

PONTIFÍCIA UNIVERSIDADE CATÓLICA DE MINAS GERAIS
Programa de Pós-Graduação em Relações Internacionais

Mariana Bomfim Burger

"ALL UNDER HEAVEN" IN THE SOUTH CHINA SEA
(天下在南海)

Belo Horizonte
2019

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Prof. Dr. Javier Alberto Vadell – PUC Minas (Orientador)

Prof. Dr. Cristiano Garcia Mendes – PUC Minas (Coorientador)

Prof. Dr. Leonardo Ramos – PUC Minas (Banca Examinadora)

Prof. Dr. Alexandre César Cunha Leite – PUC Minas (Banca Examinadora)

Prof. Dr. Marcos Costa Lima – UFPE (Banca Examinadora)

Prof. Dr. Marcos Cordeiro Pires – UNESP (Banca Examinadora)

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To Geza, Glória and Laura

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“The world is a sphere, there is no East or West”

艾未未 (Ai Weiwei)

ABSTRACT

The South China Sea (南海), known in the Philippines as West Philippine Sea and in Vietnam as East Sea is one of the world's most contested area. China claims about 90 percent of the region that is also disputed by Vietnam, Malaysia and the Philippines. Along with territorial disputes that are mainly focused on the Paracels and Spratlys archipelagoes, there are constant tensions regarding natural resources: oil, gas and fisheries. Moreover, the area holds the world's busiest Sea Line of Communication, which brings to the conflict outside powers patrolling the area in the name of securing the freedom of the seas. The present thesis aims at analyzing the disputes through a Chinese theoretical framework based on an ancient governance system named Tianxia, or "all under heaven". The hypothesis verified is that China's behavior concerning the abovementioned territorial disputes can be interpreted through the viewpoint of Tianxia theory, developed mainly by the Chinese philosopher Zhao Tingyang. In order to verify the hypothesis on China's behavior, the thesis proceeds with three case studies regarding the relations between China and Vietnam, China and the Philippines and China and Malaysia. The main purpose is to understand how historical events shaped those relations within the context of the South China Sea. There is also an analysis of the social and political processes that influence those relations as well as their outcomes in the disputes. The study shows that there are evidences that some China's behavior in the region can be interpreted as a move towards Tianxia. Nonetheless, there is still a long way ahead in order to achieve a harmonious coexistence in the region.

Keywords: South China Sea. Tianxia. China. Philippines. Vietnam. Malaysia. Southeast Asia. Harmony. Relational theory.

RESUMO

O Mar do Sul da China (南海), conhecido nas Filipinas como Mar do Oeste e no Vietnã como Mar do Leste, é uma das áreas mais disputadas do mundo. A China reivindica cerca de 90% da região que também é disputada pelo Vietnã, Malásia e Filipinas. Além das disputas territoriais que se concentram principalmente nos arquipélagos de Paracels e Spratlys, existem tensões constantes em relação aos recursos naturais: petróleo, gás natural e pesca. Além disso, pela área passa a Linha de Comunicações mais movimentada do mundo, que traz para o conflito potências externas, que patrulham a área em nome de garantia da liberdade dos mares. A presente tese tem como objetivo analisar as disputas através de um arcabouço teórico chinês baseado em antigo sistema de governança chamado Tianxia, ou “tudo sob o céu”. A hipótese verificada é que o comportamento da China em relação às disputas territoriais acima mencionadas pode ser interpretado através do ponto de vista da teoria de Tianxia, desenvolvida principalmente pelo filósofo chinês Zhao Tingyang. Afim de verificar a hipótese sobre o comportamento da China, a tese desenvolve três estudos de caso sobre as relações entre a China e o Vietnã, China e Filipinas, China e Malásia. O objetivo principal é entender como eventos históricos moldaram essas relações dentro do contexto do Mar do Sul da China. Há também análise dos processos sociais e políticos que influenciam essas relações, bem como seus impactos nas disputas. O estudo mostra que há evidências de que o comportamento da China na região pode ser interpretado como um movimento em direção a Tianxia. No entanto, ainda há um longo caminho pela frente para alcançar uma coexistência harmoniosa na região.

Palavras-chave: Mar do Sul da China. Tianxia. China. Filipinas. Vietnã. Malásia. Sudeste Asiático. Harmonia. Teoria Relacional.

摘要

南海，又称为南中国海。菲律宾称之为西菲律宾海，越南却称之为东海，乃全球最具争议的地区之一。中国声称拥有该地区约 90% 的主权，而越南、马来西亚和菲律宾对此问题都存有争议。除了集中于西沙群岛和南沙群岛的领土争端以外，持续的紧张局势也与自然资源息息相关：石油、天然气和渔业。此外，由于南海也是国际海上交通运输最繁忙的航道，外来势力以确保航行自由为由巡逻该海域。本文旨在通过中国古代治理体系为基础——中国理论框架“天下”，对南海主权争端进行分析。根据已证实的假设，中国与以上所述国家的态度可通过主要由中国哲学家赵汀阳发展出来的天下理论的观点来理解。为了验证针对中国态度的假设，本文对中越关系、中菲关系以及中马关系进行了案例研究。主要目的是了解历史事件如何塑造了南海背景下的种种关系。本文也对影响这些关系与其争端结果中的社会和政治进程进行了分析。研究表明，中国的态度可理解为中国正朝着天下理论行进。尽管如此，为了实现该地区的和谐共处，我们还有很长的路要走。

关键词：南海；天下；中国；菲律宾；越南；马来西亚；东南亚；和谐；关系理论

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ABBREVIATIONS

ARF ASEAN	Regional Forum
ARIA	Asia Reassurance Initiative Act
ASEAN	Association of Southeast Asian Nations
BRI	Belt and Road Initiative
CLCs	Commission on the Limits of the Continental Shelf
CNOOC	China National Offshore Oil Corp
COC	Code of Conduct
DOC	Declaration of Conduct of Parties in the South China Sea
EEZ	Exclusive Economic Zone
FON	Freedom of Navigation Patrol
FONOP	Freedom of Navigation Operation
HYSY981	Haiyang Shiyou 981
JDAs	Joint Development Areas
JMSU	Joint Maritime Seismic Undertaking
MOU	Memorandum of Understanding on Oil and Gas Development in the South China Sea
PCA	Permanent Court of Arbitration
PLA	People's Liberation Army
PRC	People's Republic of China
SLOC	Sea Lines of Communication
UNCLOS	United Nations Convention on the Law of the Sea

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INTRODUCTION

The South China Sea (南海), known in the Philippines as West Philippine Sea and in Vietnam as East Sea, consists of more than 200 islands, cliffs and coral reefs grouped mainly in the Paracels (西沙群岛) and Spratly (南沙群岛) archipelagos. These formations are the subject of disputes on the part of China, Vietnam, the Philippines, Malaysia and Brunei as the alleged contiguous areas overlap. The region was stage for battles in 1974 and in 1988 as well as recurrent skirmishes between the parties involved (Hayton, 2014).

China claims about 90 percent of the region and, in recent history, began to demarcate its boundaries in 1949, during the Kuomintang nationalist government, by inserting the eleven dash lines on the maps. In 1953, there was a reassessment of the area and the line started to have nine dashes where the current Chinese claim is located. The current scenario and arguments over sovereignty rights have the primary focus on China's claims and the reactions, not only of its neighbors but also from countries that do not hold territorial interests in the region, such as the U.S., Australia and Japan.

According to the official position, there is evidence that the region claimed is part of China since time immemorial¹. Some documents refers to China's controlling of the seas back in the Song Dynasty (Ministry of Foreign Affairs, 2014) or even to the Shang Dynasty (Levanthes, 1994). China also refers to Zheng He's naval expeditions from 1405 to 1433 (Dreyer, 2007) in order to legitimize its claims. Zheng He's achievements are relevant not only because he could reach the Arabian Peninsula and East Africa but also because he currently symbolizes China's peaceful intentions as a returning power.

For the purpose of this thesis, the term Asia will be used to stress differences to the West. Also, as the focus is the South China Sea, the geographic region under study is Southeast Asia and, more specifically, the states involved in the disputes.

¹ It is said that in 1975 Deng Xiaoping told his Vietnamese counterpart that the islands in the South China Sea belong to China since ancient times. From that time on, the sentence has been repeated by government officials (Hayton, 2014).

The present thesis aims at analyzing China's foreign policy in the South China Sea while legitimizing the idea of Tianxia (Zhao). Therefore, the research question is asked as follows: **Is China building a revisited Tianxia in order to address the territorial disputes in the South China Sea?**

The hypothesis to be verified is that China's behavior concerning the abovementioned territorial disputes can be interpreted through the viewpoint of Tianxia theory, as developed mainly by the Chinese philosopher Zhao Tingyang. To the extent of the hypothesis, China is engaging with the disputants aiming at harmonious coexistence in the region. This assumption will be verified with the analysis of three case studies related to the disputes in the South China Sea and their correlation with the idea of Tianxia.

Tianxia was a system with origins in the pre-Qin dynasties where the tributary states were under the rule of a "heavenly authority". Ban Wang defines Tianxia as a "system of governance held together by a regime of culture and values that transcends racial and geographical boundaries (Wang, 2017:1)". A better understanding of Tianxia is a necessary tool to approach the research question of the thesis that is whether or not China is restoring the idea of Tianxia in order to maintain its interests in the territorial disputes in the South China Sea.

It is important to point out that Tianxia was actually a governance system in the past that is currently a reference not only to Chinese academics but also to the government. As such, it is relevant to examine that part of Chinese history in order to better understand the concept. It is indisputable that it is not possible to replicate the system as it once was and it is not within Chinese ambitions to do so. Nevertheless, the worldly vision that once existed and its key elements are the basis for the contemporary theory.

Accordingly, the present thesis goes further back in time in order to investigate the Tianxia system and the reasons why it was stable from its inception to the Opium Wars², when it ceased to exist (Wang, 2014). In order to do so, a chapter will be dedicated to this historical analysis that will show the interactions among the states in the region and the strong cultural component based on Confucianism³ that sustained

² First Opium War: 1839-1842; Second Opium War 1856-1860.

³ "Tian Xia predates Confucianism, but Confucian thinkers - along with other thinkers in the Late Warring States period - emphasized its political normative dimension"(Bell).

the relations for millennia (Kang). The historical approach will be based on secondary sources, books and academic articles dedicated on the theme under analysis.

Since the "reform and opening up" with Deng Xiaoping in 1978, China has been trying to recover the standing it held under Tianxia. For the past two decades, China's principles of "peaceful rise" (和平崛起) (Zheng, 2005) "peaceful development" (和平发展道路) (State Council Information Office of China, 2011), "harmonious world"(和谐世界) (Jintao, 2005) and "Chinese Dream" (中国梦) (Xi, 2013) refer to China's eagerness not only to go back to its primary position at the center of the international order but also to spreading development and stability among those who endorse its strategy.

It is critical to understand that Chinese worldview has its roots on an universal perspective that rather than being based on force, "China has viewed itself as the center of a world that should be unified and peaceful" (Bell, 2017). Also, according to the Tianxia viewpoint, "nobody can be excluded or pushed aside, since no one is essentially incompatible with the others" (Zhao, 2009:10). Therefore, different cultures, ethnicities, and social structures are respected within "all under heaven".

Kang asserts that "China has already returned to its central position in East Asia" (Kang, 2018) and affirms that "East Asia is more peaceful and stable today than it's been in the past one hundred years". If China's rejuvenation contributes to stability⁴ of the region, it is reasonable to argue whether or not it is bringing along a revisited version of Tianxia. The changing dynamics at the South China Sea could, therefore, elucidate if idea of a system, once familiar to that specific region, is being somehow restored.

The South China Sea territorial disputes represent a constant friction between China and neighboring countries causing instabilities within Southeast Asia. Nevertheless, non-claimant states interfere in the dynamics of the disputes such as ASEAN, the United States, the European Union and, eventually, Australia and Japan. The object of the thesis, however, is to analyze relations between the parties directly involved. Therefore, the role of other actors above will be considered just in terms of a broader understanding of the conflict. Also, for the purpose of the thesis, the claimants are China, Vietnam, the Philippines, Malaysia and Brunei. Considering the

⁴ For the purpose of this thesis, "stability can be defined broadly as the absence of serious military, economic or political conflict among nation-states" (Ikenberry e Mastanduno, 2003).

"One China Principle", even though Taiwan is directly involved, its claims are considered part of China's interests in the disputes (Valencia *et al.*, 1999:30).

It is relevant to emphasize that the focus of the present thesis will be on China's perspective into the conflict. One of the main aspects of this context, as it will be later demonstrated, is that China wants to handle the conflict by bilateral means dealing with every aspect of it on a case-by-case basis aiming at harmony. Consequently, China's actions, and reactions within the region vary according to each disputant.

In order to verify the hypothesis on China's behavior, the thesis will proceed with three case studies concerning the relations between China and Vietnam, China and the Philippines and China and Malaysia. One of the purposes of using case studies is to evaluate theories (Henriques *et al.*, 2015:14) therefore, the case studies will test the validity of the Tianxia theory in interpreting China's behavior in the region.

The main purpose is to understand how historical events shaped those relations within the context of the South China Sea. There will be an analysis of the social and political processes that influence those relations as well as their outcomes in the disputes. Therefore, each case study will apply the analytical tool of process tracing as it draws up "descriptive and casual inferences from diagnostic pieces of evidence - often understood as a part of a temporal sequence of events" (Collier, 2011:824).

In order to provide causal inferences, the thesis will at some point focus on "the unfolding events and situations over time"(Collier, 2011:824). Therefore there will be descriptive chapters that will elucidate each disputant claim, its evolution over time and its relation with China. The idea is to "be able to characterize key steps in the process that in turn permits good analysis of change and sequence"(Collier, 2011:824).

The case studies are aimed at bringing forward contextual factors that shape those state's relations. Hence, process-tracing will be used to test the differences in the three cases in order to detect if China's behavior is in accordance with Tianxia theory (George e Bennet, 2005:7) and if so, in which terms.

Accordingly, there will be a qualitative analysis based on bibliographic material as well as official documents such as speeches, joint communiqués, official press' editorials and op-eds (mainly while examining China and Vietnam's positioning) as

well as historical documentation and facts presented by the parties in order to consolidate their viewpoints.

The events within the case studies will be the main bilateral crisis involving the disputants in a temporal perspective within the timeframe between 1974 and 2019. The selected timespan is adequate once in 1974 there was a conflict between China and Vietnam over the Paracel Islands with repercussions to regional dynamics until today. The intertextual model (Hansen, 2006) will be focused on Chinese official discourse, both from Chinese media and from governmental authorities during and after the events.

Brunei is left out of the specific case study as it has never openly claimed territories in the disputes. Known as the "silent claimant" (Sands, 2016), Brunei published a map in 1984, with an update in 1988 (Hart, 2018), in which showed its exclusive economic zone overlapping a disputed area. Since 2013 both countries set up a venture between state oil companies, affirming that such cooperation does not interfere with the maritime claims (Zhen, 2018).

In 2016 China and Brunei reached an agreement according to which eventual territorial disputes at the South China Sea should be resolved on bilateral basis (Hart, 2018). In 2018, during a Xi Jinping's state visit, both countries agreed to increase cooperation in areas such as defense, trade and investment (Zhen, 2018). Hence it is safe to affirm that there are no disputes between the two states, which is why it is reasonable to leave Brunei out of the case studies.

This thesis consists of five chapters in addition to the present introduction. The first chapter brings up the main concepts and principles that should be considered throughout the thesis as well as the argument that mainstream IR theories used to describe the disputes at the South China Sea. It is important to examine Chinese principles through Chinese perspective and history as they are often interpreted by the West in a different way.

Most of the principles are rooted in Chinese ancient thought and have been evolving during the past centuries. Some of them, such as harmony (和) guide China's foreign policy and holds a distinct connotation from the Western thought. Therefore, it is crucial to bear in mind what it means within its original context.

Another relevant concept that will be referred to in the first chapter is sovereignty. Even though China currently adopts the Western notion of sovereignty,

the idea was foreign to Chinese thought until around the eighteenth century when, at the occasion of the Opium Wars, China was forced to adopt some Western rules and principles. Chinese ancient understanding of sovereignty is central in order to interpret both the Tianxia system and China's claims in the South China Sea.

Along with those concepts, the chapter will present the main principles of China's foreign policy and their evolution, especially from Hu Jintao's term (2002-2012) to Xi Jinping (2013 -). Those principles have been paving the way for China's stand in the international system and are also frequently misinterpreted by Western analysts (Jing, 2014).

A further topic brought up in the first chapter regards some viewpoints from Western mainstream IR theories on China's behavior and the current state of disputes in the South China Sea. Therefore, there will be an overview on those different interpretations and perceptions without the intention of proceeding to a deeper theoretical analysis.

The second chapter presents a historical description of Tianxia bringing it to the modern idea of the concept as proposed by Zhao Tingyang. Some of ancient Chinese thought related to Tianxia will be discussed in order to better understand the theory proposed by Zhao. It is vital to understand Tianxia as a governance system that followed some ideal principles that were discussed in ancient times by Confucius and his disciples. Zhao proposes a theory based both on that system and on those principles that constitutes the theoretical framework of the present thesis.

There is a lively debate in China on whether or not to establish a Chinese School of International Relations (Acharya, 2011b; a; Yan *et al.*, 2011; Acharya, 2014). Therefore, in this chapter, along with Zhao Tingyang, there will be an introduction to the ideas of Yan Xuetong and Qin Yaqing. There is no doubt that the debate is wider than these scholars viewpoints but, as their perspectives are considered in the present thesis it is necessary to highlight their stand on China and on IR in China.

The third chapter elucidates the territorial disputes in the South China Sea. A territorial description will be presented in order to clarify the specific area of the conflict that comprise the Spratly Islands, the Paracel Islands and the Scarborough Shoal. Some of the central historical events that shaped the regional dynamics will be presented along with the analysis of the dispute's main elements that go beyond sovereignty rights: fisheries, sea lines of communications and natural resources.

The three case studies will be examined in the fourth chapter as well as the analysis of China's behavior in the disputes through the viewpoint of its foreign policy and the Tianxia theory. Therefore, the claims of the Philippines, Vietnam and Malaysia will be presented with an emphasis on their relations with China. There will be an analysis of bilateral relations focused on the disputes with special consideration on historical aspects that led to the current state of affairs. The case of China will be made, followed by its historical claims of the region.

The last Chapter will present the historical Tianxia supporting China's positioning and, within that context, its dominion of the seas that is frequently reinforced by Zheng He's expeditions. Next, Zhao's Tianxia theory will be applied in order to interpret the bilateral relations analyzed in the case studies in order to check its validity on interpreting China's behavior in the territorial disputes in the South China Sea. Last, in the final remarks, there will be an overview of the thesis main findings.

The following tables were elaborated in order to assist the reading by connecting Chinese dynasties and governments to major events discussed in the thesis:

Table 1: Chinese Dynasties and other Major Events

2100 - 1600 BC	Xia Dynasty	
1600-1050 BC	Shang Dynasty	
1046-221 BC	Zhou Dynasty	
	Western Zhou 1046-771 BC	
	Eastern Zhou 771 -221 BC	
	Spring and Autumn Period 770- 475 BC	Confucius 551 - 479 BC Buddha 563 - 483 BC
	Warring States Period 475-221 BC	Mozi 470- 391 BC Mencius 372-289 BC
221-206 BC	Qin Dynasty	China Unified 221 BC
206 BC - 9 AD	Western Han Dynasty	
9 - 23 AD	Xin Dynasty	
23-25 AD	Western Han Dynasty	

25 - 220 AD	Eastern Han Dynasty	
220 - 265 AD	Three Kingdoms	
265-420 AD	Jin Dynasty	
	Western Jin Dynasty 265-317 AD	
	Eastern Jin Dynasty 317-420 AD	
420- 589 AD	Northern and Southern Dynasties	
589-618 AD	Sui Dynasty	
618-906 AD	Tang Dynasty	
907-960 AD	Five Dynasties and Ten Kingdoms	
960 - 1279 AD	Song Dynasty	
	Northern Song Dynasty 960 - 1127	
	Southern Song Dynasty 1127 - 1279	
1279 - 1368 AD	Yuan Dynasty	
1368 - 1644 AD	Ming Dynasty	Emperor Yongle 1360 - 1424 Zheng He's Expeditions 1405 - 1433 China's Intervention in Vietnam 1407-1428 Imjin War 1592-1598
1644 - 1912 AD	Qing Dynasty	First Opium War 1839-1842 Second Opium War 1856 - 1860
1912 - 1949	Republic Period	
1949 - present	People's Republic of China	

References
(Cohen, 2000 ;
Tsin, 2009)

Table 2: The People's Republic of China Government and other Major Events

Date	Chairman/president	Events
1949 -1976	Mao Zedong	Founding of the People's Republic of China
		Nine-Dash line in the South China Sea - 1953
		Panchsheel Treaty – 1954 (Xi)
		Great Leap Forward- 1958
		Cultural Revolution – 1966/76
		Paracel's Battle - 1974
		Mao's death 1976
		Arrest of the Gang of Four – Jiang Qin, Wang Hongwen, Yao Wenyuan and Zhang Chunqiao - 1976
1976 - 1978	Hua Guofeng	
1978- 1992	Deng Xiaoping	
		Sino-Vietnamese War - 1979
		Fiery Cross Incident - 1988
		Tiannamen Square Incident - 1989
1992-2002	Jiang Zemin	
		ASEAN Regional Forum - ARF - 1994
		Mischief Incident - 1995

2002 - 2012	Hu Jintao	
		ASEAN - China Declaration on the Conduct of the Parties in the South China Sea – DOC - 2002
2012 - current	Xi Jinping	
		The Philippines filed a suit against China at PCA - 2013
		PCA Ruling - 2016

Elaborated by the author

CHAPTER 1 - A CHINESE WORLDVIEW

1.1 - Concepts

In order to interpret China's behavior in the international system, and, in specific, in the South China Sea, it is necessary to identify some of the main concepts and principles that shape its International Relations. It is relevant to point out that Chinese and Western perceptions are different but not mutually excluding. Also, even when similar they may hold different meaning, once shaped through distinct cultural perceptions. Wang points out the relevance of considering cultural norms while studying Chinese foreign policy (Wang, 2000):

Chinese cultural norms had shaped the contemporary Chinese leaders' conception of international relations to a certain extent as these leaders had socialized with these cultural norms during their formative age. Moreover, as a result of the socialization, these cultural norms have exerted some discernible influence on the conduct of Chinese foreign policy after 1949 (Wang, 2000:144).

Some of these norms arose at the time of the Warring States Period (战国时代) and most of them are deeply rooted in Chinese traditional wisdom that follows Chinese major classical schools of thought such as Confucianism, Taoism and Legalism (Yan, 2018, Wang 2000):

Taking the path of peaceful development is a strategic choice made by the Chinese government and people in keeping with the fine tradition of Chinese culture, the development trend of the times and the fundamental interests of China, and it is also a choice which China's development calls for. Peaceful development carries forward Chinese historical and cultural tradition.(State Council Information Office of China, 2011)

The first concept to be mentioned is ubiquitous in Chinese social relations, beginning at the interpersonal level and reaching foreign relations. Mianzi (面子), generally translated into "face", is related to honor and respect that, even though existing in the West, is crucial for harmonious relations in Asia, especially in China (Li, 2009). As Shambaugh puts it:

in Chinese culture and official thinking, criticism equals misunderstanding, and agreement equals understanding. In Chinese society and culture, to be criticized in public is one of the worst things that can happen to anyone, as the person loses face (Shambaugh, 2013:266)

Mianzi can be given or taken by others and is associated to social acceptance in every sphere of social relations. While China is back at the center of Asia, it is expected that other states give mianzi as a sign of trust and respect. In turn, those states will also be given mianzi, which currently can come along with investments and stronger economic relations. Shambaugh calls attention to the importance of China's face diplomacy (面子外交) as an expression of its "status as a respected nation state" (Shambaugh 2013:57) after the century of humiliation.

Even though Tianxia precedes Confucianism, harmony guided "all under heaven" since the late Warring States period (Bell, 2017). The word harmony (和) predates Confucianism and was extensively used by Confucius: "The gentleman aims at harmony, and not at uniformity. The mean man aims at uniformity, and not at harmony"⁵ (Confucius, 475 BC - 221 BC). Hence, it "presupposes the existence of different things and implies a certain favorable relationship among them" (Li, 2006:3), therefore, it does not mean or imply uniformity. Much to the contrary:

Confucian harmony, as it is sometimes understood, by no means implies perfect agreement. In an harmonious circumstance coexisting parties must be in some way different from one another; while harmony does not preclude sameness, sameness itself is not harmony (Li, 2006:8) .

The revered sage kings pursued diversity under the belief that societies prospered while harmonizing different thoughts, cultures and rites. Consequently, "the ideal of a society is to harmonize not only with the society but also with other societies" (Li, 2006:8). Lima reminds that, according to Chinese thought, "harmony is the necessary ontological condition for any one thing to exist and develop"⁶ (Lima, 2018:34).

Nisbett held an extensive study on the differences between Western and

⁵"君子和而不同，小人同而不和"

⁶ "a harmonia é a condição ontológica necessária para que as coisas existam e se desenvolvam".

Asian ways of thinking. While analyzing Greeks and Greek philosophy and comparing to Chinese Confucianism and Taoism he pointed out that on the one hand Greeks held a focus on individuals and their distinctive properties that made the unique in a society.

Chinese, on the other hand, held the focus on the community and the interrelation among its members. Moreover, "Chinese social life was interdependent and it was not liberty but harmony that was the watchword – the harmony of humans and nature for the Taoists and the harmony of humans with other humans for the Confucians" (Nisbett, 2003:19). Therefore, for Chinese, there is no sense in analyzing an object without its context as all things are interrelated "not as pieces of pie but as ropes in a net" (Nisbett, 2003:19).

The distinction between the Chinese idea of harmony differs from the Western understanding of the notion and reverberates in IR studies. For instance, Keohane states that "harmony refers to a situation in which actor's policies (pursued in their own self-interest, without regard for others) *automatically* facilitate the attainment of other's goals" (Keohane, 1984:51). The Chinese concept stands for a common goal based on what Zhao refers to as a truly inclusive worldview in contrast with Western "enemy assumption" (Ren, 2010:113: 53-54).

While bringing together various perspectives and behaviors, harmony is always being built in an ever-changing process that also implies conflict. When opposite forces are brought together aiming harmony there will be probably animosity but not annihilation of the rival. According to Confucianism, at some point parties will start adjusting and negotiating in order to reach a common ground.

In this sense, the concept resembles what Keohane describes as cooperation as it "does not imply an absence of conflict. On the contrary, it is typically mixed with conflict and reflects partially successful efforts to overcome conflict, real or potential" (Keohane, 1984:53-54). Even though there is a similarity between the Confucian ideal of harmony and Keohane's cooperation, they are still divergent.

While there might be conflict within Confucian harmony, it is also possible harmony without conflict. By contrast, according to Keohane, "where harmony reigns, cooperation is unnecessary" (Keohane, 1984:51). Moreover, Keohane's thought is based on the pursuance of self-interest, Confucianism is based on common good:

The significance of this ideal of harmony is that it provides us

with a fundamental attitude toward the world problems facing us, an attitude of determination that we must resolve conflicts by harmonization, rather than conquest (Li, 2006:15).

Also, Zhao reinforces the idea that aiming at harmony is more important than aspiring for peace once

Harmony seeks reasonable resolutions of conflicts and stable security by building truly reliable correlations that mutually benefit in the long run as well as reciprocal acceptance of the other's values. It is obvious that harmony is a higher goal than peace, since peace is only a by-product of harmony (Zhao, 2012:3)

The concept of harmony is deeply embedded in Chinese culture and, as consequence, reflects on the country's foreign policy. During Hu Jintao's term in office (2003-2013) the party adopted the idea of "Harmonious Society" (和谐社会), subsequently developed into "Harmonious World". In 2004, the CPC approved a strategic road map "China's Peaceful Development Road" in which China maintains that "peace, opening-up, cooperation, harmony and win-win are our policy, our idea, our principle and our pursuit" (State Council Information Office of China, 2004). The official document that makes 22 references to harmony represents a strong statement about the importance of the concept to China's policy.

