

The South China Sea Dispute: Implications for India

Raman Puri and Arun Sahgal

The end of the cold war created a strategic vacuum in the South China Sea. The collapse of the Soviet Union and its departure from Cam Ranh Bay; the closure of the United States' naval bases in the Philippines; and Vietnam's withdrawal from Cambodia diminished superpower influence in the region. These events also prompted several East Asian littoral governments to recalculate the strategic and national security implications of sovereignty claims made to islands in the South China Sea. The financial turmoil that whipsawed national economies throughout East Asia in 1998 also contributed to exacerbating tensions over conflicting maritime claims in the area.

Geopolitics of the South China Sea

The South China Sea, covering an area of 800,000 square kilometres (310,000 square miles), is semi-enclosed, with 90 per cent of its circumference rimmed by land. Many of Asia's most influential states are among its littoral countries: the Philippines, Malaysia, Brunei, Indonesia, Singapore, and Thailand; the Indochinese countries of Cambodia and Vietnam; and the People's Republic of China (PRC, or China) and Taiwan (the Republic of China).

Freedom of navigation through the South China Sea, particularly through the chokepoints of the Taiwan Strait in the north and the Strait of Malacca in the south, remains essential to the region's geo-strategic role in linking North-East Asia's seaborne trade with the rest of the world. Even so, the South China Sea's significance has been recently highlighted, not just for its strategically important commercial and military sea lanes, but also for furnishing living and

*Vice Admiral (Retd.) Raman Puri is a former Chief of the Integrated Defence Staff (CISC) and is currently the Executive Director of the Institute of National Security Studies. Brigadier (Retd.) Arun Sahgal is Joint Director at the Institute and a Visiting Fellow, Vivekananda International Centre, New Delhi.

mineral resources to the littoral states. Almost 50 per cent of the protein requirement of the population bordering the South China Sea is met by the abundant fishing activity in the region. As a consequence, over the past two decades competing claims to island territories, maritime and seabed jurisdictions, and access to fisheries have cast governments into a tangled nexus of regional jurisdictional conflicts and rivalries.

The matter of maritime boundary delimitation in the South China Sea is especially problematic, primarily because the present situation is defined in terms of a configuration of overlapping unilateral claims to sovereignty over an assortment of semi-submerged natural formations scattered throughout the region. These hundreds of islands, islets, cays, reefs, rocks, shoals and banks comprise four main archipelagos: the Pratas, Macclesfield Bank, Paracels and Spratlys.

Eight states currently claim title to these islands. Singapore and Malaysia dispute claims over Pisang Island and Pulau Batu Puteh, strategically situated in the congested waters of Malacca and Singapore Straits. China, Taiwan and Vietnam contest each other's claims to sovereignty over the Paracels, a group of fifteen islets and several reefs and shoals scattered over a 200 km area in the northern South China Sea. China in a bloody clash captured all the islands in Paracels from South Vietnam in 1974. Taiwan also contests China's claims to Pratas Island and Macclesfield Bank. As for the Spratlys, seven states assert their claims. Whereas China, Taiwan and Vietnam claim the entire archipelago, Indonesia, Philippines, Malaysia and Brunei claim sovereignty over portions of it. Except Brunei and Indonesia, all the others have established a military presence in the Spratlys.

The Spratlys are located in the southern South China Sea over a width of 400 nautical miles (west to east) and 500 nm (north to south). There are approximately 400 land features, of which only 33 are above mean sea level and only seven have an area greater than 0.5 sq km. With elevations ranging from 2 to 6 metres, the mapped islands of the Spratlys, including shallow territorial waters, cover an area of approximately 180,000 sq km (69,500 sq miles).

The Spratlys are too small and barren to support permanent human settlement independently, and few have freshwater or any significant land-based resources. Yet they are considered strategic, economic, and political assets by the littoral states, principally because they can serve as legal base points for states to project claims of exclusive jurisdiction over waters and resources in the South China Sea. The Spratlys area holds strategic importance for all states in the region,

simply because these islands straddle the sea lanes through which commercial vessels must sail en route to and from South Asian ports.

