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Hearing on Beijing as an Emerging Power in the South China Sea

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I am pleased and honored to have this opportunity to testify on this very important and even urgent issue. If I may say a few words about the Stimson Center, we are a nonprofit, nonpartisan institution devoted to enhancing international peace and security through a unique combination of rigorous analysis and outreach. Stimson's approach is pragmatic—geared toward providing policy alternatives, solving problems, and overcoming obstacles to a more peaceful and secure world. I am speaking for myself, and not Stimson, but my remarks are intended to contribute to these objectives.

### **Introduction and Overview:<sup>1</sup>**

China's rise and its ambitions to make up for past centuries of humiliation and become the dominant power in East and Southeast Asia is unavoidably the most important geostrategic issue facing the United States in the 21<sup>st</sup> Century.

For the United States as well as China's neighbors, the most challenging aspect of its rise is a lack of commitment to a rules-based international system except as it serves its perceived national interests. This aspect of Beijing's policies and actions is nowhere more apparent and challenging than in the case of the South China Sea, which is the locus of serious and potentially volatile maritime territorial disputes.

Of particular concern to the United States, which maintains a significant military presence in the region, is that China is seeking to redefine the very definition of international waters—traditionally known as the “high seas”—by asserting rights of sovereignty where none exist. In pursuit of this policy Chinese maritime patrol vessels have engaged in dangerous maneuvers and other forms of harassment against US naval vessels in international waters adjacent to the Chinese coast.

While the Chinese government has negotiated and committed to numerous international agreements based on prevailing international laws, rules and practices, its strong preference is for bilateral agreements based on political relationships and power disparities that favor China rather than multilateral agreements that are based on established international rules and norms.

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<sup>1</sup> This statement draws extensively from recent work by Richard Cronin, Director (and lead co-author) and Zachary Dubel, Research Associate in Stimson's Southeast Asia Program.

These tendencies are particularly troubling in China's expansive claims in the semi-enclosed South China Sea, one of the world's most geostrategically and commercially important bodies of water. The South China Sea has globally important fisheries and undersea oil and gas deposits that are still largely unexplored but are already important to the energy needs and economies of five other coastal and archipelagic neighbors—Vietnam, Malaysia, Indonesia, Brunei and the Philippines.

Because the territorial disputes have prevented exploration, the actual value of the undersea hydrocarbons – of which some 60-70 percent are thought to be in the form of natural gas – vary wildly. One Chinese estimate suggests potential oil resources as high as 213 billion barrels of oil (bbl) – a veritable new Persian Gulf – while a mid-1990s estimate by the US Geological Survey estimated the sum total of discovered reserves and undiscovered resources in the offshore basins of the SCS at 28 billion bbl. In fact, while nobody knows how valuable these resources may be, every claimant has high expectations.

Of even more immediate relevance, the South China Sea is home to large and highly coveted fish populations. Chinese patrol boats have increasingly harassed or seized fishing boats operating in the contested area. Vietnam and other countries have sometimes done the same, but China now has far more naval and civilian patrol capability which it sometimes deploys in an aggressive manner in support of its perceived interests.

### **Centrality of China to Current Disputes and Tensions in the South China Sea**

Most if not all of the other countries have also made claims that are at least partly at variance with UNCLOS rule, but China is the revisionist power.

Most of the countries of the South China Sea littoral have disputes over maritime boundaries or territorial claims of one kind or another, but apart from those involving China, none of the disputes have seriously threatened regional peace and stability. China is an extreme outlier in several important categories of disputes and the combination of its rising economic and military power and assertiveness has made the South China Sea a potential flashpoint of conflict.

China's claim to most of the South China Sea based on a long history of visits, discovery, fishing and sometimes occupation and administration is the single most contentious factor. Under UNCLOS "historical waters" claims are valid only for some specific bays and other small semi-enclosed bodies of water. For all practical purposes Beijing appears to view the sea that is shared by China and eight neighbors as a contemporary version of the Roman's mare nostrum ("Our Sea" in Latin), now the Mediterranean Sea. Increasingly, Beijing has been attempting to use its rising economic and military power to make its dominance a reality.

Since about 2009 incidents at sea involving China and several neighbors—especially Vietnam and the Philippines--have become more frequent and more serious. Some

incidents have involved cutting the cables of Vietnamese owner or chartered oil and gas exploration vessels, the cutting of nets, arrests of crews and sinking of fishing boats on the part of several countries, including the loss of life in a few cases. The potential for unintended escalation has become more frequent and the positions of all of the involved countries have hardened.

