

## The Law of the Sea

*Major nations have the most compelling reasons to participate in the race for economic predominancy, and all nations have a vital stake in the outcome. Major nations are compelled to compete in the economic-power contest because economic power's convertible into military power. A nation that is not a first-class economic power is most unlikely to become a first-class military power. A nation that is not the dominant economic power will not be the dominant military power. "Economic power" has become a metaphor for "military power." The drive for military supremacy is thinly disguised as an economic contest. What a nation's military high command can achieve in wartime is largely predetermined by the nation's capacity to generate economic power in peacetime. Old terms like "preparedness" and "mobilisation" have become misleading. Nations that cannot generate first-class economic power in peacetime cannot be put in a state of preparedness.*<sup>1</sup>

A little noted yet highly significant event occurred on May 6<sup>th</sup> of this year. Vietnam and Malaysia agreed to jointly lodge an understanding reached on their continental shelf limits in the South China Sea with the United Nations under the UN's Convention on the Law of the Sea (UNCLOS).<sup>2</sup> Amongst other things, this Convention formalises the recognition of coastal states' exclusive economic zones (EEZs) extending up to 200 nautical miles from

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<sup>1</sup> Philip D. Bradley, "The Constitutional Foundations of American Economic Power."

<sup>2</sup> <http://www.un.org/depts/los/index.htm> Currently, 156 states plus the European Union are party to UNCLOS and of the major industrialised states and maritime powers, only the United States has yet to accede (Washington has agreed to sign up but Congress has yet to ratify the decision). As Chatham House notes: "The Convention deals with a wide range of issues covering the oceans, from navigational rights to national jurisdiction over marine resources, to protection of the marine environment and compulsory and binding procedures for the settlement of disputes.... [It] is continuously developing and there are many gaps and untested areas of marine governance. One of these is in its provisions relating to the exploitation of the outer continental shelf, and particularly Article 82, in which are principles for the sharing of revenues from mineral exploitation (including oil and gas) on the outer continental shelf extending beyond the 200-nautical-mile limit. Under the Convention, a standing Commission on the Limits of the Continental Shelf is established to review the data and information submitted by coastal states and make recommendations to them in accordance with Article 76 of the Convention on the delineation of the outer limits of the continental shelf. Under Article 82, states are required to contribute a proportion of the revenues they generate by exploiting the outer continental shelf beyond the 200-mile limit for the benefit of the international community as a whole."



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their coastlines. However, UNCLOS goes further and also allows states to extend their limits to up to 350 nautical miles as long as they can demonstrate (subject to various scientific and technical verifications) that their continental shelves extend further than the normal 200 nautical mile metric. The timing of Vietnam and Malaysia's submissions was in turn determined by the provision that countries which ratified the convention prior to May 13<sup>th</sup> 1999 had ten years to submit their claims.

Aside from being a rare example of two ASEAN countries actually cooperating on something<sup>3</sup> the most notable (and predictable) outcome was the reaction of China. Although Beijing acceded to UNCLOS in May 1996, it has always resolutely opposed a multilateral approach to dealing with overlapping claims in what it views as its own backyard. Instead, the PRC has always preferred to pick off countries in the neighbourhood one-by-one either via negotiations or by shows of force.<sup>4</sup> Beijing reacted to the

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<sup>3</sup> And let us hope we see a lot more of this in future years since only by pulling together and creating a true common market can the grouping seriously hope to act as a credible economic counterweight to China. The thumping re-election of SBY in Indonesia raises the possibility that a stronger and more confident Indonesia might help push for more assertive and coordinated ASEAN for the grouping has always been at more functional (everything is relative) when Jakarta has been more comfortable in its own skin. Set against this, ASEAN has grown a lot larger and potentially even more fractious as a result. Nobody seems quite to know how to deal with Myanmar while Vietnam has become increasingly assertive as its economic power has grown and sees itself as a major player in its own right.

