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Tensions Flare in the South China Sea

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Tensions have been building in the South China Sea and, if left unattended, could sour relations in the region, prompt a regional arms race, and even worse, spark a military conflict. Encompassing an area from the Singapore and Malacca Straits to the Strait of Taiwan with a total of around 1,350,000 square miles, the South China Sea contains over 250 small islands, atolls, cays, shoals, reefs and sandbars, many of which are naturally under water at high tide, and some of which are permanently submerged. The waters of the South China Sea are not only some of the world's busiest shipping lanes; they are also a repository for valuable natural resources, including fish, minerals, and potentially large deposits of oil and natural gas. Competing territorial claims over parts or all of the South China Sea have been made by China, Taiwan, Indonesia, the Philippines, Vietnam, Malaysia, and Brunei.

Military clashes of varying severity occurred in the South China Sea beginning with China's use of military force against Vietnamese troops to enforce its claim to the Parcel Islands in 1974. Another confrontation took place between Chinese and Vietnamese forces over the occupation of Johnson South Reef (chigua jiaohai) in 1988, resulting in the sinking of three Vietnamese vessels, killing seventy-two people. In 1994, China built structures on Mischief Reef, which is well within the Philippines' Exclusive Economic Zone (EEZ). Incidents involving fishing boats and, in some cases, naval vessels continued through the 1990s, but friction waned in the early 2000s, primarily due to China's adoption of a diplomatic offensive aimed at reassuring the ASEAN countries that China's rise would be peaceful. The November 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DoC) was a watershed agreement, albeit non-binding, that was intended to freeze the status quo and encourage cooperative confident-building measures among the disputants.

Tensions flared, however, in 2007, as a result of Chinese demarches to foreign oil companies engaged in joint ventures with Vietnam to develop two gas fields that Hanoi claimed were well within its EEZ. That same year Chinese naval patrol vessels fired on a Vietnamese

fishing boat, killing one sailor; China launched tourist cruises to the Paracels; and China's National People's Congress passed a law creating a county-level city in Hainan province called Sansha to administer China's claims in the South China Sea, prompting anti-China protests in Vietnam.¹ Also in 2007, Vietnam issued a new maritime strategy that emphasized developing South China Sea resources, which Beijing viewed as provocative. In 2009-2010, Chinese authorities detained an unusually large number of Vietnamese trawlers in waters near the Paracels and expanded deployments of large fishery patrol vessels to the Spratly Islands to protect Chinese fishing boats. Vietnam claimed an extended continental shelf at the UN and launched a campaign to "internationalize" the South China Sea issue, beginning with a conference held in November 2009 in Hanoi.

The joint submission by Malaysia and Vietnam in May 2009 to the Commission on the Limits of the Continental Shelf (CLCS) also contributed to renewed friction. The claim covered the seabed resources of the southern part of the South China Sea in disregard of the other interested parties, Brunei, China and the Philippines. As such, it can be argued that the submission was contrary to the spirit of Article 5 of the DOC that calls for self-restraint in the conduct of activities that could complicate or escalate disputes.² China issued a strong protest, claiming that the submission "seriously infringed China's sovereignty, sovereign rights and jurisdiction in the South China Sea."

Observing the escalating tensions in the South China Sea, Obama administration officials concluded that U.S. policy, which emphasized American neutrality in the territorial disputes, was no longer sufficient; the deteriorating situation required that the U.S. state its interests clearly and publicly. At the meeting of the Association of Southeast Asian Nations Regional Forum in Hanoi in July 2010, U.S. Secretary of State Hillary Clinton maintained that the US had a "national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea." She expressed support for the DoC and

¹ Ian Storey, "Trouble and Strife in the South China Sea: Vietnam and China," *China Brief*, Volume 8, Issue 8, April 16, 2008.

² Sam Bateman, "The Regime of the South China Sea – The Significance of the Declaration on the Conduct of Parties," https://blog.canpan.info/oprf/img/858/dr.bateman_presentation.pdf/

offered assistance “to facilitate initiatives and confidence building measures consistent with the declaration.”

