



## **In response to Robert Beckman**

Mark J. Valencia\*

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Robert Beckman's RSIS commentary – "Joint Development in the South China Sea, Time for ASEAN and China to Promote Co-operation?"\*\*\* – is both optimistic and hortative. In the best of all worlds the claimants would heed his advice. But having written numerous articles of similar tone to no avail, I take a more pessimistic view.

The region has indeed moved to a lower level of securitization. According to Ralf Emmers of RSIS, the reasons include China's 'charm offensive', the lack of discovery of significant petroleum deposits, and self-restraint of nationalist tendencies. Perhaps most important is the distraction of the United States in the Middle East and the "war on terror", and thus a damping of China-U.S. competition in Southeast Asia and the South China Sea. To this eclectic mix one should add the expansion and strengthening of ASEAN and its growing unity in its approach to China. But these factors are neither fundamental nor durable and the apparent stability is fragile.

The fundamental conflicts over islands, maritime space and resources have not been resolved. Increasing competition for energy and fish is likely to exacerbate these conflicts and refuel nationalism in the South China Sea. Indeed in China, Taiwan, the Philippines and Vietnam, domestic laws have incorporated the islands into the nation's territory as well as the national psyche, and they have thus become symbolic of the nation and the legitimacy of their governments. For these governments the islands must be defended at 'all costs'. Their position is also fueled by fear of the unknown – that some unknown resource will be foregone or lost through compromise or relinquishment of claims – the "Alaska syndrome". At the least the situation is ambiguous, difficult to resolve, and unpredictable.

Despite its "smile diplomacy", China's intent remains uncertain. It has recently growled at Vietnam regarding Vietnam's plan to build a pipeline from British Petroleum gas discoveries 230 miles offshore on its claimed extended continental shelf. The new fields to be connected are near fields that already produce gas which is shipped onshore through an existing pipeline. In its rant, China easily slipped back into its legally dubious historic claim to most of the South China Sea and the nationalist rhetoric that accompanies it. China's Foreign Ministry spokesperson Qin Gang said "any unilateral action taken by any other country in these waters constitutes infringement into China's sovereignty, territorial rights and jurisdiction". Moreover, according to Qin, Vietnam's action "goes against the important consensus reached by the leaders of the two countries on the maritime issue."

Even the joint surveys between China, Vietnam and the Philippines that Beckman cites as progress were only made possible by what some would say was a "sell out" on the part of the Philippines. Presumably for higher political purposes, the Philippines agreed to these joint surveys that include parts of its legal continental shelf that China and Vietnam don't even claim. But in so doing it gave legitimacy to China and Vietnam's legally spurious claims to

that part of the South China Sea. Is Beckman suggesting that China should be allowed to jointly develop areas that it claims only by virtue of its “historic claim” to most of the South China Sea? Or should non-claimants to the Reed Bank – the most prospective area – like Malaysia and Brunei be participants in a grand ASEAN-China joint development scheme?

The basic lesson is clear – ‘slow and steady wins the race’. Patience and perseverance are necessary ingredients. The process must be a step-by-step building of functional co-operative arrangements that will eventually result in a web too politically costly to undue.

As for a grand solution to the South China Sea disputes, this will be a long time in coming – if ever. But the alternative – a festering sore covered by a scab that can be picked every time relations deteriorate or extra regional powers wish to interfere – should be a nightmare no regional state wants to repeat. The point is that the status quo is unstable and the future not as bright as Beckman would have it.

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**Robert Beckman\*\*\* replies** - I agree completely with Mark Valencia that the process with respect to the competing claims in the South China Sea must be a step-by-step building of functional co-operative arrangements that will eventually result in a web too politically costly to undue. This was one of the important lessons learned from the series of Workshops on Preventing Potential Conflicts in the South China Sea which were organized by Indonesia and Canada under the able leadership of Ambassador Hasjim Djalal of Indonesia.

Dr Valencia misunderstands me if he thinks that I have proposed a grand ASEAN-China joint development scheme for the South China Sea. What I have proposed is simply what I believe is a logical “next step” if the claimants recognize that their competing claims are irreconcilable and they wish to engage in talks to strengthen cooperation and consider the feasibility of joint development projects.

In my view the logical next step is a declaration containing a ‘without prejudice clause’. Without such a clause, any actions to cooperate will be labeled as “sell-outs” and as giving legitimacy to the questionable claims of others. Dr. Valencia has pointed out that some would characterize the Philippine’s action in cooperating in the tripartite agreement to conduct joint seismic surveys as a “sell-out”. Therefore, his comment is evidence that a declaration containing a without prejudice clause may be necessary before there can be cooperation among the claimants without having an impact on the validity of the underlying claims to sovereignty and jurisdiction.

The declaration I have proposed would not obligate claimants to enter into joint development negotiations with China or any other claimants or non-claimants. I have proposed that the declaration be in the form of an ASEAN-China declaration because it would give it more legitimacy and because of the precedent of the 2002 Declaration. I have not suggested that non-claimant members of ASEAN should participate in the joint development projects.

The fact that several of the claimants have enacted domestic legislation incorporating the islands into the nation’s territory is merely evidence that the claims are highly sensitive and are not likely to be resolved through negotiation or by the claimants agreeing to refer the dispute to an international court or tribunal.

The sensitivity of the claims in some of the claimant states would not prohibit those states from agreeing to a declaration containing a without prejudice clause. They would not be giving up their claims. They would only be agreeing to ‘shelve’ or ‘freeze’ their claims for a

certain period of time. They would also be protecting their claims by ensuring that their actions in cooperating cannot be interpreted as either giving up or diminishing their own claim or as recognizing the legitimacy of any other claim.

In summary, I agree with Dr Valencia that the process must be a step-by-step building of functional co-operative arrangements. Where we differ is that I believe that it will be much easier to build functional cooperative arrangements if the claimants first agree to a declaration containing a without prejudice clause.

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