### **UNCLOS and the Rise of East Asian Maritime Disputes**

The single greatest obstacle to resolving maritime disputes in the South China Sea is a fundamental divide between China on one side and the Southeast Asian claimants on the other over maritime territorial claims and the rights to the sea areas around them. Most of the current issues relate to provisions of the United Nations Convention on the Law of the Sea, commonly known as UNCLOS.

The South China Sea disputes involve both the delineation of EEZs and continental shelves as well as claims to islands, atolls, shoals, reefs and submerged banks by China and one or more of four Southeast Asian countries as well as Taiwan. Also at issue are traditional rights which are not specifically addressed by UNCLOS of both regional and extra-regional countries, including the United States, to freedom of navigation and military operations in waters over continental shelves and the EEZs.

UNCLOS was completed in 1982 after nine years of deliberations and came into force on November 14, 1994 following additional negotiations and changes and the accession of the 60th state (Guyana) the previous year. UNCLOS consolidates several previous international treaties that were also negotiated under United Nations auspices.

The main purpose of UNCLOS was to bring order to a chaotic rush involving numerous coastal nations to lay claim to offshore natural resources that was already underway. UNCLOS has served its purpose well in generating recognized EEZs and facilitating the resolution of disputes in many parts of the world, but it has become a source of contention in the South China Sea.

Despite its major role in initiating and shaping the treaty, the United States has not yet ratified it. Nonetheless, three successive US administrations have formally supported its principles. China, along with some 161 other countries and the EU has acceded to the convention, but Beijing “cherry picks” the parts that are advantageous to it and opposes or misconstrues the rest. (The treaty, which currently is on the US Senate’s agenda, enjoys the support of a bipartisan majority but as in the past, a few implacable opponents have succeeded in blocking a vote.)

### **China’s Nine-Dashed Line**

The most controversial issue of principle and international law is China’s claim to roughly 90 percent of the South China Sea on the basis of past discovery and historical use. To the consternation of every other South China Sea neighbor and with no basis under UNCLOS or any other international law, China’s maps include a so called U-

shaped nine-dashed line, known colloquially as the “cow’s tongue” because of its drooping shape. (See map) China has never explained the exact meaning of the line, which was originated by the pre-1949 Chinese Nationalist Government, but it is shown on all Chinese maps. China attached a map showing the nine-dashed line as an appendix to a 2009 protest to UNCLOS in response to continental shelf claims submitted by Malaysia and Vietnam, but without comment.

The nine-dashed line in particular totally undercuts the main purpose of UNCLOS, which was adopted in 1982 and came into force in 1994, principally to bring order to a growing tendency of countries to assert economic rights to their continental shelves.



In recent years Chinese officials in private and Chinese scholars in public have tried to make the line as palatable as possible, sometimes implying that it just indicates the outer boundary of its claims to islands and other features. These efforts have been undercut by bellicose statements by senior PLA officials. Even more provocative, on June 23, 2012 China offered nine blocks for bidding by international oil and gas companies that off the coasts of Central and Southern Vietnam. The blocks follow the curve of the nine-dashed line where it cuts deeply into Vietnam’s EEZ and continental shelf, and overlap four blocks already offered for bids.

### Specific Maritime Territorial Disputes

The area China claims under its nine-dashed line overlays disputes over specific “features” in the sea itself. The four main areas of contention include the Paracels and Spratlys island groups, the Macclesfield Bank, and Scarborough Shoal (or Reef). All of these islands, atolls, reefs, and banks are claimed by more than one party.

The mostly uninhabited Paracel Islands are also claimed by Vietnam, but they are now entirely controlled by China, which seized them from the weakening government of South Vietnam in a small naval and infantry engagement in 1974. China also seized Johnson South Reef from united Vietnam in 1988.

