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The South China Sea:

Future Source of Prosperity or Conflict

in South East Asia?

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Conclusions

The existence of oil and gas deposits in the South China Sea and overlapping claims of sovereignty over the many mid-ocean land features and surrounding waters cause a risk of military confrontation among the claimants.

It is currently unlikely that China will interfere with freedom of navigation on the strategic sea lanes of the South China Sea or attempt to force other claimant nations from the Spratlys. But neither of these possibilities can be ruled out in the longer run.

Maintaining the status quo without an overall settlement of conflicting sovereignty claims would increase the risk of confrontation as military and commercial activities increase in this area.

Uncertainty over China's long-term objectives complicates the task of formulating an overall settlement, but all claimants must be prepared to make substantial compromises for the sake of reaching agreement.

Although binding arbitration by the International Court of Justice, or a similar impartial body, would be the best means of assuring that a settlement conforms with current international law, the claimants are unlikely to agree to submit to arbitration at this time.

ASEAN nations view the United States as the principal military deterrent to the use of force. The United States has a vital interest in keeping the South China Sea open to ships of all nations. However, settlement of conflicting sovereignty claims is a regional issue which can be peacefully resolved only by the claimants.

Background

The South China Sea, an area of 648,000 square nautical miles between the coast of Asia and the islands of Taiwan, the Philippines, Malaysia and Indonesia, is dotted with hundreds of islets, reefs, rocks and shoals, which are the subject of conflicting territorial claims. The presumed existence of large oil and gas deposits in these waters and the strategic importance of shipping lanes between East Asia and South Asia, the Middle East and Europe have increased the risk of confrontations over disputed areas of the South China Sea and the urgency of averting these possible confrontations through a peaceful settlement.



Complex and Overlapping Claims

To the north, the Pratas Island and the submerged Macclesfield Bank are claimed by Taiwan and China. China and Taiwan have tacitly tolerated each other's identical claim to practically the entire South China Sea because both base their claim on the same historic grounds. All the Paracel Islands are claimed by Vietnam, Taiwan and China, on historic grounds, although these have been occupied exclusively by China since 1974. China and Vietnam disagree over their maritime boundary in the Gulf of Tonkin.

Further south, the Spratly Islands are spread astride strategic sea lanes and are claimed by: China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. Of the six, all but Brunei, have sought to strengthen their claims by establishing a military presence on at least one of the Spratlys. Although their claims overlap, all six allege that their claims are fully supported under international law and under the 1982 United Nations Convention on the Law of the Sea ("1982 UNCLOS") which entered into force in 1994. Finally, the claims of China, Taiwan and Vietnam, overlap portions of Indonesia's claim in the Natuna area.

China's Policy

China has pursued an assertive policy of sovereignty claims which, if fully recognized, would extend its jurisdiction over practically the entire South China Sea. However, since a brief clash with Vietnam at Johnson Reef in 1988, China's use of military force has been limited to occupying previously uninhabited islands and reefs or erecting structures on these. In February 1995, China erected permanent structures on Mischief Reef, an area claimed, although not occupied, by the Philippines. China's pattern may best be described as "thrust and reassure"--a steady sequence of small encroachments, each followed by protestations of peaceful intentions. True to form, China's Foreign Minister sought to defuse the situation in July 1995 at the annual Meeting of the Association of South-East Asian Nations (ASEAN) ministers in Brunei. After reaffirming China's "indisputable" sovereignty over the Spratlys, Minister Qian Qichen agreed that all disputes should be resolved by peaceful means on the basis of international law and the 1982 UNCLOS. He noted that if settlement of conflicting claims was not feasible at this time, then the issue of sovereignty should be deferred, but agreement should now be reached on joint development of the oil and gas resources in the area. Finally, he assured the ASEAN members (Indonesia, Malaysia, Brunei, Singapore, Thailand, the Philippines and, since July 1995, Vietnam) that China had no intention of interfering with freedom of navigation in the South China Sea.

The problem with such assurances is that China has always insisted that the terms of "joint development" must be established through bilateral (rather than multilateral) agreements which would favor China, as the dominant power, and not achieve an overall settlement of the overlapping claims. Moreover, despite China's professed respect for freedom of navigation, there is some concern that, if the South China Sea ever became a Chinese *mare nostrum*, international shipping might be subjected to regulatory harassment, and foreign warships might be required to obtain China's authorization before entering most of these waters.

Will China Resort to Force?

It is unlikely that China will attempt to seize the entire Spratly Islands by force of arms in the immediate future. Such aggression might trigger a military response from the ASEAN member nations and also U.S. intervention. China's power projection capabilities--naval and long-range air forces--are probably not yet up to the task of seizing and holding such a large ocean area 800 miles from the Chinese mainland. At best, it would be a high-risk operation. Moreover, any resort to force would seem to be against China's

interest in maintaining close trade and economic ties with the more prosperous nations of the region. China's action on Mischief Reef has already caused the ASEAN member nations to present a united front against what they perceived as a threat to their regional security. Some of these nations have increased their military capability, and the press reported that Vietnam invited the United States to use its naval facilities at Cam Ranh Bay. Any resort to force would only bring the ASEAN members closer together.

