

Territorial Issues and Conflict Potential in the South China Sea¹

by
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INTRODUCTION

For most of Southeast Asia the Cold War was over by 1980. Communism was a failed system and, with the exception of the Indochinese countries, governments of Southeast Asia were satisfied with the Western model of development. One could say that the last vestiges of the Cold War eased out of Southeast Asia when Vietnamese troops left Cambodia. Given the relative success of the Southeast Asian economies, one might think that peace and progress had come easily to Southeast Asia. But these are still fragile commodities. As major issues are resolved, residuals remain.

The purpose of this study is to establish the principal areas that remain under contention in the South China Sea, and to examine the alternative approaches to resolution. The scope of this study will be limited to those unresolved territorial claims on the islands in the South China Sea that still hold the potential for major conflict. More specifically, the intention is to examine the issues surrounding the Paracel and Spratly island groups.

Of course, the Paracel and Spratly island groups are not the only areas under dispute on the South China Sea. However, while intramural ASEAN (Association of Southeast Asian Nations) disputes hold little or no potential for substantial conflict, the Paracel and Spratly island groups pose major risks. The contending Southeast Asian countries do not have the ability, nor do they wish to divert their economies, to obtain sufficient military resources to allow such adventures as territorial conquest. This study will not address border disputes that could involve ground troops. For example, issues which may call for the redrawing of the land borders of Indochina will not apply here. Nor will the dispute between the Philippines and Malaysia over Sabah be addressed. As important as these other issues are, they are independent of the matter at hand. To expand the scope of this study beyond the Paracel and Spratly Islands would be an injustice to the complexity of the problem.

There certainly is a concern in Asia with the possibility of armed conflict over the Spratly Islands. A July 1990 editorial in *Asiaweek*² proposed a "1993" situation plan wherein China deployed a naval force in an attempt to take over the islands. Japan, which considers the free navigation of the sea lanes as vital to its economic interests, would then be forced to expand its military mission by proposing to convoy South China Sea shipping traffic with its own navy. Any throwback to the military expedient could seriously set back the emergence of the new economic order. Southeast Asia is the most promising developing area in the world. A conflict

involving any of the six ASEAN³ nations would certainly reduce regional confidence, affect foreign investments and promote capital flight.

It is more than metaphor to suggest that these disputes in the South China Sea are playing out the evolution in world order. Indeed, this issue encompasses factors involving all three of the major world order models that have affected Asia. Simply put, these models are the ancient Chinese World Order, the Modern European or Westphalian system, and the emerging “New” World Order.

There are remnants of the Sino-centric World Order model with claims and conflicts going back to the Yuan dynasty.⁴ That is, as with Rome, all roads led to the Middle Kingdom. China was the center of, and sovereign over, the known “civilized” world. Were the traditional Chinese order in effect, the islands would not be at issue. China would be able to secure the islands by force of arms alone. Nonetheless, some of the vestiges of the old order remain.

It is not meant to be argued here that the Chinese⁵ government still expects tribute from the world community. Reality and the nationalist movements which began at the turn of the century have brought China into the Modern European or Westphalian system.⁶ Simply defined as a “...decentralized system of sovereign and equal nation-states”,⁷ the Westphalian system was propelled by nations working in their own national interests and the legitimate use of force to obtain that end.

Now we are on the brink of a new world order. I do not refer to “the Cold-War-is-over-and-we’re-number-one” new world order. Rather, I refer to “the world-is-going-to-hell-in-a-hand-basket-if-we-don’t-work-together” new world order. The end of the Cold War is but one, albeit necessary, factor in this evolution. However, it is submitted here that the end of the Cold War was also inevitable: the communist system could not sustain itself, nor could the pre-Cold War Eurocentric system, which depended on a now defunct colonial structure. The emerging new world order is being defined by other unavoidable forces such as the environment, population growth, and the futility of the force of arms. The limits of nature, international organizations and economic factors will assume a larger role than single nations and military forces. The dynamics of the new world order are most evident in the changes to the law of the sea convention and the increasing importance of regional organizations.

The end of the Cold War certainly did not trivialize the superpower role of the United States. Quite the contrary, the military potential of the United States has been and remains the central stabilizing factor in the region. However, as we have learned so painfully in the past, the United States is not capable of imposing a resolution on Asia. Although this issue may continue for some time, there is too much tension in the system for the *status quo* to continue *ad infinitum*. *Pax Americana* will not outlast the islands.

