

The Long Littoral Project: South China Sea

A Maritime Perspective on Indo-Pacific Security

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Introduction

This report addresses the major security issues associated with the South China Sea. It includes an introductory essay by RADM (ret.) Michael A. McDevitt, Senior Fellow at CNA and director of the Long Littoral project. His essay explores U.S. policy and the South China Sea (SCS). It is followed by two other papers: The first, by Dr. M. Taylor Fravel, is on the growing competition in the South China Sea. The second, co-authored by Dr. Lewis M. Stern and RADM McDevitt, addresses Vietnam’s interests in the South China Sea disputes.

Background

This is one in a series of five reports that are part of CNA’s Long Littoral project. The term “long littoral” refers to the Indian Ocean–Pacific Ocean littoral. The Obama administration’s “rebalance” to Asia is an inherently maritime, or off-shore, oriented strategy. Accordingly, the aim of this project is to provide a maritime-oriented perspective on security issues along the Indo-Pacific littoral that the rebalance strategy must confront. To do so, it explores security issues associated with each of the five great maritime basins that make up the long littoral—the Sea of Japan, the East China and Yellow seas, the South China Sea, the Bay of Bengal, and the Arabian Sea. By exploring issues from a maritime perspective, the project also aims to identify those issues that may be common to more than one basin and involve different players in different regions, with the idea that solutions possible in one maritime basin may be applicable to another.

The South China Sea stretches from the mouth of the Pearl River in China in the north to the tip of Indonesia’s Natuna Island in the south. Recent competition over sovereignty and maritime disputes has occurred largely without the direct involvement of military forces.¹ Instead, the key actors have been fishing vessels, oil companies, and national maritime law enforcement agencies. States use these actors, along with diplomacy, to compete and to assert and defend their claims. As a result, although intense at times, the level of tension in

¹All of the land features in the SCS are in dispute. Both China and Taiwan (the Republic of China) claim all the land features. Vietnam claims both the Paracel and Spratly Island groups, which are the archipelagos with the most islands. The Philippines claims most of the Spratlys and the uninhabited Scarborough Shoal, which is in neither the Paracel nor the Spratly chains. Malaysia claims some of the Spratlys, and Brunei has an exclusive economic zone (EEZ) claim that overlaps China’s water claims.

the South China Sea has not yet resulted in the kind of instability that the region witnessed from 1988 to 1995: a major armed clash occurred between China and Vietnam in March 1988, in which 64 Vietnamese were killed,² and China occupied Mischief Reef in 1995. Today, fortunately, the dispute has not yet become militarized.

As a point of departure, here is a list of the countries that are involved in the many overlapping sovereignty claims in the SCS:

- *China (PRC) and Taiwan (ROC)*—The PRC and ROC claim all of the above-water land features in the South China Sea.
- *Brunei* – Brunei’s claim to the South China Sea is limited to its exclusive economic zone (EEZ), which extends to one of the southern reefs of the Spratly Islands. However, Brunei has not made any formal claims to the reef or to any of the Spratlys. Brunei makes no claims to any of the Paracel Islands.
- *Indonesia* – Indonesia’s claim to the South China Sea is limited to the boundaries of its EEZ and continental shelf. Indonesia claims neither the Spratly nor the Paracel Islands.³
- *Malaysia* – Malaysia’s claim to the South China Sea is limited to the boundaries of its EEZ and continental shelf. Malaysia occupies seven features in the Spratlys; it has built a hotel on one, and has brought soil from the mainland to raise the level of another. Malaysia makes no claim to the Paracel Islands.
- *Philippines* – The Philippines claims a sizable portion of the Spratly archipelago. It occupies eight of the Spratly Islands (which it calls the Kalayaan Islands). It also claims Scarborough Shoal, based on its continental shelf. It does not claim the Paracel Islands. Filipino claims are based upon the

² “Commemorating soldiers sacrificed to protect Trung Sa Island,” Communist Party of Vietnam Online Newspaper, January 30, 2013, http://dangcongsan.vn/cpv/Modules/News_English/News_Detail_E.aspx?CN_ID=565367&CO_ID=30438

³ Indonesia does have issues with China that involve its Natuna Island EEZ and associated gas fields that China’s nine-dashed line overlaps. See <http://www.rsis.edu.sg/publications/Perspective/RSIS1262012.pdf>.

EEZ and continental shelf principle, as well as a 1956 Filipino explorer's expedition.⁴

- *Vietnam* – Vietnam claims a significant portion of the South China Sea, based upon its EEZ and the continental shelf principle. Vietnam claims all of the Spratly Islands (*Truong Sa* in Vietnamese) and has occupied from 21 to 25 of them. Vietnam claims all of the Paracel Islands (*Hoang Sa* in Vietnamese) despite being forcibly ejected by China in 1974.⁵

Findings: U.S. Policy and the South China Sea

The United States has two principal interests in the South China Sea disputes: access and stability.⁶

First, the United States has a powerful interest in maintaining unhindered access to the waters of the South China Sea. From Washington's perspective, all countries enjoy high seas freedoms, including freedom of navigation, beyond any coastal state's 12-nm territorial seas over which the coastal state enjoys sovereign rights. Unhindered access to the waters of the South China Sea is important for two reasons. First, it underpins the economic dynamism of the region, which is based on extensive intra-regional and international trade; more than 5 trillion dollars' worth of trade passes through these waters each year, including more than 1 trillion dollars' worth of United States trade. Second, unhindered access sustains America's ability to project military power—not just in East Asia but also around the world, as

⁴ The Philippine claim to the Spratlys originated in 1956 when a Philippine "explorer," one Tomas Cloma, owner of a Philippine fishing company and director of the Philippine Maritime Institute, was sailing in the Spratly chain. He did not find any human habitation, and, as a result, decided to claim the islands and found a new country called *Kalayaan* (Freedomland). He posted a document in English, entitled *Notice to the Whole World*, listing all features he claimed. His claim comprises about 50 features among the Spratly group. Not surprisingly, his declaration was strongly protested by the Republic of China (Taiwan), the PRC, and South Vietnam, as well as France, the United Kingdom, and the Netherlands, which were representing their colonies in Southeast Asia. Cloma eventually "sold" Freedomland to the Marcos government for one Philippine peso. See Haydee B. Yorac, "The Philippine Claim to the Spratly Island Group," *Philippine Law Journal* 58 (1983), <http://law.upd.edu/ph/plj/images/files/PLJ%20volume%2058/PLJ%20volume%2058%20second%20quarter%20-03-%20Haydee%20B.%20Yorac%20-%20The%20Philippine%20Claim%20to%20the%20Spratly%20Island%20Group.pdf>.

⁵ Energy Information Administration, *Regional Outlook South China Sea*, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

⁶ The United States has other interests related to these disputes, including maintaining its commitments to allies in the region and ensuring a stable and cooperative relationship with China (which bears on many U.S. interests apart from those in the South China Sea).

many naval vessels from the West Coast and Japan pass through the South China Sea en route to the Indian Ocean and Persian Gulf.

Second, the United States has a powerful interest in the maintenance of regional peace and stability in Southeast Asia. Like open and unhindered access, regional stability also sustains both East Asian and American prosperity, as conflict or intense security competition would divert scarce resources away from development, reduce trade by threatening the security of sea lanes, and reduce cross-border investment.

The SCS is a complex policy problem for US policy makers because of an overlapping set of issues. Sovereignty disputes in the SCS involve six countries: China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. Five of the countries (all but Brunei) occupy some of the islands with military or paramilitary forces. The SCS picture is further muddied because China also makes claims based on assertions of “historic waters” delimited by a vague, undemarcated line on maps, known as the “U” shaped or “nine-dashed” line, which covers virtually the entire sea. This line is the cause of significant confusion, because Beijing has so far refused to define what it thinks this line means legally, and because the line overlaps the legitimate EEZ and continental shelf claims of the other SCS coastal states.

An issue that is separate but related to sovereignty is a major disagreement between Washington and Beijing over “freedom of navigation” in the SCS. The United States argues that China is trying to obstruct it. The disagreement concerns what military activities are permitted in the EEZ of China, which, based on China’s claims, could potentially encompass most of the SCS. Washington argues that the United Nations Convention on the Law of the Sea (UNCLOS) permits nations to exercise “high seas freedoms” in the EEZs of coastal states.⁷ These “freedoms” include the right to conduct peaceful military activities, which include, inter alia, surveillance and military surveys. China disagrees. This disagreement over U.S. surveillance activities has already caused two serious incidents: the 2001 mid-air collision between a U.S. Navy surveillance aircraft (EP-3) and an intercepting Chinese navy fighter, and the 2009 harassment by Chinese fishermen and paramilitary ships of USNS *Impeccable*, which was conducting underwater surveillance.

The United States is involved despite protestations of neutrality regarding sovereignty issues. In a departure from past U.S. policies of neutrality and aloofness, in the summer of 2010 the Obama administration clearly began to signal, through a combination of diplomacy and enhanced military presence, that the United States does consider creating rule-based stability in the SCS to be an important U.S. national objective. The unsettled situation in the SCS is implicitly a test case of “post-rebalance” U.S. credibility as a stabilizing

⁷ Which the United States has yet to ratify, but nonetheless observes.

power in Asia. Having more directly involved itself in trying to foster a “collaborative” solution at the 2010 ASEAN Regional Forum meeting in Hanoi, the United States now has strategic “skin in the game.” Secretary Clinton’s intervention was a departure from traditional U.S. policy, which assiduously tried to avoid becoming embroiled in sovereignty disputes that did not involve U.S. equities.

China’s coercive behavior in the South China Sea is deliberate and systematic. According to one respected expert:

The clear pattern of bullying and intimidation of the other claimants is evidence of a top leadership decision to escalate China’s coercive diplomacy. This has implications not only for the Philippines and Vietnam, the primary targets of China’s coercive efforts, but also has broader regional and global implications. Beijing refuses to engage in multilateral discussions on the territorial and maritime disputes in the region, preferring bilateral mechanisms where it can apply leverage over smaller, weaker parties. China rejects a role for the International Court of Justice (ICJ) or the International Tribunal on the Law of the Sea (ITLOS) in resolving the territorial and maritime disputes in the South China Sea. Although Beijing has agreed to eventually enter into negotiations to reach a Code of Conduct for the South China Sea, Chinese officials have recently stated that discussions can only take place “when conditions are ripe.”⁸

China appears to be following a “carrot or stick” policy approach. The “carrot” that China holds out is “win-win” cooperation, which equates to helpful trade and economic exchanges with ASEAN states, including the SCS claimants. China uses this carrot in order to avoid public disputes and other actions that would complicate its claims. At the same time, through words and deeds, it uses a “stick” to pointedly remind claimants, such as the Philippines and Vietnam, how powerful China has become—it is a power that will continue to grow and will eventually be able to prevent foreign “intrusions” into the SCS dispute.

Washington has become more involved diplomatically, but it has little leverage in reaching its desired non-coercive rules-based outcome. Chinese assertive behavior in 2009, in 2010, and again in 2012 is a contributing factor to a new U.S. “normal” in the SCS—one that has the United States much more deeply involved in security relations with all the ASEAN claimants to features in the SCS. The United States has indirectly linked the credibility of its rebalance strategy for Asia to a successful (i.e., peaceful, non-coercive, rules-based) resolu-

⁸ Bonnie Glaser, Statement before the House Foreign Affairs Committee, “Beijing as an Emerging Power in the South China Sea,” September 12, 2012, <http://csis.org/testimony/beijing-emerging-power-south-china-sea>.

tion of disputes in the SCS, but it has little to no direct leverage in resolving the SCS sovereignty disputes, the legal standing of the nine-dashed line, or the contentious fishing issues.

The range of U.S. policy options is not infinite; only four policy approaches seem possible. They could be generally divided into the categories below, which are not necessarily mutually exclusive:

1. *Make the situation better.* Reduce the risk of conflict. This approach could involve direct U.S. mediation, including active involvement in trying to reconcile the competing claims of the Philippines, Vietnam, and Malaysia. By facilitating a resolution to these differences, the United States would set a positive example for subsequent resolution with China, make it easier for ASEAN to speak with one voice to China, and create useful legal precedents that could more broadly apply to other maritime disputes in East Asia.
2. *Wash our hands of the entire problem.* Washington could try to turn the SCS matter over to a regional power such as Indonesia, and indicate to Beijing that the Sino-U.S. relationship is more important to Washington, over the long run, than becoming involved in SCS territorial disputes. At the same time, Washington could make it clear that such a policy would not be offering a “green light” for Beijing to use force but is merely a statement of the obvious fact that United has no important interests at stake so long as high seas freedoms are respected.
3. *Take a much more assertive posture with China.* Take sides; improve U.S. and other claimants’ military postures. Adopt a posture clearly aimed at deterring Chinese attempts to coerce. This policy clearly risks turning the Sino-U.S. relationship into one of confrontation. It also could make East Asia less stable and force many countries in the region into difficult choices that easily might not be resolved in favor of the United States.
4. *Enhance the status quo.* Make no change in official U.S. policy but become more explicit about Washington’s views. For example, the State Department could issue a White Paper that spells out what claims in the SCS are considered by U.S. experts to be beyond the writ of UNCLOS and general international law. Such a paper would address in very explicit terms what baselines are seen as excessive, what islands or islets qualify for an EEZ, and what the United States means by freedom of navigation. Even though the United States has not ratified UNCLOS, it can still read and interpret international law.

The recommended policy approach that this report makes focuses on law and diplomacy, and is a combination of options 1 and 4 above. By playing a role in reconciling the overlap-

ping claims of Vietnam, the Philippines, and Malaysia, Washington would simplify the sovereignty question and provide a salutary example to China. Making known U.S. views on China's dubious interpretations of UNCLOS and pointing a public spotlight on the legal absurdity of the nine-dashed line could be important steps in demonstrating America's leadership to friends and allies in Asia, and might potentially cause Beijing to bring its application of UNCLOS more into line with commonly accepted international law. Taking these steps would not be risk-free in terms of damage to the overall Sino-U.S. relationship, and those risks would need to be carefully assessed. Given that extant U.S. policy has deeply involved the United States in SCS disputes with no appreciable impact on Chinese behavior or progress toward a diplomatic resolution, evolving U.S. policy along these lines does merit consideration.

The United States must ratify UNCLOS if it hopes to be a more credible player in preserving stability in the SCS. Whether the United States likes it or not, UNCLOS embodies customary international law. Ratification would increase the legitimacy of U.S. efforts to pursue a rules-based approach to managing and resolving disputes over maritime jurisdiction, and would further enhance the image of the United States among many states in East Asia—i.e., it would show that we play by the same set of international rules.

Findings: Growing Competition in the South China Sea

The escalation of tensions associated with growing competition among the claimant states in the South China Sea — especially China, Vietnam, and the Philippines — reflect an interactive and dynamic logic. Territorial disputes by definition are unstable and prone to negative spirals of instability because they are “zero sum,” whereby one state's gain is another state's loss.⁹ As a result, states in such disputes are especially sensitive to perceived challenges to their claims by other states. Any action by one state to strengthen its own claim creates strong incentives for other states to respond. Such incentives are especially powerful because of the public nature of claims in territorial disputes and because if one state disagrees with another state's “excessive” claims they may challenge said claims by diplomatic demarche, or in the case of maritime disputes, or for example, by peaceful military activity in the disputed waters.

Since 2007, competition over competing claims in the South China Sea has increased. The proximate spark has been a greater focus on the natural resources in these waters. This increases the salience of claiming maritime rights and sovereignty over land features that can be used to claim maritime rights. To assert and exercise their rights, states have combined diplomatic and administrative actions to assert jurisdiction over parts of the South China

⁹ Robert Jervis, “Cooperation under the Security Dilemma,” *World Politics* 30, no. 2 (1978): 167-214.

Sea along with the use of commercial and maritime law enforcement agencies to exercise jurisdiction.¹⁰

Diplomatic tensions over maritime rights increased in the weeks before the May 2009 deadline for submissions to the U.N. Commission on the Limits of the Continental Shelf (CLCS). The commission reviews and qualifies claims by states to extended continental shelf rights beyond 200 nautical miles.¹¹ If a territorial or maritime dispute exists, however, then the commission's rules dictate that it "shall not consider and qualify a submission made by any of the States concerned in the dispute."¹² As a result, all claimants in the South China Sea have strong incentives to challenge the continental shelf submissions where sovereignty or maritime rights claims overlap. Accordingly, China and the Philippines both objected to Vietnam's submission and to the joint Vietnamese-Malaysian submission. All the claimants then issued claims and counter-claims.¹³

Starting in mid-June 2011, China adopted a more moderate approach to managing its claims in the South China Sea after it realized that its behavior in the previous two years had backfired. The purpose of this shift was to ensure that the disputes in the South China Sea did not harm China's broader foreign policy objectives, especially its ties with regional states. Through this approach, Beijing sought to project a more benign image to prevent the formation of a group of East Asian states allied against China, reduce Southeast Asian states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. The elevated profile of the United States in the South China Sea disputes after 2010 helped to push China in this more moderate direction and, for a time, enhanced stability.

China's turn toward moderation, however, began to unravel during and after the standoff over Scarborough Shoal in April 2012.¹⁴ China has returned to more unilateral actions for several reasons. Chinese leaders may have concluded that the moderate approach from mid-2011 had failed to assuage the concerns of all claimants and reduce what Beijing viewed as challenges to its claims. In particular, the Philippines conducted very active and public diplomacy regarding its claims despite China's shift to a more moderate approach, including pushing for proposals that China viewed as harming its claims at the East Asian

¹⁰ This section draws on Fravel, "China's Strategy in the South China Sea"; Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights."

¹¹ Under the treaty, a state can only exercise rights to the continental shelf if the CLCS certifies the claim.

¹² *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (New York: United Nations, 2008), p. 22.

¹³ A list of all submissions and objections is available on the commission's website: http://www.un.org/Depts/los/clcs_new/commission_submissions.htm.

¹⁴ The section draws on Fravel, "All Quiet in the South China Sea."

Summit, attempting to persuade ASEAN in April 2012 to negotiate a code of conduct without China and seeking international attention and support during the standoff at Scarborough Shoal.

Several Vietnamese actions in June 2012 probably strengthened the argument in China for a return to a more unilateral approach, including Vietnam's first patrol of the islands with advanced Su-27 Flanker fighter aircraft flying as low as 500m over disputed features and the National Assembly's passage of a Maritime Law that affirmed Vietnam's claims over the Paracels and Spratlys. Finally, growing tensions with Japan amid plans by Tokyo's governor to purchase three of the Senkaku Islands likely underscored the importance of strengthening China's maritime claims everywhere.

In early August 2012, China communicated its willingness to continue to deepen ties with ASEAN in perhaps an effort to prevent the disputes in the South China Sea from harming other objectives. As a result, China has not completely abandoned a more cooperative and less unilateral approach. Nevertheless, China is now pursuing its own hedging strategy, combining efforts to strengthen its own claims unilaterally while agreeing in principle to hold talks when "conditions are ripe."

United States should maintain its longstanding principle of neutrality and not taking sides in the territorial disputes of other countries. The disputes in the South China Sea are complicated and multifaceted. To the extent that U.S. policy takes sides in these disputes – or is perceived as taking sides – it risks transforming these disputes into a bilateral conflict between the United States and China. And to the extent that claimant countries believe that the United States will defend their actions against China, they may take bolder and riskier actions that could increase instability in the South China Sea.

Findings: Vietnam and the South China Sea

Vietnam's approach to the South China Sea sovereignty questions with China is based on three separate but related tracks. First, Vietnam wants to maintain good relations with China. The long history of coping with China has imprinted upon the leadership in Hanoi the fact that in order to have the space necessary to act on its interests, Vietnam must carefully manage the overall relationship between itself and China. There is a commitment to normal and proper diplomacy, a systematic effort to promote a wide range of bilateral engagement in trade and commerce and defense and security, and a continuing investment in government-to-government efforts to sort out the tricky aspects of the relationship such as border demarcation issues.

Second, Vietnam has been a consistent supporter of China's participation in the "alphabet soup" group of ASEAN-created institutions, and has been at the forefront of regional efforts

to get China to actually conclude a binding code of conduct for behavior in the South China Sea. Hanoi's hope is that by enmeshing China in a web of cooperative relations with ASEAN (the Association of Southeast Asian Nations) will moderate Beijing's unilateralist tendencies.

Third, in what could be broadly characterized as independent activity, Vietnam is strengthening its security posture. Over the past decade, Hanoi has moved to establish closer relationships with non-regional powers, particularly the United States and India. South Korea also has joined Vietnam in an "overall joint proposed plan." In addition to seeking powerful friends, Vietnam has been making serious investments in its own maritime capabilities.

The Vietnamese hope that the United States will help them cope with China's increasing power by sharing intelligence, exchanging information, and helping their military acquire technology. They see the United States as being in the region to balance China. They are prepared to go as far as necessary to strengthen bilateral relations with the United States as leverage to help secure Vietnam's interests relative to China. Vietnam thus supports U.S. strategy in Asia and a continuing U.S. presence in the region, and it supports America's legitimate interests in the region. The Vietnamese believe that the United States should proactively engage on the South China Sea issue.

Vietnam thinks that confronting China militarily in the SCS would be a mistake. The Scarborough Shoal incident¹⁵ between China and the Philippines convinced the Vietnamese that it is a mistake for any of the ASEAN claimants to deploy military vessels in a response to any acts by China intended to assert its sovereignty over the region. All of the ASEAN claimants have attempted to justify their claims based on their coastlines and the provisions of the 1982 UNCLOS, while China continues to rely on a mix of historic rights and legal claims, employing deliberate ambiguity to keep other claimants off balance. Vietnam believes that Chinese behavior drives home the need for the United States to ratify UNCLOS.

