



# South China Sea: Maintaining Peace / Preventing War



Conflict Management and China Studies Programs, 2017

**Daniel P. Serwer, Carla Freeman and Adam Lee, editors**

# **Conflict Management and China Studies Programs Field Trip South China Sea**

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## **List of Acronyms**

ACTFA	ASEAN-China Free Trade Agreement
ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AMTI	Asian Maritime Transparency Initiative
APFIC	Asia-Pacific Fishery Commission
ARF	ASEAN Regional Forum
ASBM	Air-based anti-ship ballistic missile
ASEAN	Association of Southeast Asian Nations
ASW	Anti-submarine warfare
BRI	Belt and Road Initiative
CASS	Chinese Academy of Social Sciences
CBM	Confidence-building Measures
CCP	Chinese Communist Party
CGC	China Coast Guard
CICIR	China Institute of Contemporary International Relations
CIL	Customary International Law
CMS	China Marina Surveillance
CNOOC	China National Offshore Oil Corporation
CNPC	China National Petroleum Corporation
COC	Code of Conduct
CSCAP	Council for Security Cooperation in the Asia Pacific
CSSC	China State Shipbuilding Corporation
CUES	Code for Unplanned Encounters at Sea
DOC	Declaration on the Conduct (of the Parties)
DOD	Department of Defense
DPP	Democratic Progressive Party
EDCA	Enhanced Defense Cooperation Agreement
EEC	European Economic Community
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization
FON	Freedom of Navigation
FONOP	Freedom of Navigation Operation

FOO	Freedom of Overflight
GEF	Global Environment Facility
GIUK	Greenland, Iceland, United Kingdom
HADR	Humanitarian Assistance and Disaster Relief
HYSY	Haiyang Shiyou 981 (oilrig)
ICBM	Intercontinental ballistic missile
ICJ	International Court of Justice
IGER	Institute for Global Energy Research
IMO	International Maritime Organization
IO	International Organization
IOC-UNESCO	Intergovernmental Oceanic Commission of UNESCO
ITQ	Individual Transferable Quotas
JMSU	Joint Marine Seismic Undertaking
KIG	Kalayaan Island group
KMT	Kuomintang
LCS	Littoral Combat Ship
LNG	Liquified Natural Gas
LTE	Low-Tide Elevation
MEPC	Maritime Environmental Protection Committee
MoU	Memorandum of Understanding
MPA	Marine Protected Areas
MRBM	Medium-range ballistic missiles
NAFO	Northwest-Atlantic-Fisheries-Organization
NGO	Non Governmental Organization
NOC	National Oil Company
NRDC	National Development and Reform Commission
NSC	National Security Cutter
OBOR	One Belt, One Road
PCA	Permanent Court of Arbitration
PEMSEA	Partnerships in Environmental Management for the Seas of East Asia
PLA	People's Liberation Army
PLAN	People's Liberation Army Navy
PRC	People's Republic of China

R&D	Research and Development
ROC	Republic of China (Taiwan)
RIMPAC	Rim of the Pacific Exercise
SAM	Surface-to-air missile
SASAC	State Assets Supervision and Administration Commission
SEAFDEC	Southeast Asian Fisheries Development Center
SCS	South China Sea
SLBM	Submarine-launched ballistic missile
SRMB	Short-range ballistic missile
SSBN	Submersible Ship, Ballistic Missile, Nuclear-Powered
TPP	Trans-Pacific Partnership
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USCG	United States Coast Guard
USN	U.S. Navy
USNS	United States Naval Ship
UUV	Unmanned Underwater Vehicle
VCLT	Vienna Convention on the Law of Treaties
VFA	Visiting Forces Agreement
WHO	World Health Organization
WMD	Weapons of Mass Destruction
WTO	World Trade Organization





## About the Authors

**Riccardo Alfieri** is a second-year Conflict Management concentrator at the Johns Hopkins School of Advanced International Studies (SAIS). He was a cadet at the Nunziatella Military School in Naples (Italy) and graduated *cum laude* in Law from the LUISS Guido Carli University in Rome. He had study abroad experience in Spain and Romania. Before SAIS, Riccardo worked in Brussels as a Political Advisor to the Chairman of the Committee on Constitutional Affairs of the European Parliament, and served as an OSCE short-term observer to the Presidential elections in Tajikistan and Belarus.

**Lauren Barney** is currently an MA candidate concentrating in International Economics and Conflict Management at The Johns Hopkins School of Advanced International Studies. She also holds a graduate certificate student in Chinese-American Studies from the Hopkins-Nanjing Center in Nanjing, China. She is dedicating her graduate studies towards resource management's impact on global conflict with specific focus on relations between China and the Middle East. Besides being a native English speaker, Lauren is fluent in Mandarin and Hebrew with elementary proficiency in Spanish. Past experience includes an undergraduate fellowship at the Committee for Accuracy in Middle East Reporting in America, a legislative and policy research Internship at the City of Pittsburgh City Council, and a consulting position at the Cameroon Football Development Program. Lauren is most excited to explore each stakeholder's viewpoint regarding resource allocation in the South China Sea.

**Adrienne Brooks** is a second year MA candidate studying Conflict Management and International Economics. Prior to SAIS, she worked for Habitat for Humanity as an AmeriCorps VISTA, managing a volunteer program. She also served seven years in the U.S. Army National Guard working across the United States, Poland, Botswana, and Germany.

**Joniel Cha** is a first-year MA Candidate at SAIS at Johns Hopkins University. Before entering SAIS, he lived in Ukraine for one year (2014–2015) during civil unrest and war, working with the United Nations High Commissioner for Refugees in Donetsk on humanitarian aid projects for refugees, as well as with Transparency International in Kyiv on anti-corruption and constitutional reforms. Upon his return to the United States, he worked at the Eurasia Foundation on the U.S.-Russia Social Expertise Exchange.

He graduated from the University of Virginia with a double-major in Leadership & Public Policy and Foreign Affairs concentration on Europe. Prior to attending university, he lived in Uzbekistan for 6 years and Kyrgyzstan for 4 years (2000–2010) where he learned Russian, Uzbek, and Tajik, and was heavily involved in community service and humanitarian aid projects. He was an eyewitness of the 2010 Revolution at Ala-Too Square in Bishkek, Kyrgyzstan resulting in over 100 deaths and subsequent ethnic conflict between Kyrgyz and Uzbeks, and he participated in citywide reconstruction and crisis response for victims of racial violence.

In regards to the future, he is interested in pursuing a career related to international relations, development, diplomacy, conflict resolution, and refugees resettlement.

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**Matthew De Soi** is a Master of Arts candidate at SAIS, concentrating in International Economics and American Foreign Policy. Prior to attending SAIS, Matthew served as the Director of Student Programs at the World Affairs Council of Philadelphia, a non-profit education organization, from 2010 to 2015, and completed a Fulbright Scholarship in Freiburg, Germany from 2009 to 2010.

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**Sandy Lu** is a first-year MA student at Johns Hopkins University, concentrating in China Studies. She completed her undergraduate studies in both National Taiwan University and Waseda University, majoring in International Relations. She has a strong interest in researching East Asian politics and U.S. Asian policy. Over the past few years, she has been working with an NGO, Taiwan-America Student Conference, to foster the relationships between young people in Taiwan and the United States, and a Taiwanese think tank to keep track of the international situation in East Asia. During her time at SAIS, she plans to further enhance her knowledge of China's politics and its relations with its neighboring countries and the United States.

**Weldon Montgomery** is a veteran of the U.S. Coast Guard and a former member of the civil service at the U.S. Department of State. He has a certificate in National Security Studies from Florida International University in Miami, Florida and a Bachelor of Liberal Arts in extension, *cum laude*, from Harvard University in Cambridge, Massachusetts. Weldon is in the American Foreign Policy Program at the Johns Hopkins University School of Advanced International Studies.

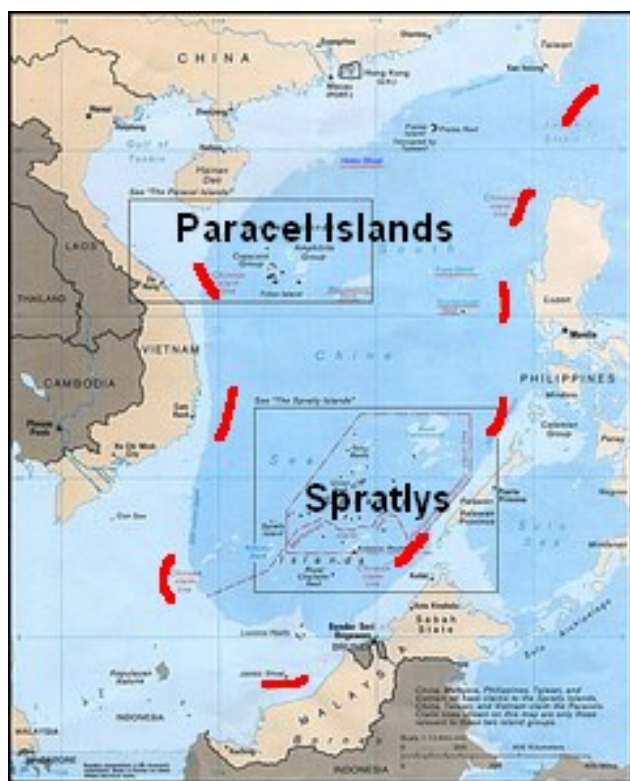
**Daniel P. Serwer** is Director of the Conflict Management Program at SAIS. Also a scholar at the Middle East Institute, Daniel Serwer is the author of *Righting the Balance* (Potomac Books, 2013), editor (with David Smock) of *Facilitating Dialogue* (USIP, 2012) and supervised preparation of *Guiding Principles for Stabilization and Reconstruction* (USIP, 2009). As vice president

of the Centers of Innovation at the United States Institute of Peace (USIP), Serwer led teams working on rule of law, peacebuilding, religion, economics, media, technology, security sector governance and gender. He was also vice president for peace and stability operations at USIP, overseeing its peacebuilding work in Afghanistan, the Balkans, Iraq and Sudan and serving as executive director of the Hamilton/Baker Iraq Study Group. As a minister-counselor at the U.S. Department of State, Serwer directed the European office of intelligence and research and served as U.S. special envoy and coordinator for the Bosnian Federation, mediating between Croats and Muslims and negotiating the first agreement reached at the Dayton Peace Talks; from 1990 to 1993, he was deputy chief of mission and chargé d'affaires at the U.S. Embassy in Rome, leading a major diplomatic mission through the end of the Cold War and the first Gulf War. Serwer is a graduate of Haverford College and earned master's degrees at the University of Chicago and Princeton, where he also did his Ph.D. in history.

**Francesco Varotto** is an Italian national and an MA candidate at SAIS. Prior to coming to SAIS he studied International Relations at the European University of Madrid, spending a semester abroad at the London School of Economics and Political Science. Previous working experiences include internships at the Institute of Cultural Diplomacy and at the Italian Red Cross, as well as a period of volunteering at ATD Quart Monde. Francesco is fluent in English, French and Spanish and has an intermediate level of Portuguese.

**Rachel Xian** is a first-year MA student pursuing a concentration in Conflict Management and a minor in China Studies at Johns Hopkins SAIS. Before SAIS, she obtained a BA in International Relations, Political Science, and East Asian Studies at the Johns Hopkins University. Her research interests include exploring alternative avenues for U.S.-China conflict resolution and cooperation using non-realist IR theory. Specific to the South China Sea and U.S.-China security disputes, her work examines how national identities, international reputations, and public opinion may underlie and contribute to U.S.-China security dilemmas, with application to security dilemma resolution in general.

**Stephanie Zable** is originally from New York, but she has also lived in Spain, China, Argentina, and three different midwest states. After graduating from Oberlin College in Ohio she moved to China; she spent three years teaching and studying in Dalian and then a year in Shanghai. She then spent a year traveling and another year and a half working as an after-school test-prep tutor. She is currently pursuing a joint JD/MA at SAIS and the University of Michigan.







## Introduction

Carla Freeman and Daniel P. Serwer

Frictions over disputed territory features and resource claims that have long troubled the waters of the South China Sea have intensified during the past decade. Today they threaten to ignite conflict in a region that serves as a critical vector for economic and geopolitical security in the Asia-Pacific. Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam are all parties to what are in some instances multiple overlapping claims. The escalation of tensions has engaged nationalist sentiments, caused damage to the fragile marine environment, and exposed the challenges of resolving complex claims tied to sovereignty, natural resources, and contested histories through established regional multilateral mechanisms and international law.

In recent years, China, the Philippines and Vietnam have taken steps to assert their claims, leading to direct clashes. Although these have remained bloodless since the Johnson South Reef Skirmish of 1988, they have risked violent, even global, conflict. The potential implications for American allies and security partners of developments in the maritime contest, along with perceived threats to free navigation in a sea that is both a key route for merchant shipping and is geo-strategically significant to the United States' capacity to project force into the region, have led Washington to increase its naval presence in disputed maritime areas. China's newly created outposts on man-made islands and the muscular deployment of its navy and coastguard fleet to assert its expansive claims has become a particular object of U.S. concern. The U.S. has conducted more visible freedom of navigation operations in the region, leading to confrontations between the U.S. and China that have caused both governments to wave the red flag of core national interests.

The South China Sea, like the Mediterranean, the straits of Hormuz and Malacca, and the Suez Canal, has thus emerged as fulcrum of international tensions that could result in globally significant conflict. That is why the Conflict Management program at the Johns Hopkins School of Advanced International Studies (SAIS) in collaboration with the School's China Studies program chose the South China Sea as the subject of its 2017 research trip. For the Conflict Management program, this is the latest in a series of conflict-focused

study trips that started more than a dozen years ago. Recent trips and comparable research volumes have focused on Sri Lanka's post-war transition, the Casamance conflict in Senegal, the civil war in Colombia, and a Moro rebellion in Mindanao.<sup>1</sup> The graduate students who go on these trips spend the fall semester reading extensively on the issues and talking with experts and officials in Washington. They then spend about 10 days in the conflict area, deepening their appreciation by discussing the issues with others directly involved.

The trip to China in January 2017 was unique in focusing on a conflict in which major powers are engaged, the United States is a protagonist, and the emphasis is on preventing rather than resolving an ongoing violent conflict or rebuilding afterwards. Fifteen masters' students (two-thirds American and one-third from other countries), one doctoral candidate, and two professors spent the fall semester of 2016 in Washington examining the South China Sea conflicts, giving greatest attention to their China-U.S. dimension. This included extensive reading as well as discussions with mostly American officials and scholars. The group spent 10 days in Nanjing and Beijing in January 2017 speaking with Chinese officials, think tank experts and scholars, as well as foreign diplomats. This volume, to which each student participant has contributed a chapter analyzing a dimension of the conflict and proposing ways forward toward conflict prevention, is the main product of the exercise. The principal conclusions presented in this publication will have been shared publicly in Washington in April 2017 and made available worldwide thereafter through Amazon.

Characterizing the main parameters of the South China Sea conflicts as they involve the China-U.S. relationship requires at least two perspectives.

In China, official statements emphasize sovereignty. Though Beijing's precise claims are shrouded in seemingly purposeful ambiguity, at the very least it claims that all the "land features" (islands, high- and low-tide elevations, rocks and reefs) of the South China Sea lying inside a roughly sketched "Nine-Dash

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<sup>1</sup> Sri Lanka January 2016; Senegal/Casamance January 2016; Colombia January 2015; Mindanao January 2014 and 2011; Nagorno Karabakh 2013; Tunisia 2012; Kosovo 2010; Cyprus 2009; Northern Ireland 2008; Haiti 2007 and 2006. Reports from previous Field Trips are available at <https://www.sais-jhu.edu/content/conflict-management#research>.

Line” belong to the People’s Republic. Beijing also claims all maritime rights associated with these land features (territorial sea, Exclusive Economic Zones [EEZ], and continental shelves). Beijing appears to claim that its long history and exercise of authority gives it these extensive sovereignty and jurisdictional rights in the South China Sea. This claim conflicts with claims by five of the seven littoral neighbors cited above. Taiwan’s claim has been, at least in principle, identical to that of the PRC, which bases its Nine-Dash Line on an Eleven-Dash Line published by the Republic of China in late 1947 to assert its South China Sea claims after the surrender of Japan.

Washington has taken no position on the merits of the disputes over islands and smaller land features in the South China Sea. Its official statements have expressed neutrality on the sovereignty claims. However, it has made clear that any resolution of the dispute must comply with international law, including importantly the principle of freedom of navigation. In the U.S. view, customary law grants all countries the latitude to conduct military activities in the high seas and allows foreign military vessels peaceful transit through all territorial seas. Although Washington has not ratified the United Nations Convention on the Law of the Sea (UNCLOS) it interprets its Articles 87 and 58 as giving the right to all states to freedom of navigation and overflight and other “lawful uses” of the sea, including military activities within another country’s Exclusive Economic Zone. Moreover, the U.S. also sees UNCLOS as protecting the right of all states to “innocent passage” through other states’ territorial seas. Since 1979, the U.S. Navy has used “freedom of navigation operations” (FONOPs) around the world to assert these rights. Beijing objects. In its view, the Law of the Sea does not guarantee the right of foreign military vessels to use EEZs as high seas—that is to either do surveillance or conduct exercises within them. In addition, they believe it is their legal right to require foreign militaries to request permission to enter Chinese territorial waters even if they are doing so for the purposes of innocent passage. Thus even if the sovereignty issue were decided in China’s favor, the freedom of navigation issue would persist.

A longer-term priority for both the United States and China is the military balance in the Asia-Pacific. China’s growing navy, especially its submarine fleet headquartered on Hainan Island as well as its defense installations on islands it has built atop reefs in the South China Sea, is making it increasingly difficult for

the United States to ensure that its navy will be able to operate effectively in the region during wartime without unacceptable losses. Denied access to the South China Sea, American military assets in the western Pacific would become vulnerable and Washington's commitments to not only the Philippines but also to Japan, South Korea, and Taiwan would become dubious. Washington does not want to give its friends and allies in the Pacific reason to doubt its reliability, as this incentivizes hedging that further undermines American credibility and enhances Beijing's ability to compete politically and militarily. Although it is still unclear whether the Trump Administration will continue President Obama's pivot/rebalance to the Asia-Pacific, maintaining America's military position there will remain a priority, especially after terminating the Trans-Pacific Partnership that was conceived as a cornerstone of America's future trade and economic relations in the Asia-Pacific.

These tensions over sovereignty, freedom of navigation, and defense in the South China Sea are arising as the strategic competition between the U.S. and China is becoming an increasingly salient feature of international relations around the world. The post-World War II liberal and increasingly democratic framework that the United States established and maintained for more than 70 years is under challenge both at home and abroad, not only from China, but also from Russia and other authoritarian regimes. Much of the world sees a great deal to admire in their upward moving geopolitical status and internal cohesion. Beijing is celebrating the recovery of its status as a global power after its "century of humiliation" (from the 1840s to the 1940s) and development under Chinese Communist Party leadership. It expects to achieve its goal of becoming a "rich, strong, democratic, civilized and harmonious socialist modern country" by 2049, the centennial of the founding of the PRC. By contrast, the long but slow American economic recovery from the 2008 financial crisis has left the U.S., with its still dominant economic and military might, with domestic and foreign policy challenges it is finding it hard to meet.

It is ironic that the contest of economic and political titans is playing out so visibly in the waters of the South China Sea. None of the Sea's natural land features among the Spratly Islands could support permanent human habitation according to the Law of the Sea Arbitral Tribunal, which rendered a decision in July 2016 in a case brought by the Philippines against China. Beijing did not

participate in the arbitration and has rejected the Tribunal's decision, not least because it clearly rejected the "Nine-Dash Line" as well as Chinese claims of traditional rights in the South China Sea. The inability of the Spratly Islands' natural land features to support permanent human habitation has important legal implications, as this means the Arbitral Tribunal found that there were no real islands among the Spratlys and therefore no land features that generate an Exclusive Economic Zone, even if the high tide elevations (rocks) generate a 12 nautical mile territorial sea. The Americans are happy about this (at least as the ruling applies to the South China Sea). The Chinese are not.

The risks of conflict between the United States and China in the South China Sea were graphically illustrated both while our group was preparing for its trip and then while we were in Beijing. In December 2016, the Chinese navy scooped up an underwater drone the American navy was operating. In January 2017 the then still nominee for Secretary of State, Rex Tillerson, told a Senate confirmation hearing that China should not be allowed access to the defense facilities it has built with the islands it has developed in the South China Sea. Due in part to good military to military communications in the first case and political restraint in the second, these moments passed without escalation, but they temporarily aroused strong passions in both countries. Another Hainan Island incident—when a Chinese fighter jet collided with a U.S. Navy intelligence aircraft—or a collision between naval ships could spark far worse. Both Beijing and Washington are going to need to continue to exercise good judgment and restraint.

If the South China Sea conflicts are to continue to be managed effectively or ultimately resolved, it will not be solely on the basis of the legal merits, as the claimants and the United States are unlikely to agree on them. The search for solutions needs to take into account other factors: the political ramifications in both China and the United States, how the publics and leaderships in all the contending states view the issues, what the distribution of economic costs and benefits is likely to be, how much environmental damage is acceptable, and the power relations among the states involved, including their alliances and frictions. We have tried hard to take into account all these often divisive factors in the chapters that follow, while identifying common interests on which conflict prevention and management can be built.

The conflict resolution process may take a long time. It took more than a century before the Atlantic fishery issues between the United States and Great Britain that arose at the end of the American Revolution could be resolved, and then only after fisheries had become far less important and Ottawa rather than London was doing the negotiating. Washington still has maritime boundary disputes with Ottawa in the Pacific. There is no predicting how long it will take to resolve the current South China Sea issues, but one thing is clear: they are not worth a war between China and the United States. The skirmishes that have occurred so far need to be heeded as warnings. Conflict prevention needs to be successful, likely over a period of at least decades if not longer.

All of the views expressed in this volume are those of the authors and editors, not of their employers. The volume begins with the legal issues, but moves beyond them to consider the political, international relations, economic, resource and environmental dimensions.

In the first chapter, Stephanie Zable examines different legal interpretations by China and the United States on freedom of navigation and the outcomes of the Philippines arbitration. In Chapter 2, Caitlin Coyle looks in greater depth at the UN Arbitral Tribunal's ruling on the case brought by the Philippines against China.

Chapter 3 by Rachel Xian follows Coyle's analysis by exploring how identities and values shape Chinese and American perspectives and behavior on freedom of navigation and other maritime issues. In Chapter 4, Matthew De Soi compares Indonesian and Malaysian interactions with China on their respective disputes with China in the South China Sea for lessons on how changes to states' behavior toward each other and the region might contribute to enhancing regional stability. Chapter 5 moves to assessing a wide range of alternatives for reducing the likelihood of conflict. The author, Adrienne Brooks, considers how expanding the scope of a Code of Conduct along with bilateral negotiations on sovereignty might help move the region beyond the current impasse. In Chapter 6, Sandy Lu looks at Taiwan's role in the dispute, including considering how communication between Beijing and Taipei might play a constructive role.

Chapter 7 by Nathan Kohlenberg considers how three key actors, China, the Philippines, and Vietnam, might adjust their policies in ways that reduce the likelihood of conflict consistent with their strategic interests. In Chapter 8,

Riccardo Alfieri sets the differences between China and the U.S. over the principle of freedom of navigation into historical context, using this historical background to argue for changes to both Chinese and American policies vis-à-vis maritime conduct and bilateral engagement as steps to mitigating the potential for conflict. Chapter 9 by Libba King examines why, despite escalating tensions, conflict has not erupted, and considers whether practices gleaned from the tenuous stability preserved to date might be strengthened and sustained to help prevent conflict in the future. Chapter 10 by Weldon Montgomery makes a case for giving a role to the U.S. Coast Guard as a way for the U.S. to both continue to reinforce its maritime principles while offering a new avenue for cooperative regional activities that could reduce tensions in the South China Sea.

The remaining chapters of the volume draw attention to the ways in which economic, resource and environmental issues in the South China Sea may offer pathways to conflict prevention. Giving greater priority to protection of the maritime environment, including curbing pollution and managing the Sea's already at risk fish stocks, provides opportunities for collaboration among littoral states, argues Rie Horiuchi in Chapter 11. In Chapter 12, Francesco Varotto looks at how economic diplomacy could be strengthened for improved regional ties. Lauren Barney in Chapter 13 argues that tensions among the disputing parties would be eased by strengthening multilateral management of fish stocks, when accompanied by other policies, such as extending the Code for Unplanned Encounters at Sea (CUES) beyond military vessels. In Chapter 14, Joniel Cha looks at how joint development and protection of hydrocarbon resources in the South China Sea might play a role in reducing tensions among stakeholders. He also considers the role that China-US scientific cooperation might play in easing tensions and how ASEAN could be used more effectively to support these activities, including by giving greater attention to energy security and risk management.

In the concluding chapter, Daniel Serwer looks back across all chapters to summarize key findings and themes. He finds that the chapters expose the complexities and pitfalls of the South China Sea conflict, including the high risk of rapid escalation. But they also all find ways to promote peace. While it is difficult, the situation is not intractable: conflict can be avoided.



## South China Sea: Maintaining Peace / Preventing War

A word of appreciation to all of the American and Chinese experts and officials who talked with the SAIS group: they enormously enriched our understanding of the issues. We would also like to acknowledge the extraordinary contribution of SAIS Ph.D. candidate Adam Lee for sharing his own expertise on the topic with us, playing a critical role in arranging a successful set of meetings, and navigating us through the logistics of our visits to Nanjing and Beijing. We also express our appreciation to Isabelle Talpain-Long of the Conflict Management Program and to Zhaojin Ji in the China Studies Program, who provided smooth-functioning administrative and budgetary support. None of this would have been possible without the vital financial assistance we received from Starr and C.H. Tung Foundations, to which we are immeasurably grateful.

## **Part I: Law**



## **Clashing Interpretations of the International Legal Order in the South China Sea Conflict**

Stephanie Zable

The South China Sea conflict is often framed in the language of international law, particularly after the Philippines Arbitration. This discussion typically assumes that international law is a constant; that it has a set meaning, and if a country is violating that meaning, it is ignoring international law. When China and the U.S. each accuse the other of violating international law, it therefore follows that one of the two countries must be making intentionally false accusations. But this assumption ignores a critical aspect of international law: its meaning is not always universally agreed upon. In this, the South China Sea conflict is reflective of a larger, critical issue surrounding and framing the global conflict between the U.S. and China: the struggle for control over the meaning of international law, and thus a, or even the, dominant role in defining the future of the international order. The South China Sea conflict is a harbinger whose outcome could determine which country is ultimately able to wring the largest benefits out of the international order.

For China, the issue that looms largest over the South China Sea conflict is the United States' Freedom of Navigation Operations (FONOPs) in the South China Sea, in which U.S. naval ships sail through what China considers to be its sovereign waters. The Chinese refer to these operations as a security threat, as the largest impediment to peace, as an unnecessary provocation. They insist that they have never in any way hampered commercial freedom of navigation within the South China Sea, and that they certainly would not, both because it would be a direct violation of the UN Convention on the Law of the Sea (UNCLOS) and because, as the largest beneficiary of South China Sea commercial shipping, it would be counter to China's own interests. Given that China poses no threat to freedom of navigation, the Chinese maintain, the U.S. FONOPs perform no real function except to threaten and contain China, in violation of international law (Chinese experts).

The United States, on the other hand, insists that the South China Sea FONOPs are simply demonstrating that the United States will sail wherever

international law allows. The purpose of FONOPs is to challenge what the U.S. considers to be “excessive maritime claims” (Freedom of Navigation Operations Program Fact Sheet). FONOPs are not specific to the South China Sea or to China’s claims; in fact, the U.S. has been conducting such operations all over the world since 1979. They serve no offensive military function; their sole purpose is to ensure that other countries understand that this principle of free navigation is a fundamental value of the United States’ that it will not sacrifice, and that no country can claim rights that are not in accordance with international law. The FONOPs in the South China Sea are not specially targeted or unusually provocative; they are normal parts of a long-standing, global program.

What these two interpretations of the FONOPs demonstrate is that the question of “freedom of navigation” does not have a consistent international meaning. As a result, each side is pushing its own understanding of the term, ultimately intending to make its interpretation the commonly accepted one. This is because the legal regime that governs the sea (and international law in general) is made up not only of UNCLOS, the agreement arising out of prolonged multilateral negotiation and signed by 168 parties, but also of Customary International Law (CIL), a much less definitive and clear-cut set of rules that stems primarily from what international lawyers call “state practice,” a concept which itself is often very difficult to define (Pedrozo 2011). CIL is international law that has never been signed or otherwise affirmed by state parties, but that most states adhere to because they believe that they are required to; widespread acceptance of a rule and belief that it is binding makes it so (Sahl 2007). The U.S. has not ratified UNCLOS, but it accepts most UNCLOS terms as binding CIL.

### **Areas of Differing Legal Interpretation in the South China Sea**

A primary area of dispute over legal meaning concerns “freedom of navigation” through a country’s UNCLOS-defined Exclusive Economic Zone (EEZ) (the area 200 nautical miles from a country’s coastline, in which the country has exclusive access to maritime resources). The U.S. and most other countries argue that under UNCLOS, freedom of navigation within another country’s EEZ refers to any and all peaceful passage by military vessels through that EEZ, including surveillance and military exercises (Rapp-Hooper 2015). China, conversely,

argues that unrestricted freedom of navigation applies exclusively to commercial shipping through established shipping lanes, and that within a country's EEZ it has the right to impose additional "securitization" requirements on military vessels, such as notification or requesting permission, or even limiting the number of ventures (Kline 2013). It points to the practice of some states, such as Vietnam, that also seek notification for passage of military vessels through the EEZ (Morton 2016). As a Chinese Foreign Ministry official noted, the lack of state agreement means that there is no consistent state practice, which means there is no CIL norm (Meeting with Ministry of Foreign Affairs, January 2017).

UNCLOS does not specifically refer to passage by military vessels through another country's EEZ. Article 58(1) guarantees all countries high seas freedoms, including "freedom of navigation," within any EEZ, but it is subject to 58(3), which states, "States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part." The U.S. argues that imposing restrictions on free navigation in the EEZ is not in accordance with UNCLOS, and therefore violates 58(3), while China emphasizes the "due regard" and "laws and regulations adopted by the coastal State" provisions. As UNCLOS does not specifically address the issue, parties must look to the Vienna Convention on the Law of Treaties (VCLT), which provides rules for interpreting treaties. According to the VCLT, in interpreting a treaty, the parties should look at, in addition to the text and the context in which it was negotiated:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

The U.S. thus cites as evidence a long history of states sailing military vessels through even territorial waters (i.e. state practice), as well as the

negotiating history of UNCLOS (De Tolve 2012). The U.S. concludes that the intent of the EEZ was not to further restrict areas of the high seas, but merely to apportion the resources therein. The EEZ is therefore for most purposes still the high seas. China, however, argues that state practice is not consistent, and that the EEZ is a “lesser” extension of a state’s sovereign territory, with many of the attendant privileges (De Tolve 2012). The U.S. position has more support, both legally and in terms of the number of countries that advocate it (Pedrozo 2011), but the Chinese argument is not without foundation or backers.

The FONOPs that have so irked China have not challenged the Chinese interpretation of the EEZ; instead, they have sought to defend the U.S. understanding of the right of “innocent passage” under UNCLOS Article 19, which allows the passage of warships through territorial waters “so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.” The U.S. believes that this permits any innocent passage of military vessels through another country’s territorial waters. China, however, argues that it has the right to require prior notification and approval of any transit by foreign military vessels through its territorial waters. China affirmed this right when it ratified UNCLOS,<sup>2</sup> and it has continued to assert it: the Chinese government is currently considering amending its Maritime Safety Law to permit China to “temporarily bar foreign ships from passing through those areas according to their own assessment of maritime traffic safety” (Leng 2017). In 2015, China’s own warships passed through the Bering Sea, in the U.S. territorial waters, without prior notification (LaGrone 2015); however, this does not appear to have affected the Chinese argument. China seems to be saying that it will take

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<sup>2</sup> Article 310 of the Convention states: “Article 309 does not preclude a State, when signing, ratifying or acceding to this Convention, from making declarations or statements... provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State.” On ratification, China declared that “the provisions...concerning innocent passage through the territorial sea shall not prejudice the right of a coastal State to request, in accordance with its laws and regulations, a foreign State to obtain advance approval from or give prior notification to the coastal State for the passage of its warships through the territorial sea of the coastal State.” This declaration has no direct legal effect, but it demonstrates that China has always considered notification requirements to be valid under UNCLOS, which is relevant for establishing state practice.

advantage of unrestricted innocent passage if the U.S. allows it, but that the U.S. is offering more than UNCLOS requires, and China is not obligated, and does not intend, to follow suit.

China is not unique in this interpretation of innocent passage. The USSR followed the same practice until a clash between Soviet and American ships during U.S. FONOPs in the Black Sea on February 12, 1988, nearly led to war, after which the two nations reached an agreement: the USSR accepted the U.S. understanding of innocent passage, and the U.S. agreed to cease FONOPs in the area (Stashwick 2015). Other countries continue to maintain similar interpretations. In Fiscal Year 2016, the U.S. conducted FONOPs challenging notification requirements for innocent passage in the territorial seas of ten countries including China, Vietnam, and Croatia (DOD Report 2016).

Another example of the conflict of legal norms is the response to the Arbitral Tribunal's award in the Philippines case. The Tribunal determined, among other rulings, that (1) China's claim of historical rights within the Nine-Dash Line had no standing under international law, as such claims were extinguished by UNCLOS; (2) none of the South China Sea features contested between China and the Philippines are islands, entitled to an EEZ; some are rocks, above-water at all times and entitled to 12-nautical-mile territorial waters, and some are low-tide elevations (LTEs), with no independent maritime entitlements; and (3) China's activities in the Spratlys—denying Philippine fishermen access to Scarborough Shoal, building artificial islands, etc., interfere with Philippine rights within the Philippines' own EEZ. The U.S. has recognized the Tribunal's ruling as binding international law. China, on the other hand, despite being a member of UNCLOS, has refused to accept the ruling, arguing that the Tribunal did not have jurisdiction over the case. China emphasizes particularly that (1) the disagreement is about sovereignty, over which the Tribunal does not have jurisdiction, and (2) China had an agreement with the Philippines to pursue bilateral negotiations before invoking any dispute settlement mechanisms, and the Philippines failed to do so (Ministry of Foreign Affairs Position Paper 2014). China also emphasizes that it claims the Spratlys as an archipelagic whole—allowing it to draw straight baselines and claim the surrounding sea as internal waters—rather than individually, and so designation of individual features is not relevant (Xie 2016).



The Chinese legal case is weak. The Tribunal stated repeatedly that it was not making any rulings as to sovereignty, and the China-Philippine agreement does not have much bearing on the Tribunal's ruling—the Tribunal noted, among other considerations, that the agreement was a political declaration and not a binding international agreement. China has relied heavily on claims of historical rights and title, but the Tribunal noted that UNCLOS allows for historic rights only in very limited cases (of which the South China Sea is not one), and the evidence China has proffered to demonstrate historic title over the contested features is shaky at best (Department of State; Daiss 2016). Assertions that stronger evidence is in Taiwan, unavailable to China (Chinese experts), are similarly unconvincing. There is also considerable disagreement as to whether a non-archipelagic state can legally claim an entire archipelago, draw straight baselines, and designate internal waters (Hong, Li, and Chen 2013).<sup>3</sup> Neither these nor the other points that Chinese lawyers have raised is persuasive, and none addresses the fact that UNCLOS states definitively that arbitral rulings are binding (Ku 2016). As a result, China has sought to demonstrate that state practice as per CIL supports its refusal to recognize the arbitration – or at a minimum, that no state practice exists to require China to accept it.<sup>4</sup> China promulgated a list of 60 countries it alleges supported its position, though it is questionable how many of the listed countries actually agree, how many simply do not want to anger China, and how many are mistakenly listed (as are at least two) (Page 2016).<sup>5</sup> China is once again attempting to demonstrate that its view of what international law can or cannot compel is supported by many other nations, with the aim of making its interpretation CIL.

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<sup>3</sup> UNCLOS Part IV grants this right only to archipelagic states, and is silent on oceanic archipelagos for continental states. The U.S. position is that this omission disallows the practice for non-archipelagic states, and therefore does not draw archipelagic baselines around Hawaii, but several other non-archipelagic states have claimed archipelagic baselines around off-lying archipelagos (Astley and Schmitt 1997), demonstrating that state practice is not yet established. Many of these baselines have been protested by U.S. FONOPs (Roach and Smith 1994).

<sup>4</sup> Under the VCLT, subsequent state practice can be considered in interpreting a treaty; such state practice requires evidence of general agreement, and is nonetheless secondary to plain text, so its utility in this case is limited.

<sup>5</sup> Another list of alleged supporters cites 71 countries, but notes that the majority merely support China's desire to resolve the issue peacefully (Wang and Chen 2016).

### **Implications of Differing Legal Interpretation**

This disagreement as to one of the most basic aspects of UNCLOS demonstrates a key feature underlying the South China Sea conflict and China's changing view of its role in the world: competing interpretations of critical elements of international law. Leadership of the international legal order is important to both China and the U.S., not only because of prestige and reputation but primarily because of the increasing importance of the "global commons," the ungoverned spaces, including space, cyberspace, and the high seas. As the legal regimes governing the global commons grow stronger, China and the U.S. will increasingly jockey to be the predominant power in these spaces. For both countries, "the state of the future global legal order is a vital component in the geo-strategic environment" (Carsten and Allen 2008), and so international law is an increasingly powerful tool to protect and advance their own interests.

China feels that the current international legal order does not adequately protect China's interests, as China was weak when this legal order was created; now that China has more power, it seeks to alter international law to reflect this new dynamic (Sceats 2015). China is aggressively seeking to become a global maritime power, but it wants to do so on its own terms and under a legal order it considers more favorable than the one that currently exists. Rather than simply refusing to adhere to the current system, China has demonstrated a belief that the most effective way to pursue its ambition is to claim to comply with international law while effecting a reinterpretation of what that law means (Nankivell 2016). It has therefore encouraged Chinese lawyers to become experts in international law, and a Chinese lawyer currently sits on the ICJ. China also positions most of its arguments within the frame of complying with international law. At the same time, in many cases it makes no effort to reform its own laws or practices to comply with the general understanding of international law, if they conflict; instead, China avows that its interpretation is the correct one. Framing arguments through international law raises the stakes: using international law legitimizes that law, so the Chinese must comport themselves in accordance with it. China has only two ways to do so. It can accept the common "unfavorable" interpretations, disavow its prior arguments and likely lose face, or it can ensure that international law changes to support Chinese arguments.

## South China Sea: Maintaining Peace / Preventing War

The U.S., on the other hand, has a significant stake in the current interpretation and legitimacy of international law. Allowing China to challenge and alter the underpinning assumptions would shake the foundation upon which the U.S. has built its international role. American scholars and military officials increasingly refer to China's attempts to redefine international legal norms as "lawfare"—legal warfare, often defined as the use (or misuse) of law to achieve military purposes. According to this view, the Chinese efforts to redefine international law are "a method of indirect warfare against the West" (Pedrozo 2011). This fear is reinforced by Chinese discussion of the "three warfares": military, public, and legal. As two American scholars noted (Kraska and Wilson 2009):

Chinese strategists have taken an increasing interest in international law as an instrument to deter adversaries prior to combat...China is working to shape international opinion in favor of a distorted interpretation of the Law of the Sea by shifting scholarly views and national perspectives away from long-accepted norms of freedom of navigation and toward interpretations of increased coastal state sovereign authority.

This view places even greater significance on the preservation of American power and influence in the global legal order: if the Chinese interpretations become law, China has won the war.

As a result, in Freedom of Navigation, innocent passage, and other areas, the U.S. and China both seek to carry their views as to the true character of UNCLOS and international law in general. A victory for one side could have dramatic implications for the international legal order as it stands, extending far beyond the South China Sea. Victory need not be a legal determination by an international court or tribunal: if either the U.S. or China can convincingly show that its interpretation is the commonly accepted practice of a majority of states, that interpretation could become the default through the basic tenets of CIL.

When a conflict of legal interpretations emerges, there are two possible responses: the conflict can either be ignored or reconciled. For a long time, conflicts between the U.S. and other countries as to the meaning of the international legal order could be ignored, because few other countries were in a

position to press their arguments. That is no longer the case, and part of China's rise has been an eagerness to be involved in international law as a rule-maker, rather than just as a rule-taker. As a result, this conflict in interpretations must be reconciled. The best way to do so is for both parties to fully commit to the international legal regime underpinning the maritime order, which means that the U.S. should join UNCLOS and China should fully accept it. Doing so would provide a framework for both countries to press their own interpretations, while at the same time enabling the creation of consistent norms. It will of course remain up to each country whether or not to comply with the norms, but it is likely that both will do so, at least to a point.

### **Future Prospects for the U.S.**

The U.S. is currently playing two sides of the game: it is attempting to mandate and hold up the ideals of international law, as it interprets them, but without fully committing to the international legal order by failing to join UNCLOS. This weakens its position dramatically, as it is very difficult to insist on a legal order that one is not a part of. And it is crucial that the U.S. continue to help shape the international law of the sea if it wants its interpretation to hold. In a 2006 study, 40–50% of international law experts consulted believed that the accepted regime for innocent passage or archipelagic strait travel would not remain stable between 2006 and 2020, and 95% believed that more countries would seek to exercise control over military activities in their EEZs (Carsten and Allen 2008). These changes would weaken UNCLOS protections for U.S. activities, but if the U.S. is not a participant in the annual UNCLOS processes, it is difficult to address these issues comprehensively and fight for its own stance. Moreover, the U.S. role encouraging other countries to hold to an agreement that it will not ratify supports China's attempt to paint the U.S. as a hegemon using its power to effect a double standard, which weakens the U.S. moral case. The U.S. conducts surveillance in the South China Sea in accordance with its understanding of CIL and UNCLOS, but “in the absence of treaty ratification U.S. surveillance serves to bolster Chinese support for a hard-line defence of its maritime rights” (Morton 2016).

The easiest way for the U.S. to secure for itself greater practical ability to define the legal norms it seeks to defend in the South China Sea, as well as more

credibility in claiming to speak on behalf of the international community, is to fully invest in the legal order: namely, to ratify UNCLOS. It is insufficient to simply commit to following UNCLOS rules, as a Chinese Foreign Ministry official noted (Meeting January 2017). “We cannot hope to ‘shape’ the global or regional legal order unless we are a good-faith participant in the system. After all, why would any State acquiesce in letting us help define a rule set if they know that we intend to later exempt ourselves from it?” (Carsten and Allen 2008) Once the U.S. is a part of UNCLOS, it can use the UNCLOS institutions to achieve further legitimacy for its understanding of international law. And by fully embracing UNCLOS, the U.S. reinforces the strength and significance of the international legal maritime order, which is the avowed purpose of Freedom of Navigation Operations in the first place.

