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China's Maritime Territorial Claims: Implications for U.S. Interests

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Summary

The relatively shallow and resource-rich waters surrounding the People's Republic of China (PRC) are of growing economic and strategic importance, yet they often remain invisible in the American foreign policy process. The United States, along with most of the international community, regards these as international waters, through which approximately half of the world's sea-going commercial shipments pass each year. Consequently, a primary U.S. economic and strategic objective in the region has been the maintenance of freedom-of-navigation through these waters.

But apart from their economic and strategic importance, the semi-enclosed South and East China Seas are filled with political and diplomatic complexities. Nine surrounding states have competing territorial claims to the hundreds of various islets, shoals, reefs, and maritime zones in these waters. The common claimant in all cases is the PRC, which increasingly has sought to define its sovereignty and economic exclusivity here in the broadest possible way hundreds of miles from its shores, to include the Spratly Islands, Pratas Islands, Paracel Islands, Macclesfield Bank, and Senkaku Islands. Successful prosecution of these wide-ranging maritime claims by the PRC could greatly change the economic and strategic make-up of the region. Other claimants of these islands and maritime zones include countries with which the United States has defense commitments, such as Japan, Thailand, and the Philippines, making peaceful resolution of these claims an important U.S. interest.

In addition to claims of sovereignty over the islands and reefs in these waters, the PRC increasingly is narrowly interpreting provisions of international law that govern activity in the 200-mile maritime zone – the exclusive economic zone (EEZ) – off its coast. As demonstrated by the April 2001 U.S. Navy EP-3 reconnaissance plane incident, the PRC now appears to be arguing that its 200-mile maritime jurisdiction extends to the airspace over its EEZ. Moreover, the PRC is claiming that the freedom of navigation and overflight in EEZs provided under the U.N. Convention on the Law of the Sea (LOS Convention) should be subordinate to the broad jurisdiction of the sovereign state – not, as the LOS Convention is generally read, subject only to the economic and resource-related rights of the sovereign state.

In addition to their economic implications, competing regional maritime claims and disagreements over provisions of international law have far-ranging security implications. The PRC views its southern coast as fairly vulnerable, particularly to U.S. naval forces. Although PRC military forces are still limited, the PRC is steadily expanding its presence in the South China Sea, pre-positioning supplies and equipment and building up outposts on various islands. Some believe that over the longer term, continued PRC expansion and assertiveness in these maritime regions will put Beijing in a position to more effectively challenge U.S. economic, political, and security interests in the region.

Contents

Overview and Issue Definition	1
Issues Surrounding China’s Maritime Claims	2
Territorial/Sovereignty Claims	2
South China Sea	2
Senkaku and Ryukyu Islands, East China Sea	6
Maritime/Exclusive Economic Zones	7
Freedoms of Navigation and Overflight	8
U.S.-China Differences on Freedom of Navigation	9
Competing Territorial Claims and Diplomacy	10
Spratlys and Paracels	10
Philippine-PRC Diplomacy and Confrontation	11
ASEAN Diplomacy	12
ASEAN and the Proposed Code of Conduct	13
U.S. Policy Toward China’s South China Sea Claims	14
Incidents and Diplomacy in the East China Sea	18
U.S. Policy Toward the Senkakus	20
U.S. Administration of the Senkaku Islands, 1945-1971	20
Okinawa Reversion Treaty	21
Relevance of the Security Treaty for the Senkakus	22
Economic Dimension and Implications of China’s Maritime Territorial Claims .	25
International Economic and Commercial Stakes	25
Resources Affected by Territorial Disputes	26
The “Economics” of Using Armed Force to Resolve Disputes	27
Mutual Vulnerabilities	28
Predominance of Interregional Maritime Trade	28
Economic Implications for the United States	28
Security and Strategic Issues	29
PLA Capabilities	30
PLA Assertiveness and Confrontations	32
Strategic Security Challenges	35
Options and Implications for the United States	39
Appendix A	
Territorial Claims: Cases in International Law	41

List of Figures

Figure 1. China’s “Nine-Dotted Line”	3
Figure 2. South China Sea	5
Figure 3. World Crude Oil Flows	25

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China's Maritime Territorial Claims: Implications for U.S. Interests

Overview and Issue Definition¹

The collision on April 1, 2001, of a Chinese jet fighter with a U.S. navy reconnaissance plane over the South China Sea drew unusual public attention to the ocean areas south and east of the People's Republic of China (PRC): the South China Sea and the East China Sea. These relatively shallow, resource-rich waters are of growing economic and strategic importance, yet they often remain invisible in the American policy process. The United States, along with most of the international community, regards these as international waters. According to one estimate, more than half of the world's sea-going commercial shipments pass through this area each year, including the bulk of inter-Asian trade and most of Japan's annual oil imports. Consequently, a primary U.S. economic and strategic objective in the region has been the maintenance of freedom-of-navigation through these waters.

But apart from their economic and strategic importance, the semi-enclosed South and East China Seas are filled with political and diplomatic complexities. Nine surrounding states have competing territorial claims to the hundreds of various islets, shoals, reefs, and maritime zones in these waters. The common claimant in all cases is the PRC, which increasingly has sought to define its sovereignty and economic exclusivity here in the broadest possible way, to include most or all of the South and East China Seas. Other claimants include countries with which the United States has defense commitments, such as Japan, Thailand, and the Philippines, making peaceful resolution of these claims a vital U.S. interest.

In a further complication, the island of Taiwan, easily the most sensitive and long-standing issue in U.S.-PRC relations, straddles the East and South China Seas, separated from the PRC mainland by 90 miles across the Taiwan Strait. Taiwan makes the same claims as the PRC to islands in these waters, but its claims are based on the Taiwan government's pre-civil war status as the Republic of China on the mainland. On this issue, then, both the Taiwan and PRC governments find themselves in the unusual position of being on the same side, as both make their claims on behalf of the Chinese nation.

This report provides an overview of which islands and reefs are in dispute and who claims them; background on Chinese assertions and justifications about the extent of Chinese sovereignty in these waters; the economic and strategic significance of the relevant sea lines of communication, both for Asia and for U.S. interests; an analysis of PRC military activity and interests in the region, as well as an overview of

¹ Prepared by (named redacted), Foreign Affairs, Defense, and Trade Division, October 2001.

confrontations in the area; and an analysis of international legal interpretations of these issues. Finally, the report discusses the implications of competing South/East China Sea claims for U.S. economic and strategic interests, and the implications that U.S. treaty obligations to claimant states have for resolution of these claims.

Issues Surrounding China's Maritime Claims

The South China Sea is a semi-enclosed sea bordered by China, Taiwan, Vietnam, Brunei, Malaysia, Indonesia, and the Philippines, all of which have long maintained claims to some or all of the islands and shoals that dot the sea. Another set of claims involves the Ryukyu and Kyushu Islands in the East China Sea, bordered by China, Taiwan, and Japan. Beginning in the 1970's, when seismic explorations indicated the potential for vast off-shore oil and gas fields in the South and East China Sea areas, claimant countries began to pay more attention to their competing maritime claims in these waters and began to press their claims more assertively. Three interrelated issues are involved in these claims: conflicting claims about sovereignty over territory; conflicting interpretations about national Exclusive Economic Zones (EEZ's) and maritime zones; and disagreements over the extent of freedom of navigation and overflight that is permitted under the U.N. Convention on the Law of the Sea (hereafter called LOS Convention).

Territorial/Sovereignty Claims

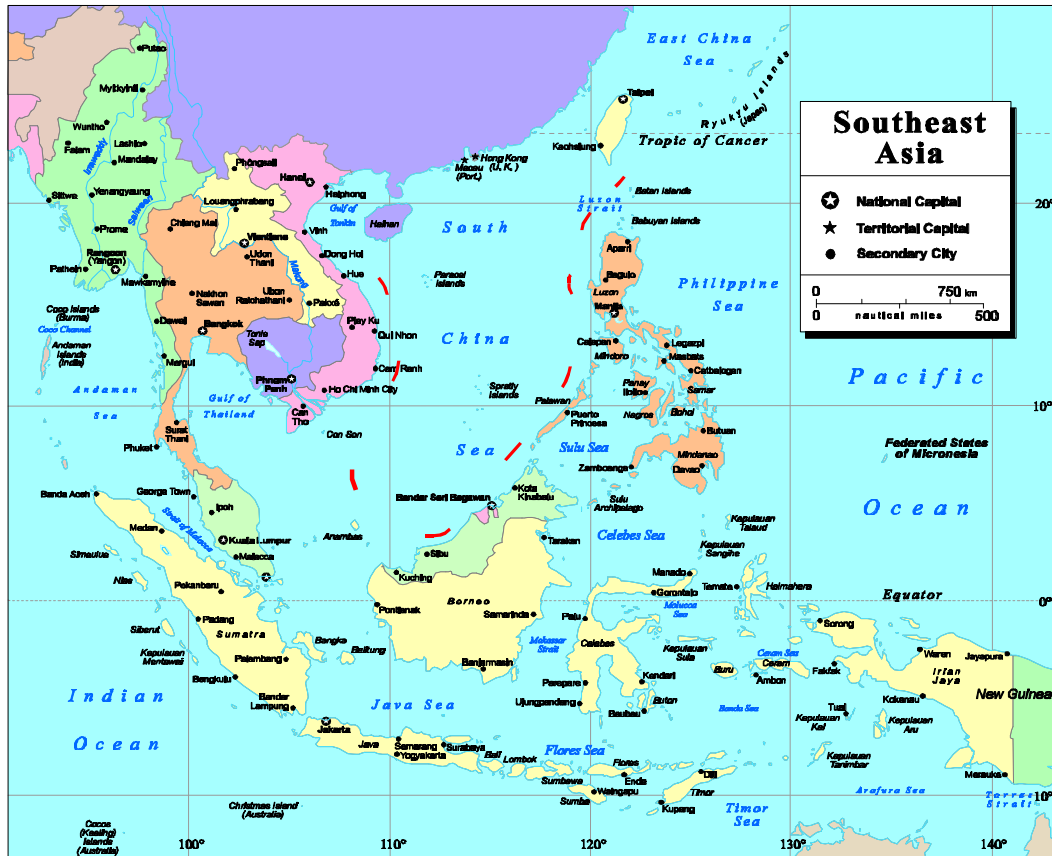
South China Sea. Since the early 1900's, the Chinese government has used what has come to be known as the "nine-dotted (or U-shaped) line" to define its territorial claims in the South China Sea.² Official Chinese maps – both those of the PRC and of Taiwan – continue to show this dotted line marking the presumed area claimed as sovereign Chinese territory. (See **Figure 1.**) There is international legal controversy and disagreement over this drawn line, even among some Chinese scholars. First, the exact boundaries of the line are unknown, as they contain no reference to latitude and longitude points, making its legal validity questionable. Second, that the line is drawn on maps of China appears to suggest that China claims sovereignty over not only the islands within this line, but the sea and seabed itself, including all marine and natural resources – an interpretation at variance with the LOS Convention, which the PRC has ratified.³ Some Chinese scholars justify this claim on the grounds that this is China's "historic bay," despite the fact that many western scholars say that waters surrounded by so many other sovereign states can be no single country's "historic bay." Under the LOS Convention, a state is allowed to

² According to Stein Tonnesson, the nine-dotted line was drawn in the 1930's, although first published officially only in 1947 by the Chiang Kai-shek ROC government. (Tonnesson, Stein, "China and the South China Sea: A Peace Proposal," in *Security Dialogue*, Vol. 31(3), September 2000, p. 312.)

³ Peter Kien-Hong Yu makes this point in his article, "The Chinese (Broken) U-shaped Line: Points, Lines, and Zones in the South China Sea." (Not yet published.) Other scholars have argued that only the islands and land masses themselves are being claimed – another problematic point, given the low-tide elevations of many of them.

subsume waters in its “historic bay” which otherwise would be subject to the 200 nautical mile EEZ limitations. Thus, any exploration or other economic activity can be conducted in an “historic bay” only with the express permission of the sovereign government. Other Chinese scholars, however, allege that western concepts that China “wants to make the South China Sea a domestic lake” are misconceptions.⁴

Figure 1. China’s “Nine-Dotted Line”



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In 1992, the PRC attempted to codify the claims implied by the nine-dotted line by enacting The Law on the Territorial Sea and the Contiguous Zones, which specifically stated its territorial claims over four island and reef groups in the South China Sea.⁵ The following year, in 1993, Taiwan established its own policy position for all of its South China Sea claims through the Executive Yuan’s Policy Guidelines for the South China Sea. The economic implications of the conflicting claims in this region are profound. In addition to potentially large off-shore oil and gas deposits, these shallow waters provide transit for much of the world’s shipping through the South China Sea by way of the Strait of Malacca (between Thailand and Indonesia), the Sunda Strait, and the Lombok Strait (both within the Indonesian island chain). In addition, bordering countries are placing increasing emphasis on the rich fishing

⁴ Ji Guoxing, “China Versus South China Sea Security,” in *Security Dialogue*, Vol. 29 (1), 1998, p. 101.

⁵ In addition, the 1992 Territorial Waters law asserts PRC sovereignty over Taiwan, the Senkaku Islands, and the Pescadores.

resources in this region, the health of which increasingly depends on coordinated and environmentally sound ocean transport and marine management policies.

Spratly Islands. The largest group of the South China Sea islands is the Spratly group, the 400 or so islands, islets, reefs, and rocks spread across approximately 800,000 square miles in the far southeast of the area delineated by the PRC's "nine-dotted line" and due west of the Philippine coast. (See **Figure 2**.) The PRC claims sovereignty over all of the Spratly Islands (Nansha), as do Taiwan and Vietnam.⁶ Since 1955, Taiwan has maintained a naval presence on the northern island of Itu Aba, or "Taiping" island, the largest of the Spratly Islands, although in 1999 Taiwan replaced its military troops with coast guard personnel, claiming the island could not be defended – a common problem with all the islets and reefs in the Spratly group. Other islands in the Spratlys are claimed by Brunei (which claims one reef and occupies no territory in the Spratlys), the Philippines, and Malaysia. Although China, Taiwan, Vietnam, the Philippines, and Malaysia all occupy territory in the Spratlys, none of the islands has been permanently inhabited, an important distinction in the LOS Convention. In another important LOS Convention distinction, only 22 to 40 of the Spratly Islands are above water at high tide.⁷ Mischief Reef, one of the Spratlys on which the PRC has constructed permanent structures, is below water at high tide, and thus is not considered an island under LOS Convention definitions.

