

11-11-2013

The Islands of the South China Sea 南中国海诸岛

Shelley Parkinson
Bond University

Follow this and additional works at: http://epublications.bond.edu.au/eassc_publications

 Part of the [International Relations Commons](#)

Recommended Citation

Shelley Parkinson. "The Islands of the South China Sea 南中国海诸岛" East Asia Security Symposium and Conference 东亚安全座谈讨论会. Beijing, Nov. 2013.

http://epublications.bond.edu.au/eassc_publications/39

The Islands of the South China Sea: A Mountain of Knives and a Sea of Fire

南中国海诸岛：刀山火海

Shelley Parkinson
PhD Candidate
[Bond University](#)

Peer-reviewed Conference Paper
2013 East Asia Security Symposium and Conference
同行互评会议论文
2013东亚安全座谈谈论会
http://epublications.bond.edu.au/eassc_publications/

For information about this paper or the East Asia Security Symposium and Conference
Peer-reviewed publishing site, please contact the Editor-in-Chief [Jonathan H. Ping](#)
想要了解关于论文、或东亚安全座谈谈论会同行互评出版地址的信息，请联系总编辑
乔纳森·H·平
jping@bond.edu.au

The Islands of the South China Sea: A Mountain of Knives and a Sea of Fire

Abstract: Traditional concerns with sovereignty have been contested in the South China Sea for decades. There are continuing clashes over the use of EEZ and disputes concerning overlapping historical and current claims of ownership. Tensions continue to escalate as fishermen and resource vessels are harassed as states scramble for the resources within the EEZ and continental shelf adjacent to the contested islands. This paper argues that difficulties in ascertaining sovereignty should not be a barrier to the creation of cooperative mechanisms to ensure that the human security of fishermen in the South China Sea is not violated.

Keywords: South China Sea, non-traditional security, human security, fishermen, tensions

南中国海诸岛：刀山火海

摘要：在南中国海，传统的主权问题斗争已经持续了数十年。当前，围绕专属经济区、过去和现在的争议领土主张冲突仍在不断发生。对专属经济区内、以及主权归属存在争议岛屿相邻的大陆架蕴藏的资源，各国一哄而上，激烈争夺，并骚扰他国渔民和开采资源的船只，造成紧张局势不断升级。本文认为，确定主权上存在困难不应妨碍建立合作机制，以确保在南中国海作业渔民的人身安全不受侵犯。

关键词：南中国海，非传统安全，人身安全，渔民，紧张局势

THE ISLANDS OF THE SOUTH CHINA SEA: A MOUNTAIN OF KNIVES AND A SEA OF FIRE

Introduction

There is a Chinese saying which seems particularly apropos for the situation in the South China Sea: *dao shan huo hai* (刀山火海) which translated means "a mountain of knives and a sea of fire." It refers to an extremely difficult and dangerous situation. Traditional concerns with sovereignty have been contested in the South China Sea for decades. There are clashes over the use of each state's exclusive economic zone (EEZ) and political chess play about overlapping historical and current claims of ownership.¹ The islands themselves are unable to sustain life and their main value lies in the resources within their EEZ and continental shelf.² Whilst a state does not have sovereignty in its EEZ it does have sovereign rights and jurisdiction over these areas for the purposes of exploration and use of the natural resources.³

The disputes over sovereignty mainly revolve around the Spratley Islands. To date, none of the claims have been successfully proven to the satisfaction of other claimant states; even though each state is convinced that the evidence that they have presented is incontrovertible. Brunei Darussalam, China, Malaysia, the Philippines, Taiwan and Vietnam all have competing claims to territorial sovereignty.⁴ China and Vietnam lay claim to the entire Spratley Island group. The Philippines claim a significant area encompassing all of the Northern islands. Malaysia lays claim to five islands in the South and Brunei has a smaller claim which encompasses the Louisa Reef.⁵ Taiwan occupies Itu Aba Island, the largest in the Spratley group, and independently (from China) claims the whole archipelago based on the same nine dash line map as China.⁶ It seems unlikely that these claims of sovereignty and the resulting issues of conflict will be resolved in the foreseeable future. Which begs the question: What should be done to mitigate the ongoing difficulties for those navigating the South China Sea? This question is particularly germane when considering the ever present non-traditional threats to security faced by fishermen traversing the waters.

