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INTRODUCTION

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Between early May and mid-July 2014 the state-owned China National Offshore Oil Corporation (CNOOC) deployed its largest and most modern oil rig, Hai Yang Shi You-981 (HYSY-981), into Vietnam's claimed exclusive economic zone (EEZ). CNOOC's action not only sparked a major crisis in Sino–Vietnamese relations, but also arguably raised tensions in the South China Sea to their highest point since the dispute first came to prominence in the late 1980s. The HYSY-981 Incident also reinforced negative trends which have dimmed the prospects of a negotiated settlement of the dispute and highlighted the limited effectiveness of attempts to more effectively manage the conflict both by the Southeast Asian claimants (Vietnam, the Philippines, Malaysia and Brunei) and China on a bilateral basis, and by the Association of Southeast Asian Nations (ASEAN) and the People's Republic of China (PRC) using a multilateral approach.

Together with the Sino–Japanese confrontation over sovereignty of the Senkaku/Diaoyu Islands in the East China Sea, the South China Sea dispute currently sits at the top of Asia's security agenda. Due to rising levels of nationalism over ownership of the disputed atolls, more strident assertions of sovereignty by the various claimants, growing competition over maritime resources, worsening geopolitical rivalries among the Great Powers and the rapid modernization of regional armed forces, maritime disputes are likely to remain the most important potential areas of conflict in Asia for the foreseeable future.

This Introduction provides an overview of the central aspects of the South China Sea dispute and is divided into seven sections. After this introductory section, the second part focuses on the geopolitical significance of the South China Sea and how the problem has increasingly become an area of contention between China and the United States. The third part identifies the reasons why tensions have been rising over the past several years. Part four looks at how the absence of political will among the claimants stands in the way of a legal or negotiated settlement. The fifth section examines how ASEAN and China have attempted to better manage the dispute with mixed success. Part six assesses why a continuation of the status quo could endanger the peace, stability and prosperity of the Asia-Pacific region and beyond. The final section provides a brief introduction to the rest of the chapters in this volume.

THE GEOPOLITICAL SIGNIFICANCE OF THE SOUTH CHINA SEA DISPUTE

At the heart of the South China Sea dispute is the question of who exercises legitimate ownership over hundreds of small islands, atolls and reefs. The PRC — and the Republic of China (ROC) or Taiwan — assert sovereignty over virtually all of these geographical features based on claims of discovery and historical usage dating back to the 2nd century BC. China's (and Taiwan's) historical claims in the South China Sea are represented on official maps by a discontinuous U-shaped line — generally referred to as the “nine-dash line map” even though PRC maps denote ten dashes and ROC maps eleven — which encompasses more than 80 per cent of the sea. There are two major archipelagos within the line: the Paracel Islands and the Spratly Islands.¹ In 1974, China evicted South Vietnamese troops from the western half of the Paracels, but Hanoi still maintains a sovereignty claim. Further south, the PRC/Taiwan and Vietnam claim ownership of all the Spratly Islands while Malaysia, the Philippines and Brunei claim parts of the group.² Since the Second World War, all of the claimants except Brunei have occupied atolls in the Spratlys: Taiwan occupies two, China eight, Malaysia five, the Philippines nine and Vietnam more than twenty.

Due to their small size, the majority of features in the Spratlys do not have any intrinsic value in themselves. Indeed, according to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), many of the Spratly features should really be classed as rocks — and thus restricted to a 12 nautical miles (nm) territorial sea — or low-tide elevations which

