China and The Territorial Claims in The South China Sea

Su Hsing
Preface

The unresolved maritime border disputes between China and some of its neighbouring countries is one of the hardest issues to resolve in current global affairs. This is not just an issue about the natural resources that these areas might have, nor solely about their strategic importance, but touches on deep emotions of national identity, and competing sovereignties in the region. The issue of the ownership of the Sankaku/Diaoyu islands, which has been particularly contentious in 2012, distils all of these thorny problems. These islands are in a region with strong geopolitical importance, because it involves the interface between the second and third largest economies not just in the region, but in the world. In addition, China and Japan's increasingly intense behaviour over the status of these islands has pulled in highly emotive issues from the joint histories between the two countries, and its impact has been seen in the steeply falling trade and investment figures between both as the problem has intensified.

Understanding the maritime border issues involves getting to grips with complex competing historical claims, some of them dating back many centuries, involving issues of predecessor states and the commitments they signed, and highly technical matters from international law, much of which is still evolving. Add to this the volatile political relations between some of the states involved, their competing senses of economic and strategic interests, and the very different ways in which they express their national identity and link it with strands of nationalism in their polities, and you have potentially a highly volatile situation.

Loh Su Hsing is well placed to help outsiders navigate this complex terrain. She is a government official, with rich experience in Singapore, one of the key observers of this issue. She is fluent in Mandarin and English, and can deal with source materials in both languages. And she has completed a Ph D in international relations in Fudan University. This gives her a hard won neutrality over the issue, supplemented by a keen eye for details. Her paper, part of the University of Sydney China Studies Centre new Policy Papers series is a timely and highly topical addition to a debate that is all too often riddled with confusing claims and baffling technicalities. For those who want to really get to grips with the reason why China’s maritime border issues are so contentious and possibly dangerous, then reading this paper would be a good start.

Professor Kerry Brown

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The territorial disputes in the South China Sea (SCS) revolve around a group of more than 200 rocks, islets and reefs in the Pacific Ocean that stretch from the Strait of Malacca to the Strait of Taiwan. Approximately three quarters of the SCS falls within the “nine-dash line” (九虚线 see map below) which demarcates the extent of China’s claims. Over recent months, the rise in confrontational rhetoric has led to fears of military conflict over the disputed territory.

Source: BBC (based on data from CIA and UNCLOS)

<table>
<thead>
<tr>
<th>Islands</th>
<th>Claimants</th>
</tr>
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<tbody>
<tr>
<td>Paracel Islands</td>
<td>China, Taiwan, Vietnam</td>
</tr>
<tr>
<td>(named Xisha Islands by China)</td>
<td></td>
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<tr>
<td>Spratly Islands</td>
<td>China, Taiwan, Philippines, Brunei, Malaysia, Vietnam</td>
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<tr>
<td>(Nansha Islands)</td>
<td></td>
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<tr>
<td>Pratas Islands</td>
<td>China, Taiwan</td>
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<tr>
<td>(Dongsha Islands)</td>
<td></td>
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<tr>
<td>Scarborough Shoal</td>
<td>China, Taiwan, Philippines</td>
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<tr>
<td>(Huangyan Island)</td>
<td></td>
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<tr>
<td>Macclesfield Bank</td>
<td>China, Taiwan, Philippines, Vietnam</td>
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<tr>
<td>(Zhongsha Island)</td>
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</tbody>
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**China’s Agenda**

The value of the SCS to China lies primarily in its strategic geographical location and its vast and relatively untapped resources. China’s naval strategy for offshore defence which dates back to the 1980s includes establishing control over the waters surrounding the first island chain, which stretches from Okinawa, Taiwan to the Philippines, and the second island chain that extends from the Ogasawara island chain and Guam to Indonesia (see map below) in order to check the US influence in the Indian and Pacific Oceans. Dominance of the SCS is thus a priority so that China’s strategic maritime frontier can be pushed toward the second island chain.

