

The Long Littoral Project: South China Sea

A Maritime Perspective on Indo-Pacific Security

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Cleared for Public Release
IRP-2013-U-002321-Final
March 2013

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Growing competition in the South China Sea

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Since 2007, competition over competing claims in the South China Sea has increased. At the end of 2011, Robert Kaplan pronounced that the South China Sea was now the “new central theater of conflict” in the world.² This working paper examines the disputes in the South China Sea, the dynamics driving the increase in competition, and the implications for the United States.³

The escalation of tensions associated with growing competition among the claimant states in the South China Sea — especially China, Vietnam, and the Philippines — reflects an interactive and dynamic logic. Territorial disputes by definition are unstable and prone to negative spirals of instability because they are “zero sum” whereby one state’s gain is another state’s loss.⁴ As a result, states in such disputes are especially sensitive to perceived challenges to their claims by other states. Any action by one state to strengthen its own claim creates strong incentives for other states to respond. Such incentives are especially powerful because of the public nature of claims in territorial disputes and because if one state disagrees with another state’s “excessive” claims they may challenge said claims by diplomatic demarche, or in the case of maritime disputes, or for example, by peaceful military activity in the disputed waters.

The South China Sea is a large body of water stretching from the mouth of the Pearl River in China in the north to the tip of Indonesia’s Natuna Island in the south. Recent competi-

¹ This working paper was completed in August 2012 and does not address developments in the South China Sea disputes that have occurred afterwards.

² Robert D. Kaplan, “The South China Sea Is the Future of Conflict,” *Foreign Policy* (September/October 2011).

³ This paper draws on several previous publications, including M. Taylor Fravel, “The United States in the South China Sea Disputes,” paper presented at the 6th Berlin Conference on Asian Security, June 2012; M. Taylor Fravel, “All Quiet in the South China Sea: Why China is Playing Nice (For Now),” *Foreign Affairs* (22 March 2012); M. Taylor Fravel, “China’s Strategy in the South China Sea,” *Contemporary Southeast Asia* 33, no. 3 (December 2011): 292-319; M. Taylor Fravel, “Maritime Security in the South China Sea and the Competition over Maritime Rights,” in Patrick Cronin and William Rogers, eds., *Cooperation from Strength: The United States, China and the South China Sea* (Washington, D.C.: Center for New American Security, 2012); M. Taylor Fravel and Michael D. Swaine, “China’s Assertive Behavior – Part Two: The Maritime Periphery,” *China Leadership Monitor* 35 (Summer 2011): 1-29.

⁴ Robert Jervis, “Cooperation under the Security Dilemma,” *World Politics* 30, no. 2 (1978): 167-214.

tion in sovereignty and maritime disputes has occurred largely without the direct involvement of military forces.⁵ Instead, the key actors have been fishing vessels, oil companies, and national maritime law enforcement agencies. States use these actors along with diplomacy to compete to assert and defend their claims. As a result, although intense at times, the level of tension in the South China Sea has not yet reached the instability that the region witnessed from 1988 to 1995. In particular, the dispute has not yet been militarized. In the previous period, a major armed clash occurred between China and Vietnam in March 1988 in which 74 Vietnamese were killed. During this period, Vietnam, the Philippines and Malaysia occupied a total of 22 contested Spratly features; China occupied seven.⁶ Tensions began to subside after Chinese foreign minister Qian Qichen attended the 1995 ASEAN Regional Forum and pledged that China would seek to settle the various disputes according to international law, including UNLCOS.⁷ As is discussed below, this agreement has been under significant pressure.

Conflicting claims in the South China Sea

Conflict in the South China Sea revolves around competing claims to territorial sovereignty and maritime jurisdiction. Claims over maritime jurisdiction include not just the scope of claims but also their content, including the navigation rights of military vessels.⁸

Territorial Sovereignty over Islands and Reefs: In the South China Sea, the territorial sovereignty of two groups of islands and reefs is the main area of disagreement. The first is the Parcel Islands, which are claimed by China and Vietnam (along with Taiwan). China controlled the Amphitrite Group of the Parcel chain since the mid-1950s and consolidated control over the entire archipelago after a brief clash with South Vietnam in 1974.⁹

⁵ All of the land features in the South China Sea are in dispute. Both China and Taiwan (the Republic of China) claim all the land features, The Parcel and Spratly Island groups are the most numerous archipelago's; Vietnam claims both. The Philippines claim most of the Spratlys and the uninhabited Scarborough Shoal that is not in either the Parcel or Spratly chains. Malaysia claims some of the Spratlys, while Brunei has an exclusive economic zone claim (EEZ) that overlaps Chinese water claims.

⁶ M. Taylor Fravel, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes* (Princeton: Princeton University Press, 2008), 295.

⁷ "Qian Qichen Explains China's 'Clear-Cut' Position on Spratlys Issue," Xinhua, August 1, 1995.

⁸ For a detailed examination of these different types of interests at stake, see Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review* 64, no. 4 (2011): 42-67.

⁹ Before the January 1974 clash between the China and South Vietnam, China controlled only the islands in the Amphitrite Group in the eastern part of the archipelago. After the 1974 clash, China gained control over the Crescent Group. See Fravel, *Strong Borders, Secure Nation*, pp. 272-287.

The second is the Spratly Islands, which consists of roughly 230 features, including several small islands, coral reefs, and shoals. Vietnam, China, and Taiwan claim sovereignty over all these land features. The Philippines claims fifty-three of these features, while Malaysia claims twelve.¹⁰ Vietnam occupies twenty-seven of the land features in the Spratlys, more than all the other claimants combined. The Philippines occupies eight features, China seven, Malaysia five, and Taiwan one. Taiwan was the first claimant to occupy a contested feature, when Nationalist troops in 1956 landed on Taiping (Itu Aba) Island, the largest of the islands.

Other claimants did not begin to establish a permanent presence until the early 1970s, when the Philippines and Vietnam occupied several of the other largest islands. China was the last claimant to establish a physical presence, when it occupied six vacant features in early 1988. China's move into the Spratlys at that time resulted in the aforementioned clash with Vietnam in March 1988 that killed 74 Vietnamese sailors. China has not occupied a contested feature since late 1994, when it seized the aptly named Mischief Reef.¹¹ Malaysia and Vietnam were the last states to occupy lands features in 1998 and 1999, respectively.

Maritime Jurisdiction over Water Space: Claims to maritime jurisdiction involve exclusive rights to water space. In particular, they involve whether states have the exclusive right to exploit resources that are contained in the water column and seabed (especially hydrocarbons but also fish and other minerals) the Exclusive Economic Zone (EEZ) and extended continental shelf. The EEZ that China claims from its coast, including Guangdong Province and Hainan Island, the northern portion of the South China Sea, is largely undisputed.¹²

- States differ in how they justify their claims to maritime rights in the middle and southern portions of the South China Sea. Vietnam, the Philippines, Malaysia, and Brunei, base their claims to maritime rights in the South China Sea from their coasts. Indonesia asserts maritime rights from Natuna Island. China, however, bases its claims to maritime rights on sovereignty over the Paracels and Spratlys. Yet most (but not all) of the features in the Spratlys would not qualify as islands under article 121(3) of the United Nations Convention on the Law of the Sea (UNCLOS), and thus cannot serve as the basis for a claim to an EEZ, much less an extended continental shelf.
- Ambiguity surrounds China's claims to maritime jurisdiction for other reasons. For many decades, Chinese maps have shown a "nine-dashed line" en-

¹⁰ Greg Austin, *China's Ocean Frontier: International Law, Military Force, and National Development* (Canberra: Allen & Unwin, 1998), pp. 153-154.

