

Confidence Building Measures in the South China Sea

by

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Table of Contents

	Page
Acknowledgment	v
Foreword by Jose T. Almonte	vii
Executive Summary	xi
Summary Report	
<i>Introduction</i>	1
<i>Significance of the South China Sea</i>	3
<i>Human Security Needs</i>	5
<i>Competing Claims to the South China Sea</i>	6
<i>Creating a Flash Point</i>	7
<i>Triggers of Conflict</i>	8
<i>Status of Current Dialogue Efforts</i>	11
<i>PRC Intentions and the South China Sea</i>	14
<i>Taiwan's Policy toward the South China Sea</i>	15
<i>Military Security and Confidence Building in the South China Sea</i>	18
<i>Principles</i>	19
<i>Recommendations for Enhancing Dialogue and Mutual Understanding in the South China Sea</i>	20
<i>Recommendations for Enhancing Environmental Protection in the South China Sea</i>	22
<i>Mechanisms for Enhancing Transparency in the South China Sea</i>	22
<i>Suggestions on How to Move toward Minimization of Conflict/Conflict Resolution in the South China Sea</i>	23
<i>The U.S. Role</i>	23

About the Authors	25
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Appendices

Appendix A: Maps 1 and 2

*Appendix B: History of Claims and
Claimant Motivations and Concerns*

Appendix C: ASEAN Declaration on the South China Sea

Appendix D: Philippine – PRC Joint Statement

*Appendix E: Code of Conduct for the South China Sea:
China and ASEAN Drafts*

Appendix F: Indonesia Workshop Summary

Appendix G: List of Project Participants

Foreword
**Confidence Building Measures
in the South China Sea**

Jose T. Almonte
Former National Security Advisor for President Fidel Ramos,
Republic of the Philippines

Never has our need for confidence building measures in the South China Sea been greater.

The “spy plane” incident off Hainan Island signifies China’s greater aggressiveness in keeping the United States from looking into its front yard. And this new aggressiveness coincides with the arrival of a tougher, more ideological America.

The incident may have been easily resolved. But we can be sure that we haven’t seen the last of such crises as the strategic competition between the two powers intensifies.

In place of the old Maoist ideology, the Chinese Communist Party now promotes a chip-on-the-shoulder nationalism and irredentism as the means of redressing what it regards as 150 years of humiliation at the hands of the great powers.

Viewed through this prism, the spy plane incident is merely the most recent in a long series of slights by the “arrogant” Westerners on China’s sovereignty and territorial integrity. (And, ironically, a flare-up of national feeling may have limited Beijing’s options on how to manage the spy plane incident.)

Meanwhile, Republican Washington’s foreign-policy making thus far projects a tougher America – one more ideological than its predecessor; one more closely focused on its national security interests; and one more selective about where in the world it engages its attention and its troops.

Allied against the Soviet Union during the last 20 years of the Cold War, the U.S. and China now regard themselves as potential adversaries. Beijing sees Washington as the obstacle to China’s rise as an Asian power. Meanwhile U.S. intelligence agencies see Asia – over the next 15-25 years – as the region having the greatest risk of major war.

Thus U.S. military attention is shifting away from its traditional focus on Europe toward the Asia Pacific. At the same time, the People’s Liberation Army’s (PLA) own center of military gravity is shifting from north to east, as the Russian threat subsides and Taiwan looms larger as a security problem.

Not only are there many potential flashpoints in the relationship between China and the U.S., but both governments also feel intense pressures from their elite constituencies to face up to the other.

Beijing says “China and the United States have no need to begin a war against each other.” But it also declares China’s emergence as an East Asian power to be “irresistible.” And Beijing seems unswerving in its two strategic goals. The first is to incorporate Taiwan as its last irredentist claim; the second is to ensure the defense-in-depth of its coastal heartland by dominating the whole of the China Sea.

Chinese strategists now apparently use as the dominant scenario in their military planning and weapons development a war with Taiwan – sometime in the next 10 years – that drags in the United States. And Beijing is pouring men and money into devising strategies and weapons to exploit America’s military weaknesses and to raise the cost in American casualties of a war over the island.

Recognizing their country’s technological inferiority, PLA planners emphasize strategic surprise. They apparently envision preemptive attacks launched in great secrecy, using highly mobile forces – packing highly accurate concentrations of firepower – that would paralyze Taiwan’s counterstrike capability in a matter of minutes thus confronting Washington with a *fait accompli*. (And this is why the Americans cannot give up their surveillance flights.)

Apart from its irredentist value, a Taiwan restored to China has enormous strategic importance. Once in Beijing’s hands, Taiwan will inhibit the U.S. Navy’s forward deployment in the South China Sea and threaten Japan’s economic lifeline. A Taiwan restored to China also opens up the entire expanse of the Pacific – and, ultimately, the world ocean – to China’s blue-water navy.

I sometimes think it is neither the territorial nor the maritime resources issue that is the principal drive to China’s Spratlys claim, but Beijing’s desire to prevent any foreign power from retaining influence in the South China Sea. Indeed Beijing’s claims to islets in the South China Sea seem to be “sovereignty symbols” meant ultimately to fence out even the littoral states.

It is true the great power that controls the South China Sea will dominate both archipelagic and peninsular Southeast Asia and play a decisive role in the future of the Western Pacific and the Indian Ocean – together with their strategic sea lanes to and from the oil fields of the Middle East. But for this very reason any serious effort by China to dominate the South China Sea and its strategic sea lanes will set off great power conflict in Southeast Asia’s front yard more intense than the region has ever known.

ASEAN – by virtue of being the weakest (militarily) of all the powers involved in the dispute and because of its vital interest in free and open trade – has the best claim to management of the South China Sea and its strategic sea lanes under the “maritime heartland” concept, to which all the great powers can safely subscribe.

Given that all our countries are trying to build up their economies, regional instability is the last thing we need since instability forces us to divert our meager resources from the work of peace. That is why we should exhaust every effort to resolve the Spratlys issues peacefully. And unofficial gatherings – which explore informal confidence building measures (CBMs) among the rival claimants – are of tremendous value, as an aid to our official negotiators.

In 1995, when China's encroachment on Mischief Reef came to light, Philippines President Fidel Ramos proposed, first, the "freezing" of troop strengths on the disputed islet, followed by the demilitarization of the Spratlys, and then by cooperative efforts by the rival claimants to assure safe passage for all shipping in order to preserve the maritime environment and exploit its sea- and sea-bed resources judiciously under a joint authority. President Ramos then also proposed that, until an agreement is reached, each disputed islet should be placed under the stewardship of the claimant-country geographically closest to it.

These CBMs have never been tried; it is time they should be, as should the many other suggestions laid out in this important volume on South China Sea confidence building measures.

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Views expressed and conclusions reached are those of the authors and do not necessarily reflect the views of the Pacific Forum CSIS, the sponsors, or the participants of the two conferences on "Security Implications of Conflict in the South China Sea," from which much of the data for this report was drawn.

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Confidence Building Measures in the South China Sea

Executive Summary

The collision of a U.S. Navy EP-3 reconnaissance plane with a Chinese fighter jet in air space over the South China Sea in April 2001 refocused attention on the region's territorial disputes and reminded the world that the South China Sea is a site for possible international confrontation.

The South China Sea's strategic significance has meant that territorial claims are fiercely contested. That sensitivity and the sheer volume of traffic through the sea have turned the area into an international flash point. Yet, the most serious immediate threats to the South China Sea result from a vacuum of responsibility rather than hegemony by a dominant regional power. They include environmental threats caused by a possible oil spill or illegal fishing, and the rise of piracy in the region.

The EP-3 incident also highlighted the dangerous potential impact of expanded military capabilities in the region, raising the possibility that as neighboring countries improve their naval capacities in the future, accidental or intentional military conflicts in the South China Sea will also rise. Many Southeast Asian neighbors are particularly concerned about the long-term implications of PRC naval and air force improvements for power projection in the South China Sea, as a result of which the balance of power to enforce disputed claims with ASEAN claimants may shift decisively in the PRC's favor.

The EP-3 incident underscores the dangers of unintentional conflict, and demonstrates the need for all parties to establish confidence building measures (CBMs) and to put preventive mechanisms into place to manage potential South China Sea disputes.

Significance of the South China Sea

The South China Sea's strategic importance is hard to underestimate. The critical sea lanes that link Northeast Asia and the western Pacific to the Indian Ocean and the Middle East traverse the South China Sea. More than 41,000 ships – over half the world's shipping tonnage – sail through the sea each year. More than 80 percent of the oil for Japan, South Korea, and Taiwan flows through the area.

China has called the sea a “second Persian Gulf.” Estimates of the oil resources near the Spratly Islands range from 105 billion barrels of oil to 213 billion barrels. However, in the absence of a comprehensive exploratory survey of the region, such estimates are wildly speculative. Estimates of total gas reserves also vary from 266 trillion cubic feet (Tcf) of natural gas reserves to more than 2,000 Tcf. As Asia’s energy consumption grows in parallel with its economic development, access to and control of those resources will weigh heavily on claimant perceptions of the strategic value of contested areas.

There is also a vital human security dimension to the South China Sea: The sea provides 25 percent of the protein needs for 500 million people and 80 percent of the Philippine diet.

There is growing concern over the damage being done to the ecology of the South China Sea. The United Nations Environment Program has concluded that more than 80 percent of the region’s coral reefs are at risk, mostly from human activities. Only a third of the region’s mangrove forests, the shoreline swampland that serves as a nursery for marine life, remain. Two-thirds of the major fish species and several of the region’s most important fishing areas are fully or over-exploited.

Current Dialogue Efforts

There are several disputed sites in the South China Sea. The main concern is the Spratly Islands. The PRC, Taiwan, and Vietnam claim the entire area; the Philippines, Malaysia, and Brunei claim some parts. All except Brunei occupy islets to support their claims.

The 1995 discovery of Chinese structures on Mischief Reef made South China Sea issues unavoidable in official dialogue between the PRC and ASEAN and propelled them onto the agenda at the ASEAN Post-Ministerial Conference (ASEAN-PMC) and the ASEAN Regional Forum. Although ASEAN provided a basis for discussions with its 1992 Declaration on the South China Sea, progress has been slow. China has consistently objected to internationalization of the dispute and has strongly resisted participation by Taiwan and non-claimants in both official and private dialogues on the issue. But the blame is not China’s alone. ASEAN is hardly united on the issue.

The primary vehicle for unofficial dialogue that includes all the claimants for over a decade has been the Indonesia Workshops on the Prevention of Conflict in the South

China Sea. The Council for Security Cooperation in the Asia Pacific, which has a working group on Maritime CBMs, and other academic/track two conferences have contributed ideas on how to manage disputes in the South China Sea.

