

Introduction

The South China Sea issue began as a territorial dispute over the sovereignty of the islands and sea territory involving China and five ASEAN countries, Vietnam, the Philippines, Malaysia, Brunei and Indonesia. Both China and Vietnam claim the entire area and the islands within while the Philippines, Malaysia and Brunei have laid claims to contiguous areas based on EEZs and continental shelves and first discovery. Had it been just a territorial issue it could have been resolved in some way as a product of Chinese efforts to reach out to ASEAN and to forge stronger ties with the region. Later the issue involved access to the oil and gas reserves of the sea which became critical as global demand for energy rose and claimants devised plans to exploit the hydrocarbon reserves of the area. Disputes erupted over the competing claims, particularly between China and Vietnam, which at times threatened to escalate. Claims to energy resources need not result in conflict, however, and can be managed on the basis of joint or multilateral development for which there are various precedents and models though none quite as complicated as would be required for the South China Sea.



Another factor has exacerbated the situation since 2010 which makes it more difficult to resolve or manage according to the approaches that have previously been discussed. The issue has gone beyond territorial claims and their resolution and has also eclipsed the concern over access to energy resources. The South China Sea is steadily becoming an issue for China's rivalry with the US which increasingly shapes its attitudes and policies. It is becoming linked with wider strategic issues relating to China's naval strategy as it develops a power projection capability to protect its far flung sea lanes to the Middle East. It is also becoming an issue for America's forward presence in the Western Pacific and its alliance relationships within the region. What is required at this stage is a multilateral agreement on measures to prevent minor incidents from escalating into conflict pending a resolution of the conflicting claims. This agreement should include the two major protagonists, the US and China as well as the ASEAN claimants.

The evolution of the South China Sea dispute

The South China Sea began as a dispute over maritime claims. Vietnam, Malaysia and the Philippines have laid claims to the area and were able to occupy islands which China could not, constrained as it was by the US and Soviet navies during the Cold War. Two principles govern the claims both which work against the Chinese claim to the entire area. One is “effective occupation” of islands, a precedent which was laid down by the Permanent Court of Arbitration in the Island of Palmas case in April 1928. [\[i\]](#) Effective occupation entails an ability and intention to exercise continuous and uninterrupted jurisdiction which is distinguished from conquest. The doctrine of effective occupation goes against Chinese interests in the Spratly Islands though not in the Paracels, since China cannot demonstrate continuous and uninterrupted jurisdiction over the area, though it can do so for the nine islands it has occupied since 1988-92. The second is UNCLOS which lays down the rules to decide claims to resources based on EEZs and continental shelves. UNCLOS does not support the Chinese claim which goes beyond its EEZs or continental shelf so China has insisted that historical rights should be accepted. The problem is that claims based on history do not carry much weight in international law and from the Chinese perspective international law downgrades China’s ancestral heritage and is a source of resentment. The Chinese attitude is that their claim predates UNCLOS and that China is not “bound by it” in this situation. Some Chinese officials argue that the inconsistencies within UNCLOS would allow China to assert its historical claims in any case. [\[ii\]](#) To assert those claims in a situation where the complexity of international law may not support them China has resorted to constant diplomatic pressure to achieve either a revision of international law, or a special exception to it, where its ancestral claims would be recognized by all.

Oil and energy

Had the South China Sea been just a territorial dispute there could have been various ways to resolve the issue on the basis of an adjustment of claims in a maritime regime. It could also have continued as a stalemated situation in the absence of a pressing need for a resolution. The demand for energy, however, meant that China could not live with the status quo in the South China Sea which placed additional pressures on the ASEAN claimants. The global

demand for energy is rising and the major consumers such as China are seeking new sources to satisfy their expanding economies. China's oil imports reached 54% of consumption in 2010 and are slated to reach 65% in 2015. China has attempted to diversify energy supplies to reduce its dependence upon the Middle East, which supplies 58% of its oil imports, by seeking to exploit the energy resources of the area. Vietnam is the major oil producer in the area, the state owned oil company PetroVietnam produced 24.4 million tons in 2010 from three fields; the White Tiger field which first began production in 1986, the Blue Dragon field and the Big Bear field; together they accounted for 26% of Vietnam's oil production in 2010. [iii] PetroVietnam has also concluded 60 oil and gas exploration and production contracts with various foreign companies in an effort to exploit new fields. Production in the established fields is declining, however, but new fields are not expected to compensate for the loss.