Nature and Status of South China Sea Claims

Though long ignored internationally, claims to sovereignty over territory in the South China Sea are based on acts of discovery, occupation and, more recently, on certain inferred rights over continental shelf delimitation. Legal facets of the claims became more salient for governments when the prospects for petroleum exploration became real during the 1970s and the 1982 UNCLOS (UN Convention on the Law of the Sea) emerged as the standard for demarcating offshore jurisdictional limits for resource exploitation.

China's assertions of sovereignty in the South China Sea rest on historical claims of discovery and occupation. The Chinese case is well documented, going back to references made in Chou Ch'u-fei's *Ling-Wai-tai-ta* (Information on What Lies beyond the Passes) during the Sung dynasty (twelfth century) and in the records of Chinese navigators during the Qing dynasty (eighteenth century). Notable problems of authenticity and accuracy exist, however, in describing coastal points as implied references for the Spratly Islands. These problems are compounded by the fundamental question whether proof of historical title today carries sufficient legal weight to validate acquisition of territory. Modern international law clearly recognizes that mere discovery of some territory is not sufficient to vest in the discoverer valid title of ownership to territory. Rather, discovery only creates inchoate title, which must be perfected by subsequent continuous and effective acts of occupation, generally construed to mean permanent settlement. Evidence of such permanent settlement is not compelling in the case of China's claim to the Spratlys.

Claims by Taiwan today mirror those of the PRC and evidence suggests that both governments have made efforts to coordinate positions on Chinese claims in international discussions of the Spratly issue. The legal bases for Taiwan's claims are its longstanding historical ties to the islands. Consequently, Taiwan's claims suffer from deficiencies like those of the PRC, namely, that discovery of, and intermittent contact with, scattered island formations are insufficient cause to establish legal title to sovereignty.

The legal grounds for Vietnam's claims to South China Sea islands flow from historical activities during the Nguyen dynasty (seventeenth to nineteenth centuries). Maps and other supporting historical evidence for Vietnam's claims were compiled and set out by the government in two white papers, Vietnam's

Sovereignty over the Hoang Sa and Trung Sa Archipelagos, issued in 1979 and 1982. Vietnam's evidence for asserting claims to title is diluted by the failure to specifically identify and distinguish between the Spratlys and Paracels. Both are treated generically, without one being geographically distinguished from the other, which has compounded the difficulty of assessing the lawfulness and propriety of the claims. Considerable doubts also arise over the authenticity and accuracy of the historical record itself. Such doubts explain why international law usually regards mere historical claims, without evident occupation and permanent settlement, as only arguably binding and susceptible to legal challenge for assuring valid claim to title over territory in the oceans.

Regarding Vietnam, the Gulf of Tonkin has been disputed by China and France for more than a century. France forced the Qing dynasty to sign the Sino-French Convention of 1887, which gave France exclusive territorial rights over the area. Taking advantage of this fact, China and Vietnam both claim the Gulf of Tonkin as part of their territory and a natural land extension as per UNCLOS Article 76, even though it is only 170 nm wide at its widest. Vietnam bases its claims to sovereignty over the Spratlys by right of cession from France in 1933. The French, however, made no subsequent efforts to perfect title to the Spratlys by occupation. Nor did they act by returning after Japan's departure following World War II, or by acting after Japan formally relinquished all title and future claims to the islands at the San Francisco Conference of 1951. Consequently, France possessed no lawful title to the Spratlys to which Vietnam could succeed.

The Philippines justifies its claim to the Spratlys principally on "discovery" of certain islands by Thomas Cloma in 1947. In 1956 Cloma proclaimed the creation of a new island state, "Kalayaan" (Freedom Land), with himself as chairman of its Supreme Council. While no government ever recognized the lawfulness of this "state", Cloma persisted with his claim until 1974, when "ownership" was officially transferred under a "Deed of Assignment and Waiver of Rights" to the Philippine government. The first official claim by the Philippine government came in 1971, mainly in response to a Philippine fishing vessel being fired upon by Taiwanese forces stationed on Itu Aba Island. The Philippine government reacted by protesting the incident and then asserted legal title by annexing islands in the Spratly group based on Cloma's claim. In 1978 the Marcos government formally annexed the archipelago to the Philippines and placed it under the administration of Palawan province. Interestingly enough, the official Philippine position contends that the Kalayaan Islands group is separate and distinct from the Spratlys and Paracels. This Philippine claim is predicated on a geological assertion that the continental shelf of the so-called

Kalayaans is juxtaposed to the Palawan Province and extends some 300 miles westward, into the heart of the Philippines' exclusive economic zone (EEZ). To defend its claim, the Philippines currently has 595 marines stationed on eight islands. These bases are fortified with heavy artillery and are equipped with radar facilities, a weather station, and ammunition depots.

