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**Maritime Disputes in the South China Sea:
Strategic and Diplomatic Status Quo**

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ABSTRACT

The Working Paper argues that the maritime disputes over the South China Sea are characterised by a strategic and diplomatic status quo. China does so far not have the necessary power projection to impose naval hegemony in the South China Sea. None of the ASEAN claimants can rely on sufficient naval power or an external military alliance to impose their claims in the Spratly Islands. A similar situation of status quo exists on the diplomatic front. China and the ASEAN countries have been negotiating for years to conclude a code of conduct for the South China Sea. The 2002 Declaration on the Conduct of Parties in the South China Sea is based on a multilateral dimension as well as on a convergence of views on the need to peacefully manage the dispute. While a step in the right direction, the declaration is only an interim political agreement and it is still to be seen whether the parties will sign a detailed and binding code of conduct for the South China Sea. The Working Paper starts by reviewing the nature of the maritime disputes. It then describes the security environment in the South China Sea by examining the changing strategic conditions of the disputes. Its final section discusses the long diplomatic road toward the 2002 Declaration. The Working Paper concludes that the South China Sea has remained primarily a political rather than a military issue thanks to China's desire to accommodate the Southeast Asian countries and the limited naval capabilities available to the different claimants.

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MARITIME DISPUTES IN THE SOUTH CHINA SEA: STRATEGIC AND DIPLOMATIC STATUS QUO

Introduction¹

The maritime disputes in the South China Sea impact on a series of regional bilateral relations and continue to trouble ties between the People's Republic of China (PRC) and the Association of Southeast Asian Nations (ASEAN).² The Spratly Islands are claimed by China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei while the Paracels have been controlled by China since 1974 and are claimed by Vietnam and Taiwan. The maritime disputes are influenced by economic, strategic and political interests.

The free navigation of commercial vessels in the South China Sea is essential for regional and international trade. Moreover, the area is rich in fishery resources and is expected to have oil and gas reserves.³ Brunei, Malaysia and Vietnam are already oil producers but in 1993 China became a net energy importer. The oil reserves of the South China Sea are uncertain and initial estimations have been adjusted lower. However, as exploration techniques have improved, oil reserves lying under the seabed in the deep water have become more viable. The South China Sea dispute also has an obvious strategic dimension. If it ever succeeds in realizing its territorial claims, the PRC would be able 'to extend its jurisdiction some one thousand nautical miles from its mainland so as to command the virtual Mediterranean or maritime heart of Southeast Asia with far-reaching consequences for the strategic environment.'⁴ A Chinese naval presence at the heart of the sub-region would be threatening not only to Vietnam and the Philippines but also to Malaysia, Brunei and Indonesia. In addition, control of the maritime communication routes would be strategic, as it would

¹An earlier version of this paper was presented at the Norwegian Institute of International Affairs-IDSS Workshop on 'Maritime Security in Southeast Asia', Oslo, Norway in June 2005. The author wishes to thank the participants for their valuable comments.

²ASEAN was established in 1967 and its original members were: Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei joined in 1984 after gaining its full independence from the United Kingdom. Vietnam joined in 1995, Laos and Myanmar in 1997 and Cambodia in 1999.

³See Bob Catley and Makmur Keliat, *Spratlys: The Dispute in the South China Sea*, Aldershot: Ashgate, 1997, pp. 44-65.

⁴Michael Leifer, 'Chinese Economic Reform: the Impact on Policy in the South China Sea', in Gerald Segal and Richard H. Yang (eds) *Chinese Economic Reform: The Impact on Security*, London: Routledge, 1996, p. 142.

endanger the security interests of the US, Japan and other maritime powers that cross these waters. Finally, the territorial claims are of nationalist importance where the claimant states are concerned. The claimants have been inflexible on the sovereignty issue. Retracting territorial claims or a willingness to make concessions on the question of sovereign jurisdiction would be costly domestically and perceived regionally as a sign of weakness.

