

## **The Problems in the South China Sea**

*Based on Discussions at the "Security Environment of the Seas in East Asia"  
International Conference*

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1. Introduction
2. The Importance of the Security Environment in the South China Sea
3. China's Aims
4. The American Response
5. The ASEAN Response
6. Conclusion

### **1. Introduction**

The Ocean Policy Research Foundation has engaged in a research program focusing on the maritime security environment in East Asian ocean areas as part of its three-year plan for 2010–12.<sup>1</sup> In 2010 we focused our attention mainly on the East China Sea and South China Sea, conducting studies on China's interests in the ocean and related national policy and military doctrine, relations between China and the Association of Southeast Asian Nations concerning the South China Sea, and American interest in these issues. In 2011 we expanded the scope of our studies to include the western Pacific and eastern Indian Oceans, examining the geopolitical characteristics of the East Asian ocean area, the influence of Chinese and American maritime strategy on the security environment, the impact of China-Taiwan relations and the political climate of the Korean Peninsula on the security environment, and how Indian maritime strategy affects the strategic approaches of China and the United States. In 2012, the final year of the project, in addition to summarizing the work of the previous two years, we are working on exchanging opinions with individuals

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<sup>1</sup> This research defines the "East Asian ocean area" as the seas to the west of the meridian line between the Ogasawara Group archipelago and the Mariana Islands, mainly consisting of the western Pacific, the East China Sea, the South China Sea, and the eastern part of the Indian Ocean.

and organizations conducting similar research overseas to reinforce the results of our research, compiling our results in book form, and disseminating those results as recommendations, both domestically and abroad.

Over the course of this two-year study period, core members of the research team have held several domestic symposia, and two international conferences have also been held. The first international conference took place in February 2011 in Tokyo; the second was held in February 2012 in Singapore. Below I introduce the substance of discussions that took place at that second international conference regarding territorial disputes over islands in the South China Sea.<sup>2</sup> Note that since the conference was conducted in accordance with Chatham House Rules, I will not identify individual presenters in this article.

## **2. The Importance of the Security Environment in the South China Sea**

The strategic importance of East Asian ocean waters has been rising in recent years. The main factors boosting the strategic value of this maritime area have been, (1) access to oceanic energy resources, (2) territorial conflicts in the South China Sea and East China Sea, and (3) buildup of naval military power by countries in the region. Many countries in the region, including China, have been pouring effort into strengthening their naval power.

Speakers at the conference pointed to the following issues as those most important from a security perspective in the Asia-Pacific region, especially the South China Sea, both today and into the future. (1) Although China and ASEAN are working toward realizing a “code of conduct” for the South China Sea that is legally binding and that creates a structure for confidence building measures, this does not appear likely to have much effect on the most fundamental problems in the South China Sea, namely territorial issues, fishing rights and access to natural resources, and naval buildup. (2) Problems in the South China Sea are difficult to resolve either legally or politically and there

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<sup>2</sup> Due to limitations on space this article must regrettably leave out discussions at the second conference regarding the legal aspects of Exclusive Economic Zones (EEZ), specifically differences of opinion between countries, particularly America and China, regarding information gathering activities and naval activities by other countries’ naval vessels within an EEZ, that were held in addition to the South China Sea controversies.

appears to be little political will for a win-win resolution of sovereignty issues. (3) Germinating geopolitical conflict between the United States and China in Asia is making already complex and difficult problems more difficult.

### **3. China's Aims**

China is the main player in the South China Sea and has set the tone for the problems developing there. The following discussions were held at the conference regarding China's recent activity in the South China Sea. First, the following points were raised with an understanding that China has recently been taking belligerent actions in the sea. (1) By modernizing the Chinese navy and strengthening its ability to enforce naval law, China has strengthened its assertions of legal jurisdiction and its presence in the sea. (2) Due to relatively calm relations between China and Taiwan in recent years, China has become able to get particularly involved with South China Sea issues. (3) Conflict among various power groups in Chinese domestic politics, as well as a surge in nationalism and a more active and prominent military, have complicated the process of forming policy relating to the South China Sea. (4) Other countries interested in the sea are being forced to respond to China, which then draws China into further opposition against them. (5) There is no effective mechanism for resolving conflicts in the South China Sea.

