

# THE SOUTH CHINA SEA: A NEW INTERNATIONAL HOTSPOT

SIDRA TARIQ

*The South China Sea... is now a principal node of global power politics, critical to the preservation of the world wide balance of power. While control of it may not quite unlock the world for China as control of the Greater Caribbean unlocked the world for America; the Caribbean, even with the Panama Canal, has never lain astride the great maritime routes and energy to the degree that the South China Sea presently does.*

— Robert D. Kaplan  
*Asia's Cauldron – The South China Sea  
and the End of a Stable Pacific*

## Introduction

The South China Sea (SCS) has in recent years become a hot spot in international conflict due to a complex set of overlapping and competing territorial claims among China, Vietnam, the Philippines, Malaysia, Brunei, Indonesia and Taiwan. Although the United States is not a party to any of the disputes, the Obama Administration's "re-balance" towards the Asia-Pacific has augmented America's profile in the region at a time when many of the regional players are seeking to evade China's increasing influence. A handful of islands that span across the South China Sea, making up an area known as the "cow's tongue," form the epicentre of this territorial row. Besides the issue of defending one's territorial sovereignty, much of the interest of the stake holders in the South China Sea is due to its global standing as a maritime superhighway, its abundant energy deposits, its copious marine resources and military bases, all of which are at stake in the increasingly recurrent diplomatic face-offs. China contends to uphold a massive area, extending almost down to Indonesia. Taiwan matches those demands but seldom pursues them boldly due to its limited role on the international stage. Paracel and Spratly Islands are claimed by Vietnam, while the Philippines, Malaysia and Brunei all have claims partially imbricating

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*Regional Studies, Vol. XXXII, No.3, Summer 2014, pp.3-39*

with that of China over the islands and other geological structures. Of the claimants, Vietnam and the Philippines have been most assertive against Chinese stance during the last few years. Malaysia and Brunei take a minimalist approach, which has been aided by the fact that Beijing has not made an issue over its conflicting demands with these countries. This paper explores a number of challenges that could potentially drive South East Asian countries, especially Vietnam and the Philippines, towards conflicts with China over the South China Sea. It focuses on the implications of regional responses to China's actions. In addition, it addresses the issue from the perspective of international law and explores the intricacies involved therein, particularly regarding numerous claims in the South China Sea. There are several key legal issues involved in the territorial claims, and all contenders present conflicting historical and legal evidences that, according to them establish their ownership of the different islands. None of the international dispute settlement systems can be used without the assent and cooperation of the parties involved, which have so far been lacking.

**Map 1**

### South China Sea



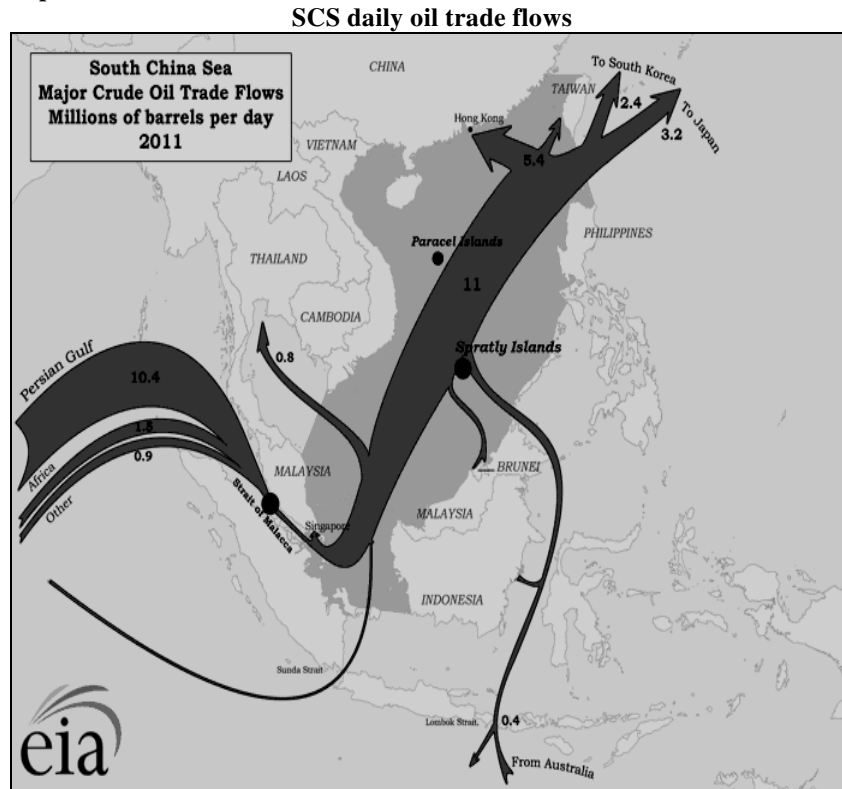
Source : < <http://www.eia.gov/countries/regions-topics.cfm?fips=scs>

### South China Sea – maritime expressway

The South China Sea covers an area of roughly 1.4 million square miles in the Pacific Ocean that encompasses a region from the Singapore and Malacca Straits to the Strait of Taiwan, spanning west of the Philippines, north of

Indonesia, and east of Vietnam (See Map 1). The South China Sea islands constitute hundreds of islands, amongst which the biggest and most contentious territories comprise the Spratly Islands, Paracel Islands, Pratas Islands, Macclesfield Bank, and Scarborough Shoal, to which all of the six key Southeast Asian nations attach various claims. The islands are mostly uninhabited and have never had an indigenous population, making the issue of historical sovereignty a tricky one to resolve.<sup>(1)</sup>

Map 2



According to Kaplan, the South China Sea works as a “throat” of the Western Pacific and Indian Oceans — the mass of connective economic tissue where global sea routes coalesce.<sup>(2)</sup> Over 50% of the world’s merchant fleet tonnage crosses through the Malacca, Sunda and Lombok Straits, with the majority continuing on into the South China Sea.<sup>(3)</sup> The Strait of Malacca, located between Indonesia, Malaysia, and Singapore, links the Indian Ocean to the South China Sea and the Pacific Ocean. According to the US Energy Information Administration (EIA), the tanker traffic that moves through the Malacca Straits is more than three times greater than the Suez Canal traffic, and

well over five times more than the traffic of the Panama Canal.<sup>(4)</sup> The EIA estimated that by the end of 2011, oil trade passing through the Malacca Straits was greater than 15 million barrels per day (BPD), amounting to one-third of all seaborne oil and second only to the Strait of Hormuz<sup>(5)</sup> (see Map 2). Oil imported by Japan, South Korea, Taiwan and southern China is shipped through the Malacca Straits and the South China Sea, giving it a special strategic significance.

The EIA also reported that about 6 trillion cubic feet (Tcf) of liquefied natural gas, or more than half of global LNG trade, passed through the South China Sea in 2011. Half of this amount continued on to Japan, with the rest of it going to South Korea, China, Taiwan, and other regional countries.<sup>(6)</sup> Also, significant quantities of coal from Australia and Indonesia, the world's two largest coal exporters, are transported through the SCS to markets around the world, particularly China and Japan.<sup>(7)</sup>

### **Competing claims in South China Sea**

Regional approach to China's actions has largely been formed on the basis of special historical narratives, as well as domestic political and economic settings of each country. With China's escalating economic and political clout, other claimant countries carefully balance their competing territorial claims over the South China Sea with the administration of their relationship with their powerful neighbour. This is chiefly challenging for Vietnam and the Philippines as they have been the most unyielding vis-a-vis China's territorial claims.<sup>(8)</sup>

Map 4



Vietnam has been the most assertive regarding SCS since 2009, when tensions intensified following the submission of claims by claimants of the South China Sea to the UN Commission on the Limits of the Continental Shelf. However, Hanoi has remained vigilant enough not to mingle the sovereignty disputes with its bilateral ties with China.<sup>(9)</sup>

Starting in mid-2011, the Philippines adopted an equally forceful position.<sup>(10)</sup> Malaysia has been noticeably quiet, which many attribute to the high priority it places on economic relations with China, but Beijing's moderate stance on its territorial disputes with Kuala Lumpur also plays a role. Both Vietnam and the Philippines depend heavily on fishing and the former also greatly relies on energy resources in the sea; yet their economies are increasingly linked to China. China's rise coupled with shaky bilateral relations with Beijing have forced Vietnam, the Philippines, and, to a certain extent, the other claimants to dexterously manage between exploiting resources, defending sovereignty claims, and maintaining relations with China.

### China's claims in the South China Sea

The region has always held strategic importance for being resource rich and for serving as a vital maritime route between the Indian and the Pacific Oceans. That is why both littoral and occupying states have divergent views on the ownership of territories. The historical claims have been shaped by various disputes over the course of the last two thousand years.

