

China's Window of Opportunity in the South China Sea

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Introduction

China's main security concern for the time being is Korea. It is feared in Beijing that the North Korean regime will soon be in the dustbin of history, in the same way as East Germany, and that there will be a US military presence in all of Korea. China is extremely concerned to prevent this from happening. At the same time, Beijing is suspicious not only of Taiwan and the Philippines, but also Vietnam. Beijing fears that Hanoi will help the US gather intelligence about Chinese missile capabilities.

The reactive and suspicious character of Chinese policies in the field of security also characterises its approach to the South China Sea. Here China's policy can be summed up in seven points:

1. A claim that China has irrefutable sovereignty to the Paracels (Xisha), the Macclesfield Bank (Zhongsha), Scarborough Reef (Huangyan) and all the islets and reefs in the huge Spratly (Nansha) area (i.e., all isles within the so-called nine-dotted line).
2. Wide-ranging, but undefined continental shelf and maritime zone claims (probably encompassing most of the area within the nine-dotted line).
3. Occupation and construction of facilities on formerly unoccupied reefs in the Spratly area, but no attacks against islets or reefs that are already under occupation by other states.
4. A long-standing, undefined proposal to shelve the sovereignty disputes while establishing joint development.

5. Rejection of proposals for multilateral negotiations, and a preference for resolving the disputes bilaterally with each of the other claimant states; yet reluctant acceptance of multilateral talks within the region about specific issues, such as a code-of-conduct.

6. Rejection of any involvement by extra-regional powers.

7. Repeated promises to follow the rules established in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

This provides for a passive, reactive policy that does not allow Beijing to exert its interests diplomatically. I will argue that China at present has a window of opportunity in this area. But let me first sum up the main findings from a research project I have conducted at the University of Oslo over the last three years, concerning 'Energy and Security in the South China Sea', with participation of ten researchers and students of international law and political science (see <http://www.sum.uio.no/southchinasea>).

Environmental awareness and legal expertise

The project has led to the conclusion that the two main conditions for reaching a solution to the conflict in the South China Sea is firstly, that all countries realise the urgency of the environmental situation and secondly, that they improve and utilise their legal expertise, notably in the law of the sea.

The main findings of the project are:

1. The last decade has marked a trend away from narrow focus on traditional national security towards a comprehensive concern for human and environmental security. International 'epistemic communities' of experts have emerged. The Convention on Biological Diversity entails important obligations for states. There is a growing awareness of threats to the marine environment. Environmental concerns are shared by all the countries around the South China Sea. Thus the urge to protect the environment and manage scarce resources seems to provide the main basis for a possible 'win-win solution'.

2. Historically the tiny Paracel islands, and notably the even smaller Spratlys, have had very limited economic and strategic value. However, their importance has been continuously exaggerated by local interest groups, by some navies and by the media. If their very limited value is realised, this may make it easier to resolve or get around the sovereignty disputes.

3. China's policy in the South China Sea has not been as chauvinistic or aggressive as is often been claimed in Western media. China believes that it is defending its patrimony against foreign incursions. It has strengthened its navy, built an airbase in the Paracels, acquired a capacity for refuelling fighter aircraft in the air, and has occupied and built military installations on a certain number of reefs and rocks in the Spratly area. However, since 1988 China has consistently avoided violent conflict. China has not tried to invade any of the islands held by Vietnam, the Philippines, Malaysia or Taiwan. These four countries now hold all those Spratly islands that are big enough to conceivably have a right to a continental shelf and exclusive economic zone (EEZ). China has only reefs. Chinese media consistently claim that China has a right to the whole South China Sea, but the media have not launched any campaign for aggressive action. Still China has played a less than constructive role in regional attempts to establish confidence-building measures, cooperative projects, or to establish the foundations for conflict resolution. The main stumbling block on the way to a process of conflict resolution is the suspicious hesitation that characterises Chinese policy.

4. As an oil province the South China Sea has disappointed the expectations of the 1970s-80s (except in the area just north of Borneo), and it is unrealistic for southern China to be able to satisfy its rapidly increasing energy needs through production of oil and gas in the South China Sea. Southern China is now a major importer of Middle Eastern oil and will soon also import LNG. This means that China must be increasingly concerned with the safety of international shipping routes. So far, however, Chinese new position as a big importer of energy does not seem to have brought any change in the government's South China Sea policy.

5. A precondition for approaching a solution to the disputes in the South China Sea is that all parties familiarise themselves with the rules of the United Nations

Convention on the Law of the Sea (UNCLOS), which all the claimant states have signed and ratified. To be negotiable, the claims of each country must be defined and phrased in accordance with UNCLOS. There are clear signs of increasing legal competence in the region, but most politicians have not grasped the significance of UNCLOS. They notably remain unable to distinguish between claims to full national sovereignty, which can only be made to land, and claims to maritime zones, which concern the sea and seabed. Many emotional statements are based on basic misunderstandings of the law of the sea.

6. The disputes in the South China Sea will be much less explosive once all the claimant states realise, or agree between themselves, that none of the Spratly islands are big enough to satisfy a reasonable interpretation of the conditions established in UNCLOS for islands to have a right to a continental shelf or exclusive economic zone (EEZ). It is reasonable to interpret UNCLOS to the effect that the 22-40 high tide elevations in the Spratly area have a right only to 12-nautical-miles territorial waters. It is also clear that if any of the islands should be granted a right to a continental shelf and EEZ, then the coasts of Vietnam, Malaysia, Brunei and the Philippines will have far more weight in maritime delimitation than the tiny Spratly islets. Thus their continental shelf and EEZ will be small, except in the northern direction, where the distance to the nearest coasts is well over 200 nautical miles. This central part of the South China Sea will either be international waters or the EEZ of some of the Spratlys.