are incapable of generating either a territorial sea or a 200 nm EEZ. Those features which meet the UNCLOS criteria of an island — a naturally formed area of land, surrounded by water and above water at high tide and which can sustain human habitation — can generate both a territorial sea and an EEZ, and this allows their owners to harvest the lucrative bounty of the seas, such as fisheries, hydrocarbons and minerals. The living and non-living resources in the South China Sea are not insignificant. By some estimates 10 per cent of the global catch is made in the South China Sea,³ and as a source of protein for hundreds of millions of people in Southeast Asia, its regional significance cannot be overstated. Regarding oil and gas, the scale of hydrocarbon resources in the South China Sea is difficult to determine with any certitude, mainly because the territorial disputes have prevented energy companies from conducting comprehensive surveys. As a result, all estimates are somewhat — perhaps even highly and occasionally widely — speculative. Chinese estimates are at the high end of the scale, usually between 100–200 billion barrels of oil (bbo) and oil equivalent. In 2012, for instance, CNOOC estimated that the South China Sea held 125 bbo and 500 trillion cubic feet (tcf) of gas in undiscovered resources.⁴ U.S. and Russian estimates are much lower. In 2010, the U.S. Geographical Survey estimated the South China Sea might contain 5–22 bbo and 70–290 tcf of gas in undiscovered resources — though its estimate did not cover the entire sea.⁵ Russia's Research Institute of Geology and Foreign Countries projects a modest 6 bbo of which 70 per cent is gas.⁶ Absent a resolution of the dispute or the political will to jointly explore for resources, the true extent of hydrocarbons in the South China Sea will remain unknown and, more importantly, the oil and gas will stay locked under the seabed. Nevertheless, the *perception* that the South China Sea is rich in energy resources continues to act as a powerful driver of the dispute.

Important though sovereignty and maritime resources are, the significance of the South China Sea dispute transcends these issues for three main reasons: the geographical location of the atolls; the basis of China's claims; and the increasingly important role the dispute plays in the geopolitics of the Asia-Pacific region.

Located at the crossroads of South, Southeast and Northeast Asia, the South China Sea occupies a critical geographical position. The sea lanes that pass through it provide the shortest route between the Pacific and Indian Oceans and function as vital arteries of world trade and energy shipments. Detailed statistics on shipping movements through the sea are not available, but it is estimated that more than 100,000 vessels transit

through the Straits of Malacca, Sunda and Lombok-Makassar every year, or more than half the world's annual merchant fleet tonnage⁷ (by comparison, in 2013, 16,596 ships passed through the Suez Canal and 12,045 through the Panama Canal).⁸ The U.S. Pacific Command estimates that US\$5.3 trillion worth of goods passes through the South China Sea per annum.⁹ The South China Sea sea lanes are particularly important to the economic powerhouses of Northeast Asia — China, Japan and South Korea — which are heavily dependent on energy imports from the Middle East and Africa. The U.S. Energy Information Agency estimated that in 2011, approximately 15.2 million barrels of crude oil per day passed through the Straits of Malacca (almost one third of the global oil trade) and 6 tcf of Liquefied Natural Gas (LNG) through the South China Sea (over half of global LNG trade).¹⁰

Conflict or even instability in the South China Sea could, therefore, threaten the free flow of maritime commerce with serious repercussions for the global economy. As Singapore's Defence Minister Ng Eng Heng warned in 2014, "It's completely artificial to think that there are somehow firewalls between trade and security. At some point, [the dispute] may impact trade and our real economies."¹¹ And as Australia's Defence Minister, David Johnson, cautioned at the 2014 Shangri-La Dialogue,

Continuing confrontations such as those we are seeing in the South China Sea pose a clear threat to the collective good of all nations in the region. Any breakdown in security through miscalculation or actions that run contrary to the general principles of international law and the free flow of goods and services through our region would be catastrophic for all of our nations.¹²

While all countries in the region have a strongly vested interest in maintaining stability and secure sea lanes, as noted later, an accidental military clash at sea could put this collective interest at risk.

How the dispute is resolved has important implications for international legal norms, perhaps even the post-war international order. UNCLOS is often referred to as the "constitution of the seas", and as of 2014, 166 parties had ratified it, including all of the South China Sea claimants except Taiwan which is not a member of the UN. As noted, China indicates its claims in the South China Sea using a nine-dash line. In a protest note following a joint submission by Vietnam and Malaysia in 2009 to the UN body tasked with examining outer continental shelf claims, China declared it had "indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign

rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof”.¹³ Attached to the protest note was a map showing the nine-dash line, the first time China had officially lodged it with an international organization. The Chinese government, however, has studiously avoided clarifying what the line actually means. This has given rise to four possible interpretations:¹⁴ first, China is claiming sovereignty over all of the features within the line and the 12 nm territorial seas and 200 nm EEZs generated by the atolls; second, China is claiming the area inside the line as its “historical waters”; third, China claims the area inside the line as an EEZ and continental shelf generated by the Paracel and Spratly Islands; fourth, China claims sovereignty of the islands, EEZs and continental shelves generated by those features as well as “historical rights” to maritime resources inside the nine-dash line.

