MANAGING CONFLICT IN TROUBLED WATERS:
THE CASE OF THE SOUTH CHINA SEA

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Professor Yale H. Ferguson
and approved by

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ABSTRACT

Managing Conflict In Troubled Waters: The Case of the South China Sea

By NALANDA ROY

Dissertation Director: Dr. Yale H. Ferguson

The South China Sea has recently become the locus of disputes that have the potential of escalating into serious international conflicts. It is a critical region among the disputing countries because of its geographic position in major oceanic routes used by crude oil tankers from the Persian Gulf to Asia and for transporting goods to the rest of the world. It is important, as well, for its promising offshore oil and gas reserves, other undersea resources, and rich marine life.

This dissertation addresses three questions: First, what factors increase the probability of conflicts in the South China Sea region? Second, what is the role of ASEAN in managing conflicts in the SCS region? And third, what is the likely utility of other conflict prevention mechanisms in the SCS region?

Following a careful review of existing literature relevant to the South China Sea disputes, the study assesses the effectiveness of UNCLOS as an international legal regime in addressing them. It also discusses each of the disputing parties, their individual stakes in specific disputes, and the long history and current status of the disputes. Special attention is paid to the involvement of China as well as “external” powers like the United States and India. The dissertation additionally weighs ASEAN’s role in the development and functioning of Asia-Pacific multilateralism, and its limited capacity to create a sense of regional community and address SCS disputes effectively. ASEAN’s main role has
been one of reiterating the norm of peaceful resolution of conflicts and engaging the parties in successive conferences, workshops, and supposed confidence-building measures. Although this study does suggest a few more such measures that might help to moderate tensions, it ends on a pessimistic note about the prospect of future armed conflicts in the South China Sea.
ACKNOWLEDGEMENTS

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I am deeply thankful and indebted to my family. My sweet little daughter Yashaswini and my husband, Mr. Chandrashis Bhowmick, have provided constant support and encouragement to achieve my goal. I am also indebted to my parents and my brother, whose silent support has boosted my morale during the course of my work. This dissertation is dedicated to my entire family.

Finally, I would like to thank, Wendy Godek and all my cohorts. Without their support, the production of this dissertation would have been a less pleasant experience. I hope this research will provide some inspiration to other scholars in their future studies.
Dedicated to my beloved God

Source: www.dollsofindia.com/bal_gopal_PZ22_1.jpg
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<td>Anti-access/Area denial</td>
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<td>ADMM Plus</td>
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<td>Alternative Dispute Resolution</td>
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<td>Association of Southeast Asian Nations</td>
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<td>ASEAN+1</td>
<td>ASEAN, China</td>
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<td>ASEAN+3</td>
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<td>Canadian International Development Agency</td>
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<td>Commander-in-Chief of U.S. forces in the Pacific</td>
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<td>CLCS</td>
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<td>CMC</td>
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<td>CNOOC</td>
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<td>China’s comprehensive national power</td>
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<td>EEZ</td>
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<td>Global Environment Facility</td>
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<td>Gross National Production</td>
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<td>Hanoi plan of Action</td>
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<td>Institute of Strategic and Development Studies</td>
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<td>Japanese Coast Guard</td>
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<td>Joint Maritime Seismic Undertaking</td>
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<td>Joint Management Zones</td>
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<td>Incident at Sea</td>
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<td>Intergovernmental Panel on Climate Change</td>
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<td>Information Sharing Center</td>
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<td>International Ship and Port Security Code</td>
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<td>International Tribunal for the Law of the Sea</td>
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<td>Joint Development Zone</td>
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<td>Joint Maritime Seismic Undertaking</td>
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<td>KM</td>
<td>Kilometers</td>
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<td>LNG</td>
<td>Liquefied Natural Gas</td>
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<td>LOSC</td>
<td>Law of the Sea Convention</td>
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<tr>
<td>MMCA</td>
<td>Military Maritime Consultative Agreement</td>
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<td>Maritime Safety Committee</td>
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<td>MSR</td>
<td>Marine Scientific Research</td>
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<td>NAM</td>
<td>Non-aligned Movement</td>
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<td>NIEs</td>
<td>Newly Industrialized Economies</td>
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<td>NISCS</td>
<td>National Institute for the South China Sea Studies</td>
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<td>NM</td>
<td>Nautical Miles</td>
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<td>NOCs</td>
<td>National Oil Companies</td>
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<td>NPCSD</td>
<td>North Pacific Co-operative Security Dialogue</td>
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<td>NSR</td>
<td>Northern Sea Route</td>
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<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>ONGC</td>
<td>Indian Oil and Natural Gas Corporation</td>
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<td>OVL</td>
<td>ONGC Videsh</td>
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<td>PDR</td>
<td>Lao People’s Democratic Republic</td>
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<td>PEMSEA</td>
<td>Partnerships in Environmental Management for the Seas of East Asia</td>
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<td>PLA</td>
<td>People’s Liberation Army</td>
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<td>PLAN</td>
<td>People’s Liberation Army Navy</td>
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<td>PNOC</td>
<td>Philippine National Oil Company</td>
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<td>POK</td>
<td>Pakistan occupied Kashmir</td>
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<td>PPP</td>
<td>Public-Private Partnership</td>
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<td>PSI</td>
<td>Proliferation Security Initiative</td>
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<td>RECAAP</td>
<td>Regional Cooperation Agreement on Anti-Piracy in Asia</td>
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<td>RIMPAC</td>
<td>Rim of the Pacific Exercise</td>
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<tr>
<td>RMSI</td>
<td>Regional Maritime Security Initiative</td>
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<td>ROC</td>
<td>Republic of China (Taiwan)</td>
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<td>SAP</td>
<td>Strategic Action Program</td>
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<td>SAR</td>
<td>Search and Rescue</td>
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<td>SDFs</td>
<td>Self-defense Forces</td>
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<td>SKM</td>
<td>Square Kilometers</td>
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<td>SMA</td>
<td>Spratly Management Authority</td>
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<td>SEANFWZ</td>
<td>Southeast Asia Nuclear Free Weapons Zone</td>
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<td>SPR</td>
<td>Strategic Petroleum Reserve</td>
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<tr>
<td>SRV</td>
<td>Socialist Republic of Vietnam</td>
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<tr>
<td>SCS</td>
<td>South China Sea</td>
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<td>SEACAT</td>
<td>Southeast Asia Cooperation against Terrorism</td>
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<tr>
<td>SIGINT</td>
<td>Signals Intelligence</td>
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<tr>
<td>SLOCS</td>
<td>Sea Lanes of Communication</td>
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<td>SCS</td>
<td>South China Sea</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>TAC</td>
<td>Treaty of Amity and Cooperation in Southeast Asia</td>
</tr>
<tr>
<td>TCF</td>
<td>Trillion Cubic Feet</td>
</tr>
<tr>
<td>TPP</td>
<td>Trans-Pacific Partnership Free Trade Agreement</td>
</tr>
<tr>
<td>TS</td>
<td>Territorial Sea</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>United Nations Environment Program</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<td>USEIA</td>
<td>US Energy Information Administration</td>
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<td>Visiting Forces Agreement</td>
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<td>Weapons of Mass Destruction</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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<td>ZOPFAN</td>
<td>Zone of Peace, Freedom and Neutrality</td>
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CHAPTER 1: INTRODUCTION

“All warfare is based on deception. Hence, when able to attack, we must seem unable; when using our forces, we must seem inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near. Hold out baits to entice the enemy. Feign disorder, and crush him.”

Sun Tzu, *The Art of War*

Scope and Significance of this study

Southeast Asia has long been of significant interest to scholars and its importance tends to grow not just politically and economically but also militarily. Besides being an important engine for global economic growth, Southeast Asia has also witnessed a plethora of important political changes and the emergence of new security threats. The end of the Cold War and the Cambodian conflict, closer relations between Vietnam and ASEAN (Association of Southeast Asian Nations) members, and the tentative rapprochement between Vietnam and China may have set the stage for a positive regional security relationship. However, historical mistrust, enduring territorial disputes, and competing maritime claims have combined to weaken an at least partially successful regional security structure.¹

Southeast Asian countries will face enormous challenges over the next decade. They will have to be competent not just in sustaining economic growth and addressing environmental issues, but they must also keep up with increasing energy demand and—and as this dissertation emphasizes—manage potential conflicts in the South China Sea (SCS) region. The current development challenges are an indication of dynamism, on the
one hand, and vulnerability, on the other. Any carelessness may lead to severe negative developments and instability.²

Southeast Asia is situated between the southwest provinces of China and the east of India. This region includes the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (PDR), Malaysia, Myanmar,³ Philippines, Singapore, Thailand, Vietnam, and, arguably, the Democratic Republic of Timor-Leste (formerly known as East Timor).⁴ Southeast Asia’s position as a bridge between two oceans as well as between the continents of Asia and Oceania gives the region a distinctive identity and importance. It is not only an important area for trade and transport but it also includes vital sea lanes of communication (SLOCs), which account for 32 percent of world oil net trade and 27 percent of world gas net trade.⁵ Because of maritime disputes in the SCS and border conflicts with Southeast Asia, the region has become a priority for China.⁶ Map 1.2 shows the location of islands in the SCS region.

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³ Burma was renamed Myanmar by the military government in 1989 and the name is recognized by the United Nations and most Asian countries.


⁵ Ibid, 56.

⁶ Ibid.
Before the 20th century, the SCS was of little interest to any of the potential claimants. This region was not considered a particularly dangerous zone; however, this has obviously changed. During the 1930s, France came to the region and claimed both
the Paracel and the Spratly Islands. Japan took charge following the defeat of France in World War II, and the SCS fell under the Japanese administrative system. After the withdrawal of Japan following the war, the importance of the SCS has been gradually recognized by its neighboring states. The SCS disputes mainly focus on two archipelagoes: the Paracel and the Spratly Islands. All the claimant states in the SCS dispute have different bases for their claims to land features and maritime zones in this highly contested area. The claims to sovereignty over the various features in the SCS are mostly based on acts of discovery, historic use, and occupation. The emergence of the United Nations Convention on the Law of the Sea (UNCLOS) in the 1970s provided an incentive to put forward claims to huge maritime zones.7

China

Southeast Asia is the first region in which China has unleashed its soft power strategy.8 In fact, this region also offers a window through which the world has witnessed China’s growing influence. China’s assertions of sovereignty in the SCS rest on historical claims of discovery and occupation. They date back to the twelfth century Sung dynasty when references to the SCS were made in Chou Ch’u-fei’s Ling-Wai- tai-ta or Information on What Lies Beyond the Passes. There are also references dating back to the eighteenth century Qing dynasty.9 Some records indicate that the Chinese marines discovered the Spratly Islands more than 2,100 years ago during the time of the Han


Dynasty.\textsuperscript{10} China claims that it began to exercise jurisdiction over the Spratlys as early as the Ming Dynasty (fourteenth to seventeenth century).\textsuperscript{11} Chinese records from the twelfth through the seventeenth centuries occasionally reference the islands and include maps.\textsuperscript{12} Chinese presence in the Spratly region has been documented from the nineteenth century onward\textsuperscript{13} when fishermen from Hainan and other parts of southern China often visited these islands. Records also indicate the presence of small-scale settlements in the Spratlys in the past.\textsuperscript{14}

China, along with Taiwan and Vietnam, claim the Paracel Islands. All of the claims are based on a number of historical usages and prior discovery. Beginning in the nineteenth century to the early twentieth century, China made claims to the Paracel Islands without effective occupation.\textsuperscript{15} Chinese ships sailed across the SCS 2,000 years ago and used the sea as a regular navigational route during the Han dynasty (206-220 A.D.). As Chinese voyages increased in frequency and range during the Tang Dynasty (618-906 A.D.), so did Chinese awareness of the Spratlys. Chinese archaeologists have even found some Chinese objects, which are considered to be evidence of China’s


\textsuperscript{11} Ibid, 3.


\textsuperscript{13} Valencia, Van Dyke, and Ludwig, \textit{Sharing the Resources of the South China Sea}, 21.

\textsuperscript{14} R. Haller-Trost, “International Law and the History of the Claims to the Spratly Islands 10” (Paper presented at the South China Sea Conference, American Enterprise Institute, September 7-9, 1994), 11.

ownership of the territories since ancient times. An enormous amount of historical literature has also been presented by China to substantiate its claim.

In 1876, the first formal sovereignty claim was made when China’s ambassador to England claimed the Paracel Islands as Chinese territory. However, British troops destroyed several pirate camps located on some of the islands in the late eighteenth century and, in 1877, the British claimed two territories in the area: the Spratly Islands and Amboyna Cay. Chinese authors assert that China has met the requirements found in the Isle of Palmas arbitration by effectively exercising sovereignty over the Spratly islets without serious challenge for centuries until the French intruded in 1933. France first established a de facto physical control of seven of the larger territories and was followed by Japan in 1933. By the end of March 1939, Japanese forces occupied the Spratly Islands. They stationed troops on the Spratly Islands and put a submarine base on both Itu Aba and Namyit Island in the Tizard Bank area. Following the surrender of Japanese troops in 1945, Japan renounced all rights to the Spratlys in Article 2 of the Treaty of Peace signed in 1951. Chinese naval patrols were then ordered to the Spratly Islands. China also protested and erased markers set by the French. Finally, in 1946–47,

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17 Ibid, 64.

18 Wolfgang Schippke, “The History of the Spratly Islands in the South China Sea,” http://www.southchinasea.org/docs/Schippke/1s0_h.html.

19 The Island of Palmas case involved a territorial dispute over the Island of Palmas between the Netherlands and the United States. It is one of the most highly influential precedents dealing with island territorial conflict.


21 Ibid, 15.
China published official names for the islands and incorporated them into the Guangdong province.\textsuperscript{22} The Peace Treaty, however, did not actually state who owned the Spratlys.

Although China claims the SCS islands “were always a part of Chinese territory,”\textsuperscript{23} many commentators criticize this argument as weak. First of all, China’s exercise of authority over the islands was only occasional and also Chinese records were unable to provide any compelling evidence of such effective occupation of the Spratlys.\textsuperscript{24} The Chinese claim to the Spratly Islands was further weakened by a 1928 Chinese commission report, which stated that the Paracel Islands were the southernmost territory of China.\textsuperscript{25} China appears to have had an interest in the Spratly Islands during different historical periods. However, no activity on the Chinese part could be characterized as “occupation” until 1988 when China built a marine observatory on Fiery Cross Reef.\textsuperscript{26}

**Taiwan**

With the involvement of Taiwan in the SCS dispute, affairs became more complicated. Taiwan not only refers to itself as the Republic of China (ROC), but also historically insisted that it was the legitimate government of China.\textsuperscript{27} The legal basis for Taiwan’s claims in the SCS is China’s longstanding historic ties to the islands. The ROC was the first government to establish a physical presence on the Spratlys when the

\begin{footnotes}
\item[25] Dzurek, “The Spratly Islands Dispute: Who’s On First?”
\item[26] Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 5.
\item[27] Ibid, 29.
\end{footnotes}
Japanese withdrew following World War II. They have occupied the largest island in the Spratly group, Itu Aba, since 1956. Their unchallenged physical presence on this island for more than five decades may support a legal claim to sovereignty over the islands. However, other states have continuously rejected that claim.

On March 1993, Taiwan adopted a Policy Guideline for the SCS, which asserted sovereignty over the Spratly Islands, the Paracel Islands, Macclesfield Bank, and the Pratas Islands. Taiwan also claims an Exclusive Economic Zone (EEZ) of 200 nautical miles (nms) and the natural prolongation of the continental shelf in the Gulf of Tonkin. The competing claims to the Spratlys were intensified after the outbreak of the Sino-Japanese war in the early 1930s. After this war, countries like Japan and France took advantage of Chinese weakness by occupying the Spratlys. Nevertheless, Taiwan maintained its sovereignty over the Spratlys in 1947 and even insisted that although the 1951 San Francisco Treaty did not include the Spratlys as part of Taiwan, its sovereignty over the Spratlys cannot be nullified.

Brunei

Brunei currently claims two reefs, the first of which is Louisa Reef, also claimed by Malaysia, and Riflemen Bank. However, there is disagreement regarding Brunei’s claims in the Spratlys. Some say that Brunei claims two territories in the Spratly group based on the prolongation of its continental shelf. Others argue that Brunei’s only claim

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29 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea, 29–30.
30 Timo Kivimaki, ed., War or Peace in The South China Sea?, 29.
31 Bob Catley and Makmur Keliat, Spratlys: The Dispute in the SCS (Singapore: Ashgate, 1997), 34.
is to the continental shelf and an EEZ.\textsuperscript{32} The Rifleman Bank claim was published by Brunei in a 1988 map, in which the extension of its continental shelf was based on a 350-nautical mile continental shelf claim. Brunei’s claim to the Louisa Reef is weak because Louisa Reef only has only two small rocks that are above water at high tide. Furthermore, these rocks do not have the capacity to generate an EEZ or continental shelf under article 121 (3) of UNCLOS.\textsuperscript{33}

**Vietnam**

Vietnam asserts that,

…it has maintained effective occupation of the two archipelagos [Paracel and partly Islands] at least since the 17\textsuperscript{th} century when they were not under the sovereignty of any country and the Vietnamese state has exercised effectively, continuously and peacefully its sovereignty over the two archipelagos until the time when they were invaded by the Chinese armed forces.\textsuperscript{34}

Vietnam argues that contact was first made with the Paracel Islands during the Nguyen dynasty (sixteenth to nineteenth centuries) and court documents from the reign of King Le Thanh Tong (fifteenth century) also prove that the Spratlys were at that time considered to be Vietnamese territory.\textsuperscript{35} Heinzig states: “Vietnamese argumentation, covering the period until the end of the 19\textsuperscript{th} century refers exclusively to the Paracels.”\textsuperscript{36} The Vietnamese government issued two white papers – one in 1979 and another in 1982 – containing its compiled historical evidence regarding Vietnam’s sovereignty over the


\textsuperscript{33} Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 38.

\textsuperscript{34} Dzurek, “The Spratly Islands Dispute: Who's On First?”, 11.

\textsuperscript{35} Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 30.

\textsuperscript{36} Dzurek, “The Spratly Islands Dispute: Who’s On First?”, 8.
Hoang Sa (or Paracel) and Trung Sa (or Spratly) Archipelagos.\textsuperscript{37} Vietnam’s claim is based on rights of succession as the heir to the French colonial regime, which first occupied islands in the Spratly in 1933. France colonized Vietnam in the nineteenth century and hence occupied the Paracel Islands. However, the French claims were never accepted and thus the existence of any lawful title that allows Vietnam a claim by right of cession from France is unconvincing.\textsuperscript{38} Vietnam has drawn straight baselines along its coast rather than laying down claims to maritime zones in the SCS. This arrangement raised objections from many states. Although the Chinese controlled the Paracel Islands after the Sino-Vietnam clash in 1974, Vietnam still maintains its territorial claims in this region. The strongest factor in Vietnam’s favor is its physical possession and occupation of the largest number of Spratly islands and geographic formations.\textsuperscript{39} However, Vietnam’s evidence is also considered weak because it failed to specifically identify and distinguish between the Spratlys and the Paracels.

**Philippines**

The Philippines claim to most of the Spratly Islands is more recent than those of China and Vietnam and is based on a theory that the islands were *res nullius*, or abandoned, after World War II. The Philippines owned some of the islands either through discovery or prescriptive acquisition and maintains that its continental shelf extension also acts as a basis for its claim. The claim, however, does not meet the requirements of natural prolongation as stipulated in the UNLOS Convention.\textsuperscript{40} Besides, the continental

\textsuperscript{37}Joyner, “The Spratly Islands Dispute in the South China Sea,” 201.

\textsuperscript{38}Ibid.

\textsuperscript{39}Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 33.

\textsuperscript{40}Ibid, 35.
shelf provisions of the UNLOS Convention refers only to the seabed and subsoil, and it is not an instrument for claiming title to features that are permanently above the sea level. In 1947, a Filipino businessman and lawyer named Tomas Cloma “discovered” and established settlement in the islands. Cloma named them Kalayaan, or Freedomland, and appointed himself as the Chair of the Supreme Council. Cloma’s declaration embraced an area extending from Palawan and included 53 territorial features. The Philippine Foreign Secretary Carlos Garcia supported this declaration and in December 1956 issued the Garcia Declaration. According to this declaration, the area claimed by Cloma was to be regarded as *terra nullius*. This act triggered severe responses from South Vietnam, which immediately began occupying islands in the area. China and France also challenged the claims; however, Cloma’s occupation lasted only for a couple of months. Later, in 1971 and again in 1978, President Marcos formally declared the Kalayaan Island to be part of the Philippines. Marcos also issued a separate Presidential Decree in 1978 claiming an EEZ around all the Philippine islands. This decree not only can be interpreted as including the Kalayaan islands but it also states that the Philippines’ ratification of the Law of the Sea Convention “shall not in any manner impair or prejudice” its sovereignty over the Kalayaan Islands.

Another branch of the *res nullius* claim is based on the 1951 San Francisco Peace treaty. According to the Philippines, under this treaty, the Spratlys were de facto under

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41 Joyner, “The Spratly Islands Dispute in the South China Sea,” 203.


43 Ibid.

the trusteeship of the Allied Powers. They further argued that although Japan had acquired the islands, its sovereignty over the Spratlys was renounced in the 1951 San Francisco Treaty without ceding them to any other country. The Philippines has reinforced its *res nullius/occupation* claims by sanctioning drilling off the Reed Bank area since 1971 and by occupying eight of the territorial features since 1978. Their claims were criticized because Cloma’s claim was neither approved nor disapproved by the Philippine government.\(^45\) The 1955 government declaration on straight baselines around the Philippine archipelago did not include the Kalayaan area. Even the continental shelf claim is weak because the deep Palawan Trough that separates the Spratly Islands from the Philippine archipelago has no natural prolongation as required by Article 76 of the UNLOS Convention.\(^46\)

**Malaysia**

Malaysia is the only claimant that provides no historical records. Malaysia claims 12 islands and territorial features in the Spratly area and justifies its claim based on continental shelf extension and discovery/occupation. Malaysia’s continental shelf claim arises out of the Geneva Conventions of 1958 pertaining to territorial waters and continental shelf boundaries.\(^47\) Malaysia signed the convention in 1960 and passed its own Continental Shelf Act in 1966 and 1969, defining its continental shelf as “the seabed and subsoil of submarine areas adjacent to the coast of Malaysia up to 200 meters deep or

\(^{45}\) Van Dyke and Bennett, “Islands and the Delimitation of Ocean Space in the South China Sea.”

\(^{46}\) Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 35.

the limit of exploitability.” In 1979, Malaysia published a “Map Showing the Territorial Waters and Continental Shelf Boundaries,” thereby defining its continental shelf area and claiming all islands arising from it as its own. In 1983, Malaysia’s Deputy Minister stated that Malaysia’s claim to Amboyna Cay was simply a question of geography and, in 1995, Malaysia’s Prime Minister Mahathir visited Teremebu Layang-Layang to reaffirm Malaysia’s claim to this territory. Although Malaysia may have asserted this claim only in order to protect its other maritime zones, these claims are difficult to justify under continental shelf theory. Malaysian officials recognize their weaknesses in claiming sovereignty over islands based on the natural prolongation of the continental shelf and, hence, they tend to emphasize their claims based on discovery and occupation of the islands. However, Malaysia’s claims are relatively recent and have been vigorously contested by other nations. In order to claim land as *res nullius*, a state must exercise effective control over it and not rely exclusively on discovery.

Thus what we have found from the discussion so far is that the Chinese and Vietnamese claims loop around the Spratlys as well as the Paracels and overlap with the specific claims raised by the Philippines, Malaysia, and Brunei. The Philippine claim to Kalayaan, or Freedomland, overlaps with the Malaysian claim. Currently, Vietnam either occupies or has a presence on 27 territorial features. The Philippines claim nine territorial features. China also has a presence on nine features. Malaysia occupies three territorial features.

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51 Ibid, 16.
features and has a presence on two other islands. Finally, Taiwan occupies only one island.\textsuperscript{52}

**Methodology and Research Questions**

My study began with a selective review of the literature on the South China Sea dispute. Literature included spans various disciplines, including public policy, law, sociology, politics, and economics. This initial review provided a foundational understanding of relevant issues, as well as led to papers, books, and other key sources of information, which I have supplemented with personal communications with various experts. This dissertation is best described as a policy-oriented analytical narrative targeting interested attentive-elite readers including academics and policymakers.

A qualitative historical-comparative methodology has been employed to help generate several qualitative research questions, to reinterpret data, and also to weigh established explanations. My work in its general approach parallels most of the existing literature, although of course – since the SCS situation has been rapidly evolving – this dissertation is much more up-to-date in terms of information. From the knowledge generated by this study, other scholars may derive propositions, in addition to those formulated by the author – for further systematic empirical research and theoretical refinement.

**Research Questions**

This dissertation addresses three main research questions:

1. What factors increase the probability of conflicts in the SCS region?

\textsuperscript{52} Buszynski, “Rising Tensions in the South China Sea.”
2. What is the role of ASEAN in managing conflicts in the SCS region?

3. What is the likely utility of other conflict prevention mechanisms in the SCS region?

Organization of the Dissertation

The organization of this dissertation is as follows. Chapter 1 provides a brief background of Southeast Asia, a statement of the problem, the scope of the study and its significance. This chapter also briefly describes the intended research area – the South China Sea – and surveys in a preliminary fashion the conflicts in the SCS. The chapter ends with a brief discussion of methodologies and an overview of the organization and purpose of the different chapters.

Chapter 2 examines conceptual and theoretical explanations of the SCS dispute in existing literature.

Chapter 3 explains the strategic and economic importance of existing SCS disputes and assesses the effectiveness of UNCLOS as an international regime in addressing them. This chapter also focuses on the disputing parties, their reasons for engaging in specific disputes, and the current status of the disputes.

Chapter 4 reviews the history of the disputes during the Cold War and immediate post-Cold War period, including the involvement of other major powers in the region.

Chapter 5 discusses the involvement of China with other Asian claimants in SCS disputes, as well as “external” powers like the United States and India.

Chapter 6 weighs ASEAN’s role in the development and functioning of Asia-Pacific multilateralism, and the extent to which ASEAN has been successful in creating a sense of regional community and addressing SCS disputes.
Chapter 7 summarizes the findings of the study, considers various policies that might at least help to lessen tensions in the SCS region, and suggests several lines of future research that might prove fruitful for policy-makers and/or academics.
CHAPTER 2: LITERATURE ON THE SOUTH CHINA SEA

“In every element of conflict there is always an opportunity for co-operation.”
Hasjim Djalal

This chapter reviews some of the main studies and themes in the literature on the South China Sea (SCS). Relevant sets of literature are grouped into three different categories based on the research questions addressed by this dissertation: the significance of the resources of the SCS and relevant geopolitics, the role of the Association of Southeast Asian Nations (ASEAN) in mitigating SCS conflict, and, finally, the pathway towards a cooperative management regime in the SCS region.

Significance of SCS Resources and Geopolitics

The literature on the SCS is rich with descriptions of its resources as well as the importance of geopolitics within this region. The SCS is regarded as one of the most dynamic and controversial regions in the world. Multiple issues or matters of concern include territorial sovereignty; disputed claims to islands, rocks, and reefs; jurisdiction over territorial waters, exclusive economic zones, and the seabed; regional and international rights to use the seas for military purposes; maritime security; rapid economic development; and environmental degradation. China has long viewed the “near seas” (the Bohai Gulf, the Yellow Sea, the East China Sea, and the South China Sea) as regions of geostrategic interest. China’s recent public designation of the SCS as a “core national interest” (hexinliyi) is one of the primary reasons numerous observers suggest that China is getting tough. Many view the SCS as being in a state of hope and
prosperity, on the one hand, and uncertainty and threat, on the other.¹ The complex disputes in the SCS seem to be essentially a tangled knot of intractable challenges. Notable incidents include China’s attack on Vietnam regarding the Paracel Islands in 1974, China’s attack on Vietnam near Fiery Cross Reef in 1988, and China’s clash with the Philippines over the Mischief Reef in 1995, as well as other more recent incidents like those of the Impeccable and the USNS Bowditch (to be discussed later). China’s insistence upon “indisputable sovereignty,” supposedly based on historic rights, and the related “Nine-dotted Line Controversy” has only added to tensions in the SCS.

Valencia discusses the significance of the SCS dispute, the lower level of securitization that has characterized the region (at least at sea), the expansion and strengthening of ASEAN, and its growing unity and confidence in its approach to China.² His work maintains that the recent wave of incidents in the SCS may in fact only represent a relative “calm before the storm.”³ In fact, the fear is that increasing competition for energy and fish will exacerbate conflicts and further fuel nationalism and sovereignty issues in the region. In accord with Valencia, this dissertation argues that norms of behavior may play an important role in either resolving the SCS dispute or at least reducing the potential for conflict. As detailed in Chapter 6, for the first time in 2002, with the signing of the Declaration on Conduct of Parties in the South China Sea (DOC), China accepted a multilateral agreement concerning the issue. Since then,


³ Ibid.
ASEAN has attempted to obtain China’s endorsement of more specific international norms of behavior with respect to the issue. China’s attitude towards the area changed both after the Taiwan crisis of 1995–1996 and with the involvement of the United States through the 1998 Visiting Forces Agreement. This dissertation suggests that in situations in which a dominant power has a clear advantage over weaker states, some sort of balance is required to negotiate norms of behavior.

Recent work by Emmers is helpful in analyzing the complex nature of the maritime disputes, the security environment, the strategic significance of the sea, and finally, the long diplomatic road toward the 2002 Declaration.4 His work suggests paying more attention to particular aspects of the problems, which have finally encouraged China and ASEAN members to adopt a slightly modified DOC in mid-2011.5 It is agreed that disputes in the SCS will be resolved under international law and the United Nations Convention on the Law of the Sea (UNCLOS). The code of conduct established at these negotiations is important both for initiating cooperation and building a stable relationship between ASEAN and China. The final DOC guidelines contained only two changes to the original 2002 draft. Point two in the first draft initially stated: “ASEAN will continue its current practice of consulting among themselves before meeting with China.”6 This was revised as: “Parties to the DOC will continue to promote dialogue and consultations in

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5 Ibid.

accordance with the spirit of the DOC.”

The additional eighth point that was included states: “Progress of the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN-China Ministerial Meeting.” Such a move is regarded as a significant and positive step in strengthening the ASEAN–China Strategic Partnership. However, China’s recent call to get ready for combat in order to protect national sovereignty as well as security and development has only increased tensions. China added that it would resolutely oppose any provocative military behavior from Vietnam over the Spratly Islands, and that the Chinese military’s resolve to defend territorial sovereignty and protect its maritime rights is certain.

Swaine and Tellis offer valuable insight about China moving ahead with coercive and/or pacifist non-coercive measures to secure the Chinese heartland against foreign invasion. They argue that the expansion and contraction of control and influence over China’s extended boundary has constantly been a function of the rise and fall in China’s comprehensive national power (CNP). This dissertation focuses on China’s perceived core interests, not only in terms of national sovereignty and territorial integrity but also security and other developmental interests. In fact, China’s intentions as well as its size, population, nuclear capability, and its dealings in the SCS have always kept its South East Asian counterparts guessing. China has pursued three important objectives in the SCS: regional integration, resource control, and enhanced security. Over the past several

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7 Ibid.


decades, Chinese actions have perhaps best been explained in terms of achieving such objectives. The seabed is thought to contain oil and gas, and the islets are said to be strategically significant for sea-lane defense and surveillance for both major as well as minor powers. In addition to the claimants, the disputes involve navigational and economic interests for powers like United States, Japan, and India. In fact, this has become one of the main security problems affecting the region over time, and it also shows that the SCS dispute has broad geopolitical implications that go far beyond drilling oil and managing the fertile marine ecosystem.