The Parcel Islands. The PRC also lays claim to all of the Parcel Islands (Xisha), a group of islands east of the Vietnam coast and closer to the south China coast than are the Spratlys (see **Figure 1**). Although the Parcels are also claimed by Vietnam, PRC military forces have been the sole occupants of the islands since 1974. The PRC's navy maintains an airbase on one of the islands in the Parcel group – Woody Island, located mid-way between the PRC's Hainan Island and the Macclesfield Bank.

The Pratas Islands. Although the PRC also claims the small Pratas Island (Dongsha) group, off the south-western Taiwan and southern PRC coasts, Taiwan physically occupies the one island and two coral reefs making up this grouping. As Pratas Island is always above water, Taiwan maintains an airfield on Pratas, as well as several emergency service centers for fishing boats operating in this area of the South China Sea.

The Macclesfield Bank. The fourth island archipelago claimed by the PRC in the South China Sea is the Macclesfield Bank (Zhongsha), including Scarborough Reef, both north of the Spratly Islands. Scarborough Reef is also claimed by Taiwan and the Philippines.

⁶ From 1939-1945, Japan occupied both the Spratlys and the Parcels, establishing submarine bases there. After Japan's surrender, the Republic of China government briefly established a garrison in the Spratlys before abandoning it and fleeing to Taiwan after defeat by Chinese communist troops.

⁷ Under the LOS Convention, a body of land meets the definition of an "island" if it is above water at high tide. See LOS Convention 121.1.

Figure 2. South China Sea



Senkaku and Ryukyu Islands, East China Sea. A different set of issues surrounds China's competing claims over the eight uninhabited Senkaku (Diaoyu) Islands and the Ryukyu Islands (the largest of which is Okinawa) in the East China Sea. The PRC, Taiwan, and Japan have all had long-standing claims to these islands which, like the South China Sea islands, are presumed to have good potential for oil and gas deposits. The Chinese side – both the PRC and Taiwan – traces its claims back to the 14th century, when Ming Dynasty fishing vessels frequented the islands, although the Ming never established a permanent presence there. Japan's claim to the islands dates from January of 1895, during the Sino-Japanese War, when the Chinese Emperor agreed to cede the Senkakus to Japan.⁸

In the 1951 Treaty of Peace with Japan, the United States assumed control over both the Senkakus and the Ryukyus, although the former were not specifically mentioned in the 1951 Treaty. In a 1953 proclamation, U.S. officials responsible for administering the Ryukyus broadly defined the region under U.S. control to include the Senkakus.⁹ Thus, in 1971, when the United States signed the Okinawa Reversion Treaty with Japan, returning to Japan the areas and territories being administered by the United States, the Senkakus were included.¹⁰ Japan's claim to the Senkaku Islands has been in dispute with both China and Taiwan ever since. Subsequently, and despite language in the Okinawa Reversion Treaty that has been interpreted to apply the U.S.-Japan Security Treaty to both the Ryukyu and Senkaku islands, U.S. officials have maintained a neutral position over the islands' status, repeatedly stating that the Okinawa Treaty language has no bearing on any outstanding claims to sovereignty over the islands in question.

International law gives some guidance for resolving the conflicting claims of sovereignty over these various islands. The decided cases are few; but the elements that have been used in determining sovereignty have included discovery, occupation, exercise of authority, and acquiescence by other states. Thus, historical facts about these elements play a crucial legal role in any given situation, and the cases are necessarily fact-specific. While it seems doubtful that the competing claimants to the islands in the South China Sea and East China Sea are amenable to a legal resolution of the various disputes at present, their public justifications are often rooted in these legal concepts. (See Appendix A for a summary of the international legal cases involving questions of sovereignty over islands.)

⁸ In the Sino-Japanese Treaty of Shimonoseki ending the war, signed in May 1895, China also ceded Taiwan (Formosa) to the Japanese. Since this Treaty did not mention the Senkakus, Japan has claimed that its rights to the islands were conveyed in a separate action unrelated to the war. This becomes relevant later, during Allied agreements at Potsdam, in which the Allies agreed to restore to China those territories it lost to Japan through military aggression.

⁹ U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27).

¹⁰ Inclusion of both the Ryukyus and the Senkakus was clarified in an Agreed Minute to the Okinawa Reversion Treaty. See U.S. Congress. Senate Committee on Foreign Relations. Okinawa Reversion Treaty (hearings). 92nd Congress, 1st Session, October 27 - 29, 1971. Washington, U.S. Govt. Printing office, 1971.

Maritime/Exclusive Economic Zones¹¹

The second set of issues involved in competing maritime claims is the definition of maritime and exclusive economic zones, or EEZ's. These issues are primarily governed by the LOS Convention, which is intended to establish a comprehensive legal regime governing all uses of the oceans and of their resources.¹² The Convention recognizes that every coastal state may lay claim to a number of differing maritime zones that give it designated rights:

- *territorial sea*: First, a coastal state is entitled to claim a belt of sea adjacent to its coast as its “territorial sea.” This territorial sea may extend up to 12 miles from the coast, and in this belt of sea the coastal state may exercise full sovereignty.¹³
- *contiguous zone*: Second, a coastal state may also establish a zone adjacent to its territorial sea as a “contiguous zone.” Within this zone the coastal state is not sovereign, but it may exercise the control necessary to prevent and punish infringements of the customs, fiscal, immigration, and sanitary laws and regulations that apply in its territorial sea. The contiguous zone may extend up to 24 miles from the coast.¹⁴
- *exclusive economic zone (EEZ)*: Third, a coastal state may claim a belt of sea up to 200 miles from its coast as its “exclusive economic zone (EEZ).” In this area the coastal state is entitled to exercise sovereign rights over the living and non-living resources of the sea, the seabed, and the subsoil of the seabed.¹⁵
- *continental shelf*: Finally, the LOS Convention recognizes the legal right of every coastal state to control and exploit the natural resources of its continental shelf up to 350 miles from its coast.¹⁶

The claims of Malaysia and Brunei apparently rest in part on the assertion that some of the islands in these waters are within one or more of their maritime zones. But more importantly, under the LOS Convention these maritime zones may extend not only from the primary land area of a coastal state but also from any islands over which it is sovereign.¹⁷ Thus, to the extent that any of the claimant states can successfully lay claim to sovereignty over disputed islands, they may also establish the pertinent maritime zones around the islands and lay claim to their economic and other

¹¹ Prepared by Dave Ackerman, American Law Division, August 2001.

¹² The Convention entered into force on November 16, 1994, and as of September 2nd, 2001, has been ratified by 137 states, including the PRC and all of the other state claimants to the Spratly Islands with the exception of Taiwan.

¹³ LOS Convention, Articles 2 and 3.

¹⁴ *Id.* Art. 33.

¹⁵ LOS Convention Articles 55-57.

¹⁶ *Id.* Articles 76-77.

¹⁷ *Id.* Art. 121.

benefits. That could include the fisheries of the islands' EEZ as well as the oil and mineral resources of their EEZ(s) and continental shelf(s).

Nonetheless, it deserves emphasis that serious questions exist concerning the extent to which some of these disputed islands possess the characteristics necessary to give rise to these maritime zones. Under the LOS Convention, an "island" is broadly defined to mean "a naturally formed area of land, surrounded by water, which is above water at high tide."¹⁸ However, few of these islands – for instance, only 22-40 of the more than 400 "islands" in the Spratly group – are above water at high tide; thus, they do not meet the LOS Convention definition of an "island." Moreover, the LOS Convention also provides that an EEZ and a continental shelf may be generated by an island only if the island is "habitable or able to sustain an economic life."¹⁹ In other words, these zones may not be based on possession of an uninhabitable rock.¹⁹ Although these standards concerning habitability and economic viability are not entirely transparent, they likely pose additional barriers to the capacity of at least some of the islands to be used as a basis for establishing an EEZ or claiming the resources of their continental shelf(s).

Freedom of Navigation and Overflight

The foregoing maritime zones also have implications for navigation in, and overflight of, parts of the South China Sea – the third set of issues in competing maritime claims in the region. Under the LOS Convention, the "high seas" are deemed to comprise all parts of the sea that are *not* included in a state's internal waters, territorial sea, or EEZ, or in the archipelagic waters of an archipelagic state.²⁰ On and over the high seas the principles of freedom of navigation and freedom of overflight govern.²¹ Similarly, the Convention states that the principles of freedom of navigation and of overflight apply with respect to the 200-mile EEZ. On and over internal waters and the territorial sea (12 miles), however, there is no right of overflight at all; overflight is allowed only with the permission of the coastal state. In these areas, moreover, navigation is subject to the control of the coastal state. While the ships of other states have a right to traverse the territorial sea (but not internal waters) of a coastal state, that passage is required to be "innocent" in nature, *i.e.*, it must not be "prejudicial to the peace, good order, or security of the coastal

¹⁸ *Id.*

¹⁹ The Convention provides that "[r]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." *Id.*

²⁰ In the LOS Convention, archipelagic states are accorded special privileges. The Convention defines an archipelagic state as "a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic, and political entity..." The LOS Convention allows archipelagic nations, such as Indonesia, to draw baselines connecting their islands which essentially create sovereign archipelagic waters. States also have rights of transit passage and overflight through archipelagic waters.

²¹ LOS Convention, Art. 87.

State”²²; also, the coastal state may impose a variety of regulations on navigation in the territorial sea. Thus, to the extent that the contending nations establish sovereignty over part or all of the islands under dispute, some limitations on overflight and navigation in the region may result.

U.S.-China Differences on Freedom of Navigation²³

The United States has not ratified the LOS Convention, but has actively sought to maintain a broad scope for the freedom of navigation around the world, a position supported equally by most developed and maritime powers with global trading interests. For purposes of navigation and overflight, the United States asserts that the LOS Convention treats EEZs as international waters in which all states’ rights to freedom of navigation and overflight are assured, subject only to the rights that sovereign states have economically to exploit the resources in their own EEZs. For freedom of navigation, then, EEZs are equivalent to the high seas, through which vessels of all states can navigate freely without paying much attention to the incidental economic interests of the relevant sovereign state. U.S. specialists further argue that the LOS Convention allows overflight in aircraft of an EEZ.

The PRC has ratified the LOS Convention, but argues that the rights of states to control and exploit resources in their own EEZs should predominate over international rights of freedom of navigation and overflight. In the PRC view, then, the LOS Convention subordinates freedom of navigation and overflight in the 200-mile EEZs to the economic interests of the coastal sovereign state.²⁴ Furthermore, as demonstrated by the U.S. Navy EP-3 incident, the PRC now appears to be arguing that these restrictions should extend as well to the airspace over an EEZ.²⁵

²² *Id.* Art. 19.

²³ Prepared by (name redacted), Foreign Affairs, Defense, and Trade Division, October 2001.

²⁴ See Ji Guoxing, “Rough Waters in the South China Sea: Navigation Issues and Confidence-Building Measures,” in *Asia Pacific Issues*, East-West Center, No. 53, August 2001.

²⁵ Article 58 states: “In the exclusive economic zone all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.... In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.” [<http://www.oceanlaw.net/texts/losc.htm>]

Competing Territorial Claims and Diplomacy²⁶

Spratlys and Paracels

The PRC's physical occupation of islands, reefs, and shoals in the South China Sea has brought China's broad claims into competition with the claims of several members of the Association of Southeast Asian Nations (ASEAN).²⁷ This is especially so of Vietnam, the Philippines, and Malaysia, which also occupy islands, shoals, and reefs in the areas and who have territorial disputes both among themselves and with China. Brunei maintains a claim but does not occupy territory. There is also a question of whether China's territorial claim to the southern region of the South China Sea overlaps with Indonesia's claim to natural gas fields near its Natuna islands. Indonesia currently is developing these gas fields through contracts with American oil companies.

Prior to 1995, PRC actions affected only Vietnam, which claimed both the Spratly and the Paracel Islands. PRC forces had occupied the Paracel islands in 1974 near the end of the Vietnam War, driving out South Vietnamese forces, although Communist Vietnam has continued to maintain these maritime claims. After 1975, China's occupation of several positions in the area of the Spratly islands resulted in military clashes and confrontations between the Chinese and Vietnamese navies, including the years 1988, 1992, and 1994. Although Vietnam was not a member of ASEAN at the time, ASEAN did take diplomatic initiatives to resolve Sino-Vietnamese disputes. In 1990, for instance, Indonesia began holding annual South China Sea workshops attended by government officials and private experts. These workshops discussed areas of potential cooperation among states in developing the natural resources of the South China Sea, as well as possible confidence building measures (CBMs) among claimant countries. The workshops were defined as "unofficial" and produced no formal agreements.²⁸

In 1992, ASEAN took formal action in response to new tensions between China and Vietnam and in response to China's issuance in February 1992 of its "Law on Territorial Waters and their Contiguous Areas," which specified China's claim to most of the South China Sea basin. ASEAN foreign ministers issued an "ASEAN Declaration on the South China Sea" which called on claimant governments to "exercise restraint" and resolve disputes "without resort to force." The Declaration also called on governments to put aside the issue of "sovereignty" and cooperate on issues like navigation, maritime pollution, search and rescue, and combating piracy. With an eye toward China, the declaration invited "all parties concerned to subscribe to this Declaration of principles."

²⁶ Prepared by Larry Niksch, Foreign Affairs, Defense, and Trade Division, October 2001.

²⁷ Current ASEAN member nations are: Burma, Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

²⁸ Wain, Barry, "In the Spratlys, an Angel May be in the Details," in *Asian Wall Street Journal*, September 12, 1994, p. 14.

The PRC did not subscribe. Instead, China used the next several years (1992-1995) to set forth several policy positions which it has attempted since to make the basis of diplomacy, with some success. These positions are: (1) China will negotiate bilaterally with other claimant countries; (2) China will not negotiate multilaterally with other claimant countries; (3) China opposes the participation of any outside country (i.e., the United States) in negotiations on the South China Sea; (4) China opposes “internationalization” of the dispute, such as taking the dispute to an international forum for arbitration or legal rulings.²⁹

Little further diplomacy occurred until early 1995, when the PRC seized Mischief Reef in the Spratly Islands. This marked the first time that the PRC had seized territory claimed by an ASEAN country, the Philippines. Consequently, ASEAN intensified its diplomatic efforts to address South China Sea territorial claims. These efforts had three elements: (1) bilateral negotiations with China, mainly by the Philippines; (2) pressure on China to discuss the South China Sea multilaterally with ASEAN; and (3) focus on negotiating a “code of conduct” with China to regulate and place limits on the actions of the claimant countries.