PRC Intentions and the South China Sea

The chief question mark hanging over the South China Sea is the PRC's intentions. Beijing makes conciliatory statements while pursuing a policy of "creeping occupation." Some credit China with a deliberate strategy of stalling until it has sufficient military strength to forcibly take and hold the territory it claims. Others argue that the PRC suffers from a poorly organized bureaucracy, inadequate understanding of the UN Convention on the Law of the Sea (UNCLOS), and a lack of attention from top-level policymakers. Regardless of whether Beijing has developed an active strategy of delay and obfuscation or whether its intransigence is simply a result of bureaucratic incompetence, the PRC is the key actor shaping possibilities for regional conflict or cooperation in the South China Sea. In short, Beijing's motivations are a mystery; in this setting, however, the stakes oblige rival claimants to assume the worst.

Taiwan's Policy toward the South China Sea

The relationship between Taipei and Beijing is another obstacle to managing disputed South China Sea territorial claims. Although both sides share nearly identical historical claims to the South China Sea that pre-date China's 1949 civil war, meetings have been disadvantaged by PRC efforts to keep Taiwan out of any discussion of South China Sea matters.

There is a growing feeling among scholars and some officials in Taiwan that Taipei should differentiate its policy from that of the mainland without eschewing possibilities for cross-strait dialogue. This creates a dilemma, since even minor changes in Taiwan's policy that might be intended as constructive steps to more effectively manage South China Sea-related disputes may be interpreted very differently by China.

For example, Taiwan's replacement of its naval forces with a coast guard presence in Pratas Islands and Itu Aba represents the first concrete step toward demilitarization of the South China Sea dispute. However, this action has been greeted with suspicion in Beijing, which interpreted the move as diminishing a historical governance structure that is a legacy of the ROC's "one China" claim.

While Taiwan may play a constructive role in diminishing the possibility of military confrontation in the South China Sea, the key is ensuring that the South China Sea does not become a problem in cross-Strait relations. Ideally, the South China Sea should be a vehicle for creating momentum in cross-Strait dialogue through informal, scholarly channels on issues where both sides have traditionally agreed. Hopefully, Beijing may have begun to realize that the best way to encourage drastic actions by Taiwan is to feed the frustration caused by international isolation in areas where Taipei's interests are directly at stake.

Recommendations

Several principles should guide any effort to promulgate confidence building measures. First, approaches that emphasize openness and transparency will augment regional confidence building efforts and decrease the possibility of accidental conflict. Second, it is necessary to recognize that since the South China Sea involves multiple claimants, multilateral approaches will be necessary to make progress in addressing the core issues under dispute. The scope of the competing claims, and the stakes of non-claimants have made the South China Sea a region of international concern. The growing doubts over the region's resource wealth, when coupled with rising concern over environmental destruction, should make it easier for governments to adopt multilateral programs to protect the South China Sea ecosystems. However, bilateral initiatives should be considered as useful first steps toward broader, more inclusive proposals.

Enhancing Dialogue and Mutual Understanding in the South China Sea:

- All claimants should halt further military construction or force build-ups in disputed territories or, preferably, return to the status quo at the time of the 1992 ASEAN Declaration on the South China Sea.
- Current efforts by ASEAN and the PRC to negotiate a region-wide Code of Conduct aimed at foreclosing use of force, expanded occupation, or further construction in the South China Sea where overlapping claims are under dispute should be encouraged.
- Region-wide mechanisms or institutions to share information and manage accidental conflicts or incidents at sea in the area of the South China Sea should be developed and encouraged.

- Technical and expert working group processes should go forward where possible, such as specific joint cooperation projects or technical research on marine scientific research, environment, resources, safety of navigation, and legal matters, among any and all participants who desire to cooperate with each other on these matters.
- Academic workshops should be held to clarify the application of UNCLOS to the major issues in the South China Sea dispute.
- Working-level cross-Strait dialogue should be pursued to enhance Taiwan-PRC understanding of their respective positions on South China Sea issues.

Enhancing Environmental Protection in the South China Sea:

- An international panel of scholars should monitor and provide an annual assessment on the status of the environment in the South China Sea. In addition, projects should be launched to promote data exchange and database compilation on biodiversity issues.
- Environmental mechanisms or measures should be adopted to preserve biodiversity and protect marine habitats in disputed areas of the South China Sea. States that are ready to cooperate on environmental issues need not wait until there is a consensus to unilaterally implement environmentally safe practices.
- Establishment of a marine park should be considered in order to preserve biodiversity through joint development while setting aside the issues of sovereignty over the claims. Claimants should consider declaring the South China Sea a “Pacific heritage marine park” and an indispensable global resource.
- Rapid response mechanisms should be established to respond to oil spills or other environmental threats that may endanger the biodiversity of the South China Sea. Clear spheres of responsibility by littoral states/claimants should be assigned to undertake rapid response in the event of an accident that endangers the environment of the area.

Mechanisms for Enhancing Transparency in the South China Sea:

- Regular military-to-military cooperation should be established in the areas of search and rescue and prior notification of military movements and/or exercises in the area of the South China Sea. Informal dialogue should be promoted among military representatives on standard operating procedures and rules of engagement.

- Uniform international safety standards for vessels and aircraft transiting the region should be established. Joint cooperation and joint patrols should be promoted to respond to illegal fishing and anti-piracy efforts and to enhance safety and freedom of navigation.
- Joint access should be promoted to commercially available satellite and other remote sensing data showing what is happening on disputed features. This information might be provided by a regional monitoring center or by regular sharing of information among monitoring centers established by each claimant.

Minimizing Conflict and Promoting Conflict Resolution in the South China Sea:

- Reach final settlement in areas where only bilateral claims are at stake, such as a final determination of the Indonesian-Vietnamese maritime boundary.
- Encourage discussions on maritime delimitation of continental shelf and exclusive economic zone claims among the Philippines, Malaysia, and Brunei and regarding management and protection of Scarborough Shoal fisheries among representatives from the Philippines, Taiwan, and the PRC.

The U.S. Role

Although it is not a claimant or a party to any South China Sea dispute, the United States has a strategic interest in Southeast Asia, the sea lines of communications, and peace throughout the region. As a neutral party, Washington can help facilitate dialogue and promote transparency and openness. But the U.S. must walk a fine line. It should support every effort to peacefully solve South China Sea disputes, but it should do so without getting directly involved. Such an approach will require sensitivity to regional interests and a willingness to let others lead. It also requires patience and an understanding of the many facets of this difficult dispute.

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by Scott Snyder, Brad Glosserman, and Ralph A. Cossa

Introduction

The collision of a U.S. Navy EP-3 reconnaissance plane with a Chinese fighter jet in air space over the South China Sea in April 2001 refocused attention on the region's territorial disputes and reminded the world that the South China Sea is a site for possible international confrontation. Although the "spy plane" incident is properly viewed through the lens of U.S.-PRC relations, it clearly demonstrates the stake that non-claimants have in upholding the principles of freedom of navigation in the international air space and waters of this critically important transit chokepoint – over half (52 percent) of all the world's oil now passes through the South China Sea from the Middle East to Asia, and the biomass of one-quarter of the world's phytoplankton is located in the sea.

The South China Sea's increasing strategic significance is reinforcing territorial claims that all too easily present themselves as national sovereignty questions. These sensitivities and the sheer volume of traffic, both human and material, through the sea have turned the area into an international flash point. The most serious immediate threats to the South China Sea result from a vacuum of responsibility rather than hegemony by a dominant regional power. They include environmental threats caused by a possible oil spill or illegal fishing and the rise of piracy in the region. These are threats to human security rather than traditional issues of state security, although the core disputes over state sovereignty directly contribute to a jurisdictional vacuum that, if unfilled, will likely result in the irretrievable loss of marine bio-diversity and possible environmental disaster that would further endanger global fishery resources.

The territorial dispute has for the time being prevented oil companies from carrying out further exploration for oil or natural gas, and companies have increasingly downplayed the likelihood that easily exploitable new resources will be discovered in that region. The rush to occupy various islands, rocks, and reefs in the South China Sea to mark sovereignty claims has subsided, although this is more a function of the fact that almost every feature that stands above water at high tide has been physically claimed than any indication that the dispute itself has subsided. The PRC's expansion of facilities on Mischief Reef and intermittent skirmishes between Chinese fishermen and Philippine military patrols around the Scarborough Shoals signal the possibility of renewed tensions.

The EP-3 incident also highlighted the dangerous potential impact of expanded military capabilities in the region, raising the possibility that as neighboring countries improve their naval capacities, accidental or intentional military conflicts in the South China Sea will also rise. Many Southeast Asian neighbors are particularly concerned about the long-term implications of PRC naval and air force improvements for power projection in the South China Sea, which may shift decisively the balance of power to enforce disputed claims in the PRC's favor.

In this report's foreword, former Philippine National Security Advisor Jose T. Almonte highlights the South China Sea as the backdrop for a dramatic confrontation between a more nationalist China and a more ideological America. Almonte warns of a PRC military strategy of "strategic surprise" against Taiwan and predicts an intense great power conflict between the PRC and the United States for dominance of the region, the key chokepoint linking the Western Pacific and the Indian Ocean. Such a confrontation between major powers would come at the expense of ASEAN, which seeks to manage sea lane stability and preserve regional balance by preventing any single power from attaining hegemony over archipelagic and peninsular Southeast Asia.

Dialogue to address South China Sea issues has moved at a glacial pace in recent years. Official negotiations between the PRC and ASEAN to establish a Code of Conduct foreswearing military actions, occupation of new features, and new construction in disputed areas have made limited progress, but serious differences remain over whether the Code would apply to the Paracel Islands as well as the Spratlys. The Indonesia Workshop process has entered its 12th year as the only forum that includes participation by representatives from all of the claimants. The Workshops have promoted confidence building regarding many technical aspects of the South China Sea dispute, although it has proved extraordinarily difficult to move beyond dialogue and get specific projects underway. Workshop organizers have gained financial support for a compilation of hydrographic and bio-diversity data in the South China Sea, but have recently lost financial support from the Canada International Development Agency (CIDA), the primary supporter of the Workshops since their inception.

The difficult cross-Strait relationship between Taipei and Beijing is another obstacle to managing disputed South China Sea territorial claims. Although the historical Chinese claim itself is one of the few international issues on which Taipei and Beijing appear to agree (in fact, during the early stages of the Indonesia Workshop process, scholars from the PRC mainland and Taiwan held dialogue to coordinate their positions in advance of the sessions), meetings to discuss the South China Sea have been

disadvantaged by PRC efforts to ensure that Taiwan does not participate in them. For instance, despite Taiwan's positive step last year toward demilitarization of Pratas Island and Itu Aba (Taiping Island) by placing those islands under the jurisdiction of the coast guard, Taiwanese officials complain that they have been shut out of PRC-ASEAN negotiations on a Code of Conduct designed to prevent militarization of the South China Sea dispute. One difficult challenge for Taipei will be to make its voice heard in Beijing and in ASEAN capitals without making South China Sea disputes an issue in cross-Strait relations. Taipei has yet to determine how it would respond to the adoption of a Code of Conduct between the PRC and ASEAN.

