Why are the Disputes in the South China Sea So Intractable? A Historical Approach

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Introduction

There are at least three ways of writing the history of a sovereignty dispute. The first applies a national perspective, goes as far back in history as possible in order to find evidence that the territory in question is an inviolable part of the national patrimony, and demonstrates how sovereignty has been continuously upheld through prescription, occupation and utilization. The second composes a non-partisan legal treatise, presents the chronology of conflicting claims to sovereignty, and evaluates their relative merits on the basis of international law (cf. Austin, 1998; Valencia, Dyke, and Ludwig, 1997). The third makes the dispute a part of general international history, analysing events and trends on the basis of changes in the international system and in the balance of power (cf. Renouvin, 1946; Joyaux, 1985, 1988; Yahuda, 1996). In this article, we shall follow the third approach and let changes in international power relations underpin the structure of the analysis. Each section starts with a characterization of the international system and power relations within the period under scrutiny, and then examines the territorial disputes within this context.

The historical record has a major role to play in any resolution of a sovereignty dispute. It is normal practice to select some critical dates when treaties, decrees or other actions provided all interested parties a chance to present and sustain their claims. For the dispute over sovereignty to islands in the South China Sea (the Spratlys and the Paracels), the candidates that may serve as critical dates are 1877, 1909, 1933, 1946–1947, 1951–1952, 1956, 1971, 1974, 1982–1983 and 1988. No attempt will be made in the analysis below to point out the dates that ought to underpin the resolution of the sovereignty disputes, but this paper will describe what happened in those years.

Since the history of the dispute in the South China Sea is itself a part of the dispute, it is difficult for the historian to be impartial. The text below has, no doubt, been coloured by the fact that only French and British archives have been consulted while information from other countries is
Disputes in the South China Sea

derived from secondary sources. The analysis may also have been affected by the author’s attitude, which tends to deny that any of the claimants has a superior right to the reefs and islets in the Spratly area. The area’s main value is to serve as a natural habitat for a variety of fish, birds and other organisms. Therefore, if the following analysis is impartial in its treatment of the sovereignty disputes, this may result from a less than impartial passion for defending the environment — and human peace — against destructive human behaviour.

It may be useful to remind the reader that sovereignty disputes to small, uninhabitable islands and the delimitation of continental shelves are fairly recent human innovations. The mapping and demarcation of land borders between the states in Southeast Asia has been going on since the mid 19th century, but maritime delimitation is far more recent. Although the principle of coastal state sovereignty to a narrow belt of territorial waters along coasts was discussed by European legal scholars as early as the 17th century and later upheld by many states, it was only codified in international law at the 1950 Hague Conference, with a limit of three nautical miles. The principle of attributing an extensive continental shelf to coastal nations was introduced by US President Harry S. Truman only in 1945, and the principle of a 200 nautical mile Exclusive Economic Zone was first seriously proposed as an international norm as late as 1971 (Sanger, 1987; Churchill and Lowe, 1999:74, 143–144, 160).

Almost twenty years have passed since the United Nations’ Convention on the Law of the Sea (LOS Convention) was signed in 1982. It has been ratified by most of the states around the South China Sea. Still, there are no recognized maritime boundaries in most of the South China Sea. Indonesia and Malaysia agreed as early as 1969 on the delimitation of the continental shelf in the area between East and West Malaysia (north of Natuna Island). Malaysia and Thailand, Malaysia and Vietnam, and Thailand and Vietnam have made bilateral agreements on boundaries and joint development zones in the Gulf of Thailand, and in December 2000, China and Vietnam reached agreement on a treaty on the demarcation of the Gulf of Tonkin, and also an agreement on fishery cooperation in the Gulf. However, in the central part of the South China Sea, there have not been any negotiations. The surrounding states have not even made known their precise zone claims.

Why has there been so little progress towards maritime delimitation in the South China Sea? Why are they so intractable? In order to explain this we must look into the respective roles of land and sea borders historically, and analyse how the disputes over sovereignty to the Paracel and Spratly islands have been related to changes in power relations.