More recently, Malaysia and Brunei have asserted claims to certain islands and reefs in the Spratlys, based principally on certain continental shelf provisions in UNCLOS. Article 76 of UNCLOS describes what legally constitutes a continental shelf for a state, and the sovereign rights it may exercise for exploring and exploiting the resources of its continental shelf. However, the countries which signed UNCLOS have several reservations about Article 76. In 1996, when China signed UNCLOS it had five reservations, the very first being that China would claim sovereign rights over the continental shelf: the implication was that China was refusing to abide by UNCLOS even as it signed on to it.

Malaysia is the most recent claimant to occupy part of the Spratlys militarily. In late 1977, Malay troops landed on Swallow Reef. Since then, about seventy soldiers have been stationed on three of the twelve islets claimed by Malaysia. Regardless of troops occupying islands in the Spratlys, it must be understood that the continental shelf gives greater area to the northern South China Sea, i.e. China, Taiwan and Vietnam stand to benefit rather than the southern side, i.e. Indonesia, Malaysia and Philippines.

Brunei has only one claim to the Spratly group, that being to a naturally submerged formation known as Louisa Reef. Similar to Malaysia the legal premise for substantiating Brunei's claim flows from continental shelf provisions in UNCLOS. Unlike Malaysia's claims to island formations, however, Louisa Reef is a submarine feature and part of the seabed. Hence, it may be regarded legally as an extension of a continental shelf. The critical point here, of course, is Brunei's ability to demonstrate that Louisa Reef is indeed part of the extension of its continental shelf. Settlement here is neither necessary nor possible; the key criterion to be satisfied for ownership is whether the continental shelf can be substantiated as a natural prolongation seaward from the coastal territory of Brunei. Granting that, Brunei would enjoy the exclusive right to exploit resources of the reef. Brunei is the only claimant without a military presence in the Spratlys. Even so, Louisa Reef is also claimed by Malaysia, which took possession of it in 1984.

In sum, the Spratlys situation remains complicated by competing claims and the possibility of military clashes. Taiwan remains in control of Itu Aba Island; the PRC has occupied seven reefs and rocks since January 1988;

Vietnam now occupies at least twenty-seven islands, reefs and cays. The Philippines controls at least eight principal islands and claims some fifty other islets, reefs and shoals. Malaysia has troops on three atolls and asserts claims to nine other geological formations in the area. Brunei claims Louisa Reef. The South China Sea thus has become a patchwork of conflicting national claims, most recently driven by geopolitical considerations over development of potential hydrocarbon resources.

Once competing states unilaterally assert territorial and maritime competence in the South China Sea, articulate enforceable limits of national jurisdiction, and then proceed to grant to multinational companies concessions or licensing projects within the areas claimed, conditions become ripe for conflict over boundaries for allocating development opportunities in resource zones. National anxieties also become aggravated, and regional tensions can escalate to the point where military options become acceptable to some governments. This pattern emerged during the past decade for states with competing claims over the Spratlys.

The intractable and contentious nature of jurisdictional disputes over the Spratlys has prompted claimant states to make efforts to enforce their claims by stationing a permanent military presence in the archipelago. By 1999, nearly 1650 troops of five claimant governments had occupied at least forty-six of the fifty-one land formations. In the process, the two principal antagonists, China and Vietnam, have each increased naval patrols and established new military outposts on previously unoccupied islets.