The idea of peaceful development is also based on the five principles of peaceful coexistence: respect for territorial integrity and sovereignty; non-interference in internal matters; equality and cooperation for mutual benefit; non-aggression and peaceful co-existence. The principles were first presented in 1953, when an Indian delegation went to Beijing to negotiate on disputed territories and were incorporated into the Panchsheel Treaty of 1954 (Panda, 2014).

The five principles were adopted both at the Bandung Conference in 1955 and by the non-aligned countries movement. Since then, the principles were included in the Chinese constitution and have been guiding China's foreign policy. During the celebrations of the 60th anniversary of the initiation of the five principles, while advocating peaceful development, Xi Jinping, stated that "China neither interferes in other countries' internal affairs nor imposes its will on others" (Xi, 2014). The five principles are often used in order to reaffirm China's purpose to implement a harmonious and peaceful order.

In 2005 at the opening ceremony of the General Assembly of the United Nations - UNGA, Hu Jintao officially launched China's strategy on the landmark speech "Build towards a Harmonious World of Lasting Peace and Common Prosperity". In his statement, Hu Jintao brought up the importance of harmony stressing out the importance of diversity to the international system:

Diversity of civilizations is a basic feature of humanity and an important driving force behind human progress. In the course of human history, all civilizations have, in their own way, made a positive contribution to the overall human progress. It is their differences that allow them to learn from one another and grow stronger together. Uniformity, if imposed on the can only take away their vitality and cause them to become rigid and decline. We should respect a country's right of independently choose its own social system and path of development. In this way, countries will go for mutual emulation instead of deliberate exclusion, for mutual learning of respective strong points instead of making fetish a particular model, thus succeeding in their rejuvenation and development in line with their national conditions. We should enhance intercivilization dialogue and exchanges, allowing cultures to compliment one another through competition and comparison and to develop together by seeking common ground while putting aside differences. (Jintao, 2005)

The idea of harmonious world and respect for different cultures is at the core of Tianxia. Following Confucian ideas, the legitimacy of a sage king was directly associated to his ability to incorporate people from different cultures and tribes in order to establish a pluralistic society (Wang, 2017). Therefore, when Hu Jintao mentioned the intercivilization dialogue, he was not only reinforcing the importance of the Confucian thought to modern China but also the aim at replicating the ancient model to the contemporary world.

Hu Jintao's quest for harmony was succeeded by Xi Jinping's "Chinese Dream" (Xi, 2013) for great rejuvenation. Following the idea expressed by his antecessors of building a harmonious world, Xi Jinping emphasizes that China is taking back its place at the international system after the century of humiliation (百年国耻). Numerous Western mainstream IR scholars (Mearsheimer; Jacques) believe that the Chinese Dream embraces China's projection as a revisionist power in what Martin Jacques refers as "Middle Kingdom mentality" (Jacques, 2009:270). As such,

he states that:

As China draws countries and continents into its web, as it is happening already with Africa, they will not be simply economic supplicants of a hugely powerful China but also occupy a position of cultural and ethnic inferiority in an increasingly influential Chinese-ordered global hierarchy (Jacques, 2009:271)

Contrastingly, Li believes that, from Beijing's perspective, the idea of Chinese Dream is related to developing a "democratic international order" in opposition to the unipolar hegemonic order promoted by the United States (Li, 2015:14). Accordingly, China is not rising as a threat but restoring a position where it was before and, in doing so, is bringing up prosperity and harmony:

The great renewal of the Chinese nation has been the grandest dream of the Chinese people since the coming of modern times. We call it the Chinese dream, with prosperity for the country, renewal of the nation and happiness for the people as its fundamental elements. The Chinese have always been a peace-loving nation. But they were subjected to a century of untold sufferings as a result of repeated foreign aggression and domestic turmoil. They know too well the value of peace, and the necessity to build the country and improve the people's livelihood in a peaceful environment. China is unswervingly committed to the path of peaceful development, dedicating itself to an open, cooperative and win-win development, while calling on all countries to follow the path of peaceful development. China always pursues a defense policy that is defensive in nature, not engaging in arms race nor posing a military threat to any country. By growing stronger through development, China will bring about more opportunities, instead of threats, to the world. The Chinese dream which we cherish deeply will not only serve the Chinese people but benefit the people throughout the world (Xi, 2013).

Xi Jinping reinforces the idea of "community of common destiny" (人类命运共同体) (Xi, 2017) in which China proposes a new idea of global governance, a revisited version of Tianxia. Whereas the current international system is based on individualistic values, China's Dreams proposes that the community should come first than the individual. And considering China's purpose of accomplishing Tianxia, Xi Jinping affirmed that:

We in China are striving to finish the building of a moderately prosperous society in all respects and realize the Chinese dream of the great national renewal. The Chinese dream is interconnected with the dreams of the people of all other countries. The Chinese people and the people of other countries should support and help each other to realize their respective dreams. China hopes to work with all the other countries, its neighbors in particular, to achieve common development and prosperity (Xi, 2014).

Hence, following Confucian principles, there should be harmony without uniformity (Xi, 2014) in a system built on collaboration rather than a world shaped according to a hegemon's ideals in which those who disagree are considered uncivilized. Moreover, harmony is a way to solve conflict. Instead of eliminating divergent thoughts and perspectives, harmony is a process to accommodate and adjust in order to create a scenario in which different needs can coexist.

Fan Yongpeng affirms that "the so-called governance of the West is simply imposing Western policies and ideologies upon target countries, undermining their political authority and national capabilities as well as assimilating the into systems with Western rules and value chains"(Yongpeng, 2018:2). According to him, while China under Tianxia kept the known world stable for centuries, Western powers were engulfed in two world wars in the first half of the 20th century. Therefore, the current system is unable to bring prosperity and stability.

Zheng Wang calls attention to the distinction between Chinese Dream and American Dream. According to him, "whereas the American Dream emphasizes individuals attaining enrichment and success, the Chinese Dream is a collective undertaking that calls upon Chinese citizens to make personal sacrifices in order to serve the greater, national good" (Zheng, 2013). Accordingly, the Chinese Dream is based on three pillars: prosperity of the country, renewal of the nation and happiness for the people" (Xi, 2013). It consists of an ideal that has been being pursued since Sun Yat-Sen while

Even though the Chinese Dream refers primarily to China's rejuvenation, it cannot be fulfilled if focused only on internal needs and demands. The national dream needs to consider the interdependence of the international system in order to succeed (Zhao, 2014). Hence, the Chinese Dream is also fundamentally related to the idea of Tianxia following the aim to having all nations, cultures and thoughts building a harmonious international system.

Confucian principles reinforce the need for peaceful resolution of conflicts but it does not mean that war should be avoided by all means. "Insofar as Confucius stresses the cultivation of virtue as the main function of government, coercive force, while by no means irrelevant, takes on a secondary role in the government" (Wang 2000:147). Following Confucius, war would be justified when benevolence and justice are threatened.

Taoism also refers to the resource of war as a last stance. Lao Zi⁷ makes a distinction between just and wars. According to his conceptions, a just war is fought for the sake of protecting the people (including from a tyrant) or preventing the state from being destroyed. An unjust war, however, is the one fought under greed, be it for territorial enlargement or on order to rip off other's wealth (Wang 2000:149).

Hence, an important idea to the Communist Party is that "we will not attack unless we are attacked; but we will surely counterattack if attacked"(人不犯我， 我不犯人； 人若犯我， 我必犯人) (Information Office of the State Council, 2013). The principle attributed to Cao Cao, a military chief in the Eastern Han Dynasty, was first officially used by Mao Zedong in 1939 while referring to the possibility of a preemptive strike by the Kuomintang (Ohara, 2013).

The principle is quoted at the Defense White Paper of 2013 and references to it are found in other official documents. The 2017 Defense White Paper emphasizes the principle when affirms that "China is forced to make necessary responses to the provocative actions which infringe on China's territorial sovereignty and maritime rights and interests, and undermine peace and stability in the South China Sea" (State Council Information Office of China, 2017). Therefore, China's position at the South China Sea emphasizes the commitment to promote peace and stability at the region while protecting what it considers its indisputable sovereign rights.

At this point it is crucial to establish the concept of sovereignty according to Chinese viewpoint:

A construct of the historical legacy of European Christendom, sovereignty only spread through expansion of the West to other parts of the world. For China, that defining period was the 19th century. For thousands of years before the arrival of the West and its concept of sovereignty, China has operated a world order based on entirely different organizing principles and assumptions: *tianxia* ("all under heaven") (Tok, 2013:24).

⁷ Lao Zi (Lao Tzu) is the founder of Taoism.

Therefore, the Western concept of sovereignty was unfamiliar to China before the 19th century and its adoption by the Chinese coincided with the downfall of the Tianxia governance system. During Tianxia Chinese believed that the emperor was the supreme authority over all the cosmos hence, he was known as the Son of Heaven (Tok, 2013:32).

It is necessary here to re-emphasize that in this cosmos there was no internal-external divide. Every element was included in this ideological construct, where the Son of Heaven reigned regardless of whether he or his officialdom actually ruled or had the capacity to do so. Boundaries - if they had existed - and frontiers were fluid (Tok, 2013:36)

In the West, the concept of sovereignty is in constant change as it pre-dates the Peace of Westphalia (Tok, 2013:27). Bartelson writes extensively on the many aspects, interpretations and definitions of sovereignty reminding that a "concept becomes central to the extent that other concepts are defined in terms of it, or depend on it for their coherent meaning and use within discourse" (Bartelson, 1995:24). Accordingly, sovereignty is a central concept and "is constituted as a primitive presence from which all theorizing necessarily must depart, if is to remain international political theorizing" (Bartelson 1995:24). The concept is so intrinsically connected to the idea of state, that most of times it is regarded as given (Bartelson).

Bearing in mind the existence of different approaches, Bull presents some relevant aspects of sovereignty in his definition of state that will be considered when referring to the Western viewpoint:

The starting point of international relations is the existence of *states*, or independent political communities each of which possesses a government and asserts sovereignty in relation to a particular portion of the earth's surface and a particular segment of the human population. On the one hand, states assert, in relation to this territory and population, what may be called internal sovereignty, which means supremacy over all other authorities within that territory and population. On the other hand, they assert what may be called external sovereignty, by which is meant not supremacy but independence of outside authorities. The sovereignty of states, both internal and external, may be said to exist both at a normative level and at a factual level (Bull, 2002:8).

Hence, it is possible to affirm that the Chinese traditional system did not operate according to the Western understanding of sovereignty (and of state, for that matter). Tok calls attention to three main differences between the two systems. The first one is that Tianxia held one authority over all existing world whereas the Westphalian concept of sovereignty required at least two sovereign peers or coexisting authorities. The second one is that territoriality is a fundamental component of the Western concept of sovereignty while the Son of Heaven, while ruling over Tianxia, did not exert *de facto* control over all territory under his authority. Last, the Son of Heaven's authority derived from his moral superiority and the Western sovereign exercised his control mainly through material power (Tok, 2013:36).

1.2 - International Relations Theory and China

This section will present an overview of how mainstream IR theories perceive China and some of the elements of the disputes in the South Sea. There is no intention of starting a theoretical debate or going through an in depth analysis of all theories. The purpose is merely presenting different understandings of China's behavior in order to contrast them with Chinese perceptions. It is relevant to show that Western and Chinese perspectives are different but not mutually exclusive. Moreover, even when similarities occur among those visions, what they mean are built based on distinct cultural comprehensions.

The study of International Relations is relatively recent in China. It started as a sub field of political science in the 1950's but was only consolidated in the 1980's, when scholars began discussing Western IR theories⁸. However, even those timeframes are debatable as some academics stand for the founding of the field with the establishment of the PRC (Song e Chan, 2000:19). Moreover, they argue that times there was already Chinese IR theory of the Chinese leadership

⁸ "According to traditional Chinese thinking, theory is the systematic understanding of the laws of nature and human society"(Song e Chan, 2000)

They summarized IR theory of Mao Zedong as: era theory, theory of trends in international relations, paper-tiger theory, "intermediate zones" [between the two superpowers] theory, theory of war and peace, theory of hegemonism, "Three Worlds" theory, national independence theory, peaceful co-existence theory, and world anti-imperialist united front theory. The theory of Deng Xiaoping was thought to include new thinking on world peace and war, "one country, two systems" theory, theory of the principles on independence in inter-party relations, and theory of the two major world themes: peace and development (Song e Chan, 2000:19).

Song and Chan argue though that this viewpoint is questionable as these leadership guidance are considered "strategic policy, not a theory" (Song e Chan:20). Nevertheless, Qin points out the relevance of Marxism in what he calls a "pre-theory phase" in China, that lasted from 1978 to 1990 (Qin, 2009:187).

Qin traces back the development of IR studies in China and asserts that there are mainly two processes in the past thirty years. The first one, which he calls "learning from the West" was responsible for consolidating the field in China and, as consequence promoting the competition between three schools: Realism, Liberalism and Constructivism. The second process goes o the direction of establishing a "distinctly Chinese perspective on IRT" (Qin, 2009:1).

International Relations are currently a consolidated field in Chinese academia. Nonetheless, there is a lively debate on whether Western IR Theories should be adapted in order to interpret China's and Asia's dynamics or if there should be established a Chinese School of International Relations (Acharya, 2011b; a; Yan *et al.*, 2011; Acharya, 2014). This debate, according to Qin, is a driving force for the development of IR theories in China (Qin, 2009:186).

Western IR theories consistently interpret China's behavior. Qin believes that Western mainstream IR theories, specifically structural realism, neoliberal institutionalism and structural constructivism hold a common metaphysical component: individualistic rationality (Qin, 2018). This shared element ostensibly contrasts with Asian worldview that emphasizes the community's interests.

Qin affirms that according to Western perception, conflict is ontologically significant and permeates the mainstream IR theories on "power (classic and neo-realism), civilization (clash of civilizations), norms (liberal constructivism, and society

(the English School)" (Qin, 2010). Accordingly, Qin refutes the understanding of Western social theories as universal:

Because social theory first developed in the West, and bearing in mind its discursive nomination, it has more often than not been taken for granted that both social theory and Western social theory are universal, while the fact that social theory always starts locally and relies on the background knowledge in which its producers are embedded has tended to be forgotten. (Qin, 2018:423)

Western IR theory follows Cox's reasoning as "theory is always *for* someone and *for* some purpose"(Cox, 1986:128). Even though aiming at explaining actor's behavior globally, is in fact explaining to a Western audience, through Western paradigms, the world as the West understands it. Acharya and Buzan affirm that although there is currently a significant body of International Relations theory

almost all of it is produced by and for the West, and rests on an assumption that Western history *is* world history. The puzzle for us is that the almost exclusively Western sources of international relations theory (IRT) conspicuously fail to correspond to the now global distribution of its subjects (Acharya e Buzan, 2007:288)

It is a fact that mainstream IR theories are based on the thoughts of Western philosophers (Acharya e Buzan, 2007). Also, Johnston's emphasizes that the IR theory was built leaving East Asia cases aside (Johnston, 2012). Therefore, it is consistent with the present study not only to present the Western viewpoint but also, and perhaps more critical, to bring to light Chinese perceptions.

Realism is the predominant Western theory used to explain Asia's dynamics (Shambaugh, 2014). Thus, mainly focused on security and military variables, when interpreting China's behavior, realists see China challenging the U.S. hegemony both globally and regionally. Friedberg states that the U.S. is the declining power while China is "both the rising power and the resident power" (Friedberg, 2018). Through these lenses, realists see the U.S. balancing in the form of Obama's Pivot to Asia, in the Freedom of Navigation Operations - FONOPs and in the most recent initiative Asia Reassurance Initiative - ARIA.

Regionally, China is perceived as a threat to its neighbors, "that are certain to fear its rise as well, and they too will do whatever they can to prevent the Chinese

from achieving regional hegemony" and "in the end, they will join an American-led balancing coalition to check China's rise" (Mearsheimer, 2006:3). Friedberg sees China's behavior in the South China Sea gives a "tangible quality to their new and aggressive policies, and it makes clear that they don't accept the status quo, at least not in East Asia"(Friedberg, 2018).

Even though Layne believes that China will not fundamentally change the post-1945 international order in the next decades, he asserts that "China did not rise to preserve that American-dominated order" (Layne, 2018:18). While describing the demise of American power in terms of bringing economic and political stability to the system, he enlightens several moves that Beijing is taking to change the system as it currently is.

In contrast to what realism proposes, Kang affirms that the concept of balance of power does not apply to patterns of conflicts in Asia (Kang, 2010:83) much less China's conduct in the region. This can be confirmed looking back in history and analyzing East Asia relations since the times of Tianxia. By doing so, it is possible to notice that, instead of weaker states joining together against the hegemon in an attempt of keeping it from dominating the system, China's position at the top of a hierarchical system was never contested. On the contrary, states within the tributary system accepted it as unequal and "worked with China, not against it" (Kang, 2010:70).

Also, China did not seek territorial expansion and reinforced stability within the system. From the Ming dynasty in 1368 to the end of the Tianxia system with the Opium Wars in 1841 there were only two wars involving the major states in the region: China, Japan, Korea and Vietnam. China was directly involved in one of them when it invaded Vietnam from 1407 to 1428 and supported Korea against Japan's invasion in 1592. There was a significant number of other armed conflicts but they consisted of either clashes between nomad tribes that eventually became China or defensive wars in which China was preserving its borders and territory (Kang, 2010:88).

Taking into account current relations in the region, Johnston follows the same idea when points out that instead of balancing, weaker states in Asia follow different strategies in order to coexist with China. Those strategies, that could be considered as "soft balancing", varies from multilateral approaches, bilateral economic and political ties and regional integration (Johnston, 2012). Those strategies are clearly

seen when analyzing the dynamics at the South China Sea and are used simultaneously both by China and by the parties involved.

In the specific case of South China Sea, a region that has been highly militarized, claimants have agreed not to use force against each other. Also, the states involved in the disputes are clearly more concerned with peaceful settlement and there is no sign of balancing against China. The states choose to accommodate and avoid confrontation which is why, even in face of tensions the region is stable (Kang, D., 2010). One of the evidences of this regional mindset is the effort being made by the disputants of reaching an agreement, within ASEAN, on the establishment of a Code of Conduct in the South China Sea - COC.

Kang believes that the pessimistic view that Realism holds from China prevents a broader understanding of the most important causal factors that explain the region's dynamic "it is interests and identity, not power, that are the key variables in determining threat and stability in international relations" (Kang, 2010:9). In fact, the idea of developing a Chinese International Relations Theory follows the need of China not being seen as a threat to the current system (Acharya e Buzan, 2007).

The liberal thought is mainly concerned with international cooperation and collaboration in order to reach peace. With a more positive approach liberals

also view China through the prism of the international system, but place much faith in the postwar system's ability to 'regulate' and constrain China's rise through a dense web of intractable institutions, rules, laws and procedures(Shambaugh, 2014:312).

Liberals state that non-state actors, such as multilateral institutions, hold substantial position in world politics. They emphasize the role of institutions at the international society as relevant agent working for peace and stability. Asian institutions, ASEAN especially, have not only contributed to the region's stability but also avoided conflict escalation. Johnston reminds that, despite all criticism on the ASEAN Way, the high regard for principles led to regional stability (Johnston, 2012).

An important feature to be noticed is that bilateral agreements are as important to conflict resolution in the framework of Asian multilateral institutions. In this sense it is said that "in some situations. ASEAN countries seem to adopt a policy of "thinking multilaterally but acting bilaterally" (Acharya, 1997:333). As a

consequence, instead of dragging all members to taking stand on a conflict, the solution is left to the parties involved to solve bilaterally.

ASEAN plays a critical role towards a peaceful solution for the South China Sea disputes. The ASEAN Regional Forum - ARF, established in 1994, brings together the disputants establishing dialogue and promoting confidence-building measures. In 2002, the parties signed the ASEAN- China Declaration on the Conduct of the Parties in the South China Sea - DOC aiming establishing a binding COC for the region that is currently under negotiations.

But ASEAN is also instrumental for China's interests. By establishing alliances with ASEAN members, China prevents that the disputes reach prominent position in official documents. One of the most remarkable precedents was 2012 ASEAN's Ministerial Meeting chaired by Cambodia, China's strong ally in the region. Divergences within the member was so strong concerning the mentioning of South China Sea disputes, that for the first time in ASEAN's history, there was no final joint communiqué (Sutter e Huang, 2012; Shambaugh, 2013) .

Another aspect of the liberal theory is the importance of trade in keeping a system stable. While China's reemergence still cast doubts about peaceful intentions, in 2017 at the World Economic Forum, Xi Jinping emphasized that "China's rapid growth has been a sustained, powerful engine for global economic stability and expansion" (Xi, 2017). He has been adopting a clear liberal speech, arguing against protectionism and advocating global interconnection, being its most evident face the Belt and Road Initiative.

In 2017, Vietnam and Malaysia were China's top trading partners in Southeast Asia, being Vietnam China's biggest export destination in the region (Xinhua, 2018b). In the same year, China was the Philippines main trade partner (Xinhua, 2018a). Besides bilateral trade relations, the South China Sea is a fundamental part of the 21st Century Maritime Silk Road. Within the scope of that initiative, China holds control of the Kuantan Port and Melaka Gateway in Malaysia as well as the Muara Port in Brunei (Ghiasi *et al.*, 2018). Therefore, following liberal perspective, that trade not only prevents states from going to war but also makes war less important (Nye Jr., 2007).

The social constructivism approach is capable to explain some fundamental aspects of relations in Southeast Asia. Accordingly, Wendt points out the importance of collective knowledge as, once actors beliefs in something would lead them to

engage in similar practices that will be reproduced in structures (Wendt, 1999). In the present case, Confucianism is widespread in the region under analysis and there is a common understanding of the idea of Tianxia. Confucianism became the cultural glue that made relations viable in a region so vast as Southeast Asia. Even states that were not under Tianxia such as the Philippines and Indonesia would adopt some of the principles in order to make trade feasible with China

Although there are many perspectives within constructivism, most authors agree on that state behavior is shaped by its history, identity and social norms. Constructivism strengthened the IR debate in China when some academics understood that neither realist nor liberal arguments were enough to interpret the concept of peaceful rise (Qin, 2009:191). Accordingly, China's identity was changing in the international scenario and was a comprehensive object of analysis, if not apprehension.

Constructivism "implicitly fits into the most important Chinese philosophy of *Ching* (Change), which advocates, unlike realism and liberalism, that both identity and behavior are changeable" (Qin, 2009:191). Therefore, through the constructivist perspective it was possible to describe China's rise, not as a threat, but as its repositioning in the world stage.

States in Asia follow some unwritten norms and rituals that are commonly accepted and practiced. Accordingly, the regional system "was also stabilized by a complex set of norms about international behavior that was generally observed by the main political units" (Kang, 2010).

The constructivist approach also interprets ASEAN's functioning and, more specifically, the ASEAN Way, with clear repercussions on South China Sea dynamics. The expression ASEAN way, commonly interchanged for the "Asian Way", is often used by analysts to approach Asian multilateral institutions. The concept emphasizes the differences between Western and Asian multilateral institutions pointing out that the latter avoids excessive institutionalization and emphasizes the importance of the process over the results. In this sense:

the ASEAN way is not so much about the substance or structure of multilateral interactions but a claim about the process through which such interactions are carried out. This approach involves a high degree of discreteness, informality, pragmatism, consensus-building and non-confrontational

bargaining styles which are often contrasted with the adversarial posturing and legalistic decision-making procedures in Western multilateral negotiations. (Acharya, 1997b:329)

The characteristics abovementioned are strongly related to most Asian societies approach to conflict solving. In this sense, the emphasis on consensus building means that the solution to a problem is based on blending different views and reaching common ground. Acharya emphasizes that

While the sources of ASEAN's legal-rational norms lay within the structure and dynamics of the international system at large, the notion of the 'ASEAN Way' was founded on elements, especially informality, consultations (*musyawarah*) and consensus (*mufakat*), that were claimed as being unique to Southeast Asia's cultural heritage. (Acharya 2014b: 44)

In this sense, conflict resolution is also based on the already discussed idea of harmony bringing together diversity in order to achieve a shared purpose and it does not mean, therefore, unanimity. Correspondingly, the non-confrontational bargaining style identifies with the idea of *mianzi*:

A great deal of care is always taken not to isolate or embarrass any individual ASEAN member in international fora. Even when an ASEAN member has advanced a position which is not acceptable to other members, the latter will refrain from acting in ways that make the latter 'lose face' internationally (Acharya, 1997a:331)

Those cultural features interfere directly in the way Asian countries interact. When considering the role ASEAN towards China a frequently asked question is "who's socializing whom?" (Ba, 2006), once China also socializes⁹ with and within ASEAN in order to protect its interests in the South China Sea. The analysis provided by constructivist perspective not only interpret those interactions but also explain why there is a different form of regionalism in Asia, which reflects cultural beliefs and collective identities (Acharya).

Also, "constructivism draws our attention on the power of historical memory" (Berger, 2003:400). China claims "indisputable sovereign rights" in the territorial

⁹ "the notion that social interaction can change preferences and interests" (Johnston, 2003)

disputes based on "historic rights" (Ministry of Foreign Affairs, 2014), therefore, constructivist analysis considers the disputant's interactions since time immemorial in order to interpret the demands. Moreover, collective values shape the actors behavior (Berger, 2003) and, as consequence the dispute's dynamics.

IR mainstream theories hold different perspective while both Asia and China's behavior, in specific. While those viewpoints contribute to a broad analysis of the region under study, it is also important to understand the approach given by developing regional theories. The theoretical framework of the present thesis is the idea of Tianxia.

In order to interpret the theory, it is necessary a retrospect in China's history back in the time when Tianxia was a functioning governance system. In the next chapter there will be an overview of the historical Tianxia, its principles and the current Chinese theories influenced by them. Also in the next chapter, there will be a brief introduction to the thought of the three main Chinese authors that guide the present thesis.

Even though Yan Xuetong's moral realism theoretical framework will not be used in the interpretation under analysis, his studies on ancient Chinese thought are fundamental in understanding main Chinese concepts as well as the idea of Tianxia. Qin Yaqing's relational theory brings up a Chinese perspective with a focus on human relations. Qin argues that

The performance of the Westphalian international system in Europe differs significantly from that of the Tribute international system in East Asia, though they share certain similarities. Theories based upon the performance and practice of the former then may not be the same as those upon the latter and, similarly, concepts derived from the former may not even be thought of in the latter (Qin, 2018:28)

Qin corroborates the viewpoint maintained by the present thesis on the relevance of interpreting the Chinese stand on the conflict through a Chinese worldview. Accordingly, the relational theory brings a frame of reference derived from the Tianxia system that is commonly accepted in Asia but is unfamiliar to Western IR theories.

Finally, Zao Tingyang, who brings the contemporary view of Tianxia and proposes an all-inclusive worldview based on harmony. Zhao affirms that "world

history has not yet begun because the world is still not integrated to an all-inclusive Tianxia that is characterized by shared interests and mutual compatibility" (Zhao). His perspective on Tianxia and the proposed governance system is crucial in interpreting China's behavior in the South China Sea.

CHAPTER 2 - ALL UNDER HEAVEN

The purpose of this chapter is to make an historical analysis of Tianxia considering how it worked as a tributary system. The Tianxia theory is based on this part of Asian history, therefore it is crucial understanding those historical facts. Along with the history of the ancient governance system, some principles, crucial both for the theories being developed and for China's foreign policy, will be presented. In this chapter there will be also an overview of the three developing theories that are strongly influenced by the system and its principles.

We consider the premise that China's historical claims in the region have their origins at the beginning of the Tianxia system, therefore, the historical analysis will not only cast light on the roots of the territorial disputes but will also elucidate relations among states in the region. Another reason for verifying the origins of the concept is to understand it in the way it once existed in order to help constructing an answer for the research puzzle of the thesis, which is whether or not China is restoring the idea of Tianxia in order to deal with the territorial disputes at the South China Sea.

