

# Recent Developments in the South China Sea

Implications for Peace, Stability and Cooperation in the Region

**Carlyle A. Thayer**



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## **Recent Developments in the South China Sea: Implications for Peace, Stability and Cooperation in the Region**

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### **Introduction**

This paper focuses on Chinese assertiveness in the South China Sea in 2009.<sup>1</sup> According to official policy, China promotes ‘peace, cooperation and development’ in the Asia-Pacific under the new doctrine of creating a ‘harmonious world’. China has therefore given priority to the primacy of economic growth and a peaceful international environment.<sup>2</sup> China’s phenomenal economic growth has been driven by export-orientated trade. China’s economic growth has also fueled a rising demand for resources and energy. These two factors have combined to heighten the importance, from a Chinese perspective, of ensuring that vital Sea Lines of Communication (SLOCs) remain safe and secure.

The global financial crisis has impacted negatively on China’s economy, slowing its high growth rate; nonetheless China’s economy will continue to expand. China is in an especially strong position because it holds U.S. \$2 trillion in foreign exchange reserves

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<sup>1</sup>This paper draws on Carlyle A. Thayer, ‘Maritime Strategic Overview of the Asia-Pacific Region’, in Joshua Ho, ed., *Realising Safe and Secure Seas for All: International Maritime Security Conference 2009*. Singapore: Select Publishing in association with Republic of Singapore Navy and S. Rajaratnam School of International Studies, 2009. 25-44; and Ian Storey and Carlyle A. Thayer, ‘The South China Sea Dispute: A Review of Developments and their Implications since the 2002 Declaration on the Conduct of Parties’, in Kesavan and Daljit Singh, eds., *South and Southeast Asia: Responding to Changing Geopolitical and Security Challenges*. Singapore: Observer Research Foundation of India and the Institute of Southeast Asian Studies, forthcoming.

<sup>2</sup>People’s Republic of China, *China’s National Defense in 2008*. Beijing: Information Office of the State Council of the People’s Republic of China, January 2009, 3. See also: Zhang Yunling and Tang Shiping, ‘China’s Regional Strategy’; Bates Gill, ‘China’s Evolving Regional Security Strategy’; and Robert Sutter, ‘China’s Regional Strategy and Why It May Not Be Good for America’, in David Shambaugh, ed., *Power Shift: China and Asia’s New Dynamics*. Berkeley, Los Angeles and London: University of California Press, 2005, 48-68, 247-265 and 289-305, respectively; and David Lai, ‘Chinese Military Going Global’, *China Security*, 5(1), Winter 2009, 3-9.

(2008 figures). China's domestic stimulus package, with priority on infrastructure, and China's current spree of overseas investments in energy and natural resources, will make China even more competitive internationally when global economic recovery occurs.

China's phenomenal economic growth has provided the wherewithal for the transformation and modernization of its defense forces. In many respects China's defense transformation may be viewed as part of the normal process of military modernization brought on by technological developments such as the Revolution in Military Affairs and is defensive in orientation.<sup>3</sup> For example, at the strategic level China has and is continuing to develop a robust second strike ballistic nuclear missile force based on land and deployed at sea. China has also developed a potent short- and medium-range ballistic missile capacity to deal with contingencies in the Taiwan Strait.<sup>4</sup> China's nuclear force, therefore, may be viewed as a deterrent to U.S. nuclear blackmail. Similarly, China's military build up along its eastern coast may be viewed as both a deterrent to any unilateral action by Taiwan to declare its independence from China and United States military intervention in a Taiwan contingency as it did during the crisis of 1995-96. Additionally, China's development of blue water navy may be viewed as an effort to ensure the security of SLOCs in order to overcome what Chinese defense analysts have called the 'Malacca dilemma' – the threat to China's national security by the closure of narrow straits or choke points in Southeast Asia.<sup>5</sup>

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<sup>3</sup>For nuanced assessments see: Michael D. Swaine, 'China's Regional Military Posture', and David M. Lampton, 'China's Rise in Asia Need Not Be at America's Expense', in David Shambaugh, ed., *Power Shift: China and Asia's New Dynamics*. Berkeley, Los Angeles and London: University of California Press, 2005, 266-285 and 306-326, respectively; Ellis Joffe, 'The "Right Size" for China's Military: To What Ends?', *Asian Policy*, 4, July 2007, 57-60; Michael R. Chambers, 'Framing the Problem: China's Threat Environment', *Asian Policy*, 4, July 2007, 61-66; and David M. Finkelstein, 'China's National Military Strategy: An Overview of the "Military Strategic Guidelines"', *Asian Policy*, 4, July 2007, 67-72.

