

Maritime Strategy and the
New Law of the Sea:
Losers and Gainers;
With a Focus on Southeast Asia

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Introduction

In 1982 maritime strategy appeared to be dominated by “global” concerns; the whole borderless blue sea was the medium upon which and under which threats and responses could be made and withdrawn, in pursuit of interests that far transcended any particular sea or strait. Accordingly, the main strategic principle embodied in law at the 1973-1982 Law of the Sea conference (UNCLOS III) was “transit passage,” a new right insisted upon *together* by the Cold War antagonists,¹ flush (as they then were) from Admiral Gorshkov’s successful domination of Soviet defence spending and from the Reagan administration’s plans for a 600-ship U.S. navy.

The maritime strategic world of 1982 was concerned with power vacuums, overseas positioning of troops and the ability to supply such troops. The American Southern Command was not located in Savannah but in Panama. Central Command was not to be in Kansas City but in Karachi. The Gulf Cooperation Council, backed by a permanent American fleet in the Indian Ocean, would prevent any future oil shocks. Maritime concerns not part of this great picture could be dismissed as “local.” And if the Japanese were being pressed to take on an Asian naval role, that role could be described as “Son of Seventh Fleet.”

I will argue four things in this paper: (1) that the apparent triumph of a globalist maritime perspective was no more than a surface truth in 1982; (2) that what was hidden but fundamental then is manifest today; (3) that the plans and means of the great maritime powers are not at all well adapted to emerging maritime realities; and (4) that coastal and island states possess considerable means to pursue, gain and protect their own maritime ends, in the face of the greater maritime powers.

I will focus on Southeast Asia (SEA) as a key place where seas, straits, continuing antagonisms and competing uses of the sea continue to call for attention. Southeast Asian states were prominent in framing issues and in creating facts that were addressed at UNCLOS III. SEA is mined with maritime-strategic problems: choke-points, overlapping

¹This consortium “made plain to all concerned that the question was paramount for these two powers.” T.W. Burke, “Submerged Passage Through Straits,” *Washington Law Review* 52 (1977), quoted in Phiphat Tangsubkul, “The Southeast Asian Archipelagic States” (Honolulu: East-West Centre, 1984). See also in extenso the process by which this was accomplished, in the nine years of negotiations, in *Straits Used for International Navigation: Legislative History of Part III of the United Nations Convention on the Law of the Sea* (New York: United Nations, 1992).

exclusive economic zones (EEZs), competing claims for islands, changes in naval technology and sharply increasing unit-costs for defence hardware. And SEA has seen the most dramatic changes in the role of external naval powers in recent years; the United States, for example, has moved from Subic Bay being essential to, instead, a lack of serious concern over replacing it at all.

I

UNCLOS III seemed to seal the triumph of “global necessities.” It is true that UNCLOS I (1958) and even UNCLOS III secured for the small states recognition of the 12-mile territorial seas and the 200-mile EEZs that they had been acquiring unilaterally. But the great maritime powers not only preserved the regime of innocent passage for commercial vessels through these zones and seas, but gained rights long denied to the great naval states. These rights can be summed up in the term “transit rights” for warships. The historic doctrine had been that warship passage was never innocent; it was inherently prejudicial to the coastal state. But UNCLOS III witnessed the Cold War antagonists working closely together, marshalling their allies, pressing others, until they gained the right to sail their warships unhindered through any international strait, even for submarines to travel submerged. By the nature of the case, particularly since adoption of the 12-mile territorial sea, nearly all these straits now lay in someone’s territory. But though the maritime states were given duties to observe, the coastal states were rarely supplied with any enforcement powers, to insist that these duties be performed. And any suits that are filed against passing ships must be tried according to the laws of the state whose flag the ship flies.

The greater maritime or industrial states had reason to believe that even the EEZs could be developed only with the high-priced help of the technologically-advanced states. The last gain secured at UNCLOS III by the lesser states was the concept of “archipelagic waters,” in which inter-island water is deemed to link, rather than separate, the component parts of a multi-island state.² But this right for island states to regulate all activities on these

²A full documentary history of the origin, development and new international status of the concept of archipelagic states is contained in *Archipelagic States; Legislative History of Part IV of the United Nations Convention*

essential inter-island highways was qualified almost to death at UNCLOS III. Archipelagic waters were subject not only to the regime of innocent passage but that of transit passage for warships. After all, what are Indonesian waters but a collection of straits?

Thus the picture emerges of a 1982 in which the great maritime powers had gained all they needed³ in order to go on conducting their relations among themselves with minimal interference from coastal states. Yet this picture seriously misrepresents the main trend in ocean affairs since World War II, and it provides us with few indicators about what was to take place from 1982 to 1995.