No global maritime power can ignore the SCS since all maritime traffic traversing that sea passes between the Spratly and Paracel archipelagos. Hence, the importance of sovereignty and strategic control over these groups of islands is plainly apparent. As Mahan, as cited in Livezey, pointed out “sea power consists in the first place of a proper navy and a proper fleet; but in order to sustain a navy, we must have suitable places where a navy can be protected and refurnished.”

Sea power, it might be argued, is experiencing a major revival today and thus it is clear why the SCS in general, and the Spratly and Paracel Islands in particular, are strategically important. They offer potential for a strong maritime presence as well as places to shelter and re-equip naval forces in the area. It seems that China is following its blue water strategy both to increase prestige and to support pursuit of expanding national interests, much as the US did back in the early twentieth Century.

As far as the “Near Seas” is concerned, China pursues a policy of maintaining strict sovereignty and jurisdiction along with anti-access/area denial (A2/AD) capabilities.
to deter outside influence. Today, sea trade is so internationally intertwined that the disruption of trade to one country will invariably bring dire economic consequences on others. As Modelski and Thompson mention, command of the sea allows its possessor to set the rules of the international order, provide security, and prevent war.\textsuperscript{11} Although an all-out war between the US and China in the foreseeable future is not very likely, and a global naval war is even less likely, at some point there could be a struggle for control of the seas somewhere in the vicinity ranging from the Yellow Sea down to the Straits of Malacca.

China’s “Mahanian” navy may try to muscle out both the USN and its bordering countries, and there is no end to this race. For example, with China’s expanding naval capabilities, Beijing’s admirals have decided to work more closely with other countries. China has even started to cooperate with the Japanese and Indian navies in patrolling against piracy off the coast of Somalia. Experts hope that such cooperation will have a positive normative effect on civilian and military leadership. This patrol coordination policy was implemented in 2012. Beijing’s new move to “go along to get along” presents a picture of avoiding enmity and competition even while expanding its military might abroad. However, matters may be different with respect to China’s perceived core interests in waters closer to China. Reubel argues that if the Chinese could adopt the current US maritime strategy of “A Cooperative Strategy for 21st Century Sea Power” (CS21), then things would work well for all.\textsuperscript{12}


\textsuperscript{12} The three maritime forces of the United States—the Navy, Marine Corps, and Coast Guard have come together and created a unified maritime strategy, which integrates sea power with other elements of national power. It discusses how sea power will work around the world and protect our life. For details, see Robert C. Reubel, “Is China the real Mahanian maritime power of the 21st century?” Information
Valencia, Van Dyke, and Ludwig explain the potential for conflict in the SCS. They argue that territorial disputes impose a serious challenge to any efforts to achieve cooperation in the region. In particular, Valencia emphasized the principles guiding nations of the SCS region in their regional and bilateral relations. He also identifies the political realities of the region, which serve as constraints on the development of the region. As Valencia remarks:

The foremost obstacles to multilateral maritime management regime formation in the South China Sea are the conflicting territorial and maritime claims and the concomitant lack of confidence and trust between some of the claimants. Settlement or the setting aside of jurisdictional boundary disputes may be a prerequisite for cooperation on other issues. Regional cooperation in the South China Sea must overcome or accommodate the conflicting sovereignty claims to features and the need to demilitarize them; the conflicting claims to maritime space; the conflicting definitions of the area that might be subject to a resource management agreement; the claimants’ primary interest in the petroleum potential of the area; and the interests of non-claimant South China Sea countries.

His most important contribution lies in explaining the history of the conflicts and the efforts taken by organizations such as Spratly Management Authority (SMA) to manage the resources of the common area. An important contribution of this proposed arrangement is that it attempts to offer an overall solution to the Spratly disputes without specifically focusing on the discussion of joint development in the South China Sea per

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15 Ibid.
In fact, the intention is also to internationalize the SCS issue. In other ways as well, the proposition to create a regional multilateral resource management body as a solution to reduce tension seemed to be a constructive one. Resources in the SCS not only represent the main source of animal protein for all the littoral states in the region but the sea is also the site of a dense system of several hundred coral reefs. The total catch of tuna and shrimp in this region is among the largest in the world. This dissertation explains how China is trying hard to pursue the objective of enhancing its long-term resource security by ensuring its control over most of the SCS’s living and nonliving resources. Indeed, the question of resources in general is certainly one of the major challenges now confronting China.

The vice president of the China National Offshore Oil Corporation (CNOOC), Zhou Shouwei, commented that offshore and especially deep-water oil and gas discoveries have great significance for replenishing China’s and the world’s oil resources. Besides, as Dutton explains in the following, the Chinese navy views the importance of sea power as an aspect of this resource security:

In the new century, the oceans are . . . strategic treasure troves of natural resources for the sustainable development of humankind. Humankind’s full exploitation and utilization of the oceans and joint management of the oceans in keeping with the law is essentially a redistribution of the world’s maritime rights and interests. Whoever has the greatest investment in the oceans, whoever has the greatest capacity for exploiting the oceans, and whoever controls the oceans will have the upper hand and will acquire more wealth from the oceans, and that nation will be rich and powerful. Therefore it is inevitable that the oceans will become an important arena for international political, economic, and military

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struggles as well as an important objective in the struggle of every nation for
rights and interests.\textsuperscript{18}

In fact, if a vast area of the SCS should come within the national jurisdiction of any
particular claimant, then other states will suffer enormous consequences. As has been
stressed, the SCS is believed to contain considerable amounts of petroleum and gas
resources, and multiple strategically important commercial and military sea-lanes straddle
through this region. In 1994, Special Diplomat for the Law of the Sea Hasjim Djalal and
the Indonesian Foreign Minister Ali Alatas proposed the “doughnut” formula. This
proposal allowed each state to claim a 320 km exclusive economic zone (EEZ), the
boundaries of which would leave an inner hole. This inner area would be subject to a
joint development zone (JDZ) and the revenue would be apportioned according to an
agreed formula.\textsuperscript{19}

According to Valencia, Van Dyke, and Ludwig, the few possible solutions to the
SCS dispute are strictly regional, and this view is well supported by the other literature
cited in this review.\textsuperscript{20} China is unlikely to enter into any kind of cooperative arrangement
in which others benefit equally without expecting to receive any rewards. For example,
an analysis of the Mischief Reef incident and China’s behavior by Marlay concluded that
China’s diplomacy towards Southeast Asia seems unpredictable and erratic – claims are
turned on and off at will.\textsuperscript{21} Valencia, Van Dyke, and Ludwig’s work emphasizes mostly

\begin{itemize}
\item \textsuperscript{18} Ibid.
\item \textsuperscript{19} Djalal Hasjim, “Indonesia and the SCS Initiative,” \textit{Ocean Development and International Law} 32, no. 2
\item \textsuperscript{20} Valencia, Van Dyke, and Ludwig, \textit{Sharing the Resources of the South China Sea}.\textsuperscript{20}
\item \textsuperscript{21} Ross Marlay, “China, the Philippines, and the Spratly Islands,” \textit{Asian Affairs: An American Review} 23,
\end{itemize}
legal aspects and as outlined by the international law focuses on global commitments to sustainable development, the protection and preservation of the marine ecosystem.\textsuperscript{22} Failure by states to cooperate on these issues would represent an abrogation of their legal responsibilities. This dissertation also argues that the claims made by respective countries suffer from significant weaknesses when examined in accordance with the principles of international law.

Thayer discusses the effort made by states to manage SCS disputes through the region’s multilayered security structure.\textsuperscript{23} His work highlights reasons why tensions are rising in the South China Sea, the extent of the problem, and potential avenues to promote regional cooperation between China and the other countries involved.\textsuperscript{24} Thayer also explains that ASEAN’s single-minded focus on implementing the DOC’s confidence-building measures and cooperative activities does not address the security challenges posed by Chinese assertiveness.\textsuperscript{25} He further comments that the code of conduct outlined in the DOC does not identify the areas in dispute and has no enforcement mechanism that is able to constrain China from acting unilaterally. In fact, on the one hand, the islands must be defended at all costs, while, on the other hand, there is a fear that some unknown resource will be foregone or lost through compromise or relinquishment of claims. Scholars agree that a win-win solution based on mutual interest seems to be a better solution to a win-lose one based on competition for sovereignty,

\textsuperscript{22} Valencia, Van Dyke, and Ludwig, \textit{Sharing the Resources of the South China Sea}.

\textsuperscript{23} Carlyle A. Thayer, “Sovereignty Disputes in the South China Sea: Diplomacy, Legal Regimes, and Realpolitik.”

\textsuperscript{24} Ibid.

\textsuperscript{25} Ibid; see also Carlyle A. Thayer, “Is the Philippines an orphan?” \textit{The Diplomat}, May 2, 2012, http://thediplomat.com/2012/05/02/is-the-philippines-an-orphan/.
jurisdiction, and control. Furthermore, since a win-lose situation only allows for one winner and many losers, it is therefore important to create an atmosphere that will permanently reduce tension and insure peace. Till remarks that the major powers have long appreciated the strategic significance of the SCS region; however, he also added that there is a collision of assumptions and resultant actions that support each trend, thereby making the situation ambiguous, difficult to resolve, and unpredictable.\textsuperscript{26} This dissertation argues that China wants to enhance its control over the SCS, in part, in order to create a maritime security buffer zone.

Kivimaki examines the importance of the SCS dispute from a global security perspective.\textsuperscript{27} He argues that the national security policies of most nations are based on a comprehensive and global concept of security. He further explains how political, economic, and military interests are interlinked with global security interests. His other concern is how national economic security can be easily affected by conflicts occurring in major international trade routes like the SCS, or how such an unclear situation might give rise to environmental challenges in the future. For him, the SCS has an integrated ecosystem and is one of the richest seas in the world in terms of marine flora and fauna: coral reefs, mangroves, sea-grass beds, fish, and plants. Kivimaki introduces the reader to the various dimensions of the dispute and conceives of three approaches to resolving them, namely the approaches of direct containment of violence, dispute resolution, and


\textsuperscript{27} Timo Kivimaki, War or Peace in the South China Sea? (Copenhagen: Nordic Institute of Asian Studies, 2002).
conflict transformation. He also explains how territorial disputes have become the principle motive for inter-state warfare and how the statistics of the militarized disputes in the SCS region show it to be no exception. This work further explains that although history is not necessarily an important factor for the legal resolution of SCS disputes, it does play an important role in defining dates of treaties and decrees that have established various claims to sovereignty over the Spratly and Paracel Islands.

Kivimaki does not propose any coherent strategic plan to follow in the region, but simply highlights elements that work for and against peace. Unlike Valencia, Van Dyke, and Ludwig, Kivimaki’s focus is mostly on environmental aspects, water pollution, and prevention of over-exploitation of fisheries and other environmental hazardous conditions.

Kurlantzick insists that the United States should pay attention to the rise of China’s soft power, since he believes both the countries will inevitably engage militarily over trade and natural resources at some point. With an increase in China’s international popularity and, at least until recently, only an incremental increase in military spending, China (in his view) appears to be quickly winning over other countries. China is also showing uncompromising respect for the sovereignty of states like Sudan, Burma, Nigeria, and Zimbabwe. Kurlantzick argues that the U.S. has an urgent need to improve its own American international public relations. The Asian Wall Street Journal has

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28 Kivimaki, War or Peace in the South China Sea?

29 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea.


31 Ibid.
warned that while 10 years ago, 80% of total investment in East Asia headed to ASEAN countries and 20% to China, now those ratios have reversed and Southeast Asia is in danger of being economically overcome by China unless other nations in the region take action.\textsuperscript{32} The New York Times similarly commented that China has been grabbing much of the new foreign investment in Asia and if the trend persists, then Southeast Asia will be reduced to the role of a supplier of food and raw materials to China in exchange for cheap manufactured goods.\textsuperscript{33}

Discussions regarding the geopolitics over the SCS are getting hotter as a new strategic fault line emerges between China and the United States in this region. In response to China’s increasing assertiveness, Secretary of State Hillary Clinton remarked at the ASEAN Regional Forum (ARF) in July 2010:

\begin{quote}
The United States, like every nation, has a national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea’…. The United States supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion…. We encourage the parties to reach agreement on a full code of conduct.\textsuperscript{34}
\end{quote}

Recently, after the U.S. announcement that it would shift the bulk of its naval fleet including as many as six aircraft carriers to the Pacific Ocean by 2020, China commented that it is “advisable for some to refrain from muddying the waters and fishing therein and for some others to desist from dancing behind a Pied Piper whose magic tone, as


tempting as it is, might lead its followers astray."\(^{35}\) China insisted that the much-hyped Chinese threat to the freedom of navigation in the SCS is purely imaginary. China has already seen its political, economic, and military strength grow markedly; hence, according to Chinese authorities, fabricating new claims is not in the nation’s agenda. Rather, Beijing genuinely wishes to turn the SCS into a sea of peace, friendship, and cooperation. In China’s view, the U.S. is making a steady and deliberate effort to bolster the US role in the region. The U.S. has refused for quite some time to sign the UNCLOS, partly because some have feared that the provisions will limit the free navigational rights of U.S. warships in the exclusive economic zones of other countries. But now China believes that any U.S. decision to join the convention would further signal an expression of its intentions to get involved in SCS disputes.\(^{36}\) This dissertation argues that China is itself shifting its position from claims based on “historic rights” to claims that fall within international law. Hence China will need to be ever more specific in its claims over specific islands and rocks.

Kurlantzick’s analysis\(^{37}\) regarding the rise of China in the SCS region is alarmist about China’s new diplomacy and how this has altered the geopolitical landscape and changed the dynamics of the relationship with its Southeast Asian neighbors.\(^{38}\) As he sees


\(^{37}\) Kurlantzick, *Charm Offensive*.

\(^{38}\) Ibid.
it, China is investing big in its navy, tightening its relationship with Pakistan and Myanmar, and following a more aggressive plan of action with countries such as Vietnam and the Philippines regarding the Spratly Islands. All that, he asserts, is part of China’s “string of pearls” strategy.\textsuperscript{39} However, it is debatable whether China’s “pearl” strategy is mere imagination or an actual military threat. Moreover, China and Japan are rather similar in their capabilities and might be thought to be competing for hegemonic control over particular sections of the SCS. Japan is in fact maintaining effective control over the Diaoyu/Senkaku Islands, which were transferred from U.S. administration in 1972. The Diaoyu/Senkaku issue is potentially related to the U.S.-Japan Security Treaty. The East China Sea dispute recently came into the spotlight after Japan protested the entry of fishery patrol boats near the disputed Senkaku islands.\textsuperscript{40} In fact, Japan even temporarily recalled its ambassador to China after this standoff.

A study commissioned by an Australian government think tank commented that Southeast Asia has been unable to insulate itself from Sino-American strategic rivalry. In fact, strategic competition appears likely to intensify. The U.S. Seventh Fleet regards the SCS as an important focus of its mission to keep the world’s sea-lanes open to commerce. China’s naval build-up and its submarine base at Yulin is already the target of surveillance by powers like the U.S. and its allies, such as Japan and Australia. Friedman thinks that in the absence of a strong American presence (containment-lite), regional states will face the stark reality of having to develop their own defensive capabilities to

\textsuperscript{39} The String of Pearls strategy refers to China’s rising geopolitical influence and their efforts to gain access to ports and airfields, modernize military forces extending from the SCS through the Strait of Malacca, across the Indian Ocean, and on to the Arabian Gulf.

silently track their neighbor.\(^{41}\) However, Kang questions whether involving U.S. power and its alliance system will actually help to reduce conflict in the region.\(^ {42}\) He argues that the existing security dilemmas between Asian nations are few, and hence balance-of-power considerations do not characterize Asian international relations.\(^ {43}\)

Southeast Asian countries are caught in a dilemma. They seem to be economically close to, yet potentially threatened militarily by China. Any attempt to maximize gains by playing a balancing game between China and the U.S. is obviously risky. China is quickly turning into a peer competitor to the U.S., thereby shaping the future of East Asian strategic security. The question now is which country, if any, will dominate the waters? U.S. President John Adams once said that the U.S. “…goes not abroad, in search of monsters to destroy. She is the well-wisher to the freedom and independence of all.” However, American foreign policy has changed since the onset of the Cold War and especially since 9/11, and some suggest that the United States now seems to look for enemies abroad.

**Role of ASEAN in Mitigating SCS Conflict**

The Association of Southeast Asian Nations (ASEAN) was established in 1967. Since then, ASEAN has worked towards its stated goals of promoting mutual respect for the sovereignty, territorial integrity, and national identity of all states. The ASEAN Vision 2020, which was adopted on the 30th Anniversary of ASEAN, calls for peace,


\(^ {43}\) Ibid.
stability and prosperity. Acharya judges ASEAN’s performance as, arguably, the world’s most successful and developing regional organization. To Acharya, common vulnerability, shared consciousness, a “we-feeling,” adherence of regional elites to the “ASEAN way,” and a norms-creating culture are the main pillars of this collective ASEAN identity. The common values shared by ASEAN states are not democracy and interdependence, but rather a commitment to economic development, regime security, and political stability. These shared norms and ideas are the backbone of the constructivist analysis of Asian international relations. In fact, the archetypal social-constructivist message is community enhances security: this is agreed. However, Acharya’s focus is more on informal rather than legalistic approaches to problem solving. The ASEAN Way or, the formal management style of ASEAN, became important when the Malaysian Deputy Prime Minister Anwar Ibrahim commented: “[W]e need to intervene before simmering problems erupt into full-blown crises.” However, as the turmoil continues in the SCS, experts are talking about creating an ASEAN United Front, or an aggressive alliance, or even setting up a collective bargain between ASEAN and China and excluding outside powers.


45 Ibid.


47 Amitya Acharya, Constructing a Security Community in Southeast Asia.

It is very important to analyze how such a position might affect ASEAN. ASEAN needs to reinvent itself and gain strategic and political prominence in order to deal with future challenges effectively. The situation looks extremely complicated since, on the one hand, ASEAN might offend China by its involvement, on the other, if this situation continues, then general peace and prosperity will be at stake. Besides, if ASEAN unconditionally supports its members, then one or more of them might draw the organization even further into the conflict. Rosenberg describes how the three waves of the East Asian socio-economic transformation has reinforced ASEAN–China relations and created a stronger Asian identity. Although differences still exist between ASEAN and China, Rosenberg remarks that both have established a promising strategic partnership to ensure peace and co-operation for the region. His work recommends trying to predict new challenges that will continue to emerge and test the strength of this partnership, as well as the possible trajectories of ASEAN-China relations. He criticizes the DOC as still being a declaration and not a code as it lacks sufficient verifiable commitments. However, certain changes emerged after July 2011 when the ASEAN and China finally approved the Guidelines for the Implementation of the DOC following the international and regional backlash that was provoked by increased Chinese assertiveness in the SCS region.


50 Ibid.

51 Ibid.
With regard to the relative success of various forms and modes of security cooperation in the Asia Pacific region, the motivation of actors engaged in cooperative security efforts requires more consideration. There are combinations of liberal institutionalist and constructivist explanations that begin from the premise that benefits are accrued in terms of cost reduction when a group of states agrees to ensure transparency, coordination, and regulation. With growing regional interdependence and an increase in transnational issues, the need for conscious coordination of policies with neighbors deepens. This may lead to a sense of regional identity and community and make the use of force in security matters unlikely.\textsuperscript{52} In fact, these approaches help to explain the formation of ASEAN and other organizations. Growing competition between claimants as well as non-claimant states and an increased power position of some states have together complicated the situation in this region. Moreover, in the wake of the post-2008 financial crisis, a conceptual linkage has developed between economic and strategic security, which is especially noticeable in the case of ASEAN plus THREE (APT), the Boao Forum, and Asian Cooperation Dialogue. Hence what might be envisaged now is a more independent concept of “strategic economic security” with clear economic imperative.\textsuperscript{53}

The second research question in this dissertation is influenced particularly by the work of Acharya\textsuperscript{54} and addresses ASEAN’s performance as the world’s most successful


new developing regional organization. Singaporean Foreign Minister S. Jayakumar remarked:

ASEAN countries’ consistent adherence to this principle of non-interference is the key reason why no military conflict has broken out between any two ASEAN countries since the founding of ASEAN… Let us maintain it in the twenty-first century.\(^{55}\)

Constructivism can be understood as a positive social process that can have transforming impact on the relationships among ASEAN countries. Constructivism makes the assumption that the interests of states and identities are endogenous, which means that institutions can provide a place for states to develop a sense of a shared identity and purpose.\(^{56}\) The concept of security communities is particularly helpful in terms of shaping an understanding of the importance of such communities in the region. Acharya’s work on the changes in security initiatives by countries since the 1990s is highly relevant here.\(^{57}\) The end of the Cold War, the resurgence of China, the Asian economic crisis, and the events of September 11\(^{th}\) have all contributed to important changes in the Asia–Pacific security architecture. Acharya explains why there is an increase in multilateral efforts including the ASEAN Regional Forum (ARF), Asia–Pacific Economic Cooperation (APEC), and the Shangri-la dialogue,\(^{58}\) and he suggests why some modes of security cooperation have proven more feasible than others.\(^{59}\)

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\(^{57}\) Acharya, “Regional Institutions and Security in the Asia Pacific.”

\(^{58}\) Ibid.

\(^{59}\) Ibid.
Foot provides an understanding of variations in modes of cooperation in conflicts like the SCS in contrast to the Taiwan issue.⁶⁰ The two main factors that have so far prevented these hot spots from deteriorating into a major crisis are mutual deterrence and a focus on goals that would be damaged were war to break out. Like Valencia, Van Dyke, and Ludwig,⁶¹ Foot argues that the highest level of formal institutional cooperation is apparent in the case of the SCS, whereas a less formalized arrangement exists in the case of the Taiwan and the Korean Peninsula issue.⁶²

Chakraborti explains the impact of claims made by the ASEAN countries in the SCS area and the post-Cold War clashes in this region.⁶³ While the situation in the area has continued to evolve, he believes the most important theme has been the policy of accommodation and non-use of force to settle disputes among the claimant states. However, unlike Acharya,⁶⁴ Chakraborti does not explain the factors that bind the ASEAN countries together.⁶⁵ Does ASEAN really matter in regional security? For the realists and neorealists, the answer might be no. However, for neoliberals and social constructivists, the answer is that ASEAN helps to create a common identity and social

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⁶¹ Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea.

⁶² Foot, “Modes of Regional Conflict Management: Comparing Security Cooperation in the Korean Peninsula, China-Taiwan, and the South China Sea.”


⁶⁴ Acharya, “Regional Institutions and Security in the Asia Pacific.”

⁶⁵ Chakraborti, “The Territorial Claims in South China Sea.”
norms conducive to regional stability. This dissertation argues that ASEAN does indeed matter, since it enhances the efficiency of state cooperation, yet the organization continues to have major weaknesses and limitations. Sheldon similarly believes that neoliberalism will increasingly explain more of the region’s future security orientation.\textsuperscript{66} He notes that in 2015 ASEAN is scheduled to become a full-fledged community consisting of political-security, economics, and societal-human rights.\textsuperscript{67} Of course, how far that vision can be implemented remains to be seen.

Although ASEAN’s integration continues to be problematic and its ability to speak in a unified fashion about politico-security matters remains uncertain, a strong ASEAN still appears to be desired by most of the SCS claimants. The Treaty of Amity and Cooperation that was signed by the ASEAN states in 1976 highlighted peaceful resolution as a key aim in dealing with intra-ASEAN conflicts. When the 1992 ASEAN Declaration on the South China Sea was signed, the principles mentioned in the Treaty of Amity and Cooperation provided something of a foundation for the establishment of a code of international conduct over the South China Sea. The Declaration on the South China Sea stated that the ministers were committed to explore:

The possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards


\textsuperscript{67} Ibid.
combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs.\textsuperscript{68}

This dissertation argues that it is ASEAN’s common identity or the “ASEAN way” that offers the best hope of balancing China and facilitating peaceful settlement of disputes. Various scholars have discussed the elements of the “ASEAN way” and its importance for ASEAN’s success as a regional organization, while others have been more skeptical, stressing that ASEAN has failed to solve specific intra-regional problems. The doyen of the realist school of ASEAN studies, Michael Leifer, argues that although ASEAN has demonstrated limited common political purpose in regional matters and has also broken its principle of non-interference both in 1986 and in 1997, he still regards non-interference as a cherished principle.\textsuperscript{69} It is only due to individual weakness that there has not been any substantive ASEAN response to the changing balance of external influences bearing on Southeast Asia. Leifer comments:

\begin{quote}
ASEAN relates to peace through a general influence exercised on member governments to observe standard international norms and not through applying any distinctive process to a particular conflict, which may be transformed as a consequence.\textsuperscript{70}
\end{quote}

Non-interference is often blamed for arresting regionalism and making ASEAN unable to deal with issues like the military regime in Myanmar or transnational problems like piracy and environmental degradation.\textsuperscript{71} Moller argues that “either interference becomes

\textsuperscript{68} Association of Southeast Nations (ASEAN), \textit{ASEAN Declaration on the South China Sea} (July 22, 1992), Point 3, http://www.aseansec.org/1545.htm.

\textsuperscript{69} Michael Leifer, \textit{ASEAN and the Security of Southeast Asia} (London: Routledge, 1989).

\textsuperscript{70} Michael Leifer, \textit{Selected Works on Southeast Asia} (Singapore: Institute of Southeast Asian Studies, 2005), 120.

legitimate, or the Association will become increasingly meaningless. The ASEAN Way ends here.” For Leifer, the concept of regional autonomy and identity remains elusive and was long in being put to test. Then, during the 1997 Asian financial crisis, ASEAN failed the test. Nischalk, as well, insists that the “ASEAN way” appears to be more of a myth rather than a community of shared vision.

Be that as it may, a number of scholars who profoundly disagree with the norms of non-interference and call for its revision are nonetheless convinced of its continuing capacity to bind the conduct of ASEAN member-states. Despite minor differences in interpretation, the “ASEAN way” is regarded as a series of behavioral and procedural norms shared by ASEAN member countries in practicing diplomacy. It centers on the principle of non-interference in internal affairs and contains a few standard norms of international law, such as respecting sovereignty and non-interference in internal affairs, peaceful resolution of conflicts, and non-use of force. The procedural norms are based on the observance of the Indonesian-Malay practice of musyawarah (consultation) and mufakat (consensus). ASEAN’s former secretary-general, Rodolfo Severino, characterizes non-interference as:

…not as a doctrine that is adhered to and applied on dogmatic or ideological grounds. It springs from a practical need to prevent external pressure from being exerted against the perceived national interest – or the interest of the regime.

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73 Leifer, ASEAN and the Security of Southeast Asia.

Essentially arising from pragmatic considerations, ASEAN’s practice of non-interference has not been absolute.75

The Route for a Cooperative Management Regime in the South China Sea Region

Scholars argue that because the number and intensity of regional maritime security problems are increasing in the South China Sea, it is high time for the states to initiate an effective management regime. In fact this notion is reflected in Leifer’s concept of a stable maritime regime in East Asia.76 Due to increased pressure on both living and non-living resources, there is also a need for strategies to cooperatively manage fishing, shipping traffic, and the environment in the SCS region. However, unfortunately, there is very little consensus as to the specific measures required.

Tran Truong Thuy focuses on the efforts made by regional countries to promote cooperation in the SCS.77 His article analyzes the implications of recent developments in the SCS in terms of regional security as well as the importance of the implementation of the DOC.78 Tonnesson suggests that the threat of open warfare is not the only reason to honor the Code of Conduct.79 Rather the ongoing depletion of coral reefs and fish stocks, piracy, oil, and gas represent other reasons to honor the Code. Tonnesson challenges many widely held views about the conflict. According to him, the great transformation of

75 Rodolfo Severino, Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-General (Singapore: ISEAS, 2006), 94; see also Leifer, ASEAN and the Security of South-East Asia.

76 Ibid.


78 Ibid.

the SCS conflict never happened in the late 1980s and early 1990s. He believes that the 1990 informal conference on Managing Potential Conflicts in the South China Sea, which took place in Indonesia, was a complete failure and the transformation is yet to come.

Emmers argues that managing the risk of possible conflict over disputed claims in the SCS has become a significant challenge today. As new challenges arise, states need to be extremely careful in dealing with the situation. A major problem is that a code of conduct has not yet been fully established or implemented, and another is the inevitable involvement of great powers like India, Australia, and the U.S. Traditional nationalism, not least between China and Vietnam, will drive politics in Asia both now as well as in the future and will also lead to the growth of navy and air forces to protect sovereignty in the region. Emmers’ focus lies mainly on the convergence of both traditional and non-traditional security issues in the SCS. Unlike other scholars, Emmers argues that non-traditional security issues not only potentially offer a sound basis for cooperation in the SCS but also serve as “building blocks” to facilitate consideration of issues like sovereignty. Conflict resolution scenarios may arise through joint exploration, international arbitration, or through the joint development of resources. However, due to the absence of a consensus among the ASEAN states over how to manage the SCS dispute, it has become difficult to resolve this issue on a collective level. As Zha and

80 Ibid.
82 Ibid.
83 Ibid.
84 Ibid.
Valencia comment: “None of the four ASEAN claimants has shown any inclination to compromise with each other on the issue of sovereignty over the Spratly feature or maritime space.”

Most tension in the SCS has been between China and Vietnam as well as China and the Philippines. Other actors in the region have generally been less assertive. As Emmers points out, the question of sovereignty over the islands is not a direct threat to the national security of the bulk of ASEAN states, which have their own agendas regarding China. ASEAN needs to get stricter since it has become doubtful whether ASEAN can manage conflict resolution amidst growing power asymmetry in the region. Although no obvious legal resolution to the competing claims in the SCS exists, various scholars have made serious efforts to identify possible ways of resolving disputes. In fact, Emmers claims that the SCS is where the most progress is being made in establishing effective functional cooperation. However, he thinks that time is running out very fast for the development of an effective regime. A move towards a Pan-Tonkin economic cooperation zone in order to build China–ASEAN relations and joint development for China in search of its energy security might be one approach. In fact, unlike Baker and Wiencek (discussed later), Emmers’ work at one point ends with a pessimistic note.

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86 Emmers, “Introduction: the South China Sea.”

87 Ibid.

regarding the resolution of the SCS dispute.\textsuperscript{89} Besides, this work does not focus much on the concept of regional integration between China and Southeast Asia, which is a part of China’s overall policy of peaceful rise.\textsuperscript{90} Such an arrangement will initiate significant political and economic changes not only with respect to Southeast Asian countries but also among those belonging to ASEAN. Examples are China’s recent support for the Greater Mekong Subregion infrastructure project and the Nanning–Singapore economic corridor in the region.

Valencia, Van Dyke, and Ludwig, have presented a series of alternative proposals at the East–West Center in Hawaii describing how the SCS could be divided into zones of national jurisdiction.\textsuperscript{91} They argue that it might actually be dangerous to start the process by resolving the sovereignty disputes, including that of the Spratlys:

In fact, the allocation of the features [to some of the claimants] might accentuate rather than resolve strategic concerns, as well as exacerbate such disputes if the recognized owners one day insist on claiming EEZs and continental shelves extending from the islands.\textsuperscript{92}

The establishment of a regional authority based on agreements among the claimants could exercise control over the islands and territorial seas, as well as the sovereign airspace. Representation in the regional authority should be based on a combination of factors such as national population, length of coastline, and extent of current and historical usage. All of these are recognized in international law as legitimate bases for resolving maritime disputes. If one or a few states gain sovereignty over the islands, this

\textsuperscript{89} Emmers, "Introduction: the South China Sea."

\textsuperscript{90} Ibid.

