

Security and International Politics in the South China Sea

Towards a cooperative management
regime

Edited by
**Sam Bateman and
Ralf Emmers**

Routledge security in Asia Pacific series

Security and International Politics in the South China Sea

The South China Sea has long been regarded as a major source of tension and instability in East Asia. Managing the risk of possible conflict over disputed claims in the South China Sea has been a significant challenge for regional relations. In addition, new challenges have emerged of resource management, environmental protection, and most recently, the security and safety of shipping against the threats of piracy and maritime terrorism. This book explores international politics and security in the South China Sea. It outlines the history of the South China Sea disputes, and the efforts that have been made to resolve these, assessing the broader strategic significance of the region for major geopolitical powers. It discusses the convergence of traditional and non-traditional security issues now appearing to provide a basis for cooperation in the South China Sea. It shows how the challenge of establishing cooperative relations is now being met, largely through agreement between the Association of Southeast Asian Nations (ASEAN) and China in 2002 on the Declaration on the Conduct of Parties in the South China Sea, and a range of recent measures for functional cooperation.

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First published 2009
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
270 Madison Ave, New York, NY 10016

Routledge is an imprint of the Taylor & Francis Group, an informa business

This edition published in the Taylor & Francis e-Library, 2008.

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging in Publication Data

Security and international politics in the South China Sea: towards a cooperative management regime/edited by Sam Bateman & Ralf Emmers.
p. cm. – (Routledge security in Asia Pacific series; 9)
Includes bibliographical references and index.

1. South China Sea—International status. 2. South China Sea Region—Politics and government. 3. Security, International—South China Sea.

I. Bateman, W.S.G. (Walter Samuel Grono) II. Emmers, Ralf, 1974—
KZA1692.S43 2008

355’.033016472—dc22

2008025473

ISBN 0-203-88524-4 Master e-book ISBN

ISBN10: 0-415-46943-0 (hbk)

ISBN10: 0-203-88524-4 (ebk)

ISBN13: 978-0-415-46943-2 (hbk)

ISBN13: 978-0-203-88524-6 (ebk)

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Acknowledgements

The editors would like to express their deepest gratitude to the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, for funding this project. Special thanks to Ambassador Barry Desker, Dean of RSIS, for his enthusiastic support and to LTC Joshua Ho and Ms Jane Chan for organizing the initial conference entitled 'The South China Sea: Towards a Cooperative Management Regime' in Singapore in May 2007. The editors would also like to thank Ms Chan for her excellent and invaluable editorial assistance in the preparation of the final manuscript. Finally, our special thanks to the editors of the series, Professors Leszek Buszynski and William Tow, for their advice on the conceptualization and organization of the edited volume and to the Routledge editorial team for their role in its production. The editors take responsibility for any shortcomings in the book.

Sam Bateman
Ralf Emmers
Singapore, September 2008

Abbreviations

ACFTA	ASEAN–China Free Trade Area
APT	ASEAN Plus Three
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CCP	Chinese Communist Party
CIDA	Canadian International Development Agency
CNOOC	China National Offshore Oil Corporation
CNPC	China National Petroleum Corporation
CSCAP	Council for Security Cooperation in the Asia-Pacific
DGPS	digital ground positioning system
DOC	Declaration on the Conduct of Parties in the South China Sea
EEZ	Exclusive Economic Zones
ELINT	electronic intelligence
FAO	Food and Agriculture Organization
GBC	General Border Committee
GDP	gross domestic product
GEF	Global Environment Facility
GEM	groups of experts meeting
HF	high frequency
ICJ	International Court of Justice
INCSEA	Prevention of Incidents at Sea Agreement
JFC	Joint Fishery Committee
JMSU	Joint Marine Seismic Undertaking
JOMSRE-SCS	Joint Oceanographic Marine Scientific Expedition in the South China Sea
KMT	Kuomintang
MALINDO INCSEA	Malaysia–Indonesia Prevention of Incidents at Sea Agreement
MPAs	Marine Protected Areas
MSC	Marine Stewardship Council
NGO	non-governmental organizations
nm	nautical miles