In China's view, its jurisdiction over the South China Sea's "intermittent line" is a product of a progressive development of the China Sea territory during the Han, Tang, Song, Yuan, Ming and Qing dynasties. These claims are disputed by other claimants in the region on the basis of limited records and artefacts available. However, China tries to validate its position by coupling historical claims with contemporary legal mechanisms.<sup>(11)</sup>

On 21 December 1934, the *Amphibious Map Review Committee* of the National Government of China approved the names of various islands and reefs in the South China Sea Islands by publishing the "Table on Names of the Islands in the SCS" in both Chinese and English. The Table demarcated the South China Sea into four groups: Dongsha (Pratas) Islands, Xisha (Paracel) Islands, Nansha (Spratly or Zhongsha) Islands and Tuanha (also called Coral) Islands. In 1948, a "Republic of China Administrative Map" was published by the national government, which identified four island groups in the South China Sea, with Beilun Hekou in the west, Zengmu Beach in the south and the eleven-dashed line in Taiwan's northeast in the east, thus, establishing a "U" shaped intermittent line. After China's independence in 1949, the same maps were followed to mark China's maritime territorial claims in the South China Sea. However, in 1953, two dashes of the 11-dashed line were removed in the Beibu Gulf, thereby forming the current "nine-dashed line" in the South China Sea. Ever since, China's position on the claims have remained intact.<sup>(12)</sup> Scholars like Tylor Fravel emphasize that China has not been as assertive in the South China Sea dispute as many analysts believe. Beijing has not altered the substance or the scope of its claims, although uncertainty keeps bordering the meaning of the nine-dashed line.<sup>(13)</sup>

Supporters of the Chinese outlook contend that there may be disputes on sovereignty over the overlapping waters off the continental shelf between countries encircling the South China Sea. However, they insist that there was no dispute between them and China over the islands and islets in the South China Sea until 1970s.<sup>(14)</sup> Recently, for instance, Yi Sianliang, Deputy Director General of the Department of Boundary and Ocean Affairs in China's Foreign Ministry, pointed out that before the mid-1970s, the official documents, textbooks and maps of Vietnam all explicitly recognized China's sovereignty over the Xisha Islands.<sup>(15)</sup>

From an objective and legal standpoint, much has changed in the region since 1948 when China issued its intermittent line map. Regional governments are now free from colonial control and have achieved significant political and economic stability in the last few decades. Moreover, since the Second World War, the rules of International Law have evolved greatly and all the states in the region, including China, are bound to the International System.

The United Nations Convention on the Law of the Sea (UNCLOS) that originated in 1982 provides rules for what states can claim as territorial seas (which extend 12 miles from shore) and as Exclusive Economic Zones (EEZs, which extends 200 miles). According to UNCLOS, China's claim to several islets may have more legitimacy but not to areas within EEZs of other states or within open waters.<sup>(16)</sup>

Many scholars find China's approach of integrating historical and contemporary International Law problematic. As Leszek Buszynski wrote in *Washington Quarterly*:

“China's claim is based on history, but such claims do not carry much weight in International Law, which from a Chinese perspective downgrades China's ancestral heritage and is a source of resentment.”<sup>(17)</sup>

The Chinese, nevertheless, advocate that its historic rights in the South China Sea originate from historical development as well as from sovereign and jurisdictional practices, while China's EEZs and the continental shelf sovereign rights are based on the 1982 UNCLOS. The former echoes the extension of the government and state inherited rights while the latter mirrors the modern marine legal system. The South China Sea issue comprises multiple facets vis-a-vis, history, diplomacy, politics, economy, military and legitimacy. Therefore, the UNCLOS cannot serve as the only solution to these disputes. The affairs that are not clearly defined by the UNCLOS do not find applicability in the general principles and provisions of the International Law.<sup>(18)</sup>

### **Vietnam**

China and Vietnam hold the most competing and overlapping claims in the South China Sea. The two countries have already fought twice over the disputed islands in 1974<sup>(19)</sup> and 1988.<sup>(20)</sup> This resulted in China's occupation of the Paracel Islands and led many Vietnamese to believe that China would not hesitate to use force again to resolve sovereignty disputes.

The history of these conflicts has raised the concerns and increased the political, nationalist and emotional sensitivity of the issue in both countries. Hence, Vietnam's forceful stance against Beijing. The legacy of the disputes has led observers to construe that military confrontation between the two countries cannot be ruled out as a possibility.

However, so far, Vietnam has proceeded with pragmatism. It has balanced its opposition to China's territorial claims with its need to maintain substantial economic relations with its neighbour. Despite Vietnam's expanding economic ties with other countries including the US, China's economic influence remains overpowering. Since the late 1980s, China has increasingly fashioned Vietnamese economy through a carrot and stick approach, and is now becoming its largest overall trading partner and main source of imports. It has invested through special loans and trade contracts to boost Vietnam's industrial and agricultural sectors and has successfully exerted this economic leverage in the territorial disputes time and again. China is expected to become Vietnam's top trading partner by 2030 after taking over the position of the US.<sup>(21)</sup>

Politically, both China and Vietnam are communist countries and maintain substantive communication through their ruling parties. For the Vietnamese Communist Party, this connection is a double-edged sword. Direct link to Chinese party officials provides Vietnam an invaluable edge over other claimant countries because it allows both sides to mend relations even after serious clashes. It has also allowed the two countries to classify their South China Sea disputes and to shield the overall bilateral relationship from them.<sup>(22)</sup> Yet, both the Vietnamese government and public are suspicious of China's intentions in the South China Sea, in spite of relatively cordial party-to-party relations.

From 2009 through mid-2011, tensions between the two over the South China Sea mounted alarmingly. In response to Vietnam and Malaysia's May 2009 joint submission of territorial claims in the South China Sea to UNCLOS, China submitted its nine-dashed line map, in which two dashes cut through Vietnam's exclusive economic zone (EEZ).<sup>(23)</sup> (See Map 5)

**Map 5**



**Source:** <<http://www.interaksyon.com/article/69553/philippines-given-until-march-next-year-for-submissions-against-chinas-nine-dash-line-claim>>

The map reiterated fears in Vietnam and other claimant states regarding Chinese intentions to persist not just for the island features, but all of the waters inside the nine-dashed line. Open differences relating to activities in the South China Sea continued during the first half of 2011. In May 2011, a China Marine Surveillance ship severed the cable of an oil and gas survey vessel operated by Vietnam's national energy firm, Petro Vietnam, in Vietnamese waters.<sup>(24)</sup> In June, the same year, a Chinese fishing boat cut the cable of a Vietnamese seismic survey vessel, heralding a diplomatic row between the two countries and fuelling nationalist protests in Vietnam.<sup>(25)</sup>

Apprehensive of China's growing influence, the Vietnamese government increased its defence budget and launched a programme to



modernize its air force and navy, purchasing military equipment from Russia and tentatively enhancing defence ties with the US.<sup>(26)</sup> It also turned to ASEAN and the US to “internationalize” the dispute, much to the chagrin of Beijing.<sup>(27)</sup> Vietnam’s efforts at championing the South China Sea issue during its chairmanship of ASEAN in 2010 secured two meetings of the ASEAN-China Joint Working Group on the South China Sea and discussion of the disputes at the ASEAN Regional Forum (ARF) for the first time.

However, tensions between the two countries over the South China Sea eased out after top-level interactions were held in October 2011 and Beijing adopted a somewhat milder approach. Despite Hanoi’s insistence that the disputes be solved multilaterally through ASEAN, the two countries signed a bilateral agreement on six basic principles guiding the settlement of maritime disputes. The agreement outlined the following measures: “friendly consultations between the two countries on managing maritime issues, the implementation of a basic and long-term approach for solving the disputes on the basis of legislation and UN Convention on the International Law of the Sea (UNCLOS) the principles, and the establishment of a defence hotline.”<sup>(28)</sup>

Relations again took a downturn when in June 2012 Vietnam passed a maritime law stating its jurisdiction over the disputed Parcel and Spratly Islands and declaring that all foreign naval ships entering these areas must notify Vietnamese authorities. China issued a strong response to this law, expressing its resolute and vehement opposition, and calling for an “immediate correction” by Vietnam.<sup>(29)</sup> On the same day, China announced the establishment of a prefecture-level city, Sansha, on the Parcel’s Woody Island (Yongxing Island in Chinese) to administer the Paracels, Spratlys and the Macclesfield Bank.<sup>(30)</sup> In another sign of rekindled tensions, a Chinese state-owned oil company contested the Vietnamese claims by inviting foreign oil companies to jointly exploit nine blocks in the disputed zones two days after the law’s passage in Hanoi.<sup>(31)</sup> In January 2014, China came up with new fishing rules that require foreign crews to request Chinese permission to work in much of the South China Sea, bolstering Beijing’s claims over the disputed areas, a move that drew criticism from Vietnam, the Philippines and the US.<sup>(32)</sup>

Such power plays are heightening regional tensions. Disturbingly, as China and Vietnam chart a course toward unpredictable incidents and conflict, their policy options become increasingly narrowed. Vietnam has returned to a tougher stance because now it views ASEAN as a less effective platform to promote its interests than in 2010.

