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## **The Paradox of Economic Integration and Territorial Rivalry in the South China Sea**

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## **Abstract**

Many factors, such as strategic anxiety, an alarming China rising, deep difference over the world crisis and China's firm response to the US customary intelligence-gathering in its adjacent water and air, contributed to the American strategy partly shift from Middle East to Asia so as to meet China's challenge. This strategy has various other purposes including maintaining American economic stake and its leadership in Asia, etc. The starting point of the rebalancing strategy is on South China Sea territorial disputes. The US takes diplomatic support and military assistance to the Philippines and Vietnam as the focal point to bolster this strategy. After 4 years practice, the US has gained many grounds: setting a tone that only the UNCLOS could resolve the maritime disputes; isolating China in regional forum; bringing ASEAN to promote the COD to be realized as a binding mechanism to China. The adverse implications are obvious: the Philippines and Vietnam are prone to confrontation with China on latter's maritime action, more skirmish and conflicts will be likely in the near future; ASEAN is facing a grave dilemma between China vis-à-vis the US; China vis-à-vis the Philippines and Vietnam.

## **Introduction**

Since 2008 the maritime tensions as a result of territorial disputes in the East and South China Seas have been gradually rising. At present the confrontation has changed from bilateral territorial disputes to a multilateral coalition of the maritime nations Japan, India, the Philippines and Vietnam versus China. This paper aims to explore the complex causes of rising tensions and to assess the respective positions of the contending countries and their policies. It will also examine the Chinese approach to the maritime challenges posed by the neighboring countries and finally suggest ways for undertaking preventive diplomacy efforts to ease anxieties.

## **Theoretical Probe into the Paradox of Growing Economic**

### **Interdependence and Heightening Territorial Tensions in East Asia**

For years economic interdependence among the countries that are experiencing political tensions in bilateral relations has been growing in East Asia. Trade for instance between China and Japan has grown rapidly ever since they normalized their relations 40 years ago. Now Japan is China's fifth-largest trade partner, whereas China is Japan's largest partner with bilateral trade volume reaching US\$ 312 billion in

2012. By June 2012 Japan had become the largest investor in China with cumulative investment reaching US\$ 83.97 billion. China is also Japan's largest national debt holder and by the end of 2011 China held a total of 18 trillion yen (about US \$ 230).

If we look at China and Vietnam, the total trade volume increased from US\$ 15 billion in 2007 to 53 billion in 2013, China being Vietnam's largest trade partner and leading destination for its exports. It is expected that trade will reach 60 billion by 2015. Similarly, bilateral trade volume between China and the Philippines is currently US\$ 32 billion and the Philippines being China's sixth largest trading partner in ASEAN.

So how should one interpret this contradiction between maturing economic interdependence and the simultaneous security dilemmas and political conflicts? In *The Economy-security nexus in Northeast Asia* (2013), a book edited by T.J. Pempel<sup>1</sup>, different authors offer different perspectives when dealing with the bilateral relations on hard security issues and economic linkages between Japan, China and the two Koreas. The implication seems to be that there may be some similarities between the security situation in Northeast and Southeast Asia. Pempel's main argument is that diverse national policies, social structure, economic development and cultural identity would almost naturally give rise to a complicated geopolitical structure in this sub-region, meaning that all countries involved pursue their own policies, in which there is a sharp distinction between economic cooperation and territorial and security goals. One author suggested that the time-old historical disputes could derail political relations and still have a negligible impact on the economic interdependence.<sup>2</sup>

Enlightening though these explanations, the real answer probably lies in the combination of Realism and Liberal-Institutionalism in this region. In the Constructivist theory there are three cultures of anarchy in the international system, namely 'enmity', 'rivalry', and 'friendship'. East Asian countries could be classified into the 'rivalry' category. In this theory, the three cultures of anarchy consisted of four different kinds of identities, respectively. East Asia may well belong to the second and third kinds, type identity and role identity.

