



**S. RAJARATNAM SCHOOL
OF INTERNATIONAL STUDIES**
A Graduate School of Nanyang Technological University

RSIS COMMENTARIES

RSIS Commentaries are intended to provide timely and, where appropriate, policy relevant background and analysis of contemporary developments. The views of the authors are their own and do not represent the official position of the S.Rajaratnam School of International Studies, NTU. These commentaries may be reproduced electronically or in print with prior permission from RSIS. Due recognition must be given to the author or authors and RSIS. Please email: RSISPublication@ntu.edu.sg or call 6790 6982 to speak to the Editor RSIS Commentaries, Yang Razali Kassim.

Outer Shelf Claims in the South China Sea: New Dimension to Old Disputes

Sam Bateman and Clive Schofield

1 July 2009

Submissions by Malaysia and Vietnam to the UN regarding continental shelf areas beyond 200 nautical miles from their mainland coasts in the South China Sea have provoked a furious response from China. What are the implications for the South China Sea disputes?

ON 6 MAY 2009, Malaysia and Vietnam lodged a joint submission with the United Nations' Commission on the Limits of the Continental Shelf (CLCS). This was in relation to an area of 'outer' or 'extended' continental shelf located beyond their respective 200 nautical mile exclusive economic zones (EEZs) in the southern South China Sea. This area is measured from the baselines fronting their



mainland coasts (see map). The following day, Vietnam also made a separate submission in respect of parts of the northern central South China Sea.

Potential seabed energy reserves?

These submissions were made in accordance with Article 76 of the UN Convention on the Law of the Sea (UNCLOS). Article 76 provides complex rules which allow coastal states located on broad continental margins to establish the outer limits of their legal continental margin seaward of their 200 nautical mile limits. In effect, Malaysia and Vietnam are seeking to establish sovereign rights over all the seabed and subsoil resources, notably including oil and gas reserves that may exist therein.

On the face of it, these submissions seem to be provocative moves. They suggest that the countries making these submissions alone have resource rights over the indicated parts of the seabed of the South China Sea to the exclusion of other potentially interested parties, such as Brunei, China and the Philippines. That said, Malaysia and Vietnam, along with many other states worldwide, were faced with a deadline (agreed among parties to UNCLOS) of 13 May 2009 to make such submissions or risk losing their rights.

Other submissions

Submissions from other South China Sea littoral states are likely to follow. In its revised baselines law of March 2009, the Philippines reasserted sovereignty over disputed islands in the South China Sea – prompting a protest from China. This was followed by its extended continental shelf submission in April 2009 in relation to seabed areas to the east of Luzon in the Pacific Ocean. The Philippines reserved the right to make further claims to outer continental shelf areas. This could well refer to the Kalayaan islands and Scarborough Shoal areas in the South China Sea.

Both Brunei and China have also provided the Commission with preliminary information, with full submissions to follow in the future. Brunei's submission, when it is made, is highly likely to overlap with the joint submission by Malaysia and Vietnam. Although China's communication to the CLCS primarily concerns the East China Sea, Beijing has reserved the right to make submissions in relation to unspecified "other sea areas" – wording that can be interpreted as implying a potential submission in the South China Sea.

Responses and counter-responses

Predictably the Vietnamese and Malaysian submissions provoked a furious response from China. The day after Malaysia and Vietnam delivered their joint submission to the CLCS, China lodged a strong protest with the UN Secretary-General. It alleged that the joint submission "seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea" and "seriously requests" the Commission not consider the submission. A similarly-worded Chinese protest was delivered in response to Vietnam's submission in relation to the northwestern part of the central South China Sea. The Chinese protests included a map showing the (in)famous U-shaped line, sometimes characterised as a general claim by China to the South China Sea as "historic waters", territorial sea or EEZ.

China's protests were met with counter-assertions from both Malaysia and Vietnam. Both stated that their submissions "constitute legitimate undertakings" as Parties to UNCLOS. While the Malaysian note emphasised that the joint submission was without prejudice to maritime delimitation or the existence of a maritime dispute in the region, Vietnam's note was less conciliatory. It restated Hanoi's "indisputable sovereignty" over both the Paracel (Hoang Sa) and Spratly (Truong Sa) Islands. Vietnam's note further asserted that China's claims in the South China Sea, as shown on the Chinese map, have "no legal, historical or factual basis", and are therefore "null and void".

Implications for Islands and the South China Sea Disputes

One particularly intriguing aspect of the submissions is the implications for the legal status of the South China Sea islands.

Outer continental shelf areas only exist in the South China Sea if the disputed islands are considered to be “rocks” within the meaning of Article 121(3) of UNCLOS, and are thus prohibited from generating extended maritime claims. If the South China Sea islands are capable of generating EEZ and continental shelf rights, no area of potential outer continental shelf beyond 200 nautical miles from the nearest island or mainland baseline exists. This development could arguably jeopardise the positions of Malaysia and Vietnam in particular in future boundary negotiations. Conversely it could also potentially substantially simplify the dispute by minimising the maritime claims associated with the disputed islands.

Outlook

The CLCS will not address these contentious issues. The Commission is a scientific rather than legal body and lacks the mandate to consider areas subject to a sovereignty dispute or subject to overlapping maritime claims, as is surely the case in the South China Sea. Ultimately, therefore, it remains up to the South China Sea states themselves to address and resolve the disputes in the region.

These extended continental shelf submissions have served to highlight existing disputes and appear likely to add an extra dimension to them. Indeed, there are already indications that the situation is escalating. China has said it will send more patrol ships to the disputed islands. The Philippines has announced it will improve military structures on the islands it claims.

This is despite concerns that such action could be contrary to the 2002 Declaration on Conduct of Parties in the South China Sea by ASEAN and China. According to the terms of the Declaration, ASEAN member countries and China agreed to resolve their disputes through “friendly consultations and negotiations”, and “to exercise self-restraint in the conduct of activities that would complicate or escalate disputes”.

Dr Sam Bateman is Senior Fellow with the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University where he serves on the Maritime Security Programme. He is a former Australian naval officer with a special interest in political and strategic aspects of the international law of the sea.

Dr Clive Schofield is QEII Research Fellow and Associate Professor with the Australian Centre for Ocean Resources and Security (ANCORS) at the University of Wollongong, Australia. He is a political geographer and a leading expert on maritime boundaries.