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The development of the South China Sea maritime dispute

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Introduction

The South China Sea is semi-enclosed, as defined in Article 122 of the UN Convention on the International Law of the Sea (UNCLOS). It includes the 15 islands of the Paracel archipelago, 45 islands and numerous reefs and rocks of the Spratly archipelago, the Macclesfield bank and the three islands of the Pratas group. The southern reaches extend to the Sunda Shelf, which is shallow, less than 200 metres, but the Palawan Trough at its south-eastern flank is deeper, dropping below 2000 metres. The dispute concerns the sovereignty of the islands and surrounding sea territory, involving China and five ASEAN countries: Vietnam, the Philippines; Malaysia; Brunei; and Indonesia. China and Vietnam have extensive claims over the area, which are largely undefined, while the Philippines, Malaysia, Brunei and Indonesia claim contiguous sea zones. The dispute involves complicated issues relating to UNCLOS which does not offer clear guidelines in situations where claims to sea territory, islands, and Exclusive Economic Zones (EEZs) overlap.

Factors in the dispute

Oil and gas

The competition for oil and gas became an important factor in the dispute in the 1970s. Surveys undertaken in 1969 indicated reserves of oil and gas, but the technology for off shore drilling at depths below 600 metres where the reserves were located was only developed in the late 1970s. The 1973 – 74 oil shocks were a stimulus to exploration in the area, and in March 1976 the first commercial field began operation off the Philippine island of Palawan at Reed Bank, involving a consortium of three Swedish and seven Philippine companies. Malaysia's Petronas is the major oil producer in the area, and in 2011 produced 500,000 barrels a day (bd) and 600 billion m³ of natural gas. PetroVietnam in 2011 produced 300,000 bd of oil and 100 billion m³ of natural gas. China's off shore fields are located in the Pearl River basin and it is not yet a producer in the disputed area. Because existing fields are being depleted, the demand for energy has increased and

both Petronas and PetroVietnam are obliged to tap new reserves, which could raise tensions with China. In 2011, China's oil imports accounted for about 54 per cent of its total demand and its interest in the oil and natural gas resources of the South China Sea has grown considerably. Some Chinese estimates claim that the area holds some 80 per cent of Saudi Arabia's oil reserves, although this figure is likely to be inflated. The US Energy Information Administration (EIA) says that 'there is little evidence outside of Chinese claims to support the view that the region contains substantial oil resources.' It claims that the area around the Spratly Islands has virtually no proven oil reserves, and estimates that about '60 to 70 per cent of the region's hydrocarbon resources are natural gas.'

Fish stocks

Access to fish stocks of the area is another factor in the dispute. The South China Sea is one of the world's richest fishing regions, regarded by Chinese and Vietnamese fishermen as a traditional fishing zone. The University of British Columbia's Fisheries Center estimated that catch statistics in the South China Sea have increased from 4.7 million tons in 1994 to 5.6 million tons in 2003, averaging about 5 million tons. The UN has warned that global fish stocks are in jeopardy as demand rises, which intensifies the competition to exploit the fisheries of the area. The fish stocks of the area have been overexploited and catch rates have been declining, resulting in smaller fish sizes and the gradual move from large, high-value fish to smaller, lower-value fish. Competition for access in a situation of declining fish stocks has been one reason for the recent clashes that have occurred in the area. As the livelihood of local fishermen is threatened, host countries offer support from naval or coastguard vessels, which has resulted in a number of tense incidents.

UNCLOS

The UN Convention on the Law of the Sea may contribute to a solution, but it has also contributed to the scramble for maritime territory and resources. UNCLOS allows each littoral state to claim an Exclusive Economic Zone of 320 km, or a continental shelf, and specifies that islands can

generate their own EEZs or continental shelves. However, what the claimants may be entitled to by asserting sovereignty over islands will be limited by UNCLOS, since not all features can generate EEZs or continental shelves. In Article 121 (3) UNCLOS distinguishes between islands and rocks or reefs, which cannot generate EEZs or continental shelves, but which are entitled to a 12-mile territorial sea. Islands may not be entitled to full maritime zones in certain situations where they are close to continental land masses. Coastline length may be used to determine entitlement to the maritime zones of occupied islands, in which case the Philippines and Vietnam would benefit more than China. UNCLOS does not significantly benefit China, which has sought alternative ways of validating its claim to the area.

