

**The Internationalization of the South China Sea:
Conflict prevention and management**

Leszek Buszynski

Visiting Fellow, Strategic and Defence Studies Centre
The Australian National University
Canberra ACT 0200
Australia
Leszekbuszynski@yahoo.co.uk

The Third International Workshop
"The South China Sea: Cooperation for Regional Security and Development"
Diplomatic Academy of Vietnam Vietnam Lawyers Association
3-5 November, 2011, Hanoi, Vietnam

Introduction

The South China Sea issue began as a territorial dispute over the sovereignty of the islands and sea territory involving China and five ASEAN countries, Vietnam, the Philippines, Malaysia, Brunei and Indonesia. Both China and Vietnam claim the entire area and the islands within while the Philippines, Malaysia and Brunei have laid claims to contiguous areas based on EEZs and continental shelves and first discovery. Had it been just a territorial issue it could have been resolved in some way as a product of Chinese efforts to reach out to ASEAN and to forge stronger ties with the region. Later the issue involved access to the oil and gas reserves of the sea which became critical as global demand for energy rose and claimants devised plans to exploit the hydrocarbon reserves of the area. Disputes erupted over the competing claims, particularly between China and Vietnam, which at times threatened to escalate. Claims to energy resources need not result in conflict, however, and can be managed on the basis of joint or multilateral development for which there are various precedents and models though none quite as complicated as would be required for the South China Sea. Another factor has exacerbated the situation since 2010 which makes it more difficult to resolve or manage according to the approaches that have previously been discussed. The issue has gone beyond territorial claims and their resolution and has also eclipsed the concern over access to energy resources. The South China Sea is steadily becoming a issue for China's rivalry with the US which increasingly shapes its attitudes and policies. It is becoming linked with wider strategic issues relating to China's naval strategy as it develops a power projection capability to protect its far flung sea lanes to the Middle East. It is also becoming an issue for America's forward presence in the Western Pacific and its alliance relationships within the region. What is required at this stage is a multilateral agreement on measures to prevent minor incidents from escalating into conflict pending a resolution of the conflicting claims. This agreement should include the two major protagonists, the US and China as well as the ASEAN claimants.

The evolution of the South China Sea dispute

The South China Sea began as a dispute over maritime claims. Vietnam, Malaysia and the Philippines have laid claims to the area and were able to occupy islands which China could not, constrained as it was by the US and Soviet navies

during the Cold War. Two principles govern the claims both which work against the Chinese claim to the entire area. One is "effective occupation" of islands, a precedent which was laid down by the Permanent Court of Arbitration in the Island of Palmas case in April 1928.¹ Effective occupation entails an ability and intention to exercise continuous and uninterrupted jurisdiction which is distinguished from conquest. The doctrine of effective occupation goes against Chinese interests in the Spratly Islands though not in the Paracels, since China cannot demonstrate continuous and uninterrupted jurisdiction over the area, though it can do so for the nine islands it has occupied since 1988-92. The second is UNCLOS which lays down the rules to decide claims to resources based on EEZs and continental shelves. UNCLOS does not support the Chinese claim which goes beyond its EEZs or continental shelf so China has insisted that historical rights should be accepted. The problem is that claims based on history do not carry much weight in international law and from the Chinese perspective international law downgrades China's ancestral heritage and is a source of resentment. The Chinese attitude is that their claim predates UNCLOS and that China is not "bound by it" in this situation. Some Chinese officials argue that the inconsistencies within UNCLOS would allow China to assert its historical claims in any case.² To assert those claims in a situation where the complexity of international law may not support them China has resorted to constant diplomatic pressure to achieve either a revision of international law, or a special exception to it, where its ancestral claims would be recognized by all.

Oil and energy

Had the South China Sea been just a territorial dispute there could have been various ways to resolve the issue on the basis of an adjustment of claims in a maritime regime. It could also have continued as a stalemated situation in the absence of a pressing need for a resolution. The demand for energy, however, meant that China could not live with the status quo in the South China Sea which placed additional pressures on the ASEAN claimants. The global demand for energy is rising and the major consumers such as China are seeking new sources to satisfy their expanding economies. China's oil imports reached 54% of consumption in 2010 and are slated to reach 65% in 2015. China has attempted to diversify energy supplies to reduce its dependence upon the Middle East, which supplies 58% of its oil imports, by seeking to exploit the energy resources of the area. Vietnam is the major oil producer

in the area, the state owned oil company PetroVietnam produced 24.4 million tons in 2010 from three fields; the White Tiger field which first began production in 1986, the Blue Dragon field and the Big Bear field; together they accounted for 26% of Vietnam's oil production in 2010.³ PetroVietnam has also concluded 60 oil and gas exploration and production contracts with various foreign companies in an effort to exploit new fields. Production in the established fields is declining, however, but new fields are not expected to compensate for the loss.⁴ As Vietnam attempts to exploit new fields there is the possibility of renewed clashes with China which has consistently opposed its attempts to conclude exploration agreements with international oil companies. China protested against the exploration activities of a consortium including PetroVietnam, Malaysia's Petronas Carigali, Singapore Petroleum and American Technology Inc. when it discovered a new offshore oil field west of Hainan Island in October 2004.⁵ China has warned international oil companies to stay out of what it calls "Chinese waters;" five concessions involving BP, ConocoPhillips, Chevron-Petronas-Cargill, Idemitsu-Nippon-and Teikoku oil were suspended as a result of Chinese pressure.