\textsuperscript{91} Valencia, Van Dyke, and Ludwig, \textit{Sharing the Resources of the South China Sea.}

\textsuperscript{92} Ibid, 133.
might exacerbate the conflict and lead to an inequitable distribution of maritime zones among the countries. Hence various scholars have proposed to divide the territory on the basis of distance from the coasts of the surrounding countries, with a system of moderate compensation for geographically disadvantaged states. For Stenseth, “None of the claimants seems to have a clear-cut case in juridical terms, and the significance of international law for solving the dispute seems limited.”\textsuperscript{93} In order to facilitate such regional cooperation, it is necessary to identify an issue area that the countries are anxious about and willing to cooperate on to form a sense of community. They should proceed from the concept of national resilience and absolute sovereignty to the concept of regional resilience, regional cohesion, and regional identity. As Valencia, Van Dyke, and Ludwig note, regions containing a small number of states with similar interests are more likely to form stronger and more resilient agreements than regions with a greater number of states.\textsuperscript{94} Furthermore, linkages and networking among experts, academics, and think tanks are just as important as those among various regional, sub-regional, and international organizations. As Storey comments: “…during the Sino-Philippine dispute ASEAN was willing to take a united stand on the issue and indirectly rebuke China.”\textsuperscript{95}

Bautista mentions what seems to him to be the relevance of the 2009 International Court of Justice (ICJ) ruling on the maritime delimitation dispute between Romania and


\textsuperscript{94} Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea.

\textsuperscript{95} Ian James Storey, “Creeping Assertiveness: China, the Philippines and the South China Sea Dispute,” \textit{Contemporary Southeast Asia} 21, no. 1 (1999): 96.
Ukraine in the Black Sea. In his view, the Black Sea case, which shows a clean three-stage approach to maritime delimitation, has the potential to serve as a blueprint for resolving maritime delimitation disputes in East and Southeast Asia. However, the precise mechanism for settling Asian disputes still remains unclear. Legal obligations in themselves, of course, do not guarantee actual maritime cooperation, as Townsend-Gault observes. Unlike Valencia, Van Dyke, and Ludwig and Emmers, Acharya believes that the SCS disputes will be resolved only after the conflicts over Taiwan and the Korean peninsula have been settled, although there is no way of predicting what the final resolution of either case might look like. The current talks in the ASEAN–China Dialogue and the Asian Regional Forum (ARF) are designed as a “holding operation” and not as an attempt to resolve the conflict. As Xiang remarks, the ARF was founded to engage China on the Spratly Islands, and it serves as a sort of military security mechanism against acts of aggression. The ASEAN Way has always served as mechanism for conflict prevention – not conflict resolution, and China’s involvement with ASEAN may help to curb the risk of violence.

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97 Ibid.


99 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea; Emmers, “Introduction: the South China Sea.”

100 Acharya, Constructing a Security Community in Southeast Asia.

101 Ibid.


103 Ibid, 108.
Baker and Wienczek’s work is different because its focus lies mostly on the application of the concept of information technology in reducing the likelihood of regional conflicts.\textsuperscript{104} This could open up a whole new approach to managing conflicts in the SCS region.\textsuperscript{105} One interesting contribution of this research is that of determining whether the application of GIS (Geographic Information System) or high-resolution observation satellites can prevent conflict or even reduce the chance of possible miscalculation. Their work is helpful in understanding the importance of satellite imaging from experts coming from multidisciplinary fields. The use of observation satellites in a conflict management regime is central to the “Virtual Diplomacy” initiative, which explains how modern information and communication technologies are transforming diplomacy. This will provide possible opportunities in the field of settling maritime disputes through remote sensing. Like the UNEP/GEF (Global Environmental Facility), the South China Sea Project Geographical Information System (GIS) program was developed to facilitate the online sharing and updating of information and data for coastal habitat sites in and bordering the SCS. It was anticipated that the GIS, which is housed on the Google Earth platform, would be built during the implementation of the revised Strategic Action Program for the South China Sea, from 2009–2013. However, the GEF project only relates to areas under accepted national jurisdiction – not yet to disputed areas of the SCS – nor is there any effective environmental management regime for the SCS. Nevertheless, Google Earth already captures images of the Shuimen Airport.\textsuperscript{106}

\textsuperscript{104} Baker and Wienczek, eds., \textit{Cooperative Monitoring in the South China Sea.}

\textsuperscript{105} Ibid.

built 364 meters above sea level overlooking the East China Sea, and images of warplanes and land-to-air missiles, which are being deployed to a Chinese air base close to both Taipei and the SCS. Satellites are also helpful in sensing the formation of storms like Talim, in the SCS east of Hainan Island.

Baker and Wincek attempt to address both the issue of technical as well as political feasibility of creating a cooperative monitoring regime in this area.\textsuperscript{107} The key elements of such regime include: 1) underlying norms, 2) the monitoring strategy, 3) an information collection and support system, and 4) a communication arrangement between the parties.\textsuperscript{108} The belief is that the cooperative monitoring regime will enhance greater regional transparency concerning activities occurring among the disputed islands. This dissertation argues for the importance of such a cooperative regime in areas like maritime piracy, managing scientific research in the SCS region, managing natural disasters, and pollution assessments. However, there is a danger that greater transparency might actually increase the level of tension among the claimant states and, in any event, routine imagery coverage or higher resolution satellites will require more staff, equipment, and money. Again, it is also important to outline what factors should be considered in order to initiate the construction of different monitoring regimes in the region. There should be cooperation and collaboration between and among claimants to set up regimes to manage natural resources, different from those meant to safeguard the freedom of navigation. But the question is obviously whether and to what extent any such arrangement is feasible. It is necessary to take into consideration those countries in the region that has varying levels

\textsuperscript{107} Baker and Wincek, eds. Cooperative Monitoring in the South China Sea.

\textsuperscript{108} Ibid.
of technological capabilities. In this regard, the Global Maritime Partnership initiative might serve as a catalyst for increased international interoperability and thereby support cooperative maritime security.

Swanstrom is particularly helpful in understanding the context of conflict management in the SCS area. He explains some of the many possible mechanisms of conflict management and assesses their likelihood of success in mitigating conflicts with particular attention to the role of China. Hong’s separate analysis of state practices by the United Nations Convention on the Law of the Sea (UNCLOS) maintains that the most pervasive threats to SCS stability and the obstacles that impede resolving the dispute are caused by a lack of political will to implement the dispute settlement mechanisms of UNCLOS. This dissertation builds on the findings of existing literature on conflict management and attempts to make specific policy suggestions for further progress in the creation of rules and institutions that may have the greatest chance of success in the South China Sea.

The next chapter focuses on the strategic and economic significance of the SCS, reasons behind conflicts in the region, and the ways in which state practices and activities aim to resolve disputes.

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110 See Nora Hong, UCLOS and Ocean Dispute Settlement: Law and Politics in the South China Sea (New York: Routledge, 2012).
CHAPTER 3: STRATEGIC AND ECONOMIC IMPORTANCE OF SOUTH CHINA SEA

“Opportunities multiply as they are seized.”

Sun Tzu

Parties Involved

As we have seen, the South China Sea has long been regarded as one of the most complex regional maritime systems in East Asia, and it has recently been the locus of disputes that have the potential of escalating into serious international conflicts. The SCS is a semi-enclosed sea bordered by member countries of the Association of Southeast Asian Nations, including Brunei, Cambodia, Indonesia, Singapore, Malaysia, Philippines, Thailand, and Vietnam, though not Laos and Myanmar. Southeast Asia lies at the intersection of the world’s most heavily traveled Sea Lines of Communication (SLOCs) – the east–west route connecting the Indian and Pacific Oceans and the north–south route connecting Australia and New Zealand to Northeast Asia.\(^1\) This chapter surveys the significance of the SCS in terms of its strategic location, oil resources, and economic and marine biological diversity. It will also review competing over-lapping claims to the sea area by different countries, potential territorial disputes among the countries, and finally analyze the relationships among these various issues.

There are four main island groups in the SCS: the Paracels, the Spratlys, the Pratas, and the Macclesfield Bank. Although the Natunas, a fifth group of islands, is not considered part of the SCS, they are worth mentioning because Indonesia and Vietnam

are in dispute over the continental shelf of these islands. Before the end of the Cold War, the presence of both the Russian as well as the United States navy facilities in Vietnam and the Philippines largely provided a stabilizing balance of power in the region. However, their withdrawal from this region has made China the dominant naval force. Neighbors fear that Beijing is trying to establish the entire region as a “Chinese Lake.”

According to Rosenberg, three movements – resource control, the conservation movement of environmentally sustainable resources, and the security movement – contribute to the growing importance of the SCS region. Territorial claims to the islands and reefs are especially important in order to establish an exclusive economic zone (EEZ) around the disputed islands that would include the oil and natural gas resources in the area. The SCS has numerous archipelagoes, islands, peninsulas, coral reefs, seasonally reversing monsoon winds, and underwater currents. All these combine to produce exceptionally favorable conditions for a fertile marine ecosystem.

The Spratly Islands are known in Vietnam as the Truong Sa and in China as the Nansha. The Paracel islands are known as the Hoang Sa in Vietnam and the Zhongsha in China, the Pratas are known as the Dongsha in China, and the Macclesfield Bank is known as the Quan dao Trung Sa in Vietnam or Zhongsha Qundao in China. Current and potential disputes involve maritime powers like China; archipelago states like Indonesia and the Philippines; strait states like Malaysia and Indonesia; Thailand, which is not part

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to the United Nations Convention on the Law of the Sea; and strait user states such as the US and Japan, among others. This chapter will later discuss how the composition of this dispute reflects several dimensions of the UNCLOS.

Table 3.1. Claims by Countries in the Region (Adapted from U.S. Energy Information Administration, South China Sea [Analysis Brief], http://www.eia.gov/countries/regions-topics.cfm?fips=SCS, March 2008.)

<table>
<thead>
<tr>
<th>Country</th>
<th>South China Sea</th>
<th>Spratly Islands</th>
<th>Paracel Islands</th>
<th>Gulf of Thailand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>UNCLOS</td>
<td>no formal claim</td>
<td>no</td>
<td>n/a</td>
</tr>
<tr>
<td>Cambodia</td>
<td>not applicable</td>
<td>n/a</td>
<td>n/a</td>
<td>UNCLOSE</td>
</tr>
<tr>
<td>China</td>
<td>all*</td>
<td>all</td>
<td>all</td>
<td>n/a</td>
</tr>
<tr>
<td>Indonesia</td>
<td>UNCLOS</td>
<td>no</td>
<td>no</td>
<td>n/a</td>
</tr>
<tr>
<td>Malaysia</td>
<td>UNCLOS</td>
<td>3 islands</td>
<td>no</td>
<td>UNCLOS</td>
</tr>
<tr>
<td>Philippines</td>
<td>significant portions</td>
<td>8 islands</td>
<td>no</td>
<td>n/a</td>
</tr>
<tr>
<td>Taiwan</td>
<td>all*</td>
<td>all</td>
<td>all</td>
<td>n/a</td>
</tr>
<tr>
<td>Thailand</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>UNCLOS</td>
</tr>
<tr>
<td>Vietnam</td>
<td>all*</td>
<td>all</td>
<td>all</td>
<td>UNCLOS</td>
</tr>
</tbody>
</table>

*excluding buffer zone along littoral states (calculations for buffer unknown)

The Nine-Dotted Line Controversy

One of the most difficult issues impacting upon sovereignty claims and disputes in the SCS is the “dotted” or “the nine-dotted line” found on Chinese maps dating back to 1947. That year, the Nationalist government of Chiang Kai-shek defined China’s claims by an area limited by nine dots covering most of the SCS. Also, in 1951, Zhou Enlai formalized this claim. This line is also known as the “U-shaped line.” Opinions vary regarding the legality of this “U-shaped” line in the SCS. In the year 1935, “The Map of

Chinese Islands in the South China Sea,” published by the Land and Water Maps Inspection Committee showed that China’s southernmost boundary reached latitude 4° north and that the James Shoal was marked within the Chinese boundary. Although there is no exact definition in international law for the concept of historic title, its legitimate basis for claiming sovereignty is well recognized. For example, Article 15 of the 1982 UNCLOS stipulates that the delineation rule for overlapping territorial sea claims “does not apply… where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.”

In an article titled “International Recognition of China’s Sovereignty over the Nansha Islands,” published in the year 2000, the Chinese Foreign Ministry claimed that various nations acknowledged and recognized the Nansha Islands as Chinese territory. Lee Lai To stated that China’s historical records, maps, and cultural relics support the country’s historical claims to these islands. However, the British scholar Andrew Forbes argued that he did not find a place where the Chinese explorers mentioned the Spratlys. Rather, he found only the name of the Paracel Islands. In fact no one paid much attention to the Spratlys until World War II when the Japanese started using this island for military purposes. Taiwan has reportedly deemed “the entire area within the U-shaped line to be

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6 Ibid.


8 Ibid.
China’s historical waters.\(^9\) According to Zou Keyuan, historic rights fall into two types: exclusive with complete sovereignty, such as historic waters and bays, and nonexclusive without complete sovereignty, such as historic fishing rights in the high seas.\(^10\) However, Keyuan argues that historic rights claimed by China are unique and different from these types because they are connected with the EEZ/continental shelf regimes.\(^11\) He calls the situation “historic rights with tempered sovereignty,” whereby China can claim sovereign rights and jurisdiction, but not complete sovereignty.\(^12\) Some scholars, like Keyuan, contend that since the declaration of the nine-dotted line, international society made no diplomatic protests nor voiced any disagreements.\(^13\) Later, a number of maps produced abroad were delineated along the nine-dotted line indicating the area as belonging to China. China claims ownership and historic right to islands, reefs, shoals, banks, and waters within the nine-dotted line. In 1979 Hasjim Djalal wrote,

> The nature of the claim of the PRC to the South China Sea is enigmatic... It is not clear whether the lines indicated in the Chinese maps are intended as the limits of the Chinese territorial claim towards the whole area, thus including the islands, the sea, the airspace, the seabed and all the resources contained therein; or whether the lines simply indicate that only the islands contained within the lines which are claimed by the PRC. Careful reading of the Chinese statements on this matter, especially those at the ICAO meetings (1979), indicates that the Chinese territorial claims are limited to the islands and all rights related thereto, and not territorial claims over the South China Sea as a whole.\(^14\)

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\(^9\) Ibid.


\(^11\) Ibid.

\(^12\) Ibid., 160.

\(^13\) Ibid.

Map 3.1 shows the official Chinese map of the SCS with the nine-dotted line.\textsuperscript{15} The Chinese government has attempted to substantiate this claim with the help of many other “official maps, e.g. Huang Qing Ge Zhi Sheng Fen Tu (Map of the Provinces Directly Under the Imperial Authority), which was made in the twentieth year of Qianlong (1755); Da Qing Wan Nian Yi Tong Di Li Quan Tu (map of the Eternally Unified Great Qing empire) made in the fifteenth year of Jiaqing (1810); and Da Qing Yi Tong Xia Quan Tu (map of the Unified Territory of the Great Qing empire) made in the twenty-second year of the Jiaqing (1817).”\textsuperscript{16} Historically, China considered the SCS as part of its Southern China sea and hence it was named Nan Hai, which means South Sea. China’s strategic thinking about this region is largely influenced by Deng Xiao-ping’s “Eight Principles of International Strategic Thinking,” which was largely used by Jian Zemin’s third generation leadership as the basis for China’s foreign policy.\textsuperscript{17}


\textsuperscript{17} Chakraborti, “The Territorial Claims in South China Sea,” 178.

Historical Claims and Counterclaims

The Paracels

Map 3.2. The Paracel Islands (Source: Spratlys.org)

The Paracels, whose ownership is contested by China, Taiwan, and Vietnam, consist of fifteen islands, several sand banks, and reefs. The area lies between latitude 16° and 17°
north and longitude 111° and 113° east. The group is located less than 150 nautical miles (nm) from China’s Hainan islands and about 240 nm from Daning in Vietnam. This archipelago has an area of about 15,000 square kilometers (skm) and is divided into two clusters: the eastern cluster of An Vinh and the western cluster of Luoi Liem. There are two main groups: the Amphitrites and the Crescent, which lie some 70 kilometers (km) from one another. In the west, the Crescent Group consists of five main islands: Robert Island, Duncan Island, Palm Island, Drummond Island, and Pattle Island. Money Island lies 12 km away and Triton Island is further south. To the west lies the Amphitrite group, which consists of Woody Island, Rocky Island, South Island, Middle Island, North Island, and Tree Island. To the east of this group lies the Lincoln Islands. Woody Island, the largest in the group, is 4 km long and 2 to 3 km wide. The distance from east to west and from north to south of the archipelago is about 95 and 90 nm respectively. Having ousted the South Vietnamese in 1974, China now occupies all of the Paracels and today has an airfield on Woody Island in the Paracels.


Taiwan has occupied Itu Aba Island since 1956 and had plans to build a 6,500-foot runway, an air terminal, a lighthouse, and fishing port on the island in order to exercise its control.\textsuperscript{20} Pratas Island is 6 km in length and 2 km in width. Because it is shaped like the moon, it is also known as Moon Island. There are two small banks – south vereker and north vereker. The island is located between latitude 20°30’ and 21°31’ north and longitude 116° and 117° east.\textsuperscript{21}

\textsuperscript{20} Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, \textit{Sharing the Resources of the South China Sea} (Honolulu: University of Hawaii Press, 1999).


The Macclesfield Bank is located at latitude 15°20’ north and longitude 113°40’ to 115° east. The bank is about 75 nm long and 33 nm wide.\(^{22}\)

The Spratlys

Map 3.5. The Spratly Islands (Source: Spratlys.org)

According to Prescott, “There is no single authoritative definition of the extent of the Spratly Islands, but they are found in the southeastern part of the South China Sea.”\(^{23}\)

\(^{22}\) Ibid, 11.
Heinzig defined it as the area lying between latitude 4° and 11°30’ north and longitude from 109°30’ to 117°50’ east. China’s Xinhua News Agency published a partial definition in the year 1991, according to which,

The Nansha Archipelago [Spratly Islands] (in ancient times called Wanli Shitang) is located from 3 degree 37’ to 11 degree 55’ north latitude to 109 degree 43’ to 117 degree to 47’ east longitude, stretching south to north approximately 550 (nm), and spreading east to west more than 650 (nm); its water territory area exceeds 800,000 square kilometers.

The Spratlys are of strategic, maritime and economic importance because they lie amidst the principle sea lines of communication for commercial ships transiting the Indian and Pacific Oceans (that is, the straits of Malacca, the Singapore Strait, the Sunda Strait, and the Lamdok Strait). They were named after Richard Spratly, the captain of a British whaler, *Cyprus South Seaman*, who reportedly explored the islands in 1843. The Spratly archipelago is a group of more than 230 islets, reefs, shoals, and sand banks scattered over an area of about 160–180,000 skm. The main island, North Danger Group, is composed of four islets including Trident Shoal, Lys Shoal, Thi Tu, and Subi Reef. Tizard Bank is of two main islands and three reefs, including the Itu Aba Island. The coast point of Spratly archipelago is about 250 nm from the Hainan island of China. The distance from east to west and from north to south is about 325 and 274 nm.


24 Ibid.

25 Ibid.


respectively. This region was sometimes referred to as the “Dangerous Ground” to warn sailors about uncharted coral reefs because it lacked any formal name. The government of the Philippines generally calls the Spratly islands “Kalayaan” or “Freedomland.” This Philippine portion includes islands that lie west of Palawan and north of latitude 7°40’ north. Its northern limit is latitude 12° north and its eastern limit is longitude 111° east. Although the Spratly Islands have neither indigenous inhabitants nor any type of established economic activity, still they have become the fulcrum for energy competition and conflicting claims in the Asia–Pacific region. It is also one of the richest fishing grounds in the world.

This area has become critical among the disputing countries mainly because of its geographic position in major oceanic routes used by crude oil tankers from the Persian Gulf to Asia, routes for goods from Asia to the rest of the world, and promising offshore oil and gas reserves. The Spratly seabed is thought to contain the greatest concentration of oil and gas reserves within the SCS. Map 3.6 highlights the importance of the worlds shipping route as a chokepoint for the flow of crude oil between the Gulf and East Asia.

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30 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea.

Map 3.6. World Shipping Routes for the Flow of Crude Oil between the Gulf and East Asia (Source: http://www.eia.gov/countries/regions-topics.cfm?fips=WOTC&trk=p3)

Ninety percent of Japan’s oil passes through this area 32 and China has called the sea a “second Persian Gulf.” 33 Estimates of the oil resources near the Spratly Islands range from 105 billion barrels to 213 billion barrels. 34 Estimates of total gas reserves also vary from 266 trillion cubic feet (TCF) to more than 2,000 TCF. Regarding the Spratly issue, Beijing continues to move forward with a “three no’s” policy – no specification of claims, no multilateral negotiations, and no internationalization of the subject. 35 China has even consolidated its facilities at Fiery Cross Reef in the Spratly archipelago with the installation of an early warning radar system. At the same time, China maintains a


33 Ibid., 438.

34 Ibid.

35 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea.
continuing naval presence at Mischief Reef off the west coast of the Philippines.\textsuperscript{36} Map 3.7 shows the occupied islands by the claimants in the SCS.\textsuperscript{37}

**Map 3.7. Islands Occupied by Claimants in the South China Sea (Source: South China Sea Virtual Library)**

As Asia’s energy consumption grows in parallel with its economic development, access to and control of these resources will weigh heavily on claimant perceptions of the strategic value of contested areas\textsuperscript{38} – not least the Spratlys. The wider significance of

\textsuperscript{36} Carlyle Thayer, “The United States and Chinese Assertiveness in the South China Sea,” *Security Challenges* 6, no. 2 (Winter 2010).


disputes in the SCS relates to the threat that a higher level of military action could pose to vital SLOC arteries to other parts of the world, including the Middle East. If the SLOC get disrupted due to armed conflict, then the economic interests of the Asia–Pacific countries as well as the U.S. could be severely affected. Over half of the top ten container shipping ports in the world are located in or around the SCS, which is the main artery of transportation for imports and exports. In fact, it is not too much to say that this region has become the hub of the industrial revolution of Asia. Besides safety of navigation, overflight is of critical strategic interests to the U.S. This is because the United States uses the SCS both as a transit point and an operating area for its Navy and Air Force facility between military bases in Asia and the Indian Ocean and Persian Gulf areas. In other words, the multi-country character of the Spratly Islands dispute has made it perhaps the most complicated of territorial disagreements. Figure 3.1 below shows top ten ports in the Asia Pacific region.


40 Rosenberg, “Governing The South China Sea.”

41 Scott Snyder, “The SCS Dispute: Prospects for Preventive Diplomacy” (Special Report No. 18 of the United States Institute of Peace, August 1996).


43 Rosenberg, “Governing The South China Sea,” 6
Livingstone argues that although the legal basis for China’s claiming of the Spratly Islands comes from its early discovery of the islands during the Qing dynasty (1644-1911), according to international law, mere discovery is not enough to claim sovereignty over a territory.\textsuperscript{44} However, in 1992, China passed a sea and zone act to enforce its legal claim to the Spratlys. Article 2 of the legislation specifically identified the Spratlys as Chinese territory.\textsuperscript{45} The Chinese have had garrisons on seven Spratly islets since 1988. Although China’s stated aim is to promote a harmonious world of enduring peace and common prosperity,\textsuperscript{46} factors such as rapid economic growth and rising energy demand have made it important for them to ensure the safety of vital SLOC. In fact, their

\textsuperscript{44} David Livingstone, “The Spratly Islands: A Regional Perspective,” \textit{Journal of the Washington Institute of China Studies} 1, no. 2 (Fall 2006).


naval modernization is viewed by some as an effort to overcome the “Malacca dilemma” – the threat to China’s national security posed by the potential closure of narrow straits or choke points in Southeast Asia.\(^47\)

The Vietnamese claim the Spratly Islands because of their historical ties to the Nguyen (1803-1945) dynasty. Their claim is also based in part on their colonial relationship with France and the French claim to the Spratlys in 1933. The Spratlys were returned to the French at the end of the World War II. By 2000, Vietnam had stationed 600 troops on at least 27 Spratly land formations.\(^48\) The Philippines justify their claim over the Spratlys because of the discovery of certain islands by the Filipino citizen Thomas Cloma in 1947. Cloma asserted ownership of 33 islands, reefs, and fishing grounds within an area covering 65,000 sq. nm. He even coined the term Kalayaan, or “Freedomland,” for the area and sent a letter to the Philippine vice-president requesting official endorsement. The Philippine government observed that the Kalayaan Islands were *res nullius* and open to exploitation by Filipinos since no country had established sovereignty.\(^49\) The islands were annexed in 1978 by the Philippine government and were thereafter administered by them because they lie within their Exclusive-Economic Zone.\(^50\) Currently, they have marines stationed on eight islands and some 50 islets, reefs, and shoals.\(^51\)


\(^{48}\) Christopher Joyner, “The Spratly Islands Dispute in the South China Sea,” 61.

\(^{49}\) Dzurek. “The Spratly Islands Dispute: Who's On First?”

\(^{50}\) Ibid, 19.

\(^{51}\) Ibid, 20.
Situated 240 kilometers west of Palawan Island in the main Philippines archipelago is the horseshoe-shaped Mischief Reef, which is 9 km in length and 6 km in width. It is claimed by China, Taiwan, and Vietnam. Because it gets submerged during high tides, it does not qualify as an island under the 1982 UNCLOS for purposes of maritime jurisdiction. It is often debated that an Alcorn petroleum agreement between Manila and its American subsidiary in 1994, as well as military cooperation between Manila and Hanoi, may have instigated China’s occupation of the Mischief Reef. Exchange visits at the highest level between Hanoi and Manila were regarded by Beijing as threatening.\textsuperscript{52} Although the Philippines tried to gain support from the U.S. under the US–Philippine Mutual Defense Treaty, they were rebuffed by the U.S. because the reef lies in the Kalayaan area. Tensions rose after China occupied Mischief Reef in 1995. This incident led to the 2002 ASEAN–China Declaration on the Conduct of Parties in the South China Sea. Box 3.1 shows the 2002 ASEAN–China Declaration on the Conduct of Parties.

Malaysia and Brunei have asserted claims to certain islands and reefs based on Articles 76 and 77 that define the limits of a coastal state’s continental shelf under the UNCLOS.\textsuperscript{53} Malaysia is the most recent claimant to occupy part of the Spratlys militarily. Brunei is the only claimant without a military presence in the Spratlys.\textsuperscript{54} However, Brunei currently claims two reefs: Louisa Reef (which is also claimed by

\textsuperscript{52} Ibid.

\textsuperscript{53} Ibid, 20.

\textsuperscript{54} Ibid, 20–21.
Box 3.1. 2002 ASEAN-China Declaration on the Conduct of the Parties (Source: http://www.aseansec.org/13163.htm)

| DECLARATION ON THE CONDUCT OF PARTIES  |
| IN THE SOUTH CHINA SEA               |

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighborliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;

2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;

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

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

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

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

a. holding dialogues and exchange of views as appropriate between their defense and military officials;
b. ensuring just and humane treatment of all persons who are either in danger or in distress;
c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
d. exchanging, on a voluntary basis, relevant information.

6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

   a. marine environmental protection;
   b. marine scientific research;
   c. safety of navigation and communication at sea;
   d. search and rescue operation; and
   e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;

8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;

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

10. The Parties concerned reaffirm 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.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.

Malaysia) and Riflemen Bank, which is apparently based on a 350 nm continental shelf claim. Brunei also claimed a 200 nm fishing zone and a 200 nm EEZ in 1984. However,
Brunei’s claim for the Louisa Reef is weak, since the Reef has only two small rocks that alone are incapable of generating an EEZ or continental shelf under article 121(3) of UNCLOS.\textsuperscript{55} Taiwan’s claim suffers from the same issues as that of China because its legal basis for sovereignty rests on historic ties to the islands. Taiwan, in fact, adopted a Policy Guideline for the SCS on March 1993 that asserted sovereignty over the Spratly Islands, the Paracel Islands, Macclesfield Bank, and the Pratas Islands. Taiwan also argued that “the SCS area within the historic water limit is the maritime area under the jurisdiction of the Republic of China, in which the Republic of China possesses all rights and interests.”\textsuperscript{56} Thus, Taiwan was the first government to establish a physical presence on Spratly and has occupied the largest island named Itu Aba since 1956.\textsuperscript{57}


Although the SCS is much greater in area than the Arabian Gulf or Caspian Sea, it is similar to both these regions in two respects. First, its undersea resources are subject to overlapping claims and, second, the countries became involved in maritime disputes to protect their perceived national interests.\textsuperscript{58} The SCS dispute embodies two dimensions: territorial sovereignty and jurisdictional rights under maritime demarcation arising from differing interpretations following the 1982 UNCLOS.\textsuperscript{59} The First United Nations Conference on the Law of the Sea (UNCLOS I) adopted four conventions commonly

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\textsuperscript{55} Valencia, Van Dyke, and Ludwig, *Sharing the Resources of the South China Sea*, 38.

\textsuperscript{56} Ibid.

\textsuperscript{57} Ibid, 19.

\textsuperscript{58} Klare, *Resource Wars*, 109.

known as the 1958 Geneva Conventions: a) The Convention on the Territorial Sea and Contiguous Zone; b) The Convention on the High Seas; c) The Convention on Fishing and Conservation of the Living Resources; and d) The Convention on the Continental Shelf. Although considered to be a step forward, the conventions did not establish a maximum breadth of the territorial sea.\textsuperscript{60} In 1960, the Second United Nations Conference on the Law of the Sea (UNCLOS II) was held, which did not result in any new international agreements. Once again, it neither failed to fix a uniform breadth for the territorial sea nor did it establish consensus on sovereign fishing rights. Finally, the Third United Nations Conference on the Law of the Sea (UNCLOS III) was held from 1973 to 1982.\textsuperscript{61} It addressed earlier issues and came into force on November 14, 1994, creating what is sometimes regarded as the constitution for the oceans.

Maritime boundary disputes are those relating to the delimitations of the sea areas over which the coastal states can exercise jurisdiction in conformity with both international law and the law of the sea. Traditionally, the maritime zones are grouped into three categories: internal waters, territorial sea, and the contiguous zone. This reflected the struggle between two conflicting trends of thought in the law of the sea that emerged in seventeenth century. They are freedom of the sea, as represented by Hugo Grotius, and the dominion of the sea, supported by John Selden, a British author who argued for the right of states to extend their jurisdiction over the sea.\textsuperscript{62} According to the

\textsuperscript{60} The UNEP Shelf Program (UNEP/GRID-Arendal) began in 2003 following a resolution of the UN General Assembly calling on UNEP’s GRID network to coordinate work on marine data related to Article 76 of the United Nations Convention on the Law of the Sea. For further information, see http://www.continentalshelf.org/about/1143.aspx.


\textsuperscript{62} Ibid.
customary international law that gradually evolved, the territorial sea was three miles from shore. The first international attempt to codify the breadth of the territorial sea was at the 1930 Hague Conference held under the auspices of the League of Nations. The continental shelf doctrine, holding that a country has exclusive control over waters above its continental shelf, was proclaimed by United States President Truman in 1945 and was subsequently adopted at the First United Nations Conference on the Law of the Sea. However, the concept of an EEZ of 200 miles from the shoreline or other line drawn according to treaty specifications was introduced for the first time in 1971 by Kenya at the Asian–Africa Legal Consultative Committee held in Nigeria and was finally accepted at the Third UNCLOS in 1982.63 See Annex 1 for a description of the EEZ rules under Part V of the UNCLOS.64

The potential riches of the SCS and its adjacent waters have increased competition and conflicts, and thus it might be said that the Asian theater will be critical for shaping state practice regarding the law of the sea and determining whether or not the 1982 convention will really constitute the law in being.65 The 1982 convention has been ratified in the region only by Indonesia, Philippines, and Vietnam. Nonetheless, the UNCLOS rules, especially those relating to the EEZ, have converted the entire region into the most extensively claimed area in the world.66 Considered as a complex ocean governance system, the UNCLOS has 17 parts, 320 articles, and nine annexes. The

63 Ibid.
question has arisen whether Article 121 (paragraph 2) of the UNCLOS is applicable to these islands, islets, and rocks, i.e. whether the annexation of the archipelagos in itself gives exclusive rights to the living resources of the sea within the limit of 200 nm. In addition, the situation is more complex because coastal states can also be straits states, archipelagic states, or even geographically disadvantaged states. For example, Singapore is both a maritime user as well as a straits state. Article 121 (paragraph 2) also states that, “except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.” Yet, paragraph 3 of the same article states, “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” Here is the crux of some current disputes. Such features are only entitled to a 12 nm territorial sea and a 500-meter safety zone respectively. Since the UNCLOS terms seem to apply to most features in the Spratly archipelago, it is often debated as to whether most of the Spratly Islands are sufficient to establish a legitimate basis for maritime jurisdiction.

