

South China Sea: Background Note

Introduction

The South China Sea channels a third of the world's shipping and is rich with islands, fisheries, oil and gas deposits. It is also one of the most disputed areas in Southeast Asia and has the most potential for armed conflict. China, Taiwan, Vietnam, the Philippines, Indonesia, Malaysia and Brunei have made overlapping territorial claims to these waters, as well as to some of the islands and rocky outcrops in them such as the Paracels and the Spratly Islands. Small naval confrontations and skirmishes between official vessels and fishing boats of various countries have become commonplace.

Maritime tensions stem from several, linked disputes that are cumulative in their effect. The principal driver is the quest of all countries for natural resources to fuel economic growth, in this case oil, natural gas, minerals, and fish. To secure those resources the countries concerned claim various rocks and islands in the East and South China Seas, and the broadest exclusive rights to exploit fish in the sea and hydrocarbons and minerals in the seabed. Each state defends its version of history to fortify its case and each acts diplomatically and in other ways to assert its claims. Nationalistic publics push governments to be firm in protecting these national interests. In recent years, there have been numerous dangerous incidents in the region.

Positions of Stakeholders

ASEAN

ASEAN has promoted multilateral talks on disputed areas without settling the issue of sovereignty, and in 2002 joined with China in signing a Declaration on the Conduct of Parties (DOC) in the South China Sea that committed all parties to those territorial disputes to “reaffirm their respect for and commitment to the freedom of navigation in and over flight above the South China Sea as provided for by the universally recognized principles of international law” and to “resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force.” Since then ASEAN has attempted to promote a code of conduct for the SCS but has failed to secure unanimity. At the ARF in Brunei earlier this month there was agreement to hold consultations on the issue in Beijing in September. Thailand is seeking to coordinate the ASEAN position in advance.

The EU

The EU has a major interest in the SCS because of its role for trade and investment in the region. In its 2012 *Guidelines on the EU's Foreign and Security Policy in East Asia*, the EU

stressed the importance of freedom of navigation in the South China Sea and encouraged the parties to peacefully resolve disputes in accordance with international law, particularly the UN Convention on the Law of the Sea (UNCLOS). Additionally, the EU suggested in the guidelines to look at previous examples and offered to share experience if wished by the conflict parties.

The US

The US has no territorial or resource claims in East Asia, but Hillary Clinton stated at the 2010 ARF meeting in Hanoi that “the United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea.” The US has defence treaties with Japan and the Philippines, and so it might get drawn into a conflict between either of them and China. It has stated that the US will accept “no unilateral attempt to change the status quo”. Although it calls for the peaceful settlement of disputes under international law, the US has not yet ratified the UN Convention on the Law of the Sea.

In the 2012 Joint EU-US statement on the Asia-Pacific region, Ashton and Clinton encouraged China and ASEAN “to advance a Code of Conduct and to resolve territorial and maritime disputes through peaceful, diplomatic and cooperative solutions”.

People’s Republic of China

Official position: Paracel and Spratly islands for the last 2000 years integral part of Chinese territory, reconfirmed by 1947 map. Arbitration started by the Philippines is illegal and founded on illegal occupation of Chinese islands and reefs, thus UNCLOS should not apply.

Stance: no international arbitration but only by states directly concerned, joint development of the area; strict adherence to Declaration on Conduct of Parties in the South China Sea (DOC).

Philippines

Official position: Chinese nine-dash line violates UNCLOS provisions to which China and the Philippines are signatories; China has declined invitation to use settlement mechanisms under Part XV of UNCLOS. Having exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime dispute with China Secretary of Foreign Affairs Del Rosario stated that therefore "the Philippines has taken the step of bringing China before the Arbitral Tribunal under Article 287 and Annex VII under UNCLOS.

Stance: International arbitration, joint development only after settling of dispute and clarification of claims; establish legally binding Code of Conduct (COC).

Vietnam

Official position: Vietnam possesses sovereignty over Spratly and Paracel archipelagos in accordance with UNCLOS.

Stance: focus on strict implementation of the DOC between ASEAN and China in 2002; hopes that ASEAN members and China launch official talks on a COC. Speaking at the Shangri-la conference in June, PM Dung called for completion of an ASEAN-led Code of Conduct for avoiding confrontation at sea, thus facilitating “peaceful dispute settlement on the basis of international law, not threats of force”.

Malaysia

Official position: Claims territory that falls within economic exclusion zone under UNCLOS and to a small number of islands in the Spratlys

Stance: dialogue and co-operation, establish COC, no involvement of ‘extra-regional states’; joint development of resources; no passing on of dispute to the next generation. Points to the example of the joint development zone in waters claimed by Thailand and Malaysia.

Brunei

Official position: Claims territory within its economic exclusion zone under UNCLOS.

Stance: resolution through dialogue by states concerned and ‘in accordance with universally recognised principles of international law’, including UNCLOS; no international arbitration; implementation of DOC and efforts towards COC.

Bilateral Cooperation

In April this year Japan and Taiwan reached an agreement to jointly share and administer the fishing resources in their overlapping claimed exclusive economic zones in the East China Sea, an important breakthrough after 17 years of negotiations and a potential model for other such agreements. Other incidences of the joint administrations of resources in disputed waters in the SCS have de-escalated tensions and promoted economic development, such as Malaysia and Brunei's 2009 agreement to partner on exploring offshore Brunei waters, with drilling in offshore oil and gas fields off Brunei beginning in 2011; and Thailand and Vietnam's agreement to jointly develop areas of the Gulf of Thailand for gas exports, despite ongoing territorial disputes.

Role for the EU?

EU has useful experience in resolving conflicts within and outside EU, including management of the seas and resources. It established the common fisheries policy (CFP) and set quotas for member states. Experience in marine protection and negotiating ever-higher environmental standards for coastal states. Unbiased outsider with experience and ASEAN keen to benefit from in other areas. Could be useful third party for technical assistance. But ultimately up to involved parties to resolve the disputes. The only viable solution in the long run is setting aside disputes and begin joint development.

