

Beyond the Scarborough Scare: Joint Resource Management in the South China Sea

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DAVID ROSENBERG, MAY 1 2012

Tensions in the South China Sea have been rising in recent years due to two major factors. The first is the growing competition for scarce resources, especially hydrocarbons and fisheries. The other factor is the seemingly intractable disputes over sovereignty claims in the South China Sea. Given the high degree of regional economic interdependence, it is not surprising that there have been numerous incidents and conflicts involving survey vessels and fishing boats on the seas. However, there are still no routine or well-tested ways to resolve these low-level but frequent conflicts. These issues are discussed below, along with a consideration of the prospects for joint resource management for the Scarborough Shoal.

Almost every month an incident occurs in the South China Sea that threatens to escalate into an armed conflict. The most recent incident began on 8 April 2012 when a Filipino Navy vessel attempted to detain eight Chinese fishing boats, which had entered waters around Scarborough Shoal, an area that both China and the Philippines claim. An armed boarding party from the Philippines' frigate BRP Gregoria del Pilar discovered that the fishing boats were in possession of a large illegal catch of coral, giant clams, and live sharks. Before the fishing boats could be detained, two Chinese surveillance vessels blocked the frigate from pursuing any further action. Filipino and Chinese Foreign Ministry officials quickly moved to negotiate a diplomatic end to the confrontation. At the same time, both sides insisted that they would defend their territorial claims. All of the Chinese fishing boats and their illegal catch left the shoal unhindered.[1] At the same time, more than 6,000 American and Filipino troops began joint military exercises off the southwestern island province of Palawan. Further heightening tensions, China demanded that the Philippines immediately remove an archaeological ship from adjacent disputed South China Sea waters.[2]

The confrontation at Scarborough Shoal was distinctive in several ways. First, the area has abundant fishery resources that have been sought after and caught by fishermen from both China and the Philippines for decades. Second, there was a similar incident between Chinese and Filipino fishing vessels and patrol boats at Scarborough Shoal in the mid-1990s. Third, this prior incident has been credited as the catalyst for diplomatic exchanges that eventually resulted in a bilateral code of conduct in 1995, in which the Philippines and China promised to settle their bilateral disputes in accordance with recognized principles of international law, including the UN Convention on the Law of the Sea (UNCLOS). This bilateral code in turn prompted the negotiation of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (CoP).[3]

Increased competition for scarce resources

Why do fishermen venture so far into contested waters for legal and illegal, unregulated and unreported fishing? The simple and obvious answer is that it is profitable. Given the growing coastal populations around the South China Sea and their increased living standards and dietary preferences, demand for fish has increased markedly in recent years.

Over 500 million people in China, Hong Kong, Taiwan, Vietnam, Malaysia, Singapore, Indonesia, Brunei, and the Philippines live within 100 miles of the South China Sea coastline. Many of them depend on it for their sustenance

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and livelihood. Fisheries are important around the South China Sea as an inexpensive form of protein, a means of livelihood, and a source of foreign exchange earnings. The South China Sea provides the habitat and spawning grounds for the world's most valuable fisheries of shrimp and tuna. A large portion of the coastal workforce is dependent on the marine environment for employment in fishing, marine transportation, offshore exploration and extraction of hydrocarbon and other natural resources, recreation and tourism.

The demand on fish resources has intensified considerably due to coastal urbanization and improvements in fishing methods. This has led to the overexploitation of fisheries in the shared waters of the South China Sea. Fish catch rates began to decline in the 1970s with sharper declines registered in the 1980s, as bottom trawlers came into widespread use. Fisheries depletion is not only evident in declining catch rates, but also in smaller fish sizes and market movements down the food chain from large, high-value fish such as tuna, grouper, and snapper, to smaller, lower-value fish such as sardines, herring, and mackerel. Aquaculture and other substitutes have expanded enormously in the region and have the potential to significantly relieve pressure on capture fisheries. However, intensive, large-scale commercial aquaculture is a relatively recent phenomena; it is not yet clear how sustainable it can be.

Countries with extensive coastlines bordering the sea, such as Indonesia, Malaysia, Vietnam, the Philippines and China, want to protect their sovereign rights and resource control in their Exclusive Economic Zones (EEZs) as provided by UNCLOS. These may extend up to 200 nautical miles beyond their coastlines. Territorial claims to the many islands and reefs in the South China Sea are especially important as an anchor for asserting an EEZ around the disputed islands, and the oil and natural gas resources they are thought to contain.