China may believe it can achieve its objectives over time, without resorting to massive confrontation, by entering into bilateral agreements for joint development while deferring a multilateral settlement of all the conflicting claims over sovereignty. However, maintaining the status quo is fraught with risk. As the number of competing commercial and military activities in the area increases, the likelihood of unintended confrontations between claimants will also increase. Moreover, some are concerned that China may only be buying time until it has acquired the military capability to enforce its territorial claims. These concerns are compounded by uncertainty over what the influence of the hard liners will be in the next few years.

U.S. Policy

Although Japan has vital interests in the region, and Japanese tankers carry 70% of Japan's oil on the sea lanes of the South China Sea, the United States is currently viewed by the ASEAN nations as the principal deterrent to any outbreak of military hostilities. The United States has significant economic and strategic interests in South East Asia and a mutual security treaty with the Philippines. In addition, several U.S. oil companies hold concessions in disputed areas (even though they were advised of the risks beforehand by the U.S. Government). The official U.S. policy on the South China Sea is that it takes no position as to the legal merits of competing claims of sovereignty. However, freedom of navigation is a fundamental interest of the United States, and it would view with serious concern any maritime claim or restriction on maritime activity in the South China Sea not consistent with international law, including the 1982 UNCLOS.

This policy is sound, and the United States should continue to discourage any use of force while encouraging all the claimants to agree to a peaceful settlement as soon as possible. Although officially neutral on competing claims of sovereignty, this policy implies that the United States would not tolerate any claimant closing off large navigable portions of the South China Sea. Given the importance the United States attaches to freedom of navigation, in order to avoid any risk of miscalculation on the part of China's hard liners, some propose the United States should be more explicit in its public statements, as to just where it draws the line. However, others believe lecturing China publicly is usually counterproductive and, if required, this is a message best conveyed privately to Chinese officials.

Binding Arbitration Unlikely

Given the complexity of the conflicting claims, the best means of assuring that an overall settlement would conform closely with current international law would be through binding arbitration by the International Court of Justice or some other impartial body under the auspices of the 1982 UNCLOS.

However, China would not be likely to agree to this approach, nor would all the other claimants. China would be concerned arbitration might produce a ruling unfavorable to its basic interests as the dominant power in the region, and possibly lead to international recognition of Taiwan. By the same token, the other claimants could not realistically expect to be awarded everything they claim.

Uncertainty over China's Long Term Objectives

China has published maps with a boundary line enclosing nearly the entire South China Sea, but it is unclear whether it is claiming the entire area as historic waters, or sovereignty over all the mid-ocean land features. The hard liners and the Foreign Ministry may be divided on this issue, and it may be impossible for China to clarify its position at this time. However, knowing whether China's primary concern is territorial or economic would make it easier to formulate an overall settlement compromise.

In 1992, China adopted a law on the territorial sea and contiguous zones, identifying the Spratly Islands and several other mid-ocean land features as Chinese territory. Even if China's claim of sovereignty over the Spratly Islands were to be recognized, it does not follow under the 1982 UNCLOS that China would be entitled to establish a territorial sea measured from archipelagic baselines drawn between the outermost islands or to claim exclusive rights over the sea bed in a contiguous zone surrounding the entire area. Under current international law, rights over the seabed in the South China Sea would primarily be determined by coastlines, rather than on historic grounds or by sovereignty over minuscule mid-ocean land features which are, for the most part, uninhabitable and submerged at high tide.

A Multilateral Regional Authority

Although China would prefer to negotiate separately with each of the claimants, this approach would be unlikely to settle all the conflicting claims. An overall settlement could be achieved by establishing a multilateral regional regime guaranteeing freedom of navigation to ships of all nations and joint development of the oil and gas resources according to a fair apportionment formula. Such an approach cannot be forced on the claimants, and any undue pressure from the U.S. would most likely be counterproductive in bringing China to negotiate.

Indonesia has sought to broker a peaceful settlement, but to date the claimants have been unable to resolve their differences. Now that Vietnam has become a member of the ASEAN, the ASEAN claimants may find it easier to reach some consensus on a fair settlement proposal. Even if such a proposal were rejected by China and Taiwan, it would at least serve to produce agreement among the ASEAN claimants.

Recommendations

With the closing of U.S. military bases in the Philippines and the end of any significant Russian naval presence in Vietnamese ports, it is essential that the U.S. Navy remain actively engaged in the South China Sea to underscore the importance of preserving peace and freedom of navigation in this region.

The United States should encourage all the competing claimants to peacefully settle their territorial disputes by establishing a multilateral regional regime guaranteeing freedom of navigation to ships of all nations and providing for the exploitation of the oil and gas resources under a fair apportionment formula.

As a regional solution to a regional dispute, this multilateral approach cannot be forced on the claimants. Accordingly, the United States should avoid exerting undue pressure on any of the claimants.

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