Philippine-PRC Diplomacy and Confrontation. Unilaterally, the Philippines responded to China’s seizure of Mischief Reef with more activist diplomatic and even military efforts to pressure China to end its occupation of the reef and to deter China from occupying other Philippine-claimed territories in the Spratlys. As a result of its diplomatic efforts, the Philippines succeeded in negotiating a “code of conduct” agreement with China on August 9-10, 1995, which contained a joint pledge “to refrain from using force or threat of force” in the South China Sea; to initiate joint cooperation in fields like maritime environment, marine research, safety of navigation, etc; and to settle disputes in accord with international law “including the UN Convention on the Law of the Sea.” The Philippine government also was able to persuade other ASEAN members to adopt more assertive policies.

The actual impact of the Philippine-PRC code of conduct agreement, however, has been limited. There has been little joint cooperation in the specified areas. Although the PRC has not seized more positions in the Philippine-claimed part of the Spratlys, it has established a regular presence of Chinese fishing and naval vessels and has placed PRC territorial markers on islands and reefs, leading some to believe it intends to occupy more territory. China also has asserted a claim to Scarborough Shoal, located about 125 miles west of the Philippine main island of Luzon, and it has tried to establish a regular presence in that area.

Despite the code of conduct’s pledges to avoid force in the South China Sea, there have been a series of incidents and confrontations since 1996 between PRC vessels and the Philippine navy in the disputed area. As the PRC established a more permanent presence of naval and fishing vessels, the Philippine government adopted a policy of physically challenging this Chinese presence. In numerous clashes and confrontations in the Spratlys and near Scarborough Shoal, the Philippine navy has

²⁹ Ibid. Chandi, Mayan, “Divide and Rule,” in *Far Eastern Economic Review*, August 11, 1994, p. 18. JI Gazing, “Security in the South China Sea: a Chinese Perspective,” in *PACNET*, January 12, 1995.

blocked and rammed Chinese fishing and ocean research boats, arrested Chinese fisherman and “researchers,” fired warning shots, and pulled down Chinese territorial markers.

On the diplomatic front, from 1995-1998 each side rejected proposals made by the other. The Philippines rejected a PRC proposal to allow Filipino fishermen access to Mischief Reef (in return for an end to Philippine reconnaissance flights), as well as a PRC proposal to ban the arrest of fishermen in the disputed region. For its part, the PRC rejected a Philippine proposal for U.N. mediation, and a Philippine proposal that each side refrain from any new construction in the disputed area.

Diplomatic deadlock deepened when the PRC installed permanent structures on Mischief Reef, including military emplacements.³⁰ Although the Philippines and the PRC reiterated their adherence to their original code of conduct agreement in a statement of March 22, 1999,³¹ a meeting that month between the two governments broke up when the PRC rejected Philippine proposals for dismantling the Mischief Reef structures, transferring control of Mischief Reef to the Philippines, and assuring that the PRC government would build no new structures. The Philippine side rejected PRC proposals to ban arrests of Chinese fishermen, avoid sending Filipino vessels and aircraft into “Chinese territory,” and ending the Philippine government’s anti-China statements.³²

ASEAN Diplomacy. When the PRC first seized Mischief Reef in 1995, ASEAN supported the Philippines in a diplomatic effort reminiscent of its 1980s diplomacy toward Vietnam’s occupation of Cambodia. Two factors stood out. First, ASEAN’s six members at the time (Vietnam was admitted as a seventh member later, in July 1995) presented a united front at a PRC-ASEAN meeting in April 1995, where ASEAN ministers warned China that its relations with ASEAN countries would suffer because of Mischief Reef. Second, Indonesia took a leadership role, criticizing China’s territorial claim to the South China Sea, calling for an early settlement of the competing claims, and pressing Beijing for a specific answer on whether its territorial claims included the Natuna gas fields.

ASEAN’s stand appeared to produce two Chinese concessions. China agreed to negotiate with ASEAN, thus modifying its earlier position of holding bilateral negotiations only. China also agreed to resolve the dispute in accord with the LOS Convention (subsequently stated in the Philippine-PRC code of conduct). But China held firm that third parties, i.e. the United States, should not be involved.

The PRC’s formal ratification of the LOS Convention in May 1996 seemed to be another diplomatic success for ASEAN, but Beijing quickly negated this by

³⁰ Agence France Presse (Hong Kong) report, December 9, 1988. Lamb, David, “Chinese Heat Up Spratly Spat,” in *Los Angeles Times*, December 15, 1998, p. A4.

³¹ Joint Statement Issued on Confidence-Building Measures. *Xinhua* (Beijing), March 23, 1999.

³² “Manila Said Losing Faith in Talks with Beijing,” in *Business World* (Manila, Internet version), March 26, 1999.

declaring a 200 mile exclusive economic zone outward from the Paracel islands, disputed between China and Vietnam.³³ Furthermore, by the time the PRC installed permanent structures on Mischief Reef in 1998, ASEAN's strength and unity on South China Sea questions had weakened, for several reasons.³⁴ First, ASEAN's admission of Laos, Cambodia, and Burma after 1995 added countries that had little interest in the South China Sea. Instead, the priority of these new ASEAN members was to improve relations with China, whose economic and political influence throughout Southeast Asia was growing. The onset of the Asian financial crisis in 1997 further distracted ASEAN governments from security issues and from giving priority to ASEAN itself. The collapse of Indonesia's Suharto government in 1998 removed the crucial element of Indonesian leadership in ASEAN's policy toward the South China Sea. Inter-ASEAN tensions over competing claims also increased when Malaysia placed structures on two reefs in its claimed area in 1999, which the Philippines and Vietnam protested.

ASEAN and the Proposed Code of Conduct. In January 1999, Philippine President Joseph Estrada's National Security Council formulated a new strategy toward the Spratly islands. The Council decided to ask regional and international bodies to consider China's actions, and to urge ASEAN to negotiate a regional code of conduct with China reminiscent of the Philippine-PRC code-of-conduct agreement of 1995. Consequently, the Philippines proposed a regional code of conduct at an ASEAN-PRC consultative meeting in April 1999.

Throughout the year, ASEAN members negotiated over the proposal. The Philippines, Vietnam, and Malaysia disagreed over the proposal's content. Malaysia reportedly was cool to the proposal, while Vietnam wanted it to cover the Paracels as well as the Spratlys. Senior ASEAN officials finally agreed in November 1999 to a draft code of conduct that would include the Paracels. They presented it informally to PRC officials attending an ASEAN Plus Three (PRC, South Korea, and Japan) meeting. The PRC rejected it, objecting to inclusion of the Paracels and to a clause providing for "a halt to any new occupation of reefs, shoals and islets in the disputed area." PRC officials did propose further discussion of a code of conduct but with two qualifications: that the discussions be bilateral with individual "relevant ASEAN members" and that the process proceed "gradually in an orderly fashion."³⁵

PRC officials produced their own draft code of conduct in March 2000. Clauses related to peaceful settlement of disputes and freedom of navigation were similar to the ASEAN draft, but the PRC draft differed on three other issues. It included a prohibition of the arrest or use of force against Chinese fishermen. It stated that signatories would refrain from "dangerous and close-in reconnaissance" and military patrols, thus limiting ASEAN country surveillance of PRC activities. This position

³³ Leahy, Joe, "Round One to Rangoon," in *Far Eastern Economic Review*, August 1, 1996, p. 14-15.

³⁴ Wain, Barry, "The Illusion of Chinese Power Is Ingrained by ASEAN's Inaction," in *Asian Wall Street Journal Weekly*, July 5-11, 1999, p. 17. Thayer, Carlyle A., "New Fault Lines in ASEAN," in *Asia-Pacific Defence Reporter*, February-March 2000, p. 26-27.

³⁵ Beijing Radio Zhongguo Xinwen She broadcast, November 26, 1999.

is similar to the PRC's position in the EP-3 collision incident – to wit, that the United States should cease military activities, including reconnaissance, in the areas off the South China coast and within the PRC's 200-mile Exclusive Economic Zone. Finally, the PRC draft did not include the ASEAN draft's ban on new occupation of reefs, shoals, and islets, instead calling on parties only “to exercise self-restraint.”³⁶

The production of both the ASEAN and PRC drafts created a mechanism to negotiate specific differences over a code of conduct. However, there appears to have been little progress in negotiations since the issuance of the PRC draft. In May 2001, Dino Patti Djalal, Political Counselor of the Indonesian Embassy in Washington, praised the idea of a “South China Sea Code of Conduct” and said that negotiations were continuing; but he did not indicate that talks were achieving progress.³⁷

According to informed sources interviewed by CRS for this report, the PRC is taking a hard line against including the Paracels in any regional code of conduct. China appears to be following this line partly in knowledge that Malaysia also favors excluding the Paracels. Malaysia's split with Vietnam and the Philippines on this issue divides ASEAN to China's diplomatic advantage. According to these sources, China hints at flexibility toward the ASEAN proposal to prohibit new seizures and structures in the Spratlys. This could signal a change in the PRC's position. But it also could be a tactic to appeal to Malaysia, since the PRC undoubtedly knows that the deadlock over the Paracels gives China diplomatic flexibility to maneuver and exploit ASEAN divisions without having to make firm commitments and promises on other issues.

U.S. Policy Toward China's South China Sea Claims. Until the PRC's seizure of Mischief Reef, U.S. policy toward the South China Sea dispute had minimal content. The stance of U.S. Administrations since the 1970s had been that the United States takes no position on the merits of the competing claims, supports a peaceful resolution of the conflict, and opposes the threat or use of force in the region by any of the claimants. There was little active diplomacy. The PRC's seizure of Mischief Reef changed all this. On May 10, 1995, the Clinton Administration issued a statement on the South China Sea that led to an exchange with China relevant to the U.S. Navy EP-3 reconnaissance plane episode. In its May 10 statement, the Clinton Administration reiterated that the United States takes no position on the “legal merits” of competing claims and opposes the use of force. The statement also expressed concern over “the pattern of unilateral actions and reactions” and that “the United States has an abiding interest in the maintenance of peace and stability in the South China Sea.” The statement focused on the issue of freedom of navigation, warning against any attempt to hinder it. It declared: “The United States would, however, view with serious concern any maritime claim, or restriction on maritime activity, in the South China Sea that was not consistent with international law, including the 1982 United Nations Convention on the Law of the Sea.”

³⁶ JIJI Press (Tokyo) report, March 14, 2000. JIJI quoted from a Chinese draft it said it had obtained. An Associated Press report of March 15, 2000, described similar differences between the Chinese and ASEAN drafts.

³⁷ Djalal, Dino Patti, “The U.S.-China Aircrafts Collision and the South China Sea Disputes,” in *Policy Views Series Issue No. 6*, May 2001.

Assistant Secretary of Defense Joseph Nye elaborated on this position in a June 1995 interview with Japanese journalists. He said that if fighting broke out in the Spratlys and threatened “freedom of the seas, then we would be prepared to escort and make sure that free navigation continues.”³⁸ Nye’s remark went beyond the May 10 statement, suggesting a U.S. willingness to become involved militarily if the United States determined that freedom of navigation were threatened. China reacted to the U.S. May 10 statement with a Foreign Ministry statement on freedom of navigation, declaring that the PRC “claim to a group of islands in the South China Sea is not meant to impede freedom of navigation or the safe passage of aircraft and other ships of other countries.”³⁹

After these statements, U.S. diplomacy settled back into a low level of activity. Although press reports of high-level U.S.-PRC meetings after 1995 describe continuous discussions of the issues of Taiwan, human rights, proliferation of weapons of mass destruction, and trade and investment, they contain little or no mention of the South China Sea as a topic in these encounters. This suggested either that the Clinton Administration did not raise the South China Sea issue at such meetings, or if it did, it did so infrequently and did not seek substantive dialogue with the Chinese. Early high level U.S.-PRC talks under the George W. Bush Administration show a similar pattern.

The low profile U.S. approach also appears to be true of U.S. diplomacy relative to the ASEAN-China negotiations, including the talks over a regional code of conduct. For the most part, the United States has not raised the South China Sea issue at ASEAN-sponsored conferences with “dialogue partners,” such as the ASEAN Regional Forum (ARF).

An exception to this approach apparently occurred in 1999, possibly in response to the situation created by China’s emplacement of permanent structures on Mischief Reef. State Department spokesman, James Rubin, warned China on January 6, 1999, to “avoid actions that create tensions in the region.”⁴⁰ At the ARF meeting in July 1999, when ASEAN was considering proposing a regional code of conduct, Secretary of State Madeleine Albright warned that “we cannot simply sit on the sidelines and watch” if a cycle were “to emerge in which each incident leads to another with potentially greater risks and graver consequences.”⁴¹ In her statement, however, the Secretary stopped short of endorsing a code of conduct. (The Australian Foreign Minister, in contrast, argued for one.)

It appears that at this time the Clinton Administration suggested to the Philippine and other ASEAN governments that a broader international group, including the

³⁸ Witter, Willis, “Sanctions Threaten U.S.-Japan Alliance,” in *Washington Times*, June 26, 1995.

³⁹ Cruz, J.V., “PROC Assures Free Navigation Across Spratlys,” in *Manila Chronicle*, May 30, 1995, p. 4.

⁴⁰ Agence France Presse (Hong Kong), January 6, 1999.

⁴¹ Kyodo News Agency report, July 26, 1999. Pathan, Don, “US Urges ARF to Ease Military Tension in the South China Sea,” in *The Nation* (Bangkok), July 27, 1999, p.1.

United States, be established to negotiate on the South China Sea. According to Filipino diplomats, Assistant Secretary of State Stanley Roth proposed at an ARF senior officials meeting in May 1999 that the ARF form an inter-sessional group (ISG) on the South China Sea.⁴² This initiative did not receive strong support from within ASEAN and therefore made no progress, although the Philippine government supported it.⁴³ Malaysia apparently opposed a more direct U.S. diplomatic role,⁴⁴ and the U.S. proposal apparently received minimal support from other ASEAN governments.

The lack of a positive response to the 1999 U.S. initiative reflected the existing divisions within ASEAN on the South China Sea discussed earlier. Malaysia's apparent rejection also may be due to the antagonisms in U.S.-Malaysia relations that existed for several years under Malaysian Prime Minister Mahathir Mohammed. The ASEAN reaction also probably reflected the PRC's diplomatic successes, particularly the influence of its constantly stated position that outside parties should not be involved in the South China Sea issue. Within ASEAN, only the Philippines, a U.S. ally, has challenged publicly the Chinese position. A number of American observers at that time also concluded that ASEAN's stance stemmed from uncertainty over the extent of U.S. support.⁴⁵

The most active component of U.S. policy related to the South China Sea has been the U.S. effort to revitalize its security relations with the Philippines.⁴⁶ Until 1992, the Philippines and the United States had an intimate security relationship based on a 1947 military bases agreement and a 1952 Mutual Defense Treaty. The security relationship was frayed in 1991 when the Philippine Senate voted to reject ratification of a new U.S.-Philippine agreement to extend U.S. rights to military bases beyond 1992, the expiration date of the 1947 agreement. As a result, the United States withdrew from its bases by December 1992, including its huge naval base at Subic Bay, and security relations went into a decline. This changed with the PRC's seizure of Mischief Reef. The two governments began to negotiate on ways to restore functioning security relations absent the U.S. bases. In February 1998, they took a first step by concluding a Visiting Forces Agreement (VFA), which set legal ground rules for U.S. military personnel to visit the Philippines for various activities, including joint military exercises.