OTH	over the horizon
OTH-B	over the horizon backscatter
PLA	People's Liberation Army
PLAAF	People's Liberation Army Air Force
PLAN	People's Liberation Army Navy
PLANAF	People's Liberation Army Naval Air Force
PNOC	Philippines National Oil Company
PRC	People's Republic of China
ReCAAP	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia
RFMO	Regional Fisheries Management Organization
RP	Republic of Philippines
SAR	search and rescue
SIGINT	signals intelligence
SLOCs	sea lines of communication
SOLAS	Safety of Life at Sea
TAC	Treaty of Amity and Cooperation in Southeast Asia
TWG	technical working groups
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
VHF	very high frequency
VLF	very low frequency
WCPO	Western and Central Pacific Ocean
WWF	World Wide Fund for Nature



Map 1 The South China Sea (source: S. Tønnesson, "China and the South China Sea: A Peace Proposal," *Security Dialogue* 31, 3 (September 2000)).

Introduction

The South China Sea: towards a cooperative management regime

Sam Bateman and Ralf Emmers

The South China Sea has long been regarded as a major source of tension and instability in East Asia. Managing the risk of possible conflict over disputed claims in the South China Sea has been a significant challenge for regional relations. This challenge is now being met, largely through diplomatic consultations between the members of the Association of Southeast Asian Nations (ASEAN) and China.¹ In particular, considerable effort has been expended over the past decade or so in building a cooperative management regime for the South China Sea that helps to defuse the potential for conflict that has existed in that sea.

Often deriving from international conventions or treaties, regimes are agreements between states to promote common interests in a defined sphere of influence. International regimes can be defined as 'sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations'.² They can regulate conflicting as well as cooperative relations. For example, the United Nations Convention on the Law of the Sea (UNCLOS) aims to establish a maritime regime by calling for closer cooperation on maritime issues, offering procedures for the resolution of territorial disputes and introducing new concepts, rights and responsibilities. For states, the formation of an international regime should be regarded as a restriction rather than an abandonment of sovereignty in a specific area. International regimes are generally self-enforcing through mutual monitoring behaviour, though some can include dispute procedures and sanctions to guarantee their implementation. Formal international organizations can also be established to ensure the respect of international regimes.

In the context of the South China Sea, positive cooperative developments have in recent years included especially the agreement between ASEAN and China in 2002 on the Declaration on the Conduct of Parties in the South China Sea, as well as a range of recent measures for functional cooperation. However, problems still abound, and the ideal of an effective cooperative management regime for the South China Sea has still not been achieved. Indeed, much more needs to be done before it could be claimed that a comprehensive regime for managing the South China Sea is in place, and the risks of conflict have been averted. The lack of agreed maritime jurisdiction has clearly complicated the establishment of a management regime for the South China Sea based on

2 *Introduction*

customary principles of sovereign rights and obligations. It has also inhibited the development of effective cooperation between the littoral states bordering the South China Sea that would conform with Part IX of the 1982 UN Convention on the Law of the Sea. This convention requires states bordering such a sea to cooperate with each other in the performance of their rights and duties, and to coordinate their activities with regard to resource management, marine environmental protection and marine scientific research.

The South China Sea has an obvious strategic dimension. Control by one hegemonic naval power of the maritime communication routes would endanger the security interests of the littoral states as well as those of the United States, Japan, China and other maritime powers that cross these waters. While the strategic significance of the South China Sea endures, contemporary security concerns in the maritime area now dictate that a cooperative management regime should also extend to the maintenance of law and order at sea. The security and safety of shipping needs to be guaranteed against sea piracy, acts of maritime terrorism and the illegal trafficking by sea in arms, drugs or people. The security and safety of navigation also extends to the provision of the navigational aids, hydrographic surveys and search and rescue (SAR) arrangements necessary for the safe and secure passage of shipping through the South China Sea.