While the first interpretation is comparable to the territorial and jurisdictional claims of the Southeast Asian claimants, the second, third and fourth interpretations are more problematic as few non-Chinese legal experts believe they are compatible with UNCLOS. Increasingly, however, through its actions and the views of Chinese legal scholars, it is the fourth interpretation that seems to be emerging as China’s official position. In 2013, for instance Gao Zhiguo, China’s judge on the International Tribunal on the Law of the Sea (ITLOS) — the dispute resolution mechanism established under UNCLOS — and Bing Bing Jia argued in an American law journal that the nine-dash line was “synonymous with a claim of sovereignty over the island groups that always belonged to China and with an additional Chinese claim of historical rights of fishing, navigation, and other marine activities (including the exploitation of resources, mineral or otherwise) on the islands and in the adjacent waters”.¹⁵ Due to the problematic nature of the nine-dash line map, a number of countries have called on China to clarify precisely what it is claiming and how those claims are consistent with UNCLOS. Several countries have concluded that China’s ultimate aim is to enforce its claims within the nine-dash line, and thereby achieve dominance within it. Indeed the U.S. Department of State has expressed concern at the “incremental effort by China to assert control over the area contained in the so-called ‘nine-dash line’”.¹⁶ And according to Philippine Foreign Secretary Albert del Rosario in 2014, China’s aim is to “unilaterally impose its so-called nine-dash line as a basis for claiming sovereignty over the whole of the South China Sea” and that if Beijing is successful it will become a “Chinese lake”.¹⁷ Japanese Prime Minister Shinzo Abe has also warned against the South China Sea becoming a “Chinese lake”.¹⁸ China takes

a very different view. According to Yun Sun, some Chinese legal experts have argued that since China's "historical rights" predate UNCLOS, "it cannot retroactively be applied to supersede China's sovereignty, sovereign rights and maritime administrative rights formed throughout history".¹⁹ When a state accedes to UNCLOS, any prior claims to "historical rights" are extinguished. But as the former Prime Minister of Singapore, the late Lee Kuan Yew, predicted in 2014, "A rising China is seeking to assert its sea boundary claims. It is naïve to believe that a strong China will accept the conventional definition of what parts of the sea around it are under its jurisdiction."²⁰

The third reason why the South China Sea dispute is significant is that increasingly it has become an issue of dissension between the United States and China. America is not a party to the South China Sea dispute but because of its extensive economic, political and strategic interests in Asia it is a significant stakeholder. America's official line is that it does not take a position on competing territorial claims, opposes the use of force or coercion to resolve the dispute and supports a negotiated settlement in accordance with international law. When tensions began to rise in 2007–8, senior U.S. officials began to express concern at "coercive diplomacy" but without naming China specifically — though it was clear to all which country was being referred to.²¹ The July 2010 meeting of the ASEAN Regional Forum (ARF) marked a turning point when then Secretary of State Hillary Clinton declared that the South China Sea was "pivotal" to regional security and that America had a "national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea".²² Since then, U.S. officials have continued to stress America's national interests in the South China Sea, but their criticism of China's behaviour has become more explicit. In August 2012, for instance, the State Department expressed concern at China's actions at Scarborough Shoal and over the upgrading of the administrative status of Sansha City.²³ In February 2014, senior U.S. officials directly blamed China for fuelling tensions, criticized fishing regulations introduced by the authorities on Hainan Island in January, warned Beijing against establishing an Air Defence Identification Zone (ADIZ) over the South China Sea (such as the one the Chinese government established over parts of the East China Sea in November 2013), backed the Philippines' legal arbitration at the UN, and for the first time explicitly challenged the legality of the nine-dash line.²⁴ In May, the State Department described the deployment of HYSY-981 as "provocative", "destabilizing" and "aggressive".²⁵ America has also openly criticized

China for undermining international norms through its actions in the South (and East) China Sea. For example, it described China's attempts to block the resupply of Filipino Marines on Second Thomas Shoal in the Spratlys in March 2014 as "inconsistent" with freedom of navigation, while William J. Burns, Deputy Secretary of State, has highlighted how the South China Sea dispute is handled "reveals whether the threat of force or the rule of law will govern disputes and whether the same rules will apply to big and small countries alike".²⁶ In a speech delivered in June 2014, Danny Russel, Assistant Secretary of State Bureau of East Asian and Pacific Affairs, opined that China should hold itself to "a high standard of behavior" and not "wilfully disregard diplomatic and other peaceful ways of dealing with disagreements" in favour of "economic and physical coercion" which is "destabilizing and dangerous".²⁷