A second step came in an agreement to begin a U.S. military support program for the Philippines. Secretary of Defense William Cohen and Philippine Secretary of

⁴² Villaviray, Johnna, "ASEAN Endorses Manila's Draft of Spratlys Code of Conduct," in *Manila Times* (Internet version), May 26, 1999.

⁴³ Ibid.

⁴⁴ "There Is No Need for Foreign Interference in the Spratly Issue," in *Berita Minggu* (Kuala Lumpur, Internet version), January 17, 1999. *Berita Minggu* is a government-controlled Sunday newspaper.

⁴⁵ McDevitt, Michael, "China and the South China Sea—A Conference Summary Report," *PacNet*, April 16, 1999.

⁴⁶ See CRS Report RS20697, *Philippine-U.S. Security Relations*, by Larry Niksch, October 10, 2000.

Defense Orlando Mercado announced on October 3, 1999, “an exchange of defense experts to facilitate, coordinate and assist in meeting the equipment requirements of the AFP” [Armed Forces of the Philippines].

The Philippines’ military confrontations with the PRC appeared to be a major motive for restoring active security relations with the United States. The Philippine government’s initial priority was to gain U.S. military aid to strengthen AFP naval and air capabilities in the South China Sea. The South China Sea issue was discussed in depth at the joint news conference that Secretary of Defense William Cohen and Philippine Secretary of National Defense Orlando Mercado held in Manila on October 3, 1999, to announce the formation of the defense experts’ group. Cohen issued a statement that went beyond any previous Clinton Administration pronouncements. He reiterated the U.S. position of neutrality regarding the claims of the disputant countries, but he stated that “we do reject very strongly any country taking unilateral action to assert sovereignty over the Spratlys.” He went further to endorse Philippine diplomatic efforts to realize a regional code of conduct, describing it as “a very positive step that they are taking to promote this code of conduct.”⁴⁷ Philippine defense planners envisaged a program of U.S. assistance that would give the AFP the capability to carry out defined military missions in the South China Sea. Military missions would include intelligence gathering and surveillance; moving troops to occupy islands and atolls; mounting a credible show of force at a particular time and place if it appeared that the Chinese were about to occupy another position; and successfully engaging the Chinese navy and air force if China resorted to military force. Senator Rodolfo Biazon, Chairman of the Philippine Congress’ Committee on National Defense and Security and a respected former Marine General, publicly recommended this kind of program.⁴⁸

Within a year after the establishment of the defense experts’ group, U.S.-Philippine military cooperation was hampered by a growing Muslim insurgency in the southern Philippines, including the taking of foreign hostages, which began to dominate Philippine defense policy in 2000 and into 2001. The Cohen-Mercado news conference of September 15, 2000, reflected these priorities, and contained no references to the South China Sea.⁴⁹ Following the removal of President Estrada from office in January 2001 and the assumption of the presidency by Gloria Macapagal-Arroyo, the defense experts’ group has resumed meetings. It faces difficult choices regarding tailoring of a U.S. assistance program in the face of Philippine military weaknesses and these competing defense priorities.

The renewal of U.S.-Philippines security relations has raised the question of whether the 1952 Mutual Defense Treaty (MDT) covers the disputed areas in the

⁴⁷ Office of the Assistant Secretary of Defense for Public Affairs. Joint Press Conference by Secretary of Defense Cohen and Secretary of National Defense Mercado, Manila, October 1999.

⁴⁸ “Manila Urged to Use US Aid Against PRC, Not Insurgents,” in *Philippine Star (Internet version)*, March 14, 2000.

⁴⁹ Office of the Assistant Secretary of Defense for Public Affairs. Joint Press Conference by Secretary of Defense Secretary Cohen and Secretary of National Defense Mercado, September 15, 2000.

South and East China Seas. Successive U.S. Administrations have stated that Article IV of the MDT, calling for responses to an armed attack on either of the signatories, does not cover the Spratly islands,⁵⁰ but U.S. statements are more vague regarding Scarborough Shoal. U.S. officials have said that the United States would consult with the Philippines “on what action to take” if Philippine military forces in the Spratlys were attacked.⁵¹ Article III of the MDT provides for consultations if either signatory is threatened by armed attack. Philippine government statements have indicated an acceptance of the U.S. position regarding the MDT but also that the Philippines might invoke Article III regarding consultations in case of a Chinese attack on Philippine forces or positions in the South China Sea.

Statements regarding the defense commitment and U.S. military activities in or near the South China Sea also appear aimed at deterring Chinese aggressiveness. The first U.S.-Philippine military exercise after Philippine ratification of the VFA took place on Palawan, a main Philippine island near the disputed area in the Spratlys. Admiral Joseph Prueher, Commander of U.S. Pacific Forces, stated in February 1999 that the U.S. Navy would make “a little bigger show of our presence there [South China Sea] than we have in the past.”⁵² At that time, U.S. military intelligence officials began to disclose publicly details of Chinese military activities in the South China Sea and provided this information to the Philippine government.⁵³ PRC officials have criticized the Palawan exercise and other U.S. military activities, and have warned Southeast Asian countries against strengthening military cooperation with the United States.⁵⁴

Incidents and Diplomacy in the East China Sea

PRC and Japanese policies toward their competing claims in the East China Sea reflect the interrelationship of the dual nature of their claims. The claims of sovereignty over the Senkaku (Diaoyu) islands, including actual control of the islands, and the overlapping claims to exclusive economic zones (EEZs) may be legally distinct, but they are intertwined for two reasons. One is that control of the Senkakus by Japan reinforces its geographical EEZ claim. The second is that PRC activities in the area where EEZ claims overlap often are viewed in Japan as preparation for a PRC attempt to occupy the Senkakus. This Japanese view is exacerbated when PRC activities become incidents, sometimes contributed to by Japanese responses.

⁵⁰ Pablo, Carlito, “Cohen Says US Defending RP Not Automatic,” in *Philippine Daily Inquirer*, August 4, 1998, p. 1.

⁵¹ Joint Press Conference of Secretary of Defense Cohen and Secretary of National Defense Mercado, October 3, 1999.

⁵² Halloran, Richard, “Reading Beijing,” in *Far Eastern Economic Review*, February 25, 1999, p. 28. Admiral Prueher later was named U.S. Ambassador to the PRC.

⁵³ Gertz, Bill, “China Makes Upgrades to Island Base, in *Washington Times*, February 11, 1999, p.A1. “Manila Reports on More PRC Military Buildup in Spratlys,” in *Philippine Star* (Internet version), April 16, 1999.

⁵⁴ Khumrunroj, Sa Nguan, “PRC Official Warns ASEAN Against Boosting U.S. Military Ties,” in *The Nation* (Bangkok, Internet version), March 15, 2000.

Throughout the past decade, there have been periods of intense Chinese activity in the area of the overlapping EEZ claims, including the vicinity of the Senkakus. PRC oceanographic research and other vessels repeatedly have entered the area, apparently to conduct marine research on natural resources. This reportedly has included preliminary drilling for mineral deposits on the ocean floor.⁵⁵ PRC fishing vessels also have been active. Periodically, PRC naval vessels and fighter aircraft have entered the disputed region.⁵⁶ In 1992 and 1993, Chinese naval vessels fired warning shots at Japanese civilian ships.⁵⁷ Japan launched fighters from bases in the Ryukyu Islands in August 1995 when PRC fighters entered Japan's air identification zone around the Senkakus.⁵⁸ The August 1995 incident and particularly heavy PRC ship activities in early 1996 led to an escalation of tensions between Japan and the PRC lasting until the end of 1996.

When PRC activities reach high levels, the Japanese become suspicious that the PRC is preparing to occupy the Senkakus. The PRC's occupation of Mischief Reef in the South China Sea in early 1995 increased Japanese suspicions. While Japan has not established a permanent, physical presence on the Senkakus, it responded to the 1992-1993 shooting incidents frequently by deploying patrol boats of the Maritime Safety Agency near the islands. It also stepped up air reconnaissance.

The Japanese government also responds with verbal assertions of its sovereignty over the Senkakus and the legality of its claimed EEZ. This sometimes is contained in diplomatic notes to Beijing. The PRC responds with similar assertions. The heating of the rhetoric over sovereignty has had the effect of weakening an understanding the PRC and Japan reached in 1978 to "shelve" the dispute over sovereignty.⁵⁹

The Japanese government also has had to deal with the actions of Japanese right-wing groups. These groups periodically send members to the Senkakus where they have implanted markers, flags, and even erected a small lighthouse. The rightist groups sometime act in response to heavy PRC ship traffic near the islands. Other times, they act without alleged PRC provocations. Beijing considers their actions as a provocation and has issued diplomatic protests to Japan demanding that the Japanese government prevent such activities. The Japanese government replies that

⁵⁵ "PRC Mobilizes Warships to 'Unlawfully' Explore for Resources in Japan's EEZ," in *The Daily Yomiuri* (Tokyo, Internet version), July 26, 2001. Gilley, Bruce, "Rocks of Contention," in *Far Eastern Economic Review*, September 19, 1996.

⁵⁶ *Ibid.*

⁵⁷ Kyodo News Service reports, July 21, 1992, and February 12, 1993.

⁵⁸ Lu Te-yun, "Official Views PRC-Japanese Fighter Encounter," in *Lien-ho Pao* (Taipei), August 25, 1995, p. 3

⁵⁹ He Chong, "Japanese Rightwing Forces Again Cause a Political Situation on Diaoyu Island," in *Zhongguo Tongxun She* (Hong Kong), May 14, 2000, page unknown. Komori, Yoshihisa, "Japanese Policy Toward the Disputes over the Senkaku Islands," prepared for the 11th International Round Table on Asia and Pacific Studies, 1997, p. 6.

the government is limited in its right to interfere with the activities of Japanese citizens.⁶⁰

Japan responds to PRC activities near the Senkakus in two other important ways. One is an ongoing debate among Japanese over whether the government would use military force to prevent a PRC occupation of the Senkakus.⁶¹ The government has not taken a position on this. The second response is to discuss whether the United States has an obligation to help defend the Senkakus under the U.S.-Japan Security Treaty (see section on U.S. Policy Toward the Senkakus).

Tokyo and Beijing negotiated in 2000 an agreement for each government to notify the other in advance of research vessels entering the EEZ of the other country.⁶² This accord, however, is vague on the requirement for notification of activities in the overlapping area of the Chinese and Japanese EEZs. This became clear in July 2001 when PRC research vessels operated near the Senkakus without prior notification of Japan.⁶³ PRC actions at that time suggest that Beijing holds that the notification requirement does not apply to its claimed EEZ but only to its maritime research in Japan's EEZ outside the geographical limits of China's claim. The Japanese Foreign Ministry did not formally protest the Chinese activities in July 2001, claiming that it did not have sufficient legal grounds.⁶⁴

U.S. Policy Toward the Senkakus. Maritime disputes in the East China Sea are primarily between the PRC and Japan, and arise from three different factors: (1) U.S. administration of the Senkakus as part of the Ryukyu islands from the end of World War II until 1971; (2) the 1971 U.S. agreement with Japan to revert administration of the Ryukyu Islands to Japan; and (3) the debated question of the application of the U.S.-Japan Security Treaty to the Senkakus. These elements make the United States more directly involved in China's claims in the East China Sea than in other maritime disputes.

U.S. Administration of the Senkaku Islands, 1945-1971. Following the American victory over Japanese forces on the island of Okinawa (June 1945), the U.S. Navy set up a Military Government of the Ryukyu Islands. In the winter of 1945-1946, it defined the geographical boundaries of its administration to include the Senkaku islands. This continued during the U.S. military occupation of Japan and was incorporated into the Japanese Peace Treaty of 1951. The Treaty granted the United States "the right to exercise all and any powers of administration, legislation,

⁶⁰ Agence France Presse (Hong Kong) report, May 1, 2000. Kyodo News Service (Tokyo) report, September 7, 1999.

⁶¹ Kristof, Nicholas D., "Would You Fight for These Islands," in *New York Times*, October 23, 1996, p.E3.

⁶² Eckholm, Erik, "China and Japan Affirm Ties Despite Tensions and Rivalry," in *New York Times*, August 30, 2000, p.A13.

⁶³ "D.A. Pressured Not to Announce PRC Ships Activity Near Japan Due to 'Delicate' Ties," *Sankei Shimbun* (Tokyo, Internet version), July 14, 2001. Kyodo News Service (Tokyo) report, July 18, 2001.

⁶⁴ Ibid.

and jurisdiction over the territory” defined as “Nansei Shoto, south of 29 degrees North latitude (including the Ryukyu and the Daito Islands).” U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27) set geographical boundaries of the Ryukyus that included the Senkakus.⁶⁵ Moreover, during U.S. administration of the islands, the U.S. Navy built firing ranges on them and paid annual rent of \$11,000 to Jinji Koga, son of the first Japanese settler of the islands.⁶⁶

During the Japanese Peace Treaty discussions, John Foster Dulles, chief U.S. delegate to the peace conference and later Secretary of State during the Eisenhower Administration, set forth the concept that Japan had “residual sovereignty” over the Ryukyu Islands. According to an official analysis prepared by the U.S. Army, residual sovereignty meant that “the United States will not transfer its sovereign powers over the Ryukyu Islands to any nation other than Japan.”⁶⁷ Kenneth Younger, the British delegate to the conference, stated that the Peace Treaty did not remove the Ryukyus from Japanese sovereignty.⁶⁸ President Eisenhower confirmed this at the U.S.-Japan summit meeting of June 1957, telling Japanese Prime Minister Nobusuke Kishi that residual sovereignty over the Ryukyus meant that “the United States would exercise its rights for a period and that the sovereignty would then return to Japan.”⁶⁹ In March 1962, President Kennedy stated in an Executive Order for the Ryukyus that “I recognize the Ryukyus to be a part of the Japanese homeland and look forward to the day when the security interests of the Free World will permit their restoration to full Japanese sovereignty.”⁷⁰ Since there was no U.S. action to separate the Senkakus from the Ryukyus, these applications of “residual sovereignty” appeared to include the Senkakus.

