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# Maritime Territorial Disputes in East Asia: Issues for Congress

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## Summary

Rising tensions stemming from maritime territorial disputes in East Asia have become a pressing challenge for U.S. policy makers, and pose one of the most complicated issues for the Obama Administration's policy of strategic "rebalancing" towards the Asia-Pacific.

Since around 2005-2006, long-disputed waters and land features in the South China Sea and, more recently, the East China Sea have seen increasingly aggressive behavior from nations trying to strengthen claims to disputed areas. Although China is not the only nation that has sought to press its maritime territorial claims, actions taken by People's Republic of China (PRC) actors, including its maritime law enforcement authorities and the People's Liberation Army (PLA), have been a particular concern. Chinese maritime authorities have taken actions include harassing vessels, destroying equipment, and blockading islets and shoals. Observers are concerned that the increasing frequency of such events raises the possibility of miscalculations that could lead to overt conflict at sea.

- In the South China Sea, the PRC makes extensive claims, including marking on its maps an ambiguous "nine dash line" that covers approximately 80% of the sea, including the Spratly and Paracel island groups and other features such as Scarborough Shoal. These claims overlap with those of four Southeast Asian nations—Brunei, Malaysia, the Philippines, and Vietnam, which themselves have claims that conflict with each other. Taiwan also makes extensive claims mirroring those of the PRC.
- In the East China Sea, China, Japan, and Taiwan all claim a Japan-administered island group that Japan calls the Senkakus, China the Diaoyu Islands, and Taiwan the Diaoyutai Islands.
- Other territorial disputes exist between Japan and South Korea in the Sea of Japan, and between China and South Korea in the Yellow Sea.

Although the United States has no territorial claim in these waters and does not take a position on the various sovereignty disputes, it is long-standing U.S. policy to oppose the use of force, threat, or coercion to promote sovereignty claims, and to support the use of international law, including arbitration mechanisms, to resolve disputes peacefully.

The ability of the disputing countries, and of the United States and other parties, to manage tensions touches on numerous U.S. interests including

- maintaining peace and stability among maritime nations in the Asia-Pacific;
- protecting free and unimpeded lawful commerce along some of the world's busiest maritime trade routes;
- protecting the U.S. Navy's ability to operate in these areas;
- managing U.S. treaty alliances with nations involved in the disputes;
- encouraging rules-based regional norms that discourage coercion or the use of force; and
- avoiding intimidation of U.S. companies that may seek to operate in the region.

The 113<sup>th</sup> Congress has held several hearings on the issues surrounding maritime disputes in East Asia. In 2013, the Senate unanimously passed a resolution (S.Res. 167) which expressed strong support of the United States for the peaceful resolution of territorial, sovereignty, and jurisdictional disputes in the Asia-Pacific maritime domains. In the FY2013 National Defense Authorization Act (H.R. 4310/P.L. 112-239), Congress stated its position that the Senkakus are administered by Japan, and that no acts of other nations will change their status. Another resolution, S.Res. 412, has been referred to the Senate Foreign Relations Committee. In the House, H.R. 4495 has been referred to the Committee on Armed Services and the Committee on Foreign Affairs.

There are other issues relating to East Asian maritime disputes that the 113<sup>th</sup> Congress may choose to address. The Senate may consider offering its advice and consent on the United States becoming a party to the United Nations Convention on the Law of the Sea (UNCLOS). Congress also may choose to examine the economic and security implications of a greater U.S. military presence in disputed areas, or the merits of providing additional resources to Southeast Asian nations to monitor and police their maritime domains. It also may choose to support efforts to lower tensions, including discussions between China and the Association of Southeast Asian Nations (ASEAN) on a Code of Conduct for parties in the South China Sea.

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## Overview

Rising tensions over overlapping maritime territorial claims in East Asia have become a pressing challenge for U.S. policy makers, raising important questions about U.S. diplomacy and security commitments in the region. These issues raise a series of challenges for Congress, including broad oversight of the Obama Administration's policies in Asia, decisions about military priorities and resources in and around disputed areas, how deeply to support the development of military capabilities of disputant nations, and how to manage relations with parties involved in the disputes, particularly China, Japan, the Philippines, and Vietnam, which have been involved in increasingly frequent maritime incidents in the East China Sea and South China Sea.

