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Damos Dumoli Agusman

Ministry of Foreign Affairs, Republic of Indonesia, damos.agusman@kemlu.go.id

Citra Yuda Nur Fatihah

Ministry of Foreign Affairs, Republic of Indonesia

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CELEBRATING THE 25TH ANNIVERSARY OF UNCLOS LEGAL PERSPECTIVE: THE NATUNA CASE

Damos Dumoli Agusman & Citra Yuda Nur Fatihah

Ministry of Foreign Affairs, Republic of Indonesia
Correspondence: damos.agusman@kemlu.go.id

Abstract

The 25th Anniversary of UNCLOS was commemorated in early February in Jakarta, just one month after the Chinese fishing vessels and coast guard entered the Indonesia's EEZ and exploited its natural resources. From the Indonesian side, this China's encounter has indeed violated the Indonesia's sovereign rights over its EEZ as well as the breach of Indonesia's sovereignty by undermining and intervening in Indonesia's right under international law in exercising legal enforcement in its own jurisdiction. Moreover, the Indonesian government has consistently and persistently rejected the nine-dash line claims by sending official protests through diplomatic notes. The protest also exerts Indonesia's firm and clear position that Indonesia is not a claimant state to either the sovereignty or territorial disputes in the South China Sea, and therefore will not engage in any negotiation. Furthermore, Indonesia would never recognize the nine-dash line claim since it does not have a legal basis recognized by international law. In contrast, the Indonesia's sovereign rights are guaranteed by the UNCLOS, as the Indonesia's EEZ had been acknowledged and registered under the UNCLOS. At the same time, Indonesia will be increasing the frequency of patrols in Natuna waters, and fisheries activities as it is Indonesia's rights. This Article attempts to identify and describe the Writers' views over the Natuna case from the legal perspective. The responses of the Indonesian government against the claim are also briefly discussed.

Keywords : *Natuna, nine-dash line, South China Sea, UNCLOS.*

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I. INTRODUCTION

“Indonesia will always comply with the UNCLOS. Indonesia has never questioned the presence of other states’ vessels in Indonesian sovereign rights’ waters. Indonesia’s state vessels charged in law enforcement will just expel those other state’s vessels that exploit Indonesia’s resources in the waters where Indonesia can exercise its sovereign rights.”¹

This year, the international community commemorates the 25th Anniversary of the entry into force of the United Nations Convention on the Law of the Sea (hereinafter referred as “UNCLOS”). In terms of Law of the Sea, UNCLOS established for the first time one set of rules for the oceans, bringing

¹ The Indonesian Ministry of Foreign Affairs’ Director General for Legal Affairs and International Treaties’ remarks to the 25th UNCLOS Anniversary Seminar, Jakarta, 2020

order to a system fraught with potential conflict. The scope of the UNCLOS itself is vast, covering all ocean space, with all its uses, including navigation and overflight, all uses of all its resources, living and non-living, on the high seas, on the ocean floor and beneath, on the continental shelf and in the territorial seas, the protection of the marine environment, and basic law and order.

Moreover, the UN Secretary-General's has also given a remarks to Meeting of State Parties to the UN Convention on the Law of the Sea on the 25th anniversary of its entry into force, stated

*“The United Nations Convention on the Law of the Sea is a fundamental tool. Many of the current challenges facing our oceans can be addressed through the effective and comprehensive implementation of the provisions of the Convention. So, as we commemorate the 25th anniversary of the entry into force of this important instrument, I encourage all States that have not yet done so, to ratify or accede to it.”*²

However, the recent activities in the South China Sea has showed us the vital role of freedom of navigation in Economic Exclusive Zone (EEZ) and the high seas. Throughout the long history of the ocean, freedom of navigation has always been one of the profound concerns of all nations.³ Fast forward to the negotiation of UNCLOS,⁴ freedom of navigation remained one of the paramount issues between coastal and maritime states.⁵ Coastal states trying to claim for more jurisdiction to be recognize as their sovereignty, however on the other hand, maritime states wants to ensure that still be a freedom of navigation as much as possible.⁶

Therefore, UNCLOS tries to bridge both interest by creating some new legal regime such as limitation of national jurisdiction at sea, the right of freedom of navigation, security, sustainable use of the ocean, and nearly all activities, which happen at sea, are regulated by UNCLOS. Moreover, the year 2020 remarks the 25th anniversary of the UNCLOS, therefore it is the best

² Secretary-General's remarks to Meeting of State Parties to the UN Convention on the Law of the Sea on the 25th anniversary of its entry into force [as delivered], United Nations Secretary-General, accessed 4 April 2020, <https://www.un.org/sg/en/content/sg/statement/2019-06-17/secretary-generals-remarks-meeting-of-state-parties-the-un-convention-the-law-of-the-sea-the-25th-anniversary-of-its-entry-force-delivered>.

³ See James Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics* (Oxford University Press New York, 2011); James Stavridis, *Sea Power: The History of Geopolitics of the World Oceans* (Penguin Press New York, 2017).

⁴ Thomas Wemyss Fulton, *The Sovereignty of the Sea* (Edinburgh, Blackwood, 1911, 1976 rep), 3.

⁵ Hugo Grotius, *The Freedom of the Seas or the Right which Belongs to the Dutch to Take Part in the East Indian Trade* (Oxford University Press New York, 1633).

⁶ *Ibid.* 27. In Chapter V of his book, *Mare Liberum*, Grotius argue that under the law of nations the sea has been regarded as the property of no one (*res nullius*), a common possession (*res communis*) and public property (*res publica*).

time to reflect the 25 years of UNCLOS and to see the future challenges. The symposium therefore aims to gather academics and practitioners in the field of law of the sea from around the world to reflect and to think about the future of ocean governance.

Not only it was celebrated at the United Nations Offices and by all other state parties around the world, the UNCLOS 25th anniversary had also been celebrated in Indonesia. In this opportunity, the Writer who is also the Director General for Legal Affairs and International Treaties at the Ministry of Foreign Affairs of the Republic of Indonesia was invited to speak during the First Session under the theme “Law Enforcement by the Coastal State on the Territorial Waters and EEZ”, and presented the “Natuna Case over the South China Sea from the legal perspective”.

The structure of the article will start with the introduction which explain the UNCLOS in general and its relation with Indonesia, including UNCLOS as the constitution of the sea, Indonesia as an archipelagic state and party to UNCLOS, and the role of UNCLOS in Indonesia’s maritime legal system and strategy. In the second part, this article will point out the South China Sea’s issue briefly, described from the background, its overlapping interests, how the dispute arises, until the actualization of the nine-dash line claims in the South China Sea itself. The third part will talk about the Indonesia’s response to the nine-dash line claims and the Natuna Incident comprehensively, as well as the recent Indonesia-China situation. And for the last part, this article will bring the conclusion and recommendation.

