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Can Conflicts Be Solved by Shelving Disputes?

A Rejoinder

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FROM THE PERSPECTIVE of peace research, it is important not to become too fascinated – or worried – by the ongoing conflict over the sovereignty of the vast southeastern part of the South China Sea often called ‘the Spratlys’, with many far-flung reefs, banks and atolls but no islands with a history of population. Five states lay claim to all or some of the reefs and islets in the area: on behalf of China, both the People’s Republic of China (PRC) and Chinese Taipei (the Republic of China on Taiwan, hereafter the ROC); Vietnam; the Philippines; and Malaysia.¹ Navies and nationalists may have an interest in focusing on this dispute, but for the people who live around the South China Sea, the ownership of the Spratlys does not necessarily matter. What they need from the sea is sufficient seafood, provisions of energy, secure sea-lanes, peace and environmental security – now and for future generations.

The main purpose of the informal workshop process which Indonesia initiated in 1990 was to shift attention from the sovereignty dispute to more essential concerns which the regional countries could try to tackle together, and which do not necessarily depend on a resolution of the sovereignty dispute. Annual workshops have

been held in Indonesia throughout the 1990s, and expert groups have met in countries throughout the region. The idea has been to build confidence, initiate cooperative projects, lay the foundation for the joint management of maritime resources, and ensure environmental protection. Sovereignty issues have been banned from the agenda at all meetings.²

One main achievement the workshops has been to gather representatives of the PRC and the ROC around the same table. Agreement has been reached to launch joint research projects on biodiversity and monitoring sea-level rise, and to exchange marine research information. The major disappointment has been the unwillingness of the PRC representatives to take part in multilateral dialogues more actively.

Now, Lee Lai To points out that the PRC has gradually become more willing to engage in talks about the South China Sea, both informally and formally, and not only bilaterally. This has happened very slowly. As he also writes, Beijing continues, however, to prefer a bilateral approach. As Tim Huxley hinted recently, observers of the Southeast Asian scene are not impressed by the PRC’s willingness to talk.³ Many of them see Chinese talk about peaceful rela-

tions and 'joint development' as smoke-screens for a long-term expansionist strategy. Beijing is buying time, and wants to play one ASEAN (Association of South-East Asian Nations) country off against the other.

International scholarly debate about the South China Sea disputes needs attention and continuity. Some aspects have been discussed previously in *Security Dialogue*.⁴

China's Central Role

Lee Lai To, like Ji Guoxing and Tim Huxley, emphasizes the PRC's central role. As the most powerful state in the region, with rapid economic growth and a keen awareness of its need for access to resources, China holds the key to resolving the South China Sea conflict. There is much to gain by peaceful means and much to lose by resorting to power. One effect of the Asian crisis since July 1997 has been to strengthen the PRC relative to other regional states, and to reduce the leverage of Indonesia, the initiator of the workshop process.

Fears exist that China will increase its military presence in the southern part of the South China Sea. In November 1998, the Philippines published photographs showing that the PRC was expanding its four-year-old constructions on Mischief Reef, a geographical feature claimed by Manila under the name of Panganiban Reef. The Philippines asserts (apparently with good reason) that the constructions on Mischief Reef are of a military nature and are transforming the reef into an artificial island.⁵ The PRC alleges that the constructions are merely shelters for fishermen.

This second Mischief Reef crisis, however, did not provoke the same massive criticism of China from the ASEAN countries as the first one did in 1995. Meanwhile, China has improved its relations with Thailand, Malaysia and Vietnam. China and Vietnam have pledged to reach an agreement on their land border and to delineate their sea border in the Tonkin Gulf before the end of 2000. After the first Mischief Reef incident, the PRC also signed a

code of conduct with the Philippines. In accordance with this, bilateral talks were held in March 1999 between the PRC and the Philippines to defuse the crisis.⁶

Can the states in the region get beyond the present pattern of re-occurring incidents? Can China reconcile its national interests with the long-term interests of the populations around the South China Sea in a secure regional environment? The answer may be yes, but this depends on how the PRC (as well as the ROC) defines China's national interests. Ji Guoxing's article was promising in this respect, giving priority to China's need for a peaceful environment: 'The basic factor ... remains: that China wants to have a peaceful environment'.⁷

Should China Define Its Claims?