The EP-3 incident clearly underscores the dangers of unintentional conflict and demonstrates the need for all parties to establish confidence building measures (CBMs) and to put preventive mechanisms into place to effectively manage potential South China Sea disputes. The Honolulu-based Pacific Forum CSIS and the International Strategic and Development Studies (ISDS) in Manila have previously joined together to examine South China Sea issues and to identify triggers for accidental conflict during conferences in 1995 and 1997 in Manila. A subsequent workshop to update the status of South China Sea issues was held in March 2000, in Jakarta, Indonesia and the latest conference was held in April 2001, in Taipei at the invitation of the Institute of International Relations of National Chengchi University.

This report draws heavily on the Taipei and Jakarta meetings, as well as additional research and interviews, to assess the situation in the South China Sea, and focuses on possible confidence building measures that could be used in the area. In some cases, comments were made on a not-for-attribution basis and this has been respected throughout this report. The report is followed by appendices that include maps and other major documents pertaining to the South China Sea, a history of claims, a history of the Indonesia Workshop process, and a list individuals who contributed to this report.

Significance of the South China Sea

The South China Sea is a semi-enclosed sea surrounded by nine states; 90 percent of it is rimmed by land. It stretches across 800,000 sq. kilometers, with hundreds of features – outcroppings of rock and coral, islets, and islands – that dot the surface. It is a cartographer's dream and a security planner's nightmare.

The sea's strategic importance is hard to underestimate. The critical sea lanes that link Northeast Asia and the western Pacific to the Indian Ocean and the Middle East

traverse the South China Sea. More than 41,000 ships – over half the world’s shipping tonnage – sail through the sea each year. That is twice the amount that transits the Suez Canal and three times the amount that goes through the Panama Canal. About 15 percent of the total volume of world trade transits the Southeast Asian sea lines of communication (SLOCs). Japan and China’s total trade via Southeast Asian sea lanes was \$260.4 billion and \$65.6 billion, 39 percent and 27 percent, respectively, of their total trade. It is estimated that East Asian ports will handle nearly half of total world container trade throughput by 2005. Intra-Asian container trade is now the second largest container trade in the world, trailing only trans-Pacific trade.¹

More than 80 percent of the oil for Japan, South Korea, and Taiwan flows through the area; two-thirds of South Korean energy needs, and more than 60 percent of that of Japan and Taiwan, transit the region annually. Liquefied natural gas (LNG) shipments through the South China Sea constitute two-thirds of the world’s overall trade.² As Jose Almonte notes in his foreword, “the great power that controls the South China Sea will dominate both archipelagic and peninsular Southeast Asia and play a decisive role in the future of the western Pacific and the Indian Ocean – together with their strategic sea lanes to and from the oilfields of the Middle East.”

Vast mineral riches are thought – or hoped – to lie beneath the sea, but the exploration of those resources has been inhibited as a result of the conflicting territorial claims. Vietnam approved exploration by the Crestone company in the early 1990s, but the work was suspended at least in part due to Chinese objections and the recognition that as long as the area is under dispute, the likelihood for profitable drilling remains low. The South China Sea has proven oil reserves of about 7.7 billion barrels. China has called the sea a “second Persian Gulf.” Estimates of the oil resources near the Spratly Islands range from 105 billion barrels of oil to 213 billion barrels. (These are estimates of potential resources, not proven reserves.) Most analysts consider the Chinese estimates to be high. A 1993/94 estimate by the U.S. Geological Survey put total discovered reserves and undiscovered resources in offshore basins of the South China Sea at 28 billion barrels.³

In addition to oil, there is natural gas. U.S. surveys indicate that 60 percent to 70 percent of the region’s hydrocarbon resources are gas. Here too, estimates of total

¹ *SLOC Security in the Asia Pacific*, by Ji Guoxing. Asia-Pacific Center for Security Studies, Occasional Paper Series, pp. 3-5.

² “*Spratly Islands*,” Federation of American Scientists, Military Analysis Network, www.fas.org/man/dod-101/ops/war/spratly.htm.

reserves vary. The Chinese provide the upper bound, estimating that there are more than 2,000 trillion cubic feet (Tcf) of natural gas reserves. The U.S. Geological Survey is more conservative, putting total natural gas reserves and undiscovered resources at 266 Tcf.⁴

As Asia's energy consumption grows in parallel with its economic development, claimants may be even less willing to explore compromises or yield their territorial claims if they believe that the region may hold the key to meeting continuously increasing energy demand. In the past two decades, oil consumption in Asia's developing economies has climbed nearly 3 percent per year on average. If this continues, oil demand for these countries will increase from 12 million barrels per day (bpd) in 2000 – the current daily output of Saudi Arabia, the United Arab Emirates, and Kuwait combined – to more than 20 million bpd by 2020. Natural gas use is climbing even faster than oil consumption: It is expected to grow more than 7 percent annually over the next two decades and should quadruple by 2020.⁵

While there are high hopes of mineral riches, as we note below (see page 9) the South China Sea's yield has been disappointing.

Human Security Needs

There is also a vital human security dimension to the South China Sea. The sea provides 25 percent of the protein needs for 500 million people; 80 percent of the Philippine diet alone. Over 5 million tons of fish are pulled from the South China Sea each year – 10 percent of the global fisheries catch – and five of the world's top shrimp producers border the sea.⁶

There is growing concern over the damage being done to the ecology of the South China Sea, a vital source of phytoplankton and coral reefs for breeding fish that migrate to other regions. Rapid development is taking a tremendous toll. The United Nations Environment Program has concluded that more than 80 percent of the region's coral reefs are at risk, mostly from human activities. Only a third of the region's mangrove forests, the shoreline swampland that serves as a nursery for marine life, remain. Rising levels of sedimentation and nutrients, along with destructive fishing practices, have devastated sea-

³ "South China Region," United States Energy Information Administration, February 2001, www.eia.doe.gov/emeu/cabs/schina.html.

⁴ *ibid.*

⁵ *ibid.*

⁶ United Nations Environment Program, cited in, "Asian Nations Put Quarrels Aside to Save South China Sea," Environment News Service, March 28, 2001.

grass communities, which serve as a key breeding ground. Two-thirds of the major fish species and several of the region's most important fishing areas are fully or over-exploited. Nursery and breeding grounds are being destroyed or degraded.⁷ The Taiwan Coast Guard briefing at Pratas Island emphasized the fragility of the South China Sea environment, citing studies showing that in the vicinity of Pratas Island alone the number of fish species has dropped by half between 1994 and 1998. This decrease suggests that losses from environmental degradation in the South China Sea are already severely damaging resources among claimants that could otherwise be shared through agreements on joint cooperation and joint development

Equally worrisome is the South China Sea's role as a transit zone for cargo that could be deadly if there were an accidental oil spill or if an oil tanker were to sink. There is currently no rapid response mechanism or emergency regulatory authority with responsibility for answering distress calls or responding to a regional environmental disaster.

Competing Claims to the South China Sea⁸

There are several disputed sites in the South China Sea. The main concern is the Spratlys, which consist of at least 190 barren islets and partially submerged reefs and rocks that cover an area of approximately 390,000 sq. kilometers. The exact count of the number of features varies widely, in part because many are often or almost always under water. The Spratlys are located about 500 kilometers off the Vietnamese coast and 950 kilometers southeast of the Chinese island of Hainan. The Philippine island of Palawan is 80-150 kilometers to the east and the Malaysian state of Sabah and country of Brunei are 250 kilometers to the south. The Spratlys are geologically separated from the continental shelves of China and Taiwan by a 3,000-meter trench to the north, and from the Philippines, Brunei, and Malaysia by the East Palawan Trough. The area is poorly surveyed and marked as "Dangerous Ground" on navigation charts.

The PRC, Taiwan, and Vietnam claim the entire area; the Philippines, Malaysia, and Brunei claim some parts. All except Brunei occupy islets to support their claims. Map 1 outlines the various claims (along with oil fields and concessions), while Map 2 identifies those islets occupied by the various claimants. A brief review of the respective claims follows, with a more detailed accounting contained in Appendix B.

⁷ Ibid.

Brunei. Brunei's claim is based upon an extension of its coastline along its continental shelf. It also overlaps those of China, Malaysia, Taiwan, and Vietnam.

People's Republic of China. Beijing asserts that China's claim originates with the Han Dynasty (206 B.C. to 220 A.D.) and the use of the South China Sea by Chinese fishermen since then. The first official claim by China dates from an 1887 treaty with France dividing the Gulf of Tonkin, which Beijing interprets as extending to include all the islands of the South China Sea, although China has yet to clearly delineate its claim.

Malaysia. Malaysia's claim is based on a continental shelf that projects out from its coast and includes islands and atolls south and east of Spratly Island. This claim overlaps claims by China, Taiwan, and Vietnam, and overlaps reefs and cays in the Philippines' claim.

Philippines. Manila bases its claims to what it calls the Kalayaan Islands on their proximity to Philippine territory and on the occupation and economic development of these previously "unattached and unused" islands by Filipino civilian settlers. The Philippines' claim overlaps those of China, Malaysia, Taiwan, and Vietnam.

Taiwan. Taipei's claims in the South China Sea mirror those of mainland China's. As a result, Taiwan claims sovereignty over all the Spratly Islands.

Vietnam. Vietnam also claims all the Spratlys, asserting that it gained sovereignty over the Spratlys and Paracels when it gained independence from France.

Creating a Flash Point

While the various claims to the South China Sea have historical roots, international concern over the area is a relatively recent phenomenon. Attention focused on the competing claims in the 1980s as negotiations on the United Nations Convention on the Law of the Sea (UNCLOS) drew to a close and countries prepared for the shift to a new international regime. At the same time, progress was being made on Cambodia, Southeast Asia's top regional security concern, which allowed policy makers to turn to other items on the security agenda.⁹

⁸ This section draws heavily from "Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict," by Ralph Cossa, A Pacific Forum CSIS Special Report, Honolulu, Hawaii, March 1998.

⁹ "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention," by Hasjim Djalal and Ian Townsend-Gault, in Herding Cats: Multiparty Mediation in a Complex World, edited by Chester A. Crocker, et al., U.S. Institute of Peace Press, 1999, pp. 114-115.

Territorial disputes in the South China Sea quickly attracted attention. Chinese and Vietnamese forces clashed several times; in 1988, three Vietnamese ships were sunk and 70 people were killed in one such dispute. The use of armed forces drove home the rising importance of the South China Sea at a time of accelerating economic development in the region. Trade was the foundation of Southeast Asian growth, and trade depended on sea lines of communication and freedom of navigation. Peaceful and secure transportation was essential to the region's future prosperity; neutralizing potential conflicts over the South China Sea would be essential to that future.