II. UNCLOS AND INDONESIA

A. UNCLOS AS THE CONSTITUTION OF THE SEA

Based on the principle that “the Land dominates the Sea”, UNCLOS, which often referred to as the “constitution of the sea”, allows a coastal state to extend its sovereignty beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea of 12 nautical miles, termed as the territorial sea.⁷ A coastal state also has economic sovereignty and jurisdiction over the exclusive economic zone of 200 nautical miles from the baseline and continental shelf,⁸ which is the natural prolongation of its land territory to the outer edge of the continental

⁷ Nguyen Hong Thao, “25th Anniversary of UNCLOS 1982 and its Implementation in Vietnam”, *Maritime Issues*, <http://www.maritimeissues.com/law/25th-anniversary-of-unclos-1982-and-its-implementation-in-vietnam.html>.

⁸ UNCLOS, art 55.

margin, or to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured and where the outer edge of the continental margin does not extend up to that distance.⁹ In exercising their rights and jurisdictions, coastal states must not infringe upon or result in any unjustifiable interference with navigation and other rights and freedoms of other States in their economic exclusive zones and continental shelves as provided for in this Convention.¹⁰

UNCLOS provides also for the most comprehensive legal regime of maritime zones on the balance of the expansion of sovereignty rights and jurisdiction of the coastal state in the exclusive economic zone and continental shelf with the common interests of the international community in the High Seas and the Area – known as the common heritage of mankind.

Most importantly, UNCLOS establishes and promotes a legal regime for what so called the “Archipelagic State”, which has become the milestone for Indonesia and other archipelagic states’ maritime legal system. UNCLOS has undoubtedly contributed to creating a new shape of both domestic and international legal systems on several countries with that specific regime of archipelagic states.

B. INDONESIA AS AN ARCHIPELAGIC STATE UNDER UNCLOS

One of the distinctive features of contemporary Indonesia is that it is an archipelagic state in which the government exercises sovereignty over the waters between the islands making up the country’s land territory as well as over the islands themselves. Historically, as an archipelagic state, nearly all the waters lying between the islands of Indonesia were as open to the ships of all nations as were the waters in the middle of the great oceans up until the middle of the 1950s.¹¹ These waters belonged to no state nor did any state claim any form of jurisdiction over them. As a consequence, Indonesia was made up of hundreds of pieces of territory separated from one another by high seas.

Then, on 13 December 1957, the cabinet of Prime Minister Djuanda Kartawidjaja declared that the Indonesian government had ‘absolute sovereignty’ over all the waters lying within straight baselines drawn between the outermost islands of Indonesia. These baselines, encompassing as they did all the islands making up the country, formed Indonesia—its lands and the seas over which the government now asserted sovereignty—into a single unified terri-

⁹ UNCLOS, art 57.

¹⁰ UNCLOS, art 56 (2).

¹¹ John G. Butcher and R. E. Elson, “How Did Indonesia Become An Archipelagic State”, *The Australian Strategic Institute*, <https://www.aspistrategist.org.au/indonesia-became-archipelagic-state>.

tory for the very first time.¹²

It has been a very long process before eventually, in 1982, Indonesia gained international recognition for its claim when the UNCLOS formally recognized the existence of a new category of states known as archipelagic states and declared that these states had sovereignty over their ‘archipelagic waters’. Indeed, all the efforts were paid off when the archipelagic-state concept was successfully adopted into part 4 of the 1982 UNCLOS.¹³ Indonesia was now allowed legally to exercise its archipelagic baseline connecting its outermost points of its outermost islands as demanded by the declaration. The waters within the baseline became archipelagic waters, within the full sovereignty of the archipelagic state.

In the end, UNCLOS which took more than 10 years in the making and now celebrating 25 years old, with its fast approaching universal participation, is perhaps one of the most significant accomplishments in the arena of international law. Therefore, with its Part 4 of the Archipelagic State’s concept which belongs to Indonesia’s ultimate victory and greatest achievement in the field of international law, UNCLOS has been contributing in shaping both Indonesia’s maritime domestic law and maritime strategy ever since then.

C. INDONESIA’S MARITIME LEGAL SYSTEM AND STRATEGY

UNCLOS has promoted the development and improvement of Indonesia’s maritime legal system. With effect on December 31, 1985 Indonesia has ratified the UNCLOS through the Law Number 17 of 1985, considering UNCLOS as a comprehensive legal document regulating Indonesia’s maritime issues such as definitions and legal regimes of its maritime zones, maritime jurisdiction enforcement and marine economy development.

From that time, all the Indonesia’s domestic law related to the maritime issues, such as boundaries, marine and fisheries, marine resources and environmental protection, and so on, as well as the defence issues-related laws, are basically consistent and compatible with those of UNCLOS provisions. Moreover, dozens of related documents, including government decrees and ministerial decisions are also subject to provisions under UNCLOS.

¹² Muhammad Taufan and Aloysius Selwas Taborat, “The Djuanda Declaration Has More to Offer”, *The Jakarta Post*, <https://www.thejakartapost.com/academia/2017/12/14/the-djuanda-declaration-has-more-to-offer.html>

¹³ Through sheer determination and formidable diplomacy, Indonesia’s negotiators were able to get the issue of the archipelagic state discussed as a separate agenda item in the third conference in 1973. Damos Dumoli Agusman and Gulardi Nurbintoro, “The archipelagic-state concept a quid pro quo”, *The Jakarta Post*, <https://www.thejakartapost.com/academia/2019/12/14/the-archipelagic-state-concept-a-quid-pro-quo.html>

The country has also signed numbers of international conventions, agreements, memorandum of understandings, joint statements, and other form of legal instruments, in the level of either bilateral or multilateral, and in the scope of either regional or international. UNCLOS, moreover, has also driven Indonesia to accede to various international maritime conventions. It can be seen that UNCLOS not only demonstrated that it is the basis for national, regional and global action and cooperation in the marine sector, but also that its legal regime allows for sufficient flexibility to ensure its durability over time, while also addressing future challenges, those can be adopted in each countries' domestic legal system, including Indonesia.

Furthermore, in terms of maritime strategy, UNCLOS also provides the basis for Indonesia to develop its own maritime vision, later known as the Indonesia's Global Maritime Fulcrum (GMF). The goal of this GMF policy is making Indonesia as a sovereign, advanced, independent, strong maritime nation that is able to provide positive contribution for peace and security in the region as well as to the world. The first Plan of Action is for the period 2016-2019 which highlights five priority pillars: Maritime Boundary, Ocean Space and Maritime Diplomacy; Maritime Industry and Sea Connectivity; Services and Industry of Marine Natural Resources and Marine Environment Management; Maritime Defence and Security; and Maritime Culture.¹⁴

Moreover, the GMF vision highlights Indonesia's view of itself as an international promoter of peace. One of the GMF pillars on defence and security is to enhance Indonesia's participation in regional and international cooperation on maritime defence and security. On maritime diplomacy, the policy indeed explicitly states that Indonesia must play a leadership role in various maritime cooperation and initiatives at the regional and multilateral levels.

