What’s wrong with the status quo in the South China Sea?

Bill Hayton
Author – South China Sea: the struggle for power in Asia
Associate Fellow, Chatham House
@bill_hayton
WHAT IS THE STATUS QUO?

PRC occupies all Paracels plus 7 features in Spratlys. Taiwan occupies Itu Aba
Vietnam occupies 21 features in Spratlys plus 6 underwater banks
Philippines occupies 9/10 features in Spratlys; Malaysia occupies 5 reefs
• Does China intend to occupy every single feature within the U-shaped line?
• Or does China accept that any agreement will have to involve compromise on territorial claims?
• Does China agree that UNCLOS sets the rules for resource allocation and maritime rules everywhere?
• Are the claimants prepared to accept the use of critical historical evidence in resolving the disputes?
WHERE DO THREATS COME FROM?

1. Claimant states that refuse to accept compromise on territorial claims
2. Claimant states that deny the role of UNCLOS in the South China Sea
3. Specifically, claims to ‘historic rights’ are a clear threat to peace
Repsol drilled appraisal well in Block 136-03 in June 2017
General Fan Changlong visited Madrid and Hanoi to order the drilling to stop
General Fan threatened attacks on Vietnamese positions on Vanguard Bank
INDONESIA’S TROUBLES...

Atlas found aboard Chinese fishing boat *Gui Bei Yu* in May 2016
Published by a state-owned publishing house
Blatant violation of UNCLOS – yet standard issue for Chinese fishing boats
MALAYSIA’S TROUBLES

Chinese vessels on station at Luconia Shoals since 2013
Chinese interference with seismic surveys as recently as 2016
Implications for future hydrocarbon development?
BRUNEI’S TROUBLES

Fall in oil price plus declining output have created ongoing budget deficit
Brunei wants to open up deep water for exploration and development
Seems to be being prevented from doing so – by China?
Malampaya gas field provides one third of the energy for Luzon (including Manila) 
Malampaya expected to run out soon after 2025, Reed Bank can fill the gap
But – China is blocking the development of Reed Bank
WHAT WILL CHINA NEGOTIATE ABOUT?

“...both sides have chosen to settle the relevant disputes through negotiation”

What does ‘relevant’ actually mean?

If it means ‘territorial’ – say so!
TWO SETS OF DISPUTES

TERRITORIAL
About the rocks and reefs
Involves littoral countries: China, VN, Philippines, Malaysia, Brunei (& Taiwan)
Not discussed by Arbitral Tribunal

MARITIME RULES
About the spaces between the islands
Involves states that care about rules: US, Japan, Australia, China (plus others)
Settled by the Arbitral Tribunal (in theory)
Since there is no official explanation for the line, commentators may explain it in their own ways, thus different views and opinions have arisen among Chinese scholars both from mainland China and Taiwan on the U-shaped line as: (a) line indicating that the geographic features within are Chinese territory; or (b) line of historic waters; or (c) line of historic rights; and (b) line indicating that the marine resources within belong to China. According to Shicun Wu, President of the National Institute for South China Sea Studies, the U-shaped line is based on the theory of ‘sovereignty + UNCLOS + historic rights’. According to this theory, China enjoys sovereignty over all the features within this line, and enjoys sovereign right and jurisdiction, defined by the LOS Convention, for instance, EEZ and continental shelf when the certain features fulfill the legal definition of Island Regime under Article 121 of the LOS Convention. In addition to that, China enjoys certain historic rights within this line, such as fishing rights, navigation rights and priority rights of resource development. 

WHY ALL THIS TROUBLE?

Three-part claim
First two are compatible with customary international law, third part is not
The question of ‘historic rights’
WHAT DOES CHINA CLAIM?

“Looking at historic rights, China has historic title to waters between the relatively close, intimately connected islands that qualitatively comprise a unified whole, these waters are historic waters, China’s internal waters . . . China has the right to take those groups of islands within the Spratlys that are relatively close to each other as a single entity to establish territorial sea baselines, and China’s Spratly Islands in the SCS have maritime administrative zones such as territorial seas, EEZ and continental shelf.”


