



Maritime Issues in the East and South China Seas

Summary of a Conference Held
January 12–13, 2016

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Preface

Disputes over land features and maritime zones in the East China Sea and South China Sea have been growing in prominence over the past decade and could lead to serious conflict among the claimant countries. Resolving disputes through a negotiated approach could also lead to new opportunities for growing cooperation. To explore differing regional perspectives and identify potential areas for cooperation, the RAND Corporation organized a two-day conference on maritime disputes hosted at RAND's headquarters in Santa Monica, California, on January 12 and 13, 2016. The conference brought together scholars on maritime disputes from China, Japan, Taiwan, and the United States to assess a variety of aspects of the disagreements among the claimants. The conference participants from the RAND Corporation included Michael S. Chase, Rafiq Dossani, Scott Warren Harold, and Joanna Yu Taylor. Outside scholars included Chun-i Chen (National Chengchi University, Taiwan), Tetsuo Kotani (Japan Institute of International Affairs), Cheng-yi Lin (Academia Sinica, Taiwan), Chunhao Lou (China Institutes of Contemporary International Relations), Mira Rapp-Hooper (Center for a New American Security, United States), and Yann-huei Song (Academia Sinica, Taiwan).

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Chapter One. Introduction and Summary of the Proceedings

Rafiq Dossani and Scott Warren Harold

This report is a summary of a conference on maritime disputes in the East China Sea (ECS) and South China Sea (SCS), held on January 12–13, 2016, at the RAND Corporation’s headquarters in Santa Monica, California. Participants discussed disputes arising from increased competition for natural resources and rising nationalism. Disputes over land features and maritime zones in the East and South China Seas have been growing in prominence over the past decade and could lead either to serious conflict among the claimant countries or to new opportunities for growing cooperation. To explore differing regional perspectives and identify potential areas for cooperation, the conference brought together scholars on maritime disputes from China, Japan, Taiwan, and the United States to assess a variety of aspects of the disagreements among the claimants.

This work was conducted by RAND’s Center for Asia Pacific Policy. Eight papers were presented at the conference in a one-day closed session that included presenters and invitees from the research community. The conference continued for a second day, when highlights of the papers and the first day’s discussions were presented to a public gathering.

In this introduction and summary, we provide background on the United Nations Convention on the Law of the Sea (UNCLOS) and outline the historical record that served as a common framework for several of the papers. We then discuss the presenters’ assessments of the historical record and analyses of states’ motivations and strategies. Finally, we provide concluding comments.

Following this introduction and summary are the eight papers presented at the conference.

Key Issues of the Conference

This section discusses context and analytical approaches adopted by conference presenters. The conference participants discussed the situation in the ECS and SCS arising from disputes over ownership of islands and the associated sovereignty rights and maritime zones. The conference papers analyzed causes, assessed risks and trajectories, and recommended stakeholder policies.

The discussion revealed that there could be four quite distinct motives for the disputes. The first motive arises from disagreements over sovereignty or governance rights over islands, each of which may confer various rights.¹ This could be important because either the islands represent

¹ As we discuss later, most of the land features of the disputed island chains are not islands in the technical sense of being able to support habitation independently. In some cases, parties have claimed land features to be islands in order to support their territorial claims, while others have disputed the idea that these land features are islands at all.

economically valuable territory for their own sake (e.g., they offer access to mineral rights on the islands) or the islands extend maritime zones over which a state may claim additional economic or sovereignty rights based on international agreements, particularly the 1982 UNCLOS.² The second motive for a dispute arises from the desire to ensure the security of trade routes. The ECS and SCS are primary trade routes for the littoral states and carry a significant share of world merchandise trade. While the first two motives for disputes arise from the desire to enhance economic wellbeing, the third and fourth motives are noneconomic in nature. The first of these is to improve the security of land boundaries in nondisputed areas, because such security may rely on the ability of navies, coast guards, and other national defense units to freely navigate the waters as needed. The fourth motive is to extend national identity to disputed islands, which could be useful to national security if it enables a state to push its security envelopes farther from its heartland.

The conference focused on the first and fourth motives because these appeared to be the most-important causes of conflict. These are not necessarily distinct reasons and are, in practice, often joint causes of conflict. Note also that the focus on these two motives does not necessarily imply that either is the most critical in its class (economic and noneconomic). On the contrary, the security of trade routes is economically far more important than access to economic rights. However, conference participants thought that interests in unhindered trade generally converge and that there was little or no possibility of trade routes being threatened by the disputes. This might seem questionable to some observers given that, in the recent past, the disputing countries have engaged in limited military action with each other over the islands, leading to loss of life (Glaser, 2012). Further escalation to large-scale military action (including blocking trade routes) did not seem unlikely during those times, but participants felt that this is not a current issue.

Similarly, freedom of navigation by naval and coast guard vessels to protect mainland boundaries can be far more critical to state integrity and existence than extending national identity to the disputed islands, almost all of which have no native population and are incapable of supporting independent habitation. However, because there are currently no significant disputes over mainland boundaries, conference participants did not view this as a critical issue.

But again, one should recognize that threats to freedom of navigation may not be an unthinkable outcome. For example, one of the disputes concerns China's claim over a vast area of the SCS known as the "U-shaped line" or the "9-dash line." If China were to succeed with this claim and exercise effective control over the waters, this would diminish the freedom of navigation of several neighboring countries' forces. For instance, the Philippine Navy's ability to freely access islands within its contiguous zone and even its mainland would require Chinese permission.

On July 12, 2016 (subsequent to when this conference was held), the Tribunal of the Permanent Court of Arbitration at the International Court of Justice issued a long-awaited ruling

² The latter case applies to sovereignty and not mere governance rights.

on a 2013 claim by the Philippines to maritime entitlements in the SCS (Permanent Court of Arbitration, 2016). The Philippines sought judgment on three main issues: that Chinese claims in the SCS must comport with the UNCLOS rather than with historical claims; that maritime features occupied by China in the SCS are rocks, low-tide elevations, or submerged banks but not islands; and that the Philippines' right to operate inside of its exclusive economic zone (EEZ) and continental shelf as outlined by the UNCLOS should be protected from Chinese harassment.

The Tribunal sided with the Philippines on all three issues. How China reacts could have far-reaching consequences for China, the Philippines, the United States, and other nations that depend on a peaceful and integrated Southeast Asia. While China has rejected the court's judgment, the ruling could still lead to a negotiated agreement between China and the Philippines.

As noted earlier, the conference focused on disputes arising from sovereignty and governance conferring access to economic value and the desire of coastal states to extend national identity to disputed areas in the ECS and SCS.

In some cases, national identity was the initial driver of the dispute. For instance, Japan's nationalization of most of the Senkaku (Japanese)/Diaoyudao (Chinese)/Diaoyutai (Taiwan) Islands was an act of extending national identity to a region that it already governed and over which it exercised economic rights. The economic value of nationalization of the Senkaku Islands was, therefore, not a consideration. China's response of asserting its ownership over these islands in response to the Japanese nationalization was similarly an attempt to extend its national identity.

In other cases, economic value is the driver. For instance, the depletion of near-shore fishing resources resulting from overfishing in the SCS has driven the littoral states' fishing industry to move to deep-sea fishing beyond the 200-nautical mile (nmi) EEZ that extends from a country's territorial sea baseline. One way for a state to secure exclusive rights in these areas for its fishing industry is to establish territorial control over islands, which extends the EEZ.

In still other cases, the motives are jointly economic and nationalist. China's 2014 establishment of a deep-sea rig (HYSY 981) within Vietnam's overlapping EEZ with China and within the contiguous zone of the Paracel Islands appears to have been both to explore the potential for oil in the area (the economic factor) and to establish China's ownership of the Paracel Islands (the national identity factor).

Key Features of the United Nations Convention on the Law of the Sea

Although the sources of several of the disputes go back many years, the guiding document for assessing the legal merits of disputants' claims is the 1982 UNCLOS, which has been endorsed by almost every country that claims a maritime zone.³ All the countries with an interest

³ This section is based on the UNCLOS's official document (United Nations, 1970).

in the area, except for Taiwan (which is not a member of the United Nations) and the United States, are signatories to the UNCLOS.

Under the UNCLOS, three nautical zones are identified for coastal states. First, coastal states may exercise sovereignty over their territorial sea up to 12 nmi from the shore. Foreign vessels are allowed “innocent passage” through these waters, and all ships and aircraft are allowed “transit passage” through straits used for international navigation. Beyond the territorial sea, states may operate within a further 12 nmi, termed the “contiguous zone,” for the purpose of protecting the territorial sea from customs, immigration, and other violations. Second, coastal states have sovereign rights in a 200-nmi EEZ with respect to natural resources and other economic activities. They are also responsible for marine science research and protection within the EEZ. All other states have freedom of navigation and overflight in the EEZ, as well as the freedom to lay submarine cables and pipelines. Third, coastal states have sovereign rights over the continental shelf for exploration and exploitation, up to 200 nmi from the shore, and potentially more under specific circumstances.

Beyond 200 nmi, coastal states generally have no protected rights, but they may enter into joint ventures with other members of the international community.⁴ Further, the relevant land mass from which the territorial sea, EEZ, and continental shelf are measured may not include “rocks”—that is, land masses that cannot sustain human habitation or economic life on their own. Two states with overlapping zones in the territorial sea are expected to cooperate in arriving at limits to zones, but neither state is entitled to extend its territorial sea beyond the median line between the two states. Beyond the territorial sea, the UNCLOS does not specify a median line but requires cooperation with and reference to international law, if needed. International law has tended to use the median line for dispute settlement.

Under the UNCLOS, all disputes must be settled peacefully. Resolving disputes is expected to follow a process, beginning with negotiation and moving, as needed, to mediation, good offices, conciliation, arbitration, and judicial settlement. An International Tribunal for the Law of the Sea was established under the UNCLOS to deal with disputes arising within maritime zones, such as disputes over fishing rights. Recourse for most maritime disputes may be had to the International Court of Justice as well. Note that the International Tribunal for the Law of the Sea’s jurisdiction only extends to matters arising from the UNCLOS and does not include sovereignty disputes, whereas the International Court of Justice’s jurisdiction is more general and includes disputes over sovereignty.

The Historical Record of Disputes in the East and South China Seas

In this section, we summarize the historical record of disputes in the ECS and SCS, based on the comments and insights of the conference participants and paper writers.

⁴ UNCLOS allows some exceptions to the 200-nmi limit, including when the continental shelf extends beyond that distance.

Disputes in the East China Sea

The ECS is the marginal sea located to the east of China and is also bounded by Japan, North Korea, South Korea, and Taiwan. The SCS is the marginal sea located to the south of China and is also bounded by Brunei, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam.

In the ECS, the dispute concerns the Senkaku Islands. There are five islands in the chain, located about 125 miles from Taiwan's baseline, about 250 miles from China, and about 600 miles from Japan.⁵ For several hundred years, the islands were under Chinese control. Then, after Japan's 1895 defeat of the Qing dynasty, Japan controlled the islands under the Treaty of Shimonoseki. Following Japan's defeat in World War II, the United States assumed control of these islands. Japan's cession of these territorial claims was formalized under the 1951 San Francisco Peace Treaty.

In 1972, under the Okinawa Reversion Agreement, the United States returned the islands to Japan's administrative control (governance control), although it clarified, prior to announcing the agreement, that governance would in "no way prejudice the underlying claims of the Republic of China" (U.S. Department of State, 1971; see Chapter Six of these conference proceedings). Both China and Taiwan have officially disputed the validity of the Okinawa Reversion Agreement.

The initial rounds of conflict between Japan and its disputants involved Taiwan more than China (see Chapter Six). There have been several incidents of confrontation between Taiwanese fishermen and the Japanese Coast Guard since 1972, but until 2012, there was only one incident that involved China. This happened in 2010 when a Chinese fishing trawler allegedly piloted by a drunken captain collided twice with Japanese Coast Guard vessels within the 12-nmi territorial zone around the Senkaku Islands. China later sent China Fisheries Administration ships to the area.

Prior to that, in 2000, China and Japan signed a fisheries agreement to jointly develop fisheries resources in the ECS, but this agreement did not cover the Senkaku Islands. In 2008, China and Japan agreed to joint development of maritime resources along the median line of the ECS, although China has not agreed to hold such an agreement as legally binding. China has extracted gas from offshore fields on its side of the median line, while Japan has officially claimed that this extraction siphons gas from fields that lie on its side of the median line.

In 2012, the two countries agreed to establish crisis management systems in order to reduce the risk of maritime confrontation. However, the two sides were unable to agree on the area to be covered. Tokyo has sought a median line settlement, maintaining that it is in line with the UNCLOS framework,⁶ while Beijing claims the waters up to the Okinawa Trough based on the extension of its continental shelf.

⁵ Under the UNCLOS, a "baseline" is measured from the nearest point on a state's mainland (or main island) to a maritime feature.

⁶ However, as discussed earlier, the UNCLOS specifies the median line as the applicable boundary only for territorial seas.

In 2012, Japan nationalized three of the five Senkaku Islands that had been privately owned by a Japanese citizen. It has also subsequently stepped up Japanese defenses around the islands. For instance, Japan has established a radar station near the Senkakus and invested in an amphibious rapid deployment brigade, helicopters, and anti-ship and anti-aircraft missiles (see Chapter Five).

The 2012 nationalization was followed by official protests by China. China subsequently announced the Baselines of the Territorial Waters of the Diaoyudao and Their Affiliated Islets and deposited the details with the United Nations. Later that year, China made a submission to the United Nations Commission on the Limits of the Continental Shelf regarding claims under continental shelf rights to the Senkakus. China also declared the islands and adjacent waters as coming under its own surveillance system. It sent naval ships to encircle the islands, announced an air defense identification zone over the islands in 2013, and started regular patrols to the disputed waters.

Since 2014, there have been diplomatic exchanges between Japan and China on the disputed islands. In 2014, the United States affirmed its commitment to defending the Senkaku Islands as falling within its alliance obligations with Japan, and China has reduced the frequency of its patrols to the disputed waters.

Meanwhile, in 2013, Japan and Taiwan signed a fisheries agreement that covered the overlapping EEZ arising from Japan's control of the Senkakus (see Chapter Two). Although the agreement did not cover the territorial seas of the Senkaku Islands, it widened the area of operation of Taiwanese fishing boats within the overlapping EEZ.

Disputes in the South China Sea

The SCS disputes discussed at the conference concern two island chains.⁷ One is the Parcel Islands, a chain of 30 islands, some of which lie in the overlapping EEZs of China and Vietnam (and are roughly 200 nmi from each country). Both countries claim the Parcel Islands on the grounds of historical control (see Chapter Four). None of the islands has a native population.

The other is the Spratly Islands, which is a sprawling chain of more than 750 “islands” and related features, none of which has a native population and almost all of which are arguably incapable of supporting habitation independently—that is, they may be rocks rather than islands.⁸ The Spratly Island chain lies near the southern edge of the SCS and within the EEZs of Brunei, Malaysia, and the Philippines; all three states claim the chain. China, Taiwan, and Vietnam are also claimants on the grounds of historical control.

The Parcel and Spratly Islands have changed ownership multiple times in the 20th century. They were under Chinese control until 1933, when France invaded and took control of both

⁷ A third island chain under dispute is the Scarborough Shoal, which lies within the Philippine EEZ and is an uninhabited collection of rocks, shoals, and reefs. In 2012, China ejected the Philippine Navy from Scarborough Shoal and now claims control of the shoal. The conference did not address this dispute.

⁸ Taiwan has claimed that the land it controls in the SCS, Taiping Island, is an island, rather than a rock.

chains. This lasted for five years until Japan took control from the French in 1938 and made them part of Taiwan. In 1945, as part of the Japanese surrender, the islands were handed to the Republic of China. However, under the 1951 San Francisco Treaty, while Japan ceded control, the islands were not awarded to any other state either for administrative control or on a sovereign basis.

After the Communist takeover of China, the Chinese government established a garrison on Yongxing (Woody) Island, the only inhabitable island in the Paracels, while Taiwan put troops on Taiping (Itu Aba) Island, the largest land feature in the Spratly Islands (see Chapter Five). Two years after the 1954 separation of Vietnam into North and South Vietnam, North Vietnam formally accepted that both islands were historically Chinese, while South Vietnam announced that it had annexed both island chains. In 1974, South Vietnamese troops attempted to capture the Paracel Islands from China but lost the battle, including a long-held outpost (Woody Island). After the unification of Vietnam in 1975, the government of Vietnam renewed its claim to the Paracel Islands. A naval clash occurred in 1988 between China and Vietnam, with both sides accusing the other of intruding on occupied islands. More than 60 Vietnamese lost their lives in that clash. In 2014, China placed an oil rig in the waters near the Paracel Islands, leading to a confrontation between maritime law enforcement vessels of both nations. However, there was not loss of life in this incident.

At the time of writing, control over the larger Spratly Islands is divided between Vietnam (29 islands), the Philippines (9 islands), China (7 islands), Malaysia (5 islands), and Taiwan (1 island, but the largest and most habitable, Taiping Island). Brunei is the only claimant without land control in the Spratly Islands (Austin, 2015; U.S. Department of Defense, 2016). By 2012, all claimants except China had established airstrips on their islands.

Since then, China has been the most active of the disputing states. It established an administrative body, Sansha City (located in the Paracel Islands), which administers its territory in the SCS. It has reclaimed land in the Spratly Islands and has built airstrips on three of the islands that it controls: Fiery Cross Reef, Subi Reef, and Mischief Reef.

The smaller Southeast Asian countries have sought outside help in building their defense against what they perceive to be growing Chinese hegemony in the SCS. In 2015, the United States committed to a \$425 million Southeast Asian Maritime Security Initiative aimed at helping Indonesia, Malaysia, the Philippines, and Vietnam with equipment and training for maritime security assistance. Additionally, that same year, the United States undertook freedom of navigation operations by sending naval vessels within 12 nmi of Subi Reef and Mischief Reef. The United States has also been focused on building partner capacity in the region. In 2014, it signed defense cooperation agreements with the Philippines for rotational base access and with Singapore for rotational access for up to four littoral combat ships.

Both the Philippines and Vietnam have sought help from the Association of Southeast Asian Nations (ASEAN) in containing what they believe to be China's aggressive post-2012 expansions in the Spratly Islands. However, there has been no progress in this regard, and

ASEAN itself is divided on its approach. For instance, China allegedly succeeded in blocking a joint ASEAN declaration on the SCS at the third ASEAN Defense Ministers' Meeting Plus in November 2015 by successfully dividing ASEAN countries on the issue.

In January 2013, the Philippines sought international arbitration over whether the U-shaped line is consistent with the UNCLOS. China rejected participation in the tribunal. The Arbitral Tribunal's decision was delivered in July 2016, as discussed earlier.

In summary, unlike in the Paracel Islands, the coastal states that are disputants in the Spratly Islands have avoided engaging each other in violent clashes. Instead, they have sought to respond in one or more of three ways: claim control and establish defensive capacity in previously uninhabited and uncontrolled areas, build coalitions, or apply to international law courts.

Diplomatic Efforts to Resolve Disputes

While tensions have risen among the disputants overall, particularly since China's post-2012 activities, efforts to defuse tensions have also been ongoing. In 2002, the ASEAN and China signed the Declaration of the Conduct of Parties in the South China Sea, under which all parties agreed to enhance favorable conditions for a peaceful and durable solution of differences and disputes among the countries concerned (see Chapter Eight). The agreement reaffirmed a commitment to international law and to the freedom of navigation in the SCS. All parties also agreed to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force. Further, the parties agreed to exercise self-restraint in taking actions that could complicate or escalate disputes. All parties agreed to work toward adopting an official Code of Conduct.

In 2005, China, Vietnam, and the Philippines signed an agreement on a seismic survey of the Spratly Islands (see Chapter Four). Beijing was to collect data, Hanoi would process the data, and Manila would analyze the data. However, domestic opposition in the Philippines is believed to have stopped progress. In 2011, China and the ASEAN agreed to establish a maritime cooperation fund into which China would contribute 3 billion Chinese yuan (RMB); in 2015, China sought to tie this fund into its 21st Century Maritime Silk Road initiative. In 2015, Taiwan agreed with the Philippines on law enforcement cooperation for fisheries issues.

Lessons from Global Experience in Resolving Maritime Disputes

In this section, we discuss the work of Yann-huei Song and what it can tell us about dispute resolution. In his study of maritime disputes in the ECS and SCS in this volume (see Chapter Two), Song argues that resolution has historically taken two trajectories. First, the parties have submitted the issue to legal settlement by an external party, such as the International Court of Justice or the International Tribunal for the Law of the Sea. Alternatively, the parties have sought to negotiate a resolution themselves.

The items for resolution typically cover sovereignty over territorial islands and waters, demarcation of overlapping EEZs, or sharing of maritime rights in overlapping territorial waters.

In several cases, the concerned parties have chosen not to try to resolve disputes over economic rights or territorial land or water. Instead, they have focused on sharing the benefits of economic rights in the disputed areas. Such approaches have typically adopted the following sequence of agreements and commitments:

1. separate the sovereignty dispute from current control (or “governance”) and establish a tacit pact to agree to disagree on sovereignty and agree instead on governance and resource management
2. commit to refrain from unilateral action during the negotiating process
3. agree on joint resource exploitation for economic gain.

Such joint exploitation of economic rights has typically been achieved through bilateral negotiations. Achieving the first two of the above agreements and commitments might be deemed to be a partial success, while agreeing on all three might be described as a complete success of sharing economic value. The relevance of such an approach, as the historical record shows, is that it could act as a confidence-building measure that can contribute toward ultimately enabling the resolution of both territorial disputes and disputes over ownership of economic rights. For instance, Iceland and Norway entered into a dispute in 1979 over ownership of Jan Mayen, a volcanic island in the North Atlantic Ocean. After several months of negotiation, the two sides agreed to a formula for sharing fisheries resources in the area in 1980. Shortly thereafter, they agreed to refer the dispute over ownership of Jan Mayen to a United Nations Conciliation Commission, whose order was agreed to by both sides.

However, in Asia, this sequential approach has been tempered by other concerns. While the approach has the merit of preempting immediate disputation with the potential for escalation to violence, it might, in some cases, delay the outcome and worsen the clashes when they do occur. This is because, by then, the relative power of one of the disputants may have increased. This appears to be a worry about China among some of the SCS disputants, for instance.

Song’s analysis shows that, of 22 major sovereignty disputes over maritime zones in the post–World War II period globally, ten were resolved. Of these, eight were settled through mutually agreed recourse to judicial or other external settlement, and two were settled through bilateral negotiations between the affected parties.

Of the 12 unresolved cases, seven shifted to a focus on negotiating a sharing of the resources in the disputed areas. Of these, three were complete successes, leading to an agreement on sharing economic value; three were failures and led to renegeing even on the principle to set aside sovereignty disputes; and one was a partial success, with no unilateral action but also no agreement. This history shows how difficult even outcomes with obvious economic benefit are to achieve when noneconomic issues intervene.

Of the 22 sovereignty disputes analyzed by Song, the following six are located in the ECS or SCS:

- Japan, China, and Taiwan's dispute over the Senkaku Islands (unresolved)
- Indonesia and Malaysia's dispute over Sipadan and Ligitan Islands in the SCS (resolved through judicial settlement in 2002)
- Singapore and Malaysia's dispute over Pedra Branca/Pulau Batu Puteh (White Rock) (resolved through judicial settlement in 2008)
- Middle Rocks and South Lodge in the SCS (resolved through judicial settlement in 2008)
- China and South Korea's dispute over Ieodo/Suyanjiào (Socotra Rock) in the ECS (unresolved, and partially managed bilaterally)
- disputes over the Paracel Islands between China and Vietnam and over the Spratly Islands between Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam (unresolved).

In all the cases of unresolved sovereignty disputes, negotiations took place to reach agreement on jointly exploiting economic value. Of these, one case, between China and South Korea over Ieodo/Suyanjiào (Socotra Rock), is a partial success. Both sides remain committed to setting aside issues of sovereignty and have refrained from unilateral actions. However, an agreement on joint exploitation has not been reached.

In the other two cases, the failure to reach agreement on joint exploitation has led to unilateral actions and to renegeing even on the principle to set aside sovereignty disputes.

For instance, the Vietnamese government-owned oil firm Petro Vietnam has signed several deals with international firms for oil exploration since 1978; government-owned firms from the Philippines, Malaysia, and Brunei have done the same. In addition, China has pursued deep-sea exploration in the SCS, as well as in undisputed areas of the ECS. China's HYSY 981 rig triggered protests in Vietnam but did not yield much value to China.

Thus, we see that the frameworks set up for dispute resolution of sovereignty issues under the UNCLOS following the failure of negotiations—mediation, good offices, conciliation, arbitration, and judicial settlement—have been used in some cases in the ECS and SCS but not in others. In the cases in which the frameworks for resolution have not been used, the disputing parties appear to see no reason to submit for external resolution a dispute in which the historical record is mixed, and which they might lose. Further, we see that there has been a willingness to set aside sovereignty issues and negotiate the sharing of economic benefits, but complete success has usually been elusive.

Coastal States' Motivations and Strategies

In the rest of this introduction and summary, we review the motivations, strategies, and future trajectories of the different parties to the disputes in the ECS and SCS, as assessed by the conference paper authors.

Regional Approaches to Territorial Dispute Management

As the above examples of territorial disputes show and as Tetsuo Kotani notes in Chapter Three, China is at the center of maritime disputes in the East and South China Seas. As Kotani argues, this is related to a changing global power balance. The economic emergence of China as a middle-income country enables it to challenge the once-overwhelming presence of the United States. While the exact date of China's emergence is hard to pin down, it had already begun with the start of the Xi Jinping administration in 2012.

For instance, if we compare China's action following the 2010 collision of a Chinese fishing trawler with two Japanese Coast Guard vessels with its action following Japan's nationalization of the Senkaku Islands, then it appears that the magnitude of China's response was very different and suggests an emerging sense of regional power and influence on China's part.

Similarly, China protested but did not otherwise respond to Vietnam's build-up of "acquiring" islands in the Spratly Island chain, which began in the 1990s. While the other countries began building airstrips on islands under their control earlier—Vietnam in 1976, the Philippines in 1978, Malaysia in 1983, and Taiwan in 2006—China began building an airstrip in the Spratly Islands only in 2014. When it did "respond," the scale of the response was much larger than its disputants' action, suggesting, again, an emerging sense of regional power and influence.

These Chinese responses may, in turn, have influenced its disputants to increase their activity, leading to rising tensions in the region. For instance, Japan revised its National Defense Program Guidelines in 2013 to permit for "dynamic joint defense," a concept that envisions maintaining military superiority in defense of the Senkaku Islands. Japan then strengthened its alliance with the United States by persuading President Barack Obama to confirm the alliance's commitment to the Senkaku Islands in 2014. On the ground, both sides have stepped up their naval and coast guard presence around the disputed islands.

According to Kotani, while China has had to accommodate for the Japanese and American presence in the ECS because of the superior military capabilities of these countries, this has been less of a concern for China in the SCS, where the other disputant Southeast Asian states are smaller and have less military capability. As discussed, these smaller states' strategies include internationalizing their disputes, such as by seeking U.S. and Japanese support; working through ASEAN; and, in general, seeking to use coalitions to increase collective power against suasion by China.

Such balancing is a common strategic response globally when a group of small states faces a single large power (Fearon, 1998). China, as the leading power, has also responded typically: It has sought to impede the formation of coalitions that weaken its negotiating power and has preferred bilateral negotiations. Although force has been used in disputes in the Paracel Islands by both Vietnam and China, this has not happened in the Spratly Islands.

Navigating Through Troubled Waters by Joint Development

In his paper, Chunhao Lou argues that, while all states may arguably be said to possess nationalistic impulses, the conversion of such impulses into a willingness to confront other states over long-held disputes requires internal policy changes or external provocation (see Chapter Four). He argues that there were three such occurrences of relevance to the ECS and SCS. In the ECS, it was Japan's rising internal nationalistic impulses that led it to nationalize the Senkaku Islands. China's rising level of activity in the region was the second occurrence, stemming from its emergence as a significant economic power. And third, the Philippines and Vietnam, which had been interested in pressing their claims in the SCS, were better able to do so by the U.S. "pivot" to Asia.

Lou argues that resource competition has been a significant factor in disputes in the ECS and SCS. This applies to both hydrocarbons and fish resources.

In the late 1960s and early 1970s, hydrocarbon surveys showed promising estimates of reserves in the SCS and stimulated exploration and development. The U.S. Energy Information Administration estimated in 2013 that the SCS contains 11 billion barrels of oil reserves and 190 trillion cubic feet of natural gas reserves. Chinese estimates have been even more optimistic. The China National Offshore Oil Corporation (CNOOC) estimates that the SCS contains 125 billion barrels of oil and 500 trillion cubic feet of natural gas. Other estimates have been more conservative, and some analysts argue that the disputed areas contain relatively little oil and gas, the vast majority of which lie outside the U-shaped line.

The ECS is also believed to contain rich oil resources. The U.S. Energy Information Administration estimates that the ECS has 200 million barrels of oil, while a Chinese assessment estimates reserves at between 70 and 160 billion barrels. The ECS's hydrocarbon reserves are mostly located on the Chinese side of the Okinawa Trough, or west of Japan's proposed median line. Japan has, however, argued that China's exploration siphons off resources from what it claims to be the Japanese side.

Maritime protein is the other major resource in the seas. The SCS is the traditional fishing ground for all the disputants, as the sea contains more than 2,500 types of fish with commercial value. The average catch is 20 million tons per annum, or 25 percent of the world's total haul of fish, with about half of that caught within the U-shaped line. The SCS states alone produce 8 million tons per annum, or 10 percent of the world's catch.

The ECS is also a vital source of fish. China's catch from the ECS alone accounts for nearly half of its total marine production. Over-fishing for the past several decades in the ECS has depleted near-shore resources, leading to ever-greater deep-sea fishing.

The depletion of near-shore fisheries resources and on-shore oil and gas, combined with economic growth, imply growing competition for deep-sea fish and hydrocarbon resources, and potentially more unilateralism. Hydrocarbons are seen as justifying strategic initiatives by the

flagship oil firms of the claimants, such as CNOOC, Petro Vietnam, the Philippine National Oil Company, and Petronas (Malaysia), all of which play a role in setting national strategy.

Relative to hydrocarbons, fisheries competition is more tension-ridden because all the disputing countries are large fish producers, with large populations reliant on fishing for their livelihoods. As a result, far more lives have been lost to fisheries disputes than to hydrocarbon disputes. A collision between a coast guard vessel and a fishing trawler may more strongly influence domestic politics and ruling-class legitimacy than the establishment of an oil well in a disputed area. Further, civilian fishermen are more difficult to regulate and manage than oil drillers, which are mostly state-owned. As a result, disputes over fishing rights tend to attract greater policymaker attention than hydrocarbon disputes. Lou suggests that separating fisheries disputes from other disputes and focusing policymaker attention on resolving these might lower the temperature in the face of multiple disputes.

Lou argues that not all the affected coastal states have felt the need to exert their presence for either nationalist or economic reasons. Malaysia and Brunei, in particular, have taken a low-profile approach to oil and gas exploration. The difference, he argues, appears to arise from both lower internal nationalistic impulses and an unwillingness to confront other claimant states, particularly China. This contrasts with Japan, Vietnam, and the Philippines, which have come to distrust China and believe that it is merely buying time with its approach to set aside disputes and pursue joint development. These countries' current assertiveness reflects their assessment of using a window of opportunity when China is rising but has not yet fully risen. Note that the difference in assessments of China by the different states does not arise from differences in economic relations, because all the states have significant trading and investment relations with China. Instead, at least partially, distrust may be related to older conflicts. Malaysia and Brunei have not had the complex and difficult relations that Japan and Vietnam have had with China before and after the World Wars. The Philippines' experiences with China were part of the Cold War, when the Philippines allied with the United States after World War II. However, the absence of actual confrontations historically suggests, according to Lou, that the Philippines' current willingness to confront China in the SCS is at least partly a result of the security umbrella provided by the United States, whereas the other states are less willing to confront China without such an umbrella.

To its neighbors, China's late emergence provides confirmation of its desire to exercise influence over the region. On the other hand, China feels that it needs to behave unilaterally because the bilateral and multilateral approaches, in which it invested considerable time and effort, have failed, as evidenced by states' pursuit of unilateral initiatives while China waited for its strategy to yield results.

Lou argues for a return to bilateralism, noting that unilateralism will require ever larger investments in security, as is happening with coast guards in each of the affected countries. In addition, as we have discussed in the review of global experience, the failure of bilateralism

leads not just to a return to unilateralism but also to reneging on prior agreements to set aside sovereignty issues, thus escalating the likelihood of conflict.

Emerging Strategies and Force Postures of Parties to the East and South China Sea Disputes

In her paper, Mira Rapp-Hooper views the disputes in the ECS and SCS through the lens of a big-power confrontation between the United States and China (see Chapter Five). As evidence, she cites China's large investment in recent years in military modernization and power projection in the ECS and SCS, and the responses of the United States and its allies. She focuses on what we may learn about the strategies and force postures of China and the United States. For instance, does the evidence suggest that the United States and its allies intend to engage China directly in each of the disputed locations? Do countries' force posture decisions advance strategies of their own and undermine others?

Rapp-Hooper finds that although China's strategy is similar for different disputes, the United States and its allies have adopted different responses. This is related to differences in relative military capabilities and in alliance relationships.

She documents China's increased presence in the ECS, starting with the Chinese fishing trawler ramming the two Japanese Coast Guard vessels in 2010. This was followed by Japan's purchase of three of the five Senkaku Islands in 2012, the rise in patrolling by the Chinese maritime forces in disputed areas, China's declaration of an air defense identification zone over the disputed islands in 2013, and in 2015, Chinese military exercises to affirm the zone and deployment of armed Chinese Coast Guard vessels.

