The South China Sea Reader

Papers and Proceedings of the Manila Conference on the South China Sea: Toward a Region of Peace, Cooperation and Progress

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O
n the 4th of November 2002, the ASEAN and Chinese leaders gathered to sign the 2002 ASEAN-China Declaration on the Conduct of Parties (DOC) in South China Sea then trumpeted as the much awaited breakthrough in the management of disputes in the SCS. This milestone in the history of East Asia diplomacy seemed to have marked a new and encouraging period of warming of relations between and among claimant and non-claimant parties. Raising expectations and bolstering optimism, such auspicious event was largely seen as a positive and bold step toward the eventual adoption of a legally binding code of conduct in Asia’s “maritime heartland.”

The ensuing period, however, proved to be as challenging as it was before the adoption of the 2002 DOC. Issues and concerns that were thought to have been settled by the said document crept back into the limelight, slowly putting into question the foundation of trust and confidence painstakingly forged by the signatory parties. Also, the recent months witnessed the seeming renewal of tension in the region, suggesting that the fruits of previous diplomatic negotiations might yet be hanging in a balance.

Because of this, a growing number of scholars seem to be gradually drawn more and more into doubting the seriousness and determination of parties to move further ahead into crystallizing previously agreed upon norms and principles. Apparently, the celebrated optimism that characterized the promulgation of the 2002 DOC seems to have tapered off, while the stubborn predicament of “zero-sum” game in the dispute perennially raises its ugly head. Notwithstanding the achievements of bilateral and multilateral confidence-building measures in the region, the recently seen flare-ups in rhetoric and in action do not augur well for a region which aspires to become a more coherent community in the years and decades to come.

This strategic backdrop and the imperatives for policy reevaluation and reformation almost a decade after the signing of the 2002 DOC provided a strong impetus for the convening of the Manila Conference on the South China Sea on 5-6 July 2011 with the theme “The South China Sea: Toward a Region of Peace, Cooperation, and Progress.” Jointly organized by the Foreign Service Institute (FSI), Diplomatic Academy of Vietnam (DAV), and the National Defense College of the Philippines (NDCP), the Conference sought to bring
together renowned scholars and practitioners from the Asia Pacific region to discuss issues such as: the security dilemma in the disputed area, relevance of multilateral mechanisms, prospects for cooperation beyond the 2002 DOC, and the geopolitical realities involving claimant and non-claimant parties.

We at NDCP, FSI, and DAV all felt the compelling need to facilitate such gathering of well known South China Sea scholars in the hope that academic discussions will contribute meaningfully to the peaceful and harmonious interactions between and among parties and relevant stakeholders. In our capacity as Track II entities, we intended to cast a fresh new look into the dispute and its surrounding circumstances, and bring again to the fore the issues and policy concerns whose strategic implications are becoming more and more visible to the eyes of the peoples of Asia and the world.

The South China Sea Reader a compendium of papers presented during the Manila Conference is a tribute to our collective will to nurture an atmosphere of harmony, understanding, and mutual respect in a region that finds itself at the center of occasional rifts and uncertainties. We present this volume as an addition to the wide array of academic resources on the said topic with a desire to further increase the level of scholarship and solidify domestic and international commitments for a secure and stable region.

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3 November 2011
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I. Executive Summary

The South China Sea Situation

The South China Sea, potentially rich in hydrocarbon resources and straddled by international waterways, is beset with territorial and maritime disputes. The strategic and economic significance of the South China Sea has led to a contest over features dotting the semi-enclosed sea. With shipping routes potentially endangered by maritime border disputes, freedom of navigation is therefore a main concern of countries that use vital shipping lanes in the South China Sea.

Recent months have witnessed the escalation of tensions in the South China Sea and observers are questioning whether it is possible to return to the status quo ante or not. While the issue is seen by some ASEAN states as a multilateral conflict that would need a multilateral solution, China feels that the disputes should be solved bilaterally. The management of the disputes thus becomes a litmus test of China-ASEAN relations. ASEAN may need to persuade China that a lasting solution to the issue may eventually require a multilateral approach.

China’s Behavior and ASEAN’s Response

Recent incidents in the Spratlys imply that China has become increasingly assertive to the point of being labeled as aggressive by some analysts in defending its territorial claims in the South China Sea. Several factors may have contributed to this seeming renewed assertiveness.

Domestically, leadership transition in China has led to internal debates concerning public opinion on China’s stance on the South China Sea issue. No Chinese leader wants to be seen as weak during this transition. Thus, a continued projection of military capability may have been seen by China’s leaders as necessary to show strength in leadership. Another internal factor that may explain China’s recent assertiveness is the self-directed initiatives of internal government entities such as fisheries authorities and maritime enforcement agencies in upholding China’s claims. The central leadership, burdened by leadership transition and other domestic issues, has not been able to offer clear
direction to these internal maritime agencies, actions of which have only aggravated other stakeholders’ threat perceptions of China.

Several external factors may have played a more obvious role in affecting China’s actions in the South China Sea. The contest over potential hydrocarbon resources in South China Sea could have catalyzed unilateral oil explorations undertaken by several claimant states, particularly the Philippines, Vietnam, and Malaysia, as well as their respective legislation of sovereignty claims such as baselines and continental shelf submissions. Furthermore, China views Vietnam as having taken advantage of its ASEAN chairmanship to internationalize the South China Sea issue, with ASEAN playing along. China is also wary of the US’ renewed interest in East Asia and its insistence on military preponderance in the Western Pacific, including what China perceives as US efforts to undermine its own military modernization program. (One speaker asserted that China itself is seeking preponderance.) In addition, China is also taking advantage of the US weakness in light of the latter’s economic and financial woes to advance its own influence and interests, particularly in the South China Sea.

With ASEAN failing to capitalize on its united position by intensifying cooperation under the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC-SCS), China may have taken advantage of this disunity by delaying establishment and/or implementation of any feasible cooperative schemes under the DOC-SCS. China’s ever growing maritime military capability has also contributed to the perception of China as a regional threat and to the predominance of the cold war mentality among ASEAN states — this, despite significant increase in China-ASEAN trade and China’s emphasis on common prosperity. This unfavorable perception of China has led to increased unilateral actions by other claimant states and heightened calls to internationalize the issue.

**Challenges and Opportunities**

There has been weariness over constant proposals for confidence-building measures (CBMs) and the inability of regional agreements (2002 DOC-SCS), international legal institutions like the United Nations (UN) and past functional cooperation to effectively address the South China Sea disputes. Other concerns include differing views of US and China on military activity in the Exclusive Economic Zone (EEZ) and Taiwan’s exclusion from conflict management and dispute resolution processes. It is ironic that despite skepticism over the effectiveness of international legal frameworks and institutions, claimant states have continued to strengthen the legal bases of their claims. China, for instance, may wish to buttress its claims on historic grounds by trying to demonstrate effective occupation, which is a strong basis for territorial claims in international law.

Despite the challenges that complicate the South China Sea disputes, opportunities still exist. Current tensions could provide an opportunity for China and the ASEAN states to re-commit to the norms laid out in the DOC-SCS, improve the existing framework and cooperative mechanisms, and strengthen the political
will to employ them. Tensions could also motivate claimant states to think beyond national interests and consider options that offer a win-win solution. ASEAN claimants, in particular, could develop a Southeast Asian response that could positively influence China’s actuations in the South China Sea.

Cooperation with China is still possible if the other claimants use the ASEAN vehicle to engage China. China wants to project a good image. In the past, China softened its tone when ASEAN projected solidarity and consensus, Continued engagement with China may lead to agreements on common interests such as fisheries, environment, safety at sea, and humane treatment of fishermen affected by the disputes. Joint development could also be possible if the parties could focus on small areas first.

Territorial disputes and overlapping maritime zones also become conflated with maritime safety and security issues. There may be a need to re-focus on a diplomacy of ocean governance, pursuing an inclusive, multi-level approach. Inclusiveness may mean not just inclusive of states as parties, but other relevant actors as well such as those from the scientific community and the private sector.

Recommendations

The following recommendations have been put forward during the Conference:

(1) There is no shortage of good ideas, only lack of political will. All parties need to compromise and abide by all agreements. Regional interest must be seen to be in the national interest.

(2) To improve the climate for dialogue, there is a need to continue confidence-building measures such as exchange of information, including notification of activities, and efforts to reduce border tensions by demilitarizing sensitive areas.

(3) All South China Sea claimant states should clarify their claims in accordance with UNCLOS. China in particular should clarify its U-shaped claims. Other claimants’ adherence to international law and other internationally-recognized frameworks may encourage the rest to do the same.

(4) Some cooperative activities under the DOC-SCS worth pushing for include joint fisheries and the humane treatment of fishermen. China is likely to continue its assertive approach, and the DOC-SCS may not be enough to dissipate current tensions. Some speakers considered the necessity of a code of conduct (COC) that should contain conflict avoidance measures, principles for functional cooperation, and rights of coastal and user states, among others. Under international law, even a non-binding COC has its merits. A COC should reflect agreement on a normative framework and should not be vague in wording, as the DOC-SCS has been; a COC should have clear compliance rules and mechanisms.
(5) Some proposals that were raised on how ASEAN and China could move forward should a diplomatic stalemate persist:

a. An ASEAN Treaty of Conduct in the South China Sea that may be opened to accession by other states.

b. Voluntary guidelines regarding military and intelligence gathering activities in foreign EEZs, where the goal is to avoid untoward incidents from happening. Such voluntary guidelines may also have provisions on the rights and duties of coastal states or other states in EEZ.

c. A 6-4-2 formula, whereby the six ASEAN non-claimants persuade the four ASEAN claimants to engage the two non-ASEAN claimants. Any multilateral engagement should be agreeable to all claimants.

(6) On the role of the US:

a. On freedom of navigation, US and other countries (Japan, Korea, etc.), major users of routes traversing the South China Sea and therefore legitimate stakeholders, must be included in the process of managing the disputes.

b. On military activities in the EEZ, regional countries and the US would need to continue dialogue on maritime security and freedom of navigation at various forums to clarify the issue. A China-US bilateral agreement regarding military activities in the EEZ would also be useful in reaching a regional agreement on the matter.

c. The US must accede to UNCLOS, as it has become the acceptable legal framework of the claimants and other coastal states.
II. Assessment of Recent Developments in the South China Sea and Their Implications for Regional Security and Cooperation

Security Cooperation in the South China Sea: An Assessment of Recent Trends
Prof. Carlyle A. Thayer
University of New South Wales

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Security Cooperation in the South China Sea: An Assessment of Recent Trends

Carlyle A. Thayer*

Introduction

This paper assesses recent developments affecting the security of the South China Sea in the first half of 2011. The paper is divided into five main sections. In the first four sections the paper reviews bilateral interaction on South China Sea issues between China and four claimant states: Vietnam, the Philippines and Malaysia and Taiwan. In the fifth section the paper discusses the role of the Association of Southeast Asian Nations (ASEAN) in promoting multilateral engagement with China over the Declaration on Conduct of Parties in the South China Sea (DOC) and a Code of Conduct for the South China Sea.

Chinese assertiveness in advancing its territorial and sovereignty claims in the South China Sea dominated the political calendar throughout much of 2010. By October these tensions appeared to have abated. China resumed military-to-military contacts with the United States that it had suspended earlier in the year. China and ASEAN revived the moribund Joint Working Group to Implement the Declaration on Conduct of Parties in the South China Sea (DOC). These and other developments led the author to conclude that there were grounds for cautious optimism that some progress could be made in managing South China Sea tensions.2

The first six months of this year have seen a revival of tensions and behaviour on the part of China that has not been witnessed before. China has begun to aggressively interfere in the commercial operations of oil exploration vessels in the Exclusive Economic Zones declared by the Philippines and Vietnam. Diplomatic protests by both states over Chinese behaviour have elicited condescension, stonewalling, and belligerency by Beijing.

Drivers of Chinese Behaviour. There are two major interrelated drivers that explain recent Chinese behaviour: sovereignty and hydrocarbon resources.

In May 2009 China protested submissions by Malaysia and Vietnam to the United Nations Commission on the Limits of the Continental Shelf by officially submitting a map of China’s claims. This map contained nine dash lines in a U shape covering an estimated eighty percent or more of the maritime area of the South China Sea. China is now backing up its claim by demonstrating that it has legal jurisdiction over the South China Sea.

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This year both the Philippines and Vietnam have renewed oil exploration activities in the South China Sea. In February 2011, for example, Forum Energy, an Anglo French consortium based in the United Kingdom, was awarded an exploration contract to explore for gas in the Reed Bank area. In April, a joint venture between PetroVietnam’s Petroleum Technical Services Corporation and CGG Veritas of France began seismic surveys off Vietnam’s coast.

Oil exploration activities by the Philippines and Vietnam are viewed by Beijing as a plundering of resources that it claims and a challenge to its forbearance. According to Song Enlai, chairman of China National Offshore Oil Corporation’s (CNOOC) board of supervisors, China loses about 20 million tons of oil annually or about 40 percent of its total offshore production due to the activities of countries in the South China Sea.

On March 7, Foreign Minister Yang Jiechi stated that China’s foreign policy would serve the country’s economic development. China then warned against any oil exploration in waters it claimed in the South China Sea. In early May China announced that it would step up maritime patrols by at least ten percent in the face of increasing incursions into its territorial waters. Chinese media reported that around one thousand recruits would be added to China’s marine service to raise the total to 10,000. That same month China launched a mega oil and gas drilling platform to be used by the CNOOC in the South China Sea. The rig frees China of dependence on foreign owned contractors for deepsea drilling. The rig is capable of exploring waters up to 3,000 metres in depth, a capability that neither the Philippines nor Vietnam possesses. Chinese sources indicated that the rig would begin operations in the South China Sea in July and thereby enable China to establish a major presence in the area.

This paper concludes by noting the cautious optimism that emerged in late 2010 about the prospects of China and ASEAN agreeing on confidence building measures has largely dissipated as a result of a new wave of Chinese aggressive assertion of sovereignty claims in incidents involving the Philippines and Vietnam. The next five months will be crucial as ASEAN’s annual cycle of summit, ministerial and related meetings take place. Although the resolution of overlapping territorial and sovereignty claims in the South China Sea will remain intractable it is possible that multilateral diplomacy can contribute to the lowering of current tensions and promote measures that advance security cooperation in the South China Sea.

1. China and Vietnam: Compartmentalizing South China Sea Tensions

In December 2008, China and Vietnam agreed to commence bilateral discussions on maritime issues with first priority given to developing a set of “fundamental guiding principles” as a framework for settling specific issues. These confidential discussions began in early 2010 and five sessions were held during the year. According to Vietnamese Foreign Ministry sources, Vietnam and China agreed to settle their differences “through peaceful negotiation” and “refrain from any action to complicate the situation, violence or threat of use of violence.”

Carlyle A. Thayer
Significantly, Vietnam and China agreed to bilateral discussions on matters that did not affect third parties, such as the waters at the mouth of the Gulf of Tonkin. Vietnam wanted to include the Paracel Islands in bilateral discussion but China refused. Vietnam and China also differed on the question of multilateral negotiations. According to Vietnam:

Issues that are related to other countries and parties like the Spratly Islands cannot be settled by Vietnam and China; they require the participation of other concerned parties. For issues that are not only related to countries that border the East Sea such as maritime safety and security, they must be negotiated and settled by all countries that share this common interest.11

**High Level Visits.** In February 2011, immediately after 11th national congress of the Vietnam Communist Party, the new Secretary General, Nguyen Phu Trong, dispatched a special envoy, Hoang Binh Quan, to Beijing. Quan met with Hu Jintao, President and General Secretary of the Chinese Communist Party, and briefed him on the outcome of the party congress. Quan also extended an invitation to Hu and other Chinese party and state leaders to visit Vietnam. In return, Hu extended an invitation to Secretary General Trong to visit China.12

In April, Senior Lieutenant General Guo Boxiong, vice chairman of China’s Central Military Commission, visited Hanoi at the invitation of General Phung Quang Thanh, Minister of National Defence. Lt. Gen. Guo was also received by Prime Minister Nguyen Tan Dung and party Secretary General Nguyen Phu Trong. Prime Minister Dung “proposed the two sides talk and seek fundamental and long lasting measures that both sides are able to accept for the East Sea [South China Sea] issue...”13 The joint press communiqué issued after the conclusion of Guo’s visit outlined a number of cooperative military activities, including increasing the scope of joint naval patrols in the Gulf of Tonkin, but no mention was made of the South China Sea.14

Immediately after General Guo’s visit, Vietnam hosted a meeting of the heads of the government delegations on boundary negotiations between China and Vietnam (April 18-19). These discussions were held at deputy minister level. China’s Foreign Ministry reported that the two vice ministers pledged, “to properly handle maritime disputes through friendly consultations and explore solutions with a positive and constructive attitude.”15 A Vietnamese spokesperson revealed that “the two sides agreed they will sign an agreement on the fundamental guidelines to settle the maritime issues” but no date was set to sign the agreement.16

**China’s Unilateral Fishing Ban.** On May 11, the Haikou Municipal Government, Hainan province, issued an announcement imposing China’s annual unilateral fishing ban in the South China Sea from May 16 August 1 ostensibly to protect dwindling fish stocks during the spawning season. Vietnam immediately issued a verbal protest:

“China’s unilateral execution of a fishing ban in the East Sea is a violation of Vietnam’s sovereignty over the Hoang Sa [Paracel] archipelago, as well as the country’s sovereignty and jurisdiction over its exclusive economic zone and continental shelf...”17 Vietnam also protested the deployment of a Chinese Fishery
Administration Vessel, *Leizhou 44261*, to patrol in the waters around the Paracel Islands from May 5 25. Vietnam accused the patrol boat of “causing difficulties for normal fishing activities conducted by Vietnamese fishermen in their traditional fishing ground and making the situation at sea more complicated.”

Vietnamese local authorities reported the arrival of Chinese fishing boats in Vietnamese waters in greater numbers than in the past. The head of Phu Yen Province Border Guard Headquarters stated that, “every day between 120 and 150 fishing boats of China were operated within waters from Da Nang City to the Truong Sa [Spratly] Archipelago... Previously Chinese fishing boats have violated our waters, but this was the first time there were so many boats.” The numbers rose to 200 on some occasions. Vietnamese fishermen formed fishing teams of five to ten boats for protection because of intimidation from larger Chinese craft that sometimes used weapons to threaten them. The Vietnamese government is currently considering a proposal by the Ministry of Agriculture and Rural Development to build ten fishery patrol boats at a total cost of US $102.14 million.

Although Vietnamese fishermen vowed to defy the ban the Vietnamese press has not reported any major incidents of harassment or detention. On June 1, however, it was reported that Chinese military vessels threatened to use their guns against a Vietnamese fishing boat operating in waters near the Spratly archipelago.

**The First Cable Cutting Incident.** On May 26, three China Maritime Surveillance ships accosted the Binh Minh 02, a Vietnamese seismic survey ship operating in Block 148, in an incident that lasted three hours. China Maritime Surveillance ship No. 84 cut a cable towing seismic monitoring equipment. The next day Vietnam lodged a diplomatic protest with China’s Ambassador claiming that the actions of the China Maritime Surveillance ships violated international law and Vietnam’s sovereignty. Vietnam also sought compensation for the damage caused. The Binh Minh 02 returned to port for repairs and resumed its oil exploration activities accompanied by an escort of eight ships.

Some news media erroneously reported that this was the first instance in which the Chinese had cut the cable of a Vietnamese exploration vessel. According to Do Van Hau, a senior PetroVietnam official, “When we conduct seismic survey and drilling operations, they [China] have aeroplanes flying over to survey our activities, they harass us with their vessels, and in extreme cases they cut our [exploration] cables.” The Vietnamese press reported that when Vietnamese conducted continental shelf surveys in 2010 “Chinese vessels also cut Vietnamese ships’ survey cables... and further obstructed Viet Nam from conducting oil and gas exploration in the East Sea...”

China responded to Vietnam protest on May 28 with the following statement: “What relevant Chinese departments did was completely normal marine law enforcement and surveillance activities in China’s jurisdictional area.” Vietnam retorted on May 29, “the area where Vietnam conducted exploration activities situates entirely in the exclusive economic zone and the 200 nautical mile continental shelf of Vietnam in accordance with the 1982 United Nations
Convention on Law of the Sea. It is neither a disputed area nor is it an area ‘managed by China.’ China has deliberately misled the public into thinking that it is a disputed area.”28 China responded in kind: “the law enforcement activities by Chinese maritime surveillance ships against Vietnam’s illegally operating ships are completely justified. We urge Vietnam to immediately stop infringement activities and refrain from creating new troubles.”29

Shangri La Dialogue. In June Liang Guanglie and Phung Quang Thanh, the Chinese and Vietnamese defence ministers, met in Singapore on the sidelines of the Shangri La Dialogue. This meeting took place under the shadow of the May 26th cable cutting incident. Minister Thanh spoke in detail about the legal basis for activities at sea “to facilitate cooperation for development and deter actions that risk our common interests, regionally and nationally.” Thanh specifically raised the Binh Minh 02 cablecutting which he characterized as a “pressing incident” that had aroused “considerable concern on the maintenance of peace and stability in the East Sea” by Vietnam’s party and state leaders. Thanh offered the conciliatory comment that “Sometime, regrettable cases happen which are beyond the expectation of both sides.”30 He ended his comments with these words: “We truly expect no repetition of similar incidents.”31

Minister Liang replied that China did not want a similar incident to occur in the future. He noted in particular that the People’s Liberation Army was not involved in the incident. Four days later there was a second cable cutting incident. Commentators were quick to contrast General Liang’s words with China’s deeds.

The Second Cable Cutting Incident. On June 9, according to Vietnam’s Ministry of Foreign Affairs, a second “premeditated and carefully calculated” incident occurred when Chinese fishing boat No. 62226 equipped with a “cable cutting device” snared the cable of the Viking II seismic survey ship operating in survey Block 136 03 in the vicinity of Vanguard Bank (Tu Chinh).32 Viking II is registered in Norway and was operating under charter with PetroVietnam.33 Two China Maritime Surveillance ships and other Chinese fishing craft came to assist the distressed fishing boat. According to Nguyen Phuong Nga, the official Foreign Ministry spokesperson, “China’s systematic acts were aimed at turning an undisputed region into one of dispute, to carry out its ambition to make China’s nine dash line claim a reality.”34 Earlier the Viking II had been involved in separate incidents on May 29 and May 31 in which Chinese boats the Fei Sheng No. 16 and Vessel No. B12549 attempted to approach its rear deck and interfere with its operations. Security escorts with the Viking II successfully blocked their approaches.35

Chinese authorities claimed that the Viking II incident occurred when armed Vietnamese ships chased Chinese fishing boats from the Wan an (Vanguard) Bank. One of the Chinese boats became entangled in the cable of the Viking II ship operating in the same area. The Chinese boat was dragged for more than an hour before the entangled net could be cut. According to the Chinese Foreign Ministry spokesperson, Hong Lei, “The Vietnamese ship put the lives and safety of the Chinese fishermen in serious danger.”
Vietnamese Foreign Ministry officials lodged a protest with the Chinese Embassy on the afternoon of the incident and announced that the Vietnam National Oil and Gas Group would be seeking compensation for damages.36

**Vietnam's Prime Minister on “Incontestable Sovereignty”.** On June 9, Prime Minister Nguyen Tan Dung responded to growing domestic pressure to demonstrate some backbone in dealing with China by making an unusually strong statement in defence of national sovereignty. Dung said: “We continue to affirm strongly and to manifest the strongest determination of all the Party, of all the people and of all the army in protecting Vietnamese sovereignty in maritime zones of the country.” Dung also reaffirmed “the incontestable maritime sovereignty of Vietnam towards the two archipelagos, the Paracel and Spratlys.”37 On the same day, President Nguyen Minh Triet, visiting Co To island off Quang Ninh province near the China border, stated that Vietnam was “determined to protect” its islands and “we are ready to sacrifice everything to protect our homeland our sea and island sovereignty.”38

**Live Fire Exercises.** On June 9, after the Chinese Ambassador to the Philippines called on Vietnam and the Philippines to cease oil exploration, and after China announced it would be conducting routine naval exercises in the Western Pacific,39 Vietnam raised the stakes by announcing a live fire exercise. Vietnam’s Northern Maritime Safety Corporation issued a notice that two live firing exercises would be held on June 13th in the waters near Hon Ong Island. The exercises would last for a total of nine hours and be conducted during the period 8am noon and 7pm midnight (0100 0500 GMT and 1200 1700 GMT). The notice further declared, “All vessels are to refrain from engaging in activities in the area during the live fire period.”40 Hon Ong Island is located approximately forty kilometres off Quang Nam province in central Vietnam.

Vietnam’s Foreign Ministry characterized the live firing exercises as “a routine annual training activity of the Vietnam navy in the area where the Vietnam navy regularly conducts training [activities] that are programmed and planned annually for units of the Vietnam People’s Navy.”41 Vietnam did not specify how many ships would be involved but made clear no missiles would be fired. The first phase of the exercise involved coastal artillery while the second part of the exercise involved missile corvettes firing their deck gun.

On June 11, the *Global Times*, an English language newspaper published by the Chinese Communist Party, editorialized that Vietnam’s conduct of a live firing exercises was the “lowest form of nationalism to create a new enmity between the people of the two countries. Hanoi seems to be looking to dissipate domestic pressure and buck up morale at home, while at the same time further drawing in the concern of international society over the South China Sea dispute.” The editorial stated that China has “never sought to politically blackmail smaller countries. But when a small country turns that around and tries to blackmail China, the Chinese people will on the one hand feel rather angry, while on the other hand find it quite amusing.” In conclusion, the editorial opined, “If Vietnam insists on making trouble, thinking that the more trouble it makes, the more benefits it gains, then we truly wish to remind those in Vietnam who determine policy to please read your history.”42
**Anti China Nationalism.** China’s new wave of aggressive assertiveness provoked apatriotic response among students and a wider section of the Vietnamese community.

Using Facebook and other social networking sites they mounted anti China demonstrations on four consecutive Sundays in both Hanoi and Ho Chi Minh City. On June 5, an estimated 300 Vietnamese gathered in Hanoi near the Chinese Embassy, while a crowd estimated “at nearly 1,000” to “several thousand” gathered in Ho Chi Minh City. On the following weekend, June 12, two hundred demonstrators took to the streets of Hanoi while another three hundred marched in Ho Chi Minh City in a repeat of the previous weekend’s protests. The protestors held placards reading “Down with China,” “The Spratlys and Paracels belong to Vietnam” and “Stop Violating Vietnam’s Territory.” These demonstrations were peaceful and dispersed on orders by the police.

On June 19, “hundreds” of Vietnamese conducted the third demonstration against China in Hanoi and Ho Chi Minh City. Estimates of the number of protestors who gathered outside the Chinese Embassy in Hanoi varied from 100 to 300. They sang patriotic songs, chanted “Down with China” and held placards reading “China stop violating the territorial waters of Vietnam.” Police used loud hailers to praise the crowd for its patriotism but tried to dissuade them by noting “Your gathering here may complicate the situation, influencing diplomatic relations between the two countries.”

On June 26, an estimated 100 protestors in Hanoi conducted the fourth successive demonstration against China. They marched through the city streets carrying signs that read, “China stop lying. China stop invading” and “Stop violating the territorial waters of Vietnam.”

During early June, growing enmity between nationalists in China and Vietnam spilled over into cyberspace. According to Nguyen Minh Duc, director of the Bach Khoa Internetwork Security Centre, more than two hundred Vietnamese websites were subject to cyber attacks. Among the sites affected were those of the ministries of Agriculture and Rural Development and Foreign Affairs where hackers succeeded in posting Chinese flags and slogans.

**Compartmentalizing South China Sea Tensions.** In a clear sign that China and Vietnam had contained tensions arising from the cable cutting incidents, the navies of both countries conducted their eleventh routine joint patrol in the Gulf of Tonkin on June 19-20. After the patrol was concluded, the Vietnamese ships paid a visit to Zhanjiang, Guangdong, Vietnam’s second ever port call to China.

On June 25, Vietnam dispatched deputy foreign minister Ho Xuan Son as a special envoy to Beijing to hold talks on the South China Sea with his counterpart Zhang Zhijun. Significantly, Son was received by State Councilor Dai Bingguo. According to a joint press release the two sides resolved to settle their disputes through “negotiation and friendly consultation,” control public opinion, and step up negotiations on guidelines on the principles of settlement of maritime disputes and the DOC. The text of the joint press release released by Vietnam’s Foreign Ministry stated:
The two sides emphasized the necessity to actively implement the common perceptions of the two countries’ leaders, peacefully solving the two countries’ disputes at sea through negotiation and friendly consultation; employing effective measures and working together to maintain peace and stability in the East Sea [sic].

They also laid stress on the need to steer public opinions along the correct direction, avoiding comments and deeds that harm the friendship and trust of the people of the two countries.

The two sides agreed to speed up the tempo of negotiations so as to early sign an “Agreement on basic principles guiding the settlement of sea issues between Vietnam and China”, and boost the implementation of the Declaration on Conduct of Parties in the East Sea [sic] (DOC) and follow up activities so that substantial progress will soon be achieved.

The reference to public opinion and “avoiding comments” referred to anti China demonstrations in Vietnam, hacking attacks, unseemingly exchanges over the internet and media reporting. China’s Global Times (an organ owned by the People’s Daily) has been particularly vitriolic in its editorials and commentary. An editorial published on June 23, for example, accused Vietnam of “setting a bad example by holding defence and security discussion with the United States and by “consenting to a growing nationalistic sentiment among its people.” The editorial further commented:

Vietnam has been trapped in an unrealistic belief that as long as the US balances out the South China Sea issue, it can openly challenge China’s sovereignty ad walk away with huge gains. If Vietnam continue to provoke China in this region, China will first deal with it with maritime police forces and if necessary strike back with naval forces.

The Vietnamese media has been more circumspect due to government and party policy direction. However, on June 24, three major dailies, Lao Dong, Thanh Nien and Tuoi Tre, were permitted to respond to the Global Times’ editorial. They charged it with distorting information, trying to intimidate Vietnam and being “increasing aggressive” thus exacerbating bilateral relations.

2. The Philippines: Diplomacy and Territorial Defence

According to the Philippines Department of Foreign Affairs, Chinese activities in the Spratly Islands stepped up in the fourth quarter of 2010. This increased presence led to six or seven major incursions into waters claimed by the Philippines in the first five months of 2011. The Philippines has not yet officially released the list but from statements by government officials the following list appears indicative:

**Incident 1.** On February 25, three Philippines fishing vessels, F/V Jaime DLS, F/V Mama Lydia DLS and F/V Maricris 12, were operating in the waters off Jackson
(Quirino) Atoll 140 nautical miles west of Palawan. According to a report prepared by the Armed Forces of the Philippines (AFP), the fishing vessels were approached by a Jianghu V Class missile frigate, *Dongguan* 560, which broadcast over its marine band radio, “This is Chinese Warship 560. You are in the Chinese territory. Leave the area immediately.” Then the frigate repeatedly broadcast, “I will shoot you.” As the fishing vessels began to withdraw, the Chinese frigate fired three shots that landed 0.3 nautical miles (556 meters) from F/V *Maricris* 12. The F/V *Maricris* 12 left the area and then returned on February 28 to recover its anchor that it cut in its hasty departure. The F/V *Maricris* 12 spotted three Chinese fishing vessels exploiting marine resources in the area. The Philippine government reportedly did not file a protest with the Chinese Embassy over this incident. The Chinese Ambassador to the Philippines, Liu Jianchao later denied that any Chinese vessel had fired on Filipino fishermen.

**Incident 2.** On March 2nd two Chinese white painted patrol boats, No. 71 and No. 75, ordered MV *Veritas Voyager*, a Forum Energy Plc survey vessel operating in the Reed Bank area off Palawan Island, to leave and twice manoeuvred close in what appeared a threat to ram the MV *Veritas Voyager*. The survey ship was French owned and registered in Singapore.

The Philippines responded by dispatching two OV 10 aircraft to investigate. The Chinese boats departed without further incident. Foreign Affairs Undersecretary Erlinda Basilio lodged a protest with Chinese Charge d’Affairs, Bai Tian, on March 4th. According to one report the note “raised four points to prove that Reed Bank is not part of the disputed area by projecting 85 nautical miles from the base point in the northern part of Palawan and not from the KIG. China questioned this during a meeting with the Philippines, but did not reply in a diplomatic note.”

After the incident, the Philippines announced a temporary halt to seismic testing and ordered the Philippine Navy and Philippines Coast Guard to escort the survey ship when testing resumed. Later, President Aquino instructed the Philippine Coast Guard to provide security for oil and gas exploration activities in the Kalayaan Island Group.

On April 5, the Philippine Mission to the United Nations submitted a letter in response to China’s Notes Verbales of May 7, 2009 (CML/17/2009 and CML/18/2009) stating the Philippines’ claim to sovereignty over the Kalayaan Island Group, adjacent waters and geological features (relevant waters, seabed and subsoil). China responded on April  with a note verbale to the United Nations that accused the Philippines of invading and occupying “some islands and reefs of China’s Nansha Islands... The Republic of the Philippines’ occupation of some islands and reefs of China’s Nansha islands as well as other related acts constitutes an infringement upon China’s territorial sovereignty.” The Chinese note verbale also argued that on the basis of domestic legislation “China’s Nansha Islands is fully entitled to Territorial Sea, EEZ and Continental Shelf.”

**Incident 3.** On May 6, a Chinese marine vessel with a flat bed was sighted in Abad Santos (Bombay) Shoal.
**Incident 4.** On May 19 the Armed Forces of the Philippines claimed that two Chinese jet fighters allegedly flew into Philippines’ air space near Palawan on May 11. This initial report was never confirmed and appears the least substantiated of the six or seven incidents of reported Chinese incursions.70

**Incident 5.** On May 21, Chinese Marine Surveillance ship No. 75 and Salvage/Research Ship No. 707 were observed heading toward Southern Bank.71

**Incident 6.** On May 24, Filipino fishermen reportedly witnessed a China Maritime Surveillance vessel and PLAN ships unloading steel posts, building materials and a buoy near Likas and Patag in the Iroquois Reef Amy Douglas Bank, 100 nautical miles off Palawan.72 The fishermen reported their sighting to the AFP the next day. Navy Headquarters in Manila ordered a ship to verify the sighting but bad weather delayed its arrival until May 29 by which time the Chinese ships had departed (presumably with the buoy). Local fishermen removed the steel polls and handed them over to authorities. The AFP reported this incident on May 27 and the Department of Foreign Affairs summoned the Chinese Charge d’Affaires on May 31 to seek clarification. The following day the Philippines conveyed “serious concerns” in a note verbale to the Chinese Embassy; the note stated, “These ships reportedly unloaded building materials, erected an undetermined number of posts, and placed a buoy near the breaker of the Iroquois Bank.”73 The Chinese Embassy responded, “The reported ‘incursion of Chinese ships’ is not true...It’s only China’s marine research ship conducting normal maritime research activities in the South China Sea.”74 Speaking on a TV forum that same day, Defense Secretary Voltaire Gazmin observed, “It’s alarming in the sense that the intrusions are increasing. They are staking claim on the areas where we do not have a presence. They want to hoist their flag so they can claim the area.”75 Foreign Affairs Secretary Albert del Rosario charged that “any new construction by China in the vicinity of the uninhabited Iroquois Bank is a clear violation of the 2002 Association of Southeast Asian Nations (ASEAN) China Declaration on the Conduct of Parties (DOC) in the South China Sea.”76

Subsequently it was revealed that Philippine Navy and Coast Guard personnel removed “foreign markers” and plastic buoys installed on three reefs and banks in waters claimed by the Philippines. Markers were removed from Amy Douglas Bank and Reed Bank in late May and from Boxall Reef on June 6.77

**President Aquino Lobbies Indonesia and Brunei.** During 2011 President Aquino lobbied his ASEAN colleagues to unify as a bloc on a detailed code of conduct and proposed that a central position on the South China Sea dispute among the ASEAN claimant states was the best way to approach China.

On March 8 President Aquino paid an official visit to Indonesia where he met with President Bambang Susilo Yudhoyono. At a joint press conference after their talks, President Aquino expressed his full support for Indonesia’s leadership role as ASEAN Chair. President Yudhoyono said Indonesia as ASEAN Chair would bring the Spratly Islands issue to the forthcoming ASEAN Summit and East Asia Summit. President Yudhoyono expressed his hope that the South China Sea could become
a “zone of possible economic cooperation.” President Aquino replied, “With regard to joint exploration [in the area], that is an idea that has been proposed a few decades past but perhaps we should continue the talks with other claimant countries. There is no room for unilateral action in that particular region.”

On June 1, President Aquino paid an official visit to Brunei Darussalam for discussions with Sultan Hassanal Bolkiah. According to Presidential Communications Operations Secretary Herminio Coloma Jr., the two leaders expressed their desire to maintain peace and stability in the South China Sea through a multilateral dialogue among the ASEAN countries, claimant countries and China. Cloma quoted the Sultan as stating “it’s best to have good relations with China.”

President Aquino told the reporters covering his visit: “We govern ourselves there [Spratly Islands/KIG]. Instead of one country has a bilateral agreement with China and the other has a different bilateral agreement with China. Let’s come together as a body. Why do we have to fight or increase all of these tensions when it profits nobody?” Aquino also renewed his call for the immediate adoption of the implementing guidelines on the DOC. The following day, June 12, Eduardo Malaya, a spokesperson for the Department of Foreign Affairs, called for a “more binding Code of Conduct or Parties in the South China Sea” in response to Chinese intrusions into Philippine waters.

During his state visit to Brunei President Aquino revealed that the Philippines was preparing to file a complaint to the United Nations in response to Chinese intrusions into its territory. According to Aquino, “We are completing the data on about six to seven instances since February. We will present it to [China] and then bring these to the appropriate body, which normally is the United Nations.” The Aquino Administration is supporting two legislative measures in response to China’s assertiveness in the Spratly Islands. The House of Representative is drawing up the Philippine Maritime Zones bill to delineate the Philippines’ maritime zones, while the Senate is considering the Archipelagic Sea Lanes bill.

**The AFP and Territorial Defence.** On March 28, General Eduardo Oban, chief of the Armed Forces of the Philippines, announced that the Philippines had increased air and naval patrols in the South China Sea and had plans to upgrade Rancudo Air Field on Pag Asa (Thitu) island and repair barracks. The AFP was allocated US $183 million in funds from the Capability Upgrade Program to purchase two offshore fast patrol boats, longrange maritime aircraft, surveillance and communication equipment including air defence radar to better protect its territory. President Aquino had earlier released US $255 million to the armed forces.

The Philippines recently acquired the U.S. Coast Guard Cutter USCGC *Hamilton*, which is expected to enter service in August and then commence patrolling disputed waters in the South China Sea. The Philippines also expects to take delivery of three new Taiwan manufactured Multi Purpose Attack Craft early in 2012. In May, a Philippine navy study recommended the acquisition of submarines as a “deterrent against future potential conflicts.”
The Philippines defence and military agencies are drawing up a new strategy in response to development in the South China Sea. The new strategy would focus on both internal security operations and external territorial defence. AFP chief General Oban said the military was planning to set up a cost watch system on the western seaboard in the next two to three years to monitor and secure maritime borders and natural resources. In June it was reported that the Philippines Embassy in Washington was in the market for excess defence equipment from the U.S. under its Foreign Military Sales (FMS) program including one or more patrol ships.

The Philippines also announced a new U.S. training program for its naval forces to enable them to better carry out their mission of providing security for oil exploration activities in the South China Sea.

On May 14, President Aquino and several members of his Cabinet flew out to the USS Carl Vinson aircraft carrier in the South China Sea as it headed towards the Philippines. The aircraft carrier made a “routine port call and goodwill visit” accompanied by the USS Bunker Hill, USS Shiloh and USS Gridley. In fact the visit by the carrier was a reaffirmation of the alliance relationship with China left to read into it what it would.

Visit by Chinese Defence Minister. China’s Defence Minister, General Liang Guanglie, paid an official visit to the Philippines from May 21-25 for discussions with his counterpart Defense Secretary Voltaire Gazmin. A joint statement issued after the meeting declared, “unilateral actions which could cause alarm should be avoided.” The two ministers also agreed to hold regular discussions to promote trust and confidence and find common ground on territorial disputes in the Spratly Islands. A statement issued the Department of National Defence stated, “both ministers expressed hope that the implementing guidelines of the 2002 Declaration of Conduct would soon be finalized and agreed upon, that responsible behavior of all parties in the South China Sea issue would help keep the area stable while all parties work for the peaceful resolution... Both ministers recognized that unilateral actions which could cause alarm should be avoided.”

When Defence Minister Liang met with President Aquino South China Sea issues were discussed in general, but the latter refrained from directly mentioning the Reed Bank incident of March 2 and the reported intrusion of Chinese aircraft into Philippine air space. President Aquino also told General Liang that more maritime incidents in disputed areas of the South China Sea could spark a regional arms race. Immediately after the defence ministers met, Sun Yi, Deputy Chief of Political Section at the Chinese Embassy in Manila, announced that China looked forward to an “accelerated dialogue” with the Philippines to resolve the dispute in the South China Sea. “It’s a bilateral issue. We repeatedly said that and we believe it’s a bilateral issue,” Sun Yi stated.

Shangri La Dialogue. All of the six seven incidents of Chinese incursions into Philippine territory, and the first cable cutting incident involving Vietnam, occurred prior to the tenth annual meeting of the Shangri La Dialogue held in Singapore from June 3 5. It was not surprising that territorial disputes in the South China Sea were raised in all plenary sessions by defence ministers
attending the Shangri la Dialogue. The Philippine Secretary of National Defence, Voltaire Gazmin, reportedly watered down the draft text of his remarks on the South China Sea before delivery. His address began by noting that, “maritime security is one of our foremost concerns.” In an obvious reference to the March 2nd incident, Gazmin stated that the actions by other states “make... the Philippines worry and concerned. These actions necessarily create insecurity not only to the government but more disturbingly to ordinary citizens who depend on the maritime environment for their livelihood.” He then gave details of recent incidents involving Chinese vessels without mentioning China by name.

Exchange of Diplomatic Protests. On June 4, the Department of Foreign Affairs issued a statement revealing it had lodged a protest with the Chinese Embassy on June 2 over the “increasing presence and activities of Chinese vessels including naval assets in the West Philippines Sea (South China Sea).” The note stated, “These actions of Chinese vessels hamper the normal and legitimate fishing activities of the Filipino fishermen in the area and undermines the peace and stability of the region.”

China responded on June 7 with a statement by Foreign Ministry spokesperson, Hong Lei: “Chinese vessels were cruising and carrying out scientific studies in waters under China’s jurisdiction and their activities were in line with the law... China asks the Philippine side to stop harming China’s sovereignty and maritime rights and interests, which leads to unilateral actions that expand and complicate South China Sea disputes. The Philippines should stop publishing irresponsible statements that do not match the facts.”

Liu Jianchao, Chinese Ambassador to the Philippines, followed up these comments on June 9. Ambassador Liang responded to complaints by the Philippines government for the first time when he met with reporters in Manila. The ambassador stated that China had not yet started to drill for oil in Spratly Islands. “We’re calling on other parties to stop searching for the possibility of exploiting resources in these areas where China has its claims.” In response to a question how China would react if countries went ahead and continued to explore without Beijing’s permission, the ambassador said China would use diplomatic means to assert its rights. “We will never use force unless we are attacked,” he said. Liang also confirmed to reporter that Chinese forces took action to keep the exploration vessel from Reed Bank. “That’s part of our exercise of jurisdiction. It’s not harassment,” he said.

Zone of Peace, Freedom, Friendship and Cooperation. In launching a new initiative, the Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C), President Aquino explained “what is ours is ours, and with what is disputed, we can work towards joint cooperation.” He directed the Department of Foreign Affairs to promote the ZOPFF/C concept through sustained consultations and dialogue.

According to the Department of Foreign Affairs, the ZOPFF/C provides a framework for separating the disputed territorial features that may be considered for collaborative activities from non disputed waters in the West Philippines Sea (South China Sea) in accordance with international law in general and UNCLOS
in particular.\textsuperscript{105} A disputed area could be turned into a Joint Cooperation Area for joint development and the establishment of marine protected area for biodiversity conservation. Areas not in dispute, such as Reed Bank that lies on the Philippines’ continental shelf, can be developed exclusively by the Philippines or with the assistance of foreign investors invited to participate in its development.

3. China Malaysia: Betwixt Bilateralism and Multilateralism

**Chinese Premier Visits Malaysia.** In June 2009, Malaysia’s Prime Minister Dato’ Sri Najib Tun Razak paid a state visit to China. In April 2011, Deputy Prime Minister Tan Sri Muhyiddin Yassin went to China to prepare for the return visit of Premier Wen Jiabao. Deputy Prime Minister Muhyiddin met with Vice Premier Li Keqiang on April 18. Li pressed China’s policy of resolving territorial disputes in the South China Sea on a bilateral basis in his discussions with Muhyiddin. Muhyiddin agreed and offered to relay China’s request for bilateral talks to other ASEAN members particularly claimant states.\textsuperscript{106}

Prior to Premier Wen’s visit China played down the importance of the Spratly Islands dispute and highlighted that agreements would be signed relating to telecommunications and infrastructure construction. China’s Assistant Foreign Minister Hu Zhengyou stated, for example, “The South China Sea problem is an old one. I think that when the leaders of both nations meet they won’t deliberately try to avoid it, but as we both understand each other’s stance, this won’t be a major issue.”\textsuperscript{107}

On return to Malaysia Muhyiddin announced that overlapping claims to the South China Sea would be discussed between Prime Minister Datuk Seri Najib Tun Razak and Premier Wen. According to Muhyiddin, “Malaysia is of the opinion that discussions with China on the issue of overlapping claims should be carried out after officials have come up with a basic framework on the claims based on facts, law and history.” He further stated, “We believe negotiations among the ASEAN claimants are important. But there will be a case where the overlapping claims involve three countries, so discussions will have to be more that bilateral.”\textsuperscript{108}

Before setting out on his trip (which also included Indonesia), Premier Wen gave an interview to Malaysian and Indonesian journalists. He was asked, “whether China would hold talks on joint development in these contested islands and reefs with Malaysia and other relevant countries that have cross claims with China?” Premier Wen replied:

> China remains committed to the Declaration on Conduct of the Parties in the South China Sea. We take the position that territorial disputes over maritime rights and interests should be peacefully addressed and resolved by the countries concerned through bilateral channels.

> We disapprove of referring bilateral disputes to multi lateral forums because that will only complicate the issue. You have rightly mentioned that although China and Malaysia have some disputes over the mentioned island and reefs in the South China Sea, these disputes have not impeded our efforts to have peaceful co existence between the two countries.
Secondly, I totally agree that the countries concerned can and should have joint development of resources in the South China Sea because this is in the interest of regional peace in the area and it also serves the interests of all claimant countries.109

Premier Wen visited Malaysia from April 27 28 and discussions with Prime Minister Dato’ Sri Najib Tun Razak mainly focused on economic and educational issues.

Shangri La Dialogue. Malaysia’s Prime Minister Najib and Defence Minister Datuk Seri Dr. Ahmad Zahid Hamidi both spoke at the Shangri La Dialogue. Prime Minister Najib gave the opening keynote address and offered the upbeat assessment that “ASEAN and China will soon be able to agree on a more binding code of conduct to replace the 2002 Declaration on Conduct in the South China Sea” and that “overlapping claims in the South China Sea have generally been managed with remarkable restraint.” He then concluded, “I remain fully committed to the common ASEAN position in terms of our engagement with China on the South China Sea, I am equally determined to ensure our bilateral relationship remains unaffected and, in fact, continues to go from strength to strength.”110 Defence Minister Hamidi drew attention to the factors influencing disputes in the South China Sea geopolitics, Sea Lines of Communication (SLOC) security and competition over petroleum resources. He argued that the 2002 DOC needed to be “supported by actual activities that can promote confidence building among the claimants” and suggested that “claimant countries in the South China Sea work towards identifying and realizing actual confidence building (CBM) activities that would help alleviate some of the tension in the area.”111

4. Taiwan: Joint Development through a Multilateral Mechanism

Over the last three years China has approached Taiwan with a view towards adopting a common position on sovereignty claims in the South China Sea. Taiwan has so far declined out of concerns that this may affect its international status and relations with ASEAN, Japan and the United States.112 In response to rising tensions in the South China Sea Taiwan has continually restated its sovereignty claims to the South China Sea. Taiwan has also taken steps to strengthen its capacity to defend Itu Aba (Taiping) Island and is considering further enhancements of its military capacity.

Between July 2010 and June 10, 2011, Taiwan issued five major statements reiterating its claims to sovereignty and calling for joint efforts to develop natural resources in the South China Sea.113 In response to the Philippines’ note verbale of April 5 to the United Nations, on April 17 Taiwan’s Ministry of Foreign Affairs issued a statement declaring the Spratly, Paracel, Macclesfield and Pratas islands “as well as their surrounding waters, sea beds and subsoil, are all an inherent part of the territory of the Republic of China (Taiwan).”114 The statement concluded:

Taiwan call on countries bordering the South China Sea to respect the principles and spirit of the Charter of the United Nations and the United Nations Convention on the Law of the Sea, and to refrain from adopting unilateral measures that might threaten the peace and stability of the region.
Taiwan reiterates that it upholds the basic principles of “safeguarding sovereignty, shelving disputes, peace and reciprocity, and joint exploration” and remains willing to work with other countries on exploring resources in the South China Sea.

Taiwan also urges the countries concerned to exercise self restraint so that peaceful resolutions to the disputes can be reached through consultation and dialogue. Taiwan remains willing to participate in such dialogue that seeks to find resolutions to disputes and promote regional peace, stability and development.\textsuperscript{115}

On April 18, the Deputy Minister of Foreign Affairs also summoned officials from the Manila Economic and Cultural Office to state Taiwan’s formal position.\textsuperscript{116} At the same time, the Director General of the Foreign Ministry’s Department of East Asian and Pacific Affairs reiterated Taiwan’s to set disputes aside and jointly explore natural resources in the South China Sea. He proposed bilateral talks with the Philippines and Vietnam to be followed by discussions on joint development through a “multilateral mechanism.”\textsuperscript{117}

On May 9, Taiwan’s Ministry of Foreign Affairs responded to Vietnam’s submission of a diplomatic note dated May 3 to the UN Secretary General claiming sovereignty over the Paracel and Spratly islands, by issuing a statement reaffirming sovereignty along the same lines as the April 17 statement.\textsuperscript{118}

In 1999 Taiwan withdrew its marines from Itu Aba and replaced them with Coast Guard personnel. On April 19, in response to rising tensions, the Ministry of Defence assigned the elite amphibious warfare Marine Corps to replace the army in training Coast Guard personnel assigned to Itu Aba.\textsuperscript{119} The Marine Corps will provide a five week combat training course in maritime combat and prevention of amphibious attack and landing.\textsuperscript{120}

The Coast Guard Administration turned down the Defence Ministry’s offer to provide missiles, tanks, mortars and 40mm automatic guns.\textsuperscript{121} Taiwan has also deferred a proposal to replace the Coast Guard with marines but is currently considering deploying tanks to Itu Aba and Seagull class boats to the area.\textsuperscript{122}

Taiwan’s navy normally conducts three annual visits to Itu Aba usually in March, June and September in order to provide supplies and to “show the flag.” On April 27 a naval “friendship fleet” visited Itu Aba while embarked on its annual deployment to the South China Sea.\textsuperscript{123}

5. ASEAN’s Role

**Joint Working Group to Implement the DOC.** In 2004, two years after negotiating the Declaration on Conduct of Parties in the South China Sea, the ASEAN China Senior Officials’ Meeting decided to establish the ASEAN China the Joint Working Group (JWC) to Implement the DOC. The Joint Working Group held its first meeting in Manila from August 4 5, 2005. The Terms of Reference for the Joint Working Group specified that the JWG was to meet twice a year to formulate recommendations in four areas:
- Guidelines and the action plan for the implementation of the DOC
- Specific cooperative activities in the South China Sea
- A register of experts and eminent persons who may provide technical inputs, non-binding and professional views or policy recommendations to the ASEAN-China JWG
- The convening of workshops, as the need arises

ASEAN tabled draft guidelines for discussion. It immediately became apparent that point two was a major sticking point. Point two stated, “ASEAN will continue its current practice of consulting among themselves before meeting with China.” China objected and insisted that outstanding disputes should be resolved by consultations “among relevant parties” and not with ASEAN. The Joint Working Group did not make much progress subsequently and, in the words of one keen observer, was on “life support.”

Three months later, the JWC was revived and held its fifth meeting in Kunming, China from December 21-23, 2010. The media reported that paragraph (or point) two still remained the main sticking point. The ASEAN Working Group on the South China Sea reported on the outcome of Kunming meeting to ASEAN Senior Officials at a three-day retreat by ASEAN Foreign Ministers in Lombok from January 15-17, 2011. On the eve of the meeting Djauhari Oratmangun, Director General for ASEAN Affairs in Indonesia’s Foreign Minister, revealed, “We haven’t agreed on t guidelines as there are still differences between China and ASEAN on the perceptions of the goals of the meeting. Actually, we are still trying to close that gap and creating guidelines, which can evolve into codes of conduct that can be used to keep the area peaceful.”

The 6th ASEAN China Joint Working Group met in Medan, Indonesia from April 18-20. This meeting failed to make appreciable progress. According to a veteran observer representatives of ASEAN claimant states fought with China over the wording of the DOPC implementing guidelines and given current tension and growing mutual suspicion “it is doubtful if they could finalise the guidelines in tie for next year’s tenth commemoration in Phnom Penh.” An ASEAN insider has revealed subsequently that the JWC meeting considered the twenty first draft of the DOC guidelines. Agreement on paragraph two still remained the main obstacle. It has been suggested that one compromise would be to remove point two from the text of the written guidelines but adopt its content in a verbal agreement.

In April, Indonesian Foreign Minister Marty Natalegawa went to Beijing to prepare for the forthcoming visit by Premier Wen Jiabao. In a press interview Marty revealed that in discussions with his counterpart Yang Jiechi, he stressed the importance of using the momentum of twenty years of ASEAN China relations to make progress in adopting guidelines for the DOC as a basis for a Code of Conduct. He noted that several sticking points remained “including whether the guidelines are to be used as a point of settlement for any conflict, or only a mere declaration without legally binding implications.”

**Indonesia as ASEAN Chair.** Indonesia, as ASEAN Chair for 2011, made it clear that it wished to take a leadership role in addressing territorial disputes in the
South China Sea. In January, for example, President Susilo Bambang Yudhoyono indicated he would try to persuade China to join multilateral talks to revolve disputes in the South China Sea. President Yudhoyono stated, “The problems of Asia should be discussed by all players in the region. We will convince China that this dialogue will bring benefits to all.”

When asked by a journalist if it was possible to advance a settlement of the South China Sea disputes under Indonesian chairmanship, President Yudhoyono replied:

> Although Indonesia is not a country of claimancy, Indonesia has an interest in seeing a peaceful, stable, security South China Sea. That is why under Indonesia’s chairmanship, we want to discuss several situations in Asia, including the South China Sea, with the aim of ensuring that everybody must be a part of this big test of maintaining peace and security in the South China Sea...

> So, yes, the South China Sea is becoming an important issue of the day, but I believe there is a way to deal with the problem in the South China Sea diplomatically, politically, and peacefully. We should find a way to discuss the necessity of working together in maintaining peace and security in the South China Sea. Because it will take place in our own territory, I will ask all participants of the EAS [East Asia Summit] in Bali in October this year to have a political security dialogue, including regional cooperation over the South China Sea.

In March, after the Reed Bank incident (discussed above), President Yudhoyono met with President Aquino in Jakarta. At a joint press conference President Yudhoyono suggested that the Reed Bank incident could be discussed at the forthcoming East Asia Summit in Jakarta. President Yudhoyono also advanced proposition that the South China Sea could become a “zone of potential economic cooperation.”

**ASEAN and Related Meetings.** ASEAN held its 8th Summit in Indonesia from May 7-8. Territorial disputes in the South China Sea were addressed in the Chairman’s Statement at the conclusion of proceedings. According to the chairman:

> 126. We reaffirmed the importance of the Declaration on the Conduct of the Parties in the South China Sea (DOC) as a milestone document signed between ASEAN and China embodying the collective commitment to promoting peace, stability, and mutual trust in the South China Sea and to ensuring the peaceful resolution of disputes in this area in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

> 127. We stressed that continuing the positive engagement of ASEAN China is essential in moving forward the DOC issue. We stressed the need to further intensify the efforts of both ASEAN and China to ensure the effective and full implementation of the DOC and move forward the eventual conclusion of a Regional Code of Conduct (COC).
128. We welcomed the convening of the 6th ASEAN China Joint Working Group on the DOC on 18-20 April 2011 in Medan, Indonesia. In this connection, we encouraged the continued constructive consultations between ASEAN and China, including the early convening of the ASEAN China SOM on the DOC. We therefore reaffirm the principle of ASEAN, on the basis of unity and solidarity, to coordinate and to endeavour to develop common positions in its dialogues with its Dialogue Partners.

129. We resolved to take advantage of the momentum of the anniversary of the 20 years of ASEAN China relations in 2011 and 10 years of the adoption of the DOC in 2012 to finalize the Guidelines on the implementation of the DOC and initiate discussions on a regional COC.135

ASEAN Defence Ministers held their fifth Meeting on May 19.136 They too discussed the South China Sea. Indonesia’s Defence Minister Purnomo Yusgiantoro met with his Chinese counterpart General Liang Guanglie. When asked by reporters how the meeting went, Purnomo replied, “fine” and that General Liang did not react negatively to the Joint Declaration issue by the ASEAN Defence Ministers. With respect to the South China Sea this declaration:

8. Reaffirm ASEAN Member States’ commitment to fully and effectively implement the Declaration on the Conduct of the Parties in the South China Sea, and to work towards the adoption of a regional Code of Conduct in the South China Sea that would further promote peace and stability in the region;

9. Reaffirm also the importance of regional peace and stability, and freedom of navigation in and overflight above the South China Sea as provided for by universally recognized principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).137

From June 7-10, ASEAN senior officials as a group (ASEAN Senior Officials’ Meeting or SOM) and ASEAN senior officials and their dialogue partners held a series of meetings in Surabaya to prepare for the ASEAN and Related Meetings scheduled for July 16-23. During this period the following meetings were held: ASEAN SOM, ASEAN Plus Three SOM, Ad Hoc East Asia Summit Senior Officials’ Consultation, ARF SOM, ARF Defence Officials’ Dialogue and the ARF Security Policy Conference. Approximately 400 officials from all ASEAN, East Asia Summit members, and the 27 ARF countries plus the ASEAN Secretariat attended. These meeting were held to prepare the agenda for the 44th ASEAN Ministerial Meeting, the 18th ARF ministerial meeting, the ASEAN Plus Three summit and the East Asia Summit.

The South China Sea featured prominently in discussions at the ASEAN Senior Officials and Dialogue Partners meeting.138 At the ASEAN Regional Forum Senior Officials’ Meeting, China and four ASEAN claimant states reiterated their commitment to a peaceful resolution of disputes over the Paracel and Spratly islands. According to the Secretary General of Indonesia’s Defence Ministry, Eris Herryanto, “China has conveyed its own commitment to peace, so have the other four countries. Other countries also urged the immediate implementation of the Declaration on Conduct of Parties [DOC] on the South China Sea. Djauhari
Oramangun, Director General for ASEAN, noted that the majority of the ARF’s twenty six members urged an immediate settlement of the disputes.\textsuperscript{139}

The 8th ARF Security Policy Conference was held in Indonesia on June 8. Indonesia’s Defence Minister Purmono Yusgiantoro revealed that new progress would be made on the Code of Conduct by the end of the year and that it might be adopted at the ASEAN Summit in Cambodia on its tenth anniversary. Vietnamese sources were less upbeat, they noted that the no agreement had been reached on the COC and that UNCLOS had not been fully implemented.\textsuperscript{140}

The ASEAN Senior Officials preparatory meeting for the 18th ARF ministerial meeting was held on June 11. According to Djauhari Oramangun, “In today’s agenda, all the delegates agreed on a maritime security work plan and agreed to push for upgrading of the DOC [Declaration on Conduct (of Parties) in the South China Sea] to the COC [Code of Conduct].”\textsuperscript{141}

**Conclusion**

China’s recent aggressive assertion of sovereignty over the South China Sea has raised the security stakes for Southeast Asian states and all maritime powers that sail through these waters. Ensuring the security of the South China Sea is now an international issue that must be addressed multilaterally by all concerned states.

Three major incidents mark the new wave of Chinese aggressive assertiveness. On March 2nd Chinese patrol boats operating within the Philippine’s Kalayaan Island Group approached a Philippine seismic survey ship in waters off Reed Bank and ordered it to leave the area. On May 26th three China Maritime Surveillance ships accosted a Vietnamese state owned oil exploration vessel deep within Vietnam’s declared EEZ. The vessel was ordered to leave the area after a Chinese ship deliberately cut its submerged survey cable. And on June 9th, a second Vietnamese exploration vessel was accosted by Chinese boats leading to a second cable cutting incident.

In May 2009, when Malaysia and Vietnam filed a joint submission to the United Nations Commission on the Limits of the Continental Shelf, China lodged a protest accompanied by a map. The Chinese map contained nine dash marks in a rough u shape covering virtually all of the South China Sea. China claims “indisputable sovereignty” over the South China Sea. Yet it has never made clear the basis of this claim despite two decades of entreaties by regional states. It is unclear what it is that China is claiming. Does China claim sovereignty over all the rocks and features within these dash marks? Or is China claiming the South China Sea as its territorial waters?

Some maritime specialists speculate that China’s claim is based on the nine rocks it occupies in the Spratly archipelago. In other words, China claims that the rocks are in fact islands in international law and thus attract a 200 nautical mile (370 kilometer) EEZ. This is a legal fiction. Islands must be able to sustain human habitation on their own and have an economic function. Rocks, which do not meet these criteria, cannot claim an EEZ or continental shelf.
China’s dash marks cut into the EEZs that have been declared by Vietnam and the Philippines. These EEZs are based firmly in international law. Both states have drawn straight base lines around their coasts and then extended their claim from these baselines seaward out to 200 nautical miles (370 kilometres). Under the United Nations Convention on Law of the Sea littoral states have sovereignty over these waters in terms of exploitation of natural resources such as fisheries or oil and gas deposits on the ocean floor.

In November 2002, China and ASEAN reached agreement on a Declaration on Conduct of Parties in the South China Sea. This was a non binding document in which the signatories pledged not to use force to settle their sovereignty disputes. The DOC, which contains numerous proposed confidence building measures, has never been implemented.

Chinese assertiveness in pushing its sovereignty claims in the South China Sea in 2009 and 2010 provoked an international backlash. The issue featured prominently at the ASEAN Regional Forum and at the inaugural ASEAN Defense Ministers Meeting Plus last year. China was out maneuvered diplomatically and sought to limit further damage by agreeing to revive the heretofore moribund ASEAN China Joint Working Group to Implement the Declaration on Conduct of Parties. This working group has stalled over China’s insistence that territorial and sovereignty claims can only be settled bilaterally by the states concerned. ASEAN members insist on the right to meet together to work out a common position before engaging China.

ASEAN, under the chairmanship of Indonesia, has been pushing China to upgrade the DOC into a more binding Code of Conduct. Some regional diplomats are hopeful that an agreement can be reached by the tenth anniversary of the DOC in November 2012. This is unlikely to be achieved unless ASEAN maintains its unity and cohesion and adopts a common stance. It is clear there are “nervous Nellie’s” among its members.

In the early to mid 1990s, when China began to occupy rocks in the Spratlys including the celebrated Mischief Reef, security analysts described Chinese strategy as “creeping assertiveness” and “talk and take”. The events of this year are best described as aggressive assertiveness. China is now paying back Vietnam for its role in internationalizing the South China Sea last year when it was Chair of ASEAN. Chinese actions in the Reed Bank area are designed to expose ambiguities in the U.S. Philippines Mutual Security Treaty over whether or not the Kalayaan Island Group is covered by this treaty.

ASEAN and the international community, both of which rely on transit through the South China Sea, must diplomatically confront China over its aggressive assertiveness. They should bring collective diplomatic pressure to bear on China at the forthcoming annual meeting of the ASEAN Regional Forum and East Asia Summit to be held later this year to honor its commitments under the DOC.

Meanwhile both the Philippines and Vietnam should take steps to enhance their capacity to exert national sovereignty over their EEZs. Their weakness only invites China to act more assertively. On June 11, Nguyen Phuong Nga, spokesperson
for the Ministry of Foreign Affairs, when asked a question about a possible role for the United States and other countries in resolving South China Sea disputes, responded, “Maintaining maritime peace, stability, security and safety in the Eastern Sea is in the common interests of all nations within and outside the region. Every effort by the international community toward peace and stability in the Eastern Sea is welcome.” It is in the interest of the United States and its allies as well as India to assist both nations in capacity building in the area of maritime security. At the same time this “coalition of like-minded states” should back ASEAN in its efforts to secure agreement on a code of conduct for the South China Sea. ASEAN members themselves could draw up a Treaty on Conduct in the South China Sea, and after ratification, open it to accession by non-member states.

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Recent Developments in the South China Sea: Unconstrained Waves of Tensions

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The South China Sea’s significance has been widely recognized by many stakeholders in international navigation, maritime safety, natural resource exploitation, environmental protection, and legal effectiveness of international law. The South China Sea disputes relating to the Paracel Islands, Spratly Islands and maritime zones associated with these groups of islands remain as ones of potential flashpoints that could cause regional instability. Since 1990s, efforts have been made by regional countries to stabilize the situation and seek the opportunities for cooperation in the South China Sea area. These efforts have resulted in, among others, the ASEAN Declaration on the South China Sea in 1992, the adoption in 2002 of the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), according to which all signing parties pledged to seek peaceful solutions to disputes and conduct maritime cooperation in order to maintain regional stability in the South China Sea. However, after signing the DOC, the parties have not ceased activities that complicate the situation. Tensions have occasionally arisen and claimants continued to protest each other’s moves in the South China Sea.

This paper will focus on recent developments in the South China Sea and its implication for regional security and cooperation; assess on the efforts made by regional countries to stabilize the situation and promote cooperation in the South China Sea; explain why the implementation of the signed documents, especially the DOC, has been incomplete; and try to contribute some solution-oriented suggestions for promoting regional security and cooperation.

Security Environment in the South China Sea and Efforts for Managing the Disputes

Prior to the signing of the Declaration on the Conduct of Parties in the South China Sea between China and ASEAN in 2002, the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the Treaty on the Southeast Asia Nuclear Weapon-Free Zone concluded in 1976 and 1995 respectively were the main legal instruments governing behaviors of the parties concerned in the South China Sea. The fundamental principles guiding the signing parties in the TAC include the settlement of differences by peaceful means, non-resort to the threat or use of force and the promotion of effective cooperation among the concerned parties.2

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ASEAN members first adopted their common stance on the South China Sea dispute in the ASEAN Declaration on the South China Sea signed in Manila in 1992. The declaration demonstrated ASEAN’s concerns over the tension between Vietnam and China after the latter licensed the Creston Energy Corporation (from the United States) to exploit oil in Vanguard Bank on Vietnam’s continental shelf and passed its Law on the Territorial Sea on 25 February 1992 stipulating China’s absolute sovereignty over both the Paracels and the Spratly islands. ASEAN's foreign ministers recognized that “South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned” and the fact that “any adverse developments in the South China Sea directly affect peace and stability in the region”. The Declaration called on the parties concerned to settle the dispute by peaceful means, exercise restraint and cooperate in applying the principles enshrined in the TAC as a basis for establishing a code of international conduct over the South China Sea. The Declaration called for exploring the possibility of cooperation in the South China Sea. In addition, all parties concerned were invited to subscribe to this Manila Declaration. Vietnam, a non-ASEAN country at the time, supported Manila Declaration. China, however, reiterated its position on its refusal to accept multilateral discussion of the issue and its view that the Paracels and Spratlys disputes did not concern ASEAN. Nevertheless, Chinese foreign minister Qian Qichen said that China subscribed to the declaration’s “principles”.