<sup>4</sup> The latter approach has been deployed especially when it has been dealing with weaker maritime nations such as the hapless Philippines, and in earlier times, a far less powerful Vietnam. You may recall China's 1995 establishment of a "fisherman's shelter" on Mischief Reef in the Eastern Spratlys which Manila huffed and puffed about but had little military wherewithal to counter. The Philippines continues to put down its legal markers as a result and in February 2009 its Congress passed a Baseline Bill (China and Vietnam have both protested) which classifies the disputed Kalayaan Island Group (as the Spratlys are known locally) and Scarborough Shoal as "a regime of islands under the Republic of the Philippines." As for run-ins with Hanoi, China also seized (and has occupied ever since) the Paracel Islands from Vietnam in 1974. The two countries also faced off militarily over the Spratlys in 1988. For the full gamut of overlapping claims and festering disputes in the South China Sea we would steer you in the direction of this tad dated yet still extremely comprehensive article from Jane's Intelligence:

[http://www.janes.com/security/international\\_security/news/jir/jir001027\\_1\\_n.shtml](http://www.janes.com/security/international_security/news/jir/jir001027_1_n.shtml)

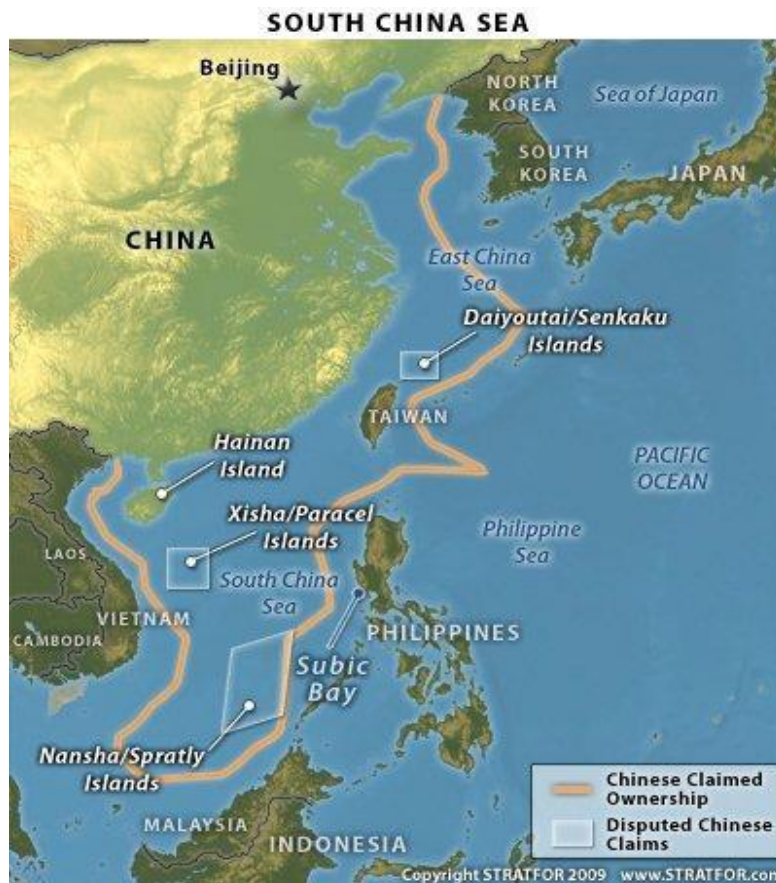


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Vietnamese-Malaysian submission with howls of indignation with Foreign Ministry spokesman Ma Zhaoxu railing that: “China has indisputable sovereignty, sovereign rights and jurisdiction over South China Sea islands and their adjacent waters.” Indeed it seems increasingly likely that because of Chinese objections, the U.N. will not now consider the joint Vietnam-Malaysia submission.

For a country that constantly professes a mantra of “Peaceful Rising” and claims it has never been, and will never be, an expansionist colonial power, China sure has some far-reaching and arguably rather spurious territorial claims.<sup>5</sup> The map below, from the excellent Stratfor,<sup>6</sup> shows just how far from its coastline Beijing’s claims extend.

China sure has some far-reaching and arguably rather spurious territorial claims



<sup>5</sup> It is also sure spending a lot of money on developing its military capabilities.

<sup>6</sup> [www.stratfor.com](http://www.stratfor.com) We were advised very early on in our career to never read anyone’s research but our own but this is one exception we have always made.