<sup>4</sup>Office of the Secretary of Defense, *Military Power of the People's Republic of China 2009*. A Report to Congress Pursuant to the National Defense Authorization Act Fiscal Year 2000. Washington, D.C.: Department of Defense, 2009, 48 and 51-52.

<sup>5</sup>Ian Storey, 'China's "Malacca Dilemma"', *China Brief* (The Jamestown Foundation), 6(8), April 12, 2006 and Thomas M. Kane, *Chinese Grand Strategy and Maritime Power*. London and Portland: Frank Cass, 2002. 127-128.

The United States, Japan, Australia and several other regional countries have reiterated long-standing concerns about the size and growth of China's defense budget and the lack of transparency regarding the intentions behind increased defense expenditure. Official Chinese military budget figures are widely believed to understate the actual budget.<sup>6</sup> These states have voiced concerns that China's military build up is more than defensive. In the words of Chairman of the Joint Chiefs of Staff Admiral Mike Mullen, the strategic intent behind China's development of new capabilities 'seem very focused on the United States Navy and our bases that are in that part of the world...'<sup>7</sup> Strategic analysts argue that China has recently developed power projection capabilities out to the first island chain extending from Japan, east of Taiwan to include possessions in the South China Sea) and is now seeking to extend their range to the second island chain (including the sea of Japan, the Philippines sea and Indonesian sea, including the Marianas and Palau islands in the south) with a focus on Guam.

The tenor of Australia's current Defense White Paper is that Australia is sufficiently unsettled by China's military transformation and modernization to embark on its most expensive procurement program. This involves the acquisition of twelve submarines, new Air Warfare Destroyers and frigates, cruise missiles and 100 Joint Strike Fighters. According to *Defending Australia in the Asia Pacific Century: Force 2030*: 'we would be concerned about the emergence of a security environment dominated by any regional power, or powers, not committed to the same shared goals. It would be in our strategic interests in the decades ahead that no power in the Asia-Pacific region would be able to coerce or intimidate others in the region through the employment of force, or through the implied threat of force, without being deterred, checked or, if necessary, defeated by the political, economic or military responses of others in the region (p. 43).'

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<sup>6</sup>Office of the Secretary of Defense, *Military Power of the People's Republic of China 2009*. 31-39.

<sup>7</sup>Admiral Michael Mullen, 'Remarks and Q & A at the Navy League Sea-Air-Space Exposition', Gaylord National Resort and Conference Center, National Harbor, Maryland, May 4, 2009.

The U.S.-China relationship is not entirely an adversarial one; it contains elements of rivalry, peer competition and cooperation.<sup>8</sup> For example, the U.S. Congress, through the Taiwan Relations Act, has mandated that the Department of Defense sell defensive weapons to Taiwan, and further mandated that the U.S. Pacific Command maintain the capability to prevail in a conflict with China over Taiwan. The Taiwan question will remain a major irritant in Sino-American relations until Beijing and Taipei can settle the matter. Although China and the United States improved the tenor of their bilateral relations during the second Bush Administration, military-to-military relations were suspended by China in September-October 2008 when United States announced a major arms sale to Taiwan.

Shortly after President Obama took office, China resumed military-to-military relations and bilateral relations improved markedly. Secretary of State Hillary Clinton visited Beijing on her first official overseas trip. China's Foreign Minister was received at the White House and Presidents Obama and Hu Jin-tao met informally at the G20 summits in London and Pittsburgh. Both sides elevated their Strategic and Economic Dialogue to ministerial level.<sup>9</sup> And most significantly, President Obama declared on the eve of his first official visit China that the United States was not threatened by a rising China.

The paper is divided into five sections each covering a current issue: Sanya Naval Base, Chinese harassment of U.S. naval ships, China's unilateral moratorium on fishing in the South China Sea, proposals for extended continental shelf, U.S. policy and China's four obstacles. The paper concludes with suggestions for future cooperation.

### **Sanya Naval Base**

In 2008 commercial satellite imagery confirmed that China was constructing a major naval base at Sanya on Hainan Island. When construction at the Sanya Naval Base is completed this will be an important strategic development because this will provide China with the potential capability to extend China's military reach into the Pacific

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<sup>8</sup>Michael D. Swaine, 'Managing China as a Strategic Challenge', in Ashley J. Tellis, Mercy Kuo and Andrew Marble, eds., *Strategic Asia 2008-2009: Challenges and Choices*. Seattle: National Bureau of Asian Research, 2008, 71-105.