Strategic value

The South China Sea embraces some of the world's busiest sea lanes, which link Northeast Asia to the Indian Ocean and the Middle East. It has been estimated that over half of the world's annual merchant-fleet tonnage passes through the area. Oil imported by Japan, South Korea, Taiwan and southern China is shipped through the Malacca Straits and the South China Sea, giving it a special strategic significance. As Northeast Asian trade increases, so does the importance of the area. Control of the South China Sea by a hostile power would be a major interruption to shipping and trade and would require rerouting through alternative straits further west – the Sunda Strait and Lombok – adding to shipping costs. For these reasons external powers such as the United States and Japan seek to maintain freedom of navigation through the area, which means preventing control by one power, particularly a potentially hostile one. China has been very sensitive to foreign penetration of the area that could threaten its sea lanes, and was disturbed by French activity in the area in the early 20th century. It was alarmed by Soviet movements in the South China Sea, the Soviet alliance with Vietnam in November 1978, and Soviet use of Cam Ranh Bay beginning in March 1979. The Chinese economy has become vulnerable to external disruption of oil and energy supplies, obliging its leaders to protect its extended trade routes and energy access, as 54 per cent of its crude oil is imported from countries

in the Middle East. China's trade routes run through the Indian Ocean and the Malacca Straits, through which an estimated 80 per cent of its oil imports are shipped. These routes are vulnerable to interdiction by India and the United States in time of conflict, and both may hold China to ransom by blocking China's oil supplies. To protect its sea lanes and access to imported fuel, China is obliged to develop a naval capability, including aircraft carriers and accompanying escorts capable of reaching as far as the Indian Ocean. This naval capability would best be deployed in a way that would allow it access to the southwest, making the Hainan area and the South China Sea most suitable. Moreover, the South China Sea will become a base for China's second-strike submarine-adapted nuclear capability intended to deter the United States from risking conventional conflict with China over Taiwan or any other issue. For strategic reasons, the Chinese navy seeks control over the area and acts to prevent the United States from establishing a presence there that could threaten it.

The development of the dispute

The South China Sea dispute has developed in an action–reaction sequence as moves by one country in the area have stimulated countermoves by others intent on securing a position there. Qing dynasty China protested France's intrusion into the area over 1884–5, but China's concern then was the Paracels and not the Spratlys. There is evidence that China's southern border was then regarded as the Paracels, and its interest in the Spratlys was in response to French intrusion in the 1930s. France intended to mine the guano deposits of the islands and was motivated to exclude the Japanese. On 23 April 1930 France announced the annexation of the Spratlys and hoisted the tricolour over the islands between 7 and 12 April 1933. China protested the French move into the Spratlys, and in April 1935, China's Land and Water Maps inspection committee drafted a map of the South China Sea which included a U-shaped line with eleven dashes. Who authorised the map and why it took this shape is still not understood. It was published by the KMT

government in February 1948 and was inherited by the PRC, becoming the basis of China's claim today; two dashes were removed in 1953 as a concession to Vietnam. In December 1939 Japan moved into the area and declared the occupation of the Pratas islands, Paracels and Spratlys. The Japanese landed troops on Itu Aba island, which they used as a submarine base to attack allied shipping and to support operations in the Philippines and Indochina.

The San Francisco Conference was convened in September 1951 to decide the disposition of territories conquered by Japan. According to Article 2(f), 'Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.' Chinese Foreign Minister Zhou Enlai, who was excluded from the conference, declared Chinese sovereignty over the South China Sea on 15 August 1951, including the Spratlys, the Paracels, the Pratas islands and the Macclesfield bank. On 7 September the Vietnamese delegate to the conference, Tran Van Huu, asserted Vietnam's claim to the same islands. The conference stripped Japan of possession and in view of the competing claims did not designate a successor. The inability of the conference to identify where sovereignty lay opened the door to competing claims that today remain unresolved. Vietnam insisted on its rights as a 'colonial successor state,' claiming that it inherited sovereignty from France. France protested the Vietnamese claim, insisting that only the Paracels were ceded to Vietnam as a result of decolonisation enforced by the Geneva Conference of 1954. The Philippines argued that it was the successor state to Japan and that the San Francisco Conference had left the area as *res nullius*, and open to whoever was first on the scene. The first Philippine claimant was the adventurer Tomas Cloma in 1956, who called the area *Kalayaan* or 'freedom land.' The Philippine Foreign Ministry argued that its claim was limited to an area staked out by Tomas Cloma, which was separate from the Spratlys in any case. This claim was declared on 10 July 1971 and was reiterated in the Marcos presidential decree of 11 June 1978, which named it the 'Kalayaan Island Group.' The Malaysian claim was stimulated by the Marcos declaration and the Philippine occupation of eight islands in its claim zone. It was proclaimed in a map published in 1979; it was based on the continental shelf and overlaps with the Philippine claim. The problem is that the continental shelf is a

claim for resources, and not for islands, prompting Malaysia to occupy three islands in its claim zone in 1983 and another two subsequently. Brunei's claim to an EEZ overlaps with Malaysia's and was the case of several later disputes over the allocation of oil exploration rights.

