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Title	Xisha (paracel) islands : a rejoinder
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Citation	Thi, N. L. A. (2014). Xisha (paracel) islands : a rejoinder. (RSIS Commentaries, No. 117). RSIS Commentaries. Singapore: Nanyang Technological University.
Date	2014
URL	http://hdl.handle.net/10220/19993
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No. 117/2014 dated 20 June 2014

Xisha (Paracel) Islands: A Rejoinder

By Nguyen Thi Lan Anh

Synopsis

Purely based on the application of international law of the sea, and notwithstanding the sovereignty dispute over the Paracels, the Haiyang Shiyou 981 oil rig was transported by China recently to a location deep inside the EEZ and continental shelf of Vietnam.

Commentary

IN HER response to my commentary, Associate Prof Li Dexia brought the debate back to the sovereignty question and ignored the application of the international law of the sea which I argued was China's main problem.

While I am happy that the writer shared some of my views regarding role of international law, I believe her comments on other aspects (RSIS Commentary 116/2014 dated 20 June 2014 entitled Xisha [Paracel] Islands: Why China's Sovereignty is 'Indisputable') warrant a rejoinder.

Why international law of the sea matters

The writer argued that the two square km Woody Island, the largest of the Paracels, which is 103 nautical miles away from the current location of the Haiyang Shiyou 981 oil rig, is entitled to an EEZ and continental shelf. I beg to differ.

The UN Convention on the Law of the Sea (UNCLOS) as well as international jurisprudence gives no decisive answer on the maritime zones of a small and remote island like Woody. Even if Woody Island is entitled to an EEZ, there has been a consistent tendency in state practices and jurisprudence of reducing the significance effect of such island in maritime delimitation with an opposite mainland.

Bach Long Vi, similarly-sized and located in the Gulf of Tonkin but with a permanent population, was only granted 25% effect in maritime delimitation between China and Vietnam.

Even in the unrealistic hypothetical scenario that the Woody is given 50% effect, at a distance of 103 nautical miles from the Woody and 130 nautical miles from Vietnam's mainland, the oil rig would be very deep within the EEZ and continental shelf of Vietnam.

The writer also argued that the oil rig would be located within the contiguous zone of the Triton in the Paracels to which proximity the oil rig is located. It might be correct, but under UNCLOS, entitlement from the contiguous zone creates no right over natural resources including conducting an exploration drill.

I also disagree with the writer's statement that Vietnam's unilateral claim of EEZ is illegal. Under UNCLOS, Vietnam is firmly entitled up to 200 nautical miles EEZ whereas the similar entitlement of the Paracels' features are uncertain. These conclusions are purely drawn from the application of international law of the sea, regardless the sovereignty issues.

Objective fact should be respected

It is true that the resulting public anger towards China fuelled some riots in a few industrial zones which led to the unfortunate consequences towards some Chinese workers and foreign investors in Vietnam. However, these riots were provoked by some outlawed opportunists who took advantage of the situation. These criminals were arrested and punished.

I therefore disagree with the writer when she associated these people with the Vietnamese government. In fact, the Vietnamese government immediately stopped the riots. The Vietnamese prime minister personally instructed government agencies and all citizens to restore public order.

He also met with the affected foreign investors and promised tax refund, tax reduction, land rental reduction and more flexible labour policy. I wonder whether the Chinese government implemented similar policies toward Japanese investors who also faced damages in the anti-Japan riots after Japan nationalised the Senkaku/Diaoyu in 2012.

In addition, who conducted violent and aggressive activities such as engaging in ramming, using water cannons and sinking Vietnamese fishing boats? The international reporters at the scene already have their own objective reports. In the sunken fishing boat incident, ten Vietnamese fishermen could have died had they not been rescued by other Vietnamese fishing boats within the vicinity.

Need for proper understanding of sovereignty claims

Like it or not, under international law, there is a sovereignty dispute over the Paracels as both China and Vietnam have stated their competing claims over the group. The writer has not only echoed the wrong 'indisputable' statement, but also misquoted several facts to support the 'indisputable' claim:

Firstly, France had numerous activities in exercising sovereignty for a long time and publicly declared its sovereignty over the Paracels to the world since 1933. France then maintained control over the Paracels until the end of the Second World War and officially ceded its rights in the Paracels to the State of Vietnam on 15 October 1950.

Secondly, the Cairo Declaration of 1943, Potsdam Declaration of 1945, San Francisco Treaty of 1951 and the Joint Communiqué between the People's Republic of China and Japan of 1972 have listed all the territories (the Manchuria, Formosa and the Pescadores) that Japan had to return to China but excluded the Paracels and Spratlys. It was noteworthy that the Chiang Kai Shek administration participating in the drafting process of the Cairo and Potsdam Declarations made no reservations concerning the Paracels and Spratlys.

Thirdly, at the San Francisco Conference, the proposal of the then Soviet Union to revise the Treaty text to include the Paracels and Spratlys in those territories to be given to China was decisively ruled out by a majority vote of 46 to 51.

Meanwhile, as a participant and signatory to the Peace Treaty at the San Francisco Conference, the Prime Minister of the State of Vietnam, Tran Van Huu, issued a statement at the Seventh Plenary Session which affirmed Vietnam's right to the Spratlys and Paracel Islands. This statement was not contested by any participants, indicating universal recognition. South Vietnam then peacefully fortified and maintained its control of the Paracels until 1974.

Fourthly, in the period from 1954 to 1975, there was more than one Vietnam. The 1954 Geneva Accords divided Vietnam into two by the 17th parallel. Accordingly, the Paracels and Spratlys were under the administration of and continuously controlled by the Republic of Vietnam, not by the Democratic Republic of Vietnam. As a signatory country of the Geneva Accords, 1954, China was well aware of this fact. By focusing on discrediting the Democratic Republic of Vietnam's claim, the writer actually missed the point.

The Socialist Republic of Vietnam, a unified State since 1976, immediately inherited and consistently reaffirmed

sovereignty over the Paracels and Spratlys which were well established by different representatives of Vietnam throughout the history of the country.

Lastly, it may be wise for the current generation of Chinese to look at history as objectively as did their late leader, Deng Xiaoping, who used to recognise the existence of the dispute over the Paracels in 1975 and promised to constructively cooperate with Vietnam to settle the dispute by peaceful means.

Following international law only makes a super-power-to-be respectful and credible in the eyes of its smaller neighbours.

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