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# **Recent Developments in the South China Sea: Implications for Regional Security and Cooperation**

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The South China Sea's significance has been wider recognized by many stakeholders in international navigation, maritime safety, natural resource exploitation, environmental protection, and legal effectiveness of international law. The South China Sea disputes relating to the Paracel Islands, Spratly Islands and maritime zones associated with these groups of islands remain as ones of potential flashpoints that could cause regional instability. Since 1990s, efforts have been made by regional countries to stabilize the situation and seek the opportunities for cooperation in the South China Sea area. These efforts have resulted in, among others, the ASEAN Declaration on the South China Sea in 1992, the adoption in 2002 of the ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), according to which all signing parties pledged to seek peaceful solutions to disputes and conduct maritime cooperation in order to maintain regional stability in the South China Sea. However, after signing the DOC, the parties have not ceased activities that complicate the situation. Tensions have occasionally arisen and claimants continued to protest each other's moves in the South China Sea.

This paper will focus on the efforts made by regional countries to stabilize the situation and promote cooperation in the South China Sea; analyse implications of recent developments in the South China Sea for regional security and cooperation, why the implementation of the signed documents, especially the DOC, has been incomplete; and try to contribute some solution-oriented suggestions for promoting regional security and cooperation.

## **Security Environment in the South China Sea and Efforts for Managing the Disputes**

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Prior to the signing of the Declaration on the Conduct of Parties in the South China Sea between China and ASEAN in 2002, the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the Treaty on the Southeast Asia Nuclear Weapon-Free Zone concluded in 1976 and 1995 respectively were the main legal instruments governing behaviours of the parties concerned in the South China Sea. The fundamental principles guiding the signing parties in the TAC include the settlement of differences by peaceful means, non-resort to the threat or use of force and the promotion of effective cooperation among the concerned parties.<sup>2</sup>

ASEAN members first adopted their common stance on the South China Sea dispute in the ASEAN Declaration on the South China Sea signed in Manila in 1992. The declaration demonstrated ASEAN's concerns over the tension between Vietnam and China after the latter licensed the Creston Energy Corporation (from the United States) to exploit oil in Vanguard Bank on Vietnam's continental shelf and passed its Law on the Territorial Sea on 25 February 1992 stipulating China's absolute sovereignty over both the Paracels and the Spratly islands. ASEAN's foreign ministers recognized that "South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned" and the fact that "any adverse developments in the South China Sea directly affect peace and stability in the region".<sup>3</sup> The Declaration called on the parties concerned to settle the dispute by peaceful means, exercise restraint and cooperate in applying the principles enshrined in the TAC as a basis for establishing a code of international conduct over the South China Sea. The Declaration called for exploring the possibility of cooperation in the South China Sea. In addition, all parties concerned were invited to subscribe to this Manila Declaration.<sup>4</sup> Vietnam, a non-ASEAN country at the time, supported Manila Declaration. China, however, reiterated its position on its refusal to accept multilateral discussion of the issue and its view that the Paracels and Spratlys disputes did not concern ASEAN. Nevertheless, Chinese foreign minister Qian Qichen said that China subscribed to the declaration's "principles".<sup>5</sup>

The Mischief Reef incident in 1995 marked a change in China's policy toward the South China Sea. China built infrastructure on a submerged reef that in the Spratly islands and well within the Philippines' Exclusive Economic Zone (EEZ) led to the first time that China and the

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<sup>2</sup> Treaty of Amity and Cooperation in Southeast Asia, Indonesia, 24 February 1976, [www.aseansec.org/1217.htm](http://www.aseansec.org/1217.htm)

<sup>3</sup> ASEAN Declaration on the South China Sea, Manila, Philippines, 22 July 1992, [www.aseansec.org/1196.htm](http://www.aseansec.org/1196.htm)

<sup>4</sup> ASEAN Declaration on the South China Sea, Manila, Philippines, 22 July 1992, [www.aseansec.org/1196.htm](http://www.aseansec.org/1196.htm)

<sup>5</sup> Rodolfo C. Severino, "ASEAN and the South China Sea", *Security Challenges*, Vol. 6, No. 2 (Winter 2010), pp. 37-47, p 42

Philippines engaged in hostile confrontation. Previously, China had only been antagonistic towards Vietnam, a non-ASEAN member, in 1974 and 1988. After the Mischief Reef incident, ASEAN sought initiatives that could prevent existing disputes from escalating into conflicts.

### ***The Declaration on the Conduct of Parties in the South China Sea***

The idea of a regional Code of Conduct (COC) was previously put forward in the 1992 ASEAN Declaration and was discussed intensively in the track-2 workshop series organized by Indonesia on managing potential conflicts in the South China Sea since 1991. The idea of COC was officially endorsed at the 29th ASEAN Ministerial Meeting (Jakarta, July 21–27, 1996) in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned. The ASEAN Foreign Ministers expressed their concerns over the situation in the South China Sea in the joint communiqué and underlined that the parties concerned should apply the principles of the Treaty of Amity and Cooperation in Southeast Asia (TAC) as the basis for a regional code of conduct in the South China Sea to build a secure and stable regional environment.<sup>6</sup>

Although a binding code of conduct had been considered the primary goal, after almost 5 years of negotiations ASEAN and China eventually only reached a political document. On 4 November 2002 in Phnom-Penh, ASEAN and the People's Republic of China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). The DOC was signed as a step toward the adoption of a more binding COC which defines the rights and responsibility of the parties concerned to further promote peace, stability and development in the region.

China's accession to the DOC marked a major change in its approach to the South China Sea dispute, from bilateralism to 'bi-multilateralism'. Previously, China had only advocated for bilateral negotiations in order to take advantage of its position as a regional power and avoid any unified ASEAN front against its interest. Though China was determined to remain its claim in the disputed areas, it seemed prepared to join multilateral mechanisms and respect the rules and values of the game. By accepting multilateral negotiations with ASEAN over the COC and DOC, China sought to exploit the divides between the ASEAN member states. Furthermore, with the DOC, China could gain politically and economically and alleviate ASEAN's concern about China. In response to the 'China threat' theory, China advocated a 'peaceful-rise' doctrine and 'peaceful-development' policies as its national development guidelines to calm its neighbors.

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<sup>6</sup> [www.aseansec.org/1824.htm](http://www.aseansec.org/1824.htm)

Southeast Asia is the focus of China's friendly policy. The signing of the DOC partly helped China gain the trust and confidence of ASEAN members, laying the foundation for further development in economic and trade ties. Furthermore, the DOC, a political and non-binding document, did not affect any of China's claims, and therefore would not provoke any negative reaction from within China itself.