Vietnam is not relying on diplomacy alone—it is also modernizing its military. Vietnam's government is committed to the modernization of the People's Army of Vietnam (PAVN), and seeking a credible deterrent to China, while also conducting an across-the-board mili-

¹⁵ In April 2012, the Philippine government dispatched a frigate to Scarborough Shoal to investigate eight Chinese fishing boats inside the lagoon of what the Philippines consider its territory. (China claims it as well.) After the Philippine Navy boarded several of the fishing boats, China responded by mustering, over a period of days, nearly 100 government fishing surveillance ships, fishing boats, and utility craft in the lagoon. It also extended its annual unilateral fishing ban to cover the waters around the shoal; it quarantined tropical fruit imports from the Philippines; and it failed to abide by a verbal agreement with Manila to withdraw vessels from the lagoon. Finally, China roped off the mouth of the lagoon to prevent other fishermen from entering. Glaser, "Beijing as an Emerging Power."

tary transition. Vietnam's defense ministry has defined key PAVN priorities for growth and development, and has focused attention on naval capabilities and the air force/air defense. It has also ratcheted up strategic cooperation by embracing the idea of defense dialogues, strategic partnership agreements, and practical bilateral military cooperation.

Vietnam is actively executing the requirement spelled out in its 2009 White Paper to manage and control “the waters and islands in the East Sea under Vietnam's sovereignty.” It is doing this by purchasing a sea denial capability, largely from Russia. Vietnam's most newsworthy purchase related to South China Sea defense has been the six Kilo-class submarines ordered from Russia in 2009—the first of which reportedly was to arrive by the end of 2012—to use in defending its own claims in the South China Sea.

Vietnam has not just acquired submarines. It also has ordered four Russian-built Gepard-class corvettes. The first two, already in operation, are fitted for attacking surface ships; the second two, still under construction, will be optimized for anti-submarine warfare. Vietnam is also producing under license at least ten 550-ton fast-attack craft that are fitted with anti-ship cruise missiles. These will be combined with the so-called Bastion Coastal Defense System, also from Russia, which consists of truck-mounted anti-ship cruise missiles, along with its 20-odd Su-27/30 aircraft that are capable of maritime strike; and four very modern Dutch corvettes of the SIGMA class. Altogether, Vietnam is putting into place a credible offshore naval force. All these off-the-shelf purchases must still be knit together into an integrated force, with effective surveillance and command and control, but Hanoi's intent is clear. Vietnam is investing significant resources to make certain that it can defend its maritime claims, and that it will avoid a replay of the 1988 South Johnston Reef clash with the PLA Navy, in which two Vietnamese landing craft were sunk, a third was badly damaged, and 64 Vietnamese were killed.

Vietnam recognizes that its SCS dispute with China is an obstacle in Sino-Vietnamese relations. It believes that if China continues to be assertive, ignoring the interests of the other parties, the South China Sea dispute will pose a threat to security and stability in the region. Vietnam is unlikely to act unilaterally against China or to be the first to initiate hostilities, though it will defend itself if attacked. It will focus on improving its security through diplomatic outreach to neighbors, as well as to the United States, while developing an ability to pose a credible military deterrent to attacks on its holdings in the South China Sea.

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The South China Sea and U.S. policy

Michael A. McDevitt, RADM, USN (ret.)

Introduction

The past four years have been filled with friction between China and its neighbors involving disputed sovereignty claims over largely uninhabited islands in both the South China Sea (SCS) and East China Sea (ECS). These confrontations have raised concerns throughout East Asia, as well as in the United States, that perhaps these events provide a glimpse into the future—one in which China is willing to “throw its weight around” the region. This is a possibility that strikes directly at the central premise of U.S. policy in East Asia—namely, that the United States is a stabilizing presence in the region.

U.S. policy regarding the sovereignty disputes and associated issues in the SCS is clear. According to Secretary of State Clinton:

The United States has a national interest, as every country does, in the maintenance of peace and stability, respect for international law, freedom of navigation, unimpeded lawful commerce in the South China Sea. The United States does not take a position on competing territorial claims over land features, but we believe the nations of the region should work collaboratively together to resolve disputes without coercion, without intimidation, without threats.¹

While this report addresses the SCS, the current tension between China and Japan in the East China Sea illustrates how the United States in support of a treaty ally could become involved in a crisis with China over issues of sovereignty.² This is particularly ironic because for decades Washington has assiduously avoided becoming embroiled in any competing claims of sovereignty throughout East Asia by adopting a position of not voicing an opinion on the merits of the sovereignty claims.

¹ Hillary Clinton, “Remarks with Indonesian Foreign Minister Raden Mohammad Marty Muliana Natalegawa,” September 3, 2012, <http://www.state.gov/secretary/rm/2012/09/197279.htm>.

² In addition to Taiwan, the Senkaku/Diaoyu Islands in the East China Sea represent the other area where the United States and China could come into conflict, because the U.S.-Japan Security Alliance covers territory under Japanese administrative control—as these islands are. In other words, if China elected to use force against Japan over these islands, the United States could very well become directly involved. See Michael A. McDevitt et al., *The Long Littoral Project: East China and Yellow Seas—A Maritime Perspective on Indo-Pacific Security*, CNA, IOP-2012-U-002207-Final, September 2012.

This report addresses the issues associated with the SCS and speculates on whether current policies are likely to achieve the Obama administration's objectives of an international law-based regime in the SCS that would eliminate tension and preserve long-term regional stability.

The potential for U.S. involvement

The SCS is a complicated policy issue because of the overlapping sets of concerns associated with it. Sovereignty disputes in the SCS involve six countries—China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei— five of which (all but Brunei) occupy some of the islands with military or paramilitary forces. The SCS picture is further muddied because China also makes claims based on assertions of “historic waters” that are delimited by a vague dashed line with no precise coordinates on maps. Known as the “U-shaped” or “nine-dashed” line, it encompasses virtually the entire SCS. This line is the cause of significant confusion, because Beijing has so far refused to define what it thinks this line means legally, and because it overlaps the EEZ and the continental shelf claims of the other SCS coastal states.

In April 2012, the SCS was the site of a confrontation between the Philippines and China over an uninhabitable feature known as Scarborough Shoal. This dispute has quieted down but has not yet been resolved, and it carries with it a possibility, admittedly slim, that the United States could become directly involved in a crisis with China because of our treaty obligations with the Philippines. In this case, it is not that the mutual defense treaty with the Philippines obligates Washington to take sides over the sovereignty question of Scarborough Shoal; it does not. Rather, the treaty does include language related to attacks on “its [the Philippines’] armed forces, public vessels or aircraft in the Pacific.”³ If China were to attack a Philippine naval or coast guard ship, Washington could find itself in a difficult position regarding its willingness to live up to treaty obligations and its perceived reliability as a security provider in East Asia.

Finally, an issue that is separate but related to the question of sovereignty is the major disagreement between Washington and Beijing over “freedom of navigation” in the SCS. The United States argues that China is trying to obstruct it. Specifically, this issue has to do with what military activities are permitted in the EEZ of China, which, based on China's claims, could potentially encompass much of the SCS. Washington argues that UNCLOS permits nations to exercise “high seas freedoms” in the EEZs of coastal states.⁴ These “freedoms”

³ Mutual Defense Treaty between the United States and the Republic of the Philippines; August 30, 1951, http://avalon.law.yale.edu/20th_century/phil001.asp.

⁴ Which the United States has yet to ratify, but nonetheless observes.

include the right to conduct peaceful military activities, which includes, inter alia, surveillance and military surveys. China disagrees. This disagreement regarding surveillance has already caused two serious incidents: the 2001 mid-air collision between a U.S. Navy surveillance aircraft (EP-3) and an intercepting Chinese navy fighter, and the 2009 harassment by Chinese fisherman and paramilitary ships of USNS *Impeccable*, which was conducting under-sea surveillance.⁵

Strategic context

While there has been no shortage of well-informed papers and reports on the complex issues associated with the South China Sea, strategists have only recently begun to view the SCS in the context of a broader competition between the United States and China in Southeast Asia. In his article, “The South China Sea Is the Future of Conflict,” for *Foreign Policy*, Robert Kaplan made the geo-strategic case that the South China Sea is at the center of the Asian littoral between the wealthy trading countries of Northeast Asia on one side and the rising power of both India and the Middle Eastern oil-producing nations on the other.

This geography makes the SCS a critical artery (Kaplan calls it the “throat”) between the Pacific and Indian oceans for commercial and military traffic, and therefore is of strategic interest to China as well as to the states of Northeast Asia that depend on unimpeded sea lanes for imports and exports. There is a dual power dynamic at work along the littorals of the SCS: the first is between China (and Taiwan) and the four Southeast Asian nations (Brunei, Malaysia, the Philippines, and Vietnam) over territorial claims in the SCS. The second dynamic involves the regional “competition” between China and the United States for influence, access, and acceptance of their respective views regarding norms of maritime behavior.⁶

In many ways the Obama administration itself has placed the SCS and Southeast Asia into a broader strategic context that involves the United States and China. Even in the earliest days of President Obama’s first term, there was a focus on Southeast Asia. This was evidenced by Secretary Clinton’s visit to the Association of Southeast Asian Nations (ASEAN) secretariat in February 2009, and Washington’s accession to ASEAN’s Treaty of Amity and

⁵ The United States has yet to ratify the UN Law of the Sea, but has followed its guidelines faithfully since the Reagan administration.

⁶ Robert Kaplan, “The South China Sea is the Future of Conflict,” *Foreign Policy*, Sep/Oct 2011, http://www.foreignpolicy.com/articles/2011/08/15/the_south_china_sea_is_the_future_of_conflict?page=0,4; Bronson Percival, *The Dragon Looks South: China and Southeast Asia in the New Century* (Westport, CT: Praeger Security International, 2007).

Cooperation in 2009, which then made it possible for the United States to become a member of the annual heads of state meeting called the East Asian Summit (EAS).⁷ In addition, in 2009 the United States opened a mission and announced an ambassador to ASEAN in Jakarta; it also held the first U.S.-ASEAN summit that year.

Secretary Clinton publically involved the United States in South China Sea issue at the July 2010 meeting ASEAN Regional Forum (ARF) in Hanoi. She surprised China by indicating that Washington was willing to facilitate multilateral discussions on the disputed territories of the South China Sea. She also said that the United States is opposed to any use of coercion or threats of force to resolve conflicting claims. Clinton justified her statement of concern by stating, “The United States, like every 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.”⁸

This policy step directly involved the United States in the South China Sea disputes in a sense that was different from merely urging peaceful resolution while maintaining neutrality on sovereignty claims. Not surprisingly, China was furious over Clinton's comments, not least because previously it had succeeded in keeping the sovereignty issue off the ARF agenda and other Asian multinational meetings. Chinese officials denounced Clinton's efforts to “internationalize” the issue; both the Chinese foreign and defense ministries criticized her for intervening in the South China Sea dispute.⁹

By inserting itself more directly into SCS sovereignty issues, Washington was responding to a perceived demand signal from Southeast Asian nations,¹⁰ which were worried about Chinese assertiveness in the SCS.¹¹ Washington was also worried about Chinese behavior follow-

⁸ Secretary of State Hillary Clinton, remarks at press availability, July 23, 2010, Hanoi, Vietnam, <http://www.state.gov/secretary/rm/2010/07/145095.htm>.

⁹ Gordon Chang, “Hillary Clinton Changes America's China Policy: the Secretary of State Pulls a 180 on Beijing,” *Forbes*, July 28, 2010. <http://www.forbes.com/2010/07/28/china-beijing-asia-hillary-clinton-opinions-columnists-gordon-g-chang.html>.

¹⁰ Bonnie Glaser and Brittany Billingsley, “US-China Relations: Tensions Rise and Fall, Once Again,” *Comparative Connections: A Quarterly E-Journal on East Asian Bi-Lateral Relations*, Pacific Forum/CSIS, Honolulu, Vol12, No 3. October 2010, p.29

¹¹ The best analysis of Chinese assertiveness in the 2009-2011 time frames is by Dr. Michael Swaine of the Carnegie Endowment and Dr. M. Taylor Fravel of MIT. See Michael D. Swaine and M. Taylor Fravel, “China's Assertive Behavior: Part Two: the Maritime Periphery,” *China Leadership Monitor* 35 (Summer 2011), Hoover Institute, Stanford University, <http://www.hoover.org/publications/china-leadership-monitor/8146>.

ing the USNS *Impeccable* incident in the spring of 2009.¹² As a result, the Clinton statement at the Hanoi ARF meeting accomplished two objectives. First, it reminded the participants, including China that the United States intended to remain a serious strategic player in East Asia and that peace and stability in the SCS was a U.S. interest. Second, it added one more policy landmark along the path leading to the unveiling of America's new Asia strategy. That unveiling took place 15 months later, when Secretary Clinton provided the most comprehensive written description available of the administration's Indo-Pacific Strategy in her *Foreign Policy* article "America's Pacific Century."¹³ Now that this strategy is characterized as the "pivot" or "rebalance" toward Asia, it is important to appreciate that while her article included an integrated mix of diplomatic, economic, budgetary, and security-related initiatives, most of the posture changes focused on the littoral of the SCS. These changes are intended to significantly increase U.S. presence through rotational deployment, more frequent port visits, and improved military-to-military engagements and training exercises with the Philippines, Vietnam, and Singapore. The rotational deployment of U.S. Marines to Darwin, Australia, also signifies a desire to more widely distribute U.S. presence in East Asia away from its Northeast Asia focal point.¹⁴

In sum, starting in the summer of 2010 the Obama administration has clearly signaled through a combination of diplomacy and enhanced military presence that the United

¹² The incident took place 75 miles south of the island of Hainan in China's EEZ and was due to different interpretations of international law. But more fundamentally it underscored the lack of transparency and trust in the US-China relationship. For a view that takes issue with official US position see Mark Valencia, "The Impeccable Incident: Truth or Consequences," *China Security* 5, no. 2 (Spring 2009). Valencia is the de facto "god father" of work that considered the SCS a serious flashpoint. See <http://www.chinasecurity.us/pdfs/Valencia.pdf>. For a more legally accurate view, see Peter Dutton, "Three Disputes and Three Objective: China and the South China Sea," *Naval War College Review* 64, no. 4 (Autumn 2011): 54-55.

¹³ Hillary Clinton, "America's Pacific Century," *Foreign Policy* (November 2011), www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century.

¹⁴ During his November 2011 trip to Asia, President Obama announced the creation of a U.S. Marine Corps presence in Australia. Today that presence is only 250 strong, but it is planned to grow to 2,500—a full Marine Expeditionary Unit (MEU). This is likely to trigger an increase in the number of amphibious ships based permanently in the Western Pacific so that these Marines will have the lift necessary to be employed within the region. The Obama announcement built upon the announcement that then Secretary of Defense Robert Gates made earlier in 2011, at the Shangri-La Dialogue in Singapore, that several of the U.S. Navy's newest surface combatants, known as the Littoral Combat Ships (LCSs), would be permanently stationed in Singapore. Finally, the idea of reestablishing some sort of rotation presence in the Philippines was also addressed by the U.S. Navy Chief of Naval Operations. Collectively, these posture announcements were intended to signal that the rebalance strategy includes improving U.S. presence in Southeast Asia,—which, in terms of U.S. presence, had been neglected when compared to Northeast Asia.

States does consider creating rule-based stability in the SCS an important U.S. national objective. The United States has become much more involved in the day-to-day security dynamic between China and SCS littoral states—and, while remaining neutral about the merits of respective sovereignty claims, it is not neutral about assertive behavior from any party.

China and the South China Sea

China's interests¹⁵ are a complex mix of the desire to exploit the South China Sea's natural resources (real and potential), the wish to establish its sovereignty, and desire to maintain its security. For China, sovereignty and resources are closely intertwined. Sovereignty over the land features—lands and rocks—creates the basis for claiming the resources in surrounding water, and on and below the ocean floor.

Beijing claims sovereignty over all of the land features in the SCS—the Xisha (Paracel), Zhongsha (Macclesfield Bank and Scarborough Shoal), and Nansha (Spratly) islands—and maritime rights over the related waters of these island groups. China occupies the entire Paracel Island chain, having driven out the South Vietnamese in 1974 from the westernmost islands of the Paracel archipelago. As of the summer of 2012 dispute with the Philippines, China also exercises effective control of Scarborough Shoal by using civilian fisheries enforcement vessels and a rope barricade across the entrance to Scarborough's lagoon to keep Philippine fishermen away.¹⁶

In the Spratly chain, physical control is more mixed; some 45 to 50 of these features are occupied by the various claimants. Vietnam is far and away the largest "landholder" in the Spratlys, occupying between 21 and 25 specific features. The Philippines and Malaysia each occupy seven or eight features, China holds seven, and Taiwan (the Republic of China) holds one.¹⁷

China's basic problem is that it does not occupy any of the largest islands in the Spratly group. This is an important concern for Beijing since only a handful of the 230 odd fea-

¹⁵ Among serious China scholars, Dr. M. Taylor Fravel's book, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes*, (Princeton University Press, 2008) is a recognized authority, and his recent article "China's Strategy in the South China Sea," in *Contemporary Southeast Asia* 33, 2011) sets the standard for assessing China's positions on the South China Sea.

¹⁶ Greg Torade, "China Dictatorial in Scarborough Shoal Dispute," says Albert Del Rosario, "South China Morning Post, November 30, 2012, <http://www.scmp.com/news/asia/article/1094200/china-dictatorial-scarborough-shoal-dispute-says-del-rosario>

¹⁷ CIA map in CNA Library Reserves, D0026371.A1, December 2011.

tures in the Spratly Islands would rate a 200-nautical mile EEZ under the provisions of Article 121 of UN Convention on the Law of the Sea (UNCLOS) and, as a result, be able to claim the resources within that zone. (This is addressed in greater detail below.) The three largest islets are in the hands of Taiwan (Itu Aba or Taiping Island), the Philippines (Thitu Island), and Vietnam (Spratly Island).

Taiwan's holding is the best of the lot; it has its own fresh water supply and facilities for its small garrison of the Taiwan Coast Guard. During World War II, the Imperial Japanese Navy used it as a bare-bones submarine base. In 2007, Taiwan completed an airfield capable of handling a C-130 transport.¹⁸

The Philippines' Thitu Island (Pagasa in Tagalog) is the administrative hub of its Spratly holdings. It too has a C-130 capable airfield, as well as a garrison of about 30 soldiers/ marines. It has a civilian population of 300 (apparently only 200 live on the island at any one time). It has facilities for all these people, including a clinic, a school, and a municipal center.¹⁹

Spratly Island, Vietnam's largest holding, has a helicopter pad, a 700-yard-long air strip that can accommodate small fixed-wing propeller aircraft, and a small jetty with two piers. Energy sources come from solar panels and wind turbines. A clinic, a cultural house, a meteorological station, a radio tower, and a Buddhist pagoda are also on the island.²⁰ According to a Chinese source, the Vietnamese have a garrison that houses a full 600-man battalion on Spratly.²¹ That number seems high—but, given Vietnam's experience in 1988 when 74 of its men were gunned down by the PLA Navy on Johnson Reef, it would not be a shock to learn that there is a substantial garrison on Spratly Island.²²

¹⁸ Taiping Island, http://en.wikipedia.org/wiki/Taiping_Island

¹⁹ Thitu Island, http://en.wikipedia.org/wiki/Thitu_Island, The Philippines and the Spratley Islands,

http://www.fitnesscenter.ekoregion.biz.pl/?fitness=Philippines_and_the_Spratly_Islands, and <http://mabuhaycity.com/photoplog/image-pag-asa-island-spratlys-photos-images-3740/>

²⁰ See, for example, *Bằng Chứng Lịch Sử Và Cơ Sở Pháp Lý: Hoàng Sa, Trường Sa Là Của Việt Nam* [Historical Proof and Legal Basis: Paracel and Spratly Islands Belong to Vietnam] (Ho Chi Minh City: Youth Publishing House, 2011).

²¹ Yu Xiaodong and Han Yong, Looking Forward: China endeavors to increase its civil presence in the Nansha (Spratly) Islands to bolster its territorial claims," <http://www.newschinamag.com/magazine/looking-forward>

²² For a video of the PLA mowing down unarmed Vietnamese, see http://www.youtube.com/watch?v=F_iTs8XYhp8

The basis for China's territorial claims in the SCS is a statement that Chinese premier Zhou Enlai issued in August 1951 during the Allied peace treaty negotiations with Japan. In the statement, Zhou declared China's sovereignty over the Paracel and Spratly islands. In September 1958, China reaffirmed its claim to these islands. For the last 40 years, official government statements from Beijing regarding the SCS have referred to China's "indisputable sovereignty" over the islands of the SCS.²³

Chinese behavior

Chinese behavior in the South Sea took a turn for the worse during 2012. China scholar Bonnie Glaser captured this in her recent statement before the House Foreign Affairs Committee, "Beijing as an Emerging Power in the South China Sea." She wrote:

China's behavior in the South China Sea is deliberate and systematic: its actions are not the unintentional result of bureaucratic politics and poor coordination. In fact, the spate of actions by China in recent months suggests exemplary interagency coordination, civil-military control and harmonization of its political, economic, and military objectives. The clear pattern of bullying and intimidation of the other claimants is evidence of a top leadership decision to escalate China's coercive diplomacy. This has implications not only for the Philippines and Vietnam, the primary targets of China's coercive efforts, but also has broader regional and global implications.²⁴

In her statement, she also pointed out that China's claims, policies, ambitions, behavior, and capabilities are significantly different from those of other claimants:

Beijing refuses to engage in multilateral discussions on the territorial and maritime disputes in the region, preferring bilateral mechanisms where it can apply leverage over smaller, weaker parties. China rejects a role for the International Court of Justice (ICJ) or the International Tribunal on the Law of the Sea (ITLOS) in resolving the territorial and maritime disputes in the South China Sea. Although Beijing has agreed to eventually enter into negotiations to reach a Code of Conduct for the South China Sea, Chinese officials have recently stated that discussions can only take place "when conditions are ripe."²⁵

In short, China is offering a choice. States that take actions directly challenging Chinese claims will be faced with demonstrations of Chinese power in all its various guises; if howev-

²³ Fravel, "China's Strategy in the South China Sea," p. 293.