The Mischief Reef incident in 1995 marked a change in China’s policy toward the South China Sea. China built infrastructure on a submerged reef that in the Spratly islands and well within the Philippines’ Exclusive Economic Zone (EEZ) led to the first time that China and the Philippines engaged in hostile confrontation. Previously, China had only been antagonistic towards Vietnam, a non-ASEAN member, in 1974 and 1988. After the Mischief Reef incident, ASEAN sought initiatives that could prevent existing disputes from escalating into conflicts.

The Declaration on the Conduct of Parties in the South China Sea

The idea of a regional Code of Conduct (COC) was previously put forward in the 1992 ASEAN Declaration and was discussed intensively in the track-2 workshop series organized by Indonesia on managing potential conflicts in the South China Sea since 1991. The idea of COC was officially endorsed at the 29th ASEAN Ministerial Meeting (Jakarta, July 2127, 1996) in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned. The ASEAN Foreign Ministers expressed their concerns over the situation in the South China Sea in the joint communiqué and underlined that the parties concerned should apply the principles of the Treaty of Amity and Cooperation in Southeast Asia (TAC) as the basis for a regional code of conduct in the South China Sea to build a secure and stable regional environment.

Although a binding code of conduct had been considered the primary goal, after almost five years of negotiations ASEAN and China eventually only reached a political document. On 4 November 2002 in Phnom-Penh, ASEAN and the People’s
Republic of China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). The DOC was signed as a step toward the adoption of a more binding COC which defines the rights and responsibility of the parties concerned to further promote peace, stability and development in the region.

China’s accession to the DOC marked a major change in its approach to the South China Sea dispute, from bilateralism to ‘bi-multilateralism’. Previously, China had only advocated for bilateral negotiations in order to take advantage of its position as a regional power and avoid any unified ASEAN front against its interest. Though China was determined to remain its claim in the disputed areas, it seemed prepared to join multilateral mechanisms and respect the rules and values of the game. By accepting multilateral negotiations with ASEAN over the COC and DOC, China sought to exploit the divides between the ASEAN member states. Furthermore, with the DOC, China could gain politically and economically and alleviate ASEAN’s concern about China. In response to the ‘China threat’ theory, China advocated a ‘peaceful-rise’ doctrine and ‘peaceful-development’ policies as its national development guidelines to calm its neighbors. Southeast Asia is the focus of China’s friendly policy. The signing of the DOC partly helped China gain the trust and confidence of ASEAN members, laying the foundation for further development in economic and trade ties. Furthermore, the DOC, a political and non-binding document, did not affect any of China’s claims, and therefore would not provoke any negative reaction from within China itself.

The regional security situation in the wake of September 11, 2001 also contributed to the signing of the DOC in 2002. After the incident, the United States declared that Southeast Asia was the second front of its war against terrorism, which aroused China’s concerns over the U.S. geo-political position in the region. Relations between US and the Philippines, Malaysia, and Vietnam were improved and strengthened. Three countries are ASEAN members and directly involved in the South China Sea dispute with China. Other ASEAN members like Thailand, Singapore and even Indonesia, the world’s biggest Muslim country, supported the U.S. in its anti-terrorism war. In August 2002, the ASEAN-U.S. Joint Declaration for Cooperation to Combat International Terrorism was signed. The increased cooperation between the United States and its Southeast Asian allies exerted an influence on China’s strategic calculations. Although China supported US on the war on terrorism, China was concerned that the enhanced military presence of the U.S. in the region might lead to U.S. engagement in the South China Sea issue. As a result, China feared that the South China Sea issue would be multilateralized and internationalized. According to Leszek Buszynski, the main reason leading to China’s participation in the DOC was that this country realized the significance of a regional code of conduct in discouraging ASEAN member countries from further enhancing their political and military relations with the United States, thus avoiding U.S. interference in the South China Sea dispute as well as possible U.S. advantage in the Taiwan issue.

From ASEAN’s perspective, China’s economic growth was seen as an opportunity for its member countries. On November 5, 2002, in Phnom Penh, an ASEAN-China Framework Agreement on Comprehensive Economic Cooperation was signed, paving the way for an ASEAN-China Free Trade Area in 2010. This
represented an important step forward in ASEAN-China relations. The potential profit from their two-way trade contributed to the signing of the DOC. On this issue, Amitav Acharya wrote, “[f]rom a political angle, the realization of a China-ASEAN free trade zone agreement indicates that historical fraud and political clashes between ASEAN member states and PRC are no longer one of the most important factors influencing ASEAN-PRC relations.”

At the seventh ASEAN-China Summit on October 8, 2003 in Bali, Indonesia, both sides signed a Joint Declaration of the Heads of State/Government on Strategic Partnership for Peace and Prosperity with a declared purpose to foster friendly relations, mutually beneficial cooperation, and good neighborliness between ASEAN and China by deepening and expanding ASEAN-China cooperative relations in a comprehensive manner in the 21st century. On the same day, China officially became the first non-ASEAN country to join the Treaty of Amity and Cooperation in Southeast Asia, thus encouraging China to commit to settle disputes in a peaceful manner and avoid threatening behavior or the use of force. ASEAN countries highly appreciated these developments, which made a major contribution to regional peace, security, and development. In 2005, Chinese leader Hu Jintao visited Indonesia, Brunei, and the Philippines to promote friendship and cooperation and to assuage concerns about Chinese intentions. All of these developments, combined with other activities within the Chinese ‘charm offensive’ toward Southeast Asia, including the 2001 proposal to establish a China-ASEAN Free Trade Area (CAFTA), had helped reduce the regional perception of China as a threat.

Implementation of DOC: China Returns to Bilateralism

To translate the provisions of the DOC into concrete cooperation activities, in the Plan of Action to implement the 2003 Joint Declaration on Strategic Partnership for Peace and Prosperity, which was formulated to serve as the master plan to deepen and broaden ASEAN-China relations and cooperation, among other things, ASEAN and China declared to pursue joint actions and measures to implement the DOC in an ‘effective way’. The actions and measures include: to convene regular ASEAN-China SOM on the realization of the DOC; to provide guidance for and review the implementation of the DOC; and to establish a working group to both draw up the guidelines for the implementation of the DOC and to provide recommendations to the ASEAN-China SOM on policy and implementation issues. At the first ASEAN-China SOM on the implementation of the DOC in Kuala Lumpur on December 7, 2004, participants decided to set up a joint working group (JWG) to study and recommend confidence-building activities. The ASEAN-China JWG is tasked to formulate recommendations on: a) guidelines and action plan for the implementation of the DOC; b) specific cooperative activities in the South China Sea; c) a register of experts and eminent persons who may provide technical inputs, non-binding and professional views or policy recommendations to the ASEAN-China JWG; and d) the convening of workshops, as the need arises. At the first meeting of the ASEAN-China JWG in Manila on August 4-5, 2005, ASEAN presented a draft of Guidelines for the implementation of DOC for discussion. However, the main issue is point 2 of the Guidelines for the implementation of DOC. According to ASEAN’ practice in dealing with Dialogue
Partner, ASEAN wants to deal with China as a group and to “consult among themselves” before meeting with China, while China prefers consultations with “relevant parties”, not with ASEAN as a bloc. After several meetings of ASEAN-China JWG, a consensus on point 2 of the guideline has not been reached and the agreed six joint cooperation projects on less sensitive issues were still on the papers.

Recent Developments and Its Implications

The DOC was signed in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned. A relative stable situation in the South China Sea was lasting for half of decade. However, as stated by Nguyen Hong Thao, it is naïve to believe that because of the DOC, the parties have ceased undertaking activities that complicate the situation. According to the DOC, the parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from any action of inhabiting the presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner. However, the Declaration does not clarify what kind of activities could be considered to complicate or escalate a dispute. Claimants have continued to construct structures in the disputed features in the South China Sea and declared unilateral jurisdictional regulations to demonstrate sovereignty in the disputed areas.

As the most powerful country, China’s approach in the South China Sea determines the nature of dispute. Since 2007-2008, as Beijing corrected its policy toward the South China Sea issue with more assertive approach, the situation was tense again.

In December 2007, China established the city of Sansha for administrating the Paracel and Spratly Islands (and the submerged reef of Macclesfield Bank), which triggered strong official protest from Vietnam as well as anti-China demonstrations in Hanoi and Ho Chi Minh City. In January 2010, China decided to establish local governing bodies in the Paracel Islands and develop the islands’s tourism industry and that act provoked condemnation from Hanoi as a violation of Vietnamese sovereignty. Later, China passed the “2010-20 Grand Plan for Construction and Development for the International Tourism Island of Hainan,” under which the Spratly and Paracel Islands will be incorporated in a multi-purpose ocean complex, air and sea tourist routes bound for Paracel will be promoted, and registration for the right to use uninhabited islands will be encouraged. In June 2010, Vietnam Ministry of Foreign Affairs (MOFA) spokesperson condemned the Chinese plan as a violation of its sovereignty and contradictory to the spirit of DOC. She quoted provision five of the DOC: “The parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from any action of inhabiting the presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner.”
China has annually unilaterally declared its fishing ban in the South China Sea for two months, June and July, which had been applied since 1999. To enforce its jurisdictional claims in the South China Sea, China sent fishery administration vessels to patrol the disputed water. In 2006 and 2007, there were several press reports of incidents of Vietnamese fishermen being killed or wounded by Chinese patrol vessels and gunboats. Over 2009, Chinese forces have repeatedly detained Vietnamese fishing boats near the Paracel Islands, which both countries claim, and have demanded a fine of $10,000 for the release of the fishermen. In early April 2010 Beijing even announced the dispatch of two large fishery patrol vessels to the Spratly Islands to protect Chinese fishing vessels, the first time it has done so outside the period of its unilateral fishing ban in the sea that usually takes place between May and August.

Occasionally, China conducted military exercises in a disputed area as sending deterrent signals to other claimants of the South China Sea. The frequent and coordination level of Chinese military exercises have increased significantly in recent years.

Regarding energy developments, China and ASEAN states have actively involved international companies to exploit the energy reserves of their claims in order to fulfill the need of their rapid economic growth. Occasionally, when international energy companies undertake exploration in zones awarded by one country but claimed by another country, especially within the U-shaped claim line of China, activity has been halted by diplomatic protest and even intervention of military or paramilitary vessels.

Starting in the summer of 2007, China told a number of foreign oil and gas firms to stop exploration work with Vietnamese partners in the South China Sea or face unspecified consequences in their business dealings with China. In April 2007, China’s Foreign Ministry spokesman protested Vietnam’s concession and cooperation with British Petroleum to build a gas pipeline near the southern coast of Vietnam that China considered “adjacent maritime zones” of the Spratly Islands. China readily slipped back into its legally dubious historic claim to most of the South China Sea and the nationalist rhetoric that accompanies it. 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.” Vietnam reaffirmed that the area covered by its project with BP is located in Vietnam’s EEZ and continental shelf. All conducted activities are in conformity with international law and practices, particularly UNCLOS and the spirit of DOC. In the spring of 2007, under Chinese pressure, BP stopped its exploitation activities on the gas fields of Moc Tinh and Hai Thach on continental shelf of Vietnam. In 2008, there were many press reports that U.S. energy company Exxon Mobil had been threatened by China. From 2007 to 2010, China has also frequently protested other exploration activities conducted by international energy companies, including BP in bloc 117; PGS (Norway) in bloc 122; Chevron (US) in bloc 122; Pogo (US) in bloc 124; ONGC (India) in bloc 127; Indemisu (Japan) in bloc 04-3; CoconoPhilips (US) in bloc 133; Pearl Energy (UK) in bloc 06-1; Knoc (South Korea) in bloc 11-4; and Gazprom (Russia) in blocs 111 and 113. A spokesperson from Vietnam’s MOFA confirmed that in the case of Exxon Mobile, “these (awarded blocs) are totally under the
sovereignty right of Vietnam and in line with the 1982 UN Convention on the Law of the Sea,” and “Vietnam will ensure all the legitimate interests of foreign investors when they operate in Vietnam.” Vietnam “welcome[s] and shall facilitate all cooperation with foreign partners, including Chinese investors operating in Vietnam, on the basis of full respect for our sovereignty.”

In 2009, China also objected to the Philippines’s drilling in the Reed Bank area, about 60 miles (100 kilometers) west of Palawan, which may contain 3.4 trillion cubic feet of gas and 450 million barrels of oil. Malaysia and Brunei also dispute about the development of a gas field in an area where their claims overlap. Identical blocs were awarded to different companies: Malaysia awarded exploration rights to Murphy Oil, while Brunei awarded similar rights to Royal Dutch Shell and Total.

On the Chinese side, China was driven by the great need of the marine resources, especially the energy, to serve its fast-growing economy. China has been an oil-importer since 1993 and, according to Zhu Jianjun of the China National Petroleum Company (CNPC), China’s oil imports will reach 50 percent of consumption in 2010 and 60 percent in 2020. Therefore, ensuring a constant supply and secure transportation routes plays a decisive role in maintaining China’s sustainable economic development. The South China Sea is described by some Chinese analysts as containing huge reserves of oil, gas, and combustible ice resources. It is estimated that the oil reserves could reach 2330 billion tons, accounting for one-third of China’s aggregate oil and gas resources. Zhang Dawei of the Ministry of Land Resources claimed that the South China Sea would become one of China’s ten major oil and gas sites: the oil reserves were estimated at 23-30 billion tons or 168220 billion barrels. As with oil, estimates of the South China Sea’s natural gas resources vary widely. One Chinese estimate for the entire area estimates natural gas reserves to be 2 quadrillion cubic feet. Another Chinese report estimates 225 billion barrels of oil equivalent in the Spratly Islands alone. In April 2006, Husky Energy working with the Chinese National Offshore Oil Corporation announced a find of proven natural gas reserves of nearly 4 to 6 trillion cubic feet near the Spratly Islands. In 2007 Beijing opened the concession and invited bids for 22 petroleum blocks in the South China Sea in areas up to 1000 miles from Hainan. Recent activities occurred in May 2010 when China sent the seismic survey vessel M/V Western Spirit to conduct seismic studies in the waters off Tri Ton island of Paracel group, in area overlapping with Vietnam’s oil and gas exploration blocks 141, 142 and 143. At the same time, China carried out ground leveling activities on Tri Ton island in preparation for construction. On August 5th the Vietnamese government formally protested and demanded an immediate cessation of activities.

While protesting against energy development activities taken by other countries in the area within the U-shaped claim, China was pushing forward the idea of joint developments of energy resources in the South China Sea. In principle, other claimants do not oppose Chinese proposal of joint development, however, finding acceptable really disputed areas remains the most intractable problem for putting these ideas into practice. Other claimants would not accept the Chinese proposals for joint developments in the areas within the Chinese U-shaped claim, sometime in distance of five to seven hundreds nautical miles from Hainan Island
but within 200 nautical miles EEZ of other claimants. As demonstrated in the case of the Agreement for Joint Marine Seismic Undertaking in the South China Sea in 2005 signed between national petroleum corporations of China, Philippines and Vietnam, the Philippines had not to renew the agreement due to opposition within Philippine domestic politics, which condemned the government of allowing the area of joint developments overlaps with the country’s exclusive economic zone.

**Outer Limit of Continental Shelf Submissions**

Tensions over resources on South China Sea continental shelf also were not unrelated with developments in the South China Sea in the last 2-3 years relating to the deadline 13th May 2009. The deadline May 13, 2009 was set by a subsequent agreement of the States Parties to the UNCLOS for states to lodge claims extending their continental shelves beyond the 200 nautical mile limit to The United Nations Commission on the Limits of the Continental Shelf (CLCS).

On May 6, 2009, Malaysia and Vietnam submitted a joint proposal to the CLCS in respect to an area seabed in the southern South China Sea located seaward of their 200 nautical miles EEZ limits. On the following day, Vietnam made a separate submission in relation to northern parts of the South China Sea. China immediately protested both submissions as a violation of its sovereignty and called on the UN commission to reject it. After almost three months, on August 4, 2009, the Philippines also protested submissions to CLCS made by Vietnam and Malaysia. Vietnam and Malaysia immediately protested the notes by the Philippines China.

China also made a submission of preliminary information to the CLCS relating to the East China Sea. Chinese preliminary information included the statement that China reserved the right to make submissions on the outer limits of the continental shelf that extends beyond 200 nautical miles in “other sea areas.” This statement possibly referred to areas in the South China Sea.

The Philippines also made a partial submission to the CLCS for areas of outer continental shelf seaward of its 200 nautical miles EEZ limit in the Benham Rise region in the Philippine Sea. The Philippines, however, reserved the right to make additional submissions for unspecified “other areas at a future time.”

The developments around the submissions of relevant countries to CLCS created several implications for the situation in the South China Sea in general, and for cooperative activities in particular.

The submissions to the CLCS by Malaysia and Vietnam arguably clarified the borders of their claims of continental shelf from the mainland. Furthermore, it seems that Vietnam and Malaysia do not consider any features in the Spratly Islands (and the Paracel Islands in the case of Vietnamese submission) as islands, as defined in Article 121 of UNCLOS. If any of the South China Sea islands is capable of generating EEZ and continental shelf rights, there is no area of outer continental shelf beyond 200 nautical miles for submission to CLCS. The fact
that Vietnam did not make any comments on the contract between the Filipino government and Forum Energy in the area within the Reed Bank basin reconfirmed Vietnam’s aforementioned consideration.

If this clarification of Malaysia and Vietnam’s claims regarding the disputed islands would be adopted by all the South China Sea parties, it would significantly simplify the dispute overall by substantially narrowing the maritime claims associated with the disputed islands. There would be an entire area in the central part of the South China Sea, which could be described as ‘the continental shelf doughnut’ combined by the outer limits of continental shelf from the nearest island or mainland of surrounding South China Sea countries, which is open for cooperative developing maritime resources.

This simplified and dispute-solution-oriented interpretation of Vietnam and Malaysia about ‘regime of features’ of Spratly was shared by other surrounding South China Sea countries but not by China. In the note protesting the submissions of Vietnam and Malaysia to CLCS, China asserted its “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.” Attached to the note was a map showing China’s U-shaped claims to virtually the entire South China Sea. This possibly means that China uses an alternative claim, beside its historical claim, based on an EEZ and continental shelf from islets of Spratly that it also claims. Most recently, in the note sent to UN General Secretary responding to the note sent by the Philippines protesting the U-shaped claim, China for the first time publicly and officially states that “China’s Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf”. It is worth to note that Chinese government’s position on “regime of islands” in the South China Sea contrasts with its own position regarding to regime of Japan’s Oki-no-Tori Shima Island, a small, extremely isolated reef sharing many characteristics with Spratly’s features and located near the centre of the Philippine Sea region of the western Pacific Ocean. In the Chinese note sent to UN General Secretary protesting Japan’s Submission of 200 nautical miles of continental shelf measured from the basepoints Oki-ni-Tori Shima Island and extended continental shelf from 200 nautical miles China argued that “the so-called Oki-ni-Tori Shima Island is in fact a rock as referred to in Article 121(3) of the Convention”.

Regarding the position of the Philippines, during the process of preparing the submissions on the outer limit of continental shelf, the Philippines passed the Archipelagic Baselines bill on March 10, 2009, which revised the existing straight baselines and brought them into conformity with the rules for archipelagic baselines set out in the UNCLOS. Under the new law, the disputed Kalayan islands group and Scarborough Shoal remain part of Filipino territory but under a “regime of islands.” In August 2009, in notes protesting both the submission by Vietnam and the joint submission by Vietnam and Malaysia to CLCS, the Philippines did not refer to any possible continental shelf generated from the disputed Kalayan islands, but that “the submission for extended continental shelf by Vietnam lays claim on areas that are disputed because they overlap with those of the Philippines,” (extended continental shelf beyond the 200 nautical mile limit
from archipelagic baseline\textsuperscript{48} and “joint submission for extended continental shelf by Vietnam and Malaysia lays claim on areas that are disputed not only because they overlap with that of the Philippines, but also because of the controversy arising from the territorial claims of some of the islands in the area including North Borneo.”\textsuperscript{49} Arguably, it means that the Philippines do not consider any features in the Spratly Islands as an island, as provided in Article 121 of UNCLOS. Therefore, these features are incapable for generating EEZ and continental shelf rights.

Concerning the Indonesian position, in a note circulated in the UN on July 8, 2010, to protest nine-dotted-lines-map attached to China’s aforementioned note, Indonesia stated that “those remote or very small features in the South China Sea do not deserve exclusive economic zone or continental shelf of their own,” and “the so called nine-dotted-lines-map...clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982.”\textsuperscript{50}

Brunei also seems to share the view of other concerned countries in ASEAN. In preliminary information concerning the outer limits of its continental shelf, submitted to CLCS on May 12, 2009, Brunei stated that the country has made significant progress towards preparation of a full submission, but it can only provide the full submission after the date of May 13, 2009. “Brunei’s full submission to the Commission will show that the edge of the continental margin, lying at the transition between the Dangerous Grounds and the deep ocean floor of the South China Sea, is situated beyond 200 nautical miles from the baselines from which Brunei’s territorial sea is measured.”\textsuperscript{51} It possibly means that Brunei will fix the outer limit of extended continental shelf beyond 200 nautical miles from the baseline of land territory without taking consideration of claimed islands in the Spratly Islands.

**China’s “Core National Interest”**

The most significant development in the South China Sea is that in March 2010, senior Chinese officials told U.S. high-ranking visitors that China had put the South China Sea into its “core national interest” category of non-negotiable territorial claims in the same level as Taiwan and Tibet.\textsuperscript{52} It possibly means that Chinese authority has to defend its newly categorized national interest in the South China Sea by all costs, including the use of force. An editorial headlined “American shadow over South China Sea” in the Global Times, a newspaper viewed as a mouthpiece of China’s Communist Party, stated that “China will never waive its right to protect its core interest with military means.”\textsuperscript{53} If this position is adopted officially by Beijing, it clearly goes against spirit and text of the DOC. However, China never officially denies of confirms its position regarding elevation South China Sea in to “core interests” category.

Several factors contributed to explain why China has come back to an assertive approach in the South China Sea in recent years. First, China for decades of impeccable continuous economic growth has accumulated its power, economically and militarily, to the level that make it become more self-confident and assertive in external behaviors, especially during and after the world financial crisis.
Second, stabilizing the relations between China-Taiwan has diverted Chinese priorities, capability and resources to other issues, notably to the South China Sea issue. Third, rising nationalism and increasing role and activities of PLA and competition of interest groups (law enforcements agencies, energy corporations) have complicated the process of policy formulation and policy implementation of China toward the South China Sea issue. Fourth, actions taken by other claimants forced China to react and China overly reacted. Fifth, the lack of workable mechanism in managing the disputes in the South China Sea, especially in regulation the conduct of parties, including China.

**ASEAN’s Concern, US Involvement and China’s Softened Tone**

Chinese increasing assertiveness in the South China Sea in recent years worried ASEAN countries and created opportunities for United States to “come back” to Asia. At the 43rd ASEAN Foreign Ministers Meeting in Hanoi on July 1920, 2010, ASEAN Ministers ‘stressed the importance of maintaining peace and stability in the South China Sea,’ ‘reaffirmed the importance of the DOC,’ ‘underscored the need to intensify efforts to ensure the effective implementation of the Declaration,’ and ‘looked forward to the Regional Code of Conduct in the South China Sea (COC).’ ASEAN Ministers also tasked ASEAN Senior Officials to work closely with their Chinese counterparts to reconvene the ASEAN-China SOM on the DOC at “the earliest opportunity.” In response, at the ASEAN-China Foreign Ministers Meeting, China’s Foreign Minister Yang Jiechi agreed to implement the DOC, but declared that an ASEAN-China SOM meeting on DOC will be held in an “appropriate time.”

At the 17th Asian Regional Forum (ARF) on July 23, thirteen foreign ministers (including five from ASEAN countries) brought up the South China Sea issue and supported the ASEAN-China DOC. For the first time in this level in an official meeting, U.S. Secretary of State, Mrs. Hillary Clinton, delivered a long statement on US position on the South China Sea issues. She said that the United States has a national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea. Clinton said the United States supports a collaborative diplomatic process, supports the 2002 ASEAN-China DOC, encourages the parties to reach agreement on a COC, and is ‘prepared to facilitate’ initiatives and confidence-building measures consistent with the DOC. In response, China’s Foreign Minister Yang Jiechi highlighted the ability of the DOC to enhance mutual trust and to create favorable conditions and good atmosphere for final solution to the disputes. But he insisted that the South China Sea issues should not be internationalized, that the DOC should not be viewed as between China on one side and ASEAN on the other, and that disputes should be handled on a bilateral, not multilateral, basis. He also pointed out that there have been JWG consultations on DOC, and “when the conditions are ripe”, a SOM can also be held. An article released immediately after ARF 17 in the website of Chinese Ministry of Foreign Affairs considered that Clinton’s remarks were in effect “an attack on China.”

Similarly to situation in the final stage of COC/DOC negotiation aforementioned before, the intervention of the United States into the South China
Sea and increased US cooperation with ASEAN countries possibly exerted influence on China’s calculations. China’s strategy has been concentrating on preventing the South China Sea issue from being multilateralized and internationalized, especially from US interference. In July 2010, response to Clinton’s remark at ARF 17 in Hanoi, Chinese Foreign Ministry warned that turning the South China Sea issue into an international or multilateral one will “only make matters worse and the resolution more difficult.” In September 2010, China has also tried to prevent the ASEAN-US Summit from discussing the South China Sea issues by voicing its opposition to the U.S. proposals on the South China Sea.

In China the strength of the Clinton’s statement and responses of a number of other countries has created a debate over whether the claim is wise with elevating the “South China Sea” to be “core interests”. According to article in August 27th, 2010 of columnist Li Hongmei in People Daily, an official news paper of China’s Communist Party, said that some Chinese military strategists and scholars believed that incorporating the South China Sea into the package of China’s core national interests is, at least currently, “not a wise move”. They considered that the claim would “upset and enrage the US” and could “strike a nerve with China’s neighboring countries”. The claim could “facilitate the US to bring its carrier close to the Chinese home and make the regional issue (South China Sea) international ...to strengthen US leadership and its economic, military, and political presence in East Asia”. Some even recognized that “the claim is not in accordance with the international standard practice”. On July 27th, 2010 the Global Time suggested that “Clearly stating China’s intention (in the South China Sea) and easing the concerns of other countries remains a challenge for China in the future. As the largest country in the region, China has the responsibility to reduce the divergence and build a consensus.” The Global Times also said in an editorial in November 3rd that China “needs to consider holding back a little bit” on territorial issues (in the East China Sea and the South China Sea) if the country wants to ensure sound development in East Asia without allowing U.S. intervention in regional affairs. “What China needs to do is not simply to get tougher.” “It should work toward a practical solution to end the disputes.” “If this is hard to achieve, China should at least try to avoid developing a situation that caters more to U.S. interests than to Asia’s.” The editorial said China has to acknowledge the fact that disputed islands “cannot be taken back in a short period of time.”

Signaling increased efforts at maintaining peace in the region, in a press briefing in Manila at the end of September 2010, Chinese Ambassador to the Philippines Liu Jianchao said China and Southeast Asian countries have initiated discussions at the working level to “draw up a code of conduct”. “(China) is ready to work with the other parties concerned on this document” and now “open to different formulas and initiatives in preserving peace, prosperity and stability in this region.”

At forum of Asian defense ministers ADMM+ in Hanoi in October 2010, although the South China Sea issue was not in official agenda, representatives of seven nations raised the issue of how to guarantee maritime security for all
countries surrounding South China Sea. US Defense Secretary Robert M. Gates reiterated Clinton’s comments in ARF in July 2010 that competing claims in the South China Sea should be “settled peacefully, without force or coercion, through collaborative diplomatic processes, and in keeping with customary international law”. He said that “US have a national interest in freedom of navigation; in unimpeded economic development and commerce; and in respect for international law”. Contrast to Yang Jiechi’ reactions at ARF 17, the Chinese defense minister, Liang Guanglie, called for “mutual trust” throughout the region. He said neighbors needed not fear his nation’s military. “China pursues a defense policy that is defensive in nature”. “China’s defense development is not aimed to challenge or threaten anyone, but to ensure its security and promote international and regional peace and stability”. He did not describe the South China Sea as a region of “core interests”.65

According to the Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2011-2015) released after the ASEAN-China Summit in November 2010 in Hanoi, China committed to work with ASEAN “push forward the full and effective implementation of the DOC in the South China Sea” and “toward the eventual conclusion …of a code of conduct in the South China Sea”.66

In November 4, 2010, Chinese Assistant Foreign Minister Hu Zhengyue said China is making efforts to establish a new security concept that China remains committed to playing “a constructive role” to address important regional and international issues, including to peacefully resolve disputes on territory and marine rights through friendly negotiations with neighboring countries.67

Chinese softened tone in diplomatic front seemingly corresponds partly with activities taken by China on the sea in recent time. Just before ADMM Plus Meeting in Hanoi in October 2010, after a number of diplomatic protests from Vietnamese side, China informed Vietnam that it would unconditionally release the trawler and nine fishermen detained near Paracel islands more than a month before. In 17th August 2010, U.S. deputy assistant secretary of defense Robert Scher said in a press conference in Hanoi that the Pentagon had not seen any “recent” Chinese intimidation of global oil and gas companies operating in the South China Sea.68

**New Round of Tension**

However, the question remains that whether China have softened its tone in recent months after ARF 17 reflects a shifting in policy or just tactics in dealing with the South China Sea issue. Indicator of this assessment occurred on November 2, 2010, immediately after China expressed a conciliatory tone, when the Marine Corps of the Chinese People’s Liberation Army staged a military drill in the disputed South China Sea massing 1,800 troops and more than 100 ships, submarines and aircraft for a live-fire display of a growing military power.69 Li Jie, a Beijing-based naval expert, denied that it was a special signal, but he commented that China chosen the South China Sea theater to show naval capacity and strength. Li said “Some countries intervene in the South China Sea in recent
years, jointly conducting military exercises with our neighboring countries, so it’s time for us to oppose these interventions with power politics.\textsuperscript{70}

This unpredictability in China’s policy on the South China Sea partly also reflects on the table of negotiation on the implementation of the DOC. At the fifth meetings of ASEAN-China JWG in Kunming, China in December 2010, China just came back to its previous position of bilateralism by proposing to delete the point 2 of the Guidelines and to consider that the Guidelines are guiding principles for implementing only the “agreed joint cooperation activities stated in the DOC”, not for implementing the Declaration at whole. China refused to agree on organizing ASEAN-China SOM on DOC implementation by arguing that the SOM cannot be held until JWG reached a consensus on the Guidelines.\textsuperscript{71}

Most recent incidents underscored China’s continued assertive approach in the South China Sea disputes. On March 2, two Chinese patrol boats aggressively harassed the seismic survey vessel operating by Energy Forum company, which had been awarded a contract by the Philippine government to exploration of gas field located inside Reed Bank, an area 80 miles west of Palawan.\textsuperscript{72} The Aquino administration has protested at least six incidents, including Reed Bank incident, involving alleged Chinese intrusion into waters within the Philippines 200 nautical miles exclusive economic zone.\textsuperscript{73} Other serious incident relating to report of the Philippine military in June 2011 that a Chinese surveillance vessel and navy ships were seen unloading building materials and erecting posts in the vicinity of Iroquois Reef and Amy Douglas Bank an uninhabited undersea hill claimed by the Philippines about 230 kilometers from southwestern Palawan province.\textsuperscript{74} If report of Philippine military is correct, it is clear that China seriously violates the DOC 2002, in article 5 of which states that “The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.”\textsuperscript{75} (Italic added)

On May 26, 2011, other incident, in this time between China and Vietnam, took place in an area just about 80 miles off the south-central coast of Vietnam, within Vietnam exclusive economic zone, when three Chinese patrol boats harassed a Vietnamese ship Binh Minh 02 exploring for oil in the South China Sea, cutting the seismic survey cable and warning the ship that it was violating Chinese territory.\textsuperscript{76}

Similar incident occurred on June 9, 2011, when a Chinese fishing boat, with support from Chinese fishing patrol vessels, rammed the survey cables of the PetroVietnam ship Viking II, which was conducting a seismic survey in Block 136-03, an area within 200 miles exclusive economic zone of Vietnam and more than 622 miles from China’s Hainan island. Vietnam MOFA spokesperson Nguyen Phuong Nga said “these acts are tailored in a very systematic way by the Chinese side with the aim to turn undisputed areas into disputed areas.”\textsuperscript{77} The Viking II incident took place only four days after Chinese Defense Minister Liang Guanglie reassured neighbors at Sangri-la Dialogue in Singapore that China poses no threat.
Conclusions

As the most powerful country, China sets the tone for the dispute in the South China Sea. As Beijing adopted a more accommodating stance in the South China Sea disputes the Declaration on the Conduct of Parties between China and ASEAN was reached in 2002. A relatively ‘softer’ China’s policy toward the South China Sea might stem from certain factors, including: i) ASEAN’s consensus and solidarity; ii) an increasing engagement from outside forces, especially the United States, in the South China Sea issue; and iii) China’s need to project a good image and promote its relations with other countries in the region.

Since 2007, as Beijing corrected its policy toward the South China Sea issue with more assertive approach, the situation was tense again. Opportunities have been created for United States to intervene into the issues and strengthen their position in the region. In last months of 2010, Beijing has voiced a softer tone on the issues to ensure neighboring countries and to gain back partly damaged image in the region. However, China softened its tone after ARF 17 in Hanoi reflects just tactics in dealing with the South China Sea issue. In the most recent months China is hardening its approach toward South China Sea with more assertive or even aggressive behaviors. In the near future, China likely will continue pursue its assertive approach in dealing with other smaller claimants in the South China Sea disputes. Consequently, relationship between China and ASEAN countries are worsening and the South China Sea resurfaces as potential flashpoints that could cause regional instability or even open conflict scenario that will not bring benefits to any sides of the disputes.

To promote regional security and cooperation, China and ASEAN should successfully implement the DOC and Beijing should accept a legally binding regional COC, which would ensure smaller parties from being intimidated and making them more confident to proceed with the cooperative activities in the South China Sea.

ENDNOTES

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4 Ibid.
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12 http://www.aseansec.org/15265.htm
13 http://www.aseansec.org/16805.htm
14 Ibid.
15 http://www.aseansec.org/16888.htm
23 Ibid.
26 www.mofa.gov.vn
27 Personal communications with Vietnam MOFA’s and PetroVietnam’s officials.
29 Mark Valencia, ‘Wither the South China Sea dispute?’
31 Leszek Buszynski and Iskandar Sazlan, “Maritime Claims and Energy Cooperation in the South China Sea,” 156
32 Lee Lai To & Chen Shaofeng, “China and Joint Development in the South China Sea,” 160
35 Ibid.
36 Nguyen Hong Thao, “Declaration on the Conduct”, 212
41 UNCLOS provides for two categories of feature under Article 121 governing the “regime of islands”: islands that are capable of generating the full suite of maritime zones, including the exclusive economic zone and the continental shelf, and “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”
First Manila Conference on the South China Sea: Toward a Region of Peace, Cooperation, and Progress


A Philippine official confirmed this consideration with author during private conversation in Manila in July 2010.


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Geopolitical Analysis of the South China Sea Disputes

Tetsuo Kotani*

Introduction

Geostrategist Nicholas Spykman once described the South China Sea as the “Asiatic Mediterranean” to underscore its importance in Asian geopolitics; recent geostrategists like to call it the “Chinese Caribbean.” Just as Rome sought control over the Mediterranean and the United States over the Caribbean in pursuit of regional dominance, China seeks dominance over the South China Sea.

China’s claims and assertiveness have increased tension in the South China Sea. Most attention focuses on Beijing’s appetite for fishery and energy resources. But from a submariner’s perspective, the semi-closed sea can be referred to as the “Chinese Okhotsk” given its position in China’s nuclear strategy. Without understanding the nuclear dimension of South China Sea disputes, China’s maritime expansion makes no sense.

This paper is a geopolitical analysis of the South China Sea disputes. To understand the importance of the South China Sea in Asian geopolitics, this paper first reviews Imperial Japan’s attempt to dominate the waters. This paper then analyzes current disputes from the viewpoint of nuclear deterrence.

Lessons from the Pacific War

“All hands on deck, prepare to abandon ship. May God be with you!” shouted Captain William Tennant, skipper of the HMS Repulse, on December 10, 1941, at 12:31. Then, a CBS correspondent, swimming in the thick oil flowing out from the Repulse, witnessed the HMS Prince of Whales lie “like a tired horse” half a mile away.¹

The battleship and the battle cruiser had been sent to Singapore in the hope that their presence would have an additional deterrent effect on Japan’s southern advance. However, those two British capital ships were sunk in the South China Sea off the Malay Peninsula by nine Japanese planes based on Indochina the first ships in history to be sunk by aircraft.

Japan, eyeing the resources in Dutch East Indies, had begun its southern expansion in 1939, filling the power vacuum in Southeast Asia resulted from the war in Europe. In response to Japan’s advance into South French Indochina, from which Singapore was within Japanese aviation’s reach, in the summer of 1941, the United States, coupled with Great Britain and Holland, imposed a trade
embargo on Japan, thus shutting off the supply of oil from the United States, the Persian Gulf, and the East Indies.

Japan’s strategy for the Pacific War was to establish a defense perimeter around its home islands and the Southern Resources Area, from Rangoon, through the East Indies, Rabaul, and the Gilberts and Marshalls to Wake, while inducing the United States to agree to negotiations. After a carrier attack on the U.S. Pacific Fleet at Pearl Harbor, Japan seized Guam, the Philippines, Hong Kong, Paracel and Spratly archipelagos, Singapore, and Wake, and created the defense perimeter in 90 days. Japan thus established complete control over the South China Sea, or the gates to the Indian Ocean.

Japanese carrier force also raided the naval bases on Ceylon to discourage British forces in the eastern Indian Ocean. Due to Japanese control of the gates along the Indonesian archipelago, the British Pacific Fleet, formed in November 1944, needed to pass south of Australia to reach the Pacific theater a route 7,500 miles longer than an approach through the Malacca Straits.

However, there existed a wide gap in Japan’s defense perimeter between the Kurils and Wake. In the Battle of Midway, Japan lost four carriers, 322 aircraft and many irreplaceable first-line aviators. With the weakening of Japanese naval power, Japanese offensive ended; the Allied counteroffensive began. The dual Allied advance through the Southern and Central Pacific gradually eroded the Japanese defense perimeter along the offshore island chain off east Eurasia. Only stray Japanese ships and submarines operated in the Indian Ocean for the rest of the war because the power center was in the Pacific. After the seizure of the Marianas, U.S. bombers began fire raids on Japanese cities, while the Allied submarines and aircraft destructed the sea lines of communication between Japan and the South Resources Area and China. Finally, the atomic bombing, coupled with the Soviet invasion of Manchuria, induced Japan to surrender.

What lessons should be learned from the Pacific War? First, the security of Singapore, an island on the tip of the Malay Peninsula, was a vital interest of the United States. The United States was not ready for a war with Japan over Japanese aggression in China. But freedom of navigation in the maritime highway linking the Pacific and Indian Oceans was much more vital for the United States, when there was a risk that Japan might link up with Germany in the Indian Ocean. It is not an exaggeration to say that the United States prepared itself for the war with Japan over freedom of navigation in the South China Sea. The Pacific War also revealed that the Pacific Ocean is open-ended and provides highways for the direct confrontation of hostile powers. Although Japan continued to control the gates to the Indian Ocean, it had little effect on the defense in the Pacific theater.

In short, the South China Sea is important because it is an international waterway. Any attempt to dominate the waters invite hostilities from seafaring powers.
The Chinese Okhotsk: The Nuclear Dimension of the South China Sea Disputes

Possessing a credible sea-based nuclear deterrent is a priority for China’s military strategy. China’s single Type 092, or Xia-class, nuclear-powered ballistic missile submarine (SSBN), equipped with short-range (1,770 km) JL-1 SLBMs (submarine-launched ballistic missiles), has never conducted a deterrent patrol from the Bohai Sea since its introduction in the 1980s. However, China is on the verge of acquiring credible second-strike capabilities with the anticipated introduction of JL-2 SLBMs (estimated range of 8,000 km), coupled with DF-31 and DF-31A road-mobile intercontinental ballistic missiles (ICBMs). China plans to introduce up to five Type 094, or Jin-class, SSBNs outfitted with the JL-2 missiles, while constructing an underwater submarine base on Hainan Island in the South China Sea. China is thus making every effort to keep the South China Sea off limits just as the Soviet Union did in the Sea of Okhotsk during the Cold War.

The Soviet Union turned to SSBNs as insurance against US capabilities to destroy land-based ICBMs. The need to secure its insurance force from attacks and the requirement for effective command and control meant that Soviet SSBNs had to be deployed close to home with longer-range missiles to strike the continental United States from home waters. In addition to the Barents Sea, Moscow gave priority to making the Sea of Okhotsk a safe haven for SSBNs by improving the physical defenses of the Kuril Islands and reinforcing the Pacific Fleet based at Vladivostok. The Soviet Pacific Fleet deployed 100 submarines, coupled with 140 surface warships, including a Kiev-class light aircraft carrier, to defend its insurance force in the Sea of Okhotsk.

Likewise, China needs to secure its forces in the South China Sea and modify its maritime strategy and doctrine accordingly. Currently, the primary wartime missions of the People’s Liberation Army Navy (PLAN) are: 1) securing sea approaches to Taiwan; 2) conducting operations in the western Pacific to deny enemy forces freedom of action; 3) protecting Chinese sea lines of communication; and 4) interdicting enemy lines of communication. With the introduction of the Type 094, protecting Chinese SSBNs will become another primary mission, and this mission will require China to kill enemy strategic antisubmarine forces and end the resistance of other claimants in the South China Sea. Chinese anti-access/area-denial (A2/AD) capabilities, especially quieter nuclear-powered attack submarines (SSNs), can be used to counter enemy forward antisubmarine warfare (ASW) operations. China’s aircraft carriers, when operational, will be deployed in the South China Sea to silence the neighboring claimants.

China started to encircle the South China Sea, filling the power vacuum created by the withdrawal of US forces from the Philippines in 1991. China then reasserted the former Republican government’s “historical” claims over all the islets, including the Paracel and Spratly archipelagos, in the South China Sea and 80 percent of the 3.5 million-km² body of water along the nine-dotted U-shaped line despite having no international legal ground to do so. Those islets can be used as air and sea bases for intelligence, surveillance, and reconnaissance.
(ISR) activities and as base points for claiming deeper part of the South China Sea for PLAN SSBNs and other submarines. China also interprets the UN Convention on the Law of the Sea (UNCLOS) in an arbitrary manner and does not accept military activities by foreign vessels and overflight in its waters to deny enemy ASW operations.

No wonder then that China called the semi-closed sea a “core interest” in 2010 and started to take assertive actions against other claimants with threats and even the use of force. China’s efforts to dominate the South China Sea face fundamental challenges, however. Chinese assertiveness has not only inflamed hostilities from other claimants but also raised concerns from seafaring nations such as the United States, Japan, Australia, and India. After all, the South China Sea is a recognized international waterway unlike the Sea of Okhotsk. Plus, since the JL-2 missiles cannot reach Los Angeles from the South China Sea, Type 094 SSBNs need to go into the Philippine Sea, where the US Navy and Japan Maritime Self-Defense Force (JMSDF) conduct intense ASW operations.

To calm neighboring claimants, China has conducted dialogue and consultation with them since the 1990s. One result was the 2002 Declaration on the Conduct of Parties in the South China Sea (2002 DOC), which calls for peaceful solutions through dialogue. But China has been reluctant about implementation of a binding code of conduct. In response to China’s recent assertiveness, Vietnam and the Philippines have conducted live-fire exercises in disputed waters, and strengthened ties with the United States since a US presence is the most visible deterrent.

The United States has made clear its opposition to China’s assertiveness at various regional forums by emphasizing its interest in freedom of navigation. The United States recently announced the deployment of littoral combat ships in Singapore in the hope that their presence would have additional deterrent effect on China’s assertiveness just as Great Britain deployed HMS Prince of Wales and HMS Repulse at the “Gibraltar of the East” to deter Imperial Japan. On the other hand, since China’s excessive claims have led to the 2001 EP-3 incident and the 2009 Impeccable incident, the United States is seeking an incidents at sea agreement with China. But China is not interested since such an agreement will justify a continued US presence in the South China Sea.

India is another important player in the South China Sea. Delhi is expected to introduce its first SSBN INS Arihant with the short-range K-15 (700 km) SLBMs shortly and plans to build two more SSBNs with the development of longer-range K-4 SLBMs (3,500 km) and six SSNs to protect those SSBNs. Until India successfully develops longer-range SLBMs, Indian SSBNs will need to operate in the South China Sea to target Beijing. India is also concerned about Chinese SSBNs based in the South China Sea. In the near future, US, Chinese, and Indian submarines will play a game of underwater tag. As a result, India is strengthening ties with South China Sea nations, especially Indonesia, to justify its increased presence there.
Australia is also concerned about the high tension in the South China Sea. Stability in Southeast Asia on Australia’s “Northern approaches” is particularly important since a hostile power can project power to Australia or threaten its seaborne trade and energy supply routes. It is expected that Australia will increase its military posture in the state’s north while allowing greater access to its bases by U.S. military.

Japan has strategic interests in the South China Sea. It is a critical Japanese sea lane through which 90 percent of imported oil passes. The power balance in the South China Sea also has enormous impact on security in Japan’s surrounding waters, namely the East China Sea and Philippine Sea. In addition, if China successfully obtains a sea-based second-strike capability by dominating the South China Sea, that would undermine the credibility of the US extended deterrent. Japan announced the new National Defense Program Guidelines in December 2010, which calls for enhanced ISR operations along the Ryukyu island chain and reinforcement of the submarine fleet. In the recent US-Japan 2+2 meeting, Tokyo and Washington included maintenance of maritime security and strengthened ties with ASEAN, Australia, and India in common strategic objectives. Despite domestic turmoil in Tokyo, China’s assertiveness in the maritime common led to this strategic shift.

Conclusion

China faces a dilemma in the “Chinese Okhotsk.” The more it seeks dominance over the international waterway, the more it invites hostilities. To avoid further deterioration, China should modify its nine-dotted claims in accordance with UNCLOS (US should accede to UNCLOS immediately). As long as China continues its assertiveness, China’s maritime neighbors will strengthen strategic cooperation with the United States, India, Australia, and Japan to establish a regional ASW network. Yet, the region should seek cooperation with China. Where possible, joint development in disputed waters should be pursued. As the South China Sea is becoming a piracy hot spot, counter-piracy is an important agenda as well. Meanwhile, regional countries should continue dialogue with China on maritime security at various forums, including ASEAN Regional Forum, ASEAN Defense Ministers’ Meeting Plus, and the East Asia Summit, and then seek a code of conduct to avoid armed conflict.

Endnotes

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The 2010 Hanoi Declaration on the South China Sea Dispute: The Birth of a New Diplomatic Strategy vis-à-vis an Emergent China?¹

Renato Cruz De Castro, Ph.D.

Less than a month after President Barack Obama’s inauguration as the 44th president of the United States, his newly-appointed Secretary of State Hillary Clinton’s embarked on a trip to Asia. Secretary Clinton’s February 2009 Asian visit underscored the new administration’s incipient and tentative interest in the region. During her first foray to East Asia, she stressed that the Obama Administration would listen and respond to the concerns of allies and partners in the region despite America’s other serious preoccupations elsewhere.² The following year, the Obama Administration vigorously pursued its policy of active re-engagement in East Asia. This policy aims to enhance the credibility of U.S. security/diplomatic commitments by buttressing its bilateral alliances and championing regional multilateralism. To substantiate this policy, the Obama Administration undertook strong and visible foreign policy actions in the last six-months of 2010. The most significant among these moves was Secretary Clinton’s 24 July 2010 declaration on the South China Sea in Hanoi, Vietnam.

Specifically, the 2010 Hanoi Declaration refers to the speech of Secretary Clinton on 24 July 2010 in Vietnam. Secretary Clinton said that the U.S. has a national interest in the freedom of navigation, open access to Asia’s maritime commons, and the littoral states’ respect for the international law of the sea in the South China Sea. She mentioned that the U.S. is prepared to facilitate multilateral negotiations to settle the dispute over the Spratly Islands. Her speech bluntly contradicted China’s claims of sovereignty in the South China Sea, which would extend close to the shores of ASEAN countries and would be overlapped in part by the territorial claims of four ASEAN claimant states Vietnam, the Philippines, Malaysia, and Brunei Darusallam.³ Although perceived as diffusing the tension in the South China Sea, the 2010 Hanoi Declaration was a sharp rebuke to China, which has insisted for decades that a large part of the South China Sea and all of its islands belong to it, and that the dispute should be resolved only through bilateral negotiations. Through its position, the U.S. capitalized on the fear of the ASEAN claimant states of China’s belligerence while invoking the freedom of navigation in the light of the March 2009 USS Impeccable incident with China.⁴ Lastly, the official pronouncement was indicative as well of the U.S. growing apprehension about China’s naval prowess and assertiveness in the Spratlys.
Conveniently overlooked in these analyses, however, are the declaration’s long-term implications on U.S. foreign policy in particular, and on the regional states’ policies in general vis-à-vis an emergent China. The 2010 Hanoi Declaration initiates a new diplomatic strategy which is aptly termed constrainment. Such a scheme, however, is far from being simple. It is an arduous and tedious task requiring the U.S. and the Southeast Asian states pressuring China into accepting and softening, if not modifying, its assertive position on the South China Sea dispute.

This paper examines the underlying diplomatic and strategic implications of the 2010 Hanoi Declaration. It explores the primary question: How does the 2010 Hanoi Declaration evoke and make operational the strategy of constrainment vis-à-vis an emergent China? It also addresses these corollary questions: 1) What is constrainment? 2) What is the politico/strategic basis of the 2010 Hanoi Declaration? 3) What are the key elements of the Hanoi Declaration? 4) How do these elements combine to generate a strategy of constrainment? 5) How does China respond to this constrainment strategy? 6) What are the problems in applying this policy on an emergent China? And 7) What are the limits of constrainment as a long-term diplomatic strategy?

From Hedging to Constrainment

With its long civilization and central geographic location, China has always considered itself as a great power in East Asia. With its growing military capabilities and expanding economic clout, China is capable of challenging the U.S., the dominant power in East Asia. However, China dare not confront the U.S. now or in the immediate future. This East Asian power concentrates on economic development to ensure its comprehensive security, without ignoring or passively down-playing the direct challenges from any superpower. China’s major security concern is maintaining its dynamic economic relations with Japan, South Korea, the U.S. and the ASEAN states. Its baseline goals include rapid economic growth, social and economic liberalization, globalization, political consolidation (for the communist party), and the maintenance of a modern military force against Taiwan. All these are directed towards developing its regional influence and not to challenge the U.S. at the present on a global scale.

Despite their cooperative relations, China regards the world’s sole superpower as a threat to its national security and domestic stability. This mindset stems from Washington’s tacit support of the status quo in the Taiwan Straits and its alleged agenda of subverting the few remaining socialist states in the world through a process of “peaceful evolution.” China’s wariness of the U.S. is further exacerbated by increased U.S. military presence in Southeast Asia as a result of the Bush Administration war on terror after 9/11. Repeatedly, China has articulated the need for a new world order that is multipolar rather than unipolar as a defensive measure to what it perceives as a structural threat from the U.S. Hence, it uses its economic and military power to foster a regional order which allows Southeast Asia states to freely side with either of the two powers (China and the U.S.) without making any firm commitment to any of them. Exploiting its prowess in the fields of security, production, and finance, China maintains a situation of “unstable balancing” in East Asia without downright undermining American pre-eminence in the region.
In the early years of the 21st century, the U.S. decided not to confront nor contain China but to adopt a proactive hedge strategy to manage the latter’s capabilities and influence its intentions. The hedge strategy assumes that among the emergent powers, China has the greatest potential to compete militarily with the U.S. in the future.11 The strategy, however, does not consider China as an immediate threat or a Soviet-style rival. Rather, it sees China as inching its way to a direct confrontation with the U.S. Thus, America must always state its intention to remain a dominant Pacific power and that China can ill-afford a miniature arms race or a geo-political rivalry with the U.S.12 The strategy also requires the U.S. to tighten its bilateral alliances across Asia, limit Chinese influence among its allies, and avoid any confrontation with China.

The hedge strategy is primarily a reaction to China’s diplomatic gambit of peaceful emergence in East Asia. Since the late 1990s, Beijing has reassured Southeast Asian states not to fear China’s emergence, and that the China does not exists. Time and again, it stresses that the rise of China is an opportunity for mutual economic benefit, and for the development of a stronger regional Asian position vis-à-vis the U.S.13 Apparently, many Southeast East Asian states have fallen for China’s charm offensive. These states now consider China as a benign neighbor and an essential economic partner. With this development, even the then Bush Administration could not force its Asian allies (except Japan) to choose between the U.S. and China a move that would not serve America’s interests. Hence, the U.S. resorted to the hedge strategy in its complex and dynamic geostrategic game in which Beijing engages Washington in both cooperative and competitive relations.

The hedging strategy, however, is fraught with paradoxes and limitations. For example, while Washington’s policy vis-à-vis Beijing is generally pragmatic and cooperative, some quarters of the U.S. government, specifically the Department of Defense still perceives China as a potential military threat. Although aiming to integrate China into the current international system, this policy requires that the U.S. strengthens its security relations with Japan, revitalize its bilateral alliances in East Asia, and deploy additional air and naval units from the Atlantic Ocean to the Pacific Ocean. These are clear-cut military measures intended to balance and not entice, an emergent power. Furthermore, hedging is a transitional strategy amidst the uncertainties associated with China’s emergence as a regional power. Before 2008, the U.S. was unsure whether China’s emergence would be disruptive to the regional order or not. However, China’s recent behavior indicates that it is acting like any great power in history. It attempts to change regional norms and arrangements as it develops the necessary political and military capabilities to challenge the status quo powers.

With its booming economy, increasing military capability, and expanding political clout, Beijing continuously promoted for Asia only cooperative ventures such as the ASEAN Plus Three (ASEAN, China, Japan and South Korea), and initially the East Asian Summit (which failed to become one because of the entry of Australia and New Zealand).14 It is gradually developing a navy that is no longer focused on pre-empting possible U.S. intervention in a Taiwan Straits crisis but on denying the U.S. Navy’s access to East China Sea and South China Sea or in inside the so-called First Island Chain that runs from Japan-Okinawa-
Taiwan and down to the Philippines. China has an annual double-digit increase in defense spending since 2006. Consequently, in the past few years, the People’s Liberation Army Navy (PLAN) has acquired a growing fleet of Russian-made diesel-electric Kilo-class submarines and Sovremmeny-class destroyers, along with several types of indigenously-built destroyers, frigates, and nuclear-powered attack submarines. The PLAN has also enhanced its operational capabilities across the waters surrounding Taiwan and has deployed two new classes of ballistic and attack submarines. Unrestrained by its strategic focus on Taiwan, China has developed the naval capabilities to undermine regional stability and challenge the interest of its neighboring states.

With its naval prowess, China has become more assertive in the South China Sea. In March 2009, Chinese naval and fishing vessels harassed the U.S.S. Impeccable which was openly conducting surveying operations in the South China Sea. The following year, China warned the U.S. to respect its extensive maritime claims. In March 2010, Chinese officials told two visiting U.S. State Department senior officials that China would not tolerate any U.S. interference since in the South China Sea is now part of the country’s “core interests” of sovereignty on a par with Taiwan and Tibet. Consequently, maritime states, both in Northeast and Southeast Asia, worry that China might seize some of the disputed islands in the East China Sea and South China Sea given the potential energy reserves of these maritime territories, and their importance as sea lines of communications (SLOCs). Recently, the Chinese government announced that it would increase its defense budget by 13% and improve the People’s Liberation Army’s (PLA) capability to accomplish a range of military tasks including “winning local wars under information age conditions.” This disclosure has caused apprehensions in Japan, South Korea, the Philippines, and Vietnam which have all recurring territorial confrontations with China.

Washington is now in a quandary as to what diplomatic strategy it should adopt to address China’s growing economic clout, expanding military capabilities, and glaring political assertiveness. China’s extensive economic links with its neighbors, the latter’s military weakness vis-à-vis the PLA, and Beijing’s participation in several regional forums make balancing an expensive and difficult U.S. diplomatic strategy for the region. An artifact from the Cold War, containment may be in insufficient in dealing with a generally pragmatic (not ideological), diplomatically astute, economically powerful, but unstable minimal status quo power like China. The evolving strategy is constrainment, involves a group of states defending their collective interests threatened by China’s growing capabilities by forming a temporary coalition that would exert political/diplomatic pressure on it with the goal of modifying (not containing) Chinese behavior.

Constraint as a Diplomatic Strategy

The late Canadian scholar Gerald Segal thought of the application of constrainment on an emerging China in his 1996 article “East Asia and the Constrainment of China.” He argued that containment and engagement are artifacts from the Cold War and could not address the special problem of a rising China. In other words, both strategies have become anachronistic in the post-
Cold War era. In lieu, he called for a balanced policy of engagement with a modified form of containment which he called “constrainment.” The term refers to the collective action of states that coalesce to pressure China to moderate its stance on certain issues. Segal recognized the advantages of deepening the economic, social, and political relations with China. However, he cautioned Western countries and ASEAN member-states that such interactions would be optimized only if China could be prevented from using force to realize its irredentist claims and to tilt the balance of power in East Asia in its favor.

There is a need to engage an emerging power like China but the international community should not hesitate to constraint it when necessary. Segal warned about some states’ tendency to indulge or pander to China’s whims so as not to offend the sensibilities of the Chinese people especially of what is perceived as an attempt to contain China. He noted, nevertheless, that China fears a concert of countervailing power that it has softened or modified its positions on contentious issues in the ASEAN Regional Forum (ARF), and has even signed the Non-nuclear Proliferation Treaty (NPT), and the Comprehensive Ban Treaty (CBT). Primarily, containment should not be a confrontational or a balancing policy against China. Rather, it must aim to integrate China to the international system. According to Segal: “A policy to constrain China...is intended to tell China that the outside world has interest that will be defended by means of incentives for good behavior, deterrence for bad behavior, and punishment when deterrence fails.” Thus, Segal’s constrainment approach is a “carrot and stick” policy in which engagement is matched by a tough-minded readiness to deter China from committing any aggressive act.

In the same 1996 article, Segal argued that the East Asian states have the primary responsibilities to constrain China. However, he had a disparaging view of ASEAN because of its member states’ general weakness and the regional organization’s lack of coherence. He considered Japan and other Northeast Asian states can possibly hold China at bay, the United States is still the key state that can hold the balance of power and ensure regional security. However, he observed that U.S. policy vis-à-vis an emerging China was still incoherent in the mid-1990s. Furthermore, according to him, Washington can only hold the ring against China if states in the region wanted. Fifteen years after, Secretary Clinton’s 2010 Hanoi Declaration provides these necessary elements for a viable constrainment policy on China.

**Strategic/Diplomatic Context of the 2010 Hanoi Declaration**

The 2010 Hanoi Declaration can be traced to two bureaucratic initiatives during the Clinton Administration in the early and mid-1990s. The first is the U.S.-Navy’ and U.S. Marine Corps’ post-Cold War naval war-fighting concept of “Forward from the Sea.” The doctrine directs the U.S. Navy from the traditional Mahanian goal of sea-control towards operations in the world’s littorals waters where regional or contingencies crisis are developing. It envisions the U.S. Navy and the U.S. Marine Corps conducting joint operations in the littoral maritime areas of the Pacific Rim, Norwegian Sea, Arabian Gulf, and the Mediterranean Basin. It provides for the development of the Navy’s aircraft carrier battle groups and amphibious ready groups of Marine Corps Expeditionary units. These naval/
amphibious groups can be deployed to counter regional powers with formidable armed forces possibly equipped with precision-guided weapons; slow down weapons proliferation; and enhance security and stability in the littoral waters. It requires the use of forward-deployed surface warships cruisers and destroyers and strategic ballistic missiles submarines that serve as deterrent in the U.S. Navy's forward presence and power projection from sea to land. The flexible naval expeditionary forces can be used for a wide range of naval missions in the world's littoral areas such as the South China Sea and East China Sea, Yellow Sea and the Arabian Sea.

The doctrine focuses on littoral areas instead of the sea-lanes along world's oceans. It requires greater cooperation between forces afloat and forces ashore, and introduces the concept of naval expeditionary forces on which the Operational Maneuver from the Sea (OMFTS) is founded. The OMFTS presents a new operational vision of influencing events ashore possibly in East Asia, to deter rising competitors like China. Writing in the mid-1990s, two academics maintained that since the U.S. Navy doctrine has emphasized naval and air assets necessary for combined force operations close to shores, the U.S. can “make the most important contribution to possible naval operations in the region (South China Sea area) since it can back up its commitment to protect international maritime traffic.”

The second document that has provided a springboard for the 2010 Hanoi Declaration was the “U.S. Policy on the Spratly Islands and the South China Sea”. It was issued by the State Department on 10 May 1995 in response to the Chinese occupation of the Mischief Reef in February 1995. The policy paper does not indicate the U.S. position on the legal position on the legal merits of the competing claims to sovereignty over the atolls, reefs, and cays in the South China Sea. However, Washington raised concerns over the unilateral actions and reactions in the South China Sea that had heighted the tensions in the region. The U.S. strongly opposed the use or threat of force in resolving the issue and urged all claimant states to exercise restrain. In June 1995, then Assistant Secretary of Defense for International Security Joseph Nye, announced that if military conflict in the South China Sea interfered with the “freedom of the seas, then the U.S. would be prepared to uphold the freedom of navigation.” Although generally directed at the claimant states, the warning obliquely referred to China which had developed and used it naval power against the Vietnamese in March 1988 to gain a foothold in the Spratlys. Thus, since the early and mid-1990s, the U.S. has looked in the South China Sea dispute as a source of tension in maritime Southeast Asia that could have serious consequences on regional stability. For all intents and purposes, the U.S. has also accepted its role as the “principal deterrent to any out break of hostilities.”

Finally, the 2010 Hanoi Declaration on the South China Sea dispute is part and parcel of the Obama Administration’s “U.S. is back” or re-engagement policy. As a policy process, re-engagement has two goals: First, it aims to rectify the perception that the Bush Administration’s single-minded focus on the global war on terror and the counter-insurgency campaigns in Iraq and Afghanistan had diverted Washington’s attention from East and Southeast Asia. Further, it assures America’s allies and friends that they can never be a fair game to any emergent
power, and that there is no need for them to choose between Washington and Beijing. At the same time, it conveys that the U.S. does not seek to contain China, but to transformation it into a responsible stakeholder in the region.

Second, the reengagement policy attempts to explore means and ways on how the U.S. and the regional states can expand their bilateral relations for their mutual interests. Hence, it involves strengthening American leadership, increasing its engagement, and applying new ways of projecting U.S. ideas and influence throughout the region.\(^{34}\) This is evident in the prioritization of issues such as the changing of the balance of power generated by China’s emergence. For many East Asian states, China’s emergence affects their overall relations with the U.S. Nonetheless, these states view and assess China challenge differently. For the Obama Administration, the reengagement policy offers opportunities for the U.S. and the Southeast Asian states to formulate common foreign policy objectives that go beyond balancing of power and managing the changing regional security landscape.\(^{35}\)

In early January 2010, Secretary Clinton laid down the guidelines for U.S.’s participation in East Asia’s proliferating multilateral forums. Accordingly, the U.S. will utilize its bilateral alliances as cornerstone of its participation. Simultaneously, it will be flexible in pursuing the results it wants to achieve.\(^{36}\) As an Asia-Pacific power, the U.S. will define which multilateral forums it will support. Secretary Clinton mentioned the ASEAN Regional Forum and APEC but she did not discount U.S. participation in other multilateral bodies like the East Asian Summit and even the ASEAN + Three (the ten ASEAN states with China, Japan, and South Korea).\(^{37}\) Then in June 2010, Secretary Robert Gates elaborated on this re-engagement policy declaring that the “United States is a Pacific nation and, is and will remain a power in the Pacific.”\(^{38}\) He reiterated the Obama Administration’s commitment to a strong and effective extended deterrence that guarantees the safety of U.S. allies and friends.\(^{39}\) Corollary to this, he said that the U.S. is willing to build the capacity of its Asian allies and friends so that they will not only secure their own territories, but also export security abroad.\(^{40}\)

The Obama Administration’s re-engagement strategy also aims to boost U.S. exports to East Asian markets; and to balance China’s economic and political influence in East Asia. American officials step up their visits to several capitals in East Asia, and engage key states in bilateral negotiations for new trade pacts and joint military cooperation. The U.S. also takes tough positions on issues of regional security such as the South China Sea and East China Sea maritime disputes, and the nuclear crisis on the Korean peninsula. This re-engagement comes at a time when many Southeast Asian countries worry about China’s activist and assertive foreign policy. China displays its naval power beyond its coastal territories. Its creeping maritime expansionism not only challenges American naval supremacy in the West Pacific and East Asia, but also demonstrates its aggressive intentions toward its neighboring states. Thus, China negates its earlier efforts to project its emergences as beneficial and benign to the region. This in, in turn, created political fissures between Beijing and its smaller and weaker neighboring states.
Undoubtedly, the rising tensions between China and its neighboring states augur well for the Obama Administration whose comeback or reengagement is welcomed in many Asian capitals. A re-engagement policy assures Southeast Asian states that they need not confront China single-handedly, and builds up their courage and confidence to redefine their relations with the emergent power. This diplomatic gambit will be tested when the U.S. affirms its position on the South China Sea dispute, and offers a solution to its resolution.

**Constraining an Emergent China?**

The South China Sea issue hibernated in the late 1990s and early 21st century when China initiated a charm offensive in Southeast Asia while the U.S. was engrossed with its war on terror. The dispute flared up again in 2009 as China assumed an assertive posture and consolidate its jurisdictional claims by expanding its military reach and pursuing coercive diplomacy against other claimant states. China also increased its naval patrols (using submarines, survey ships, and surface combatants) in Japan’s Exclusive Economic Zone (EEZ) and territorial waters, and intimidated foreign oil companies that tried to operate in the South China Sea. Prior to the 17th ARF meeting in Hanoi, Vietnamese, Philippine and Malaysian officials voiced their respective concerns to Washington about China’s assertiveness in laying claims to the Paracel and Spratlys islands.

In response, the U.S. informed ARF member states that Secretary Clinton’s intervention measure to the dispute and asked for their support. Consequently, 12 Asian backed the U.S. plan to facilitate the creation of multilateral mechanism to handle the South China Sea dispute.