The regional security situation in the wake of September 11, 2001 also contributed to the signing of the DOC in 2002. After the incident, the United States declared that Southeast Asia was the second front of its war against terrorism, which aroused China's concerns over the U.S. geo-political position in the region.<sup>7</sup> Relations between US and the Philippines, Malaysia, and Vietnam were improved and strengthened. Three countries are ASEAN members and directly involved in the South China Sea dispute with China. Other ASEAN members like Thailand, Singapore and even Indonesia, the world's biggest Muslim country, supported the U.S. in its anti-terrorism war. In August 2002, the ASEAN-U.S. Joint Declaration for Cooperation to Combat International Terrorism was signed.<sup>8</sup> The increased cooperation between the United States and its Southeast Asian allies exerted an influence on China's strategic calculations. Although China supported US on the war on terrorism, China was concerned that the enhanced military presence of the U.S. in the region might lead to U.S. engagement in the South China Sea issue. As a result, China feared that the South China Sea issue would be multilateralized and internationalized. According to Leszek Buszynski, the main reason leading to China's participation in the DOC was that this country realized the significance of a regional code of conduct in discouraging ASEAN member countries from further enhancing their political and military relations with the United States, thus avoiding U.S. interference in the South China Sea dispute as well as possible U.S. advantage in the Taiwan issue.<sup>9</sup>

From ASEAN's perspective, China's economic growth was seen as an opportunity for its member countries. On November 5, 2002, in Phnom Penh, an ASEAN-China Framework Agreement on Comprehensive Economic Cooperation was signed, paving the way for an ASEAN-China Free Trade Area in 2010. This represented an important step forward in ASEAN-

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<sup>7</sup> June Teufel Dreyer, *Encroaching on the Middle Kingdom? China views of its place in the world*, [http://www.baylor.edu/Asia\\_Studies/dreyer.pdf](http://www.baylor.edu/Asia_Studies/dreyer.pdf)

<sup>8</sup> <http://www.aseansec.org/7424.htm>

<sup>9</sup> Leszek Buszynski, 'ASEAN, the Declaration on Conduct, and the South China Sea', *Contemporary South East Asia*, Dec 2003, Volume 25, p343

China relations.<sup>10</sup> The potential profit from their two-way trade contributed to the signing of the DOC. On this issue, Amitav Acharya wrote, “[f]rom a political angle, the realization of a China-ASEAN free trade zone agreement indicates that historical fraud and political clashes between ASEAN member states and PRC are no longer one of the most important factors influencing ASEAN-PRC relations.”<sup>11</sup>

At the seventh ASEAN-China Summit on October 8, 2003 in Bali, Indonesia, both sides signed a Joint Declaration of the Heads of State/Government on Strategic Partnership for Peace and Prosperity with a declared purpose to foster friendly relations, mutually beneficial cooperation, and good neighborliness between ASEAN and China by deepening and expanding ASEAN-China cooperative relations in a comprehensive manner in the 21st century.<sup>12</sup> On the same day, China officially became the first non-ASEAN country to join the Treaty of Amity and Cooperation in Southeast Asia, thus encouraging China to commit to settle disputes in a peaceful manner and avoid threatening behavior or the use of force. ASEAN countries highly appreciated these developments, which made a mayor contribution to regional peace, security, and development. In 2005, Chinese leader Hu Jintao visited Indonesia, Brunei, and the Philippines to promote friendship and cooperation and to assuage concerns about Chinese intentions. All of these developments, combined with other activities within the Chinese ‘charm offensive’ toward Southeast Asia, including the 2001 proposal to establish a China-ASEAN Free Trade Area (CAFTA), had helped reduce the regional perception of China as a threat.

### **Implementation of DOC: China Returns to Bilateralism**

To translate the provisions of the DOC into concrete cooperation activities, in the Plan of Action to implement the 2003 Joint Declaration on Strategic Partnership for Peace and Prosperity, which was formulated to serve as the master plan to deepen and broaden ASEAN-China relations and cooperation, among other things, ASEAN and China declared to pursue joint actions and measures to implement the DOC in an ‘effective way’.<sup>13</sup> The actions and measures include: to convene regular ASEAN-China SOM on the realization of the DOC; to provide guidance for and review the implementation of the DOC; and to establish a working group to

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<sup>10</sup> [www.aseansec.org/13196.htm](http://www.aseansec.org/13196.htm)

<sup>11</sup> Amitav Acharya, *Seeking Security in the Dragon’s shadow: China and Southeast Asia in the Emerging Asian Order*, IDSS Working papers, March 2003

<sup>12</sup> <http://www.aseansec.org/15265.htm>

<sup>13</sup> <http://www.aseansec.org/16805.htm>

both draw up the guidelines for the implementation of the DOC and to provide recommendations to the ASEAN-China SOM on policy and implementation issues.<sup>14</sup> At the first ASEAN-China SOM on the implementation of the DOC in Kuala Lumpur on December 7, 2004, participants decided to set up a joint working group (JWG) to study and recommend confidence-building activities.<sup>15</sup> The ASEAN-China JWG is tasked to formulate recommendations on: a) guidelines and action plan for the implementation of the DOC; b) specific cooperative activities in the South China Sea; c) a register of experts and eminent persons who may provide technical inputs, non-binding and professional views or policy recommendations to the ASEAN-China JWG; and d) the convening of workshops, as the need arises.<sup>16</sup> At the first meeting of the ASEAN-China JWG in Manila on August 4-5, 2005, ASEAN presented a draft of Guidelines for the implementation of DOC for discussion. However, the main issue is point 2 of the Guidelines for the implementation of DOC. According to ASEAN' practice in dealing with Dialogue Partner, ASEAN wants to deal with China as a group and to "consult among themselves" before meeting with China, while China prefers consultations with "relevant parties", not with ASEAN as a bloc. After several meetings of ASEAN-China JWG, a consensus on point 2 of the guideline has not been reached and the agreed six joint cooperation projects on less sensitive issues were still on the papers.

