STIRRING UP THE SOUTH CHINA SEA (II): REGIONAL RESPONSES

Asia Report N°229 – 24 July 2012

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EXECUTIVE SUMMARY

The South China Sea dispute between China and some of its South East Asian neighbours – Vietnam, the Philippines, Malaysia and Brunei – has reached an impasse. Increasingly assertive positions among claimants have pushed regional tensions to new heights. Driven by potential hydrocarbon reserves and declining fish stocks, Vietnam and the Philippines in particular are taking a more confrontational posture with China. All claimants are expanding their military and law enforcement capabilities, while growing nationalism at home is empowering hardliners pushing for a tougher stance on territorial claims. In addition, claimants are pursuing divergent resolution mechanisms; Beijing insists on resolving the disputes bilaterally, while Vietnam and the Philippines are actively engaging the U.S. and the Association of Southeast Asian Nations (ASEAN). To counter diminishing prospects of resolution of the conflicts, the countries should strengthen efforts to promote joint development of hydrocarbon and fish resources and adopt a binding code of conduct for all parties to the dispute.

The extent and vagueness of China's claims to the South China Sea, along with its assertive approach, have rattled other claimants. But China is not stoking tensions on its own. South East Asian claimants, with Vietnam and the Philippines in the forefront, are now more forcefully defending their claims – and enlisting outside allies – with considerable energy. Crisis Group's first report in this two-part series, *Stirring up the South China Sea (I)*, described how China's internal dynamics shape its actions in the region. This second report focuses on factors in the other regional countries that are aggravating tensions.

South China Sea claimants are all anxious to pursue oil and gas exploration in the portions of the sea that they claim, and are concerned with protecting their claimed fishing grounds as coastal waters become depleted. This makes skirmishes more likely. Further complicating matters, control over resources in the sea is a nationalist issue for all claimants, making it more difficult for governments to de-escalate incidents and restricting their ability to cooperate on initiatives that could lessen tensions. Among those in South East Asia, the Vietnamese government is under the most domestic pressure to defend the country's territorial claims against China.

Although China and many other South East Asian states have embarked on modernisation programs for their navies, it is the increasing number of civilian vessels patrolling disputed waters that presents the greatest potential for conflict. They have been involved in recent incidents. In spite of being more lightly armed and less threatening than navy ships, civilian law enforcement vessels are easier to deploy, operate under looser chains of command and engage more readily in skirmishes.

While incidents in the sea have not led to actual armed conflict since 1988, they have crystallised anxiety about the shifting balance of power in the region. South East Asian claimants feel that their options are limited to bilateral discussions with China; attempts to include other actors such as the U.S. and ASEAN; and arbitration provided by the UN Convention on the Law of the Sea (UNCLOS). South East Asian states know they lack the clout to face China one-on-one. Vietnam and the Philippines in particular are seeking to increase their leverage vis-à-vis China by internationalising the issue. Beijing insists on resolving disputes bilaterally, where its economic and political clout carry the most weight. It strongly opposes efforts of South East Asian countries to deepen cooperation with outside actors, and perceives the U.S. strategic shift towards Asia as purposely containing its rise.

A lack of unity among China's rival claimants, coupled with the weakness of the regional multilateral framework, has hampered the search for a solution. International law has been used selectively by claimants to justify assertive actions in the sea, instead of as a means to resolve disputes. ASEAN, the leading multilateral forum for discussing the issue, has also proven ineffective in reducing tensions. Divisions between member states, stemming from different perspectives on the South China Sea and differences in the value each member places on their relations with China, have prevented ASEAN from coming to a consensus on the issue. China has worked actively to exploit these divisions, offering preferential treatment to ASEAN members that do not side with its rival claimants. As a result, no code of conduct on the management of South China Sea disputes has been agreed, and ASEAN is increasingly divided.

While the likelihood of major conflict remains low, all of the trends are in the wrong direction, and prospects of resolution are diminishing. Joint management of resources in the disputed areas could help reduce tensions among claimants, but the only attempt so far by China, Vietnam and the Philippines to jointly conduct seismic survey in disputed areas failed in 2008. Since then, claimants have strongly resisted compromising their territorial sovereignty and maritime rights, which would be necessary to undertake such projects. In the absence of regional agreement on policy options or an effective mechanism to mitigate and de-escalate incidents, this strategically important maritime domain will remain unstable.

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I. INTRODUCTION

A complex set of overlapping and competing claims in the South China Sea are at the core of long-simmering disputes between China and several of its South East Asian neighbours. China claims a massive area, extending almost down to Indonesia.[1] The Republic of China on Taiwan (hereafter, Taiwan) matches those demands but rarely pursues them assertively, limited as it is in access to international forums. Vietnam claims the Paracel and Spratly Islands, while the Philippines, Malaysia and Brunei all have claims partly overlapping with China's over islands and other geological structures.[2] Among the claimants, the Philippines and Vietnam have been the most active in challenging China's claims. Malaysia and Brunei take a more low-key approach, which has been facilitated by the fact that Beijing has not made an issue over its conflicting claims with these countries.

This report is a companion to an earlier Crisis Group report, *Stirring up the South China Sea (I)*, describing how China's internal dynamics and domestic factors have contributed to a more assertive stance in the region.[3] This report examines a number of risk factors that potentially could drive South East Asian claimants, especially Vietnam and the Philippines, towards conflicts with China over the South China Sea disputes, how they might change in coming years, and the implications of regional responses to China's actions. In addition, the report also addresses the complexity of international law with regard to the many overlapping claims in the South China Sea. There are several key legal issues involved in the territorial claims, and the different countries each present conflicting historical and legal evidence that they say proves their ownership of the different islands.[4] None of the international dispute settlement mechanisms can be used without the

[1] China's claims are depicted by its nine-dashed line map, which shows a U-shaped line that encompasses the majority of the South China Sea, including all of the Spratly and Paracel islands. This map, originally produced by the Republic of China under the Kuomintang government in 1947, continues to be used in official maps published by the People's Republic of China. The ambiguity of this map has raised concerns among other claimants that China might choose to disregard UNCLOS by claiming "historical rights" to the resources within the nine-dashed line. In response, the Chinese foreign ministry has begun to brief foreign embassies in Beijing behind closed doors that its claim is primarily to the features within the line and the exclusive economic zones (EEZs) they would generate. In February 2012, China's foreign ministry spokesperson Hong Lei differentiated between "disputes over territorial sovereignty of the reefs and islands of the Spratlys", and disputes over maritime delimitation, implying that China's claims are consistent with UNCLOS in that they are to the island features and the territorial waters, EEZs and continental shelves. A few months later, a leading Chinese scholar and government adviser also stated that China claims sovereign rights and jurisdiction over waters, seabed and subsoil as defined under UNCLOS. "2012年2月29者会记行例行举言人洪磊发日外交部" ["Foreign ministry spokesperson Hong Lei's regular press conference on 29 February 2012"], Chinese foreign ministry; M. Taylor Fravel, "Clarification of China's claim?", *The Diplomat*, 5 March 2012; Crisis group interviews, Singapore, June 2012. See also Crisis Group Asia Report N°233, Stirring up the South China Sea (I), 23 April 2012, pp. 3-4.

[2] For details on conflicting claims in the South China Sea, see Appendix B.

[3] See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.

[4] There are two types of territorial disputes involved. The first is the claims of sovereignty over the individual land features, based on the countries' historical presence or occupation and administration of the islands, as well as maps. The second dispute concerns the size of the maritime zones that can be awarded to the different features. Under the UNCLOS Article 121, the islands in the South China Sea that are above sea level at high tide and which can support human habitation or independent economic activity are given either an exclusive economic zone or a continental shelf, which can extend up to several hundred nautical miles from the coast. Within this area, the country with sovereignty over such islands has exclusive rights to the natural resources they contain, such as fish and hydrocarbons. In addition to these territorial arguments, a third type of conflict concerns the right of coastal states to control the activities of military vessels in the South China Sea. Fundamentally over the interpretation of international law regarding the balance of coastal state and international rights in EEZs, this dispute is primarily between China and the U.S., although claimant and non-claimant countries have interests in its outcome. Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea", *Naval War College Review*, vol. 64, no. 4 (Autumn 2011).

consent and cooperation of the parties involved, which have so far been lacking.

Research was carried out in China, Vietnam, Malaysia, Indonesia, the Philippines, and Singapore in 2011 and 2012. Among those interviewed were government officials, military officers and analysts, academics and executives of energy companies who follow the issue. The report also draws on a large body of academic literature.[5]

II. REGIONAL PERSPECTIVES ON CHINA'S SOUTH CHINA SEA APPROACH

Unique historical narratives, as well as domestic political and economic situations, influence how each country responds to China's actions. As Beijing's economic and political clout grows, other claimant countries carefully balance defence of their territorial claims and management of their relationship with their giant neighbour. This is particularly challenging for Vietnam and the Philippines as they have been the most adamant in resisting China's territorial claims.

Vietnam has been the most assertive vis-à-vis China since 2009 when tensions flared following all claimants' submissions of claims in the South China Sea to the UN Commission on the Limits of the Continental Shelf.[6] However, Hanoi has carefully managed its diplomatic ties with China to try to prevent the sovereignty disputes from affecting bilateral relations. Starting in mid-2011, the Philippines adopted an equally forceful position. Malaysia has been noticeably quiet, which many attribute to the high priority it places on economic relations with China, but Beijing's moderate stance on its territorial disputes with Kuala Lumpur also plays a role. Both Vietnam and the Philippines depend heavily on fishing and the former also highly relies on energy resources in the sea; yet their economies are increasingly tied to China. Shaky bilateral relations with Beijing, as well as fears of China's rise, have forced Vietnam, the Philippines, and, to a certain extent, the other claimants to delicately juggle between exploiting resources, defending sovereignty claims, and maintaining relations with their important neighbour and economic partner.

A. VIETNAM

China's and Vietnam's South China Sea claims overlap the most, and they claim more of the sea than any other country,[7] so each side views the other as its primary competitor. The two countries have already fought two times over disputed islands in 1974 and 1988.[8] This resulted in Chi-

[5] See Robert Beckman, "China, UNCLOS, and the South China Sea", paper presented at the Third Biennial Conference of the Asian Society of International Law on Asia and International Law: A New Era", Beijing, 27-28 August 2011; Joseph Cheng, "Sino-Vietnamese relations in the early twenty-first century", *Asian Survey*, vol. 51, no. 2 (March/April 2011), pp. 379-405; Patrick M. Cronin, Peter A. Dutton, M. Taylor Fravel, James R. Holmes, Robert Kaplan, Will Rogers and Ian Storey (eds.), "Cooperation from Strength: The United States, China and the South China Sea", Center for a New American Security, January 2012; Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea", *Naval War College Review*, vol. 64, no. 4 (Autumn 2011); Bonnie Glaser, "Armed Clash in the South China Sea", Council on Foreign Relations, April 2012; M. Taylor Fravel, "China's Strategy in the South China Sea", *Contemporary Southeast Asia*, vol. 33, no. 3 (2011); Li Guoqing, "中国南海诸岛主权的形成及南海问题的由来" ["The Origin of South China Sea Sovereignty Development and the South China Sea Problem"], 求是 [*Quest*], issue 15 (2011); Li Jinming, *南海波涛:东南亚国家与南海问题* [*South China Sea Waves: Southeast Asian countries and the South China Sea problem*] (2005); Li Mingjiang, "Chinese Debates of South China Sea Policy: Implications for Future Developments", S. Rajaratnam School of International Studies, Working Paper no. 239, 17 May 2012; Ranjeet Singh (eds.), "Investigating Confidence Building Measures on the Asia Pacific Region", Report no. 28, Henry L. Stimson Center (1999); Carlyle A. Thayer, "From Aggressive Assertiveness to All Quiet on the East Sea Front: The South China Sea as an Issue in China-Vietnam Relations", Presentation to Conference on The South China Sea and Asia Pacific in Transition: Exploring Options for Managing Disputes", sponsored by the Center for Strategic & International Studies, Washington DC, 27-28 June, 2012; Ian Storey, "Asia's Changing Balance of Military Power: Implications for the South China Sea Disputes", *The National Bureau of Asia Research*, Special Report no. 35, December 2011; Wu Shicun, *Origin and Development of Spratly disputes* (China Economic Publishing House, 2009).

[6] Taiwan, which is not a member of the UN, did not submit documentations.

[7] Except for China's and Taiwan's claims, which are similar and based on identical historical events. See Section II.D "Taiwan".

[8] In January 1974, Republic of Vietnam (South Vietnamese) warships off the Paracel Islands exchanged fire with the PLA Navy's (PLAN) South Sea fleet after Chinese armoured fishing trawlers were discovered deploying troops to the islands. Some 53 Vietnamese servicemen died in the clash. Chinese casualties have never been confirmed. Shicun, op. cit., pp. 88-89. In 1988, another 70 Vietnamese died when three People's Army of Vietnam (PAVN) vessels intercepted PLAN forces that were build-

na's occupation of the Paracel Islands and led many Vietnamese to believe that China would not hesitate to use force again to settle sovereignty disputes.[9] This legacy of conflict has raised the stakes and increased the political and emotional sensitivity of the issue in both countries. While generally prevalent in territorial disputes, nationalist sentiments in Vietnam run particularly high in its disputes with China and put pressure on the government to stand up to Beijing.[10] The bitter nature of the disputes has led observers to surmise that Vietnam would not back down from a military confrontation with China, despite China's overwhelming military capabilities, if only to raise the cost for Beijing.[11]

Despite a history of conflict, Vietnam has balanced its opposition to China's territorial claims with its need to maintain substantial economic relations with its neighbour. While it is rapidly developing economic ties with other countries including the U.S.,[12] China's economic influence remains overwhelming. Since the late 1980s, China has increasingly shaped Vietnam's economy with a combination of carrots and sticks and is now becoming its largest overall trading partner and main source of imports.[13] It has granted preferential loans and trade deals to boost Vietnam's industrial and agricultural sectors[14] and has not hesitated to wield this economic leverage in the territorial disputes. Beijing has cautioned foreign oil companies against joint development projects in disputed waters, warning them of "unspecified consequences in their business dealings with China" if they pursue those projects.[15] This has given rise to a high degree of anxiety in Vietnam. As a Hanoi-based economist stated, "the Chinese could wreck the Vietnamese economy if they wanted".[16]

On the political side, as two of the very few remaining communist countries, China and Vietnam maintain a direct channel of communication through their ruling parties. For the Vietnamese Communist Party, this relationship is a double-edged sword. Direct access to Chinese party officials gives Vietnam an invaluable edge over other claimant countries by allowing both sides to repair relations even after serious incidents.[17] It has also allowed the two countries to compartmentalise their South China Sea dis-

ing a maritime observatory in order to establish a presence on Johnson South Reef in the Spratly Islands. In the year after this clash, China went on to occupy seven more features in the Spratlys. Cheng, Tun-jen and Tien, Hung-mao (eds.), *The Security Environment in the Asia-Pacific* (2000), p. 264. In addition to these two engagements, the two countries also fought a brief war along their land border in 1979 in which Vietnam suffered between 35,000 to 62,000 casualties and China sustained between 20,000 to 63,500 casualties. King C. Chen, *China's War with Vietnam*, *1979: Issues*, *Decisions*, *and Implications* (Hoover Institution Press, Stanford University, 1987), p. 114; Daniel Tretiak, "China's Vietnam War and Its Consequences", *The China Quarterly*, no. 80, December 1979. Edward C. O'Dowd, *Chinese Military Strategy in the Third Indochina War: the Last Maoist War* (London: Routledge, 2007), pp. 45.

[9] Crisis Group interview, Hanoi, December 2010.

[10] See Section III.D "Nationalism".

[11] An ASEAN diplomat stated that even though Vietnam knows it would be beaten by China, its goal would be to inflict some pain on its neighbour. Another expert said that Vietnam would fight if forced and concluded, "Vietnam doesn't start wars but finishes them". Crisis Group interviews, Ho Chi Minh City and Hanoi, July 2011.

[12] With regard to the U.S., this included a Bilateral Trade Agreement signed in July 2000; normal trade relations status granted to Vietnam in December 2006; a bilateral Trade and Investment Framework Agreement signed in June 2007; and Vietnam's involvement in Trans-Pacific Partnership free trade agreement negotiations. The U.S. was Vietnam's largest export market and the volume of bilateral trade amounted to $17 billion in 2011. "Background note: Vietnam", Department of State, 5 January 2012; Mark Manyin, "U.S.-Vietnam Relations in 2011: Current Issues and Implications for U.S. Policy", Congressional Research Service, 18 May 2012.

[13] The import-export average growth rate is 33.95 per cent. Trade relations are severely unbalanced, however. China accounted for almost a quarter of Vietnam's import turnover in 2010 while Vietnam's exports to China accounted for only a fraction of China's overall imports. Vietnam's trade deficit with China has increased eight-fold since 2001, ballooning to $12.7 billion in 2011. "Vietnam: EU Bilateral Trade and Trade with the World", European Commission, 21 March 2012. Le Hong Hiep, "Vietnam's Tyranny of Geography", *The Diplomat*, 22 July 2011. "Vietnam trade deficit with China surges", *VietNamNet Bridge*, 26 March 2011.

[14] Hao Hongmei, "China's Trade and Economic Relations with CLMV (Cambodia, Laos, Myanmar and Vietnam)", ERIA Research Project Report 2007 no. 4, Economic Research Institute for ASEAN and East Asia. Low-interest rate loans sourced from China have been used in many industries in Vietnam, especially from China Exim Bank. For example, by 2011, four out of nine power projects developed by the Vietnam Coal and Mineral Industries Group (Vinacomin) had received loans from China; the Vietnam National Chemical Group (Vinachem) had received $500 million worth of Chinese capital for a fertilizer production project, and the Vietnam Plastics Corporation had received a preferential loan worth 50 million RMB. "Reliance on loans from China, Vietnam 'swallowing bitter pills'", *VietNamNet Bridge*, 11 January 2011.

[15] Jason Folkmanis, "China warns some oil companies on work with Vietnam, U.S. says", Bloomberg, 16 July 2009; "Tussle for oil in the South China Sea", *South China Morning Post*, 20 July 2008.

[16] Crisis Group interview, Hanoi, May 2011.

[17] As one example, following the June 2011 peak of tensions, the Vietnamese Party secretary's meeting with his Chinese counterpart in Beijing in October 2011 helped pave the way for the bilateral agreement on six principles for managing the disputes. Crisis Group interview, Beijing, December 2011.

putes and to insulate the overall bilateral relationship from them.[18] A Joint Steering Committee led by senior Chinese and Vietnamese officials ensures that business can be conducted as usual despite high levels of strategic mistrust.[19] At a committee meeting in September 2011, for example, there were few signs that incidents in the South China Sea, such as the cable cutting in May and June 2011, were affecting overall relations, attesting to how quickly the two countries were able to repair relations.[20]

Yet suspicion of China's intentions in the South China Sea and anti-Chinese sentiment run deep within both the Vietnamese government and public, in spite of relatively amicable party-to-party relations. Nationalist sentiments in Vietnam are rooted in historical grievances and are inflamed by political personalities and the influential pro-U.S. diaspora.[21] As a Vietnamese foreign ministry official stated, "the two countries are old friends and old enemies".[22] Therefore, the government has to avoid being perceived as selling out national interests to China.[23]

Tensions between the two over the South China Sea were particularly high from 2009 through mid-2011. In response to Vietnam and Malaysia's May 2009 joint submission of their territorial claims in the South China Sea to the UN Commission on the Limits of the Continental Shelf, China submitted its nine-dashed line map, in which two dashes cut through Vietnam's exclusive economic zone (EEZ).[24] The map renewed fears in Vietnam and other claimant states that China intended to claim not just the island features, but all of the waters inside the nine-dashed line.[25] Adding to these fears were two incidents at sea that supported Vietnamese perceptions of Chinese hostility.[26] In May 2011, a China Marine Surveillance ship cut the cable of an oil and gas survey vessel operated by Vietnam's state-owned energy firm, PetroVietnam, in Vietnamese waters. The next month, a Chinese fishing boat cut the cable of a Vietnamese seismic survey vessel, ramping up the diplomatic dispute between the two countries and fuelling nationalist demonstrations in Vietnam.[27]

In face of China's growing naval presence, Vietnam has stepped up military modernisation by increasing its defence budget, purchasing military equipment from Russia and tentatively enhancing defence ties with the U.S.[28] It also turned to ASEAN and the U.S. to "internationalise" the dispute.[29] These moves irritated Beijing but, as subsequent events showed, increased Hanoi's leverage with respect to China. Vietnam's efforts at championing the South China Sea issue during its chairmanship of ASEAN in 2010 secured two meetings of the ASEAN-China Joint Working Group on the South China Sea and discussion of the disputes at the ASEAN Regional Forum (ARF) for the first time.[30]

[18] Crisis Group email correspondence, Beijing, July 2012. Thayer, "From Aggressive Assertiveness to All Quiet on the East Sea Front", op. cit.

[19] Ibid.

[20] Ibid.

[21] See Section III.D "Nationalism".

[22] While relations are not always smooth, cooperation at the party-to-party level has remained substantive. There is an agreement that management of the South China Sea issue should be kept within the region, but "at the same time we [Vietnam] are ready to defend our interests in the South China Sea". Crisis Group interviews, Hanoi, May 2011; Beijing, June, 2012.

[23] Many Vietnamese believe that the Communist Party of Vietnam (CPV) cannot be trusted in its opaque discussions with the Communist Party of China for fear that it will sell out Vietnamese interests. Crisis Group interviews, Ho Chi Minh City, July 2011; Hanoi, May 2011.

[24] Crisis Group interview, Hanoi, May 2011. People's Republic of China, *Note Verbale* to the Secretary-General of the United Nations with regard to the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf, CML/17/2009, *China Leadership Monitor*, 7 May 2009.

[25] China's foreign ministry spokesperson Hong Lei stated: "No country including China has claimed sovereignty over the entire South China Sea". While China's demands remain ambiguous, this statement is seen as an important step toward clarification, as it seems to indicate claims to the land features and their EEZs within the nine-dashed line, rather than to the entire area or to "historical rights" within it. "2012年2月29日外交部发言人洪磊举行例行记者会" ["Foreign ministry spokesperson Hong Lei's regular press conference on 29 February 2012"], Chinese foreign ministry; M. Taylor Fravel, "Clarification of China's claim?", *The Diplomat*, 5 March 2012.

[26] A Vietnamese official called the cable cutting incidents "very hostile" and "aggressive". Crisis Group interview, Hanoi, July 2011.

[27] "Vietnam accuses China in seas dispute", BBC News, 30 May 2011; "China accuses Vietnam in South China Sea row", BBC News, 10 June 2011.

[28] For more on U.S. and Vietnam defence ties, see Section IV.A.1 "Bringing in the U.S.".

[29] From China's perspective, Vietnam took advantage of its chairmanship of ASEAN to internationalise the South China Sea dispute, with the organisation going along with its position. Carlyle A. Thayer, "Security Cooperation in the South China Sea: An Assessment of Recent Trends", Papers and Proceedings of the Manila Conference on the South China Sea, Manila, Philippines, 5-6 July 2011.

[30] Crisis Group interview, Singapore, May 2011; Ian Storey, "Intra-ASEAN Dynamics and the South China Sea Dispute: Implications for the DoC/CoC Process and ZoPFFC Proposal", Paper presented at The Third International Workshop "The South China Sea: Cooperation for Regional Security and Development", Hanoi, Vietnam, 3-5 November 2011.

