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# Conflict Irresolution in the South China Sea


## ABSTRACT

In the South China Sea dispute, some Track-2 settings, along with Track-1 efforts by ASEAN and China, have facilitated some conflict "management." But they have not brought about conflict "resolution" of the basic sovereignty and control issues. Conflict "irresolution" has ensued instead. Short-term balancing may perhaps generate long-term socialization convergence.


**KEYWORDS:** South China Sea, China, Vietnam, Philippines, ASEAN, conflict

## INTRODUCTION

Ongoing rival claims over the sovereignty of islands, their related territorial waters, and derived exclusive economic zones (EEZs) have generated extensive and complicated disputes in the South China Sea (see Figure 1). This includes a dispute over names: China calls this maritime area the "Southern Sea" (Nan Hai), Vietnam calls it the "Eastern Sea" (Bien Dong), and the Philippines calls it the "West Philippines Sea" (Dagat Kanlurang *Pilipinas*). The dispute involves Brunei, Indonesia, Malaysia, the Philippines, and Vietnam, as well as China in the shape of the People's Republic of China (PRC) and, the Republic of China (Taiwan). Outside powers are also involved in these waters, primarily in the shape of the U.S. and, secondarily, India, Japan, and Australia. The security and military stakes are high.[1] The regional organization, the Association for Southeast Nations (ASEAN), has facilitated some conflict management—in the sense of avoiding too much military fighting—but has not brokered conflict resolution—i.e., ending the conflictual claims. Conflict irresolution has been the result.

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1. Chris Rahman and Martin Tsamenyi, "A Strategic Perspective on Security and Naval Issues in the South China Sea," *Ocean Development & International Law* 41:4 (November 2010), pp. 315–33; Robert Kaplan, "The South China Sea Is the Future of Conflict," *Foreign Policy* 188 (September/October 2011), pp. 76–85.

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FIGURE 1. Sovereignty Claims in the South China Sea

SOURCE: University of Texas Libraries, <http://www.lib.utexas.edu/maps/middle_east_and_asia/china_sovereignty%20claims_in_the_south_china_sea-2012.png>, accessed November 14, 2012.

In looking at this conflict irresolution, this article considers international, regional, and bilateral settings before returning to the national setting of the PRC. Its concluding twist is that old-fashioned "balancing" may be the most effective management solution in the short term; this may generate long-term normative changes to bring about resolution, with Track-2 non-governmental movement translated into Track-1 government movement.

## INTERNATIONAL LEVEL

The U.N. has lacked any involvement by its Security Council, despite its wide-ranging legal and enforcement powers under the U.N. Charter (Chapter 7, Article 51) to adopt measures to handle eruptions of "threats to the peace, breaches of the peace, or acts of aggression."[2] Such a mechanism has not been invoked with regard to the South China Sea. This is unsurprising, given the presence of the PRC as a veto-wielding permanent member of the Security Council making wide-ranging claims at the center of the dispute.

If we look at other U.N. organs, the International Court of Justice (ICJ) has been involved in some nearby regional sovereignty issues. It adjudicated in 2002 between Indonesia and Malaysia on their sovereignty dispute over Pulau Ligitan and Pulau Sipadan Islands. In 2002 it adjudicated between Indonesia and Malaysia with regard to their sovereignty dispute over Pedra Branca/Pulau Batu Puteh islets, and in 2008 between Malaysia and Singapore with regard to their sovereignty dispute over Middle Rocks and South Ledge. However, ICJ involvement in the much bigger and more complicated South China Sea sovereignty disputes has not been forthcoming, not least because the PRC's consent has not been forthcoming for such ICJ adjudication. Consequently, when the Philippines asked the PRC in July 2011 to join it in seeking a ruling from the ICJ, the PRC refused.

Elsewhere on the legal front, the 1982 U.N. Convention on the Law of the Sea (UNCLOS) remains relatively impotent because the politics often overshadows the legal issues.[3] One problem is that "UNCLOS in itself cannot be applied to solve existing territorial disputes" because it leaves overlapping claims unresolved, has no binding enforcement features, and "does not address how to resolve sovereignty disputes."[4] Moreover, under Article 298, China made a statutory declaration on August 25, 2006, to the U.N.

2. *Charter of the United Nations,* <http://www.un.org/en/documents/charter/>, accessed October 15, 2012.

3. Hence, differentiations, in Peter Burgess, "The Politics of the South China Sea: Territoriality and International Law," *Security Dialogue* 34:1 (March 2003), pp. 7–10; Nong Hong, *UNCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea* (Farnham, Surrey, U.K.: Ashgate, 2012).

4. Ralf Emmers, "The Prospects for Conflict Management and Resolution in the South China Sea," *Harvard Asia Quarterly*, December 24, 2010, <http://asiaquarterly.com/2010/12/24/the-prospects-for-conflict-management-and-resolution-in-the-south-china-sea/>, accessed March 1, 2012; Robert Smith, "Maritime Delimitation in the South China Sea," *Ocean Development & International Law* 41:3 (2010), p. 214.

secretary-general that it would not accept any international court or arbitration in disputes over sea delimitation, territorial disputes, and military activities. The International Tribunal for the Law of the Sea (ITLS), an independent judicial body set up by UNCLOS in 1982, is a forum under which parties can request arbitration. In July 2011, the suggestion by the Philippines that it and the PRC should seek such arbitration from the ITLS was rejected, the PRC position being that "the International Tribunal for the Law of the Sea cannot intervene in the South China Sea disputes between China and some Southeast Asian countries."[5]

The limitations of the U.N. process were also made apparent in 2009 when the May 13 deadline for countries to submit their continental shelf delimitation applications to the U.N. Commission on the Limits of the Continental Shelf (CLCS) merely generated further divisions. A joint Vietnam-Malaysia submission in early May sparked criticisms from China and the Philippines, and their respective counter-claim submissions. The PRC Foreign Ministry asserted that "Vietnam's submission . . . is a gross infringement upon China's sovereignty, sovereign rights and jurisdiction, [and] thus illegal and invalid."[6] The CLCS, unable to consider submissions in the event of conflicting claims, was immediately deadlocked.

Elsewhere within the U.N. system, however, the U.N. Environmental Program (UNEP) facilitated some low-level cooperation: it brought together maritime scientists to work during 2002–09 on its theme of "Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand." This included work on fragile coral reefs, seagrass, and mangroves.

In terms of the international community, in general the PRC "firmly opposes attempts to internationalize the South China Sea issue, which should only be resolved bilaterally."[7] China's distrust of outside involvement, particularly by the U.S., is noticeable. Hence, U.S. attempts to raise the South China Sea issue at the July 2010 ASEAN Regional Forum (ARF)

5. Jin Yongming, "How to Resolve the South China Sea Issue," *China Daily,* July 7, 2011.

6. Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesperson Ma Zhaoxu's Remarks on Vietnam's Submission on Outer Limits of the Continental Shelf in South China Sea," May 10, 2009, <http://www.fmprc.gov.cn/eng/xwfw/s2510/t561454.htm>, accessed March 1, 2012. See also Nguyen Hong Thao and Ramses Amer, "Coastal States in the South China Sea and Submissions on the Outer Limits of the Continental Shelf," *Ocean Development & International Law* 42:3 (August 2011), pp. 245–63.

