

**Russian Academy of Sciences
Institute of Oriental Studies**

**Security and Cooperation
in the South China Sea**

Moscow
Institute of Oriental Studies of RAS
2014

Security and Cooperation in the South China Sea

© 2014 Institute of Oriental Studies, Russian Academy of Sciences

A collection of papers of the international conference “Security and Cooperation in the South China Sea” incorporates the presentations of its participants – the most prominent and authoritative world-class specialists from the United States, Japan, India, Australia, the European Union and Russia who have long been studying the problems of this region. They examine the situation in Southeast Asia and the South China Sea from various standpoints, analyse the history of the conflict, its juridical and political aspects, and the involvement of great powers therein. The common element that unites the texts offered to the reader is the authors’ desire to find the most optimal ways to resolve the dangerous standoff, to make available for the governments of the countries of the region a sort of a “roadmap” to a world of stability and cooperation.

Texts by foreign participants were written in English by the authors, while Russian-language texts were translated into English by Alexei D. Zverev.

ISBN 978-5-89282-581-8

Institute of Oriental Studies, Russian Academy of Sciences
12 Rozhdestvenka, Moscow, Russian Federation

CONTENTS

<i>Nikolay Levichev</i>	5
<i>Vitaly Naumkin</i>	9

I. New Geopolitics in the South China Sea

<i>Daniel Schaeffer</i> The South China Sea and the Nine+1 Dash Line Cliff	10
<i>Carlyle A. Thayer</i> ASEAN and China Consultations on a Code of Conduct in the South China Sea: Prospects and Obstacles	34
<i>Subhash Kapila</i> South China Sea and the Indo-Pacific Politico-Strategic Dynamics.....	50
<i>Vladimir Kolotov</i> The East Asian Arc of Instability and the Geopolitical Dimension of the Territorial Dispute in the South China Sea.....	72
<i>Vladimir Terekhov</i> The Situation in the South China Sea in the Context of the New Global Game.....	84

II. The Threat of Militarisation and the Arms Race Between the States Involved in the Territorial Dispute

<i>Vijay Sakhujia</i> South China Sea Disputes: Claimants Arm Themselves.....	97
<i>Petr Tsvetov, Anton Tsvetov</i> Probability of Conflict Over the Islands in the South China Sea: Arguments For and Against.....	111
<i>Gregory Lokshin</i> Vietnam-China Relations: the Tyranny of Geography and Common Sense.....	117

III. Interests and Politics of Extra-Regional Forces in the Dispute Over South China Sea

<i>Bronson Percival</i> Balancing Engagement and Entanglement: U.S. Policy for the South China Sea.....	139
---	-----

<i>P.K. Ghosh</i>	
The Role of External Powers in the South China Sea Region: Seeking a Peaceful Resolution.....	153
<i>S.D. Pradhan</i>	
South China Sea Disputes in the Current Security Environment – Net Assessment	169
<i>Evgeny Kanaev</i>	
China’s and the US’ Approaches to the South China Sea Issue: Changing Patterns and Strategic Implications	198
<i>Vladimir Korsun</i>	
The Evolution of Approaches of the Chinese Leadership to the Problems of Present-Day Borders of the PRC.....	212

IV. Legal Issues in the South China Sea Dispute

<i>Erik Franckx and Marco Benatar</i>	
The Argumentation on the Weight in the Law of Map Evidence of the Chinese U-Line in the South China Sea Refined	224
<i>Ian Storey</i>	
Arctic Lessons: What the South China Sea Claimants can Learn from Cooperation in the High North.....	240
<i>Roberto Tofani</i>	
A Look at the Dispute in the South China Sea through the Media.....	269

V. The Prospects of Making Peace and Stability in Southeast Asia

<i>Masahiro Akiyama</i>	
How to Handle Disputes in the South China Sea	282
<i>Dmitry Mosyakov</i>	
The Conflict in the South China Sea and Possible Ways to Resolve It.....	292
<i>Ekaterina Koldunova</i>	
Possibilities and Limitations of Regional Institutions for Cooperation in the Resolution of Regional Security Problems in Southeast Asia.....	298

Nikolay V. Levichev
*Deputy Chairman of the State Duma,
Federal Assembly of the Russian Federation*



I welcome the participants and guests of the I International Conference “Security and Cooperation in the South China Sea”!

Assembled in this hall today are authoritative scholars and experts specialising in the Asia-Pacific Region. The APR is an entire complex world, multiethnic, multireligious, far from simple to understand, embracing elements of traditionalism in social organisation and achievements of technological progress.

The Asia-Pacific Region is one of global strategic significance. One of the key centres of the global economy has been formed here. Political ambitions and joint decisions of the leading states of the region may exert a serious influence on the fate of the world.

For our country the APR is doubly important, since geographically, culturally and historically Russia performs the role of a bridge between Europe and Asia. In recent years one can observe a notable enhancement of the Asian vector in Russia’s foreign policy and foreign trade. Bilateral cooperation is developing dynamically, the multilateral bodies set up upon the initiative of Russia and with her active participation – the SCO, the EurAsEC – acquire content. Our country has hosted the APEC summit in Vladivostok on a high level. Russia’s relations with ASEAN are developing. The holding of the Russia-ASEAN Youth Summit in May 2013 in Moscow has become emblematic. Interparliamentary contacts are growing in intensity.

Concurrently, President V.V. Putin has undertaken serious measures for the development of regions of the Russian Far East. A Ministry for the Development of the Far East has been established.

Security and Cooperation in the South China Sea

A state programme for socioeconomic development of the Far East and the Baikal region until 2025 has been approved. The state and business are investing big money into the region.

Russia has always played an active role in the APR and in the future will not stay back from the solution of key problems of the region. In this context, our academic community is called upon to play a special role.

The East was and remains a priority subject for Russian scholars. This country's academic Orientological tradition, whose official origins go back to the foundation in 1818 of the Asian museum under the Imperial Academy of Sciences, will mark its bicentenary in 2018. Custody, classification, popularisation and development of this country's extremely rich Orientological heritage require special attention today in connection with the opening prospects for a new level of relationship between Russia and the APR countries.

During the last decades, the famed Russian school of Oriental studies has been facing hard times: the funding of research works and expeditions is being curtailed and educational programmes getting cut. There are great fears that the reform of the Academy of Sciences will hit specialised studies ever more painfully.

This, incidentally, applies not only to Oriental studies. Unfortunately, after 1991 the situation in our country became aggravated in that the efforts of academic scholars, including those working in the humanities, specialists in international affairs were underestimated by government authority and society in general. Public discussion, which has literally flared up on the occasion of the adoption of the law on reform of the RAS, has become a kind of symbol of the long-established abnormal situation of the absence of dialogue among scholars, the academic elite, society and the state.

However, world experience shows that in interstate relations one can suggest a solution of the problem only by understanding its entire depth. Joint action with you, acclaimed scholars and experts, including in the framework of such conferences, is able to impart a powerful impulse to our state activity in this and other foreign policy areas. I think that such an esteemed and representative assembly can suggest to us, legislators and Foreign Ministry officials present here, specific ways to

resolve the numerous contradictions in the region of the South China Sea.

Today we face the task of searching for additional possibilities for the study of the East which requires comprehensive, cross-disciplinary research combining a fundamental academic approach and current monitoring of the fast-changing situation in the region. The results of such research should become the most important constituent of the intellectual foundation of politico-diplomatic contacts and interstate cooperation, and of joint economic initiatives. The planning and conduct of foreign policy, the organisation of economic cooperation require today a swift reaction and special competences from the officials of government departments working in new conditions of dynamic informational, economic and technological interaction of states in the region. In this context, it is hard to overestimate the role of expert knowledge when it is placed at the disposal of decision-makers in a timely manner.

It seems rather paradoxical to me how one and the same local territory - the South China Sea – may serve not only as a connecting bridge, as had been the case for many centuries, but also as a constant source of tension and disagreements. According to the data from geological exploration surveys, the shelf of the South China Sea accumulates about 30 billion tons of oil and 19 trillion cubic metres of natural gas. This has largely become a key factor in relations among states in the region. In the context of growing tensions in the Middle East and increased needs of the Chinese economy in oil and gas, as well as continued militarisation of the region, frozen conflicts may well escalate into real wars. I am worried that in the nearest future this region may from being a point of development turn into another ‘hot spot’ on the map of the world. And such spots are too many even today.

Few people here nurture illusions concerning the local nature of the eventual standoff. The subject of one of today’s presentations – “Regional Disputes with Global Consequences” rather accurately characterises the situation in the making. This will inevitably affect Russia as well.

It is our common task to prevent a transition of the numerous conflicts into an acute phase, untangle this knot, ensure peace and stability,

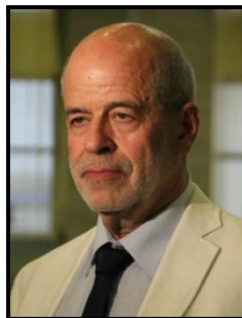
Security and Cooperation in the South China Sea

and also further strengthen Russia's peacemaking influence in the region.

The intensification of interaction between Russia and the countries of the Far East confronts politicians, business and scholars with fresh challenges presupposing changes and development of the existing institutions and communities. Fresh "Far Eastern challenges" are, as happened more than once in history, a "cutting edge" of modern global transformations that eventually will inevitably affect all mankind. And it is precisely with our country's scholarly traditions that I associate future breakthroughs in humanities research about the region. Touching upon what seems at first sight to be local problems, Russian scholars and experts always keep in their field of vision the whole context, the entire wealth of history and culture of the APR countries. This also concerns today's academic discussion encompassing a broad range of questions and involving specialists and experts in highly varied fields.

I eagerly anticipate that the conference will be fruitful and wish all its participants successful work!

Vitaly V. Naumkin
*Professor, Director of the Institute of
Oriental Studies of the Russian Academy of Sci-
ences, Associate Member of the Russian Acad-
emy of Sciences*



Dear foreign guests!
Colleagues, friends!

Allow me on behalf of the organiser of this international conference – the Institute of Oriental Studies of the Russian Academy of Sciences – to warmly welcome all its participants and wish you successful and fruitful work.

Our conference is devoted to one of the pressing security problems of the Asia-Pacific Region – the situation in the basin of the South China Sea. We are not politicians but academics and our task is to juxtapose the viewpoints of experts representing diverse national academic schools on this burning problem of world policy, research into which is conducted within the framework of a scientific field of vital importance to our time – maritime security. Of course, various experts, even those representing one and the same country which is not a party to the conflict situation, and adhering to similar political views, still cannot be absolutely impartial in their standpoints on the problem. Nonetheless, in order to try to depoliticise our research discourse and ensure a maximally objective examination of the question, we have gathered here – besides Russian specialists on the region – experts only from countries that are not located in the basin of the South China Sea. We hope that our colleagues from the states of that zone, whose opinions we respect, will not be offended by us and derive benefit from reports of conference participants, which we expect to publish in the form of a collection in English.

I wish you all successful work and our foreign guests also a pleasant stay in Moscow.



General (ret) Daniel Schaeffer
Member of the French think tank Asie21

**The South China Sea and
the Nine+1 Dash Line Cliff**

Ladies and gentlemen,

Let me first extend my many thanks to the Institute of Oriental Studies of the Russian Academy of Sciences for having invited me to express my view about this thorny issue of the South China Sea. Many thanks too, to my Russian colleagues who have certainly recommended this invitation to be extended to me. I really feel it as a great honour to have been invited to express myself in such a prestigious centre as the Russian Academy of Sciences.

To come to the topic I propose to discuss, I would say that, as it is rightfully written in the invitation letter from the Institute of Oriental Studies of the Russian Academy of Sciences *“today the dispute over the South China Sea has become one of the most serious sources of instability in Asia and around the world. Countries involved in this dispute have long been in talks, but have not yet found a way to solve the territorial problems”*.

And these territorial problems will not be solved as long as China and Taiwan, from a common tacit agreement at least, resolutely maintain the nine + 1 dash line, or from now on the ten-dash line, to delineate what they consider as being a Chinese maritime territory, be it communist or nationalist. Because, as far as the South China Sea is concerned, their fight for this maritime territory is the fight on behalf of a Greater China even if, at first sight, their separate claims give the impression that they are unconnected. That is not the case. And it is a mistake to consider Taiwan siding with ASEAN countries to confront China in this affair. As a matter of fact every year communist and na-

tionalist specialists are meeting in Hainan to work together on this question.

Before going further, I would like to explain briefly why I am speaking about a ten-dash line and not about a nine-dash line any more. It is because, on the 11th of January of this year 2013, the official Sinomap press published a new map of the South China Sea, a map on which the former nine-dash line is drawn with an additional dash, a tenth one. And this new line is quoted as representing the Chinese “*national boundaries*”. This is confirmed in the confidential verbal note that Philippines, on the 7th of June, handed over to the Chinese ambassador in Manila to protest against this new escalation of Beijing’s claims¹. We must, however, underline that this new representation of the Chinese claims does not alter the significance of the former nine-dash line for the Southeast Asian nations in conflict with China. It remains the same one as previously. The recent modification however, with the tenth dash, is that from now on it encompasses Taiwan and reaches the vicinity of the farthest Southern part of the Japanese Ryukyu islands. Therefore it is becoming clear that the crises in the South China Sea and in the East China Sea are both bound to China mainland’s aim to definitely recover Taiwan.

This specific and new point having been made, I’ll first try to demonstrate how it will become more and more difficult to convince the two rival Chinas to remove this line. Secondly, I’ll suggest some ways by which China could back away from the ten-dash line without losing face. Thirdly, I’ll expose my personal view on the role that Russia could play to help cut the Gordian knot of this complicated international problem. I do not say that in order to please my Russian guests. But I do think that Russia may have a genuine positive influential role to play in helping solve this thorny question that is, most importantly, poisoning relationships between China, the Southeast Asian countries and the United States. But in addition this dispute is also impacting Japan, South Korea, India and probably Australia because of its alliance with the USA. And thirdly the question may also impact Russia because of its economic relations with South East Asia. It may also have an impact on European interests especially because their maritime commercial lines are regularly crossing this sea to liaise with Far East-

ern countries. Therefore Europe has started to understand that troubles, crises, clashes in the South China Sea would inevitably run against own interests. This is the reason why, at the end of April 2013, the European parliament adopted a resolution approving a report originally approved on the 14th of March by the European Department of Foreign Affairs. This report included European support for the Philippines' initiative to seek an arbitration to settle its territorial dispute with China.²

I - The ten-dash line cliff

As everybody knows, the ten-dash line, as far as the first nine dashes are concerned, encompasses roughly 80% of the whole South China Sea, leaving the other coastal countries with little more than their territorial waters. The other adjacent countries of the South China Sea mockingly call this area surrounded by the then nine-dash line the "*buffalo tongue*" because of its U shape. For its part, China is justifying its claim by introducing these waters either as a historical sea³ or as a territorial sea. With the newly printed map, the latter interpretation is obvious. But in any case such claims cannot be allowed because they are not in accordance with any article of the United Nations Convention on the Law of the Sea (UNCLOS). However, China remains stubbornly attached to this peculiar interpretation of the law of the sea, arguing that the nine-dash line had been drawn long before the Montego Bay Convention, trying to draw an argument from this historical point.

Up to now, it is generally believed that the nine-dash line dates back to 1947 when China was still, but not for much longer, under the rule of the nationalist government of Chiang Kaishek (Jiang Jieshi). But, in reality, the nine-dash line, which had previously been a continuous line, did not exactly appear in 1947. Its first appearance dates back to December 1914 before being first officialised in 1947⁴.

When the Chinese Communist Party came to the power, in 1949, it did not reject the original nationalist claim. It kept the line that, at that time, had become an 11-dash one. It became a nine-dash line again when then Prime Minister Zhou Enlai ordered the two dashes that were crossing the Gulf of Tonkin to be deleted. That decision must be understood as a good will gesture towards the Vietnamese Communist

Party which was fighting against the French who still were the colonial rulers of Vietnam, and not as a gracious concession made to the latter by China. At that moment, the purpose of the drawing of the nine-dash line was, according to different sources, to delineate the maritime area that should belong to China⁵, but not really to delineate the areas inside which there would be territorial disputes to solve, as is often believed. But little by little, since not a single country, France for Vietnam, USA for the Philippines, was really opposing such a drawing by China, because it was not announced as an official one, the Chinese were emboldened and progressively reinforced their position to make the “*buf-falo tongue*” a Chinese maritime territory.

We must recognise that under the French rule, as far as the sovereignty over the Paracels is concerned, France did not do too much to defend the interests of its protectorate of Annam. It seems that they only exercised a sporadic, not a continuous, administration over the archipelago. And in 1947, when the Chinese nationalists started entrenching themselves on the Amphitrite group, the Eastern part of the archipelago, the French “*failed to persuade the Chinese commander to leave*”⁶ the area. They failed because they renounced the use of force to expel the intruders and contented themselves with being stationed on the second part of the archipelago, the Crescent group, on the western side of the Paracels. That was how the nationalist Chinese quietly took possession of the first part of the Paracels while, after the Geneva agreements, the South Vietnamese took the place of the French on the Crescent group⁷.

After the French were defeated by the Vietminh and when the 1954 Geneva agreement was under discussion, the Chinese were already silently planning a seizure of the remaining part of the Paracels. As a matter of fact, after lengthy discussions, they succeeded in obtaining that the demarcation line between South and North Vietnam be set on the 17th parallel. For their part, during the negotiations, the Vietminh representatives wanted to have the territory of the People’s Democratic Republic of Vietnam extended up to the 15th parallel⁸, thereby encompassing the Paracels which, for their part, are roughly located on the 16th parallel. There was, of course, opposition to that and finally the Chinese succeeded in getting the 17th parallel accepted.

Security and Cooperation in the South China Sea

Thus the Paracels remained under the sovereignty of the Republic of Vietnam, that is to say South Vietnam. Should the Paracels have remained attached to North Vietnam, the Chinese would therefore have been deprived of the possible prospect of conquering the remaining part of the archipelago, i.e. the Crescent group. As a matter of fact, as supporters of the Vietminh during its war against the French, the Chinese could not have decently allowed themselves to capture a territory belonging to their allies. On the contrary, having been able to keep the Paracels under the responsibility of South Vietnam, they kept open for themselves a window of opportunity to achieve a future definite conquest of the Paracels, which they did in 1974 through an amphibious storm assault. The North Vietnamese protested but not too strongly because they needed to keep the Chinese alliance to start their fight against South Vietnam.

As far as the Spratlys are concerned, the scheme is roughly the same. In 1930, reconfirmed in 1933, the French navy, on behalf of the French government, officially took possession of the Spratlys, following the international rules in vigour at that time to declare sovereignty over a *terra res nullius* as the Spratlys were. Subsequently the Spratlys were administratively attached to Cochinchina (South Vietnam) which was not a protectorate as Annam and Tonkin were, but which was a French colony up to 1954, the date of the Geneva agreement. But in 1947, still during the French colonial era, the Chinese nationalists entrenched themselves on Itu Aba, the largest island of the Spratlys, without encountering any opposition from the French side. After 1954, since the Spratlys are situated below the 17th parallel, South Vietnam took the place of the French in the archipelago. Despite such an apparently clear succession, some ambiguities surround this taking over from the Republic of Vietnam (South Vietnam): 1 – some researchers dispute the fact that since the French did not visit all the islands when they declared their sovereignty over the Spratlys, the French sovereignty was not established over the whole archipelago; 2 – In the Geneva agreement there is no accurate description of the territories lying under the 17th parallel; therefore nothing is related to the maritime territories; 3 – The French did not proceed to any transfer of sovereignty over the

Spratlys to the Republic of Vietnam after their withdrawal from Vietnam.

Taking all that into consideration, it is not surprising therefore that on the 15th of May 1956 Thomas Cloma, a Filipino businessman, a retired admiral from the Filipino navy, declared four-fifths of the Spratlys a *terra res nullius*, drew a polygon around this area he called Kalayaan, which means “*land of freedom*”, and took possession of the Kalayaan on behalf of the Philippines, but not on behalf of the Filipino government, however. Therefore the annexation of Kalayaan was not an official one, but a private one, which had no value in regard to the international law at that time. On its part, the Filipino government, being not so sure about its rights over the Kalayaan, waited until 1978 when, under the rule of President Marcos, it declared the Kalayaan a Filipino territory by presidential decree N°1596. The Filipinos were all the more encouraged in this attitude that the French, who could have reminded them that the Spratlys could still be a French territory, remained silent. That was the beginning of the dispute between Vietnam and the Philippines over sovereignty of the Spratlys. In 1975, after the victory of North Vietnam over South Vietnam and the USA, North Vietnamese navy riflemen replaced the South Vietnamese on their different positions on the islands. In March 1988, to the astonishment of the whole world which was not expecting it, China launched an amphibious storm attack against different positions held by Vietnam and took control of 11 islands. That was the first Chinese step in the capture of the Spratlys from Vietnam.

Then came the Montego Bay convention in 1982 that gave the coastal states the possibility to claim an exclusive economic zone (EEZ) of 200 nautical miles. This therefore gave Malaysia and Brunei the opportunity to have waters under their sovereign rights (but not sovereignty) extended up to the Southern Spratlys. Both countries took the opportunity of these new regulations to claim sovereignty over some of the islands of the archipelago. But this is not in conformity with the law of the sea, because sea cannot generate sovereignty over land, on the contrary. And as long as sovereignty over the Spratlys is not defined, neither Malaysia, nor Brunei may extend any claim on the islands that their EEZs are reaching. To sum up, the dispute for the

Security and Cooperation in the South China Sea

Spratlys opposes China and Taiwan on the one side to Vietnam, Philippines, Malaysia and Brunei on the other side, knowing that the four latter ones are also confronting each other for the possession of the whole archipelago or part of it. Elsewhere, that makes the Indonesian EEZ cut the nine-dash line and overlap a small part of the “*buffalo tongue*”, off Natuna island of Indonesia.

If disputes for the Paracels and the Spratlys constitute the main part of the litigations, China and Philippines are each for their part disputing sovereignty over Scarborough reef, an atoll almost entirely submerged which appears above the sea as a myriad of small scattered rocks. The problem here for the Philippines against China, which on its side has no real proof of any anteriority of any possession on Scarborough, is that neither in the 1890 Spanish-American Treaty of Paris by which the Philippine territory was ceded from Spain to the US, nor in the 1898 Spanish-American Treaty of Paris, nor in the 1900 Spanish-American Treaty of Washington, was there anything written on the atoll as being a Filipino territory.

More serious are Chinese claims over some “*submarine elevations*” as they are defined in article 76.6 of the UNCLOS, that is to say “*natural components of the continental margin, such as its plateaux, rises, caps, banks and spurs*”. generate territorial seas. As these are not “*low tide elevations*” they do not generate territorial seas. Therefore no country may claim sovereignty over them unless these submarine elevations are in its territorial waters, or may not exert sovereign rights over them unless they are situated in the EEZ or in the continental shelf of that very country. Those submarine elevations are: Macclesfield bank, off the Paracels archipelago; Truro shoal, half way between Macclesfield bank and Scarborough reef; Reed bank which is situated north of the Spratlys, which is not part of them but, on the contrary, is in the Filipino EEZ, but which China considers as being included in the Spratlys; James shoal and Luconia shoal, two submarine elevations off Malaysia, which are in the Malaysian EEZ. All of these claims are not, in any case, in accordance with the UNCLOS. But China sustains them because it needs some of them to demonstrate that the nine-dash line is the median line between what it considers its maritime territories and the other coastal states, as Xu Sen'an, a senior researcher at the

State Oceanic Administration of China, explained in 2000. At that time he pointed out that on the first map drawn by the Geography Department of the Ministry of Internal Affairs of China in 1914, “*the dotted national boundary line was drawn as the median line between China and the adjacent states*”⁹. To reinforce such a concept China is little by little building schemes around all these claims in order to make a stronger case that the nine-dash line is actually the median line between its territories and the other coastal states.

Incidentally, it should be noted that the claims over Macclesfield bank and Truro shoal do not enter into the scheme of the nine-dash line itself but into another consideration which is related to the Chinese military strategy and the deployment of its SSBNs Jin from the Sanya naval base.

As far as the archipelagos are concerned, the Chinese apply to them the rule of straight baselines, even though such a rule is relevant to archipelagic States only (Part IV of the UNCLOS) and never to any other kind of archipelago. Any country which finally would be recognised as the genuine sovereign over any of these claimed archipelagos, should apply to them the only available regime, i.e. the regime of the islands (article 121 of the UNCLOS). But in the present case we can see that China applies the regime of the archipelago States:

- Effectively to the Paracels islands, as described in the “*Declaration of the Government of the People's Republic of China on the baselines of the territorial sea*”, made on the 15th of May 1996
- Only virtually for the moment being to the Spratlys islands; that can be deducted from the terms of the verbal note addressed by China to the UN on the 14th of April 2011 to counter the Filipino protest to the UN against the nine-dash line.

As far as the submarine elevations are concerned, since China considers Reed bank as a part of the Spratlys, this submarine elevation is included in the delineation by the straight baselines that China is virtually drawing around the archipelago.

Concerning Luconia shoal and James shoal, the Chinese came to perform some activities in order to demonstrate that they are sovereign over these areas¹⁰. Among others:

- On the 20th of April 2010, the Marine Surveillance Ship-83 placed a

sovereignty stele on James shoal, which is situated at 22 meters under the sea.

- On the 19th of August 2012 Chinese patrol vessels harassed a seismic survey vessel from Shell Sarawak in Block SR 318 on Luconia reef¹¹. Malaysia did not publicly protest because it does not want its disputes with China in the South China Sea to affect their economic relationship¹².

Based on all these ambitious goals the former nine-dash line runs as follows: between the Paracels archipelago and the Vietnamese coast off Danang; turns largely to the south between the farthest southwestern part of the Spratlys and the Vietnamese coast of Con dao island; bites on the Indonesian EEZ off Natuna islands; continues between Luconia shoal, James shoal and the Malaysian coast of Sarawak province; curves to the north to pass between the Spratlys and the Philippines; then between Scarborough reef and the Philippines, crosses the Bashi Channel between the Philippines Batan islands, north of Luzon province, and the Orchid island of Taiwan. Today, it continues East of Taiwan to create a new ten-dash line.

II – From the Chinese progressive reinforcement of the nine-dash line to the ten-dash line

And little by little, step by step (*yi bu yi bu de*), through a myriad of what we could consider petty actions, China is reinforcing its global claim according to the nine-dash line, and more recently to the ten-dash line:

1 – From time to time China exerts pressures on Vietnam and Philippines in order to deter their oil companies from signing undertaking contracts with foreign companies; for that the Chinese are engaging in a large number of actions, extending from verbal warnings to aggressive acts as the following occasions testify:

- Between 2006 and 2007, fourteen foreign oil companies under contract with Petrovietnam to operate in blocks situated in the Vietnamese EEZ but astride the nine-dash line were harassed by China. That led the United States to react and to send a warning to China in June 2010, on the occasion of the East Asia Summit, or Shangri La dialogue. Robert Gates, then US Secretary of Defence,

condemned the exercise of “*coercive diplomacy*” in the South China Sea.

- In 2011, the Chinese aggressiveness worsened when Chinese maritime police ships practiced dangerous manoeuvres against Vietnamese seismic research ships and managed to cut their survey cables. Such was the case on the 26th of May 2011 against the Binh Minh 02, and on the 9th of June 2011 against the Viking 02, a research ship rented from the French company CGG Veritas.

- More recently, on the 23rd of June 2012, China National Oil Offshore Company (CNOOC) invited bids from foreign companies to cooperate and operate with it on 9 blocks, right on the edge of the nine-dash line, but inside the “*buffalo tongue*”, however; therefore these 9 blocks are straddling the Vietnamese EEZ and the Vietnamese blocks where foreign companies are either operating on behalf of Vietnam or with Petrovietnam, as it is the case for Vietsovpetro.

- On the Philippines side, on March 2011, we may register similar pressures against Philippines National Oil Company (PNOC) in partnership with foreign companies in the area of Reed bank.

2 - As far as fishing activities are concerned, China:

- Unilaterally declares a yearly moratorium on fishing activities north of the 12th parallel.

- In spring 2012, created a standoff on Scarborough reef against the Philippines and finally succeeded in having the Philippines’ small naval force withdraw from the place and in keeping some fishing boats on the spot.

3 - China also holds military naval manoeuvres close to areas disputed with other countries. One recent example is the amphibious exercise performed from the 23rd to the 26th of March 2013 by the Navy of the People’s Liberation Army (PLAN) in James shoal area.

4 - Continuing physical encroachments on features seized from other claimants as was the case for the settlement on Mischief reef against the Philippines in 1994. The thatched cabins that were built and introduced at that time as shelters for fishermen have become today concrete buildings with helipad and other facilities. We must presently observe how events will develop on Second Thomas reef, since China

Security and Cooperation in the South China Sea

has recently, in May to be more accurate, started harassing the Philippines on the sovereignty over this reef situated southwest of Mischief reef.

5 - Acting administratively to demonstrate that the “*buffalo tongue*” is under the Chinese sovereignty. Thus, on the 24th of July 2012, China upgraded the county-level administrative division of Sansha, which had already been created in 1953, to city level, equivalent to a prefecture. Sansha city is an administrative subdivision of Hainan province. It is settled on Woody island, the largest island of the Paracels. The purpose of Sansha district is to administer what the Chinese are calling the three banks: Paracels (Xisha), Spratlys (Nansha), Macclesfield bank (more exactly Zhongsha qundao). Zhongsha qundao is a specific Chinese concept that, because of the translation from Chinese into English, the international community believes, matches with Macclesfield bank, which is wrong. It includes Macclesfield bank but it is not Macclesfield bank only. Zhongsha qundao concept includes Macclesfield bank, Truro shoal and Scarborough reef to make an artificial archipelago, Zhongsha qundao, which later the Chinese will probably delineate with straight baselines. In this scheme Scarborough reef is the rocky emergence that the Chinese need to justify the fictitious construct of Zhongsha qundao¹³.

6 - Furthermore, as China claims that sea is either a historical sea or a territorial sea, it has already started launching different operations, the purposes of which are step by step, slowly, without hurting, to make the international community admit that such a sea is a Chinese sea. These operations include:

- Patrolling the South China Sea and holding inspections with civilian naval craft and not the People’s Liberation Army’s navy. These are the means that were dispatched to Scarborough reef in April 2012 to support the activities of Chinese fishermen and oppose the Filipino defence means sent on the spot to try to repel the invaders. These means comprise five main agencies that are the Coast Guards, the Marine Surveillance Agency; the Maritime Safety Administration; the Fisheries Law Enforcement Command; the General Administration of Customs.
- Holding search and rescue operations all over the “*buffalo*

tongue”, not only to save Chinese fishermen but also fishermen from all other countries such as rather often happens with Vietnamese in typhoon periods.

○ On the 29th of November 2012 announcing, by means of the national press, that Hainan province has decided that the local patrols of maritime police would be authorised, as of the 1st of January 2013, to inspect any foreign ship illegally penetrating in the territorial waters of the province. Even if the Chinese authorities tried to reassure that this right of visit would be applied 12 miles off Hainan, a big concern was raised, however, about the real extension of this decision. As a matter of fact, since Sansha city, which is a subdivision of Hainan province, finally covers the administration of the territories included in the “*buffalo tongue*”, it has therefore become imaginable that all those announced checkings should occur all over the South China Sea. All the more so that now the ten-dash line is displayed as representing the “*national boundaries*”, and even if that new representation has not yet been accompanied by any official statement.

Such a consideration is not void of any good sense since the Chinese maritime agencies are sometimes already checking, but very discreetly for the moment being, foreign commercial ships crossing the South China Sea. This soft procedure is roughly the following one: “*welcome*”; request for some pieces of information: from where the ship is coming, where does it go. The captains of the ships are informed about this possibility by the International Fusion Centre (IFC) when they pass by Singapore where the centre is located.

Since China considers the South China Sea as a historical sea or a territorial sea, the above mentioned piece of information constitutes no more than the first warning signs of what are the risks to come next: the obligations for all the warships which will want to cross the South China Sea to first request the authorisation to do that. In that regard, China will certainly try to apply the rules it has already adopted for all the warships coming into its internationally recognised territorial waters, following in that the terms of the declaration made on the 25th of August 2006 on the occasion of its ratification of the UNCLOS. This declaration sounds as follows: « 4. *The People's Republic of China*

Security and Cooperation in the South China Sea

reaffirms that the provisions of the United Nations Convention on the Law of the Sea 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 is part of what we may qualify as reports of aggressive acts. But on the other hand (and very often Westerners consider that a paradox), the Chinese make attractive proposals to their neighbours with the officially expected perspective to make the South China Sea a zone of “*peace and harmony*”. The paradox appears in the fact that even if the relations are conflicting with some Southeast Asian nations on the one side, they can be good or harmonious with them on the other side. This is a specific cultural aspect in Asia. It is the remaining influence of the *yin* and *yang* traditional thinking that allows contraries to match.

Having that in mind, it therefore appears understandable that besides their aggressive attitude the Chinese make proposals to the Southeast Asian nations for economic cooperation in the whole region connected to the South China Sea. Under the motto: “*shelving the disputes and working for joint cooperation*”¹⁴, the Chinese proposals appear attractive, all the more so as ~~the~~ these nations have privileged economic relations with China, especially trade ones. And China never misses the occasion to remind that positive aspect of the China – Southeast Asian nations’ relations.

In that sense, some of the Chinese proposals have found some favourable outcomes such as the Chiang Mai Initiative Multilateralisation Agreement (CMIM). The CMIM was finalised in this Thai city of Chiang Mai on the 24th of March 2010 after ten years of negotiations with the participants which are not only China and ASEAN but also Japan and South Korea. It originally established a common fund of \$120 billion. The system is to provide a mutual funding assistance via multilateral SWAP operations between ASEAN +3 nations¹⁵ in the event of some financial crisis. The parities between currencies are negotiated between partners by escaping the American demands to re-evaluate the yuan.

China and the Southeast Asian nations are also bound together by some other covenants such as the ASEAN–China Free Trade Area (ACFTA) which came into effect on the 1st of January 2010 or the China-ASEAN strategic partnership established in 2003, or the creation, at the end of 2011, of a 3 billion-yuan (\$472 million) fund to develop a “*maritime connection network*” with the Southeast Asian nations.

The Chinese are trying to push ahead the three-pronged bilateral development programme they have proposed in 2006 to the Southeast Asian nations. This development programme is based on three axes.

- 1 – The Nanning – Singapore corridor;
- 2 – The Greater Mekong sub-region program, already supported by the Asian Development Bank (ADB);
- 3 – The Pan-Beibu Gulf Economic Cooperation Zone (so as to make the South China Sea a “*lake of harmony*”), initiated in 2006.

With the agreement of the Southeast Asian nations, China is also working to establish and implement a net of connections with these nations: roads, railways, airlines, river transportation, wire and wireless communications. If these connections are indeed useful for the economic life of the region, the Chinese purpose is indeed to solidly lash down the Southeast Asian nations to China and recreate some kind of vassal dependence towards their former suzerain of the imperial era.

As far as the bilateral cooperation in the South China Sea itself is concerned, some attempts at economic bilateral cooperation had earlier been made, but they failed. One example is the Joint Marine Seismic Undertaking (JMSU) that had been signed between the Philippines National Oil Company (PNOC) and China National Offshore Oil Company (CNOOC) on the 1st of September 2004, joined the following year by Vietnam. The purpose of the agreement was to work together on a 2D seismic campaign in order to detect oil in an area lying in the Philippines exclusive economic zone, north of the Spratly islands, partly astride the Kalayaan territory, and 88 nautical miles off Palawan island. This JMSU should have lasted for three years and be possibly renewed, depending on a decision to be taken before the 30th of June 2008. Two campaigns were conducted under the agreement but the 3rd one did not take place because of the harsh attacks from the Filipino

Security and Cooperation in the South China Sea

opposition against president Arroyo, accused of having sold out the national territory to the Chinese.

As for the Southeast Asian nations, even if the Chinese proposals appear attractive, they remain suspicious, however, especially because, as it is written on the internet site of the Chinese Ministry of Foreign Affairs, where the conditions for such a cooperation are explained, the first condition is that “1. *The sovereignty of the territories concerned belongs to China.*”¹⁶ The following ones are softer but they cannot make one forget the first condition. They are:

- “2. *When conditions are not ripe (...) to bring about a thorough solution to territorial dispute, discussion on the issue of sovereignty may be postponed so that the dispute is set aside. To set aside dispute does not mean giving up sovereignty. It is just to leave the dispute aside for the time being.*
- 3. *The territories under dispute may be developed in a joint way.*
- 4. *The purpose of joint development is to enhance mutual understanding through cooperation and create conditions for the eventual resolution of territorial ownership.*”

As far as politics around the South China Sea are concerned, we can register, as an example of good will, the way found by China and Vietnam to solve the question of the sharing of the Gulf of Tonkin. During the French colonial era, the Gulf had been shared according to the 108 degrees meridian between Vietnam and China. This delineation has been disputed by China. And the Chinese political pressures on Hanoi, and even pressures exerted at sea on the Vietnamese fishermen harassed by the Chinese coastguard, led the Vietnamese to give way and agree to discuss with the Chinese. That led to the two agreements dated the 25th of December 2000: the “*Agreement on the delineation of the territorial seas and the exclusive economic zones in the Gulf of Tonkin*” and the “*Agreement on cooperation in fishing activities in the Gulf of Tonkin*”, two agreements that went into force in June 2004 after the instruments of ratification were exchanged.

For the moment being, negotiations continue between Vietnam and China to delineate the separation of the exit of the Gulf of Tonkin. But the question appears to be a stumbling block because we are there nearing the Paracels islands and the straight baselines delineation

drawn around them by China¹⁷. That led, on the 30th of November 2012, to an incident between a Chinese ship and the Vietnamese Binh Minh 02 research vessel when the first one cut the seismic cables of the second one. The incident happened on the Vietnamese side of the future median line that should be established between the Vietnamese coast and the Chinese coast of Hainan Island. But Vietnam, so as not to aggravate its relations with China, minimised the incident by qualifying it as accidental.

Some also consider it a good will gesture from Beijing when the latter finally agreed to negotiate a Code of Conduct (COC) for nations in the South China Sea to replace the former Declaration of Conduct (DOC) adopted on the 4th of November 2002. As a matter of fact, the DOC did not prove to be sufficient enough to ensure peace, tranquillity or stability over this semi-enclosed sea. As a matter of fact, the DOC establishes more a list of moral engagements than a code of conduct. By themselves these engagements should normally have been enough for the different states to respect them, should the concerned states genuinely act in good faith and abide by their words. In reality, since the adjacent Southeast Asian countries are leaning on their legitimate right to fully enjoy the use of their EEZs, their activities overlap the nine-dash line. Therefore, for Beijing, they do not respect what it considers the Chinese sovereign rights. On the other side, since the nine-dash, and now the ten-dash, line is unlawful, ASEAN countries in their turn consider that through the nine / ten-dash line China does not respect the DOC and behaves as a bully against them. This is the reason why they hope that a COC, which is expected to be more constraining than the DOC, should help prevent the exactions of one against the others. But, since from now on China has definitely started considering the ten-dash line as its “*national boundaries*”, then delineating the area of what it considers to be under its sovereign rights, if not sovereignty, over the South China Sea, it will always be the other adjacent nations’ fault if when exercising their legitimate rights in their own EEZs they would overlap the “*buffalo tongue*” in numerous places. Therefore, as long as the nine / ten-dash line has not been abolished, the COC will be a dream and an even better weapon for Chinese to defend what they consider as their rights.

According to all that has been previously outlined we must not let our attention be diverted, at least for the moment being, by the question of sovereignties over the archipelagos, isolated islands, submarine elevations and so on. This question is not the main problem for the moment being. But it contributes to create it because China is leaning on these areas to perpetuate the existence of the nine/ten-dash line with a view to demonstrate that this line is the median line which is sharing “equitably” the South China Sea between China’s maritime territories and those of the other coastal states. And China can arrive at this position thanks to its distorted interpretations of the law of the sea that enables it, as already explained supra, to surround the claimed archipelago by straight baselines, effectively as far as the Paracels are concerned, virtually as far as the Spratlys are concerned; and to create the artificial archipelago of Zhongsha Qundao, archipelago which, to remind it, aggregates Macclesfield bank, Truro shoal and Scarborough reef.

Therefore, as long as the nine/ten-dash line exists there will be absolutely no way to solve the problem of maritime disputes between the different claimants. Some Chinese specialists on the law of the sea, who are, however, strongly outnumbered, have started thinking that the Chinese position is exaggerated and is not in conformity with the law of the sea. But they do not represent the majority for the moment being. Therefore the problem will be to succeed in convincing the Chinese authorities to change their mind so as they might agree to give up the nine/ten-dash line. A large range of solutions exists. Some of them could be adopted by the Chinese without losing face.

III – Some proposals to make the nine/ten-dash line disappear without Chinese losing face

They are some of the proposals I made last November 2012 in Ho Chi Minh City on the occasion of the 4th international workshop organised by the Diplomatic Academy of Vietnam and the Vietnam Lawyers’ Association on “*The South China Sea: Cooperation For Regional Security And Development.*”

Except introducing cases in the International Court of Justice, which would be the most efficient path to clear the situation, even if

the constructing of cases would be costly in money and time (but is it so important when we consider that the crisis is already more than 60 years old?), some other possibilities exist. Philippines today has already decided to attack China by denouncing its excesses to the nine-dash line and brought a case before the International Tribunal for the Law of the Sea (ITLOS), in Hamburg, on the 22nd of January 2013. Pursuant to the procedures of Annex VII to the Convention, the president of the ITLOS has, on the 24th of June 2013, finally appointed the five members who will compose the arbitral tribunal for the case submitted by the Philippines¹⁸.

Among the proposals forwarded last year, the first one is the idea the Philippines introduced in 2011 in order to initiate an economic co-operation over the whole South China Sea so as to change it into a “*zone of peace, freedom, friendship and cooperation*” (ZoPFFC). Philippines is better placed than I to explain the principles of the proposal. But roughly, it has proposed a new architecture of the organisation of the claims in the South China Sea. The basic principle is to define, clarify and segregate disputed areas from non-disputed areas. The disputed areas are the islands worthy of that qualification, in the Paracels, in the Spratlys, and even some other scattered spots in the South China Sea. On the one hand, in the non-disputed area, that is the main maritime part of the South China Sea, the international cooperation would be organised according to part IX of the UNCLOS which recommends in article 123 that “*States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention*”. On the other hand, the disputed areas would be organised into joint cooperation areas according to intraregional agreements. Such a solution has the merit of rendering the nine/ten-dash line self-deleting, therefore allowing China to quit its excessive claim over the “*buffalo tongue*” without losing face.

The second possibility takes into account the huge commercial traffic that crosses the South China Sea through a rather narrow lane constrained between some dangerous rocky areas, that is to say along the western edge of the Spratlys, the eastern edges of the Paracels and of the morphological Macclesfield bank, on each side of Truro shoal,

Security and Cooperation in the South China Sea

on the western side of Scarborough reef before reaching the high sea through the Bashi channel, north of the Philippines island of Luzon. The proposal is to organise this lane into an international maritime highway under the surveillance of an international regional integrated force. The model is the maritime rail that France and UK established in the Channel to avoid accidents, loss of human beings and goods, and pollution resulting from such accidents. Such a solution could be a genuine example of cooperation in good faith for maritime safety and peace over the area. As with the Philippines solution, the proposal for a maritime highway has the merit of rendering the nine/ten dash-line self-deleting, therefore making China withdraw from its excessive claim without losing face.

A third solution would be obviously provided by a definite return of Taiwan into the fold of the motherland. How? Because, once the reunification is accomplished, China will have the possibility to develop military harbours on the Taiwanese Eastern side, towards the deep blue waters of the Pacific Ocean. There are already two possible locations, based on existing infrastructures though not large enough for the moment being. They are Hualien, situated in the centre of the eastern coast, and Dawu fishing port in the south. Once these harbours would have been developed into military harbours, China would not have the same security problem as it encounters presently to ensure the secure exits its SSBNs need out of Sanya naval base. From the Taiwanese Eastern coast, the submersibles would be able to reach very quickly the deepest depths of the Pacific Ocean to bring the Julang missile at appropriate range from the US territories. In these conditions there would be no need any more for China to cling so tightly on the nine/ten-dash line. Moreover it would be, in these conditions, easier to implement the Philippines solution.

The fourth one would be to internationalise the question. But China is formally opposed to that. But the whole world should, in its turn, be opposed to that Chinese position because the South China Sea cannot be a Chinese sea only. It is an international sea. The international community cannot be satisfied by some Chinese good words promising that the freedom of navigation will never be compromised. It needs formal commitments. If we are to believe China's promises, China

should stop maritime police operations in the South China Sea. The problem here is how to convince the international community to ask China to come to more reasonable claims so as to give up the nine/ten-dash line. In that way, I think that Russia has the means to do something in the diplomatic field.

IV – What are the possibilities for Russia to help solve the problem?

Indeed, Russia enjoys high possibilities to help solve the problem. As a matter of fact, Russia enjoys a privileged specific independent position that enables it to contribute to a peaceful solution in the South China Sea. Weakened after the fall of the Berlin wall, Russia has come again to be an international power which counts, which counts a lot. Its strength rests on acting by itself without leaning on one side or another. Russia is perceived as acting independently, which is sometimes unsettling because generally minds are not accustomed to such an international behaviour.

In that way however, because Russia is a member of the Shanghai Cooperation Organisation (SCO), and also because since 2003 Russia is participating every year in common military manoeuvres codenamed “Peace Mission” with China, some politicians all over the world believe that Russia is a close ally to China. Some even believe that the SCO is a kind of military alliance comparable to NATO. That is a misinterpretation. But due to the fact that Russia is a member of the SCO, it enjoys an advantageous position to speak with the Chinese, all the more so that, on a certain number of international events, China and Russia agree to oppose or to veto some decisions expected to be favoured by the Western countries in the circle of the United Nations, as is presently the case about Syria and Iran. Since the nine/ten-dash line is not at all viable because it does not respect the dispositions of the Law of the Sea, Russia has in that sense the faculty to try to convince China to set itself in conformity with the Law of the Sea.

Moreover, on that prospect, Russia enjoys a stronger position than the United States to speak to China. This is because, contrarily to the United States, Russia does not appear as plainly involved in taking position on the very question of the South China Sea as Washington does.

Security and Cooperation in the South China Sea

And that is true, even if Russia is delivering armament to India and to some Southeast Asian countries such as Vietnam and Indonesia, even if Russia is contributing to the rehabilitation of the military harbour of Cam Ranh. Moreover, Russia has ratified the UNCLOS on the 12th of March 1997, something which the USA has not yet done. That gives Russia more strength, more credibility to invite China to observe a more consistent attitude in regard to the law of the sea.

But Russia, even if it disagrees with the USA on a certain number of international questions, could also speak with the US about the question of the South China Sea so as to show China that both have the same concerns about the free use of the South China Sea. In that sense, it has been a good idea from Vietnam in 2010 to invite both the American State Secretary, Hillary Clinton, and the Russian ministry of foreign affairs, Sergei Lavrov, to participate in the ASEAN regional forum (ARF), thus creating the extended ARF, which has been acquiesced by all the other participants. The question of the South China Sea could be a question of common interests that should lead Moscow and Washington to definitely forget Cold War reminiscences and to work together for the good of the Southeast Asian nations first and for the international community as well. As a matter of fact, the non-regional nations must be fully ensured that their commercial lines will never be troubled when crossing the South China Sea and that their navies can freely move on it as on any other part of the high sea of the globe.

Russia also enjoys a genuine independence to send to China the signals that the South China Sea, as well as the East China Sea, cannot be exclusive Chinese seas and must remain international ones by a Russian presence on them. Among these signals there may be:

- To systematically cross this sea with warships without asking prior authorisation from China;
- To hold naval exercises with countries of the region: China, ASEAN countries, United states, India, Australia;
- To ask the International Seabed Authority the authorisation to prospect and explore the bottom of the South China Sea for polymetallic nodules, since the central part of this sea, that is outside the EEZs of the coastal states, is still high sea, at least as long as the requests from Vietnam and Malaysia¹⁹ for extended continental shelves have not

I. New Geopolitics in the South China Sea

been agreed by the Division of Ocean Affairs and the Law of the Sea (DOALOS) of the United Nations.

- And to strongly stress the fact that the different declarations from China on the regime of semi-enclosed seas are by comparison contradictory. As a matter of fact, China cannot declare on the one hand the South China Sea is almost its own property due to the “*buffalo tongue*” and on the other hand that the Arctic Ocean is the good of the whole of humanity. The South China Sea must also be the good of the whole of humanity.

Conclusion

In conclusion it is easy to see that the nine/ten-dash line is the stumbling block on which any attempt to solve the territorial problems in the South China Sea will fall. And because of that stumbling block these problems will never be solved as long as the nine/ten-dash line has not been definitely removed by China. If ever this happens one day, there is no need for China to give explanations, express repentance or anything else. If the whole world is clever enough not to give lessons to China, wise enough to felicit such a wise Chinese decision, thus discussions to solve the territorial issues properly said might start, the risks of potential serious crises would slowly fade away. And the example could come at first from a responsible Taiwan whose nationalist government of Chiang Kaishek is the originator of the former nine-dash line, a responsible Taiwan which could, because of its historical responsibility, declare that the nine-dash line can be deleted because it is not compliant with any clause of the UNCLOS.

Notes

¹ Michaela del Callar, “China's New '10-Dash Line Map' Eats into Philippine Territory,” <http://gmanetwork.com/news/story/319303/news/nation/china-s-new-10-dash-line-map-eats-into-philippine-territory>

Security and Cooperation in the South China Sea

² “European Parliament urges restraint in Philippines, China sea row,” Wednesday, April 24, 2013, <http://theaseannewsblog.blogspot.fr/2013/04/european-parliament-urges-restraint-in.html>

³ Article 14 of the “Exclusive economic zone and continental shelf act of the People’s Republic of China, adopted at the third session of the Standing Committee of the Ninth National People’s Congress, 26 June 1998: “*The provisions of this Act shall not affect the historical rights of the People’s Republic of China.*” and Dr. Nguyễn Thị Lan Anh: “Why Are ‘Historical Rights’ Historicised by UNCLOS?”, speech delivered on the occasion of the 4th international workshop on “*The South China Sea: Cooperation for Regional Security and Development*,” Ho Chi Minh City, Vietnam, 18th to the 20th of November 2012

⁴ Zou Keyan, “Chinese Traditional Maritime Boundary Line in the South China Sea: Legal Implications for the Spratly Islands Dispute,” EAI Background Brief No. 14, (Singapore, 7 May 1998), p. 5 and 7, quoted by Dr. Nguyễn Thị Lan Anh, op.cit.

⁵ Li Jinmin, Li Dexia in “The Dotted Line on the Chinese Map of the South China Sea: A Note,” *Ocean Development & International Law*, 34:287–295, 2003

⁶ Stein Tonnesson, “The Paracels, the ‘Other’ South China Sea Dispute,” *Asian perspective*, Vol.26, N°4, 2002, pp.145-169

⁷ Stein Tonnesson, *ibid.* + Stein Tonnesson, “The South China Sea in the Age of European Decline,” *Modern Asian Studies* 40,1 (2006) pp. 1 – 57, 2006, Cambridge University Press, UK; For more details see some of the works from Stein Tonnesson who speaks French and who had the opportunity to visit our archives.

⁸ Personal testimony from a former Vietnamese interpreter at the Geneva conference.

⁹ Xu Sen’an, “Nanhai duanxu guojixian de neihan” [The Connotation of the 9-Dotted Line on the Chinese Map of the South China Sea], in “21 shiji de nanhai: wenti yu qianzhan” yantaohui lunwen xuan [Paper Selections of the Seminar on “*The South China Sea in the 21st Century: Problems and Perspective*”], ed. Zhong Tianxiang (Hainan Research Center of the South China Sea, 2000), 80 quoted by Li Jinmin, Li Dexia, op.cit.

¹⁰ Li Jinmin and Li Dexia, op.cit.

¹¹ Notes taken from Marc Valencia’s speech, “The South China Sea Imbroglia: Looking Backward, Looking Forward”, pronounced on the 9th of November 2012, on the occasion of the 4th international workshop on “the South China Sea: Cooperation for Regional Security and Development” organised by the Diplomatic Academy of Vietnam and the Vietnam Lawyers Association in Ho Chi Minh City, Vietnam, 19 – 21 November 2012

¹² Leslean Arshad, “Malaysia, China Boost Ties, Overlapping Claims in South China Sea Not a Factor,” *Bernama*, 21 September 2012.

¹³ See Zou Keyuan, “Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?”, *IBRU Boundary and Security Bulletin, Summer 1999*, The International Boundaries Research Unit at the University of Durham, Vancouver,

I. New Geopolitics in the South China Sea

¹⁴ Ji Guoxing, “Asian Pacific SLOC Security: the China factor ,” Royal Australian Navy, Sea Power Centre, Working paper N°10, RAAF Base Fairbairn. CANBERRA, ACT, 2600, April 2002.

¹⁵ ASEAN countries + China + Japan + South Korea

¹⁶ <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm>

¹⁷ Declaration of the Government of the People’s Republic of China on the baselines of the territorial sea, 15th of May 1996

¹⁸ [ITLOS/Press 191 - 25.04.2013](#), Arbitrators appointed in the arbitral proceedings instituted by the Republic of the Philippines against the People’s Republic of China; [ITLOS/Press 197 - 24.06.2013](#) New arbitrator and president appointed in the arbitral proceedings instituted by the Republic of the Philippines against the People’s Republic of China, <http://www.itlos.org/index.php?id=46>

¹⁹ On the 6th of May 2009, Malaysia and Vietnam introduced to the UN/ CLCS (Commission on the Limits on the Continental Shelf) their common claim over an extended shelf in the South of the South China Sea and the same day Vietnam introduced a claim over an extended shelf (off Danang and Paracels islands).



Carlyle A. Thayer

Emeritus Professor, The University of New South Wales at the Australian Defence Force Academy, Canberra

ASEAN and China Consultations on a Code of Conduct in the South China Sea: Prospects and Obstacles*

Introduction

This chapter provides an overview of diplomatic efforts by the Association of Southeast Asian Nations (ASEAN) and China to reach a binding agreement on a Code of Conduct in the South China Sea (COC). The analysis covers the period from 1992 to November 2013. The article is divided into four parts. Part one reviews the period from 1992, when ASEAN first expressed concern about maintaining stability in the South China Sea, to 2011 when ASEAN and China finally reached agreement on Guidelines to Implement the Declaration on Conduct of Parties in the South China Sea (DOC). Part two reviews the extraordinary developments in 2012 when ASEAN political unity on the South China Sea issue was dealt a blow by Cambodia's opposition to the wording of the joint statement following the 45th ASEAN Ministerial Meeting (AMM) in July. ASEAN unity was successfully restored by deft Indonesian diplomacy. Part three discusses current developments: the Philippines' legal action in lodging a claim for an Arbitral Tribunal and China's agreement to begin consultations with ASEAN on a Code of Conduct. Part four considers the prospects and obstacles that confront ASEAN and China in reaching agreement on a binding Code of Conduct in the South China Sea.

* This chapter was revised on November 18, 2013.

Part I. ASEAN and the South China Sea, 1992-2011

ASEAN first became involved in South China Sea issues in July 1992 when China and Vietnam (not yet a member of ASEAN) became embroiled in an altercation over oil exploration activities in a disputed maritime area. ASEAN issued a declaration that urged unnamed parties “to exercise restraint.”¹ This call went unheeded and both Vietnam and China proceeded to take control of unoccupied islets and reefs comprising the Spratly archipelago.

In late 1994/early 1995 China occupied Mischief Reef, a feature in the South China Sea claimed by the Philippines. This incident marked a turning point because it involved China and a member of ASEAN. ASEAN foreign ministers issued their second statement on the South China Sea in which they expressed their “serious concern” and urged the concerned parties “to refrain from taking actions that de-stabilise the situation.”² The Philippines lobbied its fellow members to adopt a Code of Conduct (COC) that would constrain China from further encroachment.

It took ASEAN officials until late 1999 to agree on a draft COC. China drew up its own draft COC. In March 2000, ASEAN and China agreed to exchange their respective drafts and to consolidate them into a final agreed text.³ Four major areas of disagreement emerged: the geographic scope, restrictions on construction on occupied and unoccupied features, military activities in waters adjacent to the Spratly islands, and whether or not fishermen found in disputed waters could be detained and arrested. After two years of negotiations on the two drafts it became evident that no agreement was possible.

In November 2002, as a compromise, ASEAN member states and China signed a non-binding political statement known as the Declaration on Conduct of Parties in the South China Sea (DOC). This document set out four trust and confidence building measures and five voluntary cooperative activities. Significantly, the parties reaffirmed “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.”⁴ In 2004, ASEAN and China established a Joint Working Group to formulate concrete cooperative activities under the DOC.⁵

It took another twenty-five months before ASEAN and Chinese senior officials reached agreement on the terms of reference for a Joint ASEAN-China Working Group (JWG) to implement the DOC.⁶ At the first meeting of the JWG in August 2005, ASEAN tabled draft Guidelines to Implement the DOC. Point two of the ASEAN draft, which called for ASEAN consultations prior to meeting with China, proved such a sticking point that it took six years of intermittent discussions and the exchange of twenty-one successive drafts before final agreement could be reached.⁷ China insisted then, as it does now, that the parties directly concerned could only resolve sovereignty and jurisdictional disputes bilaterally.

In July 2011, the Guidelines to Implement the DOC were finally adopted after ASEAN dropped its insistence on prior consultations. ASEAN amended Point 2 to read, “to promote dialogue and consultation among the parties.” A new point was added to the original ASEAN draft specifying that activities and projects carried out under the DOC should be reported to the ASEAN-China Ministerial Meeting.⁸ In all other respects the final guidelines were word for word the same as the original ASEAN draft tabled in 2005.

In January 2012, ASEAN and Chinese senior officials commenced discussions in Beijing on the implementation of the guidelines. This meeting agreed to set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime. These committees were based on four of the five cooperative activities included in the 2002 DOC. Significantly no expert committee on safety of navigation and communication at sea was established due to its contentious nature. Not one single cooperative project has been undertaken as of November 2013 although China has offered to fund them. The sticking point appears to be China’s insistence that ASEAN states first recognise its sovereignty over the South China Sea after which China would shelve the sovereignty issue in favour of joint development.⁹

Part II. From ASEAN Disunity to ASEAN Unity, 2012

The adoption of the DOC Guidelines led ASEAN officials to consider how to implement the clause in the 2002 DOC to adopt “a code

of conduct in the South China Sea... on the basis of consensus.”¹⁰ In January 2012, the Philippines circulated an informal working draft simply titled, “Philippines Draft Code of Conduct.” ASEAN senior officials began discussion on this draft with the intention of reaching a common position before presenting it to China for discussion.

China insisted, however, that the DOC Guidelines should be implemented first. China also stated it would discuss the COC with ASEAN at an “appropriate timing” or when “appropriate conditions” were met.¹¹ As ASEAN discussions progressed China altered its stance and sought to join ASEAN officials in drafting the COC. China’s demarche quickly became a contentious issue within ASEAN. At the 20th ASEAN Summit in Phnom Penh in April 2012, Cambodia, the ASEAN Chair, pushed for China’s inclusion in ASEAN discussions. The Philippines and Vietnam objected strongly and a compromise was reached. It was agreed that ASEAN would proceed on its own to draft a COC, while communication with China would take place through the ASEAN Chair at the same time.

ASEAN senior officials quickly accomplished their task. On June 13, a special Working Group reached agreement on key elements to be included in ASEAN’s draft Code of Conduct in the South China Sea after only seven meetings.¹² This document was formally approved by a meeting of ASEAN Senior Officials in Phnom Penh who met from July 6-7. The draft was transmitted to ASEAN foreign ministers for their approval.

ASEAN Foreign Ministers held their 45th AMM in Phnom Penh from July 8-13. On July 9, the ministers unanimously approved “ASEAN’s Proposed Elements of a Regional Code of Conduct in the South China Sea (COC) between ASEAN Member States and the People’s Republic of China.”¹³ The foreign ministers also directed ASEAN senior officials to meet with their Chinese counterparts to complete negotiations on the COC. Chinese officials privately conveyed their willingness to meet with ASEAN officials in September.

ASEAN’s remarkable accomplishment was quickly marred by the extraordinary events at the AMM Retreat held in the evening of July 9.¹⁴ Cambodia’s foreign minister, Hor Nam Hong, as ASEAN Chair, delegated the task of drawing up the joint statement on AMM discus-

Security and Cooperation in the South China Sea

sions to a working group composed of the foreign ministers from Indonesia, Malaysia, the Philippines, and Vietnam. When their draft joint statement was tabled at the AMM Retreat Cambodia objected to the wording of two paragraphs summarising discussions on the South China Sea. The draft mentioned the deployment of Chinese paramilitary vessels to Scarborough Shoal claimed by the Philippines, and Vietnam's objections to China's announcement that it was leasing oil blocks that fell within Vietnam's Exclusive Economic Zone. Cambodia insisted that these were bilateral issues and should not be included in AMM joint statement.

Despite repeated attempts to broker a compromise over the wording of the South China Sea section of the joint statement by Indonesia and Singapore, Cambodia remained firm. Hor Nam Hong reportedly rejected the wording of eighteen successive drafts.¹⁵ As a result no joint statement was issued. This was unprecedented in ASEAN's forty-five year history. In the aftermath of the AMM unseemly recriminations erupted in public between Cambodia and the Philippines. China used ASEAN's disarray to renege on its earlier informal agreement to meet with ASEAN senior officials in September to begin discussions on the COC.

ASEAN's disarray proved temporary. Amidst the recriminations that followed ASEAN's 45th AMM, Indonesia's Foreign Minister Marty Natalegawa initiated consultations with his ASEAN counterparts in an effort to restore political unity and commit ASEAN to a common position on the South China Sea. Marty conducted an intense round of shuttle diplomacy flying to five capitals (Manila, Hanoi, Bangkok, Phnom Penh and Singapore) over a two-day period (July 18-19). Marty and Philippine Foreign Secretary Albert del Rosario met first and agreed to a six-point proposal that Marty put to his other ASEAN counterparts. After he obtained their agreement Marty informed Cambodia's Hor Nam Hong and left it to him as ASEAN Chair to complete the diplomatic formalities. On July 20, Hor Nam Hong officially released ASEAN's Six-Point Principles on the South China Sea.¹⁶ All ASEAN Foreign Ministers reaffirmed their commitment to:

- the full implementation of the DOC;
- Guidelines for the Implementation of the DOC;

I. New Geopolitics in the South China Sea

- the early conclusion of a Regional COC in the South China Sea;
- full respect of the universally recognised principles of international law including the 1982 United Nations Convention on the Law of the Sea (UNCLOS);
- continued exercise of self-restraint and non-use of force by all parties; and
- peaceful resolution of disputes in accordance the universally recognised principles of international law including the 1982 UNCLOS.

In response, China dispatched Foreign Minister Yang Jiechi on a visit to Indonesia, Brunei and Malaysia for talks with his counterparts. Yang stated at a joint press conference in Jakarta that China was willing to work with ASEAN to implement the DOC and “on the basis of consensus” to work toward the eventual adoption of the COC.¹⁷

Indonesia also launched another diplomatic initiative. At the 45th AMM Retreat Foreign Minister Marty promised, “Indonesia will circulate a non- paper [on] possible and additional elements of [the] COC. It is meant to be more prescriptive and operational.”¹⁸ On September 27, Indonesia presented its “non-paper” to ASEAN foreign ministers meeting in New York on the sidelines of the annual session of the United Nations General Assembly. The Indonesian proposal was titled, “Zero Draft A Regional Code of Conduct in the South China Sea.”¹⁹

This document drew heavily on three sources: the 2002 DOC, ASEAN’s Proposed Elements of a Regional Code of Conduct, and ASEAN’s Six-Point Principles on the South China Sea. Extracts from these documents accounted for approximately one-third of the text, the remaining two-thirds contained proposals drawn up by Indonesia. The most significant Indonesian contribution was Article 6 on the implementation of the COC. It ran for three and a half pages or approximately forty-four per cent of the eight-page document. Article 6 contained suggested rules, norms and procedures for carrying out confidence-building measures. It also included detailed provisions for preventing incidents and collisions at sea drawn from the 1972 Convention on the International Regulations for Preventing Collisions at Sea (COLREGS).²⁰

Article 8 of the Indonesian draft also repeated verbatim the two

dispute mechanisms contained in ASEAN's Proposed Elements of a Regional Code of Conduct: the ASEAN High Council established under the ASEAN Treaty of Amity and Cooperation in Southeast Asia (of which China was a signatory) and dispute settlement mechanisms provided under international law, including UNCLOS.

In July 2013, Philippine presidential spokesperson Edwin Lacierda stated, "we have already drafted the code of conduct, and we have asked them [China] to discuss it with us."²¹ Other ASEAN sources dispute this assertion. An ambassador from one of the claimant countries told the author that Indonesia's Zero Draft had not been adopted because there was concern that China would refuse to discuss a unified ASEAN draft.²² According to another insider, "There is only an agreed list of desirable elements and a structure for the COC. Indonesia took the liberty of drafting its 'zero draft' partly on the list, but others in ASEAN have turned it down without giving it any formal consideration. We all know that China doesn't want to consider any pre-cooked draft COC."²³

Part III. Current Developments, 2013

As noted, Indonesia played a key leadership role with ASEAN on the South China Sea between July and September 2012. In mid-2012, Thailand assumed the role of ASEAN country coordinator for relations with China. Thailand proceeded to raise the South China Sea issue with China.²⁴ In January 2013, the ASEAN Chair passed from Cambodia to Brunei, and career Vietnamese diplomat Le Luong Minh became the new ASEAN Secretary General. Both pledged to give priority to reviving discussions with China on the COC.²⁵ These developments altered the dynamics of the previous year and enabled ASEAN to reach political unity on the South China Sea COC issue. China quickly took note of these developments and adjusted its policy accordingly.

On January 22, without prior consultation with other ASEAN states, the Philippines formally lodged a Notification and Statement of Claim to the United Nations to establish an Arbitral Tribunal under UNCLOS.²⁶ China rejected this claim and declined to participate. However, under the provisions in UNCLOS, the Arbitral Tribunal proceeded without China's participation. A five-member Arbitral Tribunal

was set up in April. It is composed of judges from Ghana (chair), Germany, France, Netherlands and Poland.²⁷ The tribunal held its first session on July 11, and later sent its draft Rules of Procedure to the Philippines and China for comment. The Philippines responded on July 31; China replied a day later in a Note Verbale stating that it did not accept the legal action initiated by the Philippines and would not participate in the tribunal's proceedings.²⁸

On August 27, the Arbitral Tribunal issued its first procedural order announcing its initial timetable and Rules of Procedure. The Philippines was directed "to fully address all issues, including matters relating to the jurisdiction of the Arbitral Tribunal, the admissibility of the Philippines' claim, as well as the merits of the dispute" by March 30, 2014.²⁹ Next year the Arbitral Tribunal must determine whether the Philippines has established a case in international law and if the Arbitral Tribunal has jurisdiction over the matters raised. The Arbitral Tribunal can only proceed to hear the claim brought by the Philippines if it decides yes on both questions.

The Philippines' legal action led China to place bilateral relations with Manila in virtual cold storage. Foreign Minister Wang Yi pointedly excluded the Philippines from his itinerary during his regional visits. No incident was more telling than China's reaction to President Benigno Aquino's announcement that he intended to attend the Tenth China-ASEAN Expo (CAEXPO) in Nanning (September 3-6) as official host of the exposition. China responded by requesting that Aquino visit China "at a more conducive time."³⁰ It was subsequently revealed by Philippine officials that China insisted on the Philippines dropping its claim to the Arbitral Tribunal as a condition for Aquino's visit.³¹ President Aquino decided not to attend the CAEXPO and sent his Trade Secretary instead.