²⁴ Glaser, "Beijing as an Emerging Power."

²⁵ Ibid.

er, states pursue moderate policies or actually acquiesce to Chinese claims, they will reap mutually beneficial economic and political rewards.²⁶

China and the Nine-Dashed Line

One of the most confounding aspects of the SCS disputes is the existence of the so-called “nine-dashed” or “U-shaped” line that is drawn on Chinese maps and encompasses about 80 percent of the South China Sea. The line was the creation of the Republic of China (ROC), and first appeared officially on an ROC map in 1947. Subsequently, it has appeared on maps issued by the People’s Republic of China (PRC) since 1949. Neither the ROC nor the PRC has ever defined exactly what the line was intended to portray in terms of claims or sovereignty.²⁷ It certainly has no legal standing under UNCLOS, but, because it is not specifically demarcated by latitude and longitude, it is not technically “illegal.” As portrayed on Chinese charts, however, it clearly infringes on the exclusive economic zones (EEZs) of the other claimants, as well as upon Indonesia’s EEZ around Natuna Island and its associated gas fields.

Is the nine-dash line a claim to sovereignty over the entire sea, or an indication of historic interests, or something else? Beijing has so far ignored requests to clarify this line, which is enshrined in Chinese domestic maritime policy. In 2009, China proffered it in submission to the UN Commission on the Limit of the Continental Shelf, but without an explanation of what the line is intended to indicate. In its 2009 submission, China did state:

China has indisputable sovereignty over the islands in the South China Sea and adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed subsoil thereof (see attached map). The above position is consistently held by the Chinese Government, and is widely known by the international community.²⁸

This has led to speculation, some informed, some not, over what it is intended to portray. For example, the Republic of China (Taiwan), the originator of the nine-dashed line, indi-

²⁶ This interpretation is based upon Robert Sutter and Chin-hao Hunag, “China Muscles Opponents on South China Sea,” *Comparative Connections: A Triannual E-Journal on East Asian Bilateral Relations* 14, no. 2 (September 2012), Pacific Forum CSIS, pp. 62-63. See <http://csis.org/program/comparative-connections>.

²⁷ Fravel, “China’s Strategy in the South China Sea,” p. 295.

²⁸ The attached map did include the nine-dashed line with demarcation. *Note verbale* from PRC Permanent Mission to the UN, to UN Secretary General, 7 May 2009, http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf

cates that it was an attempt, many decades before UNCLOS was created, to portray China's "historic water limit that was under the jurisdiction of the Republic of China."²⁹

Unfortunately for the ROC and those experts and others within China who share the "historic waters" interpretation, the Law of the Sea only recognizes historic waters in very limited circumstances, such as bays that have been historically under national jurisdiction of a specific government. A historic water claim does not apply to open ocean. International law has never recognized claims of historic waters that cover such a vast area of the high seas.³⁰ In fact, one of the objectives in negotiating a Law of the Sea convention in the first place was to eliminate vague constructs such as historic waters and develop a clear methodology for maritime claims.

China's Foreign Ministry actually came close to a clarification of what the nine-dashed line meant. According to Dr. M. Taylor Fravel, an acknowledged U.S. expert:

The [Chinese foreign ministry] spokesperson...stated that "No country including China has claimed sovereignty over the entire South China Sea." By making such a statement, this phrase suggests that the "nine-dashed line" doesn't represent a claim to maritime rights (such as historic rights), much less a claim to sovereignty over the water space enclosed by the line. More likely, the line indicates a claim to the islands, reefs and other features that lie inside.³¹

However, this interpretation is contradicted by other Chinese behavior, such as cutting the cable of a Vietnamese geological survey ship that was in Vietnam's EEZ and not in any conceivable EEZ drawn from any islands in the SCS. This suggests that a final determination of what the line means has not been settled within China, and that the Foreign Ministry statement is not definitive.

This apparent contradiction has led some experts outside of China to speculate that the nine-dashed line is how "China intends to claim the area within the line as an EEZ and continental shelf generated by the disputed Paracels, Spratlys, and Scarborough Shoal."³² Since the nine-dashed line severely infringes on the EEZs of the Philippines, Vietnam, and Malay-

²⁹ Hong Nong, "Interpreting the U-shape line in the South China Sea," *China US Focus*, May 15, 2012, [rehttp://www.chinausfocus.com/print/?id=15964](http://www.chinausfocus.com/print/?id=15964)

³⁰ Conversation and e-mail exchange with maritime law expert, Captain Mark Rosen, USN, JAG Corps, retired.

³¹ M.Taylor Fravel, "Clarification of China's Claim?" *The Diplomat*, March 5, 2012, <http://thediplomat.com/china-power/clarification-of-china%E2%80%99s-claim/>

³² Doung Danh Huy, "China's U-shaped Line in the South China Sea," *Asia Sentinel*, 19 September 2012, http://asiasentinel.com/index.php?option=com_content&task=view&id=4833&Itemid=188.

sia this interpretation would effectively usurp huge portions of their EEZs. This would be in violation of the “equidistant” provisions in UNCLOS that essentially split the difference when EEZs overlap.

Finally some Chinese scholars have suggested that the line means: China claims all the islands and the EEZ and continental shelf generated by those islands; and, that it claims “historic rights” over the waters inside the nine-dashed line not captured by the first two. In this case, the claim to “historic rights” would not equate to sovereignty, but rather mean the “right” to a share of the resources inside the nine-dashed line.³³

In my opinion, it is the issue of trying to reconcile the idea of “historic rights” within the framework of the UNCLOS treaty that has been difficult, and that has been the reason Beijing has been unable to define what the nine-dashed line means. This opinion was reinforced at an off-the-record meeting at the Brookings Institution with Chinese legal experts, including officials from the Foreign Ministry. They made it clear that the desire to preserve Chinese “historic rights” weighed heavily on their minds, as did the realization that Beijing had to come to grips with making an official statement of what the line meant. The Chinese participants indicated that a politically acceptable definition was being debated actively in Beijing, and that, while it was a “difficult” political problem, they were hoping for a public statement sometime during 2013.³⁴

The relatively arcane topic of the nine-dashed line has major policy implications for two reasons: First, China has been attempting to intimidate resource exploration/exploitation by any of the coastal states in those areas that are inside both the nine-dashed line and the legitimate EEZ of one or another of the coastal states. Not only does this directly challenge the rule-based regime that the United States and its friends and allies want to put in place, it also runs the risk of triggering a conflict. Second, the existence of the nine-dashed line creates an uncertainty which undercuts the willingness of the claimants to make co-production deals with Beijing and undercuts the willingness of oil and gas industries to invest capital in developing SCS hydrocarbon resources.³⁵ None of the other claimants want to undertake any action that gives credence in any fashion to Chinese territorial claims which are both far from China's continental baselines and outside of any reasonable reading of UNCLOS.

³³ Ibid., p. 4.

³⁴ Not for attribution meeting, Brookings Institute October 2012.

³⁵ For a complete discussion of the range of tools that China employs to intimidate and discourage economic activity inside the nine-dashed line, see Fravel, “China’s Strategy in the South China Sea,” pp. 299-310.

The energy issue

It is the prospect of vast energy resources that has raised the stakes regarding sovereignty over otherwise inconsequential islets and features in the South China Sea. The Brookings Institution's Dr. Erica Downs, one of America's leading experts on the issue of resources, stated:

Nobody knows how much oil is in the South China Sea because it has not been fully explored. Not surprisingly, estimates of the region's resource potential vary, as they do for the East China Sea, as well. The key question then becomes whether the Chinese government views the South and East China Seas as potentially having enough oil to substantially reduce China's dependence on imported oil. There's no shortage of Chinese press reports referring to the SCS as China's "Persian Gulf." However, the views espoused by Chinese reporters and their interviewees may not be the same as those of Chinese officials. It's also worth noting that CNOOC (China National Offshore Oil Company) believes that deep-water SCS has enormous potential.³⁶

According to a National Bureau of Asian Research report:

Estimates regarding the scale of these resources vary wildly, especially for the South China Sea. For example, Chinese estimates have ranged from 105 to 213 billion barrels of oil. However, these assessments deal in overall oil and gas resources rather than in recoverable reserves—a vital distinction. The industry rule of thumb is a 10% recovery rate for frontier provinces such that these Chinese figures scale back to still substantial reserve estimates of 10.5-21.3 billion barrels of recoverable oil... other estimates, such as from the United States and Russia, are considerably lower.³⁷

Despite this uncertainty, China is betting that there is a lot of oil to be recovered. Specifically, China's CNOOC has backed its beliefs on finding significant reserves of deep-water South China Sea oil by constructing China's first deep-water off-shore oil rig at a cost of \$923 million. It is part of a \$2.3 billion CNOOC effort to construct a comprehensive deep-sea drilling system.³⁸ Known as CNOOC 981, this enormous (31,000-ton) rig is capable of undertaking offshore operations at a maximum water depth of 3,000 meters (prior to its construction, China could drill no deeper than 500 meters).³⁹

³⁶ Erica S. Downs, Fellow, Foreign Policy, John L. Thornton China Center, Brookings Institution, personal email to this author.

³⁷ Clive Schofield et al., "From Disputed Waters to Sea of Opportunity," NBR Special Report 30, p. 12, http://www.nbr.org/publications/specialreport/pdf/free/SR30_MERA.pdf.

³⁸ <http://www.globaltimes.cn/NEWS/tabid/99/articleType/ArticleView/articleId/666298/Deep-ambitions.aspx>.

³⁹ Ibid.

Construction of the rig is part of CNOOC's plan to invest \$50 billion in deep-water exploration and production in the South China Sea by 2020 in order to increase its output there by 50 million tons of oil (equivalent).⁴⁰ In the press commentary surrounding the commissioning of CNOOC 981, several publications cited the rig as a "game changer," arguing that up until then, China had been behind in the technological race to secure energy assets in the South China Sea.⁴¹

Chinese Security Perspectives

Unlike the arguments associated with sovereignty and resources, which tend to be articulated within the context of international law, security concerns are less structured, can change quickly, and often rest in the eye of the beholder. For China, security along its maritime frontier has been a 150-year-old problem dating from at least 1842, when the Treaty of Nanking ended the First Opium War.⁴² This three-year conflict with Great Britain exposed imperial China's military weakness to attacks from the sea and ushered in the so-called century of humiliation by triggering a sequence of military and diplomatic humiliations perpetrated by Westerners and the Japanese that came primarily *from the sea*.⁴³

Today, China's concerns over security on its maritime approaches are based on four primary factors: (1) the fact that China's economic center of gravity is its eastern seaboard, which makes it vulnerable to attack from the sea; (2) the need to prevent Taiwan's independence and, if necessary, to deter or defeat an approaching U.S. Navy relief force if China elects to attack Taiwan; (3) the historically novel situation for China in which international seaborne trade is what drives the economic growth of China, including the fact that China's economic development is increasingly dependent on oil and natural gas that is delivered by ships; and, finally, (4) the fact that China's global economic interests have translated into global

⁴⁰ China Business Newswire, November 10, 2010, accessed via Nexis.

⁴¹ I want to thank Robert O'Brien from the Brookings Institution for steering me to these sources by providing me with a copy of his "Memorandum on South China Seas Energy Resources Project," dated 1 August 2011, in author's possession. Also see <http://business.globaltimes.cn/industries/2011-05/658321.html>. Although this is China's first rig capable of drilling at depths of 3,000 meters, there are currently around 20 in existence worldwide; see <http://money.163.com/11/0606/17/75SNEDEB00253DC8.html>. In addition, *Oriental Outlook* has reported that while CNOOC owns the intellectual property of the rig itself, only the body of the boat was produced in China, with the vast majority of the technology purchased from abroad. <http://finance.ifeng.com/news/20101002/2677448.shtml>.

⁴² The most recent and extremely well-documented history that addresses this is by the English China scholar Robert Bickers in his *The Scramble for China: Foreign Devils in the Qing Empire, 1832-1914* (New York: Penguin Books, 2012).

⁴³ Ibid.

political interests that can often best be reinforced by a navy capable of operating globally on a sustained basis.⁴⁴

The importance of maritime-related security issues was highlighted in the December 2004 Chinese Defense White Paper, which explicitly lays out its ambitions for the PLA Navy, Air Force, and Second Artillery:

While continuing to attach importance to the building of the Army, the PLA gives priority to the building of the Navy, Air Force and Second Artillery force to seek balanced development of the combat force structure, *in order to strengthen the capabilities for winning both command of the sea and command of the air, and conducting strategic counter strikes* [emphasis added].⁴⁵

For any Asia security analyst, an explicit requirement in an official document to win “command of the sea” raises the immediate question of how much of the sea, and at what distance from the mainland of China, does the PLA wish to command? No official statement has been published in open-source material that would clarify this point. However, it seems that, for the moment, China’s vision of command or control of the seas is closely related to the ability to provide land-based air cover out to about 300 nm from its coast, that being the operational radius of its fighter aircraft.⁴⁶

Using this distance as a template, it means the PLA, in times of conflict, is required to “control” the Yellow Sea, much of the East China Sea (at least out to the 100-fathom curve), the Taiwan Strait, the Tonkin Gulf, and, using an airfield in the Paracels, much of the South China Sea. In other words, the “sea control area” encompasses China’s EEZ and generally follows the contour of the so-called “first island chain” that stretches southeast from Japan, through the Ryukyus, Taiwan, and the South China Sea—the area China considers its “near seas.”⁴⁷ When the PLA Navy’s new aircraft carrier, *Liaoning*, eventually reaches full opera-

⁴⁴ Michael McDevitt, “The PLA Navy’s Anti-access Role in a Taiwan Contingency,” in *The Chinese Navy: Expanding Capabilities, Evolving Roles*, edited by Philip Saunders et al., Center for the Study of Chinese Military Affairs, National Defense University, NDU Press, 2011, p 199.
<http://www.ndu.edu/press/lib/pdf/books/chinese-navy.pdf>.

⁴⁵ PRC Defense White Paper, December 2004, Information Office of the State Council of the PRC, December 2004, Beijing. <http://english.people.com.cn/whitepaper/defense2004>.

⁴⁶ Personal conversations between Rear Admiral Michael McDevitt, USN (Ret.) and Chinese interlocutors in both China and the United States, conducted over the past eight years.

⁴⁷ For a brief discussion of China’s near seas, Andrew Erickson and Gabe Collins, “Near Seas Anti-Navy Capabilities, not nascent blue water fleet constitute China’s core challenge to U.S. and regional militaries, : China Sign post, and e-journal, March 2012,
<http://www.chinasignpost.com/2012/03/near-seas-%E2%80%9Canti-navy%E2%80%9D-capabilities-not-nascent-blue-water-fleet-constitute-china%E2%80%99s-core-challenge-to-u-s-and->

tional capability, it should be able to provide air cover throughout the southern portion of the SCS, specifically the Spratlys.⁴⁸

Controlling the SCS is particularly important because, as a “near sea,” it is both a security buffer for South China and the vital commercial route for Chinese trade, including 80 percent of its oil imports. Whether it is a “core interest,” like Taiwan or Tibet, was a hotly debated topic in 2010, after a *New York Times* report asserted that China had made this statement in a meeting with a senior U.S. government official. Although the article triggered considerable interest among American China specialists, no evidence was uncovered that could attribute this apparent expansion of China’s vital interests to include the SCS.⁴⁹ Nonetheless, whether or not China officially includes the SCS in its formulations of “core interest,” its actions suggest that “control” of the SCS is high on its list of national interests.

In sum, from a strategic security perspective, China has three interests in the South China Seas: its desire to protect its territory and its economic center of gravity from attack from the sea; the imperative to ensure that its seaborne raw materials from the Indian Ocean region cannot be interdicted; and the glittering economic-strategic prospect that it could greatly reduce its dependence on oil and natural gas that has to travel through two problematic chokepoints (Straits of Hormuz and Malacca) by laying claim to and exploiting the resources of the South China Sea. Arguably, one of China’s key strategic objectives is to reduce its dependency on African and Persian Gulf oil, i.e., its so-called “Malacca Dilemma.” If it turns out that oil reserves match the most optimistic predictions, and China is able to resolve the sovereignty disputes with its neighbors in its favor, this strategic objective will become a reality—solving the Malacca Dilemma once and for all. When viewed from this perspective, it is not difficult to understand China’s willingness to worry many of its neighbors, and perhaps sacrifice the good-will developed through years of careful “peaceful development” diplomacy, by becoming increasingly assertive in its approach to sovereignty and the concomitant resource issues in the SCS.

regional-militaries. For a longer analysis see Nan Li, “The Evolution of China’s Naval Strategy and Capabilities: From Near Coast and Near Sea to Far Seas,” in *The Chinese Navy: Expanding Capabilities, Evolving Roles*, edited by Philip Saunders et al., Center for the Study of Chinese Military Affairs, National Defense University, NDU Press, 2011
<http://www.ndu.edu/press/lib/pdf/books/chinese-navy.pdf>.

⁴⁸ For a quick overview, see, Bernard Cole, “China’s Carrier: The Basics,” U.S. Naval Institute website, <http://news.usni.org/news-analysis/news/chinas-carrier-basics>.

⁴⁹ Fravel, “China’s Strategy in the South China Sea,” p. 296.

ASEAN and the South China Sea

The states of Southeast Asia have a fundamental interest in freedom of navigation, the unimpeded flow of commerce, and the maintenance of a balance of power in the South China Sea. Individual members of ASEAN, however, have stressed different priorities when confronted with the necessity of choosing between close relations with China and the defense of their interests in the South China Sea.

Southeast Asian nations can be broadly divided into three camps on the issue of the SCS: those on the front lines of the sovereignty issue, especially Vietnam and the Philippines; those with significant interests in the outcome of the territorial disagreement (specifically, Indonesia, Malaysia, Singapore, and Brunei); and those inclined to accommodate China, including Cambodia, Laos, Myanmar, and Thailand. This division was on full display at the July 2012 annual ASEAN Foreign Ministers meeting in Phnom Penh, Cambodia. Pressure from China on the 2012 ASEAN chair, Cambodia, created disarray in what traditionally has been a consensus-based organization.⁵⁰ As a result, a communiqué that was intended to address the issue of the SCS was blocked by China.⁵¹

This split was on display again at the November 2012 East Asia Summit, which President Obama attended. The end result of the summit was a split between six countries (the Philippines, Indonesia, Malaysia, Singapore, Vietnam, and Brunei) that favored broader discussion of the SCS, and four (Cambodia, Laos, Myanmar, and Thailand) that did not; this effectively prevented ASEAN from developing a louder, clearer voice in negotiating with China as a single bloc.⁵²

With respect to the SCS, the two most important ASEAN states are the Philippines and Vietnam: not only do they have the most expansive claims disputes with China, but also their

⁵⁰ There are a number of excellent scholars in Singapore and Australia who closely follow and write about Southeast Asian perspectives on the territorial and associated resource exploitation disputes in the South China Sea. One of the best is Dr. Ian Storey. He is a Fellow at the Institute of Southeast Asian Studies (ISEAS), Singapore. His recent article “China Pushes on the South China Sea, ASEAN Unity Collapses,” captures well the current state of ASEAN disarray occasioned by each member’s own relationship with Beijing, and the wide variety of interests associated with the SCS. See http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=39728.

⁵¹ Prah Chan Thul and Stuart Grudgings, “SE Asia Meeting Disarray Over Sea Dispute with China,” Reuters, <http://www.reuters.com/article/2012/07/13/us-asean-summit-idUSBRE86C0BD20120713>.

⁵² Natasha Bererton-Fukui, “Sea Tensions Erupt at Asian Summit,” *Wall Street Journal*, November 20, 2012.

claims overlap with one another's and have yet to be reconciled. Both countries have been involved in skirmishes with Chinese maritime law enforcement forces.⁵³

The Philippines has been particularly proactive within ASEAN, pushing for ASEAN specifically to find fault with China's hard-nosed approach and unwillingness to participate in multilateral dialogue aimed at resolution. Alone of all the claimants, Manila floated an ambitious proposal aimed at actually solving rather than just managing tensions. The idea was to transform the disputed area of the SCS into a "Zone of Peace, Freedom, Friendship and Cooperation" (ZoPFFC). Despite its awkward name, the proposal did have merit, but Beijing derided the concept as a "trick" and ASEAN showed little enthusiasm for backing the idea.⁵⁴

The Philippines have also been aggressive legally. On 22 January 2013, the Philippines officially notified China that it had instituted arbitral proceedings against China under Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The legal challenge is focused primarily on China's claim to rights and jurisdiction in the maritime space inside the infamous nine-dash line on Chinese maps of the South China Sea.

This is significant because even if China refuses to participate, which seems likely, if the tribunal issues a finding it will be legally binding on both China and the Philippines. The issue of sovereignty will not be resolved because determinations of sovereignty is beyond the legal writ of UNCLOS, but

the Philippines could achieve a major legal victory if the Tribunal rules that China cannot make claims to maritime space based on history and the nine-dash line.⁵⁵

Nevertheless, there is rising Southeast Asian concern over the long-term geo-strategic implications of China's recent behavior. As a result, many Southeast Asian countries have a more positive view of the U.S. rebalance strategy than they otherwise might have, given the important economic and trade relations that all ASEAN states have with China.⁵⁶

⁵³ IGC Report, *Stirring Up*, pp. 2-10.