67 Geographically disadvantaged states are the coastal states, including states bordering enclosed or semi-enclosed seas. Their geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other states in the sub-region or region for adequate supplies of fish for the nutritional purposes of their populations and coastal states that can claim no exclusive economic zones of their own.


Disputes associated with the SCS actually involve almost every aspect mentioned in the UNCLOS, e.g., maritime delimitation, historic title, territorial sovereignty, use of force, military activities, fishing, marine scientific research and environment protection, freedom of navigation, and even deep seabed mining.\(^7\) Thus it might be said that the very convention that was designed to allow countries defined access to ocean spaces encouraged states to make more claims and thus generated even more disputes.

**Reasons behind the Conflict**

The SCS dispute has an obvious geostrategic dimension. If China ever succeeds in realizing its territorial claims, it would then “extend its jurisdiction some one thousand nautical miles from its mainland so as to command the virtual Mediterranean or maritime heart of Southeast Asia with far-reaching consequences for the strategic environment.”\(^2\) Each state has developed apparently irreconcilable positions regarding islands and archipelagos. According to Garver, Lebensraum ideas have strongly influenced Chinese policy in the SCS since the late 1970s.\(^3\) The Japanese demonstrated the strategic importance of this area during the Second World War when they used the Spratlys as a submarine base. The US Energy Information Administration (USEIA) regards the Strait


of Malacca as a world oil transit chokepoint.\textsuperscript{74} The SCS has acquired added significance since it harbors large energy reserves. Thus it has become quite impossible for the claimants to follow the “good fences make good neighbors” policy at least in the sea.\textsuperscript{75} Furthermore, most of the East Asian countries use a straight baseline system\textsuperscript{76} to calculate boundaries and are criticized for distortion due to the liberal interpretation of UNCLOS Article 7.\textsuperscript{77} Map 3.8 shows overlapping claims in the SCS region.\textsuperscript{78}

One basis for China’s claim to the waters of the SCS, as previously mentioned, is its supposed historic title. Although the UNCLOS Convention does not define the legal regime of historic title or historic waters, it recognizes these regimes in Articles 10(6), 15, and 46(b). Construction of China’s Yulin Naval Base near Sanya on Hainan Island enhanced its strategic significance for the balance of power in the region. This base will provide China with the capability to extend the People’s Liberation Army Navy (PLAN’s) military reach into the Pacific Ocean and SCS. The docks at Yulin Naval Base


\textsuperscript{75} Robert Frost used this phrase in the blank verse poem “Mending Wall” published in 1914.

\textsuperscript{76} A baseline is a legal construct – a boundary line that determines where a state’s maritime sovereignty and jurisdiction begins and ends. In fact, baselines determine all areas of maritime jurisdiction. This creates a demarcation between areas where a state has no rights and those where a state does enjoy rights. The default baseline under UNCLOS is known as the normal baseline. According to Article 5 of UNCLOS, a normal baseline is drawn at the low-water line. Waters on the landward side of a baseline are considered a state’s internal waters. However, in some situations it is either impractical or uneconomical to draw a normal baseline. In such cases, straight baselines are used. The first guidelines for drawing straight baselines arose out of one of the most famous and contentious cases in international law – the 1951 Anglo-Norwegian Fisheries Case. For further information, see http://www.aggregat456.com/2010/02/baselines-straight-and-normal.html.


\textsuperscript{78} U.S. Energy Information Administration, http://www.eia.doe.gov/countries/regions-topics.cfm?fips=SCS.
currently hold several major surface warships and nuclear submarines. The apparent Chinese intention is to enhance its capability to exercise its sovereignty claims.

**Map 3.8.** Overlapping Claims in the South China Sea (Source: U.S. Energy Information Administration)

over the South China Sea and protect its vital SLOCs. This base will considerably shorten the logistics tail for PLAN forces that are deployed into the SCS. At the same time, China will have the capacity to threaten the same SLOCs on which Japan, Taiwan, and South Korea are dependent. Much of the base is built underground so that facilities cannot be easily monitored by satellite. It is capable of housing nuclear submarines like the Type-094 submarine, a second-generation nuclear vessel representing China’s most lethal naval strike weapon.\(^{79}\) Previously all nuclear submarines were under the command of China’s

\(^{79}\) Thayer, “The United States and Chinese Assertiveness in the South China Sea,” 73–4.
North Sea Fleet. However, this base marks the first permanent deployment to China’s South Sea Fleet. It provides China with the capability to station a substantial proportion of its submarine-based nuclear deterrent force here. Chinese nuclear subs operating from Yulin will be able to patrol and fire from concealed positions in deep waters off Hainan Island if China can develop the necessary operational skills. This might threaten the general naval balance of power in the SCS. China has also developed anti-access/area denial capabilities to challenge the U.S. Navy in this region. Since China is a key regional player, any movement by the Chinese invariably generates tension. For example, in January 2010, U.S, Admiral Robert Willard said that, “[T]he Chinese navy had increased its patrols in the South China Sea and had shown an increased willingness to confront regional nations on the high seas and within the contested island chains.”

There are three kinds of maritime disputes in East Asia: territorial disputes over tiny islets, maritime boundary delimitation disputes between neighboring states, and disputes over the allocation and sustainable use of marine resources. It is difficult to have a plausible solution for the first kind of dispute since the disputing states have asserted sovereignty claims over the islands. The maritime boundary delimitation set out in the UNCLOS is also a source of tension between China and its neighbors. Although China and Vietnam have signed the agreement on the maritime boundary delimitation in the Gulf of Tonkin, there is no other maritime boundary agreement between China and other neighboring countries. The only noticeable progress is in the management of marine

80 Ibid.
natural resources in the East China Sea, the Yellow Sea, and the Sea of Japan. The SCS is rich in both living and non-living resources. Fishing remains an important economic activity in this region. The SCS provides 25 percent of the protein needs for 500 million people and 80 percent of the Philippine diet.\textsuperscript{83} Several agreements were signed between neighboring states for the proper management of this industry. For example, the Fishery Agreement between China and Japan signed in 1997, the Japan-South Korea Fishery Agreement in 1998, and the 2000 China–South Korea Fishery Agreement.\textsuperscript{84}

As far as the non-living resources are concerned, as has been stressed, this region is widely known for its rich oil and gas reservoirs. In March 2002, the German Chamber of Commerce published a report stating that the SCS is also rich in tin, manganese, copper, cobalt, and nickel. The report further estimated that there are 70,000 tons of phosphorous in the Spratly regions.\textsuperscript{85} The discovery of oil and gas reservoirs in the West Pacific has made Indonesia one of the world’s leading oil exporting states. Both onshore and offshore petroleum has given Brunei the highest per capita gross national product (GNP) in the region. The 1995 assessment made by Russia’s Research Institute of Geology of Foreign Countries declared that the Spratly Islands might contain 6 billion barrels of oil equivalent, of which 70 percent would be natural gas.\textsuperscript{86} Southeast Asia's first offshore well was drilled in 1957. However, the race for oil actually started in 1969–70 when an international report by the Committee for the Coordination of Joint

\textsuperscript{83} Ibid.


\textsuperscript{85} Chin, \textit{Potential For Conflict in the Spratly Islands}, 32.

Prospecting for Mineral Resources in Asian Offshore Areas declared the prospect of finding huge reserves of oil and gas in the SCS.\textsuperscript{87} Brunei, Malaysia, and Vietnam were already oil producers. In 1993 China became a net energy importer.

Malaysia is operating in the Central Luconia gas fields off the coast of Sarawak. The Philippines are operating northwest of Palawan in the Camago and Malampaya fields. Indonesia has the Natuna gas field. British Petroleum (BP) is operating the Lan Tay and Lan Do gas fields in Vietnam in a joint venture with the Indian Oil and Natural Gas Corporation (ONGC) and PetroVietnam.\textsuperscript{88} However, China has become the main energy claimant and the principal source of uncertainty for ASEAN. The Chinese National Oil Company (CNOOC) and its subsidiary, PetroChina, are interested in expanding operations in the SCS through cooperative agreements with ASEAN.\textsuperscript{89} However, when it comes to the management of inanimate resources, particularly oil and gas, the situation gets very complicated. An agreement between Japan and South Korea to jointly develop oil and gas in the East China Sea in 1974 generated severe protests from China. Recently, China and Japan have been fighting over the Chunxiao oil and gas field located just 5 km from Japan’s unilaterally claimed middle line in the East China Sea. This dispute has been resolved partially in line with the UNCLOS Convention. Map 3.9 shows gas and oil reserves in the South China Sea region.\textsuperscript{90}

\textsuperscript{87} Ibid.

\textsuperscript{88} Nong Hong, “Chinese Perceptions of the SCS Dispute,” \textit{Geopolitics of Energy} 30, no. 6 (June 2008).


\textsuperscript{90} U.S. Energy Information Administration, http://www.eia.doe.gov/countries/regions-topics.cfm?fips=SCS.
A report published by the *Washington Times* in 2005 stated that China is adopting a “string of pearls” strategy of bases and diplomatic ties which is to include a new naval base at the Pakistani port of Gwadar. The Chinese funded port is only 390 nm from the

**Map 3.9.** Oil and Gas Reserves in the South China Sea (Source: Energy Information Administration, http://www.eia.gov/countries/regions-topics.cfm?fips=SCS.)

Hormuz Straits. In case of a disruption in the Straits of Malacca, oil imports could be diverted through there and then transported via the Gilgit region to western China. 

Recently, the 2011 Pacific Energy Summit held in Jakarta, Indonesia, on February 21-23, featured the theme “Unlocking the Potential of Natural Gas in the Asia-Pacific.” The summit explored the role of natural gas with regard to energy security and climate change in the region. Experts predicted that a Golden Age of gas in the Asia–Pacific region is on its way. In fact, unconventional gas production technology is providing access to vast

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new reserves of natural gas. At the same time, emerging liquefied natural gas (LNG) infrastructure in the region, rising production, and increased global availability have enabled natural gas to play a significant role in energy diversification efforts.

By 2015, Asia is expected to be the world’s largest regional market for natural gas. Unprecedented growth is characteristic of the Asia–Pacific region today, with China at the forefront of rapid economic expansion followed by India. The International Energy Agency (IEA) projected that China will account for half of global oil demand growth in the next five years, while over the next 25 years, demand from OECD countries such as the U.S., Japan, and Europe will remain flat.\(^92\) Despite various constraints, new regional pipeline developments have begun to take shape as the continental markets of Asia evolve. Beijing is enhancing its pipeline diplomacy initiatives to sponsor new major regional gas pipelines from Turkmenistan, Kazakhstan, and Myanmar. The objective is to construct a large west-to-east domestic trunk-line gas pipeline infrastructure to accommodate China’s growing imports of LNG.\(^93\) Huge advances in drilling technology and the growing interest of foreign companies in exploring petroleum resources in this region have intensified disputes. Rich hydrocarbon deposits in Brunei and the Malaysian state of Sabah have also been discovered.\(^94\) It is estimated that the SCS region, excluding the Paracels and Spratlys, has proven oil reserves of approximately 7.8 billion barrels and


current oil production within the region is well over 1.9 million barrels per day. In fact, total SCS production continues to grow as more and more oil wells in China, Malaysia, and Vietnam have become operational. Beijing is even seriously considering creating a strategic petroleum reserve (SPR) because of its growing energy security initiatives. Chinese investment partners currently include: Eni, British Petroleum, Exxon-Mobil, Phillips Petroleum, Shell, Texaco, and Mitsubishi. Table 3.2 shows oil and gas reserves owned by the Southeast Asian countries.

Table 3.2. Oil and Gas reserves owned by the Southeast Asian countries (Source: U.S. Energy Information Administration, 2001).

<table>
<thead>
<tr>
<th>Country</th>
<th>Proven Oil Reserves (Billion Barrels)</th>
<th>Proven Gas Reserves (Trillion Cubic Feet)</th>
<th>Oil Production (Barrels/Day)</th>
<th>Gas production (Billion Cubic Feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brunei</td>
<td>1.4</td>
<td>13.8</td>
<td>200,612</td>
<td>334</td>
</tr>
<tr>
<td>Cambodia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>China*</td>
<td>1 (est.)</td>
<td>3.5 (est.)</td>
<td>273,000</td>
<td>141</td>
</tr>
<tr>
<td>Indonesia</td>
<td>0.2 (est.)</td>
<td>30.5</td>
<td>215,000</td>
<td>12</td>
</tr>
<tr>
<td>Malaysia</td>
<td>3.9</td>
<td>81.7</td>
<td>668,922</td>
<td>1,437</td>
</tr>
<tr>
<td>Singapore</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Taiwan</td>
<td>0.01</td>
<td>2.7</td>
<td>1,300</td>
<td>33</td>
</tr>
<tr>
<td>Thailand</td>
<td>0.4</td>
<td>11.8</td>
<td>169,346</td>
<td>565</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0.6</td>
<td>6.8</td>
<td>282,463</td>
<td>19</td>
</tr>
<tr>
<td>Total</td>
<td>Est. 7.8</td>
<td>Est. 153.6</td>
<td>1,921,734</td>
<td>2,542</td>
</tr>
</tbody>
</table>


China announced a plan to establish Xinjiang as the country’s largest oil and gas production and storage base. By 2020, China National Petroleum Corporation (CNPC) aims to boost the province’s hydrocarbon production capacity to 450 million barrels of oil equivalent.\(^{98}\) However, since the 1990s, the Chinese petroleum strategy has also called for an active Chinese participation in international oil and gas exploration to secure a diversified supply structure. In 1992 China awarded the Wanan Bei 21 oil exploration concession in the southwestern part of the Spratlys to the Crestone Energy Corporation based in Colorado. Since the majority of the concession area is located within Vietnam’s declared 200 nm EEZ, it led to severe protests by Vietnam.\(^{99}\)

There has been increased exploration in China’s onshore Junggar, Turpan-Hami, and Ordos Basins, although the Tarim Basin in northwestern China’s Xinjiang Uygur Autonomous Region has been the main focus of new onshore oil prospects. PetroChina reported that reserve additions in 2009 were 3.3 billion barrels of oil equivalent. China’s national oil companies (NOCs) are investing to increase oil recovery rates at the country’s mature oil fields. In fact, CNPC is utilizing natural gas supplies from the Daqing field for reinjection purposes to fuel enhanced oil recovery (EOR) projects. CNPC hopes that EOR techniques will help to stabilize Daqing’s oil output in the coming years. China’s domestic demand for natural gas supplies is also increasing at the same time. This might put a competing claim on oil output from Daqing.\(^{100}\) Map 3.10 displays some of the major Chinese oil basins.\(^{101}\)

\(^{98}\) Ibid.

\(^{99}\) Knut, *Petroleum in the South China Sea– a Chinese National Interest?*

\(^{100}\) See U.S. Energy Information Administration, “China: Country Analysis Brief.”

\(^{101}\) Ibid.
Beyond energy per se, there are still other reasons for potential conflict in the SCS. First, as has been emphasized, is the overlapping claim by claimants, namely Brunei, China, Malaysia, the Philippines, Vietnam, and Taiwan pursuant to the EEZ concept as stated in Article 55 of the 1982 UNCLOS. A second concern is the use of the high seas for military activities, including marine scientific research (MSR) by other states in the coastal states’ EEZ. UNCLOS Article 58 regards intelligence gathering as a part of the exercise of freedom of international navigation and although such intelligence gathering is thus permitted, incidents, like that of the *Impeccable* in March 2009, still occur. A third source of friction concerns the Proliferation Security Initiative (PSI) announced by President Bush in 2003. According to this initiative, there will be increasing international cooperation to interdict shipments of weapons of mass destruction (WMD) and their related materials. However, the regional states objected to various aspects of the PSI and hence its application was at least controversial in the case
Finally, PSI accepted that freedom of navigation and stability in the SCS is equally important to the coastal states of the Southeast Asia as well as to the extra-regional powers.

Piracy and maritime terrorism have become yet another persistent threat and source of tension with regard to maritime security in the SCS region. The SCS has always been a haven for pirates. Thirty percent of piracy crimes occur in Indonesian waters. The piracy issue has become a bone of contention between the countries in the region. In fact, suppressing piracy was often used as an excuse for naval build-ups and naval deployments, thereby creating further suspicion and distrust in other countries. China has realized that regional cooperation is necessary to combat piracy in its adjacent seas and in that connection has signed the Joint Declaration on cooperation in the Field of Non-Traditional Security Issues with the ASEAN in November 2002.

The term “core interest” has important significance when describing China's intentions in the SCS area. If the SCS issue is really a matter of “core interest” to China, which would place it on at par with other sovereignty issues such as Tibet and Taiwan, perhaps justifying military intervention in the region. A foreign ministry spokesperson did comment at a news conference that China has “indisputable sovereignty” over the Spratly Islands. But there have been no such statements concerning their position in the SCS as a whole. Stapleton Roy, Director of the Kissinger Institute on China and the

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104 Zou, “Historic Rights in International Law and in China’s Practice.”
U.S., suggests that, “China may have internal political disagreements regarding the South China Sea because Beijing do not speak with precision about the South China Sea.”\(^\text{105}\) Some of their claims are not even officially documented. This further indicates that China’s outward policy has been somewhat ambiguous with regard to any claim of total sovereignty over the area.

Nonetheless, the Chinese military (the People’s Liberation Army or PLA) has declared that China has “indisputable sovereignty” over the SCS and this has naturally generated grave concern both in Washington and Asia. Countries have started to believe that China’s policy is becoming more and more aggressive. China’s navy has been demonstratively more aggressive at sea, seizing fishing boats, arresting sailors from other countries, and exchanging gunfire.\(^\text{106}\) General Mi Zehnyu bluntly stated: “China must develop a strong sea power to protect and not yield a single inch of its three million square kilometers of ocean territory. China must ‘build a new Chinese maritime great wall.’”\(^\text{107}\) The SCS’s growing strategic significance as well as increasing military competition in the region guarantees that there will be more opportunities for miscalculation. When the People’s Liberation Army and Navy (PLAN) conduct further exercises and activities at sea, the risks will rise. Research vessels will do their preparatory work, and other militaries will step up surveillance, resulting in an increased number of vessels in a limited space. The PLA is even developing new platforms and

\(^\text{105}\) Ibid.


capabilities to address still other objectives within the East and South China Seas, and possibly even into the Indian Ocean.

In one plausible interpretation, China is trying to dominate the entire area militarily by establishing a chain of outposts in the SCS region. New missile units outfitted at various locations in China could be used in a variety of non-Taiwan contingencies. Aerial-refueling programs and Airborne Early Warning and Control (AEW&C) will allow for extended air operations into the SCS. At the same time, China is trying to use soft power through capacity-building assistance in a range of marine and environmental initiatives, such as Partnerships in Environmental Management for the Seas of East Asia (PEMSEA), the UNEP/GEF South China Sea project, and the Cooperative Mechanism for Navigational Safety and Environmental Protection in the Malacca and Singapore Straits. In sum, although China’s official policy of “peaceful rise” recognizes the international values of peace, international order and cooperation, that policy is becoming increasingly suspect.

The next chapter discusses about the conflicts that took place in the SCS during the Cold War and the Post-Cold War era.

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CHAPTER 4: CONFLICTS IN THE SOUTH CHINA SEA

“War is a game of deception. Therefore, feign incapability when in fact capable; feign inactivity when ready to strike; appear to be far away when actually nearby, and vice versa.”

Sun Tzu

Southeast Asian states are highly sovereignty sensitive, and this sensitivity has made the principle of nonintervention the bedrock of foreign policy and interregional state relations. Seas are a central concern for Southeast Asian countries,¹ so it is hardly surprising that the countries in the region are strongly nationalistic in asserting and protecting their claims. Mark Valencia comments, “Indeed, when countries in Asia think maritime, they think first and foremost about boundary disputes, not protection of the deteriorating marine environment or management of dwindling fisheries,” and he further states that, “[i]t is these perceptions that must change.”² Geoffrey Till once observed that “claims to the sovereignty of islands can be important symbolically, perhaps especially in times of national difficulty.”³ In fact, the sovereignty issues in the South China Sea (SCS) are extremely complex and as Ian Townsend Gault comments, “too much ink has been spilled on that issue without making progress.”⁴ The uneasiness of the Philippines over

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⁴ Ian Townsend-Gault, “Legal And Political Perspectives On Sovereignty Over The Spratly Islands,” (paper presented at the Workshop on the South China Sea Conflict Organized by the Center for Development and Environment, University of Oslo, Oslo, April 24-26, 1999).
the joint maritime seismic undertaking (JMSU), as it seemed to weaken Philippine sovereignty claims, is a clear manifestation of nationalism. The initial agreement was signed by China and the Philippines in 2004 to jointly explore oil in the SCS, and Vietnam later joined in 2005. The JMSU was initially regarded as a breakthrough and watershed for diplomacy. It also indicated a growing level of trust and confidence among claimants to pursue peaceful options. However, this changed after Vietnam joined. Since the JMSU site covered about 80 percent of the Philippines’ Exclusive Economic Zone (EEZ), the agreement implied that the Philippines “acknowledged the area involved as disputed.”

The SCS constitutes the first line of defense for the littoral states of Southeast Asia. As Singapore’s deputy prime minister stated, individual state action is not enough; the oceans are indivisible and maritime security threats do not respect boundaries. As will be explained further in this chapter, despite – or perhaps because of – intensifying disputes, maritime security cooperation in Southeast Asia appears to be developing more quickly than in the preceding decade. A number of clashes have occurred over the control of specific islands and reefs within the SCS. According to Tonnesson, the history of the disputes in the SCS can be understood by focusing on the nationalist perspective,

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5 Richardson, “Commentary on Energy and Geopolitics in the South China Sea by Michael Richardson,” 5.


by creating a chronology of conflicting claims to sovereignty, or by examining a history of international events and analyzing trends based on the changes in the international system. This chapter utilizes all three of these approaches and focuses mainly on disputes that arose or became more salient during the Cold War (1945–1992) and the Post-Cold War era (1993–present). Table 4.1 summarizes significant events that took place in this region since the twelfth century and continues to the present.

The question of sovereignty over the Spratly Islands first arose when foreign powers like Britain and France started exerting their influence in the 1800s. Before that, Chinese ships dominated trade in the SCS from the twelfth to mid-fifteenth century. In fact, Chinese naval and commercial shipping went through a period of intense expansion during the fourteenth to early fifteenth century. Later, when the emperor ordered an end to the building of ocean-going ships, this opened new possibilities for other maritime nations like the Portuguese, who were followed by the Dutch, to explore opportunities for

Table 4.1. Key Events and Actors in Southeast Asia from the Twelfth Century to the Present (Compiled by author; Source: Tonnesson, “The History of the Dispute,” 6).

<table>
<thead>
<tr>
<th>Period</th>
<th>Actors involved</th>
<th>Key events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twelfth to mid-fifteenth century</td>
<td>China</td>
<td>Chinese ships dominated trade</td>
</tr>
<tr>
<td>Seventeenth century</td>
<td>Dutch</td>
<td>Dominated spice trade</td>
</tr>
<tr>
<td>Eighteenth and nineteenth centuries</td>
<td>Vietnamese Nguyen Kings</td>
<td>Pursued an active maritime policy claiming sovereignty to the Paracels</td>
</tr>
</tbody>
</table>


11 Ibid, 6–7.
<table>
<thead>
<tr>
<th>Period</th>
<th>Actors involved</th>
<th>Key events</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colonial Period</td>
<td>European powers</td>
<td>The British Crown claimed two islands (1877)</td>
</tr>
<tr>
<td>World War I and World War II</td>
<td>France, Japan, and China</td>
<td>France claimed the Spratlys (1930-33); Japan occupied Hainan (1939); Chiang Kai-shek’s government published the dotted U-shaped map; China established a permanent presence on the Woody Island and Itu Aba respectively, Japan occupies Spratlys (1934-44).</td>
</tr>
<tr>
<td>Cold War</td>
<td>France, Japan, and Philippines</td>
<td>The Philippines (1946) and Vietnam (1950) emerged as the first decolonized states; Peace conference in San Francisco (1951); Philippines proclaimed the area as Kalayaan; Japan renounces all rights to Spratly Islands (1951).</td>
</tr>
<tr>
<td>1974</td>
<td>China- Vietnam</td>
<td>Chinese invasion of the Paracels in 1974; airship built in the Woody island; Soviet Union started building up air and naval facilities in the Cam Ranh Bay leading to small clashes between 1979 and 1982.</td>
</tr>
<tr>
<td>Post-Cold War/1992</td>
<td>China- Vietnam</td>
<td>Dispute between China and Vietnam drilling oil in the Gulf of Tonkin; By the end of 2008, the two countries concluded the Gulf of Tonkin agreement; ASEAN Declaration on the South China Sea concerning regional security was promulgated (1992); China occupies Da Lac Reef (July 1992).</td>
</tr>
<tr>
<td>1995</td>
<td>China- Malaysia</td>
<td>First military clash took place with no serious consequences.</td>
</tr>
<tr>
<td>1995</td>
<td>Vietnam- Taiwan</td>
<td>Taiwanese artillery fired on the Vietnamese supply ship.</td>
</tr>
<tr>
<td>Period</td>
<td>Actors involved</td>
<td>Key events</td>
</tr>
<tr>
<td>---------</td>
<td>----------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1996-97</td>
<td>China-Philippines</td>
<td>90-minute gun battle with a Philippine navy gunboat near Campanes Island; and the Philippine navy ordered a Chinese speedboat and two fishing boats to leave the Scarborough Shoal in April.</td>
</tr>
<tr>
<td>2001</td>
<td>China-U.S.</td>
<td>USNS Bowditch; ASEAN and China sign Free Trade Agreement.</td>
</tr>
<tr>
<td>2009</td>
<td>China-U.S.</td>
<td>USNS Impeccable.</td>
</tr>
<tr>
<td>2009</td>
<td>China-U.S.</td>
<td>USNS Victorious.</td>
</tr>
<tr>
<td>2009</td>
<td>China-Philippines</td>
<td>Philippines Baseline Bill.</td>
</tr>
<tr>
<td>2010</td>
<td>China-U.S.</td>
<td>China communicated to the U.S. that the South China Sea is “an area of core interest that is as non-negotiable.”</td>
</tr>
<tr>
<td>2011</td>
<td>China-India</td>
<td>China objected to India’s naval presence (INS Airavat) and oil exploration with Vietnam.</td>
</tr>
<tr>
<td>2011</td>
<td>China-Vietnam</td>
<td>Naval ships from China attacked and cut the cable of Vietnamese oil exploration ship.</td>
</tr>
<tr>
<td>2011-2012</td>
<td>China-Philippines</td>
<td>Fight over the Scarborough Shoal.</td>
</tr>
<tr>
<td>2012</td>
<td>China-Taiwan</td>
<td>Taiwan rejected a pan-Chinese approach of coordinating with the PRC regarding claims to the South China Sea.</td>
</tr>
<tr>
<td>2013</td>
<td>China-Philippines</td>
<td>China rejected Philippines proposal to take the SCS dispute to the ICJ.</td>
</tr>
</tbody>
</table>
expanding trade. The Dutch for example, dominated the lucrative spice trade during the seventeenth century. However, during the eighteenth and nineteenth centuries, the Vietnamese Nguyen Kings, Gia Long (1802-20), and later Minh Mang (1820-47), pursued an active maritime policy claiming sovereignty to the Paracels.\(^\text{12}\)

But there was a new phase when the Europeans started a systematic survey of the Spratlys and Paracels. Most of the areas surrounding the SCS were made into British, French, and Spanish colonies, and hence treaties were agreed to separate them from each other. The British established Singapore as a port city, launched the Opium War (1839–42), acquired Hong Kong, and established protectorates in Malaya and northern Borneo. The French colonized the whole of Indochina (Vietnam, Cambodia, and Laos) from 1863 to 1884 and leased a territory on the Liaozhou peninsula.\(^\text{13}\) Although the monarchies in China, Japan, and Thailand were not fully subjugated, they were forced to open themselves up. Their governments had to learn new techniques of mapping and demarcating land borders, delineating territorial waters, planting flags, and establishing sovereignty markers on islands.\(^\text{14}\) Toward the end of the nineteenth century, Britain, France, Japan, and China all advanced competing claims to the Spratlys.\(^\text{15}\) In 1870, a group of merchants in northern Borneo wanted to exploit bird dung used as fertilizer on the Spratly Islands and the Amboyna Cay. Consequently, the British Crown formally

\(^{12}\) Ibid, 8.

\(^{13}\) Ibid, 8-9.

\(^{14}\) Ibid.

claimed these two islands in 1877. The Sino-French Treaty of 1887 established a land boundary between China and French Indochina, and this border remained contested for much of the twentieth century.\textsuperscript{16} From this point forward until 1933, the Spratly Islands and Amboyna Cay were regularly included in the British colonial list, though little was done to exploit them or sustain the British sovereignty claim.\textsuperscript{17} Although the Paracels occupied a strategic position, neither Britain nor France took any initiatives to claim the archipelago before the 1930s. In the first decades of the twentieth century, only the Chinese empire displayed an interest in the Paracels until China fell apart and suffered a series of civil wars. However, from 1894–95, Japan destroyed the Chinese navy and established a presence in the SCS through the annexation of Taiwan.\textsuperscript{18}

The fear of Japanese expansion led France to gain an interest both in the Spratlys and the Paracels.\textsuperscript{19} In 1930-33, France claimed the Spratlys for itself and occupied some of them. In 1938, France established what was designed to be a permanent presence in the Paracels, which were at this point also claimed on behalf of the protectorate of Annam (today’s central Vietnam).\textsuperscript{20} According to France, the stationing of a French garrison in the Paracels had a defensive purpose. Although Britain did not oppose French action, Britain did not abandon its own 1877 claim to the Spratly Islands and Amboyna Cay. Before occupying Hainan in 1939, Japan established a military presence both in the

\textsuperscript{17} Ibid, 9.
\textsuperscript{18} Ibid.
\textsuperscript{19} Ibid, 11.
\textsuperscript{20} Ibid, 6.
Paracels and the Spratlys. Towards the end of the Second World War, the most active claimant was the Republic of China (the government of Chiang Kai-shek), which sent naval expeditions both to the Paracels and the Spratlys in 1945-46. As previously mentioned, China even established a “permanent” presence on both Woody Island and Itu Aba.

In 1947–48, Chiang Kai-shek’s government published the dotted U-shaped line map encompassing virtually all of the SCS (as previously discussed in Chapter 3). However, after Chiang Kai-shek’s government fled to Taiwan, Itu Aba and Woody Island, as well as the other Spratly and Paracel Islands, remained unoccupied for some time. With the onset of the Cold War, the Philippines (1946) and Vietnam (1950) emerged as the first decolonized states. At the 1951 peace conference held in San Francisco, Japan formally abandoned its claims to Hainan, Taiwan, and all other islands in the SCS. However, the treaty did not state to whom the other islands were ceded until the Philippines proclaimed the area as Kalayaan or Freedomland, in 1956.