The paper suggests that the maritime disputes over the South China Sea are characterised by a strategic and diplomatic status quo.⁵ China does not have the necessary power projection to impose naval hegemony in the South China Sea. None of the ASEAN claimants can rely on sufficient naval power or an external military alliance to impose their claims. With the exception of Vietnam and the Philippines, who feel threatened by China's actions, the problem of sovereignty in the South China Sea is not regarded as a direct danger to the national security of the individual ASEAN countries. A similar situation of status quo exists on the diplomatic front. China and the ASEAN countries have been negotiating for years to conclude a code of conduct for the South China Sea. Beijing has preferred a non-binding multilateral code of conduct limited to the Spratlys that would focus on dialogue and the preservation of regional stability rather than on the problem of sovereign jurisdiction. Disunity among the ASEAN countries, particularly between Malaysia on the one hand and Vietnam and the Philippines on the other, has also complicated the attainment of a code of conduct for the South China Sea.

The paper first reviews the nature of the maritime disputes in the South China Sea by discussing the territorial claims in the context of the Law of the Sea. Its second section describes the strategic environment in the South China Sea by both examining the use of force by some claimant states to secure their presence in the area as well as the changing strategic conditions of the dispute. The last section discusses the long diplomatic road towards reaching a code of conduct for the South China Sea, and asks whether the 2002 political declaration should be regarded as step in the right direction or as a missed opportunity.

⁵In 1999, the late Professor Michael Leifer went further in his analysis by portraying the South China Sea dispute as a 'stalemate'. See Michael Leifer, 'Stalemate in the South China Sea', Paper presented at the SUM Workshop on the Conflict in the South China Sea, Oslo, 24-26 April.

The Nature of the South China Sea Dispute

The Law of the Sea

The South China Sea dispute may be examined in the context of the Third United Nations Convention of the Law of the Sea (UNCLOS III). The latter has been ratified by all the claimant states and some may have misused it to extend their sovereign jurisdiction unilaterally and justify their claims in the South China Sea. The Convention regulates internal waters, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones (EEZs), continental shelves and high seas.⁶ It provides coastal states with the authority to extend their sovereign jurisdiction under a specific set of rules. It authorizes expansion of the territorial sea to 12 nautical miles and limits the contiguous zone to 24 nautical miles. It also states that the EEZ ‘shall not extend beyond the 200 nautical miles from the baselines from which the breadth of the territorial sea is measured’.⁷ The sovereign rights of a coastal state over the EEZ are limited to the exploration and exploitation of its living and non-living resources. Continental shelves may not be extended beyond a limit of 350 nautical miles from territorial baselines. The sovereign rights of a coastal state over the continental shelf are reduced to the exploration and exploitation of its non-living resources.

It is debatable, however, whether most of the Spratly Islands can generate maritime zones. UNCLOS defines an island as ‘a naturally-formed area of land, surrounded by water, which is above water at high tide’.⁸ An island is capable of naturally supporting life. Rocks in contrast cannot sustain human habitation or economic life and ‘have no exclusive economic zone or continental shelf’.⁹ Features that cannot sustain human life and artificial islands are only entitled respectively to a 12 nautical mile territorial sea and a 500-metre safety zone. These terms of the Convention seem to apply to most features in the Spratly archipelago. In short, due to their status the disputed

⁶See Rebecca M. M. Wallace, *International Law*, Second Edition, London: Sweet & Maxwell, 1992, pp. 128-165.

⁷Article 57, 1982 Convention. *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index*, New York: United Nations, 1983.

⁸Article 121, 1982 Convention.

⁹Article 121(3), 1982 Convention.

features in the South China Sea may not be a legitimate basis for claiming maritime jurisdiction.

Overlapping claims in the South China Sea

The claims made by the parties involved in the South China Sea dispute can be separated into historical claims of discovery and occupation and claims that rest on the extension of sovereign jurisdiction under interpretations of the provisions of UNCLOS. The PRC views the South China Sea as an exclusive Chinese sea and claims nearly its entire territory. Its historical claims are based on the discovery and occupation of the territory.¹⁰ In 1947, the Nationalist government of Chiang Kai-Shek defined China's claims by an area limited by nine interrupted marks that cover most of the South China Sea. Zhou En-lai formalized the claims for the PRC in 1951. Relying on its claim to historical administration of the area, Beijing has not provided a legal explanation for or given specific delimitations to its territorial claims. Claiming a comparable area in the South China Sea, Taiwan relies on similar historical arguments. Since 1956 Taipei has occupied the island of Itu Aba, the largest feature in the Spratly group. Despite the Taiwan question, the PRC has tolerated Taipei's territorial claims in the South China Sea. Until the reunification of Vietnam, Hanoi had recognized Chinese sovereignty over the Paracel and Spratly Islands. Since 1975, Vietnam has claimed both groups based on historical claims of discovery and occupation. In 1977 Vietnam also established a 200-nautical-mile EEZ.