Strains between the two countries over the South China Sea showed signs of easing after high-level exchanges in late 2011 as Beijing shifted to a milder approach.[31] Although Hanoi has insisted that the disputes be solved multilaterally through ASEAN, the two countries signed a bilateral agreement on six basic principles guiding the settlement of maritime disputes.[32] The agreement outlines measures including friendly consultations between the two countries on handling maritime issues and the adoption of a basic and long-term approach to solving the disputes on the basis of legislation and UNCLOS principles.[33]

According to a senior Vietnamese diplomat, the change in Hanoi's approach was necessary because it had been "too vocal in its opposition to China and had trapped itself by angering Beijing".[34] The shift was facilitated by Beijing's decision for some months to pursue a moderate South China Sea approach, which included suppressing media commentary critical of Hanoi following Vietnamese Communist Party General Secretary Nguyen Phu Trong's visit to Beijing in October 2011.[35] This visit was a turning point in Sino-Vietnamese relations, as it resulted in the agreement on the six basic principles as well as the establishment of a defence hotline.[36]

This improvement in relations proved to be only temporary. The two countries' claims in the South China Sea overlap to such an extent that they will remain a continuing source of tension.[37] Although Vietnam is aware of its limited capacity to alter China's fundamental calculus, domestic political issues and its distrust of China's maritime ambitions will continue to limit its political flexibility and increase the likelihood of incidents at sea.[38]

In June 2012, eight months after Trong's visit to Beijing, Vietnam passed a maritime law stating its jurisdiction over the disputed Paracel and Spratly Islands and declaring that all foreign naval ships entering these areas must notify Vietnamese authorities.[39] China issued a strong response to this law, expressing its "resolute and vehement opposition", and calling for an "immediate correction" by Vietnam.[40] On the same day, China announced the establishment of a prefecture-level city, Sansha, on the Paracel's Woody Island (Yongxing Island in Chinese) to administer the Paracels, Spratlys and the Macclesfield Bank.[41] According to a Chinese official, Sansha City will be directly overseen by the central government, instead of the Hainan provincial government.[42] In another sign of rekindled

[31] For more on China's shifting tactics in 2011, see Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.

[32] This agreement mainly refers to the waters at the mouth of the Gulf of Tonkin. In addition to these principles, the agreement, signed during the October 2011 visit of Vietnamese Communist Party General Secretary Nguyen Phu Trong to Beijing, also established a defence hotline between the two countries. "Vietnam-China Basic Principles on Settlement of Sea Issues", Embassy of the Socialist Republic of Vietnam in Malaysia; Keith Bradsher, "China and Vietnam move to reduce tensions in South China Sea", *The New York Times*, 12 October 2011. Vietnam made clear at the time the agreement was signed that any cooperation for mutual development would occur only in areas of bilateral disputes and not in areas contested by third parties. Carlyle A. Thayer, "ASEAN Summit: South China Sea Post Mortem", Thayer Consultancy, 6 April 2012

[33] "China, Vietnam sign accord on resolving maritime issues", Xinhua News Agency, 12 October 2011.

[34] Crisis Group interview, January 2012.

[35] The countries informally agreed to stop publicly criticising each other and to stop publishing inflammatory articles in the media. Crisis Group interview, Beijing, January 2012; Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit. However, Trong's visit sent mixed messages to the region as it coincided with the Vietnamese president's trip to New Delhi, during which he encouraged India to explore for oil in the South China Sea. The bilateral agreement also rattled other claimant states which want to deal with China multilaterally. Crisis Group interview, Manila, January 2012.

[36] Crisis Group email correspondence, Beijing, July 2012. "China and Vietnam move to reduce tensions in South China Sea", *The New York Times*, 12 October 2011.

[37] Crisis Group interviews, Beijing, January and May 2012.

[38] A Vietnamese official also lamented that "there's nothing we can do by ourselves to change China's behaviour. We have no power to do anything punitive". Crisis Group interview, Hanoi, May and July 2011.

[39] Prior to the passage of the Vietnamese maritime law, more than 60 coastal states, including Vietnam, China and Malaysia, had already asserted restrictions, consent or notification by foreign military vessels passing through their EEZs, contrary to UNCLOS. Stuart Kaye, "Freedom of Navigation in the Indo-Pacific Region", *Australian Maritime Affairs*, no. 33; Canberra: Royal Australian Navy Sea Power Centre Australia (2008), p. 12.

[40] "China says Vietnam claim to islands null and void", Reuters, 21 June 2012.

[41] The Paracels, Spratlys and the Macclesfield Bank are respectively termed Xisha (西沙), Nansha (南沙) and Zhongsha (中沙) in Mandarin. The name of the newly-established Sansha city (三沙市), which literally means the three "sha" (sandbanks), appears to reflect the Chinese government's assertion of administration over the three islands. "民政部就国务院批准设立地级三沙市答记者问" ["Interview with civil affairs ministry on the State Council's approval of a Sansha municipality"], Xinhua Net, 21 June 2012; see also Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., p. 23; Crisis Group interview, Beijing, July 2012.

[42] In 1959, China established an office under the then-Hainan Administrative Region to administer the three islands (Paracels, Spratlys and the Macclesfield Bank) and the surrounding waters. In 1988, the Hainan Province was established to replace the previous Hainan Administrative Region. "民政部就国务院批准设立地级三沙市答记者问" ["Interview with civil affairs ministry on the State Council's approval of a Sansha municipality"], op. cit.; Crisis Group interview, Beijing, July 2012.

tensions, a Chinese state-owned oil company contested the Vietnamese claims by inviting foreign oil companies to jointly exploit nine blocks in disputed areas two days after the law's passage in Hanoi.[43]

Such an action-reaction dynamic is heightening regional tension.[44] For Vietnam, the likelihood of Chinese non-compliance challenges the implementation of its new maritime law. Chinese defiance could oblige the Vietnamese government to respond to the violation of the law or risk losing its credibility in the eyes of the public – something it cannot afford. Similarly, the creation of Sansha City also presents problems for China. The establishment of a local administration that encompasses such a large disputed area could urge other claimant states to strengthen their de facto control over the areas they claim and, in turn, further escalate Chinese assertiveness. Worryingly, as China and Vietnam chart a course toward unpredictable incidents and conflict, their policy options become increasingly narrowed.[45] In addition to domestic pressure, Vietnam has returned to a tougher stance because, in addition to domestic pressure, it views ASEAN as a less effective platform to promote its interests than in 2010.[46]

B. THE PHILIPPINES

Tensions between the Philippines and China over the South China Sea have steadily increased since President Benigno Aquino III took office in 2010.[47] The previous administration of Gloria Macapagal Arroyo had been considerably more receptive to Beijing's commercial incentives and was apparently willing to compromise Philippine claims in response.[48] China sees the Aquino government's stronger stance as provocative and has responded by increasing its presence in disputed areas.

China's occupation of the Mischief Reef in the Spratly Islands in late 1994 significantly shaped Philippine thinking on the South China Sea; particularly after Manila discovered the Chinese-built structures on the reef on 1995. It caused serious antagonism between the two countries at the time and the structures were later expanded and fortified.[49] For Philippine policymakers, the occupation demonstrated the limitations of diplomacy and prompted discussion of the need for military modernisation.[50]

President Aquino also sought to undo the damage caused by his predecessor's accession to the failed Joint Marine Seismic Undertaking (JMSU), which he believes encouraged greater Chinese forcefulness.[51] Under the agreement, Chinese, Vietnamese and Philippine national oil companies began a secret joint survey in large swathes of the South China Sea in 2005. When the full extent of the survey area became public, a political firestorm broke out in Manila.[52] Critics of President Arroyo alleged she had agreed to trade

[43] For more details, see Section III.A "Hydrocarbons".

[44] "ASEAN and the South China Sea: Deepening Divisions – an Interview with Ian Storey", The National Bureau of Asian Research, 16 July 2012.

[45] Nationalists in China took issue with Beijing's application of seemingly not-so-hard power since the Scarborough standoff against the Philippines in April 2012; see Section II.B. Critics said that responding with law enforcement vessels, instead of the navy, was weak. When Vietnam passed the new maritime law, nationalists turned their anger towards Beijing, accusing it of enabling Vietnamese boldness through its soft handling of the Philippines. Trefor Moss, "China's Not-So-Hard Power Strategy", *The Diplomat*, 28 June 2012.

[46] See Section V.B "ASEAN and the Code of Conduct".

[47] See Renato Cruz De Castro, "The Philippines in 2011: Muddling through a Year of Learning and Adjustment", *Asian Survey*, vol. 52, no. 1 (January-February 2012).

[48] "The former government could be bought; the current government cannot. The Chinese are likely playing a waiting game, hoping that the government will eventually be out of power and a new government will enable them to return to their tried and true tactics". Crisis Group email correspondence, Beijing, 21 June 2012.

[49] By 1999, China had built a five-storey, fortified concrete building that it maintained as a shelter for fishermen. Structures on the reef now include two platforms that can accommodate vessels up to 40-feet long, a helicopter landing pad and parabolic antennas. Christopher C. Joyner, "The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation", in Ranjeet Singh (eds.), *Investigating Confidence Building Measures on the Asia Pacific Region*, Report no. 28, Henry L. Stimson Center (1999). See also Terry McCarthy, "Reef Wars", *Time*, 8 March 1999; and Crisis Group interview, senior military official, Manila, September 2011.

[50] As a senior official within the Philippines' Department of Foreign Affairs (DFA) commented, "there was never any assertion that it [Mischief Reef] was theirs [China's], there was just tension. And diplomacy was used to suppress the tension". Crisis Group interview, Manila, October 2011. The closure of all U.S. military bases in the Philippines at the end of 1992 prompted the country to turn increasingly to ASEAN for regional security. Crisis Group interview, academic, Manila, October 2011. The organisation, however, could only issue a statement about the incident. "Statement by the ASEAN foreign ministers on the recent developments in the South China Sea", Singapore, 18 March 1995.

[51] Crisis Group interview, Manila, October 2011.

[52] In 2008, an article in the *Far Eastern Economic Review* alleged that one-sixth of the survey area was in fact previously undisputed and was not claimed by either China or Vietnam. Barry Wain, "Manila's bungle in the South China Sea", *Far Eastern Economic Review* (January-February 2008). To other claimant states, it appeared that the Philippines was breaking away from efforts within ASEAN to deal with China bilaterally.

Philippine territory for Chinese development assistance and filed a case in the Supreme Court challenging the constitutionality of the JMSU.[53] Philippine officials since characterised the agreement as a confidence-building measure gone awry and argued that it only attests to how China takes advantage of such opportunities to behave in a more assertive way.[54] They hold that the JMSU weakened Philippine territorial claims by giving China and Vietnam access to areas that had not previously been disputed.[55]

After the JMSU expired in June 2008, the Philippines, like Vietnam, began to prospect unilaterally for hydrocarbons in its claimed areas. In the view of a Chinese expert, the Philippines and Vietnam "started drilling full steam ahead in disputed areas".[56] China responded by increasing the presence of its vessels in the surroundings of the Paracel and Spratly Islands. This resulted in a standoff between the Philippines and China in early March 2011, when a Philippine vessel conducting a seismic survey in natural gas-rich Reed Bank was approached by two China Marine Surveillance ships that manoeuvred aggressively to force it to leave the area.[57] China perceived the Philippines' cooperation with Western companies in an area formerly covered by the JMSU as a provocation signalling a move towards unilateral resource development and thus a violation of the "self-restraint" principle of the ASEAN Declaration of Conduct.[58]

The Reed Bank incident was one of the first events in a series of incidents between Chinese and Philippine vessels in 2011. At least five significant skirmishes were reported within the first five months of 2011, although the Philippines' lack of modern surveillance equipment made it difficult to substantiate accusations.[59] In response, the Aquino government began to ratchet up diplomatic efforts, accelerate military procurement and refer to the South China Sea as the "West Philippine Sea" in all official communications.[60] The president declared in July 2011 that "what is ours is ours" in reference to Reed Bank. Writ large, this declaration has set the tone for the Philippines' efforts to exercise its sovereign rights, including enforcement of its fisheries code and oil and gas exploration, within its EEZ.[61]

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[53] Ian Storey, "Trouble and Strife in the South China Sea Part II: The Philippines and China", *China Brief*, vol. 8, no. 9, Jamestown Foundation (28 April 2008). Among the accusations against Arroyo is a $329 million deal to connect government offices through a broadband network with China's ZTE Corporation, which the former president allegedly agreed to, despite her knowledge of the company's irregularities. She cancelled the deal in 2008 under public pressure. In late 2011, the Office of Ombudsman charged Arroyo with two counts of graft for the ZTE deal, and in April 2012 she pleaded not guilty. The decision is still pending. "Arroyo couple can post bail", *Philippine Daily Inquirer*, 30 December 2011. "Ombudsman sure of 'probable cause' vs Gloria in ZTE-NBN deal", GMA News, 29 December 2011. "Arroyo pleads not guilty in NBN-ZTE case", *Sun Star*, 11 April 2012.

[54] Crisis Group interview, Manila, October 2011.

[55] Ibid. See also Aileen S.P. Baviera, "The Influence of Domestic Politics on Philippine Foreign Policy: The case of Philippines-China relations since 2004", RSIS Working Papers, no. 241 (5 June 2012).

[56] "China and Philippines tensions mount", *Financial Times*, 1 June 2012.

[57] Reed Bank is 80 nautical miles from Palawan and completely submerged. "Philippines halts tests after China patrol challenge", BBC News, 8 March 2011. For more on the incident, see Ian Storey, "China and the Philippines: Implications of the Reed Bank Incident", *China Brief*, vol. 11, no. 8, Jamestown Foundation (6 May 2011). Manila protested through a *Note Verbale* to Beijing and formally objected to China's 7 May 2009 submission of the nine-dashed line map to the UN. Communications received with regard to the joint submission made by Malaysia and Vietnam to the [UN] Commission on the Limits of the Continental Shelf, communication dated 5 April 2011 from the Philippines. According to a DFA official, the complaint regarding the Chinese submission was already underway but had yet to be submitted. Crisis Group interview, Manila, April 2011. Beijing replied by reiterating that China has indisputable sovereignty over the Spratlys and the adjacent waters. Communications received with regard to the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf, communication dated 14 April 2011 from China.

[58] Crisis Group interview, Beijing, June 2012.

[59] For a description of the incidents, see Carlyle Thayer, "China's New Wave of Aggressive Assertiveness in the South China Sea", Paper presented at Conference on Maritime Security in the South China Sea, sponsored by the Center for Strategic and International Studies, Washington DC, 20-21 June 2011. A wooden post, installed as survey marker, was found by Philippine fishermen on the Boxall Reef in mid-2011, just 105 nautical miles from mainland Palawan. A Philippine navy commander said that the marker did not have features indicating that it was of Chinese origin; the only conclusion was that it was foreign. Nevertheless, it contributed to rising tensions in the region. "Philippines removes markers from reefs in disputed waters", Agence France-Presse (AFP), 14 June 2012. "Philippine Navy dismantles foreign marker on Spratlys", *Philippine Daily Inquirer*, 15 June 2011; "China and Philippines tensions mount", op. cit.

[60] During a high-profile visit to the Philippines in November 2011, U.S. Secretary of State Hillary Clinton used this terminology. Floyd Whaley, "Clinton reaffirms military ties with the Philippines", *The New York Times*, 16 November 2011.

[61] President Benigno Aquino III, State of the Nation Address, 25 July 2011 (official English translation), at www.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011-en/.

The Philippine department of foreign affairs (DFA) under Secretary Albert Del Rosario has played a more active role in shaping South China Sea policy since tensions increased in 2011.[62] The DFA pushed for the clarification of maritime boundary claims in the South China Sea by all parties, as well as turning disputed areas into special enclaves where claimants can jointly pursue development projects; these ideas were encapsulated by the Philippine proposal for a Zone of Peace, Freedom, Friendship and Cooperation.[63] This proposal never gained much support within ASEAN despite Manila's concerted efforts in 2011. The Philippines believed it possible to resolve conflicting claims among the South East Asian claimants; the problem, Philippine officials say, was China.[64]

Manila and Beijing continue to be at odds over joint development. Philippine officials believe that the Zone of Peace approach offers concessions to China because it would eventually make cooperation and joint development possible in some areas.[65] However, since the proposal would require countries involved to clarify their claims in order to draw the enclaves, it would be impossible unless China explains what its nine-dashed line represents exactly.[66] Since ASEAN does not take sides in territorial disputes, Manila's hopes for a "solid view" against China within the regional organisation are unlikely to be realised.[67]

Bilateral relations subsequently plummeted due to a standoff that began in April 2012 over the Scarborough Shoal, north of the Spratlys.[68] The Philippines dispatched its largest warship to investigate sightings of Chinese fishing boats,[69] which prompted China to deploy Marine Surveillance vessels to prevent arrest of its fishermen.[70] When Manila replaced the warship with coast guard ships, the vessels from both sides engaged in a protracted two-month stare down.[71] Repeated diplomatic efforts to defuse tension failed and bilateral economic relations also suffered, with China imposing stricter regulations on imported tropical fruits from the Philippines and warning its tourists against travelling to the Philippines.[72] Although Manila

[62] Coordination within the DFA is handled by the West Philippine Sea Task Force, headed by the undersecretary for policy. In contrast, under the previous administration, the DFA was marginalised; the JMSU, for example, was negotiated by then-President Arroyo without consultation. Crisis Group interviews, Manila-based journalist, Manila, May 2012; former national security adviser to President Arroyo, Manila, 3 October 2011. According to some analysts, the DFA is in the lead by default and it is the only government agency with a strategy. Crisis Group interview, Philippine academic, Manila, May 2012. The department of national defence, under Secretary Voltaire Gazmin, has been taking a more prominent role in 2012.

[63] Concept paper, "ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C)", copy provided by the DFA to Crisis Group.

[64] Crisis Group interview, senior DFA official, Manila, May 2012. Aquino made this comment in reference to Reed Bank, which is approximately 150km from Palawan.

[65] Crisis Group interview, senior DFA official, Manila, October 2011.

[66] For more on the nine-dashed line, see Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 3-4.

[67] Crisis Group interview, Western diplomat, Manila, May 2012.

[68] The shoal is 124 nautical miles from Zambales province, in northern Philippines. It is 472 nautical miles from China's nearest coast and also claimed by Taiwan. On the legal basis of these claims, see Robert Beckman, "Scarborough Shoal: Flashpoint for Confrontation or Opportunity for Cooperation?", *RSIS Commentaries*, no. 72 (24 April 2012).

[69] China's Beidou navigation system, its version of the U.S. Global Positioning System (GPS), is being installed on many Chinese fishing boats. It allows users to send distress signals and reach relevant authorities on shore in the event of a maritime conflict. Since 2010, Hainan province has spent $12.5 million on fitting navigation systems, subsidising up to 90 per cent of the installation costs. "Crowded heavens pose challenge for China's answer to GPS", Reuters, 11 January 2012; "Beidou navigation system installed on more Chinese fishing boats", Xinhua News Agency, 17 May 2012; "China speeds up commercial use of Beidou", China Radio International, 22 May 2012. "海南渔民黄岩岛捕鱼，有渔政船守护很安心" ["Hainan fishermen feel secure to fish in Scarborough Shoal under the protection of fishery administration vessels"], *长江日报* [*Changjiang Daily*], 13 May 2012.

[70] According to an analyst, Scarborough was an example of Beijing responding with just enough force, using "not-so-hard power", to safeguard territory and prevent arrest of its fishermen. Trefor Moss, "China's not-so-hard power strategy", *The Diplomat*, 28 June 2012.

[71] Chinese fishing boats were seen in the shoal on 8 April, and the Philippines' largest warship was sent to inspect the boats and arrest the fishermen on 10 April. Two China Marine Surveillance ships then arrived to prevent the arrests. Manila replaced the warship with coast guard vessels two days later. A Philippine coast guard commander has since said that only the coast guard has authority to confiscate Chinese fishing boats and the navy should not be involved in enforcement of maritime laws. Experts said the Philippines' initial decision to send a warship should not be viewed as an escalation but a stabilisation measure, as it was closest to the site when Chinese fishing boats were found. See Carlyle A. Thayer, "South China Sea: Impasse at Scarborough Shoal", 12 April 2012; "Scarborough Shoal standoff: A timeline", *Philippine Daily Inquirer*, 9 May 2012. Although Philippine officials defend the use of the warship and say that it is not unusual for the navy to arrest fishermen, other observers and diplomats say it unnecessarily escalated the situation, hence its withdrawal. Crisis Group interviews, senior DFA official, Manila, May 2012; Western diplomats, Manila, May 2012; academic, Manila, May 2012. The most recent arrest of Chinese fishermen in Philippine waters was in mid-2011.

[72] It is estimated that, in May 2012, the loss from banana exports in was approximately $34 million, while cancelled visits

and Beijing reportedly pulled back their vessels in June 2012, Chinese boats were soon spotted again in the shoal, testing President Aquino's pledge to send vessels back to Scarborough if Chinese boats returned.[73]

Scarborough also tested the Philippines' priorities as some in the country voiced concerns over negative economic repercussions.[74] In mid-May, Foreign Secretary Del Rosario called on business leaders to "take a position of patriotism that what is ours is ours and we will stand for it. It is possible that everyone will need to make a sacrifice".[75] He played down the value of Chinese investments,[76] though China is the Philippines' third largest trading partner.[77] Although Manila and Beijing agreed to boost bilateral trade to $60 billion by 2016,[78] the Aquino administration appears at this stage unlikely to sacrifice territorial claims for its economic relationship with China, as evident by its stance during the Scarborough incident.

During the initial standoff, the Philippine government said it was pursuing various avenues: it engaged in discussions with China; appealed to ASEAN; and assessed its options under UNCLOS. Although not officially part of Manila's declared strategy for ending the standoff, it also unsuccessfully appealed to the U.S. for a guarantee of assistance if China used force.[79] Bilateral negotiations between the DFA and the Chinese embassy in Manila stalled repeatedly, and broke off for roughly a month when the two sides could not agree on simultaneous withdrawal from the shoal. Meanwhile, discussions in Beijing were hamstrung by the prolonged absence of a Philippine ambassador, which China saw as lack of motivation on the part of the Philippines to find a diplomatic resolution.[80] A fishing ban, declared separately by each country in mid-May, did not help; a Philippine official said the Chinese ban was just "subterfuge".[81] China still allowed a large number of fishing boats to operate inside the lagoon during the ban, claiming they did not violate its fishing regulation.[82]

Chinese law enforcement vessels have remained near Scarborough Shoal and have shown no sign of leaving the area ever since. Some Chinese military experts have dubbed this strategy the "Scarborough Shoal" model.[83] Manila

cost the tourism industry almost $1 million. Christine Avendaño, Germelina Lacorte, "Traders blame government for banana fiasco with China", *Philippine Daily Inquirer*, 28 May 2012; Christine Ong, "Philippine tourism industry braced for extended China travel ban", *Channel News Asia*, 14 May 2012; Carlyle A. Thayer, "Standoff in the South China Sea", *Yale Global Online*, 12 June 2012.

[73] "Chinese boats return to Scarborough Shoal", ABS-CBN News, 26 June 2012. The Philippine DFA confirmed that a total of 28 Chinese maritime law enforcement and fishing vessels returned to Scarborough Shoal on 26 June, despite President Aquino's declaration on 20 June that the Philippines was ready to deploy boats back to the shoal if foreign vessels trespassed upon its claimed waters. "Chinese fishing boats back in shoal-DFA", *Philippine Daily Inquirer*, 26 June 2012; "Aquino: PH ships to go back if Chinese don't leave Panatag Shoal", *Philippine Daily Inquirer*, 21 June 2012.