China's moves

China had claimed the South China Sea but could not gain access to it. Excluded by the claims of neighbouring states and the US naval presence in the region during the Cold War years, China required a physical presence there as a public demonstration of its claim. China had occupied the eastern Paracels (the Amphitrite Group) since 1956 and ejected South Vietnam from the western Paracels (the Crescent Group) in a naval clash over 19–20 January 1974. Reunification in 1975 freed Vietnam from Chinese constraints and it began to press its claim to the South China Sea. Before Saigon fell, North Vietnam began to occupy islands over 11–22 April to pre-empt China. The Chinese were angered by what they considered to be Vietnamese perfidy and pointed to Pham Van Dong's statement of 14 September 1958, which indicated Vietnam's acceptance of 'Chinese ownership of the archipelagos in the Eastern Sea [South China Sea].' The Vietnamese, however, insist that the statement relates to Zhou Enlai's declaration of 4 September regarding a 12-mile territorial limit, and was not an endorsement of China's claim. The Chinese began to move into the Spratlys, and over 1979–1982 numerous small clashes were reported between China and Vietnam.

China's thrust into the South China Sea was triggered by rivalry with Vietnam. Whether it was orchestrated by the People's Liberation Army–Navy (PLA–N) according to a grand plan to seize the islands, or whether it was the result of a series of opportunistic steps is a matter for debate. China strengthened its South Sea fleet by moving five destroyers from the North fleet. Air patrols were initiated over the Spratlys and in 1983 a naval force was sent there to survey the area; the first comprehensive Chinese survey was completed in 1984. Over May–June 1987 China launched the first large-scale naval patrol of the area. Observation towers were constructed on Fiery Cross Reef, Subi Reef, Johnston Reef, Cuarteron Reef, Gaven Reef, and

Dongment Jiao. The naval clash with Vietnam on 14 March 1988 – in which three Vietnamese vessels were sunk and 73 sailors lost – was a result of this Chinese move to occupy islands. China eventually occupied nine features in the Spratlys. In March 1995 the Philippines discovered that in late 1994 China had occupied Mischief Reef in the Philippine claim zone and had built raised octagonal structures on it, with a small pier and radar antennae. Some Chinese sources suggest that it was a local initiative by Hainanese authorities to build shelters for fishermen, but subsequent extensions on this and other reefs indicated central direction and protection. This action triggered public uproar within the Philippines and reassessment by the United States, resulting in a Visiting Forces Agreement (VFA) in 1998. It was a controversial effort to engage the United States in the enforcement of the Philippine claim against China – a conflict that the Chinese had attempted to avoid.

China's historical rights

China, nonetheless, has continued to assert its historical rights over the South China Sea. The Chinese often declare that their historical notions of sovereignty predate Western international law and should be recognised as valid *ab initio*. Chinese commentaries argue that UNCLOS cannot be applied to the South China Sea since China had 'indisputable sovereignty' over the area to begin with. China ratified UNCLOS on 7 June 1996 and took advantage of Article 310, which allows states to make declarations relating to their application, providing they do not 'exclude or modify' the legal effect of those claims. China's exception was Article 2 of the Law on the Territorial Sea and the Contiguous Zone, which was announced on 25 February 1992. It listed the Paracels and Spratly islands as 'territorial sea', which conflicted with UNCLOS. While China may have the right to make declarations relating to the application of UNCLOS, it cannot go against its legal principles by attempting to uphold historical rights in this way; China's attempt to cite ancient records as a basis for sovereignty conflicts with international law. Justice Max Huber's tests in the Island of Palmas case (1928) noted that any rights obtained from history may be lost 'if not maintained in accordance with the changes brought about by the development of modern international law.'

The difficulty with the Chinese historical claim is that although Chinese records mention the Paracels, there are no ancient records for the Spratlys. China had little contact with the area, as Chinese trade routes in the South China Sea were circum-oceanic, not trans-oceanic: vessels would follow the Indo-China coast from port to port. There was the galleon trade with Spain, which went from Acapulco in Mexico to Manila and then to Guangdong, but that also avoided the Spratlys. Nonetheless, the Chinese authorities insist on a claim for which there is little historical support and are manufacturing the public conviction that the South China Sea has always been Chinese. Starting from April 2012, the U-shaped or nine-dash line appeared on new Chinese passports as part of a map of China to buttress this conviction among Chinese citizens. In January 2013, the Chinese media published a map of China which depicted a ten-dash line that embraced the South China Sea and incorporated Taiwan with the mainland, making them indistinguishable to the Chinese public.

Conclusion

Without conclusive legal support for its claim, China has been relying upon assertion and harassment tactics to intimidate the ASEAN claimants into accepting its position in the South China Sea. Prolonged Chinese harassment is intended to unnerve the ASEAN claimants and to induce them to settle bilaterally with China. The best interpretation of China's actions is that it seeks to hustle the ASEAN claimants into recognising China's historical claim to the area. However, China's actions have the potential to draw in external powers that are disturbed by what they understand to be China's threat to the strategic sea lanes of the area. The United States has reaffirmed its alliance ties with the Philippines and has sought a security relationship with Vietnam. India and Japan have also expressed their concerns. At the prospect of the involvement of external powers, China may draw back, as it has in the past, but a more confident and nationalistic China may continue to press its claim over the South China Sea, deciding that these external powers would avoid confrontation with it. This would be a reckless step that could result in unintended clashes and destabilising escalation.