

# Stalemate in the South China Sea\*

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## The Last Frontier?

Disputes over islands and maritime space are part of the normal condition of international relations. They have contributed to its historical record ever since states began to employ sea power for national aggrandisement. Such disputes have been a recurrent feature of international relations within post-colonial South-East Asia, albeit not yet a *casus bellum*. In the main, the political geography of the region has been shaped by colonial intervention and administrative convenience without any major post-colonial revision among successor states. That geography has assumed greatest precision and durability in the case of land borders. In the case of offshore islands and maritime space, colonial jurisdiction has been less than well defined because it was not always in the colonial interest that it should be so and because of the limits to colonial power and technology. Moreover, many of the islands of the South China Sea now the object of contention were less than desirable as colonial spoils. They were, more often than not, incapable of supporting human habitation, while their natural assets comprised little more than concentrations of bird droppings and shelters for fishermen.

Indeed, it is possible to suggest that the islands and waters of the South China Sea constitute the last frontier in South-East Asia to the extent that the maritime zone was not effectively incorporated within the delimited and demarcated domains of the respective colonial powers, bearing in mind the classical distinction between boundaries and frontiers.<sup>1</sup> Moreover, where applicable in the case of the South China Sea, their islands were not necessarily incorporated within post-colonial transfers of sovereignty; nor were they provided for by way of specific transfer of sovereignty in the political settlement of the Japanese Peace Treaty in 1951. This neglect, benign or otherwise, is of considerable significance because the South China Sea may be represented as the maritime heart of South-East Asia. Its domination by a single power could over time have far reaching strategic consequences affecting the geo-political and economic interests of both regional and extra-regional states.

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Since the end of the Pacific War in 1945, irredentism, as well as more conventional expansionism, has actively been at play in respect of the islands, reefs, atolls and cays of the South China Sea and their attendant maritime space but not in respect of settled peoples in search of political redemption. In the case of the South China Sea, that irredentism, and more conventional expansionism, has become most contentious since the end of the Cold War which has seen the emergence of a new pattern of international relations in a strategically fused East and South-East Asia. That new pattern has emerged with the decoupling of China from the tacit alliance ranged against Vietnam arising from its occupation of Cambodia. Contention arising from irredentism and more conventional expansionism has become most acute in the case of the southerly Spratly Islands within the South China Sea which provide the most complex set of competing claims to sovereign jurisdiction.

These islands lack both geographic and legal coherence because there is no agreed definition of their extent; not all claimant states treat the entire group as a single geo-legal entity. In addition, the extent of mixed occupancy and overlapping claims means that the issue of sovereignty cannot be addressed conclusively at the bilateral level of relations and has never been contemplated beyond it in multilateral dialogue.

Driving coastal state conduct has been a common territorial imperative reinforced by historical grievance. It has also been motivated by the prospect of economic benefit from access to sources of energy supply through expanded rights under an evolving International Law as well as by perceived security advantages. The significance of the end of the Cold War for the complex pattern of competing claims over sovereign jurisdiction was initially to remove a source of constraint on their prosecution arising from perceived changes in the balance or distribution of regional power and from the dismantling of a pattern of alignments generated by the Cambodian conflict.

It is important to note, however, in the case of the South China Sea that virtually every island and reef capable of supporting some kind of military presence has already been occupied. And that there has not been any attempt by a claimant state to assert its sovereign jurisdiction by force at the expense of another claimant for over a decade. To the extent that possession has been regarded as nine tenths of the law, the scope for an unresisted occupation of any island or reef has become unlikely, for the time being. In that respect, the so-called last frontier in the South China Sea has been explored and as fully invested as possible. For that reason, it is possible to employ the term stalemate for the South China Sea conflict in the absence of attempted solutions either by force or by some negotiated form of multi-national condominium or by judicial arbitration. Indeed, as far as the first option is concerned, beyond any highly problematic smash-and-grab undertaking, none of the claimants states would seem to have the capability for sustained military operations at any distance from their mainlands.