THE ISLANDS

To the sailor, the islands in the South China Sea are little more than a hazard to navigation. A collection of over a hundred islets, shoals, coral reefs, banks, sands,

cays and rocks that emerge from the deep waters of the South China Sea, they had been recognized more as points to be avoided. Indeed, many nautical charts have labeled the area “dangerous ground.”

The South China Sea has little continental shelf. The surrounding land masses have a rather steep drop-off into the depths with islands emerging from waters over 1000 meters deep. The islands in question fall into two major groups; the Paracels, a group approximately 150 miles in diameter, which lie about 200 miles east of Vietnam and 150 miles south of the Chinese island of Hainan; and the Spratlys, a group measuring approximately 200 by 500 miles which lie between 100 and 300 miles off the Malay Archipelago, running from the waters northwest of the Malaysian territories and Brunei on Borneo to those west of the Philippine island of Palawan.

Under the ancient Chinese world order those lands that were occupied and not directly administered by China were expected to pay tribute to China. Those areas that were not occupied were assumed to be claimed by China. There is a long history of Chinese expeditions throughout Asia. One such expedition sent to Java in 1292 mentions the existence of what are now called the Paracel and Spratly Islands.⁸ As long as the Middle Kingdom remained the Asian “superpower,” the Chinese claims were not contested. By the mid-nineteenth century China had to adjust to a new multi-state world order. But no great contest over the islands arose. The Chinese were, and apparently remain, quite comfortable in their belief that the islands, as the rest of the South China Sea, were a part of China.⁹

Neither the traditional principles of territorial acquisition, nor the rules of the 1982 UN Law of the Sea Convention (UNCLOS III) support the Chinese claim to the South China Sea. This claim goes well beyond the generally accepted claim to coastal islands and their adjacent waters. There is only one concept in international law that can justify the Chinese claim to the entire South China Sea: *mare clausum* (closed seas). This principle was submitted in response to Hugo Grotius’ 1609 pamphlet *Mare Liberum* (The Free Sea).¹⁰ But by the end of the Napoleonic Wars the arguments supporting *mare clausum* had essentially been dropped and freedom of the seas was the commonly accepted practice.¹¹ And *mare clausum* was not considered a valid legal concept when China was brought into the Westphalian system.

As the Westphalian or modern European world system imposed itself on Asia, the Chinese claim was widely ignored. From 1846 to 1889, Labuan, Spratly and Amoyna Cay were under uncontested British jurisdiction. The British did not establish a long-term claim. It was not until the 1930s that France, on behalf of its protectorate Vietnam, asserted its claim to the Paracel and Spratly Islands.¹² Although the first historical reference to Vietnamese use of the islands dates from 1802, Vietnam now claims that Vietnamese fishermen have been using the Paracel Islands “from time immemorial.”¹³

Up until 1939, none of the claimants actually administered effective control over the islands. Japan took over in 1939 and placed the islands under the

jurisdiction of its territory, Taiwan. In August 1945, Japan relinquished the islands, leaving what some countries considered to be an open playing field. In 1956, under the assumption that the Spratlys were *terra nullius* (land belonging to no state) a lone Filipino, Tomas Cloma, proclaimed “ownership, by discovery and occupation, of all the territory, 33 islands, sand cays, sand bars, coral reefs and fishing grounds [in the Spratlies] of 64,976 square nautical miles.”¹⁴ The Philippine government reinforced its claim in 1978 with a presidential decree declaring the islands as part of a 200-mile exclusive economic zone.¹⁵ Malaysia joined the dispute in September 1983 when its troops occupied the Terumbu Layang Layang atoll. Several of the Spratly Islands fall within 200 miles of Malaysian’s coast. However, Deputy Foreign Minister Abdul Kadir Fadzir has claimed that “...the island ‘has always been and is part of the territory of Malaysia.’ This, he said, has nothing to do with Malaysia’s claim to an exclusive economic zone.”¹⁶ For whatever reasons, Malaysia has sea boundary disputes with Thailand, Singapore, Indonesia, Vietnam, Brunei and the Philippines.¹⁷ To the degree that the 200-mile exclusive economic zone (EEZ) applies, Brunei has a legitimate interest in some of the same islands claimed by Malaysia. Brunei proclaimed its own 200-mile EEZ in 1983.¹⁸