⁵⁴ Ian Storey, "ASEAN and the South China Sea: Movement in Lieu of Progress," *The Jamestown Foundation China Brief* XII, issue 9 (April 27, 2012): 10.

⁵⁵ Robert Beckman, "The Philippines v. China Case and the South China Sea Disputes," <http://cil.nus.edu.sg/programmes-and-activities/cil-members-activities/director-beckmans-paper-from-asia-society-conference-on-south-china-sea/>

⁵⁶ "The US rebalance: potential and limits in Southeast Asia," *Strategic Comments*, Volume 18, Comment 49, IISS website, www.iiss.org, December 2012. <http://www.iiss.org/publications/strategic-comments/past-issues/volume-18-2012/december/>

As a result, each ASEAN member works carefully to hedge its relationships between Beijing and Washington. In April 2012, for instance, Thailand elevated its bilateral relationship with China to “strategic partnership,” and in July it dispatched a senior military delegation to visit China as a minister of defense counterpart. Vietnam, as a frontline state in the SCS disputes, has been careful to avoid making its relationship with China any worse, and has seemingly “walled off” its SCS disputes from broader Sino-Vietnam relations. It continues to strictly ration U.S. Navy port calls to Cam Rahn Bay, while at the same time building up its own maritime defenses.⁵⁷

Malaysia and Indonesia have also been careful to balance their engagements with Washington and Beijing. Malaysia held its first bilateral “defense and security consultation” with China in September 2012 and agreed to strengthen military exchanges and cooperation. Jakarta, for its part, values its “comprehensive partnership” with Washington, but also emphasizes developing good defense relations with China. In August 2012, an agreement was reached with China that permitted Indonesia to produce China’s C-705 anti-ship cruise missile under license.⁵⁸

Singapore plays an important role in enabling Washington’s rebalance strategy, by agreeing to permit four USN warships to be rotationally stationed in Singapore. This gives the United States easy naval access to the SCS, and suggests that a more or less permanent U.S. naval presence in the SCS is likely to begin over the next two years. That said, Singapore is very careful to remain neutral between China and the United States; it rationalizes its two-decades-old security relationship with the United States as a hedge against its neighbors, many of whom are of the Malay culture, and is not specifically aimed at China.⁵⁹

The Philippines has warmly embraced the rebalance strategy; it has had to. The April 2012 standoff with China over Scarborough Shoal highlighted the fact that it is virtually defenseless at sea. Moreover, it cannot afford a major increase in defense expenditures. Since that time Manila has agreed to measures that will result in stronger and closer cooperation with the U.S. military. Periodic presence of U.S. naval resources, which has been steadily increasing over the past 12 months, will continue. Particularly important to both parties will be increased access to the former Cubi Point Naval Air Station in Subic Bay, which will facilitate aerial reconnaissance over the SCS. According to a *Voice of America* article, Philippine offi-

⁵⁷ Ibid., p. 3.

⁵⁸ Ibid.

⁵⁹ As former Singapore Prime Minister Lee Kwan Yew famously put it in his memoirs, “Singapore is a Chinese island in a Malay Sea.” See Lee Kwan Yew, *From Third World to First: The Singapore Story 1965-2000* (Singapore: Times Media, 2000), p. 25.

cials are risking political blowback regarding an increased U.S. presence because they want the country “to be in a better position to defend its claims in the SCS.”⁶⁰

Finally, Southeast Asians are acutely aware of how U.S. diplomatic and security interests in Southeast Asia have waxed and waned over the past 50 years. During the Vietnam War era, the question of whether the United States had “vital” interests in Southeast Asia was debated endlessly. Was the region itself strategically important to the United States, or was Communist expansion the real issue? If Southeast Asia just happened to be the locale for a fight against Communism, the region itself was not intrinsically a “vital” interest.⁶¹

A retrospective examination of U.S. policy and strategy from 1975 through the start of the 21st century suggests the latter judgment: Southeast Asia was a region that was important, but not vitally so. Other than worries about terrorists, it was mostly ignored during the eight years of the Bush administration. After all, this neglect is something that Obama’s rebalance strategy intends to redress. It is not clear whether the Obama administration has concluded that Southeast Asia and the SCS are intrinsically vital, but clearly they are a testing ground for the efficacy of the administration’s desired rules-based regional order.

UNCLOS and the SCS

No background discussion of the South China Sea would be complete with addressing the central role that UNCLOS plays. In the SCS, a lot of attention is being placed on many uninhabitable features and small islands that can support human occupants only because of constant resupply and the installation of water desalinization devices; the reason is that human occupation is tied to sovereignty, and sovereignty and resources are closely intertwined.

Under UNCLOS, any sovereign feature above water at high tide is surrounded by a 12-nautical-mile water column, known as its territorial sea, which endows the state possessing sovereignty to the resources within its territorial sea. UNCLOS also codified the right for the state with sovereignty to possess the economic resources of the ocean beyond the 12-mile territorial sea. Known as an exclusive economic zone, or EEZ, it stretches 200 nautical mile from a state’s nautical baseline. But, not every sovereign dot of land is entitled to a 200-nautical-mile EEZ.

⁶⁰ Simone Orendain, “Philippines Readies for Increased US Presence,” December 12, 2012, www.voanews.com/artcilceprintview/1563453.html.

⁶¹ For a more extended discussion of the point, see Michael McDevitt, “U.S. Strategy in the Asia Pacific Region: Southeast Asia,” in *US Strategy in the Asia-Pacific region*, a conference report edited by Wilson Lee, Robert Hathaway, and William Wise, the Woodrow Wilson International Center for Scholars Asia Program, 2003.

According to article 121.3 of UNCLOS, only islands—as distinguished from rocks, shoals, banks, and other features—rate an EEZ. To be an island, a feature must meet two criteria: it must be above water at high tide, and it must be capable of sustaining human life and economic activity on its own. This second provision is ambiguous; it is not entirely clear whether effective occupation or continuous administration and control meet the definition of sustaining human life and economic activity. At issue is whether “islands” that have garrisons, permanent shelter, and other facilities, including desalinization plants to provide fresh water, satisfy the UNCLOS criterion of “sustaining human life and economic activity on its own.”⁶²

It seems clear that the various claimants do believe that many of the Spratly Islands would meet UNCLOS criteria that would, in turn, justify a 200-nm EEZ; otherwise, they would not be investing the time and resources necessary to support garrisons and population centers on “islands” that do not have a permanent water supply.

In a perfect world, all the claimants would ask the Law of the Sea Tribunal (ITLOS) in Hamburg, Germany, if any of the Spratlys would justify an EEZ. If none of the features did, that would greatly simplify eventual maritime delimitations. The possibility of all the claimants agreeing to such a course of action is extremely slim. Certainly from China’s point of view, such a course of action could result in its having to surrender or share the resources it covets in the Spratlys. Further, by simply making such a request, it would run the risk of legitimizing the sovereignty claims of Vietnam, the Philippines, and Malaysia.⁶³

It is worth reflecting that for centuries, no country really cared greatly about sovereign ownership of these features. Fishermen from all the adjacent countries worked these waters peacefully. The context for the current disputes was created by two things: the development of a technology that allowed oil and gas to be recovered from below the sea bed; and a well-intentioned attempt by the United Nations to put into place a legal regime, UNCLOS, to regularize rights to these resources.

Implications for U.S. policy

Given the complexity of the mix of issues surrounding the SCS, it is easy to understand why Washington would shrink from becoming more deeply involved. Yet, because of its current

⁶² http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm.

⁶³ In addition, recent findings of the International Court of Justice in a dispute between Ukraine and Romania pertaining to Serpent Island and the very recent International Tribunal for the Law of the Sea (ITLOS) case between Myanmar and Bangladesh suggest that courts are unwilling to liberally apply Article 121 – particularly when it results in an abridgement of the rights of a continental state to have a full EEZ or continental shelf.

incremental approach—which keeps it relatively aloof from the specifics of the complicated mess of issues—it may be forced by the press of events to do just that. It would be wise to think through alternative approaches before that happens.

Only one South China Sea issue is a direct bilateral Sino-U.S. security issue—the question of military operations in China’s EEZ. Yet collectively, the unsettled situation in the SCS implicitly brings attention to the role of the United States in the region. Since the United States more directly involved itself during the 2010 ARF in Hanoi, policy makers must face the fact, like it or not, the U.S. now has “skin in the game.” The United States must be involved if for no other reason than because the central premise of the rebalance strategy rests on a foundation of ensuring that common legally based standards of behavior are followed throughout the region.

Thomas Donilon, President Obama’s national security advisor, put it succinctly in the *Financial Times*:

Security in the region requires that international law and norms be respected, that commerce and freedom of navigation are not impeded, that emerging powers build trust with their neighbors, and that disagreements are resolved peacefully without threats or coercion.⁶⁴

It would be a tremendous advantage if the United States ratified UNCLOS. This is a necessary step if it hopes to be a more credible player in preserving stability in the SCS. Today UNCLOS embodies customary international law. Ratification would increase the legitimacy of U.S. efforts to pursue a rules-based approach to managing and resolving disputes over maritime jurisdiction, and would further enhance the image of the United States among many states in East Asia—i.e., it would show that “we play by the same set of international rules as they do.”

When it comes to policy choices, clearly, the range of options for Washington is not infinite; only four policy approaches seem possible. They could be generally divided into the categories below, which are not necessarily mutually exclusive:

1. *Make the situation better.* The United States could work to reduce the risk of conflict escalation. This could involve direct U.S. mediation—for example, active involvement in trying to reconcile the competing claims of the Philippines, Vietnam, and Malaysia. By negotiating a resolution to these differences, the United States would set a positive example for subsequent

⁶⁴ Tom Donilon, “America is back in the Pacific and will uphold the rules,” *Financial Times*, November 27, 2011. <http://www.ft.com/cms/s/0/4f3febac-1716-11e1-b00e-00144feabdc0.html>.

resolution with China, make it easier for ASEAN to speak with one voice to China, and create useful legal precedents that could more broadly apply to other maritime disputes in East Asia.

2. *Wash our hands of the entire problem.* Washington could try to turn the SCS matter over to a regional power such as Indonesia, and indicate to Beijing that the Sino-U.S. relationship is more important to Washington, over the long run, than becoming involved in SCS territorial disputes. At the same time, Washington could make it clear that such a policy would not be offering a “green light” for Beijing to use force but is merely a statement of the obvious fact that United has no important interests at stake so long as high seas freedoms are respected.
3. *Take a much more assertive posture with China.* The United States could take sides, especially by improving its own capabilities and other claimants’ military postures. In so doing, it would adopt a posture clearly aimed at deterring Chinese attempts to coerce. This policy would risk turning the Sino-U.S. relationship into one of confrontation that would make East Asia less stable and force many countries in the region into difficult choices that might not be resolved in favor of the United States.
4. *Enhance the status quo.* While undertaking no change in official U.S. policy, Washington could become more explicit about its views. For example, the State Department could issue a White Paper that spelled out what the U.S. consider to be claims in the SCS that are beyond the writ of UNCLOS and general international law. Such a paper would address in very explicit terms what baselines are considered excessive, what islands or islets qualify for an EEZ, and what the United States means by “freedom of navigation.” Even though the United States has not ratified UNCLOS, it can still read and interpret international maritime law.

Conclusion

Over the past four years, the Obama administration has invested more American diplomatic, economic, and security efforts in Southeast Asia than at any time since the end of the Vietnam War. The groundwork for the rebalance toward Asia, announced in late 2011, began to be laid early in President Obama’s first term: in 2009, the United States acceded to the ASEAN Treaty of Amity and Cooperation (known as the TAC), which enabled it to become a member of the annual heads of state meeting called the East Asian Summit (EAS). In addition, in 2009 the United States opened a mission and announced an ambassador to ASEAN in Jakarta; it also held the first U.S.-ASEAN summit that year.

At the same time that Washington was reenergizing its approach to Southeast Asia, Chinese behavior was indirectly and inadvertently encouraging greater U.S. involvement. Its assertive approach made it easier for Washington to become more deeply enmeshed in the issues involved with the SCS than ever before. As a result, the United States is much more deeply engaged in security relations with all the ASEAN claimants to features in the SCS, as well as being more active in encouraging ASEAN to press for a collaborative resolution to SCS disputes.

Washington is strategically involved, but has little direct leverage

On the other hand, having become more strategically involved in the complexity of SCS issues, the reality is that Washington has little to no direct leverage on the sovereignty, the nine-dashed line, or the fishing issues. This is unfortunate, because greater involvement means that implicitly the credibility of its rebalance strategy and policy objective of a peaceful, rules-based, resolution of disputes in the SCS is now open to question.

This policy goal is “open to question” because the success hinges on the unlikely willingness of Chinese to compromise on sovereignty and agree to a collaborative resolution to territorial claims. Further, since Beijing continues to argue that the time is not ripe for a binding Code of Conduct to be agreed upon, there seems to be scant hope for a diminution in the provocative activities that put a damper on unilateral economic activities by the other SCS claimants.

Military activities in China’s EEZ

On the single bilateral issue it has with Beijing, Washington does have leverage: on the question of reconnaissance missions in the EEZ, it can simply refuse to agree to Beijing’s interpretation of UNCLOS while exercising its high seas freedoms by continuing to conduct these missions.

Improving the security posture of friends and allies to deter China

What Washington could do is use security cooperation to assist other claimants improve their military posture in the SCS, but even in this case there is a risk of failure, especially in the case of the Philippines. The episodic U.S. history of attempting to help the Philippine military improve its air and naval capabilities suggests underwriting a Philippine military and naval modernization program adequate to deter Chinese assertiveness would be difficult. It would probably be a generational effort with a mixed prospect of success. That does not mean the United States should not attempt to do so, but the approach should not be a short-term, incremental one such as providing two 40-odd year old former U.S. Coast Guard cutters that will be very difficult to maintain; it must be a sustained effort that is adequately funded and be based on a long-term plan.

Given what appears to be the legally questionable basis for the Philippines' claims in the Spratlys, agreeing that the U.S.-Philippines Mutual Defense Treaty embraces territory claimed by the Philippines in the SCS would be a very risky attempt at deterrence.

Vietnam, on the other hand, has already begun an effort, largely supplied by Russia, to defend its maritime approaches and territory. Perhaps U.S. assistance in organizing its command and control of its new capabilities would be useful, as would U.S.-supplied real-time surveillance of its maritime areas of interests. If Vietnamese plans all reach fruition, and the country is able to knit its new capabilities together and combine them with effective maritime surveillance, then in few years Vietnam could have in place an effective way to deter a replay in the Spratlys of Beijing's seizure of the Paracel Islands in 1975.

Near term policy options for Washington

In truth however, the long term basis for stability in the SCS must go beyond attempting to create a military balance of power in this body of water. The long term solution depends upon China and the other claimants reaching an understanding on sovereignty and mutual exploitation of the resources of the SCS. As already mentioned, the U.S. does not have the leverage to make this happen; it will depend upon the claimants themselves doing something to either set sovereignty disputes aside so the economic exploitation can go forward, or actually agreeing to a final sovereignty solution.

What Washington could do was explored in the previous section of this report when four possible policy approaches were discussed. Selecting policy approaches from items one and four of the options presented could provide Washington with increased leverage. Specifically, playing a role in reconciling the overlapping claims of Vietnam, the Philippines, and Malaysia would simplify the sovereignty question and provide a salutary example to China. Making U.S. views known regarding China's dubious interpretations of UNCLOS and pointing a public spotlight on the legal absurdity of the nine-dashed line could be important steps in demonstrating America's leadership to friends and allies in Asia, and might potentially cause Beijing to bring its application of UNCLOS more into line with commonly accepted international law.

Taking these steps would not be risk-free in terms of damage to the overall Sino-U.S. relationship, and carefully assessing those risks would be necessary. Nevertheless, given that extant U.S. policy has deeply involved the United States in SCS disputes with no appreciable impact on either Chinese behavior or progress toward a diplomatic resolution these additional initiatives do merit consideration.

Growing competition in the South China Sea

Dr. M. Taylor Fravel¹

Since 2007, competition over competing claims in the South China Sea has increased. At the end of 2011, Robert Kaplan pronounced that the South China Sea was now the “new central theater of conflict” in the world.² This working paper examines the disputes in the South China Sea, the dynamics driving the increase in competition, and the implications for the United States.³

The escalation of tensions associated with growing competition among the claimant states in the South China Sea — especially China, Vietnam, and the Philippines — reflects an interactive and dynamic logic. Territorial disputes by definition are unstable and prone to negative spirals of instability because they are “zero sum” whereby one state’s gain is another state’s loss.⁴ As a result, states in such disputes are especially sensitive to perceived challenges to their claims by other states. Any action by one state to strengthen its own claim creates strong incentives for other states to respond. Such incentives are especially powerful because of the public nature of claims in territorial disputes and because if one state disagrees with another state’s “excessive” claims they may challenge said claims by diplomatic demarche, or in the case of maritime disputes, or for example, by peaceful military activity in the disputed waters.

The South China Sea is a large body of water stretching from the mouth of the Pearl River in China in the north to the tip of Indonesia’s Natuna Island in the south. Recent competi-

¹ This working paper was completed in August 2012 and does not address developments in the South China Sea disputes that have occurred afterwards.

² Robert D. Kaplan, “The South China Sea Is the Future of Conflict,” *Foreign Policy* (September/October 2011).

³ This paper draws on several previous publications, including M. Taylor Fravel, “The United States in the South China Sea Disputes,” paper presented at the 6th Berlin Conference on Asian Security, June 2012; M. Taylor Fravel, “All Quiet in the South China Sea: Why China is Playing Nice (For Now),” *Foreign Affairs* (22 March 2012); M. Taylor Fravel, “China’s Strategy in the South China Sea,” *Contemporary Southeast Asia* 33, no. 3 (December 2011): 292-319; M. Taylor Fravel, “Maritime Security in the South China Sea and the Competition over Maritime Rights,” in Patrick Cronin and William Rogers, eds., *Cooperation from Strength: The United States, China and the South China Sea* (Washington, D.C.: Center for New American Security, 2012); M. Taylor Fravel and Michael D. Swaine, “China’s Assertive Behavior – Part Two: The Maritime Periphery,” *China Leadership Monitor* 35 (Summer 2011): 1-29.

⁴ Robert Jervis, “Cooperation under the Security Dilemma,” *World Politics* 30, no. 2 (1978): 167-214.

tion in sovereignty and maritime disputes has occurred largely without the direct involvement of military forces.⁵ Instead, the key actors have been fishing vessels, oil companies, and national maritime law enforcement agencies. States use these actors along with diplomacy to compete to assert and defend their claims. As a result, although intense at times, the level of tension in the South China Sea has not yet reached the instability that the region witnessed from 1988 to 1995. In particular, the dispute has not yet been militarized. In the previous period, a major armed clash occurred between China and Vietnam in March 1988 in which 74 Vietnamese were killed. During this period, Vietnam, the Philippines and Malaysia occupied a total of 22 contested Spratly features; China occupied seven.⁶ Tensions began to subside after Chinese foreign minister Qian Qichen attended the 1995 ASEAN Regional Forum and pledged that China would seek to settle the various disputes according to international law, including UNLCOS.⁷ As is discussed below, this agreement has been under significant pressure.

Conflicting claims in the South China Sea

Conflict in the South China Sea revolves around competing claims to territorial sovereignty and maritime jurisdiction. Claims over maritime jurisdiction include not just the scope of claims but also their content, including the navigation rights of military vessels.⁸

Territorial Sovereignty over Islands and Reefs: In the South China Sea, the territorial sovereignty of two groups of islands and reefs is the main area of disagreement. The first is the Parcel Islands, which are claimed by China and Vietnam (along with Taiwan). China controlled the Amphitrite Group of the Parcel chain since the mid-1950s and consolidated control over the entire archipelago after a brief clash with South Vietnam in 1974.⁹

⁵ All of the land features in the South China Sea are in dispute. Both China and Taiwan (the Republic of China) claim all the land features, The Parcel and Spratly Island groups are the most numerous archipelago's; Vietnam claims both. The Philippines claim most of the Spratlys and the uninhabited Scarborough Shoal that is not in either the Parcel or Spratly chains. Malaysia claims some of the Spratlys, while Brunei has an exclusive economic zone claim (EEZ) that overlaps Chinese water claims.

⁶ M. Taylor Fravel, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes* (Princeton: Princeton University Press, 2008), 295.

⁷ "Qian Qichen Explains China's 'Clear-Cut' Position on Spratlys Issue," Xinhua, August 1, 1995.

⁸ For a detailed examination of these different types of interests at stake, see Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review* 64, no. 4 (2011): 42-67.

⁹ Before the January 1974 clash between the China and South Vietnam, China controlled only the islands in the Amphitrite Group in the eastern part of the archipelago. After the 1974 clash, China gained control over the Crescent Group. See Fravel, *Strong Borders, Secure Nation*, pp. 272-287.

The second is the Spratly Islands, which consists of roughly 230 features, including several small islands, coral reefs, and shoals. Vietnam, China, and Taiwan claim sovereignty over all these land features. The Philippines claims fifty-three of these features, while Malaysia claims twelve.¹⁰ Vietnam occupies twenty-seven of the land features in the Spratlys, more than all the other claimants combined. The Philippines occupies eight features, China seven, Malaysia five, and Taiwan one. Taiwan was the first claimant to occupy a contested feature, when Nationalist troops in 1956 landed on Taiping (Itu Aba) Island, the largest of the islands.