7. "China Opposes Attempts to Internationalize South China Sea Issue," Xinhua, June 14, 2011.

meeting were met with a Chinese dismissal: "if this issue is turned into an international or multilateral one, it will only make matters worse."[8] On the eve of the ASEAN-U.S. summit in New York in September, Chinese Foreign Ministry spokeswoman Jiang Yu stressed the PRC's "great concern about any possible South China Sea announcement made by the United States and the ASEAN countries . . . we oppose the internationalization, multilateralization, or expansion of the issue."[9] Similarly, at the ASEAN+8 Defense Ministers meeting in October, the Chinese delegation (supported by some ASEAN members, such as Cambodia) rejected attempts by Vietnam and the U.S. to raise the issue formally, arguing bluntly: "[N]or can the issue be discussed under the framework of ASEAN+8."[10] If international avenues largely have been blocked, what of regional avenues?

## REGIONAL LEVEL

A twofold process has taken place regionally, with initial Track-2 (non-governmental) discussions feeding into Track-1 (intergovernmental) diplomacy at the ASEAN and ASEAN-PRC level. Commenting on the appearance of Track-2 efforts, Weissmann has noted, "[T]he proliferation of elite interactions, in particular track two diplomacy and personal networks, has been important for peace building and conflict prevention in the South China Sea."[11] In retrospect, environmental care, for example, in marine biodiversity, has been a relatively safe non-political arena for regional Track-2 discussions.[12]

One leading Track-2 venue has been the Indonesian-sponsored "Workshops on Managing Potential Conflicts in the South China Sea," initiated by international law of the sea expert and former Ambassador Hasjim Djalal in

8. Ministry of Foreign Affairs of the PRC, "Foreign Minister Yang Jiechi Refutes Fallacies on the South China Sea Issue," July 26, 2010, <http://www.mfa.gov.cn/eng/zxxx/t719460.htm>, accessed March 1, 2012.

9. "China 'Concerned' about Possible U.S.-ASEAN Statement on South China Sea Issue," *People's Daily*, September 21, 2010.

10. Guan Youfei (Defense Ministry), cited in "China's Defense Chief to Attend ASEAN+8 Security Session," Xinhua, October 6, 2010.

11. Mikael Weissmann, *Understanding the East Asian Peace. Informal and Formal Conflict Prevention and Peacebuilding in the Taiwan Strait, the Korean Peninsula, and the South China Sea 1990–2008* (Gothenburg, Sweden: University of Gothenburg, 2009), p. 127.

12. For example, Yann-huei Song, "A Marine Biodiversity Project in the South China Sea: Joint Efforts Made in the SCS Workshop Process," *International Journal of Marine and Coastal Law* 26:1 (January 2011), pp. 119–49.

1990. These included Technical Working Groups and Group of Experts Meetings. These workshops spawned a number of environmental projects looking at ecosystem monitoring, biodiversity, sea level, tide monitoring, as well as maritime matters such as safety of navigation, shipping, and communication. Typical of this consensual focus was the 19th Workshop held in 2009 at Makassar in Sulawesi Selatan Province on the theme "Study of Tides and Sea Level Change and Their Impact on Coastal Environment in the South China Sea." Workshop participants such as the academic Ian Townsend-Gault stressed their "functional" value in enabling claimant states to talk about the dispute on a non-confrontational and informal basis and to explore alternative avenues for cooperation.[13] His presentation, "Twenty Years of the Workshop on Managing Potential Conflicts in the South China Sea," at the 20th Workshop held in Bandung, West Java, is testimony to this continued Track-2 presence, yet also perhaps to its inherent limitations. As a 2010 Workshop statement noted, "[T]he Workshop process was commended as a role model for managing potential conflicts," but of course managing is a different thing from solving.[14]

Other workshop and conference settings have sprung up in the region. The Singapore-based S. Rajaratnam School of International Studies (RSIS) at Nanyang Technological University ran South China Sea workshops and conferences in 2007 and 2009.[15] Malaysian settings were exemplified in "The South China Sea: Sustaining Ocean Productivities, Maritime Communities, and the Climate" conference held by the Institute of Ocean and Earth Sciences (IOES) in Kuala Lumpur in November 2008. Chinese examples include the "5th International Workshop on the Marine Environmental Change of the South China Sea," held in Guangzhou in November 2009 and the "International Conference on Cooperation in Dealing with Non-Traditional Security Issues in the South China Sea," hosted at Haikou, Hainan Province, in May 2010 by the Institute of South China Sea Studies.

13. Ian Townsend-Gault, "The Contribution of the South China Sea Workshops: Importance of a Functional Approach," in *Security and International Politics in the South China Sea. Towards a Co-operative Management Regime,* eds. Sam Bateman and Ralf Emmers (London: Routledge, 2008), pp. 189–206.

14. "Statement of the 20th Workshop on Managing Potential Conflicts in the South China Sea, Bandung, Indonesia, 1–3 November 2010," <http://cil.nus.edu.sg/wp/wpcontent/uploads/2009/09/STATEMENT-OF-THE-20TH-WORKSHOP-FINAL.pdf>, accessed March 1, 2012.

15. See "The South China Sea: Towards a Cooperative Management Regime," Conference Report (Singapore: RSIS, 2007); "The ASEAN-China Regional and Subregional Cooperation Workshop," Conference Report (ibid., 2009).

In Vietnam, the Diplomatic Academy of Vietnam and the Vietnam Lawyers Association initiated the "International Workshop on the South China Sea: Cooperation for Regional Security and Development" in November 2009. This has become an annual process with further workshops held in November 2010 and November 2011 at which Chinese academics, other regional discussants, and extraregional commentators met.[16] These have proved to be combative affairs at times. The November 2009 Workshop became politicized and divisive when it openly discussed sovereignty issues, amid warnings by scholars such as Carlyle Thayer about China's naval threat and general assertiveness in the South China Sea. PRC attendees such as Su Hao reiterated Chinese claims and criticized critics: "Vietnam is making the issue a multilateral one and even involving more international players outside Asia. However, its strategy will not be a successful one because China opposes such moves."[17] Peace researcher and historian Stein Tønnesson's paper at the 2011 Workshop was blunt: "[G]eopolitics trumps international law to the extent of making the latter inconsequential," given that "it is commonplace to imagine that once the Chinese navy becomes strong enough to keep other navies out of the South China Sea, it can take control of the sea and seabed as such and extract resources by force."[18]

## FROM TRACK-2 TO TRACK-1

If we turn from Track-2 to Track-1 settings, some formal approaches have come from ASEAN. However, the so-called ASEAN Way has not yet generated long-term conflict resolution, only short-term conflict prevention—which nonetheless represents a degree of conflict management.[19] The first

16. For the first two workshops in 2009 and 2010, see Tran Truong Thuy, ed., *The South China Sea: Cooperation for Regional Security and Development, Proceedings of the International Workshop* (Hanoi: Diplomatic Academy of Vietnam, 2010); idem, ed., *The South China Sea: Towards a Region of Peace, Security, and Cooperation* (Hanoi: Gioi Publishers, 2011).