The original ASEAN members involved in the dispute present conflicting claims that differ from those discussed above. Claims are limited to specific parts of the Spratly archipelago and tend to rely on International Law, including the extension of the continental shelf, rather than on historical arguments.¹¹ Among the member states, the Philippines claims the largest area of the Spratlys - a zone referred to as *Kalayaan*. First officially proclaimed in 1971, a 1978 presidential decree declared *Kalayaan* as part of the national territory. The Philippines also established a 200-nautical-mile EEZ. Meanwhile, Malaysia extended its continental shelf in 1979 and included

¹⁰See Lu Ning, *Flashpoint Spratlys!*, New York: Dolphin Books, 1995, pp. 5-35.

¹¹Amitav Acharya, *A New Regional Order in South-East Asia: ASEAN in the Post-Cold War Era*, Adelphi Paper no. 279, London: International Institute for Strategic Studies, 1993, pp. 33-34.

features of the Spratlys in its territory.¹² Brunei then established in 1988 an exclusive economic zone of 200 nautical miles that extends to the south of the Spratly Islands and comprises Louisa Reef. Finally, Indonesia is not a party to the Spratly dispute. It was neutral in the South China Sea issue until 1993 and the suspected extension of Chinese claims to the waters above the Natuna gas fields, currently exploited by Indonesia.

Strategic Environment in the South China Sea

Use of force

The PRC has on several occasions used force to consolidate its position in the South China Sea. In January 1974, China completed its control over the Paracel archipelago by acting militarily against South Vietnam before the expected fall of Saigon and the reunification of the country.¹³ This military action was part of the Sino-Soviet struggle but also reinforced China's influence in the South China Sea. In part due to its limited capacity to project power, the PRC remained absent from the Spratly Islands until the second half of the 1980s. Claiming the entire archipelago, China needed urgently to secure a military presence in the Spratlys and occupied some features. Most claimants have viewed the construction of permanent foundations on uninhabitable and occasionally submerged features as a manifestation of their sovereign jurisdiction. A naval confrontation with Vietnam on 14 March 1988 led to renewed Chinese seizure of territory.¹⁴ Yet the issue was primarily overlooked in most ASEAN capitals due to the ongoing Cambodian Conflict (1978-1991). Moreover, the PRC did not act aggressively against any of the ASEAN claimants during that period.

After the resolution of the Cambodian Conflict with the signing of the Paris Accords in October 1991, the territorial dispute over the Spratlys gained in importance. China's apparent willingness to show restraint vis-à-vis ASEAN claimants was

¹²See Lo Chi Kin, *China's Policy Towards Territorial Disputes*, London: Routledge, 1989, pp. 153-154.

¹³See Gerald Segal, *Defending China*, Oxford: Oxford University Press, 1985, pp. 197-210.

¹⁴See Shee Poon Kim, 'The March 1988 Skirmish over the Spratly Islands and its Implications for Sino-Vietnamese Relations', in R.D. Hill, N. Owen and E.V. Roberts (eds) *Fishing in Troubled Waters: Proceedings of an Academic Conference on Territorial Claims in the South China Sea*, Hong Kong: Centre of Asian Studies, University of Hong Kong, 1991, pp. 177-191.

questioned when in February 1992 Beijing passed the Law of the People's Republic of China on the Territorial Waters and Contiguous Areas. It reiterated China's claims in the South China Sea and stipulated the right to use force to protect islands, including the Spratlys, and their surrounding waters. The law questioned the peaceful management of the territorial dispute and was regarded by ASEAN as a political provocation.

