

CHINA AND VIETNAM IN THE SOUTH CHINA SEA: DISPUTES AND STRATEGIC QUESTIONS

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Introduction

Being one of the most dynamic regions in the International System (IS), both in the economic and political point of view, Asia ends up attracting global attention and also questions, that were local until then, become the focus of international interests. Among these are the territorial disputes in the South China Sea (SCS), which involve the Southeast Asia countries and one of the most important powers in the contemporary international system: People's Republic of China (PRC).

Regarding the parts involved in the territorial disputes in the SCS, Vietnam and China are the only ones to claim sovereignty of the totality of the Spratly and Paracel archipelagos, engendering an overlap of demands. While China occupies the entire group of Paracel's islands and fifteen formations of the Spratlys archipelago, Vietnam occupies some of these islands, considering them as a maritime district of the Province of Khanh Hoe (U.S Energy Information Administration 2013, 7). There is another common point in their demands: both countries legitimize its claims based on historical rights of the use and occupation of these territories in dispute. This similarity, allied with the particularities of the sino-vietnamese relation, makes the evolution of this bilateral dispute sheds some light on the understanding of the political and strategic elements involved in this debate.

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The South China Sea

The SCS is a semi-open sea and surrounded by China, Vietnam, Malaysia, Singapore, Indonesia, Brunei, Thailand, Philippines and Taiwan. The SCS has a total dimension of approximately 3.600 square kilometers and it connects to other seas through the Taiwan Strait, the Lombok Strait and the Malacca Strait, making a strategic connection between the Indian and Pacific Oceans. Between the main groups of islands, stands out the Paracel, in its Northwest portion, and Spratly, in the centre of the Sea, both being the focus of the most part of the territorial disputes (Beckman 2012, 3). Figure 1 below brings the representation of the Sea in question, identifying its main elements.

Figure 1 – The South China Sea²



Source: The South China Sea, website.

² Available on: <<http://www.southchinasea.org/category/mpas/page/2>> Accessed March 02, 2014.

The Sea on debate raises regional and global interests due to some aspects. In the first place, there is significant speculation about the exploration potential of natural resources, in particular hydrocarbons, in the region. Notwithstanding, there's still no consensus on the dimension, or even on the existence, of such resources, the projections are uncertain and divergent. The U.S Energy Information Administration (EIA), for example, estimates that there are reserves of about 11 billion of oil barrels and about 190 trillion of cubic meters of gas in the region (U.S Energy Information Administration 2013, 2). For its turn, the Chinese National Offshore Oil Company (CNOOC), suggested, in 2012, the existence of reserves of about 125 billion of oil barrels and 500 trillion of cubic meters of natural gas in SCS (U.S Energy Information Administration 2013, 2). Spratly and Paracel archipelagos would be less attractive: the first one would have little or no oil reserves, but it could hold significant gas depositories due to its geological characteristics. The second one, in turn, would not show relevant reserves, and presented discouraging geological studies results (U.S Energy Information Administration, 4).

In second place, the Sea on debate is one of the maritime routes with more circulation in the world: it's estimated that more than a half of the oil and mercantile fleet of the world go through the SCS every year. This occurs due to its geographic position: the area is not only the shorter route starting from the Middle East and Africa, important oil and natural resources suppliers, towards Asia, but also it gives access to Southeast Asia, that gathers the main manufactured goods exporters of the world economy (Rosenberg 2011, 7-8).

The SCS attracts, thus, the interests of different countries, not only Asian ones, but also from others parts of the world, motivated by the strategic importance of the region. It's worth to notice that the contraposition of regional and international interests is reflected in the application and elaboration of agreements and treaties about the use of the area. Among them, two examples about the Law of the Sea stand out, an international and a regional one: the UNCLOS³ (United Nations Convention on the Law of the Sea) and the Declaration on the Conduct Parties in the South China Sea (COC), elaborated together by Association of Southeast Asian Nations (ASEAN) and China.

The UNCLOS defines zones that delimit and clarify the extension of the sovereignty of coastal states over its seas and adjacent oceans, allowing the regulation of the economic exploration of the coastal states. They are three,

³ The UNCLOS was signed in Montego Bay in 1982 and represented a great advance about the organizations and the definition of the rules, laws and concepts relative to the use and Exploration of the seas and oceans. It came into force in 1994 and today it counts with 166 signatories, among them: China and Vietnam (Accioly, Castella, Silva 2009, 564).

the zones established by the UNCLOS from a common point, the baseline. They are determined by the line, along the coast, where the sea level is the lower before the mainland. The first zone from the baseline is the Territorial Waters, which extend up to 12 nautical miles (about 22 km) and above where the Coastal State exercises full sovereignty over the sea, land and subsoil, besides having duties of police and of sailing regulation, allowing only the harmless passage of commercial ships and/or warships (Accioly, Casella, Silva 2009, 568).

