



China's growing assertiveness in the South China Sea

A strategic shift?

Jian Zhang

Senior Lecturer in International and Political Studies in the School of Humanities & Social Sciences, the University of New South Wales Canberra at the Australian Defence Force Academy.

The renewed tension between China and some other claimant states over the disputed territories in the South China Sea in the last few years has generated widespread concerns about growing Chinese assertiveness in bolstering its claims. In contrast to its relatively conciliatory approach to the South China Sea dispute in the early to mid-2000s, Beijing has appeared to become increasingly uncompromising when handling the dispute. Does recent Chinese assertiveness represent a new shift in China's South China Sea policy due to the country's rapidly growing economic and military clout?

A number of explanations have been made for China's recent assertive stance. One influential explanation seeks to locate the growing Chinese assertiveness in the country's fragmented policy-making structure and diffuse maritime administrative system. According to this view, recent Chinese actions have been largely a product of lack of policy coordination within the Chinese governmental system, wherein different bureaucratic agencies compete to advance their own interests¹. While such a view is certainly valid, what remains unclear is why China has become increasingly assertive in recent years but not earlier, given that fragmentation has been an integral and longstanding problem in the Chinese polity. Some others argue that recent Chinese assertiveness has largely been driven by China's new naval strategy seeking to control the South China Sea due to its intention to compete with the United States for regional primacy². Moreover, it is widely perceived that intense nationalism has been a key driving force behind China's tougher posture. While these factors have undoubtedly influenced Beijing's policy, they cannot fully explain the specific manners in which China has more forcefully asserted its claims in recent years. Particularly, it should be noted that for the most part China's assertive actions have been undertaken by civilian governmental and maritime law enforcement agencies and, more often than not, in the form of so-called 'administrative diplomacy' through diplomatic and administrative measures³.

This paper seeks to provide additional insights into the causes and nature of China's recent actions in the South China Sea. It makes three arguments. First, it argues that recent Chinese actions represent a major and arguably long-term strategic shift in China's policy regarding the South China Sea, featured by the emergence of an increasingly proactive and purposeful approach to solidify Chinese claims. Second, it argues that instead of being motivated by a growing ambition of seeking regional dominance and control of the South China Sea, China's new assertive approach has been driven more by an increasing sense of anxiety. It reflects a growing concern within China that Beijing's past more moderate policy has failed to effectively protect the perceived Chinese sovereignty and maritime interests against the intensified 'encroachments' by other claimant states. Third, despite Beijing's constant refusal to settle the dispute through international legal mechanisms, this issue brief rather controversially argues that China's changing approach is also driven by an increasing recognition of the importance and legitimacy of international law of the sea such as UNCLOS, and the more serious consideration of seeking a future diplomatic and even legal solution to the dispute. Ironically, the growing importance Beijing has placed on international law and its subsequent intentions to build a stronger legal basis through various administrative and jurisdictional measures to consolidate its claims has led to a more proactive and assertive approach, raising tensions in the South China Sea and challenging the status quo.

Beijing's evolving approaches and growing assertiveness

Despite China's claim of indisputable sovereignty over the South China Sea, its approach to the long-running dispute has varied at different periods of time. The PRC first made its official claims to the South China Sea in August 1951 through a statement issued by the then Chinese premier and foreign minister Zhou Enlai in response to the signing of the San Francisco Treaty. The statement claimed that, among others, all the Nansha Islands (Spratlys), Zhongsha Islands (Macclesfield Bank) and Xisha Islands (Paracels) 'have always been

1 International Crisis Group, *Stirring Up the South China Sea* (I), Asia Report No. 223, 23 April 2012.

2 L. Buszynski, 'China's Naval Strategy, The United States, ASEAN and the South China Sea', *Security Challenges*, 8: 2 (2012), 19–32.

3 For example, see 'China's passport move stokes South China Sea dispute', *Strategic Comments*, 18: 10 (2012), v–vii.

China's territory'⁴. Between the 1950s and early 1970s, however, the South China Sea issue received relatively low priority on Beijing's overall national development and foreign policy agenda. China paid greater attention to the South China Sea in the 1970s in response to the actions undertaken by other countries to claim and occupy various islands in areas claimed by China, and took control of the Paracels after a military skirmish with South Vietnam in 1974⁵.