Other claimants did not begin to establish a permanent presence until the early 1970s, when the Philippines and Vietnam occupied several of the other largest islands. China was the last claimant to establish a physical presence, when it occupied six vacant features in early 1988. China's move into the Spratlys at that time resulted in the aforementioned clash with Vietnam in March 1988 that killed 74 Vietnamese sailors. China has not occupied a contested feature since late 1994, when it seized the aptly named Mischief Reef.¹¹ Malaysia and Vietnam were the last states to occupy lands features in 1998 and 1999, respectively.

Maritime Jurisdiction over Water Space: Claims to maritime jurisdiction involve exclusive rights to water space. In particular, they involve whether states have the exclusive right to exploit resources that are contained in the water column and seabed (especially hydrocarbons but also fish and other minerals) the Exclusive Economic Zone (EEZ) and extended continental shelf. The EEZ that China claims from its coast, including Guangdong Province and Hainan Island, the northern portion of the South China Sea, is largely undisputed.¹²

- States differ in how they justify their claims to maritime rights in the middle and southern portions of the South China Sea. Vietnam, the Philippines, Malaysia, and Brunei, base their claims to maritime rights in the South China Sea from their coasts. Indonesia asserts maritime rights from Natuna Island. China, however, bases its claims to maritime rights on sovereignty over the Paracels and Spratlys. Yet most (but not all) of the features in the Spratlys would not qualify as islands under article 121(3) of the United Nations Convention on the Law of the Sea (UNCLOS), and thus cannot serve as the basis for a claim to an EEZ, much less an extended continental shelf.
- Ambiguity surrounds China's claims to maritime jurisdiction for other reasons. For many decades, Chinese maps have shown a "nine-dashed line" en-

¹⁰ Greg Austin, *China's Ocean Frontier: International Law, Military Force, and National Development* (Canberra: Allen & Unwin, 1998), pp. 153-154.

¹¹ For a recent review of these developments, see Fravel, *Strong Borders, Secure Nation*, pp. 267-299.

¹² For a more detailed discussion of China's claims, see M. Taylor Fravel, "China's Strategy in the South China Sea," *Contemporary Southeast Asia* 33, no. 3 (December 2011): 292-319.

closing most of the Sea's waters. Yet the Chinese government has never defined what the line does — or does not — mean. Article 14 of China's domestic 1998 EEZ law states that it "shall not affect the historic rights that the PRC enjoys" — without specifying what those rights were, such as a potential claim to historic rights in the South China Sea based on the nine-dashed line. China has not drawn baselines¹³ around the Spratlys, leaving open the question whether it will pursue claims to maritime jurisdiction that are compliant with UNCLOS.¹⁴ By contrast, the Philippines have stated that it will not claim an EEZ from any of the features in the Spratlys. Vietnam has not stated whether it will claim maritime rights from the land features that it claims in the Spratlys.¹⁵

Content of Maritime Jurisdiction: A third aspect of competing claims in the South China Sea concerns the content of the maritime rights that states may claim. Several of the states maintain that certain activities can be restricted in their waters, which raises questions of freedom of navigation. Vietnam requires prior notification for the transit of military vessels within its 12nm territorial seas.¹⁶ Malaysia requires prior authorization to conduct military exercises or maneuvers in its EEZ.

- Since the EP-3 incident in 2001,¹⁷ China has mobilized a variety of legal arguments designed to limit military activities in this zone, especially U.S. sur-

¹³ A baseline is the line from which the seaward limits of a state's territorial sea and certain other maritime zones of jurisdiction are measured. Normally, a sea baseline follows the low-water line of a coastal state. When the coastline is deeply indented, has fringing islands or is highly unstable, *straight* baselines may be used.

¹⁴ China drew baselines around the Paracels in 1996. China, however, drew an archipelagic baseline around all of the islands, not baselines around the individual islands and reefs of the Paracels. As China is not an archipelagic state, this kind of a baseline is contrary to the provisions of UNCLOS.

¹⁵ Vietnam's 2012 Maritime Law did not clarify whether such maritime rights would be claimed from these features. By submitting claims for extended continental shelf rights to the UN in 2009, Vietnam and Malaysia implied that they would not claim maritime rights from the contested islands, though they have not yet said so explicitly. In a subsequent note, the Philippines indicated the Spratly Islands did not meet the criteria under article 121(3) and thus could not be used to claim maritime rights.

¹⁶ The United States would regard this as an excessive maritime claim because warships engaged in "innocent passage" are not required to obtain permission to transit.

¹⁷ On Sunday, April 1, 2001, a United States Navy EP-3 surveillance plane collided with a Chinese J-8 fighter jet 70 miles from Chinese territory in the airspace above China's claimed 200 mile EEZ. The EP-3 made an emergency landing on Hainan Island, while the PLA Navy J-8 crashed and the pilot killed. The accident resurrected arguments concerning inter alia, China's interpretation of article 58 of UNCLOS whether the distinct legal regime created by the establishment of an EEZ has imposed limitations on 'pre-existing rights' on the high seas.

veillance and reconnaissance activities.¹⁸ Although China has focused its opposition to U.S. operations in areas close to China's coast, China may seek to impose similar restrictions throughout the entire South China Sea. Even if China embraced UNCLOS-compliant claims that did not seek to restrict military activities, the uncertain meaning of China's nine-dashed line raises concerns over what "historic rights" that China might claim based on a line that has no legal standing under UNCLOS. To date, China's efforts to enforce limits on freedom of navigation have occurred in the EEZ off its coast, and not in the EEZ of islands in the South China Sea. The May 2009 confrontation between the U.S. surveillance ship USNS *Impeccable* and Chinese Maritime Fishery patrol ship and two Chinese fishing boats that harassed the *Impeccable*, maneuvering dangerously close, took place roughly 75 miles southeast of Hainan, in China's coastal EEZ.¹⁹

U.S. interests in the South China Sea

The United States has two principal interests in the South China Sea disputes: access and stability.²⁰

First, the United States has a powerful interest in maintaining unhindered access to the waters of the South China Sea. From Washington's perspective, all countries enjoy high seas freedoms, including freedom of navigation, beyond any coastal state's 12nm territorial seas over which the coastal state enjoys sovereign rights. Both commercial and military vessels enjoy such high-seas freedoms as contained in articles 56 and 87 of UNCLOS. Despite the fact that the United States has yet to ratify the UNCLOS Treaty, it has abided by its provisions since the Reagan administration. The United States has conducted multiple "operational assertions" of such freedoms in Chinese waters every year since 2007.²¹

Unhindered access to the waters of the South China Sea is important for two reasons. First, it underpins the economic dynamism of the region, which is based on extensive intra-regional and international trade. More than 5 trillion dollars' worth of trade passes through these waters each year, including more than 1 trillion with the United States. Second, unhindered access sustains America's ability to project military power, not just in East Asia but

¹⁸ Ren Xiaofeng and Cheng Xizhong, "A Chinese Perspective," *Marine Policy* 29 (2005): 139-146.

¹⁹ Raul Pedrozo, "Close Encounters at Sea: The USNS *Impeccable* Incident," *Naval War College Review* 62, no. 3 (2009): 101-111.

²⁰ This section draws on Fravel, "The United States in the South China Sea Disputes." The United States has other interest related to these disputes, including maintaining its commitments to allies in the region and ensuring a stable and cooperative relationship with China (that bears on many U.S. interests apart from those in the South China Sea).

²¹ <http://policy.defense.gov/gsa/cwmd/fon.aspx>

also around the world, as many naval vessels from the West Coast and Japan pass through the South China Sea en route to the Indian Ocean and Persian Gulf.

For the United States, unhindered access to maritime space in the South China Sea faces several threats. The first is China's interpretation of the rights of coastal states in the EEZ discussed above. A second threat is the modernization of the PLA Navy, which, over time, could be used to exclude U.S. naval vessels from these waters. Nevertheless, given the expanse of the South China Sea, the PLAN's South Sea Fleet will not have such capabilities for some time. At present, the South Sea Fleet has roughly eleven destroyers (four of which are modern) and eighteen frigates (four or eight of which are modern). (China's new aircraft carrier, the *Liaoning*, is homeported in Dalian, in northeast China, and is under the direct control of the navy staff while it continues sea trials and training.)

Second, the United States has a powerful interest in the maintenance of regional peace and stability in Southeast Asia. Like open and unhindered access, regional stability also sustains both East Asian and American prosperity, as conflict or intense security competition would divert scarce resources away from development, reduce trade by threatening the security of sea-lanes, and reduce cross-border investment.

Regional stability faces several threats in the South China Sea. The first is the potential for armed conflict among the various claimants in the disputes over territorial sovereignty and maritime rights. China and Vietnam have clashed twice, first in 1974 over the Crescent Group in the Paracel Islands and in 1988 over the control of Johnson Reef.

A second threat to stability would be increasingly frequent use of coercive measures short of armed conflict to advance a state's claims. China's threats to American oil companies in 2007 and 2008 discussed below provide one example of such coercive behavior that can increase instability. A third threat would be ongoing naval modernization in the region. In addition to the recapitalization and modernization of the China's South Sea Fleet, Vietnam is also investing heavily in naval and air capabilities to be used in the South China Sea, such as *Kilo*-class submarines purchased from Russia that will enhance Hanoi's own area denial capability. Spirals of instability in disputes over sovereignty and maritime rights could evolve into a capabilities race and increased security competition.

Another source of instability, indirectly related to the South China Sea, would be the potential for a competitive spiral of military capabilities related to efforts by China and the United States over threatening and maintaining access, respectively. In response to new Chinese "anti-access/area denial" capabilities, including an anti-ship ballistic missile, the United States military has developed a new operational concept known as AirSea Battle intended to ensure U.S. access to these waters in wartime. Peacetime efforts to develop such capabilities could result in an "access" arms race and increased instability.

Growing competition and instability

Since 2007, competition over competing claims in the South China Sea has increased. The proximate spark has been a greater focus on the natural resources in these waters, which increases the salience of claiming maritime rights and sovereignty over land features that can be used to claim maritime rights. To assert and exercise their rights, states have combined diplomatic and administrative actions to assert jurisdiction over parts of the South China Sea along with the use of commercial and maritime law enforcement agencies to exercise jurisdiction.²²

Asserting jurisdiction: diplomatic and legal competition

Diplomatic disputes associated with resource development triggered the most recent tensions over maritime rights in the South China Sea. In the mid-2000s, Vietnam increased its efforts to develop its offshore petroleum industry in cooperation with foreign oil companies. Between 2006 and 2007, China responded by issuing eighteen diplomatic objections to foreign oil companies involved in these exploration and development projects.²³ Most of these demarches challenged the legality of Vietnam's exploration projects. In May 2006, for example, the Indian national oil company ONGC signed a production-sharing contract with PetroVietnam for blocks in the Phu Khanh basin. China claimed that ONGC's project was illegal because it fell within an area claimed by China in the South China Sea.²⁴ The demarche suggested that only claimant countries could be involved in such development activities.²⁵

In July 2008, as Vietnamese development efforts continued, reports surfaced that China had begun to directly threaten foreign oil companies investing in Vietnam. According to a report in the *South China Morning Post*, Chinese diplomats in Washington "made repeated verbal protests to ExxonMobil executives... and warned them that its future business interests on the mainland could be at risk, according to sources close to the U.S. firm."²⁶

Diplomatic tensions over maritime rights increased in the weeks before the May 2009 deadline for submissions to the U.N. Commission on the Limits of the Continental Shelf

²² This section draws on Fravel, "China's Strategy in the South China Sea"; Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights."

²³ Fravel, "China's Strategy in the South China Sea."

²⁴ The demarche was reported in the Indian press on December 3, 2007, but interviews indicate that it occurred earlier.

²⁵ Anupama Air, "ONGC's Vietnam Foray Illegal, Says China," *The Financial Express*, December 3, 2007.

²⁶ Greg Torode, "Oil Giant Is Warned Over Vietnam deal; Beijing Asserts S China Sea claims," *South China Morning Post*, July 20, 2009: 1.

(CLCS). The commission reviews and qualifies claims by states to extended continental shelf rights beyond 200 nautical miles.²⁷ If a territorial or maritime dispute exists, however, then the commission's rules dictate that it "shall not consider and qualify a submission made by any of the States concerned in the dispute."²⁸ As a result, all claimants in the South China Sea have strong incentives to challenge the continental shelf submissions where sovereignty or maritime rights claims overlap. Accordingly, China and the Philippines both objected to Vietnam's submission and to the joint Vietnamese-Malaysian submission. All the claimants then issued claims and counter-claims.²⁹

Even though the May 2009 deadline for submissions had been established ten years earlier, its impending arrival significantly increased the competition over maritime rights in the South China Sea. By submitting claims to the commission, Vietnam and Malaysia formally expanded their claimed maritime rights beyond a 200 nautical mile EEZ from their coastlines, thereby increasing the intensity of competition over maritime rights. Previously, these states had either not stated that they would claim extended continental shelf rights or clearly delineated the length of the continental shelf that they claimed. In addition, in the notes submitted to the commission, states not only contested each other's claims to maritime rights but also their territorial sovereignty claims to the Paracels and the Spratlys. Finally, China's first diplomatic note contesting Vietnam and Malaysia's submissions included a map of the region that depicted the Paracel and Spratly Islands along with the nine-dashed line. Although the Chinese note did not mention the line, Vietnam viewed the map as an expansion of China's claims.

Related to diplomatic competition have been efforts to use domestic laws and regulations to strengthen claims. In February 2009, the Philippine legislature passed an archipelagic baseline law, which reasserted Manila's claims to land features in the Spratlys. The bill was signed into law in March 2009, just before the deadline for submissions to the CLCS. In June 2012, Vietnam's National Assembly passed a Maritime Law that reaffirmed its claims to sovereignty over the Paracels and Spratlys and grounded them in domestic law.³⁰ China viewed both as challenging its own claims to these land features.

²⁷ Under the treaty, a state can only exercise rights to the continental shelf if the CLCS certifies the claim.

²⁸ *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (New York: United Nations, 2008), p. 22.

²⁹ A list of all submissions and objections is available on the commission's website: http://www.un.org/Depts/los/clcs_new/commission_submissions.htm.

³⁰ "Foreign Minister Pham Binh Minh Clarifies Content of Viet Nam Maritime Law," 29 June 2012, <http://biengioilanhtho.gov.vn/eng/foreignministerphambinhminhclarifies-nd-d6cb97e3.aspx>. China passed similar laws in 1992 and 1998.

Claimants have also used other legal means to strengthen their claims. In April 2007, for example, Vietnam created a township and two villages in the Trong Sa (Spratly) District of Khanh Hoa Province to strengthen governance and administration of Vietnamese-held features. In June 2012, China upgraded the administrative rank of the Paracel Islands, Macclesfield Bank and the Spratly Islands from a county-level administrative office (*banshiqu*) to a prefectural-level city under Hainan Province (*dijishi*) named “Sansha City.” The new city is based on Yongxing (Woody) Island in the Paracels, which is the largest Chinese-held feature in the South China Sea. The elevation of Sansha to a prefectural-level city was a significant move, as it created an organizational infrastructure for a variety of civilian activities to demonstrate China’s sovereignty in the area from fishing to tourism.

In addition, in July 2012, China announced the establishment of a military garrison (*jingbeiqu*) in Sansha city under the Hainan Military District with responsibility for defense mobilization, the militia, and disaster and relief work.³¹ (Maritime defense and military operations are governed by the Paracels maritime garrison (*shuijingqu*) under the South Sea Fleet of the PLAN.)

Exercising jurisdiction: commercial competition

As states asserted their claims more vigorously, they also sought to demonstrate and exercise the jurisdiction that they claim. In particular, they have sought to exercise these rights by conducting commercial activities such as fishing and hydrocarbon exploration and development. All claimants, especially China, have used non-military maritime law enforcement agencies to enforce their claims, also in an effort to exercise jurisdiction.

Fishing

As in many maritime disputes around the world, fishermen have played a central role in efforts to exercise and demonstrate jurisdiction in the South China Sea. These waters have served as fishing grounds for all littoral states, and many of these traditional fishing grounds overlap. As a result, fishermen will often justify operating in disputed waters through their country’s claims to maritime rights. Chinese fishermen operate in the southern portion of the South China Sea near Indonesia and Vietnam, for example, while Vietnamese and Philippine vessels operate in the northern portions near the Paracel Islands.

During the past decade, China has strengthened its ability to supervise fishing in the disputed waters and to enforce its domestic fishing laws. The principal Chinese agency tasked with this mission is the South Sea Region Fisheries Administration Bureau (SSRFAB, *nan-*

³¹ “Major officers in Sansha garrison appointed: spokesman,” Xinhua, 26 July 2012.

haiqu yuzhengju), which is a unit in the Bureau of Fisheries Administration within the Ministry of Agriculture.³² In addition to regulating China's domestic fishing industry in the South China Sea, the SSRFAB has two objectives that affect the disputes over maritime rights. First, SSRFAB vessels escort Chinese fishing boats (*huyu*) when they operate in disputed waters. These escorts provide aid to these boats, but also exercise Chinese jurisdiction over these waters (thus supporting its claims to maritime rights) and protect Chinese fishermen when they are challenged by vessels from other states. Second, the SSRFAB seeks to prevent foreign ships from operating within China's claimed EEZ by boarding and inspecting these vessels, levying fines, and confiscating catches and equipment as well as expelling ships from Chinese-claimed waters.

In the last decade, the SSRFAB has steadily increased its presence in the South China Sea. The number of total days in which the SSRFAB vessels were at sea increased from 477 in 2005 to 1,235 in 2009 (including operations in the Gulf of Tonkin as well as in both disputed and undisputed portions of the South China Sea for both years). At the same time, the number of Vietnamese ships operating in the waters around the Paracel Islands began to increase, perhaps because of the implementation in 2004 of the 2000 Chinese-Vietnamese fishing agreement that limited fishing in the Gulf of Tonkin. China sees these Vietnamese ships as directly challenging its claims to sovereignty over the islands and to maritime rights in the adjacent waters. In 2009, the SSRFAB organized 11 special operations (*zhuanxiang xingdong*) around the Paracels conducted by the *Yuzheng* 308 and *Yuzheng* 309, two patrol vessels from the SSRFAB, each of which lasted for about 24 days.³³ In 2009, China expanded the duration of a unilateral fishing ban above 12 degrees north in the summer months that had been in place since 1999 and dispatched SSRFAB vessels to enforce this ban.³⁴

The combination of increased Vietnamese fishing operations and a more capable SSRFAB resulted in a growing number of confrontations at sea. In 2008 and 2009, SSRFAB vessels confronted and "expelled" (*qugan*) more than 135 and 147 foreign boats, respectively, most of which were likely Vietnamese.³⁵ In addition, China began detaining Vietnamese fishing

³² Within the Bureau of Fisheries Administration, law enforcement activities are supervised by the Fisheries Administration Command Center (*yuzheng zhihui zhongxin*). Responsibility for patrols and other law enforcement activities is divided by regional fisheries administration, including the Yellow Sea and Bohai Gulf Region Fisheries Administration (*huangboqu yuzhengju*), the East Sea Region Fisheries Administration (*donghaiqu yuzhengju*), and the South Sea Region Fisheries Administration.

³³ Nongyebu yuyeju, ed., 2010: *Zhongguo yuzheng nianjian* [2010: China Fisheries Yearbook] (Beijing: Zhongguo yuye chubanshe, 2010), 124.

³⁴ Nongyebu yuyeju, 2010: *Zhongguo yuzheng nianjian*, 124-125.

³⁵ Nongyebu yuyeju, ed., 2009: *Zhongguo yuzheng nianjian* [2009: China Fisheries Yearbook], (Beijing: Zhongguo yuye chubanshe, 2009), 147; Nongyebu yuyeju, 2010: *Zhongguo yuzheng nianjian*, 124.

boats and their crews, sometimes levying a fine or even confiscating the seized boats. Between 2005 and October 2010, a Vietnamese newspaper reports that China detained 63 fishing boats with 725 men.³⁶ Roughly half of these detentions occurred in 2009, when Vietnamese sources indicate that China detained or seized 33 boats and 433 fishermen.³⁷ The increase in detentions coincided with the diplomatic activity surrounding competing claims described in the previous section and a Chinese perception that Vietnam was increasing the number of fishing ships operating in disputed waters. Total numbers for 2010 are unavailable, but they appear to be much lower, around seven.³⁸ In 2011, there were no reports of Chinese seizures of Vietnamese fishing vessels and their crews.³⁹ In 2012, however, China has started again to detain Vietnamese ships and their crews operating near the Paracel Islands. By the end of July 2012, China had detained approximately nine Vietnamese fishing vessels.⁴⁰ In 2010 and 2011, the decline in the number of detentions appeared to track with China's effort to moderate this element of its strategy in the South China Sea, discussed below.⁴¹ Even though the number of detentions increased in 2012 compared to the previous two years, they have not approached the levels witnessed in 2009.

Although China's detention of foreign fishing boats receives a great deal of media attention, confrontations involving fishing boats from other claimant states are also common. According to one Chinese source, more than 300 incidents have occurred since 1989 in which Chinese trawlers were fired upon, detained, or driven away. In 2009, for example, Vietnamese vessels reportedly fired three times on Chinese boats, wounding three Chinese fishermen. Also in 2009, ten Chinese trawlers reportedly were seized.⁴² Similarly, Vietnam and the Philippines routinely detain fishermen from each other's countries.⁴³ China, how-

³⁶ "Vietnam Demands Unconditional Release of Fishermen Held by China," *Than Nien News*, October 8, 2010.