In the case of the countries whose coasts are opposite or adjacent to others States, the extension of the Territorial Sea besides the medium point between the baselines of both is prohibited. This decision is not applicable only when there is a specific historical determinant (e.g. the historic use of the area) or other special circumstance. This point is extremely important in the SCS case: the sea not only fits in the opposite or adjacent classification, but also, in the perspective of the demanding countries, it brings historical elements that justify adaptations.

The second zone established by the UNCLOS is the Contiguous Zone which can reach up to 24 nautical miles (including the 12 miles of the Territorial Sea). In this area, the country can exercise all the necessary preventive measures to ensure its security, before ships, commercial or warships, reach the Territorial Sea, as customs and phytosanitary control (Accioly, Casella, Silva 2009, 574). The third delimitation is the Exclusive Economic Zone (EEZ), an adjacent area of the Territorial Sea, that includes the Contiguous Zone, reaching up to 200 nautical miles (about 370 km) from the baseline. Each country has its own EEZ sovereign rights with regard to exploration, preservation and administration of the natural resources, whether living or non-living, existing in the water, ground and underground of the EEZ (Organização das Nações Unidas 1982, 45).

Besides the zones, two concepts defined by the UNCLOS deserve to be pointed: Continental Shelf and islands. The Continental Shelf is a natural extension of the continent that extends to some point of the sea or, when not geographically determined, to 200 nautical miles, following the EEZ references. The Shelf refers to the ground and underground that allowed the economic exploration of these areas. Upon the continental shelf the Coastal State has the sovereign right of exploration and appropriation of the existing resources.

The concept of "island" refers to "(...) a natural land formation, surrounded by water, that stays uncovered in the beach-sea" (Organização das Nações Unidas 1982). Islands capable of bearing human habitation also have right to the Territorial Sea, the Contiguous Zone, the EEZ and the Continen-

tal Shelf (Organização das Nações Unidas 1982). Such definition of island becomes central on the debate about SCS: of 150 rocky formations that compound the Spratly range, only 40 come near of the island classification established by the UNCLOS. Thereby, the most part of the rocks, islets and reefs that form the Spratlys does not have the EEZ and the Continental Shelf: the sovereignty on this island, so, does not ensure, necessarily, the possession of its natural resources (Beckman 2012, 3).

Finally, the UNCLOS also created the Commission on the Limits of the Continental Shelf (CLCS), whose goal is to facilitate the implementation of the convention with regard to the delimitation of the signatories States's Continental Shelf. Its function is to analyze the datas submitted by the coastal states, allowing the identification of the Continental Shelf dimensions (Organização das Nações Unidas 1982). It is worth mentioning that the CLCS only analyzes the presented information, not having, so, the power to *decide* controversies between two or more States.

The UNCLOS is the main reference about Law of Sea, getting to influence even the non-signatory States. On the SCS issue, great part of the territorial claims made by the countries involved in the dispute use as reference the elements established by the UNCLOS and its consequential sovereignty rights: therewith, the pleas guarantee more international legitimacy. Vietnam and China, for example, incorporate the UNCLOS classification in its pleas, but also use other arguments, as the historical right, to legitimate its demands (U.S Energy Information Administration 2013, 10).

The second example highlighted concerns a regional effort of regulation: the COC, elaborated by ASEAN and China. The COC's negotiation process began, in reality, in order to elaborate a binding legal document: the Code of Conduct in the SCS. The initiative was launched in 1999, after a series of incidents involving countries of the region, members and no-members of ASEAN. Identifying the potential for regional destabilization, the Association proposed the formulation of a document capable of regulating the activities in the SCS, avoiding conflicts and the escalation of tensions (Thao 2003, 279-280).

The negotiations were marked by disagreements on the content of the document and reflected the disputes and the national pleas regarding sovereignty rights. Among the main difficulties were: (a) to determine the scope of the enforcement of the Code, if for the entire SCS or only for the areas in dispute; (b) to restrict or not the use of occupied places and in dispute; (c) to allow military activities next to the Spratly aggregation, and (d) to liberate fishing in the areas in dispute (Thayer 2013, 76-77). The lack of progress in the negotiations and the need of a consensus that would legitimate the doc-

ument, lead China and ASEAN members to sign, in 2002, the COC, a not binding political document which expressed the commitment of both parts on keeping a positive effort to ensure regional stability (Thayer 2013, 77).

The document stressed yet the principles agreed in the UNCLOS, in the Treaty of Amity and Cooperation in Southeast Asia ⁴and in the Five Principles of Peaceful Coexistence⁵ that guide ASEAN (Thayer 2013, 280). It is interesting to note the blend between elements consecrated on the regional dynamics, as the mutual trust and the pacifism, and international regulatory elements, as is the UNCLOS case, which serve as a pillar for most part of the territorial demands of the ASEAN countries acting, thus, as its legitimating base.