On 8 February 1995, the Philippines discovered the Chinese occupation of Mischief Reef, located in *Kalayaan*. The PRC had taken, for the first time, territory claimed by an ASEAN member. The Mischief Reef incident also indicated that the Philippines, since the 1992 US withdrawal from Subic Naval Base and Clark Air Base, had become the most vulnerable actor in the Spratly dispute. The American departure from its military bases in the Philippines had removed a source of deterrence against Chinese actions in *Kalayaan*. Then Philippine President Fidel Ramos strongly criticized China's action. Manila responded to the discovery of the Chinese occupation by seeking multilateral support and taking retaliatory measures that included the destruction of Chinese territorial markers and the arrest of Chinese fishermen in March 1995. The Philippines also announced a defence modernization programme. The PRC and the Philippines eventually signed in August 1995 a bilateral statement that rejected the use of force and called for the peaceful resolution of their bilateral disputes in accordance with the principles of the 1982 Convention on the Law of the Sea.¹⁵

Since the Mischief Reef incident, China in its foreign policy has increasingly been acting as a status quo power respecting standard international norms, rather than as a revisionist power seeking to undermine the international order. Shambaugh explains that, both at a bilateral and multilateral level, 'Beijing's diplomacy has been remarkably adept and nuanced, earning praise around the region'.¹⁶ This has been reflected in its actions toward the South China Sea, as China has not seized disputed features in the Spratlys since the Mischief Reef incident. Even though it expanded its structures on the Reef in November 1998, Beijing's policy towards the South China

¹⁵Joint Statement on RP-PRC Consultations on the South China Sea and on Other Areas of Cooperation, 9-10 August 1995.

¹⁶David Shambaugh, 'China engages Asia: Reshaping the Regional Order', *International Security*, vol. 29, no. 3, Winter 2004/05, p. 64.

Sea has been moderate in recent years in an attempt not to antagonize the ASEAN countries. China's readiness to accommodate the Southeast Asian countries over the South China Sea can be explained by Beijing's economic priorities as well as by its difficult relations with Japan and its concern over increased US military presence in the region, particularly since the terrorist attacks on 11 September 2001.

Yet other claimant states have used military means to take control of reefs claimed by other states, and friction over the disputed territories has continued. Tensions have surged between the Philippines and Malaysia, Malaysia and Vietnam, and Vietnam and the Philippines. In March 1999, Malaysia's seizure of Navigator Reef, claimed by the Philippines, strained relations with Manila and was criticised by Vietnam, Brunei and China. In August 2002, Vietnamese troops based on one islet fired warning shots at Philippine military planes. Additionally, some claimants have also used non-military means to protect their interests. In May 2004, Vietnam started re-building a runway on the disputed island of Truong Sa Lon (Big Spratly) with the purpose of sending small groups of Vietnamese tourists to the South China Sea.¹⁷ China strongly criticised the Vietnamese actions and described them to be in violation of the 2002 Declaration on the Conduct of Parties in the South China Sea (discussed below). In sum, all these initiatives and counter-initiatives have been part of an attempt by the claimant states to secure their presence in the Spratlys.

Strategic conditions in the South China Sea

China's naval position in the Spratlys has continued to be weak due to its limited power projection. The PRC has not extensively increased its ability to sustain naval operations away from its mainland bases. Shambaugh writes that the People's Liberation Army (PLA) 'does not seem to have made much progress in enhancing its power projection capabilities, nor do these seem to be a priority'.¹⁸ China has no aircraft carrier battle group to project its power; it has few destroyers and its submarines usually remain within its territorial waters.¹⁹ Most features in the Spratly archipelago are also too small to offer bases for further naval activities. Hence, the PRC does not currently possess the necessary capabilities to control the Spratly group

¹⁷'Vietnam rebuilds Spratly Airport', *BBC News*, 14 May 2004.

¹⁸Shambaugh, 'China engages Asia: Reshaping the Regional Order', p. 85.