The territorial disputes at the heart of these tensions are decades old, and incidents among the parties have been ongoing for many years. Observers have noted a sharp uptick in maritime incidents and diplomatic tensions over recent years, posing one of the first major challenges for the U.S. strategic "rebalancing" towards the Asia-Pacific.<sup>1</sup> Although the People's Republic of China (PRC) is not the only nation that has sought to press its maritime territorial claims, actions taken by PRC actors, including China's maritime law enforcement authorities and the People's Liberation Army (PLA), have been a particular concern.

The most serious sets of disputes are in the East China Sea and South China Sea. The former include the competing claims by China, Japan, and Taiwan over a set of Japanese-controlled islets called the Senkakus by Japan, the Diaoyu Islands by China, and the Diaoyutai Islands by Taiwan. The South China Sea disputes involve competing claims by Brunei, Malaysia, China, the Philippines, Taiwan, and Vietnam. Other disputes involve Japan and South Korea in the Sea of Japan, and China and South Korea in the Yellow Sea.

The South China Sea, the East China Sea, and the Sea of Japan are among the world's busiest waterways, and incidents at sea can create risks for vessels operating in both seas. Incidents arise for many reasons, including the desire of nations around a sea's periphery to demonstrate sovereignty and to protect their ability to exploit economic resources including oil and gas, or fish. In addition, incidents can be propelled by populist pressures in many of the nations involved.

The United States is not a claimant in any of these waters, and it has consistently taken no position on the specific sovereignty questions. However, U.S. government officials regularly voice U.S. opposition to the use of force, threat, or coercion by nations seeking to strengthen sovereignty claims over landmasses, and support for the use of customary international law and available arbitration mechanisms to resolve disputes peacefully. U.S. officials also have voiced the position that maritime claims should be based on relevant international law, as indicated in the 1982 U.N. Convention on the Law of the Sea (UNCLOS).

To many observers, Chinese actions in the disputed waters will be a key factor for regional security, and a test of China's development as a regional power and a responsible global actor.<sup>2</sup>

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<sup>1</sup> For more, see CRS Report R42448, *Pivot to the Pacific? The Obama Administration's "Rebalancing" Toward Asia*, coordinated by Mark E. Manyin

<sup>2</sup> On February 5, 2014, Assistant Secretary of State Daniel Russel told the House Foreign Affairs Committee's Subcommittee on East Asia and the Pacific that China's behavior "reflects an incremental effort by China to assert control over the area contained in the so-called 'nine-dash line,' despite the objections of its neighbors and despite the lack of any explanation or apparent basis under international law regarding the scope of the claim itself." Daniel (continued...)

Many analysts argue that because China has more military might than many of the claimants, as well as economic leverage and geopolitical clout, its behavior in these disputes sets the tone for maritime security in the region.<sup>3</sup> PRC officials, by contrast, regularly have argued that they are responding to the actions of other nations rather than acting aggressively. They have reacted particularly strongly to U.S. actions and statements which they perceive as supportive of other claimants, arguing that the United States is contributing to regional instability by emboldening other nations.

In this context, U.S. policy makers face numerous simultaneous challenges: discouraging what many see as aggressive or coercive Chinese behavior while retaining a productive relationship with Beijing, supporting U.S. allies while discouraging them from taking actions that could further escalate tensions, and helping the region's nations forge multilateral "rules of the road" for managing tensions—all at a time when the frequency of maritime incidents continues to grow. Administration officials say the disputes and tensions will likely continue in the region for years.<sup>4</sup>

This report will discuss the territorial claims in East Asia that underlie the growing tensions, U.S. interests that are at stake, factors that may be driving the growing tensions, and possible options for Congress to consider. A companion CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke, focuses on the security implications for the United States of disagreements over the definition of and the permissible activities in the disputed EEZs in the East China Sea and the South China Sea, with a focus on issues involving China.

Other CRS reports discuss these issues as well, including

- CRS Report R42761, *Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations*, by Mark E. Manyin;
- CRS Report R41108, *U.S.-China Relations: An Overview of Policy Issues*, by Susan V. Lawrence;
- CRS Report RL32496, *U.S.-China Military Contacts: Issues for Congress*, by Shirley A. Kan;
- CRS Report RL33436, *Japan-U.S. Relations: Issues for Congress*, coordinated by Emma Chanlett-Avery;
- CRS Report R40208, *U.S.-Vietnam Relations in 2013: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin;
- CRS Report R43498, *The Republic of the Philippines and U.S. Interests—2014*, by Thomas Lum and Ben Dolven;

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(...continued)

Russel, Maritime Disputes in East Asia, Testimony to the House Foreign Affairs Committee Subcommittee on East Asia and the Pacific, February 5, 2014.