Currently, there are no legally binding agreements for parties in the South China Sea. Whilst China and ASEAN states signed a Declaration on the Conduct of parties in the South China Sea (DOC) in November 2002, committing all the signatories to a peaceful resolution of

¹ Simon W. Sheldon, "Conflict and Diplomacy in the South China Sea", *Asian Survey*, 52, no. 6, 995–1018 (2012), doi:<http://dx.doi.org/10.1525/as.2012.52.6.995>

² Andrew H. Ring, *A U.S. South China Sea Perspective: Just Over the Horizon*, 1-57 (USA: Weatherhead Center for International Affairs, July 4, 2012), 1-57
<http://programs.wcfia.harvard.edu/files/fellows/files/ring.pdf> (accessed June 15, 2013).

³ Robert Beckman, "The China - Philippines Dispute South China Sea: Does Beijing have a Legitimate Claim?", *RSIS Commentaries*, no. 036/2012, (7 March 2012),
<http://cil.nus.edu.sg/wp/wp-content/uploads/2010/12/ProfBeckman-RSIS-China-PhilippinesDisputeinSCS-7Mar2012.pdf> (accessed June 14, 2013).

⁴ David Scott, "Conflict Irresolution in the South China Sea", *Asian Survey*, 52, no. 6, 1019–1042 (2012), doi:<http://dx.doi.org/10.1525/as.2012.52.6.1019>

⁵ Simon W. Sheldon, "Conflict and Diplomacy in the South China Sea", 9–28.

⁶ *Ibid*, 27-28.

conflicts, the declaration is non-binding and can be easily disregarded.⁷ The DOC committed parties to work towards adopting a legally binding code of conduct whilst exercising ‘...self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and ...and to handle their differences in a constructive manner’.⁸ Irrespective of this undertaking fishermen, and occasionally exploration vessels, have been constantly harassed, rammed and apprehended when undertaking activity in areas where ownership is contested by other states. This is regardless of whether they are considered to be within their own EEZ under the United Nations convention on the law of the sea (UNCLOS) provisions.

UNCLOS provides legal definitions, rules and guidelines for dealing with maritime disputes. It should be noted that all claimant states are signatories to UNCLOS (with the exception of Taiwan) and as such have agreed to abide by its provisions.⁹ Article 59 states:

[that] conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.¹⁰

At present this does not seem to be occurring in the South China Sea. Maritime security broadly encompasses areas such as protection of sovereignty and territorial integrity, security for seafarers, protection from piracy, fishery resource protection, safety and freedom of navigation and maintenance of good order at sea.¹¹ Nevertheless, regimes such as UNCLOS are insufficient as they fail to provide specific legal definitions resulting in differences of interpretation which is creating difficulties in managing incidents and establishing maritime security in the South China Sea. This is particularly the case concerning application of the definition for “island” and also concerning EEZ coastal baseline measurements.¹² These differences concerning definition mean that political negotiation is essential to ensure a

⁷ Ian Storey, “Slipping Away? A South China Sea Code of Conduct Eludes Diplomatic Efforts”, *East and South China Seas Bulletin* 11, 1-7, (20 March, 2013), http://www.cnas.org/files/documents/publications/CNAS_Bulletin_Storey_Slipping_Away_0.pdf (accessed June 11, 2013).

⁸ ASEAN, *Declaration on the Conduct of parties in the South China Sea*, (2002), <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea> (accessed July 4, 2013).

⁹ Robert Beckman, “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea”, *The American Journal of International Law* 107, no.142, 142-163 (2013), <http://cil.nus.edu.sg/wp/wp-content/uploads/2010/08/Beckman-THE-UN-CONVENTION-ON-THE-LAW-OF-THE-SEA-AND-THE-MARITIME-DISPUTES-IN-THE-SCS.pdf> (accessed June 14, 2013).

¹⁰ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397, *reprinted in* 21 ILM 1261 (1982) [hereinafter UNCLOS]. UNCLOS entered into force on November 16, 1994. http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (accessed June 10, 2013).

¹¹ Carlyle A. Thayer, *Efforts to Ensure Maritime Security*, (Japan: 2nd Tokyo Defence Forum Seminar Organized by the Ministry of Defence, March 16, 2012), 1-13. <http://damu7n2j5d7gw.cloudfront.net/wp-content/uploads/2012/03/MaritimeSecurity.Asia-Thayer-Efforts-to-Ensure-Maritime-Security-in-East-Asia.pdf> (accessed June 11, 2013).

¹² *Ibid*, 146,151.

lessening of tensions and ongoing maritime security.¹³ However, for the claimant states in the South China Sea negotiation appears to have stalled and discussions revolving around issues of sovereignty have become a political morass resulting in what has been called a “war of diplomatic notes.”¹⁴

Clearly, dialogue on the use of these areas needs to move from the endless rounds of political sabre rattling over claims of sovereignty, and exclusive economic rights, to consider more pragmatic issues such as the security of everyday fishermen seeking to provide economic stability for their families. Viewing the fishing incidents through a human security perspective confirms that it is essential to devise cooperative mechanisms which can be agreed upon by all parties involved in the disputes. Traditional concerns with sovereignty need not be disregarded but rather non-traditional concerns with human security must be included in ongoing debates.

