An Assessment of the Effectiveness of Current Maritime Security Frameworks and Mechanisms in the South China Sea

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As 2011 unfolds, China, Vietnam, and the Philippines are all proceeding apace with exploration operations and drilling plans to capture the undersea hydrocarbon resources of the South China Sea in the hodgepodge of contending state claims there. Friction, sometimes serious, has resulted and each of the three states has stepped up its rhetorical assertion of sole jurisdictional authority to drill in specified areas. Each state has also increased its South China Sea naval activities in ways that are either meant to signal resolve to defend its right to the resources or are at least perceived as such.

Some observers have suggested that regional economic ties and the mutual desire for a stable external environment within which to promote economic development will keep energy competition and sovereignty disputes in the South China Sea from resulting in conflict.[i] Others opine that tensions are manageable because the fact that to date Chinese maritime claims in the East and South China Seas "are generally being enforced by unarmed patrol cutters [sends] a clear signal that Beijing does not seek escalation to a major crisis on these matters."[ii] Others claim that such views are wishful thinking.[iii] This paper examines whether in the midst of such aggravated circumstances existing maritime security frameworks and mechanisms—two in particular, the United Nations Convention on the Law of the Sea, and the Declaration on the Conduct of Parties in the South China Sea--are sufficient to maintain regional peace and to advance regional economic development. Concluding that they are not, this paper will also make some suggestions for improvements in order to build confidence and make progress toward lasting stability.

Sovereignty Disputes and the Failure of International Law

The disputes in the South China Sea can be placed into three different categories—sovereignty, jurisdiction, and control.[iv] The first category involves the claims of various parties to sovereignty over the islands, rocks, and reefs in the South China Sea. There is currently no active regional or international framework or other mechanism directly attempting to resolve the question of sovereignty. This is in part due to the fact that China persists in the perspective that it will only settle any of the disputes in the South China Sea through negotiation and even that must be on a bilateral basis. This precludes the opportunity for the parties to avail themselves of existing juridical and arbitral mechanisms or other regional or international frameworks to support peaceful resolution of the disputes.

To be fair, concerning the question of sovereignty, there does not seem to have developed in *any* of the claimant states an appetite for negotiation, arbitration, or judicial settlement. Claims of "indisputable sovereignty" based on historical contacts and administrative control are routine from Vietnam and China—each of

which asserts sovereignty over all of the Spratly and Paracel Islands.[v] While less absolutist in its phrasing, the Philippine government nonetheless insists that it has "sovereignty and jurisdiction over the geological features" of the Kalayaans.[vi] Public records reflect that the Philippines bases its claim on the theory of adjacency or contiguity of the Kalayaan Island Group with its main archipelago, though the basis of its claim has less consistency than the claims of Vietnam and China in that the Philippines also, or alternatively, asserts security and economic bases, abandonment of the islands by others after World War II, and subsequent acquisition of sovereignty by discovery or prescription. Like Malaysia and Brunei, the Philippines also asserts control over the Kalayaans as an extension of its continental shelf rights.[vii] While such a range of perspectives may make for clever lawyering, it does not promote an environment conducive to negotiation, since opposing parties will have a difficult time finding a common basis on which to proceed.

Options certainly exist to develop a mechanism or framework to address the questions of sovereignty. If multilateral negotiations are unacceptable and bilateral negotiations remain unproductive, the parties could certainly submit the issue to the International Court of Justice or the Permanent Court of Arbitration, for instance. For several reasons, however, this is unlikely.

Politically, governments throughout the region must contend with domestic nationalism that constrains policy choices. Economically, there appears to be a growing sense—especially in China, but also increasingly in Vietnam--that the South China Sea's energy and food resources will be increasingly vital to national well-being as the 21st century unfolds. This anxiety shades the discourse about sovereignty over the islands and the attendant jurisdictional rights that pertain to them. Mercantilist attitudes about the South China Sea's energy resources in particular are becoming the norm. This is a worrisome trend as it suggests the parties may be unwilling in the future to trust the market-based access to resources on which the global system is based. Finally, militarily, control over the islands is also seen by China, Vietnam and the Philippines as critical to national security. There are therefore many constituencies within each country that constrain their respective governments from pursuing compromises over sovereignty. This is one major reason why governments remain committed to avoiding international courts or arbitral panels to resolve the questions. The stakes are simply too high.