China's territorial claims in the South China Sea are represented by the "nine-dotted line" that envelops about 80% of the sea's area in a U shape. China indicated its claim using this line in a note verbale submitted to the United Nations in April 2011, but has yet to officially indicate the basis for this claim. It was suggested at the conference that one reason for not clarifying this evidence may be fear of the ASEAN response. However, the following points were also raised during discussions over whether the "nine-dotted line" is geographically defined and what the basis for that demarcation might be.

- (1) Evidence for the claim in the note verbale that China submitted to the United Nations in April 2011 is unclear. A note verbale does not require specific latitude or longitude, but while it mentions islands in the South China Sea and "relevant waters," the meaning of the phrase "relevant waters" is unclear.

- (2) In 1992, China enacted a Law on the Territorial Sea and the Contiguous Zone, establishing a territorial sea extending 12 nautical miles from its shores. In 1998 it passed a Law on the EEZ and Continental Shelf, setting an EEZ of 200 nautical miles. Since the U-shaped line predates UNCLOS, the United Nations Convention on the Law of the Sea, the geographical designation of waters inside the line is undefined.
- (3) China has not announced any origin point as a baseline for its territorial claims in the South China Sea. Such an origin point would be different from that of an island nation. Should China be claiming not “rocks” (defined as unable to sustain human life in UNCLOS Article 121) but islands, there are no more than 40 or so islands in the South China Sea, only 4–9 of which could be used as origin points. China must expand its territorial claims with islands as a basis and must clearly specify those islands.

In order to broadly strengthen its presence and heighten its ability to enforce naval law within the U-shaped line, China has been mobilizing not only the People’s Liberation Army Navy, but also paramilitary and civilian naval bodies in an attempt to assert de facto control over the South China Sea within the U-shaped line. In an effort to understand China’s eventual aims in the sea, the conference held discussions on the theme of the Monroe Doctrine. Participants expressed the following interesting views.

- (1) In order to understand China’s conception of maritime rule one must examine the Monroe Doctrine. China claims the South China Sea and East China Sea as its sphere of influence and is attempting to deny the interference of foreign powers there. This is a regional reformulation of the Monroe Doctrine.
- (2) How does the Chinese approach differ from the American one? First, the Monroe Doctrine was announced by President James Monroe before Congress in his 1823 State of the Union Address, and although it has no official legal significance, it was given legal weight by countries within its area of applicability. It is difficult to find any legal characteristics in the “Sino-centric principle” that China uses to establish hegemony over the South China Sea. Second, the United States treated the Monroe

Doctrine as tactic to guard the Western Hemisphere against the incursion of European powers. On the other hand, the Chinese version is being used as a means to put China in an advantageous position in territorial disputes. Third, the US doctrine did not entirely eliminate cooperative relationships with European powers. Conversely, China is not thinking about cooperation with the US Navy in East Asian waters. Rather, most Chinese experts view these seas as a setting for conflict with America. Fourth, the United States had previously been taking a “free ride” for its regional security thanks to the British naval hegemony over the Atlantic, but the Chinese version is an expansionary doctrine that aims to establish a Pax Sinica in the ocean areas near China. And fifth, consequently, one could say that while the Monroe Doctrine was fundamentally defensive in nature, the Chinese version aims to expand China’s political, economic, and military influence over the ocean and appears to be fundamentally aggressive.

On the other hand, the view was also expressed that China itself has yet decided on its final stance regarding South China Sea issues. According to this view, China has no clear blueprint for its actions or understanding of what its true interests are in the region. China has taken some contradictory actions in the past few years. First, while strengthening its military it has simultaneously been developing more active diplomatic relations. Second, although there are proponents of a more belligerent stance, there are also people in China arguing vigorously for more liberal foreign relations. Third, while popular sentiment appears to favor ambitious strategic goals for the nation, the Chinese government itself is realizing its own limits in terms of military power and ability to enforce law at sea. While the possibility does exist of a more flexible Chinese stance in the future, there is also the possibility that China’s maritime law enforcement activities in the South China Sea will lead to competition with other countries.