¹⁹Jonathan Power, 'The So-called Rise of China', *International Herald Tribune*, 8 April 2005.

militarily. Furthermore, command over the maritime communication routes that cross the South China Sea can only result from a significant naval dominance and superiority in the region rather than the occupation of tiny features that may not offer a legitimate basis for claiming maritime jurisdiction.²⁰ It is important therefore to dissociate the military control of reefs that can only generate limited maritime zones from the control of Sea Lanes of Communication (SLOCs) and wider naval areas. The latter are obviously more significant strategically. The PRC does not yet possess the technology, military capabilities and power projection to impose such a naval hegemony in Southeast Asia.²¹

Yet military power should also be examined in relative terms and in light of regional standards. Here China possesses a significant and increasing naval advantage when compared to some vulnerable Southeast Asian claimant states. The build-up of its Southern fleet, even if it is slow and gradual, is a concern for the other claimants especially because its geographical area of operation would naturally be the South China Sea. This is particularly true in the context of Vietnam and the Philippines, which feel threatened by China's actions in the Spratlys. Vietnam perceives its relation with the PRC over the South China Sea as a reflection of its traditional antagonism and patterns of power with Beijing. Vietnam does not marshal sufficient naval power to impose its will in the South China Sea nor does it have access to an external source of countervailing power to constrain China's actions. Vietnam has not forged a formal or tacit alliance with the United States despite a significant improvement in ties since the establishment of diplomatic relations on 11 July 1995. Regardless of whether a future de facto alliance is forged, the US has so far been unwilling to get involved in the territorial dispute. In the case of the Philippines, Mischief Reef demonstrated Manila's weakness in the dispute. The Mischief Reef incident did not lead to a strong US diplomatic reaction, except for a statement on the freedom of sea-lanes. Instead, Washington reminded Manila that its territorial claims were not covered by the Mutual Defence Treaty of 30 August 1951 that ties the Philippines to the United States. The US unwillingness to get involved in the territorial dispute may result from a desire not to further complicate its relations with

²⁰Michael Leifer, 'The Maritime Regime and Regional Security in East Asia', *The Pacific Review*, vol. 4, no. 2, 1991, p. 130.

²¹See the International Institute for Strategic Studies, *The Military Balance 2004-2005*, Oxford: Oxford University Press, 2004, pp. 161-162, 170-173.

Beijing. Nonetheless, to strengthen its deterrence capabilities, the Philippines ratified a Visiting Forces Agreement with the United States in May 1999 to resume joint military exercises.

Vietnam and the Philippines cannot rely on ASEAN in a traditional security sense. The Association is unable, on its own, to act as an effective source of countervailing power in the South China Sea. ASEAN is devoid of two elements essential for any formal or tacit alliance: joint military capabilities and the existence of a common threat perception. Though all the members are confronted with China's rising power, they have differential relationships with the PRC that derive from various aspects that include contrasting historical experiences; ethnicity; economic relations as well as domestic and international conditions. Moreover, the ASEAN claimant states do not benefit from external military assistance to contain the PRC in the South China Sea. In short, the Association 'has no power to deploy because it is neither a defence community nor a party to a countervailing structure of alignments'.²² Instead, Vietnam and the Philippines have relied on ASEAN diplomacy and the negotiation of a code of conduct to protect their positions in the South China Sea.

The Long Road toward a Code of Conduct for the South China Sea

History of China-ASEAN negotiations

In July 1992, the ASEAN foreign ministers signed the ASEAN Declaration on the South China Sea in Manila.²³ As ASEAN's first common position on the South China Sea, the Manila Declaration did not deal with the problem of sovereign jurisdiction but was instead an attempt to promulgate an informal code of conduct based on self-restraint, the non-use of force and the peaceful resolution of disputes. It relied on the norms and principles initially introduced in the ASEAN Treaty of Amity and Cooperation (TAC) of 1976.²⁴ The informal code of conduct for the South China Sea

²²Michael Leifer, 'ASEAN as a Model of a Security Community?', in Hadi Soesastro (ed.) *ASEAN in a Changed Regional and International Political Economy*, Jakarta: Centre for Strategic and International Studies, 1995, p. 141.

²³Joint Statement, Workshop on Managing Potential Conflicts in the South China Sea, Bandung, Indonesia, 15-18 July 1991.

