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***Session II: Resources (Energy, Fishing) and Maritime Law***

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# Territorial Issues in the South China Sea: Politics, Resources and Maritime Law

## Introduction

While China, ASEAN and the US remain the most significant players in the South China Sea, other countries such as Japan, India, Australia, EU major countries also have huge interests in this maritime domain. In recent years, action-reaction cycle in the South China Sea has increased tension in the region, deteriorated relations between China and its neighboring countries, posed challenges for ASEAN in maintaining centrality in the regional security structure, and strengthened US determination to “rebalance” toward Asia. The South China Sea issue has become the bellwether for how China will rise peacefully and play by established rules, a test case for the US in sustaining its supremacy in the region and a challenger for ASEAN unity. This paper will explore the interests and policy of China, ASEAN, the US and other major powers in the South China Sea, analyze the dynamics of recent developments and envisage its implications for regional stability.

## Interests of the Concerned Parties in the South China Sea

### *China*

For China, a regional power on its path to global power seeking to exert greater influence in Asia and Southeast Asia in particular, the South China Sea is an important “backyard” to shield its mainland from any sea attack. If, on land, China only gains a strategic leverage over three bordering Southeast Asian countries (Laos, Myanmar and Vietnam), at sea, especially the South China Sea, China can project its power over all countries in Southeast Asia.

China’s goal to protect its interests within the “strategic stability belt” in the “near” seas stretching from the Yellow Sea, the East China Sea, and the Taiwan Strait to the South China Sea explains why Beijing considers the South China Sea as a “core interest”, opposes the US military surveillance activities in the exclusive economic zone, and increases the naval capability of ‘anti-access/ area denial’. Moreover, to protect its increasing political and economic interests, Chinese navy is shifting to far-seas operations. The South China Sea then becomes an area for training exercises and a springboard for China to move out.

In terms of energy, it is widely believed that the South China Sea has great potential for oil and gas. There are different estimates of the oil and gas reserves in the South China Sea, some vary quite significantly<sup>1</sup> as the disputes have prevented claimant-countries from calculating the exact amounts. However, there is a possibility that the energy reserves in the South China Sea have been overvalued. Even in case of effective exploitation, the output would account for only a small part of supply compared to the huge demand in the future.

On other hand, to deal with the energy security issue, China and ASEAN countries are finding ways to diversify their energy supplies. China is now concentrating on oil and gas exploitation in areas as close as possible (in order to minimize transportation costs and secure the supply of energy resources in the context of an unstable Middle East). As a result, the South China Sea becomes the focal point in China's energy security strategy. That China promotes "setting aside disputes and pursuing joint development" in the South China Sea is an essential measure to help Beijing tackle the energy security issue.

Moreover, at the moment, the legitimacy of the Chinese Communist Party is maintained and consolidated by high economic growth rate. China's stability depends on the stable supplies of natural resources and freedom of navigation. Yet, China is not satisfied with current situation when the safety of SLOC is guaranteed by the US navy. China wants to protect important sea routes which are vital to China's economy, such as routes through the South China Sea and the Malacca Strait. If these routes were blocked for one day and China's energy supply would be interrupted, it would then lead to social unrest in China.<sup>2</sup> Therefore, Beijing has legitimate concerns to develop naval forces to protect its SLOC. However, Chinese military and navy modernization is posing mounting challenges to the East Asian order.

## *ASEAN*

Because of divergent interests and external impact, ASEAN countries have different viewpoints regarding the South China Sea issue. Even claimants in ASEAN, including Vietnam, the Philippines, Malaysia and Brunei sometimes do not share a common voice. Among ASEAN claimants, Vietnam and the Philippines are those who had the largest number of collisions/ incidences with China. Therefore, both

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<sup>1</sup> In 1998, U.S geologists estimated that the sea possessed about 2.1-15.8 billion oil barrels in the Spratly, while Russian sources estimated about 7.5 billion barrels. In 2003, China assessed that the Paracels' area contains reserves of 41 billion tons of oil, 8-10 billion cubic meters of gas, about 3.1 billion tons of other natural resources and up to 630 million kW of renewable energy.

<sup>2</sup> CNAS report: *Cooperation from Strength: The United States, China and the South China Sea*, p.15, [http://www.cnas.org/files/documents/publications/CNAS\\_CooperationFromStrength\\_Cronin\\_1.pdf](http://www.cnas.org/files/documents/publications/CNAS_CooperationFromStrength_Cronin_1.pdf).

countries are the two most active players who call for ASEAN's solidarity in handling the South China Sea issue. Since the US pronouncement of 'Asia's pivot', the Philippines has become more confident and proactive, and frequently proposed new initiatives in ASEAN forums. Despite their status as claimants in the South China Sea disputes, Malaysia and Brunei were not directly intimidated by China on the sea and they often attach greater importance to their relations with China.

Among the non-claimants, Singapore and Indonesia hold a neutral view. They do not support the claim of any party. Singapore MFA spokesperson once commented that "Singapore is not a claimant state and takes no position on the merits or otherwise of the various claims in the South China Sea. But as a major trading nation, Singapore has a critical interest in anything affecting freedom of navigation in all international sea lanes, including those in the SCS."<sup>3</sup> Indonesia has a tradition of playing the mediation role, hosting many workshops on managing potential conflict in the South China Sea over the last 20 years and now actively promoting ASEAN common position on this issue. Active mediation role in the South China Sea issue has strengthened Indonesian image as one of the most reliable member within ASEAN. Laos, Thailand and Myanmar do not have direct interests in the South China Sea; therefore they have rarely expressed their positions. Having close political and economic ties with China, Cambodia, to a certain extent, supports Chinese principle of bilateral negotiation.