Okinawa Reversion Treaty. On June 17, 1971, the United States and Japan signed an Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands.⁷¹ Commonly referred to as the Okinawa Reversion Treaty, it was ratified by the U.S. Senate on November 10, 1971. It provided for the return to Japan of “all and any powers of administration, legislation and jurisdiction” over the Ryukyu Islands which had been conveyed to the United States in the Japanese Peace Treaty. Article I of the Okinawa Reversion Treaty

⁶⁵ U.S. Congress. Senate. Committee on Foreign Relations. Okinawa Reversion Treaty. 92nd Cong., 1st Sess. October 27, 28, and 29, 1971. Washington, U.S. Govt. Print. Office, 1971. p. 149-152.

⁶⁶ Ibid., p. 77, 94, 119. Hornsby, Michael, “Japan Asserts Rights to Isles Claimed by China,” in *London Times*, March 19, 1972.

⁶⁷ Blanchard, Jean-Marc F., “The U.S. Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands, 1945-1971,” in *The China Quarterly*, March 2000., p. 109

⁶⁸ Ibid. p. 110. During this period, the U.S. Government debated over whether to annex the Ryukyus, including the Senkakus, or have them placed under long-term U.N. trusteeship with the United States as the administering authority.

⁶⁹ Ibid. p. 117.

⁷⁰ Ibid. p. 118.

⁷¹ For more on this Treaty, see CRS Report 96-798 F, *Senkaku (Diaoyu) Islands Dispute: The U.S. Legal Relationship and Obligations*, by Larry Nicksch, September 30, 1996.

defined the term “the Ryukyu Islands and the Daito Islands” as “all territories with their territorial waters with respect to which the right to exercise all and any powers of administration, legislation and jurisdiction was accorded to the United States of America under Article 3 of the Treaty of Peace with Japan....” An Agreed Minute to the Okinawa Reversion Treaty defined the boundaries of the Ryukyu Islands “as designated under USCAR 27,” which included the Senkakus. The latitude and longitude boundaries set forth in the Agreed Minute also appeared to include the Senkakus; this was acknowledged by the Chinese government and by supporters of China’s claims, who testified in the Okinawa Reversion Treaty hearings before the Senate Foreign Relations Committee.⁷² A letter of October 20, 1971, by Robert Starr, Acting Assistant Legal Adviser for East Asian and Pacific Affairs—acting on the instructions of Secretary of State William Rogers—stated that the Okinawa Reversion Treaty contained “the terms and conditions for the reversion of the Ryukyu Islands, including the Senkakus.”⁷³

However, in presenting the Okinawa Reversion Treaty to the U.S. Senate for ratification, the Nixon Administration removed the Senkakus from its inclusion in the concept of Japanese residual sovereignty. The Nixon Administration asserted that the United States took no position on the issue of competing Japanese and Chinese claims to sovereignty. Acting Assistant Legal Adviser Robert Starr stated that the United States had returned only administrative rights to Japan and that “a return of administrative rights over those islands to Japan, from which the rights were received, can in no way prejudice any underlying claims.” Secretary of State Rogers testified that “this treaty does not affect the legal status of those islands at all.”⁷⁴

Several experts have attributed this Nixon Administration policy shift as having been influenced by White House overtures to China during 1971-1972, culminating in the Nixon visit to China. This new U.S. position of neutrality on sovereignty has been continued by successive Administrations. The Clinton Administration reiterated this position during the 1996 tensions over the Senkakus.⁷⁵

Relevance of the Security Treaty for the Senkakus. As Sino-Japanese tensions over the East China Sea grew in the 1990s, the Clinton Administration had difficulty stating a clear position on whether the 1960 U.S.-Japan Security Treaty covers the Senkakus. The issue appeared clear at the time of the signing of the Okinawa Reversion Treaty. Article II of the Treaty stated that the islands returned to Japanese administration were covered by “treaties, conventions and other agreements concluded between Japan and the United States of America, including, but without limitation, the Treaty of Mutual Cooperation and Security between Japan and the United States of America.” Deputy Secretary of Defense David Packard, in his testimony before the Foreign Relations Committee, stated that Japan would assume

⁷² Okinawa Reversion Treaty Hearings, p. 93, 144, 148.

⁷³ Ibid. p. 91.

⁷⁴ Ibid. p. 11, 91.

⁷⁵ Kristof, A Mini Asian Tempest Over Mini Island Group, *New York Times*, September 16, 1996, p. A8.

the “primary responsibility” for the defense of the treaty area but that the Security Treaty was applicable.⁷⁶

The issue remained moot until the 1996 tensions. The *New York Times* of September 16, 1996, carried an article on the Senkakus, which reported that “some Japanese officials say the United States would be obliged to use its military forces to protect the Japanese claims to the islands, because of the Japanese-American security treaty.” The article added that “Ambassador Walter F. Mondale has noted that the United States takes no position on who owns the islands and has said American forces would not be compelled by the treaty to intervene in a dispute over them.” The *New York Times* later quoted Mondale that the status of the Senkakus was similar to that of Taiwan, with which the United States has no defense treaty.⁷⁷

In contrast to Ambassador Mondale, the State Department did not give specific answers to questions of whether the Security Treaty covered the Senkakus, despite repeated queries by the press. Acting State Department spokesman, Glyn Davies, on September 23, 1996, brushed off a question on the U.S. reaction to a military conflict, answering that “its not the kind of issue that’s worth elevating beyond a war of words, where we are now.” Davies asserted “I don’t think you’ll find that the United States will be saying a whole lot about it.”⁷⁸ Department spokesman Nicholas Burns, refused to answer repeated questions on the Security Treaty’s relationship to the islands during his daily press briefing on October 3, 1996. He described the issue of the Treaty’s coverage as “a hypothetic situation” and that “my policy is not to comment upon hypothetical situations unless it’s in my self-interest to do so, and it’s not at this point.”

The PRC government issued a statement on the Security Treaty’s relationship to the Senkakus on October 15, 1996. The Foreign Ministry spokesman stated that the U.S.-Japan Security Treaty “must not exceed the bilateral category, and there is no reason for any third country to intervene in the Sino-Japanese dispute over the Diaoyu Islands issue.” He went on to describe as “illegal” the transfer of administration over the Senkakus from the United States to Japan in the Okinawa Reversion Treaty.⁷⁹ The PRC statement clearly reiterated Beijing’s position that disputes over PRC maritime claims should be settled bilaterally between China and the other claimant without the intervention of third parties. The PRC government also may have intended to pressure the Clinton Administration to maintain the State Department’s evasive position on the Security Treaty or even to adopt the position enunciated by Ambassador Mondale.

⁷⁶ Ibid., p. 42, 44. Also, CRS Report 96-798 F, *Senkaku (Diaoyu) Islands Dispute: The U.S. Legal Relationship and Obligations*, by Larry Niksch, September 30, 1996

⁷⁷ Kristof, Nicholas D., “Would You Fight for These Islands,” in *New York Times*, October 20, 1996, p. E3.

⁷⁸ Transcript of State Department Noon Briefing, September 23, 1996.

⁷⁹ “Japan-US Security Accord Must Not Exceed Bilateral Category,” in *Xinhua* (Beijing) English Newswire, October 15, 1996.

In contrast to the State Department's reticence on the matter of the Security Treaty, the Pentagon stated that the Senkakus were included in the geographical area covered by the Security Treaty. Assistant Secretary of Defense Kurt Campbell visited Japan in late November 1996 and stated in an interview with the newspaper *Yomiuri Shimbun* on November 28:

The 1972 U.S. agreement on the return of Okinawa to Japan clarified that the Senkaku islands fall under Japanese administration. This was clearly specified by the United States for security purposes. . . . America made a solemn promise in the U.S.-Japan Security Treaty to defend Japan's territory and areas under its administration in time of emergency. We will keep this promise.⁸⁰

Campbell's statement was followed up by a statement by Secretary of Defense William Perry at a Tokyo press conference on December 2, 1996, during the following exchange.

Question: I'm sure you are aware of our territorial dispute over the Senkaku islands with China. Do you think that part of Japan is part of the U.S.-Japan security agreement?

Perry: I am not a lawyer—an international lawyer—and I do not have expert judgment to deal with these questions. What I do know is that the United States has a treaty, a security treaty with Japan, and no Japanese should ever doubt that America will honor its security agreement to Japan. And we will.⁸¹

The differences between the State and Defense departments over this issue appears to represent a broader disagreement over U.S. policy priorities in East Asia at that time. The State Department's position likely was influenced by the Clinton Administration's policy of "engagement" with China, which stressed improving relations with China after the period of tensions in the Taiwan Straits in early 1996. The Sino-Japanese tensions of 1996 arose as the United States was negotiating with PRC officials over holding a series of high level meetings: Secretary of State Christopher's visit to China in November 1996, Chinese Defense Minister Chi Haotian's visit to Washington in December 1996, Vice President Gore's visit to China in January 1997, and an exchange of presidential visits between Presidents Clinton and Jiang Zemin in 1997 and 1998. State Department officials may have judged that an affirmation of the Security Treaty's coverage of the Senkakus could anger China and disrupt these plans.

The Defense Department's priorities, on the other hand, were tilted toward strengthening U.S.-Japan security relations. The Senkakus question emerged as the Pentagon was negotiating with Japan over new defense guidelines that would include Japanese support of U.S. military operations outside of Japanese territory "in areas adjacent to Japan." Pentagon officials apparently saw a dilemma: How could the United States gain from Japan expanded commitments of military cooperation when the Senkakus issue raised new questions over the credibility of the U.S. defense

⁸⁰ "U.S.-Japan Treaty Covers Disputed Isles," in *Reuters* North American Wire Service report, November 28, 1996.

⁸¹ Transcript: Secretary Perry, December 2, 1996, Press Roundtable in Tokyo.

commitment to Japan itself? Japanese critics of the alliance had begun to accuse the United States of unreliability over the Senkakus issue.

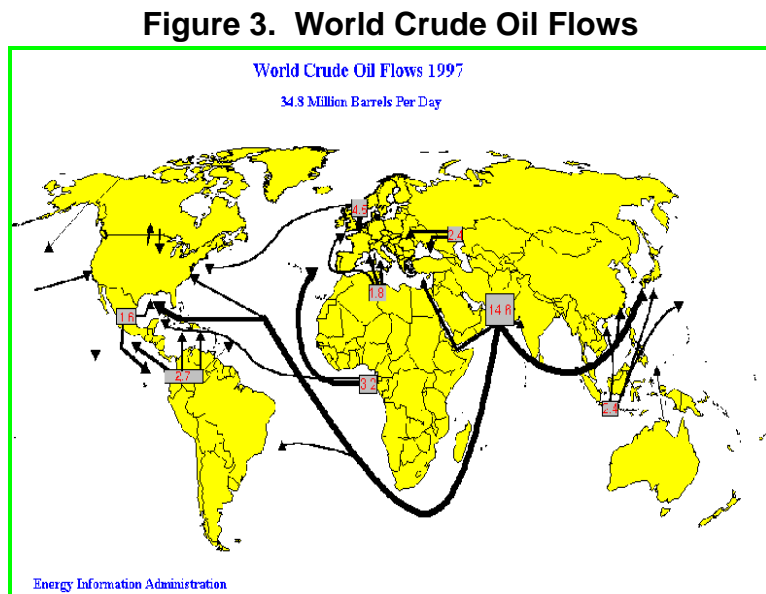
The George W. Bush Administration has made no public statements concerning the Senkakus. Nevertheless, before taking office as Deputy Secretary of State in the current Bush Administration, Richard Armitage directed a study group at the National Defense University that issued a widely publicized report in October 2000 on U.S.-Japan relations. Among its recommendations was the following: “The United States should reaffirm its commitment to the defense of Japan and those areas under the administrative control of Japan, including the Senkaku Islands.”⁸²

Economic Dimension and Implications of China’s Maritime Territorial Claims⁸³

How China addresses the issue of conflicting maritime territorial claims in East Asia has major economic implications for regional and Pacific Rim countries, including the United States and its Asia-Pacific allies and economic partners.

International Economic and Commercial Stakes

The economic and commercial stakes involved in this issue include the natural resources of the region, both currently exploited and those whose potential is yet to be established, access to extra-regional resources such as the oil and gas of the Persian Gulf, the security of ocean-borne commerce, including both oil and gas resources and manufactured goods, and the economic development prospects of regional states.



The value of the region’s natural resources and cargoes transiting disputed areas is staggering – a major share of the world’s total however the various components are estimated. A 1996 publication by the U.S. National Defense University (NDU)

⁸² *The United States and Japan: Advancing Toward a Nature Partnership*, U.S. National Defense University, Institute for National Strategic Studies, October 11, 2000, p. 4. Armitage was the co-director of the project with Joseph Nye, Assistant Secretary of Defense during the Clinton Administration.

⁸³ Prepared by Richard Cronin, Foreign Affairs, Defense, and Trade Division, October 2001.

calculated the value of interregional cargoes transiting the Straits of Malacca and Sunda through the Spratly Islands area at \$568 billion annually, mainly attributed to Europe, Japan and other countries of Northeast Asia (South Korea, Taiwan, and Hong Kong), and the Southeast Asian economies. As the NDU report noted, traffic moving West to East is dominated by bulk cargoes such as oil, iron ore, and coal destined for the manufacturing economies of Northeast Asia, while manufactured goods tend to move southward and westward towards markets in Southeast Asia. The United States has a relatively small stake in these shipments, which predominantly serve Japan and other industrialized economies of Northeast Asia. Since these data were compiled, the PRC also has emerged as a major destination for Persian Gulf oil and point of origin for manufactured goods shipments. From this perspective, the primary U.S. interest may be in what the authors of the NDU study term “maritime stability,” which is essential to freedom of navigation and the smooth functioning of the global trading system.⁸⁴ Equally important, however, are the increments of regional economic growth that would be gained or lost depending on whether the disputes are resolved peacefully (or at least contained) or become sources of instability and conflict.

The possibility of a military conflict over maritime territorial disputes has been of particular concern to a number of members of ASEAN, especially those who have disputes with China. ASEAN countries, which have prospered in recent years through export-led growth, are worried both about the potential loss of valuable resources rights and the disruption of trade and commerce that could result from a PRC military move to seize territory in the Spratlys or the oil fields in the Paracels.⁸⁵ China, for its part, has denied any intention of disrupting sea lines of communication (SLOC) in the South China Sea. In the midst of its assertive moves to seize Mischief Reef, the PRC foreign ministry asserted in April 1995, “While safeguarding its sovereignty over the Nansha (Spratly) islands and its maritime rights and interests, China will fulfill its duty of guaranteeing freedom of navigation for foreign ships and air routes through and over the international passage of the South China Sea according to international law.”⁸⁶

Resources Affected by Territorial Disputes

The total value of natural resources that are affected in one way or another by the maritime territorial disputes cannot be established with any precision, since the existence and value of many of the resources such as offshore oil and seabed minerals are largely speculative. Fisheries are probably the most clearly measurable resource, and appear to be uppermost in the case of the Senkakus/Diaoyutais dispute between

⁸⁴ Noer, John H. (with David Gregory), *Chokepoints: Maritime Economic Concerns in Southeast Asia*, National Defense University, Institute for National Strategic Studies (in cooperation with the Center for Naval Analyses), Washington, DC, 1996.