[74] "Palace: Chinese still buys Philippine bananas", *Sun Star*, 27 May 2012; "In Philippines, banana growers feel effect of South China Sea dispute", *The Washington Post*, 11 June 2012.

[75] "DFA chief calls for patriotism", *The Philippine Star*, 17 May 2012.

[76] He pointed out that Filipinos have invested $3 billion in China, while the Chinese have only invested $1.5 billion in return. Remarks of Foreign Affairs Secretary Albert F. Del Rosario on Philippine Foreign Affairs at the Joint Membership Meeting of the Makati Business Club and the Management Association of the Philippines, 16 May 2012.

[77] Although the U.S. and Japan remain ahead, trade with China is growing much faster, at 17.9 per cent in 2011. Trade with Japan grew 5.5 per cent and trade with the U.S. grew 1.7 per cent in 2011. "The Republic of the Philippines and U.S. interests", Congressional Research Service, 5 April 2012, p. 23.

[78] Signed during President Aquino's August 2011 state visit to China, $60 billion by 2016 is a significant increase over $16.1 billion in 2011. "Aquino signs China trade deal as Philippines plays down dispute", Bloomberg, 31 August 2011.

[79] The treaty text leaves the extent of U.S. commitments open to interpretation. The Philippines appears to be taking this matter into its own hand by pushing one which implies that the U.S. would respond to an attack on Philippine forces in the South China Sea. For more information, see Section IV.A.2 "The Philippines".

[80] The lack of a Philippine ambassador was due to the Commission on Appointments' failure to give the nod to Aquino's original nominee for the position, businessman Domingo Lee. In April, Lee withdrew his candidacy, citing the protracted confirmation process. In late May, President Aquino named Sonia Brady, a former ambassador to China, to the position. "Noy drops Lee as China envoy", *The Philippine Star*, 20 April 2012; "CA confirms Brady as envoy to China", *The Manila Times*, 31 May 2012.

[81] Crisis Group interview, senior DFA official, Manila, May 2012.

[82] "2012年5月25日外交部发言人洪磊举行例行记者会" ["Foreign ministry spokesman Hong Lei held regular press conference on 25 May 2012"], Chinese foreign ministry, 25 May 2012. A Chinese researcher said certain fishing activities such as the use of single wall gill net and fishing pole were exceptions under the fishing ban. Crisis Group email correspondence, Beijing, June 2012.

[83] This was first mentioned by the *People's Daily*, warning regional countries not to provoke China's sovereignty claims as in the Scarborough Shoal standoff. Chinese military experts summarise the model as "strengthening Chinese law enforcement forces' presence to fend off any effort by other claimant countries which try to infringe upon China's sovereignty and maritime rights on the South China Sea". Crisis Group interview, June 2012; *People's Daily*, 8 May 2012.

did not take further action against Chinese fishing vessels in spite of its own ban, which indicated the weakness of such restrictions in the face of a stronger, more adamant rival. Interestingly, Manila was less worried about a shooting incident than about the possibility that China would erect a structure in a manner similar to its actions in Mischief Reef or Reed Bank.[84]

The DFA maintained in May 2012 that "necessary preparations" were underway to submit the case to the International Tribunal for the Law of the Sea (ITLOS).[85] As China rejects international arbitration, however, the Philippines would have to submit a unilateral case. This requires further planning and is unlikely to happen soon.[86]

C. MALAYSIA

The territorial dispute between Malaysia and China has not been confrontational.[87] The relative stability of the bilateral relationship is noteworthy given diplomatic fallout from Malaysia's joint submission with Vietnam to the UN Commission on the Limits of the Continental Shelf in 2009.[88] While Kuala Lumpur may have intended with this move to reduce competition among claimants, it upset Beijing.[89] Yet Malaysia has been able to maintain good relations with China. In addition to a strong economic relationship, this is due to the absence of nationalist pressure on the Malaysian government to act against China; the capability of Malaysian armed forces to defend territorial claims; and Beijing holding Malaysia in special regard.[90] A senior ASEAN official characterised the relationship as China allowing Malaysia to pump oil from disputed areas in exchange for its silence on South China Sea claims.[91]

Malaysia's relatively restrained stance toward China reflects its political and economic priorities.[92] Although it would like to see a solution to the South China Sea issue, it does not regard it as a core issue.[93] Instead, its politicians and public opinion are more concerned with maritime disagreements with Indonesia.[94] However, Malaysia is also increasingly economically dependent on China, which was its largest trading partner in 2010.[95] A disruption in Chi-

[84] Crisis Group interview, senior DFA official, Manila, May 2012.

[85] "Philippines to bring case to international court even without China's approval", *Philippine Daily Inquirer*, 3 May 2012.

[86] Crisis Group interviews, government officials and diplomats, Manila, May 2012. The Philippines apparently had not considered the implications and potential cost of submitting a unilateral case to ITLOS before making the announcement. Crisis Group interview, ASEAN diplomat, Beijing, June 2012; "Philippines getting ready to take dispute with China to int'l tribunal", *Philippines Daily Inquirer*, 2 May 2012.

[87] For a detailed description of Malaysia's claims, see Appendix B.

[88] In response to Vietnam and Malaysia's joint submission, both China and the Philippines sent several *Notes Verbales* protesting the extended continental shelf claims. Robert Beckman, "China, UNCLOS, and the South China Sea", Paper presented at the Third Biennial Conference of the Asian Society of International Law on Asia and International Law: A New Era", Beijing, China, 27-28 August 2011, p. 13.

[89] Malaysia and Vietnam originally invited the Philippines and Brunei to join them in submitting the claim. Even though both refused, Kuala Lumpur proceeded with the joint submission because, as a Malaysian scholar explained, "if we could settle our dispute with even one country, that was progress". Crisis Group interview, Kuala Lumpur, May 2011. The Chinese ambassador sent a démarche to the Malaysian foreign ministry the day after the submission was filed mentioning this issue. Crisis Group interview, Beijing, June 2011. See Sam Bateman, "The South China Sea: When the Elephants Dance", *RSIS Commentaries*, 16 August 2010; Derek Pham, "Gone Rogue?: China's Assertiveness in the South China Sea", *Journal of Politics & Society*, vol. 22, no. 1 (2011), pp. 139-164; Ralf Emmers, "The Changing Power Distribution in the South China Sea: Implications for Conflict Management and Avoidance", *Political Science*, vol. 62, no. 118 (2010), p. 129.

[90] Malaysia has advanced fighter aircraft and surface ship capabilities to project force to contested territories; but Beijing sees it as a friend in ASEAN. It was the first South East Asian country to recognise the People's Republic of China. When Prime Minister Najib Razak took office in 2009, his first state visit was to China, despite the custom for a new ASEAN head of state to visit another member state first. "Stronger trade ties but no sea change", *Straits Times*, 7 May 2011; "Najib's visit heralds a new era of diplomatic ties with China", *The Star* (Malaysia), 4 June 2009; Crisis Group interviews, Kuala Lumpur, May 2011.

[91] Crisis Group interview, Singapore, June 2012. See also Section III.A "Hydrocarbons".

[92] Crisis Group interviews, Kuala Lumpur, May 2011.

[93] However, another Malaysian scholar notes four developments that would upset the status quo balance from Malaysia's perspective: Chinese occupation of more features in the Spratlys; the U.S. raising the stakes in the South China Sea, leading to more incidents like the *USNS Impeccable* standoff; increase in Chinese incursions, survey and naval ships are currently coming into or very close to Malaysia's claimed EEZ at least three times a month; and a significant hydrocarbon find. Ibid.

[94] Discussions of maritime demarcation and incidents with Indonesian vessels are reportedly leaked and amplified by the public in Malaysia. Furthermore, confrontations between Malaysian fishing boats and Indonesian vessels have involved high-calibre weapons. Crisis Group interview, Kuala Lumpur, June 2011.

[95] Bilateral trade continued to grow in 2011, reaching $90 billion. In 2011, China was the source of 13.2 per cent of Malaysia's total imports and also the destination for 13.1 per cent of Malaysia's total exports. Chen Ai Shih, "US$90 billion trade between China, Malaysia last year", *The Borneo Post*, 18 January 2012; Trade statistics – 2011, Ministry of International Trade and Industry, Malaysia.

nese trade and investment or a tourism boycott would therefore damage its economy.[96] However, while deepening its economic ties to China, Kuala Lumpur has also been quietly strengthening its military relationship with the U.S., its most important military partner.[97] Malaysia has made an effort to downplay the extent of its defence ties to the U.S. to avoid irritating China. It remains eager to avoid any armed conflict, especially one between the U.S. and China.[98]

Malaysia has responded mildly to reports that Chinese vessels, mostly fishing boats, stray into its territory a few times a month.[99] While Hanoi and Manila criticised Beijing for what they viewed as renewed aggression in early 2011, Malaysian Prime Minister Datuk Seri Najib Tun Razak praised China for managing the situation with "remarkable restraint".[100] China also has treated Malaysia with a degree of flexibility not afforded to either Vietnam or the Philippines in their territorial disputes. This is due in part to the fact that, compared to Vietnam and the Philippines, its claims in the South China Sea are farther away from and overlap less with China's.[101] As a Malaysian scholar stated:

> China treats different claimants differently. Malaysia has a more privileged position than other claimants because of our geography and political ties. China's unlikely to push its claims down here too forcefully, but that doesn't mean it will forfeit them.[102]

Also, Malaysia is the only claimant that supports China's view that other countries must request permission before carrying out military and surveillance activities within its EEZ.[103] However, Kuala Lumpur is cautious about becoming too closely aligned with China in regards to the South China Sea. The Philippines has accused Malaysia of trying to cut a private deal with China regarding its claims, but this is unlikely to happen due to Kuala Lumpur's policy of maintaining equidistant relationships with Washington and Beijing.[104]

D. TAIWAN

Taiwan's pursuit of its claims in the South China Sea is tied to its own unresolved sovereignty status and its relationship with an increasingly confident China. Both lay claim to historical waters in the South China Sea. The Kuomintang Party, prior to its defeat by the communists and retreat to Taiwan in 1949, was the original author of the official eleven-dashed line map, which was modified into the nine-dashed line by the PRC in 1953.[105] Today, both sides of the Taiwan Strait still agree that these areas in the South China Sea "belong to China" but different geographical interpretations of this have avoided disputes.[106] Notably, China has not contested Taiwan's occupation of Taiping Island, in part because it sees Taiwan's claims as part of its own.[107] However, any attempts by Taipei to be-

[96] Crisis Group interviews, Kuala Lumpur, May 2011; "China's top political advisor vows more tourism cooperation with Sabah, Malaysia", Xinhua, 14 April 2012. China has climbed from being Malaysia's fourth largest trading partner in 2006, with bilateral trade at $32.1 billion, to being its largest in 2010, with bilateral trade reaching $46.7 billion. Over one million Chinese tourists visited Malaysia in 2009. "Yearbook of Statistics Malaysia, 2010", Department of Statistics, Malaysia, September 2011.

[97] According to a scholar, Malaysia has been moving closer to the U.S. for some time, despite former Prime Minister Mahathir's public anti-American stance. The current prime minister, Najib Razak, has further deepened the relationship. Now, Malaysia and the U.S. enjoy one of the strongest defence relationships in the region, even though they are not treaty allies. In a sign of deepening bilateral military relations, the U.S. navy's annual visits to Malaysia have risen from a handful ten years ago to over thirty in 2011. Notably, U.S. ships, including the Houston-class nuclear subs and Arleigh Burke-class destroyers, have docked at Sabah (Malaysia's easternmost state).This new trend could signal a shift in Malaysia's policy. Crisis Group interviews, Kuala Lumpur, May 2011; "U.S.-Malaysia Partnership", Remarks by U.S. Assistant Secretary of State Andrew J. Shapiro, Kuala Lumpur, 15 February 2012.

[98] Malaysian leaders, in private, are reportedly concerned about Chinese assertiveness and the potential for the U.S. to exacerbate tensions. Crisis Group interviews, Kuala Lumpur, May 2011.

[99] Ibid.

[100] Keynote address by Dato' Sri Najib Tun Razak, The Shangri-La Dialogue, Singapore, 3 June 2011.

[101] Crisis Group interview, Kuala Lumpur, May 2011.

[102] Ibid.

[103] Crisis Group interview, Hainan, November 2011. Article 58 of UNCLOS provides that all states enjoy freedom of navigation and over-flight within their EEZ. The U.S., which has yet to ratify the convention, and other claimants agree to this principle and believe that activities such as surveillance and intelligence gathering are permitted within the zone. China, however, declared when it ratified UNCLOS that a state could require foreign warships to obtain advance approval before entering the EEZ. Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., p. 5.

[104] Crisis Group interview, Kuala Lumpur, May 2011.

[105] Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note", Ocean Development and International Law, vol. 34 (2003), pp. 287-295. For more see Appendix B.

[106] Russell Hsiao, "Taiwan Pivots in the South China Sea", *China Brief*, vol. 11, no. 11, Jamestown Foundation (17 June 2011).

[107] For a detailed description of Taiwan's claims in the South China Sea, see Appendix B. From Beijing's perspective, not only is cooperation with Taipei convenient due to their nearly identical claims, but given the PRC's confidence that unifica-

come an independent claimant in the South China Sea would antagonise Beijing, which would perceive such actions as an assertion of independence.[108]

Beijing's "One China" policy makes it impossible for Taiwan to participate in multilateral accords on the South China Sea, such as with ASEAN, or conduct bilateral negotiations, as it does not have official relations with any of the claimant states.[109] This raises Taipei's concern that it may be left empty-handed if agreements on resources and sovereignty are finalised among the other claimants.[110]

Taiwan has reaffirmed its stake in the South China Sea and focuses its efforts on being included in international negotiations to defend its claims.[111] Since the Kuomintang regained power in Taiwan in 2008, Beijing has repeatedly suggested establishing cross-strait joint patrols and resource development to "defend and maintain our territory together".[112] Beijing has proposed that Taiwanese state-owned energy company CPC Corporation work with the Chinese National Offshore Oil Corporation (CNOOC) to jointly develop oil and gas near the Pratas Islands, which are claimed by Taiwan and China but controlled by the former, in the northern part of the sea.[113]

Despite the economic prospects of joint development, Taipei has made clear that it will not cooperate with China to advance both countries' maritime claims.[114] National Security Director General Tsai Der-sheng reasserted this view in May 2012 and acknowledged that Vietnam and the Philippines have asked Taiwan not to work with China on South China Sea issues.[115] Cooperation would put Taipei in a difficult position. As a Taiwanese scholar explained, "Beijing says we need to work together on the South China Sea, yet they excluded us from dialogues. But if we cooperate with China, ASEAN then the U.S. get upset that we're siding with China".[116]

Despite the government's interest in pursuing peaceful approaches to resolving territorial disputes,[117] some Taiwanese scholars, opposition members and even administration officials have called for more assertive actions.[118] Rising tensions in the South China Sea have brought about an upsurge in political activities, as demonstrated by the April 2012 visit by members of the parliamentary Foreign and National Defence Committee to Taiping Island, where they were briefed by Taiping troops on their defence capa-

tion with Taiwan is inevitable, features currently occupied by Taipei will eventually be Beijing's. Jens Kastner, "China, Taiwan Warming to Military Cooperation in the South China Sea?", *World Politics Review* (online), 10 August 2011.

[108] Crisis Group interview, Taipei, July 2011.

[109] Ibid. Fear of angering Beijing has kept claimant states from holding bilateral discussions with Taipei over issues such as managing fishing grounds or joint resource development in disputed waters. The only international forum for Taiwan to voice its concerns and defend its claims since 1991 has been the annual Track II Workshop on Managing Potential Conflicts in the South China Sea hosted by Indonesia. However, it participates as "Chinese Taipei". This workshop requires unanimous agreement on projects and China did not agree to Taiwan's proposals until 2009, with the "China and Chinese Taipei Joint-Project Southeast Asian Network for Education and Training (SEA-NET)". Crisis Group interviews, Taipei and Taichung, July 2011; "South China Sea forum in doubt", *Taipei Times*, 7 August 2011. Both the Kuomintang administration and their opposition Democratic Progressive Party (DPP) support the nine-dashed line and have expressed interest in Taiwan's participation in these discussions, even if only as a political entity rather than a sovereign state (as it does in the World Health Organization). Crisis Group interviews, Taipei, July 2011.

[110] Crisis Group interview, July 2011.

[111] Taipei has set up a task force within the foreign ministry to establish a strategy on participation in higher-level talks. As a scholar said, "we need to remind the international community that we have a stake in the South China Sea, and that we need to be invited to be part of the process". In addition, Taiwan scholars are engaged in low-profile, Track II legal studies with Chinese officials and scholars on the South China Sea. Crisis Group interviews, Taipei, July and December 2011.

[112] Crisis Group interviews, Taipei, July 2011.

[113] "Taiwan circling South China Sea bait", *Asia Times Online*, 13 June 2012.

[114] As the Chinese State Council Taiwan Affairs Office's spokesman, Yang Yi, stated, people from both sides of the Taiwan Strait have a shared responsibility to safeguard sovereignty over the islands and their surrounding waters. "China holds indisputable sovereignty over South China Sea islands: spokesman", Xinhua News Agency, 15 June 2011; "台军官：南海问题上台湾与大陆一致与美国相悖" *环球网*["Taiwan military official: Taiwan and China counter the U.S. on the South China Sea problem", *Huanqiu*], 20 April 2011. During cross-strait symposiums with retired Taiwanese military officials, PLA officials have regularly brought up cooperation in the South China Sea. Kastner, "China, Taiwan Warming to Military Cooperation in the South China Sea?", op. cit.

[115] "Taiwan will not work with China on South China Sea issues", news and press releases, Taipei Economic and Cultural Office in Miami, 22 May 2012.

[116] Crisis Group interviews, Taipei, July 2011.

[117] "Ma reaffirms Taiwan's sovereignty over South China Sea islands", Central News Agency (Taiwan), 20 May 2012.

[118] Crisis Group interviews, Taipei, July 2011. They argue that the international community ignored Taiwan's past efforts to positively influence the disputes, such as replacing the marines on Taiping Island with the coast guard in 2000.Therefore,some believe that provocation is Taipei's best recourse. "传台湾太平岛将部署导弹菲律宾担忧两岸联手" *南方日报* ["Taiwan is said to deploy missiles on Taiping Island, the Philippines worries about cross-strait cooperation", *Southern Daily*], 24 October 2011; Crisis Group interviews, Taipei, July 2011.

bility.[119] There has also been a recent reinforcement of military personnel stationed on contested territories in attempts to demonstrate sovereignty.[120] Although the current administration appears to favour caution and restraint,[121] Taiwan's limited diplomatic space means that, if pressed, it has fewer avenues to exhaust before resorting to more provocative action to defend its sovereignty claims, which would risk conflicts with other claimants.[122]

III. POTENTIAL DRIVERS OF CONFLICT

Potential drivers of conflict in the South China Sea are hydrocarbon reserves, declining fish stocks, expanding military and law enforcement capabilities, and growing nationalism. Vietnam, the Philippines, and Malaysia all believe that the South China Sea's potentially vast reserves of hydrocarbons could play a key role in their economic development. While the general perception is that disputed claims over the location of these reserves present the highest conflict risk in the South China Sea, no major encounters involving oil exploration vessels have occurred since the last reported cable cutting incident in June 2011.[123] In fact, fishing incidents have become the primary type of maritime confrontation.[124] Declining fish stocks in the South China Sea, along with governments' encouragement, have driven fishermen farther into disputed areas, where they clash with law enforcement vessels of other claimants.[125] Annual fishing bans and arrests of fishermen are a convenient proxy for sovereignty claims since they can be presented as legitimate attempts to enforce marine resources protection.[126]

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

[119] The three Kuomintang (KMT) lawmakers who participated in the tour visited Taiping Island in order to "pay respect to the Republic of China soldiers and Coast Guard officers stationed there", said Defence Minister Kau Hau-chu. "Legislators visit Taiping Island as South China Sea simmers", *The China Post*, 1 May 2012.

[120] The Taiwanese Coast Guard Administration reported two incursions by Vietnamese patrol vessels (22 and 26 March 2012) in the waters around Taiping Island. There was no exchange of fire and the Vietnamese vessels left the area. This incident prompted several Taiwan parliamentarians to visit the island afterwards to demonstrate Taiwan's sovereignty, despite strong protest from Vietnam, and brought about calls for a stronger military presence on Taiping Island. The Taiwanese defence ministry recently unveiled a special airborne unit, capable of reaching Taiping Island aboard C-130 aircraft within four hours. In addition, the coast guard announced that it plans to double its arsenal of mortars on Taiping. "Vietnam vessels entered Taiwan waters: CGA", *The China Post*, 21 April 2012; "南海軍事對峙美關切我太平島軍力部署", *中国时报* ["Antagonism in the South China Sea, U.S. concerned about Taiwan's military deployment on Taiping Island", *China Times*], 3 May 2012; "越反對台官員前往太平", *中国时报* ["Vietnam opposed Taiwan officials' visit to Taiping Island", *China Times*], 10 May 2012; "Taiwan sets up airborne unit for Spratlys", AFP, 2 May 2012.

[121] Jimmy Chuang, "Taiwan will not overreact over South China Sea disputes: Ma", *China Times*, 13 November 2011.

[122] Following the escalation of tensions in the South China Sea in the spring and summer of 2011, a group inside President Ma's National Security Council began advocating that Taiwan should take advantage of the U.S. focus on the region, increase patrols, remilitarise Taiping Island, or even occupy new features to draw attention to its claims. This group claimed that being proactive now will help Taiwan take advantage of potential South China Sea resources in the future. Those within the NSC that opposed this proposal disagreed with its timing, not its provocative measures. They cautioned that Taiwan only has one chance to change the status quo in its favour. Currently, it is too weak and no one will care. Instead, they said, Taiwan should only respond provocatively once oil is discovered or significant decisions are being made that directly affect its access to resources. Crisis Group interview, Taipei, July 2011.

[123] "Vietnam says Chinese boat harassed survey ship; China disputes", Bloomberg, 9 June 2011.

[124] The China Fisheries Yearbook of 2009 and 2010 reported an increased number of confrontations between the Chinese fisheries administration vessels and foreign boats in the South China Sea in 2008 and 2009. Those confrontations could involve foreign boats being expelled, detained, fined or confiscated by the Chinese fisheries administration. An expert on the South China Sea issue attributes those confrontations to China's strengthened ability to supervise its claimed waters and the more frequent activities by both Chinese fisheries administration vessels and ships from other countries, especially from Vietnam, in the contested region. 2010 saw a sharp decline in the total number of foreign fishing boats detained by China. In 2011, China halted the practice of detaining Vietnamese fishing boats, although it continued to confiscate the catches of those ships it claimed were operating in Chinese waters. For more discussions on this, see Fravel, "China's Strategy in the South China Sea", op. cit.

[125] To alleviate some of the pressure caused by declining fish stocks close to shore, the Vietnamese government has been subsidising fuel and other costs to help fishermen go farther into the South China Sea. Crisis Group interviews, Hanoi, May 2011.

[126] Stephanie Kleine-Ahlbrandt, "Fish story", *Foreign Policy*, 25 June 2012.