The Philippine legal action immediately raised concern among ASEAN members, not least because the Philippines unilaterally submitted its claim without prior consultation. Some ASEAN members were concerned that the Philippine legal claim would undermine discussions on a Code of Conduct with China. Diplomatic sources in Southeast Asia reported that Beijing was putting diplomatic pressure on ASEAN states to lobby the Philippines to drop its legal action with

Security and Cooperation in the South China Sea

the UN in return for restarting talks on the COC.³² Chinese lobbying fell on deaf ears.

ASEAN's changed dynamics appear to have led Beijing to rethink its approach to the South China Sea issue. On April 2, at the 19th ASEAN-China Senior Officials Consultation, a Chinese representative announced China's agreement to commence discussions with ASEAN on a COC later in the year. That same month (April 4-7), Brunei's Sultan raised the issue of the COC with President Xi Jinping during his visit to Beijing and the Boao Forum on Hainan Island. Later, in April, newly installed ASEAN Secretary General Minh requested Indonesia's President Susilo Bambang Yudhoyono to assist in addressing the South China Sea dispute.³³

ASEAN convened its 46th AMM in Brunei on April 11. The Philippines' Foreign Secretary Albert del Rosario provided an explanation for his country's unilateral legal action and reaffirmed his support for ASEAN's efforts to negotiate a legally binding COC with China. The joint communiqué issued after the AMM stated:

91. We looked forward to continued engagement with China in the full and effective implementation of the DOC in all its aspects. We would continue carrying out mutually agreed joint cooperative activities and projects in accordance with the Guidelines for the Implementation of the DOC. We stressed the need to maintain the positive momentum on dialogue and consultations following the 19th ASEAN-China Senior Officials Consultations and 8th ASEAN-China Joint Working Group on the Implementation of the DOC. Taking into account the importance of the 10th anniversary of the ASEAN-China Strategic Partnership in 2013, *we look forward to the formal consultations between ASEAN and China at the SOM level on the COC with an aim to reach an early conclusion of a Code of Conduct in the South China Sea, which will serve to enhance peace, stability and prosperity in the region* (emphasis added).³⁴

Immediately following the AMM, ASEAN held its 22nd Summit from April 24-25. ASEAN leaders discussed the South China Sea without the contretemps of the previous year. The Chair's Statement issued by Brunei declared:

60. We looked forward to continued engagement with China in im-

plementing the DOC in a full and effective manner, including through mutually agreed joint cooperative activities and projects. Taking into account the importance of the 10th anniversary of the ASEAN-China Strategic Partnership in 2013, and the positive momentum following the 19th ASEAN-China Senior Officials' Consultations, we tasked our Ministers to continue to work actively with China on the way forward for the early conclusion of a Code of Conduct in the South China Sea (COC) on the basis of consensus.³⁵

The ASEAN Summit also endorsed a proposal by Thailand to host a special meeting of foreign ministers in Bangkok prior to the ASEAN-China Summit scheduled for October.³⁶

In late April/early May China's new Foreign Minister Wang Yi visited Thailand, Indonesia, Singapore and Brunei to discuss the South China Sea issue prior to the scheduled ASEAN-China ministerial meeting. In Jakarta, Foreign Minister Marty reaffirmed agreement had been reached to hold a meeting of the ASEAN-China Working Group on the DOC "in the near future" to discuss the COC. He also endorsed a Chinese proposal, made in April the previous year, and reiterated by Foreign Minister Yi, to set up an Expert and Eminent Persons Group to complement the government-to-government talks.³⁷

In early August, Foreign Minister Wang visited Malaysia, Thailand, Laos, and Vietnam. He also visited Thailand to attend the High-Level Forum on the 10th Anniversary of China-ASEAN Strategic Partnership on August 2. Minister Wang used his trip to promote joint development and dialogue on South China Sea matters. At a press conference on August 5 he noted that China and ASEAN had only "agreed to hold consultations [as distinct from negotiations] on moving forward the process on the 'Code of Conduct in the South China Sea (COC)' under the framework of implementing the 'Declaration on the Conduct of Parties in the South China Sea (DOC)...'"

Wang Yi further stated that China "has noticed that there came out some different ideas from some parties concerned on how to promote the process of COC." Wang then sounded a note of caution:

First, reasonable expectations. Some countries are talking about 'quick fix', like reaching consensus on COC within one day. It is an attitude neither realistic nor serious...

Security and Cooperation in the South China Sea

Second, consensus through negotiations... Wills of individual country or of a few countries should not be imposed on other countries, as an old Chinese saying, nothing forcibly done is going to be agreeable.

Third, elimination of interference. China and ASEAN countries tried several times to discuss on COC before, but got stuck due to some interferences...

Fourth, step-by-step approach. The formulation of COC is stipulated in DOC. COC is not to replace DOC, much less to ignore DOC and go its own way. The top priority now is to implement DOC, especially promoting maritime cooperation. In this process, we should formulate the road map for COC through consultations, and push it forward in a step-by-step approach.³⁸

On August 29, China-ASEAN Foreign Ministers held a Special Meeting in Beijing co-chaired by Wang Yi and Thailand's Foreign Minister Surapon Tovichakchaikul. This meeting as mainly concerned with planning for the China-ASEAN Summit to mark the tenth anniversary of their strategic partnership. The two sides reached agreement on seven points, only one of which touched on the South China Sea. Point five called on the parties "to make good use of the China-ASEAN Maritime Cooperation Fund."³⁹ The Sixth China-ASEAN Senior Officials' Meeting and 9th Working Group Meeting on the Implementation of the Declaration on Conduct of Parties in the South China Sea met in Suzhou from September 14-15. At this meeting ASEAN and China held their first round of formal consultations on the COC and drew up a work plan on the DOC for 2013-14, agreed to consider an expert group or other mechanism to assist in developing the COC, and agreed to hold their next meeting in Thailand in early 2014.⁴⁰

ASEAN held its 23rd Summit held in Bandar Seri Begawan on October 9. The Chairman's Statement welcomed the September consultations and looked forward to intensifying official consultations with China on the development of the Code of Conduct in the South China Sea (COC) with a view to its early conclusion. The COC will serve to enhance peace, stability, and prosperity in the region. We also looked forward to developing the ideas of establishing hotlines of communica-

tion to further enhance trust, confidence and to respond to emergency situations at sea and cooperate in the area of search and rescue for vessels in distress as part of an “early harvest” package of the COC.⁴¹

The reference to an “‘early harvest’ package of the COC” refers to a proposal to begin the implementation of cooperative measures as soon as they are agreed upon rather than wait until the final COC is negotiated.

Part IV. Prospects and Obstacles

After eighteen years of discussions ASEAN and China have finally commenced discussions on a Code of Conduct in the South China Sea. China-ASEAN discussions will feature prominently in 2014 with the scheduling of four sessions of the Working Group Meeting on the Implementation of the Declaration on Conduct of Parties in the South China Sea.

The prospects of ASEAN-China discussions on a COC appear positive at the present time but they are likely to be protracted. Unlike 2012, China now faces a more politically unified and determined ASEAN. Brunei, as ASEAN Chair, is playing a leading role in consensus making in contrast to Cambodia’s role as spoiler. Thailand, as ASEAN’s country coordinator for relations with China, has given priority to diplomatic efforts to facilitate progress on COC discussions. China cannot afford to ignore the diplomatic role of Indonesia, Southeast Asia’s largest country and member of the Group of Twenty, and its proactive Foreign Minister Marty Natalegawa. In addition, Singapore, Malaysia, Vietnam and the Philippines all support ASEAN’s current diplomatic efforts.

Weighed against these positive diplomatic developments are at least six potential major obstacles:

- Myanmar, the ASEAN Chair for 2014, fails to pursue a COC with the same commitment as Brunei.
- China continues to insist on bilateral discussions with the parties directly concerned and also insists that its nine-dash line ambit claim to the South China Sea be accepted in its entirety. This would preclude bilateral discussions on delimiting the littoral states’ Exclusive Economic Zones based on the United Nations Convention on the Law of

Security and Cooperation in the South China Sea

the Sea because the U-shaped line is a constant, while the EEZ claims of various states differ.

- Progress on implementing any of the five cooperative measures listed in the DOC is subject to prior recognition of Chinese sovereignty over the South China Sea. ASEAN states are being asked to surrender their sovereignty claims in the hope of securing equitable joint development of “formerly” disputed areas. There would be an enormous domestic backlash against any ASEAN government that conceded its sovereignty in this manner.
- China insists that consultations on the COC are organically linked to the DOC and progress on the DOC must take place first before dealing with the COC. Implementing DOC cooperative projects could take years and any difficulties in this area could be used to delay if not scuttle discussions on a COC.
- China has only agreed to “official consultations on the COC within the framework of the implementation of the DOC” at working group level.⁴² China pointedly has not agreed to direct negotiations with ASEAN on the COC proper. ASEAN advocates negotiations at senior official level. Resolution of these differences will take time.
- Protracted discussions could undermine ASEAN unity as China tests ASEAN’s resolve; lead to Chinese wedge tactics to isolate the Philippines; and result in the consolidation of China’s naval/paramilitary presence and occupation of rocks and land features in the South China Sea.

Notes

¹ “ASEAN Declaration On The South China Sea, Manila, Philippines, 22 July 1992,” <http://www.aseansec.org/1196.htm>.

² “Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, 18 March 1995,” <http://www.aseansec.org/2089.htm>.

³ Association of Southeast Asian Nations, “Regional Code of Conduct in the South China Sea (Draft),” March 2000 and People’s Republic of China, “Code of Conduct on the South China Sea (Draft of the Chinese Side),” March 2000. Copies of these documents are in the author’s possession.

⁴ Point 10, “Declaration on Conduct of Parties in the South China Sea, November 4, 2002,” <http://www.aseansec.org/13163.htm>.

I. New Geopolitics in the South China Sea

⁵ Republic of the Philippines, Department of Foreign Affairs, *Briefing Note on the South China Sea*, May 3, 2011.

⁶ “ASEAN-China Senior Officials Meeting on the Implementation of the Declaration on the Conduct of Parties in the South China Sea, Kuala Lumpur, 7 December 2004” and “Terms of Reference of the ASEAN-China Joint Working Group on the Implementation of the Declaration on the Conduct of Parties in the South China Sea,” <http://www.aseansec.org/16888.htm> and <http://www.aseansec.org/16885.htm>.

⁷ Tran Truong Thuy, “Recent Developments in the South China Sea: From Declaration to Code of Conduct,” in *The South China Sea: Towards a Region of Peace, Security and Cooperation*, ed. Tran Truong Thuy (Hanoi: The Gioi Publishers, 2011), 104.

⁸ “Guidelines to Implement the DOC,” <http://www.aseansec.org/documents/20185-DOC.pdf>.

⁹ Off-the-record discussion with an ASEAN Ambassador, Canberra, August 28, 2013.

¹⁰ Point 10, Declaration on Conduct of Parties in the South China Sea, November 4, 2002, <http://www.aseansec.org/13163.htm>.

¹¹ Carlyle A. Thayer, “Sovereignty Disputes in the South China Sea: Diplomacy, Legal Regimes and *Realpolitik*,” Paper presented at the International Conference on Topical Regional Security Issues in East Asia, co-sponsored by the Faculty of Asian and African Studies and the Ho Chi Minh Institute, St. Petersburg State University, St. Petersburg, Russian Federation, April 6-7, 2012, 7.

¹² Estrella Torres, “Manila tack on China row wins Asean nod,” *Business Mirror*, July 13, 2012.

¹³ Carlyle A. Thayer, “ASEAN’s Code of Conduct (Unofficial),” *Thayer Consultancy Background Brief*, July 11, 2012. <http://www.scribd.com/doc/101698395/Thayer-ASEAN's-Code-of-Conduct-Unofficial>.

¹⁴ For details consult Carlyle A. Thayer, “ASEAN’S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?,” *The Asia-Pacific Journal*, Vol. 10, Issue 34, No. 4, August 20, 2012, 1-23. http://www.japanfocus.org/-Carlyle_A_-_Thayer/3813.

¹⁵ Greg Torode, “ASEAN Left on a Knife Edge,” *South China Morning Post*, July 21, 2012 and Ernest Bower, “China Reveals Its Hand on ASEAN in Phnom Penh,” *Southeast Asia from the Corner of 18th and K Streets*, 3(14), July 19, 2012, 2.

¹⁶ “Statement of ASEAN Foreign Ministers on ASEAN’s Six-Point Principles on the South China Sea,” July 20, 2012.

¹⁷ Tarra Quismundo, “China says it’s willing to ease Asean rift on sea,” *Philippines Daily Inquirer*, August 11, 2012.

¹⁸ Carlyle A. Thayer, “ASEAN Unity Restored by Shuttle Diplomacy?,” *Thayer Consultancy Background Brief*, July 24, 2012, <http://www.scribd.com/doc/101075293/Thayer-ASEAN-Unity-Restored-by-Shuttle-Diplomacy>.

¹⁹ The author has a copy in his possession.

²⁰ COLREGS, <http://www.wa.yachting.org.au/site/yachting/wa/downloads/Safety/COLREGS.pdf>.

Security and Cooperation in the South China Sea

²¹ Andreo C. Calonzo, “PHL govt welcomes China’s decision to hold talks on sea code,” *GMA News*, July 4, 2013.

²² Off-the-record discussion, Canberra, August 28, 2013.

²³ Email, November 8, 2013.

²⁴ “Thailand seeks talks on South China Sea,” *Bangkok Post*, January 15, 2013 and

“Sihesak seeks South China Sea parley,” *Bangkok Post*, January 25, 2013.

²⁵ “New ASEAN chair Brunei to seek South China Sea code of conduct,” *GMA News*, January 14, 2013; “New ASEAN chief seek to finalise Code of Conduct on South China Sea,” *Channel News Asia*, January 9, 2013; and Termsak Chalermphanupap, “Toward a code of conduct for the South China Sea,” *The Nation*, January 22, 2013.

²⁶ Carlyle A. Thayer, “China At Odds with UN Treaty,” *USNI* [United States Naval Institute] *News*, March 3, 2013, <http://www.scribd.com/doc/132136055/Thayer-South-China-Sea-China-Rejects-Arbitration-Claim-by-the-Philippines>.

²⁷ The original chair was from Sri Lanka. He resigned over possible conflict of interest because he was married to a Filipina. Chinese diplomats and scholars conducted an active low-key whispering campaign against the Sri Lankan.

²⁸ Veronica C. Uy, “Philippines given until March next year for submissions against China’s nine-dash line claim,” *InterAkyson.com*, August 28, 2013.

²⁹ Michael Del Callar, “PHL case vs. China moves forward as tribunal adopts rules of procedures,” *GMA News*, September 3, 2013.

³⁰ Manuel Mogato and Ben Blanchard, “China asks Philippines’ Aquino to call off visit in apparent snub,” *The West Australian*, August 29, 2013.

³¹ Jim Gomez, Associated Press, “Philippine officials say China set impossible conditions for president’s visit,” *Daily Reporter*, September 2, 2013.

³² Based on off-the-record discussions held in Hanoi by the author on March 12-13, 2013.

³³ Bagus BT Saragih, “ASEAN chief pushes RI to act on South China Sea dispute,” *The Jakarta Post*, April 9, 2013.

³⁴ “Joint Communiqué 46th ASEAN Foreign Ministers’ Meeting, Bandar Seri Begawan, Brunei Darussalam, 29-30 June 2013,” <http://www.asean.org/news/asean-statement-communicues/item/joint-communiqu-46th-asean-foreign-ministers-meeting-bandar-seri-begawan-brunei-darussalam-29-30-june-2013>.

³⁵ “Chairman’s Statement of the 22nd ASEAN Summit, ‘Our People, Our Future Together,’ Bandar Seri Begawan, April 24-25, 2013,” <http://www.asean.org/news/asean-statement-communicues/item/chairmans-statement-of-the-22nd-asean-summit-our-people-our-future-together>.

³⁶ Kyodo News International, “ASEAN leaders discuss how to deal with China on South China Sea,” *GlobalPost.com*, April 30, 2013.

³⁷ Kyodo News International, “China, Indonesia suggest talks on binding rules in S. China Sea,” *GlobalPost.com*, May 1, 2013 and Bagus BT Saragih, “China closer to South China Sea Code of Conduct, Marty says,” *The Jakarta Post*, May 3, 2013.

I. New Geopolitics in the South China Sea

³⁸“Foreign Minister Wang Yi on Process of ‘Code of Conduct in the South China Sea’,” Ministry of Foreign Affairs of the People’s Republic of China, August 5, 2013. <http://www.fmprc.gov.cn/eng/zxxx/t1064869.shtml>.

³⁹ Ministry of Foreign Affairs, People’s Republic of China, “Special China-ASEAN Foreign Ministers’ Meeting Held in Beijing,” August 29, 2013.

⁴⁰ “China to promote maritime cooperation with ASEAN countries,” Xinhua, September 19, 2013 and “China, ASEAN ‘make progress’ on code of conduct in S China Sea,” Kyodo, September 16, 2013.

⁴¹ “Chairman’s Statement of the 23rd ASEAN Summit, Bandar Seri Begawan, 9 October 2013,” <http://www.asean.org/news/asean-secretariat-news/item/chairman-statement>.

⁴² China’s Foreign Ministry spokesperson Hong Lei quoted by Xinhua, “China, ASEAN South China Sea meetings scheduled,” September 10, 2013.



Dr Subhash Kapila

Consultant on Strategic Affairs & Foreign Policy, South Asia Analysis Group, India

South China Sea and the Indo-Pacific Politico-Strategic Dynamics

Introductory Observations

South China Sea has emerged as one of the most serious sources of instability in Asia with not only serious regional implications but also grave global strategic implications. Implicit in China's conflict escalation in the South China Sea is a challenge to the United States which has vital national security stakes in the South China Sea besides being a net provider of security in the Asia Pacific.

China's post-2008-2009 renewed conflict escalation in the South China Sea against her smaller ASEAN neighbours - Vietnam and the Philippines - unmasked China's pretensions of being a responsible stakeholder in Asia Pacific security.

China's traditional propensity to use force and military coercion to settle territorial and maritime sovereignty disputes in its favour came into focus once again.

Boding ill for Asia Pacific security in times to come were two new strategic characteristics which China displayed in the South China Sea conflict escalation.

China displayed strategic arrogance in its declaration of the Nine Dash Line claiming sovereignty over virtually the whole of the South China Sea. This indicated that China with her new found military and naval build-up was henceforth going to expect the global community to accept "Chinese Exceptionalism."

China further put the Asia Pacific on notice of her future strategic intentions on the South China Sea by declaring that the South China Sea was its "Core Interest" and that China was ready to go to war to enforce this assertion and also refusing to enter into any regional or

global multilateral conflict resolution processes.

In years to come the South China Sea conflict escalation by China may be viewed strategically as the tipping point of the transformation of the existing Asia Pacific security architecture to a more geographically and strategically expansive template of Indo-Pacific Asia.

Contemporary strategic developments preceding this tipping point need to be examined to enable an understanding of the politico-strategic dynamics under way and those likely to follow in the Indo-Pacific. Also requiring understanding contextually are the factors that have led to Chinese strategic arrogance and emboldened postures to virtually take on the rest of the Asia Pacific.

The “Global Shift of Power” to Asia, rather more specifically to the Asia Pacific, at the turn of the millennium is an established and substantiated fact. The Global Shift of Power to Asia was triggered by the remarkable vibrancy and economic growth of Asia Pacific countries with China, Japan and India in the lead.

China, Japan and India emerged as the major Asian powers on the strategic firmament of the Asia Pacific region. The striking characteristic of the three Asian giant powers was that China was at odds with Japan and India and involved in territorial disputes with them. Strategic trust deficit was therefore a marked feature of Japan and India’s relations with China.

Asian unity was therefore the casualty and because of China’s divisive strategic rivalries, Asia stood robbed of the designation of the 21st Century being an “Asian Century.”

The Global Shift of Power to Asia Pacific did not trigger the United States to exit the region. Notwithstanding that it was not a resident power in the Asia Pacific, the United States stood embedded as the predominant power in the Asia Pacific besides being the sole global Superpower. The United States had vital national security interests in Asia Pacific and Western Pacific particularly.

China’s meteoric economic rise facilitated an oversized military build-up, unwarranted in the absence of any credible military threats to China, has unleashed in the Asia Pacific a formidable military power intent on challenging United States predominance and with China’s marked propensity to use force to settle territorial disputes, generating

Security and Cooperation in the South China Sea

turbulence and endangering peace as presently evident in the South China Sea conflict escalation with ASEAN countries and more notably with Vietnam and the Philippines.

South China Sea conflict escalation by China would not have tipped the strategic scales and balance of power in the Asia Pacific but for a number of strategic blunders by the United States in its Asia Pacific strategies.

United States underwriting the meteoric economic rise of China in the 1980s and 1990s facilitated an oversized Chinese military build-up. The American strategic inattentiveness in the 2000s to Asia Pacific security due to its military interventions in Afghanistan and Iraq enabled China to build-up its force levels without any checkmating by the United States. Further the United States strategies of “China Hedging” and “Risk Aversion” with regard to China hastened the emergence of China with Superpower pretensions. By 2008-2009 China was not only indulging in destabilising strategies in the Asia Pacific but also adopting stances of being a “strategic coequal” of the United States.

Towards the closing stages of the last decade, the South China Sea disputes offered the strategic opportunity to China for conflict escalation based on China’s perceptions of United States power being on the decline, the impact of the global financial crisis on the United States and that America would be unable to shoulder extended military deployments. All these combined limiting United States capacity and will for intervention in the Asia Pacific.

The years 2008-2009 can seemingly be considered as the tipping point in the Asia Pacific security environment. China heady with its new found military muscle, especially naval build-up, felt emboldened to strike aggressive postures and indulge in brinkmanship over territorial and maritime sovereignty disputes retrieved from historical antiquity.

China’s open use of “Hard Power” combined with its aggressive declarations of Nine Dash Line and South China Sea as China’s “Core Interest” after years of pontificating about its peaceful rise shook the Asia Pacific region and the global powers, especially the United States which had long held delusionary expectations that China could be integrated as a responsible stakeholder in the global community.

Military escalation of the South China conflicts by China shook the United States out of its somnolence on China's strategic intentions and designs in the Asia Pacific.

In effect, the escalation of South China Sea conflicts by China needs to be viewed as the first strategic gauntlet thrown by China against the United States to challenge US predominance in the Western Pacific and Asia Pacific as a whole.

The United States belatedly woke up to the strategic reality that the "China Threat" could no longer be ignored and that the United States had to come up with appropriate strategic responses.

Thus we find that in the years following 2008-2009 two sets of opposing politico-strategic dynamics are coming into play in the Asia Pacific.

The first significant politico-strategic dynamic had already been triggered by China by a mix of naked aggression, military brinkmanship and political coercion against Vietnam, the Philippines and Japan. Accompanying this was China's strategic defiance in the form of the declarations of the Nine Dash Line and South China Sea as its strategically unchallengeable "Core Interest."

China thus stood unmasked of its pretensions of being a peaceful power. This image was further reinforced when China refused to submit to any multilateral conflict resolution processes.

In tandem, also visible were China's political moves to divide ASEAN unity so that ASEAN could not put up a united front against China on the South China Sea conflicts.

The second politico-strategic dynamic that came forcefully into effect as a consequence possibly in response to China's aggressive declarations of the Nine Dash Line and the South China Sea as its "Core Interest" and use of "Hard Power" in South China Sea conflict escalation was the United States declaration of a "US Strategic Pivot to Asia Pacific."

Consequently, the United States set in motion a multi-pronged strategy as part of this Pivot:

- Redeployment of US Forces in the Western Pacific and deployment of additional naval assets
- Reinforcing US bilateral security alliances with Japan, South Ko-

rea and the Philippines

- Seeking new strategic cooperation partners like Vietnam
- Giving added significance to US-India Strategic Partnership

Both these opposing politico-strategic dynamics need to be considered as the opening moves and the first major manifestation of the strategic tussle for the mastery of the Western Pacific between China and the United States and which is likely to dominate the global and regional power-play in the coming decades.

It would be a truism therefore to assert that but for China's escalation in the South China Sea post-2009 including intercepting international navies traversing through the region and forbidding international oil-prospecting, the global strategic focus on South China Sea would not have occurred.

China's maritime intentions of sea control and sea denial of the South China Sea now began to be read as not confined only to the bilateral sovereignty issues with its ASEAN disputants but coupled with its East China disputes with Japan as aimed at wresting the control of the Western Pacific. Also in attendance and coming into sharper focus were China's Indian Ocean maritime ambitions, the groundwork for which China was laying for decades.

With the strategic globalisation of the Pacific Ocean and the Indian Ocean, a vast area where the naval interests of both global and regional powers were intersecting, a new strategic construct has come into vogue in the last three years or so. This new strategic construct is Indo-Pacific Asia or simply Indo-Pacific and places the South China Sea conflicts and the ensuing politico-strategic dynamics in a wider strategic framework.

Noticeable also more recently, is a third politico-strategic dynamic coming into play in the Asia Pacific and that is of President Putin's declaration in September 2012 of Russia's Strategic Pivot to Asia Pacific.

Russia's Strategic Pivot to Asia Pacific is pregnant with many strategic eventualities in the overall power-play in the Asia Pacific and what impact it has on the South China Sea conflicts and other conflict spots involving China, has yet to unfold.

It is against this contextual backdrop that this Paper intends to ex-

amine the strategic implications of the South China Sea conflicts, the significance of the strategic enlargement of the Asia Pacific to the much wider maritime expanse of Indo-Pacific Asia and finally the politico-strategic dynamics and perspectives likely to unfold from these two strategic developments.

**South China Sea Conflicts Escalation by China:
Global and Regional Implications Generated**

The South China Sea disputes and the conflict escalation by China over the sovereignty over this maritime expanse and the islands and land forms that dot it stand analysed in great detail in recent years in strategic literature and media analysis. It is not the intention in this Paper to tread over ground which stands analysed in great detail in international conferences and seminars.

The intention in this Paper is to analyse the global and regional implications generated by escalation of South China Sea conflicts as these would provide a useful basis and context for deciphering the politico-strategic dynamics that have come into play and the perspectives on what could follow.

The South China Sea conflicts escalation by China seems to have been a strategic gamble by China which has not paid off. Chinese policy formulations and military plans on the South China Sea do not seem to have factored in correctly the imponderables that would be unleashed in the process against China. These also did not factor-in the international responses that would come into play against China over the escalation of the South China Sea conflicts.

The Chinese strategy seems to have been based on flawed premises. China miscalculated responses of Vietnam and the Philippines to its conflict escalation. Both Vietnam and the Philippines stubbornly stood their ground on their respective claims and did not submit to Chinese political and military coercion.

The next essential ingredient of Chinese strategy on the South China Sea conflicts was to keep these conflicts confined to the bilateral context and not permit them to be internationalised.

China failed in this direction also because both Vietnam and the Philippines could break out of the Chinese brinkmanship straitjacket

Security and Cooperation in the South China Sea

and were able to internationalise the issues. Vietnam resorted to some skilful diplomacy in global and Asian capitals and international conferences to keep a sustained focus on the illegality of Chinese claims and China's aggressive moves.

The Philippines went even a step further and filed for international arbitration by UN Arbitration Tribunal on maritime disputes. China may refuse to accept the UN Arbitration Tribunal's findings if not in its favour, but the fact is that notwithstanding China's reactions, the South China Sea conflict escalation by China stands "internationalised."

China's aggressive postures on the South China Sea against Vietnam and the Philippines may have stood ignored by the international community had China not transgressed into challenging the global community by forbidding international oil-prospecting in the South China Sea waters and also intercepting US Navy and Indian Navy ships traversing the South China Sea on routine goodwill missions or routine naval movements.

In one stroke therefore, by Chinese aggressive actions which amounted to an international taunt, the whole range of issues pertaining to the South China Sea issues stood "internationalised."

China's major strategic aim of preventing the South China Sea conflict escalation becoming internationalised failed completely.

Similarly, China's strategic aim of gaining international legitimacy by cautioning the global community on its policy declaration of the South China Sea as its "Core Interest" also failed. From "Core Interest" of China, the South China Sea conflicts have now emerged as what one might term as "Global Core Interest".

At issue were no longer the disputes of Chinese sovereignty or legality of its claims of ownership of the entire South China Sea region. What came to the fore now was China's blatant challenge to the global community of controlling and restricting the freedom of navigation in international waters in contravention of all UN and international conventions.

The United States made its position amply clear on China's aggressive brinkmanship in the South China Sea. Then US Secretary of State Hillary Clinton declared at the ASEAN Regional Forum in Hanoi

in July 2010 that “The United States has a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea.”

The United States assertion was seconded by Asia Pacific powers and even European powers, all stressing that the South China Sea waters were international waters under UNCLOS and not subject to Chinese national sovereignty, which itself was a unilateral aggressive move by China.

The most significant strategic impact of the South China Sea conflict escalation by China was that China stood strategically alone ranged against the international community. There were no takers for China’s case of sovereignty over the entire South China Sea and that China’s declaration of the South China Sea as its “Core Interest” would be respected by the international community.

In its wake, China’s escalation of the South China Sea conflict generated a number of significant global and regional implications in the Asia Pacific which need to be highlighted as they have unleashed a whole new set of politico-strategic dynamics which stand earlier analysed by me at another International Conference this year.

Global Implications of South China Sea Conflict Escalation by China

Briefly, the global strategic implications are enumerated below:

- South China Sea Conflict Escalation Induces Asian Strategic Polarisation and a New Balance of Power Architecture in the Asia Pacific
- South China Sea Conflict Major Spin-Off: Western Pacific is No Longer Pacific
- The Most Significant Strategic Implication: China Generates a New Cold War in Asia Pacific.

China till middle of last decade had exploited and created a perception in Asian capitals through the use of “soft power” of being a responsible stakeholder in Asia Pacific security. This in turn had created a number of “fence sitters” in South East Asia.

The South China Sea conflict escalation by China and the use of “hard power” by China to press its claims in the dispute and its disre-

Security and Cooperation in the South China Sea

guard for conflict resolution processes awakened Asian capitals to the reality of a potent “China Threat” materialising.

The strategic picture in Asia Pacific in 2013 is that of an Asian strategic polarisation ranging China against a US-led informal coalition of United States, US Pacific Allies in the Asia Pacific and new strategic partners like India and Vietnam

This is the “New Balance of Power Architecture” that has emerged in the Asia Pacific and which gets enlarged as the Indo-Pacific with an addition of India and Australia.

The Western Pacific is no longer Pacific. The South China Sea region is central to the Western Pacific. With China-generated conflict escalation in the South China Sea followed by conflict escalation in the East China Sea, China has virtually set ablaze the Western Pacific.

Since the Western Pacific plays a prominent role in the national security interests of the United States and now also China, for both defensive and offensive naval operations, the Western Pacific is destined for an inevitable military show-down between the United States and China.

Against this strategic backdrop, mention must be made of a new Cold War which can now be labelled as Cold War II enveloping the Asia Pacific and the wider Indo-Pacific Asia. Cold War II with China supplanting the Former Soviet Union as the American rival, promises to be more intense and deadlier than the first Cold War.

South China Sea Conflict Escalation: The Regional Strategic Implications

Regionally, the Asia Pacific stands significantly impacted by China’s conflict escalation of the South China Sea disputes.

ASEAN nations now stand prodded into a naval build-up race with virtually all ASEAN navies engaged in reinforcing their combat capabilities ranging from submarines, maritime surveillance and combat aircraft accretions

The above process is silently being backed up by the United States and other extra-regional powers with a stake in the region. This is in response to both the peaking of China’s naval build-up and China’s conflict escalation in the South China Sea.

The South China Sea conflict escalation has had a strong impact on China's Asian power rivals. Noticeable now is the fast-track build-up of naval capabilities by Japan and India.

ASEAN as the regional grouping stands impacted by China's conflict escalation on two counts, namely, China's attempts to divide ASEAN unity and secondly, an overall ASEAN disillusionment with China. It needs to be noted that ASEAN for years has attempted to integrate China into various ASEAN dialogue mechanisms hoping that China would so emerge as a responsible stakeholder in regional security. ASEAN belatedly realises that it was a vain hope.

Indo-Pacific Strategic Concept: the Big Strategic Leap from the Asia Pacific Concept

The Indo-Pacific strategic concept signals a big strategic leap in the Asian security strategic discourses from the long held concept of the Asia Pacific which lasted for more than a quarter century.

The Asia Pacific strategic concept seemed to have confined the strategic and political focus to East Asia and South East Asia. In this scheme of things it was the Western Pacific and its security environment which dominated strategic thinking and revolved around the United States, China and Japan power-games.

But then strategic concepts are not static concepts. Strategic concepts necessarily have to take into account the changing global and regional strategic scenarios and the evolving power dynamic therein. The political, economic and military rise of India, the US-India Strategic Partnership, China's not so strategically benign military rise, the growing strategic forays of China into the Indian Ocean, India's legitimate strategic stakes in the South China Sea and Japan and Australia growing strategically closer to India injected newer dynamics into the region.

With overlapping strategic interests between Indian Ocean and Western Pacific powers the erstwhile Asia Pacific strategic concept had to give way to a wider and expansive strategic concept and that is how the Indo-Pacific strategic concept or Indo-Pacific Asia emerged.

Needless to state that the emergence of the Indo-Pacific Asia or Indo-Pacific strategic concept was a strategic response to the brazen

Security and Cooperation in the South China Sea

display of China's aggressive brinkmanship and coercion of Vietnam and the Philippines on the South China Sea disputes. It sought to widen the strategic template by directly drawing-in India which already is an Indian Ocean naval power to play a greater role in Pacific Ocean maritime affairs.

The existing US security architecture in the Asia Pacific was inadequate to checkmate China's growing military profile and its aggressive military intentions. It needed all major Asian rivals of China under one canopy along with the United States.

The South China Sea disputes stirred aggressively by China had the effect of a strategic polarisation of the Asian security system and the Indo-Pacific strategic concept as an enlargement of the Asia Pacific strategic system is a manifestation of that polarisation against China.

This strategic concept also brings in Australian roles in Indian Ocean and Pacific Ocean security.

Indo-Pacific Strategic Concept: The Scope Defined

The Indo-Pacific Asia strategic concept has been welcomed by the United States, India and Australia in terms of Asian security.

To introduce the scope of the Indo-Pacific strategic concept, this Paper intends to reproduce excerpts from Australian strategic circles as much thought and examination has been accorded in these circles.

The most comprehensive amplification of this concept comes from Professor Michael Wesley of the Australian National University who explains it as follows:

“The Indo-Pacific power highway takes the pivot of world power away from the Northern Pacific and Northern Atlantic and shifts it to the Southern And Eastern coasts of the Asian landmass. It is here that the dynamism of the world economy will course, and where rivalries and alignments that shape the way the world works will be played out.”

The Australian Defence Minister Stephen Smith has noted the concept in crisper terms as:

“In this century, the Asia Pacific and the Indian Ocean Rim, what some now refer to as the

Indo-Pacific, will become the world's strategic centre of gravity."

In more specific strategic terms, Rory Medcalf opines:

"Indo-Pacific or Indo-Pacific Asia, is also the best available shorthand for an emerging Asian maritime strategic system that encompasses the Pacific and Indian Oceans defined in large part by the geographically expanding interest and reach of China and India and the continued strategic role and presence of the US."

South China Sea and Indo-Pacific Politico-Strategic Dynamics

The Indo-Pacific as a strategic concept can be said to be the offspring of the South China Sea disputes generated by China hitting the global and regional strategic consciousness.

Sharply brought into focus was the propensity of a powerful China to settle territorial and maritime sovereignty disputes by political coercion and use of brazen Chinese military muscle.

Indo-Pacific politico-strategic dynamics in relation to the South China Sea need to be viewed from two separate parameters. What needs to be examined first is the politico-strategic transformation that has taken place in the Indo-Pacific Asia post-2008-2009 when South China Sea region was inflicted by China with military turbulence and aggression against her small ASEAN neighbours. Secondly, what politico-strategic perspectives emerge from the transformed dynamics?

The above would provide the contextual backdrop for an analysis of the emerging strategic dynamics amongst the main regional and global powers in response to the raising of the military ante in the South China Sea by China as the over-powering claimant to the whole of the South China Sea.

Indo-Pacific Asia Post 2008-2009: The Politico-Strategic Transformation

Indo-Pacific Asia as a strategic leap from the erstwhile Asia Pacific strategic concept stands already examined earlier in the Paper. This

Security and Cooperation in the South China Sea

by itself is the most significant politico-strategic transformation that has taken place and could be termed as a strategic game-changer in Asian security affairs setting the stage for momentous strategic power-play in the coming decades.

Politico-strategic major transformations post 2008-2009 in Indo-Pacific Asia can be briefly recounted as under:

- Rise of a militarily powerful China sensing it could now equate itself as a ‘strategic co-equal’ of the United States in East Asian seas. This arose from China’s perceived decline of US strategic and financial power and United States strategic neglect of East Asia in the preceding decade.
- United States Strategic Pivot to Asia Pacific and rebalancing US Forces deployments in the Asia Pacific.
- Strategic polarisation in favour of the United States in South East Asia.
- Japan, India and Australia drawing strategically closer
- United States reinforcing its existing security alliances in the Asia Pacific and seeking new strategic partners like Vietnam
- European powers too have asserted that they have a stake in Southeast Asian security and in the defence of the global commons
- Russia also announces a Strategic Pivot to Asia Pacific.

All in all, the picture that emerges of the politico-strategic transformation in the India Pacific Asia is one of an explicit and implicit coalescing of regional powers and other countries to checkmate China’s rising power which in Indo-Pacific Asia is not perceived as benign.

South China Sea disputes which witnessed the use of raw military coercion and force seems to have acted as a catalyst for the strategic polarisation of Indo-Pacific Asia.

Emerging Politico- Strategic Dynamics in Indo-Pacific Asia: Perspectives

Emerging politico-strategic dynamics in Indo-Pacific Asia necessarily has to be analysed in terms of strategic postures and power-play amongst the leading nations in Indo-Pacific Asia. The leading nations

considered are the United States, China, India and Japan and Australia and Russia separately.

In terms of perspectives on the emerging politico-strategic dynamics that are likely to unfold, the following need consideration:

- United States-China Strategic Rivalries to Dominate the Western Pacific will Intensify
- United States Strategic Will to Stay Embedded in Indo-Pacific Asia is Reinforced
- Asian Power Triangle: The Strategic Coalescing of India and Japan
- United States-Japan-India Trilateral and United States-Japan-India-Australia Quadrilateral: A Logical Response to China's Aggressive Brinkmanship
- Cold War II Foretold and its Strategic Impact on Indo-Pacific Asia
- Russia's Difficult Strategic Choices in Indo-Pacific Asia
- China's Strategic Choices in Indo-Pacific Asia

United States Strategic Rivalries to Dominate the Western Pacific

United States and China despite all the flowery and friendly rhetoric that they indulge in at their Summit Meets are destined for an inevitable armed conflict, even if it be a limited one, in the coming decades.

The above arises from the fundamental strategic reality of their "mutual trust deficit" in their relationship. In the national security planning of both these powerful countries, United States and China figure as prime threats in their respective threat perceptions.

The United States ever since its victorious conclusion of World War II has put into place a security architecture to ensure that America maintains a strategic predominance in the Western Pacific. This continues effectively today in 2013 also.

In 2013, one could add that with its Strategic Pivot to Asia Pacific, the United States by force redeployments has further reinforced its military postures in the Asia Pacific.

Contrastingly, China has been in an adversarial mode against the United States ever since its emergence as a Communist State. China's participation in the Korean War, the Vietnam War etc. can be cited as

Security and Cooperation in the South China Sea

examples. Its proxy use of North Korea and escalated military postures over threats to militarily annex Taiwan continued the sequence.

In 2013, China by its military escalation of the South China Sea conflicts has reinforced the global perception that China's military rise is not all that benign and that lurking below the surface were nationalistic impulses to attain military superiority in the Western Pacific to begin with.

At the heart of the United States-China strategic rivalry is the American perception that China as a revisionist power is engaged in strategies geared towards an ultimate exit of American power from the Western Pacific and ultimately the whole Pacific.

China too has a strategic obsession that the United States is following a comprehensive strategy to hem-in or contain China within the Western Pacific and pre-empt its emergence as a "strategic co-equal" of the United States.

The South China Sea conflicts generated by China's strategic arrogance and over-estimation of its strengths have brought the United States-China strategic rivalries to a tipping point. In the military brinkmanship that China has adopted on South China Sea conflicts, even a small miscalculation has the potential of militarily enlarging the conflict and bringing a headlong clash between the two powerful nations.

United States Strategic Will to Stay Embedded in Indo-Pacific Asia is Reinforced

In strategic debates some time earlier, considerable thought was devoted to United States strategic will to stay embedded in Indo-Pacific Asia. This premise arose from a mix of a number of factors comprising China inducing strategic fatigue in the United States by its nibbling actions, Asia Pacific nations growing "fence-sitting" arising from US China appeasement policies and US financial health to sustain sizeable military presence in the Asia Pacific.

The picture stands somewhat changed after US declaration of the Strategic Pivot to Asia Pacific, deployment of nearly sixty per cent of US Navy assets in the Pacific and the United States removing the ambiguities of its security commitments to Japan and the Philippines.

Further, US efforts to enlist countries like Vietnam and Indonesia in strategic cooperative partnerships and US efforts to strengthen the US-India Strategic Partnership can be cited as efforts in this direction.

Redeployment of US forces in the Pacific with a Southern tilt and considerable US military build on Guam Island also needs to be noted.

In terms of perspectives, it is debatable how China's Grand Strategy pans out to cater for the United States strategic will to stay firmly embedded in Indo-Pacific Asia.

United States firm determination to stay embedded in Indo-Pacific Asia will only sharpen and make vicious Chinese strategic responses as the "revisionist power."

Asian Power Triangle: The Strategic Coalescing of India and Japan

The Global Power Shift to Asia did not lead to the emergence of a unipolar Sino-centric Asia. China had to contend with a multipolar Asia with India and Japan as its strategic rivals.

In the evolving Asian power triangle what emerges significantly, is that in response to China's territorial disputes with India and Japan, and China's reluctance to arrive at mutually acceptable solutions, India and Japan are strategically coalescing together.

The "China Threat," even if not publicly acknowledged by India and Japan, lurks significantly in their threat perceptions and their strategic planning.

India and Japan in terms of Indo-Pacific politico-strategic dynamics can be expected to evolve a substantial strategic partnership with the strong strategic convergences that have surfaced.

United States-Japan-India Trilateral and United States-Japan- India-Australia Quadrilateral: A Logical Response to China's Aggressive Brinkmanship

These two strategic groupings were crafted by the Bush Jr. Administration but stood devalued by the follow-up first Obama Administration when he made a concerted effort for a political outreach to China.

The second Obama Administration has now revived these dialogues prompted by China's escalation of the South China Sea conflicts.

While not formal security alliances or groupings, the Trilateral and the Quadrilateral enable strategic dialogues and joint exercises for inter-operability purposes. It enables appropriate political signalling to China.

Independently of these two, there are a lot of bilateral defence relationships between the four countries all spurred by a convergence of strategic interests.

The above process can be expected to substantively intensify should China's strategic postures and military actions do not register a decline from military brinkmanship and coercion and thereby rendering Asian security volatile and turbulent.

Cold War II Foretold and its Strategic Impact on Indo-Pacific Asia

China generating Cold War II in Asia Pacific was a topic addressed by me as early as April 2001 in a Paper entitled "Is China Generating a Second Cold War in Asia: Policy Choices for the United States."

The pertinent observations that were made were: "China perceives the United States as Number One Threat Perception and has been doing this for some time." Further it was added that "This has led US-China relations now bordering on volatility and uncertainty and do we see the beginnings of a Cold War? The suspicions, the rhetoric and the brinkmanship resorted to by China in actions against the United States are reminiscent of the approaching stages of the First Cold War."

Once again in 2008 in another Paper of mine, entitled "China's Escalating Military Power: Global and Regional Implications" I observed: "The present state of relations between China and the United States is acquiring the contours of a Cold War. But this Cold War, unlike the first Cold War, has all the chances of being a 'Hot War' between the United States and China over a host of conflictual flash-points stretching right across Asia and other strategic issues."

In 2013 the picture is even grimmer as China close to peaking of

its military build-up is restless and agitated over the US Strategic Pivot to Asia and creating a new balance of power in the Asia Pacific. Escalation of the South China Sea conflicts is the most potent challenge China can throw against the United States.

On present readings of strategic developments in the Indo-Pacific it seems that China is in no mood to apply mid-course corrections to adjust, adapt or integrate itself in the general scheme of strategic events in Indo-Pacific Asia.

Cold War II seems therefore as inevitable as China attempts to establish a Sino-Centric order in Indo-Pacific Asia.

Russia's Difficult Strategic Choices: Divesting 'The China Factor' from its Policy Formulations

Russia's strategic choices in the fast moving politico-strategic dynamics of Indo-Pacific Asia is a complex and difficult task with far too many imponderables dominating the choices.

Notwithstanding the above, two strategic moves by Russia are clearly discernible presently. The first move is Russia's declaration of its own Strategic Pivot to Asia Pacific. The second strategic move is the fast-track military upgradation of Russian military capabilities in its Far East Region resting on the Pacific Ocean.

Noticeable in the above two strategic moves are sub-surface Russian strategic misgivings on China's strategic intentions pertaining to Russia, in the Asia Pacific and fears of a China-US conflict, however limited.

In terms of Asia Pacific politico-strategic dynamics, such Russian strategic moves inject a new dynamic in the uncertain future of the so-called Russia-China strategic nexus, the unravelling of which even partially, opens many strategic possibilities.

Russia may be forced to double think its strategic alignment with China, however tenuous, when the whole of Asia Pacific perceives that the China Threat is assuming credible forms in terms of military coercive capabilities and intentions. Can Russia as a resurgent power afford the type-casting that Russia is in strategic alignment with China's use of 'Hard Power' against its smaller and less powerful Asian neighbours?

Implicit in these two strategic moves by Russia is an assertion that Russia is striking a path independent of the so-called Russia-China strategic nexus and Russia's intention to emerge as an independent power centre.

China for far too long has played the 'China Card' in the triangular power-games in the Asia Pacific between the United States, China and Russia. Are we likely to see Russia now playing the 'Russia Card' in this triangular power-game? Remember, that Russia in 2013 is not the Russia of the 1990s.

Further, it is again emphasised that Russia would have to consider whether it can afford a strategic alignment with China when virtually the whole of Asia Pacific perceives that the China Threat is assuming credible forms, both in terms of capabilities and intentions.

Russia cannot afford to insulate itself from the China-generated strategic turbulence in the Western Pacific and would be expected by Asia Pacific nations to adopt forthright positions on the South China Sea conflicts and other regional conflicts generated by China. This especially from countries like Vietnam with a long history of strategic cooperation with Russia in the past.

Russia faces a severe strategic dilemma in the Asia Pacific. Russia has to decide whether it can divest itself of its entangling strategic ties with China to win greater strategic acceptability and leverages in Indo-Pacific Asia or continue otherwise.

More difficult would be Russia's strategic dilemma if China provokes an armed conflict with USA and its allies over the South China Sea conflicts or the East China Sea conflict with Japan. On which side would Russia stand?

China's Politico-Strategic Moves Likely to Unfold in Indo-Pacific Asia

In terms of discerning Chinese politico-strategic moves that are likely to unfold in Indo-Pacific Asia is a daunting task for even the most learned observers.

China's contextual record of its politico-strategic moves in the last decade and a half can assist as reference points as to what is likely to unfold in the coming years.

China seems to be set on a collision course with the United States and its Asian peer rivals, namely Japan and India. The former is a US military ally and the latter is being sought assiduously by the United States as a strategic partner. Besides India and Japan are forging a strategic partnership independent of their respective strategic partnerships with the United States.

The Western Pacific which China perceives as its own exclusive strategic space is gradually emerging as the arena for politico-strategic moves of the other three setting the stage for increased volatility and turbulence.

China, having set itself on the path of challenging the existing strategic status quo in the Asia Pacific, would unlikely to step-back from its rigid stands on the South China Sea conflicts. These presage a turbulent Cold War II setting in the Asia Pacific and the wider Indo-Pacific as China also moves aggressively into the Indian Ocean.

In essence, the US Strategic Pivot to Asia Pacific, the Russian Strategic Pivot to Asia Pacific and enlarging the security construct to Indo-Pacific, all carry the flavour of some sort of China Containment evolving.

China having no “Natural Allies” except for North Korea and Pakistan is a truism I have always maintained in my writings on China. Where will China get the strategic ballast as counterweight to the evolving maritime security architecture and balance of power in the Indo-Pacific heavily weighted against China?

As observed in a recent Paper of mine, I had observed that China stands strategically cornered today on virtually all its flanks and this state of its strategic environment is likely to continue till such time China changes its strategic postulations. Will China recognise this strategic reality?

Concluding Observations

“Just as German soil constituted the military frontline of the Cold War, the waters of the South China Sea may constitute the military frontline of the coming decades. Worldwide multipolarity is already a feature of diplomacy and economics, but the South China Sea would show as to what multipolarity in a military sense actually looks like” is

Security and Cooperation in the South China Sea

a very prescient observation made by Robert Kaplan, the noted American Author on strategic affairs.

China by its conflict escalation of South China Sea conflicts has already converted the South China Sea as a military frontline of Cold War II. Multipolarity in the military sense stands already generated with the United States with Japan and India standing alongside the US along with other Southeast Asian nations and Australia.

China shows no inclination either for conflict resolution or de-escalating its military confrontation on the South China Sea disputes. Ominous portents of China's approach on the South China Sea can be read from the following statements carried in the China's state organ, Global Times editorial of November 2011: "If these countries do not want to change their ways with China, they will need to prepare for the sound of cannons. It may be the only way for the dispute on the sea to be resolved."

South China Sea conflict escalation by China is in essence a strategic gauntlet thrown by China not only against the United States but to all responsible stakeholders in Indo-Pacific Asia security.

At issue is whether a militarily powerful China can be allowed to get away with the impression that China will not submit to global norms but that the rest of the world should submit to China's dictates.

The genesis of China's strategic arrogance lies in the United States and Russia having accorded China over-exaggerated strategic primacy in their respective strategic calculi. If Indo-Pacific Asia security has to be maintained, both the United States and Russia need to downgrade China's primacy in their strategic formulations.

Short of war, political deterrence of China may be the only option available to the global powers to prevent conflict escalation in the South China Sea by China or elsewhere in Indo-Pacific Asia.

References

1. Robert D. Kaplan, *Monsoon: The Indian Ocean and the Future of American Power*, New York, Random House, 2010.
2. Joseph S. Nye Jr., *The Next Decade*, New York, Public Affairs, 2011.
3. George Friedman, *The Next Decade*, New York, Doubleday, 2011.

I. New Geopolitics in the South China Sea

4. Joseph S. Nye Jr, "A New Great Power Relationship," Op Ed. China Daily, March 04, 2013.
5. Michael T. Clare, "The United States Heads to South China Sea," *Foreign Affairs*, February 21, 2013.
6. Nguyen Manh Hung, "Could Conflict in South China Sea Lead to a New Cold War," *Asia Society*, October 22, 2012.
7. Kai Kog, "ASEAN's Great Power Dilemma," Op Ed. Asia Times, February 22, 2013.
8. "China Ready to Go to War to Safeguard National Interest", *PTI Report*, February 02, 2011.
9. Michael Wesley, *There Goes the Neighbourhood: Australia and the Rise of Asia*, Sydney, UNSN Press, 2011.
10. Minghao Zhao, "The Emerging Triangle in Indo-Pacific Asia," *The Diplomat*, July 04, 2013.
11. Rory Medcalf, "Indo-Pacific: What's in a Name," *The Interpreter*, April 10, 2011.
12. "South China Sea," US Department of State, Press Statement, April 03, 2012.
13. Dr Subhash Kapila, "The Global Power Shift to Asia: Geostrategic and Geopolitical Implications, Al Jazeera Centre for Studies, April 2012 Report No, 17
14. South Asia Analysis Group Papers by Dr Subhash Kapila,(www.southasiaanaly-sis.org)
15. "Is China Generating a Second Cold War: Policy Choices for USA", Paper No. 210, 05 March 2011.
16. "China Generates Strategic Polarisation in Asia Pacific", Paper No.5127, 09 August 2012.
17. 'China is Asia Region's Predominant Spoiler State", Paper No. 5136, 26 July 2012.
18. "South China Sea: China Escalates Brinkmanship to Dangerous Levels", Paper No. 5157, 09 August 2012.
19. "China Not Amenable to Conflict Resolution". Paper no. 5282, 07 November 2012.
20. "South East Asia: Strategically the Great Game is in Full Swing" Paper No. 5315, 28 November 2012.
21. "Russia's Strategic Pivot to Asia Pacific", Paper No.5482. 08 April 2013.
22. "China Strategically Cornered: India's Strategic Window of Opportunity", Paper NO. 5525, 29 July 2013.
23. "Russia's Strategic Choices in Asia Pacific", Paper No. 5561, 17 September 2013.
24. "Indo-Pacific Asia: The Strategic Enlargement of Asia Pacific", Paper No.5566, 19 September 2013.



Vladimir N. Kolotov

*Professor, Head of the Far East History
Department, Faculty of Asian and African
Studies, St.Petersburg State University*

**The East Asian Arc of Instability and the
Geopolitical Dimension of the
Territorial Dispute
in the South China Sea¹**

Recent decades have seen a substantial enhancement of the role of the East Asia region in world affairs. As noted by one of Russia's leading Orientalists, RAS Academician M. L. Titarenko, "the vector of world politics is gradually shifting from the Euro-Atlantic area which had been reigning unchallenged in the international arena for a number of centuries towards the Asia Pacific region, whose significance in shaping the new world order will steadily increase even further."¹ The elites of East Asian countries are showing a manifest desire to play a more substantial role in regional affairs. However, the contradiction between the region's increased economic role and its subordinate position in the security domain, which has lingered since the times of the Cold War, is currently becoming ever more noticeable. From here, in Peking's view, stems not only a desire but the necessity, for the sake of security provision, to rearrange regional order and raise the region's status. The situation as it stands places on the agenda an exacerbation of geopolitical rivalry between the first and the second economic powers of the world, which is traditionally attended by redistribution of spheres of influence. However, it is not only Washington and Peking but also other influential subjects of geopolitics that have their foreign policy interests in East Asia. How then is security ensured in this important region? Before answering this question, one has to cite the

¹ The study was performed under a research grant of St. Petersburg State University "History of Asia and Africa in the context of geo-cultural paradigm of global development" (Code of IAS: 2.38.103.2012)

opinion of one of the most authoritative experts. RAS Academician M. L. Titarenko draws attention to one fundamental feature of East Asia's regional security system: "A region where the interests of such major states as the USA, China, Russia and Japan intersect, as yet lacks a comprehensive mechanism for ensuring stability and security."² The absence of such mechanism, in our opinion, is explained by antagonistic contradictions in the sphere of regional security of the main subjects of geopolitics.

Moreover, the paradoxicality of the current situation in East Asia is that, on the one hand, some countries advocate a continued US military presence so as to balance China's enhancement in the region, while, on the other hand, they are interested in a further development of the Chinese economy so as to have additional market outlets for their produce amid the economic crisis in the West, as well as powerful protection of an Asian power from Western pressure. Meanwhile, it is to be remembered that the US military presence was a product of the Cold War era and reflected a certain balance of forces that was formed at the time. China's growth has already substantially changed that balance. The further development of the Chinese economy will lead in the foreseeable future to a still greater change in the balance of forces in the region that will have far-reaching economic and political effects, which is incompatible with a continued American military presence with all the ensuing consequences. In addition, it should be noted that whereas after the collapse of the USSR the periphery position of the region in world politics allowed the smaller SEA countries to steer integration processes in their interests, presently, as China grows and as the USA seeks to preserve the balance of forces formed in the past, the room for manoeuvre for the SEA countries will most likely become substantially narrower. In the process, this room will become narrower first and foremost in the security sphere.

In order to understand the nature of US policy in this region of the world, it is useful to recall the "three grand imperatives of imperial geostrategy"³ formulated by Zbigniew Brzezinski, which are "to prevent collusion and maintain security dependence among the vassals, to keep tributaries pliant and protected, and to keep the barbarians from coming together."⁴ Following that logic, the very possibility of "the

barbarians coming together” under the auspices of some other power will be perceived in Washington as a threat to US national security with all the ensuing consequences, which obviously will prescribe all kinds of impact based upon a system of bilateral treaties on security provision, which have been concluded with certain countries of East Asia. Let us pay particular attention to the formulation given by Zbigniew Brzezinski – “maintain security dependence among the vassals.” In other words, the principal task in Eurasia as a whole and East Asia in particular consists in preventing self-sufficiency of the ‘barbarians’ and perpetuating their dependence in this major sphere in every way possible. This is precisely why there is no “comprehensive mechanism for ensuring security” in the region, since Washington as the most influential subject of global geopolitics has no need for it. Let us recall that in the political, cultural and religious respects the region of East Asia is much varied, which significantly facilitates the matter of creating various counterbalances, coalitions and alliances to deter ‘threats’ posed by the appearance of an influential geopolitical competitor.⁵

In the absence of a formal comprehensive mechanisms for ensuring regional security, informal but for that no less significant mechanisms begin to play the principal role in this important sphere.

If we systematise information on the main potential conflicts in the region, it will become clear that the most accurate indicator for the geopolitical balance of forces in the East Asia region is the **East Asian arc of instability**. This arc of instability exerts an exceptionally significant geopolitical impact on the regional processes and in the foreseeable future this influence will increase ever more.

The East Asian arc of instability represents a complex system of blocs and counterbalances that runs through the most potentially conflict-prone zones. All the intricate curves of this arc of instability are conditioned by geostrategic and geopolitical interests of the main subjects of global and regional politics, as well as the existing balance of forces. Any change in the configuration of this arc of instability, even minor on the face of it, is a challenge to the established order and a consequence of changes in the regional balance of forces. From the southeast, this arc of instability is propped up by US military bases

located in the territory of Asian security partners. This system is based on bilateral security treaties, which in the context of heavy dependence of Asian partners upon the USA and virtually incomparable military and economic potential secures for Washington a certain freedom of action in this region. At present, the USA has already embarked upon deployment in the APR of anti-missile defence systems along the East Asian arc of instability on a broad front from Japan to Australia. From the north-west, this arc is overhung by Russia and China which coordinate their activity, chiefly in Central Asia, within the framework of the SCO, pursuing their foreign policies without visible mutual interaction southeast of their borders, along the East Asian arc of instability. In the process, a multilateral format of cooperation largely deprives the organisation of operational efficiency and limits its freedom of movement.

Thus the East Asian arc of instability reflects the historically formed demarcation lines or “buoys”, the passage beyond which on the part of the subjects of geopolitical relations is viewed by competitors as an indication in favour of immediate counteraction, which may be expressed in retaliatory measures of informational, diplomatic, political, economic, financial and/or military action.⁶

The East Asian arc of instability passes from the northeast to the south-west via the Kuril Islands (in Japanese terminology “the northern territories”), the divided Korea (the DPRK and the RK), the divided China (the PRC and the ROC), the divided Vietnam (until 1975 the DRV and the RV, now the SRV and the island territories in the South China Sea). Listed here are only the main divided countries and territorial disputes, not to mention the “smaller” potential border conflicts between Tokyo and the Republic of Korea in the Sea of Japan (Takeshima Islands) and and between Tokyo and the PRC in the East China Sea (Senkaku Islands) and also in the Yellow Sea between the two Koreas over the Northern Limit Line. Despite the ending of the Cold War, at the southern flank of that arc there occurred only two significant changes: the liberation of South Vietnam and the effective transfer of the Paracel Islands to the PRC’s control.

In 1975, the continental part of Vietnam was united under the auspices of Hanoi; however, the archipelagos in the South China Sea be-

Security and Cooperation in the South China Sea

came the subject of territorial disputes. In 1974, the North Vietnamese Army was preparing for a resolute offensive against South Vietnam and the Saigon authorities, gathering forces for resistance, with US assistance evacuated their garrisons from the Paracel Islands, which were immediately seized by the PRC forces.⁷ Presently, Peking tries to establish control also over the Spratly Islands, a move which draws protests from the SRV and other SEA countries (the Philippines, Malaysia, Brunei), a position endorsed by the USA.

Now in East Asia preparations are under way towards the next round of revision of regional order. In the early 21st century the consolidation of the economic and political positions of China along with the US desire to preserve their clout in this region are exerting a powerful pressure upon the region in opposite directions, which provokes an arms race unheard of in the history of East Asia with all the resulting consequences.

At present, the geopolitical situation along the East Asian arc of instability is stably unstable. It seems that the established status quo by and large suits all the actors involved for the time being. However, they are already pursuing robust preparations for a more proactive phase of geopolitical struggle. Worthy of particular attention is the southern flank of the East Asian arc of instability, namely the territorial disputes in the South China Sea, as it is precisely there that the most vigorous preparation for a revision of the existing geopolitical arrangement and installation of a new order in the region. Peking is set to broaden its sphere of influence, which will certainly hurt the interests of its geopolitical competitors. A peaceful redistribution of spheres of influence among the powers is an extremely rare occurrence.⁸

The geopolitical situation in East Asia is also aggravated by the fact that in this region the Eurasian arc of instability crosses China's southern 'underbelly'.⁹ A careful analysis of the situation in the regions, especially around the PRC, shows that around China there exists a multitude of potential flashpoints that may be activated as soon as Peking begins earnestly to reformat the space around its borders, first of all in the southern direction - the most promising and the least defended. However, in this context it is highly significant that the border with the RF is the PRC's calmest frontier.

The early second decade of the 21st century was marked by a fresh round of activity by the parties to the Great Game, which was attended by a flurry of destabilising processes along the East Asian arc of instability. The territorial disputes in East Asia that were hitherto in a waiting mode have intensified and are gradually spreading to the countries of Southeast Asia. In the Far East, the eastern flank of the Eurasian crosses China's southern 'underbelly' and splits into two. One offshoot goes to the north, along the 'eastern strategic front,' to use Brzezinski's terminology, while the other goes to the southeast across the South China Sea all the way to East Timor.

The effectiveness of any regional integration project will be undermined if the territory of its members is crossed by an arc of instability. The USA traditionally endorses all initiatives towards shifting the East Asian arc of instability in the north-western direction on a broad 'front' from the Kuril Islands to the South China Sea. This incidentally explains the surge in interest towards transport corridors, pipelines, political and religious radicals, separatists, terrorists, organised crime, ethnoreligious communities and human rights not only in East Asia but also in the most 'problem-ridden regions' of Eurasia.

The intensification of external (the USA) and internal (the PRC) pressure upon the region also activates the territorial disputes and regional conflicts hitherto in a waiting mode, simultaneously imparting them a broad international resonance, something which is fraught with severe destabilising consequences for the entire region.

In the regions through which the East Asian arc of instability passes, the USA traditionally pays a special attention to both forcefully-induced and 'peaceful' transformation of local political regimes in order to ensure a durable 'sanitary belt' around the target of containment, supporting and encouraging the hostility of smaller countries towards their geopolitical competitor. Thus on the agenda there appears a new guideline – the creation of an anti-Chinese coalition out of the countries of the region, to which, besides their traditional allies, the USA is trying to attract new ones, for instance Vietnam. However, the SRV pursues its own flexible balanced policy, trying to manoeuvre among the influential centres of power. Hanoi well remembers not only the American bombardments of the 1960s and 1970s, but also the destabi-

lisation in Cambodia in 1975-1978 that lasted until the 1990s, the PRC's attack upon Vietnam in 1979 and Peking's subsequent diplomatic, and military pressure in the South China Sea. This is precisely why the SRV is displaying an ever greater interest in resuming the presence of the RF Navy at the base in Cam Ranh.

Presently, a full-scale expansion of the PRC in the southern direction is under way, which provokes an ever more acute rivalry of powers for control over SEA resources. The growth of the PRC's economy, China's transformation into the world's second economic power, the intensified regional integration which may entail the emergence of a PRC + ASEAN regional bloc - may considerably enhance the PRC's positions both in the region and in the world. Southeast Asia is already subjected to an intensive economic transformation on the part of the PRC, with military-technical cooperation also in full swing. A recently published monograph by the eminent Orientalist D. V. Mosyakov who has long since and on a high professional level been engaged in the study of this problem, describes in detail the 'pervasive mechanism for gradual consolidation of positions and imposition of control over certain territories strategically important for China and for phased integration of people resident there into an inexorably expanding "Pax Sinica"'.¹⁰

The high rates of economic integration, the PRC's impressive economic growth and the heightened influence of that country upon the regional processes will inevitably transform themselves into political clout, while in prospect it is likewise possible that the region will undergo a geopolitical reformatting with all the consequences ensuing therefrom.

Besides promising prospects, the East Asian integration projects have an 'Achilles' heel' of their own, which is associated with insufficient provision with energy resources. The growth of energy-intensive Asian economies has caused an increase in demand for oil, which the region as a whole is consuming in far greater volumes than they are available there. The greater part of oil is imported via the South China Sea from the Middle East that is becoming increasingly unstable. At present, crude oil is transported in the direction of East Asia through the Strait of Malacca alone in the volume of about 15 million barrels a

day. The PRC's attempts to diversify energy supplies from other regions proceed with difficulty.

The situation in the Middle East is closely linked with East Asia where the geopolitical struggle for regional leadership is now already unfolding. The fact is that East Asia at large is a net consumer of hydrocarbons, while the Middle East is the main exporter. Having established virtually direct control over the exports of the principal resource from the Middle East, one may exert a very sensitive influence upon consumers in East Asia and thus 'regulate' the level of their economic development. It is for this very reason that the PRC is forced to invigorate its policy in the East and South China Sea, where in the continental shelf area, according to unconfirmed predictions, there are considerable reserves of hydrocarbons that the thriving Chinese economy so badly needs. That is why, the more proactively Washington operates in the Middle East, the more vigorously the PRC will work in littoral seas coupled with an increasing presence of its naval forces, so as to gain access to the most proximately located hydrocarbon deposits and ensure the security of raw material transportation routes. And this, in its turn, will disquiet other countries in the region. As noted by the well-known Russian sinologist A. D. Voskresensky: 'In the context where China lays claims to virtually the whole water area of the South China Sea as its territorial waters, a strategic concern of Japan, 80 percent of whose imported oil is being shipped via the South China Sea, becomes quite understandable.'¹¹

Currently, the question is not whether regional integration in East Asia will develop but rather under whose auspices it will proceed. It is this that is the object of a tough and uncompromising geopolitical struggle. So far there is only one really existing project of a truly Eurasian continental scale – the Eurasian arc of instability. The activation of various segments of the arc of instability in a particular region may be regarded as a step towards torpedoing some integration projects in order to realise a 'grinding' strategy in support of alternative projects of another subject of geopolitics.

In the process of expansion and deepening of regional integration far from everything goes smoothly and straightforwardly in the intended direction. Integration is a hierarchical phenomenon. Therefore the

Security and Cooperation in the South China Sea

struggle is waged for the rank of a LEADER who will streamline the minor partners into such a combination which is most profitable to HIM at a given moment!

In the situation at hand, the choice of the region's smaller countries is not which side to take, whom to choose as a locomotive of regional integration, or whose terms look more attractive. It seems that ASEAN countries, in playing upon the contradictions of the powers, have more chances to fall victim to geopolitical antagonisms of considerably stronger, more experienced and tougher partners than to bargain for themselves more advantageous terms of entering a particular integration format. In the context of the trends of recent decades, such a scenario appears to be the most plausible.

