# COOPERATION FOR REGIONAL SECURITY AND DEVELOPMENT IN THE SOUTH CHINA SEA

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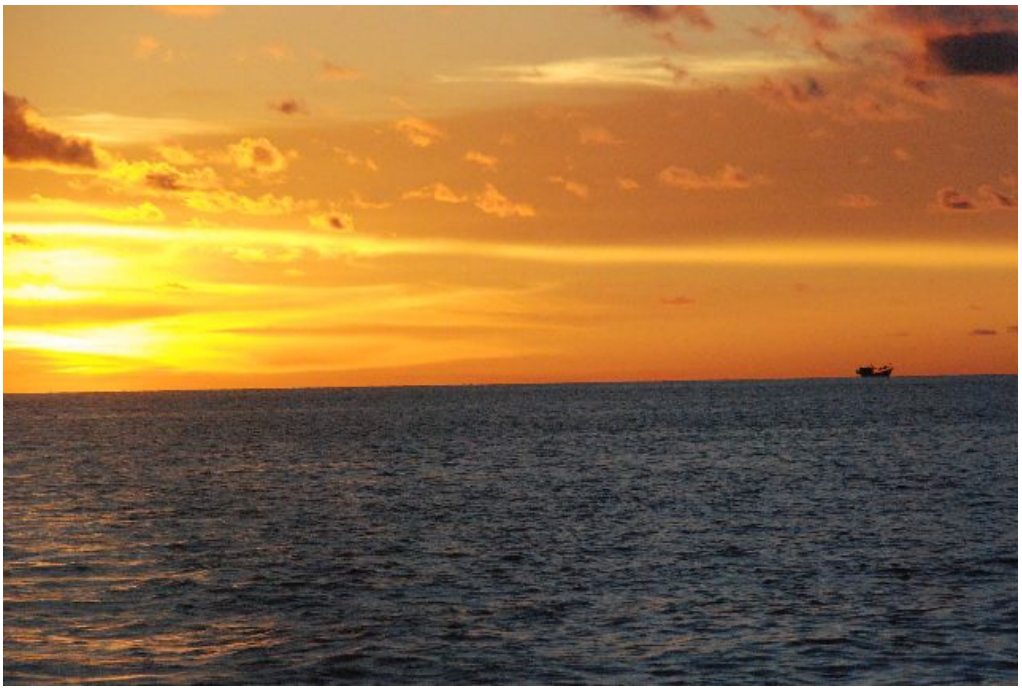

**Abstract**

*The clashing interests of the claimants to jurisdiction over the land features in and the waters of the South China Sea make it highly unlikely for their conflicting claims to be resolved either through negotiations or through adjudication by an international body. However, tensions, instability, volatility and the likelihood of conflict could be reduced if each claimant were to bring its position closer to compliance with the United Nations Convention on the Law of the Sea and if all of them were to arrive at further agreement on each of the elements of the Declaration on the Conduct of Parties in the South China Sea that the foreign ministers of the Association of Southeast Asian Nations (ASEAN) and*

*China's special envoy issued in November 2002. It would also help if an understanding could be reached between major naval powers and coastal states on what could and could not be done by foreign states and their vessels in the exclusive economic zones of coastal states. So would the general maintenance and improvement of the overall relations between China and ASEAN and its members and between China and the United States.*

**Introduction**

The subject of this paper is "Cooperation for Security and Development in the South China Sea". We all want security. We all want development. Particularly in the South China Sea, where conflicting claims to land features and water areas abound, which much of world trade traverses, and which is considered as strategic by several capitals, nations, especially the claimant and littoral states, need to cooperate with one another in order to achieve both security and development. In that area, the disputes over claims to land features and seas, the uncertain and ambiguous definitions of conflicting claims to vast expanses of sea, and the potential of the ocean and the seabed to yield immense amounts of food and minerals needed by the region's enormous population bear in them potential sources of instability, mutual suspicion and even hostile confrontation.