The signing of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 has substantially affected China's attitudes to the South China Sea. Beijing has increasingly recognised the economic and strategic significance of the maritime domain. As a state party to the UNCLOS, since the early 1990s Beijing has developed a body of domestic laws stipulating China's maritime sovereignty and rights largely within the framework of the UNCLOS. These laws include the 1992 'Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China' which asserted China's sovereignty claims over various maritime territories, including the areas listed in the above-mentioned 1951 statement. Following its ratification of the UNCLOS in 1996, Beijing promulgated 'The People's Republic of China Exclusive Economic Zone and Continental Shelf Act' in June 1998 to claim its maritime rights in the relevant waters. In the 1980s and 1990s Beijing undertook a number of assertive actions to enforce its claims. In 1988 China's military clashed with Vietnamese forces over the Johnson (Chigua) Reef in the Spratlys. China's occupation of Mischief Reef in 1995 and subsequent expansion of the structure it built on the reef in 1998 elicited vehement protests from the Philippines and raised regional concerns about Chinese 'creeping assertiveness'⁶.

Since the late 1990s Beijing has adopted a more moderate approach, largely due to the need to improve relationships with ASEAN countries. In November 2002 China signed the 'Declaration on the Conduct of Parties in the South China Sea' (DOC) with ASEAN countries; and in October 2003 it signed the Treaty of Amity and Cooperation in Southeast Asia, becoming the first non-ASEAN country to do so. Beijing has also actively promoted the idea of 'shelving the dispute and seeking joint developments' (*Gezhi zhengyi, gongtong kaifa*)⁷ with other claimant states to manage the dispute. In 2005 China, Vietnam and the Philippines signed an agreement to undertake joint seismic surveys in the South China Sea.

The last few years, however, have seen growing concern among the Chinese analysts that such a moderate policy has failed to protect China's sovereignty and maritime rights. This concern has been particularly acute with regards to other disputant states' exploitation of energy resources in the disputed areas. Ever since the discovery of hydrocarbon resources in the South China Sea in the 1960s and 1970s, competition over accessing the oil and gas has become one of the most important sources of tensions between China and other Southeast Asia claimants. While estimates of the scale of the oil and gas reserves in the South China Sea vary, Chinese analysts generally believe that the maritime domain is a critically important source of energy for China's long-term economic development. Some have estimated that the total oil and gas reserves in the South China Sea could account for one-third of the total energy reserves of China⁸. Others have referred to the South China Sea as 'China's Persian Gulf'⁹.

4 C-K. Lo (Chi-kin Lo), *China's Policy Towards Territorial Disputes: The Case of the South China Sea Islands* (London: Routledge), 1989, 28.

5 Guo J. 'Nanhai diyuan xingshi yu zhongguo zhengfu dui nanhai quanyi de weihi' (The geostrategic situation in the South China Sea and the Chinese government's efforts to protect its rights and interests in the South China Sea), *Taipingyang Xuebao*, 19: 5 (2011), 83-91.

6 I. Storey, 'Creeping Assertiveness: China, the Philippines and the South China Sea Dispute', *Contemporary Southeast Asia*, 21: 1 (1999), 95-118.

7 Luo G. 'Lijie nanhai gongtong kaifa yu hangxing ziyou wenti de xing silu: jiyu guojifa shijiao kan nanhai zhengduan de jie jue lujing' (New thinking on joint development and freedom of navigation in the South China Sea: Paths for Resolving the South China Sea Dispute Based on International law), *Dangdai yatai*, no. 3 (2012), 65-68.

8 Yang G., 'Lun Zhongguo zai nanhai wenti shang de guojia liyi' (On China's national interests in the South China Sea dispute), *Xin Dongfang*, no. 6 (2012), 10-16.

9 Chen X. 'Naihai de ziyuan shijie' (The world of resources in the South China Sea), *Sanlian shenghuo zhoukan*, no. 46 (2010), 15 November 2010, 62.

However, many Chinese analysts increasingly hold the view that the DOC has not been effective in preventing other claimant states from undertaking actions that advance their claims and exploit the energy resources in the South China Sea at the expense of China's interests. For example, some Chinese scholars have observed warily that 'currently the oil and gas resources in the South China Sea are being exploited at an alarming rate and scale by other claimant states'.¹⁰ They claim that 'the annual oil production of the other claimant states in the South China Sea is as high as 50 million tons, equivalent to the peak annual production of China's largest onshore oil field: the Daqing oil field'¹¹. Another analyst warned that 'given the current rate of exploitation, the energy resources of the South China Sea will be exhausted within the next 20 years'¹². Chinese concerns were further reinforced by the growing involvement of foreign oil companies in oil and gas exploration in the disputed area. Such developments have made the South China Sea dispute even more sensitive and complicated for China.