Summing up the brief overview of the situation at hand in East Asia along the East Asian arc of instability, one has to note the following. An effective change of that balance of forces in the region is caused by the PRC's intensified activity in the spheres of the economy, politics and security in relation to neighbouring countries. In the process, the main resource that will actually influence the result of interaction in the region – the real balance of forces, not the historical and archive materials on the territorial belonging of the islands in the past or the current norms of 'international law.' The motives and interests of great powers in many ways run counter to each other and this imparts and will continue to impart further tension in the political and economic processes in the region. For the country that will gain effective control over the region of the South China Sea and consequently over SEA, will obtain a colossal resource base, making use of which it will be able to increase its potential even more – a turn of events that will certainly meet with a most serious covert and overt opposition.¹² An integration of East Asia under PRC auspices clearly does not suit Washington. US President Barack Obama stressed in 2012 that 'we will be strengthening our presence in the Asia Pacific, and budget reductions will not come at the expense of that critical region.'¹³

Currently, the entire region of East Asia is being transformed into a sort of 'battlefield', first and foremost between the USA and the PRC which activate their allies and partners. The struggle is waged by means of legitimate and illegitimate technologies as well as intrigues,

the organisation of protests by the opposition and pressure by NGOs involving 'human rights' and 'freedom of religion.'

It appears that in East Asia the level of economic relations recently reached in the region does not correspond to the character of political relations, the crisis phenomena in the world financial system and the elements of regional security lingering ever since the times of the Cold War. Further struggle for changing the configuration of the East Asian arc of instability still lies ahead. At present, a revival on its southern flank is observed.

Literature

1. Z. Brzezinski, *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives* (1997).
2. Ye. A. Kanaev, 'Vooruzhennyi konflikt iz-za Parasel'skikh ostrovov (1974)', in *Obozrevatel'*, No. 7 (186), 2005. http://www.rau.su/observer/N7_2005/7_14.HTM
3. V. N. Kolotov, 'Etnoreligioznie soobschestva vo V'etname v kontekste sistemy regional'noi bezopasnosti: istoriya i sovremennost', in V. N. Kolotov (editor-in-chief), *Problemy sovremennoi Azii: istoriya, konflikty, geopolitika* (Saint Petersburg: Izd-vo S-Peterb. Un-ta, 2009).
4. V. N. Kolotov, 'Main Trends of Russia's Foreign Policy in Transforming East and Southeast Asia', in *Brookings Northeast Asia Commentary* (2008), No. 18. http://www.brookings.edu/opinions/2008/04_asia_kolotov.aspx
5. V. N. Kolotov, 'Russia's Views on the Security Situation in East Asia', in *Brookings Northeast Asia Commentary* (2012), No. 61. <http://www.brookings.edu/research/opinions/2012/09/17-russia-east-asia-kolotov>
6. V. N. Kolotov, 'Vietnam mezhdru SShA i KNR: istoriko-politologicheskii analiz sovremennoi geopoliticheskoi situatsii v regione', in V. N. Kolotov (editor-in-chief), *Osnovnie tendentsii politicheskogo i ekonomicheskogo razvitiya stran sovremennoi Azii i Afriki* (Saint Petersburg, 2011).
7. V. N. Kolotov, 'Vòng cung bất ổn Đông Á - Nhân tố chính trong hệ thống an ninh khu vực', in *Tạp chí Nghiên cứu Trung Quốc* số 8 - 2012 (21/09/2012). Tr. 27-36.
8. V. N. Kolotov, 'Vostochnoaziatskaya duga nestabil'nosti kak osnovnoi element regional'noi bezopasnosti', in *Aktual'nie problemy regional'noi bezopasnosti sovremennoi Azii i Afriki* (Saint Petersburg, 2012).
9. D. V. Mosyakov, *Politika Kitaya v Yugo-Vostochnoi Azii: ot proshlogo k nastoyashchemu* (Moscow: Institut vostokovedeniya RAN, 2012).
10. *Remarks by the President on the Defense Strategic view*. <http://www.whitehouse.gov/the-press-office/2012/01/05/remarks-president-defense-strategic-review>
11. M. L. Titarenko, *Rossiya i yeyo aziatskie partnyory v globaliziruyushchensya mire* (Moscow, 2012).
12. A. D. Voskresensky, *Rossiisko-kitaiskoe strategicheskoe vzaimodeistvie i mirovaya politika* (Moscow, 2004).



Notes

¹ M. L. Titarenko, *Rossiya i yeyo aziatskie partnyory v globaliziruyushchemsya mire* (Moscow, 2012), p. 12.

² M. L. Titarenko, *Op. cit.*, pp. 27-28.

³ Z. Brzezinski, *The Grand Chessboard: American Primacy and Its Geostrategic Imperatives* (1997), p. 40.

⁴ Z. Brzezinski, *Op. cit.*, p. 40.

⁵ V. N. Kolotov, 'Vietnam mezhdru SShA i KNR: istoriko-politologicheskii analiz sovremennoi geopoliticheskoi situatsii v regione', in V. N. Kolotov (editor-in-chief), *Osnovnie tendentsii politicheskogo i ekonomicheskogo razvitiya stran sovremennoi Azii i Afriki* (Saint Petersburg, 2011), pp. 298-299.

⁶ V. N. Kolotov, 'Russia's Views on the Security Situation in East Asia', in *Brookings Northeast Asia Commentary* (2012), No. 61.

<http://www.brookings.edu/research/opinions/2012/09/17-russia-east-asia-kolotov>

⁷ Ye. A. Kanaev, 'Vooruzhennyi konflikt iz-za Parasel'skikh ostrovov (1974)', in *Obozrevatel'*, No. 7 (186), 2005. http://www.rau.su/observer/N7_2005/7_14.HTM

⁸ V. N. Kolotov, 'Vostochnoaziatskaya duga nestabil'nosti kak osnovnoi element regional'noi bezopasnosti', in *Aktual'nie problemy regional'noi bezopasnosti sovremennoi Azii i Afriki* (Saint Petersburg, 2012), pp. 58-76.

⁹ V. N. Kolotov, 'Etnoreligioznie soobshchestva vo V'etname v kontekste sistemy regional'noi bezopasnosti: istoriya i sovremennost', in V. N. Kolotov (editor-in-chief), *Problemy sovremennoi Azii: istoriya, konflikty, geopolitika* (Saint Petersburg: Izd-vo S-Peterb. Un-ta, 2009).

¹⁰ D. V. Mosyakov, *Politika Kitaya v Yugo-Vostochnoi Azii: ot proshlogo k nastoyashchemu* (Moscow: Institut vostokovedeniya RAN, 2012), p. 147.

¹¹ A. D. Voskresensky, *Rossiisko-kitaiskoe strategicheskoe vzaimodeistvie i mirovaya politika* (Moscow, 2004), pp. 27-28.

¹² V. N. Kolotov, 'Main Trends of Russia's Foreign Policy in Transforming East and Southeast Asia', in *Brookings Northeast Asia Commentary* (2008), No. 18.

http://www.brookings.edu/opinions/2008/04_asia_kolotov.aspx

¹³ *Remarks by the President on the Defense Strategic Review.*

<http://www.whitehouse.gov/the-press-office/2012/01/05/remarks-president-defense-strategic-review>



Vladimir F. Terekhov

*Leading researcher,
Centre for Asia and the Middle East,
Russian Institute of Strategic Studies**

**The Situation in the South China Sea in the
Context of the New Global Game**

The Place of the SCS in the Geography of the Global Game

The situation that has been developing in the South China Sea (SCS) in recent years is in the top rows of the list of main sources of threats to the maintenance of stability not only in the Asia-Pacific Region (APR) but also in the world at large. At first glance, it seems that the growth of tensions in the SCS is conditioned exclusively by the contention among a group of countries of the Southeast Asia (SEA) subregion over the possession of a few archipelagoes located in that sea.

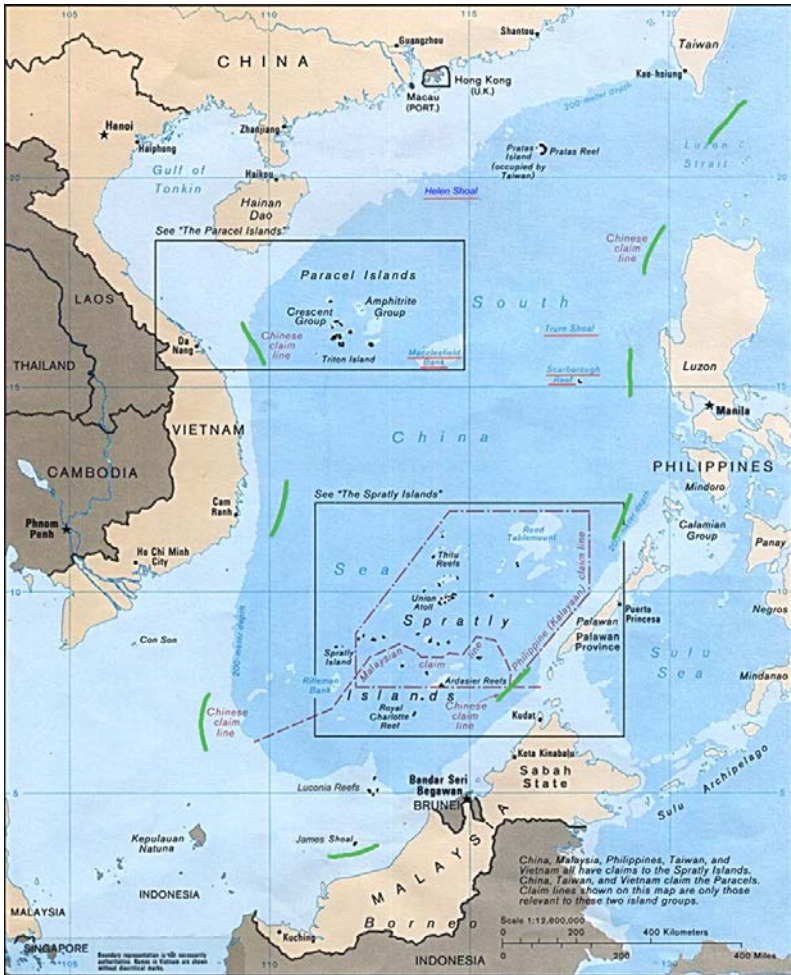
Claimants upon their possession may conventionally be subdivided into the PRC and “all the rest.” These controversies are of long standing but have become particularly acute after the dissemination in the UN in summer 2009 of the so-called “nine-dash map” (Fig. 1). As can be seen, practically all the archipelagoes prove to be inside the water area delineated by these “dashes” which, in addition, are not defined by precise geographical coordinates. This encourages the smaller littoral SCS countries to seek sources of “outside” support, which they receive first and foremost from Washington and also Tokyo and New Delhi.

The involvement of “extraregional forces” (in Chinese terminology) in the territorial disputes in the SCS is evidence of the fact that the evolving situation there is in fact predicated on the character of the new geopolitical game being shaped up with the ending of the previous one that bore the name of the Cold War. The American-Chinese rivalry

* E-mail: terekhovv1@rambler.ru

I. New Geopolitics in the South China Sea

that acquires global proportions and is noted on all continents becomes the basic content of this new game.



Its focus, however, (Fig. 2) is centred upon a relatively narrow marine belt confined between the eastern coast of China along with as

Security and Cooperation in the South China Sea

a number of countries of Southeast Asia and the so-called First Island Line. The latter incorporates an archipelago of four main Japanese islands, the Ryukyu Archipelago, Taiwan and the Malay Archipelago. The latter is occupied mainly by the Philippines and Indonesia.¹



Fig. 2. Western Sector of the Pacific Ocean Region

(Source: MAPSOF.net, <http://mapssof.net/map/philippine-sea-location>)

This belt is a repository of potential sources of conflict on a regional and even global scale, which may engulf the leading regional and world powers. Among such sources are the unsettled Korean and Taiwanese problems, the uncompromising positions of China and Japan on the issue of ownership of the islands of Senkaku/Diaoyudao and, assuredly, the territorial disputes in the SCS.

Although the interests of China are undoubtedly affected by the conflicts in the Middle East and North Africa in recent years, it does

not yet possess the requisite military infrastructure beyond the belt mentioned above. This infrastructure is now being established in the Indian Ocean, but its potential is so far manifestly inadequate to challenge the USA along with their formal and informal allies. The belt in question is another matter. Here the PRC already possesses such a potential which it will no doubt employ in the event of emergence of threats to its interests.

It seems important to note that the main players in the emerging regional game feel the freedom to choose their steps constricted. The said game begins to dictate strategies of conduct to them, and this is the most troublesome tendency in the situation developing in the APR. The involuntary character of foreign policy steps is noticeable even through the example of the United States.

The “Shift-Pivot” of World Processes and American Policy towards the APR

During the last two years, “pivot” and “shift” towards the Asia-Pacific Region (APR) have become the most frequently used terms with which experts try to render the meaning of the evolution of the US foreign policy course. They began to be widely used with the appearance of articles “America’s Pacific Century” and “The American Pivot to Asia” in the Foreign Policy magazine, whose authors were, respectively, former Secretary of State Hillary Clinton and Kenneth Lieberthal, senior administration official during Bill Clinton’s presidency.²

However, the aforementioned “pivot-shift” was in fact observed as early as the beginning of the first decade of the twenty-first century and sustained onwards, while especially watchful American experts started to speak of its inevitability back in the second half of the 1990s as part of a discussion on the new “Grand Strategy” the United States had to follow in the period after the Cold War.

In the military-political sphere, of paramount importance was the resolution of all “misunderstandings” of the Cold War period in relations with India which has advanced its claims to the role of one of the leading powers in Asia and the world at large. A visit to India in 2000 of the then Democratic President Bill Clinton paved the way to the

process of unfreezing bilateral relations and their subsequent rapid development. That process was kept on by Republican President George W. Bush and now, with a consensual characteristic of his foreign policy as one of failure, the success India-wise is believed to be extremely significant, though perhaps the only one.

As part of the strictly military component of the overall process of the “pivot-shift” of US policy towards the APR, a number of important measures were taken as early as the second half of the last decade. Thus by 2007 six (out of eleven) aircraft carriers and 38 (out of 67) nuclear-powered submarines (NPS) of the US Navy had been stationed in the Pacific Ocean.³ Beginning in 2013, four state-of-the-art littoral combat ships will be deployed in Singapore. Military alignments are being reinforced on the Hawaiian Islands and Guam, with 2,500 US marines being redeployed from Japan to Darwin, Australia.

Basic war-fighting concepts for the conduct of large-scale operations earlier worked out for stand-alone armed services, are being fitted together and unified into a single whole. The military-strategic objective of all these measures is to counter the strategy of “denying” American combat formations access to particular APR areas (Anti-Access/Area Denial - A2/AD), ostensibly adopted in the PRC.⁴

To put it differently, the high-sounding words of responsible statesmen and authoritative political scientists on the increasing significance of the APR and the “pivot-shift” of American foreign policy to Asia in fact represent an acknowledgement that the process is of long standing. But this really observable process needs some comment.

Some experts perceive in it a fulfilment, at last, of Oswald Spengler’s prophecy, made in 1918, on the “decline of the West.” However, the character of such prophecy reflected the moods of pessimism that had become widespread among the European intellectuals in the wake of World War I.⁵ Just as then, it should not be understood literally, despite all the current problems of Europe. Hillary Clinton’s successor in the post of US Secretary of State John Kerry introduced important amendments to her concept of the “pivot” of American policy to the APR. Speaking on 14 February 2013 at a meeting with EU High Commissioner Catherine Ashton, he said, among other things, that the rebalancing (implied in the above-mentioned “pivot”) “does not and

will not come at the expense of any [US] relationship in Europe whatsoever.”⁶

As an indication that the United States was not “abandoning” Europe, the project for the creation of the Transatlantic Trade and Investment Partnership, which on expert level had been discussed for more than two years already, was to be made relevant at that very moment, that is, in early 2013. Now it is hard to assess the real motives behind the renewed discussion of that project. One cannot exclude a substantial presence among them of the motive of diminishing fears among a part of Europeans to end up without safe American protection. For more than sixty years it allowed them to feel quite comfortable and engage mostly in the rehabilitation of infrastructure destroyed during World War II and in subsequent economic development.

Along with the general concept of “shift-pivot,” such fears might also be fostered by the special attention devoted by Washington in recent years to such highly significant element of the latter as the formation of the Transpacific Partnership (TPP) as well as to the solution of one of the chief political problems of that project, the one associated with encouraging the key regional ally, namely Japan, to join the TPP. In July 2013, that problem was successfully solved.

Thus the real ongoing shift in the centre of gravity of world processes and US policies towards the APR does not bear an absolute character. However, it is conditioned by the real process of transformation of the PRC into a de facto second global power, which is viewed by Washington as a challenge to key American interests in all regions of the world, but above all in the APR.

American Policy of a “Tightrope Dancer” in Relation to China

Such evaluation of the PRC’s role in the world has become a starting-point for the shaping of US policy vis-à-vis China. This policy includes two principal components which are backed by diverse and competing factions in the American establishment. These components are defined by the following terms: China’s integration into world processes with a simultaneous ‘hedging’ of the risks involved.

The second component of the two in fact boils down to the same

containment strategy as had been practiced by the USA in relation to the USSR during the Cold War years. With the latter's departure from the world political scene the seat made vacant is gradually being occupied by China which welcomes the engagement component, while absolutely rejecting the hedging strategy.

The ambivalence of American policy elicits associations with a tightrope dancer who, balancing with a pole, is trying to keep balance on a wire stretched over the abyss. One end of the pole has "integration" and the other "hedging" written on it. As he balances, the tightrope dancer raises slightly now the one, now the other end of the pole.

During Hillary Clinton's term as head of American diplomacy, priority was given to the "hedging" component. It was during her time at State that a message was newly communicated that the United States was a "Great Pacific Power" interested in all the processes taking place at any point in the APR. In 2010 it constantly sounded at ASEAN forums at exactly the times when the situation in the SCS was discussed.⁷

As a matter of fact, these forums have turned into an arena of American-Chinese political sparring. In particular, the position taken by Hillary Clinton in July 2010 at one of the above-mentioned forums was appraised by the then PRC Foreign Minister Yang Jiechi as a "challenge to China."⁸

An attempt to make the "integration" component relevant again started with Hillary Clinton's resignation and the coming of John Kerry to replace her as head of the US State Department in February 2013. A month before that, the New York Times featured an article by one of the leading lights of American political science, Joseph Nye, under a remarkable heading: "Work With China, Don't Contain It."⁹ What seems worthy of note is the restrained positive reaction to this change of leadership at the State Department in China and a guarded one in Japan.

"Offshore Balancing" in Place of "Global Domination"?

However, the tendency towards diminution of the significance of the hedging strategy with regard to China is motivated by substantially more weighty factors than the change of personalities in charge of the

American foreign policy department. Salient among them are problems in the economic domain, calling for a decrease in the burden of military expenditure. Besides, Washington does not wish to become automatically (due to allied obligations) embroiled in a global conflict with the PRC for reasons that seem relatively minor to it. For instance, on account of the above disputes of US allies with China over the possession of some islands in the SCS, often barely overhanging the water surface and located 10,000 km from the American coastline.

In the United States, there are fears of an effect of ‘imperial overheat’ emerging in case of further fulfilment of foreign policy obligations, most of which had been “accumulated” back in the Cold War period. Consistent with such sentiments of a section of the American establishment is the concept of “offshore balancing” proposed by Christopher Layne back in the mid-1990s, which, as its author himself now believes, comes to replace that of “global domination” of the Cold War era.

A few tenets of the “offshore balancing” strategy have been formulated, of which three can be distinguished¹⁰:

- the country’s fiscal and economic problems call for priorities to be set in foreign policy strategy, which, given the APR’s increased significance, necessitates a curtailment (though not termination) of military presence in Europe and the Middle East;
- it is necessary to raise sharply the level of the allies’ involvement in the solution of the task of maintaining strategic stability in all regions. This will require, among other things, the equipment of their armed forces with more up-to-date weapons systems, and also more intensified joint military exercises;
- a change of ruling regimes which has loomed large in US military actions in recent years in the Middle East and Afghanistan should be excluded from the final objectives of the future military conflicts in the APR (involving China above all).

In very broad terms, the US “offshore strategy” should be confined to ensuring the potential for intervening in the events in the APR if the balance of forces here changes drastically for the worse for Washington. There is an apparent desire to shift away from the present system of allied relations that seems like a wheel with the “hub” – the

Security and Cooperation in the South China Sea

USA and “spokes” – allies (hub-and-spoke system) in favour of a system with more or less equally loaded “spokes” (spoke-to-spoke system).¹¹

However, the tendency towards equalising the burden of obligations in the sphere of regional security provision with the allies may become a source of threats to the durability of the whole system of bilateral allied relationships. Washington had been building it up from the early 1950s according to the pattern “owner of services” in the security domain – “recipients thereof” (allies). A tendency towards departure from this pattern may cause the latter to doubt the safety of further reliance upon the United States in the provision of their own security and impel them to search for alternatives.

A number of specific measures recently undertaken by Washington are instrumental in fueling such doubts. In particular, worthy of attention is an invitation to the Chinese Naval Forces to take part in the latest in a series of international naval exercises RimPac (Rim Pacific) due next summer. Comments highlight the fact that it is for the first time that China (albeit in a truncated format) has been invited to such exercises held since 1971 once every two years under the auspices of the US Navy.¹² The plans just announced to cut the number of aircraft carriers forming part of the US Navy are likely to be given an equally guarded reaction by the US Asian allies.¹³

Advocates of a continued hard line towards China fear that instead of being reformatted, the wheel of US relations with allies may break completely with hardly predictable consequences for the situation in the APR. The American foreign policy leadership cannot but take such fears into consideration.

This explains the contradictory nature of rhetoric used in recent months by the same John Kerry. During a tour of Asian countries made in April 2013, he pronounced speeches different in meaning in various capitals. Thus in Peking it was said about the need for cooperation with China, notably on the problem of “denuclearisation of North Korea.”¹⁴

However, in Japan Secretary Kerry pronounced much more specific words, highly important for Tokyo. Like these: “Some people might be skeptical of America’s commitment to this region. Well, let me be clear: President Obama made a smart and a strategic commitment to

rebalance our interests and investments in Asia.”¹⁵ Such a rhetoric before a Japanese audience does not differ in the least from what had earlier been said by Hillary Clinton.

Japan-India Rapprochement

An all-round rapprochement between Japan and India, which had taken shape back in the period of the first premiership of Shinzo Abe (2006-2007), is one of the most important political trends in the APR. Already in the years immediately ahead it will reverberate on the situation in the APR as well. One may isolate two interlinked motives of such a process, conditioned by apprehensions of both countries regarding, first, the consequences of the PRC’s transformation into a world power and, second, the safety of further reliance upon the USA.

In the process of development of Japanese-Indian relations, an official visit to Tokyo of the Indian Prime Minister Manmohan Singh and his talks with his Japanese counterpart Shinzo Abe that took place from 27 to 29 May 2013 marked a milestone. A Joint Statement signed during the visit dealt with the questions of the economy, security, scientific and cultural cooperation. Its main content found adequate reflection in pt. 2, which expressed the parties’ desire to develop the “strategic and global partnership” established back in 2006.¹⁶ In the framework of that partnership, both “main democracies of Asia” intend to play a decisive role “in ensuring security and prosperity in the region.”¹⁷ The latter thesis almost literally reproduces the 2006 rhetoric of S. Abe himself. The sphere of economic cooperation finds the most detailed reflection in the Joint Statement.

In the opinion of Japanese experts, the relatively modest level of bilateral trade (about \$8 billion) is conditioned by India’s infrastructural underdevelopment. Since the start of the last decade, its leadership has concentrated on the solution of this key problem of the country’s economy. The most important infrastructural project is the Delhi-Mumbai Industrial Corridor – DMIC, about 1,500 km long. At the origin of this grandiose project stood the same S. Abe, who in the period of his first premiership (in 2006) had promised to allocate \$4.5 billion for its realisation in the form of financial and high-tech assistance for work to be carried out.

Security and Cooperation in the South China Sea

The motivation for Japan's support for the process of realisation of India's key state-run project is not confined to the personal attributes of Japanese political leaders and is in no way governed solely by economic considerations. In this sense, remarkable seems to be the thesis of the present Joint Statement on the need for "consolidation and enhancement in the coming years of strategic and global partnership between India and Japan with due regard for changes in the surrounding strategic setting."¹⁸

As for the motivation for New Delhi's course towards rapprochement with Tokyo, one can take note of the following words pronounced by M. Singh during the visit in one of his public utterances: "Our relationship with Japan has been at the heart of our 'Look East Policy.' We see Japan as a natural and indispensable partner in our quest for stability and peace in the vast region in Asia that is washed by the Pacific and Indian Oceans."¹⁹

With respect to the situation developing in the South China Sea, the parties expressed themselves in favour of ensuring the freedom of navigation and trade there and also for the observance of basic provisions of the law of the seas, whose main content today is constituted by the Convention adopted by the UN in 1982 (UNCLOS-82). This is not quite what may suit China, which deems 80 percent of the water area of the SCS to be its own.

The Joint Statement also speaks of harmonising the efforts of both countries towards "reforming the UN, including the extension of membership of the Security Council, meaning both its permanent and non-permanent members." In this connection, it should be recalled that India and Japan have long been claiming the status of permanent members of the UNSC.

The results of M. Singh's visit to Japan and all that attended it help clarify the region-wide political picture. For invisibly present behind the Japanese-Indian negotiating table were the two other leading regional actors, namely the United States and China.

It is noteworthy that it is not so much Washington as Tokyo which today comes out as the main organiser of the "China encirclement policy" (judging by the rhetoric of Chinese experts in recent months).²⁰ It should be noted that the very character of the foreign policy activity of

the Japanese government in recent months affords Peking certain grounds for such assumptions.

In conclusion, one has to emphasise once again the central place of the APR and the marine belt which adjoins China's eastern coastline in modern global policy. One of the main elements of that belt is the SCS. Already by the beginning of 2012 the expert appraisal of the situation developing in the SCS boiled down to an acknowledgement that it "could have continued as a stalemate without any pressing need for a resolution."²¹ In early 2013, such assessments look still less optimistic. In particular, it is said that "the prospects for compromise or cooperation in the South China Sea look bleak."²²

Finally, it seems appropriate to note that recent events in the Middle East and North Africa that are now the main generators of hue and cry in the world press, in effect represent a local ripple upon the surface of world politics. They should rather be viewed as evidence of activation of underwater volcanoes located in a quite different region of the earth.

Notes

¹ James Kurth, "Confronting a Powerful China with Western Characteristics," *Orbis*, Winter 2012, pp. 39-59.

² Hillary Clinton, "America's Pacific Century," *Foreign Policy*, November 2011; Kenneth Lieberthal, "The American Pivot to Asia," *Foreign Policy*, December 21, 2011.

³ Tim Huxley, "PacNet Number 35R," in *Pacific Forum CSIS*, Honolulu, 12 June 2012, <http://csis.org/files/publication/Pac1235R.pdf>.

⁴ Christian Le Miere, "Rebalancing the Burden in East Asia," *Survival*, Vol. 55, No. 2, April-May 2013, p. 32.

⁵ George-Henri Soutou, "L'Union européenne confrontée au besoin d'Occident et au pivotement américain," *Revue Défense Nationale*, 2013, no. 762, pp. 107-111.

⁶ "Remarks by Secretary Kerry and by European Union High Representative Ashton, February 2013," in *Council on Foreign Relations*, <http://www.cfr.org/world/remarks-secretary-kerry-european-union-high-representative-ashton-february-2013/p30017....>, February 14, 2013.

Security and Cooperation in the South China Sea

⁷ “Remarks at Press Availability,” in U.S. Department of State, <http://www.state.gov/secretary/rm/2010/07/145095.htm>, July 23, 2010.

⁸ Gordon G. Chang, “Hillary Clinton Changes America’s China Policy,” *Forbes*, <http://www.forbes.com/2010/07/28/china-beijing-...>, 7/28/2010.

⁹ Joseph S. Nye, “Work With China, Don’t Contain It,” *The New York Times*, <http://www.com/2013/01/26/opinion/work-with-china-...>, January 25, 2013.

¹⁰ Christofer Layne, “The (Almost) Triumph of Offshore Balancing,” *The National Interest*, January 27, 2012.

¹¹ Christian Le Miere, “Rebalancing the Burden in East Asia,” *Survival*, Vol. 55, No. 2, April-May 3013, pp. 31, 33.

¹² Zachary Keck, “China, RIMPAC and Containment,” *The Diplomat*, <http://thediplomat.com/flashpoints-blog/2013/04/03/china-rimpac-...>, April 3, 2013.

¹³ Christopher P. Cavas, “A US Navy With Only 8 Carriers?” *DefenseNews*, <http://www.defensenews.com/20130804/DEFREG02/30E..>, Aug. 4, 2013.

¹⁴ “US Secretary of State John Kerry presses China for help with N. Korea,” [news.com.au, http://www.news.com.au/world-news/united-states-...](http://www.news.com.au/world-news/united-states-...), April 14, 2013.

¹⁵ “Remarks on a 21st Century Pacific Partnership,” in U.S. Department of State, <http://www.state.gov/secretary/remarks/2013/04/207487.htm>, April 15, 2013.

¹⁶ “Joint Statement: Strengthening the Strategic and Global Partnership between Japan and India beyond 60th Anniversary of Diplomatic Relations,” in <http://www.mofa.go.jp/mofa/files/000005381.pdf>.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Vipin Vijayan, “Manmohan Singh’s love affair with Japan,” <http://www.rediff.com/news/slide-show/slide-show-1-manmohan-singhs-love-affair-with-tokyo/20130528.htm#3>, May 28, 2013.

²⁰ “Japan trying to “encircle” China by cozying up to India: Chinese media,” in NDTV, <http://www.ndtv.com/article/world/japan-trying-...>, May 30, 2013.

²¹ Leszek Buszynski, “The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry,” *The Washington Quarterly*, Spring 2012, p. 141.

²² Christian Le Miere and Sarah Raine, “Water pollution,” *Jane’s Intelligence Review*, February 2013.

Dr Vijay Sakhuja
*Director (Research) at the Indian Council
of World Affairs (ICWA), New Delhi*



**South China Sea Disputes:
Claimants Arm Themselves***

The South China Sea is one of the significant littoral spaces in the Asia Pacific region. It is important for maritime commerce and witnesses high shipping traffic. However, this sea space is marked by islands, reefs, shoals and rocks, some of which are barely above water during high tide, mostly uninhabited and pose dangers to navigation.

At another level, the South China Sea holds great promise for both living and non-living marine resources including fish and energy. Although the oil & gas reserves are uncertain and initial estimations have varied, but as exploration techniques have improved, exploitation of reserves lying under the seabed has become more viable.

In this sea space, the Spratly Islands are claimed and occupied by China, Brunei, Malaysia, Philippines, Taiwan and Vietnam; while the Paracel Islands are claimed by China, Taiwan and Vietnam but are under Chinese control. In recent times, South China Sea has been the centre of debate and discussion among the claimant states and invited high decibel politico-diplomatic exchanges over territorial disputes including deployment of navies and maritime enforcement agencies.

In the past, some claimant states have engaged in naval combat to defend their claims. For instance, China & Vietnam and China & Philippines have confronted each other through naval engagements to reinforce their sovereignty claims over the islands. Some of the states, particularly China, have dominated regional affairs through their economic and military strength. The region, therefore, remains a fertile ground

* Conference Draft: Not for Citation

Security and Cooperation in the South China Sea

for conflict in the light of sovereignty-related maritime flashpoints and naval ambitions.

There are no visible signs of any intense military activity by the claimants and the situation is stable. There is routine deployment/turnaround of troops and supply ships visit the islands regularly. Significantly, the “2002 Declaration on the Conduct of Parties in the South China Sea” among the claimants has resulted in de-escalation of military tensions in the region. However, the claimants are engaged in a competitive arms build-up which is shaping the emerging regional balance of power. The ongoing military acquisitions are only indicative of the fact that there are several issues ranging from unresolved boundary disputes to competitive military build up and these are exhibited through visible agendas to dominate regional affairs. These could potentially impact on regional security. Further, the deployment of sea-based nuclear weapons and their delivery systems can undermine regional security and stability.

In the above context, this paper attempts to highlight the militarisation trends among the Spratly Island claimants and argues the contending states are building offensive capabilities that could potentially disturb regional peace and security with an adverse impact on international commerce.

Mapping Disputes in South China Sea

At the heart of the boundary disputes in South China Sea is the China’s nine-dash line with no geographical coordinates resulting in ambiguity over ownership and sovereignty of the islands. There are tensions among claimants who see the Chinese claims as unacceptable and reflection of Chinese assertiveness in the region. Further, the claimants see Chinese claims as expansive and depriving the other claimants sea-based resources accrued from the resultant Exclusive Economic Zones (EEZ). According to Justice Antonio T. Carpio of the Philippines, “China’s nine-dashed line claim encroaches on 80 per cent of the Philippines’ 200-nm EEZ and 100 per cent of its 150-nm Extended Continental Shelf (ECS) facing the South China Sea – what the Philippines calls the West Philippines Sea. China’s nine-dashed line claim has similar effects on the EEZs and ECSs of Vietnam, Malaysia,

II. The Threat of Militarisation and the Arms Race

Brunei and Indonesia facing the South China Sea. The countries most adversely affected by China's nine-dashed line claim, in terms of the size of the area encroached by the nine-dashed line claim, are the Philippines, Vietnam, Malaysia, Brunei and Indonesia, in that order."¹

In 2002, the claimant agreed to a non-binding multilateral code of conduct for the South China Sea, i.e. the 2002 Declaration on the Conduct of Parties in the South China Sea² with specific focus on the Spratly Islands which had, till recently, resulted in preservation of regional stability. Although the 2002 declaration was a concrete step to institutionalise regional dialogue and served for the de-escalation of military tensions in the region, it should be borne in mind that this was only a provisional political agreement. After more than 10 years, this multilateral arrangement is witnessing several incidents of high political and diplomatic exchanges resulting in nervousness among the claimants. This has prompted Philippines "after exhausting all other means to peacefully settle their disputes in the West Philippine Sea"³ to take its dispute with China to the International Tribunal for the Law of the Sea (ITLOS). The Philippines contention is that it has "indisputable sovereignty" over most of the South China Sea, and China's nine-dash line is an "excessive declaration" of maritime territory and it must stop EEZ infringement in the West Philippine Sea.

Vietnam has dispute with China over the Paracel Islands that were captured by China after a naval clash resulting in loss of ships and personnel.⁴ China and Vietnam have disputes over a number of islands in the Spratly group. Likewise, Taiwan and Malaysia claim a number of islands in the South China Sea.

Arming Trends: Naval and Air Infrastructure

The claimants have attempted to reinforce their sovereignty over the islands through defence buildup and also deployed ships to patrol areas around these islands. The region is a witness of regular patrolling by the navies and maritime enforcement agencies who are tasked to enforce national agendas including fishing regulations. There have been a number of incidents when the navies and maritime enforcement agencies have intercepted fishing boats and these incidents have invited heated political exchanges including, saber-rattling that has alarmed

Security and Cooperation in the South China Sea

the regional countries. This has led the claimant states to invest in naval and maritime air forces to enforce national regulations in their claimed sea spaces.

China

Among the South China Sea claimants, China is a major military power with significant nuclear and conventional capabilities. It has the largest navy and a strong naval air force that is forward deployed from a number of islands that have significant military infrastructure. Among these, the Sanya Naval Base on the Hainan Island and the Woody Island are home to warships, submarines including nuclear propelled platforms, naval aviation including fighter aircraft fitted with missiles and other aviation assets.

The Yulin Naval Base also referred to as the Sanya Naval base has a number of facilities for nuclear and conventional submarines.⁵ The submarines are strategically berthed in network of tunnels or pens which offer stealth and these pens are a perfect launching point for nuclear submarines into the Pacific Ocean. Some of the recent pictures taken by satellites provide a detailed layout of the submarine-related infrastructure at an island off Hainan. Likewise, the Woody Island hosts a range of military-related infrastructure including a well-developed runway for military aircraft, a mobile missile battery, naval facilities for ships, and a network of intelligence and communication infrastructure.⁶

The Chinese inventory for these islands includes a variety of modern military aircraft like the Su27, Su30 and the JF 10 that can be staged from either Hainan or the Woody Islands and these are within short range of the Spratly Islands. With mid-air refuelling, these aircraft have enhanced loiter time and their standoff weapon capability makes them formidable. Chinese naval capability has grown many folds with the acquisition of the aircraft carrier Liaoning that can launch about 30 fixed-wing aircraft and the PLA Navy pilots have been practising deck landings.⁷

The above developments forced the other claimants, particularly Vietnam, Philippines, Malaysia and Taiwan to develop military/naval capability to prevent China from engaging in any adventurous moves

II. The Threat of Militarisation and the Arms Race

in the disputed islands. These countries are acquiring offensive platforms such as submarines, multirole aircraft and missiles.

Vietnam

Among the claimants, it is only Vietnam that has engaged in combating with China over the Paracel Islands. The Vietnam People's Navy (VPN) suffered a major defeat and since then the country has been attempting to build naval capability. It has sourced a number of naval platforms from Russia including submarines, frigates and fighter aircraft.

In 2009, Vietnam ordered six Russian-made Varshavyanka-class (Project 636M) diesel-electric submarines at a cost of US\$2 billion to be delivered by 2016.⁸ The submarine displaces 3,100 tons, can achieve maximum speed of 20 knots, dive up to 300 metres and has a crew of 52 personnel. These submarines are known for their low noise operations and are equipped with torpedoes. It is important to mention that these submarines can also be fitted with missiles depending on the buyer's choice. According to reports, the Vietnamese submarines are armed with torpedoes and mine for anti-submarine missions and Kalibr 3M54 (NATO SS-N-27 Sizzler) cruise missiles for anti-shipping.

Likewise, in 2011, Vietnam acquired two anti-ship missile Gepard-class frigates at a cost of US\$ 350 million.⁹ These 2,100 ton frigates, i.e. Dinh Tien Hoang and Ly Thai To, can operate Ka-28 or equivalent helicopters. The Russian sales package to Vietnam also includes the sale of Su-30 fighter jets in three instalments. In the first two instalments, Russia delivered 20 aircraft and recent reports suggest that a new contract worth US\$450 million or US\$600 million was signed in August 2013 for the delivery of another batch of 12 SU-30MK2s by 2015.¹⁰ It is also noted that Russia will enhance and develop Vietnam's coastal infrastructure.¹¹

Philippines

Among the South China Sea claimants, the Philippines is the weakest in terms of naval power. There are several reasons for the weakness which range from fiscal constraints to preoccupation with counterinsurgency which precluded building up the navy equipped

Security and Cooperation in the South China Sea

with major war vessels. It had relied on the US for its security requirements and this has continued till date. The US has now transferred the 3,250 tonnes decommissioned Hamilton-class US Coast Guard cutter under the US-Philippine military assistance programme. The vessel has been commissioned in the Philippines Navy as BRP Ramon Alcaraz and reflects the desire of the country to upgrade its antiquated fleet.

It is reported that a part of the former US naval base is being upgraded into a major military hub and it will now be possible to deploy vessels closer to the disputed islands in the South China Sea. According to President Benigno Aquino, “It will further intensify our patrolling of the Philippines' EEZ and our capability to quell any threat and bad elements, respond to search and rescue operations and take care of our marine resources.”¹²

There have been sharp reactions from China to the US attempt to arm the Philippines and embolden it. According to Ruan Zongze, vice-president and senior fellow at the China Institute of International Studies, “No one in this world will try to contain China and no one in this world is capable of containing China...Since the US has adopted this new strategy of returning to the Asia-Pacific region, some countries have made the wrong judgment that the US will encourage them to challenge the sovereignty and territorial integrity of China. This is a misjudgment on their part.”¹³

Taiwan

Taiwan, also referred to as a renegade province by the Chinese, also claims a few islands in the South China Sea. It is beneficiary of the US security under the 1979 Taiwan Relations Act and relies on the US for its military modernisation.¹⁴ It also has a sophisticated military industrial complex; yet, it remains under the fear of the overwhelming Chinese military power and there are a number of missiles in China that are targeted against Taiwan.

Taiwan is in occupation of Taiping Island, also known as Itu Aba, in the Spratly archipelago. It is the largest island among the Spratly Islands and in 2008, the Democratic Progressive Party (DPP) administration invested in the island infrastructure and built a small jetty to

II. The Threat of Militarisation and the Arms Race

berth small vessels of up to 6 tons and an airstrip to land a partially loaded Hercules C-130H transport aircraft in “extremely good” weather conditions.¹⁵ It now plans to modernise and expand these facilities to host coast guard ships. According to Katharine Chang, Taiwan’s representative to Australia, “We propose [a] peace initiative. President Ma [Ying-jeou] has a peace initiative that applies to [the] East China Sea and to [the] South China Sea as well...The major spirit is to shelve the disputes and [achieve] peaceful coexistence, also joined exploration of ... resources, joint development of the region and joint scientific research.”¹⁶

Malaysia

Malaysia possesses a modern navy and its force structure includes submarines, frigates, expeditionary platforms and fighter jets. The Royal Malaysian Navy (RMN) operates the Scorpene class submarines that were acquired from France under a Euro 1.2 billion deal. These Perdana Menteri-class submarines are based in the Borneo region where the RMN has set up five naval facilities.¹⁷ These are Sungai Antu in Sarawak and four in Sabah, i.e. Labuan, Sandakan, Semporna and Sepanggar where RMN HQ Region II is located. These naval facilities are meant for operations in South China Sea as also to counter insurgency originating from the Philippines side. Interestingly, the submarine base is located at Sepanggar, Sabah overlooking the South China Sea clearly suggesting that dangers arise from the Chinese navy in the area.

Malaysia has been operating the MiG-29 air superiority fighters of Russian origin for nearly a decade. Reportedly, these aircraft are due for upgrading and the government is mulling to either modernise these to extend the aircraft’s lifespan or invite tenders for new aircraft such as the Saab’s Gripen and Boeing’s F/A-18E/F Super Hornet.¹⁸ The Royal Malaysian Air Force also operates the Su 30 aircraft.¹⁹ According to Sukhoi, Malaysia signed a US\$100 million deal for technical maintenance and spare parts for the RMAF’s 18 SU-30MKMs.²⁰

Dual Use for Islands

It is evident from the above that the South China Sea claimant states are building military deterrence. They have chosen a sophisticated approach for the augmentation of military infrastructure. Interestingly, the tourism and marine leisure industry has been harnessed to build landing facilities for ships and aircraft. Several islets are being developed as tourism destinations and the leisure industry is being invited to invest. The airstrips are short in length, and can stage smaller aircraft including helicopters, but are not equipped for extended staging facility. Likewise, the ship jetties, berths and safe anchorages support operations by ships which can be safely provided shelter particularly during the typhoon months. Further, these ships can undertake minor repairs and rest& recuperation for the crew.

At least four known airstrips of various sizes exist in the South China Sea among the Spratly group of islands. Rancudo Airfield on the Pagasa is under the control of the Philippines. It is the longest and the landing strip measures 1,300 metres which can facilitate landing by C130 transport aircraft. These aircraft have landed on the island on a regular basis and have exhibited Philippines commitment to safeguard its island territories.

Malaysia occupies the Swallow Reef or Layang Layang and it has developed a marine park. The island has a 600 metre airstrip which can land smaller aircraft. Similarly, Truong Sa Lon, occupied by Vietnam and Taipingdao in control of Taiwan have 600 metre air strips while Brunei has not invested in any such facility.

These airstrips have turned these islands into proverbial ‘unsinkable aircraft carriers’ and it is possible to stage smaller military aircraft of the VSTOL (vertical short takeoff and landing) variety. These serve as deterrent and can be put into combat at short notice till reinforcements come from mainland. According to the Taiwanese Air Force Chief, Liu Kui-li, “Because of the strong likelihood that landing strips at air bases will come under intensive missile attack and [can] be destroyed during a war with China, the air force considers fighters with VSTOL capabilities to be most suitable for Taiwan’s defense... The air force is open to any kind of VSTOL fighters, and is not necessarily aiming for the US Joint Strike Fighters [JSF] that are in develop-

II. The Threat of Militarisation and the Arms Race

ment.”²¹ For both the Philippines and Taiwan, the best option, though very expensive, is the *F-35* Lightning II currently being tested by the US Navy.

Significantly, none of the claimant states have VSTOL aircraft in their inventory and have to rely on foreign sources. Malaysia is likely to explore the possibility of acquiring the Russian MiG 29 9-17K (K for *Korabelnyi* meaning “ship-borne”). It is a carrier-operated aircraft with folding wings, toughened under carriage and an arrestor hook, and can be deployed from shore particularly from shorter or damaged airstrips and is operated by India for its carrier *Vikramaditya*.

There have been reactions from among the claimants that tourism infrastructure on the islands could have severe impact on regional peace. For instance, Vietnam expressed concerns over Chinese tourism plans in the ‘Hoang Sa’ islands. Vietnam’s Foreign Ministry rejected China’s plan to bring tourists to Hoang Sa archipelago and it was noted that “Vietnam has undisputed sovereignty over the Hoang Sa and Truong Sa archipelagos. The fact that China plans to bring tourists to Hoang Sa is a serious violation of Vietnam’s sovereignty and runs counter to the Declaration on the Conduct of Parties in the East Sea. Vietnam demands that China give up that plan.”²² Vietnam also expressed concern over “Taiwan’s construction plan on Truong Sa archipelago [which] is a serious violation of Vietnam’s sovereignty over the archipelago. Vietnam demands that Taiwan cancel this plan and not to further complicate the situation in the East Sea.”²³ Although the exchanges among claimants have been limited to verbal spats, such activity has the potential to escalate into an incident if any claimant attempts to enhance military activity to support tourism.

In essence, the airstrips in Spratly Islands can support VSTOL aircraft. Besides, these aircraft can be deployed from several military and civilian platforms like helicopter carriers, landing ships, and large flat deck merchant ships and container vessels. For instance, The British Royal Navy successfully deployed Sea Harriers from modified merchant vessels during the 1982 Falkland war in the Atlantic.

India and South China Sea

India's interests in the South China Sea can be seen from at least three perspectives. First, India is a strong advocate of diplomacy and political understanding as a tool for negotiations and peaceful resolution of disputes. Second, it is a strong supporter of international law for the unimpeded conduct of maritime commerce at sea and "right of innocent passage" available to the international shipping under the 1982 Law of the Sea. Third, nearly 55 per cent of India's maritime trade transits through the waters of South China Sea, and safety and security of its national flagged vessels is critical for its economic growth.

There is now a history of naval incidents between China and other navies in South China Sea. A recent incident involving the Indian navy and the Chinese navy offers a good example of Chinese assertiveness in the South China Sea. The Indian warship INS Airavat, while on passage from Nha Trang to Hai Phong in Vietnam, was challenged by a Chinese warship and was asked to "identify itself and explain its presence."²⁴ Both sides appear to have downplayed the incident.

Another incident involving India and China merits attention. Beijing issued a demarche to New Delhi stating that the activities of the Indian state owned oil company OVL in South China Sea were illegal "unless [China's] permission is taken for exploration in Blocks 127 and 128."²⁵ The Chinese Foreign Ministry spokesperson noted that "Our consistent position is that we are opposed to any country engaging in oil and gas exploration and development activities in waters under China's jurisdiction. We hope foreign countries will not get involved in the dispute...For countries outside the region, we hope they will respect and support countries in the region to solve this dispute through bilateral channels."²⁶ The Indian government responded by stating that "ONGC Videsh Ltd. has been in Vietnam for quite some time in offshore oil and natural gas exploration and they (Vietnam) are in the process of further expanding cooperation, with Essar Oil Ltd. also being awarded a gas block in Vietnam...This (energy) is one important area of cooperation and we would like this to grow. Our cooperation with Vietnam or with any other country in the world is always as per international laws, norms and conventions." Further the Indian spokesperson stated that India "supports freedom of navigation in the

II. The Threat of Militarisation and the Arms Race

South China Sea and hopes that all parties to the dispute would abide by the 2002 declaration of conduct in the South China Sea.”²⁷ Apparently China has announced that “There is no question about the freedom and safety of navigation in the South China Sea. Countries in and out of the region are beneficiaries.”²⁸

As noted earlier, nearly 50 per cent of Indian trade transits through the South China Sea bound for destinations in the Asia Pacific region and through the Pacific Ocean towards North and South Americas. There are several geoeconomic and geostrategic causal factors that shape India’s interest in South China Sea.

India is an important stakeholder in the evolving security dynamics in South China Sea and any insecurity in the region could adversely impact on India’s trade and the economy. New Delhi’s economic vitality pivots on assured supply of energy and safe and secure trading routes in the region including the Straits of Malacca. It has high stakes in keeping the sea-lanes open in the region.

Concluding Remarks

It is fair to argue that the current security environment in the Spratly Islands is not quite benign. Claimant states continue to modernise their military and look for innovative ways to reinforce their claims. So far, the claimants have done well by keeping the military activity low; approaches such as tourism infrastructure development, with potential for military use, can undermine regional stability.

India favours an amicable settlement of disputes in South China Sea for regional peace and stability as also for its economic development. It would like to work with regional countries to reduce tensions and contribute to regional stability which is critical for Asia’s growth. However, there are fears that South China Sea may become, in the future, an arena for contention and this could adversely impact on India’s economic growth which is inextricably linked to maritime security. It is in this context that it can play a constructive role in the South China Sea.

About the Author

Dr Vijay Sakhujia is Director (Research) at the Indian Council of World Affairs (ICWA), New Delhi. He is also Visiting Senior Research Fellow, Institute of Southeast Asian Studies (ISEAS), Singapore since 2006. A former Indian Navy officer, Dr Sakhujia has been on the research faculty of a number of think tanks in India. He is author of *Asian Maritime Power in the 21st Century: Strategic Transactions - China, India and Southeast Asia* (2011) and *Confidence Building from the Sea: An Indian Initiative* (2001). A co-authored volume titled *Geopolitics of Climate Change in the Bay of Bengal* is under publication in Singapore and a manuscript *Politico-Strategic Developments in the Arctic* is under preparation. Dr Vijay Sakhujia is editor of *India-Vietnam Strategic Partnership: Exploring Vistas for Expanded Cooperation* (2011) and *Reinvigorating IOR-ARC* (2011) and co-editor of *India-Vietnam Relations: Expanding the Partnership in the 21st Century* (2013); *Change in Myanmar* (forthcoming 2013); *India and the European Union: Expanding the Strategic Partnership* (2012), *Fisheries Exploitation in the Indian Ocean: Threats and Opportunities* (2010), and *Nagapattinam to Suvarnadwipa: Reflections on Chola Naval Expeditions to Southeast Asia* (2009).

Notes

¹ “The Rule of Law in the West Philippine Sea Dispute,” *Manila Bulletin*, September 6, 2013.

² “2002 Declaration on the Conduct of Parties in the South China Sea” adopted by the Foreign Ministers of ASEAN and the People’s Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002.

<http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf> (Accessed August 17, 2013)

³ Tarra Quismundo. “Panel to hear PH Case vs China Now Complete” *Philippines Daily Inquirer*, June 26, 2013.

⁴ Andrew James Nathan and Andrew Scobell. *China’s Search for Security* (New York: Colombia University Press, 2012), p. 59.

⁵ “China to Deploy Type 094 Nuclear Subs at Sanya Naval Base.” <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20120524000065&cid=1101> (Accessed July 30, 2013).

⁶ “China extends runway on Woody island in South China Sea.”

II. The Threat of Militarisation and the Arms Race

<http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20120813000052&cid=1101> (Accessed July 30, 2013).

⁷ “Chinese Naval Jet performs First deck Landing.”

http://en.rian.ru/military_news/20121125/177719323.html (Accessed July 30, 2013).

⁸ “Russia to Hand over ‘Black Hole’ Sub to Vietnam in November,” *RIA Novosti*, July 29, 2013.

⁹ “Russia Floats Out Second Gepard Class Frigate for Vietnam.”

http://en.rian.ru/military_news/20100316/158215375.html (Accessed August 23, 2013).

¹⁰ “Vietnam’s Russian Restocking Includes Submarines, Jets, and More.”

<http://www.defenseindustrydaily.com/vietnam-reportedly-set-to-buy-russian-kilo-class-subs-05396/> (Accessed August 23, 2013).

¹¹ “Frances Mangosing”. “BRP Ramon Acaraz Enters PH-Navy.”

<http://globalnation.inquirer.net/82061/brp-ramon-alcaraz-enters-ph-territory-navy> (Accessed August 23, 2013).

¹² Hrvoje Hranjski. Philippines Adds 2nd Coast Guard Cutter to Fleet.”

<http://www.businessweek.com/ap/2013-08-06/philippines-adds-2nd-coast-guard-cutter-to-fleet> (Accessed September 7, 2013).

¹³ “Tokyo, Manila Beef up Naval Fleets Amid China Island Rows,” *South China Morning Post*, August 8, 2013.

¹⁴ Texts of the Taiwan Relations Act, the U.S. - China Communiques, and the “Six Assurances” Updated May 21, 1998, Congressional Research Service, The Library of Congress, US.

¹⁵ Chris Wang. “Expand Itu Aba Airstrip Now : DPP”, *Taipei Times*, May 28, 2013.

¹⁶ J. Michael Cole. “Taiwan’s Power Grab in the South China Sea.”

<http://thediplomat.com/flashpoints-blog/2013/09/04/taiwans-power-grab-in-the-south-china-sea/> (Accessed September 6, 2013).

¹⁷ “Malaysia Submarine Capabilities.” <http://www.nti.org/analysis/articles/malaysia-submarine-capabilities/> (Accessed August 13, 2013).

¹⁸ Leslie Andres. “Russia offers upgrade package for our MiG-29Ns,” *New Strait Times*, June 21, 2013.

¹⁹ “Malaysia’s SU-30MKMs – Will a New Competition Bring More.”

<http://www.defenseindustrydaily.com/malaysia-receives-first-2-su30mkms-03336/> (Accessed August 17, 2013).

²⁰ Ibid.

²¹ Rich Chang. “Air Force Plans to Buy Jets That Need Shorter Runway,” *Taipei Times*, January 23, 2006.

²² “Vietnam Rejects China’s Plan to Bring Tourists to Hoang Sa Archipelago”.

<http://vovworld.vn/en-US/News/Vietnam-rejects-Chinas-plan-to-bring-tourists-to-Hoang-Sa-archipelago/147945.vov> (Accessed September 11, 2013).

²³ Ibid.

²⁴ Indrani Bagchi. “China Harasses Indian Naval Ship on South China Sea,” *The Times of India*, September 2, 2011.

²⁵ Anupama Airy and Jayanth Jacob. “China objects to oil hunt, India says back off”,

Security and Cooperation in the South China Sea

The Hindustan Times, September 15, 2011.

²⁶Jaynth Jacob and Reshma Patil. "Beijing Says Keep Off South China Sea, Delhi Unmoved," *The Hindustan Times*, September 16, 2011.

²⁷Liu Sheng. "India Makes Waves With South China Sea Oil and Gas Exploration," *Global Times*, September 17, 2011.

²⁸"Japan Muddies Water in South China Sea," *Xinhua*, October 10, 2011.

Anton Tsvetov
*Master of International
Relations,
Russian International
Affairs Council*

Petr Tsvetov
*PhD in History
Department for
International
Relations,
Federation Council*



**Probability of Conflict Over the Islands
in the South China Sea:
Arguments For and Against**

In practical terms, one of the principal questions that arises in studying the range of SCS issues is that of the likelihood of a major armed conflict. We have tried to set aside sympathies for any of the countries of the region and resort to unbiased analysis.

The most general factor fostering the emergence of conflict in the SCS is the extensive development of the countries of the region and a parallel growth of their foreign policy ambitions. Many states of the region still find themselves at the industrial stage of development when fresh resources – natural and geographical – are needed to sustain economic growth. Given the relevance of SCS resources for countries like China, Vietnam and the Philippines, such a need is the key factor compelling them to seek to establish control over the water area of the SCS or a portion thereof.

As the US scholars Charles Boehmer and David Sobek have demonstrated using mathematical methods, before the transition towards a post-industrial society the propensity for conflict increases as the economic capacities of the state to carry out major military operations grow. After the transition towards a post-industrial society such a capacity continues to exist but the unwillingness, the disadvantage of entering conflict often outweighs it. For a post-industrial economy, territories and natural resources cease to play such a serious role, a shift occurs in favour of human capital which suffers greatly in conditions of war. That is to say, for an economy based not on industrial but on financial capital and the services sector, the costs of a military conflict strongly outweigh the hypothetical benefit.

But as applied to the SCS, the two most proactive powers – the PRC and Vietnam – strongly depend precisely on industrial production, while for the smaller Vietnamese economy the relative benefit from using the resources of the SCS will be particularly relevant. Besides, in a maritime conflict losses among the civilian population at the initial stage will be minimal, just as damage to the industrial infrastructure. Therefore these countries will possibly be more inclined to provoke incidents at sea. Thus it may be said that these factors are working in favour of the situation turning towards an outbreak of war.

An equally important factor fostering the emergence of conflict is the international environment of the situation at hand. One has to be aware that every country is coping with foreign policy tasks transcending the limits of a banal scramble for resources. This feature is especially relevant for the PRC and the USA. Via the SCS China ensures its own security and reserves for itself a historical sphere of influence and also tries to equalise the degree of political clout with economic development. For the United States, the policy in the SCS is part of a global strategy whose central element is the retention of world leadership, also in the dynamic Asia Pacific. For smaller countries of the region, those that have not yet entered a global level of politics, a successful resolution of territorial disputes in their favour and an assertion of their interests in this water area are often the most important tasks of foreign policy, as this is capable of fixing their place in the new architecture of international relations in the region. Having liberated themselves from colonial and semi-colonial dependence after World War II, the countries of the region are as yet in need of actual entrenchment of their identity, they are especially jealous of any encroachments on their national sovereignty. It is hard to imagine a national leader of any country who would acquiesce to claims on his territory. Therefore for each of the players the political contention in the SCS is also an important agenda of internal policy, this being the case for both democratic and authoritarian states. Nationalistic sentiments in such countries as the PRC, Vietnam and the Philippines are pushing the elites towards more stringent actions with regard to other parties to territorial disputes. This said, it is considered that authoritarian regimes (with many Asian countries being classed as such) are more prone to initiate

II. The Threat of Militarisation and the Arms Race

a conflict, as they can afford to lose a war and not to take heed of the interests of economic elites.

Another factor pushing the parties towards a conflict is the arms race which has already become an objective reality. The arms race becomes economically profitable for numerous weapons exporters, which warms up this dangerous tendency. No prospects for slowing down that race have so far been observed – the greater part of the countries of the region have long-term contracts for the supply of weapons and military equipment, just as far-reaching strategies for a buildup of defence potential.

At the same time one may also isolate a number of factors mitigating the effect of those mentioned above or having an opposite influence, that is to say, conducive to stabilisation of the situation in the region.

The first and the uppermost one is the thesis, difficult to challenge, that none of the parties can be interested in a major armed conflict in the region. Presently, wars are waged not with the aim of winning a complete victory in a classic military sense – with a destruction of the adversary and an occupation of his territory. Military operations are conducted only in case if the expected benefit will be greater than the expected costs. Surely, this paradigm can be ignored against a strong emotional background; however, this scarcely refers to this region – the countries of the Confucian zone are known for pragmatism of their political actions. In addition, a military conflict will have extremely negative consequences for regional stability inasmuch as other smoldering conflicts may erupt within the SEA states and in Northeast Asia.

A still broader range of international actors is interested in keeping stability for economic reasons. This is especially true for economic interdependence between the PRC, the USA and the SEA countries. It is hard to disagree with an assertion of a number of scholars that the interrelationship of the economies most often restrains the parties from military confrontation. Such an influence is even stronger if in these economies the share of foreign trade in the GDP is great, which is true for most of the countries of the region. Given the already mentioned thesis that such interrelationship “works” better if the countries that have well-developed democratic institutions, one has to make one ad-

justment to take account of regional specifics. In a democratic state a military conflict will not be profitable to economic elites which thanks to the instruments of public influence on government may exert impact on the foreign policy of the country's leadership. Therefore it is presumed that an authoritarian regime may ignore the aspirations of the business circles. However, in such countries as the PRC and Vietnam there occurs a virtual coalescence of the party, i. e. political, and the economic elite, hence the foreign policy decisions are taken by persons close to large businesses. Moreover, the authority carried by the Communist parties of these countries largely rests exactly upon the capacity to keep the rates of economic growth at a high level, therefore for these countries the economic costs of a military conflict will play a colossal role, especially in view of the importance of the current stage of development.

Reputational costs from the conflict will also be enormous for each of the parties. A setback in a peaceful resolution of the territorial disputes will cause a ruin of the image of the United States as a balancing power, of the PRC as a "peaceful hegemon" and of ASEAN as the main regional format of settlement.

It is also important to take into account the specific features of Eastern political culture. Professor of the University of South California David Kang believes that the model of interaction of the countries of East Asia differs strongly from that which exists in the West. In his opinion, as distinct from formal equality of Western countries, based on the principles of the Westphalian Peace, in the East the countries are formally unequal and there exists a certain form of hierarchy with China at its head. However, in practice the leaders converse with each other on equal terms and the PRC plays the role of regulator and stabiliser in these relations.

The cultural factor, which is of no small importance, exerts in addition an important psychological impact. The specific features of the Eastern mode of thinking, unlike the Western, consist in a tenet that there is nothing unequivocal. For an individual belonging to the Confucian culture, any phenomenon has both positive and negative sides, Yang and Yin, which are manifested differently at different times.

II. The Threat of Militarisation and the Arms Race

On the pages of Foreign Policy magazine, Evan Feigenbaum and Robert Manning express surprise at how “the two Asias” coexist – the one where active economic integration is progressing and the one where tension in the security field is intensifying. From the Western standpoint, political differences should overshadow economic cooperation as well. However, the Eastern mode of thinking makes it possible not to interlink these two spheres, thus creating positive ties in parallel with the negative element in relations. This is an example of Eastern pragmatism, the same which allows Vietnam to become closer to the United States despite the highly complex history of bilateral relations clouded by war.

The geographical specificity implying the decisive role of the naval forces in the event of a military confrontation, besides the negative influence, has a restraining influence as well. Compared to land and air battles, sea battles proceed rather slowly, since the velocity of ship movement is relatively small. Besides, ships are unable to occupy large territories, while the complexity and high cost of their construction and exploitation determines their small quantity. Some experts believe that for these reasons in case of outbreak of a crisis the diplomats of the conflicting parties and, indeed, the world community as a whole will have considerably more time to avert a full-scale military confrontation.

The arms race in the region, which outwardly causes such anxiety, also has an ambivalent impact on the likelihood of conflict. First, the experience of the biggest arms race (during the Cold War) suggests that an escalation to armed confrontation did not take place precisely because potential damage from such a confrontation would have been so great that it would reduce to the minimum any gain from victory. Second, without delving into political theory, one can briefly make a point that the very fact of the existence of an arms race does not betoken a conflict. One has to be anxious at a time when the states start in their military expenditures to overstep the limits of the volume accessible to them. That is to say, when for armaments production it becomes necessary to cut social expenditures and investments in the economy. A growth in military spending in the countries of the SEA region in absolute terms is determined by the very growth of their

Security and Cooperation in the South China Sea

economies as well as the renewal of obsolete specimens of military hardware. Without doubt, the new economies want to have a possibility to defend the achievements of the national economy, but not to the detriment of the economy itself. And if we examine the graph of variance of the average share of military expenditure as percentage of the GDP over the recent ten to fifteen years, we shall see a virtually even line, even slightly sloping downwards.

And, finally, some thoughts on the most widely discussed standoff – the one between Vietnam and China. In private conversations, many Vietnamese speak of a covert aggression of China, citing as examples the facts of construction of permanent settlements on individual islands, and so on. But let us not forget about the following essential element: in both China and Vietnam Communists are in power, they have a very vast field of coincidence of interests, a common party and ideological affiliation is for them too important to sacrifice it for any islands. A fact of war between Communists may inflict a greater image damage to either of them than dubious benefits from victory in a war over islands in the ocean. Consequently, it seems that even if a full-scale armed conflict between Vietnam and China does occur, it will be far from the first one in the SCS.

One may speak with assurance that these pros and cons will operate only in prospect of the forthcoming twenty to thirty years. Some futurologists forecast a break-up of China in the mid-21st century into separate regions. If this or any other Black Swan events comes to pass, the course of events in the SCS may follow another scenario.

Gregory M. Lokshin

PhD in History

*Senior Researcher at the Centre for the Study
of Vietnam and ASEAN, RAS Institute for the
Far East*



**Vietnam-China Relations: the Tyranny
of Geography and Common Sense**

The Visible Paradox

In current relations between Vietnam and China we are dealing with a striking paradox. On the one hand, all these past years have witnessed constant tensions between these two states over territorial disputes in the South China Sea (hereinafter abbreviated to SCS), which in Vietnam is called the East Sea.¹ On the other hand, the two ruling Communist Parties invariably call their relations fraternal, although in fact it has been far from always the case. The ideological proximity of the ruling parties and the community of political and social systems leave a perceptible mark on the character of Vietnam-China relations.

Both ruling Communist Parties maintain regular contacts at all levels, segregating disputes on sovereignty in the SCS into a separate “basket” and taking care to prevent them from having an impact upon the whole complex of bilateral relations. In March 1999, the leaders of both parties at a meeting in Peking adopted the so-called “Directive of 16 Golden Characters” that called for building “long-term, enduring and future-oriented good-neighbourly relations of all-round cooperation” and pledged to build their relations in the spirit of “four goods,” which meant “good neighbours, good friends, good comrades and good partners.” In June 2008, at the next summit meeting these relations were raised to the level of “strategic partnership and cooperation.”

At the same time it has long been known that ideological proximity does not eliminate variances in national and state interests of countries and the two ruling parties. The experience of their common history testifies that the CPC in relations with Vietnam invariably puts China’s national and state interests first as the key, overriding ones, to

which all the rest should conform and serve them. Differences in understanding these interests more than once engendered grave antagonisms between the two ruling parties. Consequently, differences and even antagonisms in understanding the interests of the state, party and people are inevitable also within the leaderships of both parties.

The visible paradox in relations between the two neighbours can only be understood with due regard to the Confucian philosophy of foreign policy, notably of China, but in many respects of Vietnam, too. It is invariably built on a combination of opposites, on harmonisation of what in our view can in no way be harmonised. As a weaker state, Vietnam has for many years been resorting to a tactic known in the East since ancient times: the stronger expects respect and deference for himself, while the weaker does not spare words for this but expects his autonomy to be likewise observed in the process.

Vietnam's policies in the strategic triangle China – Vietnam – the USA in which it has found itself graphically demonstrates the realisation in practice of the foreign policy approved by the XI congress of the CPV in January 2011. It consists in the steady conduct of an independent, sovereign foreign policy with a simultaneous multidirectionality and diversification of international relations. The CPV builds its foreign policy and relations with other states on the basis of the ideological conception of “partnership (*doi tac*) and opposition (*doi tuong*)” adopted by the party. In keeping with this conception, relations with China contain elements of both. This pragmatic approach also largely sheds light on the visible paradox in Vietnam's relations with China.

The Tyranny of Geography and Common Sense

Looking at the map, some researchers imagine China as a monster cock that holds Korea in its beak while resting its claws upon Vietnam unto whose lot it befell to bear the whole of China's load on its shoulders, a predicament Vietnam cannot get away from.²

Geographically, Vietnam is a relatively small SEA country living in the shadow of its giant neighbour. China is 29 times greater in territory, while Vietnam's population equals that of a single average province of China. The gigantic and many times more mighty China has

II. The Threat of Militarisation and the Arms Race

throughout history repeatedly presented the gravest threat to Vietnam's security. Owing to its explosive surge in recent decades, it has increased the gap in economic and military might even more. China's military budget, for instance, in 2012 constituted US\$105 billion, whereas that of Vietnam barely exceeded \$3.3 billion.³

Vietnam is consigned to a so-called "tyranny of geography,"⁴ whereby it has no choice but to learn to cast in its lot with neighbouring China at every turn of its history. A large and mighty country is prone to exert influence upon a smaller neighbour, just as equally natural is the desire of a smaller country to oppose this influence in every way and preserve its independence - until both of them reach a mutually satisfactory solution, some kind of a *modus vivendi*.

