Resolving
the South China Sea Conflict

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Summary

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The conflict over sovereignty to hundreds of reefs and islands in the South China Sea remains intractable. There have been no negotiations over the delimitation of maritime zones in the central part of the sea. The absence of progress on resolving the South China Sea conflict is a serious concern for the international community, because so much is at stake:

- No adequate measures are taken to regulate fishing in a zone whose rich stocks of fish and shrimps provide the main animal protein for rapidly growing urban populations. If some of the major fish stocks are depleted, it may cause a human catastrophe.
- The conflict prevents the imposition of regimes to protect against pollution and a range of other dangers to the environment. Environmental co-operation is on the agenda, but virtually no measures have been implemented.
- The conflict poses a threat to the freedom and safety of navigation in some of the world's most utilised sea-lanes.
- The conflict makes it difficult to build confidence among the states in one of the world's three main economic zones and may lead to war between major powers.

A strategy is needed for resolving the conflict, with the major aim of eliminating these dangers. Attempts have been made throughout the 1990s to prepare the ground for conflict resolution and institute co-operative regimes on a semi-official level. The main effort has been an unofficial series of annual workshops managed by Indonesia and funded by Canada. This has been a deliberate attempt to shift the agenda from a sovereignty conflict over "maritime territory" and uninhabited islands to a shared concern for resource management. Despite annual workshops during the period 1990–98, and a cost to Canada of 3 million USD, the attempt has only met with limited success. A certain degree of co-operation has commenced, primarily in the environmental sector, but it has proved impossible to establish a joint management regime or to open multilateral negotiations.

Both the People's Republic of China (PRC) and the Republic of China (ROC) on Taiwan have taken part in the unofficial workshops (the latter under the name "Chinese Taipei"), but the Taiwan conflict remains a major obstacle to conflict resolution. Two different governments uphold the same Chinese sovereignty claim, and the ROC occupies Itu Aba, the largest of the islands in the Spratly area. The PRC, however, has refused to involve Chinese Taipei in anything but informal talks. The PRC also continues to insist that it will negotiate its sovereignty conflicts bilaterally with each of the other claimants (Vietnam, the Philippines, Malaysia, and Brunei), not at a multilateral conference. The PRC has repeatedly declared itself in favour of "joint development", but has been reluctant to participate in multilateral projects addressing environmental or other concerns.

This report provides an overview of the conflict over sovereignty to islands and the delimitation of maritime zones, enumerates the stakes involved, discusses how the conflict may be resolved, analyses ongoing trends, and lists the scholars and academic institutions who are studying the conflict from a legal or political perspective.

The report contends that the most likely scenario for the next decade is neither war nor conflict resolution, but a situation where the dispute over sovereignty to the "Spratlys" is left in a status quo, where no efficient joint management regimes are established, and where all the states involved try to build economic and military power, while improving upon the basis for their claims. Such a status quo is not necessarily dangerous from a security perspective, but it is not sustainable because it makee it extremely difficult to undertake measures to manage maritime resources, protect the environment and build institutional structures for regional co-operation.

It is argued that this problem needs to be tackled head-on by addressing environmental problems, the need to develop and manage resources, and to build multilateral institutions with carefully specified tasks. This should be done while defusing the sovereignty conflict in the Spratly area, and solving disputes elsewhere in the South China Sea, mostly on a bilateral basis.

In the long run, concentration on shared concerns may also be the best way to enter a process of resolving the sovereignty conflict in the Spratly area. The possibility for conflict resolution would be seriously enhanced if it could be agreed that the so-called "Paracels" and "Spratly islands"—or at least the latter—are not archipelagos or legal entities at all, but agglomerations of individual reefs and islands, with only limited capacity for generating maritime zones.[1] The sovereignty to each reef and island could then be decided separately, and each of them would have only limited impact on the delimitation of Exclusive Economic Zones (EEZs).

Then the delimitation of maritime zones could be made from baselines along the western coasts of the main Philippines' islands, the northern coast of East Malaysia, the eastern coast of Vietnam, and Hainan-Guangdong-Taiwan, as well as the island groups in the Paracels (which are occupied by the PRC, but also claimed by Vietnam). In this case, a zone would remain in the central part of the South China Sea, where it would be possible to set up a joint development, or management zone.[2] If a regionally or internationally constituted board with a well qualified administration were put in charge of managing the joint zone, then this could become the central vehicle for enhancing regional co-operation in maritime affairs.

The above proposal is not new. It has been called 'the doughnut theory', and has been put forcefully forward by Ambassador Hasjim Djalal, Indonesia's leading expert on the law of the sea and the main instigator of the workshop process.

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[1] See the chapter below on 'Solutions'.
[2] Maps indicating approximately how the South China Sea could be divided into national maritime zones if the Spratlys were ignored, and leaving a residual area in the middle, can be found as plates 11 and 12 in Valencia, Mark J., John M. Van Dyke and Noel A. Ludwig. *Sharing the Resources of the South China Sea*. The Hague: Martinus Nijhoff, 1997, pp. 264–265.

Preface

This report is a product from the research project "Energy and Security in the South China Sea" at the Centre for Development and Environment (SUM), University of Oslo, which is led by Professor Stein Tønnesson and has ten affiliated scholars and students. The project has the purpose of building Norwegian competence on legal, political, economic, environmental and military aspects of the South China Sea conflict. This will be done through the production of dissertations, reports, journal articles, monographs and briefings for interested parties. The project is funded by the Norwegian Research Council's PETROPOL programme,[3] with contributions from the Statoil Company, the Norwegian Shipowners' Association and the Norwegian Ministry of Foreign Affairs.

With funding from the Ministry of Foreign Affairs, research assistant Leni Stenseth and Stein Tønnesson conducted a research trip to Manila, Bangkok, Singapore, Jakarta, Kuala Lumpur and Hanoi in January–February 1998. In all of these places they obtained a number of interviews. Later in the year Stein Tønnesson revisited Manila, and Leni Stenseth based her Cand polit thesis in political science (finalised in December 1998) on two research trips to the People's Republic of China. Another member of the research team at SUM, Dr. Kristen Nordhaug, twice visited Taiwan for the same purpose. The present report has been written on the basis of these trips and on available literature on the South China Sea conflict. The authors are grateful to the Norwegian Ministry of Foreign Affairs and to the staff of the Norwegian embassies in the region who provided invaluable assistance in setting up interviews and talks.

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[3] http://www.sol.no/forskningsradet/program/profil/petropol/

Maps

[Two maps to be inserted here:

1. Whole South China Sea with claims and Crestone oil concession

2. The islands and reefs in the Spratly area, with indication of who occupies which.]

Abbreviations

ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CBM	Confidence-Building Measure
CIDA	Canadian International Development Agency
CSCAP	Council for Security Co-operation in the Asia Pacific
DRV	Democratic Republic of Vietnam (North Vietnam)
EEZ	Exclusive Economic Zone
PRC	People's Republic of China
ROC	Republic of China on Taiwan (Chinese Taipei)
RVN	Republic of Vietnam (South Vietnam)
SLOC	Sea-Lane of Communication
SRV	Socialist Republic of Vietnam (founded with national unification in 1976)
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

The aim of this report is to provide a brief, but comprehensive overview of the South China Sea conflict for diplomats, business executives, journalists, researchers and students, and to point at possible venues for conflict resolution. The report will present the rival claims to sovereignty, highlight the main stakes involved, outline some possible solutions, analyse ongoing trends, and provide information about where the best research competence on the conflict is located. The report will consistently distinguish between the countries in the region that are directly involved, and external, more indirect, interests.

Who, then, belongs to the region? The *South China Sea,* which for the Chinese is the *Southern Sea (Nan Hai),* the Filipinos the *Western Sea,* the Borneoans the *Northern Sea* and the Vietnamese *The Eastern Sea (Bien Dong),* forms the maritime link between Southeast and Northeast Asia. It is a big sea (3,685,000 square kms), bigger than the Mediterranean, the Caribbean, and the East China Sea. In the scholarly tradition from the historian Fernand Braudel, who wrote about the Mediterranean, we may speak of a *South China Sea region.* The heart of this region is the South China Sea and the Gulf of Thailand, with their islands, reefs, shipping lanes, fishing banks, dangerous grounds and reservoirs of oil and gas. Around the heart are the following heavily populated states and provinces: Brunei, East and West Malaysia, Singapore, Thailand, Cambodia, Vietnam, the Chinese provinces of Guanxi, Hainan, Guangdong and Fujian, the special administrative region Hong Kong, the Republic of China on Taiwan (Chinese Taipei), the Philippine islands of Luzon and Palawan, the Indonesian island groups Natuna and Riau, East Sumatra, and north-western Kalimantan.

The Tonkin Gulf is considered a part of the South China Sea, but the Gulf of Thailand is normally treated as an independent entity or appendix. When we speak of the South China Sea *region,* however, the Gulf of Thailand belongs to the heart. The landlocked Laos may also be included in the region, partly because that country depends so much on trade through Bangkok, partly because of its close links with Vietnam. Laos is now a member of the Association of Southeast Asian Nations, and has been invited to the multilateral workshops which have been convened annually in Indonesia to discuss shared concerns in the South China Sea.

In the legal jargon, the South China Sea is a "semi-enclosed sea". The fact that it is open in both ends has given it tremendous importance for all seafaring nations. For many centuries, it has served as a thoroughfare for Japanese, Korean, Indian, Arab, European, American, Australian—and Norwegian—merchant and naval vessels. East of the main south-north sea-lane, however, is the so-called Spratly area, an extensive agglomeration of islands, reefs, atolls and rocks, which have always been feared by seafarers. On old maps this area was marked as "dangerous grounds". The right to collect guano and values from shipwrecks was contested in earlier centuries among the subjects of rulers around the sea. In the 20th century the power balance between European, Russian, Japanese, US, Chinese and Southeast Asian navies has gone through frequent shifts. Japan has relied on provisions of oil through the South China Sea for over a hundred years. Since the end of the Second World War, the United States has been the strongest naval power in the region, as in most other sea zones of the world.

For the local populations, the main attraction of the sea is of course its fisheries. Local fishing communities have for many centuries been providing coastal towns and villages with abundant seafood.

Claims

As long as Southeast Asia was a European colonial domain and the prospect of finding oil under the seabed did not disturb the minds of regional decision-makers, there was no serious dispute over ownership to the smaller reefs and islands in the central part of the sea. Conflicting claims were made from time to time, however, in official declarations or by visiting naval officers who put up markers in stone. In the pre-colonial period there was no concept of national sovereignty, only tributary relations between rulers. Still both the Chinese and Vietnamese governments have been hunting for historical records to prove that subjects of their kings or emperors were visiting or utilising the islands in the past. Such records have been cited in a number of white books. One of China's arguments is that it took so long after the French colonisation of Annam and Tonkin in 1885 before France claimed sovereignty to some of the Paracel Islands in 1931 and to seven islands in the Spratly group in 1933. This is seen as evidence that until that time the islands were seen to be Chinese. Vietnam, of course, refutes this view, and the Philippines, Malaysia and Brunei claim the islands belonged to no one (that they were *res nullius)* until they were occupied by agents of their countries. Japan took possession of some of the islands in the Paracels and Spratlys just before the Second World War, and built a submarine base in Itu Aba, the largest island in the Spratly area. After the war, Japan withdrew. Both France and Chiang Kai-shek's Republic of China were quick to send naval expeditions both to the Paracels and Itu Aba, and China also issued a map in 1947 (or 1948) which has become famous for its *nine-dotted line,* showing most of the South China Sea as belonging to China. Then, in 1949, the communists won the civil war in China. Chiang Kai-shek had to withdraw from the mainland to Taiwan, and temporarily withdrew his forces from the Paracels and Itu Aba. In the San Francisco peace treaty of 1951, Japan formally abandoned its claim to sovereignty both to Taiwan, which it had occupied from 1895 to 1945, and to the islands it had occupied in the South China Sea. At this time, however, Mao Zedong's People's Republic of China (PRC) had been recognised not only by the socialist countries, but also by the United Kingdom (and the Scandinavian countries). The United States, Japan and France continued to recognise the Republic of China (ROC) on Taiwan as the sole legitimate government of China. Meanwhile, the war in Indochina was raging between Ho Chi Minh's Democratic Republic of Vietnam (DRV) and Bao Dai's State of Vietnam, which was an Associated State within the French Union. Under these circumstances, the peace conference in San Francisco could not make any decision as to which government should have sovereignty to the islands and other features that Japan had abandoned. The Soviet Union declared, however, that in its view they belonged to the PRC.