<sup>3</sup> See, for example, Bilahari Kausikan, Singapore Ambassador-at-Large, Address to 2014 PECC Conference on New Perspectives on Regional Economic Integration. February 11, 2014.

<sup>4</sup> See, for example, Assistant Secretary of State Kurt Campbell, "Maritime Territorial Disputes and Sovereignty Issues in Asia," testimony before the Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs, September 20, 2012.

- CRS Report R41952, *U.S.-Taiwan Relationship: Overview of Policy Issues*, by Shirley A. Kan and Wayne M. Morrison.

## **U.S. Policy Regarding Asia's Maritime Disputes**

Maritime territorial disputes are a significant factor in U.S. diplomacy in East Asia, particularly relations with China, Japan, South Korea, and Southeast Asian nations including the Philippines and Vietnam. They have become one of the most challenging aspects of U.S. policy in Asia, touching on the management of treaty alliances, particularly those with Japan and the Philippines, where treaty obligations could be invoked if either country becomes involved in an active conflict with another of the claimants (for more, see the "Treaty Obligations" section below), and on the Obama Administration's efforts to help Asian nations build regional "rules and norms" that foster stability.

Long-standing U.S. policy holds that the United States has no territorial claims in the region and does not take a position on any of the specific sovereignty disputes, but that it supports freedom of navigation in these waters and opposes the use of coercion, intimidation, threats, or force by claimants trying to assert their territorial claims.

The Obama Administration has taken several steps to raise the level of U.S. involvement in the disputes. In what many analysts regard as a touchstone moment in the U.S. approach, Secretary of State Hillary Clinton stated at the July 2010 meeting of the ASEAN Regional Forum (ARF) in Hanoi, Vietnam, that the United States has a "national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea."<sup>5</sup> Chinese officials reacted angrily to the statement, and to the fact that 11 other nations at the meeting also voiced similar concerns. At nearly every regional security dialogue since that meeting, U.S. and other regional officials have voiced concern about the issues, while China has sought to have them removed from the multilateral agenda, arguing that the maritime territorial disputes and incidents are bilateral issues to be resolved by the nations involved.

In the East China Sea, where the frequency of Sino-Japan maritime incidents has grown to levels that many observers find alarming, the Obama Administration has raised the profile of the long-standing U.S. position that the U.S.-Japan Security Treaty, under which United States is bound to protect "the territories under the Administration of Japan," covers the Senkaku islets because they are administered by Japan. On an April 2014 state visit to Japan, President Obama became the first President to state this publicly,<sup>6</sup> prompting an angry Chinese response. Administration officials have coupled statements to this effect to statements that the United States takes no position on the question of sovereignty and that it opposes unilateral attempts to undermine Japanese administration.

To some Japanese observers, the growing Sino-Japan maritime confrontation is a concrete manifestation of the threat Japan has faced for years from China's rising regional power. It brings

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<sup>5</sup> See <http://www.state.gov/secretary/rm/2010/07/145095.htm>.

<sup>6</sup> During a joint press appearance with Prime Minister Shinzo Abe, President Obama said "And let me reiterate that our treaty commitment to Japan's security is absolute, and Article 5 covers all territories under Japan's administration, including the Senkaku Islands." White House Press Release, "Remarks By President Obama and Prime Minister Abe of Japan in Joint Press Conference," April 24, 2014, Tokyo, Japan.



into relief Japan's dependence on the U.S. security guarantee and its anxiety that Washington will not defend Japanese territory if doing so risks war with China. In this context, the rebalancing strategy has been reassuring to many Japanese leaders. However, Obama Administration officials also have communicated concerns to their Japanese counterparts that Tokyo should not be seen as unnecessarily provocative on disputes with its neighbors.

