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Managing Tensions in the South China Sea: Comparing the China-Philippines and the China-Vietnam Approaches

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ABSTRACT

Although disputes in the South China Sea are in general under control since 2009, developments show that China-Philippines and China-Vietnam are two key relationships that have experienced incidents leading to fluctuating levels of tension in the South China Sea region. This study reviews the evolution of these two relationships in relation to bilateral disputes in the South China Sea and the respective approaches to managing these disputes, with emphasis on the post-2009 period. By comparing the China-Philippines and China-Vietnam approaches, it intends to analyse the differences/similarities and their implication on the management of the South China Sea disputes, as well as their bilateral relations in a broader sense.

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Managing Tensions in the South China Sea: Comparing the China-Philippines and the China-Vietnam Approaches

Introduction

Although the disputes in the South China Sea are in general under control since 2009, developments show that China-Philippines and China-Vietnam are two key relationships that experienced incidents leading to fluctuating levels of tension in the South China Sea region. China-Philippines and China-Vietnam, respectively, have made efforts to handle both incidents and tensions through various approaches. This study reviews the evolution of these two relationships in relation to bilateral disputes in the South China Sea and the respective approaches to managing these disputes, with emphasis on the post-2009 period. By comparing the China-Philippines and China-Vietnam approaches, the study intends to analyse the differences/similarities and their implication on the management of the South China Sea disputes as well as their bilateral relations in a broader sense.

Methodologically, the study applies a qualitative approach through a comparative case study of the China-Philippines and the China-Vietnam cases. Thus, the study is analytical through a comparison of two empirical cases.

The key concept in the study is conflict management. In the context of this study, the concept of conflict management is defined as a process encompassing different techniques and means used to manage various dispute and conflict situations. These techniques and means include conflict prevention, conflict avoidance, conflict containment, conflict transformation, and conflict resolution.

The study is structured as follows. The next section gives an overview of post-2009 China-Philippines and China-Vietnam relations in relation to their South China Sea disputes, focusing on main incidents and interactions (or lack of interactions) in dealing with them. The third section offers comments and analysis on the approaches reflected from recent developments in these two bilateral relations. In the final section, the two relationships are compared and assessed by offering the author's observations.

Post-2009 Developments: Tensions and Management

China-Philippines over the South China Sea

Since diplomatic relations were established in 1975, China-Philippines relationship has in general been developing smoothly. Although rows emerged due to overlapping claims in the South China Sea, they were prevented from escalating out of control. The most serious ones before 2000 are the 1995 Mischief Reef (Meiji Reef in Chinese) and 1997 Scarborough Reef (Huangyan Island in Chinese) incidents. Since then, China and the Philippines had been working towards management and cooperation until 2008. The year of 2009 witnessed the start of a potential increase of tension in their bilateral relation with regards to the South China Sea. This tendency is reflected from bilateral spats over several issues.

Legal spat over maritime claims

In February-March 2009, the interpretation and application of Article 7 of the United Nations Convention on the Law of the Sea (UNCLOS) regarding straight baselines and Article 47 of UNCLOS regarding the archipelagic baselines became an issue in the South China Sea disputes. On 2 February 2009, Bill 3216 was adopted by the House of Representatives of the Philippines to define the archipelagic baselines of the Philippine archipelagos, and it was reported that both the Kalayaan Islands Group (KIG)¹ and Scarborough Reef were included in the Philippine archipelagic baselines. China responded by reiterating its sovereignty claim to both Huangyan Island and the Nansha Islands and to “their adjacent waters”. China also expressed “hope that the relevant country can earnestly abide by” the Declaration on the conduct of parties in the South China Sea (DOC) and “refrain from taking actions that may complicate and increase disputes” in the South China Sea. Further developments relating to the baselines of the Philippines is that on 10 March 2009, President Arroyo signed the Republic Act No. 9522 which did not include the KIG and Scarborough Reef within its archipelagic baselines, but the baselines there “shall be determined as ‘regime of islands’ under the Republic of the Philippines consistent with Article 121” of UNCLOS.² China responded by reiterating its statement on 3 February and by protesting against the Republic Act No. 9522 after it was submitted by the Philippines to the United Nations.³

To fulfil the obligation set by UNCLOS, by 13 May 2009, all relevant parties of the South China Sea dispute submitted their cases to the Commission on the Limits of the Continental Shelf (CLCS). In 2009, no immediate communication was done between China and the Philippines in relation to their separate notes to the United Nations, in response to the joint submission by Malaysia and Vietnam of May 2009. Nearly two years later, on 5 April 2011, the Philippines sent a Note to the Secretary-General of the United Nations, in response to China’s May 2009 Notes with the attached maps displaying the “nine-dashed lines”. In this Note, the Philippines stated that “under the international law principle of ‘la terre domine la mer’..., the extent of the waters that are adjacent to the relevant geographical features are definite and determinable under UNCLOS, specifically under Article 121 (Regime of Islands) of this said Convention.”⁴ Furthermore, in this note, the Philippines seemed to suggest that there was “no legal basis for claiming sovereign rights and jurisdiction over any resources in or under the waters within the nine-dashed line outside the waters adjacent to the islands.” In response to the Note of the Philippines, China sent a Note to the Secretary-General of the United Nations on 14 April 2011. China stated that “China’s Nansha Islands is fully entitled to Territorial Sea, Exclusive Economic Zone (EEZ) and Continental Shelf.” China did not mention or attach any map to this Note. However, the “nine-dashed lines” on China’s map will continue to arouse

¹ Part of the Spratlys (Nansha Islands in Chinese).

² The text of the Republic Act No. 9522 can be found as one of the documents submitted by the Philippines to the United Nations as part of the “Deposit of the list of geographical coordinates of points as contained in Republic Act No. 9522: An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes”, M.Z.N.69.2009.LOS (Maritime Zone Notification) (21 April 2009), http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/phl_2008_act9522.pdf.

³ Nguyen Hong Thao and Ramses Amer, “A New Legal Arrangement for the South China Sea?” *Ocean Development and International Law* 40, no. 4 (2009): 340.

⁴ Nguyen Hong Thao and Ramses Amer, “Coastal States in the South China Sea and Submissions on the Outer Limits of the Continental Shelf,” *Ocean Development and International Law* 42, no. 3 (2011): 257.

both political and scholarly debates.⁵ Also in this note, China clearly stated that prior to the 1970s, the Philippines “had never made any claims to Nansha Islands or any of its components” and it is since 1970s that the Philippines “started to invade and occupy some islands and reefs of China’s Nansha Islands”. The Note further stated that the Philippines’ occupation “constitutes infringement upon China’s territorial sovereignty”.⁶

At the ASEAN Ministerial Meeting (AMM) Retreat on 19 July 2011 in Bali, the Philippines’ Foreign Minister Albert F. del Rosario openly criticised China by saying that “the new introduction of China of the 9-dash in 2009 becomes the core of the problem.”⁷ In August, a forum entitled “The Spratly Islands Issue: Perspective and Policy Responses” was held in Manila. At the forum, Rosario again stated that “China’s claims in relation to the U-shaped line are baseless”.⁸ On 22 January 2013, the Philippines initiated arbitral proceedings against China by sending a note to the Chinese Embassy in Manila, calling on the Arbitral Tribunal for a ruling that:

“[d]eclares that China’s rights in regard to maritime areas in the South China Sea, like the rights of the Philippines, are those that are established by UNCLOS, and consist of its rights to a Territorial Sea and Contiguous Zone under Part II of UNCLOS, to an EEZ under Part V, and to a Continental Shelf under Part VI; [and d]eclares that China’s maritime claims in the SCS based on its so-called nine-dash line are contrary to UNCLOS and invalid.”⁹

On 19 February, the Chinese Ambassador in Manila returned the Philippines’ note and its attached notification making clear that China refused to accept them.¹⁰ On 16 July 2013, the Arbitral Tribunal held its first meeting at which a draft set of Rules of Procedures to govern the proceedings were sent out to China and the Philippines for their comments.¹¹ Believing that the Philippines’ unilateral submission to arbitration was in principle against the principle of the DOC, and the relevant statements therein were flawed in facts and law, China refused to participate in the proceedings. It

⁵ Nguyen and Amer, “Submissions on the Outer Limits of the Continental Shelf,” op. cit., 257–258; and Ju Hailong, “South China Sea Policy of the Philippines: Interest Driven Policy Choice,” *Journal of Contemporary Asia-Pacific Studies*, 3 (2012): 90.

