

**UNCLOS' Impact on China's South China Sea Geopolitical Strategy:
Focussing on the Spratly Islands**

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Territorial sovereignty is certainly important to any nation-state, but it holds a special place in China's national security calculus (and amongst the other nations within the Southeast Asian region where the importance of territorial sovereignty is driven both by present day society and their cultural histories [Day, 2002]). This is in part the result of the "hundred years of humiliation", the period from approximately 1842 to 1949 during which China was torn by foreign aggression and, in Mao Zedong's words, was a "semi-colonial country". Chinese officials are extremely sensitive to sovereignty claims, no matter how contested or tenuous under international law or international pressure for peaceful resolution.

Although China has been able to settle most of its land-based territorial disputes with its neighbors (for example China and Vietnam agreed to settle their contested land border in a treaty signed December 30, 1999), and has taken remarkable steps towards increasing the efficacy of its international diplomacy [Medeiros, 2003], they are still embattled in maritime related contests. At present time, China is included in "6 of the more than 2 dozen maritime disputes [within the South China Sea region]: the Diaoyutai/Senkaku Islands with Japan; Taiwan; the Paracel Islands with Vietnam; the Spratly Islands in the South China Sea with Vietnam, the Philippines, Brunei and Malaysia; water areas of the South China Sea with Vietnam, the Philippines, Brunei, Indonesia and Malaysia; and the maritime border with Vietnam (in the Tonkin Gulf)" [Cole, 2001].

Of particular interest are 2 conditions that pose to exacerbate this issue over the next 10-15 years. At present time, excluding the United States as the regional hegemony whose presence is likely to decline in the near future (please refer to: *The Unbalancing Act of the PLAN in Southeast Asia and the South China Sea*, 2003), the PLAN is the dominant military force within the South China Sea [Cole, 2001]. Furthermore, China is "launching a sweeping program of military modernization designed to transform the PLA into a smaller, more technologically proficient force [focussed on] fighting limited, local

wars on China's immediate periphery" [Miller, 2002]. Although China does not publicly articulate a "national security strategy", it's believed China is "developing its comprehensive national power and ensuring a favorable 'strategic configuration of power' ... that seeks to apply diplomatic, informational, military, and economic instruments of national power" [DOD, 2003]. Therefore consistent with China's doctrine and military modernization program, there is an imbalance of military power, which only poses to increase, within the Southeast Asian region amongst the local nation-states. This affords China the ability to enforce favorable policies through military might if diplomacy fails.

The other condition that threatens to impact the stability and contested territories within the South China Sea is China's projected growth and continued industrialization. Within China, this is noted by them "pursuing an active campaign to secure energy supplies from international sources, with oil imports growing at an average rate of 9 percent annually since 1993 ... [and] China might [be] required to import 45 percent of its petroleum requirements by 2010" [Trough, 1999]. The demand on the offshore natural resources, (which are estimated at roughly 2,000 trillion cubic feet in natural gas reserves [Leifer, 1995], 28 billion barrels of petroleum reserves [U.S. Geodetic Survey, 1999], and the reefs throughout the region are home to some of the largest fisheries in the world which has enabled China to become one of the "world's biggest producer of seafood since 1990, with more than 160,000 fishing boats manned by more than one million fishermen" [Austin, 1998]) will continue to grow as China's population expands and its people demand a more meat-based diet with rising living standards [Brown, 1999].

This demand is expected to increase even further when accounting for the elevated global demand for grain as the world population approaches eight billion by mid-century [Economist, 2002] and as the main grain producers, China, India and the United States, face increasing water shortages, thus lowering their ability to sustain current production levels [Brown, 1996]. As a long-term solution, the countries within the region are continually looking towards the seas to alleviate nutritional, energy and economic strains (both present-day and projected future).

In this regard, “the financial turmoil that has whipsawed national economies throughout East Asia since 1998 and the continuing nutritional crisis that’s rampant in the area have undercut the political stability and, in so doing, contributed to exacerbating tensions over conflicting maritime claims in the area” [Joyner, 2001; Stiglitz, 2002]. Most notably, in 1999 the dispute between China and the Philippines over the Spratly Islands reemerged as a security flashpoint in the South China Sea. Specifically, the Philippines were contesting Chinese structures built on the Panganiban Reef, which is situated within the Philippines’ 200-mile exclusive economic zone as defined by contemporary ocean law. This hotbed of potential military conflict has been a major focus within the United Nations as an extension of the United Nations Convention on the Law of the Sea (UNCLOS), which was originally “promulgated in 1982 following nearly a decade of international negotiations, and embodies important changes from previous maritime and international law” [Cole, 2001].

The crux of the UNCLOS is that it expanded the concept of maritime rights defined as the offshore area subject to a state’s sovereignty, including the air space above the sea, as well as the seabed and subsoil [UNCLOS, 1982]. The UNCLOS preserved the previously defined maritime sovereignty law, as territorial seas extending 12 nautical miles from a state’s coastline, and added 3 new zones to continue to handle increased stressors from maritime claims. Therefore, the “UNCLOS delineates four areas of national maritime rights, all measured from the state’s coastline: (1) 12 nautical miles: territorial seas, in which the state exercises full legal sovereignty; (2) 24 nautical miles: contiguous zone, in which the state exercises limited legal sovereignty; (3) 200 nautical miles: exclusive economic zone, in which the state exercises full economic sovereignty; and (4) 350 nautical miles: continental shelf, in which the state exercises limited economic sovereignty” [Cole, 2001].

