

MISPERCEPTIONS, NATIONAL INTERESTS, AND LAW IN THE SOUTH CHINA SEA

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Abstract

This paper struggles with the relationship between power and law in the disputes over maritime delimitation and sovereignty to islands in the South China Sea. It seeks to define and weigh the relative importance of the main national interests of the states involved, notably China. Then it argues that the most important long term national interests are best served by a policy that does not rely on the use of force, but on pushing for a resolution of the disputes based on international law. On this basis the paper also claims that if the top national leaders in the region give sufficient strategic attention to

the South China Sea, fully understand what the law of the sea actually says about maritime delimitation, and act in accordance with their overall national interests, then we are likely to see a resolution of the disputes within the next ten-twenty years.

Misperceptions

The paper was prompted by recent tension and escalation of mutual suspicions both in the South China Sea, the East China Sea and the areas around the Korean peninsula, with increasing apprehensions both in China and the USA that the other has switched to a new strategy. Realist-oriented US analysts see a China that is about to abandon the economy focused long term strategy of Deng Xiaoping to a new strategy seeking to capitalize on the current weakening of the US economy, US preoccupations in the greater Middle East, and the recent build-up of the People's Liberation Army Navy (PLAN) to venture into a more assertive, if not aggressive, strategy. The aim of this strategy is seen to not only deny access for the US Navy to waters close to China, but also to project power elsewhere in order to protect sea lines of communication (SLOCs), and to realize the Chinese aim of laying hands on resources within the so-called nine-dotted line in the South China Sea. Calls are heard for more "balancing" (the term "containment" is politically incorrect), with allocation of more US naval resources to East Asian waters, and policies to boost the morale of the other states in the region, notably the states of ASEAN, South Korea and Japan, and even India. Evidence of this presumed shift to a new Chinese strategy are the Impeccable incident in March 2009, the declaration by Dai Bingguo, the top Chinese decision-maker on foreign policy, in that same month to US interlocutors that the South China Sea would henceforth be considered a "core interest" along with Taiwan, Tibet and Xinjiang, the Chinese backing of North Korea after the sinking of the South Korean vessel Cheonan in March 2010, the vehement Chinese protests against joint American-South Korean maneuvers in the seas off Korea, PLAN naval exercises in the southern part of the South China Sea (near the Spratly archipelago), and the drastic measures employed by China to obtain the release of

a fishing boat captain arrested by Japan off the contested Diaoyu/Senkaku rocks in September 2010.

On the Chinese side there are similar apprehensions. They see their own actions, listed above, as necessary responses to provocative actions by others. And they see these actions as evidence that the US has shifted to a new strategy in East Asia, aiming to halt or put brakes on the rise of Chinese influence in the region. Evidence for such a new US strategy are seen in US naval surveys of China's continental shelf, US naval exercises in cooperation with its regional allies, the push for sanctions that could destabilize North Korea, weapons sales to Taiwan, and notably statements on the South China Sea made by Secretary of State Hillary Clinton at the ASEAN Regional Forum in Hanoi in July 2010 and at the East Asian Summit in Hanoi in October 2010. And President Barack Obama has now been touring India, Indonesia and Japan before arriving at the G20 summit in Seoul (which takes place simultaneously with our South China Sea conference).

An example of how recent US military and diplomatic moves are perceived in Beijing can be derived from a set of questions I received from the journal Lifeweek (www.lifeweek.com.cn) in the beginning of November 2010. I quote here all these questions, and my answers, in a interview that is likely to be published in Chinese translation on Thursday 11 November.

1. What are U.S.'s interests in the South China Sea?

Reply: The US has two interests in the South China Sea. The primary interest is the security of sea lanes of communication (SLOCs). And this for three reasons. The first is that the freedom of navigation is a sacred principle for any dominant naval power. It was exactly the same for the UK when it dominated the seas; it will be the same for China if it becomes a predominant naval power. The second reason is the interest of the US Navy in being able to move wherever it wants (albeit only - or mostly - outside the 12 nm territorial waters of coastal states, since moving inside without permission is against international law). The third reason is that the main US allies in the region, Japan and

South Korea, depend on the sea lanes through the South China Sea for their provision of energy. Please note that the US and China do not depend on such provisions in the way Japan and South Korea do. The US and China both have plenty of energy sources themselves, abundant coal and also much oil. They do import a major part of the oil they use, but they do not depend on imported oil, since they could replace it with other energy drivers in a time of war. Japan and South Korea depend completely on imported oil.