³⁷ "China Seizes Vietnamese fishing boat," Deutsche Presse-Agentur, April 19, 2010. A Chinese source indicates that the South Sea Regional Fisheries Administration Bureau fined 19 foreign ships and confiscated four in 2009. See Nongyebu yuyeju, ed., *2010: Zhongguo yuzheng nianjian*, 124.

³⁸ I was unable to find a Vietnamese source that listed all Chinese detentions in 2010. My figure is based on a survey of press reports and two Vietnamese reports, "Chinese Thuggery Unabated in East Sea," *Than Nien News*, May 14, 2010, and "Vietnam Demands Unconditional Release of Fishermen Held by China," *Than Nien News*, October 8, 2010. Vietnamese reports do not indicate that the number of ships fishing around the Paracels has declined.

³⁹ "PRESS DIGEST – Vietnam newspapers – May 31," Reuters, May 30, 2011.

⁴⁰ "China Detains Vietnamese Fishermen in New South China Sea Dispute," VOA, 21 March 2012; "14 fishermen detained by China return home," *TuoiTreNews*, 24 May 2012; "China seizes 6 Vietnamese boats, then releases 3," *TuoiTreNews*, 10 July 2012.

⁴¹ Fravel, "All Quiet in the South China Sea."

⁴² "Yumin pinzao zhoubian weixie [Fishermen Frequently Encounter Threats]," *Huanqiu shibao*, 4 April 2010.

⁴³ JC Bello Ruiz, "RP, Vietnam Agree on Spratlys," *Manila Bulletin*, October 28, 2010.

ever, has not released disaggregated information on incidents involving Chinese fishing ships, which limits the analysis that can be conducted.

As a general proposition, the presence of fishing boats in disputed waters is a useful way for a state to demonstrate the validity of its claims. As discussed above, the number of Vietnamese ships around the Chinese-held Paracels appeared to increase significantly after 2008, as Vietnam more actively pressed its claims. Likewise, in July 2012, Chinese fishing vessels from Hainan Province conducted a highly publicized trip to fish near the Chinese-held features in the South China Sea. The flotilla, which included 29 boats and a supply ship, was escorted by the *Yuzheng* 310, one of the most modern patrol ships in the Bureau of Fisheries Administration. Reporters were embedded on the ships, which stopped at most Chinese-held features in the area such as Fiery Cross (Yongshu) and Mischief Reefs.⁴⁴

Finally, the importance of fishing in the competition for maritime rights is illustrated by the origins of the standoff between China and the Philippines over Scarborough Shoal. In early April, a Philippine naval ship was dispatched to investigate reports of fishing boats inside Scarborough Shoal, a coral reef approximately 135 miles from the Philippines and 543 miles from China. Although Philippine personnel searched the boats, which were harvesting giant clams and other animals in violation of Philippine law, two patrol ships from the China Marine Surveillance, (MSF, *haijian budui*), force under the State Oceanic Administration arrived on the scene and blocked the entrance to the shoal, thus preventing the arrest of the fishermen. A standoff ensued, as both sides used government ships to demonstrate their sovereignty over the shoal and jurisdiction over the adjacent waters.

Hydrocarbons

Similar efforts to exercise claims include exploration activities of oil companies in waters where claims overlap. As discussed above, Vietnam's development of offshore oil sparked demarches and at least a few threats from China against foreign oil companies. In the first half of 2011, China interfered with seismic surveys conducted by Vietnam and the Philippines within their claimed EEZs. China's MSF has been the principal Chinese agency involved in this series of confrontations.⁴⁵ Similar to the Bureau of Fisheries Administration, one mission of the MSF is to "safeguard maritime rights and interests" in addition to enforcing Chinese laws regarding maritime affairs.⁴⁶ The South China Sea branch of the MSF

⁴⁴ Huang Yiming and Jin Haixing, "Fishing vessels set off for Nansha Islands," *China Daily*, 13 July 2012.

⁴⁵ The English name of this unit is China Marine Surveillance.

⁴⁶ "Guojia haiyang ju nanhai fenju [South Sea Branch of the State Oceanographic Administration]," <http://www.soa.gov.cn/soa/governmentaffairs/overview/jigoushezhi/jsdw/webinfo/2007/03/1271382671414165.htm>.

was established in 1999 with responsibility for the waters adjacent to Macao, Hong Kong, Guangdong, Hainan, and the disputed islands, and now has 13 ships. According to the State Oceanographic Administration, the MSF started regular (*dingqi*) law enforcement cruises to “protect rights” in 2006.⁴⁷ In April 2010, for example, MSF vessels conducted a cruise in the southern portion of the South China Sea, dropping a sovereignty marker on James Shoal.⁴⁸ In July 2012, four MSF patrol ships conducted an extended and highly publicized training exercise around Chinese-held and other features in the Spratly Islands.⁴⁹

Information about the scope and frequency of MSF patrols in the South China Sea is not available in open sources. In the first half of 2011, however, MSF ships were involved in two separate incidents in which they challenged and disrupted seismic survey activities by Vietnam and the Philippines. The first incident occurred in March, when two MSF vessels “expelled” (*ganqu*) a Philippine seismic survey vessel in the Reed Bank area in the northwestern portion of the Spratly Islands. According to Philippine press reports, the MSF vessels aggressively maneuvered around the ship and forced it to leave the area. The second incident occurred in late May, when an MSF ship cut across the stern of the seismic survey vessel *Binh Minh 2*, owned by PetroVietnam, and severed its towed cable. According to Vietnamese reports, three MSF vessels had been shadowing the *Binh Minh 2*, which was operating 120 nautical miles off the coast of central Vietnam.⁵⁰

A third hydrocarbon incident with Vietnam that involved Chinese fishing boats and SSRFAB vessels occurred in early June 2011 but accounts differ. According to Vietnam, a Chinese fishing boat with a “specialized cable-slashing device” became ensnared in the towed cables of the *Viking II*, a Norwegian ship that was surveying an exploration block for Talisman Energy (Canada) off the coast of southern Vietnam in the southwestern portion of the South China Sea.⁵¹ According to China, the fishing boat’s net became tangled with the sonar equipment on the *Viking II*, suggesting that poor seamanship and bad judgment might be to blame.⁵²

These confrontations demonstrate three important points about the competition over maritime rights. First, China escalated its efforts to exercise and enforce its maritime rights

⁴⁷ “Jianding buyi de diaowei haiyang quanyi [Resolutely Defend Maritime Rights and Interests],” <http://www.soa.gov.cn/soa/management/supervise/webinfo/2011/07/1311482429829083.htm>.

⁴⁸ *Xiandai jianchuan*, April 2010, 16.

⁴⁹ “Chinese patrol ships reach Nansha Islands,” *Xinhua*, 4 July 2012.

⁵⁰ “VN Condemns Chinese Intrusion,” Vietnam News Agency, May 28, 2011.

⁵¹ “Regular Press Briefing by MOFA’s Spokesperson Nguyen Phuong Nga on June 9th, 2011,” June 9, 2011, http://www.mofa.gov.vn/en/tt_baochi/pbfn/ns110610145220#tr5qmcP0xVB6.

⁵² “Foreign Ministry Spokesperson Hong Lei’s Remarks on Vietnamese Ships Chasing Away Chinese Fishing Boats in the Waters off the Nansha Islands,” June 9, 2011, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t829427.htm>.

when it severed the towed sonar arrays in May 2011 (the second incident above). No similar incidents were reported in previous years, though after the May incident a Vietnamese official stated that similar acts had occurred in 2010.⁵³

Second, the official response to the May incident from China's Ministry of Foreign Affairs (MFA) suggests that the cable-cutting was intended to deter Vietnam from asserting its claims and bolster China's own claim to jurisdiction. The MFA spokesperson suggested that the action was a deliberate attempt to enforce China's claims. The day after the incident, the spokesperson stated that "The *law enforcement activities* by Chinese maritime surveillance ships against Vietnam's illegally operating ships are completely justified."⁵⁴

Third, all three incidents occurred after survey activity by other claimants increased, underscoring the dynamic nature of the current competition over maritime rights. The Philippines initiated a new survey of Reed Bank in February 2011 just before the March 2 incident. The incidents involving Vietnam occurred following new surveys that began in March.

Competition to develop hydrocarbons has continued. In June 2011, the Philippines launched a new round of bidding for petroleum contracts.⁵⁵ Two of the fifteen blocks being offered, known as Area 3 and Area 4, are located off northwest Palawan in the South China Sea near Reed Bank. Parts of the blocks are located in waters that China claims, though China's claim is weak.⁵⁶ In a much bolder move, China's National Offshore Oil Company (CNOOC) in June 2012 invited bids for nine new blocks in the South China Sea. Unlike blocks offered in 2010 and 2011, these blocks are located entirely within Vietnam's EEZ delineated from its coastline. Although perhaps part of a response to Vietnam's passage of a

⁵³ Ben Bland and Kathrin Hille, "Vietnam and China Oil Clashes Intensify," *The Financial Times*, May 27, 2011. A report from Vietnam, however, suggested that such incidents had not occurred in the past. See "Russian captain condemns cable destruction," Vietnam Net, June 2, 2011. Vietnam Net is part of Vietnam's Ministry of Information and Communications.

⁵⁴ "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on May 31, 2011," <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t827089.htm> (emphasis added). By contrast, the MFA's response to the June incident suggested that it might have been unintended. Similarly, the location of the incidents suggests that they were designed to signal China's maximal claims to maritime rights. All were located near the limits of a hypothetical 200nm EEZ that China could claim in the South China Sea from the five largest features of the Spratly Islands (Taiping [Taiwan], Thitu [Philippines], West York [Philippines]), Spratly [Vietnam] and Northeast Cay [Philippines]).

⁵⁵ <http://www.offshore-technology.com/news/news119783.html/>;

<http://www.doe.gov.ph/pecr4/index.html>

⁵⁶ <http://csis.org/publication/arguing-over-blocks-do-china-and-philippines-both-have-claim>

Maritime Law at the same time, the move also sought to limit foreign investment in Vietnamese blocks that overlapped with China's in the area.⁵⁷

Whose assertiveness?

A common theme in Western and Southeast Asian analysis of the growing competition in the South China Sea has been China's assertiveness. Claims of assertiveness imply new and unilateral actions taken by a state to alter the status quo in a dispute or particular issue. Such claims of assertiveness in territorial disputes, however, often conflate efforts by states to bolster their claims with actions designed to clearly alter the status quo. States have strong incentives to defend their claims and to view the actions of other states to strengthen their own claims as a challenge to the status quo. This dynamic is inherent to disputes among states over territory, where all states take actions viewed as assertive when the act to strengthen their claims and counter efforts by other claimants to bolster their own. In other words, one state's assertive behavior is the other state's prudent defensive action in defense of its claim.⁵⁸ From this perspective, China has been assertive, but so have other states.⁵⁹

The origin of the standoff between China and the Philippines over Scarborough Shoal illustrates the interactivity of territorial disputes that creates incentives for states to assert and defend their claims. China and the Philippines both claim sovereignty over this land feature, which also lies within the 200 nautical miles EEZ that the Philippines claims from its coast. In early April 2012, a Philippine plane spotted Chinese fishing boats inside Scarborough's lagoon. The Philippines dispatched its largest naval ship, the *BRP Gregorio de Pilar*, which was a refurbished 40 year old US Coast Guard cutter. Armed Philippine sailors boarded some of the Chinese fishing vessels and the prepared to arrest the fishermen for violating Philippine waters. In response, China dispatched two MSF vessels, which blocked the entrance to the shoal, preventing the Philippine sailors from returning to the shoal and arresting the Chinese fishermen.

Both sides viewed the other as challenging their claim in a new and more assertive way. From China's perspective, the Philippines had not attempted to arrest Chinese fishermen operating around the shoal for more than a decade—the last recorded arrest occurred in November 2002. Moreover, the use of a military vessel by the Philippines to conduct a law

⁵⁷ M. Taylor Fravel, "South China Sea Oil Card," *The Diplomat*, 27 June 2012.

⁵⁸ This section draws on Fravel, "China's Strategy in the South China Sea"; Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights."

⁵⁹ International Crisis Group, *Stirring up the South China Sea (II): Regional Responses*, Asia Report No. 229, 24 July 2012. In this sense, Michael Swaine and I have argued elsewhere, however, it is not actually clear that China has become more assertive. Michael D. Swaine and M. Taylor Fravel, "China's Assertive Behavior – Part Two: The Maritime Periphery," *China Leadership Monitor*, No. 35 (Summer 2011).

enforcement activity against unarmed fishermen was seen as a further escalation of the dispute. From the Philippine point of view, however, the Chinese fishermen represented an unacceptable encroachment into their waters, especially in light of increased Chinese activity in the South China Sea. Moreover, the use of MSF vessels was seen as an escalation of Chinese presence and an effort to exert control over the shoal.

Any assessment of China's assertiveness must distinguish between the content of its claims and actions taken to strengthen or defend those claims. Although China's claims to maritime rights encompass most of the South China Sea, the content and extent of those claims remains unchanged. Drawing on the claims of its predecessors, the People's Republic of China (PRC) has claimed sovereignty over the Paracel Islands and Spratly Islands since 1951. The PRC first began to claim maritime rights from these features in 1958 during the crisis over Jinmen (Quemoy). China's sovereignty and maritime rights claims were later codified in a series of laws regarding territorial seas and EEZs that were passed by the National People's Congress in 1992 and 1998, respectively. China's sovereignty and maritime rights claims were reiterated in the May 2009 *note verbale* that China submitted to the UN Commission on the Limits of the Continental Shelf CLCS. China submitted this note, however, not because it had chosen to press its claims more assertively, but because other states had submitted claims that overlapped with China's, especially Vietnam's submission to an extended continental shelf that encompassed much of the Spratlys. As noted earlier, claimant states had strong incentives to challenge each other's submissions in order to defend their own claims.⁶⁰

Some observers argue that China expanded its claim by including a map with the nine-dashed line in the May 2009 submission. The line and its appearance on Chinese maps, however, are not new. The line first appeared in an atlas published by the Republic of China in 1947 and was formally announced in 1948. Then, however, the line was not defined officially and remains undefined today. The 2009 *note verbale* submitted with the map, for example, did not define the line or even refer to it, positively or negatively. The contested islands were the only geographic features that were both contained in the note and named on the map. In addition, the map submitted to the CLCS was the first map of the region that China ever submitted to the U.N. — none of documents China previously submitted about its maritime claims included any maps.⁶¹ If, for example, China submitted a map to the UN in 1992 with its law on the territorial sea this map would have included the nine-dashed line because the line appeared on official Chinese maps at the time. Finally, as Greg Austin has noted, the use of dashed marks on Chinese maps suggested an "indefinite or

⁶⁰ For a review of China's claims, see Fravel, "China's Strategy in the South China Sea."

⁶¹ For a list of documents that China has submitted to the U.N. relating to its maritime sovereignty claims, see www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CHN.htm.

uncertain boundary.”⁶² Consistent with this view, the PRC removed two of the original dashes in the Gulf of Tonkin in 1953, indicating that the line itself was subject to change.

In April 2010, the *New York Times* reported that China had labeled the South China Sea as a “core interest” on par with Taiwan and Tibet. Yet no senior Chinese leader has ever publicly described the South China Sea as a core interest, although it may have been discussed in one or more private meetings between U.S. and Chinese officials.⁶³ By contrast, senior Chinese leaders frequently have described Tibet and Taiwan as core interests.⁶⁴ The only exception appears to be an English-language article published on the Xinhua website in August 2011, which stated that China “has indisputable sovereignty over the [South China] sea’s islands and surrounding waters, which is part of China’s core interests.”⁶⁵ In this context, the article most likely referred to territorial sovereignty over the islands and the related 12 nautical mile territorial seas (maritime space over which states exercise sovereignty), not the South China Sea as a whole or the waters enclosed by the nine-dashed line. To date, no senior Chinese leader has repeated this statement.

As discussed above, China has been more able and more willing to enforce its claims to maritime rights in the South China Sea. In particular, the expanding fleets of patrol ships of the Fisheries Administration and MSF in the South China Sea have enabled China to respond to what it sees as challenges to its claims. Nevertheless, all states have been assertive in terms of taking action to defend their claims, often in response to other states as the interactive.

From Beijing’s perspective, for example, it has been responding to multiple challenges to its claims. The diplomatic demarches to foreign oil companies in 2006 and 2007, for example, responded to increased Vietnamese exploration in waters that China claims. Likewise, the dramatic increase in the detention of Vietnamese fishing boats in 2009 coincides with an increased presence of Vietnamese ships in the waters around the Paracels, often within the territorial seas that China claims around these islands. The June 2012 announcement by CNOOC of new blocks in disputed parts of the South China Sea was likely a response to

⁶² Austin, *China’s Ocean Frontier*, 207.

⁶³ Michael D. Swaine, “China’s Assertive Behavior—Part One: On ‘Core Interests,’” *China Leadership Monitor*, no. 34 (Winter 2011). Uncertainty remains about precisely what language Chinese officials used in their private discussions, namely, whether they referred to the contested islands as part of China’s core interests (consistent with Dai Bingguo’s formulation of China’s core interest in 2009 which included territorial integrity) or whether they referred to the waters of the South China Sea as a whole.

⁶⁴ Swaine, “China’s Assertive Behavior—Part One: On ‘Core Interests.’”

⁶⁵ “China-Philippines Cooperation Depends on Proper Settlement of Maritime Disputes,” Xinhua, 31 August 2011.

Vietnam's new Maritime Law.⁶⁶ The June 2012 bureaucratic elevation of "Sansha" from county to a prefectural-level city was also likely a response to what China viewed as Philippine and Vietnamese efforts to strengthen their own claims. Of course, actions taken by Vietnam and the Philippines were a response to Chinese actions.

Nevertheless, two Chinese actions stand out as new and unilateral; both concern hydrocarbon exploration and development. The first involved harassing seismic survey vessels and interfering with their operations, especially the cable-cutting incident in May 2011. Based on the number of Chinese ships from the MSF that were involved and the content of the MFA's response, this appears to have been an effort to clearly signal China's opposition to such Vietnamese activity. The second was CNOOC's June 2012 announcement of nine exploration blocks in the South China Sea that overlapped with Vietnam's. Finally, when the standoff over Scarborough Shoal ended in June 2012, China remained in effective control of this feature and the waters around. In this way, China has altered and redefined the status quo regarding this feature.⁶⁷

At the same time, China has chosen not to undertake other more provocative measures. Diplomatically, top Chinese leaders have not publicly visited any of the Spratly Islands. Militarily, China has not actively used naval forces to enforce its claims to maritime rights nor has it sought to use armed force. Instead, China has relied on its civil maritime law enforcement agencies, especially the Bureau of Fisheries Administration and the MSF.⁶⁸ Relying on these civilian agencies appears to be a deliberate choice and suggests that China has sought to limit the potential for escalation through how it chooses to assert and enforce its claims to maritime rights.

The rise and fall of Chinese moderation

Starting in mid-June 2011, China adopted a more moderate approach to managing its claims in the South China Sea after it realized that its behavior in the previous two years had backfired. The purpose of this shift was to ensure that the disputes in the South China Sea did not harm China's broader foreign policy objectives, especially its ties with regional states. Through this approach, Beijing sought to project a more benign image to prevent the formation of a group of East Asian states allied against China, reduce Southeast Asian

⁶⁶ Interview, China, June 2012.

⁶⁷ M. Taylor Fravel, "China's Island Strategy: 'Redefine the Status Quo,'" *The Diplomat*, 1 November 2012.

⁶⁸ One of China's other civil maritime law enforcement agencies, the coastal defense units of the Border and Maritime Defense Force (*bianhaifang budui*) known as the "maritime police" (*haijing*) has not been active in the South China Sea disputes. These are People's Armed Police units under the Ministry of Public Security and are responsible for policing Chinese ports and coasts.

states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. The elevated profile of the United States in the South China Sea disputes after 2010 helped to push China in this more moderate direction and, for a time, enhanced stability. China's turn toward moderation, however, began to unravel during and after the standoff over Scarborough Shoal in April 2012.⁶⁹

China's shift to moderation contained several components: First, since August 2011, China's top leaders, including President Hu Jintao and Premier Wen Jiabao, re-affirmed the late Deng Xiaoping's guiding principle for dealing with China's maritime conflicts of "setting aside disputes and pursuing common development."⁷⁰ Hu Jintao, for example, emphasized this approach during the August 2011 visit of Philippine President Benigno Aquino III. Hu stated that, "Before the disputes are resolved, the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas."⁷¹ Hu apparently did not stress the first element of Deng's guideline emphasizing Chinese sovereignty, which may have been a further effort to reduce tensions.

Second, China reached agreements with other claimant states with the aim of managing tensions, promoting dialogue, and facilitating eventual dispute resolution. In addition to a July 2011 agreement with ASEAN on implementing guidelines for the 2002 Declaration on a Code of Conduct (DoC), China reached a much more substantial agreement with Vietnam in October 2011 over basic principles for resolving maritime disputes that stress using international law.⁷² Both agreements have been implemented. China-ASEAN meetings were held in early 2012. Vietnam and China have set-up a hotline and begun talks over demarcating the southern portion of the Gulf of Tonkin.

Third, separate from, but related to the first point, China's top leaders held high-level meetings with their counterparts to improve broader bilateral relationships. Philippine President Aquino and Vietnamese communist party general secretary Nguyen Phu Trong

⁶⁹ The section draws on Fravel, "All Quiet in the South China Sea."

⁷⁰ Deng's guideline for this dispute was developed in the 1980s. His intent was to delay the resolution of the contested claims and focus on cooperative efforts in order to prevent tensions in the dispute from harming China's broader bilateral relations with other claimant states. Events between 2009 and 2011 raised questions about whether Deng's guideline still governed China's approach to the disputes in the South China Sea.