Since 1995, there have been sporadic confrontations that have increasingly gained political attention in line with the renewed focus on strengthening the basis for respective territorial claims to parts of the sea. As governments sit down to discuss South China Sea issues, their navies continue to face off in the area, seizing boats and crews that are fishing "illegally." There is also concern over the rising level of military activity in the sea. Earlier this year, it was disclosed that China had upgraded its communications facilities and improved facilities on Mischief Reef. Chinese warships are making more frequent appearances, and there are reports of large-scale Chinese military exercises in the region. Mid- to long-term People's Liberation Army Navy (PLAN) strategy and procurement plans clearly suggest a more active "blue water" role extending across the Taiwan Strait and the South China Sea. As a result, analysts assert that China's actions "have given rise to the perception that it is continuing with its policy of creeping assertiveness."¹⁰

Triggers of Conflict¹¹

While the EP-3 incident highlighted the possibility of accidental conflict in the South China Sea, the prospect of military confrontation in the region is low. All the claimants acknowledge their stake in continued peace and stability in the area and, to their credit, have a history of working out disputes peacefully. In addition, no claimant yet has the military capability to unilaterally enforce and defend its claim.

Broadly speaking, there are six types of triggers. They are: exploration or exploitation activity, creeping occupation, armed displacement, armed enforcement, accidents or miscalculations, and other acts of provocation (real or imagined) by any of the claimants.

¹⁰ "China-ASEAN Relations: Making the Rounds," by Carlyle Thayer, *Comparative Connections*, Vol. 3, No. 2 (July 2001).

¹¹ For a more detailed assessment of potential triggers of conflict, see Cossa op. cit.

Concerns over *exploration and exploitation of resources* have focused on energy reserves. Originally, there were hopes that the South China Sea contained large amounts of hydrocarbons, in the form of oil and natural gas. Thus far, those hopes have outpaced reality. The general consensus among analysts is that the South China Sea “has been a source of great disappointment” to oil companies. The geography of the ocean floor in many parts of the South China Sea also serves as a potential factor inhibiting serious exploitation of these resources, although advances in technology may eventually render such exploration more cost effective. Nevertheless, the prospect of discovering significant resources still captivates policy makers throughout the region. Worse, mere exploration for resources could be sufficient to bring claimants into dispute. The mere granting of concessions is one way of claiming jurisdiction over an area. China and Vietnam clashed in 1992, ‘94, ‘96, and ‘97 over various concessions allowing exploration.¹² Moreover, even if it were proven that there were no such resources, the sovereignty question would still oblige governments to stick to their claims.

“*Creeping occupation*” is most commonly associated with Chinese behavior in the South China Sea, but virtually all governments in the region have staked claims, raised flags, and increased the visibility of their presence to reinforce those claims. China’s occupation of Mischief Reef is the most egregious case, but other countries have also built and fortified structures. A Taiwanese analyst has identified 25 islets that Vietnam has occupied since 1956, three claimed by Malaysia, and eight occupied by China since 1987.

Even seemingly positive developments can be problematic. For example, Taiwan’s shift from a marine presence to that of the coast guard on Pratas Island and Itu Aba (Taiping Island) can be interpreted in two ways. On one hand, it can be said to represent a demilitarization of the situation. On the other, it can be considered a subtle form of absorption of the island by shifting administration to the local government.

Armed displacement is a rarity – and unlikely, since many of the contested sites are now occupied by military forces – but it did occur in the past. In the 1950s, Taiwan removed Philippine settlers from Itu Aba, and China and Vietnam have clashed repeatedly over the Spratlys and the Paracels.

A more likely trigger is *armed enforcement* of claims. There has been a growing number of confrontations between various militaries. In 1999, a Philippine Navy patrol boat chased, rammed, and sunk Chinese fishing boats near the Spratlys. Later that year,

¹² See the FAS report for details.

Vietnamese troops fired on a Philippine plane. Around the same time, Malaysian and Philippine aircraft reportedly came into contact without incident.¹³ This year, Philippine and Vietnamese navies have seized Chinese fishing vessels working disputed waters.¹⁴ During the presentation at Pratas Island, Taiwanese officials said they detected 400-600 encroachments on the reef area every year; each one is a potential trigger.

The South China Sea's growing strategic significance and the growing military presence in the region guarantees that there will be more opportunities for *miscalculation*. As China's PLAN assumes a higher profile, the risks will rise. The PLAN will conduct more exercises and venture further out to sea, research vessels will do their preparatory work (surveying the sea and the sea bottom for civilian and military purposes), and other militaries will step up surveillance, prompting responses of their own. The result is a rising number of vessels in a limited space. The EP-3 crash is proof that accidents will happen.

The growing frequency of piracy in East Asia is another cause for concern. According to the International Maritime Organization, more than half the world's pirate attacks occurred in East Asian waters in 1995 and 1996, and the number has continued to climb since the 1997 Asian financial crisis.¹⁵ Policing the seas is difficult work at the best of times, but it is rendered more complicated and dangerous when patrols must cross contested waters. Pursuers becoming pursued by other navies is always a possibility. There are also allegations that some pirates are working in collusion with – or sometimes are – officials in various governments and navies. That increases the likelihood of a clash between countries.

Finally, there are *acts that will be deemed provocative* by other claimants. These include upgrading the level of military capabilities on facilities, such as building air strips or deploying anti-aircraft missiles (both of which China has allegedly done on the Paracels);¹⁶ permitting visits by nationalist groups (which has occurred in the Senkaku/Diaoyu islands that are claimed by Japan, China, and Taiwan); or engaging in activities that are beneficial, such as fighting piracy, protecting the environment, or conducting research, that would advantage one country's claim over another. In each case, one government's acts could be seen as a provocation by a rival, even if, as in the latter case, there is no such intent.

¹³ "South China Sea Flashpoint," by David G. Wiencek, Jamestown Foundation China Brief, Vol. 1. Issue 2, July 24, 2001.

¹⁴ Thayer, *op. cit.*

¹⁵ Ji, *op. cit.*, p. 11.

¹⁶ Wiencek, *op. cit.*

Status of Current Dialogue Efforts

The 1995 discovery of Chinese structures on Mischief Reef pushed South China Sea issues into the official dialogue between the PRC and ASEAN and into the agenda at the ASEAN Post-Ministerial Conference, the ASEAN Plus Three, and the ASEAN Regional Forum. Although the PRC had made clear its preference to deal with the issue bilaterally and to keep it from being “internationalized,” Beijing has gradually allowed the issue to be discussed in multilateral official fora, which do not allow participation by Taiwan. The PRC has consistently objected to internationalization of the dispute and has strongly resisted participation by non-claimants in both official and private dialogues on the South China Sea issue.

In fact, ASEAN had addressed the subject in 1992, when it adopted the ASEAN Declaration on the South China Sea (see Appendix C). That document urged all parties to exercise restraint to help create a positive environment to resolve disputes and to solve all problems by peaceful means, without resort to force. By occupying Mischief Reef, the PRC chose not to observe the Declaration (an agreement that technically included only ASEAN members, but about which the PRC was already well-informed), which had foresworn military measures and unilateral occupation of features in the disputed areas. In the aftermath of the Mischief Reef incident, the PRC has since joined discussions of a Code of Conduct with the Philippines (based largely on the 1992 ASEAN Declaration, see Appendix D) and successfully completed difficult negotiations last year with Vietnam on its land border and sea demarcations in the Gulf of Tonkin, although outstanding South China Sea claims – including over the Paracels – remain an area for future bilateral Sino-Vietnamese negotiations. The PRC objected to the negotiation of a bilateral Code of Conduct between Vietnam and the Philippines, and upgraded its facilities on Mischief Reef. At the same time, Beijing agreed to participate in negotiations on a Code of Conduct in PRC-ASEAN negotiations, which also exclude participation by Taiwan. (See Appendix E for preliminary drafts of the PRC and ASEAN Code proposals).

Those negotiations with ASEAN on a Code of Conduct initially proceeded well, although the PRC has indicated that it prefers the Code to be treated as a statement of principles rather than a legally enforceable document. During these negotiations, ASEAN has focused on prevention, while the PRC has tried to emphasize the idea of promoting cooperation, presumably through some form of joint development. There were expectations that the Code might be adopted last year, but differences emerged over its scope: Vietnam insisted that it apply not only to the Spratlys but also to the Paracels, from

which Vietnamese troops had been forcibly ejected by Chinese military forces in the mid-1970s. From the Vietnamese perspective, conceding to the exclusion of the Paracels from the scope of the Code of Conduct would vindicate the PRC's use of force to enforce its claims in the South China Sea. The Malaysian government also has expressed technical concerns about the application of the Code to continental shelf claims.

A key problem is that ASEAN is hardly united on how to deal with the issue. ASEAN claimants talk more with the PRC about the South China Sea dispute than they do with each other. The Philippines and Malaysia, for instance, have not had much dialogue over their disputed claims, while everyone is talking with China.

The major non-governmental dialogue process on managing potential disputes in the South China Sea is known as the Indonesia Workshop on Managing Potential Disputes in the South China Sea. The Indonesia Workshop was formed in 1990 as an informal dialogue on technical rather than political issues through which individuals representing respective authorities with outstanding claims might participate in discussions on an individual basis. The dialogue is governed by consensus and participants make recommendations to their respective authorities based on the discussions at the Workshop. It is the only regular dialogue process on the South China Sea that includes representatives from both the PRC and Taiwan, although the Workshop has consistently avoided offers by institutions in Taiwan to host meetings as part of the process. There have been many suggestions that the Indonesia Workshop process be made an official dialogue process, but formalization would probably result in Taiwan's non-participation in the Workshops.

The Workshop process has pursued avenues of practical cooperation and has set aside intractable issues such as sovereignty. Efforts to proceed with technical cooperation in scientific research, environment, resources, safety of navigation, and legal matters have ultimately been constrained by concerns that these cooperative projects might also involve questions of sovereignty. An initial consensus to proceed with joint cooperation in biodiversity (in cooperation with the UN Environmental Program and with financial support from the U.S. Department of State) and hydrographic data sharing (with financial support from the government of Singapore) was developed, only to founder when it became clear that financial assistance would be indeed available for the projects to go forward. A pattern seems to have emerged. Dialogue is acceptable and discussions about technical cooperation have gained consensus, but when it appears that a project might actually go forward, consensus breaks down – apparently as a result of concerns that actual cooperation efforts might internationalize the issue, or perhaps as part of a deliberate effort to stall any practical cooperation effort in the South China Sea. Yet, non-claimant

interest in the South China Sea as a transit-way and global resource for fish and wildlife suggests that international interest is inevitable, as non-claimants are also stakeholders in the maintenance of regional peace and stability.

Given the lack of consensus on technical cooperation projects, some have begun to lose patience with the Indonesia Workshops. Workshop Chairman Hasjim Djalal counsels patience. He argues that the informal process itself is an important CBM, it is the only regular dialogue that has representatives from all the claimants, and the goal of the process should be precisely to prevent disputes from happening. At the same time, however, he concedes the extraordinary difficulty of convincing all parties to adopt habits of cooperation on South China Sea issues. Current funding difficulties may constitute a major challenge that could force progress through adaptation of the current strict requirements for consensus or by changing the profile of future workshop participation as a result of changes in the composition of funding. Thus far, the PRC has indicated that the only funding from outside the region that it would accept is from Canada or Scandinavia; it strongly opposes a U.S.- or Japan-funded Workshop process.

