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**The Changing Power Distribution
in the South China Sea:
Implications for Conflict
Management and Avoidance**

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ABSTRACT

The South China Sea disputes continue to play a destabilizing role in regional security and to act as an irritant in bilateral and multilateral relations. The Paracel and Spratly Islands are at the center of competing territorial, economic and strategic interests. This paper focuses specifically on the changing distribution of power in the South China Sea and assesses its implications for conflict management and avoidance. It notes a growing asymmetry of naval power to the advantage of China, causing concern in some Southeast Asian capitals. The paper discusses how the Southeast Asian nations have traditionally sought to mitigate the unequal power distribution in the South China Sea through a particular model of conflict management and avoidance. While acknowledging its positive impact, the paper highlights the limits of this model in the current context of rising power asymmetry and the swelling security dilemma caused by China's growing naval strength.

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The Changing Power Distribution in the South China Sea: Implications for Conflict Management and Avoidance

Introduction

The South China Sea disputes play a destabilizing role in Southeast Asia and act as a major irritant in bilateral and multilateral relations. The debate over the South China Sea is complicated by the number of disputants. While the claimants to the Paracels are China, Taiwan, and Vietnam, six states assert ownership over the Spratly Islands and/or their surrounding waters, namely, China, Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. While the Spratly and Paracel Islands have little worth in themselves, the island chains take on symbolic and tangible value when put into the context of their surroundings. The islands may serve as the legal base points needed for states to gain exclusive jurisdictional rights over the waters, as well as the resources found therein.

The Paracel and Spratly Islands are at the center of competing territorial, economic, and strategic interests. The free navigation of commercial vessels in the sea is essential for regional and international trade. Moreover, the area is rich in fishery resources and is expected to have oil and gas reserves.¹ Furthermore, the South China Sea disputes have an obvious strategic dimension. If it ever succeeds in realizing its territorial claims, China will be able to extend its jurisdiction to the heart of Southeast Asia. Moreover, control of the maritime communication routes is strategic as it could endanger the security interests of the United States, Japan and other maritime powers that cross these waters. Finally, the territorial claims are of nationalist importance and the claimants have been inflexible on the sovereignty issue. Retracting territorial claims or a willingness to make concessions on the question of sovereign jurisdiction would be costly domestically as well as perceived regionally as a sign of weakness.

This paper focuses on the changing distribution of power in the South China Sea and assesses the implications of that rising unequal power for conflict management and avoidance.² Power is discussed here both in terms of naval military resources as well

¹See Bob Catley and Makmur Keliat, *Spratlys: The Dispute in the South China Sea*, Aldershot: Ashgate, 1997, pp. 44-65.

²On the notion of 'unequal power' and its necessity to be managed, see Andrew Hurrell, *On Global Order: Power, Values, and the Constitution of International Society*, Oxford: Oxford University Press,

as with reference to behavior and influence. In other words, both material capabilities and the practice of power, with reference to the assertion of territorial claims for example, are considered. One observes a growing asymmetry of naval power in the South China Sea to the advantage of China. The country possesses a significant and rising military edge when compared to the Southeast Asian claimants. Moreover, Beijing is in control of the Paracel Islands but remains essentially an irredentist power in the Spratlys. The Southeast Asian claimants are concerned about the rapidly changing power distribution in the South China Sea and fear that overwhelming naval capabilities could one day be used by the PRC to resolve the sovereignty question militarily. The paper therefore examines how the Southeast Asian nations have sought, with some success, to manage the unequal power distribution in the South China Sea through the activities of the Association of Southeast Asian Nations (ASEAN) and its model of conflict management and avoidance. While acknowledging some positive results, the paper highlights the limits of this model of conflict management in the current context of rising power asymmetry and the swelling security dilemma caused by China's growing naval strength. In its conclusion, the paper argues for greater institutional structures that speak specifically to the South China Sea in an attempt to better mitigate the unequal power distribution problem.

The Nature of the South China Sea Disputes

Sovereignty claims made by the parties involved in the Paracel and Spratly disputes can be separated into historical claims of discovery and occupation, and claims that rest on the extension of sovereign jurisdiction under interpretations of the provisions of the United Nations Law of the Sea Convention (UNCLOS). Beijing views the South China Sea as an exclusive Chinese sea and claims nearly its entire territory. Its historical claims are based on the discovery and occupation of the territory.³ Relying on its claim to historical administration of the area, Beijing has not provided a legal explanation for nor given specific delimitations to its territorial claims. As a response to the San Francisco Peace Treaty, Zhou En-lai formalized the claims for the PRC in

2007; Ian Clark, 'Towards an English School Theory of Hegemony', *European Journal of International Relations*, Vol. 15 (2), 2009, pp. 203-228; Tim Dunne, 'Society and Hierarchy in International Relations', *International Relations*, Vol 17 (3), 2003, pp. 303-320.