The rise of crude oil prices and concern about energy supplies motivates the claimants to exploit the energy resources of their claim zones. The Philippines has attempted to boost self sufficiency in oil production and has set a target of 60% by 2011. It intends to offer 15 exploration contracts for offshore exploration off Palawan in an area claimed by China.⁶ Philippine exploration efforts around Reed bank have previously provoked Chinese protests and will no doubt do so again.⁷ In 2011 the Philippines reported seven incidents involving Chinese harassment; on 2 March two Chinese patrol boats harassed an oil exploration ship in the Philippine claim zone 250 kms west of Palawan, they left the area after Philippines air force was scrambled. On 5 April the Philippines lodged a formal protest at the UN and sought ASEAN support in the forging of a common position over the issue.⁸ The Chinese on 14 April accused the Philippines of "invading" its waters.⁹ The Philippines dispatched the *Rajah Humabon*, a World War 2 vintage naval vessel, to its claim area after China deployed the *Haixun-31* a 3,000 ton maritime patrol ship with a helicopter to the area.¹⁰ The Philippine vessel removed markers placed by the Chinese on various features in the Philippines claim zone including Boxall reef, Amy Douglas Bank and Reed Bank.¹¹ In June the President's Office announced the renaming of the South China Sea as the

“west Philippine Sea,” and announced a naval expansion program which would boost its limited naval presence in the area.¹² Vietnam fared no better and on 26 May two Chinese maritime surveillance vessels cut off the exploration cables of a Vietnamese oil survey ship which were towing a submerged 7 km seismic cable while searching for oil and gas deposits; this was in block 148 120 kms off Nha Trang, in Vietnam’s EEZ; the Vietnamese Foreign Ministry released videos of a Chinese vessel actually breaking the cable attached to the Vietnamese vessel *Binh Minh*.¹³ A Chinese Foreign Ministry spokeswoman Jiang Yu declared that the Chinese vessels had engaged in “completely normal marine enforcement and surveillance activities in China’s jurisdictional area.”¹⁴ On 9 June a Chinese fishing boat in similar fashion rammed the survey cables of another Vietnamese survey vessel. China has complained that the other claimants have intruded into its waters and that the incidents have been increasing. Vietnam and the Philippines plan to go ahead with gas exploration projects; PetroVietnam will work with Talisman energy and will begin drilling in an area that China awarded to Crestone corporation in 1992, which is now operated by Harvest Natural Resources. Exxon also plans exploratory drilling off Vietnam while the Philippines intends to drill in the field where Chinese vessels harassed its survey vessel in March 2011¹⁵

India has become involved as an external player which complicates the situation. China may have leverage over the ASEAN claimants by reason of size and proximity but India has the status and power to resist. India has, moreover, accumulated resentments against China for its support of Pakistan and its claims along the common border that will make it more difficult for the Chinese to manage. India’s ties with Vietnam date back to the time of Indira Gandhi in the early 1980s and many in India regard Vietnam as an ally against China. The Indian naval vessel the *INS Airavat* which was moving towards Nha Trang on 22 July was warned by a Chinese radio message to keep out of “Chinese waters.” The Indian Foreign Ministry declared however that “India supports freedom of navigation in international waters, including in the South China Sea, and the right of passage in accordance with accepted principles of international law.”¹⁶ China has protested against the exploration activities of India’s Oil and Natural Gas Corp [ONGC] around the Paracel Islands to which the Chinese are particularly sensitive. ONGC takes the view that that Vietnamese claims are in accordance with international law and that it would continue with exploration projects in two blocks near the Paracel Islands.¹⁷ While Vietnamese

President Truong Tan Sang was visiting New Delhi an oil exploration agreement was concluded between ONGC and PetroVietnam on 12 October, despite Chinese opposition.¹⁸ Significantly, this agreement was concluded while Party's General Secretary Nguyen Phu Trong was touring Beijing and professing friendship with the Chinese.¹⁹ Vietnam was resorting to its traditional way of dealing with China by stressing commonalities and friendship, which was the job of the party general secretary, while seeking an effective counterbalance.

Fishery disputes

Rivalry over the fishing and ocean resources of the South China Sea is another factor that has contributed to the rising tensions. Fishing vessels have moved regularly in and out of the overlapping claims zones and while this was tolerated in the past but the increased frequency of such incidents has raised concerns. China has imposed an annual fishing ban in the South China which it regards as a preserve for its own fishing fleet and attempts to exclude others. Vietnam complains that its fishermen are regularly arrested by Chinese patrol vessels and their vessels confiscated, they are then required to pay an exorbitant fine for their release. The first fishing ban was declared from June to July in 1999, and since 2009 was declared from 16 May to 1 August. The extent of the ban was kept vague though it covered an area around the Paracels, but not as far south as the Spratlys.²⁰ Vietnam vociferously protested against the ban as the livelihood of its fishermen was affected. To enforce the ban and to protect its own fishing vessels in the South China Sea China dispatched what it claims are "fishery patrol" vessels but which are converted naval vessels. Fisheries Administration vessels the *Yuzheng 311* and the *Yuzheng 202* operate alongside Chinese fishing vessels in what has become a regular pattern of deployment. In 2009 China reportedly arrested 17 Vietnamese fishing boats and 210 fishermen;²¹ in one incident which generated much publicity a Chinese patrol vessel seized a Vietnamese fishing boat and its 12-man crew around the Paracels in March 2010.²² The Vietnamese claim that 63 fishing boats with 725 crew members have been seized by the Chinese since 2005 in the South China Sea.²³ The problem is that Vietnamese vessels intrude into the areas claimed by the other ASEAN countries as well. Two such vessels with Indonesian names were seized by Indonesian Patrol boats in February 2011 near the Natuna Islands.²⁴ The Indonesians claim that in 2009 some 180 vessels were caught for illegal fishing in their waters, some came

from Malaysia as well.²⁵ To deal with the problem China has announced plans to boost the strength of the maritime surveillance forces to 16 aircraft and 350 vessels by 2015. Vessels such as the *Haixun-31* will be used to monitor shipping, carry out surveying duties, to “protect maritime security” and to inspect foreign vessels operating in “Chinese waters.”²⁶ Taiwan also has declared that it will deploy one of its two Seagull class patrol boats in the South China Sea to protect its claim to Tai Ping Island.²⁷