The second US interest in the South China Sea is derived from the first. This is peaceful, stable relations between the countries around it. Conflict among those countries might disrupt the security of the sea lanes of communication. The United States may therefore be expected to be supportive, or just step back, whenever the countries around the South China Sea manage to resolve their differences peacefully. By contrast, it will be likely to step in to offer assistance, mediation, and increase its naval presence whenever the situation in the region heats up.

The question of sovereignty to small islands and reefs, such as the Paracels (Xisha), Spratly (Nansha) or Scarborough Shoal (Hyungan) does not affect the interests of the United States. It couldn't care less who gets sovereignty to these features, which have very little strategic or economic value. The United States is also not much concerned by who gets which maritime zones (continental shelf; exclusive economic zone), as long as the countries around the South China Sea are able to manage their disputes peacefully.

2. In the past 60 years, how did the position of the South China Sea in U.S. global strategy change? Can it be divided into several phases? What were the major dynamics of the changes? What were the milestone events?

Reply: The US approach to the South China Sea has hardly changed at all. It has been consistent throughout. The key US interests enumerated above have dominated US thinking about the South China Sea for all those years. For more than six decades, the US

Navy has been the world's dominant navy, and it has maintained a capacity to project overwhelming naval power into the South China Sea area, if need be.

Several factors have changed, though, which have affected the US ability to pursue its two main interests. One change was the European (British, French, Dutch) naval withdrawal from the region in the 1950s-60s. A second was the establishment of Soviet naval base facilities at Cam Ranh Bay after the unification of Vietnam in 1975. A third was the finding of significant quantities of oil north of Borneo in the 1950s-60s and on the Vietnamese continental shelf in the 1970s, which increased the likelihood that there might also be oil under disputed parts of the seabed. A fourth was developments in international law, with the signing of the United Convention on the Law of the Sea (UNCLOS) in 1982, and the subsequent ratification of this Convention by all the states surrounding the South China Sea (but not by the US). UNCLOS allowed the local states to claim Exclusive Economic Zones (EEZs) out to 200 nautical miles from their coasts, and a continental shelf out to as much as 350 nautical miles. Although UNCLOS recognized the freedom of (civil and military) navigation in the EEZs (outside of the 12 nm territorial waters), the sovereignty of coastal states to resources so far out from their coasts might conceivably be utilized to also hamper the freedom of navigation. This worried, and continues to worry, the United States. A fifth change was the closure of the US bases in the Philippines in the early 1990s, and the contemporary downgrading and abandonment of the Russian base facilities at Cam Ranh Bay during the 1990s. The net effect of this was to significantly improve the leverage of the Chinese People's Liberation Army Navy (PLAN), which from the mid-1990s got a significant boost to its resources and carried out a rapid modernization and construction programme, including the establishment of modern base facilities in Hainan Island. The resulting change in the local power balance was somewhat compensated for, though, by Singapore's decision to offer base facilities to the US Navy at Changi and by Vietnam's and Malaysia's modest naval construction program. (The Philippines and Indonesian navies do not count for

much in this context.) The latest change is the increased interest in the South China Sea from the Indian and Japanese navies.

The net effect of all these changes has been a reduction in the US naval supremacy, and a strengthening of the PLAN. But this has led to some counter-moves, and also to a recent redistribution of US naval resources so a greater proportion of its fleet is now assigned to the Pacific Theatre than used to be the case quite recently.