Special Geo-strategic Interests in the Spratlys

All of the claimant states assert special geo-strategic interests in the South China Sea. These are focused at two levels, geo-strategic and economic. China's main strategic interest lies in what it sees in dealing with two "unfavourable" factors. One, China has actual control over only a small number of disputed islands and lacks channels that give connection to the oceans (major straits are controlled by the US and its allies or partners: these include Sunda, Lombok, Luzon and Malacca). Two, while the PLA Navy has developed major operational capabilities for what can be termed as green- and blue-water roles, it remains constrained by the First Island Chain that inhibits power projection and puts restraints on the security of sea lines of communication (SLOCs). It is to deal with these constraints in concert with growing military capabilities that China can be seen as adopting a policy of strategic coercion. Singular Chinese control or autonomy is unacceptable; all regional actors are keen to maintain open

commercial sea lanes throughout this region to sustain their international trade. It is in this context that Americans and their allies and partners - that includes Japan and India - look upon the Chinese moves as an attempt to control and dominate this strategic sea space. These opposing stands carry all the portents for friction and contest leading to conflict.

Economics too plays an important part. Fishing remains an important economic activity for all littoral states, and these waters hold abundant supplies of numerous fish species. A recent study indicates that the Spratlys area, covering some 390,000 sq km, is one of the world's richest fishing grounds, yielding 7.5 tons of fish per sq km. Second is the energy perspective. Oil and gas exploration is being used to ratchet tensions in the region. Promoting an offshore energy industry has become a major factor in China's national economic reform policy. China's strategy of moving offshore to develop potential oilfields has strained its relations with other littoral states in South-East Asia. Its desire to acquire vast areas of oil-rich seabed undoubtedly has been a prominent catalyst in motivating other claimant states to carve out and assert national claims throughout the Spratlys. This rivalry has compounded regional tensions over the past decade.

However, the reality is that there is declining enthusiasm for oil exploration in the South China Sea. Tall claims of the area being the second "Persian Gulf" have not been substantiated by the results of oil surveys. This is leading analysts to conclude that energy exploration is nothing but a ruse to occupy areas close to the SLOCs. China in particular feels disadvantaged, given its geographic location with regard to SLOCs. Its only achievement of some sort in exercising control has been the occupation of the Spratlys in 1988.

Vietnam has emerged as China's main rival in the South China Sea. China has created an agency called China Marine Surveillance (CMS) to conduct surveillance over what it calls its "near seas (jinhai)". In recent years there have been a number of incidents involving ships of the CMS accosting Vietnamese and Filipino oil exploration vessels operating in their EEZ. In a sense this competition has provided China with the opportunity to extend its influence as a maritime power in Asia. The Chinese desire to preserve economic and political interests through a strategic doctrine of active defence offshore makes it necessary for the Chinese navy to be prepared for maritime disputes. Sovereign rights, fishing rights, and the perceived potential of offshore hydrocarbon resources are being used as potential triggers that have driven the PRC's claims to islands in the South China Sea.

There is little doubt that Chinese claims to the Spratlys, which at their

nearest point lie some 1110 km (600 nm) south of the Chinese mainland, reflect strategic island grabbing. Such claims ostensibly support diplomacy that will reinforce China's naval presence in the South-East Asian waters. Chinese warships thus have become a projection of Beijing's politics into the South China Sea. Moreover, China's intentions clearly are to acquire both aircraft carrier and long-range, in-flight refuelling capabilities backed by active sea denial capabilities through its increased maritime domain awareness and anti-ship ballistic missiles and long-range cruise missiles, to facilitate projection of those politics throughout the region.

Prospects of Military Conflict

Developments affecting the Spratlys over the past decade have exacerbated tensions in the South China Sea. Several incidents involving bilateral intimidation contributed to an uneasy, belligerent mood among various claimants during the late 1990s and the first decade of the current century. Indeed, the Spratlys have surfaced as a primary flashpoint for conflict, particularly with Vietnam. The declaration of the South China Sea as one of its "core issues" recently by China is an escalation of regional tensions by putting this claim on the same pedestal as Taiwan and Tibet, legitimizing the use of military means to enforce its claims. This has made China's neighbours like Vietnam and Philippines nervous; they have sought regional international guarantees and intervention from other interested players like the US and multilateral arrangements such as the ASEAN Defence Ministers' Meeting plus, to prevent China from undertaking unilateral action.

Until last year, China shied away from an open declaration of "sovereign claims" over the South China Sea. With the claim of the South China Sea in terms of nine dotted lines marking its claimed boundaries, China appears to have overplayed its hand. The claim has precipitated an international crisis, with the affected nations openly criticizing China's activities in the South China Sea. The Hanoi meeting in 2010 was a watershed development. US Secretary of State Hillary Clinton publicly acknowledged US right of intervention in case freedom of navigation was restricted in the South China Sea.