Until World War II, the islands in the South China Sea were only worth their weight in guano. However, the introduction of modern naval warfare endowed the islands with strategic purpose. By using Tai Ding Dao as a submarine base to disrupt allied shipping in the South China Sea and as a staging area when launching attacks on the Philippines, the Dutch East Indies and Malaya, Japan became the first country to put the islands to military use. After the war interest in the area shifted to the sea lanes in the South China Sea and Cold War containment. To the United States, it was more important to contain the spread of communism in Vietnam. US naval planning was based almost entirely upon what they believed the Soviets would do.¹⁹ The Chinese also developed their naval policy around the perception of a Soviet threat. “The worldwide dimension of Soviet expansionism and its implications for Chinese political and economic interests in the *Nanyang* [southern ocean], according to Chinese strategists, are as relevant now as when Western naval forces operated against China’s coastal regions during the last century.”²⁰ As the US vacated Vietnam, China (PRC) became anxious over the possibility of encirclement by the Soviet Union and its Vietnamese allies.

Now, with the fall of the Soviet Union and the reduction of US presence the possibility of a military power vacuum has arisen. If the region is going to rely on a military power structure, the islands will retain their strategic value over the sealanes that provide most of the oil and raw materials to Northeast Asia.

So far as the Spratlys are concerned, UNCLOS III may have created more problems than it solved. It established 200-mile EEZs permitting the coastal states the right to exploit the resources out to 200 miles of their shorelines. Each of the Spratly Islands are within 200 miles of another; together they provide a vast area to be exploited by its sovereign. In addition to the invaluable fishing rights, potentially vast reserves of oil and natural gas exist under the seabed – priceless commodities to the energy-poor countries of the region.

If they were *terra nullius* before, they are no more: a land rush has begun. On 19 January 1974, Chinese (PRC) air and naval forces took and occupied the Paracels from (South) Vietnam. The Chinese, once again, resorted to force in March 1988 when its navy clashed with the Vietnamese and took control of six of the Spratlys. In 1992, China occupied two more islets. As of August 1992, the "occupied island" score stood: Vietnam - 21, Philippines - 8, China - 9, Malaysia - 3, and Taiwan - 1.²¹

As a method of territorial acquisition, conquest is somewhat dated and some authorities would argue no longer legal.²² Even if conquest were still acceptable it would not be valid unless the general conflict had ended and the ceded territory was formally recognized, usually by treaty.²³ Therefore, from the international legal perspective, those islands that have been taken by force are still under contention.

Southeast Asia is at a crossroads. It can take a leadership role for the Third World and set the example for progress. Or it can fall into a morass of destructive disputes. There are but three basic approaches to the resolution of international disputes – the rule of law, force of arms and diplomacy. The future of the region will depend on which approach is chosen.

THE RULE OF LAW

The concept of *terra nullius* is the most central question to the issue. Basically, a nation can acquire new territory in two general ways – original discovery or acquisition from another nation. Any state can obtain territory through the occupation (or discovery) of a site that does not belong to any other state. However, a simple claim to the territory is not enough. The acquiring sovereign must establish effective control over the area. "The requirements of effective control have become increasingly stricter in international law."²⁴ More specifically, "... by the eighteenth century effective control came to be interpreted more strictly to mean the creation of a governing presence in the territory and permanent population."²⁵ Further, "(i)f a claim was abandoned, then another state can lay claim to the territory."²⁶

If the territory is not *terra nullius* then sovereignty can still be established through prescription or effective control with acquiescence or "(t)he acquisition of territory through uncontested exercise of sovereignty over an extended period of time. [However,] prescription presupposes a prior sovereign whose control over the territory in question has lapsed through failure to occupy, abandonment or neglect, wrongful claim, or failure to contest a new claim."²⁷

It should be obvious that there are several problematic or gray areas between occupation and prescription. As it applies here, the question is whether abandonment renders a territory *terra nullius* or if abandonment is a form of implied acquiescence. If that issue is resolved, what constitutes abandonment? We may then ascertain if any or all of the islands in question had been abandoned.

UNCLOS III

In 1982 some new rules were added to the issue. In many ways, UNCLOS III went a lot further than the simple resolution of previously unanswered legal issues. It was indeed "...the most comprehensive political and legislative work undertaken by the United Nations."²⁸ "In particular UNCLOS III came to be seen as the first attempt at a comprehensive implementation of the idea of a New International Economic Order."²⁹ The conference went so far as to redraw international boundaries by modifying the concept of the continental shelf, and allowing for the establishment of EEZs.

