

The 7th South China Sea International Conference:
Cooperation for Regional Security and Development

The Diplomatic Academy of Vietnam, the Foundation for East Sea Studies and the Vietnam Lawyers' Association host an annual conference on the South China Sea. The setting this year was the delightful seaside city of Vung Tau. Held 23-24 November the theme was cooperation for regional security and development.

Much has happened in the region since the previous conference: China has proceeded apace with dredging programmes and a range of infrastructure projects, some with military potential, to create more facts on the ground; the United States Navy has conducted its first freedom of naval operations patrol through part of Chinese-claimed territory, although the reference to innocent passage by US officials appears to have confused rather than clarified Washington's intentions, and the United Nations Arbitral Tribunal has agreed that it has jurisdiction to hear the case filed by the Philippines over the interpretation and application of UNCLOS to maritime disputes in the South China Sea.

In his opening remarks, Ambassador Dr Dang Dinh Quy, President of the Diplomatic Academy of Vietnam, commented that the actions and behaviour of some of the parties in the South China Sea were of concern and a threat to regional security. He hoped they would think more carefully about their actions as the importance of the South China Sea would grow in an increasingly globalised world. He urged the conference to develop new policy recommendations that would lead to more cooperative behaviour and lessen the risk of miscalculation that could inadvertently lead to conflict.

Over the course of two days 27 presenters addressed a range of issues including an analysis of recent developments; major power interactions in the region; the application of international law; prospects for the case before the Arbitral Tribunal, and options for the future. Of particular note this year was the number of European presenters representing organisations such as the Royal Danish Defence College, the European Council on Foreign Relations, and the Netherlands Institute for the Law of the Sea.

Not surprisingly several of the presentations addressed the issue of China's claims to a large section of the South China Sea. One Chinese speaker argued that China had lost a great deal of its territory in the 19th century and through various negotiations had only recovered about half of what it had lost. Those negotiations had been bilateral not multilateral in nature, and the same principle should apply to the South China Sea to which China had an historic claim, (not exactly a ringing endorsement of the Code of Conduct negotiations). He posited that United States meddling was stirring up the issues and was not conducive to constructive engagement – an interesting observation given that constructive engagement has not been a feature of China's positioning on the South China Sea.

Other Chinese presenters adopted a less strident tone. One defended China's South China Sea claims, but agreed that Beijing needed to clarify those claims and the meaning of the nine-dashed line. Another noted that the South China Sea is a complicated and sensitive problem that included sovereignty, maritime rights, national sentiment and historical claims. The nine-dashed line was an important political asset inherited from Taiwan. But the South China Sea did not enjoy the same status as China's core interests such as Taiwan and Diaoyu, (currently in Japanese hands and known

as Senkaku). As the South China Sea was not a core interest of China, Japan or the United States, a peaceful solution should be achievable.

A Taiwanese speaker adopted a united front with China defending Beijing's decision not to appear before the Arbitral Tribunal claiming that the case did not address the core issues and would not therefore produce a solution.

Bill Hayton, the author of the *South China Sea: the struggle for power in Asia*, argued that China's claim is emotional rather than historical: the historical evidence cited to support China's claim was flimsy at best as maps produced in the early 20th century were the work of a few private individuals, not official government products. In response to suggestions that he should examine Taiwan Government archives he said his researchers had done just that and their findings had underpinned his views.

Patrick Cronin from the Centre for a New American Security discussed China-United States relations noting that political and security cooperation have lagged areas of economic cooperation. He expressed concern about the pace of Chinese military modernisation and raised questions about Chinese intentions. China had accelerated an effort "that effectively displaces, blocks and denies US power". China was seeking to neutralise America's still considerable conventional military capability.

Cronin criticised China's "tailored coercion" in the South China Sea which involved the persistent use of comprehensive state power short of force to expand control over its maritime periphery. Commenting on the United States rebalance, Cronin noted that while the US Defense Department is undertaking several lines of effort to preserve a favourable military balance for the long term, these efforts are not clearly defined or integrated into a holistic, cohesive strategy. The United States was "trying to do the right thing, but our timing is a little off". He spoke positively about recent United States defence cooperation activities with the PLA.

A Japanese academic said that while Japan supported United States Navy freedom of naval operations patrols, Japan would not take part. The South China Sea was an important issue for Japan, but his government's priority was the East Sea and specifically Senkaku/Diaoyu. Japan would continue to express its support for the ASEAN claimant states by helping to strengthen their maritime capabilities. The dispute was supporting Japan's arms exports to the region. He cautioned that USN freedom of naval operations patrols should not be "conducted with bells and whistles".

There is little Russian public commentary on the South China Sea so there was considerable interest in what Anton Tsvetov, Media and Government Relations Manager at the Russian International Affairs Council, had to say given that the Council is funded by the Russian Government. Russia's important concerns in the region were its bilateral ties with China and Vietnam. Both were crucial partners for Russia in Asia. Vietnam was the "closest thing Russia has to an ally in South-east Asia", and one of the largest buyers of Russian military equipment. Russia's interest in the South China Sea reflected its strategy of a more proactive and assertive posture in world politics.