Most of the analysis of maritime-strategic events has been done by people living in great maritime or “global” states⁴ or by people who found it either natural or prudent to defer to the perspectives that seem self-evident in the great states. But just as an athlete cannot tell at once that her best performance is now behind her, so the Cold War and pre-war great maritime states were not best-placed to realize the significance of events taking place around them among the second-rank and weak and newly-decolonized nations. Our measure of significance need no longer be derived from reading press releases or even *Jane’s Fighting Ships*. We shall not go far wrong if we observe instead who are better placed in the Nineties to get their own way off-shore — the great naval powers or the coastal states.

The trend since World War II has been toward expansion of coastal-state jurisdiction. This has taken place in the teeth of great-state resistance, though (in an irony much remarked upon) it was the United States in 1945 that set off the seaward rush when it proclaimed unilaterally its own exclusive jurisdiction over the continental shelf off its own shores.

It is important to note that the law of the sea is not traditionally a matter of positive legislation but of what comes to be recognized in practice or what is not actively and effectively protested against. In the 1951 Norwegian Fisheries Case such unilateralism met

on the Law of the Sea (New York: United Nations, 1990). This is of particular interest to Canada in that India showed apparently greater concern to bring its island chains under this regime than did Canada. But in the event, only states wholly made up of islands were deemed archipelagic states at UNCLOS III.

³Consideration of maritime/coastal rivalries over deep sea-bed mining lies outside the scope of this paper.

⁴The work of Sheldon Simon comes to mind as a sustained and responsible body of work taking this view. See, for example, his “East Asian Security: The Playing Field Has Changed,” *Asian Survey* 34:12 (December 1994): 1047-1063.

a legal challenge; but it demonstrated that, unless a great state was prepared to go to war, to incur considerable odium and to undergo various sorts of retaliation, the great state might have to put up with the extension of coastal state jurisdiction. In this case, Norway successfully redefined its internal waters seaward so as to bar British and other foreign fishing vessels except on Norwegian terms.

South America's Pacific states began to proclaim offshore fisheries jurisdiction and even sovereignty up to 200 nautical miles. By 1958 it could no longer be maintained that international law sanctioned only the simple "three-mile limit" favoured by the victors of the Second World War. If maritime law describes accepted practice, then that law now countenanced a good many different limits of jurisdiction. The 1958 convention ratified tendencies and facts not at all to the taste of the greater states.

Thus far, the movement was clearly one in which coastal states enlarged what they controlled. The area open without hindrance to the great maritime powers began to shrink. They complained about "creeping jurisdiction." But the area of open seas shrank in part because the great states did not possess either the ubiquity or the sorts of weapons that could stop this growth.

Decolonization had produced a great many new states, many with considerable coastlines, and some anxious to enlarge the significance of the meagre stretches they held. Decolonization also mandated a climate of opinion on both sides of the Cold War that labelled as "neoimperialism" any major attempt to frustrate these new states. Further, the Cold War directed much thought and inventive energy into weapons focussed on the presumed intentions and capabilities of *the other side* in the Cold War. The 1956 Suez fiasco illustrated how ill-adapted these people and weapons were to the challenges presented by the decolonizing world.

Modern weaponry grew very expensive; concentration of investment on super-carriers, nuclear submarines, missiles and anti-missile defence reduced the number of places that great-power forces could be and needed to be. (Britain by the mid-Sixties pulled back from "east of Suez.") This pressure to spend on Cold War needs decreased the number of weapons that would be useful to frustrate uppity coastal states. Finally, common sense and

international opinion prevented the use of weaponry disproportionate to the alleged offences committed by coastal states or small ones.

This is not to say that such a calculus always prevented great states from trying. Viet Nam from the early Fifties to the American debacle of 1975 reminds us of how difficult it was in the greater states to see the main trend. France and the United States were not deterred from tests of strength ten thousand miles from home.

But all the advantages now accruing to small states proved stronger when they were combined with one feature of classical strategy: in a test between a great maritime power and a coastal state, it may be decisive if one can outlast the opponent. *Outlasting is not so much a function of size and productive capacity as it is the ability to stay where one is. Here the coastal state has a considerable advantage; it will always be where it is.* The great maritime state by definition has problems elsewhere. And today, for reasons outlined above, it must choose where to continue to contest matters. Think of how quickly the fruits of Desert Storm decayed. It is useless to try to fix blame here. Strong forces propel this trend.

II

Second is the matter of what was fundamental in maritime strategy since World War II. To mention Viet Nam or Afghanistan or Somalia is not to subscribe to the “musclebound giant” theory. Great states got great, after all, by being resourceful and adaptable.