## **The post-Cold War Balance**

The contest for the South China Sea has been affected, nonetheless, by changes in the regional security environment attendant on the end of the Cold War. The prime beneficiary of those changes up to a point has been the People's Republic of China which has extensive claims to islands and maritime space within South-East Asia, albeit not without some ambiguity. It is well understood that Taiwan's claims are coincident with those of the People's Republic and that the latter appears to treat the former's occupation of Itu Aba, the largest of the Spratly Islands, as a form of trusteeship on its behalf.

China has been singled out not because its claims are necessarily worse or better founded than those of other claimant coastal states but because they entail strategic implications which do not obtain to the same extent in the case of those other competing coastal states.<sup>2</sup> Professor John Garver has pointed out that should its extensive claims be realised, China would become 'a South-east Asian nation in the same sense that the United States is both an Atlantic and a Pacific nation or Russia both a European and Far Eastern one.'<sup>3</sup> Although very much a worse-case scenario in current circumstances, the realisation of China's extensive claims would have the effect of moving its sovereign jurisdiction some one thousand nautical miles southwards and would place it in a position to command the equivalent of the Mediterranean of South-East Asia. No other coastal state has the potential to effect such a revolutionary transformation of the regional distribution of power. Such a consideration seems to count for little in Beijing whose government views itself as both a victim of history which has been denied its rightful entitlement as well as a rising power which will be able in time to redress all historical wrongs in the South China Sea.

China was able to consolidate its hold over the Paracel islands at the expense of the former Republic of Vietnam in January 1974 attendant on its historic rapprochement with the United States but the second phase of the Cold War had been a constraint on more southerly maritime assertiveness. It was only with a revision of strategic perspective towards the Soviet Union during the late 1980s that China felt enabled to disregard the impact of its seizure of some of the islands of the Spratly group, primarily at the expense of the Socialist Republic of Vietnam, on its alignment partners within the Association of South-East Asian Nations (ASEAN). The point at issue in the case of China's long-standing claims is the sense of grievance that its coastal-state competitors, whose own claims are deemed to be dubious, were able to engage in a seizure of islands backed by force because China had been constrained by Cold War circumstances.<sup>4</sup> After the end of the Cold War and the withdrawal of the United States from its military bases in the Philippines, and even after China had judged it advantageous to engage in regional multilateral dialogue within the ASEAN Regional Forum (ARF), it was deemed politic to seize the virtually underwater Mischief Reef some 130 miles off the coast of the Philippines in a calculated act of national defiance and in a demonstration of an unprecedented new-found strategic latitude and licence.

Since January 1995, however, despite a persistent reiteration that its sovereign jurisdiction in the

South China Sea is indisputable, China has not engaged in any further substantive acts of maritime assertiveness.<sup>5</sup> The only exception, on paper, would be the delimitation in May 1996 of its maritime base-lines around the Paracel Islands employing the archipelagic principle which is valid under International Law only for mid-ocean archipelagos, while reserving its position for the Spratly Islands. Moreover, the prior occupation of Mischief Reef was an act of stealth and not one of open acquisition in the face of armed resistance. That act of stealth was symptomatic of limitations in China's military capability, despite a claim that 'After years of active probes, a South Sea Fleet Naval base has successfully integrated into a systematic whole the procurement, transport and supply of materials to islands and reefs in the *Nanshas* (Spratlys)...treating it as a strategic problem under conditions of high-tech war.'<sup>6</sup>

The seizure of Mischief Reef was far more symbolic of China staking a proprietary claim beyond the geographic limits of its structural tension with Vietnam so giving notice to ASEAN claimants in advance of Vietnam's membership that it had no intention of sacrificing sovereignty for the sake of good regional relations. An ability to do more than consolidate its position on the highly vulnerable platform that is Mischief Reef is very unlikely, however. Mischief Reef is not a jumping-off ground for further maritime assertiveness in China's current condition of relative military disability. Indeed, Mischief Reef, so distant from the Chinese mainland and from substantial military support, is highly vulnerable to low-intensity warfare should any coastal state conjure up the nerve to engage in covert action.