China has rejected these criticisms, and its state-run media has regularly rebuked America for "meddling" in the dispute, exaggerating threats to freedom of navigation and using the dispute as a pretext to "pivot" or "rebalance" to Asia. Chinese officials have also accused Washington of hypocrisy for criticizing China for not abiding by UNCLOS when America has yet to ratify the agreement.²⁸ China has also challenged the U.S. position that it is a neutral party due to its capacity-building support for some of the Southeast Asian claimants, particularly the Philippines and Vietnam. When the U.S. proposed a freeze on building activities in the South China Sea in August 2014, Chinese officials promptly rejected it as interference, said they could do whatever they wanted on the disputed atolls and announced the construction of five lighthouses in the Paracels.²⁹

Differences of opinion between the United States and China over military surveillance activities in the EEZ of a coastal state has been a long-standing area of disagreement between the two countries, and one which has become conflated with the South China Sea dispute. While the U.S. regards such activities as a freedom of navigation right permissible under UNCLOS, China views them as provocative and illegal, despite the fact that China itself gathers military intelligence in the EEZ of foreign states, as it did off Hawaii in July 2014 during U.S.-led Rim of the Pacific multilateral naval exercises (in which the Chinese Navy itself participated) and again a few months later when the U.S. Navy conducted exercises off Guam.³⁰ As China has beefed up its naval presence on Hainan Island, the U.S. has stepped up its surveillance activities — especially of Chinese submarines — in the South China Sea bringing the armed forces of both countries into closer proximity. An incident on 19 August 2014 in which

a Chinese fighter jet intercepted a U.S. P-8 Poseidon surveillance aircraft in international airspace near Hainan led to mutual recriminations: the U.S. accused the Chinese pilot of dangerous and unprofessional behaviour, while China charged America with undermining regional stability and called on it to end its surveillance missions, a call Washington rejected. Such encounters raise the risk of a U.S.–China military clash and further complicate the South China Sea dispute.

RISING TENSIONS IN THE SOUTH CHINA SEA

Over the past few decades, tensions in the South China Sea have been cyclical. China's behaviour has been the key variable, though of course the actions of the other claimants have also been a contributory factor. But as the most powerful actor, it is China that has set the tone for the dispute. Thus in the early 1990s tensions began to rise when China became more assertive in trying to uphold its claims, but eased considerably in the first half of the 2000s when Beijing adopted a more accommodating stance as part of its so-called "Charm Offensive" in Southeast Asia.³¹ Since 2007–8, tensions have once again been on the upswing and, as most analysts would agree — including the majority in this volume — the primary reason is renewed Chinese assertiveness.

Buoyed by its sustained economic growth, China's confidence on the world stage has been steadily growing, and the 2008 Beijing Olympics was widely seen as a key indicator of the country's emergence as a Great Power. China's confidence was bolstered during the 2008–9 Global Financial Crisis, from which it emerged essentially unscathed. With America distracted by the economic crisis and preoccupied with its military interventions in Iraq and Afghanistan, China saw an opportunity to press home its claims. The rapid modernization of China's navy, together with the expansion of its civilian maritime enforcement agencies, provided Beijing with the means to expand its presence in the South China Sea and apply coercive pressure on the Southeast Asian claimants, especially the Philippines and Vietnam. China's growing thirst for energy resources and food security also provided an additional driver for the government to press its "historic rights" within the nine-dash line.

China's new leadership under President Xi Jinping has bolstered the country's new-found confidence and assertive posture in the South China Sea. The Xi government's message to its Asian neighbours is that while China remains committed to "peaceful development" it has no intention

of compromising its sovereignty claims and will respond firmly to countries that challenge those claims.³² Moreover, under Xi, China's policy in the South China Sea has become increasingly centralized, coordinated and proactive. The deployment of HYSY-981 in May 2014 provided a good illustration of this greater policy coherence: the presence of a large flotilla of civilian maritime patrol vessels, warships and fishing trawlers to act as a protective cordon around HYSY-981 suggested a high degree of inter-agency cooperation, and it is likely that the decision to send the rig was taken at the highest levels of the Chinese government given the inevitable negative reactions from Vietnam and other regional states.