### **Future Prospects for China**

For China, fully embracing the international legal order may be risky. For example, international legal institutions are almost certain to disregard the Chinese restrictions on military passage in the EEZ. This might ultimately be beneficial for China: as China increasingly develops a blue-water navy, free transit through other nations’ EEZs and territorial waters is likely to benefit China more than it hurts, as with the Chinese passage through the Bering Sea. At the moment, however, the requirement of notification for military transit is enshrined in Chinese domestic law, and the Chinese government might lose face if it unilaterally repealed the law. Alternatively, if China could paint the repeal of the law and consent to the liberal transit norm as a Chinese initiative to assist the stability of the international order, so that the norm is adopted with China’s consent rather than at China’s expense, China could repeal the domestic laws and help ensure a legal interpretation that will increasingly prove to its benefit.

More importantly, increased engagement and compliance with the international legal order would reassure China’s South China Sea neighbors, who fear China’s economic might and military strength and are therefore reluctant to either directly challenge (though not always completely unwilling, if they feel their national interests are threatened; for example, the Philippine Arbitration might be considered a challenge) or trust China. If these neighboring countries felt reassured that China would adhere to international law, including

dispute settlement methods, they would likely feel less wary about China's actions in the South China Sea, as those activities would have some limit set by third parties not subjugated to China's will. By minimizing threat levels, it could also allow some of those countries to distance themselves from the U.S., and possibly even to return to a state of *détente* in some of the disputed land features: multiple countries claim sovereignty, but if the countries are willing to work together, the situation could nevertheless be stable.

Increased compliance and integration with the established international legal order will inevitably require China to accept at least parts of the arbitral award, which China will be loath to do as starting negotiations from the baseline of the Tribunal's ruling theoretically weakens China's hand. In ruling that China had interfered with the Philippines' rights within the Philippine EEZ, the Tribunal determined that LTEs are not subject to claims of sovereignty,<sup>6</sup> and that the Spratlys cannot be claimed as a group. However, the Arbitral Tribunal did not (and could not) determine actual sovereignty or force China to leave the land features it occupies. The ruling has no effect on China's physical position within the South China Sea, nor does it necessarily prevent China from claiming territorial sovereignty over many of the features themselves (at minimum the features determined to be rocks, and as long as China does not attempt to claim maritime rights that exceed those outlined by the Tribunal). As a result, the ruling does not preclude what China wanted in the first place: bilateral negotiations covering both sovereignty issues and maritime rights. Accepting the ruling might even facilitate negotiations, in that by accepting international law, China can eliminate a particularly thorny prerequisite.

As precedent for ignoring the Tribunal's ruling, China has cited the U.S. failure to follow an adverse ruling in a 1986 International Court of Justice case brought by Nicaragua against the U.S. (Denyer 2016). But it is arguable that ignoring the ICJ in that case hamstrung the U.S. from that point on; by flouting the rules it had trumpeted, the U.S. weakened its moral standing in the international community (Cohen 2016). Declaring that jurisdiction is not mandatory but that China has chosen to accept the Tribunal's ruling would

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<sup>6</sup> There is some question as to whether the Tribunal's assertion that international law precludes claims of sovereignty over LTEs is in fact an accurate statement of CIL (Talmon 2016), but it does not seem to have received much attention.

reinforce the image China has sought to present as an upholder of international law at a time when the U.S. might be pulling back, which would endear China to other countries, particularly in Europe, and dramatically reduce tensions.<sup>7</sup> China has only itself to blame for the extensiveness of the Tribunal's ruling; it seems likely that had China participated, the Tribunal might have come out differently, at least on a few points. There is of course no way to know for sure how China's participation would have affected the ruling, but for example, a persuasive argument that LTEs could be subject to claims of sovereignty would have precluded the Tribunal from determining that China had violated the Philippines' sovereign rights. Further commitment to the international legal order would obligate China to participate in further judgments, whereupon it might find that if it were to participate, decisions would be much more likely to break its way.

### **Future Prospects for the International Community**

Third parties, particularly international bodies and institutions, are deeply affected by the conflicting legal interpretations: if law is not universally understood it loses much of its power, and the institutions charged with protecting the law do the same. The vested interest of international bodies is of course in their own preservation and strengthening, as well as in international stability. It is therefore clearly within their interests to encourage both participant countries to engage as much as possible with the international legal system and UNCLOS. This means emphasizing what each country stands to gain from engaging with the system, and what it stands to lose from remaining apart. The U.S. stands to lose influence and the ability to set the rules of the system, while China stands to further sacrifice stability and the respect of its "little brothers" in Southeast Asia, not to mention other area countries with which it might seek to forge stronger ties such as Australia and South Korea, both of which respect international law and are fearful that China might be attempting to run roughshod over them. These countries, as well as all other nations of the international system, should encourage both the U.S. and China to engage further with international organizations and international law; the failure or piecemeal

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<sup>7</sup> See Xi Jinping's 2017 speech at Davos trumpeting globalization (Anderlini, Feng and Mitchell. 2017).

acceptance of a treaty like UNCLOS is not good for anyone on the international stage.

### **Conclusion**

As China has gained power in the international system, it has sought to discredit or disengage from treaties and agreements it considers to be unequal, where China did not have a role in establishing the rules. China has noted on numerous occasions that the current international legal order is largely U.S.-instituted, and the rules it has imposed serve to perpetuate U.S. domination. This argument is weak with respect to UNCLOS, as China was actively involved in negotiating for the Convention and was sufficiently satisfied to ratify it.<sup>8</sup> Nevertheless, China on the whole does not feel that the international legal order reflects its current power or status within the international community. The result is that China is seeking to impose its interpretations and views of international law, as befits a rising power. However, the U.S. is certainly unwilling to give up the influence that it has held for decades. The U.S. will fight for its interpretation just as China fights for its own. The result is a fight not simply over legal interpretations of international instruments, but over a potential re-centering of the international order.

### **Recommendations**

#### The United States

- **Join UNCLOS**
- **Encourage definitive understandings on questionable issues,** including seeking a ruling on more definitive characterization of the EEZ
- **Encourage multilateral approaches to conflicts of legal interpretation**

#### To China

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<sup>8</sup> Other historically weak countries were able to ensure that issues they cared about were adequately protected under UNCLOS; for example, Indonesia and the Philippines advocated for special status for archipelagic states, which was incorporated into UNCLOS (Ku 1991).



## South China Sea: Maintaining Peace / Preventing War

- **Lead the charge towards a more explicit, liberalized, freedom of navigation norm**
- **Accept the ruling of the Arbitral Tribunal without relinquishing territory**; use it as a base for bilateral negotiations over territorial sovereignty
- Explore offering to **acknowledge the right of all military ships to conduct innocent passage through territorial waters without prior notification**, in exchange for cessation of FONOPs through Chinese territorial waters, as with the 1988 agreement between the U.S. and USSR

### To the UN/International Institutions/Third-Party States

- **Encourage both China and the U.S. to come to agreement on legal interpretations** through multilateral mechanisms and international dispute-mechanism fora.
- **Strongly support the decision of the Arbitral Tribunal**; international courts cannot be ignored

## **The Philippines in the South China Sea The China-United States Balancing Act**

Caitlin Coyle

The Philippines is currently in a strategic position in the South China Sea. Since the election of President Duterte, the Philippines has transitioned from being a major opponent of Chinese actions in the region to having a more amicable relationship with the regional power. This shift away from the United States, a major security and military ally, and towards China creates uncertainty as to the future of regional security relationships and potential violent conflict. While Duterte currently supports the rhetoric of more favor toward China and a diminished relationship with the United States, his words have not been supported in policy. In the past, many of the contesting claims made by Manila and Beijing have been central to escalation of tensions. China dwarfs Philippine military power. The only reason Manila has been able to openly oppose Beijing's claims is due to its unique relationship with the United States. The Philippines, a former colony of the United States, has retained a positive relationship with the United States since independence. This positive relationship, up until Duterte, translated into a strong military relationship between the two countries. In this context, the Philippines has the difficult role of managing the influence of the two powers in the region.

This chapter will outline the claims of the Philippines in regards to the South China Sea and the importance for both the United States and China in maintaining a favorable relationship with the South East Asian country. The Philippines is the first claimant nation to prevail in a court case against Chinese claims in the South China Sea. It won a 2016 arbitral ruling with important implications for all South China Sea claimants as well as the United States (Kraska 2015). The Philippines is also a player in developing a strong regional relationship between ASEAN and China, which could be beneficial for environmental and economic improvements in the South China Sea. This paper will consider the positive and negative implications of shifts in the Philippines' policy in the South China Sea. Initial conclusions and recommendations aimed to avoid violent conflict will be to approach unpredictable or reactionary foreign

policies with patience, clarifying relationships and policies, and developing stronger economic regional ties for all parties.

### **Contesting Claims in the South China Sea**

The Philippines has formal claims over 50 land features within the Spratly Island chain (Spratlys) and the entirety of Scarborough Shoal. The contested claims are outside the archipelagic baselines set by the Philippines, which are compliant with the United Nations Convention of the Law of the Sea (UNCLOS) after legal adjustments made between the 1960s and 2009 (Rosen 2014). The adjustments over these baselines reduced what the Philippines historically considered its internal waters, as to be UNCLOS-compliant baselines “cannot generally exceed 100 nautical miles in length” (Rosen 2014). All Philippine claims over land features in the South China Sea are contested by China, which claims all territorial features within the Nine-Dash Line, a demarcation line that vaguely refers to the Chinese claim over the majority of the South China Sea. China has also gone forward with a “reclamation strategy.” Through this strategy (including a naval presence and ‘island-building’) the United States government estimates that 3,200 acres of “islands” have been reclaimed, a majority of which were in the Spratlys (Department of Defense 2016). Many of these contesting claims have led to incidents and militarization around these land features. Notable occurrences include Chinese militarization on Subi Reef and Mischief Reef and escalated tension between Philippine and Chinese fishing vessels in Reed Bank and surrounding Scarborough Shoal.

### **The Spratlys**

The Philippines lays claim to 50 features in the Spratlys known as the Kalayaan Island group (KIG), due to physical proximity to the Philippines as well as current occupation and legal claim due to right of discovery. The historic and legal claim, according to the Philippines, dates back to 1947 with the “discovery” of the islands by Filipino explorer Tomas Cloma, who declared the islands as a new state called Kalayaan (Rosen 2014). Cloma transferred the state to the Republic of the Philippines in 1974 and then-President Marcos declared the islands part of the Palawan Province in 1978 (International Crisis Group 2012). The Philippines would have a much stronger claim to the KIG if this declaration

had not been revised through the process of setting baselines around the archipelago compliant with UNCLOS. As a result of these legal adjustments, the KIG remains contested with multiple claimants.

Citizens from either the Philippines or Vietnam physically inhabit some islands within the Spratlys. Beginning in the 1960s, the Philippines has occupied the four islands known as West York Island, Nanhan Island, Flat Island, and Lankiam Cay. Prior to the arbitration ruling, legal analysts argued that the Philippines would have to defend these claims through the concept of *terra nullius*, or “nobody’s land,” arguing that if the claims were to be settled legally, the Philippines would have the stronger case (Rosen 2014). The Philippines also occupies the Thitu and Loita Islands, which are claimed by Vietnam. Other notable claims within the Spratlys include Second Thomas Shoal and Commodore Reef.

The Philippines also claims Mischief Reef and Reed Bank. Both are low-tide elevations, which according to UNCLOS are not “susceptible to occupation,” but the Philippine government claims they exist within the Philippine EEZ (Exclusive Economic Zone, within 200 nautical miles of a territorial sea baseline). These two claims within the KIG have been particular points of contention between China and the Philippines in the past and could be potential risk areas for future conflict. The Chinese currently occupy Mischief Reef, which is only 200 km from the Philippine island of Palawan (Austin 2003). Occupied in 1995, it was initially referred to as a “fishermen’s shelter,” but is now being monitored as a military base by the Asia Maritime Transparency Initiative at the Center for Strategic and International Studies in Washington, DC ([www.amti.csis.org](http://www.amti.csis.org)). Aerial views of the reef indicate Chinese build-up of naval and air capacity through the construction of a landing strip and the positioning of a naval fleet. Mischief Reef is one example of the accusation by the United States and the Philippines (under President Aquino) of Chinese “island-building,” an accusation made by United States Secretary of State Rex Tillerson during his confirmation hearing (Forsythe 2017). Tillerson suggested that China should be blocked access from their man-made islands, which would require military intervention. This strategy of “building up” a low-tide elevation in order to possibly obtain the rights allotted to an island was an important issue in the Philippines arbitration case.

Reed Bank, also within the KIG, is a point of conflict over potential resource development in the South China Sea. Estimates of the energy reserves in the sea vary, but Reed Bank is a proven source of energy. In 2005, the government of the Philippines contracted a U.K. based oil company, Forum Energy, to conduct a seismic survey, discovering huge gas reserves that represented a potential new avenue for economic development and energy resources for the Philippines. With this information, the Philippines extended the contract with Forum Energy in 2010. When a Forum ship attempted to enter the Reed Bank area in 2011, it was halted by Chinese vessels and informed that Reed Bank was under Chinese jurisdiction (Muscolino 2013). The Aquino government in the Philippines responded with condemnation, increased protection for Forum's ships, and filed complaints with both the United Nations and China. Potential drilling at Reed Bank was suspended prior to the arbitration hearing, with the hopes that the ruling would provide clarity to jurisdiction in the Spratlys. The incident escalated tension and reintroduced concerns of potential conflict if China continued to intervene on Philippine economic pursuits in the Spratlys.

The examples of Mischief Reef and Reed Bank illustrate the past tension between the Philippines and China in the South China Sea over their competing claims. They both remain areas of high interest, the former for security and the latter for potential energy sources, and are areas of possible conflict or cooperation for both countries.

### Scarborough Shoal

The Scarborough Shoal claim is completely separate from the Spratlys and has been the center point for contests over fishing rights in the South China Sea. The Philippines has competing claims over Scarborough Shoal with both the Republic of China (Taiwan) and the People's Republic of China (China). Unlike the Spratlys, which are contested due to their sheer size, oil reserves, and security ramifications, Scarborough Shoal is contested due to an abundance of fishing opportunities. Geographically, the shoal is off the coast of Luzon and is within the Filipino EEZ.

Prior to the arbitration case, the main dispute over Scarborough Shoal, from the Philippine perspective, was whether the land features were designated as rocks. The Philippines argued that Scarborough Shoal is a high-tide "rock," and

therefore not entitled to an EEZ, though it already falls within the Filipino EEZ. The Tribunal agreed. Had it been ruled an island, it would have been entitled to its own EEZ, thus potentially exacerbating the conflict with Chinese claims.

Scarborough Shoal has also been a region of escalated tension between the Philippines and China. China “seized” the shoal from the Philippines in 2012 and has since forcibly blocked Filipino fishermen from using the area. The Philippines and the United States expressed concerns that Scarborough Shoal may be the target of land reclamation for Beijing. Further concern was raised with the presence of China’s “maritime militia” near the shoal, a civilian fleet that has been referred to as “military in disguise” (Erickson & Kennedy 2016). This signaled militarization of the area. After the Scarborough Shoal incident as well as incidents at Reed Bank, the United States began to make statements concerning the South China Sea, particularly that the security of the South China Sea was in its “national interest.”

Recent warming of relations between the Philippines and China saw a shift in the policy, and Filipino fishermen have returned to the Shoal (Paddock 2016). However, the return of the fishermen seems only to be “with permission” from China. This indicates that while tension may have deescalated, there is potential for a reemergence of fishing rights issues in the future.

### The Arbitration Case

The Arbitration ruling reinforced many of the claims made over the past decade by the government of the Philippines. The ruling was a victory for the Philippines and then-President Aquino, although tempered by the lack of a contesting Chinese counterpart. China’s unwillingness to present its case ultimately led to a very unfavorable ruling. The main goals for the Philippines were to set clear definitions of land features to impede China’s claim to land features within the Philippine EEZ as well as counter “historic rights” as a legal basis for Chinese claims to the South China Sea within the Nine-Dash Line. The arbitration case presented by the Philippines would also assert that specific actions, such as island-building by the Chinese, were unlawful. Considering the military build-up at Mischief Reef and escalating tensions surrounding fishing and natural resource accessibility in both the Spratlys and Scarborough Shoal, the Philippines agenda was clear. The legality of island building was not necessarily

addressed by the arbitration case, but it was declared that the speed at which China was “building islands” was causing degradation to the environment, therefore violating UNCLOS (Teodoro 2016).

The Chinese did not appoint an agent for the case and the majority of the ruling was in favor of the Philippines. China did publish a White Paper clarifying its own position, portraying the Philippines as an aggressive actor in the South China Sea and reasserting claims of territorial sovereignty (The State Council 2016). The White Paper also reaffirms China’s desire for bilateral negotiations.

Major outcomes of the arbitration case included the assertion that any claims within the South China Sea must be in line with UNCLOS, therefore invalidating the Chinese claim of historic rights within the waters of the Nine-Dash Line. This was a victory for the Philippines and other claimants, as China’s claim cannot be accepted in its entirety under international law, giving contesting claims more grounds for validation. The Chinese have rejected the arbitration ruling, citing their original reason for not participating in that it was an inappropriate venue for South China Sea issues as well as an overreach by the Philippines in bringing the case forward (Teodoro 2016).

### **The United States and the Philippines**

Philippine actions are of particular concern to the United States due to the signing of a Mutual Defense Treaty in 1951 (Rosen 2014). While this does not require the United States to take position on any sovereignty claims held by the Philippines, it does require the United States to be wary of any action taken by the Philippines or against the Philippines that could cause an escalation in conflict. It is important, in this context, to understand the parameters of the mutual defense treaty, and what actions taken against the Philippines would result in involvement by the United States. Articles IV and V<sup>9</sup> of the Mutual

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<sup>9</sup> Article IV- Each party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken measures necessary to restore and maintain international peace and security.

Defense Treaty are the most crucial, providing the parameters for the defense obligations. It is unlikely that the Mutual Defense Treaty would be ignored if there were a physical confrontation between Chinese military and Philippines military or fishing vessels on the South China Sea.

In addition to the Mutual Defense Treaty, the United States and the Philippines agreed to an Enhanced Defense Cooperation Agreement (EDCA) in 2014. The EDCA increases the scope of the Mutual Defense Treaty and “provides a legal framework for the increased rotational presence of U.S. Armed Forces in the Philippines.” Duterte, despite stating that the United States would not be assisting in military operations in Filipino territory, has not withdrawn from either agreement.

Any action pursuant to the Mutual Defense Treaty and EDCA is context-dependent. Military action by the United States would require the Chinese military to be clearly the aggressive actor. The treaty leaves a lot of room for interpretation as to what would constitute an attack, which means that United States military involvement would also have to coincide with other strategic interests in the region that might make conflict strategically desirable. This also depends on the relationship between the United States and the Philippines. It has been historically positive, despite a colonial history. The Philippines has supported the United States FONOPs in the South China Sea, which lends more credibility to the controversial tactics as the FONOPs do not only challenge Chinese claims but Philippine claims as well. The Philippines has been a strategic ally in the region, and although there has been some wavering across various administrations in Manila, up until the election of Duterte there was little to no risk in a degradation of the relationship. However, Duterte’s warming towards China puts the United States-Philippines relationship in uncertain territory. There was clear tension between President Duterte and former-President Obama, culminating in the cancellation of meetings between the two.

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Article V- For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific, or on its armed forces, public vessels, or aircraft in the position (Mutual Defense Treaty Between the United States and the Republic of the Philippines 1951).



It is unclear how the relationship between President Duterte and President Trump will develop. They have similar “strong-man” personalities, which could lead to the development of a very strong relationship if both the Philippines and United States foreign policy interests again align in the South China Sea. Both leaders have very strong policies putting their own country first. For Duterte, this has meant looking for other sources of funding for development projects and military support outside of the United States, illustrated through visits to China and Japan in late 2016. However, if China begins to restrict economic activity in contested areas, such as Scarborough Shoal or Reed Bank, he might seek support from Washington again. There is also a lack of clarity as to what a downgraded military relationship between the United States and the Philippines would look like. A complete withdrawal of the United States military is not only unlikely, but unreasonable due to United States military support outside of the sphere of defense, including development and natural disaster relief (Lamothe 2013; White House 2013). Both new administrations will have to address this dynamic in the future.

If the current administration in the United States intends to compete with China economically and militarily in Asia, it will have to continue to assert its presence in the region. The Philippines has traditionally been an economic partner and strategic ally. Without a current strategy of engagement in the Asia region (in contrast to Obama’s pivot policy and Trans-Pacific Partnership [TPP] plans), bilateral relationships will be key in maintaining a strong presence.

### Areas of Mutual Interest

If China reasserts its positions in the South China Sea, either through restricting access to certain territories or increasing a permanent military presence, the United States will have to take a stance as an ally to the Philippines. Aggressive action by China could ultimately result in an increased United States military presence or military involvement. While an increased military presence in South East Asia is not outside the realm of United States’ interest, increased military commitment is not an ideal. This is considering the current number of commitments in which the United States is currently engaged internationally. Ideally, the United States would be able to continually utilize the Philippines as

a military ally while maintaining FONOPs in the region without the escalation towards or requirement of military engagement.

The United States and the Philippines both have an interest in freedom of navigation as well as increased economic opportunities in the region. The United States will have to maintain its influence in South East Asia and within the South China Sea through economic endeavors, potentially with the Philippines, rather than through the security relationship, which is likely to escalate tension.

### **China and the Philippines**

Despite past tensions between China and the Philippines in the Spratlys and Scarborough Shoal, there has been a shift in the relationship since the election of Duterte. A major difference between President Aquino and President Duterte has been their approach to the alliance with the United States. Duterte has threatened that he will sever, or at least weaken, economic and military aid ties with the United States. This would require a significant contribution from other sources to make up for the previous American investment.

A visit to Beijing by Duterte in late 2016 amounted to a price tag of \$13.5 billion in investment (Reuters 2016). Initially it seemed as if this investment by China would result in a softening of the Philippine government stance on China's claims in the South China Sea. However, shortly after Duterte's visit, Manila filed a protest over Chinese military build-up in the South China Sea (Kingpen 2017). Most recently, the Foreign Secretary of the Philippines criticized the Chinese military build-up and insisted that demilitarization would be a part of the future Code of Conduct, resulting in criticism from Beijing (Mogato 2017). These events indicate the potential for the China-Philippines relationship to revert back to the status-quo ante, therefore bringing back the relevance of the arbitration ruling.

### **Areas of Mutual Interest**

As of now, both the Philippines and China may be interested in limiting the U.S. economic and security power in the region. Their motives are different: Manila wants to reduce its dependency on the U.S. China wants to compete more effectively with the U.S. Their common interest will likely result in more bilateral or regional multilateral negotiations excluding the U.S. in the future. The current emphasis on the Code of Conduct, or an understanding between

South East Asian countries and China as to how to conduct themselves on the Sea, reflects this current dynamic. While a non-binding declaration on the Conduct of Parties in the South China Sea was signed by ASEAN and China in 2002, its emphasis on self-restraint and non-militarization has not translated to a change in relations for the claimants (Emmers 2014). If the relationship between China and the Philippines remains amicable, the design and recognition of the Code of Conduct in 2017 may turn out to be more realistic and would not require an enforcement body. Establishing the Code of Conduct within ASEAN and away from potential influence by the United States could be beneficial to both parties and, if successful, could establish ASEAN in a position to be the main negotiating body with China.

Looking forward, it is likely that the Philippines and China, both as developing countries, will find the most mutual ground regarding management of natural resources and fisheries in the South China Sea. There have been discussions over joint ventures in the Scarborough Shoal, which would likely be a temporary resolution in that area while still circumventing the legality issues. While conflicts over natural resources and access to the South China Sea for fishing purposes would both benefit from greater clarification of territorial claims, legal enforcement is unlikely. Joint ventures, bilateral, and regional multilateral agreements will be the best route. This will only be a sustainable solution in the circumstance that China and the Philippines find some sort of agreement on militarization in the South China Sea. If such an agreement is made through negotiations, it will likely reduce United States' influence in the region by justifying the current military build-up by Beijing.

### **Conclusion**

The Philippines and its claimant areas within the South China Sea have been epicenters of tension in the South China Sea. Taking this into consideration, the shift in relationship to more friendly terms with China is beneficial to all parties involved, in terms of avoiding violent conflict. This is tempered by the instability of Philippine foreign policy in regards to China. Since his election, Duterte has maintained positive rhetoric toward Beijing in meetings and statements to the

press, but within ASEAN and the foreign ministry the Philippines has continued to portray China as an agitator in the region willing to militarize disputes.

An improved relationship between China and the Philippines lessens American burdens militarily. Duterte's current stance puts the United States in an odd position regarding freedom of navigation and the South China Sea. If Duterte maintains a closer relationship with China, violent conflict will be unlikely and conflicts regarding natural resources will be resolved through bilateral negotiations. This would reduce the security risk and any fear that the United States would have to become involved through treaty obligations would be low. But, this realignment leaves the United States with a weakened relationship with a strategic ally in the region. There are various situations in which this could be a diplomatic and security risk. For example, Duterte has so far supported FONOPS, but as illustrated by Manila's flip-flopping rhetoric on China in the Sea, a swift change in position is always a possibility.

In contrast, if Manila decides to take a more aggressive stance towards Chinese militarization in the South China Sea, United States involvement will likely increase in the region. The Philippines has so far decided to not involve the arbitration ruling when negotiating with China, which has made it clear that they will not recognize the ruling. ASEAN and the Philippines have displayed continued concern over Chinese reclamation strategies and military build-up, making economic agreements temporary solutions to a larger security issue. Due to the lack of a significant navy by the Philippines or any other claimant nation, the United States is the only option to provide a check to rising Chinese military power.

These two contrasting scenarios illustrate the importance of the Philippines' relationship in the South China Sea. Whether or not the Philippines present a policy that is favorable toward the United States or China regarding their actions in the South China Sea (FONOPs, joint ventures, militarization, etc.) is crucial to the balance of power in the region. This large responsibility of maintaining a balance of two great powers comes at a time when relationships are very uncertain and policy has been unpredictable in the beginning of 2017. The best way forward will be a delicate balance of economic development and strategic military relationships.

## **Recommendations**

### To the Government of the United States

- **Continue FONOPs under the Trump administration**, beginning with routes contesting the same claim as those contested during the Obama administration, rather than pursuing more aggressive routes. Reactions by Beijing and Manila to this administration will help gauge the new dynamic in the South China Sea
- **Actively invest in economic development in the South East Asia and ventures in the South China Sea**. This is a way to maintain relevance in the region
- **Develop a policy of military engagement and partnership with the Philippines** that decreases United States commitments to military engagement on behalf of the Philippines. This will assist in maintaining a positive military relationship with the Philippines while also working within the narrative of Philippine realignment

### To the Government of the People's Republic of China

- **Increase multilateral negotiations through ASEAN** rather than simply through bilateral negotiations. It will reduce the amount of hedging that is possible in bilateral negotiations
- **Avoid retaliatory action to verbal cues**

### To the Government of the Philippines

- **Clarify the military relationship with the United States**. If the relationship is going to evolve into security regarding natural disaster relief rather than defense, propose a new agreement outlining the terms of the new relationship
- **Move forward with negotiations on a binding Code of Conduct through ASEAN**, revisiting the militarization aspect mentioned in the declaration on the Code of Conduct.
- **Develop joint ventures with the People's Republic of China, specifically in Reed Bank**. Considering the results of the arbitration ruling citing environmental degradation in the South China Sea, develop environmental protocols for these joint ventures





## **Part II: Politics and Diplomacy**





## **Why China Compromised when the U.S. Didn't: American and Chinese Identities and Values in the South China Sea**

Rachel Xian

Conflict management literature emphasizes that conflicts can be driven by perceived rather than actual incompatibilities (Vukovic 2017). Thus, conflict management seeks to remove perceived differences, move from intractable to tractable positions, and draw out core negotiable interests from polarized starting points (Lund 200; Touval 2003). Simply put, the problem of conflict prevention and management is “getting to yes”—how to trade interests to devise a mutually beneficial solution (Fisher, Ury, and Patton 2012). In the process, mediators must strip away immobile positions, such as “pro-trade” or “anti-trade,” to reveal underlying interests which cover other negotiable issues (Malese 2012). Mediators might also find values or identities, which are notably more difficult to concede. Hence, when a conflict in escalating stages displays a need for preventive diplomacy, conflict managers must isolate parties’ interests from values and positions to create broader bargaining spaces.

Disputes in the South China Sea exhibit a need for preventive diplomacy. Currently, the region is in a state of unstable peace wherein “...tension and suspicion among parties run high but violence is either absent or only sporadic” (Lund 2001). However, the continued construction of military facilities on occupied features by multiple claimants, and the Trump administration’s uncertain Asia-Pacific strategy, warn of increased hostility between the region’s most powerful and interdependent countries: China and the U.S. The two countries hold divergent positions on issues including freedom of navigation (FON), the authority of their respective legal interpretations, and the sovereignty of South China Sea features. Yet, underneath these positions are likely various interests ranging from negotiable to non-negotiable, tangible to intangible (Fisher, Ury, and Patton 2012). To elucidate not just what the U.S. and China want from the South China Sea, but also *why*, this chapter will: first, outline the U.S. positions, and then propose and evaluate underlying interests; second, do the same for China, outlining China’s positions, and investigating underlying

interests; third, briefly contextualize these interests in current Sino-U.S. politics; and fourth, conclude with policy recommendations to the U.S. and China. Overall, this chapter hopes to expand approaches to understanding American and Chinese South China Sea behavior, with a view to formulating more constructive U.S.-China policies based off more accurate mutual perceptions.

### **The United States**

#### Immobile Positions

The U.S. has three core positions: safeguarding freedom of the seas; deterring conflict and coercion; and promoting adherence to international law and standards (Bader, Lieberthal, and McDevitt 2014; Searight and Hartman 2017). According to the *Asia Pacific Maritime Security Strategy* report by the Department of Defense (DOD), freedom of the seas—FON and freedom of overflight (FOO)—is vital to global and regional commerce, and crisis response (DOD 2015; Bader, Lieberthal, and McDevitt 2014). The U.S. interprets FON under the United Nations Convention on the Law of the Sea (UNCLOS) as such: “freedom of the seas includes all rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law” (DOD 2015). In this interpretation’s defense, the U.S. Navy is planning new FON operations (FONOPs) within territorial seas of China’s Spratly and/or Paracel Island facilities (Larter 2017). FONOPs have irritated China at best, and angered them at worst. Regardless, the U.S. remains adamant in its FON position to uphold UNCLOS and a rules-based system.

Underneath the U.S. conflict deterrence positions is an interest to ensure regional peace and security, which enables economic growth and Asian-Pacific resource flow (DOD 2015). The DOD finds “hard-won stability” threatened by regional powers’ increasing military capacities and other transnational threats. Though adaptive, certain dimensions of this position are resolute: diplomatic deterrence if possible, but military deterrence if necessary; a continued active U.S. regional presence; and safeguarding allies and strategic partners (DOD 2015, 2).

On adherence to international law and standards, the DOD holds that a rules-based system provides the basis for shared resources, maritime safety, and peaceful prosperity (DOD 2015). In the South China Sea, the U.S.-desired

system includes its interpretations of FON, militarization, innocent passage and military best practices, and dispute resolution methods like binding arbitration (i.e. the “South China Sea Arbitration”) and multilateral agreements (e.g. the China-ASEAN Code of Conduct). U.S. FON, innocent passage, and binding arbitration positions especially conflict with China’s legal interpretations (Center for Strategic and International Studies 2016). These American interpretations of international law and institutions, combined with freedom of military navigation and regional military deterrence, constitute the U.S. core positions.

### Underlying Interests, Identities, and Values

Per conflict management literature, a party’s underlying interests can range from tangible to intangible, tractable to intractable. This section will focus on three interest types spanning these spectrums: material interests, national identities, and values. While intangibles (tangibles) are not inherently intractable (tractable), material interests are often shareable, while identities and values are existential, thereby difficult to change. To target negotiable interests, conflict managers should attempt to qualify each type’s importance to positions. Which is more important to the U.S. positions: material interests, identities, or values?

### *Material Interests*

First, how important to the U.S. are material interests in the South China Sea? U.S. FON position’s listed material interests of unimpeded commerce, safe access for crisis management, and freedom of the seas have not been critically threatened. As a major trading power, China has strong incentives to preserve the flow of commerce—smaller littoral states even more so (Bader, Lieberthal, and McDevitt 2014). Littoral states seem unlikely to deny South China Sea crisis response given expanded China-ASEAN and ASEAN Regional Forum (ARF) humanitarian assistance and disaster relief (HADR) cooperation (ASEAN 2016; Var 2017; Zhang 2017). Even the most contentious material interest, military FON, has not been denied. China has never successfully blocked U.S. military vessels, and will remain unable to by virtue of U.S. military dominance. Still, the U.S. has an unlisted interest in preserving FONOPs and its routine air and maritime surveillance for intelligence gathering (Personal meeting with SAIS

Professor Daniel Serwer 2017; DOD 2015). Thus, U.S. material interests are insignificant to the FON position insofar as they are not threatened, but the interest of intelligence gathering *is* significant, manifested through FONOPs and regional surveillance initiatives (DOD 2015).

The material interests associated with conflict deterrence and a rules-based international system—regional security, naval best practices, institutionalized dispute resolution, and transnational threat cooperation—are, again, not critically challenged. Regional security has been preserved in recent months; Chinese seizure of a U.S. unmanned underwater vehicle (UUV) was quickly resolved (Blanchard and Holland 2016). Regional navies have implemented the Code for Unplanned Encounters at Sea (CUES) and other at-sea confidence-building measures (CBMs) (Bateman 2016; ASEAN Regional Forum 2016). China-ASEAN has doubled-down on planning for a Code of Conduct and, despite China's non-acceptance of the South China Sea arbitration, South China Sea tensions have been kept at bay (Zhang 2017; SCIO of the PRC 2016; Deogracias 2017). China and ASEAN regularly cooperates on transnational issues like piracy, trafficking, and climate change (ASEAN 2016).

Hence, because these material interests are not currently challenged, or are being addressed, they fail to explain the assertive continuity of U.S. conflict deterrence and rules-based system positions. American material interests in the South China Sea are not sufficiently challenged, nor benefited, to adequately explain the U.S. positions on FON, coercion deterrence, and international law. The missing ingredients are identities and values.

### *Identities and Values*

Intangibles like national identities and values may fill the explanatory gaps. This section will propose that American identities and values potentially influence U.S. positions in the South China Sea. These proposals, neither exhaustive nor statistically confirmed, intend to provide alternative lenses to frame American South China Sea involvement.

First, the U.S. has an identity as a *security provider*: the U.S. has inherent security advantages and sometimes provides them to other states when requested (Bader, Lieberthal, and McDevitt 2014; DOD 2015). Absent U.S. assistance, claimants worry about their claims' safety, and non-claimants worry about

successful Chinese coercion. Each time the U.S. ensures security, states, both hostile and amicable, observe, internalize, and re-project this reinforcing identity. The U.S. thus acquires an identity as a security provider whose preservation requires continued acceptance of resource-heavy requests to retain a credible success-to-failure ratio.

In the South China Sea, China's conduct since 2009 has alarmed ASEAN, spurring especially the Philippines and Vietnam to seek closer security assurances from the U.S. (Bader, Lieberthal, and McDevitt 2014). Policy recommendations (from the Brookings Institution, Center for Naval Analyses, Asia Maritime Transparency Initiative) and government officials advocate responding to these requests (Glaser 2015; McDevitt 2014; Searight and Hartman 2017). A retired U.S. Navy officer encouraged Vietnam to firmly oppose China, while accepting more U.S. security assistance, including a coastguard training center, law enforcement support, and weapons of mass destruction (WMD) detection equipment (DOD 2015). The U.S. is a *security provider* for small littoral states in the South China Sea.

In addition, the U.S. is a *balancer*: it is requested to explicitly counterbalance a security threat, namely China. Thus, the U.S. not only provides training/equipment, but also its own physical presence and foreign policy attention (Glaser 2015; McDevitt 2014). Security threats to balance include military or economic coercion, soft political influence, and/or burdensome transnational issues. This identity's clearest example is the "Pivot to Asia," or "the Rebalance" to Asia and the Pacific policy. Initially, it sought to strengthen security, economic, and cultural Asia-Pacific ties (The White House 2015). However, as the Trans-Pacific Partnership (TPP) faltered, China increased its regional soft power, and the U.S. became embroiled in domestic politics, this *balancer* policy shrunk into a primarily security-based policy.

Stemming from *security provider* and *balancer* identities are values like anti-hegemony, intervention, multilateralism, and stability. The U.S. seeks to move "...beyond the 'hub and spokes' model'...toward a more networked architecture of cooperation" (DOD, "Deepening and Networking Relationships"). Reflected in the South China Sea, the U.S. denounces hegemony (criticizes extensive Chinese land reclamation), directly intervenes (increases military deployment and rhetoric), connects more than one country

(simultaneously partners with several littoral states), and seeks regional stability (balances action and inaction to avoid full-scale provocation). The U.S. retains its South China Sea deterrence position because it is a *security provider* and *balancer*.

The U.S. also has an identity as a *defender of world order*: As the world's "most open, democratic, and pluralistic country," it must protect liberal democracy, global institutions, and common norms (Bader 2016). In the South China Sea, U.S. positions on UNCLOS, FON, and other international legalities are a defense against a "revisionist" China (as China holds divergent interpretations). Corresponding values include responsibility, protection, democracy, institutionalized conflict resolution, and maintenance of customary international law, evident in think tank and government references (The White House 2015; Glaser 2015; McDevitt 2014; Bader, Lieberthal, and McDevitt 2014).

Crucial to *defender of world order* is the value of universality: international norms supported by the U.S. should be supported by all. Like-mindedness, one "righteous" world order, inherently simplifies the *defender's* job. Both FON and the Rebalance positions advocate universality. U.S. FON interpretation is the final and lawful say; FONOPs directly challenge differing interpretations, or non-universality (Panda 2017). The Rebalance also supports homogeneity, stating its intent to "...build a network of *like-minded states* that sustains and strengthens a rules-based regional order..." [emphasis added] (The White House 2015). Without universality, the U.S. might not continue its Asia-Pacific expansion nor its defiance of China's legal and institutional interpretations. The U.S. maintains its FON, deterrence, and international norm positions because it is a *defender of world order*.

The U.S. has an identity of *strong partner and leader*. This differs from prior identities in its emphasis on strength, cooperation, and commitment. At the same time, *provider*, *balancer*, and *defender* are all necessary to this identity. U.S. policy recommendations speak of keeping American allies/partners confident in the U.S. South China Sea presence. Recent recommendations to the new administration from the Asian Maritime Transparency Initiative (AMTI) urge the government to reassure its South China Sea partners of its regional security commitments (Searight and Hartman 2017). A series of Gallup Polls illuminates

public perspectives on the U.S. as a *strong partner and leader*. Indicating partnership, 94% of respondents think defending allies' security is at least a somewhat important foreign policy goal; 84% of respondents think protecting weaker nations against foreign aggression is at least somewhat important (Gallup 2016). Indicating leadership, 66% of respondents think the U.S. has a "special responsibility" to be world affairs' leading nation; 19% think the U.S. should play the leading role in solving international problems; 52% think the U.S. should play a major role (Gallup 2016).

Ensuing values of credibility and commitment are linked: commitment to a partner's needs enhances credibility; credibility encourages increased commitment requests from current and new partners. This feedback loop builds U.S.-partner confidence when positive, but compounds confidence deterioration when negative. In the South China Sea, commitment and credibility are projected through Navy plans to increase South China Sea military operations, Defense Secretary James Mattis' and Secretary of State Rex Tillerson's recent "Asian reassurance" visits, and overall policy steadfastness (Solís and Bush 2017; Larter 2017). The White House's Rebalance fact sheet emphasizes these values (and their partner/leader identity): "Our alliances remain at the heart of the Rebalance, and our treaty commitments are sacrosanct" (DOD "Deepening and Networking Relationships").

Even more simply, the U.S. seeks to be *strong*. In "A Framework for U.S. Policy toward China," Jeffrey Bader paraphrases Lee Kuan Yew to argue against accommodation to China: "...those who were against the United States in the 20<sup>th</sup> century didn't come out so well, and we have it in our power to ensure... that the America short-sellers in the 21<sup>st</sup> century meet the same fate" (Bader 2016). This paraphrase exposes an ego-based identity involving power, assertiveness, and dominance. In addition to enhancing partner confidence, the U.S. insistence on military deterrence and legal interpretations may be a simple manifestation of "We are *strong*. We will not back down." In the above Gallup Polls, 67% of respondents felt it was important for the U.S. to be number one in the world militarily. A Brookings Institution South China Sea brief made sure to underscore Chinese failure to impose its FON interpretation on the U.S. (Bader, Lieberthal, and McDevitt 2014). In the AMTI's South China Sea recommendations to the new administration, experts encouraged the government



not to “...alter their schedule [of FONOPs] in response to Chinese pressure...” nor be “held hostage” by warnings that more robust deterrence would be detrimental to Sino-U.S. relation (Searight and Hartman 2017). This language, conflating accommodation with successful enemy coercion, betrays a need to be *strong*.

Altogether, the identities of *security provider*, *balancer*, *defender of world order*, *partner and leader*, and *strong* provide a fuller picture of why the U.S. maintains its South China Sea positions. These identities entail corresponding values of anti-hegemony, intervention, international norms and law, universality, commitment, and credibility. Balancing against a “revisionist” China and defending the existing world order fuels the American commitment to FONOPs. The immobility of the U.S. position is needed to appear *strong*. Public opinion, international reputation, and ally/partner security concerns obligate the U.S. to preserve these identities in the South China Sea, even given minimal material interests. Thus, it is difficult for the U.S. to compromise because its identities *value* unrelenting, unaccommodating foreign policy. If they seek compromise from the U.S., other states will need to find ways to minimize the U.S. obligations to its partners or open other ways in which U.S. identities and values can be reinforced.

### **The People’s Republic of China**

#### Immobile Positions

Like the U.S., China has adhered to polarized and absolute positions in the South China Sea. China’s positions are: upholding its sovereignty over *nanhai zhudao* (all South China Sea islands); safeguarding its maritime rights and interests; non-participation, non-acceptance, non-recognition, and non-implementation of the “South China Sea Arbitration” award and unilateralism; keeping the South China Sea the business of China and other directly-concerned countries; promoting “dual-track” negotiations (bilateral and multilateral); and maintaining peace, stability, and freedom of the seas in the South China Sea (SCIO of the PRC 2016; Wang and Chen 2016).

While these positions remain unchanged, recent developments, including unanticipated compromise, reinvigorated Code of Conduct talks, joint development, and cooperation suggest there are negotiable underlying interests.

Soon after the arbitration, Philippine fishermen were allowed back into Scarborough Reef, contrary to expectations of intensified South China Sea occupation (De Castro 2016). Several economic deals followed between China and the Philippines, Malaysia, and Vietnam (Calonzo 2016). Vietnam and China released a joint communiqué pledging to manage maritime differences and protect South China Sea peace and stability (Zhang 2017). What underlying identities and values have contributed to compromise and tension reduction?