A nation's continental shelf used to be defined by geological features. Article 76 of UNCLOS III changed the definition to give coastal states a shelf of at least 200 miles, and in some cases 350 miles or beyond.³⁰ In the South China Sea, which had no physical continental shelf to speak of, this is a significant change. It certainly would not support China's claim to an area which includes some islands that fall within the continental shelf of Malaysia, Brunei and the Philippines.

Articles 55-75 introduced the concept of a 200-mile exclusive economic zone, ...in which the coastal state would have the exclusive right to manage the living and non-living resources of the sea. Other states would have freedom of navigation and overflight, and the right to lay submarine cables and pipelines.³¹

Unlike the continental shelf and archipelagic states which address and extend territorial waters, EEZs add value (but not territory) to the applicable waters. In that islands have their own territorial waters, continental shelves, and EEZs, it is easy to understand how a group of rocks can acquire considerable value. The 1958 Geneva Convention (UNCLOS I) defined an island as "a naturally-formed area of land, surrounded by waters, which is above water at high tide."³² Under this definition, any nation that finds a rock could claim the 200 mile EEZ around that rock. The 1958 definition was retained in UNCLOS III but it proved rather impractical and in 1988 the regime of islands was modified such that "...rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf (article 121, paragraph 3)."³³

UNCLOS III led to difficulties. "A comprehensive and binding system of disputes settlement was established. This obliges states to settle by peaceful means their disputes over the interpretation or application of the Convention."³⁴ All of the contending nations³⁵ have signed the convention – but not without qualification. The Philippines appended its signature with several understandings to include: "Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over which it exercises sovereign authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution."³⁶ The Vietnamese Mission responded to the Philippine claim with a note claiming "[t]he so-called 'Kalayaan Islands' or 'Nansha Islands' mentioned above are in fact the Truong Sa Archipelago which has always

been under the sovereignty of the Socialist Republic of Viet Nam.”³⁷ Vietnam affirmed its “indisputable sovereignty” over the Hoang Sa and Truong Sa Archipelagoes in its 1982 statement claiming its territorial sea baselines. Their “historical waters” claim is based upon an 1887 convention signed between France and China.³⁸ Vietnam’s indisputable claims were not only contested by the Chinese but by the French and Thais as well. Both the French and the Chinese denied the assertion that the 1887 agreement in any way established a historical claim to the islands.³⁹ China declared the Vietnamese boundary line null and void, claiming the Islands as “...an inalienable part of China’s sacred territory.”⁴⁰ China went further to accuse Vietnam of expansionist designs and of deliberately trying to aggravate Sino-Vietnamese relations, and issued a warning – “The Vietnamese authorities must bear full responsibility for all the serious consequences that may arise therefrom.”⁴¹

Fortunately or unfortunately, one aspect of international law is that the nations involved cannot be compelled to comply with the court’s findings. In a case such as this, with so much at stake, there is an understandable reluctance to jeopardize what is perceived as national security. If any of the principal nations could be assured of a satisfactory outcome they would press the case and submit themselves to the rule of international law. But there is too much at stake and none seem ready to risk what they have through third-party intervention. Clearing up the claims, counter-claims, rationales, and evidence is like disengaging a Gordian knot. Unfortunately, the puzzle of the Gordian knot was resolved through a force of arms.

FORCE OF ARMS

The success of any conflict in the South China Sea will depend almost exclusively on naval and air forces. Ground forces, such as the Vietnamese Army, formidable as it may be, cannot be sustained without sealift capabilities. A well-fortified island should be able to mount a short-term defense against a regional power. However, any long-term siege defense would require continual seaborne reinforcements and logistical support.

Similarly, in order to overtake an occupied island, an attacking force would also require a fairly large amphibious force and the ability to effect an extensive bombardment. Naval gunfire can provide counter-battery support, but for target softening there is no substitute for attack aircraft.⁴² Amphibious and support ships are notoriously slow, easy targets. “In the past, long-range airplanes have been effective for attacks on shipping. Few countries possess survivable long-range bombers adapted to this task, but it seems likely that low-performance maritime patrol aircraft equipped with anti-ship missiles will do, at least in the absence of carrier air opposition.”⁴³ Any seagoing operation would require surface protection and superior air cover.