A. HYDROCARBONS

Demand for prospective hydrocarbon reserves in the South China Sea exacerbates tensions as surrounding countries' economic growth increasingly relies on energy. Competition for energy access has triggered major diplomatic rows in recent years, as domestic economic pressures compel littoral states to explore deeper into contested waters. According to an ASEAN diplomat, "eventually, some country will need to drill for oil which will lead to conflict if agreements are not reached beforehand".[127]

Although estimates of the potential energy deposits vary,[128] claimant states view the competition for access to and ownership of the resources as a zero-sum game. As negotiations over joint development stall, competition has intensified with countries vying to establish their territorial claims before resources in contested areas are developed by others.[129] In 2011, China's two most assertive acts in the South China Sea involved interrupting foreign seismic testing in disputed areas. Chinese energy experts believe that the state-owned company CNOOC is looking to move its first ultra-deep-water rig into contested oil-rich areas of the South China Sea, in a move to pre-empt rival claimants.[130] Even Taiwan is making plans to ensure its access to hydrocarbons in the future.[131]

In Vietnam, soaring food prices, weakening confidence in the currency and a stagnating job market are forcing the government to develop energy sources in the South China Sea to improve its economic performance and shore up its legitimacy.[132] Already highly dependent on South China Sea oil for revenue and energy,[133] the government in 2007 embarked on its "Maritime Strategy to 2020" aimed at increasing the share of the maritime economy from 48 per cent of its GDP in 2005 to 55 per cent in 2020.[134] A key component of the plan is offshore oil and gas.[135] Since then, Vietnam has stepped up its pursuit for new energy sources in the South China Sea.[136]

The South China Sea's energy resources are also an economic lifeline for the Philippines, which faces its own economic problems.[137] A net importer of oil, the Philippines

[127] Crisis Group interview, Hanoi, June 2011.
[128] Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.
[129] Will Rogers, "The role of natural resources in the South China Sea", in "Cooperation from Strength", op. cit.
[130] CNOOC has declined to confirm this. However, when it deployed its deep-water oil rig south of Hong Kong in May 2012, the company described the rig as "mobile national territory". Charlie Zhu, "China tests troubled waters with $1 billion rig for South China Sea", Reuters, 21 June 2012.
[131] "Taipei 'can help out' in territorial rows", *South China Morning Post*, 23 May 2012.
[132] Crisis Group interview, Hanoi, May 2011. Vietnam faces major economic problems, including a growing trade deficit ($700 million in May 2012), a slowdown in economic growth (4.1 per cent in the first quarter of 2012, a three-year low) and soaring inflation (23 per cent in August 2011, the highest in Asia). In addition, rising production costs and a negative investment climate have put a damper on foreign investment, with many investors considering relocating. "Trade deficit reaches US $700 million in May", *Business Times*, 29 May 2012. "Vietnam's inflation rate rises to 23%", BBC News, 24 August 2011; "Country profile: Vietnam", *Economist Intelligence Unit*, May 2012. Geoffrey Cain, "The End of the Vietnamese Miracle", *Foreign Policy*, 11 July 2012.
[133] Vietnam's rapid economic growth, industrialisation and export market expansion are coupled with the country's increased energy consumption, of which 24% comes from oil and 11% from natural gas. U.S. government statistics revealed that the oil and gas industry was Vietnam's biggest foreign currency earner in 2011. As of June 2011, crude oil exports from offshore production had contributed over $17 billion to Vietnam's economy since its first oil export shipment in April 1987. "Country Analysis Briefs: Vietnam", Energy Information Administration, 9 May 2012; "David and Goliath: Vietnam Confronts China over South China Sea Energy Riches", oilprice.com, 14 June 2011.
[134] China acquired a copy of this confidential document in 2007 and began to apply pressure on western oil companies that had interests in China not to assist Vietnam. "Diplomatic balancing act for oil exploration", *South China Morning Post*, 23 August 2008.
[135] Jago Penrose, Jonathan Pincus and Scott Cheshier, "Vietnam: beyond fish and ships", *Far Eastern Economic Review*, September 2007; M. Taylor Fravel, "Hearing on 'Investigating the China threat' – Part one: military and economic aggressions", U.S. House of Representatives Committee on Foreign Affairs, 28 March 2012.
[136] For example, in October 2011, Vietnamese energy and surveillance vessels started crossing into disputed areas as the state oil and gas company, PetroVietnam, formally began pursuing assets in known disputed waters. For example, PetroVietnam bid on $1.5 billion of ConocoPhillips' oil assets in the Cuu Long basin, considered by foreign experts to be included in Vietnam's continental shelf claim but within China's nine-dashed line. PetroVietnam's CEO stated that the acquiring of oil and gas interests in the South China Sea helps protect Hanoi's territorial claims. Hanoi has also issued exploratory licenses for fields Beijing has already allocated, such as Block 133/134, sold to a Canadian firm by the former and an Australian company by the latter. Crisis Group interview, Hanoi, May 2011; "PetroVietnam bids for ConocoPhillips' Vietnam assets", Reuters, 31 October 2011. "Studies on Private Sector Development and Business Opportunities for Norwegian Industry and Trade in Vietnam", Confederation of Norwegian Business and Industry, April/May 2004.
[137] The Philippines faces declining foreign direct investments (a 31 per cent decrease from February 2011 to February 2012), which are lower than some of its neighbours; high trade deficit (over $1 billion in March 2012); and increasing budget deficit (expected to reach 2.5 per cent of GDP in 2012). The country

regards the South China Sea's potential reserves as vital to its energy security.[138] The contested Reed Bank, where Chinese patrol boats manoeuvred to expel a Philippine seismic vessel in March 2011, is believed to contain large reserves of natural gas.[139] Some observers in Manila characterise the Aquino government's desire to distinguish between disputed and non-disputed areas as an attempt to defend the country's claim to Reed Bank and its resources.[140] Going forward, Reed Bank is likely to remain a flashpoint as the Philippines' Philex Petroleum plans to start drilling in the area by August 2013.[141] So far this has been held up by a lack of capital and potential partners, as major oil companies fear jeopardising their relationship with China.[142] In May 2012, Philex approached CNOOC for a possible joint development partnership in Reed Bank.[143] However, Chinese analysts are sceptical of Philex's intentions, describing it as a "trick" to test China's reaction.[144]

In China's view, these developments forced Beijing to more assertively defend its claims, as it too seeks to accelerate its exploitation of South China Sea energy resources.[145] A Chinese analyst described the cable cutting incidents between Chinese vessels and Vietnam's oil survey ships in May and June 2011 as Beijing's response to Hanoi's increasing "unilateral" economic development in disputed areas.[146] So far, China has not yet drilled in areas further from its southern coastline due mainly to technical considerations.[147] However, the Chinese land and resources ministry identified the South China Sea as one of its ten strategic energy zones in 2005; and public oil companies are preparing for offshore exploration and drilling.[148] Some Chinese scholars have also suggested that more active energy exploration would bolster China's claims and protect its interests.[149]

In an apparent response to Vietnam's passage of a maritime law on 21 June 2012, CNOOC announced on 23 June that nine blocks in the sea were available for exploration and development with foreign companies.[150] This move was an attempt to strengthen China's jurisdiction over the contested waters and challenge Hanoi's new legislation, which it considered an infringement of its territorial claims. The proximity of these blocks to the Vietnamese coast – some even within its EEZ – renewed concerns over lack of consistency of China's nine-dashed line with UNCLOS.[151] CNOOC's move prompted immediate protest

has attempted to compensate for its structural economic problems by relying on remittances from overseas workers. In 2010, such revenues represented 10 per cent of GDP. "Country report: Philippines", *Economist Intelligence Unit*, June 2012; "Philippines balance of trade", *Trading Economics*, March 2012; Derrick Metriyakool, "Continued reliance on remittances stress the need for Philippines to focus on domestic job creation", *Economonitor Roubini Global Economics blog*, 28 July 2011.

[138] Nick Owen, "Oil Disputes in the South China Sea in Context", in Clive Schofield (eds.), *Maritime Energy Resources in Asia: Energy and Geopolitics*, The National Bureau of Asian Research, Special Report no. 35 (December 2011), p. 36. In 2010, Philippines produced 33,110 barrels of oil per day and imported 338,400 barrels.

[139] "Philippine South China Sea gas find may fuel China tensions", Reuters, 24 April 2012. The area may have up to 20 trillion cubic feet of potential gas reserves, which dwarfs the 2.7 trillion cubic feet of natural gas in Malampaya, currently the only Filipino producing gas field in the South China Sea. See Forum Energy: SC72 Recto Bank, www.forumenergyplc.com/operations/oilandgas/reed-bank.aspx. Experts believe, however, that the potential reserves have been overestimated. Crisis Group interviews, security analysts, Manila, May 2012; senior diplomat, Manila, May 2012.

[140] Crisis Group interview, Manila-based journalist, Manila, September 2011.

[141] "MVP: Philex to drill for oil at Reed Bank", AFP, 17 May 2012. Philex Petroleum Corp is the largest shareholder in Forum Energy. Forum Energy held a geophysical survey exploration contract for Reed Bank starting from 2002 and tried to convert it into a service contract but was unable to do so while the area was covered by the JMSU.

[142] Crisis Group interview, Hanoi, May 2011.

[143] Crisis Group interview, Beijing, June 2012. "Philippines to drill at China-claimed reef", AFP, 17 May 2012.

[144] Crisis Group interviews, Beijing, May, June 2012. "学者：解决南沙还存在东沙岛模式，即赎买模式" *南风窗*["Scholar: the Pratas Islands model could help resolve issues over the Spratlys", *South Winds*], 13 June 2012.

[145] Crisis Group interviews, Beijing, May 2012; Li, "Chinese debates of South China Sea policy", op. cit.

[146] Crisis Group interview, Beijing, May 2012. The first incident involved a China Marine Surveillance ship cutting the cable of a Vietnamese survey vessel, while in the second incident, in Beijing's account, a Chinese fishing boat cut the cable of Vietnamese oil exploration vessel because its fishing net was tangled up. For more, see Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 5-6.

[147] Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.

[148] Li, "Chinese debates of South China Sea policy", op. cit. CNOOC launched its first deep-sea drilling rig in May 2012 in sea area 320km southeast of Hong Kong. "CNOOC 981 begins operations in South China Sea", Xinhua News Agency, 9 May 2012.

[149] Crisis Group interviews, Beijing November 2011, May 2012; Li, "Chinese debates of South China Sea policy", op. cit.

[150] "Notification of part of open blocks in waters under jurisdiction of the People's Republic of China available for foreign cooperation in the year of 2012", CNOOC website, 23 June 2012; M. Taylor Fravel, "The South China Sea oil card", *The Diplomat*, 27 June 2012.

[151] "The location of the blocks implies that China (or at least CNOOC) may interpret the nine-dashed line on Chinese maps as reflecting China's 'historical rights' in the South China Sea. Such a claim would be inconsistent with the U.N. Convention

from Hanoi and PetroVietnam, the latter of which claims that two of the blocks overlapped with those it offered.[152]

In the March 2011 Reed Bank incident, China intended to send the same message to the Philippines about its development of offshore petroleum.[153] However, rather than deter exploration, the incident deepened Philippine fears of China and of losing access to potential resources.[154] As long as disputes over maritime zones and their energy resources continue, competition for these reserves will intensify tensions.

Yet China has not objected to all moves by South East Asian states to develop energy resources within disputed territory. Although it claims many Malaysian natural gas fields located offshore of Sarawak, it has not challenged their exploitation so far.[155] Neither did it comment on reports that Brunei and Malaysia had reached an agreement on the joint development of energy resources in a disputed area claimed by both countries that also falls within the nine-dashed line.[156] This reflects the different ways in which China treats the different claimants.

B. FISHERIES

Disputes between China, Vietnam and the Philippines over fishing in contested waters are another potential trigger for conflict.[157] Fishing boats from these countries are venturing further afield as stocks in their respective waters become depleted, worsening a trend of harassment, confiscation of catch and equipment, detention, and mistreatment of fishermen.[158] Fisheries resources are of significant economic importance, but they also provide a pretext for increased civilian patrols in the South China Sea and rally nationalist sentiment.

While China is the largest consumer and exporter of fish in the world, the fishing industry is even more crucial to Vietnam. Seafood was its second biggest foreign exchange earner in 2010, accounting for 7 per cent of its $71.6 billion of exports.[159] The fishing catch of Vietnam also provides close to half of the total protein intake of a significant portion of the population.[160] But in coastal and inland areas, stocks have significantly declined due to overfishing and environmentally harmful techniques.[161] These problems are leading the government to encourage fishing fleets to go further offshore into the South China Sea to reduce the pressure on closer fishing grounds. Vietnamese fishermen now increasingly sail beyond the EEZ into the waters off the resource-abundant Paracel Islands.[162] This puts them into more frequent contact with Chinese law enforcement vessels that patrol the islands occupied by China.

on the Law of the Sea (UNCLOS), in which maritime rights can be claimed only from land features". Ibid.

[152] "PetroVietnam protests China's oil plans", *The Wall Street Journal*, 28 June 2012.

[153] Fravel, "Maritime Security in the South China Sea", op. cit., pp. 42, 45.

[154] As a Philippine diplomat observed, the Aquino government sees Reed Bank and its natural gas reserves as "big money, easy money, and most importantly their money". Crisis Group interview, Manila, May 2012.

[155] Wu Shicun, a leading Chinese scholar on the South China Sea, told the Chinese media that Malaysia produces about 20 million tons of oil from the South China Sea every year, compared to a total of 30 million tons per year by all parties. While Malaysia was one of the first to exploit the energy resources in the sea, Wu said it has refrained from confronting China. It has unilaterally reduced the area in the Spratlys that is in dispute with Beijing by claiming that the five land features it occupies do not belong to the islands; it has been less forceful towards China with regard to the ASEAN Declaration of Conduct and has instead focused on economic cooperation. "学者：解决南沙还存在东沙模式，即赎买模式" *南风窗*["Scholar: the Pratas Islands model could help resolve issues over the Spratlys", *South Winds*], 13 June 2012. "Country analysis brief: South China Sea", U.S. Energy Information Administration, March 2008, p. 5; "Chapter 6: Powering the Malaysian Economy with Oil, Gas and Energy", Economic Transformation Programme: A Roadmap for Malaysia, 25 October 2010. John V. Mitchell and Daniela Schmidt, "Resource Depletion, Dependence and Development: Malaysia", Chatham House, November 2008.

[156] "Deals sorted, good year for oil and gas", *Brunei Times*, 25 December 2010; Ian Storey, "Brunei's Contested Border With China", in Bruce A. Elleman, Stephen Kotkin and Clive Schofield (eds.), *China and its Borders: Twenty Neighbours in Asia* (New York and London).

[157] A scholar deemed fishing disputes between China and Vietnam in the Paracels to be the most immediate flashpoint. Crisis Group interview, Singapore, May 2011.

[158] Stephanie Kleine-Ahlbrandt, "Fish Story", op. cit. See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 22-23 for a discussion of the factors driving Chinese fishermen further from the mainland.

[159] "Vietnam fishermen on frontlines in China clash", *Financial Times*, 20 June 2011.

[160] "Fishery and Aquaculture Country Profiles: Viet Nam", Food and Agriculture Organization (FAO).

[161] "Overfishing affects seafood exports", *Viet Nam News*, 17 June 2011; "Sea headed for troubled waters, say marine experts", *ThanhNien*, 14 April 2008.

[162] A Vietnamese scholar considers government fuel subsidies for fishermen as an effort to help them get further out to sea within and beyond Vietnam's EEZ. Crisis Group interviews, Hanoi, May 2011. In May 2008, the Vietnamese agriculture ministry offered $3,500 per year to fishermen purchasing boats with engines large enough (over 90 horsepower) to reach offshore fishing grounds. For a discussion of declining fishing stocks in Vietnam, see Bill Hayton, *Vietnam: Rising Dragon* (Yale University Press, 2010).

Similarly, run-ins between Philippine and Chinese vessels are also on the rise. Philippine policymakers appear more concerned about the political stakes involved in defending their fishermen's access to the South China Sea than about the fishing industry's economic significance.[163] The industry accounts for less than 5 per cent of GDP, but employs close to one and a half million people.[164] The annual catch, however, has been declining since the 1990s. In the waters off Palawan, where stocks remain plentiful,[165] Philippine authorities regularly intercept Vietnamese and Chinese fishermen.[166] During the Scarborough Shoal standoff, the Aquino government denounced environmental degradation and violation of the country's fisheries code, seeking to demonstrate its efforts to enforce Philippine laws in its maritime zones.[167]

China, for its part, also encourages its fishermen to sail further afield.[168] In addition to patrolling disputed waters,[169] Chinese authorities offer fishermen incentives such as upgrading and equipping their boats with satellite navigations systems. These allow them to range even farther from home and immediately inform Chinese law enforcement forces in the event of confrontation.[170] Beijing also issued an annual fishing ban over portions of the South China Sea, including some of the areas Vietnam and the Philippines consider to be in their EEZs. Both countries object to the ban.

Vietnam particularly resents China's harassment of its fishermen who enter areas covered by the Chinese ban.[171] A Vietnamese analyst said that this leads to the deliberate sinking of boats, shooting, ramming, arrests, confiscation of radio and navigation equipment, and the detention of crews for ransom.[172] In many cases, Chinese authorities confiscate petrol from Vietnamese fishermen leaving enough just to return to shore. "It's hard to tell the difference sometimes between what the Chinese authorities are doing to our fishermen and piracy and armed robbery at sea".[173] The harassment of Vietnamese fishing vessels stokes nationalism and anti-Chinese sentiment, limiting the government's ability to compromise and increasing its willingness to respond robustly.[174]

For its part, China resents Vietnam's actions to encourage its vessels to fish in areas claimed by China and to compensate them for any property confiscated by Chinese law enforcement forces.[175] Chinese fishermen are also reportedly arrested, beaten and shot at, and their belongings allegedly seized by neighbouring countries. These cases also incite public anger in China against other claimant countries, especially Vietnam and the Philippines.[176] Conflicts over fishing incidents in the South China Sea are likely to continue to increase, and the 2012 Scarborough Shoal standoff, triggered by Chinese boats fishing in disputed waters, exposed the need for a bilateral or multilateral conflict resolution mechanism over such incidents.[177]

[163] Crisis Group interview, Manila, May 2012.
[164] Fishing contributed 4.4 per cent of GDP at constant prices in 2009. "Fish contribution to the economy, 2009", Bureau of Fisheries and Aquatic Resources, www.bfar.da.gov.ph/pages/AboutUs/maintabs/stat-fishcontri.html. "Employed persons by major industry group, Philippines: January 2012", Philippines National Statistics Office, www.bles.dole.gov.ph/PUBLICATIONS/Current%20Labor%20Statistics/STATISTICAL%20TABLES/Tab5a.pdf.
[165] "Fishery and Aquaculture Profiles, Philippines", FAO, www.fao.org/fishery/countrysector/FI-CP_PH/en.
[166] As of late May 2012, there were 24 Vietnamese fishermen being prosecuted in Philippine courts. Crisis Group interview, Manila, May 2012.
[167] Crisis Group interviews, Western diplomats and senior DFA official, Manila, May 2012. A military official stationed in Palawan also explained that Chinese fishermen come into Philippine waters because they know law enforcement is weak. Crisis Group interview, Puerto Princesa, January 2012.
[168] Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.
[169] Since 2008, the number of Vietnamese ships operating in the waters around the Paracel Islands has increased. China perceives this trend as a challenge to its sovereignty. Fravel, "China's Strategy in the South China Sea", op. cit., pp. 292-319.
[170] Crisis Group interviews, Beijing, May, June 2012; Ho Chi Minh City, July 2011. Stephanie Kleine-Ahlbrandt, "Fish story", *Foreign Policy*, 25 June 2012. See also Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.
[171] "Fishing ban starts in South China Sea", Xinhua News Agency, 17 May 2012; "China's un-neighbourly fishing ban", *The Diplomat*, 19 May 2012; and Crisis Group interview, Hanoi, May 2011.
[172] Ibid.
[173] Ibid.
[174] "Before no one cared when Vietnamese fishermen were harassed or arrested by China. Now they do". Ibid.
[175] Crisis Group interviews, Xiamen, September 2011; Haikou, November 2011; Nanning, December 2011.
[176] Crisis Group interviews, Haikou, November 2011; Nanning, December 2011.
[177] "The agreement of fisheries cooperation in Beibu Gulf between P.R. China and Vietnam" is the only agreement that has effectively solved the fishery disputes in formerly contested waters, mostly because both countries agreed on their maritime boundaries in the Beibu Gulf/Gulf of Tonkin at the time of the agreement. The 2002 Declaration of Conduct signed by China and ASEAN does not mention fishing issues. "雷志华：渔业纠纷的'政治账'" *南风窗* ["Lei Zhihua: The political calculation behind the fishery disputes", *Southern Winds*], 8 June 2012.

C. Increased Militarisation and Civilian Patrols

Many South East Asian nations, buoyed both by GDP growth in the previous decade and lobbying by arms companies, are expanding their militaries in response to China's position on the South China Sea issue and its military modernisation. While increased military power is likely to raise the threshold for, as well as cost of, armed conflict, it could also embolden countries to be more proactive in their territorial claims, making skirmishes harder to resolve. There is a risk that in seeking to flex their military muscle, claimant states will engage in brinkmanship that could lead to unintentional escalation.[178]

Vietnam and Malaysia are leading regional military buildup.[179] Their growing defence budgets have resulted in contracts with Russia, India and other countries for more advanced and costly items such as Kilo class submarines and Sukhoi Su-30 fighter aircraft.[180] They are also developing their domestic defence industries. Vietnam is implementing its own anti-access/area denial strategy, including the launch of its first indigenously built gunship.[181] The Philippines lags behind its neighbours but President Aquino is committed to improving the armed forces, particularly the navy and air force. In addition to nearly doubling the defence budget to $2.4 billion in 2011, he has embarked on a military modernisation program that will cost almost $1 billion by the time he leaves office in 2016.[182] His government relies on the U.S. to assist with these purchases, and two Hamilton-class cutters from the U.S. coast guard have already been sold at minimal cost to the Philippines. The administration has also discussed buying F-16 fighter jets from the U.S.,[183] and Washington has also offered to deploy spy planes and provide real time access to surveillance.[184]

There is growing interest in submarines from the various claimant states[185] but such equipment fundamentally alters

[178] The Chinese military sometimes responds aggressively to foreign military presence in its EEZ. For example, in 2001, a Chinese fighter jet collided with a U.S. spy plane off the coast of Hainan, and in 2009, five Chinese vessels surrounded the U.S. hydrographic survey vessel, *USNS Impeccable*, and attempted to snag its towed cable array. Although the U.S. and China were able to contain the diplomatic fallout of these incidents, future military confrontations in the South China Sea represent one possible contingency leading to armed clashes in the Pacific. Bonnie Glaser, "Armed Clash in the South China Sea", Council on Foreign Relations, April 2012, p. 1.

[179] Vietnam has identified territorial disputes as a key defence priority. See Carlyle A. Thayer, "Vietnam's security outlook", Presentation to International Workshop on Asia-Pacific Security, National Institute of Defense Studies, Tokyo, 17-18 January 2012.

[180] Vietnam's overall defense budget for the year 2012 is $3.3 billion compared to China's $106 billion. Carlyle A. Thayer, "The rise of China and maritime security in Southeast Asia", Institute of Developing Economies-Japan External Trade Organization, 2011; "Military and Security Developments Involving the People's Republic of China 2012", Office of the Secretary of Defense, May 2012. For more discussion on why reliable Vietnam defence budget statistics are difficult to obtain, see Carlyle A. Thayer, "Vietnam People's Army: Development and Modernization", Armed Forces Lecture Paper Series Paper no. 4 (Bandar Seri Begawan: Sultan Haji Hassanal Bolkiah), August 2009. At the eleventh national congress in January 2011, the Communist Party of Vietnam announced that it would modernise the military by 2015 and prioritise areas relevant to defending maritime claims: navy, air force and air defence. Crisis Group interviews, Singapore and Hanoi, May and June 2011. Malaysia is also expanding its air force and developing its naval capabilities. Eric Wertheim, "World Navies in Review", *Proceedings*, March 2012.