⁶ Ju, “South China Sea Policy of the Philippines,” op. cit., 86; and China, “Note Verbale dated 21 May 2009 from the Permanent Mission of China to the United Nations Addressed to the Secretary-General,” daccess-ddsny.un.org/doc/UNDOC/GEN/N09/346/61/PDF/N0934661.pdf.

⁷ The Department of Foreign Affairs of the Republic of the Philippines, “Secretary del Rosario to pursue PHL key initiatives in ASEAN Foreign Ministers’ meeting on July 19,” <http://www.gov.ph/section/briefing-room/departments-of-foreign-affairs-briefing-room/page/68/>.

⁸ Chen Qinghong, “Adjustment of its Policies over the South China Sea by the Philippines and the Reasons Behind,” *International Sources and Information* 10, (2011): 18.

⁹ Department of Foreign Affairs of the Republic of the Philippines, “Statement: The Secretary of Foreign Affairs on the UNCLOS Arbitral Proceedings against China, January 22, 2013,” <http://www.gov.ph/2013/01/22/statement-the-secretary-of-foreign-affairs-on-the-unclos-arbitral-proceedings-against-china-january-22-2013/>.

¹⁰ Ministry of Foreign Affairs of the People’s Republic of China, “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on February 19, 2013,” <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1015317.shtml>.

¹¹ Department of Foreign Affairs of the Republic of the Philippines, “PHL Arbitral Proceedings Against China Now Officially Under Way,” <http://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/dfa-releases/344-phl-arbitral-proceedings-against-china-now-officially-under-way>.

was in line with China's position of direct negotiation and consultation with its neighbouring countries on resolution of their territorial disputes. The Philippines submitted its Memorial on March 30, 2014.¹²

Administrative spat over resources development

Revitalising domestic economy is one of the targets for Aquino III government. The potential oil and gas resources in the sea area around the Spratlys are important to the Philippine economy. With regards to the March 2005 Joint Marine Seismic Undertaking (JMSU) signed by the oil companies from China, the Philippines and Vietnam, Aquino III commented at a ceremony on 4 January 2011, that the Philippines should not have gone into the JMSU and started oil exploration in offshore area off Palawan.¹³ Oil and gas exploration in the disputed sea area around the Spratlys re-appeared as a source of tensions.

In early 2011, the Philippine Government endowed a U.K.-based company Energy Forum with a two-year contract to explore the oil and gas resources in the disputed area in the South China Sea. On 2 March, the Philippines claimed that the seismic survey vessels of Forum Energy Philippines Corporation (FEPC) were harassed by Chinese marine surveillance vessels.¹⁴ On 23 March, the FEPC completed the work program for Service Contract 72 (SC 72) located in the Reed Bank (Lile Tan in Chinese) and announced on its website that it would immediately "begin processing the data with the aim of further evaluating the commercial potential of the block, and to help identify the best location for possible appraisal wells to be drilled."¹⁵ When responding to a question regarding to this announcement, the spokesperson for Chinese Foreign Ministry responded:

"China has indisputable sovereignty over the Nansha Islands and its adjacent waters. Oil and gas exploration and exploitation by any country or company without the permission of the Chinese Government constitute infringement on China's sovereignty and sovereign rights, which is invalid."¹⁶

Three of the 15 oil blocks which were listed for bidding by the Philippines on 30 June are located to the Northwest of Palawan.¹⁷ The Philippines denies China's claim over this sea area. At the above-mentioned forum in August 2011, Rosario declared that the Reed Bank, located 85 nautical miles from the nearest coast of Palawan, "is part of the continental shelf of the western coast of Palawan Province in the Philippines". He further stated, "The Reed Bank can only be exclusively developed by

¹² Department of Foreign Affairs of the Republic of the Philippines, "Speech of the Secretary of Foreign Affairs: An Independent and Principled Philippine Foreign Policy for Economic Growth," <http://www.gov.ph/2013/10/24/speech-of-the-secretary-of-foreign-affairs-during-the-map-2013-general-membership-meeting/>.

¹³ Chen, "Adjustment of its Policies," op. cit., 17.

¹⁴ "The Philippine Oil Company was warned by China of its oil exploitation," *Huangqiu*, March 25, 2011, <http://world.huanqiu.com/roll/2011-03/1587256.html>; and del Rosario, "Philippine Policy Response and Action," <http://dfa.gov.ph/main/index.php/newsroom/dfa-releases/3531--philippine-policy-response-and-action-by-the-hon-albert-f-del-rosario-secretary-of-foreign-affairs>.

¹⁵ Jia Cheng, "Philippines seeks oil exploration in South China Sea inside China waters," *Global Times*, March 24, 2011, <http://www.globaltimes.cn/content/637562.shtml>.

¹⁶ Ministry of Foreign Affairs of the People's Republic of China, "Press Conference by Spokesperson Jiang Yu of 24 March 2011," <http://www.fmprc.gov.cn/chn/gxh/tyb/fyrbt/t809390.htm>.

¹⁷ Ju, "South China Sea Policy of the Philippines," op. cit., 86.

the Philippines and foreign investors could be invited to assist in developing the area in accordance with Philippine laws.”¹⁸

Besides oil and gas exploration, fishing has also become a source of tension in 2011. On 25 February, the Philippine fishing vessels found at the vicinity of Jackson Atoll in the Spratlys were warned by Chinese law enforcement vessels.¹⁹ On 25 March, six Chinese fishermen were arrested by the Philippines in the Spratlys sea area.²⁰ Again on 18 October, a Chinese fishing vessel was “harassed by a Philippine warship when it was carrying out normal fishing activities”.²¹

Territorial spat over insular features²²

On 10 April 2012, the Philippines’ biggest naval vessel BRP Gregorio Del Pilar attempted to intercept Chinese fishing boats which were reported taking shelter from a storm in the lagoon of Scarborough Reef. The incident over the Scarborough Reef re-emerged. Similar incident first surfaced on 30 April 1997, when Philippine naval vessels prevented three Chinese boats from approaching the reef and hoisted the Philippine flag, but this time the incident dragged on much longer.