3. Besides the government level, how does the U.S. influence geopolitical politics in this region?

Reply: In two main ways. US companies have invested in the region, and are notably keen to increase and secure their position on the lucrative Chinese market. This has created a strong pro-Chinese lobby in the United States, which does all it can to secure and prolong a smooth cooperative relationship between the USA and China. In this endeavour they are closely aligned with the governments of Singapore and Australia (and with the Kuomintang party in Taiwan), all of whose main strategic aim is to prolong indefinitely the period when they can benefit from China's rapid economic growth under a system with as much cooperation and as little friction as possible between China and the USA.

The other main source of US influence is the strength of US academic institutions, both universities and think tanks, who benefit from the US freedom of expression to create scholarly environments with enormous attraction for intellectuals from all of the countries around the South China Sea. This means that US institutions are involved in most of the interesting, intellectually stimulating debates about geopolitical matters in Southeast and Northeast Asia. This American (and Australian) research hegemony has only been slightly affected by increased funding and academic freedom for researchers in Singapore, South Korea and in some Chinese think tanks and universities. China has unfortunately not invested in its intellectual soft power in the same way as its naval hard power. The United States therefore reigns supreme in the domain of intellectual soft

power. And a dilemma facing China is that if it moves, or sees itself as forced, to exploit its newly won hard power without first having built sufficient soft power, then this may provoke a backlash in the region, with China's neighbours pleading the U.S. to get back in with sufficient force.

4. What were U.S. major military activities in this region in the past 60 years?

Reply: A first activity was support to France in the First Indochina War, and support to Taiwan from 1950 onwards. The most significant military activity was the intervention in Vietnam in the early 1960s and escalation of the Vietnam War in subsequent years, which failed to prevent the establishment of communist states in all of Vietnam, Laos and Cambodia in 1975-76. The second was the maintenance of bases in the Philippines until 1992. The third was military support to a number of allies in the region. The fourth was support, along with Thailand and China, to low intensity warfare in Cambodia, Laos and Vietnam during the 1980s. However, by 1978, when China and the USA normalized their relations and formed an informal alliance against the Soviet Union and its allies (including Vietnam), the US military strategic focus shifted from East Asia to the greater Middle East, where it has remained since. This provided room for China to gradually increase its power in the region, first through a development policy focussing uniquely on the economy, and later through a military buildup. The Taiwan Straits crisis in 1995-96 could have interrupted this period of increased Chinese leverage and reduction in the US military presence if China had not backed out. But China did back out of a confrontation in the Taiwan Strait and skillfully later maneuvered through a period when Taiwan was in the hands of a party seeking independence so the relationship between the PRC and the ROC on Taiwan is now better than ever before. Today, however, as a result of some recent Chinese actions and statements, there is again a possibility that the USA will move its main strategic focus back to the East Asian region.

5. The natural resources in the South China Sea were discovered gradually. Does this influence the U.S. policy? How?

Reply: Very little. Just as the regional countries, the USA shows very little interest in the main threat to the natural resources in the South China Sea, namely the depletion of fish stocks. This is a tragedy that the regional states need to do something about together. As for oil and gas, this is something the U.S. government does not take a direct interest in, but generally leaves to its oil companies.

6. Does U.S. policy influence U.S. oil companies' activity in this region? How?

Reply: Some US oil companies are interested to take part in exploring for oil and gas in the South China Sea, partly because there might perhaps be significant quantities of oil and gas in hitherto unexplored areas, but mainly because such participation may contribute to establishing partnerships with Asian companies and governments in a way that could provide access also to these countries' internal markets. China is certainly the most interesting market here. But these business interests have only marginal influence on assessments of US national interests.

My impression is, though, that China influences U.S. oil companies, who in turn try to influence the U.S. government. The most serious U.S. oil companies, however, just like other serious oil companies around the world, are generally uninterested in exploring for oil and gas in the disputed parts of the continental shelves in the South China Sea. This has several reasons. One is the absence of legal frameworks, which increases risk and makes it difficult to obtain loans. A second is that the prospect of finding significant quantities of oil seem rather bleak. A third is simply the risk of incidents. And a fourth is that the companies are afraid to see their standing in China being damaged if they engage in exploring for oil and gas on the continental shelf of the Philippines, Malaysia or Vietnam. Oil companies naturally share in the strategic interest of the U.S. in seeing peaceful management and resolution of the disputes in the South China Sea, so they can explore for oil and gas under the protection of secure legal regimes.