17. Su Hao, cited in Ai Yang, "Vietnam Seeks ASEAN Discussion over South China Sea," *China Daily,* February 11, 2010.

18. Stein Tønnesson, "International Law in the South China Sea: Does It Drive or Help Resolve Conflict?" <http://nghiencuubiendong.vn/en/conferences-and-seminars-/the-third-international-workshop-on-south-china-sea/672-internaional-law-in-the-south-china-sea-does-it-drive-or-help-resolve-conflict-by-stein-tonnesson>, accessed March 1, 2012.

19. Niklas Swanström, "Conflict Management and Negotiations in the South China Sea: The ASEAN Way?" in *Perspectives on the Conflict in the South China Sea*: *Workshop Proceedings,* ed. Knut Snildal (Oslo: University of Oslo, 1999), pp. 93–125.

notable manifestation of this outcome was the 1992 ASEAN Declaration on the South China Sea. The 1992 Declaration was brief, five resolutions that boiled down to exhort for "peace" and "restraint" over South China Sea claims and "cooperation" on other affairs of mutual interest. Again, this represented conflict management rather than conflict resolution, limiting friction rather than ending a dispute. The Declaration was weaker than what some ASEAN members such as the Philippines wanted. China's response from Foreign Minister Qian Qichen was positive but ambiguous: China would "shelve our differences for the time being" in favor of "negotiations with the countries concerned when conditions are ripe."[20] This PRC formula did not specify what the conditions would be or when the time would be ripe for such negotiation. The optimist might argue that the "time" for the PRC would be when multilateral regional cooperation had softened antagonisms and inculcated cooperative norms; the pessimist would point to when the PRC becomes able to impose conditions from a position of strength.

The second Track-1 regional-level manifestation to note is the Declaration of the Conduct of Parties in the South China Sea, signed between ASEAN and the PRC in 2002. On top of the earlier 1992 trilogy of peace/restraint/cooperation, the 2002 ASEAN-PRC Declaration featured extra exhortations. These included creating confidence-building measures (CBMs), the maintenance of freedom of navigation at sea and in the air, and the conduct of negotiations in accordance with international law and with regard to UNCLOS in particular. In practical terms, the ASEAN-PRC Declaration did not deal with sovereignty resolution, nor did it impose sanctions in the event of an infringement. Its bite was further hampered because it was neither a formal treaty nor a formal code of conduct. The PRC remained opaque on this matter in 2012, with the Foreign Ministry noting, "China has expressed that it is open to discussing the formulation of the [code of conduct] when conditions are ripe."[21] As before, this PRC formula did not specify when, or under what circumstances, the time would be "ripe" for formulation, let alone agreement.

20. See Qian Qichen's comments in "Sino-AEAN Choice: Cooperation and Progress," *Beijing Review,* August 3–9, 1992, p. 4.

21. Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesperson Liu Weimin's Regular Press Conference on February 13, 2012," <http://www.fmprc.gov.cn/eng/xwfw/s2510/t905128.htm>, accessed March 1, 2012.

Admittedly, in July 2011 ASEAN and the PRC did in fact sign Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea. However, it can be argued that this highlighted the failure to implement the 2002 Declaration. Moreover, the 2011 Guidelines were no guarantee that the 2002 Declaration would be implemented in the post-2011 future, or that it would be made a binding code of conduct or actually resolve sovereignty issues. Chinese comments on the 2011 Guidelines agreement were pointed: it represented a defeat for U.S. attempts "to internationalize the issue, which is against the will of China."[22] As to ASEAN's role, PRC sources remained clear on how the Guidelines were marginal at best, noting, "[T]he disputing parties are not China and the ASEAN, so a document [the *Guidelines*] reached by the two sides cannot solve the disputes . . . the disputes can only be handled within a bilateral framework" between disputant countries.[23]

The PRC remains reluctant to give ASEAN any significant role in settling the South China Sea issues: "China's consistent stance is that the South China Sea issue is not an issue between China and ASEAN."[24] On the other hand, the Vietnam-Philippines position enunciated in their Joint Communiqué in October 2011 directly contradicted that view, noting that it was "essential to address these issues through multilateral dialogue . . . they [Vietnam and the Philippines] emphasized the ASEAN centrality."[25] However, internal divisions make a joint external ASEAN position vis-à-vis China more difficult. This was dramatically shown by ASEAN's unprecedented failure in July 2012 to issue any joint communiqué following its 45th Annual Ministerial Meeting, at which Chinese pressure on the chair, Cambodia, thwarted Vietnamese-Philippine calls for reference to be made to the South China Sea dispute. Some of the claims by ASEAN members also overlap, notably between Vietnam and the Philippines, although the two countries have drawn closer to each other, against the PRC. It might be unrealistic to expect ASEAN-led or ASEAN-facilitated sovereignty negotiations, given ASEAN's lack of supranational powers and lack of foreign policy jurisdiction competency.

22. "U.S. Sticks Its Oar In," *China Daily,* July 26, 2011.

23. "New Guidelines on South China Sea Give Green Light for China-ASEAN Cooperation," *People's Daily,* July 24, 2011.

24. Guan Youfei (Defense Ministry), "China's Defense Chief to Attend ASEAN+8 Security Session."

25. "Vietnam, Philippines Issue Joint Communique," October 27, 2010, <http://en.vietnamplus.vn/Home/Vietnam-Philippines-issue-joint-communique/201110/21882.vnplus>, accessed March 1, 2012.

## BILATERAL LEVEL

PRC-Vietnam relations, improving from a low point of military conflict along their land frontier in 1979, were normalized to some degree with the Land Border Treaty (1999), the Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin (2000), and the Agreement on Fishing Cooperation in the Gulf of Tonkin (2004). However, whereas the land border and the Gulf of Tonkin waters have been relatively stabilized, the South China Sea remains a highly confrontational area between these two neighbors. Vietnam's doggedly maintained claims are, after China's, the second biggest in the South China Sea. Vietnamese and Chinese claims are similar in nature: a continental shelf and a 200-nautical-mile EEZ, as well as historical control claims over two archipelagoes, the Paracel Islands (in Vietnam known as Hoang Sa; in China, Xisha) and the Spratly Islands (in Vietnam Truong Sa; in China, Nansha) in the South China Sea.