Rapp-Hooper concludes that China sees the ECS as a core interest and as a strategic gateway for its longer-term quest for access to the Western Pacific. Therefore, the Senkaku Islands dispute affects China's core interests. She discusses the force posture accompaniments to enable this strategy, noting large increases in China's investment in coast guard cutters, patrol craft, frigates, destroyers, amphibious ships, aircraft carriers, and air power.

Japan has responded vigorously by adding vessels to its coast guard and revising, in 2010, its National Defense Program Guidelines to enable a more "dynamic" defense, with higher operational levels. In 2015, the United States and Japan agreed to new guidelines for coordination of defense in which Japan takes a more prominent role—a development that was accompanied by enabling legislation in Japan. Japan has also reversed years of decline in its defense budget in recent years.

The United States has responded in line with Japan's initiatives, including President Obama's confirmation in 2014 of the U.S. commitment to the Senkaku Islands; however, according to Rapp-Hooper, the United States has not substantially changed its force posture, although it has deployed its newest weapon systems increasingly to Asia. The United States' Seventh Fleet is headquartered in Yokosuka, and the United States maintains a force of between 40,000 and 50,000 armed services personnel in Japan at any one time.

In the SCS, China's greater assertiveness and presence in the islands includes deployment of airstrips, radar, ports, and communication equipment in the Spratlys, as well as an airstrip in the Paracel Islands. China also is reportedly working on floating sea bases.

The other coastal states, notably U.S. allies and partners the Philippines and Vietnam, have upgraded their military capabilities with help from the United States and Japan. But compared with Japan in the ECS, these states have fewer military capabilities. Overall, however, unlike in the ECS, the gap between China's capabilities and others' seems likely to grow.

The United States has relatively few military assets in the SCS, although, as noted earlier, it is expanding its presence. In 2011, the United States established an agreement with Australia to rotate up to 2,500 Marines through Darwin. In 2014, it signed defense cooperation agreements with the Philippines for rotational base access and with Singapore for rotational access for up to four littoral combat ships. The United States is also undertaking activities that support principles that it would like to defend, such as freedom of navigation and overflight.

Rapp-Hooper argues that the evidence does not clearly suggest that the disputed islands of the SCS, unlike those of the ECS, are a core interest of China. The United States has taken a neutral stance toward underlying sovereignty issues.

China's Troubled Waters in the East and South China Seas: A Taiwanese Assessment

Cheng-yi Lin's paper studies (1) China's strategy in the ECS and SCS with an eye toward the role of Taiwan and (2) the overall impact of the disputes in both seas on China's relations with the United States and other coastal states in the region (see Chapter Six).

For China, the Senkaku Islands are considered to be affiliated with Taiwan on historical grounds relating to how they were governed while under Chinese control (until 1895). Accordingly, China has asked Taiwan to cooperate with it in safeguarding this territory.

China's calculations in this regard were significantly affected by the Japan-Taiwan fisheries agreement of 2013. Because Japan and Taiwan do not maintain official ties, the signatories to the agreement were unofficial, but the leaders of both countries have publicly supported the agreement.

Even though the agreement specifically excluded the territorial seas of the Senkaku Islands and was carefully worded to avoid any implication of agreement on sovereignty over the islands, the agreement covered the overlapping EEZ arising from Japan's control of the Senkaku Islands, thus providing tacit recognition of Japan's effective control. For Japan, the agreement ensured that China would not be able to pressure Taiwan to join with it on issues on the Senkaku Islands. For Taiwan, it enabled a policy position independent of China's. China indicated concern in its response, noting generally that China's position on Taiwan's foreign exchanges is "clear and consistent . . . we are extremely concerned about Japan and Taiwan discussing and signing a fishing agreement" (BBC World, 2013). However, it has not chosen to more directly or publicly confront Taiwan on the issue.

In the SCS, China has sought to enlist Taiwan as a de facto partner in its disputes with other states. Taiwan's occupation of Taiping Island in the Spratly Islands is seen by China as supporting Chinese sovereignty claims in the SCS. Taiwan, in turn, has not protested China's reclamation efforts in the SCS, unlike Vietnam and the Philippines. China and Taiwan also have initiated joint oil and gas exploration efforts in the SCS. Further, China's National Institute for South China Sea Studies works closely with Taiwan's Institute of International Relations on SCS issues.

Taiwan would like to continue cooperation with China on joint oil exploration and policy coordination with ASEAN claimants, but it regards the United States as a security ally. The growing rivalry between China and the United States in the South China Sea has thus posed a dilemma for Taiwan.

Taiwan's Fisheries Issues and Peace Initiatives in the East and South China Seas

In separate papers, Michael S. Chase (Chapter Seven) and Joanna Yu Taylor (Chapter Eight) examine Taiwan's peace initiatives in the ECS and SCS and ask whether they could provide a more generalizable framework for settling disputes.

The Taiwan-Japan fisheries agreement was based on five tenets:

- refraining from taking antagonistic actions
- shelving controversies and not abandoning dialogue
- observing international law and resolving disputes through peaceful means
- seeking consensus on a code of conduct in the ECS
- establishing a mechanism for cooperation on exploring and developing resources in the ECS.

The first four provisions concern dispute resolution and are similar to the 2002 ASEAN China Declaration of Conduct. The fifth provision suggests that cooperative ways to engage in resource exploitation be found. As discussed earlier, where judicial or bilateral negotiation to resolve sovereignty issues have failed, the concerned parties in many cases have agreed on the following approach: separate the sovereignty dispute from current control (or "governance") and establish a tacit pact to agree to disagree on sovereignty and agree instead on governance and resource management, commit to refrain from unilateral action during the negotiating process, and agree on joint resource exploitation for economic gain. The third element usually also covers joint conservation and management, joint research and protection, joint security and law enforcement, and agreement to settle disputes by peaceful means.

Taiwan proposed a South China Sea Peace Initiative in 2015 modeled on its 2013 East China Sea Peace Initiative. The 2015 Taiwan-Philippines fisheries agreement is another example of this approach, as it is based on the same principles, although it focuses more narrowly on three main points: avoiding the use of force, establishing an emergency notification system, and establishing a prompt release mechanism.

So far, no ASEAN countries have responded to Taiwan's initiative, nor has China. This might be because Taiwan's proposal covers the same ground, as noted above, on dispute resolution as the 2002 ASEAN China Declaration of Conduct. Taylor opines that, in addition, sensitivities about how China would react, worries about adding one more claimant (Taiwan) to the SCS disputants list, and fears that China and Taiwan might ultimately cooperate may constitute additional reasons that the ASEAN has been reluctant to respond to Taipei's initiative. One piece of evidence is that, with regard to the Philippines' case against China on the validity of the U-shaped line, Taiwan has stated that it has not been invited by the Philippines to be a party to the arbitral tribunal and would not accept its findings.

Understanding the Legal Aspects of Mutual Non-Denial and Cross-Strait Relations with Respect to the East and South China Sea Disputes

In his paper, Chun-i Chen discusses two additional factors of importance to Taiwan: the legal aspects of mutual non-denial and cross-strait differences with respect to the ECS and SCS disputes (Chapter Nine). He starts by noting that the 1992 consensus forms the basis for China and Taiwan's relations. Under the consensus, both states agreed that there is but one China, but the other side is allowed to have its own interpretation. To Beijing, "one China" means the People's Republic of China; to Taipei, it means the Republic of China. "Non-denial" refers to not denying the authority to govern—that is, recognizing the right to govern without agreeing to sovereignty. This is similar to the United States' view of Japan's rights over the Senkaku Islands in its 1971 declaration. Thus, mutual non-denial is consistent with mutual non-recognition of sovereignty. Mutual non-denial has given Taiwan the right to pursue agreements that relate to its right to govern itself (e.g., the fisheries agreement with Japan and other agreements on resource exploitation in the surrounding waters).

On the Senkaku Islands, Taiwan's view differs from China, although both views coincide in their interpretation that the Senkaku Islands do not belong to Japan. China's view, discussed earlier, is that the 1895 Treaty of Shimonoseki was illegal. The interim period of successive Japanese, American, and Japanese control are, therefore, all illegal. The legal status of the islands, under this view, is that they are Chinese and should be handed over (or, handed back) to China.

By contrast, Taiwan accepts the legality of the Treaty of Shimonoseki. It argues, however, that with the end of World War II, Japan's territorial rights over Taiwan gained by the Treaty of Shimonoseki were nullified, so the islands gained from China became free. These included Taiwan and the Senkaku Islands, which were to be restored to Taiwan, as noted in the 1943

Cairo declaration and ratified in the Japanese instrument of surrender in 1945. Thus, Taiwan's interpretation is that the Senkaku Islands should be returned to Taiwan.⁹

Conclusion

The conference focused primarily on maritime territorial disputes in the East and South China Seas arising both from sovereignty and governance rights conferring access to economic value and from the desire of coastal states to extend national identity to disputed areas in the ECS and SCS. The general consensus was that, consistent with global experience, both motives have been driving forces behind disputes, sometimes by themselves and sometimes in tandem.

Although all the parties to the disputes are either members of the UNCLOS or abide by it in practice, the dispute resolution mechanisms of the UNCLOS have not been widely used to settle territorial disputes. However, several states have resolved disputes under the UNCLOS framework. The remaining disputes primarily concern the Senkaku Islands in the ECS and the Spratly and Paracel Islands in the SCS.

In all these unresolved cases, negotiations have taken place to reach agreement on jointly exploiting economic value. Of these, one case, between South Korea and China over Ieodo/Suyan-jiao (Socotra Rock), is a partial success. Both sides remain committed to setting aside issues of sovereignty and have refrained from unilateral actions. However, an agreement on joint exploitation has not been reached. In the other three cases, the failure to reach agreement on joint exploitation has led to unilateral actions and to renegeing even on the principle to set aside sovereignty disputes. This is despite several proposed frameworks based on the UNCLOS and global experience, as well as recent proposals by Taiwan.

There are several sources of the recent territorial disputes. First, China's emergence has played a key role, enabling it to be a dominant player in the SCS after several decades of passive protests to island takeovers by other players, such as Vietnam. In the ECS, China's emergence has mattered less because Japan and the United States have been able to confront China with superior military assets.

In the SCS, however, the militarily weaker partners and allies of the United States have pursued more-diverse strategies. In addition to seeking U.S. support for their positions, they have worked through legal appeals and the ASEAN or have sought to build coalitions to increase power. "Power-balancing" remains a common strategic response when a group of small states faces a single large power. China, as the most powerful claimant, has also responded in a predictable fashion: It has pursued a divide-and-conquer strategy and resisted negotiating with a multilateral coalition that would dilute its negotiating power, instead pursuing bilateral negotiations in which its relative power advantages can be exploited. Although force has been

⁹ The 1952 Taiwan-Japan agreement noted that, under Article 2 of the 1951 San Francisco agreement, Japan renounced rights to Taiwan, Pescadores, and the Spratly and Paracel Islands. It notes that the basis for its claim is the Japanese renunciation of land acquired under the Treaty of Shimonoseki.

used in disputes in the Paracel Islands by both Vietnam and China, this has not happened in the Spratly Islands.

A second source of disputes is economic competition for resources. Continued economic growth, combined with a depletion of territorial fish and hydrocarbon resources, has led the coastal states to claim islands, presumably in order to extend their maritime economic zones. This raises issues that are difficult to manage. Because fishing is an extremely important component of livelihood in all the coastal states, the states have been unable to control their fishermen's activities outside their EEZs. And hydrocarbons are equally important to all of the coastal states' growth strategies, making territorial resolution and the setting aside of disputes in the interest of joint economic gain difficult to accommodate politically.

The likely future trajectories for territorial resolution in the ECS are discouraging to contemplate. China sees at least the ECS as a core interest in which it has, for the moment, been thwarted, not just by responses from Japan and the United States but by Taiwan's fisheries agreement with Japan covering the overlapping economic zone between Taiwan and the Senkaku Islands. As long as nationalist sentiments dominate the discussion in China and Japan, as they seem to be doing, the prospects of a settlement will remain remote. This could undermine China-U.S. relations as well.

The analysis presented here suggests a rocky road ahead, even though all sides have, at various times, negotiated bilaterally, though largely unsuccessfully.

Nonetheless, several contributors to this volume offered ideas that individually or in combination might improve the prospects for negotiated settlements and that appear to be worthy of further exploration. The common theme of these ideas is to focus on economic collaboration with the hope that economic interdependence will set the stage for settling territorial disputes down the road. This approach is encapsulated in the three-step sequence proposed by Song: separate the sovereignty dispute from current control and establish a tacit pact to agree to disagree on sovereignty and agree instead on governance and resource management, commit to refrain from unilateral action during the negotiating process, and agree on joint resource exploitation for economic gain.

Chapter Two. Lessons from Global Experience in Resolving Maritime Disputes

Yann-huei Song

Maritime disputes are extremely common in the world's oceans and seas. Worldwide, over 400 maritime boundary disputes have occurred, with less than half of them having been resolved (Anderson, 2006). It is likely that the world will see an increase in maritime disputes as the global population continues to grow, leading to higher demand for resources from the seas, both living and non-living, together with a stronger need to delimit maritime boundaries between neighboring countries.

There are two main causes for maritime disputes: (1) disputed sovereignty over island or land features located in the ocean or sea concerned and (2) disputed or overlapping entitlements to rights and jurisdictions in different maritime zones that are claimed in accordance with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (Anderson, 2006).¹ Maritime disputes, if they involve territorial disputes, are generally more difficult to resolve or manage.

Maritime disputes create tensions between countries seeking control of natural resources and influence foreign relations in the regions concerned. When tensions escalate and there is no proper process or mechanism in place to help control or manage the situation, maritime disputes could lead to serious armed conflicts with the potential to disrupt peace and stability. On the other hand, if maritime disputes are resolved successfully, cooperation on resources development in the disputed or overlapping areas can begin and benefit the nationals of the parties involved in the dispute.

Under international law, a “dispute is disagreement on a point of law or fact, a conflict of legal views or of interests between two persons” (International Court of Justice [ICJ], 1924). Accordingly, a “maritime dispute” can be defined as a disagreement on a point of law or fact, a conflict of legal views or interests between two or more States that is related to territorial sovereignty over inhabited or uninhabited islands or is involved with overlapping entitlements to rights and jurisdiction in different maritime zones, such as the territorial sea, contiguous zone, exclusive economic zone (EEZ), continental shelf, and high seas, in terms of the use of ocean space and exploration and exploitation of the resources, both living and non-living. Very few countries in the world that are involved in maritime disputes are not member states of the United Nations (UN) or are non-parties to the UNCLOS.

Multiple solutions have been suggested to help manage or resolve maritime disputes. Under the Charter of the UN and the UNCLOS, countries involved in maritime disputes are required to settle their disputes by peaceful means. Methods and mechanisms for dispute settlement are

¹ These are the two possible causes suggested by David Anderson.

provided for in these two treaties, such as negotiation, arbitration, judicial settlement, and other peaceful means.

The purpose of this paper is to examine a number of existing and settled maritime disputes in the world's oceans and seas with a goal to identify the factors that help explain why some of the disputes have been peacefully resolved while others fail to achieve resolution. Major countries in the world, such as China, Japan, the Russian Federation, the United Kingdom, and the United States, that are involved in maritime disputes with their neighboring countries in the East China Sea (ECS), the Barents Sea, the Arctic Ocean, and the Atlantic Ocean, respectively, are included in this study, together with the causes for their dispute, methods used by them to resolve the dispute, outcomes of their efforts made to manage or resolve the disputes, and reasons for either success or failure of the efforts. It is hoped that lessons learned from examination of these selected 22 cases could be useful to the East Asian countries that border the ECS and the South China Sea (SCS) when they agree to resolve their existing maritime disputes in accordance with the provisions contained in the UN Charter and the UNCLOS.

The paper consists of six parts. After the introduction, Part II describes the obligations of the parties concerned to settle their maritime disputes by peaceful means in accordance with international law, in particular the UN Charter and the UNCLOS, and the duty to cooperate. Part III discusses a variety of methods that can be used to resolve maritime disputes. Part IV addresses a number of maritime disputes that are found in different geographical regions of the world. Part V provides a general discussion of reasons that account for the success or failure of parties in resolving or managing their maritime disputes. The paper ends with brief concluding remarks in Part VI.

Obligations to Resolve Maritime Disputes by Peaceful Means and the Duty to Cooperate

As noted above, it is rare to find a country in the world that is involved in a maritime dispute but not a member of the UN. It is also unusual to identify a country that is involved in maritime disputes but not a party to the UNCLOS, which had 167 parties as of December 20, 2015. A unique example concerns Taiwan, or the Republic of China (ROC), because it is involved in maritime disputes in both the ECS and the SCS, but Taiwan is not a party to the UNCLOS and remains outside of the UN.

Under Article 2, paragraph 3, of the UN Charter, countries that are involved with maritime disputes should settle their disputes by peaceful means “in such a manner that international peace and security, and justice, are not endangered” (United Nations, 1945). In addition, in accordance with paragraph 4 of the same article, they should refrain in their relations concerning maritime disputes from “the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (United Nations, 1945). Moreover, in accordance with Article 33, paragraph 1, countries that are

involved with maritime disputes must “first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice” if the continuance of the disputes has the potential to affect the maintenance of peace and security in the region or area concerned (United Nations, 1945). Member states of the UN also have duty to cooperate in the maintenance of international peace and security.

The same obligations are also found in the UNCLOS. For parties to this Convention, they must resolve their maritime disputes in accordance with Article 279, which provides that “State Parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with Article 2, paragraph 3, of the Charter of the United Nations and, to this end, shall seek a solution by the means indicated in Article 33, paragraph 1, of the Charter” (United Nations, 1970).

State parties to the UNCLOS also bear the obligation to cooperate. Article 74(3) and Article 83(3) of this Convention provide that “[p]ending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”

For those State parties that are bordering an enclosed or a semi-enclosed sea,² they should cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention. This requirement is relevant both to joint development and cross-border utilization agreements signed between or among states that are bordering semi-enclosed seas, such as Malaysia/Thailand and Malaysia/Vietnam in the SCS, Indonesia/Australia in the Timor Sea, and the United Kingdom/Norway and the United Kingdom/the Netherlands in the North Sea. Similar examples can be found in the Persian Gulf.

Methods of Resolving or Managing Maritime Disputes

Both the UN Charter and the UNCLOS provide a number of methods that can be used by the countries involved in maritime disputes to resolve or manage their disputes. These include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, regional arrangements, or other peaceful means of their own choice. Under Article 283, paragraph 1, of the UNCLOS, when a maritime dispute arises between parties to the Convention, they should “proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means” (United Nations, 1970). The parties to a maritime dispute bear the obligation to make genuine and reasonable efforts to reach a solution in good faith.

² An enclosed or a semi-enclosed sea is defined in Article 122 of the UNCLOS as “a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States” (United Nations, 1970).

The simple and often best recourse for resolving maritime disputes is through serious negotiations between the parties concerned. Negotiation is the traditional and most commonly used method, which tends to be the first stage in a process that may require other dispute-resolution methods—in particular, quasi-judicial methods. In practice, countries almost always begin with negotiation for the purpose of managing or resolving maritime disputes. For example, after ten rounds of negotiations, beginning in 2004, Japan and the People’s Republic of China (PRC, or China) reached a principled consensus on an ECS issue in June 2008, in which the two sides reached understanding on joint development of the ECS (Xinhua Net, 2008).

If negotiations are not successful, the parties to a maritime dispute have recourse to other means, such as investigation and fact-finding, mediation, conciliation, good offices, arbitration, and judicial settlement. A good example of fact-finding is the Land Reclamation case between Malaysia and Singapore that was submitted to the International Tribunal for the Law of the Sea for settlement in September 2003 (International Tribunal for the Law of the Sea, 2015a). The Tribunal ordered the two governments to establish an independent group of four experts to verify the facts. As a result of this fact-finding study, Singapore and Malaysia were able to settle their disputes concerning land reclamation activities carried out by Singapore in the Strait of Johor.

Mediation, according to Tommy Kho, “is consensual in nature and it results in a win-win outcome” (Kho, 2015). A mediator helps facilitate communication between the parties to a maritime dispute and may make proposals. The United States offered to play a role as a mediator in the Sino-Japanese maritime disputes in the ECS, but that was rejected by the PRC.

Conciliation is an alternative dispute settlement process whereby the parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences. The conciliation does this by lowering tensions, improving communications, interpreting issues, encouraging parties to explore potential solutions, and assisting parties in finding a mutually acceptable outcome. For more than a decade, for example, the Association of Southeast Asian Nations (ASEAN) acted as a conciliator by providing a platform for the PRC and four member states that are involved in maritime disputes in the SCS—namely, Brunei, Malaysia, the Philippines, and Vietnam—to come together and work toward conciliation.

“Good offices” refers to facilitating dealings between the parties to a dispute by using an unbiased third-party’s influence. The UN Secretary General, for example, by using his prestige and the weight of the world community he represents, provides good office to prevent international disputes from developing, escalating, or spreading. In 1998, Kofi Annan negotiated a settlement of the dispute between Iraq and the U.S. over arms inspections in Iraq. Negotiation, mediation, conciliation, and good offices are considered non-judicial methods for the resolution of international disputes.

Arbitration, a form of alternative dispute resolution, is a legal approach for the resolution of disputes. The parties refer their disputes to arbitration by one or more arbitrators and agree to be bound by the award made by the tribunal. Arbitration is a long process that can take many years

to finish. Because arbitration is a formal legal proceeding, it needs written compromise between the parties, which set forth terms of arbitration and choose their preferred arbitrators.

The award made by the arbitral tribunal is binding on the parties. According to Paul Reichler (2013), an international arbitrator from U.S. law firm Foley Hoag, “[i]n more than 95% of international cases—litigation and arbitration before various international courts and tribunals—the states comply with the judgment, even if they are unhappy with it.” However, the arbitration case filed by the Philippines against the PRC concerning entitlements to rights and jurisdiction in the SCS by interpretation and application of the provisions contained in the UNCLOS was rejected by the Chinese government, arguing that the tribunal established under Annex VII of the Convention lacks jurisdiction over the case, and indicating that China refuses to participate in the arbitral proceedings. In addition, Beijing says that China is not going to accept or implement any of the awards made by the Tribunal (PRC Ministry of Foreign Affairs, 2014).

When the method of judicial settlement is employed, a maritime dispute is placed before an existing independent court. The most important and comprehensive of these courts is the UN ICJ. Another important court for the judicial settlement of maritime disputes is the UN International Tribunal for the Law of the Sea. The judicial method’s main appeal is its enforceability; the judgment of the court is enforceable (Permanent Court of International Justice, 2015). However, this method is the least desirable option because it takes the decision out of the hands of the parties involved in a maritime dispute and places it squarely in the hands of a third party.

As far as other peaceful means are concerned, examples include adopting a bilateral or multilateral code of conduct, making a provisional arrangement, issuing joint statements, signing a joint declaration, announcing peace initiatives, and organizing Track I, Track 1.5, or Track II meetings or conferences.³

Maritime disputes can be resolved if the parties concerned are willing to enter into negotiations, which could bring positive results, such as reaching agreement to settle their sovereignty differences, establishing a complete or partial maritime boundary, setting up a joint area for development or conservation, or making a commitment not to undertake unilateral activities in the disputed area. The potential political and security risks are high if the parties concerned are unable or fail to manage or resolve their maritime disputes. Activities concerning exploration and exploitation of the marine resources, both living and non-living, may not be able to be conducted safely in the disputed area if the parties to a dispute have not resolved their disagreement. The actions taken by one of the parties in the disputed area, such as allowing its fishermen to fish or allowing its oil industry to conduct oil and gas development activities, will cause more disputes, which could escalate to involve the use of force. It occurs quite often that

³ In November 2015, the 25th Informal Workshop on Managing Potential Conflicts in the South China Sea, which is a Track 1.5 mechanism for ASEAN member states, PRC, and Taiwan to discuss maritime cooperation issues, was held in Jakarta. The main goal of this workshop is to manage maritime disputes in the SCS.

actions taken by one party's law enforcement officials against fishermen from the other party in the disputed or overlapped areas further escalate tensions.

If maritime disputes are successfully managed or resolved, positive benefits can be expected. Reaching agreement on a maritime boundary, concluding a fisheries agreement, or establishing an area for joint development will therefore become possible, which helps reduce tensions between the countries concerned and allows economic activities to be conducted in the disputed or overlapping areas.

Examples of Existing or Settled Maritime Disputes in the World's Oceans and Seas

Maritime disputes can be found in all geographical regions of the world. In North America, for example, the United States and Canada, two democratic neighboring countries with friendly diplomatic relations, have disputes in the Beaufort Sea, Dixon Entrance, Juan de Fuca Strait, and the Gulf of Maine that involve different claims to territorial sovereignty and maritime boundaries (Central Intelligence Agency, 2015; Ministry of Fisheries and Oceans Canada, 2009; Renouf, 1988). Within the disputed maritime zones associated with each of these locations, there is a general understanding by U.S. and Canadian law enforcement officials that the flag state is responsible for controlling the activity of and taking appropriate law enforcement actions upon their vessels.

In April 2014, at a joint press conference held in Manila, the Philippines, U.S. President Barack Obama stated:

And I think that there are going to be territorial disputes around the world. We have territorial disputes with some of our closest allies. I suspect that there are some islands and rocks in and around Canada and the United States where there are probably still some arguments dating back to the 1800s. But we don't go around sending ships and threatening folks. What we do is we sit down and we have some people in a room—it's boring, it's not exciting, but it's usually a good way to work out these problems and work out these issues. (White House Office of the Press Secretary, 2014)

The disputes referred to in President Obama's remarks are the sovereignty differences between the United States and Canada over Machias Seal Island and North Rock that are located in the Gulf of Maine. The disputes involve different claims to rights and jurisdiction in the maritime zones generated from the island and rock. If treated as an island, under Article 121(2) of the UNCLOS, the land feature can generate a 200-nautical mile (nmi) EEZ or continental shelf. If considered a rock, in accordance with Article 121(3), the land feature can only have a 12-nmi territorial sea and 24-nmi contiguous zone, but not an EEZ or continental shelf.

In 1984, the United States and Canada settled all their maritime border disputes in the Gulf of Maine by submitting their disputes to the ICJ for arbitration, with the exception of sovereignty differences over Machias Seal Island and North Rock, as well as entitlement to rights and

jurisdiction in the sea area around the island and rock in the Gulf of Maine, which is known as the “grey zone.” As a result, in 1989, the Gulf of Maine Council on the Marine Environment was created by the governments of Maine, Massachusetts, New Brunswick, New Hampshire, and Nova Scotia, which work to foster environmental health and community well-being throughout the Gulf watershed (Gulf of Maine Council on the Marine Environment, 2016). In September 1990, an agreement on fisheries enforcement was signed by the U.S. and Canadian governments, under which each party “shall take appropriate measures consistent with international law to ensure that its nations, residents and vessels do not violate, within the waters and zones of the other Party, the national fisheries laws and regulations of the other Party” (National Oceanic and Atmospheric Administration, 1990). Bilateral consultative arrangements were also made by the two sides, including informal fisheries consultations. The U.S.-Canada fisheries consultations discuss, *inter alia*, issues concerning improvement of communication and coordination with regard to conservation and management of species of mutual concern in the Gulf of Maine (National Oceanic and Atmospheric Administration, 2016).

The U.S. government does not take action to detain Canadian fishermen conducting lobster fishing in the waters near or surrounding the disputed island and rock. Likewise, the government of Canada does not take action to prevent American bird watchers or ecologists from visiting Machias Seal Island and North Rock. At present, there are two people who live on Machias Seal Island, a pair of Canadian lighthouse keepers, and the main reason for them to be there is to maintain Canada’s sovereignty claim. No actions are taken by the U.S. government to remove the Canadian keepers or tear down the lighthouse.

In July 2015, Stephen Kelly, an associate director of the Center for Canadian Studies at Duke University and a retired American diplomat who studies border disputes, said that the United States and Canada “should show the global community that these problems can be solved peacefully and logically.” However, Angus King, U.S. Senator for Maine, quoting Robert Frost’s old saying that “Good fences make good neighbors,” suggested that if there is not a fence in the area surrounding the disputed island and rock and there is a lack of clarity, then it could lead to confrontation between the United States and Canada in the Gulf of Maine. (Raphael, 2015)

In Europe, the United Kingdom and Spain, two members of the European Union, also have disputes over limits of territorial sea in the Strait of Gibraltar and territorial sovereignty over the island Gibraltar (Lincoln, 1994; Modebadze, 2013; O’Reilly, 1999). In August 2015, the British Foreign Office accused Spanish vessels and helicopters of violating the international law of the sea when they repeatedly entered the British-claimed Gibraltar territorial sea without notifying Gibraltar authorities (BBC News, 2015). Given the fact that there are no negotiations undertaken between these two European countries for the purpose of managing or resolving the dispute, it can be expected that this maritime dispute will continue.

Russia and Norway have, in past years, been parties to maritime disputes in the Barents Sea and Arctic Ocean. After 40 years of negotiations, these disputes were resolved in September 2010 when the two sides signed a maritime delimitation and cooperation treaty (Norwegian

Mission to the EU, 2010). In 1963, Norway decided to base its position on the median line principle to draw its maritime boundary in the Barents Sea and the Arctic Ocean. The Norwegian position was not accepted by the Soviet government, claiming that due to certain circumstances, the maritime boundary should be drawn by a straight line from the border point on the coastline up to the North Pole. In 1970, the two sides began their negotiations, and after the end of the Cold War, Moscow showed greater flexibility in the discussion on a delimitation line. In 1992, Russia and Norway carved out an agreed maritime delimitation line in the disputed area. However, Russia hardened its position again thereafter. It was not until 2010 that a breakthrough was achieved, mainly because the two countries agreed to divide the disputed area into two parts approximately equal in size. The maritime delimitation and cooperation treaty signed in September 2010 led to increased cooperation between Russia and Norway in the Barents Sea and the Arctic Ocean (Haugan, 2010).

Germany, the Netherlands, and Denmark were also parties to a dispute over the delimitation of the continental shelf in the North Sea back in the 1960s. The dispute was submitted to the ICJ in February 1967. Two years after, the court delivered its judgment on the principles and rules of international law applicable to the delimitation of the continental shelf between the countries concerned in the North Sea (North Sea Continental Shelf, 1969). In accordance with the Court's ruling and through negotiation on joint development and sharing of oil resources, the United Kingdom, Norway, Denmark, the Netherlands, and Germany successfully transformed North Sea Brent Crude into a world-renowned brand.⁴

Iceland and Norway are parties to a dispute over Jan Mayen, a volcanic island located in the North Atlantic Ocean, 950 km west of Norway, 600 km north of Iceland, and 500 km east of central Greenland. Between 1979 and 1981, the two countries had a diplomatic dispute over marine resource rights and sovereignty issues around Jan Mayen. As the demand for fisheries resources increased and the potential for oil development was reported to be high, the two countries considered the need to enter into negotiations for a solution (Jóhannesson, 2013). As a result, in 1980, Iceland and Norway signed an agreement on Jan Mayen—the Agreement Between Norway and Iceland on Fishery and Continental Shelf Questions (United Nations, 1980)—which settled most of the outstanding differences. However, the two countries failed to reach agreement on the question concerning delimitation of their continental shelf during the negotiation process. As a result, Iceland and Norway agreed to refer the issue to a Conciliation Commission, which was ordered to recommend a solution for the continental shelf questions (Conciliation Commission on the Continental Shelf Area Between Iceland and Jan Mayen, 1981). Consequently, in October 1981, these two countries signed the Agreement on the Continental Shelf Between Iceland and Jan Mayen (United Nations, 1981). The two agreements established a joint development arrangement covering the exploitation of both fisheries and

⁴ North Sea Brent Crude is a type of oil that is sourced from the North Sea. This type of oil is used as a benchmark to price European, African, and Middle Eastern oil that is exported to the West. North Sea Brent Crude was discovered in the early 1960s.

hydrocarbon resources in the overlapping area around Jan Mayen. An Additional Protocol to these two agreements was signed between Iceland and Norway in November 1997 (United Nations, 1997).

The agreements between Iceland and Norway and the joint development arrangement made by the two countries for both living and non-living resources, helped resolve the maritime disputes in the area between Jan Mayen and Iceland in a way that is in accordance with the legal regime of the EEZ established under the UNCLOS. The governance system has often been cited as a successful mode and precedent for other states that are involved in similar maritime disputes.

In Eastern Europe, Romania and Ukraine were engaged in disputes over the maritime boundary in the Black Sea. In September 2004, Romania filed a case against Ukraine at the ICJ, asking the court “to draw, in accordance with international law, . . . a single maritime boundary between the continental shelf and the exclusive economic zone of the two States in the Black Sea” (ICJ, 2004). In February 2009, the Court rendered its judgment, in which a single maritime boundary delimiting the continental shelf and EEZs of the two countries in the Black Sea was established (ICJ, 2009). The dispute was therefore settled.

In Africa, Kenya and Somalia have a dispute over their maritime boundary in the Indian Ocean (Mbaria, 2014). In August 2014, Somalia filed a suit against Kenya with the ICJ concerning maritime delimitation in the Indian Ocean (ICJ, 2014b). On October 12, 2015, the ICJ fixed February 5, 2016, as the time limit within which Somalia may present a written statement of its observations and submissions on the preliminary objections raised by Kenya on October 7, 2015, in the case concerning Maritime Delimitation in the Indian Ocean (Somalia v. Kenya) (ICJ, 2015).

Another two African countries, Côte d’Ivoire and Ghana, also have a maritime dispute, this one in the Atlantic Ocean. By Special Agreement concluded on December 3, 2014, the dispute concerning delimitation of the maritime boundary between these two countries was submitted to the Special Chamber of the International Tribunal for the Law of the Sea, after having initially been submitted by Ghana to arbitration proceedings under Annex VII of the UNCLOS. The Special Chamber unanimously prescribed, pending the final decision of the case, a number of provisional measures, which include that “Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area” (International Tribunal for the Law of the Sea, 2015b).