Although ASEAN members have divergent interests on the South China Sea, all of them share common interests in protecting freedom of navigation, regional stability, respecting international law as well as maintaining the solidarity and centrality role of ASEAN within regional security (and economic) architecture. All ten ASEAN member states participated in negotiation and signed the Declaration of Conduct (DOC) in 2002 and are now in the same position to promote the negotiation of the Code of Conduct (COC) with China, in order to effectively manage the disputes and enhance peace and cooperation in the region.

### *The US*

As the only global superpower, the US has direct interests in the South China Sea in many aspects: (i) maintaining the US-led order at sea, including the international law of the sea pursuant to US interpretation; especially the freedom of navigation which includes the activities of US military ships; (ii) protecting the interests of its allies,

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<sup>3</sup> Singapore MFA spokesperson's Comments on Visit of Chinese Maritime Surveillance Vessel Haixun 31 to Singapore. [http://www.mfa.gov.sg/content/mfa/overseasmission/phnom\\_penh/press\\_statements\\_speeches/embassy\\_news\\_press\\_releases/2011/201106/press\\_201106\\_5.html](http://www.mfa.gov.sg/content/mfa/overseasmission/phnom_penh/press_statements_speeches/embassy_news_press_releases/2011/201106/press_201106_5.html)

especially the strategic maritime routes for Japan, South Korea, Taiwan and the Philippines; (iii) managing China's (naval) outreach to ensure that its rise will not upset the present US-dominated system; (iv) safeguarding the interests of US oil and gas corporations in the region. These interests are fundamental and permanent; it is difficult for the US to bargain with China because most of these interests are inextricably tied to the leadership position that the U.S wants to sustain in the existing global system.

### *Other Powers*

These include States such as Japan, India, Australia and South Korea, who are benefited in enjoying freedom of movement through the South China Sea also have huge interests in maintaining freedom of navigation, regional stability, respecting of the current system of international law. They also have interests in maintaining the centrality role of ASEAN as ASEAN provides platforms for these countries to engage in multilateral diplomacy (such as ASEAN+, ARF, ADMM+, EAS, and so forth).

## Policies of Parties in the South China Sea

### *China*

Being the most powerful claimant in dispute, China's policies set the tone for the situation in the South China Sea.

Since early 2000s, in implementation strategy of "peaceful development", China has carried out a "charm offensive" policy with variety of measures to promote cooperation with ASEAN, changed its standpoint toward the ARF process and signed the Declaration of Conduct (DOC) in 2002. Years after the signing DOC, though China has not actively cooperated with ASEAN in implementing the joint declaration, it did not conduct any significant activity threatening the stability of the South China Sea.

However, since 2009, China has adjusted its policy toward the South China Sea issue and become more assertive. China has significantly increased its presence in the South China Sea with a comprehensive approach, expanding not only military but also paramilitary and civilian activities in the area, to achieve *de-facto* control of the area in the South China Sea as indicated by the so-called 'U-shaped line' claim.

Relating to the military activities, China is accelerating its military build-up, especially in terms of its naval modernization with the construction of a naval base in Sanya that could serve as a gateway to the South China Sea. These developments are

arguably designed to send messages of deterrence to other ASEAN claimants in the South China Sea. The Chinese navy has also increased the frequency and level of coordination in conducting naval exercises in the South China Sea. One of the most significant event happened in July 2010 when the PLA navy for the first time mobilized at least a dozen modern warships from three fleets (the North Fleet, the East Fleet, and the South Fleet) to conduct a large-scale joint naval exercise in the South China Sea.<sup>4</sup> Significantly, on June 28, 2012, China's Ministry of Defense announced that China commenced combat-ready patrols in its claimed waters in the South China Sea.<sup>5</sup>

Chinese navy actively deploys anti-access/ area denial strategy at sea, a typical example of which is the harassment of USNS Impeccable on March 2009, aiming to push the US navy far away from China's coast and turn the exclusive economic zone into exclusive military zone. On other hand, PLAN has switched from "near sea active defense" in the first island chain (from Kurile, Taiwan to the South China Sea) to the "far-sea defense" of second island chain (from Japan, Guam (US) to Northwest Pacific and Indian Ocean). Thus, China is investing a Blue Water Navy, including developing the first aircraft carrier.<sup>6</sup> As a consequence of China's naval modernization, especially its Blue Water Navy, the regional balance of (hard) power is shifting in favor to China.

Concerning paramilitary activities, China has deployed systematically patrol vessels and boats from various Chinese maritime law enforcement agencies to the South China Sea. China has at least five maritime law enforcement agencies: the China Coast Guard is the maritime branch of the Public Security Border Troops, a paramilitary police force under the leadership of the Ministry of Public Security; The China Maritime Safety Administration, part of the Ministry of Transport, is for coordinating maritime search and rescue; The China Marine Surveillance (CMS), a paramilitary maritime law enforcement agency under the auspices of the State Oceanic Administration; The China Fisheries Law Enforcement Command (FLEC) (an organ of the Fisheries Management Bureau under the Ministry of Agriculture) are responsible for the enforcement of laws concerning fishing and marine resources; and the General Administration of Customs operates a maritime anti-smuggling force.