<sup>9</sup>James D. Steinberg, Deputy Secretary of State, 'Remarks At National Bureau of Asian Research Conference Engaging Asia 2009: Strategies for Success', Washington, D.C., April 1, 2009.

Ocean and South China Sea. In order to fully comprehend the strategic importance of the construction of naval base facilities at Sanya, it is necessary to understand both Chinese intentions and capabilities. China has so far refrained from providing any insights into the former.

As for capabilities, the piers and docks at Sanya Naval Base berth several major surface combatants and a single nuclear submarine. Further construction is underway to accommodate larger surface combatants including assault ships and eventually aircraft carriers. At the same time, China has extended an airfield on Woody Island in the Paracel islands, consolidated its facilities at Fiery Cross Reef in the Spratly archipelago, and maintains a continuing naval presence at Mischief Reef off the west coast of the Philippines. In sum China is developing an enhanced capability to exercise its sovereignty claims over the South China Sea and protect its vital SLOCs through the Malacca and Singapore Straits as well as to surge expeditionary forces into the South China Sea from these bases that considerably shorten the logistics tail.<sup>10</sup> By extension, China will also have the capacity to threaten the same SLOCs on which Japan, Taiwan and South Korea are dependent.

Other construction indicates that the Sanya Naval Base will have strategic implications for the balance of power in the region. Portions of the base are being built underground to provide facilities that cannot be easily monitored. Satellite imagery has confirmed the presence of a Chinese Type 094 Jin-class submarine since late 2007. The Type-094 submarine is a second-generation nuclear vessel and represents China's most lethal naval strike weapon. Up until now all nuclear submarines were under the command of China's Northern Fleet; this marks the first permanent deployment to China's Southern Fleet.

An analysis of construction activities that can be viewed from satellites indicate Sanya Naval Base will be capable of housing nuclear submarines capable of launching inter continental ballistic missiles. When these facilities are completed they will provide China with the potential capability to station a substantial proportion of its submarine-based

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<sup>10</sup>On June 18, 2009, General Zhang Li, a member of the Chinese People's Political Consultative Conference, recommended that China send larger surface combatants to the South China Sea and construct an air and sea port on Mischief Reef in order to control the Spratlys and bypass the Malacca Straits; L. C. Russell Hsiao, 'PLA General Advises Building Bases in the South China Sea', *China Brief* [The Jamestown Foundation], 9(13), June 24, 2009, 1-2.

nuclear deterrent capabilities there. China's most modern strategic nuclear submarine is not yet fully operational but when it is the submarine is expected to carry twelve Sea Launched Ballistic Missiles. This class of submarine will be even more potent if China succeeds in equipping the missiles with multiple warheads. Chinese nuclear subs will be able to patrol and fire from concealed positions in deep waters off Hainan island if China can develop the necessary operational skills. According to the U.S. Defense Department five more Chinese ballistic missile nuclear submarines (SSBN)<sup>11</sup> are expected to become operational next year. It remains to be seen how many these will be based at the Sanya facility.

China's naval modernization represents a challenge and potential threat to all of Southeast Asia and especially Vietnam. China is the dominant regional military power when compared to the navies of the ASEAN states. China will also present a growing challenge to the Indian Navy if it continues to extend its operations west of the Malacca Straits. India has already expressed concern about the projected growth of China's nuclear submarine fleet. The Australian Navy will also feel that its technical superiority will be not only challenged but eroded. Although China is developing niche capabilities to challenge the U.S. Navy in the Western Pacific, the People's Liberation Army-Navy (PLAN) is at present no match for the might of the United States now or a decade in the future.

## **Chinese Harassment of U.S. Naval Ships**

In February-March 2009, the United States dispatched the USNS *Impeccable* to conduct military scientific research related to Chinese submarine activity operating from Sanya Naval Base. The USNS *Impeccable* was reportedly operating 75 miles south of Hainan when, on 5<sup>th</sup> March, a PLAN frigate crossed its bow at a range of approximately 100 yards without first making radio contact. Two hours later a Chinese Y-12 aircraft repeatedly flew over the USNS *Impeccable* at low altitude. Then the PLAN frigate crossed *Impeccable's* bow again, at a range of approximately 400–500 yards. One

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<sup>11</sup>SSBN is the designation used by the U.S. Navy for a nuclear-powered ballistic nuclear missile-carrying submarine. The SS refers to a submersible ship, the B stands for ballistic missile, and the N denotes nuclear powered.