The tensions over Scarborough Reef had been fluctuating and reached a peak on 7 May when Chinese Vice Foreign Minister Fu Ying met with the Philippines’ Chargé D’affaires in Beijing and criticised the Philippine side for having made serious mistakes by escalating tensions and stated that “China has made all preparations to respond”. Diplomatic negotiations resumed on 9 May and both countries stated their desire to find a solution to the situation. At the same time, both sides continued with a tough stand, and the stalemate resulted in spilled over negative impacts to other areas of bilateral relations. First, it aroused strong nationalistic feelings from both countries. In the Philippines, protesters had been shouting slogans such as “China, Bake Off the Panatag Shoal, Stop Poaching”. In China, protesters responded with “Get out of Huangyan Island”. Second, bilateral trade and tourism slowed down. China is the fourth largest market for tourists to the Philippines; the number of tourists from China had increased by 77 per cent during the first three months of 2012. However, since 16 May, during the incident, no Chinese tourist groups visited the Philippines. Third, the existence of tensions in the water area of the Reef prevented fishermen from normal fishing activities.

Another incident over one insular feature remained relatively low key. It was reported in May 2013 that three Philippine naval vessels were navigating to Second Thomas Reef (Ren’ai Reef in Chinese) with the aim of repairing the wrecked navy transport ship when two Chinese surveillance ships and a naval frigate blocked Philippine ships and then kept close inspection over such area.²³ It was in 1999

¹⁸ del Rosario, “Philippine Policy Response and Action,” op. cit.

¹⁹ del Rosario, “Philippine Policy Response and Action,” Ibid.

²⁰ Chen, “Adjustments of its Policies,” op. cit., 17.

²¹ Ministry of Foreign Affairs of the People’s Republic of China, “Press Conference by Spokesperson Jiang Yu of 20 October 2012,” <http://www.fmprc.gov.cn/chn/gxh/tyb/fyrbt/jzhsl/t869317.htm>.

²² This section is partly derived from Li Jianwei and Ramses Amer, “Will the China-Philippine Standoff over Huangyan Island Lead to Cooperation?” *China-US Focus*, May 30, 2012, <http://www.chinausfocus.com/foreign-policy/will-the-china-philippine-standoff-over-huangyan-island-lead-to-cooperation/>.

²³ Qiu, “Chinese patrol vessels stopped the Philippines from consolidating the vessel,” *Huanqiu*, May 23, 2013, <http://world.huanqiu.com/exclusive/2013-05/3962158.html>.

when the former WWII ship ran aground on Second Thomas Reef to mark the reef under its territory.²⁴ Manila lodged an official protest over China's patrols around Second Thomas Shoal by claiming it as an "integral part" of the Philippines, and the Philippine Secretary of Defense declared that his country "will fight for what is ours up to the last soldier standing".²⁵ China confirms "its indisputable sovereignty over the Nansha Islands, including Ren'ai Reef, and its adjacent waters".²⁶ This spat lasted until 19 June when, as commented, "due to humanitarian consideration, China allowed the supply of food and change of personnel to be carried out by the Philippine navy".²⁷

As long as the sovereignty dispute remains unsettled, incidents such as disputes over Scarborough Reef or Second Thomas Reef may occur again. It is necessary for both countries to peacefully manage the situation and to prevent tension from re-occurring in the future. Political wisdom is needed to find creative means to address the situation and to create mechanisms to reduce the re-emergence of tension in the future.

China-Vietnam over the South China Sea²⁸

Since full normalisation of relations in late 1991, tension in China-Vietnam relations has primarily been caused by differences related to territorial disputes. Parallel with rounds of negotiations, there were periods of tensions relating to all the territorial disputes, i.e. overlapping claims to the Paracel and Spratly archipelagos, to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin, and to areas along the land border through the 1990s until the end of 2000. A *Land Border Treaty* was signed on 30 December 1999, and joint demarcation work was finished on 23 February 2009²⁹. On 25 December 2000, the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* was reached together with the *Fishery Agreement in the Gulf of Tonkin*.

²⁴ "Second Thomas Shoal 'could be the next flashpoint", *Taipei Times*, May 30, 2013, 2013, <http://www.taipetimes.com/News/front/archives/2013/05/30/2003563520>.

²⁵ Bonnie S. Glaser and Alison Szalwinski, "Second Thomas Shoal Likely the Next Flashpoint in the South China Sea," *China Brief* 13 (2013), Issue 13, <http://www.aspmmedia.org/2013/blogs/second-thomas-shoal-likely-the-next-flashpoint-in-the-south-china-sea/>; Qiu et al, "The Philippine ship intentionally ran aground," *Huanqiu Shibao*, May 24, 2013, <http://mil.news.sina.com.cn/2013-05-24/0922725723.html>.

²⁶ Ministry of Foreign Affairs of the People's Republic of China, "Statement by the spokesperson of China's Ministry of Foreign Affairs on 22 May 2013," http://www.fmprc.gov.cn/mfa_chn/fyrbt_602243/t1042669.shtml.

²⁷ "Chinese military expert say due to humanitarian consideration China allowed the Philippine Navy carry out supply to its wrecked vessel," *Qianjing Wanbao*, June 21, 2013, <http://mil.news.sina.com.cn/2013-06-21/1121728787.html>

²⁸ This China-Vietnam study is partly deprived from Ramses Amer and Li Jianwei, 'Recent Developments in the South China Sea – An Assessment of the Core Bilateral Relationship Between China and Vietnam', in *Maritime Security Issues in the South China Sea and the Arctic: Sharpened Competition or Collaboration?*, ed. Gordon Houlden and Nong Hong, 41–75, Beijing: China Democracy and Legal System Publishing House. Further reading include: Ramses Amer, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, Maritime Briefing, vol. 3, no. 5, (Durham: International Boundaries Research Unit, University of Durham, 2002); Ramses Amer, "The Sino-Vietnamese Approach to Managing Border Disputes – Lessons, Relevance and Implications for the South China Sea Situation," in *The South China Sea: Cooperation For Regional Security and Developments, Proceedings of the International Workshop, co-organized by the Diplomatic Academy of Vietnam and the Vietnam Lawyers' Association, 26-27 November 2009, Hanoi, Vietnam*, ed. Tran Truong Thuy, (Hanoi: The Gioi Publishers and Diplomatic Academy of Vietnam, 2010), 251–271.; Ramses Amer, "Sino-Vietnamese Border Disputes," in *Beijing's Power and China's Borders: Twenty Neighbors in Asia*, ed. Bruce Elleman, Stephen Kotkin and Clive Schofield, (Armonk, New York and London: M.E. Sharpe, 2012), 295–309.

²⁹ Jiang and Wang, "China-Vietnam celebrates the successful completion of demarcation work of their land border," *Zhongguo Wang*, Feb. 24, 2013, http://www.china.com.cn/international/txt/2009-02/24/content_17324602.htm.

Successful resolution of the land border and the Gulf of Tonkin issues do contribute to cooperative and friendly bilateral relations in various fields. How the experiences could transfer to the success of the last issue of the South China Sea proper seems to be limited at the moment. There was no noticeable tension in both 1999 and 2000 relating to the disputes in the South China Sea.³⁰ Up to 2008, China-Vietnam interaction over the South China Sea issue showed a pattern of continuous dialogue with limited tension, and the tension were mostly caused by oil exploration and fishing in overlapping claimed sea area.³¹ During the period of 2009-2011, there were periodic increases in the level of tensions.³² In response, the two sides implemented management efforts resulting in the “Agreement on basic principles guiding the settlement of sea-related issues” (hereinafter known as Agreement on basic principles) in October 2011.³³

Differences between China and Vietnam increased in 2009. In early May 2009, Vietnam submitted a “Partial Submission” relating to Vietnam’s extended continental shelf in the “North Area” of the South China Sea as well as a “Joint Submission” together with Malaysia relating to the “southern part” of the South China Sea to the CLCS. Both submissions prompted China to protest and reiterate its claims in the South China Sea. On a more positive note, Government-level delegations dealing with territorial issues met on two occasions in 2009, in August and in November, respectively. Vietnam also protested about the arrest of Vietnamese fishermen by China on several occasions in 2009 and also in 2010. Furthermore, Chinese fishing bans led to Vietnamese protest in 2009 and 2010.