Human Security

Human security frameworks are helpful when negotiating for mechanisms that protect the rights of people. Human security is comprehensive, context specific, preventative and orientated towards the protection of individuals.¹⁵ The United Nations (UN) in the follow-up to paragraph 143 of the 2005 World Summit Outcome defines human security as:

...the right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential; (b) Human security calls for people-centred, comprehensive, context-specific and prevention-oriented responses that strengthen the protection and empowerment of all people and all communities¹⁶

Human security does not replace traditional security considerations but should operate synergistically with states existing security agendas. In focusing on protecting people and promoting peace and sustainable continuous development it uses a people-centred methodology to understand and resolve inequalities that affect the security of those individuals and therefore the state as a whole.¹⁷

¹³ Ibid, 2.

¹⁴ Guifang (Julia) Xue, “Deep Danger: Intensified Competition in the South China Sea and Implications for China”, *Ocean & Coastal Law Journal*, 17, no. 2, (2012), 307-33, http://mainelaw.maine.edu/academics/oclj/pdf/vol17_2/vol17_307.pdf (accessed June 15, 2013).

¹⁵ United Nations Trust Fund for Human Security, *Human Security Approach* <http://www.unocha.org/humansecurity/human-security-unit/human-security-approach> (accessed July 27, 2013).

¹⁶ United Nations General Assembly, *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome*. (Sixty-sixth session. 66/290, 25 October 2012): 1. <https://docs.unocha.org/sites/dms/HSU/Publications%20and%20Products/GA%20Resolution%20and%20Debate%20Summaries/GA%20Resolutions.pdf> (accessed June 22, 2013).

¹⁷ Human Security Initiative. *Definition of Human Security*. <http://www.humansecurityinitiative.org/definition-human-security> (accessed July 23, 2013).

In applying the United Nations definition to the situations occurring in the South China Sea it is clear that the human security of fishermen is being threatened. There have been a number of incidents involving fishermen and they are a human security threat not only due to loss of income but due to fears of arrest, violations of human rights and even death should they be challenged by an adjacent state. There are currently no agreed upon people-centred provisions for the protection of fishermen in the South China Sea. Rather, each state currently operates in a manner, devoid of compromise, that best serves their interests regardless of the escalating tensions in the area.

Fishing Incidents

Incidents involving fishing boats have occurred between a number of different parties in the South China Sea, but primarily, Vietnam, Philippines and China. China, Taiwan, Vietnam, Malaysia and the Philippines have all historically fished in the South China Sea generating large revenues for state budgets and providing an important source of food for their populations.¹⁸ However, there are often competing demands, disputes and political knife sharpening when dealing with the fishery resources due to overlapping EEZ and disputed claims of sovereignty. It should be noted that illegal fishing does occur in the South China Sea and each state has the right to deal with these situations to protect their environmental and economic sovereignty. Nevertheless, fishery agreements that deal with both illegal fishing and incidents involving other states in contested areas could be negotiated and implemented according to agreed upon operational rules and guidelines.¹⁹

Since 1999 China has implemented an annual unilateral fishing ban in the South China Sea during the June/July period which was recently extended to include May and August.²⁰ Whilst most countries agree that it is imperative that fishing stocks be protected, they are vehemently opposed to what they consider China's unacceptable imposition. Vietnam in particular has issues with the ban.²¹ This has resulted in a number of incidents between the two states including seizure of Vietnamese fishing boats by Chinese patrol boats, the long term detainment of crews, and confiscation of vessels.²² In 2010 and 2011 the incidents escalated resulting in public outrage in Vietnam and government-sanctioned protests.²³ Most

¹⁸ Nguyen-Dang Thang, "Fisheries Cooperation in the South China Sea and the (ir)relevance of the Sovereignty Question", *Asian Journal of International Law*, 2, no. 1, (2012), 59-88 doi:10.1017/S2044251311000099

¹⁹ Bonnie S. Glaser, *Armed Clash in the South China Sea: Contingency Planning Memorandum No.14*, (USA: Council on Foreign Relations Press, April 2012), 1. <http://www.cfr.org/world/armed-clash-south-china-sea/p27883> (accessed June13, 2013).