Both actions involved many Vietnamese casualties inflicted by superior sized and armed Chinese forces, and are likely to long remain a sore point in Vietnam’s attitude towards China. A Chinese film of the 1988 attack in the Spratlys has been widely circulated on YouTube, and shows Vietnamese sailors being mowed down while standing in waste deep water by Chinese gunboats.<sup>2</sup>

Few natural islands and other features in either the Spratlys or Paracels constitute “terra firma” under UNCLOS and can generate their own territorial waters, let alone a 200 n. mile EEZ. The islands do not have any natural fresh water sources beyond purified rainwater, and subsequently are difficult to classify as naturally habitable. This means that, under Article 121 of UNCLOS, they would likely not qualify as able to project an exclusive economic zone of their own, but rather would be entitled only to 12 mile territorial seas at most.<sup>3</sup>

## **The Paracels**

The Paracels are host to important commercial fisheries and are widely believed to have major undersea deposits of oil and gas. They sit astride the most direct sea line of communication between Northeast and Southeast Asia and the oil rich Persian Gulf area and European markets. The Paracel islands and rocks do not have any natural fresh water sources beyond purified rainwater, and subsequently are difficult to classify as naturally habitable. This means that, under Article 121 of UNCLOS, they would likely not qualify as able to project an exclusive economic zone of their own.

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<sup>2</sup> See for instance, “China’s massacre in Spratly islands [real footage 1988]”

<http://www.youtube.com/watch?v=Uy2ZrFphSmc&feature=related>

<sup>3</sup>Part VIII, Article121, Regime of islands, specifies that:

- 1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.*
- 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.*
- 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*

## **The Spratlys**

The number of islands and bodies that collectively make up the Spratlys varies depending on what definition is used to determine what land feature is counted, as many of the features are only above the ocean surface for limited time or are constantly below the waterline, such as the numerous reefs. Thus estimates vary considerably, but of these approximately 50 are occupied by one of the five claimant states, though this occupation does not necessarily mean a continuous presence. Many islands host garrisons, but others are only subject to occasional visitation and patrol by soldiers of the occupying state in order to reinforce claims, so there is a little ambiguity in what features are actually occupied.

The Spratlys group is also claimed in entirety or parts by Vietnam, Malaysia, the Philippines, to which they are closest, and Taiwan. Of all of the five claimant states to the Spratlys, Vietnam holds the lion's share of occupied islands. (See Appendix I – Occupation of the Spratlys)

However, relatively few of these occupied features have any portion above water at high tide, a requirement under UNCLOS for the establishment of a territorial sea. Altogether, the total amount of land that is consistently above the water surface is less than 5 km<sup>2</sup>. While some sources claim that small rocks and other naturally occurring portions of otherwise low-water features, such as Johnson South Reef, are above water even at high tide, these reports are disputed, both in terms of their accuracy and how meaningful they might be in any event.

The map below shows the locations and ownership of land features in the Spratlys with at least some portion of land above high tide:



In the Spratlys, only Taiwan, the Philippines, and Vietnam control islands of any substantial size. The Chinese and Malaysian controlled features with land above high tide are limited to small rocks. Of all of these features only the Taiwanese Itu Aba Island (or Taiping Island) is known to have a natural source of fresh water, and thus arguably the only island in the Spratlys potentially capable of fulfilling the requirement of being able to independently sustain human habitation to establish a 200-mile EEZ.

### Macclesfield Bank and Scarborough Shoal

The South China Sea is dotted with several clusters of hundreds of small atolls, low lying reefs and submerged reefs, shoals and banks. These areas are treacherous to shipping because many of the features are surrounded by deep water. Because of their underwater topography the shoals and banks are rich fishing grounds and have been used by fishers

from China, the Philippines and other Southeast countries for centuries and perhaps millennia.

The Macclesfield Bank is a 6,500 square kilometers area of mainly submerged reefs and shoals circumscribed by a broken outer reef, lying east of the Paracels and north of the Spratlys. The bank, which is a rich fishing ground, is claimed by the Philippines as part of its Zambales Province and by China and Taiwan.

Scarborough Shoal is very large triangular shaped atoll with a rim of reefs and small rocks covering an area of 150 square kilometers that encloses a shallow lagoon covering some 130 square kilometers, one of the world's largest. Fishers from several littoral South China Sea countries have fished and sometimes sought shelter within the lagoon for centuries.

### **China's Declaration of Sansha "City"**

Having become more and more assertive during the past few years in contesting its claims through the use and threat of force, China has now upped the ante by announcing the creation of the new municipality of Sansha (or "Three Sands") in the South China Sea. The "Three Sands" name of the new prefecture refers to the three most important disputed geographic features of the South China Sea—the Paracels and Spratlys island groups, and the completely submerged Macclesfield Bank that China calls, respectively as the Xisha, Nansha and Zhongsha islands. Sansha will, at least nominally, assume administrative control over the former county-level administrative office based on Hainan Island, its southernmost province.