Nevertheless, when we focus on maritime realities, the maladaptation in the great maritime powers stands out. The day of the great expeditionary force that makes an opposed landing and occupies a land far from the maritime power’s home will perhaps never come again. Today’s substitutes, proxy wars, have been fought by Cubans or by suborned locals; yet such wars have not prospered, but have fostered a warlordism that no one is happy with, except warlords themselves. International sanctions have rarely performed as advertised. Trade weapons are difficult to focus properly and those who would employ them are often economically vulnerable to some riposte, if not from the targets, then from opportunistic friends.

In sum, first, the weapons that great maritime states still rely upon tend to be extremely expensive. Though the great maritime states tend to have many places where these weapons could be used, one cannot use them everywhere, because of the cost. Second, even when these instruments can be brought to bear, they tend to be ill-adapted to many of the likeliest contemporary conflict sites: the Horn of Africa proves intractable to any power’s intervention and the U.S. Seventh Fleet cannot be brought to bear persuasively on copyright violations in Asia. Third, a certain democracy of weaponry has come into being, even apart from nuclear proliferation. Not only small states but even otherwise inconsiderable factions can possess themselves of sufficient defensive firepower to raise the stakes sharply for offshore intervenors. Other fundamental factors will be alluded to in a later section.

III

Thus far we have examined, from several perspectives, the limitations that inhere in perpetuating the dominance of the great maritime powers. These are difficulties that would be present even if the coastal states were as weak as they were in the mid-Fifties. Now we

must look at those characteristics of the coastal states themselves and at those features of their interaction with the system as a whole that help to explain the narrowing gap in effective power between the coastal and great maritime states. The big nations are falling back, but the little nations are coming up — not just comparatively but actually. We are observing their increasing ability to get what they want, at least in the arena of conflict between themselves and the great maritime states.

This is all that we should be required to measure — the simple ability to gain one's ends or to persevere in trying, because cumulative experience now suggests to these states that one may prevail tomorrow if one does persist. Measured by this test, the great maritime states are not optimistic; but the coastal and island states' experience is such that today's gain is seen to prepare the way for other achievements tomorrow.

Nowhere is this more evident than in the comparative inconsequence of what the major states fought for and won in 1973-82 at UNCLOS III. They gave a good deal (more than they wished) but apparently got in return a strong version of innocent passage and an unprecedented and absolute right for warship transit of international straits. Their rights were spelled out, but enforcement of their duties was left vague and minimal. On issues where they could not win (e.g., on how seabed mining would be financed and conducted) they sabotaged; or they gave with one hand while taking back with the other, as in the case of archipelagic waters.

But the underlying trends of the postwar world were not thereby repealed, or even much deflected. These trends are in favour of the coastal states and against the continued dominance of the great maritime nations. The sheer multiplication of states, of regimes that one must influence, buy off, placate, enlist, aid, combat, ignore or overthrow — this itself challenged effective management by the greater states.

Even if, for some coastal and island states, regime survival was thought to be more important than good government, and even if people's needs were neglected, regimes *did* survive. And where regimes did not survive, then elites did. Sheer experience accumulated, including living through both the favour and the hostility of this or that great maritime state.

At the end of the day, despite all the disparity in resources and in order of battle, the little states were still there. And frequently the greater state had gone home or gone away

to vex some other region. To know experientially that one can and will survive serious challenges and to know experientially the quiet gratification of an inferior state seeing off a great power is to prepare oneself for other contests.

One may also cease responding and start initiating in the international arena. It has been very minor powers — Ecuador, the Philippines, Malaysia, Malta and the South Pacific micro-states — that have taken unilateral steps to change the maritime world. Together they are gaining more of their agenda than the major powers are doing to gain or protect theirs. The small concessions to these minor states in 1958 and 1982 (for example, pollution control and the opportunity to exploit ambiguities in the language of UNCLOS III) have turned out not to be small coins at all, whereas the limits of the great states' lines of credit are now visible to all.

IV

We can begin our documentation of this double trend by looking at events in maritime SEA from the period of UNCLOS I (1958) to the present.

The Straits of Malacca is now the busiest international waterway in the world. And Singapore has surpassed Rotterdam as the most intensely-used port. The Straits are a great, sleeve-shaped body of water trending south-southeast into a narrow cuff at Singapore. Here in the early Seventies, a proposal by the maritime powers to set up an “international” regime for the Straits was pre-empted by the coastal states of the Straits area themselves, acting on their own behalf.⁵

Opposed by the great maritime nations, Indonesia, Singapore and Malaysia nevertheless made good their own regulation of the Straits. And after two Japan-bound vessels ran aground defying the new clearance regulations and traffic-separation scheme, the

⁵See Y.Y.I. Vertzberger, *Superpowers and the Malacca-Singapore Straits* (Berkeley, CA: Institute of East Asian Studies, University of California, 1984). This sober account provides a useful work-up of the regime that finally worked and was accepted. Vertzberger accepts at face value American official interpretations of American intentions. See also M. Leifer, *Malacca, Singapore and Indonesia* (Dordrecht: Kluwer, 1978) for another view, and *Straits Used for International Navigation*, *op. cit.*

Japanese began to fund joint hydrographic research for the coastal states. Thereafter everyone else fell into line.