In principle, Europe belongs to the fourth kind—a collective identity that leads to the identification of 'self' with 'other' by blurring the distinction between them. Of course, according to Peter Katzenstein and Jeff Checkel, the EU has not yet succeeded in crafting a common European sense of "who we are",—instead facing multiple and nested identities—while Brussels bureaucrats try to build the EU, and intellectuals theorize in vain about a new kind of European allegiance.<sup>3</sup> Still, in general the EU, through institutional consultation, bargaining and legislation, works on achieving common action, and one voice in foreign affairs and common security issues. The collective identity formation makes use of role and type of identities, but also transcends them by merging 'self' and 'other' into a single identity.<sup>4</sup>

For East Asian countries in external relations the 'self' always comes first. This applies to territory, interpretation of history, exploration of resources, strategic relations with the major powers, military development and maneuvering, rules implementation and other sensitive national interests. ASEAN is taking great pains to forge an Asian community, but a collective identity is still far away, particularly when it comes to territorial relations with China.

In the Chinese perspective the world (including the Asian region), although it has evolved through

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## Notes

<sup>1</sup> T.J. Pempel, *The Economy-Security Nexus in Northeast Asia* (New York: Routledge, 2013)

<sup>2</sup> T.J. Pempel: *The Economy-Security...* John Delury, "A Roundup of Recent Titles", a book review on Pempel's book, *Global Asia*, Vol. 8, No. 4, (Winter, 2013).

<sup>3</sup> Peter Katzenstein and Jeff Checkel: *European Identity*, (Cambridge: Cambridge University Press, 2009) 1-3.

<sup>4</sup> Alexander Wendt, *Social Theory of International Politics*, (Cambridge: Cambridge University Press, 1999), 229.

globalization, economic interdependence and international cooperation on governance, is still governed by the major powers and Cold War structures, affecting military alliances, geopolitical mentalities and doctrines. The Chinese international studies experts, the media, the (young) observers of international issues on websites and in decision-making fields appear to belong to two opposing schools of thought: Liberal Institutionalism and Realism.

The Liberal institutionalists adhere to the theory of non-conditional peaceful development and cooperation with the US and neighboring countries, ignoring both the threat posed by the US and its allies to China's overall security and the encroachment by neighboring countries on Chinese islands in the South China Sea. The Realists are very concerned about the dissymmetric regional balance of power between China and the US-Japan alliance, while the US not necessary is positive on China's political system, military power and hopes that Taiwan, Xin-jiang and Xi-Zang have more independent rights, or at least partial sovereign rights.<sup>1</sup>

Although one may speak of a world order and regional relations, the status quo is actually a complicated hybrid structure, which is reflected in China's position. The present Chinese leaders view (and deal with) the world and regional affairs on the basis of a combination of visions and paradigms. Sometimes their approach is realist, their goals being based upon strong nationalism, and the realist approach taken by other countries. However, China's fundamental strategy and principles, such as reform, opening the door to the outside world, peaceful development, avoiding conflicts, cooperation with all countries on economic and political issues which arise from the international system and norms have not changed. The only change that took place was the underlying basic condition. Any foreign policy is now confined to the scope of not damaging Chinese core interests, which include territorial issues.

The prevalent domestic view is that China has been a long-term loser in territorial disputes on land or at sea. The other territorial stakeholders in the South China Sea have occupied most of the reefs, atolls and shoals, extracting vast amounts of oil from the sea. When Beijing recently started to take offensive action to assert its presence and repel what it views as illegal occupation, the US has decided to balance China's power by preferring to throw its weight behind smaller powers in the region.

China knows that US military strength and that of its allies is still superior and that US allies are fully dependent on US military support. The allies naturally seek to take advantage of the American rebalancing strategy to maintain the territorial status quo. Beijing is not reluctant to conduct serious negotiations with ASEAN about the Code of Conduct on the South China Sea or to work toward creating confidence-building measures with the US or other countries.