Secretary Clinton fired the opening salvo of the constrainment policy on China via her 2010 Hanoi Declaration. She emphasized U.S. navigational interest in the South China Sea and urged that jurisdictional disputes among the claimant states should be addressed by a collaborative multiparty process. The 2010 Hanoi Declaration was made after three years of tension in the South China Sea triggered by:

a) Beijing’s verbal threats against international companies conducting oil exploration activities. Chinese envoys warned top executives of ExxonMobil that their business in China would suffer unless they pull out from their oil exploration deals with Vietnam;

b) China’s promulgation of unilateral fishing bans that led to the arrest of hundreds of Vietnamese fishermen; and

c) The impasse in the China-ASEAN working group drafting a code of conduct in the South China Sea, according because of the lack of Chinese interest in such a multilateral undertaking.

The 2010 Hanoi Declaration was also made a few months after Chinese officials and scholars classified China’s expansive claim in the South China Sea as part of its “core interests,” a category previously reserved for Tibet and Taiwan. The pivotal points of the declaration are summarized as follows:

a) Like every other nation, the U.S. has a national interest in the freedom of navigation, open access to Asia, maritime commons, and respect for international law in the South China Sea.
b) The U.S. supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion. It also opposes the use of threat of force by any claimant.

c) The U.S. does not take sides on the competing territorial claims; and

d) The U.S. is prepared to facilitate initiatives and confidence-building measures consistent with the 2002 ASEAN-China Declaration on the conduct of parties in the South China Sea.

Analytically, the 2010 Hanoi Declaration merely echoes the 10 May 1995 U.S. State Department Policy on the Spratly Islands and South China Sea except in one crucial aspect the U.S. role in the dispute. Previous official U.S. pronouncements on the South China Sea dispute were limited to the American declaration on the freedom of navigation, the sanctity of international relations, and the need for peaceful resolution. In fact, the policy mentioned that the U.S. was willing to assist in resolving the dispute in whatever way that the claimants would deem helpful. In contrast, the 2010 Hanoi Declaration explicitly expressed the U.S. desire to facilitate initiatives that can address the unresolved claims, and other confidence-building measures consistent with the 2002 ASEAN-China Declaration. As one American scholar summed it up; “Secretary Clinton offered a facilitative role for the United States in multilateral negotiations. This statement was in contrast to previous anodyne expression of U.S. policy in which freedom of navigation, the sanctity of international waters and the need for peaceful resolution were mentioned”51 This implies that Washington is ready to “hold the ring” around the constrainment of China with regard to the South China Sea dispute.

After her speech, Secretary Clinton signed the Treaty of Amity and Cooperation with the ASEAN states. Accordingly, the U.S. acceded to the treaty strengthening its relationships in Southeast Asia and to develop a stronger and more productive presence in the region.52 She also pledged the U.S. government commitment to the ASEAN states and confirmed Obama Administration is committed to deep relations with them and relayed to them President Obama’s presence in the 2nd U.S.-ASEAN Leaders Summit Meeting in New York.

Historically, the U.S. has avoided taking a public position on a many territorial disputes in East Asia. However, China’s expansive maritime claims in the South China Sea, its brazen behavior regarding the issue, and quiet pleadings from some ASEAN states have galvanized the Obama Administration into coming out with such a declaration.53 Interestingly, the 2010 Hanoi Declaration made after the Pentagon alleged that China’s PLA is strategically sifting from being mainly a ground force to becoming a potent naval and air power. This, in turn, has made the Chinese military more aggressive in East Asia, particularly in the South China Sea, and “this assertiveness has caused concerns among China’s neighbors.”54

As a matter of international diplomacy, the ASEAN member-states, publicly and privately, commended the 2010 Hanoi Declaration. Its emphasis on American national interests and the nature of territorial claims refuted China’s infamous dotted lines on a 14th century Chinese map used by Beijing to prove its “indisputable sovereignty” across the whole of the South China Sea.55 Nonetheless,
given their growing economic ties with China, ASEAN countries do not want to be confrontation and jeopardize their relations with Asia’s emergent power. They prefer that some external and powerful balancer such as the U.S. assume this role, with them playing a supporting role.\textsuperscript{56} They also noted that the resolution of the dispute through peaceful (which is a matter of American national interest) has a long-term implication. It gives a fresh impetus to transforming the non-binding 2002 declaration between China and ASEAN on the South China Sea dispute into a more meaningful code of conduct.\textsuperscript{57} Furthermore, only U.S. involvement can give these small powers confidence to face China in multilateral negotiations, and urge the latter to submit the dispute for resolution in accordance with international law.\textsuperscript{58} In any case, the 2010 Hanoi Declaration has made constrainment a viable policy for both the U.S. and the ASEAN member states in dealing with an emergent China.

**Challenging the Constrainment Policy**

China’s reaction to the 2010 Hanoi Declaration was swift and vigorous. China’s Foreign Minister Foreign Minister Yang Jiechi condemned Secretary Clinton’s for verbally attacking China and telling the international community that the South China Sea situation is a cause for grave concern.\textsuperscript{59} He argued that “turning the bilateral issue into an international or multilateral one would only worsen the situation and add difficulties to solving the issue.”\textsuperscript{60} Interestingly, China also warned the smaller ASEAN states against multilateralizing the dispute. Minister Yang Jiechi even told Singapore’s Foreign Minister George Yao that “China is a big country and other countries are small countries and that is a fact.”\textsuperscript{61} Finally, he reminded the ASEAN states of their economic ties with China.\textsuperscript{62} These vehement reactions sprang from China’s traumatic constrainment by the ASEAN states in the aftermath of the Mischief Incident, and its forced signing of the 2002 Declaration on the South China Sea. Even the multilateral resolution conjured up the image of the U.S. and its allies ganging up on China. As one Thai analyst observed: “Washington’s voicing of support for multilateral approach, a return to the policy of U.S. government in the nineties, will add to China’s suspicion that it faces a daunting diplomatic challenge if ASEAN speaks with one voice on the territorial dispute in the South China Sea.”\textsuperscript{63}

China’s official condemnation of the 2010 Hanoi Declaration was followed by stream of nationalistic rhetoric and hostile military exercises. The China Daily editorialized that “some ASEAN countries are engaged in a power game in the South China Sea because they want to seize more ocean resources despite China’s claim to unimpeachable sovereignty.”\textsuperscript{64} A Chinese academic added “China will ignore Clinton’s call and reject any U.S. role in the consultation to resolve its territorial disputes with the neighboring states.”\textsuperscript{65} Chinese envoys all over the region echoed the official mantra that the “South China Sea dispute should be resolved bilaterally between China and individual claimants to the island chains “a ploy that would eventually up play to China’s prowess as a great power and undermine the 2010 July Hanoi Declaration.”\textsuperscript{66} Even the PLA officially declared that “China has indisputable claim over the South China Sea” but insisted that it would continue to allow others to freely navigate one of the busiest waterways in the world.”\textsuperscript{67}
The PLA statement reiterated China’s claim of sovereignty over the South China Sea in defiance of the 2010 Hanoi Declaration. At the same time, it aimed to assure Washington and several ASEAN states that China’s policy toward the region had been most open and accommodating. However, China’s efforts went down the drain when the PLAN conducted a live-fire exercise in the South China Sea in late July 2010. Warships of China’s three fleets were deployed, along with fighter jets and missile launches against hypothetical long-range targets. This show of force was reflective not only of China’s displeasure about U.S. involvement, but also of its toughened stance on the South China Sea dispute.

The 2nd U.S.-ASEAN Leaders Summit was held on 24 September 2010 in New York. President Obama met eight ASEAN heads of states to formulate a common statement that calls for a multilateral approach to settle the South China Sea dispute. The U.S. anticipated that the ASEAN to take a vigorous position on the issue and push for its peaceful resolution. It was foresee that President Obama and the ASEAN leaders would issue a statement reaffirming the freedom of navigation in the South China Sea and opposing the use or threat of force by any claimant state. The wording of the joint statement was deemed significant because it was seen as building on an earlier statement on the South China Sea delivered by Secretary Clinton during the 2010 Hanoi ARF meeting. Washington, however, was disappointed.

Fearing that such statement would alienate China, ASEAN member-states objected to a joint statement bearing any reference to the South China Sea dispute and to the use of force. Three days before the U.S.-ASEAN Leaders Meeting, a Chinese Foreign Ministry spokes person warned the ASEAN states that China is “concerned about any kind of statement that might be issued by the U.S. and ASEAN over the South China Sea” and that “China opposes any country having nothing to do with the South China Sea getting involved in the dispute.” Thus, China pre-empted the summit meeting by voicing its objection to any U.S. proposals on the South China Sea. Likewise, some member-states thought that ASEAN should not further estrange China after the 2010 Hanoi Declaration. This episode, in a way, shows ASEAN’s limitation in applying and sustaining the constrainment policy against an economically emergent China. With their mutually beneficial economic ties with China, ASEAN member-states feel that they cannot simply engage in China-bashing and create the impression that they are willing to do whatever Washington tells them to do. For these small powers, China is not only a neighbor, and a most important trading partner, and investors but also an occasional political ally against the U.S. itself. After the U.S.-ASEAN summit, the unofficial Chinese media described the event as an indication of a new US assertiveness over the South China Sea, and an effort, in collusion with the Vietnamese, to contain China. Not satisfied with applying diplomatic pressure on the ASEAN states prior to the summit, the PLAN conducted its fourth major naval exercise in the South China Sea in 2010. Taken together, these four PLAN shows of force were a demonstration that China has indisputable sovereignty over the South China Sea and that it is rapidly developing the capacity to sustain larger naval deployment deep into this maritime territory.
The New York summit, however, was not a total setback for the U.S. and its constrainment policy. The sticky South China Sea problem was openly tackled by the U.S. and ASEAN on the sidelines of the United Nations General Assembly on Millennium Development Goals that preceded the summit. Washington also noted that during a working luncheon “the President and the (ASEAN) leaders agreed on the importance of peaceful resolution of disputes, freedom of navigation, regional stability, and respect for international law, including in the South China Sea.” Hence, the discussion of the South China Sea dispute occurred despite Beijing’s diplomatic efforts to dissuade ASEAN member-states not to bring out the issue in publicly and to present a common position regarding the dispute.

Generally speaking, China resents the Obama Administration re-engagement policy which it considers as a blatant interference by a distant non-Asian power in a region where Chinese influence and political clout might otherwise go unchallenged. Meanwhile, its opposition to the 2010 Hanoi Declaration stems from the fact that it offers a dispute resolution that involves the ASEAN states standing up to China and insisting on a multilateral approach based on the United Nations Convention on the Law of the Sea (UNCLOS) and norms specified by the 2002 Code of Conduct on the South China Sea. In the short term, this policy is workable on if the U.S. could “hold the ring” and let the ASEAN member-states themselves stand up against an emergent China.

**The 2011 South China Sea Crisis: Constrainment in Action?**

Less than a year after the 2010 Hanoi Declaration, China is again testing the U.S.-led constrainment policy. On 2 March 2011, two Chinese maritime surveillance boats harassed and ordered a Philippine survey ship to leave the Reed Bank (also called Recto Reed), which is 80 kilometers from the Philippine island of Palawan. The Philippine Department of Foreign Affairs filed a diplomatic protest before the Chinese Embassy in Manila on 5 March, and claimed China to date has provoked five to seven incidents in the South China Sea. The communiqué also expressed Manila’s apprehension about the increasing presence and activities of Chinese vessels in the Philippines’ EEZ. In particular it cited Chinese patrol boats firing warning shots against Filipino fishing trawlers inside Philippine territorial waters in late February 2011. These Chinese incursions hamper the normal and legitimate fishing activities of Filipino fisherman in the area and undermine the peace and stability of the region.

Incidentally, Vietnam also complained about Chinese activities in its EEZ and accused Chinese patrol boats of harassing an oil-exploration ship conducting a seismic survey 120 kilometers (80 miles) off the Vietnamese coast. On 28 May and 9 June, Chinese patrol boats cut the cables of Vietnamese oil exploration ships. Claiming that the two incidents happened within its EEZ, Vietnam a diplomatic protest against China. In the face of these two ASEAN states’ diplomatic protests, a Chinese foreign ministry spokesperson arrogantly declared that “China has undisputable sovereignty over the South China Sea islands and adjacent waters.” These Chinese unilateral actions are perceived as testing the resolve of the other claimant states in the South China Sea dispute. Moreover, they generated tension in the region and set China on a collision course with two ASEAN member-states.
In return, the Philippines and Vietnam accused China of violating the 2002 Declaration on the Conduct of Parties in the South China Sea. The two countries also mobilized the other ASEAN states for diplomatic support, and asked the U.S, as well as Japan and Australia for their diplomatic support. Six ASEAN member-states supported the Philippines’ call for the peaceful resolution of the dispute. Surprisingly, Singapore pressed China to be more open about its claims in the South China Sea, and noted that Beijing’s ambiguous stance had raised international concerns. Australia stood behind the Philippines’ position during the Philippine-Australia Ministerial Meeting in Canberra on 16 June 2011. In a joint statement, Washington and Tokyo warned that Chinese naval activities could destabilize regional security and create tension in the South China Sea. The two allies urged China to take “a responsible and constructive role in regional stability and prosperity and called for its adherence to international norms of behavior.”

Clearly, this series of events is a case of two ASEAN states, along with six other ASEAN-member states, and three major powers (the United States, Australia, and Japan) applying the constrainment policy against an assertive China. Pressuring China through this policy to moderate its aggressive behavior in the South China Sea is a litmus test for the ASEAN states and the U.S. This constrainment policy is extremely crucial given that the Philippines, Vietnam, and China are not willing to back off from their claims over the Spratlys and the surrounding waters.

Interestingly, a few days prior to the 2011 ARF annual meeting in Jakarta, China and ASEAN reached an agreement for a vaguely worded set of guidelines for the implementation of the 2002 Declaration of Conduct on the South China Sea. ASEAN officials said that the set of guidelines provides joint projects that both sides will implement in the South China Sea. These projects include marine, environmental, SARS, transnational crime, navigation, and biodiversity issues. However, the guidelines are considered sub-element of the 2002 DOC, and do not stand on their own. Furthermore, the agreement does not provide any diplomatic framework that can directly address the dispute, much more any rules of engagement governing how the claimant states’ warships should operate in the disputed waters in the Spratlys. Clearly, China’s motives in forging these guidelines is driven by the expediency of mollifying the ASEAN states so that they would take the South China Sea dispute off from the ARF’s agenda before Secretary Clinton’s arrival in Bali, Indonesia. This betrays China’s diplomatic gambit of creating a cleavage between the ASEAN states and the U.S. that would prevent both parties from pursuing a policy of constrainment against its irredentist moves in the South China Sea.

Conclusion: the Viability of Constrainment

A major policy implication of the 2010 Hanoi Declaration is the start of the official use of a constrainment policy against China. Secretary Clinton articulated that the U.S. has a national interest in the freedom of navigation in the South China Sea; supports the 2002 ASEAN-China declaration on the conduct of parties in the South China Sea; and more significantly, is willing to facilitate a collaborative
and multilateral process in resolving the dispute. Clearly, the constrainment policy enables the Obama Administration to back its rhetoric of reengagement by “holding the ring” against China which is bent on making a major territorial reconfiguration in East Asia. Consequently, the small powers of the ASEAN have found in the U.S. a major partner in holding the ring around an emergent China.

Immediately, the Chinese foreign minister declared that Secretary Clinton’s statement constitutes a virtual attack on China. After 17th ARF, the Chinese military criticized the internationalization of the dispute and conducted four major naval exercises in the South China Sea. China also warned the Southeast Asian countries in engaging in a power game in a bid to control the resources in the South China Sea despite its claim of sovereignty over this maritime territory. Militarily and diplomatically, it also pressured Hanoi and Manila to negotiate bilaterally with Beijing, recognize the legitimacy of its expansive claim on the South China Sea, and render the 2010 Hanoi Declaration moot and academic.

Undeterred, Vietnam and the Philippines have formed an ad hoc coalition of state to apply the constrainment policy against China. The support of six other ASEAN states, Australia, Japan and the U.S makes it apparent that the policy of constrainment is effective. Because of international pressure, China will likely moderate its behavior the South China Sea. However, China is still expected to undermine the constrainment policy put in place since last year. As a neighbor, a major trading partner and investor, and an occasional political ally of most of the ASEAN states, China will also try to oust the U.S. from the ring and break up any ad hoc coalition of states that will constraint it in the future. If the constrainment policy fails, the ASEAN states will face either of two worst-case two regional scenarios: an Asian balance of power in which the great and small powers are locked in a constant competition that can create the risk of alliances formations, realignment, aggression and conflict; or a Sino-centric Asia where China exercises its preponderant power to preserve the order and to shape the region according to its preferences.

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Beyond the DOC: Guidelines for Military Activities in Foreign EEZS

Mark J. Valencia*

Recent Developments

The EP-3, the Bowditch, the Victorious, and the Impeccable incidents involved U.S. military activities in or over China’s EEZ. The legal positions of the protagonists have been dealt with elsewhere but suffice it to say they continue to fundamentally and vehemently disagree. Moreover the convergence of their strategic trajectories is likely to increase the frequency and perhaps the intensity of such incidents. US Admiral Mike Mullen, the Chairman of the US Joint Chiefs of Staff says the US military perceives China as undergoing a “strategic shift, where they are moving from a focus on their ground forces to focus on their navy, and their maritime forces and their air force.” Being more specific, US Secretary of Defense Robert Gates, says China’s investment in anti-ship weapons and ballistic missiles could threaten America’s primary way to project power and help allies in the Pacific.

As for the U.S., according to US Secretary of State Hillary Clinton “Everywhere we go we will advance one overarching set of goals: to sustain and strengthen America’s leadership in the Asia Pacific region.” Making it perfectly clear, Secretary of Defense Robert Gates has said simply that “the U.S. will increase its military presence in Asia” while Michelle Flournoy, Undersecretary of Defense for Policy has elaborated that “the United States is strengthening alliances with the Philippines, Singapore and Thailand and must do more with Indonesia and Vietnam.” The U.S. is also deepening its military relationship with Australia and Malaysia.

All this is being undertaken under the guise of stepping up pressure on Pyongyang but there is little doubt in Beijing that the U.S. has it in mind as well. Indeed, the U.S.’s recently released US National Military Strategy states that it is ‘concerned about the extent and strategic intent of China’s military modernization and its assertiveness in space, cyberspace, in the Yellow Sea, East China Sea, and South China Sea.” “To safeguard US and partner nation interests,” the U.S. will be prepared to demonstrate the will and commit the resources needed to oppose any nation’s actions that jeopardize access to and use of the global commons and cyberspace, or that threaten the security of our allies.” This is nothing less than a strategic ‘rebalancing’ of American foreign policy. Moreover, the U.S. is developing a US Air Sea Battle Concept in response to what is sees as China’s ‘anti-access area denied strategies. The EP3, Bowditch and Impeccable military intelligence gathering, including target mapping, can be

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seen in this context. So can the US transition to increased use of UAVs (drones), USVs, USSVs and stealth littoral combat vessels. Their constant intrusions into Chinese air and sea space are considered like “flies at a picnic,” and China may develop counter measures.

A key question is what is China’s intent regarding Asian seas? Of course China maintains that it is committed to maintaining peace and stability in the South China Sea and is simply defending its security and sovereignty and preventing what it perceives as isolation and ‘containment.’ It also denies that it is or will inhibit freedom of navigation. But some say that it is China’s intent to regain its historic hegemony over at least the South China Sea and thereby Southeast Asia.

China apparently believes the Obama Administration is trying in general to boost the confidence of Southeast Asian nations to stand up to China. Moreover, it sees the US intervention in the South China Sea disputes as part of a broad plan to reassert itself in Southeast Asia. This includes signing the Bali Treaty, opening a mission and naming an ambassador to ASEAN, holding a US-ASEAN summit and strengthening bilateral military co-operation with specific countries like Indonesia, the Philippines and Vietnam. This is all on top of continued US support for and arms sales to Taiwan, which violates one of China’s ‘core interests.’ Thus China may be convinced that the die is cast and that the U.S. is stealthily trying to draw ASEAN or some of its members (e.g., its allies, the Philippines and Thailand), together with Australia, Japan and South Korea into an alliance to constrain if not contain China. If so, China will struggle to break out politically and militarily, setting the stage for rivalry and tension in the years ahead.

According to Western analysts China appears increasingly intent on challenging US naval supremacy in the Western Pacific. More ominous are indications that China’s military is influencing its foreign policy and that China has launched a strategy of politics and actions “to remake global norms and institutions, transforming the world as it transforms itself.” Indeed, “the reins of civilian control over the PLA [are] quite loose. The PLA’s warnings are not necessarily intended as aggressive threats but rather as stern declarations of deterrence in order to underscore what China believes to be an asymmetry of resolve.” Clearly factions of the two countries are on a strategic collision course with perhaps the bell weather being the military activities of US assets in Chinese waters particularly its EEZ. China has warned against “any military acts in our exclusive economic zone without permission.” This of course was rejected by the U.S. “The risk of miscalculation between the U.S. and China may be higher than many assume and once a crisis or confrontation develops, the potential for unintended escalation is significant.” In such situations, it may be wiser to forego exercising a perceived right to preserve the peace.

If the problem were confined to China and the U.S., there might be some modus operandi developed to accommodate their differences. But as China’s economic and military interests expand, they are clashing with their Asian neighbors as well. Although occurring in the East China Sea, the nasty incident between China and Japan in September 2010 highlighted the possibilities for similar confrontations in Southeast Asia. In that incident, Japan accused a
Chinese trawler captain of ramming two Japanese coast guard vessels and arrested him and his vessel. China dramatically reduced ties with Japan, ratcheted up political pressure and ultimately forced Japan to release the captain. Not only did Japan lose face in the incident, but bitter feelings remain and both continue to patrol the area.  

Already remote sensing from satellites and high-flying surveillance aircraft undertake scientific research and military surveys without permission in others EEZs. Indeed, in a world of increasing use of spy submarines, RC-135s, U2s, UAVs like the ever improving Global Hawk, USVs, and even UUVs, it seems that little can be done to prevent their operations. On the horizon are unmanned floating “bases” harboring missiles that may be ‘stationed’ in foreign EEZs and a new US naval emphasis on the littoral. A new US littoral combat ship will be deployed to Singapore. The latter almost seems mandated to violate the Law of the Sea. For example, a legal advisor in the US Department of State has argued that “What is not true is that the Convention prohibits submerged transit through the territorial sea. Submarines are free to transit submerged; they simply aren’t entitled to the benefits of the right of innocent passage if they do.” Such legal subterfuge and bad faith only enhances frustration in some quarters as well as the desire to forcibly halt such intrusions when and if detected.

China had for several years been on a “charm offensive towards ASEAN countries. But now after several ugly incidents, both the Philippines and Vietnam have particular recurring problems with China in the South China Sea. The problems are similar in that they involve conflicting claims to areas with potential petroleum and China has aggressively prevented each from exploring for it. Unfortunately another commonality is that China’s claim to the areas in question is apparently based on its nine-dashed line claim.

The Philippines government says it has evidence of at least six Chinese intrusions in Manila claimed areas in the Spratlys since February 2011. On 3 March 2011, the Philippines deployed two warplanes after a ship under contract with the Philippines and surveying the Reed Bank for oil complained that it was harassed by Chinese patrol boats in that ordered it to leave under threat of use of force. Another incident involved firing by a Chinese navy vessel to scare away Filipino fishers. The most recent incident reported was on the eve of Chinese Defense Minister General Liang Guanglie’s arrival in Manila when Chinese jets allegedly intruded into Philippine air space. Philippines Foreign Minister Albert Fidel Rosario also said that a Chinese transport ship and two missile boats put up buoys and posts at the Amy Douglas Bank 100 nm off Palawan.

These incidents appear to violate the 2002 ASEAN-China Declaration on Conduct. However, China rejected the Philippines’ protests arguing that the vessels were “carrying out scientific studies in waters under China’s jurisdiction.” Making matters more complicated, the seismic work in question was to delimit the Philippine extended continental shelf for a submission to the UN Commission on the Continental Shelf. More problematic is that parts of the area were included in the now moribund Joint Marine Seismic Undertaking with China and Vietnam which tacitly recognized the legitimacy of their claims to the area. The Philippines has formally protested China’s nine-dashed line claim. And President Benigno
Aquino III has ordered the Philippine Coast Guard to provide security for oil exploration vessels in Philippine claimed areas. But China has responded with increasing vitriol that the Philippines has “invaded” Chinese territory and sea space.

The Philippines may try to drag the U.S. into the fray invoking Article V of the Manila Defense Treaty. But the U.S. has argued in the past that the Philippines claim to Kalayaan postdates the Treaty and is thus not covered by it. However Admiral Willard has vowed to co-operate with Manila in “safeguarding its territorial integrity and security.” And on 4 May the US aircraft carrier Carl Vinson made a port call to the Philippines sending a clear signal to relevant militaries. The U.S. already has a Coast Watch training and assistance arrangement with the Philippines which could be “expanded to cover Kalayaan.”

The case of Vietnam is more complex and reflects the special centuries old topsy-turvy relationship between China and Vietnam. The two are sometimes allies, sometime enemies. When in the latter mode, China treats Vietnam and Vietnamese with a particularly heavy hand.

Even in the best of recent times they have had their strident differences particularly involving the South China Sea. Vietnam has repeatedly accused China of detaining Vietnamese fishing boats around the Spratlys and Paracels. Vietnam also regularly protests Chinese military exercises in the disputed area arguing that they violate Vietnamese sovereignty and the DOC.

In July 2010, China’s three sea fleets conducted their largest joint training exercise ever and in November a live fire exercise involving 800 Chinese Navy amphibious assault vessels was conducted between Zhanjiang and Hainan Island.

The central issue is of course conflicting island and jurisdictional claims. But the latest round of incidents have focused on domestic Vietnamese elections, exploration for oil in concessions let by Vietnam, and China’s enforcement of fishing regulations. However the incidents have been particularly rancorous and show no sign of ameliorating. In May 2011, China protested Vietnam’s holding of elections for “National Assembly Deputies” on the Nansha islands, arguing that they violated China’s sovereignty and the DOC. Of course Hanoi said “The holding of elections in the Spratlys is the internal affair of Vietnam.” Then in May and June Vietnam accused China of harassing, threatening and disrupting the activities of a Petro Vietnam survey boat. In the May 26 incident the Binh Minh 02 was operating in block 148 about 120 nm off the coast of PhuYen province and a Chinese patrol boat severed its towed seismometer cable. The June 9 incident involved a Chinese fishing boat traveling with two patrol vessels. A seismometer cable toward behind a Vietnamese exploration vessel got caught in the net of the fishing boat. Vietnam alleged that the Chinese actions deliberately violated the DOC as well as the UN Law of the Sea. However China accused Vietnam of “conducting unlawful oil and gas surveys in seas around the Wan-an Bank of the Spratly archipelago and by driving out a Chinese fishing vessel, Vietnam has gravely violated China’s sovereignty and maritime rights.”
Finally, China announced on 11 May 2011 its annual ban (16 May-1 August) on fishing in the South China Sea. This poses a dilemma for those claimant countries whose fishers fish in the covered waters. Vietnamese fishers in particular are unlikely to cease fishing there. Vietnamese fishers defied previous bans in 2009 and 2010 and China arrested hundreds and impounded dozens of boats. Although a fishing ban during the spawning season is a public good, the area covered by the ban includes the Paracels, also claimed by Vietnam as well as other areas claimed by Vietnam. If Vietnam ordered its fishers to refrain from fishing in the area, it could be considered as implicitly recognizing China's claim. But it could of course issue its own ban for the same or similar area. This issue is quite separate but politically linked with frequent incursions of Chinese fishers (and their arrest) in Vietnamese coastal waters.

Exploration off Vietnam is likely to continue. Talisman, Canada’s third largest oil company by market value, plans to begin exploratory drilling in blocks 133 and 134 known as WAB-21 in China (the former Crestone Energy Corp. site and now owned by Houston-based Harvest Natural Resources Inc.). The Calgary-based company is a partner of Petro Vietnam. China has said it will intervene in some way. Pouring salt in the diplomatic wound, Vietnam undertook naval live fire exercises, and appealed to the international community and specifically the United States to help resolve the dispute.

One legal way to manifest sovereignty is to effectively control an area by enforcing state regulations there, i.e., demonstrating effectivities (continuous presence, control, regulation and management). China has announced it is adding 36 new ships over the next five years to enhance enforcement of its claims and maritime interests in the South China Sea including specifically areas where territorial disputes exist. In addition to oil and gas, potential resources include some ‘guesstimated’ 19.4 billion cubic meters of natural gas hydrates. Also China’s first deep water drilling platform is nearing completion signaling its intent to explore in deeper water and even in disputed areas, probably backed up by its navy.

So the regional stage is set for confrontation and calamity with only good judgment and the DOC standing in the way.

The Struggle to Implement the DOC

Ever since China’s agreement with the 2002 DOC, ASEAN has been trying to negotiate its implementation. The focus has been on “guidelines” or guiding principles. A ChinaASEAN joint working group on the implementation of the DOC has met six times over nine years and failed to produce significant results. ASEAN could not even agree to formally put it on the agenda of the East Asia Summit. The fundamental sticking point is that China maintains the South China Sea issues should be settled bilaterally with ASEAN members concerned and not with ASEAN as a block. But a paragraph in a draft guideline for the DOC says “ASEAN will continue the present practice of consultations among themselves before meeting with China.” Because of this difference, China has not sent senior officials to the meetings.
Moreover, ASEAN’s united front is permeable. Another problem is that Cambodia, Indonesia, Laos, Myanmar, Singapore and Thailand are not claimants to the South China Sea proper and some have close ties to China. Also there is a fundamental difference between Vietnam who wishes to include the Paracels in any agreement, and China, who does not.

The ASEAN countries or prime movers Vietnam, the Philippines and Indonesia want to focus on specific guidelines with legal import for implementing the DOC while China maintains a more general principles approach. Indonesia, as the 2011 chair of ASEAN, is determined to push for a concrete agreement. Indeed Indonesian Foreign Minister Marty Natalagawa wants to finalize the code by December 2011 and feels that any further delays would indicate failure. Meanwhile, China may be trying to split off individual ASEAN countries and reach separate understandings.

Positive Indicators

Clearly China and the U.S. have quietly reached some sort of interim understanding regarding US military activities in its EEZ. Otherwise, we would be reading about more incidents. US Admiral Robert Willard told the US Senate that the Chinese navy has not exhibited the same level of assertiveness in 2011 that it did in 2010. Willard attributed this change in China’s behavior to the strong American response regarding such actions and the resumption of US-China military talks. Perhaps. Maybe China can tolerate passive ELINT data collection but active ‘tickling’ and interference with communications is the real problem. If so, perhaps the two sides could agree that each should refrain from (1) provocative acts, such as stimulating, exciting, or probing the defensive systems of the coastal state, and (2) collecting information to support the use of force against the coastal state. Perhaps they could work toward a formal agreement on the following points:

1. The activities of another state in the EEZ of coastal state should not interfere with the communications, computer, and electronic systems of the coastal state or make broadcasts that adversely affect the defense or security of the coastal state.
2. The coastal state should not interfere with the communications, computer, and electronic systems of vessels or aircraft of another state exercising its freedom of navigation or flight in or over the coastal state’s EEZ.
3. In order to make the first two points effective, states should conclude agreements guaranteeing mutual noninterference with communications, computer, and electronic systems.

A high-level meeting of Chinese and U.S. defense officials was held in Washington, D.C., on December 10, 2010, and dealt with maritime security. Defense Secretary Gates visited China January 10 to 14, 2011. And Gates met China’s Defense Minster Liang Guanglie at the Shangri-la Dialogue in Singapore in June. The two countries have agreed to have their militaries conduct a joint humanitarian assistance and disaster relief exercise and to make use of a special telephone link. And collision protocols have been established so “unintended maritime incidents do not escalate.” All in all soothing words were exchanged
but whether they will be followed by positive actions remains to be seen.\textsuperscript{62} Despite these rays of hope, a deep chill remains in the air. A significant obstacle to a breakthrough regarding intelligence gathering efforts is that the U.S. might have to forgo its current advantages in ELINT, particularly active ELINT.

\textbf{A Regional Approach}

Several respected analysts suggest that it is time for Asia to take the lead in regional security matters.\textsuperscript{63} Indeed, perhaps it is time for a regional initiative to forge an understanding among all Asian countries regarding what are considered hostile and non-hostile acts in EEZs. The approach would be for ASEAN to negotiate a declaration on conduct similar to the Declaration on the Conduct of Parties in the South China Sea but focused on military activities, especially maritime intelligence gathering in EEZs. The language would hopefully be more specific than the declaration’s rather vague admonition “to exercise self restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability.”\textsuperscript{64}

The next step would be to invite China to join the agreement. However, this may be difficult for China because such an agreement would require that China deny itself the technological advantage it enjoys vis-à-vis all ASEAN countries except Singapore. But such a sacrifice would be proof of China’s benign intent toward the region, leaving it up to the U.S. and Japan to either join or decline to do so at their own political peril. These agreements could also be bilateral between any relevant Southeast Asian countries or those involved in the region in series like the DOCs between China and the Philippines and Vietnam and the Philippines. The end result would be the same - a norm against provocative military activities in foreign EEZs. In the end, short of a major conflict and a scramble to resolve it - this may be the only realistic option. Otherwise, these incidents are likely to increase in frequency and severity and foster conflict that could spiral out of control.

Indeed, analysts foresee an incipient unconstrained regional arms race that will be more complex than the bipolar Cold War situation.\textsuperscript{65} At the Shangri-la Dialogue, Secretary Gates warned that more clashes between the South China Sea claimants were likely if they failed to agree on and implement a Code of Conduct.\textsuperscript{66} In May, the ASEAN Defense Ministers’ meeting declared their commitment to effectively implementing the DOC and working towards the adoption of a regional COC.\textsuperscript{67} The ARF, the ASEAN, the SOM and various subcommittees met in Surabaya in June and emitted similar platitudes. All parties expressed interest in keeping peace in the area. China again promised to resolve the disputes peacefully.\textsuperscript{68} And ASEAN pushed for a rapid solution. So the immediate task is to move forward both to a COC and beyond.

\textbf{A Voluntary Set of Guidelines for Military Activities in Foreign EEZs}

Needed is a fundamental agreement as to what is and is not considered “unfriendly” military behavior in EEZs. Also required is a mechanism to manage crises such that minor incidents will be contained and not escalate.
The DOC provides an entry point for such guidelines in several of its provisions, viz.:

The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;

The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

a. holding dialogues and exchange of views as appropriate between their defense and military officials;

b. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and

c. exchanging, on a voluntary basis, relevant information.

The Parties encourage other countries to respect the principles contained in this Declaration.

Elaboration of specific and implementation of these provisions would be a logical next step. Agreement on the following would do so.69, 70

I. Rights and duties of the coastal State

1. A State using another State’s EEZ should ensure that its vessels and aircraft with sovereign immunity, act, as far as is reasonable and practicable, in a manner consistent with the 1982 UNCLOS.

2. Any restriction on navigation and overflight imposed by a coastal State in its EEZ due to its weapons tests and exercises, or any other operational activity, should be temporary, in specified areas only, and only if such suspension is essential for the carrying out of such tests and exercises.
II. Rights and duties of other states

1. While exercising the freedoms of navigation and overflight in a coastal State’s EEZ, States should avoid activities that unreasonably prejudice the peace, good order or security of the coastal State.

III. Maritime surveillance

1. Maritime surveillance may be conducted by States for peaceful purposes in areas claimed by other States as EEZ. This surveillance should not prejudice the jurisdictional rights and responsibilities of the coastal State within its EEZ.

IV. Military activities

1. With the exception of the qualifications noted elsewhere in these guidelines, military vessels and aircraft have the right to navigate in, or fly over the EEZs of other States, and to engage in other internationally lawful uses of the sea associated with the operations of ships and aircraft.

2. Ships and aircraft of a State undertaking military activities in the EEZ of another State have the obligation to use the ocean for peaceful purposes only, and to refrain from the threat or use of force, or provocative acts, such as stimulating or exciting the defensive systems of the coastal State; collecting information to support the use of force against the coastal State; or establishing a ‘sea base’ within another State’s EEZ without its consent. The user State should have due regard for the rights of others to use the sea including the coastal State and comply with its obligation under international law; such activities should follow the “Rules of the Road”.

3. Warships or aircraft of a State intending to carry out a major military exercise in the EEZ of another State should inform the coastal State and others through a timely navigational warning of the time, date and areas involved in the exercise, and if possible, invite observers from the coastal State to witness the exercise.

4. Military activities in the EEZ of other States should not hamper the search and rescue operations of the coastal State in its EEZ. States should co-operate in any such search and rescue operations.

5. Military activities by a State in the EEZ of another State should not involve the deployment of systems that prejudice the defense or security of the coastal State, or interfere with or endanger the right of the coastal State to protect and manage its resources and environment.
6. Military activities of a State in the EEZs of other States should not cause pollution or negatively affect the marine environment or marine living resources including mammals. In particular, if prohibited by the laws of the coastal State, such activities in a coastal State’s EEZ should not involve live weapons fire, underwater explosions or creation of sound waves and dangerous or radioactive materials that may directly or indirectly harm marine life or cause marine pollution.

7. Military activities by another State should not be conducted:
   i. In areas which have been announced by the coastal State as temporarily closed for the purposes of safety of navigation and overflight;
   ii. In areas with intensive fishing activities declared by the coastal State;
   iii. In areas with special circumstances adopted in accordance with Article 211 (6)(a) of the 1982 UNCLOS;
   iv. In marine parks or marine protected areas declared by the coastal State as required by Article 194 (5) of the 1982 UNCLOS;
   v. In areas with intensive navigation and near sea lanes and traffic separation schemes; and
   vi. Near submarine cables and pipelines on the seabed of the EEZ clearly marked by the coastal State on large-scale charts recognized by the coastal State.

8. If there are high seas immediately adjacent to the coastal State’s EEZ, a State undertaking military exercises should make every possible effort to limit them to the high seas.

9. Ships and aircraft of the user State shall not make simulated attacks on ships of the coastal State, nor launch nor drop any objects near ships of the coastal State.

V. Non-interference with electronic systems

1. The activities of another State in the EEZ of a coastal State should not interfere with the communications, computer, and electronic systems of the coastal State, or make broadcasts that adversely affect the defense or security of the coastal State.

2. The coastal State should not interfere with the communications, computer, and electronic systems of vessels or aircraft of another State exercising its freedoms of navigation or overflight in or over the coastal State’s EEZ.

3. In order to make subparagraphs a and b effective, States should conclude agreements regarding mutual non-interference with communications, computer and electronic systems.
VI. Suppression of piracy and other unlawful activities

1. Ships in an EEZ are subject to the exclusive jurisdiction of their flag State, except in circumstances provided by the 1982 UNCLOS or other international treaties.

2. States may act in an EEZ of another State to seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property onboard.

3. To suppress terrorism and illicit traffic in drugs, persons, arms, and weapons of mass destruction (WMD), their delivery systems and related materials, States should:
   
   i. Board and search any vessel flying their flag in their EEZ that is reasonably suspected of transporting terrorists or being engaged in illicit traffic in drugs, persons, arms and WMD, their delivery systems, or related materials, and seize such cargoes that are identified as such; and

   ii. Consent, under appropriate circumstances, to the boarding and search of their own flag vessels by other States, and to the seizure of terrorists or drugs, persons, arms, and WMD-related cargoes on such vessels that may be a mutually identified as such by both States;

4. The boarding and search of a foreign flag vessel in an EEZ without the consent of the flag State is not justified solely because it is suspected of illegal trafficking in WMD, their delivery systems, or related materials.

5. In cases of arrest or detention of foreign vessels in the EEZ of a coastal State, the arresting vessel should through appropriate channels inform the coastal State of the action taken.

VII. Marine scientific research

1. Coastal State consent should in normal circumstances be granted for marine scientific research in its EEZ exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of all humanity.

2. Marine scientific research in a coastal State’s EEZ that has direct use for living and non-living resource exploration and exploitation, conservation and management is entirely under the jurisdiction of the coastal State, which is not obliged to grant consent to such research by foreign vessels.

3. Overflight by manned or unmanned aircraft or spacecraft of one State over the EEZ of another State should not be conducted for the
purpose of marine scientific research without the consent of the coastal State.

VIII. Hydrographic surveying

1. Hydrographic surveying should only be conducted in the EEZ of another State with the consent of the coastal State. This does not apply to the collection of navigational data by a ship required for safe navigation during the ship’s passage through an EEZ.

2. The Guidelines in Articles VII and VIII also apply to aircraft, autonomous underwater vehicles (AUVs), remotely operated vehicles (ROVs) and other remotely operated devices of a State conducting research or collecting data in an EEZ.

IX. Transparency of legislation

1. Those States with policies and/or legislation regarding military activities in their EEZs should make them as transparent and as widely known as possible, including to the military authorities of other States that are frequently using or navigating their EEZs.

Initially, formal multilateral arrangements should address common maritime problems like search and rescue, environmental protection, drug trafficking, and smuggling of arms and humans. Further out to sea, in time and space, a Southeast Asian ocean peacekeeping force might ensure safety and security of navigation, undertake air sea rescue, protect fisheries from illegal fishers, and the environment from pollution and potential polluters. The harder issues comprehensive fisheries management, and ultimately, common security would be next. But first things first.

Endnotes

1 This paper is written as a policy brief, i.e., without background and with a minimum of references. It covers developments and analysis thereof since my last paper in this series presented in Ho Chi Minh in November 2010. Thus it is written and presented for experts intimately familiar with the issues.


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For the purposes of these Guidelines:

1. “abuse of rights” means the unnecessary or arbitrary exercise of rights, jurisdiction and freedoms, or interference with the exercise of rights by another State, or the abuse or misuse of powers by a State causing injury to another State;
2. “exclusive economic zone” means an area referred to as such in relevant Articles of the 1982 UNCLOS.
3. “hydrographic survey” means a survey having for its principal purpose the determination of data relating to bodies of water. A hydrographic survey may consist of the determination of one or several of the following classes of data: depth of water, configuration and nature of the seabed; directions and force of currents; heights and times of tides and water stages; and location of topographic features and fixed objects for survey and navigation purposes;
4. “marine environment” is the physical, chemical, geological and biological components, conditions and factors which interact and determine the productivity, state, condition and quality of the marine ecosystem, the waters of the seas and the oceans and the air immediately above those waters, as well as the seabed and ocean floor and subsoil thereof;
5. “marine scientific research” means activities undertaken in the marine environment to enhance scientific knowledge regarding the nature and natural processes of the seas and oceans, the seabed and subsoil;
6. “military activities” means the operations of military vessels, aircraft and devices, including intelligence gathering, exercises, trials, training, and weapons practices;
7. “military surveys” refers to activities undertaken in the marine environment involving data collection for military purposes;
8. “peaceful uses/purposes” in the context of the EEZ means that uses of that zone, or the purposes of activities conducted therein or there above, must not threaten or use force;
9. “surveillance” means the observation by visual or any technical means of activities on, over or under the seas and oceans; and
10. “threat of force” means a coercive attempt to compel another State to take or not to take certain specific action, or an action that is directed against or undermines the territorial integrity or political independence of that State, or against any of its assets or people, or taken in any other manner inconsistent with the UN Charter.
Is Time Running Out: The Urgency for Full, Final and Equitable Resolution of the South China Sea Imbroglio

Vinod Saighal*

Abstract

In 2010 China surprised the world with its assertion that it considered South China Sea as core interest at par with Taiwan and Tibet. Around that time other countries were subjected to a stronger pitch by China on issues that remain unresolved. The cumulative effect of its hardened posture made the world and more so countries of the region as well as the major players sit up and take note. It resulted in a definitive backlash. Sensing that it may have prematurely disclosed its hand, the Chinese government hastily changed course and has now gone out of its way to reassure the world of its peaceful rise. Meanwhile major developments that have a bearing on the region have come to the fore. A deeper analysis of the prevailing situation is indicative of opportunities that have surfaced. These could conceivably allow for a transition to lasting peace in the region. A window of opportunity that could hardly have been envisioned just a year ago has opened up. It is in the interest of all regional players to seize this historic opportunity. The paper examines the avenues that have opened up and explores the pathway for an enduring and just settlement in the South China Sea.

Introductory Remarks

In moving forward to a sustainable and equitable paradigm it has to be kept in mind that with Euro-Atlanticism being in comparative retreat, Asia-Pacific and the Indian Ocean will now be the dominant theatres for the rest of the Century. The economic strength of the region will again become a magnet for countries from other parts of the world for commerce as well as for the geopolitical realignments on a global scale that are bound to follow the shift of the centre of gravity from the West after nearly three centuries of dominance to the east. It is against this backdrop that the latest developments in the South China Sea urgently beckon a settlement that should be ecologically sustainable, economically just and equitable for all people living in the region. Hence, the abstract from an earlier talk delivered in November 2010 at the HCMC Conclave should remain in focus for the current dialogue as well.

Quote

“It is almost a historical truism that whenever a major intervention in the geopolitical domain by a world power takes place, it is seldom, if ever, possible to get back to the status quo ante. Something on these lines has taken place in
2010 in South China Sea region, where China’s military and economic surge has reached proportions that could dwarf the combined might of the other countries having geographic contiguity to the South China Sea”. Unquote

The Preponderance of the China Factor

At a North Asia-South Asia conference held not long ago (5-6 March 2011) at Khatmandu, Nepal the invitee for delivering the keynote address on the “Perspective of Peace and Security in Asia”, said only in half-seriousness that he could, realistically speaking, give the answer in one word: ‘Awful’. Evidently, meaning thereby that he considered the prospects for peace in the region as very bleak. The speaker** then went on to explain his troubling comment at the very commencement of his talk. According to him the most glaring sign was the awesome armaments build up by some of the most important countries in East, Southeast and South Asia as a direct result of China’s stupendous rise in its military capability and economic might. The ensuing paragraphs give a glimpse of the military build up in the region on the part of China’s neighbors to augment their security.

New Arms Race in the Region

**China**: China’s buildup looms large. China’s total defense spending was $78 billion in 2010, up from $17 billion in 2001, according to government reports. Western defense officials say those totals do not include arms imports. The U.S. Defense Department has estimated that China’s total military-related spending in 2009 was $150 billion. China does not disclose details about arms purchases. Figures made public by the Russian government indicate that China spent more than $17 billion on Russian arms imports between 2001 and 2010. Adding that figure to Chinese spending on domestic arms procurement Western defense experts estimate that China has spent about $150 billion on new weapons over the past decade.

**India**: Six 217-foot Scorpène-class attack submarines to be built over the next few years in addition to stealth frigates and guided-missile destroyers. It is augmenting its military strength in several other areas. It purchased eight maritime reconnaissance and antisubmarine aircraft from Boeing Co. for $2.1 billion in 2009, and the government recently approved an order for another four, says an Indian navy spokesman. The goal is to upgrade India’s snooping capabilities and replace outdated Russian planes. Several aerospace firms are in the running for an estimated $10.5 billion contract for 126 fighter jets India’s largest-ever defense order.

**Other ASEAN & East Asia Nations**: In December 2010, Japan overhauled its defense guidelines, laying plans to purchase five submarines, three destroyers, 12 fighter jets, 10 patrol planes and 39 helicopters. South Korea and Vietnam are adding submarines. Arms imports are on the rise in Malaysia. The tiny city-state of Singapore, which plans to add two submarines, is now among the world’s top 10 arms importers. Australia plans to spend as much as $279 billion over the next 20 years on new submarines, destroyers and fighter planes. Together, these efforts amount to a simultaneous buildup of advanced weaponry in the Asia-Pacific region
on a scale and at a speed not seen since the Cold War arms race between America and the Soviet Union. South Korea and Vietnam are expected to get six more submarines apiece by 2020. Australia plans to add 12 over the next 20 years. Singapore, Indonesia and Malaysia are each adding two. Together, the moves constitute one of the largest builds of submarines since the early years of the Cold War. Asian nations are expected to buy as many as 111 subs over the next 20 years, according to AMI International, which provides market research to governments and shipbuilders. Australia’s planned $279 billion of military spending over the next 20 years will fund the biggest expansion of its military since World War II. In December 2010 Japan overhauled its defense guidelines, drawn up in the Cold War and directed principally at the Soviet Union, to focus more on China. The new guidelines call for spending as much as $284 billion between 2011 and 2015 to modernize Japan’s Self-Defense Forces. Japan proposed deploying more U.S. Patriot missiles, prompting China to protest that such a move would trigger a regional arms race.

Taiwan. According to a lawmaker in Taipei, Taiwan has deployed a new supersonic missile on its warships in the latest response to China’s rapid naval expansion. Military authorities were reportedly mulling deploying the Hsiung Feng III the first locally developed supersonic anti-ship missile on mobile launchers, Lin Yu-fang, of the Kuomintang party, said in a statement quoting Vice Admiral Lee Hao. “Several types of warships have been armed with Hsiung Feng IIIIs (Brave Wind),” the statement said. It was not clear how many missiles would be produced but according to Lin, eight Perry class frigates and seven patrol boats will be fitted with the weapon. Analysts say Hsiung Feng III, designed to cruise at a maximum speed of mach 2.0 or twice the speed of sound with a range of up to 130 kilometres (80 miles) are difficult to defend against. Taiwan’s defence ministry has expressed alarm at China’s naval buildup although experts say it may still take time for the People’s Liberation Army to operate its first carrier group complete with fighter jets.

Taiwan plans to build a new ‘stealth’ warship armed with guided-missiles next year in response, military officers have said. Agence france presse reproduced in The Statesman New Delhi Monday 9 May 2011, P # 13

South Korea is worried about China’s continued support for North Korea, and that growing Chinese military power will limit U.S. capacity to intervene if war breaks out on the Korean peninsula. In 2006, South Korea launched a 15-year military-modernization program projected to cost about $550 billion, with about one-third slated for arms purchases. The program has since been reviewed after two attacks on the South by the North last year. Military analysts expect South Korea to spend more on conventional weapons designed to defend it against the North, including submarines, destroyers, F-15 fighter jets and possibly F-35s.

Vietnam and China, once steadfast allies against the U.S, are now feuding over Chinese territorial claims in the oil-and-gas-rich South China Sea. Vietnam does not have an economy or budget big enough to go toe-to-toe with China procuring weapons. In lieu of a big arms buildup, it is opening up a prized military asset, its deep-water port in Cam Ranh Bay, in the hopes that foreign navies will steam into the South China Sea and help secure the region’s shipping lanes.
“Offering Cam Ranh Bay to foreign navies is a master stroke,” says Carlyle Thayer, a professor at the Australian Defence Force Academy at the University of New South Wales. “It will attract precisely those navies that can be expected to keep China’s naval ambitions in check.” (Contributions by Julian E. Barnes, Patrick Barta, Tom Wright and others).

**Russia.** Meanwhile the Russian government announced a US $ 650 billion programme for further augmenting its formidable military capability. Prime Minister Vladimir Putin has promised to re-arm the Russian armed forces and make Russia one of the world’s top five economies over the next decade, arguing the country must be strong to resist foreign interference. Speaking in Parliament, Mr. Putin laid out a $700-billion programme of across-the-board modernization of Russia’s war arsenals by 2020. The production of ballistic missiles will be doubled from 2013; the armed forces will induct new missile systems, such as the long-range RS-24 Yars and Bulova and the shortrange Iskander, and the S-500 anti-missiles capable of knocking down targets in space. “We must completely re-equip the armed forces in the next 10 years,” he said. (By Vladimir Radyhin The Hindu, Thursday April 21, 2011.P#16)

**What About the US?** The occasion: the ceremonial cutting of the first piece of a $15 billion aircraft carrier slated to weigh anchor in 2020. That ship-still unnamed-will follow the just-as-costly Gerald R. Ford, now 20% built and due to set sail in 2015. Meanwhile, on the other side of the world, China is putting the final touches on a new class of DF-21 missiles expressly designed to sink the Ford and its sister ship as well as their 5,000-person crews. China’s missiles, which will likely cost about $10 million each, could keep the Navy’s carriers so far away from Taiwan that the short-range aircraft they bear would be useless in any conflict over the tiny island’s fate. “It points to an almost tragic irony of Washington’s $700 billion annual appetite from military stores: we are borrowing cash from China to pay for weapons that we would presumably use against it. If the Chinese want to slay us, they don’t need to attack us with their missiles. They just have to call in their loans. We are an increasingly muscle-bound nation: we send $1 billion destroyers, with crews of 300 each, to handle five Somali pirates in a fiberglass skiff.” (By Mark Thompson, Time Magazine April 25, 2011 P #18)

**Some Later Developments.** China’s decision to hold the BRICS Summit at Sanya, located at the Southern tips of the Hainan island was hardly accidental. The strategic symbolism of Sanya and the Hainan Islands is that Sanya is located close to the disputed Xisha (Paracel) and Nansha (Spratly) Islands in the South China Sea, which China has recently declared as an area of “core interest,” like Tibet and Taiwan. The Hainan submarine base, where five nuclear submarines, each armed with 12 nuclear-tipped ICBMS are deployed in underground caves will also be the home of China’s first aircraft carrier, located adjacent to Sanya. Chinese naval power concentrated in Sanya has evoked serious concern in both ASEAN and India. According to an Indian diplomat, hosting the BRICS Summit in Sanya was evidently a not too subtle message to the world about China’s growing military muscle. G. Parthasarthy, The Pioneer New Delhi Thursday April 28, 2011 P# 8
Adding it all Up
Adding up the costs, it leaves little to the imagination that unless the trend toward the awesome arms build up is first halted and then reversed - an unlikely proposition going by current trends - armed conflicts or skirmishes could become routine. The total costs of the armaments intake adds up to several trillion dollars. The build up is so gigantic in scale and diversity that should a skirmish between the contenders blow up into a larger conflict involving several interested countries the overall damage could be so extensive that at one extreme it could put paid to China’s global superpower ambitions and at the other considerably affect the economic well-being of several ASEAN countries, besides inflicting damage on other countries. Evidently, de-escalation cannot commence without China taking the lead or at the very least arriving at an equitable and just resolution of the South China Sea dispute.

The (Overwhelming) Preponderance of the Environmental Factor
Well before 2020 possibly by 2015 climate change, global warming and ecological degradation factors, collectively being put under the heading ‘Environmental Factor’ will overwhelm China and all other countries around the disputed area. China already faces severe problems posed by rampant desertification, polluted rivers and depleted ground water reserves. By 2020, China will have 130 million cars; by 2040, even more cars than the United States. Taking into account that China obtains 70 per cent of its energy needs from coal and that it typically uses six to seven times more energy to produce a dollar of output than do developed economies, the extent of the calamity that may engulf China and, by extension, the world becomes clear. According to China’s own official estimates, the effects of chronic pollution, large-scale damming, and climate change have combined to make for a situation where 70 percent of the country’s rivers and lakes are polluted to some degree, with 28 percent being too polluted even for irrigation or industrial use. A recent World Bank report estimates the health costs related to outdoor air pollution in urban China in 2003 to be between 157 billion Yuan ($21 billion) and 520 billion Yuan ($69 billion) depending on the method of calculation used. This means 1.2 to 3.8 per cent of GDP. Faced with this critical situation, the Chinese government has little choice but to start taking serious measures to counteract and slow down environmental degradation even if it means putting the brakes on economic growth. There are obvious lessons for India to draw as it pushes toward matching economic growth at a pace that the environment may not be able to sustain.

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The crisis in Japan has been described as “a nuclear war without a war”. Its potential repercussions, which are yet to be fully assessed, are far more serious than the Chernobyl disaster, as acknowledged by several scientists. The Japanese government has been obliged to acknowledge that “the severity rating of its nuclear crisis matches that of the 1986 Chernobyl disaster”. Moreover, the dumping of highly radioactive water into the Pacific Ocean constitutes a potential trigger to a process of global radioactive contamination. Radioactive elements have not only been detected in the food chain in Japan, radioactive rain water has been recorded in California:
“Hazardous radioactive elements being released in the sea and air around Fukushima accumulate at each step of various food chains (for example, into algae, crustaceans, small fish, bigger fish, then humans; or soil, grass, cow’s meat and milk, then humans). Entering the body, these elements - called internal emitters - migrate to specific organs such as the thyroid, liver, bone, and brain, continuously irradiating small volumes of cells with high doses of alpha, beta and/or gamma radiation, and over many years often induce cancer”. Scientists say that over the next 30 years there is an 87 percent chance that a massive Tokai earthquake will strike and the Hamaoka plant stands near the centre of the earthquake’s anticipated focal area.

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China admits Three Gorges Dam problems
In a rare admission China has acknowledged that the biggest dam in the world, Three Gorges, on the Yangtze River, has caused a range of environmental problems that need to be urgently addressed. A statement issued after a cabinet meeting headed by Premier Wen Jiabao said while the project had played a key role in flood prevention and power generation, it had caused severe problems to the environment, shipping agricultural and water supplies in the lower reaches of the Yangtze River, an area of 633,000 sq km shared by eight provinces. The Three Gorges Project, built with a budget of USD 22.5 billion, is a multi-functional water control system, consisting of a dam, a five-tier ship dock and 26 hydropower turbo-generators. The official admission came as a lingering drought in central and southern China has left residents and livestock without drinking water and dried up rivers across the lower reaches of the Yangtze River.

“In China’s thousands of years of civilisation, the conflict between humankind and nature has never been as serious as it is today,” China’s environment minister, Zhou Shengxian, said recently. “The depletion, deterioration and exhaustion of resources and the worsening ecological environment have become bottlenecks and grave impediments to the nation’s economic and social development.” What China’s minister is telling us, says Gilding, is that “the Earth is full”. (Thomas L. Friedman The New York Times, The Indian Express New Delhi Thursday June 9, 2011 P # 13)

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Sea Levels to Rise by 35” to 63” Due to Arctic Ice Melting
A new assessment of climate change in the Arctic shows the region’s ice and snow are melting faster than previously thought and sharply raises projections of global sea level rise this century. According to a report by the international Arctic Monitoring and Assessment Program (AMAP), the cover of sea ice on the Arctic Ocean is shrinking faster. The level of summer ice coverage has been in near record lows ever since 2001, it said, predicting that the Arctic Ocean will be nearly ice free in summer within 30-40 years. (The Economic Times New Delhi Monday 23 May 23, 2011 P# 23)

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The world’s oceans are faced with an unprecedented loss of species comparable to the great mass extinctions of prehistory, a major report suggests. The seas are degenerating far faster than anyone has predicted, the report says, because
of the cumulative impact of a number of severe individual stresses, ranging from climate warming and sea-water acidification, to widespread chemical pollution and gross over-fishing. The coming together of these factors is now threatening the marine environment with a catastrophe “unprecedented in human history”, according to the report, from a panel of leading marine scientists brought together in Oxford earlier this year by the International Programme on the State of the Ocean (IPSO) and the International Union for the Conservation of Nature (IUCN). The stark suggestion made by the panel is that the potential extinction of species, from large fish at one end of the scale to tiny corals at the other, is directly comparable to the five great mass extinctions in the geological record, during each of which much of the world’s life died out. The panel of 27 scientists, who considered the latest research from all areas of marine science, concluded that a “combination of stressors is creating the conditions associated with every previous major extinction of species in Earth’s history”. They concluded that the speed and rate of degeneration of the oceans is far faster than anyone has predicted. Besides, many of the negative impacts identified are greater than the worst predictions. The report also said that the first steps to globally significant extinction may have already begun. The panel of experts “found firm evidence” that the effects of climate change, coupled with other human-induced impacts such as over-fishing and nutrient run-off from farming, have already caused a dramatic decline in ocean health. (COURTESY: THE INDEPENDENT. By Michael McCarthy, The Times of India New Delhi Wednesday, June 22, 2011 P# 21.)

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In India there is great anxiety over the reported diversion of the Brahmaputra water by China, which is constructing several dams over most, if not all rivers flowing into the countries of South and South East Asia from the Tibetan Plateau. Like the irreversible damage that has occurred in the Three Gorges dam (now that the dam is in place, apparently no amount of money can fix the problem) in the post-Fukushima era, one can hope that governments would far more carefully study the geology around the mega projects that China seems to be bent upon going ahead with, unmindful of the consequences for the countries through which these rivers flow to the sea, seriously affecting the deltaic regions where population density is the highest. Such has been the case with the Indus River delta in Pakistan. These ‘irreversible’ issues should trigger fresh researches into the most seismic region on the planet: the Tibetan plateau. The officials planning the construction of myriads of dams on the Tibetan rivers should take into account the seismic conditions before starting the constructions. This cannot be solved once dams are built.

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Conclusions from the Environmental Imperilment of the Region
From the snippets of environmental imperilment mentioned above it should become evident that unless China, ASEAN, India and the other countries on the periphery collectively come together to save the region from further environmental decline, seemingly important, but relatively insignificant disputes like the South China Sea stand off between China and several ASEAN countries or border disputes could soon become minor blips against the approaching cataclysms that could
soon engulf all countries. The earthquake and tsunami that has prostrated Japan is a definite precursor to similar threats faced by all other countries in the neighborhood. China’s frenzied mega projects of diversion of water from Tibetan rivers flowing through several countries dependent upon them as well as the construction of numerous dams is bound to lead to induced seismic tremors of much higher intensities - within China and the neighboring countries. No joint studies are being allowed by China on the effects of these rapid fire activities on the ecology or long-term effects on the populations of the lower riparian states dependent on these very waterways. Inter-basin river authorities that should have been set up before indulging in unilateral schemes that can have long-term deleterious effects on the ecology, climate and geomorphology of all its neighbors have not been countenanced by China. It is reflective of an attitude that permeates China’s relations with its neighbors in many other ways.

Within the lifetime of the present generation or probably the next, sea-level rise will threaten all coastal habitations that from time immemorial have nurtured the densest human settlements. It used to be said that time is running out for the inhabitants of the planet. For those who can look ahead, time has already run out. If the leaders of countries involved in petty squabbles, when measured against the major survival threats, are unable to settle their differences amicably civil societies in these countries must come together to enlarge the dialogue to ward off the common dangers in the borrowed time that might still remain. In sum the environmental imperative dwarfs all other considerations that govern relations between countries.

**The Extra-Regional Players**

The well-known writer Nayan Chanda in a recent comment has noted that China’s rise in Asia has faithfully tracked the eruption of tensions between the US (and even the Soviet Union) and its erstwhile partners. China had long claimed islands of the South China Sea, but only launched its first attack to capture the Paracels from South Vietnam in 1974 when Washington signaled its disinterest in defending its ally. The next attack on the communist Vietnam occupied Spratly Islands came when a weak Soviet Union was unwilling to come to its treaty ally’s defence. Similarly, says Chanda the violent suppression of pro-democracy forces in Burma in 1988 and the subsequent isolation of the country opened the door for China to emerge as the junta’s most influential backer. China made further advances in the South China Sea when it took over the Philippines-claimed Mischief Reef in 1995 - three years after Manila stopped hosting US military bases in the country. The 1997 coup in Phnom Penh, which brought condemnation of the Hun Sen regime, saw China once again step in with economic and military aid. As a result, it now counts Cambodia as a close ally. (Nayan Chanda, The Times of India, New Delhi Saturday May 14, 2011 P#24)

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According to Joseph S Nye a Chinese military posture that is too aggressive could produce a countervailing coalition among its neighbors, thereby weakening China’s hard and soft power. In 2010, for example, as China became more assertive in its foreign policy towards its neighbors, its relations with India, Japan and
South Korea suffered. As a result, Nye avers, China will find it more difficult to exclude the US from Asia’s security arrangements. (Joseph S Nye, Times of India, New Delhi April 27, 2011)

Meanwhile, notwithstanding the reduced number of US forces deployed in the Pacific, the US has not remained passive to Chinese naval build-up in the region. It is increasing its capability to operate in Asia by deploying more forces in Guam, coordination with Japan in interoperability, sale of advanced weapon systems to Taiwan, deployment of anti-missile systems and increasing surveillance of Chinese naval deployments. Overall, most Asian countries prefer the US to maintain a strong presence in the Asia Pacific region to ensure a degree of deterrence to Chinese ambitions in the region.

America’s stake in Asia is enormous - nearly a trillion dollars in annual trade, billions of dollars of investment, to say nothing of the security of its allies, its global standing and the importance of the South China Sea that carries a third of the world’s trade. Concrete reasons aside, for the US not to counter perceptions of declining commitment to the region would undermine its influence.

Going by the preceding paragraphs it is hardly any wonder that countries threatened by China would want the USA to remain in the region as a counter to China’s growing power and aggressiveness. Periodic bouts of reasonableness and good neighborly solicitude emanating from Beijing hardly reassure China’s neighbors, who by now are well-versed in Chinese art of warfare and diplomacy as practiced by it through the ages.

**Can India be described as an Extra-Regional Power**

As China’s military demonstrates greater capability, and China shows greater assertiveness, a number of countries are looking at the US as a hedge to make sure they can maintain their independence, security and stability. Of late these allies have started questioning whether the United States can retain its freedom to operate in the region, and whether its economy, so highly dependent on China and struggling with recession, can sustain its high level of military spending and far off deployments. The doubt about future US capabilities or their efficacy has automatically made them look towards India as the regional balancer.

The anxiety about China includes Australia that now wishes India to take the lead in forging an Asia-Pacific community on the lines of the European Union. During his visit to India in 2009, Australian Prime Minister Kevin Rudd expressed that India was central to Asia-Pacific community and Australia and India ought to be natural partners in this region where big power rivalries would have to be ‘harmonised and reconciled’. A Positive step in this relationship was the signing of the Joint Declaration on Security Cooperation in Nov 2009 between the two countries. (Australian PM Rudd’s visit to India Dec 2009, Australian Deputy Secretary (Strategy)
Similar overtures have been made to India from time to time by Japan, South Korea and the majority of the ASEAN countries. It was only in 1992 that India belatedly and reluctantly launched the ‘Look East’ policy. India is now the 3rd largest economy in Asia after China and Japan. Whatever China may make of it, none of the ASEAN countries, East Asian or for that matter Asia-Pacific countries look upon India as anything other than a benign presence. India, in fact, lends balanced multi-polarity to the South China Sea region and the whole of Asia, if not the world. India can by no stretch of imagination be considered an extra-regional player, like for example the United States of America for the simple reason that over the millennia Indian culture and thought pervaded all countries around it, spreading as far East as China, Japan and Korea. As a matter of fact, Chinese writers of the earlier centuries were wont to describe the country beyond the Himalayas as the ‘Western Heaven’. Millennia of peace, goodwill and harmony with the Indic influences have nurtured in all its East Asian neighbors a profound sense of comfort with its presence. To this day India remains a force for stability.

**A Blueprint for Resolve**

Elementary first steps that might help in the resolution of the contentious SCS issues that were spelled out at the conference held in Ho Chi Minh City in November 2010 by the speaker that could have formed the basis for lasting peace in the region are listed below:

- Declaration of the Paracel and Spratley group of islands in the South China Sea as a marine ecology park;
- Pledge to halt further occupation, construction activity, militarization or stationing of naval ships in the Spratleys as well as the Paracels;
- Gradual dismantling of existing military structures by a given date (say 31 December 2012) and further declaration of the SCS as a Zone of Peace.
- A common approach to exploitation of natural resources in the areas under dispute. A Resource Exploitation Commission of countries contiguous to the disputed islands should be empowered to undertake exploitation on behalf of all parties and proceeds to be shared on a pro rata or any other basis decided by the Commission and ratified by the concerned countries;
- All further exploitation to cease till the Commission has completed its work and obtained ratification.