In the following two decades, while war continued to rage in Vietnam, the surrounding states took only half-hearted measures to assert their claims. Taiwan, however, reoccupied Itu Aba in 1956, threw out a group of Filipinos who tried to claim it, and has kept a garrison continuously in place since 1971. From 1969–70, when the oil rush started for real, the dispute became more and more intense, with the Republic of Vietnam (South Vietnam), the Philippines, Malaysia, Brunei and the Socialist Republic of Vietnam (SRV) all joining the race. The SRV, which was

founded in 1976, quickly abandoned the support that leaders of the Democratic Republic of Vietnam (DRV) had previously given to the claims of the PRC, and took over the claims that the former Republic of Vietnam had made to the whole of the Paracels and Spratlys. The adoption of the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, with its principle of 200 nautical mile Exclusive Economic Zones (EEZs), gave a further impetus to the conflict. Everyone now started to presume that the possession of islands might generate a right to vast maritime zones. Today, the opposing claims to sovereignty over islands and to maritime zones form a complex web.

In international law, it is customary to first sort out the sovereignty question and then demarcate the boundaries between maritime zones. Although it might be a good idea to change procedure when trying to resolve the South China Sea conflict, we shall follow the customary order when analysing the claims here.

Sovereignty, which gives full national jurisdiction, can be claimed only to land: parts of continents, islands and reefs, rocks, banks, atolls or other features that rise above the water. A state also has full jurisdiction over its internal waters, but in the territorial sea (12 nm), the EEZ (200 nm) and the continental shelf zone (varies in length) there is no sovereignty, only an exclusive right to resources. Archipelagic states like Indonesia and the Philippines can include vast sea areas as internal waters, with only limited restriction on their jurisdiction. When a non-archipelagic state claims a whole sea as internal waters, this is called a "historical claim".

*China's historical claim:*The PRC and the ROC have both repeatedly asserted that the whole area within the famous nine-dotted line that was published on a Chinese map in 1947–48 is Chinese "maritime territory" or "historic waters".[4] This has been interpreted to mean that it is internal waters with full Chinese jurisdiction, but it is not entirely clear if it has been meant, or is now meant, this way. The line includes all of the Spratly area and a vast zone beyond it, stretching almost to the Indonesian Natuna island group. The PRC formally confirmed its claim to the nine-dotted line as national territory in its Law on the Territorial Sea and the Contiguous Zone, which was adopted by the National People's Congress in 1992. The argument of both the PRC and ROC, which they base on a number of historical records, is that the South China Sea as such has always belonged to China. Foreign powers have only temporarily intruded into Chinese maritime territory.

In legal terms the Chinese claim should probably be understood as a "historical claim", analogous to the Canadian claim to the whole of Hudson Bay as internal waters. Hudson Bay, however, is surrounded by only Canadian territory and is open only in one of the ends. There is no precedent in international law for giving one particular state full jurisdiction over a whole sea when that sea is surrounded by several independent states. Thus, it seems certain that an international court would reject the Chinese claim, which is clearly unacceptable to all of China's neighbours. Legal experts in both the PRC and ROC have of course long understood the impossibility of grounding their historical claim in the international law of the sea.

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[4] In the Fisheries Case from 1951 the International Court of Justice in the Hague defined historic waters as "waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title."

They have therefore no doubt prepared themselves for reformulating the Chinese claim as a claim to maritime zones. When this is done it will be a step forward.

Before we proceed further, we shall have to go into the status of the relationship between the claims of the PRC and the ROC on Taiwan.

The status of the PRC versus ROC claim: As long as the conflict over Taiwan's status has not been resolved, it will probably be impossible for any international court to settle the legal dispute in the South China Sea. The court would either have to ignore the ROC or treat it as an independent state. Since it is inconceivable that any of these solutions would be acceptable to both the PRC and the ROC, a legal settlement seems impossible. Thus, when discussing the various claims, it appears reasonable to assume that the Taiwan conflict will be resolved first, and that Taiwan will in one way or another become a part of China. Indeed it has been argued that the dispute in the South China Sea may become a vehicle for resolving the Taiwan conflict.[5] If Taiwan were to become an independent state, it would have to issue entirely new, presumably more moderate, claims in the South China Sea. In view of the fact that the ROC has not so far issued specifically Taiwanese claims, but retained the all-Chinese claims made by Chiang Kai-shek's government before 1949, we must treat the claims of the PRC and the ROC as mutually supportive. Thus, the two governments should be seen as rival representatives of the same claim rather than two governments with rival claims.

Claims to sovereignty in the Paracels: The Paracel Islands are situated 400 kilometres east of central Vietnam and about 350 kilometres southeast of the Chinese Hainan Island.[6] The Paracels consist of about 130 features divided in two main groups, which in English are called the Crescent and the Amphitrite. The largest feature in the Amphitrite group (Woody Island) was under occupation by ROC forces from 1946 to 1951 and has been occupied by the PRC since 1956, while some islands in the Crescent group were under French and later RVN (South Vietnamese) occupation from the first half of the 1950s until 1974. One year before the end of the Vietnam War, China captured it from South Vietnamese forces, just after South Vietnam had declared its intention to grant oil concessions in the area.[7] Although Vietnamese communist leaders had formerly payed lip service to the Chinese claim to the Paracels, this Chinese move was a significant event in the process that destroyed the formerly close alliance between the communist regimes of China (PRC) and North Vietnam (DRV). Since its foundation in 1976, the unified Socialist Republic of Vietnam (SRV) has upheld the former RVN claim to the whole of the Paracels.

Both China and Vietnam claim that the Paracels belong to them historically, and can also point to effective occupation and utilisation. China now has a firm

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[5] Christopher C. Joyner, professor of international law at the University of Virginia in the US, has argued that the PRC and ROC could use their shared interests in the Spratlys to foster greater cooperation between them: C. C. Joyner. "The Spratly Islands Dispute: What Role for Normalizing Relations between China and Taiwan?"

[6] According to *Encyclopeadia Britannica*. In *China's Ocean Frontier*, p. 98, G. Austin says 300 kms south of Hainan and 450 kms east of Da Nang, referring to Marwyn S. Samuels. *Contest for the South China Sea*. New York: Methuen, 1982, pp. 183–4. The distance depends on whether one counts from the nearest feature or the nearest real island.

[7] In the literature, this is normally presented as an attack by PRC forces, but Greg Austin argues in *China's Ocean Frontier*, pp. 73ff, that the PRC forces may actually have defended themselves successfully against an RVN attack, an then utilised the victory to evict the Vietnamese forces.

presence, has built an airstrip on Woody Island, and is promoting the Paracels as a tourist site.

Claims to sovereignty in the Spratly area: The most hotly contested islands in the South China Sea are within "the Spratlys", a term now generally used to encompass all the islets, reefs, rocks and banks in the southern part of the sea, stretching from the Vietnamese-controlled Vanguard Bank in the west to the Philippinese-controlled Reed Bank in the east. A recent study has identified alltogether 48 "groups of features" within the Spratlys, which comprise 135 named ones.[8] Another study claims that 25–35 of them are above water at high tide.[9] All of these features, as a group, are claimed by Vietnam and the two Chinas. The reefs and islands in the east are claimed by the Philippines, and those in the south by Malaysia. One reef which is occupied by Malaysia is within the Exclusive Economic Zone claimed by Brunei, but Brunei has not formally claimed sovereignty to any islands. The Philippines and Malaysia do not see the Spratlys as one group or archipelago, and claim only those features that they consider to be within their Exclusive Economic Zone or Continental Shelf Zone. All the various claims overlap.

The Vietnamese and Chinese claims are again historical. Their arguments came to the forefront in a heated war of words after the border war between the two countries in 1979. Vietnam asserted in a white book, submitted to the United Nations on 19 October 1979, that the Spratly *(Truong Sa)* islands had from time immemorial been part of the territory of Vietnam. The PRC responded with a document submitted to the UN on 11 February 1980, asserting that the Spratly *(Nansha)* islands had been Chinese territory since ancient times.

The Philippinese claim is more recent than those of Vietnam and China, and is based on proximity, and the presumption that the islands it occupies were *res nullius* when the Filipino businessman Thomas Cloma put them under his protection in 1956. He later transferred the islands to the state of the Philippines, and the formal statement of the Philippinese claim was made by President Ferdinand Marcos in a decree of June 1978. The Philippines named its claimed islands *Kalayaan* (Freedom) Islands and declared it a municipality of Palawan. The Philippines consider Kalayaan to be a group of islands distinct from the Spratlys, which are further to the west.

Malaysia claims twelve features in the southern part of the Spratly area, and bases its claim on the fact that they are situated within Malaysia's EEZ or continental shelf zone. This may be a flawed argument since maritime zones are normally derived from sovereignty to land, not vice versa. Then, however, Malaysia can also refer to effective administration.

In order to fulfill the principle of effective administration, which is one of the main premises for decisions concerning sovereignty to islands, five of the claimant states keep armed garrisons on some of the features they claim. Taiwan, as mentioned, occupies Itu Aba on behalf of China. South Vietnam took possession of a number of islands in 1973, and they were taken over by the Socialist Republic of Vietnam (SRV) at its foundation in 1976. The Philippines and Malaysia also established effective occupation of some islands in the 1970s and 1980s.

In 1985, the PRC navy started a modernisation programme and extended its operations in the South China Sea. Two years later, China was authorised by UNESCO's Ocean Committee to set up two observation posts in the Spratly area.

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[8] Hancox, David and Victor Prescott. "A Geographical Description of the Spratly Islands and an Account of Hydrographic Surveys Among Those Islands."
[9] Appendix 1 to Valencia, Van Dyke and Ludwig, *Sharing the Resources of the South China Sea.*

China then immediately conducted a survey of unoccupied reefs. A series of military exercises followed, and China prepared itself for establishing bases. Vietnam reacted by extending its occupation to some additional reefs. In March 1988, a clash occurred between Chinese and Vietnamese forces at the Union Bank. Three Vietnamese ships were sunk and more than 70 Vietnamese soldiers died.[10] There have since been frequent episodes involving fishermen and military personnel from China, Vietnam, the Philippines and Taiwan. All the claimant states have endeavoured to widen their presence and make it more permanent. Malaysia has been involved in fewer conflicts than the other claimants, but has built a tourist hotel on one of the islands it occupies. By 1997, Vietnam was reported to keep 21–24 features under occupation, China 8–9, the Philippines 8, Malaysia 3–6, and Taiwan 1 (see map 2).[11] The number of features that are said to be under permanent occupation by one or another state is now actually higher than the total number that are above water at high tide (25–35), the explanation being that concrete structures have been built on some of the submerged banks and reefs.

The fact that so many states keep military forces in the area does not only make the situation explosive. It also contributes to making the sovereignty dispute virtually impossible to solve. Before discussing how to get around this problem, we must survey the rest of the South China Sea.

Claims to other features: The Indonesian ownership to the Natuna and Riau island groups in the westernmost part of the South China Sea is not in dispute. The same is the case for some major islands along the coasts, notably the Vietnamese Con Dao (or Con Son), immediately south of Vietnam. The South China Sea also contains, however, a few features that are far away from the surrounding coasts, but do not form a part of either the Paracels of Spratlys. The Macclesfield Bank *(Chungsha* in Chinese) is a submerged coral reef which is located southeast of the Paracels, in the middle of the South China Sea. China claims it, but the claim is likely to be rejected by most foreign governments on the grounds that the bank does not stand above the water at high tide.[12]

Between the Macclesfield Bank and Luzon, one finds the Truro and Scarborough shoals (or reefs). They are closer to Luzon than to the Paracels, and are

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[10] Chang Pao-min, "A New Scramble for the South China Sea Islands", *Contemporary Southeast Asia,* vol. 12, no. 1, June 1990, pp. 24–29. Apparently, the clash occurred near Johnson Reef *(Chigua Jiao* in Chinese, *Da Gac Ma* in Vietnamese) in the southwest extremity of Union Bank, i.e, west of Sin Cowe Island which is occupied by Vietnam. Vietnam has apparently retained control of Sin Cowe Island, but the PRC has occupied three other reefs in the Union Bank: Johnson, Len Dao and Kennan. See Ji Guoxing, "China Versus South China Sea Security", *Security Dialogue,* vol. 29, no. 1 (March 1998), pp. 104–105. For a description of Johnson Reef, see Hancox, David and Victor Prescott. "A Geographical Description of the Spratly Islands and an Account of Hydrographic Surveys Among Those Islands." *International Boundary Research Unit Maritime Briefing,* vol. 1, no. 6 (1995), p. 10.

