

## Is the ‘American lake’ drying up in the China Sea?

Wolfgang Pape

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Recent tensions in the South China Sea have sparked concern that the region is once again becoming a flashpoint – with much wider geopolitical consequences. The Chinese are ‘island-building’,<sup>1</sup> much like the Japanese have done on rocks farther north of the China Sea. South of the China Sea, countries are still ‘nation-building’ to assert their positions in the Association of South East Asian Nations (ASEAN) ‘without interference’. All this building sounds very constructive. Yet it might also turn to destruction if it ends up aggravating nationalist sentiment among neighbours. Mitterrand pithily summed up Europe’s historical experience in 1995 in the European Parliament: “*Le nationalisme, c’est la guerre!*” Perhaps fortunately, parallels with WWI one hundred years on drawn by Japanese Prime Minister Abe at a speech in Davos remain too dogmatic and inappropriate for the East Asian region. There, in the end pecuniary pragmatism often prevails over the risk of bringing back body bags.

The ASEAN already carries the term ‘nation’ in its full name. Over here, the continental members of the EU still cherish their ‘ever closer union’ of shared sovereignty moving towards supra-nationality. The more maritime ASEAN emphasises ‘non-intervention’ as a basic principle in its charter. The EU calls its constituting countries ‘Member States’ and barely ever refers to ‘nation’ any more. As a European sharing Mitterrand’s recall of our history of nationalisms I am tempted to suggest that the members of ASEAN had better leapfrog the status of ‘nations’. They ought to integrate directly into a regional entity that overcomes internal borders. Their goal of an ASEAN Economic Community (AEC) in 2015 could well be a step in that direction. But the necessary solidarity among these members still seems to be lacking. This was demonstrated when the EU tried to negotiate a Free Trade Agreement with the ASEAN as such and then regretfully had to divide it up again for deals with its individual members. In the absence of their unity, even more instances of ‘divide and rule’ have opened up for China on territorial issues around islands in their neighbourhood in the South China Sea.

Before WWII, territorial disputes there mainly involved Japan and France, which withdrew and left them as ‘unresolved problems’. With Dulles in the State Department, the USA – as victor – purposely drafted the San Francisco Peace Treaty of 1951 in vague enough terms to

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<sup>1</sup> See the *New York Times*, 17.6.2014.

Wolfgang Pape is Associate Research Fellow at CEPS; former official of the European Commission and General Manager of the EU-Japan Centre for Industrial Cooperation.

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leave the issues open. The Treaty only obliged Japan as the loser to renounce the Spratly and Paracel Islands, as well as Taiwan and the Northern Territories, in what became known as an 'American lake'. Therefore, it never specified to which country Japan should renounce the rocks and islands in the south. In this way, the USA has retained its room for manoeuvre and even created a 'wedge' to keep Japan uncertain and within the Western bloc.<sup>2</sup> China was not invited to California in 1951. So it was up to the then Soviet Foreign Minister Gromyko to demand, in San Francisco, the resolution of these issues in the south, namely, inter alia, that 'Chinese territory be returned to China'. Clarification of what belongs where would have drastically changed the course of history. There would have been no need for later demands to drain the 'American lake' and have USA troops withdraw in order to calm East Asia.<sup>3</sup> Nevertheless, the US-UK draft became the final text of the Treaty in 1951, and these issues have remained 'unresolved' until today.

Now, however, there are at least six claimants in the dispute over the islands, islets, rocks and economic zones in the South China Sea. In the meantime, the USA has extended its ring of containment around China all the way to India and beyond. India's new Prime Minister Modi looks like switching to Abe's anti-China stance by following the Japanese PM in nationalist narratives.<sup>4</sup> Their border issues, however, look quite different if one compares the Indian-Chinese 3,000 km-long mountain frontier (still at war in 1962) across the Himalayas with the small disputed islands low in the West Pacific between Japan and China. Nevertheless, these bilateral bastions at the extreme eastern and western reaches of China now fit well into the American arch of China-containment.

The multilateral conflicts in the South China Sea – the geographical mid-point between these two bastions – recently also moved closer to the centre of media attention.<sup>5</sup> Despite the 'Code of Conduct' signed by China and the ASEAN countries in 2002 to preserve peace in the region, we increasingly read of physical damage among quarrelling national parties -- notably China with Vietnam and the Philippines fighting over territorial rights.<sup>6</sup> Since the four ASEAN-claimants find few points of solidarity among themselves, China seems to dominate the scene through its bilateral approach of 'salami-slicing' tactics. In January 2013 the Philippines was the first, however, to file a claim at the International Tribunal for the Law of the Sea (ITLOS) seeking to invalidate China's so-called 'Nine-Dash Line', which encompasses virtually the entire South China Sea. While a ruling by the ITLOS is not expected before 2015 and its outcome is open, Vietnam has also announced plans to seek legal recourse in order to forestall any *fait accompli sur place*.