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Often referred to as the “second Persian Gulf”, the SCS is believed to hold as much as 23 to 30 billion tonnes of oil and 16 trillion cubic metres of natural gas, which accounts for one-third of China’s total oil and gas resources. In addition, the SCS is the main transport route for oil from the Middle East to Asia and is a vital route for the natural gas trade and military transportation. The SCS also holds as much as 5 million tonnes of fish according to Chinese estimates. Other than the economic and geo-strategic value of the SCS, the SCS dispute is of great social and political importance to China domestically because territorial claims remain a sensitive issue in China that can easily incite strong nationalistic sentiments, which the government can steer to its advantage but also needs to manage carefully, out of fear that it might spiral out of control.

**Instruments for Negotiation and Resolution**

Other than Taiwan, all the claimants of the islands are parties to the 1982 United Nations Convention of the Law of the Sea (UNCLOS) which came into force on 16 November 1994. UNCLOS defines the rights of States to claim maritime zones from their sovereign territory and establishes guidelines for businesses, the environment, and the management of marine resources in the oceans. Parties are obliged to define the limits of their maritime zones (territorial seas, exclusive economic zones and continental shelves). In 2009, as part of their obligation under UNCLOS, Vietnam and Malaysia made a joint submission regarding the outer limits of continental shelves in connection with the two countries to the Commission on the Limits of the Continental Shelf (CLCS). In response, China filed a formal objection with

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the United Nations, officially using the nine-dashed line map to demarcate its claim and stating that “The continental shelf beyond 200 nautical miles as contained in the Joint Submission by Malaysia and the Socialist Republic of Vietnam has seriously infringed China’s sovereignty, sovereign rights and jurisdiction in the South China Sea.”

There have been several attempts to reach agreement to ensure that the territorial disputes within the SCS will be resolved by diplomatic rather than military means. In 1992, the Association of Southeast Asian Nations (ASEAN) issued a “Declaration on the South China Sea” in which member states pledged “to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force”. In 2002, China signed the Declaration on the Conduct of Parties in the South China Sea with ASEAN in an attempt to minimise the risk of conflict. This declaration affirms the “commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations” and states that signatories will “exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner”. But the declaration has failed to lead to a formal and binding code.

On 20 July 2011, Chinese and ASEAN officials agreed to an eight-point understanding which identified steps to move from the Declaration of Conduct to a binding Code of Conduct, but this has failed to alleviate the sustained tensions between claimant states. A year later, ASEAN reached an internal consensus on its Six-Point Principles on the South China Sea, which is intended to be another step toward establishing a binding Code of Conduct with China.

China’s Foreign Minister, Yang Jiechi, stated on his recent visit to Jakarta in August 2012 that China was willing to work with ASEAN to implement the Declaration on the Conduct of Parties in the South China Sea, “on the basis of consensus” towards “the eventual adoption of the Code of Conduct”. Vice Foreign Minister Fu Ying said in July 2012 that China would start talks on a legally binding code of conduct in the South China Sea “when conditions are ripe” though no details were provided on what these conditions might be. There is
significant disagreement between ASEAN member states on the way forward. While the Philippines think the Code of Conduct should be discussed within ASEAN before deliberation with China, other member states such as Indonesia are in favour of including China in the whole process, in order to reach a meaningful agreement.

There are additional complications in the negotiating process. First, Taiwan is not a party to UNCLOS and the Declarations and the sovereignty of Taiwan in relation to China continues to be a point of contention. Second, China prefers to resolve the issues on a bilateral basis, while several ASEAN members are inclined to negotiate as a region with China based on the logic that there is strength in numbers, and that as there are multiple claimants for the disputed islands bilateral agreements are unlikely to make a significant difference.

**Joint Development**

During his engagement with China’s South-East Asian neighbours in the 1970s and 80s, Deng Xiaoping advanced the concept of "setting aside dispute and pursuing joint development". This has led to several joint exploration attempts for oil and gas resources and remains the most pragmatic and feasible middle ground. In 2004, China National Offshore Oil Corp. and Philippine National Oil Company signed the Agreement for Joint Marine Seismic Undertaking on Certain Areas in the South China Sea and in 2005, Vietnam and oil companies from the three countries also became signatories. In July 2012, China stated that “Pending the settlement of the disputes, the parties concerned may put aside their differences and engage in joint development” and that “China will always be a good neighbour, good friend and good partner for other Asia-Pacific countries”. However, the Philippines and Vietnam have rejected the use of China’s map of the SCS as the basis of joint development.