PRC troops pushed South Vietnamese forces out of the Paracels in 1974. A post-1976 unified Vietnam continues to argue that the Paracels remain an issue to be discussed; the Chinese maintain that the Paracels are not subject to further debate, let alone sovereignty negotiation.[26] Annual fishing bans imposed by the PRC in Paracels waters in 2009, 2010, 2011, and 2012 were rejected by Vietnam precisely because they cover territorial and EEZ waters claimed by Vietnam. Live-fire exercises by Vietnam in waters near the Paracels in June 2010 were widely seen as a deliberate riposte to preceding Chinese naval exercises there. Vietnam protested strongly about further naval exercises by China's South China Sea Command in the waters around the Paracels in February 2011. Vietnamese fishermen again were confronted by PRC units in Paracels waters in February 2012, generating further protests from Vietnam and mutual reaffirmations of sovereignty by both countries.

Further south, both Vietnam and the PRC carried out competing, creeping occupation of hitherto neglected reefs and atolls in the Spratlys during the 1980s. This also involved naval skirmishes and casualties in 1988 around Union Bank, Johnson South Reef, and Fiery Cross Reef. As of the start of 2012, Vietnam controlled more of the Spratlys than did the PRC, including Spratly Island (Dao Truong Sa) and a 600-meter runway. Despite the

26. Stein Tønnesson, "The Paracels: The 'Other' South China Sea Dispute," *Asian Perspective* 26:4 (2002), pp. 145–69.

ASEAN-China 2002 Declaration on the Conduct of Parties, there were a rising number of fishing-related and energy-related incidents in the disputed Spratly waters between Vietnam and China during 2010–11.

In this atmosphere of rising friction, the Chinese Foreign Ministry explained in robust terms the cutting of cables laid by Vietnamese vessels conducting energy/seismic explorations in May and June 2011. PRC officials alleged that "Vietnam grossly infringed China's sovereignty as well as maritime rights and interests by exploring oil and gas illegally in the Wan'an Bank waters."[27] Vietnamese fishing boats operating off East London Reef and Cross Island were also reportedly fired upon by PRC military vessels in May. The Chinese state media rhetoric was vehement, noting, "China has to send a clear message that it will take whatever measures [are] necessary to protect its interests in the South China Sea. If Vietnam continues to provoke China in this region, China will first deal with it with maritime police forces, and if necessary, strike back with naval forces."[28]

Events were capped in late June by reports of Vietnamese fishing boats being fired upon by PRC vessels, spurring public outrage in Vietnam including two months of unprecedented government-sanctioned protests outside the Chinese embassy in Hanoi. Similar frictions ensued in summer 2012. Vietnam passed legislation embedding its own sovereignty claims over the Paracel and Spratly Archipelagoes and dispatched air force patrols around the Spratlys, both of which actions drew protests from China. Conversely, China's own legislative upgrading of Woody Island (Yongxing Dao) in the Paracels to municipal status (as Sansha City) drew not only a formal Vietnamese diplomatic protest but ongoing public demonstrations through the summer of 2012.

After several years of bland joint statements, an Agreement on Fundamental Principles to Guide the Settlement of Sea Disputes was signed in October 2011, but it remains to be seen whether that will generate any substantive negotiations on the issues. The PRC position continues to be diametrically opposed to that of Vietnam. As Chinese Foreign Minister Yang Jiechi stressed, "[W]ith regard to China's relations with Vietnam . . . let me say the following: China

27. Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesperson Hong Lei's Remarks on Vietnamese Ships Chasing Away Chinese Fishing Boats in the Waters off the Nansha Islands," June 9, 2011, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t829427.htm>, accessed March 1, 2012.

28. "China Must React to Vietnam's Provocation," *Global Times,* June 21, 2011.

has indisputable sovereignty over the islands in the South China Sea and the adjacent waters."[29] However, Vietnam takes the mirror position that it has equally "indisputable" sovereignty over the Paracel and Spratley Islands and consequent jurisdiction over large swathes of waters in the South China Sea.

During 2010–12, Vietnam sought outside support alongside its own military build-up and acquisitions program. It turned in part to ASEAN, trying to get regional bloc solidarity behind it. Partly it approached India, whose navy has been regularly deploying into the South China Sea since 2000 and with whom Vietnam has established defense links and a strategic partnership. Above all, Vietnam's external strategic openings have been toward the U.S.

The visits by U.S. aircraft carriers and warships to Vietnamese waters in 2010 and 2011 sent widely noticed signals in the region and to the PRC. Beijing's state-run media responded with considerable accuracy that "Vietnam is making desperate efforts to internationalize and multilateralize Sino-Vietnamese disputes over South China Sea territory, and wants to enlist the help of the United States to counterbalance China in the South China Sea."[30] The fourth U.S.-Vietnam Strategic Dialogue meeting, in June, was explained by the U.S. State Department as "broadening and deepening the strategic dimensions of our U.S.-Vietnam bilateral relationship," particularly for "maritime security in the South China Sea and enhanced cooperation" in the ARF and East Asia Summit (EAS).[31] Again, this met with immediate criticism from China:

> China will never move an inch on its core interest of sovereignty and territorial integrity and will always stand up for that at any cost. Therefore, it is highly advisable for Vietnam to rein in its overreaching ambition over the South China Sea, and dim its hope pinned on the U.S.[32]

Vietnam-U.S. links were further strengthened in September by their formal memorandum of understanding (MOU) on defense cooperation. U.S. perceptions were made clear in February 2012: "Vietnam is modernizing

29. Ministry of Foreign Affairs of the PRC, "Foreign Minister Yang Jiechi Meets the Press," March 14, 2008, <http://www.fmprc.gov.cn/eng/zxxx/t414877.htm>, accessed March 1, 2012.

30. Li Hongmei, "Vietnam Advisable Not to Play with Fire," *People's Daily*, August 17, 2010.

31. Government of the United States of America, Department of State, "Fourth U.S.-Vietnam Political, Security, and Defense Dialogue," June 17, 2011, <http://iipdigital.usembassy.gov/st/english/texttrans/2011/06/20110617174628su2.667743e-02.htm>l?distid=ucs#axzz1VE7ZdFfr>, accessed March 1, 2012.

32. Li Hongmei, "Vietnam Should Wake up to Danger!" *People's Daily*, June 20, 2011.

its military and looks to the U.S. as a partner in maintaining security and stability in Southeast Asia, particularly" in the South China Sea. Under the convergence, "USPACOM [U.S. Pacific Command] will carry on working closely with Vietnam to advance our military relationship and cooperation in providing security."[33] These official comments by PACOM were immediately picked up and "rejected" by the PRC.[34]

A further balancing development has been the strategic convergence between Vietnam and the Philippines, in which their MOU, a maritime pact signed in October 2011, was driven by common concerns over the growing PRC presence in the Spratlys. Consequently, we can now turn from Vietnam-PRC relations to Philippines-PRC relations.