Significantly, in the recent past China has become aggressive in the maritime domain. It maintains that it has the right to regulate foreign military activities in its EEZ whereas the US claims freedom of navigation and over-flight in international waters. Armed with naval and air infrastructure and a large fleet of modern destroyers and frigates, the PLA Navy is now conducting regular operations in the East and South China Sea, including aggressive patrolling of the Paracels and Spratlys. Further, the number of PLA Navy exercises and the

levels of participation have gone up substantially.

In 2011 the number of clashes between China and other countries have increased. On 2 March PLA Navy's patrol boats harassed the Philippines' oil exploration vessel in Reed Bank which is located 240 km west of Palawan. In response the Philippine Air Force launched OV-10 bomber and Islander aircraft and deployed three coast guard ships. It also lodged a diplomatic protest. In May, the cables of the Vietnamese oil exploratory vessel were deliberately cut by Chinese ships in the disputed area. The tensions continued to escalate, and in June, Vietnam reported that the Chinese naval boats had opened fired on Vietnamese fishing boats in the Vietnamese territorial waters. Similar incidents of standoff between China and Philippines have been reported in Reed Bank. These incidents are clear indication that China is trying intimidation and coercion to assert its claims over the disputed islands. This has led the South East Asian countries that have stakes in these islands to beef up their sea denial capabilities.

Indian Interests in South China Sea

The fundamental perspective of Indian interest in the South China Sea is underscored by the growing arc of Indian strategic interests in tune with its increasing trade and economic engagements. ASEAN and East Asia form the fastest growing component of India's economic interests and an area of acute economic and strategic interest. These linkages are likely to grow with growing trade with these two blocs, which is expected to cross US\$ 100 billion by 2015–16. This has led to strategically linking the ocean spaces of the Indian Ocean and Pacific Ocean; a term has been coined - the Indo-Pacific Ocean - to highlight seamless connectivity. It is therefore but natural that Indian interests will gravitate toward the security and stability of this expanded geo-economic and geo-political space at the confluence of the two major oceans.

The extension of Indian strategic space into the Indo-Pacific Ocean will naturally have strategic consequences. China has reacted by asking India to stay away from the South China Sea while the South-East Asian countries and Japan have welcomed the Indian presence. China, which looks upon the South China Sea as a springboard for its power projection in Asia-Pacific, looks upon the Indian presence with the blinkered vision of China containment in concert with the democracies along the Asian Rim Land.

It is indeed unfortunate that India's growing bilateral relations with Vietnam and with other South-East Asian countries, in particular Indonesia, and growing strategic cooperation with Japan, are seen by the Chinese as an Indian attempt

at strategic assertion in the Chinese backyard. The paranoia gets enhanced in the backdrop of US-India strategic partnership and American attempts at ensuring freedom of seas and asking China to resolve the issue bilaterally.

As discussed earlier, India does not seek any confrontation with China nor is it trying to create any concert of democracies or any other mechanism that will restrain China or impinge on its interests. Just as the Chinese footprints in Myanmar, Nepal, Sri Lanka and Bangladesh are driven by trade and resource considerations apart from building strong bilateral ties, India too is attempting to build strong economic and strategic relations with ASEAN and East Asia to secure its markets and transportation linkages through the security of sea lanes.

India has genuine economic interests in the region. During the recent visit of the Vietnamese Prime Minister to India, the two countries signed an oil and gas exploration agreement, in addition to significantly upgrading their military and trade relationship. In a rather trenchant editorial, China accused India of getting involved in the South China Sea dispute despite China urging India to stay out. It concluded that India has a vested interest in becoming involved as part of the larger strategy to contain China in the region. An influential Chinese Communist Party-run newspaper warned that "every means possible" should be used to stop India's Oil and Natural Gas Corporation (ONGC-Videsh) engaging in exploration projects in the South China Sea. It further warned India that its actions would push China to the limits, implying that India would bear the consequences of its action.