### **Recent Developments and Its Implications**

The DOC was signed in the hope that it would provide the foundation for long-term stability in the area and foster understanding among the countries concerned. A relative stable situation in the South China Sea was lasting for half of decade. However, as stated by Nguyen Hong Thao, it is naïve to believe that because of the DOC, the parties have ceased undertaking activities that complicate the situation.<sup>17</sup> According to the DOC, the parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from any action of inhabiting the presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner. However, the Declaration does not clarify what kind of

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<sup>14</sup> Ibid

<sup>15</sup> <http://www.aseansec.org/16888.htm>

<sup>16</sup> Terms of Reference of the ASEAN-China Joint Working Group on the Implementation of the DOC. <http://www.aseansec.org/16885.htm>

<sup>17</sup> Nguyen Hong Thao, "The Declaration on the Conduct of Parties in the South China Sea: A Vietnamese perspective, 2002-2007," In *Security and International Politics*, ed. Sam Bateman and Ralf Emmers, 2009, 211

activities could be considered to complicate or escalate a dispute. Claimants have continued to construct structures in the disputed features in the South China Sea and declared unilateral jurisdictional regulations to demonstrate sovereignty in the disputed areas.

As the most powerful country, China's approach in the South China Sea determines the nature of dispute. Since 2007-2008, as Beijing corrected its policy toward the South China Sea issue with more assertive approach, the situation was tense again.

In December 2007, China established the city of Sansha for administrating the Paracel and Spratly Islands (and the submerged reef of Macclesfield Bank), which triggered strong official protest from Vietnam as well as anti-China demonstrations in Hanoi and Ho Chi Minh City. In January 2010, China decided to establish local governing bodies in the Paracel Islands and develop the islands's tourism industry and that act provoked condemnation from Hanoi as a violation of Vietnamese sovereignty.<sup>18</sup> Later, China passed the "2010-20 Grand Plan for Construction and Development for the International Tourism Island of Hainan," under which the Spratly and Paracel Islands will be incorporated in a multi-purpose ocean complex, air and sea tourist routes bound for Paracel will be promoted, and registration for the right to use uninhabited islands will be encouraged. In June 2010, Vietnam Ministry of Foreign Affairs (MOFA) spokesperson condemned the Chinese plan as a violation of its sovereignty and contradictory to the spirit of DOC. She quoted provision five of the DOC: "The parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from any action of inhabiting the presently uninhabited islands, reefs, shoals, cays, and other features, and to handle their differences in a constructive manner."<sup>19</sup>

China has annually unilaterally declared its fishing ban in the South China Sea for two months, June and July, which had been applied since 1999. To enforce its jurisdictional claims in the South China Sea, China sent fishery administration vessels to patrol the disputed water. In 2006 and 2007, there were several press reports of incidents of Vietnamese fishermen being killed or wounded by Chinese patrol vessels and gunboats. Over 2009, Chinese forces have repeatedly detained Vietnamese fishing boats near the Paracel Islands, which both countries

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<sup>18</sup> Statement by the Spokesperson of Ministry of Foreign Affairs of Vietnam on 4<sup>th</sup> January 2010. [http://www.mofa.gov.vn/vi/tt\\_baochi/pbnfn/ns100104182947#KvsTE0ShBsOB](http://www.mofa.gov.vn/vi/tt_baochi/pbnfn/ns100104182947#KvsTE0ShBsOB)

<sup>19</sup> Regular Press Briefing by Vietnam MOFA's Spokesperson on 24<sup>th</sup> June, 2010. [http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns100624185700#JVew0HAfgRkg](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns100624185700#JVew0HAfgRkg)

claim, and have demanded a fine of \$10,000 for the release of the fishermen.<sup>20</sup> In early April 2010 Beijing even announced the dispatch of two large fishery patrol vessels to the Spratly Islands to protect Chinese fishing vessels, the first time it has done so outside the period of its unilateral fishing ban in the sea that usually takes place between May and August.<sup>21</sup>

Occasionally, China conducted military exercises in a disputed area as sending deterrent signals to other claimants of the South China Sea. The frequent and coordination level of Chinese military exercises have increased significantly in recent years.

Regarding energy developments, China and ASEAN states have actively involved international companies to exploit the energy reserves of their claims in order to fulfill the need of their rapid economic growth. Occasionally, when international energy companies undertake exploration in zones awarded by one country but claimed by another country, especially within the U-shaped claim line of China, activity has been halted by diplomatic protest and even intervention of military or paramilitary vessels.

Starting in the summer of 2007, China told a number of foreign oil and gas firms to stop exploration work with Vietnamese partners in the South China Sea or face unspecified consequences in their business dealings with China.<sup>22</sup> In April 2007, China's Foreign Ministry spokesman protested Vietnam's concession and cooperation with British Petroleum to build a gas pipeline near the southern coast of Vietnam that China considered "adjacent maritime zones" of the Spratly Islands.<sup>23</sup> China readily slipped back into its legally dubious historic claim to most of the South China Sea and the nationalist rhetoric that accompanies it.<sup>24</sup> Foreign Ministry spokesperson Qin Gang said, "any unilateral action taken by any other country in these waters constitutes infringement into China's sovereignty, territorial rights and jurisdiction."<sup>25</sup> Vietnam

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<sup>20</sup> "Vietnam protests Chinese ship seizure". Earth Time 30 Mar 2010,

<http://www.earthtimes.org/articles/show/316377,vietnam-protests-chinese-ship-seizure.html>

<sup>21</sup> [Ian Storey](#), China's "Charm Offensive" Loses Momentum in Southeast Asia, China Brief Volume: 10 Issue: 9, April 29, 2010.

[http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=36324&tx\\_ttnews\[backPid\]=7&cHash=897d20a7fa](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=36324&tx_ttnews[backPid]=7&cHash=897d20a7fa)

<sup>22</sup> Scot Marciel, "Maritime Issues and Sovereignty Disputes in East Asia" Testimony before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, July 15, 2009. [http://foreign.senate.gov/hearings/hearing/20090715\\_2/](http://foreign.senate.gov/hearings/hearing/20090715_2/)

<sup>23</sup> Ibid

<sup>24</sup> Mark Valencia, "Wither the South China Sea dispute?" (Paper presented at the Workshop "the South China Sea", Hanoi, 2009

<sup>25</sup> "China reiterates sovereignty over islands in South China Sea," [www.xinhuanet.com](http://www.xinhuanet.com), 3 February 2007.