PRC-Philippines relations involve large areas of disputed territory in the Spratlys (known in the Philippines as the Kalayaan) area. Manila's claims are based on its continental shelf extension; its Foreign Affairs Minister Albert del Rosario argues that the nine-dash claim of China, which encloses around 80% of the South China Sea, "is, to put it plainly, illegal. It is arbitrary and bereft of any basis or validity under international law."[35] Friction was noticeable in the mid-1990s, particularly around PRC activities at Mischief Reef in the Spratlys from 1995–98, which included construction of a 300-meter-long pier, barracks, and what appeared to be some kind of command center for communications and control.[36] In turn, the Philippines took coercive action in 1998 against Chinese fishermen operating at Scarborough Reef, a disputed rocky atoll about 200 kilometers west of Luzon, the main Philippine island. This also brought U.S. declarations of potential military support for the Philippines: "[W]e have a mutual defense treaty which is not geographically specific. Our commitment is to defend against attacks on the Philippine people, or U.S. personnel as well, wherever they may be."[37]

33. Robert Willard, "U.S. Pacific Command Posture" (prepared statement to Senate Armed Services Committee), February 27, 2012, pp. 13–14, <http://armed-services.senate.gov/statemnt/2012/02%20February/Willard%2002-28-12.pdf>, accessed March 1, 2012.

34. "Beijing Rejects U.S. Role in South China Sea," *Global Times*, March 1, 2012.

35. Philippine Foreign Affairs Minister Albert del Rosario, cited in Pia Lee-Brago, "China's 9-dash Line Claim to West Phl Sea a Stumbling Block," *Philippine Star,* August 7, 2011. See also Asahiro Miyoshi, "China's 'U-Shaped Line' Claim in the South China Sea: Any Validity under International Law?" *Ocean Development & International Law* 43:1 (February 2012), pp. 1–17.

36. Daojiong Zha and Mark Valencia, "Mischief Reef: Geopolitics and Implications," *Journal of Contemporary Asia* 31:1 (January 2001), pp. 86–103.

37. U.S. Defense Secretary William Cohen's comments, reported in the *South China Morning Post* (Hong Kong), August 4, 1998.

However, in the wake of the ASEAN-PRC Declaration of 2002 and its advocacy of cooperative ventures, an Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea was signed in September 2004 between the Philippine National Oil Company (PNOC) and the China National Offshore Oil Corporation (CNOOC). It was described by them as representing their respective governments' "commitments to pursue efforts to transform the South China Sea into an area of cooperation" and made no mention of rival claims.[38] In March 2005, this was turned into a three-way Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea involving PNOC, CNOOC, and Vietnam's PetroVietnam.

Discussions on moving from joint exploration to joint development were held between the PRC and the Philippines in 2007 but were not concluded. Instead, the 2005 Tripartite Agreement was not renewed by the Philippines on its initial expiry in July 2008, amid a general deterioration in bilateral relations. In March 2009, the passing of the Philippine Archipelagic Baseline Law represented a move by Manila to strengthen Philippine claims in the Spratlys. Such legislation met with "stern" PRC denunciation as "illegal and invalid." Beijing canceled scheduled bilateral meetings and reinforced its own naval presence in the Spratlys.[39]

This deterioration in Sino-Philippine relations became particularly clear during 2011–12, around Reed Bank and Scarborough Reef. The Reed Bank incident, in March 2011, involved Chinese naval patrol boats ordering a Philippine oil exploration vessel out of the area. However, the patrol boats withdrew when Philippine air force planes were scrambled to lend support to the oil vessel. The Philippines subsequently announced a strengthening of its naval presence in the disputed waters. It also lodged an official complaint with the U.N.'s CLCS on April 5, countered by Beijing's own verbal note on April 14. The note called the Philippine complaint "totally unacceptable . . . the Republic of the Philippines' occupation of some islands and reefs of China's Nansha islands as well as other related acts constitute infringement upon China's territorial sovereignty."[40] June

38. CNOOC and PNOC, *An Agreement for Joint Marine Seismic Undertaking in Certain Areas in the South China Sea,* September 1, 2004, <http://images.inquirer.net/documents/doc1.jpg>, accessed March 1, 2012.

39. "China Lodges Stern Representation to the Philippines on South China Sea Issue," *People's Daily,* March 14, 2009.

40. Permanent Mission of the PRC to the United Nations, *Note verbale* (CML/8/2011), April 14, 2011, <http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2011_re_phl_e.

2011 saw further friction as Philippine forces removed Chinese markers from disputed reefs near Amy Douglas Bank and Reed Bank; officials dispatched the flagship *Rajah Humabon,* a frigate, to patrol the South China Sea. Such events in the first half of 2011 prompted President Benigno Aquino III to reaffirm Philippine claims to the Reed Bank in his State of the Nation Address on July 25, stating, "[T]here was a time when we couldn't appropriately respond to threats in our own backyard. Now, our message to the world is clear: What is ours is ours."[41]

By February 2012, the Philippine offering of tenders to oil companies to drill in South China Sea waters drew PRC complaints that "it is unlawful for any country or company to explore oil and gas in sea areas under Chinese jurisdiction without the permission of the Chinese government."[42] April brought renewed and ongoing confrontations through the summer at Scarborough Reef, including the deployment of naval units, between the Philippines and the PRC, and with the Chinese state media taking a strong line.[43]

Like Vietnam, the Philippines is engaged in a China-centric military modernization program and is seeking to strengthen its presence in the South China Sea. For example, March 2011 witnessed Philippines Chief of Staff General Eduardo Oban announcing plans to upgrade Rancudo Airfield on Pagasa Island, the second largest Spratly and largest of all Philippine-occupied Spratly Islands. The ship BRP *Gregorio del Pilar*, purchased by the navy from the U.S. in December, was dispatched for an extended sovereignty patrol into South China Sea waters in January 2012. More purchases of naval assets are scheduled for 2013.

Like Vietnam, the Philippines increasingly has sought regional help from ASEAN over the issue as well as outside assistance, despite PRC criticisms. A permanent working group set up in September 2011 between the Philippines

pdf>, accessed March 1, 2012. See also Nguyen-Dang Thang and Nguyen Hong Thao, "China's Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes between the Philippines and China," *Ocean Development & International Law* 43:1 (February 2012), pp. 35–56.

41. Benigno Aquino III, "State of the Nation Address," *Official Gazette,* July 25, 2011, <http://www.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011-en/>, accessed March 1, 2012.

42. "Philippines Must Learn Self-restraint in South China Sea Disputes," *People's Daily*, March 1, 2012. Also, see Zhao Shengnan, "Manila's Plan for S. China Sea 'Illegal'," *China Daily,* February 29, 2012.

