



WHITHER THE SOUTH CHINA SEA DISPUTES?¹

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The political environment in the South China Sea seems to have come a long way from the 1980's and 1990's when it was a locus of confrontation and conflict. Indeed, the China-Vietnam clash of 1988 in which about 70 Vietnamese died, and China's 1995 occupation and building of structures on the Philippines-claimed Mischief Reef seem like relics of a previous era. Conflict has given way to co-operation in which China, Vietnam and the Philippines have undertaken co-operative seismic surveys in an agreed area. But are these advances fundamental and durable – or fragile and temporary? This brief examines recent developments in this context and suggests steps forward.

In 2002, ASEAN and China signed a Declaration on Conduct in which they promised “to resolve their territorial and jurisdictional disputes by peaceful means without resorting to the threat or use of force” and “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability”. And China, Vietnam and the Philippines have agreed on a web of bilateral codes of conduct. All claimants have also agreed to move towards a more formal and legally-binding multilateral Code of Conduct --- but its realization remains out of reach and the declaration has been violated numerous times by several parties thereto.² Indeed, the down-side is that no progress has been made for seven years. The “soft” nature of the declaration which enabled its acceptance in the first place – it is not a legally binding document – makes it difficult even to raise the issue, let alone exert pressure on fellow signatories to move towards implementation. Moreover China has now made a proposal which has deadlocked the process --- that there be two prior meetings before an ASEAN –China meeting – one among the four ASEAN claimants (Brunei, Malaysia, the Philippines and Vietnam), and one between all of ASEAN.³ China remains opposed to internationalization or regionalization of the dispute and would like to prevent or weaken ASEAN solidarity on these issues and continue to address them on a bilateral basis.

¹ This is an updated and expanded version of Mark J. Valencia, Whither the South China Sea disputes, *Maritime Institute of Malaysia Newsletter*.

² *Asia Times*, 26 March 2009; DPA, Vietnam criticizes Chinese fishing bans in the South China Sea, *Monsters and Critics*, 18 May 2009; Philippines seeks to improve Spratly structures, *Reuter*, 20 May 2009.

³ China is searching for new ASEAN strategies, *The Nation*, Opinion, 19 October 2009.



ASEAN has opposed China's proposal as it wishes to speak as one and all at once. During Thailand's chairmanship of ASEAN, the issue was not a priority.⁴ But when Vietnam assumes the chair in January, the disputes and a multilateral approach could be raised. The issues will be on the agenda for the ASEAN summit meeting of April and October 2010 in Hanoi.

Despite this backsliding, the region— at least at sea – had moved to a lower level of securitization.⁵ The reasons included China's 'charm offensive' toward ASEAN, the lack of discovery of significant petroleum deposits, and self-restraint of nationalist tendencies. Perhaps most important was the distraction of the United States with the Middle East and the "war on terror", and thus a damping of China-U.S. competition in Southeast Asia and the South China Sea. To this rather eclectic mix one should add the expansion and strengthening of ASEAN and its growing unity in its approach to China. But these factors are proving neither fundamental nor durable and the apparent stability is fragile. Indeed, US attention is returning to China and the South China Sea and the result has been a series of incidents with China including that involving the U.S. Impeccable.⁶

Some analysts view the recent rash of China-US freedom of navigation incidents as reflecting a more assertive stance by Beijing in keeping with its naval modernization and drive for oil in the South China Sea.⁷ They point to its web of electronic and physical infrastructure extending into the Spratlys and its acquisition of naval and air assets that would enable its domination of the South China Sea. Others argue that China is simply trying to defend itself by protecting vital sealanes against a US-Japan-India encirclement and containment. So far the US response to these incidents has been relatively mild. But this could dangerously embolden China. Indeed there are rumors that China intends to build an airport and seaport on Mischief Reef.⁸ Darkening the horizon are calls by US 'proxy diplomats' like Senator James Webb for the U.S. to do more to balance China in the region.⁹ It did not help Vietnam-China relations that he was visiting Vietnam when he made this statement.

⁴ Stephanie Ho, Beijing: South China Sea territorial disputes not on ASEAN agenda, *VOA News*, 21 October 2009.

⁵ Ralf Emmers, personal communication.

⁶ Mark J. Valencia, Not an impeccable argument, Napsnet, *Policy Forum Online*, 9-026A, 1 April 2009. The U.S. does not take a position on the sovereignty claims but does insist on a rather broad right of freedom of navigation. During the Clinton administration it also stated that it would like to see the disputes resolved peacefully and in accordance with international law.