In the Chinese view, any military transparency should be based on an asymmetric military power and mutual strategic trust between China and the US, as China's PLA's weapons are not as sophisticated as those fielded by the US. Also, Chinese military leaders are not confident of their capability to deter the US from entering Chinese territories in case of a conflict, believing that any acceptance of confidence-building measures will definitely be more favorable to the US and its allies.<sup>2</sup> However, now that China and the US are stepping up their military competition in the West Pacific, they have been

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<sup>1</sup> About the current Chinese foreign policy debates in the academic fields, please refer to Dingding Chen, "Chinese Foreign Policy Needs Major Reform", *Diplomat*, August 21, 2014. For the two conflicting schools, there are two main representatives: Major General Luo Yuan, a realist theorist at the Academy of Military Sciences and Wu Jian-ming, former Ambassador to France, a strong backer of Deng Xiao-ping's peaceful development theory.

<sup>2</sup> Regarding the Chinese view on American military capabilities and its intentions, the comments by two American China specialists are worth reading. Please see Andrew Nathan and Andrew Scobell, "How China Sees America-The Sum of Beijing's Fears", *Foreign Affairs*, September/October Issue, 2012, <http://www.foreignaffairs.com/articles/138009/andrew-j-nathan-and-andrew-scobell/how-china-sees-america>

forced to enter into negotiations in order to establish a mutual reporting mechanism on major military operations and a code of conduct on naval and air security.<sup>1</sup>

In comparison with other major powers, such as the former Soviet Union, China has no full experience in dealing properly (and delicately) with any international pressure on its policy, let alone the ensuing crisis and confrontation that may be involved. The decision-making process prior to a response is usually slow. A decision will be reached through collective discussion after which a high-level official rather than a top leader will be authorized to publicly handle the crisis, either through negotiations or simply diplomatic pressure. This traditional practice helps top leaders to prevent a crisis from developing into a sudden, highest-level confrontation due to undesired emotional communication with rivaling foreign leaders. The guidance Chinese top leaders provide in these collective discussions gives the desired flexibility to select options when faced with different kinds of outside pressure and demands by the home front.

In Europe that has evolved into an Immanuel Kant cultural structure representing a collective identity that surmounts type and role identity, political action more or less has to be consistent with comprehensive and cooperative security, in which one of the main pillars is building security together with other countries, not against them. Genuine cooperation requires shared decision-making and practices aimed at consensus.<sup>2</sup>

In most East Asian countries politicians and citizens are very much concerned about their own territory, space for strategic maneuver, possession and exploration of natural resources, and power distribution and display. These are seen as an intrinsic part of a nation's position, security and prestige. ASEAN, Japan, South Korea and China are all very much interested in promoting regional economic integration and bilateral economic cooperation, but not at the expense of their claimed territories or maritime rights. Any concession, retreat or low-profile reaction will be regarded as a loss, or weakness on the part of the country's leadership. For example, the Vietnamese criticized their leaders after they reached a border agreement with China on December 30, 1999, because according to them too much land was being conceded.<sup>3</sup>

The maritime territories disputes have been with us for the past 30-40 years. It would be too easy to ascribe the fact that they have become so volatile recently to the Chinese change of posture, namely from Deng Xiao-ping's admonition—to cover light and bide one's time (*tāo guāng yǎng huì*) to the current assertive behavior. It is right not to underestimate the factor China in this process of power shift. But one factor alone is never sufficient to explain the tensions. With domestic pressure for more oil, more space by way of Exclusive Economic Zones and long-term strategy for ocean development, several littoral countries have actively encroached on islands in the past 20-30 years, long before China embarked on its more assertive behavior.

The most recent East Asian Realist theory centers just as much on territory, EEZ control and oil extraction as on the distribution of power. Oil constitutes one of the most significant interests in the disputed areas. For instance, the oil from the South China Sea accounts for 30 percent of Vietnam's GDP. Now that China is increasingly asserting its power to protect its claimed maritime territories, and Vietnam and the Philippines are starting to feel the pressure from China, they are tempted to turn away from economic cooperation with China, instead resorting to a hedging strategy with the US.

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<sup>1</sup> China, US to Hold Defense Talks, [http://news.xinhuanet.com/english/video/2014-09/26/c\\_133674355.htm](http://news.xinhuanet.com/english/video/2014-09/26/c_133674355.htm).

<sup>2</sup> Rodger Payne, "Cooperative Security: Grand Strategy Meets Critical Theory?", *Millennium: Journal Of International Studies*, June 2012, Vol.40, No.3, p. 605.