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<sup>4</sup> "China's three-point naval strategy", Strategic Comment, Volume 16, Comment 37 – October 2010, The International Institute For Strategic Studies (IISS), <http://www.iiss.org/publications/strategic-comments/past-issues/volume-16-2010/october/chinas-three-point-naval-strategy/>

<sup>5</sup> "China pledges to protect maritime sovereignty", [http://www.chinadaily.com.cn/china/2012-06/29/content\\_15533944.htm](http://www.chinadaily.com.cn/china/2012-06/29/content_15533944.htm)

<sup>6</sup> Ian Storey, "Asia's Changing Balance of Military Power: Implications for the South China Sea Dispute " in NBR Report Maritime Energy Resources in Asia: Energy and Geopolitics, Clive Schofield edited

Some scholars observed that every agency has their own patrol vessels and operates independently and uncoordinatedly with each other.<sup>7</sup>

During the period of its unilaterally declared fishing ban between May and August (imposed annually since 1999), Chinese maritime security forces have repeatedly detained Vietnamese fishermen, confiscated fishing boats and charged fines of US \$8,000 to \$10,000 for their release. Since early April 2010, Beijing even announced the dispatch large fishery patrol vessels to the Spratly Islands to protect Chinese fishing vessels, which were increasing in number and going further to the south.<sup>8</sup> On June 23, 2010, the Chinese fishery administration vessel Yuzheng 311 even pointed a large-caliber machine gun to an Indonesian ship and threatened to attack the ship when a Chinese fishing boat was seized by Indonesian forces in the area within Indonesia's exclusive economic zones in the Natuna Islands.<sup>9</sup>

The fact that China increasingly deploys its paramilitary forces to patrol the South China Sea is both a move to consolidate its claims over the disputed areas and a message to outsiders that China only uses "peaceful measures". However, question remains that if these powerful and well-equipped forces cannot protect China's interests, whether China will not hesitant to use its military forces to protect its interest.

The issue of resources exploitation (hydrocarbon and fish) in the South China Sea becomes the most frequent source of tensions between China and other claimants. On the one hand, China accused other claimants of extracting "China's oil", and catching "China's fish", while China has not obtained any drop of oil from the Spratlys, and Chinese fisherman are being captured and driven away.<sup>10</sup> On the other hand, China tried to prevent other claimants from oil and gas development in the overlapping area between China's U-shaped line and others EEZ. For example, since summer 2007, China has threatened a number of foreign oil and gas companies to cease joint offshore exploration operations with Vietnam or face unfathomable consequences in

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<sup>7</sup> For a comprehensive analysis, see: Lyle J. Goldstein, *Five Dragons Stirring Up the Sea: Challenge and Opportunity in China's Improving Maritime Enforcement Capabilities*, U.S. Naval War College, China Maritime Study 5, April 2010. [http://www.usnwc.edu/Research---Gaming/China-Maritime-Studies-Institute/Publications/documents/CMSI\\_No5\\_web1.pdf](http://www.usnwc.edu/Research---Gaming/China-Maritime-Studies-Institute/Publications/documents/CMSI_No5_web1.pdf)

<sup>8</sup> Ian Storey, China's "Charm Offensive" Loses Momentum in Southeast Asia, China Brief Volume: 10 Issue: 9, April 29, 2010. [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=36324&tx\\_ttnews\[backPid\]=7&cHash=897d20a7fa](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=36324&tx_ttnews[backPid]=7&cHash=897d20a7fa)

<sup>9</sup> "China flexes muscles in South China Sea", Mainichi Shimbun, 27 July 2010

<sup>10</sup> Mingjiang Li, "Reconciling Assertiveness and Cooperation? China's Changing Approach to the South China Sea Dispute", Security Challenges, Volume 6, Number 2 (Winter 2010), p 58.

their businesses with China.<sup>11</sup> Within 2011- 2012, China at least three times adopted more aggressive tactics of using law enforcement vessels (from Maritime Surveillance Agency) and/or fishing boats to harass and cut the seismic cables of commercial oil exploration vessels operating within Vietnam's EEZ.<sup>12</sup> Since second half of 2012, there was two (first) times that Chinese maritime surveillance vessels reportedly attempted to harass Malaysian exploration ships within Malaysian continental shelf.<sup>13</sup>

China has unilaterally imposed fishing bans between May and August every year since 1999. As aforementioned, Chinese maritime law enforcement forces have repeatedly detained Vietnamese fishermen, confiscated fishing boats and charged fines for their release.

While protesting against resources development activities undertaken by other countries in areas within the U-shaped claim, China has on the other hand continued to advocate for joint energy resources development within the U-shaped line in the South China Sea.

Besides taking activities directly on the sea, China also initiated a number of steps to strengthen its claim legally and administratively, which provoked protests from other claimants. For example, in second half of 2012, Chinese government issued new

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<sup>11</sup> Scot Marciel, "Maritime Issues and Sovereignty Disputes in East Asia" Testimony before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, July 15, 2009. [http://foreign.senate.gov/hearings/hearing/20090715\\_2/](http://foreign.senate.gov/hearings/hearing/20090715_2/)

For Summary of leaked US diplomatic cables released by WikiLeaks on China's protests against international oil firms signing exploration deals with Vietnam in the South China Sea, see Greg Torode, "Beijing pressure intense in South China Sea row", South China Morning Post, Sep 23, 2011. <http://topics.scmp.com/news/china-news-watch/article/Beijing-pressure-intense-in-South-China-Sea-row>

<sup>12</sup> First cable cutting incident on May 26, 2011, took place in an area just about 80 miles off the south-central coast of Vietnam, within Vietnam's exclusive economic zone when three Chinese patrol ships accosted and harassed the Vietnamese ship Binh Minh 02. See Press Conference on Chinese maritime surveillance vessel's cutting exploration cable of PetroViet Nam Seismic Vessel. [http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110530220030#1JLxTTgwqAy2](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110530220030#1JLxTTgwqAy2)