Very large crude carriers (VLCCs) are made to go around, not through; and the extreme shallowness of the Straits makes them useless for slipping submarines through undetected. These two facts raise the maritime strategic importance of the Indonesian and Philippine passages that are the continuations of or the alternatives to the Straits of Malacca. Indonesia has a lengthy and successful record of unilaterally contesting warship passage of the Straits of Malacca; and there the great states cannot appeal to “transit passage” rights from UNCLOS III, because straits regimes already in existence in 1982 (principally Gibraltar, the Bosphorus, the Sound in Denmark-Sweden and the Straits of Malacca) are not affected by UNCLOS III.

The Indonesians are proprietors, from West to East, of the Sunda strait west of Java, the Lombok strait well east of Java, and the Ombai-Wetar complex of channels and Arafura Sea, well to the east of the main islands. The Indonesians have gone to some lengths to discourage Cold War traffic and to gain revenue from VLCCs and other passing vessels. They have briefly closed their own straits at various times. They have begun to establish generous sea-lanes provisions in these straits, but have insisted that these regulations be adhered to. Careful monitoring of vessel-related pollution is in the offing. All this is, if you like, an aggressive Indonesian reading of the provisions of UNCLOS III — very much in the style of the American reading of GATT or NAFTA. And this style is very much in keeping with the expansion of coastal state jurisdiction that is so marked a feature of the postwar world.

One must ask, however, if this is not all a house of cards. Cannot the great maritime powers, at need, force a passage denied to them by regulations, by mines and by shore batteries? The short-range answer must be “yes.” But such a forcing of one of these straits (or of one elsewhere) rather gives up what contemporary great-state doctrine says that maritime strategy is all about: surprise, uncertainty, speed and stealth. And other coastal states will ponder the lesson to be drawn. Will the perceived lesson be that the great powers can give them a bloody nose? Or will it be that it is best hereafter to sup with a long spoon when dealing with these great powers? The lesser states are more and more becoming their

own markets; there are now 500 million people in SEA. The lesser states' *need* of the great maritime powers is growing smaller.⁶ The contrary may not be true. And which great state wishes to forego close relations with a straits-holding nation when the great state's own rivals might profit from *not* forcing the straits?

Finally, there is the disproportion in *stakes*: to a great power, a strait may be of great importance as a choke-point to be denied to an enemy. But the coastal state may regard the same strait as an essential highway. Which side, in the long run, is more likely to enforce its own view — a state ten thousand miles away or one that is *there* always and that has a vital, permanent interest in controlling that strait?

One can also enquire about other sorts of naval display. Major naval craft are becoming expensive not only to design, build, equip, maintain and deploy but also to *protect*. Comparatively cheap platforms and munitions are capable of challenging and impeding the activities of naval concentrations. Suppressive bombardments of hostile shores remain possible, of course, but are unlikely to win friends among other coastal states. Distant deployment has become more expensive because fewer states are willing to act as overseas warehouses of naval stores for the great maritime powers. Widely-publicized American agreements with Singapore and Thailand seek to take up some of the slack created by the American loss of Subic Bay. But close inspection of these agreements shows that there is less in them than meets the eye.

One notices also that cost-benefit analyses are beginning to have some influence on naval forward planning in the United States; what was regarded as crucial or essential for the navy in better times now goes unprovided. For example, little has in fact been done to provide a forward substitute for Subic Bay. There are also sharp pencils in the defence establishments of Southeast Asian and other coastal nations. To the degree that they can follow the debates about naval budgets within the great states, they can estimate their own ability to allow, or to impede, the activities of the great maritime states off their shores. The resources of the weak have a long-term value that the great powers too often overlook.

⁶Growing East Asian economic autarky is examined, in the context of U.S.-Chinese relations, in "Artillery Exercises," *Far East Economic Review [FEER]*, 30 May 1996, 49.

But the Spratly Islands in the South China Sea can be and often are taken to be a reminder of the enduring characteristics of classical maritime strategy, the need for traditional alliances or patron-client relations, and the danger of power vacuums. Concretely, the case of the Spratlys is sometimes brought up to let the air out of portrayals of ASEAN as resolute, gaining strength, etc. That bluff, it is said, is being called by Chinese expansion into the Spratlys.