Proposals of this nature, including more elaborate ones have been put forward by several experts from within ASEAN and from elsewhere from time to time. Evidently, they have not been found acceptable by some or one of the parties to the dispute. Up to the end of 2010 the dispute could have been allowed to linger on. That is no longer the case. The rapid acquisition of the new generation of armaments by the contenders to the dispute as well as the overwhelming preponderance of the environmental imperative do not allow for the luxury of further delay in the amicable resolution of the South China Sea disputes. Fresh avenues that could be explored are listed below:

- Diplomacy through regional chambers of commerce, academia; people-to-people contacts;
- An inter-country group of experts to examine the common elements of survival;
- What are the elements that can be seen as enablers;
- Non-traditional security issues;
- Can the humanitarian aspects of the region be ignored (in view of climate change);
- Is it reasonable to assume that the command and control of the major sealanes and passage vest with a single country;
- Is the dominance pattern of SCS solely motivated by economic considerations or is it linked to geo-strategic domination of the region;
- What are the longer-term challenges facing the SCS nations as a whole.

In nutshell, the aspects that divide and prevent resolutions of the disputes are unilateralism and developing over-militarization of the region, the latter being an extremely worrisome development. Aspects that point the way towards resolution relate to the environment, geography and commerce. At the earliest, the nations involved in the dispute should enter into N-F-U type of accord (borrowing the concept from nuclear deterrence) so that a clash between weapons of greater destructive potential like submarines is avoided. The No-First-Use concept automatically suggests certain other measures of similar type that can be introduced to prevent sudden escalation. These can be gone into by committees set up for the purpose.

**Concluding Remarks**

Dr. Edward De Bono, lateral thinking guru and inventor of Six Hats Theory has this to say about India-China relations: “If India can partner China, the two can become a super power in a short time. Alternately, if India and China can form a coalition for bringing other developing nations under its fold, it can beat all other super powers. (The Economic Times, New Delhi, 18 September 2007)

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Through several millennia Chinese civilization has influenced its neighbors. It enriched them culturally, through its scientific advances and commerce. Once again, after the humiliations visited on it in the preceding century, China has come into its own. Its phenomenal economic leap has showered benefits on all its neighbors, China having become ASEAN’s largest trade partner. Large Chinese communities are present in practically all countries in South East Asia. They too have enhanced trade and contributed to the richness of the societies in which they have remained embedded for generations. China’s assertiveness, some would call it over-assertiveness, stems from the legacy of its troubled history. The grave problems that threaten the viability of life on the planet require the emerging great powers, especially China to take the lead in tackling them. Viewed against the magnitude of the planetary decline that is taking place before our eyes with each passing year, the ridiculously petty disputes over a few islands in the South China Sea should hardly be leading the nations around it to over-militarization that could build up its own irreversible momentum. Should a major conflagration develop with the newer types of weapons being inducted into the arsenals of each country the situation could get completely out of hand with dangerous consequences all round. It is to be hoped that well before such a situation develops good sense will prevail.
III. THE SOUTH CHINA SEA ISSUE IN ASEAN-CHINA RELATIONS

ASEAN+1 Regime in the South China Sea: A Review for the Past and A Prospect for the Future
Dr. Nong Hong
China Institute, University of Alberta

South China Sea: Taming the Turbulence
Mr. Nazery Khalid
Maritime Institute of Malaysia

A Multi-Level Approach to ASEAN-China Cooperation in the South China Sea
Dr. Aileen San Pablo-Baviera
University of the Philippines
“ASEAN+1” Regime in the South China Sea Issues: A Review of the Past and A Prospect for the Future

Dr. Nong Hong*

Introduction

Four member states of ASEAN, Vietnam, the Philippines, Malaysia and Brunei claim wholly or partly of the Spratly Islands, causing territorial disputes and pending maritime delimitation with China, another major claimant in the South China Sea (SCS). As two major actors on the SCS stage, the ASEAN-China relationship develops parallel with the evolution of the SCS dispute. This paper observes closely the development of ASEAN-China relations, from the past, present to the future, and its impact on the changing attitude of China on what approach should be taken to address the SCS disputes. The uncertainty in ASEAN-China relations on the SCS issues in recent years will also be analyzed, e.g. the role of Untied State in Southeast Asia security framework, whether it helps balance the regional powers or jeopardizes the existing confidence building regime between China and ASEAN; the post-DOC development in the region, whether it is a setback or a progress of the dispute settlement of the SCS; as well as the ASEAN's attitude towards the dispute settlement and conflict management in this region, whether it reflects disagreement or shows unity among ASEAN.

A Review on China-ASEAN Relations

Southeast Asian countries used to view China as a clear and present danger to their security. In non-communist Southeast Asia, China was seen as supporting subversive and rebellious forces that sought to overthrow regimes in place by force Malaya, Thailand, the Philippines. The new order in Indonesia attributed to China support for the attempted coup in that country in 1965. At the height of the Great Proletarian Cultural Revolution, China was perceived as instigating anti-government riots in Burma. In 1974, Chinese forces seized the Paracels from Vietnamese troops stationed there. In 1988, the Chinese and Vietnamese navies clashed fatally in the Spratlys. Up to the early 1990s, Brunei Darussalam, Indonesia and Singapore withheld formal diplomatic relations from the People's Republic of China. In 1995, the Philippine discovery of a substantial Chinese presence on Mischief Reef, a feature claimed by China, also located within the Philippines' claimed EEZ, sent alarms all across Southeast Asia.2

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Today, all Southeast Asian countries have diplomatic relations with the People's Republic of China on the basis of one China policy. Despite the disagreements and differences, ASEAN and China have had occasions to work together on specific problems in the past. In the 1980s, ASEAN and China found common cause in resisting forcible regime change in Cambodia, consulting each other frequently. They cooperated in bringing about a political settlement of the Cambodian problem in 1991. By the mid-1990s, China had emerged as a strong economic power and a potential strategic partner, so that ASEAN granted it the status, first of a 'consultative partner' and then, in 1996, of a full 'Dialogue Partner'. China was a founding participant in the ASEAN Regional Forum, engaging constructively in political and security matters not only with ASEAN and its members but also with non-ASEAN participants in the ARF, like the United States, Russia, Japan and Australia.

China has formed part of the Asian side in the ASEAN-initiated Asia Europe Meeting, started in 1996 and now a going concern. It is a keystone of the ‘ASEAN+3’ process, which now covers 20 areas of cooperation and almost 50 mechanisms to manage them, including annual ASEAN Plus Three and ASEAN+1 Summits. In the Chiang Mai Initiative, which is part of the ‘ASEAN+3’ process, China is a party to several of the 16 bilateral currency swap and repurchase agreements. China's proposal for an ASEAN-China free trade area and ASEAN's quick acceptance of it led the way for similar ASEAN FTA arrangements with others, including those with South Korea, India, and Japan. It helped to lend momentum to the economic cooperation process between the ASEAN Free Trade Area and the Closer Economic Relations of Australia and New Zealand. The trade in goods and trade in services components of the ASEAN-China Framework Agreement on Comprehensive Economic Cooperation, signed in 2002, are now in place. Indeed, China and ASEAN have each rapidly become one of the other's leading trading partners. In 2007, Hong Kong aside, the two were each other's fourth largest trading partner, after the United States, Japan and the European Union. Chinese and ASEAN companies have also started to invest in each other's country.

China has built or improved transport links with mainland Southeast Asia, planning to construct oil and gas pipelines through Myanmar, widening navigational channels on the Mekong, financing roads from China to the countries to its south, and probably funding another bridge across the Mekong between Laos and Thailand. Special links have been forged between ASEAN’s and China’s ministries of trade and industry in the ASEAN Mekong Basin Development Cooperation process, whose flagship project is the Singapore-Kunming Rail Link. The SKRL would be a further transport connection between southern China and mainland Southeast Asia.

China has helped ease tensions arising from conflicting territorial claims in the SCS. It has done so by agreeing to discuss the matter with ASEAN as a group in place of its former preference for dealing with individual Southeast Asian claimants. Such discussions led to the conclusion in 2002 of the Declaration on the Conduct of Parties in the Southeast China Sea. This joint declaration committed both ASEAN and China to self-restraint, to the non-use of force, to the peaceful settlement of disputes, to refraining from occupying unoccupied features in the area, and to agreeing on a more formal code of conduct in the future.
From Bilateral to Multilateral: China’s Changing Approach to the South China Sea Issues

Competition on the SCS and its implications for national and regional security and economic development has become a matter of increasing concern to ASEAN states individually and collectively. On 22 July 1992, just after Vietnam acceded to the ASEAN Treaty of Amity and Cooperation, the ASEAN foreign ministers’ meeting took the unprecedented step of issuing a security-related Declaration on the SCS calling for peaceful resolution of territorial disputes and restraint by all parties, to which China acceded. China has offered to shelve the sovereignty issue and negotiate joint development agreements, but only on a bilateral basis. ASEAN states fear any bilateral solutions, especially between China and Vietnam, which could have a negative impact on other claimants or the region.

ASEAN has sought to deal with SCS issues on a multilateral basis, but China consistently has refused and the matter was not even discussed at the 1994 ARF meeting. When China took over Mischief Reef in 1995, both Vietnam and ASEAN protested. Following that incident, China made it clear that it would not accept ARF’s use as a vehicle for multilateral conflict resolution. Over China’s protest the matter was discussed at the 1995 ARF meeting and SCS territorial issues were raised again at the 1996 meeting. They have also been tabled at the ASEAN-PRC dialogue.

Created in 1994, ASEAN-China Dialogue marked the first time in history that China consented to multilateral negotiations. This event was seen as the capstone of a great transformation which began five years earlier in Tiananmen Square. That revolution was, of course, the conversion from unilateralism to multilateralism in the SCS. Heralded as the turning point in a long and complicated conflict, the conversion to multilateralism and the renunciation of the use of force led to conflict prevention rather than conflict resolution.

Many scholars and government officials see this shift to multilateralism and military restraint in the early 1990s as a transformation in the nature of the conflict. Citing the absence of full-blown military confrontations, the increasingly pragmatic diplomacy of China in regards to its claims, and the various multilateral declarations and joint statements produced to control the conflict, academics, and diplomats have a tendency to dismiss the SCS as a set of disputes swept under the rug by mulin zhengce, or ‘good neighbor policy’.

Some chalk it up as a result of changes in China and the end of the Cold War. Tiananmen Square was a public relations disaster for China. The global outrage expressed through criticisms and economic sanctions forced China to soften its stance against political dissension at home, and to conduct a foreign relations campaign aimed at saving face and establishing friendships. It also forced China to curb its military actions at home and abroad, thus ending an era of unilateralism in regional disputes. The fall of the Soviet empire and the end of the Cold War put an end to the Golden Triangle of China-USA-USSR relations and caused China to redefine itself in a different context of relationships. Attention turned towards becoming a regional power with regional influence. Wariness on
the part of external powers such as the United States and Japan furthered, but also checked, this ambition.

Others attribute the transformation to the increasing political and economic influence of ASEAN, increasing interdependence in Southeast Asia, or to the very introduction of multilateral talks within ASEAN and between ASEAN and China. ASEAN was becoming a more powerful voice in regional affairs. It provided a security mechanism able enough to prevent wars between its members and repel any communist insurgencies. It was also flexible enough to avoid superpower meddling during the Cold War. Furthermore, it provided a forum of cooperation in which Brunei, Malaysia, and the Philippines were able to develop a more unified approach towards China, Vietnam, and Taiwan in the SCS. Economic interdependence between the rapidly industrializing countries provided an ever-increasing incentive to avoid the escalation of disputes, reinforcing a spiral of increasing economic cooperation and interdependence in Southeast Asia. A number of scholars claim that the “ASEAN Way” of slow, informal talks and negotiations has been the catalyst for change.

Any integral interpretation of the SCS disputes must address the role of multilateralism, and specifically that within ASEAN and between ASEAN and China. A true believer of the transformed conflict theory (TCT) would claim that before the late 1980s and early 1990s, the SCS disputes were marked by unilateralism and Chinese demands that any negotiations occur on a bilateral basis. After the great transformation of 1989-1991 with Tiananmen Square and the fall of the Soviet empire, China changed its ways and consented to multilateral talks. Within a few years it joined the Indonesia Workshops on Managing Potential Conflicts in the SCS, the ASEAN-China Dialogue, and the ARF. By the time Vietnam acceded to ASEAN in 1995, China was ensnared in the trap of multilateralism. From this point on, Beijing was unable to force its will in the SCS and to play one ASEAN country against another in bilateral negotiations. In short, China’s acquiescence to a multilateral framework ensured that the dispute would be negotiated on a regional platform with all claimants except Taiwan being party to the same deliberations. Scholars cite several factors in the movement from unilateralism and bilateralism to multilateralism. First and foremost, are always the changes in China and the outside world in the late 1980s and early 1990s.

Snyder adopted the realist power-politics approach and also the neo-liberal institutionalist approach to explain the behavior of ASEAN states and how policymakers often choose different approaches (either multilateral or bilateral) to deal with different situations. He remarked that the multilateral approach has had some success in the SCS through joint development and increased transparency among the claimants. For example, after more than a decade of engagement with ASEAN, China is now moving towards this approach, often referred to as the ‘smile diplomacy’. The Philippines, on the other hand, has been one of the strongest supporters of a multilateral approach, being the first to call for a regional code of conduct. In addition to the various multilateral discussions, several bilateral and trilateral initiatives have also been developed. These range from bilateral codes of conduct for state action in the area to the establishment of bilateral working groups to discuss territorial boundary issues.
While other claimants have engaged each other on a bilateral basis, the primary proponent of the bilateral process has been China. Snyder opined that the power-politics theory best explains state behavior in the SCS, i.e. all states seek to maximize their own power. For example, by adopting the strategy of a cooperative hegemon, China could shape the multilateral mechanism to achieve its policy objective while conceding only limited power or influence to the smaller states. The Philippines and Vietnam seek the multilateral approach to enhance their national objectives while adopting the hedging strategy to engage China on a bilateral basis. Malaysia, on the other hand, has assumed a pragmatic position as it feels that it is able to reach a bilateral deal with China. Ultimately, the ASEAN nations seek to engage China in the multilateral forum with the hope that the rules and norms of the institution will, over time, be gradually integrated into the official Chinese thinking that could eventually provide real restraint in its behavior.

Stein Tønnesson downplays the changes indicated in China's consent to multilateral talks, as signaled by its 1991 attendance at the ASEAN post-Ministerial Conference, and its movement into formal discussions on the SCS disputes via the Code of Conduct in 2002.\textsuperscript{15} He is also quick to emphasize that these changes amount to little in the grand scheme of the dispute, and that any real transformation beyond gradual shifting of policy is yet to come. Pointing out the general watered-down declarations produced by the ASEAN-China Dialogues he argues that the ASEAN Way is not as much of a conflict resolution mechanism as it is a means of conflict prevention. If one looks at the vigor with which China, Vietnam, Malaysia, and others have opposed external intervention it is far-fetched to conjecture that ASEAN-China multilateral talks are in fact a ‘holding operation’ designed as a ploy to keep the USA, UN, and ICJ out.\textsuperscript{16} This suggestion can be supported by the slow progress of the Indonesian Workshops on Managing Potential Conflicts in the SCS and the ARF even to discuss the disputes, as well as by China’s reassertion at the signing of the Code of Conduct in late 2002 that it will only negotiate a settlement on a bilateral basis. The crux of the argument here is basically to admit that there has been a series of small shifts in the format of the dispute, but that the fundamental character of the negotiations remains the same.

No matter what caused China to join in 1994 an ASEAN-China Dialogue, it was a decision of profound significance. Never before, had China, in its long history, consented to embed itself in a regional framework. Whether the action is occurring at the multilateral ASEAN-China Dialogue or in a series of bilateral negotiations with ASEAN members, the fact that China has decided to sit down at the table and contemplate the fallibility of its territorial claims is a transformation that cannot be denied.\textsuperscript{17} The paradoxical situation with general multilateral talks combined with detailed bilateral negotiations may not be ideal but it is a step in the right direction. One must not forget that the assemblage of claimants is far from evenly balanced.

Obviously, China will stick to bilateral approach in addressing the disputes with regard to sovereignty and maritime jurisdiction claims. When the term ‘bilateral’ is used, it does not necessary refer to Country A vs. Country B. When three parties get involved, then the ‘bilateral’ means ‘trilateral’, but any discussion
may start from bilateral talks as well as depend on the nature of the disputes. In other aspects of the SCS issues, especially on many non-traditional security issues, such as piracy, marine environmental protection, China is already open to multilateral approach, such as the Declaration on the Conduct of Parties in the SCS (DOC) and the Workshop of “Managing Potential Conflicts in the SCS”.

**DOC**

In November 2002, China and the 10 member ASEAN adopted the DOC, laying a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. The DOC builds on earlier declarations and codes of conduct. The signatory parties agree to resolve the territorial dispute by peaceful means, without resorting to force or threat of force, through friendly consultations and negotiations, and with respect to international law. According to paragraph five of the DOC, the parties ‘undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability’ as such, the DOC prohibits claimants from occupying presently unoccupied geographical features. But it does not prohibit claimants from upgrading existing facilities on presently occupied features. Paragraph five also identifies five kinds of cooperative activities; parties are allowed to undertake, either bilaterally or multilaterally, the following CBMs: marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operations; and combating transnational crime.

However, the DOC suffers from a number of weaknesses. It is neither a binding treaty, nor a formal code of conduct. The DOC has no teeth: it does not enumerate sanctions in the event of an infringement and does not have a geographical scope. Moreover, one of the claimants Taiwan is not a party to the DOC because Beijing regards Taiwan as part of the PRC while the ASEAN states, in accordance with the One China policy, do not recognize Taiwan as an independent sovereign state. Yet despite these flaws, the DOC represents a political statement meant to reduce tensions in the region and engage in cooperative activities. It is also an agreement to work toward a formal and binding code of conduct. This commitment was reaffirmed in the October 2003 ASEAN-China Joint Declaration on Strategic Partnership for Peace and Prosperity and the subsequent November 2004 Plan of Action to implement the 2003 Declaration.

ASEAN and China have held a few senior officials meetings to discuss policy issues concerning implementation of the DOC. In a bid to thwart military aggression, political tension, and keep the vast area open to trade, China and ASEAN decided to espouse a legally binding code of conduct in the SCS, which would bolster regional stability and cooperation. However, the progress on the negotiation of code of conduct seems slow. It is reported that a major stumbling block to such a mechanism is China’s reluctance to deal with ASEAN collectively on the issue. China instead wants the matter discussed bilaterally with the group’s members which have territorial claims, while some ASEAN states want to speak as a group, especially Vietnam.
Informal Workshop on the SCS

Since 1990 a series of workshops on ‘Managing Potential Conflicts in the SCS’ have been held in Indonesia under the auspices of the Research and Development Agency within the Department of Foreign Affairs. The initiative is the brainchild of Ambassador Hasjim Djilal of Indonesia, a leading authority on ocean affairs and one of the more influential participants at the Third United Nations Conference on the Law of the Sea. A detailed strategy for its implementation was worked out by Dr. Djilal and Prof. Ian Townsend-Gault, co-directors of the project, entitled ‘Managing Potential Conflicts in the SCS’. These non-governmental gatherings, once a year in different locations in Indonesia, attended by government and military officials in their private capacities as well as by academics from the region and Canada, have been convened to explore ways to engender cooperation among the nations bordering on the SCS.

A series of technical working group meetings, including those on Marine Scientific Research (Manila, May 1993), Resource Assessment (Jakarta, July 1993), Legal Matters (Phuket, July 1995) and Shipping, Navigation and Communications (Jakarta, October 1995), Marine Environmental Protection (1997), Legal Matters, Safety of Navigation, Shipping and Communication (1998), Safety of Navigation, Shipping and Communication (1999), Environmental Legislation (1999 and 2000), Hydrographic Data and Information Exchange (2000), and Marine Database Information Exchange (2006), Marine Ecosystem Monitoring, in the following respective years, have also been organized.

The workshops had aimed to move states from engaging in forceful exchanges to peaceful joint development in the SCS region in promoting the idea of cooperation. The workshop process tried to move beyond the fixation of sovereignty issues and worked on getting states to take a functional approach towards non-traditional security concerns, namely, scientific marine research, environmental and ecological research, sea-lanes of communication management, living and non-living resource management and conservation, and institutional mechanisms for cooperation. What makes the workshop run smoothly since 1989 is that claimant states were given a platform to talk about the disputes in a ‘non-confrontational’ and informal ‘off-the-agenda’ basis, by providing the grounds for cooperation on nontraditional security issues without focusing on jurisdictional and sovereignty issues. Townsend-Gault holds that the workshop was a step towards a peaceful response, if not resolution, to the conflicts in the SCS region.

Questions on the workshop process are raised, such as what needed to be changed and done differently if the Workshop Process were to be re-crafted and conducted all over again. Djilal holds that the workshop has been successful in minimizing the amount of forceful confrontation and heated exchanges among the claimant states. The peace-promoting mechanism of the workshop should persist and not change. As different positions on territoriality continue to be a contested issue among states, subsequent workshops should try to concentrate more on ‘peace-building’ and ‘cooperative projects’. There was also criticism that both Southeast and Northeast Asia lack a collective, substantial and binding treaty that would help to ensure maritime security and safety in the region.
“Economic development might drive cooperative measures in the region but there is still a general lack of political willingness by states to commit themselves to the joint development of the SCS.”

Some scholars see China’s participation at the informal multilateral level as a good chance for China and the ASEAN countries to work towards progress and peace in the region at an official level. In essence, attempts to solidify the current conditions of peace and security would become the regional interest. In other words, the region ought to look more closely at issues that are of common regional concern, of a certain degree of urgency and cannot be tackled by any individual state. In addition, the workshop could also help strengthen cooperative commitments in the region, especially if a state is made to adopt a theme of interest to work on. ‘Although there may be a stark gap between legal theories and the political reality of the situation in the SCS, the truth remains that states ought to shelve their sovereignty and delimitation issues and move towards cooperation and joint development.’

Djalal and Townsend-Gault sought to explain the Informal Workshop in the SCS as an approach of ‘diplomacy for conflict prevention’ or ‘track-two’ initiatives. In the case of the SCS, the uncertain nature of the formal relationships between the claimant states sets obstacles in achieving the regional security and solving regional problems of marine management. Political pressures in both China and ASEAN countries tend to list disputed boundaries as top political agendas while leaving aside other issues such as living resources, the marine environment, and the safety of shipping and navigation. The informality associated with ‘track two’ initiatives allows for discussion and dialogue without being bound by political fetters. ‘Informality’ provides for a ‘flexibility and inclusiveness that is simply not possible at the formal level.’ Not only can a broader range of issues be discussed, participation from Chinese Taipei/Taiwan becomes possible under the ‘informality’ banner. ‘Track two’ diplomacy therefore ‘fills the holes in the long road of formal dialogue by providing a forum for discourse between players and on issues that simply cannot take place at the formal level, which are needed to advance cooperation and mutual understanding.’

Uncertainty in ASEAN-China Relations on the South China Sea Issues

US’s Role: Balancing Regional Powers or Jeopardizing the Existing ASEAN+1 Framework

Most Southeast Asian states consider continued US military balancing of China a necessity, as Southeast Asian military capabilities are no match for those of China and a common ASEAN defence identity is absent. ASEAN has not explicitly defined China as a potential threat. However, in 1992 ASEAN recommended that the USA maintain its forces in the region since Chinese advances into the South China Sea had implied that Southeast Asia was not immune to the consequences of the strategic choices of China and the USA. By the late 1990s, most Southeast Asian states had established some form of military cooperation with the USA, ranging from defence dialogues to alliance
agreements requiring mutual defence against aggression. Singapore, Thailand and the Philippines constitute the core US partners in Southeast Asia. Cooperation agreements involve large-scale exercises, frequent visits of US troops and, in Singapore's case, the permanent stationing of a small US logistics unit. US military cooperation with Indonesia, Malaysia and Brunei is more modest. This principally involves limited transit, refuelling and visiting rights, and joint training. Malaysian and Indonesian support for continued US military presence is particularly noteworthy since, during the Cold War, these countries tended to consider US regional engagement a potentially destabilizing factor.

Of the new member-states Vietnam, Laos, Myanmar and Cambodia only Vietnam has even considered establishing a nascent military relationship with the USA. The three other states, constituting the periphery of ASEAN in terms of military, economic and diplomatic capabilities and geographic location, are closer to China and remain suspicious of any form of US interference in Southeast Asia. Their inclusion in ASEAN in the late 1990s may nevertheless aid a Sino-Southeast Asian rapprochement. The presence of states amenable to understanding and promoting Chinese concerns in the South China Sea arguably reduces China's fears that its interests are ignored in multilateral settings touching upon security issues. ASEAN's inclusion of Laos, Myanmar and Cambodia implies that Southeast Asia has invited Sino-US strategic competition into the region. This development indicates Southeast Asian recognition that the region is not able to opt out of such competition. The states differ on the appropriate position of Southeast Asia within this framework. However, they agree on the prevalence of strategic competition between the Great Powers and do not expect this to preclude a Sino-Southeast Asian rapprochement.

China expressed concern over US's increasing engagement in the SCS, stressing that it opposes the internationalization of the maritime issue. China holds that the SCS issue is a sovereignty dispute about territory and maritime rights between the relevant countries, and not an issue between China and the ASEAN, nor a regional or international issue.

Some U.S. scholars argue that China’s opposition to the “internationalisation” of the SCS issue is tantamount to an attempt to de-internationalise an international sea. Once the South China Sea has been de-internationalised, China will be able to bring its strength to bear on the Southeast Asian countries and impose its own rules, rather than internationally accepted ones from international law on these waters. In the workshop on US-China relations on the SCS issues in September 2010, some Chinese scholars tried to clarify the interpretation of ‘bilateral approach’ which China always insists on in solving conflict with relevant states. In the context of SCS issues, China believes that the best approach to solve islands sovereignty and maritime delimitation is through direct negotiation with the countries involved. On other issues on non-traditional security, such as safety and security of sea lanes, anti-piracy, marine environmental protection, China is open for multilateral approach for cooperation. One best example is the DOC signed in 2002 and other regional agreements with ASEAN.
US Secretary of State Hillary Rodham Clinton said in July 2010 that the United States had a ‘national interest’ in the South China Sea and could facilitate talks, worrying China that it was going to step into the territorial rivalry. On June 22 2011, the Chinese vice foreign minister warned the United States to stay out of the increasingly tense territorial disputes and maritime conflicts in the South China Sea. China always opposes the internationalization of the South China Sea. Such a practice of internationalizing the SCS issue could undermine its longstanding policy of engaging the claimant states on a bilateral basis. China argued that China’s policy of regional engagement has produced good results until the recent US high profile presence in the South China Sea. China, like most of Asian countries, has historically approached the problem using a bilateral approach to an international issue.

Since Sino-US strategic competition allows little latitude for Great Power collaboration, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers.

**Post-2002 Development: a Setback or Progress?**

DOC laid a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. Though the DOC has been criticised for a number of weaknesses, as many argue, e.g. neither a binding treaty, nor a formal code of conduct, the signing of this document helped keep the South China Sea (SCS) quiet for a couple of years, at least before 2009.

The year of 2009 has seen several major developments that stirred up controversy in the SCS all over again, and highlighted the difficulties of maintaining stability in the region. In mid-February 2009, the Philippines Congress passed a territorial Sea Baseline Bill, laying claim to Scarborough Shoal (sovereignty claimed by China) and a number of islands in the SCS. Another event is the clash on 8 March between Chinese vessels and a U.S. ocean surveillance ship ‘Impeccable’ in China’s EEZ. On 6 May 2009, Malaysia and Vietnam lodged a joint submission with the United Nations Commission on the Limits of the continental Shelf (CLCS). Vietnam also lodged a separate submission in relations to the northwestern part of the central SCS. These extended continental shelf submissions have served to highlight existing disputes and appear likely to add an extra dimension to them. Indeed, there are already indications that the situation is escalating.

2010 witnessed the escalation of the controversy in the SCS, with US’s increasing presence in this region, and with a serial of US-Sino spats on the SCS dispute. In March, as first reported by a Japanese media and followed by US medias, Chinese officials told two visiting senior Obama administration officials that China would not tolerate any interference in the South China Sea, now part of China’s “core interest” of sovereignty. In July, US Secretary of State Hillary Clinton made a statement at the 10th ASEAN regional forum (ARF) that the disputes over the highly sensitive South China Sea were a “leading diplomatic priority” and now “pivotal to regional security”.

This backdrop certainly contributed to increasing
concerns in Beijing who sees Hillary’s statement as a signal that US will change its neutral position on the SCS dispute and back other claimant states, especially Vietnam.

The concern from international community is that Chinese for the first time labeled the SCS a core interest, on par with Taiwan and Tibet. Chinese scholars argue that China never publicly declared a ‘South China Sea = core interest’ policy, it came first from Japanese media and followed by US journalists which served as the subtext for the whole ‘US defends freedom of navigation in the South China Sea’ story. Zhu Feng, a Chinese political scientist, in an IISS (International Institute of Strategic Studies) workshop in Singapore in November 2010, gave another explanation on the ‘core interest’. He said the Chinese officials did use the term ‘core interest’, but the original text is that ‘the peaceful resolution of the South China Sea is the core interest of Chinese government’, which was misinterpreted by the media.

Chinese concern over Hillary’s statement that ‘United States has a national interest in resolving the claims’ indicates that Obama Administration has changed its SCS position since 1990s from neutral to active engagement. In a Sino-US workshop on the SCS in Hawaii 2010, some scholars from think tanks like Rand, APCSS (Asia-Pacific Center for Security Studies), CAN (Center for Naval Analysis) argue that Hillary’s remarks may be in response to what many US Medias’ report on China’s recent statement in March when Beijing defined the SCS as one of its ‘core interests’. So who is to be blamed for provoking the escalation of the SCS issues?

The tension continues to grow in 2011 with a serial of events occurring in rows in the SCS. Vietnam in May accused China of cutting the exploration cables of an oil survey ship. In a similar incident in June, it said a Chinese fishing boat had “intentionally rammed” the exploration cables of another of its boats. China, however, claimed that its fishing boats were chased away by armed Vietnamese ships in the incident. The fishing net of one of the Chinese boats became tangled with the cables of a Vietnamese oil exploring vessel, which was operating illegally in the area, and was dragged for more than an hour before it was cut free, the Chinese foreign ministry said. China accused Vietnam of “gravely violating” its sovereignty and warned it to stop “all invasive activities. In June, Vietnam held live-fire drills in the South China Sea amid high tensions with China over disputed waters. Chinese state media denounced the exercises as a military show of force to defy Beijing.

Standoffs have also taken place this year between Chinese and Philippine vessels. In March, two Chinese maritime surveillance ships ordered a Philippine survey ship away from an area called Reed Bank. The Philippines later sent in military aircraft. President of the Philippines Benigno Aquino’s office said on June 13 that it was renaming the South China Sea as the ‘West Philippine Sea’, as tensions with Beijing mount over the disputed area. Starting from May, the Philippines Navy has removed foreign marker posts that were placed on reefs and banks, part of the much-disputed Spratly group of islands. US Secretary of State Hillary Clinton has said Washington is committed to the defence of the Philippines, amid rising tensions in the South China Sea. She said the US would
honour its mutual defence pact with Manila and offer the Philippines affordable weapons.\textsuperscript{44}

The comparison of the period between 2002 and 2009 and the most recent development since 2009 raises a question for debate: is the recent development of the SCS clarity of claims and enhanced prospects for regional cooperation, or a setback for the regional security and peace in this region?

\textbf{With ASEAN: Internal Disagreement or Unity?}

The South China Sea disputes are conflicts of jurisdiction over territory and maritime space. As such, they are not formally an ASEAN issue, but only involve the claimant states. Four states of ASEAN, Vietnam, the Philippines, Malaysia, Brunei, are directly involved in the SCS disputes. Some argue that each individual state will be a weak position to negotiate with China on a bilateral basis. Instead, ASEAN nations should bargain collectively with China on this issue. However, other states in ASEAN not having overlapping claim with China don’t necessary agree with this collective approach which will impact their bilateral relations with China. Cambodian Prime Minister Hun Sen has urged the parties concerned to strictly abide by the code of conduct in the SCS, warning against internationalizing the issue of SCS. Hun Sen stressed that the parties concerned should use existing mechanisms to solve the problem through consultation and should not try to put pressure on China allying with the United States or Japan. At the informal ASEAN Foreign Ministers’ meeting on January 21st 2011, Indonesian Foreign Minister Marty Natalegawa voiced his concern over American and Japanese engagement in the sovereignty dispute in the SCS.

Malaysia has been an outspoken critic of US interference in Southeast Asian political and economic affairs. For example, former Malaysian Prime Minister Mahathir Mohamad characterized US opposition to ASEAN’s admission of Myanmar on grounds of human rights as an attempt at foreign coercion of ASEAN.\textsuperscript{45} Malaysia has been very active in the Sino-Southeast Asian informal dialogue on the South China Sea that began in 1990 and has included China since 1991. Malaysia has criticized attempts at pressurizing China into cooperation, arguing that nothing will be gained from trying to force China to concede, other than superficial compliance that is unlikely to last in the long run.\textsuperscript{46} Indonesia is a non-claimant that harbours second thoughts on Chinese regional engagement. Indonesia is traditionally suspicious of any Great Power overtures for collaboration that may come at the cost of indigenous regional governance.

Claimant states Vietnam and the Philippines have experienced the most serious conflicts with China in the South China Sea. As such, they are also the ASEAN states most concerned about China’s intentions. Sino-Vietnamese hostilities in the South China Sea have twice resulted in naval battles in 1974 in the Paracels and in 1988 in the Spratlys. The Philippines regards containment of China as a necessary precautionary measure against Chinese expansion in the South China Sea.\textsuperscript{47} Recurring bouts of anti-US nationalism necessitate continued public downplaying of the USA’s centrality for Philippine security following the closure of Subic Bay and Clark Air Force Base in 1992.
However, not confident of ASEAN’s ability to counter the Chinese advances, the Philippine government prefers to rely on continued US military balancing. In 2000, the USA resumed large-scale military exercises in the Philippines, allowing it to familiarize itself with conditions in the South China Sea. In addition, the war on terrorism led to the deployment of more than 1,000 US troops in the Philippines to assist in the fight against the Muslim guerrillas Abu Sayyaf. This strengthened military alignment with the USA allows the Philippines to be less confrontational towards China than Vietnam. Vietnam and the Philippines have been anxious to see tangible results from the South China Sea dialogue, expressing dissatisfaction with ASEAN’s resolve to accept Chinese constraints on the informal dialogue and calling for increased pressure on China to achieve progress in formal negotiations.\(^4^8\)

Singapore and Thailand, not involved in maritime disputes with China, enjoy cautious, but friendly, relations with the regional power.\(^4^9\) Sino-Singaporean relations are strengthened by close cultural and economic links and compatible views on issues such as press freedom, democracy and human rights. China’s proximity to Thailand, mutual economic interests and common security concerns about Vietnam’s occupation of Cambodia in 1978 have strengthened Sino-Thai relations since the establishment of diplomatic relations in 1975. Thailand and Singapore advocate the view that cordial, cooperative ties with China are best reached with continued US military presence in the region. Singapore is the most vocal supporter of preserving US regional engagement. The permanent stationing of Commander, US Logistics West Pacific in Singapore makes it the only Southeast Asian country to permanently host an administrative unit of the US armed forces. Singapore has built and financed the new Changi naval base to facilitate deployment of the US Seventh Fleet in Southeast Asia and has called for stronger ties between ASEAN and Japan to counter Chinese influence.\(^5^0\) Nevertheless, Singaporean support for the fundamentals of US Asia-Pacific policy confirms that Singapore is the most reliable advocate of continued US military presence in Southeast Asia. Despite the US-Thai military alliance, Thailand maintains a cautious attitude to the USA because of recurring trade and economic disputes between the two countries and because Thailand’s proximity to China encourages it to avoid entanglement in Sino-US strategic competition. Singapore and Thailand are not involved in maritime boundary and sovereignty disputes with China, but its presence in the maritime centre of Southeast Asia has an impact on their security. They support the South China Sea dialogue because they both advocate enhanced Sino-Southeast Asian multilateral cooperation to secure regional peace and stability. Thailand and Singapore are also in favour of a code of conduct, arguing that explicit multilateral rules of behaviour are necessary to prevent the use of force.\(^5^1\)

Myanmar, Laos, Cambodia and Brunei have a subdued foreign policy profile that also characterizes their SCS policies. Having no disputes with China in the SCS, Myanmar, Laos and Cambodia mainly have indirect interests in keeping peace in the area. Consequently, they tend to follow the official ASEAN policy line and rarely voice an independent opinion on the matter.
Despite the disagreement, the disputes of the SCS are set within a political framework largely defined by ASEAN principles of regional security and member-states' foreign policies. Furthermore, the disputes affect the security of all Southeast Asian states, because China's presence in the South China Sea makes it a Southeast Asian power outside the ASEAN security framework. Consequently, common ASEAN positions and the foreign policies of singular states on the South China Sea have a bearing on the ability of ASEAN to maintain unity on this issue.52

**Concluding Remarks**

As two major actors on the SCS stage, the ASEAN-China relationship develops parallel with the evolution of the SCS dispute. ASEAN's attitude towards China evolves from fear of threat to enhanced mutual confidence building. China's approach to the SCS dispute also evolves from bilateralism to multilateralism, with the DOC signing in 2002, and the informal workshop on ‘Managing Potential Conflicts in the SCS’ as two good examples, despite the criticism on their effectiveness. However, there are still many uncertain factors which have significant impact on the ASEAN-China relations on the SCS dispute. First, US's increasing presence in the SCS, on the one hand, may be interpreted by some ASEAN states as one key card to balance the increasing power of China in the region, on the other hand, it is not necessarily welcomed by all as other states in ASEAN not having overlapping claim with China are cautious about US's engagement in the SCS. China argued that China's policy of regional engagement has produced good results until the recent US high profile presence in the South China Sea. Since Sino-US strategic competition allows little latitude for Great Power collaboration, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers.

Second, DOC laid a political foundation for future possible commercial cooperation between China and ASEAN countries as well as the long-term peace and stability in the region. However, the most recent development since 2009 has stirred up controversy in the SCS all over again, and highlighted the difficulties of maintaining stability in the region. The comparison of the period between 2002 and 2009 and the most recent development since 2009 thus raises a question for debate: is the recent development of the SCS clarity of claims and enhanced prospects for regional cooperation, or a setback for the regional security and peace in this region.

Third, difference voices are heard with ASEAN itself on how the dispute settlement in the SCS should be pursued. Nevertheless, there is a consensus among ASEAN and China that a Sino-Southeast Asian practice of consultation and negotiation will contribute to regional peace and stability by ensuring that pending disputes between the states will be settled by peaceful means between the indigenous powers. Consequently, ASEAN is united in the fundamental principles of sustaining peaceful coexistence with China. Since Last, Sino-US strategic competition allows little latitude for Great Power collaboration on the SCS issues, the consolidation of a Sino-Southeast Asian order requires the USA to leave responsibility for conflict prevention mechanisms to the indigenous powers.
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9 Ibid.

10 Ibid.


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13 See detail on TCT at Timo Kivimaeki, “What Could Be Done?” in War or Peace in the South China Sea, pp.131-165


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South China Sea: Taming the Turbulence

Nazery Khalid

Bersatu kita teguh, bercerai kita roboh
United we stand, divided we fall
(Malay proverb)

Stormy sea

The South China Sea (SCS) (see Diagram 1) is an economically pivotal maritime area which is as vast as it is geopolitically and geostrategically complex. It provides passage to much of the intra-region trade and acts as a conduit linking East and West trade. It is also an area rich in hydrocarbon and fishery resources which are essential to the economies of its littoral states. The sea is also essential to their national interests and sovereignty, and their claims over territory and sovereign rights over maritime spaces have given rise to several disputes among them. SCS is also a theater of immense importance from a strategic and military context for regional states and external powers.

Diagram 1. South China Sea: a sea of immense economic and strategic importance

Source: http://www.usip.org/files/file/s_china_sea-nations.gif

Given these, it is unsurprising that SCS is a subject of intense public and media attention. The inter-dependency of nations on the SCS and the shipping lane it provides has put the issue of maintaining peace, security and stability in the sea on the international agenda. It is therefore a cause of regional and international
concern that of late, there has been increased tension in the sea that threatens peace and stability in the sea and may have adverse repercussions elsewhere.

The situation in SCS and the motives of the principal actors in the sea dominate contemporary literature on the subject. At the centre stage is the discourse on the growing military activities and presence of naval powers in the SCS in the name of safeguarding strategic interests, entrenching influence, projecting power and counterbalancing the presence of one another in the sea.

There are several factors and competing priorities that contribute to the current worrying situation in this crucial sea. As nations exert their presence and authority in the seas in the name of safeguarding their national interests, and as strategic powerplay among global powers convolutes the situation, there is serious concern that growing tension in SCS may turn it to a stage for military conflict.¹

Events of late in this crucial maritime area have given currency to concerns that tension is escalating in SCS. Despite platitudes by claimant states extolling the virtues of cooperation and respect towards international laws in settling their disputes in SCS, actions on the ground are anything but consistent with the pronouncements. They include the following incidents:

- Philippines claimed that between 21 to 24 March 2011, China offloaded construction materials on Amy Douglas Reef or Iroquois Reef, an unoccupied feature in SCS.²

- On 9 June 2011, a Chinese fishing vessel escorted by two fisher enforcement vessels cut the cables of a Vietnamese exploration vessel which was undertaking seismic survey within Vietnam’s continental shelf in SCS.³

- On 15 June 2011, Philippines was reported to pull what it called ‘foreign’ markers from disputed waters in the sea, after accusing China of undermining peace in the sea by sending vessels near Reed Bank to intimidate rival claimant states.⁴

- This was swiftly followed by the deployment of Chinese battleships in disputed areas in SCS⁵ and the conduct of live fire naval exercises in SCS by Vietnamese navy.⁶ Adding to the rising tension was the firebrand rhetoric from both sides accusing one another of aggression and undermining their sovereignty.

Several claimant nations have asserted their claims in SCS through legislation and available legal mechanism. For example, the Philippines declared in February 2009 that parts of South China Sea are its territory by passing a bill.⁷ Malaysia and Vietnam made a joint submission to the Commission on the Limits of Continental Shelf.⁸ China reacted to this joint submission by declaring indisputable sovereignty over almost the entire SCS area via what is now popularly known as the ‘nine dotted lines’ claim.
Disputes in SCS and the rising tension among nations with interests in parts of this vast sea have made the situation there increasingly dicey. Amid multiple claims and counterclaims; assertion of national and strategic interests; and complicated power-play in this critical maritime theater, there is growing concern that the tension in SCS may lead to military confrontations. This can be seen in the way China has indiscreetly sent warships to disputed waters, to the anxiety of Vietnam and Philippines which in turn cranked up a show of bravado. In June 2011, Vietnam conducted live-fire exercise in SCS and Philippines deployed its biggest battleship BRP Rajah Humabon in SCS to counter what they see as China's aggression. Adding to the tension, and the US is seen to be bolstering it alliances with the likes of Vietnam and Philippines in an act that can be interpreted as sending a thinly-veiled message to China that Washington is watching closely developments in SCS.

Of the disputed areas in the SCS, none is as prickly and potentially explosive as the Spratlys Islands. Tension arising from overlapping claims by several nations over this cluster of islands and maritime features is said by several analysts to be among the most likely source that can trigger naval conflict in SCS. This is despite an uneasy truce that exists there among the claimant states which are committed to resolve disputes among them in a peaceful manner and exercise restraint with a view to creating a positive climate for eventual resolution.

The Spratlys archipelago, also known as the South China Sea Islands, hosts most of the islands in the SCS. Despite the remoteness of its location and the largely uninhabitable features of its islands and reefs, Spratlys is a monumentally important area not only for its natural resources and biodiversity riches but for its location along one of the busiest shipping routes and its immense geo-political and geo-strategic value.

China, Philippines, Malaysia, Vietnam, Brunei and Taiwan PRC all parties to UNCLOS - claim in whole or in part the features in Spratlys (see Diagram 2). To reinforce their claims, they have occupied the various maritime features in the Spratlys and built features such as airstrips resorts and living quarters. The existence of military garrisons put up by claimant states on the islands and maritime features which are in close proximity to one another creates a lot of tension in the area. The presence of naval vessels of the claimant nations in this contested area has seen it turn into a militarized zone which can become a potential lightning rod for conflicts among them.
Diagram 2. Claimants of Spratlys Islands

The (peaceful?) rise of the dragon

The rise of China as an economic and military power is reflected in its conduct in SCS and its assertiveness in defending its interests in the sea. The emergence of China as a powerbroker and its growing assertion to protect its interests in the SCS has gripped the attention of military and maritime analysts. Many among them have argued that China’s increasingly ‘aggressive’ conduct, if not checked, could lead to tensions and upset regional security balance in SCS. This is despite continuous assurance by China that its rise is a peaceful one and that it will never seek hegemony or military expansion.

On 11 April 2011, China submitted a note verbale to the United Nations that said it has given publicity several times to the geographical scope of Nansha or Kalayaan Islands and the names of its components since 1930s, hence stating that the islands are clearly defined. On 7 May 2009, China exerted its claims in SCS in a public fashion by releasing a statement that said it has ‘indisputable sovereignty’ over the islands in SCS and the ‘adjacent waters’. The statement, made by China’s Taiwan Affairs Office spokesperson, Yang Yi, also stated that Beijing ‘enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof’. China claims that Nansha Islands are fully entitled to territorial sea, EEZ and continental shelf under UNCLOS and China’s laws.
China’s description of SCS as its ‘core interest’ has been interpreted as a hardening of its stand on SCS. The use of what is seen as a dramatic term seems to suggest that Beijing will go to no ends to defend its interests in the sea and its declaration of strong interest in the sea represents its response to recent developments in the sea that it felt were undermining its strategic interests. This seems to be a departure of China’s policy towards SCS; where once it adopted an understated posture, it now does not back away from asserting its authority and flexing its muscles when the occasion calls for it. China’s claim of sovereignty over SCS as defined by its ‘nine dotted lines’ principle, which has spurred anxiety among the littoral states of the sea, stands testimony to its growing assertiveness in protecting its interest in the sea.

The actions and intent of China in SCS has occupied the minds of many scholars and analysts. The country has emerged as a principal actor on the SCS theater, and it is playing an increasingly significant role in shaping the strategic landscape in sea and influencing the surrounding region’s strategic architecture. However, China’s conduct in SCS is seen by several analysts as lacking transparency and its military build-up can trigger, if it has not already done so, an arms race among claimant states in SCS.

Several probing questions have been posed in various fora and dialogues on SCS in an attempt to ‘demystify’ China’s actions and understand its intentions in SCS. They include the following:

- Is China trying to establish hegemony in the region?
- Is China trying to make the sea its sanctuary for its naval fleet, as evident by the modernisation of its navy and the establishment of forward presence in SCS?
- Is China’s growing assertion in SCS fueled by domestic politics and public pressure for the government to ‘punch within its weight class’?
- Are the dynamics in SCS a testimony of the powerplay between the major powers and a manifestation of shifting regional and global strategic dynamics?
- Will China eventually provide a legal basis to validate its ‘nine dotted lines’ claim in SCS?

Exhaustive analysis and discussions have been carried out to unravel the motives and intent of its claims in SCS that do not have any legal basis. Recent dialogues, seminars and conferences on SCS have devoted considerable time to discuss China’s motives in SCS and until China begins to explain its conduct and strategies in SCS in a more discreet and transparent manner, questions will continue to be asked of what are its intentions.

Equally intensely debated is China’s approach with ASEAN members who have claims in SCS on issues relating to the waterway. China has always preferred to discuss SCS on a bilateral basis with individual countries as it works to its advantage, being much stronger in comparison to those countries. Beijing has dismissed any attempts, for example by Vietnam during its chairmanship of ASEAN, to discuss issues and disputes in SCS on a multilateral platform, which it sees as an attempt to ‘internationalize’ the issue.
The 2002 Declaration of Conduct between ASEAN and China (DOC) reiterated their commitment to resolve their territorial disputes via peaceful means and to exercise self-restraint in the conduct of activities that would complicate or escalate disputes among them and affect peace and stability in SCS. However, the report that China was offloading construction materials in Amy Reef underscores that non-effectiveness of the DOC in ensuring adherence to the declaration.

The coming years will demand Chinese and ASEAN diplomats to assess the effectiveness of the current mechanism for dialogue on SCS, as developments that can increase tensions in the sea unravel. New approaches may have to be undertaken to ensure that dialogues between China and South East Asian nations continue to be undertaken in a cordial manner towards ensuring disputes and issues in SCS between them are addressed amicably. Efforts are being made between ASEAN and China to work towards a Code of Conduct in SCS to promote peace and stability in SCS, as affirmed in the DOC. It is suggested that more confidence building measures are promoted between them as a means to engage one another to iron out differences in SCS between them in a climate of mutual trust and confidence.

Despite being committed to the DOC and the efforts towards realizing the COC, claimant states among ASEAN see China’s claims of large swathes of territories and features in SCS as being ambiguous. Despite China being a signatory to UNCLOS, and despite its frequent emphasis of its respect to UNCLOS principles, Beijing’s claims in SCS have no basis under the convention. The basis for its ‘nine dotted lines’ claim is made on historical grounds (China claims its position in SCS has been unchanged for centuries) which is perceived by scholars as a weak one.

Littoral nations interpret China’s claim as encompassing all the areas within the so-called ‘nine dotted lines’. The claim has resulted in anxiety among them as to what extent would China defend its claims. Events of late involving China and the Philippines and Vietnam in SCS suggest Beijing’s resolve in backing its claims and protecting its interests in SCS even if it has to take aggressive actions. Left unresolved, the situation could spiral out of control and lead to conflicts that seriously undermine peace and security in the region.

**Stars and stripes in SCS**

Equally captivating is the question of US involvement in SCS, which China sees as an interference of regional affairs. Even casual observers of strategic developments in this region would not have failed to notice that US has been re-engaging itself in the Asia-Pacific region, including SCS. As if countering China’s declaration of SCS as its ‘core interest’, US insisted that it has what it termed as ‘strategic interest’ in seeing peaceful resolution to disputes in the sea without taking a position on the disputes, as stressed by its State Secretary Hillary Clinton.
US has stressed repeatedly that key to its interest in SCS is to ensure freedom of the sea in the busy and critical shipping lanes in the sea, not only to facilitate trade but for strategic purposes. It is not hard to imagine Beijing being rankled by this and taking Washington’s insistence that the sealanes should be kept open as an insinuation that China is not committed to doing so.

The recent strong intimation by the US in emphasising the importance of SCS to its strategic interests can be interpreted as a statement of its intent to be more involved in the region. Some have taken a view the US pronouncement as a major strategic declaration to counter China’s growing presence and assertiveness in the sea. This lends currency to China’s anxiety that US involvement in SCS as part of a ‘containment’ strategy, which has been denied by the US.25

The presence of these two naval powers in the seas, and their wariness of one another’s motives and intentions, has inevitably resulted in face-to-face confrontation between them that has set temperatures rising in SCS. The world held their breath when Chinese ‘fishing boats’ squared off with US Navy ships Impeccable in SCS in 2009.27 Although the incident did not result in any shots being fired in anger, it provided a reminder of how tense the situation in SCS is and how a face to face confrontation between the two powerful protagonists could lead to full exchange of blows between them.

Adding to the ‘rising temperature’ in SCS that reflects the rivalry between US and China is the recent strong statement by China’s Vice Foreign Minister that US is ‘playing with fire’ in SCS. This was a reaction to the expression of commitment by the US to come to the aid of Philippines, its treaty ally, which Beijing sees as a direct reference to the situation in SCS.

Several analysts have pointed out that while US has every right in insisting that the shipping lanes of SCS should be kept open, Washington’s insistence of freedom of the sea rings a little hollow due to the fact that US has yet to ratify UCLOS.28 This makes US appears to lack credibility in its role as the ‘freedom of the sea champion’ in SCS, and lend credence to the belief that Washington’s emphasis on SCS is just a manifestation of its wider strategy of establishing a unipolar regional security landscape with the US enjoying unchallenged hegemony.29

**Soothing the strain, taming the turbulence**

There is no masking the tension in SCS and the potential for conflict therein. However, there is no reason for the claimant states to let the stress and strain prevent them from initiating cooperation in the sea.30 There are various economic
and non-economic activities in which they can be engaged to shift the attention away from all the tense blanketing the sea. The economic interdependence among the states demand that they work together towards the attainment of common goals and objectives, and should provide a strong deterrence for them not to engage in any acts of hostility that can undermine their close economic ties.31

Among the steps that can be taken to ‘lower the temperature’ and soothe frayed nerves in SCS and prevent an escalation of the tension therein are:

- **Stop all antagonizing actions and statements** that do nothing but increase anxiety and fear over the outbreak of conflict in SCS. Leaders and politicians from nations which are at loggerheads in SCS should cease making provocative remarks in the name of one-upmanship and sounding tough to score political points domestically. Trash talking does not help create a conducive environment for disputed parties to engage in dialogues and seek amicable solutions to their disputes.

- **Align all claims to UNCLOS**. Since all claimant states of SCS are parties to UNCLOS, they should always act in concert with its provisions and bring their national laws and practices in conformity with the convention. It is imperative that claimant states enter into negotiations to agree on where are the disputed areas and those not in dispute before they can work on initiatives such as joint development. In this regard, it would be most desirable for China to bring its claims in conformity with UNCLOS so that claimants can agree on areas not in dispute.

- **Elevate the DOC into a legally binding Code of Conduct (COC)**. The recent tension between Philippines and China and between Vietnam and China demonstrated the need for restriction among ASEAN nations and China in facing situations arising from disputes in SCS. The DOC in its current form is not adequate to prevent tension from spilling over into full-blown conflict. Efforts are being undertaken by ASEAN and Chinese officials towards realizing the COC which is seen to hold the two parties to a higher degree of obligation to resolve disputes between them in SCS through peaceful, diplomatic means. However, it would be too ambitious to expect the COC to be a be-all, end-all solution to the SCS disputes between ASEAN and China; it is not expected that the COC to have a conflict prevention mechanism. While the COC would be a welcome addition to existing modalities to prevent conflict in SCS, such initiatives must be complemented by diplomatic efforts to ensure durable, long lasting peace and security in SCS.

- **Seek third party mechanism to settle disputes**, such as via the International Court of Justice and the Law of the Sea Tribunal. Referring disputes for mediation, arbitration or adjudication is the way to go for parties which cannot see eye to eye and cannot break the impasse in their negotiations. However, not all claimants are keen to seek arbitration for their disputes in SCS, for fear of having to pay high political cost of losing the case.
- **Explore joint development in SCS.** There are several areas which present ‘low hanging fruits’ that claimant nations can work on without having to clear daunting political hurdles. They include marine scientific research, joint survey, marine environment protection, navigation safety, and search and rescue, among others. These areas are relatively easy for the claimant states to cooperate in and work on as they do not involve complex negotiations and they represent areas in which the nations have common interests. There are successful joint development models that can be emulated, for example the Joint Development Authority between Malaysia and Thailand in the Gulf of Thailand to produce and extract gas. There are also success stories in technical cooperation among SCS littoral states that can be further expanded in other areas, for example joint development of fishery resources between China and Vietnam in the Gulf of Tonkin.

- **Promote more confidence building measures** on areas beyond economic cooperation. There have been such initiatives in various areas, for example training programs conducted by South East Asian Network of Training and Education (SEANET); monitoring of sea level rise and expedition on biodiversity in SCS; and agreement between Indonesia and Vietnam to delimit their respective continental shelves in the southern part of SCS.

- **Use available modalities to promote peace, security and stability in SCS** and the region. Various dialogue mechanisms such as Asian Regional Forum, ASEAN Defence Ministers Meeting, Shangri-La Dialogue and Conduct of Parties are in place to promote platforms for dialogue, cooperation, understanding and trust among the claimant states to ensure issues in SCS are discussed and addressed amicably. Such constructivist approach will go a long way towards ensuring peace and stability in SCS and its constituency.

- **Intensify dialogues at the track two levels** among think tanks, scholars and non-governmental institutions. Such dialogues foster better understanding among claimant states of one another’s positions. This leads to the creation of a climate of trust which is key to promote cooperation and initiatives such as joint development and zones of cooperation among them. The no holds barred discussion at the track two level can yield ideas and insights that can be taken up at the track one level, namely by Government officials.

- **Desensitize the issue of sovereignty.** While it is acknowledged that territorial and sovereignty disputes among ASEAN members are best addressed via bilateral means or amongst the parties concerned, as stated in the Chair’s Statement at the 18th ASEAN Summit held in Jakarta on 7-8 May 2011, nations must realize that regionalism is here to stay. Issues which were once seen as nation-centric have now become regional. By dropping the ‘sovereignty’ tag to trans-boundary issues such as environmental protection, smuggling and navigation safety, SCS littoral nations can promote regional cooperation and constructive engagement among them. This is in line with the communal spirit aspired by the ASEAN Community and creates a sense of belonging among nations involved in disputes in SCS.
All for one, one for all: Some concluding thoughts

The situation in SCS today is far from ideal. We see several nations with claims in the sea taking an increasingly hard stance in safeguarding their interests. Some think nothing of making pronouncements suggesting that they are willing to engage in military confrontations to back their claims and protect their turfs. The involvement of external powers makes things even more convoluted. The calm waters of SCS belie the fact that it is a potential landmine mired in a complex interplay of strategic dynamics and maneuvers that may result in full-blown confrontations among naval forces.

Ultimately, the actors in SCS need to take a deep breath and a sobering look at the situation in SCS and assess where the developments in the sea will lead to and how their conduct will affect peace, security and stability in the region. The claimant nations do have sovereign rights to protect, but if this is done in a way which disregards the ‘greater good’ for regional peace, security and stability, no one would stand to profit from it. They should explore possibilities of cooperation in SCS without being prejudicial to one another’s sovereignty and jurisdiction. More than ever, we need to seek wisdom in Ghandi’s profound reminder. “An eye for an eye makes the world go blind”.

To this end, the claimant nations and other stakeholders must close ranks and work towards attaining durable peace in SCS. They need to realize that being littoral nations to the sea, their collective destiny lies in its vast waters. They should therefore strive to cooperate and collaborate in initiatives and areas in which they have mutual interests and of common benefits, and set aside their difference and disputes. In other words, they have to attain what seems elusive for now in SCS, which is to agree to disagree and focus on commonalities instead of discrepancies.

In order to reap the so-called ‘low hanging fruits’ in SCS suggested in this paper, the claimant states would do well to develop a thorough understanding of the factors, limitations, opportunities and prospects involved. For example, as a prelude to undertaking joint development of oil and gas fields in SCS, they must show resolve in carrying out joint prospecting and exploration of the hydrocarbon fields. Joint surveys could be carried out to determine what and how much is available where. It would not be too far-fetched to posit that the ‘belief’ by several claimant states of the availability of oil and gas in certain areas provide them with the impetus to stake claim of those areas. By toning down speculations of the locations and content of oil and gas deposits in SCS, claimant nations might be able to make that all-important first step to establish the facts via seismic exploration before working together on more substantial efforts leading to the extraction of the hydrocarbon riches in the sea. The same step-by-step approach should apply to developing fisheries resources in SCS which is believed to contain a prolific amount of such resources.

As all claimant states are parties to UNCLOS, they are obligated to adhere to all the provisions of the convention. Under no circumstances should there be any inconsistencies between their domestic laws and UNCLOS when it comes to their claims in SCS. All their claims must have a legal basis and must be in conformity
with the provisions of the convention. This is essential in order to eliminate any doubts over the legality of claims and to eradicate the climate of suspicion which has developed arising from unsubstantiated and ambiguous claims by a certain claimant state.

It would also be most helpful for leaders of all nations which profess interests in SCS to exercise utmost restraint and avoid making inflammatory statements that fan resentment, suspicion and animosity among them. In trying to gain political mileage domestically, several leaders have made fiery and provocative remarks that are not helpful at all towards promoting peace and stability in the sea and the surrounding region. One wonders at times to what extent are pronouncement on safeguarding their nation’s interests in SCS made by senior military officials are in alignment with the diplomatic stance of their countries. It is understood that the Foreign Ministry of a particular claimant state is not in agreement with the rebel-rousing approach of its senior military officers who have used very strong language in defending their nation’s claims in SCS.

The shifting balance of power on the regional and global stage has triggered new dynamics that need to be judiciously managed by the protagonists involved so as not to unleash forces that can undermine peace and stability in SCS. The so-called ‘arms race’ often couched in media-friendly terms such as ‘military modernization’ and ‘asset upgrading’ - that is visible in the region has the potential to turn SCS into a militarized zone and stir the region into conflict. Doubters of whether there is such an ‘arms race’ being contested in the SCS region need only look at the proliferation of submarine purchases by claimant stated which are essentially developing countries. China’s commissioning of its first aircraft carrier, the Varyag, is another development that could tilt the power and strategic balance in SCS that can dramatically alter the security landscape in the sea. The rising military might and options, and the newfound strategic advantage acquired through assets like submarines and aircraft carrier, may activate powerful new dynamics that can destabilize peace and security in SCS and its vicinity. Nations which are undertaking military build-ups should be more transparent with their intentions to allay the fears and assuage the suspicion of other nations as to the motives of their actions.

To foster understanding among the stakeholders involved in SCS, efforts must be made to undertake more dialogues among them. Although skeptics may dismiss dialogues as mere talk shops, especially at the Track Two level, such a platform does indeed contribute to the process of creating . By talking openly to one another, without undermining the views of others, a climate of understanding can be fostered. This is an essential building block to avoid conflict and promote cooperation among the many stakeholders in a geopolitically complex area such as SCS.

The voyage towards eliminating mistrust, suspicion and hostility in SCS is a long, challenging one. However, the claimant states and other stakeholders must not waver and not lose faith under these far from desirable circumstances. They must constantly tell themselves that it is in no one’s interest to have conflicts in this area in which their past, present and future intertwine. They must focus on areas of commonalities and convergence, not dissimilarities and divergence. In
today’s globalized world, they have way too many common interests and are too economically dependent on another to even think of entering into conflict in their common backyard. They must exhaust all channels to resolve their disputes and difference through various modalities and seek legal and diplomatic solutions to issues in SCS.

The principle actors of SCS owe it to themselves and future generations to preserve and promote cooperation, peace, security and stability in the sea and in the region. Enough rhetoric and platitudes have been heard on this; it is time for the stakeholders of SCS and leaders to show political will to turn mantras and ideas into action and results. It is apt to end this paper with another Malaya proverb, bersatu kita teguh, bercerai kita roboh, which simply means united we stand, divided we fall.

ENDNOTES


4 Anon. (June 16, 2011). Philippines pulls markers from disputed waters. AFP.


7 In 2009, the Philippines Government declared a bill 2009 claiming an area covering more than 50 islets, shoals and reefs known by China as Nansha Islands and known by the Philippines as Kalayaan Islands Group. The signing of the bill and the ensuing strong protestation by China presented a serious challenge for Manila and Beijing to adhere to the Declaration of the Conduct of Parties in the South China Sea signed by ASEAN and China in 2002.


11 These commitments are stated in the 1992 ASEAN Declaration on SCS. In addition, the 1997 ASEAN-China statement on SCS reiterated their commitment to resolve disputes in SCS among them through negotiations and consultations in accordance with international laws including UNCLOS.


13 China’s Defense Minister, Gen. Liang Guangjie stressed during the Shangri-La Dialogue in Singapore in June 2011 that his country adheres to a defensive defence policy but at the same time that anything related to its ‘sovereignty, political stability and form of government’ is considered a matter of ‘core interest’. Analysts interpret this to mean that China would not hesitate to use force to confront any attempts top challenge areas which it deems to be integral parts of the country, including SCS.
Anon. (June 29, 2011). China has indisputable ownership over South China Sea. Xinhua Net.


China first used the term ‘nine dotted lines’ in a map sowing the extent of its claims in SCS released in reaction to the joint submission by Malaysia and Vietnam to the Commission on the Limits of Continental Shelf. China protested against the submission and countered it by declaring that it has territorial claims in a vast swathe of SCS which encroach into the EEZ of Malaysia and Vietnam.


From the author’s own observations while attending conferences and dialogues on SCS in Hanoi in 2009, Ho Chi Minh City in 2010, and in Hong Kong and Singapore in 2011.


China has openly expressed its opposition to US urging of ASEAN to engage China on issues in SCS in a multilateral manner. China, which prefers to discuss SCS issues bilaterally with individual claimants states, sees US move as an interference and an effort to internationalize the SCS issues.


This was raised during the recent ‘CIL Conference on Joint Development and the South China Sea’ held in Singapore on 6-7 June 2011 by several panelists and participants.


For an example of such optimism, see Emmers, R. De-escalation of the Spratly dispute in Sino-Southeast Asian relations. RSIS Working Papers, 129/07. Singapore:RSIS.
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The South China Sea Territorial Disputes in ASEAN-China Relations

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Recent events call attention to the territorial disputes in the South China Sea as a site of escalating tensions and possible military confrontation between rival claimant states, particularly between China and Vietnam, and China and the Philippines. While in the past, various claimant states have each undertaken unilateral actions that have been interpreted as assertions of sovereignty (including passage of laws relating to territory and maritime zones, resource exploration and exploitation activities, and efforts to hamper similar activities by other countries), the newest cycle of tensions involves more worrisome elements.

New elements in the disputes

These are, first, and foremost China’s growing use of military, paramilitary or law enforcement authorities to assert sovereignty in areas under dispute enclosed in its 9-dashed lines map, especially in areas close to the coastlines of other littoral states. This must be understood in the context of rapid advances in Chinese capability and clear intent to project naval power in the East China Sea and the South China Sea. China recently registered this map indicating its official claim with the United Nations (as part of its protest against a joint Vietnamese-Malaysian joint submission of their continental shelf limits in the SCS).

Second is the failure thus far of the regional multilateral diplomacy between China and ASEAN to move forward in promoting confidence building, cooperation or more urgently, in agreeing on conflict avoidance measures and other rules of conduct in the disputed areas.

Third is the uncertainty over the trajectory of great power relations, in an environment where China’s rise is taking place amid US economic decline and US preoccupations elsewhere in the globe (despite the Obama government’s stated intentions to remain a Pacific power).

The confluence of these factors seems to have changed the complexion of the territorial disputes in a number of ways. It is shifting the focus of the conflict management efforts from ASEAN-China confidence building and finding formulas for resource cooperation toward (1) the need to clarify the exact extent and legal bases of the respective claims, as well as the nature of the applicable laws or regimes in surrounding maritime zones; (2) how to prevent the outbreak of armed hostilities and a longer-term arms race between rival claimants; and (3) the question of whether or not bringing in the United States as a countervailing power to China is helpful or detrimental to progress in ASEAN-China diplomacy on the issue.
Overlay of big power competition

As has long been argued, the South China Sea disputes are a litmus test of China’s attitude and behavior toward its smaller neighbors, it being the region’s newest and biggest power. Its recent assertive stance and display of military power follows a fairly long period of smooth relations and bilateral as well as multilateral cooperation with Southeast Asian states, thus sending mixed signals to neighbors and appearing inconsistent with its much-touted New Security Concept. At the same time, US concerns over what it sees as lack of transparency in Chinese military modernization in general, and China’s acquisition of anti-access area-denial capability in particular, resonate in some countries in Southeast Asia. China’s development of a submarine base on Hainan island and its intentions to deploy an aircraft carrier battle group are of special note.