<sup>3</sup> Ian Storey, "Conflict in the South China Sea: China's Relations with Vietnam and the Philippines", Part One, *China Brief*, Vol. 8, No. 8 (2008) accessed April 14, 2008, The Jamestown Foundation.

Japan once again strongly advocating military power development, while trying to regain the collective defense right as well as the right to a preemptive strike, as may be expected from a modern regional power, which will assist American forces and its allies in a confrontation with China. Japan is an island as well as a maritime nation, regards itself as the loser on territorial issues—such as the Northern Territories (the Kuril Islands) and Takeshima (Dokdo). It has therefore become the Japanese strategy to maximize its maritime zone and to reinforce the islands under its control from a legal as well as a military perspective.

## **Case Studies: The Chinese-Vietnamese and Chinese-Philippine**

### **Relationship -- Action and Reaction behind the Territorial Disputes**

The territorial disputes are a legacy from history, with each country involved producing facts in support of their claims or possession of the disputed territories. Many people still remember the relatively peaceful period after China-ASEAN signed the *Declaration of Conduct of Parties in the South China Sea* in November 2002, reaffirming that relevant disputes over the South China Sea should be resolved by peaceful means through friendly consultation and negotiation. Pending the settlement of disputes, the parties pledged to exercise self-restraint and refrain from taking actions that could complicate or expand disputes. The signing of the document was of great significance for maintaining peace and stability in the South China Sea region. In order to implement the document, China and ASEAN held five Senior Officials Meetings and seven joint working groups meetings in the past years.

In December 2004 China and Vietnam signed an *Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zone and Continental Shelves in the Beibu Gulf* (also called the Gulf of Tonkin) as well as an *Agreement on Fishery Cooperation in the Beibu Gulf*. In June 2004 both sides exchanged their ratification documents. Since the normalized relations between Beijing and Hanoi in 1991, “despite frequent flare-ups, mutual suspicions and distrust, and political grandstanding, substantial progress was achieved and, most importantly, conflict between their armed forces has been avoided.”<sup>1</sup>

This was the first maritime boundary agreement that China reached with one of its neighboring countries. Since China has maritime delimitations disputes with eight countries in all, it is significant for China and other countries to start negotiations on the issues involved.

In September 2004 China and the Philippines signed an agreement on the cooperation in the South China Sea. Two state petroleum companies agreed to conduct a three-year joint study on the storage of oil resources in specific areas. In March 2005 China, Vietnam and the Philippines reached a trilateral agreement on undertaking joint seismic surveys and oil exploration in the South China Sea (JMSU). This was a breakthrough in the joint development of the disputed areas in the region. Unfortunately, the agreement was never implemented to satisfaction, because domestic groups in the Philippines strongly opposed it contending that the survey zone was located in waters claimed by the Philippines.

For China, the Philippines and Vietnam the South China Sea issue is of significance to their national interests. Any deal gone wrong will greatly affect popular support. The three top leaders involved know quite well they must manage this sovereignty dispute within the framework of bilateral relations, in their ambition to promote stable development and to prevent conflicts and strife in the South China Sea from turning into a confrontation. In all three countries, however, the fishing and maritime

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<sup>1</sup> Storey, “Conflict in the South China Sea: China’s Relations with Vietnam and the Philippines”.

agencies, local governments, media, nationalistic intellectuals and the military do not fully share the strategic considerations of their leaders. Instead, they view the sovereignty rights as a high stake, a matter of national pride, exerting pressure on their leaders to toughen their position, utilizing every incident, accident and stand-off as a display of national courage and resolution. The aim is of course to change the status quo in their favor.

2007 was a turning point in Chinese-Vietnamese relations vis-à-vis the South China Sea dispute. A series of incidents considerably damaged bilateral ties.<sup>1</sup> In April of that year Vietnam invited a consortium of energy companies led by British Petroleum (BP) to develop two gas fields and to build a pipeline in the Con Son Basin, 230 miles off Vietnam's southeast coast. China lodged a protest, since this exploration was beyond the Vietnamese EEZ, while Vietnam rejected this, claiming it was well within its EEZ.