Whereas a combination of geographical and historical factors generates mistrust on the part of Vietnam, defining the character of Vietnam-China relations, China's actions since 2008 have intensified it still more. For one thing, China has considerably speeded up the construction of its naval forces in the SCS just as certain Chinese websites have begun to publish all kinds of "plans for the invasion" of Vietnam. For another, it has started to make warnings to foreign companies carrying out geological prospecting work in the areas of the exclusive economic zone (EEZ) which is due to Vietnam in accordance with the 1982 UN Convention on the Law of the Seas signed and ratified by both countries.

Chinese-Vietnamese relations are asymmetrical. Vietnam as the weaker state pursues a strategy of ensuring its independence by employing a whole number of expedients called upon to assure China of admitting its dominant position in East Asia and in return to secure from it a recognition of a legitimate sphere of its autonomy. This strategy is aimed at getting China involved in structured relations in order to impart China's behaviour in bilateral relations a more predictable character and lower the risk of an armed conflict over territorial disputes in the SCS. On the whole, this policy does not too much differ from the general course of small and medium SEA states that joined ASEAN, which is called exactly thus – involvement and hedging risks. Thus Vietnam, like other SEA countries, has, so to speak, to learn to

dance with an elephant, adapting to China's powerful rise and even, if possible, drawing certain tangible benefits therefrom.

These relations of asymmetry, as shown by experience, may last sufficiently long, as they are based on lessons of the past, including quite recent one. Thus, for instance, the "hostile asymmetry" of Chinese-Vietnamese relations in the period of standoff over Cambodia in the 1980s lead them into a blind alley, when both sides became aware that neither of them could win. And this led to normalisation by negotiation in the 1990-91, where the parties came to a recognition and acceptance of each other's interests. The normalcy of relations does not eliminate asymmetry, something which the other side expects from them. The stronger side expects deference and the weaker one a recognition of its autonomy. Such an asymmetry can keep peaceful relations long enough if it is consistently and carefully sustained by both sides.

On the whole, Vietnam, despite the historically rooted mistrust, gives every encouragement to the development of cooperation with China and at the same time resolutely opposes it in everything that concerns the unending dispute over sovereignty in the SCS. However, it invariably seeks to segregate disputes on sovereignty, as it were, into a separate basket, precluding their negative impact upon bilateral relations in other domains. This is clearly manifested in interparty and interstate relations, commercial, economic and cultural cooperation.

In 2008-09, contradictions in the SCS began to mount drastically and soon became the main challenge and threat to Vietnam-China relations. This was attended by a dramatic surge in nationalistic sentiments both in China and among its neighbours. Over the years that passed since then, anti-Chinese nationalism has turned into a serious political force in Vietnam as well. Every incident with Vietnamese fishing or research vessels in the SCS, every step by the Chinese authorities that demonstrated who was master in that sea and on its islands, every sharp invective in the Chinese mass media would evoke a tit-for-tat response in public opinion, triggering stormy youth demonstrations in front of Chinese missions in Hanoi and Ho Chi Minh. The country's leadership, trying to prevent an outburst of anti-Chinese feeling in the country, found itself in an awkward situation. One had to back patriotic appeals to defend 'every inch of one's land,' to encourage groups of

II. The Threat of Militarisation and the Arms Race

youth setting off to work on the islands, while, on the other hand, it was necessary to forestall the further fanning of nationalism and anti-China demonstrations that threatened to furnish an occasion for unpredictable retaliatory steps.

On top of it all came severe outside pressure on the part of the numerous Vietnamese diaspora in the United States, France, Australia, and other countries. A section of that diaspora hostile to the SRV is making active use of the fact that the legitimacy of the one-party system installed in Vietnam after 1975 is based upon the incontestably leading role of Ho Chi Minh's party in the victory and the achievement of the nation's independence. And now they are accusing this party of capitulation to China's expansion and treachery to national interests.

But all this did not cause paranoia among the party and state leadership. In response to the toughening of Chinese policies in the SCS, the Vietnamese leaders reinforced the country's capacity to defend its national interests, carried out massive purchases of modern weapons, including submarines and up-to-date multi-purpose fighters, set up their own armed maritime police and took steps to ensure the security of their fishermen and foreign research vessels operating in the SCS under contracts with Vietnamese oil and gas companies.

Both sides have much to lose if a reversion to "hostile asymmetry" due to territorial disputes in the SCS were to be allowed. For Vietnam as the weaker party, the "tyranny of geography" and mere common sense dictate the nation's leadership the need for greater resilience and skilful use of all levers and forms of cooperation in upholding its interests via party, state, military structures, and multilateral institutions, as well as by mobilising and enlisting world public opinion on its side according to the so-called "second track."

The Chief Mechanisms of Cooperation

The primary concern of the Vietnamese leadership is to use all levers of diplomacy, economic relations and military ties in order to preserve its autonomy and independence, so as not to find itself fully drawn into the orbit of Chinese policies. China and Vietnam hold regular meetings of party leaders and government officials at all levels right up to the highest. As a rule, they are carefully prepared, making it pos-

Security and Cooperation in the South China Sea

sible to carry out an exchange of views and engage in decision-making on a wide range of issues. In 2006, the parties set up a Joint Steering Committee for Bilateral Cooperation at vice-premier level, called upon to coordinate all aspects of their relationship. It meets annually, alternately in China and Vietnam. In 2011, the parties signed a Programme for Building Strategic Relations and Partnership between the governments of China and Vietnam, and also a five-year Plan for the Development of Trade and Economic Cooperation between China and Vietnam for 2012-2016.

The top-level interparty and interstate relations are bolstered by an exchange of numerous delegations from assorted departments of central committees of the ruling parties and provincial authorities, and by joint seminars on various ideological and theoretical questions.

Since 1992, contacts have resumed between defence ministries, which since 2005 have turned into annual consultations and since 2010 take the form of dialogues on strategic questions at the level of deputy ministers.

Vietnam makes extensive use of top and high-level party and state leaders primarily as an important diplomatic instrument for codifying its relations with China. With their Chinese colleagues they sign joint statements, agreements and protocols wherein they always lay special emphasis on the significance and mutually beneficial character of close relations in the past, as though in contrast to present-day contrarities. They have secured agreement by the Chinese side to remove all thorny issues from the agenda of summit meetings, entrusting their discussion and the search for solutions to them to various working groups at technical expert level, while examining and tackling easier problems, progressing to more arduous ones step by step. Vietnamese diplomacy is putting emphasis on common interests, as, for instance, on transforming the land border into a normal and safe one, so that both sides could profit by transborder trade. As a result, important agreements were reached on demarcation of the land border and the northern part of the Gulf of Tonkin (Gulf of Bac Bo in Vietnamese).

Another strategic task of Vietnamese diplomacy is to promote multilateral efforts aimed at entangling China into a network of cooperative relations with cooperation in various fields. For this purpose

II. The Threat of Militarisation and the Arms Race

diverse regional multilateral institutions are being used, among them ASEAN, the ARF and ASEAN + 3⁵, defence ministers' meetings (ASEAN + 8⁶) and East Asia summits. In 2010, Vietnam made very successful use of its ASEAN presidency with a view – China's resistance notwithstanding – to largely internationalise the problem of the South China Sea. Now China is forced to discuss the problems of observance of the 2002 Declaration on the Conduct of Parties in the SCS with all the ASEAN partners as part of a working group, as well as to start consultations on converting that Declaration into a legally binding Code.

A visit to China in October 2011 by the CPV CC's Secretary-General Nguyen Phu Trong, just elected at the 11th party congress, made a big difference. This made it possible – for a certain time - to relax the dangerously escalating tension between the two neighbours. A Joint Statement adopted by the parties spoke of their intention to continue close cooperation between the CPC and the CPV. It was envisaged to considerably expand military cooperation by developing contacts between the military leaders and establishing direct communication – a “hot line” between the two defence ministries, cooperation in personnel training and exchanges of young officers, joint patrolling in border areas and joint maritime patrols in the Gulf of Bac Bo, as well as mutual port visits by warships. Great attention was paid to joint measures against transborder crime, as also to “coordinating activities and mutual support in maintaining public order in their countries,” which to a certain extent reflected fears that arose among both parties due to events of the “Arab Spring” taking place in the Middle East.

Among a variety of agreements signed during the visit was a six-paragraph Statement on the Procedure for the Settlement of Disputed Problems at Sea.⁷ In it, the parties for the first time resolved the multi-year controversy on how SCS problems should be discussed: in a multilateral format, as ASEAN countries insist, or strictly individually, separately with each country involved, as China invariably suggests. Based on the real situation and common sense, the parties agreed that there are such SCS problems that can only be settled by everyone together, but there are also others, e. g. the questions of sovereignty and

maritime boundaries, that can only be settled by the countries concerned – and by them alone.

At the same time Vietnam's position regarding sovereignty has not changed. Concurrently with the visit by the CPV Secretary-General to China, SRV President Truong Tan Sang paid a state visit to India where he, in particular, made an arrangement for the participation of Indian companies in prospecting and exploitation of Vietnam's offshore oil deposits. Reports to this effect caused an angry reaction in the Chinese media. In addition, on 25 November the same year, speaking in the SRV National Assembly, Prime Minister Nguyen Tan Dung for the first time explicitly demanded negotiations on the restitution of the Paracel Islands annexed from Vietnam by force in 1974. This indicated that political concessions made earlier failed to provoke China's reciprocal reaction. At the same time President Truong Tan Sang made an ostentatious trip to northern provinces at the border with the PRC where in 1979 the principal developments in the war with China were taking place.

China's 'Soft Power' in Vietnam

For its part, China is also putting exceedingly strong pressure upon Vietnam at all levels. Interparty relations afford China an especially important channel of influence in this respect. The Vietnamese model of economic development to a large extent, albeit not totally, borrows from China's experience. Foreign policy also largely rests upon certain guidelines of the CPC, most notably the general assessment of modern era, and upon the formula, conventional in the CPC, of "peace, cooperation and development" intended to characterise the leading strategic tendencies in the APR. The CPV likewise adapts Chinese ideology to its own needs. In particular, added lock, stock and barrel to CPV armoury are tenets on the threat of the so-called "peaceful evolution" that stems from the West and the United States above all, on the character of the party as the party of the whole people, and many others.

In short, it may be said that no other state enjoys such clout in Vietnam as China. It looks as though no significant decision is taken in Hanoi without regard for the way it will be understood in Peking and the response it may elicit.

II. The Threat of Militarisation and the Arms Race

Ideologically, the SRV leadership feels more comfortable with their Chinese counterparts than, say, with American politicians. Economically, China is the number one trading partner, a source of investment, financial assistance, and a development model. The chief impediment for good relations are differences over territorial problems.

Since the moment of resumption of bilateral trade with China, the SRV has found itself under pressure of a mighty inflow of Chinese goods, cheap but far from good quality, that inundated the whole country through the channels of both official commerce and transborder trade - exempted from duties - with China's neighbouring provinces.

Since the time when relations were normalised in 1991, bilateral trade volume has increased more than a thousand times. By 2012 it has reached US \$41.18 billion. In the process, Vietnam has exported to China goods to the amount of US\$12.4 billion, but has imported goods to the amount of US\$28.4 billion. Thus Vietnam's deficit has exceeded \$16 billion, which makes up more than 10 percent of the nation's entire GDP.⁸

China today is Vietnam's main trading partner. It furnishes Vietnam with machines and equipment, oil refining products, steel, and home electronics. Vietnam supplies crude oil, coal, rubber and rubber articles, and agricultural products to China. Towards 2015, when China's agreement with ASEAN on the creation of a free trade zone will extend to Vietnam, the parties intend to bring the trade volume up to US\$60 billion. Understanding to this effect had been reached back in December 2011, during a visit to Vietnam of the CPC CC's Secretary-General Xi Jinping, then Vice-President of the PRC and candidate to the post of the CPC CC's Secretary-General. Since then, this figure has been reiterated time and again in many official documents.

China's huge trade surplus has been discussed at every summit meeting in recent years. Party and government leaders concur that every effort should be applied to eliminate it. But how? The structure of Vietnamese exports hardly changes from year to year and no serious changes are forthcoming in the foreseeable future. Vietnamese producers cannot so far supply the Chinese market with articles of such quality as to be competitive there. Neither does Vietnam show an inclination to limit imports from China. It is heavily dependent on China for

Security and Cooperation in the South China Sea

the imports of primary products and materials for many branches of its industry.

In order to dampen the effects of such a trade imbalance at least to a certain extent, the Vietnamese leadership is pressing for an increase in Chinese investment. But the total volume of this investment remains very modest compared to other countries (ranking 14th) and does not exceed US\$3 billion. Although the share of FDI from China is not great, Chinese companies have 90 percent of the main EPC (Engineering, Procurement and Construction) contracts for construction of industrial enterprises, transport facilities and especially coal-fired thermal power stations in Vietnam. Chinese contractors enjoy advantages, as they offer cheap technologies and promise to help win funding from Chinese banks. It is true that these cheap technologies cause pollution of the environment and many other negative consequences, notably the latent use of Chinese workforce which frequently provokes strong social unrest in Vietnam. Thus, for instance, a tentative to attract Chinese capital to the development of lucrative bauxite deposits in the Central Highlands in 2011-12 drew a powerful surge of protests. The nation's geostrategic interests came under threat. As people used to say during the war: he who controls the Central Highlands, controls the whole of Vietnam. Under pressure from below, the government had to retreat.

Overall, this economic vulnerability and dependence on China present another extremely dangerous threat, even more conspicuous than the military one. Once China decides to start an "economic war," Vietnam may be in for a disaster. But this circumstance may work as a blessing in disguise: among other things, it generates economic interdependence that becomes a constraining factor for a potential conflict.

As distinct from other countries in the region, in Vietnam the one-and-a-half-million-strong Chinese diaspora does not occupy a dominant position in the country's economy, but the Chinese have found themselves among that part of the population which has stood to gain a lot from reform policies and renewal. Among the Chinese there appeared quite a few enormously affluent entrepreneurs who are playing a salient role in the economic cooperation between the two nations.

II. The Threat of Militarisation and the Arms Race

Culturally, Vietnam is considered to be the most Sinified country in SEA compared to other countries of the region where the influence of Indian culture still lingers. This has a deep ancestry. But with the rise of China as a mighty power, Vietnam has again confronted a potent wave of an offensive of Chinese culture across a very broad front. It is called the “charm offensive.” Beginning in 1990, it has been subjected to a so-called “cultural tsunami” caused by the successful inundation of the Vietnamese TV by innumerable Chinese TV films, motion picture films, music and hundreds of novels and novellettes with roots going back to Chinese culture.

The high prevalence of Chinese writing was explained in part not only by the absence or deficit of local works after long years of war, but also by the attractiveness of Chinese works for the broad masses of viewers and readers who willingly accepted them. As a result, the Vietnamese spectator was better acquainted with many personages of Chinese history than with that of his/her own country.

In May 2010, the government was compelled to issue a decree whereby Vietnamese films in the film distribution network and on TV were to make up not less than 30-50 percent of the total.⁹

China’s “soft power” in Vietnam has run into serious obstacles. Confucius institutes which have been inaugurated by China in many of the world’s countries were never founded in Vietnam and are absent to this day, although no official ban on them has been imposed. In Vietnam there is no propaganda of Confucianism of any sort. In place of it, there is a vigorous effort to inculcate “Ho Chi Minh ideas” in public life. Thus the historically inherited traditions of resistance to Chinese cultural expansion are still strong enough.

A Visit by SRV President Truong Tan Sang to China

Relations with China after the visit by the CPV CC’s Secretary-General in October 2011 became frozen due to rekindled disputes over sovereignty in the SCS. China flatly refused to hold any negotiations on the Paracel Islands. It was prepared to negotiate on the Spratly Archipelago, not with a view to return to Vietnam the islands it occupied but rather to place on record certain relations with it in that region.

Security and Cooperation in the South China Sea

There was no mention at all about the Paracel Islands. The Vietnamese acceded to that, too. But in the end the talks got nowhere.

Neither did the leadership change that took place in the PRC lead to an expected relaxation of tensions. The longstanding dispute entered a stage of “psychological war” and to a large extent turned into an internal policy issue for both countries. The new generation of Chinese leaders was in no haste to soften the hard-line policy in the SCS and the principle of “action – counteraction” clearly began to prevail there. In January 2013, China introduced foreign passports with a map printed therein that depicted the entire SCS water area claimed by China as its territory. Later on a map was officially published showing the well-known nine-dash U-shape line, this time in the form of a continuous line of state border. In March, the authorities of Hainan province issued a decree whereby the Chinese coastguard services could stop for inspection any foreign vessel within the limits of the U-shape line. That was also when once again a Vietnamese geological survey vessel had its cable cut within Vietnam’s EEZ and an attack on fishermen was made near the Paracel Islands.

However, under the new PRC leadership the most immediate issue was one of disputes with the Philippines that brought an action against China in the Arbitral Tribunal set up in accordance with the 1982 Convention on the Law of the Sea, and a new round of dispute with Japan started over the islands in the East China Sea. In order to avoid confrontation on all fronts at once, Peking may have decided to ease pressure on the Vietnamese track.

In this setting, SRV President Truong Tan Sang paid a visit to the PRC on 19-21 June 2013. It was the first state visit by a high-ranking leader of that country to China after the latter’s change of leadership. On the whole, the Chinese leadership and mass media created a more peaceful atmosphere for talks with Vietnam than with regard to China’s other opponent in the dispute over sovereignty in the SCS - the Philippines.

This time the meeting passed without routine assurances of “unbreakable fraternal friendship.” In a Common Statement adopted following the talks, the parties confined themselves to an affirmation of the fact that in spite of all the problems and obstacles they, in the

II. The Threat of Militarisation and the Arms Race

words of President Xi Jinping, “must steadily follow the path of friendly cooperation.” The Vietnamese president likewise affirmed readiness toward this, stating that in the context of the changing international situation it was necessary to “deepen mutual trust, resolve difficulties in a proper way, maintain and develop traditional friendship.”¹⁰

The parties reached a mutual consensus that China and Vietnam were passing a key period of socioeconomic development. In the development of either side they perceive a chance for their own progress. The parties agreed to “bring about a common programme of promoting relations of all-round strategic partnership.” In addition, they agreed to regulate the trade balance so as to reduce Vietnam’s huge deficit. However, as before they did not indicate how this would be done.

As has already become conventional at summit meetings between Vietnamese and Chinese leaders, they limited the agenda of negotiations on the SCS only to the questions of bilateral relations, avoiding a discussion of general problems like the famous U-shape line, whereby China claims 80 percent of the water area, all islands included.

Speaking of SCS problems, the Chinese leader called the safeguarding of stability and the promotion of cooperation the main task, for which it was necessary “to hold bilateral negotiations and friendly consultations, not to take any measures that would complicate and broaden the scope of the dispute, and to avoid internationalisation of that problem.” The Vietnamese president, for his part, reminded his counterpart of earlier arrangements concerning peaceful settlement of disputes, stressing the need to respect international law and most notably the 1982 Convention on the Law of the Sea which secures for Vietnam a 200-mile exclusive economic zone and continental shelf.

The Statement adopted spoke only of the observance of the 2002 Declaration on the Conduct of Parties but did not even mention the forthcoming consultations on transforming that Declaration into a juridically binding Code, the object of efforts by Vietnam and all ASEAN countries then as now. This was perceived by many observers as a major concession to China which was clearly dragging its feet over the start of negotiations on any Code that limited its freedom of action in the SCS.

Security and Cooperation in the South China Sea

The presidents of China and Vietnam were present at the signing of ten varied documents on cooperation. Among these, the greatest attention was attracted by an agreement between agriculture ministries on the establishment of a “hot line of communication” to resolve incidents with fishermen at sea as well as an agreement between the Chinese oil corporation CNOOC and the Vietnamese PetroVietnam on changes in contracts on joint conduct of exploration and production of oil and natural gas in the agreed area of the Gulf of Tonkin.

That was already the third “hot line” in addition to those established earlier between defence and foreign ministries. Nonetheless, the agreement itself gives evidence that the questions of fishing, on which food security of all littoral states largely depends, have come to the fore in disputes over sovereignty over the islands and the sea water area. A decrease in seafood harvesting in littoral zones is pushing Vietnam’s fishing fleet still further into the sea. The Paracel Islands occupied by China since 1974 have since olden times been the main fishing ground for fishermen of several provinces of Central Vietnam. It is here that most conflicts with paramilitary ships of the Chinese fishery supervising bodies occur. Since 2009, China has begun to impose a ban on fishing in these and other fishery zones of the SCS from May till August each year. But this is the most convenient time for fishery in terms of weather conditions, when the sea is mostly calm. Chinese patrol vessels at this time began to detain Vietnamese fishermen, confiscating catch, tackle and imposing heavy fines. China, for its part, is sending to these areas of traditional fishing entire flotillas of its fishery vessels under protection of paramilitary ships of the fishery supervision inspectorate and other paramilitary maritime services, which happen to be rather numerous and which act at their discretion and seemingly out of any control of the central authorities.

As a result of the talks, the parties, as formulated in the Joint Statement, “deemed it necessary to coordinate their action on all problems of fishing, take effective measures to promote fisheries, treat fishermen humanely in accordance with friendly relations between the two countries, as well as with current norms of international law and customs.”¹¹ Meanwhile, it remained unclear if the Chinese side acknowledged the right of Vietnamese fishermen to fish in the Paracel Islands

II. The Threat of Militarisation and the Arms Race

area where all the incidents took place, or if that meant only that Chinese patrol ships in this area will “treat humanely” Vietnamese fishermen when detaining them. However, the ink was barely dry on that document when as early as the 6th of July two Vietnamese schooners were again intercepted, while “humaneness” was manifested in the fact that they were released after confiscation of the whole catch and the nets.

As for the agreement on joint exploration of oil and gas deposits in the Gulf of Tonkin, it does not refer to the questions of sovereignty either in the gulf or still less in the “disputed” areas of the SCS. This is already the fourth agreement between PetroVietnam corporation and the Chinese CNOOC offshore oil corporation on joint oil-field exploration in the northern part of the Gulf of Tonkin where a demarcation of the water area was carried out in 2012. It makes provision for the extension of the current zone of joint operations almost threefold in equal shares from both sides from the present 1,500 sq. km to 4,076 sq. km. The agreement does not bear upon the parties’ sovereignty in the gulf. It deals not only with exploration but also joint exploitation of deposits that will be discovered. The agreement is valid until 2016.¹²

The visit by the Vietnamese president to China has confirmed that for all flare-ups between the two countries the Vietnamese leadership manifests a responsible approach and does not seek to antagonise relations with the PRC, making certain concessions if needed. Speaking at an election meeting in Ho Chi Minh City following his visit to China, President Sang emphasised that on a number of issues positive results were achieved, but generally disputes in the SCS, according to him, were extremely complicated and it was impossible to resolve them in a single moment, as the parties’ positions were too far from each other, and therefore it was “required to calmly and carefully examine that problem on the basis of preserving independence and sovereignty, on the basis of our course which we do not hide from anyone. For a single visit and a single meeting it is impossible to resolve everything. The problem must be settled gradually, step by step.”¹³ He was echoed by Foreign Minister Pham Binh Minh, who noted at a press conference in Hanoi that Vietnam attaches a special significance to relations with China and intends jointly with the Chinese side to put into practice the

consensus reached by the leaders of the two states, sustain exchange of visits at a high level, promote practical cooperation in all fields, develop humanitarian exchanges, and realise arrangements reached on the principles of resolution of issues at sea existing between the two countries.¹⁴

A Future Outlook on Vietnam-China Relations

Thus, as the facts show, Vietnam cannot afford to burn bridges in relations with China. It was and will forever remain its neighbour. Hence it is not at all in Vietnam's interests to have a bitter foe in the person of China. A threat of war is catastrophic for both sides. For Vietnam it would spell an end to all its plans for modernisation and integration into the regional and world economy. On the other hand, dependence on investment from China – the country's main trading partner, strongly increased amidst the world economic crisis, prompts Vietnam to persistently seek a peaceful political and mutually acceptable settlement of territorial disputes with China. Hanoi's entire foreign policy pursues one objective, the most important for it – to persuade China that cooperation with that nation will yield China more substantial results than confrontation.

One of the leading ideologists of the SRV's military policy, Deputy Defence Minister, Senior Lieutenant General Nguyen Chi Vinh in an interview with a BBC correspondent on the sidelines of the 11th Shangri-La Dialogue in Singapore on 3 June 2012 formulated that policy in a soldierlike manner, exactly and unequivocally: "While defending its sovereignty and territorial integrity, Vietnam strives to ensure peace, friendly relations and their stage-by-stage development with neighbouring countries, first and foremost with China. Therefore it cannot pose the problems of the SCS beyond the framework of general relations with China. ...Our aim is to make everyone understand, when we are dealing with the Spratlys or the Paracel Islands, with the East Sea or the concepts of an exclusive economic zone, **Vietnam is doing and will be doing everything possible to protect its sovereignty but do it so as not to bring a new catastrophe, i. e. war, upon its people**"¹⁵ (emphasis mine – G. L.).

II. The Threat of Militarisation and the Arms Race

The main element in Vietnam's policy is the observance of the current international law and its use in diplomacy as the chief means of maintaining stability in the SCS and promoting its interests and rights prescribed by the 1982 Convention on the Law of the Sea.

A relative community of Communist ideology is an important thread that binds the two ruling Communist Parties of China and Vietnam. But this does not give grounds for optimistic expectations of the development of these relations. History has proven that ideology is not a decisive factor ensuring longstanding and durable ties between the two states. National interests alone are such a factor.

The future of Vietnamese-Chinese relations depends on the interaction of two constant factors (history and geography) and two variable ones (China's internal and foreign policy and the changing relations of major powers: the USA-China, China-Japan, China-India) and, I would add, China-Russia. Internal policy considerations will most likely become decisive for both sides in this question, as their foreign policy is inseparably linked with internal policy and is a continuation of the latter.

If a new generation of Chinese leaders manages to cope with highly complex problems involved in securing the country's economic growth and resolving a number of longstanding contradictions of socio-economic development, they will succeed in mitigating the disquiet generated by the falling GDP growth rates and stanching the rising wave of nationalism at the domestic level, while using it selectively as an instrument of government policy. But if they suffer a defeat along that road and China really experiences grave economic difficulties, two dangers may arise: Xi Jinping and his team may yield to the demands of nationalists in the hope of distracting them from domestic problems or lose the possibility of resistance to them altogether. In both cases, a more aggressive foreign policy can spell a disaster for China's international standing, given the growing number of countries already feeling discomfort from China's toughened regional policies.

The strategic and economic interests of China override all disputed problems of law and sovereignty in the SCS zone. The entire western part of the Pacific is of special significance for China, which is trying to break free from the closed box (zone) with US domination at sea

Security and Cooperation in the South China Sea

and in the air. Intensified tensions in the SCS, in the opinion of Chinese political scientists and propagandists, are a result of US “swing” toward the APR and the fact that the small and medium states of the region have felt encouragement on the part of the United States. And therefore no amount of assurances by American politicians that this “swing” is in no way directed against China can abate its confidence that the reverse is the case.

Practically none of serious observers expect that China in the forthcoming period will renounce its territorial demands in the South China Sea. In the process, it also pursues several aims at once, and one of them is to undermine the credibility of alliances of the countries of the region with the USA, playing upon the continually arising contradictions between the USA and its allies.

The Chinese strategy in the SCS, as one of the most authoritative experts, C. Thayer, believes, incorporates three main tasks:

1. To preclude internationalisation of disputes on sovereignty in the SCS, i. e. interference of extraregional states therein, the USA above all.
2. To impair the unity of ASEAN so as also to preclude regionalisation of the dispute, i. e. common stand of ten ASEAN states in opposition to China alone.
3. To sustain tension in the SCS at such a level of political and moral pressure that will not provoke a direct US military intervention but will be one of the instruments for strategic pressure upon the United States itself in the incipient bargaining for leadership in the region.¹⁶

China flatly refuses to discuss its territorial claims on any legal basis, although it is a party to the 1982 UN Convention on the Law of the Sea. The “three no” principle included in its inventory remains unchanged. It means:

- No to internationalisation of the conflict;
- No to multilateral negotiations and any international frameworks;
- No to specification and designation of territorial demands in the SCS.¹⁷

II. The Threat of Militarisation and the Arms Race

Obviously, China will continue to strive for what observers call “Sino-centric” settlement to all territorial disputes. This presupposes, in the opinion of some of them, a further hardening of positions, a renunciation of the strategy of minor concessions (a stick and carrot policy) or delay in the resolution of the most substantial differences. Regional competitors will have either to agree to China’s demands or face armed diplomacy or direct use of military force.

However, other and what seems to be more competent experts, among them one of the most authoritative Sinologists of the RAS Institute for the Far East, Doctor of Sciences (History) Ya. M. Berger, believe that the existence of problems of its own and the mixed reaction to the PRC’s successes in the world allow one to presume that in achieving its own geopolitical objectives Peking will pursue the tactic of balancing and a pragmatic foreign policy line, while the likelihood of an armed conflict in the SCS initiated by China will remain low in both short and medium term.¹⁸

The truth of this conclusion is corroborated, among others, by a report by the CPC CC’s Secretary-General Xi Jinping made on 30 July 2013 at a special session of the CPC CC’s Politburo dedicated to the problems of naval construction. He predictably reiterated that China “will never relinquish its legitimate rights and interests” but at the same time stressed that it was necessary “to plan one’s actions in such a way as to concurrently preserve stability while defending one’s rights.”¹⁹ It was for the first time, some foreign experts believe, that such an approach has sounded from the lips of the top leader of the party and state. It may mean that equal significance is being attached to the maintenance of regional stability and the defence of “maritime rights and interests,” and there are a number of reasons for this. The main is that China’s harder line has brought damage to its other interests, leading, in particular, to an increased role of the United States and Japan in matters of regional security. How these interests will be balanced in actual fact, time will show, but Xi Jinping’s statements attest that China is possibly becoming not so uncompromising and aggressive with regard to territorial disputes in the SCS as certain experts suppose. And they indicate that China’s approach to these disputes may not be so straightforward and toughly nationalistic.

In the same report, Xi Jinping repeated the well-known formula of Deng Xiaoping concerning territorial disputes: “the sovereignty remains ours, we put off disputes for future generations and use resources together.” During the last years in China this formula more than once came under criticism on the part of a number of scholars and politicians as one ostensibly unable to prevent actions by neighbours impinging on China’s sovereignty.

Therefore, having restated this well-known guideline of Deng Xiaoping, the CPC CC’s Secretary-General, as it were, perceived it anew and certified it by the authority of the CPC CC’s Politburo, which suggests that Peking will be more patient in the coming period and for the time being intends to take measures to relax tensions in the region, something that must also allay the growing fears in the whole world regarding China’s conduct in the surrounding seas.

A few days later, on 2 August 2013 in Bangkok, after meeting with colleagues from ASEAN, the PRC Foreign Minister Wang Yi showed what all that meant in practice. He made public China’s position concerning disputes in the SCS, which he proposed to resolve in three ways.

First, to agree to the holding of bilateral consultations and negotiations between the parties directly involved in the disputes, i. e. without any interference from the outside.

Second, to continue to strictly adhere to the 2002 Declaration on the Conduct of Parties in the SCS and gradually progress toward the adoption of the Code.

Third, since the search for a joint solution will take much time, to try to find a way for joint exploitation of resources on a win-win principle.²⁰

True, neither the Secretary-General nor the Foreign Minister offered any details on how this co-development should be pursued and in which areas of the sea, while both set forth the Deng Xiaoping formula in an abridged form, without its first, not insignificant part, namely: “the sovereignty remains ours.”

Historically, there were cases when countries could not resolve a particular dispute between themselves and then they, as it were, put it aside for joint development or utilisation of the potential available. Vi-

II. The Threat of Militarisation and the Arms Race

enam had been a party to such agreements more than once and in principle endorses the method of settling disputes by way of joint development. The problem is to designate areas for such a co-development and find appropriate forms for it, which requires consent of all parties concerned. China's position is to carry out such a co-development while retaining its territorial demands within the limits of the U-shape line designated by it, which is unacceptable for other littoral countries, first and foremost Vietnam and the Philippines.

Since Vietnam and the greater part of ASEAN countries do not recognise China's territorial demands, an equitable, long-term solution to the conflict in the SCS can be started only after China relinquishes its U-shape line and manifests a desire to submit to generally accepted norms of international law. It may become the result of a multilateral diplomacy that recognises China's important role but will simultaneously protect the legitimate rights and interests of smaller countries, something which so far seems not to be in line with current ideas of a certain section of the Chinese leadership on regional order in SEA.

And nonetheless, the fact that ASEAN and China have recently reached agreement on the start of official consultations with a view to adopting the Code of Conduct in the SCS (COC) and that the first session thereon has already taken place in China, is a positive signal that must be followed on and developed with support from world public opinion.

Notes

¹ For greater detail, see G. M. Lokshin, *Yuzhno-Kitaiskoe more: trudnyi poisk soglasiya* (Moscow: IDV RAN, 2013).

² Le Hong Hiep, "Vietnam's Tyranny of Geography," *The Diplomat*, July 22, 2011.

³ Carlyle A. Thayer, *Chinese Assertiveness and US Rebalancing: Confrontation in the South China Sea?* Paper to Panel on The South China Sea at Annual Conference of the Association of Asian Studies. San Diego, March 22, 2013, p. 22.

⁴ One of the first to apply this term to Vietnam-China relations was the American expert B. Womack in his work: B. Womack, *China and Vietnam: The Politics of Asymmetry*. New York: Cambridge University Press, 2006.

⁵ ASEAN + China, Japan and the Republic of Korea.

Security and Cooperation in the South China Sea

⁶ ASEAN + 3 + Australia, New Zealand, Russia and the United States.

⁷ In Vietnamese-Chinese documents the sea customarily goes unnamed, since in various littoral countries it is called differently.

⁸ www.tuanvietnam.net/15/05/2013; www.BBC.co.uk Chủ tịch nước và cử tri TP.HCM ngày 24/6/2013. (BBC 24 06 2013. The President's Meeting with Voters in Ho Chi Minh City).

⁹ Le Hong Hiep, Viet Nam va suc manh mem cua Trung quoc (Le Hong Hiep, Vietnam and China's soft power), in www.BBC.co.uk/02-02-2012

¹⁰ Source: Xinhua, 21.06.2013.

¹¹ Nhan Dan 20 06 2013.

¹² www.RFA 21 06 2013.

¹³ www.BBC.co.uk .24 06 2013 Chu tịch nuoc va cu tri TP.HCM ngày 24/6/2013. (BBC 24 06 2013. The President's Meeting with Voters in Ho Chi Minh City).

¹⁴ www.MOFA.VN/ 25/ 06/2013.

¹⁵ BBC (viet) co.uk/ 03.06.2012.

¹⁶ C. Thayer. "Major powers: future intentions and policies in the region," in *Thayer Consultancy Background Brief*, April 19, 2013.

¹⁷ Thus, for example, the fabled U-shape line has neither latitude nor longitude coordinates, which may be construed as an initial position in eventual separate negotiations with each country concerned.

¹⁸ Ya. M. Berger. "Bol'shaya strategiya Kitaya v otsenkakh amerikanskikh i kitaiskikh issledovatelei," in *Problemy Dal'nego Vostoka*, 2006, No. 1.

¹⁹ Quoted from: *The Diplomat*, August 14, 2012.

²⁰ BBC (viet) co.uk/ 03 06 2012.

Bronson Percival
Senior Advisor, CNA



**Balancing Engagement and Entanglement:
U.S. Policy for the South China Sea**

Introduction

United States policy for the South China Sea has been consistent since it was articulated in 1995, but U.S. interest in these waters has been episodic. This policy consists of two elements: the United States takes no position on the legal merits of conflicting claims to sovereignty but insists on freedom of navigation in these waters.

China's assertiveness in support of its nine-dash line claim in the South China Sea, which is not based on international law, provoked a response from the United States after 2008. Working with ASEAN and other Asian nations, Washington has been able to rally diplomatic support to internationalise the complex issues in the South China Sea, much to Beijing's dismay.

Nonetheless, despite damage to China's relations with its Asian neighbors and the United States, Beijing has not backed down. Washington thus seems likely to have to both reassure its friends and avoid entanglement in the details of their quarrels with China for many years to come.

America "Rebalances" to Asia

When he assumed office in 2008, President Obama made Asia the top priority in U.S. foreign policy. The Obama administration initially reached out to Beijing, temporarily leading to exaggerated fears of a Sino-U.S. condominium to manage Asian affairs. Chinese assertiveness drove U.S. policy for China back towards the historic equilibrium. The change was signalled by Former Secretary of State Clinton's in-

Security and Cooperation in the South China Sea

tervention at the 2010 ASEAN Regional Forum (ARF) where, in diplomatic collusion with most Association of Southeast Asian Nations (ASEAN) members and several other Asian countries, she expressed concern about China's new assertiveness in the South China Sea.

The United States has now announced that it intends to refocus on Asia, as it draws down its armed forces from Afghanistan. As President Obama's national security advisor said:

Security in the region requires that international law and norms be respected, that commerce and freedom of navigation are not impeded, that emerging powers build trust with their neighbors, and that disagreements are resolved peacefully without threats or coercion.¹

Diplomacy has taken the lead. President Obama has travelled frequently to Asia. Clinton provided much of the drive behind the re-balance. The United States reversed the Bush administration's antagonistic attitude towards Asian regional organisations. It signed ASEAN's Treaty of Amity and Cooperation (TAC) prior to participating in East Asia Summits. Southeast Asian perceptions of neglect were assuaged. In an article explaining the U.S. pivot to Asia, Clinton noted that defending freedom of navigation in the South China Sea ranks in the same league as "countering the proliferation efforts of North Korea, or ensuring transparency in the military activities of the region's key players" (read China).² Further north, the U.S. responded to China's reluctance to condemn North Korea for its military actions against South Korea in 2010 and confirmed that the U.S. – Japan security treaty applies to the Diaoyu/Senkaku islands disputed by China and Japan.

A major increase in the U.S. armed forces in the Pacific is not in the cards, but modest force posture realignments are underway. Washington has begun to fix the "unbalanced" U.S. force posture concentrated in Northeast Asia, itself a residue of the Korean War. The new mantra is a "geographically distributed, operationally resilient and politically sustainable force posture" that increases access to Southeast Asia and the Indian Ocean. For the past few years, Washington has been pushing on an open door. It has been invited to forward-deploy littoral combat ships to Singapore, to rotate U.S. Marines through Australia, and to conduct maritime surveillance from Philippine territory. President Obama has pledged that anticipated "reductions in U.S. de-

fense spending will not – I repeat, will not – come at the expense of the Asia-Pacific.”⁵

Finally, the rebalance includes an economic component that, from a domestic political perspective, is the most sensitive element in the pivot. The U.S. economy is deeply intertwined with Asia. About one-third of U.S. merchandise trade is now with Asia. China and Japan are the second and third largest U.S. trading partners, and ASEAN is the fifth largest. Singapore is a more important trading partner than France. To demonstrate the U.S. commitment to Asia and improve U.S. access to markets in Asia, the United States turned to negotiations for a Trans-Pacific Partnership (TPP) trade agreement. These negotiations are scheduled to conclude at the end of 2013.

As the United States refocuses on Asia, it faces several challenges. The first is to manage the process so as to try to assuage the suspicion of many Chinese officials and scholars that the U.S. return is designed to “contain” China. The second is to persuade China’s neighbors in Asia that this initiative is no flash in the pan, while also disabusing Asian states that seek to drag the U.S. into their quarrels. The third is to convince China’s neighbors that Washington will not attempt to force them to choose sides should Sino-U.S. competition intensify.

U.S. Interests in the South China Sea

The United States has three interests in the South China Sea.

Maintaining “freedom of navigation” is a fundamental global interest. China and the United States do not always agree on the meaning of this term. Beijing argues that its policies do not threaten the transit of commercial ships. China only seeks to restrict U.S. “spying” within China’s Exclusive Economic Zone (EEZ). The U.S. has a broader interpretation of freedom of navigation based on international law. China’s attempts to restrict activities in its EEZ – and the possibility that it would extend restrictions both in practice and geographically should it enforce its territorial claims in the South China Sea – are cause for concern to the United States.

A second interest is encouraging the peaceful resolution of disputes. The United States is agnostic on China’s maritime territorial disputes with its neighbors, but is particularly concerned about China’s

Security and Cooperation in the South China Sea

claim in the South China Sea because it is based on a Chinese interpretation of history rather than international law.

A third major U.S. interest, articulated or not, is maintaining a balance of power in East Asia. China's growing military capabilities have the potential to eventually unravel the network of U.S. partnerships and alliances with East and Southeast Asian states that have maintained peace for decades.

In Washington the debate is not about the nature of America's interests. Instead, it is about the South China Sea's relative importance, compared to other parts of Asia, as the U.S. seeks to protect its core interests in Asia as a whole. The three different viewpoints below provide a flavor for perceptual differences.

One study by a respected U.S. research institution argues:

"The geostrategic significance of the South China Sea is difficult to overstate. The South China Sea functions as the throat of the Western Pacific and Indian Oceans – a mass of connective economic tissue where global sea routes coalesce, accounting for \$1.2 billion in U.S. trade annually. It is the demographic hub of the 21st - century global economy ... It is an area where more than a half-dozen countries have overlapping claims over a seabed with proven oil reserves of seven billion barrels as well as an estimated 900 trillion cubic feet of natural gas."⁴

A second major study is less convinced of the centrality of the South China Sea, but reluctantly concludes that the U.S. has already committed itself to stability in these waters. It states:

"The policy challenge in the region for the United States is complex because only one aspect of the South China Sea set of issues is a direct bilateral Sino-U.S. security issue - the question of military operations in China's EEZ. Yet collectively, the unsettled situation in the SCS implicitly brings attention to the future role of the United States in the region. Having more directly involved itself in the fall of 2010 in Hanoi, the United States, whether it likes it or not, now has 'skin in the game.' The United States must be involved if for no other reason than because the central premise of the rebalance strategy rests on a foundation of ensuring that common legally based standards of behavior are followed throughout the region."⁵

A third view is more China - centric.

“These two quite different trends of cross-straits détente (involving Taiwan) and military stalemate have profound consequences for the U.S. strategic attitude towards the South China Sea. On the one hand, the likelihood of a militarised cross-strait crisis has been much reduced ... On the other, ultimate American military superiority in the South China Sea is now in question. If the U.S. can be kept away from Taiwan, it can be kept away from the rest of China’s coast, including Hainan ... The banner of freedom of navigation has thus become the symbol of new US concerns about China’s military strength, and even though it is not identical to Southeast Asian concerns, China is the common focus and they each desire the other’s support.”⁶

For the United States, the South China Sea is both a diplomatic and a security challenge. Beneath the surface, U.S. interests are seen more or less from a China perspective or from a larger Asian perspective. Officials concerned with vital U.S. strategic interests in East Asia and the growing capabilities of the Chinese armed forces tend to see developments in the South China Sea in the context of Sino-U.S. relations. Diplomats and businessmen are more inclined to see the South China Sea in a broader context, as a crossroads in a larger region.

In addition, some U.S. officials focus on the South China Sea as an element in U.S. relations with ASEAN states, and stress the value of being perceived as reliable by U.S. allies and friends in Southeast Asia. The Obama administration’s determination to rebuild ties with Southeast Asia that had atrophied during the Bush era increases the relative weight accorded to South China Sea issues.

Moreover, a new American “mental map” of an “Asia-Pacific” stretching from India to the Pacific shores of America (often called the “Indo-Pacific” region) accords the South China Sea a role as a crucial hinge in the overall U.S. security structure in Asia as distinctions between East and South Asia are seen to be of diminishing relevance. One prominent commentator has labelled it the centre of maritime Eurasia. Although, for a few years, it was not entirely clear where the U.S. intended to focus within Asia as it rebalanced to Asia, former U.S. National Security Advisor Donilon eventually clarified that the U.S. rebalance is centred on Southeast Asia.

Security and Cooperation in the South China Sea

Finally, U.S. commercial interests in the South China Sea include supporting U.S. companies that seek to compete on an equal basis to explore for and extract energy and other mineral resources. The renewal of U.S. interest in the South China Sea began in 2007 in response to an attempt by elements of the Chinese government to pressure companies interested in business in China to refrain from bidding on energy development blocs in the South China Sea offered by Vietnam.

In 2010, differences over the relative priority to be assigned to the South China Sea among the vast number of issues in the U.S. – Chinese relationship appeared to surface in debate about whether Beijing had identified the South China Sea as a “core interest.”

According to U.S. and Japanese press reporting, in March 2010 Chinese officials told two visiting senior U.S. officials, “China had elevated the South China Sea to a ‘core interest’ of sovereignty and would not tolerate outside interference. China conveyed the new policy to visiting U.S. Deputy Secretary of State James Steinberg and Jeffrey Bader, senior director for Asian Affairs on the National Security Council, in early March, according to sources. The two U.S. officials met with Chinese State Counselor Dai Bingguo, Chinese Foreign Minister Yang Jiechi and Vice Foreign Minister Cui Tiankai in Beijing, and Bingguo is believed to have relayed the policy to the U.S. side.”⁷

In the absence of an official Chinese statement confirming that China had raised the South China Sea to a “core interest” on par with Taiwan or Tibet, many American experts began to question the meaning of China’s alleged definition of the South China Sea as a “core interest.” Some Chinese officials and academics subsequently suggested that China’s position had been misunderstood and sought to “walk back” speculation that the South China Sea constituted a “core interest.” Most American observers concluded that it did not.

However, “China’s tough stand on maritime territorial disputes evident first in 2012 confrontations with the Philippines in the South China Sea and Japan in the East China Sea has endured into 2013. Leader’s statements, supporting commentary, military and paramilitary activity, economic development, and administrative advances all point to determined support of an important policy shift in China’s foreign

policy with serious implications for China's neighbors and concerned powers, including the U.S.⁸

The debate in the United States about the relative priority China ascribes to the South China Sea is only part of the story. There were and are also different views in the United States on what to do in response to accumulating evidence of Beijing's determination to get its way in the South China Sea. Moreover, debate within American policy circles rises and falls in response to a variety of developments in Asia writ large. Finally, the priority accorded to South China Sea issues depends not just on perspectives but also on tactical considerations.

U.S. Policy

U.S. policy with regard to the South China Sea has remained consistent since it was first articulated in 1995, though U.S. interest in this body of water has waxed and waned.

The two elements of U.S. policy for the South China Sea are distinct. They should not be conflated. They are:

- a) The United States "takes no position on the legal merits of the competing claims to sovereignty" in the South China Sea
- b) Maintaining freedom of navigation is a fundamental U.S. national interest. The U.S. believes that international law precludes states from restricting military survey operations within their Exclusive Economic Zone (EEZ).⁹

Support for U.S. policy appears to be solid across party lines in the Senate and House of Representatives. There have been several congressional resolutions on the South China Sea, most recently a Senate resolution in August 2013. Various parts of the U.S. government and policy communities may have different reasons to focus on the South China Sea, but thus far U.S. policy on South China Sea issues has not been controversial in the United States.

Within the framework of these basic positions, we can identify three historical periods in U.S. South China Sea policy. These are:

- Neglect after the 1995 "Mischief Reef" crisis abated
- New opposition to China's "assertiveness," particularly after 2009
- Sober recognition of the complexity of the issues since 2012

Security and Cooperation in the South China Sea

The discovery of China's occupation of Mischief Reef in the Spratly Islands in 1995 led the U.S. to define its policy for the South China Sea. Thereafter, the South China Sea was a potentially significant diplomatic and security issue waiting to rise to the surface of American policy makers' consciousness. The collision of a Chinese jet fighter with an American surveillance airplane in April 2001 off Hainan prompted a new Sino-U.S. crisis and temporarily revived U.S. interest in the South China Sea. However, the 9/11 al-Qaeda terrorist attack on the United States later that year diverted U.S. attention away from East Asia. Thereafter, U.S. interest in the South China Sea again quickly waned. This trend was reinforced in 2002 when China and several ASEAN states temporarily shelved their disputes over their conflicting territorial claims in the South China Sea and signed the Declaration on the Conduct of the Parties in the South China Sea (DOC). As tensions in the South China Sea appeared to fade away, Washington turned away. The South China Sea disappeared from the U.S. policy agenda for Asia. Only China's actions reawakened interest and provoked a reaffirmation of U.S. policy.

As tensions slowly increased, the U.S. reacted pragmatically and in accordance with long-standing policy. Washington added nuances to its basic positions as U.S. involvement deepened. While affirming its reluctance to judge the legal validity of competing territorial claims, informally U.S. officials became critical of China's claim because it is based on an alleged historical presence in the South China Sea rather than customary international law. For a short time, Washington also expressed a new willingness to become entangled in the details of the South China Sea disputes by facilitating negotiations among the claimants in the South China Sea.

Beginning in 2008, China's confrontational approach in the South China Sea provoked a response from the United States, which gradually escalated as China persisted with actions that were widely interpreted as a campaign to coerce other interested parties. Initially, the United States appeared reluctant to add the South China Sea to its agenda with either China or Southeast Asian states, but it became alarmed by rising tensions in an area where it has significant security and foreign policy interests.

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

In March 2009 U.S. National Intelligence Director Admiral Dennis Blair called China's harassment of the USNS *Impeccable*, while conducting a military survey off Hainan Island, the most serious military dispute between China and the U.S. since 2001.

By the middle of the first Obama administration, several American officials recognised that China had presented the United States with a golden opportunity to reaffirm a principled stand on South China Sea issues and thus strengthen its alliances and partnerships with other states in Asia. Beijing's excessive claim and assertive behavior by elements of China's maritime agencies in the South China Sea had alienated many governments in the rest of Asia. In the South China Sea, Beijing was believed to be playing directly to American strengths, support for freedom of navigation and overwhelming naval capabilities in Asia. The United States took advantage of China's mistakes.

At the July 2010 ASEAN Regional Forum meeting, the United States and eleven other countries criticised Chinese actions in the South China Sea, which led to a diplomatic standoff with China. Afterward, Clinton told the press that the United States has a national interest in freedom of navigation, open access to Asia's maritime commons and respect for international law in the South China Sea. Clinton also offered to facilitate negotiations on a Code of Conduct among all the claimants in the South China Sea, an offer that infuriated Beijing.

Subsequently, China appeared to respond by seeking to again reassure Southeast Asian states, through visits to the region by Prime Minister Wen Jiabao and other Chinese leaders, and by restraining itself in the South China Sea. For eight months, there were no significant incidents in the South China Sea. China agreed to meetings of the ASEAN-China Joint Working Group to implement the Declaration on the Conduct of Parties in the South China Sea.

The U.S. also "took its foot off the accelerator" on South China Sea issues. At the ASEAN Defense Minister Meeting Plus (ADMM+) initial meeting in October 2010 in Hanoi, U.S. Secretary of Defense Gates "echoed recent statements by Secretary of State Clinton that the U.S. would not take sides in competing claims, but would insist on open access to international waters and shipping lanes."¹⁰ But he also accepted an invitation to visit Beijing in January 2011. American press

Security and Cooperation in the South China Sea

reporting suggested that the tone of the U.S. - Chinese dispute over the South China Sea issues had softened. Later that month, at the East Asia Summit in Hanoi, Clinton and Chinese Prime Minister Wen Jiabao also appeared to soften their stances. By the time Chinese President Hu Jintao visited Washington in January 2011, tensions between Washington and Beijing had eased and bilateral relations improved. The joint statement contained no direct mention of the South China Sea. Subsequently, U.S. officials publicly stressed cooperative ties. The U.S. was careful not to “bang the drum” on South China Sea issues.

However, by May 2011 Chinese actions in the South China Sea aroused new concerns. Nonetheless, Gates focused on America’s enduring commitments to Asia in his speech at the June 2011 Shangri-la meeting in Singapore. He restated the U.S. position on the South China Sea, but this issue did not dominate the Secretary’s remarks as it had at the 2010 Shangri-la dialogue. In contrast, at the July 2011 ASEAN Regional Forum, Clinton “called on all parties to clarify their claims in the South China Sea,” while reaffirming the U.S. view that “claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.”¹¹ The next step is for ASEAN and China to negotiate a binding code governing their conduct in the South China Sea. Thus far, China has “employed delaying tactics, informing ASEAN that China will work towards a code at an appropriate time.”¹² Subsequently, China’s intensive diplomatic campaign to keep maritime security off the agenda of the November 2011 East Asia Summit in Indonesia failed, as sixteen of the eighteen countries participating underscored the importance of ensuring maritime security.

Since early 2012 Washington has continued to support ASEAN’s efforts to agree on a draft Code of Conduct for the South China Sea, prior to negotiations with China, and to support statements in regional forums explicitly or implicitly critical of China’s “assertive” policies in the South China Sea. However, now that a diplomatic coalition has been constructed that has “internationalised” the South China Sea dispute despite China’s desperate efforts to prevent such an outcome, it also appears that Washington has decided that it might better navigate the diplomatic shoals involved in South China Sea controversies by adopting a less prominent role. Washington has been particularly keen

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

to work with ASEAN and such Southeast Asian countries as Vietnam and Indonesia.

The value of avoiding the limelight was demonstrated by Beijing's heavy-handed intervention in ASEAN affairs prior to the 2012 ASEAN Regional Forum. Beijing brought extraordinary pressure on the ASEAN Chair (Cambodia) to block agreement on a statement including references to the South China Sea, sought by fellow ASEAN members Vietnam and the Philippines. ASEAN failed, for the first time, to issue a statement. China's campaign forced an outcome that infuriated several ASEAN members and has been described as a "Pyrrhic victory." Indonesia's Foreign Minister was subsequently forced to undertake shuttle diplomacy to secure agreement on a statement that papered-over ASEAN embarrassment.

In September 2013, after meeting with ASEAN members at the United Nations General Assembly, new Secretary of State Kerry reaffirmed U.S. policy on South China Sea issues. He also met separately with Indonesia's Foreign Minister. Both of these steps demonstrated continued U.S. engagement in South China Sea issues.

In the past two years, the dangers of entanglement in South China Sea issues have also come to the fore.

The 1951 U.S. - Philippines Mutual Defense Treaty obliges the U.S. to "act to meet common dangers" embodied in attack on the territory of the Philippines or "its armed forces, public vessels or aircraft in the Pacific." The applicability of this treaty in the event of armed conflict involving the Philippines in the South China Sea is ambiguous. According to the treaty, the parties are required to consult in the event of an attack on the territory of the Philippines as of 1951, which does not include Manila's claims in the South China Sea that were advanced several years later. However, one research institution believes that, "regarding the Armed Forces of the Philippines (AFP) specifically, the treaty is unambiguous. During consideration of the 1999 Visiting Forces Agreement (VFA), then Ambassador Thomas Hubbard formally represented to the Philippines that the treaty was applicable to any attack on the AFP, referencing assurances made by Secretary of State Cyrus Vance in 1977."¹³

Security and Cooperation in the South China Sea

Nonetheless, Washington will not commit itself to specific actions based on hypothetical situations, though many Southeast Asian states would expect an American reaction to a clear attack on the AFP. It has responded to the Philippine government's apparent determination to "stand up" for itself under President Aquino by providing additional assistance and reconditioned ships to increase the capacity of the Philippines to monitor and defend its claimed waters. Joint exercises and port visits have also been adjusted to emphasise U.S. commitments, and a new agreement to increase the rotation of U.S. forces to the Philippines is under discussion. However, the United States has declined to issue a blank check to Manila in response to a series of confrontations in the South China Sea between Beijing and Manila, over Reed Bank, the Scarborough Shoal, and now Second Thomas Shoal. The U.S. has sought to quietly broker agreements between Beijing and Manila to de-escalate these confrontations, but it has declined to commit U.S. military forces. The U.S. does not support the territorial claims of any particular state in the South China Sea.

Policy Options

The South China Sea is not a "litmus test" of China's intentions or of U.S. consistency in Asia as a whole. It is, however, a good example of a larger problem for the United States in Asia. Is the fundamental threat to stability rivalry between the United States and China or is it conflicting interest between China and many of its Asian neighbors? Asian states "feel the threat of exclusion when U.S.-China relations are too close and the threat of entrapment when those relations become too tense."¹⁴ Most Southeast Asian states seek a "Goldilocks solution" – relationships that are "not too hot, not too cold, but just right" with both the United States and China. At the same time, the United States fears entanglement in tensions between China and its neighbors but also seeks to engage with both sides to enhance stability. All involved seek to retain as much room to maneuver as possible.

That said, the South China Sea is a good foreign policy issue for the United States. U.S. support for freedom of navigation and the peaceful settlement of disputes puts a spotlight on China's excessive claims and coercive tactics in the South China Sea while it simultane-

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

ously strengthens U.S. alliances and partnerships with other states in Asia.

Moreover, as long as the current pattern of sporadic “maritime skirmishes” in the South China Sea does not escalate into serious conflicts, the cost to the U.S. is low. No domestic opposition to current U.S. policy is discernible.

For these reasons, U.S. officials remain, on the whole, satisfied with U.S. policy. Its current incremental and pragmatic approach has kept the United States aloof from many of the specifics of the complicated mess of issues in the South China Sea, while emphasising principles. However, U.S. efforts have not convinced Beijing to moderate its determination to eventually get its way on South China Sea issues. Only agreement between ASEAN and China on an enforceable “code of conduct” or a radical revision in China’s nine-dash claim would return the South China Sea to the bottom of U.S. policy makers’ in-boxes and allow them to turn to other problems. Neither seems likely.

At some point, Washington may have to take additional steps. The complexity of the intertwined issues surrounding the South China Sea inclines Washington to hesitate. Nonetheless, it might consider the following:

- The United States should ratify UNCLOS. Whether the United States Senate likes it or not, UNCLOS embodies customary international law and the United States government carefully adheres to the provisions of UNCLOS. Although ratification now appears fanciful given the current political dysfunction in Congress, it would increase the legitimacy of U.S. efforts to pursue a rules-based approach in the South China Sea.
- The United States could become actively involved in trying to reconcile the competing claims of Brunei, Malaysia, the Philippines, and Vietnam. Less ambitiously, it could seek Southeast Asian claimants’ agreement that all but a few features in the South China Sea are rocks entitled to no more than a territorial sea. Either could make it easier for ASEAN to speak with one voice to China, but most U.S. officials would be extremely reluctant to tackle these issues.
- The United States could take sides on the validity of territorial claims by explicitly stating that China’s nine-dash line claim has no

Security and Cooperation in the South China Sea

basis in international law. This revision of longstanding U.S. policy would badly damage the Sino-U.S. relationship.

Notes

¹ Tom Donilon, "America is back in the Pacific and will uphold the rules," *Financial Times*, November 27, 2011. <http://www.ft.com/cms/s/0/4f3febac-1716-11e1-b00e-00144feabdc0.html>.

² Hilary Clinton, "America's Pacific Century," *Foreign Policy*, Issue 189, November 2011, p. 56

³ The White House, "Remarks by President Obama to the Australian Parliament," November 17, 2011.

⁴ Patrick M. Cronin, "Cooperation from Strength, The United States, China and the South China Sea," Center for a New American Security, Washington, D.C., January 2012, p. 5

⁵ Michael McDevitt, "The Long Littoral Project: The South China Sea," CNA, Washington, D.C., p. 33

⁶ Brantly Womack, "The Spratlys: From Dangerous Ground to Apple of Discord," *Contemporary Southeast Asia*, Vol 33, no. 3, December 2011, p. 380.

⁷ "China Tells U.S. that S. China Sea is 'core interest' in new policy," *Kyodo News Service*, July 3, 2010

⁸ Robert Sutter and Huang Chin-hao, "China's Toughness on the South China Sea – Year II," *Comparative Connections*, September 2013.

⁹ "Malaysia is the only claimant that supports China's view that other countries must request permission before carrying out military and surveillance activities within its EEZ." *Stirring Up the South China Sea (II), Regional Responses*, International Crisis Group, Asia Report No 229, July 24, 2012. Vietnam National Assembly enacted a Sea Law on June 21, 2012. Article 12 requires prior notification when warships enter Vietnam's territorial waters. For the EEZ and continental shelf, there seem to be the standard innocent passage provisions.

¹⁰ Craig Whitlock, "The U.S. has a 'national interest' in Asian Sea Disputes," *The Washington Post*, October 12, 2010

¹¹ "U.S. calls for more clarity on S. China Sea claims," *Reuters*, July 23, 2011

¹² Barry Wain, "China faces new wave of disputes," *The Straits Times*, October 17, 2011

¹³ Walter Lohman, "Sorting American Priorities in the South China Sea," *Web Memo Published by the Heritage Foundation*, No. 3297, June 20, 2011

¹⁴ Patrick M. Cronin et al, *The Emerging Asia Power Web, the Rise of Bilateral Intra-Asian Security Ties*, Center for a New American Security, Washington, D.C., June 2013

Dr PK Ghosh
*Senior Fellow at the
Observer Research Foundation **



**The Role of External Powers
in the South China Sea Region:
Seeking a Peaceful Resolution**

The South China Sea (SCS) region is like a giant tinder box waiting to explode. Portrayed as an international flashpoint that is likely to witness the next serious regional conflict involving contending nations – it is bound to herald grave international consequences. Currently the entire area is laden with mistrust and animosity amongst claimant states who have resorted to aggressive posturing to reinforce their sovereignty claims over disparate islands and “rocks.” These simmering disputes and brinkmanship have posed a serious threat to peace and stability of the region causing concern amongst the stake holders, users and the world at large.

Unfortunately, ASEAN’s inability to find an amicable solution seems to be on the wane. With its self-confidence at a low ebb due to the widening chasm of opposing views on SCS between ASEAN members¹ – it is only prudent that external and capable powers who are affected by the instability come together to amicably sort the issue. It is here that the role of external powers – as honest brokers of peace and stability becomes pertinent and needs further exploration.

Depending on the perception of the observer, it is often stated that China’s change in foreign policy and its aggressive posturing within the SCS has been the *raison d’être* for the turbulence in the region. An insinuation that the Chinese deny vigorously.

* *He was the Lead Co-Chair of the CSCAP International Study Group on Maritime Security (Naval Enhancement in Asia Pacific)*

However, a closer introspection reveals that the Chinese foreign policy - especially towards the SCS and the East China seas has indeed undergone a remarkable shift during the last few years. This alteration of course has ensured that the phase of “biding time” and that of Deng’s “24 Character strategy” on foreign and security policy, has evolved into a more forceful assertion of sovereign claims. This change in part has been fuelled by the jingoistic expression of the local populace which perceives the central government as being too generous towards other contending claimants in the SCS. The new leadership under Xi Jinping – which is keen to establish its authority in the national politics and thus shy away from being called “weak or too generous” has upped the ante and signaled a non-compromising stand by regarding the SCS as a matter of “core issues/ interests” for the nation.

A series of aggressive actions by the Chinese in the SCS and ECS regions have managed to shake the other littorals from their complacency, as it has revealed the Chinese determination to revise the current on ground positions in their favour. These events have also brought forth unpleasant memories of the bloody clashes that took place earlier in the region. The most notable amongst them being the Paracel Island incident of 1974 which resulted in the death of 53 Vietnamese soldiers and an unknown number of Chinese casualties. The Johnson South Reef skirmish of 1988 which also resulted in many casualties as the Vietnamese lost seventy of their personnel in their conflict with the Chinese.

With the current modernisation thrust of the PLA(N) in progress and its enhanced capacity to push into the farthest reaches of the Indian Ocean and the Pacific, it is quite likely that this aggressive posturing may well continue as it seems to be a natural outgrowth of enhancing maritime power.

Importance of SCS

The geostrategic prominence of the South China Sea, for the littorals as well as the external users and stake holders is difficult to overstate. Geostrategically speaking it serves as a neck to both the Western Pacific and the Indian Ocean thus proving to be critical for ensuring

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

rapid deployments of naval forces from one maritime theatre of operations to the other. Additionally, the SCS is host to important SLOCs, as it carries nearly a \$1.2 trillion worth in U.S. trade annually. Equally important has been that energy life lines that traverse this region supply vital energy from the resource heartland in West Asia to the energy deficient states in North East Asia and China.

The SCS is also a significant repository of vast amounts of oil and gas. Given the importance of energy security for the littorals, there is little doubt that this aspect plays a significant role in any posturing by the claimants.

While there are differing estimates of the energy reserves in the region and according to a reliable source the SCS has proven oil reserves to the tune of 1.2 km³ (7.7 billion barrels) with an approximate estimate of a total of 4.5 km³ (24 billion barrels) and natural gas reserves being a 7,500 km³ (266 trillion cubic feet) making it virtually a vast reservoir of energy and prime driver of the geopolitics of the region.

Other estimates like the EIA indicate that the South China Sea contains approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves.

Mark Landler of The New York Times explains, “China’s maritime ambitions have expanded along with its military and economic muscle. It has long laid claim to islands in the South China Sea because they are rich in oil and natural gas deposits. It has also put American officials on notice that it will not brook foreign interference in the waters off its southeastern coast, which it views as a ‘core interest’ of sovereignty.”

While the potential reserves of oil and gas reserves in the region is debatable, the likely value of its fish and aquaculture resources is not in doubt. Currently, the SCS accounts for one-tenth of the world’s global fisheries catch, and plays host to a multi-billion dollar fishing industry. As far as Asia is concerned, fish protein accounts for more than 22 % of the average Asian diet and with growing economies and personal incomes across Asia, this will further raise the demand for fish²— especially in the coastal regions.

Politics of fishing

For decades, fishermen who naturally followed shoals of fish were oblivious to maritime boundaries and international maritime laws, with coastal states often turning a blind eye to their activities. However, this has now changed, as a result of which, fishing has now become a politically sensitive and emotionally charged national security issue for claimant countries in the SCS.

The reason for such a change has been that fishermen are being increasingly viewed as agents of their state governments and hence have become pawns in a game of high powered international politics. Fishermen who enter disputed waters are now seen as challenging sovereignty of the claimant state. Such intrusions provoke calls for stronger penalties for illegal fishing, making it difficult for governments to release foreign offenders for fear of domestic backlash.³

On the other hand, there have been states that have purposely let their fishing fleets encroach on disputed waters and islands in an effort to reinforce their sovereignty claims.

Contending claims

Claims and counter-claims have created an atmosphere laden with animosity and mistrust with aggressive posturing aggravating the situation. Basically, there are two types of disputes in the region. The first one pertains to the sovereignty of the islands (or rocks), while the second one relates to the dispute over maritime territories that are associated with these features. Both issues are increasingly complex and difficult to estimate.

The main dispute over the island issue rests with two groups of islands, mainly the Paracel and the Spartleys. The Paracel is a group of thirty odd small islands rocks, reefs and shoals in the central north of the SCS while the Spartleys is a larger group of such similar features spread over a larger area in the central SCS.

The dispute over Paracel Islands involves China and Vietnam. However the Spartley Islands issue is a multilateral dispute between China, Brunei, Malaysia, the Philippines, Vietnam and Taiwan each having its own claim in the various features.

To the myriad disputes there is another contention that has been in the news recently – it concerns the Scarborough Reef that lies about 124 nm from Philippines coast. The contending parties in this case are between the Philippines and China and the latter has managed to gain physical control of these features.

It may be mentioned that the key to many of the disputes lie in the interpretation of Art 121 of the UNCLOS. China considers many of these features as “islands” – which makes them entitled to the accompanying Exclusive Economic Zone (EEZ) – however, others contend that these are mere “rocks” unable to sustain independent human habitation and hence are only permitted to 12 nm territorial sea. It is obvious that these small geographical features have little inherent value except for their large EEZ that can accrue considerable marine resources for the contending parties.

The Chinese who have been prone to aggressive posturing perceive the Yellow Sea, East China Sea, and South China Sea as the so-called “near seas” as issues of **core strategic interest**, thereby raising the strategic ante and reinforcing their sovereignty claims.⁴ However, officially the Chinese seem to have backed down from posture in 2011.⁵

In effect China claims about 80% of the entire South China Sea as its own through its “nine-dashed lines.” This claim has been vigorously contested by other claimants like Vietnam, the Philippines, Brunei, Malaysia and Taiwan who regard this claim as incredible and illegal. . However, these claims led to skirmishes and brinkmanship and have the potential to escalate to a dangerous conflict.