Another reason governments seem bound to avoid international judicial assistance is that the international law regime that governs settlement of sovereignty disputes is less than clear. The law itself, therefore, is another factor that makes compromise more difficult—indeed it aggravates the tendencies toward friction. Specifically, international law places a premium on a state's ability to demonstrate a superior claim to sovereignty by asserting effective occupation, administration, and exclusive control. All South China Sea countries except Brunei have forces stationed on the islands, weather monitoring stations, coast guard facilities, scientific research facilities, some even reportedly have developed or plan to develop tourism facilities. Following in this vein, the Chinese established a municipal government over the

Spratlys, established cell phone coverage, and support local fishing operations from the islands. The Malaysians set up a dive resort on one of their occupied islands. Each of these activities is an open declaration of one state's effective occupation and administration over the particular islet in question. Indeed, to bolster its occupation and adminstration claims, the Chinese government apparently went so far recently as to place markers to designate their sovereign authority on three of the smaller Spratly features, including Boxall Reef and Amy Douglas Bank near Palawan. In order not to lose its own claim to effectively administer and control the same small bits of territory, the Philippine government announced that its navy had removed the markers and stationed vessels their to dissuade China from restoring them. The Philippines also removed a Chinese-placed buoy from the water.[viii]

In short, the international law related to sovereignty disputes has itself created an escalatory competition among the claimants to demonstrate occupation and exclusive control over the islands. Because sovereignty is a win-lose construct, no party can back down in the competition and preserve its claim. As the stakes increase, so does the likelihood of ever more serious incidents. Thus, the international law framework for resolving sovereignty disputes as it currently stands is an insufficient mechanism to encourage and promote regional stability. International law does offer other win-win solutions based on shared sovereignty or sovereignty with inalienable international rights and the parties would do well to explore these win-win options as potential avenues for temporary—or even permanent—solutions to the questions of sovereignty over the Spratly Islands.

The Maritime Jurisdictional Framework of UNCLOS

The second category of disputes regard jurisdiction over the water space and the resources in the seas and on and under the seabed. Perhaps the most important maritime security framework applicable to the South China Sea is the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS was negotiated during the 1970's and early 1980's in response to several destabilizing trends in the maritime domain, all of which remain present in the South China Sea region today despite the universal accession of South China Sea states to that convention.

One such trend was the increasing capability of states during the 20th century to exploit the living and non-living resources of an ever-widening portion of the maritime littorals. The United States undertook the first act of any state in the modern era to exercise broad jurisdictional rights at sea with the 1945 Truman Proclamations, which had the unintended result in the decades that followed in sparking a global race to control maritime resources through a variety of competing mechanisms, including claims by some states to full national sovereignty as far as 200 nautical miles from their shores. This was unacceptable to many other states for many reasons, maritime powers not the least of which because of the loss of international navigational rights that full state sovereignty over more than one third of the world's oceans that a maritime regime of full sovereignty would have implied.

The Truman proclamations also created high seas fisheries conservation zones under the exclusive jurisdiction of the United States for the purpose of managing and protecting the stocks to the benefit of the American people. As with the continental shelf proclamation, what followed was a global hodge-podge of coastal state claims to exclusive resource rights that also increased frictions at sea because in some places, such as the South China Sea, a jurisdictional regime may not be the best solution to provide order in an area that was once treated by the coastal states as a regional maritime commons.

In an attempt to bring order and reduce friction, negotiations under the auspices of the newly-created United Nations began in the 1950s, resulting in a preliminary but clearly insufficient set of conventions on the law of the sea done in Geneva in 1958. Protracted international negotiations continued, resulting in 1982 in a set of grand bargains that form the UNCLOS framework for stabilizing the dangerous trends that were sparked by the Truman Proclamations, and which remain active in the South China Sea region today. Four aspects of the convention were designed to bring reasonable order to the "land grabs" at sea and to balance the legitimate interests of the coastal states with the similarly legitimate interests of maritime powers.