[11] M. Valencia, J.M. Van Dyke and N. A. Ludwig, *Sharing the Resources of the South China Sea,* p. 8. G. Austin, *China's Ocean Frontier,* refers to the United States Pacific Command's *South China Sea Reference Book* from April 1996, for quite different figures: Vietnam 35, Philippines 10, PRC 8, Malaysia 8, ROC 1. The difference may not be due only to uncertainty of facts, but also to variation in the ways of distinguishing features from each other or of deciding how much presence is needed for a feature to be "occupied".

[12] Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development,* p. 47.

claimed by the Philippines and China. Claims to sovereignty over these shoals may be rejected on the same grounds as for Macclesfield Bank.[13]

Much closer to China, southeast of Hongkong, is the Pratas Island and Reef *(Tungsha),* which consists of one island and two submerged banks. Pratas Island is claimed only by the PRC and the ROC. It is under Taiwanese administration, just as the Pescadores and several other islands in the Taiwan Strait. The ownership to these islands can thus be settled only as part of a solution to the Taiwan conflict.[14]

Claims to maritime zones: The reefs and islands in the Paracels, Spratlys, and other parts of the South China Sea may be valuable to the claimants as fishing grounds, shelters to fishermen, and as bases for military reconnaissance, but the main reason why there is such an urge to possess them is the expectation that they will generate a right to Exclusive Economic Zones (EEZs), or have a significant bearing on the delimitation of boundaries between the EEZ's of the claimant countries.

The rules for how to demarcate maritime zones are defined in the 1982 United Nations Convention on the Law of the SEA (UNCLOS) which all countries around the South China Sea, including the PRC (but not, of course, the ROC on Taiwan), have signed and ratified.[15] Under normal circumstances, negotiable claims to maritime zones can be put forward only after the question of sovereignty to islands has been settled. In the South China Sea, however, it might be possible for each state to define negotiable claims to EEZs without first resolving the question of sovereignty. Three steps would then need to be taken:

- Each state must draw internationally acceptable base-lines along their coasts from which the maritime zones can be calculated. Malaysia is in the process of doing so. Brunei, China and Vietnam have already done it (except in the Tonkin Gulf), but the Chinese and Vietnamese baselines have been contested.[16] The Philippines and Indonesia have also drawn up baselines; Indonesia has recently improved and modified its older ones. Since the Philippines and Indonesia are archipelagic states they have a different legal regime which allows them to draw base lines between the outermost islands and reefs around the whole archipelago.

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[13] According to Ji Guoxing, director of the Institute of International Strategy Studies, Modern Management Centre, Shanghai, the Scarborough Reef (Huangyan Dao) is "part of the Macclesfield Bank", and: "To defend China's sovereignty over the Scarborough Reef is a natural task of the Chinese navy." He also quotes a spokesman of the Chinese Foreign Ministry to the effect that Scarborough Reef consists of "naturally formed areas of land surrounded by water and standing above high tide". Ji Guoxing, "China Versus South China Sea Security", p. 105.

[14] It was reported by the Taiwanese journal *China Times* in April 1999 that a Taiwanese firm which is run by the Kuomintang (the China Development Corporation) is planning to invest more than NT$100 million building resort hotels and other infrastructures on the Pratas Island, but that the Taiwanese army had not yet given its consent. According to the news report, Taiwan had long-stationed troops on the Pratas Island and a local airlines maintained regular flights between Taiwan and Pratas: "Pratas, a horseshoe-shaped coral atoll measuring 2.4 square kilometers in area, has an airstrip and its garrison maintains a weather station, power generator, fresh water plant, and hostel for fishermen. The island lies 432 kilometers southwest of the southern Taiwanese port of Kaohsiung, and about 306 kilometers east of Hong Kong. *China News* 6.4.99.

[15] The PRC's "Standing Committee of the National People's Congress" ratified UNCLOS on 15 May 1996 and announced the ratification in *China Ocean News,* No. 507, 17 May 1996, p. 1.

[16] A study of the principles for drawing baselines along the coasts of the states surrounding the South China Sea is being undertaken by a law student on the "Energy and Security in the South China Sea Project" at SUM, Mr. Johan Henrik Nossum. The law studies under the project are funded by the Norwegian Shipowners' Association *(Norges Rederiforbund).*

- Everyone must accept that the Paracels and the Spratlys are not in a legal sense archipelagos, but agglomerations of individual islands and reefs. Baselines must therefore be drawn around each of the islands rather than around the whole group. The PRC's baseline around the Paracels will not be acceptable since UNCLOS does not give non-archipelagic states a right to include archipelagos.

- For each and every individual feature it must be decided whether or not it fulfills the legal requirements for status as an island.[17] The Geneva Convention on the Territorial Sea and the Contiguous Zone of 1958 defines an island as "a naturally-formed area of land, surrounded by water, which is above water at high tide". This definition was adopted unchanged in UNCLOS 121 (1), which adds in article 121 (3): "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."[18] The two main Paracel islands have sustained some population historically, but this is not the case for the Spratlys where the only population are visiting fishermen, military troops and the staff of a Malaysian hotel, all of whom depend on provisions from the outside. Unfortunately there have been few cases which may serve as precedents for how to interpret the definition of islands in the UNCLOS, but the authors of the convention were hardly thinking of hotels for scooba divers or vegetables grown on imported soil when they talked about "economic life of their own". A rock (i.e., an island that cannot sustain human habitation or economic life) will generate a right only to a 12 nm territorial sea. A submerged bank, reef or artificial island can have only a 500-metre security zone. Hence, the dispute over sovereignty to such features will have only a marginal impact on the demarcation of the larger maritime zones. It might well be possible to deprive all the features in the Spratly area of status as islands, and to reduce the number of islands in the Paracels to just a few.[19]

If agreement can be reached on these three points, the demarcation of maritime zones will become so much easier. Let us now look at the claims which have been made for maritime zones.

As mentioned, China has a historical claim to most of the South China Sea as Chinese internal waters. Neither the PRC nor the ROC on Taiwan has defined an alternative basis for the Chinese claim although the historical claim must obviously at some point be given up. Presumably, once having shelved the historical claim, China will reformulate it as a claim to a 200 nm EEZ. At first, China may try to argue that the Spratlys as a whole is a group, with full right to an EEZ of its own, or that Itu Aba has a right to an EEZ, but not the other "islands" in the Spratlys of almost the same size. These arguments will most probably be refuted. The PRC could also try to argue that the artificial islands it has created in the Spratly area shall have a right to EEZs. A new law adopted by the National People's Congress in 1998 strongly emphasises

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[17] Another law student on the "Energy and Security in the South China Sea Project" at SUM, Mr. Marius Gjetnes, will undertake a study of the capacity of the Spratly "islands" to generate maritime zones.

[18] The full text of UNCLOS can be found at: http://www.tufts.edu/departments/fletcher/multi/sea.html. See also the comments in E.D. Brown. *The International Law of the Sea,* vol. 1, pp. 33–34.

[19] In *Sharing the Resources of the South China Sea,* pp. 41–45, Valencia, Van Dyke and Ludwig discuss the question of whether the Spratlys are 'islands' with a right to generate maritime zones. This will be discussed below (see footnote 55).

China's right to construct, operate, use and protect artificial islands.[20] The law speaks about artificial islands *within* its EEZ, however, and does not claim that such islands should generate a right *to* an EEZ. The idea that artificial islands can generate a right to EEZs or continental shelfs is clearly in conflict with UNCLOS' definition of an island as being "naturally-formed". The PRC will therefore probably end up with a claim for a 200 nm EEZ, reckoned from its islands in the Paracels, from Hainan and Taiwan. This would be a basis for negotiation.

Vietnam has neither clearly demarcated its claim to maritime zones nor made entirely clear if it simply claims a 200 nm EEZ from its coastal baseline, or demands an even larger zone on the basis of the extension of its continental shelf.[21] The Vietnamese government has argued, however, that each country should be entitled to a full 200 nm EEZ, and that the Spratly islands do not generate a right to maritime zones beyond territorial waters.[22] An extensive petroleum concession bloc map published by Vietnam in the 1980s has sometimes been interpreted as an outline of the Vietnamese claim. Vietnam needs to clarify its claim.

The Philippines and Malaysia both claim 200 nm EEZs, reckoned from their base lines. Brunei's claim, which constitutes a long corridor through the Malaysian claim, goes further out than 200 nm. The basis for this extension is a presumption that an agreement will be reached with Vietnam some time in the future on a boundary based on equidistance.[23] This presumption is in conflict with article 57 in UNCLOS, which does not allow the use of a median line when the distance between two national territories is more than 400 nm. Brunei will therefore probably have to settle for 200 nm. Then there will be room for negotiations.

So far we have only been preoccupied with claims to the central part of the South China Sea. In the more peripheral zones, there are also some overlapping claims that are not, or only to a limited extent, affected by the dispute over the Paracel and Spratly areas. West of the Spratlys and north of Natuna, there are overlapping claims between Indonesia, Vietnam and China. When prodded by Indonesia, China confirmed in 1997 that it does have an overlapping claim with Indonesia, but no one takes this very seriously. It can be sustained only as part of China's historical claim to the nine-dotted line, or as a claim to an EEZ around the Spratlys. Between Indonesia and Vietnam, however, there is a more serious dispute. In view of their friendly relations and their shared opposition to China in the 1970s–80s, some commentators have wondered why they were unable to settle their boundary dispute. The main reason is probably that Vietnam was afraid to set a precedent for disputes elsewhere.

In the Gulf of Thailand and the Tonkin Gulf the demarcation of national territories is less complicated than in the South China Sea itself. Thailand and Malaysia have both successfully demarcated their maritime borders with Vietnam in the Gulf of Thailand. A Thai-Malaysian joint development zone has been established, and Malaysia and Vietnam have also agreed tok establish a joint development zone

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[20] "Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf" (adopted at the 3rd Session of the Standing Committee of the Ninth National People's Congress of the PRC on 26 June 1998), unofficial translation in MIMA Bulletin, vol. 7, no 1/99, pp. 27–29. See articles 3, 4, and particularly 8.

[21] The Vietnamese claim was formally expressed in a statement on maritime zones and continental shelf on 12 May 1977.

[22] Valencia, Van Dyke and Ludwig, *Sharing the Resources of the South China Sea,* p. 31.

[23] R. Haller-Trost, "The Brunei-Malaysia Dispute over Territorial and Maritime Claims in International Law". *International Boundaries Research Unit Maritime Briefing,* vol. 1, no. 3, 1994, pp. 43–44.

[?].[24] The only remaining problem in the Gulf of Thailand is to demarcate the boundaries with Cambodia. In the Tonkin Gulf there is a bilateral dispute between Vietnam and China. The leaders of the Chinese and Vietnamese Communist Parties agreed in July 1997, however, that the two countries would conclude the demarcation of the Tonkin Gulf no later than the end of the year 2000.[25]

　　　　After this attempt to analyse existing claims, and to reformulate some of them, we should discuss what is really at stake in the South China Sea. In discussions about the conflict there is sometimes a tendency to be overwhelmed by the intricacies of the legal dispute, and to ignore the other problems that need to be addressed. Some of them can be resolved without resolving the conflict over sovereignty, and a solution to that conflict will not in itself resolve all other problems. The Canadian international law expert Ian Townsend-Gault, one of the driving forces behind the workshop process, has made a strong argument for de-emphasizing the conflict over sovereignty in the Spratlys, and concentrating on more urgent and important matters. The US experts Mark Valencia, Jon Van Dyke and Noel Ludwig are more critical of the workshop process, which "some wonder whether ... has become just a diversion—"a talking club" .... For the informal multilateral process to avoid the "talking club" fate, the working groups must lead to effective governmental cooperation in the South China Sea—and soon."[26]

Stakes

What is at stake in the South China Sea?

- *Fisheries*
- *The Environment*
- *Sea-lanes*
- *Energy*
- *Naval power*
- *National prestige*

Fisheries: The South China Sea is the main source of animal protein for the people living in the densely populated areas along the coasts of Southeast Asia and southern China, and the need for animal protein is rising steadily with population growth and urbanisation. Among the various species in the South China Sea the most abundant are tuna, mackerel, croaker, anchovy, shrimp, and shellfish. With regard to total catch

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[24] A memorandum of understanding between Thailand and Malaysia was made in 1979, an agreement reached in 1990, and the zone was formally inaugurated in 1998.