reaffirmed that the area covered by its project with BP is located in Vietnam's EEZ and continental shelf. All conducted activities are in conformity with international law and practices, particularly UNCLOS and the spirit of DOC.<sup>26</sup> In the spring of 2007, under Chinese pressure, BP stopped its exploitation activities on the gas fields of Moc Tinh and Hai Thach on continental shelf of Vietnam. In 2008, there were many press reports that U.S. energy company Exxon Mobil had been threatened by China. From 2007 to 2010, China has also frequently protested other exploration activities conducted by international energy companies, including BP in bloc 117; PGS (Norway) in bloc 122; Chevron (US) in bloc 122; Pogo (US) in bloc 124; ONGC (India) in bloc 127; Indemisu (Japan) in bloc 04-3; CoconoPhilips (US) in bloc 133; Pearl Energy (UK) in bloc 06-1; Knoc (South Korea) in bloc 11-4; and Gazprom (Russia) in blocs 111 and 113.<sup>27</sup> A spokesperson from Vietnam's MOFA confirmed that in the case of Exxon Mobile, "these (awarded blocs) are totally under the sovereignty right of Vietnam and in line with the 1982 UN Convention on the Law of the Sea," and "Vietnam will ensure all the legitimate interests of foreign investors when they operate in Vietnam." Vietnam "welcome[s] and shall facilitate all cooperation with foreign partners, including Chinese investors operating in Vietnam, on the basis of full respect for our sovereignty."<sup>28</sup>

In 2009, China also objected to the Philippines's drilling in the Reed Bank area, about 60 miles (100 kilometers) west of Palawan, which may contain 3.4 trillion cubic feet of gas and 450 million barrels of oil.<sup>29</sup> Malaysia and Brunei also dispute about the development of a gas field in an area where their claims overlap. Identical blocs were awarded to different companies: Malaysia awarded exploration rights to Murphy Oil, while Brunei awarded similar rights to Royal Dutch Shell and Total.<sup>30</sup>

On the Chinese side, China was driven by the great need of the marine resources, especially the energy, to serve its fast-growing economy. China has been an oil-importer since 1993 and, according to Zhu Jianjun of the China National Petroleum Company (CNPC), China's oil imports will reach 50 percent of consumption in 2010 and 60 percent in 2020.<sup>31</sup> Therefore,

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<sup>26</sup> [www.mofa.gov.vn](http://www.mofa.gov.vn)

<sup>27</sup> Personal communications with Vietnam MOFA's and PetroVietnam's officials.

<sup>28</sup> Vietnam signals it wants ExxonMobil deal despite China warning. (AFP) – Jul 24, 2008. <http://afp.google.com/article/ALeqM5heDDtUDkdvnfpdxGI91DdmaxA7aw>

<sup>29</sup> Mark Valencia, "Wither the South China Sea dispute?"

<sup>30</sup> Leszek Buszynski, "The South China Sea: Avenues toward a Resolution of the Issue," (Paper presented at the Workshop "the South China Sea", Hanoi, 2009

<sup>31</sup> Leszek Buszynski and Iskandar Sazlan, "Maritime Claims and Energy Cooperation in the South China Sea," 156

ensuring a constant supply and secure transportation routes plays a decisive role in maintaining China's sustainable economic development.<sup>32</sup> The South China Sea is described by some Chinese analysts as containing huge reserves of oil, gas, and combustible ice resources. It is estimated that the oil reserves could reach 23–30 billion tons, accounting for one-third of China's aggregate oil and gas resources.<sup>33</sup> Zhang Dawei of the Ministry of Land Resources claimed that the South China Sea would become one of China's ten major oil and gas sites: the oil reserves were estimated at 23–30 billion tons or 168–220 billion barrels.<sup>34</sup> As with oil, estimates of the South China Sea's natural gas resources vary widely. One Chinese estimate for the entire area estimates natural gas reserves to be 2 quadrillion cubic feet. Another Chinese report estimates 225 billion barrels of oil equivalent in the Spratly Islands alone. In April 2006, Husky Energy working with the Chinese National Offshore Oil Corporation announced a find of proven natural gas reserves of nearly 4 to 6 trillion cubic feet near the Spratly Islands.<sup>35</sup> In 2007 Beijing opened the concession and invited bids for 22 petroleum blocks in the South China Sea in areas up to 1000 miles from Hainan.<sup>36</sup> Recent activities occurred in May 2010 when China sent the seismic survey vessel M/V *Western Spirit* to conduct seismic studies in the waters off Tri Ton island of Paracel group, in area overlapping with Vietnam's oil and gas exploration blocks 141, 142 and 143. At the same time, China carried out ground leveling activities on Tri Ton island in preparation for construction. On August 5<sup>th</sup> the Vietnamese government formally protested and demanded an immediate cessation of activities.

While protesting against energy development activities taken by other countries in the area within the U-shaped claim, China was pushing forward the idea of joint developments of energy resources in the South China Sea. In principle, other claimants do not oppose Chinese proposal of joint development, however, finding acceptable really disputed areas remains the most intractable problem for putting these ideas into practice. Other claimants would not accept the Chinese proposals for joint developments in the areas within the Chinese U-shaped claim,

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<sup>32</sup> Lee Lai To & Chen Shaofeng, "China and Joint Development in the South China Sea," 160

<sup>33</sup> Lee Lai To & Chen Shaofeng, "China and Joint Development in the South China Sea: An Energy security Perspective," In *Security and International Politics in the SCS*, ed. Sam Bateman and Ralf Emmers, 2009, 160

<sup>34</sup> Leszek Buszynski and Iskandar Sazlan, "Maritime Claims and Energy Cooperation in the South China Sea," *Contemporary Southeast Asia*, Volume 29, Number 1, (April 2007,),156

<sup>35</sup> Ibid

<sup>36</sup> Nguyen Hong Thao, "Declaration on the Conduct", 212

sometime in distance of five to seven hundreds nautical miles from Hainan Island but within 200 nautical miles EEZ of other claimants. As demonstrated in the case of the Agreement for Joint Marine Seismic Undertaking in the South China Sea in 2005 signed between national petroleum corporations of China, Philippines and Vietnam, the Philippines had not to renew the agreement due to opposition within Philippine domestic politics, which condemned the government of allowing the area of joint developments overlaps with the country's exclusive economic zone.

#### *Outer Limit of Continental Shelf Submissions*

Tensions over resources on South China Sea continental shelf also were not unrelated with developments in the South China Sea in the last 2-3 years relating to the deadline 13th May 2009. The deadline May 13, 2009 was set by a subsequent agreement of the States Parties to the UNCLOS for states to lodge claims extending their continental shelves beyond the 200 nautical mile limit to The United Nations Commission on the Limits of the Continental Shelf (CLCS).