7. "9-11" changed the U.S. global strategy landscape. During that time, what was the U.S. position in the region? What did the U.S. do?

Reply: A primary effect of 9/11 was to reinforce the U.S. strategic focus on the greater Middle East, and strengthen Sino-American cooperation in standing up against a perceived common threat. The United States also increased its cooperation with those governments in the region who have significant Muslim populations (notably the Philippines and Indonesia), with the purpose of preventing extreme Islamist groups from using terrorist tactics in the region. The net effect of this was to further increase China's room to improve its geopolitical position. The United States also tried, in this situation, to engage the PLA in closer cooperation. My impression is that Chinese suspicion of US motives led the PLA to reject most of these overtures, and also to refuse taking part in the PSI (Proliferation Security Initiative). This Chinese reluctance, and some recent declarations and episodes have in turn led to a suspicion in US military and government circles that China may have changed its strategy and is now seeking to use hard power to evict the US military from the region. This has generated a call for a more vigorous "balancing" against Chinese power, and has the potential to pull the US strategic focus back towards East Asia. (This could be good news for those in the Middle East who would like to see a reduction in the U.S. presence there.)

8. In recent years, we feel that the U.S. highlights the South China Sea in its strategy. What is your comment on this emphasis? In the future, what will the U.S. role be in this region's politics?

Reply: Your feeling is a part of the problem if it leads you to respond defensively. There is one good way to prevent an increased U.S. strategic emphasis on the South China Sea. And this is to go for a win-win solution. China needs to approach the other countries around the South China Sea with a view to resolving the disputes over maritime delimitation on the basis of the law of the sea. And Beijing needs to do this in cooperation with Taipei, since the coast of Taiwan will have a major impact on the delimitation of the One China continental shelf and EEZ. A first move would be to move together with ASEAN towards a legally binding agreement on a code of conduct that precludes any use of force. The next move would be for China to restate clearly what is

already implicit in its protest note to the United Nations concerning the joint Malaysian-Vietnamese calculation of their continental shelf in May 2009, namely that the u-shaped line, which can be seen on all Chinese maps of the South China Sea, is meant as a claim to all islands within that line, not to the whole seabed as a Chinese continental shelf or the whole sea as a Chinese EEZ. Since any other interpretation of the u-shaped line is completely unsustainable in international law, and since China has ratified UNCLOS and is thus bound by its very clear rules for how to measure continental shelves and EEZs, there is no way China can continue to avoid making clear what the u-shaped line really signifies. Therefore the sooner the better.

If China makes these moves, and reiterates its respect for the freedom of navigation within its EEZ, then this will already reduce tension sufficiently to remove the quest among China's neighbours for the US to return in force. In addition these moves could allow China to play a proactive role in resolving the disputes over maritime delimitation in the area, adding further to the significant improvement that has happened in the last decade of China's diplomatic, economic and cultural relations with all of the Southeast Asian countries. This would be in the best tradition of the highly significant work that Chinese diplomats and other experts have done over several decades to resolve the disputes over China's land borders with all of its neighbours except India and Bhutan. They have done more than perhaps anyone else to enhance China's national security. Now is the time for Beijing to fully utilize its experts on the law of the sea."

The current impressions in both Beijing and Washington that the other side has adopted, or is about to adopt, a new more assertive strategy are classic examples of the "security dilemma", and may lead both sides to up the ante in order to counter the expected moves by the adversary. In reality the actions on both sides are far more likely to be relatively un-coordinated initiatives in response to actions not only by the other side, but also by other parties, such as North Korea. At the same time the moves and

counter-moves do reflect a more volatile situation than previously, with more strategic uncertainty not just in China and the United States, but in the whole region. In addition I fear that a US president who has been sufficiently weakened by the outcome of last week's midterm elections to the House of Representatives and the Senate, may be tempted to give some concessions to Sinophobic sentiments in the American population, notably among those who have lost their jobs or have bankrupted, and who blame this on Chinese competition. In May 2010, US legislators adopted the laws that President Obama will need if he should wish to slam so-called "climate tariffs" on imported Chinese products. A serious economic conflict over currency rates, trade, WTO rules and CO2 emissions could seriously exacerbate the overall security situation. In this situation it is of utmost importance that Chinese and American negotiators manage to calm the waters and satisfy some of each others' demands ahead of President Hu Jintao's visit to Washington in mid-January 2011.