The governmental seat of this new prefecture-level city is based on what it calls Yongxing Island, some 350 kilometers (220 miles) southeast of Hainan Island. The island, which was uninhabited apart from some fishermen until China deployed military personnel and some civilians is known on international charts as Woody Island and to Vietnam as Phu Lam Island.

The total area claimed by the city itself simultaneously makes it one of the smallest and largest cities in the world. The total land amount of land is less than 15 square kilometers—just half again the size of tiny Smith Island in the Chesapeake Bay. The island is so small that a 8,900 ft. long (2,700 m.) airstrip, which the Chinese military completed in 1990 sticks out nearly half the width of the island into its surrounding coral reef and the sea itself. However, the water area claimed by Sansha approaches nearly 2 million square kilometers—about one fourth larger than the Gulf of Mexico.

China's establishment of Sansha Municipality directly conflicts with the claims of one or more of four other countries—Brunei, Malaysia, the Philippines, and Vietnam, and overlaps entirely with those of Taiwan.

China's Sansha declaration set off a fire-storm of criticism as well gasps of astonishment at the audacity of Beijing's latest move. While the declaration of Sansha City



undoubtedly will increase tensions in the region, it may not result in any meaningful increase in Chinese firepower in the South China Sea. According to the Chinese Ministry of Defense, the responsibilities for the Sansha garrison will be defense mobilization, militia reserves, guarding the city, and disaster relief, and that "whether a military establishment has combat forces or not depends on its military tasks."

The responsibility for maritime defense, however, remains with the separate Xisha (Chinese for the Paracels) garrison under the South Sea Fleet of the PLAN, as it has for years. Subsequently, it appears as though the bulk of this new garrison will likely be administrative and logistics staff-hardly a sign of China embracing the military option for dispute settlement. Instead you have a move that sounds imposing, and would also help solidify China's claim to administration of the islands it controls, but ultimately may not lead to any real increase in the number of Chinese guns in the South China Sea.

### **The Scarborough Shoal Incident Involving China and the Philippines**

With regard to disputes with the Philippines, China has increased pressure by sending PLA Navy vessels to the area around the disputed reefs. On the night of Wednesday, July 81, in the midst of a row over South China Sea disputes at the annual ASEAN Foreign Minister's meetings in Phnom Penh a PLA frigate ran hard aground near Half Moon Shoal, just 60 miles off the nearest Philippines coast. The frigate had every right to be there but in the context of recent incidents over fishing rights the presence of the ship appeared provocative and it could hardly have run aground in more embarrassing circumstances.

Apart from the desire to avoid a serious military clash that might escalate, the main check on China's assertiveness in supporting its claims is the desire not to alienate its neighbors, especially in Southeast Asia, where it seeks friendly relationships to support economic integration. At several points in the past China backed off in asserting its claims in the face of a united ASEAN front. In 2002 Beijing joined with the ASEAN in adopting a Declaration on the Conduct of Parties in the South China Sea (DOC) regarding the non-use of force in maritime disputes but continued to resist proposals for a more specific regional Code of Conduct.

How much importance China continues to give to this concern is increasingly doubtful. After years of "smile diplomacy" and the promotion of investment and preferential trade agreements, China's assertiveness in advancing its maritime claims has created consternation and disarray among the ten countries of the Association of Southeast Asian Nations (ASEAN), five of which have maritime disputes with China.

No event demonstrates the polarization of Southeast Asia over China's assertive promotion of questionable maritime territorial claims more than the unprecedented failure of the ASEAN foreign ministers to adopt a final communique at their annual meeting in Phnom Penh in July 2012 because of differences over the South China Sea disputes. For the first time in its 45-year history the consensus-obsessed ASEAN countries could not

agree on the language of the normally bland document. Cambodia, the host government and China's best friend in Southeast Asia, balked at the demand by Vietnam and the Philippines for a reference to the uneven confrontation between Chinese and Philippines ships at Scarborough Shoal in the Spratlys.