In South America, Argentina has a dispute with the United Kingdom over ownership of the Falkland Islands (which Argentina refers to as *Islas Malvinas*), South Georgia, and the South Sandwich Islands. A war broke out between the two countries in 1982 when Argentina took actions to occupy the disputed islands in an attempt to establish sovereignty over them (Song, 1988). Due to this dispute, the two countries have long had tense relations. In late November 2015, Britain’s Prime Minister David Cameron and Argentina’s president-elect Mauricio Macri agreed to “strengthen relations” and “to pursue a path of open dialogue” (Merco Press, 2015a).

However, this was followed immediately by a report that the British government reaffirmed its support for the Falkland Islands and its right to self-determination in the United Kingdom's Defense and Security Review 2015, which pledges an extra £12 billion of spending on defense equipment—part of London's £178 billion overall defense equipment and support budget during the next decade (Merco Press, 2015b).

Additionally, Peru and Chile had a maritime boundary dispute in the Pacific Ocean. Peru argued that no agreed maritime boundary exists between the two countries and asked the ICJ to draw a boundary line using the method of equidistance so that an equitable result can be achieved. For its part, Chile contended that the Court should not establish the line, since there was already an international maritime boundary, agreed to by both Peru and Chile, along the parallel of latitude passing through the starting point of the two countries' land boundary and extending to a minimum of 200 nmi (ICJ, 2014a). In January 2008, Peru filed a case before the ICJ against Chile over the dispute. Six years after, in January 2014, the Court issued a ruling that established a new maritime boundary between the two countries. The ICJ granted Peru some parts of the Pacific Ocean formerly controlled by Chile but left Chile prosperous coastal fishing grounds. The ICJ decision ended the maritime dispute between the two nations over the 14,670 square miles of abundant fishing waterways. The decision represents a compromise by extending the border parallel to the equator for 80 nmi from the coastline and then continuing the border out to the southwest. The Court's ruling is final and cannot be appealed, and the presidents of Peru and Chile have both promised to follow the ICJ's decision (Bajak and Corder, 2014).

In Central America, Nicaragua has territorial and/or maritime disputes with Honduras, Costa Rica, and Colombia in the Caribbean Sea and the Pacific Ocean. In November 2012, in its judgment in the case concerning the territorial and maritime dispute (Nicaragua v. Colombia), the ICJ found that Colombia has sovereignty over the islands of Albuquerque, Bajo Nuevo, East-Southeast Cays, Quita Sueño, Roncador, Serrana, and Serranilla and decided to draw a single maritime boundary in the Caribbean Sea for the two countries (ICJ, 2012).

In the Asia-Pacific, China, Taiwan, and Japan are parties to a dispute over ownership of the Senkaku (Diaoyu) island group and over maritime rights and jurisdiction with regard to exploration and exploitation of resources, both living and non-living, in the ECS (Lin and Gertner, 2015; O'Rourke, 2014; Yee, 2011). Japan also has disputes with the Republic of Korea over ownership of Takeshima/Dokdo, which is located in the Sea of Japan (Stratfor Global Intelligence, 2015a), and with the Russian Federation over the "Northern Territories" (Russia's Southern Kurile Islands) in the Sea of Okhotsk and North Pacific Ocean (Chotani, 2015). Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam are involved fully or partially in the disputes over sovereignty and maritime rights and jurisdiction in the Paracel and Spratly Islands of the SCS. All of these maritime disputes remain unresolved. However, it is important to take note of the efforts made unilaterally by Taiwan and then bilaterally between Taiwan and Japan in the ECS and between Taiwan and the Philippines in the SCS to manage maritime disputes in these two important East Asian semi-enclosed seas. In August 2012, Taiwan's President Ma

Ying-jeou proposed the East China Sea Peace Initiative (ROC Ministry of Foreign Affairs, 2016), which has been successful in yielding positive results, such as the landmark fisheries agreement signed between Taiwan and Japan in April 2013 (ROC Ministry of Foreign Affairs, 2013b). In May 2015, a similar initiative was announced by President Ma for the SCS; it calls on all parties to the dispute to shelve the sovereignty issue, exercise restraint, adopt a code of conduct, and jointly develop resources. This initiative was followed by the Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters Between Taiwan and the Philippines in November 2015 (ROC Ministry of Foreign Affairs, 2015e). On January 28, 2016, President Ma visited Taiping Island (Itu Aba) in the Spratly Islands and unveiled the South China Sea Peace Initiative Road Map. At a time when tensions in the ECS and the SCS are rising, Taiwan's peace initiatives are welcomed. The U.S. Department of State publicly expressed support of Taiwan's initiatives (Taipei Times, 2016; Taiwan Today, 2014).

Relations between Japan and Russia have been strained for decades because of their dispute over "Northern Territories." The two countries have never officially struck a peace treaty after the end of the Second World War, and the lingering tensions over the islands have hampered trade ties for decades. However, in February 1998, for the purpose of regulating the operations of the Japanese fisheries vessels in the waters around the disputed Northern Territories/Southern Kurile Islands, Japan and Russia signed an agreement on some matters of cooperation in the field of fishing operations for living marine resources (Japan Ministry of Foreign Affairs, 1998). Both Japan and Russia have agreed to resolve the dispute through negotiations. Moscow also states that it will continue to pursue a solution on the demarcation of an internationally recognized national border that is acceptable to both countries. However, in October 2015, Russia suddenly announced plans to construct a military base on the disputed islands, which was protested by Japan (Burke and Kusumoto, 2015; Ukraine Today, 2015).

The Republic of Korea has an overlapping maritime boundary dispute with the PRC in the Yellow Sea and the ECS involving the countries' claims to a submerged rock known as Suyan Jiao in Chinese and Ieodo in Korean (Socotra Rock in English) and its status in the maritime delimitation between the two countries for the EEZ and continental shelf (Roehrig, 2012; Stratfor Global Intelligence, 2015b). In July 2014, when Chinese President Xi Jinping visited Seoul, he and Korean President Park Geun-hye agreed that the two sides would start official discussions on the maritime demarcation line in the Yellow Sea and the ECS in 2015. On December 22, 2015, the first round of talks on maritime border delimitation between PRC and South Korea was held in Seoul, and the second round will be held in Beijing in 2016 (Sputnik, 2015a).

All of the aforementioned maritime disputes, with the exception of Suyan/Ieodo rock, involve territorial claims and remain unresolved. Among them, the most controversial one is arguably the dispute in the SCS, which carries a substantial possibility of disrupting peace and stability in the Asia-Pacific as tensions continue to escalate. It can be expected that actions will be taken by China in response to U.S. moves to send its warships sailing near the waters surrounding Chinese-occupied land features or dispatching its surveillance aircraft and bombers

to fly near or above them in the SCS (BBC World, 2015a; Panda, 2015; Sciutto and Starr, 2015; Sputnik, 2015b). The ongoing Sino-American confrontation in the area makes it very difficult for the countries concerned to resolve or manage their existing maritime disputes in the SCS.

Although there are a number of maritime disputes in the Asia-Pacific region that remain unresolved, there also exist examples of successful management or resolution of maritime disputes by the parties concerned. In 2002, the ICJ settled the sovereignty dispute between Indonesia and Malaysia over two islands—Sipadan and Ligitan—and in 2008, it settled the territorial and maritime dispute between Singapore and Malaysia over the island Pedra/Pulau Batu Puteh. The parties to these disputed islands submitted their differences to the Court and agreed to accept the ruling. In its 2002 judgment, the ICJ awarded sovereignty over the disputed islands to Malaysia (ICJ, 2002). Although Indonesia was very disappointed with the judgment, it accepted the outcome. In the case concerning the dispute between Singapore and Malaysia, the Court awarded sovereignty over Pedra Branca/Pulau Batu Puteh to Singapore, sovereignty over Middle Rocks to Malaysia, and the low-tide elevation South Ledge to “the state in the territorial waters of which it is located” (ICJ, 2008). Both Singapore and Malaysia accepted the Court’s judgment.

Another dispute concerning the delimitation of maritime boundaries occurred between Bangladesh and Myanmar in the Bay of Bengal with respect to the territorial sea, the EEZ, and the continental shelf. It was resolved as a result of the parties’ decision to submit the dispute to the International Tribunal for the Law of the Sea in December 2009. In March 2012, having reviewed historical titles and all relevant and special circumstances, the Tribunal rendered its judgment on the delimitation of territorial sea. It further judged that the EEZ would follow the natural prolongation of the demarcation line on a 215-degree angle (relatively perpendicular to the Myanmar coast) and extending to 200 nmi. As far as the dispute over the entitlement to the continental shelf beyond 200 nmi is concerned, the Tribunal continued the natural 215-degree angle prolongation of the demarcation line beyond 200 nmi. Both parties to the dispute accepted the Tribunal’s judgment. As a result, they proceeded with oil and gas exploration partnerships in the Gulf of Bengal (International Tribunal for the Law of the Sea, 2012).

Bangladesh also had a separate maritime dispute with India that lasted over three decades. In 2009, it initiated arbitral proceedings against India concerning the maritime boundary between the two countries in the territorial sea, the EEZ, and the continental shelf within and beyond 200 nmi. In July 2014, the arbitral tribunal made an award that determined the course of the maritime boundary line in favor of Bangladesh (Permanent Court of Arbitration, 2014). Bangladeshi Foreign Minister Abul Hassan Mahmood Ali called the Tribunal’s award a “victory of friendship and a win-win situation for the peoples of Bangladesh and India” (Paul, 2014). Meanwhile, the Indian Ministry of External Affairs said in a statement, “The settlement of the maritime boundary will further enhance mutual understanding and goodwill between India and Bangladesh by bringing to closure a long-pending issue” (Paul, 2014). The outcome of this

arbitral case opens the way for Bangladeshi oil and gas exploration in the Bay of Bengal, as well as expanded opportunities for shipping and fishing.

In May 2014, the Philippines signed an agreement with Indonesia to delimit their maritime boundaries in the overlapping EEZ in the Mindanao Sea and Celebes Sea in the southern Philippines and in the Philippine Sea on the southern section of the Pacific Ocean. The agreement is the result of 20 years of negotiations to delimit the overlapping EEZs of the two countries. President Benigno S. Aquino III of the Philippines said that “[t]he Agreement is a milestone for Philippines-Indonesia relations as the EEZ boundary will open opportunities for closer cooperation in the preservation and protection of the rich marine environment in the area, increased trade and enhanced maritime security” (Philippines Department of Foreign Affairs, 2014). President Susilo Bambang Yudhoyono of Indonesia said that the agreement was “indeed a model, a good example that any border disputes, including maritime border tensions, can be resolved peacefully” (Rappler, 2014).

Most recently, the Philippines and Taiwan signed the Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters on November 5, 2015, which entered into force on December 5 the same year. Under the agreement, the two sides agreed to “avoid using violence or unnecessary force in the implementation of their fisheries laws and other relevant regulations consistent with international law and practice.” They also agreed to establish a law enforcement cooperation mechanism, an emergency notification system, and a prompt release mechanism. The emergency notification and prompt release procedures for the two sides’ economic and cultural offices in the overlapping EEZ are also attached to the agreement (ROC Ministry of Foreign Affairs, 2015d).⁵

Lessons Learned from Global Experiences in Resolving Maritime Disputes

Around 22 maritime disputes found in different geographical regions of the world are cited and examined in this study, although not in a detailed way. It is hoped that this examination is helpful to understand why some of the disputes in the world can be managed or resolved while others cannot.

All of these disputes are caused by differences with regard to sovereignty over islands and/or entitlement to rights and jurisdiction in the maritime zones, particularly the EEZ and continental shelf, that are claimed by the parties to the disputes. Methods of resolving maritime disputes used by the countries concerned in North America, Latin America and the Caribbean, Western and Eastern Europe, Africa, and the Asia-Pacific include negotiation, conciliation, inquiries, arbitration, and judicial settlement, which are provided for in the UN Charter and UNCLOS.

With the exception of Taiwan, all of the parties to the cited maritime disputes are member states of the UN. All of them are also parties to the UNCLOS, except the United States and

⁵ A copy of the agreement and two attachments, both in Chinese and English, are on file with the author.

Taiwan. However, under the customary international law, in accordance with general principles of international law, or based on voluntary acceptance of the provisions contained in the UNCLOS, both the United States and Taiwan are bound by these treaties.

The only case cited in this study considered successful with regard to management of the dispute without resolving it definitively is the sovereignty/maritime border dispute between the United States and Canada over Machias Seal Island and North Rock, as well as the “grey zone,” in the Gulf of Maine. Although this dispute remains unresolved, the United States and Canada are cooperating on regulating the fishing activities and undertaking enforcement measures in the disputed area. It is unlikely that tensions will rise in the Gulf of Maine.

A number of reasons can help explain why the dispute between the United States and Canada has been managed well enough that conflict or tension has been prevented from rising in the Gulf of Maine. These include the following: relations between Washington and Ottawa are good; the stakes in the disputed area are low; the area is not one of strategic importance; there exists political willingness to cooperate; and no third parties are involved in the dispute. This dispute can be managed also because of the efforts made by the two countries to enter into negotiations or consultations that led to signing the fisheries enforcement agreement and creating the Gulf of Maine Council on the Marine Environment.

Among the 22 maritime disputes examined in this paper, ten were settled. The method of judicial settlement was used for eight of these ten maritime disputes—namely, between Chile and Peru; between Colombia and Nicaragua; between Denmark, Germany, and the Netherlands; between Romania and Ukraine; between Indonesia and Malaysia; between Singapore and Malaysia; between Bangladesh and Myanmar; and between Bangladesh and India.

As mentioned, this method is the least desirable option used by the parties to disputes, mainly because it takes the decision out of the hands of the countries concerned as they forgo control over the final outcome of the proceedings. However, once the parties are willing to settle their maritime disputes before a judicial institution, such as the ICJ or the International Tribunal for the Law of the Sea, it then becomes more likely for the disputes to be resolved. Why? Mainly because the parties to a dispute have given consent by signing a compromise agreement before the legal proceedings begin. In addition, the rulings of the court or tribunal are binding on them. Accordingly, the reasons that a maritime dispute might be successfully resolved by judicial settlement include the following:

- The parties have friendly relations.
- Development of the valuable resources (fisheries or hydrocarbon) present in the disputed area is considered important by both parties but impossible to proceed with efficiently until the dispute is resolved.
- There exist no other sensitive security or strategic matters.
- There exists political willingness for both cooperation and negotiation.
- No serious objections are raised domestically to the use of the method of judicial settlement.

Seven of the 22 maritime disputes remain unresolved—namely, between Argentina and the United Kingdom in the South Atlantic Ocean; between Spain and the United Kingdom in the Strait of Gibraltar; between Japan, Taiwan, and China in the ECS; between Japan and South Korea in the Sea of Japan; between the PRC and Brunei, Malaysia, the Philippines, Taiwan, and Vietnam in the SCS; between Japan and Russia in the Sea of Okhotsk; and between China and South Korea in the Yellow Sea. For a maritime dispute involving both sovereignty and maritime border issues, it is important to have the outstanding sovereignty issues be resolved or managed first. One of the main reasons for failure in resolving a maritime dispute by the countries concerned in these seven cases is the lack of political willingness to undertake serious negotiations.

Reasons that help explain why certain methods of resolving maritime disputes are not used by the parties to these seven maritime disputes include an absence of friendly diplomatic relations, high stakes involved, sovereignty concerns, valuable resources (fisheries and oil/gas) involved, shipping and strategic importance, lack of political will, dislike of or opposition to the use of arbitration or judicial settlement, issues of history or nationalism, and involvement of third parties.

Concluding Remarks

A surprising number of maritime disputes in the world's oceans and seas remain unresolved. But only 22 cases of them are arbitrarily selected in this study simply because the pool of cases is too big. A detailed examination of more than 400 cases is far beyond this writer's capability and time allowed. However, this study makes an effort to select the 22 cases that are concerned about maritime disputes between major countries located in different geographical areas of the world. In addition, such factors as causes for dispute (sovereignty or maritime boundary delimitation), methods of resolving dispute (negotiation or judicial settlement), current status of the dispute (pending or resolved), and reasons for success or failure in resolving disputes are also taken into account for a comparative and representative purpose. In this study, less than half of the cases cited were settled. It is also found that it is more likely for a maritime dispute to be settled if the method of arbitration or judicial settlement is employed by the parties to the dispute.

Maritime disputes can be tremendously difficult to resolve, particularly when sovereignty differences are also involved. However, under international law, all countries have the duty to cooperate in good faith and resolve maritime disputes by a variety of peaceful means, which are provided for in the UN Charter and the UNCLOS, including negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, regional arrangements, or other peaceful means chosen by the parties to the dispute.

Two important pre-conditions for resolving or managing maritime disputes are avoidance of taking unilateral actions in the disputed area and existence of political will to enter into negotiations. Although negotiation is not always easy, and it certainly takes time and requires

effort, the possibility for a maritime dispute to be resolved becomes higher if the parties to a dispute are willing to consult with each other on handling their differences or enter into negotiations for settling the dispute. Negotiations can lead to agreements on boundaries, fisheries cooperation, law enforcement measures, joint development of oil and gas resources, scientific exploration, and environmental protection. Provisional arrangements, *modus vivendi*, or provisional boundaries are also possible outcomes. More importantly, clarification of legal issues and identification of the applicable laws are useful in helping to iron out differences if serious negotiations are to begin. Finally, if maritime disputes can be resolved, enormous value can be created for the nationals of the parties, and peace and stability in the region concerned can be maintained.

Chapter Three. Regional Approaches to Territorial Dispute Management

Tetsuo Kotani

The faltering of the maritime order in Asia is not unrelated to changes in the regional power balance. Regional order must be backed by power. It has been American power that maintained the San Francisco system, which provides legal basis for maritime boundaries in Asia, through the U.S. alliance network. With the rise of its economic and military power, however, China has increased its influence over regional issues. Not a party to the 1951 San Francisco Peace Treaty, China now apparently overtly seeks to change the status quo by the use or threat of force.

China is the center of maritime disputes in the East and South China Seas. Other claimant states have responded to China's apparent assertiveness by building up their defense and constabulary capabilities (internal balancing) and by strengthening their ties with other like-minded partners (external balancing). Those claimant states also seek the establishment of risk mitigation mechanisms with China. This paper overviews those efforts in the East and South China Seas to understand regional approaches to maritime dispute management.

Managing Tension in the East China Sea

China has been challenging Japanese territory and sovereignty in the East China Sea since December 2008, when China's government ships started to intrude into Japanese territorial waters around the Senkaku Islands. The frequency of intrusions increased dramatically after September 2012 and gradually declined after the latter half of 2013. But Chinese ships have continued to enter into the contiguous zone on a regular basis since that time (Japan Ministry of Foreign Affairs, 2016b). In December 2015, China started to dispatch armed coast guard ships to the East China Sea (Mainichi Shimbun, 2016). The presence of these Chinese paramilitary ships raises the chances for unintentional accidents, incidents, and escalation, as well as the prospect of intentional use of force by China.

Since 2008, China's naval activities have grown increasingly frequent in the East China Sea and beyond in an effort to improve access to the open ocean through Japanese straits and develop China's anti-access/area-denial or counter-intervention capabilities (Japan Ministry of Defense, 2015c). Intrusions have taken place in the sky and at sea. The number of Chinese naval aviation and air force aircraft approaching Japanese territorial airspace increased after 2010 (PRC Ministry of Defense, 2016). After the announcement of the East China Sea air defense identification zone in November 2013, the Chinese military started scrambles against Japanese and U.S. military aircraft aiming at restricting foreign military aircraft's freedom of overflight above the Chinese-claimed exclusive economic zone (Kotani, 2014a).

Facing China's apparently rising assertiveness in the East China Sea, Japan revised the National Defense Program Guidelines in 2013, which called for a dynamic joint defense force. Under this concept, the Japan Self-Defense Force (JSDF) will be strengthened in both quantity and quality to defend the Nansei (Southwestern) Islands (Japan Ministry of Defense, 2013). The dynamic joint defense force concept envisions air and maritime superiority with active and regular surveillance, plus rapid deployment of combat troops, armored vehicles, air-defense units, and surface-to-ship missile launchers in defense of the Nansei Islands. In essence, it is a Japanese version of an anti-access/area-denial strategy along the Nansei Islands. The demonstration of enhanced defense posture is intended to send a deterrent message to Beijing.

To deal with Chinese challenges in the East China Sea more effectively, Japan also strengthened its alliance with the United States. Beijing became more active at about the same time that the Democratic Party of Japan, under Prime Minister Yukio Hatoyama, mismanaged the U.S.-Japan alliance, particularly the question of replacing Marine Corps Air Station Futenma in Okinawa. Upon returning to power in 2012, Prime Minister Shinzō Abe pledged to restore the alliance to health, and together he and President Obama confirmed the treaty commitment to the Senkaku Islands during the latter's visit to Tokyo in April 2014. Following this, Tokyo and Washington revised the bilateral defense cooperation guidelines to upgrade bilateral operational cooperation and improve the alliance structure (Japan Ministry of Defense, 2015b). Under the new guidelines, the JSDF takes the primary responsibility for the defense of Nansei Islands, while the U.S. military plays a supporting role with long-range offensive strike capabilities (Kotani, 2014b). The new Alliance Coordination Mechanism will endorse this upgraded operational cooperation. Under the mechanism, Japan and the United States will share information and situational awareness from peacetime to contingencies, while coordinating bilateral responses (Kotani, 2015c).

In addition to enhancing deterrence, Japan has been seeking ways to improve crisis management with China. Japan and China essentially reached an understanding on the structure of a military-to-military maritime and air communication mechanism in June 2012. Under the mechanism, the two defense authorities would establish hotlines, regular consultations, and common communication methods between ships for risk mitigation. But after September 2012, when Japan announced the nationalization of three of the five Senkaku Islands, Beijing refused to talk on this mechanism, demanding concessions on territorial and historical problems. In November 2014, Beijing finally agreed to disagree on those issues with Tokyo, and the talks on the mechanism resumed (Kotani, 2015a).

Tokyo and Beijing have agreed on the structure of the mechanism but not on the geographical coverage of the agreement. Tokyo does not assume that the communication mechanism applies to the 12-nautical mile (nmi) territorial seas and skies around the Senkakus, which Beijing insists on (Yomiuri Shimbun, 2015). Beijing is attempting to use the mechanism to justify its presence and intrusions in Japanese territorial space, and it attempts to use the crisis management negotiations as a means to achieve its policy goals.

Tokyo and Beijing have also explored jointly developing maritime resources, even though they have not delimited the maritime boundary in the East China Sea. Tokyo insists that such delimitation needs to be done based on the median line principle and according to the United Nations Convention on the Law of the Sea (UNCLOS), while Beijing claims the waters up to the Okinawa Trough, basing its arguments on the natural extension of the continental shelf. Under the Japan-China Fishery Agreement of 2000, Tokyo and Beijing agreed to jointly develop fishery resources in the East China Sea by designating provisional waters. However, the agreement does not cover the waters around the Senkaku Islands due to different views on their status. In 2008, Tokyo and Beijing agreed on the joint development of seabed resources along the median line of the East China Sea as well. However, Beijing has been reluctant to make this agreement into a legally binding treaty and continues to engage in unilateral development. Tokyo revealed details of China's unilateral development efforts in July 2015 (Japan Ministry of Defense, 2015a).

Separately, Japan and China have continued to hold high-level consultations on maritime affairs, in which all the principal maritime-related organizations on both sides participate. Through such negotiations, Japan and China have agreed to establish four working groups on policy/law of the sea, maritime defense, maritime law enforcement, and maritime economic affairs, and also agreed to seek a dialogue between the two coast guards. So far, this maritime consultation remains just a dialogue and has not become an effective confidence-building measure.

Probably because the overall military balance in the East China Sea still favors Japan and the United States, China has not sought to employ force and has instead adopted an approach characterized by gray-zone coercion short of war. Seeking to remain below the threshold of military power that would lead to a joint U.S.-Japan military response, China has regularized the presence of its coast guard ships in the vicinity of the Senkaku Islands and recently dispatched armed vessels converted from warships. While China has not attempted to use overt military force, its gray-zone coercion has not been deterred by the strengthened U.S.-Japan alliance.

In order to respond to China's gray-zone coercion, Tokyo has been reinforcing the Japan Coast Guard, the first responder to such coercion. The Japan Coast Guard is establishing a special unit for the Senkaku patrol, with 24 patrol ships based in Ishigaki Island (Japan Coast Guard, 2014). But Beijing is outpacing Tokyo in terms of shipbuilding for its coast guard. Tokyo also changed the procedures for issuing a maritime security order under which the JSDF conducts law enforcement operations in support of the Japan Coast Guard so that the JSDF can be swiftly dispatched in support of coast guard missions. But the JSDF's presence in a gray-zone contingency could escalate the situation, something that may give Tokyo pause.

By contrast to its tense relations with Beijing, Tokyo and Taipei have successfully managed their different views of the Senkaku Islands. Japan and Taiwan concluded a civil fishery agreement in April 2013 after 17 years of off-again/on-again negotiations (Kotani, 2015b). Under the agreement, Tokyo and Taipei agreed on the delimitation of their respective fishing areas and discussed resource conservation and common fishing rules.

The agreement between Tokyo and Taipei set a precedent for managing territorial disputes while avoiding further escalation of bilateral tensions in the East China Sea. Taiwan President Ma Ying-jeou has also advocated for an East China Sea Peace Initiative, calling on all sides to shelve sovereignty issues, seek peaceful resolution, and jointly develop resources in disputed waters. Ma did not insist on recognition of Taiwan's territorial claim during the fishery negotiations, which allowed Tokyo to make concessions on the joint development areas.

Increasing Tensions in the South China Sea

China became apparently more assertive in the South China Sea after 2007 (International Crisis Group, 2012a, 2012b, 2015). Beijing warned foreign oil companies against doing business with Vietnam in disputed waters, and Chinese law enforcement ships harassed marine research ships and fishing boats of other claimants. Beijing has issued unilateral fishing bans and established Nansha City in the South China Sea to reinforce its territorial claims. In addition, Beijing apparently provoked incidents with the U.S. military operating in the South China Sea.

China's rapid and massive land reclamation in the Spratly Islands, coupled with more-frequent coast guard and submarine operations, is intensifying the tensions in the South China Sea. As the United States resumed freedom of navigation operations within 12 nmi of Chinese artificial islands, the prospects for military confrontation and escalation are becoming higher. Despite the strong concern expressed by regional countries, Beijing claims that it is determined to operate the artificial islands for "peaceful" purposes and has recently tested flights by commercial aircraft to Fiery Cross Reef.

Regional states are responding to China's apparent assertiveness by increasing defense spending, particularly for naval and coast guard assets. Vietnam has received three Russian-built *Kilo*-class attack submarines and has three more on order. Additionally, Japan has donated six coast guard patrol vessels to Vietnam under official development assistance, and Hanoi's request that Washington lift its 40-year-old ban on lethal weapon sales was accepted by the Barack Obama administration. The United States and Australia have both donated vessels to the Philippines, which has also purchased new airframes from South Korea. The United States is planning to provide two additional ships to the Philippines, and Japan will provide ten patrol vessels under official development assistance. Regional states have expressed an interest in acquiring fixed-wing aircraft, helicopters, and unmanned aerial vehicles to improve their maritime domain awareness and patrol capabilities.

The ten Association of Southeast Asian Nations (ASEAN) member states are expected to spend \$58 billion on new military capabilities over the next five years, mostly on procuring maritime platforms (Govindasamy, 2015). But despite its slowing economic growth, China is still spending large sums on military and maritime capabilities. The regional military balance favors China, and internal balancing by several ASEAN members may not be sufficient to manage the increasing tension in the South China Sea.

Vietnam and the Philippines, despite China's apparent opposition, have sought to win the support of non-claimant major powers, particularly the United States and Japan, for their positions on the South China Sea issue as part of external balancing. In July 2010, Hanoi hosted the ASEAN Regional Forum and included the South China Sea issue in the agenda. Then-U.S. Secretary of State Hillary Clinton delivered a speech in which she stated that freedom of navigation in the South China Sea is in the U.S. "national interest." In May 2014, Singapore invited Japanese Prime Minister Abe as the keynote speaker at the annual Shangri-La Dialogue. In supporting ASEAN's efforts at peaceful resolution of the South China Sea disputes, he proposed "three principles for the rule of law" that called for all the claimants to make and clarify their claims based on international law, to avoid using force or coercion in resolving conflicts, and to seek to settle disputes by peaceful means.

In response to requests from Vietnam and the Philippines, Washington and Tokyo have redoubled their efforts to support capacity-building through the provision of maritime capabilities and joint training. In addition, they have reinforced their military engagements in the South China Sea. Hanoi opened Cam Ranh Bay to U.S., Japanese, and other foreign navies. Manila signed an Enhanced Defense Cooperation Agreement with Washington in 2014, and the U.S. Navy's port visits to Subic Bay are on the rise. President Obama has pledged plans for \$250 million in maritime security assistance to allies and partners in the region over two years (Maresca, 2015). Manila is seeking a visiting forces agreement with Tokyo and is offering to refuel Japanese naval forces operating in the South China Sea (Kameda, 2015).

External balancing has had only a limited effect on Beijing's behavior. ASEAN and China signed a Declaration on the Conduct of the Parties in the South China Sea in 2002 to set out basic principles for peaceful resolution without any mechanism for enforcing such a document. The declaration envisioned a legally binding code of conduct for better management of the issue, but China has been reluctant to discuss it further, preferring an approach premised on bilateral negotiations where its military, economic, and diplomatic weight can give it the maximum advantage vis-à-vis its smaller Southeast Asian rival claimants.

Facing criticism from regional countries and external powers, Beijing agreed to discuss the guidelines for the implementation of the declaration in 2011, but the dialogue on the guidelines has not covered the code of conduct. In addition to Beijing's reluctance, ASEAN member states are not unified on this, as illustrated by the failure of the ASEAN Regional Forum Foreign Ministers' Meeting hosted by Cambodia, a non-claimant member, in 2012 (International Crisis Group, 2012b).

Efforts for joint development among claimants have not been successful either. Joint development of seabed resources has been proposed, such as the one among Chinese, Vietnamese, and Filipino state oil companies, but due to sovereignty issues, the prospect of such an approach working is low. Fishery cooperation among the claimants is also unlikely for the same reason. Instead, China has become apparently more assertive on securing energy interests

by embarrassing other claimants' ships, issuing unilateral fishing bans, and giving warnings to third parties against involvement (International Crisis Group, 2012b).

An interesting development in the South China Sea is Manila's effort to bring Beijing to an international arbitration tribunal. Manila filed a case over Beijing's claims in the South China Sea requesting that the International Tribunal for the Law of the Sea determine whether China's nine-dash line is in accordance with the UNCLOS and also evaluate the legal status of Chinese-occupied reefs in the Spratly Islands. Although Beijing has rejected the arbitration process, the court in The Hague has allowed the process to move forward (Tiezzi, 2015).

The arbitration tribunal is expected to make a decision on the legal status of the reefs in the Spratly Islands as early as June 2016, although Beijing has signaled that it will not accept the panel's decision. This does not mean, however, that the arbitration process will not have any influence on Beijing's behavior. For example, after the tribunal accepted that it has jurisdiction to rule on the arbitration case, Chinese Premier Li Keqiang avoided basing Chinese claims on the nine-dash line in his statement at the East Asia Summit in November 2015. Also, Beijing acknowledged Indonesian sovereignty over the Natuna Islands, which lie just outside the nine-dash line, after Jakarta hinted it too might launch a legal case similar to that filed by Manila (Yu, 2015).

Unlike in the East China Sea, where China has not taken control of the Senkaku Islands, China has changed the territorial status quo in the South China Sea by military and paramilitary force. It fought small skirmishes with Vietnam in 1974 over Woody Island in the Paracels and in 1988 over Johnson Reef in the Spratly Islands. It took Mischief Reef in the Spratly Islands from the Philippines in 1995 and took control of the Scarborough Shoal from the Philippines in 2012.

In the past, Beijing used force when either the United States or the former Soviet Union reduced its presence in Southeast Asia, effectively filling a power vacuum. But in recent years, Beijing has apparently become more assertive in the presence of the U.S. rebalance to Asia, possibly seeking to signal its challenge to U.S. hegemony in the region (or perhaps seeking to discredit Washington's reliability as a security guarantor to regional states). However, Beijing has also attempted to avoid armed conflict with Washington by calling for a new type of major power relationship and has responded to U.S. freedom of navigation operations with restraint.

When dealing with rival Southeast Asian claimants, however, Beijing employs gray-zone coercion, and the color of gray is darker in the South China Sea than in the East China Sea. Notable distinctions include the 2014 deployment in Vietnamese-claimed waters of a mobile oil rig accompanied by hundreds of escort ships and the construction and militarization of a series of artificial islands in the Spratly Islands.

By contrast to China, Taiwan President Ma Ying-jeou has proposed a South China Sea Peace Initiative. As part of this proposal, Taipei concluded a fishery agreement with Manila to manage the fishing activities in disputed waters (Hsu, 2015). But so far, Taiwan has had less influence on the disputes in the South China Sea than in the East China Sea. For instance, the efforts for the code of conduct do not include Taiwan, which occupies the largest island in the Spratlys (Ching,

2015). Taipei still has the potential to shape the situation as the originator of the nine-dash line. If it clarifies what the nine-dash line claims, that would pressure Beijing to clarify its claims in accordance with international law (Glaser, 2014).

Conclusion

Promoting the rule of law in the East China Sea and the South China Sea is essential for the stability of the Indo-Pacific region. In reality, however, there is no consensus on the legal basis for maritime boundaries in postwar Asia. There is little consensus on peaceful resolution of maritime disputes, either.