### Underlying Identities and Values

While little has been written about American South China Sea identities and values, the opposite is true for China. *Fenqing* (angry youth) and *xiao fenhong* (little pink)—young aggressive netizens emboldened by a *rising power* identity—have captured scholarly and media attention (Schrader 2017). China's *rising power* identity is said to fuel aggressive nationalism that obligates China to take more assertive South China Sea stances. The Chinese government's frequent use of "national rejuvenation," "the Chinese dream," "Century of Humiliation," and "historical rights" in South China Sea papers and beyond connects China as a *rising power*, and values like humiliation and strength, to China's official positions (SCIO of the PRC 2015 and 2016).

However, assertive nationalism from a *rising power* identity is not the whole picture. Harvard Professor Alastair Iain Johnston found declining national pride, stable anti-U.S./Japan views, and less youth nationalism in his study on Chinese nationalism between 2002 and 2015 (Johnston 2017). The Perth U.S. Asia Centre's public opinion project on Chinese maritime awareness found preferences for diplomatic over military South China Sea dispute resolution methods: 57% of respondents approved of "compromise through negotiation," 60% approved of "UN arbitration," and large majorities approved of "popular activism" and "international publicity" to protect China's positions (Chubb, Harper, and Perry 2014). Additionally, 54% responded that use of military force in the South China Sea would not be in China's interest (Chubb, Harper, and Perry 2014). If the public's *rising power* nationalism has not been as assertive as expected and recent developments have seen China make concessions, which missing identities and values might better explain Chinese compromise?

China's core identity is a *rejuvenating* (rather than merely rising) *great power*: China is regaining significant international standing after a Century of Humiliation from foreign aggressors (Xuetong 2001). According to a Pew Research Center survey, 75% of Chinese respondents think China plays a more important role in the world today than 10 years ago (Manevich 2017). Associated values include special respect as a great power, saving face from humiliation, resilience against foreign coercion, and material power—the first three being notoriously difficult to reconcile. China, as relayed by Chinese think tank experts, expects the same respect given to other great powers, including maritime privileges like those given to Russia in the Black Sea (McNeill 1995). In other words, China expects special exception from certain international norms. Perth's China maritime awareness project saw a vast majority of respondents agreeing that other countries' South China Sea island occupation affects the dignity of the Chinese people, and is a continuation of Chinese suffering and humiliation (Chubb, Harper, and Perry 2014). A small majority felt personally humiliated from South China Sea island occupation. In the Pew Research Center's Chinese public survey, 45% of respondents say U.S. power and influence is a major threat to China, and 77% say their way of life needs to be protected against foreign influence (Wike and Stokes 2016). Material power, including military and economic power, are key vehicles of China's national rejuvenation, consolidating material interests like nuclear power projection, hydrocarbon reserves, and fishing rights into one identity-based value (Fravel 2008; Erickson and Collins 2011; SCIO of PRC 2015). China's positions on island sovereignty, land reclamation, FON, and the arbitration can be interpreted in this way: China is a great power whose special history justifies island sovereignty; China deserves larger land reclamation because China is larger; and China must save face and resist foreign coercion by fighting FONOPs and the arbitration, and defending their sovereignty over *nanhai zhudao*.

This *rejuvenating great power* identity encounters a related, but incongruent alternative identity: *responsible leader*. Even before the Trump administration withdrew from the TPP, China had already increased its presence in international organizations (IOs) like the World Trade Organization (WTO) and the UN, developed its own economic aid projects like the Asian Infrastructure Investment Bank (AIIB) and the Belt and Road Initiative (BRI), and begun championing

free markets and trade (Baden 2016; Durden 2017; Hsu 2017). Corresponding values include generosity, multilateralism, world order preservation, and positive international reputation. In the same Pew Research Center survey, 67% supported increased Chinese investment in developing countries, 62% supported increased foreign aid, and 55% supported importing more goods (Wike and Stokes 2016). AIIB involves 57 Prospective Founding Members from multiple continents, and the BRI connects Eurasia (Hong Kong Trade and Development Council 2017; AIIB 2017). Despite China's expectation of special respect as a great power, its approval of *the* international normative system, the UN, has increased from 39% in 2013 to 54% in 2016 (Wike and Stokes 2016).

In the South China Sea, China's compromises occurred primarily after the arbitration, seemingly validating the success of Western pressure. But why would a *rejuvenating great power* defer to foreign institutions if it need not follow norms, and this deference means losing face by succumbing to foreign influence? The answer is two-fold: being a *responsible leader*, valuing positive international reputation, is more important than being a resilient, norm-giving *rejuvenating great power*; and, China's desired ceremonial superficial levels of face-saving and respect were met.<sup>10</sup>

In a non-South China Sea context, SAIS China Studies Director Dr. David Lampton has expressed the view that China is often accommodating on substance if you treat it right symbolically (Personal correspondence with Dr. Lampton 2017). As long as China could publicly reject the arbitration and reassert *nanhai zhudao* sovereignty, the *responsible leader* identity faced no symbolic barriers and compelled bending to arbitration pressure and compromise. Why was being a *responsible leader* more crucial than a *rejuvenating great power*? The latter is necessary to the former. Great powers are expected to shoulder global responsibilities, so China is driven to *wangdao* (a "kingly" way) rather than *badao* (a "tyrannical" way)—to being a *responsible leader* as a means to becoming a *rejuvenated great power* (Zhai 2015).

Thus, special respect, saving face, and anti-foreign influence should not be seen as barriers to compromise. Instead, they are prerequisites. If these values are preserved at the ceremonial level, China seems willing to bow to

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<sup>10</sup> Here, ceremonial implies surface-level deference, with no need to extend to all interactions as long as the superficial position is maintained.

international pressure and negotiate the more tractable aspect of its *rejuvenating great power*, material power. Although divergent positions like those on island sovereignty will not immediately change, it is possible that prolonged material compromise and cooperation may soften claimant antagonism, ease humiliation, and emphasize *wangdao* values enough for compromise. Position compromise will require successful national rejuvenation (reducing Chinese insecurity), time (weakening the perception of historical humiliation), and the eventual convergence of *rejuvenating great power* and *responsible leader* into *responsible great power*.

### **Sino-U.S. Identities and Values in Context**

The U.S. and China's South China Sea positions are better explained through identities including *security provider*, *rejuvenating great power*, *strong partner and leader*, and *responsible leader*, which do not seem inherently in conflict. However, one Sino-U.S. dynamic emerges as strikingly incompatible: both seek to *lead* world order. A second giant is entering the room. As each country's administrations, foreign policies, and world standings continue to evolve, the see-saw of U.S.-China relations comes closer to a tipping point, and the privilege of world order leadership may fall towards China.

Thus far, increasing international dissatisfaction with the U.S., low approval ratings, and lack of respect for Trump do not bode well for the U.S. global influence (Gallup 2016). Domestic scandals have further marred the U.S. liberal democratic reputation. Inconsistent alliance positions question security commitments. U.S. identities beneficial to normative influence are declining, leaving a *responsible great power* vacuum in their wake. China has begun to fill this vacuum, evident in the international community's support for the AIIB despite American criticism, and China's new leadership in UN peacekeeping and Interpol (Lazarus 2016; Griffith 2016). Even current South China Sea peace, while desirable for all parties, may highlight the Chinese dual-track approach's (multi- and bilateral talks) triumph over the U.S.-supported arbitration. Still, the South China Sea is just one manifestation of Sino-U.S. identities and values. Future Sino-U.S. relations will reveal who has occupied the position of *responsible great power*, with a growing possibility that it may be China.

### Conclusion

Attention to U.S.-China relations in the South China Sea has focused on the U.S. material interests and Chinese rising nationalism. Yet, the U.S. has little economic and military security directly at stake in the South China Sea, and an aggressive “rising China” cannot explain recent peaceful compromise. Instead, U.S. identity obligations to provide partner/ally security, to defend world order, and remain strong may better explain relative U.S. inflexibility. Chinese identities valuing responsibility, reputation, material power, respect, and saving face may explain Chinese concessions amid upheld positions.

However, these alternative perspectives are only as useful as their mutual communication, an area desperately needing improvement in Sino-U.S. relations where uncertainty, mistrust, and misunderstanding run rampant. Now is the time not only to solidify constructive identities, but also to right the wrongs of previous administration policy and messaging mistakes. It is a critical moment for the U.S. to correct Chinese presumptions of containment, regain its reputation-enhancing identities, and push China towards a peaceful *responsible leader* identity.

### Recommendations

#### To the U.S. Government

- International support for the U.S. is declining, necessitating a reemphasis of all peaceful, reputation-boosting identities. First, **the U.S. should reinforce its *partner and leader* identity by reassuring its South China Sea allies** and security partners of American deterrence. These reassurances should be vertically (across government levels) and horizontally (within each level) consistent. Reassurances should especially target hedging countries like the Philippines and Vietnam, while potentially expanding to traditionally China-oriented countries like Malaysia.
- The Trump administration has declining ratings worldwide just as China is increasing its standing and softening its behavior. To combat this trend, **the U.S. should minimize its impassioned *strong* identity by changing the South China Sea language it uses**. When reassuring partners, discourse should be confident while avoiding militaristic,

emotional, and polarizing rhetoric. Asia-Pacific policy should be reframed from “Rebalance” to, perhaps, “Reconnection.” Words like “to pivot,” “coercion,” and “containment,” may be substituted with “to partner,” “threatening behavior,” and “monitoring.”

- **The U.S. should re-solidify its *defender of world order* identity** by encouraging the Philippines to enforce the arbitral award. While the U.S. should continue FONOPs, they should be quieter and less publicized. FONOPs should be “business-as-usual.” The *defender’s* credibility requires universality; the U.S. should speak out against all claimants’ dredging, over-fishing, and otherwise detrimental behavior. The U.S. should expeditiously ratify UNCLOS if it seeks to defend it.
- Uncertainty about U.S. Asia-Pacific policy has led littoral states to align with the more stable regional power, China. **The U.S. must quickly state an Asia-Pacific policy specifying its South China Sea plans**, showing littoral states the U.S. has not forgotten about them and they can continue expecting American security provision.
- To induce more Chinese compromise, **the U.S. should reinforce China’s role as a *responsible leader*** while providing minimally-acceptable levels of face-saving, respect, and non-intervention. The U.S. has three options for encouraging a *responsible leader* identity: negatively, by further criticizing China’s South China Sea actions while continuing regional deterrence, compelling China to “correct” its reputation; positively, by restating China’s growing influence in and responsibility to world order; and some combination of both, giving critical advice to China and maintaining non-troop security provisions with a broader goal of bringing China into world order.
- The U.S. regional presence as a *balancer* has pressured China into discreetly accepting international norms, but also humiliated China into position-hardening, Sino-U.S. tensions, and weaponized land reclamation. Thus, **American presence should seek to minimize humiliation while maintaining regional pressure**. As FONOPs are the most humiliating action, and have thus far not pressured China into accepting the U.S. FON interpretation, the U.S. should consider decreasing FONOPs and avoiding them altogether in China’s territorial

sea. One approach is to emulate the U.S.-Soviet Black Sea uniform interpretation agreement by rescinding FONOPs in return for China's public agreement with American FON interpretation. However, the U.S. should still preserve its security provisions to allies/partners, perhaps diverting funds from naval deployments to equipment, training, and services acquisition.

- Finally, if South China Sea tensions worsen, it may be time to try carrots instead of sticks. **The U.S. can provide inducements like technology transfers, decreased investment restrictions, or increased military support** to further encourage Chinese South China Sea cooperation.

### To the Chinese Government

- Despite President Trump's uncertain Asia-Pacific policy, if the U.S. remains *strong*, China could also remain strong by continuing FONOPs protests, land reclamation, and sovereignty reassertions, though these would justify U.S. presence; redirect U.S. strength from military to normative issues by pausing physical challenges like land reclamation; or remove the U.S. need to stay *strong* by stopping all norm-challenging language and actions.
- **China should hold the U.S. to its *defender of world order* identity.** Calls for U.S. UNCLOS ratification are tired but necessary. China should confront the U.S. universality value by conducting its own FONOPs in U.S. EEZs and territorial seas. China should also appeal to this identity by defending its stances on arbitration jurisdiction, UNCLOS, and FON. These arguments should incorporate the U.S.-accepted legal system, including UNCLOS language, International Court of Justice cases, and international maritime agreements.
- To reduce U.S. regional presence, **China needs to reduce American security obligations by persuading states like the Philippines, Vietnam, and even Taiwan that China is not a security threat.** Offering its reclaimed island security facilities for joint usage, increasing joint military exercises with ASEAN, or de-weaponizing those island facilities would diminish concerns of Chinese coercion.



## South China Sea: Maintaining Peace / Preventing War

- Reassurance necessitates combining *rejuvenating global power* identity (pushing aside special privilege and anti-foreign values) with a *responsible leader* identity who provides cooperation carrots like economic and infrastructure aid. A *responsible global power* should avoid escalatory controversy. **A responsible China should halt cruises to disputed islands.**
- On the Sino-U.S. clash of normative leadership, if faced with last year's U.S. administration, **China should pause norm-setting until it gains more soft power.** However, now that American reputation is falling, China should further its normative influence by replacing the U.S. position in the *current* framework. In this way, China can benefit from a *responsible* reputation without the costs of rebuilding international norms. In the South China Sea, China should publicly agree with the U.S. FON interpretation, acknowledge the military nature of its land reclamation, and use international law to challenge arbitration jurisdiction, while increasing China-ASEAN cooperation on positive values like free trade, humanitarian assistance, anti-trafficking, and environmental repair. In short, China should drop its contentious norms for the positive norms already built and widely accepted.



## **On the Southern Front: Lessons Learned from Indonesia and Malaysia**

Matthew De Soi

At a moment of pervasive, rising tension on the world stage, the South China Sea stands out as an exceptionally troubling hotspot, a theater in which armed conflict among the world's major powers may eventually play out. However, while the dispute's China-U.S. dimension poses the greatest potential risk, it is but one of several fraught, and perhaps dangerous, relationships in an increasingly complex and nuanced geopolitical struggle. This chapter will examine the roles and relations of two key—yet frequently overlooked—parties to the South China Sea conflict, Indonesia and Malaysia. In recent years, these two regional powers have tread an incredibly fine line in pursuing policies that both provoke and placate China over its claims to, and presence in, the South China Sea. Additionally, this chapter will analyze each nation's strategy to engage, and at times leverage, its relationship with China—among other key actors—to achieve national and economic security, acknowledgement of legal rights and asserted interests, as well as enhanced credibility on the world stage.

### **Indonesia's Indignation**

Since 2014, Indonesia has emerged as one of China's most vocal and combative regional adversaries. Indonesian sovereignty over the resource-rich Natuna Islands—an archipelago of approximately 270 islands located off the northwestern coast of Borneo, and home to about 70,000 residents—is uncontested by Beijing. China's controversial Nine-Dash Line, however, runs through the Natunas' 200-nautical-mile exclusive economic zone (EEZ), stirring ire on both sides and intermittent skirmishes between Indonesian and Chinese vessels operating in the area. From an economic standpoint, the Natuna Sea offers a wide range of natural benefits, to which both the Chinese and Indonesians lay historic claim. "Specifically, the East Natuna Block is one of the world's largest gas fields, containing 46 trillion cubic feet of recoverable natural gas, which at 2009 figures was around 41% of Indonesia's total reserves" (Parameswaran 2016). Furthermore, a robust yet largely unregulated fishing

industry—comprising more than 2.4 million resident fisherman—helps buttress the local Indonesian economy.

Recently, Indonesia adopted a hard line approach to stamp out illegal, unreported, and unregulated fishing operations in the Natuna Sea. According to the World Bank, illegal fishing activities cost the global economy “an estimated \$20 billion in lost revenue annually. [And,] around a quarter of these losses occur in Indonesia, whose fishing industry is second only to China in size” (Langenheim 2016). As a party to UNCLOS, Indonesia’s government has pledged to uphold freedom of navigation and the right of all vessels—civilian and military, alike—to travel unimpeded within its EEZ. However, as a warning to regional competitors—China, in particular—Indonesia has recently taken to seizing and destroying illegal foreign fishing vessels—and arresting the crew members thereof. In August 2016, to mark its annual Independence Day, the Indonesian government impounded and scuttled as many as 71 foreign fishing boats, signaling Indonesia’s “determination to protect its sovereignty over lucrative fishing grounds” (Salna 2016). This particular show-of-force, however, is nothing new. Since late 2014, Indonesia’s navy has seized and destroyed more than 170 vessels in an ongoing campaign to deter China’s commercial activity within, and ultimately claims to, the Natuna Sea.

To ease mounting tensions, Beijing attempted to clarify its position on the Natuna Islands matter in a November 2015 press conference. At that time, Chinese Foreign Ministry spokesman, Hong Lei, conceded that, “the Indonesian side has no territorial claim to China’s Nansha Islands [a.k.a. the Spratly Islands]. [Furthermore,] the Chinese side has no objection to Indonesia’s sovereignty over the Natuna Islands” (Ministry of Foreign Affairs of the People’s Republic of China 2015). Despite Beijing’s apparent bid for conciliation, the Foreign Ministry conveniently—and perhaps deliberately—avoided any mention of Indonesia’s maritime rights and/or interests in the disputed region. Instead, Mr. Hong opted to focus solely on claims to and control over undisputed land features, namely the Natuna Islands themselves. Historically, China rejects other claimants’ maritime legal rights and asserts that any operations within that particular area of the Natuna Sea are well within the bounds of what it calls “traditional Chinese fishing grounds.”

China's initial reluctance—or some might say, refusal—to recognize Indonesia's claims infuriated officials in Jakarta. In response, Indonesian Foreign Ministry spokesman Armanatha Nasir fired back, telling reporters that, “the position of Indonesia is clear at this stage that we do not recognize [China's] Nine-Dash Line because it is not in line with international law” (Fabi and Blanchard 2015). Furthermore, Indonesia's Coordinating Minister for Maritime Affairs Luhut Pandjaitan threatened to take the case to an international court if dialogue between the two nations broke down. As tensions flared, the Chinese government reassessed its rhetoric on the dispute; and, in July 2016, following a particularly heated standoff over continued illegal fishing allegations, China's Foreign Ministry acknowledged publicly—for the first time—that, China and Indonesia have “overlapping claims for maritime rights and interests” (Vatvani 2016). Nonetheless, and despite China's apparent concession, the ongoing rift cemented Indonesia's hard line. Today, the Indonesian government continues to deny the existence of a maritime dispute, as it holds firm the belief that China's claims have no international legal backing. Proponents of Indonesia's stance contend that conceding the existence of a dispute may only serve to embolden China in its fight for historical recognition and legitimacy.

Throughout the last year, Indonesian President Joko Widodo—known commonly as President “Jokowi”—has taken a much tougher, more offensive stance in defending his nation against illegal fishing activities in the Natunas' EEZ. In June, President Jokowi hosted a cabinet meeting aboard a navy warship patrolling the Natuna Sea—his first time to the region as commander-in-chief. The message—and the optics of the visit—were clear; the Natuna Islands, and the fish in the surrounding sea, belong exclusively to Indonesia, and his administration will stop at nothing to both secure and defend them. Furthermore, in early October, Indonesian warplanes staged a large-scale—and allegedly “routine”—military exercise in an area of the South China Sea that the Indonesian government claims under its jurisdiction, yet on the perimeter of the maritime boundary claimed by Beijing. Although largely symbolic, this move served only to compound growing uncertainty in the region, especially following Filipino President Rodrigo Duterte's sudden rebuke of long-time ally, the United States, and subsequent pivot to China.

Indonesia's zero-tolerance policy and recent willingness to confront China mark a dramatic shift in the decades-long maritime dispute. Prior to President Jokowi's election, Indonesia had sought to stay above the fray and position itself as a neutral third-party, a peaceful arbiter between Beijing and fellow ASEAN member claimants. Today, Indonesia's position has changed demonstrably. While it still seeks a path to peace in the region, the Indonesian government has exhibited a willingness to stand up and voice its concerns when it sees its rights and/or interests as violated. However, despite Indonesia's recent defense build-up in and surrounding the Natuna Islands, it remains unclear if President Jokowi's hard posturing would be backed by harder action or if his recent moves are, as Chairman Mao Zedong once decried, those of a "paper tiger." Nonetheless, Indonesia's increasingly hardened stance may be paying off, as it seems—at the very least—to have brought China to the negotiating table by forcing the Chinese to acknowledge the existence and validity of Indonesia's claims.

### **Malaysia's Magnetism**

Unlike Indonesia, Malaysia claims more than a dozen contested land features in the South China Sea, particularly a collection of small rocks, reefs, and islets in the southern Spratly Islands. At present, the Malaysian government has territorial and maritime border disputes not only with China, and thus Taiwan, but also three fellow ASEAN members—the Philippines, Vietnam, and Brunei. However, Malaysia's approach to managing the ongoing dispute is far more temperate—particularly with regard to China—than that of Indonesia and other key claimants. According to Gregory Poling of the Center for Strategic and International Studies in Washington, DC, "Malaysia has been more hesitant to push back forcefully against China partially because the Philippines and Vietnam have been a useful buffer, soaking up so much of China's bullying over the last few years, and partially because the ruling elite in Kuala Lumpur are convinced that they have a 'special relationship' with Beijing" (Jennings 2016).

Malaysia has been actively involved in and around the Spratly Islands since 1983, when its government built an airstrip and a military base in the contested Swallow Reef, an oceanic atoll located 300 kilometers off the coast of Sabah, one of the two Malaysian states on the island of Borneo. In 1991, to further stake

its territorial claims, the Malaysian government built and developed a three-star diving resort to promote tourism to the region. This move provoked intense, heated reactions from other claimants and has been a key point of contention in continuing negotiations with both China and Vietnam today. Like the Natunas, the Spratlys offer a vital source of both energy and food security, and are vital to Malaysia's ongoing economic development. According to the U.S. Energy Information Administration, Malaysia has reserves of more than "5 billion barrels of crude oil and 80 trillion cubic feet of natural gas in sea" (Jennings 2016).

Malaysia and China have a long history of resilient economic ties. Today, China is Malaysia's top trading partner and leading source of foreign direct investment. Furthermore, according to China's Ministry of Commerce, Malaysia is one of only two ASEAN members that achieved a trade surplus—worth an estimated \$14 billion—with China in 2013 (Salidjanova and Koch-Weser 2015). Therefore, despite the ongoing territorial dispute with Beijing, Malaysian Prime Minister Najib Razak has taken a visibly conciliatory stance, encouraging direct, bilateral negotiations as a means to achieve successful resolution. Prime Minister Najib has received some criticism for this approach; however, most Malaysians recognize that continued, positive relations with China will serve primarily to sustain the flow of existing Chinese investment. Ultimately, Prime Minister Najib, among others in the Malaysian government, hopes that amity between the two nations will lead to increased economic cooperation in key sectors such as finance, infrastructure development, agriculture, and fishing.

In dealing with China, Malaysia often strikes the right chord. When the Malaysian government responds publicly to contested territorial and/or maritime claims, it often avoids rhetoric that either directly or indirectly labels China as a threat. In recognizing China as an able and equal partner in negotiations—rather than a dangerous, meddling goliath—Malaysia brings China to, and keeps China at, the negotiating table on a range of important bilateral issues. Historically, China has shown a willingness to engage nations that respect and recognize—rather than resist—its power on the world stage. "Opponents in territorial and maritime conflicts can assuage Chinese behavior by signaling recognition and respect of China's overall self-role and world-order conceptions. Conversely, if they challenge the overarching Chinese self-role and world-order conceptions,

China tends towards a coercive strategy” (Kreuzer 2016). Malaysia and China have long worked in partnership to advance common political and economic goals. This has, in turn, led to more fruitful discussions on contentious issues such as the South China Sea.

Additionally, when negotiations break down or fail to accomplish desired ends, Malaysia rarely—if ever—seeks explicit counter assistance or support from ASEAN, a move that China would deem both antagonistic and contrary to successful resolution. Dr. Wu Shicun, President and Senior Research Fellow at the National Institute for South China Sea Studies in Beijing, contends that ASEAN has no power to negotiate sovereignty issues on behalf of its member claimants. And, any attempt to mobilize ASEAN’s members in unison against China serves only to alienate parties and exacerbate the dispute. “ASEAN, as a regional organization, cannot make territorial and maritime jurisdictional claims or participate in negotiations as a party concerned,” Dr. Wu asserts. Thus, for ASEAN to negotiate with China on behalf of its individual members would be “incompatible with international common understanding and practices” (Wu 2015). This is a widely-shared view within the Chinese government. According to China’s Ministry of Foreign Affairs, nations that seek external assistance on bilateral issues, like territorial sovereignty disputes, “will not in any way facilitate a proper settlement,” but instead “undermine mutual trust and further complicate bilateral relations” (Ministry of Foreign Affairs of the People’s Republic of China 2014). In the end, as Malaysia has learned, bilateral negotiations are key to achieving concessions from China.

Malaysia’s ongoing charm offensive may be the principal reason why it rarely sees a flare-up of tensions with Beijing. In July 2016, the Permanent Arbitration Court in The Hague ruled in favor of the Philippines’ challenge to China’s Nine-Dash Line—a decision that the Chinese government explicitly rejects and to which it has refused to adhere. Immediately following the ruling, to signal its enduring commitment to dialogue, the Malaysian Foreign Ministry issued a statement affirming its belief that “all relevant parties can peacefully resolve disputes by full respect for diplomatic and legal processes” (Ministry of Foreign Affairs, Malaysia 2016). Furthermore, Malaysia has consistently called for the “full and effective implementation” of the Declaration on the Conduct of Parties (DOC), a 2002 agreement between China and ASEAN which calls on all



dispute parties, “to rein in actions that could escalate tensions” (Mokhtar 2016). So far, Prime Minister Najib has struck the right balance, keeping the Chinese at the negotiating table, without conceding his country’s own stake in the game.

### **Recommendations**

In recent years, as China has moved to both cultivate and capitalize on the contested resources that rest in and under the South China Sea, some regional heavyweights have grown more vociferous in defending their rights and interests, oftentimes confronting China with threats—and acts—of military, economic, and legal retaliation. In the end, where Indonesia stood up, Malaysia backed down; when Indonesia objected, Malaysia conceded. Each of these nations has had its share of successes and failures in dealing with China. And, while each has a lot to learn; each, in turn, has a lot to offer. The following recommendations highlight strategies aimed specifically at the governments of Indonesia, Malaysia, and China, and may be applicable more broadly among other more volatile relationships within the conflict zone.

#### For the Indonesian Government

- **The Indonesian government should recognize China’s claims and the existence of a maritime dispute—because denying even the existence of a dispute, as the Indonesian government continues to do, only serves to compound tension and prevent an eventual resolution.** If the ongoing dispute shall be resolved without economic stalemate—or worse, violent conflict—Indonesia must first recognize, and thereby validate, China’s claims, so that both parties can move forward in dialogue. Indonesia’s present stance on the issue serves only to encourage, more so than it constrains, China’s aggressive behavior.
- **The Indonesian government should end the seizure and destruction of foreign commercial vessels, as well as the detention of foreign crew members, caught operating within its EEZ.** If these actions continue, it will only enflame existing hostilities in a region of vital economic import and interactivity. Despite Indonesia’s insistence that diplomacy prevails, the presence of Indonesian navy warships on the perimeter of contested waters serves only to exacerbate tensions

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between the two nations. In the end, the continued seizure and destruction of Chinese fishing boats could eventually spark a more violent response from Beijing, and one with potentially dire consequences for future negotiations.

### For the Malaysian Government

- **The Malaysian government should encourage other ASEAN member claimants to recognize China's important regional status and refrain from characterizing China as a fundamental threat to regional security and/or economic stability.** Above all, China seeks legitimacy and acknowledgement on the world stage as well as validation of its self-role. Historically, if this condition is met, China has shown a willingness to negotiate and, at times, concede.
- **The Malaysian government should urge other ASEAN member claimants to engage China via bilateral—rather than multilateral—negotiations, especially on territorial sovereignty issues.** China denies that ASEAN, or any other uninvolved party, has a role in resolving territorial issues between two sovereign states. Several ASEAN member claimants believe that rallying support within a multilateral forum, such as ASEAN, is necessary to gain an upper hand against a formidable opponent like China. However, the Chinese government sees any interference from outside parties as a hindrance to a successful mediation.
- **The Malaysian government should continue to employ the DOC as the primary means for dialogue among claimants, and it should utilize its good standing within ASEAN and with the Chinese government to pursue compliance from all sides.**

### For the Chinese Government

- **The Chinese government should reassure its Southeast Asian neighbors that its intentions in the South China Sea are peaceful and that resolution to territorial and maritime disputes is ultimately possible through direct, bilateral negotiations.** The Chinese government should reassure fellow dispute claimants that bilateral

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negotiations are the only avenue that has the potential to produce substantive and desired results.



## **U.S., China and Vietnam: Challenges to and Opportunities for Negotiation**

Adrienne Brooks

China and Vietnam are both claimants to many features in the South China Sea, notably the Spratly Islands, which are also claimed by the Philippines, and the Paracel Islands. The two countries share a long history of contesting, as well as resolving disputes. However, the complexity and depth of the South China Sea conflict makes this particular dispute one of the most intractable conflicts these two countries face. This chapter will examine challenges to and opportunities for negotiation through an analysis of positions and interests of China and Vietnam, as well as the United States. It will review policy options and conclude with policy recommendations to move forward in negotiation and a peaceful resolution of the conflict.

Land reclamation and militarization have defined and escalated the tensions between China and Vietnam. In both the Spratlys and the Paracels, China has been building maritime bases and airstrips, developing its military capabilities in the region. According to one Chinese academic, Hainan Island in the north of the South China Sea has ports that are deep enough to host the development of nuclear capabilities (SAIS Interview, Nanjing, January 2017). Vietnam has also built a military base in the Paracels (Poling 2016) and deployed several rocket launchers to their claimed territory. (Torode 2016) This buildup of strategic assets has increased the concerns of a military clash in the region, especially because the two countries have clashed before. Beginning in 1974, China and Vietnam fought over the Paracels, and China seized the remaining half of the land features. In 1988, China sank three Vietnamese ships in Fiery Cross Reef as Beijing became more assertive in the region. In 2011, China cut the cables of Vietnamese oil and gas survey vessels inside Vietnam's exclusive economic zone, further escalating tensions (Xu and Albert 2015).

Shifting allegiances are also creating ambiguity in the region. Vietnam has turned to the United States for military-to-military exercises and partnerships in an effort to hedge against the rise of China. The increased presence of the United States in the region has further aggravated China. There is no consensus on a

desired outcome within ASEAN, though China and ASEAN will be attempting to negotiate a Code of Conduct in the South China Sea by the end of the summer of 2017 (SAIS Meeting at Ministry of Foreign Affairs, Beijing, January 2017). Because of the difficulty of multi-lateral negotiations and in an effort to maintain relations with China, Vietnam will also be bilaterally negotiating a Code of Conduct with China (Meeting with Vietnamese Embassy, Beijing, January 2017).

### **Contradicting Positions**

The conflict of the South China Sea has drawn so much international attention not because of physical confrontations, but rather because of the complexity of the issues. This complexity is caused by the conflation of historical claims and legal rights, furthered by land reclamation to develop strategic and economic strongholds.

#### The Chinese Position

Widespread belief that the country has been historically taken advantage of has helped to create a strong 21<sup>st</sup> century Chinese identity and a desire to defend territorial claims that were unfairly lost between the 1830s and 1940s (Meeting at Nanjing Center of South China Sea Studies, January 2017). China has not fully defined its claims besides the Nine-Dash Line map. The line encompasses overlapping claims and exclusive economic zones (EEZ) of other countries, and it is not clear what exactly China claims, be it the territory or all of the water within the line.

In addition to a strong national identity, China has also experienced rapid economic growth and development, giving it both increased capability to defend territory and status as a great power. It has also been open to bilateral negotiations with the various South China Sea claimants. (SAIS Interview, Nanjing, January 2017) However, despite bilateral negotiations with the Philippines, China has not given up any of its land claims. Beijing's immense economic and military strength give it a stronger position when it enters into any bilateral, and even multilateral, negotiations.

#### The Vietnamese Position

The Vietnamese are delicately balanced between the United States and China. The Vietnamese are hedging against the growth of China. While continuing to pursue bilateral relations with Beijing, Vietnam has also engaged with the United States for security partnerships (Meeting at U.S. Embassy Beijing 16 January 2017). Vietnam has not yet commented on the UNCLOS arbitration, perhaps for fear of damaging relations with China (Abuza and Ahn 2016).

On the other hand, Vietnam has suffered numerous Chinese maritime militia attacks on its fishermen (Johnson and De Luce 2016). During the HYSY 981 incident, China also deployed a deep-sea oilrig in Vietnam's EEZ which overlaps a maritime zone of a Chinese claim, raising tensions and physical clashes between China and Vietnam in May 2014 (Glaser 2015). Vietnam hopes to limit military clashes and maintain relations with China, but simultaneously seeks military support from the United States.

### The American Position

The position of the United States is to maintain Freedom of Navigation Operations (FONOPs). With President Obama's "Pivot to Asia," the South China Sea grew in importance, and frequent U.S. operations challenged China's increasingly assertive posture in the Sea. Through its FONOPs, the U.S. can also monitor the growing perceived security threat that China's military poses, in addition to upholding the idea of freedom of movement through international waters and territorial seas (Meeting with Fellow at CNA November 30, 2016).

The United States' position has become more uncertain since the November election. The major variables in U.S. action will be President Trump's policy on FONOPs and Chinese militarization of the South China Sea (Meeting at U.S. Embassy Beijing, January 2017). However, mixed messages from Washington have confused the situation. Secretary of Defense Mattis supports diplomacy in the region: "What we have to do is exhaust all efforts, diplomatic efforts, to try and resolve this properly. Our military stance should be one that reinforces our diplomats," he said, adding "at this time we do not see any need for dramatic military moves at all" (Reynolds 2017). However, Rex Tillerson, now Secretary of State, wrote after his confirmation hearing, "China cannot be allowed to use its artificial islands to coerce its neighbors or limit freedom of navigation or overflight in the South China Sea... If a contingency occurs, the United States

and its allies and partners must be capable of limiting China's access to and use of its artificial islands to pose a threat to the United States or its allies and partners" (Ku 2017). These contradicting positions have added to the complexity of the conflict.

### **Analysis of Interests**

#### Chinese Interests

##### *Security Interests*

With China's growing economic and military strength comes the desire to establish and test its territorial borders. China's rapid growth has led to increased maritime development and reinforces its regional power. Additionally, the growth of ASEAN and rising Southeast Asian powers, with the support of the U.S., further pushes China to solidify its military presence in the region by reclaiming land and developing military bases. By maintaining a military presence on the sea, it can protect its fishermen, oil infrastructure, and all other economic interests in the area.

China has been dredging reefs to expand land features into artificial islands, capable of sustaining naval and air facilities. (Searight and Hartman 2017) With a new airbase on Woody Island, and man-made deep-water harbors on several other Paracel features, China has new strongholds across the South China Sea. The deep port capability doesn't exist along the northern coasts of Mainland China, due to the relatively shallow waters of the continental shelf. The deep port in Hainan, however, allows for the development of nuclear submarine capabilities (SAIS Meeting, Nanjing, January 2017). This buildup is also intended for surveilling United States and other military activities in an attempt to balance U.S. naval power and partnerships with the Philippines and Vietnam (Searight and Hartman 2017). As the United States continues and expands FONOPs, China will continue to balance the U.S. presence (SAIS Meeting, Nanjing, January 2017). China views FONOPs as militarization that justifies their defensive systems on their land features.

Neither the Chinese nor the other claimants want to see a full-scale military clash in the South China Sea. While the Chinese have military superiority over the other claimants, it is likely that the international community, particularly the



U.S., would be involved if such a clash were to occur. This would be very costly, economically and politically, for the Chinese (Quang 2017).

### *Economic Interests*

China's economic interests lie in fishing, oil exploration and extraction, and commerce. China's depleting fish stocks push fishermen further and further away from the mainland. The government encourages the expansion of fishing fleets, supported by the Coast Guard. U.S. military officials maintain "China's commercial fishing fleet also often serves as a surrogate navy, bolstering Beijing's claims and acting as a vanguard in disputes with Vietnam and the Philippines" (Johnson and De Luce 2016). China states the fishermen are well within China's claimed territory in their expanded fishing regions, though they overlap with claims from every other claimant in the South China Sea. The presence of its fishermen helps to solidify China's presence in disputed areas.

In addition to fishing, the potential for oil production is also an incentive for China, whose massive industrial sector requires energy that can be extracted from the South China Sea. These economic interests often manifest in security situations, namely clashes over fish and oil rigs in claimed water. The production, as well as trade and shipping of oil, is a vital economic interest for China. Each year, \$5.3 trillion of the world's trade moves through the South China Sea (Glaser 2012). China would be in a strong position to manage such a critical route if it retained all of its claims of territorial seas and EEZs.

### *Defining an Identity*

After the Century of Humiliation, China is set on solidifying a stronger identity. China's Nine-Dash Line has been contested at every turn, most recently in the arbitration case brought by the Philippines. China did not acknowledge the legitimacy of the arbitration, and thus does not want to acknowledge the international ruling that the arbitration found the Nine-Dash Line to be noncompliant with UNCLOS (Poling 2016).

China wants to retain power in the region by asserting control over critical seaways that it considers its own. The U.S. is constantly challenging Chinese claims in the region, from sending naval vessels along the Nine-Dash Line, to increasing military exercises with Vietnam. According to an expert at CIIS,

FONOPs are seen as competition with China, rather than security issues (Meeting at CIIS 18 January 2017). One researcher from CASS even stated that FONOPs cause trouble and humiliate China (Meeting at CASS January 12, 2017). Chinese rapid economic and military growth was met with concern from the international community, prompting the United States' Pivot to Asia. The U.S. Navy has also been visiting Vietnamese ports, and has a long-standing defense partnership with the Philippines, as well as continued FONOPs in the South China Sea (Nguyen 2016). Because of these developments, China has built up its defense capabilities in order to assert control over its historical claims.

China strives for a status of strength over regional countries. Recently, the Philippines acknowledged China's role in the world order and despite the arbitration win, Manila approached China in bilateral negotiations (Glaser 2012). Malaysia also improved its position in bilateral talks by respecting China's superiority (Kreuzer 2016). China is trying to solidify its identity as a world power. The challenge remains to not only solve the territorial disputes in the Paracels and the Spratlys, but also to maintain stability in the region.

### Vietnamese Interests

#### *Security Interests*

Vietnam's interest in the South China Sea is to maintain its own historical claims, and limit Chinese presence. Some of the Paracel island features lie within the 200 nautical mile EEZ of Vietnam's coast, and they are still claimed by China within its Nine-Dash Line. Vietnam views Chinese buildup of its military capabilities as a significant threat. While there has been no military clash recently, the posture and proximity of superior military force is clear to Vietnam.

If the features under Chinese control are entitled to territorial waters or an EEZ, the Chinese could seek to limit movement within the region. They could also control who else has access to the sea lanes, effectively blocking Vietnamese military operations, as well as potential naval friends of Vietnam, such as the U.S. (Quang 2017). According to U.S. officials, more regional countries are coming to the U.S. with cooperation ideas. Chinese ambiguity about the Nine-Dash Line and continual military buildup has other countries concerned and seeking partnerships with the United States to balance Chinese power. (SAIS Meeting at U.S. Embassy, Beijing, January 2017). One

Vietnamese official argues that the United States is important to balance power in the region, even if it cannot be a dominant actor (SAIS Meeting at Vietnamese Embassy, Beijing, January 2017).

### *Economic Interests*

Vietnam's oil industry is crucial to its exports and GDP (International Crisis Group 2016). This industry is dependent on shoals within the 200-nautical mile EEZ of Vietnam. It is crucial for Vietnam to retain control over this economic resource, estimated to amount to 7 billion barrels of crude oil (Kaplan 2016). Vietnam exports approximately 312,000 barrels per month and comprises almost 5% of the GDP, so this potential for oil in the seabed is not insignificant (Trading Economics). Vietnam is also interested in maintaining reliable and consistent access to fishing zones. Fish and seafood make up a significant portion of local cuisine. Fish stocks have been depleting due to overfishing in the region and competition between Vietnamese and Chinese fishermen (Poling 2016). Economic tensions parallel the security concerns, as each claimant asserts its presence through their fishermen or oil companies.

### *Political Interests*

These economic concerns translate to a political interest as well. On a domestic level, many Vietnamese fishermen are losing opportunities for financial gain because of the increased number of Chinese fishermen in the region. Chinese fishermen and militia have also attacked Vietnamese fishermen (Sands 2016). This has led to significant political unrest, so the Vietnamese government is aware of domestic concerns and concerned with being perceived as weak (ABC News 2016). One diplomat at the Vietnamese embassy acknowledged that anti-Chinese sentiment is strong in Vietnam, but said that the government could not let sentiment dictate policy (Meeting with Vietnamese Embassy, January 2017). On the international level, Vietnam is also interested in maintaining an image of political power in Asia, particularly as a large actor in ASEAN.

### United States Interests

The key United States interests are stability, freedom of navigation, and encouraging a peaceful resolution to the South China Sea disputes, according to

government officials (Meeting with U.S. Embassy Beijing, January 2016). With the Pivot to Asia, the United States presence better balances Chinese power in the region and strengthens its ASEAN allies. FONOPs are an integral part of U.S. policy in the South China Sea. The U.S. is also concerned with economic interests in the region. It wants to protect U.S. trade interests given that \$1.2 trillion of the \$5.3 trillion of trade passing through the South China is with the U.S. (Glaser 2012)

### Options

These divergent interests among the U.S., China and Vietnam have complicated the already overlapping Chinese and Vietnamese claims. The conflict has transitioned from a stage of stating positions, to one of testing boundaries and negotiation. A major challenge to negotiation is the question of sovereignty. The Chinese prefer bilateral negotiations on sovereignty issues, which they have pursued in the Spratlys with the Philippines (Zartman and Faure). China is in a strong bargaining position in bilateral negotiations because of their growing military and economic strength. This section will explore the many possible options to resolve these disputes.

One option would be for China to withdraw all military forces from the disputed features. This is infeasible because China is unlikely to simply remove its forces unless forced to, which would likely start a military confrontation. This is an unlikely solution because of the danger of escalating the conflict. Another proposition would be to split the South China Sea into pieces. This is perhaps more feasible in the Paracels than the Spratlys, as the two countries could just draw a line down the middle dividing the features between themselves (Meeting with I. William Zartman, February 2017). The trouble with this is that there would not be legal precedent, and China would be unwilling to just turn over features to the Vietnamese.

Another option, also difficult to implement, would be a user and ownership scenario over the disputed territory in the South China Sea. China would be the owner of the features, but under relaxed sovereignty conditions that would allow other claimants to use the land and water. The difficulty with this type of agreement is that there is implicit recognition of China's sovereignty over the land features (Meeting with U.S. Embassy Beijing 16 January 2017). This is

something other countries may not be willing to give. In addition to that, China's interests in the features are economic interests in the EEZ and the ability to limit international movement, so China may not be willing to relax its control, even if it had sovereignty over them. An added difficulty is the 2016 Arbitration ruling that decided none of the features in the Spratlys were entitled to an EEZ, further diminishing China's claims (Arbitration July 12, 2016). However, neither China nor Vietnam has accepted the UNCLOS ruling because they both stand to lose valuable territory.