II. THE SOUTH CHINA SEA

A. BACKGROUND

As mentioned earlier that the Indonesia's maritime policy strongly em-

¹⁴ The roadmap of the Indonesia Ocean Policy (IOP) highlights seven policy pillars: Marine and Human Resources Development; Maritime Security, Law Enforcement and Safety at Sea; Ocean Governance and Institutions; Development of Maritime Economy; Ocean Space Management and Marine Protection; Maritime Culture; and Maritime Diplomacy. Each of the policy pillars is further broken down into policies/strategies, altogether totalling 76 policies/strategies. The implementation of the IOP is carried out by the ministries and non-ministerial government agencies according to their respective roles and functions under the supervision of the Coordinating Ministry for Maritime Affairs. Dewi Fortuna Anwar, "The Emergence of Indonesia's Ocean Policy", *RSIS Commentary*, No. 028 (2018), <https://www.rsis.edu.sg/wp-content/uploads/2018/02/CO18028.pdf>.

phasize Indonesia to play a leadership role in various maritime cooperation and initiatives at the regional and multilateral levels, it's one of Indonesia's responsibilities to take into account of, and be synergised with, the various regional initiatives as long as they are in line with its national interests and can make positive contributions to peace, especially in the region.

Therefore, when the South China Sea conflict arises since many years ago, Indonesia is one of the countries that always promote peaceful discussions in depth over the recent developments in the South China Sea and expressed serious concern over the recent incidents. In this regard, with other countries, both at bilateral and multilateral level, Indonesia emphasizes the importance of maintaining peace, and stability in the South China Sea, the continued exercise of self-restraint by all parties concerned, and the promotion of confidence-building measures in this area.

In the region, for instance, the countries reaffirmed the importance and continued relevance of the Declaration on the Conduct of Parties in the South China Sea (DOC) of 2002, as a milestone document between ASEAN Member States and China, embodying their collective commitment to promoting peace, stability and mutual trust and to ensuring the peaceful resolution of disputes in the area, in accordance with universally recognized principles of international law, including the UNCLOS. All ASEAN member states called on all parties to respect the freedom of navigation in and over-flight above the South China Sea as provided for by the universally recognized principles of international law, including UNCLOS.¹⁵

However, the fact that the South China Sea region could be one of the most disputed areas in the world due to its many overlapping claims and interest, it may requires more extra efforts and special approach to handle this issue. The South China Sea dispute is very well complicated in terms of its nature, the sovereignty issues of the islands, delimitation issues, resources utilization as well as other matters concerning security (both traditional and non-traditional).

B. OVERLAPPING INTEREST IN THE SOUTH CHINA SEA

The South China Sea which, in one hand, has many potential conflicts and in the other hand, extremely rich in resources, surrounded by land belonging

¹⁵ The parties also stressed the importance of promoting a peaceful, friendly and cooperative environment in the South China Sea, and the continued constructive dialogue between ASEAN and China in this regard. Subsequently, the parties look forward to the finalization of the Guidelines at the upcoming ASEAN-China Senior Officials' Meeting on the Implementation of the DOC. ASEAN Secretariat, "Joint Communiqué of the 44th ASEAN Foreign Ministers Meeting, Bali, Indonesia, 19 July 2011," *ASEAN*, <https://asean.org/wp-content/uploads/images/archive/documents/44thAMM-PMC-18thARF/44thAMM-JC.pdf>

to several different states. For the past century, a number of sovereign states have laid claim to an overlapping territory in the South China Sea. The dispute revolves primarily around the control of two archipelagos, the Paracel and Spratly Islands, and their surrounding ocean areas.

The Spratly Islands, which measuring just over three (3) square miles, consist of a group of 100 small islands and reefs which host rich fishing grounds. There may also be oil and gas deposits, but these prospects have yet to be explored.¹⁶ Its 170-plus features collectively are located in the southern part of the South China Sea, extending for about 900km from southwest to northeast. The majority of the Spratlys are in fact submerged banks, reefs and low-tide elevations. Only 36 are known to rise above high-tide to form tiny islands, the biggest of which (Itu Aba Island) is a mere 1.4km long and 400m wide. The total land area of the Spratlys has been estimated to be less than 8 km², yet they are scattered over an area of around 240,000km².¹⁷ Estimates of the total contested maritime area in the South China Sea vary considerably but far exceed this figure. The Spratlys are located off the coasts of the Philippines, Malaysia, and Vietnam and are south of the Paracel Islands. This territory is currently contested among China, Malaysia, Philippines, Taiwan, Vietnam, and Brunei. More specifically, China, Taiwan, and Vietnam claim the Spratlys in their entirety, while Malaysia, Brunei, and the Philippines claim only part of the islands.

While a bit larger in size than the Spratlys, the Paracel Islands are composed of 130 small coral islands and reefs. The Paracels also hold excellent grounds for fish and natural resources such as oil and gas. The area is approximately equidistant from the southern coast of China and the eastern coast of Vietnam. Since 1974, the Chinese military has garrisoned and occupied the land after seizing the territory from Vietnamese troops.¹⁸ Those who claim the Paracel Islands include China, Taiwan, and Vietnam.

C. HOW THE DISPUTE ARISES

The South China Sea disputes arise when the Paracels become the object of disputes between China, Taiwan, and Vietnam, and claims to the Spratlys are contested either entirely or in part by six parties, including Brunei, Taiwan, Malaysia, China, the Philippines and Vietnam. And, furthermore, this China's argument for its sovereignty is based historically on the claim of prior discov-

¹⁶ Yeju Choi, "The South China Sea Dispute: Stimulating the Next Global Conflict", *Kennesaw State University*, http://pksoi.armywarcollege.edu/default/assets/File/South_China_Sea_Final.pdf

¹⁷ John Robert Victor Prescott and Clive H. Schofield, "Undelimited Maritime Boundaries of the Asian Rim in the Pacific Ocean", *International Boundaries Research Unit* 3, no. 1 (2001), 58.

¹⁸ Yeju Choi, "The South China Sea Dispute".

ery and on a decision of the San Francisco Conference of 1951 that required Japan to return several islands in the East China Sea to China.¹⁹

China claims all of the Spratly (Nansha) Islands on the basis of its discovery and presence from the period of the Han dynasty (2nd century BC). China then made its first official claim to the Spratly Islands in 1950, less than a year after its foundation, in response to the Philippines claims. China maintains a claim to a U-shaped ‘traditional sea boundary line’ which later known as what so called a “Nine-Dash Line”, a broken or dashed line encompassing the majority of the South China Sea.²⁰

It is indeed unclear precisely what this U-shaped nine-dash line represents, but it does not appear to be a jurisdictional limit marking the extent of China’s claimed Exclusive Economic Zone (EEZ) or a claim to historic waters as some analysts have suggested. Instead it seems to be designed to illustrate which islands are claimed by China; that is all the Spratlys and Paracels.²¹

D. THE ACTUALIZATION OF NINE-DASH LINE CLAIMS IN SCS

The claims of nine-dash line in the South China Sea, in fact, have been actualized since many years ago. There were at least four major incidents and battles occurred in the South Chinas Sea as part of the China’s nine-dash line claim since 1975. It started for the first time in 1975 when China and Vietnam marked the South China Sea battle over the Paracel Islands. Then, followed by China’s claim on James Shoal in 1984, and went on battle again in 2012 between China and the Philippines over the Scarborough Shoal, and the last in both 2017 and 2019, when China and Vietnam disputed the Vanguard Bank’s Oil. The long history of the 9 dash line claim over the South China Sea can be explained in the paragraphs below.