### **The Philippines and the South China Sea**

The election of Benigno Aquino III to the presidency office in 2010 was a turning point in China-Philippines positions in the South China Sea. Unlike the previous Arroyo government, the Aquino government’s stronger stance was seen by Beijing as being provocative. Therefore, it responded by increasing its presence in disputed areas.<sup>(33)</sup> China’s occupation of the Mischief Reef in the Spratly Islands in late 1994 extensively shaped Philippines’ view on the South China Sea, particularly after Manila revealed the Chinese-built

structures on the reef in 1995. It caused severe antagonism between the two countries at the time and the structures were shortly expanded and fortified.<sup>(34)</sup> For Philippine policymakers, the occupation demonstrated the limitations of diplomacy and provoked discussion of the need for military modernisation.

President Aquino also sought to undo the damage caused by his predecessor's accession to the failed Joint Marine Seismic Undertaking (JMSU),<sup>(35)</sup> which he believes bolstered greater Chinese influence.<sup>(36)</sup> The government holds that the JMSU damaged Philippines' territorial claims by giving China and Vietnam admission to areas that formerly remained undisputed. After the JMSU expired in June 2008, the Philippines, like Vietnam, began to hope unilaterally for hydrocarbons in its claimed areas. Resultantly, China increased the presence of its vessels in the surrounds of the Paracel and Spratly Islands. In 2011, two Chinese patrol vessels were reported to have confronted a seismic survey vessel contracted by Forum Energy, operating in Reed Bank. China perceived the Filipino companies' cooperation with Western companies in an area formerly covered by the JMSU as a provocation indicating a move towards unilateral resource development and thus a violation of the "self-restraint" principle of the ASEAN Declaration of Conduct.<sup>(37)</sup>

After the Reed Bank incident, at least five significant skirmishes were reported within the first five months of 2011, although the Philippines' lack of modern surveillance equipment made it difficult to substantiate accusations. In response, the Aquino government began to ratchet up diplomatic efforts, accelerate military procurement and officially refer to the South China Sea as the "West Philippine Sea."<sup>(38)</sup> This approach set the tone for the Philippines' efforts to exercise its sovereign rights, including the enforcement of its fisheries code, and oil and gas exploration within its EEZ.<sup>(39)</sup>

Since 2011, the Philippine Department of Foreign Affairs (DFA) became proactive in shaping South China Sea policy. It pushed for the clarification of maritime boundary claims in the South China Sea by all parties, as well as for turning disputed areas into special enclaves where claimants can jointly pursue development projects. These ideas were encapsulated by the Philippine proposal for a Zone of Peace, Freedom, Friendship and Cooperation.<sup>(40)</sup> This proposal never gained much support within ASEAN despite Manila's concerted efforts in 2011.

### **2012 Scarborough Shoal incident**

In April 2012, Scarborough Shoal, north of the Spratlys, became a serious issue and led to a confrontation between the two countries. The standoff began when China blocked an attempt by the Philippines to arrest Chinese fishermen who were allegedly taking government-protected marine species from the area. As a result, the two nations stationed non-military vessels at the Shoal in an attempt to emphasize their sovereignty over the area.<sup>(41)</sup>

Repeated diplomatic attempts to soothe tension failed and bilateral economic relations also suffered. While the standstill ended when both the Philippines and China withdrew their civilian vessels at Scarborough Shoal in the middle of June 2012, the fuel that ignited the stalemate remains.<sup>(42)</sup>

Scarborough was also a litmus test for the Philippines' economic priorities with China. Although, China is the Philippines' third largest trading partner and both the countries decided to enhance bilateral trade to \$60 billion by 2016,<sup>(43)</sup> the Aquino administration remains steadfast on Philippines' territorial claims.

Nevertheless, the Philippine government tried to reconcile matters by not only engaging in discussions with China, but by also appealing to ASEAN and assessing its options under UNCLOS.<sup>(44)</sup> Moreover, it tried to reach out to the US for an assurance of assistance in case China used force, but remained unsuccessful. Chong observed:

The Obama Administration remains supportive at best but is increasingly non committal and wary of triggering an all-out strategic/diplomatic confrontation with China, one of the US major trading partner.<sup>(45)</sup>

Both the countries declared a fishing ban separately in May 2012 but to no avail.<sup>(46)</sup> China still allowed a large number of fishing boats to operate inside the contested area during the ban, claiming they did not violate its fishing regulation. Ever since, Chinese law enforcement vessels have remained near Scarborough Shoal. Manila did not take further action against Chinese fishing vessels in spite of its own ban, which indicated the weakness of such restrictions in the face of a stronger, more adamant rival.

In January 2013, Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the UNCLOS, with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea. In its notification, Manila laid claims to Spratly Island, Scarborough Shoal, Mischief Reef, and other land features within UNCLOS allotted EEZ.<sup>(47)</sup> In March 2014, the Philippines submitted a 4,000-page memorial to the UN's Permanent Court of Arbitration seeking to nullify the nine-dash line that China uses to justify its claims in the South China Sea. Furthermore, the Philippines signed the Enhanced Defense Cooperation Agreement (EDCA) with the US, which allows for enhanced "rotational presence" of US military forces and for US supplies to be stationed at military bases in the Philippines for a period of 10 years.<sup>(48)</sup>

In the context of the above, the May 2014 announcements on the Sampaguita gas field and Area 7 (Reed Bank) are set to further raise the stakes between China and the Philippines. The Sampaguita gas is believed to contain 2.6 trillion cubic feet (tcf) of contingent in-place gas resources and 5.5 tcf of prospective in-place gas resources including possible condensates associated with the gas.<sup>(49)</sup>

### **Malaysia**

Malaysia appears to pursue a non-confrontational approach in the sovereignty dispute over Spratly Islands. The relative stability of its bilateral relationship is noteworthy, especially in the aftermath of the diplomatic fallout from Malaysia's joint submission with Vietnam to the UN Commission on the Limits of the Continental Shelf in 2009. Malaysia's pragmatic approach is due to a strong economic relationship with China, the absence of nationalist pressure

on the Malaysian government to act against China, the capability of Malaysian armed forces to defend territorial claims, and Beijing's special regard for Malaysia.<sup>(50)</sup>

Malaysia's relatively restrained stance toward China mirrors its political and economic priorities. Although it would like to see a solution to the South China Sea issue, both the countries seek to downplay this dispute in the pursuit of stronger economic ties. Malaysia continues to foster close economic and military ties with the US, both to safeguard its economic prosperity by maintaining a diversified set of trade partners, and to offset potential Chinese assertiveness in the South China Sea. It remains eager to avoid any armed conflict, especially one between the US and China.<sup>(51)</sup>

Unlike with Vietnam or the Philippines, Beijing has considered Malaysia with a degree of flexibility in their territorial disputes due to the fact that comparatively, its claims in the South China Sea are farther away from and overlap less with China's. Also, Malaysia is the lone claimant that supports China's view that other countries must request consent before carrying out military and surveillance activities within its EEZ. Despite a stable relation, Kuala Lumpur is vigilant about becoming too closely associated with Beijing in regards to the South China Sea. The Philippines has accused Malaysia of trying to cut a secretive deal with China regarding its claims, but this serves as an improbable scenario due to Kuala Lumpur's policy of maintaining equidistant relationships with Washington and Beijing.<sup>(52)</sup>

### **Taiwan**

Taiwan's quest of its claims in the South China Sea is tied to its own unresolved sovereignty status and its relationship with an increasingly confident China. Both lay claim to historical waters in the South China Sea. Today, both sides of the Taiwan Strait still agree that these areas in the South China Sea "belong to China" but different geographical interpretations of this have avoided disputes.<sup>(53)</sup>

China has not contested Taiwan's occupation of Taiping Island, in part because it sees Taiwan's claims as part of its own. However, any attempts by Taipei to become an independent claimant in the South China Sea would antagonize Beijing, which would perceive such actions as an assertion of independence.<sup>(54)</sup> Taiwan's unique political status and Taipei's rigid adherence to the "One China" policy make it impossible for her to participate in multilateral accords on the South China Sea, such as with ASEAN, or conduct bilateral negotiations, as it does not have official relations with any of the claimant states. This raises Taipei's concern that it may be left empty-handed if agreements on resources and sovereignty are finalized among the other claimants.<sup>(55)</sup>

Taiwan has reaffirmed its stake in the South China Sea and focuses its efforts on being included in international negotiations to defend its claims. Since the Kuomintang regained power in Taiwan in 2008, Beijing has repeatedly suggested establishing cross-strait joint patrols and resource development for a joint defence of the territories.<sup>(56)</sup> Beijing has proposed that Taiwanese state owned Energy Company CPC Corporation work with the Chinese National

Offshore Oil Corporation (CNOOC) to jointly develop oil and gas near the Pratas Islands, which are claimed by Taiwan and China but controlled by the former, in the northern part of the sea.<sup>(57)</sup>

Despite the economic prospects of joint development, Taipei has made clear that it will not cooperate with China to advance both countries' maritime claims. Many scholars in Taipei are of the view that cooperation with Beijing might not augur well for Taiwan's position in ASEAN and with the US.<sup>(58)</sup> Despite the government's interest in pursuing peaceful approaches to resolving territorial disputes, some Taiwanese policymakers and scholars iterate the need for Taipei's assertiveness. Rising tensions in the South China Sea have brought about an upsurge in political activities, as demonstrated by the April 2012 visit by members of the parliamentary Foreign and National Defence Committee to Taiping Island, where they were briefed by Taiping troops on their defence capability. There has also been a recent reinforcement of military personnel stationed on contested territories in attempts to demonstrate sovereignty. Although the current administration appears to favour caution and restraint, Taiwan's limited diplomatic space means that, if pressed, it has fewer avenues to exhaust before resorting to more provocative action to defend its sovereignty claims,<sup>(59)</sup> which would risk conflicts with other claimants.