The conflicting claims to sovereign jurisdiction over land features are unlikely to be definitively resolved anytime soon. The multiple, as opposed to bilateral, nature of the claims to land features and their seas make such a resolution infinitely more complex – and unlikely – than the territorial disputes normally submitted, with the consent of both parties, to bodies regarded as neutral, like the International Court of Justice, for adjudication. Indeed, China takes the position that it has "indisputable sovereignty" over the South China Sea, although the extent of its claims over the waters remains unclear. It is thus extremely unlikely for China to agree to submit any dispute over claims to sovereignty to any international judicial body.

***Clashing Interests***

Perhaps more fundamentally, the claimants – and not only the claimants but others as well – have strategic interests in the South China Sea. Many of those interests are in conflict, even as most of them are deemed "vital" or "strategic" or "core". In this light, and as is to be expected, not all claimants or major powers have demonstrated any willingness to compromise on those interests.

There are the claimants, which consider their respective claims to have a strategic character and thus cannot be compromised. There are the littoral states, most of them members of the Association of Southeast Asian Nations (ASEAN). Some of the littoral states are claimants, others not, but all, including ASEAN as a group, have a vital interest in the peace and stability of the region. There are those nations that depend vitally on freedom of navigation on and overflight over the South China Sea for the conduct of their international trade. Among them are East Asian countries – Japan, Korea, Taiwan, Australia, New Zealand, Hong Kong and the Chinese mainland, as well as most Southeast Asian countries. Also included are those that trade heavily with this part of the world, among them the oil-exporting countries of the Middle East and elsewhere, India, several European countries, and the United States.

All have a stake in keeping the sea lines of communication and flight paths open and free. All have an interest in the peace and stability of the region as a whole. Nevertheless, the strategic and security interests of the claimants and others are in apparently irreconcilable conflict. China has an interest in preventing pressure from being exerted from its southeast, that is, from the South China Sea, and in warding off the potential for the "south sea" being used to encircle or contain it. At the same time, it has a growing interest in freedom of navigation and overflight as a principle for the sake of its immense and rapidly expanding foreign trade and need for access to raw and other materials from abroad. Taipei cannot be seen as being softer than Beijing in defending China's territorial integrity. At the same time, Taiwan, too, has a clear interest in freedom of navigation and overflight. The U. S. feels the need to know what is going on in China, particularly in terms of the latter's military development, while having the freedom to

ship or fly its traded goods across the South China Sea and to maintain a military presence in the area. Japan has vital commercial and security interests in peace and stability and in freedom of navigation and overflight in the South China Sea.

For Kuala Lumpur, the South China Sea not only divides West and East Malaysia from each other; it also links the two wings of the country together. It invokes national security and geographic proximity as part of the rationale for its claims. Brunei Darussalam projects its continental shelf, exclusive economic zone and a so-called fisheries zone to the maximum breadth allowed by the United Nations Convention on the Law of the Sea (UNCLOS), making sure that it has access to the resources said to abound in that part of the ocean and its seabed. The Philippines feels itself to be most vulnerable to attack from its western flank and thus seeks to push its western boundary as far into the South China Sea as possible. Chronically suffering from food and energy shortages, Manila, too, seems to be attracted to the potential riches of the South China Sea and its seabed. If it did not maintain a foothold on the South China Sea, Vietnam would find itself almost completely surrounded by China, a circumstance that Hanoi could not tolerate.

Because of the strategic nature of the various claims to some or all of the land features and waters of the South China Sea, and therefore the apparently irreconcilable character of the claimants' positions, it is extremely unlikely that the conflicts between and among claims can be resolved anytime soon, if at all. It is also most unlikely, although not absolutely impossible, for the parties to these disputes to agree to their adjudication by international bodies, such an agreement being a pre-condition for any international body even to consider a dispute. It is highly improbable that the parties will be willing to make the necessary compromises in order to negotiate a settlement acceptable to all sides. At the same time, the UNCLOS leaves enough room for uncertainty and ambiguity for a settlement of the conflicting maritime claims to be similarly unlikely and improbable.

In this light, are China, the other claimants, ASEAN and its members, and others doomed to live indefinitely with a South China Sea that is a flashpoint for conflict or, at least, a source of instability and mutual suspicion? If not, what can be done? What can be done to mitigate the potential for conflict, overcome mutual suspicions to some extent, reduce volatility and instability, encourage cooperation, ensure untrammeled trade, and thus promote security and development in the South China Sea area? This paper suggests that these relatively modest aims be pursued pending the resolution of the disputes over sovereignty and jurisdiction. Indeed, the pursuit of these goals would make somewhat easier the difficult – and currently unlikely – task of resolving those disputes, as well as less dangerous to all concerned.