In the past, the claimant countries have engaged in joint scientific activity, as well as joint resource exploration (Meeting with Nanjing Center of South China Sea Studies 9 January 2017). Given the economic interests of Vietnam and China, this could be a meaningful step forward. If the two countries cooperated in economic development practices such as joint oil exploration, a confrontation between the two would hurt both. This would provide mutual assurance of stability through economic development, according to one researcher at CICIR (Beijing, January 2017). Another researcher points out, however, a challenge to joint development, which is the ambiguity of the Nine-Dash Line. China and Brunei have started joint development bilaterally, but there won't be an ASEAN solution until either China defines the Nine-Dash Line or ASEAN no longer demands a clear definition (SAIS Meeting with CICIR, Beijing, January 2017).

China has made it clear that it does not want to engage in multilateral negotiations to settle territorial disputes, so it will be far more feasible for Vietnam to engage in bilateral agreements. The United States is interested in a multilateral approach that would satisfy more interests, but in this case, the U.S. should respect the desires of both Vietnam and China to engage in bilateral talks (Quang 2017). An opportunity then exists for other countries to sign on to negotiated outcomes. For example, China and Vietnam will be meeting to negotiate a Code of Conduct for the South China Sea. ASEAN and China will also meet by the end of the summer of 2017 to negotiate a multilateral Code of Conduct for the entire South China Sea (SAIS Meeting at Vietnamese Embassy, Beijing, January 2017). Pending the outcome, the United States could multilateralize this bilateral agreement by also agreeing to abide by the code (Meeting with I. William Zartman, January 2017). Vietnam is trying to hedge

against China, while also engaging with China, and therefore would have a vested interest in supporting an agreement that the U.S. may be more likely to support. The difficulty remains the issue of sovereignty, as China is unwilling to negotiate territorial issues before other countries acknowledge their claims.

### Conclusion

Many of these options are infeasible based on irreconcilable interests, namely sovereignty and issues of identity. Militarization in the region has increased insecurity, so Vietnam has positioned itself between China and the United States and has begun to engage in bilateral talks with China. Vietnam will continue to keep the U.S. involved to balance power in the region. Therefore, several recommendations will move the two claimants toward a peaceful solution, while keeping the United States involved in the process.

### Recommendations

#### To China

- **Agree to a code of conduct that does not deal with sovereignty, but rather resource and crisis management in the region.** To prove itself a legitimate power, China should be willing not only to negotiate, but also uphold an agreement between itself and Vietnam, as well as ASEAN. This will help build trust, not just the legitimacy of a regional power (Poling 2016). Pursuing bilateral agreements that increase trust between China and ASEAN helps to enforce China's status. China should also provide clarity by defining the Nine-Dash Line.
- **Continue military-to-military partnership exercises with the United States** and participate with the U.S. in FONOPs. Building trust with the United States is also important to stability in the region. The U.S. and China already have relatively stable joint military exercises such as RIMPAC and military-to-military communication processes, but this could be increased and rehearsed more often in coordination with other claimant countries, strengthening communication and stability in the region.

#### To Vietnam

- **Acknowledge the strong military and economic status of China, and pursue joint resource development.** Like the Philippines and Malaysia, Vietnam could lower tensions with China through acknowledging its status in the region. Simultaneously, Vietnam should pursue joint resource development to strengthen economic ties between the two countries, as well as protect its own economic interests that often come under attack by the Chinese.
- **Agree to a planned Code of Conduct that does not deal with sovereignty issues.** If China is willing to engage bilaterally with Vietnam and create a framework for a Code of Conduct that is not based on sovereignty, this should be agreed upon to work towards stability in the region. Sovereignty issues can be negotiated at a later time, but the prevention of military clashes or future incidents is critical now.

To the United States

- **Encourage China and Vietnam to independently agree on a Code of Conduct.** Perceived American involvement in the negotiation would inhibit the abilities of the two parties to work together. A Chinese government official lamented, “the challenge to negotiation is disturbing outside powers,” insinuating the United States (Meeting with Ministry of Foreign Affairs, Beijing, January 2017). Because of this perspective, it is very important that the United States diplomatically support the process as well as Vietnam’s interests. Washington should also encourage Vietnam to resolve overlapping disputes with other ASEAN countries to improve their position vis-à-vis China (SAIS Meeting with Rear Admiral McDevitt, 30 November 2016)
- **Do not increase unilateral military operations.** The key U.S. interest is to maintain FONOPs. China has continued militarization in a response to the FONOPs, so the U.S. should not increase military action in the region, but rather maintain the current naval presence so as not to further antagonize China. Additionally, the United States should avoid a more aggressive approach, as suggested in Tillerson’s comments, as well as direct confrontation with China.

## Taiwan's Role in the South China Sea Disputes

Sandy Lu

Taiwan, although acting as one of the claimants in the South China Sea, is prevented from proactively advocating its claims in the South China Sea and joining the multilateral regional dialogues that are conducted to promote peaceful cooperation due to the ambiguity of its sovereignty status and the sensitivity of its relations with mainland China. However, considering the strategic importance of Taiwan's location and the two features that it controls in the South China Sea, Taiwan should be included in the dialogues to contribute to promoting peace in the region. Therefore, this chapter will focus on Taiwan's role in the South China Sea. The author will first look at the shifts in Taiwan's claims in the South China Sea, and then try to understand the constraints that the Taiwanese government encounters when forming its policies toward the South China Sea by looking at its domestic political changes. Finally, with the goal of searching for the positive role that Taiwan can play in the disputes, the author will consider the challenges that Taipei, Washington, and Beijing are facing and provide policy recommendations.

### Shifts in Taiwan's Claims in the South China Sea

Currently, Taiwan only has actual control over the Pratas Islands and Itu Aba Island (*Tai ping Island*)<sup>11</sup> in the South China Sea. However, Taiwan's official claim in the South China Sea derives from the "Eleven-Dash Line" that was drawn by the Republic of China (R.O.C.) in 1947. The U-shaped line encircles the majority of the South China Sea, and with several modifications, it has now become the "Nine-Dash Line" that the People's Republic of China (PRC) sometimes uses to justify its rights in the region. The meaning of the line was never clearly defined by either government. However, from the statements that Taiwanese officials have made, we can sense the delicate differences in interpretations among different Taiwanese administrations.

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<sup>11</sup> The term "island" here is used as part of the names of the features that the author refers to. It is not used to assert a perspective on the legal status of the features.



Taiwan's domestic politics feature two political parties that have fundamental differences in their cross-strait policies. The current Democratic Progressive Party (DPP) administration has historically advocated for a separate Taiwanese identity from the Chinese one and supported efforts to achieve Taiwanese independence. The Kuomintang (KMT) is against that idea, promoting a cross-strait relationship conducted based on the idea of the "One China Principle." Therefore, by comparing Taiwan's claims in the South China Sea under different administrations, we see the shifting position by successive administrations in Taipei has been away from asserting the Eleven-Dash Line and toward reinforcing claims to features already under Taipei's control. Nevertheless, the part of the South China Sea policy that has remained consistent throughout the different administrations in Taiwan is the effort to promote peaceful uses of the features in the region.

### Chen Shui-bian Administration

During his administration, Chen Shui-bian traveled multiple times to the Pratas Islands and Itu Aba Island. His main policy was to promote the idea of developing Taiwan into a maritime power. He brought up the idea of "Building the Country on the Ocean and Setting Maritime Strategy (海洋立國 海權戰略)" to promote using Pratas Islands as a base to develop maritime industries and resources as well as protect the environment and the security. What is interesting is that his administration's South China Sea policy mainly focused on the islands that Taiwan has administrative control over. For instance, when one of the Taiwanese leaders Lu Hsiu-lien visited Pratas Islands, she mentioned that "besides the island of Taiwan, the territory of our country includes Kinmen, Matsu, Pratas Islands, Spratly Islands, and the territorial sea and exclusive economic zone (EEZ) (Office of the President, Republic of Taiwan 2003)." The terms "Eleven-Dash Line" and "Republic of China" that may have implied broader Taiwanese claims in the region had all been excluded. Another example can be found in Chen's statement when he visited Itu Aba in 2008. When he mentioned the claimants in the South China Sea, he said there were currently six countries claiming to have sovereignty in the region: Taiwan, China, Vietnam, the Philippines, Malaysia, and Brunei (Office of the President, Republic of

Taiwan 2008).” He clearly referred to Taiwan as a country distinct from mainland China.

Chen proposed the “Spratly Initiative,” saying that Taiwan will: 1) Accept the spirit and principles of the Declaration on the Conduct of Parties in the South China Sea (DOC); 2) Emphasize the protection of the eco-environment in the region in the face of global warming; 3) Invite environmental scholars to the features to conduct research; and 4) Promote track III diplomacy by holding international seminars on South China Sea issues. In addition, he asked neighboring countries to act according to the United Nations Charter and the United Nations Convention on the Law of the Sea (UNCLOS) and hoped that Taiwan would be able to join the drafting of the Code of Conduct on the South China Sea (COC) (Office of the President, Republic of Taiwan 2008).

### Ma Ying-jeou Administration

In contrast to Chen, Ma Ying-jeou focused on tightening the cross-Strait relationship by constructing dialogues with mainland China based on a set of principles known as the “1992 consensus.” The “1992 consensus” was reached in 1992 by the governments of both sides of the Taiwan Strait. The idea is that both sides of the Taiwan Strait would agree on there is only one China, but hold different interpretations on the definition of China. For mainland China, the government of the People’s Republic of China represents the “One China,” and geographically both Taiwan and mainland China belong to China. However, for the government of the Republic of China in Taiwan, the Republic of China represents the China, and also that both Taiwan and mainland China belong to that China (Mainland Affairs Council, Republic of China (Taiwan) 2015).

By following the principle of this consensus, the government in Taiwan ensures mainland China that it would not attempt to promote Taiwan to be an independent state that is separated from the concept of China and that Taiwan would be part of China even with different interpretations of who represents that China. Ma was able to develop practical cooperative relations with mainland China without involving sovereignty issues based on this consensus. Accordingly, Ma repeatedly emphasized that the “Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha (Macclesfield Bank) Islands, and Tungsha (Pratas) Islands were first discovered, named, and used by *the ancient Chinese*,

and incorporated into national territory and administered by *imperial Chinese governments*. Whether from the perspective of history, geography, or international law, the South China Sea Islands and their surrounding waters are an inherent part of *Republic of China* territory and waters. *The Republic of China* enjoys all rights over them in accordance with international law. This is indisputable” (Ministry of Foreign Affairs, Republic of China (Taiwan) 2016) [emphasis added].

The Republic of China’s stance on the South China Sea issues has not changed from the Eleven-Dash Line that the Republic of China published in 1947 (Ministry of Foreign Affairs, Republic of China (Taiwan) 2016). With the improvements made in the cross-Strait relationship during his terms, Ma conducted two maritime rescue mission joint exercises and allowed the CPC Corporation in Taiwan to work with the Mainland’s China National Offshore Oil Corporation (CNOOC) to conduct oil exploration activities in the southern part of the Taiwan Strait (Office of the President 2014).

In 2015, Ma also proposed the “the South China Sea Peace Initiative” and urged all actors to shelve disputes and conduct joint development (Office of the President 2016). He suggested that all actors be included in the negotiation mechanism and cooperate to develop a plan for the South China Sea. He also emphasized the peaceful use of the Itu Aba Island and his determination to develop it into “peaceful rescue island,” “ecological island,” and “low carbon island” (Office of the President 2016).

### Tsai Ing-wen Administration

The Philippine arbitration<sup>12</sup> and Ma’s visit to Itu Aba raised awareness of South China Sea issues in Taiwan. Consequently, the general public pressured the Tsai Ing-wen administration that took office in 2016 to formulate a policy that protects Taiwan’s sovereignty in the South China Sea. Elected as a Democratic Progressive Party (DPP) candidate, Tsai also fell into a dilemma of how to ensure Taiwan’s interests and maintain its good relations with mainland China. Facing

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<sup>12</sup> The Republic of the Philippines filed an arbitration against the People’s Republic of China under Annex VII to the 1982 United Nations Convention on Law of the Sea in 2015 to challenge its claims in the South China Sea. The results of the arbitration came out in July 2016 ruling Itu Aba as a rock instead of island.

all these concerns, before the arbitration ruling came out in July 2016, Tsai reiterated that her administration would follow UNCLOS (Rickards 2016). However, with the arbitration ruling that Itu Aba is a rock, rather than an island, the outcome became unacceptable to the Tsai administration, which released statements to reject the ruling. According to the Tsai administration, the ruling first refers to the Republic of China as the “Taiwan Authority of China” and therefore is “demeaning the status of the Republic of China as a sovereign state.” Second, it argues that Itu Aba Island was not “included in the Philippines’ submissions for arbitration.” Third, it notes that the ROC was not able to participate in the process, and therefore that Taiwan is not legally bound to the ruling (Ministry of Foreign Affairs, Republic of China (Taiwan) 2016).

Despite the refusal to accept the ruling, the Tsai government has reemphasized its intention to engage peacefully in the South China Sea disputes and to promote multilateral cooperation and negotiation in the region (Ministry of Foreign Affairs, Republic of China (Taiwan) 2016). Tsai proposed that the government of Taiwan should pursue five actions based on four principles (Lu 2016).

The four principles include the following:

- 1) The South China Sea disputes should be solved peacefully according to international law, including UNCLOS;
- 2) Taiwan should be included in the multilateral conflict resolution mechanism for the South China Sea disputes;
- 3) Relevant countries should all have the obligations to protect freedom of navigation in the South China Sea;
- 4) All actors should shelve their disputes with each other to protect and develop the resources in the South China Sea jointly based on equal negotiation (Lu 2016).

And the five actions she proposed include the following:

- 1) Protecting Taiwanese fishermen’s safety in the region;
- 2) Developing dialogue with relevant countries in search of consensus;
- 3) Promoting scientific cooperation on Itu Aba Island;
- 4) Developing Itu Aba Island to become a humanitarian relief and supply center in the region;

- 5) Encouraging studies of maritime law within Taiwan (Taiwan Today 2016).

So far, the Tsai administration has proactively implemented the five actions by increasing the frequency of patrols around Itu Aba to guard against foreign fishing boats illegally fishing in the area and promoting scientific cooperation with other countries in the region on fields such as monitoring earthquakes, tsunamis, and climate change (Office of the President 2016). In November 2016, the Tsai administration also conducted a drill on humanitarian assistance and disaster relief operations around Itu Aba called “Nanyuan No.1 (南援一號)” to further promote Itu Aba Island as the humanitarian assistance and disaster relief center in the South China Sea (TECRO 2016).<sup>13</sup>

### **Taiwan’s Current Dilemma**

Even with the efforts to promote its active and positive role in the region, Taiwan faces difficulty in resolving the dilemma of not recognizing the arbitration ruling. Not only is it facing political pressure on the domestic front, it also faces pressure from the international community, including the United States, mainland China, and other claimants in the South China Sea. Since the arbitration ruling rejected mostly mainland China’s claims and activities in the South China Sea, standing against the arbitration rule, Taiwan indirectly stands against other claimants’ stances in opposing China’s claims and the United States’ advocacy in following international laws.

### External Factors

Rejecting the arbitration harms Taiwan’s image of acting as a responsible participant in international society. Taiwan has voluntarily followed international rules and norms in various aspects, even when it is not one of the signatories. Unofficially following the international rules has long been a core

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<sup>13</sup> The operation is conducted by the Coast Guard of the Republic of China. It mimics a situation of a foreign vessel catching on fire in the area near Itu Aba. The Coast Guard of the Republic of China is trained in the drill to react and operate rescue operations. The goal of the drill is to show Taiwan’s humanitarian assistance and disaster relief ability in the region, according to the government in Taiwan (TECRO, 2016).

value that Taiwan holds and prides itself on. This is a way for it to participate in the global governance arena. For instance, even though Taiwan was not included in the Declaration on the Code of Conduct, it has been voluntarily following the rules (Office of the President 2008). The refusal to recognize the arbitration ruling will damage Taiwan's image.

Even though compared to mainland China's activities in the South China Sea, Taiwan's are much more limited (Kao 2014), by using similar historical facts to support its claims without providing a clear definition of the Eleven-Dash Line, Taiwan implicitly recognizes mainland China's stand on South China Sea issues. Some voices in the United States such as Jeffrey Bader have been hoping Taiwan could put pressure on Beijing to clarify its claims in the South China Sea by defining the Nine-Dash Line (Bader 2014). However, Beijing could consider this as Taipei trying to take the U.S. side and further using the opportunity to assert its independence from China (Kao 2014).

### Cross-Strait Relations

Taiwan still officially declares that "the South China Sea Islands are the R.O.C's sovereign territory, and that the R.O.C enjoys all rights over the South China Sea Islands and their relevant waters in accordance with international law and UNCLOS" (Panda 2016; Executive Yuan 2016). Taiwan's actual claims in the South China Sea have however been moving away from claims described by the Eleven-Dash Line to focusing more on the few features that it has substantial control over and the maritime rights that those islands are entitled to according to international law.

As Wang Ying-jin (王英津), Director of the cross-Strait Relations Research Center at Renmin University of China observed, the Tsai administration only opposed the part of the arbitration ruling that defines Itu Aba as a rock and did not mention anything about the Nine-Dash Line. The Ma administration often brought up historical facts to support the Republic of China's claim in the region and used the term "inherent" to indicate that the claims are derived from history. However, Tsai does not make such claims. These differences are viewed as reflecting Tsai's efforts to sever Taiwan's ties with the Chinese history that Beijing considers Taiwan and the Mainland both share (Wang 2016). This would

go against the essence of the “1992 Consensus” that was the foundation of cross-strait relations throughout the previous Ma administration because it would no longer argue that Taiwan is part of China (regardless of the definition of China) and create a separate political entity that is no longer associated with the Republic of China. Combined with the Tsai administration officially not acknowledging the “1992 consensus,” relations between Taipei and Beijing can be expected to worsen further. Beijing is now not looking to develop a good relationship with the Tsai administration but instead looking to reinforce its ties with the Kuomintang (KMT) (personal communication, January 2017), dividing Taiwanese society based on political parties.

The pressures coming from Beijing and the limited diplomatic recognition of the government in Taiwan from the international community contribute to Taipei’s lack of access to multilateral platforms that require members to be sovereign states, such as ASEAN+3 and ASEAN Regional Forum. Taiwan was neither included in the negotiations of the Declaration on the Code of Conduct of Parties in the South China Sea (DOC) nor the ongoing discussions on the Code of Conduct of Parties in the South China Sea (COC). It is also not allowed to fully participate in multiple dialogue platforms that currently exist in the region, including the Council for Security Cooperation in the Asia-Pacific (CSCAP), to raise awareness of its claims (Kao 2014).

### Domestic Factors

Domestic political divisions are another factor that restrict the Taiwanese government from taking a strong and clear stand on the South China Sea issues. The island’s history divides its society into different demographic groups with different national identities. For instance, the Democratic Progressive Party (DPP)’s supporters belong to younger generations who identify themselves as Taiwanese instead of Chinese, but there are also groups of people who believe that Taiwan should work with mainland China to protect their common property in the South China Sea as one China.<sup>14</sup> Coming from a more pro-Taiwan independence party, Tsai’s constituents include many who voted against closer ties with Beijing. Hence, working with Beijing on this issue would not only be

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<sup>14</sup> According to a survey done by the Taiwan Thinktank (2016), 28% of the people in Taiwan support standing with mainland China to reject the ruling of the arbitration.

considered as a degradation of Taiwan's status (Kao 2014) but would also jeopardize Tsai's political support.

For people of Taiwan who feel less connected to the Chinese identity and support the Taiwanese identity, the Eleven-Dash Line that the Republic of China drew in 1947 does not resonate historical meaning nor elicit emotional connections. They might argue that the Taiwanese government should claim only the features that it has control over. This could again be viewed as a provocative move by Beijing presaging Taiwan's attempt to head toward independence. Such a position would suggest that Taiwan is denying the historical ties that it has with China. This division in its domestic politics prevents the Tsai administration from taking a stand in this matter.

Despite existing identity differences, the people of Taiwan have overall considered that ruling Itu Aba a rock is unfair and harmful to Taiwan's rights in the South China Sea.<sup>15</sup> This growing support for protecting Taiwan's territory in the South China Sea has cornered Tsai. She cannot acknowledge the arbitration ruling without losing substantial support from the people of Taiwan. At the end of his term, Ma Ying-jeou raised the issue to the public's attention by visiting Itu Aba Island. Public attention now leaves Taipei little room if wants to compromise on the South China Sea issues (Rickards 2016). According to a survey conducted by the Taiwan Thinktank (2016), 56% of the people interviewed said Taiwan should work with other affected countries in the region to file another arbitration case.

The Taiwanese government has limited options in the South China Sea disputes. As a consequence, even though the Tsai administration repeatedly reiterates the R.O.C's entitlement to "the South China Sea Islands" (MOFA, 2016), its actions are necessarily restrained (Pan 2014).

### **Beijing's Concerns in the South China Sea Disputes and the Taiwan Problem**

For Taiwan, cross-Strait relations are deeply interconnected with its policy in the South China Sea. Cross-Strait relations affect how Taiwan interprets its claims

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<sup>15</sup> According to a survey done by the National Policy Foundation in Taiwan (2016), the supporters of both political parties in Taiwan value the integrity of Taiwan's sovereignty highly. 54.4% of people in Taiwan is unsatisfied with Tsai Administration passively rejected the results of the ruling and did not take other proactive actions.



in the region and serve as one of the determining factors for how Taiwan should utilize those features, whether mere non-military use or advancing its defensive military capability. Therefore, understanding mainland China's flexibility in negotiation is decisive for other actors to form their South China Sea policies. There are similarities in the U.S. and mainland China's interactions on the South China Sea issues and the Taiwan problem; a comparison between these two issues could serve as a way to predict mainland China's behaviors. The similarities between the two issues are as follows:

1. The South China Sea issues and the Taiwan issue are both viewed by Beijing as issues that are used by the United States as bargaining chips to contain and challenge Beijing.
2. In both cases, Beijing has attempted to address the immediate tensions between disputants by advocating shelving the sovereignty issues to achieve cooperative frameworks in other areas. The usage of the "1992 consensus" in the Taiwan problem is an iconic demonstration of this method. Because of this consensus, both sides of the Taiwan Strait were willing to conduct dialogues and were able to reach various cooperative agreements in fields such as economics, judicial system, and transportation (Mainland Affairs Council, Republic of China (Taiwan) 2015). This concept might also be seen often in Beijing's bilateral agreements with other claimants in the area.
3. To maintain the legitimacy of the Chinese Communist Party (CCP)'s governance, it is often said that CCP has to demonstrate its ability to protect Chinese territory and ensure the sustained growth of the Chinese economy. The CCP also has to take the growing nationalist sentiment within the country into account (Glaser 2012). For the Taiwan issue, because of the mainland's public's strong preference for reunification,<sup>16</sup> it is usually considered that the CCP's legitimacy is directly based on "achieving reunification of Taiwan with the motherland" (Glaser and Green 2017). Nationalist claims on the islands in the South China Sea can still be seen in the textbooks in mainland China. In addition, youthful nationalism in mainland China is also pushing its government through

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<sup>16</sup> According to a survey conducted by Shanghai Academy of Social Sciences in 2016, 97% of the Chinese people asked think Taiwan is unseparated part of China.

social media such as Weibo to forcefully protect its claims in the South China Sea (personal communication, January 2017). According to Xie Tao, a professor at Beijing Foreign Studies University, no leader can give sovereignty away (USC US-China Institute 2010). Even though Chinese scholars have assured that there is room for negotiation and peaceful resolution (personal communication, January 2017), domestic pressure might restrain that flexibility. Giving up any islands in the South China Sea might still create social unrest directed at the CCP's hold on power.

To date, the Taiwan problem remains unresolved and creates numerous diplomatic and political obstacles for other actors when trying to conduct relations with Taipei. From the few similarities mentioned above, we see that, when dealing with the South China Sea issues, Beijing faces a similar dilemma as on the Taiwan issue. Consequently, the road toward the resolution of the South China Sea disputes will also be time-consuming and difficult.

### Recommendations

#### To Taipei

- Considering all the interests at stake, any change in Taiwanese claims on the South China Sea could easily bring instability to the South China Sea and the U.S.-China relations. **Taiwan should consistently and gradually promote the five actions Tsai proposed and encourage the interactions between Taiwan and other actors in the region at a civil society level** to avoid the controversial sovereignty issue.
- **Taiwan could continue maintaining the existing facilities on the land features it controls in the South China Sea**, including those that would reinforce Taiwan's defensive military capability using surveillance systems. However, the military uses of these facilities should only be defensive and non-aggressive. The information gathered should be shared with active actors in the region, including both the United States and mainland China, when the data is needed for humanitarian, emergent, or scientific purposes. **A cooperative information system should be created with Taiwan reserving the right to disclose.**

However, Taiwanese government should hold the responsibilities to actively assist in promoting regional cooperation by sharing relevant information that would support the processes.

- **The land features in the South China Sea should be actively promoted for non-military uses or of non-aggressive military uses.** Non-military uses could include establishing a research center operated jointly by Taiwan and other South China Sea states. The personnel hired at the nature science research center should include nationals not only from states in the South China Sea but also from the United States and Japan. The research results should be shared with all participants, and an annual conference could be conducted on Itu Aba to promote regional cooperation and to press Taiwan's claim on Itu Aba being a legally-defined island.
- **The Taiwanese government should focus on reaching bilateral agreements with relevant actors in the region and creating constructive, cooperative relations with them on less sensitive issues,** such as protecting the safety of fishermen and promoting scientific research on the natural environment in the region. The Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters between Taiwan and the Philippines is a great example (Ministry of Foreign Affairs, Republic of China (Taiwan) 2016).
- **Taiwan should also continue promoting Itu Aba for its use as a humanitarian rescue center,** which would provide the fishermen in the region with the assistance they need. Taiwan can serve as the communication center as well to promote better communication among the disputants.
- When holding multinational dialogues, **Taiwan should extend its invitations to other countries in the region such as Japan, South Korea, Australia, and ASEAN countries.** However, for Taiwan to successfully initiate this, Taipei needs to improve its relations with Beijing to allow other actors to attend without mainland China's opposition. Alternatively, Taiwan could initiate these events through nongovernmental channels. For instance, by promoting the cooperation between non-governmental organizations (NGOs) such as think tanks,

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Taiwanese NGOs could invite civilian scholars from different actors in the region to participate while maintaining the events unofficial.

### To Washington

- The southern part of Taiwan and the features it controls in the South China Sea could facilitate U.S. activities in the region (Easton 2016). **Washington should work with Taiwan in promoting regional cooperation and participate in the events that Taipei initiates unofficially.** However, the cooperation should remain unofficial, and the purposes should be non-military.
- **The United States should promote track II dialogue and discussion among scholars and civil society organizations with both mainland China and Taiwan** to enhance its understanding of their stances on the South China Sea issues and their concerns about it.

### To Beijing

- As a growing power, **Beijing should choose to moderate its actions in the region to reassure neighboring countries it intends to remain peaceful.** Even though Beijing has repeatedly asserted that it has shown self-restraint in the region, its island reclamation and building of military facilities only increase other states' sense of insecurity. To fundamentally reduce the distrust that neighboring countries have toward it, **Beijing should abort its reclamation projects in the region, disclose the detailed information of its existing projects to verify the peaceful purpose it claims, and refrain from using the term “self-restraint”** since it indicates that the country is capable of a more assertive action but chooses not to exercise its capabilities—it is in effect a threat.
- **Beijing should improve its governmental communication channels with Taiwan and other claimants.** The setup of hotlines or other more efficient channels should be initiated to ensure that crises are properly addressed promptly, and minor misunderstandings at the bottom level should not be escalated into a violent conflict.

## **Part III: Security**



## **National Defense Strategies in the South China Sea**

Nathan M. Kohlenberg

The South China Sea disputes cannot be fully understood without appreciating the sea's relevance to the national security strategies of the claimant states. While issues of national prestige can make any dispute over sovereignty challenging to resolve, three factors will reliably force all claimants into hardline positions: the presence of human inhabitants within the disputed territory, the presence of natural resources, and any significant military advantage conferred by control of the territory. Thankfully, the land features of the South China Sea have no native population. The value or perceived value of the mineral, hydrocarbon, and fishing resources is potentially considerable, hotly debated, and covered elsewhere in this book. The focus of this chapter will be the strategic value of the South China Sea, and how the national defense strategies of the People's Republic of China, Vietnam, and the Philippines affect these states' perspectives on the dispute.

The size of the South China Sea and its proximity to the landmasses of so many states make the waterway dangerously well-suited to a classic security dilemma. Steps taken to enhance the security of any one state are likely to erode the security of neighboring states, and thus may provoke a response, potentially leading to a cycle of escalation. The importance of the waterway to states both in its immediate vicinity and in the region as a whole creates a multiplier effect: relatively minor escalations and incidents can appear menacing to an unusually large and diverse set of states. Any effort to resolve the territorial dispute without mitigating the underlying security dilemma will be unlikely to succeed.

### **A Vital Waterway**

Passage through the South China Sea is required to access the major ports of Thailand, Cambodia, Vietnam, and Brunei. Two more states, the Philippines and Malaysia, have non-South China Sea port access, but are so dependent on trade through the South China Sea that they can rightly consider it a vital national interest. For each of these six countries, any threat to the free passage of

commercial ships through the waterway is an existential threat with the potential to cripple the economy and topple the government.

At least four more states are deeply dependent on the free flow of resources through the South China Sea: the Republic of China (Taiwan), the People's Republic of China, Japan, and South Korea. All of these countries are heavily reliant on imported oil, with 80% of China's oil imports, 70% of South Korea's oil supply and 60% of Japan and Taiwan's oil supplies passing through the sea (Kaplan 2015). While in the long-term energy supplies could be rerouted to bring oil to these ports without a South China Sea transit, such efforts would be costly and devastatingly disruptive to the affected economies in the short-term, since historically demand for energy is highly inelastic (Crabtree 2016).

The implication of this regional dependence is clear: whoever controls the South China Sea has leverage over at least ten states in the region, including some of America's closest allies and some of the continent's most important economies. Critically, this leverage does not require military action; it is present in all interactions and negotiations between the regional hegemon and any other state, and is in force so long as there is a credible threat, spoken or unspoken, that the hegemon could conceivably close the waterway. In this sense, the non-hegemon claimants and their neighbors could suffer in very real ways, for instance through the establishment of trade agreements on less favorable terms or other coerced economic or diplomatic concessions, even if the hegemon never employs force. Appreciating the significance of this balance of power *even absent a military confrontation* is critical to understanding the calculus of all parties.

### **The Panda in the Room: China's Ambitions in the South China Sea**

Any regional power could conceivably employ the South China Sea's strategic value to dominate the region politically or militarily. The only power to have ever done so is not China but the Empire of Japan, which used the South China Sea as the central crossroads of its "Greater East Asia Co-Prosperity Sphere" from 1940-1945. In the context of today's dispute, however, the only regional power threatening to achieve hegemony over the sea is the People's Republic of China.

#### China's Official View of the Conflict



Officially, China maintains an expansive claim over nearly the entire South China Sea on the basis of a map drawn by the Nationalist government before Mao's victory in the Chinese Civil War (Tsirbas 2016). Chinese officials and academics generally offer two explanations for Chinese inflexibility on this ambitious claim. The first mirrors the concerns of other regional powers: China, like most of the other claimant states, is deeply dependent on trade through the sea, and views security and stability there as vital national interests. This argument frames China as mere participant in a classic security dilemma, doing its best to maximize its own security.

Nevertheless, Chinese observers also emphasize a second, more culturally and historically specific explanation for China's approach to the dispute. The Chinese Communist Party's view of history is that it put China back on a path to greatness after China's dismemberment by Western colonial powers during its "century of humiliation" and the destruction and slaughter it faced at the hands of Imperial Japan. It views the restoration of China's national dignity as its chief claim to legitimacy. For decades, defense of territorial integrity, economic growth, and Cold War politics served collectively as the Party's *raison d'être*.

Today, though, the remnants of China's command economy are in a slow retreat from which no one expects them to return. The rate of economic growth remains relatively impressive, but is far down from its '90s and '00s highs. More of the CCP's legitimacy rests on its fierce defense of Chinese territorial integrity and sovereignty than ever before, especially as a growing middle class begins to assert itself more confidently (The Economist 2016). Rightly or wrongly, Beijing feels that any compromise on this issue, whether in Tibet, Taiwan, Xinjiang, or the South China Sea, poses an existential threat to the Communist Party's hold on power (Payne 2015). This goes some distance in explaining the intransigence of the Chinese: sovereignty issues are always sticky, and in this case, sovereignty over even uninhabited rocks is viewed as essential to this regime for reasons specific to the Chinese national identity. Nevertheless, there is considerable evidence to suggest that other motivations also shape their approach to the dispute.

### Chinese Objective #1: Strategic Depth at Sea

For centuries, China has been a large coastal state with a weak navy. Throughout the 19<sup>th</sup> century, international trade became advantageous, and eventually essential, to maintaining great power status. China lagged behind and was ultimately taken advantage of in part because of its inability to project power into its own littoral waters (Kaufman 2010). In the 1930s, when China was invaded by Japan, the Chinese had no ability to resist the Japanese navy at sea, and were forced to wage a brutal guerilla war against the Japanese occupation from deep within China, despite the fact that a huge share of China's population, resources, wealth, and industry were in occupied coastal regions that the Chinese had no hope of defending.

Today's Chinese strategists have learned these lessons well. China's present approach to national defense is heavily invested in what American analysts describe as anti-access/area-denial (A2/AD) platforms aimed at preventing enemy forces from ever reaching Chinese shores. This includes short- (SRBMs) and medium-range ballistic missiles (MRBMs) to be launched against enemy land targets, submarine, land, and air-based anti-ship ballistic missiles (ASBMs) to deter and destroy hostile surface ships, and a sophisticated network of land and ship-based surface-to-air missiles (SAMs) to ensure Chinese air superiority (Bitzinger 2016). China seeks to ensure its next war will not be fought at the gates of Nanjing or in the alleys of Wuhan, but on, under, and over choppy seas far from the Chinese homeland.

The South China Sea is critical to this strategy because it provides the offshore strategic depth that China has long craved. China likely hopes to fight no wars in the coming decades; there is little to suggest from their behavior to date or their approach to defense spending that the Chinese are planning any wars of conquest. Rather, their defense approach seems geared towards deterring or winning a future conflict with the United States close to China, either in the East China Sea, around Taiwan, or in the South China Sea (The Guardian 2016). Significantly, the South China Sea provides strategic depth for any of these situations: it provides depth for a conflict centered around the South China Sea itself, but by restricting commercial traffic, and particularly energy supplies to American partners in Seoul, Taipei, and Tokyo, the Chinese could force the United States Navy to fight a costly battle for dominance over the South China Sea while it tries to react to a Chinese confrontation with one of those allies

simultaneously. In this way, China's bases on artificial islands in the South China Sea could be used to divide American forces and starve a rival power of resources, while buying time for an operation (for example, the forcible reunification of Taiwan with China) that the U.S. Navy would otherwise be able to prevent.

### Chinese Objective #2: The Nuclear Nursery

China has been a nuclear power since the 1960s. It is the only nuclear power to have consistently maintained a "no-first-use" policy. China possesses only a few hundred nuclear weapons; a significant arsenal, but an order of magnitude smaller than the American and Russian stockpiles. These weapons serve to deter a nuclear strike against China, and would be used against countervalue targets (i.e. population centers) in the case of such an attack. For years, this second-strike capability was maintained overwhelmingly in the form of intercontinental ballistic missiles (ICBMs), as bomber aircraft are too vulnerable to air defenses, and nuclear submarines and submarine-launched ballistic missiles (SLBMs) were too technologically demanding. This presented a Chinese vulnerability: a well-designed first strike by the United States or Russia during a period of heightened tensions could conceivably eliminate China's second-strike capabilities by destroying their missiles on the ground in a surprise attack.

Today, however, China has fitted nuclear warheads on SLBMs, some of which would be certain to survive any first strike. This constitutes an enormous improvement in the credibility of the Chinese deterrent. Upon learning of a nuclear attack on China, these submarines could steam east to California or north to the Russian Arctic to launch second strikes against the United States or Russia without ever surfacing, giving the enemy little hope of destroying them before they launched their missiles (CSIS 2016). The largest contingent of these submarines is based on Hainan Island, a large Chinese island jutting into the South China Sea.

Unlike the East China Sea and the Yellow Sea, which are shallow and surrounded by islands not controlled by China, the South China Sea has many deep channels into the Pacific Ocean (Torode 2015). China fears that in the case of a nuclear exchange with the United States, submarines based along China's east coast could be quickly corralled by American, Korean, and Japanese anti-

submarine warfare (ASW) ships and sunk. The shallow waters would leave them vulnerable to attacks by torpedoes and depth charges, and the narrow passages into the Pacific between Japanese islands could be carefully guarded by destroyers (Neill 2016).

These fears, though applicable only to the presently unthinkable scenario of total war between major powers, are not entirely unwarranted. During the Cold War, the line of landmasses stretching from Greenland to continental Europe was known as the GIUK (Greenland, Iceland, United Kingdom), and was viewed by NATO as a strategic cordon behind which they could pen or sink Soviet submarines. The American and British navies ultimately installed a network of underwater sonar stations to track submerged traffic between the North Atlantic and the Soviet naval base at Murmansk (Friberg 2016). The American and Japanese navies could potentially adopt a similar approach with the Ryukyu Islands that stretch between Japan and Taiwan, given that the water is much shallower and passages much narrower than between Iceland and Scotland (Neill 2016). Based on this, the Chinese have concluded that Hainan is the only suitable place for developing their young nuclear submarine program, entrenching their position on the South China Sea further. Significantly, it also makes them particularly suspicious of American freedom of navigation operations (FONOPs), which it suspects have secret missions to conduct monitoring of Chinese nuclear submarines.

While friction over the issue of FONOPs continues to represent a point of potential escalation in the conflict, in 2014 the United States, China, and 19 other Pacific states reached an agreement called the Code for Unplanned Encounters at Sea (CUES), which establishes norms of behavior for naval vessels designed to minimize the risks of misperception. In August 2016, the U.S. Navy (USN) and the People's Liberation Army Navy (PLAN) successfully conducted joint search and rescue exercises, successfully using the CUES system for nonverbal communication (CUES 2016). Though this agreement and protocol does nothing to mitigate Beijing's suspicions about FONOPs, it does decrease the likelihood that a misunderstanding or misperception by local commanders in theater could lead to a sudden escalation of hostilities.

### Chinese Objective #3: Leverage, or Counter-Containment

The third Chinese objective that their aggressive South China Sea posture aims to advance is more nebulous, and serves as something of a Rorschach test for observers. Those inclined to take a dim view of Beijing's motives view the build up as a naked power grab aimed at giving it leverage over China's neighbors in future negotiations on everything from tariff levels to UN votes. China has long worked to conduct as much of its diplomacy as possible through bilateral negotiations, because China's superior economic and military might ensure superior leverage (Keyuan 2006). If China becomes the undisputed hegemon of the South China Sea, even a coalition of regional players would be unable to stand up to China without substantial and direct American help. Viewed this way, the Chinese bases on reclaimed islands dotting the South China Sea constitute a gun pressed quietly against the ribs of each of their negotiating partners when conferring on issues of trade, regional security, or anything else.

A view more favorable to Beijing's motives, although one that they do not advertise or proclaim, is that the South China Sea build up is a hedge against a perceived American policy of containment. China views the American alliances with Japan, South Korea, and the Philippines, as well as American support for Taiwan, as anti-Chinese. Some in China see this as preparation for, or even implementation of, a policy of containment aimed at preventing China from ever taking its rightful place on the global stage as a major power (Goldstein et al. 2014).

In this paradigm, the South China Sea would serve as a wedge between the United States and some of her regional partners by providing China a bigger carrot (in the form of fishing and mineral rights), and a bigger stick (in the form of military threats), than the United States can hope to wield from across the Pacific. While obviously aimed at the United States and its allies, the Chinese view this approach as a purely defensive posture aimed at preventing encirclement that any able country would adopt.

Such an approach explains China's use of its "maritime militias," which comprise motleys of poorly armed and semi-accountable Chinese sailors and fishermen who harass foreign vessels, both civilian and military. These militias give China a tool with which to physically assert their claims, and to punish and frustrate actors they see as operating against Chinese interests in the South China Sea, including the U.S. Navy, the Philippine and Vietnamese coast guards, and

fishermen of many nationalities. By using provincial militias instead of official navy or coast guard craft, Beijing maintains deniability with respect to their actions, even when they are clearly coordinated with official operations (Erikson and Kennedy 2016).

### **Bandwagoning: Philippine Defense Policy under Duterte**

In July 2016, the Philippines won a stunning victory when a UN Convention on the Law of the Sea (UNCLOS) tribunal ruled that China's claim to "historic rights" based on the Nine-Dash Line was invalid. Instead of pressing this rare diplomatic advantage, the new Philippine President Rodrigo Duterte sought to curry favor with China by adopting a more non-confrontational posture in the South China Sea. In October, he suggested that the Philippines would be more closely aligned with China going forward (Blanchard 2016).

### Philippine Objective: Conflict Avoidance

The Philippines, like Taiwan, South Korea, and Japan, have in the postwar era to this point balanced Chinese (and once, Soviet) influence in the region by working closely with the United States. Philippine-American relations have been close, albeit complicated, since the former's independence from the United States in 1946. The United States bases a significant military force there (as it does in South Korea and Japan) and at least 17 Americans have been killed fighting Islamic extremism in the southern Philippines in the past 15 years ("iCasualties.org 2016). Nevertheless, the election on both sides of the Pacific of populist presidents skeptical of regional integration schemes has thrown the relationship into doubt.

Duterte has turned the Philippines away from decades of balancing against China, opting to bandwagon instead. Faced with what he may see as an unwinnable arms race in the South China Sea, Duterte is unilaterally deescalating by tacitly ceding ground on the sovereignty issue, which is all-important to China. The Chinese have responded by permitting Filipino fisherman to fish the waters off the disputed Scarborough Shoal, which for years had been a source of frequent altercations (Rauhala 2016). The Chinese are more than willing to permit shared resource exploitation in exchange for ground on the issue of sovereignty. As part of this apparent trade for the Philippines' conspicuous

silence on their arbitration victory, China has also agreed to billions of dollars' worth of investments in the Philippines, including a \$3 billion line of credit from the Bank of China, up to \$9 billion in other loans, and an estimated \$11 billion invested in railroad, port, energy, and mining projects around the country (Calonzo, Andreo, and Yap 2016).

In addition to allowing him to focus on domestic affairs, including a controversial crackdown on those who use and deal illegal drugs, the benefits of this maneuver for Duterte are twofold: expanded opportunities for Filipino fishermen, and postponement of costly but necessary military investments. This strategy of appeasement carries risks, however, that may vex future Philippine leaders. The Philippine Armed Forces could not resist for long in an open war with the People's Liberation Army (PLA), but if China's construction of artificial islands continues, and these islands are garrisoned like aircraft carriers with air wings and support crews, the Chinese could conduct operations against the Philippine archipelago at a tempo that they could achieve in few other places in the world. Such a build up by the Chinese could eventually be the difference between the Philippines being defensible with American military support against a Chinese invasion, or not.