[181] Carlyle A. Thayer, "The South China Sea Disputes and Their Impact on the Security Environment of Southeast Asia: What Lies Ahead?", Paper to workshop on Political and Security Implications of the South China Sea Dispute, co-sponsored by the Center for Asia Pacific Area Studies, Academia Sinica and the East-West Center, Taipei, Taiwan, 12-13 January 2012

[182] In the first months of his term, President Aquino allocated more than $395 million to upgrading the Philippine military. In the fifteen years prior to when he took office in 2010, a mere average of $51 million was spent each year on military modernisation projects. As part of its modernisation program, the Philippines' defence department announced in June 2012 that it plans to revive the Self-Reliant Defence Posture, a failed initiative begun in 1974 that focused on developing a local defence industry. Ava Patricia C. Avila, "Philippines' Defence Buildup: Revival of the Self-Reliant Posture", *RSIS Commentaries*, no. 125 (12 July 2012); "Sentinel Security Assessment – Southeast Asia: Defence budget (Philippines), Defence budget," Jane's Information Group, 12 March 2012. Richard D. Fisher Jr., "Defending the Philippines: Military Modernization and the Challenges Ahead", *East and South China Seas Bulletin*, no. 3, Center for a New American Security, 3 May 2012.

[183] "Philippines seeks 12 F-16 fighter jets from US", *Philippine Daily Inquirer*, 21 December 2011; "Aquino 'wants everything' for military under his term", *Philippine Daily Inquirer*, 23 August 2011.

[184] See Kurt M. Campbell, Assistant Secretary, Bureau of East Asian and Pacific Affairs, Testimony Before the House Committee on Foreign Affairs Subcommittee on Terrorism, Nonproliferation and Trade on the U.S.-Philippines Alliance: Deepening the Security and Trade Partnership, 7 February 2012, at http://manila.usembassy.gov/security_and_trade_ties.html; "U.S. military seeks more access in Philippines", Reuters, 9 February 2012; "Philippines, US to share real time info on security developments", *The Philippine Star*, 5 June 2012.

[185] In 2009, Vietnam commissioned six Russian Kilo-class diesel attack submarines, which are capable of operating in the shallow littoral waters of the South China Sea. "Vietnam orders

the regional security equation. Their clandestine nature allows them to be deployed undetected for surveillance missions inside other countries' territorial waters.[186] Yet their utility in the South China Sea is questionable. The region's topography limits the space in which submarines can navigate, which increases the likelihood of run-ins as rival claimants deploy submarines to the same areas.[187] This could result in a collision or armed clash should surface ships and other units try to force a submarine out of their territory.[188] Furthermore, many of the South East Asian navies now acquiring submarines still lack rules of engagement and mechanisms for reducing the risk of collisions; some even lack basic safety procedures. As a Malaysian scholar remarked, "if you're able to get a clear answer on why we bought them [submarines], let me know".[189]

Naval vessels may be drawn into disputes more frequently as countries have limited options for responding with force on the sea. Maritime law enforcement units in both Vietnam and the Philippines are poorly equipped and understaffed, and sometimes rely on their navy to enforce maritime laws. The Scarborough Shoal incident, in which a Philippine warship, the *Gregorio del Pilar*, was confronted by China Marine Surveillance vessels, is a case in point.[190] Due to the Philippines' limited capabilities, the navy and coast guard share responsibility for policing the waters. Manila later justified its decision to deploy its largest warship to the shoal by explaining that it was already in the area, implicitly recognising that confronting the Chinese fishing boats with a naval vessel had escalated what should have been an issue of maritime law enforcement.[191] The involvement of the navy also made political compromise more difficult: Philippine decision-makers felt that any concession would be seen as a surrender of sovereignty over the shoal.[192]

Recognising the need to improve their ability to safeguard coastlines and maritime zones, some South East Asian countries are also beginning to modernise their coast guard and maritime law enforcement forces.[193] Compared with China's powerful and expanding agencies, other claimant countries' coast guard and civilian agencies are small and ill-equipped.[194] Vietnam's Marine Police, for example, only became independent of the military in 2008, and has only about 1,000 personnel. The Philippine coast guard lacks ocean-going capacity and is comprised of a small fleet of patrol boats,[195] although other countries, notably

submarines and warplanes from Russia", BBC News, 16 December 2009. In 2009 and 2010, Malaysia received two diesel-powered Franco-Spanish Scorpéne-class submarines, and is planning to purchase more. "Navy plans to buy more submarines to boost defence capability", *Malaysia Today*, 27 April 2012. The Philippines, in a recent attempt to bolster its navy's ability to patrol coastal waters, stated in 2011 its desire to build a submarine fleet and has recently ordered a study on submarine purchases. Jon Grevatt, "Philippines eyes submarine acquisition by 2020", *Jane's Defence & Security Intelligence & Analysis*, 17 May 2011.

[186] Crisis Group interview, Singapore, May 2011.

[187] Much of the South China Sea is too shallow for the use of submarines, which are therefore much less practical than other equipment such as surveillance systems and aircraft. Some Western defence officials attribute the purchase of submarines to a matter of prestige rather than acquiring what is necessary. Crisis Group interviews, Singapore, May 2011.

[188] According to Sam Bateman, submarines found in another country's territorial waters would be warned and could even be attacked. Anti-submarine weapons are clumsy and have "all-or-nothing" implications for the attacked submarine. Sam Bateman, "Perils of the Deep: The Dangers of Submarine Proliferation in the Seas of East Asia", *Asian Security*, vol. 7, no. 1 (25 February 2011), pp. 61-84.

[189] "Now that we have submarines, what if something happens? Do we have rules of engagement in place? How do we act when we encounter another country's subs by accident? What happens when there's an accident with our own subs? Do we know how to do the search and rescue? The answer to all of this is no. Hopefully we'll figure all this out soon". Crisis Group interview, Kuala Lumpur, May 2011.

[190] It is reported that the Philippine navy vessel even tried to fire a warning shot but the cannon malfunctioned and fired a dud. "Stand up to China or kneel and beg for mercy", *Inquirer Global Nation*, 9 May 2012.

[191] According to some Philippines officials, the *Gregorio Del Pilar* had been dispatched to the area to help monitor the North Korean satellite launch. "Defense chief Gazmin, Chinese official agree to dialogue", *Philippine Daily Inquirer*, 30 May 2012. Crisis Group interviews, diplomats and government officials, Manila, May 2012. See also "Scarborough Shoal again in the news", *Malaya Business Insight*, 13 April 2012.

[192] The Philippines claims Scarborough Shoal, included as a regime of islands under its 2009 Archipelagic Baselines Law. According to a senior DFA official, President Aquino told his advisers that his actions in response to the standoff must be consistent with Philippine law, meaning the territorial claim cannot be renounced. Crisis Group interview, Manila, May 2012.

[193] In addition to creating a separate maritime force, the Marine Police, the Vietnamese government also plans to create a fleet of 59 fishing patrol vessels, to help enforce fisheries law and protect fishermen, and a maritime militia. "Vietnam plans new fishing patrol fleet", *ThanhNien* (online), 10 June 2011; "Vietnam to set up militia to protect sea borders", AFP, 23 November 2009. In September 2011, the Philippe government decided to set up a national coast watch system to improve inter-agency coordination on maritime security.

[194] On Chinese agencies, see Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit.

[195] Christian Le Mière, "Policing the Waves: Maritime Paramilitaries in the Asia-Pacific", *Survival*, vol. 53, no. 1 (2011), pp. 133-146.

Japan and the U.S., have respectively provided patrol vessels and funding for a radar system.[196]

Despite their paramilitary and civilian nature, coast guard and other maritime law enforcement vessels may stoke, rather than diminish, tensions.[197] Because each country believes their territorial claims to be indisputable, maritime law enforcement agencies aggressively assert jurisdiction in disputed areas. This brings them into regular contact with civilian vessels and other paramilitaries. The involvement of paramilitary vessels lowers the threshold for confrontation. As they operate under more relaxed rules of engagement than the navy, they have more often been involved in aggressive actions such as ramming or cutting cables and fishing nets on other boats. Moreover, when facing law enforcement rather than military ships, fishermen and other civilian vessels may be more likely to resist or try to escape, particularly as coast guard and law enforcements are generally less armed than naval vessels.[198] As these units expand, such incidents could become more frequent and serious.

D. NATIONALISM

Nationalism influences political decisions and is an especially potent force in Vietnam, where resentment of China runs deep and the South China Sea issue is the main driver of popular protests.[199] For the Vietnamese leadership, like its Chinese counterpart, nationalism is a double-edged sword, working to its advantage while also limiting its options.[200] Vietnamese nationalism can be used to resist Chinese pressure and send a signal to China, but at other times the Communist Party of Vietnam reins in these sentiments to maintain good relations with the Chinese Communist Party.[201]

Vietnamese claims in the South China Sea have become an integral and emotional part of a historical narrative that is "forcing the party's hand", according to a Vietnamese scholar.[202] As another Vietnamese official explained, "for 1,000 years we spilled blood to keep our country intact. The East Sea [the Vietnamese name for the South China Sea] disputes strike at the heart of what it means to be Vietnamese".[203] Territorial disputes, coupled with a history of violent conflict and a staggering bilateral trade deficit, have fostered widespread suspicion of and animosity toward China. This has increased in line with perceptions of China's greater forcefulness since 2009.[204] Political and military personalities have accused Hanoi of failing to stand up to China over the South China Sea,[205] and the powerful pro-U.S. Vietnamese diaspora has used this to criticise the government.[206] As economic problems erode its credibility, the Vietnamese leadership cannot afford mismanagement, especially given rampant corruption. Nor can it afford being soft on China by appearing like it is once again giving up Vietnamese territory.[207]

[196] "US, others helping PH defence-DFA", *Philippine Daily Inquirer*, 21 May 2012; "Coast Guard to get 10 ships from Japan", *The Philippine Star*, 18 May 2012.

[197] The diplomatic ramifications of clashes between maritime paramilitaries are not as severe as they would be with the navies. In both the South China Sea and the East Sea, while the PLAN and other navies have largely stayed clear of actual clashes with other vessels, there have been a number of incidents involving paramilitaries. Le Mière, "Policing the Waves", op. cit., p. 142; and Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., Section IV.B.

[198] Le Mière, "Policing the Waves", op. cit., pp. 140-141 et 143; Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., p. 21.

[199] Crisis Group interview, Hanoi, May 2011.

[200] A Vietnamese official claimed that even if Vietnam wanted to resolve the conflict with China, nationalism in both countries would prevent an agreement. Crisis Group interview, Hanoi, July 2011. On nationalism as a factor in Chinese policymakers' calculations, see Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 26-28.

[201] According to a scholar, the government and people agree that some form of visible expression is needed to convey a strong message to China. Crisis Group interviews, Hanoi, July 2011. "The CPV also realises the extent to which it can rein in public anger. If it completely cuts off criticisms, then public anger could be turned towards the country's leadership and present a threat to the party". Crisis Group interview, Hanoi, May, July 2011.

[202] Crisis Group interview, Hanoi, July 2011.

[203] Crisis Group interview, Hanoi, July 2011.

[204] Crisis Group interviews, Hanoi, May and June 2011.For more information on the importance of China to Vietnam's economy, see Section II.A "Vietnam".

[205] On 10 July 2011, twenty prominent "patriotic personalities", including former ambassador to China, Major General Nguyen Trong Vin, the chair of Vietnam Union of Scientific and Technical Associations, Ho Uy Liem, and several retired government officials, submitted a petition to Vietnam's Politburo and National Assembly chairman, claiming that Hanoi had been "too soft" with China. "Petition Letter to the Vietnamese Government on the East Sea Issue", copy provided to Crisis Group.

[206] Crisis Group interviews, Hanoi, May and July 2011.

[207] Ibid. Some Vietnamese still resent what they perceive as concessions made by their government when it signed an agreement with China on the disputed land border in 1999. A Vietnamese academic commented, "the party is still forced sometimes to explain its rationale; there is still resentment". This is dangerous because South China Sea disputes are much more emotional and controversial. Crisis Group interviews, Hanoi, May and July 2011.

The government's actions in the weeks following Chinese vessels cutting the cables of Vietnamese survey ships in May and June 2011 illustrate the difficulties in managing nationalist outbursts. Initially, Vietnam hoped to send a message to Beijing by encouraging anti-China protests in the capital and granting state media unprecedented latitude to report on the South China Sea.[208] Large demonstrations continued for twelve weeks, initially driven by anti-Chinese sentiment but quickly voicing domestic political dissent.[209] When some demonstrators started to shout anti-government slogans, such as "To hell with the Vietnamese Communist Party" or "Let's topple the regime", the government broke up the protests and started to silence public debate on the South China Sea.[210] Those who continued to demonstrate on the street or online were arrested.[211] The crackdown was also motivated by Hanoi's desire not to further damage relations with Beijing.[212] This fuelled suspicions among the Vietnamese public that the Communist Party was taking orders from its Chinese counterpart.[213]

The Philippine government is much less likely than Vietnam to be moved or inhibited by nationalist sentiment. Concerns about territorial integrity centre on the Muslim insurgency in the south more than the South China Sea. Only high-profile incidents in the sea attract public attention. Chinese media accused the Aquino government of trying to agitate anti-China nationalist sentiment during the Scarborough Shoal standoff,[214] but when a demonstration was held in Manila in early May 2012 outside the Chinese embassy, only a few hundred protesters attended.[215] A senior government official noted that compared to Vietnam and China, public opinion in the Philippines with regard to the South China Sea is not a problem;[216] nationalism is more troublesome for the government when it comes to the relationship with the U.S.[217] Likewise for the governments of Malaysia, Taiwan and Brunei, nationalist sentiments with regard to the South China Sea are unlikely to constrain their options.

[208] Crisis Group interview, Hanoi, July 2011.

[209] The movement even spread to Ho Chi Minh City. Demonstrators waved flags, sang patriotic songs and chanted "Down with China!" in front of the Chinese Embassy in Hanoi. "Vietnam allows second anti-China protest in Hanoi", Reuters, 12 June 2011. A protester divided the demonstrators into three groups: anti-communist opportunists seeking to use the public protests to highlight the government's poor response to the dispute; the middle class (lawyers, scholars, poets, journalists, and bloggers) who were not necessarily anti-communist, but might hold a grudge against the government or certain officials; and the general masses, including university students, shop owners and elderly people, who were somewhat politically aware and motivated by their anger at China's aggression. Crisis Group email correspondence, Beijing, January 2012.

[210] Ibid; "Vietnam stops anti-China protest, detains many", Reuters, 21 August 2011.

[211] "Vietnamese hold anti-China protest after crackdown", AFP, 23 July 2011. Crisis Group email correspondence, Beijing, January 2012.

[212] Crisis Group interviews, Hanoi, May 2011.

[213] Ibid.

[214] For example, see "Manila provocation blasted", *Global Times*, 10 May 2012.

[215] "Filipinos hold anti-China protest in Manila amid sea dispute", Voice of America, 11 May 2012.

[216] Crisis Group interview, senior DFA official, Manila, October 2011.

[217] Many Filipinos have reservations about relying too much on the U.S. and being caught in the middle of a rivalry between China and the U.S. Some civil society organisations, particularly those sympathetic to the cause of the underground Communist Party of the Philippines and its armed wing, the New People's Army, strongly oppose the presence of U.S. troops on Philippine soil. They cite past abuses of civilians by U.S. troops and warn that the country could become a proxy for a future conflict between the U.S. and China. In May 2012, even as U.S. and Philippine troops engaged in a joint military exercise during the Scarborough Shoal standoff, civil society groups staged the largest anti-American demonstration in nearly a decade in Pampanga province. "As anti-Americanism rises …", *Asia Times Online*, 8 May 2012.

IV. INTERNATIONALISING THE ISSUE

Vietnam and the Philippines are both seeking to increase pressure on China by involving outside powers. Their efforts have focused on expanding and deepening their relations with the U.S. and other countries concerned about China's growing power, particularly Japan and Australia. Manila sees stronger military ties as a way to bolster its defence capabilities in the face of China's expanding naval power. Vietnam, which is not a U.S. treaty ally like the Philippines, is exploring enhanced defence ties with Washington. By encouraging Russia, India and other countries to join in energy exploration in the South China Sea, they are also increasing the number of non-claimant states with an economic stake in unresolved sovereignty disputes. China resents both U.S. attention to the South China Sea and its plans to expand its military presence in the region.[218] While fears of containment strengthens the voices of hardliners in China,[219] greater U.S. engagement could be helpful if used to pressure claimants into developing and resorting to measures to mitigate risks.

A. BRINGING IN THE U.S.

South East Asian claimants, especially Vietnam and the Philippines, have intensified efforts to encourage the U.S. to increase its presence as tensions in the South China Sea started to escalate in 2009, hoping to counterbalance China's growing power. From the perspective of most policymakers in Beijing, the warming ties between Washington and Hanoi on the one hand, and the strengthening of a longstanding military alliance with Manila on the other, are proof of U.S. efforts to contain China's rise.[220] This puts Vietnam and the Philippines, as well as non-claimants in the region such as Singapore, in an awkward position as they see a stronger U.S. presence. Such presence is to their benefit but they are averse to being caught in U.S.-China rivalry.[221] Vietnamese and Philippine leaders also harbour doubts about the depth of Washington's commitment to South East Asia.[222]

The U.S. rebalancing towards Asia since 2011 is changing the strategic landscape for Vietnam and the Philippines.[223] With tensions on the rise, Manila is eager to pursue closer military cooperation with the U.S. and Hanoi is keen to carefully bring in and balance U.S. influence in the region; the U.S. refocus on Asia gives them another instrument to use against China. If these countries frame any U.S. assistance as being directed against China, it will be harder for the former to persuade the latter that it will not get involved in territorial disputes.[224] The U.S. presence in the region has made Beijing more suspicious of ASEAN's moves on the South China Sea issue: it interprets the organisation's initiatives as the result of American urging.[225] A greater U.S. presence could intensify U.S.-China strategic competition and further alarm regional states which seek to avoid having to choose between the two giants.[226]

1. Vietnam

In the view of the Vietnamese government, Washington's interests in Vietnam appear less threatening and broader

[218] Zhong Sheng, "U.S. should not muddy the waters over South China Sea", *People's Daily*, 20 March 2012.

[219] The majority of Chinese scholars and policymakers believe the U.S. and some claimant states like Vietnam and the Philippines are colluding against China. Li, "Chinese debates of South China Sea Policy", op. cit.

[220] Crisis Group interviews, Beijing, May 2012.

[221] Crisis Group interviews, Singapore, June 2012.

[222] For a Vietnamese official, greater U.S. commitment to ASEAN would assuage concerns that Washington would abandon the organisation to maintain a good relationship with China. Crisis Group interview, Hanoi, July 2011.

[223] In her January 2010 speech in Hawaii, U.S. Secretary of State Hillary Clinton stated, "I don't think there is any doubt, if there were when this administration began, that the U.S. is back in Asia. But I want to underscore that we are back to stay". This "return" has since been reiterated by the Obama administration, particularly as Clinton announced the "pivot" or foreign policy shift to Asia in a November 2011 *Foreign Policy* essay. Later termed "rebalancing" by U.S. Defense Secretary Leon Panetta at the 2012 Shangri-La Dialogue, it refers to the expansion of military-to-military relationships well beyond the traditional treaty allies in the region. The U.S. has since begun rotational deployment of marine ground and aviation units to Australia, and it is looking at a similar arrangement with the Philippines. It has also berthed its littoral combat ships in Singapore and will shift its naval forces, so that 60 per cent will be positioned in the Pacific before 2020. It will also shift resources to combat new threats of cyberwar and anti-access technologies. Hillary Clinton, "Remarks on regional architecture in Asia: Principles and priorities", Hawaii, 12 January 2010; Hillary Clinton, "American's Pacific Century", *Foreign Policy*, November 2011; Jim Garamone, "Panetta Describes U.S. Shift in Asia-Pacific", American Forces Press Service,1 June 2012.

[224] As Kenneth Lieberthal noted in an assessment of the pivot, "American officials [need] to keep tight control of their rhetoric so as to avoid unnecessary distrust and tension as they flesh out details of U.S. strategy". "The American Pivot to Asia", *Foreign Policy*, 21 December 2011. The U.S. has no control over its partners' rhetoric.

[225] Crisis Group interview, Beijing, May 2012.

[226] Bonnie Glaser, "Pivot to Asia: Prepare for Unintended Consequences", Center for Strategic and International Studies, 13 April 2012. One senior ASEAN diplomat expressed fear that one day China could ask his country to choose. Crisis Group interview, Singapore, June 2012.

than Beijing's designs for its "ornery little brother".[227] The warming of relations between these former foes predates the announcement of renewed U.S. focus on Asia, but Washington's strategic shift will probably accelerate this process. This has opened the door for greater U.S. presence in Asian waters, including joint search and rescue exercises and access to Vietnam's deep-water Cam Ranh Bay.[228] While U.S.-Vietnam defence ties have slowly evolved and are in many respects still tentative, Hanoi sees that it can use this convergence of strategic interests to its advantage to, according to a Hanoi-based diplomat, "raise the stakes for China's misbehaviour".[229] Vietnam has two objectives: to enlist Washington's support for its vision of ASEAN as the primary venue for confronting China's claims in the South China Sea; and shift the balance in its relationship with China.[230]

Vietnam used ASEAN chairmanship of 2010 to place the South China Sea on the agenda, in an attempt to align the organisation's priorities with its own. Hanoi then skilfully pushed for stronger U.S. involvement with ASEAN in the hope that Washington would facilitate member states to forge a common stance against China.[231] U.S. Secretary of State Hillary Clinton subsequently positioned the South China Sea as a primary topic at the July 2010 ASEAN Regional Forum (ARF) in Hanoi, and for the organisation more broadly, by stating that the U.S. hoped for, and was willing to facilitate, a collaborative resolution to the dispute. The Vietnamese plan was effective: twelve states, including all of the ASEAN claimants, presented their views on the dispute at the forum, pressuring China to restart committee level meetings with ASEAN rather than focusing solely on bilateral dialogue, as Beijing prefers.[232]

However, U.S.-Vietnam defence cooperation on the whole is still at a relatively low scale and Vietnam is not interested in an official alliance with the U.S.[233] While pursuing closer military ties with Washington, Hanoi wants to avoid getting too close to one power, adhering to what an expert describes as the "three no's" policy: no military bases, no alliances and no leaning towards one country".[234]

[227] More specifically, Vietnam sees the U.S. presence as problematic at times but perceives its mistakes as part of a larger purpose, whereas it views China as having a one dimensional plan to control them. Although Vietnam has fought a war against both, it has a 2,000-year history with China, making the military relationship with the U.S. easier in comparison. Vietnam's trade surplus with the latter, compared to its massive deficit with China, also eases relations with the U.S. Crisis Group interview, Hanoi, May 2011; Singapore, May 2011.

[228] Cam Ranh Bay is open to civilian logistics and survey ships and cargo vessels (designated USNS, not USS), such as the *USNS Richard E. Byrd*, which Secretary of Defense Leon Panetta visited in June 2012 as it was undergoing repairs in the harbour. However, U.S. warships have not entered Cam Ranh Bay since the Vietnam War, during which it was a centre for American military operations, although they call in at other Vietnamese ports. Vietnam has yet to permit any foreign country to visit its military facilities in Cam Ranh Bay, although this could change when the Russians begin construction of service facilities for Vietnam's Kilo class submarines. Crisis Group email correspondence, Beijing, July 2012; Crisis Group interview, Hanoi, July 2011; "Access to Pacific harbours key to U.S. strategy: Panetta", Reuters, 3 June 2012; Carlyle A. Thayer, "Hanoi and the Pentagon: A Budding Courtship", U.S. Naval Institute, 11 June 2012. "Cam Ranh Bay lures Panetta seeking return to Vietnam port", Bloomberg, 4 June 2012.