What are the Spratlys? Like previous flashpoints — Fashoda, Sarajevo 1914, and the matter of Jenkins’s ear — the Spratlys are an inconsiderable provocation. Physically they are an abomination, a welter of reefs, islets, rocks, tiny islands (only one with fresh water), none as much as ten metres above mean high water — on the whole an area full of strange, fickle currents and surges that are able to strand almost any vessel on a reef. The Spratlys run from 7 degrees North to 12 North, and from 112 East to 118. Five nations, heavily armed,⁷ stare at one another from hot, damp bunkers. Yet the only reliable resource that the Spratlys have ever generated is wrecked ships.

Why, then, does anyone care about these malignant flyspecks? Apart from their status as hazards to navigation for the two hundred ships that pass the Spratlys daily,⁸ they remained of little interest except to specialists⁹ until the advent of the 200-nautical-mile EEZ and until the Chinese began systematically to advance claims and to plant installations in the Spratlys after having earlier, in 1974, forcibly evicted the Vietnamese from the Paracel islands, further north. It is not clear who in the Chinese government is behind all this movement southward, or who runs maritime matters in several naval districts, or whether China has in fact departed from its historic norms, in order to take up far-flung military

⁷Even the near-defenceless Philippines has concentrated a large proportion of its front-line military resources and supply capability on its widely dispersed holdings in the Spratlys.

⁸Kriangsak Kittichaisaree in “Implications for the South China Sea of the Entry into Force of the United Nations Convention on the Law of the Sea” at non-governmental conference on Managing Potential Conflicts in the South China Sea, July 1995, 3; cited in Craig Snyder, “Making Mischief in the South China Sea?” CANCAPS Papier #7 (North York, Ont.: Canadian Consortium on Asia/Pacific Security, August 1995).

⁹For general background and for a close reading of post-World War II events, see M.S. Samuels, *Contest for the South China Sea* (London: Methuen, 1982), especially chapters 5 and 7.

actions.¹⁰ That is to say, thinking about China and the Spratlys is as hazardous as navigating *in* those waters, where in many places Admiralty charts abandon any pretence of markings and just write in the words, “Dangerous Ground.”

Nevertheless, if I had to sort out the issues and the possible outcomes in a few minutes, I would say that the Chinese will probably think a very long time before they evict anyone’s garrisons, except possibly the Vietnamese and Taiwanese. But even here, Viet Nam’s new membership in ASEAN constitutes an additional barrier to China ejecting Hanoi’s garrisons forcibly from the southernmost Spratlys. And will the mainland be in any hurry to introduce a new complexity in its relations with Taiwan? We can note also that the strength of the Taiwanese navy would require a major campaign against it by Beijing. Heavy casualties on both sides would set new imponderables in motion on both sides of the Strait. As matters stand now, apart from Beijing-Taipei rivalries over specific geographical features in the Spratlys, the general stance of Taiwan toward the Spratlys is one that bolsters Beijing’s case against third parties: Taiwan too claims the lot; it was the Nationalist government on the mainland that first enunciated the claim that both Beijing and Taiwan make today.

My reasonably informed judgement is that the Chinese “historic” claim to the whole Spratlys and the South China Sea is insupportable in history and in fact. Guns could make it real enough, but not history. And, unless the Chinese are about to embark on an unprecedented move to take over all of SEA directly, the costs of a Spratlys take-over seem disproportionate.

Instead, commercial exploitation beckons all the contestants. And the Chinese have offered joint exploitation, even while being unyielding about sovereignty. Partly in response to this Chinese stance, ASEAN now presents a more common strategic front than once it did. Only Thailand, Laos and Cambodia are unaffected by the Chinese claim to the whole of the Spratlys.

But it was in the waters between Thailand and Cambodia that Chinese patrol vessels have seized two cargo ships, taken them all the way to China and confiscated their cargoes,

¹⁰The press follows these movements with alarm but rarely manages to discern a consistent stance on the part of any of the players in the South China Sea. A representative sample: “Territorial Imperative,” *FEER*, 23 February 1995, 14; “A Line in the Sand,” *FEER*, 6 April 1995, 14; “Fear of the Dragon,” *FEER*, 13 April 1995.

covering this bizarre behaviour with a tale about illegal activities in Chinese waters.¹¹ So really only land-locked Laos turns out to have no immediate stake in what is going on in the South China Sea.

Thus far, ASEAN has proceeded without major reference to the American navy. This has led some Americans to dismiss the ASEAN Regional Forum, the new ASEAN front for discussions with its “dialogue partners” on strategy, as a mere talking shop.¹² But the ASEAN leaders may be wiser here, even though, on the surface of the thing, the Spratlys seems to be one area in which only major force could stop the Chinese.