The DOC and the COC

China was induced to join ASEAN in signing the Declaration of the South China Sea in July 1992 which obliged China and ASEAN to resolve questions of sovereignty in the South China Sea “by peaceful means, without resort to force.”²⁸ China signed a the Declaration on the Conduct of Parties in the South China Sea [DOC] on 2 November 2002 with ASEAN which was a shift in tactics, one lauded as a very promising development within ASEAN circles. Previously China had insisted on bilateral negotiations with the claimants but this was the one occasion when it agreed to a multilateral document. This was followed by China’s accession to the ASEAN Treaty of Amity and Cooperation [TAC] on 8 October 2003 according to which disputes are to be settled peacefully. On the same day a “master plan” to deepen and broaden ASEAN-China relations over 2005-2010 was adopted by ASEAN which proposed various ways to implement the DOC; one was through regular ASEAN-China Senior Officials Meetings [SOM], another was to establish a working group which would draft recommendations for the implementation of the DOC and to offer policy guidelines to the ASEAN-China SOM.²⁹ In December 2004 ASEAN China senior officials decided to establish the ASEAN-China Joint Working Group on the Implementation of the DOC [ASEAN-China JWG]. They also agreed to move forward to the eventual conclusion of a code of conduct. The JWG has met six times, the first was in Manila in 2005 and the sixth was held in March 2011, but with few results.

ASEAN has attempted to bind China to a formal Code of Conduct [COC] to reduce the number of incidents in the South China Sea and to prevent them from escalating when they do occur. At the 16th ASEAN Regional Forum [ARF] in July 2009 the Chairman’s statement noted that ASEAN and China would “expeditiously conclude the Guidelines on the implementation of the DOC.” It also declared that they “looked

forward to the eventual conclusion of a Regional Code of Conduct.”³⁰ Vietnam had high hopes of making progress on the code of conduct when it was ASEAN chair in 2010. The Chairman’s statement from the 17th ARF which was held in Hanoi in July 2010 noted that members “encouraged efforts towards the full implementation of the Declaration and the eventual conclusion of a Regional Code of Conduct.”³¹ One major difficulty is the extent of the code and the area to which it would be applied. Vietnam has pressed for its application to the Paracel islands which the Chinese side opposes. Nonetheless, Chinese Ambassador to the Philippines Liu Jianchao claimed that China was willing to negotiate a code of conduct with ASEAN, but it has adopted delaying tactics.³² China has resisted the notion of the code of conduct which would restrict its freedom of action in the area and which could open the door to multilateral negotiations of the issue. Indonesia has been strongly pushing for a code and Vietnam obtained Philippine agreement when Acting Foreign Affairs Secretary Albert del Rosario visited Hanoi on 5 April 2011.³³ China, however, agreed to “guidelines for the implementation of the declaration of conduct” at the 18th ARF which was held in Bali in July 2011. The guidelines comprise eight short sentences calling for dialogue, consultations, and CBMs which would “lead to the eventual realization of a Code of Conduct,”³⁴ Chinese Foreign Minister Yang Jiechi said that they encourage the resolution of disputes through cooperation and negotiation, and when conditions are “ripe” China would be willing to discuss a code of conduct with ASEAN. The document simply repeated phrases that had been circulating for years without committing anyone to anything. They did at least indicate that China would accept multilateral documents on the South China Sea if pressed consistently. The document was praised by Hilary Clinton and US officials for defusing tensions over the issue but whether the effect would last is very much in doubt.³⁵ Subsequently Philippine President Benigno Aquino met Hu Jintao in Beijing and claimed that China and the Philippines agreed on the need for a binding code and an “implementing agreement” for it, not just a statement of principle, but a binding agreement on how each party should behave in the South China Sea.³⁶ Whether the Chinese are ready is another matter.

The Strategic factor

ASEAN observers of the South China Sea dispute have tended to assume that the extensive Chinese claim to the whole area was negotiable, that China would settle for a favourable regional agreement in which territorial claims would be adjusted and

access to oil and reserves would be shared. Upon this basis ASEAN has engaged China in regular dialogue hoping that its leaders could be convinced of the value of a regime of norms which would govern behavior in the South China Sea. ASEAN was habitually careful to avoid any kind of provocation in the expectation that China would in time reciprocate, and that the ASEAN way of encouraging agreement by consensus would in time be embraced by China. If the dispute was only about maritime territorial claims perhaps China would have accepted a resolution of the issue in the way expected by ASEAN, if only to weaken American influence in the organization and to promote its East Asian diplomacy. The competition for access to oil and gas reserves has made the a resolution of the issue more difficult but not insurmountable; joint development as frequently proposed by the Chinese would be a possibility provided that they saw no other way of exploiting the resources there.³⁷ What has excluded all prospect of a resolution at the present time is a new factor. The strategic value of the South China Sea compels China to become more assertive in ensuring control over the area as naval strategy and deployments increasingly dictate policy.