### **Trying to Keep Up: Vietnam's Balancing Act**

Unlike the Philippines, Vietnam has tried to maintain a credible conventional naval deterrent to Chinese designs on the territory it claims and administers. In 1974, Vietnamese forces were driven from their claims in the Paracel Islands by PLAN forces in two days of sporadic fighting. Five years later they fought the PLA to a bloody draw in the four-week Sino-Vietnamese War. Today, Hanoi and Beijing enjoy good relations, but suspicion and resentment by both sides' citizens remains. Both communist parties have inculcated nationalist fervor over the land-features of the South China Sea for decades, and to some degree both are now limited in their freedom of action on the issue by that popular nationalism.

### Vietnamese Objective: Limited Deterrence

Practically speaking, China has maintained a considerable military edge over Vietnam for years, but Vietnam has made them work hard for it. In 2013,

Vietnam purchased six very modern, ultra-quiet Kilo-class diesel-electric submarines from Russia. Costing a total of \$2.1 billion, these six boats were a major investment for the Vietnam People's Navy, and a not-so-subtle signal to Beijing that any future evictions will come at a higher price than the 18 Chinese sailors killed in 1974. Equipped with both torpedoes and surface-to-surface guided cruise missiles, these submarines could lurk undetected for days into a conflict, only to strike at PLAN surface ships, or even against the submarine base at Hainan Island (Jouan 2017).

Despite these investments, Vietnam remains in a tight situation. It may presently enjoy good relations with both Washington and Beijing, but Hanoi's "three nos" policy (no foreign bases in Vietnam, no treaties, and no reliance on foreign actors for defense) means that if it is ever needs to use those submarines, it may be standing against China alone. Resistant to traditional alliance commitments, Vietnam has sought to foster friendly relations with other regional powers, especially Japan. But Japan, with no offensive military capability of its own, is not going to aid Vietnam directly in a confrontation with China (Khanh 2015).

Vietnam has flirted with a reorientation towards the United States in the past few years. An even stronger partnership with the United States would have been Vietnam's best hope for an end to the conflict in the South China Sea on favorable terms, or at least to slow or halt Chinese militarization of the land features (Lai 2014). But such a reorientation carries risks, too. Raising Beijing's suspicions of encirclement to new heights could have provoked a hostile response. Meanwhile, an American alliance would have likely added new external pressure on Hanoi to improve its human rights record, or even introduce democratic reforms, both unappealing prospects to the ruling Communist Party (Corr 2016). In any case, the American abandonment of the Trans-Pacific Partnership, which was designed to be the lynchpin of a revitalized Pacific Alliance, ended any consideration Vietnam might have given the prospect of turning towards Washington more openly.

### **Conclusion**

As China's relative power grows, its newfound assertiveness has rattled its neighbors. Some have looked to the United States for reassurance, and not



always received it to their satisfaction. Once a hated enemy, the regime in Hanoi has become a cautious American partner, seeking to maintain close relations with Beijing while tentatively balancing against it. In Manila, Duterte has turned the Philippines in the opposite direction, hoping that given their different priorities, compromises acceptable to both the Philippine and Chinese sides can be achieved.

A shifting equilibrium offers new opportunities for regional cooperation, but also new risks of misperception that could send all sides tumbling towards a devastating conflict that benefits no one. The United States must aim to ensure both that the rule of law and the norms of the international system are upheld and that disputes are resolved peacefully, or else stabilized until they may be in the future. A breakdown of peace in the South China Sea threatens not only the claimant states and their neighbors, but also global stability since American allies worldwide would be watching to see if the United States commits fully to the defense of its friends diplomatically, politically, and if necessary, militarily.

### Recommendations

#### To Beijing

- **Keep Chinese actions in the region off the front pages**, where they incense Philippine, Vietnamese, Japanese, and even American public opinion.
- **Lay the groundwork at home** (with respect to education, rhetoric, and public statements) for a future resolution that might involve the surrender of certain sovereignty claims in exchange for recognition of others.
- **Disband the maritime militias**, which pose the greatest risk of accidental or unstrategic escalation.

#### To Manila

- **Press the UNCLOS case in public fora, and in the international press.** The *Philippines v. China* ruling reaffirms the customary international law that constitutes the best starting place for negotiations that could lead to a permanent settlement.
- **Invest in needed naval modernization**, including the purchase of Kilo-class submarines from Russia.

## South China Sea: Maintaining Peace / Preventing War

- Use the Philippines' chairmanship of ASEAN, which began in January 2017, as an opportunity to **advance the development of a Code of Conduct for claimant states**, demonstrating that the Philippines are not forsaking regionalism or the rule of law for "economic nationalism."

### To Hanoi

- **Continue to pursue a Code of Conduct among claimant states**, but be prepared to ask the UNCLOS tribunal to rule on the legality of China's claims to territory disputed by Vietnam if negotiations break down.
- **Continue to develop naval capacity** without taking aggressive action or provoking conflict with China or any other claimant.
- **Negotiate joint mineral and hydrocarbon exploration projects** with other claimants, including China and the Philippines, to be used as confidence building measures.

### To Washington

- **Ratify the UN Convention on the Law of the Sea**, to improve credibility when demanding that claimant states adhere to it.
- **Augment military-military relations with the PLA at every level** to decrease the risk of misperception and accidental escalation, and continue to practice and develop the CUES system of nonverbal communication at sea.
- **Continue to conduct regular FONOPs** in a way that is simultaneously assertive and friendly. **Invite the developing Chinese navy to participate in more joint exercises** (like RIMPAC), and even to conduct joint patrols in the South China Sea or elsewhere to demonstrate American commitment to the value of innocent passage, and perhaps its utility to China's future ambitions.



## **U.S.-China Relations: How to Halt and Reverse the Escalation Spiral?**

Riccardo Alfieri

*The Hares harangued the assembly, and argued that all should be equal. The Lions made this reply: "Your words, O Hares! are good; but they lack both claws and teeth such as we have. Aesop, 620 – 564 BCE*

At the beginning of the XVII century a small and flat strip of land off the North Sea fiercely asserted a revolutionary principle: no one can own the high seas as they are the common inheritance of the human kind. The nation supporting in words and deeds the freedom of navigation principle was the Dutch Republic, the global trading and naval superpower of that time (Johnson 2017). The Dutch lawyer Hugo Grotius in his book “*Mare Liberum*” (“The Freedom of the Seas”) elaborated this self-interested legal argument at the height of his homeland’s Golden Age. However, Grotius’ tenet was vehemently opposed by the other competing European naval powers, which feared the spectacular rise of the Dutch maritime projection. Ironically, one of the main competitors, the British Empire, would later fully embrace the freedom of the seas principle once it became instrumental to its own economic and security interests. This change of policy was not the result of dialogue and peaceful negotiations. The British Empire changed its position on the high seas only after the three Anglo-Dutch wars, and the invasion of 1688, which led to the succession of the Dutch house of Orange to the English throne (Baird 1996).

Several centuries later, the U.S. followed in the British footsteps, becoming the champion of a full application of freedom of navigation. However, it took Washington some time before accepting this regime. Indeed, during the Hague Codification Conference of 1930 the American Government insisted that warships must receive previous authorization by the coastal state to sail within territorial waters (Franckx 1990). On the contrary the Soviets—who were about to re-launch their Pacific and Arctic fleet (Hauner 2004)—claimed the right of innocent passage of military vessels through territorial waters. The situation was

reversed in just 25 years' time. In the 1950s the Soviet Navy had only a defensive character (Franckx 1987). Thus, during the Seventh Session of the International Law Commission in 1955, the USSR claimed that the passage of a warship in territorial waters required the prior authorization of the littoral state; the U.S. instead contended that military vessels, just as merchant ships, had the right to sail in territorial waters as long as the purpose of their passage was innocent (Franckx 1990). Confrontation on this issue led the two superpowers on several occasions to the brink of war. Only after the Black Sea "bumping"<sup>17</sup> incident of 1988 did the two countries agree to a common interpretation of the right to innocent passage, significantly reducing the risk of an uncontrolled escalation.

Looking through the prism of history at today's rising tensions between China and the U.S. in the South China Sea, one may draw both encouraging and worrisome lessons. Encouraging, since precedents suggest that the freedom of navigation eventually prevails once it serves the challenger's interests. Worrisome, since in the process leading up to the alignment of U.S. and Chinese interests, any miscalculation from either side may escalate tensions to the point of violent confrontation between nuclear powers.

The aim of this paper is to explore how to halt and reverse the current crescendo of tensions. Through an interest analysis of the two parties, it argues that the bone of contention essentially lies within the security domain. It then assesses the state of play of Washington–Beijing relations, taking stock of the most recent altercations. Finally, drawing upon the 1988 Black Sea "bumping" incident between the American and Soviet navy, it recommends measures to build trust in order to prevent a violent conflict.

### **Interest Analysis**

China asserts that the islands, banks, shoals, and the surrounding waters of the Paracels, Spratlys, Scarborough Shoal, and Pratas Islands, all the way south to James Shoal, are part of its historical territory. However, Brunei, Malaysia, the Philippines, Taiwan and Vietnam have overlapping sovereignty claims in the

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<sup>17</sup> On 12 February 1988, during the Cold War, two American military vessels challenged USSR's excessive maritime claims exercising the right of innocent passage in Soviet territorial waters in the Black Sea. Soviet vessels "bumped" the U.S. ships to push them in international waters.

region (ISDP 2016). The U.S., unlike China, does not have territorial or maritime claims in the South China Sea, and takes no official position on the merits of the sovereignty quarrel. Washington advocates for a peaceful settlement in compliance with the norms and regulation set out in international law. Therefore, China and the U.S. do not have inherently incompatible positions over the dispute. Nevertheless, both parties have economic, security and strategic interests in the region. While these are not intrinsically irreconcilable, China's rise as an economic, political, and military actor has made the competition with the U.S. more evident (DOD 2015).

From the economic point of view, the importance of the South China Sea cannot be overstated. It spans an area roughly the size of India and Spain together (1,423,000 square miles) and is one of the most important trade arteries of the world. About 30% of world's maritime commerce, amounting to \$5.3 trillion (CFR 2017), transits the region, of which \$1.2 trillion is connected to the U.S. (DOD 2015). Approximately one third of global crude oil, and 50% of global LNG trade sail in these waters, with a significant share of these resources directed toward the Chinese market (Today in Energy 2013). The U.S. Energy Information Administration estimates that the seabed has about 11 billion barrels of proved and probable oil – roughly equivalent to Mexico's proven reserves – and 190 trillion cubic feet and natural gas reserves – equal to Venezuelan's proven reserves (Spegele 2016). In addition to that, the South China Sea accounts for more than 10% of the world fisheries production (DOD 2015). Therefore, although the stakes are high, it is apparent to both parties that any massive trade disruption in the area will be mutually detrimental. This is confirmed by China's approach towards commercial navigation: while Beijing restricts the right of innocent passage in its territorial waters, as well as the conduct of military activities in its EEZ without prior authorization, it allows the transit of commercial ships in both maritime zones (Faqiang 2016). This proves that economic interests, while relevant for understanding the context in which the dispute unfolds, are not the kernel of contention between China and the U.S.

In the security domain, however, interests between China and the U.S. diverge. The U.S. aims to guarantee the stability of the region, protect its allies, and prevent weapon proliferation, illicit trafficking and natural disasters. Moreover, Washington is adamant in promoting adherence to international

maritime law, central to which is the freedom of navigation principle. To this end, the American Government conducts Freedom of Navigation Operations (FONOPS) to challenge the full range of maritime claims and “preserve the rights, freedoms, and lawful uses of the sea and airspace guaranteed to all nations under international law” (DOD 2017). The U.S. and the majority of the international community assert that rights and freedoms of the seas include innocent passage of military vessels through territorial waters, as well as the conduct of military exercises within the EEZs of other states without prior notice (DOD 2015). China is not the only target of FONOPS. Between October 2015 and September 2016, the U.S. has challenged the excessive maritime claims of 22 countries, including Albania, Brazil, India, Italy, and Japan (DOD 2017).

On the contrary, China argues that the passage of military ships through territorial waters, as well as the conduct of hydrographic and military oceanographic surveys in EEZs should be contingent on the prior authorization of the littoral state. Moreover, drawing upon Article 88 of the United Nations Convention on the Law of the Sea (UNCLOS), establishing the peaceful use of the high seas, Beijing claims that the FONOPS in the South China Sea are not allowed under UNCLOS, as they cannot be characterized as peaceful. China claims they are an excuse to collect intelligence and carry out military surveillance, and firmly opposes any behavior that seeks to violate its territorial sovereignty under the label of “freedom of navigation” (Faqiang 2016).

This position reveals deeper security concerns. China is the only Permanent Member of the UN Security Council that does not have an operational submersible ship ballistic missile nuclear-powered capability (SSBN). Over the last few years the Chinese leadership has tried to bridge this gap by compounding the country’s dramatic economic rise with an ambitious plan of naval modernization. This plan aims at enhancing the People’s Liberation Army Navy’s (PLAN) outreach and developing an effective class of SSBNs. This is consistent with President Xi Jinping’s strategic view, and feeds the Chinese self-image of a rising global power (CSIS 2016). However, the Communist leadership is also aware that detection is a key vulnerability of submarines, and that the U.S. presence near its shores could seriously dent the full operability of its defensive nuclear strategy (CSIS 2016), preventing an eventual strategic

equilibrium. This concern, to a degree, explains China's assertive rejection of part of the current legal regime of the seas.

Another element that needs to be factored in the interest analysis equation is the narrative of victimhood and humiliation that colors any Chinese discussion of boundaries and territorial claims. The legitimacy of the Communist party has been grounded from the People's Republic of China's (PRC) inception on the idea of ending the "Century of Humiliation." This expression refers to the period spanning from the first Opium War of 1839, up until the civil war and the PRC's foundation in 1949. It is a tale of deprivation and suffering that depicts modern China as forged out of invasions and shameful struggles with foreign powers (Kaufman 2011). This rhetoric fuels patriotic sentiment and provides social cohesion. It was critical throughout the country's consolidation, especially in the aftermath of the 1989 student's protests, when the Communist party faced a tremendous legitimacy crisis (Wang 2016). Today, President Xi Jinping's proclaimed strategy of "national rejuvenation" is informed by this chauvinist narrative, which still constitutes a powerful source of legitimacy for the ruling elite. Any effort to deescalate tensions in the South China Sea overlooking national pride risks being counterproductive. A policy that does not engineer any sort of face-saving option would undercut the party's political capital. Thus, being perceived as an existential threat to current leadership, it would be firmly rejected.

### State of Play of U.S.–China Relations

The U.S. and China have a broad and complex relationship that presents both elements of cooperation and competition (DOD 2015). Over the last few decades, many altercations in the South and East China Sea have characterized the relations between the two parties, fueling feelings of distrust.

The first significant incident took place on 23 March 2001, when a Chinese vessel aggressively confronted an unarmed American hydrographic ship, the United States Naval Ship (USNS) *Bowditch*, while conducting routine military survey operations in China's claimed EEZ in the Yellow Sea. The American Embassy in Beijing filed a diplomatic complaint to the Chinese Ministry for Foreign Affairs, and few days later *Bowditch* returned to its area of operation escorted by an American military ship (Pedrozo 2009).



One week later, on 1 April 2001, an American surveillance plane was operating in the South China Sea, roughly 70 miles off the island of Hainan, where a newly constructed Chinese submarine base was located. A collision with a PRC fighter jet forced the U.S. aircraft to an emergency landing in Hainan. The crash caused the death of the Chinese pilot, whereas the U.S. crew was detained and interrogated for 11 days by the local authorities (Rich 2012). The issue was solved with the so-called “letter of the two sorries,” whereby the White House expressed regret and sorrow for what happened, without formulating a formal apology (Newsweek 2001). As a consequence, Beijing released the crew and returned the disassembled aircraft (Kazianis 2017).

On 9 March 2009, the Department of Defense, under the newly established Obama Administration, protested the harassment of a surveillance ship, the USNS *Impeccable*. Designed to gather acoustic data, detect and track submarines, the vessel did not carry armaments (Military-Today 2017). Five Chinese ships shadowed and dangerously maneuvered in its proximity. Eventually, they forced the surveillance ship to an emergency stop to avoid collision (Pedrozo 2009). The Pentagon stated that the *Impeccable* was sailing 75 miles south of the Hainan Island, and was conducting routine operations. It considered the Chinese vessels’ maneuvers as unprofessional and in violation of international law (DOD Press release 2009). Beijing rebuffed, saying that the *Impeccable*’s operations constituted a violation of international and domestic law. Mr. Wang Dengping, political commissar of the Chinese Armament Department of Navy declared: “Innocent passage by naval vessels from other countries in the territorial waters and in the special economic zone is acceptable, but hostile military operations are not allowed” (Rich 2012). The day after the incident, the *Impeccable* returned to the area escorted by the United States Ship (USS) *Chung-Hoon*, a guided-missile destroyer (Pedrozo 2009).

Similar altercations continued in subsequent years: the USS *George Washington* was harassed in the fall of 2010; a U.S. U-2 reconnaissance plane was intercepted in June 2011 in international airspace; in July 2013 the *Impeccable* was confronted again while operating in international waters (Erickson and de la Bruyere 2014); on 5 December 2013 a collision between the USS *Cowpens* and a PLAN vessel escorting a Chinese aircraft carrier was narrowly avoided (Maritime Awareness Project 2017).

The election of the new U.S. President did not halt the crescendo of tensions. The new administration sent mixed signals to Beijing. During the electoral campaign, President Donald Trump accused China of stealing American jobs and conducting illegal activities to the detriment of U.S. interests, including theft of trade secrets, currency manipulation and dumping (New York Daily News 2015). In the beginning of December 2016, President-elect Trump broke decades of American diplomatic protocol with a phone conversation with Taiwan's President Tsai Ing-wen. In an interview with the *Wall Street Journal* he declared, "Everything is under negotiation, including 'One China'." (Nicholas, Beckett, and Seib 2017). Beijing perceived the statement as outrageous, since it questioned a cornerstone of Sino-American relations (BBC News 2016). A few days after the phone call, a Chinese ship captured an unmanned underwater drone conducting oceanographic research some 50 miles northwest of Subic Bay, within the Philippines' EEZ. Following the formal U.S. protest, the Chinese authorities returned the drone. Considering the timing of the incident, many analysts have speculated that it represented a rebuke to President-elect Trump for his rough start (Maritime Awareness Project 2017). Further concerns emerged during the confirmation hearing for Secretary of State of Rex Tillerson. When asked about his views of Beijing policies in the South China Sea, the former Chief Executive of Exxon declared: "We're going to have to send China a clear signal that, first, the island-building stops, and second, [Chinese] access to those islands also is not going to be allowed" (Forsythe 2017).

At the same time, however, Beijing was reassured by the nomination of the former Iowa Governor Terry Branstad as ambassador to China. Foreign Ministry spokesman Lu Kang welcomed Mr. Branstad's nomination, calling him an "old friend" and referring to the good relations he developed with the PLA and President Xi Jinping during his long tenure as Iowa's Governor (Isenstadt, Nussbaum, and Griffiths 2017). Beijing probably also toasted President Trump's announced decision to withdraw from the Trans-Pacific Partnership (TPP), a trade agreement perceived in Beijing as a facet of the Obama Administration's "pivot to Asia" policy aimed at containing China. Furthermore, the new President backtracked on his previous position on Taiwan, committing to the "One China Policy" in his first phone call with President Xi Jinping (McKirdy and Hunt 2017). The PRC also welcomed U.S. Defense Secretary Jim Mattis'

suggestion that diplomacy should be the priority in the South China Sea. In his visit to Japan and South Korea in the beginning of February 2017, he reassured American allies and recalled that freedom of navigation is an absolute principle, while also clarifying that the U.S. “[does] not see any need for dramatic military moves at all” and the South China Sea is an issue “best solved by the diplomats” (Panda 2017).

General Mattis’ remarks seem to be in line with the approach adopted by the Obama Administration in the face of the award issued by the Permanent Court of Arbitration (PCA) on 16 July 2016. The international court constituted under Annex VII of the UNCLOS ruled over a case brought by the Philippines in 2013 regarding its maritime entitlements in the South China Sea. The ruling declared unfounded China’s claims of historical rights and clarified that the features in the Spratly Islands reclaimed by Beijing are incapable of generating EEZs. Moreover, it considered illegal the Chinese activities conducted in the Philippines’ EEZ (PCA 2016). While Beijing did not recognize the Court’s decision, the U.S. Government recalled that the ruling is final and binding on both China and the Philippines, expressing its hope and expectation that the parties will comply with their obligations, and use the decision as a basis for diplomatic discussions and peaceful agreements (U.S. Department of State 2016).

Against this backdrop of high uncertainty and volatility, China continues steadily to increase its military capability in the area (Ali 2017) and challenge the conventional interpretation of freedom of navigation in the South China Sea. However, three instances demonstrate how China benefits from this very same principle. First, in 2012 the PLAN conducted several activities in the EEZ around Guam and Hawaii during the annual Rim of the Pacific exercise (RIMPAC) (Office of the Secretary of Defense 2013). Second, China sent an uninvited surveillance ship off the coast of Hawaii in 2014, while also participating for the first time in the RIMPAC (Erickson and de la Bruyere 2014). The drill put a broad range of technical and naval operations on display, and China seized the opportunity to collect intelligence with both hands. Third, in September 2015 a group of Chinese naval vessels transited near Alaska, while President Obama was concluding a high-profile visit. The ships transited off the Aleutian Islands,

within American territorial waters after a joint military exercise with Russia (Sciutto 2015).

While politically irritating, all three cases are fully legal. The Chinese operations mirrored those of the Americans in the South China Sea. The U.S. did not file any formal complaint, demonstrating consistency. The Chinese tests showed to the PRC leadership that freedom of navigation could be win-win solution, and serve the interest of a rising naval power. These events reveal that the process leading up to alignment of U.S. and Chinese interests is ongoing. The challenge is to manage it in a peaceful manner, and avoid dangerous miscalculations. The Cold War experience suggests a pragmatic approach applicable to the U.S.-PRC confrontation in the South China Sea.

### The Black Sea “Bumping”

The Sino-American state of affairs in the South China Sea is reminiscent of the relations between the U.S. and USSR at the end of the 1980s. In this period, the superpowers’ relationship became extremely strained, reaching the apex with the so-called Black Sea “bumping.” This refers to the incident that occurred in February 1988 when two American naval vessels, while conducting a FONOPS in Soviet territorial waters off the Black Sea, were intercepted and intentionally “shouldered” by two USSR warships. The aim of the FONOPS was to protest against Moscow’s excessive maritime claims and assert the right of innocent passage under international law. Fortunately, the incident did not escalate into a violent confrontation. The vessels reported minor damages, and the U.S. Government issued a diplomatic protest. The Soviet Union responded that the right of innocent passage was denied by its national legislation. Hence, Moscow argued that the American warships did not have any right to sail in that area (Rolph 1992).

The two countries could already count on a channel of military-to-military cooperation established on 1972 with the Agreement on the Prevention of Incidents on and over High Seas (IncSea). However, the extreme volatility of the situation made the parties realize the need for a mechanism to reduce risks. They concluded that a bilateral and mutually acceptable interpretation of the right of innocent passage would provide the common ground for a solution. In a joint statement adopted in Wyoming, on 23 September 1989, both Governments

agreed that the relevant rules applied to the right of innocent passage are based on the 1982 UNCLOS. They clarified that all ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required. Moreover, both Governments concurred to conform their domestic laws, regulations and practices to this agreed understanding of international norms. Finally, the statement clarified that laws and regulations can restrict the right of innocent passage by imposing sea-lanes and traffic separation schemes in order to protect the safety of navigation. However, such limitations cannot have the effect of impairing or denying the exercise of the right of innocent passage (Office for Ocean Affairs and the Law of the Sea 1989).

The joint statement was able to produce mutual benefits. Both parties agreed on a regime consistent with their interests as great maritime powers. The U.S. could stop its costly FONOPS, as it achieved the goal of averting excessive maritime claims in the Black Sea and asserting the law of the seas regime as codified in UNCLOS. The Soviet Union obtained an implicit recognition of its interests in the area, and a formal declaration from the U.S. Secretary of State stating that the American Government had no intention to conduct innocent passage with its warships in the territorial waters of the USSR in the Black Sea. Moreover, the joint statement paved the way for the U.S.-U.S.S.R Agreement on the Prevention of Dangerous Military Activities, which entered into force on 1 January 1990, setting the rules for armed forces personnel of each side when operating in proximity during peacetime (Franckx 1990). The joint statement gave momentum for clinching similar covenants concerning the prevention of incident at sea with NATO members, such as Italy (1989), Spain (1990), The Netherlands (1990), and Canada (1991). Thus, it triggered a ripple effect that further reinforced a common interpretation of the law of the sea and strengthened international law (European Leadership Network 2015).

### **Conclusion**

The altercations between the U.S. and China in the South China Sea present many analogies with the Black Sea bumping case. First, the level of volatility is analogous: the parties are testing each other, the chances of a miscalculation are

high, and there is potential for escalation. Second, China—like the Soviet Union—claims that the passage of warships through its territorial waters is not innocent when it fails to comply with the coastal state's domestic laws, and argues that national regulations *de facto* prevail over the international regime. Third, Beijing—like Moscow 29 years ago—craves recognition of its regional interests and is increasingly worried about the U.S. presence in the area. Fourth, the PLAN is gradually shifting toward the “far seas” (Poulin 2016), and thus the freedom of navigation principle begins to serve its growing naval capability. Fifth, China and the U.S. have developed a number of *fora* for military-to-military cooperation. In 1998 Washington concluded the Military Maritime Consultative Agreement in order to promote dialogue and prevent misunderstandings with the Chinese naval and air forces. Further, a hotline between the Chinese and U.S. Presidents was established on May 1998. More recent Confidence Building Measures (CMBs) include a Memorandum of Understanding (MoU) on the Rules of Behavior for Safety of Air and Maritime Encounters, and one on Notification of Major Military Activities.

Considering the similarities, a number of generalizations and informed speculations can be offered. Washington and Beijing should use the approach adopted following the Black Sea incident to frame their future relations in the South China Sea, deescalate tensions and create a win-win solution. The existing MoUs are not decisive in halting and reversing the current crescendo of strains. They are not binding under international law and do not address one of the key issues of the dispute: the interpretation of innocent passage as well as military activities in the EEZ. The military *fora* of cooperation should lay the groundwork for a binding bilateral agreement on the interpretation of the law of the sea. A U.S.–China joint interpretation that follows the model tested in 1989 presents many enticing characteristics. First, it would assert the principle of freedom of navigation between the two parties. This contractual feature would initially circumscribe the legal effects to U.S. and China, allowing the latter to assess the wider ramifications of its change of tack, without immediately compromising Beijing's stance in the ongoing maritime and territorial disputes. Second, it could be conducive to clinching other bilateral agreements and triggering positive spillover into a common interpretation of the law of the sea as codified by

UNCLOS. Third, the joint interpretation would reduce the need for FONOPS in the South China Sea, limiting possible flashpoints.

It is clear that a joint interpretation would not directly address all the competing security and strategic interests of the parties. Yet, it would reduce risks, set the conditions for a system of interlocking bilateral agreements, and produce positive externalities in the region. To seize this opportunity, the U.S. should decide whether FONOPS are uniquely valuable for surveillance and reconnaissance activities, or if other intelligence collection tools can provide sufficient information about the Chinese military. Washington should also consider the possibility to recognize China as a great naval power with regional and global interests, bearing in mind that while growing Chinese capability enhances risks, it also provides more room for cooperation. China should at the same time realize that abiding by well-accepted international norms will suit its growing status and serve its purposes as a great naval power, just as it did the Netherlands, the United Kingdom and the United States in the past. By engaging in good faith in a joint interpretation exercise of the sort the U.S. conducted with the USSR, the Chinese leadership would preserve its interest as a growing naval power and secure political capital for its domestic constituency. To this end it is crucial that China winds down its nationalist rhetoric, and halts its military buildup in the South China Sea.

In 1989, the existence of a framework of military cooperation, combined with the stimulus of an avoided catastrophe, created the right conditions to reach a pragmatic settlement between Moscow and Washington. In the South China Sea the challenge is to reach the same result, without resorting to dangerous incidents to encourage meaningful actions. In order to so, it is key to restore trust between the parties and boost more ambitious confidence building measures (CBMs). Persistence in brinkmanship and waiting for a “South China bumping” to halt and reverse tensions would be a dangerous gamble.

### **Recommendations**

#### **To the U.S. Government**

- **Ratify UNCLOS.** Although the U.S. is not party to UNCLOS, it considers its norms as reflective of customary law, and thus binding on

the community of nations. This stance reduces American credibility and fuels the perception that it abides by international norms only when they align with its national interests. Ratifying UNCLOS would end this speculation, and strengthen the U.S. position in favor of rules-based behavior.

- **Comply with the PCA’s interpretation of UNCLOS.** In its award of 12 July 2016, the PCA set a precedent for distinguishing between islands and rocks under UNCLOS, establishing a higher standard for what should count as an island. Rocks, unlike islands, do not generate EEZs, thus according to the PCA’s interpretation, a number of American features, such as Maro Reef in the Northwest Hawaiian Islands, Palmyra Atoll, Kingman Reef, Howland and Baker Island would be qualified as rocks (Talmon 2017). Hence, the EEZ established by the U.S. in the 1980s would not conform to international law. Even though the U.S. is not part of UNCLOS, and the PCA ruling is binding only for China and the Philippines, U.S. unilateral compliance with the PCA’s tenets would demonstrate its consistency in promoting the “lawful uses of the sea and airspace guaranteed to all nations under international law” (DOD 2017), and strengthen its credibility.
- **Support the efforts of partners and allies in the Asia-Pacific region in reaching risk reduction measures.** The U.S. should provide organizational and technical assistance on crisis management and risk reduction mechanisms, for example by sponsoring workshops and seminars on these issues, and facilitating dialogue.
- **Engineer collateral incentives for cooperation in the South China Sea.** In 2011, the International Maritime Organization (IMO) and Maritime Environmental Protection Committee (MEPC) issued a regulation requiring better energy efficiency for vessels of 400 tons or above. Some Western countries limit the berthing of ships that do not comply with this norm. China considers these rules a restriction on freedom of navigation (Faqiang 2016). Working within the existing international *fora*, the U.S. Government could provide assistance in complying with the energy efficiency requirements and support China’s proposal to have a six-year extension period, making it contingent upon



a substantial advancement on risk reduction measures in the South China Sea.

### To the PRC Government

- **Halt the construction of new facilities and the militarization of outposts it occupies.** U.S. intelligence sources have recently confirmed that China has nearly finished building almost two dozen structures on artificial islands in the South China Sea that seem designed for long-range surface-to-air missiles (Ali 2017). It is apparent that any meaningful confidence building measures are crippled by the Chinese steady militarization in the South China Sea.
- **Clarify the legal status, chain of command and operations carried out by maritime militias.** The PLAN operates a network of fishing vessels organized with paramilitary roles that provide China with an inexpensive tool to project its power in the South China Sea (Erickson and Kennedy 2016). This raises operational, legal and political challenges, as no official definition of naval militias exists. China's maritime militias blur the lines between fishing vessels and naval functions, violating the principle of distinction enshrined in International Humanitarian Law, which aims at protecting civilians from armed attacks (Kraska 2015). China should stop undermining legal concepts to advance its interests, as this prevents the reaching of a win-win solution.
- **Expand risk reduction measures to the Coast Guard.** China currently has the largest Coast Guard fleet in the world, which can count on an annual budget of \$1.74 billion. Law enforcement vessels constitute an extraordinary force for advancing Chinese interests in the South China Sea. However, the Code for Unplanned Encounters at Sea (CUES), a non-binding agreement on safety procedures, basic communication and maneuvering instructions, does not apply to the Coast Guard. It is urgent to expand its application to law enforcement vessels since between 2010 and 2016 they were involved in 68% of 45 major incidents in the South China Sea (CSIS 2017). Moreover, the CUES should become a legally binding document.

To Both Governments

- **Continue military-to-military cooperation, expand its breadth and increase the frequency of the encounters.** Growing Chinese naval capability should provide more cooperation opportunities. Both the U.S. and China should continue developing cooperation for the delivery of international public goods, including humanitarian assistance, disaster relief, peacekeeping operations, counterpiracy, search and rescue, and military medicine. Advancements in these fields can lead to positive spillovers in the South China Sea.
- **Seek opportunities for political dialogue at the highest levels.** Military-to-military cooperation can reduce risks, and lay the groundwork for a certain level of confidence. However, an improvement of political relations is necessary in order to reverse the escalation spiral. Better political relations will give momentum to military confidence building.
- **Curb the nationalist public discourse.** A continuation of nationalist rhetoric from both sides would poison the public debate, and reduce the breathing space for negotiations. It would further entrench both parties in their positions, and fuel the counterpart's self-serving narrative. This would severely compromise the political viability of a meaningful cooperation.



## **Keeping Violent Conflict Out of the South China Sea**

Libba King

The South China Sea (SCS) conflict has become a microcosm for what some experts consider to be the state of U.S.-China relations today: shrouded in mutual mistrust of motives, both sides display a lack of flexibility in seeking to understand the position of the other side. As one Chinese academic characterized it, “U.S.-China relations surrounding the SCS are like two Beijing Opera players trying to hit each other in the dark,” observing that “it is unknown as of now whether the SCS is just a strategic place for power and influence in the more traditional sense or a hotbed [of conflict]” (SAIS Interview, Nanjing, January 2017).

In discussing whether the South China Sea will be a catalyst for violent conflict or merely a long-term power struggle, this paper analyzes how three major actors, China, the United States, and Vietnam have managed the SCS without violence thus far. China and the United States have competing aims in the SCS, while Vietnam is a wildcard in that it desires security from the United States against an expansionary China, but also must hedge given China is an immediate neighbor and exerts considerable economic, political, and cultural pressure on Vietnam.

This paper begins with explaining why, at least for the time being, the likelihood of violent conflict in the SCS is low and then analyzes how the conflict has been peacefully managed thus far. In the last section of this paper, win/win recommendations are put forth to the governments of the United States, China, Vietnam and other members of the international community.

### **Why the Probability of Escalation to the Point of Violence is Low**

The probability for large-scale violent conflict, at least for the foreseeable future, is low. The United States will try to avoid deeper involvement in SCS issues as it has many other “hotter” foreign policy issues to tackle first. It is in China’s interest to present itself as a rational, responsible major power on the global stage. Beijing will not want a major violent clash.

Vietnam's top priority is avoiding confrontation unless China directly challenges Hanoi's currently-occupied islands. As explained by a Vietnamese official, "All of us in Southeast Asia (SEA) must hedge; we have to prepare for the eventuality that China will be the dominant force in the region" The same Vietnamese government official made clear that "the Chinese government has spoken to [Vietnam] about China's military equipment [and it] is not simply for show...though we are determined to defend what is ours" He added that "China is the most consequential bilateral relationship with us [Vietnam]" (SAIS Interview, Beijing, January 2017). Vietnam needs to be strategic in its hedging strategy, lest it get pitted against either China or the United States.

The fact that a military confrontation would be costly, bloody, and widely watched on the international stage suppresses China, the United States, and Vietnam's appetite for violent conflict in the SCS.

### **Two Possible Sources of Heightened Tension is the SCS**

While the risk of conflict escalation appears unlikely, there are certain developments that could raise the temperature of the conflict significantly.

#### Irresponsible Remarks

On January 11, 2017 during his confirmation hearing before the Senate Foreign Relations Committee, Secretary-designate Tillerson said that the United States needs to "send China a clear signal that, first, the island-building stops" He further added: "Your [China's] access to those islands also is not going to be allowed" (Hernández 2017). While these remarks were later walked back in his formal written responses, they elicited a sharp response. Following Secretary Tillerson's remarks, two of China's state-run media outlets, *China Daily* and *Global Times*, did not hide their contempt. *Global Times* remarked:

Tillerson's statements regarding the islands in the South China Sea are far from professional. If Trump's diplomatic team shapes future Sino-U.S. ties as it is doing now, the two sides had better prepare for a military clash (2017).

Channeling public opinion as well as illustrating the PRC's sensitivities, the state-run news agencies conveyed clearly that China is not to be bullied.

### Code of Conduct (COC) Negotiations

Another scenario for possible conflict would arise if China attempts to use the Code of Conduct (COC) negotiations it is conducting first with Vietnam and later with ASEAN to limit American FONOPs in the South China Sea. China and ASEAN are looking to conclude the Code of Conduct framework by mid-2017 (SAIS Interview, Beijing, January 2017). There will undoubtedly be a strong Chinese effort during the COC negotiation process to establish a regional security structure in a way that is favorable to China's interests in the SCS, including by limiting U.S.-led FONOPs. China will be inclined to push its agenda by requiring in the COC that all ships get permission before entering South China Sea waters, putting the United States in a highly unfavorable position.

### **How the SCS Has Been Peacefully Managed Up to This Point**

Several mechanisms have been used to manage the SCS without violence in recent years.

### The CUES System

The Code for Unplanned Encounters at Sea (CUES), devised for the "safety of naval vessels meeting at sea," has been a successful program for U.S. and Chinese naval communication (Parameswaran 2016). CUES has been successful as a "means to defuse tensions in a [possible] crisis and prevent escalation" (Glaser 2012). This system has promoted more transparent exchange between the U.S. and Chinese Navy and has been a means for both countries to clearly verbalize naval intentions while at sea.

### Joint Exercises in the SCS in an Effort to Strengthen Cooperation

The United States continues to invite China to RIMPAC, despite heightened tensions in the SCS. The U.S. approach to maritime security in Asia, former Secretary of Defense Ash Carter emphasized, "has always been to include everyone, that's our basic approach...instead of standing apart from everybody and isolating yourself and excluding yourself, try to be part of the system of cooperative nations that have made, as I said, the Asian miracle possible" (Eckstein 2016). Inviting China to RIMPAC exercises, including RIMPAC

2017, will further signal to China that the United States is committed to cooperation-based security in the SCS. While much of the SCS conflict is framed in zero-sum terms, inviting the Chinese Navy to participate in RIMPAC signals to Beijing that Washington values long-term peace in the SCS and is willing to work with China even in areas of the relationship where tensions are high.

### China's Commitment to Non-Violence

As reiterated by a senior U.S. official, China will continue to make good on its commitment to peaceful resolution of conflicts as outlined in the Declaration on the Conduct of the Parties in the South China Sea (DOC) (SAIS Interview, Beijing, January 2017). The DOC, signed by all the members of ASEAN and China on November 4, 2012, is significant in that establishes clear guidelines of behavior for parties involved in the SCS and reaffirms the ground rules for nonviolent settlement of any dispute in the SCS between China and member nations of ASEAN. Article Ten of the DOC states, "The Parties concerned affirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective." China is actively aware of its 2002 guarantee that its interactions in the SCS will be for the "enhancement of peace, stability, economic growth, and prosperity in the region" (ASEAN 2012).

### The DOC's Negotiation Process

The successful ASEAN-China negotiation of the DOC in 2002 "reaffirmed [ASEAN] member states' commitments to the peaceful settlement of disputes in accordance with international law, including the 1982 UNCLOS" (Maritime Awareness Project 2017). The importance of the DOC's role in establishing peaceful processes of dispute resolution were outlined in the Joint Communiqué of the ASEAN Foreign Ministers Meeting in July 2009, when the group of ASEAN Foreign Ministers remarked that the DOC "has been effective in building mutual trust and confidence among the claimants in the area and in maintaining peace and stability in the region" (Maritime Awareness Project 2017).

### Strategic Ambiguity Surrounding the Nine-Dash Line

The Chinese government has been tactful in its refusing to formally define its interpretation of what exactly the Nine-Dash Line encompasses. Wisely, neither the United States nor Vietnam has firmly pressed Beijing to clarify its position. This ambiguity has allowed a *modus vivendi* to emerge that permits the claims Beijing and other claimants to coexist.

### Other Nations' Strategic Neutrality

Other countries, such as Australia, Vietnam, and Indonesia, have maintained strategic neutrality between the United States and China on the FONOPs issue. This has kept governments in Asia from having to take sides in the SCS conflict. For example, while Australia has been conducting “its own airborne surveillance operations in the South China Sea [called Operation Gateway],” since 1980, and conducts regular naval presence “patrols, exercises, and port calls throughout the region,” Australia does not label any of these activities “FONOPs” (The Lowy Institute 2017). By tactfully using vagueness and keeping diplomatic channels about the SCS open with both the United States and China, other Asia nations have allowed a business-as-usual feel in the SCS. If Australia, Vietnam, and Indonesia, for example, were to officially side with either the United States or China on FONOPs, they would elicit quick and sharp responses from the opposing government and the conflict would heat up quickly.

### Trump-Xi Call

The Trump-Xi phone call on February 7, 2017 culminated in President Trump’s commitment to honor the “One China” policy, thus reversing his previous expressions of doubt about the decades-long understanding and calming a possible diplomatic flashpoint between the United States and China (Landler and Forsythe 2017). What Xi and Trump did *not* talk about is arguably also important. The SCS conflict went unmentioned, as it is not the most pressing foreign policy issue confronting the two countries at the moment.

### **Conclusion**

Throughout the past four decades, the United States has shown willingness to assist China in establishing its role as a great power, including through China’s



entrance into the WTO. One Chinese expert opined: “During the Obama administration, our relations were, in general, quite good. Now, with President-elect Trump, we are facing great uncertainties” (SAIS Interview, Beijing, January 2017). In seeking to counter these uncertainties, the United States, China, and the international community should take measures to ensure the probability of violent conflict in the SCS stays low.

### **Recommendations**

#### To the Government of the United States

- **Do not press the Chinese government for its formal position on the Nine-Dash Line.** This ambiguity is beneficial to all parties involved, as it will allow all actors to go on with a business-as-usual attitude for the near term.
- **Continue to invite China to RIMPAC,** despite heightened tensions in the SCS. This will signal to the Chinese government that the United States is committed to further cooperation and working with China as a partner, not an adversary, in international waters.
- **Seek to begin a new joint naval program that is unique to the U.S. and Chinese navies** (Parameswaran 2016). This program could include USPACOM inviting the Chinese Navy to accompany it on select FONOPs, thus signaling to Beijing that Washington values long-term peace in the SCS, but is not going to back down on FONOPs.
- **Better publicize the FONOPs it conducts in other oceans around the world.** This would signal to the Chinese government that the United States is actively committed to FONOPs around the world and is not conducting FONOPs in the SCS to simply get under China’s skin.
- **Clarify if it plans to continue Obama’s “Pivot to Asia,”** which created considerable anxiety in Beijing about the United States’ military, economic, and political motives in APAC broadly.

#### To the Government of China

- **Continue to show patience and not react brashly.**
- **Invite the United States to conduct joint naval operations in the SCS.**

- **Accept invitations from the United States for joint naval exercises,** including RIMPAC.
- **Negotiate the COC terms with ASEAN as a multilateral body** instead of engaging unilaterally with individual member countries. This will show goodwill to the United States and demonstrate to smaller SEA nations that China is committed to the long-term stability of the region through broad, inclusive talks.