Also in April Vietnam established one township and two communities in the Truong Sa District (known in Chinese as the Nansha Islands; in the West as Spratly Islands). They also held a National Assembly delegates election on Nansha Island.

In July Chinese naval patrol vessels fired on a Vietnamese fishing boat, killing one sailor near the Xisha Islands (Paracels). In August China announced its plan to start tourist cruises to the Xisha Islands. Of course, such a tour in the South China Sea was not a first. On April 19, 2004 a Vietnamese warship carried 100 tourists for a five-day visit to the Nansha Islands, including fishing, talks with the soldiers, diving performances and visits to oil platforms.

Finally, at the end of 2007 an unconfirmed news report spread in Vietnam that Beijing had decided to set up a small city—Sansha (Xisha, Nansha and Zhongsha)<sup>2</sup> in Hainan province to administer the three islands in the South China Sea claimed by China. In two consecutive weekends in December hundreds of Vietnamese students gathered at the Chinese embassy in Hanoi and the consular office in Ho Chi Minh City for anti-China protests.<sup>3</sup>

Chinese-Philippine relations remained very friendly during almost eight years following the signing of the DOC in 2002, despite occasional friction over the disputed islands in the South China Sea. Former President Arroyo visited China five times during her tenure, stating that she highly valued bilateral relations, having no intention to let the sovereignty issues block the development of good relations. It was noted with appreciation that she also visited the disaster areas in the wake of the Wenchuan earthquake in Sichuan, China in 2008, to encourage the local residents.

Still, Arroyo was not a President to relinquish sovereign territories in the South China Sea. In fact, it was she who was the first to sign the Philippine Territorial Sea Baselines Bill. The Philippines are, however, not confident about their legal claim to the newly extended territories. In the 2009 Philippine Archipelagic Baseline Law, they excluded Kalayaan and Scarborough Shoal (Huangyan Island) from the Philippine territory, placing these two in the ambiguous category of “regime of islands under the Republic of the Philippines”,<sup>4</sup> because the Philippines knew they had never claimed Huangyan Island within their 200 nautical mile Exclusive Economic Zone (EEZ) and never challenged Chinese sovereignty over Huangyan Island until April 1997. This claim is facing two problems: Huangyan Island lies within its 200-mile Exclusive Economic Zone, but it is not a *res nullius*, which is required by the

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<sup>1</sup> Storey, “Conflict in the South China Sea: China’s Relations with Vietnam and the Philippines”.

<sup>2</sup> The Nansha Islands are known in the West as Spratly Islands, in Vietnam as Truong Sa; the Xisha Islands are known in the West as Paracel Islands, and as the Hoang Sa in Vietnam; the Zhongsha Islands are known in the West as Pratas Islands, and as Quan dao Trung in Vietnam.

<sup>3</sup> Ian Storey, “Conflict in the South China Sea: China’s Relations with Vietnam and the Philippines”.

<sup>4</sup> Leszek Buszynski, “Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue”, *Security Challenges*, Vol.6, No.2( Winter 2010), 90.

1982 *United Nations Convention on the Law of the Sea*. Huangyan Island was outside Philippine territory on official maps. For example, on the maps published by the Philippine authority in 1981 and 1984, Huangyan Island was marked outside Philippine borders. A letter written by then Philippine Ambassador to Germany on 5 February 1990 to a radio amateur also clearly stated that Huangyan Island, according to the Philippine Mapping and Resource Information Authority, was not within the scope of territorial sovereignty of the Philippines.<sup>1</sup>

The change in the Philippine maritime territory policy may be traced back to the requirement of submitting documents to the Commission on the Limits of the Continental Shelf for establishing the outer limits of the continental shelf beyond 200 nautical miles, the deadline being 13 May, 2009. This was the perfect opportunity for the Philippines to extend its maritime territory.

However, although President Arroyo adopted measures to expand the Philippine maritime rights, she did not want to damage the good relationship with China. One of the main reasons for this was the economic development. When she came to power, she set herself a number of important tasks, namely the elimination of poverty, development of the economy and the crack-down on crime, understanding very well the importance of a relationship with the major economic powers in the world, including China. She managed to keep a subtle balance between good relations with China, the US and Japan, while upholding the principle of the sovereignty and shelving the territorial disputes.