[25] The 11th round of Sino-Vietnamese talks on the delimitation of the Tonkin Gulf were held in Hanoi in the last week of January 1998. After the talks, a spokeswoman for the Vietnamese Foreign Ministry said the parties stuck to the goal of reaching an agreement before the end of 2000. The next round was planned to be held in Beijing between April and June 1999. *Reuters* 29.1.99.

[26] Ian Townsend-Gault has, in his article "Preventive Diplomacy and Pro-Activity in the South China Sea", made a strong argument for de-emphasizing the conflict over sovereignty in the Spratlys, and concentrating on more urgent and important matters. Valencia, Van Dyke and Ludwig are more critical of the workshop process, which in the opinion of some 'has become just a diversion—"a talking club", holding out a false promise of cooperation...'. In their view, 'For the informal multilateral process to avoid the "talking club" fate, the working groups must lead to effective governmental cooperation in the South China Sea—and soon. Valencia, Van Dyke and Ludwig, *Sharing the Resources of the South China Sea,* p. 115.

of tuna and shrimp the fishing zone in and around the South China Sea ranks first and second among the fishing zones of the world.[27] Until a few years ago, nearly the entire catch was consumed locally, either fresh or preserved. In the last decade, an export industry has emerged, mainly targeting markets in neighbouring countries. In recent years there has also been a rapidly growing aquaculture along the coasts, leading, however, to serious problems of disease, infestation and destruction of mangroves that used to protect the coastal plains against storms.

Fisheries in the South China Sea are virtually unregulated, and coastal waters have been seriously overfished. Consequently, fishermen from Thailand, China, Taiwan and other nations go further and further out to sea, and also venture into the waters of neighbouring states. A great number of fishermen, especially from Thailand, have been arrested for poaching in other countries' territorial waters. There have been frequent episodes with Vietnamese, Malaysian and Philippinese naval patrols. It is also a serious problem that some fishing communities are using cyanide and dynamite to catch fish on the coral reefs. Many reefs have been destroyed, and stocks of rare fish have been depleted. One of the main environmental concerns in the South China Sea is the protection of fish and other species from overexploitation or extinction. A certain kind of migratory tuna, which wanders worldwide, is reported to be threatened by extinction because of overfishing, mainly in the South China Sea.

Despite all of these calamities, little is done to promote plans of a regulatory regime. The fishing communities of each coastal state are mainly interested in boosting their own catch, and national authorities often take the same narrow view. Thus, even when the setting up of joint development areas is being discussed, this is more often seen as a means to facilitate the harvesting of resources than to prevent the depletion of stocks. This is extremely serious since a depletion of the fish stocks in the South China Sea would have disastrous consequences for the huge population living in the coastal regions.

The environment: The danger to the fish stocks is not the only environmental problem. The absence of an internationally recognised regime to manage the resources in the South China Sea represents a serious threat to the environment in other ways as well. Population growth and urbanisation in the coastal areas has led to a tremendous growth in the sewage that is let directly out into the sea. If this development continues, the situation may soon resemble that of the Mediterranean in the 1970s, when pollution left much of the sea lifeless. The negative impact that such developments will have on tourism may perhaps help provincial and national authorities to realise the need to act. The dumping of industrial waste in the sea is also a practice that needs to be suppressed.

As in the Mediterranean, a main concern is oil spills from tankers. If there were to be a major oil spill in disputed waters, no one would be in charge of clearing it up. Malaysia is much concerned with the risk of major oil spills in the Malacca Strait, which is shallow, narrow and congested. In 1993 at least three supertankers passed fully laden through the Malacca Strait every day, many clearing the bottom by little more than one metre.[28] Malaysia wants—together with Indonesia—to tax the traffic through the Strait in order to finance supervisory measures (a Vessel Traffic System). Since the Strait separates two independent states, however, it remains an international waterway. Thus there has been no support for the Malaysian proposal

[27] D. Y. Coulter. "South China Sea Fisheries...", p. 375.
[28] J. H. Noer, *Chokepoints...*, p. 26.

from seafaring nations who see it as a threat to the freedom of navigation on the High Seas.[29]

Another source of likely damage to the environment is exploration for oil and gas. Seismic exploration can disrupt the migratory patterns of species and destroy the fragile ecosystem on the ocean bottom that constitutes a major part of the food chain for marine organisms.[30] This danger would be a serious concern if exploration were to start in earnest within the Spratly area, since most of the features here are coral reefs with a rich, but fragile variety of life forms. Here too, there is a need for cooperation in research and regulation.

Energy: Population growth, urbanisation and industrialisation in the coastal areas has not only led to a steep increase in the consumption of fish and shrimps, but also, of course, of energy. The growth in energy consumption is likely to continue, although not as rapidly as expected before the regional economic crisis of 1997–99. In the long run, it may be possible to generate significant amounts of energy from the sun, the wind, waves, currents or from utilising the pressure differences in the deeper parts of the South China Sea. In its most recent Law on the Exclusive Economic Zone and the Continental Shelf, China has maintained its sovereign rights to "the production of energy from the water, currents and winds", thus reproducing a formula from UNCLOS. For a long time yet, however, the main sources of energy will be coal, oil, gas and biomass. Coal is extracted only on land, and transportation by ship is too costly, so the main relevance of the South China Sea to the energy policies of the surrounding countries stems from a) the fact that oil and LNG are transported by ships using the sea-lanes, and b) the presence of reserves of exploitable oil and gas under the seabed. The Philippines, South Korea and Japan have, as mentioned, long depended on import of oil through the South China Sea. Indonesia was for many years a huge net exporter, but economic growth in the 1980s and the first half of the 1990s led to a situation where it consumed as much as it produced. Vietnam has been a net exporter of oil since its production started in the 1980s. China used to meet its own energy needs, but since 1990 has been a net importer of energy (since 1993 also a net importer of crude oil).[31]

Increasing dependence on imports of energy has had several consequences, which to some extent are contradictory:

A first consequence is a boost to the shared interest in maintaining a free trade regime. This tendency is likely to be strengthened by the current availability of lowly priced oil on the world market.

A second consequence is that China has engaged itself in a classic kind of oil diplomacy. The PRC has chosen not to rely fully on the world market, but to instruct its state companies to buy stakes in oilfields abroad (Central Asia, Indonesia, Venezuela) in a deliberate attempt to secure the nation's future needs. Ambitious plans have been aired in Beijing for constructing long range pipeline systems from Central Asia, Siberia, and even, it is rumoured, from Indonesia through Indochina or the South China Sea.

A third consequence is that the race for awarding oil concessions in the South China Sea to foreign oil companies has been given a further impetus. Offshore oil production is sometimes seen as a way of gaining hard cash through export of crude,

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[29] The dilemma between maritime safety and freedom of navigation is discussed in an appendix to J.H. Noer, *Chokepoints...*
[30] D. Y. Coulter, "South China Sea Fisheries...", p. 386.
[31] M. G. Salameh, "China, Oil and the Risk of Regional Conflict", p. 133.

sometimes as a means to satisfy one's own needs directly. The latter, of course, requires the construction of refineries. The race started in the late 1960s, when an international report first held out prospects of finding huge reserves of oil and gas in the South China Sea. Much has since been discovered, but mainly in areas close to the coasts. The main locations for ongoing hydrocarbon production are in Malaysian waters north of Borneo and east of the Malay Peninsula, further north in the Thai section of the Gulf of Thailand, in Vietnamese waters south of Vietnam, in Philippine waters northwest of Palawan, in Chinese waters south of Hainan, and along the Chinese coast between Hainan and Taiwan. Both foreign and regional companies are operating in the area, often through joint ventures. Most of the oil production is taking place in areas that are not contested, but some commercial discoveries have been made within the outer limits of the Chinese nine-dotted line by companies operating under concessions from other governments:

- The Vietnamese Lan Tay and Lan Do gas fields, which have been discovered and fully certified by the Statoil-BP Alliance, in a joint venture with the Indian oil company ONGC and PetroVietnam.
- The Indonesian Natuna gas field, which is being explored by Exxon.
- The Malaysian, already producing, Central Luconia gas fields offshore Sarawak.
- The Philippine fields Camago and Malampaya, northwest of Palawan.[32]

In the case of the Lan Tay and Lan Do gas field, there were rumours in December 1996 that China would protest officially to India and Norway, and apparently an oral protest was communicated to Indian authorities, but there has been no report of similar protests to Norway or the United Kingdom.[33]

Some more controversial concessions have been granted in the Spratly area itself.

- *Kirkland and Alcorn: [fill in]*
- *Crestone:* On 8 May 1992, China awarded a 25,155-square kilometre zone in the western part of the Spratlys to the small US Crestone Energy Corporation. The concession was carefully designed to avoid territories claimed by Malaysia, Indonesia or the Philippines, but to encompass a major part of the territory disputed between China and Vietnam.[34] Vietnam protested vehemently, awarded an adjacent bloc to Mobil, and for some time tried to attract Russian interest. This led to Chinese protests and to brief naval episodes when Mobil and Crestone sent exploration vessels to the area. In 1996, Vietnam was able to persuade the US oil giant Conoco to accept a concession in most of the same area that Crestone had obtained from China. Since then there have been no reports that either Crestone or Conoco have been drilling, and the Crestone concession, which originally was a seven year contract, has since been transferred to another small US company.

Oil concessions are clearly used as tools in the diplomatic struggle, but is there a genuine risk that exploration for oil in contested waters will lead to naval clashes? Presumably yes. Until now there have been only episodes. Drilling vessels have been

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[32] According to a map in *Petroleum Economist,* July 1995.

[33] Information from Narendra Taneja, an Indian journalist who wrote a news item about the issue, published in *Dagens Næringsliv,* 6 December 1996.

[34] The Crestone concession does, however, overlap with Brunei's claim, which goes further out than the Malaysian one.

removed each time naval patrol ships have appeared. If, however, two states decide to defend their perceived rights at all cost, and both send naval forces to the area, a battle would be more than likely. Might this, then, lead to US intervention if Western oil companies were involved? Probably not. In connection with preparing this report, we asked several US diplomatic and naval authorities what the US Navy would do if an oil rig or vessel owned by a US company came under attack by a foreign naval force. The answer was that US companies operate on their own and do not enjoy US naval protection, but if US lives were in danger, the US Navy would move in and take them out of the area. This, we may add, would probably not be necessary since oil companies are likely to remove their ships and personnel as soon as they are aware of a serious threat.

The quest for exploiting oil and gas may be a driving force for establishing co-operation in the area. There has been much discussion of creating joint development zones, on the model of those established in the Timor Gap and in an area of the Gulf of Thailand where Malaysia and Thailand were unable to agree on delimitation. At the present stage, however, it seems unrealistic that such zones will be established in the South China Sea itself. Less ambitious kinds of co-operation have been established, however, under the Coordinating Committee for Coastal and Offshore Geoscience programmes in East and Southeast Asia (CNOP) , which has partially been funded by NORAD and assisted by the Norwegian Oil Directorate.[35]

A key question, of course, is whether or not there are large reserves of oil and gas under the disputed Spratlys. A major find here would be likely to heat up the conflict. Chinese research institutes and news organs have frequently expressed expectations for major oil finds in the *Nansha* (Spratly) area. They claim to base their expectations on geological research. Foreign oil companies seem to take such reports with a grain of salt, and independent consultants have made less sanguine assessments of the potential. The Norwegian firm TGS Nopec, who made a survey in 1997 with permission from the Indonesian, Malaysian and Vietnamese governments, came up with results that did not confirm the Chinese expectations. It shot three seismic lines through the Spratly area (which is not much), and reported huge structures that could contain large reserves of hydrocarbons. However, there were also some geological risk factors. The conclusion was therefore that the question of whether or not the structures contain oil and gas, can be answered only by drilling.[36] Important finds of oil have been made by companies operating with concessions from Brunei and Malaysia south of the Spratly area, and of gas northeast of the Indonesian Natuna island to the southwest of the Spratlys, but still there has been no eagerness among international oil companies to explore for oil in the Spratly area itself. This is not only because of the sovereignty dispute, but also because of a general trend towards reduced interest among oil companies for the South China Sea. Results of oil exploration have been disappointing in Vietnamese and Chinese waters, and several oil companies have pulled out of the region. This tendency, of course, is reinforced by

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[35] *Årsrapport Oljedirektoratets NORAD-bistand 1999. Planer 1999,* Oslo: Oljedirektoratet, April 1999.