⁸⁵ Weeks, Stanley B., “Sea Lines of Communication (SLOC) Security and Access,” University of California, Institute on Global Conflict and Cooperation, Policy Paper 33.(http://www-igcc.ucsd.edu/publications/policy_papers/pp3305.html)

⁸⁶ Weeks, op. cit.

Japan and China (and Taiwan). The very word *diaoyutai* is said to mean “fishing platform or terrace” in the Chinese Mandarin dialect.⁸⁷

Deep sea resources, especially in the area around the Spratlys and the Paracels in the South China Sea, are by all accounts extensive, but no meaningful value can currently be assigned to these resources. Whatever the value of the resources, their exploitation currently is limited by the territorial disputes, since these highly capital-intensive activities generally require the participation of multinational companies which are very sensitive to issues of conflicting legal claims.

Already, however, the South China Sea area is the source of about 1,367,000 barrels per day in oil output, involving eight nations, with about half being accounted for by Malaysia, and one-fifth by China. This output is slightly more than U.S. production in the Gulf of Mexico, about one-fourth of the North Sea output, and just a small fraction of the 19,226,000 barrels produced in the Persian Gulf. Chinese claims or claims that are implied in Chinese produced maps reportedly include oil and gas producing areas of Indonesia (Natuna Island group), the Philippines, Malaysia, and Vietnam. By one account, the “most optimistic western estimates” are that the area around the Spratly Islands themselves may hold 1-2 billion barrels, which might yield a maximum output of 180,000-370,000 per day – equivalent to the current production of Brunei or Vietnam.⁸⁸

The “Economics” of Using Armed Force to Resolve Disputes

Although nations often cast economic concerns aside when responding to armed attacks or armed challenges to their territorial interests, the consequences of initiating military action to resolve territorial disputes tend to have a deterrent effect. A number of the East Asian territorial disputes, in fact, are the residue of major military conflicts or the outcome of colonial-style expansion that took advantage of periods of weakness or collapse involving one or more of the claimants. Disputes such as those between China and Japan, and between Japan and either of the Koreas, could provide minor military confrontations, but are not expected to lead either to full scale war or to the change of possession of the disputed territories.

The major exception is the PRC-Taiwan issue, which is a dispute of a very different nature. Clearly, if the PRC were to succeed in gaining control of Taiwan either by negotiation or force, the geopolitical map of East Asia would change dramatically. The economic consequences would depend on how the scenario originated and played out, but they certainly would be major. One clearly identifiable consequence would be Beijing’s acquisition of Taiwan’s 200 nautical mile EEZ.

⁸⁷ Ting, David K., The World Paper Online, December 1996.

⁸⁸ Federation of American Scientists (FAS), Military Analysis Network <www.fas.org/man/dod-101/ops/war/spratly.html>

Mutual Vulnerabilities

The PRC is generally viewed as the power most likely to upset the regional status quo by using military force – a source of some anxiety in Southeast Asia, especially among claimants to disputed territories – but the PRC also has its own vulnerabilities. China became a net oil importing nation in 1993 and currently imports about 20 percent of its oil, mainly from the Persian Gulf. These imports are expected to surge to 40 percent of total domestic consumption by 2010, and they appear to be a significant motive for Beijing’s efforts to develop its own oil and gas reserves in Xinjiang and to construct oil pipelines from Xinjiang and from Central Asian oil supplies. Because of the rapid – almost exponential – growth of China’s oil and gas consumption, these overland projects are not likely to end China’s dependence on sea-borne shipments. Also, because of the vast sums and special technologies required for these massive planned pipeline projects, China has entered into partnerships with multinational oil companies, notably BP-Amoco and ExxonMobil. The PRC’s two largest state-owned oil companies have also listed shares of subsidiaries on Wall Street in order to raise funds for pipeline construction.⁸⁹ In theory, then, the U.S. Government could counter any Chinese efforts to disrupt sea-lanes in the South China Sea by military, diplomatic, and financial means.

Predominance of Interregional Maritime Trade

The largest share of sea-borne traffic in areas subject to maritime territorial disputes is accounted for by Asian countries, particularly Japan. The Japanese economy, despite a decade-long slump, remains the largest economy in the region and the “core” economy for Northeast and Southeast Asia. In Southeast Asia, especially, Japan is usually the first or second (after the United States) source of foreign direct investment (FDI), and shipping traffic is dominated by the movement of raw materials from Southeast Asia to Japan and manufactured goods from Japan to Southeast Asia. A large share of interregional trade in Southeast Asia involves shipments of parts and components by Japanese companies for local assembly operations. Overall, export manufacturing in Southeast Asia tends to be linked backwards to Japanese technology, parts and components, and forward to the U.S. and other third markets.⁹⁰

Economic Implications for the United States

Given the range and nature of the U.S. economic stake in the disputed territories in the maritime periphery of China, and the issues posed by conflicting claims and concepts of international law, a number of conclusions are suggested. First, none of these disputes would be of major importance to the United States were it not for the

⁸⁹ Chan, John, “China Pushes into Central Asia for Oil and Gas,” World Socialist Web Site (WSWS), News and Analysis, Jan. 3, 2001[www.wsws.org/articles/2001/Jan2001/oil-j03_prn.shtml]; Xu Xiaojie, “Oil and Gas Linkages Between Central Asia and China: A Geological Perspective,” James A. Baker III Institute for Public Policy, Rice University [www.rice.edu/projects/baker/Pubs/studies/xuchina/xuchina.html].

⁹⁰ Bernard, Mitchell and Ravenhill, John, “Beyond Product Cycles and Flying Geese: Regionalization, Hierarchy, and the Industrialization of East Asia.” *World Politics*, No. 47 (January 1995): 171-172.

fact that China, a rising economic and military power, is a party to the disputes. Second, the disputed Spratly Islands have the most relevance to U.S. interests because of their importance to sea-lines of communication and the implications for control of the seabed resources if China's concept of its legal right were to be accepted. The Spratlys would appear to be of greater importance from an economic than from a military standpoint, as they are militarily indefensible. Third, economic stakes are less important to the United States than to its Southeast and Northeast Asian allies and friends. Even if the maritime disputes were resolved in China's favor, Beijing would have no logical motive or incentive to seek to interfere with international shipping save for the possible case of a cross-Straits conflict or an effort to strangle Taiwan economically. Even in this case, the main determinant would be the power of the PRC Navy, not the status of PRC claims to the Spratlys. Finally, the most important threat to U.S. economic interests is instability or conflict arising out of the maritime territorial disputes, or obstacles to resources extraction caused by disputed claims. In this respect, U.S. interests and those of all of the claimants would best be served by some form of agreement to facilitate resources sharing even without a resolution of the claims themselves.

Considering the issue from the widest perspective, U.S. economic interests in the South China Sea region may be more threatened by the sheer weight of China's economy and its tendency at the moment to draw trade and investment away from the ASEAN countries. China's economic competitiveness, which may be artificially enhanced by various distortions of the market caused by the still large state role in the economy and an undervalued currency, has enabled the PRC to attract the lion's share of inward foreign direct investment into the region. Ideally, China's entry into the WTO will create a more expanding-sum relationship, with the Chinese economy serving as an "engine of growth" for neighboring economies.

Even though direct U.S. interests in the maritime territorial disputes in East Asia may be comparatively small, the nature of economic globalization guarantees that disturbances in East Asia arising out of interruptions of shipping would reverberate in the American economy. For this reason, as well as in the interest of broader geopolitical concerns, the current deployment of U.S. military power throughout the region would appear important to supporting stability and, if necessary, enforcing rights of free passage in international sea-lanes.

Security and Strategic Issues⁹¹

For some observers, the April 2001 EP-3 incident⁹² demonstrated growing risks of confrontation in or over the maritime areas surrounding China.⁹³ In assessing these broader security ramifications, several factors argue against an aggressive posture for

⁹¹ Prepared by (name redacted), Foreign Affairs, Defense, and Trade Division, October 2001.

⁹² See CRS Report RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, coordinated by Shirley Kan.

⁹³ See, for example, Scott Snyder and Ralph Cossa, "Storm Warnings Off South China," *International Herald Tribune*, May 24, 2001; Dean Cheng, "Upon the Fields of (Black) Gold: the Spratly Islands," *China Online*, June 18, 2001.

the PRC, including: economic interdependence between the PRC and other countries, a currently weak People's Liberation Army (PLA),⁹⁴ Beijing's preoccupation with Taiwan, the PRC's own pressing internal problems, and the U.S. military presence. Nonetheless, the EP-3 incident showed that it may be prudent to also look closer at the maritime disputes that could well pose unexpected, destabilizing security crises for the United States and its allies and friends – even as the world watches the Taiwan Strait as an Asian flash point. Indeed, the George W. Bush Administration's Quadrennial Defense Review (QDR), released in September 2001, highlighted the “East Asian littoral” (south of Japan through Australia and into the Bay of Bengal) as a “particularly challenging area.”⁹⁵

PLA Capabilities

Even while the PLA pursues gradual modernization of elite, mobile segments of the armed forces, experts assess PLA capabilities as limited today, so that it would have difficulty militarily enforcing its many maritime claims. In 1996, the Center for Naval Analysis assessed the prospects of the PLA Navy (PLAN) becoming a “blue water” navy compared to a “green water,” or regional, navy.⁹⁶ The study found that the PRC cannot indigenously develop and build even a regional navy by 2010. It could choose to reverse-engineer a regional navy, but such a process would take more than 15 years (perhaps by 2020). If China enjoys an optimistic economic growth rate of 8 percent per year for 15 years and it purchases naval assets from abroad, it could buy a “green water” navy, but not a “blue water” one. Thus, American and regional observers are watchful of a longer-term PLAN strategy of first developing “green water” capabilities out to the “first island chain” early in the 21st century – which some believe could have implications for the PRC's ability to pursue maritime claims in the region – then achieving “blue water” status further out to the “second island chain” perhaps by the middle of the century.⁹⁷ According to an expert on the PLAN, its maritime ambition is one of “sea denial” – the ability to achieve regional objectives

⁹⁴ The PRC's military is collectively called the People's Liberation Army (PLA), which also includes the PLA Navy (PLAN), PLA Air Force (PLAAF), and the Second Artillery, the missile force.

⁹⁵ Department of Defense, *Quadrennial Defense Review Report*, September 30, 2001.

⁹⁶ Yung, Christopher D., *People's War At Sea: Chinese Naval Power in the Twenty-First Century*, Center for Naval Analyses report, March 1996. A “blue water” navy was defined as one having the capability of controlling the seas around China (South China Sea and East China Sea) and denying access to the Sea of Japan, the Philippine Sea, and the Northern Pacific Ocean to other navies, except the U.S. Navy. A “green water” navy was defined as one capable of achieving regional objectives (e.g., blockade of Taiwan, seizure of islands in the Spratlys, sustaining a naval force in the South China Sea, and inflicting damage on an intervening foreign navy).

⁹⁷ Kaplan, Capt. Brad, “China's Navy Today,” *Seapower Magazine*, December 1999; Cole, Bernard, “China's Maritime Strategy,” *People's Liberation Army After Next*, edited by Col. Susan Puska, U.S. Army War College, August 2000; and Japan Defense Agency, *Defense of Japan 2001: Toward a More Vigorous and Professional SDF in the 21st Century*, July 2001. Kaplan states the “first island chain” extends through the Aleutians, Kuriles, Japan, Ryukyus, Taiwan, Philippines, and the Greater Sunda islands (Brunei, Indonesia, and Malaysia). The “second island chain” consists of the Bonins, Guam, Marianas, and Palau.

while denying an adversary the use of a discrete maritime area – rather than “sea control,” the ability to command a discrete ocean area.⁹⁸

One U.S. Navy analyst has noted that even within the region, the PLAN’s capabilities are below those of the navies of Japan, South Korea, and Taiwan.⁹⁹ The PRC has focused its steady military modernization on about 10 percent of its military forces. Recognizing the limits of its own weapons development to replace obsolete systems, Beijing has turned to Moscow for advanced arms since 1990, particularly air and naval items. Currently, among the more modern parts of the PLAN are: 4 Kilo-class conventional diesel-electric submarines from Russia, 17 Ming-class and 1 Song-class conventional submarines, 2 Sovremenny-class destroyers equipped with Sunburn anti-ship cruise missiles from Russia, 1 Luhai-class destroyer, 2 Luhu-class destroyers, and 10 Jiangwei-class frigates.¹⁰⁰

The PLAN has limited air support at sea and no aircraft carriers. The modernization of the PLAN Air Force has lagged behind that of the PLA Air Force (PLAAF). The PLAAF has turned to Moscow since 1990 to acquire advanced Russian aircraft like the Su-27 fighter. Among its more modern equipment, the PRC’s naval aviation uses upgraded versions of old F-7 and F-8 fighters and B-6 bombers. The PLAN Air Force also has a limited inventory (perhaps 20) of newer, indigenous FB-7 fighter-bombers for maritime strike. The FB-7 is equipped with C-801 cruise missiles. There is also one Y-8 airborne early warning (AEW) aircraft.¹⁰¹ For longer-range operations, the PLAN Air Force has slowly developed an in-flight refueling capability. By 1996, the PLA reportedly had five converted B-6 tankers to refuel F-8 and FB-7 fighters, according to a news story that cited a classified Pentagon report.¹⁰² For the October 1, 1999 military parade, PRC official media also reported that the PLA flew its aerial refueling tankers in public for the first time.

Aside from limited advanced hardware, experts have pointed to shortcomings in PLA training and personnel, including scripted war games, poor logistics, inadequate maintenance, rigid command, and lack of combined arms and joint operations. Although fleet exercises are conducted several times a year, “there is little integration between naval air and surface units, and even less integration of naval operations with units of either the PLA Air Force or Army.”¹⁰³

⁹⁸ Cole, Bernard D., *The Great Wall At Sea* (Annapolis: Naval Institute Press, 2001).

⁹⁹ Kaplan, op. cit. Captain Kaplan is a former U.S. Naval Attache to the PRC.