China's naval strategy has two objectives; one is to prevent Taiwan from declaring independence and to deter the Americans from supporting it with naval deployments in the event of a conflict; the second is to protect China's extended trade routes and energy supplies which run through the Indian Ocean and the Malacca Straits, through which an estimated 80% of its oil imports are shipped.³⁸ For this second task China requires an ocean-going navy including aircraft carriers; Current Navy chief Admiral Wu Shengli in April 2009 revealed China's ambitions to develop an ocean going navy and declared that China would establish a "maritime defense system" to protect its "maritime security and economic development."³⁹ The only place along China's coastline where this extended naval capability could logically be deployed would be in the Hainan area, any further north and the advantage of proximity to the Malacca Straits is lost and it would become vulnerable to American interdiction from the open sea. For this purpose China has been constructing an underground base in Sanya on Hainan Island, which would house not only new types of nuclear ballistic missile carrying submarines [SSBNs], but also aircraft carriers and their escort vessels when they are deployed.⁴⁰ China's first aircraft carrier the ex Soviet *Varyag* which has been renamed *Shi Lang* is likely to be based there when completed. In October 2010 two *Shang* class nuclear submarines docked in Sanya

and the number is expected to increase.⁴¹ As Hainan develops as a naval base the Paracel Islands which are further south assume an important role in providing air cover for Hainan and signals intelligence in relation to American naval movements. This explains Chinese sensitivity to American surveillance vessels and why they confronted the USNS *Impeccable* when it ventured too close to Hainan in March 2009.⁴²

The South China Sea has become integrated into the field of China's naval rivalry with the US. From the Chinese perspective the US naval presence in the Western Pacific prevents the reunification of Taiwan with the Mainland and emboldens the ASEAN claimants in the South China Sea to resist China. The US is seen as hindering China's rise in this way and takes the brunt of Chinese nationalist resentment. For this reason it becomes imperative for China to develop the ability to deter the US navy from coming to Taiwan's assistance in time of conflict and from supporting the ASEAN claimants over the South China Sea. New naval capabilities have been acquired for this purpose over 1997-2007 four Russian *Sovremenny* destroyers, another eight are on order.⁴³ China has been developing its submarine capability and has deployed 12 Russian *Kilo* class submarines, two *Shang* nuclear attack SSNs, ten *Song* diesel electric submarines that were intended to replace the outdated *Romeo* and *Ming* classes; 2 of the very new *Yuan* class diesel electric submarines have been completed. Of most concern to the US navy is the deployment of the DF-21D which has been described as an Anti Ship Ballistic Missile [ASBM] with the ability to target US carriers and larger surface vessels.⁴⁴ CINPAC Admiral Robert F. Willard told the *Asahi Shinbun* that in combination with China's submarines this missile could pose a serious threat to the US navy, and may even "neutralize" its power projection capability.⁴⁵ The US Defense Department claims that with effective geo-location and tracking of targets the missile would put at risk American naval vessels within its 1,500-2,100 km range.⁴⁶ The Pentagon has claimed that this is part of China's "anti-access" and "area denial" or "far sea defence" strategy to deny the areas around Taiwan and the South China Sea to the US.⁴⁷

The Chinese are pressing for recognition of spheres of influence in the Western Pacific with Taiwan and the South China Sea securely within the Chinese sphere. However attractive the idea may be in terms of accommodating a rising power and defusing resentments that give rise to conflict US agreement would be unlikely.

America's commitments and interests in the Western Pacific go beyond such divisions any acceptance of which would damage commitments to Japan and South Korea. The US would lose its position on the Korean Peninsula, and ASEAN would be divided and efforts to construct a wider regionalism for the Asia Pacific that would embrace potential conflict zones would be brought to an end. US strategy in the Asia Pacific would unravel and America would be consigned to an offshore position with little corresponding influence in the region. To avoid this prospect the Obama administration has countered Chinese pressure in the Western Pacific by adopting a stronger posture over the South China Sea which has entailed strengthening relations with allies and supporters.⁴⁸ Chinese interest in spheres of influence was seen in the preparations for the Hanoi ARF in July 2010; China's embassy in Washington requested the State Department not to raise the issue of the South China Sea in the expectation that the Americans would agree.⁴⁹ Secretary of State Hillary Clinton made a stand at the forum to rally ASEAN claimants who had been alarmed by Chinese pressure. She affirmed US interest in the South China Sea which challenged the Chinese position over the South China Sea. She stressed that that claimants should pursue their territorial claims in accordance with UNCLOS. Which challenged the Chinese position as the undefined nine dash line, which represents the Chinese claim to the South China Sea, is not based on land features such as the continental shelf or occupation of any of the islands there but history.⁵⁰ Secondly, she supported a "collaborative diplomatic process by all claimants" while China had insisted that negotiations over the issue should be conducted bilaterally with the ASEAN claimants and that third parties should not get involved. Clinton mentioned the need for "institutional architecture" in the Asia Pacific as the basis for this collaborative diplomatic process which undercut Chinese efforts to deal with the claimants bilaterally.

The US has moved to strengthen defence ties with ASEAN states such as Indonesia which share concerns about China. The US terminated the ban on ties with the Indonesian Special Forces unit called *Kopassus* on 23 July 2010. This ban was introduced in 1997 and prohibited the US from having contact with foreign military units that have a history of human rights violations.⁵¹ Significantly, in September Indonesian Foreign Minister Marty Natelagawa rejected China's view that the US should not become involved in the South China Sea dispute which was an expression

of long standing Indonesian wariness of China.⁵² The Philippines has moved to strengthen relations with the US as a response to Chinese pressure, despite its troubled relationship with its former colonial master. Popular demands to demonstrate independence from the US have conflicted with the practical dictates of security. Since 1995 when the Chinese intruded into their claim zone the Philippine military has been working to bring the Americans back, if not in permanent bases then in terms of port visits and training exercises that would signal an American commitment to their defence. Foreign Secretary Albert del Rosario pointed to "China's aggressive action" and travelled to Washington in June 2011 to obtain assurances of US support. While in the US he pressed the US to clarify its position over the Mutual Defence Treaty [MDT] of 1951.⁵³ The Philippines has insisted that the MDT covered the South China Sea but the US has resisted pointing out that the Philippine claim was made after the conclusion of the treaty, and that the US was only legally committed to the defence of the Philippines as defined by the 1898 Treaty of Paris, without the claim to Kalayaan. Hillary Clinton said that the US was "troubled" by recent events there and referred to the Philippines as "our treaty ally," which sidestepped the issue. What this meant was that the US would not commit itself to the defence of the Philippine claim but would support it in the event of a conflict. The US did, however, offer material support given that the Filipinos were looking to the US to supplement their weak naval capability.⁵⁴ Del Rosario called for a lease back system according to which it could lease new equipment from the US.⁵⁵ The Americans also agreed to extend intelligence sharing with the Philippines to strengthen its maritime awareness and surveillance abilities.⁵⁶