Apart from its current military shortcomings, China is not in a position to act assertively in the South China Sea for a number of obvious reasons; above all, because of limitations in military capability, including an inability to project military power effectively and with air cover at a distance. In addition, irrespective of the motivation for the seizure of Mischief Reef, which was almost certainly decided at the highest level of the Communist Party, the diplomatic reaction within South-East Asia was surprising and disconcerting. Moreover, it occurred concurrently with a conspicuous downturn in China's relations with Japan and the United States with the latter pointedly reiterating an interest in freedom of navigation and an opposition to the use or threat of force in resolving competing claims in endorsement of ASEAN's 1992 Declaration on the South China Sea.

Irrespective of the motivation for the seizure of Mischief Reef, it was in a sense a reef too far. As former Foreign Minister, Qian Qichen, pointed out in July 1995, while the impact of Mischief Reef was still reverberating within South-East Asia, 'The top priority of China's foreign policy is to maintain a stable peripheral environment so as to safeguard normal economic circumstances at home. China regards the establishment of long-standing and stable good relations with ASEAN as an important factor in attaining this goal.' There would seem to be an obvious contradiction between Qian Qichen's declaratory goal and China's claims within the South China Sea, especially in the case of the Spratly Islands where they come into conflict over territory with Malaysia, the Philippines and Vietnam and over maritime space, additionally, with Brunei.

To serve this end, China has not budged one iota in its insistence of the rectitude of its sovereign jurisdiction but has been accommodating up to a point in its diplomatic dealings with ASEAN as a corporate entity.<sup>7</sup> Indeed, it has sought to wrap its claim to sovereign jurisdiction within the Convention on the Law of the Sea, which it ratified in May 1996. Moreover, it has made recurrent gestures in the form of offers of joint development but without ever presenting a concrete proposal for a scheme, which is not believed to be workable on a bilateral basis because of the overlapping nature of national claims.

Among the claimants to the Spratly Islands, China is the most dissatisfied. Vietnam, whose claims are almost as extensive as China's also harbours a strong sense of grievance, especially over the Paracels which are totally subject to Chinese dominion, but in the case of the Spratlys, where it occupies 35 features, it appears relatively content for the time being and has certainly not sought to pursue claims against any of its ASEAN partners on which it looks for a measure of diplomatic support against China. Militarily, it is not in any position to engage in maritime assertiveness, although it has been resolute in defence of its energy-rich continental shelf, which China disputes on the basis of its claim to the Spratly Islands.

An inability to engage in maritime assertiveness is also conspicuously the case with the Philippines, which found itself vulnerable to Chinese initiative with the withdrawal of American naval power from Subic Bay. Its government has been obliged to confine itself to military display for public relations effect in an attempt to keep the issue in the international limelight and also to ensure the passage through the Senate of the visiting forces agreement with the United States. The claims of the Philippines are limited as are those of Malaysia, albeit overlapping with one another and with Vietnam, while Brunei seeks control only over a portion of maritime space. Malaysia is also relatively content with its holdings, which it is probably capable of defending against the most resolute and well equipped attacker. It should be noted that all of these claims, with the possible exception of that to maritime space by Brunei, have shortcomings under International Law, albeit of a different order to those which may be identified in China's case and also that of Vietnam.

International legal niceties aside, the point at issue is that ever since the late 1980s, when a limited naval battle occurred somewhat inadvertently between China and Vietnam, there has not been any attempt to seize any occupied territory in the South China Sea. However obvious, it should be pointed out that Mischief Reef was unoccupied at the time of China's seizure for the likely reason that neither the Philippines nor Vietnam saw any point in investing a feature which was mainly under water for most of the time. Indeed, in order to establish its naval/fishing station on the reef, the Chinese were obliged to drill down into the rock below the water-level.