Military Engagements during the Cold War Period

Vietnam and China

This bilateral dispute over the control of the Paracel and Spratly archipelagos dates back to the Vietnam War. In 1973, four U.S. oil companies signed contracts with the South Vietnamese government of President Nguyen Thieu and, with the oil crisis looming, began exploration. Before 1974, the East Paracel islands were occupied by the

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21 Ibid, 11.

22 Ibid, 12.
People’s Republic of China, while the West Paracel islands were occupied by South Vietnam. The Chinese showed renewed interest in the Paracels by sending a fishing fleet with navy escorts in early January 1974. South Vietnam’s resistance to this move led to severe military clashes. This set the stage for China to occupy three Paracel islands in the Crescent group.

Vietnam’s claim to the islands was based on two arguments. First, Vietnam had exercised historical dominion and control over the Spratly islands dating back to 1650–53. Second, the islands are located within Vietnam’s continental shelf. China feared the close contact between the North Vietnam and the Soviet Union. Therefore, Chinese occupation of part of the Paracels was regarded by China as a means to counter a growing Soviet naval presence in the SCS region. It is important to note that the U.S. maintained a neutral position throughout the conflict over the Paracels. Although North Vietnam supported the Chinese claim of control, Taiwan and Philippines strongly protested. China strengthened its administrative control over the Paracels in the late 1970s.

On May 12, 1977, Vietnam declared sovereignty over both the Spratlys and the newly Chinese-occupied Paracel Islands within a 200-mile EEZ. As a reaction to Vietnam’s declaration, China’s foreign minister, Huang Hua, abruptly declared, “When the time comes, China will retrieve those islands,” and further stated that, “[t]here will be no need then to negotiate at all.” Vietnam did not relinquish its claims to either island group in the Spratlys or the small airstrip located there. Vietnam’s main garrison was

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25 Ibid, 52.
situated on Sin Cowe Island and fortified with heavy artillery and anti-aircraft guns.\textsuperscript{26} A Paracel maritime police district was also set up in 1978 by China along with infrastructural construction by the Chinese government. China built an airstrip on Woody Island in 1978 and air service to Hainan began in August 1979.

In January 1980, the Chinese PLAN navigation Safety Department issued a navigational chart of the Paracels. Lighthouses were also constructed on Bombay Reef on the southeast limit of the Paracel group and on the north reef lying to the northwest limit. This was done because both these points were regarded as major international commercial passageways. A new harbor was even constructed on Triton Island by the PLAN in 1982. Beijing also entered in a “battle of documents” with Hanoi to substantiate its claim to ownership of Paracels and Spratlys.\textsuperscript{27} In fact, the signing of the Treaty of Friendship and Cooperation between Vietnam and Soviet Union changed the course of disputes in the SCS region. The Soviet Union started strengthening air and naval facilities in the Cam Ranh Bay, and this led to the outbreak of small clashes between China and Vietnam in the Paracel Islands between 1979 and 1982. The worst dispute to that date took place in 1979 when 24 Vietnamese fishermen were arrested by the Chinese fleet and kept in custody for over one year.\textsuperscript{28} Once the Paracels came firmly in their hands, China ventured further to the Spratlys in the Bach Ho field area. This area was considered to be the largest and most productive by Vietnam, which was first developed by the joint

\textsuperscript{26} Chin, \textit{Potential For Conflict in the Spratly Islands}, 17.


\textsuperscript{28} Ibid, 1007–8.
venture Vietsovpetro. Established with the Soviet Union in 1981, it later involved a cooperation agreement between PetroVietnam and Russia’s Zarubezhneft.

Beijing was accused of a serious violation in the SCS by Hanoi, which thought that the former was trying to claim its ownership of the whole sea and turn it into its “home pond.” This incident took place 120 nautical miles off the coast of Phu Yen province in south-central Vietnam, claimed by both China and Vietnam. PetroVietnam accused China of sabotaging Vietnamese oil exploration vessels. Vietnam stated that while they were conducting seismic survey and drilling operations, China flew airplanes over to monitor activity. PetroVietnam was working with a number of large international oil companies, including ExxonMobil and Chevron, to explore oil and gas assets in SCS waters claimed by Vietnam. China’s next move came in May 1992 when Beijing announced the signing of an agreement between the Chinese National Offshore Oil Corporation and Crestone Energy Corporation of Denver to explore and develop oil in the 9,700 square mile Wanan B8i-21 Block (WAB-21) in the Vanguard Bank area of western Spratly.29 Vietnam strongly protested this move and urged China to void the Crestone contract as the exploration was located on their continental shelf area.30 This was Beijing’s first concession to a foreign company and instigated further complications in the SCS region, including renewed tension with Vietnam. The situation became worse

29 Ibid, 1017.

when PetroVietnam and the Vietnamese State Oil Corporation began drilling in
Crestone’s concession area.  

The Fiery Cross Reef Incident

In 1984, the Chinese navy conducted a major naval exercise in the Spratlys that
involved the circumnavigation of islands occupied by Vietnam and two more exercises
were conducted in 1986 as far as James Shoal. This meant that Beijing was becoming
capable enough to operate militarily even when far away from home. In late 1987,
China announced its intention of setting up a number of observation stations in the
Spratlys to conduct a comprehensive global oceanic survey, as requested by the United
Nations Educational, Scientific and Cultural Organization (UNESCO) at the 14th Annual
Inter-governmental UNESCO Conference held in March 1987.

Map 4.1. The Fiery Cross Reef (Source: Marius Gjetnes, The Legal Regime of Islands in
the South China Sea [master’s thesis, University of Oslo, Norway, 2000], 77)

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31 Leszek Buszynski and Iskandar Sazlan, “Maritime Claims and Energy Cooperation in the South China

32 Sulan Chen, Instrumental and Induced Cooperation: Environmental Politics in the South China Sea
(College Park, MD: University of Maryland, 2005).
In April and May 1987, the Chinese Academy of Sciences and the State Oceanic Bureau dispatched ships to investigate the possibility of establishing an observation station on one of the several uninhabited islands, or shoals, under a UNESCO plan. After various investigations were completed by the Chinese Academy of Sciences and the State Oceanic Bureau, it was decided that Fiery Cross was the most suitable location. Table 4.2 shows the geographic coordinates of Fiery Cross Reef.

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33 The Fiery Cross reef has a linear shape aligned south-west to north-east. Its long axis measures 14 nautical miles while the maximum width is 4 nautical miles with a total area of 110 square kilometers. At high tide the whole reef gets submerged except for a prominent rock, which is one meter high. The reef has an airstrip and a marine observation station built in 1988. Additionally, China built a navy harbor. This reef is incapable of supporting any human habitation since it lacks fresh water and fertile soil.

34 Garver, “China’s Push Through the South China Sea,” 1009.

Table 4.2. Geographic Coordinates of Fiery Cross Reef

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<td>112 Degree 53’ 00”</td>
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<tr>
<td>B</td>
<td>9 Degree 38</td>
<td>112 Degree 57’</td>
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<td>9 Degree 32’ 30”</td>
<td>112 Degree 54’ 00”</td>
</tr>
<tr>
<td>D</td>
<td>9 Degree 42’</td>
<td>112 Degree 54’</td>
</tr>
<tr>
<td>E</td>
<td>9 Degree 33’ 02”</td>
<td>112 Degree 53’ 34”</td>
</tr>
</tbody>
</table>

Construction of a Chinese base at Fiery Cross Reef started on March 14, 1988, and in August the construction was completed. Vietnamese forces tried to disrupt the construction work, which led to an armed battle. Seventy-five Vietnamese personnel were either killed or were reported missing, and three Vietnamese ships were set ablaze. Chinese casualties were apparently minor. The battle lasted for about 28 minutes.\(^{36}\) Vietnam reported that three Chinese warships landed troops on Fiery Cross Reef and planted China’s flag. When they were asked to leave, the Chinese troops opened fire.

Vietnam declared that, “China was trying to seize sole control of the South China Sea, dominate this international lifeline, replace the United States navy in the region, hinder the soviet navy’s navigation, apply political pressure on the Southeast Asian countries,

build a military springboard in the region, seize territory, and exploit and plunder maritime resources.”  

However, China rejected this charge and warned that:

Vietnam has no right to interfere with Chinese vessels patrolling their territorial waters. It is Vietnam that has occupied illegally islands and reefs in China’s Nansha islands. If the Vietnamese side ignores the consistent stand of the Chinese government and hinders our legitimate activities in these areas, it will have to bear the responsibility and the consequences.  

The Chinese version of the story was that a Chinese survey team landed on Fiery Cross Reef to set-up an observation post. Three Vietnamese ships arrived and landed troops on the reef. When the Chinese asked them to leave, the Vietnamese opened fire. Hence, in retaliation, the Chinese ships had to fire. On March 23, 1988, Vietnam offered to open talks on the Spratly dispute, an overture that was rejected by China. In response to what later developed into a public relations disaster, China agreed to negotiate with Vietnam and demanded the withdrawal of Vietnamese forces in May 1988. But China sent more ships to the islands and started occupying additional reefs, all the while warning Vietnam of possible military confrontation. China even warned Vietnam of another battle. Meanwhile, Hanoi occupied four more islets. China too continued occupying a few other reefs, which resulted in an armed clash at Johnson Reef in 1988. However, none of the parties regarded themselves as having initiated this conflict. China sank three Vietnamese transport ships killing 72 seamen and taking nine prisoners. Shortly after the armed clash with China, the Vietnamese defense minister reportedly started visiting the

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38 Ibid, 438.

39 Dzurek, “The Spratly Islands Dispute: Who’s On First?”

Spratly Islands. Chinese Foreign Minister, Qian Qichen, defended China’s actions by saying that China was only conducting a scientific and peaceful survey in the Nansha Islands. UNESCO, however, denied this claim. Qian Qichen promised that there would be no war in that area if Vietnam would stop occupying islands and reefs and withdraw all its troops. Meanwhile, Vietnam tried to garner the support for the Non-Aligned Movement (NAM)\(^4\) at the United Nations to condemn this action, but failed.\(^5\) In November 1988, Vietnam reported that a Chinese destroyer had fired on one of its ships, but China denied the incident. In August 1989 Vietnam started building facilities on Bombay Castle on Rifleman Bank, Vanguard Bank, and Prince of Wales Bank, thereby bringing 24 islets and reefs under its control.\(^6\) Meanwhile, Soviet naval ships stayed out of the conflict as the U.S. 7\(^{th}\) Fleet had done in 1974.\(^7\)

Though not directly involved in the clash near the Fiery Cross Reef, other claimants reacted vigorously. Taiwan reacted by reasserting its sovereignty and re-supplying its garrison on Itu Aba. On March 17, 1988, the Philippines reacted to the China–Vietnam clash by warning both nations not to interfere in Kalayaan. In April of the same year, a Philippine delegation even visited Hanoi and reached an agreement not to use force in settling disputes. The following February, Malaysia’s Deputy Foreign Minister stated,

\[^4\] The Non-Aligned Movement (NAM) was started by Indian Prime-minister Jawaharlal Nehru, Yugoslavian President Marshal Tito, and Egyptian President Nasser. The first meeting was held in Bandung, Indonesia, in 1955.


\[^6\] Dzurek, “The Spratly Islands Dispute: Who’s On First?”

The islands and atolls are under Malaysian sovereignty, and Malaysia has in the past reaffirmed its jurisdiction... They are within Malaysia's continental shelf area and Malaysia's sovereignty over them has been officially declared through the new Map of Malaysia, published on December 21st, 1979... The claim is in line with the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries, and the UN Convention on the Law of the Sea, as well as other international practices.45

In sum, the 1988 conflict bore some resemblance to the 1974 war insofar as China once again proved its military capability in the SCS region. Subsequently, for some years, the bilateral relationship between Vietnam and China appeared to improve. The two countries normalized their diplomatic relationship in November 1991.46 At the end of 2008, the two countries finally signed the Gulf of Tonkin agreement, which defined a shared maritime area between China and Vietnam. This established a maritime boundary of approximately 500 km. The line has 21 geographic points, of which points 1 to 9 divide the territorial seas and points 9 to 21 delimit the EEZs and continental shelves of the two countries in the Gulf of Tonkin. This agreement seemed to promise a new era of maritime cooperation between the two parties.

China’s strategic thinking towards Southeast Asia shifted from a land-based strategy in the Cold War to a sea-centered strategy in the post-Cold War era.47 China’s rapid economic growth along with the economic success of the ASEAN Newly Industrialized Economies (NIEs), including those of Malaysia, Indonesia, Thailand, Singapore, and the Philippines, bolstered trade and investment relations between China

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45 Dzurek, “The Spratly Islands Dispute: Who's On First?”

46 Although, the Sino-French Treaty of 1887 roughly demarcated the Sino-Vietnamese border, no accurate demarcation ever took place. This war began with numerous armed skirmishes along the border and became a source of tension since then.

and Southeast Asian countries. The SCS became strategically more important for China as a link to Southeast Asian countries in terms of trade, investment, and communication. Hence, China never wanted to lose the sympathy of ASEAN.\(^\text{48}\) During a visit to Singapore in 1990, Chinese Premier Li Peng said that the SCS conflict should be frozen and the exploitation of the natural resources should be managed by joint ventures until a peaceful solution could be reached. Li further explained that the territorial sovereignty of China could not be questioned; rather joint venture cooperation should be initiated to enhance regional cooperation.\(^\text{49}\)

A workshop held in Bandung, Indonesia, in 1991 was sponsored by the Indonesians to resolve their differences peacefully. However, China’s move to acquire aerial refueling technology and its decision to purchase an aircraft carrier from the Ukraine seemed inconsistent with the spirit of the agreement.\(^\text{50}\) Furthermore, in 1992, the Standing Committee of the National People’s Congress formally proclaimed Chinese sovereignty over the entire Spratly archipelago.\(^\text{51}\) The situation continued to worsen when Chinese troops were deployed to erect a sovereignty marker on the Vietnamese-claimed Da Lac Reef, which was located close to the Crestone energy concession.\(^\text{52}\) Following Beijing’s moves in 1992, ASEAN publicized its formal declaration known as the


\(^{50}\) Valencia, “The Spratly Islands: Dangerous Ground in the South China Sea,” 78.


\(^{52}\) Valencia, “The Spratly Islands: Dangerous Ground in the South China Sea,” 79.
“ASEAN Declaration on the South China Sea” concerning regional security. Although China pledged to honor this declaration, Chinese intentions and actions remained a matter of concern. Box 4.1 summarizes the 1992 ASEAN Declaration.

A number of other minor clashes took place in the SCS in the post-Cold War period. The first one took place between China and Vietnam in 1992 when Vietnam accused Beijing of drilling oil in the Gulf of Tonkin. China reacted by seizing 20 Vietnamese cargo ships that were transporting goods from Hong Kong. The second clash between them took place in 1994. Both these countries were otherwise engaged in naval confrontations within territorial waters claimed by Vietnam over oil exploration blocks 133, 134 and 135. China also claimed the same area as part of their (WAB-21) block.53

Malaysia and China

In September 1991, China accused Malaysia of infringing on its territorial rights in the Spratlys after Kuala Lumpur decided to build an airstrip on Terumbu Layang-Layang in 1983. This military step was severely protested both by Vietnam54 and China, and the latter claimed indisputable sovereignty over the reef it named Danwan. This also demonstrated that Kuala Lumpur was serious about defending its territorial claims, which included Amboyna Cay occupied by Vietnam since 1978. Malaysia’s decision to increase its power in the region and to use force to resist aggression if necessary gave the island of Luban new strategic importance for securing sea-lanes between Peninsula Malaysia and Sarawak and Sabah. Its importance was even clearer after the conceding of the 91-square


Box 4.1. Summary of ASEAN Declaration on the South China Sea, 1992 (Source: http://www.asean.org/5233.htm.)

ASEAN Declaration on the South China Sea (1992)
Manila, Philippines, 22 July 1992

WE, the foreign Ministers of the member countries of the Association of Southeast Asian Nations;

RECALLING the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

WISHING to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

DESIROUS of further promoting conditions essential to greater economic cooperation and growth;

RECOGNIZING that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

RECOGNIZING that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

CONSCIOUS that any adverse developments in the South China Sea directly affect peace and stability in the region.

HEREBY

EMPHASIZE the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;

URGE all parties concerned to exercise restraint with view to creating a positive climate for the eventual resolution of all disputes;

RESOLVE, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;

COMMEND all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;

INVITE all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.
mile island by the Sabah state to the central Malaysian government as a federal territory in 1984.\(^{55}\)

Malaysia also had maritime disputes with the Philippines regarding the Swallow Reef and with Brunei regarding the Louisa Reef. Apart from Malaysia and the Philippines, no other ASEAN member states have had any major claims on the disputed islands of the South China Sea. However, in 1992, China reacted against an agreement signed by Vietnam and Malaysia to jointly develop any economic opportunity that might arise in the Spratlys.\(^{56}\) That same year, China conducted an inspection in the Spratlys. The ship, after crossing through the eastern Spratlys, landed at James Shoal and placed “seven sovereignty” plates before returning to Hainan. By this time, China occupied nine islets in the Spratlys, including the Fiery Cross, Subi Cuarteron, Johnson, Gaven, Eldad, and Dongmen reefs.\(^{57}\) Finally in February 1992, the National People’s Congress of China passed the “Law of the People’s Republic of China on the Territorial Sea and Contiguous Zone,” which laid down China’s exclusive claim over the entirety of the Spratly Islands. The law further authorized the Chinese navy to evict trespassers by force.\(^{58}\) This sudden declaration alarmed many ASEAN member countries.

The Philippines felt particularly vulnerable because of the US withdrawal from its base and uncertainty about Washington’s defense commitment to Manila in the Spratlys. Therefore, the Manila Declaration was initiated to resolve the sovereignty and


\(^{56}\) Chakraborti, “The Territorial Claims in South China Sea,” 186.

\(^{57}\) Ibid, 187.

\(^{58}\) Ibid.
jurisdictional issues in the Spratlys without resort to force. This Declaration represented one of the most remarkable demonstrations of political solidarity among the ASEAN member states on strategic issues of common concern. Vietnam by then had claimed 15 islands and reefs in the Spratlys and made clear that the nation’s claims in both the Paracels and the Spratlys were mainly based on national security interests as well as on natural resources. Meanwhile, the Chairman of the Council of Ministers Continental Shelf Committee commented in an interview with the *Far Eastern Economic Review* that Vietnam had occupied 21 points including nine islands and he added that there were several thousand Vietnamese construction workers, scientists, and hydrological staff working in this area.\(^5^9\) Malaysia was also in dispute with Indonesia over two small islands, Sipadan and Ligitan, in the Sulawesi Strait between Sabah and the Indonesian province of Kalimantan. Table 4.3 below shows islands with garrisons stationed in the Spratlys.\(^6^0\)

**Military Engagements during the Post Cold War Period**

Since the end of the Cold War, China has reportedly tried to assure ASEAN that its military modernization was essentially meant for self-defense and not to “fill the power vacuum” either now or in the future. As a positive gesture, China entered into diplomatic relations with Indonesia, Singapore, and other ASEAN countries, but this move was insufficient to eradicate regional apprehension about Beijing’s military modernization. In

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\(^5^9\) Ibid.

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<th>Filipino Name</th>
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fact, this apprehension seemed entirely justified after the occupation of Mischief Reef by China in February 1995.

Philippines and China

The conflict between China and the Philippines had been latent from 1971 until 1994, when the Mischief Reef incident took place. Mischief Reef is located within Philippine waters and within its EEZ extending 200 nms from its coast. Mischief Reef is submerged at high tide and has little value. However, its occupation by China and the proceeding construction of facilities brought it into the international limelight. In February 1995, tensions heightened when China increased its military presence in Mischief Reef. This was only 90 miles away from Pagasa Island where the Philippines had its largest military station outside the mainland. China built four structures on Mischief Reef and described them as fishing shelters. A base in Mischief Reef obviously would provide military protection to both mineral and fishing resources. China was accused of breaking both international law and the 1992 Manila Declaration, in which both the parties agreed to solve conflicts through cooperative and peaceful means. The Philippine navy consisted of only a dozen patrol boats and in no way could match their Chinese counterparts. China regarded this occupation as part of its claim to the entire Spratly area based on usage and discovery.

The conflict gathered momentum when the Philippine Department of Energy approved an application made by the US oil company, Vaalco, and its Philippine

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62 Ibid.

subsidiary, Alcorn, to conduct an oil exploration exercise near Reed Bank, 400 nms west of Palawan.\footnote{Ibid, 191.} China immediately protested the move as an infringement of Chinese sovereignty. This situation worsened when the Philippines detained 55 Chinese fishermen. China replied by arresting 35 Philippine fishermen that Beijing claimed had violated Chinese territorial waters.\footnote{Swanstrom, “Conflict Management and Negotiations in the South China Sea: The ASEAN Way?” 98.} Two further clashes took place in 1996 and 1997 between China and the Philippines. The first of these was in January 1996 when three alleged Chinese vessels were engaged in a 90-minute gun battle with a Philippine navy gunboat near Campones Island. The second clash occurred in April 1997 when the Philippine navy ordered a Chinese speedboat and two fishing boats to leave Scarborough Shoal. In response to this, the Chinese navy sent three warships to survey two islands, Panat and Kota, which were occupied by the Philippines. In late 1998, Chinese workers expanded two of the four shelters, being aware of their future fuel needs. Beijing even started to build fort-like structures on Mischief Reef.\footnote{Valencia, “Mischief at the Reef,” 31.} The same year, 23 Chinese fishermen were detained for intrusion into Philippine territorial waters. China retaliated in November 1998 by building on islets claimed by the Philippines.\footnote{Ibid.} Although China announced that it would resolve the Mischief Reef crisis in accordance with the UNCLOS, China’s tone changed in 1998. The construction of Chinese facilities on Jackson Atoll and Half Moon Reef, only 70 nm west of Palawan, further strained China’s
relationship with the Philippines. This was the first militarized dispute that China had with any party other than Vietnam in the SCS. ASEAN as an organization, decided to strengthen their military preparedness and initiate possible defense cooperation against China. Beijing’s moves in the SCS cast doubt and uncertainty regarding China’s sincerity about settling issues through negotiations. China apparently not only had intentions to transform itself into a regional maritime power, but also wanted to protect and promote its sea borne trade and fishing industry. China even wanted to create a sea-air-coast island integrated defense system and it is possible that perhaps what China was looking for was a “transitional stop-gap to its blue water strategy.”

Table 4.4 shows distances from the Mischief Reef.

**Table 4.4. Distances from Mischief Reef** (Source: Daniel Dzurek, “China Occupies Mischief Reef in Latest Spratly Gambit,” *IBRU Boundary and Security Bulletin* [April 1995]: 65.)

<table>
<thead>
<tr>
<th>Feature</th>
<th>Latitude (°N)</th>
<th>Longitude (°E)</th>
<th>Distance (nm)</th>
<th>Distance (km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cam Ranh Point (Vietnam)</td>
<td>11.87</td>
<td>109.28</td>
<td>386</td>
<td>715</td>
</tr>
<tr>
<td>Hainan Island (PRC)</td>
<td>18.38</td>
<td>110.05</td>
<td>599</td>
<td>1110</td>
</tr>
<tr>
<td>Palawan (Philippines)</td>
<td>8.60</td>
<td>117.27</td>
<td>129</td>
<td>239</td>
</tr>
<tr>
<td>Spratly Island Features (Occupier)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sin Cowe East Island (Vietnam)</td>
<td>9.91</td>
<td>114.56</td>
<td>57</td>
<td>106</td>
</tr>
<tr>
<td>Nanshan Island (Philippines)</td>
<td>10.73</td>
<td>115.81</td>
<td>51</td>
<td>95</td>
</tr>
<tr>
<td>Kennan Reef (PRC)</td>
<td>9.92</td>
<td>114.48</td>
<td>62</td>
<td>114</td>
</tr>
<tr>
<td>Itu Aba (Taiwan)</td>
<td>10.38</td>
<td>114.36</td>
<td>74</td>
<td>138</td>
</tr>
</tbody>
</table>


69 Shee, “The South China Sea in China’s Strategic Thinking,” 382.
Malaysia and China

Even after the Mischief Reef incident, Malaysia felt that China might not use force against them in order to occupy Southern Spratly. However, things changed after the Malaysian navy fired a Chinese vessel wounding four crewmen on March 23, 1995. Following this incident, another clash took place between Manila and Malaysia over the construction of a building on the Investigator Shoal lying 250 kilometers from the nearest recognized territory of either country. Malaysia started building a military facility in response to China’s construction of bunkers in Mischief Reef. China criticized Malaysia’s action as an encroachment on Chinese territory. Although the dispute did not lead to any further such incidents, it was the first military clash between Malaysia and China.

Indonesia and China

China has had no direct conflict with Indonesia; however, the possibility still remains with regard to the Natuna Islands where Indonesia has developed its gas and tourism industry. Indonesia has constructed an airbase on Natuna Besar to conduct its regular air surveillance of the SCS. Although both countries have decided to avoid discussing their bilateral issues at the national and at the international level, their relationships worsened in July 1994. China began to distribute a map claiming all the Spratly Islands, as well as the Natuna gas deposits, which were developed by Exxon for Indonesia. Indonesia strongly protested this shift in China’s claims. Indonesia and

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71 Chakraborti, “The Territorial Claims in South China Sea,” 197.
72 Ibid, 193.
73 Valencia, Van Dyke, and Ludwig, Sharing the Resources of the South China Sea, 27.
Vietnam meanwhile were in dispute over the potentially oil-rich continental shelves surrounding the Indonesian-owned Natuna Islands.

China has realized that its security is very much dependent on maintaining a stable relationship with her neighbors in the Asia Pacific region.\textsuperscript{74} The 1996 multilateral treaty signed by the Shanghai Five was meant to bolster confidence in favor of China and negate the China threat theory. Originally, the Shanghai Five group was created on April 26, 1996, with the signing of the Treaty on Deepening Military Trust in Border Regions in Shanghai by the heads of states of Kazakhstan, China, Kyrgyzstan, Russia, and Tajikistan.\textsuperscript{75} The establishment of the Shanghai Five was considered as a major step in consolidating the security and stability of the central Asian region as well as the entire Asian-Pacific region. However, critics feel that problems concerning the South China Sea arise due to a disparity between Beijing’s promises.\textsuperscript{76} Beijing’s desire to seek cooperation, on the one hand, and insisting upon absolute sovereignty, on the other, creates fundamental confusion. China is increasingly asserting itself in the SCS region, as it has clearly demonstrated by launching its first aircraft carrier in August 2011. Although, China has stated that it favors equitable international order and peace, to what extent such considerations will shape China’s current defense policy remains to be seen. As Hugh White comments:

\textsuperscript{74} For example, in November 2004, China and the ASEAN agreed to gradually remove tariffs and create the world’s largest free trade area by 2010. Another example is the Treaty of Good-Neighborliness and Friendly Cooperation signed by Russia and China.

\textsuperscript{75} On June 15, 2001, Uzbekistan became a new member and signed the Declaration of Shanghai Cooperation Organization. And it was renamed as the Shanghai Cooperation Organization.

China seems to be prepared to run the risk so it can exploit these incidents to assert its claims. This is what strategic competition between great powers looks like. This is how wars start. Welcome to the Asia-Pacific century.\textsuperscript{77}

\textit{Incidents From 2001–2013}

Of late, maritime disputes in this region have again become front page news. Dubbed by some authors as “a new Persian Gulf,” or by some as “a hydrocarbons El Dorado,” the SCS seems to be shaping up as a strategically volatile flashpoint capable of generating recurring tensions with intense geopolitical implications.\textsuperscript{78} Vietnam and China are at odds over a Vietnamese survey ship and Chinese patrol boats in waters off the southern coast of Vietnam. The Philippines is protesting China’s recent unloading of building materials on Amy Douglas Bank, an area claimed by the Philippines. China’s opposition to a US carrier entering the Yellow Sea for military exercise, its low and slow relationship with Japan over the Diaoyu Islands, its own naval exercise, and its overall declaration of the SCS as core interest have led many to conclude that China is increasingly becoming “arrogant and tough.”\textsuperscript{79}

On March 23, 2001, the hydrographic survey ship, USNS \textit{Bowditch}, was conducting routine military survey operations in the Chinese-claimed exclusive economic zone (EEZ) in the Yellow Sea. Suddenly a Chinese Jianheu III–class frigate confronted the ship and ordered it to leave. The \textit{Bowditch} immediately left the area. However, after a few days, the U.S. embassy filed a diplomatic protest with the Chinese Ministry of Security.


Foreign Affairs. On April 2001, a week after the Bowditch incident, two Chinese F-8 fighter aircraft intercepted a U.S. EP-3 that was conducting a routine reconnaissance flight about 70 miles south/southeast of Hainan Island. After making several close approaches to the American aircraft, one of the F-8s lost control and collided with the EP-3. Not only the cause of the collision is disputable, but also each party still blames the other. Some suggest that the U.S. should attempt to reach a mutually acceptable solution within the context of the Military Maritime Consultative Agreement (MMCA), while others call for a negotiation like the INCSEA (incident at sea) with China to avoid future confrontations of this nature. In order to avoid skirmishes and potential miscalculations at sea, the argument goes, both the U.S. and Chinese forces should vow to respect each other’s rights. Only then the two countries will be able to avoid chances of further miscalculations like this EP-3 incident.

In 2009, various incidents in the SCS had significant implications for regional security. Such developments became self-reinforcing, thereby raising the fundamental question for Southeast Asia’s regional security, and they have also occurred in the context of deteriorating U.S.–Chinese relations and the desire for a strong U.S. presence in the region. The first incident was the March 8th clash between Chinese vessels and a U.S. ocean surveillance ship off Hainan followed by the USNS Victorious. The U.S. dispatched the USNS Impeccable, operating 75 miles south of Hainan, to conduct military

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scientific research related to Chinese submarine activity operating from the Sanya Naval Base. A PLAN intelligence collection ship declared this operation to be illegal and urged them to leave. On the following day, five Chinese ships shadowed the *Impeccable*, including a Bureau of Maritime Fisheries Patrol Vessel, a State Oceanographic Administration patrol vessel, a Chinese Navy ocean surveillance ship, and two small Chinese-flagged trawlers. The trawlers closed in on the *Impeccable*, coming within 15 meters waving Chinese flags and ordered the *Impeccable* to leave the area. One trawler moved closer to the *Impeccable* and sprayed it with water from its fire hose. The *Impeccable* then radioed the Chinese vessels and requested safe passage out of the area. Two Chinese trawlers next attempted to obstruct the *Impeccable* by stopping abruptly in front of it and forcing the *Impeccable* to execute an emergency full stop to avoid a collision. As the *Impeccable* attempted to depart, the crew of one of the Chinese trawlers used a grappling hook to try to snag the sonar array that the *Impeccable* was towing.\(^{83}\)

The confrontation between the *USNS Impeccable* and PLAN vessels was soon followed by the collision of a PLAN submarine with the *USS John S. McCain*, which was one of the three U.S. warships participating in an exercise with six Southeast Asian navies. These incidents sparked additional concern among the ASEAN countries regarding the Sino–U.S. relationship and its potential to affect regional stability.\(^{84}\)


\(^{84}\) Ibid.
Another incident took place in the Yellow Sea when the *USNS Victorious*, an ocean surveillance ship, turned its fire hoses on two Chinese fishing vessels. China claimed that the U.S. ship was operating in China’s EEZ without permission and had violated both Chinese and international law. This ship was conducting routine operations in the waters between China and the Korean peninsula. The Pentagon, however, accused the Chinese fishing vessels of harassing another U.S. surveillance ship in the SCS near Hainan Island and cited the incident as an example of unsafe Chinese seamanship. The U.S. thinks that China is playing a dangerous game with a policy of both engagement and limited containment. In response to China’s maritime exercise of, its anti-access/area denial (A2/AD) capabilities in 2010, as well as its general naval build-up, the U.S. made new arrangements with Australia. The U.S. also strengthened its position on Guam. Although China follows a kind of hesitant power projection, its A2/AD vector is trying to disengage the exclusive sphere of U.S. influence in the region. In doing so, China is following a *two-vector naval strategy*.