***Complying with UNCLOS***

The UNCLOS does not provide for the settlement of conflicting jurisdictional claims. These have to be resolved through negotiations between or among the claimants or through international adjudication. As noted above, neither conclusive negotiation nor a resort to international adjudication is likely anytime soon, if ever.

However, the claimants to maritime jurisdiction in the South China Sea can bring those claims closer to the provisions of the UNCLOS. By basing those claims on UNCLOS provisions, the claimants, all of which are parties to the convention, would bring a greater measure of clarity to their respective claims. They would be maintaining their claims on the basis of the rule of international law. They would be approaching the complicated situation in the South China Sea on the strength of common assumptions and within the same sets of parameters and thus render the situation somewhat less complex. Since early 2009, Brunei Darussalam, Malaysia, the Philippines and Vietnam have been taking measures to make their respective claims more consistent with UNCLOS requirements.

In December 1979, the Malaysian government published a map showing its claims to waters and continental shelf in the South China Sea. It included parts of the areas

claimed by China, Vietnam and the Philippines. Its projected continental shelf and exclusive economic zone came to overlap with the continental shelf and exclusive fishing zone that Brunei Darussalam claimed after it acquired its independence in 1984.

Brunei Darussalam and Malaysia conducted negotiations, at least since 2003, on their overlapping claims. The dispute seems to have been resolved during the visit of Malaysia's then Prime Minister, Abdullah Ahmad Badawi, to Brunei Darussalam in March 2009. At the end of that visit, the Malaysian leader and Brunei's ruler, Sultan Hassanal Bolkiah, issued a joint press statement that said:

> Both leaders noted the agreement of their respective governments on the key elements contained in the Exchange of Letters, which included the final delimitation of maritime boundaries between Brunei Darussalam and Malaysia, the establishment of Commercial Arrangement Area (CAA) in oil and gas, the modalities for the final demarcation of the land boundary between Brunei Darussalam and Malaysia and unsuspendable rights of maritime access for nationals and residents of Malaysia across Brunei's maritime zones en route to and from their destination in Sarawak, Malaysia provided that Brunei's laws and regulations are observed.

The letters said to have been exchanged had not been made public. However, after he had stepped down from the country's leadership, Abdullah Badawi stated on the Malaysian foreign ministry's website:

> Regarding the maritime area, Malaysia and Brunei also agreed to establish a final and permanent sea boundary. This agreement serves to settle certain overlapping claims which existed in the past which included the area of the concession blocks known before as Block L and Block M. Sovereign rights to the resources in this area now belongs to Brunei. However for this area, the agreement includes a commercial arrangement under which Malaysia will be allowed to participate on a commercial basis to jointly

> develop the oil and gas resources in this area for a period of 40 years. The financial and operational modalities for giving effect to this arrangement will be further discussed by the two sides. This means that in so far as the oil and gas resources are concerned, the agreement is not a loss for Malaysia.[1]

Malaysia's foreign ministry issued on 3 May 2010 a statement on the March 2009 agreement, which read in part:

> The key elements are the final delimitation of maritime boundaries between Malaysia and Brunei Darussalam, the establishment of a Commercial Arrangement Area (CAA) for oil and gas, the modalities for the final demarcation of the land boundary between Malaysia and Brunei Darussalam, and unsuspendable rights of maritime access for nationals and residents of Malaysia across Brunei Darussalam's maritime zones.
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> With regard to the maritime areas, the Exchange of Letters established the final delimitation of territorial sea, continental shelf and Exclusive Economic Zone of both States. Malaysia's oil concession Blocks L and M which coincided with Brunei Darussalam's Blocks J and K are recognised under the Exchange of Letters as being situated within Brunei Darussalam's maritime areas, over which Brunei Darussalam is entitled to exercise sovereign rights under the relevant provisions of the 1982 UNCLOS. The establishment of the CAA incorporating these Blocks provides for a sharing of revenues from the exploitation of oil and gas in the CAA between the two States.[2]

In March 2009, President Gloria Macapagal-Arroyo signed into law a bill passed by the Philippine Congress revising the baselines of the Philippine archipelago.

