

The Politics of the South China Sea: Territoriality and International Law

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THE SEMI-ENCLOSED SOUTH CHINA SEA (SCS) occupies a 648,000-square-mile portion of the Pacific Ocean stretching roughly from the Strait of Malacca in the southwest to the Strait of Taiwan in the northeast. It is thus bordered by China and Taiwan to the north, Vietnam to the west, Malaysia, Brunei, Indonesia, and Singapore to the south and southwest, and the Philippines to the east. The region encompasses hundreds of small islands and reefs, the majority located in the Paracel and Spratly island groups. The actual number of islands, like the question of rights associated with those islands, is contested. Historically, these uninhabited islands have for the most part constituted only hazards for the region's sea traffic, but they are also often claimed to have considerable strategic and economic value.

The SCS continues to possess rich fishery resources, and it is widely said to hold enormous potential as a source of oil and natural gas. Most importantly, however, it is a vital sea-lane, by far the shortest route from the North Pacific Ocean to the Indian Ocean. It is the world's second busiest international sea-lane, and well over half of the world's petroleum-bearing traffic passes through its waters. Over half of the tonnage shipped through the sea is crude oil from the Gulf, destined for East Asia.

Ten states border the sea (including the Gulf of Thailand): Brunei, Cambodia, China, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, Thailand, and Vietnam. Though vastly different from one another, many of these share the situation of being rapidly industrializing countries. Despite some economic recession during the past decade, the coastal regions of these countries continue to develop through processes of urbanization and population growth. The region's energy needs have thus increased significantly, putting pressure on imports and encouraging petroleum exploration. Over the next 20 years, oil consumption is expected to rise by 3.9% annually on average, with nearly half of that increase coming from China. Exploding energy needs have marked recent political and strategic priorities (World Bank, 1998).

Accompanying this unprecedented economic growth, much political attention has been focused on the potential for exploitation of oil and gas

resources beneath the sea. Oil and gas deposits have long been exploited in the southern areas of the SCS north of Brunei and Malaysia. Oil and gas have also been produced off China, Vietnam, and the Philippines, though not in unusually large amounts. At the same time, the region's geology and climate combine to create a unique ecosystem upon which the traditional economic activities in the area depend – from traditional fisheries to the modern coastal cultivation of oysters and shrimp.

Territorial rights to more or less all of the SCS are contested. Six countries are involved in a complex set of territorial claims and contestations. China claims all of the Spratly and Paracel islands and most of the SCS. The grounds for claiming sovereignty to islands are historical and archaeological, referring to naval expeditions by the Han Dynasty in AD 110 and by the Ming Dynasty in the 15th century. China has also claimed the sea as such on historical grounds. In 1947, it released a now famous map featuring nine undefined dotted lines and claimed sovereignty over all territory within those lines. In 1992, China passed a law reasserting its rights. Since then, however, China has increasingly sought to ground its maritime-zone claims in international law. In order to enforce its claims, China is currently occupying eight of the Paracel islands and several reefs in the Spratly islands. Taiwan's claim is essentially identical to China's and is based on the same historical legitimization. It occupies the largest island in the Spratlys group. Vietnam claims all of the Spratly islands. It also claims the Paracel islands and extensive portions of the SCS. The Vietnamese also present historical and archaeological arguments to bolster their claims, and Vietnam occupies more of the Spratly islands than any other state in order to enforce its claims in the region. The Philippines both occupy and lay claim to many Spratly islands on the basis of a quasi-judicial notion of 'proximity' and through reference to the alleged discovery of the islands by a Philippine explorer in 1956. Malaysia claims the same islands in the southern Spratlys and also grounds its claims on its occupations. Brunei, which occupies none of the islands, claims a huge maritime zone running through the Spratly area. Indonesia claims none of the contested islands, but has an overlapping maritime-zone claim with Vietnam and China.

