



The South China Sea: Claims and Implications

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Robinson Crusoe would like it

If this century should be an "Asian Century," it risks being unraveled by the ongoing South China Sea disputes

Disputes on hegemony over the South China Sea, developing as a result of China's claims to almost the entire body of water, may well prove to be a key defining issue in the future of Asia and the Asia-Pacific region.

With talks of this being an "Asian Century," attention has undoubtedly been focused on the region. Should the maritime and territorial disputes spiral into conflict and threaten the region's peace and security, this Asian Century could end just as quickly as it began.

The disputes, as the wording suggests, are a whole series of disagreements and not just one issue. From two parties to multiple ones, they are a series of long-running maritime and territorial disputes between nations. Given the scope of the issue, only two will be examined: the Spratly Islands dispute between several countries, and China's "nine-dash map" of the South China Sea.

The Paracel Islands and Scarborough Shoal quarrels are also part of the greater South China Sea conflict. However, as they are bilateral issues between Vietnam and China, and the Philippines and China, respectively, the situation of each is unique to those parties involved.

Spratly Islands and the Nine-Dash Map

The Spratly Islands comprise an archipelago off the coasts of the Philippines and Malaysia. The islands themselves are of little value. However, a recent US Energy Information Administration (EIA) estimate suggests that there could be anywhere between 800 million and 5.4 billion barrels of oil, and between 7.6 and 55.1 trillion cubic feet of natural gas yet undiscovered. As such, it is not difficult to understand why there is such great interest among claimant states.

The claimant states involved include Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam. With the exception of Brunei, each has occupied one or more of the islets. With so many states involved, and with overlapping claims, resolving the Spratly Islands dispute will prove more than challenging.

China's map seeks to establish Chinese hegemony over the entirety of the South China Sea and, if taken as is, would infringe upon the 200-mile exclusive economic zone of nearly all of the littoral nations. The nine-dash map, perhaps better than anything else, best describes China's ambitions. In proved and probable reserves within China's map, the same EIA estimate suggests that there could be approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas. Another conducted by the state-owned Chinese National Offshore Oil Company (CNOOC) puts these reserves at 125 billion barrels of oil and 500 trillion cubic feet of natural gas, although these figures have not been confirmed by independent sources. Thus the sea and its promise of natural resources are particularly alluring for any and all nations in the region.

By extending its exclusive economic zone, China would then not only be able to project its power throughout the sea and the wider Asia-Pacific, but also satisfy its energy demands for the near future. If Beijing were to succeed in having its monopoly, it would also control commercial maritime activities throughout the Asia-Pacific, never mind exploitation of natural resources.

Claiming Territory

To be determined is each nation's legal standing. Given that portions of the Spratlys fall within the exclusive economic zones of the Philippines, Malaysia, and Brunei, it would be easy to simply divide those islands within each country's respective EEZ as its own. Unfortunately, this is not the case.

Each state involved in the dispute has claimed history and international law to be on its side. In addition, the 200-mile EEZ is not set in stone. The area can be extended to 350 nautical miles provided that certain geological conditions are satisfied. However, as stated by the 1982 United Nations Convention on the Law of the Sea, under section 3 of Article 121, "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

The Spratlys are comprised of atolls, reefs, and small islands. While some of these islets have contained human life, predominantly military installations, it remains to be seen whether the islands are themselves capable of sustaining human habitation on their own.

China's claims (including Taiwan) are largely based in ancient naval expeditions dating back to the 15th century, never mind that indigenous peoples from all of the countries involved were already there, and are supposedly supported by archaeological evidence. Vietnam has also claimed to provide similar support of its position regarding the Spratlys, considering them a part of Khanh Hoa Province. China's position (and undoubtedly Taiwan and perhaps Vietnam's, as well) is not a question of international law of the sea but sovereignty, and that the latter should take precedence over the former.

The Philippines claim to the Spratlys and Scarborough Shoal are founded on the islands as terra nullius – that is, the islands belonged to no one during Manila's exploration of the South China Sea in 1956. As such, if the islands had never been a part of a foreign state, or if they had been a part of a foreign state but relinquished, the Philippines claimed the Spratlys by occupation. In concert with China and Vietnam's claims, it must be determined if the islands were subject to the sovereignty of either state.

In Search of a Resolution

Unfortunately, the Convention on the Law of the Sea, which China and Vietnam, as well as the other claimant states (except Taiwan), have signed and ratified, is merely a legal framework. It cannot resolve this conflict. Moreover, it has been shown that China is unwilling to submit the disputes to the International Tribunal for the Law of the Sea or the International Court of Justice. The Philippines recently submitted its case against China to the International Tribunal for arbitration – which China rejected outright. It remains to be seen whether the tribunal would proceed without China. Yet, should the tribunal continue and even if they rule in favor of the Philippines, the tribunal lacks the necessary provisions to enforce its ruling.

Efforts at resolution have so far achieved little. While gestures such as the Declaration of Conduct, as put forth by the 10-member Association of Southeast Asian Nations and China, might hint at a resolution around the corner; they are just that: gestures. Bilateral and multilateral negotiations have largely gone nowhere. Although China has invited the claimant states to bilateral talks, they have been hesitant to accept, knowing full well that under such conditions, Beijing would be able to leverage its size and position. Conversely, China has no desire to invite international opinion on the disputes.

None of this bodes well to find common ground. Despite China's position against international arbitration, it appears, at present, that an international ruling on the disputes can offer sufficient resolution by providing a just, impartial view of the matter. If China's or any other claimant states' claims are legally grounded, then they should welcome a legal opinion so as to strengthen their position.

The safety and security of the South China Sea and Asia-Pacific will depend on the cooperation of those nations involved. As long as there is an overwhelming desire to save face as opposed to finding peace, it appears more than likely that these disputes will ultimately be resolved through force instead of diplomacy.

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