Not surprisingly, some analysts began to argue that Beijing should reconsider the proposal of pursuing joint development, arguing that such a proposal is largely unrealistic and should not be the core of China's South China Sea policy.¹³ An article published in the popular *International Herald Leader*, a newspaper run by the official Xinhua News Agency, bluntly referred to the period since the signing of the DOC as a 'lost decade' for China.¹⁴ At the official level, Chinese frustration was perhaps most clearly expressed by a recent article in the *People's Daily*. The article stated that while China proposed and adhered to the principle of 'shelving the dispute and seeking joint development', other countries should not take the advantage of this to make frequent

'encroachments' on Chinese territories by taking unilateral actions, warning that countries who made 'strategic misjudgments on this issue will pay the deserved price'.¹⁵

Growing disputes over fishing between China and other Southeast Asian claimants have become another major source of Chinese frustration over the current situation in the South China Sea. Accounting for around 10 per cent of the world's annual fishing catch, the South China Sea has been a historical fishing ground for Chinese fishermen from coastal provinces such as Hainan, Guangdong and Guangxi.¹⁶ In recent years, China's conflicts with other claimant states over fishing in the disputed area have occurred more frequently, causing periodical diplomatic tension and sometimes heightened mutual public hostility. According to a Chinese official source, the number of Vietnamese boats that had engaged in illegal fishing in areas surrounding the Paracel Islands increased from 21 in 2001 to more than 900 in 2007¹⁷. Moreover, it is reported that between 1989 and 2010, there have been more than 380 incidents involving foreign countries 'attacking, robbing, detaining and killing' Chinese fishermen. These incidents affected 750 Chinese fishing boats and 11,300 fishermen, with 25 Chinese fishermen being killed, 24 injured and some 800 detained and sentenced by foreign countries.¹⁸ Chinese commentators have angrily labelled the situation in the South China Sea one of 'small countries bullying the big power' (*Xiaoguo qifu daguo*).

Apart from the increasing concern of losing valuable economic resources, a more significant and deepening worry among Chinese analysts is that the actions of other claimant states may strengthen these states' claims over the sovereignty and maritime rights of the disputed areas. Such anxiety is further reinforced by growing recognition among Chinese scholars that China's claims over the South China Sea based on historical grounds will be unlikely to carry much weight in the contemporary international legal environment.¹⁹

10 Du et al 'Nanhai zhuquan Zhengduan de zhanlue taishi ji zhongguo de yingdui fanglue' (The strategic situation in the South China Sea dispute and China's policy responses), *Shijie dili yanjiu*, 21: 2 (2012) 8.

11 Ibid.

12 An Y. *Nanhai anquan zhanlue yu qianghua haiyang xingzheng guanli* (Security strategy in the South China Sea and strengthening maritime administration), Beijing: Zhongguo jingji chubanshe, 2012, 179.

13 Luo G. op. cit., fn. 7, 66.

14 Liang J. 2011, 'Zhongguo zai nanhai shi qu de shi nian' (China's lost decade in the South China Sea', <http://news.china.com/focus/nhcts/11101498/20110628/16618928.html>).

15 *People's Daily* 2011, 'Yanzhong de zhanlue wupan' (Serious strategic misjudgments), 2 August 2011.

16 International Crisis Group, op. cit., fn. 1.

17 Liang J. op. cit., note 15.

18 China's Ocean Development Report 2012, Beijing: Ocean Press, 71.

19 International Crisis Group, op. cit., fn. 1.

A number of Chinese legal experts have recognised that current international law and legal practice prioritises continuous and effective occupation and administration over that of historical discovery, warning that the current actions of other claimant states to reinforce their effective control over the dispute areas may place them in a favourable legal position in future dispute settlements.²⁰

Moreover, despite China's growing naval capability and the occasional tough statements made by some People's Liberation Army (PLA) commentators, most of the Chinese analysts and policymakers recognise that the use of force does not constitute a viable solution to the South China Sea dispute. Given China's multilayered strategic, political, economic and diplomatic interests in Southeast Asia, Chinese analysts generally believe that a military solution is neither feasible nor desirable for the foreseeable future. Some Chinese scholars thus warily argue that China is currently caught in a difficult situation featured by three 'cannots': it cannot reach an agreement with other claimants to resolve the dispute through diplomatic negotiations; it cannot afford to resort to force, and it cannot afford to allow the current situation to last indefinitely' (*Tan bu long, Da bu de, Tuo bu qi*).²¹