2.1 - The Tributary System

Tianxia is an ancient system usually translated as "All Under Heaven" in which a moral and political order was established all over the world, governed by a virtuous ruler. Zhao considers that the Tianxia system as "the first systemic revolution in China (Zhao). There are multiple interpretations of this concept that come from the Zhou Dynasty and pre-Qin philosophers. Currently, the idea Tianxia influences, directly or indirectly, various interpretations of modern China and its place in the world. Those perceptions vary from the idea of projection of a global hegemon (Callahan, 2008) that would establish a new world order to the understanding of China as a "returning power" to a "normal state of affairs" (Kissinger, 2012) .

Tianxia is often referred as a tributary system and, in that sense constituted

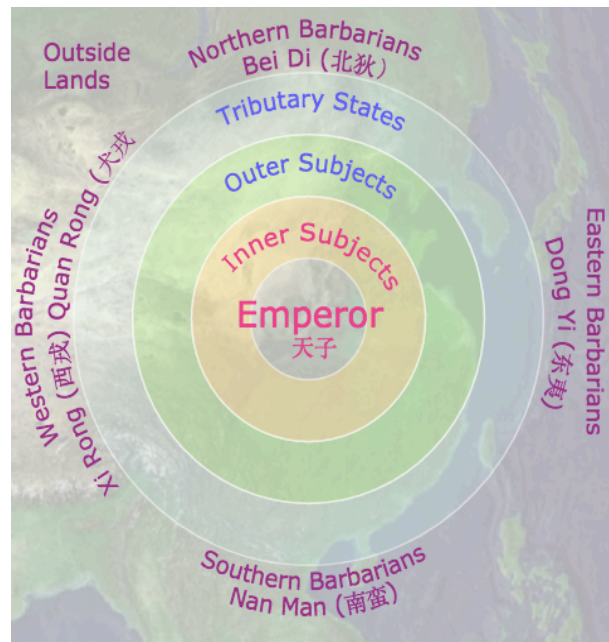
an international society with its own social structure which embodies complex social relations among participating and constituent states, and which has a particular set of institutions

that help to define norms of acceptable and legitimate state behavior (Zhang e Buzan, 2012:8)

It is also a governance system sustained on cultural basis within a region that currently involves East and most of Southeast Asia even though there were no established territorial limits. In the region, that was considered all the existing world, tribes and kingdoms would be considered Chinese by cultural assimilation, not by force but by adapting to cultural and civilization terms (Zhang e Buzan, 2012). Therefore, all under heaven were those that shared a common worldview based on Confucianism that was not limited by geography or ethnicity. In that sense, China was at the center of the system and its authority stood on social recognition (Zhang e Buzan, 2012).

The idea of "all under heaven" implied that all peoples known where within the system, under a divine order. Since its inception though Tianxia was a hierarchical system where the tribes and kingdoms were represented in concentric circles "around a cosmic-moral core of closeness to a transcendent heaven" (Duara, 2017:71) as represented in the image below:

Image 1 – Tianxia



Source:(China Policy 2017)

The closer were them to the center, the higher their hierarchical status. But most of all, it was an inclusive system that respected cultural under a general political system.

Historically, Tianxia was established under the Zhou Dynasty but the system's origins remote to the Shang Dynasty. The Shang ruled over a system believed to be universal. Those who did not accept the ruling moved beyond the existing borders and were regularly threatened by war. The tribes within the Shang's borders paid tributes and expected protection in return. Most of them were eventually culturally assimilated by the Shang (Cohen, 2000:4). Zhou of Shang, the last king of the dynasty, was considered a ruthless ruler who enjoyed war and according to Mozi, "became the shame of all under heaven" (Yan *et al.*, 2011:59).

The Shang's ruling led to the rebellion of a small tribe that, with support of other tribes, won the war and founded the Zhou Dynasty that ruled for approximately 800 years. Opposite to the last king of Shang, Wu of Zhou, the founder of Zhou Dynasty, was considered by Confucius, Mencius and Mozi the best example of a sage king. By the beginning of the Zhou Dynasty, there were around 1,000 tribes in China, the Shang held a population estimated in more than one million while the Zhou were only about 70,000 (Zhao, 2009:3). King Wu, together with his brother, the Duke of Zhou, elaborated a political ruling system capable of controlling all tribes that were before Shang's domain from a far much smaller state: the Tianxia.

The Zhou dynasty assimilated much of the culture of the Shang and respected the cultural aspects of other tribes, integrating their leaders in the administration system. In return, they gained political support. They have also established the "Mandate of Heaven" so that the ruler held not only political but also divine power and would be in power only if served the people well (Cohen, 2000:5). Later philosophers who wrote on Tianxia, described the character of the ruler as a sage and of those in charge of political and administrative affairs, who should be chosen on basis of meritocracy and virtue.

Zhao emphasized that such a model could not exist under the hegemonic logic. According to him, even though the morality of the leader could sustain loyalty in terms of war mobilization, it would not hold a long-term effect. Therefore, the governance model established by the Zhou, instead of offering military might in a hegemonic order, relied on a system founded on long-term cooperation. Within that system, "a world order has become the condition for a state to survive, and the rule

of the world the premise for the rule of a state. In that sense, world politics comes before the politics of a state" (Zhao, 2019:5).

Under Tianxia, a universal system was inaugurated based on harmony with a view to attain the well being of all under heaven (Zhao, 2009:4). Mozi described Tianxia as a political unity with shared common values where a single ruler would be the authority of all under heaven (Lewis e Mei-Yu, 2017:17). Moreover, Mozi described the system as pluralistic and believed that, by preserving it, the weaker states would be protected. Consequently, in a system with such characteristics there should be no reason for aggression (Cohen, 2000).

Even though the concept of "nation states" is an European elaboration of the nineteenth century, the pre-Qin states already held some characteristics: people, territory and government (Yan *et al.*, 2011:3). Most of those states though lacked sovereignty, which was bestowed upon the emperor. These pre-Qin states, "on the grounds of protecting their own security, sought to develop an resolve the relationship among themselves and the central royal house" (Yan *et al.*, 2011). Yan Xuetong makes an analogy of the system to the Commonwealth:

the way in which the various princely states gave feudal homage to the Zhou King as their common lord from the eighth to the third century BCE was rather like the relationship of the members of today's Commonwealth to Great Britain. They accept the Queen as head of the Commonwealth but enjoy equal and independent status along with Great Britain (Yan *et al.*, 2011:148).

China was unified in 221 BCE by the first emperor of the Qin dynasty¹⁰. The unification did not mean the establishment of a nation state according to European standards. The tribute system remained and China kept the autonomy of the nations within all under heaven. Also, the legitimacy of various rulers, and distinct foreign dynasties, was preserved under the system that lasted until 1911. China became into an existence that was not held upon geography or ethnicity but in a sense that all under heaven were Chinese.

¹⁰ While Kang believes that Tianxia existed until the Opium Wars, Zhao affirms that, when China was unified, the system ended as the existing nations were united under a central authority, distorting the concept.

Wang Hui believes that China was held together by the dynasties after the unification that followed in a way or another a Confucian moral orthodoxy. As such, distinct rituals from different minority groups that ascended to power established "a 'Chinese dynasty' that could transcend national characteristics and even language and cultural differences" (Wang, 2014). So it was neither material power nor a unified political structure that held China together.

According to Wang, the rituals were the most important features when distinguishing Chinese and foreigners. Thus "if what is foreign were to submit to ritual, then it could also become 'Chinese', just as if 'China' were to betray ritual, that 'China' would no longer be 'China'" (Wang, 2014:122). Zhao reinforces that

grand unity China still retains the heritage of the *Tianxia* concept, transforming the *Tianxia* spirit into a state spirit, changing a world structure into a state structure and consequently turning China into a "world structured country. This *Tianxia*-embedded China has inherited the all-inclusive compatibility and internality of the concepts of *Tianxia*, and therefore cannot be force-fitted into such concepts as nation-state or empire, because the political connotations of both those concepts do not capture, or simply misrepresent, that of the *Tianxia*-embedded China (Zhao, 2019:22).

Therefore, while dynasties were holding to these rituals, they were not only holding China together but also respecting specific features and cultural aspects of all ethnicities. Hence, as Tok points out, even dynasties that were traditionally non-Chinese were able to hold on power

Tianxia accommodated moments of weaknesses by "China Proper" and its inability to exercise actual control over land by virtue of its assumptions and mode of operations. For this reason, traditionally "non- Chinese" like Manchus were able to reign over China Proper for almost three centuries without causing a breakdown on the order (Tok, 2013:36)

The mandate of heaven went beyond China once the tribute system's ascendancy went over Vietnam, Korea and Japan. These states were roughly constituted in between the seventh and tenth centuries a.d. and followed not only Confucian principles but also Chinese administration system. Even though *Tianxia* consisted of an unequal hierarchic system, China was at the top honoring a

commitment of not exploiting the states under its authority. The secondary states held a high degree of autonomy and were expected not to challenge or compare themselves to China (Kang, 2010:2):

Within this system, cultural achievement in the form of status was as important a goal as was military or economic power. The status hierarchy and rank order were key components of this system, and ranking did not necessarily derive from political, economic, or military power. China was the hegemon, and its status derived from its cultural achievements and social recognition by other political actors, not from political, economic or military power (Kang, 2010:8).

Kang describes the tribute system as a Confucian society even though not every state under the mandate followed strictly Confucian notions. Kang notes that most of the conflicts involving China involved nomad people living along the northern borders that did not adopt Confucian ideas while relations with Japan, Korea and Vietnam were steady. There was a clear set of norms ruling that unequal system responsible for dispute management and conflict resolution. Those rules, while avoiding resource to war, kept the system stable (Kang, 2010).

The secondary states would follow the rules that referred to diplomatic, economic and cultural relations both with China and within themselves based on unequal relations and hierarchy in the system. As mentioned, China was at the top, not to be challenged or contested, and the hierarchy would follow based to some extent on the similarity of states to China. The recognition of the ranks within the system was formalized through rites of investiture and payment of tributes. These rites would be performed through exchanges of diplomatic and intellectual missions, responsible for consolidating political, economic and cultural relations.

The recognition of China did not interfere in the independence of each state as they could manage both the internal affairs and foreign relations with other states as they pleased: "when envoys bowed before the Chinese emperor, they were in effect acknowledging the cultural superiority of the Chinese emperor, not his political authority over their states" (Smits, 1999:36). Therefore, when the tributary states adopted Chinese-like administrative rules internally, they did it voluntarily, considering those the best practices of political and social control. But clearly, in doing so, they also believed those practices would enhance relations with China.

The only two wars involving the major states in the Tianxia threatened China's legitimacy and, as consequence, demanded action. The first was China's intervention in Vietnam from 1407 to 1428, during the Ming dynasty. The Tran king in Annam, northern Vietnam, was deposed and inadvertently invested by Yongle, the Ming Emperor. The Tran asked for assistance to be restored and Yongle, realizing his mistake sent some troops that were decimated at the border. In order to avenge the humiliation, a punitive mission of 215,000 troops was sent and after the victory, Yongle decided to integrate Vietnam to China (Kang, 2010:98-99).

After years of ruthless Ming ruling, a powerful resistance movement, using guerrilla tactics, took over the territory. Le Loy, the resistance leader, proclaimed himself emperor and sent a tribute mission to China (Cohen, 2000:159). Yongle promptly accepted and, with stability safeguarded within the system, China never again pursued territorial claims against Vietnam, at least not in the mainland.

The second occasion that led to China's military intervention in order to maintain Tianxia was during the Imijin War (1592-1598), when Japan invaded Korea. Considering the hierarchical scale among the four big states under Tianxia, Japan was the most distant from China. Even though Japan adopted Confucianism and many other cultural aspects from China, it remained at the borderline of the system. If considered the tribute missions to China, while Korea was granted once a year and Vietnam one every three years, Japan was just allowed once every ten years (Kang, 2010).

Nonetheless Japan avoided a clear acceptance of Tianxia, the Imijin War was the only episode in which it challenged the system. In 1592, the general Hideyoshi, responsible for Japan's unification, sent almost 200,000 men (Cohen, 2000:192) into Korea announcing his intention to invade China and overthrow the Ming. China responded in 1593, when the Japanese were already up to Pyongyang, with a massive attack that drove the invader to the extreme south at the city of Busan. Negotiations lasted for years as Hideyoshi demanded Japan's recognition as China's equal. Japan finally retreated in 1598 with Hideyoshi's death.

Aside from these two episodes, Tianxia's order remained unchallenged and stable until the Opium Wars in the nineteenth century. The stability did not mean there was peace. China kept on fighting tribes in the north, mostly nomads, and there were conflicts in the west at the regions were today are located Tibet and Xingjiang.

But those clashes did not challenge China's position, not even in turbulent times such as the transitions of dynasties.

2.2 - Chinese Traditional Thought

After focusing on the historical aspect of Tianxia, it is necessary to understand the meaning of the principle in Chinese and some of its various interpretations. The first character of Tianxia -天 - is commonly translated as "heaven" but it also refers to "nature, the natural order, and, when elaborated in neo-Confucian thought, the moral order that links human beings to the cosmos" (Wang, 2014:xi). Tianxia was, therefore, ruled under a single authority in a regime of value, contrasting with the concept of guo (国), translated as state, nation or kingdom, where there was a political order over a population in a territory.

Zhao Tingyang identifies Tianxia as the world interpreted in three different ways. First, it meant "the Earth or all lands under the sky" (Zhao, 2009:5). Yan Xuetong emphasizes that, at the time Tianxia was established people thought that:

The Earth was square and flat. They did not know that there were lands not joined to mainland, nor did they know that in other lands there were other people and civilizations. Hence, conceptually speaking, the 'all under heaven' of pre-Qin people and today's 'world' have two points in common: one is that the Earth is understood to include the whole surface of the land beneath heaven; the other is that it is limited to the totality of social relationships among human beings. (Yan *et al.*, 2011:42)

Second, "a common choice made by all people in the world, or a universal agreement in the 'hearts' of all peoples" (Zhao, 2009:5). The system was built upon trust, on links of common culture and beliefs, not on coercion and borders. Therefore, Tianxia holds a strong moral component in which the capability of the leader to be willingly followed as a moral paradigm was fundamental to its existence.

Third, "a political system for the world with global institution to ensure universal order" (Zhao, 2009:5). In this sense, there were norms that ruled Tianxia that were responsible for the stability of the system even though they were not followed in the same way by all states.

Another crucial concept is the idea of "humane authority". The notion constituted the basis of the ancient order and, although coexisting with the Chinese understanding of hegemony, they constitute contrasting ideas of ruling a system. Both kinds of leadership though, share the idea of a hierarchic system ruled by a superior power, in one case, morally, in the other, by the use of force (Yan, 2018).

The heavenly authority was bestowed upon the Chinese emperor, the "son of heaven" (天子), but not every ruler was entitled to the position. Yan Xuetong believes that while the ancient concept of "humane authority" is associated with the principles of benevolence and justice, it could be currently translated into the idea of leading by example while applying soft power (Yan, 2018). The idea is strongly related to the moral authority of the ruler, whose legitimacy is based on trust:

Starting from the belief that humans are self-interested, the principle of humane authority encourages China's rules to adopt a benevolent foreign policy towards their weaker neighbors in expectations that the recipients of said benevolence will express gratitude for the benefits ensuing from such leadership (Yan, 2018:17)

By contrast, from the realism perspective, the idea of hegemony is associated to political power, based on force. Zhao asserts that "rule by force is not politics, but just a way of ruling; true politics is an art that creates universal cooperation and coexistence" (Zhao, 2019:9). A hegemon, although not entitled to the humane authority, is capable of bringing to the international system but there will be instabilities outside the structure of alliances (Yan *et al.*, 2011:71). Mencius believed that "using force and pretending to benevolence is the hegemon. The hegemon will certainly have a large state. Using virtue and practicing benevolence is the sage king" (Yan *et al.*, 2011:45).

Even though a hegemon may govern with a degree of morality, respecting alliances and protecting its people, its ruling is based on dominance. In contrast, the sage king of Zhou was aware that he could not rule for a long time by force so he established a system in which all could benefit and there would be no reason to leave it. The sage kings ruled with humane authority and the other states accepted it willingly.

Yan reminds that, according to Xunzi, "humane authority is the highest form of world power" (Yan *et al.*, 2011). A sage king would hold the moral authority capable of inspiring people both home and abroad. While accomplishing that, the ruler would be considered "son of heaven" and, therefore, entitled to lead the Tianxia. Yan warns though that:

the moral standing of a leader, though a necessary condition for attaining world leadership, is not a sufficient condition. Lacking strong power or failing to play a full part in international affairs and having only moral authority is not sufficient to enable a state to attain world leadership. Hard power may in fact be equally important for both humane authority and hegemony. (Yan *et al.*, 2011:91)

While Mencius only speaks of humane authority and hegemony as kinds of international power, Xunzi also views a possibility of tyranny. Tyrants act based on military force and deception. As consequence, they bring instability to the system and lack morality, therefore, should be avoided. (Yan *et al.*, 2011).

Zhao described some characteristics of the ancient system, qualifying it as world system based on harmony, not uniformity. There were no geographic boundaries and nations were welcome to join as long as they followed general rules. Those rules would go from paying tribute and obedience to the son of heaven, to a commonly agreed dispute resolution system. At the same time, internal rites, culture and social norms were respected (Zhao, 2012) .

In addition to a set of shared norms and principles on political coexistence and diplomacy, Tianxia also ruled over trade relations. Those rules would go far beyond core of the tributary system, and would permeate most of East and Southeast Asia. Confucianism became the cultural glue that made relations viable in a region so vast. Even states that were not under Tianxia such as the Philippines and Indonesia would adopt some of the principles in order to make trade feasible with China and other Sinic states.

2.3 - A Theory for All Under Heaven

As mentioned before, there is a lively debate in Chinese academy on the need of a Chinese School of International Relations. The present thesis will analyze the

territorial disputes in the South China Sea considering Tianxia as the theoretical framework. The leading scholar supporting the theory is Zhao Tingyang, therefore, the main argument will be constructed keeping in mind his perspective on Tianxia.

In order to better understand Zhao's views on Tianxia, it is necessary assimilating some concepts based on Chinese traditional thought. Yan Xuetong, while developing his ideas in moral realism went through an in-depth analysis of Chinese classics and their thoughts on governance and interstate relations. Thus, Yan's findings will also be adopted in order to interpret critical notions that constitute the idea of Tianxia.

While structuring his viewpoint on Tianxia, Zhao apply some views presented in relational theory. Further, on of the four key concepts for a new Tianxia that Zhao presents is relational rationality. Therefore, with a view to contemplating this idea, Qin Yaqing's thoughts will be analyzed. Even though following different approaches, these three theories restore Chinese traditional thought in order to interpret the world order and propose a distinctive perspective through a new paradigm.

2.3.1 - Moral Realism

Yan describes three concurrent theories existing in China's foreign policymaking: Marxism, which is the official theory of Chinese Communist Party but not longer put in practice; economic pragmatism, which reinforces the importance of trade but refuses to take on international responsibility in other areas and; traditionalism, which is being revived by the party, using ancient thought to support a leadership based on moral conduct (Yan, 2018). Yan uses Western IR theory - realism - as an analytical framework in order to understand power relations according to ancient Chinese thinkers.

His findings lead to a conclusion that even though hegemonic power is capable of dominating the international system and that the use of force cannot be dismissed, the dominant state ruling under a moral authority is more likely of bringing stability to the system. The leading state, acting under a humane authority "has the role of taking the leading in implementing and upholding international norms, whereas hegemony lacks this" (Yan *et al.*, 2011:214).

According to Yan, "the rise of China is granted by nature" (Yan, 2001) but, despite China's quest for its national rejuvenation, the current world order is a consequence of U.S. power demise, pulling back from military and diplomatic commitments. China still sees national sovereignty as priority and is focused on keeping conditions for its own economic growth. Accordingly, China has no intention of challenging the U.S. militarily and avoids direct confrontations. Therefore:

caution, not assertiveness or aggressiveness, will be the order of the day in Beijing's foreign policy in the coming years. Even as it continues to modernize and expand its military, China will carefully avoid pressing issues that might lead to war with the United States, such as those related to the South China Sea, cybersecurity, and the weaponization of space (Yan, 2019:9).

Yan believes that, as China is reaching the position of the dominant power in the international system, a new normative order could be a blending of liberal and traditional Chinese values. According to this proposition, an ideal stable system would be one in which equality, democracy and freedom could be balanced with fairness, justice and civility. As such this proposed system would be a modern version of the ruling through a humane authority (Yan, 2018)

Increased Chinese clout may also bring attempts to promote a vision of world order that draws on ancient Chinese philosophical traditions and theories of statecraft. One term in particular has been making the rounds in Beijing: wangdao, or "humane authority". The word represents a view of China as an enlightened, benevolent hegemon whose power and legitimacy derive from its ability to fulfill other countries security and economic needs - in exchange for their acquiescence to Chinese leadership (Yan, 2019:10).

For the time being, Yan sees a bipolar world order in which neither China nor the U.S. have enough power to set the rules. Therefore, he predicts a competition in terms of trade and technology that would lead to a two-track foreign policy. In this scenario, states would side with either China or the U.S. on specific issues, according to their own interests. In the meantime, China will enhance its economic and soft power expansion as Yan asserts that "at the top of Beijing's priorities is a liberal economic order built on free trade" (Yan, 2019:2).

Yan's studies seven pre-Qin philosophers to understand the basis of state power: Guanzi, Laozi, Confucius, Mencius, Xunzi, and Hanfeizi. He analyzes some fundamental concepts such as “humane authority”, “Son of Heaven” and “hegemony” with a view to understanding how Chinese traditional thought approached them. As a result, Yan makes a clear account on those notions:

The debate about human authority among the pre-Qin masters is precisely a discussion of the issue of whether to wield humane authority or hegemony over all under heaven. Given the then lack of modern scientific understanding of geography, the Chinese notion of all under heaven meant all land, sea and people under heaven. The term *all under heaven* was virtually synonymous with the *world*. The title *Son of Heaven* referred to the person who ruled over all people on the earth as representative of Heaven. The emperors of China's feudal times called themselves, which shows that they thought of themselves as rulers of the world (Yan *et al.*, 2011:218).

For the purpose of this thesis it is relevant considering Yan's references on Xunzi's idea of all under heaven, considered as:

the whole world and that possessing all under heaven amounts to having world leadership. This kind of power is the result of the masses and the various feudal states willingly accepting the leadership of the sage. It is not a status that the ruler can win by violence (Yan *et al.*, 2011:85).

Moreover, Xunzi asserts that “humane authority is a form of interstate leadership that is higher than hegemony” (Yan *et al.*, 2011:99). Accordingly, Yan believes that, even though the international system under a humane authority is not perfect it's implementation would allow both more security and cooperation than the current hegemonic system. Nevertheless, according to Yan's viewpoint, the Chinese Government does not hold clearly yet within its goals building a humane authority.

He believes that, following the idea of All under Heaven, China should be opened to the world and the world to China. In order to materialize this idea, he proposes three tasks: the first one is translating the production of Chinese scholars, so the international academic community could have access to what is being discussed in China; the second one is to increase comparative studies on Chinese and European interstate ancient thought and contemporary IR theory; finally, he

suggests the creation of a new IR theory based both on pre-Qin thought and contemporary IR theory (Yan *et al.*, 2011).

2.3.2- Relational Theory

Qin Yaqing's relational theory is based on Confucian thought and stands on the assumption that the "world is a universe of relatedness" (Qin, 2018b:107). Qin criticizes Western IR mainstream theories¹¹ on that they "take the state as their primary units, pre-existing and self-subsistent" (Qin, 2018b:121). Moreover, he asserts that

a major problem of IR as a discipline is that it does not have a well-developed theory of relations and does not seriously theorize on relations, even though it is called International "Relations" and accepted as such through common practice (Qin, 2018b:121).

The relational theory proposes that "social actors base their actions on relations in the first place" (Qin, 2018a:428). Accordingly, self-existence and coexistence are simultaneously present and rationality is determined in terms of the relations between actors: "a social actor needs first to define the relationship between her and her related order and is then able to decide what action toward the latter is rational" (Qin, 2018a:428) . Actors interact within the system and transform each other and, as consequence, their identities and roles are shaped.

According to the Western perspective, relations are based on interactions between units. On that account, Qin reminds that those interactions can take form of competition, according to Locke, war of all against all, according to Hobbes or even all befriending all, following the Kantian view (Qin, 2018b). Further, there is also the construct of a clash of civilizations and a consequent homogenization of the system. Nonetheless, through the relational perspective, the interaction is inclusive and changes will reverberate changing the system itself.

¹¹“ Realism and liberalism explicitly define identity as pregiven: the actor has her identity with properties and attributes and enters an interaction in a social setting with such a priori identity as an independent individual. Mainstream constructivism also acknowledges the primary and fundamental nature of the pregiven identity, although it recognizes that the secondary properties and attributes can change through intersubjectivity” (Qin, 2018b).

Relational theory main focus is on human relations, where the unit is a “selfless self, because it would be non-existent as a social being without the interdependence on and interrelatedness with other as well as with the context” (Qin, 2018b:114). Qin asserts that even though the process constitute the actors, actors also create the process (Qin, 2018b). Nevertheless, relations, and not actors, constitute the primary unit of analysis (Qin, 2018b).

Thus, process is the object of Chinese dialectics and Qin reinforces that "all social actors are entirely embedded in the process from the very beginning, and there is no given society independent of process. In the process, the behavior of actors transforms, so do their essential properties" (Qin, 2010:132). Hence, even considering relations between states, Qin believes they hold human elements once their behavior can be considered rational, non-rational or irrational. Moreover, those relations can be established in different levels of importance and are also subject to changes (Qin, 2018b).

Following this viewpoint, relations are not based on conflict as actors see each other as complementary. As consequence, there is an ongoing transformative process in which the relationship between actors is based on harmony. Qin believes that, at any given time, an actor's identity is multi-faceted, showing more evident characteristics while keeping others less visible. Most of times an actor is defined by his most distinctive features but it does not mean that other aspects are not present. When interacting with other actors, it is possible that the unexposed characteristic will surface in such ways that could become his dominant property. This is the importance of change according to what Qin describes as "harmonious dialectics" (Qin, 2010):

Relational thinking sees change as the nature of things and stresses the transformative process defined in terms of complex relations in motion, which are full of dynamics. (...) This process-nurtured transformation is called *tongbian*, or continuity through change. (Qin, 2010:140)

Qin asserts that the international system is in constant change where rules and institutions "are not established to govern or restrain behavior of individual actors in society but to harmonize relations among members of society" (Qin, 2010).

Therefore, he argues that, according to Chinese relational thinking, international institutions in a continuous process of transforming and becoming.

Qin's relational theory is applied by Zhao while developing his idea on a new governance system based on Tianxia. Therefore, while investigating the territorial disputes in the South China Sea, the main focus will be on the relations among China and the other actors. A clear viewpoint of those relations will help providing the basis for a Tianxia analysis.

2.3.3 – Tianxia

Zhao also applies relational concepts but proposes another vision of the world system based on the idea of Tianxia. He states that, even though the West and Chinese traditions share the idea of a world order, the perspectives on the concept are different and parallel (Zhao 2019:xvii). He reinforces the relevance of understanding history in order to set the basis of the future.

Zhao states that there is no world history, only fragmented histories from different parts of the world. Therefore, the currently named world history is nothing but the history of European expansion and the network it created by interacting with other societies. According to him, while understanding history one is able to detect the "genes of civilization", being the "political genes" the ancient Greek polis and the Tianxia system (Zhao 2019:2).

Zhao points out the different perceptions of politics between Chinese and Western ancient thought, "two political paths that ran uncrossed until modern times" (Zhao 2019:3). Western civilization, based on ancient Greek thought, understood politics within the notion of "polis", focused on a local perspective of state politics. The individualistic Western concept based on Roman imperialism and hegemonism considers that States are mainly concerned about pursuing their own interests in the international system

Today's world remains a mere geographic space, rather than being commonly shared, indicating that it is still in an anarchy. In essence, the world remains in a primitive and natural political state. The introduction of a world politics that can construct a political world is yet to take shape. What we have now is only so-called international politics (Zhao, 2019:xvi)

Zhao affirms that international politics are nothing but an extension of national politics. Thus, international politics does not aim at achieving common good and prosperity but at maximizing a states individualistic interest. Furthermore, he believes that not only a genuine world politics cannot derive from international politics but also that the root cause of world conflicts are in international politics (Zhao 2019).