[1] Statement by Tun Abdullah Ahmad Badawi on the Exchange of Letters Between Malaysia and Brunei Darussalam, Dated 16 March 2009 (http://www.kln.gov.my/web/guest/).

[2] Statement of the Ministry of Foreign Affairs, Malaysia, 3 May 2010.

Significantly, the new law, which emanated from the Department of Foreign Affairs through the Philippine Senate, also declared a "regime of islands" for the land features in the Spratlys area that the Philippines claims and for Scarborough Shoal and the land features related to it, which are also in the South China Sea but outside the Spratlys group. Predictably, Beijing and Hanoi protested the legislation, which continued to lay claim to land features that both of them also claimed. However, the new law substantially reduced the maritime expanse claimed by the Philippines. Previously, Manila had laid claim to an expanse of water amounting to more than 70,000 square nautical miles. The enactment of the new law was an evident attempt to make the country's maritime claims in the disputed area more consistent with the provisions of the UNCLOS. The new law specifically cites Article 121 of the UNCLOS as the basis for its declaration of a "regime of islands" for the land features in the South China Sea that it claimed.[3]

According to Article 121 of the UNCLOS (Regime of Islands), an "island is a naturally formed area of land, surrounded by water, which is above water at high tide". An island thus defined can generate a continental shelf and an exclusive economic zone of as wide as 200 nautical miles from the country's baselines, as well as a territorial sea of up to a breadth of 12 miles and a contiguous zone as broad as 24 miles from the baselines. On the other hand, according to the same article, rocks "which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf".[4]

At the same time, the Philippines has preserved for itself a degree of ambiguity by not indicating which of the land features that it claims are islands as defined in Article 121, which can generate continental shelves and exclusive economic zones, and which are rocks, which cannot.

[3] Document in the author's possession.

[4] UN Convention on the Law of the Sea, Part VIII, Article 121 (http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm).

On 6 May 2009, Malaysia and Vietnam sent a "joint submission" to the UN Commission on the Limits of the Continental Shelf as required by the UNCLOS. In a commentary for the S. Rajaratnam School of International Studies at the Nanyang Technological University in Singapore, Robert Beckman, Director of the Centre for International Law and associate professor of law at the National University of Singapore, points out:

> The joint submission of Malaysia and Vietnam suggests that they have taken the position that sovereign rights to the resources of the South China Sea should be determined by principles governing the continental shelf as measured from the mainland coast. By not measuring their continental shelves or EEZs from any of the islands which they claim in the South China Sea, they have in effect taken the position that no islands in the South China Sea should be entitled to more than a 12nm territorial sea – the maximum permitted by UNCLOS.[5]

The next day, on 7 May 2009, China protested the Malaysia-Vietnam submission, asserting its "indisputable sovereignty over the islands in the South China Sea and the adjacent waters". A map showing China's nine interrupted lines around the South China Sea was attached to the protest note.[6] The Chinese map bearing those lines was first issued by the Nationalist regime in China in 1947. With no coordinates to pinpoint their exact locations, the interrupted lines encompass the entire South China Sea without, even after the UNCLOS came into force with respect to China, indicating the nature of the waters being claimed. Hanoi immediately rejected China's assertion and reiterated its own claim to the Paracels and the Spratlys.[7] In a separate note, Malaysia then stressed

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[5] Robert Beckman: "South China Sea: Worsening Dispute or Growing Clarity in Claims?" in *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies, 16 August 2010), page 2.

[6] http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009 re_mys_vnm_e.pdf.

[7] http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_chn_2009 re_mys_vnm_3.pdf.

that its submission with Vietnam had been done "without prejudice" to the positions of other states that had overlapping claims in the South China Sea.[8]

(On 8 July 2010, Indonesia, which does not claim any of the land features or waters in dispute in the South China Sea, addressed a third-person note to the UN Secretary-General, pointing out that the Chinese map bearing the nine bars that had been submitted to the UN Commission "clearly lacks international legal basis"[9], a charge that Indonesia had been making for years.)