Even if the COC didn't match the initial goal of a binding Code, it was seen as a progress for the maintenance of regional peace and security, providing the references for futures discussions regarding the rights of exploration and sovereignty over the SCS. Moreover, the main points that should compose a Code of Conduct were contained in the Declaration: (a) no use of force; (b) self-restraint; (c) pacific resolution of conflicts; (d) strengthening of the mutual trust; (e) cooperation and (f) respect for the freedom of navigation (Thao 2003, 281). Even so, the text gaps, as the inaccuracy about the scope of the Declaration and the ambiguity, made it urgent, in the ASEAN vision, the elaboration of the Code (Thayer 2013, 79).

However, some obstacles hamper negotiations, such as the extension of the Chinese participation on the formulation of an ASEAN document, the period needed for the maturation period of proposals, the possibility of foreign interference and the need of consensus (Thayer 2013, 81-82). Thus, negotiations remain open and evolve taking slow steps, despite external pressure especially from the United States (USA) and Japan, and internal, as from Vietnam. The negotiating process of the COC as well as the Code, reflect the typical regional reality: for the Southeast Asia countries it's clear the idea that the relations between China and ASEAN are the basis for Asian stability, then, coexistence, pacific whenever possible, respecting the role of each actor involved is central for the understanding of the Asian perspective about the

4 The Treaty of Amity and Cooperation in Southeast Asia was signed in 1976 and had as goal to reinforce the historical tie that got the countries of the region united. The signatories would be committed to cooperate in different areas, as policy, economy and social, so to ensure the stability necessary to the progress of the Southeast Asia region (Associação das Nações do Sudeste Asiático 1976).

5 The Five Principles of Peaceful Coexistence are: (a) mutual respect for sovereignty and regional integrity; (b) non-aggression; (c) equality and mutual benefit, (d) non-interference on domestic questions, and (e) peaceful coexistence.

question.

The demands of China and Vietnam: origins and legitimacy

Chinese demands use as their main argument the idea that the PRC has an historical right⁶ over the SCS. For this purpose, China refers to official documents of several dynasties that already mentioned the SCS relevance for the country. Records from Western Han dynasty (206 BC – 9 AC), for example, point that the routes that connected the Southeast Asia countries, and passed through the Strait of Malacca, were already used and served as facilitators for regional trade. Historical records of the Yuan dynasty (1271 BC – 1388 AC) show a high degree of development and of patrol capacity of the Chinese navy, concentrated on the maritime routes (Shen 2002, 120-123).

The cartographic technical precariousness of this period hindered the standardization of the localizations and the names of islands, corals and reefs existing on SCS. Although a more recent map, elaborated in 1402 during the Ming dynasty (1368-1644), identify three locations that, according to the geographic coordinates, would correspond to the Spratly and Paracel islands: since that period, Chinese officials maps put such places as being part of the Chinese territory, even if the names were different from the current ones (Shen 2002, 126-128). The *Qianli Changsha* (actual *Xisha* or Parcel) and *Wanli Shitang* (actual *Nansha* or Spratly) islands, therefore, were already under the jurisdiction of the City hall of Qiong, that currently correspond to the Province of Hainan (Shen 2002, 132). From this perspective, China would be the first State to map, study and make use of the SCS. Such condition would not have been internationally expressed and officialized long before only due to the inexistence of contestation of the Chinese presence and sovereignty in the region (Shen 2002, 140).

The first formalisation of the Chinese claims happened yet in 1887 with the Convention regarding the Delimitation of the Border between China and Tonkin, which determined the jurisdiction of each portion of the SCS (Furtado 1999, 388-389). At that time, European and Japanese expansionism to Southeast Asia made Chinese predominance over the SCS uncertain and open to challenge. In 1933, French troops invaded and occupied nine islands of the Spratlys archipelago, and, in 1939, during the Second World War, Japa-

6 Such premise is based on intertemporal right, whose use is extensive in China. From this perspective, the questions are judged based on the analysis of the historical process and in its comparison with the contemporary laws: thereby, the laws in force in the moment of emergence of the disputes would have prevalence over the current ones (Jacques 2009, 294).

nese troops invaded some of the main islands of the SCS (Shen 2002, 136).

With the end of Second World War, the sovereignty question over the SCS islands got worse: with the eviction of the territories by Japan and European powers, there were room for countries, till then occupied, to also present its claims over the SCS. At the time, the Chinese government was worried about the agreements that allowed the resumption of the territories occupied by foreign powers: the Declaration of Cairo and the Proclamation of Potsdam determined that the occupied territories during the war should be returned to its original owners, including the occupied territories in the SCS (Shen 2002, 137).