At least four things inhibit ASEAN leaders from recourse to the American fleet. First, there are few issues in the region that the American fleet can settle or even influence in a major way without a war effort far larger than Desert Storm — and it would be a war effort in which (apart from Taiwan) the Americans would lack allies.¹³

Second, American aid comes with strings. But American interests and Asian interests are likelier to clash than to run in parallel. Will Asian leaders follow American perceptions of the greater good, in preference to their own — over the Spratlys?

Third, despite the noises from partisans of an activist American stance in Asia, the American government as a whole, over several administrations, has shown little enthusiasm for new missions in Asia. Repeated American statements of concern about “freedom of navigation” in the South China Sea do not constitute advances on previous American positions or commitments, but retreats from the days of SEATO and Viet Nam and even from more recent dicta of Gulf War vintage. The likelihood of further restrictions on American forward basing and pre-positioning in Japan and the lack of priority given by the

¹¹See “Pirates or Police?” *FEER*, 13 July 1995, and a Deutsche Presse Agentur report appearing in the *Globe and Mail*, 25 July 1995: “Chinese Warships...”

¹²See for example “The China Challenge” by Robert A. Manning and James J. Przystup, former U.S. state department advisor and Department of Defense and State department staffer respectively, *FEER*, 13 July 1995, just prior to the ASEAN ministerial meeting in Brunei, just after which China declared its readiness to adhere to international norms in settling South China Sea problems.

¹³One must distinguish the oft-repeated acquiescence of Asian leaders in the American desire to remain a presence in East Asia from any willingness to follow American perceptions about vital issues. Officials from even those nations with the much-heralded, though partial, basing and repairing agreements with the U.S. will say privately that, barring a general Chinese invasion of SEA, they can envision almost no circumstances in which they would fight China beside Americans.

Americans to alternatives to Subic Bay speak louder than generalized assurances about an American desire to protect shipping.

And fourth, the Spratlys really do not lend themselves to a tidy intervention by anyone. The waters are shallow and treacherous, unsuitable to both submarines and heavy units. In the case of the Americans, supply lines would be long indeed, since Japan would not likely allow forward staging from Sasebo and other ports. Attempts to suppress Chinese air and naval resistance would likely take the Americans to Hainan and Guangdong and thus into a major morass. And some day the Americans would go home and leave an unresolved mess, as they did in Lebanon and Viet Nam and after Desert Storm and as they fear doing after Bosnia. Who would be left but the regional states and China, still facing one another across the South China Sea? A better prospect than that for Southeast Asian nations is to waltz with the Chinese now about sovereignty and exploitation and to see what tomorrow brings — including a new government in China, or a second new one soon after the first. In the medium term, perhaps a joint economic regime can have been erected and a political arrangement that “takes note of” the Chinese claim. This is untidy, compared to the immense satisfactions of issuing foreign policy “doctrines” every few years. But it may suit the realities of the South China Sea very well.¹⁴

The most recent Chinese responses both recognize the utility of multilateral discussion (in place of rigid bilateralism) and offer adherence to Law of the Sea norms for the means to be employed. That these Chinese statements (and they remain statements in mid-1996) were made in the meetings of ASEAN Regional Forum seems to validate both the non-confrontational style of ASEAN and the fact that the Forum would not exist apart from perceived difficulties with China.¹⁵

¹⁴For similarly unalarmed prognoses about a Spratlys *modus vivendi*, see Koichi Sato, “The China Card,” *FEER*, 13 April 1995, 32; and Mark J. Valencia, “How to Carve Water,” *FEER*, 6 June 1996, 32.

¹⁵On the run-up to this meeting, see the extended analysis “Treading Softly,” *FEER*, 3 August 1995 and the statements by Chinese officials then and subsequently. Craig Snyder, *op. cit.*, provides the texts (from Reuters). Foreign minister Qian Qichen said that China was “willing to discuss the sovereignty dispute over the Spratlys based not only on China’s historic claim but also according to international law.” Shortly thereafter Shen Guofang, speaking for the ministry, stressed that “China is ready to work together with the countries concerned to resolve appropriately the relevant disputes according to recognized international law, the contemporary law of the sea including the basic principles and the legal regime defined in the UN Convention [of 1982].”

In May 1996 China formally ratified the Convention (which Canada and the United States have yet to do), drew the coastal baselines (according to the Conventions's guidelines) necessary to define a twelve-mile territorial sea and proclaimed a 200-nautical-mile EEZ based on those lines. These appear to be stability-enhancing moves that signal a normalization of the Spratlys issue.

V

One more element still requires to be inspected, for the larger issue of maritime strategy in general and in respect of SEA. This is *archipelagic waters*, first as it affects open-ocean clusters and then as it conditions SEA.