Thus, the Southeast Asian claimants have moved somewhat closer to making their respective claims consistent with the pertinent UNCLOS provisions. China, on the other hand, has maintained the official character of the nine bars without defining the nature of the waters that they encompass. China has not gone beyond indicating that those waters are "adjacent" or "relevant" to the land features of the South China Sea, over which it has "indisputable sovereignty". Like the other claimants, Beijing has also refrained from specifying which of those land features are islands in the UNCLOS sense and which are rocks. In any case, UNCLOS provisions cannot possibly be consistent with claims to maritime areas as expansive as the one encompassed by the nine bars.

In a 16 September 2010 "commentary" for the Nanyang Technological University's S. Rajaratnam School of International Studies, published in the *Straits Times* of Singapore on 25 September, Beckman suggests ten ways in which China could "clarify" its claims and, by implication, bring those claims closer to conformity with the UNCLOS. These ways include claiming sovereignty over all the islands within the U-shaped nine bars on Chinese maps and an exclusive economic zone of 200 nautical miles only from such of those islands as can sustain human habitation or economic life, as Article 121 of the UNCLOS defines them. In the context of these claims, China could assure all states of their right in the Chinese EEZ, in accordance with the UNCLOS, to

[8] http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_re_chn_2009 re_mys_vnm_e.pdf.

[9] http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010 re_mys_vnm_e.pdf.

freedom of navigation and overflight and to lay submarine cables and pipelines. China could explicitly point out that overlapping sovereignty claims to the islands or rights to the EEZ cannot be referred to any international tribunal without the consent of China or of other claimants. Much less can the UN Commission on the Limits of the Continental Shelf act on submissions involving such overlaps. Because of these, and because of what Beckman calls "the highly sensitive nature of the sovereignty claims", a resolution of the overlapping claims to sovereignty over the South China Sea islands or to EEZs in "the foreseeable future" is highly unlikely.[10]

In my view, in addition to China moving its maritime claim in the South China Sea towards compliance with the provisions of the UNCLOS, the next step in the process would be for each claimant to indicate which of the land features that it claims are islands and which are mere rocks.

While the Philippines, in invoking Article 121 in its new baselines law, seems to have come closest to making, albeit by implication, the distinction between islands and rocks, a distinction that is crucial to claims to maritime jurisdiction, neither the Philippines nor any of the other claimants has done so in a clear, unambiguous and concrete way with specific reference to its claims. None of them has designated which of the land features that it claims are islands in the UNCLOS sense and which are rocks as defined by Article 121. A measure of ambiguity may be good as a negotiating tactic, but a bit more clarity, simultaneously arrived at, might help diminish uncertainty in the South China Sea and, therefore, the volatility of the situation there.

At the same time, irony and even cynicism can arise from the U. S.' repeated invocation of international law and, specifically, the UNCLOS, when Washington has not ratified the 1982 convention and thus is still not a party to it. American officials have affirmed that the administration intends to submit the treaty to the U. S. Senate for its

[10] Robert Beckman: "South China Sea: How China Could Clarify its Claims" in *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies, 16 September 2010); also in the *Straits Times,* Singapore, 25 September 2010, page A36.

"advice and consent", a necessary condition for the U. S. to become party to that international agreement. However, it has not done so to this day. Washington would have a better right to invoke the UNCLOS if the U. S. were a party to it.

***Complying with the ASEAN-China Declaration on Conduct***

Another important step would be for ASEAN and China to flesh out their common commitments in the Declaration on the Conduct of Parties in the South China Sea that the ten ASEAN foreign ministers and China's special envoy, Wang Yi, signed in Phnom Penh in November 2002[11]. They did so after much arduous negotiation not only between China and ASEAN but among the Southeast Asian claimants as well.

The Declaration states, "The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea." The mention of "sovereign states directly concerned", evidently insisted upon by China, could be construed as keeping out the direct involvement of the United States, Japan or any other non-claimant, including ASEAN as a group, in any negotiations on the South China Sea. The stress on "sovereign states" is manifestly a reference to Beijing's insistence on the non-participation of Taiwan in those negotiations.