### **Major factors in South China Sea dispute**

The countries around the periphery of the South China Sea encounter unique challenges with regard to natural resources and environmental trends. The immediate source of conflict in the region is competition over hydrocarbon assets, declining fisheries, expanding military and law enforcement capabilities, and growing nationalism. Vietnam, the Philippines, and Malaysia all believe that the South China Sea's potentially vast reserves of hydrocarbons could play a key role in their economic development. While the general perception is that disputed claims over the location of these reserves present the highest conflict risk in the South China Sea, no major encounters involving oil exploration vessels have occurred since the last reported cable cutting incident in June 2011. In fact, due to declining fishing stocks, fishing incidents have become the primary type of maritime confrontation.<sup>(60)</sup>

As tensions over resources rise, claimant countries are also expanding the presence of their naval and law enforcement vessels in the disputed areas, further increasing the likelihood and gravity of maritime incidents. This is particularly true of Vietnam, as the government has had to take a hard line on defending its sovereignty claims in response to deep public distrust of China and historical grievances.

### **Quest for energy resources**

Various geological studies have shown that the South China Sea has proven oil reserves of seven billion barrels, and an estimated 900 trillion cubic feet of natural gas. Some Chinese observers have called the South China Sea "the second Persian Gulf" containing more oil than any area of the globe even Saudi Arabia.<sup>(61)</sup> With rising global energy demands, competition for potential

hydrocarbon reserves in the South China Sea has exacerbated. In the South China Sea region, as Rogers has rightly observed:

Many regional countries are growing increasingly concerned about meeting their long-term energy needs. For example, China's oil reserve-to-production ratio — which indicates how long domestic petroleum supplies will last at current production rates — stands at just 9.9 years, according to BP [British Petroleum], and South China Sea production could more than double China's reserves.<sup>(62)</sup>

As negotiations over joint development stall, countries are increasingly vying to establish their territorial claims before other competitor claimants are able to develop the resources of the contested areas. China's placement of the giant state-owned oil rig HD-981 in Block 143 inside Vietnam's Exclusive Economic Zone (EEZ) on 2nd May 2014 is a case in point. The incident set a geopolitical storm in the region.<sup>(63)</sup> Even Taiwan is making plans to ensure its access to hydrocarbons in the future.

In Vietnam, soaring food prices, weakening confidence in the currency and a stagnating job market are forcing the government to develop energy sources in the South China Sea in order to improve its economic performance and shore up its legitimacy. Already highly dependent on South China Sea oil for revenue and energy, the government in 2007 embarked on its "Maritime Strategy to 2020" aimed at increasing the share of the maritime economy from 48 per cent of its GDP in 2005 to 55 per cent in 2020.<sup>(64)</sup> Its aim is to develop Vietnam into a chief maritime power to better exploit and direct its maritime domain. A key component of the plan is offshore oil and gas. Since then, Vietnam has stepped up its pursuit for new energy sources in the South China Sea.

The energy resources of the South China Sea serve as potential economic lifeline for the Philippines, a country that has been facing its own economic problems. A net importer of oil, the Philippines regards the South China Sea's potential reserves as vital to its energy security. The contested Reed Bank is believed to contain large reserves of natural gas. Reed Bank is likely to remain a flashpoint as the Philippines' Philex Petroleum plans to start drilling in the area in early 2016.<sup>(65)</sup>

In China's view, these developments forced Beijing to more assertively defend its claims as it, too, seeks to accelerate its exploitation of South China Sea energy resources. In an apparent response to Vietnam's passage of a maritime law in June 2012, China's National Offshore Oil Corporation (CNOOC) announced that nine blocks in the sea were available for exploration and development with foreign companies. CNOOC's move prompted immediate protest from Hanoi and Petro Vietnam, the latter of which claims that two of the blocks overlapped with those it offered.<sup>(66)</sup>

In the March 2011 Reed Bank incident, China intended to send the same message to the Philippines about its development of offshore petroleum, igniting Manila's fears that it might lose access to potential resources. As long as disputes over maritime zones and their energy resources continue, competition for these reserves will intensify tensions. To date, China has not objected to all

moves by South East Asian states to develop energy resources within disputed territory. Although it claims many Malaysian natural gas fields located offshore of Sarawak, it has not challenged their exploitation so far. Neither did it comment on reports that Brunei and Malaysia had reached an agreement on the joint development of energy resources<sup>(67)</sup> in a disputed area claimed by both countries that also falls within the nine-dashed line.

### **Disputes over fishery resources**

Fishing has played a vital role in asserting claims to maritime rights in the South China Sea. These waters have served as fishing hubs for all littoral states, and many of these traditional fishing grounds overlap. Fishing boats from countries like China, Vietnam and the Philippines are venturing further afield as stocks in their respective waters become depleted, worsening a trend of harassment, confiscation of catch and equipment, detention, and mistreatment of fishermen.<sup>(68)</sup> Fisheries are of significant economic importance, but they also provide a pretext for increased civilian patrols in the South China Sea and rally nationalist sentiment.

While China is the largest consumer and exporter of fish in the world, the fishing industry is even more crucial to Vietnam. Seafood is one of its biggest foreign exchange earners. In 2011, Vietnam's top ten largest seafood exporters accounted for over 20 per cent of the country's total export turnover.<sup>(69)</sup> According to a report released by the UN Food and Agriculture Organization (FAO), Vietnam's overall fishing economy features a number of different areas, including aquaculture, brackish water and sea fishing as well as the processing of fish. Vietnam valued its seafood exports at \$6.5 billion in 2013, about 5 per cent of the country's GDP.<sup>(70)</sup> The fishing catch of Vietnam also provides nearly half of the total protein intake of a significant portion of the population.

But in coastal and inland areas, stocks have significantly declined due to overfishing and environmentally harmful techniques. These problems are leading the government to encourage fishing fleets to go further offshore into the South China Sea to reduce the pressure on closer fishing grounds. Vietnamese fishermen now increasingly sail beyond the EEZ into the waters off the resource-abundant Paracel Islands. This puts them into more frequent contact with Chinese law enforcement vessels that patrol the islands occupied by China.<sup>(71)</sup>

Each year, from mid-May through 1<sup>st</sup> August, China imposes a fishing ban in most areas of the South China Sea above the 12th parallel. Initiated in 1999, this ban aims to protect the fish during the egg-laying season and endorse sustainable development of the fishing industry in the South China Sea. Vietnam and the Philippines have disputed the ban on the ground that portions of the ban extended into their EEZ.<sup>(72)</sup> Moreover, while the Chinese government has policies to push for the redevelopment of its fisheries, the country is utilizing factory-fishing vessels to process fish at sea. It is difficult for fishermen from smaller stakeholders, like Vietnam, to vie with such large scale operations.<sup>(73)</sup>

Similarly, run-ins between Philippine and Chinese vessels are also on the rise. Philippine policymakers appear more concerned about the political stakes involved in defending their fishermen's access to the South China Sea than about the fishing industry's economic significance. The industry accounts for less than 5 per cent of GDP, but employs close to one and a half million people. The annual catch, however, has been declining since 1990s. In the waters off Palawan, where stocks remain plentiful, Philippine authorities regularly intercept Vietnamese and Chinese fishermen. During the Scarborough Shoal standoff, the Aquino government denounced environmental degradation and violation of the country's fisheries code, seeking to demonstrate its efforts to enforce Philippine laws in its maritime zones.<sup>(74)</sup>

China, for its part, also encourages its fishermen to sail further afield. In addition to patrolling disputed waters, Chinese authorities offer fishermen incentives such as upgrading and equipping their boats with satellite navigation systems. These allow them to range even farther from home and immediately inform Chinese law enforcement forces in the event of confrontation. Beijing also issued an annual fishing ban over portions of the South China Sea, including some of the areas that Vietnam and the Philippines consider to be in their EEZs. Both countries object to the ban.