⁷ Micah Springut, Managing China's growing assertiveness in the South China Sea, *World Politics Review*, 27 July 2009.

⁸ China making move in Spratlys, *guampdn.com*, 15 July 2009.

⁹ Matt Steinglas, In Vietnam, Webb says US must 'balance' China, *VOA News*, 19 August 2009.



Thus fear is still racing hope.¹⁰ One trend is toward a post modern world moving away from the Westphalian nation state system. This construct would downplay sovereignty and focus on common security and common prosperity and be evidenced by codes of conduct, sharing of resources, and cooperation to protect the environment. This is the hope.

But the fundamental conflicts over islands, maritime space and resources have not been resolved. In 2007 several international incidents in quick succession re-energized the sovereignty disputes over the Spratly islets and reefs and recast a spotlight on the issues. These incidents included the early March visit by then Malaysian Prime Minister Abdullah Badawi to disputed Swallow Reef and the signing of the Philippines Baseline Bill by President Gloria Arroyo--which included the Spratlys in a “regime of islands.” The Philippine claim was vehemently protested by Vietnam, China, Taiwan and Malaysia.¹¹ Earlier, in February 2007, then Taiwan President Chen Shui-bian’s visit to Taiping Dao drew protests from China, Malaysia, the Philippines, and Vietnam. On a more positive note China and Vietnam vowed to resolve their South China Sea differences through peaceful provisional arrangements.¹² But such words have become repetitive and perfunctory, and the proof will be in the doing.

The fear is that increasing competition for energy and fish will exacerbate these conflicts and refuel nationalism in the South China Sea. Pressure is building as China and others successfully expand their exploration for deep-sea oil and gas fields as well as for gas clathrates.¹³ China, Taiwan, the Philippines and Vietnam have enacted domestic laws that incorporate the islands into the nation’s territory and the national psyche and they have thus become symbolic of the nation and the legitimacy of the government. For these governments the islands must be defended at ‘all costs’. China has banned fishing in parts of the South China Sea and even sent a fisheries patrol vessel to protect its fisheries resources in its claimed island EEZs.¹⁴ China has also objected to the Philippines drilling in the Reed Bank area which may contain 3.4 trillion cubic feet of gas and 450 million barrels of oil. This trend is also fueled by fear of the unknown – that some unknown resource will be foregone or lost through compromise or relinquishment of claims --- what some call the ‘Alaska syndrome.’

¹⁰ I attribute the phrase to former CINCPAC Admiral Larson who used it in this context.

¹¹ Vietnam asks for restraint in East Sea islands, *Thanh Nien News*, 8 February 2009; Dave-Dizon, China hits out at RP baselines bill on Spratly claims, 18 February 2009.

¹² China, Vietnam hold talks on South China Sea issue, *Xinhuanet.com*, 13 August 2009.

¹³ *Asia Times*, *supra* n. 2.

¹⁴ China defends Spratlys sea patrol, *APF*, 16 March 2009.



Further complicating the situation are claims to an “extended continental shelf” by Vietnam and Malaysia and official objections thereto by China and the Philippines. China’s objection was based in part on its ‘nine-dashed line’ historic claim to the South China Sea which means in a legal sense China seems to be moving backward rather than forward. Ironically, by claiming an extended shelf, Malaysia and Vietnam have undermined their own potential claims to some of the Spratly features as islands capable of generating EEZs and a continental shelf.¹⁵ Baselines that do not appear to conform to the 1982 UNCLOS are another problem that will eventually need to be resolved especially if claims to full zones from the islands are dropped in favor of claims from the respective mainlands. Highly questionable are Malaysia’s baseline off Sabah, Vietnam’s baseline off its southern coast, and China’s closing lines around the Paracels. In sum, there is obviously a “collision of assumptions”¹⁶ and resultant actions that support both negative and positive trends. This makes the situation ambiguous, difficult to resolve, and probably unpredictable.