[36] There are huge structures in the Spratly area which *may* include great quantities of hydrocarbons, but because of several geological risk factors, the question of whether or not there is much oil and gas in the area can only be decided through drilling. Source: e-mail from Kjell Bugge Johansen, TGS Nopec, 19 February 1999. TGS Nopec has made a limited geological survey of the area, on behalf of several regional governments. Two other surveys are available: South East Asia Super Tie-95 (SEAS-95), and a big IEDS report: "A review of the hydrocarbon Potential of the South West China Sea", which is partly based on TGS Nopec's work.

the fact that so much oil and gas has been discovered in other parts of the world, and by the drop of the oil price in 1998.[37]

We started by listing three implications of China's increasing demand for oil. The question now is which of the implications that will dominate. Which strategy will China pursue in order to provide its coastal regions with sufficient energy? What are the implications of Beijing's strategic choice for its policy in the South China Sea?

China's first alternative is to rely on the global market, and import oil and liquefied natural gas (LNG) from the most competitive provider. This is the road that the United States, Japan and all major oil companies would like Beijing to take. If China decides to rely fully on the market, however, there will be no great need to either provoke conflict or resolve the dispute in the South China Sea. China's behaviour in the South China Sea would then be driven fully by other reasons than its need for energy.

The second alternative is for China to use diplomacy in order to secure provisions of oil from friendly nations within its own region. For China's northern core this means Russia and the Central Asian Republics. In the south, however, the same strategy requires that Beijing cultivate relations with the main oil-producing countries in Southeast Asia: Indonesia, Malaysia and Brunei. China will then need to rival Japan for influence in Southeast Asia, and seek privileged access to provisions of oil and gas, perhaps through a pipeline system. Such a strategy could lead China onto a path of multilateral conflict resolution, but Beijing would presumably insist that all external powers (notably Japan, India and the United States) stay out of the equation.

The third alternative is to try and satisfy its southern provinces' energy needs primarily from oil and gas deposits under the seabed of the South China Sea. This seems to have been the underlying prospect when China pushed its positions forward during the years 1985–92. If the strategy remains the same, Beijing will continue to act aggressively, back up its huge historic claims with action, and speed up exploration for hydrocarbons. This would entail a great risk of conflict, and China might find it hard to enlist the help of foreign oil companies.

Free trade, mercantile diplomacy, and conquest of maritime territory. These are the three courses open to China. They are not mutually exclusive. All can be pursued at the same time, but a regime like the PRC, with its nationalist and communist ideology, is likely to opt for a strategy with a degree of national planning. It will not rely fully on the market, but put emphasis on either option two or three. When doing so, however, it cannot put the freedom of navigation at risk. China needs to convince others that it will respect the freedom of navigation.

Sea-lanes: The importance for the local economies of secure sea-lanes of communication (SLOCs) cannot be exaggerated. The region is maritime. It has few roads and railroads, but thousands of harbours, with Singapore and Hong Kong the two dominant ones. Internal trade between the countries and provinces surrounding the South China Sea depends on open sea-lanes. The South China Sea is also a major thoroughfare for globally operating merchant marines, who rely on the freedom of

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[37] The United States Energy Information Administration claims that even if the extremely optimistic Chinese estimates of an oil potential under the Spratlys of 105 billion barrels of oil should be proven correct, a "rule-of-thumb" that normally only some 10 percent of potential resources can be economically recovered in "such frontier areas" implies a potential production of only some 1.9 million barrels/day. This is one and a half times today's total production from the South China Sea (1.37 million in 1996/97) and well over a half of China's total production (3.2 million in 1998), but only a tenth of the production from the Persian Gulf region, and less than a sixth of the production in the North Sea. See: http://www.eia.doe.gov/emeu/cabs/schina.html.

navigation.[38] Generally, oil and minerals move north, and food and manufactured goods move south. Of particular significance is the transport of oil from the Middle East. Tankers and other ships approaching from the west can choose between three main lanes: the Malacca, Sunda or Lombok-Macassar Straits.[39] The Malacca Strait is the second most busy strait in the world after the English channel. The Sunda Strait is much used by vessels coming from or going to Africa. Ships passing northwards through the Lombok and Macassar Straits, a route that is primarily used by Australian north-south trade, can either go into the South China Sea west of Palawan, or move into the Pacific south of Mindanao. The most utilised route through the South China Sea enters through the Malacca Strait, sails across the sea between Vietnam and the Spratlys and exits through the Luzon or Taiwan Strait.

These sea-lanes are of vital importance to the Philippines, South Korea and Japan. They receive 85%, 74% and 67% of their oil from tankers passing through the South China Sea.[40] About 40% of Japan's total imports and exports pass through that sea.[41] China is now also a great trading nation, and has since 1993 been a net importer of crude oil. Thus it too is becoming increasingly dependent on provisions of oil from Indonesia and the Middle East. The regional dependence on import of energy is likely to grow significantly in the years to come, although the Asian crisis has somewhat reduced the pace of growth in the energy consumption. The United States, however, receives only 12% of its oil consumption from the Middle East, and can easily channel provisions through the Lombok Strait or south of Australia.[42] Thus, the South China Sea is not of vital importance to the United States itself. It is out of concern for the stability of the East Asian region—and for the overall principle of freedom of navigation—that the US considers it imperative to secure the SLOCs. The new Chinese Law on the Territorial Sea and the Contiguous Zone, which was adopted in 1992, empowers the Chinese navy to evict trespassing nations in the South China Sea by force if need arises.[43] On 10 May 1995, the US foreign minister warned local governments against any moves that could endanger the security of sea-lanes. The US naval reaction to China's missile tests in the Taiwan Strait in 1996 was also not just meant to bolster Taiwan's democracy, but to demonstrate Washington's resolve to protect the freedom of navigation, as a prerequisite to global free trade. The PRC has since been eager to affirm that it too will uphold and safeguard the freedom of navigation.[44] In 1997, a working group under the ASEAN Regional Forum discussed the possibility of issuing a Declaration on Navigational Rights.[45]

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[38] A basic principle in the Law of the Sea is the freedom of navigation in international waters. In non-international waters there are three regimes that ensure the freedom of navigation: innocent passage in territorial seas, transit passage, and archipelagic sea-lanes passage.

[39] An American study reports that 8,842 vessels larger than 1000 deadweight (US) tons passed through one of the three straits, or sailed past the Spratlys on international voyages in 1993. J. H. Noer, *Chokepoints...*, p. 9.

[40] http://www.cpf.navy.mil/pages/factfile/cmdbrief/cb1210/sld001.htm (slide 8).

[41] J. H. Noer, *Chokepoints...*, p. 24.

[42] 3.3% of US total exports and 4.5% of its imports transit the South China Sea. J. H. Noer, *Chokepoints...*, p. 25.

[43] F. A. Magno, "Environmental Security in the South China Sea", p. 101.

[44] "Any country shall enjoy the freedom of navigation in and of overflight over the exclusive economic zone of the People's Republic of China ..." Article 11 of "Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf" (adopted at the 3rd Session of the Standing Committee of the Ninth National People's Congress of the PRC on 26 June 1998), unofficial translation in MIMA Bulletin, vol. 7, no 1/99, pp. 27–29.

[45] R. Amer and L.C. Sebastian, "'Freedom of navigation' in the Sea Lanes of Pacific Asia." R. Amer. "Towards a Declaration on 'Navigational Rights' in the Sea-Lanes of the Asia-Pacific."

It is not only states that can hamper the freedom of trade. The South China Sea has always been a haven for pirates. Piracy thrives in waters where no state has an internationally recognised authority, and where it is possible to pay off local police. Piracy and armed robberies, which led to the loss of so many Vietnamese refugees' lives in the late 1970s, are said to have been less frequent in the 1980s, when there was a strong US and Soviet naval presence, but to have surged again in the 1990s. In 1997, 105 of the 229 shipboard attacks reported worldwide took place in the South China Sea.[46] Co-operation between Indonesia, Malaysia and Singapore is claimed to have reduced the number of piracy incidences in the Straits of Malacca and Singapore, but instead there has been a surge of piracy in the northern part of the South China Sea (around Hainan, west of Luzon, and primarily south of Hong Kong).[47] Over the most recent years there have been several attempts to build closer relations between representatives of the various navies of the region, partly as a confidence-building measure, partly to enhance co-operation in suppressing piracy.

Naval power: The relative strength of regional and extra-regional navies is a primary concern for national strategic planners. During the last decade of the cold war the United States and the Soviet Union both had a strong naval presence in the South China Sea. The United States had a base in Subic Bay of the Philippines, and the Soviet navy had privileged access to the Vietnamese base in Cam Ranh Bay. Gorbachev scaled down the Soviet naval presence in the late 1980s. Yeltsin's Russia has maintained some presence in Cam Ranh Bay to this day, but Russia no longer has a naval force to be reckoned with in the region. Vietnam has sometimes alluded to the possibility that either the Chinese, the US or other navies might be invited in for fuelling and repair in Cam Ranh Bay.[48]

The US naval presence was reduced after the end of the cold war, with the closure of the Philippine bases in November 1992. Still, the US 7th Fleet, with its headquarters in Hawaii and major base in Okinawa just east of the South China Sea, remains by far the strongest naval force in the region. The US Navy depends on secure sea-lanes through the South China Sea for rapid transfer of ships between the Pacific and the Indian Ocean (and Persian Gulf). In March 1996, the 7th Fleet made a demonstration of force during the Taiwan Strait crisis, and the US has since been invited by Singapore to use new port facilities under construction at Changi, close to Singapore's airport.[49] In 1998 the Pentagon was finally able to sign a Visiting Forces Agreement with the Philippines. Thus, the US has consolidated its position after a period in the first half of the 1990s when its power was seemingly declining. The main stated purpose of the US Navy's presence in the region is to ensure that the sea-lanes remain open to the free passage of commercial and naval ships.[50]

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[46] Tracy Dahlby, "Crossroads of Asia: South China Sea", *National Geographic,* vol. 194, no. 6, December 1998, p. 23.

[47] R. Amer and L.C. Sebastian, "'Freedom of navigation' in the Sea Lanes of Pacific Asia", pp. 5–6.

[48] For the moment, however, Russia is the only foreign power using the base. In reply to a Japanese reporter on 2 January 1999, Vietnam's prime minister Phan Van Khai said the agreement Vietnam had signed with Russia on the Cam Ranh Bay would continue to be implemented until 2004 as agreed previously without any change made during a visit by the Russian defense minister in 1998. Xinhua News Agency 2.1.99.

[49] The Taiwan Strait crisis of 1996 is analysed in John W. Garver, *Face Off.*

[50] Militarily it is important for the United States to have naval forces in the region that are not vulnerable to land-based missile attacks. China's acquisition of advanced missile technology is thus more worrisome from a US (and Japanese) strategic perspective than the modernisation of the Chinese fleet.

With the reduction in the naval presence of the superpowers at the end of the cold war, some of the local states, whose economic growth provided them with more financial resources than previously, made efforts to modernise and expand their own naval and air forces. This was notably the case for China, Taiwan, Singapore, Malaysia, Brunei, Indonesia and Thailand, but not for Vietnam and the Philippines, who did not have enough resources to upgrade their navies, and also gave priority to policies enhancing economic growth. It is no coincidence that these two states are the ones who have taken the brunt of the pressure from the expanding Chinese navy. In 1988 the Chinese occupied a number of islets formerly controlled by Vietnam in the western part of the Spratlys, and in 1995 the Chinese navy started construction of a military listening post at Mischief Reef, close to the Philippines. The view of the Philippines is that China is trying to mark the outer perimeter of its territorial claim by setting up markers and military posts, and that Mischief Reef is part of a gradual annexation of the whole Spratly area. It also seems possible that the Chinese navy is engaged in a long term construction of artificial islands. China is reported by the Philippines to maintain a year-round naval presence in the Spratlys, usually consisting of one or two combatants, as well as three to five auxiliary and hydrographic research vessels. These naval ships routinely patrol near Chinese occupied territories, remaining on station for two to four months.[51] Taiwanese naval analysts have seen the expansion of mainland China's navy as a deliberate attempt to push the perimeter of China's naval territory gradually into the Pacific.[52]

Since virtually the whole of the South China Sea is considered by Beijing as Chinese maritime territory, the Chinese navy is under instructions to defend all of it against foreign intrusion. The navy is also charged with ensuring the usage of the South China Sea's resources to offset what national planners see as the main threats to China's mainland security: the rapid rise in population, dwindling resources, and destruction of the environment.[53] The Asian financial crisis 1997–98 led to a further shift of balance in favour of the Chinese, Taiwanese and US navies since other states with a naval presence in the region, notably Thailand and Indonesia, were forced to cut their defence budgets.[54]

Outside of the South China Sea, India has a strong navy in the Indian Ocean, and Japan has a highly modernized fleet of small and medium size vessels based in its home islands. The Indian and Japanese navies do not at present operate in the South China Sea, but the prospect of them taking over some of the US role in the future haunts the region. The long term strategy of China seems to consist in gradually increasing its own capabilities while maintaining friendly relations with a weakening

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[51] Raffy S. Jimenez and Johnna R. Villaviray, "China to US: Stay away from Spratlys", *The Manila Times,* 17.1.99.

