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The South China Sea—Islands and the Code of Conduct

Articles

Introduction

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The articles published in this volume of *Ocean Development and International Law* are based on papers from the conference Human and Regional Security around the South China Sea, which was held in Oslo, Norway, 2–4 June 2000. This was the final of three conferences organized under a three-year research project that studied the environmental, economic, historical, military, political, and legal aspects of the disputes concerning sovereignty to islands and the delimitation of maritime zones in the South China Sea.[1] The project, which received funding from the Norwegian Research Council, the Statoil Company, the European Science Foundation's Asia Committee, and the Norwegian Shipowners Association, was under the direction of Professor Stein Tønnesson and involved Dr. Kristen Nordhaug and eight students who have graduated or will soon graduate.

Keynote speakers at the June 2000 conference were Professor Dr. Ambassador Hasjim Djalal (Jakarta) and Dr. Mark J. Valencia (Honolulu). The workshop was organized into six panels: (1) Environmental Matters, (2) History, (3) Security, (4) Economy, (5) Law, and (6) Confidence Building and Conflict Management. Altogether, 37 papers were presented and discussed.

The articles published in this volume include Professor Dr. Hasjim Djalal's keynote address, wherein he sums up the main lessons from the Managing Potential Conflicts in the South China Sea Workshops, which have been running since 1990. The articles by Nguyen Hong Thao, Zou Keyuan, Alex G. Oude Elferink, and Marius Gjetnes are based on papers which were presented at the law panel. Kriangsak Kittichaisaree's article was presented at the Conflict Resolution Panel, and the paper by Edgardo D. Gomez was presented at the Panel on the Environment, which opened the conference and set much of its tone. The papers on history will be published later, in an edited volume, and some additional papers will serve as the basis for articles in *The Pacific Review* and other journals.

I will not try to summarize the articles, which stand for themselves, but I would like to take this opportunity to state some of my own personal conclusions from the discussions at the conference, which was organized under the Chatham House Rule.

1. *The environment in the South China Sea is under severe stress.* Disputed coral reefs are being rapidly destroyed by the use of illegal fishing methods and military activity. Some species of fish are being depleted. The environmental problems are recognized locally and agreement has been reached to undertake some joint research. However, little effective action has been taken. Even in areas where national jurisdiction is undisputed, it is difficult to patrol fishing grounds

and prevent the use of illegal fishing methods. In disputed waters this is impossible. While the situation is one of pessimism, environmental concerns are the most likely basis for regional cooperation and conflict management, and hence optimism. One factor that may contribute to reducing the intensity of the disputes is that there seems to be less prospect of finding substantial quantities of oil and gas in disputed areas than was believed in the 1970s–1980s. It is good news that the United Nations Environmental Programme's (UNEPs) new Strategic Action Plan for the South China Sea now seems to be getting off the ground.

2. *Old historical documents mentioning the reefs and islands in the South China Sea are unlikely to be helpful in resolving the disputes.* Historically, the Paracel and Spratly Islands have mainly been a source of danger to shipping. When ancient documents described them, the intent was not to claim sovereignty on behalf of any particular state, but to help seafarers avoid danger. Even in the 19th and 20th centuries the small islands and reefs in the Paracel and Spratly areas have been of much less economic and strategic value than some would have the world accept.

3. *Any attempt to resolve the disputes militarily is likely to fail.* The balance of naval force in the South China Sea is now partly affected by the growing strength of the Chinese Navy, partly by U.S. development of TMD (theatre missile defence) technology, and also by the increasing sophistication of satellite-based monitoring systems. Taiwan–Mainland China relations are closely intertwined with the conflict in the South China Sea. Any attempt to take already occupied islands by force is most likely to be resisted. The conflict would create a potential for disrupting international cooperation and prevent the utilization of maritime resources even by the new occupant. Realization of these dangers has been reflected in agreement among the littoral states of the South China Sea that they will not resort to force. Their dedication to preserving peace is further demonstrated in the current negotiations for a regional code of conduct. It seems possible that a local security regime could emerge for the South China Sea based on: (a) a shared implicit realization in China, the United States, and Southeast Asia that a balance of force is necessary in order to guarantee the safety of shipping, and (b) a general realization in the region that cooperation and conflict management must be undertaken in order to resolve critical environmental problems and facilitate international trade and investments.

4. *The region depends on international trade.* The economic development of the countries around the South China Sea depends on their trade with developed economies outside the region. The local states compete in the same markets and try to attract the same kinds of investments from outside. There has also been a tendency towards more regional integration, with Singaporean and Taiwanese investment as catalyzing factors. A pattern of sustained economic development will depend on keeping the means of communication open and on a cooperative trend.

5. *The Law of the Sea provides the main language for conflict resolution.* All the states have signed the United Nations Convention on the Law of the Sea (UNCLOS); most have also ratified it. The foreign ministries have increased their competence in the Law of the Sea, but many politicians lack a basic understanding of international law. The foreign ministries realize that any solution to disputes over maritime delimitation must be based on UNCLOS. This means that claims to sovereignty over so-called "maritime territory" must be rephrased as claims

to a 12 nautical mile territorial sea, a further 12 nm contiguous zone, a 200 nm exclusive economic zone, and a 200–350 nm continental shelf, all extended from properly drawn baselines along the coasts and around the islands of each state. A key step in paving the way for a solution to the South China Sea disputes is to decide if any of the small islets in the Spratly and Paracel areas fulfill the requirements for generating more than a 12 nm territorial sea, and if the answer is positive, how many. The text of UNCLOS is unclear on this matter and legal scholars disagree. The Philippines, China, and Taiwan might, if they want to, seek a resolution to their dispute over Scarborough Reef (west of Luzon) in a way that would set a precedent for resolving the larger disputes (notably concerning the Spratlys).[2]

6. *In 2000 and early 2001 there was a positive trend towards regional détente.* The most promising events in terms of preparing the ground for conflict management and regional cooperation were: (a) In December 2000, as promised, China and Vietnam reached an agreement on maritime delimitation in the Gulf of Tonkin and on fisheries cooperation in the Gulf. (b) Relations between the People's Republic of China and Taiwan improved to some extent, with more meetings and scholarly communication and with the opening, in January 2001, of communications between the Taiwan-controlled islands close to the mainland and the mainland itself. (c) ASEAN and China were negotiating actively with the goal of reaching agreement on a code of conduct, and both sides were making constructive proposals. (d) As mentioned, China finally gave the green light for UNEP's Strategic Action Plan.

7. *There is still ample ground for pessimism.* The atmosphere at the June 2000 Oslo conference was one of pessimism. This mainly concerned the environmental situation, but there were also considerable worries about matters related to regional security, although no one seemed to expect an outbreak of war. Significant hurdles must still be overcome before the countries around the South China Sea can engage themselves in a genuine process of conflict resolution.

Notes

1. Information about the project can be found on its website: www.sum.uio.no/southchinasea/

2. See Stein Tønnesson, "China and the South China Sea: a Peace Proposal," *Security Dialogue* Vol. 31, 2000, No. 3, pp. 307–326.