[229] Ibid.

[230] A Vietnamese official said that they would like to see the U.S. ratify UNCLOS to underscore that Washington and ASEAN share a common interest in keeping the region governed by rules and not a hegemon. Crisis Group interview, Hanoi, July 2011. A Vietnamese scholar explained that Vietnam encourages ASEAN to address the South China Sea because, like most member countries, it prioritises domestic issues, leaving very little energy for such regional disputes. Crisis Group interview, Hanoi, May 2011.

[231] Crisis Group interview, Hanoi, June 2011.

[232] Beijing still prefers to abide by its strategy of "treat each case differently, and defeat each one separately" in dealing with its territorial disputes in the South China Sea. For example, see 郁志荣, "设三沙市意在用实际行动教训越南" , *環球時報* [Yu Zhirong, "Establish Sansha City to teach Vietnam a lesson" *Global Times*], 25 June 2012; Crisis Group interview, Singapore, May 2011. Ian Storey, "China's Bilateral and Multilateral Diplomacy in the South China Sea", in "Cooperation from Strength", op. cit., p. 56.

[233] The U.S. and Vietnam have never conducted military exercises. The U.S. continues to ban the sale of lethal weapons to Vietnam and to restrict the sale of non-lethal weapons and military services on a case-by-case basis. Hanoi does not permit any country, including the U.S., from making more than one port visit per calendar year. It is so sensitive about U.S. military presence that it restricts wearing uniforms in public (U.S. defense attaché excepted). U.S. troops engaged in missing in action recovery efforts wear civilian clothes and change back into uniform on departure. Crisis Group email correspondence, Beijing, July 2012.

[234] Carlyle A. Thayer, "Vietnam's Approach to Asia-Pacific Security", Presentation to Security & Strategic Studies B, Strategic & Defence Studies Centre, The Australian National University, 31 August 2010; Crisis Group interview, Hanoi, May 2011. In 2010, Vietnam and the U.S. launched a series of non-combative joint naval exercises in the South China Sea and Vietnamese officials were flown out to the aircraft carrier USS. George Washington. At the November 2011 Asia-Pacific Economic Cooperation (APEC) meeting in Honolulu, Vietnamese President Truong Tan Sang called the U.S. "a very important partner" and specifically mentioned its role in the South China Sea. Vietnam has also opened its deep-water port in Cam Ranh Bay to the U.S. and other countries. "US-Vietnam ties strengthen with military exercises, to China's chagrin", *The Christian*

Hanoi is fully aware that Washington gives economic and political priority to its relationship with Beijing. "We are under no illusion about that", a Vietnamese scholar said, "we know the U.S. will sacrifice our relations if they need to".[235] After the July 2010 ARF, Vietnamese officials were concerned that a "grand bargain" would be agreed between the U.S. and China. They were worried, for example, that the U.S. need for Chinese cooperation on other issues such as North Korea would prevent it from pressuring China to act more responsibly in the South China Sea.[236]

But Vietnam hopes for "just enough" U.S. involvement to keep China in check without tipping the balance in Washington's favour.[237] A certain degree of tension between China and the U.S. is useful to Vietnam and by ensuring some level of unpredictability in its relations with each, Hanoi remains a more independent actor.[238] At present, however, bilateral relations with the U.S. continue to expand and recent indications by U.S. Defense Secretary Leon Panetta that Washington is interested in working with Vietnam on "critical maritime issues, including a code of conduct focusing on the South China Sea and also working to improve freedom of navigation in our oceans", appears to be another step forward.[239] Vietnam has also engaged in highly symbolic acts of enhanced military ties, such as flying out senior officials to visit U.S. aircraft carriers.[240]

While the younger generation of Vietnam's Communist Party seems increasingly open to closer ties to the U.S.,[241] warmer relations with Washington are deepening divisions between pro-China and pro-U.S. camps within the party.[242] For instance, in the lead-up to Secretary Panetta's visit, an analyst cautioned that the U.S. should ensure that greater defence cooperation is not construed by Vietnamese party conservatives "as an attempt to enlist Vietnam into an anti-China containment policy".[243] This is a particularly delicate balance as many party members believe rapprochement with the U.S. will lead Washington to demand more progress on human rights and multiparty democracy in return for military support.[244] However, the alternative approach, closer ties with China, may see Vietnam lose some of its territory. Even for some in the pro-China camp, their view is not so much that the two countries should be in lock step, but that there is a need to prioritise relations with China to avoid a disastrous conflict.[245]

In addition, warmer ties with the U.S. may increase the influence of the overseas Vietnamese diaspora, largely composed of those who fled the country after the communist victory in the 1970s and very critical of Vietnamese policy toward China.[246] This has caused concern among Vietnamese officials that the South China Sea issue may become a common cause for the pro-U.S. diaspora and domestic nationalists, drawing them closer together and strengthening opposition. This group already has strong networks within opposition groups in Vietnam, and has pressured the Communist Party on political reform and territorial disputes with China.[247]

Science Monitor (online), 12 August 2010; "Vietnam President says leaders want to take relations with U.S. to next level", East-West Center, 11 November 2011.

[235] Crisis Group interview, Hanoi, July 2011.

[236] Crisis Group interviews, Beijing, November 2010; Singapore, May 2011; Hanoi, July 2011.

[237] Crisis Group interview, Singapore, May 2011.

[238] "Vietnam floats between China and US", *Asia Times Online*, 12 May 2012.

[239] "US explains 'need' for more Pacific ships", *Shanghai Daily*, 4 June 2012. The U.S. and Vietnam have a longstanding strategic dialogue under the auspices of the state department and foreign ministry; they have recently developed another strategic dialogue between their respective defence ministries at deputy minister level. Last year both sides signed a Memorandum of Understanding covering five areas, which only codified what has already taken place and was seen as more of a transparency measure directed at China. Crisis Group email correspondence, Beijing, July 2012.

[240] To date, there have been four Vietnamese visits aboard U.S. aircraft carriers – USS John C. Stennis, USS George Washington (twice) and USS George H.W. Bush – which are considered to be sovereign U.S. territory. Three of the visits were conducted in the waters off the coast of Vietnam, which underscored Hanoi's view that the U.S. has a legitimate presence in the South China Sea and that "China is not the region's only big player". The visit to the USS George H.W. Bush was in Norfolk, Virginia on the 15th anniversary of the normalisation of diplomatic relations and took place near simultaneously with the fly out to the USS George Washington off the coast of Vietnam's Danang city. In addition, during the Vietnamese defence minister's 2009 visit to Hawaii, he was photographed peering through the periscope of the USS Florida, a nuclear submarine armed with convention cruise missiles. Crisis Group email correspondence, Beijing, July 2012; "Vietnamese Ministry Of Defense Officials Visit USS John C. Stennis", U.S. Navy, 24 April 2009; Margie Mason, "U.S. and Vietnam, once enemies, now military mates", Associated Press, 8 August 2010; "Vietnamese Diplomats Tour Navy's Newest Aircraft Carrier", U.S. Navy, 1 July 2010.

[241] Crisis Group interview, Singapore, May 2011.

[242] Crisis Group interviews, Hanoi, May and June 2011.

[243] "Shangri-La talks to tackle South China Sea crisis", *Defense News*, 27 May 2012.

[244] Crisis Group interview, Hanoi, May 2011.

[245] Ibid.

[246] Crisis Group interviews, Hanoi, May 2011, Beijing, July 2012.

[247] Tonnesson, Stein, "Could China and Vietnam Resolve the Conflicts in the South China Sea?", Paper presented at the International Conference "Major Law and Policy Issues in the South China Sea: European and American Perspectives", Insti-

Vietnam's enhanced engagement with the U.S. has led China to reconsider its relationship with its southern neighbour. As a Vietnamese diplomat explained, before Clinton's remarks at the 2010 ARF, China never took Vietnam seriously, but "they talk to us now".[248]

2. The Philippines

The Philippines has turned to the U.S. for military assistance to enhance its leverage vis-à-vis China. Yet, even with more military funding and equipment from Washington, the Philippine military would still be a long way from being able to defend its territorial claims in the South China Sea. Moreover, miscalculations, such as the initial dispatching of a former U.S. coast guard cutter turned Philippine warship in response to the Scarborough Shoal standoff and the failure to appoint an ambassador to China, have undercut potential leverage afforded by the 1951 Mutual Defense Treaty with the U.S. Since then, this treaty has been the cornerstone of the relationship, periodically renewed in response to changing security threats.[249] While the text calls for the U.S. to respond to an armed attack against the Philippines, Manila only received "vague assurances" that Washington would uphold the treaty during the Scarborough standoff.[250] Furthermore, the U.S. has not confirmed whether the scope of the treaty covers contested territories in the South China Sea.[251]

In November 2011, following the Obama administration's announcement of the policy shift towards Asia, and with tensions between the Philippines and China on the rise, Manila and Washington commemorated the 60th anniversary of their alliance. A declaration signed by U.S. Secretary of State Hillary Clinton aboard an American warship docked in Manila Bay emphasised freedom of navigation and "a rules-based approach in resolving competing claims in maritime areas" – language that a Philippine diplomat described as "code words" for the South China Sea.[252] The Philippines, believing that any suggestion of U.S. intervention will deter China, has repeatedly pushed hard to get Washington to reaffirm its treaty obligations.[253] However, senior U.S. officials have reiterated that Washington will stay out of the region's territorial disputes.[254]

The treaty text leaves the extent of U.S. commitments open to interpretation. The Philippines appears to be taking this matter into its own hand by pushing one which implies that the U.S. would respond to an attack on Philippine forces in the South China Sea. In May 2012, Foreign Affairs Secretary Del Rosario released a statement citing diplomatic correspondence dating from 1979 in which the U.S. considered the South China Sea to be part of the Pacific area and the treaty text which covers armed attacks "in the Pacific area".[255]

As long as China avoids using force, as it has in recent years, the question of how Washington interprets the treaty will remain academic. But if the Aquino administration hoped that restating the alliance would bolster Philippine territorial claims and deter China from challenging them, these expectations have not been met.

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tute of European and American Studies, Academia Sinica, Taipei, 6-9 October 2011.

[248] Crisis Group interview, Beijing, November 2010.

[249] Crisis Group interview, Manila, July 2011. The treaty is periodically renewed in response to changing security threats. The U.S. sought to revitalise the alliance following the 11 September 2001 attacks. At the time, concerns centred on Filipino Islamic extremists and their foreign jihadi allies operating on the southern island of Mindanao. On the U.S. role in the southern Philippines, see Crisis Group Asia Report N°152, *The Philippines: Counter-insurgency and Counter-terrorism in Mindanao*, 14 May 2008; and Patricio Abinales and Nathan Gilbert Quimpo, (eds.), *The US and the War on Terror in the Philippines* (Manila, 2008).

[250] Renato Cruz De Castro, "Future Challenges in the US-Philippines Alliance", *Asia-Pacific Bulletin*, 26 June 2012.

[251] The treaty predates the Philippines' territorial claims in the South China Sea so it is uncertain how the U.S. will interpret its application to disputed territories in the event of a conflict. A scholar noted that while strategic ambiguity is sometimes conducive to regional stability, if Beijing sees it as a sign of U.S. weakness, it may embolden China to continue its assertive actions. However, another scholar asserted that the U.S. does not consider the treaty to extend to features in the South China Sea. Thomas Lum, "The Republic of the Philippines and U.S. interests", Congressional Research Service, 5 April 2012; Michael Richardson, "Beijing turns up heat in S. China Sea", *Straits Times*, 6 June 2011; Carlyle A. Thayer, "China-ASEAN: Some Progress, along with Disagreement and Disarray", Center for Strategic and International Studies, 1999.

[252] Crisis Group interview, DFA official, Manila, October 2011. "Signing of the Manila Declaration on board the USS Fitzgerald in Manila Bay, Manila, Philippines", U.S. Department of State, Washington DC, 16 November 2011.

[253] The Aquino administration worked hard for Clinton's visit, and asked for reaffirmation of the mutual defence treaty at the first "2+2" meeting between the two countries' top defence and foreign policy officials in April 2012. Crisis Group interviews, Western diplomat, Manila, October 2011 and May 2012.

[254] For comments to the press, Presentation of the Order of Lakandula, Signing of the Partnership for Growth and Joint Press Availability with Philippines Foreign Secretary Albert Del Rosario, 16 November 2011, at www.state.gov/secretary/rm/2011/11/177234.htm.

[255] "Statement of Foreign Affairs Secretary Albert F. Del Rosario regarding the Philippines-U.S. Mutual Defense Treaty", DFA, 9 May 2012.

Washington and Manila do, however, share the objective of bolstering the Philippine military to achieve "a minimum credible defence posture".[256] During President Aquino's June 2012 visit to Washington, the U.S. furthered its commitment to improving the Philippines' maritime defence and intelligence capabilities, which has been the focus of increased assistance since 2011.[257] The Pentagon then announced that it would provide Manila with a land-based radar system to track ships along its coastline.[258] Many observers describe this assistance as being targeted at China and linked to the U.S. rebalancing towards the Pacific.[259] Yet, even with enhanced access to U.S. surveillance data, the military still lacks the equipment and technical expertise to make use of it.[260] As a Western diplomat described, the Philippines simply has "no position of strength vis-à-vis China".[261]

The renewal of the alliance is likely to be very useful to the U.S. as it reallocates military resources to the Asia-Pacific. Despite the closure of American bases in the country in 1992, the 1998 Visiting Forces Agreement and the 2002 Mutual Logistics Support Agreement make it comparatively easy for the U.S. to station forces and materiel in the Philippines.[262] Discussions between Washington and Manila have centred on a number of key issues. These comprise U.S. access to civilian airports, including those at the former Clark U.S. airbase and Ilocos on the northern island of Luzon, for refuelling and repair;[263] more frequent ship visits; prioritising joint exercise and training activities related to maritime security;[264] and increasing temporary rotation of U.S. troops in the country.[265]

Two factors may constrain Philippine efforts to deepen and expand bilateral military cooperation. First, President Aquino must contend with domestic opposition from the left to any U.S. presence, as well as widespread public discomfort with relying too much on Washington.[266] Second, there are signs that his government is frustrated with the many requests from the Obama administration and what it has so far received in return.[267] Although military assistance has doubled from $15 million in 2011 to $30 million in 2012, Foreign Affairs Secretary Del Rosario complained that a declining percentage of the foreign military financing for East Asia and the Pacific is going to his country each year.[268] However, during President Aquino's June 2012 visit to Washington, he declared that the Philippines and the U.S. had reached "a new juncture" in their relations as both sides expressed their desire to enhance security and defence cooperation, and seemed satisfied with discussions with President Obama and Secretary of State Clinton.[269]

It is unclear whether the Aquino administration feels that enhanced military cooperation with the U.S. will help advance its proposals for a solution to the South China Sea

[256] Joint statements have explicitly mentioned this goal. For example, "Joint statement of the Philippines-United States ministerial dialogue", 30 April 2012.
[257] "Obama standing by PH", *Philippine Daily Inquirer*, 10 June 2012.
[258] "Pentagon: US to equip Philippines with powerful radar", *Philippine Daily Inquirer*, 14 June 2012.
[259] Philippine government officials and academics emphasise that modernisation of their armed forces has been needed for a long time, regardless of growing concerns about Chinese actions in the South China Sea. Crisis Group interview, DFA and DND officials and academics, Manila, October 2011 and May 2012. They stress that procurement of new equipment from the U.S. was already underway and that the shift in the military's role from internal security to external territorial defence was envisioned before the Reed Bank incident in March 2011. The Aquino government's six-year internal peace and security plan, "Oplan Bayanihan", was written in fall 2010 and forecast that the Armed Forces of the Philippines would shift to territorial defence from 2013 to 2016.
[260] Crisis Group interviews, Western diplomats and Manila-based journalist, Manila, May 2012.
[261] Crisis Group interview, Manila, May 2012.
[262] No new agreements will need to be signed for the U.S. to establish a greater military presence. As a Manila-based journalist commented, "the entire Philippines is a military base". Crisis Group interview, Manila, May 2012.
[263] Crisis Group interview, Manila-based journalist, Manila, May 2012.
[264] The joint Balikatan military exercises were held in 2012 in an area bordering the South China Sea. "Balikatan combined exercise returns to the Philippines", U.S. embassy, Philippines, 7 March 2012.
[265] There are rumours in Manila that the U.S. has asked the Aquino government if the marines now stationed in Darwin, Australia, can be rotated to the Philippines for part of the year. Crisis Group interviews, security analyst and Western diplomat, Manila, May 2012.
[266] For an example of public sentiment, see "Carrying a small stick", *Manila Standard Today*, 11 May 2012.
[267] Crisis Group interviews, Western diplomats, Manila, May 2012. Another indication of Manila's disappointment regarding what has materialised from U.S. support is evident in U.S. Defense Secretary Panetta's denial of the Philippines' request that the second coast guard cutter be transferred with more military hardware intact.
[268] Numbers are based on fiscal years. See "Common challenges, new developments", Remarks by the Hon. Albert F. del Rosario, Secretary of Foreign Affairs of the Republic of the Philippines, Public Lecture at The Heritage Foundation, Washington DC, 2 May 2012.
[269] Benigno Aquino III, Washington DC, "Remarks of President Aquino at the lunch hosted by U.S. Secretary of State Hillary Rodham Clinton", 9 June 2012; and "Obama standing by PH", op. cit.

dispute. In late 2011, there was some confidence in Manila that a stronger line was putting China on the defensive and resulting in fewer incidents at sea.[270] Secretary Clinton's visit to the Philippines in mid-November 2011 also suggested that both capitals believed greater attention to the alliance and forceful rhetoric would yield dividends when the region's leaders assembled at that month's high-level ASEAN meetings and the East Asia Summit, which President Obama was attending for the first time.[271]

The Scarborough Shoal standoff may have changed Manila's strategic calculus. Since late 2011, some analysts have suggested that closer cooperation with the U.S. may lead the Philippines to be more forthright in defending its claims in the South China Sea.[272] The standoff, particularly the use of the warship to confront the Chinese fishing boats, was not deliberate brinkmanship by Manila.[273] It was, however, read that way by some regional players, including China. Subsequently, other ASEAN members quietly asked the Aquino government to tone down its rhetoric.[274] Any perception that the Philippines is promoting U.S. strategic ambitions in the Asia-Pacific may in fact limit its room for manoeuvre with China. It also makes its ASEAN partners uncomfortable.

B. China's Perspective on the U.S. Role

China resents regional countries' inclusion of the U.S. in the South China Sea issue, which it sees as a tacit attempt at containing its rise.[275] As a Chinese expert put it:

> Some countries are emotional about China's development and made use of the U.S.'s plan to return to Asia by making a fuss about the South China Sea disputes. The U.S. is on a gradual decline and China is on the rise … that's why they are doing whatever they can to contain China.[276]

These views are widely shared by mainstream academics and officials; a moderate scholar even predicted, "in the next ten years, the South China Sea will continue to be a chip by the U.S. to contain China".[277] Some believe that Washington is seeking to change the regional power structure that Beijing has tried hard to insulate from U.S. dominance over the last two decades.[278] Hardliners and nationalists are angered by this; some have even urged the Chinese government to launch a war and "teach the small South East Asian countries a lesson".[279]

Facing an increased U.S. presence in the region, China's goals are threefold: deepening claimant countries' economic dependence on China; keeping them from developing the disputed areas; and avoiding outright confrontation with the U.S.[280] A government adviser described Beijing's response to the U.S. as "defensive": not challenging it but continuing to develop China's overall strength.[281] In the latter half of 2011 until early 2012, China made a tactical shift to a more moderate approach on South China Sea issues.[282] Wu Dawei, a senior diplomat, noted that Premier Wen Jiabao's work report on the National People's Congress in March 2012 was "the first time that Beijing put relations with neighbours as one of its top foreign policy priorities".[283] China intended to focus more on diplo-

[270] Crisis Group interviews, senior DFA official, Manila, October 2011; senior diplomat from an ASEAN country, Manila, October 2011.
[271] Crisis Group interviews, Western diplomats, Manila, May 2012.
[272] M. Taylor Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights", in "Cooperation from Strength", op. cit., p. 47. Some Philippine government officials feel these fears are misplaced, pointing to the two U.S. coast guard vessels that were stripped bare before being handed over. Crisis Group interview, DFA official, Manila, May 2012.
[273] Crisis Group interviews, Western diplomats and senior DFA official, Manila, May 2012. See also Patrick M. Cronin, "Muddy Waters", *The New York Times*, 24 April 2012.
[274] Crisis Group interviews, Singapore, June 2012; senior Indonesian military officer, Jakarta, May 2012; Western diplomats, Manila, May 2012. This is notable because in April 2011, Philippine officials were saying that Hanoi was encouraging Manila to pursue closer ties with Washington. Crisis Group interview, DFA official, Manila, April 2011.
[275] Crisis Group interview, Beijing, May 2012.
[276] Ibid.
[277] Crisis Group interviews, Beijing, July, August, September 2011 and May 2012.
[278] Crisis Group interviews, Beijing, July, August, and September 2011.
[279] For example, see "当前是在南海动武的良机", *环球时报* ["Now is the time to use force in the South China Sea", *Global Times*], 27 September 2011; "强烈要求中国对菲律宾动武，教训他让他知道南海是谁的", *天涯社区* ["Strongly urge China to use force against the Philippines, teaching the country to whom the South China Sea belongs", *Tianya Club*], 21 July 2011, www.tianya.cn/publicforum/content/worldlook/1/368613.shtml; "中国要是再不教训东南亚小国，就甭想收回台湾了，因为台湾瞧不起大陆", *搜狐焦点网* ["If China doesn't teach the small South East Asian countries some lessons, it will not take over Taiwan, because Taiwan will look down upon the mainland", *Sohu Focus*], 30 June 2011, http://bjmsg.focus.cn/msgview/4123/1/213450254.html.
[280] Crisis Group interview, Beijing, May 2012.
[281] Crisis Group interview, Beijing, May 2011.
[282] See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 32-36.
[283] The remark was given by Wu, Chinese special representative on Korean Peninsula affairs and a member of the Chinese People's Political Consultative Conference. "Focus turns to good neighbourly relations", *China Daily*, 8 March 2012.

matic engagement, investment and trade with neighbouring countries.[284]

But the tactical shift was short-lived, coming to an end with the 2012 Scarborough standoff. In addition to its assertiveness, Beijing has become more reactive, pushing back on perceived provocations to an extent that the other party loses some of the control it had in the disputed area, while China claims that it did not trigger the incident.[285] A senior Chinese foreign ministry official said that the Scarborough Shoal incident was a provocation by the Philippines based on Manila's misperception that the South China Sea dispute had reached a "now or never" stage, which led it to adopt hasty and more aggressive actions.[286] The official blamed the Philippine secretary of foreign affairs, Albert F. Del Rosario, for "hijacking the country's foreign policy" with "wrong judgment".[287]

Beijing saw the incident as allowing it to take full advantage of a mistake by the Philippines to have used force first (by deploying the navy), justifying a robust response to demonstrate China's willingness to defend its claims to a domestic audience.[288] After the incident, Beijing announced that it would continue dispatching administrative vessels to "serve" Chinese fishermen in the Scarborough Shoal – an indication of intent to increase law enforcement presence in disputed areas. This has weakened de facto Philippine control over the area.[289]