¹⁰⁰ Kaplan, op. cit; *The Military Balance 2000-2001*, International Institute for Strategic Studies, October 2000; and CRS Report RL30700, *China’s Foreign Conventional Arms Acquisitions: Background and Analysis*, Shirley Kan (coordinator).

¹⁰¹ Allen, Ken, discussion at a conference. See McDevitt, Michael, “The PLA Navy: Past, Present, and Future Prospects,” conference report, Center for Naval Analyses, May 2000; *The Military Balance*, 2000-2001, op. cit.

¹⁰² Gertz, Bill, “Chinese Arms Buildup Increases Attack Range,” *Washington Times*, March 12, 1996.

¹⁰³ Kaplan, op. cit.

Still, the PLA likely recognizes its poor performance and can be expected to make progress in carrying out more realistic operations. Even the overall glowing accounts in official media have mentioned certain problems in PLA capabilities. For example, one report on a PLAN exercise in the East China Sea in March 2000 said that units of the East Sea Fleet tended to repeat training routines year after year, so that their commanding officers passed evaluations without problems, but officers now emphasize “strategizing skills.”¹⁰⁴ Another report in 2001 noted that surface ships and submarines have not trained together, and “such training practices have lagged far behind what is needed in real war.”¹⁰⁵

The PLAN has demonstrated some capacity to deploy on long voyages. In 1997, the PLAN dispatched a multi-ship task group to Southeast Asia and another to North, Central, and South America. In March 1997, a contingent of three PLAN ships sailed across the Pacific for port visits in Honolulu and San Diego – the first time to the U.S. mainland – then sailed on to Mexico, Peru, and Chile.¹⁰⁶ In August 2001, two PLAN ships left their East Sea Fleet port of Wusong for the first PLAN visit to Europe, with scheduled port calls in Germany, Britain, France, and Italy.¹⁰⁷ In addition, the PLAN has taken initial steps to train with the Russian navy. In October 1999, for the 50th anniversary of the founding of the PRC, ships of the Russian Pacific Fleet sailed to Shanghai and participated in a naval exercise with the PLAN for the first time in four decades.¹⁰⁸

In April 2001, after a PLAN F-8 fighter collided with a U.S. Navy plane and crashed into the sea, the PLA used the opportunity to launch its largest search operation, publicly touted by PRC authorities as a mission to rescue the lost F-8 pilot. The PLA reported that it carried out the search and rescue operation in the South China Sea for over 10 days, quickly deploying more than 110 aircraft, over 100 naval ships, over 1,000 civilian boats, and more than 55,000 personnel. According to subsequent PLA reports, PRC military forces learned from this experience how to search for missing personnel and equipment as well as how to launch an anti-search and rescue operation “to prevent the enemy from mounting a search and rescue operation, thus causing more casualties or damage to the enemy.”¹⁰⁹

PLA Assertiveness and Confrontations

Even as the PLA has struggled with limited capabilities, it nonetheless has increasingly asserted Beijing’s perceived sovereign rights and territorial claims around a Sinocentric “periphery,” contributing to the air and maritime confrontations with

¹⁰⁴ *Jiefangjun Bao [Liberation Army Daily]*, April 13, 2000, via FBIS.

¹⁰⁵ *Jiefangjun Bao [Liberation Army Daily]*, June 19, 2001, via FBIS.

¹⁰⁶ These were a Luhai-class destroyer (the Harbin) and a Luda III-class destroyer (the Zhuhai), accompanied by a Nanyun-class oiler (the Nancang),

¹⁰⁷ These were a Luhai-class destroyer (the Shenzhen) and an oiler (the Fengcang). *Xinhua*, August 23, 2001 (via FBIS); *People’s Daily* (online), August 23, 2001.

¹⁰⁸ *Asia Week*, Hong Kong, October 11-17, 1999, via FBIS.

¹⁰⁹ *Jiefangjun Bao [Liberation Army Daily]*, May 8, 2001, via FBIS.

regional neighbors and the United States. In its 1992 Law on Territorial Waters and Contiguous Areas, the PRC expressly asserted the PLA's "right" to use force to enforce territorial claims. The following discussion briefly reviews the PLA's publicly reported confrontations in or over the maritime areas beyond the PRC's coast, from the Yellow Sea in the north to the East China Sea, Taiwan Strait, and South China Sea.¹¹⁰

Offshore Islands. In 1954, as the United States and the Republic of China (ROC), or Taiwan, discussed a defense treaty,¹¹¹ the PLA fired artillery at the offshore islands of Quemoy and Matsu held by Taiwan forces. The PLA again bombarded the offshore islands in 1958.¹¹²

South China Sea. In 1974, during the Vietnam War, the PLAN gained control of all the Paracel Islands in the South China Sea by seizing the Western Paracels from South Vietnam.¹¹³ In 1988, the PLA forcefully ousted Vietnamese forces, sank 3 Vietnamese ships, and took control of six islands in the Spratlys.¹¹⁴

USS Kitty Hawk in the Yellow Sea. In October 1994, the U.S. aircraft carrier, USS Kitty Hawk, faced a three-day encounter with a PLAN Han-class nuclear attack submarine in the Yellow Sea near the Korean peninsula. After the Kitty Hawk's anti-submarine aircraft detected and tracked the Han sub, PLA fighters scrambled toward the U.S. aircraft. The PLAN submarine then returned to its base at Qingdao on the Shandong peninsula. Later in Beijing, the PLA sent a warning to the U.S. Naval Attache, saying that in a future incident, the PLA would open fire.¹¹⁵

Mischief Reef. In February 1995, the PLAN took Mischief Reef (about 150 miles west of the Filipino island of Palawan), this time asserting territorial claims against the Philippines, a treaty ally of the United States.¹¹⁶

¹¹⁰ The concern about PRC willingness to use force was discussed earlier in CRS Report 94-32, *China as a Security Concern in Asia: Perceptions, Assessments, and U.S. Options*, January 5, 1994, by Robert Sutter and Shirley Kan.

¹¹¹ The Mutual Defense Treaty was signed on December 2, 1954, and was terminated at midnight on December 31, 1979.

¹¹² Clough, Ralph N., *Island China* (Cambridge, MA: Harvard University Press, 1978).

¹¹³ Ross, Robert S., *The Indochina Tangle: China's Vietnam Policy 1975-1979* (Columbia University Press, 1988); Marko Milivojevic, "the Spratly and Paracel Islands Conflict," *Survival*, January/February 1989; CRS Report 92-614 S (archived), *East Asia: Disputed Islands and Offshore Claims – Issues for U.S. Policy*, by Robert Sutter, July 28, 1992.

¹¹⁴ Cushing, Jerry, "Beached Again on Shoals," *Far Eastern Economic Review*, March 17, 1988; Milivojevic, op. cit.

¹¹⁵ Mann, Jim and Art Pine, "Face-off Between U.S. Ship, Chinese Sub Is Revealed," *Los Angeles Times*, December 14, 1994; Barbara Starr, "'Han Incident' Proof of China's Naval Ambition," *Jane's Defense Weekly*, January 7, 1995.

¹¹⁶ Branigin, William, "China Takes Over Philippine-Claimed Area of Disputed Island Group," *Washington Post*, February 11, 1995; Mayan Chandi et al, "Territorial Imperative,"

1st Missile Exercises Against Taiwan. The United States announced in May 1995 that it would issue a visa for Taiwan President Lee Teng-hui to make a private visit to Cornell University. Thereafter, the PLA's Second Artillery launched "test-firings" of M-9 short-range ballistic missiles into target areas in the East China Sea in July, and ground, air, and naval forces (at times under the command of the Nanjing Theater of Operations) conducted military exercises in August, October, and November – ahead of Taiwan's legislative elections in December.

Senkakus. In August 1995, two PLAAF Su-27 fighters flew close to the Japanese-held Senkaku (Diaoyu) Islands, and two Japanese Air Self-Defense Force F-4 fighters intercepted them.¹¹⁷

2nd Missile Exercises Against Taiwan. In March 1996, ahead of Taiwan's first democratic presidential election, the PLA's Second Artillery again "test-fired" M-9 ballistic missiles toward Taiwan, this time close to the two Taiwanese ports of Keelung and Kaohsiung. The United States deployed two aircraft carrier battle groups, led by the USS Independence and USS Nimitz, to the vicinity. Also, PLA naval and air forces conducted live-fire exercises in the Taiwan Strait, and the Nanjing Theater of Operations commanded ground, air, and naval exercises.

PLAN Ships Near Japan. With disputes between Beijing and Tokyo over the sovereignty of the Senkaku (Diaoyu) Islands and their respective EEZs, Japan has reported increased assertiveness on the part of PLAN ships in waters close to Japan. (Japan has also complained about the PRC's civilian marine survey ships operating close to Japan on numerous occasions, including the 1996 tensions.) In May 1999, 12 PLAN ships sailed to within 70 miles of the Senkakus and were confronted by a P-3 patrol aircraft of the Japanese Maritime Self-Defense Force. Again, in July 1999, 10 PLAN ships were seen near the Senkakus. In March 2000, two PLAN Luda-class destroyers and one Jiangwei-class frigate sailed to about 220 miles northwest of Amami-Oshima (north of Okinawa). In May 2000, the PLAN's Yanbing-class survey ship/icebreaker sailed around Japan, in what Japanese media described as a trip to collect data for PLAN submarines and information on Japanese radar sites. In July 2000, another PLAN ship sailed off the coast of Japan. The Japan Defense Agency (JDA)'s 2001 Defense White Paper reported that the vessel was a PLAN missile observation survey and research ship which rotated its antenna off the Kii Peninsula to collect intelligence.¹¹⁸

¹¹⁶ (...continued)

Far Eastern Economic Review, February 23, 1995. In March 1995, Members of the House and Senate introduced resolutions (H. Res. 114, S. Res. 97) urging U.S. support for peace and stability in the South China Sea. It was not until 3 months later that the State Department delivered the U.S. response, when a spokesperson stated at a news briefing on May 10, 1995, that "the United States strongly opposes the use or threat of force to resolve competing claims and urges all claimants to exercise restraint and to avoid destabilizing actions." The spokesperson, however, did not identify the PRC as having provoked tensions and was careful to say that "we're not suggesting that the threat is coming from any particular direction."

¹¹⁷ *AP* and *Kyodo*, August 24, 1995.

¹¹⁸ *Okinawa Times*, May 15, 1999; *Kyodo*, July 15, 1999; *Sankei Shimbun*, April 18, 2000; (continued...)

USS Bowditch in the Yellow Sea. According to one news report, in March 2001, a PLAN Jianghu III-class frigate (the Huangshi) confronted the U.S. Navy's surveillance ship (the USS Bowditch), reportedly closing to within 100 yards of the U.S. ship in the Yellow Sea near the Korean peninsula. The PLAN ship allegedly forced the U.S. vessel to leave the area, which the PRC claims as its EEZ.¹¹⁹

EP-3 Incident. In early April 2001, a serious incident occurred after a PLAN F-8 fighter collided with a U.S. Navy EP-3 reconnaissance plane over the South China Sea in international airspace.¹²⁰ The F-8 pilot was reported killed, while the 24 U.S. crew members survived the near-fatal accident and made an emergency landing on the PRC's Hainan Island. The PRC detained the U.S. personnel for 11 days. U.S. military officials attributed the accident to a pattern of aggressive interceptions of U.S. reconnaissance flights, beginning in December 2000, by PLAN units based in the south on Hainan Island. Washington had already formally protested to Beijing about the dangerous flying of its PLA pilots. Later, the PRC refused to allow the EP-3 to be repaired and flown out of China. U.S. forces dismantled the aircraft and removed it by cargo plane.

Australian Ships in the Taiwan Strait. In the wake of the F-8/EP-3 collision, in mid-April 2001, the PLAN challenged the passage of three Australian naval ships in the Taiwan Strait. As two Australian frigates and a supply ship sailed from South Korea to Hong Kong through the strait, a PLAN patrol ship demanded that the Australian ships return on their course and leave the area. The Australian ships reportedly refused to change course, stating they were in international waters.¹²¹

Strategic Security Challenges

The PLA's modernizing efforts and willingness to threaten the use of force for dispute resolution present security challenges to the PRC's neighbors and the United States, causing concern among analysts and policymakers about some aspects of Beijing's strategy. PRC military strategy has sought to be able to win a regional high-tech war along China's periphery, including in the Taiwan Strait, and East and South China Seas. For the PLAN, the new maritime strategy is one of offshore defense, initially advocated by the PLAN's first commander, Xiao Jinguang (1949-1979), and approved by Mao Zedong in 1975 as a way to project the PLA's perimeter of maritime defense farther away from coastal waters. High-level promotion of this strategy has been mainly attributed to General Liu Huaqing, vice chairman of the

¹¹⁸ (...continued)

Kyodo, June 10 and 19, 2000; *Sankei Shimbun*, July 15, 2000, (via FBIS); JDA, *Defense of Japan 2001*, July 2001.

¹¹⁹ Gertz, Bill, "U.S. Spy Plane Lands in China After Collision," *Washington Times*, April 2, 2001.

¹²⁰ CRS Report RL30946, *op. cit.*

¹²¹ *Sydney Morning Herald*, April 29, 2001.

PLA's top command, the Central Military Commission (CMC), from 1989 to 1997.¹²² Although there may be different analyses about the validity of the PLAN's focus on the "island chains," the record shows that the PLAN has been able to procure some PRC and Russian destroyers, submarines, and aircraft, and it has expanded its activities further out into the maritime areas off China's coastline.¹²³

Still, it is not clear, with the available indicators, that the PLAN per se has particularly significant influence on PRC decision-making. Liu Huaqing rose through the ranks in the PLAN and promoted its role in China's military strategy, but he also wore an army uniform while in the CMC – symbolizing the army's traditional dominance of the PLA. As a member of the CMC as well as of the Politburo Standing Committee, the PRC's highest decision-making body, Liu epitomized the overlapping civilian and military roles of top PRC leaders. (Jiang Zemin is at once the chairman of the CMC, President of the PRC, and general secretary of the Chinese Communist Party.) When Generals Liu and Zhang Zhen retired in 1997, their roles as the highest-ranking PLA officers were taken by Generals Zhang Wannian and Chi Haotian, who were not from the PLAN, and neither inherited Liu's place on the Politburo Standing Committee. Thus, Liu Huaqing did not represent a particular "PLAN seat" on the CMC or Politburo Standing Committee, and any supposed PLAN or broader PLA influence at the apex of decision-making likely was owed to Liu personally.