In response to the heightened tension, the Prime Ministers of the two countries held talks in Hanoi on 28 October 2010 and decided to “seek satisfactory solutions to existing issues relating to” the South China Sea. According to the official Vietnamese report, the two sides also “reached consensus on speeding up negotiations on basic principles to settle sea issues, and satisfactorily settling fishermen and fishing boat issues”. The official Chinese report did not mention anything about fishermen and fishing boats.

Open differences relating to activities in the South China Sea continued during the first half of 2011 and the most serious incidents occurred in late May and early June. Two incidents on 26 May and 9 June, respectively, were related to Vietnamese oil exploration activities in areas that Vietnamese considers to be within its exclusive economic zone (EEZ) and continental shelf to the east of the Vietnamese coast, and that China considers as under its “jurisdiction”. Vietnam accused China of cutting the cables of the explorations ships operated by Vietnam, while China accused Vietnam of illegal activities within an area under its “jurisdiction”. During the 9 June incident, China also accused

³⁰ Amer, *The Sino-Vietnamese Approach*, op. cit., 26–34.

³¹ For an overview of incidents during this period see Amer, “The Sino-Vietnamese,” op. cit., 264–267.

³² For an overview of key incidents in 2009 and 2010 see Ramses Amer, “Vietnam in 2009 – Facing the Global Recession,” *Asian Survey* 50 (2010), no. 1: 215–216; Ramses Amer, “Vietnam in 2010 – Regional Leadership,” *Asian Survey* 51 (2011), no. 1: 200; and Ramses Amer, “Dispute Settlement and Conflict Management in the South China Sea – Assessing Progress and Challenges,” in *The South China Sea: Towards A Region of Peace, Security and Cooperation*, ed. Tran Truong Thuy (Hanoi: The Gioi Publishers and Diplomatic Academy of Vietnam, 2011), 266. For details about developments in 2011 see Amer and Li, ‘Recent Developments in the South China Sea’, op. cit., 43–58. For developments from 2009 to 2011 see also Ramses Amer, “China, Vietnam and the South China Sea – Disputes and Dispute Management”, *Ocean Development and International Law* 45 (2014), no. 1 (forthcoming).

³³ See Amer and Li, ‘Recent Developments in the South China Sea’, op. cit., 53–56.

Vietnam of chasing away Chinese fishing boats. In connection with the incidents, Vietnam explicitly rejected China's claim within the so-called "nine-dashed lines" in the South China Sea.

After this public display of differences and tension relating to the activities in the South China Sea, the two countries took action to reduce the level of tension. Vietnam dispatched a Special Envoy to Beijing to discuss the situation with Chinese leaders. The two sides agreed to "speed up the tempo of negotiations so as to early sign an 'Agreement on basic principles guiding the settlement of sea issues between Vietnam and China'" as well as to "boost the implementation" of the DOC and of "follow-up activities so that substantial progress will soon be achieved."

Two significant developments took place in October 2011: the Agreement on basic principles was signed in Beijing on 11 October, and the first high-level summit between the two countries since 2008 took place on 11-15 October when the Secretary-General of the Communist Party of Vietnam (CPV), Nguyen Phu Trong, visited China.

The Agreement on basic principles stated that the government-level delegations of both countries "agree that the satisfactory settlement of sea-related issues between Vietnam and China is suitable for the basic interests and common aspirations of the two countries' people and helpful for regional peace, stability, co-operation and development." They also agreed that on the basis of "common perceptions of the Vietnamese and Chinese leaders reached on sea-related issues" to "solve sea-related issues pursuant to" a set of "principles" divided into six points.³⁴

During his visit to China, Trong met with China's then President and Secretary-General of the Communist Party of China (CPC), Hu Jintao, and other Chinese leaders. In the Joint Statement issued in connection with the high-level summit, considerable attention was devoted to maritime issues. It was stated that the two sides "exchanged views in a sincere and straightforward manner on the sea issue, stressing their political will and determination to settle disputes via friendship, negotiation and talks in order to maintain peace and stability" in the South China Sea. The two sides agreed to "speed up negotiations on the sea issue, seek basic and long-term solutions acceptable to both sides". The two sides also stated that they "will firmly speed up negotiations on the demarcation of areas beyond the mouth of the Tonkin Gulf and actively discuss co-operation for mutual development on this area."³⁵

China's then Vice-President, Xi Jinping, made an official visit to Vietnam on 20-22 December 2011. He held meetings with Vietnamese leaders. The two sides reviewed the overall collaboration between the two countries including territorial issues.

In February 2012, Vietnam's Minister of Foreign Minister, Pham Binh Minh, made an official visit to China. In talks with his Chinese counterpart, Yang Jiechi, the two reviewed the bilateral relationship

³⁴ For a detailed overview see Amer and Li, "Recent Developments in the South China Sea," op. cit., 53–56; The text of the Agreement is reproduced as Annex in Amer, "China, Vietnam".

³⁵ "Vietnam-China joint statement," *Communist Party of Vietnam Online Newspaper*, October 16, 2011, http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30107&cn_id=484891.

including territorial issues and reiterated the two sides' commitment to settle their differences by peaceful means. In late February, Vietnam's Deputy Foreign Minister, Ho Xuan Son, held talks with his Chinese counterpart, Zhang Zhijun, in Beijing. They agreed to establish working groups at the "department level to negotiate on the delineation of the sea area outside the Bac Bo (Tonkin) Gulf mouth and cooperate in jointly developing this area". They also agreed to set up working groups to cooperate in "less sensitive sea domains, including sea environment protection, scientific research out at sea, search and rescue activities and mitigation of damage caused by natural calamities". Finally, they agreed to launch a "hotline between the two foreign ministries". The hotline was opened on 2 March.

On 21-22 May 2012, the "first-round of talks at the departmental level" was held in Hanoi on the "demarcation of areas outside the mouth of" the Gulf of Tonkin in Hanoi. This signalled the resumption of talks relating to this area which started in January 2006. The second round of talks was held in Beijing on 26-27 September, 2012. The third round of talks was held in Hanoi on 29-30 May 2013. Two observations can be drawn here. First, when tensions increased in bilateral relations due to tension regarding the South China Sea, undergoing negotiations over the said area became inactive from 2009 to 2011. Second, clear improvement has been made in the third round of talks. Some more concrete arrangements have been raised. Both sides proposed positions in more details on relevant issues relating to maritime delimitation. Agreement was reached on strengthening negotiation over the issue of joint cooperation in the said area. A group of technical experts will be formed to carry out joint survey.³⁶

From 29 to 30 May 2012, the first round of talks on "co-operation in less sensitive fields at sea" was held in Beijing, and cooperation principles and mechanisms were agreed upon.³⁷ The second round of talks was held in Hanoi from 6 to 8 November. The third round of talks was held in Beijing from 22 to 24 April 2013 and three priority projects were identified in relation to joint search and rescue, environmental protection of the seas and islands in the Gulf of Tonkin, and comparative studies on Holocene-era sedimentary evolution in Yangtze Delta and Red River Delta.³⁸ The fourth round of talks was convened in Hanoi from 24 to 26 September. At this round, the content of the agreements was agreed over the three projects. The next step is to go through relevant procedure to sign agreements so by the end of 2013 which would imply that two projects could be started.³⁹

Two high-level summits took place in 2013. The first was Vietnamese President Truong Tan Sang's State visit to China from 19 to 21 June 2013. In connection with the visit, an agreement between Vietnam's Ministry of Agriculture and Rural Development and China's Ministry of Agriculture on "the establishment of a hot line on unexpected incidences in fishing operations at sea" was signed. In the

³⁶ "The Vietnam-China working group start the 3rd round of negotiation on the sea area beyond the Gulf of Tonkin," *People's Army Newspaper Online*, June 2, 2013, <http://www.qdnd.vn/webcn/zh-cn/120/365/380/245152.html>.