Because of Cambodia's insistence that mention of the South China Sea confrontation could not be included in the communique the delegates left without issuing one. It is hardly unusual for ASEAN to avoid mentioning controversial issues, but it unprecedented for any issue to cause the failure to achieve a least-common-denominator consensus on a final communique. This fracture in ASEAN may have far-reaching repercussions for the South China Sea dispute, not the least which will be a continuing inability for the ASEAN claimants to work through the regional organization to persuade China to join in any sort of code of conduct.

### **Growing US Involvement in Southeast Asian Disputes**

US attitudes and policy towards maritime disputes have shifted markedly since the 1995 confrontation over China's construction of a makeshift structure on Mischief Reef some 70 miles (113 km) off the coast of the Philippines island of Palawan. At that time, the Clinton Administration spoke against the use of force but took no position on the conflicting claims.

A combination of concerns about China's challenge to the American core interest in freedom of navigation and increasingly serious incidents involving Chinese incursions into the EEZs of Vietnam and the Philippines have caused the US policymakers to implicitly take sides.

The hardening US attitude can be dated approximately from the March 2009 incident in which five Chinese vessels carried out dangerous maneuvers against the US Navy's ocean surveillance ship the Impeccable during operations some 75 miles off China's Hainan Island. The Impeccable was well outside China's territorial sea but within its EEZ, which the United States regards as a lawful military activity under both UNCLOS and long-standing international norms. In addition to being viewed as a provocative intelligence gathering activity the Impeccable in effect was directly challenging China's legally unsupportable policy of seeking to control foreign military activity in its 200 n. mile EEZ.

Incidents at sea in mid-2011 involving Chinese maritime patrol vessels and geological survey ships deployed by Vietnam have sharply ratcheted up long-standing tensions over conflicting maritime territorial claims in the South China Sea. Reports attribute incidents of deliberate cable and net cutting and the seizure of fishing boats and catches to armed vessels of the central government's Bureau of Fisheries Administration and the China Marine Surveillance and South Sea Command of the State Oceanic Administration.

In fact, the United States and most international law experts assert that rights granted by UNCLOS in regard to EEZs relate only to natural resources and environmental protection. UNCLOS nowhere mentions military activities except sections related to rights of “innocent passage” in the 12 n. mile territorial sea.

### **Impact on US Policy Interests and US-China Relations**

Both Beijing and Southeast Asian capitals saw the Obama Administration’s broader “reengagement” with Southeast Asia via the 2009 Lower Mekong Initiative (LMI) and the more recent announcement of a “pivot,” now couched as a “rebalancing of US military power towards Asia and the Pacific as inherently geopolitical. Whereas Beijing strongly criticized the move as intended to counter China’s rise, the ASEAN countries generally welcomed US reengagement, if only as an opportunity to diversify their relationships and benefit from any competitive bidding for their favor.

Although the United States has long stated that it takes no position on the conflicting claims, Beijing has interpreted statements by US officials in support of UNCLOS principles for determining maritime territorial claims, calls for restraint by all parties, and recent naval exercises with the Vietnamese and Philippines navies as unmistakably “taking sides.” On July 11, 2011, during an official visit to PLA headquarters by Adm. Mike Mullen, chairman of the US Joint Chiefs of Staff, China's top military leader, General Chen Bingde, bluntly criticized the timing of small-scale US naval exercises with the Philippines navy a few days before his arrival and a “low-level” exercise with Australian and Japanese naval forces of the coast of Brunei during the visit, and planned exercises with Vietnam.

Chen's complaints about planned exercises with the Vietnamese Navy in particular underscore China's concern about deepening security ties between the United States and Vietnam. Such exercises are not new — the ones with the Philippines are held annually — but Chen criticized the timing of the exercises in the midst of the first military-military visit to China as “extremely inappropriate.”<sup>4</sup>

### **Still Not Another Cold War**

Because of their significant bilateral economic interdependence and mutual interests, China’s rising power and assertiveness and US foreign policy resistance and military “rebalancing” are not likely to match the all-encompassing intensity and dangers of the Cold War with the former USSR. Nonetheless, the number of dangerous incidents at sea has been increasing along with the growth of nationalistic passions in maritime Asia. The parties have only grown further apart.

Meanwhile, the interests of China’s neighbors have become increasingly aligned with those of the United States because of the natural affinity of our interests and positions. This development may be a geopolitical plus for the United States and also opens the way

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<sup>4</sup> BBC News/Asia-Pacific, “US-China spat over South China Sea military exercises,” July 11, 2011. <http://www.bbc.co.uk/news/world-asia-pacific-14097503>

for greater US military access in Southeast Asian waters, other equally important US interests with China are being negatively affected. The gains for US alliance and partnership relationships in maritime Asia may be offset by increased risks of being drawn into conflicts that are not of American choosing and/or US broader global interests.