The approval of the 2009 Philippines Baseline Bill by the Philippine Congress and President Arroyo marked another sovereignty dispute over islands and reefs in the SCS. China sternly protested the Philippine bill because it claims Huangyan Island (Scarborough Shoal) and some islands of the Nansha group (the Spratly Islands) as part of Philippine territory. These features are claimed by both China and Vietnam, and Vietnam also protested the bill, warning that the Philippine action threatened peace and

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stability in the region. Another incident that irritated China was the joint submission by Malaysia and Vietnam in May 2009 to the Commission on the Limits of the Continental Shelf (CLCS). The joint submission of Malaysia and Vietnam suggests that the sovereign rights to the resources to the SCS should be determined by principles governing the continental shelf as measured from the mainland coast. In fact, they took a position whereby no islands in the SCS should be entitled to more than a 12 nm territorial sea. The submission obviously has further implications as to how the hydrocarbon resources of the SCS should be allocated.

The SCS dispute can be described as a great bargaining game in which the littoral countries consider their ownership of this potentially rich maritime zone in zero-sum terms. Those with the most bargaining power leave the game with the biggest reward as opposed to those who have no bargaining power. China, being the most powerful player in this dispute, exercises a relatively aggressive policy toward other claimants by maintaining a very staunch position. A particularly serious issue associated with this zero-sum game is the lack of agreement on some fundamental legal principles relating to boundary delimitation, maritime jurisdiction, and the 1982 UNCLOS. On the one hand, China authorizes the use of force to preserve its core interest in this region and, on the other hand, tries to woo its neighbors’ faith through its charm diplomacy. China is

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90 Num, “Sovereignty in ASEAN and the Problem of Maritime Cooperation in the South China Sea,” 121.
continuously upgrading its military technologies and maintaining a strong physical presence in this region. As You Ji observes, “the PLAN’s presence in the Spratlys is more political than military for the time being.”92 It is thus hard to determine whether China is actually trying to establish a maritime sphere of influence and hegemony in the SCS. As Sun Tzu once commented: “Never let out your real intentions. Lull your adversaries by all possible means. Hide your capabilities.”93

The following chapter will discuss the involvement of China with other Asian claimants, its Arctic strategy, and the involvement of major powers like the U.S. and India in the SCS conflict.

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92 James Manicom, “IR Theory and Asia’s Maritime Territorial Disputes” (paper presented to the Australasian Political Studies Association Conference, University of Newcastle, September 2006).

CHAPTER 5: INVOLVEMENT OF THE DRAGON, THE EAGLE, AND THE ELEPHANT IN THE SOUTH CHINA SEA IMBROGLIO

"Ultimate excellence lies...not in winning every battle, but in defeating the enemy, without ever fighting."

Sun Tzu

The South China Sea (SCS) is regarded as a highly volatile environment because of the potential energy resources beneath the sea and an apparent willingness on the part of claimant states to use military force to defend access to these resources. As the Dutch legal scholar Hugo Grotius argued in the Mare Liberum (Freedom of the Seas, published in 1609), the ocean’s bounty is inexhaustible, as limitless as the air; thus, it “cannot become a possession of any one.” In fact, the SCS and the coastal passage from Malaysia to Russia have become an area of crucial economic interest to all. Territorial disputes in the South and East China Seas, along with military build-ups by Beijing and Tokyo, evidence a highly unstable relationship. This argument is strengthened further by assessments that point to a growing “energy nationalism” across Asia.

In many ways the SCS dispute is typical of the post-Cold War security situation in East Asia. With the decreasing significance of United States–Soviet and Sino–Soviet competition, territorial disputes, which received little attention during the Cold War, have reemerged. Although China and the United States are not engaged in a maritime

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boundary dispute, fundamental disagreements exist between them over the laws that govern the conduct of vessels at sea. Such disagreements over navigational freedom, not least of military vessels, in coastal state waters have already triggered a number of incidents between the two.

This chapter first discusses China’s relationship with other Asian states claiming rights to the SCS. The chapter continues by analyzing the involvement of major powers like the United States and India and it closes with a brief discussion of Beijing’s reconsideration of the SCS dispute in light of its Arctic Strategy.

**The Watergate Imbroglio**

*China vs. Asian Claimants*

Tensions are indeed rising almost every day in the SCS region. Rivalries, which once revolved around issues like sovereignty, fisheries, energy resources, and maritime navigational rights, are now being overshadowed by major power initiatives to gain greater strategic influence in the region. The People’s Liberation Army (PLA), with some 1.25 million ground troops (the largest in the world) is on target to build a modern and regionally-focused force by 2020. While celebrating its 85th anniversary, the PLA made it clear that China’s maritime interests are non-negotiable. Regarding the SCS, China’s Ministry of Defense spokesperson, Geng Yanshen, declared that China not only has indisputable sovereignty over the SCS but also has sufficient historical and legal backing to underpin its claims. At the same time, the military has denied that it is preparing for war in the SCS. Such actions by China, amidst its rising nationalism as well as extended
military exercises in the area, have provided a diplomatic opportunity for the U.S. and even pushed some ASEAN countries into the U.S. corner.⁴

In June 2008, Vietnam’s Prime Minister Nguyen Tan Dung made a trip to the U.S. and met President Bush. In a joint statement released after the Bush–Dung meeting, both sides agreed to hold regular high-level talks on security and strategic issues. For its part, Vietnam followed a “3 nos” policy: no military alliances, no foreign bases, and no reliance on another country to combat a third country. While accelerating the modernization of its navy, Vietnam encouraged the U.S. and ASEAN to internationalize the problem and hold regular dialogue with China to manage tensions.⁵ China was unhappy about the building up of a deeper U.S.–Vietnam security tie. There are, however, clear differences between China and Vietnam’s approaches to initiating policies and to employing conflict resolution techniques when addressing disputes in the South as well as the East China Seas. Beijing is also trying to pressure Hanoi to accept a joint exploration and production agreement pertaining to energy fields located off the coast of Vietnam so that no foreign oil companies are able to enter into energy deals with Vietnam. However, this tactic has proved to be unsuccessful since both BP and ExxonMobil have indicated their intention to proceed with such deals. Vietnam and China also differed on the question of multilateral negotiations. In May 2009, China announced a unilateral three-month moratorium on fishing in the SCS in order to preserve fish stocks, address illegal fishing, and prevent the arrest of Chinese fishermen


and other forms of harassment. This particular season was regarded as the best for Vietnamese fishing. Vietnam immediately lodged a diplomatic protest. In one instance, a Chinese fishery vessel sank a Vietnamese boat, seized three others, and took 37 crewmembers into custody near the Paracel Islands. The Vietnamese Foreign Ministry issued another protest note to the Chinese Embassy in Hanoi. China’s assertiveness appeared to have backfired. Although Beijing’s military buildup in the SCS does not necessarily indicate that Beijing will use force to occupy more islands, it does, however, suggest that Beijing is keeping its options open.

In 2011, China and Vietnam held four high-level meetings in which the SCS dispute was discussed. The first was with regard to the China’s unilateral fishing ban. On May 11, 2011, the Haikou Municipal Government issued an announcement imposing China’s annual unilateral fishing ban in the SCS to protect dwindling fish stocks during the spawning season. Vietnam immediately issued a verbal protest stating, “China’s unilateral execution of a fishing ban in the East Sea is a violation of Vietnam’s sovereignty over the Hoang Sa [Paracel] archipelago, as well as the country’s sovereignty and jurisdiction over its exclusive economic zone and continental shelf…” Vietnam also protested the deployment of a Chinese fishery administration vessel, Leizhou 44261, to patrol the waters around the Paracel Islands, which led to the first cable cutting incident.

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On May 26, 2011, three Chinese maritime surveillance ships accosted the Binh Minh 02, a Vietnamese seismic survey ship operating in Block 148, in an incident that lasted three hours. Maritime surveillance ship No. 84 cut a cable towing seismic monitoring equipment. The next day Vietnam lodged a diplomatic protest with China’s Ambassador claiming that the actions of the Chinese maritime surveillance ships violated international law and Vietnam’s sovereignty. This was followed by the second cable cutting incident in June of the same year when Chinese fishing boat No. 62226, equipped with a “cable cutting device,” snared the cable of the Viking II seismic survey ship operating in the vicinity of Vanguard Bank. This was followed by live-fire exercises after the Chinese Ambassador to the Philippines called on Vietnam and the Philippines to cease oil exploration. Vietnam immediately raised the stakes by announcing a live-fire exercise. Vietnam’s Northern Maritime Safety Corporation issued a notice that two live-firing exercises would be held on June 13, 2011, near Hon Ong Island. Vietnam’s Foreign Ministry characterized such exercises as a routine annual training activity of the Vietnamese navy. The Global Times of China, however, commented that the live-firing exercises carried out by Vietnam were the “lowest form of nationalism to create a new enmity between the people of the two countries.” It was further commented that, “Hanoi seems to be looking to dissipate domestic pressure and buck up morale at home while at the same time further drawing in the concern of international society over the SCS dispute.”

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8 Ibid.


10 Thayer, “China’s New Wave of Aggressive Assertiveness in the South China Sea,” 19.
In April 2011, a joint venture was set up between PetroVietnam’s Petroleum Technical Services Corporation and CGG Veritas of France to conduct seismic surveys off the Vietnam coast.\(^{11}\) According to the chairman of the China National Offshore Oil Corporation (CNOOC), “disruptive” activities in the SCS result in an annual loss of about 20 million tons of oil for China, or about 40 percent of its total offshore production. In order to curb such losses, China announced that it would step up maritime patrols by at least 10 percent in light of increasing incursions into its territorial waters. CNOOC further declared its intention to invest US $31 billion to drill 800 deep-water wells in the East Sea, Yellow Sea, and SCS with the aim of producing 500 million tons of oil by 2020. China also announced its plan to construct a mega oil and gas-drilling platform to be used by the CNOOC in the SCS. Such developments were followed by huge demonstrations from a broad section of the Vietnamese student community using Facebook and other social networking sites. The protestors held placards reading, “Down with China,” “The Spratlys and Paracels belong to Vietnam,” and “Stop Violating Vietnam’s Territory.”\(^{12}\) The growing enmity between nationalists in China and Vietnam has even spilled over into cyberspace. More than 200 Vietnamese websites were subject to cyber attacks. Among the sites affected were those of the Ministry of Agriculture and Rural Development and the Ministry of Foreign Affairs where hackers succeeded in posting Chinese flags and slogans.\(^{13}\)

\(^{11}\) Ibid.

\(^{12}\) Ibid.

\(^{13}\) Ibid.
Beijing’s recent offer to Taipei for the joint exploration of resource-rich waters of the SCS at the expense of others has created great unease. There are several considerations here. First, fuels shipped from the Persian Gulf, western Africa, and China drive Taiwan’s economy. Hence, if this supply gets cut off, then Taiwan’s economic activity would obviously be jeopardized. Second, it is estimated that underneath the SCS lie oil and natural gas reserves that could meet more than 60 years of current demand. Third, Taipei does not have the military power or economic confidence to handle such situations. Its diplomatic isolation, shaky energy situation, far-off location from Itu Aba Island, and the fact that it is not a party to the United Nations Convention on the Law of the Sea (UNCLOS) have all further complicated its predicament. CNOOC and Taiwan’s state-owned oil refiner, CPC Corporation, have collaborated before and conducted joint surveys in the Tai-Chao basin. This has infuriated Washington, Manila, and particularly Hanoi. Evidencing Vietnam’s dissatisfaction with the China–Taiwan alliance, and particularly with Taiwan, 42 Vietnamese intrusions were counted within six kilometers of Taiwan-controlled Taiping Island in 2010, followed by 106 in 2011, and 41 in 2012.14 The Vietnamese have even fired at the Taiwanese coast guard station on the island. Taiwan has started to view Vietnam as their enemy rather than China and thinks that the PLA would be capable of protecting them. Hence, the concept of cross-strait military cooperation is gaining prominence, but there are certainly a few risks involved for Taipei.

China’s two-track hard/soft policy toward SCS disputes indicates a pattern it has been following in both settled cases and those that are unsettled, such as the dispute with

Japan over islets known as Senkaku in Japan and Diaoyu in China. The Japanese government declared that it will buy the privately-owned islets, which upset China. In response, China decided to send two patrol ships to safeguard the islets. China is strongly opposed to any application of the 1960 U.S.–Japan Treaty of Mutual Cooperation and Security in its dispute over Senkaku/Diaoyu. While Japan has decided to pursue a “mutually beneficial strategic partnership” with China, which would allow both economic engagement and develop better relations,\(^\text{15}\) it is still building up its self defense forces (SDFs) in reaction to China’s expanding maritime capabilities. As such, it has been strengthening the ability of its SDFs to operate at long range. With the passage of the Law Relating to Measures for Preserving the Peace and Security of Japan, the permitted area of its SDF activity has been expanded to encompass “peripheral areas” lying outside of its main islands, including the SCS. The Japanese government even declared that in emergencies Japanese forces would be permitted to conduct missions in areas outside Japan.\(^\text{16}\) By the year 2015, Japan plans to build either two medium-sized aircraft carriers or a large transport vessel with displacement in excess of 15,000 tons. Japan is also conducting military exchange visits and joint exercises with countries in Southeast Asia and South Asia as well as strengthening its relations with Russia and other Central Asian nations. The most important aim is to ensure balance in the Asia–Pacific region and also to counterbalance asymmetric dependence. As Hughes points out, this is a quiet military hedging game that Japan is playing with China,\(^\text{17}\) as Japan is mostly


\(^{16}\) Ibid.

\(^{17}\) Ibid.
concerned with China’s anti-access/area-denial (A2/AD) aircraft and maritime power projection capabilities both in the SCS and the East China Sea.

South Korea and Japan are themselves in a sovereignty dispute over the Liancourt Rocks (known as Takeshima in Japan and Dokdo in South Korea) in the Sea of Japan.\(^{18}\) China is becoming a threat to South Korea due to its increasing ability to project power into the sea lines of communication (SLOCs) around the Korean Peninsula. Therefore, South Korea is trying to be less economically dependent on China and also developing its own military modernization program. However, the situation became complicated with the recent visit of the South Korean president, Lee Myung-bak, to the disputed islands of Takeshima.\(^{19}\) This incident has raised diplomatic tensions since the islands are historically claimed both by Japan and South Korea but have been occupied by South Korea since 1954. The islands are 230,000 square miles in size with no fresh water; however, they have extensive fishing grounds and could also contain huge gas deposits. In response, the Japanese government recalled its own envoy and summoned the South Korean ambassador in Tokyo. Matters are thus getting increasingly more complicated amidst rising tensions, even in the East China Sea region, and the Southeast Asian

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countries are seemingly becoming more concerned about Beijing’s increasingly assertive behavior in regional waters.\textsuperscript{20}

Recently, in tropical waters off the coast of the Philippines, a standoff between Chinese fishing boats, two Chinese law enforcement vessels, and a Philippine Navy ship attracted a lot of international attention. It was reported that the squabble was over some rare corals, clams, and poached sharks that the Philippine Navy were trying to retrieve from the Chinese fishing boats operating in the Scarborough Shoal of the SCS. According to the Philippines Department of Foreign Affairs, China’s increased activities in the Spratly Islands have led to six to seven major incursions into waters. In fact, Joker Arroyo commented, “Not even a resolution of concern or of sympathy had been issued by ASEAN. We are left to fend for ourselves. What happened to us? We’re like orphans…without allies. That’s our dilemma.”\textsuperscript{21} While the Philippines has preferred to negotiate bilaterally with China, Cambodia and Laos are getting pro-China on this issue.\textsuperscript{22}

The Philippine government’s move to rename a portion of the SCS will not affect China’s similar claim to sovereignty over areas within the sea. Philippine President Aquino signed an administrative order to formally name a maritime area in the western


part of the country as the “West Philippine Sea.” The recent announcements of joint oil and gas exploration by the Philippines and Vietnam are viewed by Beijing as a challenge. For example, in February 2011, Forum Energy, an Anglo-French consortium based in the United Kingdom, concluded a two-year survey of oil and gas resources in the SCS. President Aquino awarded Forum Energy an exploration contract in the Reed Bank area.

On February 25, 2011, three Philippines fishing vessels, F/V Jaime DLS, F/V Mama Lydia DLS, and F/V Maricris 12, were operating in the waters off Jackson Atoll, 140 nautical miles west of Palawan. These fishing vessels were approached by a Jianghu-V Class missile frigate, Dongguan 560, which asked them to leave. On March 2, 2011, two Chinese white-painted patrol boats, No. 71 and No. 75, ordered MV Veritas Voyager, a Forum Energy Plc survey vessel operating in the Reed Bank area off Palawan Island, to leave. The Philippines responded by dispatching two OV-10 aircraft to investigate. The Chinese boats departed immediately. The third incident took place on May 6, 2011, when a Chinese marine vessel with a flat bed was sighted in Bombay Shoal. Soon after this incident, on May 19, 2011, the Armed Forces of the Philippines claimed that two Chinese jet fighters allegedly flew into the Philippines’ air space near Palawan. This initial report was not confirmed and appeared to be the least substantiated among other reported incidents of Chinese incursions. Again, on May 21, 2011, Chinese Marine Surveillance ship No. 75 and Salvage/Research Ship No. 707 were observed heading toward Southern Bank. Then on May 24, 2011, Filipino fishermen reported seeing a Chinese maritime surveillance vessel and PLAN ships unloading steel posts, building materials, and a buoy.

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near Likas and Patag in the Iroquois Reef–Amy Douglas Bank, 100 nautical miles off Palawan.24

Meanwhile, President Aquino met with President Bambang Susilo Yudhoyono and expressed his full support for Indonesia’s leadership role as ASEAN Chair. President Yudhoyono expressed his hope that the SCS could become a “zone of possible economic cooperation.”25 The Philippines also announced a new U.S. training program for its naval forces to enable them to better carry out their mission of providing security for oil exploration activities in the SCS. While launching the new ZOPFF/C initiative, President Aquino explained, “What is ours is ours, and with what is disputed, we can work towards joint cooperation.”26 The U.S. and the Philippines further announced plans to expand intelligence sharing and cooperation on maritime security amidst growing tension in the SCS.

Philippine President Aquino’s plan to begin drilling off Reed Bank, and how China will react to this incident is an open question. Manila’s announcement to open new blocks off Palawan for hydrocarbon exploration has already triggered conflict between the two countries. China objected by arguing that some of the blocks are in areas over which China has rights and jurisdiction. Although the Philippines’ position is based on the distinction in UNCLOS between “islands and rocks,”27 this situation is complicated

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24 Thayer, “China’s New Wave of Aggressive Assertiveness in the South China Sea.”
25 Carlyle Thayer.
26 Ibid.
27 Ibid.
because China argues that some of the features near Reed Bank, such as Nanshan Island, are “islands” under UNCLOS since they are naturally formed areas of land above water at high tide.

Chinese civilian maritime enforcement ships confronted a Philippines’ navy frigate in a standoff over the Scarborough Shoal, a triangular-shaped chain of reefs and rocks enclosing an area of 150 square kilometers located between the Macclesfield Bank and the Luzon Island of the Philippines in the SCS. Both China and the Philippines claim that Scarborough Shoal is an integral part of their national territory. China refers to Scarborough Shoal as Huangyan Island and asserts indisputable sovereignty over the island and adjacent waters on the basis of historical discovery. The Philippines refer to Scarborough Shoal as Panatag Shoal, which falls within its 200 nautical mile exclusive economic zone (EEZ). One recent clash began when a Philippine reconnaissance aircraft spotted five Chinese fishing vessels in the lagoon. The Philippine Navy investigated the Chinese vessels and discovered giant clams, coral, and sharks, species protected under Philippine law and the Convention on International Trade in Endangered species of Wild Flora and Fauna. China and the Philippines formally protested each other’s actions. In an effort to lower tensions, the Philippines withdrew the navy frigate, replacing it with a Coast Guard cutter. The dispute still simmers. While China says it wants to negotiate bilaterally, the Philippines has adopted a three-pronged strategy – legal, political and diplomatic – and expects to take its case to the International Tribunal on Law of the Sea.

China increased pressure by issuing a travel advisory that led to cancellation of 80

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scheduled Chinese tour groups and charter flights to the Philippines, temporarily halted imports of Filipino bananas on a pretext of infestation, and imposed a unilateral fishing ban in the area. The Philippines issued its own fishing ban in the shoal.\textsuperscript{29} China has no immediate plans to pull out its vessels from Scarborough Shoal. Rather, China is sending vessel “\textit{Nanhuijiu 115}”\textsuperscript{30} in order to assist Chinese fishing boats affected by inclement weather and strong tides.

The Philippines and the U.S. have conducted annual Balikatan military exercises, and China announced that it intends to produce its first deep water mega oil-drilling rig.\textsuperscript{31} China also plans to deploy unmanned aerial vehicles (UAVs) and to construct 11 UAV bases along its coastline in order to conduct remote-sensing marine surveillance.\textsuperscript{32} Roberto Romulo, a former foreign secretary of the Philippines, stated that China is not only testing the U.S. but also eating the U.S.’s lunch in Southeast Asia.\textsuperscript{33} The deputy chief of the PLA, Gen. Ma Xiaotian, insisted that the South China issue is not the U.S.’s business but it is rather an issue between China and its neighbors. China is also planning to set up a communication network to link the islets in the SCS. This will include 51 base stations on islets, 104 base stations on boats, and eight undersea cables, as well as cover

\textsuperscript{29} Ibid.


\textsuperscript{31} Thayer, “Standoff in the South China Sea Scarborough Shoal standoff reveals blunt edge of China’s peaceful rise.”


islets in the SCS, including the islets of the Paracel Islands, Macclesfield Bank, and Spratly Islands. This is a part of China’s bid to “tighten its grip” on these island groups, which were designated by China as Sansha City of the Hainan province.\textsuperscript{34} China is not only expecting to deploy its first aircraft carrier, but it also projected its power in the area by sabotaging Vietnam’s oil exploration efforts in 2011.

The China-based \textit{Global Times} commented: “If these countries don’t want to change their ways with China, they will need to prepare for the sounds of cannons. We need to be ready for that, as it may be the only way for the disputes in the sea to be resolved.”\textsuperscript{35} Each side is asking the other to take concrete measures to reduce the conflict, while increasing their own presence. China sent ships to Huayang Reef on July 1, 2012, and anchored them to the northeast of Yongshu Reef after covering a distance of 1,800 nautical miles. China reports that it is considering setting up a military body in its newly established city of Sansha that administers Chinese territory in the West Philippine Sea. This action has angered both Vietnam and the Philippines, and they have declared that it is a violation of international law. Around 1,000 people inhabit the city on the island of Yongxing, also known as Woody Island. China announced that the island city will host troops and serve as the administrative center for islands claimed by Vietnam, the Philippines, and other neighboring nations. Beijing is determined to block any unified effort from rival claimants. Such a hard-line approach was also visible at the annual foreign ministers meeting of ASEAN in 2012. China is spending nearly $1 billion on a


locally-built 981 ultra-deepwater Haiyang Shiyou offshore oil rig owned by CNOOC, which will explore disputed areas of the SCS and also drill south of Hong Kong in an area within Beijing’s realm.\textsuperscript{36} Eventually, CNOOC has plans to explore more oil-rich waters where Vietnam, the Philippines, Taiwan, Malaysia, and Brunei have overlapping territorial claims.

The Dragon vs. the Eagle and the Elephant

With the exception of India, and possibly Japan, all Asian nations have asymmetrical relationships with China. However, India is increasingly getting involved in the wider Asia–Pacific region as part of its “Look East Policy,” which aims to strengthen its influence in Southeast Asia. India hosted the ASEAN–India Commemorative Summit in New Delhi in December 2012 to mark the 20th anniversary of the ASEAN–India dialogue partnership. The theme of the summit was “ASEAN–India Partnership for Peace and Shared Prosperity,” and it also marked the 10th anniversary of ASEAN–India summit-level partnership.

In 2002, both the Indian and the U.S. navies worked together to ensure safe transit through the Straits of Malacca. India also signed an agreement with Singapore in 2003 to improve maritime security and counter-terrorism. Both the Indian and the Indonesian navy performed joint patrols of the Six Degree Channel lying between Aceh and the Nicobar Islands.\textsuperscript{37} India seemed to be worried about the rapidly modernizing Chinese military. In fact, General Deepak Kapoor commented, “We need to take note of likely


implications of China’s military modernization [and] improvement of infrastructure in the Tibet Autonomous Region, which could impact our security in the long-term.”

China is viewed as a serious peer competitor for India, since, like India, China is also shifting its military focus from a predominantly land-based strategy to a blue water strategy. For example, China is building ports (in Gwadar, Pakistan) and strengthening maritime relations in a number of Indian Ocean region (IOR) locations. Apart from India and Pakistan’s historical conflicts, the China–Pakistan connection is inflammatory due to a strategic situation described as India’s “Hormuz Dilemma.” This refers to India’s dependence on imports passing through the Strait of Hormuz in close proximity to Pakistan’s Makran coast and emphasizes the danger of a strong China–Pakistan relationship in that area of the IOR. In fact, China’s encroachment into the IOR is a matter of grave concern to India. Many even view the PLA’s move against India as a part of its strategic encirclement. Although India and China have signed a treaty to maintain peace and tranquility along the disputed border, talks regarding a 3,500-kilometer disputed frontier have hardly made any progress.

Scobell predicts that China and India are likely to witness “simmering tensions” in their relations. From China’s perspective, India’s actions in Tibet are viewed as

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40 Kondapalli, “The Chinese Military Eyes South Asia.”


42 Kondapalli, “The Chinese Military Eyes South Asia.”
affecting China’s sovereignty and territorial integrity. Commenting on the 1962 war, Xia Liping stated, “It was not a purely military action, but a complicated political, diplomatic, and military war.”  

Apparently, the main objective of the Chinese government was “not to recover the territory, but to wipe out more Indian effective strength so as to give more serious lessons to the Indian Army.” The 2010–2011 annual report by the Indian Defense Ministry stated that “[i]t is watchful of China's increasing military capabilities as well as the implication of China’s evolving military profile in the immediate and extended neighborhood.” The 2007 Indian Navy document, *Freedom to use the Seas: India’s Maritime Military Strategy*, clearly states that India’s area of interest extends from the north of the Arabian Sea to the SCS. Some scholars argue that India should not worry about the development of Chinese military capabilities because India will have the confidence to establish a mature bilateral tie with China. However, India is rapidly increasing its military budget and also broadening its military deployment near the disputed border with China. Data released by the Stockholm International Peace Research Institute substantiates this view, and, according to this report, India has replaced China as the world’s top arms importer.  

In late July 2011, while returning from a goodwill visit to Vietnam, an Indian naval ship was hailed on open radio and advised to stay out of the SCS. Although such

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43 Ibid, 198.
44 Ibid.
45 Ibid.
naval incidents between China and her neighbors are not unusual, this was the first one to involve India. China’s Foreign Ministry spokesperson commented: “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. We are opposed to any country engaging in oil and gas exploration and development activities in waters under China’s jurisdiction.”

China’s Defense Ministry declared that China and India are not enemies or opponents, but neighbors and partners. For example, both the China National Petroleum Corporation (CNPC) and India’s Oil and Natural Gas Corporation (ONGC) have agreed to jointly explore oil and natural gas worldwide to secure energy supplies for their fast-growing economies. According to a pact signed in 2012, the companies will jointly explore assets in countries like Myanmar, Syria, and Sudan. The companies have agreed to expand cooperation in the refining, processing, marketing, and distribution of crude oil and natural gas. They will also collaborate on the construction and operation of oil and gas pipelines worldwide. For example, ONGC is working with CNPC to transport gas from Myanmar through a pipeline from the Bay of Bengal across India into southwestern China. They are also working together in Syria as well as in Sudan, holding joint stakes in 36 production fields. Furthermore, they are venturing to build an oil pipeline from South Sudan to

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Kenya’s East African coast in order to bypass the traditional export route through the north.\(^{50}\)

Nevertheless, China’s hard-line approach on the SCS has increasingly worried India. In fact, China offended India by denouncing ONGC Videsh’s (OVL) deal with Vietnamese firms to explore oil fields in the two offshore blocks (127 and 128) in the disputed SCS, over which China claims indisputable sovereignty. China has also forced India into a difficult situation by putting up international bidding for the same Vietnamese petroleum block that India had obtained from Vietnam for exploration. Although China issued a warning to India in 2011 regarding its exploration in Blocks 127 and 128, India was not deterred. In 2012, India’s oil minister, R.P.N. Singh, declared that OVL would return Block 128 to Vietnam since exploration was not commercially viable. In response, Hanoi claimed that New Delhi has succumbed to pressure from China. However, after Vietnam agreed to give India a longer period to prove commercial viability in mid 2012, India decided to continue the joint exploration. Vietnam extended the OVL contract for hydrocarbon exploration in Block 128 in order to maintain the regional strategic balance. The same year, CNOOC came forward by opening nine blocks for exploration in waters claimed by Vietnam, including oil Block 128. Furthermore, China planned on deploying troops and building strategic projects in Pakistan-occupied Kashmir (POK). There are also unconfirmed reports of confrontation between a Chinese warship and INS Airavat in the SCS.\(^{51}\) Meanwhile, China has announced that it is

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expanding maritime exploration of 10,000 square kilometers of seabed in the Southwest Indian Ocean. The Indian government responded immediately stating that its cooperation with Vietnam or any other country is within international laws and conventions and that India’s cooperation with Vietnam in the area of energy is especially important. Indian Foreign Secretary Nirupama Rao, while addressing the National Maritime Foundation in 2011, reaffirmed the importance of the SCS as a shipping route and stated that India will support its freedom of navigation in sea-lanes. She added that Indian companies have already invested heavily in that region and will further expand their operations.52

Recently, Jaswant Singh commented that China focuses on strategic encirclement or “wei qui” (known in Japan as “go”). China’s activity in Pakistan and Myanmar, the expansion of China’s port agreements in the Indian Ocean (the so-called “string of pearls”), and heightened Chinese naval activity in the Indian Ocean are perceived threats to India’s security. Ever since India’s border war defeat with China in 1960, India has viewed China with deep-seated distrust. Therefore, any significant move by the Dragon made in the region would certainly bother the Elephant. Despite this mistrust, China looks for a win-win model while developing economic and trade relations with its neighbors, including India. Now, the question remains whether India will try to play smaller neighboring nations against China in order to contain China’s growing clout in the region. China’s assertiveness in the SCS has prompted India to declare that the disputed sea is in fact open sea, the property of the world. Although Indian naval ships frequently visit the Southeast Asian countries’ ports and the SCS, cooperation with

52 Singh, “Asia's Giants Colliding at Sea?”
regard to non-traditional threats, like drug-trafficking, human-trafficking, and maritime terrorism, is still inadequate.

The ASEAN countries collaborate with India on other issues, for example, missile technology, radar systems, and defense component systems. India is also willing to sell Brahmos missiles to Southeast Asian countries. As we have seen, India is keen on strengthening its maritime capabilities, given China’s pursuit of a powerful blue water navy. Delhi views this not only as a threat to key shipping routes in the Indian Ocean but also to Indian energy assets in the SCS. Even as they compete, China is currently seeking to strengthen its ties with India, and India has also expressed its desire to improve bilateral ties with China in the 21st century. India may not join the U.S. bandwagon to counter China; however, it will certainly develop its own muscle to effectively control the IOR. India has its trump card, the Indian Naval Ship Satpura (Shivalik class frigate), to exert its influence both over the Indian Ocean and the Asia–Pacific region.