²⁴Adopted at the first ASEAN Summit held in Bali in 1976, the TAC constitutes a norm-based code of conduct that enunciates ASEAN's core principles, including the respect for sovereignty and non-interference in the affairs of other states.

was based therefore on the notions of conflict management and avoidance rather than conflict resolution. Despite the overlapping claims, the member states shared an interest in promoting Southeast Asian stability and avoiding any confrontation with China. Nevertheless, the relevance of the 1992 Declaration was reduced by the lack of external support. While supported by Vietnam, China was not receptive to the Declaration and did not formally adhere to its principles. Beijing repeated its preference for bilateral rather than multilateral discussions on the South China Sea. The United States was unsupportive and maintained its position of neutrality in the territorial dispute.

At the first ASEAN Regional Forum (ARF) meeting in July 1994, China's Foreign Minister Qian Qichen repeated Beijing's peaceful intentions and rejected the resort to force as a means to solve the dispute. Yet China refused to discuss the question of sovereign jurisdiction in a multilateral forum. By limiting itself to bilateral negotiations with the other claimants, China aimed to dominate the discussions. This complicated ASEAN's attempt to develop a code of conduct for the South China Sea. Prior to the second ARF meeting in August 1995, however, China's Foreign Minister Qian Qichen made some concessions to the ASEAN members. He declared that the PRC was prepared to hold multilateral discussions on the Spratlys, rather than limit its diplomacy to bilateral talks, and to accept the 1982 Convention on the Law of the Sea as a basis for negotiation.²⁵ These concessions resulted from a need to accommodate the Southeast Asian countries in light of the Mischief Reef incident, as well as from a deterioration of Chinese relations with the United States and Japan. Yet they did not alter China's territorial objectives in the South China Sea, as Beijing was still unwilling to address the question of sovereign jurisdiction and repeated its territorial claims over nearly the entire area.

At the informal ASEAN Summit of November 1999, the Philippines, supported by Vietnam, proposed a new version of a code of conduct. This was an attempt to peacefully manage the South China Sea question by preventing a deterioration of the situation. In particular, it aimed to avert the additional occupation by the claimant

²⁵Sheldon W. Simon, 'ASEAN Regional Forum', in William M. Carpenter and David G. Wienczek, (eds) *Asian Security Handbook: An Assessment of Political-Security Issues in the Asia-Pacific Region*, New York: ME Sharpe, 1996, p. 47.

states of disputed and still uninhabited features. The initiative was more specific than the 1992 Manila Declaration. It tried to move beyond the simple assertion of standard principles and proposed joint development of the Spratly Islands. The Philippine proposal was rejected by both China and Malaysia. The latter was concerned that such a code would be too legalistic. Malaysia had until the early 1990s been critical of China's actions in the Spratly Islands but its diplomatic stand on the South China Sea gradually changed over the subsequent years and came closer to the Chinese position. Malaysia refused to address the question of sovereignty. It favoured bilateral negotiations with China and preferred to avoid a constraining regional code of conduct or external mediation. The chairman's press statement at the informal summit declared that the heads of state and government 'noted the report of the Ministers that ASEAN now has a draft regional code of conduct, and further consultations will be made on the draft with a view of advancing the process on the adoption of the code'.²⁶

Malaysia proposed a declaration for the Spratly Islands at the 35th ASEAN Ministerial Meeting (AMM) in Brunei in July 2002. The non-binding document to regulate conduct in the disputed territory was a watered down compromise, even failing to mention the Spratlys by name. It was also unclear whether the agreement would be referred to as a code of conduct or as a declaration. Most member states refused to support the Malaysian proposal, with Vietnam and the Philippines insisting for instance on the adoption of a binding document on the South China Sea. Unable to reach a consensus, the foreign ministers announced in their joint communiqué their decision to work closely with China towards a Declaration on the Conduct of Parties in the South China Sea.²⁷

The ASEAN foreign ministers and China's Vice Foreign Minister Wang Yi finally signed a Declaration on the Conduct of Parties in the South China Sea on the sidelines of the ASEAN summit in Phnom Penh in November 2002. The agreement was intended to prevent further tensions over the disputed territories and to reduce the risks of military conflict in the South China Sea. The parties stipulated their adherence to the principles of the UN Charter, UNCLOS, the TAC and the Five Principles of

²⁶Chairman's Press Statement, Third Informal Summit of the ASEAN Heads of State and Government, Manila, Philippines, 28 November 1999.