³See Lu Ning, *Flashpoint Spratlys!*, New York: Dolphin Books, 1995, pp. 5-35.

1951 by presenting an interrupted U-shaped line that covered most of the South China Sea. The allied powers had failed at the conference to identify a rightful owner to the islands after Japan had renounced all claims over the Spratly and Paracel Islands without stating their new ownership. In February 1992, Beijing passed the Law of the People's Republic of China on the Territorial Waters and Contiguous Areas. It stipulated the right to use force to protect islands, including the Paracels and Spratlys, and their surrounding waters. Claiming a comparable area in the South China Sea, the Republic of China (ROC) relies on similar historical arguments to the PRC. Since 1956, Taipei has occupied the island of Itu Aba, the largest feature in the Spratly group. Since 1975, Vietnam has claimed the Paracels and Spratlys on historical claims of discovery and occupation. In 1977, Vietnam also established a 200-nautical-mile EEZ.

The Philippines, Malaysia and Brunei present conflicting claims that somewhat differ from those discussed above. Claims are limited to specific parts of the Spratly archipelago and tend to rely more on International Law, including the extension of the continental shelf, rather than on historical arguments. Among these three disputants, the Philippines claims the largest area of the Spratlys, a zone it refers to as *Kalayaan*. First officially proclaimed in 1971, a 1978 presidential decree declared *Kalayaan* as part of its national territory. However, the Philippine claims are not clearly defined and Manila has declined to clarify its position. The Philippines has also established a 200-nautical-mile EEZ. Meanwhile, Malaysia extended its continental shelf in 1979 and included features of the Spratlys in its territory. Brunei then established in 1988 an exclusive economic zone of 200 nautical miles that extends to the south of the Spratly Islands. The Sultanate does not claim any of the Spratly Islands, however, but only the seas around Louisa Reef. Finally, though Indonesia has no sovereignty claims, its neutrality in the South China Sea issue was retracted in 1993 by the suspected extension of Chinese claims to the waters above the Natuna gas fields, an area exploited by Indonesia.

While most of the claimant states have relied on disputed islands to extend their sovereign jurisdiction in the South China Sea, it is questionable whether the Paracel and Spratly Islands may generate maritime zones. UNCLOS defines an island as 'a naturally-formed area of land, surrounded by water, which is above water at high

tide.’⁴ An island is also capable of naturally supporting life. In contrast, UNCLOS declares that ‘rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.’⁵ Features that cannot sustain human life and artificial islands are only entitled respectively to a 12-nautical-mile territorial sea and a 500-metre safety zone. These terms of the 1982 Convention seem to apply to most features in the Paracel and Spratly archipelagos. Due to their status, the disputed features in the South China Sea may not offer a legitimate basis for claiming maritime jurisdiction.

The Changing Power Distribution in the South China Sea

Among the claimant states, China undoubtedly has the largest military force. While the country suffered from budgetary constraint and obsolete equipment in the 1980s, China has, since the 1990s, expanded the logistical reach of the People’s Liberation Army Navy (PLAN) and modernized its armed forces. The 2007 annual report issued by the Stockholm Peace Research Institute even placed China as the number one arms spender in Asia, and the fourth in the world after the United States, the United Kingdom, and France.⁶ Shifting its focus away from land and border defense, China has improved its maritime capabilities significantly. Indeed, while China has decreased the military strength of its land forces, it has increased the projection capabilities and power of its navy. It has procured new weapons systems, restructured its armed forces, acquired Russian destroyers and submarines, and improved the amphibious capabilities of its South Sea Fleet (SSF). While the SSF was the weakest Chinese fleet in the 1970s, two decades later, it had advanced to be equal to, if not superior, to the others.⁷ The PLAN has continued to expand its conventional submarine capabilities (Song, Yuan and Kilo classes) as well as to develop a smaller number of nuclear-powered submarines. China has also purchased a large number of destroyers, including from the Russian-built *Sovremenny*-class, and frigates. In 2006,

⁴Article 121, 1982 Convention in the Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index, New York: United Nations, 1983.

⁵Article 121 (3), 1982 Convention.

⁶Stockholm International Peace Research Institute, *SIPRI Yearbook 2007: Armaments, Disarmament and International Security*, Oxford: Oxford University Press, 2007.