The South China Sea question and its current development must be seen in light of the overall apprehensions above. My own conviction, as can be derived from the replies I gave to the Chinese newspaper's questionnaire, is that there is no serious conflict of interest between China and the United States in the South China Sea. It should therefore be fully possible to calm down the waters, and for China to even move towards a strategy of long term conflict resolution, without having to fear adverse American reactions. One condition, however, that must be satisfied in order to make this happen, is to separate clearly between those questions where US interests are involved and those questions that are not of much concern to the United States.

National Interests

The main nations pursuing their interests in the South China Sea are of course the surrounding states (China and Taiwan, the Philippines, Malaysia, Brunei, Vietnam, Indonesia, Singapore, Thailand and Cambodia) and those external powers that have the

capacity to project power in the area (The USA, India, Japan - to a lesser extent Australia and South Korea, and - in the past - Russia).

Some important interests are shared by all these countries, and should therefore be expected to provide a basis for cooperation: Secure sea lines of communication, repression of piracy, the maintenance of fish stocks, production and marketing of energy from resources in or under the sea under solid legal frameworks.

Then there are interests that separate nations from each other. Each coastal state wants naturally to get as large an EEZ and continental shelf as possible. Each wants its own fishermen to be able to catch as much fish as possible and other countries' fishermen as little as possible. States want to deny their adversaries naval access to areas near their coasts. States want security of sea lines of communication not just from pirates, but also from rival states' navies. Governments want oil companies to invest in oil exploration and production on their own continental shelf rather than that of others in order to gain revenue. Governments want to gain status and prestige both at home and abroad through shows of force and a visible presence on contested islands.

A dilemma for the countries around the South China Sea is that on the one hand they would all certainly benefit in a general sense from resolving their disputes over maritime delimitation, so this is a joint interest, but each nation might lose some maritime territory in the zero sum games that will necessarily have to be played as part of the negotiations towards conflict resolution. It seems that Vietnam and Malaysia have fully realized that it is strongly in their national interest to resolve their disputes on the basis of the law of the sea. They may therefore be expected to be proactive players, even though it may be hard for Vietnam to accept one particular concession, which will no doubt be necessary: namely to give up its claim to the Chinese occupied Paracel islands. Since they do not themselves have claims in the most disputed areas, Indonesia, Singapore, Thailand and Cambodia may be less interested in solutions that divide most of the South China Sea into national EEZs, and be more tempted by formulas for joint development

zones, in which they might hope to play a part. The Philippines should be strongly expected to share the interest of Malaysia and the Vietnam in a solution based on the law of the sea, but many of its leading politicians do not see it that way since they have embraced the both legally and realistically unsustainable idea that the archipelagic state of the Philippines can at the same time claim sovereignty over an affiliate “archipelago” in the South China Sea, called the Kalaya’an. It is a similar kind of illusion that has for a long time prevented China (and Taiwan) from playing a constructive role in moving towards resolution of the disputes over maritime delimitation in the South China Sea. For the last half century, as everyone knows, China has included on all of its maps a stapled line around virtually the whole of the South China Sea, which for the uninformed viewer must seem to indicate a Chinese claim to the whole area inside it, not just the reefs and islands, but the seabed and the sea itself as well. This illusion has stimulated dangerous patriotic pride domestically and equally dangerous fears in other countries.