Beijing denies all blame for rising tensions in the South China Sea and insists that responsibility lies with the Southeast Asian claimants, especially Vietnam and the Philippines, as well as the United States and Japan. A common theme in the Chinese narrative is that Beijing exercises "restraint and patience" in the South China Sea.³³ Over the past few years, Chinese media commentaries have repeatedly accused the Philippines and Vietnam of "plundering" China's resources in the South China Sea and raising tensions through their "aggressive actions".³⁴ President Xi's assertion during the HYSY-981 crisis that "We will never stir up trouble, but will react in the necessary way to the provocations of countries involved" was typical in that it put the onus for rising tensions on the other claimants.³⁵

The leaders of the Philippines and Vietnam have, however, laid the blame for rising tensions firmly at China's door. Philippine Foreign Secretary Del Rosario has been a particularly sharp critic of China, accusing it of raising tensions due to its "excessive and expansive" maritime claims and "aggressive patterns of behaviour" that threaten regional peace and stability.³⁶ Philippine President Benigno Aquino has even drawn parallels between China's behaviour in the South China Sea and Nazi Germany's in Europe in the 1930s.³⁷ At his keynote speech at the Shangri-La Dialogue in 2013, Vietnamese Prime Minister Nguyen Tan Dung criticized China's behaviour without directly naming the country; but during the HYSY-981 crisis, the gloves came off, and Dung declared China's deployment of the oil rig posed a threat to "peace, stability, security, safety and freedom of navigation, cooperation and development in the region and the world".³⁸ Dung and Aquino reiterated this missive at a joint meeting a few weeks after the drilling rig had entered Vietnam's waters.³⁹ The Philippines and Vietnam's fellow ASEAN members have been more circumspect in their comments, but most have been troubled by China's actions.

China's attempts to push its claims have damaged its international image and created anxiety across the region. A poll conducted in mid-2014, for instance, found that in the Philippines 93 per cent of respondents were concerned about conflict with China, 85 per cent in Japan, 84 per cent in Vietnam and 66 per cent in Malaysia — even in China, 62 per cent of respondents were concerned.⁴⁰ And yet Beijing seems prepared to absorb the reputational costs and press on with its assertive policy confident that the Southeast Asian claimants will avoid confrontation with China for three reasons. First, as they become more economically dependent on China the costs of challenging its claims rise.⁴¹ Second, they cannot match China's naval capabilities, even collectively. Third, the United States will not intervene militarily on their behalf because it does not take a position on competing sovereignty claims and because a war with China over the atolls is not in its national interests. The Chinese leadership must also have taken note of the Obama administration's more cautious foreign policy and reluctance to employ military power in response to international hotspots such as Syria, Iraq and Ukraine during 2013–14. As China feels that time is ultimately on its side, there seems little prospect of it adopting a more accommodating posture.

ROADBLOCKS TO A RESOLUTION

Disputes among nations are seldom insoluble. However, resolving interstate problems requires agreement among the conflicting parties on what the nature of the problem is, and whether it should be addressed through direct negotiations or through legal arbitration. Solutions can be expedited when the parties are prepared to offer concessions and reach compromises. Unfortunately these conditions render the South China Sea dispute particularly intractable. Defining the nature of the dispute is problematic because China's nine-dash line is, as noted earlier, ambiguous and seemingly incompatible with UNCLOS. Because most of the claimants were once victims of Western or Japanese colonialism, sovereignty is a highly sensitive issue and governments must endeavour to uphold the country's sovereignty claims or else be perceived by nationalists — and the other claimants — as being weak. None of the claimants have engaged in serious bilateral discussions and legal avenues are currently closed — at least on the sovereignty issue — because Beijing eschews legal arbitration.

The International Court of Justice (ICJ) at The Hague is the only international body that could make a ruling on the ultimate sovereignty of the Paracel and Spratly Islands. Maritime disputes involving non-sovereignty issues can be adjudicated by ITLOS. Cases brought before the ICJ on matters of sovereignty require the consent of all parties. While the Philippines has indicated that it would be prepared to submit its claims to the Spratlys to the ICJ, none of the other Southeast Asian claimants have done so. Most importantly, China does not, as a matter of principle, submit its border, sovereignty or maritime boundary disputes to international legal arbitration, including the ICJ and ITLOS. China's refusal to consider legal arbitration for the South China Sea dispute is predicated on two factors: severe domestic repercussions should the judicial body rule against China; and the suspicion that Western-created institutions are biased against China.

