



## Sovereignty Over Paracels: Article Lets Off Beijing Lightly

In his RSIS Commentary *Tensions in the South China Sea: Whose Sovereignty over Paracels?*, Sam Bateman suggests that China may be within its rights in deploying the Haiyang 981 oil rig in its present location. The piece fails to support this view and presents an unbalanced perspective of the relative merits of Vietnam's and China's cases.

By Huy Duong and Tuan Pham

IN HIS recent *RSIS Commentary No.88/2014*, Sam Bateman opined on the dispute between Vietnam and China over Beijing's decision to locate its oil rig in an area close to Vietnam. He states that "the rig is about 14 nautical miles from a small island in the Paracels claimed by China and 80 nautical miles from Woody Island, a large feature with an area of about 500 hectares occupied by China". This sentence contains several errors and omission, all of them biased in favour of China.

The nearest feature to the rig is Triton Island, which is 17 nautical miles from the rig. While the difference between 14 and 17 nautical miles may seem small, the former implies that the rig is just two nautical miles outside Triton's territorial waters while the distance is actually five nautical miles. Woody Island is 103 nautical miles away, not 80, and its area is generally reported as being only around 200 hectares, consistent with Google Maps. The omission is the failure to mention that the Paracels are also claimed by Vietnam.

### Dismissive of Vietnam's claims

Bateman states that "a negotiated maritime boundary in this area would likely place the rig within China's EEZ even if reduced weight was given to China's claimed insular features". A careful analysis suggests just the opposite. Firstly, both Vietnam and China claim the Paracels, so it would be incorrect to assume that negotiations or arbitration would be on the basis that these islands and any EEZ allocated to them automatically belong to China.

Even in the improbable event of Vietnam relinquishing its claim on the Paracels, an arbitration court would probably award the area around the rig's location to Vietnam since its distance to the Vietnamese mainland (120 nautical miles) is only marginally greater than that to Woody Island (103 nautical miles). In past negotiations and arbitrations of maritime boundaries worldwide islands far larger than the Paracels have been given a third or less weight than mainland coasts.

In the 2000 Gulf of Tonkin boundary agreement, Vietnam's Bach Long Vy island was given 1/4 effect. In the 2012 ICJ judgement in the Nicaragua-Colombia dispute, Colombia's islands were given a quarter of the distance to Nicaragua.

The islands involved in those cases are from about the same size as Woody Island to thirteen times in area. Triton Island is nearer to the drilling site but unlikely to qualify for an EEZ based on UNCLOS Article 121, so it does not have an effect.

Bateman states that "Vietnam claims that because the rig is closer to its mainland coast than to China's and well inside 200 nautical miles of its coast, it lies within its EEZ and on its continental shelf...but geographical proximity alone is not an unequivocal basis for claiming sovereignty or sovereign rights". This is a confused and misleading description of the basis of Vietnam's claim. The confusion arises because Bateman mixes up the concepts of sovereignty and sovereign rights.

### Sovereign dispute indeed

There is indeed a sovereignty dispute involved but it is over the Paracels Island, not about the drilling area. Vietnam's sovereignty claims over the islands were never based on proximity, therefore Bateman's argument about of countries having sovereignty over features inside the EEZ of another is completely irrelevant. As to Bateman's examples of EEZ boundaries being established significantly closer to one country than to another, this is in fact an argument in favour of Vietnam, not China. This is because even if the Paracels belonged to China, past negotiated or arbitrated EEZ boundaries have tended to favour the mainland (Vietnam in this case), as argued earlier.

Bateman is dismissive of Vietnam's claim to the Paracels, but his arguments are weak. It is true that North Vietnam kept quiet on the sovereignty matter, but in international law this is not recognition. In his 1958 diplomatic note, which Bateman presumably referred to, North Vietnam's PM Pham Van Dong refrained from mentioning the Paracel or Spratly Islands. In addition, South Vietnam always asserted and defended its claim.

Bateman states that the United States has explicitly or implicitly recognised Chinese sovereignty over some or all of the islands but fails to give any convincing evidence of this. In fact the US did not even recognise the People's Republic's sovereignty over the Chinese mainland until 1979. The only "evidence" supplied was that American actions during the war might have been different had North Vietnam occupied Woody Island, but Bateman fails to explain how or why that should be the case, and he is confusing occupation with sovereignty.

### **China should stick to UNCLOS**

Although peripheral to the central argument, Bateman's statement that China claims traditional rights for its fishermen over most of the South China Sea again lets off Beijing lightly. It fails to mention the more controversial fact that China uses the traditional fishing rights argument to claim oil rights, even though they have been ruled to be unrelated by the International Court of Justice (ICJ) in the Libya-Tunisia case.

In conclusion, there are too many errors, omissions, unsupported arguments and unbalanced opinions in Bateman's article to support his controversial contention that China may be within its rights deploying the oil rig in its present position, or that Vietnam should unilaterally give up its claims on the Paracels.

The Haiyang 981 confrontation is a case of overlapping EEZ claims. Article 74 of UNCLOS stipulates how the disputing parties should handle these cases, and this Article has been interpreted and applied in the Permanent Court of Arbitration's 2007 judgement on the Guyana-Suriname dispute.

Dr Bateman could make a more positive contribution to peace and cooperation by encouraging China to submit itself to the dispute settlement procedure specified in UNCLOS.