Tsvetov suggested that Russia could offer its diplomatic and mediatory experience by promoting the global public good aspect of the South China Sea as opposed to a sovereignty-centred approach. Like his Japanese counterpart he saw opportunities for further expansion of arms sales in the region to strengthen the maritime capabilities of ASEAN claimant states especially Vietnam. In this respect he asserted that Russia was already doing what Japan and the United States were still only talking about doing.

Many speakers urged greater efforts in developing the Code of Conduct, but there was little conviction that their calls would bear fruit. One presenter suggested that it would only be possible to make progress in implementing the Declaration of Conduct and in developing the Code of Conduct if these were embedded in a broader regional maritime security architecture which could serve as a regional platform for dialogue and cooperation. Another resignedly offered the view that progress would only be made on the Code of Conduct once China had finished cementing in its position in the South China Sea and the Code would be little more than an endorsement of China's position.

For me the highlight of the conference was a radical proposal advanced by Robert Beckman, Director of the Centre of International Law, at the National University of Singapore. He argued that the decisions that would be made next year by the UN Arbitral Tribunal on the case brought by the Philippines, would strengthen its legal and moral position if the case went in its favour, but do nothing to change the facts on the ground. While the Tribunal's findings would be legally binding the Tribunal did not have the means of enforcing its decision should China choose to ignore it. Nor would United States freedom of naval operations have any effect on China's claims.

Although the Tribunal's decision would be technically binding only on China and the Philippines, other claimant states would be under pressure to bring their practice on islands, rocks and low tidal elevations into conformity with the Tribunal's interpretation. None of the other claimants have clarified which features they claim are islands and which are rocks.

Beckman said China must understand that it will pay a very high (reputational) price if it continues to further its interests through power in defiance of international law. But ASEAN claimants must accept that the underlying disputes cannot be resolved by international tribunals. China also needed to understand that it is not possible for the ASEAN claimants to appear to back down on their claims to resources in their EEZ's, while ASEAN claimants similarly must come to realise that it may not be politically possible for China to reverse course and bring its claims into conformity with UNCLOS.

Beckman proposed a way out of this dilemma. This would require both sides to agree to set aside the disputes on sovereignty and on maritime claims. They would then enter into provisional arrangements of a practical nature, pending the eventual settlement of the sovereignty disputes and settlement of maritime boundaries. Pending agreement on provisional arrangements, all claimants would agree to refrain from actions that would jeopardise or hamper the negotiation of an agreement on such arrangements or on agreements finally to resolve the sovereignty and boundary issues. Under this proposal no claimant would give up or surrender its historic position on sovereignty, maritime boundaries, and historic rights.

Beckman suggested that this proposal would allow China to enter the process without clarifying its nine-dashed line or its sovereignty and maritime claims. For their part ASEAN claimants would not have to modify their position on their own claims or their positions on China's claims. Taiwan could declare that it would abide by the provisional arrangements. "Without prejudice" clauses would ensure that a position a claimant takes in negotiations on interim arrangements cannot be used against them later.

The types of interim arrangements Beckman envisaged included measures to reduce the risk of potential conflicts between government vessels; measures to establish cooperative regimes on matters of common interest; and joint development arrangements on fishing, and oil and gas resources. He suggested that the claimants jointly request the UN Secretary-General to appoint a panel of experts to recommend specific provisional arrangements including a timetable for implementation and procedures for monitoring compliance with the arrangements.

Beckman readily acknowledged the obstacles. He listed these as lack of trust and confidence; how to identify the area of overlapping claims subject to the provisional arrangements; how to address the rights and interests of outside powers in the area of overlapping claims; how to deal with the issue of jurisdiction in the area of overlapping claims and how to structure joint development arrangements.

An important and encouraging innovation at this year's conference was the establishment of the South China Sea Young Leaders Network. The aim is to create a forum for young researchers on South China Sea issues, and to encourage them to work together across countries and across disciplines. Five countries are currently represented: Australia, Brunei, China, Singapore and Vietnam. I registered with the conference organisers Asia New Zealand Foundation's interest in joining this group.

The organisers deserve credit for bringing together such a diverse cast of presenters, and for ensuring that some at least did take seriously the mandate to come up with new policy initiatives. I make no apology for devoting so much of this report to Robert Beckman's comprehensive set of proposals. The issues are so complex and the political mind-sets so fixed that new approaches are needed. As Beckman said in his concluding remarks his proposal gives all claimants a face-saving way out of an otherwise intractable dispute. It is to be hoped that his ideas don't sink without trace. The region would be much the poorer in that eventuality.

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Paul Sinclair

Acting Director

Centre for Strategic Studies

Victoria University of Wellington

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