Still, there is no getting around the fact that China is forcing the issue and in a way that the US can only avoid conflict by acquiescing to Chinese dominance of some of the world's most important sea lanes and, the current global economic slump notwithstanding, its fastest growing economies and emerging financial center of gravity. All of the other stakeholders including the United States either have signed UNCLOS or otherwise subscribe to its principles. China is odd-man out, having signed UNCLOS but rejected its basic principles and cherry-picked benefits that suit its interests, such as the creation of EEZs.

### **Prospects**

The motivations for China and its neighbors to assert or defend their maritime territorial claims are tangible and are not going to disappear. But at the same time, the disputes limit the possibilities for developing the subsea oil and gas resources and sustainably managing fisheries that cross EEZs and areas of conflicting claims.

Regarding its island claims, China finds itself in a weak position under international maritime law which requires "continuous and effective acts of occupation." By one recent account Vietnam occupies 23 islands and reefs in the Spratlys compared to nine by the Philippines, seven by Malaysia, one by Taiwan and only seven, all of them reefs that cannot support normal habitation, by China.

The presumed political limits on China's flexibility also argue strongly against compromise. First, the Chinese government and population are broadly seized with the feeling that China was taken advantage of by the western colonial powers in the 19<sup>th</sup> Century and that the UNCLOS bears US fingerprints. Second, the Chinese PLA leadership appears to equate asserting Chinese claims forcefully as in keeping with its growing military capabilities and rising power status. China's prevailing mercantilist policy of seeking to acquire, develop, and lock up resources rather than relying on international markets also limits its willingness or ability to reduce the extent of its claims.

Some analysts also see China's greater assertiveness as shaped in part by Communist Party politics leading up to the October 2012 Party Congress. We are even now witnessing the amazing story of the disappearance from the public view of China's presumptive new premier and party leader, Vice President Xi Jinping, who has not been seen since September 1. Xi failed to appear for scheduled meetings with Secretary of State Hillary Clinton and Denmark's Prime Minister. Rumors abound that Xi is seriously ill or that in light of internal turmoil over the Bo Xilai scandal the planned leadership transfer may be on hold.

That said, none of the claimants can develop resources easily in the contested zones alone. In general, the multinational oil and gas companies are more technically capable than national companies, but are also the most sensitive to political, economic and legal risk. China has successfully bullied multinational oil and gas companies from exploiting blocks offered by Vietnam but Vietnamese naval forces have also escorted Chinese survey ships out of waters that it claims.

With oil demand in China and Southeast Asia expected to double by 2025, the presumed subsea deposits in the disputed areas will become increasingly attractive, and the future sustainability of critically important fisheries is also gravely at risk.

### **Possible Models for Managing Specific Disputes**

There are some indicators that suggest the possibility that the most serious disputes could be managed even if resolving them is very unlikely. One encouraging indicator is the 2000 Boundary Agreement between Vietnam and China over the Gulf of Tonkin, which they share.

The Tonkin Gulf agreement marked limits of the territorial seas, contiguous zones and exclusive economic zone of both China and Vietnam. Furthermore, the agreement also followed precedents of proportionality in determining these borders when islands are in question. Specifically, Vietnam's Bach Long Vi island, in the middle of the gulf, was attributed a 25% of normal effect on delimiting the boundary, while the more coastal Con Co island, another Vietnamese island, was given a 50% effect.

For seabed resources that straddled the border between the two states, the agreement included a provision stating that the two states would jointly develop those resources on a negotiated "equitable" basis. The Chinese National Offshore Oil Corporation (CNOOC) and PetroVietnam entered into joint exploration agreements based on this principle in 2007, though no development projects have yet to come from this.

The agreement on boundaries entered into effect in 2004 with mutual ratification by both the Chinese and Vietnamese, and coincided with a parallel agreement on fishery management that was ratified on the same day. This fisheries agreement was intended to allow for successful co-management of fish stocks that crossed the newly created maritime border in order to prevent depletion of those resources. Though there have been clashes between fishermen and fishery administrations of both sides and frictions in the South China Sea continue to test their relationship, the joint patrols of the Gulf of Tonkin have continued since 2005.