The tension between Japan and China in the East China Sea has been managed by Japan's internal and external balancing. To some observers, China is not serious about crisis management and confidence-building, and China's gray-zone coercion appears to be a continuing challenge to Japan's security and stability in the East China Sea. For Japan, it is important to effectively respond to China's gray-zone activities by controlling the escalation while maintaining overall military superiority.

The situation in the South China Sea is and continues to be difficult to manage given China's rising activity. Because the military balance favors China in the South China Sea, internal and external balancing by regional states apparently has little effect on Chinese behavior. Beijing may therefore have less interest in crisis management or confidence-building in the South China Sea. Beijing seems to have carefully avoided U.S. military intervention, even as it has intensified its gray zone coercion vis-à-vis other claimants.

Regional players need to come up with a better response to gray zone challenges by further reinforcing their efforts at internal and external balancing while promoting the norm of the rule of law and peaceful dispute resolution through international arbitration. It is important to monitor how Beijing responds to the international arbitration decision to know the impact of the international legal process on Beijing's behavior.

Chapter Four. Navigating Through Troubled Waters by Joint Development

Chunhao Lou

The South China Sea (SCS) is a semi-enclosed sea stretching from the Strait of Malacca in the southwest to the Taiwan Strait in the northeast, comprising the Nansha Islands (Spratly), Xisha Islands (Paracel), Zhongsha Islands (Macclesfield Bank), and Dongsha Islands (Pratas). There exist territorial disputes among six parties—mainland China, Vietnam, the Philippines, Malaysia, and Brunei, plus Taiwan. Indonesia is not a territorial disputant, but it has not finished maritime delimitation with mainland China yet. The East China Sea (ECS) borders Japan, South Korea, mainland China, and Taiwan. Japan has disputes over the sovereignty of the Diaoyu (Senkaku) Islands with mainland China and Taiwan, and it has not finished maritime demarcation. Both the SCS and ECS boast of increasingly strategic significance, partly because of the energetic regional economies, partly because of the U.S. rebalancing strategy and China's rise, and partly because of the serious implications of the region's security for the world.

During the past few years, the SCS and ECS have witnessed growing tensions. The dynamics are complex: Some termed the regional claimants' behavior, such as the arbitration case and the "nationalization" of the Diaoyu (Senkaku) Islands, as provocative; some blamed the U.S. rebalancing strategy for sending the wrong signals to regional countries; and many have rebuked Chinese policy as "assertive" or even "coercive." All these arguments make sense to some extent. The other very important angle to understand the SCS and ECS disputes is the competition for resources, which may represent "the immediate source of conflict in the region" (Xu B., 2014) or the "strategic center of the conflict for relevant parties" (Li G., 2014).

The history of the SCS and ECS disputes suggests that the competition for resources has contributed significantly to tensions. Back in the late 1960s and early 1970s, relevant survey reports about the potential hydrocarbon reserves in these regions stimulated exploration and development activities and intensified the disputes, particularly in the wake of the 1970s oil shocks. A number of recent incidents were also driven by economic activities. The collision incident between the Chinese fishing boat and the Japanese Coast Guard in September 2010 seriously damaged the China-Japan bilateral relationship. Similarly, the attempted arrest of Chinese fishermen by the Philippines' naval forces led to the Huangyan Dao (Scarborough Shoal) standoff in 2012, and the deployment of Chinese oil rig Haiyangshiyou (HYSY) 981 triggered strong protest from Vietnam in 2014. Clearly, competition for resources plays a major role in the ECS and SCS tensions.

This paper will first touch on the economic significance of the SCS and ECS and then explain the rationale and implementation of regional claimants' policies. Considering that it is

quite probable that competition for these resources will be prolonged, the paper argues that joint development may be the most feasible way to reduce the tensions over the long run.

Potential Resources in the South and East China Seas

The economic significance of the SCS and ECS is mainly attributed to the huge resources potential, including hydrocarbon and fisheries. Although it is quite difficult to produce an accurate assessment of the potential for hydrocarbon reserves, particularly in the SCS, regional claimants have strong energy demand and have carried out exploration and development activities for decades. As for fisheries, the SCS and ECS are traditional fishing grounds for relevant countries and closely linked to peoples' daily lives. In addition, as regional states have developed economically, people in these societies have come to consume higher levels of protein, further incentivizing fishing activities in the region's waters. Furthermore, the SCS is home to vital sea lanes connecting the Indian Ocean and West Pacific, but because all countries share convergent interests on the safety and security of the sea lines of communication, it is unwise, and unlikely in the near future, for any country to block the sea lines.

The SCS is believed to contain huge oil and natural gas reserves, although the estimates of the size of these resources vary substantially. In 1968, the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas published the result of a survey claiming abundant deposits of oil and gas in the SCS. The report was widely cited as an important factor driving regional claimants to be more assertive in their SCS policies (Ju, 2015; Song, 1999). The U.S. Energy Information Administration (EIA) estimates that the SCS contains approximately 11 billion barrels of oil reserves and 190 trillion cubic feet of natural gas reserves in proved and probable reserves, which is "closer to a high-end estimate" (U.S. Energy Information Administration, 2013). Some oil and gas industry consultants argue that "the disputed areas of the SCS actually contain relatively little oil and gas. The vast majority of the Sea's resources lie outside the U-shaped line. There are some good fields and interesting prospects within Chinese claim, but the . . . possibilities [probably] aren't worth the fuss the area generates" (Hayton, 2014). Chinese institutes tend to give more-optimistic assessments, with the SCS widely described by Chinese analysts as "the second Persian Gulf" (Wu and Ren, 2005; Xu H., 2012). According to the Chinese Ministry of Land and Resources, in the SCS, there are more than 10 basins with oil reserves, covering 852,240 km², which amounts to nearly half of the entire continental shelf in the SCS. The Chinese National Offshore Oil Company (CNOOC) estimates that the area holds around 125 billion barrels of oil and 500 trillion cubic feet of natural gas in undiscovered resources (U.S. Energy Information Administration, 2013) and that three of China's five gas enrichment areas are located in the SCS—Yinggehai Basin, Qiongdongnan Basin, and Pearl River Mouth Basin (Fu, 2012). Based on its geological surveys and research, the Chinese Academy of Sciences states that the "SCS is the only marginal sea with ocean crust in China and rich in oil and gas resources" (Wan, 2006). According to Chinese scientists'

research, the oil and gas fields in the SCS are mainly concentrated in the Cenozoic sedimentary basins along the continental margin. The majority of oil fields are located in the Beibu Wan Basin (Gulf of Tonkin Basin), Pearl River Mouth Basin, Mekong Basin, Zengmu Basin, and Brunei-Sabah Basin (Li Jinr., 2014).

The hydrocarbon reserves in the ECS are also challenging to assess accurately. In the early 1960s, through joint research, American geologist K. O. Emery at the Massachusetts Institute of Technology and Hiroshi Niino from the University of Tokyo argued that the ECS and Korea Strait were rich in oil resources. Later, the two scientists affirmed that the ECS might be one of the areas that has the richest oil reserves in the world. EIA estimates that the ECS has about 200 million barrels of oil, but Chinese assessments run as high as 70–160 billion barrels of oil (U.S. Energy Information Administration, 2014a). The hydrocarbon resources in the ECS are mostly located on the west of Okinawa Trough.

In addition to hydrocarbon reserves, marine fish resources constitute another important commodity for competition. The SCS and ECS are traditional and rich fishing grounds for the regional claimants. There are more than 2,500 types of fish with commercial value in the SCS, and the fish catch is estimated at more than 20 million tons annually, with almost half of this coming from within the U-shaped line (Liu et al., 2013). It is estimated that the fishing capacity is around 7.5 tons per km² per year in the Nansha Islands alone, and the SCS states produce more than 8 million metric tons of live weight of marine fish, accounting for 10 percent of the total world catch (Huang and Billo, 2014). The ECS is one of the most important fishing grounds for China, and the catch production in the ECS accounts for around 40 to 50 percent of Chinese total marine catch production. However, due to over-fishing in recent decades, the fish stocks in the ECS have been declining. Considering the increasing demand for consumption of marine products and the decline of inshore fish stocks, major coastal states like China, Japan, and Vietnam increased fishing in farther, and probably disputed, areas.

Attempted Cooperation, Actual Competition

Since the 1970s, parties to the ECS and SCS disputes have competed for the resources necessary to sustain domestic economic development. However, the economic and political cost of unilateral development has at times driven regional countries to cooperate under an approach that Chinese thinkers characterize as “Setting Aside Disputes and Pursuing Joint Development.” In 1978, during his visit to Japan, Chinese leader Deng Xiaoping stated that the two countries should set aside the Diaoyu (Senkaku) Islands dispute for the development of a bilateral relationship (PRC Ministry of Foreign Affairs, 2016).¹ This was the first time that the Chinese

¹ Deng stated that “it’s a fact that when China and Japan normalized their relations, both countries agreed that this issue (regarding the Diaoyu Islands) should not be involved. When we negotiated the Sino-Japanese Treaty of Peace and Friendship, we also agreed not to deal with this issue. We believe that we should set the issue aside for a while if we cannot reach agreement on it. It is not an urgent issue and can wait for a while. If our generation does not have enough wisdom to resolve this issue, the next generation will have more wisdom.”

government had ever proposed this approach. In June 1979, the Chinese Ministry of Foreign Affairs formally proposed the concept of joint development of resources adjacent to the Diaoyu (Senkaku) Islands to the Japanese side through diplomatic channels, but China did not receive positive feedback. Deng made similar proposals in a meeting with Filipino leader Cory Aquino in 1988 for resolving the territorial disputes in the SCS. Until now, this approach remains an important element of China's policy toward the ECS and SCS disputes (Xinhua News, 2013).²

In response to China's proposal, some progress has been made on joint development. In the SCS, China, Vietnam, and the Philippines signed a three-year Joint Marine Seismic Undertaking in March 2005. The agreement covered an area of 142,886 km², including some parts of the disputed areas. According to the agreement, China would handle the surveying, sending the data to Hanoi for processing and to Manila for analysis. It was a good step for joint development but ultimately foundered due to domestic opposition in the Philippines. China also signed the Fisheries Cooperation Agreement in the Beibuwan with Vietnam in 2000. In the ECS, China has formally conveyed to the Japanese side several times that, while sticking to the principle of natural prolongation of the continental shelf, China still welcomes joint development of the continental shelf (Zhang and Wang, 2011). Japan did not accept this proposal and sought to block Chinese exploitation activities several times since 2004. Nevertheless, through joint efforts, China and Japan reached the Principled Consensus on the East China Sea Issue in 2008, stating that the two sides would "conduct cooperation in the transitional period prior to delimitation without prejudicing their respective legal positions" (Xinhua Net, 2008). This effort collapsed after a Chinese fishing captain was arrested by the Japanese Coast Guard near the Diaoyu (Senkaku) Islands in September 2010. As for fishery resources, China and Japan signed an agreement on this issue in 1997, but incidents related to activities by Chinese fishermen still occur frequently.

While progress has been slow on joint development, regional claimants regularly carried out unilateral exploration and development in both bodies of water in recent years. Since the first cooperative development contract with Japan in 1978, Vietnam Oil and Gas Group (Petro Vietnam) has signed 37 production sharing contracts, one commercial cooperation contract, and seven joint development contracts (Li Jinm., 2010). As of late 2014, Vietnam had offered 120 oil blocks for bidding, despite Chinese protests that these offers violate China's claims to sovereignty over the areas in question (Li G., 2014). Vietnam produced around 353,700 barrels of oil per day and 346 billion cubic feet of marketed natural gas in 2013 (U.S. Energy Information Administration, 2014d).

The Philippines similarly viewed the potential oil and gas resources of the SCS as important pillars for national energy security. In 1976, the Philippines invited the Amoco Corporation, and subsequently invited British Petroleum (BP) in 1998, to assist it with oil exploration in Liyue

² Chinese President Xi Jinping reemphasized this principle at a study session with members of the Political Bureau of the Communist Party of China in July 2013. The study session's theme is to build China into a maritime power.

Tan (Reed Bank). In 2011, the Philippines offered three blocks for exploration to foreign companies, two of which are within the Chinese-claimed U-shaped line (Li G., 2014).

Malaysia and Brunei keep a low profile on SCS disputes but have benefited the most from oil and gas exploitation in the SCS. Malaysia is the second-largest oil and gas producer in Southeast Asia, and the majority of its oil and gas resources are located in the offshore fields. Although most of the oil reserves are located in the undisputed Malay basin, several major deepwater oil development projects are offshore the Sabah state. Moreover, more than half of the natural gas reserves are located in the offshore Sabah and Sarawak, with exploration and development activities focusing on these regions (U.S. Energy Information Administration, 2014b). One Chinese scholar even argued that Malaysia's exploration and development activities concentrate in areas from Nantong Jiao (Louisa Reef) to Zengmu Ansha (James Shoal) (Li G., 2014). In 2010, Malaysia exploited more than 34.5 million tons of oil and more than 49 billion cubic meters of gas in the SCS, with some fields stretching more than 120 nmi inside the Chinese-claimed U-shaped line (Xu H., 2012).

Brunei relies heavily on oil and gas production for government revenues and has produced oil and gas in the SCS for several decades. Eight of the ten oil and gas fields Brunei exploits most heavily are offshore, most of them located within the Chinese-claimed U-shaped line (Li G., 2014).

To sum up the situation in the SCS, according to incomplete statistics, regional claimants have discovered 283 oil and gas fields in the inshore and 73 deep-sea fields, many of which are located within the U-shaped line. Until August 2011, regional claimants operated around 556 exploration wells and 354 development wells within the U-shaped line, exploring more than 50 million tons of oil equivalent and gas resources (Wang P., 2012).

In the ECS, China and Japan have overlapping exclusive economic zone claims, as they take different approaches on maritime demarcation. Based on legal and scientific proof, China adheres to an approach based on the natural extension of the continental shelf, while Japan insists on a "median line" approach. China is often blamed for unilateral exploration in the ECS, but in fact, even if the Japanese "median line" were acknowledged, Chinese oil and gas fields are still within the Chinese side. Thus, Chinese development activity is argued by some observers to be justified and legitimate. Japan once argued that Chinese oil and gas fields would siphon off resources from the Japanese side, but without scientific proof, Japan abandoned the claim. Since the 1970s, Japan has been active in resource exploration in the ECS, but its efforts have stalled after several failed attempts. In the early 2000s, the Japanese government renewed its interest in regional resources and conducted several surveys on the continental shelf. In 2003, Japan set up the Continental Shelf Surveys Office under the Cabinet Secretariat, committing to spend 52.2 billion Japanese Yen (around U.S. \$500 million) on continental shelf surveys during 2003–2008. Since then, Japan has issued several policies for accelerating the exploration of deep-sea resources.

Compared with the competition for hydrocarbon resources, the competition for fishery resources in the ECS and SCS is more immediate. Clashes over fishery rights have been frequent. All coastal parties are large marine fish producers. According to the Food and Agriculture Organization of the United Nations (FAO), China is the largest fish producer when measured by quantity. In 2012, China's capture production was around 16.17 million tons. Regional parties, including Indonesia, Japan, Vietnam, the Philippines, South Korea, Malaysia, and Taiwan, all ranked near the top of the list. The capture productions of Indonesia, Vietnam, the Philippines, Malaysia, and Taiwan were 5.81, 2.62, 2.32, 1.48, and 0.91 million tons, respectively, for 2012. Japan's capture production was around 3.64 million tons, with South Korea following at 1.67 million tons (Food and Agriculture Organization of the United Nations, 2014). In the SCS, China and Vietnam had a fishery agreement in the Beibuwan that helped reduce tensions over fishing disputes there; in other parts of the SCS, clashes over fisheries between China and Vietnam are more common. Due to the decreasing inshore fishery resources and the development of advanced fishing technology, fishermen increasingly go farther offshore. The competition among fishermen, and the confrontation between fishermen and other countries' law enforcement forces, has often been fierce. Between 1989 and 2010, there were a total of 382 incidents in which Chinese fishermen claimed to have been harassed, attacked, or arrested by force by other coastal countries bordering the SCS. Around 74 ships were confiscated or rammed, 826 fishermen were penalized, 25 were killed, and 24 injured. The direct economic losses amounted to more than 300 million Chinese yuan (RMB) (around U.S. \$46.3 million) (Wang, Liu, and Wang, 2012).

China claims to have exhibited restraint in the development of resources in the SCS and ECS for decades. Despite other countries' exploitation activities, China repeatedly proposed the joint development principle in the 1970s. In 1982, China established CNOOC to focus on the development of offshore oil and gas resources. CNOOC started to build its first oil rig in the SCS in 1986 and offered oil blocks to U.S. energy company Creston in 1992. But considering the technical difficulty, economic cost, and political sensitivities, China gave up or postponed planned exploration operations several times. As the oil prices have gone up since the early 2000s, China has become more interested and active in deep-sea oil and gas development. Some Chinese scholars have argued that it is "really urgent" for China to develop the deep-sea oil and gas resources (Lu and He, 2007). In 2008, CNOOC declared plans to spend around RMB 200 billion (around U.S. \$32 billion) for oil and gas exploration and exploitation in the next 10–20 years in the SCS, setting the annual exploration target at 50 million tons of oil equivalent. In 2011, CNOOC issued its Second Leap Forward Program (2011–2030), listing the deep-sea oil and gas development as a priority. Even so, Chinese offshore exploration and development activities, mostly driven by CNOOC, were mainly carried out on the Bohai Bay region, the Pearl River Mouth Basin in the South China Sea, and, to a lesser extent, the ECS (U.S. Energy Information Administration, 2015b). The Bohai Bay and Pearl River Mouth Basin are undisputed Chinese waters. In May 2012, HYSY 981, China's first sixth-generation ultra-deep-water semi-

submersible drilling platform, began drilling in a sea area 320 km southeast of Hong Kong at a depth of 1,500 meters, marking “a substantial step” of Chinese deep-water development. The location is not within disputed waters. Moreover, China and Brunei achieved a breakthrough on joint development. In October 2013, the two countries signed memorandums of understanding on maritime cooperation; CNOOC and the Brunei National Oil Cooperation signed an agreement to set up a joint venture to explore and exploit offshore oil and gas resources, without prejudice to the position of the respective countries in relation to maritime rights and interests. In the ECS, China reached consensus with Japan in 2008, allowing Japanese legal enterprises to jointly explore resources in the Chunxiao gas field, which is located on the Chinese side of the “median line.” As far as the fishery issue is concerned, China signed a cooperation agreement with Japan and another with Vietnam in the Beibuwan.

However, due to a series of incidents during the past few years—including the claimed harassment of its fishermen, the Huangyan Dao (Scarborough Shoal) standoff, Japanese “nationalization” of the Diaoyu (Senkaku) Islands, and other claimants’ active unilateral exploration of oil and gas resources—China became more active in “unilateral development.” In the ECS, the Japanese government claimed that China built 14 new gas structures since 2013 (Japan Ministry of Foreign Affairs, 2016a), although all these structures apparently lie on the Chinese side of the “median line.” In the SCS, China deployed the offshore rig HYSY 981 to drill in the Zhongjiannan basin in the Xisha (Paracel) Islands in May 2014. The drilling incited serious anti-China protests in Vietnam, as Hanoi also claims these areas. According to publicly available information, the drilling did not result in any commercial finds, but it still allowed China to send a strong political signal that it will step up its oil and gas drilling efforts in the SCS. Until now, China has established one “deep-sea fleet,” described on CNOOC’s official website, consisting of HYSY 681/682, HYSY 708, HYSY 720, HYSY 981, and HYSY 201. HYSY 681/682 is China’s first high-powered deep-water anchor-handling tug supply vessel. HYSY 708 is the first deep-water survey vessel designed to operate at a depth of up to 3,000 meters. HYSY 720 is a new-generation three-dimensional geophysical survey vessel. HYSY 201 is the world’s first deep-water pipe-laying crane vessel featuring 3,000-meter deep-water pipe-laying capacity, 4,000 tons of lifting capacity, and DP-3 dynamic positioning capability (China National Offshore Oil Corporation, 2016).

Prolonged Competition

Little progress has been made so far toward joint development in the SCS and ECS, particularly in terms of the two regions’ oil and gas resources. On the contrary, some evidence suggests that the competition over resources may become more fierce.

First and foremost, all parties have a strong appetite for resources to sustain domestic social and economic development. The development of sources in the sea has become an important

component of each claimant's energy policy, although falling oil/gas prices and the prospect of provoking armed conflicts may discourage unilateral energy development.

East Asia has witnessed rapid economic growth and strong energy consumption in the past three and a half decades. From 1981 to 2011, Chinese energy consumption grew at around 5.82% annually, contributing to “the long-term, steady and rapid growth of the national economy and the sustained improvement of living standards” (PRC Information Office of the State Council, 2012). According to the EIA, Chinese oil consumption growth accounted for about 43% of the world's oil consumption growth in 2014 (U.S. Energy Information Administration, 2015b). A recent BP report showed that Chinese oil consumption in 2014 was 12.4% of the world's consumption, while the United States ranked first at 19.9%. In natural gas, China was the third-largest consumer after the United States and the Russian Federation, accounting for 5.4% of total world consumption (British Petroleum, 2015b).

Besides the total amount, the structure of China's energy consumption has also invited attention. Due to its rich endowments, China has relied heavily on coal consumption for decades. In recent years, coal consumption accounted for around 65–70% of China's total energy consumption, although the ratio of oil and gas consumption rose to 20–25%. In 2014, the consumption of coal, oil, and natural gas accounted for 66.0%, 17.1%, and 5.7% of total national energy consumption, respectively (Ma J., 2015). Thus, although the Chinese government aims to reduce the ratio of fossil fuels in its overall energy mix, the country's demand for and reliance on oil and gas is projected to remain high. BP estimates that China will surpass the United States as the largest oil consumer in 2030 and become the second-largest natural gas consumer behind the United States in the mid-2020s. By 2035, the ratio of oil consumption in China's total consumption will remain at around 18% while that of gas will rise to 12% (British Petroleum, 2015a). Moreover, concerned about the geopolitical risks of high dependency on energy imports, the Chinese government has emphasized an increasingly “self-reliant” approach. In June 2014, Chinese President Xi Jinping hosted a high-level meeting on energy security strategy, stressing that China's approach “relies on a diversified supply at home to ensure the energy security” of the country (Qingdao Huijintong Power Equipment Co., 2014). Considering the projected drop-offs in oil and gas production on land, it is quite possible that China will increase oil and gas exploration activities at sea.

In the SCS, regional countries also have strong needs for oil and gas due to rapid economic growth and industrialization. Vietnam's oil consumption increased year-over-year and overall by more than 70%—from 238,400 billion barrels per day in 2004 to 413,000 billion in 2013—and the country consumed 346 billion cubic feet of natural gas in 2013. Although Vietnam will likely remain a net exporter of crude oil for some time to come, it is predicted that the country's demand for gas will surpass its domestically produced supply in the near future (U.S. Energy Information Administration, 2014d). Oil and natural gas are the main energy resources for Malaysia. Nearly all of its oil production is from off-shore fields, where most of its gas reserves also exist. It is estimated that Malaysian oil and gas consumption witnessed annual growth at

6.1% during 2006–2010, compared with a growth of 4.5% per year during 2000–2005. One source has estimated that the combined share of oil and gas in Malaysia’s overall energy mix was more than 86.3% in 2010 (Wang H., 2013). Separately, the EIA estimated that the share of oil and gas consumption is 40% and 36%, respectively, in 2012, suggesting that the country’s reliance on hydrocarbon resources is deepening rapidly (U.S. Energy Information Administration, 2014b). While the figures offered by the two sources differ from each other, the fact is that Malaysian energy consumption relies heavily on oil and gas, and this trend will not change in the near future. Similarly, the Philippines is a net energy importer and relies heavily on oil consumption, which represented approximately 41% of its total energy consumption in 2011 (U.S. Energy Information Administration, 2014c). Eyeing the huge resource potential of the SCS, the Philippines has offered several oil and gas fields for bidding in order to partially meet domestic demand. The EIA points out that “with Southeast Asian domestic oil production projected to stay flat or decline as consumption rises, the region’s countries will look to new sources of energy to meet domestic demand,” and the huge resource reserves in the SCS become an “incentive to secure larger parts of the area for domestic production” (U.S. Energy Information Administration, 2013).

In the ECS, Japan lacks sufficient domestic hydrocarbon resources and relies heavily on energy imports. Japan is the world’s largest importer of liquefied natural gas and the third-largest net importer of crude oil and oil products. After the Fukushima nuclear incident, Japan shut down all of its nuclear reactors and turned to fossil fuels to make up the resulting energy shortfall. In 2013, oil accounted for the greatest share of Japan’s total energy consumption with a ratio of 44%, while gas accounted for 22% (U.S. Energy Information Administration, 2015c). Due to its lack of domestic energy production, Japan endeavored to increase energy efficiency and diversify import sources. But partly stimulated by Chinese development activities, partly by the advancement of its own oil and gas exploration technology, and partly by the government’s efforts to reduce oil import dependency, Japan turned to the development of resources from the sea. During the period following the 2012 disaster, the Japanese government issued many policy papers on developing its oceanic economy and carried out many surveys of the resource reserves in the ECS. In April 2013, the Japanese government renewed its Basic Plan on Ocean Policy, stating that the government should take the initiative in carrying out basic surveys and promoting technological development for resources exploitation “in the marine zones surrounding Japan” (Government of Japan, 2008). Japan also published a Strategic Energy Plan stating the same policy in April 2014 (Government of Japan, 2014).

As for the fisheries issue, regional countries’ marine fish consumption, as an important source of protein, has increased steadily in recent years. The World Bank predicts that by the end of 2030, total Chinese fish consumption will reach 57.36 million tons, with Southeast Asia and Japan following at 17.16 million and 7.93 million tons, respectively. The three parties’ share in global total is 37.8%, 12.7%, and 4.9%, respectively (Msangi et al., 2013). Due to environmental pollution, the depletion of fishing resources in inshore waters, and the increasing demand for

deep-sea marine products, fishermen increasingly sail into deep-sea waters in search of more fishing resources. Taking China as an example, although the quantity of its sea-fishing take is smaller than its output of aquaculture, sea-fishing production reached 1.24 million tons in 2010. According to FAO statistics, between 2003 and 2012, most of the regional parties saw increases in capture production. China's capture production increased from 14.3 million tons in 2003 to 16.17 million tons in 2012, Vietnam from 1.87 million tons to 2.62 million tons during the same period, and the Philippines from 2.17 million tons to 2.32 million tons over those years. (Japan and Taiwan witnessed decreases during the same period.) According to the FAO, there are around 9.23 million fishermen in the region, and the figures in Indonesia, Vietnam, the Philippines, Malaysia, Taiwan, and Japan are 2.49 million, 0.53 million, 1.91 million, 0.14 million, 0.24 million, and 0.17 million, respectively (Food and Agriculture Organization of the United Nations, 2014). The number of people employed by the fishing industry as a whole is much larger. Chinese media reports that there are around 20.66 million fishermen and 14.43 million fishing industry practitioners in China alone (Xinhua Net, 2014). Thus, fisheries issues should be viewed not only from an economic perspective but also as being closely linked with domestic politics.

Second, the energy industry constitutes an important economic pillar for many countries, and big energy corporations are powerful interest groups. It is quite likely that these corporations will push ahead deep-sea exploitation strongly, which will intensify the competition.

Oil and gas industries have become important sources of revenue for claimants in the SCS. In Vietnam, oil exports contributed the most to foreign exchange earnings since the 1990s, surpassing even the traditional strong-earning sector of rice exports. Today, the oil and gas industry is the largest revenue source for the Vietnamese government. Brunei's economy similarly relies heavily on the export of oil and natural gas, and hydrocarbon revenues account for nearly two-thirds of the country's gross domestic product (GDP) and the vast majority of its merchandise exports and government revenues (U.S. Energy Information Administration, 2015a). In Brunei, sources of public revenue outside the oil and gas sector are tiny. Brunei issued an energy white paper in March 2014, noting that if the country did not stave off a natural decline in oil and gas production, the slide of global oil and gas prices could lead to declining revenues, a development that even "calls into question the social compact, which includes large scale government spending for the benefit of all residents" (Economist Intelligence Unit, 2016). The Malaysian government's revenue similarly relies heavily on the oil and gas industry, and declining oil prices in these sectors in recent years have reduced the government's operating revenues. It is reported that the energy industry makes up almost 20% of Malaysia's GDP (U.S. Energy Information Administration, 2014b). The Philippines does not enjoy huge hydrocarbon reserves, and most of those it does claim are in disputed regions. As a net importer of oil, the Philippines regards the SCS's potential reserves as vital to its energy security (International Crisis Group, 2012b). China's state-owned oil and gas corporations, commonly referred to as the "three buckets of oil"—CNOOC, China National Petroleum Corporation, and China Petroleum

and Chemical Corporation (Sinopec)—are also important sources for government revenue. Although the exact and detailed figures are not available, it is reported that the China National Petroleum Corporation and Sinopec are the two-largest tax contributors among listed companies in China (NetEase, 2015). In other words, oil and gas resources in the SCS are critical to many claimants' economic development policies. As many oil and natural gas fields in areas easy to exploit on-shore or in immediately proximate waters are aging, regional actors are increasing their pursuit of deep-sea resources.

The important status of the energy industry gives the oil and gas companies heavy weight in the relevant countries' political and economic debates. Vietnam Oil and Gas Group (Petro Vietnam), Vietnam's primary operator and regulator of the industry, is Vietnam's largest state-owned company in terms of revenue (Economist Intelligence Unit, 2015b). It was formally founded in September 1977 by the Government Council's decision. Petro Vietnam's development history shows that the Vietnamese government was deeply involved in the corporation's affairs. In 1992, the corporation was even under the Council of Ministers (Petro Vietnam, 2010). By the early 2010s, Petro Vietnam had become Vietnam's biggest conglomerate, accounting for about 20% of the country's GDP and generating up to 25–30% of the government's annual revenue. And because the country's continued economic development demands increasing energy supply, SCS-based oil and gas resources will likely become more important to Vietnam in the future (Hiep, 2014). The appointment of the chairman and chief executive officer of Petro Vietnam needs the approval of the Vietnamese Prime Minister, as do all important posts within the Vietnamese Communist Party. Petro Vietnam's chairman is also a member of the party's Central Executive Committee (International Crisis Group, 2016).

Malaysia's Petroliam Nasional Berhad (Petronas) was established in 1974 and is wholly owned by the Malaysian government. It has exclusive rights to develop and exploit Malaysia's oil and gas resources and a monopoly on oil production. Petronas reports to the National Petroleum Advisory Council, which in turn gives advice on overall energy matters to the Malaysian prime minister, who has ultimate authority over the petroleum sector (Economist Intelligence Unit, 2015a). Although the Malaysian government has sought for years to broaden its revenue sources, the percentage contribution from Petronas to the total revenue has remained high. In 2011 and 2012, Petronas contributed about 35% and 33% of total government revenue, respectively (Star Online, 2013). Due to falling oil prices, Petronas's contribution declined to 22% in 2014 but remained the single-largest source of revenues (Lin Say, 2015). In 2014, the Petronas Group had revenues of about U.S. \$74.61 billion, of which around U.S. \$17.01 billion were contributed to the government in the form of tax revenues. As of 2014, Petronas's total historical contributions to the government amounted to just shy of U.S. \$200 billion (Petronas, 2014). Members of the Petronas Board of Directors have close links with the government, and many of them are civil servants. For example, the current chairman of the Petronas board served in the Administrative and Diplomatic Service for 38 years and was the chief secretary of the Malaysian government between 2006 and 2012.

In the Philippines, the Philippine National Oil Company (PNOC) was established in 1973 by the government in response to the oil shocks of the early 1970s. PNOC plays an important role in formulating the country's energy policy. Its chairman is appointed by the president and is simultaneously secretary of the energy department (International Crisis Group, 2016). The then-PNOC president was deeply involved in the 2005 China-Vietnam-Philippines trilateral seismic survey agreement. One scholar has pointed out that

the key Filipino decision makers were neither foreign policy nor security experts . . . that had long been handling policy on the Spratlys (Nansha Islands). Instead, there were two individuals who stand out as the main champions—Speaker of the House of Representatives Jose de Venecia, Jr., who had been involved in the first oil exploration off the coast of Palawan Island, and the president of the PNOC Eduardo Manalac. (Baviera, 2012)

Similar to the countries described above, China's state-owned corporations are also very close to the Chinese government. Chinese state-owned oil and gas corporations are powerful, influential entities in the Chinese system. The chairmen of the three corporations are usually members of the Central Committee or the Central Commission for Discipline Inspection of the Chinese Communist Party. Chinese national oil companies are "some of the most important potential quasi-governmental actors in Chinese SCS policy" and are believed to "urge the central government to sponsor and approve oil exploration in the disputed waters in the SCS, arguing that such actions would help reinforce China's sovereignty claims in these areas" (International Crisis Group, 2012a).

To conclude, with advances in deep-sea energy development technologies, the decreasing potential of land-based and coastal fields, and countries' growing appetites for energy converging with corporations' hunger for profits and higher political status, regional oil companies are likely to become increasingly active in oil and gas exploitation in disputed seas. Moreover, the corporations' leaders may seek to improve their political status by pushing forward deep-sea exploitation more firmly. Of course, the falling oil and gas prices make deep-sea development less profitable. But a convergence of those above-mentioned varied interests suggests a high possibility that contention may continue to grow in the future.