¹¹ For a recent review of these developments, see Fravel, *Strong Borders, Secure Nation*, pp. 267-299.

¹² For a more detailed discussion of China's claims, see M. Taylor Fravel, "China's Strategy in the South China Sea," *Contemporary Southeast Asia* 33, no. 3 (December 2011): 292-319.

closing most of the Sea's waters. Yet the Chinese government has never defined what the line does — or does not — mean. Article 14 of China's domestic 1998 EEZ law states that it "shall not affect the historic rights that the PRC enjoys" — without specifying what those rights were, such as a potential claim to historic rights in the South China Sea based on the nine-dashed line. China has not drawn baselines¹³ around the Spratlys, leaving open the question whether it will pursue claims to maritime jurisdiction that are compliant with UNCLOS.¹⁴ By contrast, the Philippines have stated that it will not claim an EEZ from any of the features in the Spratlys. Vietnam has not stated whether it will claim maritime rights from the land features that it claims in the Spratlys.¹⁵

Content of Maritime Jurisdiction: A third aspect of competing claims in the South China Sea concerns the content of the maritime rights that states may claim. Several of the states maintain that certain activities can be restricted in their waters, which raises questions of freedom of navigation. Vietnam requires prior notification for the transit of military vessels within its 12nm territorial seas.¹⁶ Malaysia requires prior authorization to conduct military exercises or maneuvers in its EEZ.

- Since the EP-3 incident in 2001,¹⁷ China has mobilized a variety of legal arguments designed to limit military activities in this zone, especially U.S. sur-

¹³ A baseline is the line from which the seaward limits of a state's territorial sea and certain other maritime zones of jurisdiction are measured. Normally, a sea baseline follows the low-water line of a coastal state. When the coastline is deeply indented, has fringing islands or is highly unstable, *straight* baselines may be used.

¹⁴ China drew baselines around the Paracels in 1996. China, however, drew an archipelagic baseline around all of the islands, not baselines around the individual islands and reefs of the Paracels. As China is not an archipelagic state, this kind of a baseline is contrary to the provisions of UNCLOS.

¹⁵ Vietnam's 2012 Maritime Law did not clarify whether such maritime rights would be claimed from these features. By submitting claims for extended continental shelf rights to the UN in 2009, Vietnam and Malaysia implied that they would not claim maritime rights from the contested islands, though they have not yet said so explicitly. In a subsequent note, the Philippines indicated the Spratly Islands did not meet the criteria under article 121 (3) and thus could not be used to claim maritime rights.

¹⁶ The United States would regard this as an excessive maritime claim because warships engaged in "innocent passage" are not required to obtain permission to transit.

¹⁷ On Sunday, April 1, 2001, a United States Navy EP-3 surveillance plane collided with a Chinese J-8 fighter jet 70 miles from Chinese territory in the airspace above China's claimed 200 mile EEZ. The EP-3 made an emergency landing on Hainan Island, while the PLA Navy J-8 crashed and the pilot killed. The accident resurrected arguments concerning inter alia, China's interpretation of article 58 of UNCLOS whether the distinct legal regime created by the establishment of an EEZ has imposed limitations on 'pre-existing rights' on the high seas.

veillance and reconnaissance activities.¹⁸ Although China has focused its opposition to U.S. operations in areas close to China's coast, China may seek to impose similar restrictions throughout the entire South China Sea. Even if China embraced UNCLOS-compliant claims that did not seek to restrict military activities, the uncertain meaning of China's nine-dashed line raises concerns over what "historic rights" that China might claim based on a line that has no legal standing under UNCLOS. To date, China's efforts to enforce limits on freedom of navigation have occurred in the EEZ off its coast, and not in the EEZ of islands in the South China Sea. The May 2009 confrontation between the U.S. surveillance ship USNS *Impeccable* and Chinese Maritime Fishery patrol ship and two Chinese fishing boats that harassed the *Impeccable*, maneuvering dangerously close, took place roughly 75 miles southeast of Hainan, in China's coastal EEZ.¹⁹

U.S. interests in the South China Sea

The United States has two principal interests in the South China Sea disputes: access and stability.²⁰

First, the United States has a powerful interest in maintaining unhindered access to the waters of the South China Sea. From Washington's perspective, all countries enjoy high seas freedoms, including freedom of navigation, beyond any coastal state's 12nm territorial seas over which the coastal state enjoys sovereign rights. Both commercial and military vessels enjoy such high-seas freedoms as contained in articles 56 and 87 of UNCLOS. Despite the fact that the United States has yet to ratify the UNCLOS Treaty, it has abided by its provisions since the Reagan administration. The United States has conducted multiple "operational assertions" of such freedoms in Chinese waters every year since 2007.²¹

Unhindered access to the waters of the South China Sea is important for two reasons. First, it underpins the economic dynamism of the region, which is based on extensive intra-regional and international trade. More than 5 trillion dollars' worth of trade passes through these waters each year, including more than 1 trillion with the United States. Second, unhindered access sustains America's ability to project military power, not just in East Asia but

¹⁸ Ren Xiaofeng and Cheng Xizhong, "A Chinese Perspective," *Marine Policy* 29 (2005): 139-146.

¹⁹ Raul Pedrozo, "Close Encounters at Sea: The USNS *Impeccable* Incident," *Naval War College Review* 62, no. 3 (2009): 101-111.

²⁰ This section draws on Fravel, "The United States in the South China Sea Disputes." The United States has other interest related to these disputes, including maintaining its commitments to allies in the region and ensuring a stable and cooperative relationship with China (that bears on many U.S. interests apart from those in the South China Sea).

²¹ <http://policy.defense.gov/gsa/cwmd/fon.aspx>

also around the world, as many naval vessels from the West Coast and Japan pass through the South China Sea en route to the Indian Ocean and Persian Gulf.

For the United States, unhindered access to maritime space in the South China Sea faces several threats. The first is China's interpretation of the rights of coastal states in the EEZ discussed above. A second threat is the modernization of the PLA Navy, which, over time, could be used to exclude U.S. naval vessels from these waters. Nevertheless, given the expanse of the South China Sea, the PLAN's South Sea Fleet will not have such capabilities for some time. At present, the South Sea Fleet has roughly eleven destroyers (four of which are modern) and eighteen frigates (four or eight of which are modern). (China's new aircraft carrier, the *Liaoning*, is homeported in Dalian, in northeast China, and is under the direct control of the navy staff while it continues sea trials and training.)

Second, the United States has a powerful interest in the maintenance of regional peace and stability in Southeast Asia. Like open and unhindered access, regional stability also sustains both East Asian and American prosperity, as conflict or intense security competition would divert scarce resources away from development, reduce trade by threatening the security of sea-lanes, and reduce cross-border investment.

Regional stability faces several threats in the South China Sea. The first is the potential for armed conflict among the various claimants in the disputes over territorial sovereignty and maritime rights. China and Vietnam have clashed twice, first in 1974 over the Crescent Group in the Paracel Islands and in 1988 over the control of Johnson Reef.

A second threat to stability would be increasingly frequent use of coercive measures short of armed conflict to advance a state's claims. China's threats to American oil companies in 2007 and 2008 discussed below provide one example of such coercive behavior that can increase instability. A third threat would be ongoing naval modernization in the region. In addition to the recapitalization and modernization of the China's South Sea Fleet, Vietnam is also investing heavily in naval and air capabilities to be used in the South China Sea, such as *Kilo*-class submarines purchased from Russia that will enhance Hanoi's own area denial capability. Spirals of instability in disputes over sovereignty and maritime rights could evolve into a capabilities race and increased security competition.