Some observers have noted that the basic principles of the Gulf of Tonkin fisheries agreement have the potential to be expanded by China and Vietnam to waters outside of the Gulf itself. The Gulf of Tonkin agreement does show that the Chinese leadership recognizes the legitimacy of international law in delimiting maritime zones, but only

when they themselves want to sit at the bargaining table, which is something they aren't willing to do for the South China Sea at present.

While the Gulf of Tonkin could be a useful precedent for cooperation between the two biggest claimants in the South China Sea, its usefulness in expanding into the sea itself is limited. Most importantly, the agreement did not require solving issues of sovereignty over any islands; it simply delimited the border between the two states following the time-honored tradition of dividing enclosed seas along the median line between the two shores.

### **Joint Marine Seismic Undertaking (JMSU)**

A 2004 agreement for exploration of part of the Spratlys area involving China, the Philippines and eventually Vietnam ultimately failed because of a domestic political backlash in the Philippines, but could still represent a viable approach to equitably co-developing disputed areas. I say equitably, because no country is likely to agree to co-developing its own EEZ or continental shelf without at least implicit recognition of its rights in any agreement for sharing product of revenues.

The JMSUI involving the Chinese National Offshore Oil Company (CNOOC), the Philippines National Oil Company (PNOC), and eventually PetroVietnam was intended to promote cooperation by setting aside issues of sovereignty for mutual economic benefit. It involved exploratory surveys of the seabed off of the Philippines to lay a framework for potential future joint development. By early 2005, Vietnam had also joined the undertaking, creating a trilateral agreement between the three largest players in the dispute

However, by 2008 the project had come to a halt when the issue again became embroiled in Filipino domestic politics. At the time, Filipino President Gloria Arroyo and her husband Jose Arroyo, long haunted by allegations of corruption and misconduct, were accused of accepting bribes from Chinese companies for favorable deals. Though the deals in question were unrelated to the JMSU, the tripartite survey inevitably became entangled with the scandal, partly due to its nature as another business deal with China and partly due to the terms of the deal. Though the original spirit of the agreement was to shelve issues of sovereignty in order to reap the economic benefits of joint development, the area covered by the agreement was viewed by many to be unnecessarily favorable to the Chinese as a significant portion of the survey area was within Filipino waters that were not contested by China or Vietnam.

### **Possible Impact of China's Introduction of the HYSY 981 Drilling Rig**

The introduction of China's first semi-submersible deep sea drilling HYSY 981 has generated considerable alarm but also has the potential to be a positive development for the region. This can only be the case if this new technological capability makes CNOOC more attractive as a development partner for some of China's neighbors who remain dependent on international oil and gas companies for exploiting their subsea resources

*and* . When speaking about Filipino plans to develop the natural gas fields around Reed Bank, Philex Petroleum chairman Manuel Pangilinan said recently that, "a gas field will need major expenditures and the help of international oil firms that have the technical capability and financial resources."

Assuming the state of China-Philippines political relations allowed, the most difficult aspect of negotiation between Filipino and China energy companies would be whether the terms of such an agreement were sufficiently balanced to avoid enflaming Filipino national sentiments and eliciting accusations of betrayal as in the JMSS agreement. Equally important, China would have to willing to abandon its insistence that it has indisputable sovereignty over the areas of proposed cooperation, or both countries would have to agree to disagree about sovereignty, possibly by declaring that nothing in the agreement prejudiced the final settlement of the territorial dispute.

### **Broad Alternatives**

There are two broad alternatives to the current impasse in which the risk of conflict is ever present and the prospect of developing and managing the fisheries and undersea resources is seriously constrained. Realistically, UNCLOS principles cannot resolve the disputes so long as China insists on a different set of principles for claiming maritime boundaries and it and several other claimants reject the submission of their disputes to international arbitration. In one alternative future, current trends lead to serious regional polarization, the interruption of regional economic integration and other positive shared aspirations such as the ASEAN Community. The other future is one in which the maritime disputes—especially those between China and its neighbors—are surmounted rather resolved through the cooperative and equitable development of resources without resolving the underlying disputes.

### **US Policy Implications**

With its rising naval power China could, in theory, enforce its claims despite the complaints of its neighbors, but only at serious risk to other important equities, starting with the desire not to unite its neighbors against it. The commitment of the United States not to be pushed out of the South China Sea also has a deterrent effect, much as China rails against what it sees as a growing US effort to contain China and deny it the fruits of its rising power status.