To the Government of Vietnam and the Broader International Community

- **The Vietnamese government should send diplomatic delegations to ASEAN member nations to discuss plans for COC negotiations.** ASEAN member states communicating with each other under the greater ASEAN umbrella during the DOC negotiations ensured China did not unilaterally set the terms of the DOC, and sending officials to ASEAN nations will set the tone that ASEAN should act as a cohesive body when negotiating with China on the COC. Hellen De La Vega, ASEAN's Affairs Assistant Secretary, outlined the importance of ASEAN acting as a unified body when she said during an interview in early 2017, "They [China] want to refer to it as an 11-party process and not as an ASEAN-China process meaning that the 10-ASEAN member states and China within the DOC and COC process."
- **The government of Australia should consider breaking from its position of strategic neutrality and add formal FONOPs to its Operation Gateway mission docket.** This should not be done out simply of solidarity with the United States, but instead to show that Australia will not be docile should China attempt to limit U.S. FONOPs during COC negotiations. By increasing the number of states that have a vested interest in ensuring Freedom of Navigation for all in the SCS, China will be harder pressed to pressure any one country away from pursuing FONOPs (Ott 2013).

## **The Role of Coast Guards in the South China Sea**

Weldon D. Montgomery

Coast guard assets have the potential to reduce tensions in the South China Sea. The new and improved China Coast Guard (CGC) now plays a leading role in the region's territorial dispute (CSIS 2016). But by using the coast guard rather than the navy to engage with foreign vessels and assert its claims, China has pursued its strategic objectives with an instrument that is less lethal and therefore less threatening to its neighbors than naval assets.

Since the end of World War II, the United States has maintained significant combat forces in the Pacific in support of its alliance commitments and strategic goals. But the overt presence of U.S. military forces also reinforces perceptions that the American presence is threatening and aimed at “containment” of China, belying U.S. claims of neutrality on the issue of territorial sovereignty over disputed maritime features.

From a conflict management perspective, American policymakers may need options that reduce tensions without compromising key maritime principles and strategic objectives. Although the U.S. Navy is and should remain the principal agent of American presence in the region, greater use of the U.S. Coast Guard (USCG) could be a valuable tool for U.S. foreign policy and defense strategy. Just as the CGC contributes to China's objectives, the USCG could offer a lower intensity alternative to traditional naval power in certain circumstances, while allowing the United States to remain committed to defending the principle of freedom of navigation and increasing maritime security capacity among regional partners and allies.

### **Description of American and Chinese Coast Guards**

#### **United States Coast Guard**

Because the United States Navy assumes the lead role for combat readiness and defense operations in the maritime domain, the remaining responsibilities of the maritime domain fall mostly to the smallest of the American armed services: the United States Coast Guard. Despite its small stature, it has eleven statutory responsibilities, which range from the familiar search and rescue mission to the less well known tasks of maintaining buoys and lighthouses, breaking ice, and

inspecting merchant ships and ports for safety and security at sea. Among the seemingly civilian nature of many of its tasks, one of its missions is also national defense, which requires the service to contribute to military operations as Congress authorizes in a war declaration or—more likely under America’s current defense organization—as a unique military supplement to a military operation under the direction of a regional combatant commander (Tripsas, Roth, and Fye 2004).

The United States Coast Guard is therefore somewhat of a paradox in that it is a “military” force that is not combat oriented. Its cutters and aircraft are constructed primarily to facilitate its other peacetime roles, which may involve the use of force, albeit at a lower level of intensity than that expected in traditional naval warfare. The National Security Cutter (NSC), for example—lightly armed when compared to a conventional naval asset, but armed nonetheless—is one of the largest cutters in the U.S. Coast Guard’s fleet, coming in at a respectable 418-feet. It is roughly the same size as the Navy’s new Littoral Combat Ship (LCS), but lacks the offensive armaments and combat survivability of its naval cousin. Nevertheless, both the NSC and LCS share the same 57mm cannon (U.S. Navy 2017), and the United States Government has a long-term plan to ensure that the newest Coast Guard and Navy platforms, such as the NSC and the LCS, have compatible and interoperable systems and communications.

### China Coast Guard

In 2009, China circulated a diplomatic note among the members of the United Nations in response to Vietnam’s claim to certain rights over the continental shelf beyond its exclusive economic zone. In the document, China asserted its “indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters, as well as the seabed and subsoil thereof,” and attached an illustrated map of the Nine-Dash Line (United Nations 2009).

When China made this diplomatic statement, the responsibilities of what could otherwise have been a single, unified, non-combat naval force were partitioned among five different agencies, and as a whole were a “relatively weak” contribution to China’s national power, according to China scholar Lyle J. Goldstein of the U.S. Naval War College (2010). Goldstein analyzed China’s

disjointed maritime forces and determined that the gaps in capabilities and the redundancy among the five agencies was “a mystery,” given the weight that the Chinese government had publicly placed on asserting its sovereign rights in the maritime domain. But following the 18<sup>th</sup> Party Congress in 2012, China corrected these inefficiencies, consolidating and restructuring the five agencies in order to form today’s China Coast Guard, which now resides under the State Oceanic Administration (Martinson 2015). Its form and appearance is strikingly similar to the American model—including its portfolio of duties, the appearance of its cutters, its presence under a non-defense ministry, and increasingly, its ability to effectively operate far from its shores (Tate 2016). Weapons systems are equally modest when compared with traditional naval fleets, as its cutters sport capable naval guns but forgo the combat capabilities of missile batteries or torpedoes.

### **The Diplomatic Value of Non-Combat Naval Forces**

Unlike coast guards, a navy’s primary purpose is to fight. It trains, maintains, and operates sailors and ships equipped to destroy its enemies. Naval vessels are heavily armed with offensive weapons, and painted grey as a form of marine camouflage. They are specially constructed with reinforced hulls in order to keep on fighting after sustaining battle damage (Kok 2012). For a globally capable navy, the ability to project power around the world is a general deterrent, sending a signal to adversaries that destructive capacity is always near and credible, even without firing a shot (Department of Defense 1997).

But navies have a serious, and occasionally unwanted, side effect: they are obvious and intentional instruments of death and destruction. Because they are built to fight, these grey-hulled ships are intrinsically threatening. Despite a military commander’s intent, a ship’s combat orientation can pose a threat where one may not exist. Policymakers may want to send a message without implying hostility, such as when the United States operates in areas friendly to the U.S., but politically sensitive to anti-imperial sentiment. The flexibility of naval forces are a paradox: although these ships—with their aircraft, small boats, advanced communications, well-trained crews, and established supply lines—are capable of much more than the obliteration of their enemies, their appearance and destructive power often eclipse their non-threatening capabilities.

As an alternative, a coast guard fleet is able to deliver resources, refined messaging, and sovereign presence in a way that combat-oriented naval forces cannot. A well-resourced coast guard is a navy in its own right, but with a distinct identity that intentionally reduces the visibility of its defense-oriented missions. These non-combat naval forces can focus on a range of duties other than combat readiness, freeing up a nation's traditional navy to specialize in naval warfare. In smaller countries, a single naval force is often responsible not just for national defense, but for all maritime operations, including fisheries management, search and rescue, and customs enforcement. More powerful nations, such as the United States, China, Russia, and India, have divested their traditional navies from such non-military preoccupations, passing the responsibility for many of these tasks to their coast guards. In fact, China and Russia have intentionally avoided identifying their services as military forces, or placing them under the direct management of their defense ministries: China's coast guard resides under the State Oceanic Administration, and Russia has placed its coast guard under the civilian Federal Security Service. In the United States and India, the coast guard is a military force by law, although only India places its coast guard under the Ministry of Defense. Military or not, these four non-combat naval forces operate armed fleets, with ships upwards of 400 feet, and all are instruments of national security capable of projecting national power well beyond their immediate coastal zones.

Therefore, in spite of their name, large coast guard services are capable of much more than guarding the coast. They often serve as an extension of land based border security services, or as a way to fight asymmetric threats such as drug trafficking and terrorism. Coast guards often protect fishery and energy resources found within the exclusive economic zone—an area of limited jurisdiction defined by international law where coastal states enjoy exclusive rights to the area's natural resources. Just as traditional naval forces project power through demonstrating a capacity for violence, coast guard fleets project a certain level of power as well, asserting sovereignty within territorial waters and the exclusive economic zone, and increasingly through international engagement on matters of shared interest and maritime governance. For example, due to diminishing sea ice, the Arctic has emerged as a new frontier for international engagement and cooperation in the maritime domain. But rather

than opt for the Navy as the lead agency in the region—a choice that could convey military-oriented priorities in the region—the United States has designated the USCG as the lead agency for maritime operations and international cooperation among Arctic states (U.S. Coast Guard 2013). The CGC also provides a diplomatic contribution to China’s national strategy and participates in similar multilateral governance initiatives, such as the North Pacific Coast Guard Forum. But in the South China Sea, Chinese coast guard vessels have the added benefit of reinforcing the message that the land features contained within the Nine-Dash Line are subject to domestic administration.

Because of this organizational and aesthetic separation from overt combat forces, coast guards provide coastal nations a diplomatic compliment to traditional naval power. In the South China Sea, the use of a non-combat naval force such as the CGC is critical to China’s long-term strategy. However, the United States relies primarily upon traditional naval forces in the South China Sea, which is a potent symbol of power and capability that does not enjoy the subtle advantages accorded to non-combat naval forces.

### **Freedom of Navigation**

The United States carries out a formal freedom of navigation (FON) program designed to challenge excessive maritime claims and “preserve the rights, freedoms, and uses of the sea and airspace guaranteed to all nations under international law” (Department of Defense 2015). The U.S. Navy has been responsible for this task for decades; it can sail fearlessly and independently throughout the world’s oceans and is well prepared to defend itself if challenged with force. The navy’s capabilities have made it an ideal agent for asserting these rights, but the USCG could also contribute to the FON strategy, albeit with a more a subtle approach.

The core objective of the FON program is protecting the right to “fly, sail, and operate wherever international law allows” (U.S. Pacific Command 2016). Preserving the principle of FON reinforces internationally accepted norms, developed through long-standing practice and codified in international law, that allow uninhibited movement of almost any sort, including the navigation of merchant ships, government vessels, and warships, throughout the world’s oceans. By definition, the advantages from FON are not limited to American

ships; vessels of all types and nationalities enjoy the same rights and privileges, with few exceptions under international law, such as those articulated under a U.N. Security Council resolution (UN Security Council 2016). The United States frames this strategy as an effort not only to protect its own national interests, but as providing a global public good.

American freedom of navigation operations (FONOPS) in the South China Sea are not directed at features only under the de facto administration of China, but take place near features under the de facto administration of Vietnam and the Philippines as well. For example, in October 2015, the USS Lassen conducted a FONOP “by transiting inside 12 nautical miles of five maritime features in the Spratly Islands—Subi Reef, Northeast Cay, Southwest Cay, South Reef, and Sandy Cay—which are claimed by China, Taiwan, Vietnam, and the Philippines” (USNI News 2016). China protested strongly, but there was no complaint from the Philippine and Vietnamese governments about the operation (VTV News 2015). Most of these operations cause little commotion, or go unnoticed altogether. In fact, American officials point out that the frequency of FONOPS in the South China Sea has not changed much in the past several decades. Nevertheless, these operations appear to have become a particularly intense irritant to the Chinese government. American naval presence upon the high seas is simple enough: there are no sovereign claims or objections to military ships in the deep and open waters of the Pacific Ocean. But China says the presence of American warships sailing near, and occasionally inside, the territorial sea of features within the South China Sea—which China claims in their entirety—is an unacceptable violation of its sovereignty and a threat to its national security, labeling such activities as “illegal,” and “provocative” (Ali and Spetalnick 2015).

The United States contends that the navigation of its warships does not contravene these principles, and therefore, it exercises the right to sail through both the exclusive economic zone and territorial sea of any nation (as long as the passage through the territorial sea is innocent under international law). American officials stress that FONOPS are not a form of military deterrent, and make the point that if they were, they would be wildly unsuccessful given that the U.S. Navy has not affected or disrupted any of China’s island reclamation activities.



Nevertheless, American ships are still painted grey and are armed with rockets, missiles, and torpedoes. China is increasingly sensitive to the close proximity of a powerful foreign military, and nationalist sentiment is strong there. Young Chinese students are not taught the intricacies of international maritime law in grade school, but they *are* taught that the islands in the South China Sea are Chinese. Although FONOPS contribute to American strategic objectives, news reports of grey-hulled Western warships within sovereign Chinese waters are a potent and potentially irritating image, which runs the risk of feeding nationalist sentiment and limiting the Communist Party's policy choices in a crisis.

### **Conclusion**

Despite the politically abrasive effect FONOPS seem to have on China, the United States should not pull back from its long-term commitment to upholding the principle of freedom of navigation. But policymakers might want to have a non-escalatory alternative that maintains America's commitment to FON in the context of U.S. Pacific strategy. U.S. Coast Guard assets could provide policymakers some of this flexibility.

One approach could be more USCG involvement in security assistance and training among Southeast Asian naval forces, which appear increasingly anemic and ill-prepared in comparison to growing Chinese capabilities. The USCG occasionally conducts similar capacity building missions around the world, including port visits and partnership building in West Africa (U.S. Coast Guard 2011), and deploying experts to establish a new maritime security force in Saudi Arabia (U.S. Coast Guard 2016). In the South China Sea, the U.S. Coast Guard has been working with Vietnam on building up its maritime security force (Parameswaran 2015), and is contributing to the Defense Department's efforts to bolster the Philippines' capabilities. The United States recently donated three former 378-foot, high-endurance U.S. Coast Guard cutters to the Philippine Navy (Rahmat 2016), part of a wider initiative to bolster maritime security, which includes \$42M in aid to purchase sensors and radar to help the Philippines surveil its large maritime domain.

The United States could also supplement its formal, military-oriented freedom of navigation program with an informal and non-permanent presence of

United States Coast Guard cutters. For example, a coast guard cutter from the United States would have to pass through the disputed waters and excessive claims of the South China Sea to conduct the joint training exercises described above. U.S. Coast Guard cutters would not, therefore, contribute to the formal freedom of navigation program managed by the Department of Defense, but would simply be going from one place to another to support American capacity building efforts. The effect is the same, though more subtle: an assertion by the United States of the rights of merchant ships, government vessels, and warships under international law to navigate wherever the law allows.

It is unlikely that China would forcefully confront an American coast guard cutter, for such a provocation could invite a military response from the United States and increase the need for traditional American naval forces in the region. Such an outcome would threaten the Sino-centric regional dynamic China has tried to foster. Furthermore, at the moment, the South China Sea dispute does not generate much domestic political pressure in the United States, which provides a certain amount of latitude to American policy choices. Following an altercation at sea that results in damage to an American ship or injury to an American serviceman, this is certain to change. Given the suspicion American voters already hold towards China, such an incident is likely to lead to a more hawkish American policy.

Even an accident between American and Chinese government vessels could lead to a significant crisis. The United States and China understood that the consequences of a mistake were highest among their navies, leading them to agree upon a Code for Unplanned Encounters at Sea (CUES) in 2014 along with 19 other Pacific countries. It established “safety measures” intended to “limit uncertainty and facilitate cooperation” by agreeing to standard communications protocols between naval forces, thereby reducing the chance of a collision. CUES is generally identical to long established international protocols governing professional mariners. However, the agreement is currently limited to navies. Despite the large presence of the China Coast Guard in the region and the increased risk of an accident, the Chinese government has not yet promulgated these protocols among its coast guard fleet.

Replacing naval FONOPS with USCG presence is not the solution. But a more visible USCG involvement in capacity building and the option of

complimenting naval FONOPS with a coast guard presence could give American policymakers a wider range of choices. The USCG can serve as a vehicle to greater cooperation, such as expanding CUES, or on joint governance such as fisheries management. As a non-combat naval force, USCG cutters would likely pose a lower profile in times of crisis, providing the U.S. Government the flexibility to pull back on or redeploy traditional naval patrols without abandoning support for the principal of freedom of navigation.

### **Recommendations**

#### To the United States of America

- **Increase the number of U.S. Coast Guard assets and personnel assigned to Vietnamese, Philippine, and Malaysian non-combat naval force capacity building efforts**
- **Commit to improving the professionalism of the China Coast Guard and PLA Navy through joint training exercises and military-to-military agreements**, thus reducing the potential for mishaps at sea
- **Regularly navigate U.S. Coast Guard cutters through disputed areas**, in accordance with international law, without an overt or explicit challenge to claims or inclusion into the formal freedom of navigation operations program

#### To the People's Republic of China

- **Commit to the professionalization of the PLA Navy and China Coast Guard**, including the expansion of CUES to non-combat naval forces, and continue pursuing joint training opportunities with the United States
- **Refrain from using traditional naval forces for direct interaction with foreign civilian vessels**
- **Take advantage of freedom of navigation rights around the world**, and assess the long-term strategic advantages of FON principles to a globally capable PLA Navy

## **Part IV: Economy and Environment**



## **Environment First**

Rie Horiuchi

Resolving conflicting sovereignty claims and boundaries in the South China Sea is not promising in the foreseeable future. Instead, countries must identify and manage common interests and seek cooperative areas on less sensitive political issues. Joint development—an agreement to develop and share oil and gas in the disputed areas—is one of the mechanisms to pave the way for cooperation among disputed parties. Former Chinese President Deng Xiaoping promoted the concept of “setting aside disputes and pursuing joint development” as a peaceful approach for territorial disputes with neighboring countries (Ministry of Foreign Affairs, the People’s Republic of China 2006). Under Xi Jinping, however, recognition of China’s sovereignty claims by other states has returned as a precondition for joint development (SAIS interview, Hainan, January 2017). Therefore, joint development in the disputed areas again has become problematic in the current political environment.

Instead, environmental protection is the key to regional cooperation. The South China Sea should not be a battlefield of sovereignty disputes but a cooperative area to protect the marine ecosystem and fish resources. Transboundary environmental issues can only be solved through cooperation among regional states.

### **Biodiversity of South China Sea and Its Degradation**

The South China Sea is biologically diverse, with over 300 hard coral species, 3,365 fish species, and approximately 2 million hectares of mangrove forest (12 percent of the world’s total) (GEF 2013; UNEP 2001). Five million tons of fish, or 10% of the world’s total annual catch, are caught in the South China Sea, which is the basis of both food security and export income for coastal countries (UNEP 2001). China is a major fish producer and the largest exporter of fish and fishery products, accounting for 62% of global aquaculture production (FAO 2016).

There are many complicated sovereignty claims over the islands and seas in the South China Sea, which inflame political sensitivities in the region. The coastal states are cautious about acting in the disputed area to avoid

confrontation. As a result, regional cooperation in environmental protection in the South China Sea has not been effective for decades compared to other closed and semi-closed seas. States are reluctant to compromise even for marine environmental protection in disputed areas because they are afraid that anything they say or do might be interpreted as compromising their sovereignty claims (Zhang 2009).

Increases in coastal populations, rapid industrialization, economic growth, and increases in fish demand are the main drivers of the environmental degradation in the South China Sea (UNEP 2001). Three types of environmental problems have seriously affected the marine ecosystem in the South China Sea: habitat degradation and loss, overfishing, and land-based pollution (UNEP 2001).

Though no oil spills have occurred, these are also a potential risk in the South China Sea due to both oil transport through the region and exploitation of oil reserves from claimant countries. The South China Sea contains critical sea lanes for oil imports from the Middle East and Southeast Asia to East Asia. It sees “roughly two-thirds of South Korea’s energy supplies, nearly 60 percent of Japan’s and Taiwan’s energy supplies, and about 80 percent of China’s crude-oil imports” (Kaplan 2011). In addition, the South China Sea is known for its oil and gas reserves estimated at 11 billion barrels of oil and 190 trillion cubic feet of natural gas and not including undiscovered reserves in the disputed areas (U.S. Energy Information Administration 2013). In fact, all the claimant states have exploited oil and gas from the region. Any future oil spill could have serious impacts on marine life in the semi-closed sea because of “the low speed of water body exchange with the high seas” (Zhang 2009). Therefore, it is crucial that coastal states be well-prepared for regional oil-spill contingency response and prevention.

Environmental concerns have become increasingly salient. The disagreement about sovereignty has intensified the competition for marine resources. Coastal countries have increased their fishing activities to exploit what they deem their sovereign resources, as well as to defend their sovereignty claims (Emmers 2014). Increased population and economic development has compounded land-based sources of marine pollution. Without a regional approach to environmental management, significant biodiversity will be lost

within a century (UNEP 2001). If overfishing and marine pollution in the South China Sea continue to be overlooked, there is long-term potential for the marine environment to become irreversibly damaged and useless to coastal states, thereby reducing the value of the sovereignty claims. Therefore, management of fisheries and cooperative marine environmental protection in the South China Sea is a matter of urgency.

### **Global Conventions for Environmental Protection: UNCLOS 123**

The first United Nations Conference on the Human Environment in 1972 raised awareness of the importance of states' cooperation and the role of international organizations in environmental protection (UNEP 1972). There are various global conventions which obligate states to commit to environmental protection in international seas, such as the United Nations Convention on Biological Diversity, the International Convention for the Prevention of Pollution from Ships, and the United Nations Convention on the Law of the Sea (UNCLOS) (UNEP 2007). The activities of coastal states have different impacts on open and closed seas. In the case of closed and semi-closed seas, the marine environment is more directly affected by the activities of coastal states than open seas. Therefore, UNCLOS includes a specific article for regional cooperation on resource management and environmental protection. Under UNCLOS Article 123, states bordering closed or semi-closed seas have an obligation to cooperate in managing living resources and to protect the marine environment.

These international conventions, however, have limitations. They do not consider specific regional situations or take into account differences in social and economic development, as well as the varying levels of environmental protection capability among states. According to one Chinese government expert, China is more willing to cooperate under regional agreements than under broader international conventions (SAIS interview, Beijing, January 2017). Furthermore, the international conventions lack legally-binding repercussions for non-compliance, which hinders effective environmental protection.

As discussed above, states are more likely to abide by region-specific conventions than broader international treaty conventions for management of regional seas. However, there is not currently a regional legally-binding convention for transboundary environmental protection in the South China Sea



that involves all littoral countries. Current multilateral cooperation relies on nonbinding declarations, agreements, and action plans such as the Declaration on the Conduct of Parties in the South China Sea (DOC), which was signed by China and the Association of South East Asian Nations (ASEAN) states in 2002.

### **Regional Programs for Environmental Cooperation**

There are several regional and sub-regional programs and projects for environmental cooperation initiated by international organizations, such as Partnerships in Environmental Management for the Seas of East Asia (PEMSEA), the United Nations Environment Programme (UNEP) East Asian Seas Action Plan, and the ASEAN Environment Programme. The most notable program is Reversing Environmental Degradation Trends in the South China Sea and the Gulf of Thailand Project (the South China Sea Project), launched by UNEP and the Global Environment Facility (GEF) in 2002. This was a five-year project, implemented in seven countries bordering the South China Sea: Cambodia, China, Indonesia, Malaysia, the Philippines, Thailand, and Vietnam. This program is the first major program involving every littoral state of the South China Sea, focusing solely on environmental protection (UNEP 2007).

The South China Sea project has accomplished two major objectives, including establishing fisheries refugia and the rehabilitation and protection of mangroves. UNEP defines fisheries refugia as “spatially and geographically defined marine or coastal areas in which specific management measures are applied to sustain important species [fisheries resources] during critical stages of their life cycle, for their sustainable use” (South China Sea Project 2017). This system focuses on sustainable use of fisheries resources, instead of restricting access, as in Marine Protected Areas (MPA). Vietnam, the Philippines, and Thailand have established the fish refugia system and reduced fishing pressure. Another accomplishment of the South China Sea project is the rehabilitation and protection of mangroves by encouraging local authorities and community members to establish and enforce regulations (Van Lavieren and Benedetti 2015).

Although these are notable accomplishments, the agreement that any activities under the project could not be undertaken in disputed areas and any activities could not directly or indirectly address the sovereignty issue limits the

overall effectiveness of the program (UNEP 2001). Even though fish stocks are at risk, countries have not signed any multilateral joint fishery agreements in the areas under dispute (GEF 2013). Disputing states are also reluctant to agree to establishing environmental research and monitoring on the high seas and on disputed islands (GEF 2013). There is thus still no regional authority to manage vulnerable resources in the South China Sea.

Furthermore, there is no integrated monitoring and assessment scheme to continuously monitor, collect, and assess the environmental situation in the South China Sea. GEF helps the states to monitor the habitat and provides resources for pollution monitoring activities to improve the environmental condition of the habitat and biodiversity, fisheries, as well as decrease land-based pollution. However, the lack of technology, capability differences, and frequent staff turnover in the national and local governments have obstructed continuing monitoring and evaluation activities. The monitoring data collected by the local and national authorities is not fully accessible to the public for analysis and management (GEF 2013). The lack of continuous monitoring and information sharing hinders the assessment of the effectiveness of these programs. In order to raise awareness of the need for immediate action among the regional states and to develop effective regional cooperation, states must develop an integrated information sharing scheme to continuously monitor and analyze the marine environment. The local and national authorities should not only collect the scientific information but also assess and share it among the decision-makers of the coastal states and international organizations.

### **Regional Cooperation for Marine Oil Spill Contingency Response**

PEMSEA, a sub-regional partnership program implemented by the United Nations Development Programme (UNDP), initiated the Gulf of Thailand Joint Statement and Framework Programme for Joint Oil Spill Preparedness and Response for the marine oil spill contingency plan. Cambodia, Thailand, and Vietnam signed the program in 2006, which is the first agreement for transboundary cooperation on oil spills in the Gulf of Thailand (GEF 2013). The three countries have committed themselves to cooperate in mutual support and assistance in the case of an oil spill in the Gulf of Thailand.

However, this program is limited to sub-regional cooperation and there are no legally-binding regional regulations. The South China Sea contains sea lanes that are used by other coastal states and countries outside the region, such as the U.S. and Japan. The rapid growth of oil demand in Asian economies will lead to growth in oil transportation through the South China Sea, increasing the risk of oil spill incidents (Zhang 2009). In order to effectively prepare for oil spill contingencies in the South China Sea, it is crucial to have a regional protocol that regulates all the coastal states as well as the user states.

### **Regional Cooperation in the Mediterranean Sea: A Comparative Case Study**

The Mediterranean Sea is another enclosed sea, which contains crucial sea routes for trade and security. The South China Sea countries can draw lessons from the precedent of the Action Plan for the Mediterranean (Med Plan), which succeeded in building a regional regime to protect the marine environment. The Med Plan, which was developed under the auspices of UNEP in 1975, is the most successful case for regional environmental cooperation and has served as the role model for regional agreements for other seas (Haas 1990). Understanding the international conventions on regional cooperation for environmental protection in the Mediterranean Sea could help develop regional environmental cooperation on the South China Sea.

#### Convention and Protocol for Marine Environmental Protection

The Mediterranean Sea connects Europe, Africa, and the Middle East, which entails multiple political and economic interests of the 21 regional countries. Like the South China Sea, economic, social, and cultural backgrounds among the coastal countries are diverse, which makes cooperation complex. There are great discrepancies in economic development between African states and European states, and European states have political leverage over African states. Each state has different capabilities to monitor the environment and meet the obligations of international conventions. Reaching the agreement on the level of pollution control among these states was difficult because developing states tend to prefer weaker water quality standards as they prioritize industrialization rather than environmental protection more than developed states (Haas 1990).

Although the convention was initially called for because of concern for oil pollution by tanker traffic, UNEP initiated more comprehensive efforts to control many types of Mediterranean pollution such as marine dumping and land-based sources, including agricultural spraying, municipal wastes, and industrial wastes (Haas 1990). The participating states developed the Barcelona Convention for the Protection of the Mediterranean (Barcelona Convention) and subsequent protocols in 1976, which banned marine dumping and urged regional cooperation in case of oil spills. With the additional protocols adopted later, there are currently a total of seven protocols, including the Land-Based Sources Protocol. The convention and protocols bridged the gap between the capabilities of developed and developing countries (Zhang 2009). For example, European states and African states had to compromise over the Land-Based Sources Protocol, which covers pollution such as agricultural compounds, industrial compounds, and municipal wastes. Under the protocol, the developing countries were assured that contracting parties would provide technical assistance to developing countries to formulate and implement the program “particularly in the fields of science, education and technology” (United Nations 1980, Article 10). Furthermore, the protocol differentiated between emission standards and ambient standards; it applied the emission standards for the black list pollutants (most toxic substances) and ambient standards for the grey list pollutants (less toxic substances), so that industries in developing countries had a comparative advantage over the European states with respect to the grey list. The European industries had to introduce pollution control immediately for grey-listed materials because Southern European coasts were more polluted than the North African coast, whereas African countries were able to prioritize their industrialization (Haas 1990).

The Mediterranean Action Plan emerged in a difficult political environment in which the involved states had different political interests and power. Furthermore, UNEP-led monitoring and research projects, with the support of national research institutions and other international organizations including the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), and the Intergovernmental Oceanographic Commission of UNESCO (IOC-UNESCO), raised the technical capability of developing countries by providing equipment and by training technicians. The

Mediterranean would be more polluted today if it were without this regional cooperation.

### Leading Role of France and UNEP

In the case of the Mediterranean Sea, prior to UNEP's leadership, France, as a major polluter and the regional economic and political hegemon, played a leading role in building consensus in the region on pollution control. France was a major trading partner with other countries in the region. Also, France had a strong scientific capability and was the only country that had an operating pollution monitoring network in the region (Haas 1990). Therefore, there was political, economic and scientific opportunity for France to take the lead in the Med Plan.

In Haas's analysis, there were initially two motivations for French leadership in Mediterranean pollution control: France had a strong interest in showing its dominant presence in the region and hoped not to commit itself further than the European Economic Community (EEC) regulations (Haas 1990). Therefore, France took the leadership in realizing regional cooperation in marine environmental protection. Eventually, UNEP took over the role of French leadership and evolved the Med Plan into a comprehensive program that hampered French dominance (Haas 1990). Nevertheless, France was the largest financial contributor to the Med Plan from the initial period and continued its sizeable contribution even after its leadership role was transferred to UNEP. If there had not been active participation by both France and UNEP, a pollution control framework in the Mediterranean would not exist today.

### **China-ASEAN Cooperation in Regional Environmental Protection**

China and ASEAN states have gradually shown their willingness to begin to engage in environmental cooperation in the South China Sea. The DOC signed in 2002 lists environmental protection as one of the five cooperative areas, implemented so far mainly in workshops.

As China develops, its public has become more concerned with environmental protection generally (Gao 2015). Following concerns about air pollution, more than 75% of the Chinese public thinks water pollution is a very or moderately big problem. Although there is no specific polling data for the

South China Sea, growing public opinion on environmental issues could be a driving force for China to take regional action for environmental protection in the South China Sea. The government has paid attention to marine environmental protection since the mid-1980s and has enacted laws and regulations to improve the marine environment (Zhang 2009). If China were to take the environmental initiative in the South China Sea, the Chinese public would welcome it.

ASEAN countries have different economic, historical, cultural, and political backgrounds. They were colonized by different countries. Culturally, each country has a different religion such as Buddhism, Confucianism, Christianity, Hinduism, and Islam. There are significant differences in economic development and living standards among the states, ranging from the most developed, Singapore, to the least developed, Cambodia. Disparities in levels of development suggest that each state may have varying abilities to enact environment protection.

China and ASEAN countries should work toward agreement on sustainable growth strategy. To facilitate cooperation among diverse states, there should be one country willing to lead the initiative, as France did in the Mediterranean. Since China is a major stakeholder of resources as well as the transportation routes, it should take one of the central roles. At the same time, because China has political and economic advantages, ASEAN countries should cooperate closely so that the agreement does not result in Chinese dominance over the region. China and ASEAN will require the involvement of international organizations, because ASEAN countries may see China's lead as an attempt to undermine other claims to sovereignty. International organizations, especially UNEP, should support any environmental protection regime for the South China Sea by filling economic, technical and political gaps through sharing scientific information, giving legal advice, and drafting agreements. UNEP should play a coordinating role to ensure all the coastal states' interests are reflected and to make the agreements equitable, as when it took over leadership of the Med Plan from France.

Admittedly, the sovereignty issue, which is absent from the Mediterranean, will likely complicate regional environmental cooperation in the South China Sea. The Med Plan, however, establishes a precedent for diverse countries to be able to reach an agreement for the protection of the marine environment. China

and ASEAN countries can observe, learn from, and adjust this example for their own specific circumstances.

### **Conclusion**

There are two benefits from regional cooperation on environmental issues: protection of the marine environment and fostering regional cooperation. First, coastal states can effectively protect the marine environment by combating and preventing transboundary pollution, over-fishing, and habitat loss. A healthy marine environment would enable sustainable economic and social development. Each state is affected by the deterioration of the marine environment differently and has different willingness and capability to protect the environment. To this end, each state must recognize the importance of marine environmental protection and cooperate to maintain sustainable development in the region. The degradation of the marine environment will not be solved by a single state but rather by all bordering and user states.

Second, marine environmental protection can foster a regional cooperation mechanism and build mutual trust that could eventually be the basis for settling disputes, which will require time, wisdom, and political sacrifices. Building cooperative relationships in less politically-sensitive areas such as marine environmental protection could open opportunities to expand the discussion into sensitive issues such as security cooperation (Wu 2013).

In order to achieve these goals, UNEP—with Chinese backing—should take the lead, despite the multiple claimants to sovereignty in the South China Sea. International organizations such as UNEP should support the development of regional cooperation by filling in gaps of political, economic and technical capabilities among the states. However, China, as the major stakeholder of the sea routes and marine resources, should initiate regional cooperation and eventually hand over leadership to UNEP. Enacting marine protection and ensuring regional cooperation under UNEP leadership would lead to a sustainable marine environment in the South China Sea.

### **Recommendations**

#### **To the Government of the People's Republic of China**

- **China should promote the concept of ‘setting aside disputes and**

**pursuing environmental protection.’**

To the Government of the People’s Republic of China and ASEAN Countries

- **China and ASEAN countries should build legally-binding regional conventions and protocols to address environmental protection in the South China Sea.**

The protocols should include but are not limited to:

- Preventing pollution from land-based pollution
  - Contingency and preventive plan for oil spill emergency from ships
  - Preventing pollution dumping from ships
- **China and AESAN countries should expand fisheries refugia systems into a regional program to protect sustainable fishing resources across the South China Sea.** The regulation should ensure seasonal closure, restrict large-scale fishing and encourage small-sale fisheries.

To the International Community

- **International organizations including UNEP and GEF should raise awareness of transboundary environmental concerns in the South China Sea** among the coastal states to encourage immediate action.
- **UNEP should take the leading role in encouraging China and ASEAN countries to create a convention and protocols**, including providing technical and legal assistance, drafting the agreements, and sharing scientific information and knowledge.
- **UNEP should build a regional marine cooperation center for integrated monitoring and assessment of the marine environment.** Researchers should be recruited from national institutions and the UN. The center should allow coastal states to share monitoring and evaluation data. It should also increase marine protection capabilities by providing technical assistance to each state on monitoring, preventing, and managing pollution. The collected information should be open to the public and to national/international decision makers to develop effective policies. The center should coordinate with the related



governments and international organizations such as GEF.

- **International organizations such as UNEP, UNDP, WHO, and the International Maritime Organization (IMO) should focus on building the capability of developing countries to monitor and protect the marine environment.**

This includes, but is not limited to

- **Providing adequate equipment and technical experts** to increase their monitoring capabilities.
- **Providing legal assistance to governments** to build domestic laws and regulations for environmental protection.
- **These organizations should initiate exchange programs** by inviting scientists and policy makers of different regions with backgrounds in environmental protection (1) to preserve and share lessons from the past experience of pollution/environmental destruction and successful environmental protection and (2) to train scientists and environmental policy makers of developing countries.

To the User States

- **The user states—including but not limited to—the U.S., Japan, Australia, India, and other powers in the region should join the negotiation table for convention and protocols as observers** to ensure that the regulations will not affect freedom of navigation in the South China Sea.

## **U.S. vs. China: Economic Diplomacy in the South China Sea**

Francesco Varotto

Today's Southeast Asia finds itself hemmed in between a duo of powers: China, both historically and physically tied to the region, and the United States, an outside actor with a global mission. These two actors, the second– and the first–biggest world economies respectively, have competing interests and antagonistic positions on a number of regional questions, including in the South China Sea.

Economic diplomacy is one of the strategies they use with the aim of solidifying alliances and gaining support from specific countries on the issue. Both China and the U.S. have well understood that trade and investment in key countries may help gaining a sizable advantage over the other in an increasingly unstable scenario.

This chapter will analyze and compare Chinese and American attempts at winning hearts and minds in the region through economic diplomacy. It will seek to determine which has been more successful at it, and will contemplate which may be more likely to dominate the region in the future. First, it will examine the system of alliances that define the balance of power in the region, and how these alliances may play out in the South China Sea. It will then consider Chinese and American economic diplomacy in Southeast Asia overall, and look at implications for the South China Sea. Finally, it will dig into two country cases where China's economic might may be having a role in relaxing positions vis-à-vis the South China Sea question: Malaysia and the Philippines. A concise list of recommendations, directed to the U.S. and Chinese Governments, will be included at the end of the chapter.

### **A Changing Ecosystem**

The United States formally has two main allies in the region: the Philippines and Thailand. While Thailand is not a contender in the South China Sea, the Philippines has been actively involved in the issue.

The U.S. signed a Mutual Defense Treaty with the Philippines in 1951, and the archipelagic state has accommodated U.S. bases and contingents for more

than four decades since the end of World War II. After 1988, U.S.-Philippine relations were strained at various times. In 1991, the Philippines' government asked the U.S. to withdraw from Subic Base, then the Navy's principal supply and ship-repair facility, and Americans were gone by the end of 1992. In 1999 Washington and Manila agreed to resume ship visits and perform joint military exercises via the Visiting Forces Agreement (VFA), and from 2002 onwards, American troops have been involved in the southern island of Mindanao fighting against insurgent Islamist movements together with Philippine military forces (Gates, Goh, and Huang 2016). There is a more recent Enhanced Defense Cooperation Agreement, which builds upon the VFA (Official Gazette of the Republic of the Philippines 2014). In 2003, during the turbulent years of the so-called War on Terror, President George W. Bush even designated the Philippines a "major non-NATO ally," a select club of some of America's closest military partners.

However, the relatively solid relationship the U.S. has historically enjoyed with the Philippines appears to be faltering lately. Following the election of Rodrigo Duterte as the new Philippine President in May 2016, Manila has been gradually pivoting towards China while distancing itself from the U.S. President Duterte has repeatedly praised China and ventured into condemnations of the U.S. at the same time. The Philippines will not break its alliance with the U.S., at least in the short- to medium-term. Relations between the two countries date back to colonial times, and Duterte will not remain forever in power. Filipinos notably have a very positive view of the U.S., and that is unlikely to change swiftly (Wike, Stokes, and Poushter 2015). Yet the shift provoked by the brusque change of direction in the country's leadership might be already having consequences for the South China Sea. Notably, for instance in October 2016 the Philippines suspended joint patrols with the U.S. there (Moss 2016).

It was Manila that in 2013 brought the legal case against Beijing to the International Court of Arbitration, and in 2016 won it. Now, instead of seeking implementation of the Court's ruling, President Duterte seems to be willing to trade his country's victory in court for China's billions. Four hundred Filipino businessmen joined Duterte's trip to China last October, and investment agreements worth \$24 billion were signed between the two countries (Calonzo and Yap 2016).

The nimble use of economic diplomatic action by China might create unwanted biases from a U.S. perspective. Even if, as noted, the historic alliance between the U.S. and the Philippines will likely last in the short- to medium-term, it is crucial that the U.S. take appropriate measures in order not to lose a precious ally as the Philippines in the long-term. China can already count on a large group of friends in the region, and despite tensions in the South China Sea, there exist ideological affinities between the PRC and the Indochinese states overall. Although it remains a question whether such affinities are sufficient to make them China's friends, it is possible that some of them will be tempted to give in to Beijing's economic lures in case these are made explicit.

The U.S. should move closer to Vietnam in a phase in which the nation's Communist governance is rightly concerned with China's activities in the South China Sea. Thankfully, this has been understood in Washington, and a rapprochement with Hanoi seems to be underway, as confirmed to our group during meetings at the U.S. and Vietnamese Embassies (SAIS interview, Beijing, January 2017).

It is equally important that the U.S. strengthen its ties with Brunei, Indonesia, and Malaysia, capitalizing on the fact that these countries—with the recent and partial exception of Malaysia—have been less aligned to either China or the U.S. in the South China Sea dispute. Their role may be decisive to the issue in the future.

### **Assessing Chinese and American Economic Diplomacy**

Economic relations between China and ASEAN have grown exponentially in the past three decades. Inter-trade has skyrocketed, going from mere \$8 billion in 1980 to \$178 billion in 2009—the year in which Beijing became the group's largest trading partner. In 2015, it accounted for \$345 billion, and the PRC is currently among the top three commercial partners for every ASEAN country. A China-ASEAN Free Trade Agreement (ACFTA) was signed in 2010, bilateral investment was \$130 billion in 2014, and will amount to \$150 billion by 2020 (ASEAN Secretariat 2013).

Furthermore, China is pursuing policies aimed at creating financial and economic institutions—like the Silk Road Fund, or the newly established Asian Infrastructure Investment Bank (AIIB)—and pushing forward ambitious

regional development projects such as *One Belt, One Road* (OBOR)—of which the Maritime Silk Road is a cornerstone. It is not difficult to sense where China is willing to go with such initiatives. While the leadership has downplayed the political role of the AIIB and described the bank as complementary to the Asian Development Bank (ADB) and the World Bank (WB), the AIIB has certainly the potential to rival U.S.-dominated institutions as financier of infrastructure projects in the Asian region. Since its establishment in early 2016 the AIIB has already approved ambitious ventures in the fields of energy, poverty alleviation, and transport in Central Asia, the Middle East, South and Southeast Asia. What is striking about the AIIB is that unlike the ADB and the WB, its financing operations are much simpler and loans are conceded with fewer conditions. Asking borrowers to privatize or deregulate businesses in order to obtain them, typically, is not something the AIIB would do (Qing 2015).

As for OBOR, despite the fact that President Xi has repeatedly emphasized the ‘Three Nos’ underlying the initiative—i) no interference in the internal affairs of other nations, ii) no seeking to increase the so-called sphere of influence, and iii) no striving for hegemony or dominance—it is probable that China has ulterior reasons for advancing OBOR beyond simple economic considerations like ensuring access to resources or promoting trade. It may well be seeking to increase its influence at the expense of the U.S. and Japan, Asia’s established powers (Cheung and Lee 2016; The Economist 2014).

Frictions in the South China Sea are currently inhibiting major deals signed between the AIIB and contenders in the dispute. Yet this may not last. Both the Philippines and Vietnam, for instance, register among the lowest levels of infrastructure development in Southeast Asia (Komatsuzaki 2016; Hansakul and Levinger 2016). They desperately need new roads, ports, and facilities in order to revamp their economies, and may therefore welcome investment in key sectors, even if it comes from Chinese institutions (Ibid). Duterte has made the tie between Chinese assistance in infrastructure and his position on the South China Sea fairly clear, saying that he was ready to set aside the dispute “if China will build us some railroads” (Lacorte 2016).