Because China refuses to give its consent, the ICJ cannot adjudicate the South China Sea dispute. How about ITLOS? In 2006, China excluded itself from compulsory arbitration procedures on matters concerning sea boundary delimitations, historic bays and titles and military activities. However, this did not prevent the Philippines from unilaterally challenging the legality of China's expansive claims in the South China Sea at ITLOS in January 2013. The Philippines requested ITLOS to issue an award that, *inter alia*, declares China's maritime claims based on its nine-dash line to be contrary to UNCLOS and therefore invalid.⁴² China refused to participate in the proceedings on the grounds that ITLOS did not have jurisdiction.⁴³ Nevertheless, the case is proceeding and an Arbitral Tribunal is currently assessing the Philippine submission. If the Tribunal accepts jurisdiction, a ruling — which will be legally binding but not enforceable — is expected in 2016. A favourable ruling for Manila would provide it with a legal and a moral victory, narrow the scope of the dispute to sovereignty of the atolls, benefit the other claimants and put the onus on China to provide legal justification for its claims. How China will respond to an unfavourable ruling remains to be seen.

The UN encourages countries with disputes to resolve them through bilateral or multilateral negotiations and only revert to legal arbitration when the parties are deadlocked. It would therefore be preferable for the claimants to settle among themselves the question of sovereignty, maritime boundaries and resource rights. For a host of reasons, however, arriving at a negotiated settlement is fraught with difficulties. The Paracels is a bilateral dispute between China and Vietnam; however, Beijing does not recognize

that a dispute exists and refuses to discuss the sovereignty question with Hanoi (much as Japan does not recognize a dispute with China over the Senkaku/Diaoyu Islands and South Korea with Japan over the Dokdo/Takashima Reef). And while Beijing accepts that there is a dispute over the Spratlys, it regards it as a bilateral problem that can only be resolved between China and each of the Southeast Asian claimants on a one-on-one basis (and not between the four Southeast Asian countries as a group and China). Since the early 1990s China has successfully resolved many of its sovereignty disputes through bilateral negotiations, but for the South China Sea this approach has found little support among the Southeast Asian countries due to asymmetries in power: the Southeast Asian claimants are concerned that an economically and militarily strong China would be able to pressure them into accepting unfavourable terms. Other problems stand in the way of a negotiated settlement too. Over the past few years nearly all of the claimants have attempted to strengthen their sovereignty and jurisdictional claims through national legislation, submissions to the UN and acts of administration. Together with rising nationalist fervour over sovereignty of the islands, this has made it harder for governments to make concessions or reach compromises. An additional complication to a negotiated settlement is that it would be nearly impossible for Taiwan to participate in talks concerning sovereignty of the islands because, in accordance with the One China policy which Beijing demands as a condition of diplomatic relations, none of the other parties recognize it as a sovereign state.

Setting aside the sovereignty issue in favour of joint development is a third possible option to resolve the dispute. In the late 1970s, Chinese Premier Deng Xiaoping asserted that while sovereignty of the South China Sea atolls belonged to China, the claimants should shelve the dispute and engage in joint development. This formula has been repeated many times by China's leaders, most recently by President Xi in 2013.⁴⁴ Yet China has never explained in detail how joint development would work, nor suggested a framework to operationalize it. In 2011, the Philippines proposed transforming the South China Sea into a "Zone of Peace, Freedom, Friendship and Cooperation" (ZoPFF/C) by enclosing the Spratlys, demilitarizing the islands and establishing a joint agency to manage seabed resources and fisheries — essentially a roadmap for Deng's proposal. China, however, dismissed the idea out of hand, and none of the Philippines' ASEAN partners supported it. As a result, the ZoPFF/C failed to gain momentum.

THE ASEAN–CHINA CONFLICT MANAGEMENT PROCESS

As all parties to the South China Sea dispute have been acutely aware of the roadblocks in the way of a negotiated settlement, since the end of the Cold War the focus of discussions has been on how the conflict can be better managed. Because peace and stability in the South China Sea is fundamental to Southeast Asia's security, ASEAN has taken the lead in proposing a series of initiatives aimed at reducing tensions and building trust among the claimant countries. After more than twenty years of talks and agreements, however, the results have been fairly disappointing.