Many Chinese observers see the confrontation in the opposite way: a concrete manifestation of the threat China faces from a re-militarizing Japan, backed by U.S. support. China considers Japan to have set off the current round of tensions in 2012 by purchasing the islets from private Japanese owners.<sup>7</sup> China also believes the U.S. rebalancing has contributed to the rising tensions, emboldening Japan and changing what it says had been a stable situation. The diametrically opposed views underscore how hard it will be to reduce tensions.

In the South China Sea, the United States has voiced support for multilateral dialogues to help manage tensions, acknowledging that the territorial disputes are long-standing, involve numerous parties, and will be very difficult to resolve in the near term. It has voiced particular support for discussions between China and ASEAN over a Code of Conduct for disputants in the region. To many analysts, such a set of mutual understandings—ideally with some form of enforcement mechanism—could contribute to preventing potential conflict. Although ASEAN-China negotiations on a code were restarted in 2013, disagreement among parties about what should be included, and whether a Code should have binding dispute resolution mechanisms, has stymied progress.

In recent months, many observers note that Obama Administrations officials also have become more specific in their calls for all parties to adhere to customary international law, as embodied in the United Nations Convention on the Law of the Sea (UNCLOS), and to clarify the precise nature of their claims. In February 6, 2014, testimony to the House Foreign Affairs Committee's Asia Subcommittee, Assistant Secretary of State Daniel Russel said: "... we do take a strong position that maritime claims must accord with customary international law. This means that all maritime claims must be derived from land features and otherwise comport with the international law of the sea."<sup>8</sup> During an April trip to the Philippines, President Obama praised Manila's decision to file for international arbitration in its maritime disputes with China.

At the same time, the tensions raise the issue of whether the United States should seek to improve the capabilities of Southeast Asian nations to monitor and police their maritime territory in the South China Sea, where several nations have disputes with China. The United States has transferred to the Philippines two 3,350-ton Hamilton-class high-endurance cutters that originally entered service with the U.S. Coast Guard in 1967. In December 2013, the Administration announced two security assistance packages—a \$40 million, three-year package for the Philippines under the Global Security Contingency Fund (GSCF), to aid the Philippine Coast Guard and National Police improve maritime domain awareness, logistics, engineering, communication, and vessel maintenance; and a \$32.5 million regional assistance package—

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<sup>7</sup> In April 2012, Tokyo Governor Shintaro Ishihara announced a plan to buy three of the Senkaku islands from a private Japanese owner. In July, Japan's central government indicated it would nationalize the islands. The central government said its move to buy the islands, which was discussed through the summer, aimed to prevent a group of Japanese nationalists from acquiring the islands. The group's nominal leader had called for showing Japan's control over the islands by building installations such as a telecommunications base, a port, and a meteorological station.

<sup>8</sup> Daniel Russel, Assistant Secretary of State, testimony to the House Foreign Affairs Committee's Asia Subcommittee, February 6, 2014.

including \$18 million for Vietnam—to enhance the capacity of coastal patrol units. The latter package included new maritime law enforcement training courses at the International Law Enforcement Academy in Bangkok, Thailand.

**Figure 1. Map of East Asia**



Source: Congressional Research Service.

## Issues for Congress

Maritime disputes in East Asia raise numerous issues for Congress, including broad oversight of the Obama Administration’s policies and relations with each of the claimant nations. Congress faces questions of how much to support the development of military capabilities of Southeast Asian disputants, each of which is at a military disadvantage with China, and how to manage relations with China and Japan, which have been involved in increasingly frequent maritime

incidents in the East China Sea. Congress may choose to examine the rebalancing towards Asia and its implications for relations between China and other claimant nations. It may choose to assess whether the Obama Administration's approach is fostering stability, and whether the Administration has a clearly articulated strategy for dealing with the disputes.

One key congressional concern has been the possibility that the United States could be drawn into a conflict in the region. Some analysts point to the risk of a conflict that could bring in the United States,<sup>9</sup> arising from scenarios that include:

- Chinese action to block U.S. surveillance activity within China's 200-nautical-mile Exclusive Economic Zone (EEZ) (the area from 12 nautical miles from China's coast to 200 nautical miles from its coast), where China takes the position that foreign militaries must seek its approval to conduct any activity;<sup>10</sup>
- Armed conflict between China and another claimant, perhaps as an escalation of an inadvertent incident such as a collision. This would be of particular concern in the cases of Japan or the Philippines, both of which have treaty alliances with the United States. As noted above, the U.S. position is that the U.S.-Japan Security Treaty of 1960 applies to the Senkaku Islands, which are claimed by China, Japan, and Taiwan, and administered by Japan. The 1951 Mutual Defense Treaty with the Philippines is less definitive about the United States' responsibilities in the event of an attack on Philippine-claimed territory in the South China Sea.