⁷Allan Shephard, ‘Testing the waters: Chinese policy in the South China Sea’, Australian Defence Studies Centre Working Paper no. 39, Canberra: Australian Defence Studies Centre, August 1-26, 1996, p. 15.

the US Department of Defense assessed that the PLAN possessed around 75 major surface combatants, 55 attack submarines and 50 amphibious craft.⁸ In 2009, estimates put these figures at 26 destroyers and 51 frigates, 58 diesel-electric submarines and 8 nuclear-powered submarines.⁹

Furthermore, China has extended its capabilities on the reefs and islands it controls in the South China Sea. It has fortified its facilities on the islets, including Mischief Reef, with anti-aircraft and naval guns as well as landing pads for helicopters. Additionally, China has one J-17C radar installed on Fiery Cross Reef, providing the country with early-warning capability. In the Paracels, it has been reported that anti-ship cruise missile installations have been emplaced on Woody Island. The latter is essentially used as a staging point to support military operations in the Spratlys. The runway on the Island has recently been lengthened. The PLAN is also constructing an underground nuclear submarine base near Sanya on Hainan Island. The base, which could house up to 20 nuclear-powered submarines, aircraft carriers, and other power-projection ships, could significantly increase China's strategic presence and capability in the South China Sea.¹⁰ This would have profound implications for the distribution of power in and control of the South China Sea. Increased Chinese submarine activity in the South China Sea is a great source of concern to the other claimant states and Japan but also a challenge to the United States and its naval predominance in the region. Besides the PLAN activities, it has also been reported that the PRC has built a class of large offshore patrol vessels manned by para-militaries specifically to patrol the South China Sea.

As Taiwan's claims are often viewed to be the same as China's, an additional four submarines, 33 principal surface combatants, and 71 patrol and coastal combatants may be counted in when determining the strategic balance.¹¹ That said, while Beijing and Taipei are largely in agreement on the South China Sea, the political relationship between the PRC and the ROC remains fragile. The military buildup observed on either side has been primarily related to preparations for conflict with the other. In

⁸Col. Christopher Langton (ed.), *The Military Balance 2007*, London: International Institute for Strategic Studies, 2007, p. 332.

⁹See SinoDefence.com, 9 September 2009, <http://www.sinodefence.com/>

¹⁰*The Straits Times*, 'China building underground nuclear sub base', May 3, 2008.

¹¹Langton, *The Military Balance 2007*, pp. 372-5.

1996, tensions in the Taiwan Strait reached the point of crisis. Should future relations worsen, the Spratlys and Paracels could act as a further source of friction between Beijing and Taipei.

Clearly, the Chinese military build-up in the South China Sea goes beyond avoiding, by force if necessary, any violations of its sovereign rights in the disputed areas. Other factors that drive the Chinese naval build-up include guaranteeing China's maritime security as well as its economic prosperity and energy supplies, which necessitate protecting the Southeast Asian sea lines of communication (the Strait of Malacca, the Singapore Strait, the Sunda Strait, and the Lombok Strait) and the traffic that proceeds through the South China Sea. Traffic has rapidly augmented in the last few years as a result of increased crude shipments to China. The importance of the South China Sea in case of open conflict in the Taiwan Strait should also be highlighted. In particular, Beijing is aiming at a strategy of sea denial meant at keeping US forces temporarily out of a limited naval zone from where they could support Taiwan.¹²

Despite its growing military power, it is important not to exaggerate the immediate Chinese threat in the South China Sea. Having acquired new technology, Beijing still requires time for those technologies to be integrated into its existing force structure before they are fully operational. Moreover, the PRC is not yet capable of sustaining naval operations far away from its mainland bases. China has at this stage no aircraft carrier battle group to project its power. It has been suggested, however, by a top Chinese military official that the PRC may build an aircraft carrier in the future. In a *Financial Times* interview, Major General Qian Lihua declared in November 2008 that the 'navy of any great power ... has the dream to have one or more aircraft carriers.'¹³ Significantly, most features in the Spratly archipelago are too small to offer bases for further naval activities. Hence, command over the maritime communication routes that cross the South China Sea may only result from a significant naval dominance and superiority in the region rather than the occupation of

¹²David Lague, 'Dangerous Waters: Playing Cat and Mouse in the South China Sea', *Global Asia*, Vol. 4 (2), Summer 2009, p. 59.

¹³ As quoted in Mure Dickie and Martin Dickson, 'China hint at aircraft carrier project', *Financial Times*, November 17, 2008, p. 1.

tiny features.¹⁴ It is important therefore to dissociate the military control of reefs that can only generate limited maritime zones from the control of sea lines of communication (SLOCs) and wider naval areas. The latter are obviously more significant strategically.