On May 6, 2009, Malaysia and Vietnam submitted a joint proposal to the CLCS in respect to an area seabed in the southern South China Sea located seaward of their 200 nautical miles EEZ limits.<sup>37</sup> On the following day, Vietnam made a separate submission in relation to northern parts of the South China Sea.<sup>38</sup> China immediately protested both submissions as a violation of its sovereignty and called on the UN commission to reject it. After almost three months, on August 4, 2009, the Philippines also protested submissions to CLCS made by Vietnam and Malaysia. Vietnam and Malaysia immediately protested the notes by the Philippines China.

China also made a submission of preliminary information to the CLCS relating to the East China Sea. Chinese preliminary information included the statement that China reserved the right to make submissions on the outer limits of the continental shelf that extends beyond 200 nautical miles in "other sea areas."<sup>39</sup> This statement possibly referred to areas in the South China Sea.

The Philippines also made a partial submission to the CLCS for areas of outer continental shelf seaward of its 200 nautical miles EEZ limit in the Benham Rise region in the Philippine Sea. The Philippines, however, reserved the right to make additional submissions for unspecified "other areas at a future time."<sup>40</sup>

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<sup>37</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mysvnm\\_33\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm).

<sup>38</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

<sup>39</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/preliminary/chn2009preliminaryinformation\\_english.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/chn2009preliminaryinformation_english.pdf)

<sup>40</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_phl\\_22\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_phl_22_2009.htm)

The developments around the submissions of relevant countries to CLCS created several implications for the situation in the South China Sea in general, and for cooperative activities in particular.

The submissions to the CLCS by Malaysia and Vietnam arguably clarified the borders of their claims of continental shelf from the mainland. Furthermore, it seems that Vietnam and Malaysia do not consider any features in the Spratly Islands (and the Paracel Islands in the case of Vietnamese submission) as islands, as defined in Article 121 of UNCLOS. If any of the South China Sea islands is capable of generating EEZ and continental shelf rights, there is no area of outer continental shelf beyond 200 nautical miles for submission to CLCS.<sup>41</sup> The fact that Vietnam did not make any comments on the contract between the Filipino government and Forum Energy in the area within the Reed Bank basin reconfirmed Vietnam's aforementioned consideration.

If this clarification of Malaysia and Vietnam's claims regarding the disputed islands would be adopted by all the South China Sea parties, it would significantly simplify the dispute overall by substantially narrowing the maritime claims associated with the disputed islands.<sup>42</sup> There would be an entire area in the central part of the South China Sea, which could be described as 'the continental shelf doughnut' combined by the outer limits of continental shelf from the nearest island or mainland of surrounding South China Sea countries, which is open for cooperative developing maritime resources.

This simplified and dispute-solution-oriented interpretation of Vietnam and Malaysia about 'regime of features' of Spratly was shared by other surrounding South China Sea countries but not by China. In the note protesting the submissions of Vietnam and Malaysia to CLCS, China asserted its "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."<sup>43</sup> Attached to the note was a map showing China's U-shaped claims to

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<sup>41</sup> UNCLOS provides for two categories of feature under Article 121 governing the "regime of islands": islands that are capable of generating the full suite of maritime zones, including the exclusive economic zone and the continental shelf, and "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

<sup>42</sup> Clive Schofield and Ian Storey, *The South China Sea Dispute: Increasing Stakes and Rising Tensions*, Jamestown Foundation Occasional Paper, November 2009, 23

<sup>43</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mysvnm\\_33\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm).  
and [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

virtually the entire South China Sea. This possibly means that China uses an alternative claim, beside its historical claim, based on an EEZ and continental shelf from islets of Spratly that it also claims. Most recently, in the note sent to UN General Secretary responding to the note sent by the Philippines protesting the U-shaped claim, China for the first time publicly and officially states that “China’s Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf”.<sup>44</sup> It is worth to note that Chinese government’s position on “regime of islands” in the South China Sea contrasts with its own position regarding to regime of Japan’s Oki-no-Tori Shima Island, a small, extremely isolated reef sharing many characteristics with Spratly’s features and located near the centre of the Philippine Sea region of the western Pacific Ocean. In the Chinese note sent to UN General Secretary protesting Japan’s Submission of 200 nautical miles of continental shelf measured from the basepoints Oki-ni-Tori Shima Island and extended continental shelf from 200 nautical miles China argued that “the so-called Oki-ni-Tori Shima Island is in fact a rock as referred to in Article 121(3) of the Convention”.<sup>45</sup>

Regarding the position of the Philippines, during the process of preparing the submissions on the outer limit of continental shelf, the Philippines passed the Archipelagic Baselines bill on March 10, 2009, which revised the existing straight baselines and brought them into conformity with the rules for archipelagic baselines set out in the UNCLOS. Under the new law, the disputed Kalayan islands group and Scarborough Shoal remain part of Filipino territory but under a “regime of islands.”<sup>46</sup> In August 2009, in notes protesting both the submission by Vietnam and the joint submission by Vietnam and Malaysia to CLCS, the Philippines did not refer to any possible continental shelf generated from the disputed Kalayan islands, but that “the submission for extended continental shelf by Vietnam lays claim on areas that are disputed because they overlap with those of the Philippines,”<sup>47</sup> (extended continental shelf beyond the 200 nautical mile limit from archipelagic baseline<sup>48</sup>) and “joint submission for extended continental shelf by Vietnam and Malaysia lays claim on areas that are disputed not only because they overlap with that of the Philippines, but also because of the controversy arising from the territorial claims of some of the islands in the area including North Borneo.”<sup>49</sup> Arguably, it means that the

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<sup>44</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2011\\_re\\_phl\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf)

<sup>45</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/jpn08/chn\\_6feb09\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/jpn08/chn_6feb09_e.pdf)

<sup>46</sup> [www.lawphil.net/statutes/repacts/ra2009/ra\\_9522\\_2009.html](http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html)

<sup>47</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/vnm\\_re\\_phl\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/vnm_re_phl_2009re_vnm.pdf)

<sup>48</sup> A Philippine official confirmed this consideration with author during private conversation in Manila in July 2010.

<sup>49</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/clcs\\_33\\_2009\\_los\\_phl.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/clcs_33_2009_los_phl.pdf)

Philippines do not consider any features in the Spratly Islands as an island, as provided in Article 121 of UNCLOS. Therefore, these features are incapable for generating EEZ and continental shelf rights.