Accordingly, he refers to Confucius who asserted that politics (政治) was the most important thing in the world. Politics, according to the Chinese perspective, has always referred to a "civilized order that determines the common fortune of all peoples" (Zhao, 2012:1), holding a global view. Therefore, a world order based on hegemony and the ruling of major power and their allies cannot be considered a truly world order (Zhao 2019).

Based on methodological relationalism, Zhao argues that the individual can only be defined in terms of the others. Hence, he develops the concept of "ontological existence" under which the existence of an individual can only be possible if in coexistence with others. Thus, "coexistence is prior to existence" (Zhao, 2012:64). Consequently, the idea of "individual rationality to maximize self interest is unreasonable and actually irrational" (Zhao, 2012:6).

From the perspective of Chinese philosophy, "the political philosophy focusing on the absoluteness of individual or nation misleads political questions and logic, for it encourages conflicts and consciousness of the enemy, which encourages more problems than solutions" (Zhao, 2006:34).

Zhao believes that Western IR theories are responsible for a fragmented perspective of the world once they interpret the international system with the viewpoint of the self, considering the individual as a political foundation. Relegating to a second place the idea of coexistence, those theories fail when approaching international conflicts and other global issues. Accordingly, Zhao emphasizes that that:

From the viewpoint of this political ontology, our supposed world is now still a *non-world*, for the world has no yet been completed in its full sense. World institution and full popular support are still missing. We are talking nonsense about the world, for the world has not yet been fulfilled with its world-ness. (Zhao, 2006:2)

As mentioned before, Tianxia was ruled and should be ruled by the "son of heaven", entitled of the "mandate of heaven". According to Zhao, the legitimacy of the ruler is established by what he does, not what he is. Therefore, the position is opened to any nation that would lead with moral authority in benefit of all. The son of heaven would lead aiming at harmony as "anything the wholeness and harmony of the world is defined as politically unacceptable" (Zhao, 2006:5) .

According to Zhao, the model created under the Zhou holds the conditions to establish a truly world system

(1) the *Tianxia* system must guarantee that the benefits of joining will outweigh those of staying outside, thus making all states willing to recognize it and join; (2) the *Tianxia* system must ensure that all states are interdependent in interests and that their relationship is mutually beneficial as to secure a world order with universal safety and lasting peace; (3) the *Tianxia* system must be able to develop public interest, shared interest and public enterprise beneficial to all states, so as to ensure the system is universally beneficial (Zhao 2019:7).

Following this theory, the proposed vision of all under heaven is an "extendedly-defined world society with harmony, communication and cooperation of all nations, guaranteed by a commonly-agreed institution" (Zhao, 2006:8). As such, the idea of Tianxia embraces and expects the coexistence of diversity and should not follow the beliefs of a superpower. The political goal of this proposed world governance system is to establish "the trinity of the geographical world (the earth), the psychological world (the hearts of all people) and the political world (world institution)" (Zhao, 2006:2).

According to the proposed new vision of Tianxia, there should be a commonwealth of states set under the purpose of a truly world vision. This proposed world order would be ruled by universal values that would be established by blending Western elements with Confucian values. At this all-inclusive world, self-interest would be replaced by common good and the purpose of peace and cooperation will be the basis of stability.

Tianxia is, therefore, an ideal to be followed, leaving the current focus on individualistic state interests in order to reach a genuinely harmonious world. Zhao argues, though, that there is a realistic goal for his proposed Tianxia model

establishing a *Tianxia* system that has common and shared interests, willing to be embraced by all states and all peoples along with its games rules, or in other words, all states or all peoples will benefit more from accepting the *Tianxia* system than from sabotaging it (Zhao 2019:14-15)

In order to reach that goal, Zhao understands that there are four key concepts for the proposed new *Tianxia* system. The first one is the internationalization of the world that is “based on the concept of non-exclusiveness in the old *Tianxia* system” (Zhao 2019:58). Accordingly, it refers to the idea of a truly world view that aims at common good.

The second concept is of relational rationality. Strongly related to Qin’s theory, relational rationality focuses on “giving priority to mutual safety and security” (Zhao 2019:59) instead of on maximizing self-interests. This concept holds two main ideas: coexistence prior to existence, which is the “ontological foundation of relational rationality” (Zhao 2019:59) and minimization of mutual hostility. These notions guarantee that the common good is the priority for existence, no the self.

The third concept is Confucian improvement, where every change should be beneficial to the society as a whole, not in benefit of a single individual. Finally, the fourth component is compatible universalism. According to this idea, there should be universal values not an imposition of a certain culture over others. Hence, “any value that can be defined by symmetrical relations is a universal value” (Zhao 2019: 60).

Considering the ancient concepts and China's foreign policy principles, it is possible to detect they are strongly correlated to *Tianxia* theory. The following chapters will approach the territorial disputes in the South China Sea under the light of *Tianxia* and interpret if such system could be applied in the region.

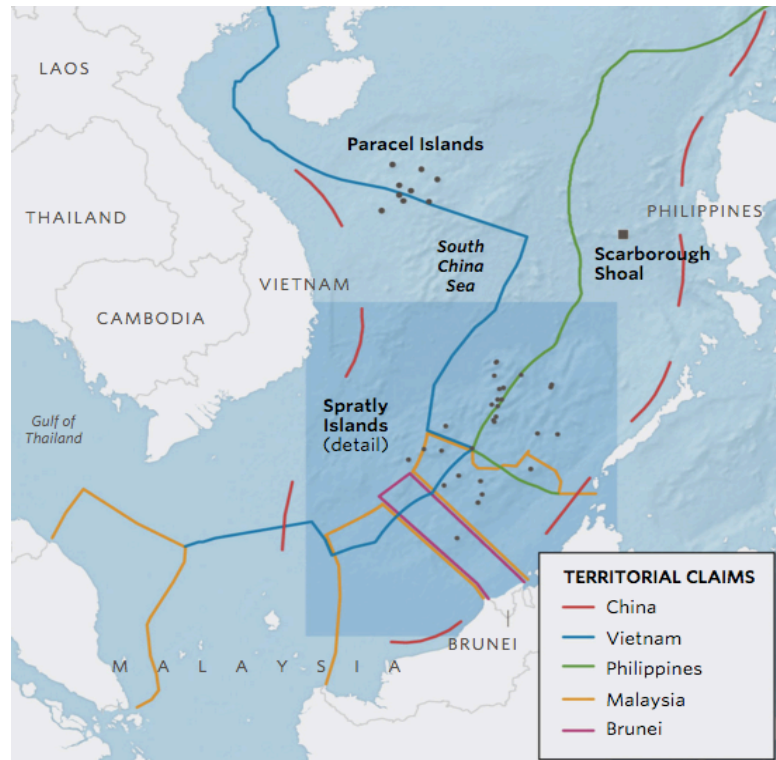
CHAPTER 3 – THE TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA

3.1 - Dispute's Overview

The South China Sea, known in the Philippines as West Philippine Sea and in Vietnam as East Sea, consists of more than 200 islands, cliffs and coral reefs grouped mainly in the Paracels and Spratly archipelagos. Spratly's formations are the subject of disputes on the part of China, Vietnam, the Philippines, Malaysia and Brunei as the contiguous areas overlap. The disputes over the Paracels involve China and Vietnam and it is currently under Chinese control. The Scarborough Shoal is another feature in the region disputed between China and the Philippines. China occupies the feature since 2012.

China claims almost 90 percent of the region and, in recent history, began to demarcate its boundaries. In 1947, the Kuomintang nationalist government inserted eleven-dash line in South China Sea maps in order to delimit a vast area the included islands, sandbanks, reefs and adjacent waters. In 1953, there was a reassessment of the area, eliminating the dashes in the region of Tokin Gulf and the line started to have nine dashes where the current Chinese claim is located (Valencia *et al.*, 1999) as shown in map1:

Map 1 - Maritime Claims in the South China Sea



Source: (Wsj News Graphics, 2016)

There are various elements on the background of the disputes in addition to sovereignty matters but the most significant ones are the sea lines of communication - SLOC, oil, gas and fisheries. Also, the claimants present their position based on distinct arguments. China holds its plea based on historical rights over the region, sustained by the concept of Tianxia and later, under the Ming dynasty, with Zheng He's navigations. Vietnam also claims a significant part of the region based mainly on historical rights, especially regarding the Paracels.

The other States involved in the territorial dispute are mainly concerned with the concepts of continental shelf and contiguous areas established in the United Nations Convention on the Law of the Sea - UNCLOS of 1982. This is the case of the Philippines in relation to some islands in the Spratly Archipelago that are considered contiguous areas to its territory. Malaysian claims also based on international law. In 1979 it extended its continental shelf so that part of the Spratly were incorporated to its territory. Although Brunei does not hold a formal demand, its exclusive economic zone, as determined in UNCLOS, enters the archipelago Spratly, in a region claimed by both Malaysia and Vietnam.

Another fundamental aspect that UNCLOS influences regional dynamics relates to the regime of islands¹². According to the Convention, an island is a natural formation that keeps above water at high tide. Furthermore, "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (Unclos, 1982).

At the Paracels, most of the features are islands, that is, capable of sustaining human habitation (Hayton, 2014) and, according to the UNCLOS entitled to territorial sea and EEZ. However, most of the formations contested at the Spratly's by the claimants "consist of 25 to 35 islets that are above water at low tide and many submerged reefs. They have never sustained a permanent population or any lasting economic activities" (Valencia *et al.*, 1999).

Furthermore, the Convention does not bestow artificial islands with the status islands, therefore not only they do not hold a territorial sea of their own but also they do not interfere in the demarcation of territorial sea, exclusive economic zone or continental shelf (Unclos, 1982)¹³. Nevertheless, constructions in the features are swiftly taking place in the region. Woody Island in the Paracels, for instance, holds a desalinization plant (Panda, 2016), which makes it capable of human habitation as well as the development of economic activities in the future.

As mentioned, the territorial disputes at the South China Sea hold several components that should be considered collectively in order to understand the parties' conduct and their claims. This chapter will provide an outline of the disputes. First there will be an overview on the dispute's stages: Spratly Islands, Paracel Islands and Scarborough shoal. Next, there will be an analysis of the main elements of the conflict: trade, security and natural resources. The comprehension of all these aspects will help constructing a clear perception of the regional dynamics.

¹² UNCLOS. Part VIII. Regime of Islands. "Article 121 - Regime of islands - 1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide. 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory. 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (Unclos, 1982).

¹³ UNCLOS. Part V. Exclusive Economic Zone. "Article 60 (Li) - Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf"(Unclos, 1982).

3.2 - The Territorial Claims Main Stages

3.2.1 - Spratly Islands

The Spratly Islands comprises about 140 islands, reefs and sandbanks in an area of approximately 410,000 square kilometers (Cia, 2018a) in the South China Sea. Known as Nansha Islands (南沙群岛) by the Chinese, the archipelago is at the core of the disputes once all claimants hold territorial interests in the area where lie rich fishing grounds and potential oil and gas.

There are no precise geographic limits to the archipelago and the claimants, especially China and Vietnam, delimit the area according to their own interest. Also, some of the features are hard to identify as some of them are partly, or completely under water at high tide, and they were given different names by the claimants (Dzurek, 1996).

Map 2 - Disputed Spratly Islands



Source:(Vuving, 2016)

Bill Hayton provides a thorough historical background of the region and, therefore, of the conflict. Pursuant to his research, the Spratly Islands were named after the British Captain Richard Spratly who sailed the archipelago in mid 1800s and was credited with its discovery. Great Britain first claimed it in 1877 and, although

never giving much attention to the islands, not at any time withdrew the claim (Hayton, 2014). In 1883 China protested a German survey in the Islands and that act supports China's claim on sovereignty. It was only in 1930, when France dispatched ships to the region, that Britain revived its claims. In 1933 France annexed six islands: Spratly, Amboyna Cay, Itu Aba¹⁴, North Danger, Loaita and Thitu.

Japan was also involved in the territorial disputes. In 1917, a Japanese company starts exploring guano in some of the islets and, in late 1930's Japan took over Itu Aba island, operating a submarine base from there (Valencia *et al.*, 1999). Japanese occupation continued during the Second World War and was abandoned by the end of 1945. In 12 December 1946, the Republic of China sent navy ships to Itu Aba, removed the Japanese flag and claimed the island in what was considered the first form of Chinese claim at Spratlys (Hayton, 2014).

At the San Francisco Treaty of 1951, Japan renounced every area in the region that was under its control¹⁵ (United Nations, 1951). It was not determined, however, to whom the islands belonged to. At that moment, China went through internal chaos, with the defeat of the Nationalist Party and seizure of power by the Communist Party, and thus was unable to act to occupy the territories that judged to be its own (Valencia *et al.*, 1999). Even though both Vietnam and China claim their historical rights over the Spratlys, disputes on sovereign rights were intensified after the Second World war, after Japan and France's withdrawal from the region (Dzurek, 1996).

The Disputes over the Spratlys have already led to military confrontations. In 1988, China and Vietnam fought a battle where 64 Vietnamese troops were killed. As China occupied Fiery Cross Reef and started the construction of a permanent base, Vietnam occupied four features nearby, followed by more occupations by China aimed. Upon Chinese arrival at Johnson Reef, Vietnamese already on the Island refused to leave and opened fire. The Vietnamese vessels were also set on fire. The Chinese responded and in a few minutes took over the feature. After the incident China occupied three more reefs: McKennan, Subi and Gaven (Hayton, 2014).

¹⁴ Itu Aba, occupied by Taiwan since 1956, is Spratly's largest island and the only one with natural water resources. The island currently holds a runway, facilities such as post office and hospital. Fruits and vegetables are grown locally which makes the case for the feature to be considered an island according to the UNCLOS (Yann-Huei, 2016).

¹⁵ 1951 Treaty of Peace with Japan - Chapter II, Article 2 (f) "Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands"(United Nations, 1951).

Currently, Fiery Cross is China's most advanced base at the South China Sea and was the first feature occupied by China at the Spratlys. It is considered as one of China's "big three", along with Mischief and Subi Reef. The three of them hold airbases with patrol and military planes, radars and missile shelters (Amti, 2017; 2018). A further major incident, this time involving China and the Philippines, took place on Mischief in 1995.

In 1994, 55 Chinese fishermen were detained by the Philippine's patrol under the allegation of illegal entry and possession of explosives. The region was also under a survey on oil and gas potential commissioned by the Philippines. Up to that point, Chinese presence at South China Sea only interfered with Vietnamese interests (Hayton, 2014).

In 1995 a fishing boat from the Philippines that detected the presence of platforms supporting bunkers had its crew member detained for a week by the Chinese occupying the Mischief Reef (Valencia *et al.*, 1999).

China at first denied the detention and affirmed that construction was used as shelter for fishermen. As Manila became aware of the nature of the structures, Beijing affirmed they were set up by lower rank officials acting without proper authorization (Hayton, 2014).

The Philippines issued a protest and urged Beijing to respect ASEAN Declaration Manila on the South China Sea, that emphasized "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force"(Asean, 1992)¹⁶. Manila also resorted to ASEAN in order to obtain support and a Joint Communiqué was issued urging the claimants "to refrain from taking action that could destabilize the region" (Asean, 1995), which is considered strong language by ASEAN standards (Hayton, 2014).

Beijing refused treating the Mischief incident on multilateral level and offered Manila a joint development of the oil prospect in the disputed area. Bilateral talks were not much fruitful as a day before Chinese facilities were discovered on two features. The only concrete development was the release of the 55 Chinese fishermen detained in 1994 (Valencia *et al.*, 1999). As a direct consequence of the

¹⁶ Even though China was not signatory of the declaration, Beijing has pledged to abide by it (Valencia *et al.*, 1999).

Mischief incident, in 1995, China and ASEAN began discussions towards a Code of Conduct in the South China Sea (Thayer, 2018).

Currently, the Mischief Reef, that was a barely submerged coral reef, is one of the Chinese “big three” in the region. It holds hangars with capabilities for 24 aircrafts, advanced radar systems as well as underground storage tunnels (Amti) as seen in the image below:

Image 2 – Mischief Reef



Source:(Vuving, 2016)

The other claimants also have been occupying features over the past decades. Even though there are divergent numbers on who occupies the Spratly's, a 2016 survey presented 7 features under China's control (plus Itu Aba occupied by Taiwan), 21 under Vietnam's, 9 under the Philippines', 5 under Malaysia's and 1 under Brunei (Vuving, 2016)¹⁷.

Although there is no new land reclamation in the region since 2012, the disputants are building up and improving the infrastructures on the features under their control. On top of reassuring sovereign right, most of constructions suggest

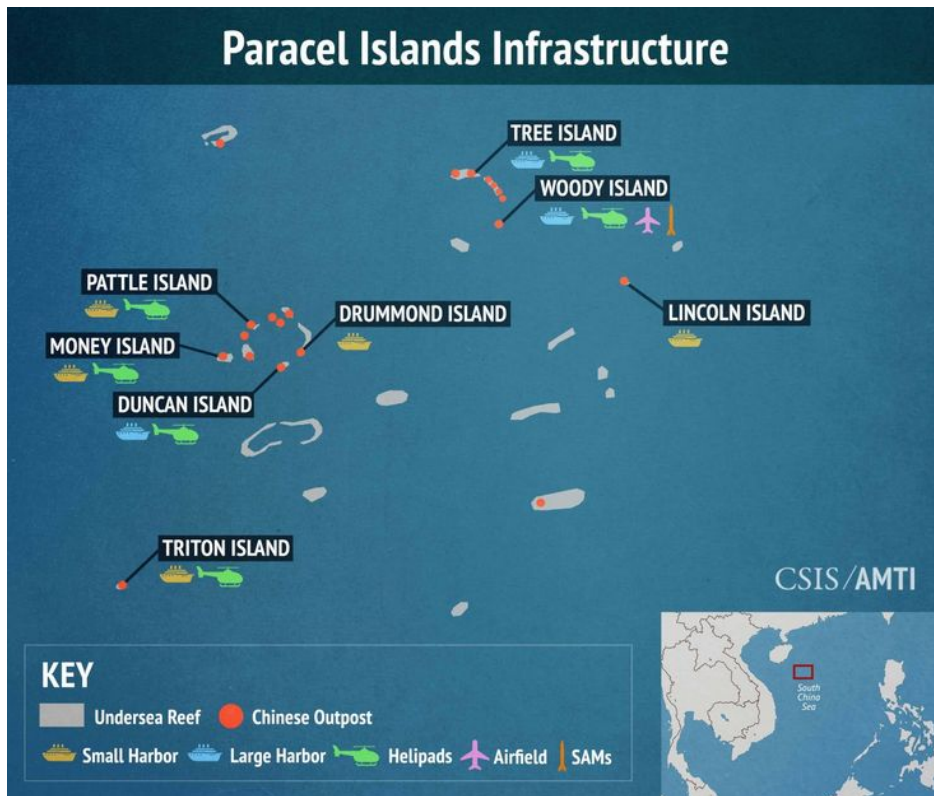
¹⁷ Most discrepancies concerning the numbers of the occupied features regards to what kind of occupation is being made by the disputants. While the presented numbers consider any kind of feature, some other studies consider just outpost (in the sense of some kind of military occupation). There are still other studies considering both.

militarization and, as consequence, contribute to the regional instability. As such, they constitute a relevant element of the disputes.

3.2.2 - Paracel Islands

The Paracels (西沙群岛) archipelago is composed of islands and coral reefs located in an area believed to be rich in gas and oil. The region can be divided into two groups of islands: the Amphitrite group and the Western Crescent Group (Cia, 2018b).

Map 3: Paracel Islands Infrastructure



Source: (Asia Maritime Transparency Initiative, 2017)

The Amphitrite¹⁸ is composed mainly by seven islands, including the largest in the archipelago: Woody Island¹⁹. China has been building up at Woody Island in the

¹⁸ Discovered in 1698 by a French ship, and named after it (Hayton, 2014).

¹⁹ Woody Island was taken by Nationalist Chinese troops under the orders of Chiang Kai-shek in 1947 and was abandoned in 1950. Communist China took over the island permanently in 1955 (Hayton, 2014).

past decades and had since incorporated Rocky Island. It has become its largest military outpost in the South China Sea, where more than 1,000 military personnel are stationed (Cia, 2018b).

There are other five islands in the Amphitrite: Tree, Lincoln, South, Middle and North. At the Tree Island, China has added additional land as well as a harbor, a helipad and also renewable energy infrastructure as wind turbines and photovoltaic panels while at Lincoln there is only one harbor. Also, since 2016, China has been trying to connect North and Middle islands (Asia Maritime Transparency Initiative, 2017).

The Western Crescent group holds another seven islands: Duncan, Triton, Pattle, Money, Drummond, Robert and Passu Keah. China has also built on those islands. Duncan was linked to a smaller island, Palm, through a land bridge and is currently the second most relevant Chinese feature in the region. It currently holds a harbor and a substantial helicopter base. Triton and Pattle and Money hold some harbors as well as a helipad each. As of 2017, there were no structures built on Drummond, Robert and Passu Keah (Asia Maritime Transparency Initiative, 2017).

There are also other small features within the Paracels, such as coral reefs and sand banks, where China has been building up some small structures. In the South of the archipelago is located Bombay Reef where China has installed a lighthouse. Some ongoing constructions are present at Antelop Reef, Quanfu Island, Yagong Island and Observation Bank (Asia Maritime Transparency Initiative, 2017).

The Paracel Islands are at the center of disputes between China and Vietnam that have been going on for centuries. Both states affirm historical sovereign rights over the region but fail to prove consistent occupation of the features. One of the first accounts of Chinese formal claims dates from 1867 when a Chinese ambassador to Britain reportedly stated that the Paracels belonged to China. There were also diplomatic protests also a diplomatic protest, against Germany's expedition in 1883 (Samuels, 2015).

The first international instrument recognizing China's claim is the Convention Respecting the Delimitation of the Frontier between China and Tonkin, following the Sino-French war in 1884. The treaty of limits signed in 1887, designated both the Paracels and the Spratlys as Chinese dominion (Samuels, 2015).

France's recognition of China's status lasted until 1931, when, safeguarding Vietnam's interests, challenged Beijing control over the Paracels. Supported by

Vietnamese historical records from 1816 and 1835, France contended Vietnam's sovereignty over the archipelago. During negotiations with China in 1933, France took over nine islands both in the Paracels and in the Spratlys. While China was fighting Japan in 1938, France took over all remaining islands in the Paracels (King C., 1987).

In 1939, Japan occupied much of the both archipelagoes that remained under its control until 1945 (Buszynski e Sazlan, 2007). In 1946, Nationalist China regained control and occupied the region until 1950, when the troops were withdrawn to Taiwan (Samuels, 2015). As the PRC was established, to the exception of Pattle Island occupied by Vietnam, all the other features at the Paracels were abandoned as Beijing did not have the means to occupy them (Hayton, 2014).

After the San Francisco Treaty Beijing issued an statement in 1951 declaring China's sovereignty over the islands even though it could not keep presence there (King C., 1987). In 1958, Beijing issued another statement²⁰ on China's territorial sea that included both archipelagoes. This statement was formally recognized by Vietnam's Premier ten days later but in 1961 Vietnam announced the Paracels incorporation. The announcement by Saigon in 1973 that was contracting foreign companies for oil exploration in the region ultimately led to the China's take over (King C., 1987).

In January 1974, Chinese troops took over the Paracels on a surprise attack expelling the Vietnamese from the islands, in what has become known as the Paracels Battle. China consolidated its presence there in the following decades. Since the battle, tensions between China and Vietnam were never eased. Problems regarding fishermen harassment are frequent but mostly solved without alarm.

However, controversies regarding oil have already escalated to the brink of military conflict. In 2014 China National Offshore Oil Corporation's Haiyang Shiyou 981 - HYSY981 moved an oil platform into waters at the Paracels, according to Beijing, within the nine-dash line. The platform sparked protests from Vietnam as it was also located within its EEZ. Tensions intensified with the involvement of naval and coast guard vessels from both sides²¹ (Panda, 2018d). In 2016, the same

²⁰ Declaration of the People's Republic of China on China's Territorial Sea from 04 September 1958.

²¹ The incident is known as "The Haiyang Shiyou 981 oil rig crisis". More on that at Chapter 4.

platform was placed in the same area generating protests from Vietnam (Tiezzi, 2016).

In 2018, tensions raised again. Spanish oil company Repsol was told by Vietnam to suspend its operations at the Paracels in a disputed area after Beijing threatened initiating a military conflict (Panda, 2018d). As Vietnam EEZ and China's nine-dash line overlap in the regions, Beijing has been pressuring for joint oil and gas exploration but Hanoi is still rebuking the idea while exploring those resources at its coast in an area not contested by China.

3.2.3 - Scarborough Shoal

The Scarborough Shoal is a coral reef located approximately 120 NM from the Philippine's coast and more than 350 NM from China's coast (Department of Foreign Affairs, 2013). According to UNCLOS, the shoal is part of the Philippines' Exclusive Economic Zone - EEZ²² while Beijing declared it to be within its nine-dash line in the South China Sea.

The Shoal, being mostly submerged at high tide, cannot be considered island under UNCLOS hence, according to the same convention cannot generate territorial sea. It was under the control of the Philippines until 2012 and, even though uninhabitable, was constantly visited by local fishermen who sustained their livelihood from what they caught there.

A confrontation between Chinese fishermen and Filipino patrols led to what became to be known as the "Scarborough Incident". On April 2012, Chinese fishermen were spotted in the area by Filipino air surveillance and a naval frigate was sent there in order to inspect. The Chinese sent a distress call and a patrol arrived. The standoff reached diplomatic levels and five days into the dead lock Manila announced that would pursue arbitration, reached out to ASEAN and later involved

²² UNCLOS. Part V. Exclusive Economic Zone. "Article 55 - Specific legal regime of the exclusive economic zone. The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention". "Article 57- Breadth of the exclusive economic zone. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured" (Unclos, 1982).

the U.S. on the grounds of the U.S.-Philippine Mutual Defense Treaty (Green *et al.*, 2017).

The impasse reached economic levels when China started blocking fruit imports from the Philippines based on health concerns. Negotiations continued and more than two months into the standoff, the Philippines decided to pull out its vessels from the shoal believing the China would do the same. Chinese vessels never left and China took control of the shoal. The Philippines reached for regional support at ASEAN but facing internal discord, for the first time in history there was not a joint communiqué after a summit. This outcome led the Philippines to file a suit at the Permanent Court of Arbitration in 2013 (Green *et al.*, 2017).

Also in 2012, the Chinese delimited area was put under the administration of the province of Hainan. On November of the same year, the province adopted a set of regulations on the areas under its jurisdictions prohibiting "foreign ships and their crew from illegally anchoring in the territorial sea of the province"(Talmon e Bing, 2014) and the foreign crew that disrespected those provisions could be "stopped, boarded, inspected, arrested, expelled or diverted"(Talmon e Bing, 2014). As consequence of the act, China's patrols started preventing the Philippines from fishing at Scarborough Shoal and adjacent areas. Presently the shoal is still under China's control.

3.3 - Elements of the Disputes

3.3.1 - Sea Lines of Communication – SLOC

Sea lines of communication - SLOCs - are primary maritime routes that connect ports and are used for trade, logistics or military purposes. In terms of trade, their importance is attached to heavy shipping traffic and the transport of vital products such as oil. Also, SLOCs "hold tremendous strategic importance and geopolitical value to their users. In times of conflict, it is not unusual to find SLOCs being blocked by naval powers" (Khalid, 2012).