This has led to numerous overlapping and conflicting territorial claims to the hundreds of small features in the South China Sea, including uninhabited islets, shoals, reefs, banks, sand bars, cays, and rocks. These are divided into four groups of islands and underwater features: the Pratas Islands (Dongsha Qundao), the Paracel Islands (Xisha Qundao), the Macclesfield Bank (Zhongsha Qundao), and the Spratly Islands (Nansha Qundao). The Pratas Islands are under the firm control of Taiwan. No competing claims exist there under the current conception of "One China." For the Macclesfield Bank, the only claimants are mainland China and Taiwan. The Paracel Islands are under the control of the People's Republic of China, though contested by the Vietnamese. The dispute over the Spratly Islands involves as many as six parties (mainland China, Taiwan, Malaysia, Vietnam, the Philippines, and Brunei), all of whom have made claims over the Spratly Islands, the whole or in part, and their surrounding water areas.

Shifting Patterns of Cooperation and Confrontation

There is still no well-established judicial or administrative mechanism for settling conflicting territorial claims or routinely resolving the numerous fishing disputes in the South China Sea. As a result, there has been a wide range of ad hoc, cooperative, competitive, and confrontational responses to conflict resolution among coastal states.

For example, for much of the past decade, China has been highly assertive in employing more unilateral and confrontational measures. Beijing publicly challenged the legality of foreign oil companies' investments in Vietnam's offshore energy industry, emphasizing its own rights over islands and waters far from the Chinese mainland. It detained hundreds of Vietnamese fishermen near the Chinese-held Paracel Islands. Between 2005 and 2010, China detained 63 fishing boats and their crews, many of which were not released until a hefty fine was paid. It harassed Vietnamese and Philippine vessels conducting seismic surveys in waters that Beijing claims. In May 2011, Chinese patrol ships cut the towed sonar cable of a Vietnamese ship to prevent it from completing a seismic survey.

On the other hand, more recently, in 2011, China employed more cooperative responses. For example, in June, Vietnam and China held talks in Beijing about the countries' various maritime disputes. In July, China and the ten members of the Association of Southeast Asian Nations (ASEAN) agreed to finally implement the declaration of a code of conduct they had originally drafted in 2002, agreeing to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes." In October, China reached an agreement with Vietnam on "basic principles guiding the settlement of maritime issues." The accord stressed following international law, especially the UN Convention on the Law of the Sea. Since then, China and Vietnam have begun to implement the agreement by

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establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands. In November, China announced that it would establish a three billion yuan (\$476 million) fund for China-ASEAN maritime cooperation on scientific research, environmental protection, freedom of navigation, search and rescue, and combating transnational crimes at sea. In December, China convened several workshops on oceanography and freedom of navigation in the South China Sea. Finally, in January 2012, China hosted a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration.[4]

Conflicting sovereignty claims

The Philippines asserts that it has exercised effective occupation and jurisdiction over the Scarborough Shoal since independence in 1946. To reinforce this claim it points to a lighthouse it built on the Shoal in 1965, and that it has conducted surveys and research in the waters surrounding the Shoal. China asserts that Scarborough Shoal and its adjacent waters have been Chinese territory for generations, and that it discovered the Shoal, incorporated it into its territory and exercised jurisdiction over it. Further, China also claims that the Shoal is included in the Zhongsha Islands, one of the four archipelagoes inside China's nine-dashed line map to which it has historic claims to sovereignty. China also argues that the Philippines never disputed Chinese jurisdiction until 1979.

There are a lot of complex aspects to this sovereignty dispute, but one of the most problematic is China's ambiguous claims in the South China Sea. These claims have been referred to as the "nine-dashed line," the "nine interrupted-lines," the "U-shaped line," as well as the official Chinese name: "traditional maritime boundary line" (chuantong haijiang xian)

The modern history of this line goes back to December 1914, when Hu Jinjie, a Chinese cartographer, published a map with a line around only the Pratas and Paracels, entitled "the Chinese territorial map before the Qianglong-Jiaqing period of the Qing Dynasty (AD 1736-1820)." In 1935, the Land and Water Maps Inspection Committee of the Republic of China (ROC) published a "Map of Chinese Islands in the South China Sea" with an 11-dotted line drawn around 132 islets and reefs of the four South China Sea archipelagos. In 1947, The ROC Ministry of Interior prepared a location map for internal use, renaming the islands in the South China Sea and formally allocating their administration to the Hainan Special Region. One year later, the Atlas of Administrative Areas of the Republic of China was officially published, including the first official map with the line for the South China Sea. An eleven-segment line was drawn instead of the previous continuous line. In 1949, the newly-established People's Republic of China (PRC) published a "Map of China" with the eleven-dotted line. In 1953, after Premier Zhou Enlai's approval, the two-dotted line portion in the Gulf of Tonkin was deleted. Chinese maps published since 1953 have shown the nine-dotted line in the South China Sea.[5]

From this brief summary, it is clear that the PRC has inherited and maintained the claims first developed by the ROC. Further, the current claims of the Beijing government and the Taipei government are essentially the same. Indeed, the Taiwan government occupies the largest of the Spratly Islands, Itu Aba (Tai Ping Dao).