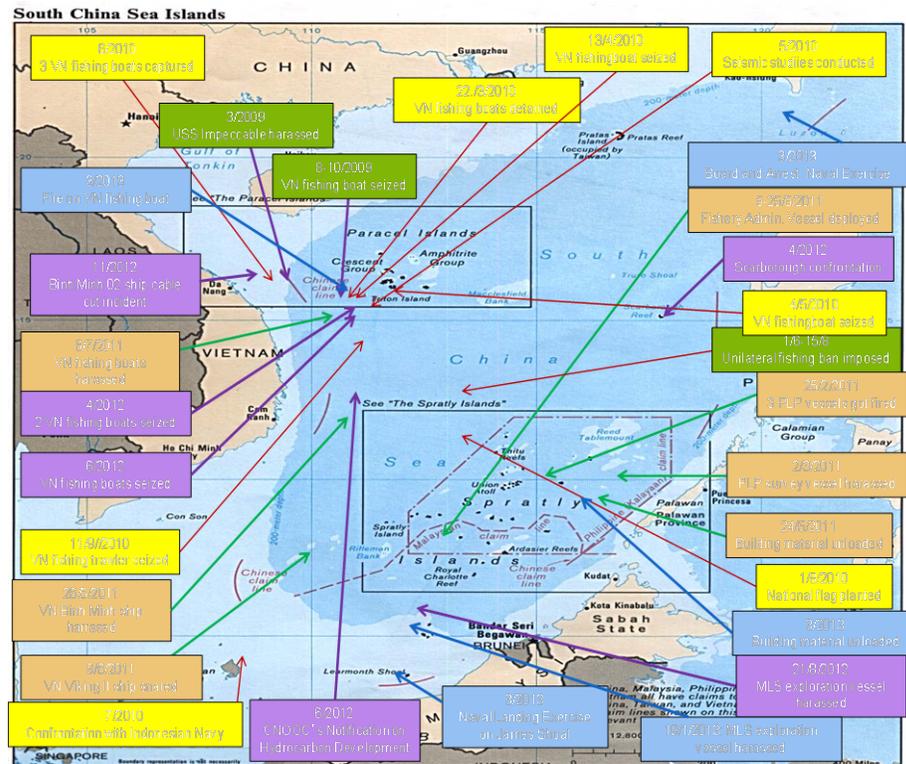
Second incident occurred on June 9, 2011, when a Chinese fishing boat, with support from Chinese fishing patrol vessels, rammed the survey cables of the PetroVietnam ship Viking II, which was conducting a seismic survey in Block 136-03, an area within 200-nautical mile exclusive economic zone of Vietnam. [Foreign Ministry Spokesperson Nguyen Phuong Nga at the Press Conference June 9th 2011. http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110610100618#kyKoH1NekSr9](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610100618#kyKoH1NekSr9)

Most recent incident happened on December 3, 2012 when two Chinese boats ran up behind and cut seismic survey cables of PetroVietnam's ship Binh Minh 02 while this commercial ship was operating in the area outside the mouth of Tonkin Gulf on Vietnam's side, about 20 miles from median line between China's coast and Vietnam's coast. See "PetroVietnam Protests Chinese Ships' Breakage of Survey Cable" at <http://biengioilanhtho.gov.vn/eng/PrintNews.aspx?NewsId=4466f14c>

<sup>13</sup> <http://malaysiaflyingerald.wordpress.com/2013/04/16/buku-bertemu-ruas-the-rmn-against-china-maritime-surveillance-agency/>

electronic passport for its citizens with the map of the U-shaped line claiming most of the South China Sea. In November 2012, Hainan provincial government announced new regulations allowing law enforcement vessels to board, inspect, detain, expel or confiscate foreign ships conducting “illegal” activities within Chinese waters. Though Hainan’s officials and China’s Ministry of Foreign Affairs spokesperson assured the international community that the scope of application of this rule is within 12 nautical miles of Hainan’s coast and the Paracels,<sup>14</sup> the language of the regulation regarding Chinese “jurisdictional waters” and “Sansha city” is relatively ambiguous, which can be later exploited by Chinese law enforcement agencies to expand “board and search” activities to the U-shaped line, or at least to the territorial sea of other islands and rocks in the South China Sea.<sup>15</sup> Tension is likely to increase if China applies this new regulation and arrests Vietnamese fishermen conducting fishing activities near the Paracels. In case Chinese law enforcement agencies expand “board and search” activities to the territorial sea of islands and rocks in the Spratlys which are under control of other claimants, there will be new clashes and incidents in these areas.

**Map: Approximate Locations of Incidents between China and other Countries in the South China Sea during 2009-2013.**<sup>16</sup>



14 “China says 'board and search' sea rules limited to Hainan coast”  
<http://in.reuters.com/article/2012/12/31/china-seas-idINL4N0A51QH20121231>  
 15 See text in Chinese at [http://www.hq.xinhuanet.com/news/2013-01/01/c\\_114221654.htm](http://www.hq.xinhuanet.com/news/2013-01/01/c_114221654.htm)  
 16 compiled by author (VN: Vietnam; PLP: Philippines; MLS: Malaysia)

Several interconnected internal and external factors contribute to the explanation why China has returned to a more assertive approach in the South China Sea in recent years.

Domestic factors include: (i) The rise of nationalism in China: Chinese people believe that other claimants are extracting “China’s oil”, and catching “China’s fish”, while China has not obtained any drop of oil from the Spratly islands, and Chinese fisherman are being captured and driven away;<sup>17</sup> (ii) Leadership transition period and the ensuing internal political struggles: none of the Chinese leaders wants to appear “soft” in protecting territorial sovereignty; (iii) Interest groups: Some activities are carried out by competing interest groups (such as Fisheries Law Enforcement Command, China Marine Surveillance...) without approval from center,<sup>18</sup> while top leaders are busy with power transition and other domestic issues; (iv) Energy demand: as aforementioned, China considers the South China Sea as a vital source of supply and a critical transportation route for its national development; (v) Relative stability in China-Taiwan relation in recent years has enabled China to shift its priorities, capability and resources to other external issues, most notably to the South China Sea.