There are mixed views on India's continued oil exploratory activity in the South China Sea. Some diplomats and analysts, generally concerned about China's rise, take a view that there is a need to pay close attention to the Chinese protest. They remind us of a range of possibilities that exist and a range of options that are available to the Chinese. The concern is what happens if China decides to take the conflict to the next level by triggering a confrontation in its own backyard, in terms of physical harassment. They question what would be the reaction of the Indian government or for that matter Vietnam: will the Indian Navy be asked to react and in what manner? They also point out that China's propensity of upping the ante along the disputed India-China border is nuanced.

Implicit in these arguments is a perspective that India has limited options and it would be prudent to give up its exploration rights or negotiate these with the Chinese, foregoing any confrontation. This is unnecessary passivism. While nobody wants to confront China, India needs to take all such steps in

conjunction with Vietnam and other regional players to protect its own interests. While it is nobody's case to enter into confrontation with China, that country's India-centric jingoism also needs to be analysed. Why is China adopting a coercive attitude against India while seeking mutual accommodation with ASEAN countries and even Vietnam and the Philippines?

Under the circumstances, what are India's options? It needs to be categorically pointed out that India has interests in the region and these are purely economic and partly political. India's stakes in three blocks in Vietnam are as old as May 1988. What is important and relevant is that in all these years China did not formally raise any objection to any of the agreements or projects undertaken by India. It is only since it started claiming the area as being part of its core interest that China has become hypersensitive.

India does not seek confrontation with China nor will it forsake its legitimate economic rights and agreements entered with a sovereign government. Second, it would be in the Indian interest to work with regional parties - to include ASEAN, China, Japan and even the US - to develop a framework for maritime cooperation. China must be encouraged to resolve the issue of its claims in the South China Sea in a spirit of mutual cooperation, regional harmony and peace. Unnecessary belligerence and assertiveness will only vitiate the atmosphere and harm its own long-term interests.

If China insists upon coercing India, then India too can raise the issue of Chinese presence in Pakistan where the Chinese are involved in over forty-five projects for a cumulative investment of about \$8–10 billion. Pakistan-Occupied Kashmir is Indian-claimed territory or, at worst, disputed. Moreover, China's projects like the upgradation of Karakoram Highway and planned rail link to Gwadar in Pakistan are aspects which are of strategic concern to India, which India will be well within its rights to raise. The solution lies in resolving the issue in a spirit of mutual accommodation. Joint development of fossil and other resources will be for common good of the region, as against an attempt to corner them for use by one country flexing its military muscle.

Conclusion

The essence of the Spratlys dispute lies in questions of territorial sovereignty, not law-of-the-sea issues. UNLOS prescribes new legal rights and duties for Asian littoral states and other users of ocean space. In the South China Sea, the extension of 12 nm territorial sea and 200 nm EEZ has exacerbated conflicting claimed jurisdictions over non-living resources in overlapping

continental shelf zones. Moreover, various political antagonisms and disputed sovereignty claims over the Spratlys have seriously complicated the establishment of agreed-upon baselines for territorial waters.

The complexities of overlapping claims and the long history of the dispute make determination of national sovereignty in the Spratlys extremely difficult. Obviously, if the issue of sovereignty can be resolved, then the maritime jurisdictional principles codified in UNCLOS can be applied to the Spratlys. Such application would cede undersea resource rights to portions of the South China Sea to recognized legal owners. Yet, no claimant government is able to establish sufficiently substantial legal grounds to validate its claim. This situation, paradoxically, makes resort to binding arbitration or adjudication by claimant states, especially China, less likely since none is willing to risk an unfavourable outcome.

The Spratlys dispute is sharpened by strategic and geopolitical considerations. China requires increasing energy resources to meet the growing needs of its rapid industrialization process, and its massive population exacerbates its energy problem, although as per 2008 data, the South China Sea has a mere 2 per cent of the world's proven oil reserves with projection of 2.4 million barrels per day of gas.

ASEAN states are especially concerned because China historically has shown readiness to use military force to settle disputes within what it regards as its sphere of influence. China's build-up of naval forces is seen as expanding this sphere in the South China Sea through build-up of force projection capabilities. The Chinese moves at attaining blue-water naval capability are viewed by some as spawning a naval arms race among Asian states.

Where India is concerned, it has no strategic interests beyond economic engagement and security of its trade. It has entered into legal contracts with sovereign states, which are legally binding. It is important for China to recognize these facts and resolve any contentious issues in a spirit of mutual accommodation and cooperation, without being unduly jingoistic.

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