In response to warming U.S.-Vietnam relations, Beijing has made efforts to further engage Vietnam through party-to-party talks and keep their disagreements behind closed doors.[290] This had diminished tensions by late 2011 but by 2012 they rose again. China bristled at Defense Secretary Panetta's historic visit to Cam Ranh Bay in June 2012 and other signs of U.S.-Vietnam military cooperation,[291] and firmly objected to the Law of the Sea passed by the Vietnamese legislature later that month.[292]

C. Involvement of Other Non-claimants

Vietnam and the Philippines have also turned to countries like Japan, South Korea and Australia for support. So far this has produced only modest results. In late September 2011, President Aquino visited Japan and secured support for training and equipping the Philippine coast guard.[293] The two countries recognised the need to resolve disputes in the South China Sea through a rules-based regime and the importance of compliance with UNCLOS.[294] During the state visit of South Korean President Lee Myung-Bak to Manila in late November 2011, President Aquino requested assistance to modernise the military.[295] The Philippines has also sought the support of Australia; in May 2012, Foreign Affairs Secretary Del Rosario announced that the military was expecting to receive from Australia search-and-rescue vessels and training for its personnel.[296]

As part of its "three no's" policy to avoid getting too close to one power, Vietnam has also looked to India and Russia. In September 2011, it signed an agreement with India to jointly explore disputed waters[297] and in the following month it announced a defence cooperation initiative with Japan.[298] Hanoi has been trying to entice the Russians to enter the disputes by inviting them to engage in oil and

[284] Ibid.
[285] In Scarborough Shoal and a few other cases, China engaged in a policy of reactive assertiveness, characterised by strong reactions to provocations by other parties, rather than being the instigator of incidents in disputed areas. This forces the other party to lose part of the control they had. For example, China has largely deployed maritime law enforcement vessels, instead of the navy, to respond to incursions in its claimed territorial waters.
[286] Crisis Group interview, Beijing, June 2012.
[287] Ibid.
[288] Crisis Group interviews, Beijing, May 2012.
[289] This was termed the "Huangyan Island Model" by some Chinese experts. Crisis Group interviews, Chinese analysts, Beijing, June 2012; "外交部：中方两艘公务船完成泻湖撤出黄岩岛" ["MFA: two Chinese official vessels completed operation inside the lagoon, withdrew from the Scarborough Shoal"], *China News Net*, 6 June 2012; "China patrol ships reach South China Sea reef", Xinhua News Agency, 1 July 2012; Alexis Romero, "25 Chinese boats still in Panatag", *The Philippine Star*, 7 July 2012.
[290] See Section II. A "Vietnam".
[291] "Beijing wary over deepening US-Vietnam ties", *Global Times*, 5 June 2012.
[292] See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit. For more details about Vietnam's Law of Sea and China's retaliation, see Section II.A "Vietnam".
[293] "Japan, Philippines agree to step up naval cooperation", Reuters, 28 September 2011. Japanese diplomats deny that this assistance has anything to do with China. Crisis Group interview, Japanese embassy, Manila, October 2011.
[294] "Japan-Philippines joint statement on the comprehensive promotion of the 'strategic partnership' between neighbouring countries connected by special bonds of friendship", 27 September 2011, at www.kantei.go.jp/foreign/noda/diplomatic/201109/27philippines_e.html.
[295] President Aquino's statement on the state visit of President Lee Myung-bak of South Korea, 21 November 2011, at www.gov.ph/2011/11/21/president-aquino%E2%80%99s-statement-on-the-state-visit-of-president-lee-myung-bak-of-south-korea-november-21-2011/.
[296] "Japan, SoKor, Australia to help PH improve defence capability – DFA", *Philippine Daily Inquirer*, 20 May 2012.
[297] "ONVG Videsh Limited pulls out of block in South China Sea", *The Times of India*, 16 May 2012.
[298] "Japan, Vietnam sign memo on defense cooperation enhancement", *The Mainichi Daily News* (online), 25 October 2011

gas exploration,[299] and sought stronger ties to Australia, as a key supporter of Canberra's successful bid for East Asia Summit membership.[300] By increasing the number of nations with a stake in a peaceful South China Sea, Vietnam hopes to force Beijing to recalculate the cost of future aggression.[301]

V. MEASURES TO REDUCE RISKS

A. THE LAW OF THE SEA AND INTERNATIONAL ARBITRATION

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

The legal claims in the South China Sea are extremely complex. The different countries have a wide range of factors supporting their arguments, making it hard to determine their relative strengths.[302] This affects the delimitation of maritime zones, since sovereignty over land determines ownership of the surrounding waters.

Despite this, claimants could significantly reduce tensions if they were to agree on the size of the maritime zones surrounding each land feature, regardless of ownership, and then promote joint development or administration of areas where potential claims overlap. As of mid-2012, Vietnam, Malaysia and the Philippines seemed to consider that the disputed islands were not capable of sustaining habitation or economic activity, and thus should not receive an EEZ or continental shelf.[303] This potentially reduces the size of the disputed areas, and could make it easier to reach agreement on joint development. China, while ambiguous, seems to consider that many of the is-

[299] Crisis Group interview, Hanoi, May 2011. "Gazprom expands in Vietnam after gaining two off-shore blocs", Bloomberg, 5 April 2012.
[300] Le Hong Hiep, "Australia and Vietnam deepen their strategic relationship", East Asia Forum, 21 March 2012.
[301] Crisis Group interview, Hanoi, May 2011.

[302] Disputes to sovereignty over land are determined by customary international law, and examine factors such as a documented history of discovery, control, administration, and others. While first discovery and naming or mapping of the islands is important, in practice current or continuous occupation or administration of a feature has been a prominent criterion.
[303] In their joint submission to the UN Commission on the Limits of the Continental Shelf, Vietnam and Malaysia both measured their EEZs/continental shelf from their coastlines, rather than from the disputed islands, suggesting that they did not believe the islands to be entitled to an EEZ/CS claim. The Philippines also has drawn its EEZ from its coastline and, in statements related to the Scarborough Shoal standoff, declared that the area is not an island. "Philippine position on Bajo de Masinloc and the waters within its vicinity", Philippine DFA, 18 April 2012.

lands are entitled to additional maritime zones.[304] It has also refused to clearly renounce potential "historical rights" within its nine-dashed line, a claim that would likely be unsupported by international law and is unacceptable to its neighbours.[305]

China has specifically rejected the mechanisms for international arbitration and adjudication provided by UNCLOS upon ratification, citing its right in the convention to opt out of such procedures.[306] During the Scarborough Shoal standoff, the Philippines invited China to join it in submitting their dispute to the ITLOS.[307] It declined on the grounds that it would not accept the presence of a third party in the search to solve disputes over the South China Sea.[308] The Philippines may still submit the dispute unilaterally, but whether it has the legal basis to do so remains uncertain.[309] Manila is eager to pursue this course because as Foreign Affairs Secretary Del Rosario explained: "A diplomatic solution would be desirable, but a legal solution would be durable".[310] There is no guarantee, however, even if ITLOS takes up the dispute, that it would rule in the Philippines' favour. Nevertheless, some government officials are cautiously optimistic and believe that a judicial ruling would have implications for Beijing's territorial claims and would put China on the defensive.[311] As one of them said, "we want an international forum to say whether we can trust the nine-dashed line".[312]

B. ASEAN AND THE CODE OF CONDUCT

ASEAN forums are the primary multilateral platforms for discussing the South China Sea, yet their achievements have been modest.[313] The 1992 Declaration on the South China Sea and the 2002 Declaration on the Conduct of Parties in the South China Sea set out basic principles to avoid disputes but do not provide any mechanisms to resolve them.[314] Both documents envisioned a code of conduct to promote further peace and stability in the region.[315] Following a unified statement by ASEAN in response to China's occupation of Mischief Reef, China and the Philippines attempted to elaborate a bilateral code of conduct in 1995, but it quickly broke down.[316] Progress on the regional code of conduct since then has been painfully slow.[317]

[304] In a *Note Verbale* to the Commission on the Limits of the Continental Shelf, China claimed that its "Nansha Islands [the Spratlys] are fully entitled to Territorial Sea, Exclusive Economic Zone and Continental Shelf".

[305] China's domestic law on its ratification of UNCLOS stated that the convention would not affect its historical rights. Some Chinese scholars also assert that these rights in the South China Sea go beyond the possible territorial waters and EEZs that could be drawn from the islands. Beckman, "China, UNCLOS and the South China Sea", op. cit., p. 12. However, UNCLOS does not generally recognise historical rights as having any legal basis. Robert Beckman, "Geopolitics, International Law and the South China Sea", 2012 Tokyo Plenary Meeting: The Trilateral Commission, 21 April 2012.

[306] "Declaration of state parties relating to settlement of disputes in accordance with Article 298-China", International Tribunal for the Law of the Sea, 25 August 2006.

[307] The Philippines has long been more inclined to see a legal resolution of the disputes. See Liselotte Odgaard, "The South China Sea: ASEAN's Security Concerns About China", *Security Dialogue*, vol. 34, no. 1 (2003), p. 17.

[308] See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., pp. 31-32.

[309] For an analysis of how unilateral submission could work, see Robert Beckman, "UNCLOS Dispute Settlement Regime and the South China Sea Disputes", Draft presented at the 2011 International Law Association Asia-Pacific Regional Conference, Taipei, Taiwan, 29 May – 1 June 2011.

[310] "Common challenges, new developments in the Philippines-US alliance", op. cit.

[311] Group interview, senior DFA official, Manila, October 2011. Few in the diplomatic community in Manila understand the Philippines' legal approach. Crisis Group interviews, various diplomats, Manila, 23-25 May 2012. "Philippines to bring shoal dispute to int'l body", *The Philippine Star*, 21 April 2012.

[312] Crisis Group interview, senior DFA official, Manila, 25 May 2012.

[313] A scholar asserted that ASEAN cannot solve problems but can manage them. Crisis Group interview, Hanoi, May 2011.

[314] ASEAN Declaration on the South China Sea, signed in Manila, the Philippines, 22 July 1992, point 4; Statement by the ASEAN Foreign Ministers on the Recent Developments in the South China Sea, 18 March 1995, and Declaration on the Conduct of Parties in the South China Sea, signed in Phnom Penh, Cambodia, 4 November 2002.

[315] Ibid.

[316] In this code of conduct, the two countries agreed to avoid taking potentially destabilising and provocative actions in waters surrounding the Spratlys. Ian Storey, "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute", *Contemporary Southeast Asia*, vol. 21, no. 1 (April 1999), pp. 95-118. Manila declared that Beijing had violated the code by undertaking construction and sending warships to the region. Christopher C. Joyner, "Problems, Policies, and Prospects for Diplomatic Accommodation", in Ranjeet Singh (eds.), *Investigating Confidence Building Measures on the Asia Pacific Region*, Report no. 28, Henry L. Stimson Center (1999).

[317] Prior to reaching a draft, progress on the code had been complicated by the unwillingness of members to accede to the Philippines' demand that the statement address the behaviour of parties in disputed areas. Crisis Group interview, Washington DC. June 2012; Carlyle A. Thayer, "Sovereignty Disputes in the South China Sea: Diplomacy, Legal Regimes and Realpolitik", Paper presented to the International Conference on Topi-

When they signed the 2002 Declaration of Conduct, ASEAN members agreed that the organisation should be involved in the South China Sea issue.[318] They also stated that the declaration was the first step towards a code of conduct, thus providing a basis for a role in the South China Sea. ASEAN also became increasingly involved because of the creation of new forums such as the ASEAN Regional Forum (ARF) and the East Asia Summit (EAS), which bring together many countries from outside the region that are closely watching the dispute.[319] In addition to increasing diplomatic pressure on China, these forums also support Hanoi's and Manila's harder stances.[320] At the same time, some ASEAN members such as Indonesia, which chaired the organisation in 2011, are uncomfortable with outside states' deep involvement and want to ensure the regional body remains central to dispute resolution efforts. In Jakarta's view, the best way to do so is to make progress on a code of conduct to demonstrate that it is the most appropriate venue for addressing the South China Sea issue.[321]

Cambodia, which took over from Indonesia as chair in 2012, appears uninterested in advancing this.[322] Phnom Penh has failed to demonstrate leadership or separate its national interests from those of ASEAN.[323] China's influence over Cambodia also contributed to ASEAN's inaction during the Scarborough Shoal standoff, which exposed the deep divisions among its members. In a May 2012 emergency meeting over the standoff, Cambodia blocked the organisation's attempt to release a statement encouraging China and the Philippines to exercise restraint.[324]

At the July 2012 foreign ministers' meeting in Phnom Penh, ASEAN failed to produce a customary communiqué – for the first time in ASEAN's 45-year history.[325] Both Vietnam and the Philippines insisted on including the incident in the communiqué, but Cambodia reportedly walked out of the room even after the two countries had agreed to a compromised version of the statement.[326] This debacle has also set back progress on the code of conduct, as it revealed that China is still unwilling to forego its preference for bilateral negotiations. New multilateral discussions between ASEAN and China on the draft code of conduct are scheduled for September 2012.[327]

China is well aware of ASEAN's internal politics and can choose to exploit them as it did in July 2012. Previously, as part of a softening in its South China Sea approach,[328] it had been more willing to engage with the organisation and, in 2011's mid-year ASEAN summits, agreed to vague guidelines for the implementation of the Declaration of Conduct. According to Indonesian diplomats, China suggested moving forward with the declaration in late 2010, which contrasted sharply with its previous stance.[329] Yet there are limits to the softer line, and Beijing still prefers to abide by its strategy of "treat each case differently, and defeat each one separately"[330] in handling disputes in the

cal Regional Security Issues in East Asia St. Petersburg State University, St. Petersburg, Russian Federation, 6-7 April 2012.

[318] Without consensus, the issue would not have even been placed on the agenda. Crisis Group interview, Jakarta, June 2011.

[319] Some diplomats in the region believe these fora are also pulling ASEAN deeper into an increasingly "hot" rivalry between China and the U.S. Crisis Group interviews, Singapore, June 2012.

[320] As discussed, in 2010 Vietnam used the ARF to bring in the U.S. and Malaysia reportedly blamed Vietnam for the heightened tensions between China and ASEAN. In 2011, with Vietnam stepping aside after playing the leading role the previous year, the Philippines was alone in pushing for a harder line against China among the South East Asian countries and felt it had more support from the wider ARF membership than from the other nine members of the regional organisation. Crisis Group interviews, Western diplomats, Manila, October 2011. Yet DFA officials in Manila said they understood Vietnam could not continue to be so assertive as it had "come on too strong" in 2010. Crisis Group interview, senior DFA official, Manila, October 2011; Crisis Group interview, Hanoi, July 2011.

[321] Crisis Group interview, Indonesian diplomat, Jakarta, January 2011. Indonesia views itself as neutral (as a non-claimant) and therefore able to bring China and ASEAN together. Crisis Group interview, former senior government official, Jakarta, February 2011.

[322] Indonesia made behind-the-scenes efforts to dissuade Phnom Penh from being too partisan to Beijing. But Cambodia is a close ally of China, which recently extended $19 million in defence assistance to Phnom Penh. "Asean to 'intensify efforts' on China sea disputes", AFP, 4 April 2012; "China gives Cambodia millions before meet", *The Phnom Penh Post*, 29 May 2012. A senior ASEAN diplomat described how Cambodia has shut off lower levels of communication within ASEAN so that maritime issues had to be raised through top level political leadership, therefore slowing down discussions. Crisis Group interview, Manila, May 2012; Crisis Group interview, Washington DC, June 2012.

[323] Crisis Group interview, Washington DC, June 2012.

[324] Ibid.

[325] "Key players holding ASEAN hostage", *The Nation*, 16 July 2012; "ASEAN stumbles in Phnom Penh", *Asia Times Online*, 17 July 2012.

[326] "Asian leaders at regional meeting fail to resolve disputes over South China Sea", *The New York Times*, 12 July, 2012.

[327] "ASEAN stumbles in Phnom Penh", *Asia Times Online*, 17 July 2012.

[328] See Crisis Group Report, *Stirring up the South China Sea (I)*, op. cit., p. 32.

[329] Crisis Group interview, senior Indonesian diplomat, Jakarta, May 2011; Chair's Statement, 18th ASEAN Regional Forum, Bali, Indonesia, 23 July 2011, paragraph 11.

[330] In Chinese "分别对待，各个击破", which appears in various Chinese articles on the South China Sea to describe China's strategic approach. "郁志荣: 设三沙市意在用实际行动教训

South China Sea. Beijing has consistently opposed ASEAN meeting behind closed doors on the issue, and in September 2011 attempted to derail a meeting of regional maritime legal experts in Manila and successfully dissuaded Laos and Cambodia from attending.[331]

U.S. support may also affect discussions on a code of conduct. The Obama administration has been eager to strengthen ties to ASEAN to promote greater cohesion among South East Asian states and encourage them to assert their independence in the face of growing Chinese influence.[332] At the July 2012 ARF, Secretary of State Hillary Clinton stressed the importance of a rules-based framework and encouraged ASEAN and China to make meaningful progress toward finalising a code of conduct.[333] In addition to repeatedly emphasising their support for this code, diplomats have also been active behind the scenes: at the May 2012 ASEAN-U.S. dialogue, the U.S. urged its partners to move forward with the code of conduct.[334] Just days later at a meeting of ASEAN defence ministers in Phnom Penh, it provided input on what it felt would be helpful to include in the code.[335]

Although ASEAN members generally want the U.S. present in the region and welcome its support, there are concerns about the durability of U.S. engagement; as a Malaysian scholar put it, "we're not sure about the U.S. commitment to South East Asia, so we can't put all of our eggs in one basket".[336] ASEAN countries are anxious about U.S. support being "Obama-specific";[337] there is a perception that it has been "dependent on personalities", especially Secretary of State Hillary Clinton, who will leave her post at the end of 2012.[338] At the same time, the U.S. is aware of the limits of ASEAN's influence on regional security and has been disappointed by the slow progress the organisation has made on the South China Sea issue.[339]

Even if China and ASEAN can agree on a code of conduct, it will at best help manage the dispute by getting all sides to comply with a set of legally binding rules.[340] No one expects it to resolve the territorial claims. This is a source of friction between the Philippines and the rest of the organisation. Manila submitted a draft code of conduct, which it hoped would be treated as a working draft, but its language and content were, as a senior ASEAN diplomat noted, "very tough".[341] The Philippines had insisted that such a code comprise not only areas for cooperation,[342] but provisions on dispute settlement and clarification of disputed and non-disputed areas, as per its proposed zone of peace, freedom, friendship and cooperation.[343] Philippine intransigence had been a source of frustration within ASEAN, as many believed Manila was holding up the drafting process, but there was some sympathy and support behind closed doors for the ideas it proposed.[344]

C. Joint Management of Resources

Cooperation on resource management in the South China Sea has been proposed by experts as a way to de-escalate tensions.[345] By addressing the two major resources at the core of current disputes, energy and fish, joint development and preservation allow claimants to share the wealth of the sea. Since joint management requires claimants to put aside, not renounce, their territorial and maritime claims in favour of peaceful collaboration, it can be a practical way to shelve disputes for tangible benefits. However, the failure of joint hydrocarbon development, unilateral fishing bans and increased military and law enforcement vessels patrolling the sea signal that sovereignty claims remain more important than resource sharing. As a Philippine official explained, until the sovereignty issues are resolved, "anything on joint development is dead in the water".[346] Experts have also suggested a fisheries agreement between claimant countries to allow their fishermen to enter disputed waters and protect the stock,[347] but the prospect of such cooperation remains distant due to a lack of interest.[348]

The only recent attempt at joint development was the failed Joint Marine Seismic Undertaking (JMSU) between Chinese, Philippine and Vietnamese state oil companies. Since then, both the Philippines and Vietnam seem more tempt-

越南", *環球時報* ["Yu Zhirong: Establish Sansha City to teach Vietnam a lesson", *Global Times*], 25 June 2012.

[331] Crisis Group interviews, Manila, October 2011.

[332] Crisis Group interviews, U.S. diplomats, November 2010 and May 2011.

[333] "Remarks by Secretary Clinton to the ASEAN Regional Forum", Department of State, 12 July 2012.

[334] Crisis Group interview,Washington DC, June 2012.

[335] Josh Rogin, "Inside America's quiet diplomacy on the South China Sea", *Foreign Policy* (online), 8 June 2012.

[336] Crisis Group interviews, Kuala Lumpur, May 2011.

[337] Ibid.

[338] Ibid; Crisis Group interview, Singapore, June 2012.

[339] Crisis Group interview, Washington DC, June 2012.

[340] Crisis Group interview, Hanoi, July 2011.

[341] Crisis Group interview, Manila, May 2012.

[342] Since the 1992 declaration, cooperation has been envisioned in five areas: safety of maritime navigation and communication; protection against environmental pollution; coordination of search and rescue operations; combating piracy and armed robbery; and collaboration against drug trafficking.

[343] Statement of President Benigno Aquino III on the Declaration on the Conduct of Parties in the South China Sea, 4 April 2012.

[344] Crisis Group interviews, Manila, May 2012.

[345] Crisis Group interviews, Haikou, November 2012.

[346] Crisis Group interview, Manila, October 2011.

[347] M. Taylor Fravel, "How to defuse South China Sea Conflicts", *Wall Street Journal*, 26 June 2012.