[52] Wen-Chung Liao, *China's Blue Waters Strategy in the 21st Century.* Taipei: Chinese Council of Advanced Policy Studies Occasional Papers Series, September 1995.

[53] An interesting book outlining China's maritime strategy was published in October 1998 by Captain Wu Chunguang of the PLA-Navy's Political Work Research Institute: *Taiping Yang Shang de Jiaoliang: Dangdai Zhongguo de Haiyang Zhanluue Wenti* [Competition on the Pacific Ocean: Problems in Maritime Strategy for Modern China]. See http:/www.usembassy-china.gov/english/sandt/paccpca.htm. The book says that the south Spratlys comprise 230 islands and an ocean area of 800,000 square kilometres, which is one-third of "China's southern ocean territory".

[54] This coincided with a turning point in Sino-Indonesian relations. China contributed as much as 1bn USD to the IMF package for Indonesia, bought significant quantities of oil from Indonesia, and Chinese state companies bought themselves into Indonesian oil fields, while at the same time there was serious ethnic tension between Indonesian Muslims and (often Christian) Chinese in Indonesia. What all of this will mean for the relationship between the PRC and the emerging post-crisis regime in Indonesia remains to be seen.

United States, and keeping at bay its main regional adversaries, Japan and India. This strategy is no doubt meant to increase China's leverage in its relations with the ASEAN countries, and Taiwan. An offensive naval strategy may also, however, be driven by less rational, more emotionally nationalist impulses, or it may be used as a tool to boost national prestige.

National prestige: The struggle for the defense of national maritime territory has often been the focus of nationalist mobilisation in many parts of the world. In 1979–80, after Vietnam's invasion of Cambodia and the PRC's punitive invasion of Vietnam's northern provinces, the war between the two countries continued as a war of words. Many of these words had to do with the *Xisha* or *Hoang Sa* (Paracels) and *Nansha* or *Truong Sa* (Spratlys), which had always been under the sovereignty of each of the two nations. Although Vietnamese nationalism has been directed primarily against European colonialism and American imperialism, the idea of a thousand year old threat from the north has been a backbone of Vietnamese nationalist thinking, from the extreme right to the extreme left, through the whole of the 20th century. When Vietnam supported the Soviet Union in its conflict with China, Deng Xiao-ping reacted with a wounded feeling of betrayal. The younger brother in the south, who had received so much Chinese assistance for his national liberation struggle, was being ungrateful. The vitriolic attacks that the PRC and the SRV directed against each other in 1979–80 struck the world as examples of how the very crudest form of nationalism can dominate even regimes that are ideologically committed to internationalism.

The war of words continued through the 1980s, but the clash between the two countries in 1988 did not lead to a new surge of nationalist polemics. Greater events elsewhere stole most of the attention. In the 1990s, the nationalist rhetoric has been less intense than previously, as discourses related to economic growth, multilateral diplomacy and international law have gradually conquered the conceptual terrain. At the same time, however, the struggle has been widened from being primarily a conflict between China and Vietnam to a multilateral conflict. The main new country to enter the war of words has been the Philippines. The Mischief Reef incidents in 1995 and 1998 provoked attempts by some politicians in Manila to stir up nationalist sentiments in defense of the national patrimony. Such attempts largely failed, however. The potential for national outrage does not seem to be very high in pluralist Filipino politics. Malaysia and Brunei have been largely pragmatic in their approach to the South China Sea conflict, and done little to whip up nationalist sentiments.

How important, then, is national prestige for the PRC's policy? Leni Stenseth has made a study of a selection of articles in Chinese journals and newspapers and has used a typology from Alan Whiting to categorise a rhetoric as aggressively nationalist, assertively nationalist or just affirmatively nationalist.[55] She found that there were few articles of the aggressively nationalist kind, and that all of them were in press organs controlled by the military. Most of the articles examined conformed either to Whiting's description of assertive or affirmative nationalism. Stenseth also noticed that several articles made a point of the fact that China was being patient with its neighbours in order to maintain peace, and was generous in showing willingness to share resources with others. Almost every article about the South China Sea affirmed, almost in an obligatory manner, that the sacred territory in the South China Sea is an

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[55] Leni Stenseth. *Nationalism and Foreign Policy—the Case of China's* Nansha *Rhetoric,* pp. 54, 90–93. She refers to Allan S. Whiting. "Chinese Nationalism and Foreign Policy after Deng." *The China Quarterly,* no. 154 (1998): 309–329.

inviolable part of China. The fact that this has become a kind of bottom line in Chinese nationalist rhetoric may create difficulties for a pragmatic regime in Beijing if it wants to abide by the UNCLOS rules and compromise on the dispute over sovereignty.

1996 gave a rare glimpse into the mecanisms of nationalist mobilisation in the greater Chinese world, not in relation to the South China Sea, but to the dispute with Japan over the Senkaku or Diaoyu islands, east of Taiwan. Anti-Japanese nationalists in Hong Kong and Taiwan mobilised a campaign with the obvious purpose of stirring up nationalist feelings within the PRC that could cause problems for the communist regime. The government in Beijing saw the danger and quickly took effective measures to prevent any nationalist campaigning in the universities of the mainland. The present regime in Beijing seems to shy away from aggressive nationalism, and to seek pragmatic solutions. It may be under pressure from more activist military circles, however, and is bound by the rhetoric of defending Chinese maritime territory. The same is the case in Vietnam. In order for the regimes in Beijing and Hanoi to enter a process of conflict resolution without losing national prestige, it thus seems preferable to find a venue that avoids, at least for some time, the vexed issue of sovereignty to islands.

Solutions

When talking about possible solutions, it is easy to just think of the sovereignty dispute. This may not be the most urgent issue. What really needs attention, is the question of how to implement measures to monitor and regulate fish stocks, protect the environment, suppress piracy, safeguard the freedom of navigation, etc. We shall soon discuss the possibility, in the absence of a solution to the sovereignty dispute, of establishing a joint management regime. This said, it will of course be necessary for the states around the South China Sea at some point to get on with the process of delimitating their maritime zones. Thus we shall try to outline a possible venue for resolving the legal dispute.

Resolution of the sovereignty dispute: For the sake of the argument, we shall assume that the PRC and the ROC are resolving their conflict over Taiwan's status, and that the dispute over the South China Sea is left to a multilateral conference or independent court to decide. What would the solution then look like? The conference or court would no doubt put aside China's historical claim to all the maritime territory inside the nine-dotted line, a claim that may continue to have a role to play in the rhetorical sphere, but not in discussions based on the law of the sea. Next the court or conference would examine the question of whether or not the Spratlys constitutes a group or archipelago. This would be a major question to decide (also for the Paracels). In their book *Sharing the Resources of the South China Sea,* Mark Valencia, Jon Van Dyke and Noel Ludwig have asked the crucial question: "Do Any of the Spratly Islets Have the Capacity under Article 121 to Generate EEZs or Continental Shelves?" With reference to UNCLOS paragraph 121 (3), which establishes that rocks, i.e., small islands, which are unable to "sustain human habitation or an economic life of their own" do not qualify as islands with the right to an EEZ, they find this doubtful. They refer to Ambassador Hasjim Djalal and to Vietnamese officials, who have adopted the view that the Spratly islets *cannot* generate EEZs or continental shelves, and they

conclude: "We think the best approach, in terms of international law, logic, and practicality would be to deny extended maritime zones to any of the Spratlys."[56]

A court or enlightened conference would most probably reach the same conclusion, not the least because of practicality. If some of the islets were recognized as islands and the present occupants gained sovereignty to them, there would be an insoluble imbroglio of overlapping EEZ claims. Also, if some of the Spratlys were to qualify as islands, it would tempt the occupying powers to try and evict the other claimants by force. Nothing could do more to reduce military tension in the Spratly area than to ascertain that none of the features in the Spratlys have a right to EEZs and continental shelfs.

After this decision has been made, the main steps in resolving the dispute would probably be the following:

- Delimitate 200 nm EEZs from the baselines of the six claimant states around the South China Sea: Indonesia, Malaysia, Brunei, the Philippines, Vietnam, and China with Hainan and Taiwan. (If Taiwan were to become an independent state, it would have a separate EEZ.)
- Define 500 metre security zones around all submerged features and artificial islands that are not within only one state's EEZ, or are occupied by another state than the one whose EEZ it is located in.
- Define 12 nm territorial waters around islets (legal 'rocks') that are not within only one state's EEZ, or are occupied by another state than the one whose EEZ it is located in.
- Specify the features in other parts of the South China Sea that fulfill the requirements for being islands with a right to EEZs and continental shelfs.
- Decide who has sovereignty to the features that qualify as islands. Presumably all islands that are not close to one of the claimant states' coasts (such as the Vietnamese island Con Dao) would be in the Paracels.
- Decide how much weight should be given to such islands when delimitating the boundaries between the Chinese, Vietnamese and Philippinese EEZs.
- Demarcate the boundaries between all the six EEZs, using the principle of equidistance with due consideration of other relevant factors, and delimitate a remaining non-national high seas zone in the central part of the South China Sea.
- Establish a joint management regime for the residual, central area.

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[56] Valencia, Van Dyke and Ludwig, *Sharing the Resources of the South China Sea,* pp. 41–45. Before reaching the conclusion cited, they note that "Although the arguments against allowing any of the Spratlys to generate extended zones seem strong, occasional authors continue to suggest that at least some of the islands can generate zones." (p. 44). After concluding that the best approach would be to deny extended maritime zones to any of the Spratlys, they also add: "But if agreement cannot be reached on this approach, a fall-back position might be to allow the islets to generate a "regional" zone, that would be shared and jointly managed." (p. 45). If one were to accept that some of the Spratlys have a right to maritime zones, the next step would be to decide the relative weight of these islets in delimiting the maritime boundaries between the Spratlys and the coasts around the South China Sea. Given the insignificance of the islets, these boundaries would most certainly not be median (or equidistant) lines, but be much closer to the Spratlys than the surrounding coasts (cf. the Jan Mayen case from 1993). Valencia, Van Dyke and Ludwig, pp. 50–51.

Joint development and management: Proposals have already been made, in the absence of a settlement of the legal dispute over sovereignty to the features in the Spratly area, to demilitarise them and set up a joint resource management regime for some specific areas. The purpose would both be to ensure an equitable distribution of benefits from production of oil and gas, and to ensure the protection of the environment. It might be possible to institute a joint management regime for some limited purposes even before the negotiations over the delimitation of maritime zones begins. A joint resource management regime would have as one of its main obligations to regulate fisheries in order to protect endangered species and preserve sufficient stocks for the future. It might also administer exploration for oil and gas, if a multilateral regime could be set up for that purpose. Such a regime might be inspired by the treaty negotiated by Australia and Indonesia for the so-called Timor Gap (where the Indonesian role will now presumably be taken over by an independent East Timor).

Diplomacy

When meeting in Manila in 1992, the then six foreign ministers of ASEAN adopted a "Declaration on the South China Sea" in which they emphasised "the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resorting to force". All of the ASEAN countries seem willing to engage in multilateral negotiations. The PRC, however, has so far insisted that it will negotiate only bilaterally with each of the other claimant states, not in a multilateral forum. China has repeatedly declared itself in favour of the principle of "joint development", a formula which might form a premise for conflict resolution, but has not specified what it means by "joint development". The same Manila declaration suggested, without prejudicing the sovereignty question, to explore possible cooperation relating to a) the safety of maritime navigation, b) protection against pollution, c) coordination of search and rescue operations, d) efforts towards combatting piracy, and e) collaboration in the campaign against illicit trafficking in drugs. At the time of the Manila declaration, such ideas had been advocated through informal track II diplomacy on the initiave of Indonesia.