1. Battle of the Parcel Islands, China and Vietnam in 1975

The Battle of the Parcel Islands was a military engagement between the naval forces of China and South Vietnam in the Parcel Islands on January 19, 1974. The battle was an attempt by the South Vietnamese navy to expel the Chinese navy from the vicinity.²² Prior to the battle, Vietnam had controlled some islands within the Paracel archipelago (Xisha in Chinese, and Hoang Sa in Vietnamese) and China had controlled others. Both sides claimed them in

¹⁹ Hans Dieter-Evers., 81.

²⁰ John Robert Victor Prescott and Clive H. “Undelimited Maritime Boundaries”.

²¹ *Ibid.*

²² Ralph A. Cossa, “Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict,” *Washington, D.C. Center for Strategic and International Studies*, no. 1 (1998).

full, as did Taiwan. During the battle, three of the four Vietnamese warships had to retreat while the fourth sank with its captain on board.²³

As a result, China gained control over the entire group of islands, now part its newly-established Sansha prefecture. Furthermore, China gained control over all of the Paracel Islands. South Vietnam protested to the United Nations, but China, having veto power on the UN Security Council, blocked any efforts to bring it up.²⁴ The remote islands had little value militarily, but diplomatically the projection of power was beneficial to China.²⁵

2. China's Claim on James Shoal, China and Malaysia in 1984

Historically, James Shoal, along with its two nearby features, Parsons' Shoal and Lydie Shoal, were recognised by British surveyors in the early 19th century via many of its surveys.²⁶ James Shoal first appeared on the British Admiralty Chart in the 1870s.²⁷ And geographically, this James Shoal lying about 45 nautical miles northwest of Bintulu, Malaysia, on the continental shelf of Borneo, the shoal is 80 kilometres from the Malaysian coast and about 1,800 kilometres from the Chinese mainland.²⁸ In fact, it sits south of the Spratly Islands, but is sometimes grouped with them as part of international disputes over sovereignty in the South China Sea. The shoal is embedded in the continental shelf of Malaysia and well within its 200 nautical mile EEZ.²⁹

From the perspective of the territorial disputes, Malaysia's claim on the shoal is based on the continental shelf principle, on the basis that Malaysia is the only country whose continental shelf covers James Shoal.³⁰ While the shoal is claimed to be the southernmost territory of China and Taiwan.³¹

²³ *Ibid.*

²⁴ Bernard Gwertzman, "Peking Reports Holding U.S. Aide", *The New York Times*, 26 January 1974 <https://www.nytimes.com/1974/01/26/archives/peking-reports-holding-us-aide-condition-of-observer-for-embassy.html>.

²⁵ James M. Markham, "Saigon Reports Clash with China", *The New York Times*, 19 January 1974 <https://www.nytimes.com/1974/01/19/archives/saigon-reports-clash-with-china-officer-says-3-vietnamese-soldiers.html>.

²⁶ Bill Hayton, "How a Non-existent Island Became China's Southernmost Territory". *South China Morning Post*, <https://www.scmp.com/comment/insight-opinion/article/1146151/how-non-existent-island-became-chinas-southernmost-territory>.

²⁷ *Ibid.*

²⁸ Joint Submission to United Nations Commission on the Limits of the Continental Shelf (CLCS)" (PDF). *United Nations*. 20 May 2009. Retrieved 15 March 2015.

²⁹ B. A. Hamzah, "China's James Shoal Claim: Malaysia the Undisputed Owner", *RSIS (Rajaratnam School of International Studies) Commentaries*, Nanyang Technology University, Singapore. <https://www.rsis.edu.sg/wp-content/uploads/2014/07/CO14122.pdf>.

³⁰ Active exploration and development of oil and gas fields by Malaysia has been taking place around the James Shoal since 2014, with several production facilities erected in the surrounding area. Malaysia has also been undertaking exploration for and production of hydrocarbon resources on a sustained basis in the area, effectively asserting jurisdiction over the area. *Ibid.*

³¹ *Ibid.*

3. Battle of Scarborough Shoal, China and the Philippines in 2012

The Scarborough Shoal claimed by both China and the Philippines. Taiwan also claims the shoal as part of its territory. A Philippine Navy surveillance plane spotted eight Chinese fishing vessels anchored in the waters of Scarborough shoal on April 8, 2012.³² An offshore patrol vessel of the Philippine Navy was sent on the same day by the Philippine Navy to survey the vicinity of the shoal, and confirmed the presence of the fishing vessels and their ongoing activities. Furthermore, on April 10, 2012, a Philippines offshore patrol vessel came to inspect the catch of the fishing vessels. This Philippines' naval vessel inspection team claimed that they discovered illegally collected corals, giant clams and live sharks inside the first vessel boarded by the team.³³ It was reported that they attempted to arrest the Chinese fishermen but were blocked by two Chinese maritime surveillance ships.³⁴ Since then, tensions have continued between the two countries.

4. Vanguard Bank's Oil Dispute, China and Vietnam in 2017 and 2019

Tensions had risen once again in the South China Sea after all the battles and disputes those mentioned above. For weeks in 2019, Chinese and Vietnamese coastguard vessels have been involved in a confrontation after a Chinese geological survey vessel entered waters near the Vietnam-controlled Vanguard Bank on 3 July 2019.³⁵ The incident has upset both Hanoi's leadership and the Vietnamese public, and led the US to criticise Beijing for "bullying behaviour" in the area.³⁶ Moreover, a spokesperson for the U.S. Department of State, released a statement condemning China's "repeated provocative actions aimed at the offshore oil and gas development of other claimant states threaten regional energy security and undermine the free and open Indo-Pacific energy

³² Tina G. Santos, "PH, Chinese naval vessels in Scarborough Shoal standoff", *Philippine Daily Inquirer*, <https://globalnation.inquirer.net/32341/ph-chinese-naval-vessels-in-scarborough-shoal-standoff>.

³³ Elton Lugay, "Filipinos, Vietnamese in US close ranks: Boycott Chinese products", *Philippine Daily Inquirer*, <https://globalnation.inquirer.net/41565/filipinos-vietnamese-in-us-close-ranks-boycott-chinese-products>.

³⁴ Christopher Bodeen, "China travel agencies suspend trips to Philippines", *Philippine Daily Inquirer*, 11 April 2012, <https://globalnation.inquirer.net/36217/china-travel-agencies-suspend-trips-to-philippines>.