Thereby, in 1951, in the period of elaboration of the Treaty of San Francisco, Zhou Enlai, then PRC's Minister of Foreign Affairs, declared that the Chinese Sovereignty over Spratlys and Paracels was inviolable and that, although the territories had been occupied by Japan during the Second War, China succeeded in recovering them, reaffirming its sovereignty (Furtado 1999, 389-390). Between the years 1960 and 1970, however, due to internal questions, the debate regarding the sovereignty over the SCS stayed on the background (Jian 2013, 20).

From the Vietnamese side, its sovereignty over the Spratly and Parcel islands also has historical foundation. In the *White Paper* about the *Hoang Sa* (Parcel) and *Truong Sa* (Spratly) islands published by the Socialist Republic of Vietnam in 1975 an historic is presented that would be able to prove its sovereignty over the archipelagos in debate. By the given description, maps elaborated between the years 1630 and 1653 would already bring indications of the existence of such islands, that would be part of the Vietnamese territory: such documents brought references to the characteristics of the islands known currently as Parcel (República Socialista do Vietnã 1975, 5-6). The formalization of the Vietnamese possessions over the Parcel territories would have occurred in 1816 and, since then, the government of Vietnam was responsible for several administrative activities and for the patrol of the islands and adjacent waters (República Socialista do Vietnã 1975, 14-16). In the Spratlys case, the Vietnam government would not have implemented a systematic policy of administration and jurisdiction, but a map published in 1838 by local explorers would make reference to the Spratlys, under the name *Van Ly Truong Sa*, as part of the Vietnamese territory (República Socialista do Vietnã 1975, 28).

It is worth noting that the period of French occupation, contrary to what could have been imagined, had not broken Vietnamese sovereignty over the archipelagos: in Vietnam speech, France only gave continuity to the administration held until then by the Nguyen dynasty. In the Spratly case, the

french invasion in 1933, reported by China as an aggression to Chinese territory, would be, in the Vietnamese view, the legal possession of the islands under the administration of the French protectorate (República Socialista do Vietnã 1975, 26). In relation to Paracel, the French government would have given continuity to the administrative activities “on behalf of Vietnam”, having its domain over the archipelago interrupted briefly from 1941 onwards, due to the Japanese invasion. The end of Second World War, however, forced Japan to return the territories to its original owners.

It should be noted that in the Vietnamese *White Paper* the mention to the Declaration of Cairo and to the Proclamation of Potsdam presented a Chinese dynasty’s interpretation. In the Vietnamese view, since the right of possession of Vietnam was not denied, it allows the transference of sovereignty from France to Vietnam to be seen as a legacy from the colonial period (República Socialista do Vietnã 1975, 32).

In 1951, during the 7th Plenary Session of the United Nations General Assembly, Tran Van Huu, then Vietnam’s Prime Minister, made a pronouncement reaffirming Vietnamese sovereignty over such islands (Furtado 1999, 391). Such declaration had the function to assure an already existing right and, so, would have an effect even over countries not represented in the Conference⁷, what would annul any contestation to the fact (República Socialista do Vietnã 1975, 37). In the period after, marked by the Civil War between North Vietnam and South Vietnam, the territorial claims stayed on the background.

In 1974, in a supposed response to the constant violations of the Chinese territory of Paracel and of the attack to fishermen and to Chinese military ships from the part of Vietnamese vessels, Chinese soldiers occupied the main islands of the archipelago retaking the territory from the foreign domain (Shen 2002, 147). In Vietnam, the event was described as a brutal invasion to the archipelago by the Chinese troops: unprepared for the conflict and undermined by the Civil War, Vietnamese troops would have had little responsiveness, losing the totality of Paracel for China (República Socialista do Vietnã 1975, 42).

In the 1980s, the emphasis given by Vietnam on the economic reform, *Doi Mou*, redefined the priority assigned to territorial demands: the need of a stable regional environment which allowed to focus on economic development was essential, by making Vietnamese external politics seek to improve its relations with its neighbors (Hai 2013, 27). On the Chinese side, the 1980s were marked by the concern with the reassurance of its presence

7 At the time, the government that represented China in the United Nations was the Republic of China and not PRC, with whom the disputes about the islands in question are more intense. The PRC only would take the seat designated to China in 1971.

on the SCS (Jian 2013, 20).

In 1988, a new tension happened between Chinese and Vietnamese troops, this time in the Spratlys region (Crisis Group 2012 a, 3). According to the Chinese report, the clash occurred because, in one of its patrol exercises in the Spratlys region, Chinese navy ships would have been attacked by Vietnamese ships, being forced to hit back in defense. As a result, the Chinese government would have felt the need to reinforce its presence in the occupied islands of the archipelago (Shen 2002, 149). Since then, China controls part of the Spratlys islands.