The U.S., assuming it is not willing to see Chinese influence grow indefinitely, should counter such moves by pushing forward a clear strategy for its economic diplomacy in the region. Some policy options—such as developing

a strategy for Asian infrastructure development, or updating the Asia-Pacific economic architecture—have been put forward, notably by the Center for Strategic and International Studies (Barshefsky, Greenberg, and Huntsman Jr. 2017).

The U.S. already has an established presence in Southeast Asia, but there needs to be further coordination between the U.S. government and multilateral institutions, as well as between the U.S. government and American enterprises operating regionally—mimicking the way China currently manages its economic diplomacy. The U.S.’ starting point is enviable, since its economic grip in the region is already strong.

Trade between ASEAN and the United States totaled \$212 billion in 2015. Washington is among its top trading partners, and U.S. investment in the 10-member bloc represented 11.3% of the total and around \$14 billion in 2015. In 2012, President Obama and ASEAN leaders launched the U.S.-ASEAN Expanded Economic Engagement (E3) initiative, with the purpose of facilitating trade and investment across the 11 nations and preparing ASEAN countries to join free trade agreements like the Trans-Pacific Partnership (TPP)—a trade agreement between a number of Pacific rim countries that now appears to be dead (ASEAN Statistics 2017).

In terms of institutions, the U.S. holds among the biggest shares in the Asian Development Bank (ADB) (Asian Development Bank 2016) as well as in the WB (The World Bank 2016). By virtue of being the largest shareholder in both organizations, Washington may try to be more incisive when it comes to directing the flow of projects and investments into strategic countries in the South China Sea. There is an obvious asymmetry between the U.S. and China here: both the ADB and WB are two multilateral institutions in which the U.S. plays a major role while the AIIB is a bank founded by the Chinese government in which the U.S. is not a member. On the contrary, China is a member of both the ADB and the WB, thereby limiting the degree to which these institutions may be used for U.S. purposes. Yet Americans should still demonstrate a stronger governmental lead when it comes to influencing the direction of investment inside ADB and WB. In addition to this, the U.S. should seek to become a member of the AIIB, so that it can put pressure on China from within its own

institutions. Beijing has made clear that the U.S. may join the AIIB if it pleases, and Washington should accomplish that.

This becomes particularly critical also given recent developments concerning the TPP. This trade agreement, which the new administration has failed to ratify, represented by far Washington's best weapon in the region in terms of economic diplomacy. Not only would have it brought substantial benefits to the American economy (The Wilson Center 2016), but it would have also have given it a strategic advantage over China. As former President Obama remarked in 2015, "without this agreement, competitors that do not share our values, like China, will write the rules of the global economy" (Obama quoted in The White House Office of the Press Secretary 2015). President Trump's decision to withdraw the country from the TPP is set to produce far-reaching consequences for the regional balance, including in the South China Sea.

In the eyes of many Southeast Asian leaders, the TPP would have constituted a proof of American commitment to the region, and would have placed the U.S. and its treaty associates at the center of regional rule making (Hamre, et al. 2016). For now, serious divergences in the South China Sea have caused mistrust and concern towards Beijing. However, U.S. abandonment of the TPP makes one wonder whether these impediments alone will be capable of curbing China's push towards dominating Southeast Asia in the long-term.

On multiple occasions, China's leadership has emphasized the need to have Beijing's neighbors behave in a more "friendly manner in politics, and [be] economically more closely tied to China" (Li and Char 2015). President Xi has sought, arguably rather successfully, to boost China's role in the region by using economic diplomacy as a tool, thereby trying to influence policy-making in Southeast Asian capitals in a way suitable to China's interests. The South China Sea is a case in point.

### **Did Malaysia and the Philippines Yield to China's Sirens?**

Beijing has been testing checkbook diplomacy to seize advantages in the South China Sea since 2011. In November of that year, China's then Premier Wen Jiabao pledged \$500 million to Southeast Asian countries to induce them to

cooperate with China on maritime issues. The offer was promptly rejected (Hayton 2016).

A series of incidents involving China and its neighbors spurred concerns within ASEAN about Chinese activities in the South China Sea. Notably, China took possession of Philippine-controlled Scarborough Shoal in April 2012, and in 2014 moved an oil rig into waters claimed by Vietnam (Clover and Peel 2016). In 2015, after a year of ASEAN-China maritime cooperation, Beijing unremittingly pursued construction of artificial islands.

This ‘talk-and-grab’ diplomacy irritated many of the ASEAN countries, and discouraged its members from constructively engaging with China. As a result, until recently, it was problematic for China to approach South China Sea issues with ASEAN members, both multilaterally and bilaterally.

Times seem to have changed though. Two ASEAN members, Malaysia and the Philippines, are currently going through a period of relatively friendly relations with China. There are multiple explanations for this. Kuala Lumpur is getting closer to Beijing in part because of investigations by the U.S. Department of Justice of Prime Minister Najib Razak’s involvement in money laundering (Latiff and Sipalan 2016), and American criticism of the Philippines’ war on drugs has further alienated Duterte (Taylor 2017).

The rapprochement between China and these two countries may also be due to economic inducements coming from Beijing, as well as to a crude reality: “China is too near and the U.S. is too far” (Hayton 2014). Beijing knows that, at the end of the day, these countries depend on China more than China depends on either of them. Kuala Lumpur and Manila are aware of this fact too. Malaysia has been silent on South China Sea issues and the Philippines, which had filed a lawsuit against China in 2013, seems to be oddly rolling back from its original positions in the dispute. President Duterte was lavishly treated during a state visit to China in October 2016, and investment deals amounting to \$24 billion were put on the table. On that occasion, the Philippines’ President emphatically announced his country’s rhetorical separation from the United States and obtained from China a go-ahead for Filipino fishermen to operate around Philippine-claimed Scarborough Shoal (Blanchard 2016). Following a six-day trip to China, President Najib of Malaysia also returned to his capital with \$34 billion worth in contracts and loan pledges. Notably, the deals also include the



purchase of military equipment, including four naval vessels, and investments in strategic sectors that some have defined as “the golden jewelry” of Malaysia (Sipalan 2016).

It seems that Chinese carrots are beginning to produce the results hoped for by Beijing in the South China Sea. Both Malaysia and the Philippines agreed, in principle, to resolve controversial issues through dialogue with China, or in other words, bilaterally. Although it remains to be seen whether Kuala Lumpur and Manila will maintain their promise to do so in the long-term, this represents a victory for Beijing, which has always preferred to maintain South China Sea issues on a bilateral—rather than on a multilateral—level.

### **Conclusion**

In the cases of Malaysia and the Philippines, China is apparently winning terrain. Even the United States—as the group has been able to appreciate during the trip—acknowledges it in private. This is not entirely bad. For instance, it is to the U.S. advantage that the Philippines and China settle their territorial disputes expeditiously, and without requiring military help from the U.S., which Washington might otherwise be compelled to give by virtue of its military alliance with Manila.

Given the nature of China’s political system, it is easier for Beijing to engage in effective economic diplomacy. Unlike the American government, the Chinese are used to intervening in economic matters overseas. Yet its ability to do so successfully will depend on its overall economic performance. China has to hope it can sustain current levels of growth in the future. It will need more and more capital in order to keep up with its regional game: to make new friends, as well as to ensure current friendships endure over time. HSBC estimates that OBOR will require between \$4 and 6 trillion in the next 15 years (Mauldin 2017). It remains to be seen whether China will be able to maintain its commitments to regional development should its economy start growing at a significantly slower pace. Currently, countries such as Malaysia and the Philippines find Chinese money attractive, and for that reason have come closer to China. Yet this may be only temporary.

American presence in the region is still dominant, and Washington should not fear imminent Chinese hegemony. The U.S. should nevertheless be willing

to find a way to adapt its diplomacy to the challenge. By virtue of its unparalleled military might, the U.S. will continue to rule the waves in the short- to medium-run, including in the South China Sea. But it should also note that this is a regional environment wherein changes happen rapidly, and that therefore needs continuous adjustments.

### Recommendations

#### To the U.S. Government

- **The U.S. should counter Beijing's economic diplomacy with a strategy resembling that of China**, which entails more active involvement by the state in economic issues overseas. The two countries have vastly different political systems and domestic constraints, as well as diplomatic styles. However, the U.S. should recognize the advantages of economic diplomacy China-style, and adjust accordingly.
- While the U.S. already has deep economic relations with almost all countries in the region, **it should nonetheless increase economic engagement at all levels**. The TPP may be dead but new agreements, perhaps of a bilateral kind, should be carefully considered with key countries in the South China Sea.
- It is crucial that **the U.S. cultivate its time-honored alliance with the Philippines**, including by increasing its already solid economic interactions with Manila. Despite the confrontational nature of the current government in the Philippines, the U.S. cannot afford to lose such a precious ally in the region down the road.
- **The U.S. should work towards a rapprochement with Malaysia**. The current phase is one in which Kuala Lumpur appears to be coming closer to China despite South China Sea issues. Washington should study strategies for reengagement. For instance it may want to upgrade its economic partnership with Malaysia, and increase trade and investment there.
- **The U.S. should actively seek to join the Asian Infrastructure and Investment Bank** so as to exert influence from inside rather than outside. Participation in the holistic ecosystem of Asian institutions—

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even if not U.S.-dominated—may yield more results than the mere containment of China.

### To the Chinese Government

- Given the current relaxation in its relations with Malaysia and the Philippines, **China should plan a resolution of territorial disputes with these two countries.**
- **China should use economic diplomacy** not merely as a way of increasing its influence, but **as a confidence building measure** to deescalate tensions with other disputants in the South China.

## **Maritime Militias and South China Sea Fisheries**

Lauren Barney

Fish is the main current and volatile resource driver in the South China Sea (SCS) dispute. Expanding fisheries in a semi-enclosed sea drives a maritime “land grab.” Subsea mineral resources, national sovereignty and maritime commercial transport are all sources of regional maritime friction, but the volatility of fish supply escalates tensions rapidly. Since fishing resources are becoming scarcer and face depletion in many areas in geographical proximity to China, competition for aquatic resources is growing. In areas of the SCS with overlapping sovereignty claims, maritime security and naval forces assert national sovereignty to protect domestic fishing interests. Fishing in these areas draws neighbors into active confrontation. Therefore, regional industry cooperation is essential to remove multi-state rivalry.

### **South China Sea Fisheries**

#### **The Geopolitical Concerns of the Fishing Industry**

Prior to the 21<sup>st</sup> century, fishing throughout most of the SCS was not a regional concern. Littoral states did not assert territorial rights. But dwindling resources along coastal areas forced large fishing fleets farther into waters claimed by others. As seen in the figure below, the majority of fishery incidents in disputed waters occurred farther into the South China Sea.

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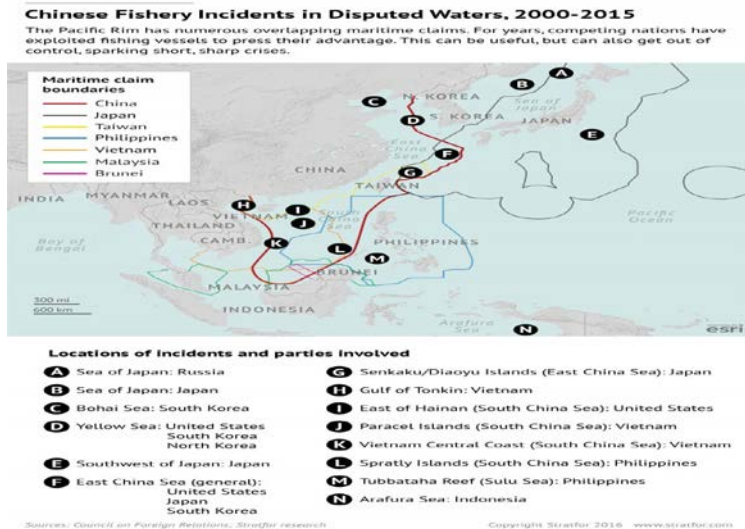


Figure 1: Chinese Fishery Incidents in Disputed Waters, 2000–2015.

Source Council on Foreign Relations; Stratfor Research<sup>18</sup>

Littoral states have therefore changed their approach to fishing in the SCS. Today, governments exploit fishing fleets to reinforce territorial claims. Fishing is now a politically-charged national security issue. As geopolitical concerns grow, the roles of fishermen evolve from innocent actors to coordinated government pawns. Fishermen encroach into waters claimed by others with state security assistance.

### The Regional Protein War

The SCS is a three million square kilometers sea that is home to a disproportional marine aquatic catch. Moreover, hundreds of millions of people live on its coasts. The SCS is home to 3,365 marine fish species, and accounts for twelve percent of the world's total fishing catch, totaling \$21.8 billion (ADM Capital 2012). Fishing resources are depleting in the SCS, and the Chinese commercial fishing enterprise has expanded tenfold over the past decade According to UN Food and Agricultural Organization, Asian fishing fleet vessels account for 75% of total

<sup>18</sup> Courtesy of [Stratfor.com](http://Stratfor.com), a geopolitical intelligence platform.

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world fishing fleets, and China accounts for 61% of total Asian aquaculture production.

**TABLE 13**

### **TOTAL OF FISHING FLEETS BY REGION, 2014 (POWERED AND NON-POWERED VESSELS COMBINED)**

	VESSELS	PERCENTAGE OF TOTAL
	(Thousands)	
<b>WORLD</b>	<b>4 606.0</b>	
Africa	679.2	14.7
Asia	3 459.5	75.1
Europe	95.5	2.1
Latin America and the Caribbean	276.2	6.0
North America	87.0	1.9
Oceania	8.6	0.2

### **AQUACULTURE PRODUCTION BY REGION AND SELECTED REGIONAL MAJOR PRODUCERS: QUANTITY AND PERCENTAGE OF WORLD TOTAL PRODUCTION**

REGIONS AND SELECTED COUNTRIES		1995	2000	2005	2010	2012	2014
Asia	(thousand tonnes)	21 677.5	28 422.5	39 188.2	52 439.2	58 954.5	65 601.9
	(percentage)	88.91	87.68	88.47	88.92	88.70	88.91
Central Asia	(thousand tonnes)	14.3	6.7	4.0	7.8	15.7	25.5
	(percentage)	0.06	0.02	0.01	0.01	0.02	0.03
China (mainland)	(thousand tonnes)	15 855.7	21 522.1	28 120.7	36 734.2	41 108.3	45 469.0
	(percentage)	65.03	66.39	63.48	62.29	61.85	61.62
Eastern Asia, excluding China (mainland)	(thousand tonnes)	1 549.0	1 371.8	1 555.6	1 572.6	1 532.5	1 545.1
	(percentage)	6.35	4.23	3.51	2.67	2.31	2.09
Indonesia	(thousand tonnes)	641.1	788.5	1 197.1	2 304.8	3 067.7	4 253.9
	(percentage)	2.63	2.43	2.70	3.91	4.62	5.77
Viet Nam	(thousand tonnes)	381.1	498.5	1 437.3	2 670.6	3 084.8	3 397.1
	(percentage)	1.56	1.54	3.24	4.53	4.64	4.60
South-Eastern Asia, excluding Indonesia and Viet Nam	(thousand tonnes)	1 151.7	1 444.4	2 614.9	3 401.0	3 431.7	3 194.8
	(percentage)	4.72	4.46	5.90	5.77	5.16	4.33

Courtesy of [Stratfor.com](http://Stratfor.com), a geopolitical intelligence platform.

As a result, harbors to house Chinese fishing fleets are also expanding. The U.S.-allied Philippines relies on this fishing ground for its population's main source of protein. With limited and depleting aquatic products, fleet and harbor expansion challenges the future food security of other claimant states who also fish in close proximity.

According to the Asia Maritime Transparency Initiative (AMTI), China has already constructed harbor infrastructure on every major Paracel Island it occupies (CSIS 2016). China has built small harbors on Triton, Drummond, Money, Pattle, and Lincoln Islands, and large harbors on Duncan and Woody Islands. Triton Island was already equipped with a small harbor and China slightly expanded this harbor. Not every island has a military base or air force infrastructure. The maritime aspirations of China rely on docking PLAN ships, Coast Guard vessels, and fishing fleets at its harbors.

Maritime resource protection is essential to the survival of Chinese commercial fishing. As shown in the figure below, over half of Chinese aquatic products originate from seawater. Overfishing along the coast requires Chinese fisheries to move further into the SCS to meet demand and to employ more workers. Discounting the illegal fishing in the region, legal fisheries employ at least 3.7 million Chinese citizens in the country's southern provinces (FAO 2006). As populations rise, demand for fish in these coastal areas will also rise, resulting in continued growth in Chinese commercial fishing at the cost of other claimant states' fishing resources.

Year	2010	2011	2012	2013	2014	2015
Total Aquatic Products (10 000 tons)	5373.0	5603.2	5907.7	6172.0	6461.5	6699.6
Seawater Aquatic Products	2797.5	2908.0	3033.3	3138.8	3296.2	3409.6
Freshwater Aquatic Products	2575.5	2695.2	2874.3	3033.2	3165.3	3290.0

*Figure 2: National Bureau of Statistics; People's Republic of China<sup>19</sup>*

Micronutrient deficiency is a growing concern of all claimant states in the SCS. Micronutrients found in fish include vitamin A and DHA omega 3 fatty acids. As the SCS littoral states are among the most reliant in the world on aquatic products (Golden et al. 2016), these populations could face a growing concern with malnutrition as the supply of aquatic products decreases.

### Depletion of Fishing Resources and Multilateral Fishing Cooperation in the Asia Continent

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<sup>19</sup> Courtesy of [Stratfor.com](http://Stratfor.com), a geopolitical intelligence platform.

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Since fish resources are not exclusive and proprietary, the SCS generates a tragedy of the commons. After diminishing China-ASEAN cooperation in 2012, the Asia-Pacific Fishery Commission (APFIC) secretariat warned of overfishing in the SCS and the need for sustainable fishing practices (Funge-Smith, Brigs, and Miao 2012). As aquatic product depletes closer to countries' borders, regional and state fishing enterprises move further away from their coasts.

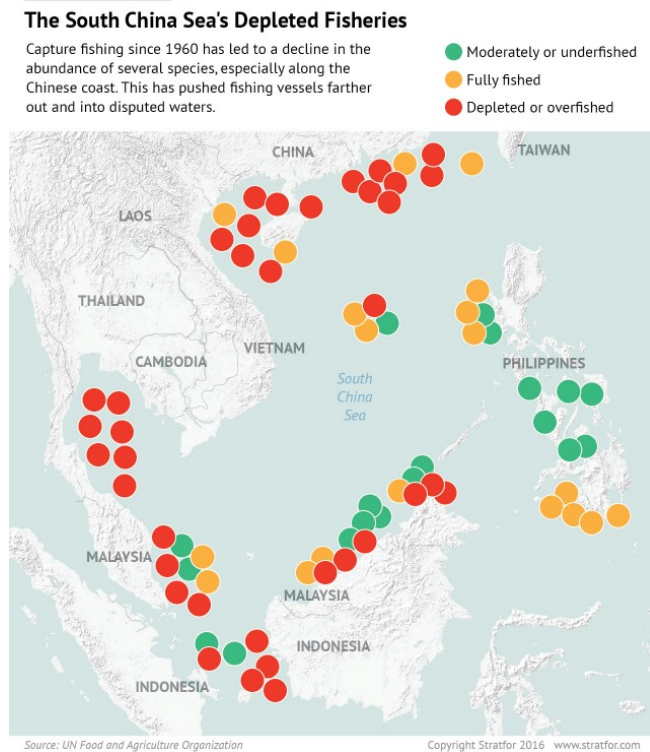


Figure 3: UN Food and Agriculture Organization 2016<sup>20</sup>

Article 123 of UNCLOS calls for cooperation between states. The existing bilateral treaties in the South China Sea do not adequately support conservation of aquatic resources. Current multilateral agreements fail to include all littoral

<sup>20</sup> Courtesy of [Stratfor.com](http://www.stratfor.com), a geopolitical intelligence platform.



states.<sup>21</sup> In other areas of the world, such multilateral agreements have proven effective. The Northwest Atlantic Fisheries Cooperation (NAFO), a 12-country management body in the Atlantic Ocean, monitors vessel requirements and fisheries compliance outside the contracting parties' EEZs. A multilateral cooperation agreement negotiated with all claimant states similar to NAFO would resolve both conflictual language in various bilateral treaties and the lack of full littoral state membership. SCS littoral states need to realize aquatic product is exhaustible. Sustainable fishing practice would provide long-term resource gains. China should learn from the failures of APFIC to generate success in future negotiations.

Since 1995, the Chinese Ministry of Agriculture has placed moratoriums on fisheries in the South China Sea. These moratoriums are unilateral actions intended to save fish species from depletion. The ministry's most recent announcement prescribed a new moratorium from May until August 2017. Enforcement of these moratoriums on other states' fisheries could incite incidents of confrontation.

### **China's Military Complex in the South China Sea**

#### **People's Liberation Army Navy (PLAN) Development**

The Southern Command of the PLA Navy (PLAN) protects Chinese sovereignty rights and economic security in the South China Sea. PLAN's former Navy Commander, Wu Shengli, spoke in December 2016 at the seventieth anniversary commemoration of the capture of Paracel and Spratly land formations that China refers to as Xisha and Nansha islands. Commander Wu highlighted the necessity to safeguard the status quo of Chinese sovereignty over these islands:

Recovering these islands was an important achievement of China's war against aggression, demonstrating that China was firmly safeguarding the post-war international order and affirming the nation as defending its rights and interests in the South China Sea. (Press Trust of India 2016)

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<sup>21</sup>Current multilateral treaties include Southeast Asian Fisheries Development Center's (SEAFDEC) signed by 11 ASEAN states but not China and the Asia-Pacific Fishery Commission (APFIC) signed by China but which only functions as a consultative forum for the Yellow Sea, the South China Sea, and the Bay of Bengal.

China's military strategy was revised in 2015 (PRC Ministry of Defense 2015). Safeguarding rights and interests in the South China Sea extends to safeguarding maritime resources and vessels exploiting these resources.

### Coast Guard

The Chinese Coast Guard works in tandem with PLAN to protect against perceived security threats. Similar to its function in the East China Sea, the Coast Guard (海警局haijingju) serves as an obstruction force in resource rich areas and protects Chinese fisherman.

The Chinese Coast Guard is one of the few state operated entities in the SCS to cooperate with other claimant states. Philippine President Duterte committed to cooperation between the two states' coast guards during his October 2016 visit to China. The interim agreement solidified in February 2017 opened needed navigational communication between the two coast guards. This cooperation may ease tensions over competing claims. Furthermore, both China and the Philippines could potentially share harbors erected on the Paracel Islands.

### Maritime Militias

China exerts its control over fishing resources partly through a civilian paramilitary force, maritime militias. They are considered militias because they receive specialized defense training and equipment that an ordinary fishing fleet would not get. The Chinese maritime militias function as the vanguard to protect China's regional presence. The type of vanguard role the maritime militias play depends upon whether it is a time of peace or a time of war. In peace time, maritime militias protect fishing. During conflict, the maritime militias can act as military units.

### Peace Time

During peace time, China's maritime militias act as a form of power projection. The militia is the lowest part of the military command. It asserts Chinese claims in the SCS by projecting Chinese power in the region and serving as a daily reminder of China's steadfast commitment to a secure its territory and rights. If tensions escalate, the maritime militia serves as a coercive threat. It prevents

competition from rival state fishing fleets by blocking them from entering the same fishing grounds as Chinese fishermen. The militias' main function during peace time is apprehending other boats if they cross into Chinese claimed areas. Rival water patrol boats engage in incidents, including one that took place in March 2016 between Chinese and Indonesian fishing vessels (Cochrane 2016). Due to a lack of relative capability, the might of Chinese maritime militias disadvantaged the Indonesians.

The fishing vessels of the militia are equipped with advanced electronics, including communications systems and radar that supplement the PLAN force structure and enhance interoperability with other agencies, such as the Coast Guard. The maritime militia also provide logistics support to Chinese warships. In May 2008, for example, militia fishing craft transferred ammunition and fuel to two warships near Zhejiang Province. Many boats are equipped with satellite navigation and can track and relay vessel positions as well as gather and report maritime intelligence. The militia ships provide an on-scene presence around reefs and rock features, natural islands, and newly-created artificial islands, both shore-side and offshore (Kraska and Monti, 2015).

As Erickson notes, Chinese maritime militias act like the Coast Guard as a subsidiary to the PLAN's Southern Command. The mere presence of the maritime militia can obstruct the navigation of a foreign naval vessel. For instance, the much smaller maritime militia boats frequently obstruct United States FONOPs (Erickson 2016).

### War Time

The PLA funds and institutionalizes the civilian maritime militias. During times of conflict, they work closely with military forces. The PLA funds and institutionalizes the paramilitary civilian militias. The law of naval warfare prevents fishing vessels, which are indistinguishable from maritime militias, from capture or attack during war time.<sup>22</sup> The maritime militia's indistinguishable vessels place other state militaries in danger of violating this

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<sup>22</sup> The Paquete Habana, supra note 32, at 678. The Paquete Habana is a formidable opinion of customary international law holding that coastal fishing vessels if used solely for peaceful purpose are exempt from capture.

restriction. Even if they do not play a combat role, the maritime militias will continue to generate legal and operational dilemmas.

From a Chinese official perspective, employing maritime militias during conflict is a win-win situation. PLAN can coordinate with China's fishing vessels, which are indistinguishable from PLAN-affiliated militia boats. Any obstruction or harm to the fishing efforts of these apparently civilian boats will be used as a propaganda tool against the enemy. China will make it clear that its civilians were unlawfully harmed in naval warfare. As Erickson explains, "The line between civilian fishing ships and military vessels erodes." If hit during war time, the maritime militias could be used to stir public opinion, even deeming such action a war crime (Erickson 2016).

The Chinese maritime militias pose an operational challenge that requires other littoral states to strengthen their forces in the SCS. Unmanned drones and other detection tools will be required to differentiate Chinese forces.

### **Recommendations**

#### U.S.-China Bilateral Trust

##### *To the Government of the United States*

Maritime militias create confusion during navigation procedures for all states, both claimant and non-claimant. Legitimizing these forces will remove this confusion.

- **Demand clear definition and designation of all maritime militias operating in the SCS.** The United States will gain operational benefit from designated markings of fishing vessels that operate as maritime militias.
- **Promote the establishment of maritime navigational dialogue between U.S. military vessels and Chinese maritime militia vessels to avoid obstruction incidents.** Military to military communication exists between the U.S. and China, but there is no official mechanism for the U.S. to communicate with fishing vessels. Official communication channels would avoid miscommunication.

##### *To the Government of the People's Republic of China*

- **Establish a system of navigational communication among all commercial and military vessels in disputed waters.**
- **Legitimize maritime militias of all SCS littoral states through the upcoming Code of Conduct (COC) to be negotiated between ASEAN and China in the coming year.**

Joint Economic Development between All Claimant and Non-claimant States

Overfishing will ruin future potential. Zero-sum fishing game must be converted to a win-win fishing game for all fisheries in the SCS regardless of nationality.

*To the Governments of the Republic of the Philippines, the Socialist Republic of Vietnam, the Republic of Indonesia, the Kingdom of Thailand, Malaysia, and the People's Republic of China*

- **Create a joint governing body of fisheries similar to NAFO to ensure compliance and establish catch quotas.** Claimant states should work together to halt the tragedy of the commons. The governing body should account for all fishing activity and marine species vitality in the SCS.
- **Institute Individual Transferable Quotas (ITQs) like those employed by NAFO.** ITQs account for the migratory nature of fish and the uniqueness of claimant states' interests. Through transferable quotas, claimant states can alter catch quotas to fit the needs of their citizens while maintaining multilateral agreement and standards set by the joint governing body.
- **Launch a public campaign to explain the multilateral joint governing body's role to citizens of all claimant states.** Fishermen will not comply with future standards set by the joint governing body if they lack confidence that other states will not comply with the governing body's multilateral standards. The joint governing body should leverage public opinion for successful implementation and fisheries compliance.
- **Develop future plans for the commercial fishing industry through a consultative forum.** A consultative forum would serve as the AFPIC

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for the South China Sea. The forum would determine which species require protection from extinction.

## **Energy Security, Resources Sustainability, and Environmental Preservation: Opportunities for U.S.-China Cooperation**

Joniel Cha

The South China Sea's hydrocarbon resources are hotly contested although its reserves are unproven. While their potential economic benefit may be considerable, their primary significance is political and strategic, as their division has implications for sovereignty, fundamental law of the sea principles, and security. However, there are opportunities for states to cooperate in joint exploration and development of energy resources in the sea.

### **Energy Security**

Energy resources, particularly natural gas, located in the South China Sea present strategic opportunities for cooperation between the United States and China and the littoral South China Sea states. The South China Sea contains an estimated 11 billion barrels of oil and 190 trillion cubic feet of natural gas, according to the Energy Information Administration (EIA) (IGER 2016).<sup>23</sup> Yet in 2012 the China National Offshore Oil Corporation (CNOOC) estimated that the area holds 125 billion barrels of oil and 500 trillion cubic feet of natural gas (Maxie 2016). These resources are extremely important for the region as energy demands increase. China, Vietnam, the Philippines, Malaysia, Indonesia, and Brunei are among the states that have limited or no onshore hydrocarbon resources relative to their growing demand. Disputes over sovereignty and rights to resources in the contested waters hamper exploration and drilling for resources. Chinese activities destabilize the region, deterring foreign investors from developing reserves. Energy companies must weigh the potential financial rewards against the political risks they are likely to face in disputed waters. Given today's low oil prices, there is little enthusiasm for such risky undertakings (Hengel 2017).

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<sup>23</sup> There are estimated to be over 2 trillion 228 billion barrels of oil and over 6,973 trillion cubic feet of natural gas in the world (EIA 2016; Borden 2015).

One-third of global crude oil and half of liquefied natural gas (LNG) trade passes through the South China Sea, one of the world's most important trade routes (EIA 2013). According to the U.S. Department of Energy, these sea lanes account for roughly 75% of China's oil imports, 85%–90% of Japan's and South Korea's oil imports, and 33% of Japan's and South Korea's LNG imports (EIA 2013). Mounting tensions can threaten the crucial shipping lanes particularly escalated by U.S. Freedom of Navigation Operations (FONOPs) and Chinese militarization of the South China Sea. Joint development of resources in disputed waters is a key way to ease tensions.

Over the past decade, Asia-Pacific countries have consistently placed energy security as a top national security priority due to the combination of extremely volatile energy prices, China's rapid rise as a great power, and Asia's continuing demand for imported oil and gas (Herberg 2016). Energy security is the relationship between national security and the availability of natural resources for energy consumption. It is the uninterrupted and reliable availability of energy sources at an affordable price (IEA 2017).<sup>24</sup> Asia's robust economic growth boosts demand for energy in the region. Non-OECD Asia natural gas consumption is growing by 3.9% annually, from 10% of world gas consumption in 2008 to 19% by 2035; China is projected to account for 43% of that growth (EIA 2013).<sup>25</sup> Over the past few years, national and foreign companies have

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<sup>24</sup> Access to cheap energy has become essential to the functioning of modern economies. However, the uneven distribution of energy supplies among countries has led to significant vulnerabilities. Littoral states seek guaranteed and secure energy supplies. Long-term energy security deals with timely investments to supply energy in line with economic developments and sustainable environmental needs. Short-term energy security focuses on the ability of the energy system to react promptly to sudden changes within the supply-demand balance.

<sup>25</sup> With Southeast Asian domestic oil production projected to stay flat or decline as consumption rises, the region's countries will look to new sources of energy to meet domestic demand. China in particular promotes the use of natural gas as a preferred energy source and set an ambitious target of increasing the share of natural gas in its energy mix from 3% to 10% by 2020. The South China Sea offers the potential for significant natural gas discoveries, creating an incentive to secure larger parts of the sea for domestic production. It is difficult to determine the amount of oil and natural gas in the South China Sea because of under-exploration and territorial disputes. The U.S. Geological Survey (USGS) estimated the South China Sea contains between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas (EIA 2013).



begun venturing farther offshore and in deep water to find new discoveries to compensate for declining fields.<sup>26</sup>

The main impact of the territorial and maritime disputes has been to block the development of new oil and gas resources in the majority of the South China Sea, particularly in what could be the more attractive deep-water areas. These waters are becoming increasingly accessible as technology advances. However, despite journalistic hyperbole about the petroleum riches of the South China Sea, the reality is that most Western estimates of the region's oil and gas resources potential suggest relatively modest resources, not nearly large enough to alter Asia's deep dependence on oil and gas imported from outside the region. Because the region is mainly natural gas-prone, rather than oil-prone, and since gas exploration and production conditions in the South China Sea are unfavorable, the overall potential of the South China Sea is relatively limited.

However, in November 2012, CNOOC estimated that the area holds 125 billion barrels of oil and 500 trillion cubic feet of natural gas (Maxie 2016). This higher CNOOC estimate than the EIA and USGS estimate suggests a correspondingly higher level of interest in conducting activities in the South China Sea and thereby establishing Chinese sovereignty and jurisdiction.<sup>27</sup> The State Assets Supervision and Administration Commission (SASAC), directly under the State Council, handles all central enterprises owned by the central government and oversees various facets of national oil company (NOC) operations (Jiang and Sinton 2011). Still, the top NOCs including the China National Offshore Oil Corporation (CNOOC), China Petroleum & Chemical

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<sup>26</sup> Rather than conducting unilateral exploration and production activities in disputed territory, several countries have opted to cooperate in the South China Sea. Malaysia and Brunei settled territorial disputes in 2009 and have partnered to explore offshore Brunei waters. Thailand and Vietnam have jointly developed areas of the Gulf of Thailand despite ongoing territorial disputes.

<sup>27</sup> Beginning in the 1990s, Chinese demand outstripped domestic supply, causing state-owned enterprises to search for natural resource supplies. China shifted to a new energy security strategy from supporting domestic production and consumption towards competing on the global market. China's Eleventh Five-Year Plan and Thirteenth Five-Year Plan highlighted China's priority to compete for natural resources and maintain energy and resource security (Seligsohn 2016). Energy supplies must be reliable, sufficient, at a reasonable price, and consumption patterns must be harmonious with the environment (Croshaw and Ye 2012).

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Corporation (Sinopec), and China National Petroleum Corporation (CNPC), exploit institutional weakness and dominate the policy process (Cheon 2015). This results in fragmented energy policy driven by company objectives rather than a comprehensive national strategy, explaining bureaucratic politics incentivizing CNOOC's higher estimates of oil and natural gas in the South China Sea.<sup>28</sup>

South China Sea estimated conventional hydrocarbon production

Country	Estimated production in South China Sea (2011)		Major exploration and production areas	SCS contract holders and operators	
	Oil <sup>1</sup> 1000 barrels/day	Natural gas billion cubic feet		National oil companies	Foreign firms
Brunei	120	400	Baram Delta	PetroleumBRUNEI	BHP Billiton, ConocoPhillips, Hess Corporation, Kulczyk Oil Ventures, Mitsubishi Corporation, Murphy Oil, PETRONAS, Polyard Petroleum, QAF Brunei, Shell, Total
China	250	600	Pearl River Mouth Basin Qiongdongnan Basin	CNOOC Sinopec CNPC	BG Group, BP, Chevron, ConocoPhillips, Eni, ExxonMobil, Husky, Newfield, Shell, Total
Indonesia	60	200	Natuna Basin	PT Pertamina (Persero)	PetroChina, Chevron, CNPC, ConocoPhillips, Eni, ExxonMobil, Husky, KUPPEC, PETRONAS, Santos, Statoil, Total
Malaysia	500	1,800	Sabah Sarawak Malay Basin (w/ Thailand)	PETRONAS	Lundin, BHP Billiton, ConocoPhillips, ExxonMobil, Hess, KUPPEC, MDC O&G, Murphy Oil, Newfield, Nippon, Petrofac, Roc Oil, Shell, Talisman Energy
Philippines	25	100	Palawan Basin	PNOC	ExxonMobil, Shell
Thailand	-	-	Gulf of Thailand Malay Basin (w/ Malaysia)	PTTEP	BG Group, Chevron, Shell
Vietnam	300	300	Cuu Long Basin Nam Con Son Basin	PetroVietnam	KNOC, ConocoPhillips, Geopetrol, Premier Oil, PTTEP, Santos, SK Corp, Total, Zarubezhneft

<sup>1</sup> Oil production includes lease condensate.

Sources: U.S. Energy Information Administration, Oil & Gas Journal, IHS, CNOOC, PFC Energy.

Figure 1: South China Estimated Conventional Hydrocarbon Production<sup>29</sup>

### China's Strategic Activities

China relies largely on bilateral diplomacy to build relationships with other states and uses state-owned enterprises including national oil companies (NOCs) to invest in South China Sea energy infrastructure. In addition to its strategic

<sup>28</sup> The Energy Leading Group was unable to solve the problems of energy sector management, such as inadequate institutional capacity to coordinate conflicting interests and the problematic influence of NOCs in energy policy-making. Even the Ministry of Foreign Affairs did not find out about investments until after the fact. The National Development and Reform Commission (NRDC) is the most powerful agency dealing with long-term energy development and projects (Cheon 2015). This explains fragmented authoritarianism in which competing interests drive policy (Lampton 2016).

<sup>29</sup> Source: Energy Information Administration Feb 2013. Used with permission. Information Dissemination Specialist Curley Andrews. EIA.

importance, securing oil and gas reserves is crucial to economic development, social stability, and regime legitimacy (Hart 2016). China has unilaterally pursued an assertive strategy of energy diplomacy to secure supplies for itself. According to some experts, Beijing uses the South China Sea dispute and the ensuing resource competition as an instrument to assert territorial sovereignty for geopolitical and strategic purposes (Maxie 2016).<sup>30</sup>

### *China's State-Owned Enterprises*

China's state-owned enterprises including its NOCs conduct corporate activities that serve national interests. Beijing has mandated the China National Offshore Oil Corporation (CNOOC), China Petroleum & Chemical Corporation (Sinopec), and China National Petroleum Corporation (CNPC) to develop the South China Sea's resources.<sup>31</sup> These NOCs have grown rapidly in financial strength and technical capability, especially deep water drilling (ICG 2016). At times, Vietnam perceived China's offshore deep-water exploration activity as challenges to Vietnam's joint projects with India's Oil and Natural Gas Corporation, Russia's Gazprom, and U.S. ExxonMobil (Hiep 2014). In 2012 China announced a column of nine new exploration blocks that closely follow the Nine-Dash Line claim and extend far into Vietnam's 200-nautical-mile exclusive economic zone (EEZ).

Due to domestic competition and public opinion, the NOCs' executives have pressed the government for policy and financial support to enable exploration farther from the Chinese shore and deeper into disputed waters. In 2014 CNOOC deployed oilrig HYSY 981 that drilled for oil and natural gas in the South China Sea within Vietnam's EEZ. Vietnam alleged that the placement of the HYSY 981 served as an assertion of Chinese maritime sovereignty. Arguably justifiable on the basis of maritime claims of assumed Chinese sovereignty over one of the Paracel Island features, China's action involving the HYSY 981 was not a spontaneous violation of the Vietnamese EEZ. This strategic maneuver using HYSY 981 served as a geopolitical weapon and a business venture (Long 2015).

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<sup>30</sup> The China Marina Surveillance (MSF) is the principal agency involved in confrontations in the South China Sea (Fravel, Stern, and McDevitt 2013).

<sup>31</sup> Beijing mandated as early as 2005, and the NOCs have taken assertive steps since 2009 (Li 2015).

China again made a similar oilrig incursion maneuver in 2016 (Tiezzi 2016). CNOOC Chairman Wang Yilin and Sinopec Chairman Fu Chengyu described deep-water equipment as “mobile national territory” that is strategic for improving China’s position in maritime disputes (Downs 2014).<sup>32</sup>

Without clarity of the meaning of the Nine-Dash Line and due to disagreements over rights to resources in the South China Sea, neighboring countries face difficulty in conducting joint development. The South China Sea presents two related aspects: territorial disputes which result from coastal states’ claims over all or part of the islands in the South China Sea, and maritime delimitation in the waters in the South China Sea where coastal states have overlapping claims to EEZs and continental shelves (Herberg 2016). Despite China’s strategy since the 1980s to shelve disputes and carry out joint development in disputed areas, cooperation has been limited in the South China Sea. China’s offer of joint development is generally conditional on other parties’ recognition of Chinese sovereignty over contested features. Hence, joint development has been a non-starter from the perspective of other claimant states (Bateman and Emmers 2009).

### *China’s Maritime Silk Road*

In October 2013 President Xi Jinping announced a major initiative to build the 21<sup>st</sup> Century Maritime Silk Road as part of the Belt and Road Initiative (BRI).<sup>33</sup>

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<sup>32</sup> In May 2011 a Chinese marine surveillance vessel severed the cable of a Petrovietnam seismic vessel. In June 2012 CNOOC invited foreign oil companies to bid for blocks in waters also claimed by Vietnam. In July 2012 Chinese diplomats prevented ASEAN from issuing a joint statement due to differences between members over whether to mention incidents in the South China Sea. In November 2012 Hainan Province issued new regulations establishing a legal basis for provincial public security units to board, detain or expel foreign vessels in waters around islands or land features that China occupies or claims.

<sup>33</sup> From June 2013–June 2016, BRI commodity trade valued U.S. \$3.1 trillion and accounted for 26% of China’s total trade volume. The AIIB and China-ASEAN Bank Union considers the BRI one of its investment priorities. State Administration of Foreign

China portrays the BRI, based on economic ties and investment, as advocating cooperation, mutual benefit, and development, and a community of shared interests and mutual trust.<sup>34</sup> Beijing is effectively developing economic cooperation and integration while shelving disputes for another time (Guo 2016). Yet some Southeast Asian countries regard China warily since China's capacity cooperation campaign has increased its share in the global market, raised its status in the international economic system, and augmented its influence worldwide.<sup>35</sup>

Governments are taking unilateral responsibility to acquire the resources needed to ensure continued economic growth. Despite concerted efforts to push countries toward viewing energy security as a collective and regional issue, state-based resource policies continue to dominate East Asia's energy landscape.<sup>36</sup>

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Exchange, China Investment Cooperation, Export-Import Bank of China and China Development Bank invest and finance BRI projects. China's top 5 banks ICBC, CCB, BOC, ABC and BOCOM comprise the business network in BRI. BRI is also known as the One Belt One Road (OBOR) Initiative (Wen, Ross, Yiwei, and Jingjing 2016)

<sup>34</sup> The Ministry of Foreign Affairs, Ministry of Commerce, and National Development and Reform Commission lead the initiative to build secure transport routes connecting major seaports along the Belt and Road on two routes from the South China Sea to the Indian Ocean and from the South China Sea to the Pacific Ocean. China has introduced bilateral joint working mechanisms and free trade agreements to promote trade and investment cooperation with countries and has used ASEAN Plus China, Asia-Pacific Economic Cooperation, and other multilateral organizations to attract more countries to participate in BRI. BRI seeks to achieve policy coordination among the participating nations through intergovernmental cooperation, macro-policy coordination and new multilevel mechanisms. It provides energy security through diversification of geographic sources (Mitrovic 2016).