The following factors that may affect China’s response to the South China Sea problems were suggested. First are domestic factors. The Chinese population is conservative regarding issues of territory and sovereignty, and it is therefore difficult for the Chinese leadership to take a flexible stance on such issues. For the Chinese Communist Party to maintain its authority it must present tough

policies to address important problems; shifting to a more flexible footing is difficult. Due to domestic political conditions, Chinese policymakers have few options available on the South China Sea problem, making flexible responses harder to achieve. They need to stir up nationalism so that the people's anger is not directed towards the government, but this is a double-edged sword, at the same time presenting them with the need to control that nationalism. A balance must be struck between belligerence and flexibility. Secondly, there are also strategic issues for China. In order to become a great maritime power, China needs to overcome the American challenge. But by maintaining a belligerent stance in maritime conflicts, China just ends up undermining its own position.

#### **4. The American Response**

China's rigid attitude toward the South China Sea problem in recent years has given the United States a chance to once again enhance its presence in Asia. Discussions about the American response to the South China Sea problem produced the following main points.

- (1) At the July 2010 ASEAN Regional Forum (ARF), US Secretary of State Hillary Clinton indicated that the national interest of the United States includes free transit through the region, freedom of access to Asian ocean commons, and strict observance of international law regarding the South China Sea problem.
- (2) The American strategic approach to the Asia Pacific region and adjacent waters is composed of the following three components: first, emphasizing and strengthening relations with treaty allies in the Asia Pacific while also strengthening contributions to multilateral organizations in the region; second, maintaining a strong military presence in the region in order to maintain access to the ocean and freedom of actions that adhere to international law; and third, positioning American naval power as the main actor promoting an international rules-based order. Basically, President Barack Obama's "pivot to Asia" security strategy says that the United States, as an Asia Pacific country, aspires for an international order in the region that provides a foundation for peace and prosperity, in which all countries have rights and responsibilities, and in which free trade and free transit

are not infringed upon. Conference participants also expressed the view that the development of cooperative relations between the United States and ASEAN countries, along with American involvement in the South China Sea problem based on this strategy, have influenced China's calculations regarding the matter.

- (3) American policy toward South China Sea sovereignty has been fairly consistent since the late 1990s. Although Secretary of State Clinton said at the July 2010 ARF that the United States would not get involved in any territorial disputes, it has maintained a clear position on the establishment of maritime borders. Secretary Clinton stated that the origin points used for maritime claims must be on land—a challenge to China's "nine-dotted line" claims. America has said that the South China Sea problem must be discussed in main regional forums such as the ARF, the East Asia Summit, and the ASEAN Defense Ministers' Meeting Plus. China, however, has refused to internationalize the issue and is pressing for bilateral negotiations with each of the relevant countries.
- (4) The United States is well aware that although members of ASEAN expect it to take a role in strengthening security in the South China Sea, those countries are also not hoping for increased Sino-American discord. Therefore, the American military role remains minor, and escalated US military involvement is inconceivable. The United States has provided patrol boats to the Philippines and has declared support for Manila, but has also taken serious care to deal in such a way that it will not be trapped into backing the Philippines and other allied countries in the event of a conflict in the South China Sea. Since these territorial issues did not come officially to the fore until 1978, the Spratly Islands are not covered by the 1951 US-Philippines Mutual Defense Treaty. America would likely be hesitant to help the Philippines regarding the Spratlys.

## **5. The ASEAN Response**

The following points were made in discussions on the ASEAN response.

- (1) A 2002 Declaration of Conduct between China and ASEAN was intended to freeze the situation as a means of managing the conflict. The eight

guidelines for implementation of the DOC, issued in 2011, are lacking in specificity and do not exceed the statements of the DOC. Nevertheless, implementation of the guidelines is theoretically possible on two fronts. The first is by realizing confidence-building measures; the second is via official negotiations for a legally binding Code of Conduct. ASEAN has decided to begin drawing up a draft COC, but there are many points of contention, and there is doubt over whether it will be able to guarantee effectiveness even if enacted.