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Most of these claims are based around archaeological finds of Han Dynasty pottery which China uses to demonstrate that outlying islands in the region have been contiguously part of the Middle Kingdom for almost two millennia. Based on such logic, Mongolia can fairly lay claim to the whole of China but of course logical consistency rarely intrudes into such discussions. In reality, the claims are based on defence prerogatives, perceived spheres of influence and natural resource exploitative potential.<sup>7</sup> And as such, Beijing's stance is hardly different from any other great power over the centuries.

A tad strange perhaps for a country that constantly professes a mantra of "Peaceful Rising" and claims it has never been, and will never be, an expansionist colonial power

With the notable exception of the Ming Dynasty Admiral Zhang He-led expeditions in the early 1400s, China has rarely focussed on projecting naval power much beyond its immediate coastline.<sup>8</sup> The country's priorities have historically been to maintain the internal integrity of the Han heartland,

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<sup>7</sup> As we discussed a few weeks back in "A Greater China Co-Prosperity Sphere", May 4<sup>th</sup> 2009, Meiji Japan also sought to pursue a peaceful rising policy in the immediate decades after the Restoration but increasingly bumped up against counter-claims to its stated spheres of influence both from the foreign colonial powers and its Asian neighbours. The result was growing military assertion. We noted at the time that whatever the merits of the Huiyuan-Coca-Cola deal, knocking it back was a seriously dumb action since by labelling a fruit juice manufacturer as a strategic asset, it opened the door for other countries to offer up similar protectionist rationale for blocking Chinese acquisitions. The collapse of the putative Rio-Chinalco deal is a case in point (albeit market action played its part) but if this is the beginning of a trend of preventing China from deploying its accumulated monetary resources into physical assets, it may germinate a significantly more robust approach over time. The recent detainment of Rio's Chinese-born, Australian-citizen Stern Hu is potentially a throwback to 1993 when James Peng, a similarly Chinese-born Australian was seized by Chinese security officials in the Portuguese enclave of Macau, bundled across the border and charged with embezzlement and misappropriation of company funds. Subsequently, after two years in detention, he was handed down a sixteen-year jail sentence, based on laws passed sixteen months after his initial detention. He was eventually released in 1999 but the message to ethnic Chinese was that you can take up a foreign passport but we will still consider you Chinese when it comes to the law, however, we interpret it.

<sup>8</sup> The Zhang He voyages across Asia and to Africa and the Middle East had the dual function of showcasing Chinese Imperial splendour (and exacting tribute) and further developing trade, but their state-sponsored nature made them exceptional. Chinese traders have interacted with their neighbours for millennia but this has traditionally been independent of or indeed in direct contradiction to Imperial edicts.



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control the buffer states which potentially provide a launching pad for land invasion – hence the strategic importance of Xinjiang and Tibet; analogous to Russia’s imperatives in Ukraine and Georgia – and defend its coastlines from foreign interventions.

As Stratfor noted in a fascinating three-part report *China’s development of a blue-water navy*:<sup>9</sup> “the constant threat to China’s long land borders, that has always won out over the development of an expeditionary navy – particularly when there is no real economic benefit from or need for state-sponsored maritime activity.... Given the cost and scale of China’s land-based defence priorities, protecting the coasts was often done administratively (limiting trade and foreign concessions), or by relying on the size of China’s population as a deterrent to invasion. China rarely threw substantial funding and development into a navy, and when it did, it was almost always used for coastal defence.”

Nevertheless, the past thirty years has seen China’s (re)emergence as a serious trading power with a growing interest both in guaranteeing the openness of sea-lanes and exerting its claims to resource deposits across areas it deems to be within its natural sphere of influence. Such interests and ambitions do not necessarily have to clash with those of its neighbours or indeed of Asia’s current maritime hegemon, the US. For example, China has recently been highly cooperative in deploying ships to help with anti-piracy operations off the coast of Somalia<sup>10</sup> while it has at least not overtly obstructed recent American-led initiatives to prevent sea-borne North Korean weapons proliferation. It has also expressed a desire to cooperate with its neighbours to jointly exploit resources in disputed areas, for example signing a June 2008 joint gas exploration deal with Japan, though as the FT noted the other week, follow up action has come to naught.<sup>11</sup>