Throughout the 1990s, Indonesia has endeavoured to establish a framework for conflict resolution through a so-called workshop process. Indonesia, as traditionally the most powerful member of ASEAN, and with no claim itself inside the Spratly area, has been ideally suited for a facilitating role. The other countries that could have played such a role, are Thailand and Singapore, who also have no claims in the Spratlys.

After the Sino-Vietnamese clash in the Spratlys in 1988, Indonesia took the initiative to organise informal multilateral discussions in order to improve the diplomatic climate (so-called track II diplomacy). The main initiator was Ambassador, Professor Dr. Hasjim Djalal, an established expert on the law of the sea. A comprehensive project was initiated which received funding from the Canadian International Development Agency (CIDA) through the University of British Columbia. A professor of law at the University, Dr. Ian Townsend-Gault, has since worked closely with Djalal. Since 1990, one major workshop has been held every year in one of Indonesia's provinces, with participation of bureaucrats, academics and other experts from the countries surrounding the South China Sea. Six countries were represented at the first workshop in 1990, 11 countries at the 9th workshop in 1998.

"Chinese Taipei" has taken part in the workshops, and so has the landlocked Laos. Since 1994 a number of more specialised expert groups have also met in the various countries of the region to discuss various collaborative projects. Projects on biodiversity, sea-level rise monitoring, exchange of marine scientific research information have been initiated. This may perhaps lead to the establishment of a cross-national "epistemic community" of experts, based not only on shared expertise, but also on shared values and goals related to environmental protection and peace.[57]

The intention behind the workshop process was to reformulate the regional agenda, deemphasise the conflict over sovereignty, and instead generate discussions about how to initiate collaborative projects. Parcicipants at the workshops have been prohibited from discussing matters relating to sovereignty. The workshops have only to a limited extent succeeded. The sovereignty conflict continues to dominate the public discourse, and only a few collaborative projects have got off the ground. Some had also hoped that the workshops would pave the way for official multilateral negotiations.[58] After ten years of track II workshops, the prospects of such negotiations remains remote. Many commentators therefore claim that the results of the costly workshop process have been meager. They see the main stumbling block in the Chinese reluctance to go along with multilateral schemes, and to engage in genuine talks in the presence of representatives of Taiwan. It may be argued, however, that the workshops have had effects of a less tangible kind. New generations of experts have acquainted themselves with each other, and may form a critical mass in the future behind a process of conflict resolution.

The workshop process managed by Indonesia has been supplemented by initiatives in other fora. The Council for Security Cooperation in the Asia Pacific (CSCAP), a wider track II forum, was established in 1993 under ASEAN's Regional Forum (ARF) to deal with various kinds of security issues. Activities under the CSCAP umbrella are coordinated by a number of academic or semi-official institutes in the states that participate in the ARF (this includes Australia, Russia, Canada, the United States and the EU). Australia has been particularly active. CSCAP has a number of working groups, one of which focuses on maritime cooperation. In 1998, the group came up with a set of Guidelines for regional maritime cooperation. In the same year, the second meeting of the CSCAP Working Group on Maritime Cooperation was held in Kuala Lumpur, and a track II forum on "Maritime Security in East Asia", sponsored by European CSCAP, was held in the United Kingdom. The Working Group has taken several initiatives. A drafting group met in Jakarta 3–4th December 1998 to consider a draft document on Guidelines for Regional Maritime Cooperation, while another sub-committee of the Working Group is investigating a possible programme of annual workshops on regional marine and maritime affairs.

In 1997, a small step forward was made when China allowed the annual ARF meeting to address the South China Sea issue. This was called track I ½ diplomacy. Nothing came out of it, however. China continues its opposition to multilateral negotiations.

Trends

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[57] Mr. Tom Næss, a student of political science at the University of Oslo who is writing a thesis on track II diplomacy in the South China Sea conflict, tries to find out to what extent "epistemic communities" have been formed and have played a role in the workshop processes.
[58] The ninth workshop in 1998 agreed to nominate Ambassador Djalal for the Nobel Peace Prize.

This section will abandon the somewhat idealistic approach pursued so far, and make a more detached, then also pessimistic, analysis of ongoing trends. The trends could point in either of three main directions: conflict, resolution or status quo. This section will consider each of these possibilities.

Conflict: In the late 1980s and early 1990s, the most conflictual relationship was that between the PRC and Vietnam. They had been in open conflict since the Vietnamese invasion of Cambodia in December 1978, but Vietnam had received naval protection from the Soviet Union. When Gorbachev scaled down the Soviet commitment, Vietnam was left in a weak position, and China exploited this in 1988 when seizing several reefs in the vicinity of Vietnamese-controlled islets in the Spratly area. It is possible that the Chinese navy was planning to follow up in 1989 and evict Vietnam completely from the Spratlys. If this was the case, the plan may have been interrupted by Gorbachev's visit to Beijing in June and the demonstration on Tiananmen Square. In the same period, Vietnam reoriented its foreign policy to establish relations with all former foes, including China. In this way, Hanoi managed to improve its international standing. Relations with China were normalised in 1991, Vietnam obtained membership in ASEAN in 1995 and was finally able to normalise its relations with the United States in 1997. The improvement of the Sino-Vietnamese relationship in 1990–92 was not only due to the Vietnamese withdrawal from Cambodia, but also to a shared abhorrence in Beijing and Hanoi at the breakup of the Soviet Union. The two regimes opted for similar solutions: a combination of one-party rule and rapid economic growth through a market economy. This may explain why the conflicts over the Chinese Crestone concession in 1992 and the Vietnamese Conoco concession in 1996 did not degenerate, and that the two countries could agree in 1997 to demarcate their border in the Tonkin Gulf before the end of the year 2000. It seems likely that the PRC Navy at some point received instructions to refrain from actions in the South China Sea that could lead to open conflict with Vietnam.

The Chinese pressure has instead shifted to the Philippines. Already in the late 1980s China had seized reefs within the *Kalayaan* area claimed by the Philippines, but in 1994 the Chinese Navy took one step further when starting to construct military installations on Mischief Reef *(Panganiban* in tagalog), only some 135 nautical miles from the coast of Palawan. Mischief Reef is also not far from Reed Bank, where the Philippines has awarded oil concessions to foreign companies. In February 1995, when the Philippines discovered the constructions on Mischief Reef, it issued strong protests and received massive support from the ASEAN countries, including its new member, Vietnam. China asserted that the installations were only shelters for fishermen, but agreed to a protocol with the Philippines saying that neither party should do anything that could change status quo. The protests led China and the Philippines to sign a code-of-conduct. In December 1998, however, China built new constructions on Mischief Reef. The Philippines again protested strongly, its defence minister calling for a conference of all claimant countries *as well as the United States.* This time both Vietnam and Malaysia objected, saying that the matter should be settled by the claimants themselves.[59] Since the regional financial and economic crisis started in July 1997, Malaysia and Vietnam had both further improved their relations with China, and were sceptical of economic advice from the USA and the

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[59] Richel B. Langit, "Erap wants US role in Spratlys row", *The Manila Times,* 15.1.99. Raffy S. Jimenez and Johnna R. Villaviray, "China to US: Stay away from Spratlys", *The Manila Times,* 17.1.99. Michael Richardson, "Philippines Is Stymied In Dispute With China", *International Herald Tribune,* 21.1.99.

International Monetary Fund. China has clearly improved its diplomatic standing in the region and can get away with actions that would previously have led to massive protests from the ASEAN. Sceptics say that Beijing consistently and shrewdly uses its leverage to always apply pressure on the weakest of its opponents, and only on one opponent at a time.

To sum up, it may seem that China is following a patient policy, combining diplomacy and prudent military initiatives of a kind that will not lead to open confrontation. The PRC also refrains from actions that might entail conflict with more than one country at a time, or that could seriously disturb the Sino-US relationship. But the regime in Beijing is not satisfied with only status quo, and therefore endeavours to improve its military position in the Spratly area, as well as to improve its bilateral relations with each of the ASEAN states. In the 1990s, China has significantly widened and improved its bilateral relations with Malaysia, Thailand and Vietnam. This was seen clearly in late 1998 and 1999 when the Philippines failed to gain support among the ASEAN member states for an initiative to call an international conference on the Spratly issue. We are not likely to see major conflict, only a series of little incidents or episodes between a gradually expanding PRC navy and one ASEAN country at a time, or Taiwan. Without a radical change of leaders in Beijing, the PRC will be likely to avoid major conflict.

Resolution: As already mentioned, there are good prospects for the Gulf of Thailand and the Tonkin Gulf to be completely demarcated into national territories within the next few years. For this to happen, Cambodia will need to negotiate maritime borders with its neighbours, and China and Vietnam will have to fulfil their promise to reach an agreement on the Tonkin Gulf before the end of the year 2000.

[Bedre her å diskutere multilaterale versus bilaterale løsningsmuligheter. ST]

A number of proposals have been made for how to resolve the conflict concerning the delimitation of maritime zones also in the central part of the South China Sea. Some of them have influenced the proposal made above. A resolution of the conflict does presuppose a combination of bilateral and multilateral negotiations, or that all claimant states agree to let the International Court of Justice in the Hague, or another court, decide. The latter seems a remote possibility, however, at least as long as the international status of Taiwan has not been resolved.

Although an informal multilateral framework has been created as well as a network of experts in various domains, it is impossible to avoid the conclusion that there is no clear trend towards resolving the conflict. Ideas have been aired for setting up a more comprehensive joint resource management regime, and to demilitarise the Spratly area. So far, however, little progress has been made in either direction. There has been much talk about demilitarisation, confidence-building, joint development and management, but instead of demilitarisation, the troops and fishermen in the Spratlys (and the satellites above them) have seen naval activities in the area being expanded all the time.

It may cause further concern that Indonesia, both before and after Suharto's resignation, has been weakened by economic, social and political crisis. Indonesia may no longer have the clout to play a constructive, diplomatic role. The main change needed, if the region is to enter a process of conflict resolution, is for Beijing to

change its mind and engage itself in a multilateral process.[60] This does not yet seem about to happen. Despite progress in the Gulf of Thailand and Gulf of Tonkin, there is therefore no visible trend towards resolving the main conflict in the South China Sea. China has, however, upgraded its diplomatic relationship with the ASEAN countries, and is becoming more and more dependent on a global regime of open trade. The overall diplomatic relationship between most of the claimant countries has significantly improved since the end of the cold war. China has refrained, since 1988, from initiatives that could entail a clash with other naval forces, or to provoke the United States unnecessarily. In the general improvement in the quality of Chinese diplomacy, and in China's current penchant for prudent behaviour lies perhaps a hope that it may utilise a status quo situation not to prepare for future conflict, but to gradually open the door for conflict resolution, following both bilateral and multilateral tacks.

Status quo: Since there is no observable trend towards either violent conflict or conflict resolution, the conclusion must be that the most likely scenario for the next few years is maintenance of status quo, with the likely recurrence of incidents from time to time. This is what China seems to prefer, perhaps because it believes that it can gradually improve its position over time, or simply because it is so difficult to resolve the conflict in the South China Sea without first, or at the same time, resolving the Taiwan problem.

A status quo situation should not, however, be interpreted to mean no change at all. Even though the sovereignty dispute over the Spratlys is left in a stalemate, some of the claimant states may be able to improve their position and gradually change the power balance, and there may continue to be improvement in the bilateral relations between some of the states with stakes in the South China Sea.

A status quo situation should also not give ground for either disillusionment or satisfaction, but be seen as an impetus to launch joint initiatives in the fields of environmental protection and management of resources. This is not only the responsibility of the local governments, but of concerned scholars both in the South China Sea region and elsewhere.

Competence

Some may see a hope in the fact that the 1990s has seen an upsurge of academic studies and international scholarly conferences on the South China Sea. This could mean that a cross-border, scholarly community is emerging, with shared values linked to research cooperation, international law, environmental management, confidence-

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[60] The Chinese view on how to resolve the Spratly dispute was expressed by Foreign Ministry spokesperson Zhu Bangzao in April 1999: "The issue of the Nansha Islands is very complicated. The Chinese side believes that the easiest issues should be solved first and then later move onto the more difficult ones. The most feasible way to do this is to start from bilateral consultations. In such a spirit the Chinese side has conducted bilateral consultations on the relevant issues with Viet Nam, the Philippines, Malaysia and Brunei and has contacted ASEAN, exchanging views with them and achieving good results. The Chinese side wishes to continuously explore the issue with the countries concerned." *Beijing Review,* vol. 42, no. 14, 5–11 April 1999, downloaded in August 1999 from http:/www.chinanews.org/bjreview/99jul/bjr-99-14e.html.

building and conflict resolution. This has been much stimulated by the semi-official workshop processeses initiated by Indonesia and the Council for Security Cooperation in the Asia Pacific (CSCAP).

