

Disputes and Cooperation in the South China Sea

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Abstract

The disputes of the South China Sea (SCS) have drawn an extensive international concern in recent years, the freedom of navigation, shipping, sovereignty dispute, and so on. The main reasons leading to the problems are the divergence in state sovereignty and the relevant delimitation, with some potential elements like interest demand, extra-regional state's intervention, some Association of Southeast Asian Nations (ASEAN) members' wish to countervail China in the help of extra-regional states. Different nations hold their claimant, however, development needs a peace and secure environment. This paper is apt to discuss the above problems, the relevant rules, and the efforts and cooperation in various nations.

Keywords

Free navigation, disputes, China South Sea, security, cooperation.

1. Free navigation

Here is the China's statement on the freedom of navigation in the South China Sea: the SCS is an important maritime waterway, and China always respects the freedom of navigation and overflight in the SCS as provided for by the widely accepted principles of international law. The spokesperson of the Ministry of Foreign Affairs of China, Hong Lei said that China safeguards its sovereignty and maritime rights and interests in the SCS, which does not affect freedom of navigation in this area enjoyed by nations according to international law; there is no problem with the freedom and safety of navigation in the SCS, all countries within the region and out of the region are beneficiaries to free and safe navigation, which is a common view of the relevant states.

China and the ASEAN Member States have signed the Declaration on the Conduct of Parties in the South China Sea (DOC) in November 2002 to reaffirm the respect for and commitment to the freedom of navigation and overflight in the SCS as the universally recognized principle of international law, including the 1982 UN Convention on the Law of the Sea. In July 2011, the China-ASEAN foreign minister's meeting has adopted Guidelines for the Implementation of the DOC, reaffirming that the DOC is a milestone document signed between the ASEAN Member States and China, embodying their collective commitment to promoting peace, stability and mutual trust and to ensuring the peaceful resolution of disputes in the SCS.

The Navigation in the SCS is not a absolute freedom without any restriction, the navigation through the territorial sea under the jurisdiction of a states should be a peaceful navigation and comply with the rights and duties of the coastal states as well as respect their security interests and sovereign rights, which have been stipulated in the United Nations Convention on the Law of the Sea :

Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions of sea. (Article 21)

The exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the

laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part. (Article 58)

2. Disputes

The SCS with very important geographical location is a military position, bordered by China, Malaysia, Brunei, Singapore, Vietnam, Philippines, and Taiwan; the major island and reef formations in the SCS are the Spratly Islands, Paracel Islands, Pratas Islands, Natuna Islands and the Scarborough Reef. The economic growth in the last twenty years and activity in other Asian economies including Japan and South Korea, has contributed to a large portion of the world's commercial merchant shipping passing through this region, from which it continues on through the Malacca, Sunda and Lombok Straits. The SCS also contains rich fishing ground and is reported to hold significant reserves of undiscovered oil and gas, which have in part driven many of the territorial disputes in this region.

With the discovery of huge oil and gas reserves in the 1960s and the foundation of UNCLOS in 1982, some Southeast Asia states, namely Philippines, Vietnam, Malaysia and Brunei, have claimed sovereignty rights over some islands and its surrounding waters in the SCS area. Nowadays, the disputes over island sovereignty are mainly concentrated in the Nansha Islands (Spratly Islands), including China, the Philippines, Vietnam, Malaysia, Indonesia, Brunei, Thailand, Singapore and Taiwan, as to maritime delimitation, the exclusive economic zone (EEZ) and continental shelf claimed by the relevant countries have overlapped with China's U-Shape Line demarcating the SCS, and raised a huge disputing area. Since lots of countries (parties) get involved, the disputes on island sovereignty and maritime delimitation in the SCS come to be a complex disputes in the world and may increase the risk of contradictions and conflicts, thus threatening the safety in the SCS area.

In 1999, Chinese Foreign Ministry claimed that the South China Sea is a body of water of the People's Republic of China, and China has all rights and privileges in the South China Sea, any activities (including the discussion on joint cooperation or on Code of Conduct, etc.) in the South China Sea region must acquire the approval of the Government of the People's Republic of China. China makes the claim in the SCS based on the 'nine-dash-line' map, published in 1947, which served as the declaration on China's territorial sea. The 'nine-dash-line' is a controversial demarcation line for China to claim territories and waters in the SCS. In 2009, China submitted a diplomatic note to the United Nations Secretary-General to assert its sovereignty over islands in the SCS presented with the map of 'nine-dash-line'. The legality of the 'nine-dash-line' map, which China considers is based on historical evidence, and under the UNCLOS Treaty, however is disputed by other South China Sea territorial claimants.