The first state to ratify UNCLOS III was Fiji, on the very first day that the new Convention was opened for signature.¹⁶ This enthusiasm represents nicely the real gains achieved by isolated island clusters, to whom were turned over not only vast EEZs but more direct control of inter-island waters — till then fished with impunity by Japanese, Russian and American vessels. For states like Kiribati and Tuvalu, recognition of archipelagic waters is not only a psychic boost; it is economically comparable to the discovery of oil on native reserves in North America.

But the Philippines and Indonesia lie across major trade routes that will only grow still further in importance as South China industry comes on stream. These two states lie close to contentious strategic locations and are themselves significant actors in the region. What has recognition of archipelagic waters done for them?

Indonesia is much the larger and the one through which the most sea-borne commerce now flows. Given its thousand-kilometre frontage on the Straits of Malacca, Indonesia should count as a coastal state of some consequence, as well as an archipelago. Indonesia also contains the three next-best routes between Middle Eastern oil and Asian industry and population centres. The most forceful of the Straits nations in creating the traffic scheme that

¹⁶Signature comes at the conclusion of negotiations that result in an agreed text. Signature does not require or predispose signatories to proceed to ratification. In the case of the 1982 Convention, it took nearly twelve years to achieve sufficient ratifications to bring the Convention into force. But Fiji managed to accomplish both acts on the first day possible for either action.

governs the Straits of Malacca, Indonesia also demanded successfully that the United States notify Indonesia when its warships proposed to transit the Straits of Malacca. This requirement was backed by a threat to deny the Straits to warship passage unless notification was forthcoming. This threat was believable because of the numerous ways Indonesia could impede commerce as well as naval craft. Commerce did not want to be disrupted on a point of American naval honour. Nor did commercial and naval planners overlook the other Indonesian cards: possession of the other three straits between the Gulf and East Asia.

In 1994 Indonesia began to lay out sea-lanes for traffic in the three straits.¹⁷ But it is hard to say that the 1982 Convention has either caused or modified Indonesian conduct in these straits. The Malacca regime antedates UNCLOS III and is protected from its transit passage provisions. Indonesia has closed the other straits unilaterally on several occasions — three of them before the archipelagic concept was recognized. These have all been brief closures; but the last two were explained by the need to hold naval manoeuvres in those areas. This explanation calls attention, of course, to the presence of substantial naval units in the area, capable of enforcing the suspension of traffic.

Indonesia is also the stopper in the Australian bottle: 60 per cent of Australia's traffic goes through Indonesian waters. So Australia, with less than a tenth of Indonesia's population and as exposed as it is, is not going to aid the greater powers to challenge Indonesian actions. And the great naval states must ask themselves whether, on a given Thursday, their desire to assert a principle is worth more than the uproar that would follow a naval challenge to Indonesian demonstrations of sovereignty. But while Indonesia could be viewed as vigorously exploiting the few means apparently left to coastal and archipelagic states after UNCLOS III to protect themselves, in fact little that Indonesia has done seems to rest itself on the provisions of UNCLOS III. What does not rest on a Convention will perhaps better resist being taken away by another Convention.

The Philippines, once economically more powerful than its neighbours, is now the laggard. After the Second World War it staked everything on funding economic

¹⁷See "Troubled Waters," *FEER*, 5 January 1995, 18-20. The *Globe and Mail* story of 16 May 1996, "Indonesians Pressed...", indicates that Indonesia has explored the detailed requirements with interested parties since that first announcement but has remained insistent on balancing commercial and foreign warship desiderata by Indonesian national objectives.

development from reparations supplied by the United States and Japan — reparations the Philippines did not get. While the Philippines' neighbours sweated capital out of the labour of their people, the Marcos kleptocracy siphoned off crucial decades and billions of dollars. By 1982 Philippines defence capability was markedly out of phase with its location. All the straits we have mentioned feed through the Philippines or directly along it. The best east-west routes from SEA go through the Philippine passages. And the nation still had, in 1982, unresolved territorial claims with Malaysia over the large territory of Sabah in North Borneo and with several nations over the Spratlys.

Yet the Philippines could muster not even a squadron of seaworthy blue-water naval vessels. Its air patrol and enforcement capability was rudimentary. Its radar was so poorly maintained that the nation had to rely on American radar that was very much concerned with American priorities. One of the world's longest coastlines (11,000 miles) lay open to the region's notable perils of smuggling and ruthless piracy.

Still, the Philippines did not lack ideas. Defined in the U.S.-Spanish treaty of 1898 by lines drawn in the *sea*, the Philippines could plausibly claim that all of its waters had the status of the Gulf of St. Lawrence, Puget Sound or the Firth of Clyde. The later archipelagic claim uses analogies of this sort; inter-island waters are not straits, not high seas, but subject to the "historic bays" doctrine employed in the West to close Hudson Bay or the Norwegian offshore waters. This is an argument both ingenious and, possibly, true. It was, in any case, embodied in legislation (Republic Act 3046 in 1961). But the Philippines, unlike Indonesia, rarely developed the means to give practical effect to these convictions.