The actual resolution of the South China disputes is a long term proposition, if at all, that will have to await either a more harmonious region, at best, or a successfully hegemonic China, at worst. For the near term, the United States can best contribute to peace and multilateral cooperation for sustainable resources management and development by maintaining the wherewithal to carry out a carefully modulated policy of insisting on US maritime rights, supporting multilateral regional institutions – especially ASEAN and the ASEAN Regional Forum (ARF) – and pursuing positive engagement with both China and its neighbors.

The United States can play a constructive role in capacity building in particular to help strengthen the Philippines' capacity for patrolling its waters. This is not an easy task given the scant budgetary resources available to the Philippines even for the operation and maintenance of its coast guard and naval vessels and patrol aircraft.

The United States would increase the credibility of its voice and influence by acceding to UNCLOS. As it has done already, the US should support the broad principles of UNCLOS and the importance of a rules-based international order without taking sides in the specific disputes. Broad engagement with China that takes into account the full range of both countries shared interests as well as differences is critically important, but it appears that this must largely wait on events in that country, particularly the apparently seriously troubled leadership transition.



## Appendix I – Occupation of the Spratlys

### All Occupied Features in the Spratly Islands

	China	Taiwan	Malaysia	Philippines	Vietnam
Names of Occupied Islands in the South China Sea	-Cuarteron Reef -Fiery Cross Reef -Gaven Reef -Hughes Reef -Johnson South Reef -Mischief Reef -Subi Reef -Whitson Reef	-Ban Than Reef -Itu Aba Island	-Ardasier Reef -Dallas Reef -Erica Reef -Investigator Shoal -Louisa Reef -Mariveles Reef -Swallow Reef	-Commodore Reef -Flat Island -Irving Reef -Loaita Island -Lankiam Cay -Nanshan Island -Northeast Cay -Second Thomas Reef -Thitu Island -West York Island	-Alison Reef -Amboyna Cay -Barque Canada Reef -Central London Reef -Collins Reef -Cornwallis South Reef -East London Reef -Grainger Bank -Great Discovery Reef -Grierson Reef -Ladd Reef -Lansdowne Reef -Namyit Island -Pearson Reef -Petley Reef -Prince Consort Bank -Prince of Wales Bank -Rifleman Bank -Sand Cay -Sin Cowe Island -South Reef -Southwest Cay -Spratly Island -Tennent Reef -Vanguard Bank -West London Reef

**Occupied Features in the Spratly Islands Above Water at High Tide**

*Italics* = Only Small Rocks Above Water

\* = Disputed

	China	Taiwan	Malaysia	Philippines	Vietnam
Names of Occupied Islands in the South China Sea	<p><i>-Cuarteron Reef</i></p> <p><i>-Fiery Cross Reef</i></p> <p><i>-Gaven Reef *</i></p> <p><i>-Johnson South Reef *</i></p> <p><i>-Whitson Reef *</i></p>	<p>-Itu Aba Island</p>	<p><i>-Erica Reef *</i></p> <p><i>-Louisa Reef</i></p> <p><i>-Mariveles Reef</i></p> <p><i>-Swallow Reef *</i></p>	<p><i>-Commodore Reef</i></p> <p>-Flat Island</p> <p>-Lankiam Cay</p> <p>-Loaita Island</p> <p>-Nahshan Island</p> <p>-Northeast Cay</p> <p>-Thitu Island</p> <p>-West York Island</p>	<p>-Amboyna Cay</p> <p><i>-Barque Canada Reef</i></p> <p><i>-Central London Reef *</i></p> <p><i>-Collins Reef</i></p> <p><i>-Discovery Great Reef</i></p> <p><i>-East London Reef</i></p> <p>-Namyit Island</p> <p><i>-Pearson Reef</i></p> <p><i>-Petley Reef *</i></p> <p>-Sand Cay</p> <p>-Sin Cowe Island</p> <p>-Southwest Cay</p> <p>-Spratly Island</p> <p><i>-Tennent Reef</i></p> <p><i>-West London Reef</i></p>

\*Swallow Reef – The island here is mostly man-made and subsequently not a legitimate source of maritime zones, though some claims say that prior to this there was a small rocky island/outcropping above water at high tide.