Tim Huxley took a less sanguine view of Chinese intentions.⁸ He set up five requirements that the PRC would need to fulfil in order to play a genuinely useful role: (1) moderate its claim to sovereignty over maritime territory, (2) clarify the full and precise extent of its claims, (3) desist from the occupation of further features, (4) specify what it means by 'joint development' and (5) reassure its neighbours through military transparency. The last three requirements are essential, but the first two may not be sufficiently realistic to be helpful. There are several reasons to be careful in pressing the PRC to speed up definition of its claims.

First, the general claim to sovereignty in the South China Sea has become a basic, obligatory credo underlying Chinese official nationalism. This is also reflected in Lee Lai To's article, where he writes about 'China's sovereignty over the South China Sea' as if any state could claim sovereignty over a whole sea which is surrounded by a number of states. If we proceed from international law, then sovereignty claims can be made only to islands and internal waters. The rest is a question of delimiting maritime zones and continental shelves. The idea of having sovereignty over the South China Sea as such is a kind of extra-

legal construct which is intractable, and thus it seems better to leave it aside than to define or modify it. Any leader in Beijing (as well as in Taipei) will find it extremely difficult to explicitly moderate this claim, which was first made by Chiang Kai-shek's government in 1947 (or 1948)⁹ and codified by the PRC as late as February 1992, in its Law on the Territorial Sea and the Contiguous Zone. Ji Guoxing actually went quite far when he explicitly recognized the obvious point, in terms of the law of the sea, that the validity of the nine-dotted line that has been drawn on Chinese maps since 1947 'seems questionable'.¹⁰

The second reason for being careful is related to the fact that the Chinese claim in the South China Sea involves two governments, one in Beijing and one in Taipei,¹¹ both of which will have to use baselines around Taiwan and ROC-occupied islands (in addition to Hainan, the Paracels and the coast of Guangdong province) as points of departure for making legally sustainable claims to Exclusive Economic Zones (EEZ). As long as the conflict over Taiwan's status is unresolved, it will be virtually impossible to delimit maritime zones in the South China Sea. One would have either to ignore the ROC or to treat it as an independent state. It is inconceivable that any of these solutions would be acceptable to both the PRC and the ROC. For this reason, it may be desirable that China desists from precisely defining its claims to EEZs until this can be coordinated with authorities in Taiwan, or done in conjunction with a resolution of the Taiwan conflict.¹²

Third, if the PRC were to make a precise definition of its overall claims, it could be tempted to take up Ji Guoxing's dangerous proposal and 'define its baselines of territorial seas in the Spratlys by taking as base points such small islands as Itu Abu Island, Thitu Island, Amboyna Cay, Flat Island, Nanshan Island, Commodore Reef, Swallow Reef and Spratly Island, then draw straight lines connecting them in a rectangular form, and define the 200 nautical mile continental shelf instead of the nine-dashed intermittent line'.¹³ This would mean

drawing baselines around an enormous area whose islets and reefs are today occupied by Vietnam, the Philippines, Malaysia and Taiwan. That would be a certain way to further militarize the conflict.

Moreover, it would be in violation of the UN Convention on the Law of the Sea (UNCLOS), which the PRC ratified in 1996, and which all the countries in the area have also ratified. Non-archipelagic states like China cannot simply define the Spratlys as an archipelago.¹⁴ The distance between the features in the Spratly area is much too great to allow the drawing of straight baselines. Further, there may not be a single islet in the Spratly area that satisfies the (admittedly ill-defined) criteria in UNCLOS for an 'island' with a right to generate EEZs. To qualify as a legal island, a feature must be above water at high tide and able to sustain human habitation and an economic life of its own (UNCLOS 121 (1), 121 (3)). Features above water that do not satisfy 121 (3) have a right only to 12-nautical-mile maritime zones. Artificial islands have a right only to 500-metre security zones.