Externally, there are two factors contributing to the explanation of China’s assertive behaviors in recent years, which closely relate to the other two dyads of the China-ASEAN-US triangle. First, China believes that the US’ power is declining due to economic and financial problems in 2008-2009; while China for decades of continuous remarkable economic growth has accumulated its economic and military power to a level that allows it to become more confident and seek to increase its influence and interests in East Asia, of which the South China Sea is the focal point. China’s assertiveness is part of the plot to test US response. Second, ASEAN claimants’ activities have forced China to react. This is China’s main argument when it accused other claimants of provoking tension and violating China sovereignty in the South China Sea. In fact, none of ASEAN claimants are exploiting hydrocarbon resources in disputed Spratly or Paracel areas. ASEAN claimants’ resources development activities have been carried out in their internationally recognized exclusive economic zone for many years without China’s opposition. The main reason that China has increasingly opposed those activities is that since China made public internationally its map with U-shape line in 2009, any activity taken by other claimants within the line has been regarded as violations of China’s interests.

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<sup>17</sup> Mingjiang Li, “Reconciling Assertiveness and Cooperation? China’s Changing Approach to the South China Sea Dispute”, *Security Challenges*, Volume 6, Number 2 (Winter 2010), p 51, p 58.

<sup>18</sup> See: ICG Report “Stirring up the South China Sea” part 1 at <http://www.crisisgroup.org/en/regions/asia/north-east-asia/china/223-stirring-up-the-south-china-sea-i.aspx>

## ASEAN

Facing with increasing China's assertive activities in the South China Sea, ASEAN claimants, particularly the Philippines and Vietnam, applied a multifaceted policy designed to defend their national interests while simultaneously seeking to preserve a peaceful environment and relations with neighboring States. This policy comprises a combination of using the international law, especially the *United Nations Convention on the Law of the Sea, 1982 (LOSC)*,<sup>19</sup> to defend their maritime claims; opposing joint development with China in the areas within their internationally recognized maritime zones; bringing up the South China Sea issue to regional forums for discussion with involvement of other external powers, especially the US; working with other members of ASEAN in engaging China in *DOC* implementation and in working for a new code of conduct; and negotiating directly with China to defuse tensions and to settle remaining bilateral issues.

In their attempts to deal with China's vast claim in the South China Sea, ASEAN claimants have been trying to separate their exclusive economic zones and continental shelves measured from their mainland coasts (or from near-shore undisputed islands) that they consider to be undisputed waters from the central parts of the South China Sea that are in their estimation subject to overlapping maritime claims arising from disputes over islands area in the South China Sea. In order to minimize the area under dispute, ASEAN claimants prefer to interpret the *LOSC*, specifically the article 121 "regime of islands" in a strict way.<sup>20</sup> They directly or indirectly do not consider any disputed features in the South China Sea to be islands, as defined in Article 121 of UNCLOS, therefore these features can generate maximally twelve miles maritime zone of territorial sea.<sup>21</sup>

Response to China's proposal of joint development, in principle, other claimants do not oppose concept of joint development, ASEAN claimants even signed some joint development arrangements in the South China Sea and Gulf of Thailand; however, the question of how to define an acceptable area in the disputed waters in the South China Sea to launch joint development projects remains one of the most

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<sup>19</sup> *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3 (*LOSC*).

<sup>20</sup> *LOSC* provides for two categories of feature under article 121 governing the 'regime of islands': islands that are capable of generating the full suite of maritime zones, including the exclusive economic zone and the continental shelf, and "rocks which cannot sustain human habitation or economic life of their own" and "shall have no exclusive economic zone or continental shelf."

<sup>21</sup> See analysis on positions of ASEAN countries regarding the issue of "regime of island" in the South China Sea at Tran Truong Thuy, "[The Declaration on the Conduct of Parties in the South China Sea and Developing Maritime Energy Resources](#)" in Report of the National Bureau of Asian Research "[Maritime Energy Resources in Asia: Energy and Geopolitics](#)" Dec 2011.

Link: <http://www.nbr.org/publications/element.aspx?id=565#.UbrEtK7Utxg>

intractable issues in putting the idea into practice. ASEAN claimant states would certainly not accept any Chinese proposals for joint development arrangements in the areas within their undisputed EEZ and continental shelves. Such areas are, sometimes of the order of five to seven hundreds nautical miles distant from Hainan Island, the southernmost Chinese undisputed territory. On other hand, China's policy of assertiveness on the sea and pressure on Vietnam and Philippines for "setting aside dispute and pursuing joint development" only raises nationalism in these countries and makes compromises harder to achieve. As has been demonstrated in the case of the Agreement for Joint Marine Seismic Undertaking in the South China Sea in 2005 between national petroleum corporations of China, the Philippines and Vietnam, the Philippines had withdraw from the agreement due to mounting domestic opposition, which condemned the government of compromising Philippine sovereignty by allowing the area of the joint development project to overlap with the country's exclusive economic zone. Alternatively, ASEAN claimants are ready to work with foreign – including Chinese – partners only on the condition that their sovereign rights are fully respected.<sup>22</sup>

Failing in reaching any agreement between China and other ASEAN countries on joint development in the South China Sea is also relating to the most controversial issue – the U-shape line. Since 2009, when China in a Note Verbal to CLCS published the map with U-shaped line covering almost 80% of the South China Sea and overlapping with exclusive economic zones of all ASEAN countries that surrounding the South China Sea, including Indonesia, these countries become more concerned about China's intention. Several countries have protested to the line or requested China to clarify its legal basic.