In this context, many Chinese analysts argue that China needs to take a more proactive, rather than reactive approach to strengthen its claims through administrative, diplomatic and legal means. For example, the Chinese maritime law expert Qu Bo argues that China should take concerted measures to reinforce its control over the disputed areas in the South China Sea. According to him, China should: adopt a zero-tolerance approach to the presence of other nationals in the areas surrounding the Paracels; take greater efforts to strengthen its control over the seven features occupied by China in the Spratlys and the surrounding maritime areas; establish and enforce relevant maritime laws and regulations; make greater use of jurisdictional measures to demonstrate China's sovereignty; strengthen the capability of the city of Sansha in defending China's maritime rights

in the disputed areas; increase Chinese military presence; and respond promptly to any actions by other countries which violate China's sovereignty.²² After China's standoff with the Philippines over the Scarborough Shoal in April 2012, Chinese legal analyst Zhang Lei warned that while China has indisputable historical rights to the Shoal, it also needs to take strategic and proactive measures to demonstrate and strengthen its continuous and effective administrations of the Shoal on the basis of international law.²³ The growing attention paid to current international legal norms was also reflected in official government documents. For example, in the latest China's Ocean Development Report released by the State Oceanic Administration, it is explicitly stated that China's claims to the sovereignty of the South China Sea Islands are based on 'historical discovery, occupation and longstanding, continuous and effective administration'.²⁴

It is not surprising that the last few years have seen the emergence of a more assertive and purposeful approach on the part of Beijing to bolster China's claims through increasingly proactive and systematic measures. In 2008 the Chinese State Council authorised China Marine Surveillance (CMS) under the State Oceanic Administration to commence regular patrols (*shunhang*) over all the maritime areas claimed by China, including the South China Sea. In 2009 CMS claimed for the first time that it undertook regular patrols over the entire claimed area in the South China Sea, reaching as far as Zengmu Ansha (James Shoal).²⁵ In 2010, the CMS ship also established a sovereignty marker on the Zengmu Ansha (James Shoal) during its patrol.²⁶ Moreover, in 2011 CMS undertook a series of 'special rights protection operations' (*zhuan xiang weiquan xingdong*) in the South China Sea, particularly targeting the 'illegal activities' of foreign countries undertaking 'oil and gas explorations and exploitations, maritime survey and military surveillance'.²⁷ It is thus not an isolated incident that

20 Zhang L. 'Jiaqiang dui huangyan dao youxiao kongzhi de guoji fa yiju' (Enhancing effective control of the Scarborough Shoal on the basis of international law), *Faxue*, no. 8 (2012), 67-75.

21 Zhang S. *Zhongguo Haiquan* (Chinese sea power), (Beijing: Renmin ribao chubanshe), 2009, 21.

22 Qu B., 'Nanhai zhoubian youguan guojia zai nansha qundao de celue ji woguo de duice jianyi' (The Spratlys Strategy of the relevant countries in the South China Sea and advice for China's policy responses), *Zhongguo faxue* no. 6 (2012), 58-67.

23 Zhang L. op.cit. fn. 21

24 China's Ocean Development Report 2012, op. cit. 51.

25 Ibid., 341-2.

26 Ibid., 351.

27 Ibid., 352.

in May 2011 a CMS ship cut off the cable of the Vietnamese seismic survey vessel, Binh Minh 2 in a disputed area in the South China Sea. In addition to the CMS, China's Fishery Administration Bureau (FAB) under the Ministry of Agriculture has also taken more proactive measures against what it regards as illegal fishing in the disputed areas and to protect the operations of Chinese fishermen against what it considers harassment by foreign countries.

Recent external developments provided further impetus for China to take a more assertive approach to counter other countries' claims over the disputed areas in the South China Sea. A joint submission had been made by Vietnam and Malaysia to the Commission on the Limits of the Continental Shelf (CLCS) regarding their claims for continental shelves beyond their EEZs in the South China Sea in May 2009. To protest against this, China subsequently submitted a *note verbale* restating China's indisputable sovereignty over the islands in the South China Sea and adjacent waters. What is notable, however, is that China also attached to its diplomatic note a map indicating a U-shaped line, the first time China officially used such a map to support its claims over the South China Sea.²⁸ The U-shaped line map was initially drawn by a Chinese cartographer in 1914 and was officially published in 1948 by the Republic of China to indicate China's claims to the South China Sea. Since 1949 it has been subsequently used by the current People's Republic of China (PRC) as the basis of Chinese claims. While the U-shaped line covers most of the South China Sea, the PRC government and its ROC predecessor has never clarified explicitly what it claims within the line.²⁹ Given the extensiveness of the areas covered by the U-shaped line and China's ambiguous claims, Beijing's use of the U-shaped line map in its May 2009 diplomatic note to the UN has been perceived by many as indicating growing Chinese assertiveness in the South China Sea dispute. Moreover, in response to Vietnam's promulgation of a national law of sea that stipulates its claims over the Paracels and Spratlys, in July 2012 China