Clinton did not alter the US long-standing neutral position on the territorial disputes in the region and did not take a position on how the disputes should be resolved. Rather, she emphasized the necessity of resolving disputes without the use or threat of force and stated that “claimants should pursue their territorial claims and accompanying rights to maritime space in accordance with the UN Convention on the Law of the Sea.”³ Following Clinton’s address, twelve other nations mentioned concerns about stability in the South China Sea. In his rebuttal, Chinese Foreign Minister Yang Jiechi insisted that the situation in the South China Sea was peaceful and cautioned against internationalizing the territorial disputes. He accused Secretary Clinton of launching an “attack” on China that was “designed to give the international community a wrong impression that the situation in the South China Sea is a cause for grave concern.”⁴

The waters of the South China Sea remained relatively calm in the second half of 2010, but churned again in 2011. The Philippines opted in February to begin exploration activities in the Reed Bank, a group of small islets west of the Philippine Island of Palawan. On March 2, two Chinese patrol boats reportedly threatened to ram a survey ship that was chartered by a UK-based oil and gas company which had conducted seismic studies that had indicated the presence of 3.4 trillion cubic feet of gas and was undertaking work to identify locations for appraisal wells to be sunk. The Chinese vessels ordered the survey ship to cease its activities because the area was under Chinese jurisdiction⁵. On May 26, Hanoi accused Chinese vessels of severing the cables of a PetroVietnam survey ship. A similar incident occurred again two weeks later. The Vietnamese insisted that the area in which the survey was taking place was inside its EEZ and had not been previously contested and charged Beijing with seeking to “turn undisputed areas into disputed areas.” China’s foreign ministry spokesman claimed that armed Vietnamese ships

³ Clinton speech in Hanoi.

⁴ Statement on Chinese MFA website, “Foreign Minister Yang Jiechi Refutes Fallacies on the South China Sea Issue.”

⁵ Ian Storey, “China and the Philippines: Implications of the Reed Bank Incident,” *China Brief*, Volume 11, Issue 8, May 6, 2011.

were chasing a Chinese fishing vessel from the area and a fishing net accidentally became entangled with the cable of the “illegally operating” oil-exploration vessel.

From Beijing’s perspective, Vietnam and the Philippines are violating an understanding to forego unilateral development of maritime resources. China maintains that it is justified in protecting Chinese fishing vessels, enforcing an annual fishing ban near the Paracels, and harassing foreign energy companies to suspend exploration work in disputed areas. In the face of perceived challenges to its jurisdictional authority, the Chinese continue to reiterate their claim of “indisputable sovereignty” over the South China Sea. Beijing bases its claim on initial discovery and historical arguments that it traces to the second century B.C. A map originally drawn up by the Kuomintang (KMT) in 1947 depicts China’s claim. It shows nine unconnected lines that cover almost the entire South China Sea. The Chinese government remains deliberately ambiguous about the exact meaning of the nine-dotted line. Since there is no consensus government position, Chinese analysts provide different explanations. Some experts claim that the lines convey full sovereignty over the waters and all land and sub-sea features within. Others contend that the line delineates ownership of the islands within the dotted lines, but not sovereignty over the sea itself. Another school of thought maintains that the significance of the dotted lines lies in their delineation of China’s historical legacy in the South China Sea.

Diplomatic and Military Context

The DOC is a useful starting point for managing disputes in the South China Sea, but it is not sufficient. The DOC committed parties to using peaceful modes of dispute settlement, exercising self-restraint in the conduct of activities that would complicate or escalate disputes, adhering to international law, seeking ways to build up confidence and trust, and respecting the freedom of navigation of overflight in the South China Sea. The agreement also contains some useful confidence-building measures, including holding dialogues among defense officials; notifying other parties of planned military exercises, and exchanging information. These provisions are voluntary, however.⁶ Although nine years have passed since the DoC was signed, there has been little progress made in implementing it. This is partly due to a lack of consensus

⁶ *Declaration on the Conduct of Parties in the South China Sea*, <http://www.aseansec.org/13163.htm>.

among the parties on how to proceed and whether making the agreement operational was urgent. A DoC Joint Working Group has met only five times. Talks between ASEAN and China resumed in December 2010, but yielded no results. A major stumbling block continues to be Beijing's opposition to the inclusion in the DoC draft guidelines of language that would permit the ASEAN countries to discuss among themselves issues relating to the South China Sea dispute prior to meeting with Chinese officials. The lack of progress has stalled the implementation of the cooperative CBMs outlined in the DoC.