Vietnam immediately responded to China's Note Verbal in 2009 by sending a Note to CLCS stating "China's claim for the nine-dotted line on the map attached to its diplomatic note is null and void as it has no legal, historical and factual ground."<sup>23</sup>

Indonesia, in a note sent to the UN on July 8, 2010, to protest the map attached to China's note, stated "the so called nine-dotted-lines-map as contained in the Note...clearly lacks international legal basis and is tantamount to upset the UNCLOS 1982."<sup>24</sup>

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<sup>22</sup> "Vietnam Signals It Wants ExxonMobil Deal Despite China Warning," *Agence France-Presse*, July 24, 2008, <http://afp.google.com/article/ALeqM5heDDtUDkdvnpdxGI91DdmaxA7aw>.

<sup>23</sup> [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/vnm\\_chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_chn_2009re_mys_vnm_e.pdf)

<sup>24</sup> Permanent Mission of Indonesia to the United Nations, "Communication dated 8 July 2009," Commission on the Limits of the Continental Shelf (CLCS), UN Division for Ocean Affairs and the Law of the Sea, [www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/idn\\_2010re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/idn_2010re_mys_vnm_e.pdf)

On April 5, 2011, the Philippines sent a Note Verbal to CLCS to protest against China's nine-dotted line.<sup>25</sup> Following Vietnam and Indonesia, the Philippines rejected the historical basis, if any, of China's nine-dotted line. The Philippines also challenged China's claim by suggesting China bring the issue before the ITLOS, but met with no response from the Chinese side. Finally, on 22 January 2013, the Philippines officially instituted arbitral proceedings against China under Annex VII of the UNCLOS 1982 requests that the Arbitral Tribunal issue an Award that, among others, "declares that China's maritime claims in the South China Sea based on its so-called "nine dash line" are contrary to UNCLOS and invalid".<sup>26</sup>

Singapore, a non-claimant, also calls on China to clarify its claims in the South China Sea. On 20 June 2011, comment on visit of Chinese Maritime Surveillance vessel Haixun 31 to Singapore, MFA spokesperson said that:

We think it is in China's own interests to clarify its claims in the SCS with more precision as the current ambiguity as to their extent has caused serious concerns in the international maritime community. The recent incidents have heightened these concerns and raise serious questions in relation to the interpretation of the 1982 UN Convention on the Law of the Sea (UNCLOS).<sup>27</sup>

Regarding ASEAN position as a group, in a document of "ASEAN's Proposed Elements of a Regional Code of Conduct in the South China Sea (COC) between ASEAN Member States and the People's Republic of China" agreed by all ASEAN members before ASEAN Minister Meeting in July 2012 in Cambodia, ASEAN proposed COC is legal document and one of its objectives is to:

Encourage efforts to clarify disputes in accordance with international law, in particular the UNCLOS. Encourage the parties concerned to work together to define and clarify the territorial and maritime disputes in the South China Sea, based on international law, including UNCLOS.<sup>28</sup>

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<sup>25</sup> See Philippine Note at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/phl\\_re\\_chn\\_2011.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/phl_re_chn_2011.pdf)

<sup>26</sup> Philippines' Department of Foreign Affairs: Notification and Statement of Claim on West Philippine Sea, p.17. [http://www.dfa.gov.ph/index.php/downloads/doc\\_download/523-notification-and-statement-of-claim-on-west-philippine-sea](http://www.dfa.gov.ph/index.php/downloads/doc_download/523-notification-and-statement-of-claim-on-west-philippine-sea)

<sup>27</sup> Singapore MFA spokesperson's Comments on Visit of Chinese Maritime Surveillance Vessel Haixun 31 to Singapore. [http://www.mfa.gov.sg/content/mfa/overseasmission/phnom\\_penh/press\\_statements\\_speeches/embassy\\_news\\_press\\_releases/2011/201106/press\\_201106\\_5.html](http://www.mfa.gov.sg/content/mfa/overseasmission/phnom_penh/press_statements_speeches/embassy_news_press_releases/2011/201106/press_201106_5.html)

<sup>28</sup> "ASEAN's Proposed Elements of a Regional Code of Conduct in the South China Sea (COC) between ASEAN Member States and the People's Republic of China"

The ASEAN proposed COC also binds parties to “commit to respect the exclusive economic zone and continental shelf of the coastal states as provided for in 1982 UNCLOS”.<sup>29</sup>

### *The United States*

After a long engagement in the Middle East and Afghanistan in a war fighting against terrorism, the United States has “pivoted to Asia” to cope with a rising China. The South China Sea becomes the focal point of “Asia’s rebalancing” strategy adopted by Obama’s administration. The shift in US policy is relatively comprehensive. In terms of politics and diplomacy, the US engages deeper in the Asia Pacific through an increasing number of visits of the President, State Secretary and Defense Secretary and other high-ranking officials to the region. In economic term, after ratifying the Free Trade Agreement with South Korea, the U.S concentrates on the Trans-Pacific Partnership Agreement (TPP). TPP has a strategic component of strengthening US relations and other countries to counterbalance current China-centric multilateral economic mechanisms such as CAFTA, ASEAN+3. In military term, despite defense spending cuts, the budget for US Pacific Command (PACOM) will not be affected.<sup>30</sup> On the contrary, the US will increase its presence in PACOM’s areas of responsibility, including a new “rotating base” in Australia. The US is also planning to move the majority of its naval forces to the Asia-Pacific region. US Secretary of Defense Leon Panetta announced at the 11th Shangri-La Dialogue in Singapore that 60% of US warships would be based in the Pacific by 2020.<sup>31</sup> In recent years, the US has also enhanced cooperation with Japan and the Philippines on maritime issues.