³⁵ The Vanguard Bank basin is the westernmost reef of the Spratly islands and is known for its rich oil and gas reserves. The area also hosts Vietnam's strategic oil rigs, a collection of around 24 service stations considered to be "ocean fortresses" to fend off intruders. The reef sits well within the 200 nautical miles of Vietnam's exclusive economic zone (EEZ) set down by the United Nations Convention on the Law of the Sea (UNCLOS), so is too important for Vietnam – economically and politically – to concede. Trinh Le, "The Vanguard Bank Standoff Shows China Remains Undeterred", *The Interpreter*, <https://www.lowyinstitute.org/the-interpreter/vanguard-bank-standoff-shows-china-remains-undeterred>.

³⁶ The United States has expressed concerns over recent Chinese geological survey activity and "interference" with Vietnam's activities in disputed waters in the South China Sea. Ankit Panda, "US Slams China's 'Bullying' Amid Vanguard Bank Oil Exploration Standoff With Vietnam", *The Diplomat*, <https://thediplomat.com/2019/07/us-slams-chinas-bullying-amid-vanguard-bank-oil-exploration-standoff-with-vietnam>.

market”.³⁷

Interestingly, the ship briefly left the region to resupply, only to return in recent days. As we know, this latest stand-off harks back to a similar incident five years ago following the intrusion of a Chinese oil rig, which at the time triggered a wave of unprecedented anti-China protests and riots in Vietnam and brought relations between the two communist regimes to their lowest point since the bloody border war in 1979.³⁸

Many maritime experts at that time came out with a statement that Beijing should not conduct any activities that would complicate the situation in the sea and violate Vietnam’s sovereign rights in the Vanguard Bank area in the South China Sea. The actions so far have violated Vietnam’s sovereignty under the International Law.³⁹

Moreover, the tension at Vanguard Bank hardly represents the first time Chinese ships have infringed on Vietnamese territorial waters or faced allegations of pressure on resource projects. However, the government of Vietnam views this latest incident differently. It was because this Vanguard Bank basin is the westernmost reef of the Spratly islands and is known for its rich oil and gas reserves.⁴⁰ Indeed, it is too important for Vietnam – economically and politically – to concede.

Furthermore, as what explained above, those four major incidents and battles occurred in the South China Sea as part of the China’s nine-dash line claim were just one of China’s tactics. Even when the Permanent Court of Arbitration in The Hague dismissed the nine-dash line claim as groundless in 2016, instead of working through the issues by legal means, the Chinese government continues to adopt its unilateral approach. In the other side, all those countries challenged by China had also been rightfully protested those Chinese aggression over their disputed areas in the South China Sea region and have alleged that Chinese ships have violated their sovereignty, sovereign rights and jurisdiction under UNCLOS.

³⁷ *Ibid.*

³⁸ Derek Grossman, “Why Vanguard Bank and Why Now? Explaining Chinese Behavior in the South China Sea,” *The Randblog*, <https://www.rand.org/blog/2019/08/why-vanguard-bank-and-why-now-explaining-chinese-behavior.html>.

³⁹ Dipanjan Roy Chaudhury, “Vietnam justified in defending its rights in Vanguard Bank in South China Sea,” *The Economic Times-India Times*, 30 September 2019, https://economictimes.indiatimes.com/news/defence/vietnam-justified-in-defending-its-rights-in-vanguard-bank-in-south-chinasea/article-show/71368439.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

⁴⁰ Trinh Le, “The Vanguard Bank Standoff Shows China Remains Undeterred”, *The Interpreter*, <https://www.lowyinstitute.org/the-interpreter/vanguard-bank-standoff-shows-china-remains-undeterred>.

III. THE INDONESIA-CHINA SITUATION

A. INDONESIA'S RESPONSE TO THE NINE-DASH LINE CLAIMS

Indonesia's response to the nine-dash line claim has always been clear, concise, and right to the point. As also stated by the Writer in his presentation during the UNCLOS 25th Anniversary seminar, that the claims regarding the nine-dash line are rejected by countries, violating the UNCLOS, and has indeed no legal basis. This statement has always been Indonesia's position up until now concerning the nine-dash line.

First, Indonesia is not a claimant state to either the sovereignty or territorial disputes in the South China Sea. This position was stated in several diplomatic notes addressed to government of the People Republic of China since 2010. Indeed, for Indonesia, the dispute is not about maritime features but China's illegal claim over the Indonesia's EEZ. Furthermore, China made illegal claims over Indonesia's EEZ stating that it is within China's traditional relevant waters.

In the other opportunity, the Indonesian government has also emphasized that Indonesia is not claimant States in the South China Sea dispute, simply because Indonesia does not claim any feature in the area and no state claims any feature within Indonesia's South China Sea waters.⁴¹ Even though this Natuna Archipelago is within the Indonesian waters but geographically also part of the South China Sea region.⁴²

Second, the Tribunal instituted under Annex VII to the UNCLOS, between the Republic of the Philippines against the People's Republic of China (The South China Sea Arbitration/the Tribunal) has already confirmed that the nine-dash line is invalid under UNCLOS. Therefore, the international communities as well as the other countries need to comply or at least respect the Tribunal award. As a result, the nine-dash claims are rejected by countries.

Even though China has reiterated they will not obey the Tribunal ruling as it did not acknowledge its jurisdiction in the case, and refused to attend the entire proceedings in The Hague, the Netherlands.⁴³

Furthermore, Indonesia notes that its view concerning the maritime en-

⁴¹ Damos Dumoli Agusman, "The South China Sea UNCLOS Tribunal Award 2016: What is has changed and what it does mean to Indonesia," *Indonesian Journal of International Law* 14, no. 2 (2017): 130-150.

⁴² *Ibid.*

⁴³ Dhiana Puspitawati and Mohd Hazmi Mohd Rusli, "Defending territorial integrity over Natuna Islands," *The Jakarta Post*, 14 August 2018, <https://www.thejakartapost.com/academia/2018/08/14/defending-territorial-integrity-over-natuna-islands.html>.

titlements of the maritime features as reflected in the Tribunal award in which no maritime features in the Spratly Islands is entitled to an Exclusive Economic Zone or a Continental Shelf of its own. In conclusion, the Tribunal has clarified that there are no more contested waters, but only the undelimited waters. At the same time, some features are solved, that the low tide elevations are not subject to appropriation and the low tide elevations within the EEZ will belong to the coastal states which have such EEZ.

And third, the nine-dash line claim has no legal basis. Indonesia has been following closely all the debates over the nine-dash line claim and has also sent its diplomatic notes, for example in 2010 and 2012, to reassert its position concerning the nine-dash line claim that there is no clear explanation as to the legal basis, the method of drawing, and the status of those separated nine-dash line. Indonesia has submitted its position on the nine-dash line's map through a diplomatic note of the Permanent Mission of the Republic of Indonesia to the United Nations dated 8 July 2010 addressed to the Secretary-General of the United Nations. The note is essence affirmed that the nine-dash line's map lacks of international legal basis and is in contravention to the UNCLOS.

In May 2020, Indonesia reiterates again that the nine-dash line's map implying historic rights claim clearly lacks international legal basis and is tantamount to upset UNCLOS. This view has also been confirmed by the Award of the Tribunal that any historic rights that the People's Republic of China may have had to the living and non-living resources were superseded by the limits of the maritime zones provided for by UNCLOS.