[iv]

As Vietnam attempts to exploit new fields there is the possibility of renewed clashes with China which has consistently opposed its attempts to conclude exploration agreements with international oil companies. China protested against the exploration activities of a consortium including PetroVietnam, Malaysia's Petronas Carigali, Singapore Petroleum and American Technology Inc. when it discovered a new offshore oil field west of Hainan Island in October 2004.

[v]

China has warned international oil companies to stay out of what it calls "Chinese waters;" five concessions involving BP, ConocoPhillips, Chevron-Petronas-Cargill, Idemitsu-Nippon-and Teikoku oil were suspended as a result of Chinese pressure.

The rise of crude oil prices and concern about energy supplies motivates the claimants to exploit the energy resources of their claim zones. The Philippines has attempted to boost self sufficiency in oil production and has set a target of 60% by 2011. It intends to offer 15 exploration contracts for offshore exploration off Palawan in an area claimed by China. [vi] Philippine exploration efforts around Reed bank have previously provoked Chinese protests and will no doubt do so again.

[vii]

In 2011 the Philippines reported seven incidents involving Chinese harassment; on 2 March two Chinese patrol boats harassed an oil exploration ship in the Philippine claim zone 250 kms west of Palawan, they left the area after Philippines air force was scrambled. On 5 April the Philippines lodged a formal protest at the UN and sought ASEAN support in the forging of a common position over the issue.

[viii]

The Chinese on 14 April accused the Philippines of "invading" its waters.

[ix]

The Philippines dispatched the *Rajah Humabon*,

a World War 2 vintage naval vessel, to its claim area after China deployed the *Haixun-31*

a 3,000 ton maritime patrol ship with a helicopter to the area.

[x]

The Philippine vessel removed markers placed by the Chinese on various features in the Philippines claim zone including Boxall reef, Amy Douglas Bank and Reed Bank.

[\[xi\]](#)

In June the President's Office announced the renaming of the South China Sea as the "west Philippine Sea," and announced a naval expansion program which would boost its limited naval presence in the area.

[\[xii\]](#)

Vietnam fared no better and on 26 May two Chinese maritime surveillance vessels cut off the exploration cables of a Vietnamese oil survey ship which were towing a submerged 7 km seismic cable while searching for oil and gas deposits; this was in block 148 120 kms off Nha Trang, in Vietnam's EEZ; the Vietnamese Foreign Ministry released videos of a Chinese vessel actually breaking the cable attached to the Vietnamese vessel

Binh Minh

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A Chinese Foreign Ministry spokeswoman Jiang Yu declared that the Chinese vessels had engaged in "completely normal marine enforcement and surveillance activities in China's jurisdictional area."

[\[xiv\]](#)

On 9 June a Chinese fishing boat in similar fashion rammed the survey cables of another Vietnamese survey vessel. China has complained that the other claimants have intruded into its waters and that the incidents have been increasing. Vietnam and the Philippines plan to go ahead with gas exploration projects; PetroVietnam will work with Talisman energy and will begin drilling in an area that China awarded to Crestone corporation in 1992, which is now operated by Harvest Natural Resources. Exxon also plans exploratory drilling off Vietnam while the Philippines intends to drill in the field where Chinese vessels harassed its survey vessel in March 2011

[\[xv\]](#)

India has become involved as an external player which complicates the situation. China may have leverage over the ASEAN claimants by reason of size and proximity but India has the status and power to resist. India has, moreover, accumulated resentments against China for its support of Pakistan and its claims along the common border that will make it more difficult for the Chinese to manage. India's ties with Vietnam date back to the time of Indira Gandhi in the early 1980s and many in India regard Vietnam as an ally against China. The Indian naval vessel the *INS Airavat* which was moving towards Nha Trang on 22 July was warned by a Chinese radio message to keep out of "Chinese waters." The Indian Foreign Ministry declared however that "India supports freedom of navigation in international waters, including in the South China Sea, and the right of passage in accordance with accepted principles of international law."