In many cases, Chinese harassment of Vietnamese fishing vessels stokes nationalism and anti-Chinese sentiment, limiting the government's ability to compromise, and increasing its willingness to respond robustly. For instance, in May 2014, Vietnam accused Chinese boats of ramming and sinking a Vietnamese fishing vessel, while Beijing hit back by blaming the Vietnamese craft.<sup>(75)</sup>

Chinese fishermen are also reportedly arrested, beaten and shot at, and their belongings allegedly seized by neighbouring countries. Such cases also incite public anger in China against other claimant countries, particularly Vietnam and the Philippines. Conflicts over fishing incidents in the South China Sea are likely to continue to increase, and the 2012 Scarborough Shoal standoff, triggered by Chinese boats fishing in disputed waters, exposed the need for a bilateral or multilateral conflict resolution mechanism over such incidents.

### **The military dimension**

Many South East Asian nations, buoyed by their GDP growth in the previous decade and the lobbying of arms companies, are expanding their militaries in response to China's position on the South China Sea issue and undertaking military modernisation. While increased military power is likely to raise the threshold for, as well as the expenditure of an armed conflict, it could also embolden countries to be more proactive in their territorial claims, making skirmishes harder to resolve. As Kaplan rightly examined: "Just as German soil constituted the military front line of the Cold War, the waters of the South China Sea may constitute the military frontline of the coming decade."<sup>(76)</sup> During the last decade, China has worked extensively on advancing its naval capabilities. As Fravel observes:



Within the People's Liberation Army Navy (PLAN), the South Sea Fleet (SSF) based in Zhanjiang, Guangdong, now boasts some of China's most capable surface combatants, including five of the seven modern destroyers that China developed indigenously in the past 10 years. It also includes the Kunlunshan, China's first modern landing platform dock, which displaces 20,000 tons and can transport one battalion of marines. The SSF is the most capable of the PLAN's three fleets....The SSF's infrastructure has also been upgraded recently, including the expansion of the important Yulin naval base at Sanya on Hainan Island. For many regional observers, enlarging the base symbolized China's expanding naval forces and its focus on projecting naval power throughout the South China Sea.<sup>(77)</sup>

After China, Vietnam and Malaysia are leading regional military build-up. Their growing defence budgets have resulted in contracts with Russia, India and other countries for more advanced items such as Sukhoi Su-30 fighter aircraft and Kilo class submarines. They are also developing their indigenous defence industries.

*Defense Industry Daily* reported that in November 2013, Vietnam started receiving its diesel-electric Kilo/Project 636 Class assault submarines from Russia. There have been some outside deals for items like maritime surveillance floatplanes, and a Dutch deal to provide high-end frigates. For the most part, however, Vietnam's new combat power in the air, at sea, and on land is coming from Russia.<sup>(78)</sup> In late August 2014, both India and Vietnam upheld their resolve to deepen cooperation in oil and defence areas.<sup>(79)</sup> Data from the *Stockholm International Peace Research Institute (SIPRI)* 2013 shows that from 2004 to 2013, Vietnam has increased its military spending to 113 per cent in real terms, in a clear response to China's military prowess.<sup>(80)</sup> Vietnam is implementing its own "anti-access/area denial strategy, including the launch of its first indigenously built gunship.

The Philippines lags behind its neighbours but President Aquino is committed to improving the armed forces, particularly the navy and the air force. In addition to nearly doubling the defence budget to \$2.4 billion in 2011, he has embarked on a military modernization programme that will cost almost \$1 billion by the time he leaves office in 2016.<sup>(81)</sup> His government relies on the US to assist with these purchases. The administration has also discussed buying F-16 fighter jets from the US and Washington has also offered to deploy spy planes and provide real time access to surveillance.<sup>(82)</sup>

There is growing interest in submarines from the various claimant states, but such equipment fundamentally alters the regional security equation. Despite their significance, the region's topography limits the space in which submarines can navigate and increase the likelihood of run-ins as rival claimants deploy submarines to the same areas, potentially leading to armed clashes. Naval vessels may be drawn into disputes more frequently as countries have limited options for responding with force on the sea. Maritime law enforcement units in both Vietnam and the Philippines are poorly equipped and understaffed, and sometimes rely on their navy to enforce maritime laws. The Scarborough

Shoal incident, in which a Filipino warship — the Gregorio del Pilar — was confronted by China Marine Surveillance vessels, is a case in point.<sup>(83)</sup>

Recognising the need to improve their ability to safeguard coastlines and maritime zones, some South East Asian countries are also beginning to modernise their coast guard and maritime law enforcement forces. Compared with China's powerful and expanding agencies, other claimant countries' coastguard and civilian agencies are small and ill-equipped. For instance, Vietnam's Marine Police only became independent of the military in 2008, and has only about 1,000 personnel. The Philippine coastguard lacks ocean-going capacity and is comprised of a small fleet of patrol boats, although other countries, such as Japan and the US, have respectively provided patrol vessels and funding for a radar system.<sup>(84)</sup>

### **Nationalism**

Vietnamese claims in the South China Sea have become an integral and emotional part of a national historical narrative that guides the internal political dynamics. Territorial disputes, coupled with a history of violent conflict and a staggering bilateral trade deficit, have fostered widespread suspicion of and animosity toward China. With China's greater assertiveness in the region since 2009, antagonism towards Beijing has been further consolidated among the Vietnamese. Political, military and pro-US personalities have accused Hanoi of failing to stand up to China over the South China Sea. As economic problems erode its credibility,<sup>(85)</sup> the Vietnamese leadership cannot afford being too tough with its leading trading partner, China, nor can it afford being too soft.

The weeks following the May and June 2011 stand-off between the two countries illustrate the difficulties in managing nationalist outbursts. Again, in May 2014, China's placement of the giant state-owned oil rig near the Paracel Islands in the EEZ of Vietnam was seen as provocative and brought the Vietnamese out on streets in protests. This incident led to one of the worst breakdowns in Sino-Vietnamese relations since the neighbours fought a brief border war in 1979. Anti-China riots erupted in industrial zones in the south of Vietnam. Its Binh Duong and Dong Nai provinces are highly industrialized with dense concentration of foreign-invested industrial parks. Anti-China demonstrations there developed into a full scale worker riot, where factories were looted, smashed or burnt. Swarms of rioters on motorbikes erroneously attacked South Korean, Taiwanese, Hong Kong, Japanese and Singaporean businesses as Chinese and vandalized them. Taiwan's biggest investor in Vietnam, Formosa Plastics Group's upcoming steel plant in Ha Tinh, was set on fire after fighting erupted between its Vietnamese and Chinese workers. *Reuters* reported that more than 20 Chinese were killed in over 460 foreign factories mostly belonging to Chinese investors. China evacuated over 7,000 of its workers from Vietnam.<sup>(86)</sup> Although the Chinese removed the rig two months later, the incident continues to irk Vietnam.

The Philippine government is much less likely than Vietnam to be moved or inhibited by nationalist sentiment. Concerns about territorial integrity centre on the Muslim insurgency in the south more than the South China Sea.<sup>(87)</sup>

Only high-profile incidents in the sea attract public attention. Compared to Vietnam and China, public opinion in the Philippines with regard to the South China Sea is not a big problem. Nationalism is more troublesome for the government when it comes to the relationship with the US. Likewise for the governments of Malaysia, Taiwan and Brunei,<sup>(88)</sup> nationalist sentiments with regard to the South China Sea are unlikely to constrain their options.

### **International perspective: Great power contest in the South China Sea**

Vietnam and the Philippines are both seeking to increase pressure on China by involving outside powers. Their efforts have focused on expanding and deepening their relations with the US and other countries concerned about China's growing power, particularly Japan and Australia. Manila sees stronger military ties as a way to bolster its defence capabilities in the face of China's expanding naval power. Vietnam, which is not a US treaty ally like the Philippines, is exploring enhanced defence ties with Washington. By encouraging Russia, India and other countries to join in energy exploration in the South China Sea, they are also increasing the number of non-claimant states with an economic stake in unresolved sovereignty disputes. China resents both US attention to the South China Sea and its plans to expand its military presence in the region.

#### **The US and the South China Sea**

The US pivot to Asia since 2011 is changing the strategic landscape for Vietnam and the Philippines. To counterbalance China's growing power, both the South East Asian claimants have intensified efforts to encourage the US to increase its presence as tensions in the South China Sea started to escalate in 2009. The US has asserted that a dynamic relationship with China is part of its "Rebalance to Asia". From the perspective of most policymakers in Beijing, the warming ties between Washington and Hanoi on the one hand, and the strengthening of a longstanding military alliance with Manila on the other, are proof of US efforts to contain China's rise. This puts the claimants and the non-claimants in the region such as Singapore, in an awkward spot. While stronger US presence, on one hand, is to their benefit, it equally puts them, inadvertently, at the centre of intensified US-China competition. Vietnamese and Philippine leaders also harbour doubts about the depth of Washington's commitment to South East Asia.