A variety of other dialogue processes address issues related to the South China Sea on an indirect or *ad hoc* basis. The Council for Security Cooperation in the Asia Pacific (CSCAP) has a working group on Maritime CBMs that is currently examining how UNCLOS applies to the definition of marine and maritime boundaries in the Asia Pacific. Ian Townsend-Gault, a member of the Maritime Working Group of CSCAP, argued that ratification of UNCLOS implies that a state is willing to set aside historical claims in favor of UNCLOS methods for defining the extent of a nation's claim. He urged states to draw baselines and justify their claims based on clearly accepted international precedent. One scholar, during not-for-attribution discussions, noted that during the recent EP-3 incident the PRC cited the Law of the Sea rather than the PRC's historical "nine-dashed line" claim as the basis for objecting to U.S. reconnaissance flights near its territory. He claimed this suggested that claimants are recognizing UNCLOS as the basis for determining claims, even if the understanding of how to apply UNCLOS in such instances remains low.

Moreover, Vietnamese and PRC procedures for determining coastal baselines used to determine maritime claims have been challenged as inconsistent with international practice. In particular, the PRC's use of an "archipelagic baseline" concept to draw baselines around its contested Paracel claims is dubious, and the reasoning behind such baselines should be carefully explored in discussions with international Law of the Sea experts. Processes that help further understanding about how UNCLOS applies to outstanding South China Sea claims may be useful in reducing the areas under dispute.

There are also occasional academic conferences such as the Norwegian-sponsored workshop on “Human and Regional Security Around the South China Sea” in Oslo, Norway, held June 2-4, 2000; roundtable discussions on Taiwan’s role in conflict management such as the one hosted in February of 2001 by Academia Sinica in Taipei; and Pacific Forum/ISDS’ own collaborative efforts on the issue since 1995. All of these have contributed ideas for consideration by governments on how to manage potential disputes in the South China Sea.

PRC Intentions and the South China Sea

The PRC’s contradictory behavior in managing South China Sea issues is taken by some as evidence of a duplicitous strategy. China critics believe that Beijing is waiting until its military development has proceeded far enough to allow it to forcibly take and hold the territory it claims.

Others take a more benign view of the contradictions. Some point to the tension between the PRC’s claims to sovereignty and its need to cultivate good relations with ASEAN. Alternatively, they suggest that there is no coordination among China’s various ministries, and the response of each depends on its own area of interest. A final argument is that China has a poor understanding of how to interpret UNCLOS, which was ratified by the PRC in 1996. (One scholar asserted that the PLAN already recognized the South China Sea as international waters based on comments by some PLAN personnel that the South China Sea is a lake controlled by the Seventh Fleet of the U.S. Navy)

Other analysts observe a very effective and well-coordinated PRC approach to South China Sea issues that imposed sufficient discipline to prevent progress at diplomatic and informal discussions of these issues. As a result, more progressive bureaus within the PRC government that might be inclined to cooperate have been restrained by the Ministry of Foreign Affairs and/or the PLA to avoid any actions that might weaken the PRC’s territorial claim. For instance, environmental agencies may have an incentive to cooperate on marine pollution issues in the South China Sea; the State Oceanic Administration of the PRC was identified as another agency that had been cooperative. In addition to restraining cooperation, the PRC Ministry of Foreign Affairs was also said to restrain potentially destabilizing PRC agencies, such as those that might be interested in oil exploration and resource development.

One Chinese scholar argued that the South China Sea is simply not a priority for the leadership in Beijing, especially when compared to the leadership's focus on cross-Strait relations. As a result, he suggested that the Chinese leadership would be eager to adopt mechanisms that would limit potential conflicts as a way of putting the South China Sea on the back-burner until more pressing issues are resolved. This assertion is borne out by China's relative flexibility in discussing the South China Sea issues with ASEAN at the height of cross-Strait tensions in 1996. Beijing's priorities pose a dilemma for ASEAN claimants. They don't want to see increased cross-Strait or major power tensions, yet they may find that the PRC is more conciliatory in negotiations over South China Sea-related issues during times of tension because of Beijing's need to maintain a focus on higher priorities such as the cross-Strait and U.S.-PRC relationships.

Taiwan's Policy toward the South China Sea

The recent trend to exclude Taiwan from official South China Sea dialogues has presented Taipei with an increasingly complex policy dilemma. Until the 1995 Mischief Reef incident focused international attention on China's aggressive actions in support of its South China Sea claim, scholars from Taiwan and the mainland would routinely consult with and support virtually identical historically-based South China Sea claims at international forums such as the Indonesia Workshops. However, the scrutiny triggered by China's occupation of Mischief Reef encouraged ASEAN to discuss these issues with Beijing through the ASEAN-PRC dialogue and the South China Sea issue was also mentioned as a problem to be addressed at regional multilateral fora such as the ASEAN Regional Forum, neither of which includes Taiwan as a participant. At the same time, then Taiwan President Lee Teng-hui's 1995 visit to the United States and subsequent PRC missile firing exercises in the direction of Taiwan constituted a serious setback to cross-Strait dialogue efforts. The result has been the virtual exclusion of Taiwan from the critical dialogues on South China Sea issues, including ongoing ASEAN-PRC negotiations over a Code of Conduct for the South China Sea.

As a result, Taiwan is isolated from key discussions on the issue. Moreover, Taiwan's position on South China Sea issues is affected by the quality of cross-Strait relations. There is a growing feeling among scholars and some officials in Taiwan that Taiwan needs to differentiate its policy from that of the mainland without eschewing possibilities for cross-Strait dialogue. This creates a dilemma since even minor changes in Taiwan's policy that might be intended as constructive steps to more effectively manage South China Sea-related disputes may be interpreted very differently by the PRC.

Taiwan's recent action of replacing its naval forces with a coast guard presence in Pratas Islands and Itu Aba is especially significant. It represents the first concrete step toward demilitarization of the South China Sea dispute: All other claimants have acted to strengthen their military presence and occupation of South China Sea features over the past decade. Some in Taiwan believe that this contribution to lessening tensions in the region should be given a higher profile so that Taiwan gets credit even though it cannot participate in official discussions on the establishment of a Code of Conduct in the South China Sea. However, its action has been greeted with suspicion in Beijing, which interpreted the move as diminishing a historical governance structure that is a legacy of the ROC's "one China" claim.

There has also been active debate in Taiwan over how it should position itself on the issue of a Code of Conduct. Some have advocated that Taiwan unilaterally announce its own Code of Conduct that would govern Taiwan's actions in the South China Sea, even before the conclusion of the ASEAN-PRC negotiations. Others worry that such a move would needlessly provoke China and would be perceived as another step in the direction of Taiwan independence. Taiwan could unilaterally endorse the principles contained in the Code of Conduct following the conclusion of ASEAN-PRC negotiations, but some argue that Taiwan should withhold its endorsement of the Code to protest its exclusion from the negotiation process.

The key is ensuring that the South China Sea does not become a problem in cross-Strait relations. Ideally, the South China Sea should be a vehicle for creating momentum in cross-Strait dialogue through informal, scholarly channels on issues where both sides have traditionally agreed. For instance, an agreement between Taipei and Beijing on how to manage potential South China Sea disputes could be negotiated and might be referenced in any Code of Conduct that might finally be signed between ASEAN and the PRC. One way to give greater significance to Taiwan's endorsement of the Code of Conduct might be to allow Taiwan to sign as a "co-operative entity." ASEAN-Institute for Strategic International Studies' regular dialogue with Taiwan is another informal channel through which Taipei can pursue additional information and understanding on issues such as the Code of Conduct. The debate over how Taiwan should address the Code of Conduct illustrates the extent to which South China Sea issues have become entangled in cross-Strait relations, and the real risk that the South China Sea dispute could become ensnared by developments in cross-Strait relations if Beijing and Taipei fail to manage this issue carefully.

One possible solution to the dilemma Taiwan faces is the “APEC model,” in which Taiwan is allowed to participate as an economy. More recently, the Multilateral High-Level Conference on conservation and management of highly migratory species in Honolulu made special arrangements for Taiwan to participate in its dialogue as a fishing territory, and it is anticipated that Taiwan will join the World Trade Organization (WTO) simultaneously with the PRC as a “customs territory.” Devising a formula for Taiwan’s participation in South China Sea-related discussions without referring to the question of national recognition would go a long way toward easing the difficulties that have been created by Taiwan’s isolation from official dialogue mechanisms and would give Taiwan an opportunity to participate in discussions that directly affect its own security, economic, environmental, and maritime interests. Although such a proposal represents a pragmatic solution that now has strong precedent, the PRC may fear that it may fuel *de facto* Taiwan independence. Hopefully, Beijing has begun to realize that the best way to discourage drastic actions by Taiwan is to cooperate so as not to feed the frustration caused by international isolation in areas where Taipei’s interests are directly at stake.

As Song Yann-huei of Academia Sinica in Taipei warns, “the possibility of Taiwan taking unilateral actions in the disputed area in support of its sovereignty and maritime jurisdictional claims should never be ruled out, given the fact that Taipei . . . was not invited to participate in the process of formulating the ASEAN-PRC Code of Conduct and thus cannot be expected to be bound by it.”¹⁷

There has recently been a renewal of cross-Strait dialogue among private scholars who specialize in South China Sea-related issues, and the development of this dialogue constitutes another reason for Taiwan to be cautious as it handles its South China Sea policy. Still, there still may be space for Taiwan to forge a South China Sea policy that helps minimize the possibility of disputes in the area, without forcing Taipei to choose between ASEAN and Beijing.

But, if Taiwan needs to be cautious, it is equally true that Beijing needs to be more flexible in finding ways to let Taipei’s voice be heard. Since it is unlikely that Beijing would ever agree to Taiwan participation in the ARF or in governmental PRC-ASEAN deliberations, a way must be devised to gain Taiwan’s input and ultimate consent regarding the Code of Conduct process. This could best be handled either through the non-governmental (but quasi-official) Indonesia Workshops or through CSCAP’s Confidence and Security Building Measures Working Group – PRC and Taiwan security

¹⁷ Song Yann-huei. “South China Sea Code of Conduct and Taiwan,” *PacNet* #40, Oct. 6, 2000.

specialists participate in both fora. Thus far, however, Beijing has kept operational issues of this nature off the Indonesia Workshop agenda and has blocked any discussion of the Spratlys in CSCAP. The Chinese government has even issued demarches aimed (unsuccessfully) at preventing independent think tanks in the region from conducting multilateral discussions on South China Sea confidence building measures. Realistically speaking, however, unless China and ASEAN devise a way to bring Taiwan into the Code of Conduct discussion in some meaningful way, the Code will be ineffective and perhaps even counterproductive or destabilizing. Track two dialogue seems to hold the answer.