It is essential to distinguish between claims to islands and claims to maritime zones. The latter concern rights of access to underwater fishing resources and oil and gas drilling rights. Major Malaysian, Vietnamese, and Philippine natural gas fields lie within areas included in China's national waters claim. And by late 2002, China and Vietnam had not yet reached a final agreement over fisheries in the Gulf of Tonkin.

In 1982, a long-awaited convention on the Law of the Sea (LOS) was adopted at a United Nations conference. This sets down rules for measuring maritime zones and contains guidelines for mediation and settlement of disputes. In brief, the LOS Convention established parameters for defining a

territorial sea, a contiguous zone, an Exclusive Economic Zone (EEZ), and a continental shelf, and it specified terms for deciding what is and what is not an island, as well as the criteria to be met in order for an island to generate a maritime zone beyond a 12-nautical-mile territorial sea. Four areas covered by the convention are relevant for the SCS context. Article 3 asserts that 'every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles'. Articles 55–75 define the concept of an EEZ, an area up to 200 nautical miles beyond and adjacent to the territorial sea. Within its EEZ, a nation possesses sovereign rights 'for the purpose of exploring and exploiting, conserving and managing the natural resources' of the area. Articles 76–77 define the notion of a continental shelf and accord nations that have a continental shelf 'sovereign rights for the purpose of exploring it and exploiting its natural resources'. Article 121 specifies that 'rocks that cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf'.

Despite the major innovation in regulation of international norms afforded by the LOS Convention, it may very well have contributed to exacerbating problems of delimitation. Most acutely, the formulations with regard to EEZs increase the possibility for overlapping territorial claims in enclosed seas like the SCS. In the SCS area, the real effect of this has been that nations that border the sea have hurried to establish settlements – in most cases military outposts – on the small islands of the region in order to establish unique territorial claims to both an EEZ and a continental shelf. Territorial margins overlap, and various conflicts of sovereignty are the result. Of the six countries staking claims to the contested Spratly islands, all but Brunei have established some kind of military presence on at least one of the islands. All of the countries allege that their territorial claims are fully supported by international law in general and by the 1982 LOS Convention, which entered into force in 1994, in particular.

Yet, even before the enactment of the LOS Convention, a number of 20th-century military skirmishes marked the SCS, all revolving around territorial disputes. The most serious was China's invasion and capture of the western Paracels from Vietnam in 1974. In 1988, Chinese and Vietnamese naval forces clashed in the Spratly islands. Three Vietnamese vessels were sunk, and 72 Vietnamese sailors killed. In 1992, Vietnam accused China of drilling for oil in Vietnamese waters in the Gulf of Tonkin and of landing troops on a reef. China seized almost 20 Vietnamese cargo ships transporting goods from Hong Kong between June and September that year. In 1995, soon after the enactment of the LOS Convention, China occupied Mischief Reef, not far from the Philippine island of Palawan. In the same year, Taiwanese artillery opened fire on a Vietnamese supply ship. In January 1996, three alleged Chinese vessels engaged in a 90-minute gun battle with a Philippine navy gunboat. In 1998, Vietnamese soldiers opened fire on a Philippine fishing boat.

In the 1990s, Indonesia played a central role in hosting informal talks with the aim of conflict prevention, management, and resolution. ASEAN (the Association of Southeast Asian Nations) has played a natural and central role in following up these talks. In 1999, ASEAN ministers agreed in principle to develop a common 'code of conduct' with China with the aim of preventing conflict and stopping further occupations. After three years of negotiations, a Declaration on the Conduct of Parties in the South China Sea was finally signed at the ASEAN summit in Phnom Penh on 4 November 2002. The declaration was signed by China and the ten members of ASEAN, though Taiwan was not included. The effect of the declaration, which is not legally binding, remains to be seen. This declaration and the constellation of geopolitical concerns surrounding Sino-ASEAN relations is the backdrop against which we present the following contributions to the theme 'The Politics of the South China Sea'.

REFERENCE

World Bank, 1998. *World Development Indicators*. Washington, DC: World Bank.