Third, the lack of mutual trust among the parties to the ECS and SCS disputes pushes them toward unilateral development. Territorial sovereignty is quite politically sensitive, and it is understandable that sovereignty disputes help fuel a lack of mutual trust. If the bilateral foreign relationship remains healthy, the other side's oil and gas development activities are unlikely to unduly disturb the two countries' diplomatic relations. Malaysia and Brunei, for example, are a pair of SCS claimants who have adopted a low-profile and pragmatic approach toward their territorial disputes with China, and their oil and gas development in the SCS did not constitute big obstacles in their relations with China. If the bilateral foreign relationship is tense and mistrust or misperception is deep-rooted and serious, competition over resources is more likely to become severe. In the SCS and ECS, it is widely speculated that the power balance will be in

favor of China. Japan, Vietnam, and the Philippines have deep-rooted mistrust toward Chinese foreign policy and are concerned or even worried that China's proposal to "set aside disputes and pursue joint development" is just an approach designed to buy China time to grow stronger and enhance its position. Moreover, these countries tend to argue that China proposed this principle several decades ago mainly because, at that time, it lacked the relevant technologies and funds to pursue development unilaterally, but nowadays, with better technology and more funds, China is becoming more assertive in the realm of deep-sea energy exploration. Chinese development activities in recent years, particularly the deployment of HYSY 981, seem to support these speculations. Thus, Japan, Vietnam, and the Philippines want to take advantage of the period when China is rising but has not yet fully risen yet.

From China's perspective, however, the proposal to set aside disputes and pursue joint development did not bring the expected positive results. Many Chinese scholars and officials feel frustrated that, despite Chinese efforts, the reality is that "China sets aside the disputes while others pursue unilateral development." Before the recent round of tensions, China did not undertake any substantial unilateral operations in the disputed regions, and even gave up planned survey operations out of consideration for other countries' reactions. Thus, there are many domestic voices in China arguing for adjusting the previous policy by pushing forward joint development through independent development unilaterally. In the ECS, many people think that China has already made too many concessions, because the settled block for joint development now sits astride the median line, part in the disputed area and part on the undisputed Chinese side (International Crisis Group, 2013).

Misperception of the other side's intentions aggravates strategic mistrust. In the ECS, the Sino-Japanese relationship is seriously constrained by historical issues and the dispute over the Diaoyu (Senkaku) Islands, which is closely linked to the post-World War II order. The competition over resources, particularly fishery resources, arouses nationalism in both countries. In turn, nationalism intensifies mutual mistrust. In the SCS, perception of a "China threat" exists in many countries, and with the widening gap in the balance of power, regional countries are becoming more concerned about Chinese intentions. Thus, in the near future, all claimants might step up unilateral development.

Impetus for Joint Development

Though challenging, there are some examples of joint development proving effective in addressing maritime disputes, such as the cases of Malaysia-Brunei, Malaysia-Vietnam, and China-Vietnam in the Beibuwan. Professor Robert Beckman has argued that the reasons for pursuing joint development are clear—for example, the unlikely resolution of disputes in the near future, the considerable economic incentives, and the spillover effect in reducing tensions and facilitating cooperation (Wu and Nong, 2014).

The remainder of this paper argues that the dynamics favoring joint development in the ECS and SCS are as follows.

First, joint development is the only way to facilitate cooperation. Sovereignty issues are closely linked to domestic governance legitimacy, and concerned governments have little room for compromise. In particular, the ECS and SCS disputes have strong links to the origins of the post–World War II global order. But this does not mean that we should do nothing or just let the disputes continue to simmer. Moreover, historical experience has shown that, without friendly bilateral relations, unilateral development operations will face huge obstacles, and international energy corporations are hesitant to invest in areas with high political risks. Thus, we should approach the matter in a manner characterized by mutual compromise based on political resolve and friendly bilateral relations. We should push forward joint development for pragmatic benefits, thus leading to the creation of a community of common interests. As one PNO manager argued about the 2005 joint undertaking, “30 per cent of something is better than 100 per cent of nothing” (Hayton, 2014). Chinese experience in solving its boundary disputes with its land neighbors implies that, if the overall bilateral relations are good enough, China is ready to make some compromise. This applies to the Chinese approach toward maritime disputes as well. While its sincerity in addressing maritime disputes has often been questioned by the other claimants, China has signed a maritime delimitation agreement in the Beibuwan with Vietnam. China’s approach on territorial negotiations may be described as “inconsistent” (International Crisis Group, 2012a), but it also reflects China’s pragmatic and strategic flexibility. Given that China prioritizes good neighbor policy, and particularly views Southeast Asia as a “core region” for the 21st Century Maritime Silk Road, China would prefer joint development.

Second, estimates about the resource reserves in the ECS and SCS vary hugely, and even from an economic perspective, it is not reasonable for regional countries to base their policies to too large an extent on the prospect of estimated resource availability. On the one hand, deep-sea oil and gas exploration faces many natural and technological obstacles, and the simple availability of resource reserves does not automatically mean that they will be commercially viable. One scholar has noted that “oil and gas exploration in off-shore areas is a capital-intensive activity with no guarantee of commercial success. There is generally a 10-year gap between the discovery of hydrocarbon resources and their ultimate exploitation” (Wu and Nong, 2014). And the high cost of exploiting these resources makes the SCS less attractive compared with other hydrocarbon resource supplies in the Middle East and Africa (Huang and Billo, 2014). On the other hand, even if the estimated resources were all developed commercially, they would still not be sufficient to satisfy regional countries’ increasing consumption demands. For example, China’s estimated consumption of oil and gas was about 500 million tons and 18.6 billion cubic meters in 2013 (People’s Republic of China, 2014). The deep-sea drilling success rate averages 10–15% globally, meaning that even if the most-optimistic estimates were to prove out, the oil and gas reserves in the SCS would represent less than 15 years of China’s consumption needs. In other words, the high expectations some have expressed regarding the oil

and gas resource potential of the SCS are “highly likely to be misleading” (Buszynski and Roberts, 2014).

Third, the ECS and SCS disputes have attracted substantial domestic attention in all of the claimant countries through social media, stirring up nationalism; pursuit of joint development would help cool down these passions. Joint development is itself a confidence-building measure. According to the Pew Research Center poll released in July 2014, 93% of Filipinos, 85% of the Japanese, and 84% of the Vietnamese are concerned that territorial disputes will lead to a military conflict, and the public in these three countries view China as their top security threat (Keck, 2014). The nationalism and hostility against others are enlarged by the media, which prefers eye-catching incidents. The popularity of social media makes it much easier for relevant news reports to spread quickly, inflaming nationalist anger. If the problem is not addressed in a cooperative fashion promptly, mutual hostility could become more deeply rooted and the overall situation may become much worse.

Another dangerous trend is that all regional countries are beefing up their maritime law enforcement capabilities. China has ambitious plans to further develop its coast guard capacity through organizational restructuring, institutional integration, equipment acquisitions, expanded personnel training, and growing financial support. The integration process may not be smooth but will bring results. China is also preparing an Oceanic Oil and Gas Pipeline Protection Ordinance, Maritime Traffic Safety Law (revised), Regulations on the Administration of Environmental Protection in the Exploration and Development of Offshore Petroleum (revised), and an Ocean Basic Law (PRC General Office of the State Council, 2015). The Chinese Coast Guard will strengthen its law enforcement activities just as the other parties are doing. The United States has implemented a Southeast Asia Maritime Law Enforcement Initiative to assist regional countries, with resources of up to U.S. \$100 million, with Indonesia, Vietnam, Malaysia, and the Philippines the most likely recipients of these “maritime law enforcement-focused” funds and grants (Parameswaran, 2015). The United States has become an indispensable contributor to maritime capacity-building and has become the largest and most important partner in coast guard capacity-building in the region (Morris, 2015). Japan is also strengthening its capabilities and law enforcement operations in the ECS. The Japanese Coast Guard has reallocated funds to create a “Senkaku fleet” and is resourcing shipbuilding and undertaking doctrinal changes to match, assuming a more active role in patrolling the Diaoyu (Senkaku) Islands (Arakawa and Colson, 2015). Therefore, the danger of confrontation among maritime law enforcement agencies will likely increase. With the help of social media, small incidents may escalate into serious stand-offs or even diplomatic crises. The possibility of confrontation calls for urgent efforts aimed at cooperation, or all parties will lose.

Conclusions

The disputes in the ECS and SCS are not limited to the territorial sovereignty, sovereign rights, and jurisdiction over the islands and surrounding waters; they also involve strategic competition over maritime resources. As noted above, many factors contribute to the competition, and some of these are structural and deep-rooted, which means that it is quite probable that the competition will persist if not successfully addressed through joint development or some other cooperative approach. Additionally, fishermen are not under the direct control of governments, making them potentially more difficult to regulate or manage than naval or maritime law enforcement forces. In recent years, illegal fishing activities have increased year by year. Over-fishing and environmental destruction reduce the fisheries resources in coastal areas, leaving fishermen little choice but to go after deep-sea fishing resources. As one source notes, “Encounters at sea are [becoming] more common and diplomats have neither the luxury of time nor of obscurity. . . . The fishing fleets pose more immediate, frequent, and less managed risks” (Xie and Luo, 2015). Thus, it may be the case that the fisheries issue is deserving of even greater attention than the hydrocarbon question.

It is unlikely that the disputes in the ECS and SCS can be resolved in the near future. Instead of indulging in a blame game against each other, concerned parties should realize that joint development can help relieve tensions and facilitate cooperation. There have been many discussions over joint development since China first proposed it as an approach in the 1970s. In the future, concerned parties should try to reach a political consensus on joint development, stressing its indispensable role in contributing to regional peace and stability. Concerned parties can set up joint expert groups to study how to address the difficulties of joint development, such as defining disputed areas and distributing interests.

China is an important stakeholder in both the ECS and SCS disputes. Compared with its practice in past decades, China has become more active in protecting its sovereignty and sovereign rights. At the same time, China cherishes its relations with the countries in the Association of Southeast Asian Nations and views Southeast Asia as a core region for the 21st Century Maritime Silk Road Initiative. Thus, maintaining regional peace and stability through joint development is definitely in China’s interest. As the initiator of joint development, China has claimed that it has never changed its basic principle that “sovereignty belongs to China,” but that the best approach is to “set aside disputes and pursue joint development” in the East and South China Seas. Through more-active measures at a tactical level, China may be able to achieve the strategically mutually beneficial goal of joint development.

Chapter Five. Emerging Strategies and Force Postures of Parties to the East and South China Sea Disputes

Mira Rapp-Hooper

As China has invested heavily in its military modernization and power projection capabilities, analysts and policymakers have devoted great attention to the strategies and force postures of China, the United States, and other regional powers in the Pacific. In particular, this has included copious examination of China's so-called anti-access/area-denial (also referred to as "counter-intervention") strategies, Beijing's forces for achieving the goal of countering intervention and defeating its adversaries, and potential U.S. responses. At the same time, the East and South China Seas have risen to prominence as major regional flashpoints. These are no longer just sovereignty disputes with deep political and historical roots. Rather, it is now possible to begin to examine major powers' strategies and force postures around these island disputes, which would have been difficult to imagine until very recently. This paper examines the emerging strategies and force postures of China, U.S. treaty allies, and the United States in the East and South China Seas. For the purposes of this treatment, *strategy* is defined as the set of ideas implemented by a country and its military to bring about its desired goals; *force posture* is defined as the bases, equipment, personnel, activities, and relationships that may enable military action in the service of those goals.

An analysis of the military strategy and relevant posture decisions around these disputes is warranted for several reasons. First, while the East China Sea and South China Sea are home to longstanding sovereignty disputes between China and U.S. treaty allies, these only became sites of sustained military competition very recently. This can be attributed to the fact that China's new military capabilities enable it to project power and advance interests in ways that it could not just five years ago. Washington has also become increasingly engaged around these disputes by virtue of its treaty commitments and regional interests, and while much has been written about Sino-American military competition, relatively little addresses the balance of that competition around these specific flashpoints. Do U.S. and allied strategies seem to engage China's strategy directly in each of these locations? Are the relevant actors making force posture decisions that meaningfully advance their own strategies and undermine those of their opponents? These questions will be of paramount importance in the coming years and will have far-reaching implications for regional stability.

Planning and posture decisions are, of course, of great consequence during conflict and in deterrence and crisis escalation short of war. But strategies and the postures for achieving them also have profound effects on state perceptions of potential challengers and of allies. Put differently, strategies and postures are not simply the stuff of military planners and of defense competition in the Western Pacific. Indeed, they may have far-reaching political reverberations,

and they may shift the political dynamics around the disputes in the East and South China Seas even if the relevant actors do not approach conflict.

This paper surveys the emerging strategies and force postures that China, Japan, the United States, and the Philippines are adopting, with an eye to the East and South China Sea disputes. It aims to provide an initial baseline of these fast-evolving postures in the years ahead. It also provides some brief analysis of the implications of these emerging strategies for the key players and for the region more broadly. At least one major caveat is warranted, however. This paper aims to document the relevant actors' strategies on the basis of their manifest actions and existing analysis. It does not presume to provide a definitive account of these countries' military strategies for the East and South China Seas, as access to definitive accounts of these actors' military strategies is in some cases not possible due to the linguistic limitations of the researcher, classification by the states involved, or the absence of a formal strategy. Examining these emerging strategies and force postures requires some interpolation. Indeed, that is a chief purpose of this paper.

It is also worth observing that notable actors in both the East and South China Seas may have significant national interests in these disputes without having overt military strategies or force postures for engaging them. Taiwan claims the Diaoyutai Islands, as well as much of the South China Sea, but it does not actively seek to advance these with military or paramilitary forces. Taiwan would be capable of landing military aircraft on Itu Aba if it should choose to do so, but it replaced its marine detachment with a coast guard presence on the island in 2000. Nonetheless, the evolving military strategies and force postures of Japan, China, the United States, and others may still have far-reaching implications for Taiwan's territorial and maritime claims.

The remainder of this paper proceeds as follows. I begin by evaluating emerging strategies and postures of the relevant actors in the East China Sea. I briefly review China's apparent strategy and the forces it may bring to bear around the Senkaku/Diaoyu Islands. I then turn to Japan and the United States' strategy, force posture, and procurement decisions around the dispute. I conduct similar analysis for the South China Sea, examining Chinese emerging strategy and force posture decisions. I follow with an analysis of the United States' and its partners' emerging strategy and force posture decisions in and around the South China Sea. While China possesses a similar strategy and forces that may be brought to bear for power projection around each of these disputes, the strategies and emerging force postures that the United States and its regional allies have adopted constitute very different strategies and posture responses when it comes to competition with China in the East and South China Seas. This is, of course, attributable to significant differences in the military capabilities of Japan compared with the Philippines, as well as to differences in existing alliance relationships and U.S. force postures. Nonetheless, it points to the importance of conducting dispute-specific analysis as competition with China continues apace in the East and South China Seas. I conclude with some brief observations about what these emerging strategies and postures mean for the future of deterrence and allied assurance in the East and South China Seas.

Emerging Strategies and Postures in the East China Sea

The Senkaku/Diaoyu dispute has been an issue of serious concern for China, Japan, and Taiwan for several decades, but it only assumed a prominent place in the military strategies of the claimants recently. In 2013, Chinese official statements began to suggest that Beijing was upgrading the Senkaku/Diaoyu dispute to a “core interest” or fundamental issue of sovereignty for which China would be willing to fight (Campbell et al., 2013). Until 2015, China’s defense white papers generally focused on Taiwan as the primary military mission; Beijing’s 2015 strategy paper had a much more prominent role for the East and South China Sea disputes (PRC Information Office of the State Council, 2015). The 2015 paper also emphasized combat readiness in the maritime domain and an “open seas protection” doctrine that would allow China to project naval power farther from its shores (Gady, 2015a).

This public elevation of the role of the East China Sea in Chinese strategy follows several years of increased tensions between China and Japan over the islands. In September 2010, a drunken Chinese fishing trawler captain rammed two Japan Coast Guard patrol vessels after refusing their demand to leave the disputed waters, and the captain was arrested, sparking a major diplomatic row. In September 2012, tensions flared again after Japan purchased three of the five islands in an effort to prevent Tokyo’s nationalist governor Ishihara Shintaro from purchasing them and developing infrastructure on them. Following the 2010 incident, China Marine Surveillance and Fisheries Law Enforcement Command vessels began conducting regular patrols in the contiguous zone (12–24 nautical miles) of the islands. Beijing established a continuous presence around the disputed islands for several months. Following the 2012 standoff, Chinese coast guard vessels resumed a high volume of patrols, with as many as 100 vessels per month entering the territorial seas and contiguous zone around the Senkakus (Japan Ministry of Foreign Affairs, 2015). During the same period, China also stepped up its aerial transits of the Miyako Straits—a gap in Japanese airspace and territorial waters around the Ryukyu island chain that permits access to the Western Pacific (*Japan Times*, 2015b; Wood, 2013). In November 2013, China declared an air defense identification zone in the East China Sea that included the Senkaku Islands in its coordinates. Beijing also began to publicly question Tokyo’s sovereignty over the Ryukyu island chain as a whole, arguing that the islands had paid tribute to China in the 14th century (that is, they made regular payments in recognition of their status as a dependency of China) (McCurry, 2013). In late 2015, China conducted large-scale military exercises to “affirm” that zone and also deployed its first armed coast guard vessel for the first time on record (Fisher, 2015; *Wall Street Journal*, 2015).

China’s increased coast guard and military presence in the East China Sea is, no doubt, related to its sovereignty claims. It is likely that Beijing’s maritime patrols around the territory aim to erode Japan’s administration of the islands, and that its air defense identification zone lays the groundwork for a more robust aerial presence. It is possible that several years from now, China could seize the Senkaku Islands, either in isolation or as part of a broader campaign in the

Ryukyu Islands (Kotani, 2014b). Either one of these contingencies would require an incredibly costly amphibious invasion that would almost certainly bring Beijing into conflict with the U.S.-Japan alliance, however. The role that the East China Sea plays in allowing Beijing access to the Western Pacific may be as important. Along with a strategy that increasingly emphasizes offshore missions, China is quickly acquiring the ability to project naval and aerial power beyond the so-called First Island Chain (Cheng, 2015). Beijing almost certainly sees the East China Sea as a strategic gateway in its longer-term quest for access.

China's Force Posture

Whether in peacetime or in conflict, China's East China Sea operations would primarily be conducted from the Chinese mainland. In peacetime, Beijing relies on its coast guard; in conflict, it would draw on its growing array of naval vessels and platforms, as well as long-range strike capabilities.

China's efforts to sustain its East China Sea presence and press its sovereignty claims rely most heavily on its coast guard. In the wake of the 2010 fishing boat incident, China announced that it would procure 36 new coast guard cutters. Most of these were delivered by the end of 2014 (Martinson, 2014). It is estimated that the coast guard also built 100 patrol craft and smaller vessels during 2010–2015, for a 25-percent increase in total force levels (U.S. Department of Defense, 2015b). These vessels are generally unarmed or lightly armed, and China generally patrols near the disputed islands using three vessels at a time.

A major campaign to take the Senkakus or Ryukyus more broadly would, of course, require substantial naval power projection. China has built four new classes of frigates since the 1990s and put 16 new frigates into service since 2010 (O'Rourke, 2010). It has put into service six new classes of destroyers since the 1990s, and 14 of these vessels have come into service since 2010. Beijing is also planning a new Type 055 10,000-ton cruiser or destroyer, which is believed to carry more than 100 anti-surface missiles and likely went into production in 2015. It is also building a new class of corvette (or light frigate) and has put 27 of these into service between 2013 and 2015. A new amphibious ship with a full flight deck for helicopters is also expected.

China has also begun operating its first aircraft carrier, the *Liaoning*, and in December 2015 announced it had commenced work on a second, indigenously built carrier (Buckley, 2015). The *Liaoning* may eventually accommodate an air wing of 30 or more aircraft. The ski-jump configuration of both carriers restricts refueling and ordnance loads, giving aircraft a more limited combat radius. They could nonetheless be useful for fleet defense missions in the East (or South) China Sea, particularly if those conflicts involved opposing U.S. forces (O'Rourke, 2010).

The People's Liberation Army (PLA) Air Force is improving its ability to conduct defensive and offensive offshore operations. It already employs the H-6K bomber, which can carry six land-attack cruise missiles for stand-off strikes. The PLA's acquisition of three new MIDAS refueling tankers will increase the range of its fighters over the East and South China Seas. It is

also testing a new heavy transport aircraft, the Y-20, to improve strategic lift capabilities, and this aircraft could acquire additional missions for early warning and refueling. The PLA Air Force and the PLA Navy have also increased their exercises in an effort to move toward integrated air-sea power, which would be useful for strike and support in the East and South China Seas. The East China Sea is also in range of approximately 300 Chinese medium-range ballistic missiles, including DF-16s and DF-21s, and between 450 and 1,250 land-attack and air-launched cruise missiles (mostly CJ-10s) (Heginbotham et al., 2015).

Emerging Japanese and Alliance Engaging Strategy

Since 2010, Japan and the U.S.-Japan alliance have taken several steps to improve their ability to respond to the strategic challenges posed by China in the East China Sea in both peacetime competition and wartime contingencies. In peacetime, Japan has demonstrated its ability to sustain constant coast guard patrols around the Senkaku Islands in an effort to counter Chinese attempts to contest Japanese administrative control of the islands. It has not significantly increased the budget for the Japan Coast Guard, but it has made internal reallocations to create a new Senkaku Fleet. This fleet includes 12 coast guard vessels that are solely dedicated to patrols (Arakawa and Colson, 2015). The United States also revised its alliance declaratory policy in an effort to bolster peacetime deterrence. In 2013, Secretary of State Hillary Clinton stated that not only did Article V of the U.S.-Japan security treaty apply to the islands but that the United States would oppose Chinese attempts “to undermine Japanese administration” (U.S. Department of State, 2013).

Japan and the United States have also initiated some significant strategic changes for an East China Sea contingency. In late 2010, Tokyo’s National Defense Program Guidelines moved the country away from a static defense posture and toward a more “dynamic defense” (Smith, 2010), a move that entails an increased operational level and tempo for the Japan Self-Defense Forces as a whole (Kotani, 2014b). In 2013, when the Liberal Democratic Party returned to power, the Japanese Ministry of Defense issued revised National Defense Program Guidelines emphasizing “dynamic joint defense,” placing an emphasis on not just a more flexible Japanese force posture but also a more seamlessly integrated capability to coordinate with Japan’s U.S. ally. The two sides then built on these advances in 2015 by revising their bilateral defense guidelines. The new guidelines include an Alliance Coordination Mechanism, as well as specific operational concepts for maritime defense, in which Japan takes a leading role (Japan Ministry of Defense, 2015b).¹ Japan’s 2015 security legislation enabling collective self-defense also makes the alliance better able to coordinate in wartime. Finally, Japan has seen four consecutive annual increases in its defense budget (Asahi Shimbun, 2015a). These modest 2-percent hikes follow a long period of decline and should not be thought of as revolutionary, but nonetheless constitute an effort by Japan to do more for its own defense (Blair, 2015). Taken together, these strategic, doctrinal, and

¹ See, especially, the section on “Operations to Defend Maritime Areas.”

fiscal changes envision a U.S.-Japan alliance that is able to operate more seamlessly in and around the East China Sea, with Japan in a leading role.

Japan and Alliance Posture Responses

Beyond these significant strategy changes, Japan has been investing in equipment, platforms, and plans to bolster its ability to defend the Southwest Islands in the East China Sea. This includes allocations for construction of a major radar station on Yonaguni Island, 100 miles away from the Senkakus. It also includes weapons platforms that may help to forestall invasions and enable amphibious counter-invasions, including Global Hawks, Ospreys, CH-47JA helicopters, amphibious assault vehicles, and *Hyuga*-class destroyers (Gady, 2015d).

Another significant investment has been Japan's establishment of an Amphibious Rapid Deployment Brigade (ARDB)—a Marine Corps-like unit housed within the Japan Ground Self-Defense Force whose primary mission is the defense of the Southwest island chain. The self-defense force currently has approximately 700 troops in service of this mission, and its initial ARDB deployment raises this to 2,000 troops and 90 specialists (Kallender-Umezu, 2015). In late 2015, it was reported that Japan would deploy another 500 additional ground troops on Ishigaki Island for crisis response outside of the ARDB, bringing the total number of Japanese military personnel in the East China Sea to 10,000 (Asahi Shimbun, 2015b). Tokyo is also reportedly considering deploying a Japan Ground Self-Defense Force helicopter unit to Ishigaki or Miyako to allow for rapid contingency response (*Japan Times*, 2015c).

Finally, Tokyo has decided to deploy a string of anti-ship and anti-aircraft missiles along the Southwest Islands. The missile batteries aim to keep at bay China's eastward push into the Western Pacific and may be thought of as a Japanese response to Beijing's anti-access/area denial strategy (Kelly and Kubo, 2015). According to Japanese strategists, if the PLA sought to attack the Ryukyus, neutralizing these anti-air and anti-ship missiles would present a considerable operational challenge and may deter an attack entirely. And even if China did not seek to take the Senkakus or Ryukyus, it will nonetheless have to pass beneath their shadows when it transits the Miyako Straits (Kazianis, 2016).

For its part, the United States has not markedly changed its force posture in and around Japan. The Seventh Fleet continues to be headquartered in Yokosuka and includes 80–100 vessels, 150–200 aircraft, and 40,000–50,000 Navy and Marine Corps personnel at any given time (U.S. Navy, 2016). The U.S. Air Force bases 130 fighter jets at Misawa and Kadena, and the Third Marine Expeditionary Force is based in Okinawa. Washington has also decided to base three new F-35 squadrons out of Japan. All of these assets, together with additional forces stationed in Guam, Hawaii, and outside of the Pacific, would be available in the case of an East China Sea conflict.

Japan faces some significant hurdles when it comes to upgrading its force posture and procurement, however. First, amphibious operations are necessarily joint operations, and these require that all three services cooperate, which has not traditionally been a strength of the Japan

Ground Self-Defense Force (Kallender-Umezu, 2015). Second, Japan has underinvested in logistics and is likely to face continued hurdles when it comes to transport for Senkaku contingencies. It must also consider how to persuade its citizens in the Ryukyus to accept a larger military footprint (Kelly and Kubo, 2015). Third, the East China Sea contingency calls for far more joint training with U.S. forces on amphibious operations and more-seamless coordination between the two militaries. Joint training for amphibious operations is particularly vital. The revisions to the defense guidelines and the collective self-defense enabling security legislation make this possible, but the extent to which it will take place and how effective it will be remain to be seen.

Emerging Strategies and Postures in the South China Sea

Analysts continue to debate whether China has elevated the South China Sea to a “core interest,” but it has recently elevated the disputes in its national military strategy (Woody, 2015). Its doctrinal revisions toward “open seas protection” are also equally applicable in these waters (Gady, 2015a). As in the East China Sea, China’s emerging strategy seems designed to increase its presence and bolster its maritime and territorial claims in the South China Sea. In 2012, it ejected the Philippines from its position at Scarborough Shoal after a 10-week-long standoff. In 2014, it moved an oil rig into waters claimed by the Socialist Republic of Vietnam.

Most notably, between early 2014 and mid-2015, Beijing transformed seven formerly low-lying rocks and reefs in the Spratly group into artificial islands using commercial dredging techniques. It is now installing sophisticated military equipment and facilities on these outposts. Beijing has repeatedly insisted that these facilities are for civilian and/or defensive military purposes only. Port facilities, airstrips, radar, and communication equipment, however, are all dual-use and can serve offensive and defensive purposes (LaGrone, 2015a). Top U.S. military commanders have stated that China is warning away military and commercial vessels from these islands and attempting to create so-called “military zones” in the waters and airspace around them (Perlez, 2015b).

China’s strategy for pressing its maritime and territorial claims and for seeking open-ocean access appears to rely on some new and innovative techniques for extending its reach. Prior to its island-building efforts, Beijing’s limited naval and aerial refueling and resupply capability meant that it could not comprehensively monitor or sustain operations in the central and southern portions of the South China Sea. Its maritime and territorial claims stretch as far as 1,000 miles from its shores, making this perimeter difficult to reach from China’s southernmost base in Hainan. The airstrips, ports, radar, and communication equipment in the Spratlys will allow China to reach much farther into these waters, and potentially to put pressure on the positions of other claimants. Some PLA officials have indicated that this strategy reflects the fact that the South China Sea “belongs to China” (Gady, 2015b). U.S. military leaders have indicated that it could give China *de facto* control of these waters in scenarios short of war (LaGrone, 2015a).

China's Emerging Force Posture in the South China Sea

The coast guard vessels, major surface combatants, and long-range strike capabilities that China can bring to bear in the East China Sea are all relevant to the South China Sea, albeit in a more constrained way because of China's limited refueling and resupply capabilities to support and sustain these types of forces. Beyond these mainland-based assets, however, China's embryonic South China Sea force posture has several unique elements.

First, China is reinforcing its presence in the Paracel Islands, where it has long maintained a 2,700-meter airstrip—long enough to accommodate nearly any aircraft it should wish to land there. In late 2015, it deployed advanced J-11 fighter aircraft to Woody Island. Beijing is unlikely to permanently station fighters on Woody Island due to the maintenance challenges this would pose, but even a rotational presence extends its fighter reach 360 km further south than if it bases out of Hainan (Minnick, 2015a). It is also expanding its infrastructure in the Paracels, building a filling station and large fuel storage tank on Woody Island, which will allow it to refuel military and civilian aircraft and vessels (*The Guardian*, 2015).

In the Spratly Islands, China has built a 3,000-meter airstrip on Fiery Cross Reef, is building another on Subi Reef, and may be working on a third at Mischief Reef. Like the Woody Island airstrip, each of these airstrips can accommodate any aircraft China should wish to land. Similarly, China is also unlikely to base aircraft at these outposts due to likely damage from salt and weather. Beijing has also conducted large, deep-water port facilities at several locations, including Fiery Cross, Subi, and Mischief reefs, and these could be used to accommodate major coast guard vessels and naval surface combatants. These ports and airstrips could also be used to resupply ships and aircraft that otherwise would not have the range to operate in the South China Sea. If China bases aerial refueling tankers in the Spratlys, this would substantially extend the range of its patrol aircraft. If it bases bombers there, it would put countries as far as Australia within striking distance of the Spratlys. This would, however, be expensive and logistically challenging. The Fiery Cross Reef airstrip is now operational, and China has begun training missions from this outpost (McHugh, 2015). China is also reportedly beginning construction on large, floating sea bases for the South China Sea, which may serve similar purposes to its artificial islands and support-aircraft and surface-ship operations (O'Rourke, 2014).

China has also begun to install long-range radar in the Spratlys to extend its monitoring capabilities in the area. Sophisticated radar could detect ships more than 300 km away and extend China's monitoring capabilities out by nearly 1,000 km. If it operated maritime patrol aircraft from the Spratlys, these would have an operational range of 1,600 km, putting the Philippines, Vietnam, and Malaysia within range. Finally, U.S. military leaders and experts have speculated that China's outposts may become bases for HQ-9 and S-300 PMU surface-to-air missiles and YJ-62 and YJ-83 anti-ship cruise missiles, which could all be accurate up to a few hundred kilometers (LaGrone, 2015a). In all likelihood, regional claimants would not have the intelligence or the strike capabilities to challenge a Chinese buildup of this nature if one

occurred, as they could not attack these assets without risking the destruction of their own personnel or platforms. These capabilities would also seriously impact the ability of other states to operate ships or aircraft in the area (Chen and Glaser, 2015).

In addition to developing its force posture in the South China Sea, China appears to have recently ramped up its military exercises in and around the region. Beijing began to announce its military exercises only in recent years—a change that may allow it to claim transparency and that may have some deterrent value. This does, however, make it difficult to tabulate exactly how much of an uptick in South China Sea exercises China has undertaken. Anecdotally, however, Beijing’s South China Sea exercises appear to have become larger and more regular (Zhao, 2015; Reuters, 2015; Xinhua News, 2015). Several have included its Second Artillery Corps, and one may have simulated a cruise missile attack on an aircraft carrier (Zhao, 2015; Gady, 2015c; Xinhua News, 2015).

China has also been leveraging what one scholar has referred to as a “maritime militia” around both the Spratly and Paracel Islands. The “militia” consists of locally organized fishing and merchant vessels that bear no signs of having official imprimatur, but which appear to be dual-hatted as government proxies. These ships play an important role as China increases its presence in disputed areas and attempts to erode other claimants’ positions. Andrew Erickson of the U.S. Naval War College’s China Maritime Studies Institute, for example, has found evidence that maritime militias were active in the HYSY-981 oil rig incident, China’s attempt to put pressure on the Philippines at Second Thomas Shoal, and in China’s response to the United States’ October 2015 freedom of navigation exercise (Cavas, 2015). China’s strategy for establishing presence, advancing its maritime and territorial claims, and increasing its own ability to operate in the South China Sea seems to involve a nascent force posture that draws on a spectrum of capabilities. This ranges from extended ranges for its fifth-generation fighters and a potential network of sophisticated missile emplacements to ambiguous, quasi-military operators designed to put the burden of escalation on those who would oppose China’s efforts to establish its claims by *fait accompli*.

U.S. and Allied Strategy in the South China Sea

The United States’ strategy for the South China Sea differs markedly from that in the East China Sea, where Japan retains a world-class military and the alliance has a close history of defense cooperation. The United States’ close Southeast Asian ally, the Philippines, has negligible naval and air force capabilities, and the United States itself has relatively few assets in the near vicinity of the disputed territories. The South China Sea disputes themselves also involve multiple claimants, each of whom has a complex and variegated relationship with China. Therefore, the United States’ strategy around the South China Sea disputes focuses on building partner capacity, encouraging partners to build domestic capacity, diversifying and upgrading its own force posture, and building a coalition. The United States has launched a partner capacity-building initiative to bolster the maritime capabilities of allies and partners in the region in an

effort to help them deter and defend against China in the South China Sea. Washington has pledged \$250 million in aid to Southeast Asia in 2016–2017 and may spend as much as \$425 million by 2020 (Carter, 2015).

Washington is also attempting to secure rotational base access closer to the South China Sea. In 2011, it reached an agreement with Australia to rotate up to 2,500 Marines through Darwin, and this was followed by a 2014 Force Posture Agreement (Government of Australia, 2014). In 2014, the United States signed the Enhanced Defense Cooperation Agreement with the Philippines, which will allow rotational base access to defense installations in the Philippines. It has also concluded a rotational agreement with Singapore that enables it to put up to four littoral combat ships in the island state (LaGrone, 2015b; Minnick, 2015b).