Military Security and Confidence Building in the South China Sea

Given the South China Sea's critical role as a throughway for commercial goods and energy supplies from the Persian Gulf to Northeast Asia, there is broad international interest in continuing freedom of navigation through international waters in the region. It is unlikely that any claimant would oppose such freedom of navigation because dependence on these sea lanes is mutual and closure would negatively affect claimants and non-claimants alike. Neither is it reasonable to expect that freedom of navigation would become a subject of negotiation among the claimants, since it is a right guaranteed under international law and is not the prerogative of any individual state to "guarantee" such rights of passage. Likewise, spurious jurisdictional claims that challenge international law are unlikely to prevent commercial or military craft from traversing areas that have long been recognized and treated as international waters.

There is a wide range of maritime issues that could be discussed as part of broader efforts to increase confidence among the claimants and decrease the possibility that any accidental encounter would escalate into military conflict. Piracy, environmental disasters, and search and rescue operations are best handled with clearly understood procedures for a rapid and uniform response among the claimants that bear a special responsibility for safety and prevention of accidents stemming from their respective claims. To avert accidental military conflict, the ARF is promoting military confidence building and transparency measures, including prior notification of military exercises, invitations to observe military exercises, and clear declarations of military objectives and intent through the publication of defense white papers. Hopefully, these broad measures will help diminish the prospect of accidental conflict in the South China Sea.

There has been ample discussion of the problems that roil the South China Sea. Considerably less attention has been devoted to the measures that could help build trust and reduce the possibility of conflict in the region. Although some of the ideas listed

below are contradictory, we present them thematically in as comprehensive a form as possible to stimulate discussion and to illustrate the rich menu of confidence building measures that is available for consideration – even though the conventional wisdom is that these conflicting claims are a near-term problem to be managed and that a final solution to conflicting claims in the South China Sea lies far in the future.

Principles

Several principles should guide any effort to promulgate confidence building measures. First, openness and transparency are to be encouraged at every opportunity. The most effective cure for the mutual suspicions that dominate thinking about the South China Sea is transparency. There should be established and mutually agreed upon procedures for state-sponsored activity in the area, from hydrographic research to military exercises. Prior notification is an essential part of this package. Sharing of information and inviting observers will go a long way to ease suspicions and increase trust among the various claimants to the area.

Second, multilateral dialogue should be encouraged. The scope of the competing claims, and the stakes of non-claimants such as the United States, Japan, and South Korea, have made the South China Sea a focus of international concern. China has protested the “multilateralizing” of the disputes, but the fact is there is no other satisfactory solution. Reality dictates that less optimal solutions be accepted in the interim, however. That means that bilateral initiatives should be considered as useful first steps toward broader, more inclusive proposals. Agreements should be open to other signatories, and should not prejudice third-party claims.

Track two dialogue can play an important role in facilitating solutions. Given the stakes, it will take time for governments to reach agreements on South China Sea issues. That opens the door to informal discussions, to air ideas, and float suggestions. CSCAP and other track two organizations should be utilized to move the process forward and begin the building of consensus.

Recommendations for Enhancing Dialogue and Mutual Understanding in the South China Sea:

- All claimants should halt further military construction or force build-ups in disputed territories or, preferably, return to the status quo at the time of the 1992 ASEAN Declaration on the South China Sea. “Creeping encroachment” by all claimants must stop.

Perception of a need to respond to safeguard a country's claims only feeds the cycle of action and reaction. There is also agreement that building on various reefs in the South China Sea damages the coral that serves as the feeding grounds for many fish in the region. Continued construction of structures on submerged reefs will eventually limit the sustainability of fishing in the region.

- Current efforts by ASEAN and the PRC to negotiate a region-wide Code of Conduct aimed at foreclosing use of force, expanded occupation, or further construction in the South China Sea where overlapping claims are under dispute should be welcomed and encouraged. A mutually agreed upon Code of Conduct would establish a clear standard for behavior that would bind and expose claimants who take it on themselves to pursue unilateral action in defiance of the claims of others. It would also inculcate the habit of dialogue with a purpose, as opposed to dialogue for dialogue's sake. Further thought needs to be given to how Taiwan's interests may be represented and how its support may be enlisted for a region-wide Code ratified by all the claimants. Any proposal must also include mechanisms to verify that commitments are honored. Empty promises will only increase mistrust. A proposal must have "teeth" for it to be effective and respected by all parties.
- Region-wide mechanisms or institutions to share information and manage accidental conflicts or incidents at sea in the area of the South China Sea should be developed and encouraged. The EP-3 incident highlighted the importance of this issue. States should agree on principles for handling such encounters. The 1998 Military Maritime Consultative Agreement between the United States and the PRC could serve as a model, and has been cited as a mechanism through which incidents such as the recent EP-3 incident might be discussed.
- The Indonesia Workshop process is widely recognized as a dialogue process that enhances confidence among claimants by providing a venue for discussion and promotion of joint cooperation among parties with an interest in the South China Sea. Technical and expert working group processes should go forward in areas where cooperation might effectively be established, including implementation of specific joint cooperation projects or technical research on marine scientific research, environment, resources, safety of navigation, and legal matters, among any and all participants who desire to cooperate on these matters. Informal discussions among the willing could help prod those less inclined to enter into dialogue to reconsider out of fear of being left behind or out of the process.

- Academic workshops should be held to clarify the application of UNCLOS to the major issues in the South China Sea dispute. An informal commission of international maritime legal experts may be convened to explore how UNCLOS applies to the South China Sea and to identify mechanisms available for settling overlapping claims. Such a step may be a useful way of deepening understanding of an UNCLOS-consistent settlement without forcing all the claimants to accept an official verdict and binding arbitration process that would be required by a decision to turn the matter over to the International Court of Justice.
- Working-level cross-Strait dialogue should be pursued to enhance Taiwan-PRC understanding of their respective positions on South China Sea issues. While higher-level dialogue is necessary, political constraints seem to make that impossible at present. Nonetheless, both governments have interests in the region and their actions will have an impact on developments. Technical cooperation or agreement on working principles is the next preferred step; at a minimum, both sides should understand each other's position and be aware and alert to changes in policy.

Recommendations for Enhancing Environmental Protection in the South China Sea:

- A focus on environmental concerns may sensitize claimants and the international community as a whole to the importance of the South China Sea, its environmental resources, and its heritage. An international panel of scholars should be established to monitor and provide an annual assessment on the status of the environment in the South China Sea. In addition, projects should be launched to promote data exchange and database compilation on bio-diversity issues, as has been pursued through the Indonesia Workshop process.
- Environmental mechanisms or measures should be adopted to preserve bio-diversity and responsibly protect marine habitats in disputed areas of the South China Sea. States that are ready to cooperate on environmental issues need not wait until there is a consensus to unilaterally implement environmentally safe practices. For instance, states are responsible for policing their own fishermen and should develop cooperative

relationships with counterpart agencies to uphold safe fishing practices, regardless of where such practices take place, i.e., in disputed areas or not.

- Establishment of a marine park should be considered in order to preserve bio-diversity through joint development while setting aside the issues of sovereignty over the claims. Claimants should consider declaring the South China Sea a “Pacific heritage marine park” and an indispensable global resource.
- Rapid response mechanisms should be established to respond to oil spills or other environmental threats that may endanger the rich bio-diversity of the South China Sea. Clear spheres of responsibility by littoral states/claimants should be assigned to facilitate rapid response in the event of an accident that endangers the environment of the South China Sea.

Mechanisms for Enhancing Transparency in the South China Sea:

- Regular military-to-military cooperation should be established in the areas of search and rescue and prior notification of military movements and/or exercises in the area of the South China Sea. Informal dialogue should be promoted among military representatives on standard operating procedures and rules of engagement.
- Uniform international safety standards for vessels and aircraft transiting the region should be established. Joint cooperation and joint patrols should be promoted to respond to illegal fishing and anti-piracy efforts and to enhance safety and freedom of navigation.
- There should be joint access to commercially available satellite and other information showing developments on disputed features. This information might be provided by a regional monitoring center or it might consist of regular sharing of information among monitoring centers established by each claimant.

Suggestions on How to Move toward Minimization of Conflict/Conflict Resolution in the South China Sea:

- Reach final settlement in areas where only bilateral claims are at stake, such as a final determination of the Indonesian-Vietnamese maritime boundary. Recognize Sino-Vietnam agreements on delimitation of land borders and the Gulf of Tonkin as positive developments that enhance confidence bilaterally and regionally. Support Sino-Vietnamese progress on South China Sea through international conferences on historical

claims and status of the Paracels and other South China Sea issues, leading to enhanced understanding on bilateral disputes surrounding the Paracel Islands.

- Encourage discussions on maritime delimitation of continental shelf and exclusive economic zone claims among the Philippines, Malaysia, and Brunei and regarding management and protection of Scarborough Shoal fisheries among representatives from the Philippines, Taiwan, and the PRC.

The U.S. Role

Although it is not a claimant or a party to any South China Sea dispute, the United States has a stake in seeing that all regional problems are resolved peacefully. Washington can also help facilitate dialogue and promote transparency and openness. U.S. ships ply those waters on a daily basis and American allies and friends rely on them for peaceful transit and survival. The U.S. has a strategic interest in Southeast Asia, the SLOCs, and peace throughout the entire region.

The United States should and will continue to pursue a policy of “active neutrality” and uphold its rights to freedom of navigation in international waters by remaining a regularly visible and interested non-claimant.

As a naval superpower heavily involved in the interpretation and enforcement of disputes arising from the application of UNCLOS in other regions, the United States is also in a strong position to provide technical expertise on interpreting UNCLOS and applying it to South China Sea claims.

It also has a treaty commitment to the Philippines, which does not cover disputed territories per se, but does cover Philippine forces and facilities. A failure of the U.S. to respond if an ally was threatened would have serious consequences for all U.S. credibility, so a U.S. response, while not assured, should be assumed.

But the U.S. must be careful. China is increasingly suspicious of U.S. activity in the region and will no doubt respond negatively to any gesture that it considers an infringement upon its national sovereignty. While ASEAN is not as hostile to the U.S., it too is sensitive to the prerogatives of its member states and the institution as a whole. ASEAN also wants to avoid having to take sides in disputes between Washington and Beijing. This is seen as a lose-lose situation in Southeast Asia.

As a result, the U.S. must walk a fine line. It should support every effort to peacefully solve South China Sea disputes, but it should do so without getting directly involved. It must encourage, cajole, and facilitate without intervening, interfering, or obstructing. That calls for a sensitivity to regional interests and a willingness to let others lead. It also requires patience and an understanding of the many facets of this difficult dispute. These have not been American strong points in recent years, but the complex nature of the South China Sea dispute suggests that there is no other option.

History of Claims and Claimant Motivations and Concerns

Brunei: Brunei's claim is based upon an extension of its coastline along its continental shelf. It also overlaps those of China, Malaysia, Taiwan and Vietnam. The extent of Brunei's claim has varied from one established by the British in 1954 (that terminated at the 100-fathom line) to a more recent claim issued in a map showing a longer extension that goes beyond Rifleman Bank. Brunei's claim is based on an interpretation of the UN Convention on the Law of the Sea (UNCLOS) concerning the continental shelf (UNCLOS Articles 76 and 77).