Potential Role of External Power

ASEAN and the Chinese are fundamentally divergent in the methodology in which the SCS issue is to be discussed and eventually resolved. For the Chinese the issue is a bilateral one that demands a bilateral discussion between contending parties and are averse to an idea of external mediation. The contending littorals on the other hand insist on multilateral discussions preferably between ASEAN and China using the “ASEAN way” for determining any effective lasting solution. To this the Chinese contend that it is superfluous to involve the entire

Security and Cooperation in the South China Sea

ASEAN as there are ASEAN members like Singapore who are not a contending party to the SCS issue. However, this does not obviate that most contending nations feel secure in larger numbers while dealing with a powerful giant like China and that ASEAN talks with China yielded the DoC. It must also be mentioned that ASEAN as a forum has not taken any stand on the sovereignty issue of any particular island or rock - on the contrary, it has reiterated that the issues should be sorted out peacefully and that stability needs to be maintained in the region. Hence in effect it has only discussed MSCBMs and other confidence building measures as a way of reducing any escalation of conflict or tensions in the area - the resultant has been the DoC and now the CoC on which talks have commenced.

Notwithstanding this basic divergence, the fact remains that “external powers” have the potential to play a significant role in the region since the interests of not only the contending states but the “users” who ply through the area and other stakeholders are deeply involved. The prevalent thought being that any instability prove disastrous and also have serious global repercussions. Such turbulence would affect the SLOCs and the flow of trade and energy through the region. Any interdiction of the energy lifelines could consequently have a crippling effect on the energy-dependent economies of the region.

Additionally, countries like India and many others have invested large sums of money in carrying out legitimate exploitation of energy resources in blocks that have been won in global bidding processes. Such projects would be in jeopardy in case of sustained instability.

One of the primary external powers - the US, for instance, has rejected the bilateral approach of talks as suggested by the Chinese and instead have supported the multilateral “ASEAN way” as the appropriate approach. To reiterate this position, Hillary Clinton has stated that “Issues such as freedom of navigation and lawful exploitation of maritime resources often involve a wide region, and approaching them strictly bilaterally could be a recipe for confusion and even confrontation.”⁶ Clinton subsequently testified in support of the Law of the Sea Convention (UNCLOS ratification by US), which would strengthen U.S. ability to support countries that currently oppose China’s claims to islands in the area.⁷

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

Such statements emanating from US have been effective in sending out many subterraneous strategic messages simultaneously. They have on one hand relayed the intention of the US to tacitly involve itself in the affairs of the region actively yet on the other it also made it clear that the current aggressive string of Chinese actions are unacceptable as it aggravates the situation considerably. Some contending littorals have taken moral sustenance from such messages emanating from the US leadership and are understandably relieved at its normative leadership role in the dispute. The contending states have been further heartened since it effectively declares the Chinese claims to the entire sea as “invalid” at the realist level. However, the countries also realise that the event of US engaging in a military conflict with China on behalf of the other contending states is most unlikely to happen.

The case of India is slightly dissimilar. India is a benign power and is well suited for playing a larger and a more positive role in the entire region. It can undertake the task of playing the role of a stabilising power with the help of all like-minded nations. Although perceived as an external power by littorals, its legitimate interests in the South China Sea region are manifold and deep.

As a “user” nation, New Delhi is very keen that the growing turbulence and the overlapping claims of sovereignty do not affect any legitimate activity related to exploitation of natural resources. It is also keen that the freedom of navigation for the busy shipping through the region remains unaffected since nearly 50% of Indian sea borne trade passing through the SLOCs in the area and any interdiction of trade can have grave consequences for the Indian economy.

The Indian Government has made heavy investments in the region of energy exploration in the area. Awarded through the global bidding process, India has three blocks in the Vietnamese region in which about \$360 million or Rs 1,900 crore was invested through the state run ONGC Videsh (OVL) .

OVL has been prospecting for oil in Vietnam’s EEZ since long in Blocks 127 and 128 (Phu Khanh bay) in the territories under dispute but within the Vietnamese EEZ. Unfortunately, it had to withdraw from Block 127 as it proved unviable and dry, while Block 128 was bogged by layers of hard rock and unfavourable geological conditions

which made it difficult to penetrate. Despite these issues, India decided not to withdraw from Block 128 due to complex geostrategic compulsions including a request from the Vietnamese to stay on for another two years.

Indian operations of extracting natural gas in Block 6.1 in the undisputed region continues, from where it got 2 billion cubic meters (BCM) of gas in 2011-12 for its 45% participating interest.⁸

Russia is another major Pacific power that can play a positive role in stabilising the situation in the SCS region, given its relations with China as well as the ASEAN countries. Even though Russia has withdrawn from the Cam Ranh Bay base that was regarded as a remnant of the Cold war era – it has enormous maritime capacity and deep economic interests in the region which arise from heavy investments in oil exploration blocks within the Vietnamese EEZ.

The Russian energy giant Gazprom and Vietnamese Petrovietnam signed an Oil and Gas Contract for blocks 129, 130, 131 and 132 in October 2008. Later joint exploration production and sales in block 112 offshore was also catered for by a contract signed in September 11, 2000.

In addition to signing the Strategic Partnership Agreement, Gazprom and Petrovietnam signed an Addendum to the Oil and Gas Contract for block 112 on December 15, 2009. The Addendum extends the scope of the Contract to cover adjacent blocks 111 and 113 and by a single operator, which is Vietgazprom.

In April 2012 Gazprom and Petrovietnam signed an agreement on its involvement in the development of blocks Moc Tinh 05.2 and 05.3 offshore Vietnam in the South China Sea. The deposits are located 189.8 miles from Vietnam's Vung Tau coastal area.⁹ According to Gazprom's **Plan of 2010** it is investing RUB9.43 billion on such energy projects in Vietnam.¹⁰

Apart from such heavy investments in the energy sector – Russia has significant defence relations with many of the contending nations especially China and Vietnam.¹¹

Conflict resolution and Confidence Building suggestions

Given the current upturn in tension in the region, it must be realised that any outbreak of conflict in the region has serious implications not only for the contending parties, but also for the other stakeholders.

Hence it is suggested that the following can help the littorals states to ease the tense situation without displaying the sign of weakness either to the opponents or the local population. However in this case the sovereignty issue may remain unsolved¹² as these are confidence building measures of sort and not really a solution to the problem/s.

Maintenance of Status quo: In case of a political declaration by all contending states that they will maintain a status quo, its position regarding the areas will go a long way in easing the tension prevailing in the Spartley and Paracel islands as any attempt by the claimants to be revisionist and use force and alter this position in their own favour may well lead to conflict escalation with a potential to escalate beyond control.

Joint activities for establishing environmental protection and conservation zones:¹³ The setting up of an ecology park at Spartley and Paracel islands would obviate the need for any military buildup in the region and act as a natural de-escalatory measure. In this context, the Vietnamese and the Philippine scientists of the Joint Oceanographic Marine Scientific Research Expedition (JOMSRE) had made recommendations for a **Marine Transborder Peace Park** in the disputed areas in consonance with the UNCLOS part IX.¹⁴ but the effort to expand and include China and Laos failed, leading to a collapse of the initiative.

It is now felt that such an idea needs to be revived though it may face strong opposition from fisherman groups in almost all contending littorals as it would constrain fishing activities.

Given the cooperative aspect, its stress in the UNCLOS, it is most relevant to the SCS in the current context wherein cooperation between some contending states is at a low level. Simultaneously, the UNCLOS also provides a path to seek active participation of external powers into such cooperative projects. Thus, this would enhance the participation and involvement of stakeholders and “users,” making it more difficult for claimants to resort to violence and brinkmanship.

Joint development of resources: This move requires political will to compromise which is often seen absent in the current scenario. However, there are numerous examples of such cooperative efforts in disputed areas that have been undertaken without prejudice to the sovereignty claims and these examples can be used as models.

Since there are many external powers like India, Russia, US etc that have invested heavily in exploration of resources in the SCS – it would be prudent to involve them – probably as a consortium in exploration/ exploitation of resources in the region. This would not only ensure the incorporation of higher technology in the field but also serve to ensure that the process of development and exploitation of resources is fair and peaceful. With numerous stakeholders in resource development, it would become difficult for claimant states to act unilaterally, as has been the case with China laying claim on sea blocks for exploration that are already being developed by Vietnam.¹⁵

Agreements on Fishing: Fishing rights in disputed areas has been one of the frequent causes of clashes between contending states leading to conflict escalation. Agreements on fishing seasons, maximum catch limits, prohibition on the capture of certain marine species and protection from unilateral arrests are among the “neutral” issues that may facilitate dialogue without spilling over into the sensitive politics of the region and also build confidence.¹⁶

Publicly Proclaiming a halt to further militarisation: The unprecedented levels of naval modernisation and acquisition by the contending littorals have raised considerable concerns globally and have enhanced the potential for conflict in the region while constraining the use of diplomacy to solve problems. According to projections made by a US-based naval consulting company, AMI International, Southeast Asia is set to spend more than US\$25 billion on new and varied naval acquisitions through 2030.

With an ability to act as stealthy force multipliers in the conducive waters of the South China seas – submarines have found themselves in many naval inventories including that of Indonesia, Vietnam, Singapore and Malaysia. They also top the shopping lists of Thailand and the Philippines. Maritime strike aircrafts, like the Sukhoi Su-30, are also planned/acquired for the Indonesia, Malaysia and Vietnam. In

such a volatile atmosphere, a public pledge by all contending littorals (individually or in tandem) to halt further militarisation would prove to be a significant step in reducing regional tensions. However, such a major step would only prove fruitful if the contending states adhere to such a proclamation in word and spirit and more importantly – the other contenders have belief in such a proclamation.

Prevention of Provocative behavior and statements: Provocative behavior has often been the norm in the region as such statements, jingoistic statements of bravado are made for domestic and internal political considerations. However, sharp responses from other contending states lead to escalation as few are willing to “back down” and be shown in poor light within their own constituency.

The recent case of the “celebrations” at the Sansha city (known as Phu Lam island by Vietnam) on Yongxing island by China has created a furore amongst other contending states. China has seemingly created Sansha City to “consolidate its administration apparatus” over the Paracel island chain, of which Yongxing is a part. Though the official Xinhua News Agency reported that Sansha's jurisdiction covers a mere five square miles of land, (which includes other islands and atolls) around Yongxing, in reality, the jurisdiction covers more than 750,000 square miles of surrounding waters.¹⁷

Such acts of provocation with jingoistic hues needs to be curtailed drastically to ensure a peaceful environment as they have huge potential to escalate.

Enhancing Cooperation between maritime agencies of contending littorals: The South China sea region faces numerous maritime threats and challenges that are transnational by nature. In addition the area is prone to frequent natural disasters that can cause havoc to the vast and densely populated coastal regions. Various maritime governmental agencies are often individually involved in overcoming these challenges. In such a case it is essential to have cooperation between these agencies which is presently rudimentary in certain areas. Developing interoperability and an understanding of the working ethos would not only help in reducing tensions in the region, but also help in overcoming asymmetric challenges and in times of natural disasters for HADR-related activities.

Joint Cartographic surveys: The involvement of external powers in carrying out joint cartographic surveys would ensure that the areas are surveyed properly in an unbiased fashion.

Notification of activities: A notification of all maritime activity – especially those related with navies and coast guards would serve well as steps towards enhancing confidence amongst the contending states.

Commencement of Negotiations and Finalisation of COC: Since the efficacy of the non-binding DOC between ASEAN and the Chinese has been ineffectual at best, it resulted in the conclusion of the Guidelines for Implementation of the DOC after a nine-year-long discussion. The idea behind this document was to make the DOC more effective and less prone to transgressions. However, the strident demand for a legally binding agreement led to the relenting of the Chinese.

The Chinese have finally agreed to commence talks and discussions on the formation of COC with ASEAN. However, given the track record of such negotiations – it will be no surprise if these drag on for nearly a decade. Even though the commencement of talks is a positive step, few in ASEAN countries or even the Chinese believe that the COC will enable the establishment of stability and harmony in the region. Most detractors believe that the Chinese are using this as a ploy to stretch the discussions infinitely while the efficacy of the DOC keeps reducing. For the Chinese it also creates the façade that it is genuinely keen to stabilise the region for common good and harmony.

A Permanent Solution

The earlier suggestions revolve around reducing tensions in the region as incremental CBMs. They do not *per se* solve the basic contentious issues of sovereignty and that of maritime boundaries which are intrinsic to the solving of the issue permanently. Given the current geostrategic situation, to tackle the core issues effectively, the following path needs to be adopted:

Arbitration (third party mechanisms or recourse to International Tribunal for Laws of the Seas - ITLOS): The sheer complexity of the problems regarding the sovereignty of islands chains, rocks and the associated maritime zones demand the necessity of resorting to third party arbitration or taking the issue bilaterally to ITLOS for trial and

judgment. This is the route chosen by the Philippines recently after the Scarborough Shoal affair.

The prolonged tensions in the Scarborough shoal area had denuded the Philippines of any meaningful options. Its efforts to arrest Chinese fishermen accused of illegally fishing area escalated into an issue of brinkmanship and a showdown with the Philippine forces which were then largely forced out by this Chinese law enforcement and maritime surveillance vessels. This led to the Philippine losing control of the area and finally on 22 January 2013, the Philippines notified China that it intended to bring the case to arbitration under the (UNCLOS), which both states have signed. Though this method of arbitration had been suggested earlier, the Chinese had refused stating that the methodology of bilateral negotiations as the only way to resolve the conflicting claims and that they had opposed the relevant articles when the UNCLOS was formed in 1982.

In this case, the Philippines does not seek a judgment as to which country holds sovereignty over the islands and rocks of the South China Sea *per se*, but seeks to establish the status of those land features, and more importantly the type of maritime areas they can generate. They also seek to have the tribunal publically declare China's entire claim in the SCS through the so-called "Nine-Dashed Line" as a contravention to the provisions of the UNCLOS III .

Importantly, Chinese participation is not considered necessary for the process but would mean that China would not abide by the judgment. However in all likelihood it would readily embrace a positive ruling in its favour.

On the other hand, a positive ruling for the Philippines would only carry symbolic significance as it would serve to strengthen the cause and resolve of other contending littorals of the SCS. Additionally, such a judgment would also render the Chinese claim a blow by terming it as inconsistent with the UNCLOS.¹⁸

China formally rejected the Philippine move for arbitration on 19th February with spokesman Hong Lei of the Ministry of Foreign Affairs of China (MFA) stating that Philippines was disregarding previous agreements on the SCS dispute . He stated that Philippine actions "not only violate the consensus enshrined in the Declaration of Conduct of

Parties in the South China sea, but are factually flawed and contain false accusations.”¹⁹

Conclusion

The South China Sea region has emerged as the global tinder box and is waiting to explode. The ineffective diplomatic solutions, a growing disunity amongst ASEAN nations, military buildups, tense / bloody face-offs and an increasing tendency to retort to brinkmanship, has raised the potential for a full-fledged conflict.

It is in such a situation that some ASEAN countries are seeking a greater involvement of external powers and stakeholders like US, India, Russia and others powers to stabilise the volatile situation. This was evidenced at the Indo-ASEAN commemorative summit held in Delhi on 20 December 2012 which focused on issues connected with freedom of navigation and maritime security along with that of trade enhancement. These powers can effectively play a stabilising and encouraging role by being an active participant in some of the confidence building measures like creation of an environmental park, joint development of resources, joint cartographic surveys etc. which would help in maintaining peace while ensuring the freedom of navigation and unhindered access to the movement of shipping in the region.

It must be realised that the only possible way to stabilise the entire South China Sea area is through extensive negotiations between the claimant states and an honest attempt at reducing the current animosity and tension through multipronged efforts with the impetus provided by external powers. As a means of seeking a permanent solution to this volatile issue – the matter may be taken for arbitration by a third party or to the ITLOS for final judgment. While this may not be readily acceptable to all parties concerned – however a judgment by the ITLOS will prove to be a path-breaker and symbolic in many ways encouraging the contending parties to seek this option for solving the problem.

Notes

¹ For the first time in ASEAN history, the ten member regional grouping failed to issue a joint communiqué at the end of the meeting of Foreign Ministers at Phnom Penh in July 2012. There were differences on the South China Sea issue. Talks floundered after China insisted the forum was not the appropriate place to discuss the issue and Cambodia (the Chair) resisted any steps that would embarrass Beijing.

² Prepared Statement of Dr. Patrick M. Cronin Senior Advisor and Senior Director of the Asia-Pacific Security Program, Center for a New American Security, **Testimony before the U.S.-China Economic and Security Review Commission**, available at http://www.cnas.org/files/documents/publications/CNAS%20Testimony%20Cronin%20012612_1.pdf

³ Lucio Blanco Pitlo III “Fishing Wars: Competition for South China Sea’s Resources,” *International Relations and Security Network* at <http://bit.ly/12XL9YY/>.

⁴ Also see “U.S., China Relations: Policy Issues Congressional Research Service, 12 January 2011.

⁵ Edward Wong , “China Hedges Over Whether South China Sea Is a ‘Core Interest’ Worth War”. *New York Times*. Published 30 March 2011.

⁶ As cited in Reuters “Clinton warns against threats in Spratlys, Scarborough dispute” at <http://www.abs-cbnnews.com/global-filipino/world/07/12/12/clinton-warns-against-threats-spratlys-scarborough-dispute>. Published on 12-July 12.

⁷ See

http://en.wikipedia.org/wiki/Territorial_disputes_in_the_South_China_Sea#cite_note-59

⁸ Piyush Pandey, “ONGC Videsh Limited pulls out of block in South China Sea,” also see “Engaging Upstream Oil & Gas Communities World-wide at www.oilcouncil.com

⁹ As mentioned in Gazprom website available at

<http://www.gazprom.com/about/production/projects/deposits/vietnam/>

¹⁰“ Gazprom to invest 550 Million USD in Vietnam and India” available at

<http://english.vov.vn/Economy/Gazprom-to-invest-US550-million-in-Vietnam-and-India/110594.vov>

¹¹ In a significant move Russia has scheduled to sell Vietnam six Kilo-class Project 636 diesel-electric submarines worth \$4 billion and eight Su-30MK2 Flanker-C multi-role fighters worth \$400 million.

¹² Carolina Hernandez, “The South China sea Disputes: Regional Security Implications and Avenues for Cooperation,” in *The South China Sea Reader* Papers and Proceedings of the Manila Conference on South China seas, published by NDC Philippines and the Diplomatic Academy of Vietnam, 2011, pp 154-156.

¹³ Ibid.

¹⁴ Alberto Encomienda, The South China Sea: Back to Future through Cooperation,” in *The South China Sea Reader* Papers and Proceedings of the Manila Conference on South China seas, published by NDC Philippines and the Diplomatic Academy of Vietnam, 2011, pp. 191-192.

Security and Cooperation in the South China Sea

¹⁵ On 23 June 2012 the Chinese state company CNOOC (China National Offshore Oil Company) offered nine offshore blocks to international oil and gas companies for global bidding. These blocks (blocks 128 to 132 and 145 to 156), on offer by the Chinese, overlapped with the blocks that had already been given by the Vietnamese earlier for exploration.

¹⁶ Lucio Blanco Pitlo III Note 3,

¹⁷“China Throws Birthday Party for New City in Heart of Disputed South China Sea,” The Daily Mail Published 10 Apr 2013 available at <http://www.dailymail.co.uk/news/article-2178656/China-celebrates-birthday-Sansha-new-city-heart-disputed-South-China-Sea-course-neighbours-werent-invited.html#ixzz2Q3RXCH4q>

Sansha is the smallest prefecture-level city by both population and land area but the largest by water area.

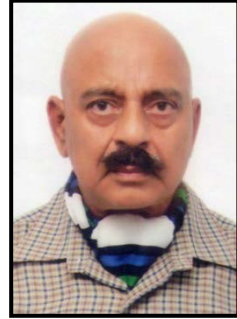
¹⁸ Zach Dubel, “Arbitration In The South China Sea: Between The Rocks And A Hard Case” at

<http://www.stimson.org/spotlight/arbitration-in-the-south-china-sea-between-the-rocks-and-a-hard-case-> published 04 March 2013.

¹⁹ As cited in James Hardy, “China rejects Philippines UN arbitration move,” HIS Jane’s Defence Weekly, Vol 50, Issue 9, 27 Feb 2013, p. 16.

Dr S.D. Pradhan

*Former Deputy National Security Advisor and
Secretary, National Security Council
Secretariat, Prime Minister's office,
the Government of India*



**South China Sea Disputes in the Current
Security Environment - Net Assessment**

Abstract

[Notwithstanding some positive developments, the situation in the South China Sea is fast acquiring dangerous dimensions with the possibilities of potential triggers resulting in a conflict. The growing aggressive nationalism, military build-up by three main disputants and increased US deployment of naval assets, which have taken the proportions of militarisation of the region, Chinese aggressive activities and the reaction by others, increased involvement of outside powers due to South China Sea's strategic, economic and commercial importance, have combined to create a highly tense situation in the region clouding all positive gains. Unless the International Community as one entity takes concerted and coordinated steps to ensure that the situation remains under control and creates a situation in which the involved parties would agree to accept a reasonable *modus vivendi*, the possibility of tension generating incidents flaring up into a conflict would remain a distinct possibility. This calls for, *inter alia*, a joint strategy by the International Community to pressurise and persuade disputants to stop the use of force and occupation of islets and reefs and to define disputed areas as also agreed boundaries of territorial waters, contiguous zones and EEZs of the littoral countries in the interim period.]

Objective

1. The paper is divided into three parts. In the first part, the recent developments in the South China Sea region with emphasis on the relationship between disputants are analysed. The changes in the level of outside powers are also taken into account. In the second part, net as-

essment on the developments is given to determine whether the situation has improved or deteriorated in the last couple of years. In the third part, suggestions required for maintenance of peace and stability in the region are spelt out.

Part-I **Positive Developments**

2. Since the signing of Guidelines for the Implementation of Document of Conduct for the Parties of South China Sea Disputes (DOC), there were both positive and negative developments as far as the South China Sea disputes are concerned. The most important positive development was that ASEAN agreed to a draft for Code of Conduct (COC) despite their differences. ASEAN Foreign Ministers on 14th August, 2013 agreed to take a common position on COC to tackle conflicts in the South China Sea. The agreement was reached at an informal gathering in Hua Hin to discuss ways of strengthening the regional grouping and to prepare for talks with China to adopt the COC as a way of settling territorial in the South China Sea. “We reinforced the common ASEAN position on our expectation that the COC be a rules-based regime to promote confidence, to avoid incidents and to address incidents should they occur,” Indonesian Foreign Minister Marty Natalegawa said. “We are all set to go to Beijing,” he further added.¹ Prior to this in 2012, ASEAN had produced a preliminary draft and then Indonesia developed it and produced a draft (called Zero Draft Code of Conduct) which was discussed towards the end of 2012. It is expected to take a position as discussed in the agreed Draft of COC. The Indonesian draft COC is based on three sources - the DOC of 2002, ASEAN’s Proposed Elements of a Regional Code of Conduct, and ASEAN’s six-point principles. The Indonesian draft included a disclaimer clause that nothing contained in the COC would prejudice the position of Parties, defined the area for COC, i.e. all unresolved maritime areas of the South China Sea, dealt with rules and procedures for confidence-building measures, preventing incidents and collisions at sea that demanded complying with 1972 International Regulations for Prevention of Collision at Sea (COLREGS) as also other relevant international instruments and two dispute settlement mechanisms for

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

resolving incidents when they take place and a ministerial level review mechanism every five years.² This agreed draft appears to have important elements for a COC to be able to maintain peace in the region till final resolution of the disputes, which remains to be problematic. The Foreign Ministers of China and ASEAN at the meeting on the 29th August, 2013 agreed that the competing maritime claims in the South China Sea should not overshadow fast deepening regional economic ties.³ Significantly, ASEAN-China representatives also agreed on 15th September, 2013 to speed up the process of finishing the COC for South China Sea. The agreement was result of the 9th ASEAN-China Joint Working Group meeting on the Implementation of the DOC of Parties on South China Sea and 6th ASEAN-China Senior Officials' meeting on the Implementation of the DOC held in Suzhou, China. Both sides also agreed to set up an eminent persons and experts group as proposed by China, though the terms of reference would be discussed later.⁴

3. Alongside, some joint efforts were also being planned on maritime scientific research, environmental protection, search and rescue, and transnational crime. In January, 2012 four committees were established in the meeting of ASEAN-China Senior Officials. China declared on 27th December, 2012, that it would allocate 30 million Yuan (\$4.8 million) in 2013 to enhance international cooperation with developing economies in the South China Sea. "Through cooperation with South China Sea countries we can deepen understanding and acknowledgement with each other and eliminate doubts and worries," Ma Dei, Director of the First Institute of Oceanography under the State Oceanic Administration, said in December 2012. He further added that deepening cooperation will largely prevent flaring up of disputes over the South China Sea. "Territorial disputes cannot be solved within a short time. Territorial disputes should be temporarily put aside, and joint development will be an effective way," said Zhang Zhanhai, director of the administration's international cooperation department.⁵ Chinese President Xi Jinping on 31st July, 2013 confirming this, stated that Beijing will adhere to the policy of "shelving disputes and carrying out joint development."⁶ Chinese PM Li Keqiang proposed a seven-point plan at the East Asia Summit (9-10 Oct. 2013) for ASEAN-China clos-

er ties that calls for increased economic, diplomatic and security cooperation.⁷ At the APEC meeting (7-8 Oct. 2013) China had proposed an Asian Infrastructure Investment Bank to finance development projects in Asia-Pacific.⁸ These according to some experts indicated that on non-core issues some cooperation can be expected, while efforts would continue for COC.

Negative Developments *Tension generating incidents*

4. However, there had been negative developments both in 2012 and 2013 in the South China Sea involving China, the Philippines, Vietnam and Taiwan. These suggest that despite the signing of the Guidelines for the Implementation of the Declaration of Conduct (DOC) and some positive developments noted above, the tension generating incidents continued to vitiate the environment in the South China Sea. In regard to China-Philippines tussle in 2012, one incident was noteworthy that could spiral into hostilities. On April 10, the Philippines Navy dispatched the frigate BRP Gregorio del Pilar to Scarborough Shoal to investigate the presence of eight Chinese fishing boats. An armed boarding party from the frigate discovered that the Chinese fishing boats were in possession of a large illegal catch of coral, giant clams and live sharks. Before the fishing boats could be detained, two China Marine Surveillance vessels interposed themselves between the fishermen and the Philippine frigate thus preventing any further action by the Philippines. While the Philippines attempted to diffuse the matter by replacing the warship with a Coast Guard cutter, China reinforced its presence with the dispatch of an armed Fishery Law Enforcement Command ship. All of the Chinese fishing boats and their illegal catch left the Shoal unhindered. Since then the Shoal is under the Chinese control. An expert Ian Story of the Institute of the South Asian Studies in Singapore has rightly remarked that “the rise of incidents such as Scarborough Shoal increases the risk of an accidental clash that could escalate into military or diplomatic crises.”⁹ It was also circulated in the Internet that China had ordered some military units up to level two of its four level scales in response to the territorial row with the Philippines over Scarborough Shoal. On 11th May, 2012, around 300 protes-

tors demonstrated outside the Chinese Embassy in the Philippines against the “bullying” tactics of China. On expected lines, the Chinese officially-backed newspaper on the 12th May, 2012 accused the Philippines of whipping up nationalism through protests and added that military conflict in the South China Sea was possible. China later denied that it is increasing combat readiness.¹⁰ In addition, China and Philippines continued to blame each other on the South China Sea disputes. In March 2012 the Philippines declared that it would upgrade facilities on Pagasa Island by building a roll-on roll-off dock for ferry-boats, which was protested strongly by China. In July, 2012, the Philippines along with Vietnam raised the issue of Scarborough Shoal, but Cambodia chair of ASEAN under the Chinese influence did not allow the issue to be included in the Joint Communiqué and for the first time Joint Communiqué was not issued after the 45th Annual Ministerial Meeting of ASEAN.¹¹ China blamed the two countries for unnecessary creating problems.

5. Such tension-generating incidents also took place involving China and Vietnam in 2012. On February 22, 2012, Vietnam alleged that its fishing craft was shot at and damaged by Chinese Marine Surveillance vessel near Paracel Islands. On March 3, 2012, Chinese authorities detained 21 Vietnamese fishermen and their two boats in waters near Paracel Islands. China demanded \$11000 from them and Vietnam protested against it.¹² On March 9, 2012, an official from the Hainan Tourism Development Commission announced that his Commission would work with the National Administration of China to expand tourist activities in Paracel archipelago, which was also protested by Vietnam.¹³ On March 12, 2012, Vietnam’s plan to send six Buddhist monks to re-establish temples that had fallen into despair on the Spratly Islands was opposed by China.¹⁴ On March 15, 2012, Vietnam accused China for violating its sovereignty by allowing the China National Offshore Oil Corporation to open bidding for 19 oil exploration blocks near Paracel Islands.¹⁵

6. The first eight months of 2013 have also witnessed such incidents. In May 2013, a Taiwanese fisherman was killed by the Philippines Coast Guard, which attracted strong protests and sanctions against the Philippines. Taiwan ended sanctions against the Philippines

after accepting an apology from Manila for the fatal shooting of a Taiwanese fisherman by the Philippine Coast Guard in August, 2013.¹⁶ China not only sided with Taiwan but also, taking advantage of Philippines' preoccupation with Taiwan, placed three naval vessels near the Second Thomas Shoal, the gateway to the oil and mineral rich Reed Bank, just 105 nautical miles from Palawan Islands within 200 nautical miles of Philippines' EEZ.¹⁷ Later in the month, Philippines lodged a strong protest against this act of China. There were three serious incidents involving China and Vietnam this year. On March 20, 2013, Vietnam accused the Chinese vessel of firing on the fishing boat near the Paracel islands and setting it alight. Vietnam lodged a formal complaint with the Chinese embassy in Hanoi. In a statement, the Vietnamese foreign ministry declared that a "very serious incident" took place on 20 March. According to Vietnam, the use of firearms pointed to a more forceful approach from Beijing in protecting what it calls China's sovereign waters. Earlier in the month, two Vietnamese fishing boats were chased out of disputed waters by Chinese Marine Surveillance ships, local reports said.¹⁸ On 20th May, 2013, Vietnam accused China of damaging another fishing boat in the disputed South China Sea. The Vietnamese Foreign Ministry said that a Chinese vessel slammed into a Vietnamese fishing boat while the latter was operating in the Vietnamese waters. It also accused China of damaging the Vietnamese boat's hull and risked the lives of 15 crew members.¹⁹ The third incident involving China and Vietnam took place on 7th July. Prime Minister of Vietnam Nguyen Tan Dung's government blamed that a Chinese boat crew beat Vietnamese fishermen near a disputed island chain. Vietnam Ministry of Foreign Affairs spokesman Luong Thanh Nghi (17th July, 2013) in a letter protesting the July 7 incident to the Chinese Embassy in Hanoi, requested an investigation and compensation for the fishermen, who also lost personal property. He also accused the Chinese vessel for chasing two Vietnamese fishing boats near the Paracel Islands, without specifying the number of fishermen involved.²⁰

7. The above mentioned incidents were followed by spats between China, Philippines and Vietnam. In the verbal attacks during 2012 and

2013, the higher level of stridency as compared to earlier times was palpable.

Growing aggressive nationalism

8. The rising aggressive nationalism (which is focused against some target), particularly in three claimant states - China, Vietnam and the Philippines - is significantly contributing to exacerbate the situation in the South China Sea as is evident from recent developments.²¹ Chinese aggressive nationalism and irredentism has become a potent feature of China's foreign policy and aggrandisement. The perception that China has to rectify humiliation of the past centuries is taking the central place in the formulation of foreign and security policies of China.²² The Chinese people and government feel that the areas in its periphery belong to China and they must be acquired. As China becomes more powerful, which China calls its "peaceful rise," its government and people see an increasing need for China to be more assertive in claiming these areas. In Beijing during the period under review, angry crowds assembling outside embassies, whenever dispute flared up, was a regular occurrence.²³ Vietnam and the Philippines too have witnessed strong anti-China protests. In July 2012, after Joint Statement could not be issued, there were strong protests against China in both countries. In Vietnam these protests were considered unprecedented due to stridency and strength.²⁴ In Philippines, in May 2012, on the Scarborough Shoal, the protests were widespread, particularly after the news of the Chinese flag being hoisted in Scarborough Shoal was reported.²⁵ Such protests were also noted in 2013. This rising aggressive nationalism among the countries involved limits the options for governments of the disputants.

Divisions among ASEAN countries

9. While ASEAN countries have come out with their agreed draft for COC, the differences among them remain. The differences are due to two reasons - first, their stakes are different in the South China Sea disputes and second, their relationships with China vary. Carlyle Thayer has rightly pointed out that "ASEAN is divided into three groups on the South China Sea question. The first group comprises the mainland states (Cambodia, Laos, Myanmar and Thailand). Their poli-

cies differ but generally, with the exception of Cambodia, they advocate deference to China through a low-key non-offensive approach. Cambodia proactively supports China. The second group comprises the four littoral states (Philippines and Vietnam/Malaysia and Brunei) whose maritime claims are disputed by China. This group may be subdivided into the front line states of the Philippines and Vietnam who vocally oppose China and Malaysia and Brunei who have adopted a low-key role but also support a unified ASEAN position. The third group comprises the maritime states Indonesia and Singapore who, though not parties' principal to the South China Sea disputes, have strong interests in maritime security including freedom of navigation. Five states - the Philippines, Vietnam, Malaysia, Indonesia and Singapore - form a loose coalition within ASEAN that advocates a unified position on the South China Sea in discussions with China."²⁶ This sums up the different approaches within ASEAN. These differences were clearly visible after the failure to issue joint statement at the 45th ASEAN Ministerial Meeting in July, 2012 in Cambodia. While ASEAN has come up with an agreed draft of COC, it is yet to be seen how they diplomatically deal with China as one entity. Their different levels of relationship with China and past experience do not generate much optimism. Even Vietnam and the Philippines, who have been most vocal in opposing China, have different types of relationship with China. While Vietnam has a fairly strong party-to-party relationship with China (in addition to government to government and military to military relations) and that places its links with China in a different category; Philippines is seen by China as an ally of US.

Chinese Game Plan

10. The problem needs to be seen in the larger context of the Chinese claims and intentions on disputed maritime borders. China claims most of the region in the South China Sea with its nine dotted lines. China considers it absolutely necessary to have undisputed control over the area in the South China Sea for strategic, economic and commercial reasons. The area in the South China Sea is given the same importance as it gives to Tibet and Taiwan. Its game plan towards the South China Sea disputes is based on three premises. First, China con-

siders, as noted in the official sponsored Global Times on 31st March, 2013, that behind the South China Sea disputes, it is actually the rivalry between Beijing and Washington.²⁷ Second, it not an issue for discussion at a multilateral forum but to be discussed bilaterally with the parties directly involved.²⁸ And the third is that ASEAN has divisions which can be exploited for dealing with the claimants. Luo Zhaohui, Director General of the Department of Asian Affairs of China stated in November, 2012 that “it is some ASEAN countries and not China that are not ready to embrace a Code of Conduct (COC) in South China Sea.”²⁹ China, keeping the above in view has formulated a well calibrated grand strategy towards the South China Sea disputes, which has diplomatic, political and military dimensions.

11. Diplomatic steps include projection of willingness for negotiations, while subtly trying to play on the leverages it has over ASEAN members with a view to weaken their unified efforts. China’s reluctance to discuss the issue at multilateral forums is well known. In view of growing pressure and prospects of discussions of the ASEAN draft at a multilateral forum, while China has not openly rejected discussions, the Chinese leadership has recently come out with statements that reflect the Chinese game plan to ensure that the parties concerned discuss the issue separately with China. Wang Yi the Chinese Foreign Minister on the 2nd August, 2013 speaking in Bangkok on the occasion of the 10th Anniversary of ASEAN-China partnership proposed a three-way formula to resolve the South China Sea disputes. The first plank of the proposal demands direct bilateral talks among the parties concerned. The second plank of the proposal is to continue to implement the DOC while gradually push forward to formulate COC, i.e. making progress on COC dependent on the implementation of DOC and the Guidelines. And the third plank is to cooperate in the common development projects.³⁰ The timing and the occasion was specially chosen to send a clear message to the members of ASEAN. Later on 5th August in Hanoi, Wang Yi stated that all parties should have realistic expectations and take gradual approach to the proposed COC. He further said that there should not be any rush for COC and stressed that a lot of work was yet to be done in this context. He also pointed out that no individual country should impose its will on others, hinting that China

would not like to accept a draft prepared by others.³¹ He was hinting at Philippines' move to take the South China Sea issue to the international tribunal. Chinese PM Li Keqiang at the East Asia Summit (9-10 Oct. 2013) repeated the Chinese position that negotiations on the South China Sea should only be held directly between the parties concerned.³² Wang Yi in May, 2013 visited four countries - Singapore, Thailand, Indonesia and Brunei. At that time some analysts pointed out that the Chinese aim was to sow divisions amongst the members of ASEAN.³³ In August, 2013 Wang Yi visited Malaysia, Vietnam and Brunei avoiding Philippines. An independent analyst of Cambodia Lao Monghay said, "The strategy of China is to divide ASEAN." Earlier China had used its influence on Cambodia and economic assistance to ensure that South China Sea issue was not mentioned in the Joint Communiqué as desired by Philippines and Vietnam. China is using its economic and political influence in countries like Cambodia, Thailand and Myanmar to obtain their support for Chinese strategy on the South China Sea disputes. China's main reason to continue talks with ASEAN is to ensure that they do not further enhance their political and military relation with the US.

12. Politically China is taking steps for projecting that its sovereignty over South China Sea is non-negotiable. It had passed the Law on Territorial Sea and Contiguous Zone of People's Republic of China in 1992 and declared that the region in the U-shaped area in the South China Sea belonged to China. This in fact turned the South China Sea into a Chinese lake. On 7th May, 2009 China submitted a map to the United Nations that contained nine-dash lines.³⁴ Since then in all statements China says that it has sovereignty over this area, which must be protected. It has in the past objected to the purely commercial activities like oil exploration in the EEZ area of Vietnam. It also bans fishing activities by the fishermen during May and August every year, while it encourages fishing by its own fishermen in areas which belong to other countries. The official media continues to project the South China Sea disputes as one of the core issues. China took next step to tighten its control over the disputed areas in June 2012, when the Chinese cabinet approved the establishment of the prefectural level city of

Sansha to administer the Xisha (Paracel), Zhongsha and Nansha (Spratly) island groups.³⁵

13. Since 2012, China has significantly up-graded its propaganda to buttress its claims. In 2012 China established a Steering Sub-Committee for guiding, coordinating and supervising, educating, propagating awareness of the national map and controlling the entire national map market with coordination of 13 Ministries which included the National Agency for Geographic Information and Map Production, Committee for Propaganda and Instruction of the Communist Party of China, Ministry of Foreign Affairs, Ministry of Education, Ministry of Industry, Ministry of Public Security etc. The main objective of this committee is to instruct and guide the task of reprinting and republishing national maps and organising propaganda.³⁶ This indicated a Chinese plan to intensify cartographic aggression and propaganda along with other aggressive activities. It may be added that the Chinese claims are based on selective history and interpretation of UNCLOS. “In case of Scarborough Shoal, China claims the area on the basis of the map of the 13th century when China was itself under the alien – Mongol – rule”.³⁷ However, a 10th century Arab traveller and a geographer al-Masudi had made reference to the Cham Sea and trade between Champa and Luzon.³⁸ Moreover, while China rejects the unequal treaties imposed by colonial powers, it points out that the Treaty of Paris of 1896 had not given Scarborough Shoal to the Philippines.³⁹ In the end of 2012, China began to issue biometric passports with a map of China showing the nine-dash lines that attracted severe reactions from the neighbouring countries.⁴⁰ On 1st January, 2013, China issued a new map, which for the first time marked in detail more than 130 islands, reefs, shoals in the South China Sea that Beijing claims within 9-dash lines.⁴¹ China in fact is trying to strengthen its claim with regard to disputed areas with a view to deal with other claimants from the position of strength.

14. Recently, China has adopted a new tactics to strengthen its claims in the South China Sea. It is using tourists for this purpose. In April 2012, China approved a development project to support tourism and fishing in the South China Sea. The Chinese southernmost province Hainan declared that it would develop tourism in the Paracel is-

land chain.⁴² In April, 2013 it was reported that China had sent a cruise ship with thousands of tourists to the South China Sea that was escorted by naval and other vessels to assert its claims.⁴³

15. Chinese vessels are now aggressively patrolling the area in accordance with its “Near Seas Defence” doctrine that includes the Yellow Sea, East China Sea and South China Sea.⁴⁴ China, after fortifying its naval outposts in the South China Sea, has established a new pattern of patrol that covers practically all disputed reefs, shoals and islets within China’s nine-dash lines.⁴⁵ In March, 2013, a four-ship Chinese naval fleet that conducted patrol and training missions on the South China Sea for sixteen days, reached Zengmu Reef, the southernmost part of China’s claimed territory and conducted simulated landings near the disputed James Shoal. There an oath-taking ceremony was organised.⁴⁶ The crew vowed to defend the South China Sea area claimed by China and maintain national sovereignty. The flotilla included Jing-gangshan - an amphibious landing platform dock, this was aimed at projecting an active and increased presence of PLA (Navy) and that well-trained naval personnel capable of undertaking amphibious operations were present in the area. China also claimed to have used a helicopter to patrol the disputed Spratly Islands in the same month. The Chinese administration claimed that for the first time a maritime helicopter was dispatched to patrol the South China Sea that covered 800 nautical miles.⁴⁷ However, other disputants had pointed out that the Chinese aircraft and helicopters were patrolling the region even earlier.

16. China has also reorganised its maritime security units to raise their effectiveness. In March, 2013, China merged four of its maritime units to form Chinese Coast Guards. These four units were - Chinese Maritime Surveillance belonged to the Ministry of Land Resources, Coast Guards under the Ministry of Public Security, Fisheries Police under the Ministry of Agriculture and Marine Anti-Smuggling Police under the General Administration of Customs.⁴⁸ The reorganisation was aimed at forming a strong force to assert the Chinese claim effectively without using military vessels. A senior Chinese Navy Official Zhang Zunshe, Vice-President of the Chinese Naval Research Institute, hailed the unification of China’s law enforcement agencies under a new National Oceanic Administration as the creation of an “iron fist”

that would replace ineffective operations scattered among a number of agencies.⁴⁹ This reflects China's motive for reorganising the Coast Guards. Chinese consider that First and Second chains of Islands must be protected and the Chinese forces since the beginning of this year have been given authority to search and take necessary action against "illegally entered ships in its territorial waters."

17. The Chinese activities assume serious dimensions when seen in the backdrop of Chinese defence-related developments. The Chinese defence budget has been increased substantially over the years and the official budget in 2013 was raised by 10.7% over the budget of 2012 from \$106.39 bn to \$114.3 bn.⁵⁰ It is well known that the actual budget is about 2.5 times more than the official budget. The USA's report on "Military and Security Developments involving the People's Republic of China, 2011" assessed, "However, the pace and scope of China's sustained military investments have allowed China to pursue capabilities that we believe are potentially destabilising to regional military balances, increase the risk of misunderstanding and miscalculation and may contribute to regional tensions and anxieties. Such capabilities could increase Beijing's options for using military force to gain diplomatic advantage, advance its interests or resolve military dispute in its favour."⁵¹ A recent study by Ronald O'Rourke (08-08-2013) for the US Congressional Research Service entitled "Chinese Naval Modernisation: Implications for the US Navy Capabilities: Background and Issues for Congress" clearly points out that Chinese naval modernisation is aimed at developing its Anti-Access capabilities (meant for US) and also for asserting or defending its territorial claims in the South China Sea and East China Sea.⁵² Chinese scholars, on the other hand, point out that its military spending is not more than country's need. It is pointed out that its military expenditure is less 1.3 per cent of its GDP and compares unfavourably with the defence expenditure of US, UK and Japan.⁵³ This estimate does not take into account the unofficial budget.

18. The Chinese acquisition of new weapons and technology is also alarming that is meant to strengthen its Anti-Access and Anti-Denial Strategy. China's missile capabilities increased substantially, which is reflected in the growth of the number of missile units. In the last ten

years, its short range missile units have increased more than seven times, indicating the number of missiles added in the Chinese store since the year 2003. Its long range missiles have impressive range though the number has not increased much in the last two years. China is also replacing its liquid fuel missiles with solid propellant missiles. There had been 30% increase in cruise missiles in 2010 alone.⁵⁴ Pentagon has described that China has “the most active land-based ballistic and cruise missile programme in the world.”⁵⁵ According to a document prepared by the Project 2049 Institute, “The People’s Republic of China is developing capabilities that would alter the strategic landscape in Asia-Pacific region and beyond.”⁵⁶ Authoritative Chinese writings and assessments by security experts indicate intensified efforts towards research and development of increasingly accurate and longer range strike systems that can be launched from Chinese territory against land and sea based targets through the Asia Pacific region in a crisis situation. China’s growth of missile stockpile is viewed by its neighbours as well as Western countries as a threat to the balance of power in the region. Quoting a report by the Federation of American Scientists, a news item reported that “China continues to deploy four new nuclear capable ballistic missiles (DF-21, DF-31, DF-31A and JL-2) including the one that can be launched from submarines, causing fear among its neighbours and the US.”⁵⁷ However, an American expert stated that the Chinese Jin class nuclear submarines equipped with JL-2 ballistic missiles would be deployed next year.⁵⁸ A Chinese newspaper (PLA Daily) in December, 2012 claimed that the Chinese submarines and crew during a training exercise had hit all the targets.⁵⁹ Ya Long naval base has underground submarine pens. The patrolling by Chinese submarines is a source for concern not only for the involved parties but also for US and other countries using South China Sea. Recently Japanese Ambassador to US K. Sasae described China’s “spectacularly active” naval posture coupled with “massive” military build-up in Asia as part of a pattern of belligerent behaviour towards Japan and other neighbours over maritime disputes.⁶⁰ Chinese deployment of Anti-Ship Ballistic Missiles and operationalisation of its aircraft carrier Varyag have also been noted with concern by its neighbours. The then Indian Naval Chief Admiral Nirmal Verma remarked

on 2nd December, 2011, that China's new anti-ship ballistic missile, if fully functional, posed "a different category of threat and certainly requires a different measure to counter it." He further noted that "Jin class of submarines with its ballistic missile capability and underwater endurance levels have compelled other maritime powers to see what the Chinese intentions with such platforms and weapons are."⁶¹ Other nations in South China Sea, while have been cautious in not openly criticising the Chinese military build-up, have taken steps to increase their capabilities, which are described later.

19. Changes in the Chinese nuclear doctrine, indicating the possible use of nuclear weapons to get back its territories, too pose a serious threat to China's neighbours. In the last few years, it has become clear that China has no intention to follow the doctrine of "No First Use" (NFU) of nuclear weapons at least in the regions which it claims as its own territory.⁶² The security experts analyse that tactical nuclear weapons of China are incompatible with its declared NFU doctrine. This raises an important issue whether China would use nuclear weapons to ensure its control over the islands in the South China Sea or not. Since China has agreed to support the South East Asia Nuclear Weapon Free Zone (SEANWFZ) and is bound not to attack non-nuclear weapon States, it would appear that China would not use it. However, going by the logic of the change in the doctrine, it can be said that if China feels that "its territory in the South China Sea" is attacked by US or any other power even with conventional weapons, it could use nuclear weapons. The "No First Use" is not applicable for safeguarding its own territory. It may be added that this concept was developed to safeguard the Chinese interests in Taiwan. Since the U-shaped line in the Chinese maps reflects the Chinese perception that all the islands covered in it belong to China, this change in the nuclear doctrine would appear to be relevant for the disputed islands in the South China Sea. In any case, the nuclear weapons are meant to strengthen Chinese deterrence.

20. China has gradually occupied new features in the South China Sea. Initially, it used force to occupy features but later changed this policy. In 1974, China fought with South Vietnam when it was under military pressure and occupied islands in Paracel.⁶³ In 1988, it had

clashes with Vietnam in Spratly islands and occupied Johnson Reef and in this clash about 80 Vietnamese soldiers died.⁶⁴ After this, China began to look for suitable opportunities to occupy features without clashes. In 1995, it occupied Mischief Reef. And in 2012, it occupied Scarborough Shoal. Aerial photographs taken on the 31st August, 2013, reflect that China has started construction activities at Scarborough Shoal. It may be recalled that China had constructed facilities in Mischief Reef after its occupation in 1995.⁶⁵ Thus China continues to build facilities which can be used by military in Spratly and Paracel Islands.

21. China's growing military power has coincided with a more aggressive tone and activities, threatening the stability of the region. The Chinese claims of its peaceful rise are seriously questioned by most countries. The Chinese attempts to project its growing power as China's peaceful rise that is not aimed against any country appear to be a ploy to obfuscate its ulterior motive of strengthening itself without arousing the suspicions of its neighbours. In this context, statement of two analysts - Sean Chen and John Fiffer - is significant, "Ultimately, even if Chinese leadership views the military leadership as the natural part of the country's ascension to great power status, the uncertainties surrounding its military expenditures actually undermines the contention that China's rise is peaceful."⁶⁶ Dr Milan Vego, Professor of Operations, Naval War College, summing the perceptions of US and other countries around China, remarked, "The rapid increase in PRC's Anti-Access capabilities in the Western Pacific should greatly concern the US and its allies and other friendly countries in the area. We should take note of supposed peaceful rise and far more prudently its military capabilities."⁶⁷ The harsh comments of Chinese official media often made the situation more complicated as there were always strong reactions from China's neighbouring countries. An analyst Aaron L. Friedberg, Professor of Politics and International Affairs at Princeton, commenting on the situation stated, "China's military policies are not the product of misunderstanding; they are the part of a deliberate strategy that other nations now find ways to meet. Strength deters aggression: weakness tempts it. Beijing would denounce such moves as provocative but it is China's actions that currently threaten to upset it."⁶⁸ The continuous military growth of China, modernisation of the Chinese

armed forces, Chinese aggressive actions and continuing occupation of Islands/Shoals are matters of serious concern for the stability and peace of the region.

Involvement of out-side powers

22. There are several pull factors that are attracting outside powers to this region. They realise the strategic, economic and commercial significance of the South China Sea. It is rightly called the maritime heart of South East Asia. It is its geographical location that makes it strategically important. It is located south of China and Taiwan, west of the Philippines, east of Vietnam, north of Indonesia, Malaysia and Brunei and north-east of Singapore. It extends from the Straits of Malacca in the south-west to the Straits of Taiwan in the north-east and straddles the world's second busiest sea lane and sees the passage of over half of world's oil tanker traffic.⁶⁹ Thus, its significance lay in the strategically important sea lane of communication. US Vice President Joe Biden aptly stated that the South China Sea is an area that's a "major, major, major highway of commerce."⁷⁰ In addition, its oil and gas resources are considered to be vast. The Chinese have estimated that oil resources are around 213 bn barrels, while US scientists have estimated the amount of oil at 28 bn barrels. The US Energy Information Administration puts the natural gas reserves at about 900 trillion cubic feet - the same as Qatar.⁷¹ It provides rich fishing area. It produces 8% of world's total commercial fishing output.

23. Another important interest of outside powers is their concern over China's aggressive designs that are not only harming the interests of the parties involved but also of outside powers as they disturb the balance of power and stability of the region. The impact of the Chinese activities and tone of statements is just the opposite of what China desires. China does not want internationalisation of the South China disputes and closer relations between US and other claimants. However, by challenging purely commercial activities of Indian and Russian oil companies⁷² and annual US-Philippines military exercise⁷³ as also claims of "indisputable sovereignty" over most areas in the South China Sea, it has brought the South China Sea disputes into the sharper focus of the comity of nations. And the Chinese aggressive activities

are enhancing the threat perception of smaller countries in the region, which in turn is pushing them to the US. John Lee, a security specialist at the University of Sydney, has noted, "After 2010 there was little choice for other regional capitals but to seek closer relations with the US in order to balance and hedge against future Chinese intentions and behaviour."⁷⁴ The US in official statements does not take any position on the sovereignty issue, but has since 2010 stated that the South China Sea issue is of national interest. The US in August, 2012 in a press release explained its concerns in the following words, "As a Pacific nation and resident power, the United States has a national interest in the maintenance of peace and stability, respect for international law, freedom of navigation, and unimpeded lawful commerce in the South China Sea."⁷⁵ President Obama's rebalancing policy includes economic, political, diplomatic and military dimensions to protect US interests.

24. The increasing projection of the Chinese claims on the islands in the U-shaped dotted line is viewed with concern by outside powers. While there is no doubt that the outside powers have strategic, economic and commercial interests in the region, the Chinese actions are acting as a catalyst to bring the outside powers into the region. The former Indian foreign Minister Mr S.M. Krishna had stated that the South China Sea is the property of the world.⁷⁶ He also stated that trade ways in the international waters were open for all countries.⁷⁷ Russia too is interested in the freedom of navigation as was stated by the Russian Defence Minister General Sergei Shoigu in May 2013.⁷⁸ The European Union has expressed support to ASEAN on the proposed COC.⁷⁹ However, it is the US which has formulated a strategy (rebalancing) to take concrete steps. The US, noting the aggressive activities, stated in a press release, "We are concerned by the increase in tensions in the South China Sea and are monitoring the situation closely. Recent developments include an uptick in confrontational rhetoric, disagreements over resource exploitation, coercive economic actions, and the incidents around the Scarborough Reef, including the use of barriers to deny access. In particular, China's upgrading of the administrative level of Sansha City and establishment of a new military garrison there covering disputed areas of the South China Sea run counter to collaborative diplomatic efforts to resolve differences and

risk further escalating tensions in the region.”⁸⁰ The opinion in the US is also building up in favour of countering the Chinese aggressive activities. On 10th June, 2013, a number of US Senators submitted the Resolution 167 condemning all acts of coercion, supporting ASEAN-China for adopting a COC and encouraging deepening of efforts by the US to develop partnership with regional countries. This was the third Resolution by US Senators but the wordings this time reflected a hardening of views.⁸¹

Military build-up in the region

25. Of late, the military build-up in region has become a notable feature. While China’s military modernisation has been described earlier, other nations too in the region have started modernising their armed forces. US commitments in the region have increased particularly since 2009. The US has already taken a decision to keep 2500 troops in Australia and deploy littoral ships in Singapore and in the Philippines keeping in view the growing tension and to be in a position to protect its interests.⁸² US have Visiting Forces Agreement (1998) with the Philippines, which allows US forces to have a rotational presence. Now the US has expanded negotiations with the Philippines and is seeking to build facilities and storage sites in that country as well as given greater access for its aircraft and warships.⁸³ On 22nd August, 2013, the USA and the Philippines have issued a Joint Vision Statement for creating a joint force posture that assures freedom of navigation and provides for common defence of each nation’s sovereign territory.⁸⁴ With Vietnam, too, the US is developing closer defence relations despite some reservations. US-Japan defence relations too are strengthened in recent years in view of Chinese activities. Leon Panetta, the former US Defense Secretary, made it clear that US would deploy 60% of its ships in this region by 2020.⁸⁵

26. The Philippines has a treaty with the US and the latter is bound to defend the former in case of a conflict. In 2012, the Philippines passed the New Armed Forces of the Philippines Modernisation Act and allocated \$1.73 bn for this purpose. In 2013, President Benigno S. Aquino III approved additional \$648.44 mn for the modernisation of the armed forces.⁸⁶ The Philippines’ National Security Council in June

2013, asked Aquino's Government to enhance defence budget by .5 to 1% of the GDP from the present defence budget which is 1.1 of the GDP.⁸⁷ The Philippines has acquired two warships from US since 2011 - Gregorio del Pilar and BRP Ramon Alcaraz. Manila spent \$15mn to upgrade the latter.⁸⁸ The Philippines is also negotiating with South Korea to purchase a dozen new fighter jets and two frigates and has ordered 10 coast guard ships from Japan and three vessels from France. The US has increased its military assistance package next fiscal year from \$30 mn to \$50 mn.⁸⁹ In addition, the Philippines has also reached out to Taiwan and Italy for defence acquisitions.⁹⁰ The Philippines armed forces are acquiring three multipurpose attack craft from Taiwan and defence equipment from Italy which possibly include a frigate and aircraft.⁹¹

27. Vietnam's assiduous efforts to modernise its armed forces are also notable. Vietnam has increased its defence budget by 130% from 2003 to 2012.⁹² Since 2008, the Vietnamese Navy has obtained two Gepard class guided missile frigates and four Svetlyak-class fast boats. It also acquired about 400 Kh Uran/SS-N-55 anti-ship missiles. The Vietnamese Army acquired 40 Yakhout/SS-N-26 missiles. Its two batteries for air defence have S-300 PMU-I surface-to-air system and two hundred 9M311/SA-19 Grison surface-to-air missiles. These are also equipped with four Kochanya air defence search radars and three Vera passive radars. The Vietnamese Air Force acquired between 2010-2012 twenty Su-30 MK2V combat aircraft armed with Kh-59 MK anti-ship cruise missiles and one hundred R-73 (AA-11 Archer) short-range-air-to-air missiles. Vietnam's Navy is also acquiring six Kilo-class fast attack submarines and four Dutch Sigma-class Corvettes. Kilo-class submarines would be armed with heavy torpedoes (53-56 or Test 76) and anti-ship missiles (3M-54E or 3M-54EI) Novator Klub-S (SS-N-27) anti-ship cruise missiles. Vietnam plans to deploy an advanced capability modern submarine fleet by 2016-2017.⁹³ Vietnam's Army is also modernising its fleet of T-55 main battle tank with the help of Israeli companies. Hanoi is also showing interest in buying helicopters and army transport aircraft from France and the latter has agreed to help Vietnam modernise its armed forces.⁹⁴ Vietnam is also asking US to remove restrictions to import weapons.

28. Most of Taiwan's weaponry is old. The process of modernisation of its forces got stalled for various reasons, including Chinese pressure. In the last five years some move to upgrade its systems and equipment got underway. These include P-3 Orion maritime patrol craft (ordered 12 and a few are likely to arrive this year), UH-60 helicopters, requested for AH-64 D attack helicopters, Patriot missile upgrades, Stinger missiles, E-2 Hawkeye AWACS planes (the last 2 upgrades arrived in March 2013), F-16 upgrades, mine-hunting ships (20 Ospry class were ordered in 2010, arrived in August 2012) and missiles for defence against aircraft, ships and tanks. Taiwan is also trying to acquire diesel/electric submarines but so far it has not succeeded.⁹⁵

29. Indonesian armed forces are also being modernised, though the country claims that such efforts are on-going attempts to upgrade its forces. Indonesia too increased its budget by 73% from 2003 to 2012, raising the defence budget to \$ 7.013 bn.⁹⁶ A number of procurements have already been announced or are on-going as part of the modernisation efforts. These include the construction of three new submarines, the purchase and upgrade of second-hand F-16s from the United States, trainer aircraft from Brazil and South Korea, the purchase of surplus Leopard 2 tanks and Marder AFVs from Germany, MLRS systems from Brazil and Caesar artillery systems from France among others.⁹⁷

30. Major stakeholders are gearing to build up their military capabilities to counter possible Chinese threat. Japan, which is also under threat of China in East China Sea, too has started acquiring weapons to protect its interests. In fact, there are three dimensions, which are complicating the situation in the region. First, Chinese attempts to form a security group by playing on the divisions in ASEAN, second, US efforts to form a security group, and third, ASEAN's attempts to have ASEAN-centric security group. While the first two strengthen the perception that the South China Sea disputes are an extension of Sino-US rivalry, the third efforts have their own weaknesses.

Part II Net Assessment- Eight Dimensions

31. Weighing both positive and negative developments as also the intents of the claimants, the following assessment is derived -

I. The situation in the South China Sea is exacerbating with the risky moves like occupation of Scarborough Shoal and incident at Second Thomas Shoal in May 2013, the rising aggressive nationalism and escalating spats which are becoming shriller and louder. The steps taken so far including DOC and Guidelines for the Implementation of DOC have reduced neither tension nor fresh occupation. The salience of negative factors has increased. The relationships between China and other disputants involve hostile perceptions and occasional use or threat of use of military/paramilitary instruments. The chances of such incidents escalating into a conflict fall into the realm of a distinct possibility.

II. As oil and gas are increasingly becoming scarce, the parties involved harden their stance on the sovereignty issue. This is also a factor that is attracting outside powers.

III. It is only China among the disputants which has reservations about COC and the South China Sea issue remains hostage to the continued reluctance of China to deal with the issue at the multilateral forums. Its discussions with others are meant only to ensure that the other parties involved may not move closer to the US. In fact, China is playing a waiting game so that it may be able to negotiate from the position of strength after its “rise” is completed.

IV. China’s policies have moved from assertiveness to aggressiveness. China, in accordance with its well-crafted strategy, is also occupying new areas and is constructing facilities there. China’s increasingly aggressive actions are viewed both by involved parties and outside powers as attempts to use its coercive means to settle the issue. This factor is responsible for the major stakeholders making attempts to strengthen/form alliances to protect their interests.

V. As the result of Chinese military development and the reaction of others, the process of militarisation of the region has begun. While some experts point out that the military build-up has not yet acquired

the dimension of militarisation, the military build-up has spurred an arms race. This arms race, which is in the incipient stage, is fast acquiring dangerous proportions threatening the peace and stability of the region. This reflects disputants' willingness to accept higher costs for the protection of their interests.

VI. The rigidity of disputants is increasing. Vietnam and the Philippines have strongly reacted to the Chinese political moves. After China passed the Law on Territorial Sea and Contiguous Zone of the People's Republic of China in 1992 and declared that all islands in the South China Sea belonged to China, the Philippines passed the Baseline Law on 10th March 2009 defining the area and Vietnam passed the Law of Sea on 21st June 2012 defining its own area. These two nations, too, following China, may empower their maritime forces to search and seize ships entering their own areas. Such a possibility presages a grim picture.

VII. Outside powers are increasingly getting concerned about the developments in the region to protect their interests. Their strategic, economic and commercial interests as also Chinese activities are keeping the South China Sea developments in their sharper focus. Over the past few years, their involvement in the region has definitely increased. US policy makers consider this an important area of national interest and have decided to increase their presence in the region. The strategic interests of the US demand that Chinese hegemony in this region should not be established. The US would continue to take measures to contain Chinese aggressive activities. Russia and India too are interested in the oil exploration activities as also in the freedom of navigation in the region. Japan which has a dispute with China over the Senkaku Islands too is worried over the aggressive Chinese activities. The involvement of outside powers has a mixed impact. The positive side is that their focus and relations with smaller countries are keeping China under pressure to continue to have dialogue with ASEAN and not indulge in military adventure that would immediately attract action by them particularly by the US. On the other hand, the support of outside nations for the Philippines and Vietnam is emboldening them to protest strongly against the Chinese aggressiveness, raising the level of tension. However, the outside nations have not yet formulated any joint

strategy to deal with situations like occupation of Scarborough Shoal. This may have conveyed a message to China that further occupation of islands and reefs would not be effectively opposed by outside nations and it can get away with impunity after stealthily occupying islands and reefs.

VIII. The essential elements which are required to resolve the issue are either missing or are very weak. It is well known that the resolution of a conflict is possible under certain conditions. First, the negotiations can succeed only if all concerned adopt the problem-solving behaviour, i.e. they all sincerely make efforts to resolve the issue. For this they should be willing to accept that certain concessions would have to be given to others. The current developments do not reflect that the involved parties are willing to accept compromises. On the other hand, the rhetoric fuelled by aggressive nationalism suggests that any concession to others is considered as a loss. They see this as a “zero sum game.” Second, the current stalemate is not hurting hard the main player, i.e. China, and therefore there is no urgency shown by China to resolve the issue. Third, for the success of a mediation and arbitration effort, all the parties involved have to develop confidence in the mediator or arbitrator as well as optimism in the outcome. These elements are missing. China has not shown any confidence in the mechanisms available under UN.

Part III **Suggestions**

32. In view of the above, it would be unrealistic to expect that either the disputes can be resolved in any short time frame or situation would get improved soon. The factors responsible for the continuing tension are strong. Pragmatism demands focus on reducing the chances of incidents escalating into a conflict, which is possible if all parties accept a binding COC and adhere to the agreed procedures. For this the following five steps are essential:

- First, all the parties concerned should agree to define the area of dispute. This would not be easy as this requires that all parties come to a temporary agreement, without prejudice to the final decision, on the boundaries of the disputed areas in the South China Sea. This would require that the laws passed by the three countries would remain

under suspension till the final resolution of the disputes. While this would not require any change in the current position of control of the islands, they would have to stop further occupation of the islands and reefs and construction activities. The procedure for management of disputed areas would have to be clearly indicated which should be respected by all the parties. Effective dispute settlement mechanism to deal with any untoward incident would also be essential.

- Second, ASEAN must act as one entity and remove their differences to be able to effectively place their points before China. This demands that they take a common stand on de-linking the processes of implementation of DOC and formulation of COC.

- Third, the International Community has the responsibility to ensure peace in the region and has the capability (provided all nations act as one entity on this issue) to persuade and pressurise the concerned parties, particularly China, whose aggressive activities are responsible for strong reactions from others and widening the trust deficit. The US and other nations interested in the region have to take concerted action to ensure that all the parties of the disputes adopt a reasonable approach and agree to the proposed COC at the earliest. Nations like US, Russia, Japan, India and Australia need to act as one entity to use all leverages of pressure and incentives to change the Chinese stance. So far outside nations have been reacting separately to the incidents. Trade with China provides a strong leverage to them to pressurise China. The International Community should take effective steps to check further occupation of the islands and reefs. To provide incentive, China also needs to be clearly told that if the freedom of navigation and legalised exploitation of resources are assured and aggressive activities are stopped, the interference from outside countries could be reduced. There should be transparent and clear procedure for freedom of navigation and exploitation of resources. In addition, US need to clearly take a position on UNCLOS to be able to pressurise the concerned parties to accept UNCLOS and mechanisms available for resolution of disputes.

- Fourth, the galloping militarisation of the region needs to be checked. This in the regional context means that China adopts a friendly stance towards other countries, particularly the Philippines and Vietnam. In the international context, it means China and the US estab-

Security and Cooperation in the South China Sea

lish a relationship that would understand each other's concerns. China needs to appreciate that continued confrontationist attitude would adversely affect its trade with other countries. Further militarisation of reefs and shoals should be stopped by all disputants immediately.

- And fifth, all parties should agree to de-activate their assets from launching offensive propaganda against other countries. This is important as propaganda increases the level of tension significantly. Any diplomatic effort to succeed requires absence of spats.

34. In conclusion, it must be admitted that the above steps are not easy to be taken as the environment is tense and the International Community has yet to formulate a strategy to deftly deal with the South China Sea Disputes. However an effort in the right direction can substantially improve the situation.

Notes

¹ <http://www.bangkokpost.com/news/local/364660.asean-agrees-on-south-china-sea-conduct>.

² http://csis/files/attachments/130606_thayer_conferencePaper.pdf.

³ <http://www.globalpost.com/dispatch/news/kyodo/asean-agree-territorial-rows-not-cloud-economic-growth>.

⁴ <http://www.bangkokpost.com/lite/breakingnews/369881/asean-china-to-speed-up-code-of-conduct>.

⁵ http://chinadaily.com.cn/2012-12/28/content_16063094.htm.

⁶ http://www.business-standard.com/article/pti-stories-carry-joint-development-xi-113073101186_1.

⁷ <http://csis.org/publication/2013-apec-leaders-meeting-and-east-asia-summit>.

⁸ Ibid.

⁹ <http://www.usatoday.com/news/world/story26-04-26/south-china-sea-philippines/54566350/1>.

¹⁰ The Hindustan Times, New Delhi, 13th May, 2012.