According to the information from the World Bank, the SCS contains proven oil reserves of at least seven billion barrels and an estimated nine hundreds trillion cubic of natural gas. In the end of 2012, China's National Energy Administration named the disputed waters as the main offshore site for natural gas production, and a major Chinese energy company has started drilling in deep-water off the southern coast. The tensions escalated when India's state-run Oil and Natural Gas Corp declared it had worked with Petro Vietnam on oil exploitation in the disputed region. In 2011, Vietnam accused a Chinese fishing boat of cutting cables from an oil exploration vessel inside its EEZ. In recent conflicts, the Philippines' naval forces intercepted eight Chinese fishing ships around the Scarborough reef, searching so-called illegally marine life on board, which lead to an impasse around two months.

Vietnam holds two kinds of claimant over the SCS, one is territorial claim, focused on Paracel (Xisha) Islands, and Spratley (Nansha) Islands; the other one is to claim the rights and jurisdiction over part of the SCS maritime space. In 1979 and 1982, the Vietnamese government issued two white papers to support its claims of sovereignty over the Paracel and Spratley Islands. Vietnam's claimants to rights and jurisdiction include the maritime space around the Hoang Sa and Truong Sa Islands, as well as EEZ and continental shelves. Thailand has one of the most developed deep sea fishing industries in the SCS area, being reluctant to accept the 200-nautical-mile exclusive economic zone (EEZ) concept; it claims to be a geographically disadvantaged state as its gains from the establishment of the 200-nautical-mile

EEZ is quite small compared with those of its neighbouring states, thus Thailand has been advocating its right on traditional fishing in neighbouring waters. Singapore also has the fishing rights problems, as a geographically disadvantaged state, Singapore support the allowable catch of living resources within the EEZ, and claim that under the Article 62, 29, 70 of the CLOS, other states have an interest in the allowable catch, the coastal state must reasonably determine its capacity to harvest the living resources within the EEZ, otherwise, other states should be allowed access to the rest resources.

Taiwan is one of the six parties directly involved in sovereignty and maritime jurisdictional disputes in the SCS, its claimant to the Spratlys started in December 1945. Taiwan reminds other countries concerned of Itu Aba, the largest island in the Spratlys, has been under its effective control, it has indisputable sovereignty over the Pratas Islands, the Paracel Islands, the Spratly Islands, and the Macclesfield Bank, and possesses sufficient historical evidence and legal grounds to assert its sovereignty over the said archipelagoes. Taiwan reserves the right to take whatever action is considered necessary to defend its sovereignty and jurisdictional rights over the mentioned islands and their adjacent waters in the SCS.

On the South China Sea issue, the intervening factor by extra-regional states, such as the USA, Japan, and India, cannot be ignored. During the Cold war, in order to resist the former Soviet Union, the USA took a neutral and non-intervention policy in the SCS; while since the 21st century, this situation has been changed, especially after the access to the Treaty of Amity and Cooperation in Southeast Asia, 2009, the USA started a position of intervention in the SCS. In a Press Statement issued on 22 July 2011 on the SCS, Hillary Clinton said that we also call on all Parties to clarify their claims in the SCS in terms consistent with customary international law, including as reflected in the Law of the Sea Convention, consistent with international law, claims to maritime space in the SCS should be derived solely from legitimate claims to land features. Obama said that where we get concerned with China is where it is not necessarily abiding by international norms and rules, and is using its sheer size and muscle to force countries into subordinate positions, we think this can be solved diplomatically, but just because the Philippines or Vietnam are not as large as China doesn't mean that they can be just be elbowed aside.

Japan's invasion can be traced back to the late of Qing Dynasty, by drawing natural resources and seizing islands, keeping with its 'non-traditional security' cooperation with ASEAN nations, and making an utmost effort to infiltrate into the SCS issue. Recent years, Japan has participated in military drills and frequently sent warships in the SCS in the name of combating transnational crime. To Japan, it has some vital interests in safeguarding the sea-lanes of the SCS, it is also a major country in international trade, the trade volume between Japan and the ASEAN members were 140 billion dollars in 2004, making Japan the forth trading nation in this area, after China, USA, and EU. In Japan, almost all the oil supply is imported from the Middle East through the SCS or the archipelagic sea-lanes on its periphery. As the large number of import demand and the need of ship route in SCS, Japan is working its best to intervene in the SCS issue.