In the intervening years since the DoC was signed, the military balance of power has shifted decidedly in China's favor. The People's Liberation Army Navy (PLAN) has made notable strides, putting into service numerous modern submarines, destroyers, frigates, amphibious landing ships, and patrol vessels, strengthening China's hand in the South China Sea territorial disputes and enhancing China's ability to intimidate the other claimants. The navy and maritime law enforcement agencies have increased the frequency of their missions in contested waters. In addition, Chinese military exercises in the South China Sea have increased in scope, frequency and sophistication. Later this year, the Chinese plan to deploy an aircraft carrier—the 67,000 ton ex-Soviet carrier *Varyag*—which will provide the PLAN with power projection capabilities that could be employed in the South China Sea.

China's military buildup has made the region uneasy and led to various efforts to hedge against China's rising power by supporting, and in some cases actively facilitating, the U.S. forward deployed military balance to deter and balance Chinese military power. Singapore is the most ardent and explicit backer of U.S. military presence in the region, evidenced by the U.S. Navy's frequent port calls at Changi Naval Base. At the Shangri-La Dialogue in June, U.S. Secretary of Defense Gates announced that the U.S. is strengthening its bilateral defense relationship with Singapore, "pursuing more operational engagement," including the deployment of U.S. Littoral Combat Ships to Singapore. In addition, the two countries are exploring ways "increase opportunities for our two militaries to train and operate together, to include prepositioning supplies to improve disaster response, improving command and control capabilities, and expanding training opportunities to help prepare our forces for the challenges

both militaries face operating in the Pacific.”⁷ Thailand and the Philippines are U.S. treaty allies. Defense ties between the Vietnam and the U.S. are expanding. Malaysia also continues to develop strong military ties with the U.S. Indonesia and the U.S. normalized military-to-military ties in 2005 and have been gradually developing cooperation.

In addition, some Southeast Asian countries are taking steps to strengthen their military capabilities to prepare for potential conflict scenarios in the South China Sea. Vietnam is procuring six Kilo-class submarines and 12 SU-30MK2 fighter jets from Russia. It has also recently acquired two frigates, two corvettes, and ten fast-attack boats. To defend its interests in the South China Sea, Malaysia has maintained advanced air and naval capability, including procurement recently of two submarines. The Philippines, which has suffered from a lack of financial resources, took delivery in May of what is believed to be the first of three former U.S. Coast Guard patrol vessels to enable its navy to patrol Philippine territorial waters and its Exclusive Economic Zone.⁸

Why are tensions rising now?

There is likely no single reason for the escalation of tensions in the South China Sea in recent years. Rather, a confluence of factors explains clashes are currently on the rise after a period of relative quiescence.

- The deadline for submission of coastal states’ claims of an extended continental shelf beyond 200 nautical miles to the United Nations Commission on the Limits of the Continental Shelf was May 13th, 2009. This required disputing states to be specific about the limits of their claims. For the first time, China presented it’s a map representing its claim of a U-shaped line encompassing 80% of the South China Sea to a UN body. China protested Vietnam’s submission and the joint submission by Malaysia and Vietnam.

⁷ Speech by Secretary of Defense Robert Gates to the 10th IISS Asia Security Summit, The Shangri-La Dialogue, Singapore, June 4, 2011. <http://www.iiss.org/conferences/the-shangri-la-dialogue/shangri-la-dialogue-2011/speeches/first-plenary-session/dr-robert-gates/>.

⁸ “U.S. Coast Guard (USCG) Hamilton Cutter Transfers to Philippine Navy,” May 18, 2011 press release, Department of Foreign Affairs, <http://www.pnoynews.com/2011/05/us-coast-guard-uscg-hamilton-cutter.html>.