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Set against this, the People’s Liberation Army Navy (PLAN) has been aggressively building out its capability to at least operate a sea-denial strategy to American naval operations in the South and East China Seas. Beijing is still many, many years away from having the capability to match the US’ prowess – see the chart on the next page to get an idea of just how

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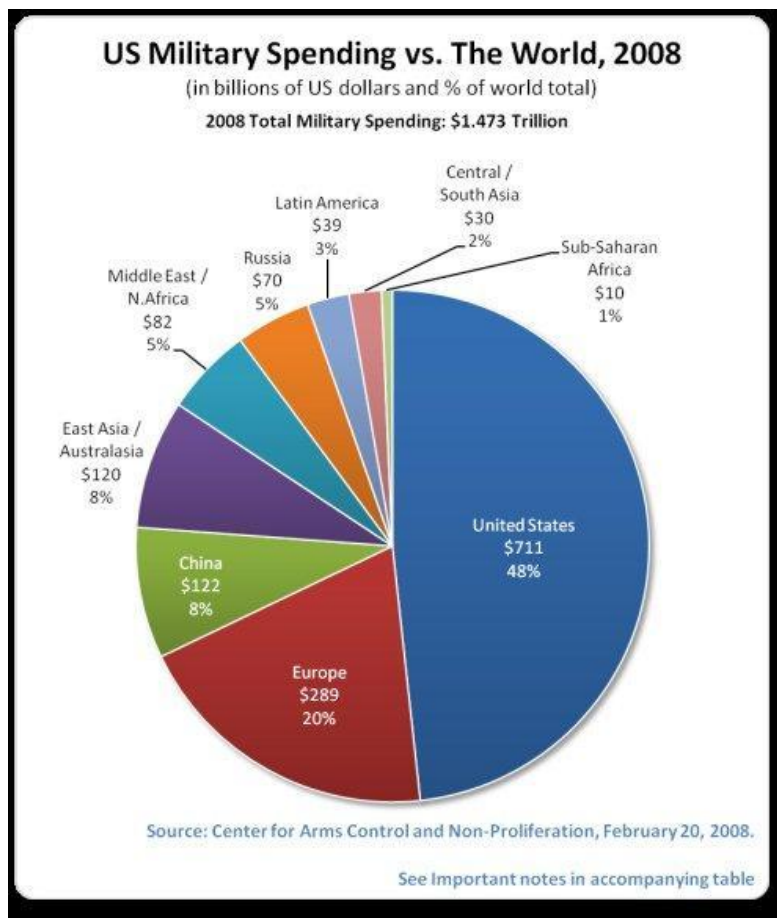
<sup>9</sup> March and April 2009, available for download at the aforementioned website.

<sup>10</sup> This has provided China both the opportunity to demonstrate that it is a good global citizen and the ability to test out its long-distance deployment and projection capabilities.

<sup>11</sup> “End the go-slow on gas in the East China Sea”, July 1<sup>st</sup> 2009, available at [www.ft.com](http://www.ft.com)

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much more the Americans spend on defence than any other country; weapons are paid for in real not PPP dollars. However, its capability to conduct asymmetrical countermeasures to American manoeuvres using destroyers, submarines and cyber-warfare<sup>12</sup> is growing rapidly, and it has been steadily cranking up its harassment of US warships in the region in recent years.



China's long-term vision is to replace the Americans as the region's dominant naval power as the result of US economic decline and political distraction, and its own build-out of economic and military capability. How the rest of the region views such a prospect and whether it is willing to act to counter China's rise remains unclear. Anti-Americanism and China-boosterism are increasingly popular intellectual pastimes both within and

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<sup>12</sup> A favoured route of the North Koreans too if its alleged involvement in Seoul's recent IT travails is anything to go by.