One of the most evident features of the disputes is trade. It not only is a cause of concern for the parties directly involved but also is the main reason why other actors such as the U.S., Japan, ASEAN and even the E.U. frequently interfere in the

conflict. But the trade flow through those waters is deeply connected to concerns over security. The South China Sea is the world's most important SLOC, what makes it strategically crucial:

it is fair to say that the SCS is the essential part of perhaps the most important waterway of our time: the SLOC that connects Singapore with Northeast Asia. Already some years ago, the economic value and volume of the goods in this SLOC has surpassed that of the SLOC between Rotterdam and New York, which was the world's premier SLOC for more than a century (Felse Vu, 2016:4)

In 2016, US\$3.37 trillion of global trade crossed the region. Considering the disputant's total trade, 39 percent of China's, 72 percent of the Philippines', 86 percent of Vietnam's, 58 percent of Malaysia's and 76 percent of Brunei's move across the area (China Power Team, 2017). Considering China's staple food, in 2017, 43 percent of its imports passed through the Malacca Strait (Ghiasi *et al.*, 2018).

The South China Sea is currently part of the 21st Century Maritime Silk Road and as such has caught academic and media's attention in terms of what it represent in terms both world trade and security. Concerns on security terms are led by fears that transport infrastructure can be used both by commercial and military purposes.

Yet, China has never prevented the freedom of navigation in the South China Sea and an eventual blockage of the SLOC is unreasonable once China is the main beneficiary of the trade that crosses the region. Besides, since the Second World War, there has been no campaign against commercial ships:

In fact, a modern campaign against civil shipping is judged by most naval experts to be most effective as the vessels leave port or approach the destination ports, or narrow straits, rather than in open ocean areas (Austin, 2015:1)

Given the strategic importance of the South China Sea, the US presence in the region has intensified in the past few decades, either through military patrols - FONOPs - or through the consolidation of alliances with States with direct interests in the territorial conflict. The official policy of the Obama administration called "pivot to

Asia" had as one of the main aspects the expansion of the military presence in the region and was perceived by Beijing as a strategy of containment (Sutter, 2014).

The United States have always declared being neutral regarding the conflicts in the South China Sea, but neutrality is compromised by strategic interests. Friedberg holds the U.S. stance stating that

a large portion of the commerce that passes through the South China Sea every year is bound for the United States or from the United States into the region. So we have a direct and kind of practical interest. We also have a long standing interest in defending freedom of the seas (Friedberg, 2018).

As mentioned, one of the main US alleged concerns is the preservation of the "freedom of the high seas"²³ (Unclos, 1982)²⁴ and the maintenance of the SLOC that cross the region:

The United States has an interest in upholding the rights of all countries to exercise freedom of the seas. The idea of a maritime commons in which all nations are free to sail, fish, and engage in commerce has been a bedrock of U.S. foreign policy since President Thomas Jefferson dispatched U.S. military forces against the Barbary States in response to piracy against military vessels (Cooper e Poling, 2019)

Besides the fact that the volume of US annual trade that passes through the South China Sea is less than 6 percent (China Power Team, 2017), Washington has been conducting Freedom of Navigation Operations - FONOPs - in the region since 2015. In order to legitimize its presence in the region, the Pentagon emphasizes the U.S. lawful right to challenge what it considers "excessive maritime claims". According to the U.S. government:

²³ The U.S. has never ratified the UNCLOS but claims to observe it as customary international law (Cooper e Poling, 2019). China ratified the treaty in 1996.

²⁴ UNCLOS Article 87 - "Freedom of the High Seas: 1 - The high seas are opened to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions of this Convention and by other rules of international law It comprises *inter alia*, both for coastal and for land-locked states. (a) freedom of navigation;(b) freedom of overflight;(c) freedom to lay submarine cables and pipelines, subject to Part VI;(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;(e) freedom of fishing, subject to the conditions laid down in section 2;(f) freedom of scientific research, subject to Parts VI and XIII. 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area." (Unclos, 1982)

These operational activities serve to protect the rights, freedoms and lawful uses of the sea and airspace guaranteed to all nations in international law by challenging the full range of excessive maritime claims asserted by some coastal States in the region (Department of Defense, 2015)

The FONOPs were created in 1979 and are conducted every year all over the world (Ku, 2017). At the South China Sea, they've been a constant source of friction between China and the U.S.. There has been so far 17 FONOPs at the South China Sea, 4 conducted under Obama's administration and 15 under Trump's, being the most recent on September 2019 at the Paracels. Even though the Philippines, Malaysia and Vietnam have also built facilities at contested features in the region, the FONOPs aim mainly at China's land reclamations.

Table 3: U.S. Reported FONOPs in the South China Sea

Date	Location	Archipelago	Distance	Claimant
26 October 2015	Subi Reef	Spratly	Within 12 NM ²⁵	China
30 January 2016	Triton Island ²⁶	Paracel	Within 12 NM	China/Vietnam
10 May 2016	Fiery Cross	Spratly	Within 12 NM	China
21 October 2016	Triton and Woody Islands	Paracel	Outside 12 NM	China/ Vietnam
22 March 2017	Triton Island	Paracel	Within 12 NM	China/ Vietnam
26 May 2017	Mischief Reef	Spratly	Within 6 NM	China
02 July 2017	Triton Island	Paracel	Within 12 NM	China/Vietnam

²⁵ Nautical Miles

²⁶ Even Though Triton Island is claimed by both China and Vietnam, China occupies it since 1974. Currently, the Island holds Chinese facilities as an harbor and a helipad (Asia Maritime Transparency Initiative, 2017).

10 August 2017	Mischief Reef	Spratly	Within NM	12	China
10 October 2017	Did not cross territorial sea of any island but crossed a disputed territorial line around the archipelago	Paracels	Outside NM	12	China
17 January 2018	Scarborough Shoal	Spratly	Within NM	12	China/ Philippines
23 March 2018	Mischief Reef	Spratly	Within NM	12	China
27 May 2018	Tree, Lincoln, Triton and Woody Islands	Paracels	Within NM	12	China
30 September 2018	Gaven Reef	Spratly	Within NM	12	China/ Philippines/ Vietnam
26 November 2018	Around the Paracels	Paracels	Within NM	12	China/ Vietnam
7 January 2019	Woody Island	Paracels	Within NM	12	China
11 February 2019	Mischief Reef	Spratly	Within NM	12	China
06 May 2019	Gaven and Johnson Reef	Spratly	Within NM	12	China/ Philippines/ Vietnam

19 2019	May Scarborough Shoal	Spratly	Within 12NM	China/ Philippines
28 2019	August Fiery Cross Mischief Reef	Spratly	Within 12NM	China/ Philippines
13 September 2019		Paracels	Within 12NM	China/ Vietnam

Sources: (Graham, 2016; Lagrone, 2016; Gady, 2017; Lagrone, 2017b; a; Standifer, 2017; Panda, 2018b; a; c; Martina, 2019; Panda, 2019)

The operations are a constant source of friction between China and the U.S. rising tensions at the region. The U.S, alleges the right of innocent passage in the terms of UNCLOS²⁷ and crosses the territorial sea²⁸, established in the same convention as 12 nautical miles, in a statement that it does not recognize China's claims.

In 2017 the Pentagon announced it would no longer acknowledge or announce the FONOPs, as they would be summarized on an yearly report (Ku, 2017). The main intention of the FONOPs was that, while making them public, the U.S. would not only make a political statement on supporting international law but also expose China in what Washington believed to be "excessive maritime claims". As the South China Sea FONOPs are presented in an annual report along all other operations worldwide without further details, they become ineffective as a form of diplomatic protest.

The latest U.S. initiative affecting directly the South China Sea is the Asia Reassurance Initiative Act - ARIA, signed into law on December 2018. The legislation

²⁷ UNCLOS. Article 19 - "Meaning of Innocent Passage: Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law. 2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: (a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations; (b) any exercise or practice with weapons of any kind; (c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State; (d) any act of propaganda aimed at affecting the defence or security of the coastal State; ... " (Unclos, 1982)

²⁸ UNCLOS. Part II. Section 2. Article 3 - "Breadth of the Territorial Sea: Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention" (Unclos, 1982).

mentions "China's illegal construction and militarization of artificial features in the South China Sea"²⁹ (115th Congress, 2018) but ignores the same actions performed by the other claimants. Moreover, the legislation reinforces the FONOPs in the region³⁰ and meddles with the territorial disputes while urging ASEAN member to reaffirm the PCA's ruling concerning the arbitration procedure between the Philippines and China³¹ (115th Congress, 2018).

A serious concern regarding the FONOPs is the actual risk of an incident at sea that could easily spark a conflict escalation. Even though the U.S. and China disagree on the territorial disputes, both are aware of the probability of such an event. With that in mind, the U.S. Navy and the People's Liberation Army - PLA announced in January 2019 that they are holding talks to establish an efficient communication mechanism in order to minimize the risks at the occasions of the two navies encounters (Lu, 2019).

But the U.S. is not the only state patrolling the area. Although Japan, the United Kingdom and France do not hold claims in the region, they perform operations similar to the U.S. and likewise contribute to rising tensions in the South China Sea. In May 2017, Japan sent a helicopter carrier to be stationed in the region for 3 months (Fan, 2018). Following, in September 2018 the Japanese Maritime Self-Defense Force announced for the first time a submarine conducted drill in the region, even though claiming that Japan has been performing those exercises in the past 15 years (Kato, 2018).

In like manner, France and the United Kingdom performed a joint freedom of navigation patrol - FON - in June 2018 at the Spratlys. Both states claimed acting according to UNCLOS in order to protect the SLOC free passage. The United Kingdom performed a FON at the Paracels later in August that was seen by Beijing as a provocative move (Luc, 2018). France has been regularly conducting FONs since 2014 (Parello-Plesner, 2018). In 21016, the French Defense Ministry Published France published a document in which states that

In the South China Sea, the large-scale land reclamation activities and the militarization of contested archipelagos have changes the status quo and increased tensions. The potential

²⁹ ARIA. Title IV. Sec. 2. (2)(A).

³⁰ ARIA. Title II. Sec 213(a)(1)

³¹ ARIA. Title II.SEC. 205 (a)(7)

consequences of this crisis have global impact considering that one third of the world trade transits through this strategic region (Ministère Des Armées, 2016).

In 2017 France sailed at least five ships in the region (Luc, 2018). All these moves were object of strong protests by Beijing. Both United Kingdom's and France's conducts in the region are interpreted by some analysts as "moderate security alignment behavior" (Schreer e Lim, 2017). Accordingly, while France and United Kingdom still engage with China, their security behavior has been changing in the past few years, especially in the South China Sea under the argument of safeguarding both the SLOCs and the respect for the international law.

Despite concerns on the matter, China's buildup in regional features could not serve as military strategic outposts in order do perform a sea blockade. Besides, the islands occupied by China are very small, and therefore incapable of holding troops or sustaining an anti-shipping campaign, the Southern province of Guandong holds a 4,300 kilometers coastline from where an eventual military intervention would be more efficient (Austin, 2015).

In all, the FONOPs are detrimental to regional stability as they consistently cross territorial sea without prior authorization, violating China's sovereign rights. Also, the FONOPs have not prevented the disputants from building facilities on sandbanks, reefs and islands in the region what makes the alleged prevention of "excessive maritime claims" meaningless. In fact, the territorial build up by all claimants has intensified in the past decade (Asia Maritime Transparency Initiative, 2018).

3.3.2. - Natural Resources

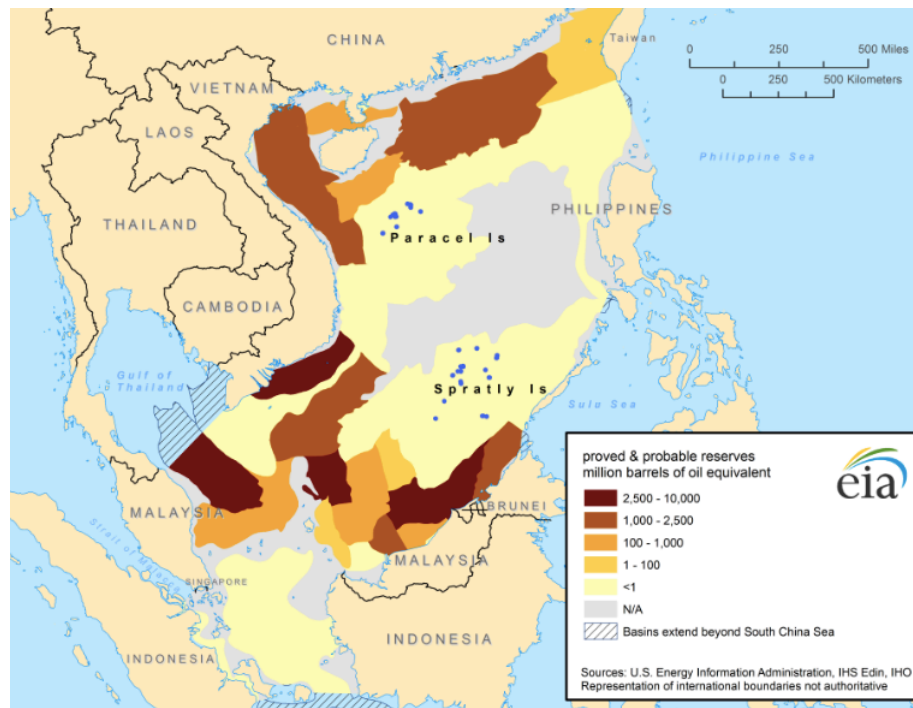
3.3.2.1 - Oil and Gas

Much is discussed on the South China Sea oil and gas potential. As the contestants rarely agree upon terms of exploration, numbers on the region's reserves are guesses, at best. There is also an interest from the main foreign companies to keep survey's numbers unknown so they could profit on exploration in eventual contracts (Valencia *et al.*, 1999). That being said, oil and gas currently constitute

some of the main elements regarding the disputes. As a result, territorial claims that once were linked exclusively to states' sovereignty also turned into a quest for energy.

South China Sea's oil rush started in the 1970's. In 1971, the Philippines seized three features at Spratly's under oil motivation. In 1973, following the same incentive, Vietnam occupied ten islands in the same archipelago. Experts believe that there's not much oil and gas in the region, at least not within the nine-dash line. Also the existing resources are too deep, requiring deep water production technology, which makes the drilling commercially unattractive (Valencia *et al.*, 1999; Hayton, 2014).

Map 4: South China Sea Proved and Provable Oil & Gas Reserves



Source: (Eia, 2013a)

An estimate from the U.S. Energy Information Agency published in 2013 informs that the South China Sea "contains approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and provable reserves mostly reside in undisputed territory" (Eia, 2013b). In the same report, an survey by energy consultancy company Wood Mackenzie estimated proved oil reserves on only 2.5 billion barrels of oil (Eia, 2013b).

Considering the archipelagoes, within the Spratlys there is no proved or provable oil reserves and just a few gas reserves, which would total 100 billion cubic feet. Nevertheless, the region holds a potential for other hydrocarbons, yet unexplored. Regarding the region within the Paracels, there is no significant oil, gas or other hydrocarbons reserves (Eia, 2013b).

However, China is taking its chances at the South China Sea. In 2017, China National Offshore Oil Corp - CNOOC announced 22 blocks in the northern part of the South China Sea opened for bidding. Some of those blocks are located in contested areas (Huang, 2017). While investing in oil and gas exploration within the region, China constrains other disputants in order to block individual resource explorations. For instance, in 2015, the Philippines suspended a drilling at the Reed Bank alleging "force majeure" initial prospect in the region revealed reserves of 20 trillion cubic feet of gas (Cruz, 2015).

China and Vietnam tumultuous relations frequently affect oil exploration in the region. On the one hand, in 2104, China's decision to explore oil in contested waters led to violent protests in Vietnam. Two years later, Vietnam asked China to remove rigs and halt drilling in the waters not clearly demarcated. On the other hand, China had Vietnam cancelling contracts with Repsol in two different occasions. Nonetheless, China and Vietnam held a joint oil exploration project for almost a decade at the Gulf of Tonkin. The project came to an end in 2016 as the oil they found, if any, was not enough to the exploration be economically viable (Jennings, 2018).

Reserves outside the disputed areas are located in shallow waters where oil and gas are regularly explored, sometimes under joint partnerships. In 2004, China and Philippines agreed on conducting seismic exploration in an area of almost 143 square kilometers nearby the Philippine province of Palawan (Bower, 2010). Six months later, in 2005, Vietnam joined the initiative and signed the Joint Maritime Seismic Undertaking – JMSU. The agreement lapsed in three years without extension both to the fact that it was linked to a corruption scandal in the Philippines and that it covered an area where, according to the Filipino constitution, could not be submitted to joint exploration (Baviera, 2012).

Some other partnerships were established as in the case of Malaysia and Brunei or Malaysia and China. Malaysia is "Southeast Asia's second-biggest oil and natural-gas producer and the world's second-largest liquefied natural gas exporter"

(Malaysia-China Business Council, 2018). In 2015, Malaysia and Brunei announced joint oil and gas exploration along the South China Sea overlapping areas affirming that boundary claims were mostly resolved (Strait Times, 2015). Even though China and Malaysia hold good relations the new Prime Minister Mahathir Mohamad is revising contracts made with China. In September 2018, cancelled three China-backed pipeline projects alleging Malaysia's financial problems (Palma, 2018).

In November 2018, China and the Philippines exchanged a memorandum of understanding on oil and gas development in the South China Sea. Despite the fact that the agreement was not publicized, a Chinese draft was made public and mentioned that the parties "have agreed to conduct joint oil and gas exploration in relevant sea areas in the South China Sea" (PRC, 2018). It is not clear though where exactly this cooperation will take place as the document only mentions that the "oil and gas exploration shall not affect the respective position on sovereignty and maritime rights and interests of the two parties" (PRC, 2018).

As seen, the disputants are capable of deals involving oil and gas explorations outside the disputed areas, where the vast majority of the reserves are located. Frictions occur within the central part of the South China Sea, where the disputed islands are located and where, allegedly, there are not enough resources. Hence, that indicates that oil and gas are not the main sources of the conflict. In any event, the best scenario on dealing with gas and oil extraction in the region would be the joint management of resources.

3.3.2.2 – Fisheries

The South China Sea is one of the world's fifth most important fishing zones (CSIS, 2018). In 2015 the region was accountable for about 12 percent of global fish catch in an estimate of 16.6 million tons yearly (Bale, 2017), not considering illegal fishing. It holds the world's richest marine ecosystem where 3,365 known fish species live (Bale, 2017). Officially, more than half of the world fishing vessels operates in the area but there are innumerable unreported boats engaged in irregular activities (South China Sea Expert Working Group, 2017).

Fish stocks are on decline in the past few decades due to not only overfishing and illegal practices but also to the construction of artificial islands by the claimants, destroying coral reefs:

Each decade, 30% of seagrass, 16% of mangrove, and 16% of live coral cover is lost from this basin due to pressures associated with unsustainable patterns of use by more than 300 million people that reside on the SCS's coast (Iw:Learn, 2018)

The destruction of coral reefs currently represents an area of approximately 160 square kilometers (Bale, 2017) leading to the collapse of fish stocks. There are several aspects of concern when analyzing the relevance of fisheries for the region and, as consequence, for the conflict. Besides the maritime claims, those include food security, economy and environment.

China, Malaysia, the Philippines and Vietnam have been building artificial islands in order to secure their maritime claims. The building process consists of moving sediments from the seafloor or reefs in order to turn sandbanks into islands or to build up existing islands. Added to the destruction of coral reefs, the sediments scattered on the sea are harmful to marine ecosystem as they "can wash back into the sea, forming plumes that can smother marine life and could be laced with heavy metals, oil and other chemicals from the ships and shore facilities being built" (Muller-Karger, 2015).

Fish is a staple food for most of regional population. China consumes 34 percent of global fish food supply and the demand is growing due to population increasing rates as well as income growth (World Bank, 2013). Even though most fish demanded by China is supplied through aquaculture, the growing demand will require expansion of maritime fishing (Greer, 2016), putting under further pressure the resources in in the South China Sea.

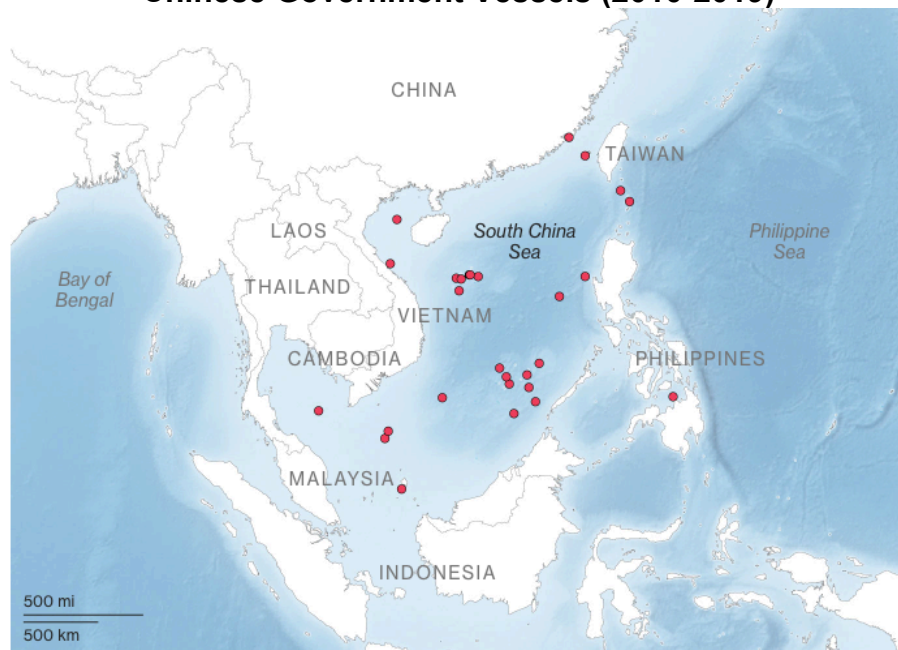
Fish is a considerable source of animal protein to the population of other claimants. In the Philippines it represents 42.6 percent of all animal protein consumed and in Vietnam 35.3 percent (Greer, 2016). Due to declining stock fishermen are not only going farther but also using illegal methods to fish. Predatory fish is leading to a vicious circle that further reduces stock through the use of cyanide, bombs and inadequate vessels and nets that damage coral reefs (Greer, 2016).

There is also a meaningful part of the population that economically subsists on fishing. Accordingly, there are about 3.7 million people officially employed in the activity (South China Sea Expert Working Group, 2017). In the Philippines there are about "1.5 million traditional fishermen and the industry account for 2.7 percent of national GDP" (Greer, 2016). Fishermen are also paid by local governments in order to strengthen their claim in the region. The Chinese government offers them subsidy to fish, especially at the Spratly's (Bale, 2017).

Fishermen are often directly involved in the conflict. The need to sail farther in order to get fish push them into contested waters where they are constantly threatened by military patrols. Recurrently they are at the center of disputes accused of trespassing national waters. Considering Chinese reports, "between 1989 and 2011 there were over 360 cases of attacks, robberies, detainments, or shootings, with 25 Chinese fishermen killed or missing" (Greer, 2016).

All claimants are involved in both sides of the disputes: either acting with military patrols or with national fishermen harassed. However, since China has taken part in 73% all reported incidents (Quynh *et al.*, 2019) shown in the map below:

Map 5: Reported Clashes between fishermen and Chinese Government Vessels (2010-2019)



Source: (Eia, 2013a)

In most cases, these incidents are quickly solved but some have evolved into diplomatic crisis. Nonetheless, some high profile cases brings both diplomatic and media attention. In the first semester of 2019, two cases were highlighted. The first was a Vietnamese fishermen vessel that was sunk by Chinese patrols near the Paracels. The second was a collision between Chinese and Filipino vessels (Quynh *et al.*, 2019).

It has already become clear to the disputants the urgent need to control overfishing and to repair environmental damages in the region. However, they haven't reached a common solution on how to manage both the environment and the resources. Moreover, all individual attempts so far have been seen as an artifice to further secure maritime and territorial claims.

Faced with the lack of regional governance on the issue, China has tried to unilaterally implement some measures. Since 1999 it implements seasonal South China Sea fishing bans. Also, since 2013, Chinese fishermen are required to seek governmental approval to enter the disputed waters (Greer, 2016). But those measures have proved flawed as China can only impose restrictions on Chinese fishermen while foreigners keep on profiting from local resources (Greer, 2016).

Moreover, China's fishing ban covers all the region of the Paracels and reaches the Scarborough Shoal over a period of three and a half months (Scarsi). China's declarations that even foreign vessel are subject to detention and fines provokes protests from other claimants. In response to the latest ban stated on May 2019, the Vietnamese Foreign Minister spoke person affirmed that "Vietnam opposes and resolutely rejects China's unilateral fishing ban decision" (Scarsi).

In another unilateral move, On January 1st, 2019, the Chinese Ministry of Natural Resources announced the restoration process of coral reefs of the Spratly's, affirming that "to protect the coral ecological system is the key to ensuring the ecological security of the Spratlys as well as the entire South China Sea" (Zhen, 2019). The announcement was immediately met with the Philippines suspicious that China would occupy more areas in the region if unilaterally rehabilitating the reefs (Mateo, 2019).

Under the scope of the Belt and Road initiative, China presented the "Blue partnership, pursuing a path of harmony between man and the ocean, characterized by green development, ocean based prosperity, maritime security, innovative growth and collaborative governance" (State Council Information Office of China, 2017).

Being the South China Sea at the Maritime Silk Road, efforts will also be directed to the region.

The territorial disputes, therefore, are directly connected to fishery problem in the region that is currently facing an aggravating crisis. The discussions on cooperation for fish management and environmental sustainability still face disputant's resistance once they are understood as a sovereignty matter. China has also proposed the establishment of a China - ASEAN cooperation mechanism under the framework of China-ASEAN Environment Cooperation Strategy and Action Plan in order to implement environment protection in the region (State Council Information Office of China, 2017).

All the mentioned elements are fundamental in understanding the dispute's dynamics. They are constant source of frictions that sometimes escalate to crisis that already led to military confrontations. The next chapter will present the viewpoint of all claimants, with an emphasis in the relation with China. The description of China's viewpoint on South China Sea will demonstrate the deep connection of its position with the historical Tian Xia. After that, it will be possible to verify whether or not its behavior in the region is in line with current Tian Xia theory.

CHAPTER 4 – FOUR VISIONS OF THE SEA

The present chapter will focus on the specific demands of the claimants under study. Thus, there will be a description of each claim along with a historical perspective. It is also crucial at this point to emphasize that the conflicts within the region occur among all claimants, therefore, some tensions also escalate without China's direct involvement. Even though relations among all claimants are relevant the main focus will be on the bilateral relations between the state under analysis and China.

4.1 - Malaysia

Relations between China and Malaysia go back in time to the founding of Malacca in 1399. Iskandar Shah, Malacca's first ruler was invested by Emperor Yongle as king and was a faithful collaborator to Zheng He's voyages. Even after China withdrew from the seas Malacca's alliance with the Ming helped maintaining stability in the region (Dreyer, 2007).

Malaysia is located in a strategic area in the South China Sea and Malacca has been a focal point in international trade since the times of the ancient silk route. The state holds close relations with China, not only trade-related but also because 7 million ethnic Chinese, around 25 percent of Malaysia's population, consist on one of the largest China's overseas population (Chang, 2018). That part of the population, even though going through eventual internal adversities, exerts considerable economic and political power.

China has been Malaysia's top trading partner since 2009 and total bilateral trade in 2017 was US\$67.72 billion (Malaysia, 2018). China is highly dependent on the SLOC that crosses the Strait of Malacca as 39.5 percent of all of its trade in 2016 (China Power Team, 2017) and 42 percent of its oil imports in 2017 (Marex, 2018) crosses the region. Therefore, regional stability and strong bilateral relations are crucial for both states.

Malaysia's claims are based on continental shelf and on discovery and occupation. The continental shelf allegations are based on a series of legal

instruments such as the 1958 Geneva Conventions³² as well as its Continental Shelf Act, from 1966, the Petroleum Mining Act, also from 1966 and an official map depicting its continental shelf and territorial waters published in 1979 (Valencia *et al.*, 1999). But that legislation does not meet the UNLCLOS criteria, which makes its pleas weak according to international law.