Concerning the Indonesian position, in a note circulated in the UN on July 8, 2010, to protest nine-dotted-lines-map attached to China's aforementioned note, Indonesia stated that "those remote or very small features in the South China Sea do not deserve exclusive economic zone or continental shelf of their own," and "the so called nine-dotted-lines-map...clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982."<sup>50</sup>

Brunei also seems to share the view of other concerned countries in ASEAN. In preliminary information concerning the outer limits of its continental shelf, submitted to CLCS on May 12, 2009, Brunei stated that the country has made significant progress towards preparation of a full submission, but it can only provide the full submission after the date of May 13, 2009. "Brunei's full submission to the Commission will show that the edge of the continental margin, lying at the transition between the Dangerous Grounds and the deep ocean floor of the South China Sea, is situated beyond 200 nautical miles from the baselines from which Brunei's territorial sea is measured."<sup>51</sup> It possibly means that Brunei will fix the outer limit of extended continental shelf beyond 200 nautical miles from the baseline of land territory without taking consideration of claimed islands in the Spratly Islands.

#### *China's "Core National Interest"*

The most significant development in the South China Sea is that in March 2010, senior Chinese officials told U.S. high-ranking visitors that China had put the South China Sea into its "core national interest" category of non-negotiable territorial claims—in the same level as Taiwan and Tibet.<sup>52</sup> It possibly means that Chinese authority has to defend its newly categorized national interest in the South China Sea by all costs, including the use of force. An editorial headlined "American shadow over South China Sea" in the *Global Times*, a newspaper viewed as a mouthpiece of China's Communist Party, stated that "China will never waive its right to

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<sup>50</sup> [www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/idn\\_2010re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf)

<sup>51</sup> [www.un.org/Depts/los/clcs\\_new/submissions\\_files/preliminary/brn2009preliminaryinformation.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf)

<sup>52</sup> Chinese Military Seeks to Extend Its Naval Power, [www.nytimes.com/2010/04/24/world/asia/24navy.html?\\_r=1&scp=1&sq=Chinese%20Military%20Seeks%20to%20Extend%20Its%20Naval%20Power&st=cse](http://www.nytimes.com/2010/04/24/world/asia/24navy.html?_r=1&scp=1&sq=Chinese%20Military%20Seeks%20to%20Extend%20Its%20Naval%20Power&st=cse)

protect its core interest with military means.”<sup>53</sup> If this position is adopted officially by Beijing, it clearly goes against spirit and text of the DOC. However, China never officially denies or confirms its position regarding elevation South China Sea in to “core interests” category.

Several factors contributed to explain why China has come back to an assertive approach in the South China Sea in recent years. First, China for decades has accumulated its power, economically and militarily, to the level that make it become more self-confident and assertive in external behaviors, especially during and after the world financial crisis. Second, stabilizing the relations between China-Taiwan has diverted Chinese priorities, capability and resources to other issues, notably to the South China Sea issue. Third, rising nationalism and increasing role and activities of PLA and competition of interest groups (law enforcements agencies, energy corporations) have complicated the process of policy formulation and implementation of China toward the South China Sea issue. Fourth, actions taken by other claimants forced China to react and overreact. Fifth, the lack of workable mechanism in managing the disputes in the South China Sea, especially in regulation the conduct of parties, including China.

#### **ASEAN’s Concern, US Involvement and China’s Softened Tone**

Chinese increasing assertiveness in the South China Sea in recent years worried ASEAN countries and created opportunities for United States to “come back” to Asia. At the 43rd ASEAN Foreign Ministers Meeting in Hanoi on July 19–20, 2010, ASEAN Ministers ‘stressed the importance of maintaining peace and stability in the South China Sea,’ ‘reaffirmed the importance of the DOC,’ ‘underscored the need to intensify efforts to ensure the effective implementation of the Declaration,’ and ‘looked forward to the Regional Code of Conduct in the South China Sea (COC).’ ASEAN Ministers also tasked ASEAN Senior Officials to work closely with their Chinese counterparts to reconvene the ASEAN-China SOM on the DOC at “the earliest opportunity.”<sup>54</sup> In response, at the ASEAN-China Foreign Ministers Meeting, China’s Foreign Minister Yang Jiechi agreed to implement the DOC, but declared that an ASEAN-China SOM meeting on DOC will be held in an “appropriate time”.<sup>55</sup>

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<sup>53</sup> <http://opinion.globaltimes.cn/editorial/2010-07/555723.html>

<sup>54</sup> Joint Communiqué of the 43rd ASEAN Foreign Ministers Meeting. [http://asean2010.vn/asean\\_en/news/47/2DA8FF/Joint-Communique-of-the-43rd-ASEAN-Foreign-Ministers-Meeting](http://asean2010.vn/asean_en/news/47/2DA8FF/Joint-Communique-of-the-43rd-ASEAN-Foreign-Ministers-Meeting)

<sup>55</sup> Personal interview

At the 17th Asian Regional Forum (ARF) on July 23, thirteen foreign ministers (including five from ASEAN countries) brought up the South China Sea issue and supported the ASEAN-China DOC. For the first time in this level in an official meeting, U.S. Secretary of State, Mrs. Hillary Clinton, delivered a long statement on US position on the South China Sea issues. She said that the United States has a national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea. Clinton said the United States supports a collaborative diplomatic process, supports the 2002 ASEAN-China DOC, encourages the parties to reach agreement on a COC, and is 'prepared to facilitate' initiatives and confidence-building measures consistent with the DOC.<sup>56</sup> In response, China's Foreign Minister Yang Jiechi highlighted the ability of the DOC to enhance mutual trust and to create favorable conditions and good atmosphere for final solution to the disputes. But he insisted that the South China Sea issues should not be internationalized, that the DOC should not be viewed as between China on one side and ASEAN on the other, and that disputes should be handled on a bilateral, not multilateral, basis. He also pointed out that there have been JWG consultations on DOC, and "when the conditions are ripe", a SOM can also be held.<sup>57</sup> An article released immediately after ARF 17 in the website of Chinese Ministry of Foreign Affairs considered that Clinton's remarks were in effect "an attack on China".<sup>58</sup>

Similarly to situation in the final stage of COC/DOC negotiation aforementioned before, the intervention of the United States into the South China Sea and increased US cooperation with ASEAN countries possibly exerted influence on China's calculations. China's strategy has been concentrating on preventing the South China Sea issue from being multilateralized and internationalized, especially from US interference. In July 2010, response to Clinton's remark at ARF 17 in Hanoi, Chinese Foreign Ministry warned that turning the South China Sea issue into an international or multilateral one will "only make matters worse and the resolution more difficult".<sup>59</sup> In September 2010, China has also tried to prevent the ASEAN-US Summit from discussing the South China Sea issues by voicing its opposition to the U.S. proposals on the South China Sea.