However, her political opponents and the media blocked the joint development project with China and Vietnam, which had the potential for success once fully implemented, stating that the agreement with China was in violation of the Constitution, which could be grounds for impeachment.<sup>2</sup>

By the time the new Philippine President Benigno Aquino came to power, the bilateral relations had changed dramatically, China once again being at odds with the Philippines over the territorial dispute. In the spring of 2012 Chinese maritime agencies and the Philippine Navy wrestled against each other over Huangyan Island (Scarborough Shoal). The two countries are still contesting control over Ren-ai Reef (the Second Thomas Shoal), which may become a new flashpoint. The shift from Arroyo's parallel policy—holding on to its (claimed) territory while still enjoying good relations with China—to Aquino's territories first policy suggests that the Philippines are poised for a trial of strength with China to secure the already controlled islands and shoals within its 200-mile Exclusive Economic Zone.

Summarizing, we can say that the scramble for the islands and shoals—and the subsequent maritime confrontations—was the result of both complex domestic and international factors interacting and reinforcing each other, while effectively blocking the Chinese-Vietnamese-Philippine rapprochement. Of course there were other factors, such as the enhanced ocean awareness, the increasing importance of ocean resources development. The situation did not improve by the UNCLOS re-interpretation of the extended sovereignty rights of littoral states to adjacent waters, intensified patrols by Chinese and Vietnamese maritime agencies throughout the disputed waters, the extensive oil and gas fields development in the disputed waters, etc.

## **A Large Interpretation Gap between Claimants regarding UNCLOS is the Obstacle for Resolving the Disputes**

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<sup>1</sup> Yi Ping, "The Philippines Lacks Legal Ground to Go to Tribunal, and China Has No Obligation to Accept the Invitation", *China News Agency* accessed April 27, 2012.

<sup>2</sup> "Arroyo Hit on Spratlys Deal – Drilon: Her Lawyer Worried Pact Basis to Impeach", *Philippine Daily Inquirer*, March 7, 2008.

### ***Incompatibility of international laws and historical rights of first discovery***

UNCLOS did not offer much support for Vietnamese and Chinese historical claims, which are not based on the principle of geographical distance. The Economic Exclusive Zone (EEZ) and continental shelf under UNCLOS are determined by that principle.<sup>1</sup> American officials criticized China's historical claims for falling short on international law, because they are not determined by the nation's coastline or its islands.<sup>2</sup> However, if China abandons its historical right of first discovery, the nine-dash line that was drawn by the former government—the Republic of China—in 1947, there will be no legal ground for claiming the reefs, atolls, shoals and traditional waters used for fishing in the South China Sea, except the eight to nine islands and reefs already under control. For the time being, therefore, it is not realistic to push the disputes, because the effect will be the expulsion of China from this area.

Land features are the main criterion for judging the maritime delimitation and the extent of the EEZ. One should, however, keep in mind that China's historical claims are not concerned with a large body of water in the South China Sea, but only with the land of islands, which were discovered and possessed earlier in history by China long before the UNCLOS went into effect. The underlying misunderstanding is that when the nine-dash line (originally eleven-dash line) was first proclaimed in 1947, the territorial waters were only three nautical miles from the shore, but the line drawn by China was hundreds of nautical miles away from Chinese coast. As a consequence China would not have the right to own the waters in the South China Sea it discovered the first.<sup>3</sup>

It is a principle of international law that “the land dominates the sea”, which means that maritime rights derive from the coastal State's sovereignty over land.<sup>4</sup> In other words, littoral countries can extend their maritime rights, but not cover land owned or claimed by others long before UNCLOS.

By that token, UN Laws and the right derived from historical discovery should be both applicable in resolving and managing territorial disputes. The Chinese, Vietnamese and Japanese claims or occupation are based by them on historical grounds (first discovery).<sup>5</sup> In East Asian countries history is always part of people's pride and culture, but this fact cannot be separated from international law and the heritage of history. Despite the different interpretations of books and maps dealing with these territories, joint study, academic debate, international seminars and ancient literature may help scholars to clarify some of the existing misunderstandings. Prior to such an undertaking countries will need to maintain the status quo, while acknowledging that there are disputes.