US ties with Vietnam have improved in what is now a burgeoning security relationship. The Vietnamese regard the US as an important check upon China but proximity to their northern giant dictates caution. The American navy had been eyeing the former Soviet Naval base at Cam Ranh Bay since the 1990s as a useful berthing facility in the event of conflict over Taiwan. Various notable visits have taken place which have demonstrated that both sides have maintained interest in a closer relationship without actually moving beyond the constraints imposed by Vietnamese solicitude for Chinese sensitivities. Three US defence secretaries have visited Vietnam, William Cohen in March 2000 and Donald Rumsfeld in June 2006 and Robert Gates in 2010; President Bill Clinton made a well publicized visit to Vietnam in November 2000, which was the first ever by an American president. Two Vietnamese defence ministers

visited Washington; Pham Van Tra in 2003, and Phung Quang Thanh in December 2009. Relations developed quickly over 2009-2010; The US naval supply ship USNS *Richard E. Byrd* was repaired in Vietnam in Van Phong which is close to Cam Ranh Bay. This was regarded by the American navy as a step towards building a capacity for emergency and voyage repairs. The US continues to seek an agreement to service and re-supply its ships and access to Vietnamese ports, including Cam Ranh Bay.⁵⁷ In August 2010 the American carrier the USS *George Washington* travelled along Vietnam's coastline and received visits from high ranking Vietnamese military officials.⁵⁸ In October 2010 US Defence Secretary Robert Gates visited Hanoi for the Inaugural ASEAN-Plus Defence Ministers' Meeting.⁵⁹ On 1 August 2011 The US and Vietnam concluded what was lauded as their first military agreement since the Vietnam War; though it was limited to cooperation in health and research collaboration in military medicine it is likely to open the door to other more wider agreements.⁶⁰ America's alignment with a Vietnam which is rapidly modernizing its defence capability may prove to be a formidable combination. In 2009 Vietnam became Russia's biggest arms purchaser; in April of that year Vietnam purchased 6 Project 636 Class Kilo class submarines and 12 SU-30MKK fighters from Russia in a deal estimated at \$2.4 billion deal. Russia also concluded a deal to build Vietnam's first nuclear plant.⁶¹ Russia had already been contracted to construct two *Gepard* 3.9 class frigates for the Vietnamese Navy in 2006, which were delivered in March and August 2011⁶²

The risk of conflict

Positions have polarized over the South China in a way that heightens the risk of conflict. The Chinese insist that China has "indisputable sovereignty" over the area, and that the US naval presence is the cause of the problem by making ASEAN claimants more confident in asserting their claims. There is has been a noticeable rise in nationalist outbursts directed against the US and countries which stand in the way of China's rightful claims and it is doubtful whether the leadership would be able to contain the pressure in the event of a crisis. Various scenarios may be envisaged in which conflict may arise triggered by a clash between Vietnamese naval vessels and Chinese fishery administrative vessels, or between the Philippines and China. In the past there were various standoffs between Chinese fishing vessels and ASEAN naval vessels but on the ASEAN side there was a noticeable reluctance to confront China or

to challenge its claims. China's need to assert control over the area for the various reasons mentioned clashes with the ASEAN claimants' intention to stake out their claims and to resist Chinese pressure. Two incidents revealed the factors that would shape crisis decision making in China, both indicate the absence of an effective crisis management system in China and the susceptibility of the leadership to nationalist pressure in a disturbing way. The first was the America's bombing of the Chinese Embassy in Belgrade in May 1999 which killed three Chinese and unleashed a tide of nationalist fervor against the political leadership for not standing up to the US. The episode demonstrated that in critical situations Chinese leaders would be swayed by popular nationalism to take a tough stand against the US and that their ability to negotiate the necessary compromises with America would be constrained.⁶³ The problem of crisis indecision and the manipulation of information in China was revealed on 1 April 2001 when a U.S. Navy EP-3E [Aries II] turboprop reconnaissance aircraft collided with a Chinese F-8II jet some 70 miles off China's Hainan Island. However, the information fed to the leadership claimed that the US plane caused the collision and that a tough response was justified accordingly.

Aware of the dangers that any new crisis would pose for China the leadership has attempted to defuse tensions over the South China Sea. China has resiled from the aggressive posture adopted by its representatives in the previous year which resulted in closer involvement in the dispute by the US. Hu Jintao's foreign policy coordinator Dai Bingguo has reassured ASEAN that China does not seek to eject the US from Asia and that the South China Sea would be left for future generations to resolve, called for "harmonious coexistence" with ASEAN. Dai visited Vietnam over the 5-9 September 2011 for the 5th meeting of the China -Vietnam steering committee on cooperation which the Vietnamese described as "tense." With Deputy Prime Minister Nguyen Thien Nhan he issued a statement that "both sides agreed to boost coordination in regional affairs and to promote China-ASEAN relations. Both sides also agreed to properly handle their dispute over the South China Sea through deep consultation to maintain friendly relations of the two counties."⁶⁴ Wu Bangguo, chairman of the standing committee of China's National Peoples' Congress, met Vietnamese General Secretary Nguyen Phu Trong in Beijing and declared that China wanted to strengthen political trust with Vietnam and properly solve existing problems in bilateral relations.⁶⁵ On 12 October an agreement was concluded signed by