Another source of instability, indirectly related to the South China Sea, would be the potential for a competitive spiral of military capabilities related to efforts by China and the United States over threatening and maintaining access, respectively. In response to new Chinese "anti-access/area denial" capabilities, including an anti-ship ballistic missile, the United States military has developed a new operational concept known as AirSea Battle intended to ensure U.S. access to these waters in wartime. Peacetime efforts to develop such capabilities could result in an "access" arms race and increased instability.

Growing competition and instability

Since 2007, competition over competing claims in the South China Sea has increased. The proximate spark has been a greater focus on the natural resources in these waters, which increases the salience of claiming maritime rights and sovereignty over land features that can be used to claim maritime rights. To assert and exercise their rights, states have combined diplomatic and administrative actions to assert jurisdiction over parts of the South China Sea along with the use of commercial and maritime law enforcement agencies to exercise jurisdiction.²²

Asserting jurisdiction: diplomatic and legal competition

Diplomatic disputes associated with resource development triggered the most recent tensions over maritime rights in the South China Sea. In the mid-2000s, Vietnam increased its efforts to develop its offshore petroleum industry in cooperation with foreign oil companies. Between 2006 and 2007, China responded by issuing eighteen diplomatic objections to foreign oil companies involved in these exploration and development projects.²³ Most of these demarches challenged the legality of Vietnam's exploration projects. In May 2006, for example, the Indian national oil company ONGC signed a production-sharing contract with PetroVietnam for blocks in the Phu Khanh basin. China claimed that ONGC's project was illegal because it fell within an area claimed by China in the South China Sea.²⁴ The demarche suggested that only claimant countries could be involved in such development activities.²⁵

In July 2008, as Vietnamese development efforts continued, reports surfaced that China had begun to directly threaten foreign oil companies investing in Vietnam. According to a report in the *South China Morning Post*, Chinese diplomats in Washington "made repeated verbal protests to ExxonMobil executives... and warned them that its future business interests on the mainland could be at risk, according to sources close to the U.S. firm."²⁶

Diplomatic tensions over maritime rights increased in the weeks before the May 2009 deadline for submissions to the U.N. Commission on the Limits of the Continental Shelf

²² This section draws on Fravel, "China's Strategy in the South China Sea"; Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights."

²³ Fravel, "China's Strategy in the South China Sea."

²⁴ The demarche was reported in the Indian press on December 3, 2007, but interviews indicate that it occurred earlier.

²⁵ Anupama Air, "ONGC's Vietnam Foray Illegal, Says China," *The Financial Express*, December 3, 2007.

²⁶ Greg Torode, "Oil Giant Is Warned Over Vietnam deal; Beijing Asserts S China Sea claims," *South China Morning Post*, July 20, 2009: 1.

(CLCS). The commission reviews and qualifies claims by states to extended continental shelf rights beyond 200 nautical miles.²⁷ If a territorial or maritime dispute exists, however, then the commission's rules dictate that it "shall not consider and qualify a submission made by any of the States concerned in the dispute."²⁸ As a result, all claimants in the South China Sea have strong incentives to challenge the continental shelf submissions where sovereignty or maritime rights claims overlap. Accordingly, China and the Philippines both objected to Vietnam's submission and to the joint Vietnamese-Malaysian submission. All the claimants then issued claims and counter-claims.²⁹

Even though the May 2009 deadline for submissions had been established ten years earlier, its impending arrival significantly increased the competition over maritime rights in the South China Sea. By submitting claims to the commission, Vietnam and Malaysia formally expanded their claimed maritime rights beyond a 200 nautical mile EEZ from their coastlines, thereby increasing the intensity of competition over maritime rights. Previously, these states had either not stated that they would claim extended continental shelf rights or clearly delineated the length of the continental shelf that they claimed. In addition, in the notes submitted to the commission, states not only contested each other's claims to maritime rights but also their territorial sovereignty claims to the Paracels and the Spratlys. Finally, China's first diplomatic note contesting Vietnam and Malaysia's submissions included a map of the region that depicted the Paracel and Spratly Islands along with the nine-dashed line. Although the Chinese note did not mention the line, Vietnam viewed the map as an expansion of China's claims.

Related to diplomatic competition have been efforts to use domestic laws and regulations to strengthen claims. In February 2009, the Philippine legislature passed an archipelagic baseline law, which reasserted Manila's claims to land features in the Spratlys. The bill was signed into law in March 2009, just before the deadline for submissions to the CLCS. In June 2012, Vietnam's National Assembly passed a Maritime Law that reaffirmed its claims to sovereignty over the Paracels and Spratlys and grounded them in domestic law.³⁰ China viewed both as challenging its own claims to these land features.

²⁷ Under the treaty, a state can only exercise rights to the continental shelf if the CLCS certifies the claim.

²⁸ *Rules of Procedure of the Commission on the Limits of the Continental Shelf* (New York: United Nations, 2008), p. 22.

²⁹ A list of all submissions and objections is available on the commission's website: http://www.un.org/Depts/los/clcs_new/commission_submissions.htm.

³⁰ "Foreign Minister Pham Binh Minh Clarifies Content of Viet Nam Maritime Law," 29 June 2012, <http://biengioilanhtho.gov.vn/eng/foreignministerphambinhminhclarifies-nd-d6cb97e3.aspx>. China passed similar laws in 1992 and 1998.

Claimants have also used other legal means to strengthen their claims. In April 2007, for example, Vietnam created a township and two villages in the Trong Sa (Spratly) District of Khanh Hoa Province to strengthen governance and administration of Vietnamese-held features. In June 2012, China upgraded the administrative rank of the Paracel Islands, Maclesfield Bank and the Spratly Islands from a county-level administrative office (*banshiqu*) to a prefectural-level city under Hainan Province (*dijishi*) named “Sansha City.” The new city is based on Yongxing (Woody) Island in the Paracels, which is the largest Chinese-held feature in the South China Sea. The elevation of Sansha to a prefectural-level city was a significant move, as it created an organizational infrastructure for a variety of civilian activities to demonstrate China’s sovereignty in the area from fishing to tourism.

In addition, in July 2012, China announced the establishment of a military garrison (*jingbeiqu*) in Sansha city under the Hainan Military District with responsibility for defense mobilization, the militia, and disaster and relief work.³¹ (Maritime defense and military operations are governed by the Paracels maritime garrison (*shuijingqu*) under the South Sea Fleet of the PLAN.)

Exercising jurisdiction: commercial competition

As states asserted their claims more vigorously, they also sought to demonstrate and exercise the jurisdiction that they claim. In particular, they have sought to exercise these rights by conducting commercial activities such as fishing and hydrocarbon exploration and development. All claimants, especially China, have used non-military maritime law enforcement agencies to enforce their claims, also in an effort to exercise jurisdiction.

Fishing

As in many maritime disputes around the world, fishermen have played a central role in efforts to exercise and demonstrate jurisdiction in the South China Sea. These waters have served as fishing grounds for all littoral states, and many of these traditional fishing grounds overlap. As a result, fishermen will often justify operating in disputed waters through their country’s claims to maritime rights. Chinese fishermen operate in the southern portion of the South China Sea near Indonesia and Vietnam, for example, while Vietnamese and Philippine vessels operate in the northern portions near the Paracel Islands.