Beyond the rise of transnational threats in the South China Sea, other challenges have emerged in terms of resource management and environmental protection. In environmental terms, the South China Sea is an area of globally significant marine biodiversity. Attempts are now being made, for example through the UNEP/GEF South China Sea project, to develop regionally coordinated programs of action designed to reverse environmental degradation particularly in the area of coastal habitat degradation and loss, to reduce land-based pollution and to address the issue of fisheries overexploitation. However so far, this project relates only to waters under clear national jurisdiction and not to areas of overlapping claims.

While it is primarily the responsibility of the littoral states to establish an effective management regime for the South China Sea, other regional countries have a vested interest in that outcome. In many ways the South China Sea is the center of gravity of economic growth in East Asia. It is the geographical link between Southeast and Northeast Asia, and includes vital sea lines of communication (SLOCs) between these two economically dynamic sub-regions. The strategic significance of the South China Sea has long been appreciated by the major powers present in the region, as was illustrated historically by the secret hydrographic surveys of the area conducted by the United Kingdom, the United States and Japan in the 1920s and 1930s.³

This edited book seeks to contribute to the existing body of scholarship on the South China Sea. It has been some time since there has been a comprehensive study of strategic and political developments in the South China Sea.⁴ Thus it is timely to review developments in the South China Sea disputes and the efforts that have been made to resolve these. These activities have a considerable impact on regional relations and regional security. It is still true to observe that the South China Sea and the conflicting claims to sovereignty and sovereign

rights in that sea are important factors in the relations between the Southeast Asian countries and China, as well as within the ASEAN membership itself.

The objectives of the edited volume are therefore to:

- review the history of and geopolitical considerations impacting the South China Sea disputes, and the efforts that have been made to resolve these;
- consider the impact of these disputes on regional relations and regional security;
- assess the strategic significance of the South China Sea in the context of the contemporary regional security environment;
- discuss the convergence of traditional and non-traditional security issues now appearing to provide a basis for cooperation in the South China Sea; and finally
- identify factors which have either facilitated or inhibited effective cooperation in the South China Sea.

The various chapters in this edited book bring out both the progress that has been made with establishing a cooperative management regime in the South China Sea, and the reasons why an effective regime is still not in place. In that regard, the volume makes an important and original contribution to the existing literature. Key lessons for preventive diplomacy have been learned, particularly with regard to the factors which have either facilitated or inhibited effective cooperation in the South China Sea. Recent progress with cooperative management in the South China Sea provides a useful precedent, as well as some lessons learned, for the establishment of effective cooperation in other seas of East Asia, which are also subject to disputed maritime claims.⁵ Interestingly, while the situation in the South China Sea is the best known and problematic of the maritime jurisdictional problems in East Asia, it is also the situation where the most progress is being made in establishing effective functional cooperation.

Furthermore, this volume highlights the convergence of traditional and non-traditional security issues in the South China Sea. This convergence is a special issue that is worthy of further consideration and several chapters in this volume address this topic. Indeed, the non-traditional security issues potentially offer a sound basis for cooperation in the South China Sea. They are all common interests of the littoral countries and thus may involve lesser sensitivities than those likely to be encountered with more traditional security concerns. In particular, the non-traditional security issues offer potential as the launching pads for measures of preventive diplomacy and confidence building that may serve as 'building blocks' to facilitate consideration of more difficult issues of sovereignty and traditional security.

Most of the chapters in this book were first presented at a conference, 'The South China Sea: Towards a Cooperative Management Regime', hosted by the S. Rajaratnam School of International Studies (RSIS) in Singapore in May 2007. Other papers were subsequently commissioned to fill in possible gaps in respect of the contemporary security and political scene in the South China Sea. The

4 Introduction

editors have been particularly concerned to have adequate coverage of the current views of the major protagonists in the sovereignty disputes in the sea: China on the one hand and the several Southeast Asian countries on the other.