The Declaration commits the signatories to "the freedom of navigation in and overflight above the South China Sea" and to the exercise of "self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including… refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features". Evidently with the Mischief Reef events in mind, the element of "no new occupations" was a fundamental part of the Philippines' position.

[11] Declaration on the Conduct of Parties in the South China Sea (http://www.aseansec.org/13163.htm).

In several places, the Declaration calls for respect for "the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea". It also provides for confidence-building measures and cooperative activities in several specified areas.

Thus, the Declaration pledges the claimants to the peaceful settlement of their territorial and jurisdictional disputes through consultations and negotiations without the participation of Taiwan or of non-claimants; self-restraint; no new occupations; the freedom of navigation and overflight; respect for international law, including the 1982 UNCLOS; and confidence-building measures and cooperative activities.

In 1992, in Manila, the then-six ASEAN foreign ministers had adopted the ASEAN Declaration on the South China Sea, which contained the principles of the peaceful settlement of disputes "pertaining to the South China Sea", self-restraint, and cooperation on certain specified transnational problems. The then Chinese foreign minister, Qian Qichen, who was in Manila, together with his Russian counterpart, as "guest" of the ASEAN chairman, was invited to sign the Declaration. Presumably after consulting Beijing, Qian declined to commit China formally to the Declaration on the ground that Beijing had not been involved in its drafting. However, Qian affirmed that China adhered to the Declaration's principles.[12]

Since the issuance of the 2002 Declaration on the Conduct of Parties, no serious violence has taken place in the assertion of sovereignty or jurisdictional claims to land features or waters in the South China Sea; neither have consultations or negotiations on those claims. There apparently have been no new occupations in the Spratlys area, probably because there are no longer any uninhabited islands left to occupy. The Declaration commits the parties to the freedom of navigation and overflight; yet, by affirming its "indisputable sovereignty" over undefined expanses of water in the South China Sea, China seems to reserve to itself the right to curtail that freedom in case of an

[12] http://www.aseansec.org/1196.htm.

alleged violation of its sovereignty. The Southeast Asian claimants seem to be moving towards the alignment of their maritime claims with UNCLOS requirements, although not totally and unambiguously so, and China leaves undefined the nature of the waters encompassed by the nine bars on its maps and the meaning and the coordinates of those lines. The conduct of confidence-building measures and cooperative activities in the South China Sea has been sporadic.

Each of the claimants ought to indicate at some point which of the land features in the South China Sea it regards as islands in the UNCLOS sense and which are rocks. Apart from this, ASEAN and China need to resolve certain issues to which the Declaration on the Conduct of Parties gives rise. One of them is the question of whether the call in the Declaration for "self-restraint" and its prohibition of new occupations, of "inhabiting on the presently uninhabited" (sic) land features in the South China Sea, would include significant new construction or the fortification of or improvement on facilities already installed in occupied territory. As it is, all claimants that maintain a presence in the disputed land features – except the Philippines, apparently not for want of intention but for lack of resources – have beefed up their facilities on the land features that they occupy.

Another question: would acts of intimidation and shows of military force violate the Declaration's call for self-restraint? Still another: how can assurances of freedom of navigation on and overflight above the South China Sea be made iron-clad to the satisfaction of those that trade extensively across that body of water? How can China's claim to "indisputable sovereignty" over an undetermined expanse of the South China Sea be reconciled with such iron-clad guarantees? Yet another question: why do not the claimants undertake more regularly confidence-building measures and other cooperative activities, as they have pledged to do in the Declaration? Finally: when will the "Parties concerned . . . resolve their territorial and jurisdictional disputes . . . through friendly consultations and negotiations . . . in accordance with universally recognized principles of

international law, including the 1982 UN Convention on the Law of the Sea", as the Declaration requires?

In the light of these unanswered questions, there seems to be a need for ASEAN and China to sit down together again – and again – in order to give further flesh to the Declaration on the Conduct of Parties and clarify the issues raised and the questions begged by the terms of the Declaration.