ASEAN's first public statement on the problem was the 1992 ASEAN Declaration on the South China Sea, also known as the Manila Declaration.⁴⁵ The Declaration was issued in response to rising tensions in the sea as the various claimants moved to bolster their claims. In order to position itself as a neutral party, ASEAN's 1992 Declaration did not apportion blame for increased tensions but called on all parties to resolve their disputes peacefully, renounce the use of force, exercise "self-restraint", negotiate cooperative confidence building measures (CBMs) and draw up a "code of international conduct". It was not until 1999, however, that Beijing finally indicated that it was ready to begin talks with ASEAN about such a code, by which time the dispute had become a serious source of friction between China and Vietnam and China and the Philippines. Following two years of discussions, in November 2002, ASEAN and China issued the Declaration on the Conduct of Parties in the South China Sea (DoC).⁴⁶ The one-page agreement built on the Manila Declaration — as well as the work of the South China Sea workshops hosted by Indonesia between 1991 and 2002 — and called on the parties to resolve their disputes peacefully, exercise self-restraint and implement CBMs — but unlike the 1992 Declaration it proscribed the occupation of unoccupied features. Although it was widely hailed as a major breakthrough at the time, the DoC had significant weaknesses: it was non-binding, did not specify which activities contravened the self-restraint clause and Taiwan was not a party to the agreement. Moreover, although ASEAN and China established a senior officials meeting and joint working group to operationalize the DoC, it was not until July 2011 — against a backdrop of surging tensions — that the two sides agreed on a set of implementation guidelines. Talks on designing cooperative CBMs began in early 2012 but it was not until mid-2013 that China finally consented to start discussions on a binding Code of Conduct for the South China Sea (CoC) which

the DoC calls for and which ASEAN hopes will “promote trust and confidence, prevent incidents, and manage incidents should they occur” and thus create a “conducive environment of the eventual resolution of the disputes”.⁴⁷ Those discussions began in September 2013 and continued during 2014. At the time of writing it is difficult to speculate when the CoC will be signed, mainly because the two sides have different timeframes: while ASEAN leaders have repeatedly called for expedited talks leading to the “early conclusion” of the CoC, China has indicated that it is in “no rush”.

RISKS AND DANGERS

There is unlikely to be a breakthrough, either political or legal, in the South China Sea dispute for the foreseeable future. This being the case, what are the risks and dangers inherent in a continuation of the status quo?

Few observers envisage a major war in the South China Sea involving large-scale naval battles, air strikes and amphibious landings. As noted earlier, all of the parties to the dispute, and indeed all members of the international community, have a common interest in the maintenance of peace and stability in the South China Sea and ensuring the free flow of maritime trade. As the Vietnamese Prime Minister Nguyen Tan Dung cautioned in 2013, “A single irresponsible action or instigation of conflict could well lead to the interruption of these huge trade flows, with unforeseeable consequences not only to regional economies but also to the entire world.”⁴⁸ Among the claimants, China possesses the strongest armed forces and could, in theory, “resolve” the problem by force. The reputational costs to China would, however, be very costly: cutting the Gordian Knot would completely undermine China’s “peaceful development” thesis, cause irreparable damage to its relations with Southeast Asian countries, and push them into closer alignment with the United States. None of these outcomes would be in China’s interests, and would outweigh any gains to be made from access to resources.

But while a major war is an unlikely scenario, conflict cannot, of course, be ruled out. As in the East China Sea, the main risk in the South China Sea is that a skirmish on the water involving patrol boats, warships, fishing trawlers, survey vessels or oil rigs sparks a military clash that quickly escalates into an unplanned and dangerous crisis in which lives are lost. As U.S. Defense Secretary Chuck Hagel warned at the ASEAN Defence Ministers’ Meeting-Plus (ADMM-Plus) in August 2013, “Actions at sea to advance territorial claims do no strengthen any party’s legal claim. Instead

they increase the risk of confrontation, undermine regional stability and dim the prospects for diplomacy.”⁴⁹ This risk of tensions turning into conflict is heightened due to the relative absence in Asia of effective crisis prevention and de-escalation mechanisms of the kind negotiated by the United States and some of its allies with the Soviet Union during the Cold War, such as hotlines and Incidents at Sea agreements.