³⁷ "China-Vietnam initiated talks on cooperation at sea on less-sensitive issues," *Guoji Zaixian*, May 30, 2013, <http://news.sina.com.cn/o/2012-05-30/185724507001.shtml>.

³⁸ "China-Vietnam Expert Working Group hold 3rd round of talks on cooperation at sea on less-sensitive issues," *Xinhua Wang*, May 4, 2013, <http://world.people.com.cn/n/2013/0425/c157278-21283407.html>.

³⁹ "China-Vietnam Expert Working Group hold 4th round of talks on cooperation at sea on less-sensitive issues," *Yi Wang*, September 27, 2013, <http://news.163.com/13/0927/00/9905501V00014JB5.html>.

Joint Statement from the State visit, it was stated that the two sides had reached “consensus that the two Parties and States should maintain regular exchanges and dialogues”. They would “persistently seek fundamental and long-term solutions acceptable to both sides through consultations and friendly negotiations”. It was agreed to “intensify negotiations of the Working Group on the sea off” the Gulf of Tonkin as well as to “increase negotiations of the Working Group on Viet Nam – China cooperation in less sensitive issues at sea”. The two sides also agreed to “properly settling emerging issues with a constructive attitude, not letting the issue affect the overall situation” of their relationship as well as peace and stability in the South China Sea.” Finally, the two sides “reached consensus on the comprehensive and effective implementation” of the DOC.⁴⁰

The second visit was Chinese Prime Minister Li Keqiang’s visit to Vietnam on 13-15 October. At the end of the visit, China and Vietnam issued a joint statement on further deepening their comprehensive strategic cooperative partnership in the new period, in which the role of high-level contacts between the two countries was hailed as irreplaceable, and both sides are committed to maintaining high-level contacts and visits and promoting high-level contacts in various forms. Like in the previous joint statement signed during Sang’s visit, sea issues were given high attention. Both sides emphasised cooperation and dispute management in relation to the sea issues. They agreed to “exercise tight control of maritime disputes and not to make any move that can further complicate or expand disputes, to make good use of the hotline between the two Foreign Ministries to manage and control disputes at sea as well as the one between the two Agriculture Ministries to promptly and suitably deal with problems arising from fishery activities at sea.” Both sides “will continue to actively discuss and seek efficient measures to control disputes and maintain the overall good bilateral relations, and peace and stability in the South China Sea”.⁴¹

Despite these positive developments, some incidents displayed that differences relating to the South China Sea still exist. This can be seen from official Vietnamese complaints in 2012 in response to (i) China’s fishing ban; (ii) the arrest of Vietnamese fishermen; (iii) the opening up of blocks for oil concessions in the South China Sea; (iv) Chinese activities relating to the establishment of the city of Sansha; and (v) an incident in late November in which Vietnam claimed that Chinese fishing boats had “blocked” and “severed” the cable of a Vietnamese seismic survey vessel in the vicinity of Con Co island in an area located within Vietnam’s continental shelf and EEZ. China’s main complaint was in response to the adoption of Vietnam’s “Law of the sea” also referred to as “Maritime Law”.

There were also some incidents in 2013 that led to Vietnamese complaints in response to China’s activities in the South China Sea, e.g. legislative decisions and development plans affecting the Paracel and Spratly archipelagos, activities in the two Archipelagos, and law enforcement activities by China against Vietnamese fishing boats in the Paracel area.

⁴⁰ Ministry of Foreign Affairs of Vietnam, “Viet Nam, China issue joint statement,” June 22, 2013, http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns130624152141/newsitem_print_preview.

⁴¹ Ministry of Foreign Affairs of Vietnam, “VN, China issue joint statement,” October 15, 2013, <http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns131016041515>.

Dispute Management Approaches

As the respective countries were undergoing bilateral disputes over the issues in the South China Sea, efforts have been made from relevant countries on managing the situations. However, since 2009, outstanding differences have shown up between China-Vietnam and China Philippine approaches.

China-the Philippines: ad hoc mechanism

After the Mischief incident, China and the Philippines held talks leading to an eight-point code of conduct in the Joint Statement of the Republic of Philippines and the People's Republic of China Consultations on the South China Sea and on other Areas of Cooperation of August 1995. This works as a model to initiate a more active role of the Association of Southeast Asian Nations (ASEAN) in the South China Sea, which led to the DOC signed between the ten ASEAN countries and China in November 2002.⁴² In 1996, China and the Philippines issued a joint press release in which both sides agreed to set up bilateral consultation mechanisms including three working groups in charge of fishery, marine environmental protection and confidence building respectively. In particular, for the aim of promoting confidence, practical cooperation was raised in the fields including search and rescue, anti-piracy and counter-smuggling. In the 2000 joint communiqué between the two foreign ministers, both reaffirmed the positive work by the confidence-building working groups and agreed to promote practical cooperation between the two militaries, in fields such as information sharing and disaster relief to promote maritime security.⁴³ Therefore, during the period from 1995 to 2000, the two countries moved to initiate mechanisms for confidence building through practical measures rather than directly managing conflicts which may have resulted from the disputes.⁴⁴

Such cooperative environment was further promoted under the Arroyo Administration. Exchange of visits between the top leaders in the two countries played an important role in setting the tone for both countries to manage their maritime disputes. It was between the top leaders of China and the Philippines that the concept of joint development was first raised to manage their differences in the South China Sea. At the meeting between Deng Xiaoping and his Filipino counterpart Aquino on 16 April 1988, Deng was quoted by saying, "after many years of consideration, we think that to solve the issue (of Nansha/the Spratlys), all parties concerned could explore joint development under the premise of admitting China's sovereignty over them."⁴⁵ The March 2005 JMSU agreement was highlighted during Hu Jintao's state visit to the Philippines in 2005. In the joint statement issued during Hu's visit, both agreed to "continuously make efforts to maintain peace and stability in the

⁴² Li Jianwei and Ramses Amer, "Recent Practices in Dispute Management in the South China Sea," in *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*, Special Report, no. 37, ed. Clive Schofield (Seattle: National Bureau of Asian Research, 2012), 90.

⁴³ Zhong Feiteng, "Domestic Politics and the Institutionalization of the South China Sea Issue: Bilateral Policy Coordination in Sino-Vietnamese and Sino-Philippines Relations," *Journal of Contemporary Asia-Pacific Studies* 3 (2012), 102.