Chinese crewman used a grappling hook in an attempt to snag *Impeccable's* towed sonar array.

On 7<sup>th</sup> March a PLAN intelligence collection ship contacted the *Impeccable* over bridge-to-bridge radio and informed its captain that his ship's operations were illegal and that the *Impeccable* should leave the area or 'suffer the consequences'.<sup>12</sup> On the following day, five Chinese ships shadowed the *Impeccable*, including a Bureau of Maritime Fisheries Patrol Vessel, a State Oceanographic Administration patrol vessel, a Chinese Navy ocean surveillance ship, and two small Chinese-flagged trawlers.

The trawlers closed on the *Impeccable*, coming within fifteen meters waving Chinese flags, and ordering the *Impeccable* to leave the area. When one trawler moved closer to the *Impeccable* it was sprayed with water from its fire hose. The *Impeccable* then radioed the Chinese vessels and requested safe passage out of the area. The two Chinese trawlers then attempted to obstruct the *Impeccable* by stopping abruptly in front of it, forcing the *Impeccable* to execute an emergency full stop in order to avoid a collision. As the *Impeccable* attempted to depart the crew of one of the Chinese trawlers used a grappling hook to try to snag the *Impeccable's* towed sonar array.

The standoff between the *USNS Impeccable* and PLAN vessels was followed by the collision of a PLAN submarine with a towed sonar array by the *USS John S. McCain* on 11th June. The *USS McCain* was one of three U.S. warships participating in combined exercises with six Southeast Asian navies, including the Philippines and Malaysia.

These two incidents have reawakened concerns in Southeast Asia that Sino-US strategic competition could affect regional stability. Clearly the rapid expansion of China's naval forces has precipitated greater scrutiny from the U.S. military and submarine operations out of Sanya Naval Base. As China's submarine fleet grows so too will U.S. interest. But for

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<sup>12</sup>For a discussion of the legal positions held by the United States and China see: Sam Bateman, 'Clashes at Sea: When Chinese vessels harass US Ships', RSIS Commentaries, March 13, 2009; Patrick J. Neher, Raul A. Pedrozo and J. Ashley Roach, 'In Defense of High Seas Freedoms', RSIS Commentaries, March 24, 2009; and B. A. Hamzah, 'EEZs: US Must Unclench its Fist First', RSIS Commentaries, April 9, 2009. The RSIS Commentaries are produced by the S. Rajaratnam School of International Studies, Nanyang Technological University in Singapore. The most recent incident took place in the Yellow Sea in early May; BBC, 'Pentagon warns over Chinese boats', May 5, 2009.

China to deploy its submarines effectively, it too will need to develop the capability to acquire the same scientific and technical information that the U.S. Navy is gathering. Future incidents at sea cannot be ruled out as long as China attempts to override the UN Convention on Law of the Sea with its own unilateral interpretation of international law.

### **China's Unilateral Moratorium on Fishing**

In May 2009, China announced a unilateral three-month moratorium on fishing in the South China Sea (above the 12<sup>th</sup> parallel) from 16<sup>th</sup> May to 1<sup>st</sup> August in order to preserve fish stocks, prevent illegal fishing and protect Chinese fishermen. This was the height of the Vietnamese fishing season. Eight modern Chinese fishery administration vessels were dispatched to enforce the ban.<sup>13</sup> Vietnam lodged a diplomatic protest. The Vietnamese news media reported that the Chinese vessels stopped, boarded and seized the catches of fishing boats and chased other Vietnamese boats out of the proscribed area. In one instance a Chinese fishery vessel rammed and sank a Vietnamese boat.<sup>14</sup> On 16<sup>th</sup> June, China seized three Vietnamese boats and thirty-seven crewmembers in waters near the Parcel islands. After freeing two boats and their crews, China detained the third and its twelve crewmembers pending payment of a fine totaling US \$31,700.<sup>15</sup> Chinese actions prompted defiance from local government officials in Quang Ngai province, the home of the detained fishermen, who declared they would refuse to pay the fine.<sup>16</sup> The Vietnamese Foreign Ministry issued a protest note to the Chinese Embassy in Hanoi demanding the release of the detained fishermen.<sup>17</sup>

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<sup>13</sup>'Patrol ships trawl for disorder in Beibu Gulf', *China Daily.com*, May 28, 2009; 'One more ship to patrol South China Sea', *Chinadaily.com.ch*, 15 May 2009 and 'Reinforced patrol sails from Hainan', *Chinadaily.com.ch*, 19 May 2009.