**Intervention of the US and China-US Rivalry**

South-East Asia has traditionally held strategic importance for the US as the region has some of the most important waterways of the world, a sizeable Muslim population and because ASEAN member states, such as the Philippines and Thailand, are military allies of the US. In addition, over the past decades, ASEAN has emerged as an influential platform and agenda-setter for economic and security cooperation in the region. Thus, the successful engagement of South-East Asia has strong bearing on the continuity of the US as an Asia-Pacific power. In recent years, ASEAN has been encouraging the presence of the US in South-East Asia to check the perceived growing influence of China. Influential Singaporean statesman Lee Kuan Yew has stated explicitly that ASEAN views the US as the counter-

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10 The concept of "setting aside dispute and pursuing joint development" has the following four elements: 1. The sovereignty of the territories concerned belongs to China. 2. When conditions are not ripe to bring about a thorough solution to territorial dispute, discussion on the issue of sovereignty may be postponed so that the dispute is set aside. To set aside dispute does not mean giving up sovereignty. It is just to leave the dispute aside for the time being. 3. The territories under dispute may be developed in a joint way. 4. The purpose of joint development is to enhance mutual understanding through cooperation and create conditions for the eventual resolution of territorial ownership. "Set Aside Dispute and Pursue Joint Development" Ministry of Foreign Affairs of the People’s Republic of China. 17 November 2000. http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm

weight to the rise of China. Other Asian military allies of the US, such as Japan and South Korea, also see the sustained presence of the US as an indication of their commitment to their alliances in the region. Thus, any sign of weakness by the US in the context of an increasingly assertive China would undermine the credibility of this security guarantee.

This has led to the SCS becoming a prominent stage that showcases the jostling for influence between China and the US. From China’s perspective, US military intelligence and surveillance activities close to its maritime territories, its strong military ties to China’s immediate neighbours, and the intervention in regional issues by the US make for an unsettling situation. In March 2009, there was a clash between the US and China in the SCS, in which Chinese vessels issued warnings to an American surveillance ship, the USNS Impeccable, when it sailed close to the island-province of Hainan. The Chinese stated that the latter’s operations were illegal and that it had to leave or “suffer the consequences”. The US and China both stood their ground based on competing interpretations of the UNCLOS. This incident served as a high-profile reminder of the geo-strategic importance of the SCS to the two powers.

The disputes in the SCS is exacerbated by the historical sensitivities between China and its South-East Asian neighbours, including the former tributary system, Chinese occupation and tensions stemming from Communism. Notably, China and Vietnam have had two military clashes in the SCS: in 1974, China evicted South Vietnamese troops from the Paracel Islands at the end of the Vietnam war; and in 1988 the Chinese and Vietnamese navy clashed over the Spratly Islands. China’s threats of economic sanctions and military overtures to Japan over the contested islands in the East China Sea, and its rising expenditure on military modernization, have left its ASEAN neighbours unsettled and wary that military means might be employed to resolve the disputes in SCS.

As a result of the vested interests of ASEAN member states, China and the US, the disputed territory in the SCS has become a major focus at recent ASEAN meetings, much to the disapproval of China which thinks that the US should not be involved as it is neither a claimant in the territorial disputes nor a signatory of UNCLOS. At the 2010 ASEAN Regional Forum in Hanoi, US Secretary of State Hillary Clinton ruffled Chinese feathers by declaring that “The United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea” and Foreign Minister Yang Jiechi reportedly reacted angrily to the perceived encirclement by ASEAN and the US on the discussion on the SCS (which was not listed on the agenda) before leaving the room. At the 2011 East Asia Summit in Bali, Premier Wen Jiabao stated pointedly that “outside forces should not, under any pretext” interfere in a regional dispute over the control of the South China Sea. The 45th ASEAN Foreign Ministers Meeting held in Phnom Penh this year failed to issue a joint communiqué (for the first time in 45 years) due to disagreements on how to resolve the SCS disputes, and in August 2012 the US Department of State reiterated that “as a Pacific nation and resident power, the United States has a national interest [emphasis added] in the maintenance of peace and stability,

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respect for international law, freedom of navigation, and unimpeded lawful commerce in the South China Sea.\textsuperscript{13}