The South China Sea Dispute: Navigating Strategic Tensions

This edited volume is composed of thirteen chapters which were originally presented at the “Workshop on the South China Sea Dispute: Political and Security Implications for the Region’s Future” in 2012 organized by the Center for Asia-Pacific Area Studies of Academia Sinica and the East-West Center in Hawaii, but which have been thoroughly updated since that event.

In Chapter 2, “Untangling a Complex Web: Understanding Competing Maritime Claims in the South China Sea”, Clive Schofield sets the geographical scene by investigating competing claims to maritime jurisdictions and how the opacity of some of those claims not only stand in the way of a negotiated settlement but also joint development of resources.

In Chapter 3, “China Debates the South China Sea Dispute”, Mingjiang Li reviews the on-going debates within the PRC on what approach it should take to the dispute and how best to uphold its sovereignty and jurisdictional claims. In the following chapter, “Taiwan’s Evolving Policy towards the South China Sea Dispute, 1992–2016”, Anne Hsiu-an Hsiao and Cheng-yi Lin explain Taiwan’s evolutionary policy approach towards the South China Sea issue under Presidents Lee Teng-hui, Chen Shui-bian and Ma Ying-jeou and then examine the current opportunities and challenges for Taiwan in the context of improving cross-straits relations.

The next two chapters are devoted to Southeast Asian countries and the role of ASEAN. In Chapter 5, “The South China Sea: Primary Contradictions in China–Southeast Asia Relations”, Alice D. Ba situates the issue within the overall context of Southeast Asia’s relations with China, how the concerned parties have tried to manage the problem in the past, the costs of increased politicization of the dispute since 2008 and the enormous challenges for ASEAN as it faces growing U.S–China rivalry in

Southeast Asia centered on the maritime dispute. In Chapter 6, “Rising Tensions in the South China Sea: Southeast Asian Responses”, Ian Storey traces the highs and lows of the ASEAN–China conflict management process before going on to examine the perceptions of, and policy responses to, the regional hotspot by each of the ten ASEAN members.

The next three chapters focus on individual Southeast Asian claimants. Aileen S.P. Baviera in Chapter 7, “The Philippines and the South China Sea Dispute: Security Interests and Perspectives”, looks at Manila’s maritime claims and the factors which have contributed to the “deteriorating security seascape” of Sino–Philippine relations and how, in response, the Philippines has relied on diplomacy and, more recently, international legal arbitration to protect its claims. In Chapter 8, “A Vietnamese Perspective on the South China Sea Dispute”, Hoang Anh Tuan argues that China’s increased assertiveness has raised the prospect of conflict, facilitated America’s “pivot” to Asia and not only damaged China’s regional relationships and image but also its long-term economic prospects and leadership aspirations. Elina Noor, in Chapter 9, “The South China Sea Dispute: Options for Malaysia”, assesses the country’s energy and geopolitical interests in the South China Sea, its cautious approach to the dispute and its options for mitigating the problem, both bilaterally with China and in concert with its ASEAN partners.

The next three contributions assess the interests, roles and policies of the United States and Japan. In Chapter 10, “The United States and the South China Sea: Front Line of Hegemonic Tension?”, Denny Roy adopts a geopolitical perspective and argues that because China’s policy in the South China Sea challenges major U.S. interests in the Asia-Pacific region, the dispute is likely to exacerbate Sino–U.S. rivalry and may herald the beginning of a turbulent hegemonic transition. In the following chapter, “The South China Sea Dispute in U.S.–ASEAN Relations”, Yann-huei Song posits that as tensions have risen, the dispute has become an increasingly salient issue in America’s relations with ASEAN and has served to promote closer ties between the United States and its friends and allies in Southeast Asia: in short, that Washington has actually benefitted from renewed Chinese assertiveness. In the final chapter, “Japan and the South China Sea Dispute: A Stakeholder’s Perspective”, Yoichiro Sato considers how events in the South China Sea have paralleled those in the East China Sea, and why Tokyo believes that Beijing’s policies in the maritime domain pose a threat to its national interests in Asia. The volume ends with a concluding chapter.

Notes

This chapter draws in part from Ian Storey, “Discordes en mer de Chine méridionale: les eaux troubles du Sud-Est asiatique” [Disputes in the South China Sea: Troubled Southeast Asian Waters] which first appeared in *Politique étrangère* 79, no. 3 (Fall 2014): 35–47. It is reproduced here with the kind permission of the publishers.

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