India's 'Look East' policy took shape in the beginning of 1990s, which aimed to establish strategic links with as many countries as possible in SCS, to develop closer political and economic links with ASEAN, to carve a place for India in the larger Asia Pacific, to avoid being left out of the sweeping changes in this area, and to showcase India's potential on investment. As the business with ASEAN and China grows, India has an increasing economic which needs the SLOC (Sea Lines of Communication) open for international shipping. Unlike USA and Japan, India has no territorial claims in the SCS, just seeking a balance on China's rise without posing a direct threat.

3. Maritime Security

Despite the disputes, Coastal states surrounding the SCS do wish a peace and secure navigation environment, however, the SCS has a problem on piracy problem. Many shipowners are unwilling to report their experience during pirate attacks to the authorities or assist in the investigation of pirate attacks, even the suspected pirates are arrest, crew members of the victim ship may be unwilling to bear the expense or risks in a investigation. Actually, many shipping companies clearly prohibit shipmasters

from reporting pirate attacks, not to mention the negative impact on the company reputation, reporting a pirate attack may mean that the victim ship will be detained in harbor for investigation, the cost of such delay is one disaster after another. There are some relative low-cost antipiracy measures, such as equipping the superstructure with proper locks and providing antipiracy training, but still not all the insurance company can bear the costs on this. Facing up to the serious fact of piracy problem, governments of Indonesia and Malaysia have required shipping companies and the international community to share the costs on the fight against piracy; these requirements have received little enthusiasm from most international actors involves, like Japan, which has funded a number of initiatives to provide training and resources to the law enforcement authorities in SCS.

Moreover, some problems like illegal fishing, illegal migration, drug trade, marine pollution, are also threat to the peace and security of SCS. To against these risks, Singapore has taken strict and forceful measures to tackle maritime security threats, and it was the first Asian port to join the CSI (Container Security Initiative). CSI includes four main elements: using intelligence and automated information to identify and target containers which pose a risk for terrorism; pre-screening those containers that pose risk at the port of departure before they arrive at American ports; using detection technology to quickly prescreen containers that pose a risk; using smarter, tamper-evident containers. Under the CSI program, the screening of containers that pose a risk for terrorism is accomplished by teams of CBP (Customs and Border Protection) officials delayed to work in concert with their host nation counterparts. Work with Indonesia, Singapore use a radar tracking system in order to identify, track, share information on shipping.

On the facts of addressing the piracy problem in the SCS, it can be showed that it is possible to build cooperation based upon the need of peace and security in this sea zone. Whatever their conflicting claims and mutual suspicions are, political leaders in the coastal states are beginning to understand that they must cooperate to manage the increasing marine traffic, to tackle maritime security threats, to exploit and use the resources SCS sustainably. Considering international circumstances, China insists the principle ‘shelving differences and seeking joint development’.

4. Existing Rules

UNCLOS (United Nations Convention on the Law of the Sea) constitutes a multilateral international agreement which defines the legal rights and responsibilities of each nation to respect the world's oceans and also superjacent airspace. UNCLOS creates rules for coastal countries on establishment of territorial seas and other ocean boundaries, with rights and duties, defines navigational freedoms in the maritime domain, and founds disputes resolution mechanisms for competing claims or disputes. UNCLOS came into force in 1994, PRC, the United Kingdom, Canada, Japan, Australia, Russia, and most ASEAN countries are the member states; the United States is not a party of UNCLOS, but regards the navigation and overflight provisions of the Convention as a reflection of customary international law and will exercise and assert its navigational and overflight rights and freedoms in accord with the balance of interests reflected in the Convention.

To sea the specific provision, Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. (Article 3) According to this definition, firstly, the coastal states need to establish a baseline from coastal land feature. Except where otherwise provided in the Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on larger-scale charts officially recognized by the coastal state. (Article 5) Pursuant to this provision, most baselines will be measured from the low tide, and baselines will follow the curvature of the coast, if a coastal state claims straight baselines rather than baseline based on low tide, the Article 16 mandates that shall be shown on charts of a scale or scales adequate for ascertaining their position, alternatively, a list of geographical co-ordinates of points, specifying the geodetic datum, may be substitutes, the coastal state shall deposit a copy of each such chart or list with the Secretary-General of the United Nation. All water inside of a baseline is named internal water, which is a part of coastal nation's sovereign authority, and

the water outside of the baseline up to 12 nautical miles is still the territorial sea, coastal nations may exercise sovereign control of the territorial sea subject to certain limitations, like the right of innocent passage or safe harbor, UNCLOS preserves and guarantees freedoms of navigation and overflight for all states in the water and airspace beyond the territorial sea.