declared the establishment of a new city, Sansha, which will have jurisdiction over the Paracels, Spratlys and Macclesfield Bank. While the idea of establishing Sansha was considered by Beijing as early as in 2007, it was not formally approved due to various considerations.³⁰ This announcement clearly signified Beijing's new assertive approach to reinforcing its claims by establishing a prefecture-level formal government that can exercise full administrative and jurisdictional functions over the disputed areas.³¹ According to Wu Shicun, the director of China's National Institute for South China Sea Studies, the establishment of Sansha city has been an important step in China's efforts to solidify its sovereignty claims through administrative and jurisdictional measures (*fali weiquan*).

In China's twelfth five-year plan, announced in March 2011, it was stipulated that China was to strengthen law enforcement efforts to protect its maritime rights and interests. In 2012, amid China's growing conflict with other countries over the disputed maritime territories, Beijing established 'the Central Maritime Affairs Leadership Small Group Office' (Zhonggong zhongyang haiyang quanyi gongzuo lingdao xiaozu bangongshi) to coordinate policies regarding China's maritime rights and interests, highlighting the importance placed by the Chinese leadership on maritime affairs. Members of the leadership small group include, among others, the Foreign Ministry, the State Oceanic Administration and the military.

China's proactive stance to assert its claims is further demonstrated by the issuance of a new version of the Chinese passport in November 2012. The passport contains a map of China that includes its claimed South China Sea area within the U-shaped line. According to one analysis, 'By printing the passports, and inviting other states to stamp their visas in them, Beijing is attempting to gain recognition for its claims to sovereignty [of the

28 K. Zou, 'China's U-shaped Line in the South China Sea Revisited', *Ocean Development & International Law*, 43:1 (2012), pp. 18-34.

29 For discussion of the origins, nature and significance of the U-shaped line, see K. Zou, *op. cit.*; and International Crisis Group, *op. cit.*, 3-4.

30 J. Dreyer, 'Sansha: New City in the South China Sea', *China Brief*, Xli:16, August 17, the Jamestown Foundation, 6-9.

31 Prior to this, China only had an ad hoc country-level working committee 'Xi, Nan, Zhong Sha (Sansha) Working Committee' as its administrative arm in the South China Sea. The working committee, however, is not a formal level of government and lacks relevant administrative and jurisdictional authority. J. Li, 'Sansha shi cheng li shi me' (The Establishment of the Sansha City), *Liaowang dongfang zhoukan*, 24 July 2012.

South China Sea].³² In March 2013 China further announced its plan to reorganise the State Oceanic Administration (SOA) to enhance China's maritime law enforcement capability. In addition to the CMS, the new SOA will take control of the FAB, the Coast Guard Forces of the Public Security Ministry, and the Maritime Anti-smuggling Police of the General Administration of Customs. The SOA will undertake law enforcement activities in the name of China Maritime Police Bureau.

Conclusion

China's new assertive approach to the South China Sea dispute will have far-reaching consequences for regional stability and future resolution of the dispute. Instead of reflecting a short-term, reactive policy stance, Beijing's recent actions represent a long-term, proactive and purposeful approach to bolster Chinese claims. China's new assertiveness, however, does not signify an increasing inclination to resort to force to settle the dispute. Rather it reflects a growing intention to employ legal, diplomatic and administrative measures to augment the basis of its claims to gain leverage in future diplomatic and legal negotiations. It should also be noted that despite its assertive approach, Beijing does not want to let the South China Sea issue dominate its relationship with ASEAN and the other claimant states. Instead, Beijing has taken efforts to reduce the damage caused by its increasingly assertive actions to its regional status by continually promoting closer economic, political and even military relationships with Southeast Asian countries. Nonetheless, China's new assertive approach will certainly add new uncertainties to the already tension-ridden South China Sea.

32 'China's passport move stokes South China Sea dispute', *op. cit.*