43. For example, "China Is Prepared for Escalation of Huangyan Island Incident," Xinhua, May 8, 2012; Zhang Yunbi, "Philippines Warned over Island Dispute," *People's Daily,* May 9, 2012.

and Japan to cover maritime disputes in Asia was labeled "dangerous in the South China Sea" by the Chinese state media.[44] Philippine-India strategic links and maritime cooperation have been strengthened. Above all, like Vietnam, the Philippines has sought support from the U.S. This became obvious when military exercises near the South China Sea were carried out between the Philippine and U.S. navies in June; the PRC called these "suspicious."[45] Further beach-landing exercises were conducted between U.S. and Philippine forces in October. In the Manila Declaration in November, the two governments reiterated the closeness of their relationship and the need for regional stability and observance of international law, which was language aimed at China. The PRC might have argued at the start of 2012 that Philippine convergence with the U.S. was sending the wrong signal, but from Manila's point of view it was a deliberate warning to Beijing, especially in light of other calls in the Chinese media to "make Philippines pay for [its] balancing act."[46] The *Balikatan 2012* joint exercises between U.S. and Filipino forces were held in the South China Sea itself in April 2012 off the Philippine Palawan Island, amid speculation about plans to establish American base-like facilities on the Philippine coastline looking out onto the South China Sea. This immediately attracted PRC suspicions.[47] The common denominator in all these developments was the growing shadow of China, and it is to the PRC that we can now turn.

## NATIONAL LEVEL (PRC)

The PRC is the central player in the South China Sea conflict, an energy-seeking actor asserting the widest-ranging claims over the widest-ranging areas of the waters. The PRC's position is based on assertions of the South China Sea as "an inalienable part of Chinese territory since ancient times," an area lost to British and French colonialism in the 19th century during the so-called Century of Humiliation but to be recovered in full.[48] The PRC's

44. Zhang Wenmu, "India Playing Around, Japan Dangerous in S. China Sea," ibid., October 19, 2011.

45. Cheng Guangjin, "U.S., Philippines Hold Drills Near South China Sea," *China Daily,* June 29, 2011.

46. "Philippines Sends 'Wrong Signal'," ibid., January 30, 2012; "Make Philippines Pay for Balancing Act," *Global Times,* January 29, 2012.

47. Liu Tian, "Proposed U.S.-Philippines Drills Raise Questions about U.S. Intentions in Asia," *People's Daily*, January 23, 2012.

48. Ministry of Foreign Affairs of the PRC, "Historical Evidence to Support China's Sovereignty over Nansha Islands," November 17, 2000, <http://www.fmprc.gov.cn/eng/topics/3754/t19231.htm>, accessed March 1, 2012.

U-shaped "9-dashes line" encloses most of the South China Sea; it was presented by Beijing to the U.N. CLCS in May 2009. The PRC reiterated its position:

> China has indisputable sovereignty over the South China Sea Islands, including Xisha [Paracels] and Nansha [Spratly] Islands, and their adjacent waters, as well as [EEZ] sovereign rights and jurisdiction over the seabed and subsoil under the relevant waters.[49]

The PRC prefers, indeed, still "insists," that any settlement should be a bilateral rather than multilateral-regional-international settlement, arguing that "we have to stick to our one-on-one policy, and resolve disputes with individual countries one at a time rather than with a handful of them."[50] This is partly because of PRC sovereignty fears vis-à-vis outside organizations but also because in a practical bargaining situation China can face divided rival claimants separately, and from a position of greater bilateral strength.

One sign of greater Chinese stress on its claims was talk in 2010 by some PRC figures that the Sea was one of China's "core interests" (*hexin liyi*), alongside Taiwan and Tibet. Some PRC commentators were forthright on the implications, saying that China "will never compromise its core interests. By adding the South China Sea to its core interests, China has shown its determination to secure its maritime resources and strategic waters."[51] Admittedly, at the official public level, Beijing then pulled back from such an explicit linkage, perhaps precisely because it alienates opinion in Southeast Asia and tends to amplify U.S. regional balancing propensities there.

Any elevation of the South China Sea as a "core interest" to China comes up against U.S. signals of its own strategic interests in the area.[52] As Secretary of State Hillary Clinton recounted, "When China [State Councillor Dai Bingguo] first told us at a meeting of the Strategic and Economic Dialogue

49. Ministry of Foreign Affairs of the PRC, "Foreign Ministry Spokesperson Ma Zhaoxu's Remarks on Vietnam's Submission on Outer Limits of the Continental Shelf in South China Sea."

50. "China Insists on Bilateral Talks to Resolve South China Sea Disputes," *People's Daily,* June 29, 2011; Yang, "Vietnam Seeks ASEAN Discussion over South China Sea."

51. Gong Jianhua, "Modernizing Navy for Self-defense," *China Daily*, July 13, 2010. Also see "China Will Never Waive Its Right to Protect Its Core Interest with Military Means"; and "American Shadow over South China Sea," *Global Times,* June 26, 2010.

52. "The South China Sea: China's 'Indisputable Sovereignty' Versus America's 'National Interest'," *China-U.S. Focus,* June 23, 2011, <http://chinausfocus.com/peace-security/>, accessed March 1, 2012.

that they viewed the South China Sea as a core interest, I immediately responded and said we don't agree with that."[53] In turn, she told the ARF 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."[54] The message was aimed at Beijing. Similar signals on the South China Sea were issued by the U.S., backed up by India, at the ARF meetings in 2011 and 2012.

Legislative claims have been a continuing feature of PRC policy. Its 1992 Law of the People's Republic of China on its Territorial Waters and Contiguous Area reiterated claims in the South China Sea and authorized the use of force to keep out foreign naval and research vessels. China announced that local elections covering their claimed areas in the South China Sea would be held in May 2007. This was followed in November by establishment of a new district-level administrative region within Hainan Province called the Sansha District, with jurisdiction over the Macclesfield (Zhongsha Qundao), Paracel, and Spratly areas. Woody Island became the site for Beijing's declaration of a municipal-level framework in June 2012. Sansha City, complete with around 1,000 inhabitants and augmented military garrison, held mayoral elections in July 2012, to further buttress Beijing's sovereignty claims in the South China Sea.

Such political-legislative consolidation by the PRC was matched by military consolidation. This included **c**alls in 2009 by naval chiefs for further Chinese bases to be built in the South China Sea.[55] Chinese war game deployments during April 2010 brought Northern Command destroyers, frigates, and submarines down from the Bohai Sea that stopped en route at the Chinese early warning radar station at Fiery Cross Reef in the Spratlys, along with simulated bombing raids in the South China Sea by Chinese naval aviators. The PRC's increased naval deployments were augmented by its dispatch of armed ships from its Fisheries Administration wing, sent in April 2010 to "reinforce China's fishing rights of the waters around [the] Nansha Islands."[56] Criticisms of China at the ARF Foreign Ministers meeting in July 2010 were immediately followed by further large-scale PRC military exercises in the

53. Hillary Clinton, "Interview with Greg Sheridan of The Australian," November 8, 2010, <http://www.state.gov/secretary/rm/2010/11/150671.htm>, accessed March 1, 2012.