<sup>14</sup>'Controversial Chinese ban affects more Vietnamese fishing vessels', *Thanh Nien News*, 5 June 2009 and 'Fishermen intimidated and harassed by Chinese patrol boats', *Thanh Nien News*, 8 June 2009.

<sup>15</sup>'MOFA Spokesman answers reporters' question', *Nhan Dan* on line, 27 June 2009; 'Calling for signs of goodwill from China', *Thanh Nien News*, 28 June 2009; and 'VN official asks for Chinese counterparts;' help in detained fishermen case', *VietNamNet Bridge*, July 23, 2009.

<sup>16</sup>'China arrests Vietnamese fishermen, demands astronomical fines', *Vietnam.net*, 30 June 2009 and 'China again demands money for Vietnamese fishermen', *Vietnam.net*, 7 July 2009.

<sup>17</sup>'Fishermen team up for protection, Vietnam asks China to lift ban', *Thanh Nien News*, 8 June 2009.

In the midst of these developments, an article prepared by China's Ministry of Trade critical of Vietnam's claims appeared on a website jointly maintained by the trade ministries of China and Vietnam. This prompted Vietnamese officials to close the site temporarily.<sup>18</sup> In August, when two Vietnamese fishing boats with a total crew of twenty-five sought to avoid a tropical storm by seeking safe haven in the Paracel archipelago, they were detained by Chinese authorities.<sup>19</sup> Vietnam not only demanded the boat's release, but also upped the ante by threatening to cancel a meeting that had been scheduled to discuss maritime affairs. China released the fishermen.<sup>20</sup> The 'border and territory' talks were held at deputy minister level from 12-14 August 2009 in Hanoi.

## **Extended Continental Shelf**

The United Nations Commission on the Limits of the Continental Shelf (UNCLCS)<sup>21</sup> set 13<sup>th</sup> May 2009 as the deadline for states to lodge claims extending their continental shelf beyond the 200 nautical mile limit set by the UN Convention of Law of the Sea. On 6<sup>th</sup> May, Malaysia and Vietnam submitted a joint proposal<sup>22</sup> and on the following day Vietnam also presented a separate claim.<sup>23</sup> China quickly lodged a protest but did not

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<sup>18</sup>'Vietnam shuts down Web site in dispute with China', Associated Press, 18 May 2009 and Deutsche Presse-Agentur (DPA), 'Vietnam-China territory dispute moves to cyberspace', 19 May 2009. In April 2009, Vietnam's Ministry of Information and Communication suspended *Du Lich* (Tourism) newspaper for three months for publishing a series of articles praising the patriotism of Vietnamese students who demonstrated against China in late 2007. Nga Pham, 'Vietnam paper banned over China', BBC News, April 15, 2009.

<sup>19</sup>DPA, 'China detains Vietnamese fishermen fleeing storms', 4 August 2009; DPA, 'Vietnam asks China to release fishermen', 5 August 2009 and Beth Thomas, 'China Releases Vietnamese Fishermen Seized Near Paracel Islands', Bloomberg, 12 August 2009.

<sup>20</sup>'Chinese nabbed Quang Ngai fishermen return home', Vietnam News Agency, August 15, 2009.

<sup>21</sup>The UNCLCS maintains a home page at:  
[http://www.un.org/Depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/Depts/los/clcs_new/clcs_home.htm).

<sup>22</sup>A copy may be found at:  
[http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mysvnm\\_33\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm).

<sup>23</sup>A copy may be found at:  
[http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_vnm\\_37\\_2009.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_vnm_37_2009.htm).

make a formal submission.<sup>24</sup> Under the rules of the UNCLCS contested submissions cannot be evaluated. Vietnam responded to China's by presenting its own protest.<sup>25</sup>

China documented its maritime claims by attaching a map (see Appendix A) containing its traditional 'nine brush marks' or nine dash lines which form a U-shaped area embracing virtually the entire South China Sea. It would appear to be the first time that the People's Republic of China (PRC) has officially presented its claim in this matter.<sup>26</sup>

No map of this nature was attached to the three major declarations and one law that China regularly uses to support its maritime claims: Declaration on China's Territorial Sea (September 1958), Declaration of the People's Republic of China on the Territorial Sea and Contiguous Zone (1992), Declaration of the People's Republic of China on Baselines of the Territorial Sea (1996), and the Law of the People's Republic of China on the Exclusive Economic Zone and Continental Shelf (1998).