Malaysia's claims are crucial not only on asserting its sovereignty but also in securing the area in which rests oil and gas fields. Its economy is highly dependent on the oil and gas sector that constitutes one third of its revenue. Furthermore, it is Southeast Asia second-largest oil and natural gas producer and the world's third-largest natural gas exporter (Parameswaran, 2015b).

In order to assert its discovery and occupation claims, Malaysia has been taking over features in accordance to its 1979 map. From 1983 it started the land reclamations on reefs, all of those are located within China's nine-dash line (Vuving, 2016). Currently "Malaysia claims 11 maritime features in the Spratly Islands and occupies eight of them, with the other three being occupied by Vietnam or the Philippines" (Parameswaran, 2015b).

Malaysia was the first ASEAN state to normalize relations with China in 1974 and both states have ever since maintained agreeable relations. Accordingly, "Malaysia prefers to adroitly manage the south China Sea issue by communicating its concerns privately to China rather than publicly airing grievances, as Vietnam and Philippines are wont to do" (Parameswaran, 2015a). In 2012 and 2013 China prevented Malaysia from carrying on an oil survey within its EEZ but the incidents were not lead to further disagreements.

Even when Chinese vessels enter Malaysia's waters the approach is cautious. One of Malaysia's navy strategy towards China is the "minus-one approach" that consists of sending a ship less than Beijing when contact is made (Parameswaran, 2015b). Therefore, by giving China "mianzi", Malaysia has been reciprocated by often not being disturbed on its oil and gas exploration and even if face of challenges, both states with no further difficulties.

Malaysia's Prime Minister Mahathir Mohamad was elected in 2018 pledging to take a stronger position in relation to China. He accused his predecessor Najib Razak of corruption and raising state's debts on infrastructure projects financed by

³² Signed by Malaysia in 1960 (Valencia *et al.*, 1999).

China under the scope of BRI. After cancelling US\$ 22 billion in projects, Mohamad visited Beijing emphasizing that the move was not against China but in order to prevent Malaysia's bankruptcy (Jaipragas, 2018). Regarding specifically the South China Sea, in the joint statement the parties affirmed that:

Both sides underscored the importance of maintaining peace, security and stability, as well as safety and freedom of navigation in the South China Sea.

Both sides emphasized the need for all sovereign states directly concerned to resolve their differences by peaceful means through friendly consultations and negotiations, in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea.

Both sides further emphasized the need of all parties to exercise self-restraint in the conduct of activities, and to avoid actions that would complicate or escalate tensions in the South China Sea.

Both sides, together with ASEAN Member States, will work for the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) and encourage maritime cooperation, as well as actively push forward consultations on a Code of Conduct (South China Sea Expert Working Group) to see early conclusion of an effective COC (China-Malaysia, 2018).

The joint statement reflects the bilateral conduct towards South China Sea issues. But relations with other disputants are not always as smooth. In 1983 its territorial demands began overlapping those of the Philippines and tensions between the two States increased. They have established a *fait accompli* but, as yet, there is no definitive solution to the controversy. Following, in 1988, Malaysia arrested three Philippine fishing boats and 45 fishermen in contested area. Even though the incident was resolved amicably, in 1996, the Philippine navy detained 25 Malaysian fishermen near Palawan (Odgaard, 2002).

Malaysia has also faced some tensions regarding Brunei. Malaysia started oil exploration in the region where laid Brunei's EEZ and tensions scaled in the region in 2003 (Storey, 2012). The parties reached an agreement through an Exchange of Letters that was presented to the UN under the Brunei Preliminary Submission on

Continental Shelf in 2009³³. They decided on jointly developing oil and gas resources in two blocks in the region afterwards (Parameswaran, 2015b). Even though the blocks are located within the nine-dash line, there was no protest on the joint exploration.

Parameswaran describes Malaysia's behavior towards China in the South China Sea as a "playing it safe approach" under which is pursues a "combination of diplomatic, legal, economic and security initiatives that can secure its interests as claimant state while being careful not to disrupt its vital bilateral relations with China" (Parameswaran, 2015b). Accordingly, while keeping a low profile when resolving frictions, Malaysia is also promoting dialogue via ASEAN and pursuing conflict solving in accordance with the international law. The recent joint statement reinforced this position suggesting that Prime Minister Mohamad will maintain Malaysia's policy.

4.2 – Vietnam

4.2.1 - Vietnam's Claims in the South China Sea

Among all disputants, China and Vietnam are the ones with most overlapping claims. Both states assert territorial sovereignty in the Paracels and in the Spratlays and both of them claim historical rights. Vietnam officially asserts that

"Hoang Sa (Paracel) and Truong Sa (Spratly) Archipelagoes are integral part of Vietnamese territory. Viet Nam has sufficient historical evidences and legal foundation to assert her sovereignty over these two archipelagoes" (Permanent Mission, 2011).

Thus, Vietnam resorts ancient maps and documents to reinforce its claims over the archipelagoes. A court document dated back to King Le Thanh Tong (1460-1497) referred to both Spratly and Paracels as Vietnamese territory. In the 17th century the ruling lords sent an annual brigade to the region of the Paracels in order to conduct surveys, mapping and setting up markers (Thayer).

After the unification of Vietnam in 1802 under the name of Kingdom of An Nam, the brigade was sent again to the Paracels in different occasions and "in 1816

³³ Brunei Darassalam's Preliminary Submission concerning the Outer Limits of its Continental Shelf (Brunei Darassalam, 2009).

Emperor Gia Long formally took possession of the Paracels” (Thayer 2016:202). During French domination (1884-1954)³⁴, claims were made in Vietnam's behalf and nine islets at the Spratlys were occupied (Valencia *et al.*, 1999). Succeeding the independence war, according to the 1954 Geneva Conference, Vietnam was divided in two, and the southern part, named Republic of Vietnam, held administrative control of both the Spratlys and the Paracels (Thayer). Following the unification in 1976, Vietnam still claims control of the region that was once under its control as well as its Spratly's occupations.

Accordingly, Vietnam states that the Paracels Islands were part of its territory from the 16th to the 19th century, in addition, claims that the Spratly Islands were incorporated into their territory in 1933, France. Although North Vietnam declared in 1956 and in 1958 that the territories belonged to China, at the time of the reunification of the country in 1975, it repudiated the previous declaration and occupied 13 Islands in the Spratly archipelago. In 1977, Vietnam established an exclusive economic zone of 200 nautical miles in the occupied islands, and was able to verify effective occupation of more than 20 islands in the Spratly archipelago from 1989 (Buszynski e Sazlan, 2007).

Historical records between the mid-nineteenth century prove one point: while both China and Vietnam had claimed ownership of their archipelagoes, neither was aware of other's claim. They therefore, never saw the need to protest the issue. In terms of evidence, China has more solid documentation than Vietnam to prove its first discovery and claims to the ownership of the islands (King C., 1987).

Currently, Vietnam occupies 21 features at the Spratlys, 11 of them displaying portions above water at high tide, which means they can be considered islands under UNCLOS (Vuving, 2016). Its claims at the Spratlys are that the "islets do not generate exclusive economic zones and continental shelves, and that any zones around these islands should be limited to territorial seas" (Vuving, 2016).

In 1974, Vietnam lost control of all its possessions at the Paracels to China and, even though still claims them, currently does not hold control of any feature at the archipelago. Moreover, the nine-dash line crosses Vietnam's EEZ which causes

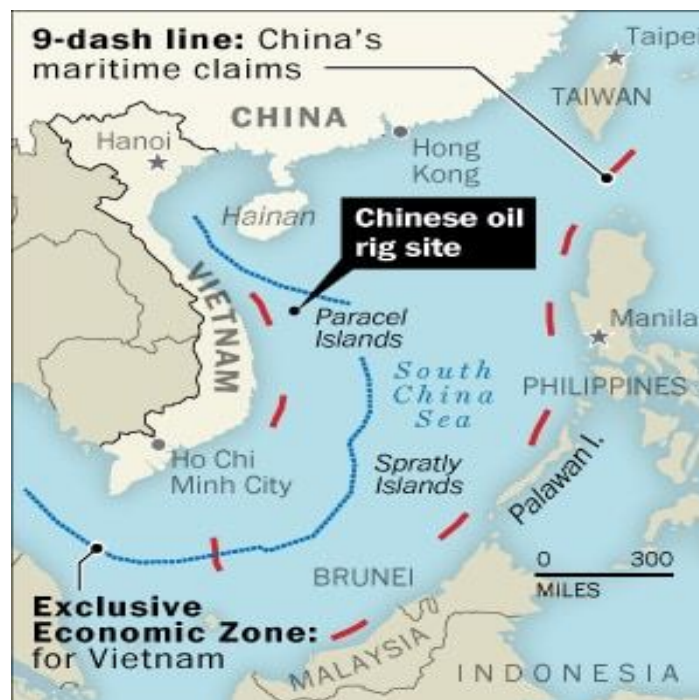
³⁴ During the Second World War, Japan occupied the French Indochina, including features in the Paracels and Spratly. French authority over those territories was restored in 1947 (Thayer).

constant frictions regarding natural resources extraction in the region. In 1982, Vietnam claimed baselines along its coastline but they were not in accordance to UNCLOS (Valencia *et al.*, 1999).

From 1992 to 1994, relations between China and Vietnam were disturbed as a series of incidents took place at the South China Sea. In 1992, China set a deal with an American energy company in order to explore an area also claimed by Vietnam. In 1993, China sent survey vessels to another disputed area that was leased by Vietnam to a British and to a Norwegian company. In the following year, both states sent survey ships to a disputed area that were intimidated by naval forces (Thayer).

In 2014, during the Hayang Shiyou 981 oilrig crisis (Map 6), Vietnam brought the disputes to international attention in a clear threat to China's Mianzi. On that occasion, China deployed oilrigs in contested waters at the Paracels, within Vietnam EEZ, according to the map below:

Map 6: The Hayang Shiyou 981 oilrig crisis



Source: (Karklis, 2014)

Vietnam sent patrols that tried to disrupt the operations and suffered attacks from Chinese vessels. While leaving military vessels in the region but not close enough to escalate tensions, Vietnam invited international press to testify and report China's actions. Violent anti-China protests took over the streets of Ho Chi Minh City.

Under international pressure and criticism, China withdrew the oil rig a month before scheduled (Hai, 2017).

Although it was considered a successful operation by the Vietnamese government, China issued a note condemning Vietnam's handling of the situation as well as the protests. The Chinese government accused Vietnam of going along with the riots, where "thousands of lawless elements in Vietnam conducted beating, smashing, looting and arson against companies of China and several other countries. They brutally killed four Chinese nationals and injured over 300 others (Ministry of Foreign Affairs, 2014).

Further in the note, China maintained that even though "the waters between China's Xisha Islands and the coast of Vietnamese mainland are yet to be delimited (...) Those waters will never become Vietnam's EEZ and continental shelf, no matter which principle is applied in the delimitation" (Ministry of Foreign Affairs, 2014). The Chinese government once again reaffirmed its historical rights over the region, dating back to the Northern Song Dynasty (960-1127 AD). The episode is considered the most serious crisis between China and Vietnam since the 1979 war (Thayer).

4.2.2 - Vietnam - China Relations

Vietnam and China relations are the most tempestuous in the South China Sea. There are constant frictions between the two states that, as mentioned in chapter 3, have already escalated to armed conflict such as in 1974 in the Paracels and in 1988 in the Spratly. As a result of historical relations, especially considering the Cold War period, "modern Vietnamese nationalism is more or less defined in opposition to China" (Hayton, 2014).

During the Cold War, Sino-Vietnamese relations went through different approaches. China's support to Communist Vietnam was crucial in the victory against French forces, upheld by the U.S.. But with Nixon's overture to China, Hanoi became suspicious of Beijing's intentions. As Vietnam was unified under Hanoi's rule, China and Vietnam confrontations moved to the military conflict in Cambodia that culminated with China's invasion to Vietnam in 1979³⁵ (Sutter, 2016).

³⁵ China also justifies the invasion on the basis that ethnic Chinese minority was being persecuted in Vietnam, therefore, there were moral grounds for the invasion. Moreover, the fact that China

The 1979 War, although lasting only 27 days, was responsible for the killing of ten of thousands Vietnamese, mostly civilians³⁶. It is one of the most sensitive topics on Vietnam-China relations in recent history³⁷. Vietnamese government is constantly wary as anti-China demonstrations could turn into anti-Party demonstrations. As consequence, the 1979 war was until recently a taboo topic that was scarcely referenced to in history books (Doan, 2019).

In 1991, with the Cambodia's peace agreement, China and Vietnam started normalizing relations (Sutter, 2016). Moreover, "as China was the most important remaining socialist country after the collapse of the Soviet Union, the communist leaders in Vietnam considered socialist solidarity with China as vital to the continuance of their rule" (Hai, 2017). Since then, China and Vietnam coexist in a delicate balance occasionally shattered by military confrontations and Vietnamese nationalism outbreaks.

Thus, although sparse, violent popular protests take the streets of Hanoi and Ho Chi Minh City against China's behavior in the South China Sea (Hayton, 2014). Demonstrations are closely controlled by the government and are illegal without its consent, even if it is a tacit one. In 2011, riots took over Vietnam's major cities. Earlier that year, China cut the cable of Vietnamese oil exploration vessels in the Spratlys under the allegations that they were invading Chinese sovereignty. Moreover, a month after the incident, Chinese forces attacked Vietnamese fishermen and drove them out of disputed waters (Ciociari e Weiss, 2012).

Vietnam uses different resources when dealing with China in the South China Sea. In 2011, Vietnam and China took steps in the direction of a settlement of maritime disputes. In a six-point agreement, they reaffirmed the commitment on friendly consultations in order to deal with South China Sea issues. Moreover, a hotline mechanism was established so that they can directly communicate and deal on that matter (Zhang, 2011). The mechanism though did not prove much effective as it was followed by other bilateral crisis.

In another way to counter China's position, Vietnam has tried to bring the South China Sea issues to the multilateral sphere, mainly through ASEAN and to

withdrew by the end of the conflict demonstrates that there were no territorial ambitions (Wang 2000:162)

³⁶ According to estimates, Chinese casualties were between 21,000 and 63,000 (Doan, 2019).

³⁷ Another delicate issue is the 1988 Spratlys Incident.

make the conflict object of international interest by bringing the U.S. to the scene. As an ASEAN member, Vietnam has been pressuring for statements favorable to its plea and insisting on a multilateral settlement of the disputes (Ciociari e Weiss, 2012).

Vietnam holds a non-alignment policy based on "3 Nos": no foreign bases on its territory; no military alliances and; no involving third parties in the disputes (Sands, 2018). Yet, those principles have been somewhat accommodated it in order to protect its interests in the South China Sea while internationalizing the disputes. In 2010, while hosting the ARF forum, Hanoi has managed to some extent, to achieve support with Secretary Clinton's remarks that the U.S. has a national interest in the region and "supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion" (Clinton). That declaration laid the ground to Obama's "Pivot to Asia" policy (Castro, 2013).

The intensification of the FONOPs during Trump's administration and the attempt to revive the Quad³⁸ is received with enthusiasm by Hanoi. During a Trump state visit in 2018, the Vietnamese leadership agreed with "Washington's 'Free and Open Indo-Pacific Strategy' to prevent Beijing from further changing the status quo in disputed areas such as the Paracel and Spratly islands". Vietnam seems to be in an effort to balance against China by strengthening defense relations with all Quad members (Grossman, 2018).

Vietnam is also a beneficiary of the FONOPs that are mainly an U.S. response to China's claims. While patrolling the South China Sea, Washington exerts the kind of pressure that Hanoi militarily and politically can't do. Meanwhile, Vietnam offers the operations technical and logistical support to the operations at Can Ranh Bay. The private harbor located at the region is opened to foreign vessels for maintenance and refueling, receiving ships from 10 countries, including military vessels from the U.S., France and Japan (Economist, 2017).

³⁸ The Quad is a quadrilateral security dialogue composed by the U.S., Japan, Australia and India that broke down in 2008 due to Japan's changes in foreign policy. It has been revived under Trump administration (Grossman, 2018).

4.3 - The Philippines

From the 1400's on, there was a significant expansion in southeast Asia's trade (Kang, 2010) and Manila was a hub in the region

Manila quickly became an enormously important trade emporium, attracting merchants from all over East Asia, especially from China. It was the center of the "galleon trade" in which Chinese merchants brought their silks, cottons and ceramics to exchange for silver the Spanish merchants brought from Acapulco (Cohen, 2000)

Chinese migrations were responsible for strong trade relations and, by the seventeenth century, ten thousand Chinese were living in Manila (Kang, 2010). Under U.S. control, the Philippines kept away from China and, even with the Philippines' formal independence in 1946, the American domination had lasting effects. One of those consequences was the Chinese immigration control through the 1947 "Chinese Exclusion Law", a policy only reversed in 1975, when Manila established relations with the PRC (Hayton, 2014). But U.S. - Philippines relations interfered also in the South China Sea dynamics, especially until 2016, when Duterte was inaugurated.

The Philippines claims part of the Spratly Islands mostly based on international law. According to UNCLOS, the Philippines are considered an archipelagic state³⁹ and under that status it holds a special regime on archipelagic baselines and archipelagic waters. The claims are also based on EEZ and continental shelf and occupations based on the international concept of *res nullius*⁴⁰ (Department of Foreign Affairs, 2013).

Spratly Islands were object of protest when the French incorporation in 1933, with support of the United States, that occupied the Philippines at the time. In 1956, the Spratly Islands were occupied by the United States and designated as Philippine territory, to be called Kalayaan. In 1978, the Philippine government published a

³⁹ UNCLOS. Part IV. Archipelagic States. Article 46. Use of Terms - 'For the Purpose of this Convention: (a) "archipelagic state" means a State constituted wholly by one or more archipelagoes and may include other islands'(Unclos, 1982).

⁴⁰ "Territory not currently under the sovereignty of any state but subject to potential incorporation into state territory"(Currie, 2008).

decree incorporating islands in Spratly / Kalayaan and establishing, from them, exclusive economic zone of 200 nautical miles (Hayton)

China's nine-dash line crosses Philippines EEZ and continental shelf. Within the lines, China occupies Mischief Reef, McKennan Reef, Gaven Reef, Subi Reef, Johnson Reef, Cuarteron Reef, Fiery Cross Reef and Scarborough Shoal that the Philippines claim within its jurisdiction. China interferes with resources (oil, gas and fisheries) exploration in the contested waters (Department of Foreign Affairs, 2013).

The Philippines started occupying features in the 1970's. Currently, it occupies nine features at Spratlys and maintains another one under constant surveillance (Vuving, 2016). As mentioned, some of the Philippines claims are based on the concept of *res nullius*, that is, it considers that some islands were abandoned and, therefore can be subject of occupation. The allegations, therefore do not find legal backing as the islands were privately occupied without protest from Manila. Furthermore, a 1955 declaration of the baselines did not include the region. Some other features claimed by the Philippines are based on its continental shelf but they don not hold the legal measurement required by UNCLOS (Valencia *et al.*, 1999). Recent conflicts between China and the Philippines escalated in 1995 with China's occupation of the Mischief Reef and the subsequent diplomatic incident. China kept on building structures at the islands.

China has for long been stating that it seeks a peaceful solution for the controversies at the South China Sea and that it intends to do so through bilateral channels. During Jiang Zemin's state visit to the Philippines in 1996, both countries agreed on "shelving disputes and going in for joint development on the issue of South China Sea" (Embassy, 2009). Bilateral consultations went through and both parties agreed to "establish working groups on fisheries, marine environment and confidence-building measures" (Tien e Cheng, 2016). Even though here was no formal agreement on the dispute, both China and the Philippines signed the Declaration on Conduct of Parties in the South China Sea - DOC in 2002.

There was a series of bilateral agreements between China and the Philippines in the following years in various fields. In 2004, China National Offshore Oil Corp. and Philippine National Oil Company signed the JMSU. As mentioned in the previous chapter, the JMSU did not go forward as it lapsed due in 2008 and faced strong political opposition in the Philippines (Maxie 2016). Although there were demonstrations of cooperation, there were frequent skirmishes at the disputed areas,

mostly involving fishing boats. In 2011 tensions were high again and led to the arbitration procedure that will be analyzed in the following section.

In 2011, both the Philippines and Vietnam announced their intentions of joint exploration of oil and gas at the South China Sea, which launched protests from China. As result, China announced that it would not only increase its patrols in the region but also launch an oil and gas-drilling platform. By the end of 2011, there were reported six incidents involving Filipino vessels and Chinese patrols, including the most significant one at the Reed Bank that was followed by exchange of note verbales at the United Nations (Thayer). In 2012, China seized the Scarborough Shoal, denying Philippine fishermen access to a rich fishing ground. A mutual withdrawal agreement was made but, shortly thereafter, Chinese ships returned to the region, where they remained in position.

In January 2013, the Philippines decided to file the arbitration procedure, before the Permanent Court of Arbitration - CPA, according to provisions of UNCLOS. Both China and the Philippines are signatories to the Convention which provides for "the obligation to settle disputes by peaceful means" (Unclos, 1982). Article 280 of the Convention provides that signatory states should choose the dispute settlement mechanism of their choice, with compulsory procedures and mandatory decisions. Article 287 further provides that, in the absence of a State party's statement to that effect, it will be deemed to have accepted arbitration (Unclos, 1982).

The Philippines made nine main allegations in the notification to the arbitral tribunal, which succinctly involved the annulment of the nine-line line that China claims to be its territorial sea, in addition to accusing China of illegally interfering in Philippine territory. According to the Philippines, the line goes beyond what is provisioned at UNCLOS. In addition, various submerged formations that China declares as its territory, cannot be recognized as such under UNCLOS, as they are not a Chinese continental shelf.

Furthermore, the Philippines alleged that some of these formations, such as the Mischief and McKennan corals are part of its continental shelf, also on the terms of the convention. Thus, according to the Manila lawsuit, Beijing has illegally required such territories and prevented the Philippines from using its rights of navigation and exploitation of the resources located therein (Department of Foreign Affairs, 2013).

China rejected the arbitration procedure and returned the Philippines' note verbale together with the attached Notification and Statement of Claim. However, according to the Annex VII, article 9:

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings (Unclos, 1982).

Despite Chinese protests, the arbitral tribunal was constituted and the Philippines filed a memorial in 2014, after rising tensions between the two states at Second Thomas Shoal. China again rejected the arbitration and refused to file its memorial. In December 2014, China filed a position paper alleging the lack of jurisdiction of the court and therefore refusing to take part in the procedure. Thus, it claimed its historical rights over the region and stated that "only after the extent of China's territorial sovereignty in the South China Sea is determined can a decision be made on whether China's maritime claims in the South China Sea have exceeded the extent allowed under the Convention" (Ministry of Foreign Affairs, 2014).

According to China's recount, as the Philippine's lawsuit did not require the determination of sovereignty over the disputed region, the court would not have jurisdiction to resolve the matter presented. In addition, China invoked the optional exclusion clause of Article 298 of UNCLOS submitted by it in 2006 (Ministry of Foreign Affairs, 2014). This instrument allows the State not to accept procedures concerning "the delimitation of maritime areas, or the bays or historical titles" (Unclos, 1982), therefore, following China's allegations, the Chinese Government does not accept any of the compulsory dispute settlement procedures" which included compulsory arbitration.

Another point highlighted by China in the document was the signing of the ASEAN DOC, which provides for the parties' commitment to conflict resolution through dialogue. In addition, China and the Philippines have repeatedly issued joint declarations reinforcing their commitment to dialogue to end disputes, including on the occasion of Philippine President Benigno Aquino III's visit to China in 2011. Thus, China accused the Philippines of acting contrary to the will and joint efforts of China

and ASEAN members in submitting the matter to arbitration (Ministry of Foreign Affairs, 2014). In October 2015, the arbitral tribunal ruled that it had jurisdiction over the case, which led to a series of protests by the Chinese government.

In the course of the proceedings, and amid escalating crisis between the two countries, the Philippines sought to intensify relations with the United States, mainly in security. In April 2014, the Philippines and the United States signed the Enhanced Defense Cooperation Agreement on the occasion of the visit and Barack Obama to Manila. The 10-year instrument allows the United States to use rotating bases on Philippine territory, as well as stockpile military equipment, as well as modernize and develop the maritime defense capability of the Philippines (Agreement 2014)

During the weeks leading up to the CPA's decision, Chinese rhetoric has become more aggressive, both in relation to the Philippines and the United States. China accused the United States of interfering in matters in which it has no direct interests and of fomenting a climate of animosity in the region. In addition, it refutes American accusations of militarization of the region and affirms that, in fact, the United States, through agreements and joint military exercises, were responsible for the militarization (Mahmood 2016).

The PCA's decision was rendered on July 12, 2016, favorable to the Philippines' plea. The Court declared that China held no historical right over the territory comprised within the nine-dash lines:

China's claims to historic rights and other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the "nine-dash-line" are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention (PCA., 2016).

It further understood that the Spratly Islands were not part of the territory of China but were, in fact, Philippines' EEZs (although it is not for the PCA to delimit that territory). Also in the content of the decision, the Court concluded that there had been a violation of the rights of the Philippines within its EEZ, since China has been: " a) "interfering with Philippine fishing and petroleum exploration, b) constructing artificial islands and c) failing to prevent Chinese fishermen from fishing the zone"

(PCA 2016). Finally the Court considered China responsible for the environmental damage caused in seven islands of the Spratlys.

As previously announced, Beijing stated that it would not acknowledge the decision, which considered to be illegal and that the CPA held no jurisdiction over the matter (Yao, 2016). Addressing the issue on the same date, Xi Jinping asserted that China:

Firmly insist on maintaining peace and stability in the South China Sea, and on directly negotiating for a peaceful resolution on relevant disputes with states that are directly involved, based on the respect of history and in accordance with international laws (Xi 2016).

Thus, despite alleging that the search for the arbitration solution was an act of bad faith from the Philippines (Cctv, 2016), Beijing continued to call for dialogue and resolve the dispute through negotiations and consultations, as established in DOC, 2016. China claimed that the Philippine government of Benigno Aquino III, responsible for initiating the arbitration proceeding, was "manipulated and instigated by external forces" (Wu, 2016). Beijing suggested that Manila should not be used in the US "pivot to Asia" strategy as it would affect its trade interests with China that reached a bilateral trade volume of US \$44.42 billion in 2014 (Liang, 2016). Confronted by the arbitration award, Beijing accused Washington of fomenting escalation of tensions in the region and putting ASEAN members against each other (Xiaohui, 2016). After the promulgation of the sentence, Cambodia and Laos favored the Chinese position and Taiwan protested against the ruling as it adversely affected its territorial interests. Australia, Japan and Vietnam, as well as the G-7 and the European Union, joined the United States and issued communiqués urging China to respect international law and abide by the PCA's decision.

China's Foreign Ministry spokesman called on the United States, Japan and Australia not to interfere in the conflicts in the South China Sea, which should be resolved exclusively by the parties directly involved. In addition, it accused the three States of acting in accordance with international law only when it suits them (Yao 2016). At the meeting of the ASEAN Regional Forum, held on July 26, 2016, China achieved a great diplomatic victory. With the presence United States Secretary of State John Kerry, Beijing was able to avoid any mention in the final statement

regarding the outcome of the arbitration (Mcleary 2016). Despite increasing tensions in the region after the arbitration decision, there is no expectation that other states will take the same initiative in the Philippines (An & Shoufeng 2016)

Since the PCA ruling, Manila has been adopting a posture opened to negotiations, as President Duterte expects investment and aid from Beijing. A few weeks after the ruling Duterte sent former President Fidel Ramos to Hong Kong in order to engage both countries towards future agreements. Duterte was successful in his approach as an array of agreements has been reached between the Philippines and China. A significant agreement reached during Duterte's visit to China in October 2016 was the Memorandum of Understanding on Coast Guard Cooperation, which can be considered an important confidence building measure.