In my replies to the Chinese journalists, I said that Secretary Clinton is right when she insists that the United States has only two interests in the South China Sea, the freedom of navigation and the maintenance of peace and stability. The main question then is to enumerate the national interests of China, and to weigh them up against each other. This is essential from a conflict resolution perspective since it is difficult to imagine any progress towards a resolution of the disputes if China does not assume a proactive, perhaps even a leading role. Before this can happen China must decide, just as Malaysia and Vietnam have apparently done, that it is in its own best interest to resolve the disputes in the South China Sea on the basis of international law.

What is it that could weigh against such a decision?

First, the nine-dotted line would have to be defined in accordance with international law as a claim to just the islands within it, and this could disappoint all those who have imagined that China could lay hand on the whole sea and seabed as such. There could be a domestic, nationalist backlash against the government. Now, the formula that

China used in its protest to the United Nations over the joint Malaysian-Vietnamese continental shelf calculation in May 2009 did in fact speak of sovereignty to the Spratlys and “their adjacent waters”. Although few have noticed this, it actually means that China recognizes the basic principle that sovereignty to the resources in the sea and under the seabed can only be derived from distance to a land over which one holds sovereignty. This shows how the discipline of legal thinking may lead towards formulations that tend to make matters more practical and negotiable.

The second national interest that may weigh against a legal approach to resolving the disputes in the South China Sea is concern for possible adverse reactions in Taiwan. Indeed it will be necessary to establish cooperation between the People’s Republic of China (PRC) and the Republic of China (ROC) on Taiwan, in order to be able to delimitate the waters between Taiwan and Luzon, and decide on how much adjacent water the Taiwan-occupied Taiping Dao (Itu Aba) island can have. The practical and political difficulties of establishing cross-Strait cooperation in such a delicate matter may tempt Beijing to refrain from any attempt at active conflict resolution, and continue to just tread the water.

A third factor that may count against a resolution of the disputes based on international law may be a vague hope that the Philippines, Vietnam and Malaysia might later become so dependent on Chinese goodwill that they could be brought, through formulas of “joint development”, to let Chinese companies take part in exploiting resources that they consider, with a solid foundation international law, to be theirs, and that the PRC can then have a share in the revenue. I think this is an illusion. No matter how strong and powerful China becomes, as long as Vietnam, Malaysia and the Philippines are sovereign states, with full rights in the international community of nations, they will also defend their most obvious national interests in the sea and on their continental shelf.

The Chinese national interests that count in favour of seeking a legal solution to the disputes are much heavier:

Firstly, an agreement on maritime delimitation will, no matter what the solution looks like, remove a reason for the US Navy to maintain a visible presence, and also reduce other regional nations' inclination to invite the US Navy to operate in the area. There would be less risk of US interference in regional affairs, and more room for China to continue its peaceful rise, also for further building up its navy.

Second, an agreement on maritime delimitation of the South China Sea would open up fully the possibility to explore for oil and gas, with full access to international loans, since the legal regimes would be in order. Chinese oil companies would most likely be invited to submit tenders for concessions not just on China's own continental shelf, but also on the continental shelves of the neighbouring states.

Third, since a process towards agreement on maritime delimitation of the SCS would depend on close cooperation between mainland China and Taiwan, this could create a momentum for resolving other cross-Strait problems as well and move towards a recognized solution, based on the one-China principle. The PRC and the ROC on Taiwan could simply agree on a formula for dividing responsibilities between themselves in the South China Sea, which could serve as a model for how to divide other responsibilities later.

For these reasons I think it is likely that the more China rises in wealth and power, the more interested it will be in exploring the possibility of resolving the disputes in the South China Sea on the basis of existing international law.

Law

National and international laws have tremendous bearing on the management and resolution of all kind of disputes. Virtually all agreements, and even dictates, are formulated in legal language, and with reference to some kind of general or specific

overriding principle. Even great powers cannot just ignore the law or bend it at will. In order to gain legitimacy, trust, respect, they must ground their actions not just in mere power, but also in principles. Only if they themselves abide by the law can they expect others to do so willingly beyond the situations where they are subjected to naked force.