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<sup>56</sup> Remarks at Press Availability, Hillary Rodham Clinton, Secretary of State, Hanoi, Vietnam, July 23, 2010. <http://www.state.gov/secretary/rm/2010/07/145095.htm>

<sup>57</sup> Foreign Minister Yang Jiechi Refutes Fallacies On the South China Sea Issue, <http://www.fmprc.gov.cn/eng/zxxx/t719460.htm>

<sup>58</sup> Ibid

<sup>59</sup> Ibid

In China the strength of the Clinton's statement and responses of a number of other countries has created a debate over whether the claim is wise with elevating the "South China Sea" to be "core interests". According to article in August 27<sup>th</sup>, 2010 of columnist Li Hongmei in *People Daily*, an official news paper of China's Communist Party, said that some Chinese military strategists and scholars believed that incorporating the South China Sea into the package of China's core national interests is, at least currently, "not a wise move". They considered that the claim would "upset and enrage the US" and could "strike a nerve with China's neighboring countries". The claim could "facilitate the US to bring its carrier close to the Chinese home and make the regional issue (South China Sea) international ...to strengthen US leadership and its economic, military, and political presence in East Asia". Some even recognized that "the claim is not in accordance with the international standard practice".<sup>60</sup> On July 27<sup>th</sup>, 2010 the *Global Time* suggested that "Clearly stating China's intention (*in the South China Sea*) and easing the concerns of other countries remains a challenge for China in the future. As the largest country in the region, China has the responsibility to reduce the divergence and build a consensus."<sup>61</sup> The *Global Times* also said in an editorial in November 3<sup>rd</sup> that China "needs to consider holding back a little bit" on territorial issues (in the East China Sea and the South China Sea) if the country wants to ensure sound development in East Asia without allowing U.S. intervention in regional affairs. "What China needs to do is not simply to get tougher,". "It should work toward a practical solution to end the disputes". "If this is hard to achieve, China should at least try to avoid developing a situation that caters more to U.S. interests than to Asia's." The editorial said China has to acknowledge the fact that disputed islands "cannot be taken back in a short period of time."<sup>62</sup>

Signaling increased efforts at maintaining peace in the region, in a press briefing in Manila at the end of September 2010, Chinese Ambassador to the Philippines Liu Jianchai said China and Southeast Asian countries have initiated discussions at the working level to "draw up a code of conduct". "(China) is ready to work with the other parties concerned on this document" and

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<sup>60</sup> Li Hongmei, "Unwise to elevate "South China Sea" to be core interest ?"

<http://english.peopledaily.com.cn/90002/96417/7119874.html>

<sup>61</sup> "Road map toward China's maritime peace". <http://opinion.globaltimes.cn/editorial/2010-07/556148.html>

<sup>62</sup> "Asia should not be bound by a few islands". <http://opinion.globaltimes.cn/editorial/2010-11/588915.html>

"China should consider holding back on territory issues: paper."

<http://mdn.mainichi.jp/mdnnews/international/news/20101104p2g00m0in021000c.html>

now “open to different formulas and initiatives in preserving peace, prosperity and stability in this region”.<sup>63</sup>

At forum of Asian defense ministers ADMM+ in Hanoi in October 2010, although the South China Sea issue was not in official agenda, representatives of seven nations raised the issue of how to guarantee maritime security for all countries surrounding South China Sea. US Defense Secretary Robert M. Gates reiterated Clinton’s comments in ARF in July 2010 that competing claims in the South China Sea should be “settled peacefully, without force or coercion, through collaborative diplomatic processes, and in keeping with customary international law”. He said that “US have a national interest in freedom of navigation; in unimpeded economic development and commerce; and in respect for international law”.<sup>64</sup> Contrast to Yang Jiechi’ reactions at ARF 17, the Chinese defense minister, Liang Guanglie, called for “mutual trust” throughout the region. He said neighbors needed not fear his nation’s military. “China pursues a defense policy that is defensive in nature”. “China’s defense development is not aimed to challenge or threaten anyone, but to ensure its security and promote international and regional peace and stability”. He did not describe the South China Sea as a region of “core interests”.<sup>65</sup>

According to the Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity (2011-2015) released after the ASEAN-China Summit in November 2010 in Hanoi, China committed to work with ASEAN “push forward the full and effective implementation of the DOC in the South China Sea” and “toward the eventual conclusion ...of a code of conduct in the South China Sea”.<sup>66</sup>

In November 4, 2010, Chinese Assistant Foreign Minister Hu Zhengyue said China is making efforts to establish a new security concept that China remains committed to playing "a constructive role" to address important regional and international issues, including to peacefully

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<sup>63</sup> China, ASEAN states begin talks on 'code of conduct' for disputes. <http://www.gmanews.tv/story/202363/china-asean-states-begin-talks-on-code-of-conduct-for-disputes>

<sup>64</sup> Remarks by Secretary Gates at ASEAN Defense Ministers Meeting Plus <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4700>

<sup>65</sup> U.S. and China Soften Tone Over Disputed Seas, <http://www.nytimes.com/2010/10/13/world/asia/13gates.html>

<sup>66</sup> [http://asean2010.vn/asean\\_en/news/36/2DAA15/Plan-of-Action-to-Implement-the-Joint-Declaration-on-ASEAN-China-Strategic-Partnership-for-Peace-and-Prosperity](http://asean2010.vn/asean_en/news/36/2DAA15/Plan-of-Action-to-Implement-the-Joint-Declaration-on-ASEAN-China-Strategic-Partnership-for-Peace-and-Prosperity)

resolve disputes on territory and marine rights through friendly negotiations with neighboring countries.<sup>67</sup>

Chinese softened tone in diplomatic front seemingly corresponds partly with activities taken by China on the sea in recent time. Just before ADMM Plus Meeting in Hanoi in October, after a number of diplomatic protests from Vietnamese side, China informed Vietnam that it would unconditionally release the trawler and nine fishermen detained near Paracel islands more than a month before. In 17<sup>th</sup> August, U.S. deputy assistant secretary of defense Robert Scher said in a press conference in Hanoi that the Pentagon had not seen any “recent” Chinese intimidation of global oil and gas companies operating in the South China Sea.<sup>68</sup>