⁴⁴ Zhong, "Domestic Politics," *ibid.*, 101.

⁴⁵ Li and Amer, 'Recent Practices', *op. cit.*, 94.

South China Sea region and extend the welcome to the China-the Philippines-Vietnam JMSU.”⁴⁶ However, this wishful thinking has not been materialised. At the end of the first stage of work in 2008, the project came to an end due to domestic politics in some country.⁴⁷ The maritime disputes prevail and bilateral tensions in relation to the South China Sea increase since 2009 in particular after Aquino III took office. Regarding the resolution of the South China Sea issues, both countries emphasised the importance of peaceful settlement. Both agreed that direct communication would help ease tensions. However, there appears a divergence of approaches to dispute settlement in recent developments. China wants to resolve the disputes through direct diplomatic means, i.e. bilaterally. At the same time China’s practice of promoting coordination with ASEAN is to manage the overall situation in relation to the South China Sea.⁴⁸ According to China, the DOC, as well as a possible future Code of Conduct (COC) when ready, is not for dispute settlement but conflict management for peace, security and stability of the region.

On the other hand, the Philippines have turned to alternative practices beyond bilateral means. It has tried to get a unified voice within ASEAN, to get support from its treaty ally of the United States, and to go for international jurisprudence.

First, the Philippine has been promoting one voice within ASEAN to deal with China in efforts on two attempts. The first attempt is to push for a legally binding COC. In the first half of 2011, the top leaders and officials of the Philippine Government travelled through the key countries of ASEAN for such a purpose. In April, during Rosario’s visit to Vietnam he agreed with Vietnam counterpart to mutually push ahead for the COC. In May, Aquino III visited Thailand and Brunei. During the visit, he was trying to persuade the two countries to press China to reach a COC.⁴⁹ The second attempt is to promote the ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC). At an August forum, Rosario promoted the concept of ZoPFFC. He explained that under the ZoPFFC, the relevant disputed features in the South China Sea would be segregated from the undisputed waters in accordance with international law, specifically the UNCLOS.⁵⁰ In the Joint Communiqué of the ASEAN Foreign Ministers Meeting on 19 July 2011, the ASEAN Senior Officials’ Meeting (SOM) was asked, with the assistance from maritime legal experts, to seriously study the proposal of ZoPFFC.⁵¹

Second, more clearly than before, the Philippines have turned to the U.S. for security reassurance in dealing with a bigger neighbouring country like China. The U.S.-Philippine alliance relationship was considered as the basis of Aquino III’s government. Since Aquino III took office, the U.S. has provided economic and military assistance to the Philippines, openly expressing its plan to improve the

⁴⁶ Ministry of Foreign Affairs of the People’s Republic of China, “Joint Statement between China and the Philippines,” April 28, 2005, <http://www.fmprc.gov.cn/chn/gxh/zlb/smgg/t193789.htm>.

⁴⁷ Tara Davenport, “Joint Development in Asia: Some Valuable Lessons Learned”, *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*, Special Report, no. 37, ed. Clive Schofield, (Seattle: National Bureau of Asian Research, 2012), 145.

⁴⁸ Li and Amer, ‘Will the China-Philippine Standoff’, op. cit.

⁴⁹ Ju, ‘South China Sea Policy of the Philippines’, op. cit., 90.

⁵⁰ Del. Rosario, ‘Philippine Policy Response and Action’, op. cit.

⁵¹ Department of Foreign Affairs of the Republic of the Philippines, “Statement of Secretary Albert F. Del Rosario at the ASEAN Foreign Ministers’ Meeting (AMM)’ 15 November 2011, Bali, Indonesia,” November 15, 2011, <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/4141-statement-of-secretary-albert-f-del-rosario-at-the-asean-foreign-ministers-meeting-amm-15-november-2011-bali-indonesia>.

Philippines' capability in protecting the sovereignty over the islands by providing the Philippines with new military equipment and strengthening bilateral military cooperation.⁵² In February 2011, Rosario stated that the U.S. was the only strategic partner of the Philippines. In March, then U.S. secretary of State Clinton exchanged views over the phone with her Filipino counterpart Rosario. Both emphasised the need to ensure maritime security in the Asia Pacific and agreed that a way forward was the conclusion of a binding regional code of conduct in the South China Sea.⁵³ Also in June, the Philippines and the U.S. carried out one bilateral and one multilateral military exercise in or near the South China Sea area.⁵⁴ During the Scarborough Reef incident, the Philippine Department of Foreign Affairs posted a message on its official website stating that Clinton had firmly reiterated that the U.S. would honour its treaty obligations under its Mutual Defense Treaty (MDT) with the Philippines and urged claimant countries to clarify and settle their claims legally in accordance with international law including the UNCLOS.⁵⁵ At the ASEAN-U.S. Ministerial Meeting held on 11 July 2012, Clinton echoed the Philippine position in promoting one common ASEAN voice by saying, "[w]hat might be a challenge today for some of ASEAN's members, if left unaddressed by all of ASEAN, could lead tomorrow to issues that may become problems for (the rest of) other ASEAN members." This was interpreted in reference to the tensions in the South China Sea.⁵⁶

Third, the possibility of international jurisprudence has been explored and put into practice. In Aquino III's Nation Address of 25 July 2011, it was raised that "[w]e are also studying the possibility of elevating the case on the West Philippine Sea⁵⁷ to the International Tribunal for the Law of the Sea, to make certain that all involved nations approach the dispute with calm and forbearance."⁵⁸ On 22 January 2013 the Philippines brought China to arbitration "under Article 287 and Annex VII of UNCLOS" to challenge "the validity of China's nine-dash line claim" and to "desist from unlawful activities that violate the sovereign rights and jurisdiction of the Philippines under the 1982 UNCLOS".⁵⁹ From the perspective of the Philippines, it "has exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime dispute with China."⁶⁰ It is the first time that international jurisprudence is invoked in relation to the South China Sea issues.

⁵² Ju, "South China Sea Policy of the Philippines", op. cit., 85.

⁵³ Department of Foreign Affairs of the Republic of the Philippines, "Secretary Del Rosario Receives Call from US Secretary of State Clinton," March 14, 2011, <http://dfa.gov.ph/main/index.php/newsroom/dfa-releases/2698-secretary-del-rosario-receives-call-from-us-secretary-of-state-clinton>.

⁵⁴ Ju, "South China Sea Policy of the Philippines", op. cit., 86.

⁵⁵ Department of Foreign Affairs of the Republic of the Philippines, "US Reiterates it will Honor Obligations Under MDT Amid Standoff in Bajo de Masinloc, Urges Claimant States to the WPS to Clarify Claims Under UNCLOS," May 3, 2012, <http://dfa.gov.ph/main/index.php/newsroom/dfa-releases/5317-us-reiterates-it-will-honor-obligations-under-mdt-amid-standoff-in-bajo-de-masinloc-urges-claimant-states-to-the-wps-to-clarify-claims-under-unclos>.

⁵⁶ Department of Foreign Affairs of the Republic of the Philippines, "Clinton and Del Rosario Urge ASEAN to Take a Common Position on Scarborough Reef (12 July 2012)," <http://dfa.gov.ph/main/index.php/newsroom/dfa-releases?start=8>.

⁵⁷ On 5 September 2012, Aquino III announced renaming part of the South China Sea as "the West Philippine Sea". "Administrative Order No. 29, s 2012," *Official Gazette*, September 15, 2012, <http://www.gov.ph/2012/09/05/administrative-order-no-29-s-2012/>.