China and Taiwan are the only contending nations with adequate amphibious assault capabilities. Given the distance from the Spratlys, Taiwan would find it difficult if not impossible to provide sufficient long-range air cover to pose a

realistic military threat. China is a different story. There has been a significant build up in the amphibious assault capacity of the Chinese South Sea Fleet.⁴⁴ As of 1989 they had 4000 combat marines with armor, and had increased the fleet from 20 to 70 vessels (about 20 of which are anchored in the Spratlys).⁴⁵

At one point there was a question as to how China could provide air cover over the Spratlys. There have been reports that the Chinese have been considering the purchase of a Soviet aircraft carrier or the possibility of building their own.⁴⁶ However, aircraft carriers are expensive and would require a long "break-in" period before they could be integrated into general naval operations. It would be more practical to increase their long-range airfleet and deploy forward aircraft on the occupied islands. It is being speculated on that China is developing a fleet of 52 Su 27 fighter aircraft and have constructed an airstrip on one of the Paracel Islands, which some analysts say would provide air superiority over the Spratlys.⁴⁷

Where launching an attack can be rather expensive, defensive measures can be relatively economical. Effective sea denial conjures up images of an attacking surface navy running a gauntlet of mines, submarines, aircraft, and anti-ship missiles. Eric Grove argues effectively that "[m]ines are reemerging as the most effective poor man's weapon at sea, and [more expensive] mine countermeasure forces are going to become more important than ever."⁴⁸ However, mines are most effective in restricted and shallow waters. They may be effective in the close-in defense of individual islands but they may be counter-productive in the broad depths of the South China Sea. On the other hand, it is just the breadth and the depth of the South China Sea that makes the area ideal for effective submarine operations. And submarines are becoming more effective than ever: "... technological change is increasing the submarine's advantage in remaining covert and undetected during routine surveillance operations."⁴⁹ One need only remember the high priority that the British had assigned to locating Argentine submarines during the Falklands Conflict to realize the chilling effect any unaccounted-for submarine can have on a task force.⁵⁰ At the moment, China has the best possible anti-submarine program possible: the other contenders have no submarines.

Presently, the countries in Southeast Asia are engaged in a low-level arms-race. However, there is no emphasis on blue-water naval capability (see Table 1). The maritime forces are reaching beyond inshore coastal activities but their ranges are limited by available air cover. Sam Bateman's assertion that: "[n]o longer can the maritime forces of ASEAN countries be regarded as "brown water" navies capable only of inshore operations in coastal waters"⁵¹ is somewhat misleading. "It would be disingenuous to argue that the ASEAN navies' capabilities include no capacity for power projection, but the extent of such capacity when weighed against the possibility of sophisticated opposition is so limited that these services are and will probably remain fundamentally defensive."⁵²

The arms race in the South China Sea will continue, if for no other reason than to fill the power vacuum created by US downsizing and expanding mission requirements. Every country in the region has a vested interest in keeping the sea

lanes secure. Moreover, pirates in the South China Sea have become more numerous and better armed. Consequently, stronger maritime forces are required to maintain security in expanded territorial waters and EEZs.⁵³ However, the ASEAN navies are best suited to what we would call constabulary or Coast Guard activities (e.g., naval patrols, sealift missions, maritime law enforcement, search-and-rescue, and disaster relief).

Despite the arms race, a rapid expansion of Southeast Asian maritime capabilities should not be expected. All of the Southeast Asian navies are in a diminished state, and some, notably the Philippines, hardly exist.⁵⁴ The Cold War levels of military assistance are no longer available. The growth of regional defence capabilities should not take place at the expense of development and, therefore, will be tempered by budget restrictions. For example, Malaysia has shown an interest in acquiring a submarine. However, the funds will not be available until the next development plan, which will not begin until 1996.⁵⁵ For defense against external attack, we might expect the ASEAN nations to rely upon defense treaties with their old colonial powers and the US.

The US Navy is clearly the superior power in the Pacific. The best any other navy could aspire to is a distant second place. Even without bases in the Philippines, the US Seventh Fleet has sufficient power to affect any outcome it may desire in the South China Sea. The end of the Cold War has removed whatever ideological reasons the US may have had for involvement in local conflicts. As it is, the US has no formal position on the islands except that the issue be resolved by peaceful means. The focus of the US concern is the freedom of navigation on the high seas. It has been suggested that Washington is upset with China's "grandiose claims" to the entire South China Sea so we may expect US sympathies to be with the other claimants. The US has issued a strong warning against the unilateral use of force to resolve the dispute.⁵⁶ Now that there are no enemies, there is a reasonable concern that US friends may fight other US friends.