²⁷Joint Communiqué of the 35th ASEAN Ministerial Meeting, Bandar Seri Begawan, Brunei, 29-30 July 2002.

Peaceful Coexistence and reaffirmed their respect and commitment to ‘the freedom of navigation in and over flight above the South China Sea’.²⁸ They agreed to resolve their territorial disputes by peaceful means, ‘without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law’.²⁹ The parties also pledged to practice self-restraint in activities that could spark disputes, such as inhabiting still uninhabited features, and to enhance their efforts to ‘build trust and confidence between and among them’.³⁰ They agreed to exchange views among defence officials, to provide humane treatment to any person in danger or distress, and to give advance notice of military exercises on a voluntary basis. The political declaration was an interim accord, as the parties were expected to continue working on the adoption of a code of conduct. It stated:

The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.³¹

The Philippines and Vietnam were disappointed as they had pushed for a binding document. Moreover, Vietnam had demanded that the declaration include a commitment not to build new structures, which was rejected by China. The political declaration also made no reference to its specific geographical scope, primarily because China opposed any mention of the Paracel Islands.

Declaration on the Conduct of Parties: Step in the right direction or failed opportunity?

As an interim accord, the Declaration on the Conduct of Parties in the South China Sea is a step in the right direction. It shows a desire by the different parties involved to pursue their claims by peaceful means. It openly denounces the use of force in the South China Sea. In that sense, it contributes towards the easing of tensions between

²⁸Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, Cambodia, 4 November 2002.

²⁹Declaration on the Conduct of Parties in the South China Sea.

³⁰Declaration on the Conduct of Parties in the South China Sea.

³¹Declaration on the Conduct of Parties in the South China Sea.

the claimant states. By putting off the question of boundaries, it also increases the possibility of reaching agreements on joint oil exploration and development schemes. Such an agreement was, for example, signed in March 2005 by the state-owned oil companies of China, Vietnam and the Philippines with regard to the conducting of oil pre-exploration surveys in the Spratlys. Philippine President Gloria Arroyo stated at the time that the agreement was a first implementation of the provisions of the 2002 Declaration.³²

The Declaration on the Conduct of Parties is essentially part of ASEAN's search 'for explicit confirmation that China's presence in the South China Sea will not jeopardize peaceful coexistence'.³³ In return, China has been keen not to antagonise the ASEAN countries over the South China Sea and it has often repeated its desire to resolve the territorial disputes by peaceful means without the resort to force. Since the Mischief Reef incident, Beijing has introduced an element of moderation towards the South China Sea question and it has attempted not to pose challenges to the broader regional order. As the first multilateral agreement signed by China on the South China Sea, the 2002 Declaration should thus be seen as an indication of its willingness to adhere to the principles promoted by the ASEAN countries. In October 2003, China was also the first non-Southeast Asian state to adhere to the TAC. This has been part of China's overall courtship of ASEAN in recent years, as well as further demonstrating its willingness to respect the Association's norms of inter-state behaviour.

Still, after years of negotiations, the 2002 declaration was a step short of the original goal of reaching a detailed and binding code of conduct for the South China Sea.³⁴ Tonnesson points out that the 'declaration does not establish a legally binding code of conduct: it is simply a political statement'.³⁵ The declaration is unable to prevent territorial clashes or other possible sources of conflict such as the arrest of fishermen by foreign navies and the expansion of military structures on already-occupied reefs.

³²Luz Baguioro, 'Three Nations sign Pact for Joint Spratlys Survey', *The Straits Times Interactive*, 15 March 2005.

³³Liselotte Odgaard, 'The South China Sea: ASEAN's Security Concerns about China', *Security Dialogue*, vol. 34, no. 1, March 2003, p. 22.

³⁴Ralf Emmers, 'Keeping Waters Calm in the South China Sea', *The Straits Times*, 21 November 2002, p. 23.

³⁵Stein Tonnesson, 'Sino-Vietnamese Rapprochement and the South China Sea Irritant', *Security Dialogue*, vol. 34, no. 1, 2003, pp. 55-56.