People's Republic of China: China's claim is, in part, historical and originates with the Han Dynasty (206 B.C. to 220 A.D.) and the use of the South China Sea by Chinese fishermen since then. The first official claim by China dates from an 1887 treaty with France dividing the Gulf of Tonkin at 108°3'E.

In 1948, Nationalist China's Ministry of Interior issued a Map of Locations of South China Sea Islands that depicted China's historical claim as a broken, U-shaped line that intersects waters off Vietnam, Malaysia, Brunei, and the Philippines. Both the PRC and Taiwan still cite this U-shaped claim, although no official declarations defining the nature or extent of the claim have been made. Official Chinese maps include the U-shaped line, but without elaborations.

In 1958, the PRC issued a "Declaration of Territorial Sea" that extended China's territorial sea to 12 nautical miles (NM) and claimed the territory (and corresponding 12 NM territorial seas) of the Spratly (Nansha) Islands, Taiwan, the Paracels, Macclesfield Bank, and the Pescadores. In 1992, the PRC's "Law on the Territorial Waters and their Contiguous Areas" added 24 NM Contiguous Zones, and reiterated the claims of the 1958 Declaration, and additionally claimed the Senkaku Islands east of Taiwan. It also authorized the use of military force in defending these claims.

The first PRC occupation of the Spratlys occurred in 1988 when, after a naval engagement with the Vietnamese, the PRC took possession of several reefs in the Spratlys and established a base at Fiery Cross Reef. Since then, other reefs have also been occupied. Of most recent and greatest immediate contention was the emplacement of markers and the construction of "fisherman's structures" on the Philippine-claimed Mischief Reef in early 1995, along with their renovation in 1998-99.

Malaysia: Malaysia's claim is based on a continental shelf that projects out from its coast and includes islands and atolls south and east of Spratly Island. This claim overlaps claims by China, Taiwan, and Vietnam, and overlaps reefs and cays in the Philippines' claim. Malaysia's claim was announced in 1979 in an official map publication. Malaysia established a small military garrison together with a fisheries patrol base on Swallow Reef in 1983. An airstrip was added in 1991 and a small tourist center and bird sanctuary have also been established on the island. Mariveles and Ardasier Reefs were garrisoned in 1986.

Philippines: The Philippines bases its claims to what it calls the Kalayaan Islands on their proximity to Philippine territory and on the occupation and economic development of these previously "unattached and unused" islands by Filipino civilian settlers. Manila claims that the Kalayaans are a separate island chain from the Spratlys. The Philippines' claim overlaps those of China, Malaysia, Taiwan, and Vietnam.

Philippine forces began to occupy some of the islands in 1968. In 1971 the Philippines officially claimed the Kalayaan Islands, stating that any other claims to the area had lapsed by being abandoned. In 1978, the Kalayaans were formally annexed by presidential decree. The Philippine government has stated that the islands are important for national security and economic survival due to their proximity to the main Philippine islands. It alleges that ancient Chinese claims are invalid since these claims also included parts of what today are the Philippines, Malaysia, and Indonesia. Further, Chinese fishermen in ancient times only used the islands as a temporary base of operations.

Taiwan: Taipei claims sovereignty over all the islands within the U-shaped line in the South China Sea, including all the Spratly Islands, and exercises effective control over Itu Aba (Taiping) Island in the Spratly archipelago. Itu Aba has a coast guard garrison, a radar station, a meteorological center, and a power plant. Taiwan is also completing construction on communications facilities on the island and an airstrip is under consideration.

Vietnam: Vietnam claims that it gained sovereignty over the Spratlys and Paracels when it gained independence from France. The French had administratively claimed Spratly Island in 1929, and the French Navy took possession in 1930. In 1933, the French announced the formal occupation and annexation of nine Spratly islands.

In 1951, Vietnam asserted its claim to all the Spratly Islands, and South Vietnam reasserted this claim in 1956. From 1961, South Vietnam issued decrees covering the administration of the islands as part of Vietnamese territory. China contends that the North Vietnamese government recognized Chinese claims during 1956 – 1975, when official North Vietnamese maps and textbooks included Chinese claims.

Claimant Motivations and Concerns

The basic issue is sovereignty. As a general rule, states traditionally are hesitant to yield on issues of sovereignty. Sovereignty is a politically sensitive, emotion-laden issue driven largely but not exclusively by domestic political reasons. In addition, some claimants (the PRC in particular) express concern that yielding on the issue of sovereignty in the South China Sea could set a dangerous precedent or unleash forces or movements in other areas.

Other underlying claimant motivations vary but economics is clearly another common driving factor. The potential for profit in the form of oil, gas, fish, and mineral resources seems to be behind many claims, although (especially in the case of oil) this is based more on expectations of future discoveries than on proof of existing reserves. The desire to use claimed territories to extend exclusive economic zones (EEZs) and continental shelf zones -- within which a country may control exploration, exploitation, and preservation of natural resources -- provides additional motivation.

National pride and other manifestations of nationalism remain a key driving factor, particularly (but not only) in democracies. National security is another. For example, the Philippines has asserted that the islands are necessary for strategic defense and to help protect the borders of the Philippine archipelago.

The proximity of the Spratlys to South China Sea shipping lanes adds an important strategic element to the dispute. Simply put, the region's economic growth and security depend upon continued freedom of navigation for both merchant and military traffic.

A desire to obtain a foothold along this strategic waterway – or the perceived need to prevent others from doing so -- provides additional incentive to stake or reinforce claims in this area. Concerns about freedom of navigation provide all nations, the U.S. very specifically included, who rely on free passage through the sea lanes of the South China Sea with a vested interest in how the dispute plays itself out.

ASEAN DECLARATION ON THE SOUTH CHINA SEA

We, the Foreign Ministers of the member countries of the Association of Southeast Asian Nations

Recalling the historic, cultural, and social ties that bind our peoples as states adjacent to the South China Sea;

Wishing to promote the spirit of kinship, friendship, and harmony among our peoples who share similar Asian traditions and heritage;

Desirous of further promoting conditions essential to greater economic cooperation and growth;

Recognizing that we are bound by similar ideals of mutual respect, freedom, sovereignty, and jurisdiction of the parties directly concerned;

Recognizing that the South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

Conscious that any adverse developments in the South China Sea directly affect peace and stability in the region;

Hereby -

1. Emphasize the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;
2. Urge all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes;
3. Resolve, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against the pollution of the marine environment, coordination of search and rescue operations, efforts towards combating piracy and arm robbery, as well as collaboration in the campaign against illicit trafficking in drugs;
4. Commend all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;
5. Invite all parties concerned to subscribe to this declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, 1992.

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

Delegations from the Philippines and China met in Manila on 9-10 August 1995 for consideration on the South China Sea and on other areas of cooperation.

The consultations were held in an atmosphere of cordiality and in a frank and constructive manner.

The two sides reiterated the importance they attach to their bilateral relations. They recognize that the continued prosperity of their economies depends upon the peace and stability of the region. They reaffirmed their commitment to regional peace, stability, and cooperation.

Frank discussions on Mischief Reef (“Meiji Reef”) were held. The two sides expressed their respective positions on the matter. They agreed to hold further consultations in order to resolve their differences. On the South China Sea issues as a whole, they exchanged views on the legal and historical bases of their respective positions.

Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct in the area:

1. Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect.
2. Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes.
3. In the spirit of expanding common ground and narrowing differences, a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes.
4. The two sides agree to settle their bilateral disputes in accordance with the recognized principles of international law, including the UN Convention on the Law of the Sea.
5. Both sides shall keep an open-minded attitude on the constructive initiatives and proposal of regional states to pursue multilateral cooperation in the South China Sea at the appropriate time.
6. The two sides agree to promote cooperation in fields such as protection of the marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology, and maritime pollution control. They also agree that on some of the abovementioned issues, multilateral cooperation could eventually be conducted.
7. All parties concerned shall cooperate in the protection and conservation of the marine resources of the South China Sea.
8. Disputes shall be settled by the countries directly concerned without prejudice to the freedom of navigation in the South China Sea.

In order to push the process forward, the two sides agreed to hold discussions among experts on legal issues and sustainable economic cooperation in the South China Sea. They agreed further that experts

from the two countries shall hold consultations at a mutually acceptable date in order to explore the possibilities of fisheries cooperation in the disputed area.

The two sides agreed on the importance of bilateral cooperative activities as useful in and of themselves, and as confidence building measures. They are dedicated to a pragmatic approach to cooperation.

In addition to the South China Sea issue, the two sides reviewed other fields of bilateral cooperation. They emphasized the usefulness of exchanging contact at various levels in strengthening cooperation. They noted the successful conclusion of the 18th Philippines China Joint Trade Committee Meeting. They looked forward to conducting negotiations on the avoidance of double taxation and fiscal evasion. They noted the ratification by the Philippine side of the Bilateral Agreement on the Promotion and Mutual Protection of Investments.

The talks ended with both sides satisfied that some progress had been made in terms of substantially improving the atmosphere of relations and identifying and expanding areas of agreement by holding frank exchanges directly addressing contentious issues. They pledged to continue consultations in the same constructive spirit.

**CHINA'S DRAFT
CODE OF CONDUCT IN THE SOUTH CHINA SEA**

The Government of the People's Republic of China and the Governments of the member states of ASEAN.

REAFFIRMING their determination to consolidate and develop the friendship and cooperation among Asian people, who have a similar tradition, and to establish a 21st century-oriented partnership of good-neighborliness and mutual trust;

RECOGNIZING that permanent peace, stability and prosperity in the Southeast Asian Region serve the fundamental and long-term interests of their countries;

CONSCIOUS of their common responsibility for and firm commitment to peace, stability and prosperity in Southeast Asia;

WISHING to promote the region's economic growth and prosperity, enhance mutual friendship and cooperation among people in the region, and establish a peaceful, friendly and harmonious environment in the South China Sea;

DESIRING to create favorable conditions for final resolution of differences and disputes between the countries concerned; and

PROCEEDING from the objectives and principles set forth in The 1997 Joint Statement of the Meeting of the President of the People's Republic of China and the Heads of State/ Government of the Member States of ASEAN,

HAVE AGREED

To adopt and abide by the following Code of Conduct in the South China Sea:

- (1) The purposes and principles of The Charter of the United Nations, the Five Principles of Peaceful Coexistence and other universally recognized principles of international law shall serve as the basic norms governing state-to-state relations;
- (2) Explore ways for building trust and confidence and for resolving differences or disputes by peaceful means in accordance with the above principles and on the basis of equality and mutual respect;
- (3) Refrain from use or threat of force, or other action that may affect the good-neighborly and friendly relations among countries, and regional stability;
- (4) Disputes relating to the Nansha Islands shall be resolved by the sovereign states directly concerned through bilateral friendly consultations and negotiations, and in accordance with universally recognized international law, including The 1982 UN Convention on the Law of the Sea;
- (5) In order to maintain peace and stability in the region, the parties concerned shall, pending the settlement of disputes, continue to exercise self-restraint and handle their disputes and differences in a cool and constructive manner and through diplomatic channels, and refrain from taking actions that will complicate or magnify the disputes;
- (6) The countries concerned shall, in a spirit of "putting aside disputes and engaging in joint development", explore or carry out cooperation in areas such as marine environmental protection, marine scientific research, safety of navigation and communication at sea, exploration and exploitation of resources, search and rescue operations, and combating

transnational crimes (including but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms);

(7) The countries concerned shall be encouraged to develop bilateral fishery cooperation, establish channels of consultation and dialogue over issues that may arise in fishing operation, and manage and resolve fishing disputes through consultation.

