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Whose Sovereignty over the Paracels? A Response

By Sam Bateman

Synopsis

Rather than getting into an unproductive debate over matters of detail, this response to the critique of an earlier commentary looks more at the deleterious impact of sovereignty arguments on managing the South China Sea and its resources.

Commentary

IN THEIR joint RSIS Commentary No. 099/2014 entitled *Sovereignty over Paracels: Article Lets Off Beijing* Lightly, Dr Huy Duong and Dr Tuan Pham criticised my viewpoint, *New Tensions in the South China Sea: Whose Sovereignty over Paracels?* (RSIS Commentary No 088/2014). Their criticism highlights two fundamental issues with the South China Sea disputes more generally. The first is that these disputes and their implications for maritime boundaries are complex and unlikely to be resolved in the foreseeable future. This factor has become the major obstacle to effective governance of the South China Sea.

The second is that strident assertions of sovereignty are unhelpful and do nothing to help establish necessary regimes for managing the sea and its resources. While this is the case, fish stocks are being over-fished, marine habitats are being destroyed, good order at sea is lacking, and there is inadequate marine scientific knowledge to provide for the development of its resources.

Sovereignty over the Paracels

Whether China's oil rig is established in Vietnam's exclusive economic zone (EEZ) depends largely on which country has sovereignty over the Paracels. The authors criticised my comments about weaknesses in Vietnam's claim. In doing so, they omit to acknowledge that Woody Island has been continuously occupied by China since immediately after World War Two; presumably they would write this factor out because it is 'confusing occupation with sovereignty' – but over 60 years without effective challenge for much of that period is a long time.

The authors misread my comment that geographical proximity alone is not an unequivocal basis for claiming sovereignty or sovereign rights. In saying this, I am not mixing up the concepts of sovereignty and sovereign rights. Rather my comment was aimed at the repeated, simplistic assertions that the Chinese rig is located 'well within' Vietnam's EEZ, presumably on the basis of proximity to mainland Vietnam. 'Sovereign rights' in this

context was of course a reference to the fact that within an EEZ, a country only exercises rights over the resources of the zone – not sovereignty.

Vietnam can make good arguments to support its claim to sovereignty over the Paracels, but these are just that – arguments. China also has arguments. The respective arguments have ultimately to be tested either through the process of bilateral negotiation or before an international tribunal. In the meantime, there are no agreed boundaries in this part of the sea, and disputes such as the one we are seeing now are becoming more frequent.

Sovereignty assertions

Assertions of sovereignty have become even more strident in recent years. Bordering countries have eschewed cooperation for fear that by cooperation they will somehow be compromising their sovereignty claims.

Largely led by the Indonesia-sponsored workshops on resolving conflict in the South China Sea, countries around the South China Sea appeared to be heading towards a process of effective cooperation in the 1990s and early 2000s. This was evident in the 2002 Declaration on Conduct of Parties (DOC) which listed specific areas for cooperation. However recently, the process has been bogged down by nationalistic assertions of sovereignty.

These assertions have picked up their own momentum due to public fervour and the notion that the islands involved are an integral part of the nation state. The consequences of this have been clearly evident in the recent violent nationalistic protests in Vietnam against China.

At the risk of promoting another storm of protest from Vietnamese scholars, I venture to suggest that among the littoral countries, Vietnam has been the main offender with its strident assertions of sovereignty and a half-hearted response to its obligations under the international law of the sea, particularly UNCLOS Part IX. China at least has proposed the China-ASEAN Maritime Cooperation Fund to facilitate the process of cooperation.

I happily concede that by relying on secondary sources that quote different figures, I may have presented some incorrect distances. But the impact of this oversight is marginal and does not affect my basic concerns. Arguments over detail amount to 'not seeing the wood for the trees' where effective cooperative regimes are the 'wood'.

Even with Woody Island size does not really matter. It is big enough to meet the criteria of being an 'island' in the regime of islands in UNCLOS, and would be a consideration in the delimitation of maritime boundaries. Vietnam with its long coastline onto the South China Sea adopts the line that there are no 'islands' in the South China Sea lest they become a factor in boundary negotiations.

Way forward

The South China Sea situation 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' (that is, establishing maritime boundaries between neighbouring countries) to one of functional cooperation and cooperative management. This would be in accordance with both the obligation under Part IX of UNCLOS and the spirit of the 2002 DOC.

The authors concluded their criticism by claiming that I could make a more positive contribution to peace and cooperation by encouraging China to submit itself to the dispute settlement procedure in UNCLOS. Might I say the same of Vietnam?

My heartfelt contribution to regional peace and cooperation is to argue the case for a changed mindset from one of sovereignty, sole ownership of resources and seeking 'fences in the sea' to one of functional cooperation and cooperative management of the South China Sea and its resources. The strident assertions of sovereignty, even evident in the response of the authors, are becoming more counter-productive and leading nowhere.

In the long term, all parties will suffer due to the continued lack of effective arrangements for resource management, marine scientific research, marine environmental protection, the safety and security of shipping passing through the area, and the prevention of illegal activities at sea. Ultimately the national interest of all parties requires this cooperation.

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