## **Stalemate**

With the last frontier of the South China Sea occupied where practical, there is limited incentive among coastal states to engage in serious confrontation. For example, the prospect of vast supplies of energy under the Spratlys remains unproven, while the costs of exploration at a time of low oil

prices serve as a disincentive. Moreover, although the United States has conspicuously not taken a position on the legal merits of the contending claims, it has not moved into a post-Cold War mode of strategic retreat in East Asia signalled for some by its withdrawal from all military bases in the Philippines. Indeed, it has substituted a policy of 'places for bases' in South-East Asia and is currently awaiting the ratification by the Philippines Senate of a new visiting forces agreement.<sup>8</sup> Moreover, the willingness of President Clinton to order the deployment of two carrier battle groups into the South China Sea in March 1996 in response to Beijing's coercive attempt to influence the outcome of Presidential elections in Taiwan had a salutary effect in the Chinese capital. The security relationship with Japan was reaffirmed in the following month, while in September 1997 an agreement was concluded on renewed guidelines for operational application of the Mutual Security Agreement. In addition, the United States has pressed ahead with consolidating military access arrangements within South-East Asia, most notably with Singapore where its aircraft carriers will have full use of the new Changi naval base when it becomes operational at the turn of the Millennium.

For its part, China's outstanding claims in the South China Sea are not only affected by constraints imposed by a resented American power but are also a hostage to its prior concern with effecting unification with Taiwan. Any further act of assertiveness within the South China Sea risks the prospect of another counter-reaction particularly in the light of a Republican-dominated Congress seizing on an alleged softness towards China by the Clinton Administration with the forthcoming presidential election in mind. Moreover, China's capacity to undertake a sea-borne invasion of protected islands without the benefit of close air support could result not only in military failure but also in military fiasco and loss of international standing.

Individual claimant ASEAN states, whether or not beset by acute economic adversity, do not have the military capability to pursue their respective interests on a unilateral basis. In addition, the claimant members of ASEAN have not been able to contemplate addressing a common diplomatic position among themselves so as to be able to adopt a united front against China, for example. They certainly have not been willing to invoke the dispute settlement machinery of the their 1976 Treaty of Amity and Cooperation for South-East Asia which makes specific provision for establishing a High Council to engage in mediation, enquiry or conciliation. In practice, the very culture and its characteristic approach to conflict avoidance and management of ASEAN predisposes against employing an instrumentality which has never once been invoked by any member of the Association and has remained dormant for over two decades.<sup>9</sup> Accordingly, ASEAN has not been able to go beyond its worthy, albeit pious, Declaration on the South China Sea of 1992 which deals with modalities only and not with the matter of sovereignty which the Chinese have depicted as indivisible. Moreover, because an enlarged ASEAN has exposed the differential relationships with China within the Association, the prospect of forging a renewed corporate consensus over the South China Sea beyond the bland declaration of 1992 has become highly problematic. This difficulty was demonstrated at ASEAN's sixth summit in Hanoi in December 1998.

For the time being, none of the competing claims to sovereign jurisdiction in the South China Sea have been set aside; nor have they been subject to any measure of compromise. Because the maritime last frontier does not offer any further scope for national aggrandisement other than through acts of force, a condition of stalemate would appear to have set in. Claimants states are either satisfied up to a point with their incomplete holdings or do not deem it politic to pursue their claims by even diplomatic means. The exception to this mode is the Philippines whose government has expressed itself most aggrieved at China's recent consolidation of its position on Mischief Reef but has experienced nothing but frustration and humiliation in fruitless dialogue with Chinese officials without tangible support from ASEAN partners. Indeed, that bilateral dialogue in March 1999 was one of the deaf with China adamant that 'Meiji Reef is Chinese territory' and that it would not dismantle expanded structures on it.<sup>10</sup>