Baselines. The first aspect is the codification of rules related to baselines, which are the boundaries at or near the shoreline between the coastal state's fully sovereign territory and the maritime zones that extend seaward of it. The purpose of a unified system of baselines is to limit the seaward reach of a coastal state's authority over the oceans. UNCLOS articles 5 and 7 specify that the baselines are normally the low water line along the coast. Article 7 provides a very limited set of circumstances to allow coastal states to deviate from the normal rule, primarily where there exist deeply indented coastal inlets—such as the fjords of Norway, or fringing islands along the immediate vicinity of the coastline—such as exists along the southwestern coast of the Korean peninsula. Article 47 allows states comprised entirely of islands with no mainland territory—known as archipelagic states—to draw baselines around the outermost edge of their islands and to claim a special status for and to exercise a higher degree of authority over the enclosed waters. Although on a global basis the states that qualify are relatively few, there are two states with borders in the South China Sea that qualify: the Philippines and Indonesia. Malaysia, of course, does not qualify because a portion of its territory is continental. A key point about the regime of baselines is that they are to be drawn based exclusively on the state's coastal geography. This geography-based regime was established to ensure order to the process of establishing maritime claims by expressing them from a uniform set of open and undeniable features. Thus, there are no non-geographic exceptions to drawing baselines that are recognized either under UNCLOS or international law more generally.

China's Baselines. Although China's mainland baselines are all expressed in terms of its coastal geography (the U-shaped line in the South China Sea will be dealt with separately), in several offshore places, China's baselines exceed those allowed by UNCLOS and international case law, inappropriately enclosing from full

international use more than 2500 square nautical miles of ocean space primarily in the East China Sea. Of importance to the South China Sea is that China has drawn straight baselines around the Paracel Islands in an unequivocal violation of the rules of UNCLOS that only archipelagic states may make such a claim. Thus, although the international norms as expressed in UNCLOS have had *some* impact on how China drew its baselines along its coastline, they did not prevent China from making excessive or clearly inappropriate claims in other cases.

Vietnam's Baselines. While from the north of its coastline to the south Vietnam draws excessive baselines from offshore islands, rather than the low tide line of its shores, the excessive nature of these claims in the south and southwestern portions of its coastline is truly extraordinary. Vietnam purports to enclose more than 27,000 square nautical miles that should be open to international use. While Vietnam does use geographic features to describe its baselines, it does so in a grossly excessive manner in accordance with the provisions of UNCLOS as clarified by international case law. Thus, as in the case of China, the UNCLOS-established baselines regime did not serve as a constraint Vietnam.

The Baselines of Indonesia and the Philippines. As the two archipelagic states in the region, Indonesia and the Philippines are entitled to enclose large bodies of water within their baselines and to assert sovereign authority over it. Although when they were first drawn in 1960, Indonesia's system of straight baselines did not conform with international law, during the UNCLOS negotiations in the 1970s Indonesia successfully lobbied to have their system adopted for all states comprised entirely of islands. Today, Indonesia's baselines are accepted as normative. The Philippines, however, long maintained excessive baselines inherited from the period of Spanish colonization and did not bring their baselines into conformity with UNCLOS until March 2009 as part of its effort to meet a submission deadline for the UNCLOS Continental Shelf Commission. In other words, to specify their continental shelf, the Philippines had first to specify the baselines from which it would be drawn.

During the period leading up to the Philippines baselines declaration, China is reported to have put significant pressure on members of the Philippines Congress. This pressure was aimed at convincing the Philippines Congress to pass a baseline bill that excludes the Spratlys from within the Philippines archipelagic baselines. China's preference was for the Philippines to draw baselines around the 'home' islands and treat the Philippines-claimed Spratlys as a "separate regime of islands" outside the home archipelago and therefore outside the archipelagic baselines. Presumably, China sought to avoid a situation in which the Philippines claimed the Spratly islands as inseparable Philippine sovereign territory, as drawing archipelagic baselines that included both the Philippines home islands and the Kalayaan group would have done. For obvious reasons, China is sensitive to the increased political difficulty a Filipino government would face in negotiating away rights to territories that Philippines law considers inseparable or "core" to its territory.