Moreover, during the April 2001 aircraft collision incident involving the EP-3 plane, President and CMC chairman Jiang Zemin, vice premier Qian Qichen, and the Foreign Ministry took the lead in taking a hardline stance with the United States, while top PLA officers followed in stance and appearance with no greater inflammatory rhetoric. That incident suggested that, while military leaders tend to take conservative stances and advocate bigger defense budgets for better arms, the Beijing leadership may well be united with strong views on issues of national security and sovereignty.¹²⁴

As part of the strategy of offshore defense, the PLAN has steadily expanded its presence in the South China Sea, pre-positioning supplies and equipment as well as staking physical claims to the disputed territory. The PLA occupied the most important Paracel Island, Woody Island (Yongxing), in 1974.¹²⁵ In addition to having built reinforced facilities on Mischief Reef, the PLA in 1999 was reported by U.S. intelligence to be constructing a fuel-storage facility next to an airstrip on Woody

¹²² General Liu was PLAN commander (1982-1987) and deputy secretary general of the CMC (1987-1989). He was also a member of the Politburo Standing Committee from 1992 to 1997.

¹²³ For debates about PLAN leadership and the issue of "island chains," see Allen, Kenneth, "PLA Navy Building at the Start of the New Century," conference report on the second conference on the PLA Navy, Center for Naval Analyses, July 2001.

¹²⁴ CRS Report RL30946, *China-U.S. Aircraft Collision Incident of April 2001: Assessments and Policy Implications*, coordinated by Shirley Kan.

¹²⁵ Milivojevic, op. cit.

Island, building up an outpost there.¹²⁶ In November 1998, the Philippines released photographs of PLAN structures on the reef and naval ships in the vicinity.¹²⁷ Also, the PLAN has replaced shacks built on stilts with permanent, reinforced concrete “sea bastions.” The forces also have built platforms for helicopters to land and take off on Yongshu (Fiery Cross) Reef and Zhubi (Subi) Reef, recognizing that “supply is the lifeline of the Spratlys.” Now, according to the PLA, helicopters have been able to take off from large supply ships and deliver large quantities of supplies to the reef islands. Moreover, equipment has been delivered for “rapid reaction reconnaissance” to observe and detect naval and air movements and the “state of the enemy.” The PLAN has set up refrigerators to store fresh food and water storage ponds to ensure a supply of clean water for several months.¹²⁸ In May 2001, one news account stated that the PLAN also was building an outpost on Scarborough Shoal.¹²⁹

The PLAN’s assertiveness around the region has been remarkable, because it has occurred even with the increased tensions over Taiwan since 1995. This boldness may reflect little concern in Beijing over contentions with multiple neighbors on more than one front. Beijing appears to believe that it can afford to contend with Taipei and Washington in the Taiwan Strait, even as it confronts other neighbors elsewhere on the periphery. There are several possible explanations for the PLAN’s increased challenges in the region.

Beijing may perceive its strategy to be a necessary defense to counter a U.S.-led “chain” of neighbors undermining China’s interests. As early as August 1954, PRC Premier Zhou Enlai (Chou En-lai) criticized the United States for building a “chain” of alliances around China.¹³⁰ Beijing’s sense of insecurity has increased since the end of the Cold War with one superpower commanding what Beijing sees as unilateral powers. More recently, one expert at the China Institute of Contemporary International Relations (CICIR) wrote that “the United States is preparing to construct a strategy chain to contain China,” through ties with and presence in Japan, South Korea, India, Taiwan, and Guam.¹³¹ Other articles also discuss the inclusion of Guam, Singapore, India, and Indonesia in this anti-China “chain.”¹³² The PRC may seek to prevent perceived attempts to encircle China, safeguard maritime choke-points

¹²⁶ Gertz, Bill, “China Makes Upgrades to Island Base,” *Washington Times*, February 11, 1999.

¹²⁷ *Reuters*, November 5, 1998; *Defense News*, November 16-22, 1998.

¹²⁸ *Jiefangjun Bao [Liberation Army Daily]*, April 18, 2000. All quotes in the accompanying paragraph are from this article.

¹²⁹ Gertz, Bill, “Chinese Navy Deploys Warships to Disputed Spratly Island China,” *Washington Times*, June 25, 2001.

¹³⁰ Clough, op. cit.

¹³¹ Fu Mengzi, “Strategic Considerations in U.S. China Policy,” *Xiandai Guoji Guanxi [Contemporary International Relations]*, June 20, 2001, translated by FBIS.

¹³² *Jiefangjun Bao [Liberation Army Daily]*, September 6, 2000; *Zhongguo Qingnian Bao [China Youth Daily]*, August 2, 2001; *Renmin Ribao [People’s Daily]*, August 17, 2001, translated by FBIS.

as its economy develops, protect historical territorial claims and resources as other countries have, and defend against invasions from the sea.

Moreover, Beijing may calculate that its strategy to successfully claim more maritime territory involves little risk or strong reaction because of the attraction of its economic growth, the weakness of some neighbors, the lack of a strong U.S. position on territorial claims, and worldwide attention to the larger issues of the Koreas and Taiwan. The PLAN efforts have entailed modest acquisitions of advanced equipment, and the PLA, for the most part, has not disrupted civilian navigation of international waters and airspace.

But even if Beijing's strategy is undertaken in defense, there are evident elements of preemption, strategic initiative, and offensive operations – perhaps necessary for a military relying on asymmetric tactics and inferior equipment. According to the PLA's media, destroyers in the East Sea Fleet practiced “launching missiles before the enemy,” noting that “the time needed for responding to a missile attack is crucial to gaining the initiative by striking the enemy first.”¹³³ The surprise aspects may well involve the use of difficult-to-detect submarines. A PRC newspaper wrote that two PLAN submarines had trained in the South China Sea to destroy “an invading ‘enemy’ carrier battle group” and to take “the initiative in launching attacks.”¹³⁴

Further, the PRC strategy in part relies on developing sufficient military force in order to achieve political objectives in cross-strait policies or diplomacy with other neighbors. The PRC's threats to use force may not be limited to intimidation of Taipei. For example, at the PRC-Japan summit in Tokyo on November 26, 1998, Prime Minister Keizo Obuchi refused to give Jiang Zemin a written apology for Japanese atrocities during World War II, and declined to repeat President Clinton's opposition to Taiwan's membership in the United Nations.¹³⁵ After this tense meeting, PLAN ships operating close to Japan became an issue in their bilateral relations. PLA confrontations directed against countries such as Japan, the Philippines, and Australia also are directed at undermining U.S.-led alliances, raising the costs to U.S. regional allies, or bringing into question U.S. commitments in the region.

In addition, while a Taiwan scenario has provided an important catalyst for PLA modernization since 1995, NATO's mistaken bombing of the PRC embassy in Yugoslavia in 1999 has apparently spurred the PLA to accelerate modernization efforts.¹³⁶ PLAN ships have carried out reconnaissance operations closer to Japan since 1999, missions believed by some in Japan as partly related to PLAN submarine

¹³³ *Jiefangjun Bao [Liberation Army Daily]*, January 28, 2001.

¹³⁴ *Zhongguo Qingnian Bao [China Youth Daily]*, July 23, 2000, via FBIS.

¹³⁵ *Far Eastern Economic Review*, December 10, 1998.

¹³⁶ For a discussion of the PRC leadership's strategic debate in 1999, see: David M. Finkelstein, “China Reconsiders Its National Security: ‘the Great Peace and Development Debate of 1999,’” Center for Naval Analyses, December 2000. The Secretary of Defense also mentioned this debate in China in the 2000 report to Congress, “Military Power of the People's Republic of China.”

operations. PLAN fighters and ships have confronted foreign militaries with increased boldness and frequency, a factor contributing to the F-8's collision with the U.S. Navy EP-3 plane. As PLA training takes on greater urgency and tougher tasks, especially beyond China's coast, further confrontations with regional or U.S. forces may occur.

Thus, there are continuing debates about whether the PRC's strategy is essentially defensive or offensive, aimed at the status quo or at expanding PRC power, and limited or not to the Taiwan question. At the same time, the generally conservative and insecure leadership in Beijing has looked offshore to extend its maritime perimeter. In efforts to project the PLA's presence, it has heightened multi-front assertiveness despite limited capabilities, incorporated preemptive moves as advantageous aspects of strategy and doctrine, and used the military to pursue political objectives. These trends have prompted increasing concerns in Asia and the United States.

Options and Implications for the United States¹³⁷

As territorial disputes have continued, a number of options have been suggested for addressing the maritime claims and freedom of navigation issues in the region. Among these are the following:

- Assurances from all claimants that there will be no further seizure of territory.
- Confidence-building measures, including regular military exchanges and greater transparency on military spending.,
- Regular multilateral discussions involving trade-offs and compromise for competing claims.
- Clearer understanding of what is meant by "joint resource development," and exploration of establishing a relevant regulatory regime.
- Further clarification of and agreement on what kinds of international activity is expressly permitted in EEZs.
- Oversight authority of shared EEZs by an agreed-upon international body.

Nothing on the policy horizon suggests that either the United States or the PRC is likely to change traditional objectives with respect to Asian maritime areas. The United States will continue to focus on assuring freedom of navigation along with the economic and physical well-being of its regional allies, while the PRC will concentrate more on protecting its offshore economic interests and enhancing naval security along its southern and eastern flanks. Given the stronger U.S. policy emphasis on Asia, increasing global transport of goods through regional waters, and long-term projected growth of PRC economic and military power, U.S. and PRC interests in the region are likely to continue to bump up against one another. Add to this the intersection of

¹³⁷ Prepared by (named redacted), Foreign Affairs, Defense, and Trade Division, November 2001.

so many other political interests – including the volatility of the Taiwan issue, the growing PRC concern over a more active regional military role by Japan, and the network of U.S. defense commitments with some claimant countries – and it becomes apparent how far-reaching the consequences of serious diplomatic and military confrontations could be.

Nevertheless, some analysts have argued that it is this very tangle of diplomatic, economic, and political interests that suggests a series of regional “grand bargains” may be possible. As the current research shows, there are significant economic, political, and logistical constraints on the ability of any regional military – even the PLA – to effectively enforce all its maritime claims. Moreover, national economic imperatives and the desire to protect global trade relationships give claimant countries an incentive to reach accommodations that will minimize costs and maximize benefits.

Appendix A

Territorial Claims: Cases in International Law¹³⁸

The fundamental issue of contention with respect to the Spratly and other islands in contention concerns which state is (or states are) sovereign. International courts have rendered several decisions in the past with respect to the ownership of islands that give some guidance as to the legal criteria that may apply to the competing claims of China, Vietnam, Malaysia, the Philippines, Taiwan, Indonesia, Japan, and Brunei as follows:

- In the *Island of Palmas Case (or Miangas)*¹³⁹ in 1928 both the United States and the Netherlands claimed sovereignty over an island between the archipelago of the Philippines and what was then the Dutch East Indies archipelago. The U.S. contended that the island had first been discovered by Spain in the 16th century, that Spain's title had been ceded to the United States in the Treaty of Paris at the end of the Spanish-American War in 1898, and that, in any event, the island's proximity to the Philippines sufficed to establish U.S. sovereignty. But the Permanent Court of Arbitration held that discovery alone is insufficient to confer title; actual possession and the effective exercise of sovereign authority, it said, are more important determinants. It further held that international law lends no support to a claim based on "contiguity" or proximity. Because the Netherlands established that it had effectively, peacefully, and openly exercised political authority by means of agreements with native princes on the island for 200 years before and after the Treaty of Paris, the court held that it had, by prescription, acquired a valid title of sovereignty.
- In the case of *Arbitral Award on the Subject of the Difference Relative to the Sovereignty over Clipperton Island*¹⁴⁰ in 1932, France and Mexico vied for sovereignty over an atoll 600 miles south of Mexico in the Pacific Ocean. French sailors had landed on the atoll in 1858 and claimed it for France; and France subsequently publicized that declaration. But it had made no further effort at occupation. Mexico, for its part, contended that the atoll had been claimed by Spain in the 18th century and devolved to Mexico as the successor state in 1836, and that its sovereignty was further evidenced by its removal of several Americans who were found mining the guano beds on the atoll in 1897. The arbitrator (King Victor Emmanuel III of Italy) noted that ordinarily an initial claim of sovereignty must be complemented by an effective occupation for a territorial acquisition to be valid but that "[t]here may be cases where it is unnecessary to have recourse to this method." It may be

¹³⁸ Prepared by Dave Ackerman, American Law Division, September 2001.

¹³⁹ 22 AJIL 867 (1928).

¹⁴⁰ 26 AJIL 290 (1932).

sufficient, he concluded, that an uninhabited territory remains “at the absolute and undisputed disposition” of the state making the claim. Finding no evidence to support the claim of Spanish discovery and occupation, and determining that France had not only claimed the island but had widely publicized that claim and protested occupancy by others, he held Clipperton Island to have been “legitimately acquired by France.”

- In the *Minquiers and Ecrehos Case*¹⁴¹ in 1953 England and France asked the International Court of Justice to determine which country was sovereign over two islands lying between the British Channel Island of Jersey and the French coast. The court found historical documents to lend somewhat more support to England’s claim than that of France but said that “any definitive conclusion as to ... sovereignty ... must ultimately depend on the evidence which relates directly to possession.” The court concluded that the evidence demonstrated long-standing exercise of administrative authority over both islands by the English authorities on Jersey and, as a consequence, held England to have sovereignty over them.
- In the *Case Concerning Land, Island, and Maritime Frontier Dispute Among El Salvador, Honduras, and Nicaragua*¹⁴² in 1992, a chamber of the International Court of Justice had to determine which country owned three islands in the Gulf of Fonseca, which is located where the boundaries of the three countries meet. Spain had governed the area until 1821, and the Federal Republic of Central America had done so until 1839. But the Federal Republic had then disintegrated and given rise to the present states. The court ruled that because the islands were not undiscovered territory in 1821, sovereignty could not be established by discovery and occupation. The initial question, it said, was whether any of the contending states had succeeded to Spain’s title. But finding evidence on that to be “confused and conflicting,” the court relied instead on evidence concerning which country subsequently exercised political authority over the islands and whether the other countries acquiesced in that exercise. Finding Honduras to have exercised authority over one island since 1849 and El Salvador to have done so over two islands since the latter part of the 19th century, and discovering no evidence of contemporaneous protests by the other states, the court held that one island belonged to Honduras and two belonged to El Salvador.

These decisions, obviously, are not determinative of the contending states’ various claims to sovereignty over part or all of the islands in the South and East China Seas. But they do clarify the elements that necessarily are involved in such claims – discovery, possession, exercise of authority, and acquiescence. They also suggest that of these elements, discovery alone is a weak basis for a claim of sovereignty.

¹⁴¹ ICJ, Judgment of November 17, 1953.

¹⁴² ICJ, Judgment of September 11, 1992.

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