Such recourse to law will inevitably also encounter the legal mind of the European Union. After centuries of suffering the horrors of war between nations, in recent decades we have not only integrated towards an ever closer union, we have also applied tools such as self-determination to solve such issues of territorial belonging, for instance in Saarland in 1955 and as far away as the Falklands in 2013.<sup>7</sup> However, this approach can hardly solve the problems in the China Seas. These isolated dots on the map – often only shoals and rocks –

<sup>2</sup> Kimie Hara (2007), *Cold War Frontiers in the Asia-Pacific*, Nissan Institute/Routledge Oxon, p. 45, 114-115 *et passim*.

<sup>3</sup> Not only increasing voices in East Asia itself, but also previously an analysis by computer-tools of an EC-sponsored conference of Asian intellectuals on "Shaping Factors in East Asia" in Haiko 1995.

<sup>4</sup> *The Economist*, "Across the Himalayas", 14.6.2014.

<sup>5</sup> See *Financial Times*, "US to counter China naval advance", 10.7.2014.

<sup>6</sup> For instance, in the *Financial Times*, "South China Seas: Troubled waters", 19.6.2014.

<sup>7</sup> A perhaps less convincing case as Presidents Kirchner and Putin pointed out together on 12.6.2014 in Buenos Aires.

are not home to enough indigenous people to vote for one or the other nationality. Who in the South China Sea could justly exercise this cardinal principle under international law? Anyway, with recent developments farther west around Ukraine, the principle of self-determination has again come to the fore, notably along with the breach of the right to territorial integrity that East Asian claimants already raise in their region.

In this context, the reaction of China to events in Ukraine in recent months has so far provided little insight into Beijing's principled position; it merely called for a peaceful solution without taking sides in the conflict. In fact, China appeared to sit on the fence between self-determination and territorial integrity and chose to abstain from the crucial UN Security Council vote. Crimea's secession and 'choice' to join Russia, under the pretext of self-determination, must have alarmed many Chinese officials who might have imagined similar moves on the part of its officially declared 56 'nationalities', which are still peacefully displayed for paying tourists in a Beijing park. In addition, China wants to maintain its freedom to deal with near neighbours and borders without the constraints of sublime principles of international law. Nevertheless, many in the West had expected China to distance itself from Russia during the latter's blunt violation of Ukraine's territorial integrity. But unlike dogmatic continental Europeans, the Chinese can be very pragmatic, especially when it really counts for them, and that is in the realm of business. Only weeks after Putin triumphantly sailed into the port of Yalta and had Russian passports distributed to all diaspora, in Shanghai he could celebrate the sale of \$400 billion-worth of natural gas annually over three decades.

It is a matter of fact that relations between China and Russia are fundamentally based on mutual interest.<sup>8</sup> Threatened by Western sanctions on the one side of the Eurasian continent and contained by the Americans on the other, these two historically rather cool neighbours now easily find common ground – not only as BRICS, but also in the Shanghai Cooperation Organisation. In the longer term and with the help of climate change they might together even develop and control a Northern Sea route through the Arctic Ocean by 2020, thereby opening up a 22% shorter cut to Western Europe.<sup>9</sup>

Likewise, down to earth and over water the business links between China and the other traders around the South China Sea are closely intertwined. For instance, Vietnamese protesters could not distinguish between the many Chinese, Taiwanese or Japanese firms on their soil and attacked all of them indiscriminately when the recent incidents with the Chinese occurred over the Paracel Islands in the Sea. Nevertheless, their leaders seem to be pragmatic enough to compromise on economic grounds with the Middle Kingdom (中國 in Chinese), which is gradually trying to restore its historic place in the region of the China Sea. China's 'salami tactics' not only slice meat but, in the fashion of its culinary tradition, might also slice right through certain bones of contention.

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<sup>8</sup> See Mu Chunshan, "Why Doesn't Russia Support China in the South China Sea?", *The Diplomat*, 21.6.2014.

<sup>9</sup> *The Economist*, "Polar bearings", 12.7.2014.