The United States categorically rejects the basis of Chinese claims to the South China Sea. In testimony to the Senate Foreign Relations Subcommittee on East Asia and Pacific Affairs, Deputy Assistant Secretary of State Scot Marciel rejected out of hand China's claims to territorial waters and maritime zones that did not derive from a land territory. 'Such maritime claims are not consistent with international law', he asserted.<sup>27</sup>

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<sup>24</sup>A copy may be found at:

[http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm).

<sup>25</sup>Neil Ford, 'Progress in the South China Sea', *International Gas Report*, 8 June 2009; 'Receipt of the joint submission made by Malaysia and the Socialist Republic of Viet Nam to the Commission on the Limits of the Continental Shelf', Secretary General of the United Nations, 7 May 2009; Xinhua, 'China urges UN commission not to review joint Malaysia-Vietnam submission on outer limits of continental shelf', 7 May 2009. A copy of Vietnam's reply to China may be found at:

[http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/vnm\\_chn\\_2009re\\_mys](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/vnm_chn_2009re_mys).

<sup>26</sup>Unofficially, an earlier map had been in circulation based on a 1947 map drawn up by the Kuomintang (KMT) government. The KMT map contained eleven dash lines; the PRC later deleted two dashes in the Gulf of Tonkin (Beibu Gulf). See the map reproduced in Stein Tonnesson, 'China and the South China Sea: A Peace Proposal.' *Security Dialogue*, Vol. 31(3), September 2000.

<sup>27</sup>Testimony of Deputy Assistant Secretary Scot Marciel, Bureau of East Asian and Pacific Affairs, U.S. Department of State before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, 15 July 2009.

### **U.S. Policy and China's Four Obstacles**

In most recent annual report to Congress on the People's Liberation Army, the Pentagon warned that the rapid transformation of the Chinese armed forces was changing Asia's military balance in favor of China and providing it with the capabilities to conduct military operations beyond Taiwan, including in the South China Sea. The U.S. has demonstrated a keener interest in Southeast Asia's most intractable territorial dispute over the past several years, driven mainly by freedom of navigation concerns but also by the need to protect the commercial activities of American energy companies.

The Obama Administration has built on the legacy left by the Bush Administration by retaining Robert Gates as Secretary of Defense. During the most recent Sino-Philippine spat over the Spratlys, President Obama called President Gloria Macapagal-Arroyo to reaffirm the U.S.-Philippine alliance relationship and Washington's commitment to the Visiting Forces Agreement.<sup>28</sup> The intent of that call is open to interpretation, but the timing suggests it was a gesture of support for the Philippines in its altercation with Beijing.

In July 2009, the U.S. Administration made clear its policies towards maritime issues in the Asia-Pacific, including the South China Sea, in testimony by two high-ranking officials to the Subcommittee on East Asia and Pacific Affairs of the Senate Committee on Foreign Relations. Deputy Assistant Secretary of State Scot Marciel opened his remarks by noting that the United States has “a *vital interest* in maintaining stability, freedom of navigation, and the right to lawful commercial activity in East Asia's waterways” (italics added). And more pointedly, after reviewing cases of Chinese intimidation against American oil and gas companies working with Vietnamese partners, Marciel stated, “We object to any effort to intimidate U.S. companies”.<sup>29</sup>

The Administration's policy with respect to harassment of U.S. naval vessels discussed above was made clear by Robert Scher, Deputy Assistant Secretary of Defense, who outlined a four-point strategy:

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<sup>28</sup>*Philippine Daily Inquirer*, 17 March 2009.

<sup>29</sup>Testimony of Deputy Assistant Secretary Scot Marciel, Bureau of East Asian and Pacific Affairs, U.S. Department of State before the Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, United States Senate, 15 July 2009.

In support of our strategic goals, the [Defense] Department has embarked on a multi-pronged strategy that includes; 1) clearly demonstrating, through word and deed, that U.S. forces will remain present and postured as the preeminent military force in the region; 2) deliberate and calibrated assertions of our freedom of navigation rights by U.S. Navy vessels; 3) building stronger security relationships with partners in the region, at both the policy level through strategic dialogues and at the operational level by building partner capacity, especially in the maritime security area, and 4) strengthening the military-diplomatic mechanisms we have with China to improve communications and reduce the risk of miscalculation.<sup>30</sup>

The incoming Obama Administration has reached out to China and raised bilateral relations to ministerial-level with the convening of the first Strategic and Economic Dialogue (SED) in Washington in July 2009. One hopeful outcome of the SED was agreement to hold a Military Maritime Consultative Agreement meeting in Beijing later in the year.