Whether Chinese pressure or some other reason was the cause, after a difficult political period, the Philippines Congress indeed enacted a baselines bill that excluded their Kalayaan claim in the Spratlys from their archipelagic claim and treated that group as a separate set of islands. This left some in the Philippines upset that their government had succumbed to Chinese pressure, a resentment that adds fuel to the nationalist frustrations with ongoing Chinese interference with Philippine efforts to perform surveys on Reed Bank.

In conclusion, the system of baselines established under UNCLOS was insufficient to prevent at least two key South China Sea states—Vietnam and China--from making excessive and unlawful maritime claims and was insufficient to eliminate friction between states. However, Vietnam, as will be demonstrated below, has much better overall compliance with the rules for maritime boundary delineation provided in UNCLOS than does China.

Exclusive Economic Zone. Turning to the resources in the South China Sea, perhaps the most important UNCLOS framework designed to achieve maritime security and stability is the regime of the exclusive economic zone (EEZ). The EEZ was designed to reduce disputes over the resources in the water column *and to the resources of the seabed* out to 200 nautical miles from the coastal state's baselines. UNCLOS gives the coastal state specified jurisdictional rights to manage, protect, and preserve the living and non-living resources in that zone. That the EEZ regime replaced the continental shelf regime to govern the seabed out to 200 nautical miles is sometimes an overlooked fact. Thus, UNCLOS continental shelf provisions have practical importance only for articulating the circumstances under which a state may claim continental shelf rights *beyond* 200 nautical miles—known as the extended continental shelf.

UNCLOS is quite clear that a state's jurisdictional claim over resources must be based on its coastal geography. China's expression of its maritime jurisdictional claim in the South China Sea as a U-shaped line of dashes without any direct or even indirect reference to a feature of its coastal geography—or even to its baselines, for that matter--is therefore in fundamental violation of international law and the norms of expected state behavior as articulated in the regime of maritime boundaries established by UNCLOS. *China's U-shaped claim therefore represents one of the two major sources of disputes and friction among South China Sea states*—the other being the disputes to sovereignty over the sea's islands as discussed above.

The specific meaning of China's U-shaped line claim eludes definition, which appears to be part of China's chosen state policy regarding this claim. Four alternative or perhaps overlapping explanations are expressed for the jurisdictional meaning of the line: to some it is an expression of Chinese sovereignty or sovereign rights, to others it expresses a zone of historic rights to administer the region, to others it is an expression of security interests, and finally, to some it expresses the zone within which China owns all the islands and whatever water space rights those islands can claim. Only the last explanation has any merit under UNCLOS, and even

that is undermined by China's claim in its domestic law that it has additional historic rights over its waters beyond those which current international law recognizes. Additionally, China stated in a letter to the United Nations Commission on the Limits of the Continental Shelf that the Nansha (Spratly) Islands are "fully entitled to [a] Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf."[ix] This claim to EEZ and continental shelf rights for the Spratly Islands also violated international law in that few if any of the islets, reefs and sandbars that comprise the Spratlys are entitled to such zones since they cannot support an indigenous human population or sustain economic activity of their own.

On the other hand, availing themselves of the process by which states may make continental shelf claims beyond 200 nautical miles, Vietnam and Malaysia have made public their exclusive economic zone claims in the South China Sea plus extended continental shelf rights there that are entirely normative in their alignment with the provisions of UNCLOS, except of course that Vietnam's EEZ begins too far seaward as a result of its improper baselines. The Philippines and Indonesia each also maintains a proper 200 nautical mile EEZ claim around its archipelagic baselines, which are geographically drawn. Unlike China, these four claimants to some or all of the Spratly Islands have refrained entirely from claiming an exclusive economic zone or an extended continental shelf to which these features are simply not entitled.