¹¹ <http://www.bbc.co.uk/news/world-asia-17610012>.

¹² <http://www.thanhiennews.com/official-statement-hoang-sa/2012024>. The Times of India, 22nd March, 2012.

¹³ Eurasia Review, March 16, 2012.

¹⁴ <http://www.bbc.co.uk/news/worl-asia-17343596>.

¹⁵ <http://guambatstew.in/2012/03/south-china-seiz.html>.

¹⁶ <http://www.mytimes.com/2013/08/10.world/asia/against-philippines-over-fishermans-killing.html?r=0>.

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

- ¹⁷ <http://globalnation.inquirer.net/76323/chinas-cabbage-strategy-to-recover-islands-reefs-illegally-occupied-by-philippines>. An article by Rodel Rodis.
- ¹⁸ <http://bbc.co.uk/news/world-asia-21935059>
- ¹⁹ <http://foxnews.com/world/2013/Vietnam-fishing-boat-damaging-its-hull-in-south-china-sea>.
- ²⁰ <http://www.bloomberg.com/news/2013-07-18/vietnam-china-protest-over-claims-of-attack-the-fisherman.html>.
- ²¹ <http://www.eastasiaforums.org/2012/12/15/sino-vietnam-tensions-in-the-south-china-sea/>.
- ²² Ibid.
- ²³ <http://atlanticsentinel.com/2012/07/nationalism-looms-over-south-china-sea-disputes/>.
- ²⁴ Ibid.
- ²⁵ <http://www.telegph.co.uk/news/worldnews/asia-in-dispute-over-south-china-sea-island.html>.
- ²⁶ Carlyle A. Thayer's presentation to China in Transition, Asian China Forum 2012, at Westin Chosun Hotel, Seoul, South Korea, 11-12-December, 2012.
- ²⁷ <http://www.globalresearch.ca/south-china-sea-disputes-us-proxy-conflict-with-china/5329184>.
- ²⁸ http://zeenews.india.com/news/world/direct-talks-to-resolve-south-china-sea-dispute_866725.html.
- ²⁹ <http://www.bt.com.bn./news/national/2012/11/10/some-asean-countries-not-ready-coc-south-china-sea>.
- ³⁰ http://zeenews.india.com/news/world/direct-talks-to-resolve-south-china-sea-dispute_866725.html.
- ³¹ <http://www.reuters.com/article/2013/08/05/us-china-sea-idUSBRE9740C20130805>.
- ³² <http://csis.org/publication/2013-apec-leaders-meeting-and-east-asia-summit>.
- ³³ <http://www.irrawaddy.org/archives/34200>.
- ³⁴ <http://www.fas.org/sgp/crs/R42784.pdf>.
- ³⁵ The Hindustan Times, 29 June, 2012.
- ³⁶ <http://www.globaltimes.cn/NEWS/tabid/99/ID/2256/South-China-Sea-mapping-underway.aspx>.
- ³⁷ Phillip Bowring, "Writing out of the Non-Han: China's aggressive policies vis-à-vis the South China Sea are based on selective history," *The Times of India*, May18, 2012, New Delhi.
- ³⁸ Ibid.
- ³⁹ Ibid.
- ⁴⁰ <http://www.iiss.org/en/publications/strategic%20com/china-passport-move-south-china-sea-mapping-underway.aspx>.
- ⁴¹ http://www.jamestown.org/uploads/media/cb_06_21.pdf.
- ⁴² <http://www.google.com/hotnews/op/article.pA?>
- ⁴³ <http://yaleglobal.yale.edu/content/winning-without-fight-south-china-sea>.

Security and Cooperation in the South China Sea

⁴⁴ Carlyle A. Thayer, Chinese Assertiveness and US Rebalancing: Confrontation in the South China Sea? A paper presented at the Annual Conference of the Association for Asian Studies at San Diego on 22 March, 2013.

⁴⁵ <http://www.globalpost.com/despatch/news/kyoto>.

⁴⁶ http://news.xinhuanet.com/English/china/2013-03/26/e_132263657.

⁴⁷ <http://manilastandardtoday.com/2013/03/23/beijing-pushes-sea-aggression>.

⁴⁸ <http://www.stratgypage.com/dls/articles/The-Chinese-White-Fleet-Goes-Off-To-War-8-14-2013.asp>.

⁴⁹ http://www.nytimes.com/2013/07/28/world/asia/in-east-china-sea.html?rf=territorialdisputes&_r=o.

⁵⁰ <http://news.xinhuanet.com/english/chinese.2013-03/05/c132207948.htm>.

⁵¹ <http://www.defense.gov/news/newsarticle.aspx?id=65130>.

⁵² <http://www.fas.org/spg/crs/row/RL33153pdf>.

⁵³ Wang Baokun, "Military Spending is not more than the country's need," *China Daily*, May 18-24, 2012.

⁵⁴ These figures have been taken from the articles available at Federation of American Scientists, <http://www.fas.org/blog/ssp/category/china>.

⁵⁵ <http://www.defence.gov/news/newsarticle.aspx?id=65130>.

⁵⁶ Mark Stokes, "China's Evolving Conventional Strategic Strike Capability", prepared for the Project 2049 Institute - a think tank.

http://project2049.net/documents/chinese_anti_ship_ballistic_missile.asbm.pdf.

⁵⁷ The Times of India, New Delhi, dated 5-11-2011.

⁵⁸ <http://www.washingtontimes.com/news/2013/jul/china-deploy-new-strategic-missile-class-submarine/?page=all>.

⁵⁹ <http://ajw.asahi.com/article/special/pla/AJ20120125003a>.

⁶⁰ <http://www.bloomberg.com/news/2013-06-2013/china-military-build-up-worrisome-japan-s-u-s-ambassador-sya.html>.

⁶¹ The Times of India, New Delhi, 3rd December, 2011.

⁶² http://defense.gov/pubs/pdfs/2011_cmpr_final.pdf.

⁶³ http://www.nids.go.jp/english/publication/kiyo/pdf/2008/bulletin_e2008_2.pdf.

⁶⁴ Ibid.

⁶⁵ Carlyle A. Thayer, "South China Sea: Chinese Stealth 'Block by Block'," *Thayer Consultancy Background Brief*, September 4, 2013.

⁶⁶ http://www.asianperspective.org/articles/v_33n4.c.

⁶⁷ www.nytimes.com, dated 6-9-2011.

⁶⁸ <http://www.cbsnews.com> dated 15-11-2011.

⁶⁹ <http://www.southchineseas.org/introduction>.

⁷⁰ <http://www.bloomberg.com/news/2013-07-28/us-to-push-china-for-south-china-sea-conduct-code-biden-says.html>.

⁷¹ <http://bbc.co.uk/uk/news/world-asia-pacific-13748349>.

⁷² *The Times of India*, 11th April, 2012.

⁷³ http://English.ndtv.com/ndtv_en/news_asia/2012/Philippine-war-games.html.

⁷⁴ <http://www.cbsnews.com> dated 15-11-2011.

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

⁷⁵ <http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>.

⁷⁶ *The Times of India*, New Delhi, 12th April, 2012.

⁷⁷ *The Hindu*, New Delhi, 14th April, 2012.

⁷⁸ <http://www.generationaldynamics.com/pg/xct.gde130805htm>.

⁷⁹ <http://www.rapler.com/nation/29443-eu-supports-asean-south-china-sea>.

⁸⁰ <http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>.

⁸¹ <http://www.southchinasea.com/analysis/599/agression-the-east-sea-condemned-by-the-us-senate.html>.

⁸² *The Times of India*, New Delhi, 17th December, 2011.

⁸³ <http://rt.com/usa/philippines-usa-china-sea-176>.

⁸⁴ Carlyle A. Thayer, South China Sea: Chinese Stealth 'Block by Block',” *Thayer Consultancy Background Brief*, September 4, 2013.

⁸⁵ *The Times of India*, New Delhi, 7th June, 2012.

⁸⁶ <http://thediplomat.com/asean-beat/2013/07/03/philippines-to-modernise-air-force-amid-china-row/>.

⁸⁷ <http://news.asiaone.com/news/AsiaOne+news/Asia/Story?A1Story20130615-429934.html>.

⁸⁸ <http://beforeitsnews.com/media/2013/08/manila-reacts-to-china-south-sea-agression-2473048.html>.

⁸⁹ Ibid.

⁹⁰ Carlyle A. Thayer, “Securing Maritime Security in the South China Sea: Norms, Legal Regimes and Realpolitik,” presentation given to a panel at the International Studies Association Annual Convention in San Francisco on April 6, 2013.

⁹¹ Ibid.

⁹² <http://www.thejakartapost.com/news/2013/06/01/growth-spurs-asia-s-military-modernisation>.

⁹³ <http://www.scribd.com/doc/136794587/Thayer-Vietnam-Military-Modernisation>.

⁹⁴ <http://sgforums.com/forums/1164/topus/406468>.

⁹⁵ <http://www.defenseindustrydaily.com/taiwans/uninstalled-force-modernisation-04251/#FY2006-2008>

⁹⁶ Ibid.

⁹⁷ <http://asianmilitaryreview.com/Indonesias-military-modernisation>.



Evgeny A. Kanaev

*Professor, Department of International Affairs,
Faculty of World Economy and International
Affairs National Research University Higher
School of Economics*

China's and US' Approaches to the South China Sea Issue: Changing Patterns and Strategic Implications

In the years to come, the South China Sea issue seems to be fore-ordained to remain one of Asia-Pacific key security challenges. Currently, it is at complicated crossroads, and its future evolution to a great extent will be defined by the key regional actors – China and the United States. In this light, to trace the approaches undertaken by Beijing and Washington, offer insights into their current contradictions and assess their possibilities to shape future contours of the issue is a timely and valuable exercise.

The nexus of not only Asia-Pacific, but also global politics, economy and security is and will be formed by relations between China and the United States. With this in view, the questions raised in the paper are not only important for academic purposes but also pose tasks that have to be addressed by policy practitioners.

The paper consists of three parts. Part one provides an assessment of the current state of the South China Sea issue. Part two traces the US and China's approaches to this issue since the end of the Cold War outlining points of their convergence and divergence. Part three assesses possibilities of and prospects for Washington's and Beijing's policies in the short-term and the mid-term perspective. The conclusion summarises the foregoing analysis.

The South China Sea Issue: on a Complicating Trajectory

Much research and debate has been devoted to analysing the South China Sea issue and producing recommendations on how to solve it.

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

When failed, the latter were followed by logical and convincing explanations. The result is inevitable: the more efforts have been taken, the more complicated the issue has become. At present, its three layers can be distinguished.

The first layer stands for the sovereignty over the disputed territories of the South China Sea. This side of the problem is very complex. It embraces historic claims laid by China and Vietnam: no matter how well or poorly substantiated they might be¹, neither Beijing nor Hanoi will ever consider even a theoretical possibility to drop them. Also important are the legal aspects of the issue with relevance to sovereignty: the key document laying down the jurisdictional parameters of conflict resolution – Declaration on Conduct of Parties in the South China Sea – doesn't explicitly mention the Paracel islands and the Scarborough Shoal. Last but not least, it encompasses the rise of nationalism: deep social and economic transformations taking place in many countries heated up nationalistic sentiments – to a larger extent than it was before. At this juncture, in order to distract public attention and simultaneously score political points, the leaderships in many South China Sea claimants are trying to compensate aggravating internal social and economic problems by hard-line approaches to territorial issues.

The second layer embraces relations between China and ASEAN. A conspicuous point is lack of progress in translating numerous rhetorical exercises into reality. For instance, it took China and ASEAN a decade to lay down the legal framework of the issue outlined in Declaration on the Conduct of Parties in the South China Sea (DOC)² and another nine years (2002-2011) to produce Guidelines for DOC Implementation. Currently, China and ASEAN are elaborating on Code on Conduct of Parties in the South China Sea (COC), but its prospects seem to be more than unclear.

It is important to stress: practice has lowered previously optimistic expectations that increased economic cooperation could be a safety mechanism against new outbreaks of tension. The launch of China – ASEAN Free Trade Area (CAFTA) coincided with a new escalation of the South China Sea issue.

The third layer is represented by Sino-US contradictions. Their essence centers upon whether Beijing or Washington will set the rules of

Security and Cooperation in the South China Sea

the game in maritime Asia-Pacific. As things are, the two countries have differing views on how to preserve regional stability. Washington sees the key factor in flexing its military muscles and strengthening ties with its allies while for Beijing, the top priority is to create benign external milieu along its borders, a task often complicated by American policy.

The key outcome has been a clash between the Chinese Active Defense (or, to put it differently, Anti-Access/Area Denial) Concept and the American Air-Sea Battle. The former is aimed at undermining the US supremacy and hampering its freedom of action in maritime Asia-Pacific, or at least making these actions highly risky and prohibitively costly. The latter, in its turn, elaborates on measures to preserve American strategic pre-eminence in these waters and conduct any military activity as Washington sees it necessary.

In sum, the South China Sea issue has become more complicated than it previously used to be. Against this line, ASEAN efforts taken to resolve the issue seem to be encountering serious obstacles.

This assessment is substantiated by the evolution of regional multilateral dialogue platforms – namely, rise in number and simultaneously, conservation in substance. The existing institutions like ASEAN Regional Forum, ADMM Plus Eight and East Asia Summit are praise-deserving ASEAN attempts to create a cooperative security system in Asia-Pacific. Nevertheless, progress in resolving regional issues has been hampered by ASEAN institutional minimalism and its principles of cooperation based on consensus and a pace comfortable to all participants. As a result, these institutions and initiatives are growing in number – as well as seriousness of the problems being discussed – but no significant results have been produced so far.

Another reason for this assessment stems from another trend: while the South China Sea issue is becoming more nuanced and complicated, approaches to resolve it are obviously stagnating. As things have been developing, along with the outbreak of tensions in the South China Sea since 2009, ASEAN-led multilateral dialogue platforms have been unable to offer a novel conceptual framework designated to cope with the emerging challenges. A critical review of ASEAN documents leaves unanswered many questions on what the difference be-

tween confidence-building measures and preventive diplomacy is and how instruments elaborated on by the association could be applied to the South China Sea issue.³

Last but not least, the main “ace up ASEAN sleeve” – Code on Conduct of Parties in the South China Sea instead of Declaration 2002 – might well turn out useless. Suppose ASEAN could produce a draft that would satisfy its own participants, Beijing and Washington, and suppose China and the ASEAN states agreed to sign it. But what next? ASEAN lacks sufficient institutional resources to capitalise on any document – be it DOC, COC or whatever else. Let us not forget: DOC was signed between China and the ten member states of ASEAN – not the four claimant states.⁴ Nevertheless, mechanisms and resources of ASEAN as a multilateral unity are deliberately ignored. If so, it is not surprising that the situation in the South China Sea has been evolving in a way hardly favorable to the association.

In sum, the contradictions over the South China Sea are growing in scale and complexity while the instruments to resolve them are demonstrating limited effectiveness. Under these circumstances, the future evolution of the issue will be defined by the players which possess the most substantial resources – the United States and China.

China and the US in the South China Sea after the Cold War

In the South China Sea, China and the United States have always regarded each other as *the key* competitors. Suffice it to mention that the two armed clashes that have occurred so far – in 1974 and 1988 – became possible owing to China’s perception that the US wouldn’t interfere. After the Cold War ended, this trend became even more conspicuous, although the policy priorities and instruments adopted by Washington and Beijing have differed. In considering them, two periods – before and under the Obama administration – will be distinguished.

From early-1990s to late-2000s, these approaches can be characterised as *the US reactive vs China’s proactive stances*.

Regarding the US, three factors are noteworthy. First, at that time Washington didn’t raise the issue of freedom of navigation. Or, speak-

ing in more analytical terms, didn't distinguish between *the trade* and *the military* navigation. To substantiate this argument, suffice it to remind: as early as in 1995, after the Brunei session of the ASEAN Regional Forum at which Beijing promised not to threaten freedom of trade navigation the US preferred not to damage relations with China during simultaneously aggravating Sino-US contradictions over the Mischief reef. Later on, the US didn't raise this issue. As for the freedom of military navigation, this discourse didn't occur at all: in spite of PLAN modernisation it even theoretically couldn't undermine American positions in maritime Asia-Pacific.

Second, Washington initially staked on multilateral diplomacy but later on lost interest in it. In the early 1990s, the US regarded ASEAN-led multilateral dialogue as the key instrument to tackle the situation in the area. Also, Washington supported 1992 ASEAN Declaration on the South China Sea.⁵ In 1999, M. Albright tried to raise the issue at the ARF and collectively elaborate on ways to tackle it⁶; but her calls fell on deaf ears. This added fuel to the growing US irritation at the ARF: the prevailing sentiment was that the Forum concentrated solely on discussions instead of translating their outcomes into reality. Under the Bush administration, the US demonstratively ignored ASEAN-led multilateral platforms, thus letting discussions on the South China Sea issue run their own way.

Third, during and after the Asian economic and financial crisis the US suffered from severe reputational losses. This sentiment was reinforced by American policy in the Middle East and proposals to launch the Container Security Initiative, the Proliferation Security Initiative and Regional Maritime Security Initiative. These developments urged ASEAN to be receptive to China's proposals to speed up negotiations to elaborate on Code on Conduct of Parties in the South China Sea, as well as contributed to its willingness to sign DOC in spite of its obvious pro-Chinese provisions.

China's policy was different. First of all, it was shaped by nationalism, a factor completely absent from the US priorities. With regard to the South China Sea, nationalistic sentiments encompassed historical, economic, political, social, military and other dimensions: other countries had unduly occupied undisputed Chinese territory, deprived China

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

of its resources and undermined PRC security. This added a strong emotional component to China's position which, as time passed, became more and more uncompromising.

Second, contrary to the US, initially China was skeptical about the utility of ASEAN-led multilateral dialogue mechanisms. Again, the evidence was provided by the Brunei session of the ARF: while assuring its ARF partners of the freedom of trade navigation via these waters, China flatly refused to let other aspects of the issue be discussed. Later on, however, China willingly embraced negotiations vis-à-vis ASEAN, and these discussions finally produced DOC. Subsequent events demonstrated that the multilateral vector of China's South China Sea strategy – along with its traditional preference for the bilateral format to negotiate on contradictions – was seen by Beijing as its important priority.

Third, again in contrast with the United States, in late-1990s – mid-2000s China significantly improved its image in Southeast Asia. It started during the Asian financial and economic crisis and continued throughout 2000s, when China implemented its “charm and cash offensive” policy towards ASEAN. Expected economic benefits which the association could obtain from CAFTA can be rightfully regarded as the key factor behind the pro-Chinese terms of conflict resolution outlined in DOC.

The trends outlined above amply suggest: before the late-2000s, Washington didn't consider the South China Sea issue as its *self-sufficient* foreign policy priority while Beijing paid the issue a very close attention. As a result, the US lagged behind the developments, while China led and shaped them.

Since the Obama administration came to power, the situation has changed. It can be characterised as *the US proactive vs China's reactive stances* in the South China Sea. But the wording *reactive* and *proactive* should be understood in a proper context: the US proactive stance accounts for gross interference in the issue while China's reactive position has been, although self-restrained, staunch and strategically-oriented. This assessment can be exemplified by looking into three main lines of Sino-US contradictions in the South China Sea.

The first line relates to an admissibility to violate the letter and spirit of DOC. It was generated by H. Clinton's speech at the Hanoi session of the ASEAN Regional Forum and focused on three components: moving from DOC to COC, an American readiness to act as an intermediary between the parties concerned in translating DOC into reality and the need to distinguish between China's claims on land features and waters of the South China Sea.⁷ This runs contrary to DOC: its article 4 stipulates that all disputes are to be resolved by sovereign states directly concerned.⁸

Under these circumstances, China refrained from statements and actions which would have been equally uncompromising. The maximum what Beijing did was a response at the same session of the ARF that "China is a big country and other countries are small countries, and that's just a fact."⁹ Nevertheless, since then Beijing has repeatedly stressed that progress in resolving this issue can be based only on respecting its existing legal framework outlined in Declaration 2002. Otherwise, in case letter and spirit of DOC are not respected, the idea to find an internationally recognised legal framework in which the issue may be resolved can be discredited for many years ahead.

The second line embraces the freedom of navigation discourse. In the context of Sino-American relations, this should be understood as freedom of military navigation conducted by the US in waters that are covered by the Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China. In concrete terms, contradictions – which started in March 2009 and then continued – stem from admissibility of the US intelligence gathering activities in China's territorial sea and exclusive economic zones. This situation generated the aforementioned clash between China's Anti-Access/Area Denial concept and the US Air-Sea Battle which will define how the situation in the South China Sea will evolve in the years to come.

At this juncture, China prefers to reiterate its adherence to norms and principles of UNCLOS although it doesn't grasp the essence of current Sino-American contradictions. This fact itself confirms China's intentions to keep the situation in a manageable, not explosive state. More than that, China hasn't made any actions that could have stirred up the situation or brought it to extremes.

The third line focuses upon the exploration of resources of the South China Sea. China stresses: as the South China Sea falls within our internal waters and our “core interests”, any actors attempting to develop the resources of this area should get our permission. The US retorts that the South China Sea and its resources are part of the global commons, and therefore can be developed by any interested party – be it oil companies or fishermen of littoral states.

In this realm, China cannot boast of conciliatory attitude to those who “illegally and unduly exploit Chinese resources on China’s territory.” Nevertheless, one important point is noteworthy. China’s position to prolong with the Code on Conduct of Parties in the South China Sea may be seen as grist to the mill of other parties with stakes in the area, including the US. The reason is simple – in case these negotiations accelerate, many uncomfortable questions relating to the economic activity in the area, will have to be raised and discussed.

In sum, trends in the US and China’s approaches to the issue suggest that Washington has preferred to break the rules while Beijing, on the whole, adopted a conciliatory position. The latter doesn’t mean weakness and readiness to make concessions. On the contrary, this stance is strategically-oriented and might give China considerable and very useful assets.

Whither Beijing and Washington in the South China Sea? A Scenario

In the circumstances described above, the key question is what tactics Washington and Beijing are likely to adopt in the years to come. The further analysis will stem from the following factors.

First, the US is facing too serious financial constrains to strengthen and even maintain its presence in Asia-Pacific. Although the White House has repeatedly emphasised that budget cuts will not come at the expense of Asia-Pacific as a critical region for the US interests,¹⁰ previous responsibilities might be too heavy for Washington. Now that budgetary cuts are in sight, American top figures express doubts that a higher level of military presence in the Asia-Pacific would be necessary.¹¹ In these circumstances, US ambitious plans to increase its mili-

Security and Cooperation in the South China Sea

tary presence in the region in qualitative and quantitative terms by 2020 might well fall short.

Second, currently a new development is taking place in Asia-Pacific – an emerging regional power network transformed from the US hub and spoke system. While bracketing out reasons for this – ranging from a response to strategic uncertainty generated by Sino-US contradictions to an enhanced cooperation in order to tackle non-traditional security challenges – one point should be made. This nascent security architecture reflects a stark reality: American allies are exploring alternative means to maintain security in Asia-Pacific as they cannot rely on US guarantees. In the years to come, this trend – as well as doubts about the US future role in the region – will probably strengthen.

Third, the Trans-Pacific Partnership as the economic leg of the American pivot to Asia might well await an inglorious end. The way these negotiations have been developing indicates that prospects for TPP are poor: its expected benefits are far from clear, while disadvantages are obvious. In case the project fails, which is likely, it will further weaken American regional positions.

On the contrary, China's economic growth based on an acceleration of domestic demand, although not always smooth and without setbacks, will probably continue. As well as China's active support of multilateral economic initiatives – like the project Regional Comprehensive Economic Partnership – to which ASEAN attaches profound significance and which are generally seen by both the association and its partners as producing an overall consolidating effect on the region. This will give Beijing extra opportunities to further strengthen its regional positions and therefore – to tackle issues as it sees appropriate.

Simultaneously, the regional middle powers will be further increasing their profiles in the South China Sea. It will be exemplified, first and foremost, by India promoting its economic interests and strengthening naval cooperation with Southeast Asian states in the area. Japan – in tandem with the US or even independently – is also likely to follow a more active policy in the South China Sea. The construction of ROK naval base at Jeju island might also play an important role

in shaping the strategic landscape in maritime Asia-Pacific, including the South China Sea.

All this will exert influence upon China's and the US stances on the issues under consideration. Consequently, the following steps taken by Beijing and Washington appear logical.

First, China will under any pretext prolong moving from Declaration 2002 to Code on Conduct of Parties in the South China Sea. The contours of this approach are fairly clear: as stressed by Beijing diplomats, the parties should first build consensus at the informal level before advancing any formal agenda for negotiations and proposals on COC.¹² Needless to say that this consensus at the informal level will be a continual stumbling block. If so, the negotiations may be held for years with no end and no progress in sight.

With this in view, it is worth reminding again that it took ASEAN and China nearly a decade to move from DOC to Guidelines for DOC Implementation. The latter hasn't brought remarkable changes to the issue: the provisions of the document are too general, and the principle of "consensus among parties concerned" is reiterated.¹³ If so, why should progress on COC be faster?

Second, China may test grounds for new precedents of the 45th ASEAN Ministerial Meeting. The Cambodian chairmanship in ASEAN exemplified that the previous investment might bring a good feedback. With this in view, new attempts to implement its "divide and rule" policy towards ASEAN's next chairs might be a likely scenario.

In this connection, food for thought is provided by readiness of the next three ASEAN chairs to drive the South China Sea issue towards a resolution at the expense of good relations with China. It seems that Myanmar and Laos will be unwilling to damage these relations for an issue that is not their top priority; as for ASEAN common good, much evidence, provided, for instance, by Xayaburi dam construction, suggests that it has never been very important to these countries. As far as Malaysia is concerned, let us not forget: this country has traditionally been receptive to China's expectations – to an extent that it proposed DOC instead of the COC in 2002.

Third, China will probably increase efforts aimed at accelerating PLAN modernisation in order to produce a necessary demonstrative

effect upon its neighbours. At the same time, however, saber-rattling, including military stand-offs, seems unlikely. Beijing will carefully learn lessons and come to an obvious conclusion: any sentiments associated with force or threat to use it will be counter-productive for China and bring it more losses than benefits.

In response to all this, the US can be expected to repeatedly raise the issue at the regional multilateral platforms, first of all – ASEAN Regional Forum and East Asia Summit. The current practice of discussing it within narrow formats – for instance, at the trilateral setting between the US, Australia and Japan – in pan-regional multilateral formats, as was the case on the sidelines of APEC summit in Bali¹⁴ – may continue. The emphasis will be placed upon the common good like freedom of navigation or exploitation of natural resources of the South China Sea. Simultaneously, Washington might well encourage its allies and partners to adopt more proactive stances on the issue – in the form of conducting more naval drills or expanding their economic activity in the area. Also, it cannot be excluded that the US will enhance its rhetoric on its unique and indispensable role as the security provider in Asia-Pacific and intentions to always remain a Pacific nation.

But the results are very likely to be very different from those obtained in 2009-2013. Budget cuts coupled with reputational losses will do their job. No less important is another factor: ASEAN, as well as its individual members, appears to have realised that further stirring up the South China Sea issue will be contrary to their internal interests and undermine their prospective plans. With this in view, their initial interests in the US as a counterbalance to China will be flagging.

Under these circumstances, the US policy is unlikely to present a really challenging task to China. All means that could have been used have already been tested; to move forward with new ones along with financial constraints will be too costly. Beijing, in its turn, will be increasing its capabilities and diversifying policy instruments to shape the issue in a way favourable to itself. There are all reasons to expect that Beijing will succeed in it.

Conclusion

Sino-American contradictions over the South China Sea cannot last indefinitely long, and with the course of time the parties will have to develop a *modus vivendi* on the issue. But what outcome can be expected?

Under current trends, a COC embracing both Beijing's and Washington's expectations is out of the question. China has invested too many resources to let the US join the game. In case COC is developed, which in itself is very unlikely, not even the most veiled reference to the US will be there.

Equally problematic appears to be another scenario: Beijing heeds Washington's calls to become a responsible and constructive member of the globalising world and not to object to the activity undertaken by the international community – including the US and its allies – in the South China Sea. No convincing evidence can support this.

There is only one available option left, and it seems the most realistic. Beijing will slowly but steadily implement a strategy aimed at converting its previously developed economic, political, military and reputational potential into diminishing the US abilities to shape the situation in the South China Sea. This task will not be solved overnight, of which China is perfectly aware. But it is well aware of another thing: time is on its side.

With all this in view, it is more than logical to expect that with the course of time the South China Sea will become a “Chinese lake,” whether other parties with stakes in the area may like it or not. All that they can do is to grin and bear it.

Notes

¹ This can be exemplified by China's uncompromising position on its sovereignty over the South China Sea islands based on historical evidence although the latter is often disputed. This has become – and is likely to remain – an endless story. For recent examples, see: Chu Hao, China's Sovereignty over South China Sea Indisputable. China.org.cn. 23.05.2012. http://www.china.org.cn/opinion/2012-05/23/content_25454569.htm vs M. Malik, “History the Weak Link in Beijing's Mari-

Security and Cooperation in the South China Sea

time Claims,” *The Diplomat*. 30.08.2013. <http://thediplomat.com/2013/08/30/history-the-weak-link-in-beijings-maritime-claims/>

² The author considers as the starting point the year 1992 when ASEAN Declaration on the South China Sea was elaborated on, and China didn't leave it unnoticed.

³ Among these documents, the key are: ASEAN Regional Forum (ARF) Concept and Principles of Preventive Diplomacy. Adopted at the 8th ARF. 25.07. 2001. <http://aseanregionalforum.asean.org/library/arf-chairmans-statements-and-reports/159.html>; ASEAN Regional Forum Preventive Diplomacy Work Plan. Approved by ARF SOM. 10.06.2011.

<http://aseanregionalforum.asean.org/files/library/ARF%20Chairman's%20Statements%20and%20Reports/The%20Eighteenth%20ASEAN%20Regional%20Forum,%202010-2011/2%20-%20ARF%20Work%20Plan%20on%20Preventive%20Diplomacy.pdf>

⁴ 2002 Declaration on the Conduct of Parties in the South China Sea. Adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002.

<http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf>

⁵ J. A. Baker III, “America in Asia: Emerging Architecture for a Pacific Community,” *Foreign Affairs*. – N.Y., 1991/1992. Vol. 70. – No. 5. – p. 5.; R. Tasker, “End of the Sentry. US Military Withdrawal Prompts Security Fear,” *Far Eastern Economic Review*. – Hong Kong, 1992. – Vol. 155. – No. 47. – pp. 18-20. – p. 20.

⁶ Security Challenges Confronting the Asia-Pacific Region. Secretary's Albright Intervention at Sixth ASEAN Regional Forum. Singapore, July 26, 1999, in *US Department of State Dispatch*. – Washington, 1999. – Vol. 10. - No. 7. – pp. 3-6.

⁷ Remarks at Press Availability. Hillary Rodham Clinton. Secretary of State. National Convention Center. Hanoi, Vietnam. July 23, 2010.

<http://www.state.gov/secretary/rm/2010/07/145095.htm>

⁸ 2002 Declaration on the Conduct of Parties in the South China Sea. Adopted by the Foreign Ministers of ASEAN and the People's Republic of China at the 8th ASEAN Summit in Phnom Penh, Cambodia on 4 November 2002.

<http://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea-pdf.pdf>

⁹ J. Pomfret, “U.S. Takes a Tougher Tone with China,” *Washington Post*, July 30, 2010. <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/29/AR2010072906416.html>

¹⁰ Panetta Answers Troops' Questions in Japan. US Department of Defense.

24.10.2011. <http://www.defense.gov/news/newsarticle.aspx?id=65786>; Remarks by the President on the Defense Strategic Review. The Pentagon. 5.01.2012.

<http://www.whitehouse.gov/photos-and-video/video/2012/01/05/president-obama-speaks-defense-strategic-review#transcript>

¹¹ For more details, see: H. LaFranchi, US Pivot to Asia: Is John Kerry Retooling It? *The Christian Science Monitor*, 20.02.2013. <http://www.csmonitor.com/USA/Foreign-Policy/2013/0220/US-pivot-to-Asia-Is-John-Kerry-retooling-it>

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

¹² See: Cina Berkomitmen pada Perdamaian Laut Cina Selatan, *Tempo*, 31.07.2013. <http://www.tempo.co/read/news/2013/07/31/118501267/Cina-Berkomitmen-pada-Perdamaian-Laut-Cina-Selatan>

¹³ Draft of Guidelines of the Declaration of the Code of Conduct of Parties in the South China Sea (DOC). 22 July 2011. <http://www.newsbreak.ph/2011/07/22/draft-of-guidelines-of-the-declaration-of-the-code-of-conduct-of-parties-in-the-south-china-sea-doc/>

¹⁴ China Warns U.S., Japan, Australia Not to Gang Up in Sea Disputes. Reuters. 6.10.2013. <http://www.reuters.com/article/2013/10/07/us-asia-southchinasea-china-idUSBRE99602220131007>



Vladimir A. Korsun

Associate Professor, PhD, Department of Oriental Studies, MGIMO (U) under RF Ministry of Foreign Affairs

The Evolution of Approaches of the Chinese Leadership to the Problems of Present-Day Borders of the PRC

The traditional Sino-centric conception of building ties with the outside world excluded any self-limitation in terms of, in the first place, civilisational and then territorial expansion. Virtually all Chinese dynasties pursued an aim of creating around the country a tight ring of dependent countries (the degree of whose dependence was determined not by remoteness from China but by the degree of assimilation of, and adherence to, the Confucian ritual values of the “tributary system”) called upon to defend inner lands, or, to be more exact, to protect them from external impact. In this sense, expansion into neighbouring countries was invariably perceived as bearing a defensive character, while the very word *fan* (Barbarian) was in the first stratum of etymology conjoined with the meaning “hedge,” which did not prevent the “tributaries” to view the kowtow ceremonial and the “Chinese world order” with readiness and ease throughout centuries, when China figured exclusively in the role of a cultural “donor” and its neighbours as “recipients” of Chinese achievements. Along with this, the psychology of Chinese emperors was marked by a peculiar self-perception in the spirit of the refrain “We are responsible for everything on the planet” (suffice it to recall the Confucian maxim that “the true sovereign (*wan*) does not deem anything exterior,” and also that the name of Celestial Empire (*Tianxia*) referred not only to China but to the entire world).

The thesis on the loss by China of historical lands – Burma, Vietnam, Thailand and the rest of the Indochina peninsula, Himalayan states – Nepal, Bhutan and Sikkim as well as the area of the Indian state of Arunachal Pradesh adjoining the Himalayas, Afghanistan, Indonesia, the Ryukyus, Taiwan, Korea, Mongolia, the Amur River ba-

sin, Primorye and Sakhalin, as also the greater part of the territories of the republics of Central Asia – was assimilated and defended both by the leaders of the Kuomintang party, notably Sun Yatsen and Chiang Kaishek and by those of the Communist Party of China – Mao Zedong and Deng Xiaoping. Certain Chinese publications in the PRC and on Taiwan to this day assert that the coming of Russian pathfinders to the Amur River basin and Primorye was an invasion of Chinese territory. With an area of present-day China equal to 9.6 million sq. km, the total area of territories “lost” by China was estimated by various Chinese authors in the Kuomintang and post-Kuomintang periods at 4 to 10.5 million sq. km.

Methods of proving territorial claims of the Chinese elite that are conventional for China’s foreign policy behaviour encompass the general conception of global history which takes as a premise the invariable peacefulness of China and *a priori* aggressiveness of its neighbours, the reasoning of classics of Marxism-Leninism and a number of exponents of Soviet historical science about China as solely a target and victim of Western expansion, a sanitised history of non-Han peoples (“the theory of a single Chinese nation”) and the Chinese version of the historico-legal basis of border formation underpinned by “cartographic aggression.” What strikes the eye in the process is the continuity of China’s foreign policy on the territorial question – from Qing diplomacy to that of the Kuomintang and down to PRC diplomacy. An innumerable amount of modern Chinese authors implementing a certain social mandate and seeking to dispel the myth of “Yellow Peril” continue to act as apologists for the “eternally peaceloving character” of China’s foreign policy and idealise the traditional diplomacy of “tributary friendship and concord,” emphasising the exclusively “reflectory” and “passively defensive character” of the policy of “tributary world arrangement” “securing a peaceful environment for the Chinese agrarian civilisation.”

The four-hundred-year-long period of the formation and development of Russo-Chinese relations, including the Soviet period, attests to a possibility in principle to settle all border issues on a mutually acceptable basis without a full-scale military conflict, by way of dialogue and negotiation. As a result of 40-year-lasting talks (1964-2004) be-

tween the USSR/Russia and the PRC based on a purposeful political will of the leaderships of both countries, the agreements of 1991, 1994 and 2004 were signed and ratified that did not fix a new border by a partition of territories but merely introduced certain corrections to the generally recognised border already existing on the basis of treaties and agreements in force, 4,259 km in length, including 705 km by land, 3,484 km along rivers and 70 km along lakes. In the process, in order to reach a compromise, at the initial stage of the talks the underlying principle for the fixing of the border and correction of its layout in separate segments was often based not only upon historico-legal arguments (Chinese authors count up to 20 “unequal” treaties) but chiefly the mutually acknowledged political expediency. As early as 1964, both parties, having taken old Russo-Chinese treaties as a basis, recognised that along the entire length of 7,500 km of the Soviet-Chinese border there existed more than 30 segments where the passage of the borderline was understood differently, which was graphically demonstrated as a result of exchange of geographical maps on the initiative of the Chinese side. It was agreed that in accordance with generally accepted norms of international law approved in 1919 at the Paris Peace Conference, on navigable border rivers the border would pass along their main waterways and on non-navigable rivers – along the midstream (thalweg) of the river or its main arm. Two bloody armed clashes in spring 1969 on Damansky Island on the Ussuri River and in the Zhalanashkol area (Kazakhstan) in August that same year served as a sobering factor in the face of the prospect of a geostrategic conflict fatal to both sides.

The final stage of negotiations started in 1987 on the tide of normalisation of bilateral relations and was characterised by a coincidence of interest of our two countries in a calm and constructive examination of all aspects and in a complete removal of border issues from the agenda of Russo-Chinese dialogue. Discussions were shifted from the realm of politics and ideology into the field of documentary-historical research, when treaties became the sole basis for a concrete and careful matching of views on each kilometer of the frontier. The task was made more complex due to the fact that many old treaties as legal documents were extremely imperfect, while the formulations of border

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

articles in the Russian, Manchu and Latin texts were not identical, very general and hard to understand, the more so as the treaties had no maps appended to them. The delimitation of the border in a number of treaties was unsatisfactory due to the obscurity of geographic references mentioned therein, while the demarcation of the border was not carried out at all, which allowed the parties at times to arbitrarily shift the line of the border. Proceeding from the conception of “securing a peaceful environment for China” hallowed by the authority of Deng Xiaoping, Chinese negotiators took what in their own fashion was an unprecedented step – they consented to juridically formalise in the 1991 Border Agreement in Its Eastern Section the understanding reached by the parties on certain points, among them the disputed segments at Khanka, Ussuri and Khasan (on Tumannaya River), continuing negotiations on the remaining “gaps” near the islands close to Khabarovsk and in the upper reaches of the Argun. The year 1994 saw the conclusion of the Agreement on the Western Section of the Russo-Chinese Border from Mongolia to Kazakhstan, 58 km in length. The remaining border issues of a segment up to Afghanistan were settled after the break-up of the USSR by the independent states of Kazakhstan, Kyrgyzstan and Tajikistan completely on their own with a documentary and archival assistance from Russia.

The additional agreement of 14 October 2004 was a triumph of political will of both sides which had agreed in strict confidentiality at the highest level on an unconventional manner of demarcation of island territories roughly in half with due regard to the parties’ interest in observing the rule of the midstream of the Amur and Ussuri River waterways determined by means of joint hydrographic soundings. In order to get from the main waterway of one river to the other, the borderline traversed Bolshoi Ussuriiski Island, which was duplicated by analogy also on the uninhabited swampy island of Bolshoi (area: 58 sq. km) on the non-navigable Argun River. In the process, Tarabarov Island and a sizable part of Bolshoi Ussuriiski Island (in all, 337 sq. km of Russian territory) were handed over to the Chinese side. A political solution to the water-parting line made it possible to clearly define the boundary and the sovereignty over border islands documentarily and geographically, by in-situ demonstration, and thereby eliminate from

the agenda a serious ‘irritant’ in interstate relations in the spirit of article 6 of the Russo-Chinese Treaty on Good Neighbourliness, Friendship and Cooperation of 16 June 2001, which acknowledged the “absence of mutual territorial claims.” It is understandably difficult to speak of true good neighbourliness in relations between both states and peoples without purposeful work to change the stereotypes of Russia and China in the mass mentality of the two neighbouring countries.

As of today, the PRC’s land boundaries, with the exception of the border with India where mutual territorial claims to segments with a total area of 133 sq. km (it is noteworthy that the “Deng Xiaoping Package deal” offered by China boils down to the idea of exchanging one area of Indian territory, which is claimed by China, for another area of Indian territory China had overrun in the course of the armed conflict in 1959-1962) were legally formalised by treaty and demarcated (Vietnam was the last to sign an agreement on the land border with the PRC in 1999), and the focus of attention of Chinese diplomacy shifted into the sphere of delimitation of China’s maritime borders. Among the disputed questions of sovereignty over island territories, the exclusive economic zone and continental shelf, Peking refers to vast expanses in the Yellow, East China and South China seas, imposing control over which, along with the annexation of Taiwan to the PRC upon terms advanced by Peking, is being elevated into the rank of a national task. These questions pertaining to China’s claims to small island territories – the Senkaku Islands, the Paracel Islands and the Spratly Archipelago, as well as the exclusive economic zone and continental shelf in the above seas – are, among others, grounded by the Chinese side with reference to the conception of “unequal character” and “illegitimacy” of treaties with imperialist powers that are allegedly trying to reanimate those forces in the adjoining countries which have inherited imperialist policies. Suspending these problems, as it were, in limbo up to a certain time according to the method of “deferred demand,” Peking uses them, provoking multiple “accidental” incidents to deflect the attention of China’s population from any conflict-prone topics and situations of internal development, so as to ensure their “fair and rational” solution with “historical territorial debtors” at a more propitious moment.

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

The main thrust of the economic and political expansion of the PRC, which had settled its differences with neighbours in the north and west, was in the 1990s focused on Southeast Asia. It is here in the sphere of its traditional influence that China senses the military-political and psychological readiness to bolster its foreign policy and, challenging the US and Japanese dominance, try a “soft,” “not too regimented” model of achieving stability and ensuring its leadership by “non-institutional” means. There is no need to speak of the severe historical legacy of the relationship of the countries of the region with China, which has predetermined the existence of unsettled territorial disputes, above all those involving the Paracel Islands (Xisha/Western Archipelago) and the Spratly Archipelago (Nansha/Southern Archipelago), officially incorporated by the Chinese authorities into the Hainan administrative region back in 1934. The military occupation by China of all the Paracel Islands was carried out in 1974 when, availing itself of the situation of the heightened inter-Vietnamese war, the PRC Naval Forces, incidentally to the undisguised delight of Hanoi, dislodged Saigon troops from the archipelago and then set up their military base there. Taiwan is likewise a party to the disputes on sovereignty over the Paracel Islands that have lasted already for several decades. In 1988, a PRC fleet in a clash with the SRV Naval Forces took control over a number of reefs and atolls of the Spratly Archipelago (in Vietnamese: Truong Sa) claimed by Hanoi. It should be noted that in the late 1980s – early 1990s China had a different attitude towards claims of countries that were pretenders to the Spratly Islands which, in Peking’s view, have “since time immemorial” been a “primordial territory” of China. Whereas in dialogue with the Philippines and Malaysia who feared new actions by China after the evacuation of the US Subic Bay naval base, Peking proposed to postpone the question of sovereignty over the disputed archipelago and become engaged in joint development of its resources, the PRC position regarding territorial claims by the SRV before its entry into ASEAN in July 1992 was marked by unwillingness to seek a common solution and fathom any compromises. Being apprehensive about remaining alone face to face with China in an anything but easy territorial dispute, Vietnam makes every effort to press for an internationalisation of the conflict.

Security and Cooperation in the South China Sea

China's method of "cartographic aggression" reflecting its claims to the water area of the South China Sea down to encroachments upon a portion of the high seas - which is clearly at variance with Article 2 of the 1958 Geneva Convention on the High Seas and articles 87 and 89 of the 1982 UN Convention on the Law of the Sea - added fuel to the fire. China's neighbours were scared by the fact that on maps published in China, in particular in the Atlas of Provinces of the PRC, the "maritime state border of the PRC" was designated in the South China Sea literally 100-200 km from the coast of the Indochinese Peninsula and the islands of the Sunda Archipelago. It should be noted that fearing a possible consolidation of ASEAN countries and their partners on an anti-Chinese basis, Peking strove to secure a free hand for China until it has built up its military potential and acquired all attributes of no longer a regional but a global power and, on the other hand, it wished to safely resolve conflict situations on a strictly individual, i. e. bilateral basis. On 25 February 1992, the Standing Committee of the National People's Congress of China enacted a new law on maritime dominions, proclaiming PRC sovereignty over the whole water area of the South China Sea as a "natural extension of land" (3 million sq. km, virtually 80 percent of all water area of the South China Sea) and precluding any compromises on questions of sovereignty over disputed territories, delimitation of the exclusive economic zone and continental shelf, which could not but provoke a negative reaction and concern of not only Vietnam but also Taiwan, Malaysia, Brunei and especially the Philippines.

The significance of entrenching sovereignty over all the islands of the water area for Peking by far transcends the task of consummating the process of annexation of lands hitherto forfeited by China, as this will enable it to institute control over navigation not only within the limits of the current 12-mile zone of the PRC's territorial waters but also over the world's second international sea lane in order of importance, over the Malacca, Lombok and Sunda straits which account for up to 60 percent of its foreign trade and 80 percent of oil imported to China from the Middle Eastern countries and from Africa. A significant motive for territorial disputes was also furnished by the availability of colossal fishery resources in the South China Sea as well as the

major discovered and proven oil and gas deposits on the shelf of the islands of the South China Sea, a fact that amid energy shortage of the parties concerned considerably raises the value of the matter in dispute. In principle, without turning down the compromise idea put forward by ASEAN countries – that of joint development of resources of the continental shelf of the zone of the Spratly Islands – Peking has invariably made and continues to make the start of such collective exploitation conditional upon formal recognition of PRC sovereignty over the areas under development. In parallel, China, wishing to seize the initiative, also proposes to embark upon joint development of some sectors lying in the depth of offshore zones of its neighbours, while simultaneously refusing to offer for joint exploitation any of the sectors under its own control. As consequence of many years of negotiations, ASEAN managed in 2002 to bring China to sign the Declaration on the Conduct of Parties in the South China Sea, whereby the parties pledged to resolve their disputes exclusively by peaceful means, by way of friendly consultations and talks between sovereign states directly involved in these disputes. Eventually, Peking, which is constantly calling upon everyone to act with “responsibility and restraint,” backed off from accession to the Code of Conduct which would impose juridical commitments upon the parties involved. Ascendancy in Peking was gained by supporters of the “silk worm stratagem” seeking to achieve their ambition gradually, step by step, demonstrating their flag, setting out markers and expanding military presence in this strategic zone. Meanwhile, realising that continued existence of the right to free navigation is a priority task for both the United States and its traditional allies Japan and South Korea, while infringement thereof is fraught with a head-on collision with them, the Chinese leadership began ever more proactively to declare readiness to engage in talks on the settlement of differences in the South China Sea on the basis of international law and provisions of the UN Convention on the Law of the Sea. Symptomatically, while constantly declaring the “inadmissibility of deployment of armed forces and military bases outside the boundaries of national territory,” Peking, for its part, not averse to acquire footholds and bases in the vast SEA region, is equipping them by leaps and bounds, having set the course on projecting China’s military might beyond the limits of

Security and Cooperation in the South China Sea

the mainland in the direction of littoral water areas. Incidents involving Chinese ships attended by patrolling of the disputed water area, attempts to carry out construction work, erect pillars and set out markers amidst uninhabited disputed reefs, crude actions by patrol boats to counter geological prospecting activity (up to and including ramming and cutting cables, as was the case with seismological Vietnamese ships in summer 2011) provoke bitter diplomatic battles encouraged by the prospect of US involvement in the conflict, flare-ups of anti-Chinese sentiment in the countries concerned, attempts to plant national flags on upon disputed islands, field firing exercises in the area of the latter, mass boycotts of Chinese goods and hacker attacks against Chinese websites.

Still greater concern of the international community is caused by territorial disputes fraught with an outbreak of a serious military conflict centred around the Senkaku Islands (Chinese name: the Diaoyudao /Fishing/) and in the water area of the East China Sea, which are currently in a phase of regular aggravation. The last decades, and in particular the anything but easy dialogue on the issue of the disputed islands of Senkaku and the water area around them, have made certain adjustments to the relationship of the two exponents of “stratagem diplomacy” who know each other perfectly well and have developed a clear system of signals allowing the two countries to successfully manoeuvre in an intricate tangle of the factors of rapprochement and estrangement. The Senkaku Islands, the legitimacy of real possession of which by Japan is challenged by both Peking and Taipei, are located in the East China Sea 420 km west of Japan’s Okinawa, 420 km east of the PRC port of Fuzhou and 190 km north-east of Taiwan’s port of Keelung. The islands are uninhabited and out of the five islands of the archipelago only three are relatively large, with a total area of 6.3 sq. km. The territorial dispute around Senkaku began to be warmed up from the middle of the 1990s in view of the confirmation of the presence of rich oil and gas deposits on the shelf and in the water area (notably, substantial reserves of natural gas were discovered, estimated roughly at 200 billion cubic metres) and the increased dependence on the imports of hydrocarbons of both China (the PRC has become a net importer of oil since 1993) and Japan, whose economy is 90 percent

dependent on external shipments of energy resources. In the period of tensions in Japanese-Chinese relations, the Senkaku problem always existed and acted as a constant ‘irritant’ which was warmed up by regular attempted landings on the islands of Chinese patriots from both the mainland and Taiwan, prevented by Japanese patrol boats. Given all the delicacy of the questions of territorial integrity and sovereignty, it becomes ever more difficult to bring the parties’ positions closer and find an optimal compromise on this subject, as in both the PRC and Japan the problem has been driven into a certain “politico-emotional impasse,” when diversity in historical assessments and ideas on the processes of the formation of states’ borders increasingly becomes a matter of opportunistic politicking, a play of catch phrases and populist manipulations. As time went on, along with the Senkaku Islands proper, the question of delimitation of exclusive economic zones of China and Japan in the East China Sea gained increasing relevance. A decision taken by Tokyo, followed in July 1996 by the introduction of a 200-mile Special Economic Zone around Japan, was called upon to consolidate Japanese rights to the said islands, which aggravated the problem of delimitation of the maritime boundary in this region. Meanwhile, according to the UN Convention on the Law of the Sea, exclusive economic zones of littoral states may extend 200 nautical miles from the shoreline but in cases where there is less than 400 miles between countries and a mutual overlap of SEZ takes place, they have to negotiate a compromise. In the case of China and Japan, attempts to reach a negotiated compromise have up to now been unsuccessful. Only since 2006, when the escalation of tension in Sino-Japanese relations subsided, has it become possible to start talks between the leaderships of the two countries to normalise the situation and on China’s initiative an understanding (bearing rather a declarative character) was even reached on joint development of the deposit and joint exploitation of resources of the East China Sea. In the process, Peking contended that the problems of sovereignty over the Diaoyudao Islands and demarcation of the Japanese-Chinese border in the East China Sea ought to be tackled “in a single package,” whereas Tokyo was not ready to accept such an approach and was altogether unwilling to discuss the question of sovereignty over the Senkaku Islands. Despite the fact that

in the “thaw” period of 2007-2009 arrangements between the PRC and Japan were reached and repeatedly confirmed on the establishment of “strategic mutually advantageous relations” attended by statements from both sides on the desire to “turn the East China Sea out of a sea of problems into a sea of friendship,” these good intentions did not materialise. A collision off the Senkaku Islands on 7 September 2010 of a Chinese trawler with two coastguard patrol boats of Japan which drew a great public resonance in both countries, led to the next in a series of flare-ups of Chinese-Japanese enmity. In this context, China continues to expand and intensify its naval activity in the water areas adjoining Japan, carrying out military exercises there, collecting information and preventing a similar activity of the Japanese side.

The year 2012 was marked by the outbreak of the “war of names” of the islands of the water area between Tokyo and Peking, while the next in a series of scandals flared up in connection with Tokyo’s decision to nationalise three out of five Senkaku Islands by buying them from private persons, which resulted in the next bout of anti-Japanese hysteria in the PRC accompanied by mass demonstrations, the storming of the Japanese embassy, arsons and looting, suspension of work of enterprises of a number of Japanese companies, calls for boycott of Japanese-made goods, and the sending of warships to Senkaku “for the defence of sovereignty.” In summary, it should be stressed that the problem of the islands and the water area of the East China and South China seas has become an important indicator of the extent to which the Chinese leadership has an intrinsic desire to press for its ambitions in the international arena by military and forceful methods. It can also give an answer to the question of whether the enhancement of the PRC’s geostrategic positions will be attended by a growth of aggressiveness of its foreign policy behaviour. As of today, it is evident that the unsettled nature of questions of delimitation of the seawater areas has preconditioned the growth of the PRC’s military expenditures and naval activity far beyond its territorial waters, in the waters of the seas washing East Asian countries, in whose historical memory the reminiscences of the “lessons of retribution” inherent in the centuries-old “tributary system” are still alive. While appealing to the norms of international law and calling for a non-violent settlement of the problem

III. Interests and Politics of Extra-Regional Forces in the Dispute Over SCS

by the method of consultations, Peking demonstrates a persistent unwillingness to give a serious consideration to the demand of the countries of the region to carry out a fair and all-round delimitation of the disputed areas, and even as it shows readiness to discuss issues involving the continental shelf, it does not remove from the agenda its claims to ownership of the disputed islands. For all the attractiveness of declarations like those about the “new world order” and the “harmonic world,” the real approach of the PRC leadership wishing to retain its freedom of action or, at any rate, of a substantial section of the Chinese elite linked to PLA and the military-industrial complex, is expressed in the logic aptly observed by one of the most brilliant Russian foreign policy analysts of the post-perestroika period: “The foreign policy thinking of the Chinese leaders is rather conservative and tends towards perception of the international realities in the tradition of classical Realpolitik – with a typical accent on force, balance of power, logic of ‘zero sum games,’ with a heightened feeling of ‘power vacuums,’ with a suspicious attitude towards long-term alliances (in the spirit of Britain’s philosophy, 19th century-style).” (A. D. Bogaturov, *Velikie derzhavy na Tikhom okeane* (Moscow, 1997), p. 234.)



Erik Franckx
*Research Professor, Vice-Dean for Internationalisation at the Faculty of Law and Criminology, President of the Department of International and European Law and Director of the Centre for International Law at the Vrije Universiteit Brussel **

Marco Benatar
*Ph.D. Fellow, Research Foundation – Flanders (FWO); Member, Department of International and European Law and Centre for International Law, Vrije Universiteit Brussel***

The Argumentation on the Weight in the Law of Map Evidence of the Chinese U-Line in the South China Sea Refined

Abstract

An article published in 2012 looked at the U-line in the South China Sea, as attached by the People's Republic of China to two *notes verbales* sent to the Secretary-General of the United Nations, from the perspective of the law of map evidence. This article will shortly be receiving a response that will be published in the same journal. Based on

* V.U.B.; Pleinlaan 2, B-1050, Brussels, Belgium; Erik.Franckx@vub.ac.be. He holds teaching assignments at the Vesalius College (V.U.B.), Université Libre de Bruxelles, the Brussels School of International Studies (University of Kent at Canterbury), the Program on International Legal Cooperation (Institute of European Studies, V.U.B.), and the Université Paris-Sorbonne Abu Dhabi. He has been appointed by Belgium as a member of the Permanent Court of Arbitration, The Hague, The Netherlands; as an expert in marine scientific research for use in special arbitration under the 1982 United Nations Convention on the Law of the Sea; as a legal expert in the Advisory Body of Experts of the Law of the Sea of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organisation; and as an expert in maritime boundary delimitation to the International Hydrographic Organisation.

** Marco.Benatar@vub.ac.be.

a preliminary draft of that response the present article further refines the legal argumentation involved.*

Introduction

The present article intends to shed some further light on the Chinese U-line in the South China Sea, a saga that finds its origins in the 1930s when the Republic of China (ROC) established a Committee to survey and name the islands in the South China Sea and produce maps indicating the islands that they deemed fell under Chinese sovereignty.¹ This U-line, however, only started to draw international attention after the People's Republic of China (PRC) revealed this enigmatic map *urbi et orbi* in 2009² in reaction to a Malaysian-Vietnamese joint submission³ and a Vietnamese individual submission⁴ to the Commission on the Limits of the Continental Shelf, a body established by the United Nations Convention on the Law of the Sea to help delineate the continental shelf of states when it extends beyond 200 nautical miles.⁵ It is sufficient in this respect to refer to the specialised legal literature in order to understand the sudden and swift interest generated by this first official endorsement of the U-line by the PRC at the international level. *Ocean Development and International Law*, a specialised journal in maritime affairs, devoted most of its first issue of 2012 to this topic.⁶ But also the *American Journal of International Law*, a journal not focussing particularly on the law of the sea, saw it fit to dedicate a special agora to the South China Sea in early 2013,⁷ another testament to the sudden importance the international community at large attaches to these two 2009 Chinese *notes verbales*. In both collections of articles the U-line features prominently.⁸ This should not come as a surprise, for if the territorial claims of China with respect to the maritime features in the South China Sea had already been expressed at the international level on previous occasions by the PRC, the map including the

* This is a preliminary version, presented at the Conference "Security and Cooperation in the South China Sea", organised by the Institute of Oriental Studies of the Russian Academy of Science in Moscow on 18 October 2013. A more thoroughly researched paper will be published later.

U-line on the contrary had so far never been relied upon by China at the international level in a state-to-state dispute.

It is against this general background that we participated in a conference held in Ho Chi Minh City between 10-12 November 2010, entitled “The South China Sea: Cooperation for Regional Security and Development,” with a paper “Dotted Lines in the South China Sea: Fishing for (Legal) Clarity.” The main objective of the paper was to assess the value of the map containing the U-line from the perspective of the law of map evidence under contemporary international law. That paper subsequently served as the basis for a scientific article, which was published in the *Asian Journal of International Law* in 2012.⁹ That article will now receive a response in one of the upcoming issues of the same journal.¹⁰ The author of that note has made a preliminary version available to one of the present authors at an international symposium held on 22-23 June 2013 in Hangzhou, China, and organised by Zhejiang University, Guanghua Law School, on “Peaceful Use of the Sea and Maritime Cooperation” where both were present.¹¹

The present contribution is a first reaction to this Response. Each time a synthesis of our original thoughts as published in 2012 will be advanced, followed by the critique and our first reaction thereto. But before doing so, a short introduction to the Response’s main line of reasoning seems to be in order.

Main line of reasoning of the Response

The Response makes the case that the U-line, which has featured most prominently on a map annexed to the two *notes verbales* sent by China in 2009 to the UN Secretary-General, has greater probative force than we suggested in our article. The argument is based on a study of five criteria, each of which plays a major role in determining the probative force of cartographic materials. These criteria are distilled from the jurisprudence of international courts and tribunals, namely 1) the expression of the state’s will; 2) the accuracy; 3) the consistency; 4) the neutrality; and 5) acquiescence. The latter two are merged as they both relate to recognition by third states. The Response maintains that the U-line meets all of the aforementioned requirements. While we acknowledge the significance of the criteria detailed by the Response,

we argue that the reading of the U-line by the Response is too generous. Especially the argument that China is exonerated from the normally applicable rules of international law by virtue of its “special” position needs to be stressed in this respect. We will briefly go through each criterion to pinpoint the shortcomings we perceive.

The map is a clear expression of China’s will

Our 2012 article

Our argumentation started out by stressing the fact that the PRC’s *notes verbales* of 7 May 2009, while possibly novel in their maritime aspects, repeated assertions with respect to China’s territorial claims in the South China Sea.¹² The positions of the PRC and the ROC on this issue show great resemblances. One of the issues with the U-line is that it is marred by ambiguity that neither government nor Chinese or Taiwanese scholars seem to be able to elucidate.¹³

The Response

The Response observes that the U-line combines two types of claims, territorial and maritime. The territorial claim has been established beyond any doubt in several official documents (*e.g.* the 1947 government map “Location Map of the South China Sea Islands”; the 1958 “Declaration of the Government of the People’s Republic of China on the Territorial Sea”; and the 1992 “Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone”). All these documents assert that Chinese sovereignty extends to the Pratas Islands, Paracel Islands, Macclesfield Bank and Spratly Islands.

The maritime claim, the Response concedes, is characterised by some uncertainty. The fault lies, however, not with China, but with the “imperfection” of the law of the sea, because 1) the 1982 Convention does not adequately deal with historic rights, and 2) there is no consistent understanding of the concept of historic rights. In addition, Chinese historic rights should not solely be analysed in light of “Western” international law.

Rejoinder

As far as the territorial claims are concerned, we do not contest that China had in the past made territorial claims to certain maritime features in the South China Sea.¹⁴ Nonetheless, the U-line as such will do little in the way of strengthening China's case for ownership. Legal title must be assessed in light of the usual principles applicable to territorial disputes (discovery, occupation, critical date, *effectivités*, etc.). It was never our intention to address such matters in our article. Given the prolonged nature of the dispute between the states surrounding the South China Sea, and in view of the so-called white papers produced by several of them, it is clear that such issues cannot possibly be dealt with in an exhaustive manner in the confines of a scientific journal article but should rather take the form of memorials and counter-memorials. That question was consequently explicitly excluded from our analysis.¹⁵

With respect to the maritime claims, the argumentation in the Response, based on the bias of international law, is tantamount to a call for China to receive special treatment. Conversely, in many global fora, China consistently proclaims to act in accordance with international law *tout court* and has joined relevant multilateral treaties, such as the 1982 Convention, sending a strong signal of its desire to abide by the law of the sea. During the almost ten-year period that the negotiations of the Third United Nations Conference on the Law of the Sea lasted (1973-1982), the PRC never raised the issue of the U-line even though these negotiations addressed the law of the sea in all of its aspects. The only general statement made by the PRC with respect to the South China Sea concerned the ownership of its insular features and thus the territorial and not the maritime claims of this country. The critique of the 1982 Convention and its relationship to historic rights would appear to be a minority position in legal doctrine, as is the theory of historical consolidation expounded by Charles De Visscher since the early 1950s.¹⁶

The Response thus seems to start from the premise that the U-line is a historic rights claim, even though it is acknowledged that this is only one of four interpretations to be found in writings on the legal

status of the U-line.¹⁷ How does one know whether this is the correct interpretation? Even if the map is meant to be read in conjunction with the text of the 2009 *notes verbales* and the diplomatic correspondence it triggered, one cannot come to this conclusion with a high degree of confidence.¹⁸ It is precisely this ambiguity that keeps the international community guessing. The Response moreover does not rebut our contention that the language used in that note, namely “relevant waters” and “adjacent waters,” is unknown to the 1982 Convention and thus further exacerbates the ambiguity. This preferred interpretation might also be difficult to reconcile with the provisions of the 1958 “Declaration of the Government of the People’s Republic of China on the Territorial Sea” where it is stated that the waters between the mainland and the islands are “high seas.”

The map is sufficiently accurate Our 2012 article

We argued that, besides the unclear intent of the U-line, as just alluded to, its technical imprecision further demonstrates the inherent evidentiary shortcomings of this map.¹⁹ The following technical imprecisions were addressed: Geographical co-ordinates of the segments are missing; inconsistencies exist as to their cartographic representation; a very small scale is used; and the map has no datum in order to appreciate the exact location of the lines it contains.

The Response

It is argued that the level of required accuracy depends on the purpose of the map. Less accuracy is required for maps designed to reflect a State’s position and to determine the scope of its claims, such as in the case at hand, when compared to maps intended for maritime delimitation. The U-line, it is stated, is approximately located on the median line between the South China Sea islands and bordering states. This allows the U-line to be described as an “undetermined maritime boundary.” The fact that a 1947 map depicting the U-line contains co-ordinates is seen as an enhancer of accuracy. Our opinion that the 2009 map should comply with modern chart specification standards is criticised because 1) it is based on the 1947 map, and thus an appeal to

comply with these standards constitutes a violation of the non-retroactivity principle; 2) there are no standards for drawing “special historic rights,” which is the nature of China’s maritime claims; 3) according to specifications of the International Hydrographic Organisation, the normal manner for drawing boundary lines (magenta +--+) may not be used for disputed maritime boundaries.

Rejoinder

Even if maps used merely for the purpose of reflecting a State’s position need not be highly precise, one should at least be able to understand what is being claimed with relative ease. The U-line is anything but a paragon of clarity, as proven by the various and contradictory interpretations already alluded to above.²⁰

Furthermore, in the supposition that the U-line represents, as claimed in the Response, the median line between the islands and coastal states in the region, the lack of precision becomes once more problematic. For if equidistance is a mathematical method, praised in international jurisprudence for producing a single, precise result, should it not lie in the nature of things that states attempt to draw such a line with the greatest possible level of accuracy? This reasoning would seem to apply *a fortiori* if historic rights are involved because of the profound effect they have on the rights of others in the area.

The argument that modern chart standards need not apply to the 2009 map because it is based on a much older map does not stand. Firstly, would that mean that modern maps of longstanding claims would never have to adapt to contemporary cartographic standards? Secondly, as 2009 was the first time China made its position “clear” to the international community, the “older map argument” seems irrelevant.

Different maps portraying the U-line are consistent with one another Our 2012 article

Under the heading “Incompatible Maps”, the argument was developed that the content of the U-line has changed over time. It started out with eleven dashes, but during the 1950s the two dashes in the Gulf of

Tonkin were deleted, with Chinese scholarship still in disagreement over the exact timing of this event as well as the exact reasons triggering their deletion. The U-line consisting of nine dashes was changed again in 2010, for a tenth dash was added in the north between Taiwan and the Ryukyu group of islands, all belonging to Japan.²¹

The Response

It is argued that China's position reflected in the U-line has remained consistent since its inception. The removal of two dashes from the Gulf of Tonkin is explained as the result of a Sino-Vietnamese agreement and the added dash in 2010 between Taiwan and the Ryukyu group as outside of the South China Sea and therefore irrelevant to claims in the latter sea.

Rejoinder

First of all, there seems to be a problem of timing with respect to the argument that the two dashes in the Gulf of Tonkin were removed during the 1950s because of the conclusion of a boundary agreement. Indeed, the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin dates from 25 December 2000,²² that is about 50 years after the removal of the two dashes within that gulf.

While it is true that the 2010 additional dash is north of the South China Sea, visually speaking it is the natural continuation of the U-line. This then raises a totally different issue, namely whether this now means that China also claims "special historic rights" vis-à-vis Japan? The Response remains silent on this matter. If, however, the dash in the East China Sea is not meant to represent historic rights, despite utilising the very same type of dash found in the U-line, would this not harm consistency? How can one tell the dashes apart in such a hypothesis? Without lucid official statements accompanying such maps, this would be impossible. Moreover, the tenth dash between Taiwan and Ryukyu seems to have inexplicably disappeared in later emanations of the dotted line once again, as in the new version of the standard Chinese passport issued in late 2012. Another blow to consistency it would appear.