Chinese Vice Foreign Minister Zhang Zhijun and his Vietnamese counterpart, Ho Xuan Son. The agreement stated that the two sides “actively discuss transitional and temporary measures that do not affect the stances and policies of the two sides.” The two practical measures the agreement were mentioned in Article 6 and included talks about periodic meetings between heads of government and level border negotiation delegations twice a year and a hotline between government level delegations.⁶⁶ On 15 October both sides agreed to strengthen military cooperation by increasing contacts between high ranking officers and establishing a hotline between their respective defense ministries. They also agreed to joint patrols long their land border and the Gulf of Tonkin, to increase mutual visits by naval vessels and to discuss the joint development of the sea area.⁶⁷ In Vietnam anti China rallies had been taking place in Hanoi and Ho Chi Minh City since June 201, eventually by October the protesters were rounded up and the demonstrations ended. How long China can remain conciliatory to Vietnam while asserting its own claims to the South China Sea is an open question.

Conflict Prevention and management

Conflict prevention is about preventing conflicts before they break out and erupt into uncontrolled violence and embraces diplomatic initiatives, preventive negotiation, mediation, and judicial arbitration. Conflict management is about preventing escalation in a conflict that has already erupted, and bringing about its eventual settlement. The basis of both prevention and management of conflict is the rapid and immediate communication of intentions to prevent the other side from assuming the worst case scenario and escalating in turn. Chinese efforts to defuse tensions with Vietnam indicate that Beijing has been concerned about regional and global reactions to its pressure upon claimants and external powers in the South China Sea. The agreement with Vietnam is insufficient for this purpose and it should be extended to the multilateral level. There should be a conflict prevention agreement on two levels to deal with the risk of conflict in the South China Sea. This would differ from the code of conduct sought by ASEAN in several ways; it would not be legally binding and would be observed as self interested measure to prevent conflict escalation in which the Chinese have a stake. At one level there should be an agreement between ASEAN and China which would cover incidents at sea, oil exploration and fishery disputes and would lay down guidelines for their negotiation

and resolution. It would also include procedures to resolve clashes between fishing fleets and confrontations between naval and/or coast guard vessels. At another level there has to be a similar agreement between the US, China and external powers such as India which would cover surveillance and exploration activities perceived as threatening by China. It would also maintain the principle of freedom of navigation in the South China Sea. Provisional agreements to prevent conflict would not touch upon the legal claims but they would disarm the claimants from resorting to forceful measures to enforce them. Herein is one of the reasons why China might procrastinate in its usual manner given that agreements of this nature deprive China of the means of exerting pressure on the other claimants. Nonetheless, it cannot press Vietnam or the Philippines too far over the issue without pushing them both more closely to the US and for this reason a conflict prevention agreement would be in its interests. One major difficulty with such agreements is that they remain provisional and are subject to the balance of forces as China perceives them. As China gains in power and confidence renewed pressure upon the ASEAN claimants may be anticipated if the US is perceived as weakening or losing interest in the South China Sea. If it was the prospect of closer American involvement which induced the Chinese to move to a conciliatory posture towards Vietnam then the US presence would deter further Chinese pressure against the ASEAN claimants. The involvement of the US may not be to China's liking but it would reduce that pressure on the ASEAN claimants and create the conditions for an uneasy stability, which is the best one can hope for at present.

Endnotes

- ¹ On the legality of the claims see Mark J. Valencia, Jon M. Van Dyke, Noel A. Ludwig, *Sharing the Resources of the South China Sea*, pp. 39-59; R. Haller-Trost, *The Spratly Islands: A Study on the Limitations of International Law*, Centre of Southeast Asian Studies, University of Kent at Canterbury, Occasional Paper No. 14 October 1990
- ² See cable by Political Minister Counselor Aubrey Carlson "MFA Maintains Claims to South China Sea; Urges US Companies not "to get Entangled," 13 March 2008, Wikileaks on line.
- ³ "Vietsovetro finds more oil at Bach Ho field offshore Vietnam," *Energypedia.news*, 29 June 2011 <http://www.energy-pedia.com/article.aspx?articleid=1460879> Jun 2011
- ⁴ "Vietnam Market for Oil and Gas Machinery and Services," *US Commercial Service-Vietnam*. March 2011, http://export.gov/vietnam/static/BP-Oil%20and%20Gas%20Machinery%20and%20Services_Latest_eg_vn_030123.pdf
- ⁵ Tran Dinh Thanh Lam, "Vietnam oil find fuels China's worries", *Energy Bulletin*, 26 October 2004. <http://www.energybulletin.net/node/2838>
- ⁶ "Philippines to seek more oil in West Philippine Sea," *Agence France-Presse* June 29th, 2011 <http://globalnation.inquirer.net/5034/philippines-to-seek-more-oil-in-west-philippine-sea>
- ⁷ "China objects to RP Oil Project," *Philstar.com*, 15 August 2009 <http://www.philstar.com/Article.aspx?articleid=496221>
- ⁸ "Philippines protests China's Spratly claim at UN," *AFP*, 13 April 2011
- ⁹ Teresa Cerrojano, "Beijing counters Manila's UN protest, says Philippines 'started to invade' Spratlys in 1970s," *AFP*, 19 April 2011
- ¹⁰ TJ Burgonio, "Navy flagship to patrol PH waters only, says Palace," *Philippine Daily Inquirer* 21 June 2011
- ¹¹ "Philippines pulls markers from disputed waters." *Channelnewsasia.com* 15 June 2011
- ¹² Philippines to boost Spratly Patrols," *Channelnewsasia.com*, 15 April 2011
- ¹³ Alex Watts, "Tensions rise as Vietnam accuses China of sabotage," *The Sydney Morning Herald*, 2 June 2011
- ¹⁴ "China reprimands Vietnam over offshore oil exploration," *Reuters*, 28 May 2011 <http://af.reuters.com/article/energyOilNews/idAFL3E7GS07E20110528>
- ¹⁵ Daniel Ten Kate, "South China Sea Oil Rush Risks Clashes as US Emboldens Vietnam on Claims," *Bloomberg*, 27 May 2011
- ¹⁶ Indrani Bagchi, "China harasses Indian naval ship on South China Sea," *Times of India*, 2 September 2011
- ¹⁷ Ananth Krishnan, "South China Sea projects an infringement on Sovereignty, says China," *The Hindu*, 19 September 2011
- ¹⁸ "India, Vietnam sign oil exploration agreement, ignoring China's objections," *The Washington Post*, 12 October 2011
- ¹⁹ "New Delhi tries to snap Beijing's string of pearls," *The Times of India*, 20 October 2011
- ²⁰ "Unilateral fishing ban likely to fuel tension" .editorial, *South China Morning Post*, May 17, 2010