### ***Arbitration under the UN Convention on the Law of the Sea***

In January 2013 the Philippines filed a suit against China's nine-dash line at the international tribunal for arbitration under the UN Convention on the Law of the Sea. Manila argued that China's claims were only based on historical documents and not on proximate land features. Its lawyers also stated that the discretionary power of the tribunal allowed other states to join in.

The nine-dash line was originally an eleven-dash line that first appeared on a map published by the Republic of China (1912-1949) in December 1947 to justify its claims in the South China Sea, following

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<sup>1</sup> Buszynski, “Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue”, p. 87.

<sup>2</sup> This is a remark that the US Assistant Secretary of State for East Asia, Daniel Russel, made at a Congressional hearing in Washington on February 5, 2014. See *VOA News*, February 9, 2014.

<sup>3</sup> See “China Has No Historical Rights in the Nine-dash Line”, December 30, 2013, [www.southchinasea.com/analysis/592-china-has-no-historical-rights-in-the-nine-dash-line.html](http://www.southchinasea.com/analysis/592-china-has-no-historical-rights-in-the-nine-dash-line.html).

<sup>4</sup> Shi Jiuyong, “Maritime Delimitation in the Jurisprudence of the International Court of Justice”, *Chinese Journal of International Law*, Vol.9, No. 2, (2010), 4.

<sup>5</sup> Buszynski, “Rising Tensions in the South China Sea: Prospects for a Resolution of the Issue”, p. 86.

the surrender of the Japanese forces and its own deployment of a Chinese Navy fleet to resume its administration there. After the founding of People's Republic of China, the line was adopted and revised to a nine-dash line as endorsed by Premier Zhou Enlai. China submitted a map to the UN including the nine-dash line territorial claim in the South China Sea on May 7, 2009.

The nine-dash line is vague from a legal point of view,<sup>1</sup> and indeed even Chinese scholars have asked the government to clarify its nature. The Philippines, evidently of the same opinion, then lodged a diplomatic protest against China for illegally claiming the whole of South China Sea. Vietnam and Malaysia filed their joint protest a day after China submitted its 9-dash line map to the UN. Indonesia also registered its protest.

Although the nine-dash line is at odds with the spirit and stipulations of UNCLOS, it is nevertheless legal in terms of the then applicable international law, China obviously long controlling the four archipelagoes encompassed by the line. It is also crucial to note that China does not define this line as a territorial boundary. Here we can just quote the Chinese Foreign Minister Wang Yi's response to a question regarding the 9-dash line at Brookings on November 20, 2013:

*It's the first time for me to hear that the line has been changed into a solid one. What I can say to you is that there has been no change in China's position with respect to the nine-dash line. I don't think this line should become a solid line, but if you did see such a map showing this I would have to maybe further look into it and check it. But this line, the nine-dash line, was drawn by the ROC government back in 1948 (first appeared on the Map of South China Sea Islands Position in 1947, and then was penciled on the Administrative Map of ROC in 1948) and this has been upheld by the successive Chinese governments and I don't think there has been any change in our position on this issue.<sup>2</sup>*

Arbitration is one of the options to solve the issue of the disputed territories. But its success rests on all disputed parties agreeing to take the case into court and accept the verdict. Some countries including China, however, did not accept international adjudication or arbitration when they signed UNCLOS.

Since the Chinese government has rejected the invitation by the Philippines to take their case to the International Tribunal for the Law of the Sea (ITLOS) or any other international tribunal, the Philippines could be said to be engaged in a clever attempt to discredit the Chinese government as ignoring the international judicial system and rejecting dispute settlement through legal means.<sup>3</sup> Any finding issued by ITLOS will be non-binding, but if a verdict is unfavorable to China, this will undermine China's moral position. The danger here is that this could lead to more active support from ASEAN and other community members to isolate China. If ASEAN were to openly applaud the adjudication, then Vietnam might follow suit. Vietnam's Foreign Ministry told Reuters that Hanoi was closely monitoring the legal moves made by Manila.<sup>4</sup>

The maritime disputes have become thoroughly politicized, meaning that acceptance of international arbitration will lead to serious consequences at home. China definitely will not be prepared to relinquish its nine-dash line, no matter what international adjudication will say, since it has existed for almost 66 years. Chinese citizens are strongly aware of the territory encompassed by the nine-dash line, and no leader will dare to give it up. It should also be noted that this line has never blocked the freedom of passage for all ships and will not become a delimitation of high sea and Chinese territorial waters. It is

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<sup>1</sup> After the Second World War there was no specific maritime law about the sovereignty of maritime territories.