Military power should nonetheless be examined in relative terms and with regards to intentions and the possible use of force. China disposes of a significant and rising military advantage when compared to the Southeast Asian claimants that fear its potential hegemonic ambitions in the region. China has, for example, the largest number of submarines and combat aircraft among the claimants. This makes the construction of an underground nuclear submarine base on Hainan Island significant for the South China Sea disputes. The build-up of its Southern fleet, even if it is slow and gradual, is also a concern for the other claimants especially because its geographical area of operation would naturally be the South China Sea. This is specifically true in the context of Vietnam and the Philippines, which feel threatened by China's actions in the Spratlys. The growing asymmetry of naval force to the advantage of China could have a direct strategic impact on the South China Sea disputes. It could neutralize the dispute over the Paracels, as the dominant power controls the archipelago, but it may act as an escalating attribute in the Spratlys, where the PRC remains predominantly an irredentist power.

Arguably the most powerful Southeast Asian claimant state, Vietnam, does not have the military capacity to compete with China. Hanoi does not marshal sufficient naval power to impose its will in the South China Sea. Vietnam has sought to modernize its naval and air forces since the mid-1990s. Most recently, Hanoi announced in April 2009 the possible purchase of six Russian Kilo class submarines. Vietnam is also expected to establish a naval aviation capability aimed at strengthening its maritime strength.¹⁵ Still, the Vietnamese Navy continues to suffer from ancient platforms and poorly funded programmes. Other claimant countries fare worse than Vietnam. The capabilities of the Philippine Navy and air force are weak despite a national effort to modernize the military and upgrade its equipment. The weakest naval power in the

¹⁴Michael Leifer, 'The maritime regime and regional security in East Asia', *The Pacific Review*, 1991, vol. 4 (2), 126-36, p. 130.

¹⁵Robert Karniol, 'Naval air arm to boost Viet offshore power', *The Straits Times*, 14 September 2009.

dispute is Brunei. The Sultanate has not established any military presence in the Spratlys and makes no claims to the islands themselves. Still, the country has sought to upgrade its equipment. Finally, Malaysia is in a more favourable situation. Like the other Southeast Asian claimants, it has sought to increase its maritime capabilities, including through the acquisition of its first French-manufactured *Scorpene* submarine in 2009.

In addition to their relative military weakness, the Southeast Asian claimants do not benefit from external military assistance to contain the PRC in the South China Sea. The only power capable of countering the Chinese military would be the United States, particularly through its Seventh Fleet.¹⁶ Yet, Washington has repeatedly stated that the Philippine claimed territories were not covered by the Mutual Defence Treaty of 30 August 1951, which ties the Philippines to the United States. Vietnam has not reached a formal or tacit alliance with the United States despite a significant improvement in ties since the establishment of diplomatic relations on 11 July 1995. Regardless of whether a *de facto* alliance is ever forged with Hanoi, Washington has so far been unwilling to get involved in the territorial dispute. The absence of an external source of countervailing power in the South China Sea does not result from an American strategic retreat from the area. Instead, it arises from its unwillingness to get involved in the question of sovereign jurisdiction. Though following closely the developments in the South China Sea, the United States has consistently limited its interest to the preservation of the freedom of navigation and the mobility of its Seventh Fleet. It is therefore unclear how far the United States would go to support either Taiwan or the Philippines should conflict occur in the South China Sea.

The Southeast Asian concerns regarding the rising unequal power distribution in the South China Sea are exacerbated by the fact that the PRC has in the past used military means to consolidate its position in the dispute areas. In January 1974, China completed its control over the Paracel archipelago by acting militarily against South Vietnam before the expected fall of Saigon and the reunification of the country. In part due to its limited capacity to project power, the PRC remained absent from the Spratly Islands until the second half of the 1980s. It started to occupy some features in

¹⁶Lee Lai To, 'China, the USA and the South China Sea conflicts', *Security Dialogue*, 2003, vol. 34 (1), 25-39, p. 27.

1987. A naval confrontation with Vietnam on 14 March 1988 led to a new Chinese seizure of territory. The Mischief Reef incident was arguably the most noticeable incident of the 1990s. On 8 February 1995, the Philippines discovered Chinese in occupation of Mischief Reef located in the *Kalayaan*. It marked the first major new occupation of territory in the South China Sea following the end of the Cold War. Significantly, the PRC had also taken, for the first time, territory claimed by an ASEAN member. The incident enhanced regional concern over an expanding China and worries that Beijing would seek to dominate the South China Sea through military means. The Philippines had been left vulnerable to a Chinese action after calling for the closure of the US Subic Bay base in 1992. The PRC built new structures on Mischief Reef in 1998 and 1999, fueling once more the idea of a 'China threat'.