Since the 1990s both governments will be concerned about the adequacy of their claims to the international norm. In 1992, for example, the Communist Party of China (CPC) approved the Law about the People's Republic of China's Territorial Sea and Contiguous Zone, which defines the Chinese sovereignty on the Paracel and Spratly archipelagos, in addition to reserve to China the right of the use of force in case of disrespect of its sovereign rights (Thao 2000, 105).

The ratification of UNCLOS by both countries, not coincidentally, took place in this period: Hanoi ratified the Convention in 1994, while Beijing did it in 1996. It was also in the 1990s that the idea of peaceful resolution of the disputes gains prominence within ASEAN: in 1994, during the ASEAN Regional Forum (ARF) meeting, China committed itself to solve the disputes with Vietnam in relation to the Spratlys through peaceful negotiations (Thao 2000, 108). In 1995, Vietnam became an official member of ASEAN, and was able to make use of the Association as a broker in the negotiations with China (Kaplan 2014, 53). Years later, in 1999, the Vietnamese and Chinese General Secretaries of the Communist Parties, Kha Phieu and Jiang Zemin respectively, published a joint statement that valued the reinforcement of the mutual trust and the peaceful settlement of disputes (Thao 2000, 111-112). In the same year, the proposal to create a Code of Conduct between the ASEAN members and China is officially released (Thao 2000, 114).

In the beginning of the 2000, the efforts to cooperate resulted in one of the only initiatives well succeeded of the joint administration of the SCS resources that involved, precisely, China and Vietnam. The agreements in question make reference to the Gulf of Tonkin, or Beibu, that borders both countries and is the meeting point of its related EEZs. The agreements, signed in 2000, entered into force in 2004 and shall be effective for fifteen years. The documents define rules for fishing, for the access to the EEZ of the counterpart and for the joint administration of the goods of the Gulf (Rosenberg 2011, 120). Although restrict to only one area of the SCS, the document is seen as an example of the provision of the parts to cooperate, prioritizing the joint

development of resources (Kaplan 2014, 42). Two years later, in 2002, the signature of COC between China and ASEAN represented an important advance in the negotiations about the topic, favouring mutual trust (Thao 2003, 281).

Nevertheless, in 2009, Vietnam surprised the Chinese government by submitting to the Commission on the Limits of the Continental Shelf (CLCS) two requests of extension of its Continental Shelf to beyond the 200 nautical miles. One of them, together with Malaysia, made reference to the south portion of the SCS; the other one, individual, proposed to advance the Vietnamese Continental Shelf, closer to the Spratly archipelago, reaching the limit of 350 nautical miles (Crisis Group 2012a, 3). In the document, Vietnam defended the legitimacy of its plea according to the UNCLOS provisions about the Continental Shelf and asserted that the area under discussion had not been claimed by previous presented demands until then. So, the Vietnamese government plea involved sovereignty, the sovereign rights and the national jurisdiction over the seas and the continental shelf of the Spratlys and Paracels (Malásia, República Socialista do Vietnã 2009, 2).

In response, China sent a verbal note to CLCS contesting both of the submissions, the joint as well as the Vietnamese with the following text:

China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over relevant waters as well as the seabed and subsoil thereof (see attached map). (República Popular da China 2009, 1)

The text went on stating that the joint submission violates the sovereign rights and the Chinese jurisdiction in the region on debate and, therefore, requested to CLCS that disregard the request. The SCS map⁸ attached (Figure 2) showed nine lines in the shape of "U" that, together, formed a belt drawn from the Chinese territory which included the Paracel and Spratlys archipelagos (República Popular da China 2009, 1-2). This was the first official mention to the pointed map in a context of debate about the SCS. However, the figure by itself doesn't clarify the Chinese position regarding the delimited area: even the verbal note didn't offer subsidies that allowed the identification of the Chinese demands.

The verbal note, added to the nine lines map, points four elements,

⁸ This map was drafted in 1946 by the Republic of China (RC) government as an attempt map the region defined as the RC's "historic waters". Since 1949, the new communist government of the PRC made use of this map only altering the number of lines: from eleven to nine, but maintaining the delimited area. The nine lines map, as it became to be known, includes the whole of the SCS, without limiting itself to the special economic zones. (Rosenberg 2011, 11)

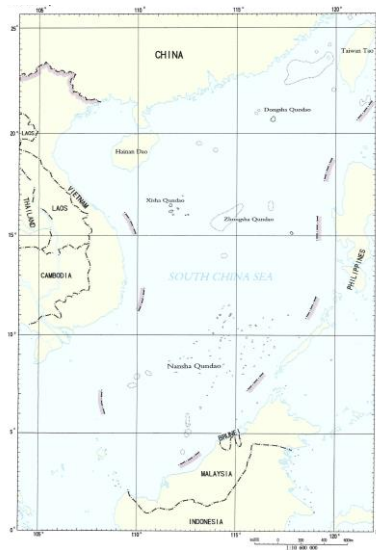
without offering further information: (a) the Chinese sovereignty extends to the SCS islands and to the adjacent waters, without defining such concept; (b) the sovereignty includes the maritime bottom and subsoil; (c) the rights there presented have historical foundation, and (d) the nine lines map serve as reference to the Chinese claim, even if not defining its content (Nien-Tsu 2010, 204-205).

