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Xisha (Paracel) Islands: Why China's Sovereignty is 'Indisputable'

By Li Dexia

Synopsis

China has solid evidence of its indisputable sovereignty over the Xisha (Paracel) Islands. The oil rig that China has located is not inside Vietnam's EEZ, as Hanoi claims.

Commentary

IN HER RSIS Commentary dated 9 June 2014 entitled *The Paracels: Forty Years On*, Dr. Nguyen Thi Lan Anh stressed that China had located its oil rig in disputed waters in the Xisha (Paracel) Islands which Vietnam claims. In reality, China owns indisputable sovereignty over the islands grounding on ample historical and legal basis.

To begin with, in accordance with the international law and customary law, the main condition to own an island far from the mainland is to be the first to occupy it effectively. Based on numerous Chinese historical records, since at least the North Song Dynasty (960-1127AD), China had exercised sovereignty and jurisdiction over the Xisha (Paracel) and Nansha (Spratly) Islands effectively. It is several hundred years earlier than the 17th century claimed by Vietnam (assuming Hanoi's evidence was unproblematic for the moment).

China's 'indisputable sovereignty' over the Xisha Islands

Secondly, the writer mentioned "during the period of Western colonial expansion sovereignty over the Paracels was continuously exercised by France". Actually, France occupied the Islands only for a short period from 3 July 1938 to 1 March 1939 when Japan seized them and ousted the French there. After Japan's surrender in 1945, however, the Islands were returned to China according to the Cairo and Potsdam Declarations. So why did the writer claim that "Sovereignty later passed from France to South Vietnam under the 1954 Geneva Accords?"

Thirdly, from 1954 to 1974, the successive Vietnamese governments had publicly and officially admitted the Xisha and Nansha Islands as inherent Chinese territory for many times, among which are three striking ones:

- When Vice Foreign Minister of the Democratic Republic of Vietnam Ung Van Khiem met with charge d'affaires ad interim Li Zhimin of the Chinese Embassy in Vietnam on 15 June 1956, he indicated, "according to Vietnamese data, the Xisha and Nansha Islands are historically part of Chinese territory". Then the Acting Director of the Asian Department of the Vietnamese Foreign Ministry, Le Loc added, "judging from history,

these islands were already part of China at the time of the Song Dynasty”;

- China issued a statement of the territorial sea on 4 September 1958, announcing that it applied to all China’s territories, including the Xisha and Nansha Islands. Ten days later, Vietnam’s Prime Minister Pham Van Dong sent a diplomatic note to China’s Premier Zhou Enlai, solemnly declaring that “the government of the Democratic Republic of Vietnam recognises and supports the declaration of the government of the People’s Republic of China on its decision concerning China’s territorial sea made on September 4th, 1958”;

- In a statement issued by the government of the Democratic Republic of Vietnam on 9 May 1965, it wrote, “US President Lyndon Johnson designated the whole of Vietnam, and the adjacent waters which extend roughly 100 miles from the coast of Vietnam and part of the territorial waters of the People’s Republic of China in its Xisha Islands as ‘combat zone’ of the United States armed forces,” and it is “in direct threat to the security of the Democratic Republic of Vietnam and its neighbours”.

In addition to its government statements and notes, Vietnam’s newspapers, maps and textbooks then also reflected its above-mentioned position clearly. Since the successive Vietnamese governments had publicly acknowledged these islands as belonging to China, it is thus unreasonable for Vietnam to dispute them. Or it would be against the equitable estoppel – which is a bar to a party from asserting a legal claim or defence that is contrary or inconsistent with his or her prior action of conduct.

Unfortunately, since the 1970s, South Vietnam had started to covet those Islands. It tried repeatedly in 1973 to invade the Zhongjian (Triton) and Chenhang (Duncan) Islands, both within the Xisha Islands group, ignoring China’s protests. What the writer did not mention is that despite Vietnam’s frequent military provocation starting from 15 January 1974, China was obliged to fight back only until 19 January, because the Vietnamese army had killed and injured many Chinese fishermen, and their warplanes and warships had bombarded the Chenhang Island and China’s patrol boats.

Is the oil rig deep inside Vietnam’s EEZ?

The writer stated the rig is “deep inside Vietnam’s exclusive economic zone (EEZ) and continental shelf, close to the islands”. Is the statement tenable? According to my knowledge, the location of the rig is 17 nautical miles from both the Zhongjian (Triton) Island of the Xisha Islands group and the baseline of the territorial waters of Xisha Islands, yet approximately 133 to 156 nautical miles away from the coast of the Vietnamese mainland. Is it closer to China or to Vietnam?

Unquestionably Vietnam has its EEZ and continental shelf, but so has China. According to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Yongxing (Woody) Island of the Xisha Islands is also entitled to an EEZ and continental shelf, and when the EEZs of two countries overlap, they are required to negotiate the demarcation. Before that, any unilateral claim of EEZ is illegal. It is therefore out of place to argue the rig is deep inside Vietnam’s EEZ.

Furthermore, the rig is exactly within the continuous zone of the Zhongjian (Triton) Island, which owns a total of 24-nautical-mile territorial sea and continuous zone grounding on UNCLOS even as a “rock”. In other words, the rig is well within China’s waters.

Who is the real bully?

One of the crucial factors for Vietnam to be desirous of the islands was the discovery of rich oil and gas deposits in the 1970s. China’s recent operation in the Xisha Islands has undoubtedly stimulated Vietnam’s sensitive nerves. Since May this year, Vietnam has sent plenty of vessels, including armed ones, to harass China’s operation and crash into the Chinese government vessels constantly and violently.

It is reported that up to 5 p.m. on 7 June 2014, “there were as many as 63 Vietnamese vessels in the area at the peak, attempting to break through China’s cordon and ramming the Chinese government ships for a total of 1,416 times”. Moreover, the anti-China demonstrations condoned by the Vietnamese government in mid-May led to four Chinese killed, over 300 others wounded, and numerous companies of different countries looted, smashed, and set on fire.

Has Vietnam behaved as a responsible power in the international arena? Who is the real bully?

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