China views India’s rise, overall, as a positive development that promotes China’s own core interests and strategic objectives more than it threatens or challenges them. Enhanced cooperation with a rising India allows Beijing to avoid a potentially costly confrontation that would harm the growth of both countries, block the formation of a close U.S.–India relationship, and reduce the overall influence of the U.S. in the region. China’s strategy toward a rising India combines engagement with deterrence. China is thus pursuing comprehensive political, economic, and international engagement with

53 Singh, “South China Sea Dispute And India.”

India to advance its broader strategic objectives. Conversely, China is seeking to deter India from undermining Chinese interests by withholding cooperation and maintaining its policies on specific issues, such as its ties with Pakistan.\footnote{Ashley J. Tellis, Travis Tanner and Jessica Keough, eds. \textit{Strategic Asia 2011-12: Asia Responds to Its Rising Powers - China and India} (Seattle, WA: National Bureau of Asian Research, 2011).} India has traditionally followed the game of “chaupad” (four sides) or “shatranj” (chess), concentrating on contest, conquest, and subjugation. On the other hand, as mentioned earlier, China follows “wei qui” or, as advised by Sun Tzu, “ultimate excellence lies... not in winning every battle, but in defeating the enemy, without ever fighting.”\footnote{Singh, “Asia's Giants Colliding at Sea?”}

Since 2000, there has been a rapid expansion of the Indian navy’s area of operations into the SCS.\footnote{Asia Times, "India Challenges China in South China Sea,” April 26, 2000, http://www/atimes.com/ind-pak/BD27Df01.html.} This move has had a major impact on the naval balance of power in the SCS and on the development of both bilateral and multilateral military relationships in the region. A great power in South Asia, India has always viewed the Indian Ocean as being within its sphere of influence. India has also started to develop long-range naval operations and exert control over five strategic channels: the Suez Canal, the Bab el Mandeb, the Strait of Hormuz, the Strait of Malacca, and the Sunda Strait. This has marked the beginning of its “southern forwarding strategy.”\footnote{Economic Times, “South China sea an area of ‘significant concern’: Indian Navy chief,” November 17, 2011, http://articles.economictimes.indiatimes.com/2011-11-17/news/30410113_1_south-china-sea-indian-navy-territorial-disputes.} As a part of this strategy, the Indian navy has been expanding operations into the SCS and the Pacific Rim in the east, towards the Red Sea and the Suez Canal bordering the Mediterranean in the west, south to the southern edge of the Indian Ocean, and potentially even around the
Cape of Good Hope into the Atlantic. India is also planning to attach a carrier group to its Eastern Region and Western Region fleets and to the Far East Naval Command located in the Andaman Islands. This would give India one of the largest carrier fleets in the world and would significantly improve its ability to project naval power over long distances.\(^59\) India has also held joint military and antipiracy exercises in the SCS with countries like Vietnam, South Korea, and Japan.\(^60\)

According to Australia’s “Defense White Paper,” Australia too is sufficiently unsettled by China’s military transformation and modernization to embark on its most expensive procurement program, which involves the acquisition of 12 submarines, new Air Warfare Destroyers and frigates, cruise missiles, and 100 Joint Strike Fighters.\(^61\) The *Defending Australia in the Asia Pacific Century: Force 2030* commented:

> We would be concerned about the emergence of a security environment dominated by any regional power, or powers, not committed to the same shared goals. It would be in our strategic interests in the decades ahead that no power in the Asia-Pacific region would be able to coerce or intimidate others in the region through the employment of force, or through the implied threat of force, without being deterred, checked or, if necessary, defeated by the political, economic or military responses of others in the region.\(^62\)

Australia acts as the quintessential “status quo power”\(^63\) and wants its relationships with Asian nations to remain balanced amidst growing economic integration with China, on

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\(^{60}\) Ibid.


\(^{62}\) Ibid.

the one hand, and its security dependence on the U.S., on the other. A U.S. Defense Department paper, *China’s Military and Security Developments – 2011*, argued that China’s near-sea politics has seriously disturbed not only India but also other countries like Japan, Australia, the U.S., and the ASEAN countries. A recent statement by China has added to tension in the region: “We should not leave the world with the impression that China is only focused on economic development, nor should we pursue the reputation of being a peaceful power.” This position was not consistent with China’s earlier white paper on “China’s Peaceful Development,” which argued that China’s key to success was mutual economic dependence across the Pacific and a good-neighbor policy. However, things have tended in the opposite direction so far. China has pushed its neighbors away so much so that they have already invited the U.S. in the region. However, as Surin Pitsuwan, the Secretary General of ASEAN, commented, “The U.S.–China rivalry is certain to play out in ASEAN; of course nobody in Southeast Asia wants to choose between the United States and China.”

By 2000, the U.S. had switched from a policy of “active neutrality” to one of “active concern” in the SCS. During the Fifteenth ASEAN-U.S. Dialogue, which was held on May 24–25, 2000, in Kuala Lumpur, the United States pointed out that the SCS


66 Ibid.


68 Ibid.
remained an area of potential conflict. The September 11th terrorist attack provided several opportunities for the U.S. to improve its relationship with other Southeast Asian countries. For example, Vietnam and the U.S. increased mutual discussions about their security relations. Moreover, on December 10, 2001, the U.S.–Vietnam Bilateral Trade Agreement went into effect. On May 14, 2002, a U.S.–Malaysia Anti-Terrorism Pact was concluded in Washington, whereby the two countries pledged to increase cooperation in the areas of defense, intelligence, border control, transportation, and law enforcement. Furthermore, Malaysia gave the U.S. access to its intelligence, and the number of U.S. flights over the Malaysian-controlled air space also increased dramatically. Then-Defense Secretary Rumsfeld stated that the U.S. was very impressed with “the extent to which Malaysia is a cooperating partner in the global war on terrorism.” At a roundtable held in Hanoi in 2002, Admiral Dennis C. Blair, the Commander-in-Chief of U.S. forces in the Pacific (CINCPAC) commented that he “had discussed with Vietnam’s top officials the possibilities for more participation by Vietnam in… regional military activities.” The U.S. invited Vietnam to observe the Cobra Gold regional military exercise for peacekeeping operations in the Asia–Pacific region. Even Singapore supported the war on terror immediately after the 9/11 attacks, allowing U.S. aircrafts to use its airfields and increasing the protection of vital shipping in the Strait of Malacca. Although Singapore

69 Song, “The Overall Situation in the South China Sea in the New Millennium.”

70 Ibid.

71 Ibid.
maintains a strong relationship with Beijing, it remains an important post for the U.S. military presence in Asia.\textsuperscript{72}

Information sharing between Singapore, Malaysia, Philippines, Thailand, and the U.S. provided unprecedented insight into the Al-Qaeda networks in this region. Thailand coordinated fully with the U.S. in combating terrorism by granting blanket permission to U.S. planes to fly over the country and allowing U.S. refueling and support aircraft to land at airbases in Thailand. The first Thai–U.S. antiterrorist exercise, code-named \textit{Known Warrior}, started in August 2002.\textsuperscript{73} The Japanese MSDF operation in the Indian Ocean that sailed through the SCS to support the U.S.-led war against terrorism was a key development in Japanese security policy since World War II. Furthermore, U.S.–Indian military relations have expanded since the September 11\textsuperscript{th} terrorist attacks, and India offered rapid and valuable assistance to the U.S. in conducting military operations in Afghanistan. The primary areas of cooperation between New Delhi and Washington have been peacekeeping, counter-terrorism, special operations training, and naval activities.

Against the backdrop of the recent defiant rocket launch by North Korea and Suu Kyi’s recent victory in parliamentary by polls, India and the U.S. are holding new dialogues on issues related to East Asia. Leon Panetta’s pledge to deploy 60 percent of U.S. naval assets to the Asia–Pacific in the next few years has raised strong concerns in China. Furthermore, Panetta declared recently that in spite of the Pentagon budget cut,


\textsuperscript{73} Song, “The Overall Situation in the South China Sea in the New Millennium.”
the U.S. would maintain its “force projection” in this region as China expands its military presence. China calls the U.S. the “sneaky troublemaker.” Former U.S. Secretary of State Hillary Clinton had a hard time convincing the Chinese regarding U.S. intentions about containment. In 2011, President Obama declared the Asia–Pacific region, including the SCS, an area of utmost priority for the U.S. foreign policy. In fact, the U.S. has started relocating its navy and marines to countries like Australia and Singapore. U.S. bilateral and multilateral cooperation on maritime security was leveraged in ways that can help ensure and legitimize its continuing military presence in East Asia. It is clear that military clashes would be bad for all countries in the region involved, but it remains highly improbable that China will waive its right to protect its core interest with military means. As Friedman comments: “Each one of China’s neighbors is eager to have a picture of their president standing with Secretary Clinton or President Obama – with the unspoken caption that reads: ‘Honestly, China, we don’t want to throttle you. We don’t want an Asian cold war. We just want to trade and be on good terms. But, please, stay between the white lines. Don’t even think about parking in my space because, if you do, I


have this friend from Washington, and he’s really big. … And he’s got his own tow truck.”

Be that as it may, the steady expansion of China’s maritime reconnaissance-strike is creating “no-go zones” in the Western Pacific, gradually eroding the U.S.’s military power projection into a region of longstanding vital interest. Since coming to power, the Obama administration has actively promoted the vision of a tougher China and has been clear about its intentions to restore U.S. strategic importance in Asia. In the words of Sun Tzu, China is acquiring the means to “win without fighting” and is trying to establish itself as Asia’s dominant power by undermining the credibility of the U.S.’s security guarantees and eventually easing it out of the region. As Eric McVadon comments, “The PLAN’ is arguably the only one in today’s world that the U.S. Navy must deter or be able to defeat, and also a navy that under different circumstances could become a high-seas partner.” In fact, the PLAN has conducted several serious naval exercises, including those with the Jiaolong, an amphibious deep sea submersible, in November


82 The Chinese government has been testing to launch a new submersible, in 2010 named Jiaolong, which can dive to 7,000 meters. If successful, it will be the deepest diving submersible in the world, diving deeper than the Japanese Shinaki 6500, which can dive to 6,500 meters and the American submersible Alvin, which can dive to 4,500 meters.
2010. This demonstrates PLA’s growing ability to seize islands and project military power far beyond its shores. The manned *Jiaolong* submersible will undertake a deep-sea dive mission in the SCS in 2013. China is accelerating its deep-sea research by setting up a national deep-sea support base in Qingdao and building a new mother vessel for *Jiaolong* to succeed *Xiangyanghong-9*. These projects will be completed by 2015 and eventually China plans to build a deep-sea station where submersibles can dock undersea and oceanauts can stay for work. The PLA feels it is also right for China to increase its national defense spending and modernize its military in response to the growing international criminal and terrorist activities.

Washington is placing marines in the northern Australian port city of Darwin and also, as explained above, increasing its military relations with Vietnam. Panetta’s visit to Vietnam and a tour of the Cam Ranh Bay in 2012 made it clear that the use of the harbor is important to the Pentagon since it is moving more ships to Asia. The Eagle has clearly stated that it has no intention of leaving the area and that it is rather trying to strengthen its legal hand so that its navy can be assured the freedom of navigation that UNCLOS recognizes beyond any nation’s territorial limit of 12 nautical miles. The U.S. has additionally stressed that freedom of navigation in the SCS should not be interrupted due to its strategic and economic interests in the Asia–Pacific region. In May 2008, during the Shangri-La Dialogue in Singapore, Former U.S. Defense Secretary Robert Gates described the U.S. as “a Pacific nation with an enduring role in East Asia.”

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84 Reuters, “China tests troubled waters with $1 bln rig for South China Sea.”

85 Ibid.

General Xu Caihou, Vice Chairman of China’s Central Military Commission (CMC), met with the U.S. National Security Advisor, Chairman of the Joint Chiefs of Staff, and the Deputy Secretary of State and signed an agreement on seven important issues. The issues cover promoting high-level visits, enhancing cooperation in the area of humanitarian assistance and disaster relief, deepening military medical cooperation, expanding exchanges between armies of the two nations, enhancing the program of midgrade and junior officer exchanges, promoting cultural and sports exchanges between the two militaries, and invigorating the existing diplomatic and consultative mechanisms to improve maritime operational safety. However, it was also clear at the meeting that
U.S.–China military relations still have a long way to go. General Xu mentioned four major obstacles that he claims are harming bilateral relations between the two nations. The first and foremost obstacle is the U.S.–Taiwan military relationship, which again is a matter of core interest to China. Second is the intrusion of U.S. military aircrafts and ships into China’s maritime EEZ. The third is that a few U.S. policies, like the 2000 Defense Authorization Act, restrict the development of the military relationship between China and the U.S. Finally, the lack of trust the U.S. has in China.

According to Valencia, “American forces are testing China’s ability to detect foreign vessels and aircraft by tickling their radar stations, interfering with ship to shore communications and attempting to detect how Chinese submarines enter and leave their bases.” According to China, “such activities are a form of battlefield preparation, which are prohibited by Chinese domestic law.” Ji Guoxing regards such activities as counter to UNCLOS Article 301, which stipulates that parties shall refrain from threatening the sovereignty of any state when exercising their rights at sea.

China is increasingly becoming concerned about the neo-interventionism and neo-gunboat policy of other major powers, and Washington’s involvement in particular has created much alarm and trepidation within China. Chinese leaders began advocating “peaceful rise” as soon as they realized that their hard power stance was widely mistrusted. Beijing has called upon other nations in Asia to abandon their alliances with
the U.S. and has warned against foreign intervention in the SCS. However, this strategy seems to have backfired. China has also warned Australia about its decision to strengthen military ties with the U.S. while continuing Australia’s economic dependency on China. The issue has become further complicated with the growing importance of the city of Zhanjiang, which is China’s main naval command center for ships and also the export destination for tons of Australian iron ore.

The 2007 *A Cooperative Strategy for 21st Century Seapower* views the regions of the Western Pacific and the Indian Ocean (including the Persian Gulf) as the central theatres for the exercise of hard U.S. naval power. The SCS, which lies between the two theatres, of course, is a gateway both for merchant shipping and for navies. The report states that through persistent presence, and operational flexibility, the U.S. will accomplish several key strategic imperatives. U.S. maritime forces will have the combat power to limit regional conflict, deter major power war, foster and sustain cooperative relationships with an expanding set of international partners, and prevent crises. The U.S. has even discussed conducting operations in the Himalayan region as a humanitarian mission to search for the remains of U.S. pilots listed as missing after World War II.

The operation will be held in Arunachal Pradesh, disputed by China, which suspects that

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95 Ibid.


98 Boris Volkhonsky, “U.S. policy in the South China Sea.”
the mission is not purely humanitarian. The U.S. took a seat at the East Asian Summit and engaged in negotiations to create a Trans-Pacific Partnership Free Trade Agreement (TPP) without China. It may still be that India’s growing involvement with Vietnam or its moves in the SCS will act as a counter weight to China’s activities and support in Bangladesh, Myanmar, and Pakistan. Henry Kissinger, in his book, *On China*, stated that China’s approach to world order is dissimilar to the Western system of a “balance of power diplomacy, primarily because China has never engaged in sustained contact with another…. on the basis of the concept of the sovereign equality of nations.”99 Should the Eagle and the Elephant along with other nations contend with the Dragon’s assertiveness by following Sun Tzu’s advice to “contain an adversary through the leverage of converting the neighborhood of that adversary into hostiles”?100

The landmark defense deal between the U.S. and India is a sign of the rapidly growing defense and security ties between New Delhi and Washington following 9/11. At the same time, India is improving its relationship with the ASEAN member states and has signed a 14-article agreement for collaboration with Vietnam. The U.S. is concerned with the fact that naval confrontation between China and India in the SCS could affect its national interests with respect to the maintenance of peace and stability in the region and the free passage of U.S. ships through the SCS. Yet the U.S. also views the expansion of Indian power in the SCS as a positive step to contain China’s steadily increasing naval presence in the region.


100 Ibid.
Although the U.S. and China have agreed to take a “substantive leap” with regard to military-to-military cooperation, scholars also talk about a “C-shaped ring of encirclement by China.” Others even argue that the U.S. is organizing an “Asian version of NATO” against China. Following Vannarit, the question is whether the U.S. military presence in East Asia is a part of U.S. strategy to counterbalance China’s efforts in creating the *Energy Silk Road* or to complete the geographical containment of China. The U.S. could strengthen its own position by becoming a party to the UN Convention on the Law of the Sea. As General Xu recognized, various obstacles stand in the way of improved security relations with China. First is the U.S. sale of arms to Taiwan, followed by the intense spy and patrol activities of U.S. aircraft and ships in the South and East China Sea. Another is the 2000 National Defense Authorization Act, which set conditions and limits on U.S. military contacts with China.

China’s “string of pearls” strategy has become an important one in terms of expanding its power. If leaders of other South Asian states contemplate militarizing some of these “pearls,” it would be difficult for Beijing to convince them that hosting

101 Song, “The Overall Situation in the South China Sea in the New Millennium.”

102 Holmes, “What ‘Containing China’ Means.”


104 Ibid.

PLAN bases is in their best interests. As “swing players” in an emerging Indo-Pacific “great game,” the littoral states of the Indian Ocean will probably prefer not to align but rather oscillate between Beijing, New Delhi, and Washington.  

Map 5.1 China’s “String of Pearls” route. (Source: http://forums.military.com/eve/forums/a/tpc/t/8001934822/m/1970017472001)

Beijing: The South China Sea and the Arctic Strategy

As strategic questions are being raised about the SCS dispute, another issue of growing importance is China’s Arctic strategy. China has become increasingly serious about the consequences of melting ice in the Arctic Ocean due to climate change. The melting of the Arctic ice would mean greater use of the Northeast Passage, which would in turn decrease dependence on the Malacca Strait. Although new commercial opportunities for cooperation will arise as a result of an ice-free Arctic, at the same time there is a significant likelihood that tension and miscalculation will characterize this region much as it has in the SCS. In fact, the U.S. Navy Task Force on Climate Change

completed its latest assessment of the Arctic region and reported that the developing
situation in the Arctic resembles that which is unfolding in the SCS.

China views this unique Arctic opportunity as potentially beneficial for its
international trade and shipping, with a major impact on China’s future economy. China
has therefore sought observer status at the Arctic Council that looks at various Arctic
issues, including shipping. The opening of the Arctic means more available routes that
have a lower risk of piracy, and this would certainly be helpful for China whose seven
ports are on the list of the world’s top 20 container terminals. At the 2009 Arctic
Forum in Norway, Hu stated: “Arctic countries should protect the balance between the
interests of states with shorelines in the Arctic Ocean and the shared interests of the
international community in settling territorial claims.” China’s State Oceanic
Administration declared in 2010 that, “[T]he Arctic is the inherited wealth of all
humankind…The Arctic Ocean is not the backyard of any country and is not the private
property of the Arctic Ocean littoral states. Under the framework of international law,
every country in the world has an equal right to exploit the Arctic Ocean.”

Interestingly, China’s assertive position regarding other countries’ sovereignty claims in

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108 Caitlin Campbell, “China and the Arctic: Objectives and Obstacles,” *U.S.-China Economic and Security Review Commission Staff Research Report* (2012), http://www.uscc.gov/researchpapers/2012/China-and-the-Arctic_Apr2012.pdf. The five Arctic littoral states are Canada, Denmark (of which Greenland is a territory), Norway, Russia and the United States (by virtue of Alaska). An additional three countries have territory in the Arctic Circle: Finland, Iceland and Sweden. The waters of the Arctic Ocean are basically controlled by the eight polar states: Canada, Russia, Norway, Sweden, Finland, Iceland, the US (via Alaska) and Denmark (via Greenland). They have set policy for the region through the Arctic Council created in 1996.

109 Ibid.
the Arctic might undermine its own position in contested areas like the SCS. It is clear that China will at least have to learn how to *share and bear*.

The question remains whether China is trying to initiate a new version of a Greater East Asia Co-Prosperity Sphere that was the intention of imperial Japan during 1940. According to the “Co-Prosperity Sphere” concept at that time, supplying regional raw materials and energy resources would facilitate Japan’s control over the access of other countries to vital areas and commercial routes and also ensure the nation’s own self-sufficiency. Likewise, China is now asserting its territorial and maritime claims in the East and South China Sea, maintaining its longstanding claim over the Taiwan Strait, making claims in the Indian Ocean, and implementing a “string of pearls” strategy. China might learn some lessons from Norway’s earlier claims over Svalbard. According to the 1920 Spitsbergen Treaty, Norway was granted sovereignty over the Spitsbergen archipelago, or Svalbard. However, the treaty restricted Norway’s control to some extent and Norway was obliged not to discriminate against any nation or company from the signatory states seeking to undertake maritime or mining activity on the island. In fact, Norway has never interrupted the global supply of oil, not surprisingly perhaps because it is both an oil exporter and explorer.\footnote{Parag Khanna and John Gilman, “Does Norway hold key to solving South China Sea dispute?” *CNN*, November 13, 2012, http://www.cnn.com/2012/11/13/opinion/khanna-south-china-sea-dispute/index.html.} Beijing should also understand that with the melting of Arctic ice, the Northwest Passage will be used by countries to reduce shipping time between Europe and Asia. As the *Japan Times* commented, the Northern Sea Route
(NSR) will force nations to reassess their maritime strategies.\textsuperscript{111} The Arctic states of Europe could perhaps serve as a role model for Asia.

There are rumors that Beijing will invest money in developing advanced air defenses, submarines, anti-satellite weapons, and anti-ship missiles, and use them to deny other countries access to the SCS. Furthermore, China has recently announced new rules allowing for the interception of ships in the SCS, which has raised serious alarm across Asia.\textsuperscript{112} If China were to fully enforce these new rules beyond the 12-nautical-mile zones, it would represent a significant threat to all countries concerned.\textsuperscript{113} In 2013, Beijing is going to publish a new vertical-format map of China including 130 islands and islets in the SCS, which were not featured previously.\textsuperscript{114} Such actions are certain to increase tensions all the more in the region. Moreover, China’s activities in the Maldives, which are viewed by the Maldives as important for maintaining security in the IOR, are emerging as a new area of conflict. China is also busy building ties with other island nations located on or near to India’s border, like Sri Lanka, Seychelles and even Mauritius. Former President Hu Jintao defined the objective of China’s foreign policy as to “jointly construct a harmonious world,” and invokes the cultural idea of “all under


heaven,” or Tianxia.\textsuperscript{115} Perhaps, if his statement is true, then China will not undertake aggressive actions in the SCS to advance its territorial claims and meet its rapidly increasing energy demands.

For its part, the Beijing-based \textit{Global Times} stated that regional stability would be difficult to maintain if the Southeast Asian states allow themselves to be controlled by the U.S. While Australia appears to favor China’s bilateral approach in resolving the SCS disputes; Singapore, Thailand, and the Philippines seem to prefer the current arrangement of placing the matter on ASEAN’s agenda.\textsuperscript{116} If China is convinced that the U.S. is stealthily trying to draw ASEAN or some of its members together with Australia, Japan, and South Korea into a soft alliance to constrain China, then the world can only expect even greater rivalry and tension in the years ahead. Consider, for instance, former U.S. Secretary of Defense Robert Gates’s remarks in 2010:

\begin{quote}
We have a national interest in freedom of navigation, in unimpeded economic development and commerce in respect for international law, the United States has always exercised our rights and supported the rights of others to transit through and operate in international waters. This will not change, nor will our commitment to engage in activities and exercises together with our allies and partners.\textsuperscript{117}
\end{quote}

The following chapter will discuss the role of ASEAN and focus on different methods to resolve crisis in the region.


\textsuperscript{116} Valencia, “The South China Sea: Back to the Future?”

CHAPTER 6: ASEAN AND THE SOUTH CHINA SEA DISPUTES

“Southeast Asia minus ASEAN equals greater political instability, more widespread economic deterioration and, almost surely, the ascendancy of expansionist forces that thrive on the weakness, isolation, and disunity of others.”

ASEAN Secretary-General Narciso G. Reyes

ASEAN

The Association of Southeast Asian Nations (ASEAN) was established with the signing of the ASEAN Declaration on August 8, 1967, in Bangkok, Thailand, by the foreign ministers of Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Since then, membership has expanded to include Brunei, Myanmar, Cambodia, Laos, and Vietnam. The declaration called for the establishment of an Association for Regional Cooperation in Southeast Asia to be known as ASEAN. Its stated objectives are accelerating economic growth, social progress, and cultural development through joint endeavors and to promote regional peace and stability. Its founding document called for its regional member countries to respect justice and the rule of law and adhere to the principles of the United Nations Charter.

Additionally, ASEAN acts to promote active collaboration and mutual assistance on matters of common interest, provide assistance to members in the form of training and research facilities, collaborate more effectively for the greater utilization of their agriculture and industries, promote Southeast Asian studies, and maintain close and beneficial cooperation with existing international and regional organizations.\(^1\) ASEAN thus purports to represent “the collective will of the nations of Southeast Asia to bind

themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.”

The two-page Bangkok Declaration contains the rationale for the establishment of ASEAN as well as its modus operandi of building on voluntary and informal arrangements towards more binding and institutionalized agreements. In their relations with one another, the ASEAN member states have also adopted a few fundamental principles, contained in the 1976 Treaty of Amity and Cooperation (TAC). They are as follows:

Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations;

The right of every State to lead its national existence free from external interference, subversion or coercion;

Non-interference in the internal affairs of one another;

Settlement of differences or disputes by peaceful manner;

Renunciation of the threat or use of force; and

Effective cooperation among themselves.

ASEAN is a central structure in Asia-Pacific regional institutional architecture. The establishment of ASEAN in 1967 was prompted by the outbreak of interstate disputes, like the conflict over Sabah (Malaysia vs. Philippines). ASEAN survived those early disputes and, for the first decade of its life, attempted to define and refine the

2 Ibid.
3 Ibid.
4 “Overview of ASEAN,” The Official Website of ASEAN.
concepts that formed the basis of its identity. During those early years, ASEAN member countries developed a habit of working together and resolved to keep external powers from intervening in the internal affairs of Southeast Asia. In 1971, the five ASEAN foreign ministers met in Kuala Lumpur and established the Zone of Peace, Freedom and Neutrality (ZOPFAN), also known as the Kuala Lumpur Declaration. In the declaration, the parties publicly stated their intention to keep Southeast Asia free from outside interference. The first multilateral treaty that served as a part of the code of conduct for SCS states was the TAC, mentioned above, which only governed relations among the member states of ASEAN. The Second Protocol to TAC enabled non–Southeast Asian states to become parties to TAC as a demonstration of their commitment to friendly and constructive relations. By the early 1990s, ASEAN members claimed that their organization was one of the most successful experiments in regional cooperation in the developing world. At the heart of this claim was ASEAN’s role in moderating intra-regional conflicts and significantly reducing the likelihood of war. Although ASEAN was involved in the diplomacy that led to the Paris Peace Agreement on Cambodia in 1991, ASEAN’s credibility and the so-called ASEAN way has frequently been questioned by some observers.

5 Ibid.

6 Amitav Acharya, Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order (New York: Routledge, 2009): 5–6; On October 23, 1991, the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict were signed by Cambodia and 18 other nations in the presence of the United Nations and ASEAN. The agreements were the culmination of more than a decade of negotiations in which the Secretary-General had been closely involved from the outset.
 Responding to the growing potential for conflict and the assertiveness of China’s territorial claims in the South China Sea, the ASEAN foreign ministers adopted the ASEAN Declaration on the South China Sea in July 1992. The Declaration called for the peaceful resolution of “all sovereignty and jurisdictional issues pertaining to the South China Sea,” the exercise of “restraint,” and the application of “the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea.” As Emmers comments, the informal code of conduct for the SCS was based on notions of conflict management and avoidance rather than conflict resolution. Despite the overlapping claims, the member states showed their interest in promoting stability in Southeast Asia and avoiding any confrontation with China. A series of informal workshops focusing on SCS disputes also began in the 1990s. As noted in Chapter 5, China began to normalize its relations with many of its neighbors. For example, China established normal diplomatic relations with Indonesia and Singapore, and in 1991, China also normalized relations with Brunei and Vietnam and was even invited that year to the ASEAN post-Ministerial Conference. An ASEAN–China dialogue was launched in 1994. Such multilateral negotiations proved successful enough to keep non-regional actors, such as the International Court of Justice (ICJ) and the United Nations, from any direct involvement.


In July 1994, the ASEAN Regional Forum (ARF) was created to engage the great powers and maintain regional stability. ARF emphasized institutionalization as well as norm-building and capacity-building, and sought to promote a collaborative security environment. The ARF was to function as a forum that included all regional actors as members. The ARF now has 28 member states. The 27th ASEAN ministerial meeting stated:

The ARF could become an effective consultative Asia–Pacific Forum for promoting open dialogue on political and security cooperation in the region. In this context, ASEAN should work with its ARF partners to bring about a more predictable and constructive pattern of relations in the Asia Pacific.

The ARF’s visibility as a conflict management forum increased after the resolution of the Cambodian conflict. However, outside analysts tended to be skeptical about the effectiveness of the ARF and some, such as Emmerson, continue to assert that the ARF is all bark and no bite. Lim argues that the ARF gave China opportunities to divide and rule. In fact, after almost 16 years, the ARF still remains at the first stage of confidence building measures (CBMs), although its 2001 “Concept and Principles” document states that such confidence building, along with the development of preventive diplomacy and approaches to handle conflicts, is of great importance.

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9 These include Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples’ Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, Timor Leste, the U.S., and Vietnam.


11 Ibid.

12 Ibid.

The Council for Security Cooperation in the Asia Pacific (CSCAP)\textsuperscript{14} also observes the ARF has not yet accomplished its mandated objectives. While the ARF has been able to undertake some CBMs, it has been reluctant or unable to advance preventive diplomacy (phase two) and conflict resolution (phase three). Unless the ARF is able to move forward in a convincing manner, there will be an opening for other options and bodies to be considered for its present role.\textsuperscript{15} The overall picture of security cooperation in this region is thus one of flux: as new institutions are created, existing ones expand and new arrangements are formalized.\textsuperscript{16} Acharya claims that the ARF, at the very least, still has the potential to develop norms and principles for intra-state cooperation, preventive diplomacy, and CBMs.\textsuperscript{17} Michael Wesley argues that Asia–Pacific regionalism was always geared toward “mediating” the impacts of global order for the region.\textsuperscript{18} In his view, after the Cold War, the ARF accommodated “the more benign aspects of world order, while keeping its more interventionist aspects at bay” by “tying the U.S. presence to the region but trying to dilute U.S. influence through diffuse and highly consensual mechanisms.”\textsuperscript{19}

\textsuperscript{14} The Council for Security Cooperation in the Asia-Pacific is a non-governmental process for dialogue on security issues in Asia Pacific. There are currently twenty member committees of CSCAP.


\textsuperscript{17} Amitav Acharya, “Preventive Diplomacy: Issues and Institutions in the Asia Pacific Region,” Paper Presented to the Eighth Asia-Pacific Roundtable, Kuala Lumpur, (June 6-8, 1994).


\textsuperscript{19} Ibid.
China became a full Dialogue Partner of ASEAN at a July 1996 meeting in Jakarta. The five most important areas targeted for ongoing discussions were non-traditional security issues, free trade area arrangements, bilateral and/or sub-regional economic development, the SCS and maritime security, and regional perspectives on ASEAN–China relations. China was also improving its military ties with individual ASEAN members through military training and weapons, military technology assistance, and naval port visits. Meanwhile, ASEAN–China relations had to contend with a rising China, a strong – albeit economically troubled – Japan, and, finally, the traditional superpower status of the United States. Other issues have occasionally had a spillover effect, including the cross-straits relationship between China and Taiwan, the problem of nuclear proliferation in North Korea, and the stand-off between India and Pakistan in South Asia.