²⁰ Nguyen Dang Thang, "China's Fishing Ban in the South China Sea: Implications for Territorial Disputes", *RSIS Commentaries*, no. 89/2011, (9 June 2011), <http://www.rsis.edu.sg/publications/Perspective/RSIS0892011.pdf> (accessed July 27, 2013).

²¹ Rohit Wadhwaney, "Vietnam Slams China's 10-week Fishing Ban in South China Sea", *Asia Pacific Defense Forum*, (2013), http://apdforum.com/en_GB/article/rmiap/articles/online/features/2013/05/23/china-fishing-fleet (accessed August 10, 2013).

²² Tomotaka Shoji, "Vietnam, ASEAN, and the South China Sea: Unity or Diverseness?", *NIDS Journal of Defense and Security*, 14, no. 1, (Dec. 2012), 3-21, http://www.nids.go.jp/english/publication/kiyo/pdf/2012/bulletin_e2012_2.pdf (accessed June 10, 2013).

²³ David Scott, "Conflict Irresolution in the South China Sea", 1029.

recently, in March 2013, Chinese patrol boats fired warning flares at four Vietnamese fishing boats setting one on fire.²⁴

The Philippines and China have also reported incidents of harassment concerning fishermen. One of the most serious of these took place on the Scarborough Shoal in April and May 2012 when China's civil maritime agencies prevented the Philippines from arresting Chinese fishermen allegedly illegally fishing in the area. Chinese vessels then stopped Philippine trawlers from accessing the area effectively asserting de facto control of the reef.²⁵ Chinese fishermen have also faced harassment, including a confrontation with the Malaysian navy, which has resulted in China regularly dispatching patrol boats to accompany its fishing fleets.²⁶ Recently, May 2013, a Taiwanese fisherman was shot and killed by the Philippine coast guard for allegedly fishing in disputed waters.²⁷

As well as threatening the human security of fishermen, these events at sea serve to sour diplomatic relationships which destabilize the region and have ongoing international implications for ASEAN and external major powers such as the United States.²⁸ As tension in the area escalates, so does the possibility of conflict.²⁹ Presently all parties seek to maintain their rights by peaceful means but there is some concern that the balance may shift if clashes between fishermen, resource exploration vessels and other states continue. As such the harassment and ongoing issues concerning fishermen not only threatens their human security but the security of the entire region.

Conclusion

The situation in the South China Sea truly is a mountain of knives and a sea of fire. A seemingly impossible situation that is unlikely to be resolved in the near future. These overlapping claims of sovereignty make it important that better mechanisms be implemented in order to deal with disputes at sea in a non-aggressive manner. One such measure could be a more stringent application of UNCLOS. UNCLOS provides no assistance in resolving sovereignty claims but it does provide a set of principles and rules that govern the use of resources and validity of claims in the South China Sea. In addition, it is essential for states to create a legally binding Code of Conduct affirming cooperation, non-violent dispute resolution and the promotion of peace and stability in the region.

²⁴ Ian Storey, *Can the South China Sea Dispute be Resolved or Better Managed?*, (Strategizing Change in Asia: The 27th Asia-Pacific Roundtable, 3-5 June 2013, Kuala Lumpur, Malaysia), 1-16, http://www.isis.org.my/attachments/apr27/PS9_Ian_STOREY.pdf (accessed August 4, 2013).

²⁵ Ian Storey, "Manila Ups the Ante in the South China Sea", *China Brief*, 13, no. 3, 1 (February 2013), 3-5, http://www.jamestown.org/uploads/media/cb_02_11.pdf (accessed June 20, 2013).

²⁶ Nguyen-Dang Thang, "Fisheries Cooperation in the South China Sea and the (ir)relevance of the Sovereignty Question", 65.

²⁷ Ian Storey, *Can the South China Sea Dispute be Resolved or Better Managed?*

²⁸ Li Mingjiang "Chinese Debates of South China Sea Policy: Implications for Future Developments", *RSIS Working Papers*, no. 239, (17 May 2012), 1-25, <http://www.rsis.edu.sg/publications/WorkingPapers/WP239.pdf>

²⁹ Bonnie S. Glaser, *Armed Clash in the South China Sea*, 6.

Even if sovereignty challenges cannot be easily resolved it is possible to create bilateral and multilateral agreements on fisheries management, joint exploration and dispute resolution and access in the South China Sea. Additionally, track-two diplomatic interactions in the form of collaborative workshops and processes to identify the specific needs and vulnerabilities of fishermen; training programs for front line actors; and agreed upon rules of engagement could all contribute to a resolution of the current problem. When looking at these issues through a human security framework they serve to mitigate disputes between fishermen and states, which is essential not only because of the threat to the individual, but due to increasing tensions in the area which may escalate in the future.