7. It will contribute greatly to facilitating maritime delimitation if the coastal states redraw their coastal baselines, following the rules established in UNCLOS. Today only the baselines of the Philippines (because it is recognised as an archipelagic state) seem to satisfy the rules. Vietnam, China and Taiwan have made illegitimate use of straight baselines, and these are unlikely to be accepted as basis for negotiations by other claimant states (unless they all agree to use a special straight baseline system for the South China Sea). At any rate the radical baselines are unlikely to be respected by third parties, i.e., the world's main naval powers.

8. The disputes over sovereignty to islands and maritime delimitation in the South China Sea are extremely complex, but it is possible to resolve them through negotiations. It would also be possible to seek arbitration or decision on certain contested issues by the

International Court of Justice in the Hague or the Law of the Sea Tribunal in Hamburg, if the claimant states agree to do so. The main thing is for the regional governments to decide that they want a solution, and then find qualified diplomats and politicians to carry out the necessary work.

A window of opportunity

On the basis of these findings I would like to argue that China has every reason to change its posture in the South China Sea, and launch a diplomatic strategy for conflict resolution. There is little that China can gain by waiting for a better opportunity at some later stage. Beijing has a window of opportunity now. China has already significantly improved its diplomatic relations with all the other countries who claim islands and maritime zones in the contested parts of the South China Sea. China could capitalize on the success of its own recent regional diplomacy. A failure to do so might lead to a situation where incidents, such as a fishing dispute, could deteriorate China's relations with its neighbours. Moreover, Sino-US relations are not at present so hostile that the United States would be likely to interfere in a negotiating process concerning the South China Sea. As long as China negotiates with all of the other claimant states and the negotiators make sure to guarantee the freedom of navigation, the USA would not feel that its basic interests are threatened by a higher Chinese diplomatic profile in Southeast Asia. India and Japan are also not now sufficiently influential in Southeast Asia to impose themselves and distract a Chinese diplomatic effort, if this is welcomed by ASEAN. In the long run, particularly if the US military presence is reduced, Japan and India are likely to become more assertive. Since China now shares the traditional dependence of Japan, South Korea, Taiwan and the Philippines for import of oil from the Middle East, all of these countries should feel a shared concern for safeguarding the freedom of navigation, suppressing piracy and avoiding international crises. A last, and perhaps the most compelling reason for China to act now, is that there is an urgent need for regional cooperation in addressing threats to the marine environment. Several species of fish are in danger of being depleted, and the coral reefs, which constitute the natural breeding ground for a wide variety of live resources, are being destroyed by troops and

fishermen using illegal methods. The situation is serious not only for the Chinese fishing communities but also for the coastal populations who depend for their protein intake on seafood from the South China Sea. From a responsible environmental perspective it also seems urgent to define responsibilities for effective intervention in case of an environmental emergency, such as an oil spill from a tanker. There is little doubt that China, if it chose to address these issues through an active regional diplomacy, could seriously enhance its reputation in the region and the world.

A six-stage strategy

What then could China do? Within a time period of some ten-fifteen years, China could probably resolve the disputes with the other claimant states by pursuing the following six-stage strategy:

First stage: Negotiate a bilateral treaty with Vietnam on the Gulf of Tonkin (Beibu Gulf). Make sure that the median line is measured from baselines drawn in accordance with the rules established in UNCLOS, and define territorial waters, contiguous zones and exclusive economic zones on both sides of the median line. Arrive at a mutually acceptable fishing regime, that ensures the preservation of essential fish stocks.

Second stage: Enlist Taipei's cooperation in working out a co-ordinated negotiation strategy vis-à-vis the Philippines, Malaysia, Brunei and Vietnam.

Third stage: Together with Taiwan make a 'small bargain' with the Philippines over Scarborough Reef. Agree that the reef does not have a right to more than 12-nautical-mile territorial waters. Shelve the sovereignty dispute to the reef as such and its territorial waters, and prohibit any kind of economic activity in the disputed zone.

Fourth stage: Use the 'small bargain' as a model for a 'big bargain' about the Spratlys and the Paracels. Concede that none of the Spratly islands satisfy the conditions for having a right to more than 12-nautical-mile territorial waters. Shelve the sovereignty dispute to the islands and reefs as such, and their territorial waters. Obtain, in return, recognition of Chinese sovereignty to the Paracels, and also that some of the Parcel

islands do satisfy the conditions for having a right to a continental shelf and 200-nautical-miles EEZ.

Fifth stage: Ask all claimant countries to draw new proper baselines along their coasts and islands, and to precisely define their continental shelf and maritime zone claims, using the baselines as point of departure. Delimit the continental shelf and exclusive economic zones through bilateral and multilateral negotiations. The Paracels can then be used as a basis for the Chinese maritime zone claim, but no claimant can use Scarborough Reef, the submerged Macclesfield Bank or the Spratlys.

Sixth stage: All claimant countries transfer their alleged sovereignty to the Spratlys to a regional or international authority, which is set up to administer a system of marine nature parks. Within the parks all economic activity is prohibited, except environment-friendly tourism. The Spratlys are thus given back to their original inhabitants: the birds, fish and turtles.