Fortunately, there are well developed bodies of international law that are ready to be used in resolving the disputes in the South China Sea, and they will of course be further developed, modified and changed in the process of being used. The most relevant part of international law is the law of the sea, as codified in a number of historical treaties, and notably the United Nations Convention on the Law of the Sea, from 1982, which after having been ratified by more than sixty states has become fully valid international law. Among the ratifying states are all the countries around the South China Sea (except Taiwan, which does not enjoy a status as an internationally recognized states, but has made its own declaration in support of UNCLOS).

From a legal perspective, the main issue areas in the South China Sea, and which should mostly be treated separately instead of being confounded with each other, are the following:

- The freedom of civilian navigation on the High Seas as well as in the Exclusive Economic Zones of individual states (outside of the 12 nm territorial waters). This is a shared interest among China, the United States and all the countries in the region, and also merchant marine countries outside the region. The United States should not be allowed though to conflate the freedom of civilian with the freedom of military navigation.

- The freedom of military navigation on the High Seas as well as in the EEZs of individual states, including the right to conduct seismic and other surveys of the seabed of a kind that would clearly be prohibited if they were done by civilian, commercial companies. This is a contested issue in international law. Many coastal states sympathize with the Chinese position that there must be certain limitations on the

military activities of foreign navies within a coastal state's EEZ. This also means that the construction, since 1995, of permanent Chinese military facilities on Mischief Reef is in contravention of international law. Since Mischief Reef is not above water at high tide, it is not an island, but a part of the seabed. This means that the sovereign rights to resources in the water and under the seabed in the Mischief Reef area are regulated by the law of the sea. And because this area is in the vicinity of the coast of the Philippines, it can with solid foundation in international law claim Mischief Reef as part of its continental shelf. If China wants to its quest for international support for setting limits to the kind of operations that the US and other navies can undertake inside the Chinese EEZ to be credible, it must abandon its military facilities on Mischief Reef or seek permission from the Philippines to maintain them.

- Management of living and other resources in a semi-enclosed sea. This is a strong shared interest among all the populations around the South China Sea, but it generates only minimal funding and political attention. As long as several states have not even calculated or made known the precise extension of their continental shelf and EEZ claims, this must be seen as a shared responsibility calling for urgent, collaborative initiatives rather than unilateral moves.

- The exploration and exploitation of mineral and other resources under the seabed, notably oil and gas. This is of little concern to external countries such as the United States, although American and other oil companies would under the right conditions be interested to take part on commercial basis. As is already happening, oil exploration can be made in uncontested areas or in areas that obviously belong to one country's continental shelf (such as the continental shelf north of Brunei and Eastern Malaysia), under the authority and legislation of that country. In disputed areas exploration for oil is better left to the future than be subject to so-called "joint development", for two reasons. Firstly, the disputes would be likely to escalate dangerously if significant quantities of oil were to be found, unless the "joint exploration zone" had bullet-proof internationally guaranteed legislation for how

revenues would be divided among the participating states. And secondly, because the most serious and environmentally conscious oil companies are reluctant to undertake exploration in disputed areas.

- The delimitation of maritime zones (continental shelf and EEZ). This is also of little concern to countries outside of the region. How this is to be done is actually regulated with great detail in the Law of the Sea Convention, which has been signed and ratified by all the states around the South China Sea. Once these countries have made their precise claims known, negotiations can start on the basis of well-established precedents and principles. Maps with various alternative models for how the South China Sea will be divided among the surrounding states can be found both on the net and in Jon Van Dyke and Mark Valencia's classic book *Sharing the Resources of the South China Sea*.

- The disputes over sovereignty to reefs, rocks and islands that are above water at high tide is of little concern to external states such as the United States and should preferably be handled by the states directly concerned, either through a combination of bilateral and multilateral negotiations, or by leaving the decision to the International Court of Justice in the Hague. These disputes are in no way regulated by the law of the sea, but by other parts of international law. Such disputes are resolved on the basis of historical presence, permanence of occupation, official statements, etc. The sovereignty to the Spratlys, Scarborough Shoal (and Diaoyu/Senkaku) is so hotly disputed that it will be very difficult to resolve. However, this may not be necessary, since these features are so small that they either do not satisfy the criteria in paragraph 121.3 of the Law of the Sea Convention for being able to generate a continental shelf and EEZ claim or will have very little effect on the delimitation of continental shelves and EEZs because the length of their coasts is so short in relation to the coasts of the countries surrounding the South China Sea.