The book is divided into four parts. The first reviews the geopolitics of the South China Sea, including the historical perspective. The second considers non-traditional security issues, especially fisheries and the development of the oil and gas resources of the area. The third part addresses politics and security in the South China Sea with chapters giving the current views of the Southeast Asian countries and China, as well as the impact of the sea on Sino-Southeast Asian relations. The last part of the book considers the progress that has been made towards a cooperative management regime in the South China Sea. As the title of Hasjim Djalal's chapter in the collection suggests, this has indeed been a long road and we still have some distance to travel. By addressing the current situation in a comprehensive manner, we hope that this book will assist in moving further along the road.

Notes

- 1 ASEAN was established in Bangkok in August 1967. The original members were Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.
- 2 Stephen D. Krasner, 'Structural Causes and Regime Consequences: Regimes as Intervening Variables', *International Organization*, 36, 2, 1982, p. 186.
- 3 David Hancox and Victor Prescott, *Secret Hydrographic Surveys in the Spratly Islands*, Kuala Lumpur: Maritime Institute of Malaysia, 1997.
- 4 See for example Mark Valencia, *China and the South China Sea Disputes: Conflicting Claims and Potential Solutions in the South China Sea*, Adelphi Paper 298, Oxford: Oxford University Press, 1995; Bob Catley and Makmur Keliat, *Spratlys: The Dispute in the South China Sea*. Aldershot, UK: Ashgate Publishing, 1997; and Lee Lai To, *China and the South China Sea Dialogues*, Westport, CT: Praeger Publishers, 1999.
- 5 For a discussion on the maritime territorial disputes in Northeast Asia, see Unryu Suganuma, *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands*, Honolulu: University of Hawaii Press, 2000 and Kimie Hara, *Cold War Frontiers in the Asia-Pacific: Divided Territories in the San Francisco System*, New York: Routledge, 2007.

Part I

Geopolitics in the South China Sea

1 Dangerous Ground

A geopolitical overview of the South China Sea

Clive Schofield

Introduction

When the Spratly Islands are mentioned, a number of striking images tend to spring to mind. One notable picture shows a pair of soldiers perched precariously on a tiny inhospitable-looking rock only marginally larger than the sovereignty marker dominating it. Another striking photo shows a flimsy-seeming bamboo shelter, complete with ragged flag, attached to another diminutive rock just breaking the surface of the sea. Rather than being exceptions to the rule, these images are indicative of the true characteristics of many of the insular features among the Spratlys archipelago.

Despite their seeming insignificance physically these features have been subject to intense competition between rival claimants among the South China Sea's coastal states. In terms of the number and complexity of overlapping jurisdictional and sovereignty claims made to it, the South China Sea is among the world's most disputed areas. Competing claims to maritime space on the part of the littoral states are complicated by the presence of two disputed archipelagos of islands and reefs generally known as the Spratly and Paracel islands, as well as other outlying islands and islets. Sovereignty over these islands is disputed and maritime jurisdictional disputes related to the maritime claims that they may, or may not, be able to sustain also appear to exist.

The objective of this chapter is, essentially, to set the geopolitical scene in respect of the South China Sea and in particular of the Spratly Islands area. In light of lingering uncertainties over where the islands of the South China Sea are located and what they comprise, the chapter will, in the first instance, provide a brief examination of the geographical nature of the features that make up the South China Sea islands, particularly those collectively known, in English at least, as the Spratly Islands. The competing claims to sovereignty over these islands will then be briefly alluded to, as this provides a necessary context against which to assess the geopolitical value the claimant states attach to the features in question. Discussion will then turn to examining the key geopolitical interests and factors motivating the claimant states.