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Paracel Islands

## **Whose Sovereignty Over The Paracels? A Response**

Rather than getting into an unproductive debate over matters of detail, this response to the critique of an earlier commentary looks more at the deleterious impact of sovereignty arguments on managing the South China Sea and its resources.

**By Sam Bateman**

IN THEIR joint RSIS Commentary No. 099/2014 entitled *Sovereignty over Paracels: Article Lets Off Beijing Lightly*, Dr Huy Duong and Dr Tuan Pham criticised my viewpoint, [New Tensions in the South China Sea: Whose Sovereignty over Paracels?](#) (RSIS Commentary No 088/2014). Their criticism highlights two fundamental issues with the South China Sea disputes more generally. The first is that these disputes and their implications for maritime boundaries are complex and unlikely to be resolved in the foreseeable future. This factor has become the major obstacle to effective governance of the South China Sea.

The second is that strident assertions of sovereignty are unhelpful and do nothing to help establish necessary regimes for managing the sea and its resources. While this is the case, fish stocks are being over-fished, marine habitats are being destroyed, good order at sea is lacking, and there is inadequate marine scientific knowledge to provide for the development of its resources.

### **Sovereignty over the Paracels**

Whether China's oil rig is established in Vietnam's exclusive economic zone (EEZ) depends largely on which country has sovereignty over the Paracels. The authors criticised my comments about weaknesses in Vietnam's claim. In doing so, they omit to acknowledge that Woody Island has been continuously occupied by China since immediately after World War Two; presumably they would write this factor out because it is 'confusing occupation with sovereignty' – but over 60 years without effective challenge for much of that period is a long time.

The authors misread my comment that geographical proximity alone is not an unequivocal basis for claiming sovereignty or sovereign rights. In saying this, I am not mixing up the concepts of sovereignty and sovereign rights. Rather my comment was aimed at the repeated, simplistic assertions that the Chinese rig is located 'well within' Vietnam's EEZ, presumably on the basis of proximity to mainland Vietnam. 'Sovereign rights' in this context was of course a reference to the fact that within an EEZ, a country only exercises rights over the resources of the zone – not sovereignty.

Vietnam can make good arguments to support its claim to sovereignty over the Paracels, but these are just that – arguments. China also has arguments. The respective arguments have ultimately to be tested either through the process of bilateral negotiation or before an international tribunal. In the meantime, there are no agreed boundaries in this part of the sea, and disputes such as the one we are seeing now are becoming more frequent. Sovereignty assertions

Assertions of sovereignty have become even more strident in recent years. Bordering countries have eschewed cooperation for fear that by cooperation they will somehow be compromising their sovereignty claims.

Largely led by the Indonesia-sponsored workshops on resolving conflict in the South China Sea, countries around the South China Sea appeared to be heading towards a process of effective cooperation in the 1990s and early 2000s. This was evident in the 2002 Declaration on Conduct of Parties (DOC) which listed specific areas for cooperation. However recently, the process has been bogged down by nationalistic assertions of sovereignty.

These assertions have picked up their own momentum due to public fervour and the notion that the islands involved are an integral part of the nation state. The consequences of this have been clearly evident in the recent violent nationalistic protests in Vietnam against China.

At the risk of promoting another storm of protest from Vietnamese scholars, I venture to suggest that among the littoral countries, Vietnam has been the main offender with its strident assertions of sovereignty and a half-hearted response to its obligations under the international law of the sea, particularly UNCLOS Part IX. China at least has proposed the China-ASEAN Maritime Cooperation Fund to facilitate the process of cooperation.

I happily concede that by relying on secondary sources that quote different figures, I may have presented some incorrect distances. But the impact of this oversight is marginal and does not affect my basic concerns. Arguments over detail amount to 'not seeing the wood for the trees' where effective cooperative regimes are the 'wood'.

Even with Woody Island size does not really matter. It is big enough to meet the criteria of being an 'island' in the regime of islands in UNCLOS, and would be a consideration in the delimitation of maritime boundaries. Vietnam with its long coastline onto the South China Sea adopts the line that there are no 'islands' in the South China Sea lest they become a factor in boundary negotiations.

### **Way forward**

The South China Sea situation will only be settled when the bordering countries change their mindsets from one of sovereignty, sole ownership of resources and seeking 'fences in the sea' (that is, establishing maritime boundaries between neighbouring countries) to one of functional cooperation and cooperative management. This would be in accordance with both the obligation under Part IX of UNCLOS and the spirit of the 2002 DOC.

The authors concluded their criticism by claiming that I could make a more positive contribution to peace and cooperation by encouraging China to submit itself to the dispute settlement procedure in UNCLOS. Might I say the same of Vietnam?

My heartfelt contribution to regional peace and cooperation is to argue the case for a changed mindset from one of sovereignty, sole ownership of resources and seeking 'fences in the sea' to one of functional cooperation and

cooperative management of the South China Sea and its resources. The strident assertions of sovereignty, even evident in the response of the authors, are becoming more counter-productive and leading nowhere.

In the long term, all parties will suffer due to the continued lack of effective arrangements for resource management, marine scientific research, marine environmental protection, the safety and security of shipping passing through the area, and the prevention of illegal activities at sea. Ultimately the national interest of all parties requires this cooperation.

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