⁷¹ "China, the Philippines Agree to Downplay Maritime Disputes, Enhance Economic Ties," Xinhua, 31 August 2011.

⁷² Qin Jize and Cui Haipei, "Guidelines Agreed with ASEAN on Sea Disputes," *China Daily*, July 21, 2011; "Guanyu Zhidao Jiejue Zhongguo Yu Yuenan Haishang Wentu Jiben Yuanze Xieyi [Agreement on Basic Principles Guiding the Resolution of Maritime Issues between China and Vietnam]," Ministry of Foreign Affairs (China), October 12, 2011, <<http://www.fmprc.gov.cn/chn/gxh/tyb/zyxw/t866484.htm>>.

visited Beijing in August and October 2011, respectively. Likewise, Vice President Xi Jinping traveled to Vietnam in December 2011 as part of a Southeast Asian tour.

Fourth, authoritative Chinese-language media such as the *People's Daily* underscored the importance of a cooperative approach in the South China Sea.⁷³ Many of these appeared in the “International Forum” column under the name Zhong Sheng, which is a pen-name for the editors from the international department. Such articles are written largely to explain policy decisions to domestic readers, especially those working within party and state bureaucracies. Shortly after the July 2011 meeting of the ASEAN Regional Forum, for instance, the print edition of the *Renmin Ribao* included a full page devoted to the importance of pursuing joint development that was described as an “authoritative forum” (*quanwei luntan*).⁷⁴ Such a collection of essays on the South China Sea in the official newspaper of the Chinese Communist Party may be unprecedented and was likely designed to signal “unify thought” (*tongyi sixiang*) within the party on this issue.

Fifth, China engaged other claimants by establishing a 3B *yuan* (476 million US dollar) China-ASEAN Maritime Cooperation Fund (November 2011), hosting several workshops on oceanography and freedom of navigation in the South China Sea (December 2011), and hosting a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration (January 2012).

Finally, China has halted the more assertive behavior that attracted so much adverse attention between 2009 and 2011. Vessels from the Bureau of Fisheries Administration have detained and held only nine Vietnamese fishing vessels since late 2010 (as of July 2012). Patrol ships from the State Oceanographic Administration have not interfered in Vietnamese or Philippine hydrocarbon exploration activities since May 2011. More generally, China has not obstructed related exploration activities, such as Exxon’s successful drilling of an exploratory well in Vietnamese waters claimed by China in October 2011.

This all began to change, starting with the standoff over Scarborough Shoal in April 2012 and especially since June 2012; Chinese actions suggest that it may be abandoning at least part of its more moderate approach. China’s response to the standoff at Scarborough itself did not necessarily represent a change in China’s approach to the disputes in the South China Sea. China viewed this as a bilateral dispute with the Philippines and clear challenge to its claim of territorial sovereignty over the shoal. As discussed above, the Philippine use of a naval vessel created a strong incentive for China to respond. As the standoff continued, with maritime law enforcement vessels from both countries stationed near the shoal, China

⁷³ The section draws on Fravel, “All Quiet in the South China Sea.”

⁷⁴ See *Renmin Ribao*, August 2, 2011, 23.

began to adopt a tougher stance. In particular, using indirect pressure, China quarantined bananas from the Philippines in Chinese ports and halted tourist groups to the Philippines.

In June 2012, China took a series of unilateral steps to strengthen its claims in the South China Sea. As mentioned above, in mid-June, the State Council announced the elevation of the Sansha administrative office from a county-level unit to a prefectural-level city with the aim of accelerating efforts to develop these islands and the waters of the South China Sea. The following week, CNOOC invited bids for nine exploration blocks in the middle portion of the South China Sea.⁷⁵ These blocks, which lie within the 200nm EEZ that Vietnam claims from its coast, overlapped with areas where Vietnam has signed contracts with foreign oil companies. A few weeks later, the State Oceanographic Administration dispatched four vessels on a training exercise in the middle and southern portion of the South China Sea to demonstrate China's claims.⁷⁶ Finally, in July, a fleet of thirty fishing vessels conducted a two-week cruise in the Spratlys to fish at Chinese-held reefs.⁷⁷

China has returned to more unilateral actions for several reasons. First, Chinese leaders may have concluded that the moderate approach from mid-2011 had failed to assuage the concerns of all claimants and reduce what Beijing viewed as challenges to its claims. In particular, the Philippines conducted very active and public diplomacy regarding its claims despite China's shift to a more moderate approach. These efforts included pushing for proposals that China viewed as harming its claims at the East Asian Summit, attempting to persuade ASEAN in April 2012 to negotiate a code of conduct without China, and seeking international attention and support during the standoff at Scarborough Shoal.

Second, although China managed to improve ties with Vietnam in the past year, several Vietnamese actions in June probably strengthened the argument in China for a return to a more unilateral approach, including Vietnam's first patrol of the islands with advanced Su-27 Flanker fighter aircraft flying as low as 500m over disputed features and the National Assembly's passage of a Maritime Law that affirmed Vietnam's claims over the Paracels and Spratlys. Finally, growing tensions with Japan amid plans by Tokyo's governor to purchase three of the Senkaku Islands likely underscored the importance of strengthening China's maritime claims everywhere.

At the 2012 meeting of the ASEAN Regional Forum, China continued to signal its willingness to pursue a more moderate approach. Foreign Minister Yang Jiechi repeated Deng Xiaoping's policy of "shelving disputes and seeking joint development" and indicated Chi-

⁷⁵ Fravel, "South China Sea Oil Card."

⁷⁶ "Chinese patrol ships reach Nansha Islands," *Xinhua*, 4 July 2012.

⁷⁷ Huang Yiming and Jin Haixing, "Fishing vessels set off for Nansha Islands Updated," *China Daily*, 13 July 2012.

na's willingness to hold "discussions on [a Code of Conduct] on the basis of full compliance with the [Declaration on a Code of Conduct] by all parties." He also repeated that maritime delimitation should be "in accordance with international law, the UNCLOS included."⁷⁸ In early August 2012, China communicated its willingness to continue to deepen ties with ASEAN in perhaps an effort to prevent the disputes in the South China Sea from harming other objectives. As a result, China has not completely abandoned a more cooperative and less unilateral approach. Nevertheless, China is now pursuing its own hedging strategy, combining efforts to strengthen its own claims unilaterally while agreeing in principle to hold talks when "conditions are ripe."

Conclusion

States have increased their efforts to claim, assert, exercise, and enforce competing claims to maritime rights in the South China Sea. The United States has a direct stake in freedom of navigation in the South China Sea and in regional stability more generally, including the peaceful resolution of disputes. Nevertheless, the disputes over maritime rights and territorial sovereignty in the South China Sea pose distinct challenges that United States must navigate going forward.

On the one hand, the United States should reaffirm its interests in the region when they may be challenged. At the July 2010 meeting of the ARF, for example, Secretary of State Clinton clearly articulated U.S. interests in the South China Sea, including freedom of navigation, unimpeded commerce, respect for international law, and peaceful dispute resolution.⁷⁹ The unprecedented expression of American interests in this dispute helped produce China's July 2011 agreement with ASEAN on implementing guidelines.

China seeks to limit the U.S. role in resolving the South China Sea disputes, and hoped that it could limit discussion of the issue at the 2011 ARF meeting by instead concluding the agreement with ASEAN (which does not include the United States). In this instance, U.S. diplomacy helped prevent tensions from escalating further. Yet on the other hand, the United States should maintain its longstanding principle of neutrality and not taking sides in the territorial disputes of other countries. The disputes in the South China Sea are complicated and multifaceted. To the extent that U.S. policy takes sides in these disputes – or is perceived as taking sides – it risks transforming these disputes into a bilateral conflict between the United States and China. And to the extent that claimant countries believe that the United States will defend their actions against China, they may take bolder and riskier actions that could increase instability in the South China Sea.

⁷⁸ "Foreign Minister Yang Jiechi on the South China Sea Issue," Ministry of Foreign Affairs, 12 July 2012, <http://www.fmprc.gov.cn/eng/zxxx/t950626.htm>

⁷⁹ Clinton, "Remarks at Press Availability."

These challenges for the United States were evident just before the November 2011 East Asian Summit in Bali, Indonesia. During a press conference in Manila three days before the summit, Secretary of State Clinton appeared to side with the Philippines by referring to “disputes...that exist primarily in the West Philippine Sea between the Philippines and China.”⁸⁰ The West Philippine Sea is the name that the Philippines began to use in June 2011 to refer to the South China Sea (which is the standard name for this body of water).⁸¹ Reinforcing this interpretation, Voice of America published an article entitled “US Secretary of State Backs Philippines in South China Sea Dispute.”⁸² Similarly, the Philippines viewed American policy as supporting its position in the dispute. According to the Philippine presidential spokesperson, the U.S. presence “bolsters our ability to assert our sovereignty over certain areas.”⁸³

As a result, Clinton’s statements not only appeared to undermine the principle of maintaining neutrality in other countries territorial disputes, but may also embolden the Philippines in the future to be more assertive in the South China Sea. More recently, a statement issued by the State Department in early 2012 appeared to lean toward taking a position against China. Although the statement declared American neutrality, it cited only Chinese actions as sources of instability and endorsed for the first time international arbitration for resolving the disputes that is favored by the Philippines.⁸⁴

Looking forward, the United States must balance efforts to maintain stability in the South China Sea against actions that could inadvertently increase instability, especially greater involvement in the resolution of the dispute itself. The United States should affirm the principles that Secretary of State Clinton articulated in July 2010 and apply them equally to all claimants in the South China Sea disputes. The United States should not take a position on what specific modes or forums should be used to resolve or manage these disputes, so long as they are agreed upon by the claimants without coercion. The United States should not offer to facilitate talks or mediate the disputes because China will view this as a direct involvement in its sovereignty questions. The United States should ratify UNCLOS, which embodies customary international law in the maritime domain. Ratification would increase the legitimacy of U.S. efforts to pursue a rules-based approach to managing and resolving

⁸⁰ “Presentation of the Order of Lakandula, Signing of the Partnership for Growth and Joint Press Availability with Philippines Foreign Secretary Albert Del Rosario,” November 16, 2011, <http://www.state.gov/secretary/rm/2011/11/177234.htm>

⁸¹ China’s name for the South China Sea is the South Sea (*nanhai*). South China Sea is the name used by the Office of the Geographer at the Department of State.

⁸² Simone Orendain, “US Secretary of State Backs Philippines in South China Sea Dispute,” Voice of America, November 16, 2011.

⁸³ Daniel Ten Kate and Julianna Goldman, “Obama Targets Maritime Security as China Spars With Philippines Over Sea,” Bloomberg, November 17, 2011.

⁸⁴ <http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>

disputes over maritime jurisdiction and further enhance the image of the United States among many states in East Asia. Striking the right balance between these policies is necessary for maintaining stability and preventing conflict in the future.

Vietnam and the South China Sea

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Introduction

Vietnam's approach to the South China Sea and China is based on three separate but related tracks. First, Vietnam wants to maintain good relations with China. The combination of power disparities and proximity makes Vietnam well positioned to benefit from Chinese economic growth but also susceptible to Chinese pressure. The long history of coping with China has imprinted upon the leadership in Hanoi the realization that in order to have the space necessary to act on its interests, Vietnam must carefully manage the overall relationship between itself and China. So, while China is accused of threatening behavior, "bullying" its neighbors, and unjustifiably "showing groundless demands against international law,"⁸⁵ there is still a regular procession of high-level visits to Beijing by Vietnamese Party and state officials, reflecting a commitment to normal and proper diplomacy, a systematic effort to promote a wide range of bilateral engagement in trade and commerce and defense and security, and a continuing investment in government-to-government efforts to sort out the tricky aspects of the relationship such as border demarcation issues.

Second, Vietnam has been a consistent supporter of China's participation in the "alphabet soup" group of ASEAN-created institutions, and has been at the forefront of regional efforts to get China to actually conclude a binding code of conduct for behavior in the South China Sea. Hanoi's hope is that enmeshing China in a web of cooperative relations with ASEAN (the Association of Southeast Asian Nations) will moderate Beijing's unilateralist tendencies. This aspiration has not yet borne fruit. At the July 2012 annual ASEAN Ministerial Meeting, held in Phnom Penh, the regional grouping failed to issue a formal communiqué largely because the Cambodian host allowed Chinese influence to prevail in the argument over the wording on the key elements of the communiqué, including proposals by Hanoi and Manila that the document should reference maritime incidents involving Chinese ships. As a consequence, no agreement could be reached on a proposed Code of Conduct on the South China Sea. Nevertheless, Vietnam, along with its ASEAN brethren, remains committed to pressing the Chinese to cooperate with the regional association. This

⁸⁵ Viet Long, "China's Strategy of Widening Disputed Areas in East Sea," *Quan Doi Nhan Dan Online* (Hanoi) 18 June 2011, in OSC-SEP20110708178001.

approach is aimed at blunting Chinese efforts to diminish the association's capacity to cohere by stressing the need to resolve critical issues in the South China Sea on a bilateral basis with Southeast Asian claimants.⁸⁶

Third, in what could be broadly characterized as independent activity, Vietnam is strengthening its security posture. Over the past decade, Hanoi has moved to establish closer relationships with non-regional powers, particularly the United States and India. South Korea also has joined Vietnam in an "overall joint proposed plan."⁸⁷ In addition to seeking powerful friends, Vietnam has been making serious investments in its own maritime capabilities.

The arc of the Vietnamese argument on the South China Sea

The key questions for Hanoi continue to be: What is China going to do? What is the United States going to do? And what can the United States and Vietnam do together in a way that helps manage China's emergence as a key player in the region and on the global stage?

Vietnam is not asking that U.S. warships come into the region to fight China. Rather, the Vietnamese hope that the United States will help them cope with China's increasing power by sharing intelligence, exchanging information, and helping their military acquire technology. The Vietnamese want the United States in the region to balance China.

The Vietnamese are prepared to go as far as necessary to strengthen bilateral relations with the United States as leverage to help secure Vietnam's interests relative to China. Vietnam thus supports U.S. strategy in Asia, though it is not interested in being caught in the middle of a Sino-U.S. arms race. Vietnam supports a continuing U.S. presence in the region, and it supports America's legitimate interests in the region.

According to the Vietnamese, "everyone" understands that China's demands and claims regarding the South China Sea are unsupportable, and "everyone" considers such claims to

⁸⁶ Sheldon Simon, "ASEAN Stumbles," *Comparative Connections* (an e-journal published by Pacific Forum CSIS, Honolulu, HI), vol. 14, no. 2, <http://csis.org/program/comparative-connections>.

⁸⁷ For instance, see Juan Pinalez, "Vietnam Representatives Visit USS *George Washington*," Navy News Service, NNS110309-12 (09 March 2011), at: http://www.navy.mil/search/display.asp?story_id=58986; Patrick Barta, "U.S., Vietnam in Exercises Amid Tensions With China," *Wall Street Journal* (16 July 2011), at: <http://online.wsj.com/article/SB10001424052702304223804576447412748465574.html>; and "India, Vietnam: Testing China's Patience," *IRGA* (26 September 2011), at: http://www.irgamag.com/?page=Stories_26092011; and Donald Kirk, "Seoul and Hanoi Eye a Glowing Partnership," *Asia Times Online* (10 November 2011), at: <http://www.atimes.com/atimes/Korea/MK10Dg01.html> (all accessed 02 June 2012).

be wrong; however, not many are prepared to voice that belief, especially if they are afraid of angering China.⁸⁸

In the end, though, for the Vietnamese, the Sino-Vietnamese relationship is one of great value. Vietnam will continue to invest whatever resources are necessary to develop and sustain a close and friendly link. But, an important caveat is Hanoi's determination that it will never again become hostage to a single relationship, as it was to the Soviet Union. It will not become a pawn in the dynamics of relationships between big powers, and the Vietnamese will develop a strictly sovereign foreign policy aimed at serving their goals of sustained economic development, improved trading opportunities, and regional stability. Hanoi's priority focus on "diversifying" and expanding its diplomatic relationships reflects this view.

In this regard, Vietnamese policy-makers argue that the development of the relationship between the United States and ASEAN must be based on the needs of both sides. It should not be motivated merely by the intention of dealing with China. The same principle must inform the development of U.S.-Vietnamese relations: the relationship must serve the interests of the two parties. The best course would be for the United States and Vietnam to focus on the development of U.S. relations with ASEAN, and of U.S.-Vietnamese relations, in order to grow a meaningful link between these two sets of relationships.

Accordingly, Vietnamese strategic thinkers⁸⁹ believe that the United States should proactively engage with China on the South China Sea issue for several reasons:

- First, the rule of law must be safeguarded. Parties seeking to interpret international law to their advantage should not be allowed to transgress against this body of law.
- Second, clear U.S. economic interests are at stake. The interests, and the commercial viability, of American corporations operating on the ASEAN continental shelf, and more generally in the region, stand in jeopardy.

⁸⁸ See "Vietnam navy works with media to raise awareness on maritime sovereignty," September 18, 2010. Text of report in English by state-run Vietnamese news agency VNA website ("News Agency, Naval Force Sign Cooperative Agreement"). Source: VNA news agency website, Hanoi, in English, 17 September 2010, *BBC Monitoring Asia Pacific – Political*, supplied by BBC Worldwide Monitoring.

⁸⁹ Vietnam lacks the robust community of think tanks and research centers that produce a raft of analyses, policy recommendations, and scholarly articles (so commonly found in the West). However, the following insights about the views of the Vietnamese strategic perspectives and the GoV's strategic and policy priorities are derived from the authors' reading of articles and speeches that are available as well as his own assessments informed by many years of first hand interactions with Vietnamese academics, policy makers and influential intellectuals at conferences and other academic exchanges.

- Third, the peace and prosperity of countries in the region will be directly affected by the way the United States, as well as the region, manages the South China Sea conflicts.
- Fourth, the South China Sea is a strategic “test” of two propositions: that China’s rise can be managed effectively, and that China is really pursuing “peaceful development.”

The Scarborough Shoal incident⁹⁰ between China and the Philippines convinced Vietnamese Foreign Ministry strategists that it is a mistake for any of the ASEAN claimants to deploy military vessels in a response to any acts by China intended to assert its sovereignty over the region.

Recent thinking

Vietnam’s core policy argument for the South China Sea remains the need to strictly follow UNCLOS in order to effectively deal with this issue. Hanoi also believes that the countries of Southeast Asia should strengthen dialogues, build trust on the basis of the Code of Conduct, boost cooperation among armies of other countries, and enhance dialogue at forums such as the ASEAN Regional Forum, the East Asia Summit, the annual Shangri-La Conference in Singapore hosted by the International Institute for Strategic Studies, and the ASEAN Defense Ministerial Meeting (ADMM) and ADMM+.⁹¹

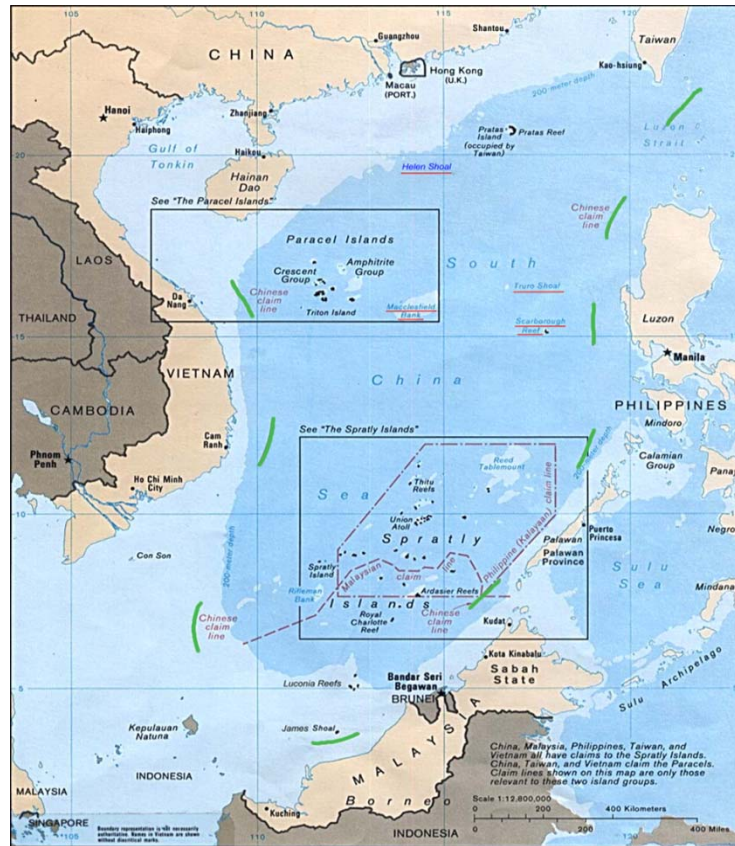
In addition, Hanoi is apparently perplexed by the strategic short-sightedness of Beijing’s current approach. They foresee unfavorable strategic consequences for China if it (1) insists on managing South China Sea conflicts in a bilateral manner, and thus resisting ASEAN’s multilateral approach to the issue, and (2) chooses to escalate aggressively in de-

⁹⁰ In April 2012, the Philippine government dispatched a frigate to Scarborough Shoal to investigate eight Chinese fishing boats inside the lagoon of what the Philippines consider its territory. (China claims it as well.) After the Philippine Navy boarded several of the fishing boats, China responded by mustering, over a period of days, nearly 100 government fishing surveillance ships, fishing boats, and utility craft in the lagoon. It also extended its annual unilateral fishing ban to cover the waters around the shoal; it quarantined tropical fruit imports from the Philippines; and it failed to abide by a verbal agreement with Manila to withdraw vessels from the lagoon. Finally, China roped off the mouth of the lagoon to prevent other fishermen from entering. Bonnie Glaser, Statement before the House Foreign Affairs Committee, “Beijing as an Emerging Power in the South China Sea,” September 12, 2012, www.csis.org.