Washington continues to take a neutral stance toward underlying sovereignty disputes in the South China Sea and has therefore begun to emphasize multilateral support for the principles that it seeks to defend, rather than explicitly calling for a balancing coalition against China. Where military plans and preparations are concerned, this has focused increasingly on freedom of navigation and freedom of overflight, and building consensus to uphold them.

U.S. and Allied Force Posture in the South China Sea

Unlike in the East China Sea, where both Japan and the United States base substantial capabilities that could be brought to bear in a conflict, U.S. and allied force posture decisions in the South China Sea aim to raise the relevant parties from a rather low baseline. The United States has agreed to deliver one new coast guard cutter, four new patrol craft, and a research vessel to the Philippines (Shear, 2015). The Philippines has also received patrol boats from Japan and light-attack jets from South Korea. Washington is also eager to use its military aid to help partners improve their maritime domain awareness capabilities. The United States and the Philippines inaugurated Manila's Coast Watch center in 2015 (U.S. Embassy in the Philippines, 2015). It remains to be seen what other maritime domain awareness investments Washington will make around the South China Sea.

The Philippines has announced a military spending hike of its own and will invest in frigates, strategic sealift, long-range patrol aircraft, and close-support aircraft. Vietnam is ramping up its own military spending, purchasing six *Kilo*-class submarines from Russia and seeking fighter aircraft, unmanned aerial vehicles, and maritime patrol aircraft (Torode, 2015). Vietnam has also received patrol boats from Japan and is considering opening its Cam Ranh Bay to an international presence, including the United States (De Luce, Hickey, and Johnson, 2015).

With respect to its own force posture changes, the United States is operating a Marine Air-Ground Task Force out of Darwin designed for swift deployments and crisis response (Nautilus Institute, 2013). In addition to the four littoral combat ships Washington will operate out of Singapore by 2017, Washington has recently announced plans to deploy a P-8 surveillance aircraft to the city-state (LaGrone, 2015b; Minnick, 2015b). It remains to be seen what the United States may deploy to the Philippines, but given that the Enhanced Defense Cooperation

Agreement is also a rotational agreement, it is likely to establish a fairly nimble presence. Additionally, U.S. naval commanders are reportedly seeking new anti-ship missiles for deployment around the South China Sea (De Luce, 2015). Bases in Guam, Australia, and Japan would allow the United States to mount a robust campaign against China and probably to prevail in a conflict if it chose to join one. Whether it would opt to fight China over the South China Sea is an open question, and Washington does not now maintain a presence that allows for immediate crisis response.

After a three-year hiatus, in October 2015, the United States also resumed conducting freedom of navigation operations (FONOPs) in the Spratly Islands in response to China's artificial island-building and expansive maritime claims. FONOPS are not major military operations, but rather discrete legal assertions that challenge excessive claims to airspace and water (Rapp-Hooper, 2015). They are, however, designed to use naval and aerial instruments to push back against China's attempts to create spurious "military zones" in the Spratly Islands, and the United States has conducted them using a guided-missile destroyer and B-52 aircraft (Page and Lubold, 2015).

Washington has also invested substantial diplomatic energy attempting to rally regional support for its freedom of navigation and overflight efforts and encouraging partners to take on their own. Following the October Spratly FONOP, U.S. treaty allies—including Australia, the Philippines, South Korea, and Japan—lent their rapid, public support for the operation. Australia has since conducted a FONOP of its own with a P-3 surveillance aircraft, and analysts have speculated that Japan and others may eventually participate in joint patrols (BBC World, 2015b). Freedom of navigation patrols are unlikely to result in a major change in the South China Sea military balance: Regular U.S. FONOPs will likely occur no more than twice per quarter and will generally include one major surface vessel. Nonetheless, this effort by Washington to rally multilateral support behind these legal principles is also an attempt to build a balancing coalition to offset China's force posture changes and undermine its strategy in the South China Sea. It of course serves a secondary, but significant, purpose of assuring allies of its defense commitments and enduring interests in this disputed waterway.

Analysis

The foregoing review of emerging strategies and force postures lays bare some significant differences between emerging East and South China Sea postures and strategies. China has similar goals around each dispute, as well as similar power projection forces that it can bring to bear. Yet because of major disparities in *existing* U.S. and allied strategies and postures in the region prior to 2010, the strategy and posture responses from 2010–2015 have diverged.

China has made significant investments in its coast guard, major surface combatants, and long-range strike capabilities to advance its peacetime goal of presence and potential wartime goal of a Senkaku or Ryukyu grab. While Japan and the U.S.-Japan alliance have not kept pace

with these *quantitative* investments, they have implemented significant strategic and doctrinal changes in relatively short order that directly engage China's apparent peace and wartime goals and strategies for achieving them. Not only have the new bilateral defense guidelines and security legislation facilitated close Senkaku defense cooperation with Japan at the lead, but the 2013 declaratory policy revision removes any uncertainty that China would also face the United States in a conflict over the Senkakus. If fully resourced and implemented, Japan's ARDB and Southwest Island missile installations could provide meaningful offsets to China's East China Sea advances. While the East China Sea should not be thought of as "stable," the U.S.-Japan alliance has demonstrated the ability to compete with China symmetrically around the Senkaku Islands. An already-strong alliance has taken significant steps to shore up existing vulnerabilities, strengthen deterrence, and coordinate around the new maritime roles and missions that an East China Sea contingency presents.

The picture in the South China Sea, however, is very different. Although China's strategic goals and long-range power projection options are similar, China's South China Sea reach was decidedly limited by its inability to refuel and resupply until it constructed its artificial islands. While these almost certainly will not result in major South China Sea deployments, a rotational fighter presence and surface-to-air missile and anti-ship cruise missile presence in the Spratly Islands could pose a formidable risk to other claimant states that lack the ability to neutralize them. And because both the United States and its Southeast Asian partners started from a much lower baseline in this area, their strategy for engaging China's advances looks much different. Washington and its partners are advancing their strategies for partner capacity-building, force posture diversification, and coalition-building, but these are longer-timeline efforts and seem unlikely to match the pace of China's rapid advances in extending its reach. Because the South China Sea was a relative vacuum in terms of forces, bases, and other military resources until very recently, China has been able to make asymmetric advances. While the United States could likely prevail in a conflict against China in the Spratly Islands, China has rapidly gained advantages over other claimant states when it comes to peacetime competition and conflict if the United States were to stand aside, and Washington's incremental force posture changes still do not give it presence in the immediate vicinity (Cliff, 2015). And while partner capacity-building efforts should remain a part of the U.S. strategy in the South China Sea, the gap between China's and Southeast Asian states' capabilities is only likely to grow. Of all of the elements in Washington's South China Sea strategy, coalition-building is likely to be the most important, as it will determine whether like-minded and reasonably capable states are able to act as force multipliers consistently and reliably.

This assessment has implications for Taiwan, particularly in the South China Sea. As China has rapidly built up and begun to militarize its islands, and the United States and its partners have begun to devise strategies to push back, it may be tempting for Taiwan to turn to defensive arming on Itu Aba, given that it does not have a superpower patron in the South China Sea. This would be a mistake. Beijing sees a long-term strategic interest in Taipei's continued control of

Itu Aba, and it is not likely to place pressure on Taiwan there. Taiwan should continue its efforts to remain outside of the mounting South China Sea security dilemma and persist in its attempts to play a constructive management role.

This assessment also has some implications for U.S. alliance management. While tensions in the East China Sea could rise in the years ahead and questions remain about Japan's ability to resource its force posture upgrades, the U.S.-Japan alliance has put in place the mechanisms crucial for engaging this hotspot. These not only increase local and extended deterrence in the East China Sea but should enhance the United States' ability to assure Japan of its abiding interest in its security there. China's push into the relative vacuum in the South China Sea has not only allowed it to advance some of its strategic goals rather quickly but has laid bare vulnerabilities the United States and its partners will have to grapple with in the coming years. Whether the Philippines will be able to sufficiently resource its own defense upgrades remains to be seen. There is little chance that these measures will convince China to abandon the force posture advantages it has gained from its artificial islands. But if Washington succeeds at coalition-building around freedom of navigation and overflight, it may be able to undermine Beijing's apparent strategy.

Chapter Six. China's Troubled Waters in the East and South China Seas: A Taiwanese Assessment

Cheng-yi Lin

Historically, the People's Republic of China (PRC) was relatively passive regarding its maritime claims and paid little attention to defending its sovereignty in the South and East China Seas. It was Taiwan, also known as the Republic of China (ROC), that first occupied Yongxing (Woody) Island in the Xisha (Paracel) Islands and Taiping (Itu Aba) Island in the Nansha (Spratly) Islands in 1946. When Chiang Kai-shek withdrew from Yongxing Island after the fall of Hainan Island, the PRC immediately occupied the evacuated island in the east part of the Paracel Islands, while South Vietnam stationed its troops in the western part of the archipelago in 1950. In 1974, China took military actions to repel South Vietnamese soldiers from the Paracel Islands and took full control of those islands. Chiang Kai-shek returned to Taiping Island in June 1956, and it was not until 1988 that Deng Xiaoping first occupied some tiny reefs, such as Yongshu Jiao (Fiery Cross Reef), Chigua Jiao (Johnson South Reef), and Huayang Jiao (Cuarteron Reef), in the Spratly Islands. After China occupied reefs in the Spratly Islands, Beijing and Taipei were invited to participate in the Indonesian South China Sea Workshop in 1991, with Taiwan beginning to play the role of junior partner to China.

In the East China Sea, Taiwanese fishermen had been struggling with Japanese Coast Guard ships for years over access to fishing grounds in and around the Diaoyutai Islands (also, interchangeably, Senkaku, Diaoyu, or Diaoyudao). Before September 2012, Chinese Maritime Surveillance ships only once transited within 12 nautical miles of the Diaoyutai Islands (in December 2008). For leaders Deng Xiaoping, Jiang Zemin, and Hu Jintao, maintaining a good relationship with Japan was more vital than fighting over tiny islands in the East China Sea as long as Japan did not station any Japanese civilians or officers on them. With Xi Jinping entering the scene and the nationalization of the islands by the Democratic Party of Japan, an unprecedented political stalemate and maritime confrontation erupted between China and Japan. Taiwan began to play a secondary role in confronting Japan in waters near the Diaoyutai Islands starting in September 2012. This paper will first survey the PRC's policy in the East and South China Seas, then examine the Taiwan factor in Beijing's policy deliberations, and conclude with an observation of Chinese strategies in these two troubled seas.

Sino-Japanese Confrontations over the East China Sea

Amid the beginning of sovereignty disputes between the ROC and Japan over the Diaoyutai Islands, President Chiang Kai-shek instructed the Chinese Petroleum Corporation (Taiwan) to sign a series of contracts with U.S. oil corporations, such as the Gulf Oil Company (July 1970),

Oceanic Exploration Company (August 1970), and Clinton International Corporation (September 1970), to conduct joint exploration surveys in the East China Sea. Only after the ROC asserted its sovereignty claims through joint oil ventures with U.S. corporations did Beijing first issue its protest at the end of 1970 (*New York Times*, 1970). The PRC Ministry of Foreign Affairs again issued a statement in December 1971 protesting claims that the islands were included in the U.S.-Japan Okinawa Reversion Agreement. The PRC Foreign Ministry stated that it “is totally illegal and will never alter China’s sovereignty over the territory,” and Beijing is “determined to liberate Taiwan” and “recover sovereignty over the Diaoyutai Islands and other islands affiliated to Taiwan” (Hu, Huang, and Sun, 2014). However, Premier Zhou Enlai once said in 1972 that the sovereignty issue over the islands could be settled by the next generation (Xin, 2013).

Before September 2012, it was primarily Taipei, not Beijing, fighting for its sovereignty over the islands vis-à-vis Japan and the United States. From 1969 to 1972, the ROC under Chiang Kai-shek conducted a series of negotiations with the Nixon administration and succeeded in convincing the United States to proclaim that a return of “administrative rights” to Japan of the Diaoyutai Islands “can in no way prejudice the underlying claims of the Republic of China” (U.S. Department of State, 1971). Chiang avoided resorting to a military solution in the Diaoyutai dispute or bringing a legal claim before the International Court of Justice after the U.S. transferred administrative control, instead of sovereignty, over the Diaoyutai Islands to Japan. Presidents Lee Teng-hui, Chen Shui-bian, and Ma Ying-jeou conducted negotiations beginning in 1996 on fishing rights in waters surrounding the Diaoyutai Islands. Meanwhile, until 2012, the PRC kept its distance to avoid involving itself in the dispute or being dragged into a conflict with Japan.

China’s marine surveillance vessels only once entered into the 12-nautical-mile territorial waters of Diaoyutai on December 8, 2008, for more than 10 hours. Even with serious rifts in September 2010 over the collision of a Chinese fishing trawler, *Minjinyu 5179*, with two Japanese Coast Guard patrol boats, China intentionally stationed only fishery administration law enforcement ships, instead of marine surveillance vessels, which are more symbolic and related to maritime security and the state’s sovereignty, in waters near Diaoyutai (Xinhua Net, 2011b). The nationalization of the islands by the Japanese government in September 2012 was perceived by China as a pronounced step in changing the status quo in the dispute. In response, Beijing took a series of countermeasures since September 2012 aimed at undercutting Japan’s jurisdiction or administrative control over the islands. Coincidentally with assuming the position of general secretary of the Chinese Communist Party, Xi Jinping’s first foreign policy crisis was Japan’s nationalization of the islands. On September 10, 2012, the Chinese Ministry of Foreign Affairs issued a statement denouncing the Japanese government’s “purchase” of the islands as “totally illegal and invalid” and warning Japan that “should the Japanese side insist on going its own way, it shall have to bear all serious consequences arising therefrom” (PRC Ministry of Foreign Affairs, 2012). On September 11, 2012, Beijing announced that it was setting the Baselines of the Territorial Waters of the Diaoyudao and Their Affiliated Islets, a move it

followed up by depositing the coordinates table and chart of the base points and baselines of the territorial sea of Diaoyutai and its affiliated islands with the Secretary-General of the United Nations. On December 14, 2012, the PRC made a submission to the United Nations Commission on the Limits of the Continental Shelf concerning the outer limits of the Chinese continental shelf beyond 200 nautical miles. It set the baselines in part with reference to the East China Sea and the Diaoyutai Islands.

On September 25, 2012, the Chinese government issued a comprehensive white paper on the Diaoyutai issue declaring that Beijing “has incorporated Diaoyu Dao and its adjacent waters into the National Sea Area Dynamic Surveillance, Monitoring and Management System, as well as the National Islands Monitoring and Surveillance System,” which meant Chinese marine surveillance vessels or planes would regularly sail or fly within 12 nautical miles of Diaoyutai to assert China’s territorial claims (Liu D., 2012; Tabuchi, 2012). The same day, China’s first aircraft carrier, *Liaoning*, was handed over to the People’s Liberation Army (PLA) Navy amid rising tensions over disputed waters in the East China Sea. Along with Chinese retaliation measures against Japan’s nationalization of the islands on September 25, 2012, several dozen Taiwanese fishing boats—with financial support from the *China Times*, a China-friendly newspaper in Taiwan, and under escort by ROC Coast Guard Administration patrol vessels (and with PRC Maritime Surveillance ships standing off a short distance away)—entered waters surrounding the Diaoyutai Islands. Although Taiwanese fishermen were conducting their own protest actions, the impression was created in some minds that Taiwan and China were working in tandem. Further inflaming tensions, a series of anti-Japanese protests, some characterized by violence, were held in cities across China ahead of the 40th anniversary of establishing diplomatic relations between China and Japan.

To safeguard Chinese sovereignty over Diaoyutai, Beijing waged international media warfare against Japan by running advertisements asserting its claims over Diaoyutai in U.S. newspapers, such as the *New York Times* and *Washington Post*, on September 29, 2012. In the 18th Party Congress report in November 2012, Chinese leaders stressed the need to enhance their “capacity for exploiting marine resources, developing the marine economy, protecting the marine ecological environment, resolutely safeguarding China’s maritime rights and interests, and building China into a maritime power” (Xinhua Net, 2012). In April 2013, China’s first defense white paper after Xi Jinping came to power revealed that the country’s development of an aircraft carrier “has a profound impact on building a strong [PLA Navy] and safeguarding maritime security,” the Navy provides “security support for China’s maritime law enforcement, fisheries, and oil and gas exploitation,” and the PLA “has established mechanisms to coordinate and cooperate with law-enforcement organs of marine surveillance and fishery administration, as well as a joint military-police-civilian defense mechanism” (PRC Information Office of the State Council, 2013). In July 2013, separate and often uncoordinated Chinese maritime law enforcement units, such as marine surveillance, fisheries administration, customs enforcement, and border control, were merged into the new “China Coast Guard.” To strengthen the maritime

law enforcement capacity of the China Coast Guard, the PLA decommissioned a number of navy vessels and transferred them to the newly established agency.

In the wake of these developments, the U.S. State Department maintained its decades-long policy of not taking “a position on the ultimate sovereignty of the Senkaku Islands” and urging calm and restraint on all sides “given the importance of the Japan-China relationship to the global economy” (Burns, 2012). However, the U.S. government has also declared that the Diaoyutai Islands “fall within the scope of Article 5 of the 1960 US-Japan Treaty of Mutual Cooperation and Security, because the islands have been under the administrative control of the Government of Japan since they were returned as part of the reversion of Okinawa in 1972” (Ventrell, 2012a). President Xi Jinping has repeatedly urged the United States to be neutral on the Diaoyutai dispute and directly questioned Secretary Leon Panetta whether the U.S. pivot to the Asia-Pacific was targeted at China (Panetta and Newton, 2014; Shanker and Johnson, 2012). Xi Jinping’s new model of major-country relations with the U.S. may fail if the territorial dispute in the East or South China Sea is not properly managed, and likewise the situation may also complicate President Barack Obama’s Asia rebalancing strategy. In January 2013, Secretary of State Hillary Clinton went further by reiterating that the U.S. opposed “any unilateral actions that would seek to undermine Japanese administration” in waters surrounding the Diaoyutai Islands. Immediately after the remarks, the Chinese foreign ministry accused Secretary Clinton of distorting the Diaoyutai dispute (Perlez, 2013).

Most surprisingly, China announced its East China Sea air defense identification zone (ADIZ) on November 23, 2013, specifying that “China’s armed forces will adopt defensive emergency measures to respond to aircraft that do not cooperate in the identification or refuse to follow the instructions.” Taiwan was taken by surprise by Beijing’s unilateral and abrupt announcement of its plans to create an ADIZ in the East China Sea, but President Ma kept his criticism of Beijing low-key, urging “parties with overlapping ADIZs [to] initiate bilateral talks for solutions at the earliest possibility” (ROC Ministry of Foreign Affairs, 2014). The U.S., for its part, regarded Beijing’s measures as a “provocative act and a serious step in the wrong direction” and “an attempt to change the status quo in the East China Sea.” In response, Washington dispatched a pair of B-52s to fly unannounced through the Chinese-proclaimed ADIZ in the East China Sea (Rinehart and Elias, 2015; U.S.-China Economic and Security Review Commission, 2014). Amid the tension, the Japanese Prime Minister paid a controversial visit to Yasukuni Shrine in December 2013, which led to rare criticism of Tokyo by the Obama administration and ignited another round of propaganda accusations between Japan and China (Cui, 2014; Oshima, 2013; Sasae, 2014).

From Beijing’s perspective, the U.S. reaction toward China’s declaration lacked consistency. For example, the U.S. criticized China for its lack of communication before its issuance of the East China Sea ADIZ while also requesting that civilian airlines not intending to enter into China’s territorial air space nonetheless file flight plans with the China Civil Aviation Agency. By contrast, the Government of Japan asked its carriers not to report their flight plans to China

authorities. The PRC has argued that Japan and South Korea, its two northeastern neighbors, long ago declared their own ADIZs, and there is simply no prohibition on China taking such notification measures. China rejected the Japanese and U.S. calls to rescind its ADIZ but has not strictly enforced its claims against unannounced aircraft transiting the East China Sea within its ADIZ.

For Beijing, lacking actual control of Diaoyutai handicapped it in its rivalry with Japan over competing sovereignty claims in the East China Sea. Japan's nationalization of the islands precipitated the East China Sea crisis soon after Xi Jinping assumed the position of general secretary of the Chinese Communist Party, and Xi decided to take advantage of this crisis and use it to China's advantage. China sent ships and airplanes to pass within 12 nautical miles of Diaoyutai, confronting Japan in the East China Sea, with the U.S. playing the role of bystander until Beijing's announcement of the East China Sea ADIZ in November 2013. Japan, under Prime Minister Shinzō Abe, has undergone a dramatic shift in its national security policy formulation through the establishment in January 2014 of a National Security Council under the Cabinet to enhance policy coordination and joint defense (Japan National Institute for Defense Studies, 2013). Most importantly, Prime Minister Abe decided to go through with a reinterpretation of Article 9, the no-war clause, of Japan's constitution by building a foundation for the rights of collective defense and then pushing through bitter Diet debates and street protests leading to the adoption of new legislation enabling collective self-defense in September 2015.

China believes that the U.S. is siding with Japan in the East China Sea and with the Philippines in the South China Sea. The U.S. tends to be ambiguous regarding the defense of Philippine-claimed territories in the Spratly Islands under the U.S.-Philippine Mutual Defense Treaty of 1951, but the U.S. is clear about the inclusion of the Diaoyutai Islands in Article 5 of the U.S.-Japan security treaty of 1960, which states, "Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes." In April 2015, Japan and the U.S. released new defense cooperation guidelines, in which "a standing, whole-of-government mechanism for Alliance coordination, enabling a seamless response in all phases, from peacetime to contingencies" would be established (U.S. Department of State, 2015). This new development is a sharp contrast to the 1990s, when Walter Mondale, U.S. ambassador to Japan, mentioned that "seizure of the islands would not automatically set off the security treaty and force American military intervention" (Kristof, 1996).

Since September 2012, the PRC has replaced the ROC, which occasionally escorted Taiwanese fishing vessels into disputed waters, in confronting Japan over the sovereignty of the Diaoyutai. China's main measures to retaliate against Japanese "nationalization" of Diaoyutai have included regular patrol missions of China Coast Guard ships within the 12-nautical-mile territorial waters, but the frequency of these patrol missions have been decreasing rather than

increasing, as bilateral relations between Beijing and Tokyo have improved since the end of 2014. After two years of bitter confrontations, China and Japan reached a consensus with room for different interpretations over the islands, in which “both sides recognized that they had different views as to the emergence of tense situations in recent years in the waters of the East China Sea, including those around the Senkaku Islands, and shared the view that, through dialogue and consultation, they would prevent the deterioration of the situation, establish a crisis management mechanism and avert the rise of unforeseen circumstances” (Japan Ministry of Foreign Affairs, 2014). For China, there exists a dispute over who has sovereignty over the islands, whereas Japan refuses to acknowledge any dispute. Nevertheless, Chinese President Xi and Japanese Prime Minister Abe have met twice in recent years, first in Beijing on the sidelines of the Asia-Pacific Economic Cooperation summit in November 2014 and then at the Second Asia-Africa Conference Summit in Jakarta in April 2015. In December 2015, senior officials from China and Japan conducted another round of talks in Xiamen on maritime issues, such as the early launch of “a maritime communication mechanism aimed at averting miscalculations that could lead to conflict in the East China Sea” (*Japan Times*, 2015a; Kyodo News, 2015). Nevertheless, a China Coast Guard vessel fitted with gun turrets was detected in disputed waters in December 2015 and later protested by Japan. For Taiwan, armed vessels either from Japan or the PRC spotted near the Diaoyutai Islands could fuel tensions and contradict the spirit of President Ma’s East China Sea Peace Initiative.

Confronting ASEAN Claimants and the United States in the South China Sea

The PRC promulgated its Law on the Territorial Sea and the Contiguous Zone in February 1992, and the Association of Southeast Asian Nations (ASEAN) announced its first Declaration on the South China Sea in July 1992, urging “all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes” (Association of Southeast Asian Nations, 2012). Beijing’s occupation of the disputed Meiji Jiao (Mischief Reef) in 1995 alarmed the Philippines and the United States, but major concern was promptly shifted to the missile crisis in the Taiwan Strait. Beijing’s preoccupation with the process of Taiwan’s democratization and tensions in the Taiwan Strait might have reduced the chance of additional military adventurism in the South China Sea. Cross-Strait détente during the Ma Ying-jeou government might benefit Beijing to have opportunities to tackle more-sensitive issues in the South China Sea.

China’s thirst for oil to fuel its economic powerhouse has driven Beijing’s leaders to tackle the Malacca Strait dilemma by upgrading its maritime enforcement capabilities in the South China Sea and building pipelines in Pakistan to reduce its dependency on this strategic waterway. China has the same national interest in maintaining freedom of navigation in the South China Sea, but Chinese leaders’ goal of building China into a maritime power has forced

Beijing to adopt a more vigilant, if not tougher, stance on Chinese sovereignty and sovereign rights. In May 2009, Beijing submitted for the first time its 9-dotted-line map to the United Nations to counter the Vietnam-Malaysian joint submission of their extension of the continental shelf beyond 200 nautical miles in the South China Sea. Following Chinese efforts to intimidate American oil companies, Vietnam registered its protest to Beijing over pressure on British Petroleum to abandon a joint project with Vietnam in the Spratly Islands in 2008. The Chinese have been sending their fishing regulation cruisers and coast guard ships into the waters of the Paracel and Spratly Islands regularly since 2009. The Chinese National Oceanic Administration created an additional enforcement unit in the South China Sea in 2010 and is devoted to building more big law enforcement ships in the coming years. The Chinese government is also considering a tourism plan for the disputed islands and has implemented a moratorium on fishing for three months each year in the South China Sea.

In March 2011, Filipino oil exploration vessels were harassed by Chinese ships in waters near Reed Bank, a feature occupied by the Philippines. In May and June 2011, Vietnamese oil exploration ships were harassed by Chinese Marine Surveillance ships and Fishing Administration ships in waters closer to Vietnam than to Hainan Island. These two incidents resulted in growing anti-Chinese sentiment in Vietnam, where hundreds of people staged a rare protest over the activities of Chinese ships in disputed waters. This led the Vietnamese government to issue rules on conscription in war times and dispatch the country's Vice Foreign Minister Ho Xuan Son to Beijing to calm the waters in the Spratly Islands. In October 2011, China and Vietnam signed a six-point agreement in Beijing to further cool tensions over rival territorial claims in the South China Sea. They agreed to open a hotline to deal with potential maritime flare-ups, to hold border negotiation talks twice a year, and that they "should remain committed to friendly consultations in order to properly handle maritime issues and make the South China Sea a sea of peace, friendship and cooperation" (Li Jia., 2014; Xinhua Net, 2011a).

In April 2012, the most serious maritime and diplomatic conflict between China and the Philippines erupted in waters around Huangyan Dao (Scarborough Shoal) in the South China Sea. The PRC was again portrayed as bullying its much weaker neighbor. On another front, after a short respite in Sino-Vietnamese tensions over the disputed islands, in June 2012, they resumed a new round of heated competition in strengthening their respective sovereignty claims in the South China Sea. In mid-June 2012, Vietnam dispatched two Su-27 fighters to patrol its occupied island in the South China Sea; it also adopted its first-ever Law of the Sea. These steps were followed in short order by Chinese diplomatic protests and new administrative measures.

On June 21, 2012, the Vietnamese National Assembly adopted a Maritime Law claiming to lay the groundwork for "the utilization, management and protection of Viet Nam's sea and islands as well as the development of a sea-borne economy" in accordance with the United Nations Convention on the Law of the Sea. The Chinese Ministry of Foreign Affairs immediately protested this legislation for its "serious violation of China's territorial sovereignty." On the same day, the Chinese Ministry of Civil Affairs announced that it had

raised the level of governance on three island groups—Nansha, Xisha, and Zhongsha (Macclesfield Bank)—in the South China Sea from the county level to the prefectural-level city of Sansha, which covers 13 square kilometers of land with more than 2 million square kilometers of maritime zones (Zhang, 2014). In addition to counterbalancing Vietnam’s new domestic legal efforts, Beijing is determined to show its Asian neighbors that its sovereignty in the South China Sea is indisputable and cannot be challenged.

The Chinese government has protested joint energy projects between ASEAN claimants and other major powers, such as India, Russia, and the United States. Ironically, the China National Offshore Oil Corporation announced similar measures on June 23, 2012, by inviting international bidding for nine oil blocks in the South China Sea that are located in Wan’an Tan (Vanguard Bank), also claimed by Vietnam. Vietnam immediately issued a protest on June 26, 2012, accusing China of taking a set of steps that “seriously violates Viet Nam’s sovereign rights, jurisdictional rights and legitimate national interests as well as the 1982 [United Nations] Convention on the Law of the Sea to which China itself is a member State, [which] complicates the situation and causes tensions in the East Sea” (Vietnam Net, 2012).

After China forced the Philippines off Huangyan Dao (Scarborough Shoal) in the Macclesfield Bank, Manila initiated international arbitral proceedings in January 2013 and demanded that a decision be made on whether China’s South China Sea “nine-dash line” was in line with the United Nations Convention on the Law of the Sea. Through track-two dialogue between think tanks, Beijing tried to convince the Philippines to drop the case and return to the bilateral negotiation table. The Chinese foreign ministry then issued a comprehensive position paper arguing that “the Arbitral Tribunal has no jurisdiction over the claims of the Philippines for arbitration,” and Beijing has made it clear that “it will neither accept nor participate in the arbitration thus initiated by the Philippines” (PRC Ministry of Foreign Affairs, 2014).

For Beijing, differentiating between the primary and the secondary enemy is important in its management of its South China Sea policy, and the worst-case scenario is a united front led by the United States with ASEAN claimants as its main partners (Shear, 2015). Chinese top leaders, such as Xi Jinping and Li Keqiang, have intentionally shunned formal visits to the Philippines and tried to pursue wedge politics by isolating the Philippines from other ASEAN members. Xi Jinping and Li Keqiang visited Malaysia in October 2013 and November 2015, respectively, and Xi visited Vietnam in November 2015 after Premier Li’s visit in 2013. In October 2013, Chinese Premier Li Keqiang and Prime Minister Nguyen Tan Dung of Vietnam held talks, agreeing on “the establishment of a working group for consultations on joint maritime development,” which “sends a positive signal that both sides are ready to resolve problems through cooperation” (PRC Ministry of Foreign Affairs, 2013). Beijing’s willingness to engage with other claimants besides the Philippines may represent an attempt to address what it perceives as the primary threat. Engagement has the dual effect of demonstrating both its rejection of Philippine efforts to internationalize the dispute and the feasibility of a cooperative bilateral approach to dispute settlement negotiations. However, confrontations between China and Vietnam have shown no

signs of subsiding. In May 2014, the installation of an oil platform by China near the disputed Zhongjian Dao (Triton Island) in the Xisha Islands sparked violent protests in Vietnam against Chinese actions and inflicted disaster upon Taiwanese-owned businesses in several Vietnamese cities.

One of the most striking developments was that China began to step up land reclamation activities on all of its occupied reefs except Huangyan Dao and has built airstrips on three strategic reefs—Yongshu Jiao (Fiery Cross Reef) in the south, Meiji Jiao (Mischief Reef) in the northeast, and Zhibi Jiao (Subi Reef) in the northwest of the Spratly Islands. These runways could serve as forward-deployed aerial platforms and could enable the PRC to have air-power projection capabilities and improved anti-access/area-denial capabilities to guard against U.S. intervention. It is true that the PRC is not the only claimant conducting land reclamation activities, but their pace and scale exceed those of other claimants. In addition to Vietnam and the Philippines, Taiwan finished construction of two docks and extended the length of its runway on Taiping Island in December 2015. However, as of June 2015, according to a report by the U.S. Department of Defense, China has reclaimed “17 times more land in 20 months than the other claimants combined over the past 40 years, accounting for approximately 95 percent of all reclaimed land in the Spratly Islands” (U.S. Department of Defense, 2015a).

In May 2010, one PLA general declared at the Second Strategic and Economic Dialogue meeting that the South China Sea was part of China’s “core interests” related to Chinese sovereignty and territorial integrity, and that China would brook no U.S. intervention. Two months later, U.S. Secretary of State Hillary Clinton raised the South China Sea issue at the ASEAN Regional Forum in July 2010 by offering to facilitate moves to create a code of conduct in the region (Clinton, 2014). Beijing started to perceive the Obama administration’s approach as a departure from the previous low-profile and non-active policy of the U.S. toward the South China Sea. Then—Chinese Foreign Minister Yang Jiechi implicitly warned the U.S. not to “internationalize” the territorial dispute between China and some ASEAN claimants, because it will “make matters worse and the resolution more difficult” (Li and Zhang, 2010).

Almost in parallel with the inauguration of President Obama, the PLA Navy has increasingly projected power beyond Chinese exclusive economic zones (EEZs), not only entering the second island chain in the waters of the Pacific Ocean to the east of Taiwan but also increasing the number of military exercises in the South China Sea. Five Chinese vessels blocked and surrounded the USS *Impeccable*, a U.S. surveillance ship, in the South China Sea in March 2009, and in December 2013, USS *Cowpens*, a guided-missile cruiser, was forced to take evasive action to avoid a collision with a Chinese military ship in the South China Sea. In August 2014, a Chinese Su-27 intercepted a U.S. reconnaissance plane P8 in the air 135 miles east of Hainan Island. These incidents indicate that China and the United States have different interpretations of military use within EEZs.