During the past decade, China has strengthened its ability to supervise fishing in the disputed waters and to enforce its domestic fishing laws. The principal Chinese agency tasked with this mission is the South Sea Region Fisheries Administration Bureau (SSRFAB, *nan-*

³¹ “Major officers in Sansha garrison appointed: spokesman,” Xinhua, 26 July 2012.

haiqu yuzhengju), which is a unit in the Bureau of Fisheries Administration within the Ministry of Agriculture.³² In addition to regulating China's domestic fishing industry in the South China Sea, the SSRFAB has two objectives that affect the disputes over maritime rights. First, SSRFAB vessels escort Chinese fishing boats (*huyu*) when they operate in disputed waters. These escorts provide aid to these boats, but also exercise Chinese jurisdiction over these waters (thus supporting its claims to maritime rights) and protect Chinese fishermen when they are challenged by vessels from other states. Second, the SSRFAB seeks to prevent foreign ships from operating within China's claimed EEZ by boarding and inspecting these vessels, levying fines, and confiscating catches and equipment as well as expelling ships from Chinese-claimed waters.

In the last decade, the SSRFAB has steadily increased its presence in the South China Sea. The number of total days in which the SSRFAB vessels were at sea increased from 477 in 2005 to 1,235 in 2009 (including operations in the Gulf of Tonkin as well as in both disputed and undisputed portions of the South China Sea for both years). At the same time, the number of Vietnamese ships operating in the waters around the Paracel Islands began to increase, perhaps because of the implementation in 2004 of the 2000 Chinese-Vietnamese fishing agreement that limited fishing in the Gulf of Tonkin. China sees these Vietnamese ships as directly challenging its claims to sovereignty over the islands and to maritime rights in the adjacent waters. In 2009, the SSRFAB organized 11 special operations (*zhuanxiang xingdong*) around the Paracels conducted by the *Yuzheng* 308 and *Yuzheng* 309, two patrol vessels from the SSRFAB, each of which lasted for about 24 days.³³ In 2009, China expanded the duration of a unilateral fishing ban above 12 degrees north in the summer months that had been in place since 1999 and dispatched SSRFAB vessels to enforce this ban.³⁴

The combination of increased Vietnamese fishing operations and a more capable SSRFAB resulted in a growing number of confrontations at sea. In 2008 and 2009, SSRFAB vessels confronted and "expelled" (*qugan*) more than 135 and 147 foreign boats, respectively, most of which were likely Vietnamese.³⁵ In addition, China began detaining Vietnamese fishing

³² Within the Bureau of Fisheries Administration, law enforcement activities are supervised by the Fisheries Administration Command Center (*yuzheng zhihui zhongxin*). Responsibility for patrols and other law enforcement activities is divided by regional fisheries administration, including the Yellow Sea and Bohai Gulf Region Fisheries Administration (*huangboqu yuzhengju*), the East Sea Region Fisheries Administration (*donghaiqu yuzhengju*), and the South Sea Region Fisheries Administration.

³³ Nongyebu yuyeju, ed., 2010: *Zhongguo yuzheng nianjian* [2010: China Fisheries Yearbook] (Beijing: Zhongguo yuye chubanshe, 2010), 124.

³⁴ Nongyebu yuyeju, 2010: *Zhongguo yuzheng nianjian*, 124-125.

³⁵ Nongyebu yuyeju, ed., 2009: *Zhongguo yuzheng nianjian* [2009: China Fisheries Yearbook], (Beijing: Zhongguo yuye chubanshe, 2009), 147; Nongyebu yuyeju, 2010: *Zhongguo yuzheng nianjian*, 124.

boats and their crews, sometimes levying a fine or even confiscating the seized boats. Between 2005 and October 2010, a Vietnamese newspaper reports that China detained 63 fishing boats with 725 men.³⁶ Roughly half of these detentions occurred in 2009, when Vietnamese sources indicate that China detained or seized 33 boats and 433 fishermen.³⁷ The increase in detentions coincided with the diplomatic activity surrounding competing claims described in the previous section and a Chinese perception that Vietnam was increasing the number of fishing ships operating in disputed waters. Total numbers for 2010 are unavailable, but they appear to be much lower, around seven.³⁸ In 2011, there were no reports of Chinese seizures of Vietnamese fishing vessels and their crews.³⁹ In 2012, however, China has started again to detain Vietnamese ships and their crews operating near the Paracel Islands. By the end of July 2012, China had detained approximately nine Vietnamese fishing vessels.⁴⁰ In 2010 and 2011, the decline in the number of detentions appeared to track with China's effort to moderate this element of its strategy in the South China Sea, discussed below.⁴¹ Even though the number of detentions increased in 2012 compared to the previous two years, they have not approached the levels witnessed in 2009.

Although China's detention of foreign fishing boats receives a great deal of media attention, confrontations involving fishing boats from other claimant states are also common. According to one Chinese source, more than 300 incidents have occurred since 1989 in which Chinese trawlers were fired upon, detained, or driven away. In 2009, for example, Vietnamese vessels reportedly fired three times on Chinese boats, wounding three Chinese fishermen. Also in 2009, ten Chinese trawlers reportedly were seized.⁴² Similarly, Vietnam and the Philippines routinely detain fishermen from each other's countries.⁴³ China, how-

³⁶ "Vietnam Demands Unconditional Release of Fishermen Held by China," *Than Nien News*, October 8, 2010.

³⁷ "China Seizes Vietnamese fishing boat," Deutsche Presse-Agentur, April 19, 2010. A Chinese source indicates that the South Sea Regional Fisheries Administration Bureau fined 19 foreign ships and confiscated four in 2009. See Nongyebu yuyeju, ed., *2010: Zhongguo yuzheng nianjian*, 124.

³⁸ I was unable to find a Vietnamese source that listed all Chinese detentions in 2010. My figure is based on a survey of press reports and two Vietnamese reports, "Chinese Thuggery Unabated in East Sea," *Than Nien News*, May 14, 2010, and "Vietnam Demands Unconditional Release of Fishermen Held by China," *Than Nien News*, October 8, 2010. Vietnamese reports do not indicate that the number of ships fishing around the Paracels has declined.

³⁹ "PRESS DIGEST – Vietnam newspapers – May 31," Reuters, May 30, 2011.

⁴⁰ "China Detains Vietnamese Fishermen in New South China Sea Dispute," VOA, 21 March 2012; "14 fishermen detained by China return home," *TuoiTreNews*, 24 May 2012; "China seizes 6 Vietnamese boats, then releases 3," *TuoiTreNews*, 10 July 2012.

⁴¹ Fravel, "All Quiet in the South China Sea."

⁴² "Yumin pinzao zhoubian weixie [Fishermen Frequently Encounter Threats]," *Huanqiu shibao*, 4 April 2010.

⁴³ JC Bello Ruiz, "RP, Vietnam Agree on Spratlys," *Manila Bulletin*, October 28, 2010.

ever, has not released disaggregated information on incidents involving Chinese fishing ships, which limits the analysis that can be conducted.

As a general proposition, the presence of fishing boats in disputed waters is a useful way for a state to demonstrate the validity of its claims. As discussed above, the number of Vietnamese ships around the Chinese-held Paracels appeared to increase significantly after 2008, as Vietnam more actively pressed its claims. Likewise, in July 2012, Chinese fishing vessels from Hainan Province conducted a highly publicized trip to fish near the Chinese-held features in the South China Sea. The flotilla, which included 29 boats and a supply ship, was escorted by the *Yuzheng* 310, one of the most modern patrol ships in the Bureau of Fisheries Administration. Reporters were embedded on the ships, which stopped at most Chinese-held features in the area such as Fiery Cross (Yongshu) and Mischief Reefs.⁴⁴

Finally, the importance of fishing in the competition for maritime rights is illustrated by the origins of the standoff between China and the Philippines over Scarborough Shoal. In early April, a Philippine naval ship was dispatched to investigate reports of fishing boats inside Scarborough Shoal, a coral reef approximately 135 miles from the Philippines and 543 miles from China. Although Philippine personnel searched the boats, which were harvesting giant clams and other animals in violation of Philippine law, two patrol ships from the China Marine Surveillance, (MSF, *haijian budui*), force under the State Oceanic Administration arrived on the scene and blocked the entrance to the shoal, thus preventing the arrest of the fishermen. A standoff ensued, as both sides used government ships to demonstrate their sovereignty over the shoal and jurisdiction over the adjacent waters.