Along with the 4 sovereignty zones the UNCLOS defines, there are two other provisions that are particularly applicable to the situation within the South China Sea. The first is the UNCLOS definition of an island, which is “a naturally formed area of land,

surrounded by water, which is above water at high tide” [UNCLOS, 1982]. The particular application of an island is that it poses, and therefore extends, the breadth of the state’s territorial sea, contiguous zone (CZ), exclusive economic zone (EEZ), and continental shelf (CS). Therefore, China (and the other nation-states within the region) can extend their maritime territorial claims through the process of “island hopping”.

Contrary to UNCLOS’ island definition, states are claiming maritime territorial sovereignty based upon “self-declared islands” within the Spratly area, which under UNCLOS do not fall within this category. Whereby, “many of the so-called islands in the Spratly area are merely rocky outcroppings that are underwater at high tide” [Cole, 2001]. To counter this, and contrary to the UNCLOS definition, countries are pursuing development programs to build artificial barriers and structures on top of these “rocky outcroppings” to facilitate the use and future societal development, including continued maritime territorial expansion by claiming EEZ and CS zones from these new islands. This policy, which is rampant amongst all of the claimants, is being pursued at first through docking facilities for offshore fishing communities and eventually spreads to include military establishments deemed required by the country to support and protect their sea-going citizens and maritime industries. Once this infrastructure is in place, the removal through diplomatic means is nearly impossible.

The second provision that is having a profound impact on the geopolitical scene within the South China Sea is the UNCLOS provision for delimiting the EEZ between states less than 400 nautical miles apart and the CS for states that are closer than 700 nautical miles. States with conflicting EEZ or CS zones are urged to “achieve an equitable solution ... or submit the dispute to the UNCLOS-created adjudication body for resolution” [UNCLOS, 1982]. Within the Spratly Islands these zones overlap amongst Vietnam (who occupies 23 islands), Taiwan (who occupies only Itu Aba, on which they built a paved runway), Malaysia (who occupies 6 islands), the Philippines (who occupies 9 islands), and China (who occupies 12 islands, but publicly claims territorial sovereignty over the entire 410,000 square kilometer region). Unfortunately, due to China’s naval dominance, “Beijing opposed the UNCLOS-suggested method of delineating contested EEZ and CS

claims by applying equidistant criteria, instead favoring bilateral negotiations by the parties concerned ... and not reference the international tribunals recommended by UNCLOS” [Cole, 2001]. By pursuing such means to rectify the current contested claims, China forgoes the international community, and therefore allows it to indirectly (or directly) use its military presence as part of the negotiations. Therefore, contained within the diplomatic relations amongst these countries is the imbalance of military power, which effectively allows China to gain advantages within the treaties that may not have been allotted if the talks were pursued in an international forum. This is demonstrated by China publicly reaffirming “its sovereignty over all the islands it had claimed in its 1992 ‘Law on the Territorial Sea and the Contiguous Zone’ ... which would [effectively] remove from discussion exactly the sort of issue UNCLOS was created to address” [Cole, 2001].

Since the end of the Cold War, the Southeast Asian region has been void of a super-power to maintain stability and moderate conflict resolution amongst the states. For the last 10 years this role has been played, in a limited fashion, by the United States. But as the PLA continues its modernization effort and China’s economy continues to scale at the pace it has been (which is predicted to increase at an even greater pace through a re-evaluation of the Renminbi [Williamson, 2003]), there is a threat of China becoming the regional hegemony. In an area with already high levels of national tension due to socio-economic stressors [Chua, 2003] and projected increased rates of growth that will put an even greater strain on the local natural resources, it’s critical there be a balance of power between the coordination of the local states, the United Nations, the United States and a select few global institutions (the World Bank and the IMF for example).

The states within this region receive a large portion of global foreign direct investment [Gilpin, 2000; Stiglitz 2002], most notably with China ranking first amongst recipients of bilateral and multilateral aid at 1,735 million dollars per year [Economist, 2002]. Therefore, the economic global institutions could fill the void that voluntary participation in the United Nations creates by acting as the de facto enforcer, through economic motivation, of UNCLOS compliance. The most critical part of the UNCLOS that is

necessary for global and regional stabilization is that the treaties and resolutions of conflicting maritime territorial claims be resolved through moderated international forums that promote equitable delineation and distribution of the offshore resources these countries are becoming more heavily dependent upon. If bilateral diplomacy continues throughout the region and military strength continues to be incorporated in this process, the area of the Spratly Islands, and more importantly of the South China Sea could escalate to either localized conflicts or regional war. This poses to destabilize not only the South China Seas, but also the western-dependent SLOCs through conflict over offshore natural resources (specifically the natural gas and oil reserves estimated and fisheries required to feed the growing population) amongst many of the current Southeast Asian countries claiming rights. Therefore, the world must begin to confront this problem to ensure China's maturing process and emerging diplomatic perspectives on global politics are consistent with the requirements of global stability and security.

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