-
- ²¹ Vietnam fishermen yet to return, China help sought, *Vietnews* 15 October 2010 <http://www.dztimes.net/post/politics/vietnam-fishermen-yet-to-return-china-help-sought.aspx>
- ²² Will Clem, "Patrol boats to escort fishing vessels in disputed Spratlys," *South China Morning Post*, April 3, 2010
- ²³ Seth Mydans "U.S. and Vietnam Build Ties With an Eye on China," *The New York Times*, 12 October 2010
- ²⁴ "Navy arrests illegal Vietnamese fishing boats," *Antaraneews.com*, 12 February 2011 <http://www.antaraneews.com/en/news/67994/navy-arrests-illegal-vietnamese-fishing-boats>
- ²⁵ "Ten Vietnamese fishing boats caught poaching in RI waters," *Antaraneews.com*, 23 April 2010 <http://www.antaraneews.com/en/news/1272030822/ten-vietnamese-fishing-boats-caught-poaching-in-ri-waters>
- ²⁶ Wang Qian, "Maritime Forces to be Beefed up Amid Disputes," *China Daily*, 17 June 2011 http://www.chinadaily.com.cn/china/2011-06/17/content_12718632.htm
- ²⁷ "Taiwan plans missile boats in Spratlys," *channelnessasia.com*, 12 June 2011
- ²⁸ ASEAN Declaration On The South China Sea Manila, Philippines, 22 July 1992 <http://www.aseansec.org/3634.htm>
- ²⁹ Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity, *Association of Southeast Asian nations*, <http://www.aseansec.org/16805.htm>
- ³⁰ Chairman's Statement, 16th ASEAN Regional Forum, 23 July 2009, Phuket, Thailand, *ASEAN Regional forum*. <http://www.aseanregionalforum.org/PublicLibrary/ARFChairmansStatementsandReports/tabid/66/Default.aspx>
- ³¹ Chairman's Statement, 17th ASEAN Regional Forum 23 July 2010, Ha Noi, Viet Nam, ASEAN Regional forum. <http://www.aseanregionalforum.org/PublicLibrary/ARFChairmansStatementsandReports/tabid/66/Default.aspx>
- ³² "China, ASEAN working on South China Sea code-Ambassador," *ABS CBN News*, 1 October 2010
- ³³ "Phl, Vietnam agree on Code of Conduct in South China Sea," *Philstar.com*, 8 April 2011
- ³⁴ Abdul Khalik and Desy Nurhayati, "South China Sea Guidelines agreed," *Jakarta Post*, 21 July 2011
- ³⁵ David Gollust, "Clinton Welcomes South China Sea Guidelines, VOAnews.com, 22 July 2011 <http://www.voanews.com/english/news/asia/Clinton-Welcomes-South-China-Sea-Guidelines-126002064.html>
- ³⁶ "Philippines, China seek South China Sea Code of Conduct," Reuters, 31 August 2011 <http://www.reuters.com/article/2011/09/01/us-philippines-china-idUSTRE7800KY20110901>
- ³⁷ Cases of bilateral joint development include the Japan- South Korea agreement of January 1974, the Malaysia-Thailand agreement over the sea boundary of February 1979, the Timor Gap Treaty concluded by Australia and Indonesia in December 1989 as modified by the Timor Sea Treaty of May 2002 and the Malaysia-Vietnam agreement of June 1992

³⁸ *Military Power of the People's Republic of China, 2008*, Annual Report to Congress, Office of the Secretary of Defense, Washington D. C. 23
http://www.defense.gov/pubs/pdfs/China_Military_Report_08.pdf

³⁹ Cui Xiaohuo and Peng Kuang, "Navy chief lists key objectives," *China Daily*, 16 April 2009, also http://www.chinadaily.com.cn/cndy/2009-04/16/content_7681478.htm "China planning huge navy upgrade," *channelnewsasia.com* 16 April 2009

http://www.channelnewsasia.com/stories/afp_asiapacific/print/422735/1/.html

⁴⁰ The Paracels assume an important role providing aircover and signals intelligence in relation to American naval movements. The Chinese have been acutely sensitive to American surveillance of the area and confronted the USNS *Impeccable* when it came too close to Sanya on 9 March 2009. Five Chinese vessels surrounded and harassed the *Impeccable* about 75 miles off Hainan island; see Thom Shanker and Mark Mazzetti, "China and U.S. Clash on Naval Fracas," *The New York Times*, March 10, 2009