The Spratlys May Not Be Islands

The UNCLOS definitions are not the only reason for arguing that the Spratlys are not an archipelago and do not include any 'islands'. Another compelling reason is that the dispute will otherwise be intractable. Five states keep features in the Spratlys occupied, if we count the PRC and the ROC as separate states. If any features are given status as islands with a right to EEZs, then this will make military aggression pay. There will be a temptation to drive the other occupants out. This may also internationalize the conflict, since neither Japan nor the United States is likely to allow the South China Sea, with its vital sea-lanes, to be controlled by a single state.

Two of China's main goals are to maintain friendly relations with Southeast Asia and to avoid internationalization of the disputes. To draw baselines around the Spratly area would seriously jeopardize those goals. The best way of resolving the

conflict peacefully may be simply to agree that there are no 'islands' there.¹⁵ Then the delimitation of maritime zones could be made from baselines along the western coasts of the riparian states, as well as the island groups in the Paracels (occupied by the PRC but also claimed by Vietnam). In this case, a zone would remain in the central part of the South China Sea, where a joint development or management zone could be set up.¹⁶

This has been called 'the doughnut theory', put forward by Ambassador Hasjim Djalal, Indonesia's leading expert on the law of the sea and the main instigator of the workshop process. Perhaps the best way for China to assert itself peacefully in Southeast Asia would be to put aside the dispute over the Spratlys and opt for a combination of bilateral and multilateral solutions, based on the law of the sea and its own ideas for joint development – or management.

So, yes, conflicts can be solved by shelving disputes. The conflict in the South China Sea would be easier to manage, and eventually to resolve, if the states around it could agree to drop the dispute over sovereignty of the so-called Spratlys and concentrate on more essential, shared concerns.

NOTES AND REFERENCES

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- 1 Three geographical features also fall within the Exclusive Economic Zone claimed by Brunei, but Brunei has not specifically claimed sovereignty over the features as such.
- 2 Ian Townsend-Gault, 'Preventive Diplomacy and Pro-Activity in the South China Sea', *Contemporary Southeast Asia*, vol. 20, no. 2, 1998, pp. 171–190.
- 3 Tim Huxley, 'A Threat in the South China Sea?', *Security Dialogue*, vol. 29, no. 1, March 1998, pp. 113–118.
- 4 Francisco A. Magno, in his article 'Environmental Security in the South China Sea' (vol. 28, no. 1, March 1997, pp. 97–112), listed the environmental problems requiring multilateral cooperation. Then Ji Guoxing tried to defuse anxieties regarding the PRC's intentions in 'China Versus South China Sea Security' (vol. 29, no. 1, March 1998, pp. 101–112). Tim Huxley contributed his pertinent rejoinder from the perspective of a South-east-Asianist (see note 3 above).
- 5 Numerous news reports after the Foreign Ministry of the Philippines made a press release with photographs on 6 November 1998.
- 6 *South China Morning Post*, 22 March 1999.
- 7 Ji Guoxing (see note 4 above), p. 101.
- 8 See note 4 above.
- 9 See Greg Austin, *China's Ocean Frontier* (Canberra: Allen & Unwin, 1998), p. 14, note 6.
- 10 Ji Guoxing (see note 4 above), p. 103.
- 11 The largest of the islands in the Spratly area, Itu Aba, is under occupation by the ROC.
- 12 The PRC and the ROC could use collaboration in resolving the South China Sea conflict as a means of defining Taiwan's status. See Christopher C. Joyner, 'The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan?', *New England Law Review*, vol. 32, no. 3, Spring 1999, pp. 819–852.
- 13 Ji Guoxing (see note 4 above), p. 103.
- 14 The only archipelagic states in the region are the Philippines and Indonesia. China drew baselines around the Paracels in 1996, but that has led to protests from other states.
- 15 Mark J. Valencia, Jon M. Van Dyke & Noel A. Ludwig, *Sharing the Resources of the South China Sea* (The Hague: Martinus Nijhoff, 1997), pp. 46–48.
- 16 For maps showing how the South China Sea might be divided into maritime zones, ignoring the Spratlys, see Valencia et al. (note 15 above), pp. 264–265.