Such inaccuracies unleashed new speculations about the Chinese claims (Nien-Tsu 2010, 204). Among some of the raised interpretations were the most radical views, such as the Vietnamese, that understood that the nine lines map preached Chinese sovereignty over the entire area inside the lines, as well as more moderate views, as the Singapore one, which highlighted the inconsistency with the international laws made absurd the idea that the entire area inside the nine lines was pleaded by China (Crisis Group 2012a, 3). On the Chinese side there was no effort to clarify: however, statements in international forums seemed to indicate that the country didn't claim for sovereign rights over the entire area delimited by the line, but over the island that it surrounds. In 2012, for example, the spokesman of the Ministry of Foreign Affairs, Hong Lei, differentiates disputes regarding the sovereignty over the SCS reefs and islands from disputes with regard to maritime delimitation (Crisis Group 2012b, 3).

Since then, the region became more sensitive with regard to topics about territorial disputes in SCS. In 2010, as president of the ARF meeting, Vietnam included the SCS on the agenda's event, warning to the urgency of a legal administration mechanism of the disputes. Therefore, several countries present, not only the Asian ones, treated the topic in its official speeches: until then the subject was debated exclusively in Asian forums (Crisis Group 2012a, 7).

The subject reappeared in the next year, in 2011, during the East Asia Summit (EAS). In the occasion, the Chinese premier Wen Jiabao defended the inadequacy of the forum for the discussion of the topic. Even so, he reaffirmed China's posture of collaboration with ASEAN neighbors, which set, through the COC, the negotiation of a Code of Conduct. The premier reinforced the importance of mutual trust and cooperation to ensure the regional stability ("Premier..." 2011, 1). Wen made clear with such declaration that the attempt to press the country through the involvement of other parts in the negotiation, would not lead to a solution of disputes.

Figure 2 – The Nine Lines attached presented by China in 2009



Source: People's Republic of China, 2009

In the same year, Chinese maritime patrol ships approached the vietnamese seismic survey ship, Binh Minh 02, during an operation supposedly inside the vietnamese EEZ and cut one of its cables of seismic monitoring. The episode had great repercussion in Vietnam, with public protests anti-China organized by the national elite in the main cities of the country. The domestic pressure stimulated a more assertive answer from the Vietnamese Prime Minister, Nguyen Tan Dung, whose declaration reaffirmed the determination of the Party, the population and the army of protection of the Vietnam's rights on the region (Thayer 2011, 86-88).

In the following weeks several military exercises were carried out in Vietnamese waters, fostering the wave of nationalist demonstrations, which lasted around twelve weeks, mobilizing a great part of the Vietnamese society (Thayer 2011, 89). To avoid the escalation of tensions, Vietnam and China leaders met and published through a joint announcement that ensure the mutual disposition in solving the question by peaceful negotiations, aimed at peacekeeping and regional stability. The announcement also mentioned public demonstrations about the topic and the need that they were guided by governments: the Comunist Parties should avoid that popular demonstrations prejudice the bilateral relation (Thayer 2011, 90).

Therefore, Beijing decided that it needed to review its posture with

regard to the SCS, expanding the legal backing of its sovereign rights. Thereby, it released in 2011, the 12th Chinese Five-Year Plan for Oceanic Development, which reaffirmed the need to reinforce the legal structure related to Chinese demands in the SCS and defined measures to protect and preserve the existing maritime resources, including natural resources (Jian 2013, 23). In the next year, the country announced the creation of a new city, Sansha, under the jurisdiction of the Province of Hainan, whose objective would be the administration of the Paracels and Spratlys archipelagos (Jian 2013, 23). The creation of the city had been already authorized in 2007, but Vietnamese protests suspended its establishment (Crisis Group 2012b, 23).

Still in 2012, and in great part as a response to Chinese practices, the Vietnam National Assembly published a Vietnamese law about the Law of the Sea. In general, the document presented devices which determine that in the case of a conflict between national and international norms of maritime rights, the second one should prevail over the first: the initiative represents the effort to adequate Vietnamese laws regarding the UNCLOS (Hai 2013, 29).⁹

Besides the adequacy to the International Law, another strategy employed in the the SCS dispute, for countries like Vietnam, is the internationalization of the debate: this increases the geopolitical costs of a more assertive action, or even coercive, by China in the resolution of maritime disputes. Between the countries that direct or indirectly end up involved on the SCS question the USA stands out, whose interests go beyond the questions related to trade and the exploration of natural resources.