The United States may not be as detached from the issue as it would like to be. That is, the US could be caught up under the Mutual Defense Treaty with the Philippines.⁵⁷ As it stands, this is a gray area. The United States has never recognized the Philippine claim to the Spratlys. However, in 1979 there was an exchange of notes that strengthened the US-Philippine mutual Security Agreements. "The notes specified that the Philippines could invoke the agreement both as the result of an attack on the home islands, attacks on Pacific islands under Manila's jurisdiction, and on Philippine armed forces operating in the Pacific outside the Philippines."⁵⁸ The very thought that the islands could be used as a "trip-wire" to cause the reintroduction of the US military into Southeast Asia should have a significant deterrent effect on the aggressive designs of other nations.

In February 1992, when it passed a law asserting its claims in the South China Sea, the Standing Committee of the National Peoples Congress also asserted its prerogative to apply military solutions in settling its territorial disputes.⁵⁹ It should be safe to assume that the Chinese will use force to take what they can when they

think they can get away with it. The incidents of 19 and 20 January 1974 and 14 March 1988 are the exceptions that prove the rule. The United States remained neutral in 1974 when the PRC drove the South Vietnamese from the Paracel Islands. Likewise, the Soviet Union did not intervene when the PRC drove their Vietnamese allies from six of the Spratly Islands in 1988. Vietnam was a convenient target. In 1974, the Nixon administration had its own problems and to confront China would have tarnished what was to become the bright spot of the presidency. In 1988 Vietnam was the least popular country in Asia. The situation with Vietnam has so changed that it is doubtful that China will be able to get away with such attacks as long as the US remains engaged in the region.

REGIONAL COOPERATION AND DIPLOMACY

The Spratly issue presents a difficult situation. The nation with the least credible claims has the largest military capability. As mentioned above, UNCLOS III is a milestone on the road to the new world order. Unfortunately, China's intransigence does not lend much hope for successful resolution through this, or any other, international or multi-national approach. As long as China is a member of the Security Council there is no expectation of UN intervention. Nor will China submit the issue to the international courts.

Even if the international community had the legal right to intervene, it is doubtful that it would have the resources to enforce any decisions. While the Spratly Island issue is arguably the most serious threat to stability in Southeast Asia, it does not enjoy the same priority in the overall order of global security issues. Nor is it the foremost security issue in Asia. The world is much more concerned with the possibility that North Korea is developing nuclear weapons. Nor is it the most pressing issue with China. The major friction between the US and China is more in the areas of the sale of missile technology and human rights violations.⁶⁰ With the exception of the Chinese claim to the high seas, this is an Asian problem.

At the moment, Asian security is a rather complex web of bilateral agreements. None of the contending Southeast Asian nations are capable of conducting a war and they all realize that the cost of preparing for war would bring regional growth to a halt. Southeast Asia is so economically dynamic that there is too much to lose in being obstinate. The nations of Southeast Asia have learned the rewards of regional cooperation. The relevant question here is whether or not the Southeast Asian contenders can form a united front against China.

At the working level, there have been some efforts at regional maritime cooperation. The Western Pacific Naval Symposium, which is comprised of the ASEAN states' navies, China, Japan, South Korea, the United States, Australia, New Zealand, and Papua New Guinea, has met biennially since 1988.⁶¹ Nonetheless, full multinational cooperation will take time and require a series of exercises and confidence building measures.

Some of the players are engaging in a new dynamic of corporate legitimizing. Nations negotiate with private corporations for exploration or mining rights and the

agreement tends to legitimize the claim. The winner is the nation that can enforce the agreement. In May 1992 it was announced that China had signed an agreement with Crestone Energy Corporation, a US company, to explore for oil in an area contiguous to an offshore Vietnamese oil field. "The president of Crestone has claimed that the operation will be protected by the Chinese navy."⁶² In June 1993 the *Far Eastern Economic Review* reported that a joint Vietnamese-Russian venture intends to begin searching for oil in the islands.⁶³ "The Hanoi government, in an apparent attempt to encourage an increased Vietnamese presence on the disputed Spratly Islands, has introduced a three-year tax holiday for companies and individuals willing to exploit and export sea products from the archipelago," the Vietnam News Agency reported.⁶⁴ On 8 May 1994, the Philippines granted an oil exportation permit to Vaalco Energy of the United States and its Philippine subsidiary, Alcorn Petroleum.⁶⁵ However, the weakened condition of the Vietnamese and Philippine navies does not instill confidence in the security of the operation. Thus a nation can exploit the resources without having its claim recognized as legal. The whole approach has the texture of a protection racket.