The following is a preliminary overview of institutes and scholars with expertise in the legal, political and strategic aspects of the conflict in the South China Sea. The 1990s has seen tremendous growth in the number of conferences, reports, dissertations, monographs and journal articles dedicated to the issue. Much of the research is undertaken by individuals without much institutional backup, but some research centres have also been established which have acquired a particular competence on various aspects of the topic. Natural science research is not included in this overview, only institutes and individuals who study the conflict from the perspectives of international law, political or social science. We shall distinguish between research centres in the region itself, and researchers/research groups at universities or institutes outside of the region.

Much competence on the South China Sea can also be found in companies and consultancy firms, such as the Norwegian Blom Dantarsa Co. (http://www.blom.co.id/) and PGS Nopec (http://www.tgsgeo.com/index.htm), but competence of a commercial kind will not be mentioned in the following.

The addresses and web sites of some of the research centres can be found toward the end of the report.

Research centres within the region: Within each of the states in the region the main legal competence on the South China Sea dispute can be found in the legal affairs division of the foreign ministry,[61] but there are also some experts on the law of the sea at universities and independent or semi-official research institutes. Most such experts have represented their country, in a semi-official capacity, at the multilateral workshops administered by Indonesia and the University of British Columbia.

China has a vast research environment for natural science research on the South China Sea, and Chinese natural scientists publish frequently on matters pertaining to the South China Sea in Chinese and English-language journals. Chinese scholars of law and social sciences have not had a similarly high profile. The reason is obviously that the topic is so sensitive. On the legal and political side the main research centre in China is the Institute of Maritime Development Strategy under the State Oceanic Administration in Beijing.

Taiwan does not have an institute specialising in maritime affairs from a legal or political science perspective, but a handful of Taiwanese researchers have published on the issue. The most prolific and updated of them is Yann-huei Song who is based at the Institute of European and American Studies of the Academia Sinica in Taipei.

In Southeast Asia, the main specialised research centre on the political aspects of maritime affairs is the Maritime Institute of Malaysia (MIMA) in Kuala Lumpur, led by Director-General B. A. Hamzah and Research Director J N Mak. MIMA is a policy research institute which was set up by the Malaysian government in 1993 to look into matters relating to Malaysia's interests at sea, and to serve as a national focal point for research in the maritime sector. Its role is to deal with national, regional and international matters affecting Malaysia. MIMA is in particular concerned with coastal development, marine environment, maritime security and

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[61] Matters pertaining to international law in Singapore are handled by the Prosecutor General's Office.

diplomacy, economics and ocean industries and ocean law and policy. The institute has a useful library which is open to visiting scholars.

Malaysia is also of interest for hosting the annual Asia-Pacific roundtables sponsored by the Institute for Strategic and International Studies (ISIS). Here the South China Sea is constantly on the agenda.

Vietnam has the beginnings of a similar centre to MIMA in Hanoi. It has been set up by the official Continental Shelf Committee with assistance from Canada. The Canadian connection is an offspring of the funding by the Canadian International Development Agency (CIDA) of the workshop process organised by Indonesia. CIDA's assistance has the purpose of allowing Vietnam to formulate, improve, and/or harmonise some of its ocean and coastal management policies, and to play a meaningful role in regional ocean development and negotiations. The new Vietnamese research centre does not intend to build up a huge book collection, but instead makes intensive use of information technology. Mr. Luu Van Loi, a retired Vietnamese diplomat who served for many years as President of the Continental Shelf Committee, is Vietnam's most established authority on the South China Sea conflict.

The Institute of Southeast Asian Studies (ISEAS) in Singapore must be considered the leading research centre in all of Southeast Asia on general regional affairs. It has not undertaken much research on the South China Sea conflict, but two of its scholars have published on the issue before they came to ISEAS, Dr. Sheng Lijun, who has a profound knowledge of Chinese policies towards the South China Sea, and Dr. Derek da Cunha, who is a specialist on the larger security picture, with emphasis on naval strategy and US policies in the region. Da Cunha also edits *Contemporary Southeast Asia,* which has published many articles on the South China Sea.

Singapore established a new strategic research and teaching institute in 1996, the Institute of Defence & Strategic Studies, led by Ambassador at Large S R Nathan. It has the objective of a) promoting research in security, strategic and international studies, b) providing general and post-graduate education in strategic studies, defence management and defence technology, c) promoting joint and exchange programmes with similar regional institutions and to participate and organise regional and international conferences on security, strategic and international matters.

In the Philippines the main legal expert on the law of the sea is Raphael Lotilla, professor of law at the University of the Philippines, who is also deputy director of the National Economic Development Authority (NEDA). For security issues the main research centre in the Philippines is the Asia Pacific Security Center.

Indonesia's leading authority on the law of the sea and maritime affairs is Ambassador, Professor Dr. Hasjim Djalal. He has been the driving force behind the regional workshop process, sponsored by Canada. Ambassador Djalal, of course, works out of the foreign ministry. His son, Dino Djalal, is also an expert on the South China Sea conflict, working from a political science perspective.[62]

Thailand has a South East Asian Programme on Ocean Law (SEAPOL) at the University of Sukhothai, which (like the workshop hosted by Indonesia) is funded by

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[62] The Norwegian company Blom Dantarsa, which has been conducting digital marine resource mapping of Indonesian waters on a commercial basis, has established a project production centre at Kemang Raya in Jakarta. In 1998 it was staffed by 16 expatriates and 61 Indonesian counterparts and ancillary personnel. The data processing and production of both paper and electronic charts is performed at this centre, which is also developing a national marine resource database.

It may be added that Norway has provided Indonesia with an advanced research vessel for ocean research.

Canada (CIDA) until the year 2000. At Bangkok's two universities there are three experts on the law of the sea: Professor Chumpaon Putjusanoon at Chulalongkorn and professors Jaturon Tirawat and Noopanit Suriyan at Thammasat. Among those who were active in negotiating UNCLOS back in the 1970s, Arun Panupong and Prajit Rojanapruk are still active in the legal field, and Suchinda Yongsunthorn now serves as judge of Thailand's Constitutional Tribunal.

Research centres outside the region: Australia, which sometimes sees itself as belonging to the East Asian region, has several highly competent research institutes dealing with the security of the Asia-Pacific, notably the Strategic and Defence Studies Centre (SDSC) of the Australian National University, headed by Professor Paul Dibb. It co-ordinates the Australian participation in the CSCAP process. Australia has also recently established a specialised Centre for Maritime Policy which is a joint venture of the University of Wollongongg and its commercial and consultancy arm, the "Illawarra Technology Corporation". It focuses on maritime security, strategy, law, transport, environment and resources. Its manager is Commodore Sam Bateman.

Greg Austin, a former defence analyst now working at the Research School of Pacific Studies, Australian National University, published a major work on *China's Ocean Frontier* in 1998 (see below).

The world's leading research team on maritime policies in the Asia-Pacific is located in Honolulu, Hawaii. Dr. Mark J. Valencia, Senior Fellow at the East-West Center, and Professor of Law Jon M. Van Dyke at the University of Hawaii, have published widely on the South China Sea for more than twenty years. Together with the geologist Noel A. Ludwig, they are the authors of the best introduction to the topic: *Sharing the Resources of the South China Sea* from 1997 (bibliographic information below). The three of them have contributed a number of inventive ideas for how to resolve the dispute, alas, without much effect. The East-West Center, which was established in 1960 and joined by Dr. Valencia in 1977, has a wide range of research programmes relevant to the conflict in the South China Sea, including a programme on resources, energy and minerals.

The Canadian funding of the Indonesian-led workshops has been channeled through the University of British Columbia which in the process has built significant competence on the conflict. Under the direction of Dr. Ian Townsend-Gault, an expert on ocean law, the University's South China Sea Informal Working Group has also constructed a useful website, with documentation of the workshop process.

In Great Britain, the International Boundaries Research Unit (IBRU) was founded at the University of Durham in 1989. It works with international boundaries on land and at sea, including their delimitation, demarcation and management. It has established a comprehensive database and publication programme, and organises regular conferences and training workshops. The London School of Economics and Political Science (LSE) has two leading experts on Southeast Asian security, who have written on the security aspects of the South China Sea conflict: Professor Michael Leifer and Professor Michael B. Yahuda. At the School of Oriental and African Studies, Professor Richard Scofield does research on matters pertaining to the South China Sea. Both at the International Institute of Strategic Studies (IISS) and the Royal Institute of International Affairs (Chatham House) in London, there are specialised research programmes in environmental and energy policy that include studies of the East Asian region, but the programme at Chatham House has so far focussed mainly on Northeast Asia.

A French expert on the South China Sea, Frédéric Lasserre, published a book on the issue in 1996. He is now based at the Université de St. Etienne.

The foremost expert on the South China Sea conflict in the Nordic countries is associate professor Ramses Amer at the Department of Peace and Conflict Research, Uppsala University. He has published several articles on the topic, notably in the Singapore-based journal *Contemporary Southeast Asia* (which is edited by Dr. Derek da Cunha). A PhD student at the University of Århus in Denmark, Ms. Liselotte Odgaard, is preparing a thesis on the South China Sea. In Oslo, the Fridtjof Nansen Institute has been working on matters pertaining to the law of the sea for many years, and its former director, Willy Østreng, who is now a resident scholar in the Norwegian Foreign Ministry, published an article on the South China Sea in 1985.

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The following persons were interviewed in January–February 1998:

José Almonte, Director General of the National Security Center of the Philippines, Manila.

Michael M. Bely, Ambassador of the Russian Federation, Singapore.

Admiral Taweesak Cheepensuk, Deputy Permanent Secretary of Defence, the Ministry of Defence of Thailand, Bangkok.

Dr. Derek da Cunha, Senior Fellow, Editor *Contemporary Southeast Asia,* Institute of Southeast Asian Studies, Singapore.

Prof. Dr. Hasjim Djalal, Ambassador at Large for the Law of the Sea/Maritime Affairs, Member of the National Maritime Council of Indonesia, Adviser to the Naval Chief of Staff, Department of Foreign Affairs, Jakarta.

Captain Scott Douglas, Naval Attaché of the USA, Singapore.

Dr. Per-Christian Endsjø, President, Hydro Asia Pacific Pte Ltd, Singapore.

Mr. Thomas C. Ferguson, First Secretary, Embassy of the USA, Manila.

Professor B.A Hamzah, Maritime Institute of Malaysia (MIMA), Kuala Lumpur.

Mr. Huynh Minh Chinh, Assistant to the Chairman, Director Marine Affairs Department, Head, Office of Sea and Islands, National Border Commitee and the Continental Shelf Committee of the Government of Vietnam, Hanoi.

Mr. Zee Yoong Kang, Senior Assistant Director, Policy, Planning & Analysis Directorate I, Ministry of Foreign Affairs, Singapore.

Mr. Le Quy Quynh, Naval Engineer, Master-Mariner MSc, Senior Officer in Marine Affairs, National Border Committee and the Continental Shelf Committee of the Government of Vietnam, Hanoi.

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Rear Admiral Stephen R. Loeffler, United States Navy, Singapore.

Mr. Bernard Loo, Associate Research Fellow, Institute of Defence and Strategic Studies, Singapore.

Professor Raphael M. Lotilla, Faculty of Law, University of the Philippines, Deputy Director, National Economic Development Authority (NEDA), Manila.

Mr. Luu Van Loi, former Chairman of the National Border Committee and the Continental Shelf Committee of the Government of Vietnam, Hanoi.

Ms. Cik Nafizah bte. Mohammed, Principal Assistant Secretary, Maritime Affairs, International Organisation, Ministry of Foreign Affairs, Kuala Lumpur.

Ambassador at Large S R Nathan, Director, Institute of Defence & Strategic Studies, Singapore.

Mr. A.M. O'Neill III, Counsellor for Political Affairs, Embassy of the USA, Manila.

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Lieutenant General Nguyen Dinh Uoc, Director, Vietnam Institute for Military History, Hanoi.

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Vice Admiral Dato Seri Ahmad Ramli bin Haji Mhd. Nor, Chief of Navy, Malaysia, Kuala Lumpur.

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Rear Admiral Pramual Yuvanimi, Executive Director, A & Marine, Marine (Thai) Co. Ltd., Bangkok.

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