[\[xvi\]](#) China has protested against the exploration activities of India's Oil and Natural Gas Corp [ONGC] around the Paracel Islands to which the Chinese are particularly sensitive. ONGC takes the view that that Vietnamese claims are in accordance with international law and that it would continue with exploration projects in two blocks near the Paracel Islands.

[\[xvii\]](#) While

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Vietnamese President Truong Tan Sang was visiting New Delhi an oil exploration agreement was concluded between ONGC and PetroVietnam on 12 October, despite Chinese opposition.

[\[xviii\]](#)

Significantly, this agreement was concluded while Party's General Secretary Nguyen Phu Trong was touring Beijing and professing friendship with the Chinese.

[\[xix\]](#)

Vietnam was resorting to its traditional way of dealing with China by stressing commonalities and friendship, which was the job of the party general secretary, while seeking an effective counterbalance.

(continuing)

Read full text of this paper [here](#)

[\[i\]](#) On the legality of the claims see Mark J. Valencia, Jon M. Van Dyke, Noel A. Ludwig, *Sharing the Resources of the South China Sea*, pp. 39-59; R. Haller-Trost, *The Spratly Islands: A Study on the Limitations of International Law*, Centre of Southeast Asian Studies, University of Kent at Canterbury, Occasional Paper No. 14 October 1990

[\[ii\]](#) See cable by Political Minister Counselor Aubrey Carlson "MFA Maintains Claims to South China Sea; Urges US Companies not "to get Entangled," 13 March 2008, Wikileaks on line.

[\[iii\]](#) **"Vietsovpetro finds more oil at Bach Ho field offshore Vietnam,"** *Energypedia.news*, 29 June 2011
2<http://www.energy-pedia.com/article.aspx?articleid=14608>

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79 Jun 2011

[iv] “Vietnam Market for Oil and Gas Machinery and Services,” *US Commercial Service-Vietnam* . March 2011,
http://export.gov/vietnam/static/BP-Oil%20and%20Gas%20Machinery%20and%20Services_Latest_eg_vn_030123.pdf

[v] Tran Dinh Thanh Lam, “Vietnam oil find fuels China's worries”, *Energy Bulletin*, 26 October 2004. <http://www.energybulletin.net/node/2838>

[vi] “Philippines to seek more oil in West Philippine Sea,” [Agence France-Presse](#)

June 29th, 2011
<http://globalnation.inquirer.net/5034/philippines-to-seek-more-oil-in-west-philippine-sea>

[vii] “China objects to RP Oil Project,” *Philstar.com*, 15 August 2009
<http://www.philstar.com/Article.aspx?articleid=496221>

[viii] “Philippines protests China’s Spratly claim at UN,” *AFP*, 13 April 2011

[ix] Teresa Cerojano, “Beijing counters Manila’s UN protest, says Philippines ‘started to invade’ Spratlys in 1970s,” *AFP*, 19 April 2011

[x] TJ Burgonio, “Navy flagship to patrol PH waters only, says Palace,” *Philippine Daily Inquirer* 21 June 2011

[xi] “Philippines pulls markers from disputed waters.” *Channelnewsasia.com* 15 June 2011

Written by quanghung299
Tuesday, 17 January 2012 06:42

[xii] Philippines to boost Spratly Patrols," *Channelnewsasia.com*, 15 April 2011

[xiii] Alex Watts, "Tensions rise as Vietnam accuses China of sabotage," *The Sydney Morning Herald*, June 2011

2

[xiv] "China reprimands Vietnam over offshore oil exploration," *Reuters*, 28 May 2011

<http://af.reuters.com/article/energyOilNews/idAFL3E7GS07E20110528>

[xv] Daniel Ten Kate, "South China Sea Oil Rush Risks Clashes as US Emboldens Vietnam on Claims," *Bloomberg*, 27 May 2011

[xvi] Indrani Bagchi, "China harasses Indian naval ship on South China Sea," *Times of India*, 2 September 2011

[xvii] Ananth Krishnan, "South China Sea projects an infringement on Sovereignty, says China," *The Hindu*, 19 September 2011

[xviii] "India, Vietnam sign oil exploration agreement, ignoring China's objections," *The Washington Post*, 12 October 2011

[xix] Sachin Parashar, "New Delhi tries to snap Beijing's string of pearls," *The Times of India*, 20 October 2011