<sup>2</sup> <http://www.brookings.edu/events/2013/09/20-us-china-foreign-minister-wang-yi>.

<sup>3</sup> Yi, "The Philippines Lacks Legal Ground to Go to Tribunal, and China Has No Obligation to Accept the Invitation".

<sup>4</sup> Greg Torode, "For South China Sea Claimants, A Legal Venue to Battle China", *Reuters*, February 12, 2014.

rather an ‘archipelago ownership line’ or a negotiation baseline for securing the EEZ or territorial waters from islands, atolls, etc.

## **Approaches to Tension Reduction and Dispute Management**

The best approaches to deal with East Asia territorial disputes and tensions are as follows:

1. All claimants need to acknowledge the territorial disputes, whether based on historical claims or UNCLOS.
2. Maintain the status quo and avoid unilateral action to expand own interests and reduce tensions.
3. All claimants need to set up crisis or accident management mechanisms, exploring ways to ensure clear communication at sea and avoid collision or miscalculation and overreaction.
4. China needs to focus its territorial claims on the waters adjacent to the controlled atolls, reefs, shoals and archipelago, reserving fishing rights within the nine-dash line.
5. China, Vietnam and the Philippines need to conduct a joint oil development in the overlapping EEZ and consider inviting Chinese oil companies to participate as share investors. They should also uphold the principle of separation of sovereignty from administration.
6. China, Vietnam and the Philippines all should open their EEZ for fishing activities by other countries, with regulations on quantities, while monitoring illegal fishing.
7. The three countries could conduct joint patrols in the overlapping waters.
8. All countries should stop building more military installations on the disputed atolls, reefs and shoals.
9. Japan’s nationalization of the Diaoyu Islands (Senkaku Islands) changed the understanding reached by Chinese and Japanese leaders in 1978. China will not accept Japan’s attempt to change the actual control of the islands into real sovereignty. China and Japan should consider a new status quo for the Diaoyu Islands: no building of facilities, no development, no habitation. China should have the right to patrol the waters around the island with a minimum number of vessels and patrolling frequency.
10. Countries should not form any maritime alliance aimed at a specific country.
11. As for the formulation of a South China Sea Code of Conduct (COC), a principle should be followed: rational expectations, consensus, elimination of outside interference and progressive advancement. The key point to manage the tensions in the area does not just rely on a new document, since all sides signed the Declaration on the Code of Conduct on the South China Sea (DOC) in 2002. It will be good, however, to reflect on rather unproductive past five to six years, and to explore a more practical approach to implement the DOC first, regain trust among claimants, and then move one further step forward.

## **Conclusion**

From the above arguments on the maritime tensions in the South China Sea between China, Vietnam and the Philippines, we see that the growing economic relations or economic interdependence does not automatically imply the establishment of good security relations and a framework for managing territorial disputes. Politicians and citizens in the countries involved are very concerned about their lost or controlled territory, strategic maneuvering space and access to natural resources.

With this regional characteristic in mind, it is understandable that the claimants in the maritime disputes seek all available means to consolidate the areas under their control and build their own footholds in the disputed areas involved. China, Vietnam and the Philippines have all adopted measures that infringed on the status quo, which, in turn, leading to the scramble for occupation of the islands, one of the driving forces being the interplay between their domestic agencies. It will be rather difficult to resolve the disputes in the foreseeable future, and since all claimants bear responsibility for the tensions, they should now focus on maintaining the status quo and avoid unilateral actions. They would do well to set up crisis or accident management mechanisms to prevent collision, miscalculation and overreaction.