[348] Crisis Group interview, Hainan, November 2011.

ed to pursue unilateral exploration and suffer the political consequences. In May 2012, however, President Aquino indicated that he would like the whole region to benefit from the resources in areas claimed by the Philippines; whether his statement was intended to endorse CNOOC's potential involvement in exploration in natural gas-rich Reed Bank is unclear.[349] The involvement of Chinese oil companies could mitigate the risk of Beijing responding even more aggressively than it did in March 2011 by sending in China Marine Surveillance ships.[350] Although Philex proposed three-party cooperation with CNOOC and a UK-based company, Forum Energy,[351] a Chinese analyst said Beijing will likely reject such a plan because it wants joint development in disputed areas to involve only claimant states.[352]

Joint development is unlikely to take place due to complications inherent in negotiating cost and resource sharing arrangements amid high political tension.[353] This lack of progress has spurred some claimant states to look for partners outside the region, to Beijing's strong annoyance.[354] Since 2007, the Chinese government has repeatedly warned oil companies that continued cooperation with Vietnam in the South China Sea would affect their business with China.[355] Some oil companies have already moved away from Vietnam and the country has had increasing problems convincing other large international oil companies to invest.[356] As a foreign energy analyst in Vietnam explained, "when push comes to shove, none of the foreign oil and gas companies are going to risk their business in China for something small in Vietnam".[357]

The involvement of non-claimants in joint exploration in the South China Sea also feeds Beijing's fears of containment.[358] A Chinese analyst described India's joint exploration with Vietnam as a move to counter China's relations with Pakistan and the border dispute between the two countries, and Russia's gas deal with Vietnam as an effort to counterbalance China's energy presence in Central Asia.[359] In April 2012, Russia's natural gas producer, Gazprom, and PetroVietnam agreed to explore two blocks on the Vietnamese continental shelf.[360] In response, a Chinese foreign ministry spokesperson said that "China hoped companies from countries outside the South China Sea region would respect and support efforts by directly concerned parties in resolving disputes through bilateral negotiations".[361]

As for fishing disputes, which are at the front lines of underlying sovereignty disputes in the South China Sea, agreements between claimant countries on protecting stocks could help ensure the abundance of the fish and reduce the risk of conflicts like the Scarborough Shoal standoff in the future.[362] However, reluctance to at least temporarily suspend claimed maritime rights seems to have obstructed further attempts on possible fisheries agreements like those between China and Japan and China and South Korea.[363]

[349] "Aquino: Philippines willing to share resources but not territory", *Philippine Daily Inquirer*, 17 May 2012.
[350] As South China Sea expert Dr Ian Storey told Reuters, "They [the Chinese] could adopt the same tactics as they did [in 2011] and harass the drilling vessels, or they might even take a stronger line against them and send in warships". "Conflict looms in South China Sea oil rush", Reuters, 27 February 2012.
[351] Crisis Group interview, Beijing, June 2012.
[352] Crisis Group interviews, Beijing, June 2012. Although Forum Energy is primarily held by Philippine shareholders, Chinese analysts see it as a British company.
[353] Crisis Group interview, Kuala Lumpur, May 2011.
[354] Most claimant states lack the technology and funds to explore and drill in the South China Sea. Crisis Group interviews, Beijing, May 2012.
[355] "China warns some oil companies on work with Vietnam, U.S. says", Bloomberg, 16 July 2009.
[356] In 2008, ConocoPhillips abandoned exploration work on Block 5-3, and in 2007, BP terminated its lease on Block 5-2; both blocks are under disputed waters. Ibid; Crisis Group interviews, Hanoi, May and July 2011.
[357] Crisis Group interview, Hanoi, July 2011. For more discussion see Section III. A "Hydrocarbons".
[358] Crisis Group interviews, Beijing, May 2012.
[359] Crisis Group interview, Beijing, May 2012.
[360] ONGC Videsh Ltd had also signed onto joint exploration with Vietnam of two disputed blocks in June 2006 but pulled back in 2011 and 2012 after failing to discover hydrocarbons. "ONGC Videsh Limited pulls out of block in South China Sea", op. cit. According to energy analysts, the blocks to be explored by Gazprom and PetroVietnam are not in disputed areas. Crisis Group interviews, Beijing, May 2012.
[361] "Foreign ministry spokesperson Liu Weimin's regular press conference on 10 April 2012", Chinese foreign ministry, 10 April 2012, www.fmprc.gov.cn/eng/xwfw/s2510/t923053.htm.
[362] Fravel, "How to defuse South China Sea conflicts", op. cit.
[363] The Fishery Agreement between the Governments of the People's Republic of China and the Republic of Korea was signed in November 2000. It did not require agreement on maritime boundaries as a precondition of managing the fishing stock in disputed waters between the two countries. "中华人民共和国政府和大韩民国政府渔业协定" ["The fisheries agreement between the People's Republic of China and the Republic of Korea"], Chinese foreign ministry website, www.fmprc.gov.cn/chn/pds/ziliao/tytj/tyfg/t556669.htm. The fisheries agreement between China and Japan, signed in July 2007, permitted fishermen to enter traditional fishing grounds into disputed waters designated as "Provisional Measures Zone". "中日渔业协定及其管理措施" ["China-Japan fisheries agreement and regulatory measures"], Chinese agriculture ministry, 16 March 2012, www.hbhyzj.moa.gov.cn/swyye/swyyxz/201203/t20120316_2511159.htm.

VI. CONCLUSION

The claimants to the South China Sea are increasingly driven by domestic economic and political imperatives that are slowly eroding the longstanding restraints on conflict in the region. Vietnam and the Philippines, in particular, are experiencing rising demands for hydrocarbon and fisheries exploitation, which push their survey and fishing vessels farther out into disputed areas. Rising nationalism, and the unwillingness of claimant countries to appear to their domestic audiences as compromising their territorial claims, slowly nudge them towards a position of greater confrontation with China.

Although major conflict is unlikely – Beijing carefully avoids using force to assert its claims and other countries do not want to engage in armed conflict with an important economic partner and major military power – tensions continue to escalate while the prospects of resolution seem to be diminishing. With political resolution to the disputes in sight, China and most South East Asian claimant countries have continued to expand and modernise their navies and coast guards. The regional build-up of arms increases the likelihood of unintentional escalation, and the aggressive use of law enforcement vessels to assert claims leads to more frequent contact with civilian vessels and other coast guards. Yet despite efforts to bolster their defence forces, claimant countries are no match for China, and are engaging in force modernisation and seeking enhanced security ties with the U.S. Recent actions taken by the Philippines to align its defence postures more closely with Washington, and Vietnam's efforts at bringing in other regional powers, are perceived by China as attempts to contain its rise.

Tensions in the South China Sea are unlikely to be abated so long as risk-reducing measures gain such little traction, even absent moves towards the ultimate resolution of overlapping claims. Domestic pressures have prevented policymakers in claimant countries from making even the slightest compromises in their claims, which would be a precondition to any legal solution. Instead, they have drawn upon international law to further their national interests and justify assertive actions in the region.

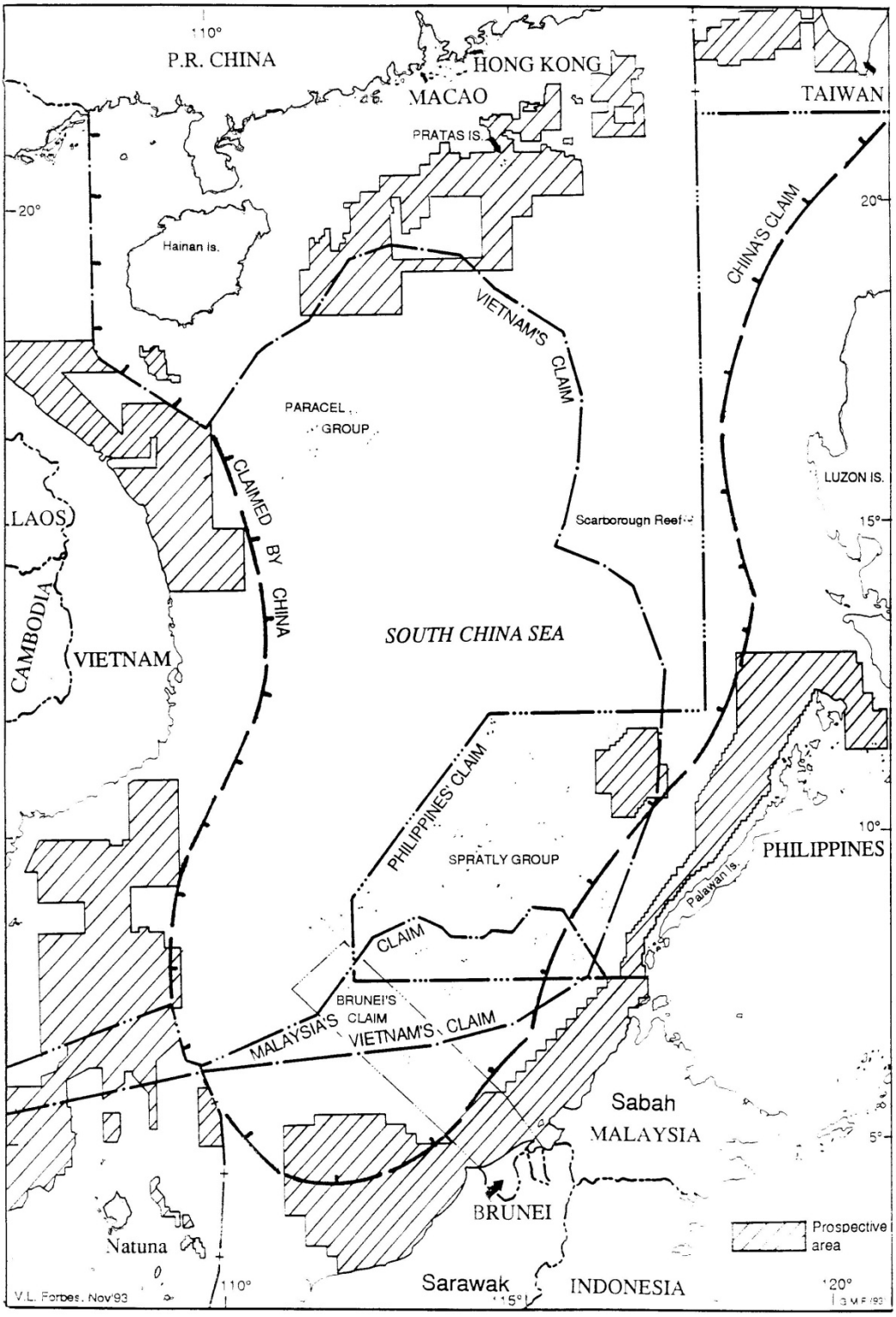
ASEAN is at the core of efforts to engage China multilaterally on its South China Sea claims, but its members – even just the four claimant states – cannot agree on a way forward. The July 2012 ASEAN ministerial meetings hosted by Cambodia were a major setback, failing to produce an agreement on a code of conduct and, for the first time in 45 years, a customary joint statement. ASEAN needs to advance the development of a code of conduct with China to prove the regional body should be the platform to handle the issue, even if the document will at best manage, not resolve, the disputes. Joint development, while an opportunity for claimants to cooperate and thereby reduce tensions, has stalled as claimants resist China's demands that they first accept its sovereignty over disputed areas.

The failure to reduce the risks of conflict, combined with the internal economic and political factors that are pushing claimants toward more assertive behaviour, shows that trends in the South China Sea are moving in the wrong direction. The risk of escalation is high, and as pressure in the region threatens to boil over, claimants would benefit from taking concrete steps toward the joint management of hydrocarbon and fishing resources, as well as toward reaching a common ground on the development of a mechanism to mitigate or de-escalate incidents, even if they cannot agree on an overall approach to dispute resolution. In the absence of such a mechanism, tensions in the South China Sea could all too easily be driven to irreversible levels.

Beijing/Jakarta/Brussels, 24 July 2012

APPENDIX A

MAP OF SOUTH CHINA SEA



Vivian L. Forbes, *Conflict and Cooperation in Managing Maritime Space in Semi-enclosed Seas* (Singapore, 2001). Reproduced with permission – some modifications included.

APPENDIX B

CONFLICTING CLAIMS

China

China claims "indisputable sovereignty" over both the Spratly and Paracel islands and maritime rights over related waters in the South China Sea based on a map drawn by the Kuomintang (KMT) government in 1947 to show the country's historical waters.[364] The map, with an eleven-dashed line enclosing most of the sea and later reduced to a nine-dashed line, indicates historical claim to the islands and other geographical features in the South China Sea based on survey expeditions, fishing activities and naval patrols dating as far back as the 15th century.[365] It has been repeatedly used to justify these claims since the founding of the People's Republic of China (PRC).[366] As a contemporary basis for its territorial claims, Beijing uses an August 1951 statement by Chinese Premier Zhou Enlai, in which he asserted sovereignty over the island groups.[367] In 1958, China released a statement linking for the first time its territorial claims over the Spratlys and Paracels to maritime rights in the surrounding waters.[368]

In 2009, China submitted a *note verbale* to the UN Commission on the Limits of the Continental Shelf, which declared that it has jurisdiction over waters surrounding islands in the South China Sea.[369] However, while China bases its maritime claims on its land sovereignty, many of these land features would likely not meet qualifications set by UNCLOS to serve as a base for EEZs and continental shelves.[370] The submission of the nine-dashed line map to the UN and the use of the term "relevant waters" sparked concern among claimants that Beijing sought exclusive right to natural resources in the whole area within the line. While many Chinese scholars and commentators claim that the entire region within the line is Chinese territorial waters,[371] some officials in Beijing recognise that this interpretation is inconsistent with UNCLOS and prefer to claim only the islands within the line and their adjacent waters.[372]

Republic of China on Taiwan

Taipei bases the extent and legitimacy of its claims in the South China Sea on the U-shaped line developed under the KMT government in 1947.[373] It officially declared sovereignty over the majority of the South China Sea in 1993,[374] and reiterated the breadth of this claim in a June 2011 foreign ministry statement: "The Nansha Islands [Spratly], Shisha Islands [Paracels], Chungsha Islands [Mac-

[364] The eleven-dashed line was used by the mainland between 1949 and 1953, after appearing on the map of China published after the creation of the PRC in 1949. The nine-dashed line began to appear on maps after 1953, following Premier Zhou Enlai's deletion of two lines below the Gulf of Tonkin. See Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note". Liu Feng, deputy head of the Research Centre for Marine Science of the Chinese National Institute for South China Sea Studies (NISCSS) told *China News Weekly* in an interview in June 2012 that seven reefs and eight shoals (the Mischief Reef has two shoals) are under de facto control of China. "学者：中国在南海需建立基地自营开发 加强存在" *中国新闻网* ["Scholar states: China needs to establish domestic exploitation and strengthen presence in the South China Sea", *China News Weekly*], 4 June 2012; Peter Dutton, op. cit.

[365] Shen Jiangming, "China's Sovereignty over the South China Sea Islands: A Historical Perspective", *Chinese Journal of International Law*, vol. 1, issue 1 (2002), pp. 94-157.

[366] "30年代确定南海疆域线（九段线），坚定地维护了西沙、南沙群岛主权" ["The confirmation of South China Sea boundary line (the nine-dotted line) in the 1930s, firmly safeguarded sovereignty over Paracel and Spratly Islands"], China National Geographic, October 2010.

[367] Fravel, "China's Strategy in the South China Sea", op. cit.

[368] Ibid.

[369] China included the nine-dashed line map with its 2009 *Note Verbale* to the UN Secretary-General, which stated: "China has indisputable sovereignty over the islands in the South China Sea, and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof," and then made reference to the map of the nine-dashed line. People's Republic of China, "*Note Verbale* to the Secretary-General of the United Nations with regard to the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf", CML/17/2009, 7 May 2009.

[370] Crisis Group interviews, Beijing, August, December 2011.

[371] Crisis Group interview, Beijing, December 2010.

[372] Crisis Group interviews, Beijing, August, December 2011.

[373] Unlike Beijing, however, Taipei uses the original eleven dashes, since the other two dashes in the Gulf of Tonkin were only removed under the approval of Premier Zhou Enlai in 1953, four years after the establishment of the PRC. Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note".

[374] In March 1993, the Legislative Yuan of the ROC adopted the "Policy Guidelines for the South China Sea", officially declaring the area territory within the nine-dashed line under ROC (Taiwan) sovereignty. Kuan-Ming Sun, "Policy of the Republic of China towards the South China Sea", *Marine Policy*, vol. 19, no. 5 (1995), p. 402.

clesfield] and Tungsha Islands [Pratas], as well as their surrounding waters, seabeds and subsoil, are all an inherent part of the territory of the Republic of China (Taiwan)".[375]

The government was also the first to establish a physical presence on the Spratlys after the Japanese withdrawal at the end of World War II.[376] Following the Taiwanese interior ministry's effort to draft baselines and demarcate its territorial sea and EEZ between 1989 and 1990, the foreign ministry declared Taiwan's territorial claims over the Tungsha (Pratas), Shisha (Paracels), Nansha (Spratlys) and Chungsha (Macclesfield) islands on 16 July 1991. Taipei reaffirmed this claim in 1991 and 1992 at the Indonesian workshops on the South China Sea.[377] It officially declared sovereignty over the majority of the South China Sea in 1993,[378] when the Taiwan legislature (Legislative Yuan) adopted the "Policy Guidelines for the South China Sea", reasserting its claim – all features within the U-line and the whole area as its "historic waters".[379]

On 10 February 1999, Taipei took a step forward to clarify the basis of its territorial sea claims by defining and publicising baselines around its land territory and internal waters, which included the Tungsha (Pratas Island and Reef) and the Chungsha (Macclesfield Bank) in the northern part of the South China Sea. Taipei stated that the baselines for the Spratlys would be drawn later.[380] The government reiterated the breadth of this claim in its June 2011 foreign ministry statement. When cross-strait relations and domestic politics were in favour of shared economic interests, Taiwan and Beijing promoted territorial claims on behalf of China as a whole. Despite claiming territorial sovereignty over the entire South China Sea, Taiwan only occupies the Pratas Islands and Itu Aba Island (Taiping Island in Chinese), the largest in the Spratlys and with the most facilities among the occupied islands.[381]

Vietnam

The area that Hanoi claims in the South China Sea includes all of both the Spratly and Paracel island chains, bigger than any other claimants' claims except that of China and Taiwan.[382] Key foreign ministry statements and two authoritative White Papers from 1979 and 1982 outlined claims to all features of both island chains and offer four main historical arguments.[383] A joint submission to the UN Commission on the Limits of the Continental Shelf (CLCS) with Malaysia in May 2009 defined 200-nautical mile EEZ limits derived from the mainland. However, Vietnam has never specified the extent of maritime or territorial claims stemming from the disputed islands.[384]

Vietnam provides several justifications for its sovereignty claims. First, Vietnam claims to have been the first country to discover and name the Spratly islands, evidenced by their appearance in Vietnamese maps and books as early as the beginning of the 19th century.[385] Second, it asserts its historical claims to the Paracels are supported by France's repeated statements in the early 1930s asserting sovereignty over the islands.[386] The Vietnamese navy replaced French occupying forces following the Indochina war, until China seized control of the Paracels in 1974.[387] Third, Vietnam maintains that Japan's renunciation of all South China Sea islands in the San Francisco Treaty did not specifically return the territories to China.[388] Finally, control and administration of the Spratlys have continued unbroken through the Nguyen Dynasty, the French colonial government and the Republic of Vietnam.

[375] Press release no. 186, foreign ministry, Republic of China (Taiwan), 7 June 2011.
[376] Dimitris Liakopoulos, "Legal and Environmental Regime of Islands in the South China Sea: Status under International Law", *Global Jurist Topics*, vol. 4, issue 3, article 2 (2004), p. 9.
[377] Kristen Nordhaug, "Explaining Taiwan's policies in the South China Sea, 1988-99", *The Pacific Review*, vol. 14, no. 4 (2001), pp. 496-497.
[378] In March 1993, the Legislative Yuan of the ROC adopted the "Policy Guidelines for the South China Sea", officially declaring the area territory within the eleven-dashed line under ROC (Taiwan) sovereignty. Kuan-Ming Sun, "Policy of the Republic of China towards the South China Sea", *Marine Policy*, vol. 19, no. 5 (1995), p. 402.
[379] Kuan-Ming Sun, "Policy of the Republic of China towards the South China Sea", op. cit., p. 402; see also Kristen Nordhaug, "Explaining Taiwan's policies in the South China Sea, 1988-99", p. 497.
[380] Ibid, p. 502.
[381] Quan Minh Pham, "The South China Sea security problem: Towards regional cooperation", *Asia Europe Journal*, vol. 8 (2010), p. 428.
[382] For the area that Vietnam claims, see Appendix A.
[383] "Vietnam's sovereignty over the Hoang Sa and Truong Sa Archipelagos", Vietnamese foreign ministry, 7 August 1979; White Papers of 28 September 1979 and 18 January 1982.
[384] See "Malaysia, Vietnam joint continental shelf submission", May 2009.
[385] The Complete Map of Unified Great Nam "Dai Nam Nhat Thong Toan Do".
[386] "Vietnam's sovereignty over the Hoang Sa and Truong Sa Archipelagos", op. cit.
[387] Crisis Group interview, Beijing, December 2010; see also Kenneth J, "Conflict Potential in Southeast Asia and the South China Sea", The Heritage Foundation, 2 March 1992.
[388] During the San Francisco Treaty peace conference in 1951, Vietnamese Prime Minister Tran Van Huu's assertion that the Spratly and Paracel islands were Vietnamese territory was unchallenged. Rodolfo C. Severino, "ASEAN and the South China Sea", *Security Challenges*, vol. 6, no. 2 (Winter 2010), p. 39.

The Philippines

The Philippines claims over 50 features in the Spratlys and occupies nine of them, where its military presence is second only to that of Vietnam.[389] The area, which Manila calls the Kalayaan Islands Group, was first claimed in 1956 by a Filipino citizen, Tomas Cloma.[390] In 1974, he transferred the deed to the government of President Ferdinand Marcos who declared them as part of Philippine territory in a 1978 presidential decree. In 2009, the congress passed legislation to revise the baselines to comply with international law.[391] The act claims the Kalayaan Islands Group and Scarborough Shoal (also claimed by China and Taiwan), which are beyond the Philippines' archipelagic baselines, under the "regime of islands" doctrine in UNCLOS.[392] The same year, Malaysia and Vietnam made a joint submission to the UN Commission on the Limits of the Continental Shelf regarding their claims to southern parts of the South China Sea. The Philippines protested but refrained from submitting its own demands at that time but reserved the right to do so later.[393]

Malaysia

Malaysia claims islands and features in the southern Spratlys, and it has occupied five of them since 2009.[394] Among these occupied features is the Swallow Reef (Terembu Layang-Layang), which has a military installation, airstrip and diving resort.[395] Malaysia's claims originate from a 1979 map often referred to as the *Peta Baru*, or new map, which set out its continental shelf claim off Sabah and Sarawak states.[396] Kuala Lumpur further clarified its claims in 2009 with a Vietnam-Malaysia joint submission to the Commission on the Limits of the Continental Shelf, though it has never specified the extent of maritime territory it claims from the islands itself.[397] The Philippines, Taiwan, Vietnam, Brunei and China have all objected to Malaysia's demands, and the Philippines and Vietnam currently occupy islands claimed by Kuala Lumpur.

Brunei

Based on UNCLOS, Brunei claims only two features in the Spratly Islands, submerged formations called Louisa Reef and Rifleman Bank, and extends its EEZ around the feature and well into the southern section of the South China Sea.[398] Brunei's maritime and territorial claim directly overlaps with Malaysia's, and extends into those of China, Taiwan, Vietnam and the Philippines. Brunei is the only claimant that does not occupy any of the islands and does not have a military presence in the South China Sea.

[389] Crisis Group interview, Hanoi, December 2010.

[390] Ulises Granados, "Ocean Frontier Expansion and the Kalayaan Island Groups Claim: Philippines' Postwar Pragmatism in the South China Sea", *International Relations of the Asia-Pacific*, vol. 9 (2009).

[391] Republic Act no. 9522, 10 March 2009, at www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html.

[392] Congress was given four options on the baselines and some members of the government were in favour of using the Spratlys to define the baselines. Crisis Group interviews, Manila, October 2011.

[393] Communications received with regard to the joint submission made by Malaysia and Viet Nam to the Commission on the Limits of the Continental Shelf, communication dated 4 August 2009 from the Philippines. The Philippines made a partial submission for the sea east of the northern island of Luzon. According to a congressman, it never seriously considered joining the joint submission because "when it comes to baselines, we need to stand alone". Crisis Group interview, congressman, Manila, October 2011.

[394] Beckman, "China UNCLOS, and the South China Sea", op. cit., p. 3.

[395] "Spratly Islands Conflicting Claims", Global Security.

[396] See "Peta Menunjukkan Sempadan Perairandan Pelantar Benua Malaysia", Pengarah Pemetaan Negara ["Map showing the territorial waters and continental shelf boundaries of Malaysia", Director of National Mapping], 21 December 1979; Asri Salleh et al., "Malaysia's Policy toward its 1963-2008 Territorial Disputes", *Journal of Law and Conflict Resolution*, vol. 1, no. 5 (October 2009), pp. 107-116; and Beckman, "China, UNCLOS, and the South China Sea", op. cit., p. 5.

[397] "Malaysia-Socialist Republic of Vietnam joint submission to the Commission on Limits of the Continental Shelf", May 2009.

[398] Joyner, "The Spratly Islands Dispute in the South China Sea", op. cit.; and Storey, "Brunei's Contested Border With China", op. cit.

APPENDIX C

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