights under the Convention, including with respect to fishing, oil exploration, navigation, and the construction of artificial islands and installations;
- (b) failing to protect and preserve the marine environment by tolerating and actively supporting Chinese fishermen in the harvesting of endangered species and the use of harmful fishing methods that damage the fragile coral reef ecosystem in the South China Sea; and
- (c) inflicting severe harm on the marine environment by constructing artificial islands and engaging in extensive land reclamation at seven reefs in the Spratly Islands.

Philippines has asked the Tribunal to find that China has aggravated and extended the disputes between the Parties during the course of this arbitration by restricting access to a detachment of Philippine marines stationed at Second Thomas Shoal and by engaging in the large-scale construction of artificial islands and land reclamation at seven reefs in the Spratly Islands.

5.2 Chinese Claims

China had consistently rejected the Philippines' recourse to arbitration and adhered to a position of neither accepting nor participating in these proceedings. It had articulated this position in public statements and in many diplomatic Notes Verbales, both to the Philippines and to the Permanent Court of Arbitration (the "PCA" or the "Registry"), which serves as the Registry in this arbitration. China's Foreign Ministry has also highlighted in its statements, press briefings, and interviews that it considers non-participation in the arbitration to be its lawful right under the Convention. On 22 January 2013, the Department of Foreign Affairs of the Republic of the Philippines presented a note verbale to the Embassy of the People's Republic of China in the Philippines, stating that the Philippines initiated compulsory arbitration proceedings with respect to the dispute with China over "maritime jurisdiction" in the South China Sea. On 19 February 2013, the Chinese Government rejected and returned the Philippines' note verbale together with the attached Notification and Statement of Claim. The Chinese Government has subsequently reiterated that it will neither accept nor participate in the arbitration thus initiated

by the Philippines. In its Position Paper, China argued that the Tribunal lacks jurisdiction because (a) “the essence of the subject-matter of the arbitration is the territorial sovereignty over the relevant maritime features in the South China Sea”; (b) “China and the Philippines have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the South China Sea, to settle their relevant disputes through negotiations”; and (c) the disputes submitted by the Philippines “would constitute an integral part of maritime delimitation between the two countries.” The Chinese Ambassador to the Netherlands has also sent several communications to the individual members of the Tribunal, directly and via the Registry, to draw certain statements of Foreign Ministry officials and others to the attention of the arbitrators, while at the same time making clear that such communications should not be interpreted as China’s participation in the arbitral proceedings.

5.3 The Result

On 12 July 2016, the five arbitrators of the tribunal agreed unanimously with the Philippines. They concluded in the award that there was no evidence that China had historically exercised exclusive control over the waters or resources, hence there was "no legal basis for China to claim historic rights" over the Nine-Dash Line. The tribunal also judged that China had violated the Philippines' sovereign rights and caused "severe harm to the coral reef environment". China however rejected the ruling.

6. Island Building

The speed and scale of China’s island-building spree have alarmed other countries with interests in the region. China announced in June that the creation of islands — moving sediment from the seafloor to a reef — would soon be completed. Since then, China has focused its efforts on construction. So far it has constructed port facilities, military buildings and an airstrip on the islands, with recent imagery showing evidence of two more airstrips under construction. The installations bolster China’s foothold in the Spratly Islands, a disputed scattering of reefs and islands in the South China Sea more than 500 miles from the Chinese mainland. China’s activity in the Spratlys is a major point of contention between China and the United States and was a primary topic of discussion between President Obama and President Xi Jinping of China during the Chinese president’s visit to the White House in September 2015. The new islands allow China to harness a portion of the sea for its own use that has been relatively out of reach until now. Although there are significant fisheries and possible large oil and gas reserves in the South China Sea, China’s efforts serve more to fortify its territorial claims than to help it extract natural resources, said Mira Rapp-Hooper, formerly the director of the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies, a Washington research group. Though too small to support large military units, the islands will enable sustained Chinese air and sea patrols of the area. The United States has reported spotting Chinese mobile artillery vehicles in the region, and the islands could allow China to exercise more control over fishing in the region. Several reefs have been destroyed outright to

serve as a foundation for new islands, and the process also causes extensive damage to the surrounding marine ecosystem.