A more blatant example of this is in the use of piracy. The Chinese navy is the best equipped to control the increase in piracy in the South China Sea, especially since much of the activity has originated in Chinese waters. But a more serious issue evolves when Chinese naval vessels commit acts of piracy in the guise of smuggling interdiction. In the most flagrant cases, the Chinese will board, inspect and impound foreign-flagged vessels outside of their internationally recognized territorial waters. As important as the issue of smuggling is to the Chinese, they are overstepping their bounds when they interdict foreign vessels on the high seas. On the other hand, it is even more disturbing if the Chinese assert that they are behaving legally under the assumption that they are acting within their territorial waters. The focus of this concern is that "[i]f unchallenged, such acts would effectively turn the South China and East China Seas into Chinese lakes. In this view, piracy is used by China to assert – and extend – its maritime claims unofficially."⁶⁶ In fairness to China, it should be noted that the reports of Chinese interdiction have fallen off since March 1994 after the issue was raised by the International Maritime Organization.⁶⁷

In spite of their apparent inflexibility, the Chinese appear to be trying to make diplomatic overtures toward the nations of Southeast Asia. In December 1992, Chinese Premier Li Peng made a state visit to Vietnam which resulted in the signing of four economic agreements and a grant of aid to Vietnam. Further, in late May 1993, China opened a consulate in Ho Chi Minh City.⁶⁸ Also in May the Chinese defense minister Chi Haotian visited Malaysia and assured his hosts that China will not resort to force to settle its claim to the Spratly Islands. He also expressed a desire to increase military cooperation and arms sales.⁶⁹

In March and August 1994, Vietnam and China began talks to settle their border disputes.⁷⁰ Unfortunately, there has been no progress on the South China Sea issue.⁷¹ There appears to be no willingness to compromise. The militant conservative faction within the Chinese government still holds considerable influence. On

the other hand it has been suggested by some military analysts that the Chinese may be using these conferences to bide their time while they build up their military.⁷² If they are patient and persistent, they may expect China to become the *de facto* sovereign of the South China Sea.

Fortunately, there are some new regional dynamics which may work to defuse the issue. Among them is what Frank Ching refers to as “preventive diplomacy.” These are efforts to defuse an issue by addressing the issue somewhat indirectly through scientific, academic and official forums, workshops and meetings – cocktail parties, if you will. These meetings need not address the political issues but might seek consensus on the periphery such as marine research, the environment, or navigation. In the Western sense this is a long way to resolution. But in the words of one Indonesian diplomat “Talk talk is better than shoot shoot.”⁷³

ASEAN is one of the Third World’s success stories. In the words of Malaysia’s former Minister of Foreign Affairs M. Gazali Shafie: “I am completely convinced that the stability and development obtaining in Southeast Asia today is the most important result of the ASEAN system of cooperation; it is also the most important contribution that ASEAN has made to date to international stability and development.”⁷⁴ And ASEAN is growing. Before the Spratly issue is resolved, we can expect the inclusion of the Indochinese nations and Burma to form a 10-nation ASEAN.⁷⁵ Although instrumental in the economic success enjoyed by Southeast Asia, ASEAN was never intended to address security issues.

For its first twenty years ASEAN groped along, recording slow but steady progress in the area of economic cooperation and development. From the security perspective ASEAN was united in its position against the Vietnamese occupation of Cambodia. However, as the external threat from Vietnam diminished, unresolved disputes among the members surfaced to threaten the harmony that the group seemed to convey. Concern for the harmony was expressed in the Declaration at the end of the 1987 Manila Summit meeting. The declaration states in part: “Intra-regional disputes shall be settled by peaceful means in accordance with the spirit of the Treaty of Amity and Cooperation in Southeast Asia and the United Nations Charter.”

The Manila Declaration has received full support from Vietnam, Japan and ASEAN’s Western dialogue partners. However, China was cautious with its support. In an earlier statement the Chinese had warned against outside powers involvement in the South China Sea.⁷⁶ With the introduction of a security agenda ASEAN may be taking the final step toward self-sufficiency. As it is they have yet to work out a basic definition of security.⁷⁷ Nonetheless, security is definitely an important part of ASEAN’s agenda. For the first time the 1993 ministerial meeting in Singapore called for a formal ASEAN Regional Forum (ARF) to discuss political and security issues.⁷⁸ ARF convened in Bangkok on 25 July 1994. However, given the tentative nature of the first meeting, it was not expected to address issues as contentious as the Spratlys.⁷⁹