Beijing’s 2011 sabotage of a seismic survey vessel seeking to explore oil reserves within the Philippines’ Economic Exclusive Zone (EEZ) and the 2012 dispute between China and the Philippines over the Scarborough Shoal were, for Vietnamese strategic thinkers, “we told you so” moments.

⁹¹ See, for example, Nguyễn Đình Chiển: “Sức mạnh tổng hợp bảo vệ chủ quyền biển, đảo Việt Nam,” 21 September 2011, <http://tienbh.com/News/2011/09/tuong-nguyen-dinh-chien-suc-manh-tong-hop-bao-ve-chu-quyen-bien-dao-viet-nam/>.

fense of amorphous claims to ownership of the South China Sea, instead of laying out the specifics of the nine-dashed or U-shaped line (shown in the map below) which represents China's claims of sovereignty over the area that is, from Beijing's perspective, China's southern border.⁹²



Source: http://upload.wikimedia.org/wikipedia/commons/c/cc/0_dotted_line.png

In essence, Hanoi's view is that China has compromised its long-term interests by insisting on ownership of the South China Sea and by driving home its points with an increasing willingness to deploy force in defense of its arguments. Vietnam believes that:

⁹² The Chinese say that the U-shaped line was a construct inherited from the Kuomintang Government and was only officially submitted to the UN Commission on the Limits of the Continental Shelf in 2009. The claims encapsulated by the U-shaped line have no specific geographical coordinates. The U-shaped line claimed by China covers 80 percent of the South China Sea, equivalent to 1,080,000 square miles. According to Vietnamese analysts, China in fact administers only 15 percent of that area. Vietnam has argued that newly discovered maps of the Qing Dynasty printed in 1904 showed not the Paracels and the Spratlys, but rather the Hainan Island, as China's southern border. See Hoang Anh Tuan, "Chinese Strategic Miscalculations in the South China Sea," *Asia Pacific Bulletin* (East-West Center), no. 181 (27 September 2012): 2. www.eastwestcenter.org/download/5369/33686/apb_181.pdf.

- First, China’s sovereignty disputes with ASEAN are ruining its positive image as a peacefully rising power in Asia. As the result of its South China Sea policies, China’s national strength is declining rather than “rising.”
- Second, Washington’s “pivot” to Asia is the direct result of China’s bellicosity. As a consequence of Beijing’s behavior, the entire region is pivoting to the United States. The Vietnamese view is that the more assertive China becomes, the more the region tends to regard China with disfavor.⁹³
- Third, if China cannot maintain good relationships with its closest neighbors, countries farther from Beijing’s periphery will be more inclined to act in ways that will not serve China’s foreign policies.
- Fourth, the assertion of China’s sovereignty over the South China Sea is destabilizing the region. All concerned parties are becoming more heavily armed, and there is no longer a guarantee that conflict in the sea, if it ever happens, will end without affecting international maritime security and safety of navigation.

In essence, by pursuing an “incorrect” policy, Beijing is making the SCS a long term zone of instability. The Vietnamese sense of their correct interpretation of history has a strong place in this argument, which relies on several widely shared Vietnamese views of the antecedents of contemporary South China Sea issues. The Vietnamese argue that newly available sources indicate that until 1904, Qing Dynasty maps did not even show the Paracels and the Spratlys. These maps, in the Vietnamese view, showed Hainan Island as China’s southernmost island, while various maps in Vietnam’s possession indicated that as early as the 17th century the Nguyen Dynasty of Viet Nam administered both the Paracels and the Spratlys and exploited their resources. Further, the Vietnamese argue that in legal terms even if China’s domestic laws or maps had imprints of the U-shaped line as China claims, the UN Convention on the Law of the Sea, to which China is a signatory, would prevail over domestic law.

Finally, this Vietnamese perspective argues that the U-shaped line was drawn randomly with no specific coordinates, and, thus, left room for various inconsistent interpretations by China. In addition to claiming that the U-shaped line is a historical line, some Chinese now interpret the line as the outer maritime boundary of the Paracels and the Spratlys, which are treated as inhabited islands and therefore eligible for a 200-mile EEZ according to UNCLOS provisions.

⁹³ Hoang Anh Tuan, “Dispute in the South China Sea (or East Sea) from Vietnamese Perspectives,” unpublished manuscript in authors’ possession, July 2012.

In sum, in Vietnam there is the belief that China has painted itself into a corner and is facing a strategic dilemma of its own creation: Backing away from its claims regarding ownership of the territory within the U-shaped line would represent a concession from a position of weakness. But continuing to assert its sovereignty over the U-shaped line will do even more to irritate its neighbors, and elevate tensions with countries that are increasingly inclined to stick together and insist on the relevance of international laws as the remedy for conflicting claims.⁹⁴

One more variable: Invigorating an ASEAN troika

There is a serious effort within the region to devise possible solutions aimed at finding a way out of the impasse.

Working-level ASEAN foreign policy strategists are informally circulating a proposal to ASEAN colleagues and foreign academics and think tankers exploring the idea of invigorating an ASEAN troika of former regional diplomats—essentially, an office of a special envoy of ASEAN claimants—that would clarify the nature of the claims among the ASEAN claimants, crystallize real solutions to the South China Sea issue, and galvanize real discussions with China. ASEAN strategists believe that such a proposal must come from the new ASEAN Secretary-General, who will be a Vietnamese, when that person takes office early next year.⁹⁵ Regional officials have sought to enlist the support of elements of the Vietnamese Foreign Ministry for the notion of a permanent ASEAN special envoy, or what has been described in informal working-level circles as a troika of former ASEAN diplomats.

The two-month-long standoff between Chinese and Philippine ships at Scarborough Shoal, which began in early April 2012, telegraphed the message that there has been no softening of views. Two other events drove home to Vietnam the extent to which Beijing is disinclined to abandon its commitment to ambiguity. One was China's recent assertion of its claim to the Spratlys and Paracels—as well as to Zhongsha (also called the Macclesfield Bank), which is a submerged feature that, under applicable international law, is not considered an island. The other was an early May 2012 restatement of an annual unilateral fishing ban for all of the South China Sea above the 12th parallel.

⁹⁴ In his manuscript, Hoang Anh Tuan quotes Kishore Mahbubani, “Is China Losing the Diplomatic Plot?” *Project Syndicate*, 26 July 2012, <http://www.project-syndicate.org/commentary/is-china-losing-the-diplomatic-plot>.

⁹⁵ “Vietnam Nominates Deputy Minister as ASEAN Secretary General,” *Thanhniennews.com*, 10 August 2012, <http://www.thanhniennews.com/index/pages/20120810-vietnam-deputy-fm-nominated-as-asean-secretary-general.aspx>.

ASEAN experts, including those who are Vietnamese, recognize that additional rounds of Track I or Track II dialogues are unlikely to push things toward a practical solution and would instead offer the competing claimants the opportunity to temporize. But, a special envoy or a troika of former ASEAN diplomats could engage China consistently. The goal of this diplomatic approach would be to encourage China to clarify its position on the South China Sea and to respect the Code of Conduct.

Vietnam is not relying on diplomacy alone—it is also modernizing its military

Vietnam's government is committed to the modernization of the People's Army of Vietnam (PAVN) and seeking a credible deterrent to China. Minister of defense, General Phung Quang Thanh, who received the highest vote total in the National Assembly in the 2011 election (97.4 percent), and who is only the second defense minister to serve two terms is presiding over a military in transition.

Thanh has paid attention to defense acquisition in a systematic way: He has defined key PAVN priorities for growth and development, and fixed his attention on naval capabilities and the air force/air defense. He has developed a rigorous way of thinking about cooperation with international organizations, and modernized Vietnam's military relations by creating the criteria by which to measure effective practical engagement and defining the role of active military sales in defense relationships. Finally, he has ratcheted up strategic cooperation by prodding the defense establishment to embrace the idea of defense dialogues, strategic partnership agreements, and practical bilateral military cooperation, and he has placed a priority on cultivating defense links with neighbors and developing Vietnam's role in multilateral organizations as a critical component of national defense.

In January 2011, the 11th National Congress of the Vietnamese Communist Party (VNCP) elected 19 military officials to the Central Committee. For the most part, these are military leaders who came of age during a transitional moment in the life of the PAVN; that is, they are senior PAVN leaders who survived the institutional downsizing that followed the withdrawal of Vietnamese military forces from Cambodia, and endured a prolonged period during which PAVN was essentially a military without a mission.

Moreover, these leaders saw neighboring armies thrive, adapt, and enter into lucrative relationships with foreign partners that yielded world-class training, interoperability, and opportunities for orderly modernization through foreign military sales programs and national-level programs aimed at capability development (SAR, HADR, and PKO). At the same time, they saw PAVN's own capabilities dwindle and become less and less relevant to the challenges facing the region in the late 1990s and early 2000s. These military leaders seem inclined to stress modernization and the development of a rational defense procure-

ment plan that can drag the Vietnamese army into the 21st century. In addition, they appear focused on developing the strategic partnerships necessary to fuel this acquisition plan and cement the deals necessary to put effective training and exercising opportunities into place.⁹⁶

High inflation and shrinking foreign reserves have continued to put downward pressures on the Dong. The Vietnamese government and central bank (SBV) have recently taken drastic steps to stabilize the volatile economy. Examples are the 9.3-percent devaluation of the Dong, in mid February 2011, which was the largest single devaluation taken by the government since the reforms of the mid 1980s; and the issuance of a prime ministerial order to major state-owned enterprises (SOEs) to sell their foreign currency (mainly dollars) to banks, for the first time since 2009.

But, whatever the macro-indicators and market numbers might suggest, in the area of defense and security the government has money to spend. The government remains aggressively inclined to procure big-ticket items for the PAVN, including jet fighter aircraft. The military establishment is also committed to improving the local manufacture of basic shoulder and hand guns – a goal that has been reiterated for decades. Finally, PAVN is intent on developing a navy capable of securing Vietnam’s borders and performing basic maritime security and surveillance.

The arithmetic clearly shows that Vietnam’s defense budget has grown by some 82 percent over the past nine years, and, while it decreased slightly in 2011 (6.9%), the growth is impressive.⁹⁷ Much of this growth was due to purchases for the navy and for other capabilities (air force, coastal defense cruise missiles and surveillance) that contribute to its ability to defend its EEZ and disputed claims in the South China Sea. In early 2011, the 11th National Congress of the Vietnam Communist Party declared that the modernization of Vietnam’s armed forces and defense industry is one of five key tasks to be accomplished in the next five years (2011-15). According to Defense Minister Thanh, priority would be assigned to modernizing the navy, air force, air defense, and electronic and technical reconnaissance.⁹⁸

⁹⁶ See Lewis Stern, “PAVN’S Modernizers,” *CogitASIA*, Center for Strategic and International Studies Asia Policy Blog, 22 August 2011, http://cogitasia.com/pavns_modernizers/; and Stern, “The 11th Congress of the Vietnamese Communist Party: Political and Military Leadership Changes,” *INSS Staff Analysis*, Center for Strategic Research, National Defense University, April 2011.

⁹⁷ According to the Stockholm International Peace Research Institute (SIPRI), Southeast Asia’s defense spending grew by 42 percent in real terms over the years between 2002 and 2011 and Vietnam was one of the leading contributors to this dramatic increase in defense spending.

⁹⁸ Carl Thayer, “The Tyranny of Geography: Vietnamese Strategies to Constrain China in the South China Sea,” *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 33, no. 3 (December 2011): 348-369.

Vietnam's naval procurement budget increased by 150 percent between 2008 and 2011. It was USD 276 million in 2011, and is expected to grow to USD 400 million by 2015, according to *IHS Jane's Defense Budgets*.⁹⁹ Most of this increase went to weapons purchased from Russia aimed at improving Vietnam's sea denial capabilities within 200 nautical miles of its coast.

All the capabilities (see below) that Vietnam has contracted to purchase, or co-produce, *could* result in a credible capability to defend its maritime claims. There are caveats to this assessment, however: the systems under contract have to be actually fielded; and some sort of an integrated command-and-control system, which must include a comprehensive maritime surveillance system, has to be put into place.¹⁰⁰

Vietnam has not issued a maritime strategy, but Hanoi did publish a defense white paper in 2009, in which the navy's responsibility was described as strictly managing and controlling "the waters and islands in the East Sea under Vietnam's sovereignty" to include maintaining maritime security, sovereignty and sovereign rights, jurisdiction, and national interests at sea. This white paper drew on a 2007 resolution by the fourth plenum of the Communist Party of Vietnam Central Committee, mandating development of a comprehensive national "Maritime Strategy Towards the Year 2020," to fully integrate economic development and maritime national defense measures.

Vietnam's most newsworthy purchase related to South China Sea defense has been the six Kilo-class submarines ordered from Russia in 2009, the first of which will reportedly arrive by the end of 2012. Vietnam has been interested in purchasing submarines from Russia since the early 1980s; an earlier deal with Russia was cancelled by Premier Gorbachev for fear of offending China. Professor Carl Thayer, a veteran specialist on the Vietnamese military at Australia's Defense Force Academy, reported in 2009 that Vietnam was seeking a credible deterrent against China, hoping to defend its own claims to the South China Sea.

⁹⁹ <http://www.janes.com/products/janes/defence-business/budgets.aspx>.

¹⁰⁰ The concepts of sea control and sea denial date back to the writings of Alfred Thayer Mahan and his near-contemporary Julian Corbett, and stem from notions of "command of the sea." A search of their writings will yield often-contradictory definitions of these terms. A reasonable interpretation is that "sea control" means having the capability to prevent an enemy from using some segment of maritime geography for as long as one wishes. In other words, one party can use the sea at its pleasure while an opponent cannot. *This is hard to accomplish in practice unless one also controls the air above the water in question.* "Sea denial," on the other hand, means temporary control of an area of water. Implicit is the idea that control will be contested and that neither side has complete freedom to use the sea as it wishes. Many books talk about and around this topic. For the best-extended discussion, see Colin S. Grey, *The Leverage of Sea Power: The Strategic Advantages of Navies in War* (New York: The Free Press, a division of Macmillan, Inc., 1992), pp. 19, 274.

“It's a very bold step,” Thayer was quoted as saying. He continued:

It has been apparent for some time now that Vietnam's sovereignty is under threat in the South China Sea, and that is something that is painfully felt in Hanoi. Hanoi knows it could never hope to match the Chinese Navy, but it can at least make them think very hard before any attempt to, for example, drive Vietnam off some of their Spratly Islands holdings. Even a few Kilos makes that a very complicated business, indeed you suddenly have to factor in losing ships.¹⁰¹

Vietnam has not just acquired submarines. It also has ordered four Russian-built Gepard-class corvettes. The first two, fitted for attacking surface ships, are already in operation; the second two, still under construction, will be optimized for anti-submarine warfare. Vietnam is also producing under license at least ten 550-ton fast-attack craft that are fitted with anti-ship cruise missiles. These will be combined with the so-called Bastion Coastal Defense System, also from Russia, which consists of truck-mounted anti-ship cruise missiles, along with its 20-odd Su-27/30 aircraft that are capable of maritime strike; and four very modern Dutch corvettes of the SIGMA class, the purchase of which has been announced. Altogether, Vietnam is putting into place a formidable off-shore naval force.

All these off-the-shelf purchases must still be knit together into an integrated force, with effective surveillance and command and control, but Hanoi's intent is clear. There is little question that Chinese naval capability is the focus of these procurements. Vietnam is investing significant resources to make certain that it can defend its maritime claims, and that it will avoid a replay of the 1988 South Johnson Reef clash with the PLAN, in which two Vietnamese landing craft were sunk, a third was badly damaged, and over 80 Vietnamese were killed. Finally, Vietnam, unique among Indo-Pacific littoral states, endured over eight years of carrier-based air attacks during the Vietnam War and thus can be expected to pay particularly close attention to PLA Navy aircraft carrier developments.

Conclusion

Vietnam seems ready to defend its holdings in the Spratlys, particularly since China militarily seized the westernmost islets in the Paracel Island group from South Vietnam in 1974, and then defeated a Vietnamese Navy “surveillance” mission to the islands in 1979. (Since

¹⁰¹ Thayer quoted in Greg Torode, “Vietnam buys submarines to counter China,” *South China Morning Post*, December 17, 2009, http://www.vietstudies.info/kinhte/vietnam_buys_submarines_SCMP.htm.

that time Vietnam has not militarily challenged Chinese possession of the Paracels.)¹⁰² It would be a mistake, however, to suggest that Hanoi's disputes with China over the South China Sea define the totality of Vietnam's relationship with China. The relationship is far more complex.

There are at least four narratives regarding China that are given expression by Vietnamese in many walks of life – government officials, military officers, foreign policy experts and practitioners, intellectuals, analysts, and the “man on the street.”

The first narrative speaks to Vietnam's martial history:

- A succession of Chinese dynasties ruled Vietnam from 207 BC until 938, when Vietnam regained its independence. Vietnam, a tributary state for much of its history, repelled invasions by the Chinese and the Mongols between 1255 and 1285. The legends of the Trung Sisters, and a host of brave warrior kings who marched armies against Chinese dynastic militaries, contribute to the lore that contemporary Vietnamese turn to when looking for strength against an increasingly aggressive modern China.

The second narrative speaks to Vietnamese fraternity with modern revolutionary China:

- China offered sacrifice and support, sanctuary and supply, to Vietnam during the course of Vietnam's struggle for independence—through the establishment of independence during the August Revolution in 1945, the proclamation of the Democratic Republic in 1954, the long conflict with France and the United States, and the victory of the revolution in April 1975. This contributes to the sense that the Vietnamese Revolution owed a considerable debt to its Chinese allies.

The third narrative speaks to the Vietnam's long struggle with an assertive and unfriendly China:

- One argument—fueled by modern Vietnamese nationalism—holds that China aimed to control Vietnam in the pattern of big power/small power relations dating to dynastic history. This argument cites China's efforts to reverse Vietnam's success at socialism and Hanoi's increasing power and independence during the late 1970s through the early 1990s, Vietnam's increasing reliance on Soviet largess and support, the war of attrition along the

¹⁰² Brantly Womack, *China and Vietnam: The Politics of Asymmetry* (New York: Cambridge University Press, 2006), pp. 181-182.

common border with China, and the protracted Cambodian conflict during which the Chinese sided with Democratic Kampuchea.

The fourth narrative relates to Vietnam's long efforts to resolve conflict with China:

- This addresses Sino-Vietnamese efforts to resolve land border disputes and settle contests over maritime issues in the South China Sea peacefully. It also highlights the commitment to the shared enterprise of establishing the basis (in the early and mid-1990s) for the normalization of Sino-Vietnamese relations, and of sustaining a historically important yet asymmetrical relationship fueled by wide-ranging trade and assistance, common regional concerns, shared strategic goals, and concerns regarding the plans and intentions of external powers such as the United States.

These narratives bleed into one another, and find uses in the hands of different interests. Vietnamese Party and government leaders stress the enduring commitments to common strategic interests and historical friendships as they try to keep a steady hand on the rudder of a relationship that veers and lurches. Popular opinion gives expression to an increasing virulent nationalism in response to Chinese efforts to assert their claims in the South China Sea, or in reaction to Chinese commercial imperialism.

These narratives are also important because they shape Vietnamese policy toward China, and define the parameters for national thinking about China's plans and intentions as they impact Vietnam's interests. Nevertheless, it is critical to bear in mind that Vietnam is intent on continuing to invest in a strong, broad relationship with China that involves deep commitments to developing systems of economic and trade cooperation and resource management with a regional frame of reference.¹⁰³

In the end, Vietnam assigns primacy to keeping the relationship with China steady, positive, and center-stage—even in the midst of sustained pressure on critical issues such as

- conflicting maritime claims in the South China Sea;

¹⁰³<http://www.worldpoliticsreview.com/articles/10823/vietnam-broadens-ties-to-hedge-against-an-assertive-china>; Linh Thu, "Việt - Trung đối thoại chiến lược quốc phòng tại Hà Nội," (Vietnamese-Chinese Strategic Defense Dialogue in Hanoi), *VietnamNet*, 3 September 2012, <http://vietnamnet.vn/vn/chinh-tri/87047/viet-trung-doi-thoi-chien-luoc-quoc-phong-tai-hanoi.html>; Nguyen Vu Tung, "Vietnam's Security Challenges: Hanoi's New Approach to National Security and Implications to Defense and Foreign Policies," in *Asian Pacific Countries' Security Outlook and its Implications for the Defense Sector* (Tokyo: The National Institute for Defense Studies, 2010).

- ongoing demarcation issues in the context of an essentially “resolved” land border issue;
- long-standing differences over economic issues such as cross border trade; and
- “Big Dragon/Little Dragon” issues that pervaded the modern relationship for decades.

After the initiation of Sino-Vietnamese “normalization” some 20 years ago, the South China Sea dispute remained frozen in an unresolved form. It has now emerged as an obstacle in Sino-Vietnamese relations—and, as Vietnamese analysts argue with increasing vehemence, if China continues to be assertive, ignoring the interests of the other parties to the dispute, the South China Sea dispute will pose a threat to security and stability in the region.

Vietnam is unlikely to act unilaterally against China or be the first to initiate hostilities, though it will defend itself if attacked.¹⁰⁴ Instead, it will focus on improving its security through diplomatic outreach to neighbors, as well as to the United States, while developing an ability to pose a credible military deterrent to attacks on its holdings in the South China Sea.

¹⁰⁴ Hoang Anh Tuan, “Chinese Strategic Miscalculations.”

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