Thus, it should be clear that in addition to the struggle over sovereignty over the islands, the friction over fishing rights, and the competition for hydrocarbon resources should be added *a contest over the normative framework by which these disputes should be settled.* Should UNCLOS, as the widely accepted international regime developed to provide maritime stability in the face of competition for maritime resources, govern the settlement of these disputes? Or should the basis for dispute resolution be China's perspective on its historic entitlements and its increasing power to enforce them? As yet, the resource allocation provisions of UNCLOS as a regime to ensure maritime security and stability have not been successful in the South China Sea.

Navigational Rights. A third UNCLOS regime bears brief comment, since it relates to the category of disputes involving control over the waters of the South China Sea. During the negotiations that resulted in the final version of the convention, there was a tension between the legitimate interests of coastal states in protection and sustainable development of the living and non-living offshore resources on the one hand and on the other the high seas navigational freedoms that enable states to freely conduct commerce and to defend their security interests. The EEZ regime was crafted as a carefully balanced compromise between those two legitimate interests. It protected the resource rights by giving the sovereign state exclusive right to them and jurisdiction sufficient for their management, but not full sovereignty, which would have allowed coastal states to interfere with the navigational freedoms of other states as they employ naval power to pursue their security interests. Therefore, high seas freedoms of navigation, overflight, and other traditionally

lawful activities, including military freedoms, were specifically retained by all states in the UNCLOS jurisdictional framework of the EEZ and the continental shelf. That the United States and China struggle over this balance is a reflection of the failure of UNCLOS to meet its full potential as a mechanism of maritime stability concerning the balance of coastal state rights and international freedoms in the EEZ.

It is clear from the foregoing analysis that universal acceptance of the UNCLOS rule sets for drawing maritime jurisdictional boundaries that allocate resources rights and for international freedoms of navigation for military purposes has not been achieved. Signing treaties and conventions is not the same as employing their rules and norms. Sustained leadership will be required to strengthen the UNCLOS regime and to further encourage its universal application.

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

Because the normative framework provided by UNCLOS was insufficient to build maritime stability into relations in the South China Sea, the Association of Southeast Asian Nations (ASEAN) stepped in to try to provide a political framework for stability. During the late 1990s and into the beginning of the new millennium, ASEAN sought to reduce tension and to promote several of its founding principles through an Indonesian initiative. Specifically, ASEAN sought "to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region … and to accelerate the [region's] economic growth." The need for such a process was apparent after two decades of friction and even conflict in the South China Sea, punctuated most notably by the fighting between China and the Republic of Vietnam in the Paracels in 1974, the Fiery Cross Reef Incident between China and Vietnam in 1988 and finally by the Mischief reef Incident between China and the Philippines in 1995. In that same year, 1995, Vietnam signed the Treaty of Amity and Cooperation and thereby acceded to membership in ASEAN, thereby politically uniting Southeast Asia in opposition to what was widely perceived in Southeast Asia as dangerously disruptive Chinese behavior. China too turned a corner in 1995 and 1996 after finding itself subject to the disapproving gaze of a now-united group of Southeast Asian states and after its frustrations over the resolution of the Taiwan Strait Crisis with the United States. Circumstances were ripe for all parties to find a mechanism to bring stability to the South China Sea.

It took nearly seven years, but in 2002 the governments of the member states of ASEAN and China entered into the Declaration on the Conduct of Parties in the South China Sea (DOC). That agreement makes five basic declarations:

> it reaffirms the parties' commitment to international law, including UNCLOS;
> it commits the parties to explore ways to build trust and confidence among them, based on equality and mutual respect;
> it commits the parties to respect freedom of navigation and overflight in the South China Sea;

> it commits the parties to resolve territorial and jurisdictional disputes without the threat or use of force;
> and it commits parties to refrain from inhabiting presently uninhabited islands.[x]

Each declaration will be considered in order to determine to what degree this political framework was sufficient to provide stability.

UNCLOS. As demonstrated above, the commitment to abide by the provisions and norms of UNCLOS has proven a failure in both a legal and a political sense in that China's claim to jurisdiction in the South China Sea relies on its notion of historical rights rather than on the geographic framework provided by the convention. ASEAN has not made any more progress through political means in changing Chinese behavior on this point than has the United States in encouraging compliance with the regime of rules for jurisdiction at sea.