The United States' "pivot" towards the Pacific was introduced by the Obama administration in a succession of announcements toward the end of 2011. Addressing the Australian Parliament in November 2011, President Barack Obama stated:

As President, I have, therefore, made a deliberate and strategic decision — as a Pacific nation, the United States will play a larger and long-term role in shaping this region and its future, by upholding core principles and in close partnership with our allies and friends.<sup>(89)</sup>

The US presence in the region has made Beijing more suspicious of ASEAN's moves on the South China Sea issue, as it interprets the initiatives of the organisation as a product of American influence.<sup>(90)</sup> A greater US presence could intensify US-China strategic competition and further alarm regional states that seek to avoid having to opt between the two giants.

### **Warming of relations between US and Vietnam**

For Vietnamese government, Washington's interests in Vietnam appear less threatening and broader than that of Beijing. The importance of US-Vietnam military collaboration is based on its proximity to China as much as it is based on capability. In 2010, its relationship with the United States was further highlighted at the 17th Meeting of the ASEAN Regional Forum in Hanoi when the former US Secretary of State Clinton stated:

The United States supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion. We oppose the use or threat of force by any claimant. ...The United States is prepared to facilitate initiatives and confidence-building measures consistent with the declaration. Because it is in the interest of all claimants and the broader international community for unimpeded commerce to proceed under lawful conditions.<sup>(91)</sup>

This has opened the door for greater US presence in Asian waters, including joint search and rescue exercises and access to Vietnam's deep-water Cam Ranh Bay. An *International Crisis Group* report examines that while US-Vietnam defence ties have gradually evolved, it has provided Vietnam with an opportunity to use it to its advantage by (i) registering Washington's support for its vision of ASEAN as the primary venue for confronting China's claims in the South China Sea; and (ii) shifting the balance in its relationship with China.<sup>(92)</sup>

However, US-Vietnam defence cooperation is still in its evolving stage. Although the younger generation of Vietnam's Communist Party seems increasingly open to closer ties to the US, seasoned members attempt to avoid getting too close to one power as they are of the firm view that "distant water [USA] cannot put out a nearby fire [China]," to use a Vietnamese adage. Because of the failure of the Soviet Union to help Vietnam in 1979, the Vietnamese will never again trust a far-away power.<sup>(93)</sup> Vietnam is also fully cognizant of America's economic and political priority in terms of its relationship with Beijing, but hopes for "just enough" US involvement to keep China in check without tipping the balance in Washington's favour. A certain degree of tension between China and the US serves Vietnam's interest by ensuring some level of flexibility in its relations with each, so that Hanoi remains a more independent actor. Yet, bilateral relations with the US continue to expand. As in 2012, former US Defense Secretary Leon Panetta stated that his country was interested in working with Vietnam on critical maritime issues, including a code of conduct focusing on the South China Sea and also working to improve freedom of navigation in our oceans. Vietnam has also engaged in symbolic acts of enhanced military ties, such as flying out senior officials to visit US aircraft carriers.<sup>(94)</sup> Despite recurring tensions, China too, has been

trying to strengthen its diplomatic relations with Vietnam, especially in view of an expanding US-Vietnam partnership.

### **US and the Philippines**

The United States, a former colonial ruler of the Philippines and a treaty ally with Manila since 1951, has made the Philippines a part of its policy in which the Asia-Pacific region exists at the heart of US security and economic strategy. But even with more military funding and equipment from Washington, the Philippine military would still be a long way from being able to defend its territorial claims in the South China Sea.<sup>(95)</sup>

In November 2011 amid rising tensions between the Philippines and China in the post-Scarborough Shoal standoff, Manila and Washington commemorated the 60th anniversary of their association. A declaration signed by former Secretary of State Hillary Clinton, aboard an American warship docked in Manila Bay, underscored freedom of navigation and a rules-based approach in resolving competing claims in maritime areas. On the occasion, Mrs. Clinton stated:

We are now updating our alliance and all of our alliances in the region with three guidelines in mind. First, we are working to ensure that the core objectives of our alliances have the political support of our people. Second, we want our alliances to be nimble, adaptive, flexible so they can continue to deliver results in this new world. And third, we are making sure that our collective defense capabilities and communications infrastructure are operationally and materially capable of deterring provocation from the full spectrum of state and non-state actors....To that end, the United States is working ... to support the Philippines, particularly in the maritime domain as you move to improve your territorial defense and interdiction capabilities.<sup>(96)</sup>

While the 1951 treaty calls for the US to respond to an armed attack against the Philippines, the text leaves the extent of US obligations open to interpretation. Therefore, so far, the US has remained cautious in its approach regarding the region's territorial disputes, despite repeated efforts by Philippines to push Washington to reaffirm its treaty commitments.

Washington and Manila do, however, share the objective of bolstering the Philippine military to achieve "a minimum credible defence posture". During President Aquino's June 2012 visit to Washington, the US furthered its commitment to improving the Philippines' maritime defence and intelligence capabilities. The Pentagon then announced that it would provide Manila with a land-based radar system to track ships along its coastline.<sup>(97)</sup> Many observers describe this assistance as a calculated policy for the strategic military containment of China. Yet, even with enhanced access to US surveillance data, the military still lacks the equipment and technical expertise to make use of it.

The renewal of this alliance is likely to be very useful to the US as it reallocates military resources to the Asia-Pacific. Despite the closure of American bases in the country in 1992, the 1998 Visiting Forces Agreement and the 2002 Mutual Logistics Support Agreement make it relatively simple for the

US to station forces and material in the Philippines. In April 2014, the US and the Philippines signed the Enhanced Defence Cooperation Agreement (EDCA) at Camp Aguinaldo, Quezon City. Characterized by both governments as an executive agreement and not a formal treaty, the EDCA was the result of eight rounds of negotiations that initially commenced in August 2013. The EDCA is described as a framework agreement that raises the scope of the Mutual Defence Treaty 1951 signed between the two countries. The EDCA constitutes a legal framework for the “increased rotational presence” of US armed forces in the Philippines; more frequent ship visits; prioritising joint exercise and training activities related to maritime security. Under the Agreement, the Philippines will provide access to the US to Agreed Locations without “rental or similar costs” and will assist in the transit of US forces to public land and facilities, including those owned by local governments. It also allows the United States to contract materiel, supplies, equipment and services without restraint.<sup>(98)</sup>

Commenting on EDCA during his official visit to Manila in May 2014, the US President Barak Obama said:

With respect to the new Defense Cooperation Agreement that has been signed, the goal here is wide-ranging. We’ve had decades of alliance with the Philippines, but obviously in the 21<sup>st</sup> century we have to continue to update that. And the goal for this agreement is to build Philippines’ capacity, to engage in training, to engage in coordination — not simply to deal with issues of maritime security. But also to enhance our capabilities so that if there’s a natural disaster that takes place, we’re able to potentially respond more quickly; if there are additional threats that may arise, that we are able to work in a cooperative fashion.<sup>(99)</sup>

The two sides remain muted about where the US plans to deploy its forces and in what numbers. But since the deal serves to improve the Philippines’ deterrent strategy against China, priority will be given to the locations affording easy access to the strategically sensitive areas of the South China Sea. For example, Subic Bay and Cubi Point, as well as Western Luzon used to be the US Navy’s biggest strongholds outside the United States. In 2013 Philippine Defence Secretary Voltaire Gazmin announced that the government was planning to set up Philippine Naval and Air Force bases at Subic given its proximity to disputed territories in the South China Sea, notably Scarborough Shoal. Local leaders and business people in Subic Bay verify that the location has recently been examined by both Filipino and American defence officials. Clark Air Base, once the epicentre of American air operations in the Western Pacific, now serves as a commercial airport, and is listed to be the site of the Philippines’ next real-estate boom. Because a Philippine Air Force base is also situated there, US Air Force rotations could soon be passing through Clark in increasing numbers. Their tasks could be assisting with South China Sea surveillance as well as providing air combat capability — something the Philippines currently lacks. At Palawan, Oyster Bay and Brooke’s Point could serve as important strategic locations. Situated in the Luzon Strait at the northern end of the Philippine archipelago, Batanes was used as a station for the

US Navy. Though long since abandoned, the remote Batanes outpost would have obvious advantages if Manila and Washington are eager to advance their monitoring of Chinese activities.<sup>(100)</sup>

Nevertheless, Philippines' effort to expand bilateral military cooperation with the US faces domestic opposition from the left. Public opinion is also against hedging too much on Washington. Although, since 2011, US military assistance to Manila has augmented, the Philippines government seems troubled with the many requests from the Obama administration and what it has so far received in return.<sup>(101)</sup> The vows of a renewed partnership between Washington and Manila aside, it still remains ambiguous whether the enhanced military cooperation with the US will help Philippines advance its proposals for a solution to the South China Sea dispute. Besides, any perception that the Philippines is projecting US strategic ambitions in the Asia-Pacific may in fact limit its space with China.<sup>(102)</sup>