B. THE CHINA'S BEHAVIOURS AND INCONSISTENT CLAIMS

As Indonesia has responded this nine-dash claims firmly, in the other hand, the Chinese government has also given their responses. First of all, China has never protested the 1969 Indonesia-Malaysia Continental Shelf Agreement in the South China Sea (within the nine-dash line), while this agreement was deposited and announced in the United Nations. Moreover, China has never protested the Indonesian Declaration on the EEZ in 1980 even though it was clearly announced that this EEZ boundaries in the South China Sea were within the nine-dash line.

Furthermore, China has also never protested against the Indonesian map since the 1980s which was officially issued by the Indonesian Agency, that has drawn the boundaries of the Indonesia's EEZ to the nine-dash line. And lastly, during the UNCLOS negotiations way back in the 1980s, the Chinese Delegation never raised the nine-dash line claim, even though many countries at that time raised various issues that could potentially affect their national interests

once UNCLOS entered into force. For instance, Malaysia, Thailand, and Singapore raised the issue of traditional rights which was later accommodated in the UNCLOS.

From this inconsistent behaviours, we can exactly pointed that this China response could led to the situation where, in fact, China put aside the differences, the “cooperation”, but in the same time they still work in actualizing the claim, resulting in a “grey zone and strategic ambiguity”. In the other hand, the Chinese government are likely to tone down the issue, while again in the same time they reposition the claim to be more international law-friendly narratives.

Besides all the absence of legal basis and those China inconsistent behaviours, China also has its another “inconsistent claims” in using term to refer their what so called “rights” with no coherent legal basis. Starting in 2009, China used the term “traditional fishing area” for the first time to justify their claim to fish in Indonesia’s EEZ.⁴⁴

Furthermore, in 2016, there was a changing term process of China’s claim, from “traditional fishing area” to “traditional fishing ground”. While three years later, on in 2019 precisely, there was another term of the same claim which known as “historic rights in relevant waters”.⁴⁵ In conclusion, in terms of behaviours and even in utilising the legal terminology, China has never been consistent to refer their rights in those nine-dash line claims.

IV. THE NATUNA INCIDENT

A. BACKGROUND

The South China Sea could become a flashpoint between China and Indonesia, the South East Asia’s biggest nation but with no claim in South China Sea region.⁴⁶ The Government of the Republic of Indonesia reacted firmly to these Chinese claims. Indonesia recently rejected China’s claims over a disputed part of the South China Sea as “having no legal basis” as explained before. It also protested to Beijing over the presence of a Chinese coastguard vessel in its territorial waters. This Chinese boat trespassed into Indonesia’s

⁴⁴ Damos Dumoli Agusman, “Understanding the Natuna Incident”, *Ministry of Foreign Affairs of Republic of Indonesia*, 2020.

⁴⁵ *Ibid.*

⁴⁶ Dipanjan Roy Chaudhury, “Vietnam justified in defending its rights in Vanguard Bank in South China Sea.” *The Economic Times-India Times*, 30 September 2019, https://economictimes.indiatimes.com/news/defence/vietnam-justified-in-defending-its-rights-in-vanguard-bank-in-south-chinasea/article-show/71368439.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

EEZ off the coast of the northern islands of Natuna, leading Indonesians officials to issue a “strong protest” and summon the Chinese ambassador in Jakarta.

B. THE INCIDENT’S TIME FRAME

This Natuna incident began on 19 December 2019, when the Indonesian Coast Guard vessel detected the presence of two Chinese Coast Guard (CCG) vessels (No. 5302 and 5403) and a Chinese Maritime Surveillance vessel in the Indonesia’s EEZ. These three vessels of the People’s Republic of China exercised an escort operation for 63 Chinese fishing vessels conducting illegal fishing activities in the Indonesia’s EEZ.⁴⁷

Furthermore, on 24 December 2019, the Indonesian Coast Guard (KN Tanjung Datu) approached the Chinese Coast Guard 5302 and requested the vessels to order the Chinese fishing vessels to cease the illegal fishing activities and promptly leave the Indonesia’s EEZ. However, the request of the Indonesian Coast Guard was disregarded by the Chinese Coast Guard. While pursuing to expel Chinese fishing vessels from Indonesia’s EEZ, the Indonesian Coast Guard vessel was hindered by the Chinese Coast Guard vessel 5403 while the Chinese Maritime Surveillance vessel continued escorting the Chinese fishing vessels. And up until 30 December 2019, the Chinese Coast Guard vessels were still found in the Indonesia’s EEZ.

These two major incidents, indeed, has led the Indonesian Government, through its Ministry of Foreign Affairs (the Ministry) to summon the Chinese ambassador in Jakarta and to issue a protest through a diplomatic note addressed to the government of the People’s Republic of China via its embassy in Jakarta. The diplomatic note dated 30 December 2019 utilized the “hardest” diplomatic terminologies those may be used in diplomatic correspondence to show the Indonesian Government’s utmost displeasure.

Through this diplomatic note, the Ministry expressed the Indonesian Government’s strong protest to the Chinese Government for the obvious violation of Indonesia’s sovereign rights over its EEZ as well as the breach of Indonesia’s sovereignty by undermining and intervening in Indonesia’s right under international law in exercising legal enforcement in its own jurisdiction. Moreover, the government has also reiterated its strongest objection toward the baseless claims made by the Chinese Government over Indonesia’s EEZ, in contravention of the UNCLOS, as confirmed by the award of the Tribu-

⁴⁷ Fadli, “Indonesia issues protest to Beijing over Chinese vessel trespassing in Natuna,” *The Jakarta Post*, 31 December 2019, <https://www.thejakartapost.com/news/2019/12/31/indonesia-issues-protest-to-beijing-over-chinese-vessel-trespassing-in-natuna.html>.

nal in 2016, including the nine-dash line claim and the “Traditional Fishing Ground” in Indonesia’s EEZ. At the same time, the protest through this diplomatic notes has emphasized that those Chinese unlawful acts were also a repetition of a similar operation conducted in 2016.

The Indonesian Government also urges the Chinese Government to restrain from exercising activities in contravention of international law which would potentially lead to unnecessary tension in the region. In fact, Indonesia emphasizes its statement that it will take all necessary actions including legal enforcement with a view to secure its sovereignty, sovereign rights and jurisdiction in accordance with international law including the UNCLOS.