On the other hand, it should be noted that every act of state regarding the maritime domain by a member state of ASEAN in the past decade has been in general conformity with the provisions of UNCLOS. The Philippines in particular abandoned historic claims regarding its archipelagic waters in favor of the geography-based system mandated by UNCLOS. This is likely due, at least in part, to its desire to associate with the principles and norms of ASEAN in order to benefit from political unity that such conformity promotes. Thus, at least as regards the decisions of the Philippines, the DOC has been successful in promoting the norms of UNCLOS as the basis for making jurisdictional claims, rather than historical claims.

Freedom of navigation. Concerning the DOC commitment to uphold the international prerogatives of freedom of navigation in the South China Sea there is an interesting dynamic underway in Southeast Asia. Even as the Philippines, Vietnam, Singapore and others seek to draw American naval power more closely to the region, there is a noticeable tendency to recalculate the balance of coastal state rights and interests in the EEZ in ways that would allow coastal states to require their consent before a foreign power could undertake exercises or other operations in their jurisdictional waters. While this is of significant concern to the United States—as it undermines the primary source of American regional power--it appears to be of less concern to many Southeast Asians more generally. This is witnessed by the statement of understanding appended to Thailand's notice of accession to UNCLOS, which stated:

> The Government of the Kingdom of Thailand understands that, in the exclusive economic zone, enjoyment of the freedom of navigation in accordance with relevant provisions of the Convention excludes any non-peaceful use without the consent of the coastal State, in particular, *military exercises or other activities* which may affect the rights *or interests* of the coastal State….[xi]

Thailand joins only Malaysia and China among regional states as having made such a public declaration, but private conversations indicate that the sentiment may have even more general acceptance among Southeast Asians. What is clear from those conversations and from the behavior of ASEAN states is that the object of current concern is not American naval power, but growing Chinese naval capabilities. In other words, if the current trends manifest themselves into growing regional restrictions on naval operations, while the United States continues to exercise freedom of navigation throughout the South China Sea for all military purposes--except where it encounters frictions with China--in the disputed waters of the South China Sea, China may begin experiencing the same treatment at the hands of its neighbors that it gives the United States Navy. That is not likely to be a stabilizing development.

Confidence Building Measures. The commitment in the DOC to undertake confidence-building measures can point as one of its successes to the Sino-Vietnamese Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Beibu Gulf [Gulf of Tonkin Agreement], which went into effect in June 2004. That agreement delineated the maritime boundary in the Gulf between China and Vietnam, which remains China's only delineated maritime boundary anywhere, and established a joint fisheries zone under a companion agreement. The fisheries zone covers most of the productive fishing grounds in the region and lasts until 2019, after which much of the space reverts to Vietnamese control.[xii] The agreement provides for joint fisheries patrols, which occasionally have been undertaken, if perhaps without enthusiasm from either side.

The joint submission to the Commission on the Limits of the Continental Shelf of proposed maritime boundaries by Vietnam and Malaysia in the South China Sea should also be noted as indication of bilateral confidence building between the two states. That the Philippines and Brunei have so far been unable to join them may reflect the degree of development of their maritime law. Once additional progress is completed on their national legislation, additional cooperation among the four ASEAN states in their international submissions may become evident. This would certainly reflect the ASEAN preference for consensus. It may also provide negotiating leverage with China, since China would clearly become the sole remaining claimant that bases its claims on grounds other than the agreed UNCLOS normative framework. As such, the initiation of a multilateral confidence building process resulting in a common boundary agreement among ASEAN claimants based on the provisions of UNCLOS should be encouraged as a mechanism to encourage China to do the same.