In short, the Southeast Asian claimants are concerned about China's rising naval power in the South China Sea and over Beijing's intentions in the disputed areas. The Southeast Asian states involved in the disputes cannot rely on traditional balance of power politics to address the unequal power distribution problem. Due to their relative military weakness, they cannot depend on a strategy of unilateral balancing, which includes actions to substantially strengthen their own capabilities, to effectively constrain Chinese rising power and assertiveness in the South China Sea. In addition, they do not have access to an external source of countervailing power to deter the PRC. Finally, a conventional balance of power strategy cannot be practiced through their regional organization, ASEAN, as it excludes military cooperation. The Association is devoid of two elements essential for any formal or tacit alliance: joint military capabilities and the existence of a common threat perception. Even if such a transformation was ever to occur, ASEAN would not have the joint military capabilities required to deter Chinese actions in the Spratly Islands. Rather than relying on balance of power politics, the next section discusses how the Southeast Asian nations have attempted to manage the unequal power distribution in the South China Sea through a model of conflict management and avoidance.

Conflict Management and the Rising Security Dilemma

ASEAN has sought to mitigate the unequal power distribution in the South China Sea by applying its model of conflict avoidance and management to the disputes. This

attempt can be situated within a broader international society perspective. Hurrell writes that if ‘unequal power is not harnessed to some collective authority or firmly embedded within stable structures of interstates or societal cooperation, then the potential political implications of that unequal power cannot be ignored – not because they can lead inevitably to war and conflict, but because the pathologies of power will tend to affect the nature and functioning of the legal and normative order’.¹⁷ In response to these possible negative implications, it is asserted here that the Association has tried to set aside the problem of sovereign jurisdiction and to focus instead on confidence-building and conflict management in an attempt at mitigating the unequal power distribution in the South China Sea.

The ASEAN members have aspired to establish a code of conduct for the South China Sea based on the principles enumerated in the Treaty of Amity of Cooperation (TAC) and facilitated by its informal style of diplomacy. From the start, ASEAN has aimed to do so by including China in the diplomatic consultations. The difficulty for the Association has been therefore to apply its own model of conflict management and avoidance to a non-member state. Since the late 1990s, Beijing has generally endorsed and supported ASEAN’s norms and principles as well as its style of informal diplomacy. Its willingness to adhere to such a norm-based approach has been typified by its signing of the Declaration on the Conduct of Parties in the South China Sea in November 2002 and the TAC in October 2003. Still, and while acknowledging some positive results, this section highlights the limits of this model of conflict management and avoidance in the current context of rising power asymmetry and the swelling security dilemma caused by China’s growing naval strength.

Adopted in 1976, the TAC is at the core of ASEAN’s conflict management model, as it provides the Association with a norm-based and informal code of conduct for regulating regional inter-state relations and managing existing or potential disputes.¹⁸ It relies on a modest set of international norms and principles well known in the study of international relations, as they represent the underlying foundations of the

¹⁷Hurrell, *On Global Order*, pp. 31-32.

¹⁸The TAC mentioned the principles of the United Nations Charter and the principles endorsed at the Asian-African Conference in Bandung, Indonesia, in April 1955. The Treaty also referred to the 1967 Bangkok Declaration and 1971 Kuala Lumpur Declaration.

traditional states system constructed on the sovereignty of nation-states. Among others, it enunciates the following principles: ‘Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations’; ‘the right of every state to lead its national existence free from external interference, subversion or coercion’; ‘Non-interference in the internal affairs of one another’; ‘Settlement of differences or disputes by peaceful means’; and ‘Renunciation of the threat or use of force.’¹⁹ The Treaty also includes provision for a dispute resolution mechanism, a High Council for establishing techniques of mediation and consultation. The provision for a High Council, which is at odds with ASEAN’s basic norm of non-intervention in the internal affairs of other states, has never been invoked by the members.

In addition to the norms and principles codified in the TAC, an informal style of diplomacy has also influenced ASEAN’s model of conflict management and avoidance. The ‘ASEAN Way’ may be defined as an informal process of interaction within the ASEAN framework through which the members relate to each other and reach but also avoid common decisions. It has consisted of various features that include: a high level of informality, the practice of quiet diplomacy, a continuing process of dialogue, a willingness to exercise self-restraint, solidarity, the practice of consensus building and the art of conflict avoidance.

ASEAN’s model of conflict management was perhaps best illustrated in the context of the South China Sea disputes through the signing of the Declaration on the Conduct of Parties in the South China Sea in November 2002. The result of a long process of negotiation, the agreement was intended to prevent further tensions over the disputed territories and to reduce the risks of military conflict in the South China Sea. The parties stipulated their adherence to the principles of the United Nations Charter, UNCLOS, the TAC, and the Five Principles of Peaceful Coexistence. They agreed to resolve their territorial disputes by peaceful means, ‘without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of

¹⁹Treaty of Amity and Co-operation in South-East Asia, Bali, Indonesia, 24 February 1976.

international law.’²⁰ The parties also pledged to practice self-restraint in activities that could spark disputes and to enhance their efforts to ‘build trust and confidence between and among them.’²¹ A step in the right direction, the Declaration was part of ASEAN’s search ‘for explicit confirmation that China’s presence in the South China Sea will not jeopardize peaceful coexistence.’²² It openly denounced the use of force in the South China Sea and mitigated the disputes by emphasizing shared principles and attempting to establish common norms of behavior. In that sense, it contributed towards the easing of tensions between the claimant states. Still, questions remain regarding the relevance and effectiveness of the 2002 Declaration. In particular, the document ‘is simply a political statement.’²³ It cannot prevent the occurrence of incidents over territorial claims in the South China Sea.