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outside of the region while, of course, no-one wants to offend Beijing or Delhi. However, although everyone is more than happy to accept the economic benefits emanating from China and India's economic rising, we suspect the reality is that the majority of smaller countries, if pressed, would still plump for relatively neutral and benign US hegemony over that of any of the other potential claimants. (Offending Tokyo is a somewhat different matter though given its increasingly gerontocratic state, few are realistically nervous about a resurgence of Japanese militarism at this juncture. Nevertheless, Japan's serial inability to offer a proper and sincere apology for its wartime conduct and to rein in its wilder nationalists<sup>13</sup> continues to provide its neighbours with a ready stick to beat it with.)

Beijing has also been extending its influence further west and in doing so is increasingly bumping up against the interests of an increasingly unnerved India. The rationale is that with forty percent of global trade passing through the Strait of Malacca, China worries greatly about disruptions to its supply chains and has sought to diversify its trade routes through central Asia (the centrality of Xinjiang again) and across to ports on the Indian Ocean.<sup>14</sup> India in turn is also rapidly building out its naval capabilities

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<sup>13</sup> We would recommend that when you are in Tokyo next you should visit the privately-funded Yasukuni Shrine Museum. The authorities defend its existence in its current form on the basis of free speech but imagine the outcry if a privately-sponsored Holocaust denial museum were to open in Berlin. A visit to the Yasukuni museum a truly eye-opening experience and readily explains why so many of Japan's neighbours still feel so aggrieved about the Imperial Army's actions of the previous century.

<sup>14</sup> Writing in the March/April 2009 edition of *Foreign Affairs*, "Center stage for the 21st Century" available at [www.foreignaffairs.com](http://www.foreignaffairs.com), Robert Kaplan notes that: "The Chinese government has already adopted a 'string of pearls' strategy for the Indian Ocean, which consists of setting up a series of ports in friendly countries along the ocean's northern seaboard. It is building a large naval base and listening post in Gwadar, Pakistan, (from which it may already be monitoring ship traffic through the Strait of Hormuz); a port in Pasni, Pakistan, 75 miles east of Gwadar, which is to be joined to the Gwadar facility by a new highway; a fuelling station on the southern coast of Sri Lanka; and a container facility with extensive naval and commercial access in Chittagong, Bangladesh. Beijing operates surveillance facilities on islands deep in the Bay of Bengal. In Myanmar, whose junta gets billions of dollars in military assistance from Beijing, the Chinese are constructing (or upgrading) commercial and naval bases and building roads, waterways, and pipelines in order to link the Bay of Bengal to the southern Chinese province of Yunnan. Some of these facilities are closer to cities in central and western China than those cities are to Beijing and Shanghai, and so building road and rail links from these facilities into China will help spur



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(albeit its resource constraints are more binding) and is also nurturing ever closer relationships with Myanmar, irrespective of its democratic imperatives.

On the subject of unsavoury regimes, let us conclude by steering the conversation back to Pyongyang. China has traditionally tolerated Pyongyang – ok they are as close a lips and teeth – since a divided Korea has provided a useful buffer against an American ally (and few people in the region want to see a more powerful, united Korea anyway given the inherent prickliness of Koreans on both sides of the parallel). It has also taken a rather narrow view that DPRK weapons programmes would never be used against Beijing (Tokyo and Seoul have always seemed the more likely candidates) so therefore it would protect an errant little brother who was useful as an irritant to the PRC's main rivals. And finally, the last thing China (or any of the neighbours for that matter) wanted was an economic implosion on its borders.

**China has traditionally tolerated the antics of Pyongyang**

Beijing's miscalculation, in our opinion, has been to underestimate the impact that Pyongyang's increasingly belligerent and serially mendacious behaviour would have on military investment across the region. Tokyo has probably rightly believed that if Kim Jong-il was going to fire off a nuke at anyone, it would be at Japan. The South Koreans fears have remained more about conventional bombardment though a certain section of Seoul society supports Pyongyang's nuclear programme on the view that this technology would become the South's on reunification. And the biggest fear of the West has been one of proliferation – i.e. nuclear weapons and expertise would be sold to hostile regimes or even more scarily to non-state terrorist groups. Again, the view from Beijing has always seemed to be that if a non-state actor was going to set off a dirty nuclear, chemical or biological bomb off anywhere, it would not be China's problem as it would not be on Chinese soil. However, the current crackdown in Xinjiang invites radical Islam to consider the PRC to be as valid a target as any of the other infidels.