The pictures below are taken in July 2014 and September 2015 respectively.



7. Positions of Stakeholders

7.1 ASEAN

ASEAN has promoted multilateral talks on disputed areas without settling the issue of sovereignty, and in 2002 joined with China in signing a Declaration on the Conduct of Parties (DOC) in the South China Sea that committed all parties to those territorial disputes to “reaffirm their respect for and commitment to the freedom of navigation in and over flight above the South China Sea as provided for by the universally recognized principles of international law” and to “resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force.” Since then ASEAN has attempted to promote a code of conduct for the SCS but has failed to secure unanimity. At the ARF in Brunei earlier this month there was agreement to hold consultations on the issue in Beijing in September. Thailand is seeking to coordinate the ASEAN position in advance.

7.2 The EU

The EU has a major interest in the SCS because of its role for trade and investment in the region. In its 2012 Guidelines on the EU’s Foreign and Security Policy in East Asia, the EU

stressed the importance of freedom of navigation in the South China Sea and encouraged the parties to peacefully resolve disputes in accordance with international law, particularly the UN Convention on the Law of the Sea (UNCLOS). Additionally, the EU suggested in the guidelines to look at previous examples and offered to share experience if wished by the conflict parties.

7.3 The US

The US has no territorial or resource claims in East Asia, but Hillary Clinton stated at the 2010 ARF meeting in Hanoi that “the United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea.” The US has defence treaties with Japan and the Philippines, and so it might get drawn into a conflict between either of them and China. It has stated that the US will accept “no unilateral attempt to change the status quo”. Although it calls for the peaceful settlement of disputes under international law, the US has not yet ratified the UN Convention on the Law of the Sea.

7.4 People's Republic of China

Official position: Paracel and Spratly islands for the last 2000 years integral part of Chinese territory, reconfirmed by 1947 map. Arbitration started by the Philippines is illegal and founded on illegal occupation of Chinese islands and reefs, thus UNCLOS should not apply.

Stance: no international arbitration but only by states directly concerned, joint development of the area; strict adherence to Declaration on Conduct of Parties in the South China Sea (DOC).

In the 2012 Joint EU-US statement on the Asia-Pacific region, Ashton and Clinton encouraged China and ASEAN "to advance a Code of Conduct and to resolve territorial and maritime disputes through peaceful, diplomatic and cooperative solutions".

7.5 Philippines

Official position: Chinese nine-dash line violates UNCLOS provisions to which China and the Philippines are signatories; China has declined invitation to use settlement mechanisms under Part XV of UNCLOS. Having exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime dispute with China Secretary of Foreign Affairs Del Rosario stated that therefore "the Philippines has taken the step of bringing China before the Arbitral Tribunal under Article 287 and Annex VII under UNCLOS.

Stance: International arbitration, joint development only after settling of dispute and clarification of claims; establish legally binding Code of Conduct (COC).

7.6 Vietnam

Official position: Vietnam possesses sovereignty over Spratly and Paracel archipelagos in accordance with UNCLOS.

Stance: focus on strict implementation of the DOC between ASEAN and China in 2002; hopes that ASEAN members and China launch official talks on a COC. Speaking at the Shangri-la conference in June, PM Dung

7.7 Malaysia

Official position: Claims territory that falls within economic exclusion zone under UNCLOS and to a small number of islands in the Spratlys

Stance: dialogue and co-operation, establish COC, no involvement of 'extra-regional states'; joint development of resources; no passing on of dispute to the next generation. Points to the example of the joint development zone in waters claimed by Thailand and Malaysia.

7.8 Brunei

Official position: Claims territory within its economic exclusion zone under UNCLOS.

Stance: resolution through dialogue by states concerned and 'in accordance with universally recognised principles of international law', including UNCLOS; no international arbitration; implementation of DOC and efforts towards COC.