Hydrocarbons

Similar efforts to exercise claims include exploration activities of oil companies in waters where claims overlap. As discussed above, Vietnam's development of offshore oil sparked demarches and at least a few threats from China against foreign oil companies. In the first half of 2011, China interfered with seismic surveys conducted by Vietnam and the Philippines within their claimed EEZs. China's MSF has been the principal Chinese agency involved in this series of confrontations.⁴⁵ Similar to the Bureau of Fisheries Administration, one mission of the MSF is to "safeguard maritime rights and interests" in addition to enforcing Chinese laws regarding maritime affairs.⁴⁶ The South China Sea branch of the MSF

⁴⁴ Huang Yiming and Jin Haixing, "Fishing vessels set off for Nansha Islands," *China Daily*, 13 July 2012.

⁴⁵ The English name of this unit is China Marine Surveillance.

⁴⁶ "Guojia haiyang ju nanhai fenju [South Sea Branch of the State Oceanographic Administration]," <http://www.soa.gov.cn/soa/governmentaffairs/overview/jigoushezhi/jsdw/webinfo/2007/03/1271382671414165.htm>.

was established in 1999 with responsibility for the waters adjacent to Macao, Hong Kong, Guangdong, Hainan, and the disputed islands, and now has 13 ships. According to the State Oceanographic Administration, the MSF started regular (*dingqi*) law enforcement cruises to “protect rights” in 2006.⁴⁷ In April 2010, for example, MSF vessels conducted a cruise in the southern portion of the South China Sea, dropping a sovereignty marker on James Shoal.⁴⁸ In July 2012, four MSF patrol ships conducted an extended and highly publicized training exercise around Chinese-held and other features in the Spratly Islands.⁴⁹

Information about the scope and frequency of MSF patrols in the South China Sea is not available in open sources. In the first half of 2011, however, MSF ships were involved in two separate incidents in which they challenged and disrupted seismic survey activities by Vietnam and the Philippines. The first incident occurred in March, when two MSF vessels “expelled” (*ganqu*) a Philippine seismic survey vessel in the Reed Bank area in the northwestern portion of the Spratly Islands. According to Philippine press reports, the MSF vessels aggressively maneuvered around the ship and forced it to leave the area. The second incident occurred in late May, when an MSF ship cut across the stern of the seismic survey vessel *Binh Minh 2*, owned by PetroVietnam, and severed its towed cable. According to Vietnamese reports, three MSF vessels had been shadowing the *Binh Minh 2*, which was operating 120 nautical miles off the coast of central Vietnam.⁵⁰

A third hydrocarbon incident with Vietnam that involved Chinese fishing boats and SSRFAB vessels occurred in early June 2011 but accounts differ. According to Vietnam, a Chinese fishing boat with a “specialized cable-slashing device” became ensnared in the towed cables of the *Viking II*, a Norwegian ship that was surveying an exploration block for Talisman Energy (Canada) off the coast of southern Vietnam in the southwestern portion of the South China Sea.⁵¹ According to China, the fishing boat’s net became tangled with the sonar equipment on the *Viking II*, suggesting that poor seamanship and bad judgment might be to blame.⁵²

These confrontations demonstrate three important points about the competition over maritime rights. First, China escalated its efforts to exercise and enforce its maritime rights

⁴⁷ “Jianding buyi de diaowei haiyang quanyi [Resolutely Defend Maritime Rights and Interests],” <http://www.soa.gov.cn/soa/management/supervise/webinfo/2011/07/1311482429829083.htm>.

⁴⁸ *Xiandai jianchuan*, April 2010, 16.

⁴⁹ “Chinese patrol ships reach Nansha Islands,” *Xinhua*, 4 July 2012.

⁵⁰ “VN Condemns Chinese Intrusion,” Vietnam News Agency, May 28, 2011.

⁵¹ “Regular Press Briefing by MOFA’s Spokesperson Nguyen Phuong Nga on June 9th, 2011,” June 9, 2011, http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610145220#tr5qmcP0xVB6.

⁵² “Foreign Ministry Spokesperson Hong Lei’s Remarks on Vietnamese Ships Chasing Away Chinese Fishing Boats in the Waters off the Nansha Islands,” June 9, 2011, <http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t829427.htm>.

when it severed the towed sonar arrays in May 2011 (the second incident above). No similar incidents were reported in previous years, though after the May incident a Vietnamese official stated that similar acts had occurred in 2010.⁵³

Second, the official response to the May incident from China's Ministry of Foreign Affairs (MFA) suggests that the cable-cutting was intended to deter Vietnam from asserting its claims and bolster China's own claim to jurisdiction. The MFA spokesperson suggested that the action was a deliberate attempt to enforce China's claims. The day after the incident, the spokesperson stated that "The *law enforcement activities* by Chinese maritime surveillance ships against Vietnam's illegally operating ships are completely justified."⁵⁴

Third, all three incidents occurred after survey activity by other claimants increased, underscoring the dynamic nature of the current competition over maritime rights. The Philippines initiated a new survey of Reed Bank in February 2011 just before the March 2 incident. The incidents involving Vietnam occurred following new surveys that began in March.

Competition to develop hydrocarbons has continued. In June 2011, the Philippines launched a new round of bidding for petroleum contracts.⁵⁵ Two of the fifteen blocks being offered, known as Area 3 and Area 4, are located off northwest Palawan in the South China Sea near Reed Bank. Parts of the blocks are located in waters that China claims, though China's claim is weak.⁵⁶ In a much bolder move, China's National Offshore Oil Company (CNOOC) in June 2012 invited bids for nine new blocks in the South China Sea. Unlike blocks offered in 2010 and 2011, these blocks are located entirely within Vietnam's EEZ delineated from its coastline. Although perhaps part of a response to Vietnam's passage of a

⁵³ Ben Bland and Kathrin Hille, "Vietnam and China Oil Clashes Intensify," *The Financial Times*, May 27, 2011. A report from Vietnam, however, suggested that such incidents had not occurred in the past. See "Russian captain condemns cable destruction," Vietnam Net, June 2, 2011. Vietnam Net is part of Vietnam's Ministry of Information and Communications.

⁵⁴ "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on May 31, 2011," <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t827089.htm> (emphasis added). By contrast, the MFA's response to the June incident suggested that it might have been unintended. Similarly, the location of the incidents suggests that they were designed to signal China's maximal claims to maritime rights. All were located near the limits of a hypothetical 200nm EEZ that China could claim in the South China Sea from the five largest features of the Spratly Islands (Taiping [Taiwan], Thitu [Philippines], West York [Philippines]), Spratly [Vietnam] and Northeast Cay [Philippines]).

⁵⁵ <http://www.offshore-technology.com/news/news119783.html/>;

<http://www.doe.gov.ph/pecr4/index.html>

⁵⁶ <http://csis.org/publication/arguing-over-blocks-do-china-and-philippines-both-have-claim>

Maritime Law at the same time, the move also sought to limit foreign investment in Vietnamese blocks that overlapped with China's in the area.⁵⁷

Whose assertiveness?