China was the first Nuclear Weapon State (NWS) to express its intention to accede to the Protocol to the Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ). The SEANWFZ Treaty followed the provision of Article VII of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, which recognizes the right of any group of states to conclude regional treaties that ensure the total absence of nuclear weapons in their respective territories. The treaty came into force in 1997 and was considered to be ASEAN’s major contribution to complete elimination of nuclear weapons. Although China has indicated that it would be a signatory, its deployment of ballistic missile

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20 SEANWFZ is a nuclear weapons moratorium treaty conducted between ten Southeast Asian members in 1995 under the auspices of the ASEAN. It is also known as the Bangkok treaty.

submarines (SSBNs) to Sanya Naval Base raises serious questions about its true intentions. The relationship between ASEAN and China appeared to draw closer yet in the new millennium, with the signing of a revised Declaration on the Conduct of Parties in the South China Sea at an ASEAN-China summit meeting in Phnom Penh in November 2002, as well as a joint declaration of the Heads of State on Strategic Partnership for Peace and Prosperity in October 2003 in Bali. Also in 2003, China signed the TAC, which enhanced the stature of that treaty as a model for interstate relations in the region. The first East Asian Summit, held in Kuala Lumpur in December 2005, involved ten ASEAN members, along with China, Japan, South Korea, India, New Zealand, and Australia, and pointedly excluded the United States. Abdul Razak Baginda commented: “There is now this feeling that we have to consult the Chinese. We have to accept some degree of Chinese leadership, particularly in light of the lack of leadership elsewhere.” In fact, “as long as PRC’s growing eminence is perceived as beneficial for the region by key governmental elites in Southeast Asia, the international relationship between China and ASEAN will increasingly resemble hegemonic stability.”

Additional firsts for ASEAN were a gathering in 2006 of the ASEAN Defense Ministers (ADM), which envisaged the future creation of an ASEAN Security Community (ASC), and the conclusion of a formal ASEAN Charter that entered into force in December 2008. A 2009 meeting in Phuket, Thailand, on “Acting Together to

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22 Amitav Acharya, Constructing a Security Community in Southeast Asia, 6.


Cope with Global Challenges,” among other things, strongly reaffirmed the importance of the DOC as a milestone document between ASEAN and China to ensure peaceful resolution of disputes. In 2010, ASEAN and China also agreed to cooperate on areas such as agriculture, information and communication technology, human resource development, Mekong Basin Development, investment, energy, transport, culture, public health, tourism, and the environment. Several more workshops were conducted in 2012 in support of the DOC. These included the Workshop on Marine Hazard Prevention and Mitigation in the South China Sea, the Workshop on Marine Ecosystems and Biodiversity, the Symposium on Marine Ecological Environment and Monitoring Techniques, and, finally, the Joint Workshop in Commemoration of the 10th Anniversary of the DOC.

**ASEAN’s Potential Role in SCS Dispute Resolution**

As we have seen, ASEAN and China have established a significant and continuing relationship through summits, ministerial meetings, meetings between senior officials, and meetings of experts. The final section of this chapter now focuses on ASEAN’s role in dispute resolution with specific regard to the South China Sea.

Confidence-building measures (CBMs) stand at the less-active end of dispute resolution and can take many forms. In a sense, treaties like the TAC or the ASEAN Declaration of a Zone of Peace, Freedom, and Neutrality (ZOPFAN)--setting forth positive principles and widely endorsed by all parties--although seriously lacking in

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26 Ibid.
implementation and enforcement mechanisms, are in themselves CBMs. Their aim in part is to lessen anxiety and suspicion by making the behavior of parties more predictable. Additional CBMs are regular diplomatic meetings, informal workshops, and joint projects for development, scientific research, and/or environmental protection. Bilateral negotiations, mediation and/or arbitration by parties within or outside the region, and judicial settlement are obviously much more active conflict resolution measures. Since we have reviewed key treaties, declarations, and diplomatic meetings above, let us start here with workshops.

Workshops. Between 1990 and 2001, a series of annual workshops were held, the first in Bali, titled workshop on managing potential conflicts in the South China Sea. The workshops were a direct response to Li Peng’s speech in Singapore in 1990 pledging China’s willingness to solve any existing conflicts peacefully. All workshops convened in Indonesia were sponsored by the Canadian International Development Agency (CIDA). The participants were a mixture of both governmental and non-governmental officials, scholars, and resource people from outside the region. The objective was to provide a basis for more formal negotiations. In the end, the early workshops accomplished very little because China refused to participate, all the initiatives came from Indonesia, and ASEAN was never involved as an organization in any substantive negotiation process.


Another workshop--this time, notably, outside of Indonesia--on CBMs in the South China Sea and Taiwan’s involvement was held in 2001 in Taipei. The workshop identified a number of CBMs that might be helpful in avoiding accidental escalation of conflicts in the SCS. These included: a halt to further military construction or force build-ups in disputed territories; a return to the status quo at the time of the ASEAN Declaration on the South China Sea; negotiations on a region-wide code of conduct to reject the use of force and to work toward the eventual demilitarization of the disputed territories; an annual environmental assessment of the SCS by private scholars; establishment of a marine park to preserve the unique biodiversity of the SCS; and joint development efforts that set aside issues of sovereignty.29

Yet another workshop convened in Hainan in 2006 on the implementation of the Declaration on the Conduct of Parties in the South China Sea. In this case, the parties foresaw undertaking a few initiatives with China such as a joint ASEAN-China table top maritime search and rescue exercise funded by the ASEAN-China Cooperation Fund (ACCP); a workshop on regional oceanographic and climate exchanges in the SCS; a workshop on disaster prevention and reduction, involving the establishment of a disaster monitoring and warning system in the SCS; and a training program on ecosystem monitoring and monitoring technology with regional oceanographic exchange around the SCS.30 Against a backdrop of rising tensions in the SCS, a further workshop on the South


China Sea was held in Ho Chi Minh City in 2010.\textsuperscript{31} There was significant concern about the growing presence of naval powers in the SCS in the name of safeguarding strategic interests and counterbalancing the presence of one another. Additionally, the participants focused on the role and probable intentions of China as well as the effectiveness of the Declaration on the Conduct of Parties agreed between ASEAN and China to resolve disputes in the SCS through diplomatic means.\textsuperscript{32}

Joint Development Projects. Such projects in the SCS have been discussed for many years and are something about which China has expressed interest and become moderately engaged. In fact, joint development is a relatively new concept in international law, dating from the 1970s. According to the British Institute of International and Comparative Law, joint development includes an agreement between two states to jointly share offshore oil and gas in a designated zone of the sea-bed and subsoil of the continental shelf that both or either of the participating states are entitled to under international law in proportions agreed by inter-state cooperation.\textsuperscript{33} The Institute’s definition of joint development is broad enough to cover all relevant situations. The Institute specifically lists the SCS as one of the potential areas for joint development. The UNCLOS also provides a legal basis for joint development in disputed maritime areas pending the settlement of the maritime boundary delimitation. The UNCLOS leaves other options open to states concerned as to whether they can enter into joint development

\textsuperscript{31} 2nd International Workshops on the South China Sea: Cooperation for Regional Security and Development, Ho Chi Minh City, November 11-12, 2011, Maritime Institute of Malaysia.

\textsuperscript{32} Ibid.

\textsuperscript{33} Ibid.
agreements after any definite maritime boundary delimitation. A possible Timor Gap Treaty was frequently discussed and finally accepted in 1991 in the context of possible joint development in the SCS. It suggests that instead of creating a single joint development zone, the claimants should establish 12 separate joint development zones for each area of overlapping claims.

In the 1980s, the East–West Center in Hawaii organized two workshops to discuss the possibility of joint development in the SCS. Robert Smith presented a paper at one of the workshops on potential joint development in the Spratlys. According to Smith, the claimants could draw hypothetical equidistant lines between the disputed islands and the surrounding littoral states after freezing the territorial claims.  


36 Ibid.
sovereignty over them.”\(^{37}\) However, when the Filipino government soon thereafter suggested joint use of a Chinese-built station on Mischief Reef, China demurred.

Joint development was also mentioned in the so-called “donut hole” theory proposed by Hasjim Djalal in 1989–1990. According to this theory, the zone beyond 200 miles from coastal lines and islands claimed by the concerned parties would be a zone for cooperation of all states around the SCS.\(^{38}\) In 1991, the Hainan Research Institute for the South China Sea held a joint conference on the SCS in Hainan, at which a total of five papers dealing with joint development in the SCS were presented. The papers discussed the issue of joint development from military, economic, legal, political, and regional perspectives. Despite China’s initial rebuff of the Philippines over Mischief Reef, following Deng’s opening, China has been cautiously pursuing the goal of joint development in other contexts. In 2003, the China National Offshore Oil Company (CNOOC) and the Philippine National Oil Company agreed to jointly explore oil and gas in the SCS. China also expressed its willing to discuss the ways and means of joint development with other ASEAN countries, including Vietnam.

In June 2008, China and Japan reached a first-step agreement on cooperation in the East China Sea. According to Masahiko Koumura, “[T]he agreement is the first step toward realizing a common understanding between the leaders of the two countries that the East China Sea should be a Sea of Peace, Cooperation and Friendship.”\(^{39}\) Looking ahead, energy consumption by Asian countries is expected to increase to nearly 29.8

\(^{37}\) Ibid.


\(^{39}\) Ibid.
million barrels per day by 2025; hence joint development should provide a remarkable window of opportunity. There are potential spinoffs as well. The joint oceanographic marine scientific expedition in the South China Sea is an example, where the parties have pledged to cooperate in marine scientific research and environmental protection.\footnote{Henry S. Bensurto, “Cooperation in the South China Sea: Views on the Philippines—Vietnam cooperation on maritime and ocean concerns, South China Sea Studies (July, 2011): “Maritime energy resources in Asia, Legal Regimes and Cooperation,” NBR Special Report no. 37 (February, 2012).}

**Mediation.** Mediation, by definition, involves an invitation to presumably unbiased third parties to make non-binding suggestions of possible terms for peaceful settlement of disputes. Some ASEAN members, especially the Philippines, have actively tried to engage the U.S. and Japan and even the United Nations as mediators, but China has consistently refused. ASEAN itself is divided over whether to engage external actors in the conflict resolution process, since this would also inevitably highlight the intra-ASEAN disputes. The resistance against involving both external states and organizations, such as United Nations (UN) and Asia–Pacific Economic Cooperation (APEC), is far greater than the will to engage them. For its part, China has consistently insisted that SCS disputes must be negotiated through bilateral channels. According to Valencia, China follows “a three nos strategy” that gives China the upper-hand in negotiations, which includes no internationalization of the conflict, no multilateral negotiations, and no specification of China’s territorial demands.

**Bilateral and Multilateral Negotiations.** The above said, China has entered into bilateral negotiations when it suited China’s purposes. For example, Vietnam and China held three informal meetings concerning the Cambodian conflict – in January 1989, in May 1989, and in February 1990—without any significant results. Discussions
concerning the Gulf of Tonkin achieved great progress, and both parties agreed not to take any actions that would increase tensions. Moreover, bilateral negotiations between China and the Philippines have intensified since China’s occupation of the Mischief Reef. There and in the Spratlys, thus far, continuing talks have at least staved off direct violent confrontations. Missing in all the foregoing discussion of peaceful settlement initiatives has been mention of any important role played by ASEAN, which to date has at best simply provided a benign background of stated principles that it is hoped might have the effect of dampening the potential for conflict. As noted, China resists multilateralism of existing disputes and ASEAN has its own internal divisions that constrain its members’ capacity to act collectively. Southeast Asia minus ASEAN\(^{41}\) would probably mean even greater political instability, more disunity, and widespread economic deterioration. That is about the best one can say for the organization. It proclaims some worthwhile principles and continues to “be there” should parties to disputes wish to make use of its services. Thus far, they have shown little inclination to do so in any particularly substantive way. Both the East Asian summits in July and November 2012 ended in dismay as Cambodia, the chair of ASEAN and an important Chinese ally, declared that the SCS disputes will not be raised in international forums. Recently, Vietnam, the Philippines, and India are all objecting to Beijing’s move to establish its territorial claims by illustrating them in passports. Even Taiwan has actively joined the competition by deciding to explore for undersea oil in the SCS region.

Judicial Settlement. The conclusions of the International Court of Justice with respect to the boundary cases of Pulau Ligitan and Pulau Sipadan, which was between Malaysia and Indonesia,\textsuperscript{42} and the case of Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge, which was between Malaysia and Singapore,\textsuperscript{43} could serve as a basis for initiatives to submit the various SCS disputes to international juridical agencies like the ICJ or the International Tribunal for the Law of the Sea (ITLOS). But there are a number of complications involved. For example, matters can only be referred to the International Court of Justice or other third-party adjudicative bodies if all parties agree. Furthermore, obviously some potential claimants are discouraged from bringing their cases to the court, because they may fear that the ruling might not be in their favor.\textsuperscript{44}

The next chapter provides a brief review of the main findings of the dissertation, and makes recommendations for possible future research.


\textsuperscript{44} Nguyen Thao and Ramses Amer, “A New Legal Arrangement for the South China Sea?,” Ocean Development and International Law, 2009.
CHAPTER 7: CONCLUSION

“The time to make peace is when there is peace.”

Sri Noordin Sopiee

The author of this dissertation certainly agrees with Noordin’s remark, that it is good to “make peace while there is peace.” And there is no right or wrong time, rather the time is now! The world also, no doubt, would welcome some form of grand solution or even major progress towards resolving the South China Sea disputes. But unfortunately nothing of the kind appears likely within the foreseeable future.

I am organizing this brief Conclusions chapter first around the three research questions I established at the start of my work. The middle part of the chapter offers some modest suggestions for improving conflict management and thus decreasing the potential for violent clashes in the SCS. The final section explores various lines of possible future research relevant to security in the SCS.

Research Questions and Summary of Findings

My first research question was: “What factors increase the probability of conflicts in the SCS region? As explained in previous chapters, the SCS is the locus of some of the most strategic and busiest shipping lanes in the world, the importance of which are likely to increase dramatically in future years. The SCS also holds major resource reserves of a variety of minerals and fish that are certain to be exploited (perhaps over-exploited) in future years, especially with rapidly improving technology. Regrettably for the cause of

1 Valencia Mark, “Whither the South China Sea Disputes?,” South China Sea Studies, (July 2010).
peace, the SCS is additionally the site of numerous islands and other less substantial territorial outcroppings, some which have long been in dispute and others in more recent times. Historical titles and claims have often been as vague as many of the documents and maps upon which they have been based. UNCLOS as an international legal regime has clarified some of the rules affecting maritime traffic and territorial disputes in the SCS, but paradoxically did add to the competition by codifying such concepts as twelve-mile territorial waters and 200-mile Exclusive Economic Zones.

China’s new assertiveness in the SCS region has raised tensions and highlighted the need for all potential claimants to make or reaffirm their claims, clarify their extent, and prepare to defend them, militarily if necessary. The disputes have the potential of escalating into serious international conflicts, not only because of the practical resource stakes, but also because emotions run high whenever the themes of challenges to sovereignty and national pride are sounded. In IR theory terms, there are thus strong realist incentives for conflict as well as constructivist dimensions, insofar as the numerous parties to disputes assess the strength and significance of their own claims and degree of commitment to them, as well as the elusive “actual” intentions of their rivals. In fact, the long-range threat from China may yet prove to be far less serious than some analysts and policy-makers suppose. Much depends on the priority China attaches to expansionism in the SCS, when the country has so many other regional concerns—Taiwan, North Korea, Japan—not to mention problems at home. Yes, China’s economic progress has been striking, but Beijing still has a host of political, economic, and social problems to overcome. Some observers say that China’s aging authoritarian regime may ultimately be unable to cope with the major challenges that lie ahead. Whether domestic
instability would lead to more or less saber-rattling in the SCS is extremely hard to predict.

My second research question was: “What is the role of ASEAN in managing conflicts in the SCS region?” Chapter 6 reviewed the history of ASEAN as an organization and its engagement in various ways with SCS disputes and China over several decades. As Acharya has suggested, perhaps ASEAN’s contribution has mainly been one of always being present as an organization and dependably in a positive, upbeat mode. ASEAN has continually attempted to establish and reiterate a central norm of interstate relations for the region: that Southeast Asia is a zone of cooperation and peace, where states have firmly pledged to resolve any and all disputes peacefully. Accordingly, direct condemnation of any member or external party is not helpful and, given the regional norm, should hardly ever be required. In IR theory terms, this “ASEAN way” is pure “social construction,” but it is has some significant “objective reality,” because it has been supported by the likes of countless declarations, meetings, and workshops and at least has served to discourage conflict rather than make it more likely. Nonetheless, the question remains whether such a benign approach is not itself marginal to the realpolitik that appears to characterize the SCS ambitions of a rising China and other regional claimants, not to mention the concerns of external powers like the United States and India. The proof will most likely be in the pudding in the years ahead. Will the parties—not least China—embrace and explore the full potential of the ASEAN way or prove the ASEAN way to have been, at best, well-intentioned moralizing or, at worst, gravely deficient because it failed to fashion an urgently needed more activist approach to
conflict resolution? ASEAN has also to date effectively discouraged any offers of good offices, mediation, or arbitration by external actors such as the United Nations.

My third research question was: “What is the likely utility of other conflict prevention mechanisms in the SCS region?” Probably I should have phrased this as “other means of preventing conflict” and made the question less distinct from the second question regarding ASEAN, because that organization has pointed to the potential usefulness of such measures (beyond ASEAN itself) as joint development projects and resource sharing. In fact, we have noted that China has been willing to “dialogue” on a formal basis with ASEAN but has consistently rejected any true multilateralization of SCS disputes. Moreover, as we have observed, ASEAN has pridefully resisted calling upon external powers or organizations like the UN to exercise their good offices, mediate, or arbitrate disputes in the region; and no SCS dispute has recently been referred by the parties to the ICJ or other judicial settlement. Parties to territorial claims appear to be more anxious to keep their future options open, rather than risk closing them off prematurely through any compromise settlement. This may reflect the perceived domestic utility of persistent foreign frictions and/or a genuine belief that it is too early to know what strategic and resource rewards might eventually prove to be at stake. Nevertheless, I do make a few modest suggestions in the next section for various potential “win-win” measures that might help to advance cooperation and lower tensions in future years.

A Few Constructive Suggestions

In sum, I personally think that the SCS disputes are very likely to remain much as they currently are for quite some time, with minor skirmishes in the region frequently making front page news. While actions and counteractions by other claimants with regard
to their claims over the islands in the SCS are to be expected, I believe that such actions will probably not escalate to a grave conflict that would threaten the entire region. However, admittedly, the situation is extremely volatile and could indeed give rise to warfare beyond the level of a skirmishes and even involve active military engagement by external powers like the United States. Given that very real possibility, it obviously behooves all parties concerned to explore any and all possible win-win solutions and, following the ASEAN way, to continue to stress cooperation over confrontation at every possible opportunity.

One positive approach is expanding economic interdependence and joint development projects. As we know from the classic example of World War I, for example, there is no guarantee that close economic ties will prevent the outbreak of war. But, all other things being equal, enmeshing parties in a mutually beneficial web of economic interdependence certainly cannot hurt the prospects for peace. It is significant that after the 2008 financial crisis, a conceptual linkage has apparently begun to develop between economic and strategic security. This is particularly noticeable in the case of ASEAN Plus Three and the Asian Cooperation Dialogue. Members should develop a common ASEAN vision for future East Asian trade and economic integration, perhaps looking to create an ASEAN-wide FTA by 2015 and a full-fledged ASEAN economic community by 2020. It is a generally healthy trend that ASEAN–China economic relations have been growing rapidly over the past decade. China is currently the second

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2 ASEAN Plus Three is a forum that functions as a coordinator of cooperation between ASEAN and three East Asian countries like Japan, China and South Korea. It is credited for creating the financial stability in Asia. The Asia Cooperation Dialogue is a body created in 2002 to promote Asian cooperation at a continental level and to help integrate separate regional cooperation organizations. The first leaders meeting were held in 1996 and 1997.
largest trading partner of ASEAN, and ASEAN is the third largest trading partner of China. Further intra-ASEAN economic integration and also with China could help counterbalance the new trans-Pacific free trade agreement now being pursued by the United States.

Cooperation between and among SCS claimants should be encouraged to set up regimes for the effective use of natural resources, perhaps starting with the management of fishery resources, with the hope of having a spillover effect on other areas of collaboration. The parties should actively investigate successful agreements for joint fishing management zones, protection of diminishing coral reefs, and hydrocarbon exploration, as well as more general nature conservation zones, especially those administered by independent or multilateral agencies. There might also be joint efforts to expand tourism in the region, with an emphasis on “eco-tourism.”

Military-to-military consultation and collaboration is also urgently needed to minimize the threat of dangerous incidents that could escalate to full-fledged armed conflict. Countries might lower tensions by expanding agreement on military rules of engagement and offering prior notification of the nature and intention of military movements in the SCS. In my view, joint patrols and even joint access to commercially available satellite and other information showing developments on disputed features should be promoted in order to respond to illegal fishing and to enhance anti-piracy efforts as well as the safety and freedom of navigation generally. Monitoring and documenting military deployments and unauthorized civilian landings by nationalist groups could be useful to all concerned. Regular sharing of information using GIS technology (another upcoming and significant research area) should be given precedence
in order to avoid possible miscalculations at sea. Another area for potential cooperation is that of search and rescue (SAR) operations. With regard to the International Convention on Maritime Search and Rescue, the International Maritime Organizations or the IMO found that China is mainly responsible for whatever SAR work already exists in the SCS region. In order to strengthen its SAR capability, China will have to build airports and ports, which would no doubt be seen as threatening by other SCS parties. More equitable burden-sharing of SAR thus might be beneficial from more than one standpoint.

**Possible Future Research**

This dissertation has gathered together and analyzed a wide range of information on the evolving SCS disputes, much of it new to the limited major literature on this subject, partly because events in the region have been moving so rapidly in recent years. As the situation continues to evolve in future years, there will certainly be no shortage of opportunities for additional research. Hence I will only mention three such areas here.

First is the role of the Rim of the Pacific Exercise (RIMPAC), which is the world’s largest international maritime warfare exercise. The question is whether RIMPAC is a threat to Beijing or whether Beijing will soon join the RIMPAC to warm its relationship with the U.S. as well as its Southeast Asian neighbors amidst growing tension in the region. Those neighbors as well as Russia and India participated for the first time in RIMPAC 2012, while the absence of People’s Liberation Army Navy (PLAN) left the strong impression that the exercises were aimed at managing China’s increasing naval clout.

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3 “China’s search and rescue efforts in South China Sea seriously lacking,” *Global Times*, (March 18, 2013).
I briefly mentioned China’s Arctic strategy in Chapter 6, which is a subject I hope to pursue as a part of my own future research agenda. Because of China’s quest for natural resources, China will increasingly make its presence felt in the Arctic and, minimally, look to the Arctic for potential imports of resources. Will China opt for the notion of an Arctic open to all, and what will be the effect of its Arctic strategy on the intensity of its claims in the SCS?

Finally, a word on IR theory and the SCS disputes. Mine was never intended to be a dissertation focused on IR theory, rather—like all the other major works in the literature on this subject (except for Acharya’s constructivist view of ASEAN)—mainly a forthright review and analysis of ongoing territorial disputes in the SCS, their possible escalation, and avenues for advancing cooperation rather than conflict. However, to be sure, the SCS disputes inevitably have theoretical overtones. China’s pursuit of its perceived “core interests,” as well as other parties’ defense of theirs’, is clearly realist. China’s rise calls to mind neorealism’s concern with global structure and power shifts. China’s engagement with a wide variety of international organizations from the UN to the WTO to ASEAN points to liberal institutionalism. And the concept of the ASEAN way as well as the various SCS parties’ different conceptions of their own claims and the threat posed by others belongs to the constructivists. Thus, although I have not cast my dissertation primarily in a theoretical mode, the challenge to do so remains for those bold enough to attempt it. I wish them well.
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APPENDIX 1: INTERVIEW QUESTIONS

Which of the various potential conflicts in the SCS do you believe are the most dangerous?

How threatening do you think India and other regional actors regard China's military modernization to be?

How likely do you think a clash between China and the United States will be in the SCS—and what are the most likely flashpoints?

What contributions do you believe ASEAN might make to lessen the potential for conflict?

What might be other roads to peaceful resolution of potential conflicts?

What might be the most constructive policy for India to follow regarding tensions in the SCS?
APPENDIX 2: EEZ Rules under Part V of UNCLOS

**Article 55**
Specific legal regime of the exclusive economic zone
The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

**Article 56**
Rights, jurisdiction and duties of the coastal State in the exclusive economic zone

1. In the exclusive economic zone, the coastal State has:

(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

(i) the establishment and use of artificial islands, installations and structures;

(ii) marine scientific research;

(iii) the protection and preservation of the marine environment;

(c) other rights and duties provided for in this Convention.

2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

3. The rights set out in this article with respect to the seabed and subsoil shall be exercised in accordance with Part VI.

**Article 57**
Breadth of the exclusive economic zone

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

**Article 58**
Rights and duties of other States in the exclusive economic zone
1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.
3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

Article 59
Basis for the resolution of conflicts regarding the attribution of rights and jurisdiction in the exclusive economic zone. In cases where this Convention does not attribute rights or jurisdiction to the coastal State or to other States within the exclusive economic zone, and a conflict arises between the interests of the coastal State and any other State or States, the conflict should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole.

Article 60
Artificial islands, installations and structures in the exclusive economic zone
1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:
   (a) artificial islands;
   (b) installations and structures for the purposes provided for in article 56 and other economic purposes;
   (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone.
2. The coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations.
3. Due notice must be given of the construction of such artificial islands, installations or structures, and permanent means for giving warning of their presence must be maintained. Any installations or structures which are abandoned or disused shall be removed to ensure safety of navigation, taking into account any generally accepted international standards established in this regard by the competent international organization. Such removal shall also have due regard to fishing, the protection of the marine environment and the rights and duties of other States. Appropriate publicity shall be given to the depth, position and dimensions of any installations or structures not entirely removed.
4. The coastal State may, where necessary, establish reasonable safety zones around
such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures.

5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.

6. All ships must respect these safety zones and shall comply with generally accepted international standards regarding navigation in the vicinity of artificial islands, installations, structures and safety zones.

7. Artificial islands, installations and structures and the safety zones around them may not be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

8. Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf.

**Article 61**

Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.

2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.

3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.

4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.

5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

**Article 62**
Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.

2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:

(a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;

(b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;

(c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;

(d) fixing the age and size of fish and other species that may be caught;

(e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;

(f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programs and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;

(g) the placing of observers or trainees on board such vessels by the coastal State;

(h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;

(i) terms and conditions relating to joint ventures or other cooperative arrangements;

(j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;

(k) enforcement procedures.
5. Coastal States shall give due notice of conservation and management laws and regulations.

**Article 63**

Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

**Article 64**

Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

**Article 65**

Marine mammals

Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.

**Article 66**

Anadromous stocks

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.

2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches
for stocks originating in its rivers.

3. (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.

(b) The State of origin shall cooperate in minimizing economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the areas in which such fishing has occurred.

(c) States referred to in subparagraph (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.

(d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.

4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall cooperate with the State of origin with regard to the conservation and management of such stocks.

5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

Article 67
Catadromous species

1. A coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish.

2. Harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones. When conducted in exclusive economic zones, harvesting shall be subject to this article and the other provisions of this Convention concerning fishing in these zones.

3. In cases where catadromous fish migrate through the exclusive economic zone of another State, whether as juvenile or maturing fish, the management, including harvesting, of such fish shall be regulated by agreement between the State mentioned in paragraph 1 and the other State concerned. Such agreement shall ensure the rational management of the species and take into account the responsibilities of the State mentioned in paragraph 1 for the maintenance of these species.

Article 68
Sedentary species

This Part does not apply to sedentary species as defined in article 77, paragraph 4.

Article 69
Right of land-locked States

1. Land-locked States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:
   (a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;
   (b) the extent to which the land-locked State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;
   (c) the extent to which other land-locked States and geographically disadvantaged States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;
   (d) the nutritional needs of the populations of the respective States.

3. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing land-locked States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 2 shall also be taken into account.

4. Developed land-locked States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

5. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

Article 70

Right of geographically disadvantaged States

1. Geographically disadvantaged States shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or
region, taking into account the relevant economic and geographical circumstances of all the States concerned and in conformity with the provisions of this article and of articles 61 and 62.

2. For the purposes of this Part, "geographically disadvantaged States" means coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own.

3. The terms and modalities of such participation shall be established by the States concerned through bilateral, subregional or regional agreements taking into account, inter alia:

(a) the need to avoid effects detrimental to fishing communities or fishing industries of the coastal State;

(b) the extent to which the geographically disadvantaged State, in accordance with the provisions of this article, is participating or is entitled to participate under existing bilateral, subregional or regional agreements in the exploitation of living resources of the exclusive economic zones of other coastal States;

(c) the extent to which other geographically disadvantaged States and land-locked States are participating in the exploitation of the living resources of the exclusive economic zone of the coastal State and the consequent need to avoid a particular burden for any single coastal State or a part of it;

(d) the nutritional needs of the populations of the respective States.

4. When the harvesting capacity of a coastal State approaches a point which would enable it to harvest the entire allowable catch of the living resources in its exclusive economic zone, the coastal State and other States concerned shall cooperate in the establishment of equitable arrangements on a bilateral, subregional or regional basis to allow for participation of developing geographically disadvantaged States of the same subregion or region in the exploitation of the living resources of the exclusive economic zones of coastal States of the subregion or region, as may be appropriate in the circumstances and on terms satisfactory to all parties. In the implementation of this provision the factors mentioned in paragraph 3 shall also be taken into account.

5. Developed geographically disadvantaged States shall, under the provisions of this article, be entitled to participate in the exploitation of living resources only in the exclusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone.

6. The above provisions are without prejudice to arrangements agreed upon in subregions or regions where the coastal States may grant to geographically disadvantaged States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the exclusive economic zones.

**Article 71**

Non-applicability of articles 69 and 70

The provisions of articles 69 and 70 do not apply in the case of a coastal State whose
economy is overwhelmingly dependent on the exploitation of the living resources of its
exclusive economic zone.

Article 72
Restrictions on transfer of rights
1. Rights provided under articles 69 and 70 to exploit living resources shall not be
directly or indirectly transferred to third States or their nationals by lease or license, by
establishing joint ventures or in any other manner which has the effect of such transfer
unless otherwise agreed by the States concerned.
2. The foregoing provision does not preclude the States concerned from obtaining
technical or financial assistance from third States or international organizations in order
to facilitate the exercise of the rights pursuant to articles 69 and 70, provided that it
does not have the effect referred to in paragraph 1.

Article 73
Enforcement of laws and regulations of the coastal State
1. The coastal State may, in the exercise of its sovereign rights to explore, exploit,
conserv and manage the living resources in the exclusive economic zone, take such
measures, including boarding, inspection, arrest and judicial proceedings, as may be
necessary to ensure compliance with the laws and regulations adopted by it in
conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of
reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the
exclusive economic zone may not include imprisonment, in the absence of agreements
to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly
notify the flag State, through appropriate channels, of the action taken and of any
penalties subsequently imposed.

Article 74
Delimitation of the exclusive economic zone between States with opposite or adjacent
coasts
1. The delimitation of the exclusive economic zone between States with opposite or
adjacent coasts shall be effected by agreement on the basis of international law, as
referred to in Article 38 of the Statute of the International Court of Justice, in order to
achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the States
concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit
of understanding and cooperation, shall make every effort to enter into provisional
arrangements of a practical nature and, during this transitional period, not to jeopardize
or hamper the reaching of the final agreement. Such arrangements shall be without
prejudice to the final delimitation.
4. Where there is an agreement in force between the States concerned, questions
relating to the delimitation of the exclusive economic zone shall be determined in
accordance with the provisions of that agreement.

Article 75
Charts and lists of geographical coordinates
1. Subject to this Part, the outer limit lines of the exclusive economic zone and the lines of delimitation drawn in accordance with article 74 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.
2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.
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