- Hypernationalism in China is posing a challenge at a time of leadership transition. The CCP has fostered hypernationalism to divert attention from social problems, economic inequality and political authoritarianism, thereby inhibiting popular support for the reforms necessary to transform China into a trustworthy neighbor. In the run-up to the leadership transition at the 2012 Party Congress, the Chinese leadership is especially risk averse and seeks to avoid being criticized for not adequately defending Chinese sovereignty and territorial integrity.
- Prices for oil and gas are rising as demand, especially in Asia, surges. Survey activity has increased and in some cases has produced significant findings. For example, the survey conducted in the Sampaguita gas field located inside Reed Bank by Forum Energy, a UK-based oil and gas company, on contract for the Philippine government, indicated the presence of 3.4 trillion cubic feet of gas⁹.
- Capabilities for deep water drilling have spread. China's state-owned China National Offshore Oil Corp., the country's largest offshore oil producer, has announced in May the acquisition of the capability to undertake an offshore operation at a water depth of 10,000 feet and drilling a length of 39,000 feet.¹⁰
- Chinese patrol capabilities are expanding. The China Maritime Surveillance Force of the South Sea fleet now has 13 patrol ships, two planes, and one helicopter. The latest ship, a 1,500 ton vessel, 88 meters long and 12 meters wide, was added to the fleet in May.¹¹
- China may be demonstrating its opposition to deeper U.S.-Vietnam security ties. For more than a decade after normalizing relations with the United States in 1995, Hanoi was cautious in developing defense ties with the U.S. However, in recent years, the U.S.-Vietnam military relationship has expanded rapidly, to include high level exchanges, port calls, and military exercises.
- The Obama administration's assertion that it is back in Southeast Asia and Secretary of State Clinton's explication of U.S. interests in the South China Sea has likely

⁹ Ian Storey, "China and the Philippines: Implications of the Reed Bank Incident."

¹⁰ "China Gets Massive Deep-Water Rig," UPI, May 25, 2011, <http://dalje.com/en-world/china-gets-massive-deep-water-rig/360546>.

¹¹ "China adds South China Sea patrol ship," People's Daily Online, May 9, 2011, <http://english.peopledaily.com.cn/90001/90776/90882/7373370.html>.

emboldened various players and raised hopes that the U.S. might be enlisted to support their claims against China.

- In the run-up to the July ASEAN Regional Forum meeting and the subsequent East Asia Summit in Bali, some of the claimants are competing to shape the discussion of South China Sea issues.

A Way Forward

The rising risks of armed clashes in the South China Sea require consideration of steps to defuse tensions and resolve the festering disputes. Many proposals have been put forward by scholars and statesmen with an interest in the preservation of peace in the region. Some of the key recommendations are summarized below:

1. The implementation guidelines for the DOC should be concluded, and a binding Code of Conduct should be negotiated between ASEAN and China.
2. All claimants should clarify their claims. China especially must address the concerns that have been raised by its nine-dotted lines map.
3. The United States should become a party to UNCLOS. The Senate should ratify the treaty expeditiously.
4. Where possible, territorial disputes should be referred to the International Court of Justice. Where this is not possible, countries should agree to set aside the dispute over sovereignty and pursue joint development of hydrocarbon resources, as proposed by Chinese leader Deng Xiaoping.¹²
5. Confidence building measures should be implemented to build trust among militaries in the region and to promote habits of cooperation.
6. An agreement to prevent incidents at sea should be negotiated among regional states. Such an accord should contain procedures for operational safety at sea and for preventing accidents from escalating into serious conflicts.

¹² Six ASEAN member States (Brunei, Cambodia, Indonesia, Malaysia, Thailand, and Vietnam) and three Northeast Asian countries (China, Japan and South Korea) have either officially agreed to negotiate joint development agreements or have been party to a joint development agreement. See keynote address by Professor S. Jayakumar, CIL Conference on Joint Development and the South China Sea, June 16, 2011.

7. A common understanding should be reached on key elements of UNCLOS, especially on rights and duties in an EEZ.