A common theme in Western and Southeast Asian analysis of the growing competition in the South China Sea has been China's assertiveness. Claims of assertiveness imply new and unilateral actions taken by a state to alter the status quo in a dispute or particular issue. Such claims of assertiveness in territorial disputes, however, often conflate efforts by states to bolster their claims with actions designed to clearly alter the status quo. States have strong incentives to defend their claims and to view the actions of other states to strengthen their own claims as a challenge to the status quo. This dynamic is inherent to disputes among states over territory, where all states take actions viewed as assertive when the act to strengthen their claims and counter efforts by other claimants to bolster their own. In other words, one state's assertive behavior is the other state's prudent defensive action in defense of its claim.⁵⁸ From this perspective, China has been assertive, but so have other states.⁵⁹

The origin of the standoff between China and the Philippines over Scarborough Shoal illustrates the interactivity of territorial disputes that creates incentives for states to assert and defend their claims. China and the Philippines both claim sovereignty over this land feature, which also lies within the 200 nautical miles EEZ that the Philippines claims from its coast. In early April 2012, a Philippine plane spotted Chinese fishing boats inside Scarborough's lagoon. The Philippines dispatched its largest naval ship, the *BRP Gregorio de Pilar*, which was a refurbished 40 year old US Coast Guard cutter. Armed Philippine sailors boarded some of the Chinese fishing vessels and the prepared to arrest the fishermen for violating Philippine waters. In response, China dispatched two MSF vessels, which blocked the entrance to the shoal, preventing the Philippine sailors from returning to the shoal and arresting the Chinese fishermen.

Both sides viewed the other as challenging their claim in a new and more assertive way. From China's perspective, the Philippines had not attempted to arrest Chinese fishermen operating around the shoal for more than a decade—the last recorded arrest occurred in November 2002. Moreover, the use of a military vessel by the Philippines to conduct a law

⁵⁷ M. Taylor Fravel, "South China Sea Oil Card," *The Diplomat*, 27 June 2012.

⁵⁸ This section draws on Fravel, "China's Strategy in the South China Sea"; Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights."

⁵⁹ International Crisis Group, *Stirring up the South China Sea (II): Regional Responses*, Asia Report No. 229, 24 July 2012. In this sense, Michael Swaine and I have argued elsewhere, however, it is not actually clear that China has become more assertive. Michael D. Swaine and M. Taylor Fravel, "China's Assertive Behavior – Part Two: The Maritime Periphery," *China Leadership Monitor*, No. 35 (Summer 2011).

enforcement activity against unarmed fishermen was seen as a further escalation of the dispute. From the Philippine point of view, however, the Chinese fishermen represented an unacceptable encroachment into their waters, especially in light of increased Chinese activity in the South China Sea. Moreover, the use of MSF vessels was seen as an escalation of Chinese presence and an effort to exert control over the shoal.

Any assessment of China's assertiveness must distinguish between the content of its claims and actions taken to strengthen or defend those claims. Although China's claims to maritime rights encompass most of the South China Sea, the content and extent of those claims remains unchanged. Drawing on the claims of its predecessors, the People's Republic of China (PRC) has claimed sovereignty over the Paracel Islands and Spratly Islands since 1951. The PRC first began to claim maritime rights from these features in 1958 during the crisis over Jinmen (Quemoy). China's sovereignty and maritime rights claims were later codified in a series of laws regarding territorial seas and EEZs that were passed by the National People's Congress in 1992 and 1998, respectively. China's sovereignty and maritime rights claims were reiterated in the May 2009 *note verbale* that China submitted to the UN Commission on the Limits of the Continental Shelf CLCS. China submitted this note, however, not because it had chosen to press its claims more assertively, but because other states had submitted claims that overlapped with China's, especially Vietnam's submission to an extended continental shelf that encompassed much of the Spratlys. As noted earlier, claimant states had strong incentives to challenge each other's submissions in order to defend their own claims.⁶⁰

Some observers argue that China expanded its claim by including a map with the nine-dashed line in the May 2009 submission. The line and its appearance on Chinese maps, however, are not new. The line first appeared in an atlas published by the Republic of China in 1947 and was formally announced in 1948. Then, however, the line was not defined officially and remains undefined today. The 2009 *note verbale* submitted with the map, for example, did not define the line or even refer to it, positively or negatively. The contested islands were the only geographic features that were both contained in the note and named on the map. In addition, the map submitted to the CLCS was the first map of the region that China ever submitted to the U.N. — none of documents China previously submitted about its maritime claims included any maps.⁶¹ If, for example, China submitted a map to the UN in 1992 with its law on the territorial sea this map would have included the nine-dashed line because the line appeared on official Chinese maps at the time. Finally, as Greg Austin has noted, the use of dashed marks on Chinese maps suggested an "indefinite or

⁶⁰ For a review of China's claims, see Fravel, "China's Strategy in the South China Sea."

⁶¹ For a list of documents that China has submitted to the U.N. relating to its maritime sovereignty claims, see www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/CHN.htm.

uncertain boundary.”⁶² Consistent with this view, the PRC removed two of the original dashes in the Gulf of Tonkin in 1953, indicating that the line itself was subject to change.

In April 2010, the *New York Times* reported that China had labeled the South China Sea as a “core interest” on par with Taiwan and Tibet. Yet no senior Chinese leader has ever publicly described the South China Sea as a core interest, although it may have been discussed in one or more private meetings between U.S. and Chinese officials.⁶³ By contrast, senior Chinese leaders frequently have described Tibet and Taiwan as core interests.⁶⁴ The only exception appears to be an English-language article published on the Xinhua website in August 2011, which stated that China “has indisputable sovereignty over the [South China] sea’s islands and surrounding waters, which is part of China’s core interests.”⁶⁵ In this context, the article most likely referred to territorial sovereignty over the islands and the related 12 nautical mile territorial seas (maritime space over which states exercise sovereignty), not the South China Sea as a whole or the waters enclosed by the nine-dashed line. To date, no senior Chinese leader has repeated this statement.

As discussed above, China has been more able and more willing to enforce its claims to maritime rights in the South China Sea. In particular, the expanding fleets of patrol ships of the Fisheries Administration and MSF in the South China Sea have enabled China to respond to what it sees as challenges to its claims. Nevertheless, all states have been assertive in terms of taking action to defend their claims, often in response to other states as the interactive.

From Beijing’s perspective, for example, it has been responding to multiple challenges to its claims. The diplomatic demarches to foreign oil companies in 2006 and 2007, for example, responded to increased Vietnamese exploration in waters that China claims. Likewise, the dramatic increase in the detention of Vietnamese fishing boats in 2009 coincides with an increased presence of Vietnamese ships in the waters around the Paracels, often within the territorial seas that China claims around these islands. The June 2012 announcement by CNOOC of new blocks in disputed parts of the South China Sea was likely a response to

⁶² Austin, *China’s Ocean Frontier*, 207.

⁶³ Michael D. Swaine, “China’s Assertive Behavior—Part One: On ‘Core Interests,’” *China Leadership Monitor*, no. 34 (Winter 2011). Uncertainty remains about precisely what language Chinese officials used in their private discussions, namely, whether they referred to the contested islands as part of China’s core interests (consistent with Dai Bingguo’s formulation of China’s core interest in 2009 which included territorial integrity) or whether they referred to the waters of the South China Sea as a whole.

⁶⁴ Swaine, “China’s Assertive Behavior—Part One: On ‘Core Interests.’”

⁶⁵ “China-Philippines Cooperation Depends on Proper Settlement of Maritime Disputes,” Xinhua, 31 August 2011.

Vietnam's new Maritime Law.⁶⁶ The June 2012 bureaucratic elevation of "Sansha" from county to a prefectural-level city was also likely a response to what China viewed as Philippine and Vietnamese efforts to strengthen their own claims. Of course, actions taken by Vietnam and the Philippines were a response to Chinese actions.