On 31 December 2019, the Chinese Foreign Ministry’s Spokesperson made a daily press statement and stated that:

“China has sovereignty over the Nansha Islands and has sovereign rights and jurisdiction over relevant waters near the Nansha Islands. In the meantime, China has historical rights in the South China Sea. Chinese fishermen have long been engaging in fishery activities in relevant waters near the Nansha Islands, which has all along been legal and legitimate. The China Coast Guard were performing their duty by carrying out routine patrol to maintain maritime order and protect our people’s legitimate rights and interests in the relevant waters. Our ambassador to Indonesia reiterated China’s consistent position to the Indonesian side. China would like to work with Indonesia to continue managing disputes properly through bilateral dialogue, and to maintain friendly cooperation as well as peace and stability in the South China Sea.”⁴⁸

At the same day with the Chinese Foreign Ministry’s spokesperson’s statement, on 31 December 2019, the Indonesian Ministry of Foreign Affairs also made a press statement rejecting that China’s Unilateral Claim over the Indonesia’s EEZ.⁴⁹ From the Indonesia’s side, it said that firstly, the Republic of Indonesia rejects the statement made by the Spokesperson of the Ministry of Foreign Affairs of the People’s Republic of China on 31 December 2019 of which China claims a historic title over Indonesia’s EEZ. Secondly, The claim over Indonesia’s EEZ based on historic title that Chinese fishermen have long been conducting their fishing activities in the said waters is unilateral in nature and has no legal basis whatsoever under the UNCLOS. Furthermore, this par-

⁴⁸ “Foreign Ministry Spokesperson Geng Shuang’s Regular Press Conference on December 31, 2019”, *Ministry of Foreign Affairs of the People’s Republic of China*, accessed 1 May 2020, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1729013.shtml

⁴⁹ Ahmad Faiz Ibnu Sani, “Indonesia Lodges Protest to China Over Natuna Border Violation,” *Tempo.co*, <https://en.tempco.co/read/1289547/indonesia-lodges-protest-to-china-over-natuna-border-violation>.

ticular argument had been deliberated and decided to be in contravention of international law by the arbitral judgment of 2016. The Republic of Indonesia further rejects the use of the term “relevant waters” claimed by the People’s Republic of China as this term is not recognized under UNCLOS.⁵⁰

Thirdly, The Republic of Indonesia urges the People’s Republic of China to provide a clear legal reasoning for its claimed entitlement based on UNCLOS and the geographical limits with respect to China’s claim over Indonesia’s EEZ. And the last point, pursuant to the provisions of UNCLOS, the Republic of Indonesia does not have overlapping maritime entitlements with the People’s Republic of China. Any dialogue concerning the delimitation of maritime boundaries between the two countries is therefore unnecessary and irrelevant.

Two days later, on 2 January 2020, the Chinese Foreign Ministry’s Spokesperson made a daily press statement again concerning the China’s claim to the Indonesia’s EEZ. The spokesperson stated,

“I elaborated on China’s position and propositions on the South China Sea issue the day before yesterday and see no need to repeat them here. I want to stress that China’s position and propositions comply with the international law, including UNCLOS. So whether the Indonesian side accepts it or not, nothing will change the objective fact that China has rights and interests over the relevant waters. The so-called award of the South China Sea arbitration is illegal, null and void and we have long made it clear that China neither accepts nor recognizes it. The Chinese side firmly opposes any country, organization or individual using the invalid arbitration award to hurt China’s interests.”⁵¹

Knowing the Chinese Foreign Ministry has made a press statement again, on 3 January 2020, or a day after, the Indonesian Minister of Foreign Affairs, Retno Marsudi, also made a “4 conclusions” concerning the Indonesia’s position regarding this Natuna incident.⁵² First, The China’s coastguard vessels had committed violations in Indonesia’s EEZ. Second, Indonesia’s EEZ had been acknowledged as Indonesia’s territorial waters through the UNCLOS. Third, China is one of the signatories and parties to UNCLOS, so that China is obliged to honour the implementation of UNCLOS. And fourth,

⁵⁰ Damos Dumoli Agusman, “Understanding the Natuna Incident,” *Ministry of Foreign Affairs of Republic of Indonesia*, 2020.

⁵¹ “Foreign Ministry Spokesperson Geng Shuang’s Regular Press Conference on January 2, 2020,” *Ministry of Foreign Affairs of the People’s Republic of China*, accessed 1 May 2020, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1729272.shtml

⁵² Andita Rahma, “Natuna Waters: Indonesia Opposes China’s Nine-Dash Line,” *Tempo.co*, <https://en.tempo.co/read/1290785/natuna-waters-indonesia-opposes-chinas-nine-dash-line>.

Minister Retno further added that Indonesia would never recognize the Nine-Dash Line claimed by China because it does not have a legal basis recognized by international law, including the UNCLOS. In addition, Indonesia will be increasing the frequency of patrols in Natuna waters, “and fisheries activity as it is Indonesia’s rights.”⁵³

A few days later, on 6 January 2020, the Ministry of Foreign Affairs of the People’s Republic of China issued a diplomatic note addressed to the Embassy of the Republic of Indonesia in Beijing and has reiterated the China’s position as follows: First, it stated that the Nansha Islands are China’s inherent territory, and has sovereign rights and jurisdiction over the relevant waters based on the Nansha Islands. China claimed that it also has historic rights in the relevant waters of the South China Sea, which is consistent with the relevant international law, including the UNCLOS and international practices.

Second, the Chinese fishing vessels and fishermen have long engaged in fishing activities in those relevant waters are both lawful and legitimate. Therefore, the Chinese Government believed that as part of its duties, the China Coast Guard has conducted routine patrols in these waters in accordance with law and for the purpose of maintaining order and protecting the life and property of Chinese fishermen from violation.

Third, it reiterated the China’s position on the Arbitral Tribunal’s Awards to the South China Sea that the Tribunal has no jurisdiction over the Philippine’s submissions, and exercised that the jurisdiction *ultra vires*. Therefore, the Tribunal’s awards are null and void, and contrary to the principles of fairness and justice. As a consequence, China has neither accepted nor participated in the Arbitral Tribunal, and the Tribunal’s awards will never affect the China’s territorial sovereignty and maritime rights and interests in the South China Sea.

Fourth, on this last point of the China’s diplomatic note, the Chinese Government mentioned about the comprehensive strategic partnership with Indonesia as well as emphasized the good communication and coordination the two countries have maintained on the South China Sea over the years. It is said that China wishes Indonesia will work together in order to properly manage the relevant issues through bilateral dialogue and consultation. Those four points were the first Chinese Government responses to the Indonesian Government rejections through a diplomatic channel, before finally Chinese Foreign Ministry’s Spokesperson made a press statement, a day after.⁵⁴

⁵³ *Ibid.*

⁵⁴ “Foreign Ministry Spokesperson Geng Shuang’s Regular Press Conference on January 7, 2020,” *Ministry of Foreign Affairs of the People’s Republic of China*, accessed 1 May 2020, <https://www.fmprc.gov.cn/>

On 7 January 2020, during his daily press statement, the Chinese Foreign Ministry's Spokesperson mentioned about the 70th anniversary of diplomatic ties between Indonesia and China which is also an important year of national development in both countries. He also stated that as comprehensive strategic partners, China and Indonesia enjoy broad cooperation with great potential. At the same time, he stressed out in particular concerning the effective China-Indonesia cooperation under the Belt and Road Initiative (BRI) has brought tangible benefits to both peoples. China stands ready to work with Indonesia to further deepen BRI cooperation.⁵⁵

And eventually, he mentioned that China and Indonesia have been in communication with each other through diplomatic channels. Therefore, as the littoral countries of the South China Sea and major countries in the region, both China and Indonesia shoulder the important task of safeguarding regional peace and stability, and maintain the bilateral relationship from a strategic and long-term perspective. He also emphasized in terms of disputes, both countries shall properly resolve the differences and foster favourable atmosphere and conditions for celebrating the 70th anniversary of our diplomatic ties.