Considering other factors such as the disagreements between China and the US regarding US spying activities in Chinese EEZ and airspace and China’s discomfort over its so-called “Malacca dilemma” (i.e., dependence on the US to provide sealanes security for its own oil imports through the Malacca Straits), it is increasingly obvious that beyond the territorial and resource disputes themselves are higher stakes involving competition for maritime control among the big powers. Efforts by the United States and Japan to involve India (with its powerful navy) in a regional security role to act as a balancer to Chinese influence are also indicative of growing geopolitical competition.

In the past, China, other claimants and ASEAN as a whole expressed that they were committed to ensuring a peaceful and stable environment in the South China Sea. More than ever, this peaceful environment will be seen as dependent not just on all the claimants exercising self-restraint, but in particular China assuring neighbors that the parameters and objectives of its emerging military power are non-threatening as well as dedicated to maintaining rather than undermining regional stability. Without such assurances, unfortunately, the neighbors will worry about looking for more effective ways of constraining the power aspirations of a potential regional overlord, particularly if the multilateral diplomacy will appear to have run its course and to have ended in failure.

Bilateral vs Multilateral Approaches

One bone of contention in the diplomatic front is that China insists that the disputes be addressed through bilateral negotiations, resisting (1) “internationalization” of the disputes such as attempts to involve parties that are not directly concerned, principally the United States; (2) efforts by the other claimant states (Vietnam, Philippines, Malaysia and Brunei) to come together and discuss the issue without China or prior to holding dialogue with China; and (3) ASEAN’s initiatives to frame the disputes as a subject for ASEAN policy coordination and action vis-a-vis China.

This posture by China, reiterated by Vice Foreign Minister Cui Tiankai last June, is a throwback to its position prior to China’s agreement to the 2002 Declaration of Conduct in the South China Sea. There is no way China can prevent ASEAN or
even the claimant states among ASEAN from consulting among themselves on such an important issue. Since the ASEAN Foreign Ministers issued the Manila Declaration on the South China Sea in 1992 (when ASEAN had six, rather than the current ten members), the effects of the disputes on regional peace and stability had already been recognized as a matter of collective interest to ASEAN, at least as represented then by the six signatories, strengthened further after Vietnam joined the Association. Among the non-claimants to the Spratlys and Paracels, Indonesia has been drawn into the fray by the fact that its Natuna gas fields fall within China’s 9-dashed lines claim and by the active role it has played in facilitating Track Two workshops on the matter since the early 1990s. Singapore, on the other hand, arguably has the most to lose by any disruption in regional trade that might ensue from conflict and has been the most active in ensuring a continuing US military presence in the region.

However, it is to ASEAN’s woe that it has been unable to adopt a stronger common position on the importance of this issue and on what approach to take toward its resolution. Moreover, some ASEAN countries — my own government being a case in point — have wavered between accommodation and resistance toward China and between emphasizing bilateral over multilateral approaches.

**Conflation with other maritime security challenges**

The territorial and sovereignty disputes in the Spratlys and Paracels are only one of several inter-locking layers of potential conflict and therefore security challenges in the South China Sea. Aside from the disputes and military competition for sea control among the big powers, there are also undefined or overlapping maritime boundaries resulting in jurisdiction issues, as well as threats to maritime safety and sealane security such as piracy, terrorism, smuggling and trafficking.

The territorial disputes are very much intertwined with the maritime boundaries and jurisdiction conflicts. Territorial disputes aggravate problems over maritime jurisdiction because they lead to difficulty in determining the basis from which a state’s maritime zones are to be projected, as stipulated in the UN Convention on the Law of the Sea, therefore leaving it unclear whether said state or another should exercise rights and obligation over particular swathes of ocean. On the other hand, the desire to extend maritime boundaries farther out to sea so as to enlarge control over ocean spaces and resources has emboldened states to assert more strongly their respective territorial claims.

At the same time, territorial disputes and overlapping maritime zones become conflated with maritime safety and security issues because many of the challenges such as piracy and smuggling occur within the exclusive economic zones (EEZs) and territorial seas of coastal states, therefore under UNCLOS giving coastal states the primary duties and obligations to regulate such activities, even though they may not have the capacity for it.

Given the foregoing discussion of the increasing complexity of the security environment in the South China Sea, it is becoming evident that mitigating
security threats and preventing the outbreak of armed conflict will require a multi-level, multi-stakeholder process. As countries immediately surrounding the South China Sea, ASEAN and China should find ways of cooperating to attain peace and stability in our shared maritime spaces, with the active support of other legitimate users and stakeholders. Failing that, we may well end up opening the region to the risk of both big power conflict and a chaos of other maritime security threats and challenges.

**A multi-level approach: mitigating sovereignty disputes, avoiding armed conflict while building a cooperative maritime security regime**

A multi-level approach must be based on a determination of (1) the precise subject of the source of conflict, including a definition of the areas that are contested and those that are not, (2) who are the primary parties and if any secondary stakeholders, (3) what are the legitimate needs and interests of the parties that must be taken into consideration.

In the South China Sea, there are separate but inter-related disagreements over (1) sovereignty over territory (where the claimants Brunei, China, Malaysia, Philippines, Vietnam and Taiwan are primary parties concerned over security, territorial integrity, and/or access to resources), (2) jurisdiction over maritime zones (where littoral states and other traditional users of the ocean are legitimate stakeholders and where the stakes range from freedom of navigation, coastal state control over illegal activities in its surrounding waters, access to resources in the EEZ and continental shelf), and (3) who should have primary responsibility for addressing common or transnational security challenges such as piracy, maritime terrorism, environmental and natural disasters, and the like.

The principle proposed here is of inclusiveness with respect to all legitimate stakeholders.

For territorial sovereignty issues, bilateral negotiations are appropriate for disputes that are bilateral in nature, where no third party interests will be severely prejudiced by the outcome of a bilateral resolution. In the South China Sea, this may apply only to the Paracels (assuming Taiwan is not a separate stakeholder from the PRC), and possibly to Brunei’s corridor overlapping the Malaysian claim. Wherever a bilateral resolution may infringe on fundamental interests and needs of a third party, then dispute settlement that excludes that party will likely run into trouble, in which case a multilateral approach (i.e., involving three or more relevant parties) would be appropriate. It is important to stress that the proposed multilateral approach involves only direct parties and is distinct from so-called “internationalization” of the disputes that is the subject of Chinese criticism.

However, the most urgent matter with respect to the territorial and maritime jurisdiction disputes is not resolving the question of sovereignty or sovereign rights, but mitigating the effects of sovereignty claims in the meantime that these remain unresolved. Territorial and boundary issues in the South China Sea are likely to be successfully addressed only through a protracted process or series of peaceful bilateral as well as multilateral consultations among the various parties, leading to a hopefully equitable political settlement based on principles
and norms in international law. (At some point arbitration or mediation may play a role but this is not pre-determined).

Joint development projects in fisheries, oil and gas, or joint management of other ocean concerns may be undertaken upon agreement of the parties, as an interim measure or even as a permanent solution. Such initiatives may also benefit hugely from efforts of the regional states to come to common understanding or interpretations of the relevant provisions of the Law of the Sea, e.g., on the definition of islands as opposed to rocks, given its importance for the determination of maritime zones, and on issues such as transit/innocent passage and legitimate military uses of the ocean.

An atmosphere where you have one country threatening or using force against another, arms build-ups and counter build-ups, and demonstrations of power through unilateral military drills, such as have occurred in the last two years, is far from conducive to the conduct of any consultations and negotiations toward this end. If this atmosphere is to prevail it would be a reversal of painstaking confidence-building efforts that have been undertaken between China and Southeast Asian countries in the last two decades.

To restore some civility and predictability in the actions of various parties, a regional code of conduct has become imperative, with the single most important goal of conflict avoidance. Such a Code can initially be pursued bilaterally, or “mini-laterally” among the claimant-states only, but to have the full effect of calming the waters and restoring confidence in regional stability, a multilateral agreement among not just the claimants or even littoral states but involving other users of the ocean (particularly those engaged in military activity) may be more effective and sustainable. A code of conduct will focus on military CBMs and ways of addressing existential threats rather than diplomacy, such as procedures to prevent incidents at sea, or measures to demilitarize the region and encourage civilian presence instead for the security of oil installations or the like.

The management of the disputes is also very much related to the question of regional maritime security cooperation, and more broadly speaking, ocean governance. There is a need to elevate ASEAN and China’s perspective on the South China Sea from focusing excessively on territorial disputes back to a diplomacy on ocean governance encompassing the economic, development, security, environmental imperatives of managing it as a semi-enclosed sea, rights and obligations pertaining to which have been stipulated in UNCLOS.

In the last decade alone, the ASEAN Regional Forum, CSCAP and other security dialogues have engaged in thickening discourses on maritime security focused on problems such as sealane safety and security, maritime search and rescue, marine environmental protection, etc. In Southeast Asia, regional navies and enforcement agencies have shown willingness to cooperate on information-sharing and capacity-building (e.g. the Information Fusion Center in Singapore and the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia or ReCAAP), and gradually higher and more complex levels of cooperation, such as the MALSINDO (Malaysia—Singapore—Indonesia) anti-piracy Malacca Straits patrol that cover the territorial waters of the three countries,
and the MALSINDO Plus Thailand Eyes in the Sky program of coordinated air patrols. This broader agenda of ocean governance and maritime security regime-building on the other hand may have important implications for the eventual resolution of the disputes particularly in terms of encouraging cooperative multilateral security frameworks based on shared interests and mutual benefit.

To conclude, the territorial disputes in the South China Sea are not stand-alone issues but rather, are implicated in conflicting maritime jurisdiction claims, brewing big power conflict, and in the imperative of managing shared ocean spaces beset with transnational maritime security challenges. While it is important to sustain dialogue and to make real progress on the management of the disputes per se, ultimately only a multi-level, multi-pronged, and multi-stakeholder approach inclusive of primary parties and other legitimate stakeholders can guarantee a successful outcome.
IV. LOOKING BACK AND LOOKING FORWARD: COOPERATION IN THE SOUTH CHINA SEA

The South China Sea Disputes: Regional Security Implications and Avenues for Cooperation  
Dr. Carolina Hernandez  
Institute for Strategic and Development Studies

Various Lessons Learned from Various Conflicts and Potential Conflicts Management in Southeast Asia  
Prof. Dr. Hasjim Djalal  
Indonesian Maritime Council

An Assessment of the Effectiveness of Current Maritime Security Frameworks and Mechanisms in the South China Sea  
Prof. Peter Dutton  
China Maritime Institute of the Naval War College

The South China Sea: Back to the Future Through Cooperation  
Amb. Alberto A. Encomienda  
Dagat Kalinga Alaga, Inc

China’s South China Sea Policy: Claims and Changing Contexts  
Dr. Li Mingjiang  
S. Rajaratnam School of International Studies
(Continuation)

South China Sea Dispute  Sea of Opportunities?
_Dato’ Vice Admiral Noor Aziz Bin Yunan_
_Defense Konsult plc_

South China Sea Issue in China-ASEAN Relations:
_An Alternative Approach to Ease the Tension_
_Dr. Shen Hongfang_
_Xiamen University_

The Code of Conduct in the South China Sea:
The International Law Perspective
_Mr. Nguyen Dang Thang_
_University of Cambridge_
The South China Sea Disputes: Regional Security Implications and Avenues for Cooperation

Carolina G. Hernandez, PhD
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Introduction

It is extremely difficult to dissociate the South China Sea (SCS) from the territorial disputes over geographic features found within this large body of water - some 1,800 kilometers from north to south and over 900 kilometers from east to west - that is also semi-enclosed by land territories belonging to the member states of the Association of Southeast Asian Nations (ASEAN). This presentation will then take off from the SCS disputes, and analyze recent developments in the SCS that impact on these disputes, their regional security implications for East Asia and the broader Asia Pacific region, before offering some avenues for cooperation.

The SCS disputes involve conflicting and overlapping claims over small islands, islets, coral reefs, cays, rock formations, atolls, outcroppings of varying sizes, and sandbanks located in the Spratly Island group and the Paracels among Brunei Darussalam, China, Malaysia, the Philippines, Taiwan, and Vietnam. All the claimants except Brunei have occupied features within their claimed areas and established military outposts or bases; and all claimants have adopted domestic legislation related to their claims.

There are two important norm-setting documents governing the SCS. The first is the 1992 ASEAN Declaration on the South China Sea adopted in Manila by ASEAN member countries, and the second is the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) between China and ASEAN. Both contain principles of good inter-state conduct including respect for national sovereignty and territorial integrity of states, the settlement of disputes by peaceful means, and non-interference in the internal affairs of other states. The DOC also includes the concept of ‘no new occupation’ in its paragraph 5 under which the parties commit to “exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including among others, refraining from the action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features…” These documents are, however non-binding and provide no mechanisms for enforcement against violators. Thus, non-official attempts to avert conflict have been important features of regional activities relating to the SCS disputes.

Some sixteen (16) years ago, in an effort to call attention to the security implications of a putative conflict in the South China Sea (SCS) not only for
claimants to this territorial dispute, but also for other states with interest in maintaining good order and peace in this area for commercial and other purposes, an initiative was launched by the Institute for Strategic and Development Studies (ISDS Philippines) and the Pacific Forum/CSIS (Honolulu) that focused on ‘triggers’ of conflict which needed to be avoided by all parties concerned. It recognized existing initiatives to avoid conflict such as the joint Indonesian and Canadian initiative called the Informal Workshops for Managing Conflict in the South China Sea (Informal Workshops) launched in 1990, but the new series sought to provide another venue for confidence-building especially for states in East Asia and the broader Asia Pacific region not involved in the Informal Workshops but have strategic interests in maintaining regional peace and stability. In 1995, that goal appeared to be at risk with the discovery by the Philippines that China had constructed what it originally claimed as ‘fishermen’s shelter’ on Panganiban (Mischief) Reef that lies within the Philippine claim in the Spratly Islands.

Between 1995 and 1998, China had transformed this ‘fishermen’s shelter’ into the naval base that exists at present. China’s rise as the second largest economy in the world, its naval modernization that enabled it to acquire a blue water navy, and recent increasing assertiveness in maritime areas in East Asia beyond the SCS in which it has territorial disputes with other states such as Japan and South Korea, diverse interpretations of the rights of littoral states over their exclusive economic zones (EEZs), and the risks inherent in power shifts that potentially can alter the regional strategic status quo have combined to bring us to this important conference on the SCS seeking to avoid conflict and to find ways of building peace, cooperation, and progress instead.

As already noted, this presentation focuses on the security implications of recent developments in the SCS for East Asia and the broader Asia-Pacific region and attempts to provide some ideas regarding possible avenues for cooperation. It leaves off the bases of individual claims to the disputed areas in the SCS, takes into account the assumption that the present international system of territorially-based sovereign and independent states prevents the resolution of these territorial disputes, and proceeds to find avenues for cooperation not only among the claimants to these territories, but also among other states and groups that seek peace and stability in the disputed areas including its waters used for international navigation.

Recent Developments in the SCS and Their Regional Security Implications

The SCS area has been seen as a regional ‘hotspot’ where tension and conflict are more likely than cooperation and peace. The primary reasons for this view include the conjunction of strategic and economic interests of the great regional powers of the Asia-Pacific region - China, Japan, South Korea, the United States (US), Russia, India, and Australia - in the SCS, the world’s second busiest sea lines of communication (SLOC). The SCS connects the Indian Ocean via the Strait of Malacca to the Pacific Ocean via the Taiwan Strait. These sea lanes are also seen as ‘choke points’ which any state dominating or controlling the SCS can use against opponents. The national interests of the great maritime countries
in the world that use these SLOCs require respect for freedom of navigation in these waters, as well as over flight in the airspace above them.

It is also through the SCS where over a quarter of global trade passes, including 70% of Japan’s energy needs (before the nuclear leak in the Fukushima nuclear power facility following the March 2011 earthquake and tsunami disasters in Japan) and 65% of China’s. East Asia’s reliance on global trade for economic growth has also made the SCS a critical transport route for its exports and imports, a fact not lost on regional states.4

There are also other significant economic reasons over which states in the region could compete rather than cooperate. The SCS is believed to be rich in oil, gas, and marine-based minerals, apart from being one of the richest fishing grounds in the world.5 Access to these resources is sought by all the claimants as well as their allies, especially as the SCS is sometimes seen as a ‘second Persian Gulf’6 in terms of energy source. The global search for energy sources in the light of the voracious consumption needs of fast-growing economies including China and India in the wider Asia-Pacific region heightens the economic and strategic importance of the SCS.

And the Association of Southeast Asian Nations has a huge stake in the peace and stability of the SCS whose stretches as a semi-enclosed sea from North to South and East to West are encircled by the national territory of its member states, four (4) of which are claimants in the SCS disputes, i.e., Brunei Darussalam, Malaysia, the Philippines and Vietnam.

Given the strategic and economic importance of the SCS and China’s perceived ‘assertiveness’ and ‘creeping occupation’ during the second half of the 1990s, it was noteworthy that there was a period in the recent past when analysts on the SCS saw a ‘de-escalation’ of the SCS disputes7, a period that coincided with the launch by China of its ‘charm’ diplomacy. Writing in 2007, Emmers argued that while the SCS dispute remained in ASEAN’s security agenda, it had nevertheless de-escalated to the point that it was “no longer perceived as a significant flashpoint capable of undermining order in the region and it has to some extent been shelved in Sino-Southeast Asian diplomatic relations”.8 There was naturally a cause for optimism when such de-escalation occurred.

However, in 2011, the SCS disputes have escalated once again., and is very likely to be put back into the bilateral diplomatic agenda of ASEAN and China, particularly because there has been no progress made in the adoption of implementing guidelines for the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) which an analyst recently observed as having “likely been overtaken by events”9, a view quite unlike that held by a former ASEAN Secretary-General who laid the failure to adopt implementing guidelines for the DOC upon China’s doorstep.10

That said, the roller-coaster pattern of Sino-Southeast Asian relations in regard to the South China Sea merely validates the truism that nothing can be permanent if it is political. It also demonstrates the primacy of the political and
the strategic over other considerations in world politics, rhetorical protestations to the contrary notwithstanding.

Recent Chinese assertiveness in the East Asian maritime domains it claims is a major source of the current sense of unease in regard to the SCS. It is of course because China is a ‘big country and all others are small’ by comparison. This assertiveness can be seen in a number of instances including over flight and navigation in its EEZ by foreign aircraft and vessels. That the 1982 United Nations Convention on the Law of the Sea (UNCLOS) is not helpful in regard to this matter, including over flight and navigation by military aircraft and naval vessels in the EEZ of littoral states suggests more room for tension and disagreement among concerned parties. The disagreements between China on the one hand, and other regional powers such as the US on the other, over issues such as for example the USN Impeccable and other related incidents are only among the more publicized. Less known are incidents involving the arrest of and firing upon fisherfolk caught by Chinese naval officers and the use of naval power to prevent civilian activities such as scientific exploration by civilian agencies of rival claimants. It is also the case that although the islands and islets in the SCS are small, military presence has been boosted by the erection of bases in the occupied parts of the SCS. For example, the „fishermen’s shelters’ on Mischief Reef were upgraded into a naval base by China as it also “established bases with various electronic support systems both in the Spratly group and the Paracels which are second in importance only to Hainan Island bases on the South China coast”.

The SCS’s strategic importance as a major sea lane of communication inhibits its insulation from big-power interests and therefore, competition as argued by political realism. The controversial statement made by US Secretary of State Hilary Clinton at the 2010 meeting of the ASEAN Regional Forum (ARF) in Hanoi can be seen as a big-power reaction to a series of maritime incidents in East Asian waters over the past few years that go beyond the USN Impeccable and include the sinking of the Cheonan, allegedly by missiles from a North Korean vessel, as well as incidents in other contested islands in East Asia. In addition, the continuous contestations involving the arrest of fisherfolk going about their business, military action by China against civilian scientific explorations by the Philippines and Vietnam already noted above, and other similar incidents in the disputed areas in the SCS have only served to erode whatever confidence China has built with its neighbors including in Southeast Asia. They must have also shaped growing close relations between the US and Vietnam in recent times, as well as sent a wrong signal to other states regarding China’s intentions in its post-peaceful rise phase.

China reportedly feels surrounded by unfriendly states in the region that are developing closer relations with the US. This perhaps accounts for its increasing assertiveness in regional affairs as well as its desire for enhanced military capacity. It is also said to be concerned that the oceans could be used by enemies to attack it as in the past. This perhaps drives it to achieve a degree of control over these waters. Yet its increasing assertiveness, the use of naval patrols to arrest Philippine and Vietnamese fisherfolk and prevent civilian scientific exploration, as well as continuing efforts to improve military structures it erected on contested areas drive some of these countries closer to the US.
Thus, one can see a spiral of action-reaction among some of the claimants and other actors in the SCS.

Despite China’s openness to multilateral institutions including the ARF, it prefers to deal with the SCS disputes bilaterally. While some specific areas of dispute might lend themselves to bilateral processes such as when there are only two claimants, where there are more than two (2) claimants nothing short of multilateral negotiations can lead to a reasonably lasting solution. This is the case in the disputes over the Spratly Island group. Intransigence over only a bilateral approach in dispute settlement in the SCS is therefore a non-starter.

It is also a dilatory tactic to wait until ASEAN has arrived at a consensus on the disputes. Other than a collective stand in regard to the 1992 ASEAN Declaration on the South China Sea, the DOC, and a Code of Conduct on the SCS, an ASEAN consensus is not likely due to the fact that four (4) of its member states are rival claimants, and the others have varying degrees of political, diplomatic, and economic closeness to China. In short, only when ASEAN’s collective integrity is challenged can a consensus be expected to emerge. The SCS disputes are not part of this collective integrity, since they involve individual member states.

Nonetheless, even if a resolution of the disputes is not in the offing, it is still important to find avenues for cooperation in order to reduce tension, avoid triggers’ of conflict, and create a degree of regional stability that is good for peace, progress, and prosperity. Armed conflict is in nobody’s interest. Every effort needs to be taken to find ways by which concerned parties can cooperate even as the disputes remain unresolved for the time being. The likelihood that they will remain unresolved is high given the built-in constraints of the current international system of territorially-based, independent, and sovereign states that continue to behave according to the norms of the 15th century Treaty of Westphalia.

**Avenues for Cooperation**

States will cooperate to avoid conflict (or for that matter for any other reason) if it is in their interest to do so. Hence, in the context of the SCS disputes, it must be made crystal clear that (1) the SCS is of strategic and economic interests not only to the states bordering this body of water, but to all other ‘users’, including those not territorially-based around the SCS, and that in a specific sense, the SCS is part of the ‘global commons’ into which there is freedom of peaceful access and use; (2) the escalation of tension can be a trigger for conflict, even if those that escalate tension do not mean to do so, simply because in world politics, perception is a powerful and often an overpowering - factor in state behavior; and (3) any attempt to break the peace will be much too costly even for big countries.

**Among Claimant States**

The starting point is for claimant states, large and small to respect and abide by the political declarations regarding their conduct individually and in relation to others to be observed in the SCS, especially non-use of force and no new occupation. Here, the exercise of self-restraint is extremely important, an exercise that ought not to
be regarded as a sign of weakness by others. With this overarching framework and mindful of the conflicting sovereignty claims that remain unresolved, the following might be considered:

1. Joint activities to establish environmental protection and conservation zones;
2. Adoption of enforceable mutual guarantees to ensure order in the exercise of freedom of navigation and over flight in accordance with existing international law, including the UNCLOS;
3. Joint scientific exploration, surveys, and data collection in disputed areas without prejudice to include areas close to the claimants’ national territory;
4. Joint development of resources in the SCS, including the joint grant of concessions to private companies for oil and gas explorations, for example, with equitable distribution of gains;
5. Prevention of the threat or use of force against fisherfolk of rival claimants; and
6. Maintenance and respect for the present status quo in the disputed areas.

Among Maritime States in the Region

Since the SCS is a major SLOC, it is in a sense a kind of global commons where freedom of navigation and over flight well established in international law and practice should be observed by the littoral states and flag states of vessels and aircrafts passing through them. In this regard, the maritime states in the Asia-Pacific region should consider cooperation in the following areas:

1. Prevention of the illegal use of the SLOCs, generally and particularly in the suppression of piracy, illegal trafficking in drugs, small arms and light weapons, natural persons, as well as the use of the SCS in contravention of international agreements related to Weapons of Mass Destruction (WMDs);
2. Prevention of the threat or use of force by any and all states whose vessels and aircraft pass through the SCS;
3. Adoption of mutual guarantees to observe and respect applicable international law on freedom of navigation and over flight in the SCS;
4. Lead in further clarification of relevant UNCLOS provisions that can enhance peace and stability in relation to regimes such as the EEZ; and
5. Accession to and ratification of the UNCLOS as a common applicable law on the uses of the oceans.

ASEAN-China

Much can be achieved to make the SCS a stable and peaceful area through ASEAN-China cooperation. Since an ASEAN consensus on the disputes is not feasible at this time, there are still avenues for cooperation between the two sides to promote stability in the SCS. Among them are:

1. Adoption of an enforceable code of conduct on the SCS beyond the political DOC Beijing can make this its gift to the incoming ASEAN Chair, Cambodia,
like its gift of the DOC during Phom Penh’s last occupancy of the ASEAN Chair in 2002;

(2) Adoption of the SCS as a regular item in their bilateral agenda;

(3) Conversion of existing military facilities in the disputed areas into genuine fishermen’s shelters accessible to all the fisherfolk plying the SCS for their livelihood;

(4) Prevention of provocative behavior by all claimants, including the arrest of and firing upon other countries’ fisherfolk, expulsion of civilian agencies conducting scientific activities in the SCS by military and naval forces; and

(5) Search for conflict resolution mechanisms that can facilitate the achievement of lasting peace.

ASEAN Regional Forum

As the premier political-security dialogue mechanism in the Asia-Pacific region in which the most powerful actors in world politics participate, the ARF needs to become more relevant to its overall mandate. It needs to move away from a sequential to a comprehensive approach in its concept paper that identified three tasks for it: confidence building measures, preventive diplomacy, and measures for conflict resolution. Moreover, while its entry into non-traditional security cooperation is commendable, it appears to have moved further and further away from addressing hard security issues, including on the Korean Peninsula and the South China Sea. Due to recent developments involving the SCS, including the statement made by US Secretary of State Clinton at the 2010 ARF, this forum can no longer afford to ignore this matter and leave it to bilateral negotiations. Thus, it can consider undertaking the following:

(1) Since the SCS is discussed in the fringes of the ARF sessions, include the SCS as an area of increasing tension in the ARF agenda on a regular basis;

(2) Use of the Friends of the ARF Chair and other creative venues to bring the SCS into the ARF agenda;

(3) Prevention of piracy and other illegal activities in the SCS; and

(4) Prevention of infringements of pertinent international law and regional declarations regarding the SCS.

Concluding Remarks

No doubt, these avenues for cooperation are bound to be rejected by many. However, they also serve as a challenge to all concerned, particularly those that purport to be responsible stakeholders. I have often wondered what Northeast Asia, and now East Asia would have been like had the biggest resident country in this region taken the lead that Indonesia took in Southeast Asia in 1967? That act paved the way for the peace, stability, prosperity, central role in regionalism that Southeast Asia as ASEAN has become today. Now is a good time to square the rhetoric with the behavior for East Asia’s biggest country. The testing ground is the South China Sea.
ENDNOTES

1 Prepared for the International Conference on “The South China Sea: Toward a Region of Peace, Cooperation, and Progress” jointly organized by the Foreign Service Institute (The Philippines) and the Diplomatic Academy of Vietnam, Dusit Thani Hotel, Makati City, The Philippines, 5-6 July 2011.

2 Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, 2002.


4 None of the country perspectives on the importance of the SCS failed to take this into account in the 1995 International Conference on the South China Sea in Manila. See these country papers in Carolina G. Hernandez and Ralph Cossa, editors, Security Implications of Conflict in the South China Sea: Perspectives from Asia-Pacific (Quezon City and Honolulu: Institute for Strategic and Development Studies and Pacific Forum/CSIS, 1997).


8 Ibid., p. 1.


10 East West Centre Conference on East Asian Regionalism, Brussels, December 2010.

11 Aileen S. P. Baviera, “China is a Big Country, Other Countries are Small Countries: Analyzing the Facts of Power Asymmetry”, a presentation at the 25th Asia Pacific Roundtable, Kuala Lumpur, 30 May-1 June 2011, citing China’s foreign minister Yang Jiechi.


14 From a track two meeting in Kuala Lumpur, 1 June 2011.

Lessons Learned from Various Conflicts and Potential Conflicts Management in Southeast Asia

Prof. Dr. Hasjim Djalal, MA

LESSONS LEARNED FOR DISPUTES MANAGEMENT

Indonesia has had some experiences with regard to dispute or potential dispute management in South East Asia, either from multilateral cooperation or from national experience. The disputes management may involve disputes between states or in some cases internal disputes, but involving outside help and cooperation. The disputes or potential disputes in the area include the management and the resolution of the Cambodian conflicts, which also involve non South East Asia. The internal disputes include such as those regarding the Southern Philippines, the Timor case, and the Aceh Movement for Independence. Other multilateral issues that may end up in disputes, if not managed well, include the issues of the South China Sea and the Straits of Malacca and Singapore. Other issues that may also involve dispute management and multilateral cooperation is the environmental and the water management of the Mekong River, that may involve five South East Asian countries (Myanmar, Thailand, Vietnam, Laos and Cambodia) and the Peoples Republic of China, particularly the Yunan Province and other areas in the south of China.

Some of these disputes management have been dealt with informally and some formally, involving non South East Asian countries or parties, or even personalities. The Cambodian disputes management started with ‘informal cocktail parties’, involving relevant official personalities, later ends up informal agreement signed in Paris in 1991. The southern Philippines started with in formal Indonesia and Malaysia efforts, joined in by Libya and later assisted by Organization of Islamic Countries (OIC), resulting in some agreements between the Government of the Philippines and the MNLF. It is unfortunate that this Agreement was not supported by the MILF. The Timor issue, which was argued as domestic matters of Indonesia for a long time, was settled by the help of the UN, implemented with the help of the UN Forces. The Aceh Independence Movement was settled after the devastating tsunami in 2004 by the inter-mediation of the former Prime Minister of Finland, Mr. Maartti Ahtisaari. The South China Sea issues is still being managed informally by the ‘workshop process’ that has lasted for more than 20 years. The Straits of Malacca issues, which has been on the agenda for the last 40 years has been solved by the creation of ‘Cooperative Mechanism’, supported by the littoral countries, as well as the user states and assisted by the International Maritime Organization (IMO). The Mekong informal initiative had stopped for lack of cooperation by an important country in the Mekong River.
The informal workshop on the South China Sea was not intended to solve territorial disputes among the various Claimants, but aimed to achieve 3 things: (1) devising cooperative programs, in which all participants can take part so that the parties learned the use of cooperation in view of their habits of “confrontation” in the past, (2) promoting dialog among the directly interested parties, so that they could find out solution to their problems, and (3) to develop confidence building process so that everyone will feel comfortable with one another.

Experiences with regard to the South China Sea issues indicated that technical cooperation is relatively easier to achieve than resources distribution, and more difficult with regard to the territorial as well as sovereignty and jurisdictional issues. With regard to the promotion of cooperation, for instance, it has been agreed to work out a number of cooperative engagement and some of them had been implemented, such as the bio-diversity expedition and some of them are being implemented, such as the monitoring of sea level rise, and the environmental monitoring. Also the training program for South East Asian Networking of Education and Training (SEANET) are also being jointly implemented by Chinese Taipei (2010) and by China (2011) at the cost of each one of them, and participated by all South China Sea participants.

With regard to the promotion of dialog between the parties, China and Vietnam had been able to agree on the maritime delimitation in the Gulf of Tonkin (Beibu) and in some instances, some joint cooperation on fisheries in the area. Vietnam and Malaysia as well as Malaysia and Thailand have also agreed in some joint management cooperation. Vietnam and Indonesia had also agreed on the delimitation of their respective continental shelf in the southern part of the South China Sea, north of Natuna.

With regard to the promotion of Confidence Building Process, ASEAN and China had also agreed on the Declaration of Conducts between them in the SCS. China and the Philippines, as well as Vietnam and the Philippines had also agreed on some kind of Code of Conduct between them. In the past, there has also been some understanding not to occupy new features and not to increase military presents in the South China Sea.

A number of lessons have been learned from these various management of potential or actual conflicts in South East Asia. The paper deals with some of these lessons learned in the management of potential conflicts, that may also be useful to other regions. Some of these lessons maybe repetitious, but that may indicate its relevance in dealing with the management of conflict or potential conflicts.

I. Lessons Learned: Cambodia

In 1970s, the political and security condition in Indo-China was heated up, particularly after Vietnam entered Cambodia to support Hun Sen to fight against the Khmer Rouge under Pol Pot and Khew Sampan, who was regardless pro-Chinese. As a consequence, China “taught Vietnam a lesson” by entering the Vietnamese border from the north.
The situation in Cambodia posed a serious problem of security for South East Asian countries. Indonesia would like to develop peace, stability and cooperation in South East Asia and therefore, together with other ASEAN countries, would like to help achieve peace in Cambodia.

Indonesia and other South East Asia countries later on took an effective “informal diplomatic process” that in the end established peace in Cambodia through the Peace Treaty in Paris in 1991. A number of lessons could be learned from the more than 10 years of experience in dealing with the Indo-Chinese / Cambodian conflicts which later on were useful in dealing with the South China Sea issues. These are:

1) If and whenever direct interests of outside powers, especially the big and super powers, are involved in a conflict between and among regional powers, direct involvement of the super or non-regional powers would not be very helpful, although any agreement reached by the conflicting regional powers would not be effective unless they were endorsed by the involved non-regional major powers. Regional conflicts should ideally be solved by the most directly concerned parties in the region. Regional initiative is crucial in this kind of situation. This lesson could be useful in managing potential conflicts in the South China Sea.

2) The initiative for the process of reconciliation should start by informal methods. In most cases, direct efforts toward formal meeting could backfire. An informal diplomatic and behind the scene efforts could be useful. For this purpose, there was a need to find a disinterested and impartial interlocutor, trusted by all sides and had the interests of all foremost in his mind. Indonesia at that time provided this need.

3) The process of managing a conflict or a potential conflict, and hopefully solving it, would require seriousness, tenacity, patience, and wisdom of the interlocutor, supported seriously by the conflicting parties and their backers who saw and considered that it would also be in their interests to end the conflict and solve the problems through dialogue and confidence-building measures.

4) The international community at large, including the United Nations, should also support the efforts to reach a solution, and whenever a solution was arrived at, the international community and the UN should endorse it in order to give it international recognition. As necessary, the world community and the UN should also support as much as possible the implementation of the agreed solution.

5) The regional leaders must be careful in watching issues that may sooner or later become regional problems or conflicts, and try as much as possible to prevent the issues from becoming conflicts. It was after watching ASEAN spend more than 10 years of its precious time and opportunity dealing with the Cambodian question (from 1979 to 1991) that in 1989 I began to pay special attention to the South China Sea issues which, if not well-managed, could also develop into another conflict in the area, especially
after a naval incident between China and Vietnam near the Fiery Cross in 1998, killing some 70 Vietnamese. I thought then that we should avoid the repeat of the Cambodia/IndoChina conflict in the South China Sea.

II. Lessons Learned: East Timor

Although the peoples of Timor have been living on the same small islands for centuries, the East Timorese have followed separate history from West Timorese. West Timor became part of the Dutch East Indies, and therefore later on became part of the Republic of Indonesia, while East Timor was part of Portuguese colonial administration. The “Flowers Revolution” (coup d’etat) in Portugal on April 25, 1974 resulted in changes in East Timor, which later enabled political parties to grow, such as the UDT (Democratic Party of East Timor), ASDT (Socialist Party) which later became FRETILIN, APODETI and TRABALHISTA (Labor Party).

When the Government of Indonesia announced on October 8, 1974 that Indonesia did not have territorial ambition over East Timor and that Indonesia would respect the right of the East Timorese people to determine their own future, a number of negotiations later took place between Indonesia and Portugal and the various groups in East Timor, but unfortunately did not bring much results. The UDT later sought to unite with Indonesia, while the FRETILIN aligned itself.

The situation in East Timor became out of control. About 42,000 people out of the 600,000 population began to seek refuge in West Timor. Civil war broke out and the Governor of East Timor, Lemos Pires, sought refuge in Atauro Island off the mainland of East Timor and close to Indonesian Wetar island.

During that critical moments, Indonesia asked Portugal to take its responsibility to restore order to enable the people of East Timor to determine their future peacefully and orderly, but Portugal did not respond. Indonesia has also suggested the formation of a joint effort or troops to consist of Portugal, Indonesia, Australia and Malaysia to return the situation to normal, but this effort did not bring result.

There are several lessons that could be learned from Indonesia’s experience in dealing with the East Timor question. These are:

1) In delicate political issues between states, especially on self-determination and the remnants of colonialism like East Timor, it would probably have been better to cooperate with the UN from the beginning, taking into account the development of the global sentiment and rules on self-determination of peoples and human rights, in addition to attempting to involve regional powers.

2) The relationship between domestic politics and international relations should not be ignored. “Globalization” was growing in the world, not only in economic, trade, and investment, but also in other areas such as in political democratization, human rights, good governance, environmental issues, communication and telecommunication, freedom of the press, etcetera. Unfortunately, at that time Indonesia did not fully comprehend the significance and the impacts of globalization in all areas to its domestic as well as international policies.
3) It is important to gain support from regional and other international organizations to a certain policy. But the support alone would not be able to solve the problems, unless they are converted to actual cooperation. Indonesia gained enormous support for its policy on East Timor from ASEAN, OIC (Organization of Islamic Conference Countries), NAM (Non-Aligned Movement), and practically all of its neighbors, but was not able to transform this support to meaningful act when the issues of East Timor were moved from the UN forum to a trilateral forum.

4) In a situation where the interests of other States are or could be involved, there might be issues which are generally regarded as internal affairs, when in reality they were not really or not any more purely internal affairs. Therefore, suggestions that might not be accepted internally but could solve the problems in the long run should be profoundly studied, and should not be discarded for short-term convenience.

5) It should be remembered that there were plenty of political and diplomatic problems with regard to East Timor, and not just security problems. It was unfortunate that the security elements dominated more, so that it was difficult to coordinate domestic security needs with the requirements of diplomacy in international forums.

6) The role of international NGOs and the international press, especially the human rights groups of Western nations, aided by modern information technology, should not be under-estimated.

III. Lessons Learned: The Southern Philippines

The root of the problems in the Southern Philippines goes back for centuries. Islam came to the Southern Philippines in the 13th century, much earlier than the arrival of Christianity. Intermittent conflicts had arisen since then. Recently, after more than two decades since the Tripoli Agreement in 1976, during which period internal wars continued, some progress and successes have been achieved in managing the conflict at higher level, especially after the Peace Agreement in 1996. There has been demobilization of MNLF combatants and their integration into civilian life and the assimilation of some of them into military and the police. The problems remain, however, with regard to the effective implementation of autonomy at the lower level in the Southern Philippines as well in achieving economic development for the region.

Some lessons could be learned from the management of disputes in the Southern Philippines:

1) When a national or internal conflict with religious overtones erupt in a country, it could be difficult to characterize it as a purely internal affair of the states concerned, primarily if it obtained external sympathy and support. While the ‘ethnic’ or ‘provincial-central government relations’ aspects of the conflict could be overcome in a purely domestic context, the ‘religious’ aspects of the conflict could pose much wider ramifications and implications. The Philippines Government since President Marcos
apparently had understood this fine line, particularly by inviting the good offices of the OIC and the Libyan government, presumably under the assumption that Libya was supporting the MNLF and the OIC could do some constructive roles in seeking the solution. Later on, Indonesia and Malaysia as the closest neighbors of the Philippines have also been playing constructive roles in attempting to bring peace to the Southern Philippines. It means that good neighbors could be helpful in seeking solutions to a problem which are generally regarded as the internal affairs of the State.

2) In making efforts to seek solutions to a conflict situation, the exact nature of the conflict should be well-understood in the beginning, and efforts should be exerted to understand the genesis of the conflict. In the Southern Philippines case, it was thought that the crux of the matter was autonomy and economic development; however, Indonesia failed to recognize that this might also be the core issues of the East Timor problem, and only toward the end that it considered that autonomy for East Timor was a possible solution. By that time, it was already too late, and strangely, Indonesia even went beyond autonomy by also offering the ‘second option’, namely separation and “independence” from Indonesia if the autonomy offer was rejected by the people of East Timor. Up to now, the Philippines government never thinks of the ‘second option’.

3) Of course there are differences between the problems of East Timor and the Southern Philippines. For one thing, East Timor was not part of the Indonesian Proclamation of Independence in 1945, while the Southern Philippines has always been part of the Philippines, at least since the American administration of the Philippines. Perhaps another important difference is that East Timor, being largely populated by a Christian/Catholic community, obtained much attention from international human rights groups, press and media, and the Catholic/Christian community, all of whom portrayed Indonesia in a negative light. On the other hand, the MNLF and the MILF in the Southern Philippines are pictured differently, perhaps because of their ‘Islamic’ inclination that do not augur well for the sympathy among international human rights groups, press or media. In fact, some of them are being pictured as ‘terrorists’. While the OIC, Indonesia and Malaysia played an impartial and constructive role in seeking solutions to the problems faced by one of its friendly neighbors and a member of ASEAN, the UN and Portugal were generally more sympathetic to the forces that opposed Indonesia in East Timor.

4) Once an agreement has been achieved, the parties to the Agreement should not tinker with specific letters of the agreement under any kind of legality pretext. Legality in some cases is not always helpful in settling issues that are clearly of political nature or overtone. While legality is useful and helpful in many cases, and therefore should be meticulously considered before the agreement was concluded, sometime political consideration and interpretation should prevail during the implementation stage, particularly on issues that are overwhelmingly political, such as the interpretation of sovereignty and territorial jurisdictions.
5) It should be realized that reaching an agreement and solution to a problem in Southeast Asia and the South China Sea would always be difficult and require strenuous effort. As the problems of the Southern Philippines indicate, a step-by-step approach and point-by-point agreement should be undertaken, and the interests of the various groups and parties should be taken into account. The ‘parties’ to the conflict, namely the Government of the Philippines and the MNLF, and later also the MILF, took active interest in the negotiation and were present during the whole process within an ‘all-inclusive’ approach. Patience, persistence, and tenacity are required. It took 20 years and many lost of lives and properties from the 1976 Tripoli Agreement to come to the peace agreement in 1996 between the Government of the Philippines and the MNLF. Hopefully a final peace agreement between the government and the MILF could be achieved much faster. Implementing the agreements would be even harder and more difficult, especially if the agreements are not clear and could be subject to numerous legal interpretations. This difficulty would be compounded if there was no or not enough political will and good will to achieve compromise and a ‘win-win’ solution in formulating and implementing the agreement.

6) Even if there is political will to implement the agreement faithfully, financing the implementation of the agreement could also be a problem, especially in a time of economic downturn and donor fatigue. States and parties in the Peace process or agreement and cooperative efforts should be helpful in supporting the process and its implementation, or at least helping to seek support for the process and its implementation. Otherwise, the danger of not doing anything or not doing enough could be greater to the country concerned and to the region as a whole, than the costs of doing something.

IV. Lessons Learned: Aceh

The Acehnese had played very significant role in the Indonesian struggle for Independence, beginning from the 19th century up to the actual war for Independence in 1945–1990. Yet, toward the end of the war for Independence and at the early part of the 1950s, some Acehnese leaders would like to establish an Islamic state in Indonesia as part of Darul Islam struggle. This group of people later rebelled against the Government of the Republic of Indonesia, which could only be settled by 1962.

Yet, some of the leaders in Aceh were not happy with the settlement and the continued incorporation of Aceh in the Unitary State of the Republic of Indonesia. In the middle of 1970s, a new group came up and rebelled against the Government of Indonesia under the name of Gerakan Aceh Merdeka (GAM) or Aceh Liberation Movement, under the leadership of Hasan Ditiro, a descendant of the Indonesian hero for struggle against the Dutch, Tengku Cik Ditiro, during the colonial period in the 19th century.

In 2004, the tsunami strucked Aceh, killing more than 200 thousand people. The Indonesian government took this calamity as a way to work together with
the people in Aceh and GAM to overcome the tremendous tragedy and to create confidence building process between the Central Government and the Aceh Liberation Movement.

Accepting the good offices of Mr. Martti Ahtisaari, the former President of Finland and the Chairman of the Crisis Management Initiative (CMI), a peace agreement was finally concluded in Helsinki in August 2005.

The solutions to the Aceh conflict may be useful for the solutions of other conflicts outside of Indonesia. In fact, some of these lessons have been learned from experiences in managing potential conflicts and in seeking the long lasting solution to conflicts in Southeast Asia, such as in Cambodia in the South China Sea, in the Southern Philippines, in East Timor, and in other parts of the world. The synthesized lessons may be useful for other conflict resolution attempts in the future. The following are some key lessons that helped Indonesia and Aceh move forward in peace.

1) A military solution is not the solution. Indonesia learned this lesson the hard way, through many military operations that led to even more resentment and discontent on the part of the Acehnese. It is important for both parties to realize that a continuation of armed conflict would not settle the disputes and would benefit neither one of them. A military solution may result in a win-lose situation that may end up as a lose-lose situation. A win-win solution may be achieved only through a sustainable and long-term political solution. In this situation, winning the hearts and minds of the people would be crucial.

2) A swift and effective disarmament. In the case of Aceh, this swift disarmament, accompanied by regulated procedures that were agreed upon in detail during the comprehensive planning stage, led to increased confidence during the peace process. But it is vital that once they are agreed upon, the agreements and regulations must be respected and enforced.

3) A reservoir of political will is necessary from both sides for peaceful negotiations and resolution. This political will may have been brought about and strengthened as the result of the sufferings of the people of Aceh, culminating in the destruction caused by the tsunami of December 2004. Both sides seemed to realize that the continuation of the conflict was not in their interests and would be a tremendous handicap in bringing rehabilitation and reconstruction to the people of Aceh.

4) Both sides also agreed that an ‘all-inclusive’ approach was necessary. It was no longer viable to involve only certain sections of society in the peace process. The opinion of all groups should be accommodated, either those who are living in Aceh or in other parts of Indonesia, and even Acehnese who are living abroad. Some of them may no longer be Indonesians because they have adopted foreign citizenship, like those in Sweden and perhaps also those who are living in Malaysia, but attempts must be made to accommodate their views.
5) An informal approach. In undertaking efforts to seek solutions, it would seem wise to start with less sensitive issues which the parties may feel comfortable discussing, although it would be important for each party to be clear in what their ultimate objectives are. The negotiators of both sides must be shrewd enough to look for opportunities and seize them whenever they appear, and should be in a position to develop them later on into elements of building up agreements. They should proceed with daring but also with common sense, bringing up sensitive issues when the mood is right. This informal approach was very successful, but it must be shielded from publicity as much as possible. Also, the negotiators themselves should be very senior and important personalities in their respective institutions, so that their counterparts feel that there is mutual respect from the government’s side. These senior-level negotiators should also be able to communicate directly and at any time with the top political leadership, so that immediate responses and guidance could be provided when necessary. The highest political leadership must also have and provide the appropriate commitment and constant attention that a lasting solution requires.

6) Compromise is often regarded as defeat. It is not. Compromise can be beneficial to all involved. In seeking solutions to highly-charged political issues, both sides should not capitalize on ‘differences’. Instead, they should magnify the possibilities for cooperation. In this context, international support should be galvanized to promote opinion that encourages both parties to seek solutions. Hostile comments from outside parties should be discouraged as much as possible. But trust is built in stages. It comes only when one party realizes that the other party will keep its word. If both sides understand that making concessions does not mean losing ground, but instead may lead to gains for both sides — then progress will ensue.

7) Also important is a step-by-step approach. Both sides should keep in mind that the final objective is a long-lasting, permanent, and sustainable solution. Yet negotiations for this lasting solution should be attempted in stages, with trust growing at every stage. This was the case with the Helsinki talks, which started in anger but would eventually improve with friendly gestures. A final solution can only be attempted in an environment imbued with confidence and kinship. This does not come overnight; it requires time and patience. Continuity and patience are vital. The process of seeking solutions to decades-old conflict is an ongoing process. The lack of immediate concrete results should not be cause for despair and frustration. Perseverance and tenacity are keys to fruitful negotiations.

8) Any foreign assistance or interest in overcoming issues should be considered as helpful, not detrimental. The role of a friendly, disinterested support to the process of seeking peace could be very useful, and should not be taken as interference in the domestic affairs. Indeed, outside opinions can be constructive and useful in bridging the different views and positions. Trust must be extended not only to one’s ‘enemy’ but also to bystanders and observers who too want peace in the region. An overly legalistic and nationalistic approach to a peace process may instead backfire.
9) Like in many other disputes and conflicts, the roles of the initiator, the interlocutor, or the convener of the process for seeking the end to the conflict could be very useful, as long as the convener or the interlocutor maintains impartiality and dedication. He or she should be able to retain the respect and cooperation of all the negotiators and their government or institution. If this respect and cooperation is maintained, then all efforts must be made by both sides of the contending parties to galvanize support for the intermediary party, in order to maintain the mood of confidence over the peace process. He or she must also have a good understanding of their issues and pitfalls. The mediator must be fully interested in a peaceful solution as the end result, and not merely the process of peace negotiations.

10) Exercise courage, resolve, and mutual respect. Some members of the political elite in Jakarta and elsewhere feared that the so-called ‘rewarding’ the rebel in Aceh would create a precedent for other provinces. They feared also that Aceh would become an international issue and follow the example of East Timor. This fear proved to be unfounded. It is necessary for the leadership to weight the consequences of these fears, and balance them with other knowledge. Finding a balance is difficult in any situation. For decades, it proved impossible in Aceh. But this balance was finally found in Aceh, and maintaining it will be an enormous challenge for the region and for Indonesia.

V. Lessons Learned: SCS Workshop Process

The South China Sea Workshop (SCSW) Process, although is not a regional organization envisaged in Article 123 of UNCLOS 1982, is perhaps one of the closest to regional organization stipulated in Article 123. There are other forums that have been dealing with the South China Sea issues, such as the ASEAN-China dialogue, the informal discussion in ARF and CSCAP, but they do not deal with the subject matters enunciated in Article 123. It is therefore important to think of the need to create such a regional or sub-regional organization for the South China Sea as envisaged by Article 123. Pending the establishment of such a regional organization, however, the SCS Workshop Process should continue and be supported by all the coastal states or authorities of the South China Sea. Some lessons that I have learned from 20 years of managing the SCSW Process are:

1) The parties to the disputes must realize that the outbreak of the conflicts, especially armed conflict, will not settle the disputes and will not bring benefits to either parties; in fact, they may only bring mutual damage or loss to the parties.

2) The existence of political will to settle the disputes peacefully, and to take measures so that the continuation of the disputes would not escalate into armed conflict. The parties must realize that the solution of the disputes would be more in their interest than in their continued prolongation.
3) The parties should not legislate any territorial claims and should not involve as much public opinion as possible, especially in the area where the claims are clearly disputed. Legislating territorial claims and seeking support through public opinion tend to harden the position of all sides, making it more difficult to seek solutions or compromises or even temporary solutions like ‘joint developments’.

4) The need to increase ‘transparency’ in national policy, legislation, and documentation, and more frequent meetings among the legal officers of the various regional countries in order to exchange their documentation and information as well as their legislative planning. Successful efforts often begin by informal efforts, either through track-two process or through informal track-one process. After those efforts indicate some possible success, a more formal ‘track one’ approach can be attempted. This was the case with the Cambodian issue, which started with informal ‘cocktail parties’, the Southern Philippines issue, and the South China Sea workshops. Preventive diplomacy requires patience, tenacity and consistent efforts.

5) Preventive Diplomacy should be undertaken by all parties who have interests in the solution of the problems, either regionally or internationally. Solutions that take into account only national as well as regional interests but ignore the interests of states outside the region would not be an effective long-term solution.

VI. Several basic principles for launching an informal initiative should be observed.

1. Use an all-inclusive approach. Do not exclude any directly interested countries or parties.

2. Start with less sensitive issues with which participants feel comfortable discussing, without incurring the animosity of their respective governments or authorities. Oil and natural resources, for example, proved to be a sensitive topic; environmental protection is a more comfortable topic.

3. The participants should be senior or important personalities in their governments or authorities, although they are participating in the process in their private capacities.

4. At least during the initial stage, do not institutionalize the structure of the process or create a permanent mechanism. Keep the process as flexible as possible.

5. Differences should not be magnified and cooperation should be emphasized. Bringing ‘provocative’ international attention too early, or immediately internationalizing the process, may be detrimental in the long run.
6. In view of the delicacies and sensitivity of some issues, it is wise to start with what is possible and follow a step by step approach, taking into account the principles of cost effectiveness.

7. It should be understood that the process of managing potential conflicts is a long-term continuing process, where lack of immediate concrete results should not be cause for despair and frustration.

8. Keep the objectives simple. The South China Sea workshops have two objectives: to learn how to cooperate; and to implement cooperation.

9. The roles of the initiator, the interlocutor, or the convener of the process as well as the roles of disinterested supporters and sponsors are very crucial. The initiator, the convener, or the interlocutor, must be impartial, have patience and dedication as well as tenacity and sufficient knowledge of the delicate issues involved. At the same time, he or she must be able to retain the respect and the continued support and cooperation of all participants. He must have the interests of all in mind and should be motivated by the general good, rather than sectoral or group interests, although he must be aware of all those conflicting interests and should be in the position to accommodate them. He or she should strive to arrive at the decision by consensus.

VII. Additional Lessons Learned

1) Bigger countries in the region should be mindful of the views of their neighbors especially the smaller ones. The bigger countries should be careful so that they are not perceived to be dominating or bullying their smaller neighbors.

2) Attempt should be made to broaden the participants in cooperative programs and deepen the areas of cooperation while at the same time promote growth of the regional states. The more the cooperative effort develops economic contents for mutual benefits, the more likely the effort to be more successful. The approach should be inclusive rather than exclusive.

3) There should be more emphasis on regional and common interests. The countries of the region should learn how to pursue their national interests within their regional harmony; in fact, they should perceive the pursuit of regional interests as part of their national interests.

4) There should be a gradual progression of the concept of national resilience to the promotion of the concept of regional resilience and regional cohesion. The positive experiences of ASEAN have been very instructive. The concept of national resilience teaches that the strength of a country depends on, and will be negatively affected by, its weakest links. National resilience will increase if the weakness in its component parts is remedied and the link and cohesion amongst all its components are
strengthened. Equally, regional resilience will be negatively affected by instability in one or more of its national components and the degradation of the links and cohesion among its members.

5) The countries in the region should be less sensitive to the concept of national sovereignty, since more and more issues which in the past might be arguably of a national character, now they are becoming more and more regional and having more regional implications, such as the environmental issues, some domestic political stability issues, some severe human rights problems, and even some monetary and financial issues as shown recently in South East Asia. Yet, ASEAN has been able to develop this notion from the concept of ‘regional cooperation’ to the concept of ‘constructive engagement’, later to the concept of ‘enhanced inter-action’ in the general interest of all and to create a sense of “Community”.

6) Within the true sense of oriental good neighbor, the countries in the region should be able to be helpful to the neighbors in need if required. Any ‘aid’ offered by the richer and stronger countries to the poorer and weaker countries in the region should not always be based on calculation of strict ‘national and business interests’, but also should have a strong element of ‘do-good-ism’ and ‘disinterestedness’, which in the end will promote a stronger regional cohesion.

7) The countries in the region should avoid arms race amongst themselves; in fact, they should be able to coordinate their defense need, thus bolstering regional harmony and transparencies. There are a lot of non-military security cooperation that could be developed in the region, which in the end would avoid an arms race among them, such as in preventing piracy and armed robberies at sea, illegal traffic in drugs, refugee problems, international terrorism, smuggling, and others.

8) Major external powers, wherever possible and practicable, should support the development of constructive atmosphere in the region for peace, stability, and progress. The external powers, however, should not involve themselves in territorial or jurisdictional disputes, except requested by the parties concerned, or if the consequences of such disputes are such that they have already endangered or will be endangering peace and stability in the region.

9) Countries in the region should exercise preventive diplomacy by preventing dispute from becoming an open-armed conflict or by preventing a conflict from spreading or aggravating. More dialogue and confidence-building measures or processes among all concerned parties, assisted as appropriate by third party offices, are necessary.

10) Countries in the region should develop cooperative efforts so that potential conflicts could be managed by converting them into actual cooperation. Any potential conflicts also contain in themselves elements for cooperation. Efforts to formulate and implement cooperative projects should move beyond the expression of political support to actual
implementation by providing the necessary financial, technical, and administrative support.

11) **Countries in the region should develop various fora for dialogue, either bilateral or multilateral, either formal or informal.** The various fora for dialogue should hopefully in the end be able to produce a set of agreed “code of conduct” for the region. The contribution of track 2 activities to ‘preventive diplomacy’ should not be under-estimated.

12) Countries should pursue various avenues of peaceful settlement of disputes through negotiation; bilateral if the disputes are bilateral or multilateral if the disputes are multilateral. Since most of the parties are already members of the UN and parties to UNCLOS 1982, and all have pledged their commitments to peaceful settlements of disputes, **they should put those commitments to actual practice by solving their disputes by peaceful means as soon as possible.**

13) **Third party mechanism for disputes settlement should also be explored and utilized, such as good offices, mediation, arbitration, and, if necessary, adjudication, through the International Court of Justice or the Law of the Sea Tribunal.** The ASEAN TAC (Treaty of Amity and Cooperation, 1976) had already formulated certain mechanisms for dispute settlement among ASEAN countries, although they were never invoked. A new mechanism for SCS as a whole should be considered, either by drawing from the TAC or from other models.

14) **The countries in the region should attempt to settle their land, maritime, and jurisdictional boundaries as soon as possible and respect the agreed boundaries.** They should not settle boundary problems through unilateral enactment of national legislation, because enacting legislation tend to harden positions rather than enabling the parties to seek solutions. The delay in settling territorial and jurisdictional disputes would not be helpful in promoting regional peace and stability; in fact, the longer the delay, the more the position of each disputant will harden, making it more difficult to settle the dispute, detrimental to the countries concerned as well as to the region as a whole.

15) **In some disputed areas, the application of Joint Development concept might be useful as long as the zone of the dispute can be identified, and the parties concerned are willing to negotiate seriously on the modalities for the Joint Development concept in a particular area.**

16) **While encouraging Track 1 activities in the Asia Pacific region to be more responsive and imaginative to deal with the potential conflict, more discussion by the Track 2 activities, including by academics and think tanks, could also be helpful.**

17) **The interests of non-regional countries should be taken into account, and their potential contribution to avoid conflict in the region should not be discarded altogether.**
An Assessment of the Effectiveness of Current Maritime Security Frameworks and Mechanisms in the South China Sea

Peter A. Dutton

As 2011 unfolds, China, Vietnam, and the Philippines are all proceeding apace with exploration operations and drilling plans to capture the undersea hydrocarbon resources of the South China Sea in the hodgepodge of contending state claims there. Friction, sometimes serious, has resulted and each of the three states has stepped up its rhetorical assertion of sole jurisdictional authority to drill in specified areas. Each state has also increased its South China Sea naval activities in ways that are either meant to signal resolve to defend its right to the resources or are at least perceived as such.

Some observers have suggested that regional economic ties and the mutual desire for a stable external environment within which to promote economic development will keep energy competition and sovereignty disputes in the South China Sea from resulting in conflict.¹ Others opine that tensions are manageable because the fact that to date Chinese maritime claims in the East and South China Seas “are generally being enforced by unarmed patrol cutters [sends] a clear signal that Beijing does not seek escalation to a major crisis on these matters.”² Others claim that such views are wishful thinking.³ This paper examines whether in the midst of such aggravated circumstances existing maritime security frameworks and mechanisms two in particular, the United Nations Convention on the Law of the Sea, and the Declaration on the Conduct of Parties in the South China Sea—are sufficient to maintain regional peace and to advance regional economic development. Concluding that they are not, this paper will also make some suggestions for improvements in order to build confidence and make progress toward lasting stability.

Sovereignty Disputes and the Failure of International Law

The disputes in the South China Sea can be placed into three different categories: sovereignty, jurisdiction, and control.⁴ The first category involves the claims of various parties to sovereignty over the islands, rocks, and reefs in the South China Sea. There is currently no active regional or international framework or other mechanism directly attempting to resolve the question of sovereignty. This is in part due to the fact that China persists in the perspective that it will only settle any of the disputes in the South China Sea through negotiation and even that must be on a bilateral basis. This precludes the opportunity for the parties to avail themselves of existing juridical and arbitral mechanisms or other regional or international frameworks to support peaceful resolution of the disputes.
To be fair, concerning the question of sovereignty, there does not seem to have developed in any of the claimant states an appetite for negotiation, arbitration, or judicial settlement. Claims of “indisputable sovereignty” based on historical contacts and administrative control are routine from Vietnam and China each of which asserts sovereignty over all of the Spratly and Paracel Islands. While less absolutist in its phrasing, the Philippine government nonetheless insists that it has “sovereignty and jurisdiction over the geological features” of the Kalayaans. Public records reflect that the Philippines bases its claim on the theory of adjacency or contiguity of the Kalayaan Island Group with its main archipelago, though the basis of its claim has less consistency than the claims of Vietnam and China in that the Philippines also, or alternatively, asserts security and economic bases, abandonment of the islands by others after World War II, and subsequent acquisition of sovereignty by discovery or prescription. Like Malaysia and Brunei, the Philippines also asserts control over the Kalayaans as an extension of its continental shelf rights. While such a range of perspectives may make for clever lawyering, it does not promote an environment conducive to negotiation, since opposing parties will have a difficult time finding a common basis on which to proceed.

Options certainly exist to develop a mechanism or framework to address the questions of sovereignty. If multilateral negotiations are unacceptable and bilateral negotiations remain unproductive, the parties could certainly submit the issue to the International Court of Justice or the Permanent Court of Arbitration, for instance. For several reasons, however, this is unlikely.

Politically, governments throughout the region must contend with domestic nationalism that constrains policy choices. Economically, there appears to be a growing sense especially in China, but also increasingly in Vietnam—that the South China Sea’s energy and food resources will be increasingly vital to national well-being as the 21st century unfolds. This anxiety shades the discourse about sovereignty over the islands and the attendant jurisdictional rights that pertain to them. Mercantilist attitudes about the South China Sea’s energy resources in particular are becoming the norm. This is a worrisome trend as it suggests the parties may be unwilling in the future to trust the market-based access to resources on which the global system is based. Finally, militarily, control over the islands is also seen by China, Vietnam and the Philippines as critical to national security. There are therefore many constituencies within each country that constrain their respective governments from pursuing compromises over sovereignty. This is one major reason why governments remain committed to avoiding international courts or arbitral panels to resolve the questions. The stakes are simply too high.

Another reason governments seem bound to avoid international judicial assistance is that the international law regime that governs settlement of sovereignty disputes is less than clear. The law itself, therefore, is another factor that makes compromise more difficult indeed it aggravates the tendencies toward friction. Specifically, international law places a premium on a state’s ability to demonstrate a superior claim to sovereignty by asserting effective occupation, administration, and exclusive control. All South China Sea countries except Brunei
have forces stationed on the islands, weather monitoring stations, coast guard facilities, scientific research facilities, some even reportedly have developed or plan to develop tourism facilities. Following in this vein, the Chinese established a municipal government over the Spratlys, established cell phone coverage, and support local fishing operations from the islands. The Malaysians set up a dive resort on one of their occupied islands. Each of these activities is an open declaration of one state’s effective occupation and administration over the particular islet in question. Indeed, to bolster its occupation and administration claims, the Chinese government apparently went so far recently as to place markers to designate their sovereign authority on three of the smaller Spratly features, including Boxall Reef and Amy Douglas Bank near Palawan. In order not to lose its own claim to effectively administer and control the same small bits of territory, the Philippine government announced that its navy had removed the markers and stationed vessels there to dissuade China from restoring them. The Philippines also removed a Chinese-placed buoy from the water.8

In short, the international law related to sovereignty disputes has itself created an escalatory competition among the claimants to demonstrate occupation and exclusive control over the islands. Because sovereignty is a win-lose construct, no party can back down in the competition and preserve its claim. As the stakes increase, so does the likelihood of ever more serious incidents. Thus, the international law framework for resolving sovereignty disputes as it currently stands is an insufficient mechanism to encourage and promote regional stability. International law does offer other win-win solutions based on shared sovereignty or sovereignty with inalienable international rights and the parties would do well to explore these win-win options as potential avenues for temporary or even permanent solutions to the questions of sovereignty over the Spratly Islands.

The Maritime Jurisdictional Framework of UNCLOS

The second category of disputes regard jurisdiction over the water space and the resources in the seas and on and under the seabed. Perhaps the most important maritime security framework applicable to the South China Sea is the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS was negotiated during the 1970’s and early 1980’s in response to several destabilizing trends in the maritime domain, all of which remain present in the South China Sea region today despite the universal accession of South China Sea states to that convention.

One such trend was the increasing capability of states during the 20th century to exploit the living and non-living resources of an ever-widening portion of the maritime littorals. The United States undertook the first act of any state in the modern era to exercise broad jurisdictional rights at sea with the 1945 Truman Proclamations, which had the unintended result in the decades that followed in sparking a global race to control maritime resources through a variety of competing mechanisms, including claims by some states to full national sovereignty as far as 200 nautical miles from their shores. This was unacceptable to many other states for many reasons, maritime powers not the least of which because of the loss of international navigational rights that full state sovereignty over more
than one third of the world’s oceans that a maritime regime of full sovereignty would have implied.

The Truman proclamations also created high seas fisheries conservation zones under the exclusive jurisdiction of the United States for the purpose of managing and protecting the stocks to the benefit of the American people. As with the continental shelf proclamation, what followed was a global hodge-podge of coastal state claims to exclusive resource rights that also increased frictions at sea because in some places, such as the South China Sea, a jurisdictional regime may not be the best solution to provide order in an area that was once treated by the coastal states as a regional maritime commons.

In an attempt to bring order and reduce friction, negotiations under the auspices of the newly-created United Nations began in the 1950s, resulting in a preliminary but clearly insufficient set of conventions on the law of the sea done in Geneva in 1958. Protracted international negotiations continued, resulting in 1982 in a set of grand bargains that form the UNCLOS framework for stabilizing the dangerous trends that were sparked by the Truman Proclamations, and which remain active in the South China Sea region today. Four aspects of the convention were designed to bring reasonable order to the “land grabs” at sea and to balance the legitimate interests of the coastal states with the similarly legitimate interests of maritime powers.

**Baselines.** The first aspect is the codification of rules related to baselines, which are the boundaries at or near the shoreline between the coastal state’s fully sovereign territory and the maritime zones that extend seaward of it. The purpose of a unified system of baselines is to limit the seaward reach of a coastal state’s authority over the oceans. UNCLOS articles 5 and 7 specify that the baselines are normally the low water line along the coast. Article 7 provides a very limited set of circumstances to allow coastal states to deviate from the normal rule, primarily where there exist deeply indented coastal inlets such as the fjords of Norway, or fringing islands along the immediate vicinity of the coastline such as exists along the southwestern coast of the Korean peninsula. Article 47 allows states comprised entirely of islands with no mainland territory known as archipelagic states to draw baselines around the outermost edge of their islands and to claim a special status for and to exercise a higher degree of authority over the enclosed waters. Although on a global basis the states that qualify are relatively few, there are two states with borders in the South China Sea that qualify: the Philippines and Indonesia. Malaysia, of course, does not qualify because a portion of its territory is continental. A key point about the regime of baselines is that they are to be drawn based exclusively on the state’s coastal geography. This geography-based regime was established to ensure order to the process of establishing maritime claims by expressing them from a uniform set of open and undeniable features. Thus, there are no non-geographic exceptions to drawing baselines that are recognized either under UNCLOS or international law more generally.