Refrain from use or threat of force, or taking coercive measures, such as seizure, detention or arrest, against fishing boats or other civilian vessels engaged in normal operation in the disputed areas, nor against nationals of other countries thereon. Just and humane treatment shall be guaranteed to these nationals;

(8) The countries concerned shall hold dialogues and exchanges of views between or among their high level defense and military officials;

(9) Refrain from conducting any military exercises directed against other countries in the Nansha Islands and their adjacent waters, and from carrying out any dangerous and close-in military. Military patrol activities in the area shall be restricted;

(10) Maintain safety international navigation in the South China Sea and ensure freedom of navigation of ships and aircraft in normal passage in accordance with universally recognized international law and the relevant principles and provisions of The UN Convention on the Law of the Sea;

(11) China and ASEAN member states are ready to continue their dialogues on the relevant issues, including this Code of Conduct, so as to enhance transparency and promote harmony, mutual understanding and cooperation; and

(12) The Parties undertake to abide by provisions of this Code of Conduct and take actions consistent therewith.

ASEAN DRAFT REGIONAL CODE OF CONDUCT IN THE SOUTH CHINA SEA

The Heads of State and Government of the member states of ASEAN and the People's Republic of China:

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea for the enhancement of stability, economic growth and prosperity in the region;

COMMITTED TO the spirit and principles of international law, the Charter of the United Nations, the 1982 U.N. Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and the ASEAN Declaration on the South China Sea;

REAFFIRMING respect for the freedom of navigation and air traffic in the South China Sea, as provided for by international law, including the 1982 U.N. Convention on the Law of the Sea; and

WISHING TO FURTHER enhance the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the Peoples Republic of China.

HEREBY ADOPT the following Code of Conduct in the Disputed areas of the Spratlys and the Paracels in the South China Sea, hereinafter referred to as the Disputed Area.

- (1) The Parties concerned undertake to resolve disputes relating to sovereignty or jurisdiction in the Disputed Area by peaceful means, without resort to the use of force or threat of the use of force, on the basis of respect for sovereignty, equality and mutual respect among nations, and non-interference into each other's internal affairs, consistent with the recognized principles of international law, including those in the 1982 U.N. Convention on the Law of the Sea;
- (2) The Parties concerned undertake to refrain from action of inhabiting or erecting structures in presently uninhabited islands, reefs, shoals, cays and other features in the Disputed Area;
- (3) The Parties concerned undertake to exercise self-restraint in the conduct of activities that affect peace and stability in the Disputed Area and to handle their differences in a constructive manner;
- (4) The Parties concerned undertake to intensify efforts to find a comprehensive and durable solution to the disputes over the Disputed Area. Without prejudice to existing claims of sovereignty or jurisdiction, the Parties concerned undertake to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:
 - (a) holding dialogues and exchanges of views as appropriate among defense and military officials of the Parties concerned;
 - (b) informing voluntarily other Parties concerned of significant policies and measures that affect the Disputed Area; and
 - (c) ensuring just and humane treatment of nationals of other Parties concerned who are either in danger or in distress in the Disputed Area.
- (5) Without prejudice to existing claims of sovereignty or jurisdiction, the Parties concerned may explore or undertake activities in the Disputed Area. These may include the following:
 - (a) marine environmental protection;
 - (b) marine scientific research;
 - (c) safety of navigation and communication;
 - (d) search and rescue operations; and
 - (e) combating transnational crime, including, but not limited to, trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations in respect of bilateral and multilateral cooperation should be agreed upon by claimant countries prior to their actual implementation.

- (6) The Parties concerned undertake to conduct consultations and dialogues concerning the Disputed Area through modalities to be agreed by them, including regular consultations on the observance of this Code of Conduct, for the purpose of promoting good neighborliness and transparency, establishing

harmony, mutual understanding and cooperation; and achieving peaceful resolution and prevention of disputes among them.

(7) Other countries and international organizations are encouraged to subscribe to the principles contained in this Code of Conduct.

Adopted this _____ in the _____

Workshop on Managing Potential Conflicts in the South China Sea¹

January 1990: First Workshop (Bali)

Six ASEAN countries (Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand) discussed territorial and sovereignty issues; political and security issues; marine scientific research and environmental protection; safety of navigation; resources management and institutional mechanisms for cooperation.

July 1991: Second Workshop (Bandung)

China, Taiwan, Vietnam and Laos join the discussions. Topics include non-South China Sea powers in the region and confidence building measures.

June-July 1992: Third Workshop (Yogajakarta)

Topics include resource management, and cooperation in the field of shipping, navigation and communication, possible joint hydrographic research project, and marine scientific research from the view of the environment and ecology.

August 1993: Fourth Workshop (Surabaya)

Report of the Marine Scientific Research Working Group recommending three areas for implementation:

- i. database, information exchange and networking (China);
- ii. sea level and tide monitoring (Indonesia);
- iii. biodiversity studies (Vietnam).

Report from the Technical Working Group (TWG) Resources Assessment and Ways of Development.

October 1994: Fifth Workshop (Bukittinggi)

Establishment of a Group of Experts on biodiversity

Principle of the TWG on Legal Matters is to avoid discussion on sensitive territorial and sovereignty claims.

Plan for the First Meeting of the TWG on Shipping, Navigation and Communication, and the Fourth TWG on Marine Science Research

Discussion on confidence building measures in the South China Sea.

October 1995: Sixth Workshop (Balikpapan)

Discussion of the value of scientific tidal information. Participants concluded such information will not influence claims in disputed areas.

CBMs: eight principles for a Code of Conduct were agreed between the People's Republic of China and the Philippines.

1996: Seventh Workshop (Batam)

Discussion of modalities to implement agreed project proposals.

December 1997: Eighth Workshop (Pacet, Puncak, West Java)

Possibility of connecting with track-one diplomacy such as the ASEAN Regional Forum.

Reports from:

¹ Research from website: <http://faculty.law.ubc.ca/csc>

TWG on Marine Environmental Protection in the South China Sea (TWG-MEP);
TWG on Legal Matters (TWG-LM);
TWG on Safety of Navigation, Shipping, and Communication in the South China Sea (TWG-SNSC);
Marine Scientific Research and Marine Environmental Protection;
TWG on Resource Assessment and Ways of Development (TWG-RAWD).
Discussion of implementation of agreed programs for cooperation, confidence building measures, with emphasis on the importance of workshop process as a confidence building measure (CBM).

December 1998: Ninth Workshop (Ancol, Jakarta)

Reports on:
Study Group on Zones of Cooperation (SG-ZOC);
Third Meeting of the TWG on Legal Matters (TWG-LM-3);
Second Meeting of the Group of Experts (GEM) on Hydrographic Data and Information Exchange (GEM-HDI-2);
Third Meeting of the TWG on Safety of Navigation, Shipping and Communication (TWG-SNSC-3);
Sixth Meeting of the TWG on Marine Scientific Research and the Second Meeting of the Group of Experts on Marine Environmental Protection (TWG-MSR-6/GEM-MEP-2);
First Meeting of the Group of Experts on Non-living, Non-hydrocarbon Mineral Resources (GEM-NHM).

December 1999: Tenth Workshop (Bogor, West Java, Indonesia)

Reports from:
Marine Scientific Research TWG;
Safety of Navigation and Communications TWG;
Resource Assessment and Ways of Development TWG;
Legal Matters TWG;
Support for the efforts of the ASEAN China Dialogue to develop a Code of Conduct for the South China Sea region, and agreed to continue exchanging views on a Code of Conduct for marine environmental protection.
Review of progress in implementation of agreed projects for cooperation

March 2001: Eleventh Workshop (Cengkareng, Banten)

Technical Working Group Meetings

Technical Working Group on Marine Scientific Research

May 1993 (Manila)
August 1993 (Surabaya, Indonesia)
April 1994 (Singapore)
June 1995 (Hanoi)
July 1996 (Mactan, Cebu, Philippines)
November 1998 (Manila)
jointly with Second GE on Marine Environmental Protection to promote and further develop of the Biodiversity Project

Technical Working Group on Resource Assessment

July 1993 (Jakarta)

Technical Working Group on Legal Matters

July 1995 (Phuket)

May 1997 (Chiang Mai, Thailand)

Oct. 1998 (Pattaya, Thailand)

Codes of Conduct as an important CBM in the South China Sea.

Need for further research on Zones of Cooperation in the South China Sea

Sept. 1999 (Koh Samui, Thailand)

Oct. 31 – Nov. 4 2000 (Cha Am, Thailand)

Technical Working Group on Shipping, Navigation and Communications

October 1995 (Jakarta)

October 29-November 1, 1996 (Bandar Seri Begawan, Brunei Darussalam)

October 1998 (Singapore)

Group of Experts Meeting

Search And Rescue And Illegal Acts At Sea In The South China Sea

June 1999 (Kota Kinabalu, Sabah, Malaysia)

(for summary <http://faculty.law.ubc.ca/scs/>)

Marine Environmental Protection in the South China Sea

June 1997 (Phnom Penh)

Potential opportunities for cooperation in marine environmental protection.

November 1998 (Manila)

jointly with Sixth TWG on Marine Scientific Research to discuss ecosystem monitoring proposal.

Hydrographic Data and Information Exchange in the South China Sea

June 1997 (Kuching, Sarawak, Malaysia)

Cooperation in the exchange of hydrographic data and information.

October 1998 (Singapore)

Discussion of:

Draft Agreement on the Exchange of Hydrographic Data and Information in the South China Sea.

Meeting discussed the paper on Joint Hydrographic Surveys and Charting of the South China Sea (Participants from the PRC and Chinese Taipei requested further time to study and consider the proposal.)

November 2000 (Legian, Bali, Indonesia)

Discussion of the “Draft Agreement for the Exchange of Hydrographic Data and Information,” and the proposal to conduct joint hydrographic surveys.

On Environmental Legislation in the South China Sea

September 1999 (Shanghai, China)

Informal Meetings

June 1998 (Vientiane, Lao PDR) Informal Meeting of a Study Group on Zones of Co-operation

June 27 - July 1, 1999 (Tabanan, Bali, Indonesia) Second Meeting of the Study Group on Zones Of Co-operation in the South China Sea

Confidence Building Measures in the South China Sea

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