China has, of course, insisted on bilateral negotiations between itself and other claimant states. Perhaps this preference could be respected if bilateral negotiations followed the completion of a multilateral process undertaken by rest of the claimants--Vietnam, Malaysia, the Philippines, Brunei and perhaps Indonesia to deal with the region to the northeast of Natuna Island--to come to a common

understanding on their South China Sea boundaries as between each other. One of the complexities that currently make bilateral negotiations so difficult is that one party's agreement with China affects its ability to negotiate with all other claimants. A two-step process based on advance agreement between ASEAN states, followed by bilateral negotiations with China might allow for a region-wide framework to be achieved.

Freezing Control of Islands and Refraining from Force. One of the most effective aspects of the DOC has been that it prevented changes in the status quo of occupation for sixteen years, since the Mischief Reef Incident that spurred parties to change course in the first place. China's emplacement of markers on Amy Douglas Bank and Boxall Reef was so provocative because it signaled a clear breakdown of this most important and stabilizing norm. Parties also acted with military restraint because the agreement not to threaten or use force seemed to include an understanding that the region would not be militarized. Even that agreement, however, appears to be breaking down under the current strain. Although most Chinese view their country as the only one to have acted with restraint, while the other claimants took the oceans resources, the truth is more nuanced. China may not have militarized the South China Sea disputes, but it certainly brought its other substantial state maritime capacities to bear in the region, including the vessels of its Fisheries Law Enforcement Command and the Maritime Surveillance Service.

Conclusion

As it did in 1995 and 1996, Indonesia, as ASEAN Chair for 2011, has actively sought to return the parties in the South China Sea to more peaceful approaches to dispute resolution, including sponsorship of dialogue and discussions. The United States has called publicly for the parties to make progress on an implementing agreement for the DOC or on a full-fledged Code of Conduct. The Philippines proposed a Zone of Freedom, and Cooperation. There is no shortage of good aspirations. There appears to be a shortage of political will to find compromises and all sides are using naval power to send signals of resolve. If parties are to stave off conflict, the answer lies not in the win-lose propositions of sovereignty and jurisdiction, but in finding answers in some of the examples of win-win frameworks that would regionalize the territory and waters of the South China Sea, allow common development of the living and non-living resources, and provide for shared enforcement of laws. The alternative is as it ever has been--that the strong will do what they can and the weak will do what they must.

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[i] See, e.g., Joseph Y. S. Cheng, "Sino-Vietnamese Relations in the Early Twenty-First Century," *Asian Survey*, Vol. 51, No. 2, March/April 2011, pp. 379-405.
[ii] See, e.g., Lyle J. Goldstein, "Resetting the US-China Security Relationship," *Survival*, Vol. 53, No. 2, April-May 2011, pp. 89-116.

[iii] Robert Kagan, The Perils of Wishful Thinking, The American Interest On-line, January-February 2010, available at http://www.the-american-interest.com/article.cfm?piece=759.
[iv] Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review*, Autumn 2011 (forthcoming).
[v] "Vietnam Reasserts Sovereignty Over Archipelagoes," *Thanh Nien News*, May 7, 2011; "China Reasserts Sovereignty Over Spratly Islands," *Jakarta Globe*, March 8, 2011. Taiwan participation in recent South China Sea dynamics has been nearly entirely absent, despite the coincidence of its claims with those of the mainland.
[vi] Letter from the Permanent Mission of the Republic of the Philippines to the Secretary General of the United Nations, 11-00494, No. 000228, May 7, 2011; "PH Protests China's 9-Dash Line Claim Over Spratlys," *VERA Files*, April 13, 2011.
[vii] "Manila's Claim in Spratlys Within West Philippine Sea," *Inquirer News*, June 6, 2011.
[viii] "Phl Removes Foreign Markers in Spratlys," *Philippine Star*, June 16, 2011.
[ix] Letter from the Permanent Mission of the People's Republic of China to the Secretary General of the United Nations, 14 April 2011.
[x] Declaration on the Conduct of the Parties in the South China Sea, available at http://www.aseansec.org/13163.htm.
[xi] Declaration of the Kingdom of Thailand Upon Ratification of the United Nations Convention on the Law of the Sea, May 25, 2011.
[xii] Zou Keyuan, "The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin," *Ocean Development and International Law*, Volume 36 (2005) pp., 13-24 2005.