54. "Foreign Minister Warns of South China Sea Issue," *People's Daily,* July 26, 2010.

55. Russell Hsiao, "PLA General Advises Building Bases in the South China Sea," *China Brief* 9:13 (June 24, 2009), pp. 1–2.

56. "China Starts Regular Patrols in the South China Sea," *People's Daily*, April 26, 2010.

South China Sea involving warships, submarines, and combat aircraft, firing live ammunition. The *Jiaolong-2010* exercises in November involved Chinese warships and planes in more live-fire deployments and marine amphibious operations. PRC sources explained this in robust terms: "We chose that theater to show our naval capacity and strength. . . . Some countries [i.e., the U.S.] have intervened in the South China Sea in recent years, jointly conducting military exercises with our neighboring countries, so it's time for us to oppose these interventions."[57]

In August and November 2011, the sea trials of China's *Liaoning,* a converted Russian aircraft carrier formally commissioned in September 2012, together with plans to build more carriers domestically, spurred talk of a Chinese carrier fleet most likely being established within the South China Sea Command. This would project PRC sea power deeper into the region against other littoral states that have no such carrier capability. The newly commissioned *Jinggangshan* amphibious dock landing ship, operated under the South China Sea Fleet, conducted air and sea operations in February 2012.

The PRC's military presence runs from Hainan Island through the Paracels down to the Spratlys. In 2009, China's readiness to stand up to what it saw as intrusive U.S. activity off Hainan in the USNS *Impeccable* incident, exposed varying legal perceptions of the disputed waters. The U.S. view focused on international waters and freedom of transit; the Chinese saw the issue as sovereignty and EEZ rights.[58] Moreover, Hainan Island includes the Sanya deep-water submarine base. September 2010 saw the deployment of nuclear-powered *Shang*-class attack submarines out of Sanya, amid speculation that they were designed for power projection into the South China Sea.[59]

In the Paracels, the PRC military presence is centered on Woody Island. Its two square kilometers include a 350-meter-long pier, an artificial harbor, a 2,600-meter-long airstrip, oil tanks, Silkworm anti-ship cruise missiles installations, gun emplacements, and ammunition storage bunkers. July 2012 saw the announcement of a permanent military garrison for the newly proclaimed

57. Deng Jingyin, "Chinese Marine Corps Stages Live-action Drill in South China Sea," *Global Times,* November 3, 2010.

58. Raul (Pete) Pedrozo, "Preserving Navigational Rights and Freedoms: The Right to Conduct Military Activities in China's Exclusive Economic Zone," *Chinese Journal of International Law* 9:1 (March 2010), pp. 9–29; Zhang Haiwen, "Is It Safeguarding the Freedom of Navigation or Maritime Hegemony of the United States?" ibid., pp. 31–48.

59. Hsiao, "China's New Submarines and Deployment Patterns: Aimed at South China Sea?" *China Brief* 9:21 (October 22, 2010), pp. 1–2.

city of Sansha, with troops earmarked for general duties in the South China Sea region. An artificial harbor has been constructed at the most southerly Paracels location, Triton Island (Zhongjian Dao). Meanwhile, further south, although Vietnam has more holdings in the Spratlys than China, PRC military capabilities vis-à-vis such rival claimants are increasing quickly. As of 2012, the PRC had installations on Cuarteron, Fiery Cross, Hughes, Johnson, Mischief, Gaven, and Subi Reefs ranging from small three-story buildings with helipads to refueling docks.

China's energy interests have also manifested themselves ever more strongly in the South China Sea. The launch in June 2011 by the CNOOC of its advanced oil and gas drilling platform for dispatch to the South China Sea enables the drilling of oil and gas in waters up to 3,000 meters deep in waters much further south than previously. The platform has been dubbed an "Offshore Oil Aircraft Carrier" by the Chinese media; CNOOC chairman Wang Yilin asserted that "deep-sea oil drilling devices are our moving territory and are essential for realizing our offshore oil exploitation strategy."[60]

China has also sought to block energy companies from concluding deals with its rivals in waters it claims. These include Vietnamese deals with British Petroleum in 2007, with ExxonMobil in 2008, and with India's ONGC Videsh in 2011 and 2012. The PRC line was simple: "Our consistent position is that we are opposed to any country engaged in oil and gas exploration and development activities in waters under China's jurisdiction. We hope foreign countries do not get involved in the South China Sea dispute."[61] In a sign of greater assertiveness and involvement in the region, India rejected Chinese criticisms and announced its intentions to go ahead with agreed explorations with Vietnam in Block-128.

China's mantra under its self-proclaimed "Good Neighbor Policy" (Mulin Youhao Zhengce) remains "shelving disputes and conducting joint development" (*gezhi zhengyi, gongtong kaifa*), but with the proviso that "to set aside dispute does not mean giving up sovereignty."[62] In other words, shelved dispute claims can be taken down from the shelf to be pursued at some future point. Other South China Sea claimants remain anxious that China is ready

60. Wang Wei, "Deep Ambitions," *Global Times*, July 15, 2011.

61. Chinese Foreign Ministry spokesperson Jiang Yu, cited in "India Makes Waves with South China Sea Oil and Gas Exploration," *People's Daily*, September 18, 2011.

62. Ministry of Foreign Affairs of the PRC, "Set Aside Dispute and Pursue Joint Development," November 17, 2001, <http://www.mfa.gov.cn/eng/ziliao/3602/3604/t18023.htm>, accessed March 1, 2012.

to avoid conflict resolution negotiations "now" because it hopes to eventually settle the matter from a stronger power position. This might be through direct action, on the model of its occupation of the Paracels in 1974, or by increased leverage in negotiations, especially in bilateral settings where China's power disparity with individual ASEAN states will be magnified. This represents what Dosch calls "order building on Chinese terms."[63] Indeed, China's general power rise is already enabling greater PRC assertiveness. Some comments in state media were ominous. In 2011, for example, articles headlined "Some Countries Will Pay for Misjudging China's Sovereignty" (*People's Daily,* August 3) and "Time to Teach Those around South China Sea a Lesson" (*Global Times,* September 29).