Right before the ASEAN Regional Forum meeting in Bali, Indonesia, in July 2011, China and ASEAN conducted intensive discussions leading to agreement on implementation guidelines

for the Declaration on the Conduct of the Parties (DOC). These guidelines are flexible and provide room for different interpretations; they indicate a new phase of development in the South China Sea because China and ASEAN, particularly those states that are claimants, will carry out the provisions of the DOC “in a step-by-step approach,” “on a voluntary basis,” and “based on consensus among parties concerned, and lead[ing] to the eventual realization of a Code of Conduct” (Association of Southeast Asian Nations, 2012). Basically, China is prolonging the process of negotiations leading to a legally-binding Code of Conduct in the South China Sea through intensive discussions in the joint working group meetings and senior officials’ meetings on the implementation of the DOC.

The Chinese have been vigilant in promptly or almost simultaneously counteracting any hostile or unfriendly deeds by either ASEAN or the United States. In November 2011, at the East Asia Summit meeting in Bali, Premier Wen Jiabao was prompt to react by offering the establishment of a 3 billion RMB China-ASEAN maritime cooperation fund to counterbalance President Obama’s proposal of a Southeast Asia Maritime Partnership (PRC Information Office of the State Council, 2011). In February 2016, it was revealed that China had installed surface-to-air missiles on Zhongjian Dao (Triton Island) in the Paracel Islands, possibly in response to the sailing of the USS *Curtis Wilbur* within 12 nautical miles of the disputed island, which is also claimed by Vietnam and Taiwan. For leaders in Beijing, the southern maritime borders of China have been confronted by ASEAN claimants’ impromptu actions and Obama’s policy to pivot to Asia. The South China Sea has become rougher even though the establishment of the China-ASEAN Free Trade Area in 2010 led to zero-tariff treatment for more than 90% of the products exchanged between China and ASEAN countries. Neither the claimants to the South China Sea islands nor the U.S. has been the winner of the increasingly tense imbroglio. Even with military preparations and contingency planning, China has refrained from solving the dispute through military means. The South China Sea dispute cannot be resolved and will be harder to manage as the U.S. policy of rebalancing against China’s rise has begun to unfold.

The greatest threat to realizing the new type of great power relations proposed by China comes from a potential confrontation between the militaries of the United States and China in the South China Sea. In the East China Sea, China is confronting two formidable and advanced military powers; even Japan alone could forestall the PRC from crossing the red line. The U.S. has become more public in extending its protection over the Diaoyutai Islands under Article 5 of the U.S.-Japan Security Treaty. China has been confronting Japanese Coast Guard ships that have kept 24-hour vigilance for any possible intrusions from China against the Diaoyutai Islands.

What Beijing is most concerned with is the U.S. readjustment of its South China Sea policy and the geographical gravity of Obama’s rebalancing to Asia strategy. Daniel Russel, Assistant Secretary of State for East Asian and Pacific Affairs, has repeatedly pointed to Southeast Asia as a particular focus for the U.S. and as representing a “rebalance within the rebalance” (Russel, 2014). In the same vein, Beijing has proposed upgrading its relationships with its southern neighbors, including by agreeing on a treaty of good-neighborliness, friendship, and cooperation.

Specifically, Beijing hopes to strengthen cooperation in non-traditional security fields, to build an “upgraded version” of the China-ASEAN Free Trade Agreement, to establish an Asian Infrastructure Investment Bank, to strengthen financial cooperation by increasing the scope of bilateral currency swaps, to build a maritime cooperation partnership, and to boost cultural and educational exchanges between youth, think tanks, and the media (Xinhua Net, 2013b).

With its rebalancing strategy, the Obama administration is in the opposite camp when it comes to managing the South China Sea dispute. For example, the State Department argued in August 2012, that “China’s upgrading of the administrative level of Sansha [Nansha, Xisha, Zhongsha] City and establishment of a new military garrison there covering disputed areas of the South China Sea run counter to collaborative diplomatic efforts to resolve differences and risk further escalating tensions in the region” (Ventrell, 2012b). In February 2014, Assistant Secretary of State Daniel Russel stated, “Any use of the ‘nine-dash line’ by China to claim maritime rights not based on claimed land features would be inconsistent with international law” (U.S. House of Representatives, 2014). Russel supported the Philippines’ right to take its case to a United Nations tribunal for arbitration to find a “peaceful, non-coercive” solution, and the State Department called China’s placement of a large oil rig near the disputed Parcel Islands “provocative” (Mullany and Barboza, 2014). The U.S. also urged China and ASEAN to seek consensus on a principles-based mechanism and encouraged China and ASEAN to “make meaningful progress toward finalizing a comprehensive Code of Conduct in order to establish rules of the road and clear procedures for peacefully addressing disagreements” (Ventrell, 2012b).

China has criticized the U.S. for internationalizing the South China Sea issue by siding with ASEAN claimants, particularly Vietnam and the Philippines. China and the U.S. also have different interpretations of the rights of foreign militaries to act in EEZs under the United Nations Convention on the Law of the Sea. The interdiction of the USS *Impeccable*, the close call between the USS *Cowpens* and a Chinese military vessel, and the Chinese J-11 interception of the U.S. P-8 Poseidon in August 2014 all happened in the South China Sea, demonstrating the dangers China poses to freedom of navigation. Although China and the U.S. signed the Military Maritime Consultative Agreement in 1998 to strengthen military maritime safety, they still felt the need to avoid miscalculation by frontline command officers by signing two separate memorandums of understanding: the Notification of Major Military Activities Confidence-Building Measures Mechanism and the Rules of Behavior for Safety of Air and Maritime Encounters in November 2014.

In responding to the U.S. adoption of a more explicit and apparently assertive South China Sea policy, as exemplified by Secretary of State Clinton’s remarks at the 2010 ASEAN Regional Forum meeting in Hanoi, China has taken a series of diplomatic and legal actions (albeit not without pressure for a militarist approach from some nationalistic hard-liners) to safeguard Chinese sovereignty in the South China Sea (Li and Kemburi, 2014). Beijing succeeded in blocking the release of a joint declaration on the South China Sea at the third ASEAN Defense

Ministers' Meeting Plus in November 2015 (Perlez, 2015a). Beijing has also refused to participate in an arbitration case in The Hague regarding the legality of the Chinese nine-dash line initiated by the Philippines. More-profound implications include Xi Jinping's decision to conduct land reclamation activities in Chinese-occupied reefs in the Spratly Islands starting from 2013–2014, which the U.S. has described as fueling “the prospect of further militarization” and “the risk of miscalculation or conflict among claimant states” (Baldor and Pennington, 2015). To assuage President Obama's concerns, Xi made assurances in Washington on September 25, 2015, that China's construction activities “do not target or impact any country, and China does not intend to pursue militarization” (Davis and Sanger, 2015).

Beijing has consistently reiterated that its land reclamation and infrastructural development on features in the South China Sea are primarily for civilian use. For example, in June 2015, Assistant Minister of Foreign Affairs Zheng Zeguang confirmed that “facilities including navigation and search and rescue equipment aiming to meet various civilian demands will be mainly constructed on the islands” to better fulfill China's international obligations (PRC Ministry of Foreign Affairs, 2015). The Chinese government has also considered establishing ocean protection zones and ocean parks benefiting the marine environment and even the improvement of local economic development through the release of tourism plans for the Paracel Islands. To add other non-military activities, the PRC finished the construction of two lighthouses on Huayang Jiao and Chigua Jiao in October 2015 for the purpose of improving navigation safety. In January 2016, two civilian flights departed from Hainan Island and landed on Fiery Cross Reef to bolster its claims that its infrastructural developments are primarily for civilian purposes. Nevertheless, it is hardly convincing that China will not militarize those artificial and enlarged islands. Beijing will claim that its military installations are for defense purposes and that dual-use facilities and defensive weapons should not be categorized as evidence of militarization.

During the several decades prior to the announcement of President Obama's rebalancing to the Asia-Pacific strategy, Beijing was much less aggressive in its South China Sea policy. In addition to the U.S. factor, various leaders among claimants of the South China Sea Islands were playing the critical roles in the tension-prone waters. From time to time, China had maritime law enforcement conflicts with Vietnam or the Philippines over fishing or oil exploration activities, and it occasionally harassed or intercepted U.S. naval ships and air patrol planes. Still, it hardly regarded the U.S. as the paramount impediment to peace in the South China Sea. China's strategic plan is to forestall a united front initiated by the U.S. and other Spratly Islands claimants, but Beijing has apparently detected the development of a united front against Chinese interests that is becoming more likely than ever.

The Taiwan Factor in China's East and South China Sea Policy

The 1952 San Francisco Peace Treaty designated the U.S. as “the sole administering authority” in the Ryukyu Islands. The U.S. administration of the Diaoyutai Islands commenced from 1953 to 1972. Even before the Emery Report, issued in April 1969, which concluded that there was a high probability of significant oil reserves on the continental shelf between Taiwan and Japan, the ROC had directed its attention to Diaoyutai and considered setting up a meteorological survey station to the west of Diaoyutai in January 1969 (ROC Ministry of Economic Affairs, 1969).

For Beijing, Diaoyutai and its related islands are all affiliated with the island of Taiwan, which is considered an inalienable part of China. China has insisted that Taiwan should cooperate or coordinate with China to jointly safeguard Chinese territories, rather than leave the Chinese mainland to fight the sovereignty issue in the East China Sea alone (Minamoto and Oki, 2012). In responding to the nationalization of the Diaoyutai Islands by the Democratic Party of Japan government, President Ma, in August 2012, proposed the East China Sea Peace Initiative urging joint exploration of resources in the East China Sea among Taiwan, Japan, and China and seeking consensus through dialogue on a code of conduct in the region. In addition, President Ma has repeatedly stressed the ROC position on the importance of “safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development” in the East China Sea (ROC Presidential Office, 2012). Amid the serious rift between China and Japan, Taipei and Tokyo signed a fisheries agreement in April 2013 after 17 years of bilateral negotiations (beginning in 1996). From China's perspective, the Taiwan-Japan fisheries agreement undermines cross-Strait mutual political trust and the possibility of cooperation on the Diaoyutai issue (Liu H., 2015; Wang J., 2013). Ironically, Taiwan may gain substantively from the East China Sea tensions in 2012, but it also finds itself marginalized as the power equation shifts against it due to China's efforts to force Japan to accept a *de facto* Sino-Japanese joint exercise of parallel jurisdiction in the Diaoyutai Islands.

Beijing appreciated Taiwan's jurisdiction over the Nansha Islands long before the PRC first set foot on the disputed islands after fighting with Vietnam in 1988. The ROC's occupation of Taiping Island from 1946 through 1950 and its consistent claims to jurisdiction since 1956 support Chinese sovereignty claims over the Spratly Islands. If Chiang Kai-shek had not stationed marines on Taiping Island, then the PRC might not be able to secure its troops on Nanxun Jiao (Gaven Reef), which is located to the west of Taiping Island, and Vietnam might have occupied all the islands and reefs of the Zheng He Qunjiao (Tizard Bank).¹

The PRC neither worries about a military attack from Taiwan's Taiping Island on China's occupation of Nanxun Jiao nor Taiwan joining Vietnam or the Philippines in counterbalancing the Chinese claim over the Nansha Islands. For Beijing, Taiwan is on its side even though

¹ Land features in the Zheng He Archipelago include Namyit Island (Vietnam), Gaven Reef (China), Itu Aba Island (Taiwan), Sand Cay (Vietnam), Petley Reef (Vietnam), and Eldad Reef.

Taiwan always plays the role of a silent partner or bystander in Chinese sovereignty disputes with ASEAN claimants. The ROC government has also chosen not to criticize Beijing for its unprecedented land reclamation activities in the South China Sea. In contrast, Taiwan has often issued statements protesting other ASEAN claimants for their activities impinging on the ROC's sovereignty or sovereign rights. Taiwan and China share similar historical justifications for sovereignty claims in both the East and South China Seas. The PRC inherited the ROC's U-shaped line, although it dropped two dashes in waters between China and Vietnam in 1953. For the PRC, Taiwan is an inalienable part of China, so Beijing's leaders support what Taiwan has done in safeguarding Chinese sovereignty and sovereign rights in these two seas.

More importantly, cross-Strait rapprochement since 2008 has provided the PRC with an opportunity to shift its policy priority toward implementing its consolidation programs in the South China Sea. China has initiated joint oil and gas exploration with Taiwan in the waters near the Dongsha (Pratas) Islands, located in the northeast of the South China Sea. Such efforts were initiated during the Lee Teng-hui presidency, and cooperation on cross-Strait oil and gas exploration resumed with the advent of the Ma Ying-jeou administration in 2008. China has also tried to persuade Taiwan to move southward to explore waters near Reed Bank in their joint exploration ventures, although, to date, the Ma government has been dissuaded from agreeing to such a move by the United States (Liu and Wu, 2015). In December 2015, President Ma even gave up an opportunity to travel to Taiping Island for the opening ceremony of newly renovated wharfs on the island, but he finalized the visit in January 2016 to demonstrate that Taiping is an island entitled to a 200-nautical-mile EEZ instead of a rock that would only generate 12 nautical miles of territorial waters. The U.S. expressed its disappointment about Ma's trip, but Beijing was supportive of Ma's safeguarding the inheritance from Chinese ancestors.

Since 2008, China has benefited from the assistance of Taiwan's legal scholars in the joint study of the nine-dash line and has formed a tacit coordination effort in countering the Philippine challenge at the Permanent Court of Arbitration, which serves as the administering institution and registry in the arbitration case, with appointment of judges by the President of the International Tribunal on the Law of the Sea. China has initiated legal warfare against the Philippines through international publications of Chinese positions on the arbitration (Talmon and Jia, 2014). A group of Taiwan's marine and legal experts familiar with the South China Sea issue were frequently approached by Beijing to provide legal opinions on the issue. Track-two think-tank exchanges between China's National Institute for South China Sea Studies and Taiwan's Institute of International Relations have been conducted annually since 2001, leading to the publication of joint assessment reports of the situation in the South China Sea starting from 2011. The Ma government shares concerns similar to that of China about the possible implications of the outcome of the Philippines-initiated international arbitration case, in particular about whether Taiping Island should be regarded as a rock instead of an island. If the Arbitral Tribunal determines that Taiping Island is a rock, it will not be entitled to a 200-nautical-mile EEZ. Thus, Taipei and Beijing have adopted the same basic positions, and they

have not clarified the meaning of the U-shaped line or nine-dashed line. More importantly, they neither recognize the legality of international arbitration nor will accept its related awards (ROC Ministry of Foreign Affairs, 2015a). For Beijing, as long as Taiping Island is in the hands of Taiwan, Beijing can claim that, legally, it also belongs to China. To tie Taiwan and China together in their positions on the South China Sea could relieve China from being regarded as an outlier under the United Nations Convention on the Law of the Sea. Beijing has consistently expressed its concerns about the possibility of Taiwan going it alone in its own interpretations of history and present reality in the South China Sea (Hayton, 2014).

In this view, China's true political rivals in the South China Sea are Vietnam and the Philippines but not Taiwan. China and Vietnam have a long history of naval clashes even during the on-and-off improvement of bilateral relations since 1988. The PRC expelled South Vietnamese forces from the Paracel Islands in January 1974 and has firmly consolidated its claim since then. Similarly, Beijing took some reefs from Vietnam in 1988 following naval clashes in the Nansha Islands. The PRC has not used force to take inhabited islands or reefs controlled by the Philippines, but Beijing did occupy the uninhabited Mischief Reef in 1995 and took control of the waters surrounding the Scarborough Shoal in 2012.

For a military giant like China, the most serious threat to its position comes not from the defense modernization programs of Vietnam or the Philippines, but from the political and legalistic approach to the Nansha Islands dispute taken by the Philippines. Beijing is most concerned about the possibility of the Tribunal issuing an award that concludes that neither Subi Reef nor Mischief Reef are entitled to 12 nautical miles of territorial waters because they are low-tide elevations. The PRC has built these two reefs into a "great wall of sand" with multipurpose airstrips able to aid the projection of air power in the region. Any constraints on its operational depth would be seen as a threat and might explain why China was so upset about the U.S. sending its destroyer, USS *Lassen*, into the 12 nautical miles adjacent to Subi Reef in October 2015 and later dispatching B-52 bombers to fly over the disputed islands in November and December 2015. U.S. actions are an outright rejection of Chinese sovereignty claims to the adjacent waters of artificial islands.

For leaders in Beijing, China's main obstacle in settling the South China Sea dispute with ASEAN claimants comes from the Obama administration and its rebalancing strategy in the Asia-Pacific region. China has insisted on a dual-track South China Sea policy, excluding U.S. involvement in the dispute settlement process during the China-ASEAN senior officials' meeting on the implementation of the Declaration on the Conduct of the Parties and arguing that regional peace and stability can only be maintained by China and ASEAN without outside intervention (Xinhua Net, 2015). Both Japan and the U.S. are countries not directly related to the sovereignty dispute and should not take sides with any particular claimants. China always has been suspicious of the possibility of cooperation between Taiwan and the U.S., and if Taiwan dares not side with the PRC, Beijing at least has deterred Taiwan from standing with the U.S. or Japan in the East and South China Seas.

Conclusion

Comparatively speaking, the PRC began paying attention to sovereignty issues in the East and South China Seas later than the ROC. The PRC is the most recent claimant to occupy reefs, while the ROC was the first one to secure the largest island in 1956. While the ROC was fighting over oil exploration with Japan in the Diaoyutai Islands, the PRC was occupied with normalizing relations with Japan and decided to shelve the settlement of the sovereignty dispute for the next generation. As soon as the PRC decided to take the reins, the ROC was marginalized in dealing with the sovereignty issues with Japan and other ASEAN claimants.

Tensions in the East and South China Seas have constrained the development of the new model of Sino-American relations. Beijing has repeatedly warned the U.S. against siding with Japan, Vietnam, or the Philippines in opposition to China's stance in these waters. Even with continuous calls from Beijing to build a new type of great power relations, the Obama administration has not shied away from strengthening its security arrangements with its treaty allies in the Asia-Pacific, including Japan in the East China Sea and the Philippines in the South China Sea. The PRC has adopted a strategy of not fighting a two-front war in the East and South China Seas. It is imperative for Xi Jinping to strike a compromise with Japan to allow Beijing to focus greater attention on the South China Sea. Dealing with two major ASEAN claimants in the South China Sea, Beijing has implemented a divide-and-rule tactic by isolating the Philippines from other ASEAN members and cultivating closer relations with Vietnam through Chinese leaders' visits and economic assistance.

China has taken concrete steps to expand the scope of land reclamation in the Nansha Islands, with the exception of the Huangyan Dao, since 2013. China has turned a number of originally low-tide elevations that were completely submerged with no rights to territorial seas of their own into artificial islands. It has also done the same with a number of rocks and reefs entitled to 12 nautical miles of territorial waters, such as Chigua Jiao, Huayang Jiao, and Yongshu Jiao. While other claimants are also involved in land reclamation, China has taken steps with extraordinary pace and scope in turning those Chinese-claimed reefs into maritime bastions in the South China Sea. Chinese actions may be explained as reflecting Beijing's eagerness to create a new status quo before the final arbitration award comes out from The Hague. As Xi Jinping pledges that China will not militarize its occupied reefs, the formalistic dual use of those reefs for both civilian and military purposes will continue to be a part of Beijing's political rhetoric.

It is likely that China will increase its military activities on and near reefs it has occupied and pose a new security threat for Vietnam and the Philippines. If China decided to declare an ADIZ in the South China Sea, Beijing's first potential target would be U.S. maritime aerial patrol planes. Militarization of the South China Sea is probably inevitable because China will use Yongshu Jiao as a naval and air base to project power and to store prepositioned stocks of

equipment. This might narrow the room for diplomatic resolution and further delay the process of reaching the final phase of negotiations on a Code of Conduct in the South China Sea.

For Beijing, the growing U.S. attention to the South China Sea has not only created difficulties for China in settling its disputes with other ASEAN claimants but also posed dilemmas for Taiwan in its cooperation with China on joint oil exploration and policy coordination vis-à-vis other ASEAN claimants. It is unlikely that the PRC would attack or occupy the Taiwanese-controlled Taiping Island as long as other claimants still control other Chinese-claimed territories. With the uncertainty about the direction of cross-Strait relations after Ma's presidency, Taiwan's security in its southern front in the South China Sea is no longer given. After the completion of three airstrips in the Nansha Islands, Chinese dependence on logistical support from Taiping Island has dramatically dissipated, but Beijing still needs Taipei to share the Chinese historical U-shaped or nine-dash line claim in the South China Sea. Taipei's policy of not antagonizing Beijing in the South China Sea may continue even with the change of government in May 2016.

Chapter Seven. Fisheries Issues in Taiwan's Relationships with Japan and the Philippines

Michael S. Chase

International attention is increasingly focused on rising tensions over sovereignty, resources, and maritime rights and interests in the East and South China Seas. Indeed, policymakers, scholars, and analysts in the region and in the United States are growing more and more concerned that these long-simmering disputes could quickly turn into flashpoints, whether because of apparently more-assertive behavior by China, an action-reaction cycle involving rival claimants, or perhaps miscalculation or an accident involving the maritime law enforcement or naval vessels operating in close proximity to each other near one of the disputed features in the region. While many media reports and scholarly articles have focused on high-profile issues, such as competing sovereignty claims, challenges to freedom of navigation, and disputes over oil and gas, less analytical attention has been devoted to another set of important problems involving fisheries issues, which are one of the main sources of contention in the East and South China Seas. Additionally, while considerable attention has been devoted to the maritime policies of China, Japan, Vietnam, and the Philippines, less has been devoted to Taiwan's approach to handling these issues.

The purpose of this paper is to begin to fill this gap by reviewing Taiwan's approach to dealing with fisheries issues, particularly in its relationships with Japan and the Philippines. These cases stand out because fisheries issues have, at times, proven to be difficult for Taiwan in handling its ties with these countries and because the relevant parties in both cases have concluded agreements aimed at more effectively managing the associated challenges. To address these issues, this paper draws on a variety of sources, including media reports, official statements, speeches by policymakers and leaders, and discussions with scholars and officials from the United States, Taiwan, Japan, and the Philippines.

The key finding is that, despite challenges related to sovereignty disputes and the challenging circumstances Taiwan faces in negotiating such agreements in the face of Chinese objections, the two agreements stand as strong examples of pragmatic cooperation aimed at reducing friction and managing interaction over sensitive and potentially highly contentious maritime resource issues. They also serve as an opportunity for Taiwan to highlight its role as a constructive actor with respect to regional maritime challenges. Moreover, a number of international observers have applauded the two agreements as positive examples to China and other claimants currently embroiled in disputes over territory and resources in the East and South China Seas, by illustrating how these disagreements might be peacefully resolved through negotiated settlements.

The rest of the paper is organized as follows. The next section assesses the Taiwan-Japan fisheries agreement signed in 2013, followed by the 2015 fisheries law enforcement agreement between Taiwan and the Philippines. The final section offers some concluding observations and considers the potential implications for other maritime disputes in the region.

Taiwan-Japan Fisheries Agreement

On April 10, 2013, Taiwan and Japan signed a landmark fisheries agreement covering waters around the Senkaku/Diaoyu/Diaoyutai Islands, which are administered by Japan but also claimed by China and Taiwan. Taiwan President Ma Ying-jeou highlighted the agreement as helping to secure “both peace and prosperity,” and stated that it was made possible because it “set sovereignty questions aside.” Analysts have pointed out that the agreement also gave Taiwan an opportunity to demonstrate a constructive role in handling regional maritime issues.

Beijing, however, criticized the pact between Taiwan and Japan. Meanwhile, the United States welcomed it as an example of a negotiated approach to successfully managing potentially contentious maritime issues.

Background on the Taiwan-Japan Fisheries Agreement

The Taiwan-Japan fisheries agreement was reached following roughly five months of negotiations. Liao Liou-yi, Chairman of the Association of East Asian Relations, which manages Taiwan’s unofficial ties with Japan, represented Taiwan at the signing ceremony. Mitsuo Ohashi, Chairman of the Interchange Association, which handles Japan’s unofficial ties with Taiwan, represented the Japanese side. The agreement came as result of the 17th round of talks on the issue. It was the second round of talks under President Ma Ying-jeou, following ten rounds of talks held under Chen Shui-bian between 2000 and 2008, and five under Lee Teng-hui, beginning in August 1996 (Shih, 2013). The agreement runs from 27 degrees north latitude to an area north of the Yaeyama Islands. Additionally, as part of the agreement, Japan and Taiwan agreed to establish a fisheries commission to hold annual discussions on relevant issues. In March 2015, the Taiwan-Japan joint fishery committee reached agreement to modify aspects of the fisheries pact ahead of the fishing season.

President Ma has highlighted the importance of the April 2013 Japan-Taiwan fisheries agreement in two major areas. First, it has reduced tensions between Taiwan and Japan over fishing issues. According to comments President Ma made in an October 2014 *New York Times* interview, “In the year before we signed, we had 17 clashes over fishing rights, sometimes leading to standoffs between our nations’ respective coast guards. Since the agreement’s signing, there has been but one, for which there was no standoff and which was resolved quickly.” Second, it has yielded concrete economic benefits. According to President Ma, “Economically, both sides have enjoyed larger catches, especially of high-quality fish like bluefin tuna. This has been beneficial to the fishermen of both sides.” In all, according to Ma, the agreement has been

beneficial to “both peace and prosperity,” and it was possible because “we have set sovereignty questions aside, not allowing these to hinder resource development and relevant negotiations.” (*New York Times*, 2014)

A number of Japanese analysts have also welcomed the agreement. For example, according to Tetsuo Kotani, “the agreement was a strategic success for both Japan and Taiwan.” For Prime Minister Shinzō Abe, it ensured that China would not be able to pressure Taiwan into a united campaign against Japan over the issue of the disputed islands. For President Ma, the fisheries agreement aligned well with his East China Sea Peace Initiative and differentiated Taiwan’s approach to handling sensitive maritime issues from China’s “gray zone” activities. The agreement also “demonstrated Taiwan’s presence and influence in regional issues” (Kotani, 2015b).

Reactions from China and the United States

As noted earlier, China criticized the agreement between Taiwan and Japan. However, China’s criticism appears to have been relatively muted on the whole. The country’s Ministry of Foreign Affairs spokesperson said, “China’s position on Taiwan’s foreign exchanges is clear and consistent. . . . We are extremely concerned about Japan and Taiwan discussing and signing a fishing agreement” (BBC World, 2013). Moreover, the spokesperson stated that Beijing expects Tokyo “to earnestly stick to its commitments on the one-China policy as well as the Taiwan question, and deal with Taiwan-related issues in a prudent manner” (People’s Daily, 2013).

In contrast, the United States welcomed the agreement as an example of a constructive approach to handling potentially contentious disputes over maritime resources. For example, Ray Burghardt, chairman of the American Institute in Taiwan, praised the agreement as “well-handled” (Taiwan News, 2013). Similarly, U.S. Secretary of State John Kerry highlighted the agreement in an August 2014 speech at the East-West Center in Honolulu, Hawaii, in which he emphasized the importance of defusing tensions and addressing disputes in the region through good-faith negotiations. He specifically praised the fisheries agreement, stating that Japan and Taiwan “showed last year that it’s possible to promote regional stability despite conflicting claims” (Kerry, 2014).

Taiwan-Philippines Fisheries Law Enforcement Agreement

In November 2015, Taiwan concluded an agreement governing law enforcement cooperation on fisheries issues with the Philippines. The deal followed two years of negotiations motivated by the 2013 shooting death of a fisherman from Taiwan by Filipino Coast Guard officers. Like the agreement between Taipei and Tokyo, it offers a practical means of managing an issue that would otherwise have considerable potential to escalate into another diplomatic or security crisis between important U.S. allies and partners in the region. Additionally, like the Taiwan-Japan

agreement, it has won praise from several international observers and served to amplify Taiwan's role in maritime issues in the region.

Background on the Taiwan-Philippines Fisheries Law Enforcement Agreement

As in Taiwan's relationship with Japan, fisheries issues have been a source of tension in the Taiwan-Philippines relationship at times, and observers in Taiwan have seen reaching a fisheries agreement with the Philippines as a means of addressing these problems. Indeed, the negotiations leading up to the Taiwan-Philippines agreement were motivated in large part by the need to avoid clashes like the one that occurred in May 2013, when overlapping claims to fishing grounds led to a very serious incident resulting in the death of a 65-year-old fisherman from Taiwan, Hung Shih-cheng, souring the bilateral relationship between Taipei and Manila. That incident arose when coast guard personnel from the Philippines fired on a Taiwan fishing vessel, the *Guang Da Xing No. 28*, leading to the death of fisherman Hung. Following the incident, Taiwan not only demanded an apology, compensation for the victim's family, and an investigation into the incident but also underscored the importance of holding talks on a fisheries agreement (Pitlo, 2013). Overall, the incident underscored the need to reach a bilateral fisheries agreement to help avoid further clashes and prevent the escalation of incidents between the two sides' fishermen and maritime law enforcement personnel.

Accordingly, in November 2015, after more than two years of negotiations, the two sides finally reached an agreement on fisheries issues. Representative Gary Song-huann Lin of the Taipei Economic and Cultural Office in the Philippines and Representative Antonio I. Basilio of the Manila Economic and Cultural Office in Taiwan signed the agreement in Taipei at a ceremony also attended by fisheries officials from the two sides. The Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters covers three major points: "avoiding the use of violence or unnecessary force, establishment of an emergency notification system, and establishment of a prompt release mechanism." Specifically, according to the Ministry of Foreign Affairs,

Taiwan and the Philippines will avoid the use of violence or unnecessary force when enforcing the law. Before taking law enforcement action against a fishing vessel from the other party which is believed to be operating illegally in the overlapping exclusive economic zones, a one-hour advance notification will be given to the fisheries and coast guard agencies as well as representative office of the other party. If the fishing vessel is found to have violated the law and subsequently detained, it will be released within three days after posting reasonable bond, other security, or payment consistent with the law of the arresting party. These measures will effectively reduce fisheries disputes in the overlapping EEZs and protect the rights and interests of Taiwanese fishermen operating legally. (ROC Ministry of Foreign Affairs, 2015d)

In addition, from Taiwan's point of view, the agreement "upholds the spirit and principles underlying the South China Sea Peace Initiative" that President Ma announced in May 2015. (ROC Ministry of Foreign Affairs, 2015d)

Reaction to the Agreement

While there was no official reaction from China, the United States welcomed the signing of the agreement on fisheries law enforcement issues between Taiwan and the Philippines. Shortly after the agreement was announced, a spokesperson from the American Institute in Taiwan praised the agreement as “a model for the region on resolving maritime issues through peaceful means” and stated that it “reflects the principles that are at the heart of the U.S. efforts on maritime issues, namely, respect for international law and peaceful management of disputes” (China Post, 2015).

Conclusion

Overall, Taiwan’s fisheries agreements with Japan and the Philippines appear to exemplify a constructive means of handling disputes by setting aside more-intractable sovereignty issues and focusing on practical means of cooperation, resource-sharing, communication, and deconfliction. Although fishermen have complained to all three governments about aspects of the agreements, the agreements appear to be quite successful on the whole. As Hsu and Southerland put it, the Taiwan-Japan fisheries agreement “is a strong example of how Taiwan’s pragmatic approach to its fisheries policy can bolster its international status and calm tensions related to maritime disputes” (Hsu and Southerland, 2015, p. 5).

The agreements Taiwan has reached with Japan and the Philippines could also have broader implications in terms of how various rival claimants might go about handling other maritime disputes in the region. According to Kotani, with the Taiwan-Japan Fisheries Agreement, “Tokyo and Taipei set a precedent for managing territorial disputes while avoiding further escalation of bilateral tensions in the East China Sea. This could provide a good example for claimants to the South China Sea disputes”(Kotani, 2015b).¹ Similarly, the agreement between Taiwan and the Philippines could serve as an example for handling contentious maritime law enforcement issues between rival claimants in these disputes. However, in the two cases examined here, some of the key factors that scholars have identified as favoring or impeding successful resolution or management of such disputes, as highlighted in Professor Song’s contribution to this conference volume, are different from other cases. This suggests that these other disputes might be much more difficult to manage successfully. Indeed, some of these factors appear to indicate that it might be considerably more difficult for other pairs of actors to replicate the success of these agreements.

¹ Kotani notes, however, that some Japanese fishermen have been dissatisfied with the agreement, raising questions about how effectively it will be implemented at a more tactical level over the long term. He argues that the practical solution is greater Taiwan-Japan cooperation “rulemaking for safe fishing and the implementation of regulations to make the fishery agreement a real success.”

Future Research

While this paper has surveyed some of the attributes of and reactions to the Taiwan-Japan and Taiwan-Philippines agreements, it is important to note that it leaves some important questions to be addressed by future research. Why was Taiwan able to reach these agreements with Japan and the Philippines when some other actors with similarly contentious fisheries disputes have not been able to do so? Is it an issue of relative power differential? Is the fact that, in both cases, the relevant parties enjoy strong relationships with the United States an important part of the answer? Should we attribute the outcome in this case to the nature of the two governments as democracies? These questions would benefit from further research and analysis to establish their linkages to important factors shaping the evolution of regional security and order in the maritime domain.

Chapter Eight. Analysis of Taiwan's East China Sea and South China Sea Peace Initiatives

Joanna Yu Taylor

Within the span of three years, Taiwan has proposed two peace initiatives for two bodies of water in Asia that have significant potential for military escalation. Taiwan did not propose these peace initiatives as a disinterested, well-meaning third party. The stability of the East and South China Seas has great ramifications for Taiwan's security, as the two bodies of water sit directly to the north and south, respectively, of the Taiwan Strait.

Taiwan resolutely maintains its sovereignty claims over the islands in the East and South China Seas, but perhaps because of its unique international circumstance and domestic democratic development, Taiwan is also able to transcend its own political positions and propose regional agendas that focus on pragmatism, common interests, and cooperation.