**China’s Baselines.** Although China’s mainland baselines are all expressed in terms of its coastal geography (the U-shaped line in the South China Sea will be
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dealt with separately), in several offshore places, China’s baselines exceed those allowed by UNCLOS and international case law, inappropriately enclosing from full international use more than 2500 square nautical miles of ocean space primarily in the East China Sea. Of importance to the South China Sea is that China has drawn straight baselines around the Paracel Islands in an unequivocal violation of the rules of UNCLOS that only archipelagic states may make such a claim. Thus, although the international norms as expressed in UNCLOS have had some impact on how China drew its baselines along its coastline, they did not prevent China from making excessive or clearly inappropriate claims in other cases.

Vietnam’s Baselines. While from the north of its coastline to the south Vietnam draws excessive baselines from offshore islands, rather than the low tide line of its shores, the excessive nature of these claims in the south and southwestern portions of its coastline is truly extraordinary. Vietnam purports to enclose more than 27,000 square nautical miles that should be open to international use. While Vietnam does use geographic features to describe its baselines, it does so in a grossly excessive manner in accordance with the provisions of UNCLOS as clarified by international case law. Thus, as in the case of China, the UNCLOS-established baselines regime did not serve as a constraint Vietnam.

The Baselines of Indonesia and the Philippines. As the two archipelagic states in the region, Indonesia and the Philippines are entitled to enclose large bodies of water within their baselines and to assert sovereign authority over it. Although when they were first drawn in 1960, Indonesia’s system of straight baselines did not conform with international law, during the UNCLOS negotiations in the 1970s Indonesia successfully lobbied to have their system adopted for all states comprised entirely of islands. Today, Indonesia’s baselines are accepted as normative. The Philippines, however, long maintained excessive baselines inherited from the period of Spanish colonization and did not bring their baselines into conformity with UNCLOS until March 2009 as part of its effort to meet a submission deadline for the UNCLOS Continental Shelf Commission. In other words, to specify their continental shelf, the Philippines had first to specify the baselines from which it would be drawn.

During the period leading up to the Philippines baselines declaration, China is reported to have put significant pressure on members of the Philippines Congress. This pressure was aimed at convincing the Philippines Congress to pass a baseline bill that excludes the Spratlys from within the Philippines archipelagic baselines. China’s preference was for the Philippines to draw baselines around the ‘home’ islands and treat the Philippines-claimed Spratlys as a “separate regime of islands” outside the home archipelago and therefore outside the archipelagic baselines. Presumably, China sought to avoid a situation in which the Philippines claimed the Spratly islands as inseparable Philippine sovereign territory, as drawing archipelagic baselines that included both the Philippines home islands and the Kalayaan group would have done. For obvious reasons, China is sensitive to the increased political difficulty a Filipino government would face in negotiating away rights to territories that Philippines law considers inseparable or “core” to its territory.
Whether Chinese pressure or some other reason was the cause, after a difficult political period, the Philippines Congress indeed enacted a baselines bill that excluded their Kalayaan claim in the Spratlys from their archipelagic claim and treated that group as a separate set of islands. This left some in the Philippines upset that their government had succumbed to Chinese pressure, a resentment that adds fuel to the nationalist frustrations with ongoing Chinese interference with Philippine efforts to perform surveys on Reed Bank.

In conclusion, the system of baselines established under UNCLOS was insufficient to prevent at least two key South China Sea states Vietnam and China—from making excessive and unlawful maritime claims and was insufficient to eliminate friction between states. However, Vietnam, as will be demonstrated below, has much better overall compliance with the rules for maritime boundary delineation provided in UNCLOS than does China.

**Exclusive Economic Zone.** Turning to the resources in the South China Sea, perhaps the most important UNCLOS framework designed to achieve maritime security and stability is the regime of the exclusive economic zone (EEZ). The EEZ was designed to reduce disputes over the resources in the water column and to the resources of the seabed out to 200 nautical miles from the coastal state’s baselines. UNCLOS gives the coastal state specified jurisdictional rights to manage, protect, and preserve the living and non-living resources in that zone. That the EEZ regime replaced the continental shelf regime to govern the seabed out to 200 nautical miles is sometimes an overlooked fact. Thus, UNCLOS continental shelf provisions have practical importance only for articulating the circumstances under which a state may claim continental shelf rights beyond 200 nautical miles known as the extended continental shelf.

UNCLOS is quite clear that a state’s jurisdictional claim over resources must be based on its coastal geography. China’s expression of its maritime jurisdictional claim in the South China Sea as a U-shaped line of dashes without any direct or even indirect reference to a feature of its coastal geography or even to its baselines, for that matter—is therefore in fundamental violation of international law and the norms of expected state behavior as articulated in the regime of maritime boundaries established by UNCLOS. *China’s U-shaped claim therefore represents one of the two major sources of disputes and friction among South China Sea states* the other being the disputes to sovereignty over the sea’s islands as discussed above.

The specific meaning of China’s U-shaped line claim eludes definition, which appears to be part of China’s chosen state policy regarding this claim. Four alternative or perhaps overlapping explanations are expressed for the jurisdictional meaning of the line: to some it is an expression of Chinese sovereignty or sovereign rights, to others it expresses a zone of historic rights to administer the region, to others it is an expression of security interests, and finally, to some it expresses the zone within which China owns all the islands and whatever water space rights those islands can claim. Only the last explanation has any merit under UNCLOS, and even that is undermined by China’s claim in its domestic law that it has additional historic rights over its waters beyond those which current international law recognizes. Additionally, China stated in a letter to the United...
Nations Commission on the Limits of the Continental Shelf that the Nansha (Spratly) Islands are “fully entitled to [a] Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.” This claim to EEZ and continental shelf rights for the Spratly Islands also violated international law in that few if any of the islets, reefs and sandbars that comprise the Spratlys are entitled to such zones since they cannot support an indigenous human population or sustain economic activity of their own.

On the other hand, availing themselves of the process by which states may make continental shelf claims beyond 200 nautical miles, Vietnam and Malaysia have made public their exclusive economic zone claims in the South China Sea plus extended continental shelf rights there that are entirely normative in their alignment with the provisions of UNCLOS, except of course that Vietnam’s EEZ begins too far seaward as a result of its improper baselines. The Philippines and Indonesia each also maintains a proper 200 nautical mile EEZ claim around its archipelagic baselines, which are geographically drawn. Unlike China, these four claimants to some or all of the Spratly Islands have refrained entirely from claiming an exclusive economic zone or an extended continental shelf to which these features are simply not entitled.

Thus, it should be clear that in addition to the struggle over sovereignty over the islands, the friction over fishing rights, and the competition for hydrocarbon resources should be added a contest over the normative framework by which these disputes should be settled. Should UNCLOS, as the widely accepted international regime developed to provide maritime stability in the face of competition for maritime resources, govern the settlement of these disputes? Or should the basis for dispute resolution be China’s perspective on its historic entitlements and its increasing power to enforce them? As yet, the resource allocation provisions of UNCLOS as a regime to ensure maritime security and stability have not been successful in the South China Sea.

Navigational Rights. A third UNCLOS regime bears brief comment, since it relates to the category of disputes involving control over the waters of the South China Sea. During the negotiations that resulted in the final version of the convention, there was a tension between the legitimate interests of coastal states in protection and sustainable development of the living and non-living offshore resources on the one hand and on the other the high seas navigational freedoms that enable states to freely conduct commerce and to defend their security interests. The EEZ regime was crafted as a carefully balanced compromise between those two legitimate interests. It protected the resource rights by giving the sovereign state exclusive right to them and jurisdiction sufficient for their management, but not full sovereignty, which would have allowed coastal states to interfere with the navigational freedoms of other states as they employ naval power to pursue their security interests. Therefore, high seas freedoms of navigation, overflight, and other traditionally lawful activities, including military freedoms, were specifically retained by all states in the UNCLOS jurisdictional framework of the EEZ and the continental shelf. That the United States and China struggle over this balance is a reflection of the failure of UNCLOS to meet its full potential as a mechanism of maritime stability concerning the balance of coastal state rights and international freedoms in the EEZ.
It is clear from the foregoing analysis that universal acceptance of the UNCLOS rule sets for drawing maritime jurisdictional boundaries that allocate resources rights and for international freedoms of navigation for military purposes has not been achieved. Signing treaties and conventions is not the same as employing their rules and norms. Sustained leadership will be required to strengthen the UNCLOS regime and to further encourage its universal application.

**The Declaration on the Conduct of Parties in the South China Sea**

Because the normative framework provided by UNCLOS was insufficient to build maritime stability into relations in the South China Sea, the Association of Southeast Asian Nations (ASEAN) stepped in to try to provide a political framework for stability. During the late 1990s and into the beginning of the new millennium, ASEAN sought to reduce tension and to promote several of its founding principles through an Indonesian initiative. Specifically, ASEAN sought “to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region ... and to accelerate the [region’s] economic growth.” The need for such a process was apparent after two decades of friction and even conflict in the South China Sea, punctuated most notably by the fighting between China and the Republic of Vietnam in the Paracels in 1974, the Fiery Cross Reef Incident between China and Vietnam in 1988 and finally by the Mischief reef Incident between China and the Philippines in 1995. In that same year, 1995, Vietnam signed the Treaty of Amity and Cooperation and thereby acceded to membership in ASEAN, thereby politically uniting Southeast Asia in opposition to what was widely perceived in Southeast Asia as dangerously disruptive Chinese behavior. China too turned a corner in 1995 and 1996 after finding itself subject to the disapproving gaze of a now-united group of Southeast Asian states and after its frustrations over the resolution of the Taiwan Strait Crisis with the United States. Circumstances were ripe for all parties to find a mechanism to bring stability to the South China Sea.

It took nearly seven years, but in 2002 the governments of the member states of ASEAN and China entered into the Declaration on the Conduct of Parties in the South China Sea (DOC). That agreement makes five basic declarations:

1. it reaffirms the parties’ commitment to international law, including UNCLOS;
2. it commits the parties to explore ways to build trust and confidence among them, based on equality and mutual respect;
3. it commits the parties to respect freedom of navigation and overflight in the South China Sea;
4. it commits the parties to resolve territorial and jurisdictional disputes without the threat or use of force;
5. and it commits parties to refrain from inhabiting presently uninhabited islands.10

Each declaration will be considered in order to determine to what degree this political framework was sufficient to provide stability.
UNCLOS. As demonstrated above, the commitment to abide by the provisions and norms of UNCLOS has proven a failure in both a legal and a political sense in that China’s claim to jurisdiction in the South China Sea relies on its notion of historical rights rather than on the geographic framework provided by the convention. ASEAN has not made any more progress through political means in changing Chinese behavior on this point than has the United States in encouraging compliance with the regime of rules for jurisdiction at sea.

On the other hand, it should be noted that every act of state regarding the maritime domain by a member state of ASEAN in the past decade has been in general conformity with the provisions of UNCLOS. The Philippines in particular abandoned historic claims regarding its archipelagic waters in favor of the geography-based system mandated by UNCLOS. This is likely due, at least in part, to its desire to associate with the principles and norms of ASEAN in order to benefit from political unity that such conformity promotes. Thus, at least as regards the decisions of the Philippines, the DOC has been successful in promoting the norms of UNCLOS as the basis for making jurisdictional claims, rather than historical claims.

Freedom of navigation. Concerning the DOC commitment to uphold the international prerogatives of freedom of navigation in the South China Sea there is an interesting dynamic underway in Southeast Asia. Even as the Philippines, Vietnam, Singapore and others seek to draw American naval power more closely to the region, there is a noticeable tendency to recalculate the balance of coastal state rights and interests in the EEZ in ways that would allow coastal states to require their consent before a foreign power could undertake exercises or other operations in their jurisdictional waters. While this is of significant concern to the United States as it undermines the primary source of American regional power it appears to be of less concern to many Southeast Asians more generally. This is witnessed by the statement of understanding appended to Thailand’s notice of accession to UNCLOS, which stated:

The Government of the Kingdom of Thailand understands that, in the exclusive economic zone, enjoyment of the freedom of navigation in accordance with relevant provisions of the Convention excludes any non-peaceful use without the consent of the coastal State, in particular, military exercises or other activities which may affect the rights or interests of the coastal State....

Thailand joins only Malaysia and China among regional states as having made such a public declaration, but private conversations indicate that the sentiment may have even more general acceptance among Southeast Asians. What is clear from those conversations and from the behavior of ASEAN states is that the object of current concern is not American naval power, but growing Chinese naval capabilities. In other words, if the current trends manifest themselves into growing regional restrictions on naval operations, while the United States continues to exercise freedom of navigation throughout the South China Sea for all military purposes—except where it encounters frictions with China—in the disputed waters of the South China Sea, China may begin experiencing the same treatment at the hands of its neighbors that it gives the United States Navy. That is not likely to be a stabilizing development.
Confidence Building Measures. The commitment in the DOC to undertake confidence-building measures can point as one of its successes to the Sino-Vietnamese Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Beibu Gulf [Gulf of Tonkin Agreement], which went into effect in June 2004. That agreement delineated the maritime boundary in the Gulf between China and Vietnam, which remains China’s only delineated maritime boundary anywhere, and established a joint fisheries zone under a companion agreement. The fisheries zone covers most of the productive fishing grounds in the region and lasts until 2019, after which much of the space reverts to Vietnamese control. The agreement provides for joint fisheries patrols, which occasionally have been undertaken, if perhaps without enthusiasm from either side.

The joint submission to the Commission on the Limits of the Continental Shelf of proposed maritime boundaries by Vietnam and Malaysia in the South China Sea should also be noted as indication of bilateral confidence building between the two states. That the Philippines and Brunei have so far been unable to join them may reflect the degree of development of their maritime law. Once additional progress is completed on their national legislation, additional cooperation among the four ASEAN states in their international submissions may become evident. This would certainly reflect the ASEAN preference for consensus. It may also provide negotiating leverage with China, since China would clearly become the sole remaining claimant that bases its claims on grounds other than the agreed UNCLOS normative framework. As such, the initiation of a multilateral confidence building process resulting in a common boundary agreement among ASEAN claimants based on the provisions of UNCLOS should be encouraged as a mechanism to encourage China to do the same.

China has, of course, insisted on bilateral negotiations between itself and other claimant states. Perhaps this preference could be respected if bilateral negotiations followed the completion of a multilateral process undertaken by rest of the claimants—Vietnam, Malaysia, the Philippines, Brunei and perhaps Indonesia to deal with the region to the northeast of Natuna Island—to come to a common understanding on their South China Sea boundaries as between each other. One of the complexities that currently make bilateral negotiations so difficult is that one party’s agreement with China affects its ability to negotiate with all other claimants. A two-step process based on advance agreement between ASEAN states, followed by bilateral negotiations with China might allow for a region-wide framework to be achieved.

Freezing Control of Islands and Refraining from Force. One of the most effective aspects of the DOC has been that it prevented changes in the status quo of occupation for sixteen years, since the Mischief Reef Incident that spurred parties to change course in the first place. China’s emplacement of markers on Amy Douglas Bank and Boxall Reef was so provocative because it signaled a clear breakdown of this most important and stabilizing norm. Parties also acted with military restraint because the agreement not to threaten or use force seemed to include an understanding that the region would not be militarized. Even that agreement, however, appears to be breaking down under the current strain. Although most Chinese view their country as the only one to have acted with
restraint, while the other claimants took the oceans resources, the truth is more nuanced. China may not have militarized the South China Sea disputes, but it certainly brought its other substantial state maritime capacities to bear in the region, including the vessels of its Fisheries Law Enforcement Command and the Maritime Surveillance Service.

**Conclusion**

As it did in 1995 and 1996, Indonesia, as ASEAN Chair for 2011, has actively sought to return the parties in the South China Sea to more peaceful approaches to dispute resolution, including sponsorship of dialogue and discussions. The United States has called publicly for the parties to make progress on an implementing agreement for the DOC or on a full-fledged Code of Conduct. The Philippines proposed a Zone of Freedom, and Cooperation. There is no shortage of good aspirations. There appears to be a shortage of political will to find compromises and all sides are using naval power to send signals of resolve. If parties are to stave off conflict, the answer lies not in the win-lose propositions of sovereignty and jurisdiction, but in finding answers in some of the examples of win-win frameworks that would regionalize the territory and waters of the South China Sea, allow common development of the living and non-living resources, and provide for shared enforcement of laws. The alternative is as it ever has been—that the strong will do what they can and the weak will do what they must.

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**Endnotes**

5 “Vietnam Reasserts Sovereignty Over Archipelagoes,” *Thanh Nien News*, May 7, 2011; “China Reasserts Sovereignty Over Spratly Islands,” *Jakarta Globe*, March 8, 2011. Taiwan participation in recent South China Sea dynamics has been nearly entirely absent, despite the coincidence of its claims with those of the mainland.
9 Letter from the Permanent Mission of the People’s Republic of China to the Secretary General of the United Nations, 14 April 2011.
I wish to thank the Foreign Service Institute of the Philippines and the Diplomatic Academy of Vietnam for inviting me to participate in this International Conference on the South China Sea: Toward a Region of Peace, Cooperation and Progress. I also appreciate the subject assigned to me on Cooperation in the South China Sea as this would represent, for myself, a career pilgrimage come full circle. I have come to believe that a durable solution to the South China Sea issues and concerns could be facilitated through cooperation, especially under UNCLOS as the normative cornerstone. The very essence of UNCLOS is cooperation and therefore obliged. Moreover, the UNCLOS specially calls for enhanced and coordinated governance cooperation in a marine geological configuration that is called enclosed or semi-enclosed seas. The South China Sea is a regional interconnected enclosed and semi-enclosed seas. It is the classic model as regards the marine geological configuration, and for implementation of UNCLOS prescriptions for maritime governance cooperation. In this setting, governance cooperation is focused on conserving and protecting the marine environment and biodiversity, but includes cooperative international efforts at establishing the safety, security and good order of maritime communication. This governance cooperation would involve States bordering such seas, and other interested States (and international organizations) upon invitation of the former. In other words, extra-regional States can participate as stakeholders. This is provided for under UNCLOS Part IX.

The current conflict situation in the South China Sea revolves around contending claims to ownership or sovereignty over islands and other marine geological features. There would, therefore, be no substitute for a neat settlement of sovereignty/sovereign rights issues. Indeed, at the moment, this is seen as the only avenue to achieving peace and stability in the critical conflict area of the South China Sea, the so-called Spratlys archipelago, which otherwise would be the exclusive economic zone and continental shelf of the Philippines. However, time and events have demonstrated that for the Philippines at least, an archipelagic State bordered on three fronts by enclosed and semi-enclosed seas which are of geo-strategic importance, and a large archipelagic State as immediate southern neighbor, instituting cooperative region-wide governance mechanism for peace, security and good order in the regional sea cannot wait. The establishment of a regional cooperative maritime ocean governance mechanism cannot be hostage to a settlement of sovereignty/sovereign rights issues. Such governance cooperation must be compellingly established under the umbrella of UNCLOS Part IX, while at the same time pursuing UNCLOS solutions to sovereignty/sovereign rights issues.
This paper attempts to give an insight to cooperation arrangements under UNCLOS, which is compelled by the geological and other natural characteristics of an enclosed and semi-enclosed sea, and a scientific underpinning that dictates holistic governance and management. The canvas and brushstrokes for an UNCLOS structural/institutional design for such cooperation is also herein conceptually organized. A strategic, critical role for the Philippines is always highlighted.

This presentation is the fourth policy paper in a series which I had the privilege to present in various Track 2 fora over the last two years espousing cooperation to pave the way for a durable solution, in whatever form or evolution that may eventually follow, in the current South China Sea conflict situation. Inevitably, some parts are lifted from previous papers in an effort to compose a coherent and consolidated blueprint.

Introduction: SEA OF TRANQUILITY . . . SEA OF CONFLICT

1. The South China Sea is an extremely important regional body of water especially in regard to navigational routes for regional and international vessel traffic, and fisheries resources. Since time immemorial, the South China Sea had been a sea of tranquility and never a scene of competition and conflict among the early civilizations surrounding it, nor in later intra-State interactions. There never was adversarial contention in this maritime region during the Shri-Vishayan (7th to 13th century) and Majapahit (13th to 16th century) empires to which the tribal communities that later formed the Filipino nation then belonged. This sea area remained undisturbed when the Yuan Dynasty of the 13th and 14th centuries spread its hegemony and suzerainties over Southeast Asia, and its seafaring ventures ranged beyond the region. Even the far reaching sea expeditions of Admiral Zheng He, the mightiest exhibition and demonstration of naval power the world had seen up to that time, never seemed to have created a ripple of concern in the region. Maritime trading had been active in the entire length and breadth of the South China Sea since the early beginnings of seafaring which later saw the establishment of important arteries for the olden Silk Road, the Spice Route, the Galleon Trade and European age of discovery. Fisheries and other marine resources were shared and nourished and fed the entire population of this maritime region. The atmosphere of regional maritime peace and good order lasted until the period of the Second World War.

2. In the above maritime scenario, it is clear that not much significance were given to islands and islets in the South China Sea except perhaps for temporary sheltering by fishermen and haven for pirates. This may be attributed to the fact that the islands and islets are remote and inhospitable to support human habitation. Indeed, some claimant countries would base a claim to ownership or possession on, among other bases, “discovery”, asserting that those islands and islets were terra nullius. A certain claimant country would, in more recent times, justify the construction of what was originally a crude structure of light materials upon a reef, as a fishermen’s shelter that would later be shared with fishermen in distress from other countries. (The “shelter” is now a multi-storey concrete structure straddling a reef formation, heavily garrisoned and with radar and gun emplacements.)
3. In the meantime, the South China Sea, especially its northern half, had become a sea of conflict and contention and a looming flashpoint among riparian States and, even more recently, involving extra-regional Powers. In this contemporary history, the South China Sea issues seen in terms of ownership of islands and other marine geological features, are sought to be solved through the application of the modern international law of the sea, UNCLOS, the universally accepted Constitution of the Ocean. This is far easier said, however, as it is clearly apparent that, despite repeated calls for application of UNCLOS provisions on sovereignty/sovereign rights to resolve the issues, the conflict is attributable to varying auto-interpretation and application of UNCLOS provisions by claimant States. It can even be said that it is UNCLOS that brought the problems about. When efforts at codification of the international law of the sea began in the mid-1950’s, the South China Sea was not an existing concern. The definition of an island in UNCLOS Part VIII on the Regime of Islands became a core controversy in the South China Sea situation in the post-UNCLOS Conference aftermath. (The Philippines, for one, was solely consumed during the three United Nations Conferences on the Law of the Sea with establishing the archipelagic regime and international acceptance thereof.) While the post-World War II regional geopolitical equation triggered a quick grab for marine geological features in the South China Sea among riparian States for reasons of national security, it is economic/commercial interest that later fueled the current on-going conflict. Whether these contending claims can be unraveled and settled under the UNCLOS provisions pertaining to sovereignty/sovereign rights, has become the intractable proposition.

4. It had always been regarded that the solution to the South China Sea disputes must start with a neat application and delineation of sovereignty and sovereign rights prescriptions under UNCLOS. However, it has been continually demonstrated that this has not been practicable in the critical “contested areas”, mainly for the following reasons:

- the contested area is a jumbled mix of islands and islets, and other marine geological features such as atolls, shoals, cays and rocks which otherwise are not capable of appropriation under international law
- there is no common acceptance of the characterization/classification of these differing marine geological features; it is not even clear whether the bigger formations can qualify in the technical UNCLOS definition of an island and further, whether these would be entitled to a territorial sea and exclusive economic zone, and if so, how much effect; and there are controversies on the application of UNCLOS provisions on baselines delineation
- a tangled mix of jurisdictional rights are being attached to these geological features by the claimants
- the confused bundle of bases or justification for the various claims of ownership over those marine geological features would not allow for the issues to be joined especially for the purpose of a recourse to judicial settlement or arbitration; attempting to sort out and define the justifiable issues would take forever
How the above intricately tangled cluster of issues can eventually be adjudicated and implemented under UNCLOS, even assuming that a judicial decision is arrived at that is acceptable to all concerned Parties, is the practical situation that would be confronting any outcome of a judicial settlement anticipatedly proceeding from a rules-based approach. (The current turmoil generated by the far simpler Temple of Preah Vihear case should be noted and pondered in a far more complex three-way (possibly more) situation where there would likely be a varying mix of winners and losers or worse, one winner and several losers.)

5. In the foregoing scenario the possibility of arriving at a settlement of sovereignty/sovereign rights issues under UNCLOS would very likely be impossible. If implemented in good faith, the “rules-based” approach should be the only way to proceed. But the UNCLOS has been rendered dysfunctional as, as earlier indicated, it is being invoked to support rigid and differing national positions. Moreover, it would be extremely difficult for claimant countries to abandon or even compromise on their claims on account of the sovereign nature of such claims. It is also important to note that the motive element for the sovereignty/sovereign rights claims is not mere ownership of barren marine geological features but competition for the resources beneath. (Perhaps it can help establish better perspective if it is considered that the rules-based approach had not helped matters either in regard to disputed “islands” between China and Japan and the Republic of Korea and Japan.) While awaiting a peaceful resolution of the sovereignty disputes, however, other neglected security concerns must be addressed.

6. The South China Sea, particularly in the so-called “contested areas” faces another security concern, characterized as non-traditional security issues. This arises from its natural geological characteristic as an enclosed or semi-enclosed sea that compels maritime governance cooperation principally among riparian countries. This other security concern refers to ocean governance to sustainably conserve and preserve the marine environment, its fisheries resources and biodiversity. It also necessarily involves cooperation to ensure the safety, security and good order of navigation as these concerns, as with other human activities, impacts on the marine environment. Governance cooperation in this regard, while compelled under scientific paradigms on account of the geological configuration of the South China Sea as enclosed or semi-enclosed sea, is rendered infinitely more complex and critical because of criss-crossing strategic and commercial sealanes throughout the regional sea, the intense competition for fish and other marine resources, and military assertion activities of claimant countries in the contested area. The added impetus to implement maritime governance cooperation is the expectation that this necessary recourse could at the same time defuse and help alleviate or even ultimately resolve the conflict situation.

7. The clear and imperative order of the day is to bring the South China Sea regional maritime state of affairs ... back to the future; a rebuilding and continuation of early regional maritime culture and history through governance cooperation. Regional maritime peace must be reconstructed to set the stage for a collective regional “peaceful rise”. (China should contribute substantially
towards this immediate goal, or the anticipated China-led Asian century would have an inauspicious entry with a troubled conflicted front yard.)

**Contemporary Regional Geopolitical Equation**

8. A regional geopolitical tour d’ horizon and situational assessments especially in the contested areas had been made earlier in this Conference that would lay the premises for a proposition toward implementing maritime governance cooperation. The troubled regional milieu does not project rosy future prospects . . . it is a clear continuing stalemate with a prognosis for further deterioration. At the moment, in the words of Professor Mark Valencia . . . “fear is racing hope”. The key players in the regional peace and development equation has been identified as ASEAN-China; they are responsible for the continuing stalemate and threats to peace and good order in the regional sea, or the locomotive for development and economic progress. Having said this, it is a hopeful sign that the Track 2 setting, as reflected in (Session 5) Topic 3 of this Conference, have seemingly graduated from what has come to be an exceedingly drawn-out and puerile discourse solely focused on supposed applicable international law to settle sovereignty/sovereign rights issues, or putative violations of international law in regard to activities of the claimants in the contested areas. After too long wallowing in legalese darkness on this aspect, perhaps it is time to light a candle for maritime governance cooperation, which is compelled under UNCLOS and therefore also rules-based. Instituting regional maritime governance cooperation, while not directly relevant to a rules-based settlement of sovereignty/sovereign rights issues, is nonetheless mandated under UNCLOS, as earlier emphasized, for enclosed or semi-enclosed seas. Such a marine geological configuration, to repeat, entails primary concern relating to the protection and conservation of the marine environment, its resources and biodiversity, but must essentially complementarily accompanied by cooperative arrangements for the security and good order of maritime communication. These are regional governance concerns that can only be effectively addressed through cooperation among riparian States, with stakeholder participation of extra-regional Powers as other interested States, following the UNCLOS Part IX format.

9. It had always and for too long been regarded that settlement of the claims to sovereignty/sovereign rights jurisdictions in the conflict areas of the South China Sea is a prejudicial question, a conditio sine qua non, to any forward movement addressing regional maritime peace, security and prosperity. Somewhat later, almost as an afterthought, promoting cooperation increasingly became an attractive possibility in the nature of “interim measures”. A well-known early proposal along this tack was when then Chinese Premier Deng Xiao Peng proposed in 1996, a few times subsequently reiterated, for sovereignty issues to be “shelved” and for claimant countries to carry-on with Joint Cooperation/Development. This Conference clearly strikes the future direction for a parallel effort at pursuing cooperation, while at the same time working at addressing sovereignty/sovereign rights controversies. There is now a creeping realization that cooperation, whether normative under UNCLOS, or extra-UNCLOS such as Joint cooperation/development, would be a constructive parallel undertaking while searching for a durable solution to the overall conflict situation. UNCLOS
Part IX would be the appropriate starting point for such cooperation, and proceed with a holistic package of interrelated cooperation arrangements that hopefully could have positive impact in downplaying sovereignty/sovereign rights issues and help defuse current tensions in the so-called “contested areas”.

10. Parenthetically, an UNCLOS-mandated institutionalized cooperation in tandem with the pursuit of solutions to sovereignty/sovereign issues by whichever means of pacific settlement, would also be more constructive in alleviating tensions than pursuing a Code of Conduct among Parties to the dispute. Work on the Code of Conduct, later downgraded to a Declaration of Conduct so it would not be considered “compulsory” and expectedly gain easier acceptance, took over a decade. Specific implementation steps agreed upon in 2006 pursuant thereto, have yet to happen. And even before the Declaration can be said to have acquired any moral or persuasive force almost a decade after its adoption, there is now talk of a renewed attempt at constructing a Code. When this can finally be accomplished, it would be impossible to foretell. In the meantime, events are developing towards a “fait accompli” favoring a particular claimant State employing disturbingly aggressive means.

11. A recent and wider geopolitical concern relates to the geological/geographical character and configuration of the South China Sea as an enclosed and semi-enclosed sea in a geo-strategic setting. This time extra-regional Powers are directly involved. This has to do with recent assertions by extra-regional Powers in regard to what was originally referred to as “freedom of navigation” and now claimed as “rights of access” to . . . “international commons”. This added dimension to the South China Sea situation is said to be triggered by the so-called “spy plane incident” over exclusive economic zone near Hainan Island in 2000. The incident is attributed to have generated an “AirSea” battle strategy on the part of a superpower - antagonist as counter to what it perceives as an anti-access strategy of a regional superpower (Bateman 2011) engaged in a “non-confrontational assertion” of jurisdictional rights (Li Minjiang 2011). This is an altogether different issue, also involving varying interpretations of applicable international law (in this case the regime governing the exclusive economic zone or EEZ), which must not distract the focus on resolving the issues relating to the contested areas. This is not to say that this new controversy is irrelevant or unimportant to peace, security and good order in the South China Sea, but it is outside the purview of this Conference. Indeed, it is this added-on dispute to the South China Sea security situation that could well be the greater threat and flashpoint as the Parties directly involved have capacities to wreak a “nuclear cockpit” of the region, and truly “internationalizing” the flashpoint and the conflict.

[A superpower is reported to have offered “support” to the Philippines in regard to the claims controversy. If the offer of support could be channeled to assistance in regard to constructing regional maritime governance infrastructure under UNCLOS Articles 275 and 276, in relation to UNCLOS Annex 6, then this offer of support would be constructive. The superpower concerned and other interested extra-regional Powers can have a valid stakeholder participation under UNCLOS Part IX, with the proffered support to focus on the aspect of safety, security and good order of navigation. [In this regard, the IMO and IHO can also be involved]
under UNCLOS Part IX and other UNCLOS cooperative governance provisions.) This would be the answer to the (Secretary of State Hillary) Clinton doctrine enunciated in Hanoi in July 2010 for institutionalized solutions to the South China Sea issues and concerns under UNCLOS. If, however, the proffered support is of a politico-military character, there would be grave Constitutional and national policy dilemma for the Philippines, especially if the Mutual Defense Treaty is invoked by either side. If this kind of support is entertained, would enhanced military “presence” (read military bases in Philippines territory or intensified activity under the domestically controversial Visiting Forces Agreement or VFA) not be far behind? If the Mutual Defense Treaty strategic alliance relationship can be **transmuted** into maritime governance cooperation under UNCLOS Part IX, UNCLOS Articles 275 and 276 and UNCLOS Annex 6, the “presence” in the region of the superpower concerned, or any **other interested States** for that matter, would be most welcome. The issue of **access** could be defined, subsumed and worked out in this aspect of regional governance cooperation.]

**Cooperation among Regional Countries**

**12.** As a general proposition, maritime cooperation among States bordering the South China Sea is nothing new. Since the birth of ASEAN, bilateral cooperation in maritime border patrol and security, and search and rescue, among such others, have been undertaken among member States and continues to be strengthened. Somewhat later, joint cooperation/development arrangements were instituted on a bilateral basis. These cooperative undertakings have a life of their own and are expected to continue to be further developed and enhanced. (In a wider regional scenario, China and Vietnam have an agreement on joint patrol.) Of concern in this Conference, however, is regionwide cooperation that could help defuse tensions in the South China Sea as a parallel course to the search for pacific settlement along traditional modes of conflict resolution which, as earlier implied, has long been . . . at sea, or worse . . . dead in the water. This paper is confined to this cooperation context; a two-pronged cooperation, in no way exhaustive in either case, is herein proposed that can and must be pursued in the immediate term:

- normative cooperation under **UNCLOS**
- extra-**UNCLOS** cooperation in regard to joint cooperation /development

[Joint cooperation/development is herein mentioned but will not be discussed. As a cooperative modality, however, its importance cannot be downplayed by the Philippines as its value is not only relevant to the Spratlys archipelago. With technology for deep-sea drilling now within easy reach, the Philippines should already seriously study and entertain prospects for joint cooperation/development for energy resources in its southern borders with Indonesia and Malaysia, and also in its northern border with Taiwan or China (indeed, the Spratlys situation is heating up because one claimant not only already possesses deep-sea drilling capability, but has announced its intention to soon commence such activity in deep waters in the South China Sea). Moreover, it is no idle conjecture that in less than ten (10) years, when China celebrates the centenary of the Communist Party, the northern boundary of the Philippines would be China, not Taiwan (China already claims so even at this very moment). A focus by the Philippines on joint
cooperation/development could therefore be preemptive of other possible conflict situations in the South China Sea.

The intended geographical scope for cooperation would be the entire South China Sea as an enclosed or semi-enclosed sea but critically initiated in the so-called “contested areas” with contending sovereignty/sovereign rights claims i.e. the Spratlys archipelago. This is imperative as the cooperation arrangement is intended to help alleviate the conflict situation, and also because this critical maritime sector suffers the most from degradation of the marine environment and depletion of fisheries and other marine resources arising from the conflict situation.

Normative Cooperation under UNCLOS

13. A normative cooperation structure under UNCLOS relevant to the South China Sea would be under the following specific provisions:

- UNCLOS Part IX - Enclosed and Semi-Enclosed Seas
- UNCLOS Part XII - Protection and Preservation of the Marine Environment
- UNCLOS Part XIII - Marine Scientific Research
- UNCLOS Part XIV - Development and Transfer of Marine Technology
- UNCLOS Annex 6 - Resolution on development of national marine science technology and ocean service infrastructures

The possibilities for governance cooperation under UNCLOS are limitless. The above areas of maritime governance cooperation are suggested as mere starting points and not an exhaustive catalogue of cooperation arrangements. They would provide the canvas and broad brushstrokes of a maritime governance structure/infrastructure under UNCLOS. Implementing cooperation with the abovementioned starting points is urgent in the “contested areas” and would serve as building blocks for region-wide capacity/institution-building promoted under UNCLOS as a general cooperation obligation among States, but specifically called for in the UNCLOS Part IX context.

14. The cooperation modality under UNCLOS Part IX is necessary and compelled in an ocean geographical/geological configuration called enclosed or semi-enclosed seas, defined below:

Article 122: Definition- For the purposes of this Convention, “enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

To understand and appreciate the mandatory and essential nature of cooperation in the setting of enclosed or semi-enclosed seas, attention is invited to UNCLOS Article 197 where, as a general principle, cooperation for the protection and preservation of the marine environment must be conducted on a regional basis . . . “taking into account characteristic regional features”. Among a few
enclosed and semi-enclosed seas in the world, the classic layout for application of UNCLOS Part IX on a regional scale is the South China Sea. Moreover, cooperation under UNCLOS Article 123 may be undertaken through an appropriate regional organization for the purposes stated therein. (The Philippines, way back in 1996 and reiterated in 2003, made official representations with the IMO and lobbied for the creation of an IMO regional office located in the Philippines, for this purpose. Incidentally, the “maritime heartland” and epicenter for conservation and protection, and therefore the strategic center for maritime governance cooperation, is the Philippines.) To emphasize universal interest in promoting governance of an enclosed or semi-enclosed sea, States bordering such seas have an obligation to invite, where appropriate, other interested States and international organizations to participate in governance cooperation (UNCLOS Article 123 (d)). This would be a localized, regional situation that by international law (UNCLOS) is “internationalized”.

15. In an ocean geological configuration as defined above, UNCLOS Part IX prescribes the broad cooperation arrangement in the following manner:

Article 123: Cooperation of States bordering enclosed or semi-enclosed seas. States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to coordinate their scientific research policies and undertake, where appropriate joint programmes of scientific research in the area;

Once again, UNCLOS is about cooperation in all aspects of ocean management and governance. In the case of enclosed or semi-enclosed seas, UNCLOS defines a special obligation among States bordering such seas to ... coordinate the management, conservation and exploitation of living resources; ... coordinate implementation of rights and duties for the protection and conservation of the marine environment; and ... coordinate scientific research and appropriate joint programmes of scientific research in the area. This emphasizes the necessary holistic approach to ocean governance of an enclosed and semi-enclosed sea and, for that matter, the connectivity of the ocean. Further, it underlines worldwide concern by imposing the obligation among riparian States to invite the participation of ... other interested States and international organizations (UNCLOS Article 123 (d) as cited above).
Specific Governance Cooperation under UNCLOS

16. As already noted, the specific areas of cooperation mentioned under UNCLOS Parts XII and XIII relates to the preservation and conservation of the marine environment and biodiversity and the promotion of marine scientific research. These would be the essential starting points for recovery of the marine environment and biodiversity in the contested areas which have suffered the gravest threat and degradation mainly due to the activities of claimant States and complete lack of governance management. The regionwide cooperation structure/infrastructure for the South China Sea as an enclosed or semi-enclosed sea would be under the umbrella of UNCLOS Part IX, while the more specific parameters of cooperation would cover Parts XII, XIII, and XIV and other specified cooperation arrangements promoted elsewhere in UNCLOS. As stated earlier, the take-off point for maritime governance in the foregoing structure/infrastructure would be the contested areas wherein collaborative undertakings could be bilateral and/or multilateral as suggested in UNCLOS Part IX. In the multilateral aspect, UNCLOS Part IX could include, to reiterate for emphasis, “other interested States”, a clear reference to extra-regional stakeholder participation/partnerships.

Cooperation for Capacity-building under UNCLOS

17. Another avenue of cooperation also prescribed under UNCLOS, complementary to those indicated in Parts IX, XII, XIII and XIV thereof relates to mutual assistance among States for capacity-building in maritime governance, scientific research, and institution-building and governance infrastructure. This separate but complementary cooperation structure mirrors a mutual-aid concept originally embodied in the United Nations Conference on Trade and Development (UNCTAD) and adapted into UNCLOS. In the ocean governance context, it relates to the economic/social aspect of the ocean in sustainable economic development that focuses on assistance to developing countries among themselves, or in the form of development assistance from developed countries to developing countries. This is a mutual assistance modality derived from the Technical Cooperation among Developing Countries (TCDC) under UNCTAD and imported into UNCLOS particularly at Articles 202, Article 244 (2), and Article 266 (2). The essence of this additional layer of cooperation arrangements is restated in UNCLOS Annex 6 exhorting that all countries must exert cooperative effort to promote the “development of national marine science, technology and ocean service infrastructure”. (This cooperation modality must be separately programmed and pursued by the Philippines and promoted regionwide as a matter of vital national interest as an archipelagic State bordered by enclosed and semi-enclosed seas. The Philippines earlier attempted to implement this mutual-aid cooperation under its own TCDC program as handled by the Technical Cooperation Council of the Philippines (TCCP) attached to the Department of Foreign Affairs. The Philippines could also initiate incorporation of this thrust into the Millennium Development Goals (MDG)).
A Transborder Marine Peace Park; other maritime cooperation building-blocks

18. Attempts at implementing and promoting UNCLOS Part IX cooperation in the South China Sea had been started bilaterally and multilaterally. The Joint Oceanographic Marine Scientific Research Expedition (JOMSRE), a bilateral undertaking between Philippines and Vietnam, was in the process of expanding multilaterally with the participation of China and Laos, and in regard to the geographic scope of research coverage. The program was however aborted when it was scuttled by the Philippines for reasons not publicly known, during the third and final preparatory meeting in Nha Trang, Vietnam in 2008. Another attempt was the trilateral Joint Marine Seismic Undertaking (JMSU) involving China, Philippines and Vietnam which was a Joint Cooperation/Development project for the extraction of oil and gas resources in the contested areas of the South China Sea. The first phase, i.e. joint cooperation (exploration) was successfully completed with promising results but could not proceed, as agreed, to joint development supposedly due to domestic issues on the part of the Philippines. Both thrusts could still be revived. (Admittedly though, the aforementioned joint cooperation/development programs did not originate from a coherent/coordinated policy implementation of UNCLOS Part IX.) A third building block implementing UNCLOS Parts IX, XII, XIII and XIV in what would be a comprehensive and unified governance undertaking is the establishment of a Marine Transborder Peace Park in the contested areas. This is a joint proposal of the participating scientists at the Colloquium formally concluding the bilateral JOMSRE between Vietnam and Philippines and reflected in its published Proceedings. If implemented, this regional project would serve as the appropriate “launch activity” for UNCLOS Part IX cooperation in the South China Sea. (The Philippines, pursuing the spirit of UNCLOS Part IX, conducted Exercise Luzon Sea in 1996 as a marine scientific research cruise entirely within its territorial waters in the southwestern flank of Palawan Island, as the marine scientific research segment connecting to the JOMSRE exercises which is in the high seas. It was participated in by invited scientists from regional countries. The research outcomes are also published).) 

19. Other areas of regional cooperation in the South China Sea would relate to fisheries management. This is an area where some form of unilateral conservation measures are already taking place among riparian States and can and should easily be repackaged and promoted regionwide under UNCLOS Part IX. An equally important and urgent area of maritime governance cooperation may be established as a separate structure of governance mechanism complementary to the protection of the marine environment, but also under UNCLOS Part IX. This would be in regard to maritime safety and security adverted to earlier. Extra-regional States should be interested stakeholders in the aforementioned maritime governance cooperation as other interested States inasmuch as the South China Sea is a strategic crossroads of Sea Lanes of Communications (SLOCs) for international commerce and navigation.
Conclusion/Prologue

20. It would be noted that a substantially lengthy early part of this paper (paragraphs 1-10) amounts to a negative proposition in regard to the continuing pursuit of the settlement of sovereignty issues under UNCLOS. This nevertheless serves as the lead argument to the main proposition that maritime governance cooperation must immediately be implemented and cannot be hostage to settlement of the sovereignty/sovereign rights issues. Indeed these urgent and pressing regional maritime governance requirements are also characterized as non-traditional security issues as mentioned earlier, a play on the usual treatment of security concerns in the South China Sea as being solely and directly associated with the conflict situation and sovereignty issues. UNCLOS provides the scientific/legal underpinnings for the regionwide governance architecture, but there is the immediate necessity to arrest and reverse the rapidly deteriorating neglected maritime environment in the contested areas which is largely due to the on-going unilateral assertion activities of claimant States.

21. The above proposition to implement regional cooperation in ocean governance could be said to skirt the core issue of conflicting/overlapping sovereignty claims that makes the South China Sea a regional flashpoint, rather than directly addressing it. The problem, however, is that in the almost four decades of contention and search for solutions invoking the application of general international law and UNCLOS, not a single of the accompanying bundle of jurisdictional issues have been resolved today. During all this time, no significant progress has been achieved in pursuing solutions to maritime jurisdictional issues applying UNCLOS. It may be time to break out of “the box” and consider simultaneously addressing another South China Sea security concern which, under UNCLOS, is peculiarly demanded and essential to enclosed and semi-enclosed seas. This maritime governance cooperation thrust can serve to ease tensions and create a regional détente and favorable atmosphere for pursuing an eventual durable solution.

22. A strong argument for implementing maritime governance cooperation that could serve as a soft complement to conflict resolution is that a durable and comprehensive solution could evolve in the region in much the same manner that the European Coal and Steel Community (ECSC) did in Europe. In this regard, the economic aspect and incentive is not at all missing in the South China Sea equation. The intense competition for energy (oil, after all, is the modern-day coal) and fishery resources are present to serve as motive factor. This is not to suggest for the ECSC to be a template or conceptual model for the South China Sea. The reference is only meant to inject some awareness that out of constructive modest beginnings could develop or evolve durable solutions. This is not an original thought, it is adapted from a conceptual suggestion in an article by Mr. Tommy Koh (“E.Asia can learn from EU”, The Straits Times, 10 July 1998) relating to another aspect of regional cooperation. And in aspiring for this regional “castle of everybody’s dream”, quoted herein for its wisdom and relevance, especially in a drafting formulation which cannot be improved upon, is the concluding paragraph of an article by Gareth Evans, former Minister of Foreign Affairs of Australia, entitled “What Asia Needs is a Europe-Style CSCA” appearing in the
27 July 1990 issue of the *International Herald Tribune*, as follows: “It is too early to map in detail what might evolve. What matters for the moment is that the process of dialogue, both bilateral and regional, be assiduously pursued. Efforts should be constant to make all the individual strands of the web both denser and more resilient, so that sooner or later a base will emerge on which more systematic security can be built”. This should be the regional mantra for the South China Sea, building towards institutionalized maritime governance cooperation under UNCLOS, that hopefully could evolve towards a durable solution to the conflict, and even perhaps contributing to greater integration for Southeast Asia.

23. Finally, in the ECSC setting, Luxembourg is said to have played the role of the “school where the Six learned to work together”. This is a role which the Philippines, in the regional geo-strategic setting as the front-line State in the South China Sea conflict situation and most vulnerable to adverse economic, social, and environmental impacts that could arise therefrom, or threats or damage related to peacetime exploitation of resources or shipping, would be most appropriate to undertake. In the same context, the Philippines can also establish and consolidate a leadership role in regional ocean governance to serve its own vital national interests by working to establish a strong *national marine and technological research centre*. This national institution must be designed and projected to be the South China Sea regional marine scientific and technological research centre (see UNCLOS Articles 275 and 276) and promote the regional marine policy envisioned in UNCLOS Part IX and Annex 6.

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The Changing Contexts of China’s Policy on the South China Sea Dispute

Mingjiang Li*

Introduction

China, since 1949, has never treated its territorial disputes with neighboring countries as an isolated issue in its foreign and security policy. Rather, Beijing has always handled those territorial issues in the larger context of its strategic interests at the specific historical times. Chinese decision makers made concessions on territorial contentions when they believed that those compromises served China’s broader and longer term strategic benefits. And conversely, China appeared to be quite stubborn or non-compromising when heavy-handedness and assertiveness served its other purposes, either domestic or international.

The South China Sea issue is no exception in China’s foreign and security calculations. Over the decades, China’s handling of the dispute has been affected by a wide range of factors, not simply territorial or sovereignty claims. There are many good examples to illuminate this point. For instance, it has been argued that the 1974 conflict between China and South Vietnam, which ended in China taking control of the whole Paracels, was partly motivated by the Chinese anxiety of Soviet security threat from the sea.1 The 1988 Sino-Vietnamese conflict in the Spratlys had to do with the PLA Navy (PLAN)’s interest in pushing for greater budget when Beijing was shrinking expenditure on military in the 1980s.2 The 1995 Mischief conflict was partly a result of internal elite political power struggles in China.3 And the “calculated moderation” in China’s approach to the South China Sea dispute in the past decade reflected China’s attempt to balance its interests in domestic economic development, sovereignty claims, and regional strategic interests.4 These cases sufficiently demonstrate that it is useful and highly necessary to take into consideration many other factors to better understand China’s policy on the South China Sea dispute.

This paper attempts to analyze some of the major factors that have helped shape China’s policy on the South China Sea issue in the past decade or so. I will discuss whether the context of China’s policy making, both internal and external, has significantly changed and the impact of this changed context on China’s future policy on the dispute.

Strategic Interests and Moderation

Throughout the 1990s, China strived to normalize its relations with Southeast Asian states. Departing from its initial approach that favoured bilateral relations, China got more involved in multilateral and regional institutions,5 especially in
frameworks that allowed Beijing to enhance its dialogue with ASEAN. When former president Jiang Zemin and all the ASEAN leaders organised the first ASEAN plus China Summit in December 1997, they issued a joint statement of establishing a relationship of good neighbourliness and mutual trust oriented towards the twenty-first century. As a consequence, economic and political relations between China and the ASEAN countries developed rapidly. But security relations were tarnished by territorial disputes in the South China Sea. At the turn of the century, however, the tensions began to decline owing to a series of agreements: China and Vietnam signed a Treaty on the Land Border in December 1999, followed by an agreement demarcating maritime zones in the Gulf of Tonkin in 2000, and in November 2002, China and ASEAN signed the Declaration on the Conduct of Parties in the South China Sea (DOC). Meanwhile, at the ASEAN-China Summit in November 2001, ASEAN leaders accepted China's proposal to create a China-ASEAN Free Trade Area (CAFTA) that would include China, Brunei, Malaysia, Indonesia, the Philippines, Singapore and Thailand by the year 2010, followed by Cambodia, Laos, Myanmar and Vietnam by the year 2015.

Generally speaking, China’s approach to the South China Sea dispute in the first half of the past decade reflected the overall re-orientation of Beijing’s diplomacy in Southeast Asia, which many pundits characterize as “charm offensive” or “soft power.” China has essentially attempted to seek some balance in pursuing its sovereign, economic, and strategic interests in the dispute. Given the political, economic, and strategic importance of the South China Sea for China, many people in China may have wished to use more assertive means to push for China’s interests in the area. However, in the past decade, there has been no major military conflict between China and other disputants. The prediction that ASEAN states would be unable to pressurize China into accepting multilateral negotiations in the aftermath of the Asian financial crisis in 1997 turned out to be incorrect. On the one hand, China held a strong position on its claim of sovereignty at all diplomatic occasions, took piecemeal actions to consolidate its presence in the South China Sea, and responded with stern warnings when other disputants acted against Chinese interests. But on the other hand, Beijing felt that it had to address more important goals in its foreign policy towards Southeast Asia by making several significant changes in the Chinese actual behaviour.

It is widely believed that China has only opted for a bilateral approach to the South China Sea dispute. In reality, this assertion is at most partially true. So far, there has been no serious discussion, either bilateral or multilateral, about the sovereignty issues of the islands or the demarcation of maritime zones. Instead, positive things have taken place in the South China Sea dispute including dispute management and confidence-building measures (with the exception of the China-Philippine-Vietnam joint seismic study being a small step towards joint development). And these things have been multilateral. Thus it makes little sense to say that China only favours a bilateral approach to the problem. Besides, the claims by different parties overlap so much that it is impossible for China to explore a diplomatic solution with any single ASEAN claimant country in the future.
China has been dealing with ASEAN collectively over the dispute for many years for all existing confidence-building measures and dispute management mechanisms. The 1997 Joint Statement of ASEAN and Chinese leaders discussed the possibility of adopting a code of conduct in the South China Sea. The Declaration on the Conduct of Parties in the South China Sea (DOC) was signed by all ASEAN foreign ministers and Chinese Special Envoy Wang Yi in Phnom Penh on November 4, 2002. The 2003 Joint Declaration of the Heads of State/Government of the Association of Southeast Asian Nations and the People’s Republic of China on Strategic Partnership for Peace and Prosperity state that the two sides will implement the Declaration on the Conduct of Parties in the South China Sea, discuss and plan the way, areas and projects for follow-up actions. The Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity includes details concerning how both sides could implement the DOC.

The DOC has not proven to be very effective in managing the dispute in the South China Sea. But one can perhaps get some sense of its positive role by asking this question: Could the dispute have been worse if there had been no DOC? While the DOC has been ineffective in regulating the actual behaviours of relevant parties, it does instill some degree of moral restraint on the parties concerned. Moreover, it seems to serve as a stepping stone for further discussion and policy deliberation among the claimant countries. This indicates that China is willing to accept norms to regulate issues concerning the South China Sea, no matter how primitive and informal the norms are. Also, by joining the ASEAN Treaty of Amity and Cooperation, China has made a legal commitment not to use force against any member of the ASEAN.

Why would China adopt these relatively more moderate policies? It is an important question, not only to understand the history in the past decade, but also seek hidden clues to future development. One factor that most observers can concur is the insufficient capability of the PLAN, but this factor alone does not give us a satisfactory explanation. After all, China did take forceful actions in 1974, 1988, and 1995 when its navy was far inferior? What essentially shaped China’s policy on the South China Sea dispute towards cooperation and moderation was the strategic context that China found itself in and China’s visionary response to that context. Various domestic factors that facilitated the implementation of that moderate policy as well.

In the aftermath of the Tiananmen crackdown in 1989, China was diplomatically isolated in the first half of the 1990s. In order to break the isolation, Beijing began to engage with Southeast Asian nations both bilaterally and multilaterally in the mid-1990s. In that process of engagement, China learned that its engagement policy was welcomed by regional states and was effective in broadening China’s international presence and participation. More importantly, China realized that engagement was the best policy tool to counter the widespread “China threat” discourse in the West and in China’s neighbourhood. This policy line led to the much acclaimed Chinese decision not to devalue its currency during the Asian financial crisis in 1997/1998.
In the past decade, two sets of strategic thinking dominated the milieu of foreign policy making in China. The first notion is “an important period of strategic opportunity” (zhongyao zhanlue jiyu qi) put forth in the political report of the 16th Party Congress and repeatedly emphasized by top Chinese leaders at numerous occasions. The basic idea of this concept is that the first twenty years of the new century would be China’s strategic opportunity to develop itself. There will be both good opportunities and serious challenges to China’s development, but overall it is very likely for China to experience another major leap forward in the next two decades if China handles its domestic and international challenges properly. The implicit warning is that if this “important period of strategic importance” is missed, China may not have another opportunity to ensure another major take-off. The second notion that might have operationalized the first strategic thinking is the Chinese leaders’ dictum that China should constantly well coordinate both its domestic and international situations (tongchou guonei guowai liangge daju). The basic idea is that China should do everything possible to create a conducive external environment for the sake of domestic socio-economic development.

Under these strategic thoughts, China was even more cognizant and confident that further engagement with Southeast Asian countries at the turn of the new century would serve its strategic interests. These Chinese strategic interests included the following aspects: a stable and peaceful regional environment to ensure domestic economic development, which in turn relies on adequate supplies of raw materials, energy resources, markets and investment in regional states, and promoting a positive image of China in East Asia in order to water down the “China threat” rhetoric.

But Beijing’s strategic consideration became far more comprehensive. China also began to aim to establish a stronger strategic foothold in the region to compete with the US strategic influence. That was why we saw a dazzling series of amazing Chinese moves in proactively engaging with ASEAN: the FTA initiative (including the early harvest scheme), the DOC, the signing of the TAC, the announcement for a strategic partnership, the addition of many more official cooperation mechanisms, and many political documents proclaimed by Chinese and ASEAN leaders. The US preponderant military presence in East Asia and its extensive security ties with many Southeast Asian countries were factors that Chinese policy makers had to contend with. Beijing understood that a heavy-handed Chinese approach could only push other claimant states much closer to Washington in the security arena.

China also believed that supporting ASEAN as a regional grouping served China’s regional and even global strategic interests. A more united and stronger ASEAN would help dilute American strategic supremacy in the region and make members of ASEAN more confident in perceiving China’s rise so that they did not have to side with the US or any other major power to counter-balance China. Supporting ASEAN was also good for China’s global strategy of encouraging the emergence of multipolarity.

Inside China, various conditions in the past decade were also conducive for a moderate policy towards the South China Sea dispute. The military establishment,
usually the more hawkish element in any country, continued to enjoy generous funding and was primarily preoccupied with various new programs to modernize its war-fighting capabilities. The military leadership appeared to believe that a head-to-head confrontation with the US or any other major power would be unwise because China’s military power still lagged far behind that of the United States and its allies in East Asia. Various Chinese maritime law enforcement agencies were also keen to beef up their capabilities rather than to use their inadequate capacity to prematurely challenge or provoke other disputant states in China’s neighbourhood. Thus, maritime territorial disputes, to some extent, were put on the back burner.

It is often not fully recognized that the decade since the late 1990s were the most notable period of China starting to actively participate in various maritime cooperation projects in East Asia. During this period, various Chinese maritime agencies engaged with Malaysia, the Philippines, Indonesia Vietnam, and Thailand to implement maritime cooperation projects. Wang Shuguang, the former head of China’s State Oceanic Administration, even proposed during a visit to Southeast Asian countries that the ministers of maritime countries surrounding the South China Sea meet regularly to discuss multilateral cooperation in the maritime domain. China also participated in the United Nations Environment Programme’s (UNEP) Global Meeting of Regional Seas and Global Program of Action for the Protection of the Marine Environment from Land-based Activities, the Partnership in Environmental Management for the Seas of East Asia (PEMSEA), the Northwest Pacific Action Plan (NPAP), the North Pacific Coast Guard Forum (NPCGF), and the Container Security Initiative (CSI). Sun Zhihui, former chief of China’s Oceanic Administration, indicated at the Second East Asia Seas Congress meeting that China intends to promote peace and stability in regional maritime issues in order to focus on economic development in the next 20-year “important period of strategic opportunity.” Clearly, China’s maritime policy in the past decade was regarded as part of its larger strategic consideration.

**Non-confrontational Assertiveness: the Emerging New Context**

The year 2010 was significant in China’s foreign and security policy. It was probably the most complicated and turbulent year for China’s international politics in the past decade. China’s increasing assertiveness in East Asia can be seen in the following events: Beijing’s unprecedented strong response to US arms sale to Taiwan and President Obama’s meeting with Dalai Lama, China’s political and security protection of North Korea in the wake of the Cheonan incident and the Yeonpyeong bombing, the reportedly assertive Chinese actions in the South China Sea, China’s heavy-handed approach to US naval exercises in the Yellow Sea, and Beijing’s pressure tactics during the Sino-Japanese crisis over the Diaoyu/Senkaku island dispute. It is widely believed that Beijing has jettisoned its erstwhile “low profile” international posture and has instead become more aggressive in pushing for its own narrowly-defined national interests. Some analysts even believe that China is inclined to adopt a confrontational strategy in the region.
It is perhaps a crucial moment for the rest of the world, in particular regional states, to have an accurate assessment of China’s strategic thinking with regard to East Asian security and the South China Sea dispute. While we acknowledge the fact that China has become more assertive and is likely to remain so in the foreseeable future, we also have to be sober-minded to note that China is unlikely to pursue any kind of confrontational strategy in its regional international politics. Non-confrontational assertiveness is likely to underpin China’s foreign and security policy in the near future and ASEAN countries will have to grapple with this reality in their China policy in relation to the South China Sea dispute.

What does China’s non-confrontational assertiveness essentially mean? It means that at the strategic level, Beijing is not likely to pursue any overt confrontation with other major powers and ASEAN. China is not likely to pursue an ostensibly coercive approach towards its smaller neighbors for fear that such coercion may have a profound impact on China’s strategic position in the region and relations with other major powers. But at the same time, China will be assertive in dealing with issues that are of crucial importance to its national interests. There may seem to be some contradictions between the strategic non-confrontation and tactical assertiveness, but China seems capable of balancing the two through dexterous diplomacy. In the past decade or more, for instance, China has arguably practiced non-confrontational assertiveness in its external policy with regard to human rights, maritime territorial and demarcation disputes, and even the Taiwan issue. Assertive actions were taken whenever China’s core concerns on these issues were infringed upon. But at the same time, Beijing has always been careful not to escalate any dispute into a major long-term confrontation with any other major power. What is different between today and the past is that Beijing is likely to be willing to employ more assertive means in dealing with major disputed issues in its foreign relations.

A couple factors have contributed to China’s increasing assertiveness in regional security affairs. First, it has to do with the fact that China’s power has grown to the extent that it can afford to be more assertive. Its military modernization efforts have generated quite impressive results. China has become the number two economy in the world and it has become a crucial growth engine for many regional states. China’s maritime law enforcement capability has also been significantly augmented in recent years and appears to grow further in the coming years. In an anarchic world, the growth of one country’s capability always comes hand in hand with the greater temptation to use pressure tactics and brinkmanship. Second, partially because of the increased power capability, China’s self-confidence has also notably grown, especially in the wake of the financial crisis. Chinese elite were excited to see that China weathered the financial crisis better than any other country. The bullish mindset was further boosted by their observation that the West was stagnating or even, relatively speaking, declining. China’s self-confidence and rising nationalism interacted to produce a more assertive China.

Third, the increased capability and enhanced confidence, together with unabated nationalism, has contributed to the elevation of China’s core national interests. Although the Chinese usage of the term “core interests” is still subject to different
interpretations, some senior Chinese officials have stated that they may include the ruling position of the party, territorial sovereignty and integrity, and economic and social development. China has sought to codify its concerns over “core interests” in its foreign relations, for instance during Obama’s visit to China in 2009, and has clearly demonstrated its resolve to defend its “core interests” by undertaking action in recent years. Once the issue of “core interests” becomes a prominent concern for the top political elite, different bureaucratic agencies in the Chinese political system may find it feasible and even very rewarding to behave assertively. As a result, bureaucratic politics intervene and further complicate China’s handling of the South China Sea dispute.

In addition to this overall emerging context of non-confrontational assertiveness, the context of China’s policy-making in relation to the South China Sea is also subtly changing. First of all, there is widespread disappointment and frustration in China over the developments in the region. Similar to Vietnamese complaint of China’s brutality against Vietnamese fishermen, China also complain of its shrinking traditional fishing ground in the Spratlys and ill-treatment of its fishermen. One Chinese report notes that since 1989, there were over 300 instances of Chinese fishing vessels being arrested, expelled and even fired upon in the Spratly area involving 80 Chinese fishing boats and over 1,800 Chinese fishermen. While most Chinese analysts agree with the government position that “shelving disputes and joint development” should still be the official position of China, some observers in China are increasingly critical of this policy. They argue that this policy has actually worked against Chinese interests in that it has de facto allowed other claimant states to unilaterally exploit the resources in the South China Sea.

Beijing is unhappy with other states’ attempt to exert pressure on China by rallying under the ASEAN flag and using the ASEAN Regional Forum (ARF) to discuss the South China Sea issue. China is particularly concerned about the involvement of other major powers, in particular the United States. In the understanding of Chinese scholars, Washington has been pursuing a policy of “active neutrality” in the South China Sea. It is a policy of “neutrality” in the sense that the US has openly stated that it does not support the territorial claim of any party and does not intend to get involved in the imbroglios. But it is active in the sense that it has repeatedly warned against any forceful means to solve the problem and any action that would impede the freedom and safety of navigation and the overall stability in the region. It is also an active policy in that the US has quite strongly insisted on having the freedom of using the South China Sea, including China’s EEZ (Exclusive Economic Zone) to conduct military surveillance activities. The US government has openly stated that it would protect the interests of American oil companies which assist other claimant countries in energy exploitation in the South China Sea. Various US-led naval exercises in the South China Sea have reinforced the Chinese analysts’ negative view of Washington’s role in the disputes. Overall, many Chinese analysts conclude that the US has continued to pursue a strategy of military preponderance in the South China Sea area and has become more active in the disputes as part of US strategy to contain or constrain China’s rise.
In recent years, China has begun to pay more attention to the South China Sea, hoping to reap the potential energy resources. In 2005, the Chinese Ministry of Land and Resources identified the South China Sea as one of the ten strategic energy zones and made plans to accelerate efforts to exploit the deep water oil and gas in the region. CNOOC (China National Offshore Oil Corporation) and several scientific research institutes in China have stepped up efforts to further study the oil and gas reserves in the deep water area in the South China Sea. Despite doubts about the reported huge reserve of oil and gas resources in the South China Sea by various international experts, the Chinese seem to be quite certain of the prospects of harnessing energy resources in the area. Zhang Fengjiu, a senior engineer at the CNOOC, reports that up to the year 2007, China has discovered 323.5 billion cubic meters of natural gas in the South China Sea. He also notes that China has been extracting about 6 billion cubic meters of natural gas in the South China Sea annually, accounting for 88 percent of China’s natural gas production in the sea. Various research institutes in China have started a comprehensive study on methane gas hydrate (the so-called combustible ice) in the South China Sea. In August 2006, China announced its plan to invest RMB800 million in studying the exploration of combustible ice in the South China Sea and intended to trial extract before 2015. It is estimated that the reserve of combustible ice in the northern part of the South China Sea would amount to 50 percent of all the oil reserves in the land area of China.

CNOOC plans to invest RMB200 billion (US$29 billion) before 2020 to set up 800 oil platforms in deep water areas. The company plans to produce 250 million tons of crude oil equivalent in deep water areas by 2015 and 500 million tons by 2020. CNOOC is now stepping up efforts including developing the required technology, equipment and human resources to meet these targets. CNOOC has signed contracts with American, Canadian, and British oil companies to explore and exploit the oil and gas resources in the northern part of the South China Sea. In recent years, CNOOC, in cooperation with its partner Husky Energy, has successfully discovered three areas of natural gas reserve on Block 29/26 in the Pearl River basin in the eastern part of the South China Sea. On February 9, 2010, the CNOOC announced its latest discovery: the Liuhua 29-1 exploration well tested natural gas at an equipment restricted rate of 57 million cubic feet (mmcf) per day. According to Husky, “the three natural gas fields; Liwan 3-1, Liuhua 34-2, and Liuhua 29-1 have confirmed the resource potential as a major gas development project in the South China Sea and supports an earlier estimation of petroleum initially in place of 4 to 6 tcf (trillion cubic feet) for the Block.”