In December 2016 Duterte announced a firearms deal in which Beijing offered to provide \$14.4 million worth of equipment to Manila as military assistance (Parameswaran 2016). During Duterte's visit to China for the Belt and Road Forum in May, 15 2017, the Filipino Secretary of Defense signed a letter of intent with the president from Poly Technologies, one of China's top state-owned defense manufacturing and exporting firms in which the Philippines would buy military equipment, possibly using a loan provided by the Chinese government (Parameswaran 2017). Even though the details are not clear, the agreement shows the willing of both parties to go further on defense cooperation.

Another result of Duterte's strategy was the resumption of the Philippines - China Joint Commission on Economic and Trade Cooperation led in March 2017 to a six-year program for economic and trade cooperation. The dialogue was put on hold for five years as consequence of the rising tensions related to the territorial disputes at the South China Sea. With the reestablishment of the Joint Commission China agreed to fund three infrastructures projects: a railway valued at \$3.1 billion, a dam valued at \$374 million and an irrigation project valued at \$53.6 million (Venzon 2017) Another sign of better relations was a greater access to Filipino fisherman to the waters near Scarborough Shoal where they could not operate since the 2012 incident.

Even though there has been a substantive improvement in relations since the PCA ruling, tensions at the South China Sea persist between Beijing and Manila reaching the negotiations table. One of the main sources of friction between the two countries is that, even though Beijing insists that it would not militarize its holdings in

the region, constructions at those sites seem to show otherwise. Satellite images from July 2016 showed that China was building hangars for jets on Fiery Cross, Subi and Mischief Reefs. China's Defense Ministry reaffirmed its sovereignty over the Islands and asserted that "China has said many times, construction on the Spratly islands and reefs is multipurpose, mixed, and with the exception of necessary military defensive requirements, are more for serving all forms of civil needs." (Beech e Ali, 2016).

A recent incident involving China and the Philippines took place in March 2017 at Union Banks in the Spratly Islands, near Gaven Reef, one of China's recently built artificial island. The episode involved a Chinese speedboat that fired the Princess Johann, a Filipino fishing trawler. The incident caused a backlash both from the Filipino press and the opposition but there was no official reaction both from Manila and from Beijing (Glaser & Funaiolo 2017). The lack of official statements about the episode, nonetheless, can be translated into another effort to maintain the stability of relations and an effort to solve differences bilaterally.

Another controversy involving the territorial disputes at the South China Sea was a recent disclosure of the contents of meeting between Duterte and Xi regarding the Philippines intentions of drilling oil at contested territory. According to Duterte, as the subject was mentioned at the meeting, Xi supposedly threatened with war (Ranada 2017). The conversation was held in Beijing, during the Belt and Road Forum. Duterte's declaration triggered protest from the opposition in the Philippines that accuse him of being too soft with Beijing. A few days later, the Foreign Ministries both from China and from the Philippines played down Duterte's statement by affirming that the discussion was focused on preventing conflict (Lema & Petty, 2017).

Considering the multilateral aspect in which China and the Philippines are involved there are also indications of further stabilizing the relations at the South China Sea. Despite China's wish to solve bilaterally the conflicts, ASEAN members have been trying for years to establish a Code of Conduct – COC, that is currently under negotiations.

In November, 2018 Xi Jinping was in Manila for a state visit, the first by a Chinese President in 13 years (Tiezzi, 2018). In the joint statement issued on the occasion, both parties affirmed that regarding the South China Sea

contentious issues are not the sum of China Philippines bilateral relations and should not exclude mutually beneficial cooperation in other field. Both sides stay committed to addressing disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, and in accordance with universally recognized principles of international law, including the Charter of the United Nations and the 1982 UNCLOS (China-Philippines, 2018).

The statement was in accordance to what Beijing has been advocating, especially regarding the emphasis on "consultations and negotiations" as adequate means to direct the disputes. Moreover, the parties stressed "the importance of the Bilateral Consultation Mechanism" (China-Philippines, 2018). Another point made clear is that those negotiations should involve exclusively the "states directly concerned". Also during the visit, bilateral relations were upgraded to comprehensive strategic cooperation and 24 bilateral agreements were signed (Wong, 2019), consolidating bilateral ties.

Whereas Sino-Philippines relations have been instable for the past years, especially considering the disputes at the South China Sea and the arbitration award, there are consistent signs of a wish from both parties to stabilize it and reach a peaceful solution. Duterte has been a strong advocate for better relations with China, even in face of mounting internal opposition.

In June 2019, another incident involving Chinese and Filipino fishing vessels took place near the Reed Bank. The Filipino vessel sunk and its crew was left to drown in the area, being rescued later by a Vietnamese boat. It took Duterte five days to make a formal statement on the matter, when he affirmed it was an "ordinary maritime incident" (Duterte). He also declared that the episode should be further investigated and China had a right to be heard, contradicting the Secretary of Defense who has earlier blamed the Chinese (Duterte).

Nonetheless, Manila shows concerns towards the maritime clashes in the region and works on diplomatic ways to contain China's actions. The Philippines are the lead coordinator of the negotiations of the COC. The Reed Bank incident led it to express the need of the urgent completion of the code (Manantan).

As seen, there are still evident points of friction and external factors that could influence or even revert the intent of securing a harmonious relationship between China and the Philippines but its seems that, as long as Duterte remains in power,

both sides will focus on cooperation while avoiding frictions.

4.4 – China

4.4.1 - Legal Perspective

In 2009, Vietnam and Malaysia jointly submitted to the UN Commission on the Limits of the Continental Shelf - CLCS information on the continental shelf beyond 200NM (Malaysia-Vietnam, 2009). According to UNCLOS, coastal states could claim up to 360NM of continental shelf. The claims presented by Malaysia and Vietnam overlapped China's interests in the region.

Beijing presented to CLCS its rebuttal alleging that the continental shelf presented "infringed China's sovereignty, sovereignty rights and jurisdiction in the South China Sea" (Permanent Mission, 2009). Beijing further alleged that "China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" (Permanent Mission, 2009).

For the first time, Beijing submitted officially its claims along with the map containing the nine-dash lines. But there is no definition under UNCLOS of "adjacent waters" or "relevant waters" which makes China's claims imprecise. Moreover, while presenting claim of sovereignty over that vast amount of water, China might have taken a fundamental step in turning the disputes into an international matter regarding the SLOC that crosses the area (Rajagopal, 2016).

The Chinese claims on the South China Sea are based mainly on what it understands to be the historical right on the region that includes the Paracels, the Spratlys and the Scarborough Shoal. In the Position Paper presented by China on the occasion of the arbitration initiated by the Philippines at the Permanent Court of Arbitration - PCA, it was argued that:

China has indisputable sovereignty over the South China Sea Islands (the Dongsha Islands⁴¹, the Xisha Islands⁴² and the

⁴¹ Pratas Islands.

⁴² Paracel Islands.

Nansha Islands⁴³) and the adjacent waters. Chinese activities in the South China Sea date back to over 2,000 years ago. China was the first country to discover, name, explore and exploit the resources of the South China Sea Islands and the first to continuously exercise sovereign powers over them (People's Republic of China, 2014)

Even though alleging those rights and sovereignty, the exact claims were never clear. In 2016, China issued a statement on its sovereignty, maritime rights and interests in the South China Sea. At the initial part, the document reaffirms the 2014 Position Paper but it also details some of Beijing claims:

- I. China has sovereignty over Nanhai Zhudao⁴⁴, consisting of Dongsha Qudao, Xisha Zhudao, Zhongsha Zhudao⁴⁵ and Nansha Qundao;
- II. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao;
- III. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao;
- VI. China has historic rights in the South China Sea. (Ministry of Foreign Affairs, 2016)

In the statement, China asserts that those rights are reaffirmed by internal legal instruments⁴⁶ and by UNCLOS. Still China's claims are imprecise. First, it is not clear if China sees the region it claims sovereignty as a single archipelago that holds, Spratlys, Paracels, Scarborough Shoal and Pratas Islands. Even if it does, China does not fit into UNCLOS' definition of archipelagic states. Accordingly, the PCA's South China Sea Arbitration ruling declared that China "is constituted principally by territory on the mainland of Asia and cannot meet the definition of an archipelagic state" (PCA, 2016).

Second, according to UNCLOS, islands are entitled to territorial sea⁴⁷, contiguous zone⁴⁸, EEZ⁴⁹, and continental shelf⁵⁰, but those are not applicable to

⁴³ Spratly Islands.

⁴⁴ South China Sea.

⁴⁵ Scarborough Shoal.

⁴⁶ 1958 Declaration of the People's Republic of China on China's Territorial Sea; 1992 Law of the People's Republic of China on the Territorial Sea and Contiguous Zone and; 1998 Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf.

⁴⁷ Not exceeding 12 NM. UNCLOS. Part II, Section 2. Article 3.(UNCLOS,1982).

⁴⁸ Not exceeding 24 NM from the baseline. UNCLOS. Part II. Section 4. Article 33 (2). (UNCLOS,1982).

⁴⁹ Not exceeding 200 NM from the baseline. UNCLOS. Part V. Article 57. (UNCLOS,1982).

rocks and artificial islands⁵¹ (UNCLOS, 1982). Most of the features currently occupied by China are rocks, reefs and sandbanks turned into artificial islands.

At the PCA's South China Sea Arbitration, the Philippines requested the tribunal to declare the status of the Scarborough Shoal, currently occupied by China. According to the ruling, the feature is "a rock, for the purpose of Article 121 (3)⁵²" (PCA, 2016). Also, in the same ruling, the PCA concluded that "none of the high-tide features in the Spratly Islands is capable of sustaining human habitation or an economic life of their own, the effect of Article 121(3) is that such features shall have no exclusive economic zone or continental shelf" (PCA, 2016).

Last, China reaffirms once more its historical rights over the region. China's claims are supported by documented events that corroborate with its historical narrative. As such the 1867 statement of the Chinese ambassador to Britain related to the Paracels and the diplomatic protest against Germany's expedition in 1883, there was also another diplomatic protest against the British ships in the Spratly Islands in 1877(Samuels, 2015). Furthermore, the Convention Respecting the Delimitation of the Frontier between China and Tonkin" from 1887, designated both the Paracels and the Spratlys as Chinese dominion (Samuels, 2015).

China claims historic rights over the region, and has mostly used this terminology when referring to the matter. Nonetheless, there is a legal distinction between "historic rights" and historic title" that China has also used interchangeably in official documents. Chinese official documents also refer to the right to "historic waters". The Court discussed in the award the difference among those terms

the term 'historic rights' is general in nature and can describe any rights that a State may possess that would not normally arise under the general rules of international law, absent of particular historical circumstances. Historical rights may include sovereignty, but may equally include more limited rights, such as fishing rights or rights of access, that fall well short of a claim of sovereignty. 'Historic title', in contrast, is used specifically to

⁵⁰ UNCLOS. Part VI. Continental Shelf .Article 76. Definition of the Continental Shelf (1) - "The continental shelf of a Coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance"(UNCLOS,1982).

⁵¹ UNCLOS. Article 60. Part V. (8). (UNCLOS,1982).

⁵² UNCLOS.

refer to historic sovereignty to land or maritime areas. 'Historic waters' is simply a term for historic title over maritime areas typically exercised either as a claim to internal waters or as a claim to the territorial sea (PCA, 2016:96).

The PCA understood that China's usage of the term historic rights "more likely represents an error in translation or an instance of imprecise drafting rather than a claim by China to sovereignty over the entirety of the South China Sea" (PCA, 2016:96-97). The Court also dismissed China's plea on "historic title" or "historic waters" and understood Chinese claims as a "constellation of historic rights short of title" (PCA, 2016:97).

Based on international law, continuous and effective occupation is required and the suit based on historical facts is not enough to determine the ownership of the territory. UNCLOS does not contemplate the possibility of exerting sovereign rights over a feature or region based on historic rights. The PCA, even consistently using historical evidence in order to fundament the ruling on South China Sea, did not consider China's allegation on historical rights.

The tribunal referred to a UN Secretariat memorandum on the juridical régime of historical waters from 1962. The document established a criteria to determine the title of historic waters: "1 - the authority exercised over the area by the State claiming it as 'historic waters'; 2 - the continuity of such exercise of authority; 3 - the attitude of foreign States." (United Nations, 1962). According to the PCA, China did not meet the criteria, therefore, was not entitled to those rights. Finally, the PCA understood that:

The Tribunal has no doubt that the fishermen have long made use of the waters of the South China Sea, including the areas beyond the territorial sea of any feature. If China had historic rights giving it a privileged position with respect to resources of such waters, the acceptance of the exclusive economic zone as a matter of customary law and China's adherence to the Convention altered the situation (PCA, 2016).

As seen, China's claims, when met with International Law on the matter, are particularly fragile. But, in order to understand China's assertions, it is necessary to go back further in time and assess it's historical positioning.

4.4.2 - Historical Perspective

China insists on its rights over the South China Sea alleging that it was under Chinese dominion since immemorial times. Throughout Chinese history there were some hiatus when China remained closed to the seas but "while China has long been considered a continental power, it also had a rich maritime history, some of which was part of the old Silk Roads" (Ghiasi *et al.*, 2018). Fu advocate this stand as China

Since time immemorial was the first to use the South China Sea for navigation and other uses. Moreover, the number of countries that used this sea was limited ... For a long period of time, the Chinese Government played the Master of the [South China] Sea and encountered no difficulties regarding this state of affairs. The special historical relationship with these waters merit their treatment as something slightly different from the ordinary high seas⁵³(Fu, 1995:12)

Currently, there are 55 minority groups in China (Fenby, 2012). One of them, the Yi held a seafaring tradition even before the rise of the first Chinese empire. Once incorporated to inland cultures, they originated the Shang, "the first historic 'Chinese' kingdom" (Levanthes, 1994:27). After China's unification, there are accounts of Qin's expeditions and later, the Han also went to the seas on the way to Indonesia (Levanthes, 1994).

Confucianism, adopted as the moral code during the Han Dynasty, was responsible for a halt in Chinese endeavors at sea. Confucius believed that travelling abroad interfered with filial piety: "while his parents are alive, the son may not go abroad to distance" (Confucius, 475BC-221BC). Further, Confucius did not appreciate profits as "the mind of the superior man is conversant with righteousness; the mind of mean men is conversant with gain" (Confucius, 475BC-221BC).

Despite Confucian moral thought, the policy was reversed during the Tang Dynasty. Porcelain was the main Chinese export product and the fleets went south of Sumatra and Malaya. They also crossed the South China Sea in the direction of India and, by some accounts, went as far as Africa (Levanthes, 1994). There are also

⁵³ 中國人自古航行，利用此一水域，且四周是用此一水域的國家有限。。。中國政府在此一水域長期，不受挑戰地，扮演著主宰者的角色。這種特殊的歷史關係，應使此一水域與一般水域稍有不同之處。In: (Chung, 2013:12).

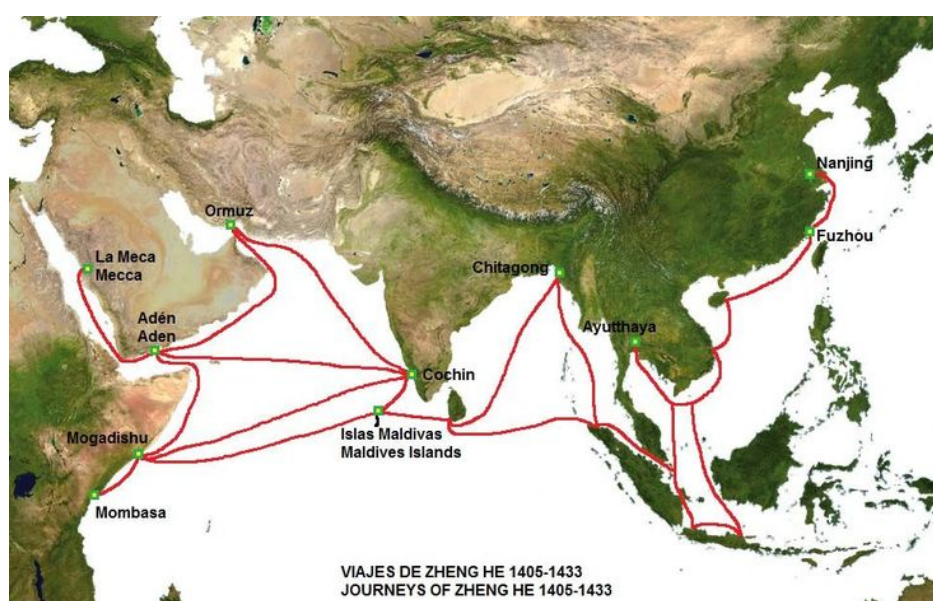
reports of trade in the South China Sea from the Song Dynasty. As the empire was being attacked from the north, the Song court moved to the port city of Hangzhou. The Emperor needed to finance the state and resorted to foreign trade. The Confucian texts reexamined and China went once more overseas (Levanthes, 1994).

An account from 1178 "describes ships 'like houses' with sails 'like great clouds in the sky' when spread; each carried several hundred men and a year's supply of grains as well as pigs and wine"(Dreyer, 2007:109). Marco Polo also mentioned the large dimensions of Chinese ships that could carry 1,000 crew members (Dreyer, 2007).

During the Ming Dynasty, China held ambitious expeditions that crossed the South China Sea and reached the African coast. Ming's China was the wealthiest and the most populous economy on earth (Dreyer, 2007). The most revered historic figure in China's maritime history is the Muslim eunuch and military commander Zheng He.

In his seven naval expeditions from 1405 to 1433 the fleets were crewed by more that 27,000 men. There were 255 ships, 62 of them, the treasure ships are considered to have been "the largest wooden ships ever constructed" (Dreyer, 2007:27). The records kept from those voyages were so accurate that it is possible to locate accurately the places visited by the fleet (Dreyer, 2007):

Map 7: Journeys of Zheng He



Source: (Continentalis, 2013)

One of the main objectives of the expeditions was to express Ming Emperor Yongle's political ideology on a "China-centered tributary system of peaceful coexistence and co-prosperity under the concept of Tian Xia" (Truong, 2016). Thus, Zheng He's mission "was to enforce outward compliance with the norms of China's by now ancient tributary system of foreign relations" (Dreyer, 2007). In most locations visited, his fleet was welcomed and a ritual of exchanging gifts was performed, meaning the Emperor's recognition as the Son of Heaven.

Some of the diplomatic relations established at that time faded as the missions stopped existing but some importance alliances were sealed. A relevant example was the investiture of the king of Malacca by Emperor Yongle. Malacca collaborated with Zheng He's fleet and thrived under the Ming's protection. That alliance was responsible the regional stability when China withdrew from the seas (Dreyer, 2007).

Yongle died in 1424 and his son, Hongxi, died within nine months. During Yongle's reign, China was fighting Mongols in the North, invaded Vietnam and was building a new capital, Beijing. Yongle's grandson, Xuande, ceased campaigns in Mongolia and recognized a new ruler in Vietnam. He also kept the new capital in Beijing and authorized Zheng He's last voyage, from 1430 to 1433. After that, China once again, turned inwards (Dreyer, 2007).

As the Manchu Qing were taking power, Ming loyalist went to the coast in the South and to Taiwan from where kept on resisting and threatening the Qing rule. In 1661, in order to consolidate the continental power of the Qing dynasty, the emperor banned all coastal shipping and evacuated the coastal strip of five provinces (Samuels, 2015).

By 1684, once the internal situation was under control, as the Ming rebels were defeated, the ban was lifted, custom houses were reopened and the merchants were back to the South China Sea. "Chinese merchants pushed the Europeans and West Asians out of mainland markets and dominated those of Ayutthaya, Burma, Cambodia, and a divided Vietnam throughout the century that followed" (Cohen, 2000:217).

In 1730, the emperor gave instructions for the regions' reconnaissance and a geographic assessment was written describing the South China Sea. But the recognition did not lead to occupation (Samuels, 2015). The maritime priorities of the Qing could not be compared those of the previous dynasties such as Song or Ming.

With its origins in the North, the emperors were more concerned with continental borders than with maritime southeastern affairs (Kang, 2010).

By mid 15th Century, China was a power not to be contested in Asia. Western traders in the coast were denied direct contact with government officials and showed dissatisfaction with the rules they were subjected to. But the Emperor did not consider them as a threat. Eventual disruptions in the neighboring countries were met with Chinese fierce responses such as the Burmese attempt to dominate Laos and Ayutthaya. Vietnam was still a Qing tributary and Korea kept on sending tribute missions (Kang, 2010).

At the close of the eighteenth century, the Philippines remained firmly under Spanish control and the Dutch had acquired territory that included most of Java. Elsewhere the European presence was minor. Much of international trade was controlled by expatriate Chinese, most evidently in Siam, Vietnam, and in the cities of Batavia and Manila (Cohé 2000:39).

Considering the course of Chinese history it is possible to detect the interest on safeguarding the tributary system. Zheng He's journeys aimed at expanding the emperor's rule as the son of heaven but even navigating a fleet with more than 27,000 men onboard, those were never conquering expeditions. The Chinese never took the seas to control and subjugate other kingdoms and tribes, the focus were exactly trade, cultural exchanges and, most importantly, expand the emperor's moral authority.

The tributary system worked on the basis of deference and tributes to the Chinese Emperor, who never interfered on internal matters, unless requested to do so, mostly in cases of unrests. The South China Sea was in fact the main maritime route within China's tribute system and connected the region under the mandate of heaven.

It was only in the nineteenth century, with the collapse of the tributary system that China started claiming its sovereign rights over the region. In fact, up to that point, there was no need to do so. According to Chinese legal and political thought

The Emperor rules men and not space; the area of the rule was defined as points of human residence and use. Thus, the

delineation of the scope of territorial sovereignty was expressed in terms of zones of influence rather than by definite linear boundaries (Valencia *et al.*, 1999:20).

Therefore, the western idea of sovereignty linked to "the authority around political space has no exact parallel in East Asian legal and political history" (Samuels, 2015:51). Considering the PCA's ruling based on international law, continuous and effective occupation were the criteria established to consider sovereignty over a territory. It is clear that, up to the nineteenth century, it didn't make sense for China to occupy those features. Then, with Western power's invasion and the following Century of Humiliations, it became impossible for China to do so.

Accordingly, the claims in the South China Sea should not be interpreted exclusively through the lenses of Western maritime law. Moreover, the fact the China agreed to abide by some of those legal instruments should not revoke almost three thousand years of history and a system that dominated Asia during that time. Samuels holds that

The geography of Chinese exploit and the history of the China trade are the *sine qua non* of the contest of the South China Sea. Based on the ancient and medieval history of maritime exploration in East Asia, the dispute is quite literally rooted in the historical geography of China and Southeast Asia (Samuels, 2015:72).

Thus, China's refusal on taking part on the PCA arbitration and its further rejection on compliance with the award is coherent with its stand on the matter. Any viable solution to the disputes should consider all viewpoints including the historical and political contexts.

CHAPTER 5 – TIANXIA IN THE SOUTH CHINA SEA

The present chapter will discuss the focus of the thesis, which is whether or not China is establishing a revisited Tianxia in order to address the territorial disputes in the South China Sea. Considering theoretical references, historical components, main elements of the disputes and perspectives of the parties involved it is viable at this point to interpret China's positioning towards the conflict.

The revisited idea of Tianxia proposes an idea of global governance in what Zhao calls a truly all-inclusive world. Under Tianxia different viewpoints, needs, cultures and perceptions work together towards an order that would benefit all. Hence,

World order is not one with a hegemony or allied major powers rule the world, but one that is based on universal common interests of sovereign nations; not one in which a certain country establishes the game rules for the entire world, but one in which a global constitution establishes the game rules for all nations (Zhao, 2019:44).

The hypothesis presented is that, in favor of achieving a modern version of Tianxia, China is engaging with the disputants aiming at harmonious coexistence in the region. As mentioned in the first chapter, the Chinese notion of harmony does not involve perfect agreement but a common goal. According to Zhao, aiming at harmony is more important than striving at peace. Harmony focuses on conflict resolution and promotes stable relations based on trust where different views and needs can coexist. Peace, therefore, is a consequence of harmony (Zhao, 2019).

From the perspective of the disputants, the territorial delimitation is at the core of the conflict that involves other important elements such as the SLOCs and natural resources. Moreover, tensions in the region are constantly raised with the presence of military forces from states that do not hold direct territorial interests in the area. Nonetheless, the region is connected through historical, cultural and economic interests that must be taken into account when analyzing the disputes.

At this point it is relevant to reinforce Tianxia as a system of global governance that is based on trust, not coercion. According to Yan, Tianxia resembles the British Commonwealth (Yan *et al.*, 2011) in that all submitted to an authority but kept their

autonomy in managing both internal and foreign affairs. Moreover, the tributary states, even somewhat following Confucian ideals, kept their own traditions.

Zhao points out that the current system excludes States that don't play by its rules hence cannot be considered a truly world system. The prevailing system is based on Western individualistic values, based on the Greek polis, aiming at preserving self-interests. Those values are in sharp contrast with the Tianxia goal of a universally beneficial system that brings together common and shared interests (Zhao, 2019).

Even considering sensitive issues involving the disputes under study, an interpretation based on Tianxia may lead to convergent interests among the disputants. The following analysis will adopt this perspective with the focus on China's behavior towards the regions.

5.1 – The Territorial Disputes

Considering Zhao's theory, Ren points out the geographical meaning of Tianxia. It holds both a broader and a narrower connotation, which are non-exclusive. The broader is the all under heaven notion that held China at the center while "the narrower usage just referred to Zhongguo (China/中国) within the four seas" (Ren, 2010:107). These interpretations are valid not only to understand China's stand towards disputed area but also its relations with the disputants.

The broader connotation reinforces China's plea based on historical arguments. Accordingly, the Chinese perspective, all known world was ruled by the humane authority bestowed upon the figure of the Chinese Emperor, from the inception of Tianxia during the Zhou dynasty to its downfall with the advent of the Opium Wars. This geographic Tianxia, therefore, comprised the region of the conflict, where the various kingdoms paid tribute, now the disputants, paid tribute to the emperor.

The narrower interpretation also follows China's understanding of its territorial sovereignty. Intrinsicly connected to the first interpretation, the word Zhongguo (China/中国) is also translated into middle kingdom, establishing China's position as the territory at the center of the world, or "within the four seas" (Ren, 2010 105). Regardless of the geographic interpretation, the world known as Tianxia held no fixed

limits or borders (Tok, 2013) and the Western idea of sovereignty was unknown to China until the 19th century.

China fundamentals its plea in the South China Sea based on historical evidence. While doing so, it presents the ancient system of Tianxia that held the region together in a harmonious way for centuries. Throughout the existence of the system, that collapsed with Western invasions and the Opium Wars, different Asian cultures were linked by some common practices, trade and disputes settlement.

As already mentioned, China reinforces indisputable sovereignty over the region within the nine-dash lines. There were some reports of Chinese officials referring specifically to the region as a core interest (核心利益)⁵⁴, which would hold a status comparable to Taiwan, Xingjiang or Tibet. However, there is no mentioning both from official documents or state-controlled media that corroborate the standing (Swaine, 2010)⁵⁵. Nonetheless, “China’s Maritime interests should not be understated as they are grounded in China’s core interests - or non-negotiable - interests.” (Ghiasi *et al.*, 2018:5).

Therefore, when the concept is applied by the PRC it can be understood as a warning on sensitive matters that are often connected with the possibility of the use of force

Of course, even official (and unofficial) statements of strong resolve and a refusal to compromise do not necessarily guarantee that Beijing would in reality in every instance employ such a rigid approach (including, perhaps the use of force) to defend what it has defines as its core interests. Yet, at least with regards to territorial issues, the historical record of China’s behavior suggests that such a possibility would be extremely high, and certainly cannot be dismissed (Swaine, 2010:7).