Prospects

There are three ways that China and the Philippines might resolve their dispute over the Scarborough Shoal. First, they could continue to arm their marine patrol vessels and intimidate or coerce each other into compliance. Some assert that this is indeed China's current policy. "China now no longer hesitates to send armed maritime patrol ships (not regular navy) to prevent those fishermen from being arrested by foreign nations." [6] The China Marine Surveillance (CMS) and the Fishery Law Enforcement Command (FLEC) can both deploy paramilitary vessels to exert Chinese jurisdiction. The CMS appears to be an independent agency that can take action without authorization from the Foreign Affairs Ministry. This approach unfortunately blurs the distinction between traditional and non-traditional security concerns: e.g. when states or their navies support their fishermen, even when they are fishing illegally or poaching. Arming marine police boats increases the risk that a similar incident might escalate into a violent conflict.

Second, they could refer the territorial sovereignty dispute to an international court or tribunal and ask them to decide

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which State has the better claim to sovereignty. This was done by Malaysia and Indonesia over Sipidan-Ligitan and by Singapore and Malaysia over Pedra Branca/Pulau Batu Puteh. In both cases, the States agreed to refer the sovereignty disputes to the International Court of Justice. This has been tried only infrequently. Nationalist concerns over preserving national sovereignty make it difficult to turn any territorial disputes over to international courts.

Third, they could agree to set aside their sovereignty dispute and jointly manage the fisheries in the disputed area. For example, this was done by China and Vietnam in the Tonkin Gulf Joint Resource Management Zone. China and the Philippines could do something similar in the Scarborough Shoal region. There are several compelling reasons to pursue a joint fishery resource management program for the Scarborough Shoal. Fishery resources, especially migratory species, follow their ecosystem dynamics, not territorial seas or EEZs. They are an intrinsically regional resource. They have high value as a source of protein, food, and jobs. The Scarborough Shoal has had a long history of cooperative traditional fishing practices, including international working groups and an epistemic community of marine biologists and resource managers to provide sustainable resource management.

The international legal framework for resource use in the South China Sea is provided by UNCLOS. It calls for establishing joint resource management areas and provides guidelines for doing so, even where conflicting territorial claims are unresolved. For example, Article 61 of UNCLOS requires countries to monitor their fish catch in relation to both economically- and environmentally-sustainable yields. Articles 116-119 provide for provisional agreements for joint resource management in disputed areas. Hence, China and the Philippines, as signatories to the UNCLOS, should cooperate to manage their fisheries and regulate the behavior of their own fishing vessels.

Ten years ago, the South China Sea territorial disputes, once seen as potential flashpoints, were substantially mitigated by the 2002 Declaration on the Conduct of Parties (CoP). It was China's first formal multilateral agreement on the South China Sea, and the whole of ASEAN is a party to the agreement. China has a substantial stake in making the agreement effective, as it limits the internationalization of the disputes, which can be used as a pretense for non-ASEAN parties like the United States or Japan to intervene in them.

Fishing traditions around the South China Sea evolved under the assumption of unlimited resources. Fisheries depletion and habitat degradation were already problems before the extension of maritime jurisdictions through EEZ declarations in the 1990s. Now that the limits of fishery resources have been clearly perceived, coastal states are grappling with the challenge of avoiding a maritime tragedy of the commons similar to the collapse of the North Atlantic cod fishery in the 1990s.[7] Ecosystems seldom coincide with territorial boundaries and the Scarborough Shoal and the greater South China Sea are no different in this regard.

Without a joint resource management regime for the Scarborough Shoal, there will also be an increased risk of another confrontation leading to armed conflict. As Sam Bateman has argued, "the South China Sea disputes 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' to one of functional cooperation and cooperative management." However, this approach "has become bogged down in recent years by nationalistic assertions of sovereignty, some of which are ill-founded, which set back any progress towards cooperation with managing the sea, its environment and its resources." [8] Hence, cooperative fisheries management is more pressing than ever.

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