At the 17<sup>th</sup> ARF in 2010, then the US Secretary of State Hillary Clinton declared its national interests in the South China Sea for the first time; among which were freedom of navigation, peaceful settlement of dispute, unimpeded commerce. The United States also indirectly rejected any argument of “historic water” or “historic rights” of U-shaped line when Secretary of State Hillary Clinton said, “Consistent with customary international law, legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.”<sup>32</sup> Speaking at a hearing of the US Senate Committee on Foreign Relations, Secretary of

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<sup>29</sup> Ibid

<sup>30</sup> Conversation with author

<sup>31</sup> <http://www.iiss.org/conferences/the-shangri-la-dialogue/shangri-la-dialogue-2012/speeches/first-plenary-session/leon-panetta/>

<sup>32</sup> Ibid

State Hillary Clinton said, “China’s claims in the South China Sea exceed what is permitted by the UNCLOS”.<sup>33</sup>

## Dynamics and Implications of Recent Developments in the South China Sea

From above discussion, the development in the South China Sea and especially the interrelationships among China-ASEAN-US in the South China Sea has their own dynamics. China’s assertiveness in the South China Sea have made ASEAN claimants countries more concerned about their security and regional stability. In general, the more assertive China in the South China Sea, the less attractive of its soft power in South East Asia. China’s “charm offensive” in South East Asia over the past ten years hasn’t gained much major achievements since it was launched. Although most of ASEAN states have close trade-economic ties with China, they are still cautious with China’s intention. On one side, these countries develop economic relations with China; on the other, they strengthen security relations with the US and welcome the US military presence in the region. Some ASEAN countries have enhanced military modernization, sought US supports to balance power; thus the US has more excuses to engage in the region and influence on the South China Sea issue.

For the US, although competing with China for maintaining leadership position in Asia-Pacific, the U.S needs to cooperate with China in many aspects, especially in economic field. In that case, the South China Sea gives the US a leverage to remain engaged in the region and to mobilize support in the region in dealing with a rising China. The more powerful China becomes, the larger US interests in the South China Sea will be. The fact that the US reaffirmed its interests and position on the South China Sea at the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> ASEAN Regional Forum (ARF) and the East Asia Summit (EAS) 2011, 2012 is a logical development. It is highly possible that in the next few years the U.S will hold on to this position, though with varying degrees at different regional forums.

On other hand, US policy has spillover effect on position of other countries, especially countries that have close relationships with Washington. Following the US, other stakeholders such as Japan, Australia, India and even some European Union’s countries have also expressed concern about developments of situation in the South China Sea. The South China Sea disputes have become international issue, being referred by all concerned parties at many multilateral mechanisms (ARF, EAS, ASEM, etc.).

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<sup>33</sup> “China’s Sea Claims Excessive, Says US”, <http://www.mb.com.ph/articles/360386/chinas-sea-claims-excessive-says-us>

On other aspect, China's pressure on international oil and gas companies did not success in preventing them from cooperation with ASEAN's countries, but has paved the way for the US to express views on "unimpeded commerce" and be more determined in protecting interests of American energy corporations. Another consequence of China's action is that small countries in South East Asia have sought to cooperate with international oil and gas companies from major powers, namely US, Russia, Japan, and India, which cannot be threatened by China. Consequently, the South China Sea becomes an area of intertwined major powers' interests and more internationalized – the situation that China doesn't expect.

More importantly, the South China Sea now becomes one of the main issues in US-China relations. In the previous years, when the South China Sea issue was always one of the top priorities in foreign policy of ASEAN claimants, it was secondary in China's policy in comparison with great powers relationships. Once South China Sea issue is elevated in priorities of China's foreign policy decision-making process, China's approach becomes much more coordinated and centralized. As a result, competition between and independent activities of interest's groups - one of the main reasons of China's renew assertiveness since 2009 - are manageable.<sup>34</sup> China's approach toward the South China Sea can be flexibly adjusted when Chinese top leaders consider it necessary. This development, in turn, has both positive and negative impact for ASEAN depend on whether Chinese leaders decide to moderate or to harden policy toward the issue.

Development in the second half of 2011 demonstrates the positive side when China was moderating its South China Sea policy. When Chinese leaders realized negative consequences of its growing assertiveness recently in the South China Sea, they adjusted policy with a more comprehensive approach: from developing the "charm offensive" second round towards ASEAN countries through economic and financial measures to restraining from taking further intimidating action on the sea. For instance, there were no reports on arrests of Vietnamese fishermen or confiscations of Vietnamese fishing boats as in the previous years although China continued to declare its unilateral fishing ban in the area north of 12 degrees latitude of the South China Sea from 16 May to 1 August 2011, which Vietnam had protested as a violation of Vietnamese sovereign rights.<sup>35</sup> Chinese law enforcement vessels also did not conduct

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<sup>34</sup> In March 2013, China announced plans to restructure the country's top oceanic administration by bringing China's maritime law enforcement forces, currently scattered in different ministries, under the unified management of one single administration, to "enhance maritime law enforcement and better protect and use its oceanic resources". See: "China to restructure oceanic administration, enhance maritime law enforcement" at [http://news.xinhuanet.com/english/china/2013-03/10/c\\_132221768.htm](http://news.xinhuanet.com/english/china/2013-03/10/c_132221768.htm)

<sup>35</sup> "Chinese unilateral fishing ban in the East Sea is a violation of Vietnamese sovereignty". [http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110516112044#Q9866xMQkrnn](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110516112044#Q9866xMQkrnn)

new harassments against oil and gas exploration activities of Vietnam and the Philippines in areas within the U-shaped line in the South China Sea. China also signed with ASEAN the Guidelines for DOC implementation and with Vietnam the Agreement on basic principles on settlement of sea issues. China also expressed openness for discussing with ASEAN the formulation of a code of conduct “when conditions are ripe”.<sup>36</sup> One possible calculation when China accepts to discuss with ASEAN the South China Sea issue is to demonstrate to the international community that ASEAN and China can work together to manage the disputes and that there is no need for external involvement in the South China Sea issues.