<sup>35</sup> Since 2015, China has campaigned for industrial and other capacity win-win cooperation to boost development in both China and ASEAN states.

<sup>36</sup> Various intergovernmental bodies such as ASEAN, ASEAN+3, and the East Asia Summit have launched energy cooperation initiatives aimed at further integration of national resource markets. Overall these attempts have been successful in improving dialogue and information sharing, but have not resulted in any substantial changes. Notable successes include the 2002 Trans-ASEAN gas pipeline and the 2008 launch of an "Oil Stockpiling Roadmap" to improve the regions capacity to respond to an oil supply crisis. Most of the informal agreements lack binding mechanisms for cooperation, so that states maintain weak commitment to these statements of collectivism. They are voluntary and nonbinding in nature (Hart 2016).

States have largely rejected collective solutions and have continued to closely link resource security to the traditional idea of national security.

### *New Developments*

Following The Hague Tribunal Award in July 2016 and China's rejection of it, littoral states perceive these as an obstacle to collaboration. China remains steadfast in its rejection of the arbitration, and is unlikely to concede to any terms that would imply recognition of the arbitration. Although Filipino President Rodrigo Duterte has been reluctant to wield the ruling over Beijing, it is highly improbable that he will make any concessions that sacrifice what international law, in the form of the arbitral ruling, clearly awarded to the Philippines.

Meanwhile, China has taken on a more conciliatory posture as embodied in its push for the ASEAN Code of Conduct (COC) by mid-2017. Moreover, China and ASEAN have agreed to several breakthroughs, including guidelines for an ASEAN-China hotline during maritime emergencies and a joint declaration applying the Code for Unplanned Encounters at Sea (CUES) to the South China Sea.

### Joint Marine Seismic Undertaking

China, Vietnam, and the Philippines made great gains in cooperation on March 14, 2005. The China National Offshore Oil Corporation, Philippine National Oil Company, and Vietnam Oil and Gas Corporation signed the Tripartite Agreement for Joint Marine Seismic Undertaking (JMSU) in the Agreement Area in the South China Sea, with the approval of their respective governments.<sup>37</sup> The JMSU displays an exceptional case in which countries involved in maritime delimitation disputes reached provisional and transitional arrangements including joint resources development in disputed areas with the understanding that their respective position on sovereignty and jurisdiction are not affected. The parties shared expenses and responsibilities equally and worked together. Most

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<sup>37</sup> Despite the obstacles, collaboration has been attempted. The most advanced partnership, the JMSU, began as a bilateral agreement between Beijing and Manila in 2004 to survey the seabed for hydrocarbon deposits in some disputed areas. Vietnam joined in 2005, as the area overlapped with its claims. The JMSU was conducted under particular conditions.

importantly, each party prioritized maintaining stable relations over asserting claims. That has been missing in recent years marked by frequent friction, heightened tensions, and volatile ties (ICG 2016).

However, the JMSU constituted an agreement on exploration, not exploitation, thus constraining its success as a model of joint development. This limitation of the JMSU, including constraints within the Philippine constitution on joint exploitation of sovereign resources, holds significance. Indeed, it is for this very reason that the Philippines decided not to renew the JMSU in 2008. Domestic outcry erupted in the Philippines when the location of the JMSU was brought to the attention of the Philippine public. The location allegedly included even undisputed areas under Philippine sovereignty. The JMSU was challenged on constitutional grounds, due to constitutional constraints on joint development of Philippine resources.<sup>38</sup> While the JMSU serves as an example of joint development in which sovereignty issues were temporarily set aside, these issues returned in 2008 and contributed to the JMSU's debate. Because the JMSU ended in 2008 without renewal, China and other littoral states, with U.S. support, must build from the JMSU model to find opportunities to engage in joint development projects as a means to ease tensions.<sup>39</sup>

### Challenges to Collaboration

Exploration frictions have deepened geopolitical fault lines. Access to the South China Sea's oil and gas reserves as well as fishing and other ocean resources complicate the territorial claims.<sup>40</sup> Competition has been framed by verbal warnings, diplomatic pressure, and even physical confrontation.<sup>41</sup> Beijing has

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<sup>38</sup> Nevertheless, the Philippine courts decided not to rule, since the JMSU ended before the ruling (Bernal 2014).

<sup>39</sup> The Philippines alleged that the JMSU agreement weakened the government's position in its claim over the disputed islands.

<sup>40</sup> Although these conflicts may be managed through joint or multilateral development regimes, the South China Sea is very complicated (Buszynski 2012).

<sup>41</sup> Instances of physical confrontation include CNOOC's deployment of oilrig HYSY 981 in Vietnam's EEZ in 2014 and 2016. Littoral states perceive China's growing capability and accompanying desire to expand exploration as preventing other claimants' activities.

## South China Sea: Maintaining Peace / Preventing War

advocated setting aside disputes and developing resources jointly, but as collaboration remains elusive, the Chinese government can take unilateral measures to pressure uncooperative parties (SAIS interview with Chinese government affiliated think tank, Beijing, January 2017).

The question remains regarding how to prevent competition from turning into conflict.



Figure 2: South China Sea Major Crude Oil Trade Flows, 2011<sup>42</sup>

Securing reliable energy supplies and shipping to fuel Asia's prosperity is tightly bound with the maintenance of freedom of navigation through the South China Sea. Every regional power identifies these sea lanes as a core energy and national security interest. The intensifying engagement between the People's Liberation Army (PLA) Navy and the U.S. Navy over navigational rights and the application of the United Nations Convention on the Law of the Sea (UNCLOS) in the South China Sea has potential significant energy security implications (McDevitt 2013).<sup>43</sup> The United States and littoral states are

<sup>42</sup> Source: Energy Information Administration Feb 2013. Used with permission. Information Dissemination Specialist Curley Andrews.

<sup>43</sup> Major disagreement between Washington and Beijing over "freedom of navigation" has resulted in tensions. The U.S. argues that China tries to obstruct the freedom of



concerned with China's island-building activity in the Spratlys and China's attempts to strengthen its positions and claims in the Paracel Islands.<sup>44</sup> When it comes to energy security, China has consistently taken a "China first" approach and has not shown real interest in building a more multilateral or regional energy security framework.

While each party's energy hunger could be an incentive for cooperation, joint exploration and development face obstacles. China's precondition that its sovereignty be recognized over the areas concerned raises fear that collaboration amounts to accepting its claims. Compliance with the Philippine law that oil and gas projects must be 60% Philippine-owned, would imply acceptance of Manila's ownership and by extension its sovereignty.

### *Potential Oil and Gas Chokepoint*

With China's increasing militarization of the South China Sea and modernization of the PLA Navy, there is widespread concern that movements through the South China Sea and China's activism in the sea could threaten the supply of oil and gas to other countries in that region. Almost one third of global crude oil and over one half of LNG pass through the South China Sea every year. Two thirds of South Korea's energy supply, 60% of Taiwan and Japan's energy supply, and 80% of China's crude rely on the South China Sea lanes (EIA 2013). Though the South China Sea has not historically emerged as a chokepoint, there is debate regarding the increasing likelihood that it will emerge as one in the future

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navigation including freedom in the high seas under UNCLOS to conduct peaceful military activities. Three notable incidents have taken place thus far: 1) 2001 mid-air collision between a U.S. Navy surveillance aircraft (EP-3) and an intercepting Chinese navy fighter, 2) 2009 harassment by Chinese fishermen and paramilitary ships of USNS *Impeccable*, and 3) 2016 underwater drone seized by Chinese military (McDevitt, 2013 and 2016).

<sup>44</sup> China has reassured the region that its presence would help ensure freedom of navigation. Yet China's interpretation of freedom of navigation differs from that of the United States. China seeks to ensure open sea lanes for commercial trade but not for military (SAIS interview with Chinese government-affiliated think tank. Beijing, January 2017).

(Bleviss 2017).<sup>45</sup> Even a temporary disruption including piracy, terrorism, and climate change could cause a sharp rise in oil prices and severely restrict economic growth (Hart 2016).<sup>46</sup>

### U.S. Interests

The United States is interested in ensuring freedom of navigation and cooperating with the littoral states to preserve energy security in the Asia-Pacific region. In particular, the U.S. is concerned with securing energy supplies through the South China Sea, including to its energy import-dependent allies, South Korea and Japan, as well as Taiwan.

### U.S. Activities

Since the late 1980s, U.S. oil companies such as ConocoPhillips, Chevron, and ExxonMobil have partnered with Chinese NOCs including CNOOC, Sinopec, and CNPC in the South China Sea. These U.S. companies invest in research and development (R&D) for cutting-edge exploration and exploitation technologies.<sup>47</sup> Chevron joined the CNOOC/Agip/Chevron/Texaco (CACT) joint operators' group in 1999 to develop onshore energy resources in the South China Sea (Feng 2014; Chevron Corp. 1999).

### **Resource Sustainability**

The South China Sea is an arena of competition for control of potential energy resources and key energy transit routes through the South China Sea. Territorial control and maritime jurisdiction confer control over and ownership rights to oil and natural gas resources. The littoral states' territorial claims have important

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<sup>45</sup> According to SAIS Professor Deborah Bleviss, there are four narrow chokepoints including the Malacca Strait, Sunda Strait, Philippine Sea, and Lombok Strait (Lecture at Johns Hopkins University School of Advanced International Studies. January 2017).

<sup>46</sup> However, the U.S. Navy surmised that if the South China Sea were to be closed, commercial ships would simply go around it, as they did around the Cape of Good Hope when the Suez Canal was closed for over a decade. An oil supply disruption itself in the South China Sea would not have much impact on global oil prices (SAIS Interview with Michael McDevitt, November 2016)

<sup>47</sup> ExxonMobil and Chevron have established R&D centers in China: the Exxon Chemical Shanghai Technology Center and several Chevron-Chinese oil company partnerships in joint research and training programs (Feng 2014).

energy security implications for all the contenders. China's expansive but vague Nine-Dash Line claim encircles many oil- and gas-rich zones off the shores of key regional producers, including Vietnam, Malaysia, Indonesia, the Philippines, and Brunei.

### Resource Grab

National and foreign oil and gas companies permitted to explore for oil and natural gas by one country have been denied access to disputed areas by armed ships of other claimants (Stratfor 2011; Batongbacal 2015).<sup>48</sup> Nationalism surges in the Asia-Pacific region, and it will only grow as the states seek to displace public frustration to external sources and strengthen legitimacy. Domestic national sentiment of littoral states causes the populations to see joint arrangement as a surrender of sovereignty, a direct challenge to the government's legitimacy.

### Artificial Island Building

Littoral states including China, Vietnam, and the Philippines engage in artificial island building in the South China Sea. These states expand islands, rocks, and submerged reefs through landfill with sand dug from nearby reefs, which are being dumped to create new structures (Ghosh 2014).<sup>49</sup> China is transitioning from its "biding time" phase in its foreign policy towards assertive posturing to strengthen its sovereign claims by building artificial islands, constructing air bases and naval seaports, and deploying an aircraft carrier in the South China Sea. Other littoral states have also engaged in such strategic development activities in the South China Sea, even earlier than China.

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<sup>48</sup> China interfered in Philippine exploration activities near the Reed Bank in March 2011. Two Chinese patrol boats under the China Maritime Surveillance threatened to ram a Philippine seismic survey ship.

<sup>49</sup> The primary concern stems from the fact that China is building entire air bases with runways for fighter jets as well as naval seaports. Civilian ships are being modified to become large, low-cost floating production platforms in the South China Sea. The China State Shipbuilding Corporation (CSSC) and PLA Navy are conducting most of these activities. EIA predicts that China's energy demand in 2035 will double that of the U.S. and triple that of the EU. This enormous appetite for energy resources, backed by growing naval power, will have considerable implications for the energy-rich South China Sea (Ghosh 2014).

### Joint Resources Development

A solution is to promote joint development of South China Sea resources. This is consistent with Article 74(3) of UNCLOS, which allows such activity during transition periods before an agreement of maritime sovereignty delimitation is reached. The arrangement for joint development normally defines the limits of disputed areas and includes a means to share the resources in a way that is independent of the relative strengths of the claims. Joint development agreement requires political will in support of the resolution, willingness to compromise, and the assistance of appropriate experts. Agreements should include provisions on non-prejudice exceptions to the sovereign rights of each party over the disputed deposit; jurisdictional allocations; institutional arrangements and hydrocarbon licensing regime; dispute settlement; environmental protection; and third party rights.

The potential economic benefits of gas exploitation include infrastructure development, pipeline tariffs, employment opportunities, additional tax revenue, an increase in the value of the product onshore processing, LNG processing, import-offset benefits, and enhanced energy security. The states involved must have a certain level of trust in each other. They must have a common desire to set aside their competing claims and jointly develop the resources. Further, they must have the political will necessary to cooperate by sharing the natural resources. They must agree on an area for joint development that is politically acceptable to both sides.

### **Environmental Preservation**

Access to natural resources and their depletion and degradation affects the human population and results in the breakdown of stability. Conservation and protection of natural resources in the South China Sea is needed for sustaining and preserving life. The South China Sea is an environmental crime scene (Borton 2016). Dredging and reclamations destroy marine ecosystems and coral reefs.<sup>50</sup> The depletion of resources in the South China Sea presents food security

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<sup>50</sup> 80% of South China Sea coral reefs have been degraded (Borton 2016).

concerns. Industrial run-offs pollute coastal regions. Overexploitation threatens marine biodiversity.

Rapid construction of artificial islands expanded from 500 acres in 2014 to 2,000 in 2015. Landfill upsets the marine ecology of the region and destroys coral reefs. The South China Sea is a semi-closed sea and is the most biologically diverse marine ecosystem facing land-based pollution, vessels-related pollution, and degradation of the marine ecosystem.

The risk of oil spills and gas leaks raises grave concerns due to their impact on human health, marine habitat, biodiversity, ecosystems, and the environment. To mitigate these risks, the littoral states must improve oversight expertise and emergency response to safely extract, produce, process, and transport oil and gas.<sup>51</sup> Through joint exploration, littoral states must increase information and knowledge regarding oil and gas reserves in the South China Sea and utilize advanced technologies to cut production and drilling costs.

### Challenges

Political concerns and mutual mistrust affect the marine cooperation even in areas of low sensitivity. Cooperation is often limited to workshops and mutual visits. Concrete cooperative projects and joint cruises must be developed. Natural resources can play a role in compounding problems created by conflict (USIP 2007). In the future, areas in which oil and gas become the primary economic sources due to newly tapped reserves, may face an increase in poverty and potential conflict as the oil and gas reserves deplete.

However, natural resources can also serve as a positive component in conflict resolution. The establishment of standards, agreements, and efforts at cooperation, co-management, and conservation under resources management contribute to diplomatic engagement that is necessary to alleviate conflict and build peace. International organizations, foreign investors, and trade-partner countries that are part of the natural resource market can influence the regional market and governance. Outside parties can participate in negotiations and agreements, implement solutions such as eco-parks, sustainable development,

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<sup>51</sup> States must develop effective search and rescue capabilities under regional cooperation.

and conservation mechanisms, and provide aid and economic incentives to make necessary changes and settle disputes.

### **Analyses**

The South China Sea poses extensive geological, technological, and political challenges to developing hydrocarbon resources, especially natural gas. Producers would have to construct expensive subsea pipelines to carry the gas to processing facilities. Submarine valleys and strong currents present formidable geologic problems to effective deep-water gas infrastructure. The region is also prone to typhoons and tropical storms. Industry sources point to innovations in deep-water drilling pioneered throughout the Gulf of Mexico as models for developing the South China Sea.

NOCs have indeed partnered with international companies to provide technology and equipment for deep-sea exploration and drilling operations. Commercial development of natural gas hydrates in the South China Sea is many years away because of technological challenges (EIA 2013; Platts 2016). Energy is the key to growth and development.

Vietnam needs new energy sources to satisfy its domestic economy and provide export revenue to pay for its growing demand for imported refined-oil products. The Philippines has some natural gas production but imports virtually all its crude oil. Additionally, the Philippines faces pressure from the fact that its largest domestic source of energy, the Malampaya natural gas field, is expected to run dry by 2030 (ICG 2016; Gonzales 2014). While China has similar needs, depending heavily on oil and facing a growing need for natural gas, developing the sea's resources meets Beijing's strategic interests far more than its economic ones. Beijing hopes that its relatively successful joint development and delimitation package with Vietnam in the Gulf of Tonkin can serve as a model for future arrangements in the South China Sea. Moreover, Beijing has shown greater flexibility with claimants that it sees as cooperative as they pursue their own joint development deals, for example the joint oil and natural gas exploration agreement between Brunei and Malaysia in 2015 (Stratfor 2016).

Each year, \$5.3 trillion of trade passes through the South China Sea; U.S. trade accounts for \$1.2 trillion of this total (Glaser 2012). Should a crisis occur, the diversion of cargo ships to other routes would harm regional economies and

result in higher insurance rates and longer transits. Conflicts of any scale in the South China Sea could hamper the claimants from benefiting from the gas reserves.

Despite the formidable obstacles presented by the heated atmosphere in the South China Sea, there are practical options to enable development of oil and gas resources. States should pursue joint development arrangements, whereby claimants agree to set aside territorial claims without prejudice for future resolution and jointly develop energy resources in a contested area (ICG 2012). The Malaysia-Thailand Joint Development Area has been in operation in the Gulf of Thailand since the mid-1990s in a maritime zone claimed by both countries. China has traditionally supported such joint development of resources in disputed areas.

### **U.S.-China Relations**

China must ensure that its interlocutors and trading partners continue to enjoy the benefits of engagement.<sup>52</sup> The U.S. is frequently accused of attempting to physically encircle China, establishing alliances and building positions of strength all along its periphery. By actively working with China through the U.S.-China Strategic and Economic Dialogue and expanding it to the South China Sea, and by encouraging claimant states to engage in dialogue and cooperation in the South China Sea through joint exploration and development, the U.S. can take advantage of opportunities to ease tensions, build trust, and strengthen relations with China.

### **Conclusion**

China and the littoral states should forge a special, narrowly focused regional agreement on jointly exploring, developing, and protecting oil and gas extraction and transport through the regional seas.<sup>53</sup> By focusing on shared interests

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<sup>52</sup> China's three axioms are to "avoid confrontation, build comprehensive national power, and advance incrementally." China wants to win without fighting, by establishing a favorable peripheral environment.

<sup>53</sup> A possible template for such an agreement is the 25-nation multinational anti-piracy naval task force that has been operating in the Gulf of Aden and northern Arabian Sea since 2008. The prospects of a joint-protection regime could ensure energy security in the South China Sea in the future.

supporting sustainable economic growth and protecting the environment, the littoral states can build from the JMSU. Additionally, the states must maintain mutual respect, exercise restraint in the competitive aspects of mutual engagement in the region, and reassure the region that neither the U.S. nor China is interested in Southeast Asia and the South China Sea in particular for reasons of hegemony.

The U.S. should take steps to prevent a conflict in the South China Sea and to defuse a crisis should one take place. Although the possibility of a major military conflict is low, the potential for a violent clash in the South China Sea in the near future is high, given past behavior of states in the region and the growing stakes. Therefore, both U.S. and regional policymakers should seek to create mechanisms to build trust, prevent conflict, and avoid escalation.

The U.S. and China can build trust and confidence with the region by working toward common aims whenever possible. They can forge cooperation based on mutual interest despite major tensions in the overall relationship. Through the use of cooperation over energy, the U.S. and China can initiate a process of wider collaboration as the first step towards a maritime regime. If ASEAN can promote energy cooperation in the South China Sea on a strictly commercial basis, it can build trust among the states.

### **Recommendations**

Since the states involved hold energy security to be among top priorities in the South China Sea, they should engage in dialogue and take advantage of opportunities to cooperate in joint development of resources in the sea. Further, the littoral states should ensure resource sustainability through the management of resources. In conducting their joint and unilateral activities, the littoral and foreign states should protect the marine environment. Through such engagement and cooperation in the South China Sea, the states in the Asia-Pacific can ease tensions, build trust, and strengthen relations.

#### To the Littoral Claimant States

- **Conduct joint development and cooperation ventures to share energy and mineral resources of the South China Sea to reduce tensions.** The U.S. government should apply diplomacy to encourage



such dialogue and cooperation. Taking the JMSU model, littoral states can shelve disputes. This requires complicated negotiations regarding sharing the work, financing, and disputed territory. But negotiation and sharing is a far better alternative to armed or other forms of conflict. In addition, U.S. oil and gas companies can tacitly assist with these endeavors by providing technical support. These initiatives require transparency and multilateral cooperation, and they should result in public posts of their findings (Singh et al. 2016).

- **Refrain from unilateral exploration and exploitation in disputed areas**, particularly around land, such as the Paracel Islands and Spratly Islands, whose sovereignty is hotly contested.

### To ASEAN

- **Empower the ASEAN Regional Forum (ARF) to address energy security challenges and resource management in the South China Sea.** The ARF should oversee joint exercises for maritime search and disaster relief in the South China Sea and strengthen communication and dialogue between claimant states by holding think tank dialogues and routine joint exercises. Since the ARF emphasizes personal contacts, informality, and consensus-building rather than formal institutionalized decision-making, it serves to foster dialogue and consultation, and promote confidence building and preventive diplomacy in the region (Rustandi 2016).
- **Include a provision in the Code of Conduct (COC) to contain risk-reduction measures and a dispute-resolution mechanism.** The COC should regulate and enforce maritime cooperation, including maritime security, environmental, and energy resources cooperation.

### To the International Community

- **Support ASEAN development of a South China Sea Blue Multilateral Commission, which should comprise leading marine scientists of claimant nations** (Borton 2016). The key objective is to foster joint collaboration in maritime observation, reef monitoring, and sharing of data and forecasting. The shared vision of marine

environment protection and energy security serves as the driving force for cooperation.<sup>54</sup>

- **Appeal to the United Nations for more marine protected areas in the South China Sea**, including the creation of a reclamation free demilitarized zone. One such model is the Spratly Islands International Marine Peace Park.<sup>55</sup> Another model is the Joint Development Area.<sup>56</sup>

### To the Government of the People's Republic of China

- **Follow the UNCLOS principles in quiet negotiations and consultations on the area of joint exploration in the South China Sea.** China should reassure its neighbors in this way since it signed UNCLOS, is party to the international treaty, and vows to adhere to international norms and regulations.
- **Build on the U.S.-China energy and climate cooperation and use the U.S.-China Climate Change Working Group to expand to the South China Sea.** China and the U.S. should launch a U.S.-China Clean Energy Research Center to exchange ideas and experiences on renewable energy and low-carbon economic growth (Singh et al., 2016).
- **Create a China-U.S. Think Tank on the South China Sea that includes experts in different practical fields such as climate, energy, law, education, healthcare, urban design, and security.** This think tank should form a scholarship program focused on the South China Sea

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<sup>54</sup> Utilize ASEAN Declaration on Conduct and Code of Conduct, China-ASEAN Maritime Cooperation Fund, Indonesia Workshop, Third Party Compulsory Dispute Settlement, joint development, and bilateral negotiations.

<sup>55</sup> Take the “two countries, two parks” model between China and Malaysia for capacity cooperation. Since 2012, the China-Malaysia Qinzhou Industrial Park and Malaysia-China Kuantan Industrial Park have worked to preserve the environment.

<sup>56</sup> Malaysia and Thailand agreed to develop a section of the Gulf of Thailand jointly (Joint Development Area) without either party ceding legal rights to it. Use South China Sea Large Marine Ecosystem, UNEP/GEF Project, ASEAN Way of marine environment protection, OFS Ocean Forecast Demonstration System in the Southeast Asian Seas in 2010, ASEAN-China workshop on marine science and technology cooperation, and IOC Westpac Momsei Monsoon Onset Monitoring and its Social and Environmental Impact.

and be open to scholars from each of the littoral states for joint research projects, so as to expand people-to-people cooperation.

### To the Government of the United States

- **Advocate joint development and multilateral energy resources cooperation.** The U.S. should apply diplomacy to encourage such dialogue and collaboration. U.S. oil and gas companies can tacitly assist with these endeavors by providing technical support. In this way, the U.S. should clearly convey its commitments as a neutral third-party to reassure the claimant states.
- **Build on the U.S.-China Strategic and Economic Dialogue 2015 to extend maritime cooperation in the South China Sea on economic development planning, infrastructure investment, and coastal ecosystem restoration.**
- **Expand on the successful U.S.-China Coastal Cities Forum to give mayors and governors a platform for exchanging technical expertise and best practices on subnational coastal and open sustainability issues.**



## Conclusion

Daniel P. Serwer

Law, politics, diplomacy, national security, resources, economics, and environment: the South China Sea presents a complex set of problems and difficult choices for their resolution. The stakeholders include a long-established superpower, a still rising great power with superpower ambitions, and half a dozen key Asian Pacific countries. There are many more ways of getting things wrong than getting them right, but getting them right is vital. Even small incidents could escalate quickly. Big mistakes could be globally devastating.

The SAIS students who participated in the January 2017 trip to Beijing, and the studies that preceded it, propose in this volume ideas about how the many conflicts in the South China Sea should be managed. They do not all agree with each other, but they agree that more needs to be done to mobilize the stakeholders' resources and interests to maintain the peace and prevent future war.

Stephanie Zable in Chapter 1 outlines the differing legal interpretations of China and the United States on freedom of navigation and the Philippines arbitration. While the Chinese position on freedom of navigation has some support in other countries, she regards the Beijing's legal arguments against the arbitration outcome as weak. China participated in the negotiation of UNCLOS and is obligated to accept its norms, including the arbitration. The United States participated in the UNCLOS negotiations but neither signed nor ratified the treaty, making its insistence on UNCLOS norms ring hollow. Reconciling the differing legal interpretations on freedom of navigation and the arbitration will require, Zable suggests, that the U.S. join UNCLOS and that China embrace UNCLOS norms, including the arbitration decision, more fully than it has in the past. She also suggests that China accept the U.S. position on innocent passage through territorial waters in exchange for American agreement not to exercise it, the "Black Sea" solution discussed in more detail by Riccardo Alfieri in Chapter 8.

In Chapter 2, Caitlin Coyle delves deeper into the 2016 UNCLOS arbitration decision, which gave the Philippines a significant victory over China. Beijing refused to participate in the arbitration and rejects its outcome, which invalidates

its claim to historic rights as well as the Nine-Dash Line. The United States, which has defense treaties with the Philippines, welcomed the ruling. Philippines President Duterte, rather than press for its full implementation, chose instead to try to improve relations with Beijing and distance himself—if not his country—from Washington. Coyle suggests the Americans should welcome this unexpected turn and encourage Philippine cooperation on resources in the South China Sea, as doing so reduces the likelihood of Washington incurring military burdens in defending the Philippines in any crisis over its legal claims.

Underlying the legal issues in the South China Sea, Rachel Xian suggests in Chapter 3, are deeper identities and values that determine how China and United States behave when confronting each other on freedom of navigation and other issues. She attributes American “immobility” to its self-concept as a security provider, a counter balancer to China, a defender of the world order, and a strong partner as well as leader. These identities, she argues, “entail corresponding values of anti-hegemony, intervention, international norms and law, universality, commitment, and credibility.” China’s “immobility” she attributes not to its identity as a rising power allegedly imbued with nationalism but rather to its rejuvenation and increasing material power after the Century of Humiliation. But China also aspires to be seen as a responsible leader, an identity that may even predominate if respect is shown and face saved. Xian urges that the U.S., which is at risk of losing its predominant world position, reinforce its role as a defender of the world order, including by ratifying UNCLOS. She wants the U.S. to engage China in its role as a responsible leader and reduce the humiliation associated with freedom of navigation operations by agreeing to the “Black Sea” solution. She also wants China to stop its land reclamation and military provocations and to become a more positive norm-setter and collaborator in the region.

In looking south for positive examples of how other regional powers can handle China’s South China Sea claims, Matthew De Soi in Chapter 4 points to Indonesia’s tough, confrontational “indignation” and Malaysia’s softer and more conciliatory “magnetism,” which acknowledges China’s leadership role in the region while not compromising on South China Sea claims. Both have managed to get some satisfaction from Beijing. De Soi thinks Jakarta might gain from being less aggressive and other ASEAN members might gain from being less

critical of China and more accepting of its important regional role. China, he thinks, would benefit from providing reassurance to its neighbors, in particular its commitment to diplomacy, even while continuing its insistence on bilateral negotiations of sovereignty claims.

The United States, China, and Vietnam are the protagonists of Chapter 5, where Adrienne Brooks imagines some innovative but infeasible options and turns in the end to more practical suggestions. She would like to see China agree to a Code of Conduct with ASEAN that deals with resources and crisis management in the South China Sea but leaves sovereignty issues for bilateral negotiations. She would also like to see China participate with the U.S. in FONOPs. She suggests that Vietnam resolve its disputes with other ASEAN countries and expand joint development of resources with China, while acknowledging China's leadership role in the region. She prefers that the U.S. not increase its military operations in the South China Sea and that Washington support the negotiation of a China/ASEAN Code of Conduct.

Sandy Lu in Chapter 6 discusses Taiwan's role in the South China Sea, which has evolved during recent presidential administrations in practice to focus on nearby Itu Aba even while Taipei's formal claims remained the same as when it drew the precursor to the Nine-Dash Line in 1947. Growing independence sentiment in Taiwan naturally loosens Taipei's willingness to go to the mat with its neighbors and the U.S. on the Philippines arbitral decision, but Taipei has rejected the determination that Itu Aba is not an island. Lu recommends that Taiwan avoid the sovereignty issue to the extent possible but continue to occupy land features in the South China Sea, including Itu Aba, and use them to develop stronger regional ties, including through humanitarian, military, scientific, and nongovernmental cooperation. She also recommends better communications between China and the other South China Sea claimants, including hotlines.

Emphasizing the critical security and economic role of the South China Sea for the region, Nathan Kohlenberg in Chapter 7 is keen to underline that whoever controls it has leverage over other states that depend on it, even without taking any military action. In this light, he examines the national security objectives of three key stakeholders: China, the Philippines, and Vietnam. China, he says, needs the South China Sea for strategic depth, for development of its nuclear submarines, and for countering U.S. containment efforts. The militarily weak

Philippines, under President Duterte at least, appears to have chosen bandwagoning with China, despite its long alliance relationship with the U.S. Vietnam has tried to achieve limited military deterrence against China but hesitates to ally with the U.S. Kohlenberg recommends that Beijing lower public attention to South China Sea conflicts, disband maritime militias, and prepare to trade some sovereignty claims with its neighbors. He suggests Manila take a bolder public approach to promoting the arbitral decision as well as invest seriously in its navy. Hanoi he would like to see more committed to joint development with other claimants as well as ready to take Beijing to the UNCLOS arbitral tribunal if negotiations on the Code of Conduct fail. The U.S. he suggests should ratify UNCLOS, continue to do FONOPs, and deepen engagement with the PLAN.

Freedom of navigation, Riccardo Alfieri demonstrates in Chapter 8, has consistently been favored by dominant sea-faring nations, starting with the Dutch in the early 17<sup>th</sup> century, followed by the British after 1688, and eventually by the Americans only in the 1950s. He reviews both the Black Sea incident that culminated in Soviet acceptance of the U.S. position on freedom of navigation in exchange for U.S. agreement not to conduct some freedom of navigation operations as well as the several incidents that have already occurred between the U.S. and China. He also reviews recent Chinese operations that appear to avail themselves of freedom of navigation principles the U.S. supports. In the end, he recommends (like several others in this volume), U.S. ratification of UNCLOS and acceptance of the applicability of the Philippines arbitration to U.S. claims. He would also like to see Beijing halt its militarization of land features in the South China Sea, clarify the role of maritime militias, and expand the use of CUES to the Chinese Coast Guard. Both governments, Alfieri says, should deepen military cooperation, tone down the public discourse about the South China Sea, and improve bilateral political relations.

The worst has not yet happened in the South China Sea: military clashes between the U.S. Navy and PLAN so far have been relatively small and have not escalated dramatically. Libba King in Chapter 9 asks why this is the case, and what can be done to keep it that way. She worries about ill-considered remarks like those by Rex Tillerson in his confirmation hearing suggesting the U.S. might block Chinese access to its facilities in the South China Sea, or a Chinese effort



to develop a Code of Conduct with ASEAN that would limit American freedom of navigation operations. She identifies the CUES system for communicating ship movements, joint naval exercises, Chinese commitment in the Declaration on a Code of Conduct to peaceful means for settling disputes, the ongoing Code of Conduct negotiations, the strategic ambiguity surrounding the purpose of the Nine-Dash Line, other countries' neutrality on FONOPs, and President Trump's acknowledgement of the One China Policy as key stabilizing factors and suggests they be continued.

Weldon Montgomery in Chapter 10 focuses on the positive role coast guards can play in the in reducing tensions in the South China Sea. Coast guards, he says, "provide coastal nations a diplomatic complement to traditional naval power." The USCG could act as a "non-escalatory alternative" to the U.S. Navy in assisting other countries, including China, and in transiting territorial seas and EEZs, though not as part of the formal military FONOPs program. He also suggests extending the use of CUES to non-combat forces in the South China Sea and suggests China should become more active in taking advantage of freedom of navigation rights around the world.

All the chapters on resources, economics, and the environment suggest that these issues are underutilized as means of preventing conflict and pursuing improved regional relations that could contribute to peace and stability. Sovereignty claims, political and diplomatic sensitivities, and security concerns have scared off more productive regional enterprises.

Rie Horiuchi in Chapter 11 says environment should come first. She reviews several successful regional environmental efforts in other parts of the world that were once regarded as dauntingly difficult but have now proven successful. She recommends that China set aside disputes in order to pursue environmental protection. She suggests China and ASEAN agree to counter marine pollution from both ships and land-based sources as well as develop refugia for threatened fish species. She envisages a strong role for the United Nations Environment Programme in building up capacities in the South China Sea that have proven viable and productive elsewhere.

Economic diplomacy in the South China Sea is lopsided, according to Francesco Varotto in Chapter 12. Beijing uses it aggressively, wielding its authority over state-owned companies as well as its One Belt One Road initiative

and the Asian Infrastructure Investment Bank. China's persistent bilateral economic diplomacy, which involves billions of dollars, is starting to bear fruit, especially with the Philippines and Malaysia. The U.S. however has abandoned its main vehicle of economic diplomacy in the region: the Trans-Pacific Partnership. Varotto wants to see the U.S. respond to China in kind, with vigorous state involvement in economic issues and more efforts to woo both Malaysia and the Philippines as well as to join the AIIB.

Lauren Barney in Chapter 13 underlines the importance of fish as a source of friction in the South China Sea, but also as a potential subject for cooperation. The littoral countries depend heavily on fish, which are naturally abundant in the South China Sea. But overfishing has done serious harm to fish stocks there. Barney argues that unilateral and bilateral efforts, which exist, are simply inadequate. What is needed is the kind of multilateral management that has been effective elsewhere in preventing overfishing and unsustainable stock depletion. She also recommends clarification of the role of maritime militias and more extensive use of CUES.

Energy and environment are the keys to future cooperation in the South China Sea, Joniel Cha argues in Chapter 14. He wants China and the other littoral states to "forge a special, narrowly focused regional agreement on jointly exploring, developing, and protecting oil and gas extraction and transport through the regional seas." This effort would avoid unilateral exploration and exploitation in disputed areas. He wants ASEAN to take up energy security issues and to work on risk reduction and dispute settlement. He also recommends more scientific collaboration and marine protected areas, as well as enhanced U.S./China collaboration in the South China Sea.

In concluding, we are struck by the recurrence of several themes in these varied and far-ranging chapters. Above all, maintaining peace and preventing war in the South China Sea is not only a worthy goal but a top priority. War there would have global consequences for trade, the world economy, great power relations, and the future of two countries—the U.S. and China—on which much of the world now depends for sober and serious leadership.

If relations between the China and the U.S. are good, many of the problems in the South China Sea will be more readily solved, not only between them but among the other littoral claimants as well. But no one can guarantee good

relations between Beijing and Washington, other than Washington and Beijing. It is vital that the two capitals keep South China Sea issues in perspective and seek to solve them judiciously.

This will be difficult. China comes to the negotiating table feeling it has been humiliated in the past and determined not to allow any repetition. Its sovereignty claims—which include not only those in the South China Sea but also Tibet, Xinjiang, and other troublesome provinces—are viewed in China as crucial to the legitimacy of the Communist Party. The United States comes to the negotiating table fearful of decline, relative if not absolute. It will seek to stem that decline and assert its power, including through freedom of navigation operations, but few Americans care about the land features in the South China Sea. In this situation, small slights can make for big problems. Both sides need to keep the many channels of communication open.

Throughout this volume, some issues arise repeatedly. Here are a few of them:

1. The U.S. failure to ratify UNCLOS and Chinese failure to accept the Philippines arbitration decision undermine confidence in the region that the great powers intend to play by the rules. They should remove this ambiguity.
2. Beijing is courting its neighbors in the South China Sea with substantial incentives as well as the negotiation with ASEAN of the Code of Conduct. Washington needs to step up its game to compete effectively.
3. PLAN should be invited to participate in selected American freedom of navigation operations, which are important but should not be increased, as doing so would create problems for China and likely evoke a problematic reaction.
4. The use of CUES by the U.S. and Chinese navies has been a key step in the right direction and should lead on to other increased communication and cooperation.
5. Chinese maritime militias are a problem, because they introduce paramilitary capabilities in an ostensibly civilian guise into volatile situations. Their role and command and control need explication and clarification.

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6. The Black Sea deal the U.S. worked out with the Soviet Union—Moscow's acceptance of freedom of navigation as the international norm while Washington stopped some freedom of navigation operations—Chinese find appealing. The Americans should explore whether something like it might work with China.
7. The sovereignty disputes in the South China Sea have prevented the growth of multilateral institutions vital to exploiting resources and protecting the environment. Both the U.S. and China should show leadership in filling this gap.
8. Overlapping territorial and maritime claims are likely to last a long time. Working out practical ways of reducing their saliency while not negating their validity is vital.
9. The citizens of the United States, China, and the claimant states have a lot bigger problems than the disputes in the South China Sea, which are all too often used as a way of diverting attention and criticizing other countries. De-escalation should apply not only to military forces but also to public passions.
10. The South China Sea conflicts are complicated but not unmanageable or even insoluble. There may be no quick solutions, but patience and determination to keep the peace can prevail. Both China and the U.S. have far more important issues, both at home and abroad.

## **List of Briefings and Interviews**

### **Washington, DC Briefings**

- The South China Sea Arbitration: Implications and Beyond
  - Ruth Wedgwood, Director of the SAIS International Law and Organizations Program and Former President of the International Law Association
  - Daniel Serwer, Director of the SAIS Conflict Management Program and Former Vice President for Peace and Stability Operations at the U.S. Institute of Peace
  - David M. Lampton, Director of SAIS China, Chair of SAIS' China Studies Program, and Former President of the National Committee on U.S.-China Relations
  - Karl Jackson, Chair of the SAIS Southeast Asia Studies Program and Former National Security Adviser to the Vice President of the United States
- Abe Denmark, Deputy Assistant Secretary of Defense for East Asia at DOD
- Bonnie Glaser, Senior Adviser for Asia and Director, China Power Project, Center for Strategic and International Studies
- Dr. Nong Hong of the Institute for China-America Studies
- Zachary Riskind, U.S. Dept of State Office of China and Mongolian Affairs
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### **Nanjing Briefings**

- China Center for Collaborative Studies for South China Sea Studies, Nanjing University
- Nanjing Massacre Memorial Hall
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**Beijing Briefings**

- Ministry of Foreign Affairs
- Roundtable discussion with students and faculty at Peking University's School of International Studies
- Institute of World Economics and Politics (IWEP) of the Chinese Academy of Social Sciences (CASS)
- China Institutes of Contemporary International Relations (CICIR) with members of the Institute of Maritime Studies; the Institute of American Studies; the Institute of Japan Studies; and the Institute of South, Southeast Asian and Oceanian Studies
- Meeting at the Chongyang Institute for Financial Studies, Renmin University of China (RDCY)
- Reception at the Johns Hopkins Club of Beijing with SAIS alumni
- Meeting at the Embassy of Vietnam
- Meeting at the U.S. Embassy
- Meeting with the China Institute of International Studies

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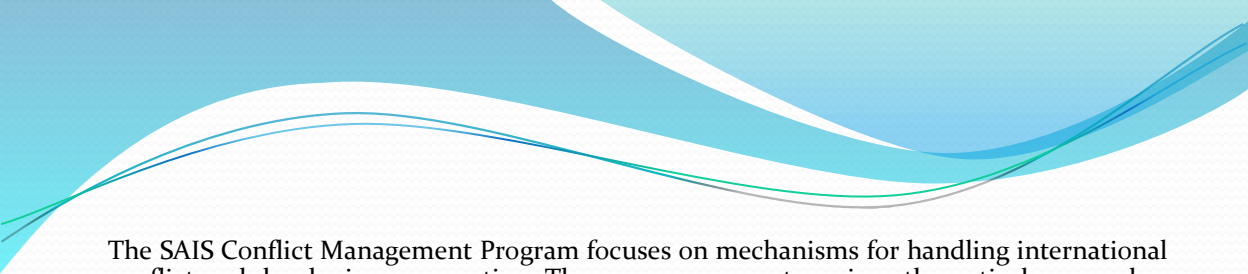
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The SAIS Conflict Management Program focuses on mechanisms for handling international conflict and developing cooperation. The program presents various theoretical approaches to negotiation, examines policies and processes in managing crises and conflicts and explores the formation and use of international organizations and regimes. Courses offer an opportunity to pursue case studies and simulations. An annual field study trip to a conflict zone provides an opportunity to study, analyze and formulate policy proposals relevant to an ongoing or recently ended conflict.

Frictions over disputed territory features and resource claims that have long troubled the waters of the South China Sea have intensified during the past decade. Today they threaten to ignite conflict in a region that serves as a critical vector for economic and geopolitical security in the Asia-Pacific. Brunei, China, Indonesia, Malaysia, Philippines, Taiwan, and Vietnam are all parties to what are in some instances multiple overlapping claims. The escalation of tensions has engaged nationalist sentiments, caused damage to the fragile marine environment, and exposed the challenges of resolving complex claims tied to sovereignty, natural resources and contested histories through established regional multilateral mechanisms and international law.

The South China Sea, like the Mediterranean, the straits of Hormuz and Malacca, and the Suez Canal, has thus emerged as fulcrum of international tensions that could result in globally significant conflict. That is why the Conflict Management program at the Johns Hopkins School of Advanced International Studies (SAIS) in collaboration with the School's China Studies program chose the South China Sea as the subject of its 2017 research trip.

The trip to China in January 2017 was unique in focusing on a conflict in which major powers are engaged, the United States is a protagonist, and the emphasis is on preventing rather than resolving an ongoing violent conflict or rebuilding afterwards.

There is no predicting how long it will take to resolve the current South China Sea issues, but one thing is clear: they are not worth a war between China and the United States. The skirmishes that have occurred so far need to be heeded as warnings. Conflict prevention needs to be successful, likely over a period of at least decades if not longer.

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