⁴¹ "New Attack sub docked at China's navy base in Hainan Island," *Mainichi News*, 21 October 2010

⁴² Five Chinese vessels blocked and surrounded the USNS *Impeccable* about 120 kilometers, from Hainan; Mark McDonald, "U.S. navy provoked South China Sea incident, China says," *The New York Times*, 10 March 2009

⁴³ On China's military capabilities see *Annual Report to Congress, Military and Security Developments Involving the People's Republic of China 2010*, Office of the Secretary of Defense, A Report to Congress Pursuant to the National Defense Authorization Act for Fiscal Year 2010 <http://www.globalsecurity.org/military/library/report/2010/2010-prc-military-power.pdf>

⁴⁴ Tested in 2005 and 2006 the ASBM comes in two versions, the DF-21 with a range of range at 1,770 to 2,150Kms, and the DF-21A with a range of range 2,500 kms Richard Fisher, "New Chinese Missiles Target the Greater Asian Region," *International Assessment and Strategy Centre*, 24 July 2007,
http://www.strategycenter.net/research/pubID.165/pub_detail.asp

see also Mark Stokes and Dan Blumenthal, "Why China's Missiles Should be our Focus," *The Washington Post*, 2 January 2011,

⁴⁵ See Yoichi Kato, "China's new missile capability raises tensions," *Asahi.com* 27 January 2011 <http://www.asahi.com/english/TKY201101260340.html>; also "'Carrier Killer' won't stop US: admiral," *Taipei Times*, 16 February 2011
<http://www.taipetimes.com/News/front/archives/2011/02/16/2003496000>

⁴⁶ *Annual Report to Congress, Military Power of the People's Republic of China 2009*, Office of the Secretary of Defense, A Report to Congress Pursuant to the National Defense Authorization Act for Fiscal Year 2009, 21
http://www.defense.gov/pubs/pdfs/China_Military_Power_Report_2009.pdf

⁴⁷ *Annual Report to Congress, Military and Security Developments Involving the People's Republic of China 2010*, 29

⁴⁸ Mark Landler, Sewell Chan, "Taking Harder Stance toward China, Obama Lines up Allies," *The New York Times*, 25 October 2010

⁴⁹ John Pomfret, "Beijing claims 'indisputable sovereignty' over South China Sea," *The Washington Post*, July 31, 2010;

⁵⁰ See Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note," *Ocean Development & International Law*, Volume 34, Numbers 3-4, July-December 2003, pp. 287-295

⁵¹ Craig Whitlock, "U.S. to end ban on Indonesia's special forces, angering human rights groups," *The Washington Post*, 23 July 2010

⁵² Daniel Ten Kate, Susan Li, "Indonesia Rejects China Stance that US Stay out of Local Waters Dispute," *Bloomberg*, 22 September, 2010, <http://www.bloomberg.com/news/2010-09-22/indonesia-rejects-china-stance-that-u-s-stay-out-of-local-waters-dispute.html>

⁵³ Keith B. Richburg, "China warns US in Island Dispute" *The Washington Post*, 24 June 2011

⁵⁴ Remarks With Philippines Foreign Secretary Albert del Rosario After Their Meeting, *US Department of State*, June 23 2001, <http://www.state.gov/secretary/rm/2011/06/166868.htm>

⁵⁵ Lachlan Carmichael and Shaun Tandon, "US Says it will provide hardware to Philippines," *Defence News* 23 June 2011 <http://www.defensenews.com/story.php?i=6906530&c=POL&s=TOP>

⁵⁶ "US to boost Philippine intelligence, DFA says," *Agence France-Presse*, 25 June 2011

⁵⁷ Greg Torode, US ship repair in Vietnam confirms ties Dock work a clear signal to China, *South China Morning Post*, April 2, 2010

⁵⁸ Margie Mason, "Former Enemies US, Vietnam Now Military Mates," *Associated Press*. 8 August 2010 <http://www.google.com/hostednews/ap/article/ALeqM5gUMael2GN4bo5IGD5wVmRBK2uANQD9HFAIQG0>

⁵⁹ The ASEAN plus defence ministers meeting included ten ASEAN ministers plus their counterparts from the East Asian Summit [EAS] countries, as well as the US and Russia, eighteen in total.

⁶⁰ "US, Vietnam Start Military Relationship," *DefenseNews*, 1 August 2011, <http://defensenews.com/story.php?i=7264252&c=AME&s=TOP>

⁶¹ "Vietnam Buys Russian Kilo Class Subs, SU-30 Fighters, Nuke Plant," *Defence Industry Daily*, 31 March 2010 <http://www.defenseindustrydaily.com/Vietnam-Reportedly-Set-to-Buy-Russian-Kilo-Class-Subs-05396/>

⁶² "Russia floats out second Gepard class frigate for Vietnam," *RIANovosti*, 16 March 2010, http://en.rian.ru/military_news/20100316/158215375.html

⁶³ Paul H. B. Godwin, "Chinese Decision Making under Stress" p. 168

⁶⁴ "China, Vietnam agree to boost forward-looking bilateral relations," *Xinhua*, 5 September 2011

⁶⁵ "China vows to properly handle problems in relations with Vietnam," *Xinhua*, 10 October 2011

⁶⁶ "Vietnam, China establish principles of settling disputes," *VNA* 12 October 2011; Keith Bradsher, "China and Vietnam Move to Reduce Tensions in South China Sea," *The New York Times*, 12 October 2011

⁶⁷ "China and Vietnam to Strengthen military ties: report," *Reuters* 15 October 2011 <http://www.reuters.com/article/2011/10/15/us-china-vietnam-idUSTRE79E0IR20111015>