In October Secretary of Defense received General Xu Caihou, vice chairman of China's Central Military Commission. General Xu also met with National Security Advisor James, Jones, Chairman of the Joint Chiefs of Staff Admiral Michael Mullen, Deputy Secretary of State James Steinberg and paid a courtesy call on President Obama. Xu and Gates reached agreement on seven issues:

Promoting high-level visits; enhancing cooperation in the area of humanitarian assistance and disaster relief; deepening military medical cooperation; expanding exchanges between armies of the two nations; enhancing the program of mid-grade and junior officer exchanges; promoting cultural and sports exchanges between the two militaries; invigorating the existing diplomatic and consultative mechanisms to improve maritime operational safety.<sup>31</sup>

It was clear that U.S.-China military relations still had a long way to go. General Xu, for example, tabled four major obstacles that he claimed harmed bilateral relations.

The first and foremost obstacle is the U.S.-Taiwan military relationship... The Taiwan issue is related to the core interests of China and is a core issue that prevents the development of the U.S.-China military relationship. If the U.S. side

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<sup>30</sup>Testimony of Deputy Assistant Secretary of Defense Robert Scher, Asian and Pacific Security Affairs, Office of the Secretary of Defense before the Subcommittee on East Asia and Pacific Affairs, Senate Committee on Foreign Relations, United States Senate, 15 July 2009.

<sup>31</sup>Yang Qingchuan, 'Chinese, U.S. military ties face opportunity for new development', Xinhua, October 29, 2009.

can't handle this issue very well, a healthy and stable China-US. Military relationship will not be possible.

Second, U.S.-military aircraft and ships' intrusions into China's maritime exclusive economic zone should be terminated. China hopes the U.S. military can observe UN Convention on the Law of the Sea and Chinese maritime legislation, and stop such acts which would threaten China's security and interests.

Third, there is some U.S. legislation which restricts the development of the China-U.S. military relationship. Most notably is the 2000 Defense Authorization Act passed in 1999.

Another obstacle is the United States lacking strategic trust in China.

## **Conclusion**

During 2007-09, the South China Sea dispute has moved from the back to the middle burner of Asian security issues despite the intentions of the 2002 Declaration on Conduct of Parties in the South China Sea (DOC) for parties to exercise 'self restraint in the conduct of activities that would complicate or escalate disputes'. Recent naval incidents between China and the United States discussed above raise the possibility that the South China Sea could once again become 'front burner' issue if not managed properly.

There are several possible explanations to account for recent Chinese assertiveness in the South China Sea.<sup>32</sup> First, Beijing may be attempting to pressure Hanoi into accepting a joint exploration and production agreement covering energy fields located off the Vietnamese coast, similar in nature to the June 2008 pact between China and Japan to jointly develop the Chunxiao gas field in the disputed waters of the East China Sea. If so, Beijing's efforts are unlikely to succeed, as the offshore energy fields lie within, or at the edge of, Vietnam's declared 200 nm EEZ. Moreover, Vietnamese nationalism suggests that Hanoi will resolutely resist perceived attempts by China to bully it into accepting such an arrangement. As a tactic in pursuit of this goal Beijing seems to be ratcheting up the pressure on foreign oil companies not to enter into energy deals with Vietnam, with the implicit threat that corporations that do so will be excluded from future energy projects in the PRC. Thus far this tactic has proven unsuccessful, as both BP and

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<sup>32</sup>This section is drawn from Storey and Thayer, 'The South China Sea Dispute: A Review of Developments and their Implications since the 2002 Declaration on the Conduct of Parties', op. cit.

ExxonMobil have indicated their intention to proceed with existing deals and the United States has clearly signaled it will resist such intimidation.

Second, China may be signaling to Vietnam its strong disapproval of deeper U.S.-Vietnam security ties. Since Vietnam and the United States normalized relations in 1995, Hanoi has been careful to calibrate its defense relations with the U.S. so as not to offend China. However, in recent years the pace of development of U.S.-Vietnamese military-security ties has noticeably stepped up. In June 2008, Vietnam's Prime Minister Nguyen Tan Dung made a high-profile trip to the United States where he met with President George W. Bush and became the first Vietnamese prime minister since 1975 to visit the Pentagon.