This begs the question of whether ASEAN has succeeded in embedding the unequal power distribution in the South China Sea within a stable structure of inter-state cooperation. China’s adherence to the Declaration and the TAC in 2002 and 2003 respectively suggested that the Association was in the process of promulgating an informal code of conduct for the South China Sea based on self-restraint, the non-use of force and the peaceful resolution of disputes. It relied therefore on the norms and principles initially introduced in 1976 in the TAC. Such an informal code of conduct for the South China Sea was clearly associated with the notion of conflict management and avoidance rather than conflict resolution. This paper argues that the need to formulate such a form of inter-state cooperation derived from the necessity for the Southeast Asian claimants to address the security dilemma caused by the rising unequal power distribution in the South China Sea.

The application of the ASEAN model of conflict management to the South China Sea disputes had a positive impact following the Mischief Reef incident. While the problems of sovereignty and border demarcation were not addressed, tensions over the South China Sea lessened between 1995 and the mid-2000s. To some extent, the

²⁰Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, Cambodia, November 4, 2002.

²¹Declaration on the Conduct of Parties in the South China Sea, November 4, 2002.

²²Liselotte Odgaard, ‘The South China Sea: ASEAN’s security concerns about China’, *Security Dialogue*, 2003, vol. 34 (1), p. 22.

²³Stein Tonnesson, ‘Sino-Vietnamese rapprochement and the South China Sea irritant’, *Security Dialogue*, 2003, vol. 34 (1), pp. 55-6.

overall trajectory of the disputes derived from a shift in China's behavior vis-à-vis the Southeast Asian claimants. The PRC acted primarily as a status quo power in the South China Sea. Its actions were marked by self-restraint as Beijing did not seize additional disputed features in the Spratlys. In 2007, Goh wrote that China's policies on the issue had generally been characterized by 'multilateralism, mutual respect, and subscription to regional norms; conflict management; as well as an attitude of seeking mutual benefit, demonstrated through restraint and the bearing of cost burdens vis-à-vis less developed neighbors.'²⁴ The signing of the 2002 declaration had indicated, at least symbolically, a Chinese commitment to pursue its claims by peaceful means. Overall, there was a sense that a clash of arms was unlikely although risks existed of miscalculations or accidents that could lead to limited confrontation.

Consequently, ASEAN has touted the South China Sea as a successful model of conflict management and avoidance post Mischief Reef and the 2002 declaration. Yet, the rising power asymmetry and the security dilemma caused by China's growing strength touch on deep regional concerns and question the ongoing effectiveness of the ASEAN model. In other words, it is now debatable whether the applied model can mitigate the unequal power distribution problem. Significantly, the changing power distribution has not been matched by further progress in the implementation of conflict management mechanisms. No tangible progress has been made since 2002 on the adoption of a formal code of conduct for the South China Sea. Instead, one has seen since late 2006 a further escalation of the situation on the ground and a clearer Chinese assertiveness in advancing its territorial claims.²⁵ That said, it is important to stress that Beijing is not solely responsible for the rise in tension in the South China Sea. Actions undertaken by the other claimants have been particularly unhelpful in managing the situation. A series of negative developments are worth mentioning. These incidents highlight the weakness of the Declaration on the Conduct of Parties when it comes to the prevention of skirmishes in the South China Sea.

²⁴Evelyn Goh, 'Southeast Asian perspectives on the China challenge', *The Journal of Strategic Studies*, 2007, vol. 30 (4-5), p. 815.

²⁵Michael Richardson, 'China's land and sea claims: Balancing stability and desire for expansion', *The Straits Times*, 7 September 2009.