The outstanding exception to this is the Philippines' pursuit of its Spratlys claim. Here the Filipinos have not hesitated to move in strongly, to fortify islands, build an air strip and even remove Chinese installations and markers after the Chinese had quietly established themselves on Panganiban Reef — Meiji to the Chinese and Mischief Reef to the world's press.

The Philippines' claim in the Spratlys follows closely the lines of Tomas Cloma's quixotic personal claim to the area as *res nullius* in 1956. I have seen atlases published in Europe and North America that show the Spratlys as the "Palawan Islands (Philippines)." Most of the islands claimed there by the Philippines lie within the Philippines' 200-mile

EEZ. No other claimant's home territory lies closer than 200 miles to the nearest part of the Spratlys.¹⁸ But all these nations base their claims on occupation or on history, not on propinquity. The new Law of the Sea defines the stakes here: outcrops that remain dry at high tide and that are capable of an economic life of their own can generate both a territorial sea and an EEZ of their own.

Why does the Philippines suppose that it can maintain itself among better-armed and more powerful competitors in the Spratlys — above all, China? First, there is the historic circumspection of China about direct force projection. When indirect means have proved insufficient, the Chinese typically have been patient.¹⁹

Too, the Chinese lack the ability to maintain air superiority in the further South China Sea and have still deferred building or buying the mid-sized carriers that might have overcome this difficulty. Perhaps the problem of protecting attractive targets of that sort in these waters vexes the Chinese as much as it does the Americans.

Most of all, there is no clear and important interest to be gained by seizing the whole of the Spratlys, no gain that outweighs the grave disadvantage of increasing ASEAN's cohesion and re-invigorating its anti-Chinese bias, so recently overcome.

The Filipinos can be seen as exploiting all this from a position even weaker than that of the coastal states. The Chinese seem to gain more by bearing with their inconvenient neighbours in these mildewed flyspecks. And on the Spratlys the Filipinos can play the

¹⁸Only the "overseas" parts of Malaysia (Sarawak and Sabah) lie at their margins as close as 200 nautical miles to the drying reefs of Ardasier Bank and Swallow Reef, in the extreme southwest of the Spratlys. Here, appropriately, the Malaysians have turned a reef into an underwater resort. Other features closer to Sabah than 200 miles lie well north of the equidistance line between the Philippines' and Malaysia's EEZs.

¹⁹The May 1996 Chinese adoption of coastal baselines, territorial sea and 200-nautical-mile EEZ, under the provisions of UNCLOS 1982, while it included an attempt to treat the Paracel islands (between Hainan and the Spratlys) as an archipelago, did not connect up the nine distinct line-segments that China sketched in fifty years ago in order to indicate (in an unspecified way) the extent of its claim in the South China Sea.

Until it does that and until it relates those segments or that continuous line to the provisions of the 1982 Convention, no one knows yet what the Chinese mean by their South China Sea claim. A staff-drawn map in *FEER* (27 April 1995, 28) treats those line-segments as if they had been connected by the Chinese government. But this is not so; and the lack of such action appears to be a useful mark of Chinese caution — as distinguished from opportunistic, short-run efforts like positioning themselves on Panganiban Reef, at the furthest extremity of the Spratlys from China proper. Samuel G. Wu and Bruce Bueno de Mesquita, in "Assessing the Dispute in the South China Sea: A Model of China's Security Decision-Making" *International Studies Quarterly* (1994) 379-403, predict that non-military means will be employed to advance China's interests in the area.

cornered-mouse card. The Philippines can picture itself as (and may *be*) locked in by domestic politics to a militant stance. And the newest Chinese installations on the very doorstep of the major Philippine island of Palawan in fact gave very little room for Filipinos to manoeuvre politically; they had to choose: either raise the stakes or abandon the game.²⁰ However motivated, the Philippines' riposte has succeeded so far.

This set of circumstances helps to illustrate the room that exists to be exploited today by the weak. They can frustrate or deny things to the greater states because the cost of reaching out to squash minor opponents turns out to be imponderably large. Great states can learn this lesson by prudent calculation; or they can learn it more expensively. There are unrepealable advantages that rest with the coastal states and their island neighbours. If even the United States can learn from experience, as now seems to be the case, more rational societies may already have the lesson in hand: On maritime strategic matters in our time, bet on the home team.

²⁰Major General Carlos Tanega, in charge of the southwest Philippines military command area, on the tense, hour-long confrontation of Philippines and Chinese naval units: "We were eyeball to eyeball. We did not blink." *FEER*, 1 June 1995.

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