In a joint statement released after the Bush-Dung meeting, both sides agreed to hold regular high-level talks on security and strategic issues. Moreover, President Bush also stated that the United States supported “Vietnam’s *national sovereignty, security and territorial integrity*” (italics added).<sup>33</sup> Bush’s unprecedented comment was open to interpretation, as it did not explicitly identify the South China Sea. However, it reinforced comments made by U.S. Defense Secretary Robert Gates earlier in 2009 in Singapore: ‘In my Asian travels, I hear my hosts worry about the security implications of rising demand for resources, and about *coercive diplomacy* and other pressures that can lead to disruptive complications... All of us in Asia must ensure that our actions are not seen as pressure tactics, *even when they coexist beside outward displays of cooperation*’ (italics added).<sup>34</sup> The U.S. position has been that it does not recognize the claims of any of the disputants in the South China Sea; taken together, however, the comments made by Bush, Gates and Marciel indicate that Washington is warning Beijing not to blackmail U.S. energy companies into non-participation in Vietnam’s oil and gas sector.

A third possible reason is that Beijing has reverted to a more assertive policy in the South China Sea driven by an increasing thirst for off-shore energy deposits, the growing importance of Southeast Asian SLOCs to China’s strategic interests, and Great Power

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<sup>33</sup>Joint Statement Between the United States of America and the Socialist Republic of Vietnam, 24 June 2008. <http://www.vietnamembassy-usa.org/news/story.php?d=20080627045153>

<sup>34</sup>International Institute for Strategic Studies (Singapore) speech as delivered by Secretary of Defense Robert M. Gates, Singapore, 31 May 2008. <http://www.defenselink.mil/speeches/speech.aspx?speechid=1253>

ambitions. China has not only embarked on a major program to modernize the People's Liberation Army-Navy but has constructed a major naval base on Hainan Island from which China can enforce its maritime claims and project power into the South China Sea.

### **Suggestions for Cooperation**

- All regional states have an interest in China's rise and the peaceful management of China-United States relations. All regional states and regional multilateral institutions related to security should therefore continue to bring their diplomatic influence to bear on China and the United States to resolve their differences through dialogue and confidence-building measures. The two powers should hold regular high-level military-to-military meetings and work out an effective Incidents at Sea Agreement.
- The ASEAN Defense Ministers Meeting Plus (ADMM Plus) should be activated to extend the ASEAN Regional Forum's effective engagement in addressing security issues. This would be an effective forum to adopt agreed principles on military transparency that would address concerns about China's military transformation and modernization programs.
- China and other nuclear states should become signatories to the Southeast Asia Nuclear Free Weapons Zone Treaty. China has long indicated it would be a signatory. But deployment of SSBNs to Sanya Naval Base raises questions about the geographic scope of Southeast Asia that need to be clarified.
- Under the DOC, if China has concerns about the viability of fish stocks in the South China Sea it should seek to engage the other claimants (Vietnam, the Philippines, Malaysia and Brunei) in joint scientific research on fisheries management. China should refrain from unilaterally declaring and enforcing a ban on fishing in the South China Sea until a scientific basis for its actions are established. In 2009, while China was enforcing its moratorium on fishing by chasing Vietnamese boats out of the area, Taiwan was complaining that Chinese fishermen were encroaching on its waters. If there is a scientific basis for halting fishing for a period of time it should apply to all nations.

- ASEAN should support the South China Sea littoral states in engaging China in a new round of diplomatic talks to raise the status of the DOC to a fully-fledged Code of Conduct for the South China Sea.
- Regional states should undertake an initiative to hold Senior Official-level discussions on the UN Convention on Law of the Sea in order to further clarify a number of matters that are either unclear or in dispute. Such discussions could explore the legal basis for claims to extended continental shelves and what actions foreign military vessels can undertake in the EEZ of another country.
- Regional states should seriously consider proposals by the governments of Australia and Japan to enhanced the effectiveness of regional security architecture either through an Asia-Pacific community concept<sup>35</sup> or an East Asia Community concept. The eventual development of a new leaders' mechanism would contribute positively to addressing a range of issues that affect regional security.

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<sup>35</sup>See Carlyle A. Thayer, 'Kevin Rudd's Asia-Pacific Community Initiative: Suggestions and Insights for the Future Process of East Asian Regional Cooperation', Paper presented to International Conference on East Asia and South Pacific in Regional Cooperation, sponsored by The Shanghai Institutes of International Affairs, Shanghai, People's Republic of China, September 9-10, 2009. Available at Scribd.com.

Appendix A

China's Claims to Maritime Territory in the South China Sea