Nevertheless, two Chinese actions stand out as new and unilateral; both concern hydrocarbon exploration and development. The first involved harassing seismic survey vessels and interfering with their operations, especially the cable-cutting incident in May 2011. Based on the number of Chinese ships from the MSF that were involved and the content of the MFA's response, this appears to have been an effort to clearly signal China's opposition to such Vietnamese activity. The second was CNOOC's June 2012 announcement of nine exploration blocks in the South China Sea that overlapped with Vietnam's. Finally, when the standoff over Scarborough Shoal ended in June 2012, China remained in effective control of this feature and the waters around. In this way, China has altered and redefined the status quo regarding this feature.⁶⁷

At the same time, China has chosen not to undertake other more provocative measures. Diplomatically, top Chinese leaders have not publicly visited any of the Spratly Islands. Militarily, China has not actively used naval forces to enforce its claims to maritime rights nor has it sought to use armed force. Instead, China has relied on its civil maritime law enforcement agencies, especially the Bureau of Fisheries Administration and the MSF.⁶⁸ Relying on these civilian agencies appears to be a deliberate choice and suggests that China has sought to limit the potential for escalation through how it chooses to assert and enforce its claims to maritime rights.

The rise and fall of Chinese moderation

Starting in mid-June 2011, China adopted a more moderate approach to managing its claims in the South China Sea after it realized that its behavior in the previous two years had backfired. The purpose of this shift was to ensure that the disputes in the South China Sea did not harm China's broader foreign policy objectives, especially its ties with regional states. Through this approach, Beijing sought to project a more benign image to prevent the formation of a group of East Asian states allied against China, reduce Southeast Asian

⁶⁶ Interview, China, June 2012.

⁶⁷ M. Taylor Fravel, "China's Island Strategy: 'Redefine the Status Quo,'" *The Diplomat*, 1 November 2012.

⁶⁸ One of China's other civil maritime law enforcement agencies, the coastal defense units of the Border and Maritime Defense Force (*bianhaifang budui*) known as the "maritime police" (*haijing*) has not been active in the South China Sea disputes. These are People's Armed Police units under the Ministry of Public Security and are responsible for policing Chinese ports and coasts.

states' desire to further improve ties with the United States, and weaken the rationale for a greater U.S. role in these disputes and in the region. The elevated profile of the United States in the South China Sea disputes after 2010 helped to push China in this more moderate direction and, for a time, enhanced stability. China's turn toward moderation, however, began to unravel during and after the standoff over Scarborough Shoal in April 2012.⁶⁹

China's shift to moderation contained several components: First, since August 2011, China's top leaders, including President Hu Jintao and Premier Wen Jiabao, re-affirmed the late Deng Xiaoping's guiding principle for dealing with China's maritime conflicts of "setting aside disputes and pursuing common development."⁷⁰ Hu Jintao, for example, emphasized this approach during the August 2011 visit of Philippine President Benigno Aquino III. Hu stated that, "Before the disputes are resolved, the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas."⁷¹ Hu apparently did not stress the first element of Deng's guideline emphasizing Chinese sovereignty, which may have been a further effort to reduce tensions.

Second, China reached agreements with other claimant states with the aim of managing tensions, promoting dialogue, and facilitating eventual dispute resolution. In addition to a July 2011 agreement with ASEAN on implementing guidelines for the 2002 Declaration on a Code of Conduct (DoC), China reached a much more substantial agreement with Vietnam in October 2011 over basic principles for resolving maritime disputes that stress using international law.⁷² Both agreements have been implemented. China-ASEAN meetings were held in early 2012. Vietnam and China have set-up a hotline and begun talks over demarcating the southern portion of the Gulf of Tonkin.

Third, separate from, but related to the first point, China's top leaders held high-level meetings with their counterparts to improve broader bilateral relationships. Philippine President Aquino and Vietnamese communist party general secretary Nguyen Phu Trong

⁶⁹ The section draws on Fravel, "All Quiet in the South China Sea."

⁷⁰ Deng's guideline for this dispute was developed in the 1980s. His intent was to delay the resolution of the contested claims and focus on cooperative efforts in order to prevent tensions in the dispute from harming China's broader bilateral relations with other claimant states. Events between 2009 and 2011 raised questions about whether Deng's guideline still governed China's approach to the disputes in the South China Sea.

⁷¹ "China, the Philippines Agree to Downplay Maritime Disputes, Enhance Economic Ties," Xinhua, 31 August 2011.

⁷² Qin Jize and Cui Haipei, "Guidelines Agreed with ASEAN on Sea Disputes," *China Daily*, July 21, 2011; "Guanyu Zhidao Jiejue Zhongguo Yu Yuenan Haishang Wenti Jiben Yuanze Xieyi [Agreement on Basic Principles Guiding the Resolution of Maritime Issues between China and Vietnam]," Ministry of Foreign Affairs (China), October 12, 2011, <<http://www.fmprc.gov.cn/chn/gxh/tyb/zyxw/t866484.htm>>.

visited Beijing in August and October 2011, respectively. Likewise, Vice President Xi Jinping traveled to Vietnam in December 2011 as part of a Southeast Asian tour.

Fourth, authoritative Chinese-language media such as the *People's Daily* underscored the importance of a cooperative approach in the South China Sea.⁷³ Many of these appeared in the “International Forum” column under the name Zhong Sheng, which is a pen-name for the editors from the international department. Such articles are written largely to explain policy decisions to domestic readers, especially those working within party and state bureaucracies. Shortly after the July 2011 meeting of the ASEAN Regional Forum, for instance, the print edition of the *Renmin Ribao* included a full page devoted to the importance of pursuing joint development that was described as an “authoritative forum” (*quanwei luntan*).⁷⁴ Such a collection of essays on the South China Sea in the official newspaper of the Chinese Communist Party may be unprecedented and was likely designed to signal “unify thought” (*tongyi sixiang*) within the party on this issue.

Fifth, China engaged other claimants by establishing a 3B *yuan* (476 million US dollar) China-ASEAN Maritime Cooperation Fund (November 2011), hosting several workshops on oceanography and freedom of navigation in the South China Sea (December 2011), and hosting a meeting with senior ASEAN officials to discuss implementing the 2002 code of conduct declaration (January 2012).

Finally, China has halted the more assertive behavior that attracted so much adverse attention between 2009 and 2011. Vessels from the Bureau of Fisheries Administration have detained and held only nine Vietnamese fishing vessels since late 2010 (as of July 2012). Patrol ships from the State Oceanographic Administration have not interfered in Vietnamese or Philippine hydrocarbon exploration activities since May 2011. More generally, China has not obstructed related exploration activities, such as Exxon’s successful drilling of an exploratory well in Vietnamese waters claimed by China in October 2011.

This all began to change, starting with the standoff over Scarborough Shoal in April 2012 and especially since June 2012; Chinese actions suggest that it may be abandoning at least part of its more moderate approach. China’s response to the standoff at Scarborough itself did not necessarily represent a change in China’s approach to the disputes in the South China Sea. China viewed this as a bilateral dispute with the Philippines and clear challenge to its claim of territorial sovereignty over the shoal. As discussed above, the Philippine use of a naval vessel created a strong incentive for China to respond. As the standoff continued, with maritime law enforcement vessels from both countries stationed near the shoal, China

⁷³ The section draws on Fravel, “All Quiet in the South China Sea.”

⁷⁴ See *Renmin Ribao*, August 2, 2011, 23.

began to adopt a tougher stance. In particular, using indirect pressure, China quarantined bananas from the Philippines in Chinese ports and halted tourist groups to the Philippines.