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the economies of China's landlocked provinces. The Chinese government is also envisioning a canal across the Isthmus of Kra, in Thailand, to link the Indian Ocean to China's Pacific coast – a project on the scale of the Panama Canal and one that could further tip Asia's balance of power in China's favor by giving China's burgeoning navy and commercial maritime fleet easy access to a vast oceanic continuum stretching all the way from East Africa to Japan and the Korean Peninsula.”



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Beijing has thus far stayed out of the Proliferation Security Initiative (PSI) which seeks to prevent the DPRK from exporting its wares to the outside world. However, its lack of reaction to Seoul's recent joining of the PSI (an act of war in the words of Pyongyang), and its non-interference in the US Navy's shadowing of and eventual turning round of a DPRK vessel allegedly delivering arms to Myanmar, might suggest it is not going to do much to help the Kim regime distribute its cargos. Beijing signing up, along with Moscow, to the latest round of UN sanctions also seems pretty symbolic.

The ailing state of the Dear Leader, Kim Jong-il, and his recent anointment of his youngest son, Kim Jong-un, now also known as the Brilliant Comrade, also further complicates the scenario planning.<sup>15</sup> While the leadership transition from Kim Il-sung to Kim Jong-il was many years in the making and the younger Kim was sufficiently old and experienced to cement power when his father died, repeating the same trick with a 26 year old unknown is an altogether harder trick. Most likely China will continue to help prop up the regime through any transition but it will surely seek to reassert influence. For better or worse, which way Beijing swings has yet to be seen.<sup>16</sup>

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<sup>15</sup> For an always interesting and entertaining take on events both north and south of the 38<sup>th</sup> Parallel click on <http://www.rexiter.co.uk/research-insight/article/view/it-is-official-again-it-is-emergence-as-usual-for-the-hermit-kingdom-according-to-the-oracle/198/> where you will find the latest musings of our good friend, Adrian Cowell.

<sup>16</sup> We would humbly suggest a potential win-win solution. Hong Kong's visionary Chief Executive has recently announced that his Task Force on Economic Challenges has identified six new industries for the SAR to develop – testing and certification, medical services, innovation and technology, culture and creative, environmental and educational services – and he rarely wastes the opportunity to tout us as a hub for something or other. We would suggest that a seventh sector to target would be to turn the SAR into a hub for former dictators. After all Zimbabwe's Robert Mugabe has already spent more than USD5 million on a home in Tai Po developed by the charming Albert Yeung's Emperor Group <http://www.iloiloviews.com/so-little-justice.html> Moreover, his wife Grace loves the shopping here (she is also a fan of Singapore too and we must compete in everything against the Lion City after all) though she had to be granted diplomatic immunity after assaulting a photographer. And his daughter Bona is here too studying under a false name (until she was outed) at one of the SAR's universities. Why not then invite the Kim dynasty to take up residence as well – the eldest son Jong-nam is already a resident in Macau – and perhaps extend the offer to the likes of Than Shwe while we are at it?

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The real clincher is that we are not short of sites to set them all up on. Perhaps the most natural option is to set up Dictatorland at the now-to-be extended Magic Kingdom. This might allow Hong Kong's hapless taxpayers to claw something back from the government's handouts to the Disney Corporation. (A supine legislature just voted to inject billions more into the project despite the government refusing to release details of the park's financial performance for the past three years. Under the new best case scenario it will break even by 2029, but only by 2044 in less favourable economic conditions.)

The alternative might be the Lok Ma Chau loop, a 96-hectare, highly-contaminated quasi-swamp left over from the redirection of the river that forms the border between Hong Kong and Shenzhen. Its ownership status is less than clear for although the area is now under the jurisdiction of the SAR, the development rights are mooted to remain with a Shenzhen Government investment company. Hence if the SAR could be persuaded to provide the linking infrastructure and utilities, and also to pay for the clean-up, a developer would stand to make serious money. And interestingly enough, one of the biggest proponents on the Chinese side of the border of development was Shenzhen's erstwhile Mayor Xu Zhongheng who was recently arrested for corruption. But with him out of the way....



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