⁵⁸ Ju, 'South China Sea Policy of the Philippines', 86; and Department of Foreign Affairs of the Republic of the Philippines, "Benigno S. Aquino III Second State of the Nation Address," July 25, 2011, <http://www.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011-en/>.

⁵⁹ Note 10, 'Statement: The Secretary of Foreign Affairs on the UNCLOS Arbitral Proceedings against China, January 22, 2013'.

⁶⁰ Ibid.

China-Vietnam: a systematic mechanism in shape⁶¹

In order to manage their territorial disputes, China and Vietnam initiated a system of talks and discussions which was both highly structured and extensive, and from bottom to top they were as follows: (i) Expert-level talks; (ii) Government-level talks, i.e. Deputy/Vice-Minister; (iii) Foreign Minister-level talks; and (iv) High-level talks, i.e. Presidents, Prime Ministers, and Secretary-Generals of the CPC and the CPV.⁶² This system of talks was gradually established following the full normalisation of bilateral relations in late 1991 and has contributed to positive management of the China-Vietnam disputes in relation to the South China Sea.

The talks at the expert- and government-levels deserve further attention. Talks at the expert-level were initiated in October 1992; up to late 1995, the talks focused mainly on the land border and the Gulf of Tonkin issues. Talks at the government-level began in August 1993 and the thirteenth round of talks was held in January 2007. There have also been meetings and talks that have not been included in the official rounds. The first achievement was the signing of an agreement on 19 October 1993 on the principles for handling the land border and the Gulf of Tonkin disputes. It was further agreed that joint working groups were to be set up at the expert-level to deal with the two issues. The joint working group on the land border held sixteen rounds of talks from February 1994 to December 1999 when the *Land Border Treaty* was signed. The joint working group on the Gulf of Tonkin met seventeen times from March 1994 to December 2000 when the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* was signed. Talks at the expert-level on the disputes in the South China Sea proper, the so-called “sea issues”, were initiated in November 1995 and the eleventh round of talks was held in July 2006.

The negotiation process resulting in the signing of a treaty relating to the land border on 30 December 1999 reflected the substantially higher degree of progress made in negotiations on the land border as compared with talks on other border disputes up to the end of 1999. In 2000, the negotiations on the Gulf of Tonkin issue were stepped up with a view of reaching an agreement within that year. This goal was reached on 25 December 2000. Thus, the deadline for resolving the land border and the Gulf of Tonkin issues, were met in 1999 and 2000, respectively.

Less progress has been achieved with regards to the disputes in the South China Sea proper, i.e. the competing sovereignty claims to the Paracel and Spratly archipelagos as well as the overlapping maritime claims in the South China Sea. Talks have been initiated and since August 2009, the focus of the Government-level Talks over border issues is over the sea issues. Although talks continue all

⁶¹ For a broad overview on the border issues in Sino-Vietnamese relations see Amer, “Sino-Vietnamese Border,” *op. cit.*, 295–309.

⁶² Amer, *The Sino-Vietnamese Approach*, *op. cit.*, 9–14 and 50–58; Ramses Amer, “Assessing Sino-Vietnamese Relations through the Management of Contentious Issues,” *Contemporary Southeast Asia* 26 (2004), no. 2: 329–331; Amer and Nguyen, “Vietnam’s Border Disputes,” *op. cit.*, 118–122, Ramses Amer and Nguyen Hong Thao, “The Management of Vietnam’s Border Disputes: What Impact on Its Sovereignty and Regional Integration?” *Contemporary Southeast Asia* 27 (2005), no. 3, 433–434; and Ramses Amer and Nguyen Hong Thao, “Vietnam’s Border Disputes - Assessing the Impact on Its Regional Integration,” in *Vietnam’s New Order: International Perspectives on the State and Reform in Vietnam*, ed. Stéphanie Balme and Mark Sidel, (Houndmills, Basingstoke, Hampshire and New York, NY: Palgrave Macmillan, 2007), 74–76.

through, both parties have yet to agree on which disputes to be included on the agenda. Vietnam pushes for the inclusion of the Paracels as an issue alongside that of the Spratlys, whereas China only wants to discuss the latter issue. To further complicate matters, China seems to view the disputes over water and continental shelf areas as part of the Spratly conflict whereas Vietnam seems to view them as separated from that conflict. It seems as though Vietnam does not want to initiate talks relating to the areas of overlapping claims in the South China Sea proper as it would be interpreted as giving legitimacy to China's claims to those areas. Thus, of the three South China Sea issues to be addressed by the two countries there is only agreement on putting one on the agenda for talks, namely the Spratly archipelago, which is a multilateral conflict situation involving other claimants as well.

With recognition of the importance on managing bilateral dispute, especially after the 2009-2011 increase in tension, China and Vietnam emphasises the importance of communication by high-level talks in the three Joint Statements of October 2011, June 2013 and October 2013, with the last one encouraging high-level talks "in various forms".

Since 2005, additional talks have been initiated. Although they are not directly dealing with territorial issues, they work to create good environment for future discussion on thorny issues of territorial disputes. The first is China-Vietnam defence and security consultation mechanism, headed by Vice-Defence Minister level generals from both countries. The first round of defence talks started in April 2005 and was targeted to be held annually. On 6 June 2013, the 7th Defence and Security Talks was held in Beijing. The solidarity between the two militaries contributes to a great extent to positive management of the dispute situation.⁶³ The second is a series of talks of China-Vietnam Steering Committee for Bilateral Cooperation. This mechanism is cross-department including different ministries. The first meeting was held in Hanoi on 11 November 2006. Because the purpose of such mechanism is promote all-around cooperation by coordination, sea issues can be discussed, in particular when tension occurs this mechanism can act as a security valve. Cooperation can reduce sense of tensions. For example, after the May-June 2011 tension it was at the 5th meeting on 6 September 2011 when proper handling of sea issues was emphasised and more negotiations were encouraged to reach agreement on the basic principles.⁶⁴ In addition, hotlines were established, one between two foreign ministries and the other between agriculture ministries with the latter dealing with fishery issues including dispute fishery cases.⁶⁵

⁶³ "The 7th China-Vietnam Defence and Security talks held in Beijing", *Zhongguo Xinwen Wang*, June 5, 2013, <http://www.chinanews.com/mil/2013/06-05/4898528.shtml>.

⁶⁴ "Joint press release for the 5th meeting of the China-Vietnam Steering Committee for Bilateral Cooperation," *Xinhua Wang*, September 8, 2011, http://news.xinhuanet.com/world/2011-09/08/c_121998922.htm.

⁶⁵ In the joint communiqué issued during Vietnamese President Truong's visit to China in June 2013, it was written that ministries of agriculture from both countries would establish hotlines to deal with fishery cases. Ministry of Foreign Affairs of the People's Republic of China, "China-Vietnam Joint Communiqué," June 21, 2013, http://www.fmprc.gov.cn/mfa_chn/zyxw_602251/t1052237.shtml.

Conclusions⁶⁶

The most evident feature shown from the above empirical overview is that between China and Vietnam there are established forms of dialogues and talks at different levels to address differences and tensions. On the other hand, between China and the Philippines there are no such established forms of dialogues. In fact, between China and Vietnam, the structure of talks has been developed continuously since the early 1990s, and the two sides have agreed on mechanisms and principles to better handle and manage their differences. Between China and the Philippines, both countries currently lack established forms of dialogue and mechanism that can be contrasted with the mid-1990s when the two sides even agreed on a bilateral “code of conduct” to be observed in the South China Sea.