The American involvement in the SCS question is also justified by the reorganization of the priorities of the American foreign policy. When Barack Obama came into Presidential power in 2009, he defined as one of his goals the revival of the the alliance with Asia and the reassurance of American leadership in the region (Obama 2009). In 2010, in ARF, Hilary Clinton, then Secretary of State, classified the SCS question as an American “national interest” and listed the principles that guided USA posture: in the first place, the freedom of navigation, that can be translated in free access for American ships, in particular of the contingente of the Seventh Fleet, to the region,

9 In the response letter to the Chinese verbal note, in 2009, Vietnam signals that its proposal were in accordance with the UNCLOS provisions, while the Chinese contestation based on the nine lines map had no legal foundation. Hai (2013) affirms that such change occurs due to a modification in the strategic perception: while the plea with historical bases would legitimize China’s own claim, the use of legal arguments for the territorial contestation, not only would suit to the existing international norm, but it would also require the Chinese counterpart to review its own plea (Hai 2013, 28).

taking into account the norms of international right. In the second place, the freedom of maritime trade routes that passes by the SCS and guarantee the access to important consumers and exporters at Southeast Asia. In the third place, the adequacy of maritime claims to the UNCLOS principles, that requires a clarification of the Chinese plea based on the nine lines map¹⁰ (Bader, Lieberthal, McDevitt 2014, 6-7).

In the fourth place, the appreciation of the sovereignty-territory relation, which assigned legitimacy only to the claims based on the extension of the Continental Shelf inside the limit set by the UNCLOS, invalidating the Chinese map. Finally, the emphasis in the negotiated resolution of the dispute, that intends to avoid the coercion and the expansion of the tensions that could harm American interests or, even, drag the USA to an unwanted conflict (Bader, Lieberthal, McDevitt 2014, 7). Such points reveals the ambiguity of the American position that, at the same time that is concerned in reaffirming its space in Asia, seems unwillingly to get involved in an extra-regional conflict, or, even, to compromise its relation with China (Bader, Lieberthal, McDevitt 2014, 2-4).

For China, an increase in American presence can threaten the already unstable regional balance of forces, also undermining the efforts of decades of harmonization of its relations with the neighbors. For Vietnam, a greater American leadership represents greater security at the same time that it also may represent the choice between China and USA that must be avoided by all means for the guarantee of its own national interests.

The SCS and the National Interests

Chinese national interest is based on a set of variables from different origins. In foreign policy, the SCS question challenges at the same time the international and regional Chinese strategy. By signing and ratifying the UNCLOS as an effort of reinforce its image of a “responsible power”, the country restricted its possibility of completely denying the Convention. Since recognizing the strategic relevance of UNCLOS for Chinese foreign policy, the country has been developing a set of domestic legal instruments that suit to the Convention (Jian 2013, 20). Even a major Chinese “assertiveness” in the region may be interpreted in this sense: the international law tends to prioritize the effective and continuous occupation over the historical rights

¹⁰ Such identification worries the USA, because the case referred to the sovereign rights over the existing resources in the region, it can prejudice American companies that exercise fishing activities or the exploration of the region's resources.

in the analysis of territorial disputes. Then, a greater Chinese activism with regard to the Spratlys and Paracels archipelagos and to the exploration of natural resources, would have the intention to reinforce the Chinese presence as a “responsible power” for the areas in dispute (Jian 2013, 22). Allied to this would be the fact that, due to the Chinese economic growth, the country acquired capacity to effectively monitor its region. The percentage of Gross Domestic Product (GDP) destined to defence is low, but it translates in large investments for the sake of the size of Chinese economy. The result is the modernization of the navy, the expansion of patrol capacity and, consequently, the multiplication of incidents (Jian 2013, 21; Yahuda 2012, 32).

On regional policy, the SCS is, on the one hand, an opportunity for the Chinese government to prove to the neighbors that it's capable of getting involved in a constructive way in the region, representing a source of support and alliance essential for Southeast Asia stability. On the other hand, when the overlap of demands contributes to the expansion of historical tensions and the internationalization of the topic, raises an extreme disapproval of China, the country is faced by a deadlock since it needs to avoid a posture that would risk all the progress obtained with the good neighbor policy practiced since the 1990 (Yahuda 2012, 32-34).

Also in the regional spectrum, there is the nationalism that, in China's case, is confused with a high self-confidence, motivated by the socioeconomic advancement of the last decades. China would be retaking the gloriou path of the “Middle Empire”, leaving behind the period of subjugation to the West and Japan: so, it may retake rights that were denied until then (Yahuda 2012, 34). It helps to explain, for example, the difficulty to accept the UNCLOS dispute resolution mechanisms for the SCS question: accept Western solutions for regional problems may be seen by the population as a weakness of the CCP (Crisis Group 2012a, 4-5).