Attempts to formulate a binding code of conduct for the South China Sea will continue to face major obstacles. In that respect, the 2002 Declaration may be regarded as an abdication on the part of ASEAN regarding its original objective of attaining a detailed and binding code of conduct. Though the political declaration is meant to be part of a work in progress, it is legitimate to question whether the ASEAN members and China will ever agree on a binding code of conduct for the South China Sea.

The failure to develop a code of conduct among the claimant states results from several factors. The PRC has constantly repeated that its sovereignty over the South China Sea is indisputable. Beijing seems only prepared to support a non-binding multilateral code of conduct that would be limited to the Spratlys and focus on dialogue and the preservation of regional stability, rather than the problem of sovereign jurisdiction. Nevertheless, the absence of consensus and solidarity among the ASEAN states over the South China Sea needs to be kept in mind, particularly between Malaysia on the one hand and the Philippines and Vietnam on the other. The ASEAN claimants involved in the dispute are also unwilling to make concessions with regard to their territorial claims and have failed to address the problem of sovereign jurisdiction. Finally, cooperation on the South China Sea has been affected by persisting mistrust among the ASEAN claimants. All these sources of disunity have complicated the attainment of an ASEAN stand on a code of conduct.

Conclusion

The maritime disputes in the South China Sea have been characterised by a strategic and diplomatic status quo. Diplomatic achievements to manage or even resolve the disputes have been rather limited. The 1992 Declaration on the South China Sea only applies to the ASEAN members. The 2002 Declaration on the Conduct of Parties in the South China Sea is based on a multilateral and normative dimension as well as on a convergence of views on the need to peacefully manage the dispute. While a step in the right direction, the declaration is still only an interim political agreement. It may also be regarded as an abdication on the part of ASEAN regarding its original objective of attaining a detailed and binding code of conduct. Despite the use of force by China and others to take control of some disputed features, the South China Sea

has remained primarily a political rather than a military issue, thanks to China's desire to accommodate the Southeast Asian countries and the limited naval capabilities available to the different claimants.

In the short to medium term, an armed conflict seems unlikely although risks exist of miscalculations or accidents that could lead to limited confrontation. In the longer run, however, the maritime disputes could become a military threat and a primary security concern in Southeast Asia if China, or to a lesser extent the other parties involved, significantly increase their power projection capabilities. As oil prices have risen substantially over recent years, the situation in the South China Sea would also quickly change if proof was found of sufficient oil reserves for commercial use. Whether the situation would change for the better or worse depends of course on the political and regional circumstances at that given time, on the status of China-ASEAN relations, as well as on the demand for energy supplies. There are few reasons to be optimistic on the last issue. Despite its own production of 3.4 million barrels a day, China's import needs have already grown to 40 per cent of its total oil consumption and this figure is expected to increase in order to sustain its economic growth and development.³⁶

As no solution to the territorial disputes in the South China Sea seems to be in sight, it is relevant to ask whether the claimant states should put off the question of boundaries for now and instead seek to agree on joint oil exploration and development schemes in this potentially-oil rich area. The agreement signed on the conducting of oil pre-exploration surveys in the Spratlys by the state-owned oil companies of China, Vietnam and the Philippines in March 2005 shows that this reverse process has already started. Yet similar cases of overlapping sovereignty claims in resource-rich areas suggest that this may well be a flawed policy for the weaker parties involved in the territorial disputes in the South China Sea. For example, the Norwegian experience in negotiating with Russia over their respective maritime jurisdiction indicates that territorial disputes should be resolved first before the exploration and exploitation of living and non-living resources can start.³⁷ Otherwise, the

³⁶Nayan Chanda, 'China Naval Expansion: Strictly Business, please', *The Straits Times*, 12 April 2005.

³⁷This point was raised by Dr Stein Tonnesson at the Norwegian Institute of International Affairs-IDSS Workshop on 'Maritime Security in Southeast Asia', 14-15 June 2005, Oslo, Norway.

overwhelming asymmetry in power and the absence of an overall agreement on the sovereign rights of the coastal states can significantly weaken the negotiating position of the weaker parties as well as leave them in a fragile situation after changing economic conditions (for instance more oil reserves found for commercial usage than anticipated) or evolving strategic circumstances in the territorial dispute.

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