This statement brought China’s opposition to US intervention to a boil and the Chinese government released a strong response, stating that the US statement “showed total disregard of facts, confounded right and wrong, and sent a seriously wrong message”, that the Chinese government “expresses strong dissatisfactory of and firm opposition to it” and asking “why has the United States chosen to speak out all of a sudden to stir up trouble at a time when countries concerned in the region are stepping up dialogue and communication in an effort to resolve disputes and calm the situation?”\textsuperscript{14}

**Recent Escalation of Conflict**

There has been a significant escalation in conflict between China, the Philippines and Vietnam over the SCS in the past two years, leading to a greater sense of urgency among ASEAN member states to reach a binding agreement on peaceful resolution of the disputes. Some of the key conflicts in 2012 include:

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<th>Month</th>
<th>Event Description</th>
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| May     | A month-long standoff between the Chinese and Philippine Navy at the Shoal in May as a result of the escalation of an incident where the Philippine Navy confronted a fleet of Chinese fishing vessels.  

June | China announced that it has set up a prefectural-level city, Sansha, to administer the islets, sandbanks and reefs in Xisha, Zhongsha and Nansha islands.  

| Vietnam passed a maritime law which declared sovereignty and jurisdiction over the Paracel and Spratly Islands.  

July | The Philippine government announced that it is set to auction off three areas in the SCS for oil and gas exploration.  

| Philippines and Vietnam expressed strong protests against China’s moves to establish a military garrison in the SCS.  

August | State-owned China National Offshore Oil Corporation (CNOOC) invited exploration bids for nine offshore blocks in SCS.  

| PetroVietnam called for the CNOOC to cancel the invitation for foreign companies to explore the nine blocks that overlap with areas awarded to Exxon Mobil Corp., OAO Gazprom and India’s Oil & Natural Gas Co.  

September | China expressed strong protests when the Philippines renamed the waters off its coast the West Philippine Sea.  

| China announced an increase in the number of UAVs monitoring the disputed waters, which followed a national marine zoning program approved by the State Council as a part of the 12th five-year plan.  

November | Announcement by Hainan province (rule passed by the provincial legislature) that Chinese vessels would board and search ships in contested waters starting from 1 January 2013.  

| China’s new passports are imprinted with maps claiming sovereignty over the disputed territory, eliciting strong protests from Philippines and Vietnam.  


Vietnam accused a Chinese fishing boat of cutting a seismic cable attached to one of its PetroVietnam vessels exploring for oil and gas near the Gulf of Tonkin, and announced that it will increase its number of patrols (including marine police) in the SCS.

**Likely Future Scenario**

The disputes in the SCS and East China Sea are closely watched as each has become perceived as an indicator of how China might act in the other, and as generally revealing of the posturing of China as it rises in the region and the direction of its relationship with the US. Despite the heated diplomatic exchanges and escalation of conflict, a military clash in the SCS remains unlikely for now as China is under international pressure to present itself as a responsible regional and global power. China also has the additional concern of building goodwill with its neighbours as a bulwark against containment, and the possible intervention by the US in the event of a military conflict adds another layer of deterrence. Stability in the region is valued by both China and its South-East Asian neighbours, none of which are keen to be the first to make a military move.

However, confidence-building measures that will eventually lead to the establishment of a binding code of conduct are necessary at this critical juncture. There have been several military overtures over the disputes and with the naval enforcement units of the dispute parties in close proximity, there is a higher probability of incidents which could lead to further escalation. With the rising nationalism and impending leadership transitions in some of the claimant states, there might be little room for compromise.

The SCS disputes are likely to remain a long-term source of conflict with no easy resolution in sight. There appears to be general agreement between China and the South-East Asian claimants that a collaborative approach is the preferred way forward, though the exact form this might take remains a point of contention, even within ASEAN. In the short term, ASEAN will take the lead toward confidence-building measures in an attempt to de-escalate the conflict. Territorial integrity and nationalist sentiments aside, the rich resources and geo-strategic importance of the SCS means that none of the claimants will back down on their claims. The longer-term solution would need to focus on finding a pragmatic way to ensure access to resources and economic benefits for all claimants as well as assurances on freedom of passage and other rights.