C. INDONESIA'S RESPONSE TO NATUNA INCIDENT

Indonesia has always been firm and clear in showing the responses to both the Chinese claims on nine-dash line and over the Natuna Sea. In every occasions and events, including during the 25th UNCLOS Anniversary Seminar, the Writer has always mentioned one of the most important ways to response the Chinese government over this issue is a protest through diplomatic notes. Indonesia has sent these diplomatic notes to show the government's consistency and persistent in protesting the claim. It's been since the Chinese Delegation distributed the nine-dash line's map in the South China Sea Workshop ini 1993, then the first Natuna incident when the Chinese government utilize the term of "traditional Chinese fishing area" in 2009 and the second Natuna incident with another new term of "traditional Chinese fishing ground" occurred again in 2016, and three years later, in 2019, the Natuna incident took place again, while this time using the term of "historic rights In relevant waters", Indonesia has been always issuing diplomatic notes to show its consistently and persistently protest.

The substance of these diplomatic notes has also been the same, which is consistent to protest and reject the nine-dash line claim or any other related-terms used by the Chinese government. These protests has always consistently consisted of three main points, which first stated that Indonesia is not a claim-

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⁵⁵ *Ibid.*

ant state and has neither overlapping claims nor party to the territorial dispute in the South China Sea, therefore, Indonesia has nothing to negotiate with China. Second, it's been always stated also in those diplomatic notes that according to the Arbitral Tribunal awards in 2016, this China's nine-dash line is incompatible with UNCLOS. And the last point, the Indonesian government has also stressed that this nine-dash line claim has no legal basis under international law and therefore it's a breach to the UNCLOS.

Moreover, these protest notes through diplomatic channels have legal significances. First, it shows Indonesia's persistent objection. In international law, this norm provides that if a state persistently objects to a newly emerging norm of customary international law during the formation of that norm, then the objecting state is exempt from the norm once it crystallises into law.⁵⁶

This objection to the emergence of a norm may come in the form of statements declaring a state's position on an existing right, or action in which a state exercises an existing right in the face of an emerging norm which would threaten that right.⁵⁷ Therefore, in this case, Indonesia has made the form of statements through diplomatic notes declaring its position consistently and persistently against the nine-dash line claim. In other words, this action in which Indonesia exercises aimed to prevent the nine-dash line claim become what so-the Writer-called "embryonic" and "consolidated". Therefore, Indonesia will never been bound by such claim.

Moreover, in line with Indonesia's persistent objection, it has also pointed out that Indonesia underscores China's claim which is not legal and therefore their claims lost its value under the principle of international law, which known as "estoppel". International law has long recognized the doctrine of estoppel, a principle which prevents states from acting inconsistently to the detriment of others.⁵⁸ Until the 1980s, the use of estoppel in Public International Law was limited to cases involving territorial claims.⁵⁹ Moreover, International estoppel is based on good faith and promotes consistency in international relations. Therefore, the China's inconsistency action without any good faith has been disadvantaging many other countries, including Indonesia. As a consequence, the unilateral nine-dash line claim will no longer valuable under international

⁵⁶ The conceptual role of the rule may be interpreted as straightforward: to preserve the fundamentalist positivist notion that any norm of international law can only bind a state that has consented to be bound by it. In reality, however, numerous unanswered questions exist about the way that it works in practice. James A. Green, *The Persistent Objector Rule in International Law* (Oxford University Press, 2016), 37.

⁵⁷ *Ibid.*

⁵⁸ Thomas Cottier and Jörg Paul Müller, *Estoppel in Public International Law* (Oxford University Press, 2011), 32.

⁵⁹ It is a broad concept, capable of myriad applications, and as a "general principle of law recognized by civilized nations", it carries persuasive moral weight that can be applied in the International Court of Justice (ICJ). *Ibid.*

law. This doctrine basically asserts that the behavior of a country that secretly or firmly recognizes a fact results in the loss of its rights subsequently to make the opposite claim.⁶⁰

The behaviors of China in this regard, as explained above, as follows: First, China has never protested the 1969 Indonesia-Malaysia Continental Shelf Agreement in the South China Sea (within the nine-dash line), and China has also never protested the Indonesian Declaration on the EEZ in 1980 even though it was clearly announced that this EEZ boundaries in the South China Sea were within the nine-dash line.

On the other hand, China has also never protested against the Indonesian map since the 1980s which was officially issued by the Indonesian Agency, that has drawn the boundaries of the Indonesia's EEZ to the nine-dash line. And lastly, during the UNCLOS negotiations way back in the 1980s, the Chinese Delegation never raised the nine-dash line claim.

V. CONCLUSION

The Indonesian government has been rejecting the nine-dash line claim consistently and persistently. This Indonesia's consistent and persistent action has carried out by issuing official protest through diplomatic notes. Indonesia has officially protested the China's claim by sending several diplomatic notes through its embassy in Jakarta. This Indonesia's consistent and persistent action is also in accordance with the norm "Persistent Objection" under international law.

This Indonesia's persistent objection furthermore provides that if Indonesia persistently objects the nine-dash line claim, those have come in the form of sending protests through diplomatic notes or exerting the action of the Indonesian government by exercising its power over the Natuna sea against such claim, then Indonesia is exempt from those claims once it crystallises into law, in this regard the customary international law.

Besides Indonesia's persistent objection recognized under the international law, Indonesia also underscores China's claim which is not legal and therefore their claims lost its value under the principle of international law, which known as "estoppel". Indonesia found that this China's unilateral claim and inconsistency action have been exercised without any good faith and did disadvantaging many other countries, including Indonesia, and therefore has been against the principle of estoppel which prevents states from acting in-

⁶⁰ Damos Dumoli Agusman, "Understanding the Natuna Incident".

consistently to the detriment of others, and based on good faith and promotes consistency in international relations.

Moreover, Indonesia's current position is to remain firm on the matter of principle, that is Indonesia's sovereign rights guaranteed by the UNCLOS, as the Indonesia's EEZ had been acknowledged as Indonesia's territorial waters through the UNCLOS, and therefore there is no room for any negotiation. Furthermore, Indonesia would never recognize the Nine-Dash Line claimed by China since it does not have a legal basis recognized by international law, including the UNCLOS. At the same time, Indonesia will be increasing the frequency of patrols in Natuna waters, and fisheries activities as it is Indonesia's rights.

On the other hand, in line with China, this issue does not necessarily interfere with greater cooperation. For this reason, Indonesia has maintained its bilateral relation without touching on this principle. At the diplomacy level, Indonesia needs to continue its attitude of persistent objection. In addition, it is necessary to examine the repositioning steps that are being and will be carried out by China to justify its historical claims through UNCLOS-friendly narratives

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