- (2) The member countries of ASEAN are using UNLCOS as a means to pursue their own interests and oppose China's U-shaped line. They are interpreting UNCLOS Article 121, "Regime of Islands,"<sup>3</sup> particularly strictly. For example, in a 2009 joint Malaysia-Vietnam application to the Commission on the Limits of the Continental Shelf, both countries made reference to Article 121 in defining islands for purposes of territorial designation in the South China Sea. The Philippines, meanwhile, made use of Article 121 in claiming the Kalayaan islands (the Philippine name for the Spratlys) and the Scarborough Shoal as Philippine territory in its March 10, 2009, Archipelagic Baseline Law on Oceans. China does not agree with the use of Article 121 to buttress territorial claims, as seen in the actions of ASEAN members. By making territorial claims using its vague U-shaped line, China is trying to maximize the amount of South China Sea territory under dispute.
- (3) The Philippines has proposed a Zone of Peace, Freedom, Friendship, and Cooperation (ZoPFFC) in order to resolve the conflict. The ZoPFFC is composed of two measures. The first is to separate the portion of the South China Sea that is under dispute from the portion that is not. The second is for the countries making territorial claims to move ahead with demilitarizing occupied islands and to construct a joint commission for

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<sup>3</sup> Article 121, "Regime of islands," reads in full as follows:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

managing ocean and sea floor resources. While this plan does have its merits, it is unlikely to proceed smoothly. China has refused the proposal, while some countries that oppose Chinese interests, such as Vietnam, are in favor of it. Malaysia has expressed concern that this proposed zone could be the seed of new conflict. The ZoPFFC has merit and does make cooperation possible, but it will require strong political will from all involved countries to resolve the situation. As of now, despite the fact that such will is nowhere to be seen, the Philippines is working hard to win support for ZoPFFC. But it will be difficult to build consensus with a lack of Chinese support; meanwhile, other countries are complaining about a lack of prior explanation. This plan therefore does not appear likely to come to fruition. The Philippines has also been threatening to file a petition with the International Tribunal for the Law of the Sea opposing China's territorial claims, to which China has yet to make a response.

- (4) Other countries have in principle avoided opposing Chinese suggestions for joint development of ocean resources. However, the question of which areas in the disputed territory of the South China Sea to designate for joint development is a thorny one.

## 6. Conclusion

Opinions regarding the future prospects for South China Sea territorial disputes that were given at the conference are as follows.

- (1) While conflicts involving the ocean do ordinarily have the possibility to escalate irrationally, the status quo in the South China Sea is likely to continue indefinitely. Legal resolution of this problem is extremely difficult. This problem is also likely to continue as an issue between China and the United States. The American "pivot to Asia" has given the South China Sea new importance as a test case in Sino-American relations. A stable and peaceful South China Sea will depend on whether China maintains a moderate approach. And while China's approach does appear to be affected by domestic politics, it can probably also be influenced to a certain extent by ASEAN collaboration and solidarity, the regional presence of external powers such as the United States, and the

potential establishment of a binding Code of Conduct.

- (2) There are doubts over whether or not a COC would be effective, even if it were implemented. The biggest issue for effectiveness is how a legally binding COC would be enforced. Currently, the concept of such a code does not have much meaning.
- (3) Since conflicts over sovereignty in the South China Sea involve the overall stability of the region and may have an impact on future relations with China, assuring security in the sea is vital. For example, should significant undersea resources be discovered in the South China Sea, there is a possibility that it would lead to conflict over development of those resources. In such a case it might not only affect the region itself but also Sino-American relations.
- (4) When asked to imagine the prospects of the South China Sea problem in the near future, conference participants noted the possibility of guarded optimism, but when asked about the long-term prospects for the situation, nobody had any answer.

The above has been a summary of discussions on the issues of sovereignty of islands in the South China Sea at our February 2012 international conference. UNCLOS has codified the customary law of the sea, but countries have been establishing new territorial claims by expanding their EEZs significantly beyond the extents of their existing ocean territory in order to maximize their sovereign authority. This has been provoking previously unheard of conflicts. Bountiful fishing resources, as well as the possibility of developing undersea resources in East Asian waters, are also spurring these conflicts. The core domestic members of the conference are currently collating the results of this two-year study for publication and proceeding with the necessary work to make it the basis for policy proposals, both domestically and abroad.

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