Neutrality criterion and acquiescence by third states

Our 2012 article

International courts and arbitral tribunals generally attach greater probative value if a map is drawn up by an impartial expert. The argument made is that neutrality is clearly lacking with respect to the U-line since it was first established by an internal governmental commission.²³ As far as the lack of acquiescence by third states is concerned, we take the example of Vietnam, a country objecting at every instance that China made a sensible claim with respect to the maritime features in the South China Sea. With respect more particularly to the U-line, it is indicated that Vietnam started to protest as soon as this claim was espoused by China on the international level and that a direct link was made between the map containing the U-line and the territorial claims, and possibly the maritime claims as well, of China in the South China Sea, *i.e.* since 2009.²⁴

The Response

The Response takes stock of Vietnam's earlier practice, during which it is claimed the latter 1) failed to react to Chinese assertions; 2) issued declarations which approve of such claims; 3) drew maps indicating certain South China Sea islands as Chinese. It then discusses Japanese practice in the wake of World War II. It is argued that the 1952 San Francisco Peace Treaty and Japanese maps and declarations demonstrate that the occupied islands reverted to China. Some cartography from other parts of the world depicts the U-line and/or assigns the South China Sea islands to China. Finally, the Response resorts to arguments of common sense: 1) if the U-line is so abnormal would this not have provided a greater impetus and need for interested third states to react?; and 2) if the Chinese claims were so unclear, why did this not prevent Vietnam from protesting prior to 2009?

Rejoinder

Before 2009, it should be remembered, the map containing the U-line had never been relied upon on the international level by China in a state-to-state dispute. Neither was it comprehensible before that date

because it had never been accompanied by the slightest indication how this map could be related to the territorial, and possibly maritime claims of China. As stated before, the territorial claims which might be involved are not part of the material covered by the 2012 article,²⁵ but the bulk of materials produced by both parties in the form of white papers sustaining their respective claims, including letters of protest sent to one another, testifies to the fact that acquiescence will be difficult to prove. Concerning these territorial claims, the map containing the U-line will not be of great help to China for it is difficult to envisage how it can “fall into the category of physical expressions of the will of the State”²⁶ in the same way as maps that are annexed to a treaty of which they form an integral part, an example the International Court of Justice considered to very well illustrate such a physical expression of the will of the state.²⁷ A precondition of the “expression of the will of the State” seems to be that this will is clear, understandable and intelligible for it to generate legal force.

The declarations of Vietnam referred to and which are supposed to demonstrate that Vietnam agreed with the U-line, in fact only relate to ownership of the islands. In no way are they related to the U-line, for the PRC’s declaration on territorial waters of the late 1950s did not provide any reference whatsoever to that line. Especially this section of the Response is filled with references to mere territorial claims, an issue not touched upon by our article. The San Francisco Peace Treaty is a good example for it relates to the legal merit of the territorial claims of contending states, not to the legal value of the map depicting the U-line. In the same vein, if a certain map indicates that a particular maritime feature belongs to China, this is again unrelated to the U-line if the latter is nowhere to be found on the map in question.

Finally, the arguments based on common sense, or rather the absence thereof, need to be addressed. The more far-fetched the claim, the more reason states have to protest is the logic of the Response, with at its apogee the inconceivable claim, which needs to be protested first and foremost. In the everyday diplomatic practice of states, however, when claims are not clear, states usually refrain from immediately sending letters of protest awaiting clarification in order not to unnecessarily offend the state making the claim. If, however, the clarification

is not forthcoming and the state making the claim is unwilling or unable to explain exactly what it means, states often abstain from protesting if their rights are not infringed in any way in daily practice. In other words, how much common sense is there being applied if one requires a state to protest a dashed line on paper, of which the exact meaning has remained utterly unclear since its inception, if in practice one's ships can freely move about and one's usage of the area as high seas is in no manner restricted by the state having drawn such dashes on a map. It is only when these rights of third states are actually hampered that letters of protest will ensue, not against an unintelligible dashed line on a map, but rather against the concrete infringement of the right in question, such as disregard of the freedom of navigation or fishing on the high seas. In the scheme of things, claiming that the absence of protest to the dashed line on the map, despite the protests to each and every infringement of the rights normally enjoyed in accordance with the 1982 Convention on the inside of that line, nevertheless results in acquiescence of the dashed line *per se* seems hardly logical, for the implementation of that line will then take away precisely all those rights that third states, when infringed, had been protesting for many years.

Conclusions

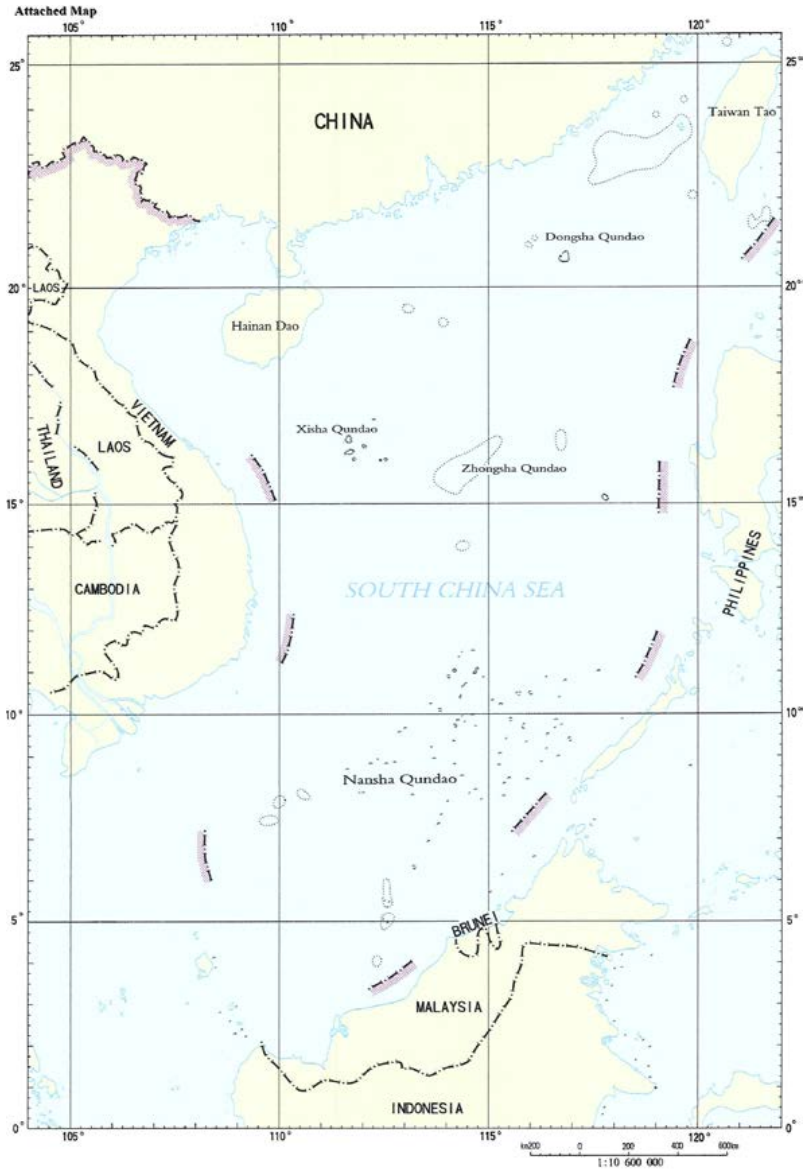
At the end of this analysis we conclude that the basic reasoning developed in the 2012 article is still valid. Until China clarifies its position with respect to the U-line, third states can hardly be expected to have to protest an utterly unclear broken line on a map in order to safeguard their rights. It appears sufficient in order to block acquiescence with respect to such a line that third states protest every time one of their concrete rights under contemporary international law are infringed by the state in question on the inside of that line. Nevertheless, the reaction of the international community once China made a direct link between the U-line on the map and its territorial, and possibly maritime claims in the area, make it clear that this partial lifting of the veil was sufficient for governments to start protesting the claim and for the scientific community to seriously start trying to understand the exact meaning of the U-line.

IV. Legal Issues in the South China Sea Dispute

A lot of arguments are put forward in the Response backing China's territorial claims in the area. However, it is submitted that the validity of such claims will not depend on the U-line depicted on maps, but rather on the usual principles of international law applicable to territorial disputes.

Finally, the argument that it is not necessary for China to fit its U-line within the general framework established by the 1982 Convention, because it preceded it, is a dangerous one. The 1982 Convention represents a package deal, which simply does not allow for cherry picking as evidenced by the general prohibition to formulate reservations.²⁸ If countries were allowed to return to their old practices simply because these practices were in existence before they joined the 1982 Convention, not much would remain of the basic edifice so diligently crafted by the founding fathers of the Constitution for the Oceans.

Security and Cooperation in the South China Sea



Notes

¹ J. Li & D. Li, “The Dotted Line on the Chinese Map of the South China Sea: A Note,” 34 *Ocean Development and International Law*, pp. 287, 289 (2003).

² This took the form of two separate, but identical letters addressed on the same day by the PRC to the UN Secretary-General: People’s Republic of China, “Letter to the Secretary-General of the United Nations—CML/17/2009” (7 May 2009), online: UN <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf>; People’s Republic of China, “Letter to the Secretary-General of the United Nations—CML/18/2009” (7 May 2009), online: UN <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf>. The map was attached to these letters. It was also reproduced in the following Chinese sources: 9 *China Oceans Law Review* pp. 200 and 202 (2009); and L. Zhu, “Chinese Practice in Public International Law: 2009”, 9 *Chinese Journal of International Law* p. 622 (2009). A copy of the map can be found in Annex 1.

³ Malaysia-Socialist Republic of Viet Nam, “Joint Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in Respect of the Southern Part of the South China Sea, Executive Summary” (May 2009), online: UN <http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009executivesummary.pdf>. As indicated by the letter of the Secretary-General of the UN, acknowledging receipt, this joint submission was made on 6 May 2009, online: UN <http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mysvnm_clcs33_2009e.pdf>.

⁴ Socialist Republic of Vietnam, “Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982, Partial Submission in Respect of Vietnam’s Extended Continental Shelf: North Area (VNM-N), Executive Summary” (April 2009), online: UN <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/vnm2009n_executivesummary.pdf>. As indicated by the letter of the Secretary-General of the UN, acknowledging receipt, this submission was made on 7 May 2009, online: UN <http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/vnm_clcs37_2009e.pdf>.

⁵ *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 U.N.T.S. 397 (entered into force 16 November 1994), online: UN <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf> [1982 Convention], Annex II and art. 76(8). Hereinafter 1982 Convention.

⁶ In order of appearance in the journal: M. Masahiro, “China’s ‘U-Shaped Line’ Claim in the South China Sea: Any Validity Under International Law?”, 43 *Ocean Development and International Law* pp. 1-17 (2012); K. Zou, “China’s U-Shaped Line in the

South China Sea Revisited,” 43 *Ocean Development and International Law* pp. 18-34 (2012); T. Nguyen-Dang & T. Nguyen Hong, “China’s Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes Between the Philippines and China,” 43 *Ocean Development and International Law*, pp. 35-56 (2012); and G. Michael Sheng-Ti, “The U-Shaped Line and a Categorisation of the Ocean Disputes in the South China Sea,” 43 *Ocean Development and International Law* pp. 57-69 (2012).

⁷ In order of appearance in the journal: L. F. Damrosch & B. H. Oxman, “Agora: The South China Sea. Editors’ Introduction,” 107 *American Journal of International Law*, pp. 95-97 (2013); Z. Gao & B. B. Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” 107 *American Journal of International Law*, pp. 98-124 (2013); F. Dupuy & P.-M. Dupuy, “A Legal Analysis of China’s Historic Rights Claim in the South China Sea,” 107 *American Journal of International Law*, pp. 124-141 (2013); and R. Beckman, “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea,” 107 *American Journal of International Law*, pp. 142-163 (2013).

⁸ Or as stated by the introductory note to the agora that appeared in the *American Journal of International Law*: “The nine-dash line that surrounds much of the South China Sea has attracted widespread attentions since it was shown on a map attached to China’s note verbale requesting the Commission on the Limits of the Continental Shelf not to consider the joint submission of Malaysia and Vietnam. ... Its significance is among the important issues addressed by the essays that follow, each of which was submitted independently of the others.” L. Damrosch & B. Oxman, *supra* note 7, p. 97.

⁹ E. Franckx & M. Benatar, “Dots and Lines in the South China Sea: Insights from the Law of Map Evidence,” 2 *Asian Journal of International Law*, pp. 89-118 (2012).

¹⁰ At the time of the Moscow conference, mentioned *supra* note ‡, this had not yet materialised.

¹¹ The authors would like to thank Mr Zhihua Zheng of the Shanghai Jiao Tong University, KoGuan Law School, China, for having made this preliminary version available. Hereinafter the Response. Because this version is probably not the definitive version as it will appear in the near future in the *Asian Journal for International Law*, the present reaction is consequently also preliminary in nature. Please note the *caveat* mentioned *supra* note ‡.

¹² Franckx & Benatar, *supra* note 9, p. 94.

¹³ *Id.*, pp. 94-103.

¹⁴ See *supra* note 12 and accompanying text.

¹⁵ Franckx & Benatar, *supra* note 9, p. 99.

¹⁶ C. De Visscher, *Théories et réalités en droit international public*, Paris, Pedone, 467 pp. (1953).

¹⁷ These four strands of interpretation are: Historic waters, historic rights, maritime boundary line and line indicating islands ownership.

¹⁸ If there is one thread of Ariadne to be found in the flood of articles which followed the 2009 *notes verbales*, as mentioned *supra* notes 6-7, it is that the exact meaning of the U-line remains veiled in mystery even as of today.

IV. Legal Issues in the South China Sea Dispute

¹⁹ Franckx & Benatar, *supra* note 8, pp. 107 and 108-111.

²⁰ See *supra* note 18 and further references to be found there.

²¹ Franckx & Benatar, *supra* note 8, pp. 105-106.

²² For an analysis of this agreement, see for instance K. Zou, “The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin,” 35 *Ocean Development and International Law*, pp. 13-24 (2005).

²³ Franckx & Benatar, *supra* note 8, pp. 107-108.

²⁴ *Id.*, pp. 111-115.

²⁵ See *supra* notes 12-14 and accompanying text.

²⁶ Words used by the International Court of Justice in the *Frontier Dispute (Burkina Faso/Republic of Mali)*, I.C.J. Rep. p. 582, para. 54 (1986).

²⁷ *Id.*

²⁸ 1982 Convention, *supra* note 5, Article 309.



Dr Ian Storey

Senior Fellow at the Institute of Southeast Asian Studies (ISEAS), Singapore, Editor of the academic journal Contemporary Southeast Asia

Arctic Lessons: What the South China Sea Claimants can Learn from Cooperation in the High North

Part I: Introduction

As a consequence of global warming, the Arctic environment is undergoing unprecedented and profound changes. Due to rising air and sea temperatures a vicious cycle is underway: multi-year ice melts and is replaced with younger, thinner and weaker ice that rapidly disappears in the summer creating darker, heat-absorbing water which leads to further melting. Many scientists believe that the Arctic ice reached a tipping point in the summer of 2007 from which it is unlikely to recover.¹ In that year, according to the US National Snow and Ice Data Center, Arctic ice coverage in the summer fell to 4.17 million square kilometres (1.61 million square miles) compared to an average of 6.22 million square kilometres (2.4 million square miles) during 1981-2010.² In 2012 it reached a new record low of 3.41 million square kilometres (1.32 million square miles). In 2013 it recovered to 5.10 million square kilometres (1.97 million square miles) but this figure was still well below the 1981-2010 average minimum and reinforced the long-term downward trend in Arctic ice coverage.³

Dramatic changes in the Arctic's climate create costs, opportunities and challenges. The negative consequences for the global climate as a whole are not yet known, but could be catastrophic. As the ice retreats, however, it becomes easier for ships to traverse Arctic sea lanes that link the Atlantic and Pacific oceans and which cut transoceanic journeys by as much as one-third. It also becomes technically more feasible to access potentially valuable resources such as hydrocarbons and minerals. Fishing stocks may also increase due to rising water

IV. Legal Issues in the South China Sea Dispute

temperatures. The challenge over the next few decades is to make Arctic trade routes and energy extraction commercially viable, while at the same time protecting its fragile environment and the indigenous people who depend on it for their livelihoods. The Arctic states and other interested countries must also find ways to build on existing cooperation and pre-empt or at least limit geopolitical competition.

The prospect of Arctic energy resources and seasonally ice-free shipping lanes has aroused considerable interest in Asia. In May 2013, after several years of intense lobbying, five Asian countries—China, Japan, South Korea, India and Singapore—became permanent observers to the region's most important institution, the Arctic Council, whose membership includes the five Arctic littoral states (Canada, Denmark via Greenland and the Faroe Islands, Norway, Russia and the United States, collectively referred to as the Arctic-5) and three Nordic countries (Finland, Iceland and Sweden). That decision was controversial—some Arctic Council members were uncomfortable about admitting non-Arctic states—but began the process of legitimising the roles and interests of Asian countries in the High North.

In Asia itself, sovereignty and maritime boundary disputes continue to pose contentious, conflict-prone and some would argue intractable problems. In the South China Sea tensions among the six claimants—China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei—have been rising since 2007-2008, while in the East China Sea the Sino-Japanese territorial dispute over the Senkaku/Diaoyu Islands has plunged bilateral relations to a new and potentially dangerous post-war low. Neither of these disputes is even close to a resolution, and efforts to lower tensions and reduce the risk of armed clashes by establishing effective crisis management mechanisms have met with limited success. While the geopolitical situation in the Arctic differs significantly from that in the South China Sea, there are issues common to both regions. Although only one minor territorial dispute exists in the High North, there are disputes over maritime boundaries and competing claims to fisheries and hydrocarbon resources. And while the potential for conflict in the Arctic over access to those resources has been widely exaggerated, some of the littoral states are increasing their military presence in the area.

Despite these disputes, and occasional nationalist posturing, cooperation among the circumpolar states is already extensive and growing. Indeed it appears that the prospect of greater geopolitical competition has led the Arctic states to accelerate cooperation. This stands in marked contrast to the situation in the South China Sea, where over the past few years the claimants have increasingly dug in their heels over their territorial and jurisdictional claims and, despite over two decades of discussions, functional cooperation remains very limited.

Can the South China Sea claimants learn lessons from how the Arctic states are managing their disputes? In my opinion the answer is in the affirmative, in at least three aspects. First, in the Arctic governments recognise that the delimitation of maritime boundaries is necessary before hydrocarbons can be commercially developed. Second, the circumpolar states have pledged to resolve their disputes using procedures contained in the United Nations Convention on the Law of the Sea (UNCLOS). Third, the Arctic states are committed to focused discussions leading to agreements on functional cooperation.

This paper is divided into six parts. Following the Introduction, Part II sets the scene by examining the geostrategic importance of the Arctic and the South China Sea. Part III looks at maritime resources — real and potential— as a driver of disputes. Part IV examines the territorial and maritime boundary disputes and efforts to resolve them. Part V assesses the prospects of conflict, the role of regional institutions in mitigating conflicts and conflict management mechanisms. Part VI ends the paper with some concluding thoughts.

Part II: The Geostrategic Importance of the Arctic and South China Sea

As with many aspects of the Arctic and the South China Sea there are major differences but also commonalities.

The Arctic maybe the smallest of the world's oceans, but at 14 million square kilometres (5.4 million square miles) it covers four times the area of the South China Sea (3.5 million square kilometres or 1.2 million square miles). Both bodies of water are surrounded by large continental land masses, islands and archipelagos. The Arctic Ocean is ringed by Russia, the US state of Alaska, northern Canada, Greenland

IV. Legal Issues in the South China Sea Dispute

(the world's largest island), Iceland and Norway. The South China Sea is surrounded by China, Taiwan, the Philippines, Brunei, Indonesia, Malaysia and Vietnam. The primary geostrategic importance of the Arctic and the South China Sea is that they connect larger ocean spaces: the former connects the Atlantic and the Pacific oceans (via the Greenland and Labrador seas and the Bering Straits respectively); the latter the Pacific and Indian oceans (via the Taiwan and Luzon straits and the Malacca, Sunda, Lombok-Makassar straits respectively).

The South China Sea has functioned as a major artery of world trade for hundreds if not thousands of years. Detailed statistics on shipping movements through the sea is not available, but it is estimated that more than 100,000 vessels transit through the Straits of Malacca, Sunda and Lombok-Makassar every year, or more than half the world's annual merchant fleet tonnage⁴ (by comparison, in 2012 17,225 ships passed through the Suez Canal and 12,862 through the Panama Canal).⁵ The US Pacific Command estimates the value of trade which passes through the South China at \$5.3 trillion per annum.⁶ The sea lanes that pass through the South China Sea are particularly important to the economic powerhouses of Northeast Asia — China, Japan and South Korea— which are heavily dependent on energy imports from the Middle East and Africa. The US Energy Information Agency estimates that approximately 15.2 million barrels of crude oil per day passed through the Straits of Malacca in 2011 (almost one third of the global oil trade) and 6 trillion cubic feet of Liquefied Natural Gas (LNG) through the South China Sea (over half of global LNG trade).⁷ The South China Sea is also a vital theatre of operations for Southeast Asian navies, as well as those of major external powers such as the United States, China and Japan. The US Navy in particular maintains a continuous presence in the South China Sea and makes regular port calls throughout Southeast Asia.

The Arctic only assumed geostrategic importance in the twentieth century. In the closing stages of World War I, Allied forces (i.e. British, French and American) landed in the Arctic ports of Murmansk and Arkhangelsk in support of the anti-Bolshevik White Army. During World War II, the Allies' Arctic convoys utilised those same ports to deliver supplies to the Red Army, while the United States stationed

Security and Cooperation in the South China Sea

forces in both Iceland and Greenland to protect vessels crossing the Atlantic. During the Cold War, the Arctic became one of the main theatres of strategic rivalry as US and Soviet nuclear ballistic-missile submarines lurked under the polar ice cap to avoid detection. Post-Cold War, however, the geostrategic importance of the Arctic declined and, as will be examined later, it is only very recently that the circum-polar states have stepped up their military activities in the High North.

The South China Sea has, as noted, always functioned as a vital conduit of regional and global trade. From the fifteenth century Europeans dreamed of using the Arctic as a shortcut to Asia, but the presence of year-round thick ice continually dashed those hopes. With the advent of ice breakers in the early twentieth-century passage between Europe and Asia via the Arctic became possible but it was not commercially viable. Today, with the melting of the sea ice during the summer months, however, governments and businesses are looking at Arctic shipping lanes with renewed interest. Global warming has raised the prospects of three Arctic sea routes: the Trans-Polar Route (TSR), the fabled Northwest Passage (NWP) and the Northern Sea Route (NSR, or Northeast Passage). Commercial interest is motivated by the fact that Arctic shipping lanes significantly reduce the time taken to transport goods from Europe to Asia and North America to Asia.

The TSR runs from the Bering Straits to the Greenland and Norwegian seas across the North Pole. It is the most direct route from Asia to Europe, but due to the presence of multi-year ice the TSR is not yet a reality and may not be so until mid-century.⁸ The NWP comprises five sea routes that run through the Canadian Arctic Archipelago, past Alaska and through the Bering Straits. Three of the five routes are unsuitable for deep draft ships, and transit through the NWP can be hampered by the presence of multi-year pack ice.⁹ During the summer of 2013, more extensive ice coverage than in previous years kept the NWP closed.¹⁰ Compared to the NSR, there is also a lack of port facilities along the NWP. Accordingly, the shipping industry has focused on the potential of the NSR.

The NSR comprises a set of maritime routes from the Kara Sea, across the top of Siberia and through the Bering Straits, a distance of 5,600 kilometres (3,480 miles). The Soviet Union first developed the

IV. Legal Issues in the South China Sea Dispute

NSR in the 1920s and by the late 1980s millions of tons of freight were being moved along the NSR every year.¹¹ Following the collapse of the Soviet Union, however, the NSR and its related infrastructure fell into disuse. But as the summer ice began to retreat in the late 2000s, Russia made the NSR's revival a national priority.¹²

The NSR has its pros and cons. The most obvious advantage is that it cuts sailing times from Europe to Asia by as much as one-third. For instance, the distance from London to Yokohama using the NSR is 13,841 kilometres (8,600 miles) compared to 21,200 kilometres (13,173 miles) using the Suez-Malacca route or 23,000 kilometres (14,292 miles) via the Panama Canal.¹³ In August 2013, for example, a Chinese-flagged cargo ship sailed from Dalian to Rotterdam using the NSR in 35 days — 13 days shorter than had it used the Suez-Malacca route.¹⁴ Not only does using the NSR cut fuel and manpower costs, but it also reduces carbon dioxide emissions. Supporters also point out that the NSR is less vulnerable than the Suez-Malacca route because it bypasses the perpetually unstable Middle East and piracy “hotspots” in the Gulf of Aden and parts of Southeast Asia. It has even been suggested that the NSR is safer than the South China Sea because of the prospect of instability and even conflict over the disputed atolls.

However, shorter does not always mean cheaper. Shipping companies must factor in the cost of preparing their vessels for Arctic conditions (even in the summer), and higher insurance costs due to limited Search and Rescue (SAR) facilities along the NSR. And while ships avoid paying fees to use the Suez or Panama canals, Russia levies transit and ice-breaker fees for vessels using the NSR. And while the NSR might be an attractive option for ships carrying bulk goods, it is less attractive for container shipping. Unpredictable weather conditions in the Arctic negatively affects on-time delivery schedules that are so vital to the profitability of the container industry. Moreover, compared to the Suez-Malacca route there are few major transshipment ports where ships can load and unload cargoes, and draft and beam restrictions at certain points mean that megacontainer ships cannot use the NSR.¹⁵

Scientists differ on when the Arctic will be completely ice-free during the summer (no one is predicting an ice-free Arctic during the

winter). Most experts envisage that the Arctic will be seasonally ice-free by 2030-2040, though some models suggest this might happen as early as 2015.¹⁶ But the NSR is already witnessing an increase in traffic: in 2012, 46 vessels used the NSR up from only four in 2010. However, in order to obtain an accurate picture of Arctic shipping it is necessary to break down the figures. The Moscow-based Northern Sea Route Administration is responsible for issuing transit permits. As of 31 July 2013, it had received 413 applications and approved 296. Of those 296 vessels, however, the majority were local traffic moving between Russian ports; only 55 (18 per cent) were for all areas of the NSR.¹⁷ In 2012, of the 46 ships that used the NSR 22 (48 per cent) travelled between Europe and Asia, or vice versa.¹⁸ These figures demonstrate that the NSR is unlikely to be a major commercial rival to existing maritime trade routes for some time to come. Nevertheless, it will complement existing routes and as the ice continues to retreat and the volume of traffic increases, so too will the Arctic's geostrategic importance.

Part III: The Resources Factor

The question of who has the legal right to exploit living and non-living resources is one of the most critical issues in the international politics of the Arctic and the South China Sea, and goes a long way to explain why the littoral states have been so reluctant to compromise their territorial and maritime boundary claims, especially in the latter dispute. Both areas are home to significant fishing grounds, but undelineated sea boundaries have resulted in tense, sometimes fatal incidents over disputed fishing grounds. International conservation and fishery management agreements are urgently required to prevent overfishing and Illegal, Unregulated and Unreported (IUU) fishing. But in an age of rising demand for energy resources, it is the prospect of developing offshore oil and gas fields that has led countries in both the Arctic and South China Sea to strengthen their sovereignty claims, heightening tensions in the process.

Fisheries

Fisheries in the South China Sea are much more important than in the Arctic Ocean. The former is rich in biodiversity and hosts a fishery

IV. Legal Issues in the South China Sea Dispute

of global significance. By some estimates ten per cent of the global catch is made in the South China Sea.¹⁹ As a source of protein for hundreds of millions of people in Southeast Asia, its regional significance cannot be overstated. In contrast, only five per cent of global catch is made in the Arctic.²⁰ However, fishing grounds in the Barents Sea and Bering Straits are rich and extremely important to the fishing industries of Norway, Greenland, Russia, Iceland and Alaska.

Overfishing and IUU activities occur in many of the world's maritime spaces. According to the UN, they represent a "critical threat" to biodiversity in the South China Sea and the fishermen whose livelihoods depend on it.²¹ The situation has been exacerbated by the problem of overlapping maritime jurisdictions caused by undelineated boundaries, except in a few areas such as the Gulf of Tonkin. Over the past several decades, there have been numerous incidents involving warships or civilian patrol boats and fishing trawlers, some of which have strained bilateral ties. In May 2013, for example, the murder by Philippine coast guard personnel of a Taiwanese fisherman in waters claimed by both Manila and Taipei triggered a serious crisis in Taiwan-Philippine relations.²² China's expansive claims in the South China Sea are a particular source of contention. Official Chinese maps indicate a discontinuous ten-dash line, nine of which are located in the South China Sea (the tenth is off the east coast of Taiwan). As will be examined later, China not only appears to be claiming sovereignty of all the atolls within the line but also ownership of maritime resources within the U-shaped line. The nine-dash line overlaps with the EEZs of the Philippines, Brunei, Malaysia, Indonesia and Vietnam, and challenges their sovereign rights to maritime resources within their EEZs as provided under UNCLOS. The ill-tempered atmosphere that the disputes have created over the years has undermined attempts to reach agreements among the claimants to address overfishing and IUU fishing, manage fish stocks and protect the marine environment. Since 1999 China has imposed a fishing moratorium between mid-May and early August in northern areas of the South China Sea, ostensibly to protect spawning and breeding grounds. However, as this measure is unilateral and of questionable legality, it has strained relations with

some of China's neighbours, especially Vietnam which considers the ban illegal and an infringement of its sovereign rights.

In the Arctic, the picture is more positive than in the South China Sea. Norway and Russia, the two principal fishing nations in the Barents Sea, established a joint fisheries commission in 1976 that sets quotas for certain kinds of fish despite an undelineated sea border.²³ In 2010, the two countries resolved that dispute. However, Norway and Russia continue to argue over fishing rights in waters surrounding Svalbard Island. In 1920 the Treaty of Svalbard recognised Norwegian sovereignty over the island, but treaty signatories acquired rights to exploit fish and minerals. Norway argues that fishing rights only extend to coastal waters and not the EEZ, while Russia and other countries disagree.²⁴ Unlike in the South China Sea, however, the Svalbard dispute has not generated serious tensions.

As the waters of the Arctic Ocean grow warmer and the ice retreats during the summer, fishing opportunities are expected to increase.²⁵ The prospect of overfishing and IUU fishing in this new environment has prompted the Arctic-5 to begin negotiations on an agreement to jointly manage fish stocks in Arctic waters outside their EEZs.²⁶ No such negotiations are currently taking place among the South China Sea littoral states, though ASEAN has sponsored discussions at the track two level.

Hydrocarbons

For some of the Arctic and South China Sea littoral states the extraction of seabed oil and gas reserves has been a significant source of national income for decades. Growing global demand for energy resources (especially in East Asia), plateauing or declining production rates in existing fields, new technologies and, in the case of the High North, melting ice, have spurred regional and international interest in the development of new reserves. Often these hydrocarbons lie further from the coast and in deeper, and crucially, disputed areas.

The scale of hydrocarbon resources in the Arctic and South China Sea is difficult to determine with any certainty, the former because of complex geology, deep waters and ice cover and the latter because the territorial disputes have prevented energy companies from conducting

IV. Legal Issues in the South China Sea Dispute

comprehensive surveys. As a result, all estimates are highly —perhaps even wildly— speculative.

In the South China Sea, Chinese estimates are at the high end of the scale, usually between 100-200 billion barrels of oil (bbo) and oil equivalent. In 2012, for instance, the state-owned energy company China National Offshore Oil Corporation (CNOOC) estimated that the South China Sea held 125 bbo and 500 trillion cubic feet (tfc) of gas in undiscovered resources.²⁷ US and Russian estimates are much lower. In 2010, the U.S. Geographical Survey (USGS) estimated the South China Sea might contain 5-22 bbo and 70-290 tcf of gas in undiscovered resources —though its estimate did not cover the entire sea.²⁸ Russia's Research Institute of Geology and Foreign Countries estimates a modest 6 bbo of which 70 per cent is gas.²⁹ Absent a resolution of the dispute or the political will to jointly explore for resources, the true extent of hydrocarbons in the South China Sea will remain unknown and, more importantly, the oil and gas will stay locked under the seabed. Nevertheless, the *perception* that the South China Sea is rich in energy resources will continue to act as a powerful driver of the dispute.

Potential reserves of hydrocarbons in the Arctic are estimated to be much higher than in the South China Sea. In 2008, the USGS estimated the Arctic could contain 90 bbo and 1,669 tcf of gas — 13 and 30 per cent of estimated total global undiscovered oil and gas respectively.³⁰ Although these figures have been widely cited, especially in the media, the methodology used by the USGS has been criticised and other organisations have been much less sanguine in their assessments.³¹ The commercial viability of energy reserves in the High North has also been called into question given the high costs of Arctic exploration and development, significant technical, logistical and environmental challenges, and the fact that cheaper alternatives exist, including oil from the Middle East and shale gas from North America.

The following section examines the prospects for resolving the territorial and sea boundary disputes in the Arctic and South China Sea, and how this will affect the development of maritime resources.

Part IV: Territorial, Maritime Boundary and Continental Shelf Claims

Disputes between and among countries over the sovereignty of islands, how and where maritime boundaries should be drawn, and who owns seabed resources beyond the EEZ limit are common to both the Arctic and the South China Sea. Disputed areas in the South China Sea relate to land, sea and seabed. In the Arctic, however, there is only one minor territorial dispute, and all other disputes relate to the sea and seabed. What differentiates the two areas is the manner in which the claimants have approached their disputes. While the Arctic-5 have formally resolved to settle their disputes in accordance with UNCLOS, in the South China Sea, Beijing has eschewed international legal mechanisms.

Territorial Disputes

In the whole of the vast Arctic region there is only one piece of disputed territory: Hans Island, a 1.3 square kilometre (0.5 square miles) atoll located in the Nares Straits between Ellesmere Island and Greenland, and claimed by both Denmark (on behalf of Greenland) and Canada. However, although politicians in both countries have occasionally used the dispute to burnish their nationalist credentials, Hans Island is not a serious irritant in bilateral relations. Sovereignty of the island has no implications for resource ownership as the two countries delimited their maritime boundary in the Nares Straits in 1973.³² Moreover, both countries are mature democracies and North Atlantic Treaty Organisation (NATO) allies who are not going to go to war over this issue. Copenhagen and Ottawa have decided not to submit their dispute to the International Court of Justice (ICJ), preferring bilateral negotiations instead. In 2012 the two sides were reportedly considering dividing the island equally.³³

In the South China Sea the picture is completely different. Here, sovereignty over entire archipelagos, as well as smaller insular features such as reefs and shoals, is contested by multiple parties.³⁴ The two major island groups under contention are the Paracels and Spratlys. The Paracels, which lie in the northern part of the South China Sea southwest of Hainan Island, were occupied by China in 1974 following the forcible eviction of South Vietnamese troops. Since reunification in

IV. Legal Issues in the South China Sea Dispute

1975, Hanoi has refused to accept the legality of China's actions and continues to claim sovereignty over the Paracels. This dispute is truly intractable as Beijing refuses to discuss the matter of sovereignty with Hanoi. Further south is the Spratlys which is composed of 150-180 geographical features, ranging from islands (which under UNCLOS can generate both a 12 nautical miles territorial sea and EEZ), to rocks (which can only generate a territorial sea) to semi-submerged and low-tide elevations (which can neither generate a territorial sea nor an EEZ). China and Taiwan (whose claims are analogous) claim sovereignty over the entire group, as does Vietnam. Malaysia and the Philippines claim parts of the group. Brunei has never formally claimed any of the Spratlys, though two features lie within its EEZ and it is usually listed as a claimant. In addition, China and Taiwan claim ownership of Pratas Island (which is occupied by Taiwan), Macclesfield Bank and Scarborough Shoal. The latter, a small reef lying 130 nautical miles west of Luzon, is also claimed by the Philippines. In May 2012 China effectively occupied Scarborough Shoal after a tense stand-off with the Philippines.

All of the claimants except Brunei have occupied islets in the Spratlys: Vietnam more than 20; the Philippines nine; China eight; Malaysia five; and Taiwan two. Military and civilian facilities have been constructed on the occupied features, including barracks, helicopter landing pads and air strips, landing piers and sea walls. In addition, most of the claimants have attempted to strengthen their sovereignty and jurisdictional claims through national legislation, submissions to the UN, and through acts of administration such as setting up local government units and establishing air, sea and telecommunications links between the atolls and the home country.

The South China Sea claimants have not mustered the political will to settle their territorial disputes, either through international legal arbitration or negotiations leading to a political settlement that resolves the issue of sovereignty. The ICJ could issue a ruling on sovereignty of the South China Sea atolls, but a submission would require the consent of all parties. China has adamantly ruled out international legal arbitration as a means of resolving territorial, land or maritime boundary dis-

putes. As Beijing is unlikely to change its position, the ICJ option remains closed.

China's view is that the disputes can only be resolved through bilateral negotiations—that is between China and each of the claimants on a one-on-one basis. The Southeast Asian claimants are wary of such an approach, especially given the asymmetries in political power (though it should be noted that China has resolved many of its land boundary disputes with smaller neighbours in a fair and amicable way). The other approach China favours is for the claimants to set aside their sovereignty disputes and to jointly develop their maritime resources. However, when the Philippines proposed such a solution in its 2011 Zone of Peace, Freedom, Friendship and Cooperation initiative, Beijing rejected it out of hand. China itself has never suggested a way to operationalise the joint development proposal.

Maritime Boundary Disputes

In the Arctic there are two outstanding maritime boundary disputes (as noted earlier, Russia and Norway settled their sea border in 2010). Canada and the United States have a disputed maritime boundary in the Beaufort Sea. Canada argues that the demarcation line between Alaska and the Yukon which runs along the 141st line of longitude (which was established in an Anglo-Russian treaty of 1825) extends to the sea; the US position is that the demarcation line ends at the shore and the sea should be divided using the principle of equidistance.³⁵ The disputed area covers 21,436 square kilometres and is close to lucrative oil fields in Prudhoe Bay and Mackenzie Valley.³⁶ However, according to Roger Byers, Washington and Ottawa have approached the dispute “with restraint” over the past few decades.³⁷ The second boundary dispute is between Canada and Denmark in the Lincoln Sea and covers a much smaller area.

There are two other disputes in the Arctic which do not involve contested maritime boundaries but which nevertheless warrant our attention: the legal status of the NWP and NSR.

Canada claims that the NWP is in its internal waters and that foreign ships must therefore apply for permission to transit. The United States, as well as the European Union, contends that it is an international strait and therefore commercial and naval ships have the right of

IV. Legal Issues in the South China Sea Dispute

transit passage, and that Canada has no right to regulate shipping in the NWP. As P. Whitney Lackenbauer notes: “The US insists that, if it acquiesces to Canada’s claim that the Northwest Passage constitutes internal waters, then archipelagic states could use this as a precedent to restrict naval mobility in other parts of the world.”³⁸ The two allies have agreed to disagree on the status of the NWP. Similarly Russia claims the NSR passes through its internal waters and that ships must apply for permission before transiting (which as we saw earlier, hundreds are now doing every year). As with the NWP, and for the same reasons, the United States views the NSR as an international strait and that the regime of transit passage applies.³⁹

Disputes over the legal status of the NWP and NSR are germane to this paper because they parallel the situation in the South China Sea, though on a much smaller scale. As mentioned earlier, Chinese maps indicate a nine-dash line that encloses 80 per cent of the South China Sea. Beijing has never officially explained what the nine dashes represent but four potential meanings have been advanced.⁴⁰ First, China is claiming sovereignty over all of the islands inside the line, as well as their 12 nautical miles territorial seas and 200 nautical miles EEZ. Second, the area within the line represents China’s “historic waters.” Third, the waters bounded by the U-shaped line is an EEZ and continental shelf claim generated by the Paracels, Spratlys and Scarborough Shoal. Fourth, China claims sovereignty over all of the disputed islands, an EEZ and continental shelf generated by those islands, as well as “historic rights” to the entire maritime space including entitlement to all living and non-living resources.

Increasingly it appears that it is the fourth of these interpretations that has become China’s de facto official line. Although the U-shaped line had appeared on Chinese maps since the late 1940s, it was not until 2009 that China officially lodged a copy of the map with the UN attached to a *note verbale* protesting a joint submission by Vietnam and Malaysia to the Commission on the Limits of the Continental Shelf (CLCS).⁴¹ In the note China declared that it had “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 (see attached map).” In 2011,

CNOOC invited tenders for nine off-shore blocks covering 160,000 sq km in the South China Sea.⁴² The blocks, which CNOOC described as being in “waters under the jurisdiction of the People’s Republic of China,” lie at the outermost limits of the nine-dash line and entirely within Vietnam’s claimed EEZ.⁴³ The closest China has come to an official articulation of the fourth interpretation occurred in 2013 when Zhiguo Gao —a Chinese judge on the UN’s International Tribunal on the Law of the Sea (ITLOS)— published a co-authored academic article which argued that the U-shaped line was justified under international law and had “become synonymous with a claim of sovereignty over the island groups that always belonged to China and with an additional Chinese claim of historical rights of fishing, navigation, and other marine activities (including the exploitation of resources, mineral or otherwise) on the islands and in the adjacent waters.”⁴⁴ This suggests that China regards the South China Sea as its “internal waters.”

The legal basis for China’s U-shaped line has been questioned by governments and legal experts across the region. Indonesia formally challenged the map at the UN in 2010.⁴⁵ And in a major development in the long-running dispute, in January 2013 the Philippines unilaterally submitted its overlapping jurisdictional claims with China in the South China Sea to international legal arbitration at the UN.⁴⁶ The Philippines’ submission does not call on the UN to determine which of the claimants enjoys sovereignty over the disputed atolls, because, as noted earlier, that determination only can be made by the ICJ and with the consent of all parties. Instead the Philippines has challenged China’s claim to sovereign rights, including to all resources and navigational rights, within the maritime space encompassed by the nine-dash line. The Philippines has requested the UN to issue an award that, *inter alia*, declares China’s maritime claims based on its nine-dash line to be contrary to UNCLOS and therefore invalid; requires China to bring its domestic legislation into conformity with UNCLOS; declares China’s occupation of certain reefs to be illegal and a violation of Philippine sovereign rights; declares that China has unlawfully claimed maritime entitlements beyond 12 nautical miles from certain features (including Scarborough Shoal); and requires China to desist from unlawful activities in the Philippines’ EEZ, including exploiting living and non-living

resources.⁴⁷ Given China's long-standing preference to resolve territorial and boundary disputes with neighbouring countries through bilateral negotiations rather than international legal arbitration, it came as no surprise that it formally rejected the Philippine submission on 19 February 2013. China's foreign ministry declared the Philippine submission was "factually flawed," "contained false accusations" and violated the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC).⁴⁸ Nevertheless, despite China's refusal to participate, ITLOS has appointed an Arbitral Tribunal and the Permanent Court of Arbitration (PCA) has asked the Philippines to submit detailed written legal arguments by 30 March 2014.⁴⁹

While Vietnam has not formally protested the map, Vietnamese leaders have declared that it has no legal basis.⁵⁰ Singapore is not a claimant, but has expressed reservations about the legality of China's claims. In a keynote address during an academic conference in Singapore, former senior minister and law expert Professor S. Jayakumar described the map as "puzzling and disturbing" as it could be "interpreted as being a claim on all the maritime areas within the nine dotted lines."⁵¹ Several days later Singapore's Ministry of Foreign Affairs called on China to clarify its claims in the South China Sea "with more precision as the current ambiguity as to their extent has caused serious concerns in the international maritime community."⁵² Singapore's Ambassador-at-Large Tommy Koh has pointed out that if China is only claiming the insular features within the nine-dash line, this can be consistent with UNCLOS, but that if it is claiming sovereignty over the features and the waters, this is incompatible with UNCLOS.⁵³ When the Arbitral Tribunal issues an award, possibly as early as late 2014, it may provide clarity on the validity of China's nine-dash line. China, however, is likely to ignore the ruling.

Extended Continental Shelf Claims

Under UNCLOS, coastal states possess sovereign rights to all living and non-living resources on or below the seabed and in the water column out to the limit of their 200 nautical miles EEZ. Within ten years of acceding to UNCLOS, states can also claim sovereign rights to resources on or below the seabed (but not within the water column) in continental shelf areas that extend beyond the EEZ limit out to 150

nautical miles or 100 nautical miles beyond the 2,500 meter isobaths. To secure these rights, states must submit detailed scientific and technical information to the CLCS, a specialist body mandated to make recommendations based on the evidence submitted by coastal states. Some of the Arctic and South China Sea littoral states have pursued their extended or outer continental shelf claims with enthusiasm.

As noted earlier, the USGS has estimated that up to 13 and 30 per cent of the world's undiscovered oil and gas reserves may lie in the Arctic. According to the USGS, the Arctic continental shelf "may constitute the geographically largest unexplored prospective area for petroleum remaining on Earth."⁵⁴ Even more than in areas close to the coast, the development of these seabed resources will pose immense technical and logistical challenges. Nevertheless, while it may be decades before Arctic seabed resources become commercially viable, the littoral states have been keen to stake their claims. Encouragingly, however, regional governments recognise that large-scale and long-term investment in Arctic energy resources is dependent on uncontested jurisdiction. Accordingly, on 28 May 2008 in Greenland, the Arctic-5 issued the Ilulissat Declaration which states: "The law of the sea provides for important rights and obligations concerning the delineation of the outer limits of the continental shelf, the protection of the marine environment, including ice-covered areas, freedom of navigation, marine scientific research, and other uses of the sea. We remain committed to this legal framework and to the orderly settlement of any possible overlapping claims."⁵⁵ In issuing the Ilulissat Declaration, the Arctic-5 committed themselves to resolving their maritime disputes under UNCLOS.

Russia, Canada, Denmark and Norway are parties to UNCLOS. The United States is not a party, but accepts its key provisions as being reflective of customary international law. Nevertheless, until America accedes to UNCLOS, it cannot make a submission relating to the outer limits of its extended continental shelf to the CLCS. The four members of the Arctic-5 who are parties to UNCLOS claim that the undersea Lomonosov Ridge as natural extensions of their continental shelves. Russia made its submission to the CLCS in 2001 but was asked to provide further scientific data. Meanwhile, Canada and Denmark are con-

ducting a joint survey. If the CLCS rules that the claims overlap, the Arctic states will be required to negotiate a settlement between or among themselves.⁵⁶

In the South China Sea, in 2009 Malaysia and Vietnam made a joint submission to the CLCS, Vietnam an independent submission, the Philippines a partial submission, and China and Brunei separately made preliminary submissions. China and the Philippines protested the submissions made by Malaysia and Vietnam, leading to counter protests. The CLCS is not mandated to assess claims that have been challenged by another state. In contrast, none of the submissions made to the CLCS by the Arctic states have so far been challenged.

Part V: The Prospects of Conflict and Conflict Management

For both the Arctic and the South China Sea there have been dire predictions of conflict sparked by competition over energy resources. The Arctic has been characterised by some observers as a “geostrategic flashpoint” and the arena for a new “Great Game” among the circum-polar states, especially America and Russia.⁵⁷ Some Russian politicians have been apt to play up the prospects of rivalry. In 2010 then Russian President Dmitri Medvedev predicted an “increasing fight for Arctic resources” while in 2012 Deputy Prime Minister Dmitri Rogozin warned that Russian sovereignty in the Arctic was under threat from other countries.⁵⁸ On the other side of the world, since at least the early 1990s the South China Sea has often been referred to as a “regional flashpoint”, and since the uptick in tensions in 2007-2008 the warnings have grown starker.⁵⁹ In the Arctic, the prospects of war have been greatly exaggerated; in the South China Sea there are also important mitigating factors, but the chances of armed conflict are higher than in the High North.

The Arctic

Since the melting of the Arctic ice accelerated in the mid-2000s, there has been a modest increase in military activities. In 2009, the NATO Secretary General Jaap de Hoop Scheffer highlighted this trend when he noted that “several Arctic Rim countries are strengthening

their capabilities, and military activity in the High North region has been steadily increasing.”⁶⁰

As the preeminent Arctic power, much of the focus of this militarisation has been on Russia. Russia’s 2008 Arctic policy statement defines the region as an area of critical strategic importance for the country, and for good reason. Russia’s aspirations to remain a Great Power are dependent in large part on developing the country’s untapped energy resources, much of which lie in the Arctic. The region is home to the Northern Fleet which operates the largest number of nuclear-ballistic missile submarines (all the more important given the decline in the country’s conventional forces), and is responsible for defending Russia’s interests in the Arctic and North Atlantic, as well as the NSR.⁶¹ In 2007, Russia resumed strategic bomber patrols over the Arctic (as well as in other parts of the world) and in 2013 aerial maritime patrols.⁶² But Russia is not the only circumpolar state to have beefed up its military presence. Norway has acquired new Arctic-capable naval and air assets, and in 2009 relocated its Joint Operational Headquarters from Stavanger to Bodø just north of the Arctic Circle.⁶³ Since he assumed office in 2006, Canadian Prime Minister Stephen Harper has strongly advocated a greater military presence in the Arctic to underscore Canadian sovereignty.⁶⁴ As it drawdowns its forces in Iraq and Afghanistan, and “pivots” towards Asia, the Arctic is not a high priority for the US military, and in 2006 it withdrew the last of its personnel from the Keflavik airbase in Iceland. Nevertheless, the Arctic continues to play an important role in America’s strategic nuclear deterrence.

Despite moves by some of the Arctic states to increase their military presence in the region, the prospect of a conflict over resources seems remote for two main reasons.

The first centres on the political systems and historical relationships among all but one of the circumpolar states. Of the eight members of the Arctic Council, seven—America, Canada, Denmark, Norway, Sweden, Finland and Iceland— are mature, Western liberal democracies. Five —America, Canada, Norway, Denmark and Iceland— are NATO allies, and two —Finland and Sweden— are “NATO-friendly.”⁶⁵ Three —Denmark, Sweden and Finland— are members of

IV. Legal Issues in the South China Sea Dispute

the EU and Iceland has applied to join. A conflict between or among these democratic, NATO and EU members over resources or maritime boundaries is, to all intents and purposes, unthinkable. Russia is the outlier: it cannot be classed as a Western liberal democracy, and is not a member of NATO or the EU. Yet despite the occasional bellicose statement from Russian politicians borne of a “persistent sense of insecurity,”⁶⁶ when it comes to the Arctic, Moscow has firmly chosen cooperation over competition. Its 2008 policy paper identifies as a major national interest “Safeguarding the Arctic as a zone of peace and cooperation.”⁶⁷ Russia views the Arctic Council as the primary vehicle of Arctic governance and, as mentioned earlier, has committed itself to settling disputes through UNCLOS. Moreover, due to the lack of investment in the country’s oil and gas industry since the demise of the Soviet Union, Russia needs the active cooperation of Western corporations and governments if it is to realise its ambitions to be an energy superpower.⁶⁸

The second reason which reduces the prospects of conflict in the Arctic is that most of the hydrocarbon reserves identified by the USGS are located within the EEZs of coastal states, and therefore the question of ownership does not arise.⁶⁹ As we have seen, disputes might arise over extended continental shelf claims, but the Arctic-5 have pledged to resolve those disputes under UNCLOS.

Geopolitical rivalry in the Arctic cannot, of course, be ruled out: as Rolf Tamnes notes, “Multipolarity, globalisation, and deeper interdependence connect the High North to broader patterns and outside events and make the security environment of the region unpredictable.”⁷⁰ Tensions generated by problems or conflict in other parts of the world could spill over into the Arctic, especially between the United States and Russia—whose relations have been in a downward spiral in recent years—or between Arctic and non-Arctic states, possibly even the United States and China.

Although the possibility of conflict in the Arctic remains low, regional states recognise the need to enhance dialogue and cooperation. The Arctic Council was established in 1996 to maintain peace, stability and cooperation in the region, but its mandate is limited to promoting sustainable development, protecting the environment and preserving

the rights of indigenous peoples —military-security issues and resource and boundary disputes are beyond its remit. Nevertheless, as the geopolitical importance of the Arctic grows, there have been calls for the Arctic Council to address transnational security issues such as illegal migration, trafficking and smuggling, challenges that are likely to grow as maritime traffic increases. A start has already been made. In 2011 members of the Arctic Council signed a landmark SAR agreement.⁷¹ Talks on military-security cooperation have also taken place outside the framework of the Arctic Council. In 2012, for instance, the annual Northern Chiefs of Defense Meeting was inaugurated in Canada. At the 2013 meeting in Ilulisatt the defence chiefs of the eight Arctic Council members discussed how military resources could be used to support civilian needs such as SAR and environmental crises and agreed to improve information exchange.⁷²

The South China Sea

In the South China Sea the level of militarisation has been greater than in the Arctic, and the war of words over conflicting claims much sharper. As a result, cooperation —even among the four ASEAN claimants— has been lacking, and the risk of conflict is much higher.

China's impressive economic growth rates over the past three decades have allowed the country's leaders to devote greater resources to defence spending. Between 1988 and 1997 China raised defence spending by an annual average of 14.5 per cent, rising to 15.9 per cent between 1998 and 2007.⁷³ In 2012, China's official defence spending rose to \$106 billion, the second highest in the world —admittedly along way behind the United States which spent \$614 billion, but nevertheless the highest in Asia (China spent twice as much as the next biggest Asian defence spender, Japan).⁷⁴ The modernisation of the People's Liberation Army (PLA), especially the navy and air force, together with the expansion of China's civilian maritime agencies, has increasingly provided Beijing with the capabilities to enforce its territorial and jurisdictional claims and bring coercive pressure to bear on the smaller claimants in the South China Sea. The rise of China's military power has in turn acted as a catalyst for military modernisation programmes across the region, most notably in Vietnam and the Philippines.

IV. Legal Issues in the South China Sea Dispute

Despite the on-going militarisation of the dispute, two factors militate against conflict in the South China Sea. First, all of the claimants—and indeed all countries in the Asia-Pacific region and beyond—have a common interest in maintaining freedom of navigation and the uninterrupted flow of maritime traffic. Any disruption to maritime trade would severely harm regional economic growth prospects and damage the global economy. Thus far, this critical factor has restrained the behaviour of the main parties. Second, while China probably already possesses the military capabilities to “resolve” the problem by force of arms, the costs associated with this course of action would almost certainly outweigh the benefits. Cutting the Gordian Knot in the South China Sea would make a nonsense of China’s much heralded “peaceful development” (perhaps the closest thing the Communist Party of China has to an official ideology these days), damage its international image and reputation, and push Southeast Asian countries and other states into a tighter strategic embrace with the United States. And all this for a few billion barrels of oil?

However, conflict in the South China Sea cannot be ruled out. Given the increasing frequency of incidents at sea involving warships, patrol boats, fishing trawlers and survey vessels, the chances of an accidental clash at sea is relatively high. The risk is heightened by the absence of conflict prevention and crisis management mechanisms between the various claimants. In contrast, several Arctic NATO members (i.e. the United States, Canada and Norway) and Russia have had both in place since the Cold War, including the prevention of incidents at sea agreements (INCSEA) and established channels of communication.

Unlike the Arctic Council, the Association of Southeast Asian Nations (ASEAN) is deeply involved in security issues (though it is not, of course, a military alliance like NATO). Since the end of the Cold War, ASEAN has been at the forefront of efforts to create a regional security architecture that accommodates major and middle powers while protecting the interests of its members, thereby maintaining peace and stability. Although ASEAN does not take a position on the territorial claims of its four members—nor those of China—and is not mandated to settle sovereignty and maritime boundary claims, it has

played a leading role in efforts to better manage the dispute. Thus far, however, the results have been very disappointing, partly because of the lack of unity within ASEAN but mainly due to China's intransigence. The 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC) has not been even partially implemented. It was only in September 2013, for instance, that the two sides agreed in principle to establish an SAR hotline. At the same meeting, ASEAN and Chinese officials also began consultations (note, not negotiations) on a more formal and binding Code of Conduct in the South China Sea (CoC) which the DoC calls for. China has been unenthusiastic about such a code and has repeatedly stalled attempts by ASEAN to advance the process. China's lack of good faith, and internal divisions within ASEAN, suggest that when the two sides finally agree on a code it will do little to reduce tensions in the South China Sea or prevent tense standoffs at sea from occurring.⁷⁵

Part VI: Concluding Thoughts

The geostrategic importance of both the Arctic Ocean and the South China Sea are rising. Melting Arctic ice is opening up shorter trade routes between Europe and Asia, as well as the prospects of new oil and gas fields to meet growing global demand for energy resources. As the world's economic centre of gravity continues to shift towards Asia, the flow of maritime trade through the South China Sea is set to increase. Arctic shipping lanes will not challenge the Suez-Malacca route for some time to come, but will instead serve as vital connectors between the circumpolar states and the vibrant economics of the Asia-Pacific region. In that sense, the destinies of Asia and the High North are becoming inextricably linked.

As this paper has examined, territorial, maritime boundary and extended continental shelf disputes persist in both areas. In the South China Sea these disputes have generated serious interstate tensions, fuelled military modernisation programmes and raised the prospect of armed conflict. As the claimants' positions over their sovereignty and jurisdictional claims have become more entrenched, the prospects of a resolution have receded. Even moves to better manage the conflict have become more complex and problematic.

IV. Legal Issues in the South China Sea Dispute

In the Arctic a different picture has emerged. Although future geopolitical rivalry cannot be ruled out, the Arctic states recognise that cooperation is necessary to address common challenges and exploit new opportunities. One factor that helps explain this spirit of cooperation and the general absence of tensions is that all but one of the circumpolar states are mature democracies with high-levels of economic interdependence and overlapping memberships of political and military organisations such as NATO and the EU. Russia is not a part of this group, and yet even it has prioritised cooperation over competition.

While there are clearly significant differences between the geopolitical situation in the Arctic and in the South China Sea, there are three important lessons that we can draw from the politics of the High North and apply to the maritime disputes in Southeast Asia.

First, the settlement of maritime boundaries is a prerequisite for the development of sea bed resources. When sea boundaries are delimited there can be no disputes over the ownership of natural resources up to the limit of a coastal state's EEZ. In areas of overlapping claims putting aside disputes in favour of joint development is possible but this scenario seems unrealistic in the South China Sea given the size of disputed areas and multiple claimants. In this regard it is China's expansive claims, as represented by the nine-dash line, that is the crux of the South China Sea problem. As such, it is imperative for China to clarify its claims and bring them into line with existing international law. Until the U-shaped line issue is resolved, the dispute cannot be settled.

Second, and related, the Arctic-5 have formally committed themselves to resolving their territorial, maritime boundary and outer continental shelf claims using existing international legal frameworks, especially UNCLOS. Under the terms of the DoC, the South China Sea claimants agreed to resolve their territorial and jurisdictional disputes peacefully and through negotiation "in accordance with universally recognised principles of international law" including UNCLOS.⁷⁶ But China's commitment to existing legal regimes sometimes looks shaky: it has rejected the ICJ as a mechanism to resolve the issue of sovereignty of the atolls, and refused to participate in the case brought by the Philippines at the UN. Worryingly, in June 2013 Chinese Foreign

Security and Cooperation in the South China Sea

Minister Wang Yi stated that “proper solutions must be sought through dialogue and negotiation on the basis of fully respecting historical facts and international law.”⁷⁷ Thus in China’s new ordering of priorities, history comes before law. China needs to take a leaf out of Russia’s book and firmly commit itself to dispute resolution under UNCLOS, a treaty that it has signed and ratified.

Third, pending a resolution of the disputes, the South China Sea claimants must deepen dialogue, accelerate efforts to establish crisis prevention mechanisms and pursue functional cooperation. ASEAN and China’s agreement in principle to establish an SAR hotline is a good start, but must be quickly followed up by a detailed agreement of the kind drawn up by the Arctic Council members in 2011. The claimants should also start serious discussions on INCSEA agreements so as to prevent clashes from occurring. Fisheries is another important area of functional cooperation. Overfishing and IUU fishing pose a threat to the food security of all the littoral states in the South China Sea, while overlapping EEZs have led to tense disputes over fishing rights. The joint management of fisheries (such as between Norway and Russia, and now under discussion among the Arctic-5) and agreements covering fishing activities in areas of overlapping jurisdiction would go a long way towards lowering tensions in the South China Sea.

The Arctic and the South China Sea might be on opposite sides of the planet, but there is much that China and Southeast Asian states can learn from the spirit of cooperation in the High North.

Notes

¹ Alun Anderson, *After the Ice: Life, Death and Geopolitics in the New Arctic* (New York: HarperCollins, 2009), pp. 88-89.

² Arctic Sea Ice News and Analysis, National Snow and Ice Data Center <<http://nsidc.org/arcticseaicenews/>>.

³ *Ibid.*

⁴ “The South China Sea”, U.S. Energy Information Administration, 7 February 2013 <<http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>>.

⁵ See the Suez Canal Authority <<http://www.suezcanal.gov.eg/sc.aspx?show=13#>> and the Panama Canal Authority <<http://www.panacanal.com/eng/index.html>>.

IV. Legal Issues in the South China Sea Dispute

- ⁶ “Press Briefing by NSA for Strategic Communications Ben Rhodes and Admiral Robert Willard, U.S. Pacific Command”, The White House, Office of the Press Secretary, 13 November 2011 <<http://www.whitehouse.gov/the-press-office/2011/11/13/press-briefing-nsa-strategic-communications-ben-rhodes-and-admiral-rober>>.
- ⁷ “The South China Sea”, U.S. Energy Information Administration, 7 February 2013 <<http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>>.
- ⁸ Malte Humpert and Andreas Raspotnik, “The Future of Arctic Shipping Along the Transpolar Sea Route,” in *Arctic Yearbook 2012* edited by Lassi Heininen (Akureyr, Iceland: Northern Research Forum, 2012).
- ⁹ *Arctic Marine Shipping Assessment 2009 Report*, The Arctic Council, April 2009, pp. 20-21 <http://www.arctic.gov/publications/AMSA_2009_Report_2nd_print.pdf>.
- ¹⁰ Arctic Sea Ice News and Analysis, National Snow and Ice Data Center <<http://nsidc.org/arcticseaicenews/>>.
- ¹¹ Charles Emmerson, *The Future History of the Arctic* (New York: Public Affairs, 2010), p. 159.
- ¹² Arbakhan Magomedov (Ulyanovsk), “Russia’s Plans for the Northern Sea Route: Prospects and Obstacles,” *Russian Analytical Digest*, No. 129 (24 June 2013), p. 8.
- ¹³ *Ibid.*
- ¹⁴ “Chinese cargo ship sets sail for Arctic shortcut,” *Financial Times*, 11 August 2013.
- ¹⁵ Stephen M. Carmel, “The Cold, Hard Realities of Arctic Shipping,” *Proceedings*, Vol. 139/7/1,325 (July 2013).
- ¹⁶ Anderson, *After the Ice*, op. cit., p. 96; in October 2013 the International Programme on the State of the Ocean predicted ice free summers in the Arctic by around 2037. See “Press Release: Greater, Faster, Closer —Latest Review of Science Reveals Ocean in Critical State from Cumulative Impacts,” IPSO/IUCN (13 October 2013).
- ¹⁷ See the Northern Sea Route Administration website <http://www.arctic-lio.com/nsr_nsra>.
- ¹⁸ *Ibid.*
- ¹⁹ See UNEP/GEF South China Sea Project website <<http://www.unepscs.org/>>.
- ²⁰ Charles Emmerson and Glada Lahn, “Arctic Opening: Opportunity and Risk in the High North,” Chatham House-Lloyd’s Risk Insight Report (April 2012) <<http://www.chathamhouse.org/sites/default/files/public/Research/Energy,%20Environment%20and%20Development/0412arctic.pdf>>.
- ²¹ “Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand,” UNEP (22 May 2009), p. 6 <<http://www.unep.org/eou/Portals/52/Reports/South%20China%20Sea%20Report.pdf>>.
- ²² See Ian Storey, “The South China Sea Dispute (Part I): Negative Trends Continue in 2013,” *China Brief*, Vol. XIII, Issue 12 (7 June 2013).
- ²³ Geir Honneland, “Cross-Border Cooperation in the North,” in *Russia and the North* edited by Elana Wilson Rowe (Ottawa: University of Ottawa Press, 2009), p. 42.
- ²⁴ Anderson, *After the Ice*, op.cit., p. 129.

Security and Cooperation in the South China Sea

²⁵ Roger Howard, *The Arctic Gold Rush* (London and New York: Continuum, 2009), p. 96.

²⁶ "Accord Would Regulate Fishing in Arctic Waters," *New York Times*, 16 April 2013.

²⁷ "The South China Sea," U.S. Energy Information Administration (7 February 2013) <<http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>>.

²⁸ "Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010," U.S. Geographical Survey Fact Sheet 2010-3015 (June 2010) <XXX>.

²⁹ Clive Schofield, Ian Townsend-Gault, Hasjim Djajal, Ian Storey, Meredith Miller and Tim Cook, "From Disputed Waters to Seas of Opportunity: Overcoming Barriers to Maritime Cooperation in East and Southeast Asia," National Bureau of Asian Research (July 2011), p. 12.

³⁰ "Circumpolar-Arctic Resource Appraisal: Estimates of Undiscovered Oil and Gas in the Arctic", U.S. Geographical Survey, Fact Sheet 2008-3049 (2008); Donald L. Gautier et al., "Assessment of Undiscovered Oil and Gas in the Arctic," *Science*, Vol. 324, 1175 (2009).

³¹ See, for instance, "Wood Mackenzie downgrades Arctic energy supply source," *Oil & Gas Financial Journal* (1 December 2006).

³² Michael Byers, *Who Owns the Arctic?* (Vancouver/Toronto/Berkeley: Douglas and McIntyre, 2009), pp. 24-27.

³³ "Hans Island: New proposal would see isle split equally between Canada and Denmark", *National Post* [Canada], 11 April 2012.

³⁴ For an overview of the dispute see Clive Schofield and Ian Storey, *The South China Sea Dispute: Rising Tensions, Increasing Stakes* (Washington D.C.: The Jamestown Foundation, 2009).

³⁵ Byers, *Who Owns the Arctic?*, op. cit., p. 99.

³⁶ Anderson, *After the Ice*, op.cit., p. 114.

³⁷ Byers, *Who Owns the Arctic?*, op. cit., p. 101.

³⁸ P. Whitney Lackenbauer, "Polar Race or Polar Saga? Canada and the Circumpolar World," in *Arctic Security in an Age of Climate Change* edited by James Kraska (New York: Cambridge University Press, 2011), p. 237.

³⁹ James Kraska, "The New Arctic Geography and U.S. Strategy," *ibid.*, p. 260.

⁴⁰ Duong Danh Huy, "China's U-shaped Line in the South China Sea," *Asia Sentinel*, 19 September 2012 <

http://www.asiasentinel.com/index.php?option=com_content&task=view&id=4833&Itemid=390>.

⁴¹ Note from the Permanent Mission of the People's Republic of China addressed to the Secretary General of the United Nations, CML/17/2009, 7 May 2009

<http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm>

⁴² "Notification of Part of Open Blocks in Waters under Jurisdiction of the People's Republic of China Available for Foreign Cooperation in the Year of 2012", 23 June 2012 < <http://en.cnoc.com.cn/data/html/news/2012-06-22/english/322127.html>>.

IV. Legal Issues in the South China Sea Dispute

⁴³ Ibid.

⁴⁴ Zhiguo Gao and Bing Bing Jia, “The Nine-Dash Line in the South China Sea: History, Status, and Implications,” *The American Journal of International Law*, Vol. 107, No. 95 (2013), p. 108.

⁴⁵ See

<http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf> and Notification and Statement of Claim, op. cit.

⁴⁶ Notification and Statement of Claim, Department of Foreign Affairs, Manila, 22 January 2013, available from <<http://www.dfa.gov.ph/>>.

⁴⁷ See Ian Storey, “Manila Ups the Ante in the South China Sea,” *China Brief*, Vol. XIII, Issue 3 (1 February 2013).

⁴⁸ *Xinhua*, 19 February 2013.

⁴⁹ See <http://www.pca-cpa.org/showpage.asp?pag_id=1529>.