⁵⁴ China’s core interests are extremely relevant considering their nonnegotiable nature. “They are: (Acharya) its political system and state security; (b) state sovereignty and territorial integrity; and (c) the continued stable development of the economy and society.³¹ These three interests have since been expanded to seven: (a) the regime; (b) sovereignty; (c) unity;(d) territorial integrity; (e) the welfare of the people; (f) sustainable economic and social development; and (g) other major interests of the state and the capability to maintain a sustained security status.” (Ghiasi *et al.*, 2018)

⁵⁵ Swaine notices that the first reference to the South China Sea as China’s core interest was made on a New York Times article on a private meeting in Beijing between Chinese and American officials. The news was replicated using the same language without quoting a source. The author also mentions a meeting between the then Secretary of State Hillary Clinton and State Counselor Dai Bingguo when he supposedly referred to South China Sea on these terms. The author adds that there is no single official source where “core interest” directly linked to the South China Sea. Furthermore, “when given the opportunity to clarify the official record on this issue, Chinese official have avoided doing so.” (Swaine, 2010)

Swaine states that there is a plausible reason why China's officials avoid clarifying the South China Sea's status as a core interest. As mentioned, the concept clearly applies to Taiwan, Tibet and Xingxiang. Nevertheless, those regions are considered internal affairs and therefore should not be subject of foreign intervention. Conferring the status to the South China Sea would imply an abrupt change on China's approach (Swaine, 2010).

Even though China currently asserts that it holds "indisputable sovereignty over the islands and adjacent waters and enjoys sovereign rights and jurisdiction over relevant waters as well as the seabed and subsoil thereof" (PRC 2009) it does recognize that there are interests from other states in the region. Moreover, as part of its policy towards the region, China agrees on debating bilaterally with the parties directly involved in the conflict.

If China officially changes its view towards the region, naming it a core interest, it also means that there will be no room for debate even in aspects that were already object of discussion such as joint exploration of natural resources. That change would also bring undesirable outcomes. First, it would raise international tensions within the region and the U.S. and allies would once again justify their presence in the name of the "freedom of the seas".

Second, also as an international consequence, it will promote further instability in the region caused by the suspicious and following reactions from the parties directly involved, that will at least try to balance against China. Last, considering the South China Sea a core interest, China's stance in the region will become non-negotiable. Therefore, any future compromise on the region is likely to be considered by Chinese internal audience as sign of weakness.

Regardless of being or not officially a core interest, China has already made its stand on the region considering its sovereignty within the nine-dash line is inalienable. That being stated, it is possible to draw two direct consequences. First, as China considers the region its territory it is natural that, in face of being constantly threatened, it would take all necessary measures in order to protect its territorial integrity. The most evident effect is the islands building up and their reinforcement as military outposts.

In 2015, during a State visit to the United States, President Xi affirmed that "relevant construction activities that China are undertaking in the island of South - -

Nansha Islands do not target or impact any country” (Xi e Obama, 2015). In fact they are considered legitimate by the Chinese government as measures to protect its territory. China started building up on Spratly's features in 1987, at Fiery Cross, in order to set up a monitoring station intended for oil research (Hayton, 2014). Since then several other features in the region underwent modifications that varies from lighthouses to harbors and airfields.

President Xi has also pledged that “China does not intend to pursue militarization” (Xi e Obama, 2015). Nonetheless, China believes that the military operations and drills conducted not only by the U.S. but also by Great Britain, France and Japan “violate Chinese and international laws, infringe on China’s sovereignty, and undermine peace, stability and good order in relevant waters” (Lu). Moreover, China is not likely to perform a preemptive attack against those military forces but, following its ancient principle and current official documents, will not hesitate when considering a counterattack.

Second, even though China will not make concessions regarding its own territory⁵⁶ there is room for compromise in what concerns some elements of the disputes. As will be later discussed, the DOC and the current negotiation of the COC, show China’s interest in regional stability and, moreover, establishing a *modus vivendi* among the parts directly involved in the disputes.

As discussed, the territorial delimitation is at the gist of the disputes and there is no perspective of solving the matter in the near future. China and Vietnam claim all the area based mainly on historical rights. At the same time, Malaysia and the Philippines support their claims based on UNCLOS and the concepts of EEZ and territorial sea.

The historical plea is supported by ancient practices in the region that supports the Chinese perspective. This custom holds its roots on ancient Tianxia, Zheng He’s expeditions and the system that prevailed in the region until the 19th Century. China’s historical argument is considered flawed not only by the other claimants but also by the PCA, who dismissed it in the ruling.

As seen in chapter 4, there are also legal arguments that support China’s position but those were not accepted by the PCA ruling. China’s refusal in accepting

⁵⁶ Considering that territorial integrity is in fact a core interest.

the Court's award, as well as the Philippines unwillingness to assert the decision left the issue opened.

5.2 – Sharing Resources

While the territorial disputes remain in a stalemate there has been some aspects of the disputes that were conducted both by bilateral and by trilateral negotiations. China's move towards Tianxia can be more easily seen when examining those aspects.

One of the viable ways of peaceful coexistence in the area is the establishment of joint development areas – JDAs. Those agreements leave out negotiation on delimitation of maritime borders or territorial pleas and focus on commonly developing resources. These kinds of compromises are not new to the region as they have been used since 1979 (Huy, 2019) and most of them were proved efficient in decreasing tensions.

In 2018 China and the Philippines signed a Memorandum of Understanding on Oil and Gas development in the South China Sea - MOU. Both States agreed on establishing an Inter-Governmental Joint Steering Committee in order to negotiate cooperation agreements in 12 months (China-Philippines). An aspect of the MOU to be noted is that “does not create obligations under international or domestic law” (China- Philippines, 2018). Hence, it cannot be used in order to support claims in the area.

It is crucial though that a JDA would involve all parties holding claims in the agreement's specific area with a view to avoid creating tensions. In 2009, Malaysia and Vietnam agreed on a JDA that provoked protests from the Philippines that also held claims in the region. Nonetheless, it is a viable solution to some of the dispute's elements and a powerful tool in bringing stability to regional relations among the claimants.

As mentioned before, the South China Sea is one of the world's top fishing zones. Jointly managing these as well as preserving the regional environment should be another way of bringing the disputant together towards a common goal. Except for the Blue Partnership, proposed by China under the scope of the Belt and Road Initiative, there has been no regional venture in this sense so far.

Considering the disputed area, China's undertakings have been perceived with disquiet and in some cases were responsible for rising tensions. Accordingly, China's yearly fishing ban, promoted since 1995 not only leads to conflicts involving foreign fishermen but also incites protests from other claimants. Another Chinese initiative was the restoration process of coral reef at the Spratlys' that was met with protests from the Philippines.

According to the article 123 of the UNCLOS, "States bordering enclosed or semi-enclosed sea⁵⁷ should cooperate with each other (...) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea" (UNCLOS, 1982). Therefore, following the international law, the disputants are obliged to preserve the contentious area.

Regardless of legal obligations, the coastal states are highly dependent on fisheries both as food supplies and as source of income. Therefore, protecting the maritime environment is a shared interest of the disputants. Pursuing the idea of Tianxia, this common ground should be one of the issues to be jointly addressed at the South China Sea.

Following the same line of the JDAs regarding oil and gas exploration, there is room for joint agreements on maritime scientific research, environmental protection and fisheries management. Those JDAs should be supported by a dispute solution mechanisms agreed beforehand by the parties involved. Building up a governance system focused on handling a protecting these resources would be efficient not only in defusing tensions but in creating a safe environment for those who depend on fisheries for a living.

Nonetheless, no multilateral initiative involving the disputants has been considered so far. Moreover the only State that held actions towards maritime environmental protection in the region was China. As mentioned, those unilateral enterprises have caused disquiet in the area.

Since Tianxia refers to common good, it is crucial that the disputants join their resources interest in order to get mutual benefits. Zhao points out as one of the four key concepts for a new Tianxia system the idea of relational rationality. The concept

⁵⁷ UNCLOS article 122 Definition "For the Purpose of this Convention "Enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States" (UNCLOS).

should be applied when considering sharing resources in the region. Therefore, China's unilateral actions could be considered as "an inadequate application of reason" once based on "individual rationality" (Zhao, 2019:58).

Relational rationality stands on two main pillars: coexistence prior to existence and minimization of mutual hostility. Zhao asserts that "coexistence is the necessary condition for ensuring the security and interests of an existence" (Zhao, 2019:58). Accordingly, the idea of Tianxia in the South China Sea is connected to the notion that in order to guarantee the existence, the adoption of practices that reduce mutual hostility "must always take precedence over maximization of self-interests" (Zhao, 2019:59).

Even though the JDAs constitute an initiative towards harmonious coexistence in the region, they are still insufficient and do not cover all the necessary areas or resource management. In order to those initiatives to be effective, they should be "aimed at maximization of reciprocal interests" (Zhao, 2019:59) which is not yet the case.

5.3 – Establishing Coexistence Rules

Zhao understands that "truly artful politics is built on compatibility. If built on uniformity, politics is nothing but control" (Zhao, 2019:51). Moreover, he considers "politics as an art to construct an order for coexistence" (Zhao, 2019:61). Therefore, in order for Tianxia to be established, at last in the South China Sea, it is adamant that the disputants establish coexistence rules in the region that accommodates needs and interests.

Those rules should follow what Zhao refers to as compatible universalism, which is another key concept for a new Tianxia system. Zhao believes that unilateral universalism is invalid as it represents the imposition of values from one culture to all others bringing conflicts as a result. By contrast, compatible universalism "considers universal values as those applied to every interrelation (...). The basic principle for compatible universalism can be stated as follows: any value that can be defined by symmetrical relations is a universal value" (Zhao, 2019:60).

Compatible universalism is directly connected to the idea of harmony and consequently, China's intent of building up a harmonious world. Zhao reminds that

“earlier than Confucius, in the minds of the kings of *all-under-heaven system*, the greatest and ultimate political goal was “to create harmony of all nations and all peoples”” (Zhao, 2012:1). As mentioned in Chapter 1, harmony aims at peaceful solution of conflict by accepting and respecting different values.

Even though there are strong cultural ties and shared values among the disputants, different views and interests in the South Sea are at the core of the conflict. ASEAN was structured based on the common views of its members. Decisions made by consensus through an informal process of consultations, named ASEAN way, are also applied when approaching China.

ASEAN has been instrumental in bringing together the parties involved in the disputes and, despite of the discreetness of the ASEAN way, has been exerting some pressure towards the establishment of the COC. Another important aspect of ASEAN towards the issue is keeping opened a dialogue channel among the disputants. Nonetheless the ideal of Tianxia sees ahead of multilateral institutions.

As mentioned, China is currently negotiating the COC within the ASEAN framework. In 1992, at the occasion of the ASEAN Foreign Ministers Meeting, a formal declaration on the South China Sea was issued. ASEAN states agreed on “any adverse developments in the South China Sea affect peace and stability in the region” (Asean). Thus, the declaration commended an international code of conduct over the region.

In 2002, China signed the DOC with ASEAN where they agreed on negotiating a COC. While tensions were escalating in the region, the only movement towards and agreement was a draft of guidelines aimed at implementing the DOC in 2005 and enforced in 2011. After the PCA’s ruling, negotiations gained a new momentum, as the parties reached a framework for the agreement in 2017 and a single draft negotiating text in 2018.

Even though the COC aims as reducing tensions and promoting stability in the region, it holds no intention of defining territorial limits or establishing a binding disputes mechanism (Thayer, 2018). Nonetheless, it includes areas of cooperation that were already agreed on the DOC as “marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation and, combating transnational crime” DOC 2002:2).

It is relevant to emphasize that, while the negotiations are still in course, China aims at amplifying the scope of cooperation in the COC. Accordingly the Chinese

proposition at the draft includes conservation of fishing resources, maritime law and security cooperation environmental protection and most importantly “marine economy, including aquaculture and oil and gas cooperation” (Thayer, 2018). If successful, the COC will bring together interests on these crucial aspects of the disputes.

The COC can be considered as a genuine attempt of the parties involved in reaching harmonious relations. Moreover it is also a set of rules agreed by consensus that will regulate relations under the regional Tianxia. Even though it is an important step towards regional stability, negotiations are being held among ASEAN members and China and not just among the claimants. Therefore, issues as managing resources or dispute resolution mechanisms may not be as effective as they should be if they were agreed exclusively by the parties involved in the disputes.

Another point of concern regarding the COC is whether or not the COC will be legally binding. This particular topic is one of the most controversial in the negotiations. If not compulsory, the COC will be nothing but an empty declaration unable to secure regional stability. Nonetheless, China shows unwillingness to be constrained in an area considered to be its own territory.

ASEAN and China agreed on finalizing the COC in 2022 (Quang, 2019) and the first reading of the Single Draft Negotiating Text was finished ahead of schedule in August 2019. If approved and being effective, the COC would represent a powerful tool in order to achieve Tianxia.

5.5 – Towards Tianxia

Based on the analysis of the relations between China and the other disputants it is clear that China interacts in different ways according to the bilateral relations with each claimant at the South China Sea. As mentioned, Malaysia has been keeping stable relations with China and the same has been happening with China-Filipino relations since Duterte was invested in power. In contrast, relations with Vietnam are still permeated with tensions.

As seen, China prefers dealing bilaterally with the disputants refusing to discuss regional matters with powers not directly involved in the territorial issues. Even though in order to build a regional harmony all parties should engage in

harmonious coexistence, an analysis of the current state of affairs of bilateral relations reflects different stages of the path towards Tianxia.

5.5.1 – Malaysia

Although claiming sovereignty in the same area, Malaysia and China currently hold steady relations regarding the South China Sea. Malaysia avoids standing up against China preferring a discreet bilateral approach. Parameswaran terms Malaysia's stance towards China in the South China Sea as a "playing-it-safe approach" (Parameswaran, 2015):

Even though Prime Minister Mahathir Mohamad's campaign was marked by strong opposition to China, as soon as he was elected in 2018, critics were played down. Even when suspending or cancelling investment agreements, China's mianzi was preserved and harmony prevailed.

Though standing for cohesion at ASEAN in issues regarding the South China Sea and supporting the idea of a legally binding COC, Malaysia avoids being confrontational towards China (Parameswaran, 2015). By the time the Philippines filed the claim at the PCA, Malaysia refused to take part

there are clear limits to Malaysia's support for the use of legal instruments by itself and other claimants in the South China Sea. For example, despite repeated suggestions from Philippine officials and the United States, Malaysia has thus far been unwilling to support the Philippines overtly in a 2013 suit that the latter has filed with the International Tribunal for the Law of the Sea (ITLOS) to challenge China's claims over the South China Sea (Parameswaran, 2015).

As mentioned in Chapter 4, China and Malaysia signed contracts of oil and gas exploration that helped appease eventual frictions. The area claimed by Malaysia is at the extreme south of the contested Chinese nine-dash line. Even though there were reported clashes between Malaysian fishermen and Chinese patrols, China has never acted aggressively towards Malaysia oil and gas exploration and production (Parameswaran, 2015).

There are undeniable points of friction between the two States as noted in Chapter 4. Nonetheless, China and Malaysia are able to accommodate their needs

and interests in the region. Disagreements are solved through diplomatic channels in a discreet manner. Both States privilege the main components of relational rationality giving priority to coexistence and minimization of mutual hostility.

From the analysis made in Chapter 4, it can be inferred that both China and Malaysia maximize their reciprocal interest. As consequence, even though carrying differences regarding territorial sovereignty in the South China Sea, bilateral relations promote regional stability. Further, the investigation shows that China and Malaysia carry on steady and harmonious coexistence that, if replicated to the other claimants would establish a regional Tianxia.

5.5.2 – Philippines

Relations between the Philippines and China described in Chapter 4 show an antagonism in the past few decades that peaked with military confrontation and the submission of the disputes to the PCA by the Philippines. From the Scarborough Shoal incident in 2012 until the PCA's ruling in 2016, bilateral relations were marred with tensions and reciprocal accusations.

In 2016 Duterte was elected president and in less than a month of his inauguration, the PCA released its decision that was not only favorable to the Filipino plea but also declaring invalid Chinese nine-dash line. There was a strong international reaction in order to pressure China to abide by the ruling but as soon as Duterte was invested in power there was a significant change in the way both States approached their differences.

Duterte not only refused to enforce the ruling but also immediately sent former President Fidel Ramos to China as special envoy. As a result of a friendly policy towards China, trade and investment relations flourished in the following months. Some recent incidents involving Filipino fishermen and Chinese patrols were played down by Duterte despite growing internal opposition on his policies towards China (Manantan, 2019).

Duterte is currently through half of his term and often defines Manila's policy towards Beijing as a choice between war and appeasement. Accordingly, through this viewpoint the Philippines could not be successful if standing against China (Manantan, 2019). Nonetheless, the South China Sea is of vital importance to the

Philippines, a poll showed that 87 of the Filipino population wants China to be held accountable the Reed Bank incident (Manantan, 2019).

Moreover, in April, 2019, on account Chinese activities nearby Thitu Island, occupied by the Philippines, Duterte made his strongest statement since in office. The President threatened to send his soldiers on a “suicide mission” (Duterte, 2019) if China oversteps in the region. Even though a firm response to please internal audience, there was no military engagement in the region.

As long as Duterte remains in office it is not likely that a drastic change will take place regarding bilateral relations. As mentioned in Chapter 4, the Philippines is actively engaged on the COC negotiations and is making every effort to an agreement to be settled soon. From the status in quo it is likely that both States will keep on working towards regional stability and keeping eventual tensions to be solved by bilateral diplomatic ways.

It is undeniable that Duterte’s administration moved close to China and works towards a harmonious coexistence. Differences are mostly set aside and, as consequence, more often than not Duterte is accused of being subservient towards Beijing (Guarco, 2019). Nonetheless, it is unpredictable if prevailing stability in bilateral relations will be maintained in future Filipino administrations.

5.5.3 - Vietnam

Relations between China and Vietnam regarding the South China Sea are described as “cooperation and struggle” (Thayer, 2016). Vietnam tries to avoid that issues concerning the disputes affect trade and investment relations. At the same time, while Vietnam asserts its autonomy in the region it also seeks solving frictions with China through bilateral negotiations. Nonetheless, whenever tensions between peak, Vietnam also makes use of internal popular protests and tries to bring along supporting statements from international allies such as the U.S..

From the current analysis, Vietnam is the most resisting State to join a possible Tianxia order in the region. As seen, there have been throughout history some violent clashes between the two states, being from wars and invasions in the past to current skirmishes and threats related to the disputes in the South China Sea. Nonetheless, there is a clear effort from both states in order to reach harmony and

stability in the region. Moreover, tensions regarding the conflict do not affect trade relations.

In 2000, Vietnam and China reached an agreement on delimitation of the northern part of the Gulf of Tonkin as well as a joint fishing regime in the area. It consists of China's only resolved maritime limits (AMTI) that showed Chinese willing to negotiate and make concessions. The region rests in the north of the South China Sea as shown in map 8

Map 8: Gulf of Tonkin Boundary Maritime Agreement



Source: (Csis)

The boundary between China and Vietnam in the Gulf of Tonkin was set in the agreement that established EEZ, continental shelf and territorial sea. The agreement took the UNLCLOS as reference but did not follow exactly the limits defined in the Convention (Kardon, 2019).

The agreement shows some important steps towards a harmonious order in the region. The long-contested Bach Lon VI Island⁵⁸ was left under Vietnamese control and was considered when demarcating Vietnam's EEZ (Kardon, 2019). In 2006,

⁵⁸ The Bach Lon VI Island's dispute between China and Vietnam was brought to a close in 1957 when Mao Zedong and Zhou Enlai dropped the claim. Nonetheless, it was under the agreement that it was formally put under Vietnamese authority (Kardon).

China and Vietnam started joint patrols in their overlapping fishing zones in the region that were later extended to anti-piracy drills. A hotline was also established in order to improve communications between the coastguards (Thayer, 2016).

Another consequence of the agreement was the 2006 pact on joint exploration of oil and gas. Although no significant reserves were found, the operation was conducted for ten years without incidents, even considering rising tensions in the South China Sea, especially regarding the 2014 Hayang Shiyou 981 oilrig crisis.

The agreement is a genuine sign that, even considering the bitter historical relations between China and Vietnam, harmony can be established. Further, even though there are no talks of an extension of the agreement to the disputes over the Paracels and Spratlys, it is possible to set coexistence rules in the region.

There were other signs of improving relations between China and Vietnam with positive repercussions in the South China Sea. In, 2008, after a 17 years gap, the PLA was invited to resume Vietnam port visits. Since then, the practice has been carried on a yearly basis. In 2010 the strategic dialogue was raised to deputy minister level and later, in 2012 a hotline was established between the defense ministers (Thayer, 2016).

The 2014 Hayang Shiyou 981 oilrig crisis described in chapter 4 was one of the most critical episodes in recent China-Vietnam bilateral relations. Both states came to the brink of an armed conflict that could easily spread to the whole region. Nonetheless, both states made efforts in order to diffuse tensions and, as a sign of a positive turnaround in the relations, high-level visits were held in 2015: Secretary General Trong visited Beijing and President Xi Jinping reciprocated with a visit to Hanoi.

In 2020 China and Vietnam will celebrate the 70th anniversary of the establishment of diplomatic ties. High-level exchanging visits are being held in order to promote the event. Chinese Defense Minister Wei Fenghe visited Hanoi on May, 2019 and among a series of cooperation agreements signed, there were talks on solving disagreements in the South China Sea by peaceful means and working to promote a peaceful environment in the region (Parameswaran, 2019).

It is reasonable to assert that China and Vietnam are currently in a joint effort to establish harmonious relations in the South China Sea that can be interpreted within a Tianxia perspective. Accordingly, Thayer believes that “Vietnam seeks to cooperate and struggle with China by acknowledging its primacy in the expectation

that China will respect Vietnam's autonomy" (Thayer, 2016). This cooperation is a result of joined interdependent interests and consists of a fundamental pillar in building up regional stability.

As seen, bilateral relations are often impaired by tensions involving mostly oil and gas exploration. Even though recent efforts on enhancing minimizing mutual hostility, both China and Vietnam still face bilateral relations with individual rationality, maximizing self-interest. Establishing a regional Tianxia depends mostly on China-Vietnam relations, as those are currently the most sensitive among the disputants.

5.6 Final Remarks

The South China Sea is, in fact one of the most contested regions in the world where China, the Philippines, Malaysia and Vietnam hold territorial claims. The busiest SLOC in the world crosses the area, bringing to the conflict foreign powers that patrol the region on under the pretext of safeguarding the freedom of the seas. The disputes are further entangled by the fact that there are vital natural resources such as oil, gas and fisheries that the claimants do not agree on how to manage and explore.

Even though mainstream IR Theories have already touched the matter it is vital an interpretation on the conflict through a Chinese theoretical approach. As seen, there are fundamental concepts with origins in ancient Chinese thought that are still applied today the do not have the same interpretation through a Western viewpoint, such as harmony. There are also other notions that shape Asian behavior that do not hold correspondents in Western culture, at least not in terms of relevance, as in the case of Mianzi. By contrast, the Western idea sovereignty, for instance, is relatively new to Asia and was only introduced to china after the Opium Wars.

Therefore, the present thesis applied the Tianxia idea in order to better understand the conflict. Among other Chinese theories, Tianxia is significant to the case under study as it stands on an ancient governance system that prevailed in the same region for centuries, connecting the disputant States. Moreover, Chinese claims of historical rights are also grounded on the Tianxia system.

Zhao developed his theory based on the "non-exclusiveness in the old Tianxia system. Non-exclusiveness is established as a transcendental concept of the

worldness in the world” (Zhao, 2019:60). Therefore, Zhao proposes what he understands as a truly world view, where all cultures and perspectives are welcomed leaving self-interests aside in the name of common good.

Zhao understands that there are four key concepts that would sustain a new Tianxia: internationalization of the world, relational rationality (that holds two components: coexistence prior to existence and minimization of mutual hostility), Confucian improvement and compatible universalism. These concepts guided the analysis of the bilateral relations between China and the other disputants.

The study was focused on those bilateral relations. However, there are other actors whose actions resound in the disputes. As mentioned, the area holds a vital SLOC for the world trade. Therefore, outside powers, not directly involved in the territorial disputes assert their presence in the region with military patrols and joint military exercises. A direct consequence of this presence is the building up of military outpost, not only by China but also by the other disputants in their own occupied features.

Those powers also directly interfered when the PCA released its ruling on the case submitted by the Philippines against China. There was a strong international pressure in order to make China comply with the decision, which was vehemently rebuked by Beijing. As seen, tensions just did not get out of control because Duterte adopted a policy closely aligned with China and opposed to the United States.

Another relevant actor is ASEAN. The multilateral institution has been crucial in establishing a dialogue mechanism among the parties even though China is adamant that all negotiations regarding the South China Sea are to be conducted bilaterally by the parties directly involved in the disputes. ASEAN is instrumental to China exactly because of one of the main characteristics of the ASEAN way: decisions are made by consensus. Consequently, China makes use of its alliances with the member states in order to block decisions and public statements that go against its interest.

China and ASEAN relations led to the questioning of “who’s socializing whom?” (Ba, 2006). Even though China’s policies are successful as in the case of the Cambodia’s Ministerial Meeting in 2012, ASEAN members are also bringing Beijing to the negotiation table. Currently China and ASEAN members are discussing the implementation of the COC aimed at safeguarding stability in the South China Sea. Accordingly, ASEAN has been instrumental in dissipating tensions in the region.

From the analysis of the bilateral relations between China and each of the disputants it is possible to draw some inferences under the light of the Tianxia theoretical analysis. China-Malaysia relations have been stable throughout the centuries. The two States were connected in the ancient Tianxia system and have since shared a history with convergent cultures traces.

Currently, 25 percent of Malaysia's population is ethnical Chinese (Chang, 2018) and both States hold strong trade and investment relations. As mentioned, Malaysia's claims are located at the extreme south of Chinese nine-dash line where it explores oil and gas in partnership with foreign companies, including Chinese.

Even though there are eventual frictions in bilateral relations, both states give and respect each other's Mianzi. Therefore, tensions are cautiously managed through diplomatic channels avoiding direct confrontations. These respectful relations are under the ideal of the Tianxia as proposed by Zhao: privileging coexistence and minimizing mutual hostility. Such a relation, if replicated to the other claimants, would stabilize the region in a harmonious way.

The Philippines also hold historic relations with China even though kept far-off during the United States occupation. Disputes between the two states over the South China Sea increased during pro-American governments in the Philippines in the past few decades. China also held a more assertive posture in the contested area that culminated with the Scarborough Shoal incident and occupation of other features in the Spratly Islands.

As mentioned, relations came to a low as the Philippines submitted its claims to the PCA, infuriating Beijing. Nonetheless, as soon as Duterte was invested in power, a pro-China policy was adopted and tensions were soothed. An interpretation of the current relations would lead to the belief that the idea of Tianxia could be applied as Manila is evidently avoiding conflicts even considering Chinese presence at its EEZ and growing internal opposition to an appeasement policy.

However, it is still soon to assess if Duterte will keep on with the alignment with China. Moreover, and more unpredictable is whether or not the changes in foreign policy implemented by him will endure as he eventually leaves power. Tianxia proposes the construction of a coexistence order where mutual safety and stability prevail. China and the Philippines are currently seeing each other eye to eye but there is no evidence that this alignment will be sustainable in the long run.

Vietnam was under the ancient Tianxia order for centuries and relations in the past few decades were embedded with tensions and resentment. Vietnamese population resents China's presence based on historic invasions and domination. Both China and Vietnam claim a substantive area in the South China Sea, including the totality of the Paracel Islands, currently under Chinese control.

Despite the former and present turbulent relations, China and Vietnam are managing ways to establish a peaceful coexistence in the South China Sea. The Gulf of Tonkin Boundary Agreement was a clear sign that both States could reach a reasonable compromise in order to stabilize the region. Nevertheless, recent clashes regarding oil and gas exploration that almost led to a military confront showed that there are simmering tensions between Hanoi and Beijing. Therefore, although sharing a common history and related cultures, relational rationality is not applicable to this case.

Even though Zhao's proposed Tianxia shares an ideal to be universally applied, it could also be implemented in specific regions and contexts. The proposed analysis was focused on the South China Sea on the ground that the region shares a common history, related culture and shared interests.

From the analysis made, it is possible to identify some aspects that, if expanded and reinforced could lead to a harmonious coexistence based on shared interests. Nonetheless, it is still soon to assert that those conditions will prevail, especially when considering outside actors interference that contribute to regional tensions. Tianxia was a governance system that endured for centuries, there are definitely elements for a contemporary similar system to take place but they are still not strong enough in the South China Sea.

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