***Improving US-PRC, ASEAN-PRC Relations***

At the same time, it would help if China and the United States could consult and come to an agreement on what is and is not allowed in the exclusive economic zone of a coastal state. This would help in avoiding situations that raised tensions in the area, like the incident involving the United States vessel, the USNS *Impeccable*, in March 2009. Delivered to the U. S. Navy in March 2001, the *Impeccable*, one of five so-called Ocean Surveillance Ships in the Navy's Military Sealift Command, was built to tow a Surveillance Towed Array Sensor System, which is meant to detect and track "undersea threats", including mines and torpedoes – and submarines. On 8 March 2009, five Chinese vessels, some military, others civilian, "harassed" – the term used by a spokesman of the U. S. Department of Defense – the *Impeccable* and drove it away.

As acknowledged by U. S. officials, this incident took place 75 miles (120 kilometers) south of Hainan, the main island of the province of the same name in southern China (a province that includes the Paracels, the Spratlys and Macclesfield Bank), well outside China's territorial sea as measured from Hainan's coast but well within its 200-mile exclusive economic zone. Hainan is said to be the location of a major submarine base. The EEZ is considered as part of the high seas, and the U. S. insisted that the activities conducted by the *Impeccable* were well within its rights. China, in turn, charged that "the U.S. claims are gravely in contravention of the facts and confuse black and

white and they are totally unacceptable to China". The spokesman of China's foreign ministry stressed that the *Impeccable* had broken both international and Chinese law. [13]

Article 56 of the UNCLOS bestows on the coastal state sovereign rights in the EEZ "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds". It also assigns to the coastal state jurisdiction over, among other things, marine scientific research, which the Chinese accused the *Impeccable* of conducting.[14]

On the other hand, Article 58 of the UNCLOS states:

> In the exclusive economic zone, all States . . . enjoy, subject to the relevant provisions of this Convention, the freedoms . . . of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.
>
> In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.[15]

According to this article, both China and the U. S. could be right. Clearly, however, there are not only conflicting interpretations here but also, relatedly and more

[13] http://news.xinhuanet.com/english/2009-03/10/content_10983647.htm.

[14] http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

[15] Ibid.

importantly, a clash of interests between China and the U. S. The chances of similar incidents, which tend to raise tensions and not contribute to confidence-building, would be diminished if China and the U. S. were to reach an understanding on what activities are permissible and what are not that each might conduct in the other's exclusive economic zone.

More broadly, steady improvements in the overall relations between China and the United States would help. So would closer understanding and relations in general between China on the one hand and, on the other hand, ASEAN as a group and the Southeast Asian claimants to land and water in the South China Sea. Such helpful improvements would promote peace and stability in the region of the South China Sea, which would be in the interest of all./.

**Author's biography**

***Rodolfo C. Severino*** is the head of the ASEAN Studies Centre at the Institute of Southeast Asian Studies in Singapore and a frequent speaker at international conferences in Asia and Europe. Having been Secretary-General of the Association of Southeast Asian Nations from 1998 to 2002, he has completed a book, entitled *Southeast Asia in Search of an ASEAN Community* and published by ISEAS, on issues facing ASEAN, including the economic, security and other challenges confronting the region. He has produced a book on ASEAN in ISEAS' Southeast Asia Background Series and one on the ASEAN Regional Forum. His views on ASEAN and Southeast Asia have also been published in *ASEAN Today and Tomorrow*, a compilation of his speeches and other statements. Severino is currently working on a book on the Philippine national territory. He has co-edited two books: *Whither the Philippines in the 21st Century?* and *Southeast Asia in a New Era*, which is intended for pre-university students. He writes articles for journals and for the press. Before assuming the position of ASEAN Secretary-General, Severino was Undersecretary of Foreign Affairs of the Philippines, the culmination of 32 years in the Philippine Foreign Service. He twice served as ASEAN Senior Official for the Philippines and is one of the Philippines' Experts and Eminent Persons for the

ASEAN Regional Forum. Severino has a Bachelor of Arts degree in the humanities from the Ateneo de Manila and a Master of Arts degree in international relations from the Johns Hopkins University School of Advanced International Studies. He is on the Advisory Board of The Fletcher Forum of World Affairs, the journal of the Fletcher School of Tufts University, and on the International Advisory Board of Asia Society.