### **Overcoming Contention**

An evident feature of the contention over islands and maritime space in the South China Sea is that there has been a lack of political will to employ any regional or international machinery to try to resolve them. There have been a limited number of agreements over joint exploration and exploitation of contested maritime space in South-East Asia, the most notable in the case of the Timor Sea between Australia and Indonesia, albeit controversial and subject to challenge before the International Court of Justice. Limited resort to the International Court of Justice has been agreed between Malaysia and Singapore and Malaysia and Indonesia, but the issues in contention have yet to be joined in legal argument. The Philippines has also indicated a willingness to go to the Maritime Court in Hamburg over Mischief Reef but without prompting a Chinese response. The government of Indonesia with Canadian support has sponsored a series of workshops on the South China Sea over the past decade but these workshops at the 'track two' level have not had the effect of generating any semblance of substantive accommodation whatsoever. They have been obliged to confine themselves to technical subjects in the interest of confidence-building and to avoid political contention.

The issue of the South China Sea has been addressed in biennial dialogues between ASEAN and China with some strong talking at the initial occasion in April 1995 in the wake of the revelation of the seizure of Mischief Reef but without any practical outcome for conflict resolution. Correspondingly, the issue of the South China Sea has been raised in general terms within the working sessions of the ASEAN Regional Forum (ARF) which includes, *inter alia*, all the claimants to sovereign jurisdiction in the South China Sea. The ARF, like ASEAN, is not a problem-solving vehicle but is concerned primarily with general confidence-building and has not taken any significant initiative to try to resolve the competing claims to sovereign jurisdiction.

At the second working session of the ARF in 1995, a Concept Paper prepared by officials gave the impression of corporate evolution towards a problem-solving role. The paper incorporated an institutional route-map setting out ideal progress in stages from confidence-building through

preventive diplomacy ultimately to conflict-resolution mechanisms. The latter goal was then replaced at ministerial initiative by the 'elaboration of approaches to conflict', which was, in effect, a weasel word alternative at China's insistence to the development of conflict-resolution mechanisms. Although the ARF has agreed since 1997 to address the subject of preventive diplomacy, albeit only where it overlaps with that of confidence-building, the outcome, so far, has not been at all encouraging either for dispute settlement in general or the issue of the South China Sea in particular. In consequence, there is an absence of any regional machinery for addressing the complex contention which is not in itself a failure of institutions but one of political will on the part of the adverse claimants.

### **Stalemate and Regional Order**

The main contention over islands and maritime space in the South China Sea has arisen in respect of minuscule territories which colonial powers were either unwilling or unable to incorporate within their respective domains. Accordingly, the near-to golden rule of respecting post-colonial political boundaries for fear of stirring up a multitude of competing territorial claims has not obtained, while, of course, for China the very notion of a colonial boundary is an anathema. In the case of contention over islands and attendant maritime space, possession whether through colonial transfer or through unilateral assertion has been treated, as indicated above, as more than nine tenths of the law. Moreover, claims to sovereignty over islands and attendant maritime space have been upheld with a steely rectitude by all parties without any sign of compromise which does not bode well for regional order which has to be based on some shared view of the political-territorial status quo.

In a sense, therefore, the unresolved contention over the South China Sea is symptomatic of the problem of regional order in a strategically-fused East and South East Asia, which lacks a security architecture, based on a consensus over the status quo. Indeed, there is a conspicuous rising tension between China and the United States arising from frustration and anger in Beijing at the unipolar conduct of Washington and its closest allies whether in the Gulf or in the Balkans. That tension has expressed itself in part in recurrent demands that the United States should dismantle its residual Cold War security order in East Asia.<sup>11</sup> It has also expressed itself symptomatically in adverse interpretations of the role of the ARF with China more interested in multipolarity than multilateralism, which is a coded term for constraining the unipolar pretensions of the United States in the Asia-Pacific.

It is in this context, that China's extensive claims, irrespective of their legal validity pose the most serious potential challenge to regional order because of its perceived self-image as a rising power. In that image, however misconstrued given its acute economic problems, it casts a shadow over its regional environment in a way that cannot obtain on the part of any other regional coastal state. For the time being, however, the constraints of the Cold War have been replaced for China with other varieties, including internal economic adversity which bears on military modernisation, the countervailing power of the United States and an interest in managing relations with ASEAN as a



counter to the role and influence of both the United States and Japan.