## OPTIONS

At first sight, the most direct way forward for settling the South China Sea problem would be through application of UNCLOS. Under its rules, various maritime zones can be calculated from mainland coasts and from properly recognizable "islands." Such maritime jurisdictions cover "territorial seas" (12 nautical miles out), "contiguous zones" (24 nautical miles out), EEZs (200 nautical miles out), and "continental shelf extensions" (200–350 nautical miles out). The "island" criteria for EEZs are that islands are above water at high tide and are inhabitable or able to sustain an economic life of their own. Artificial islands, such as China's concrete build-up of Mischief Reef, only have a right to a 500-meter-wide "security zone." Back in 1999, Tønnesson argued that the Spratlys do not fulfil the UNCLOS "island" criteria for 200-mile EEZs, so that actually "the best way of resolving the conflict peacefully may be simply to agree that there are no 'islands' [UNCLOS-style] there."[64]

In terms of thinking in, around, and out of the UNCLOS box, what are the options for the South China Sea? Various solutions directly deal with the sovereignty issue: (1) dividing sovereignty, whereby disputed present de facto lines of control become agreed future de jure boundaries; (2) joint sovereignty;

63. Jörn Dosch, "The Spratly Islands Dispute: Order-Building on China's Terms?" *Harvard International Review* 33:2 (August 2011), <http://hir.harvard.edu/the-spratly-islands-dispute-order-building-on-china-s-terms>, accessed March 1, 2012.

64. Stein Tønnesson, "Can Conflicts Be Solved by Shelving Disputes?" *Security Dialogue* 30:2 (June 1999), pp. 181–82. Also see Clive Schofield and Dustin Kuan-Hsiung Wang, "The Regime of Islands under UNCLOS: Implications for the South China Sea," *Special Report* (NBR) 37 (February 2012), pp. 62–77.

(3) pooling sovereignty into some sort of higher Joint Authority; (4) third-party adjudication; or (5) ICJ adjudication. However, while precedents for these exist generally and some Southeast Asian nations—Indonesia, Malaysia, and Singapore—have used the ICJ to resolve smaller sovereignty matters, there is little political will for China and its rivals to settle for less than full control of such large maritime expanses. Various solutions in effect shelve or sideline the sovereignty issue, including (6) Fidel Ramos's stewardship concept;[65] (7) CBMs; (8) demilitarization; and (9) joint cooperation-development. However, such approaches have been bedeviled by questions of control and relative share. Demilitarization proposals fall afoul of the sense that claimants, especially China, have wider interests to maintain from existing South China Sea holdings.

All parties in the South China Sea dispute have accepted the principle of joint cooperation-development, yet they have failed broadly to translate that into practice. On the one hand, energy development is particularly problematic, as we see from the 2008 collapse of the tripartite PRC-Philippines-Vietnam exploration agreement. Similar issues appear in the context of Chinese criticisms of Vietnamese and Filipino allocations of exploration rights to Indian and Western companies in disputed waters in 2007, 2008, and 2011. On the other hand, there is the positive precedent of the adjacent Malaysia-Thailand Joint Development Area set up in disputed waters in the Gulf of Thailand in 1990 to manage the gas reserves there.

## CONCLUSIONS

In many ways, the South China Sea still reflects Leifer's sense at a Track-2 workshop in 1999 that "a combination of a lack of any willingness to compromise over sovereignty on the part of the claimant states, matched by their unwillingness or inability to attempt any method of conflict resolution, gives rise to the current stalemate."[66] That situation has remained largely unchanged. Discussions have mostly remained at the level of desultory CBMs with only marginal cooperation schemes actually being implemented.

Nevertheless, one possibility, termed the international/regional *socialization* argument, suggests that ongoing Track-1 and Track-2 discussions may

65. In 1995, then-Philippine President Fidel Ramos proposed the concept of stewardship: "Each disputed island should be placed under the stewardship, meaning the primary responsibility, of the claimant country closest to it geographically, on the understanding that the steward country accommodates the other claimants' need for shelter, anchorage, and other peaceful pursuits."

66. Michael Leifer, "Stalemate in the South China Sea," in *Perspectives on the Conflict in the South China Sea*: *Workshop Proceedings*, ed. Snildal, p. 9.

help shape a PRC that in the long term is both benign and cooperative. As this article has attempted to demonstrate, conflict irresolution, the failure to agree upon sovereignty claims, remains apparent, partly through drift and partly because of deliberate avoidance of deadlocked, thus unfruitful, efforts to resolve the sovereignty dilemma. Ongoing discussions may be little better than holding operations. However, they may have longer-term benefits. Valencia posits that the "gossamer web of cooperative commitments and functional arrangements . . . will eventually result in a web too politically costly to undo" for the PRC.[67] On the part of ASEAN states, and indeed ASEAN itself, such webs may represent attempts to socialize and habituate the PRC into long-term non-confrontational dynamics.

Scientific research, maritime safety, and environmental protection seem to be the least fraught issues to move forward on.[68] Cooperation over piracy threats to maritime security is also another shared interest among rival claimants. Resources, especially energy imperatives, may be the wild card in the pack, as China's increasing energy needs bolster its desire to control the South China Sea and its envisaged bountiful oil and gas fields. These imperatives also highlight the importance of who controls access through the South China Sea into the Indian Ocean. Because the Chinese navy in a decade or two will probably be in a much stronger position to enforce Chinese claims in the South China Sea fields on PRC terms, it is probably better for ASEAN countries to try to lock the Chinese earlier into joint exploration and exploitation agreements. Increasing economic interdependence may lessen the urgency of sovereignty claims. Such processes could generate some sort of cooperative management regime for the South China Sea in which a convergence of expectations, procedures, and norms arise over time.

Failing that, a final *realism* twist, in international relations terms, may be that old-fashioned strategic balancing by regional states with outsiders (above all the U.S.) will maintain the status quo for the foreseeable future.[69] The U.S.-Japan-Australia naval exercises held in the South China Sea in July 2011

67. Valencia, "Whither the South Sea Disputes?" in *Energy and Geopolitics in the South China Sea* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 72, 73.

68. Aldo Chircop, "Regional Cooperation in Marine Environmental Protection in the South China Sea," *Ocean Development & International Law* 41:4 (December 2010), pp. 334–56; Shih-Ming Kao, Nathaniel Pearre, and Jeremy Firestone, "Regional Cooperation in the South China Sea: Analysis of Existing Practices and Prospect," ibid., 43:3 (August 2012), pp. 283–95.

69. Christopher Freise, "By Invitation, Mostly: The International Politics of the U.S. Security Presence, China, and the South China Sea," *RSIS Working Papers,* 247 (August 28, 2012).

were one example of this external factor. Closer deployment of U.S. forces was another. In the words of U.S. Admiral Jonathan Greenert, "[I]n Southeast Asia, we will station several of our newest littoral combat ships at Singapore . . . to maximize our forward presence while strengthening our alliances and partnerships. . . . [O]ur ships will conduct cooperative operations around the South China Sea."[70] The benefits of such balancing may become apparent because balancing is itself a stabilizing process. This approach may also help push the PRC to adopt more conciliatory and flexible attitudes regionally in order to deter its littoral rivals from balancing with outside powers.

70. Admiral Jonathan Greenert, "Navy 2025: Forward Warfighters," *Proceedings* (U.S. Naval Institute), December 2011, <http://www.usni.org/magazines/proceedings/2011-12/navy-2025-forward-warfighters>, accessed March 1, 2012.