East China Sea

Origin of the Dispute in a Nutshell

While Taiwan (officially called the Republic of China [ROC]), China, and Japan all invoked the traditional usage of the area by their fishermen as a historical justification for ownership over the Senkaku (Diaoyutai) Islands,¹ it is events in the modern era that contributed most to the current sovereignty dispute in the East China Sea. Such events include Japan's incorporation of the Ryukyu Kingdom into its domain during the Meiji Restoration, the Sino-Japanese War of 1895 and the resulting Shimonoseki peace treaty, the terms of Japanese surrender after World War II, and the U.S. reversion of Okinawa to Japanese control in 1972.

When Japan incorporated the Ryukyu Kingdom into its domain during the Meiji Restoration in the 1860s, it also began to survey the Senkaku Islands. However, the Japanese government did not annex the Senkaku Islands until 1895, in a parallel development to its declaration of war on the Qing empire. From then on, the Senkaku Islands were administered as part of the Okinawa Prefecture. It is the Japanese position that in 1972, when Okinawa was returned to Japanese control by the United States (which had administered it since the end of World War II), the Senkaku Islands returned to Japanese control as well, as part of Okinawa (Kawashima, 2013).

In the ROC's view, as part of the Peace Treaty of Shimonoseki that concluded the First Sino-Japanese War, the Senkaku Islands were ceded to Japan along with Formosa as one of the "islands appertaining or belonging to the said island of Formosa." Therefore, when Japan

¹ Japan justified ownership because the Okinawans fished there; China justified ownership because the Taiwanese fished there.

relinquished control of Formosa at the end of World War II, Japan also relinquished control of the Senkaku Islands (ROC Ministry of Foreign Affairs, 2013a). Moreover, the 1952 Sino-Japanese Peace Treaty which officially ended World War II hostilities between Japan and the ROC stated, “All treaties, conventions, and agreements concluded before 9 December 1941 between Japan and China have become null and void as a consequence of the war.” Therefore, in the eyes of the ROC, “the Diaoyutai Island should have been restored to the Republic of China” (ROC Ministry of Foreign Affairs, 2013a).

Indeed, although the ROC acknowledged U.S. administrative control over the Senkakus after World War II, it has maintained its sovereignty claim. It also noted that right before the reversion of Okinawa to Japan, the United States officially notified the ROC on May 26, 1971, that the reversion does not jeopardize any of the ROC’s sovereignty claims, and that the U.S. position is neutral over the sovereignty of the Senkakus (ROC Ministry of Foreign Affairs, 2013a).

Substance of the East China Sea Peace Initiative

Under the principle of “safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint exploration and development” (ROC Ministry of Foreign Affairs, 2012a), Taiwanese president Ma Ying-jeou announced the East China Sea Peace Initiative on August 5, 2012.

The key tenets of the East China Sea Peace Initiative are fivefold:

1. Refrain from taking antagonistic actions.
2. Shelve controversies and pursue dialogue.
3. Observe international law and resolve disputes through peaceful means.
4. Seek consensus on a code of conduct in the East China Sea.
5. Establish a mechanism for cooperation on exploring and developing resources in the East China Sea.

The East China Sea Peace Initiative is intended to be implemented in two stages. Stage 1 involves promoting the idea that East China Sea disputes should be resolved through peaceful means. The objective is to establish Track I and Track II channels that can be either bilateral or multilateral negotiation mechanisms to address key issues involving the East China Sea. The goal of these channels is to bolster mutual trust and provide collective benefit.

Stage 2 is to discover ways to share resources and undertake cooperative development. The objective is to institutionalize the dialogues and negotiation mechanisms established during Stage 1 and, through them, implement substantive cooperative projects and establish mechanisms for the joint exploration and development of resources. The goal is to form a network of peace and cooperation in the East China Sea.

The long-term objective of the peace initiative is to streamline the parallel bilateral meetings (between Taiwan and Japan, Taiwan and China, and Japan and China) and move toward one set of trilateral negotiations.

The ROC proposes the following five key areas that could be the starting point for negotiations and further cooperative endeavors (ROC Ministry of Foreign Affairs, 2012b):

1. *Joint conservation and management of the East China Sea's living resources.* Convene bilateral and multilateral meetings and exchange programs in the fishing industry, and establish a mechanism to improve cooperation and coordination of the fishing industry.
2. *Joint exploration and exploitation of the East China Sea's non-living resources.* Promote resource sharing in the territorial waters north of Taiwan and establish a mechanism for joint exploration, development, and management.
3. *Joint maritime scientific research and protection of the marine environment.* Conduct multinational marine and ecological research projects.
4. *Joint exercises to maintain conventional and unconventional security in the East China Sea.* Implement bilateral and multilateral law enforcement exchanges and maritime rescue cooperation, and establish a mechanism for collaborative maritime security and law enforcement.
5. *East China Sea code of conduct.* Conduct meaningful dialogue in accordance with the United Nations Charter and Article 279 of the United Nations Convention on the Law of the Sea (UNCLOS), and reach a consensus on a code of conduct in the East China Sea that will provide a common frame of reference for dealing with issues related to territory, sovereignty, and the use of resources.

Response from Other Players

The ROC's East China Sea Peace Initiative was proposed during heightened tension among the three sides.

In September 2010, a drunken Chinese fishing boat captain was detained for ten days by Japanese Coast Guard authorities, after he twice rammed his trawler into Japanese Coast Guard vessels in the waters around the Senkaku Islands. During this time, the Chinese government was rumored to have waged small-scale economic warfare with Japan by suggesting to Chinese companies to slow or stop their export of rare earth minerals to Japan; at the same time, there were reports that administrative processes were delayed at ports in Shanghai and Guangzhou to prevent materials from being loaded onto ships (Inoue, 2010; *The Telegraph*, 2010).

After this major diplomatic row between Japan and China, Chinese nationalists from Hong Kong, Taiwan, and China attempted a handful of island landings. Sometimes, their vessels were escorted by ROC Coast Guard ships. There were even reports that Chinese vessels were in close proximity to monitor their safety as well.² These island landing attempts were accompanied by protests in Hong Kong, Taiwan, and China, often with incendiary slogans and posters.

The East China Sea Peace Initiative signaled an attempt on the part of the ROC to break the nationalist fervor and inspire the other parties to do the same. At first, however, the peace initiative seemed to have fallen on deaf ears. Six months after President Ma's announcement, Japan nationalized the Senkaku Island chain by purchasing the three main islands from a

² Senior scholar at Taiwan Thinktank, interview with the author, December 24, 2015.

Japanese owner. Relations between Japan and Taiwan seemed to have reached a nadir. But then, the Japanese government indicated renewed interest to negotiate a fisheries agreement that has been under discussion for the past 17 years. Ultimately, it was with the strong political backing of the Japanese Prime Minister Shinzō Abe that a fisheries agreement over the contested waters was signed between the ROC and Japan in April 2013, eight months after the peace initiative was first unveiled.

To date, China has not responded officially to the peace initiative. According to some observers, it has not sought to practically implement the principles espoused in the peace initiative. According to these observers, China appears to be going in the opposite direction of the peace initiative. In November 2013, unilaterally and without forewarning to the affected parties, China declared an air defense identification zone over the East China Sea. Moreover, the way China would like to enforce the zone might suggest that it is treating it as territorial air space under customary practice and international law (Xinhua Net, 2013a).

To these observers, China's apparent failure to take advantage of the ROC's peace initiative has escalated tension in the region. In December 2015, as part of its announcement on homeland defense, which included a plan to fortify its 200-plus islands in the East China Sea with anti-ship, anti-aircraft missile batteries, Japan cited an intention to prevent China from breaching the first island chain as an added reason for the fortification of these "Southwest Islands" (*Japan Times*, 2015d).

Rating the East China Sea Peace Initiative

There are three claimants to the East China Sea: Taiwan, Japan, and China. With Taiwan's East China Sea Peace Initiative and Japan's initial favorable response, China seems to be the outlier in this sovereignty dispute. If this is the case, the natural inclination might be to devise a way to bring China into the discussion so that all three sides can peacefully resolve or settle their differences. However, given China's apparently uncompromising position when it comes to maritime sovereignty issues, in this author's view, perhaps the better approach might be for Taiwan and Japan to find more ways to work together under the East China Sea Peace Initiative and strengthen the stability they have begun to create in the East China Sea.

Cooperation in the fishing industry is the first of five areas of cooperation proposed by the peace initiative. The initiative also identified joint exploration of the seabed for the mining industry, joint marine life and ecological research by the scientific community, law enforcement and search and rescue cooperation between its maritime agencies, and, on the political level, setting up Track I and Track II dialogues to advance the goal of signing an East China Sea Code of Conduct.

If Taiwan and Japan were able to achieve these five areas of cooperation, that would send a strong message to China—as well as the international community—that cooperation, not confrontation, is the modus operandi in the East China Sea. Moreover, the network of cooperation that Taiwan and Japan would have created together—in the fisheries, mining,

scientific, law enforcement, and diplomatic communities—could act as strong mitigators against any belligerent action that China might undertake.

South China Sea

Origin and Evolution of the Dispute

The ROC, along with China, uses the U-shaped dashed line as the basis of its claims in the South China Sea. While visually illustrative, the line has left more questions than answers, and until recently, neither government has clarified what the line means.

Playing its part to clarify the legally ambiguous U-shaped dashed line, in September 2014, the ROC Ministry of the Interior and its national history institute, Academia Historica, sponsored an exhibit in which it displayed historical maps containing the line.

In addition, in its efforts to be compliant with the UNCLOS, the exhibit also displayed diplomatic correspondence with foreign states over the islands' status and a timeline (National Policy Foundation, 2014) detailing ROC activity on the islands (China Post, 2014). This is consistent with statements on the South China Sea put out by the ROC's Ministry of Foreign Affairs in 2015, which had sought to emphasize ROC claims over the islands, as opposed to the waters of the South China Sea (ROC Ministry of Foreign Affairs, 2015a, 2015d).

To date, China has apparently not followed suit. Instead, it has focused on building out islets in the South China Sea and outfitting them with air strips, piers, and buildings.

Substance of the South China Sea Peace Initiative

Making reference to the East China Sea Peace Initiative, and citing its success in helping address a 40-year fisheries dispute between the ROC and Japan, President Ma proposed the South China Sea Peace Initiative under the same principle of “safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development” (ROC Presidential Office, 2015b). The South China Sea Peace Initiative (ROC Ministry of Foreign Affairs, 2015c) calls on all parties to do the following:

1. Exercise restraint and refrain from taking unilateral actions that might escalate tensions.
2. Respect the principles and spirit of relevant international law, including the United Nations Charter and the UNCLOS, to manage disputes through peaceful means and to uphold the freedom and safety of navigation and overflight in the South China Sea.
3. Ensure the inclusion of all claimant parties in measures designed to address the South China Sea issue, such as a maritime cooperation mechanism or a code of conduct.
4. Shelve sovereignty disputes and establish a regional cooperation mechanism for the zonal development of resources in the South China Sea.
5. Establish coordination and cooperation mechanisms for nontraditional security issues, such as environmental protection, scientific research, maritime crime fighting, and high availability and disaster recovery solutions.

The peace initiative echoes many of the key points of the Declaration on the Conduct of Parties in the South China Sea between the Association of Southeast Asian Nations (ASEAN) and China. That declaration affirmed the following:

1. Commitment to the United Nations Charter, the UNCLOS, and other relevant international law as the basic norms governing state-to-state relations, including in the maritime domain.
2. Commitment to the freedom of navigation in and overflight above the South China Sea.
3. Desire to resolve territorial and jurisdictional disputes by peaceful means and without resorting to the threat or use of force.
4. Commitment to refrain from escalatory actions, such as inhabiting presently uninhabited land features. To build trust and confidence, the signatories intend to
 - a. hold defense dialogues
 - b. ensure humane treatment of persons at sea who are in distress
 - c. provide voluntary notification of joint or combined military exercises
 - d. provide voluntary exchange of relevant information.
5. Commitment to undertake cooperative activities in
 - a. marine environmental protection
 - b. marine scientific research
 - c. safety of navigation and communication at sea
 - d. search and rescue operations
 - e. combatting transnational crime, such as illicit drugs, piracy, armed robbery, and arms trafficking.

Although the ROC's peace initiative sounds very similar to the Declaration of Conduct, the principle behind it is very different. The declaration focuses more on the need to get all parties to agree on the rules of the road (i.e., refrain from escalatory actions, refrain from use of force), but because the peace initiative sees a need to regulate behavior over highly contentious sovereignty disputes, it instead looked past the sovereignty issue and asked, "Why not focus instead on activities that all parties can do together and benefit from?" It then offered that as the starting point for mutual discussions.

Response from Other Players

To date, neither China nor any ASEAN state has responded directly to Taiwan's South China Sea Peace Initiative. There could be several reasons for this.

First, the Southeast Asian nations have been very intent on getting China to the negotiation table. Having a keen awareness of Chinese sensitivities of Taiwanese participation in any international forum, they may not think it prudent to respond to the Taiwan initiative.

Second, there are already so many claimants in the South China Sea that having one less party to contend with—or to split the pie in any joint agreement over resources—might be in the interest of everyone already involved.

Three, there are apparently still lingering suspicions that China and the ROC might cooperate with each other in the South China Sea.

Conclusion

For Taiwan, its East China Sea Peace Initiative has been more successful than its South China Sea Peace Initiative. This may have as much to do with the extent of Taiwan's diplomatic outreach as it does the strategic calculation of the states involved and their relative power vis-à-vis China.

Japan might be a singular actor in the East China Sea, but it has an advanced maritime force, strong administrative control over the disputed islands, and a powerful alliance with the United States as a security partner. The ASEAN might be a multitude of nations, but none of those nations' maritime forces—individually or combined—could outmatch those of China, their control over their respective land features is tenuous, and only the Philippines could claim an alliance with the United States (and that alliance was only recently resuscitated, after the U.S. military was asked by the Philippine legislature to withdraw from the archipelago in 1991).

Taiwan's peace initiatives seek to transcend individual political agendas and focus on joint economic and scientific development, which can contribute to regional stability and prosperity. The initiatives are also plans—when more fully implemented—that can allow for success to be achieved with the participation of many, rather than all, actors; consequently, the initiatives can diminish the power of unilateral actors to control the system. It appears that the peace initiatives retain the potential to improve the contentious climate in the region. Given this conclusion, it would be in the interest of the other claimants to give them more consideration in their strategic calculations.

Chapter Nine. Understanding the Legal Aspects of Mutual Non-Denial and Cross-Strait Relations with Respect to the East and South China Sea Disputes

Chun-i Chen

Taiwan faces the sea on all sides. The Pacific Ocean, the Taiwan Strait, the East China Sea, and the South China Sea provide Taiwan both opportunities and challenges. To the west, the state of relations between mainland China and Taiwan and their relevance to international law and affairs have always interested scholars and practitioners around the world (Crawford, 2006; Hsieh, 2009).¹ To the north, the sovereignty and maritime dispute in the East China Sea has captured the world's attention since 1971. To the south, the situation in the South China Sea, with the development of the ongoing Sino-Philippine arbitration case before the Permanent Court of Arbitration (Permanent Court of Arbitration, 2015), has been the focus of great international attention.

This paper analyzes the legal aspects of mutual non-denial and cross-strait relations with respect to the East and South China Sea disputes. It first provides a brief background on current cross-strait relations and mutual non-denial, with reference to considerations in the domestic laws of the Republic of China (hereafter, the ROC or Taiwan). It then reviews Taiwan's position on the East China Sea and South China Sea, with emphasis on issues relating to mutual non-denial. Implications and challenges of mutual non-denial to the East and South China Seas are discussed in the concluding section.

Cross-Strait Relations and the Mutual Non-Denial Approach

Cross-strait relations can be divided into three eras: 1895 to 1945, 1945 to 1949, and 1949 to the present (Hsieh, 2009). From 1895 to 1945, Taiwan was part of the Japanese empire due to a Qing dynasty concession ceding Taiwan to the Empire of Japan under the Treaty of Shimonoseki in 1895 (Chiu, 1979).² From 1945 to 1949, Taiwan and the Chinese mainland were under the sovereignty and effective control of the ROC (Chiu, 1979). In 1949, the ROC government retreated from the Chinese mainland to Taiwan. From the 1950s to the late 1970s, tensions between Taiwan and Mainland China were high. But since the early 1980s, cross-strait relations

¹ In this article, the terms *Taiwan* and *Republic of China* (ROC), as well as the terms *mainland China* and *People's Republic of China* (PRC), will be used interchangeably. *Cross-Strait relations*, instead of *ROC-PRC relations*, is used here in order to avoid reference to sovereignty disputes.

² Article II of the Treaty of Shimonoseki stipulated: "China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon: . . . (b) The island of Formosa, together with all islands appertaining or belonging to the said island."

have relaxed, moving rapidly toward closer relations in the cultural, social, trade, and investment areas (Chiu and Dreyer, 1996).

Observers generally agreed that Dr. Ma Ying-jeou's inauguration as president of the ROC in May 2008 signified a significant change in its China policy (Tang, 2009; Zagoria, 2009). Since then, the Straits Exchange Foundation (SEF) in Taiwan and the Association for Relations Across the Taiwan Straits (ARATS) in mainland China have signed 23 agreements. As a major breakthrough in cross-strait relations, President Ma met mainland China's leader Xi Jinping in Singapore on November 7, 2015 (ROC Presidential Office, 2015a). From Taiwan's perspective, these promising developments have proven that the 1992 consensus and mutual non-denial is a workable model for maintaining peace and stability across the Taiwan Strait (ROC Presidential Office, 2011).

What is the 1992 consensus? Since the beginning of negotiations between the SEF and the ARATS, "the one-China principle" has been a sensitive issue for Taiwan and mainland China. Mainland China has consistently insisted on the one-China principle as a precondition for cross-strait talks. Taiwan is unwilling to explicitly agree to this principle because most countries in the world have recognized the PRC as the sole legal government of China, and inserting the one-China principle into the proposed agreement could create the impression that the ROC was submitting to the PRC's sovereignty (Chiu, 1993). To circumvent these political differences, the two sides reached the "one-China, respective interpretations," understanding in Hong Kong in 1992. This later became known as the "'92 Consensus" (Su, 2008). To Beijing, one China means the PRC; to Taipei, it means the ROC (Chiu, 1993).³ In President Ma's words, the '92 Consensus "is a typical agree-to-disagree formula" (ROC Presidential Office, 2015b). The consensus has

³ On August 1, 1992, the ROC's National Unification Council adopted a resolution on the meaning of "one China" as follows (Su, 2008):

- First, both sides of the Taiwan Strait have been adhering to the principle of one China. Nevertheless, the positions of the two sides are somewhat different. The Chinese Communists, for example, contend that one China means the People's Republic of China and that, after reunification in the future, Taiwan will become a special administrative region under the jurisdiction of the Chinese Communists. Meanwhile, our side contends that one China means the Republic of China founded in 1912 and [its] sovereignty covers all of China. Our government's current political power, however, only covers Taiwan, Penghu, Kinmen [Quemoy] and Matsu. Taiwan is a part of China and the mainland is also part of China.
- Second, since the 38th year of the Republic of China [1949], China entered a temporary division and two political entities have ruled the two sides of the Taiwan Strait since then. This is an objective fact. All views on unifying the country must not overlook the existence of this fact.
- Third, to develop the nation and promote the nation's prosperity and the people's welfare, the Government of the Republic of China has formulated a program for national reunification. It also has sought a common understanding among all people, and it has implemented steps to promote the reunification of the country. Therefore, it earnestly hopes that the authorities on the mainland will seek truth from facts, discard preconceived ideas, cooperate with us, and contribute to the building of a free, democratic, commonly rich, and single China.

been the cornerstone of the ROC government mainland policy since 2008, providing the political framework to uphold the ROC's sovereignty.

Mutual non-denial, as explained by President Ma, means “mutual non-recognition of sovereignty, and mutual non-denial of authority to govern.” He further elaborated why Taiwan and mainland China cannot recognize each other's sovereignty: “Under the ROC constitutional framework, the cross-strait relationship is not one between states, but a special relationship for which the model of recognition under conventional international law is not applicable” (ROC Presidential Office, 2015b). He continued:

I find the distinction between “sovereignty” and “authority to govern” necessary. An interesting precedent can be found in the 1972 Basis of Relations Agreement between the Federal Republic of Germany and the Democratic Republic of Germany, where the word “sovereignty” (souveranität in German) was replaced by the word “supreme power” (hoheitsgewalt in German). As the two sides of the Taiwan Strait have overlapping sovereignty claims, with all of each side's territory included within the claims of the other, mutual recognition of sovereignty is clearly unachievable. “Mutual non-denial” of one another's authority to govern, however, is a practical recognition of the status quo. Otherwise, the negotiation and signing of 15 legally binding agreements between the two sides would not have been possible. Only through “mutual non-denial” can cross-strait relations continue moving forward peacefully. Therefore, I see “mutual non-recognition and mutual non-denial” as the best interpretation of the cross-strait status quo and also the best approach to addressing realities, shelving disputes, and promoting peace. (ROC Presidential Office, 2015b)

The term “authority to govern” reflects the fact that Taiwan and the mainland can, in reality, exercise power to govern persons and property by their domestic laws based upon effective control of territory (Chiu, 1992). In that sense, “authority to govern” is broader than the international law concept of jurisdiction, which includes both the power to prescribe rules and the power to enforce them (Harris, 1998). In addition, “authority to govern” also means that Taiwan and mainland China may treat each other on a de facto basis as an entity without touching the issue of recognition.

The ROC's constitution, domestic legislation, and Constitutional Court's interpretations clearly support the essence of mutual non-denial. On December 25, 1947, the present ROC constitution entered into force (Chiu, Lin, and Myers, 1994). Under that constitution, both Taiwan and the mainland are parts of the ROC. On May 1, 1991, additional articles were added to the constitution (these are referred to as the 1991 Additional Articles) (Chiu, Lin, and Myers, 1994). The articles are revisions to the original ROC constitution; their effect is to clarify that the territory of mainland China is still treated as territory of the ROC, describing the ROC as comprised of two areas: the “free area” and the “mainland area” (Hsieh, 2009). Recognizing the reality of the PRC and envisaging that cross-strait relations may be regulated by special laws, the

1991 Additional Articles authorize the government to enact a law to regulate relations on interchanges between Taiwan and mainland China.⁴

That is why the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area (an act also known as the Cross-Strait Statute) was enacted. Passed by the Legislative Yuan in 1992, the Cross-Strait Statute governs the relations between the people of Taiwan and the mainland, covering administrative, civic, and criminal matters arising from cross-strait interactions (Chiu, 1993). The Statute defines the “Taiwan Area” as the area where the ROC government exercises its effective control (United Nations High Commissioner for Refugees, 2004) and the “Mainland Area” as the ROC territory outside the Taiwan Area.⁵

The Constitutional Court of the ROC has also found opportunities to address the problem of relations between Taiwan and mainland China. In 1993, the Court was requested to decide whether four agreements between the Chairman of the SEF in Taiwan and the director of mainland China’s ARATS were “international agreements”(Chiu, 1993).⁶ The Court held, in Interpretation No. 329, that agreements between SEF and ARATS were not international in nature (Justices of the Constitutional Court, 1993).

Today, the ROC government effectively governs Taiwan, the Pescadores, and the islands of Kinmen and Matsu. The Diaoyutai (Senkaku) Islands and the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha Islands (Macclesfield Bank), and Tungsha (Pratas) Islands, as well as their surrounding waters, are also parts of ROC territory and waters, but some are not under the active administrative control of the ROC government. The ROC’s constitution asserts a claim to sovereignty over all of China, and the ROC government maintains that it has never unequivocally asserted that Taiwan is an independent state (Crawford, 2006; ROC Presidential Office, 2015b).

It is in this context that this paper examines Taiwan’s position on the East China Sea and South China Sea disputes.

Taiwan’s Position on the East and South China Sea Disputes

The Diaoyutai Islets are at the heart of the disputes in the East China Sea. On August 5, 2012, the 60th anniversary of the day the Sino-Japanese Peace Treaty came into effect, President Ma Ying-jeou proposed the East China Sea Peace Initiative. While insisting that the ROC has sovereignty over the Diaoyutais, under the concept that sovereignty cannot be divided but

⁴ See Article 11 of the 1991 Additional Articles, constitution of Taiwan (available in Hsieh, 2009).

⁵ The Taiwan area includes Taiwan, Penghu, Kinmen, Matsu, and any other area under the effective control of the ROC government.

⁶ These agreements are the Agreement on the Use and Verification of Certificates of Authentication Across the Taiwan Straits, Agreement on Matters Concerning Inquiry and Compensation for [Lost] Registered Mail Across the Taiwan Straits, Agreement on the System for Contacts and Meetings Between the SEF and the ARATS, and Joint Agreement of the Koo-Wang Talks.

resources can be shared, the initiative calls on concerned parties to shelve disputes, respect international law, resolve disagreements peacefully, and negotiate the sharing of resources and their cooperative development (ROC Presidential Office, 2012).

One of the effects of the East China Sea Peace Initiative was that it helped Taiwan and Japan make a breakthrough in fisheries talks within five months, with the two sides signing a fisheries agreement in April 2013. That agreement covers about 21,600 square nautical miles of waters in which fishermen from each side may operate without interference from coast guard ships of the other. Moreover, the sovereignty dispute has been set aside, for the time being; a “without prejudice clause” in Article 4 stipulates that the sovereignty claims of the two sides are not affected by the fisheries agreement (ROC Ministry of Foreign Affairs, 2013b).

The East China Sea Peace Initiative serves as a model for peaceful development in the South China Sea. With respect to issues in the South China Sea, President Ma Ying-jeou proposed the South China Sea Peace Initiative on May 26, 2015 (ROC Presidential Office, 2015b). This initiative reiterates the ROC government’s longstanding principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development. In addition, based on respect for all relevant international laws and regulations, including the United Nations Charter and the United Nations Convention on the Law of the Sea (UNCLOS), it expresses the ROC’s willingness to work with other parties concerned to jointly ensure peace and stability in the South China Sea, uphold the freedom of navigation and overflight, and conserve and develop resources in the region.

The two peace initiatives show that Taiwan would like to develop its own version of a code of conduct and be recognized as a responsible stakeholder of disputes. And whether in the Taiwan Strait, East China Sea, or South China Sea, the ROC government’s approach is the same: Uphold the basic principles of safeguarding sovereignty, shelving disputes, pursuing peace and reciprocity, and promoting joint development. However, it is also worth noting that Taiwan’s claims on the East and South China Seas have several important implications for cross-strait relations, including the following.

First, the ROC government reiterates that the Diaoyutai Islands are a part of the ROC’s territory. They are under the jurisdiction of Taiwan Province. The ROC argues that, following China’s defeat in the Sino-Japanese War, the Qing empire was forced to sign the Treaty of Shimonoseki on April 17, 1895, which ceded “Taiwan and its appertaining islands” to Japan. Since the Diaoyutai Islands were part of Taiwan, the only basis of Japan’s legal rights is the 1895 Treaty of Shimonoseki, which was nullified after World War II. Accordingly, post–World War II arrangements restored the islands to their pre-1895 legal status. The 1943 Cairo Declaration stipulated that “all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa (Taiwan), and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed.” The 1945 Potsdam Proclamation stated that the “terms of the Cairo Declaration shall be carried out.” Furthermore, the 1945 Japanese Instrument of Surrender accepted the terms of the Potsdam

Proclamation. In addition, Article 2 of the Treaty of Peace between the Republic of China and Japan of 1952 states, “It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the City of San Francisco on September 8, 1951, Japan has renounced all right, title and claim to Formosa (Taiwan) and the Pescadores (the Penghu Archipelago), as well as the Spratly Islands and the Paracel Islands.” When Japan renounced sovereignty over Taiwan and Penghu, this naturally extended to the Diaoyutai Islands, which are an integral part of Taiwan. (ROC Ministry of Foreign Affairs, 2013a)

Second, sovereignty and maritime disputes in the South China Sea are much more complicated and difficult to resolve than the disputes in the East China Sea because of the claims made by mainland China and Taiwan to the so-called U-shaped line (Zou, 1999; ROC Ministry of Foreign Affairs, 2015d) or nine-dashed line (Gau, 2012; Song and Yu, 1994; Wang K., 2010). It is generally agreed that the PRC inherited this claim from the ROC, so how the ROC interprets its claims is relevant to the PRC’s position. Once, Taiwan claimed that the waters encircled by the U-shaped line were its historic waters and that it owned all of the land features within the line (Sun, 1995; Wang K., 2010).⁷ While Taiwan has not claimed the entirety of the waters encircled by the U-shaped line as its historic waters since December 2005,⁸ it continues to claim that “whether from the perspectives of history, geography, or international law, the Nansha (Spratly) Islands, Shisha (Paracel) Islands, Chungsha Islands (Macclesfield Bank), and Tungsha (Pratas) Islands, as well as their surrounding waters, are an inherent part of ROC territory and waters” (ROC Ministry of Foreign Affairs, 2015d). Taiwan always emphasizes that the San Francisco Peace Treaty of 1952, as well as the Treaty of Peace between the ROC and Japan, together with other international legal instruments, confirm that the islands and reefs in the South China Sea occupied by Japan should be returned to the ROC. It also cites evidence to support the fact that the ROC’s ownership and effective exercise of control over these islands has been recognized by foreign governments and international organizations. On January 28, 2016, President Ma Ying-jeou led government officials and scholars to visit Taiping Island in the Nansha Islands and he remarked,

We must state clearly that these islands were first discovered, named, and used by the Chinese in the Western Han dynasty (in the first century BCE). They were incorporated into the maritime defense system no later than 1721, in the Kangxi period of the Qing dynasty, with patrols and other management measures. After the ROC was founded in 1912, the government published maps of the South China Sea Islands in 1935 and 1947, reaffirming to the international community ROC sovereignty over the islands and their surrounding waters. (ROC Presidential Office, 2016)

⁷ On April 13, 1993, the Executive Yuan (Cabinet) of the ROC adopted the Policy Guideline for the South China Sea, which indicated, “The South China Sea area within the historic waters limit is the maritime area under the jurisdiction of the Republic of China, where the Republic of China possesses all rights and interests” (Sun, 1995).

⁸ On December 15, 2005, the South China Sea guideline was terminated by the Ministry of Interior during the presidency of Chen Shui-bian.

Third, on the status of Taiping Island, Taiwan claims that strong evidence shows Taiping Island to be an “island” capable of sustaining human habitation or economic life under Article 121 of the UNCLOS. Taiwan states that Taiping Island (Itu Aba), the largest (0.5 square km) of the naturally formed Nansha (Spratly) Islands, has been garrisoned by ROC troops since 1956. In February 1990, by executive decree, the Executive Yuan of the ROC put Taiping Island under the administrative jurisdiction of Kaohsiung City. Taiping Island has groundwater wells, natural vegetation, phosphate ore, and fishery resources. Moreover, personnel stationed on the island cultivate vegetables and fruit and rear livestock. Taiwan argues, from legal, economic, and geographic perspectives, that Taiping Island indisputably qualifies as an “island” according to Article 121 of the UNCLOS and can sustain human habitation and economic life of its own, and is thus categorically not a “rock” (ROC Ministry of Foreign Affairs, 2015b).

Fourth, on the issue of the awards pertaining to jurisdiction in the Philippines and mainland China arbitration issued by the arbitral tribunal on October 29, 2015, Taiwan’s position is that since the Philippines has not invited Taiwan to participate in its arbitration with mainland China, and since the arbitral tribunal has not solicited Taiwan’s views, Taiwan will not accept related awards or findings, and thus the arbitration will not have any effect on Taiwan (ROC Ministry of Foreign Affairs, 2015a).

Implications and Perspectives

Mutual non-denial has implications for Taiwan, mainland China, and other states. For the foreseeable future, the ROC and the PRC are unlikely to officially recognize each other as states. On the other hand, under mutual non-denial, each side of the Taiwan Strait does not deny the other’s de facto existence in bilateral relations, thereby effectively shelving the sovereignty issue and leaving room for negotiations. Moreover, mutual non-denial led to a scheme of strategic ambiguity that allowed many foreign governments that had withdrawn formal recognition to continue “substantive” relations with Taipei on a semi-official or unofficial basis. Since the affirmation of one unified state as a matter of domestic constitutional law does not require abandoning the position that Taiwan is a right-bearer in the international legal order, at least from a legal point of view, any state in the region could negotiate with Taiwan on issues relating to code of conduct, joint conservation and management of fisheries resources, and exploration and exploitation of oil and gas resources in the East and South China Seas.

Understanding the legal aspects of mutual non-denial is helpful for appreciating why the claims Taiwan makes to the ownership of the disputed islands and the accompanying maritime rights and interests in the East and South China Seas are more or less identical with mainland China’s claims. When considering the issue of the protection of territorial integrity, the ROC cannot deviate from the constitution and domestic laws as aforementioned.

Of course, Taiwan fully understands that it faces a policy dilemma over taking a position that is preferred by the United States, Japan, and the member states of the Association of Southeast

Asian Nations. This can explain why Taiwan always emphasizes that it will not cooperate with mainland China to present a united front in pursuit of its territorial claims vis-à-vis its neighbors and reiterates that its goal is to be a responsible stakeholder and a regional peacemaker. In fact, Taiwan has taken small but significant steps toward clarifying its claims, such as mentioning the need to “respect the spirit and principles of the UN Charter and UNCLOS” (ROC Ministry of Foreign Affairs, 2015d). In addition, although Taiwan did not fully clarify the legal status of the claimed waters within the U-shaped line, observers generally agree that the ROC has never used the U-shaped line as a national boundary line, never adopted any interpretation completely at odds with the UNCLOS, never threatened freedom of navigation, and never represented a challenge to the current international maritime order. And during the Ma administration, the ROC government has made it clear that freedom of navigation in the South China Sea will be respected in accordance with the rules under the UNCLOS.

Any efforts by president-elect Tsai Ing-wen of the Democratic Progressive Party to maintain, revise, or relinquish Taiwan’s territory claims on mainland China or in the East or South China Seas will definitely have an impact on cross-strait relations.

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