Conclusion

No navy, regardless how strong it is, can conquer, fortify and defend the sea or the seabed. In this sense, the sea is fundamentally different from land. Naval supremacy is gained and maintained by having sufficiently strong naval forces to convey the impression among others that their navies would most likely be destroyed if they were to confront the forces of the supreme power. If the Chinese navy were even ten times stronger than today, it would still not be able to defend illegally established oil rigs in the South China Sea against a determined power considering the oil to be its own. It is also excessively costly to prevent other states' fishing fleets from fishing in the sea if these fleets are backed up by their governments. All of this means that it is preferable for a state to combine naval power (the "big stick" that Theodor Roosevelt meant one should carry) with not just "soft speak", but diplomacy based on profound knowledge and creative utilization of international law.

There is a widespread misperception that the disputes in the South China Sea cannot be resolved on the basis of international law, and that the only solution therefore is to have "joint development". A further misperception is that Chinese naval ascendancy will make a legally based resolution of the South China Sea disputes even less likely than it used to be. My inclination is to think that the prospects for resolution to happen on the basis of international law increases rather than diminishes with the growth of Chinese power and influence. Three generations of Chinese leaders have realized how important it is for their national security to resolve boundary disputes on land, and have devoted considerable resources to this kind of conflict resolution. M. Taylor Fravel has shown in his eminent study *Strong Nation Secure Borders* how China has resolved no less than 17 border disputes, often at the price of considerable concessions. He also finds that China has been most willing to make compromises when it has negotiated from a position of strength, and more inclined to use force when it has experienced a weakening of its negotiating position. I assume that the same may apply in China's maritime disputes, and I base this on the obvious advantages enumerated above that China may derive from resolving these disputes. Conflict resolution will remove both reasons and excuses for the

US to interfere in regional affairs, will enhance the trust that China has already gained among its neighbours through economic cooperation and diplomacy, and will provide the necessary legal frameworks for getting on with measures to manage, protect and exploit marine and other resources, such as offshore oil and gas, with positive implications for China's energy security./.

Author' biography

Dr Stein Tønnesson is a research professor at the Peace Research Institute Oslo (PRIO). During 1 October 2010–31 July 2011 he is a Jennings Randolph Senior Fellow at the United States Institute of Peace, Wash., D.C. (<http://www.usip.org/specialists/stein-tønnesson>) His marine research topics are revolution and war in Vietnam, decolonization and nation-building in Southeast Asia, and the disputes in the South China Sea. He led a research project on the South China Sea during 1998-2001, leading to publications such as “Vietnam's Objective in the South China Sea: National or Regional Security?” *Contemporary Southeast Asia*, 22(1), April 2000: 199–22; “China and the South China Sea: A Peace Proposal,” *Security Dialogue* 31(3), September 2000: 307-326; “The Paracels: The 'Other' South China Sea Dispute,” *Asian Perspective*, 26(4), 2002: 145-169; “Why are the Disputes in the South China Sea So Intractable?” *Asian Journal of Social Science* 30(3), 2002: 570-601; “Sino-Vietnamese Rapprochement and the South China Sea Irritant,” *Security Dialogue* 34(1), March 2003: 55–70; “The South China Sea in the Age of European Decline,” *Modern Asian Studies* 40(1), 2006: 1–57, and Timo Kivimäki, ed., *War or Peace in the South China Sea* (Copenhagen: NIAS Press, 2002). Tønnesson's most recent publications are: “The Class Route to Nationhood.” *Nations and Nationalism* 15(3), 2009: 375-395; “What Is It that Best Explains the East Asian Peace Since 1979?” *Asian Perspective* 33(1), 2009: 111-136; and *Vietnam 1946: How the War Began* (University of California Press, 2010). For his publications on the South China Sea, see: www.cliostein.com