### **New Round of Tension?**

However, the question remains that whether China have softened its tone in recent months after ARF 17 reflects a shifting in policy or just tactics in dealing with the South China Sea issue. Most recent development occurred on November 2, 2010, when the Marine Corps of the Chinese People's Liberation Army staged a military drill in the disputed South China Sea massing 1,800 troops and more than 100 ships, submarines and aircraft for a live-fire display of a growing military power.<sup>69</sup> Li Jie, a Beijing-based naval expert, denied that it was a special signal, but he commented that China chosen the South China Sea theater to show naval capacity and strength. Li said "Some countries intervene in the South China Sea in recent years, jointly conducting military exercises with our neighboring countries, so it's time for us to oppose these interventions with power politics,"<sup>70</sup>

This unpredictability in China’s policy on the South China Sea partly also reflects on the table of negotiation on the implementation of the DOC. At the fifth meetings of ASEAN-China JWG in Kunming, China in December 2010, China just came back to its previous position of bilateralism by proposing to delete the point 2 of the Guidelines and to consider that the Guidelines are guiding principles for implementing only the “agreed joint cooperation activities

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<sup>67</sup> China voices commitment to "constructive role" to address regional, international issues. [http://news.xinhuanet.com/english2010/china/2010-11/04/c\\_13591585.htm](http://news.xinhuanet.com/english2010/china/2010-11/04/c_13591585.htm)

<sup>68</sup> U.S. Sees No `Recent' China Pressure on Global Oil Companies in South Sea <http://www.bloomberg.com/news/2010-08-18/u-s-sees-no-recent-china-pressure-on-global-oil-companies-in-south-sea.html>

<sup>69</sup> Chinese Marine Corps stages live-action drill in South China Sea. <http://military.globaltimes.cn/china/2010-11/588894.html>

<sup>70</sup> Ibid

stated in the DOC”, not for implementing the Declaration at whole. China refused to agree on organizing ASEAN-China SOM on DOC implementation by arguing that the SOM can not be held until JWG reached a consensus on the Guidelines.<sup>71</sup>

Most recent incidents underscored China’s continued assertive approach in the South China Sea disputes. On March 2, two Chinese patrol boats aggressively harassed the seismic survey vessel operating by Energy Forum company, which had been awarded a contract by the Philippine government to exploration of gas field located inside Reed Bank, an area 80 miles west of Palawan.<sup>72</sup> The Aquino administration has protested at least six incidents, including Reed Bank incident, involving alleged Chinese intrusion into waters within the Philippines 200 nautical miles exclusive economic zone.<sup>73</sup> Other serious incident relating to report of the Philippine military in June 2011 that a Chinese surveillance vessel and navy ships were seen unloading building materials and erecting posts in the vicinity of Iroquois Reef and Amy Douglas Bank – an uninhabited undersea hill claimed by the Philippines about 230 kilometers from southwestern Palawan province.<sup>74</sup> If report of Philippine military is correct, it is clear that China seriously violates the DOC 2002, in article 5 of which states that “The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, *refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features* and to handle their differences in a constructive manner.”<sup>75</sup> (*Italic added*)

On May 26, 2011, other incident, in this time between China and Vietnam, took place in an area just about 80 miles off the south-central coast of Vietnam, within Vietnam exclusive economic zone, when three Chinese patrol boats harassed a Vietnamese ship Binh Minh 02 exploring for oil in the South China Sea, damaging equipment and warning the ship that it was violating Chinese territory.<sup>76</sup>

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<sup>71</sup> Personal interviews with Joint Working Group participants

<sup>72</sup> “Philippine Oil Vessel Confronted By China, Spurring New Dispute”, World Street Journal, March 4, 2011  
<http://online.wsj.com/article/SB10001424052748703300904576178161531819874.html>

<sup>73</sup> Philippines accuses China of ‘serious violations’ in South China Sea  
<http://globalnation.inquirer.net/3205/philippines-accuses-china-of-%E2%80%98serious-violations%E2%80%99-in-spratlys>

<sup>74</sup> Ibid

<sup>75</sup> <http://www.asean.org/13163.htm>

<sup>76</sup> “[Vietnam accuses China of threatening boat researching oil-drilling sites in South China Sea](#)”, AP May 27, 2011,  
<http://www.google.com/hostednews/canadianpress/article/ALeqM5hL8uj6abJ4M4dgA94pptkculWv6w?docId=6972004>

Similar incident occurred on June 9, 2011, when a Chinese fishing boat, with support from Chinese fishing patrol vessels, rammed the survey cables of the PetroVietnam ship Viking II, which was conducting a seismic survey in Block 136-03, an area within 200 miles exclusive economic zone of Vietnam and more than 622 miles from China's Hainan island. Vietnam MOFA spokesperson Nguyen Phuong Nga said "these acts are tailored in a very systematic way by the Chinese side with the aim to turn undisputed areas into disputed areas,".<sup>77</sup> The Viking II incident took place only four days after Chinese Defense Minister Liang Guanglie reassured neighbors at Sangri-la Dialogue in Singapore that China poses no threat.

### **Conclusions**

As the most powerful country, China sets the tone for the dispute in the South China Sea. As Beijing adopted a more accommodating stance in the South China Sea disputes the Declaration on the Conduct of Parties between China and ASEAN was reached in 2002. A relatively 'softer' China's policy toward the South China Sea might stem from certain factors, including: i) ASEAN's consensus and solidarity; ii) an increasing engagement from outside forces, especially the United States, in the South China Sea issue; and iii) China's need to project a good image and promote its relations with other countries in the region.

Since 2007, as Beijing corrected its policy toward the South China Sea issue with more assertive approach, the situation was tense again. Opportunities have been created for United States to intervene into the issues and strengthen their position in the region. In last months of 2010, Beijing has voiced a softer tone on the issues to ensure neighboring countries and to gain back partly damaged image in the region. However, China have softened its tone in recent time reflects just tactics in dealing with the South China Sea issue. In the near future, China likely will continue pursue its assertive approach in dealing with other smaller claimants in the South China Sea disputes.

To promote regional security and cooperation, China and ASEAN should successfully implement the DOC and Beijing should accept a legally binding regional COC, which would ensure smaller parties from being intimidated and making them more confident to proceed with the cooperative activities in the South China Sea.

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<sup>77</sup> [Foreign Ministry Spokesperson Nguyen Phuong Nga at the Press Conference June 9th 2011.](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610100618#kyKoH1NekSr9)  
[http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110610100618#kyKoH1NekSr9](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610100618#kyKoH1NekSr9)