### **China's perspective on the US role**

From China's perspective, US intervention in the South China Sea increases the tension in the South China Sea. The majority of policy analysts in China view that the United States exploited the South China Sea issue to alienate China's cordial relations with regional countries, and established military alliance with the Philippines and Vietnam so as to contain China's growing influence in the region. For example, Sheng Jiru from the CASS Institute of World Economy and Politics focuses on the strategies of Vietnam and Philippines, arguing that these countries misinterpreted China's tolerance and patience and "internationalized" the South China Sea issue by dragging the United States into the picture.<sup>(103)</sup> Analyst Gao Zugui contends that China should elevate the issue to the national strategic level and not let the US and neighbouring countries push China into overreaction.<sup>(104)</sup> Strategic analysts such as Lin Limin view that the dynamics in the South China Sea have profound regional and structural roots and that an anti-China alliance directed by the United States is being shaped to include Southeast Asian countries, Japan, Australia and India.<sup>(105)</sup> In the wake of the swelling US presence in the region, China's goals are three-fold: deepening claimant countries' economic reliance on China; preventing them from developing the disputed areas; and avoiding outright confrontation with the US.<sup>(106)</sup> China intends to focus more on diplomatic engagement, investment and trade with neighbouring countries.

On the other hand, the perspective of some US scholars is that China's opposition to the internationalization of the SCS issue is tantamount to an attempt to de-internationalize an international sea. Once the South China Sea has been de-internationalized, China will be able to bring its strength to bear on the Southeast Asian countries and impose its own rules, rather than internationally accepted ones from international law on these waters.<sup>(107)</sup> The apprehension of the international community is that the Chinese, for the first time, labelled the South China Sea a "core interest," on par with its interests in Taiwan and Tibet. In response, Chinese scholars negate the use of such labels by Beijing. Zhu Feng, a Chinese political scientist, clarified that the Chinese officials did use the

term “core interest,” but the original text is that the diplomatic resolution of the South China Sea is the core interest of Chinese government, which was misinterpreted by the media.<sup>(108)</sup> A number of western analysts,<sup>(109)</sup> for instance, view the 2012 Scarborough standoff as a clear manifestation of China’s assertiveness. However, China’s official stance is that the Scarborough Shoal incident was a provocation by the Philippines founded in Manila’s misperception that the South China Sea dispute had reached a “now or never” stage, which led it to adopt hasty and more aggressive policy.<sup>(110)</sup>

In response to expanding US-Vietnam relations, Beijing has made efforts to further engage Vietnam through party-to-party talks and keep their disagreements at bay. Still, tensions between the two countries on the South China Sea disputes rise time and again over events such as the deepening US Vietnam military cooperation; the former US Defence Secretary Panetta’s historic visit to Cam Ranh Bay in June 2012; or American vocal support for Hanoi in May 2014 over the allegation against Chinese vessels for sinking a Vietnamese ship; and the placement of a Chinese oil rig in Vietnam EEZ in April 2014.

In a more recent June 2014 episode, the United States and China squared off at Singapore’s Shangri-La Dialogue, Asia’s biggest security forum. Using unusually strong language, US Defence Secretary Chuck Hagel chided Beijing’s handling of territorial disputes with its Asian neighbours. He said:

In recent months, China has undertaken destabilising, unilateral actions asserting its claims in the South China Sea....We firmly oppose any nation’s use of intimidation, coercion, or the threat of force to assert these claims.<sup>(111)</sup>

Warning China, he said the US was “committed” to its geopolitical stability to the Asia-Pacific region and will not look the other way when core principles of the international order are being challenged. Mr. Hagel’s remarks provoked an angry reaction from the deputy chief of staff of the Chinese Army, Lieutenant General Wang Guanzhong, who said the speech was aimed at causing trouble in the Asia-Pacific region and full of hegemonism, threat and intimidation.<sup>(112)</sup>

#### **Involvement of other non-claimants**

Vietnam and the Philippines have also turned to countries like Japan, South Korea and Australia for support. So far, this has produced only modest results. In late September 2011, President Aquino visited Japan and secured support for training and equipping the Philippine coast guard. The two countries recognised the need to resolve disputes in the South China Sea through a rules-based regime and the importance of compliance with UNCLOS.<sup>(113)</sup> During the state visit of South Korean President Lee Myung-Bak to Manila in late November 2011, President Aquino requested assistance to modernise the military. The Philippines has also sought the support of Australia; in May 2012, Manila announced that the military was expecting to obtain from Australia search-and-rescue vessels and training for its personnel.<sup>(114)</sup>

As part of its “three no’s” policy to avoid getting too close to one power, Vietnam has also looked to India and Russia. In September 2011, it



signed an agreement with India to jointly explore disputed waters and in the following month it announced a defence cooperation initiative with Japan. Hanoi has been trying to entice the Russians to enter the disputes by inviting them to engage in oil and gas exploration. It has also sought stronger ties with Australia, as a key supporter of Canberra's successful bid for East Asia Summit membership. By increasing the number of nations with a stake in a peaceful South China Sea, Vietnam hopes to force Beijing to recalculate the cost of future aggression.<sup>(115)</sup>

### **Legal measures to reduce South China Sea dispute**

International law should be a means to resolve the South China Sea disputes and thereby reduce tensions. The various claimant countries, however, selectively use it to support their overlapping claims and justify assertive action, including regular maritime patrols and detention of vessels that enter disputed waters. In addition, sovereignty claims are an ingrained part of the national consciousness in claimant countries, particularly China and Vietnam. This seriously limits the ability of policymakers to make even the smallest compromise needed for a legal solution. As a result, to date, a legal approach has not yet helped resolve the disputes.

#### **The law of the sea and international arbitration**

The legal claims in the South China Sea are extremely complex. Different countries have a wide range of factors supporting their arguments, making it hard to determine their relative strengths. This affects the delimitation of maritime zones, since sovereignty over land determines ownership of the surrounding waters. Despite this, claimants could significantly reduce tensions if they were to agree on the size of the maritime zones surrounding each land feature, regardless of ownership, and then promote joint development or administration of areas where potential claims overlap. As of mid-2012, Vietnam, Malaysia and the Philippines reflected that the disputed islands were not capable of sustaining habitation or economic activity, and hence should not receive an EEZ or continental shelf. This potentially reduces the size of the disputed areas, and could make it easier to reach agreement on joint development. China, while ambiguous, seems to consider that many of the islands are entitled to additional maritime zones. It has also rejected to clearly relinquish potential "historical rights" within its nine-dashed line, a claim that would likely be unsupported by international law and is unacceptable to its neighbours.<sup>(116)</sup>

China has specifically rejected the mechanisms for international arbitration and adjudication provided by UNCLOS upon ratification, citing its right in the convention to opt out of such procedures. Andrew Billo, an *Asia Society* fellow, rightly posits the limitations of legal approach in South China Sea issue:

While International law provides mechanisms and guidelines for discussing barriers to cooperation, it is insufficient on its own to enforce egalitarian behavior because it fails to acknowledge the

political, economic and military realities that allow rules to be circumvented. In practice, the effectiveness of the UN Convention on Law of Seas is hampered by China's unwillingness to submit disputes to arbitration, as in the current Philippines case against China, as well as the fact that the US has yet to ratify the treaty, thus undermining its legitimacy.<sup>(117)</sup>

During the Scarborough Shoal standoff, the Philippines invited China to join it in submitting their dispute to the International Tribunal for the Law of the Sea (ITLOS). It declined on the grounds that it would not accept the presence of a third party in the search to solve disputes over the South China Sea.<sup>(118)</sup> Therefore, in January 2013, the Philippines filed a Notification and Statement of Claim<sup>(119)</sup> at the ITLOS, under Annex VII of UNCLOS, seeking to annul China's nine-dash Line, which encompasses almost the entire South China Sea. A ruling is not likely prior to 2015, but the submission has already jolted the region. In response, China has attempted to isolate Philippines; Vietnam, too, has announced plans to seek legal recourse against China. However, there remains considerable uncertainty about the ruling as outcomes could range from validating China's "Three Warfares strategy"<sup>(120)</sup> to fatally undermining China's soft power strategy and opening gates for the US to cast itself as a champion of international law.<sup>(121)</sup>

Dr. Ian Forsth, a former US Defence Department analyst on East Asia, is of the view that:

Any ruling will have an immediate impact on regional politics. If the PCA refuses to rule on this case China will likely see this refusal as a validation of its opting out of compulsory arbitration. This outcome would provide China with added leverage in its attempts to confine all dispute negotiations to the bilateral level. ...If ITLOS invalidates the nine-dashed-line, the ruling would be a loss of face and a blow to all three of China's 'three warfare' efforts in the region... emboldening challenges for the Philippines, Vietnam, Malaysia and possibly Indonesia. These countries would be less likely to accept China's insistence that all disputes be resolved bilaterally. Now bolstered by a clear ruling of its maritime rights issued by the highest legal authority for this issue, other competing claimants would be bolder about submitting ITLOS claims of their own, fishing in their claimed EEZs and awarding hydrocarbon exploration and drilling rights in their EEZs.<sup>(122)</sup>

### **The role of ASEAN**

In 1992, China claimed exclusive sovereignty over the bulk of the South China Sea by passing its Law of the Territorial Sea and Contiguous Zone of the People's Republic of China. The areas claimed by China clashed with the claims of four of the then six ASEAN members — Brunei, the Philippines, Malaysia and Indonesia.<sup>(123)</sup> Given a history of shaky relations between Beijing and many of the then ASEAN members, the Association promptly responded through its 1992 Declaration on the South China Sea. The declaration urged

constraint and a peaceful resolution of sovereignty and jurisdictional issues and was signed by all of its members. After successfully engaging China, ASEAN issued the Joint Statement of the Meeting of Heads of State/Government of the Member States of ASEAN and the President of the People's Republic of China in Kuala Lumpur on 16 December 1997, which states that:

the parties concerned agreed to resolve their disputes in the South China Sea through friendly consultations and negotiations in accordance with universally recognized international law, including the 1982 UN Convention on the Law of the Sea.

Toward the end of the statement, ASEAN member states reaffirmed their commitment to the “one China” policy.<sup>(124)</sup>

After a decade of prickly tensions in the South China Sea leading to perceptions of a “China threat” among South East Asian countries, Beijing agreed to discuss a Code of Conduct (CoC) with the ASEAN. In 2002, the Declaration on the Conduct of Parties in the South China Sea was signed by China and ASEAN nations, including the newly admitted members of Cambodia, Laos, Myanmar, and Vietnam. These discussions led to the Declaration of Conduct (DoC) in 2002. However, since the DoC was not binding, it could not enforce any of its principles. Nonetheless until 2007, it successfully eased out the regional tensions, before China’s reassertion in the region.<sup>(125)</sup>

The first half of 2011 was marked by several incidents in the South China Sea that heightened tensions and highlighted the fact that no real progress towards resolving border disputes had been made. In July 2011, a breakthrough occurred when China and ASEAN adopted “Guidelines for the Implementation of the Declaration on Conduct of Parties.” The guidelines aim at ensuring concrete implementation of the DoC and encouraging resolution of disputes through cooperation and negotiation.<sup>(126)</sup> Diplomatic efforts seemed to advance when ASEAN and Chinese senior officials met in Beijing in January 2012 and agreed to set up four expert committees on maritime scientific research, environmental protection, search and rescue, and transnational crime. The next step planned was the “Regional Code of Conduct” for the South China Sea, as called for in the DoC. The purpose of this CoC is to define limits of action by each nation in order to avoid confrontations such as the one at Scarborough Reef between the Philippines and China in 2012. However, during the August 2014 ASEAN Regional Forum (ARF) in Myanmar, no real further movement was made on the issue.<sup>(127)</sup>

ASEAN is often criticized because diplomatic progress proceeds at a snail’s pace. The main cause for this is due to ASEAN’s fourteen principles in its charter that call for consensus through unanimous decision-making. Another handicap of ASEAN is its rotating chairmanship of all member states, which changes annually.<sup>(128)</sup> It therefore becomes almost impossible for the states like Cambodia (2012) or Brunei (2013) or Myanmar (2014) to challenge, through the Forum, assertions made by other powerful members. Moreover, out of the ten ASEAN countries, only four face South China Sea dispute with China. The other six nations pursue their own individual policies with China with their

unique economic interests at the forefront. This lack of common interest has prohibited ASEAN from developing a consensus on how to approach China on its territorial claims.

During the 2012 ARF and accompanying ASEAN Ministerial Meeting (AMM), China was able to split ASEAN's consensus on the South China Sea by employing its considerable influence over Cambodia, which then served as the chair of ASEAN. This was made easier by the fact that the primary source of tension then was over China's seizure of Scarborough Shoal from the Philippines — an act for which it found some success by blaming Philippines' missteps. In the 2013 ARF in Brunei, several ASEAN members were hesitant to fully blame Beijing for tensions, believing that Manila had overreacted with its decision to bring a case against China for international arbitration.<sup>(129)</sup>

In the annual ARF of August 2014, the US secretary of state, John Kerry, formally presented a proposal under which China and members of the ASEAN that have competing claims to territory in the South China Sea would voluntarily halt provocative actions.<sup>(130)</sup> ASEAN has generally backed US suggestions on easing tensions, including endorsing the progress of a binding code of conduct to govern activities involving conflicting claims. But China's defiance on the code of conduct has been halting the progress over the past several years.<sup>(131)</sup>

#### **South China Sea: Can joint management work?**

Cooperation on resource management in the South China Sea has been proposed by experts as a way to de-escalate tensions. By addressing the two major resources at the core of current disputes — energy and fish — joint development and preservation allow claimants to share the wealth of the sea. Since joint management requires claimants to put aside, not renounce, their territorial and maritime claims in favour of peaceful collaboration, it can be a practical way to shelve disputes for tangible benefits. However, the failure of joint hydrocarbon development, unilateral fishing bans and increased military and law enforcement vessels patrolling the sea signal that sovereignty claims remain more important than resource sharing.<sup>(132)</sup> Joint development is unlikely to take place due to complications inherent in negotiating cost and resource sharing arrangements amid high political tension. The involvement of non-claimants in joint exploration in the South China Sea also feeds Beijing's fears of containment.

As for fishing disputes, which are at the heart of underlying sovereignty disputes in the South China Sea, agreements between claimant countries on protecting stocks could help ensure the abundance of the fish and reduce the risk of conflicts in the future.<sup>(133)</sup> However, collective reluctance towards — at least — temporarily suspending claimed maritime rights seems to have obstructed further attempts on possible fisheries agreements like those between China and Japan and China and South Korea.

## Conclusion

The South China Sea has become an epicentre of global territorial and energy conflicts in recent times. The national, economic and political exigencies of the major claimants have hampered the prospects of a negotiated resolution of the issue. Mounting demands for energy resources and fisheries exploitation have particularly pushed Vietnam and the Philippines deep into disputed areas. Rising nationalism and the unwillingness of claimant countries to compromise on territorial claims have brought them to a greater confrontation with China.

At the moment, a major clash in the South China Sea is improbable. Although Beijing carefully avoids using force to assert its claims, other players are aware of China's rising military might and their economic connections with China. Still, conflicting claims keep surfacing incessantly and continue to soar. With no political resolution to the disputes in sight, China and most South East Asian claimant countries have continued to expand and modernise their navies and coastguards. The regional build-up of arms increases the likelihood of unintentional escalation, and the aggressive use of law enforcement vessels to assert respective stances lead to more frequent contact with civilian vessels and other coastguards. Nonetheless, even with efforts to bolster their defence forces, claimant countries are no match for China, and are engaging in force modernization and seeking enhanced security ties with the US. Recent actions taken by the Philippines to align its defence postures more closely with Washington, and Vietnam's efforts at bringing in other regional powers, are perceived by China as attempts to contain its rise.

There seems to be a growing absence of restraint and long-term vision among the claimants regarding matters of the South China Sea. Their stances are often overwhelmed by harmful rhetoric and fervent nationalism. Domestic pressures have prevented policymakers in claimant countries from making even the slightest compromises in their claims, which would be a precondition to any legal solution. Instead, they have drawn upon international law to further their national interests and justify assertive actions in the region. Therefore, a new approach to discussion is desirable. Stakeholders need to direct the dispute in a way that minimally disrupts overall economic and political cooperation, especially for those working in the disputed territories in fisheries, energy and shipping.

ASEAN is at the heart of efforts to engage China multilaterally on its South China Sea claims, but its members - even just the four claimant states - cannot agree on a way forward. Meanwhile, joint development, while serving as an opportunity for claimants to cooperate and thereby reduce tensions, has stalled as claimants continue to resist China's demands that they first accept its sovereignty over the disputed areas. ASEAN, therefore, needs to advance the development of a Code of Conduct (CoC) with China in order to prove that the issue can be handled at a regional platform, even if the CoC will only manage, rather than resolve, the outstanding disputes.

The unrelenting attitude of the major claimants demonstrates that trends in the South China Sea are moving in the wrong direction. Considering the ever escalating tensions in the region, the involved parties could devise plans to allay

the possibility of a major clash through increased dialogue and joint management of hydrocarbon and fishing resources. In the absence of such a mechanism, it appears that only crisis will trigger the necessary change of attitude over the South China Sea.

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