The SCS also raises more practical interests: a greater integration of the Chinese economy to global and regional economies expanded the need to ensure the maintenance and stability of trade routes that passes by SCS. It is estimated, for example, that one third of the Chinese oil imports reach the country by the SCS that, as already pointed, connects the Pacific and Indian oceans, besides being the most direct connection with the Middle East (Yahuda 2012, 32). Before the increasing Chinese energy dependence, such trade route becomes strategic. Finally, the SCS represents a “natural shield” for the access to China's territory: the coastal region of Guangxi and Guangdong is one of the richest, most populous and most developed of China, besides it connects essential regions for the Chinese national integration strategy: Hong Kong and Taiwan (Kaplan 2014, 41).

The Vietnamese interest on the SCS is also motivated by several elements. In Vietnam's case, the SCS exercises a particular role: of favoring the national unity. The separation history between North and South of the country, allied to a particular geographic distribution, makes Vietnam present a wide polarization between the two extremes of its territory. The concentration of demographic and economic activities in Hanoi (north) and Ho Chi Minh (South) creates a detachment between the areas that goes beyond the geographic issue. Therefore, the wide coast of 3,444 km is the link between the two most dynamic regions of Vietnam, it's the element that keeps the national cohesion and unity (Hai 2013, 27).

Despite the its extensive coast, Vietnam has no historic of intense maritime explorations: the country has a limited naval capability that, combined with the narrowing of the central part of the territory, strengthens the perception of its maritime vulnerability (Hai 2013, 27). To reduce its fragility, Vietnam has made efforts in the sense of modernizing its navy and expanding defense ties with ASEAN and foreign powers, as already mentioned in the USA's case (Crisis Group 2012b, 4).

As well as China, the Vietnamese nationalist sentiment is an explanatory part of the subject. National identity is marked by the historic of resistance against various foreign powers that had invaded the country: China, France, Japan and USA. In this scenario, nationalism is still influencing the political decisions of the country, especially those that involve former aggressors, such as China. In the SCS case, for example, to give up of the claims in favor Chinese predominance, would represent an outrage to the Vietnamese identity of resistance and defence of territorial integrity, raising historical resentments (Crisis Group 2012b, 4).

The distrust and animosity in relation to China end up being used by the Vietnamese Communist Party as an excuse to avoid certain commitments or to press the neighbor. The protests that spread through Vietnam, in 2011, after the episode with the seismic monitoring ship, are a great example: the manifestation was supported by the government as long as it represented a pressure element over China, from the moment that both sides were willing to talk, the manifestation was suppressed (Crisis Group 2012b, 20). Moreover, proof of the instrumental use of the Vietnamese nationalism is the country's approach with the USA, which also keeps a historic of aggression: even so, the memory of the war was left in the background in favor of the current strategy.

Moreover, the territorial disputes introduced an opportunity to ensure to the country its autonomy in relation to China. In the SCS, even if all countries present a different regional and international projection, they are equally a relevant part of the territorial dispute. When the smaller neighbors of South-

east Asia, placed ASEAN as an intermediate in the negotiations, they gained weight in the disputes and in the Chinese strategic calculus. The inclusion of the topic on the ARF's 2010 agenda is one of the main examples of such strategy (Crisis Group 2012a, 6).

The SCS stills gain prominence on the Vietnamese economic strategy. Today's Vietnam is a country focused on exports and, due to its already mentioned geographic characteristics, concentrated on maritime trade: thus, the guarantee of freedom of navigation and of the trade routes that passes by the SCS is essential (Hai 2013, 8). Besides, fishing activity is important for the exports as well as for Vietnam's domestic market. Then, the peaceful resolution of disputes and the exploration of resources as in the Gulf of Tonkin's case, are essential for the country (Crisis Group 2012b, 16).

Final Considerations

This brief analysis revealed, therefore, that the SCS question involves a variety of conditions that characterize the complexity of the topic. The search for the sovereignty of the archipelagos without potential for habitation or economic exploration hides, actually, much more subjective and revealing components of the regional dynamics and challenges. These disputes are a reflection of the race for strategic positions, strongly influenced by regional nationalism.

We saw that even the internationalization of the debate about the SCS is far from representing the answer for the solution of disputes, it brings new nuances to the already complicated regional context. Combining historical questions, regional stability and the presence of foreign actors, the SCS question challenges the very basis of Chinese regional actions.

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ABSTRACT

The dispute between China and Vietnam in the South China Sea involves strategic interests that are mixed with cultural and historical heritages fundamental to the understanding of their respective positions. Ensure the sovereignty over the islands, for these countries, also means to ensure important economic and geopolitical interests in Asia.

KEYWORDS

China; Vietnam; South China Sea.

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