⁵⁰ During the Question and Answer session at the 2010 Shangri-La Dialogue, Vietnamese Defence Secretary General Thanh said the map had no legal justification. During his visit to Washington D.C. in July 2013, Vietnamese President Truong Tan Sang said, “We cannot find any legal foundation or scientific basis for such a claim and therefore it is the consistent policy of Vietnam to oppose the nine-dash-line plan by China.” See “Viet leader opposes China’s sea claims,” *Agence-France Presse*, 27 July 2013.

⁵¹ Keynote Address by Professor S. Jayakumar, National University of Singapore Centre for International Law Conference on “Joint Development and the South China Sea,” Singapore, 16 June 2011.

⁵² “MFA spokesman’s comments in response to media queries on the visit of Chinese maritime surveillance vessel Haixin 31 to Singapore,” 20 June 2011.

⁵³ Tommy Koh, “Mapping out rival claims in the South China Sea,” *Straits Times*, 13 September 2011.

⁵⁴ “Circumpolar-Arctic Resource Appraisal,” op. cit.

⁵⁵ The Ilulisatt Declaration, Arctic Ocean Conference, Ilulisatt, Greenland, 27-29 May 2008 <http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf>.

⁵⁶ Rob Huebert, “Canada and the Newly Emerging International Arctic Sea Regime,” in Kraska, *Arctic Security in an Age of Climate Change*, op. cit., p. 203.

⁵⁷ See, for example, Siloh Rainwater, “Race to the North: China’s Arctic Strategy and Its Implications,” *Naval War College Review*, Vol. 66, No. 2 (Spring 2013); Scott G. Borgerson, “The Great Game Moves North,” *Foreign Affairs*, 25 March 2009 <<http://www.foreignaffairs.com/articles/64905/scott-g-borgerson/the-great-game-moves-north>>.

⁵⁸ Medvedev cited in Katarzyna Zysk, “Military Aspects of Russia’s Arctic Policy,” in Kraska, *Arctic Security in an Age of Climate Change*, op. cit., p. 100; “Russia calls for Tougher Arctic Policy,” *RIA Novosti*, 21 January 2013.

⁵⁹ See, for example, Robert D. Kaplan, “The South China Sea is the Future of Conflict,” *Foreign Policy* (Sept./Oct 2011) <

Security and Cooperation in the South China Sea

http://www.foreignpolicy.com/articles/2011/08/15/the_south_china_sea_is_the_future_of_conflict>.

⁶⁰ Speech by NATO Secretary General Jaap de Hoop Scheffer on Security Prospects in the High North, Reykjavik, Iceland, 29 January 2009 <<http://www.nato.int/docu/speech/2009/s090129a.html>>.

⁶¹ Zyst, "Military Aspects of Russia's Arctic Policy," op. cit., pp. 92-94.

⁶² "Russian Navy Warplanes Start Arctic Patrols," *RIA Novosti*, 14 February 2013.

⁶³ Rolf Tamnes, "Arctic Security and Norway," in Kraska, *Arctic Security in an Age of Climate Change*, op. cit., p. 59.

⁶⁴ Nikolaj Peterson, "The Arctic Challenge to Danish Foreign and Security Policy," in Kraska, *Arctic Security in an Age of Climate Change*, op. cit., p. 151.

⁶⁵ Swedish and Finnish military personnel have operated alongside NATO forces in Kosovo and Afghanistan.

⁶⁶ Zyst, "Military Aspects of Russia's Arctic Policy," op. cit., p. 100.

⁶⁷ For an English translation of the policy paper see Philip Burgess, "The Foundations of the Russian Federation's State Policy in the Arctic Until 2020 and Beyond," 1 December 2012 <

http://icr.arcticportal.org/index.php?option=com_content&view=article&id=1791%3>.

⁶⁸ Emmerson, *The Future History of the Arctic*, op. cit., p. 211.

⁶⁹ Howard, *The Arctic Gold Rush*, op. cit., p. 211.

⁷⁰ Tamnes, "Arctic Security and Norway," op. cit., p. 63.

⁷¹ See "Agreement on Aeronautical and Maritime Search and Rescue in the Arctic" <<http://www.ifrc.org/docs/idrl/N813EN.pdf>>.

⁷² "Arctic nations set cooperation guidelines," *Defense News*, 27 June 2013.

⁷³ Andrew S. Erickson and Adam P. Liff, "Understanding China's Defense Budget: What it really means and why it matters," *PacNet* 16 (10 March 2011).

⁷⁴ "China's defence budget to grow 11.2 per cent: spokesman," *Xinhua*, 4 March 2012.

⁷⁵ See Ian Storey "Slipping Away? A South China Sea Code of Conduct Eludes Diplomatic Efforts," *East and South China Sea Bulletin #11*, Center for a New American Security, 20 March 2013; Ian Storey, "China Runs Rings Around Asean," *Wall Street Journal*, 3 October 2013.

⁷⁶ See Paragraph 4, "Declaration on the Conduct of Parties in the South China Sea" <<http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>>.

⁷⁷ "Exploring the Path of Major Country Diplomacy with Chinese Characteristics," Remarks by Foreign Minister Wang Yi at Tsinghua University, 27 June 2013.

Roberto Tofani
*Multimedia journalist and political analyst
covering South East Asia region**



A Look at the Dispute in the South China Sea through the Media

Media is not only seen as a space for representation and recognition, but a place where political and social models can be shaped. (Taylor, 1994)¹

- **'ASEAN, China to speed up progress on a Code of Conduct in the East Sea'** - (VOV5 – 12, April 2013)²
- **'Asean, China to speed up code of conduct'** - (Bangkok Post – 16, September 2013)³

These are two headlines published by two online news journals: the Vietnamese *VOV5* and the Thai *Bangkok Post*. Although they correspond to two different periods in 2013--April and September-- the message is quite identical and clear, leaving no room for interpretation. The first headline links to an article published before the “special meeting” of ASEAN plus China foreign ministers that took place in April. The second comes after the 9th ASEAN-China Joint Working Group meeting on the Implementation of the Declaration on the Conduct of Parties for the South China Sea (DOC) and the 6th ASEAN-China Senior Officials' Meeting (SOM) on the Implementation of the DOC, which was held in mid-September in Suzhou, China.

Apart from noting the “East Sea” denomination in the Vietnamese article referring to the South China Sea, the two headlines are used in this paper as a pretext to reflect on the evolution of an issue that month

* www.sudestasiatico.com – www.planetnext.net

after month becomes increasingly complex and difficult to decode, not only on a political but also strategic and geopolitical level. In particular, the goal is to show how the media narrative contributes to configuring the terms of the South China Sea issue trying to answer a series of questions that, at least from a media perspective, are not addressed or otherwise analysed.

The main question is: do the stakeholders really want to finalise a Code of Conduct (COC) to resolve the issue as they officially claim? Or is it possible that different and multilateral interests are pushing the claimants and the superpowers involved to exploit a situation of ambiguity and uncertainty which might bring more benefits than would a resolution? Or even worse, is someone pushing for a regional conflict? Do all the stakeholders involved in the South China Sea issue really want the situation to evolve through changes, albeit slow and respectful by all parties involved, or is the final aim “to change everything to make sure that nothing changes?”, quoting “The Leopard”, the Italian novel written by Giuseppe Tomasi di Lampedusa.

A first and possible answer to the first question is “yes”. The final aim of all the ASEAN countries involved—namely Brunei, the Philippines, Malaysia and Vietnam—plus China, is to finalise a Code of Conduct. Even China, whose officials have been insisting on the implementation of the DOC first, see the COC as the final aim. “If China acts strategically on the basis of its national interests, then it will seek to resolve its maritime boundary disputes. China’s failure so far to move towards comprehensive negotiations with neighbouring states, and a legally binding code of conduct (COC) with ASEAN, is unstrategic behaviour. My prediction is that the Chinese government will overcome its reluctance to correctly interpret the ill-conceived U-shaped line that appears on most of its maps of the South China Sea, adopt a more realistic and conciliatory policy that is based on its national interests, and seek resolution.” (Stein Tønnesson).⁴

Furthermore, a binding agreement is the main goal that is always emphasised by the claimants’ national media. In such a context, any agreement between the parties—which could take years of negotiations—would also be the starting point for a new political relationship not only among the six claimants, but also between

IV. Legal Issues in the South China Sea Dispute

ASEAN, China and the dialogue partners of the Association founded in 1967 in Bangkok. A region, increasingly important for different reasons: economic-commercial, geopolitical, military and strategic.

However, although this is the declared goal by governments officials, in recent months there seems to prevail a feeling of distrust and pessimism, characterised also by a continuous and repeated criticism of ASEAN. A criticism that reached its highest level during the Cambodian chairmanship (2012), accused of supporting Chinese interests and not those of the Association of which the Kingdom is a member since 1999.

Therefore, following this point of view, **two perspectives should be underlined.**

- ASEAN seems unable to speak with one voice on the issue. As a direct consequence, Indonesia is emerging as a mediator and regional power.
- The desire to get to the finalisation of a COC does not seem to apply with equal strength to the various governments involved.

In fact, through media filter, it may be noted that there is a huge gap between the governments and/or joint official statements during international forums or meetings at multilateral level and those of local officials within their borders.

A discrepancy that emphasises not only the ambivalence and the ambiguity of super-powers such as the People's Republic of China, but raises many doubts on the entire negotiation process which should have as its ultimate goal the search for a solution in the South China Sea through dialogue and peaceful means. Moreover, reinforcing the claims through propaganda rhetoric within their own borders is fuelling a nationalistic sentiment that every single government has to face. "Governments need to be careful not to rally public sentiment too strongly around this issue, as negative personal sentiments around this issue can interfere with people to people relations, particularly in the business sector. Journalists in the region should engage with the issue constructively and objectively, and regional governments should encourage coverage of the positive aspects of their relations with neighbours, in spite of the challenge in doing so."⁵

The Vietnamese case

If we look at Vietnam, for example, despite being subjected to an unofficial technical blackout since 2009, Facebook users now openly express their views on the delicate South China Sea dispute in on-line groups and fan pages such as “Truong Sa” and “Hoang Sa Vietnamese Mother Earth.”

The 'Trường Sa & Hoàng Sa đất Mẹ Việt Nam' (Truong Sa and Hoang Sa Vietnamese Mother Earth) fan page counts more than 8,200 fans (7,600 at the beginning of January) showing Vietnamese maps, pictures of Chinese demonstrators and strikers and, more recently, news about submarines and military technology.

The anti-China '87 million signatures protesting China's invading sea territories of Vietnam' Facebook page, on which China is referred to as “ChiNazi” and ex-president Hu Jintao and new leader Xi Jinping are captioned in pictures as the “Pirates of Asia”, has almost 20,000 fans. Another page known as 'Vietnam Military Power', which glorifies Vietnam's weaponry and military firepower, has more than 5,400 fans, (up from 4,000 in January).

Hãn đội Trung Quốc chiếm Hoàng Sa - Trường Sa của Việt Nam, which provides links to Vietnamese articles and analyses on the geopolitical implications of meetings, forums and workshops and developments like the last standoff between Japan and China over the contested Senkaku/Diaoyu islands, has drawn almost 26,000 fans. All of the highly viewed Web pages have a strong nationalistic bent, underscoring grassroots sentiments in favour of Vietnam's historical claims to the Paracel (Hoàng Sa) and Spratly (Trường Sa) island chains. Those sentiments have also coalesced into anti-China street protests. Vietnamese police authorities at first allowed the protests to proceed before cracking down and making arrests. The anti-China protests, all of which were eventually suppressed by police forces, are known to have been organised online, including over Facebook.

Janus attitude

To fight and conquer in all your battles is not supreme excellence; supreme excellence consists in breaking the enemy's resistance without fighting.⁶

IV. Legal Issues in the South China Sea Dispute

This Janus-faced attitude does nothing but exacerbate the different levels of ambiguity in a context that no longer involves only and exclusively the six claimants, but also international powers like Australia, India, Japan, Russia, South Korea and the U.S. Their representatives are all present in multilateral frameworks such as the East Asia Summit, where the South China Sea issue has increasingly become a top priority, despite pressure from Beijing to maintain the dispute locked in a bilateral context and at a regional level.

If Beijing, as mentioned above by Prof. Stein Tønnesson, “will seek to resolve its maritime boundary disputes,” the presence of new players does not seem to be helping to settle them. It seems there is a directly proportional relationship between the number of actors involved and the difficulty in reaching a diplomatic solution that would please everyone.

The United States' “pivot” to the Asia-Pacific, which for some scholars and political observers is still unclear, has created a situation of strategic ambiguity in the South China Sea. While regional countries believe that Washington will implement the policy, including its promise to base 60% of its naval assets in the region by 2020, it remains vague as to how the shift will impact on the region's escalating maritime disputes. “Washington is creating expectations that its military presence will stabilise the situation [...] but if the US does not act when a crisis occurs it might create a mistaken impression that the US is not reliable,” said former ambassador J Stapleton Roy, director of the Kissinger Institute on China and the United States, during a conference organised by Asia Society in New York in mid-March.⁷

Hence, coming back to my original question, it seems that from the U.S. perspective the critical situation in the South China Sea has been exploited to get closer to Vietnam, Indonesia, Singapore and more in general within the ASEAN region and to reinvigorate its historic relationships with the Philippines, Japan and South Korea. The declared aim is to be seen to guarantee the “freedom of navigation” in the South China Sea, while the undeclared goal is to counterbalance what Americans define “the rising China.”

From the Chinese perspective, the critical situation in the South China Sea has been exploited to define its regional and international

role, with the declared aim to enhance cooperation within the region.

What it is still unclear is the Russian role in this arena. A role that this paper will not analyse, but that should be read taking into account the consideration that big powers always have an advantage in maintaining strategic ambiguity. However, it is such ambiguity that is promoting an arms race that affects not only the People's Liberation Army, but all the littoral States in the South China Sea. A race that seems to favour the American and Russian war industry and that is strictly linked to the modernisation and strengthening of treaty alliances in the region.

In 2009, Vietnam spent approximately 2 billion dollars on six Kilo class diesel submarines 'Made in Russia'. The first two submarines should be delivered by the end of the year. Without mentioning other arms deals, according to Dr. Dmitry Gorenburg "Vietnam has recently become one of the world-leading purchasers of Russian arms."⁸

But Vietnam is not the only country interested in Russian military technology. Viktor Komardin, deputy head of the state-run Rosoboronexport, which is in charge of regulating defense imports and exports, told RIA Novosti that negotiations for the sale of Russian Su-35 fighter jets to China are ongoing, and an agreement was likely to be reached sometime in 2014.⁹ "The main importers of Russian weaponry are China and India," stated Dmitry Evstafiev, a military expert who has a long record in Russian military analysis.¹⁰

"In 2012 the most significant amount of Russia's defence-related exports went to Asia Pacific countries which received 43 percent of our total foreign military sales. It is an objective process, since developing nations in the Asia Pacific vitally need to secure their development plans and protect national interests, and in this area we render them assistance," affirmed Victor Komardin, deputy director general of Rosoboronexport. At present many Asian states including India, Indonesia, China, Malaysia and others are actively operating Russian aircraft and helicopters, air defence and naval systems, infantry weapons and equipment.

Apart from China, India, Malaysia and Indonesia, other countries in the Asia-Pacific region are requesting arms not only from Russia, but are also interested in 'Made in USA' arms. Washington is in fact the

IV. Legal Issues in the South China Sea Dispute

world's largest exporter of arms, which in 2012 amounted to \$28.5 billion worth of sales. Three out of five countries that sought the highest values in U.S. arms exports in 2012 are Asia-Pacific States, namely the Republic of Korea, Australia and Japan with \$8.8, \$1.7, \$1.6 billion respectively. Indonesia follows in sixth place with a request of arms sales from the U.S. of \$1.51 billion. Among the first 26 countries there are also Singapore and Thailand with a request of \$435 and \$253 million.¹¹

The pivot “will result in growing opportunities for our industry to help equip our friends,” said Fred Downey, vice president for national security at the Aerospace Industries Association, a trade group that includes top U.S. arms makers, at the beginning of the current year.¹²

In this context, the risk is a proliferation of nuclear weapons in the area, despite the diplomatic effort that led ASEAN members in 1995 to sign the Southeast Asian Nuclear-Weapon-Free Zone Treaty (SEANWFZ), a nuclear weapons moratorium treaty. In November 2011, “the Nuclear Weapons States (China, France, Russia, the United Kingdom, and the United States) and ASEAN agreed to take the necessary steps to enable the signing of the Protocol and its entry into force at the earliest opportunity” but none of the five States has actually signed the protocol.

This risk associated with accidents that have occurred for the last three years in the maritime disputed areas tells us once again that diplomacy is lagging behind the unfolding events, to the point that in many contexts, including academics, much pessimism prevails. The danger of a regional conflict is increasingly palpable, as also pointed out during the conference EuroSEAS that the author of this paper attended last June in Lisbon.

Media Chronological History

Taking into account the considerations above, what follows is a concise chronological history of the events that have occurred this year reconstructed through a brief analysis of the web-media news. The aim is to show the “media-evolution” of the South China Sea issue.

After Cambodia, the ASEAN chair passed to Brunei. H.E. Le Luong Minh was nominated ASEAN Secretary-General by the

government of Vietnam, a post which he took over on January 1. The same day Vietnam's new Law of the Sea took effect. A few weeks later, Philippine foreign affairs authorities announced that they would take Beijing to an international arbitration tribunal under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Both China and the Philippines are signatories to the convention.

Philippine officials said they aim to show that China's wide-reaching "nine-dash line" map setting out its claims in the potentially oil-and-gas rich waters is "unlawful" under the UNCLOS. The move to internationalise the dispute came after a series of incidents between Chinese and Philippine vessels in contested waters, including last year's weeks-long stand-off in the contested Scarborough Shoal area.

Apart from being widely covered by international media, the decision has provided the opportunity to explore and cover new aspects of the dispute such as the legal one. Since the decision by Manila, many academic conferences, meetings, papers and web-media articles have been focusing on legal implications, the importance of historical rights and/or on the consequences that this choice could have for the other five claimants and particularly for Vietnam.

What Happens if China Tries to Boycott UNCLOS Arbitration? A Japanese Guy Gets to Appoint the Tribunal (Jan. 25)¹³

China rejects arbitration with Philippines under UNCLOS; can it? (Feb. 19)¹⁴

Furthermore, at the third annual CSIS (Center for Strategic International Studies) South China Sea Conference held in June, for example, a report—The South China Sea in Focus, by Gregory B. Poling—was presented showing "the maximum area of the South China Sea that is legally in dispute. The reports blends analysis of maritime law, satellite imagery, public source data, and geographic information systems to clarify the areas under dispute."¹⁵

At the end of April, the 22nd ASEAN Summit was held:

Asean makes progress on trade, not on sea disputes¹⁶ (Apr. 25)

Leaders attending the Association of Southeast Asian Nations summit in Brunei had hoped China would soon agree to start talks on a

IV. Legal Issues in the South China Sea Dispute

nonaggression pact to prevent a major clash in the disputed territories that could smother their region's robust economies. But China has given no clear indication when it would agree to negotiate such a stopgap accord, known in ASEAN parlance as a 'code of conduct.'"

In June the 12th Shangri-La Dialogue held in Singapore was opened with remarks by the Vietnamese PM Nguyen Tan Dung. **An appeal for greater strategic trust.** His speech opened underlining the importance of 'trust', a word that the Vietnamese prime minister repeated 28 times during his 25-minute presentation in front of a worldwide and distinguished audience, including the newly-appointed US Secretary of Defence Chuck Hagel and Chinese General Qi Jianguo, the deputy chief of general staff of the People's Liberation Army (PLA).

Shangri-La Dialogue 2013: A Vietnamese appeal for greater strategic trust¹⁷

At the beginning of July the 20th Meeting of the ASEAN Regional Forum (ARF) was held in Bandar Seri Begawan, Brunei Darussalam and the main question is:

Tensions easing in the South China Sea?¹⁸

*China has agreed to hold formal talks with its southeast Asian neighbours about establishing a 'code of conduct' to ease maritime tensions in the South China Sea, a major step forward in the long-running dispute. A statement issued after a weekend meeting of foreign ministers from the 10-member Association of Southeast Asian Nations (ASEAN) and China in Brunei, said the countries **aim to reach a conclusion of a Code of Conduct in the South China Sea, which will serve to enhance peace, stability and prosperity in the region.***"

At ASEAN meetings in Brunei, Philippine Foreign Secretary Albert del Rosario, for the first time, raised China's "militarisation" of the South China Sea.¹⁹

"The large and persistent presence of Chinese naval vessels in (Scarborough Shoal) and around (Second Thomas Shoal), which are integral parts of Philippine territory, undermine regional maritime stability and security," he said, adding Manila views with serious concern this militarisation of the South China."

Chinese general: Philippines stirs trouble for asking US help²⁰

“The role of the Philippines in the South China Sea is actually, in my view, a troublemaker,” People’s Liberation Army Major General Luo Yuan, known as The Hawk among Beijing’s military leaders, said in his first interview with foreign media.

Kerry presses China, Southeast Asia to ease sea tensions²¹

“We have many goals. We have economic and security interests. But I want to emphasise, importantly, our actions are not intended to contain or to counterbalance any one country,” Kerry said.

It has to be noted that the meeting produced one positive result. In a telling sign, the ASEAN Ministerial Meeting (AMM) held in Brunei between June 30 and July 2 took a radically different approach from the previous meeting held last year in Phnom Penh, where the 10-member regional organisation failed to even agree to discuss the South China Sea disputes.

In political terms, however, the choice of Benigno Aquino’s administration to ask for an arbitration on South China Sea has had mainly two repercussions.

- It was a unilateral decision that has threatened to undermine relations among the ten ASEAN members and the unity of the Association, if indeed there is one on this particular issue.
- It pushed Vietnam and China to take a clear stand on the issue.

On one hand, Vietnam is the only claimant State to have publicly backed Manila in its strategy. However it remains to be seen whether officials in Hanoi will decide to pursue the path taken by the Filipino government.

Hanoi backs Manila on sea strategy (Aug. 2)²²

Vietnam backs arbitration of sea dispute with China (Aug. 2)²³

Vietnamese Foreign Minister Pham Binh Minh expressed support for the country’s move to bring its dispute with China before an international court, as he disclosed that his country has also rejected Beijing’s proposal to jointly explore contested areas in the West Philippine Sea (South China Sea).

On the other hand, China has totally refused to follow the path laid by UNCLOS to which both are signatories. Furthermore, Beijing has been trying to isolate the Filipino government within ASEAN, relying on its political and economic power.

A legal battle in the South China Sea (Ago. 07)²⁴

MANILA, BEIJING, AND UNCLOS: A TEST CASE?(Aug. 26)²⁵

Malaysia Splits With Asean Claimants on China Sea Threat (Aug. 28)²⁶

Malaysia differed with fellow Southeast Asian claimants in the South China Sea on the threat posed by China, dismissing concerns about patrols off its coast. Malaysia is not worried about how often Chinese ships patrol the areas it claims in the waters, Defence Minister Hishammuddin Hussein said in an interview in Brunei. Chinese Navy ships in March visited James Shoal off Malaysia, near where Royal Dutch Shell Plc (RDSA) and Petroliam Nasional Bhd. have oil and gas operations. “Just because you have enemies, it doesn’t mean your enemies are my enemies,” Hishammuddin said on the sidelines of meetings with counterparts from the Association of Southeast Asian Nations as well as the U.S.

At the beginning of September, the 10th China-ASEAN Expo was held in Nanning, (China). While “**China asked Philippine President Benigno Aquino to call off the visit,**”²⁷ in his keynote speech, Chinese Premier Li Keqiang underlined the “golden decade of China-ASEAN cooperation,” making clear the Chinese position on the South China Sea issue:

“[...] We have also noticed that there exist some **disruptive factors** in the region that are against stability and development, but they **are not mainstreams**. Regarding **South China Sea** disputes, China has always firmly held that the immediate disputing parties should seek sound **solutions through friendly negotiations on the basis of respecting historical facts and international laws**. The Chinese government is one of accountability, and is willing to seek sound solutions through friendly negotiations. **The Chinese side maintains that the South China Sea disputes are not an issue between China and ASEAN, and they should not and will not affect the overall China-ASEAN cooperation.** Ten years ago, China and ASEAN countries jointly signed the Declaration on the Conduct of Parties in the South China Sea, which has firmly maintained peace and stability and substantially safeguarded free voyages in the South China

Security and Cooperation in the South China Sea

Sea. China will continue to comprehensively implement all provisions in the Declaration with an attitude of accountability, and steadily facilitate talks over a code of conduct in the South China Sea step by step under the framework of the Declaration [...]”²⁸

“to change everything to make sure that nothing changes”

Notes

¹ C. Taylor (1994) *Multiculturalism: Examining The Politics of Recognition*, Princeton University Press.

² ASEAN, China to speed up progress on a Code of Conduct in the East Sea - <http://vovworld.vn/en-us/Spotlight/ASEAN-China-to-speed-up-progress-on-a-Code-of-Conduct-in-the-East-Sea/147814.vov>

³ Asean, China to speed up code of conduct - <http://www.bangkokpost.com/news/asia/369881/asean-china-to-speed-up-code-of-conduct>

⁴ Steps Forward for China to Resolve its Disputes in the South China Sea. http://www.globalasia.org/V8N2_Summer_2013/Steps_Forward_for_China_to_Resolve_its_Disputes_in_the_South_China_Sea.html

⁵ ‘South China Sea: recognising History and Law, Focusing on Cooperation – Presented at the conference “Sovereignty over Paracel and Spratly Archipelagos: Historical and Legal Aspects.” - Quang Ngai City, Viet Nam, April 27-28 2013.

⁶ The Art of War, ancient Chinese military treatise attributed to Sun Tzu.

⁷ Ambiguity afloat in South China Sea - http://www.atimes.com/atimes/Southeast_Asia/SEA-01-240413.html

⁸ Dmitry Gorenburg. Davis Center for Russian and Eurasian Studies, Harvard University. <http://russiamil.wordpress.com/2011/11/15/russian-arms-sales-to-south-east-asia-are-on-the-rise/>

⁹ Russia to Sell China Su-35 Multirole Fighter Jets - <http://thedi diplomat.com/flashpoints-blog/2013/09/10/russia-to-sell-china-su-35-multirole-fighter-jets/>

¹⁰ Russia’s share on the world’s arms market increase: tactical and strategic factors - http://voiceofrussia.com/2013_09_11/Russia-s-share-on-the-world-s-arms-market-increase-tactical-and-strategic-factors-4744/

¹¹ <http://www.armscontrol.org/factsheets/Proposed-US-Arms-Export-Agreements-2012>

¹² Analysis: U.S. arms sales to Asia set to boom on Pacific "pivot" - <http://mobile.reuters.com/article/idUSBRE90005D20130101?irpc=932>

¹³ <http://opiniojuris.org/2013/01/25/what-happens-if-china-tries-to-boycott-unclos-arbitration-a-japanese-guy-gets-to-appoint-the-tribunal/>

IV. Legal Issues in the South China Sea Dispute

- ¹⁴ http://lawprofessors.typepad.com/china_law_prof_blog/2013/02/china-rejects-arbitration-with-philippines-under-unclos-can-it.html
- ¹⁵ 'The South China Sea in Focus – *Clarifying the Limits of Maritime Dispute*' - http://csis.org/files/publication/130717_Poling_SouthChinaSea_Web.pdf
- ¹⁶ <http://www.thejakartapost.com/news/2013/04/25/asean-makes-progress-trade-not-sea-disputes.html>
- ¹⁷ <http://www.sudestasiatico.com/shangri-la-dialogue-2013-a-vietnamese-appeal-for-greater-strategic-trust/>
- ¹⁸ <http://www.sudestasiatico.com/tensions-easing-in-the-south-china-sea-a-press-review/>
- ¹⁹ Ibidem
- ²⁰ Ibidem
- ²¹ Ibidem
- ²² <http://manilastandardtoday.com/2013/08/02/hanoi-backs-manila-on-sea-strategy/>
- ²³ <http://www.manilatimes.net/vietnam-backs-arbitration-of-sea-dispute-with-china/25151/>
- ²⁴ <http://www.sudestasiatico.com/a-legal-battle-in-the-south-china-sea/>
- ²⁵ <http://www.japanfocus.org/-Alex-Calvo/3988>
- ²⁶ <http://www.bloomberg.com/news/2013-08-28/malaysia-splits-with-other-asean-claimants-over-china-sea-threat.html>
- ²⁷ China asks Philippines' Aquino to call off visit in apparent snub - <http://www.reuters.com/article/2013/08/29/us-philippines-china-idUSBRE97S0CA20130829>
- ²⁸ Premier Li Keqiang's keynote speech at 10th China-ASEAN Expo - http://news.xinhuanet.com/english/china/2013-09/04/c_132688764.htm



Masahiro Akiyama
President, Tokyo Foundation

How to Handle Disputes in the South China Sea

1. Maritime Security Situation in the South China Sea

Major issues in the South China Sea are territorial disputes involving islands and reefs whose number is estimated to exceed more than 200. While there are territorial disputes among coastal states other than China, they are mostly disputes pitting China against other coastal states. In addition to territorial problems there are also disputes over the delimitation of relevant EEZs and continental shelves.

In the 1940s after World War II, China widely encircled the South China Sea with the so-called eleven (now nine) dotted lines, claiming that the islands inside the lines were Chinese territory and the seas being China's sea. Vietnam made almost the same territorial and sea claims, as did the Philippines over the west of the Philippines and the Spratly Islands. Malaysia, Brunei, and Taiwan made their respective sovereign claims over areas in the South China Sea; conflicting territorial claims over the Spratly Islands are now being made by six nations and one region.

Since the 1960s, China has used its military power to establish effective control over several islands and implemented coercive diplomatic activities using nonmilitary, law enforcement agencies to contain, acquire, and maintain what it calls its "territory," which indeed gives rise to increasing friction with surrounding countries.

In the 1970s, China expelled Vietnam from the Paracel Islands by using military forces and occupied the islands (The Paracel Island incident of 1974). From the 1980s to the 1990s, it also used its national forces, including armed forces, to bring many islands in the South China Sea under its control (Ex. The Johnson South Reef incident of

V. The Prospects of Making Peace and Stability in Southeast Asia

1988). All these developments followed a similar pattern: First, many fishery ships were dispatched by China, then the islands were surveyed by national authorities; they were then administered on land, military bases were built, and permanent forces were stationed, leading to the de facto control over the islands. Recently, China has introduced a new municipal government covering almost all islands in the South China Sea in order to further develop administrative control over them.

It was against this backdrop that coastal states of the South China Sea became concerned, and the Association of Southeast Asian Nations (ASEAN), most of whose members are the coastal states, issued in the 1990s the “Declaration on the South China Sea” (1992) and the “Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea” (1995) to call for a peaceful resolution with China. As a result, the ASEAN nations and China signed the “Declaration on the Conduct of Parties in the South China Sea” in 2002, which was followed by opportunities for joint exploitation activities.

However, China has turned to a tougher stance recently. The China Fisheries Law Enforcement Command has reinforced patrolling activities and has stepped up aggressive behavior, for instance, aiming cannons at an Indonesian patrol vessel and cutting submarine cables laid by a Vietnamese resource survey ship. China now seems determined to gain control inside the nine dotted lines in the light of promising continental shelf resources off the coast of Vietnam and potential resource exploitation throughout the South China Sea.

A typical example of such territorial disputes that took place recently involves the Scarborough Shoal, located about 120 nautical miles west of the Philippines. Traditionally, the Philippines had territorial jurisdiction over the shoal and ruled it, and Philippine fishermen conducted fishing activities there. However, Chinese fishing boats frequently invaded the Scarborough area, and China’s public ships entered into the area to protect those boats. In 2012, after a standoff between Chinese and Philippine official vessels, the Philippines’ side withdrew, and the shoal is now effectively under China’s control. The Philippines submitted a petition on this incident to the International Court of Justice, which China has ignored.

China's interests in the South China Sea are not limited to territorial matters and resource exploitation. While Beijing has considerable interest in the territory and territorial sea, China plans to control the entire South China Sea and to deny military operations of other countries, especially the United States, from a national security perspective. Regarding the interpretation of United Nations Law of the Sea (UNCLOS), China denies any activities, operations, and missions of non-coastal states (that is, the United States) in its territorial sea and EEZ (and the airspace above), which the United States calls Anti-Access/Area Denial (A2AD) policy. In this sense, the seizure of the territory within the nine dotted lines and the associated EEZ is also very important for China. On the other hand, noncoastal states, especially the United States, will be severely constrained in the South China Sea where military activities had traditionally been freely carried out, and the global strategies and tactics of the US Navy and Air Force in the future will be severely hampered. Washington, responding to requests from coastal states there other than China, has decided to engage in South China Sea issues and is urging the continuance of the freedom of navigation and the peaceful resolution of the issues. This is what is known as the US pivot to Asia or the US rebalance to the Asia-Pacific region.

China does not view the security of the South China Sea from the military perspective only. China now imports a large amount of energy and mineral resources, and to ensure the security of the sea lanes of the Pacific and Indian Oceans is one of the major challenges for China. China thinks that both the Strait of Malacca-Singapore and the Indian Ocean are effectively under US control. China apparently intends to rule the South China Sea along with the East China Sea and the Yellow Sea to ensure the security of its sea lanes.

For Japan, the South China Sea is an area for shipments of energy resources, and ensuring its security and freedom of navigation is a critical national interest. As such, the destabilisation of the South China Sea caused by disputes over territory or territorial sea and over the associated delimitation of the EEZ and the continental shelf is not in Japan's national interests. From the viewpoint of security in general, Ja-

pan is just as concerned about the significant strengthening of Chinese control over the sea area as the United States.

There are several difficult issues between Japan and China in the East China Sea. They are the Senkaku Islands problem, delimitation of EEZ and continental shelf in the sea, the related joint exploitations of oil and gas resources, fishery problems, and the strengthening of PLA Naval and Air Force activities there. Taking into account that both Japan and China are coastal states in the East China Sea, the situation seems to be the same as what we have seen in the South China Sea. From that viewpoint, Japan cannot but be concerned about the South China Sea.

2. Factors Affecting Maritime Security in the South China Sea

To find possible ways to resolve existing problems and create a stable and predictable world in the region, we should first analyse the factors that have affected maritime security in the South China Sea.

The first is the emergence of “nation states” after the end of World War II through their liberation from colonialism and imperialism; the second is the entry into force of UNCLOS; the third is progress in the exploitation of maritime resources associated with the convention; the fourth is the power shift; and the fifth is the rise of China that is closely related to the above four developments.

(1) The emergence of nation states

After the end of World War II many “nation states” emerged in Asia, although their political systems varied. They successfully won independence through liberation from colonialism and imperialism. Then they awakened to their sovereign rights in the sea area and declared some areas in the South China Sea as their own. In 1947 China made public a chart showing the territorial sea area including almost all of the South China Sea encircled by eleven (now nine) dotted lines, while Vietnam claimed sovereign right to almost the same area. The Philippines announced its claim to the sea area to its west and the Spratly Islands, based on the border lines agreed to in the Philippine Convention introduced by Spain in the nineteenth century. As for the Spratly Islands, five nations (China, Vietnam, Malaysia, Philippines,

and Brunei) and one region (Taiwan) claim sovereign rights. Four littorals out of these six maintain effective controls over some of the islands there.

(2) United Nations Convention on the Law of the Sea

UNCLOS was adopted in 1982 at the third UN Conference on the Law of the Sea, and it entered into force in 1994. Currently, 165 nations have acceded to it (as of August 2013). It defines the territorial sea as extending 12 nautical miles from the baseline, the contiguous zone outside the territorial sea extending 24 nautical miles from the baseline, the EEZ extending 200 nautical miles outside the territorial sea, and the continental shelf beneath it. The continental shelf can be extended up to 350 nautical miles from the baseline based on topographic features. To do so, an application must be submitted to the Commission on the Limits of the Continental Shelf, and a recommendation from the commission must be obtained. Hence, about three-quarters of the world's seas are estimated to come under the jurisdiction of some coastal state.

If the distance between two states with opposite coasts is less than 400 nautical miles, various disputes could arise. As the EEZ limit lines would overlap if the 200 nautical mile measures were taken, the states are asked to discuss and reach an agreement. In this case, the delimitation of the continental shelf is also an inevitable subject for negotiation between the states. Furthermore, the delimitations for EEZ and the continental shelf do not necessarily coincide. Such demarcations, especially those related to marine resource exploitation, could become sources of disputes between states.

EEZ is a new legal regime introduced by UNCLOS. Coastal states hold sovereign rights to explore, exploit, sustain, and manage natural resources within their EEZs, including the sea floors, and they have jurisdiction over the construction of artificial islands, scientific ocean research, and environmental protection. However, noncoastal states are assured the freedom of navigation, over-flight, and the laying of submarine cables and pipelines. A coastal state holds sovereign rights to explore its continental shelf and exploit natural resources and exercises such rights.

V. The Prospects of Making Peace and Stability in Southeast Asia

With regard to the freedom of navigation, activities of a non-coastal state's military vessels within the EEZ of a coastal state could cause serious problems. Several countries, including China, not only demand that their prior consent be obtained when a noncoastal state's military vessel enters into their EEZs but also insist that no military activities, operations, and missions other than mere passages are allowed there. On the other hand, the United States, which is a great sea power, claims that such impositions are against the freedom of navigation, conducts operations of their military vessels within other states' EEZs, and cumulates such operations so as to make them part of customs law.

For the continental shelf, UNCLOS has introduced a new concept to extend the continental shelf 200 nautical miles from the baseline with no constraints and to allow extensions beyond 200 nautical miles in some cases. Because resource exploitation issues are directly involved, such delimitations and extensions could cause disputes among states.

There are unique issues concerning the status of remote islands near the border, and reefs and rocks. According to UNCLOS provisions, rocks that cannot sustain human habitation or economic life of their own can have an associated territorial sea but cannot have an EEZ or continental shelf. Furthermore, remote islands near the border play an important role when the delimitations are discussed between two states with opposite coasts.

(3) Marine resource exploitation

With respect to marine resources, offshore oil and gas field exploitation activities have drawn attention in recent years. Historically, these include the oil field surveys and exploitation off the Gulf of Mexico, which started in the early 20th century; the North Sea oil field exploitation since the 1960s; the survey and exploitation of oil and gas in the Arctic Ocean since the 1970s; the oil field exploitation in the East China Sea from the end of the twentieth century to the early twenty-first century; as well as the surveys and exploitation in the South China Sea.

Reserves of rare metals and other rare earth elements, as well as those of oil and gas, have been recognised as ocean floor resources,

and how to explore and exploit them is an issue to be addressed. Especially, how to exploit manganese nodules and cobalt-rich crusts is an important issue. There is high expectation for exploration, exploitation, and commercialisation of methane hydrates, which are new energy resources, as well as seafloor hydrothermal deposits containing nonferrous metals and noble metals.

Fisheries cannot be excluded from discussion on marine resource exploitation. Fish is estimated to account for 16% of animal proteins taken by humans, but recent fish catch quantities remain almost unchanged. Since the world population is growing, the demand for protein consumption is also increasing, and hence conflicts over sea fishing are unlikely to decrease. Environmental protection, resources protection, and delimitating an EEZ and a coastal state's jurisdiction over it are international issues for fish farming, sea fishing, and fishery sea areas, respectively.

(4) Power shift

The fourth point is an emerging power shift in Asia. In this region, China and India are new rising countries, both having large populations and enormous land areas. As their economic growth surged, they have rapidly built up their military capacity. While becoming economic powers, both countries are also emerging as major military powers. Although "a US-centered unipolar structure" in terms of the world's security system has often been talked about since the collapse of the Soviet Union, the economic and military power of the United States has weakened in relative terms. Declining US power has caused power to shift to China and India. The shift will not occur in a simple way, though, because the US population is growing; it maintains its technology levels in frontier areas, including the military field, conspicuously higher than those of any other nation; and its economy is still growing. Nonetheless, the world may be moving in a multipolar direction, and a definite power shift is taking place due to the rising powers in Asia.

Russia, which was once one of the two superpowers during the Cold War, also seems to be regaining its national and military power. And also it has become much interested in the Asia region, including the South China Sea. It can be said that the US-centered unipolar structure has changed considerably.

(5) The rise of China

The fifth point is the impact caused by China's maritime strategies. This is closely related to the four developments mentioned above, and most of the maritime security issues of the Pacific and Indian Oceans are related to China.

China was traditionally considered a land power but is now aggressively pursuing maritime strategies. Firstly, China attaches importance to the defense or control of coastal, near-sea, and far-sea areas and is strengthening its naval powers and expanding operation areas.

In the course of its economic development, China has come to see securing natural resources as one of its urgent issues, and it has become strongly aware of its national interests in exploiting marine resources, securing fishery resources, and obtaining their control.

In the 1980s, Liu Huaqing, then head of the People's Liberation Army Navy (PLAN), while stressing the necessity of a strong navy, expanded China's maritime strategies from coastal defense to "near-sea defense" and included the First and Second Island Chains into the operational areas of its military forces. In this century, Beijing has also come to discuss "far-sea defense" to deploy its military operations beyond the Second Island Chain. China is politically expanding and advancing, and there is an aspect that enhancing PLAN and expanding its operation areas have become possible because of its considerable economic development.

China's territory was invaded by the Great Powers during modern history. Hence, China has a strong will to regain and maintain its territory and territorial sea areas, and considers them as its core interests while not hesitating to use its military forces if necessary. While making progress with land border demarcation, China shows firm resolve to secure its territory and territorial sea areas and to control such areas. In both the South and East China Seas, it is causing many disputes over territory, territorial sea, and border demarcation issues with coastal states. In the postmodern age, initiating an actual war appears increasingly inconceivable, but it seems China is still in the modern age, conducting coercive diplomatic activities using its military forces as well as other law enforcement resources. This can be called "paramilitarism" that should be criticised by the international community.

While becoming a major power, China has frequently behaved in a hegemonic manner. It seems to be expanding its political and economic engagement with or influence over Asian countries and, if allowed, to rule over them or make them satellite states to secure influence over the Pacific and Indian Oceans. This affects the situation in the South China Sea.

3. To Create a Stable and Predictable World in the Region

We have seen the security situation in the South China Sea and the factors affecting it. How can we resolve these problems and create a stable and predictable order in the region?

With regard to the territorial issues, ASEAN and China seek to resolve them by diplomatic means. They have a plan to establish a Code of Conduct that will replace the Declaration on the Conduct of Parties in the South China Sea to introduce an element of compulsion. The reality is, however, that China is reluctant to adopt multilateral measures and is trying to negotiate bilateral agreements. China has become a big power, advancing a coercive foreign policy backed by its para-military and military forces, and thinks it would be more advantageous to deal with each coastal state separately.

It is important to promote the implementation of the Code of Conduct among the relevant coastal states. The international community needs to make this repeatedly clear and to persuade China to join the mechanism.

At the same time, the international community should launch a special task force to incorporate the views of noncoastal states to address difficult issues. It would become very effective if ASEAN + China meetings allowed noncoastal states interested in the South China Sea to participate as observers, much like the Arctic Council.

Secondly we can and should discuss the problems from the principles of international law. Territorial issues, the delimitation of the EEZ and continental shelf, the freedom of navigation, and the exploitation and development of resources should be resolved based on such principles. International law includes not only UNCLOS but also various other conventions, treaties, agreements, and even customary law. In that sense the international community should introduce an interna-

V. The Prospects of Making Peace and Stability in Southeast Asia

tional law conference focusing on the South China Sea. There is a possibility that some states cannot, or would be averse to, abiding by the international law principle. One state in particular may be reluctant to adhere to the established system and may try to change current rules. This could result in taking us back in time to an era of world history when large-scale military clashes were possible.

Were China able to change the rules, it would strengthen its control over the South China Sea after successfully securing almost all the islands there and declare it as a special China Sea that noncoastal states cannot freely use, even though it would not be China's territorial sea. China has its own interpretations of UNCLOS and its related articles. This could result in the international community losing the freedom of navigation through the South China Sea.

The international community thus needs to take some action.

As mentioned above, the South China Sea issue includes a dimension of power shift, with the possibility of a military confrontation between China and the United States. We must keep our eyes on the recent build-up in Chinese military capabilities, particularly the naval and air forces, although China may argue that such actions are aimed merely at ensuring its defense and national security. A stronger military can often change the objective of a nation and trigger a power shift in the world security situation that could make the world unstable and less peaceful.

We need to control the situation carefully by hedging through our own military empowerment in the region in the light of China's military build-up and its opaque intentions.

In that sense it would be useful to hold security dialogues among related countries to discuss issues relating to the South China Sea from a security viewpoint. Members may include both noncoastal and coastal states, including, of course, China.



Dmitry V. Mosyakov
Dr of Science (History)
Head of Centre for SEA, Australia and Oceania,
Institute of Oriental Studies,
Russian Academy of Sciences

The Conflict in the South China Sea and Possible Ways to Resolve It

There exists a variety of opinions concerning the time of the outbreak of conflict over the islands in the South China Sea. Some trace it back to all but hoary antiquity, others to the second half of the nineteenth, and still others to the first half of the twentieth century. For a long time the opposition of the conflicting sides here manifested itself only on geographic maps, in statements by politicians and the opinions of historians. The first real collision occurred in 1959 when the PRC, which had by that time occupied a portion of the Paracel Islands, attempted to establish control over the entire the Paracels and gain a foothold on the western group of the islands called Croissant. It is that episode that may be considered the start of the real, not imagined life of this conflict. Chinese fishermen and South Vietnamese borderguards clashed here for the first time. The Chinese twice tried to land on this part of the islands and raise their flag there but were ousted by South Vietnamese forces. A statement by the PRC Foreign Ministry of 5 April 1959 treated the detention and arrest of the Chinese fishermen as an illegal Vietnamese incursion upon Chinese territory.¹

Despite the fact that in the following fifteen years the situation involving the islands remained relatively calm, the stage for the conflict had already been set. In January 1974, it became a talking-point worldwide as, making use of the fact that the United States was withdrawing from Indochina and had no intention to interfere into local affairs anymore, Chinese troops carried out a lightning military operation and literally in four days became full masters on the Paracels, having driven out South Vietnamese borderguards.

V. *The Prospects of Making Peace and Stability in Southeast Asia*

Naturally, after the unification of Vietnam the issue of sovereignty over the islands became one of the main irritants in relations between the two countries. Hanoi was demanding a restitution of the islands, citing numerous documents from the archives to prove that for many years they had been an integral part of its territory and ruled by governors of respective littoral provinces. China was refusing to admit this and pointed to its own historical arguments.

The bilateral conflict might stay bilateral, had it not been for a new round of Chinese expansion, this time far south of the Paracels, to the Spratly Islands. In the late 1980s, after armed clashes with the Vietnamese Navy, Chinese units penetrated to these islands and overran a number of strongholds. Thereupon, on 25 February 1992, the National People's Congress of China enacted the Law on Territorial Waters and Areas Adjacent Thereto, whereby the Paracel and Spratly Islands were proclaimed an inalienable part of the PRC territory and administratively subordinated to Hainan province.²

However, attempts to expand the sphere of its influence on the Spratly Islands even further led the PRC to a conflict with the Philippines, Malaysia and even with Indonesia when Peking announced that the Indonesian islands of Natuna, too, should become the subject of negotiations on sovereignty over them. At that time the conflict from being bilateral turned into a regional one, since China began to deal not just with Vietnam but also with other ASEAN countries and with that regional organisation as a whole. In May 2009, Peking addressed a special letter to the UN Secretary-General Ban Ki-moon with an appended map on which China's borders were marked according to the PRC authorities' version. It indicated a southern border of the Chinese dominions enclosing the reefs on the coast of the Malaysian state of Sarawak located in Kalimantan, more than one and a half thousand kilometers from the main Chinese territory.³ In that letter the PRC authorities made it clear that they had incontestable rights to sovereignty over these islands and the water areas adjacent thereto (*ibid.*). As a result, the PRC officially declared its territory roughly 80 percent of maritime spaces of the South China Sea, having almost completely ignored the just demands of Vietnam and the Philippines, and indeed ASEAN at large.

Security and Cooperation in the South China Sea

After that the tensions and confrontation in the region rose sharply, as testified by the dangerous armed conflicts of 2011 and 2012, when warships of the opposing sides for several days faced each other in readiness to open fire. The PRC's opponents, the Philippines authorities in the first place, turned to the USA for support and obtained it. Washington guaranteed to Manila every kind of assistance in the event of Chinese expansion and thus in fact took its side, evoking in many a sensation that the dispute has clearly transcended regional limits. The struggle for the islands and water areas has begun to turn into another competitive field between the PRC and the USA in this region of the world.

Given such a dangerous turn of events, a question arises as to whether it is possible to stop this conflict at all and find a peaceful way out of it. To resolve this problem, one should isolate the main factors that cause its menacing evolution and compel member-states to walk down the perilous brink all the time.

The first point at issue is the South China Sea's water area in and of itself. Its total surface area is 3,537,000 sq. km. 80 percent of the territory, i. e. that portion of it which China in 2009 officially declared its own, makes up roughly 2,829,000 sq. km. Control over vast water areas allows the PRC to engage in monopoly exploitation of the main riches of the South China Sea: fishery resources – unique in diversity and catches (not less than 8 percent of the world fish production volume) as well as oil and gas deposits. Preliminary estimates show that these may contain up to 30 billion tons of oil and 15 trillion cubic metres of gas. As claimed by Xinhua News Agency, this amounts to roughly one third of the oil and gas resources the PRC now has at its disposal.⁴ ASEAN countries disagree with the borders arbitrarily drawn by China and lay their own claims to water areas and resources of the South China Sea.

As we see, the struggle for the sea territory, for fishery, oil and gas resources form the chief field of conflict. But there is still another factor, one involving state prestige. It is important for governments of virtually all the countries of the region, but most notably for the Chinese leadership, which constantly reiterates that the strong China reclaims was had been lost in the years of historical weakness. Therefore the

V. The Prospects of Making Peace and Stability in Southeast Asia

transformation of the islands and water area of the South China Sea into an integral part of the PRC is in a certain sense a testimony to both the success of the PRC's internal and external policies and the growth of the country's power, political clout and possibilities.

Furthermore, it cannot be omitted that literally in front of our eyes the conflict is aggravated by another highly complicated problem – that of ensuring the freedom of navigation and shipping in the South China Sea. For in January 2013 the Chinese authorities officially permitted the police of Hainan province to inspect ships in the waters which China unilaterally declared its own.⁵

Justifying that decision, the PRC Foreign Ministry clarified that nothing at all serious happened and that the freedom of navigation would not be affected thereby. Nevertheless, it is clear to all that the situation is now radically changing. Earlier, before the public announcement of new Chinese borders, the freedom of navigation in the South China Sea had been taken for granted, but now the implication is that freedom is made conditional upon the good will of the Chinese authorities.

Such a course of events merely intensifies mistrust in relations between the conflicting parties, whipping up the arms race that has engulfed the entire region. As estimated by S. Denisov, expert of the Centre for the Analysis of Strategies and Technologies, “APR countries account for roughly the third of global arms imports, with half of the ten largest world arms importer countries found there. The volume of arms shipments to APR countries in 2007–2011 was up 21.5 percent from the 2002–2006 period – rising from \$62.2 to 75.6 billion.”⁶

Thus we see how tightly the knot of conflict is being drawn across the maritime expanses deserted not too long ago. Consequently, today it is necessary to work out, as quickly as possible, a “road map” for the resolution of outstanding differences. It is clear that reaching at least some progress in the dispute over the South China Sea ultimately calls for good will on the part of China and all the countries that are parties to the conflict. In this connection, as a first step it can be proposed to the conflicting parties that the whole negotiating process be subdivided into two parts. During the first, to concentrate on arresting the escalation of the conflict, cutting short its upward momentum. Subsequently,

to ensure a full settlement of the situation and its final resolution. Incidentally, so far the events have been developing in exactly this vein. The talks recently held in Peking between the ASEAN foreign ministers and their Chinese counterpart have shown that the general consensus respecting a new treaty on the rules of behaviour in the South China Sea is quite possible. In this case China may also agree with the proposal by the Vietnamese Prime Minister Nguyen Tan Dung made in Singapore at the Shangri-La Conference in 2013 that all parties to the confrontation in the South China Sea desist from the use of force, and with the Indonesian proposal to hold naval manoeuvres jointly with the PRC and thereby build trust between the military of both countries.⁷

One more scenario of achieving compromise may become a transition to a somewhat modified agenda where the most essential issues are isolated out of the totality of contradictions and separate negotiations pursued on them.

One may engage in such negotiations on fisheries, on oil and gas, on freedom of navigation, on historical rights on disputed water areas, on questions of military confrontation and cessation of the arms race. As likely as not, successful understandings reached in some aspects will stimulate progress in others. Furthermore, conditions will be established for an ongoing negotiating process, for more confidential contacts and consultations, something that will both create a more favourable climate and promote the cause of settlement.

Another problem that should be specially highlighted is that of imposing a moratorium upon any actions and changes in the existing balances during the negotiations. In my view, this should not be done officially, as the whole experience demonstrates that it will sooner or later be infringed. It will be better if all the parties informally assume certain commitments, and do this in the scope they will deem possible for themselves.

In discussing these first priority steps, it should be noted that the option of resolving the conflict by a unilateral appeal to the UN International Tribunal for the Law of the Sea, which was taken by the Philippines, although it appears outwardly logical, will not bring any relaxation of tension, especially in a situation where the PRC refuses to recognise the validity of the Tribunal's decisions on the South China Sea.

V. *The Prospects of Making Peace and Stability in Southeast Asia*

It stands to reason that the steps listed above will help stem the escalation, but they will not be able to fundamentally resolve the problem of fair territorial delimitation. Far more weighty concessions and compromises on the part of all conflicting parties may be required for this (including territorial ones), which will only be possible in the remote future. In the framework of a comprehensive settlement China will have to recognise the legitimate rights of both Vietnam and the Philippines to those territories or part of territories it declared its own. Knowing the flexibility which the Chinese diplomacy demonstrated more than once, one cannot exclude that Peking can devise a scenario whereby China might propose to its contracting parties to purchase from them a certain portion of territories occupied by it. However, things may unexpectedly revert to a zero option whereby the parties to the conflict renounce reciprocal claims and sit down at the negotiating table with the aim of giving the relations in the region a fresh start. In such case it is not ruled out that a solution will be found at an international conference hosting ASEAN, the PRC and other influential global players. Presently, such a conference is little likely, but it is possible in the remote future. Then it may be hoped that a stable peace will prevail in the region.

Notes

¹ *Renmin Ribao*, 06.04.1959.

² *Law of the Sea Bulletin*, August 1992, p. 24.

³ *The Straits Times*, 2.08.2010.

⁴ “Kitai – ASEAN: delyozh ostrovov v Yuzhno-Kitaiskom more startoval,” *Torgovopromyshlennye vedomosti*, 30 July 2012.

⁵ “Chinese police plan to board vessels in disputed seas,” *The Straits Times*, 29 November 2012. <http://www.straitstimes.com/the-big-story/asia-report/china/story/chinese-police-plan-board-vessels-disputed-seas-20121129>.

⁶ Sergei Denisentsev, “Rynok vooruzhenii stran Aziatsko-Tikhookeanskogo rayona,” *RSMD*, 30 May 2012. http://russiancouncil.ru/inner/?id_4=440#top).

⁷ *The Straits Times*, 22.03.2013.



Ekaterina V. Koldunova

*PhD, Deputy Dean, School of Political Affairs,
Associate Professor, Asian and African Studies,
School of International Relations,
MGIMO-University, the MFA of Russia*

**Possibilities and Limitations of Regional
Institutions for Cooperation in the
Resolution of Regional Security Problems
in Southeast Asia**

The last few years that passed since the beginning of the aggravation of conflict in the South China Sea have demonstrated, on the one hand, the risks entailed by the internationalisation of this problem and, on the other, the objective limitations confronted by the existing regional institutions for multilateral cooperation (the ARF, the ASEAN + China interaction mechanism, the East Asia summit and so forth¹) in the resolution of this problem. These limitations are naturally associated with the character of regional institutions and the system of regional cooperation which has been formed in East Asia and the APR. At the same time apparently the solely acceptable option for the resolution of regional security problems, including the problem of the South China Sea, can only be found in the framework of these institutions for cooperation and first of all along the line of interaction of the parties involved in the conflict.

There exists a variety of opinions concerning the character and driving forces of institutional multilateral cooperation in East Asia. Some researchers believe that the main organisers of such interaction are the small and medium countries exemplified by ASEAN.² Until recent times, coordination of their actions on the international arena facilitated the retention of their autonomous position vis-à-vis larger players, sustained ASEAN's status as the initiator and coordinator of all macroregional initiatives in East Asia and in some degree allowed to keep in a manageable state a number of regional problems, including the dispute in the South China Sea.

V. The Prospects of Making Peace and Stability in Southeast Asia

Another approach to the analysis of the processes of East Asian regional cooperation brings attention firmly to bear on the role of major regional players, chiefly China and Japan,³ in promotion or, vice versa, blocking various regional projects. As an example of such competition one may mention the initiatives for an ASEAN + 3 free trade zone promoted by China, on the one hand, and, on the other, Japan-supported projects for an ASEAN-Japan FTZ and later on for a *Regional Comprehensive Economic Partnership Initiative*, RCEP in the format of ASEAN + 6,⁴ negotiations on which were started in early 2013.

It is evident, however, that such a tug-of-war between larger regional powers was to the advantage of small and medium players. This situation allowed ASEAN to keep its positions as a 'steersman' of regional processes and at the same time provided the possibility for the Association countries to draw maximum profit from this.

In the meantime, however close each of the said approaches might be to an accurate explanation of the processes of regional cooperation, none of them could predict the reaction of regional institutions to the growth of contradictions between the biggest regional players, first of all between China and the United States. Moreover, none of the approaches naturally viewed the USA as a relevant driving force of regional institutional cooperation due to the United States' traditionally inherent emphasis upon the system of bilateral military alliances in the APR. Meanwhile, as the events of the last three years have demonstrated, US policy in the region has exerted a decisive influence on the state of regional cooperation institutions, most of which had earlier been formed without its active participation.

In 2011, the United States declared a strategic reorientation in the direction of the Asia-Pacific Region. A quintessence of growing American attention towards the APR was the well-known article by the then US Secretary of State Hillary Clinton "America's Pacific Century" in the *Foreign Policy* magazine, which appeared on the eve of the events of the APEC Leaders Meeting in Honolulu under US presidency in 2011. In the Secretary of State's opinion, the need for expanding American presence in the APR was to be correlated with two key tasks. The first was to ensure stability and security in the region amid

lingering old threats (the situation at the Korean Peninsula, the problems of nuclear non-proliferation) and the growth of fresh ones (natural cataclysms and territorial disputes in the South China Sea). The second was to ensure a favourable foreign policy environment for the American economy, including export and investment possibilities in the region.⁵

A strategic turnaround of the USA towards the APR occurred at a period when the PRC's economic positions in the region continued to strengthen as a result of the economic crisis. Over the period of 2008-2012, China has continued to keep high rates of economic growth. On a regionwide scale in East Asia at that time, a discussion was in progress of two projects for the formation of regional trade blocs in the format of ASEAN + 3 and ASEAN + 6, which incorporated China but not the United States. A US reaction to these processes was the active promotion of the competing project of Trans-Pacific Partnership, which was proposed by America back in 1998 but has been stagnating over the 2000s.⁶

On the military-political level, the contradictions between the United States and China coincided with an aggravation of the problem of territorial disputes in the South China Sea⁷ and growing differences in positions within ASEAN countries. It should be noted that the aggravation of the situation in the South China Sea took place not without the participation of the USA itself. In 2009, the USS Impeccable, having entered China's exclusive economic zone, thereby provoked the Chinese side into reciprocal steps and statements on the extension of the PRC's "core interests" to the South China Sea zone.⁸ China's actions caused a further escalation of antagonisms between China and the Philippines, China and Vietnam. In the process, the said disputes most directly influenced the character of the functioning of such regional institutions as the ASEAN Regional Forum for Security and the Association itself.

By 2012, ASEAN countries were faced with a serious internal split. Part of Association members took positions close to the PRC, while another part advocated a closer interaction with the USA in the situation at hand. As a result of the split, ASEAN members for the first time in the long history of their interaction in the Association frame-

work could not approve a joint communiqué following the summit in Phnom Penh in June 2012.⁹

Thus a change in the international political situation resulted in the formation of dividing lines both inside regional institutions for cooperation and between them. The region has turned into an arena of competing initiatives in the field of liberalisation of trade, each of which excluded some regional players or other. In the span of just a few years, the situation in the South China Sea out of a local latent conflict has evolved into a serious regional problem, provoking a tougher position of the PRC and other countries on questions of regional security.

In broad terms, the aggravation of the dispute in the South China Sea has demonstrated the ineffectiveness of the set of traditional methods which were routinely employed by ASEAN in case of the emergence of any regional problems. In a generalised sense, these methods can be imagined as follows: an accent on conflict management in place of a search for ways resolving them, the involvement into regional processes of as many external actors as possible so that they could balance each other and by means of such balance create a situation favourable for member countries of the Association, duplication of regional mechanisms focused on discussion of one and the same problems.

Indonesia's proposal made in May 2013 on the conclusion of the Indo-Pacific Treaty on Friendship and Cooperation may be considered an illustration of the method last mentioned.¹⁰ As conceived by the Indonesian side, this document is to fulfil three main tasks: foster trust-building in the region, create conditions for the management¹¹ of territorial disputes and changes taking place in the region as a whole.¹²

To what extent can Indonesia's initiative resolve the existing contradictions? On the one hand, it fully conforms to regional political culture and will scarcely elicit rejection in the region, as happened earlier with the idea of the Asia-Pacific Community put forward by the former Australian Prime Minister Kevin Rudd.¹³ On the other hand, in order to become a truly effective method of management of the regional situation, the Indonesian project has to overcome what no regional institution has so far managed to overcome – a situation where the main real security mechanisms in the region hinge upon a system of bilateral military-political alliances with the USA, whereas regional

bodies are not very successful in coping with antagonism in relations between major regional players.

On a more practical level, the search for a solution to the problem of the South China Sea is being pursued in the framework of negotiations between ASEAN countries and China aimed at mutually approving guidelines for the realisation of the Declaration on the Rules of Conduct of Parties in the South China Sea and consultations held at various levels between China and ASEAN countries on ways for the parties to launch a negotiating process on the Code of Conduct in the South China Sea.

Thus as a result of the transformation of the situation in the South China Sea into a full-blown regional problem, ASEAN and the regional mechanisms linked with the Association have faced grave challenges. The key challenge is associated with the need for ASEAN not only to find a satisfactory way out of the situation at hand but also to reaffirm its positions as a “steersman” of regional processes, overcome internal differences and preserve internal cohesion. In the meantime, at this juncture all the parties involved in the conflict lack other real alternatives of resolving the dispute except the current negotiating mechanisms in the framework of regional institutions for cooperation.

Russian Initiatives: Possibilities and Limitations

According to the 2012 Conception of Foreign Policy of the Russian Federation, Russia’s interests are served by the formation in the Asia-Pacific Region of a “transparent and equitable architecture of security and cooperation on a collective basis.”¹⁴ That said, Russia in regional processes acts like a constructive actor interested in mitigating the existing conflicts and one that does not try to exacerbate regional contradictions.

Russia does not yet fully fit in with the regional economic integration processes based on the existing production chains. At the same time Russia is ready to make a quite real contribution to the development of the processes of institutional cooperation and propose such projects in the APR that will create possibilities for the resolution of current problems. Among such projects one may refer first of all to alternative routes for transportation of primary energy products (oil

V. *The Prospects of Making Peace and Stability in Southeast Asia*

pipeline East Siberia – Pacific Ocean, the Northern Sea Route) capable of diminishing the risks of transporting these primary products to the APR from the countries of the Middle East via the Malacca Strait and the South China Sea and thereby partly blunt the edge of contradictions on questions of energy security that are one of the aspects of the dispute in the South China Sea.

Politically, Russia supports the centrality of ASEAN among the regional cooperation bodies and stands for a collective regional security architecture. In this context, it is precisely the Russian proposal to form a security architecture common for all that might become the basis for the resolution of regional contradictions. However, from political motives not all the countries of the region are ready to recognise this. Such caution results in fluctuations of the regional situation from the next in a series of rounds of aggravation of contradictions to a relative but temporary stabilisation, when all the regional players understand that they have gone too far in their claims towards each other.

Notes

¹ What is implied in this case is the broad approach to the notion of “regional institution,” since in such interpretation it also refers to the 2002 Declaration on the Conduct of Parties in the South China Sea.

² D. Weatherbee, *International Relations in Southeast Asia: The Struggle for Autonomy*. Lanham: Rowman & Littlefield Publishers, Inc., 2009.

³ See more on that in J. Rathus, *Japan, China and Networked Regionalism in East Asia*. Basingstoke: Palgrave Macmillan, 2011.

⁴ M. Kawai, “ASEAN+3 or ASEAN+6: Which Way Forward?” in M. Kawai, G. Wignaraja, *ADB Discussion Paper 77*. Tokyo: ADBI (2007), p. 4.

⁵ H. Clinton, “America’s Pacific Century,” *Foreign Policy*, 2011 (November) [Electronic resource]. Mode of access:

http://www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century?page=0,6

⁶ For a more detailed treatment, see A. Capling, “Multilateralising Regionalism: What Role for the Trans-Pacific Partnership Agreement?” in A. Capling, J. Ravenhill, *The Pacific Review*, 2011 (December), Vol. 24, No. 5, p. 559.

⁷ The immediate parties to the dispute over the Spratly and Paracel Islands in the South China Sea are China and Vietnam (the dispute on sovereignty over the Paracel Islands), China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei (the dispute on sovereignty over the Spratly Islands).

Security and Cooperation in the South China Sea

⁸ “China Adds South China Sea to “Core Interest” in New Policy” [Electronic resource]. Mode of access: http://zeenews.india.com/news/world/china-adds-south-china-sea-to-core-interest-in-new-policy_638592.html (date of access: 20.05.2012). Earlier it was mostly the issues of Taiwan, Tibet and Xinjiang that dominated the discourse on “core interests” with foreign policy partners (A. D. Voskresensky, “Mirovoi finansovo-ekonomicheskii krizis i yego vliyanie na razvitie otnoshenii v treugol’ niki Kitai-SShA-Rossiya,” in *Sravnitel’naya politika*, 2011, No. 1, p. 76). Later on the thesis on the extension of “core interests” to the South China Sea was not included in public discourse.

⁹ “Divided We Stagger,” *Economist*, 18.08.2012,

URL:<http://www.economist.com/node/21560585> (date of access: 28.04.2013).

¹⁰ By analogy with the Treaty on Friendship and Cooperation in Southeast Asia concluded in 1976.

¹¹ Emphasised in this case is precisely the function of management, not resolution, of territorial disputes, possibly due to the fact that the Association itself in essence remains an instrument of management (incidentally, far from always effective), not resolution, of such disputes between its members. See more details in Ye. V. Koldunova, “Integratsiya bez konflikta ili konflikt pri integratsii?” in *Mezhdunarodnie protsessy*, 2011 (September-December), Vol. 9, No. 3 (27), pp. 105-111.

¹² “Indonesia FM Seeks new Asian treaty to curb conflict,” *Channel News Asia*, 17.05.2013. URL: <http://www.channelnewsasia.com/news/asiapacific/indonesia-fm-seeks-new-asia-treaty-to-cu/677940.html> (date of access: 26.05.2013).

¹³ J. Georgieff, “An Indo-Pacific: An Idea Whose Time Has Come?” in *The Diplomat*. 17.05.2013. URL: <http://thediplomat.com/the-editor/2013/05/17/an-indo-pacific-treaty-an-idea-whose-time-has-come/> (date of access: 26.05.2013).

¹⁴ *Kontseptsiya vneshnei politiki Rossiiskoi Federatsii. Utverzhdena Prezidentom Rossiiskoi Federatsii V. V. Putiny 12 fevralya 2013 g.* http://www.mid.ru/brp_4.nsf/0/6D84DDEDEDBF7DA644257B160051BF7F (date of access: 22.09.2013).