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PANEL 5: REGIONAL CASE STUDY ON THE SOUTH CHINA SEA

This panel will take an inter-disciplinary look at the sovereignty issues in play in the South China Sea. The panel will begin with a technical introduction to the dispute over the South China Sea, giving delegates a neutral overview of the geological challenges. This technical overview will be complemented with a presentation on recent developments in, and future prospects for, the resolution of the legal disputes between the States surrounding the South China Sea. The panel will then turn to setting out the positions of three of the States most involved in the South China Sea disputes: Vietnam, the Philippines and China.

Sir Daniel Bethlehem KCMG QC

Sir Daniel Bethlehem KCMG QC is chairing this session.

Dr Robin Cleverly

Basepoints and Equity: How do you draw a line in the South China Sea?

Exploitation of the continental shelf resources in the South China Sea has been held up by a long-running dispute over ownership. Geologically, the most promising areas for oil exploration are along the south and west, with the central portion being floored by oceanic crust being less prospective.

This paper discusses some of the technical aspects of delimitation in the South China Sea. It does not evaluate the relative merits of the differing sovereignty claims in the region. The straight and archipelagic baselines claimed by the littoral states are discussed, along with the implications for exploration of continental shelf and its extension beyond 200 nautical miles. The principles applicable to maritime delimitation are reviewed, especially the notion of equidistance and the use of straight and normal baselines. The numerous small islands are likely to be legal “rocks” under the terms of the convention and therefore not entitled to a continental shelf of their own.

The simplest solution is to ignore or enclave the islands in a final delimitation, which would be in accordance some of the recent jurisprudence, whilst appreciating that the problem is at present intractable.

The opinions expressed are those of the author and do not necessarily represent those of the UK Hydrographic Office or any other UK Government Department.



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Professor Robert Beckman

Legal Disputes in the South China Sea: the Role of UNCLOS

I will provide an overview of the sovereignty and maritime claims in the South China Sea. I will first explain the developments since 2009 and the disputes which have arisen because of uncertainties regarding China's claim to rights and jurisdiction within the "nine-dash line" on the map it attached to a *Note Verbale* sent to the UN Secretary General on 7 May 2009. I will then explain how the 1982 Law of the Sea Convention applies to the disputes in the South China Sea, including its provisions on the settlement of disputes. I will then explain the issues raised in the arbitration proceedings instituted on 22 January by the Philippines against China under Annex VII of UNCLOS and the implications of the case for resolution of the disputes.

Nguyen Thi Minh Nguyet

Vietnam's positions on the settlement of territorial disputes in South China Sea

Vietnam, a coastal state bordering the South China Sea, is currently involved in a number of territorial disputes, broadly defined to include both maritime delimitation and island sovereignty disputes, with other neighbouring countries. So far, Vietnam has recorded some success in settling or managing a number of its maritime delimitation disputes and is actively in negotiations with its neighbours in the search for resolution to the remaining ones. Island sovereignty disputes facing Vietnam concern the Paracel Islands and the Spratlys, the former being a bilateral one between Vietnam and China and the latter a multilateral one between Vietnam and five other claimants. Given their different nature, Vietnam is flexible in its approach to the handling of these island sovereignty disputes while maintaining its basic tenets. The paper presents comprehensively Vietnam's position on the settlement of territorial disputes, its success and on-going efforts.

Professor Keyuan Zou

China and Maritime Boundary Issues in the South China Sea

With the entry into force of the 1982 United Nations Convention on the Law of the Sea in 1994, the movement of enclosing sea areas into the domain of national jurisdiction has been intensified. However, such unilateral expansion by a coastal State inevitably encounters counter-claims and/or expansion from its neighbouring countries opposite or adjacent to its coasts but within the same sea area producing overlapping claims. For China, it has openly



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admitted that it had maritime boundary delimitation with eight neighbouring countries and most of them are in fact concerning the delimitation of Exclusive Economic Zones and continental shelves. Maritime boundary delimitation is apparently a new challenge to China. This paper attempts to examine and assess China's practice in maritime boundary delimitation, in particular concerning the South China Sea. It consists of three parts: a general overview of China's practice in maritime boundary delimitation, the effect of the U-shaped line on maritime boundary delimitation in the South China Sea and future prospects for maritime boundary dispute settlement.

Henry Bensurto, Jr.

Rule of Law: Path to Durable Peace in the South China Sea

Clarification of disputes in the South China Sea ("SCS") in accordance with international law, principally the UN Convention on the Law of the Sea ("UNCLOS"), is critical in the management and resolution of disputes in the SCS.

The disputes in the SCS are essentially twofold: 1) territorial disputes; and 2) maritime disputes. As a matter of approach, these disputes could be managed and resolved by disaggregating the former from the latter. Theoretically, territorial disputes could be shelved by enclaving the relevant disputed features (and their *prima facie* maritime entitlements which should not be more than 12 nautical miles), and the Parties could commence resolving the maritime disputes. But, with China's vague 9-dash line as basis of its so-called "indisputable sovereignty over the islands in the South China Sea and its adjacent waters," the dispute in the SCS has become more complicated.

The Philippines considers China's vague 9-dash line claim in the SCS as invalid under international law and specifically under UNCLOS. It is imperative for the disputes in the SCS to be clarified *a priori* and in accordance with UNCLOS as necessary conditions to any meaningful management (i.e., joint development) and resolution of the disputes in the South China Sea.