

The paracels : forty years on

Thi, Nguyen Lan Anh

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The Paracels: Forty Years On

By Nguyen Thi Lan Anh

Synopsis

China's act of locating its oil rig in contested waters in the Paracels is more than a dispute over sovereignty. It is also a dispute about international law of the sea.

Commentary

IT HAS been a month since the South China Sea was again stirred up near the Paracel Islands. Forty years ago, in January 1974, the Paracels were a battlefield between China and the then South Vietnam.

In taking control of the islands from South Vietnam, China sank one South Vietnamese naval ship and damaged four others, leaving 53 Vietnamese killed and 16 injured. The battle resulted in China obtaining full control of the Paracels for the first time.

More than a dispute over sovereignty

Vietnam's sovereignty claim over the Paracel Islands is based on the Nguyen dynasty occupation of the Paracels and Spratlys from at least the 17th century when the islands belonged to no one. During the period of Western colonial expansion sovereignty over the Paracels was continuously exercised by France, the protector of Vietnam.

Sovereignty later passed from France to South Vietnam under the 1954 Geneva Accords, and it then passed by succession to the Socialist Republic of Vietnam when North and South Vietnam were united in 1975. Vietnam has continued to assert its sovereignty claim by protesting activities conducted by China in the Paracels.

Although Vietnam's sovereignty claim to the Paracels has a strong legal basis, China insists that it has "indisputable" sovereignty. China refuses to acknowledge that sovereignty over the islands is in dispute and it refuses to discuss the sovereignty issue with Vietnam in bilateral negotiations. Also, China will not agree to refer the sovereignty dispute to an international court or tribunal.

The act which made the Paracel Islands the latest hotspot in the South China Sea was China's placement of the Haiyang Shiyou 981 oil rig deep inside Vietnam's exclusive economic zone (EEZ) and continental shelf, close to the islands.

At first, the oil rig controversy may look like a dispute over who has sovereignty over the Paracels. However, a closer look reveals that it is also a dispute about the international law of the sea.

Geographical distance not the issue

Triton Island in the Paracels, where China located the deep-water oil rig HD-981, is a 1.6 km² sand and coral cay that cannot sustain human habitation or economic life of its own. Consequently, under the 1982 Convention on the Law of the Sea (UNCLOS), it is a “rock” that can generate no more than a 12 nautical mile territorial sea. Even if some other islands in the Paracels are in principle entitled to an EEZ and continental shelf, the rig would still be located in an “area in dispute” for two reasons.

First, since both Vietnam and China claim sovereignty over the Paracels, any EEZ claimed from the Paracels is an area in dispute. Second, the rig is in an area of overlapping claims because it is within the EEZ and continental shelf claimed by Vietnam from its mainland as well as within the EEZ claimed by China from the Paracels.

The area where the rig has been placed is an area in dispute until China and Vietnam agree on how to delimit the maritime boundary in that area. According to the practice of States in maritime boundary delimitations, Triton Island and the other islands of the Paracels should be given “reduced effect” in drawing the maritime boundary because the length of coastline of the small islands is much shorter than the coastline of Vietnam.

China and Vietnam have followed this practice in negotiating their maritime boundary. In delimiting their limited maritime boundary in the northern-most section of the Gulf of Tonkin, the two States agreed to give only 25% effect to Bach Long Vi Island, a Vietnamese island located in the Gulf of Tonkin. This was the case even though the island has an area of 2.33 km² and a permanent population.

In any case, since there is no agreed maritime boundary in this area, the argument that the rig is located closer to the Paracels than to the Vietnamese coast is not relevant. The rig is located in a “disputed area”, where China cannot exercise exclusive rights.

China’s oil rig move violates DOC

The true basis for China’s claim to the natural resources in Vietnam’s EEZ is not an EEZ claim from the Paracels, but its claim to rights and jurisdiction over all the natural resources with the nine-dash line that Beijing has demarcated on its map of the South China Sea. Without providing any official documents supporting this claim or its legal basis under international law, the nine-dash line map is being used by China to claim rights to all the natural resources in and under the waters inside the line, even when they are in the EEZ of other States.

China is basing its claim on the nine-dash line map because the areas with high oil and gas potential off the coast of Vietnam are all located outside the areas that China could claim under the international law of the sea. Therefore, China has decided to ignore the international law of the sea, and assert claims based upon its nine-dash line map, which includes up to 85% of the South China.

It is very significant that the rig has been placed in an area of disputed waters. Under the law of the sea, until an agreement has been reached between China and Vietnam on the maritime boundary in this area, the two States are under a legal obligation to make every effort to enter into provisional arrangements of a practical nature. The international law of the sea also imposes an obligation on China and Vietnam not to undertake any unilateral activities that would jeopardise or hamper the negotiation of a final boundary agreement.

International tribunals have ruled that in an area of overlapping maritime claims, it is unlawful for one State to attempt to exploit the natural resources by drilling because such a unilateral activity would permanently change the status quo and thus jeopardise or hamper the negotiation of a final boundary agreement.

In its discussions with ASEAN on a legally binding Code of Conduct for the South China Sea, China has consistently maintained that there must be full and effective implementation of the 1992 Declaration on Conduct of Parties in the South China Sea (DOC). However, China’s act of unilateral drilling is a clear violation of the provision in the DOC which provides that the Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes.

It is hoped that China will soon understand that bullying neighbouring countries in violation of international law is not the way a responsible power behaves in the international arena.

Nguyen Thi Lan Anh is the Vice Dean at the International Faculty of the Diplomatic Academy of Vietnam. The

views expressed in this commentary are her own and do not necessarily reflect any official position. She contributed this specially to RSIS Commentaries.