Scarborough standoff in 2012 with Philippines also confirmed that China’s approach become coordinated and centralized, but on the opposite direction. To deter the Philippines, China also applies a comprehensive and coordinated approach, from imposing diplomatic pressures, strengthening presence in the disputed area with hundreds of fishing boats and law enforcement vessels from different agencies (Marine Surveillance and Fishing Patrol), applying economic sanction on Philippine agricultural products and promoting international propaganda. In response to adoption of Vietnam’s Law of the Sea in June 2012, China also implemented multi-directional measures at the same time such as issuing diplomatic protest, establishing the prefecture-level city of Sansha to administer the Paracels, Macclesfield Bank, and Spratly Islands and “their surrounding waters” in the South China Sea,<sup>37</sup> offering oil blocks within Vietnamese exclusive economic zone for international bidding,<sup>38</sup> deploying a large number of law enforcement vessels to patrol the South China Sea, and putting the military forces of “Sansha city” under the combat-ready position. In relations with ASEAN, to influence on the chair of the year 2012– Cambodia – and on ASEAN’s internal discussions, then President Hu Jintao visited Cambodia just before the opening of ASEAN summit in April. Then Defense Minister Liang Guanglie also paid an official visit to Cambodia during the 6th ASEAN Defense Ministers’ Meeting (ADMM) in May 2012, informally turning the ADMM into ADMM+1.

As a result of applying a comprehensive, coordinated and centralized approach, China policy in the South China Sea can be characterized as a policy aiming for “expanding but low intensified dispute” in the South China Sea. That policy is a

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<sup>36</sup> Remarks by Foreign Minister Yang Jiechi at the ARF Foreign Ministers' Meeting. <http://www.fmprc.gov.cn/eng/zxxx/t842183.htm>

<sup>37</sup> “Administrative status of islands raised“. [http://europe.chinadaily.com.cn/china/2012-06/21/content\\_15517602.htm](http://europe.chinadaily.com.cn/china/2012-06/21/content_15517602.htm)

<sup>38</sup> CNOOC: “Notification of Part of Open Blocks in Waters under Jurisdiction of the People’s Republic of China Available for Foreign Cooperation in the Year of 2012”. <http://en.cnooc.com.cn/data/html/news/2012-06-22/english/322127.html>

combination of: increasing presence and control of civilian and paramilitary force in all areas within the U-shaped line; refraining from using military forces; offering economic intensives to ASEAN countries, especially to non-claimants; and actively pushing diplomatic pressure to prevent ASEAN from forming a common position on the South China Sea. Acting by that way, China is incrementally limiting the possibilities of US and other powers to engage into the South China Sea issue.

The US is now facing a dilemma. The fact that the US has not yet joint Convention on the Law of the Sea is limiting its legitimacy to criticize other countries for not respecting the maritime law. The increasing presence of the US naval forces doesn't have significant impact on the contest for control of resources in the South China Sea, which is mainly among law enforcement vessels from claimant countries. The fact that China have successfully driven away the Philippine and established its permanent presence in Scarborough Shoal despite US' efforts to mitigate the tension showed the limit of US involvement. On diplomatic arena, ASEAN countries now have to take more into account Chinese concern than the US's concern. On multilateral diplomacy, the effect of "Clinton's remark at ARF 17" is not as strong as it used to be, since the US hasn't expressed any new viewpoints in recent speeches at regional forums.

ASEAN, after Phnom Penh incident at ASEAN Ministerial Meeting 45 in July 2012, is facing biggest challenge since the end of the Cold War. ASEAN's centrality in regional security architecture and its role in managing the South China Sea disputes can be limited due to intra-bloc division and external impacts –especially in the context of increasing China-US rivalry in South East Asia.

## For conclusion

The situation in the South China Sea for the time being is imbalanced when China is dominating on the sea and on diplomatic arena, US is still seeking approach how to deal with a rising China, ASEAN is being fragmented, structurally can be hijacked by any chair or even a single member and extra-regional powers have huge interests but limited role to play.

However, it is possible that what China has gained is just temporary; in the long term what China may lose might be much more than what it has won. China's actions in the South China Sea has long been regarded as "the test case" whether China pursuits the policy of peaceful rise, respects the international law, or it wants to "revise the rules". However, that China allowed China National Offshore Oil Cooperation (CNOOC) offering for international bidding 9 blocks within 200 nautical miles of Vietnamese exclusive economic zone is clearly a precedent of disregarding international law. Facing with situation when international law are being disregarded

and ASEAN centrality role is impacted, ASEAN countries have no choice but to raise more frequently their common concern in regional forums.

Regarding the US, the South China Sea is not only relating to its strategic interests, but also to the credibility of the US power. But if China continues to use nonmilitary measures on the sea and apply economic and diplomatic measures to influence on ASEAN countries' policies, the US will not be able to interfere and influence on the settlement of South China Sea issue. What the US can respond to China's strategy is to add other elements to its strategy such as paramilitary and economic elements, which the US has neglected over years.

To protect their interests, other powers also have to pay more attention to the South China Sea, voice concern on regional diplomatic forums and promote maritime security cooperation.

Since Beijing can formulate a coordinated and centralized policy on South China Sea issue, there is possibility that China will put this issue in a broad picture of its overall foreign policy. When China has to care about other interests in relations with the US and ASEAN than specific maritime interests in the South China Sea, one can expect a more moderated Chinese approach in the South China Sea.