A successful first ARF would be one which holds promise for the second. Diplomatically put, the 1994 ARF was a historic first step which addressed "... security issues and confidence-building measures, as well as a framework under which conflicts can be prevented."⁸⁰ On the outside, it might have been hoped that the forum would allow Southeast Asia to present a united front against China. It did not. China refused to engage in any multilateral discussions on the islands, preferring the one-on-one bilateral discussions that would favor the larger nation.⁸¹

The bilateral approach may not be the most effective route to a final solution but it has shown steady progress – at least among the Southeast Asian contenders. For example, Malaysia and the Philippines have been able to table their differences and "... agreed ... on joint fishing ventures in the contested Spratlys islands in the South China Sea."⁸² On the other hand, there is again a difficulty with China. Where the ASEAN contenders have overlapping claims based in UNCLOS III, China does not enjoy the comfort of international law. Thus any joint venture into which China is welcomed by another contender adds legitimacy to the Chinese claim.

Force of arms notwithstanding, China's growing economic presence makes her too important to ignore. For example, the Philippines had to bow to Chinese pressure over the aforementioned oil survey rights in the Reed Bank (which the Philippines maintain is part of its territorial waters and not part of the Spratly Islands). The Philippines felt obligated to offer a joint or multi-national venture to China for oil exploration.⁸³

One final diplomatic effort to defuse the potential for conflict was proposed by Philippine President Fidel Ramos. "Ramos has suggested that the six Asian nations with claims to the Spratlys study demilitarising them and exchanging informal visits by senior military officers."⁸⁴ Again, while the less powerful, Southeast Asian nations should be expected to support such a proposal, we cannot expect China to surrender its advantage.

CONCLUSION

With the exception of increased piracy, the South China Sea has been surprisingly calm for the last several years. That is, given the EEZ claims and counterclaims, one might have expected repeated challenges resulting in a continuing series of detained or confiscated fishing and research vessels. But as it is, the contending nations have agreed to disagree. The South China Sea is settling into a status whereby the issues are not resolved but none of the actors are prepared to engage in conflict. Of course, things will change and unless the issues are resolved, the potential for conflict remains. The question is how changes in the region will affect the potential for conflict. In that respect, the South China Sea should be a fairly peaceful area. The islands in question are not traditional homelands so there are no internal grassroots movements to limit the options of the individual governments. The only government that is relying upon a traditional "national dignity" argument is China.

It should be clear that China is the central actor in the South China Sea. The ASEAN contenders have essentially agreed to cooperate in developing the area. None of the ASEAN actors have, or are developing, the naval potential to conduct sustained offensive operations. The Chinese forces are adequate and are growing. However, they should not be expected to ever be strong enough to overtake the US. Any US disengagement may create a vacuum in sea control, but US submarine forces alone could effectively deny the usage of the seas to any Asian navy.

China should also understand that there will be a cost imposed by the international community upon any nation that unilaterally resorts to force of arms. It might be argued that the same understanding did not prevent the Chinese from crushing the demonstration in Tiananmen Square. On the other hand, unlike human rights issues, international conflict tends to discourage investment, in that China (as the other contending nations) lacks the technical abilities to exploit the region's resource potential. If China is going to enjoy the economic benefits of the region, open warfare is not an option.

Should it become necessary to stay engaged in the area, China might resort to minor belligerent activity such as increased piracy or economic sanctions. However, these calculated activities would be with the objective of not being ignored. In short, China is obstinate because it can get away with it. China has no incentive to compromise and, apparently, is prepared to wait indefinitely. And, as long as it continues to enjoy some benefits China will maintain its claim to the whole area. With nothing to lose, it can afford to wait or count on serendipity.

Table 1: The Military Balance Among those Nations with Spratly Island Claims

	China	Taiwan	Vietnam	Malaysia	Brunei	Philippines
Submarines^(a)	44	4				
Destroyers	17	24				
Frigates	37	10	7	4		1
Missiles^(b)	207	52	8	8	3	
Mines^(c)	130	13	11	4		
Amphibious	61	26	7	2	3	7
Bombers						
Medium	120					
Light	350					
Attack	500	420 ^(d)	60		33	
Fighters	4000		125		17	9

[a] Tactical only.
 [b] Missile Craft.
 [c] Off shore minesweepers only.
 [d] Includes fighter aircraft.

Source: International Institute for Strategic Studies reprinted in *Far Eastern Economic Review Asia 1993 Yearbook*.

Endnotes

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