The stalemate that marks the condition of the contention over islands and maritime space in the South China Sea cannot be assumed to be a permanent feature of the region, however. Changes in strategic circumstances may offer new opportunities for assertiveness. Indeed, the timing of China's acts of acquisition in the case of the Paracel Islands in the mid-1970s and then that in the case of the Spratly Islands in the late 1980s corresponded with changes in regional strategic circumstances which made such unilateral armed action opportune. The current stalemate is tolerable for the contending claimants for the time being, however. It does not seem likely to be disturbed in the near future which is every reason for seeking a resolution sooner rather than later. Should that stalemate be disturbed for one reason or another, then the consequences for regional order could well be revolutionary. But, for the time being, a stalemate persists which has not been affected substantively by the economic adversity, which has afflicted East and South-East Asia from the middle of 1997.

The problems of dispute settlement in the South China Sea are as complex and intractable as ever, while there are no signs whatsoever of any moves to resolution. The nature of the regional balance or distribution of power together with the calculated interests of the key claimants and other interested parties serve as an obstacle to any short-cut solutions involving the use of force. In addition, there is neither a willingness, with perhaps one exception, to go for judicial settlement nor one for some form of collaborative regime. The condition of the South China Sea conflict presents a paradox, therefore. A combination of a lack of any willingness to compromise over sovereignty on the part of the claimant states matched by their unwillingness or inability to attempt any method of conflict resolution gives rise to the current stalemate.

## Notes

1. For a helpful synthesis of seminal studies, which lead to the conclusion that a boundary refers to a line, while a frontier refers to a zone, see J.R.V. Prescott Boundaries and Frontiers, Croom Helm, London. 1978.

2. A good primer on the pattern of competing claims in the most contentious case of the Spratly Islands is Daniel J. Dzurek The Spratly Islands Dispute: Who's On First? Maritime Briefing, Vol.2, No.1, International Boundaries Research Unit, University of Durham, Durham. 1996. See also, David Hancox and Victor Prescott A Geographical Description of the Spratly Islands and an Account of Hydrographic Surveys Amongst Those Islands, Maritime Briefing, Vol.1, No.6, International Boundaries Research Unit, University of Durham, Durham. 1995.

3. John W. Garver 'China's Push Through the South China Sea: The Interaction of Bureaucratic and national Interests' The China Quarterly, December 1992. p.1028.

4. For a comprehensive and scholarly assessment of China's position, see Greg Austin China's Ocean Frontier, Allen and Unwin, St. Leonards, New South Wales, 1998. See also, Mark.J.Valencia China and the South China Sea Disputes, Adelphi Paper 298, Oxford University Press for IISS, London, 1995 and Michael Leifer 'Chinese Economic Reform and Security Policy: The South China Sea Connection' Survival, Vol. 37, No. 2, Summer 1995.

5. See, Pan Shiyong The Petropolitics of the Nansha Islands-China's Indisputable Legal Case, Economic information and Agency, Hong Kong. 1996.

6. Cao Baojian and Ding Feng 'Years of Effort by a South Sea Fleet naval base results in integrating the procurement,

supply and transport of materials to *Nanshas* into a system.' Jiefangjun Bao, 17 March 1995 in BBC Summary of World Broadcasts, FE/2260/G 1-2.

7. See Michael Leifer 'China in Southeast Asia; interdependence and accommodation' in David S.G.Goodman and Gerald Segal (eds.) China Rising. Nationalism and interdependence, Routledge, London. 1997.

8. See The United States Security Strategy for the East Asia-Pacific Region, Department of Defense, Washington. 1998.

9. See Michael Leifer 'The ASEAN Peace Process: a category mistake' The Pacific Review, Vol.12, No.1. 1999.

10. Nirmal Ghosh 'China's Spratlys structures will stay' The Straits Times, 23 March 1999.

11. Note, for example, the comments of China's Defense Minister, Chi Haotian International Herald Tribune, 28-29 September 1998.