First, the possible intrinsic worth of the insular features themselves will be briefly examined. The potential value of the disputed islands in terms of the

claims to maritime zones of jurisdiction that they may generate will be explored. This represents a critical issue as it has direct consequences in terms of access to the resources believed to exist in the South China Sea. The regime of islands as set out in the United Nations Convention on the Law of the Sea (UNCLOS)¹ will therefore be considered and the implications of this for the South China Sea “islands” will be discussed. A key related issue here is the possible presence of resources, particularly hydrocarbon, among the Spratly Islands. The conflicting assessments as to the potential resources, especially seabed resources, believed to exist in the South China Sea will therefore be reviewed with regional energy security concerns in mind, as these considerations appear to play a vital role in the geopolitical calculations of claimant states.

The significance of the islands with respect to access to living resources and in environmental terms will also be briefly raised; as will their potential value in a military and geostrategic sense, with particular reference to shipping passing through the South China Sea. The crucial role of the nationalism that underlies regional claims to territory, sovereignty and sovereign rights in the disputes over the South China Sea islands is also acknowledged.

The “Dangerous Ground”

The islands of the South China Sea include two contested archipelagos, the Paracel Islands in the northwest and the Spratly Islands in the south. Additionally, the isolated features of Pratas Island and Scarborough Shoal (or Reef) are located in the northeast and east of the South China Sea respectively. The present discussion will focus specifically on the Spratly Islands group.

Despite the intense examination of the problem these insular features pose in international relations, the substantial research efforts undertaken and the wealth of literature devoted to them, there remains a surprising degree of uncertainty over the nature of the islands, islets, rocks and shoals under discussion. Some of the fog of illusion, half-truths and misinformation associated with discussion of the geographical nature of the Spratly Islands has been lifted by scholars such as Hancox and Prescott.² The present author is indebted to them, and other scholars, for their meticulous research efforts on which key parts of the remainder of this section are largely based.³

Estimates as to the number of “islands” making up the Spratlys group vary wildly, with a high-tide mark of around 500.⁴ This figure is on the high side among estimates and appears to substantially overstate the case. A rather more realistic assessment instead puts the number of insular features of various types at 150–180.⁵ Why such uncertainty? One reason is the practical consideration of what, exactly, to count. The question “how many Spratly Islands are there?” should therefore immediately give rise to a counter-query as to what type of insular feature is meant.

The majority of the Spratly Islands are not, in fact, islands in the international legal sense as provided by the relevant provisions of UNCLOS. According to UNCLOS, Article 121(1), an “island” is “a naturally formed area of land,

surrounded by water, which is above water at high tide". While the requirements that an island be "naturally formed", an "area of land" and "surrounded by water" appear to be reasonably unambiguous, the requirement that islands be "above water at high tide" is potentially more problematic. The phrase "naturally formed" also serves to exclude from consideration artificial islands or structures (see below).⁶

The *regime of islands* provided under UNCLOS also includes, through Article 121(3) a sub-category of islands, the "rock". Such features "cannot sustain human habitation or economic life of their own". Differentiating between "islands" and "rocks" is problematic and has generated considerable scholarly debate as well as proving an important factor in numerous maritime and boundary disputes and delimitation questions (see below). Furthermore, UNCLOS Article 13(1) defines a low-tide elevation as "a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide".

Issues related to the relevant vertical datum are fundamental to distinguishing between these various categories of insular feature. The term "vertical datum" refers to the level of reference for vertical measurements such as depths and heights of tide. Choice of vertical datum can have a telling impact on whether a particular feature can be classified as an island (above high tide), a low-tide elevation (above low tide but submerged at high tide) or a non-insular, submerged feature (submerged at low tide).⁷