In addition to CNOOC, CNPC (China National Petroleum Corporation) and Sinopec (China Petrochemical Corporation) have also been granted areas in the South China Sea and they have decided to make major investments in the deep-water oil and gas projects in the South China Sea. Given the enormous Chinese interest in energy resources in the area, China may continue to emphasize its “shelving disputes and joint exploitation” policy in the South China Sea. But at the same time, since many regional claimant states are not strongly interested in the Chinese proposal, it is quite likely that China may also step up efforts to unilaterally exploit the resources in the Spratlys in the foreseeable future.
Given all these changes that have taken place inside and outside China and the rapid rise in China's expectation for tangible material benefits, China is unmistakably poised to step up its efforts to assert its interests in the South China Sea region. These apparently Chinese assertive actions have other purposes that may be irrelevant to the South China Sea disputes. In early 2009, the air force of the Guangzhou Military Region conducted a large-scale exercise in the far South China Sea. Many Chinese analysts regarded the exercise, in particular the airborne refuelling of China's indigenous J-10 jet fighters, as a deterrent signal that China sent to other claimant states in the South China Sea. The exercise indicates that China is “gradually taking steps to adopt a more assertive strategy” towards the South China Sea disputes instead of simply issuing diplomatic protests as it had done in the past.32

In March 2009, China sent its fishery administration vessel 311, the largest fishery patrol vessel converted from a retired warship, to patrol the Paracels. In May, another fishery administration fleet patrolled the Paracels area again. On April 1, 2010, two Chinese fishery administration vessels set off for the South China Sea to protect the fishing activities of Chinese fishermen. This time, unlike similar patrols in the past, the Chinese government decided to conduct regular patrols in the Spratlys area. At the sailing ceremony, Liu Tianrong, a senior official at the Fishery Administration of the South Sea Area, said that that the crews of the two vessels were determined to counter piracy, resist the arrest and expulsion of Chinese fishing boats by opposing states, and reinforce Chinese sovereignty in the South China Sea.33 Four days later, the Chinese fishery administration fleet arrived at an area at the southern end of the Spratly archipelago (N5°30') to protect Chinese fishing boats. This area is traditionally known by the Chinese fishing community as the “Southwest fishing area” because it is located in the Southwest of the Spratlys.34 From late March to early April, a flotilla of the PLAN North Sea Fleet sailed a long distance to the South China Sea and conducted naval exercises.35

China’s enforcement capabilities still remain “balkanized and relatively weak” as compared to other major powers.36 Hence, over the last decade, China strived to enhance its maritime enforcement capabilities including “unprecedented capability” of using satellites to monitor and conduct operations along its disputed maritime periphery.37 Increasingly, China has begun to apply its capability to protect its interests in the South China Sea. In much of 2010, the outside world was concerned about the Chinese claim of treating the South China Sea issue as one of its “core national interests.”38 Although it is still unclear how, why, and under what context the Chinese officials made the remarks, the fact that China has neither officially clarified nor refuted such rhetoric indicates that some segments in China do intend to be more serious about protecting China’s own interests in the South China Sea.

Implications for China-ASEAN Interactions in the South China Sea

What does China’s non-confrontational assertive policy posture in the South China Sea imply for ASEAN and its claimant countries in the dispute? Essentially,
it means that in the coming years, other claimant countries will be prepared to deal with a China that is more likely to use pressure tactics on contentious issues between them. Beijing is less likely to make concessions on the South China Sea issue. Beijing is reluctant to reach a legally binding code of conduct and present a clearer stance on the “my sovereignty” precondition for joint development schemes in the South China Sea. As China starts to be more active in protecting what it perceives as its own national interests in the South China Sea, disputes and skirmishes are likely to occur. Unilateral actions by ASEAN claimant countries in the South China Sea would likely beget Chinese counter measures and in fact might be used by China as excuses to assert its own interests. This vicious circle of events, if it happens at all, will have a significantly negative impact on China-ASEAN cooperation in non-traditional security cooperation and regional economic integration.

At the same time, leaders in ASEAN countries may find it useful to note that China has little intention to see any major confrontation with Southeast Asian neighbours. Despite emerging signs of China becoming more assertive, there are significant constraints that could limit China’s muscle-flexing. China faces several dilemmas in the South China Sea disputes. First, the predicament of keeping the balance between the protection of its sovereign and other maritime interests in the South China Sea and at the same time, sustaining a peaceful and stable relationship with Southeast Asian countries, particularly direct claimant states. Southeast Asia has been often dubbed as China’s strategic backyard. Beijing needs to maintain good relations with its Southeast Asian neighbours in order to diffuse the “China threat” thesis, cultivate a positive China image in the international scene, and push for multipolarization in world politics. A heavy-handed Chinese approach could easily swing other claimant states to the security embrace of the United States and other external powers such as Japan and India. Second, Beijing has to constantly encounter the difficult maritime disputes with Japan in the East. The challenges in the East Sea are no less daunting than those in the South China Sea. In fact, in recent years, there have been numerous emerging crisis situations between China and Japan. Japan is a much stronger rival, both in terms of economic and military power, for China in the maritime domain. The challenge for Beijing is how to avoid the simultaneous occurrence and escalation of maritime conflicts in the East and in the South. In this sense, China will have to tread carefully in the South China Sea in order to avoid a two-front confrontation in the maritime domain. Third, perhaps most importantly, China’s political elite are mindful that the most central task for China is to focus on domestic socio-economic development for decades to come. Chinese elite firmly believe, perhaps rightly so, that a peaceful and stable environment, particularly in its East Asian neighbourhood, is indispensible for sustained domestic economic growth.

Given this context, China is likely to practice self-constraint so as to avoid a major confrontation with Southeast Asian countries. Beijing is also likely to reciprocate any regional states’ goodwill to prevent any crisis from escalating into a confrontation. All these essentially mean that there is a good window of opportunity for the two sides to maintain the status quo and manage the dispute well. It would be useful if the two sides could attempt to set up more effective
mechanisms for crisis prevention and crisis management. The two sides could also work harder at explaining their strategic intentions to each other. Needless to say, such explanations will not completely dispel the distrust between the two countries, but they might help in mitigating mutual misunderstanding. In this sense, it is important for both sides to maintain regular high-level communications.

What ASEAN could further do is probably to continue to work on regional institutions and norms. The pace of regional institutional building has been slow in recent years but it is better than nothing. Regional institutions have always provided a suitable conduit for the leaders of China and ASEAN claimant states. One should not downplay the socialization effect of interaction between regional institutions. Efforts to further develop norms in regulating regional international relations should continue and ASEAN could continue to play the driver's role.

The opportunity to push for joint development in the South China Sea is not totally lost as long as ASEAN claimant countries are amenable to the idea. To push for win-win deals, one step that China could undertake is to further clarify its position on its claims in the South China Sea. For many years, Beijing has pushed for a “joint development” scheme in the South China Sea. But at the same time, China has insisted that other claimant states have to recognize Chinese sovereignty in the South China Sea as a precondition. As one can imagine, regional states have absolutely refused to accept the Chinese precondition.

In light of the emerging consensus among Chinese scholars on the definition of the U-shaped line and bilateral and multilateral practices that have taken place in the South China Sea, it is possible for China to more clearly define the implications of its U-shaped line and practice significant flexibility in its “my sovereignty” precondition.

According to a Chinese maritime strategist, generally speaking, there are four views and interpretations of the U-shaped line. The first view is that the islands and their adjacent waters within the line are areas of Chinese jurisdiction. This is also the official position: “China enjoys indisputable sovereignty over the islands and their adjacent waters in the Spratlys.” Still there is ambiguity over the extent of “adjacent waters.” The second view is that the line is the boundary of China’s historical rights, including sovereignty over the islands, islets, atolls and shoals and all the natural resources in the waters, while allowing other countries to have the freedom to navigate, over-fly, and lay cables and pipelines under the water. The third view, largely held by some Taiwanese scholars, indicates that the South China Sea should be China’s historical water, meaning that the area is China’s internal water or territorial sea. The fourth view is that the line represents national territorial boundary. Everything within the line is Chinese territory.

Some Chinese analysts believe that Beijing should provide a more clear-cut explanation to the U-shaped line sooner rather than later given the fact that other regional claimant states have stated their EEZ and continental shelf in the South China Sea and the fact that regional states have been aggressively exploiting the oil and natural gas resources in the area. The talks with Vietnam
on the demarcation of maritime zones and resource development in the south of the Tonkin Gulf have added to the urgency for China to clarify its position on the U-shaped line. China will need to publicize its maritime base line in the Spratlys and EEZ and continental shelf zones. All these measures are urgently needed because the Chinese patrol missions need to be based on certain legal grounds. Without these legal measures, it is difficult for the Chinese patrol crews to determine the boundary of their patrols and actions appropriate to protect China’s maritime interests in the Spratlys.

The debate in China has arrived at a point where China can now offer a clearer position on its claims in the South China Sea. Chinese analysts are aware that the possible Chinese claim of owning the South China Sea as its internal water, territorial water, or historical water is weakened by the government’s pronouncements regarding freedom and safety of foreign vessels and aeroplanes in and over the area. The fact that the dotted lines are symbols typically used for undetermined state boundary indicates that China may not be able to claim the area as part of its territory. It is also argued that in the process of promulgating the South China Sea map and the dotted lines in the late 1940s the explicit intention of the Chinese government (ROC) was to decide and publicize the boundaries and sovereignty of the Paracel and Spratly archipelagos. The Chinese government at that time did not intend to claim the whole water area of the South China Sea.

There seems to be a widely held view that the nine dotted lines are not China’s territorial boundary but support China’s sovereign rights over the islands and islets and other relevant rights over the natural resources in the South China Sea. Chinese maritime legal experts have taken note that the notion of “historical water” has become less relevant in international maritime delimitations. Moreover, China had objected the Vietnamese claim of historical water in the Tonkin Gulf demarcation. Many Chinese scholars believe that China enjoys “historical rights” in the South China Sea implied in Article 14 of the 1998 Chinese Law on the EEZ and Continental Shelf: “regulations in this law do not affect the historical rights that the PRC should enjoy.” They argue that China has both legal rights that are derived from the UNCLOS and historical rights that are derived from the U-shape line. These rights would include sovereignty over the islands and their adjacent waters and rights over the natural resources within the U-shaped line.

In practice, China has shown considerable flexibility in its “my sovereignty” precondition in relation to joint development. In various official proclamations, Beijing has only claimed “sovereignty and sovereign rights over the islands and their adjacent waters” in the South China Sea. China has openly stated that it would allow the freedom of international communications in the South China Sea including maritime navigation, flights in the airspace over South China Sea, and the laying of cables and pipelines on the seabed. The China-Philippine-Vietnam joint seismic study which was essentially part of “joint development” did not require any recognition of China’s sovereignty in the area under study. China has already accepted “joint development” in its EEZ and continental shelf in the East China Sea with Japan and in the Tonkin Gulf with Vietnam. In neither case
did China require the other party to accept Chinese sovereignty as a precondition. China also firmly rejected Vietnam’s suggestion of treating the Tonkin Gulf as an area of historical water during their demarcation negotiations. China is actively negotiating with Vietnam over “joint development” in the area south of the Tonkin Gulf which is essentially part of the South China Sea.

For “joint development” to take place, China may consider some flexibility with regard to the “my sovereignty” precondition. In fact, all other claimant parties should also drop any position on sovereignty for any joint exploitation proposal because according to UNCLOS no country enjoys full sovereignty beyond territorial sea. Insisting on “my sovereignty” contradicts with the notion of “shelving disputes.” After all, the proposed “joint development” plan is not about the islands. If China could take the lead to further downplay sovereign claims in the waters of the South China Sea, it would significantly remove a barrier to “joint development.”

A clearer Chinese position on its claims in the South China Sea and Chinese willingness to push for benevolent objectives, i.e. truly win-win situations, would facilitate serious discussion of some grand proposals that have emerged. Xue Li, a senior strategic analyst at the Chinese Academy of Social Sciences, proposes a Spratly Energy Development Organization to include all the seven claimant parties to jointly explore and exploit the energy resources in the Spratlys area. Some Chinese scholars also believe that it would be a good idea to establish a South China Sea economic circle. Further downplaying sovereignty in the waters of the South China Sea would certainly help the realization of the Pan-Beibu Gulf Economic Zone, now quite enthusiastically pushed by the Guangxi Ethnic Zhuang Autonomous Region in China.

Joint development and closer economic integration around the South China Sea could be the first major step towards a reasonable final solution to the disputes. The Chinese believe that the “shelving disputes and joint development” proposal has a benevolent intention. They consider the proposal as the means, not the end, towards the larger goal of finding a final solution to the disputes. They believe that joint development could help enhance understanding and gradually build consensus through cooperation so that in the future, various parties could find more realistic options to solve the problem once and for all. In the future, it may even be possible to submit the disputes to international arbitration in the future.

**Conclusion**

China’s policy on the South China Sea issue has been shaped by many factors including domestic politics, public sentiment, domestic economic development, and most important, China’s own strategic calculation. The configuration of major factors that helped determine Beijing’s approach to the dispute changed through time, but obviously China’s strategic thinking has had the most important impact on its decision. This paper has demonstrated how Beijing’s strategic calculations in the decade since the late 1990s have entailed a more or less moderate approach to the South China Sea conflict. It is China’s strategic priority in striving to shape a stable and peaceful international environment, particularly in its neighborhood, that essentially limited China’s choices in
dealing with the dispute. “Calculated moderation” was very likely the only logical
and possible option for China.

Starting in recent years, the context for China’s strategic thinking has somewhat
changed. Beijing now understands that its strategic position has slightly changed
to its favor even though the fundamentals of the geo-strategic structure in East
Asia may have not changed at all. China appears to be less worried about the
possibility of any formal containment or constraintment policy in the region that
might very likely be led by the United States. Beijing’s perception of its own power
and capability has also changed. Whereas in the past two decades it felt it was
weak and vulnerable, now it has gained much confidence in handling touchy
regional issues. Together with this perception of power growth, no matter real or
not, Chinese nationalism seems to be on the rise as well. Assertive nationalism
in China has become an effectively double-edged sword for the decision makers
when it comes to territorial and sovereignity disputes with neighboring countries.
Also, energy security has become an increasingly more important component in
China’s strategic thinking as well. All these new trends essentially mean that China
is likely to be more assertive in handling regional disputes in the coming years.

But at the same time, there is little evidence to show that China intends to practice
pure coercion or confrontation towards its maritime neighbors. Some of the
fundamental elements and the context of China’s previous strategic thinking still
exist. What is likely to take place in China’s actual behavior in its management
of territorial disputes in the region can be characterized as non-confrontational
assertiveness. Its assertiveness is likely to be manifested as intransigence, non-
compromise, piecemeal reinforcements, and stern counter-measures in response
to “intervention” by external powers.

In response to China’s non-confrontational assertiveness, ASEAN (or some ASEAN
countries) may attempt to play the balance of power game by getting external
powers, i.e. the US involved in the dispute. This strategy might be effective to
some extent in taming China’s assertiveness. Overly playing this game may also
result in China hardening its position and adopting counter-measures which
may further complicate the South China Sea dispute and damage the bilateral
relations between individual ASSEAN countries and China. ASEAN can play a
proactive role in helping shape China’s strategic thinking. It could constantly try
to convince China that properly managing the dispute serves China’s strategic
and long-term interests. It could continue to socialize China in various regional
institutions and forums. What is most important is this: ASEAN (especially those
claimant countries) could perhaps seriously consider the “joint development”
option as there is still fairly strong political and intellectual support for such
initiative in China.

* * *
Endnotes

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INTRODUCTION

Geographical Area of South China Sea

The South China Sea is an area covering part of the Pacific Ocean stretching roughly from Singapore in the southwest to the Strait of Taiwan in the northeast. The area is covered by more than 200 small islands, rocks, and reefs with the majority located in the Paracel and Spratly Island chains. Many of these islands are partially submerged islets, rocks, and reefs unsuitable for habitation. These features also posed a hazard to the shipping communities due to the area being not well chartered. In recent years, claimant countries have built up the area and expand some of these reefs into islands where military garrisons and airstrips are placed to defend their claims.

The importance of South China Sea

There are several reasons as to why the South China Sea is of strategic importance:

i. **Critical trade route**: Much of the trade between Europe and the Middle East and East Asia passes from the Indian Ocean through the Malacca Strait, then up through the South China Sea to China, South Korea, and Japan. Japanese and South Korea defense planners in particular do not want this trade route dominated by China. Japan has shown a strong interest for guaranteeing the freedom of trade. This is due to the fact that Japan’s trade and an overwhelming part of the oil Japan imports is transported through the South China Sea. It is in Japan’s interest that no one party gets strong enough to control the trade throughout the region.

ii. **Oil reserves and fishery resources**: The surrounding seas are believed to contain significant hydrocarbon resources. On 24 December 1989, China made public that it estimated the Spratley’s contained 25 billion cubic meters natural gas, 105 billions barrels of oil, and 370,000 ton of phosphor. These resources should, according to Beijing then, help China to become a developed country. Along with China, the other smaller nation claimants; Taiwan, Malaysia, Philippines, Vietnam and Brunei also has great interest in the South China Sea as a source of revenue for its fast growing population.
iii. Geo-political strategy: The strategic location of the South China Sea as an important sea-line-of-communications adjacent to choke points of Malacca and Singapore Straits is becoming a zone of competition between China and the United States. The Spratly area has military, economic, and strategic importance for all the parties in the conflict. Paracel and the Gulf of Tonkin have the same strategic importance for Vietnam and China. Should one party gain exclusive control over the area, that state would gain total control over the economic development and the trade routes in the region. Apart from that, China is seeking naval preponderance in the South China Sea as part of its bid to become a global naval power. This would include projection capabilities to the Indian Ocean. However, Beijing denies that it has a policy to fill the power vacuum that was created after the departure of the United States. The United States is clearly trying to get back into South East Asian geopolitics after a decade of neglect by the Bush administration which focused more on Afghanistan, Iraq, and the wider Middle East. During this time, China stepped up its influence in South East Asia through increased trade, investment, and use of ‘soft’ power. The United States is weary of China’s intentions and are taking steps to counter China’s strategy.

CURRENT SCENARIO

The South China Sea dispute of late has gained momentum covering headlines on most news media. The assertiveness of China in pursuing her claims in the dispute have strained China’s relations with South East Asian countries (ASEAN) and the United States. China on the other hand blames the other claimants for causing the increase in tension with their assertiveness in stating their claims and thus escalating the dispute.

Essentially, China has reiterated its long-standing claims over the whole of the South China Sea, including the Spratly and Paracel islands through its presentation of the “9 dotted line” map. What China calls their “historical waters” consists of the area in the South China Sea where the Chinese people consider themselves to have preferential rights and historical claims. The historical water is in the shape of a U and includes the Paracels, Gulf of Tonkin, and the Spratlys from China to the border of the Philippines, down to Malaysia and Indonesia. China’s demands are still unspecified to a large extent, and it is unclear if China will demand EEZ, continental shelves, and the formations above and under the sea. This claim, widely figured as absurd, is disputed by Brunei, Malaysia, the Philippines and Vietnam, with each claim part of the islands or the sea. Recently Singapore, which is not a claimant, called on China to clarify its claims “as the current ambiguity as to their extent has caused serious concerns in the international maritime community.” This is a constructive move and China should clarify her claims as the dotted lines are so vague.

In late July 2010, the United States entered the fray. US Secretary of State Hilary Clinton stated that the United States aligned firmly with South East Asia’s approach to overlapping claims in South China Sea. She continued to state that
the United States supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion and opposes the use or threat of force by any claimant.¹ This angered China which regards the South China Sea as an internal matter and its “core interest” of territorial integrity, alongside Taiwan, Tibet, and Xinjiang province.² China lambasted unwarranted interference by United States in matters that do not concern it.

**Sino-Vietnam conflict**

Vietnam and China, who established formal ties in 1950, have had border differences that trace back to the 1950’s. These disputes were deferred while Vietnam was battling a civil war, and the U.S. entry into the conflict tied Northern Vietnam more closely to Beijing. As the Vietnam war wound down territorial disputes began anew.

In 1973, Hanoi announced to Beijing its intentions to negotiate contracts with foreign firms for the exploration of oil in the Gulf of Tonkin, part of the South China Sea. The disputed islands in the South China Sea assume importance only after it is disclosed that they are near the potential sites of substantial offshore oil deposits. In January 1974, Chinese military units seized islands in the Paracels occupied by South Vietnamese Armed Forces and Beijing claimed sovereignty over the Spratlys. In Spring 1975, South Vietnam occupied part of the Spratly Islands. In 1976, North and South Vietnam unified. In 1978, Vietnam’s treatment of the Hoa people - an ethnic Chinese group - became an issue when Hanoi instituted a crackdown on the Chinese community because of its pervasive role in domestic commerce in the South and its alleged subversive activities in the North. Vietnam’s actions forced an unprecedented exodus of thousands of Hoa across the border into China. In November 1978, Sino-Vietnam relations worsened when the Soviet Union and Vietnam signed a Treaty of Friendship and Cooperation that calls for mutual assistance and consultation in the event of a security threat to either country.

In 1988, China and Vietnam fought a naval battle just off the Spratlys Islands whereby 70 Vietnamese sailors were killed. In December 2000, Vietnam and China signed two agreements to resolve a long-standing territorial dispute over the resource rich Gulf of Tonkin. The agreements demarcated territorial waters and exclusive economic zones, as well as outlining regulations for fisheries.

In May 2003, The Vietnamese Foreign Ministry issued a “sovereignty” declaration on the Chinese ban on fishing in the South China Sea, claiming that Vietnam had undisputed “sovereignty” rights over the Paracel and Spratly islands.

In May 25 this year, a Vietnamese ship had its cables cut by Chinese patrol boats while conducting an underwater survey off the South China Sea.

In June 9, 2011; Vietnam’s foreign ministry stated a Chinese fishing boat supported by two Chinese naval patrol craft had cut a cable being used by a seismic survey craft operated by state-run energy company PetroVietnam.
In June 13, 2011; Vietnam held live-fire drills in the South China Sea amid high tensions with China over disputed waters.

**Sino-Philippines Dispute**

In 1995, China’s armed forces occupied the Philippine-claimed Mischief Reef, located 135 miles west of Palawan Island. In 1998, tensions further escalated when China destroyed the original structures built by Philippines on Mischief Reef and replaced it with a three-story concrete fortress. On the same year, Philippine President Fidel Ramos declared that the Spratlys had become a “litmus test” of China’s Great Power ambitions, while his successor, Joseph Estrada, warned that the dispute was about “Southeast Asia’s bottom-line security.” Negative Philippine perceptions of the PRC were reinforced by a perceived lack of sincerity on Beijing’s part to resolve the dispute.

When President Arroyo succeeded Estrada in 2001, her administration gave economic development top priority. Manila looked at the China market, Asia’s fastest growing economy, to help pull the country out of its poor economic situation. Arroyo was determined to prevent the Spratlys dispute from hindering the development of bilateral ties, especially the goal of strengthening two-way trade and investment.

The signing of the 2002 Declaration on the Conduct of Parties between China and ASEAN was a also a factor behind improved relations and a potential breakthrough in the Spratlys dispute. As part of China’s charm offensive toward the Southeast Asian region, Beijing has sought to reassure the ASEAN countries that its growing power does not pose a threat to regional stability. As a result, in 2002 China and ASEAN signed the Declaration on the Conduct of Parties in the South China Sea (DoC) which aimed to freeze the status quo and encouraged the disputants to pursue confidence-building measures (CBMs) to ease tensions. The DoC paved the way for a landmark agreement between state-owned energy companies Philippine National Oil Company (PNOC) and China National Offshore Oil Company (CNOOC) to conduct joint seismic studies in the disputed waters of the South China Sea to assess the extent of the oil and gas deposits in the area. The agreement known as the Joint Marine Seismic Undertaking (JMSU) was signed in September 2004 during a state visit to the PRC by President Arroyo. Manila has characterized the JMSU as “marine scientific research,” one of the CBMs outlined in the DoC. Arroyo hailed the JMSU as a “historic diplomatic breakthrough for peace and security in the region,” while China lauded the agreement as the first step toward implementing Deng Xiaoping’s 1988 proposal to shelve the sovereignty dispute in favor of the joint exploration and extraction of resources.  

In early March this year, the Philippines Armed forces had to dispatch two aircraft to the disputed area of South China Sea to assist a call for help from a Philippine oil research vessel that was being confronted by two Chinese patrol boats.
Malaysia and Brunei

Unlike Philippines and Vietnam, there has been no incident of clashes between Malaysian and Chinese forces nor Brunei and Chinese. There have been sighting reports of Chinese survey vessels and warships in the area of dispute, however, no untoward incident has happened.

OPPORTUNITIES ABOUND

In all its tension raising and insecurities and the worry the dispute might lead to war, the South China Sea dispute provided various opportunities for stake holders who are able to take advantage of the situation. Here are some of the plusses (depending on which side one is on) derived out of the dispute:

i. Greater cooperation. China’s assertiveness has pushed the weaker claimants to seek partnership as the imbalance of power force weaker players to cooperate and amongst themselves to strengthen their position. As the majority of South China Sea claimants belong to ASEAN, ASEAN vehicle was used to engage China. As a result, the 2002 Declaration of Conduct of Parties was signed involving ASEAN members and China. United States also saw opportunities to be involved and play a role in the dispute after a long time absence in South East Asia under Bush’s Administration. The United States have moved towards getting her position known through statements of intent by Secretary of State Hilary Clinton. China is perceived as the bully through her assertive acts against the weaker claimants. The United States in wanting to remain “influential” in Asia-Pacific area, has taken the opportunity to form alliances with countries previously reluctant to take sides especially Vietnam. The United States and Vietnam conducted joint naval exercises in the South China Sea, a sign of increasing military ties between the two former enemies. The week-long activities focus mainly on non-combatant exercises and are part of the 15th anniversary of diplomatic ties between Washington and Hanoi.

The dispute has also provided opportunities for closer military ties between US and Philippines. The United States has indicated that she will come to the assistance of the Philippines should the Philippines come under attack by Chinese forces as agreed under the United States-Philippines Mutual Defense Treaty. In what form the United States will assist the Philippines in this territorial dispute is still unsure. However, it was reported that US Secretary of State Hilary Clinton in a meeting with the Philippines’ Department of Foreign Affairs (DFA) Secretary Albert del Rosario at the US State Department on June 23 that the United States is determined and committed to supporting the defense of the Philippines, and that means trying to find ways of providing affordable material and equipment that will assist the Philippine military to take the steps necessary to defend itself,” Clinton said in a statement cited by the Philippine embassy. A US official said, referring to the Philippine-US Mutual Defense Treaty signed in 1951 that “The Treaty continues to serve as a pillar of our relationship and a source of stability in the region”.

Noor Aziz Bin Yunan
The port call of the aircraft carrier USS Carl Vincent and three other escort ships to the Port of Manila on 16th of May this year further strengthened ties between the two countries. This renewed visit is expected to open opportunities for further similar port calls by other US ships that has long made Philippine port calls a miss. It must be noted that a port visit by ships the size of an aircraft carrier and her escorts (a total of approximately 5000 personnel) to a port will create a sharp spike in the income of those traders involved in the visit and tourism.

On the 29th June 2011, the United States and the Philippines began a series of naval exercises in the South China Sea which is scheduled to last for 11 days amidst growing tension on the dispute. The exercise which is part of the annual CARAT exercise demonstrates US commitment to the security of the Philippines.

ii. Increased defense budget and procurement. The territorial dispute provided opportunities for countries involved to increase their defense budget. Fearing a situation that their armed forces might be blamed for any defeat, the military leadership invariably will ask for more allocation to increase and modernize their forces. Law makers have no choice but to adhere to the demands, albeit according to affordability, in order not to be accused of not supporting the war for national integrity.

China and some countries increased their defense budget. China announced an increase by 12.7% to 601.1bn yuan ($91.5bn; £56.2bn) up from 532.1bn yuan last year. Many analysts say China’s actual spending on defense is far higher than the government reports.

China’s People’s Liberation Army (PLA) uses the issue of South China Sea and other territorial disputes in their defense strategy to increase military capability. Chinese leadership have to show to their people that they are not letting them down by backing their claims. In 1998, China purchased the Russian aircraft carrier Varyag, a multi-role aircraft carrier. Thirteen years after its purchase, it is reported that the carrier, will conduct her first sea trial in August 2011. The carrier was initially purchased by a Chinese businessman to be turned into a casino. In its plan to have carrier-capable fighter aircraft, in October 2006, China signed a deal for the purchase of up to 48 Sukhoi Su-33 Flanker-D from Russia. In September 2008, the PLA announced the recruitment of 50 pilots to undergo specialized training on “ship-borne aircraft flight”. For the time being, China’s carrier will not pose a threat in the South China Sea dispute as it will take a long time before they will be able to operate the carrier as intended. Carriers do not operate alone. They require carrier battle groups to escort and PLA(Navy) is a long way to achieving this. China has the largest fleet of attack submarines surpassing United States. China has 62 whilst the United States has 53.

China is reported to have plans to increase its maritime surveillance force to ensure that the country’s maritime interests are being protected amid increasing disputes with its neighbors. By 2020, a total of 15,000 personnel, compared with
9,000 now, will serve in the China Maritime Surveillance (CMS) force under the State Oceanic Administration. The CMS air arm will be increased to 16 planes and the patrol fleet will have 350 vessels during the period of the 12th Five-Year Plan (2011-2015). The fleet will have more than 520 vessels by 2020.

China’s increase in maritime law enforcement forces is seen as a wise move to reduce the use of military(warships) in areas of dispute. Law enforcement forces are regarded less hostile when deployed in areas of dispute and can help de-escalate a tense situation. The use of warships can be construed as “flexing of muscle” or a show of “gunboat diplomacy”.

Vietnam too has increased their maritime capability as well as air strike capability with the purchase of 8 Sukhoi SU-30 Mk2 fighter jets and 36 more on order. They are also purchasing 6 Kilo class submarines at a cost of $ 2bn. The deals make Vietnam one of the key clients of the Russian arms industry. The weapons purchases come at a time when disputes over sovereignty are increasing in the South China Sea.

Taiwan has in her inventory eight US Perry Class frigates which were recently acquired. She also has six French La Fayette Class frigates and four refurbished Kidd Class guided missile destroyers. The announcement by President Bush in April 2001 that the United States would sell Taiwan up to eight conventional submarines did not make progress. However in December 2007, Taiwan’s legislature approved funding to begin design process for the building of submarines with at least one US submarine builder.

**THE WAY FORWARD**

The focus on nationalism and sovereignty are major reasons why the South China Sea conflict is hard to resolve without creating a loser, which in turn could have severe political repercussion. If the estimates of the resources available in the South China Sea are correct, the economic and financial benefits would be significant for all parties involved. All the nations in the region are dependent on a fast and high growth economies, which demands cheap natural resources for energy. It would be a disaster for all parties to lose the economic possibilities that the South China Sea could contain.

All other nations in the region have similar problems where a rapid increase in the population cannot be supported without external or new resources being brought into the economy, or without a decreased economic development speed. A decreased development speed would create great problems when most regimes in the region base their political position on the grounds on rapid development. This is noted by all nations in the region and has been an argument for cooperation.

One should also take into account that the military build-up by claimants especially China has a negative impact on the negotiation process. There is a fear that the military built up could cause increased tension and possibly conflict since the military preparedness and seemingly willingness to use violence have increased.
There is a great need for Confidence Building Measures in the South China Sea and several researchers have pointed out that progress has been made in that direction. However, more and deeper measures are needed to prevent the conflict from ending in a large-scale war. To this end, the following Confidence Building Measures are proposed:

i. **Exchange of information.** Information sharing is particularly important for security cooperation in the disputed sea areas given the increased number of piracy and robberies happening in the South China Sea area. This can be achieved by establishing a shared database on maritime security in the South China Sea and an information exchange system. These cooperation mechanisms should not only confine to inter-governmental exchanges. It is also necessary to establish mechanisms for promoting exchanges between industries, think tanks, academics and non-governmental organizations.

ii. **Agencies cooperation against maritime threats and disasters.** Opportunities should be created so that government agencies can work together against maritime threats such as piracy, terrorism, people trafficking, illegal fishing, smuggling etc. These threats are of common concern and can jeopardize security in the area. Another concern is that the South China Sea is an area of frequent disasters caused by typhoons and other tropical storms. Cooperation against maritime threats and disaster relief could be the building blocks for mutual security relationship between ASEAN states and China.

iii. **Notification of activities.** It would be prudent, especially when there is heightened tension for claimants to notify each other of any exercises, maneuvers, naval operations and air operations outside of normal areas or near sensitive areas. This can alleviate any suspicion by the other party. Where possible and appropriate, observers should be invited to witness the maneuvers or exercises.

iv. **Reduction of border tensions.** In order to reduce border tensions, claimants should agree on areas that are considered sensitive in which should be demilitarized. An agreement can be worked out so that certain weapons or certain specialized unit should be excluded from these sensitive areas. There should also be agreements on activities considered acceptable or otherwise.

China is reluctant to internationalize the conflict management and/or let a regional organ interfere as a negotiator/mediator. This is due to the fact that a multilateral conflict management would lessen China’s advantageous position in any bilateral negotiation with the other regional actors, who are much weaker. China should accept the fact that the other claimants will not negotiate bilaterally with her and should stop pushing the idea. The ASEAN members still would like to handle the *intra-member* conflicts bilaterally and informally to avoid a split in the organization. All the parties in the conflict, except China, are today members of ASEAN, and would prefer a regional organ such as the ASEAN Regional Forum (ARF) to handle the conflicts that involve China. China can show leadership as a
peace loving nation full of restrain towards its weaker neighbors. China should be less assertive in its claim especially on the 9 dotted lines which is difficult to be accepted by many countries.

The United States has offered to be the mediator to the dispute but was rejected by China who is suspicious of United States neutrality. There is a need for an honest broker or multiple parties to come forward to act as mediator to the dispute at least for the purpose of conflict avoidance. The mediator or mediators of course should be acceptable to all parties in the dispute.

The World Court (International Court of Justice) could also serve as a conduit to resolve the territorial disputes. In order for the World Court to hear a case, however, all disputants must be willing to permit the Court to hear the case and render a binding decision.

Most claimants have agreed to work on joint development of the area in dispute. Each claimant is well aware that settlement of the dispute is a long way coming. The problem with joint development in the South China Sea is its large area of overlapping claim. It would be difficult to demarcate the area to be jointly developed. Perhaps the area to be developed should start small as a pilot project and in areas where the claims are less contentious. At the same time, the area to be jointly developed should not in any way affect the claims of each claimant if ever the matter is to be resolved by the International Court of Justice (ICJ) in the future.

In moving towards mitigation of the conflict, 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 undo. If that can be achieved, the worries of an unavoidable war to break out will be diminished.

**CONCLUSION**

The South China Sea dispute is in many aspects a multilateral conflict that needs multilateral solutions. The multilateral conflict regarding the Spratly islands would be extremely difficult to solve in a bilateral way. If the parties are willing to solve the conflict, they need to increase the multilateral negotiations and agreements.

In this conflict, China is the primary actor; many believe that if China could be convinced to settle the conflict we would soon see the light at the end of the tunnel.

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**Endnotes**

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South China Sea Issue in China-ASEAN Relations: An Alternative Approach to Ease the Tension

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Abstract

The rising tension in the South China Sea since 2009 almost overturns the sound political and economic relations established between China and the ASEAN states since 1997. Better handling of the issue to ease the tension of territorial disputes in the South China Sea is thus the key to good-neighbourliness among China and ASEAN’s claiming states. The ASEAN-China Declaration of the Conduct of Parties (DOC) signed by China and the ASEAN countries in 2002 has not reached its purpose of promoting a peaceful, friendly and harmonious environment in the South China Sea. Instead, the past decade has witnessed numerous clashes between the sovereignty-claimants. Hence, the South China Sea has actually become a potential “battlefield” if consultations or negotiations among the parties concerned have not been effectively or well handled. This paper describes the current overlapping sovereignty claims of related parties around the South China Sea, introduces the mainstream opinions in mainland China toward this critical sovereignty issue, and discusses the evolving academic viewpoints of the Chinese scholars on the South China Sea’s territorial disputes, and attempts to seek an alternative approach to handle these complicated sovereignty disputes and raises some proposals for this purpose.

1. Introduction

The tension in the South China Sea (SCS) among China and the ASEAN’s claming states over the sovereignty has drastically escalated since 2009, which almost overturns the sound political and economic relations established between China and the concerned states since 1997. Hitherto, the relations were usually described as “the “the golden age of partnership”.1 Therefore, better handling the issue so as to ease the tension of territorial disputes of South China Sea among the sovereignty-claiming states is the key to good-neighbourliness among China and ASEAN’s claiming states.

The 1982 UN Convention on the Law of Sea (UNCLOS) created a number of guidelines concerning the statues of islands, the continental shelf, enclosed seas, and territorial limits. However, the guidelines have not solved the territorial jurisdictional disputes, but added complications to the overlapping claims in the
South China Sea. Among those relevant to the South China Sea are: (1) Article 3, which states that “every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles”. (2) Article 55-75 define the concept of an Exclusive Economic Zone (EEZ), which is an area up to 200 nautical miles beyond and adjacent to the territorial sea. The EEZ gives coastal states “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and its subsoil…” (3) Article 76 defines the continental shelf of a nation, which “comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles…” This is important because Article 77 allows every nation or party to exercise “over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.” (4) Article 121 states rocks that cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. Thus it can be seen that the establishment of the EEZ creates the potential for overlapping claims in the South China Sea. Claims could be made by any nation that could establish a settlement on the islands in the region.

The ASEAN-China Declaration of the Conduct of Parties (DOC) on the South China Sea signed by China and ASEAN countries in 2002 also has not reached its purpose of promoting a peaceful, friendly and harmonious environment in the South China Sea. Instead, the past decade has witnessed numerous clashes between China and Vietnam, China and the Philippines, Taiwan and the Vietnam, Vietnam and the Philippines, the Philippines and Malaysia, and Malaysia and Brunei. The South China Sea has actually become potential “battlefield” if consultations or negotiations among the parties concerned have not been effectively or well handled.

After a brief description on the current overlapping sovereignty claims of related parties around the sea, this paper then introduces the mainstream opinions of the Chinese people in mainland China toward this critical sovereignty issue, followed up by a discussion on the evolving academic viewpoints of the Chinese scholars toward the South China Sea’s territorial disputes, along with the development of the situation in the region. From the academic perspective, this paper also attempts to seek an alternative approach to handle the complicated sovereignty disputes, and raise some proposals. First is the establishment of an effective mechanism for this particular issue within the framework of ASEAN-China Strategic Partnership for Peace and Prosperity, with an aim to develop a code of conduct with binding guidelines for actions related to fishery, transportation, oil exploration and etc. Second, bilateral and multilateral dialogues are needed in mitigating tensions over South China Sea, and East Asia Summit (EAS) can play an important role in this respect. Third, emphasis should be put on setting aside disputes for joint maintenance of maritime security, and the governments concerned should pledge not to seek unilateral benefit from security cooperation.
2. Main Actions of Sovereignty-Claiming States in this New Round of Tension of South China Sea Disputes and the Reasons

2.1. Main Actions of Sovereignty-Claiming States since 2009

The South China Sea has long been a disputed region with overlapping claims of sovereignty rights by five countries and six parties, based on reasons as different as century-old principle of discovery, 200-mile exclusive economic zone (EEZ), geographic proximity, effective occupation and control, and vital interest.

As matter of fact, UNCLOS added even more complicating and contradictory factors to the solution of territory disputes in the South China Sea.

The Commission on the Limits of the Continental Shelf (CLCS or the Commission), a body set by UNCLOS to accept submissions of claims by the Coastal States Parties (CSP) to define the outer limit of extended continental shelf.\(^3\)

Due to the approaching deadline (May 13\(^{th}\) 1999) of claiming outer continental shelves (OCS) designed by the Commission on the Limits of the Continental Shelf, the tension in the South China Sea between China and the ASEAN’s claiming states has been increasing since 2009.\(^4\)

On May 6\(^{th}\) 2009, Malaysia and Vietnam made a joint submission relating to an area in the South of the South China Sea. On 8 May 2009, Vietnam made a submission on its own relating to an area near the centre of the South China Sea. Previously, Vietnam had invited Brunei to make a joint submission together with Malaysia. On May 12\(^{th}\) 2009, Brunei had made a submission to the CLCS to show that a disputed area of the South China Sea is also situated beyond 200 nautical miles from the baseline from which Brunei’s territorial sea is measured but Brunei had not protested Malaysia and Vietnam’s joint submission.\(^5\)

While Indonesia is not technically a claimant state, it has a clear interest in the issue, especially as the “nine-dotted line” map, from which the Chinese claim is based upon, actually includes the water around the Natuna Islands. In an interview, Indonesian President Susilo Banbang Yudhoyono, claimed that as the chair of ASEAN this year, one of his top priorities would be to make progress over the South China Sea disputes by bringing China into multilateral talks. However, Indonesia “has not taken the action to submit claims to CLCS. Since the 1990s, Jakarta “has sought clarification over Chinese claims, but has so far failed to receive an unequivocal response.”\(^6\)

The Philippines has not made a submission to CLCS for any area in the South China Sea. The reason for not making such a submission is to “avoid creating new conflicts or exacerbating existing ones.” The Philippines has not protested immediately either Vietnam’s own submission or Malaysia and Vietnam’s joint submission.\(^7\) Nevertheless, on February 16, 2009, the final version of a bill that determines Philippine’s archipelagic baselines was given approval by a legislative committee. The bill placed the disputed islands in the South China Sea - Scarborough Shoal and Kalayaan Island Group - under a regime of Islands of the
Republic of the Philippines, while they were also claimed by the other three parties, Vietnam, China, and Chinese Taipei. On March 10, 2009, the former President Gloria Macapagal-Arroyo signed the bill.

Akbayan party member and academic Dr. Walden Bello has also made a legislative proposal (House Resolution No. 1350) officially name the region the “West Philippine Sea” in order strengthen the Philippine’s claims to these controversial waters and the natural resources found within. On June 10th, 2011, the Aquino government has apparently made it settled doctrine to use “West Philippine Sea” to refer to the waters west of the country via a statement of Malacañang through China’s Ambassador to the Philippines Mr. Liu Jianchao.

On 7 May 2009, China made immediate objections to the Vietnamese submission and Vietnamese-Malaysian joint submissions to CLCF. It protested that these actions infringed upon Chinese sovereignty, sovereign rights and jurisdiction in the South China Sea. China has not made any submission. According to one analyst, “the reason for this is clear: it is impossible to justify China’s U-shaped dotted line using UNCLOS’s scientific criteria for the outer limits of the continental shelf.” At the same time, China has presented the U-shaped line to the UN body “in the context of maritime delimitation” to show that Chinese sovereignty over the South China Sea. In response to the action taken by the Philippine legislature, the Chinese Foreign Ministry issued statements reiterating the Chinese sovereignty over the Huangyan Island and Nansha Islands. Any other country that makes territorial claims on Huangyan Island and Nansha islands is therefore taking illegal and invalid action. In addition, China has sent its patrol boats to the South China Sea to safeguard the interests of Chinese fishermen.

During the 10th IISS Asia Security Summit of Shangri-la Dialogue held in Singapore on 5 June 2011, General Liang Guanglie, the Minister of Defense in representative of Chinese government again reiterated the consistent Chinese government policy toward the South China Sea. He said that China is committed to maintaining peace and stability in South China Sea, and has been actively keeping dialogues and consultations with ASEAN countries in implementing 2002 Declaration on the Code of Conduct on South China Sea, and acknowledged the settlement of the territorial and jurisdictional disputes by peaceful means through friendly consultations and negotiation by sovereign states involved.

2.2. Other Major Factors for this Round of Tension

In addition to the factors mentioned above, several factors adding the tension are illustrated as the follows:

2.2.1. South China Sea Has Become Important Route for Trade and Commerce, Hence Safety of Transportation Has Become Very Important

In the context of the driving forces of economic globalization and East Asian regionalization, the region as a whole has brought forth a higher rate of economic growth through FDI and international trade in the latest two decades. Especially along with the booming of various Free Trade Agreements (FTAs) and Regional
Trade Agreements (RTAs) within and without the region, the shipping route of South China Sea is becoming more and more important for global trade and commerce. Thus for, over half of the world’s shipping by tonnage and the half of the world’s oil tanker traffic sail through these waters every year, intra-Asian trade is now valued at around $1 trillion. Taking the past decade of total trade value between ASEAN and China for example, it has increases from US$395.2 hundred million in 2000 to US$2927.8 hundred million in 2010, according to Chinese official figures, with an increase of almost 6.4 fold. Many of the Chinese and ASEAN member states’ imports and exports as well as the goods from other western countries are most likely to take the sea route. Along with the robustness of East Asian economic growth and economic integration, maritime piracy has also become an issue in the South China Sea since 1990s. According to the annual report of international Maritime Bureau, altogether there were 239 reported pirate attacks in 2006, of which 88 attacks occurred in the South China Sea. The pirate attacks have decreased due to the measures taken by the governments in the region. However, the safety of the shipping route is no doubt still a matter of paramount important.

2.2.2. Rich Marine Resources, Both Living and Non-Living, Are Exploited under Unregulated, Unreported and Even Illegal State Actions That Cause Serious Problems

Since the SCS claimers in Southeast Asia make claims using the 200-sea-mile EEZ as the legal base, the consequences are indeed serious. Clashes between different groups of fishers and between alleged illegal fishermen and maritime law enforcement forces occur regularly in the area. The alleged illegal, unregulated and unreported fishing and oil exploration among claimers have been causing serious problems in the South China Sea not only for marine environmental protection, but also for the harmony of the neighbouring countries around the South China Sea. As the fisheries have been over-exploited and catches have declined over the years, even though the South China Sea is one of the world’s most productive fishing grounds. As Sam Bateman pointed out, “in a large part, this is due to the lack of agreed limits to maritime jurisdiction,” which “…has contributed to over fishing through a ‘beggar thy neighbor’ approach.”

Asia’s vibrant economic growth also has increased substantially the demand for energy. More and more countries in the region have become conscious of energy security as their energy self sufficiency has been declining for years. Oil deposits have been found in most of the littoral states of the South China Sea, the oil reserves of the area has been estimated at about 7.0 billion barrels of oil while oil production in the region is around 2.5 million barrels per day, with Malaysia so far being the most active producer among the claimant states. In addition, the South China Sea also contains rich hydrocarbon resources. According to the estimates by the U.S. Geological Survey, about 60%-70% of the region’s hydrocarbon resources are natural gas. Many hydrocarbon fields have been explored by Brunei, Indonesia, Malaysia, Thailand, Vietnam and the Philippines. As early as in 1998, more than 1000 oil wills were already dug by the countries around the South China Sea in cooperation with many western oil companies. The figure is now expected to rise to about 2000. However, China has not dug a single oil field up to today.
2.2.3. Cold War Mentality of “China Threat”

The third and most important factor is that the cold war mentality of “China threat” is not disappearing but escalating.

I still remember a question I raised in my interview with a well-known scholar of the Philippines 16 years ago in 1995 when I was a Visiting Professor at Ateneo de Manila University of the Philippines at that time, “What China could do to improve the Sino-Philippine bilateral relations?” The answer I received was that “China should expand trade and increase investment in the Philippines.” “China does not have such an image.” On the contrary, “the outflow of Filipino-Chinese merchants investing in their ancestral home had caused the shortage of Philippine investment becoming much more severe.” 16 years have passed while China’s economy has been rapidly growing. China hopes to become a more responsible actor in the region, wishing to share common prosperity with its neighbours through expanding trade, outward investment and foreign assistance to the Philippines and some other less developed ASEAN member states. Ironically, the “China Threat” theory has not disappeared but somehow has become more entrenched. Hence, the question remains whether a prosperous China or a poor China will benefit the region as well as the world?

In fact, some propaganda machines are overestimating China’s economic and military power. Although China’s GDP in total is ranked the second in the world, the GDP per capita of China is still far behind many middle-level income countries. More than 20 million Chinese people are still living under the poverty line, and the disparity between rural and urban areas, East and West, inland and coastal regions is very large. In addition, due to the different way of measurement used in the calculation of economic size, some renowned economists, including Nobel Laureates Joseph E. Stiglitz and Paul Krugman, have reached the consensus that China’s economic growth rate probably is only half of what is officially calculated. The past years have also seen the progress of China’s defense and military modernization. However, such progress is within the legitimate need of self-defense.

Therefore, the saying of “China’s rising” is wrong. It has already been rectified by Chinese academic community as “China’s peaceful development” instead of “China’s rise.” China has promised again and again to follow unswervingly the path of peaceful development that is fundamentally different from the path of colonial expansion that some countries used to take historically. The path taken by China ensures common interests and win-win situations with the rest of the world, and will bring benefits shared by all nations.

2.2.4. US Engagement in Asia

Finally, the intensity of US engagement in Asia in recent years has added a tense atmosphere in the region.

Amid heightening tensions in the South China Sea, U.S. Secretary of State Hillary Clinton made an important statement affirming U.S. engagement in Asia at ASEAN Regional Forum in July 2010. Addressing reporters after attending the
17th ministerial meeting of the Association of Southeast Asian Nations (ASEAN) Regional Forum, Clinton declared, “The United States, like every other nation, has a national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea. We share these interests with not only ASEAN members and ASEAN Regional Forum participants but with other maritime nations and the broader international community.”

Chinese officials were at the beginning alarmed by the US, especially the latter made its intention in such a high-profile manner, but soon realized that Clinton’s position was probably a result of coordinated action with some of the concerned Asian nations. In other words, the US was urged by the officials from the Philippines, Malaysia, and Vietnam to remain as a balancer. The South China Sea claimant states want the US to “continue to have a sizable military presence in the South China Sea so as to weigh in much more heavily on the South China Sea disputes.”

Chinese officials and academics have always cautioned U.S. not to involve itself in the South China Sea issue, publicly or in private. Most recently, the Chinese vice Foreign Minister Cui Tian-kai told foreign media before attending the first round of the China-US consultations of the Asia-Pacific affairs on 22 June, 2011, that “the U.S. is not a South China Sea claimant state, so should stay away from these disputes.” He also said: “I think that some South China Sea claimant states are actually playing with fire with the hope that the U.S. can be of help. Some Americans think that they can help the situation, we appreciate this gesture but this attitude often only makes things more complicated.”

3. Mainstream Chinese Opinions toward the Recent Tension of South China Sea’s Territorial Disputes

Along with the intensified situation in the South China Sea, a lot of discussions and arguments are taking place in China not only among the academics but also in the general public. Like the other claimant states, China’s domestic public opinion tends to be more nationalistic on the issue of the South China Sea.

A public debate erupted in China over this question: Should China officially upgrade the South China Sea to a “core interest,” placing it on par with Tibet, Taiwan and Xinjiang, so that military intervention is justified? The website of the People’s Daily posted a survey asking readers whether it was now necessary to label the South China Sea a “core interest.” As of January 2011, 97 percent of nearly 4,300 respondents said “yes.” The internet survey that I conducted on my own also showed that regardless of age or gender, internet users tend to articulate strong nationalistic voices to defend China’s sovereignty in the South China Sea.

3.1. Perspectives of Military Scholars

Western media have already paid attention to the hard-line position of China’s military toward South China Sea territory disputes. There was actually
an argument how to respond Clinton’s statement of “national interests” in the South China Sea. Using the terms “core interest” or “indisputable sovereignty” Chinese senior military officers weighed in on the debate. Earlier in the year, Chinese military officials reportedly told their American counterparts on at least two occasions that the South China Sea was a “core interest” presumably on a par with Taiwan and Tibet.26

The Chinese military finds it hard to tolerate military exercises of some claimant states with outside powers in the South China Sea in which China is the unspoken target of the exercises. The sudden changes of atmosphere in the South China Sea, caused by the actions taken by some claimant states to submit their claims to the CLCS, no doubts set off a new upsurge of strong nationalism in China. Some voices even suggested that it is the right time to adopt necessary measures to “teach some countries a lesson” and “China is legally entitled to take military action to repel the invaders”.

Almost all of Chinese senior military officials share the same common feeling - “to defend the motherland is the sole responsibility of the military.” As a popular Chinese saying goes, “if people do not attack us, we will not attack them, if we are attacked, we will certainly counterattack.” Nevertheless, the military is under the control of the communist party in China. The military has to listen to the Party and obey the order of the party.

Mr. Han Xudong, an army colonel and a scholar at the National Defense University, argued that a “low-intensity armed conflict” might occur in the South China Sea in the near future if China decides that the peaceful means to stop illegal occupation of the islands in the sea by the claimant states has failed.27 A paper wrote by Mr. Han in Outlook, a policy magazine, that “China’s comprehensive national strength, especially in military capabilities, is not yet enough to safeguard all of the core national interests. In this case, it’s not a good idea to reveal the core national interests.”28 Mr. Zhang Zhongzhao, a well-known military analyst and also a professor at National Defense University, considered that the best time of solving the territory disputes has already passed. He opined that diplomatic negotiations will lead to nowhere.29 He also expressed no confidence in using international judicial process to resolve the conflicts.30 Zhang has maintained that while China hopes to resolve the dispute in peaceful manner, one must have the courage to use sword if it is really in need.31

Scholars from the prestigious Institute of Military Sciences (or Academy of Military Sciences) have also appeared in the media in China to assert China’s sovereignty over the South China Sea. In March 2009, Luo Yuan, a researcher at the Institute and a major general of the People’s Liberation Army, warned other claimant states not to misconstrue China’s restrain as China’s weakness in the area. He advocated for the strategic expansion of China into the sea and construction of a “blue-water” navy.32 In June 2011, Luo, now affiliated with the Research Society on Military Sciences, which is sponsored by the Institute of Military Sciences, contended that China has been a “victim” in the South China Sea for too long. China’s patience and tolerance of the activities of the claimant states will not be forever, and the claimant states in Southeast Asia should stop trying China’s patience.33
3.2. Perspectives of Civilian Scholars

Chinese scholars working in the civilian institutions also offer their opinions and analyses on the South China Sea during this recent round of tension between the claimant states.

Many news and articles have been reporting that in return of Hillary Clinton’s characterization of US “national interest” in the South China Sea, the Chinese government adopts the term “core interest”. Tracing the source, it appeared first in a populist Chinese newspaper, the English-language edition of the Global Times. After Mrs. Clinton’s statements, it published an angry editorial that linked the South China Sea to China’s core interests “China will never waive its right to protect its core interest with military means.”

An article written by Mr. Dai Bing-guo, a member of Standing Committee of Chinese Communist Party, posted on the website of the Department of Foreign Affairs before the end of 2010 has broadened the definition of the term by saying that China has three core interests: maintaining its political system, defending its sovereignty and promoting its economic development. Due to the tense situation in the area at that time, the article has stirred up some strong nationalism in China, and the public opinion has taken the South China Sea and all other sovereignty disputes as falling under “core interests.” Arguably, the term “core interest” has the consequence of making the situation even more complicated.

The Chinese government inclines to use the term of “indisputable sovereignty” instead of the term “core interest” as its official policy, and claims that “China has indisputable sovereignty” over virtually the entire South China Sea, a view which is shared by Taiwan. Both sides of the Taiwan Straits recognize basically the legal status of China’s dotted line in the South China Sea, and scholars from both sides have expressed for many times desires to cooperate on the issue. I suppose the reason to adopt the term “indisputable sovereignty” instead of “core interest” is mainly to express the goodwill of China’s “good neighbour” diplomacy, but it is by no means less assertive.

Many scholars hold the viewpoint that while the Chinese government has adopted a conciliatory and flexible attitude to the issue of territorial disputes in the South China Sea, with an aim to maintain good-neighbourly relations with Southeast Asian countries since earlier 1980s, what it has received from this policy has been constant provocations and hostilities from the claimant states. A near-consensus among these scholars is that China has to do something more pro-active on the issue of the South China Sea, instead of continuing the present policies of “shelving the disputes and working for joint development” and of peaceful settlement of these disputes in according with the UNCLOS. There are strong voices be heard that “the territorial disputes have never been shelved. Joint exploration or development on the South China Sea between the claimant states has not been started, but resources, especially oil and hydrocarbon, have been continuously carved up” while China has not began a single operation in the claimed territory. More than twenty years of China’s commitment to good-neighbour policy, the situation in the South China Sea has not become any less
messy. As “joint development” has become quite impossible in the present situation, the Chinese can only take the measure of “active presence, moderate development” in the South China Sea.

The practice of cooperating and working together by some claimant states in this new round tension raises a new question: whether territorial disputes are now to be solved through ASEAN? More important than this, the disputes in the South China Sea are also teaching a lesson to the Chinese government: that China’s economic “helping hand” in the region will not lower the tensions and hostilities resulting from the disputes and will not solve these disputes.

4. Conclusion: An Alternative Approach to Reduce Tension in the South China Sea

Like other Southeast Asian claimant states, the Chinese government is also under the public pressure regarding the South China Sea. If China gave away more territory to foreign states, the national honor would be under attack and the people and the military would question the legitimacy of the government. It is of the outmost importance that the government is not considered by the people or the military as internally or externally weak, which in turn could have severe political consequences.

China’s South China Sea policy at the moment has not changed much, as General Liang pointed out in his speech at the 10th IISS Asian Security Summit during 3-5 June 2011. The core of China’s policy has been characterized by Mark Valencia as “Three-No” strategy: “no” to internationalization of the conflict, “no” to multilateral negotiations and “no” to specification of China’s territorial demands. With the deteriorating situation in the South China Sea, there is an inclination on the part of China to be more pro-active to resolve the complicated issue of the South China Sea, or at least to ease the tension, here and now, and not leave it to the next generation. To my understanding and survey, China will firmly insist the first “no”, but will allow some room of flexibility in executing the second “no” and the third “no”. With an aim to reduce the tension and to turn the disputed sea into a zone of peace, freedom, friendship and cooperation, I make some suggestions here as an alternative approach.

4.1. An Effective Mechanism Is Needed To Be Established within the Framework of China-ASEAN Partnership

Since the 2002 ASEAN-China Declaration of the Conduct of Parties (DOC) in the South China Sea is neither a legally binding agreement nor an enforceable document, it “has failed to provide any mechanism or procedure to ensure that the parties comply with their obligation to respect the provisions of this declaration.” The joint working group that has been set up to manage the dispute and monitor DOC’s implementation has “failed to make any concrete progress so far.” Therefore, a new organ (or mechanism) should be established with acceptable rules and regulations, so as to develop the confidence, and to act as a mediator for handling the conflicts when clashes, conflicts or disputes appear. However, the new organ must be within the framework of China-ASEAN Partnership, but include Chinese Taipei.
4.2. Setting Up the Official Track of Multilateral Dialogues within East Asian Summit

The official track of multilateral dialogues aiming at turning the disputes sea into a zone of peace, freedom, friendship and cooperation could be set up within the framework of East Asian Summit, which now includes the U.S., and Russia, called “Ten Plus Eight”. But multilateral dialogues do not mean the internationalization of the issue. The task of the track is to provide some constructive suggestions through multilateral exchanges and interactions, and not engage in any alliance targeting a third party.

4.3. Bilateral-level Negotiation

Last but not least, territorial disputes of the South China Sea have to be solved on the basis of bilateral-level negotiation.

Unlike economic cooperation and East Asian regionalization in which China hopes that ASEAN will play the role of the “hub” while China is willing to be the one of the “spokes”. China’s goodwill toward the ASEAN countries include its willingness to let ASEAN have the leading role to play in regional economic affairs and in bringing “common development and prosperity” to ASEAN member states amid the tide of regionalization.39

The definition of “hub and spoke structure” in economics means that the spokes are the smaller investment vehicles while the hub is considered the central investment vehicle, in which investments from the spokes pool their assets into one central vehicle.

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Endnotes

1 See Palanca (2007).
3 The CSPs can make a full or partial submission, or a joint submission. The CSPs can also submit their preliminary information indicative of the outer limits of the extended continental shelf. Objections to submissions can also be made.
7 Du Tran, “Maritime Boundaries and the Spratlys”.
9 Dr. Walden Bello is a retired professor from the University of the Philippines and he was also a former co-director of South Focus, an NGO based in Bangkok, Thailand.
11 Du Tran, “Maritime Boundaries and the Spratlys”.
12 http://baike.baidu.com/view/2210290.htm


15 Shen (2010).

16 Wu (2009: 100).


18 http://www.eia.doe.gov/emeu/cabs/schina.html

19 Shen (2009)

20 China’s latest defense white paper reiterated that “China adheres to a defense policy that is pure in nature” and “whether at present or in the future, no matter how developed it may be, China will never seek hegemony or military expansion.” Adopted from Liang Guanglie, “A Better Future through Security Cooperation”, speech at the 10th IISS Asia Security Summit, Singapore, 5 June 2011 <http://www.iiss.org/conferences/the-shangri-la-dialogue/shangri-la-dialogue-2011/speeches/fourth-plenary-session/general-liang-guanglie-english/>.

21 Ibid.


25 Question: South China Sea is China’s ‘Core Interest’? <http://www.peopleforum.cn/viewthread.php?id=83118>

26 Carlyle A. Thayer, “The South China Sea”.


28 Question: South China Sea is China’s ‘Core Interest’? <http://www.peopleforum.cn/viewthread.php?id=83118>


36 Li (2010) and Guo (2009).


The definition of “hub and spoke structure” in economics means that the spokes are the smaller investment vehicles while the hub is considered the central investment vehicle, in which investments from the spokes pool their assets into one central vehicle.

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The Code of Conduct in the South China Sea: The International Law Perspective

Nguyen Dang Thang-Nguyen Thi Thang Ha

Abstract

The recent escalation of tensions in the South China Sea demonstrates the weakness of the 2002 Declaration of Conduct in the South China Sea (DOC) as a conflict prevention instrument. Countries in the region are again calling for the adoption of a Code of Conduct (COC) in the South China Sea. But it is unclear how such a code will be negotiated in the future. One thing is nevertheless certain: the ‘new’ COC must depart fundamentally from the ‘old’ COC; otherwise success will hardly follow. It appears with hindsight that the DOC text adopted by ASEAN and China in 2002 is not so much different from the COC version originally contemplated by ASEAN. There are however certain defects in the old version as revealed during the ‘implementation’ of the DOC. It is thus compelling that there be a paradigm shift in the approach to COC negotiations in the coming years. In particular, a future COC should go far beyond a mere statement of general principles on conflict prevention. More importantly, it needs to take into account the geopolitical context of the South China Sea. A set of detailed principles tailored to the regional particularities will facilitate implementation. This instrument also needs appropriate dispute settlement or avoidance mechanisms to ensure its compliance. This paper offer some initial thoughts on what the future COC needs to address and some suggestions on how it can be achieved by ASEAN and China.

1. Introduction

The Declaration of Conduct in the South China Sea (DOC) signed in Phnom Penh in 2002 has turned out to be much less effective than expected in reducing tensions arising from competing activities vis-à-vis the territorial claims in the South China Sea (SCS). After a short hiatus following the signing of the Declaration, the situation in the SCS has kept boiling up since 2007. In particular, incidents in the first half of this year, which are considered as escalating the territorial disputes in the SCS to their highest level ever since the Cold War, serve as a wake up call that the SCS has always remained a significant security flashpoint. These incidents also bear testimony to the fact that the DOC has now become a dead letter.

Against the current backdrop, the time is ripe for the negotiation of a Code of Conduct (COC) in the SCS which has already been envisaged in the DOC and set as a task in the ‘Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2011-2015)’. But it is unclear how such a code will be negotiated in the time to come. One thing
is nevertheless certain: the ‘new’ COC must depart fundamentally from the ‘old’ COC; otherwise success will hardly follow. While diplomatic negotiations are by and large a political process and there are different approaches in conceptualising the COC as a confidence-building instrument for the SCS, it is believed that international lawyers can play some role in and contribute to the adoption of the COC. This paper is an attempt to offer some thoughts on how a COC can be conceptualised from the perspective of international law - the discipline that both authors are most familiar with. This paper is composed of three parts. In the first part, we review briefly the recent tensions in the SCS with a view to demonstrating the fundamental flaws in the present DOC text. We will then offer some reflections upon what COC should address in the context of the SCS before concluding with some further thoughts about the way forward.

2. Background to the SCS

The territorial disputes in the SCS have long attracted attention of scholars and give rise to rich literature from different perspectives. It is thus unnecessary to revisit here every aspect of these disputes. It suffices to recap some basic features of the SCS and the territorial disputes therein to provide the context for the present discussion.

The SCS is the second largest semi-enclosed sea in the world and bordered by China (including Taiwan) to the north and eight ASEAN countries, namely the Philippines to the east, Brunei, Indonesia, Malaysia and Singapore to the south and Cambodia, Thailand and Vietnam to the west. The SCS is of global significance in term of maritime trade as it is the crucial conduit for more than a quarter of the world’s trade volume. The Sea Lines of Communication (SLOCs) through the SCS are of great importance to not only Southeast Asian coastal states but also states beyond the region, such as China, Taiwan, Japan and Republic of Korea who rely heavily on energy supply from the Middle East, Australia and Africa. In military terms, the SCS is also important for naval powers, especially the United States who wants to maintain its global military posture and depends on the SCS transit corridors for rapid deployments between the Western Pacific and Indian Ocean.

In addition to the geo-strategic importance, the SCS also boasts important natural resources. It is generally recognized that living resources in the SCS are abundant and provide important sources of protein, foreign currency and work for the coastal states. It is also noteworthy that most of the fisheries resources in the SCS are either highly migratory or transboundary stocks, such as scad, mackerel and especially tuna - the most valuable and sought-after species. The abundance of marine living resources in SCS is thanks to its high biodiversity with coral reefs being the important nursery and breeding grounds for regional fisheries. There is also widespread perception that the seabed of the SCS holds significant amounts of oil and gas. While commercial discoveries at the margins of the SCS have been made, the oil and gas potential of the central part of the SCS, where exist two groups of disputed islands, remains speculative ‘best guesstimate’ due to the lack of sufficient exploration activities. Nevertheless, the oil factor remains arguably the most important geopolitical calculation of
states in the region, given their increasing energy demands and the surging oil prices.

Paradoxically, the SCS is also fraught with intractable territorial disputes. Among these disputes, the most notorious are the sovereignty disputes over two groups of islands, namely the Paracels and the Spratlys, which are situated to the central north and in the centre of the SCS respectively. While the former is a bilateral dispute between China and Vietnam, the latter involves six parties, i.e. Brunei, China, Malaysia, the Philippines, Vietnam and Taiwan, the last one presently considered by all other claimants as a province of China. The significance of these island sovereignty disputes lies in the fact that these islands occupy strategic location in close proximity to the important SLOCs in the SCS. From a geostrategic and military perspective, possession of the islands helps states get a hold over navigation and security in the SCS.

The scramble for natural resources, especially petroleum resources, of the SCS may also lead to another dispute, that is, the dispute over the status of the insular features within the Paracels and Spratlys. This is a dispute over the interpretation and application of Article 121 of the United Nations Convention on the Law of the Sea (LOS Convention), which provides that only ‘islands’ are capable of having an exclusive economic zone (EEZ) and continental shelf while ‘rocks’ are not. A particular feature can be classified as an island if it can sustain human habitation or economic life. This definition of ‘island’ is however notoriously difficult to interpret and opinions of writers not surprisingly differ as to the classification of the insular features in the SCS. Meanwhile, not all states in the region have expressed their official positions as to whether and which of the insular features in the SCS are classified as islands. If some insular features in the Paracels and the Spratlys are classified as islands under Article 121 of the LOS Convention there will be overlapping maritime zones generated by those features on the one hand and the opposite coasts of the states bordering the SCS on the other. It follows that there may be further maritime delimitation disputes involving the Paracels and the Spratlys in the SCS. In addition to these disputes, there possibly exists another dispute relating to maritime zone claim which however hardly arises from the LOS Convention provisions. This dispute concerns the China’s infamous nine-dotted-line map, which was officially introduced to the international community for the first time in May 2009. Yet China has not articulated what those lines actually mean and thus a dispute relating to this claim has so far remained pure speculation.