China’s intent remains uncertain. It recently growled at Vietnam regarding Vietnam’s plan to build a pipeline from British Petroleum gas discoveries 230 miles offshore on its claimed continental shelf. The new fields to be connected are near fields that already produce gas which is moved onshore through an existing pipeline. In its rant, China readily slipped back into its legally dubious historic claim to most of the South China Sea and the nationalist rhetoric that accompanies it. China’s Foreign Ministry spokesperson Qin Gang said “any unilateral action taken by any other country in these waters constitutes infringement into China’s sovereignty, territorial rights and jurisdiction”. Moreover, according to Qin, Vietnam’s action “goes against the important consensus reached by the leaders of the two countries on the maritime issue.”¹⁷ The two had made significant progress regarding their overlapping claims in the Gulf of Tonkin and it was hoped that the creative solution employed there would have a positive spin off effect on their disputes in the South China Sea. However, China/Vietnam relations remain troubled. Moreover, Vietnamese nationalists allege that the Vietnamese leadership has been subservient to China on maritime boundary issues and relatively rare anti-China protests have been held in Vietnam.¹⁸

¹⁵Sam Bateman and Clive Schofield, Outer Shelf claims in the South China Sea: new dimension to old disputes, RSIS.C65-2009, 1 July 2009.

¹⁶ Geoffrey Till, personal communication.

¹⁷ China reiterates sovereignty over islands in South China Sea, www.xinhuanet.com, 3 February 2007; Taiwan followed suit. MOFA reaffirms sovereignty over Spratly’s in South China Sea, 4 February, www.etaiwannews.com, 2 Weds, 2009.

¹⁸Nga Pham, Vietnam paper banned over China, *BBCNEWS*, 15 April 2009.



Further, even the joint surveys between China, Vietnam and the Philippines were only made possible by what some have said was a “sell out” on the part of the Philippines. Presumably, higher political purposes motivated the Philippines to agree to these joint surveys on parts of its legal continental shelf that China and Vietnam do not even claim. But in so doing it gave legitimacy to China and Vietnam’s legally dubious claims to that part of the South China Sea. In any case the agreement expired in July 2008 and has not been renewed due to domestic politics in the Philippines. The Philippines is considering whether to extend it or to grant a concession in the area to a US company.¹⁹ The latter would certainly raise objections by China and Vietnam.

Another pesky problem that cannot be ignored indefinitely is Taiwan’s claims in the area and its occupation of Itu Aba, at 0.5 kilometers long, the largest of the Spratly Islands. Indeed, its recent construction of a military airfield there is bound to increase tension. Although then President Chen Shui-bian’s 2 February 2009 visit to the feature contributed to this tension, his declaration of a ‘Spratly Initiative’ which puts environmental protection ahead of development may be an important conceptual step in the right direction.

So where does all this leave the imbroglio? As Malaysia’s late Tan Sri Noordin Sopiee --- one of Asia’s leading intellectuals --- used to say: “make peace while there is peace.”²⁰ What this means for the South China Sea is that while tension is reduced – for whatever reasons – a gossamer web of co-operative commitments and functional arrangements should be negotiated and cemented. This would not only be in the claimants interests vis a vis China but in China’s interest as well. It would be a logical extension of its accession to the ASEAN Treaty of Amity and Co-operation and firm up the legitimacy of its presence in the South China Sea.

What does this mean in practice? There are several concrete steps that can be taken. The claimants could implement an early warning system “based on existing mechanisms to prevent occurrence/escalation of conflicts” as agreed in their March ‘blueprint for peace.’²¹ They could formalize a code of conduct for the South China Sea and adhere to it. They could dispense with nationalist rhetoric and legally unsupportable areal and baseline claims. They could build a web of functional co-operative arrangements in marine environmental protection, marine scientific research, navigational

¹⁹ Euan Paulo C. Anonuevo, Govt mulls fate of Sampaguita find, *Manila Times*, 12 October 2009; FM: Philippine gov’t willing to pursue joint marine exploration in South china Sea, *Xinhua*, 23 December 2008.

²⁰ Personal communication.

²¹ *Asia Times*, *supra*, n. 2.



safety and search and rescue. The Pratas Island Reef National Marine Park recently declared by Taiwan could serve as a model for co-operative establishment of similar parks in the Spratlys proper. None of these arrangements would threaten existing positions and they can all contain a clause that affirms that such arrangements are non-prejudicial to sovereignty and jurisdictional claims.

The basic lesson is clear – slow and steady process will win the race for hope over fear. Patience and perseverance are necessary ingredients. The process must be a step-by-step building of functional co-operative arrangements that will eventually result in a web too politically costly to undue.

As for a grand solution to the South China Sea disputes, this will be a long time in coming --- if ever. But the alternative – a festering sore covered by a scab that can be picked every time relations deteriorate or extra regional powers wish to do so --- should be a nightmare no regional state wants to repeat. As Noordin said “The time to make peace is when there is peace.” That time is now. But the window of opportunity is closing.