In December 2006, China planted new markers on the Paracel Islands, angering Vietnam which deemed the construction to be 'invalid.'²⁶ Worsening tensions between the countries led to the withdrawal of Chinese foreign aid to Vietnam in the same month. The second half of 2007 and the early months of 2008 saw a further acceleration of incidents on the ground. In the spring of 2007, British Petroleum (BP) shelved plans to develop an oil and gas field off the Southern Vietnamese coast due to ongoing friction between Beijing and Hanoi. In July of that year, a group of Vietnamese fishing boats came under fire from Chinese patrol vessels in the Spratlys, causing the sinking of a boat and the death of one of its crew members. This raised Sino--Vietnamese tensions over the disputed territories. In November, the PRC conducted naval exercises in the Paracel archipelago. In addition to its military build-up previously mentioned, Beijing established a higher level of administrative control over the Spratlys and Paracels in December 2007. It upgraded the status of the administrative center in charge of the Paracels, Spratlys, and submerged reefs of Macclesfield Bank. Based on Woody Island, the center was relabeled as the city of Sansha, a move strongly criticized by Vietnam. In response, Hanoi tolerated that same month popular demonstrations outside of China's Embassy in Hanoi and its Consulate in Ho Chi Minh City. On a more positive note, the successful visit by Vietnamese Prime Minister Nguyen Tan Dung to Beijing in October 2008 should be mentioned. The two nations pledged in their common declaration to jointly explore resources in disputed offshore areas.²⁷

In December 2007, the Philippine Parliament passed the Maritime Boundary Act, which incorporated parts of the disputed Spratly Islands into Philippine territory. In response, the Chinese Embassy in Manila lodged an official protest. Moreover, the Philippine military announced in early 2008 that the airstrip at Kalayaan Island, the largest island occupied by Philippine troops, would be repaired and lengthened and that troops quarters located on the island would be upgraded. The militarization of the disputes has therefore continued. In the run-up to the March 2008 presidential elections, Taiwanese President Chen Shui-bian visited the Spratlys in February and

²⁶Roger Mitton, 'Sino--Vietnam relations take a further dive', *The Straits Times*, Singapore, January 23, 2007, p. 12.

²⁷Agence France-Press, 'China--Vietnam ties on the mend', *The Straits Times*, Singapore, October 27, 2008, p. A11.

inaugurated a 1,150-long runway on the fortified island of Itu Aba (Taiping Island). The presidential visit was reportedly accompanied by close to half of the Taiwanese Navy, including two submarines.²⁸ The Taiwanese decision to extend the runway on Itu Aba may be interpreted as a strategic response to the Chinese underground nuclear submarine being constructed on Hainan Island. Vietnam's Foreign Ministry spokesperson Le Dung described the visit as 'an extremely serious act of escalation, violating Vietnam's territorial sovereignty over the Spratlys.'²⁹ The Philippines joined Vietnam in condemning Chen's visit to Itu Aba while Beijing kept quiet.

The territorial question has escalated further due to the submission of claims by the Philippines, Malaysia and Vietnam to the United Nations Commission on the Limits of the Continental Shelf. States that joined UNCLOS by 1999 had to submit by 13 May 2009 their supplementary claims to economic rights when their continental shelf extends more than 200 nautical miles beyond a baseline. China reacted angrily and branded the submission of the new claims as a violation of its jurisdiction and sovereign rights over the South China Sea.³⁰ While China's response could be anticipated as the new claims overlapped with its own, it is important to highlight that Beijing included the interrupted U-shaped line map in its protest note, therefore reviving old suspicions in Hanoi, Kuala Lumpur and Manila.³¹ Beijing also established a new Department of Boundary and Ocean Affairs and enhanced its patrolling capabilities in an attempt to further assert its sovereignty in the South China Sea.

Finally, the incident involving the harassment of USNS spy ship, *Impeccable*, by Chinese navy and civilian patrol vessels South of Hainan Island in March 2009 caused additional concern in some Southeast Asian capitals. While Beijing claimed that the *Impeccable* was involved in 'illegal activities' in its exclusive economic zone, the incident could also be perceived as an example of Chinese assertiveness in the South China Sea. Overall, increased Sino-US competition in the maritime domain

²⁸Shih Hsui Chuan, Hsu Shao Hsuan, and Jimmy Chuang, 'President visits disputed islands', *Taipei Times*, February 3, 2008, p. 1.

²⁹Quoted in *The Straits Times*, 'Chen draws angry rebukes over visit to Spratlys', February 4, 2008, p. 8.

³⁰Ian Storey, 'China-Vietnam's Year of Friendship turns fractious', *The Straits Times*, 26 May 2009.