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. In the exclusive economic zone, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, jurisdiction as provided for in the relevant provisions of this Convention with regard to, the establishment and use of artificial islands, installations and structures, maritime scientific research, the protection and preservation of the maritime environment. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement, it can be seen that the Convention supports negotiated settlement on the disputes to the delimitation of the EEZ. In regard to arrest of ship, coastal state penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the states concerned, or any other form of corporal punishment.

With respect to regime of islands, the island in UNCLOS means a naturally formed area of land, surrounded by water, which is above water at high tide, rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of the Convention applicable to other land territory. In the section 5, settlement of disputes and advisory opinions, it stipulates what kind of disputes will be concerned by the Convention and the roles of the Sea-Bed Disputes Chamber of the International Tribunal for the Law of the Sea in resolving the disputes.

On 24th February 1976, at the first ASEAN Summit in Bali, Indonesia, Treaty of Amity and Cooperation in Southeast Asia has been adopted by the heads of state. The treaty shall be signed by the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand. The purpose of the treaty is to promote perpetual peace, everlasting amity and cooperation among their peoples which contribute to their strength, solidarity and closer relationship. On the relations with each country, the High Contracting Parties shall be guided by the following fundamental principles: mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; the right of every state to lead its national existence free from external interference, subversion or coercion; non-interference in the internal affairs of one another; settlement of differences or disputes by peaceful means; renunciation of the threat or use of force; effective cooperation among themselves. The Parties shall strive to achieve the closest cooperation on the widest scale and shall seek to provide assistance to one another in the form of training and research in the social, cultural, technical, scientific and administrative fields. The Parties shall have good faith to prevent disputes from arising, shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations. Thus, the Treaty opposes violent actions, and believes the positive energy of peaceful thoughts and expressions.

While tensions in the SCS always exist, there are some processes and dialogues underway in an effort to build confidence within the region and establish a common code of conduct. In 2002, ASEAN and China issued a joint 'Declaration on the Conduct of Parties in the South China Sea', which affirmed the signatories' commitment to international law and the freedom of navigation in the SCS, the Declaration also called for the adoption of a code of conduct for the SCS, to be negotiated by the parties subsequently. As a foundation of a code to be negotiated, trust and confidence between the maritime powers in the SCS need to be established firstly. Declaration on the Conduct of the Parties in the South China Sea, as the first political document signed by China and ASEAN Member States regarding the

SCS issue, can be regarded as a milestone in the maintenance of peace and stability in the SCS, and it is in the common interest of all parties to keep working this Declaration fully and effectively. In recent years, to guide the implementation of cooperation measures and projects within the framework of the Declaration, China and ASEAN States started consultations on developing guidelines to better implement of the Declaration. In the discussion, the parties have enhanced mutual understanding and continuously accumulated trust and consensus, the parties recognized that completing the consultations on the guideline as quickly as possible, actively implementing the Declaration and improving pragmatic cooperation is a necessary requirement to maintain peace and stability in the SCS and further promote development of the China-ASEAN relations.

5. China's Interests on Cooperation

In 2014, China put forward dual-track approach that disputes over the SCS be resolved through consultation and negotiation between disputing parties, peace and stability of the SCS be jointly preserved by China and the ASEAN, and against any intervention in the disputes by countries irrelevant to the issues or bring this issue to international and multilateral arena. On November 22, 2015, Chinese Premier Li Keqiang attended the 10th East Asia Summit. He said that with the joint efforts of China and the ASEAN countries over the years, the South China Sea has generally maintained peace and stability without interference or intervention of external forces. We are comprehensively and effectively implementing the 'Declaration on the Conduct of Parties in the South China Sea', conducting practical cooperation and actively promoting negotiations on the 'codes of conduct in the South China Sea', and have made important progress; this is hard-won and should be cherished by all. China has always been actively advocating and firmly upholding the freedom of navigation and flying over in the South China Sea. China is a major trading country in the world, and the South China Sea is an important international waterway, an unstable situation in the South China Sea will first harm countries in the region including China and bring no benefits to other countries. The freedom of navigation and flying over in the SCS has never been a problem; countries in the region are willing and able to continue safeguarding it properly; China's construction work on its own islands and reefs is legitimate and legal; it is no targeted at nor will affect any country; instead, it conduces to safeguarding the freedom of navigation and responding to maritime disasters, it is far from 'militarization'. When exercising the freedom of navigation and flying over, countries involved should fully respect the sovereignty and security of the coastal countries in the region. China will continue to adhere to peacefully solving disputes through negotiations and consultations, controlling differences by rules and mechanisms and realizing mutual benefits and win-win results through cooperation and joint development; China is willing to work with countries in the region to forge the SCS into a sea of peace, friendship and cooperation.

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