Many of the features counted among the Spratly Islands are in fact really low-tide elevations or submerged banks. Only 48 are known to rise above high tide to form uniformly small, and in most cases tiny, islands or rocks.⁸ The biggest insular feature among the Spratlys, Itu Aba Island, is a mere 1.4 kilometres long and 370 metres wide with an area of approximately 50 hectares, while Spratly Island itself has a roughly isosceles triangle shape, the base measuring 750 metres with the apex 350 metres distant and an area of around 13 hectares.⁹ The highest point on both islands is 2.4 metres above the high-tide mark.¹⁰ Indeed, the total land area of the Spratlys above the highest astronomic tide has been estimated to be less than eight square kilometers (three square miles). These features are located in the southern part of the South China Sea extending for approximately 460 nautical miles (nm) from southwest to northeast and 220 nm east to west.¹¹ They are therefore scattered over an enormous area of around 240,000 square kilometres.¹²

As noted above, the Spratly Islands encompass a bewildering profusion of different types of feature – islands, rocks, reefs, coral cays, low-tide elevations and submerged banks and shoals. This geographical complexity has made distinguishing between different insular features among the Spratlys group highly problematic. Consequently, commentators have tended to count some features but not others, count several grouped features as one or, alternatively, count each tiny, and often sub-surface, feature as a separate entity. Further sources of confusion are that there is no clear or consistently used definition of the Spratly Islands.¹³ There are also considerable difficulties over appropriate names for features among the Spratly Islands which may have multiple names in Chinese,

English, French, Malay, Filipino and Vietnamese as well as variants within these languages.¹⁴

Furthermore, it is important to note that for the vast majority of their history, the Spratly Islands have been generally regarded as no more than hazards to navigation. This is evidenced by the number of features among the Spratlys whose names (in English at least) derive from the names of vessels that were wrecked on them.¹⁵ The term “Dangerous Ground”, which has traditionally featured on British navigational charts of the area now commonly known as the Spratly Islands group, seems particularly apt both in this regard and in terms of their contemporary role as a focus for conflicting jurisdictional claims.

As serious hazards to navigation, the Spratlys represented an area traditionally best avoided. The limits of this perilous part of the South China Sea were thus ascertained with some urgency in the nineteenth century but there was understandably little interest in penetrating what Findlay described in 1889 as a, “labyrinth of detached shoals”.¹⁶ Additionally, some of the observations that were made were uncertain, particularly regarding positional information. Plausible explanations here relate to inaccuracies in celestial observations, cumulative and unaccounted errors in ships chronometers and errors arising from dead reckoning.¹⁷ This gave rise to numerous features being recorded and appearing on charts that did not (and do not), in fact, exist. Examples of these are two Brown Islets, two Ganges Reefs and no fewer than seven reefs bearing the name Pennsylvania!¹⁸ Moreover, when systematic surveys among the Spratlys eventually did occur, they were largely conducted in secret and the information collected was deemed too sensitive to share (even, on occasion, with allies) and classified.¹⁹ This was largely because of the emergence of geopolitical rivalries among the distant but interested maritime powers, notably Britain, France, Japan and the USA. These conflicting ambitions prompted secret surveys with differing aims.

Thus, Britain was concerned to find safe and speedy passage through the Dangerous Ground for oil supplies from Borneo to Hong Kong. The British Admiralty also held out hope that there might exist a strategically useful concealed fleet anchorage among the Spratlys. Japan was the other main player, especially in the 1930s, scouting safe invasion routes and potential submarine bases, as well as generally attempting to bolster its commercial presence in Southeast Asia. France’s modest surveying efforts appear to have been mainly motivated by a desire to ward off Japan, while the US conducted surveys with the intent of establishing a secure east–west passage through the complex Spratlys group. It has thus been rightly observed that geopolitical rivalries over the Spratlys are nothing new – only the players have changed.²⁰

It is, nonetheless, surprising that major discrepancies remain between charting authorities on the Spratlys and that many charts and maps continue to show features among the Spratlys that simply do not exist. For instance, Hancox and Prescott have identified 22 features which routinely appear on US navigational charts and maps, yet have been conclusively proven not to exist by other hydrographic survey authorities, notably the British Admiralty, decades before. This is especially surprising given that it is common practice for hydrographic survey