³¹This point was raised by Professor Robert Beckman at a joint RSIS-Shanghai Academy of Social Sciences Seminar, Singapore, 11 September 2009.

would undoubtedly affect the South China Sea disputes. The United States has in recent years been distracted by the war in Iraq. A more dominant US presence in East Asia would be considered as a source of concern in Beijing, which could lead toward a more assertive Chinese diplomacy and naval activity in the South China Sea. There is already a perception in the PRC that the United States is enhancing its involvement in the disputed areas.³²

In light of these recent developments, the ASEAN model of conflict management seems too fragile to establish a structure of inter-state cooperation capable of mitigating the unequal power distribution in the South China Sea. In other words, the multilateral dialogue process is not embedding Chinese power nor is it convincingly addressing the lingering uncertainty over Beijing's territorial intentions in the South China Sea. Instead, the PRC increasing its power projection capabilities has exacerbated the security dilemma in the area. Beijing has continued to rapidly modernize its South Sea Fleet and has constantly stated that its sovereignty over the South China Sea is indisputable. In particular, the fear that the PRC perceives the acquisition of additional military power as a possible instrument to enhance its sovereign rights in the South China Sea still exists. China's active process of naval modernization and acquisition is viewed by some Southeast Asian claimants as a means to back up with force existing territorial claims and access to natural resources. Furthermore, there is anxiety that overwhelming military power may one day be utilized to resolve the sovereignty question militarily rather than by peaceful diplomatic means. Facing a rising asymmetry of power, and in the absence of a credible source of countervailing power, the weaker parties have sought to upgrade and strengthen their own military capabilities. The recent announcement of a possible purchase by Vietnam of six Russian Kilo class submarines is worth repeating here. Moreover, the Philippines, Vietnam, Malaysia but also Taiwan have sought to strengthen the military structures on the reefs and islands they respectively occupy. In short, the acquisition of additional military capabilities has proceeded, therefore swelling the security dilemma in the South China Sea.

³²This point was raised by Professor Cai Penghong at a joint RSIS-Shanghai Academy of Social Sciences Seminar, Singapore, 11 September 2009.

Conclusion

This paper concludes by arguing for greater institutional structures meant at mitigating the unequal power distribution in the South China Sea. Before discussing the kind of stronger institutional mechanisms required, two critical points need to be repeated. First, Beijing is not solely responsible for the rise in tension in the South China Sea. As discussed, actions undertaken by the other claimant states, including the submission of new claims, have been particularly unhelpful in managing the situation. Mutual restraint is thus required. Yet, China's acquisition of additional military capabilities has fuelled the security dilemma in the South China Sea. This needs to be addressed through the embedding of Chinese power in a wider inter-state structure. Second, open conflict has not occurred in the disputed areas despite some escalating trends. The prevention of conflict has resulted arguably from attempts by China and the other disputants to keep the escalation of tensions in check and not to allow the disputes to spiral out of control. Nonetheless, the situation on the ground remains particularly fragile, dynamic, and possibly volatile. These circumstances highlight the need for a stronger multilateral approach consisting of a joint development scheme incorporated and structured around a cooperative management regime.

The joint exploration and development of resources combined with the shelving of the sovereignty question is often seen as the only feasible option to enhance cooperation and stability in the region. To some extent, the 2002 Declaration contributed to such efforts by putting off the question of boundaries. Significantly, the Joint Marine Seismic Undertaking (JMSU), signed by the state-owned oil companies of China, Vietnam, and the Philippines in March 2005 as a commercial agreement on the conducting of oil pre-exploration surveys in parts of the Spratlys, was generally welcomed. It is worth noting that the agreement was signed by national oil companies rather than states, which simplified the process. Yet, despite its commercial orientation, no Taiwanese company was part of the undertaking. The JMSU expired on 30 June 2008, however, and it is still unclear whether it will be extended by the parties involved. Indeed, the Philippine opposition had in recent years criticized the JMSU as an illustration of how the government had undermined its claims in the South China Sea and violated the Constitution. Despite these difficulties and in light

of the complexity of the overlapping claims in the South China Sea, joint development remains the most plausible approach to achieving a better management of the South China Sea disputes.

Nevertheless, such a joint development scheme needs to be located within and structured around a wider cooperative management regime. In the absence of such a deeper arrangement, the overwhelming power asymmetry could still leave the weaker parties in a fragile situation in the case of changing economic conditions or evolving strategic circumstances. Moreover, a joint development scheme devoid of a wider institutional structure and mechanisms would simply re-confirm China's territorial claims in light of the unequal power distribution in the South China Sea. In other words, the Southeast Asian claimants would just be included in the exploration process in areas where they have overlapping sovereignty claims with Beijing. In the context of the JMSU, Valencia already asserted that the joint survey came at a cost to the Philippines, as it covered an area of the Philippines' legal continental shelf that China and Vietnam have not claimed. Moreover, the agreement was giving legitimacy to Chinese and Vietnamese 'legally spurious claims to that part of the South China Sea.'³³ Hence, the signing of a joint exploration and development scheme would need to be preceded by the negotiation of a framework that freezes existing territorial claims and constitutes a binding code of conduct regulating regional inter-state relations and managing existing or potential disputes.

³³Mark J. Valencia, 'In response to Robert Beckman', *RSIS Commentaries* (53/2007), Singapore: RSIS, 4 June 2007.

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