Andrew Chubb | SouthSeaConversations | 20 July 2016
THE FOUR ‘SHAS’

- Dongsha ‘East Sand’ Pratas
- Xisha ‘West Sand’ Paracels
- Zhongsha ‘Central Sand’ Macclesfield Bank etc (Doesn’t actually exist!)
- Nansha ‘South Sand’ Spratlys etc

New attempt to find ‘UNCLOS-like’ legitimacy for Chinese claims
Presented to US officials in August 2017 (according to Bill Gertz)
No evidence of any claim to ‘historic rights’ in official Chinese archives
The only claim discussed by ROC officials in 1946/47 was to islands
‘Historic rights’ claim – invented by Prof. Fu Kuen-chen in Taiwan in early 1990s
China’s territorial claims in the Spratlys are the result of 20th century mistakes. No historical evidence of occupation for vast majority of features. It’s time for an honest discussion of the evidence.
TURNING WATER INTO LAND

Mis-translation of ‘shoal’ as 滩 - James Shoal becomes ‘Zengmu Tan’

An underwater feature becomes land by bureaucratic mistake

Names change in 1947 (‘Tan’ becomes ‘Ansha’) and again in 1983
WHAT DOES CHINA WANT?

1) Reunify Taiwan with the mainland

2) Enable the return of “lost” and disputed maritime territory in the First Island Chain

3) Defend national maritime resources

4) Secure China’s strategic lines of communication

5) Preclude preferably but if necessary defeat decisively any seaborne attack by foreigners

6) Build sufficient strategic nuclear deterrence

CHINESE SUBMARINE ‘BASTION’

Borrowing an old Soviet idea
3 Type 094 (Jin class) SSBNs based in Yulin
Explains the desire to occupy Scarborough Shoal?
WHAT NEEDS TO HAPPEN NOW

15 years on, is there any point in the Code of Conduct negotiations?
China’s choice: voluntarily accept limits or expect resistance and deterrence
It’s time to formalise the status quo in the South China Sea
What’s wrong with the status quo in the South China Sea?

Bill Hayton
Author – South China Sea: the struggle for power in Asia
Associate Fellow, Chatham House
@bill_hayton
Historical Evidence To Support China's Sovereignty over Nansha Islands
2000/11/17

China was the first to discover, name, develop, conduct economic activities on and exercise jurisdiction of the Nansha Islands.

A. China the First to Discover and Name the Nansha Islands

The earliest discovery by the Chinese people of the Nansha Islands can be traced back to as early as the Han Dynasty. Yang Fu of the East Han Dynasty (23-220 A.D.) made reference to the Nansha Islands in his book entitled Yiwu Zhi (Records of Rarities), which reads: "Zhanghai qitou, shui qian er duo cishi" ("There are islets, sand cays, reefs and banks in the South China Sea, the water there is shallow and filled with magnetic rocks or stones"). Chinese people then called the South China Sea Zhanghai and all the islands, reefs, shoals and isles in the South China Sea, including the Nansha and Xisha Islands, Qitou.

HALF-TRUTHS

Document ‘scraping’ and selective quotations

Original texts long disappeared: using copies of copies from over 1000 years later
The original entry in the *Yiwu zhi* reads as follows: “There are rugged stones in the rising sea, and where the water is shallow there are many magnetic stones. Foreigners reinforce their big ships with sheet metal. When they reach this strait, they cannot sail past because of the magnetic stones.”

*Yiwu zhi jiyi jiaozhu*, 212, entry 105.

Professor Johannes L. Kurz, Universiti Brunei Darussalam

‘What is the ‘historical’ in China’s claims to the South China Sea?’

**EVIDENCE IN CONTEXT**

Phrase ‘South China Sea’ doesn’t appear in the ‘original’

‘Original’ shows ‘foreigners’ navigating the sea, not Chinese