In June 2012, China took a series of unilateral steps to strengthen its claims in the South China Sea. As mentioned above, in mid-June, the State Council announced the elevation of the Sansha administrative office from a county-level unit to a prefectural-level city with the aim of accelerating efforts to develop these islands and the waters of the South China Sea. The following week, CNOOC invited bids for nine exploration blocks in the middle portion of the South China Sea.⁷⁵ These blocks, which lie within the 200nm EEZ that Vietnam claims from its coast, overlapped with areas where Vietnam has signed contracts with foreign oil companies. A few weeks later, the State Oceanographic Administration dispatched four vessels on a training exercise in the middle and southern portion of the South China Sea to demonstrate China's claims.⁷⁶ Finally, in July, a fleet of thirty fishing vessels conducted a two-week cruise in the Spratlys to fish at Chinese-held reefs.⁷⁷

China has returned to more unilateral actions for several reasons. First, Chinese leaders may have concluded that the moderate approach from mid-2011 had failed to assuage the concerns of all claimants and reduce what Beijing viewed as challenges to its claims. In particular, the Philippines conducted very active and public diplomacy regarding its claims despite China's shift to a more moderate approach. These efforts included pushing for proposals that China viewed as harming its claims at the East Asian Summit, attempting to persuade ASEAN in April 2012 to negotiate a code of conduct without China, and seeking international attention and support during the standoff at Scarborough Shoal.

Second, although China managed to improve ties with Vietnam in the past year, several Vietnamese actions in June probably strengthened the argument in China for a return to a more unilateral approach, including Vietnam's first patrol of the islands with advanced Su-27 Flanker fighter aircraft flying as low as 500m over disputed features and the National Assembly's passage of a Maritime Law that affirmed Vietnam's claims over the Paracels and Spratlys. Finally, growing tensions with Japan amid plans by Tokyo's governor to purchase three of the Senkaku Islands likely underscored the importance of strengthening China's maritime claims everywhere.

At the 2012 meeting of the ASEAN Regional Forum, China continued to signal its willingness to pursue a more moderate approach. Foreign Minister Yang Jiechi repeated Deng Xiaoping's policy of "shelving disputes and seeking joint development" and indicated Chi-

⁷⁵ Fravel, "South China Sea Oil Card."

⁷⁶ "Chinese patrol ships reach Nansha Islands," *Xinhua*, 4 July 2012.

⁷⁷ Huang Yiming and Jin Haixing, "Fishing vessels set off for Nansha Islands Updated," *China Daily*, 13 July 2012.

na's willingness to hold "discussions on [a Code of Conduct] on the basis of full compliance with the [Declaration on a Code of Conduct] by all parties." He also repeated that maritime delimitation should be "in accordance with international law, the UNCLOS included."⁷⁸ In early August 2012, China communicated its willingness to continue to deepen ties with ASEAN in perhaps an effort to prevent the disputes in the South China Sea from harming other objectives. As a result, China has not completely abandoned a more cooperative and less unilateral approach. Nevertheless, China is now pursuing its own hedging strategy, combining efforts to strengthen its own claims unilaterally while agreeing in principle to hold talks when "conditions are ripe."

Conclusion

States have increased their efforts to claim, assert, exercise, and enforce competing claims to maritime rights in the South China Sea. The United States has a direct stake in freedom of navigation in the South China Sea and in regional stability more generally, including the peaceful resolution of disputes. Nevertheless, the disputes over maritime rights and territorial sovereignty in the South China Sea pose distinct challenges that United States must navigate going forward.

On the one hand, the United States should reaffirm its interests in the region when they may be challenged. At the July 2010 meeting of the ARF, for example, Secretary of State Clinton clearly articulated U.S. interests in the South China Sea, including freedom of navigation, unimpeded commerce, respect for international law, and peaceful dispute resolution.⁷⁹ The unprecedented expression of American interests in this dispute helped produce China's July 2011 agreement with ASEAN on implementing guidelines.

China seeks to limit the U.S. role in resolving the South China Sea disputes, and hoped that it could limit discussion of the issue at the 2011 ARF meeting by instead concluding the agreement with ASEAN (which does not include the United States). In this instance, U.S. diplomacy helped prevent tensions from escalating further. Yet on the other hand, the United States should maintain its longstanding principle of neutrality and not taking sides in the territorial disputes of other countries. The disputes in the South China Sea are complicated and multifaceted. To the extent that U.S. policy takes sides in these disputes – or is perceived as taking sides – it risks transforming these disputes into a bilateral conflict between the United States and China. And to the extent that claimant countries believe that the United States will defend their actions against China, they may take bolder and riskier actions that could increase instability in the South China Sea.

⁷⁸ "Foreign Minister Yang Jiechi on the South China Sea Issue," Ministry of Foreign Affairs, 12 July 2012, <http://www.fmprc.gov.cn/eng/zxxx/t950626.htm>

⁷⁹ Clinton, "Remarks at Press Availability."

These challenges for the United States were evident just before the November 2011 East Asian Summit in Bali, Indonesia. During a press conference in Manila three days before the summit, Secretary of State Clinton appeared to side with the Philippines by referring to “disputes...that exist primarily in the West Philippine Sea between the Philippines and China.”⁸⁰ The West Philippine Sea is the name that the Philippines began to use in June 2011 to refer to the South China Sea (which is the standard name for this body of water).⁸¹ Reinforcing this interpretation, Voice of America published an article entitled “US Secretary of State Backs Philippines in South China Sea Dispute.”⁸² Similarly, the Philippines viewed American policy as supporting its position in the dispute. According to the Philippine presidential spokesperson, the U.S. presence “bolsters our ability to assert our sovereignty over certain areas.”⁸³

As a result, Clinton’s statements not only appeared to undermine the principle of maintaining neutrality in other countries territorial disputes, but may also embolden the Philippines in the future to be more assertive in the South China Sea. More recently, a statement issued by the State Department in early 2012 appeared to lean toward taking a position against China. Although the statement declared American neutrality, it cited only Chinese actions as sources of instability and endorsed for the first time international arbitration for resolving the disputes that is favored by the Philippines.⁸⁴

Looking forward, the United States must balance efforts to maintain stability in the South China Sea against actions that could inadvertently increase instability, especially greater involvement in the resolution of the dispute itself. The United States should affirm the principles that Secretary of State Clinton articulated in July 2010 and apply them equally to all claimants in the South China Sea disputes. The United States should not take a position on what specific modes or forums should be used to resolve or manage these disputes, so long as they are agreed upon by the claimants without coercion. The United States should not offer to facilitate talks or mediate the disputes because China will view this as a direct involvement in its sovereignty questions. The United States should ratify UNCLOS, which embodies customary international law in the maritime domain. Ratification would increase the legitimacy of U.S. efforts to pursue a rules-based approach to managing and resolving

⁸⁰ “Presentation of the Order of Lakandula, Signing of the Partnership for Growth and Joint Press Availability with Philippines Foreign Secretary Albert Del Rosario,” November 16, 2011, <http://www.state.gov/secretary/rm/2011/11/177234.htm>

⁸¹ China’s name for the South China Sea is the South Sea (*nanhai*). South China Sea is the name used by the Office of the Geographer at the Department of State.

⁸² Simone Orendain, “US Secretary of State Backs Philippines in South China Sea Dispute,” Voice of America, November 16, 2011.

⁸³ Daniel Ten Kate and Julianna Goldman, “Obama Targets Maritime Security as China Spars With Philippines Over Sea,” Bloomberg, November 17, 2011.

⁸⁴ <http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>

disputes over maritime jurisdiction and further enhance the image of the United States among many states in East Asia. Striking the right balance between these policies is necessary for maintaining stability and preventing conflict in the future.