The different tension management approaches of the two relationships can be observed when comparing China and Vietnam’s response to the deep tensions in 2011 with the response by China and the Philippines to the tensions in both 2011 and 2012. China and Vietnam reached the Agreement on basic principles in October 2011 and took steps to implement the agreement in 2012 and 2013. In addition, in October 2011, the two countries held the first high-level summit which was vacant for three years since 2008. At the summit, the South China Sea issues were directly addressed. The respective high-level summits of June and October 2013 confirmed this trend. Between China and the Philippines, no equivalent progress has taken place. Both countries depend on *ad hoc* diplomatic negotiations to reduce the tensions in relation to their maritime disputes. This has been shown very obviously in the Scarborough Reef incident of 2012. Even into the peak of tensions, the Philippines failed to appoint their ambassador to China. In the end, two envoys were chosen to send to Beijing to handle the negotiations. The 18th Foreign Ministry Consultations (FMC) was held in Manila on 19 October 2012. However, this regular bilateral foreign-minister-level mechanism has not touched maritime dispute issues, but a venue for the two countries to discuss bilateral, regional and multilateral issues of mutual concern in general, including promoting areas of cooperation in various fields, such as trade and investment, tourism, culture and education, defence and security, agriculture and fisheries, transportation and communication, and consular matters.⁶⁷ The Philippines’ recent move to go for arbitration is an obvious divergence from bilateral mechanisms. However, at the moment, it is hard to predict its impacts on bilateral relations. Clearly a lack of a bilateral mechanism to invoke to when maritime disputes occur would negatively affect the effectiveness in bilaterally handling such issues and open doors to other options.

From the history of the China-Philippines relations relating to the South China Sea issues, the period from 1995 to 2000 seems to be more proactive years in promoting bilateral mechanisms in managing the issues which otherwise could lead to tensions. In August 1995, the first bilateral code of conduct in the South China Sea region was reached between the two countries. In 1996, some bilateral

⁶⁶ Some of the observations relating to the China-Vietnam relationship are derived from Amer and Li ‘Recent Developments in the South China Sea’; and from Amer, ‘China, Vietnam’.

⁶⁷ “Philippines China to Hold 18th Foreign Ministry Consultations,” Department of Foreign Affairs of the Republic of the Philippines, accessed November 30, 2012, <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/6585-philippines-china-to-hold-18th-foreign-ministry-consultations>.

consultation mechanisms including three working groups were agreed to be set up in charge of fishery, marine environmental protection and confidence building respectively. It was due to mutual political will resulted from the realisation of the need for such a dispute management mechanism. Such cooperative interaction positively affected other disputant parties as well as ASEAN as a whole to lead to the DOC. Partially due to the ASEAN-China confidence-building mechanism, in particular strong political will from both countries in relation to the China-Philippine management in their disputes, the South China Sea remains reasonable calm up till 2009. The improvement in the overall bilateral cooperative relations contributed positively to the bilateral success in handling differences and promoting cooperation in the disputed sea area, including the trilateral 2005-2008 JMSU. However, it seems unfortunate that under such positive relations no bilateral mechanisms were formally established in relation to managing the South China Sea issues. The China-Philippine relations were negatively affected by the recent development of their maritime disputes, which was obviously shown in the 2012 Scarborough Reef incident. The obvious lack of some mechanism in coordinating or managing their differences in relation to South China Sea disputes could easily turn the situation out of control. This would be detrimental to bilateral relations and confidence building. In view of both countries' consensus on not letting their maritime issues affect the general friendly relations, there is an urgent need for such a mechanism.

A summary of the main achievements by China and Vietnam displays that the demarcation of the land border has been completed. In the Gulf of Tonkin, both the boundary agreement and the fishery agreement have entered into force. On-going talks and discussions on the remaining territorial disputes in the South China Sea is a further indication of the importance placed by both countries on managing and avoiding tension.

However, continued efforts are needed. In the Gulf of Tonkin, successful completion of the negotiations on the delimitation of the so-called mouth of the Gulf is important. An interim approach could be a bilateral joint development arrangement in relevant agreed waters in the mouth area. The continued implementation of the fishery agreement is essential. The collaboration relating to the maintenance of order in the Gulf through joint-patrols needs to be expanded. In the South China Sea, it is essential to avoid future confrontation in the area, not only for bilateral relations but also for the stability in the region. It is also necessary to move both the bilateral and multilateral conflict management process forward. Although formal settlements of the disputes are unlikely in the current situation there is room for further progress both bilaterally and multilaterally in managing both disputes and the broader security situation in the South China Sea.

At the bilateral level, the October 2011 Agreement on basic principles has enhanced the mechanisms for management of sea-related issues and disputes through a *de facto* bilateral 'code of conduct' and the High-level Summit of October 2011 signalled a renewed high-level push for better management of the sea-related issues. This high-level push continues as displayed by the June 2013 High-level summit and the October 2013 visit to Vietnam by Li Keqiang. The combination of these two factors has created more conducive conditions to manage disputes and to reduce tension between China

and Vietnam in the South China Sea. This addresses the need to enhance and expand the bilateral management approach relating to the South China Sea issues.

As has been the case since full normalisation of the China-Vietnam relations, overlapping claims to the sea area to the East of the Vietnamese coastline will most likely be the subject of continued differences between the two countries. The risk of incidents and periodic tension is likely to persist. Developments in 2012 and 2013 support this prediction. On a more positive note, the initiation of “department level” talks on the mouth of the Gulf of Tonkin and the initiation of talks on “co-operation in less sensitive fields at sea” display that the two sides are making progress in implementing the Agreement on basic principles.

One issue that remains to be addressed is the lack of mutual agreement on the scope of talks on the South China Sea. Only the Spratlys is on the agenda. China opposes the inclusion of the Paracels. Vietnam opposes the inclusion of areas to the east of the Vietnamese coast where Vietnam claims to continental shelf and EEZ areas extend beyond the limit of the so-called ‘nine-dashed lines’ claim by China.

At the regional level, all three countries are parties to the DOC. China, the Philippines, and Vietnam can positively contribute to the successful implementation of the DOC, and also to the process of further developing the conflict management mechanisms needed to maintain stability, and avoid tension and confrontation in the South China Sea. A possible future regional “code of conduct” applicable to the South China Sea within the framework of the ASEAN-China dialogue, could contribute to such a development.

Through the comparative case study analysis, the differences in approach between the China-Philippines case and the China-Vietnam case, respectively, have been clearly displayed in this study. The comparison has highlighted how the existence and utilisation of bilateral mechanisms has helped China and Vietnam manage tension relating to developments in the South China Sea. On the other hand, there is absence of similar mechanisms between China and Philippines, and the two sides have failed to contain incidents in the South China Sea from causing periodically deep tensions.

From a conflict management perspective, China and Vietnam have, since the full normalisation of relations in 1991, sought to manage their border disputes through the establishment and development of a system of talks. This approach has resulted in both formal settlement of disputes – land border and Gulf of Tonkin – and in better management of disputes and incidents in the South China Sea. Between China and the Philippines, attempts were made to establish mechanisms for conflict management in the 1990s and 2000s but they have not been sustained, and in recent years the absence of such mechanisms has been in evidence.

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