In addition to the implications for both the freedom of navigation and economic exploitation in the SCS, the territorial disputes also affect the management of marine living resources in the SCS. Given the absence of well defined maritime boundaries, fisheries in the SCS are hardly properly managed. By the same token, environmental protection in the SCS is also fraught with difficulties.
3. **DOC trial period runs out?**

3.1. **Recent tensions in the SCS**

Since the situation in the SCS has been reviewed in depth and at length elsewhere, this part will highlight the string of events that have recently occurred and raised the already high temperature of the SCS disputes.

The first one in this string of events is the so-called Reed Bank incident, which concerned the reported harassment on 02 March 2011 by two Chinese patrol boasts of a Philippines-chartered vessel carrying out seismic survey near Reed Bank. While the Philippines claims the area which lies about 85 NM from Palawan as part of its EEZ, China asserts its ‘indisputable sovereignty over the Spratlys and adjacent waters’. There are two other controversial events relating to petroleum exploration activities reported of late. On 27 May and 09 June, Vietnam protested against China’s violations of its sovereign rights and jurisdiction after the latter’s vessels cut the cables of seismic survey ships operated by PetroVietnam, the Vietnamese national oil company, on the continental shelf of Vietnam. In the first incident, China argued that the action of its ships was regular maritime law enforcement and surveillance activities in ‘waters under the jurisdiction of China’. In the second case, China however disputed the circumstances surrounding the incident, stating that its fishing vessel had been illegally chased by armed Vietnamese vessels before a fishing net snagged the cable.

The quarrel over factual issues also occurred on other occasions. On 1 June, Vietnam charged armed Chinese vessels with firing warning shots at its fishing vessels near the Spratlys but China dismissed that claim as a fabrication. In a different scenario, the spat between the Philippines and China over the latter’s activities on Amy Douglas Bank was about both fact and law. The Philippines accused China of attempting to erect new structure on Amy Douglas Bank in early June while China denied any intention to occupy or seize the reef and claimed the materials were used for scientific purposes. The ‘legal’ issue is whether the DOC prohibits the erection of new structure on uninhabited question, which will be discussed later.

Amid the escalating tensions in the SCS, China sent its largest patrol ship through the disputed waters and announced that the ship would conduct inspection of foreign-flag flying vessels operating in China’s ‘territorial waters’ while the Philippines also sent its biggest warship to the Spratlys.

The above events alone are exemplary of the ineffectiveness or deficiencies of DOC, which are the subject of the next section.

3.2. **Fundamental flaws of the DOC**

It appears that the DOC text adopted by ASEAN and China in 2002 is not so much different from the COC draft originally agreed among ASEAN. The two major differences between ASEAN’s COC draft and the finally adopted DOC are due to the irreconcilable positions between China and ASEAN concerning the
geographical scope of the instrument and a ban on erecting new structures on uninhabited features, the latter being included within the concept of activity that further complicates the disputes.\textsuperscript{41} In the event, China and ASEAN papered over their disagreements by leaving these two issues out of the final text and the COC was accordingly downgraded to a declaration. Ironically, that skilful but disingenuous negotiating technique now backfires. If China and ASEAN had reached an agreement on these two issues, some of the controversial events mentioned above could not have occurred.

Indeed, it can be argued that the disagreement between China and the Philippines over the former’s construction on Amy Douglas Bank was partly caused by the absence of a hard and fast rule prohibiting the erection of new structures on uninhabited features.\textsuperscript{42} Likewise, the petroleum exploration-related incidents can be considered attributable to the absence of geographical scope of the DOC. By glossing over this most important matter, the parties now suffer from the pitfalls of the absence of defined disputed areas. It is not difficult to understand that states are far from in agreement on this issue, not least because the claimant states have different views as to what features are in dispute and how much maritime zones they generate under the LOS Convention. Furthermore, the dubious status of China’s nine-dotted lines also exacerbates the situation. The absence of a common understanding as to the disputed waters in the SCS may, as will be shown, have further implications for all states bordering the SCS.

The old COC/DOC approach also contains some further inherent fundamental flaws. First, it is self-contradictory that the DOC is a confidence-building instrument but all the activities pursued to build trust and confidence, either unilaterally or jointly, are optional rather than ‘mandatory’. It is therefore not surprising that all activities under paragraphs 5 and 6 have yet to be conducted.

Secondly, the duty to refrain from activities that may further complicate the disputes (so-called the duty of self-restraint) remains vague because the concept of ‘complicated activities’ itself is accompanied by only one single example without any further guidance. Not surprisingly the parties will have different interpretation of this nebulous concept, reiterating their positions during the past COC/DOC negotiations. This is unfortunate because the duty of self-restraint is one of the key obligations in the DOC. In fact, as will be shown, if the parties had elucidated the duty of ‘self-restraint’ in light of international law, incidents relating to petroleum exploration activities might not have occurred.

Thirdly, the absence of a mechanism to verify incident at sea seems to be a neglected issue when ASEAN and China negotiated the COC/DOC. While DOC operates in the same way as binding instruments, that is, its implementation relies on good faith, a mechanism to ensure its implementation seems desirable. The recent disagreements between parties over factual aspects of an incident are characteristic of this shortcoming.

On top of everything else, the whole notion of concluding a COC or DOC to regulate only activities relating to the disputed areas in the SCS is conceptually flawed. The SCS is above all a semi-enclosed sea which should be treated as an integral whole. That territorial disputes exist in the SCS does not change this geographical fact.
On the other hand, the lack of a common understanding as to the geographical scope of the contested waters appertaining to the Paracels and the Spratlys means that most of the SCS is disputed. This hinders the exploitation and management of natural resources in the SCS. Furthermore, the SCS is the link between the Pacific and Indian Oceans, serving as the crucial conduit for maritime trade. Any conflict arising from these territorial disputes will disrupt the SLOCs through the SCS and thus may directly affect the interest of all user states, who are of course not limited to coastal states in the region. It is therefore without reasons that major SCS users voiced their concerns over the escalating tensions in the SCS. In this connection, it should be noted in passing that the SCS is also the place of interactions between naval powers, which may lead to friction due to the different understanding of the applicable laws. The case in point is the conduct of military activities in the EEZ between China and the United States, which gave rise to tension between China and the United States as in the incidents like the EP-3E in 2001 and the USNS Impeccable in 2009.

4. Re-conceiving the COC for the SCS

The foregoing demonstrates the fundamental flaws of the old COC/DOC approach. It is therefore suggested that a new approach be adopted in the upcoming negotiations of a new COC for the SCS should ASEAN and China want to tap the benefits from the SCS and manage the potential conflicts of the territorial disputes there. In this part are highlighted some issues worth considering by China and especially ASEAN member states in conceptualising a new COC in the SCS. But before doing so, some words should be spent on the term ‘code of conduct’ as ASEAN is now talking about a legally binding COC for the SCS.

In ASEAN practice, the term code of conduct has been used to refer to a legally binding instrument, that is, the Treaty of Amity and Cooperation in Southeast Asia (TAC). But the term ‘code of conduct’ in that context is perhaps used as a metaphor rather than a legal term of art. In the case of the old COC/DOC, initially the term ‘code of conduct’ as suggested by the Philippines was not intended to be a legally binding instrument. This can be inferred from the fact that in the draft COC agreed by ASEAN the word ‘undertake’ was used instead of a more imperative language, i.e. the word ‘shall’. That perception is in line with the general state practice, according to which the term ‘code of conduct’ normally refers to a written non-binding set of rules developed to address a specific or general area of regulatory concerns. Such a set of rules is comprised of both binding and non-binding norms under contemporaneous international law and hence its compliance depends on the will of the signatories. A code of conduct as such is not binding as opposed to a treaty, understood as a generic term, which is binding. It is however the voluntary nature that make the codes of conduct more attractive and easier to achieve than treaties in certain areas where the parties have genuine difficulty in implementing their obligations. If the regulatory instrument is a legally binding treaty, failing to comply with an obligation under that instrument entails international responsibility. By contrast, a ‘violation’ of a provision in a code of conduct does not give rise to responsibility under the code for the defaulting state. Yet the non-binding character does not render a code of conduct legally insignificant. After all, the implementation of both treaties and codes of conduct rests on good faith of the parties.
That being said, as a matter of principle, the nomenclature of an instrument does not determine its bindingness or otherwise.\textsuperscript{54} Rather, it is the intention of the parties as seen from the substance of the instrument that renders it legally binding. ASEAN and China are at free will to conclude a binding treaty and designate it as a \textquote{code of conduct}. The above observation of the popular use of the term \textquote{codes of conduct} is in point in so far as it serves to emphasize the merits of a non-binding code of conduct. In any event, the process of negotiating a code of conduct, regardless of its legal force, is akin to that of a treaty.\textsuperscript{55} And a clear understanding of \textit{lex lata} and \textit{lex ferenda} is important in both processes.

4.1. Common themes

Given the characters of the SCS, which is plagued by a number of territorial disputes, there are three common themes that the SCS should address, that is, freedom of navigation, settlement of disputes and sustainable use of the SCS.

Respect for the freedom of navigation in the South China Sea should not be underestimated. This is a matter whose significance is beyond the Southeast Asian region. Every user of the South China Sea has an interest in maintaining the SLOCs in the SCS. While the DOC, as well as its parties, reaffirms that the freedom of navigation in and overflight above the SCS is respected, the connotations of such freedom are not free from uncertainty.\textsuperscript{56} The new COC thus should go further than the DOC by putting flesh on the bones of the freedom of navigation and overflight.

Since the SLOCs are close the disputed islands in the SCS, it is necessary to properly manage these disputes so that conflicts will not arise. Thus, two fundamental principles of international law are also highly relevant in the context of the SCS, that is: (i) states settle their international disputes by peaceful means and (ii) states refrain from the use or threat of force. These two interrelated principles are enshrined in both global and regional instruments.\textsuperscript{57} The COC should reaffirm these principle as does the COC but also needs to go further with regard to implementation by providing for an appropriate compliance mechanism.

The last but by no means least theme, namely sustainable use of the SCS, is more relevant to the coastal states. Indeed, if economic interests figure prominently in the calculations of the coastal states in the SCS, it is reasonable that the utilization of the SCS must be sustainable. The absence of well defined boundaries in the SCS is iminical to the management of the SCS natural resources and environment. While the territorial disputes in the SCS cannot be settled overnight, it is imperative to understand which part of the SCS is disputed and which is not for proper allocation of management functions.

The above three common themes should form the thread running through the future COC, which in turn informs its subject-matter, scope of application and substantive contents.
4.2. Subject-matter and guidelines

In a sense, the new COC is not different from the existing DOC: both are confidence building and conflict preventing instruments. Furthermore, given the high stakes involved in any definitive settlement, the future COC, just like the existing DOC, does not aim to solve the sovereignty dispute over islands and the related issue of maritime delimitation. Both the COC and the DOC are concluded without prejudice to the existing positions of the states on their territorial disputes in the SCS.

On the other hand, the COC should depart from the DOC in one important way. While the DOC aims to regulate activities relating to, in one way or the other, the disputed islands, the future COC should go beyond that, having as its subject-matter all activities in the South China Sea which are not readily regulated by the LOS Convention. Though the LOS Convention is considered as ‘a Constitution for the Oceans’ in the sense that it provides a comprehensive framework for all activities at sea, it is our belief that there are many areas the regulations of which are either ineffective or contestable. Broadening the subject matter of the COC has the rationale that the SCS boasts not only intractable territorial disputes but also economic potentials.

Furthermore, the framers of the future COC should glean lessons from the failure of the present DOC as far as compliance is concerned. To this end, the COC should be as detailed as possible, especially with regard to prohibitive and permissible activities in the disputed areas. There should also be in place a stringent mechanism to ensure compliance and settle dispute relating to the interpretation and application of the COC.

4.3. Scope of application

With the above subject matter, it is conceivable that the geographical coverage of the future COC will be the whole SCS. Focusing only on the disputed areas from the SCS runs counter to the idea that the SCS is a semi-enclosed sea and needs to be treated as an integral whole. On the other hand, having the COC applying to the whole South China Sea does not mean it is no longer necessary to define the contested waters relating to the disputed offshore islands and the legitimate and undisputed maritime zones of the states bordering the SCS. Quite to the contrary, such an exercise is necessary because the implementation of rights and obligations of states under the law of the sea predicates upon the well defined boundaries of their national maritime jurisdictional zones.

Despite the fact that the claimant states have yet to reach a common understanding on the status of the disputed insular features in the South China Sea, it is submitted that the relevant rules of the international law of the sea, including the principles relating to maritime delimitation, already provide a solution as to how the legitimate and undisputed maritime zones of the coastal states can be defined. The aim of maritime delimitation is that of equitable solution with the principle of proportionality being a test for equitableness. Therefore, for the sake of argument, if we accept that the insular features in the South China Sea are classified as islands under Article 121 of the LOS Convention, the length of the
combined coasts of these features is much lesser than that of the respective opposite mainland coasts. It follows that the insular features cannot compete with the relevant coasts of the literal states in generating their respective EEZs and continental shelves. There is indeed authority to support the view that the features in the South China Sea have limited effect in comparison with the relevant mainland coasts in generating maritime zones.\(^63\) In other words, regardless of whatever status these features in the South China Sea may attain, the coastal states can always extend their EEZs and CSs to the maximum extent possible. Whether this maximum extent is 200 nm or less depends on the distance between the insular features and the respective opposite coasts. However, if this principle, which is legally sound in the light of the case law of the international courts and tribunals, is accepted, it is not difficult to work out the exact coordinates of the limits of these coastal states' legitimate and undisputed maritime zones.

What will be the status of the maritime space in the centre of the South China Sea beyond the national maritime jurisdictional zones generated by the mainland coasts? This is a legal question relating to the interpretation and application of Article 121 of the LOS Convention which is best answered by an independent judicial body. The states concerned may think of having recourse to the dispute settlement mechanism under the LOS Convention to find a legal answer to it.

Pending an authoritative determination of the status of the Paracels and the Spratlys and for the purposes of the COC, which is without prejudice to the positions of the parties, it is suggested that this maritime space can be treated as the waters appertaining to the disputed insular features in SCS. In other words, some of these features are treated as islands under Article 121 of the LOS Convention so that there will be no high seas or Area in the SCS. Of course, an agreement by the parties to the COC that there are no high seas in the SCS necessarily impinges upon the rights of third states. But this is perhaps the only solution acceptable to China who already states that these islands can have EEZ and CS of their own. On the other hand, if the freedom of navigation in the SCS be respected such an agreement should not be impugned.

With regard to the above scope of application, there will arise several critical substantive questions that need to be addressed by the future COC to which we now turn.

**4.4. Substantive contents: some thoughts**

A future COC should go far beyond a mere statement of general principles on conflict prevention. More importantly, it needs to take into account the geopolitical context of the SCS. A set of detailed principles, which is exactly a code of conduct means in practice, will facilitate implementation. Furthermore, the instrument should also envisage some kind of monitoring or compliance mechanism. In this part, we would like to offer some thoughts on three issues: unilateral activities in the SCS, cooperative activities and compliance procedure.
4.4.1. Permissible and prohibitive activities

That the SCS with abundant natural resources is important to economic development of coastal states makes the idea of a comprehensive moratorium in disputed areas in the SCS incomprehensible.\textsuperscript{64} It is especially so given the fact that a solution to the SCS disputes is not in the immediate prospect. Furthermore, the idea of an absolute moratorium is also vulnerable to abuse when states may act in bad faith and make extravagant claim to expand the disputed areas.\textsuperscript{65} On the other hand, when there exists a real dispute, the prospective interests of claimant states need to be protected. Thus a more comprehensible approach is to make a distinction between what states can do unilaterally in the disputed areas and what state cannot.

While an exhaustive list of prohibited activities is impossible, the mentioning of only a single example in the DOC is regrettable. Worse still, without any further guidance, the definition of complicated activities is therefore left in the eye of the beholder. On the other hand, there are rules, as will be explained immediately below, from which analogy may be drawn to shed light on this issue. Thus, while it is necessary to list, as long as possible, the prohibitive activities in the disputed areas, the future COC should also set out a benchmark against which states may establish whether a particular act complicates the situation or not. As far as the activities in the disputed areas are concerned, the case law of international courts and tribunals are highly instructive and already provide answers to some recent controversies relating to petroleum exploration activities in the SCS. In particular, according to the dictum in the Guyana/Surinam Tribunal,\textsuperscript{66} it is permissible to pursue unilaterally those activities, such as seismic tests, which do not cause a permanent physical change to the marine environment.\textsuperscript{67} By contrast, activities, which lead to permanent physical change, can only be conducted pursuant to an agreement between the parties.\textsuperscript{68} The point here is not to say that the recent incidents relating petroleum exploration vessels contracted by Vietnam and the Philippines occurred in the disputed waters; rather it emphasizes that there are existing standards of conduct that all claimant states should follow in areas they consider as disputed.

The rationale for the Guyana/Suriname Tribunal to make a determination on the permissibility of a particular unilateral petroleum exploration activity is the impact of that activity on the environment, that is, whether the activity in question results in a permanent change to the marine environment or not.\textsuperscript{69} Though the dictum was made in the context of petroleum exploration and exploitation activities, it is submitted that the distinction between prohibitive and permissible activities elucidated has wider scope of application. By analogy, such a distinction may be applicable to the question of erection of new structures on uninhabited features and more importantly to the already extensive fishing activities in the SCS. As to the former, a newly erected structure clearly alters physically the feature in question. In this connection, it should be pointed out in passing that from a legal point of view, the occupation of new feature after the dispute crystallize does not help bolster the argument of the parties. As to the latter question, while sustainable fisheries activities are permissible, overexploitation which may lead to depletion should be prohibited.\textsuperscript{70} Of course,
what can be considered as overexploitation is a scientific question which requires survey and cooperation between the parties.

The permissibility of certain activities in disputed areas a priori gives rise to the need for a common understanding as to the law enforcement scheme in the disputed waters in particular and the whole SCS in general. This is desirable given the fact that the body of rules in this field is less clear under international law. The most easily accepted rule perhaps is that the use of force against civilians in disputed areas is generally prohibited. This follows from the principle that force can be used but only in exceptional circumstances in enforcement activities (in non-disputed area). Other rules on law enforcement, e.g. whether it is possible to enforce one disputant’s laws and regulations against the other disputant’s vessels, are less explicit. Nor is there any dictum of an international court of tribunal in this regard. Given the fact that the disputing states are dispatching more and more patrol vessels to the disputed area, an agreement or arrangement on this matter is highly desirable. In this connection, state practice in concluding provisional arrangements of practical nature to manage maritime disputed areas will provide helpful guidance.

4.4.2. Cooperative activities

While elaborate provisions on prohibitive and permissible activities in the disputed areas can be considered as conflict preventing measures, provisions on cooperative activities can be considered as confidence building ones. In fact, the DOC does envisage in a non-exhaustive manner certain activities which parties should cooperate. Yet, that provision falls prey to the absence of scope of application when the DOC itself provides that ‘[t]he modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.’ It is suggested that the COC should continue to emphasize the need for cooperation as does the DOC. Furthermore, parties to the COC should also take account of the special characters of the SCS and their corresponding obligations under the LOS Convention.

As noted above, the biological context of the SCS is that valuable fish stocks in the SCS are highly migratory, which mandates cooperation between coastal states according to Article 63(1) of the LOS Convention when the boundaries are established. In a sense, the existence, velnon, of territorial disputes in the SCS is irrelevant. Finally, that the SCS is a semi-enclosed sea means coastal states should cooperate with each other in the implementation of their rights and obligations under the LOS Convention as envisaged by Article 123. The said article also points out several activities which call for cooperation, including living resources management, environmental protection, scientific research... States bordering enclosed and semi-enclosed seas are also encouraged to invite ‘other interested states or international organizations’ to cooperate with them in implementing the article. Though Article 63(1) only provides for an obligation to negotiate, which is weak, and Article 123 is only hortatory in nature, it is submitted that the political and economic considerations of the coastal states should come to the fore, which dictate the field and method of cooperation.
4.4.3. Compliance procedure

The development of a COC for the SCS, regardless of how elaborate it is, will be of little significance unless accompanied by appropriate means for ensuring its compliance. In fact, one of the major flaws of the DOC is the absence of a mechanism to settle or help parties settle disputes arising from the implementation of that instrument. On the other hand, the character of the SCS, i.e. a region fraught with many territorial disputes and still wanting in maritime boundaries, should be borne in mind. International courts and tribunals more often than not show hesitation in making any findings on a breach of obligation in territorial dispute situations and in ruling on the consequences arising from such a breach. Furthermore, Asian states are notoriously in favour of soft, diplomatic methods, e.g. negotiation, over judicial means to settle their disputes, especially those relating to sensitive issues such as sovereignty and territories. Finally, if the future COC remained a non-binding instrument, there would be, strictly speaking, no international responsibility arising from a breach of its provisions as such.

Against that background, it is suggested that non-confrontational procedures which do not entail binding decisions should be established to settle or, more properly, help the parties settle their disputes arising during the implementation of the COC.

In so far as many disputes relating to the future COC involve factual issues, the institution of inquiry appears to be very appropriate a mechanism. Inquiry here is understood as an independent institutional arrangement which does not settle the dispute but helps facilitate bridging a disagreement on issues of fact. Though not a popular method for dispute settlement, it is interesting to note that inquiry has worked effectively in some cases of disputes related to incidents at sea. Moreover, a recent regional example is the Singapore’s land reclamation case which was settled amicably by Malaysia and Singapore upon the recommendations of a group of experts appointed by them to investigate the impact of Singapore’s land reclamation activities. The institution of inquiry is in fact not alien to the region. The TAC, to which China is also a party, already envisages the possibility that the High Council constitutes itself into a committee of inquiry upon the agreement of the parties (Article 15).

A logical extension of the inquiry or fact-finding procedure above, which is also a non-confrontational mechanism and worth considering in the context of the SCS, is the so-called non-compliance procedure (NCP) most well known in multilateral environmental treaties. The NCP under the Montreal Protocol, which is generally considered as the most advanced model established so far, can be used as an example. Under the Montreal Protocol, any party to the protocol, the protocol secretariat or even the defaulting party itself can invoke the NCP whenever there appears to be problem with regard to compliance. The matter will be then investigated by an Implementation Committee, which will consider all the submissions, information and observations it receives or requests through the Secretariat in order to find an amicable solution of the matter based on the provisions of the Protocol. A report is made by the Implementation Committee.
to the full Meeting of the Parties, which decides what steps to take in order to bring about full compliance.

Of course, the COC is not an environmental treaty, but in a sense both instruments share the same characteristic, that is, preventative in nature, albeit different in terms of subject matter. For a NCP to work in the context of COC, certainly more studies need to be undertaken but it is fitting that between ASEAN and China there are in place certain institutional arrangements for the NCP to work.94 Most importantly, the merit of the NCP is that it is better conceived of as a ‘dispute avoidance’ or ‘alternative dispute settlement’, which helps avoid binding third party procedures.95 Thus, the NCP is applicable not only to treaties, i.e. legally binding instrument, but also to non-binding instrument.96

Finally, in addition to the two institutions for the settlement of disputes established within the COC itself, parties to the COC should also consider the possibility of having recourse to existing dispute settlement mechanisms which have competence to deal with law of the sea issues. It should be noted that the International Tribunal for the Law of the Sea actually has greater potential than it is normally believed. In addition to its traditional function of settling international disputes, the Tribunal also plays a very useful role of giving advisory opinion on a legal question raised by, inter alia, states in the implementation of their rights and obligations under the Convention. This is an innovative function which was not expressly provided for in the LOS Convention but developed during the drafting of the Rules of the Tribunal.97 Rule 138(1) of the adopted Rules of the Tribunal provides that ‘[t]he Tribunal may give advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion’. Of course, an advisory opinion is not binding. But it is perhaps the non-binding character of such an opinion, which is after all rendered by the foremost law of the sea experts, that has the greatest merit in the context of Asian territorial disputes.

5. By way of conclusion: some further thoughts on the way forward

One of the proposed themes of the future COC is freedom of navigation and this is an issue of concern to not only states bordering the SCS but also all other SCS users outside the region. In fact, it is generally agreed that the SCS issue is an international one, not least because of this issue. Thus, it is necessary to take into account the views of all major users of the SCS when ASEAN and China deliberate the scope and connotations of freedom of navigation in the SCS during their future COC negotiations. It is even ideal for other major users of the SCS to be involved in elucidating this very concept. If ASEAN and China agree to a freedom of navigation concept which is different from that held by third states, the COC will be of little avail in preventing conflicts arising from the real different perceptions of this concept among the major SCS users. Furthermore, ASEAN and China may also need to think of the possibility that the COC can be opened to other SCS users to participate in. The basic rule in the implementation of treaty law is pacta tertiis, according to which a treaty can only be binding upon its states parties.98
We also believe that the role of Taiwan should be addressed in any future arrangement relating the SCS. Though legally, Taiwan is not recognized as a state, it is a matter of fact that Taiwan also borders the SCS and is situated in close proximity to major SLCs through the SCS. Most importantly, Taiwan is occupying the largest feature in the centre of the Spratly Islands and hence is arguably an indispensable partner in any cooperative arrangement relating to the SCS. While it is not absolutely necessary that Taiwan participates directly in the negotiations of the COC, an appropriate mechanism that allows Taiwan to implement the future COC would be commendable. To this end, lessons may be gleaned from Taiwan’s membership in regional fisheries organizations as well as the WTO.99

Finally, as a follow-up to the DOC, the COC should be best negotiated by ASEAN and China.100 It is however not difficult to predict that China might not be enthusiastic about concluding another SCS instrument, let alone a new COC with more stringent provisions than the DOC.101 Thus, the prospect for ASEAN and China to sign the COC is bleak.102 It is suggested that ASEAN be receptive to the idea of signing a COC among themselves.103 Such a COC is, of course, open for accession by other states, including, first and foremost, China. While this idea has been considered elsewhere as a most provocative one,104 there are both practical reasons and legal grounds for such a course of action. It is recalled that ASEAN was established to pursue dual aims, that is, economic collaboration and regional peace and stability in the face of lingering disputes among some of its original members.105 ASEAN is formed not to be against anyone but to align the national interests of individual members with regional interests.106 A DOC which maintains the sustainable use of the SCS in the interests of eight out of ten ASEAN countries who are littoral states can be considered as within the broader aims of ASEAN. Furthermore, the substantive principles envisaged in the COC are to constrain activities of the parties rather than bestowing upon them more extensive rights. Most importantly, the normative framework for the conclusion of the COC is the LOS Convention, to which all claimant states in the SCS territorial disputes are parties. It is hoped that ASEAN member countries will, by their actions, demonstrate the merits of a new COC such that China will reconsider its position and accede. In this connection, China’s accession to the TAC may be a precedent.

In any event, even if ASEAN member countries have yet to accept the idea that a COC can be signed among themselves, they should be ready to take the necessary preparatory steps and to start thinking about a draft of their future COC - a process similar to what they did with regard to the now defunct DOC. And in that process, international lawyers hopefully may play a useful role.

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Endnotes

1 The authors thank the participants at the Conference for their useful comments. Nguyen Thi Thanh Ha would also like to thank Dr. Dang Danh Huy for linguistic suggestions.


5 DOC, paragraph 10.


11 T Kivimaki (ed), War or peace in the South China Sea? (NIAS Press, Copenhagen, 2002), 44, ranks the SCS fourth in the 19 richest fishing zones in the world.


15 PEMSEA (Partnerships in Environmental Management for the Seas of East Asia), Sustainable Development Strategy for the Seas of East Asia: Regional Implementation of the World Summit on Sustainable Development Requirements for the Coasts and Oceans, 2003, 16, states that the SCS is “the global centre of marine shallow-water tropical biodiversity”.

By this term we mean both disputes over island sovereignty and disputes relating to maritime zones.

For these two disputes, see generally, R Emmers, Geopolitics and maritime territorial disputes in East Asia (Routledge, London, 2009), ch 4.


As Schofield notes, the features of the Spratlyls do not have much intrinsic value in themselves but the potential to generate large maritime zones and hence entitle claimant states to exploit marine natural resources there, particularly oil and gas. See ibid., 12-8.


LOS Convention, Article 121(3).

For a useful discussion, see B Kwiatkowska and AHA Soons, ‘Entitlement to Maritime Areas of Rocks which Cannot Sustain Human Habitation or Economic Life of Their Own’ (1990) 21 NYIL 139.


These lines were depicted in the maps attached to Notes Verbales of China sent to the UN Secretary-General to protest against the unilateral and joint submissions by Malaysia and Vietnam of their extended continental shelf claims in the SCS to the Commission on the Limits of the Continental Shelf in May 2009 under Article 4, Annex II of the LOS Convention, modified by Decision regarding

28 Chinese scholars have been active in their discussion of the lines but their arguments divide on both its validity and meaning. Even among those who think the lines are defensible under international law, opinions deeply divide and change over time.

29 A succinct but comprehensive review of the SCC situation after the signing of the DOC up to 2009 is C Schofield and I Storey, ‘The South China Sea Dispute: Increasing Stakes and Rising Tensions’ [2009] The Jamestown Foundation Occasional Paper (The Jamestown Foundation, Washington, DC). The situation has been regularly reviewed in some recent regional and international conferences.

30 For a useful account of this event, see I Storey, ‘China and the Philippines: Implications of the Reed Bank Incident’ (2011) 11(8) China Brief 6.

31 See ibid.


38 G Torode & T Ng ‘Manila sends its flagship to shoal’, South China Morning Post, 18 June 2011.

39 The idea of having a COC in the SCS was first raised by the Philippines who was later entrusted with the task of jointly preparing with Vietnam the ASEAN draft as the basis for discussion with China. The ASEAN draft was adopted in November 1999. For history of the COC, see K Kittichaisaree, ‘A Code of Conduct for Human and Regional Security Around the South China Sea’ [2011](32) ODIL 131; HT Nguyen, ‘Vietnam and the Code of Conduct for the South China Sea’ (2001) 32(2) ODIL 105.

40 There are of course also a few stylistic changes in the DOC. For a comparison of the two documents, see HT Nguyen and T Nguyen Dang, ‘Mot so suy nghia ve Bo Quy tac ung xu o Bien Dong (Some thoughts on the Code of Conduct in the South China Sea)’ presented at Second National Workshop

41 The DOC however keeps the ban on inhabiting presently uninhabited features.

42 Though China did not explicitly made that point.


49 Of course, a rule, which is embodied in a code of conduct but reflective of existing rules of international law, is binding upon the parties to the code on its own right.


51 This does not mean that every violation is without legal effect; if the provision in question contains an international obligation under other sources of international law, independently of the code, a breach of it still entails responsibility.


53 ‘Convention on the Law of Treaties, Vienna, 23 May 1969’ 1155 UNTS 331, Art 26. The difference between a treaty and a code of conduct lies in the consequences arising from the violations of these two instruments. A breach of treaty provision gives rise to international responsibility while a breach of a code of conduct does not.

54 Ibid, Art 2(1)(a).


59 Cf Articles 74(3)/83(3) of the LOS Convention.


61 E.g., IUU fishing, activities in disputed areas and freedom of navigation. The problem of IUU fishing is especially acute due to the absence of well defined maritime zones in the South China Sea. With regard to freedom of navigation, it should be noted that China and the United States have different views as military activities in the EEZ. For discussion, see below.

62 Opinions of writers on this point remain divided. For the view that certain features of the Spratlys, including those occupied by the Philippines, meet the requirements to have their own EEZ and CS, see L-AT Nguyen, The South China Sea Dispute: A Reappraisal in the Light of International Law (PhD thesis, University of Bristol, Bristol 2008), 55-61. See also AG Oude Elferink, ‘The Islands in the South China Sea: How Does Their Presence Limit the Extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts?’ (2001) 32(2) ODIL 169. For contrary view, M Gjetnes, ‘The Spratlys: Are They Rocks or Islands?’ (2001) 32(2) ODIL 191. However, if the claim to disputed insular features in the South China Sea is in fact to acquire further basis for maritime claims, it is politically improbable that all the claimant states will limit the potential maritime zones of the disputed islands. See C Schofield, ‘Dangerous Ground: A Geopolitical Overview of the South China Sea’ in S Bateman and R Emmers (eds), Security and International Politics in the South China Sea: Towards a Co-operative Management Regime (Routledge, London, 2009), ch 1, 7, 12-18, stating that the features of the Spratly Islands do not have much intrinsic value in themselves but the potential to generate large maritime zones.


Guyana/Suriname Award, paras 466-7.

This in turn determines whether ‘the other party’s rights are affected in a permanent manner. See Guyana/Suriname Award, paragraph 470.

See further Nguyen Dang, ‘Fisheries cooperation in the South China Sea’ supra note 65.

This is because law enforcement at sea presupposes the existence of boundaries.

The Guyana/Suriname Arbitral Tribunal, relying on previous cases, opined that “in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary.” See Guyana/Suriname Award, paragraph 445 (emphasis added), citing S.S. “I’m Alone” (Canada/United States), 3 RIAA 1615, Red Crusader (Commission of Enquiry, Denmark-United Kingdom), 35 International Law Report 199, The M/V “SAIGA” Case (Saint Vincent and the Grenadines v. Guinea) ITLOS List of Cases: No 2. This is arguably a customary rule. See D Guilfoyle, Shipping Interdiction and the Law of the Sea (Cambridge University Press, Cambridge, 2009), 277-82. The SAIGA case, also emphasizes that in using force in law enforcement activities “[c]onsiderations of humanity must apply in the law of the sea, as they do in other areas of international law” and that these considerations dictate that “all efforts should be made to ensure that life is not endangered.” See SAIGA case, paras 155-56, the later paragraph citing “I’m Alone” case and Red Crusader case.

Though one of the authors is of the view that a rule may be derived from the existing jurisdiction principles of international law. See T Nguyen Dang, The Elephant in the Room: Law Enforcement in Maritime Disputed Areas, with Special Reference to the EEZ and Continental Shelf, SSRN Working Paper Series, 23 April 2011 <http://ssrn.com/abstract=1871071 >.

The Guyana/Suriname Tribunal however glossed over this issue despite Suriname’s statement that it is normal for coastal states to undertake law enforcement activities in disputes areas (usually in relation to fisheries) and also to do so against vessels under foreign flags including the flag of the other party to the dispute, unless specific arrangements exist. See Suriname’s Rejoinder, 4.33; Guyana/Suriname Award, paragraph 441.

For a review of state practice, see Nguyen Dang, ‘The Elephant in the Room’ supra n 73.

DOC, paragraph 6, which includes: marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation and combating transnational crime.

DOC, para 6.

See further Nguyen Dang, ‘Fisheries cooperation in the South China Sea’ supra note 65.

LOS Convention, Article 123(d).


See Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening), Merits, Judgement [2002] ICJ Reports 303 (where the ICJ refrained from making a finding as to Nigeria’s responsibility arising from its occupation of the territory that the Court ruled to belong to Cameroon); and to a lesser extent, Guyana/Suriname arbitration (where the Tribunal, though declaring Suriname had violated of its obligation, declined to rule on compensation for damages).


Of course, it does not mean that there is no international responsibility if the obligation breached is an obligation under international law.
Inquiry may also mean a process to assist a third-party settlement to resolve a matter of fact. See JG Merrills, International Dispute Settlement (5th edn, Cambridge University Press, Cambridge, 2010), 41.

Ibid., 54-57, points out three reasons for the unpopularity of inquiry.

For summary of these cases, see ibid. 42 ff.

Case concerning Land Reclamation by Singapore in and around the Strait of Johor (Malaysia v Singapore), Award on Agreed Terms, 1 September 2005, available at http://www.pca-cpa.org/upload/files/MASI%20Award.pdf.

Ibid.


In 2001, the High Contracting Parties of the TAC adopted the Rules of Procedure of the High Council, text at http://www.aseansec.org/3718.htm. This Rule 3 provides for the possibility that China participates in the High Council should a dispute involving it arises.


For a full account of Taiwan’s participation in regional fisheries organizations and the WTO, see A Serdy, ‘Bringing Taiwan into the International Fisheries Fold: The Legal Personality of a Fishing Entity’ (2005) 75 BYIL 183.


Ibid.


See ibid.
V. Appendices

Highlights of the Open Forum
Program
List of Participants
Highlights of the Open Forum

Topic 1: Assessment of Recent Developments in the South China Sea and their Implications for Regional Security and Cooperation

1. On China’s current assertiveness vis-a-vis its previous behavior in the 1995 Mischief Reef incident
   - It seems that China’s behavior then was influenced by external factors such as its relationship with ASEAN and its conformity with the multilateralist framework in international relations. In the past, China softened its tone because ASEAN embodied solidarity and consensus. Further, China sought ASEAN’s favor then, and therefore, it toned down its position. China needed a peaceful environment for its “peaceful rise” and had to project a good image.

   - Since the Mischief Reef incident, China has built up its forces. It is now in a stronger position military wise and may not have the same inclination as before to give ASEAN some space.

   - At present, China’s behavior seems to depend on its internal situation and domestic politics and shaped by the reactions from the ASEAN and the US. The upcoming leadership transition is also a factor to consider as no Chinese leader wants to be seen as weak during this transition.

2. On the alleged infirmity of DOC and what can be done about it
   - The DOC may be modified so as to convey a stronger language for cooperation, joint enforcement and self-restraint. The DOC cannot prevent and settle disputes and its contents are not clearly defined. The issue is not so much about whether or not it is a binding or non-binding document as it is needed to clarify certain provisions. For instance, parties should clarify what is meant by “activities that would complicate the dispute” by clearly describing such activities. The talks on DOC implementation do not actually tackle implementation but only a discussion on cooperative mechanisms.

   - China is likely to continue its assertive stance, and in such a case, the DOC is not enough. A code of conduct (COC) is needed which would contain avoidance measures, principles for functional cooperation, rights of coastal and user states, and compliance rules and mechanisms. The COC should reflect agreement on a normative framework and should not be vague in wording.
3. On the issue of international law and the United Nations as means of resolving the disputes

- The DOC contains provisions invoking international law and it utilizes the UNCLOS as the main law covering the disputes. However, China opted out of the arbitration process when it signed the UNCLOS. States must still be realistic when invoking the UN or the UNCLOS because the UN has a very limited power to settle disputes. The legal regime in resolving the disputes must be customary international law.

4. Lessons from Vietnam on what its navy is doing to strengthen its position in the SCS

- Vietnam is increasing the number of its ships and constantly upgrading its naval technology. It also recognizes the importance of using the diplomatic route, of avoiding open conflict, and of not resorting to the military solution in resolving issues such as the SCS dispute.

5. On Taiwan’s participation in the resolution of the SCS dispute

- While Taiwan is a claimant in the dispute, it may not continue to abide by the DOC if it is continuously excluded from negotiations. Only one China is recognized and that is the mainland China. If Taiwan would want to integrate with the international community, it needs to abide by UNCLOS and drop its own unilateral claims over the SCS. This action would embarrass China because China’s claims closely follow Taiwan’s own claims. The problem is that Taiwan is not a member of official bodies. A far-out suggestion would be to use APEC.

6. The SCS dispute in the 18th ARF Ministerial Meeting discussions

- The issue of the SCS dispute will most likely dominate discussions in the ARF. Among the matters that could be discussed include maritime security, measures to calm existing tensions, and guidelines for parties in coming up with a regional understanding on what constitutes acceptable behavior.

7. On an ASEAN Treaty on the SCS

- An ASEAN Treaty on the SCS could ensure that ASEAN as a driver becomes a reality with the creation of a code of conduct for the behavior of claimants and non-claimants in Southeast Asian waters. Such a treaty could clarify the situation and provide the ASEAN with a mechanism for ensuring its own security.

8. On Joint Development Cooperation in the SCS

- While China has been talking about joint development cooperation, the real questions are: who, where, what, and how to go about such cooperation, and whether there is current progress in determining the area for joint development and cooperation. This is a difficult question to answer considering that the areas contemplated for joint development lie on disputed areas, and therefore, are areas of overlapping claims.
10. **On the US’ coming to the aid of the Philippines**

- Under the terms of the Mutual Defense Treaty between the Philippines and the US, both parties recognize that an armed attack in the Pacific area would be dangerous to their own peace and safety and would act to meet the common dangers in accordance with their respective constitutional processes. The question is: Does the Pacific area include the SCS?

- The Philippines is an independent nation that has decided in 1991 that it no longer needed the US. It must stand by this decision and not turn around when things go wrong and ask the US for assistance. Further, the US could claim that since the withdrawal of the US bases in 1991, they have been effectively deprived of an area where they can assist. It must also be noted that the US has a habit of coming and not leaving.

- What the US can do is to allow ASEAN to work towards a regional pact with China, but this should not be in the nature of a defense pact.

11. **India’s rise vis-à-vis China’s**

- It is not right to say that India’s rise is a means to counteract China’s rise which for the sake of clarity must be qualified as a country that has risen (not rising, not emerging). China and India are united. India provides balance and multipolarity in the region, and not as a counteracting force to China.

- No country feels threatened by India. While India may be emerging economically, the world is comfortable with its rise.

**Topic 2: The South China Sea Issue in ASEAN-China Relations**

1. **The Practicality of elevating the SCS dispute to UNCLOS level**

- The sovereignty issues stemming from territorial disputes do not fall within the ambit of UNCLOS. The provisions of UNCLOS only contemplate maritime disputes. The test of practicality lies in being able to persuade China into agreeing to bring the issue to arbitration.

- The UNCLOS is a guide towards resolving the issue. The solution, however, is ultimately political.

2. **On advancing from a Declaration of Conduct (DOC) to a Code of Conduct (COC)**

- Some sectors believe that the DOC may have outlived its purpose, hence, the necessity of initiating the COC. Yet, the shift from a DOC to a COC does not necessarily mean that states involved in the disputes will observe the COC. *(If the UNCLOS is regularly violated, what more a non-binding COC?)* Hence, it is important to fashion the COC as a confidence-building mechanism (CBM) that will set an amiable atmosphere before the discussions can move forward.
- Chinese scholars also think that the DOC only constrains Chinese behavior. China believes that the DOC has not helped much and a COC should be completed as soon as possible.

- Yet, while a COC is a welcome addition to existing modalities, it must be supported by diplomatic efforts to ensure lasting peace. At the end of the day, all agreements would only be as good as how people observe them. All diplomatic solutions must be exhausted and documents must be made to work.

3. On involving the US in the SCS

- China and the US share a lot of common things in the SCS such as the freedom of navigation and sea lines of communication (SLOC). The more appropriate question probably would be: “What could China do to not involve the US?”

- China should work with ASEAN to bridge the perception gap. China should also clarify its claims. The claimants also need to clarify which areas the US should be involved in.

4. On Malaysia’s alleged fence-sitting on the issue

- Malaysia is only exercising caution. Malaysia deems it best to not comment on the other states’ policies as it is keen on looking at the multilateral solution to the dispute.

- Malaysia’s policy of understating its claims can be summarized, thus: We agree to disagree but we have the capacity and political will to tell them (other claimants) to work on commonalities.

- Malaysia further believes that the ASEAN is the best forum within which to engage China.

5. On China’s purposeful ambiguity: is it a conscious policy of China to simply confuse everyone by not answering or explaining the limits of its claims?

- China is choosing ambiguity. If Chinese officials and scholars would start using the UNCLOS language, and they would be clear, would everyone want that? China is of the view that what they do today will have effects on what they do later. Yet, China’s non-clarification of its position (nor its request for respect of its history) does not mean that it is not willing to compromise.

- However, there is fear that responding might give legitimacy to the claims of the others. Some sectors of the Chinese society even believe that joint development is a violation of Chinese sovereignty.

- Sometimes, the “misunderstandings” stem from the language barrier as some things might be lost in the translation from Chinese to English.
6. On China’s complaint regarding joint submissions

- A case in point: When Malaysia and Vietnam made a joint submission, China’s objection was that there was no consent from China when the two countries proposed the joint submission. But, had they sought China’s consent, that might mean that they were submitting to its claims. While consent may not be a proper word, there should be mutual agreement among claimant states before submission.

7. China’s denial of “core interest” statement

- China did not say that the SCS is a core interest; it is not denying this statement because it did not say this. What China said was: the peaceful settlement of the SCS is a core interest. (italics supplied)

Topic 3: Looking Back and Looking Forward: Cooperation in the South China Sea

1. On the 6-4-2 formula and the incentive for the 6 non claimants

- The 6-4-2 formula was proposed, thus: six (6) ASEAN nonclaimant states would encourage and persuade the four (4) ASEAN claimants to sit together with the two (2) non ASEAN claimants and discuss the issue, but only if this is acceptable to 4 and 2. However, one thing to consider is the existing tensions even among the 4 (such as the Philippines and Malaysia over the Sabah question). Further, the 6 would only act as interlocutors and not play the role of mediators.

- The incentive for the six non-claimant countries is to be able to show solidarity with ASEAN without having to compromise their good (economic) relations with China.

2. ASEAN Consensus on SCS dispute

- There is no way that ASEAN will come up with a common ground on the SCS issue and waiting for an ASEAN consensus on the matter is a dilatory tactic. We cannot expect ASEAN to come together and get a common position on this because of the diversity. Everything will fall apart for ASEAN when other things like economic relationships are discussed.

- Further, ASEAN will not consider contentious matters such as those involving sovereignty and intervention among its member states. However, ASEAN could be useful in setting the ground rules and guidelines to resolve existing tensions outside of UNCLOS mechanisms.
3. **The Way Forward**

*Involvement of the US*

- The US could support cooperative efforts, norms, rules and provide the leadership necessary for parties to resolve the issue, but it should not mediate.

- The US opposition to China’s assertiveness should be seen in the context of its interest in the freedom of navigation.

- The US is a major user of the SCS and is therefore a legitimate stockholder and must be included in the process of resolving the dispute.

*Role of Taiwan*

- Although some feel that Taiwan needs to play a role in the SCS dispute, it cannot do so officially. Taiwan is not a signatory to UNCLOS and the DOC. Thus, the 2002 DOC must be amended for Taiwan to be a participant. If UNCLOS has been amended twice, then it is easier to amend DOC because it is a political document.

- There is a need to review and assess the strategic implications of excluding Taiwan from the conflict management and dispute resolution processes. The resolution of the SCS issue will have to be preceded by some kind of agreement between China and Taiwan. Cooperation in the SCS means involving Taiwan.

- Claimant states should rethink the application of the One-China Policy because Taiwan cannot join the dialogues even when it has a different position from China.

- Will Taiwan share the same voice as that of China’s? There is a need to consider what Taiwan’s reservations are as regards China’s claims. Thus, the China-Taiwan issue is crucial in the resolution of the SCS disputes.

*ASEAN*

- While the SCS issue may be considered as a bump, such will not determine ASEAN’s future and relevance as an organization.

*Persuading China to clarify its claim*

- China has heard about the demand for its clarification of claims; the question then is not whether China has heard this message or not, but why China is not replying.

- China’s stand: Some Chinese analysts maintain that the nine-dash line claim had long been publicized even before the emergence of contemporary international laws of the sea. Hence, the new international maritime legal regime should not negate China’s prior rights in the SCS.
- China is aware that it should provide a better explanation to its nine-dash line claim.

To encourage China to do this, other claimants should start clarifying theirs as well.

4. On the possibility of China clarifying its position on the nine dash line

- It is possible for China to clarify its position, but the Chinese culture of doing things must be considered. Open pressure and criticism will not work. The use of public pressure will not augur well in this case as public pressure will only stir up the Chinese peoples’ “conspiracy theories.” It would be more effective to engage Chinese officials in private.

- As it stands, the policy community in China is now willing to move towards clarity on the issue. The Chinese are open to the use of official track multilateral dialogues within the East Asia Summit, provided that this will not mean the internationalization of the issue and no alliances are made.

- However, it is impossible for China to drop the nine dash line claim because when the Chinese government publicized the map in 1947, no state protested. This gave China some rights. The rights enjoyed before the passage of current international laws cannot override the rights enjoyed before.

5. On the role of private sector

- The private sector could be tapped to play a role in ocean protection and fisheries management. They could also link their business interest in oil, shipping and petroleum development with their corporate social responsibility (CSR) agenda.

- Some developments are private sector-led, such as the Layang-Layang islands. Some islands can also be made private and commercial.

6. On whether CBMs deliver results

- There seems to be skepticism, if not fatigue, over the use of CBMs considering that the same issues remain contentious. This, however, should not obscure the successes and benefits of CBMs, such as providing avenues for people-to-people contact and exchange of information, the development of best practices, the setting of examples, and the reduction of border tensions by demilitarizing sensitive areas.

- There are several existing disputes within ASEAN but none of these have culminated in any form of clashes because of good CBMs. Hence, CBMS are still necessary in order to keep the discussions going and to constantly engage China and thereby avoid flare ups in the future.
7. On functional cooperation

- It is important to consider the benefits of cooperation for the fisherfolk. It is also important to involve not only governmental agencies but also fishing villages and communities.

8. On the views of the Chinese military academia/security analysts

- Experts are talking in a very low tone. Chinese people consider the SCS as part of China because of historical record. This is the reason why the prevailing sentiment is “launching war on invaders” because the SCS issue has come to symbolize the heart of Chinese nationalism and their ideal of sovereignty. When linked together with nationalism, the views of the people may not be the same as that of the government which insists on a no-war policy.

8. On why China is unclear on the SCS

- The People’s Republic of China (PRC) cannot answer the nine dash line claims because the original 11 dash line was drawn by the Republic of China (ROC) government. The PRC is still doing research about it in Taiwan.
First Manila Conference on the South China Sea: Toward a Region of Peace, Cooperation, and Progress
5–6 July 2011
Ballroom B, Dusit Thani Hotel, Makati City

Tuesday, July 5

08:30 09:15 AM  **Registration**  
*Venue: Ballroom B, Ground Floor*

**Opening Session**

09:15 09:30 AM  Opening Remarks

09:30 09:40 AM  Introduction to Issues and Conference Briefing/Conference Arrangements

09:40 10:00 AM  **Photo Op and Break**

**TOPIC 1: ASSESSMENT OF RECENT DEVELOPMENTS IN THE SOUTH CHINA SEA AND THEIR IMPLICATIONS FOR REGIONAL SECURITY AND COOPERATION**

**Session 1**

**Moderator:** Amb. Laura Q. Del Rosario, Foreign Service Institute

10:00 10:15 AM  **Security Cooperation in the South China Sea: An Assessment of Recent Trends**  
Prof. Carlyle A. Thayer, University of New South Wales (AUS)

10:15 10:30 AM  **Recent Developments in the South China Sea: Unconstrained Waves of Tensions**  
Dr. Tran Truong Thuy, Diplomatic Academy of Vietnam (VNM)

10:30 10:45 AM  **Geopolitical Analysis of South China Sea Disputes: A Japanese Perspective**  
Mr. Tetsuo Kotani, Okazaki Institute (JPN)

10:45 11:30 AM  **OPEN FORUM**
Session 2

Moderator: Amb. Nguyen Duc Hung, Diplomatic Academy of Vietnam

01:00 01:15 PM The July 2010 Hanoi Declaration on the South China Sea Dispute: A New Strategy vis-a-vis an Emergent China?
Dr. Renato De Castro, De La Salle University (PHL)

01:15 01:30 PM Beyond the DOC: Guidelines for Military Activities in Foreign EEZS
Dr. Mark J. Valencia, National Asia Research Program, National Bureau of Asia Research and Woodrow Wilson Center (USA)

01:30 01:45 PM Is Time Running Out: The Urgency for Full, Final and Equitable Resolution of the South China Sea Imbroglio
Maj. Gen. (rtd) Vinod Saighal, Eco Monitors Society (IND)

01:45 02:45 PM OPEN FORUM

02:45 03:00 PM BREAK

Session 3

Moderator: Dr. Fermin R. De Leon, National Defense College of the Philippines

03:00 03:15 PM ASEAN+1 Regime in the South China Sea: A Review of Past and A Prospect for the Future
Dr. Nong Hong, China Institute, University of Alberta (CHN)

03:15 03:30 PM South China Sea: Taming the Turbulence
Mr. Nazery Khalid, Maritime Institute of Malaysia (MYS)

03:30 03:45 PM A Multi-level Approach to ASEAN-China Cooperation in South China Sea
Dr. Aileen San Pablo-Baviera, University of the Philippines (PHL)

03:45 04:45 PM OPEN FORUM

07:00 PM DINNER
(Host: The Asia Foundation)
Venue: Meeting Rooms 3 and 4, Mezzanine Level
Wednesday, July 6

**TOPIC 3: LOOKING BACK AND LOOKING FORWARD: COOPERATION IN THE SOUTH CHINA SEA**

**Session 4**

**Moderator:** Prof. Carlyle A. Thayer, University of New South Wales

09:00 09:15 AM  **The South China Sea Disputes: Regional Security Implications and Avenues for Cooperation**
Dr. Carolina Hernandez
Institute for Strategic and Development Studies (PHL)

09:15 09:30 AM  **Various Lessons Learned from Various Conflicts and Potential Conflicts Management in Southeast Asia**
Prof. Dr. Hasjim Djalal, Indonesian Maritime Council (IDN)

09:30 09:45 AM  **An Assessment of the Effectiveness of Current Maritime Security Frameworks and Mechanisms in the South China Sea**
Prof. Peter Dutton
China Maritime Institute of the Naval War College (USA)

09:45 10:35 AM  OPEN FORUM

10:35 10:50 AM  BREAK

**Session 5**

**Moderator:** Pres. Dang Dinh Quy, Diplomatic Academy of Vietnam

10:50 - 11:05 AM  **The South China Sea: Back to the Future Through Cooperation**
Amb. Alberto A. Encomienda, Dagat Kalinga Alaga, Inc. (PHL)

11:05 11:20 AM  **China’s South China Sea Policy: Claims and Changing Contexts**
Dr. Li Mingjiang
S. Rajaratnam School of International Studies (SGP)

11:20 11:35 AM  **Has Informal Regional Preventative Diplomacy Contributed to Stability and Progress in Maritime Jurisdictional Disputes?**
Prof. Ian Townsend-Gault
University of British Columbia (CAN)

11:35 AM 12:30 PM  OPEN FORUM
Program

12:30  1:50 PM  LUNCH
Venue: Fiesta San Miguel, Mezzanine Level

Session 6

Moderator:  Prof. Dr. Hasjim Djalal, Indonesian Maritime Council

01:50  02:05 PM  South China Sea Dispute - Sea of Opportunities?
Dato’ Vice Admiral Noor Aziz Bin Yunan, Defense Konsult plc (MYS)

02:05  02:20 PM  South China Sea Issue in China-ASEAN Relations: An Alternative Approach to Ease the Tension
Dr. Shen Hongfang, Xiamen University (CHN)

02:20  02:35 PM  The Code of Conduct in the South China Sea: The International Law Perspective
Mr. Nguyen Dang Thang, University of Cambrige (VNM)

02:35  02:50 PM  Possible Joint Fisheries Conservation and Management Efforts In the South China Sea
Dr. Yann-huei Song, Academia Sinica, Taiwan

02:50  03:50 PM  OPEN FORUM

Closing Session

03:50  04:00 PM  Summary of Issues
Dr. Aileen san Pablo-Baviera
University of the Philippines

04:00  04:10 PM  Closing Remarks

*~ END OF PROGRAM ~*
List of Participants

National Security Council

1. **RADM Vicente M. Agdamag**, Deputy Director General
2. **Lorenzo Clavejo**, Director
3. **Carmina Acuña**, Director
4. **Clarissa Rutor-Garcio**, National Security Specialist

Department of Foreign Affairs (DFA)

5. **Belen F. Anota**, Assistant Secretary, OSPPC
6. **Oscar G. Orcine**, Executive Director, OCO
7. **Henry S. Bensurto, Jr.**, Secretary General, CMOAS
8. **Nomer Blevens Ado II**, Principal Assistant, CMOAS
9. **Jose S. Brillantes**, Undersecretary, OUSOC
10. **Roberto T. Bernardo**, Special Assistant, OUSOC
11. **Antonio A. Morales**, Executive Director, OUSOC
12. **Julio C. Dery**, Special Assistant, OUSOC
13. **Irene Susan B. Natividad**, Executive Director, OLA
14. **Edilberto P. Adan**, Undersecretary, PCVFA
15. **Dean Jason N. Arriola**, Principal Assistant, ASEAN
16. **Cecille Lao**, Principal Assistant, UNIO
17. **Patricia Ann V. Paez**, Assistant Secretary, OAA
18. **Eric Tamayo**, Special Assistant, OUIER
19. **Meynard Montealegre**, Executive Director, ASPAC
20. **Luningning G. Camoying**, Principal Assistant, OEA
21. **Joseph Gerard B. Angeles**
22. **Amb. Sonia C. Brady**
23. **Amb. Theresa Lazaro**

Department of National Defense (DND)

24. **Prof. Raymond Jose G. Quilop**, Assistant Secretary for Strategic Assessment
25. **Kristina Camille G. Cablayan**, Research Officer, Office of the Assistant Secretary for Strategic Assessment
26. **Atty. Dennis M. Aga**, Defense Legislative Liaison Specialist
27. **Usec. Pio Lorenzo F. Batino**, Usec. for Legal and Legislative Affairs and Strategic Concerns
28. **Nebuchadnezzar Alejandrino**, Head Executive Assistant / OIC IMO, Office of the Secretary

Armed Forces of the Philippines (AFP)

29. **MGen. Francisco Cruz, Jr. AFP**, Deputy Chief of Staff for Intelligence, J2
List of Participants

30. **Col. Herminigildo C. Aquino**, Assistant Chief, Office of Strategic and Special Studies (OSSS)
31. **Col. Jaime Fernando R. Hidalgo PA (GSC)**, Chief, Strategy & Policy Division, J5
32. **LTC Charlemagne F. Batayola, Jr., PA**, OSSS
34. **Stephanie Lee C. Navalta**, Research Analyst, OSSS
35. **Maj. Phillipp G. Alvarez, Jr.** Branch Chief, Intelligence, Research and Analysis Division (IRAD), OJ2
36. **LTSG. Josie E. Estadilla PN, Chief**, WESCOM Branch
37. **Ms. Anna Liza P. Ochoco**, Research Analyst, Intelligence, Research and Analysis Division (IRAD), J2
38. **SGT. Fyke Fernan**, ISAFP
39. **TSG. Rey Basibas**, ISAFP

**Philippine Coast Guard**

40. **LCDR Fedelyn A. Santos**

**Philippine Navy**

41. **Capt. Danilo R. Rodelas PN (GSC)**, Assistant Chief of Naval Staff for Plans, N5
42. **Capt. Aurelio A. Rabusa, Jr. PN (GSC)**, Chief of Staff, Naval Education & Training Command
43. **LCDR. Flitzerald P. Cañete PN**, Chief, International Affairs Branch, N5
44. **Ms. Esmeralda H. Distor**, ON5 Defense Analyst

**Philippine Air Force**

45. **Col. Raul L. Del Rosario, GSC (PAF)**, Asst. Chief of Air Staff for Intelligence
46. **Col. Galileo Gerard R. Kintanar, Jr. GSC (PAF)**, Asst. Chief of Air Staff for Plans

**National Defense College of the Philippines (NDCP)**

47. **Dr. Fermin D.R. de Leon**, President
48. **Dr. Ananda Devi Domingo-Almase**
49. **Prof. Christine June P. Cariño**
50. **Prof. Chester Cabalza**
51. **Prof. Charithie Joaquin**

**Diplomatic Academy of Vietnam (DAV)**

52. **Mr. Dang Dinh Quy**, Acting President
53. **Amb. Nguyen Duc Hung**
54. **Ms. Ngo Thu Huong**
55. **Mr. Tran Van Huong**
56. **Mr. Le Quang Hung**  
57. **Mr. Vu Khac Tuc**  

Office of the Vice President, Republic of the Philippines  

58. **Rodolfo Plaza**, Vice Presidential Consultant on Political Affairs  
59. **Shirley P. Plaza**  

Presidential Management Staff (PMS)  

60. **Ferdinand B. Cui, Jr.**, Undersecretary  
61. **Clemencia A. Cabugayan**, Director III  
62. **Sheryl D. Fortunato**, Presidential Staff Officer I  
63. **Noelle S. Velasquez**, Presidential Staff Officer III  

Jinan University, P.R. China  

64. **Dr. Dai Fan**, Assistant Professor, Center for South China Sea Studies  
65. **Dr. Ju Hailong**, Professor & Executive Director, Strategic Base for South China Sea Studies, China Marine Development Studies Institute  

National Chengchi University (Taiwan)  

66. **Dr. Chyungly Lee**, Associate Professor, Institute of International Relations  

Academia Sinica (Taiwan)  

67. **Dr. Yann-huei Song**, Research Fellow  

Eurasia Group  

68. **Roberto Herrera-Lim**, Director  

University of the Philippines  

69. **Mr. Roque Mamon, Jr.**, Former Development and Cooperation Program Officer, Manila Economic and Cultural Office (MECO)  

Philippine Senate  

70. **Senator Leticia Ramos-Shahani**, Former Senator  
71. **Ronyll Mendoza**, Technical Staff, Office of Sen. Juan Ponce Enrile  

Philippine Congress  

72. **Rep. Roilo S. Golez**  
73. **Rep. Jose F. Zubiri, III**  
74. **Atty. Manuel Ibañez, Jr.**, Office of Congressman Rodolfo Biazon
75. Mr. Javad Hedarian, Officer-in-Charge, Office of Rep. Walden Bello
76. Ms. Valerie D. Francisco, Office of Speaker Feliciano Belmonte, Jr.

Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)

77. Prof. Raphael P.M. Lotilla, Executive Director
78. Melissa Elsa P. Cruz, CSR Specialist
79. Maria Teresita G. Lacerna, Legal Specialist

Taipei Economic and Cultural Office

80. Mr. Kuo-ching Pu, Director, Political Affairs Division

Local and foreign media

The Asahi Shimbun
81. Mr. Yoichi Kato, National Security Correspondent

The Mainichi Newspapers
82. Junichi Yano, Manila Bureau Chief

Nikkei Inc.
83. Ms. Ma. Theresa Martelino-Reyes, Editor

Nippon Hoso Kyokai (NHK) TV/Japan Broadcasting Corp.
84. Ms. Charmaine Deogracias, Reporter

Malaya
85. Ellen Tordesillas, Columnist

Foreign Correspondents Association of the Philippines
86. Mr. Alastair McIndoe, President

Thomson Reuters
87. Manuel Mogato, Correspondent

ABC News (USA)
88. Chito Sta. Romana, Former Beijing Bureau Chief

People’s Monitor
89. Erlinda Galvan
90. Wilma Maestre

NewsAsia
91. Eric San Juan

Associated Press
92. Jim Gomez
Guang Ming Daily, P.R. China

93. Fu Zhigang

The Asia Foundation

94. Dr. Steven A. Rood, Country Representative
95. Mr. Jon Morales, Assistant Program Officer, Policy Reform Program
96. Ms. Hyro Domado, Assistant Program Officer, Conflict Management Program

Embassies

Australia
97. HE Roderick Smith, AEP, Embassy of Australia
98. Jonathan Gilbert, First Secretary (Political), Embassy of Australia
99. Rachel Atley, Third Secretary, Embassy of Australia

Cambodia
100. HE Hos Sereythonh, AEP, Royal Embassy of Cambodia
101. Roth Phally, First Secretary, Royal Embassy of Cambodia

China
102. Wang Xiaolong, Embassy of the People’s Republic of China

European Union
103. Philipp Woschitz, Political and Human Rights Officer, Delegation of the European Union in the Philippines

India
104. HE Shri Yogendra Kumar, AEP, Embassy of India
105. Madhukar Asnani, First Secretary (Political), Embassy of India

Indonesia
106. HE Y. Kristiarto S. Legowo, AEP, Embassy of the Republic of Indonesia
107. Ms. Esther A. Rajagukguk, Third Secretary, Embassy of the Republic of Indonesia

Japan
108. Hitoshi Ozawa, Minister and Head Political Section, Embassy of Japan

Laos
109. HE Malayvieng Sakonhninhom, AEP, Embassy of the Lao People’s Democratic Republic
110. Mr. Khamfeuang Phanthaxay, Deputy Chief of Mission, Embassy of the Lao People’s Democratic Republic

Malaysia
111. Mr. Yap Wei Sin, Second Secretary, Embassy of Malaysia (will attend July 5&6)
112. **Mr. Zakaria Nasir**, Minister and Deputy Chief of Mission, Embassy of Malaysia

New Zealand

113. **Andy White**, Deputy Head of Mission, Embassy of New Zealand

Russia

114. **Ilya Bogopmolov**, Second Secretary, Embassy of the Russian Federation

115. **Ilya Kuznetsov**, Embassy of the Russian Federation

Singapore

116. **Daphne Teo**, Deputy Chief of Mission, Embassy of the Republic of Singapore

South Korea

117. **Kim Kie Joo**, Counsellor, Embassy of the Republic of Korea

118. **Martha Gaa**, Executive Assistant, Embassy of the Republic of Korea

Thailand

119. **HE Prasas Prasasvinitchai**, AEP, Royal Thai Embassy

120. **Mr. Monton Chansiri**, Second Secretary (Culture and Politics), Royal Thai Embassy

121. **Mr. Dennard Dacumos**, Staff Officer, Royal Thai Embassy

United States of America

122. **Matthew A. Dzialo**, Embassy of United States, Political

123. **Ms. Laura Parewski**, Embassy of United States

124. **Ms. Bimbi Villa**, Embassy of United States

125. **Mr. Scott Pollock**, Embassy of United States, Political

Vietnam

126. **HE Nguyen Vu Tu**, AEP, Embassy of the Socialist Republic of Vietnam

127. **Tran Trong Doan**, Embassy of the Socialist Republic of Vietnam

128. **Tran Le Phuong**, Embassy of the Socialist Republic of Vietnam
Diplomatic Academy of Vietnam

The Diplomatic Academy of Vietnam was established in accordance with Decision 82/2008/QD-TTg dated 23 June 2008 by the Prime Minister of the Socialist Republic of Vietnam on the basis of upgrading the Institute for International Relations (successor of the College for Foreign Affairs established in 1959). The Academy carries out strategic research in international relations and foreign policies; undergraduate and graduate training and retraining of Foreign Service personnel; serves as “think tank” in foreign policy for the Ministry of Foreign Affairs, the Party and the State.

It offers training at undergraduate and graduate levels in international relations, international law, international economics, foreign languages, and media and cross-culture communication. Each year, the Academy takes in 60 graduate and 450 undergraduate students in six disciplines of International Relations, International Law, International Economics, International Communication, English and French; 100 college students and 150 on-the-job students. Different training units form an establishment similar to a university with its own faculties and departments.

The Academy has cooperated with overseas universities to offer joint courses, invited foreign trainers to teach foreign languages and European studies and US foreign policies etc. By 2010, the Academy has trained 5000 students for 37 formal university enrolments, 2500 students in 23 secondary enrolments, 369 students in 10 master enrolments and 10 students in 1 doctor enrolment. It has also held 12 on-the-job and 5 second-degree training enrolments.
National Defense College of the Philippines

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To prepare and develop potential national security leaders for high positions of responsibility and command, and undertake strategic research and policy studies to enhance national defense and security

(PD 190 s. 1973; PD 452 s. 1974; Admin Code of 1987, DC 2 s. 2007)

Vision

To be the center of excellence in educational and policy development for strategic and dynamic leaders in national defense and security by 2022.

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b. Undertake a research program as basis in the formulation of national defense and security policies;

c. Conduct extension program such as non-degree training, seminar-workshops, policy conferences and other similar fora on national defense and security issues;

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