East Asian maritime territorial disputes may play a role in consideration of various legislation during the 113<sup>th</sup> Congress, especially defense authorization and appropriation bills. Defense authorization legislation may consider the implications of the reallocation of military resources within the Asia-Pacific region on the political dynamics among the various claimants in the East and South China Seas. Similarly, Congress may examine defense appropriation legislation which may provide for the provision of military resources to Southeast Asian nations. **H.R. 4495**, introduced in the House on April 28, 2014, called on the Department of Defense to conduct an assessment of the maritime balance of forces in the Asia-Pacific region over the next 10-year period, and ensure the United States maintains its defense commitment to the region.

Overall, Congress has the ability to lend its voice in support of processes to lower tensions and seek resolution of the disputes, or to speak forcefully about what it sees as aggressive or coercive actions by parties in the disputes. It can urge that U.S. relations with China, Japan, Taiwan, Southeast Asian claimants, and multilateral bodies such as ASEAN be conducted in ways that serve U.S. interests in the region. For example, Congress inserted in the FY2013 National Defense Authorization Act (**H.R. 4310/P.L. 112-239**) a resolution stating among other items that "the unilateral action of a third party will not affect the United States' acknowledgment of the administration of Japan over the Senkaku Islands."

The Senate has considered resolutions regarding maritime security in East Asia. On July 29, 2013, it unanimously agreed to **S.Res. 167** ("Reaffirming the strong support of the United States for the peaceful resolution of territorial, sovereignty, and jurisdictional disputes in the Asia-

<sup>9</sup> See Bonnie S. Glaser, *Armed Clash in the South China Sea, Contingency Planning Memorandum No. 14*. Council on Foreign Relations.

<sup>10</sup> For more on the EEZ issue, see CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke.

Pacific maritime domains.”), which condemns the use of coercion and urges all parties to the disputes to exercise self-restraint; supports a South China Sea code of conduct, collaborative diplomatic processes, and adherence to international law, including the use of international arbitration; and encourages the strengthening of U.S. partnerships and military engagement in the region. On April 7, 2014, Senator Robert Menendez introduced **S.Res. 412** (“Reaffirming the strong support of the United States Government for freedom of navigation and other internationally lawful uses of sea and airspace in the Asia-Pacific region, and for the peaceful diplomatic resolution of outstanding territorial and maritime claims and disputes.”), which has been referred to the Senate Foreign Relations Committee. **H.R. 4495**, mentioned above, makes many similar statements of support for peaceful resolution of the disputes. It has been referred to both the House Armed Services Committee and House Foreign Affairs Committee.

The Senate also could offer its advice and consent to U.S. adherence to the United Nations Convention on the Law of the Sea (UNCLOS), which went into force in 1994 and is widely considered the governing regime for oceans and the primary (though not the only) venue for making maritime territorial claims and adjudicating maritime territorial disputes. The United States signed UNCLOS in 1994 but has not ratified it. In the 112<sup>th</sup> Congress, the Senate Foreign Relations Committee held four hearings on UNCLOS, considering the opinions of the Obama Administration, military leadership, the private sector, and opponents of accession.<sup>11</sup> The committee held no vote on the Convention in the 112<sup>th</sup> Congress, and no hearings have been held in the 113<sup>th</sup> Congress.

## **Background: Who Claims What?**

The persistence of complex and overlapping territorial claims in the South China Sea, the East China Sea, the Sea of Japan, and the Yellow Sea is at the base of tensions that have existed for decades, and that have flared up substantially in recent years. The disputes stem from myriad factors, including different interpretations of history, different interpretations of UNCLOS, the unwillingness of some parties to submit to dispute settlement procedures, and—with rare exceptions—the inability of the disputants to negotiate settlements among themselves.

One of the most complex issues surrounding maritime territorial disputes is that there is no single agreed-upon venue or protocol for resolving them. UNCLOS—to which each of the claimant states is a part—presents one possible venue for making formal claims to maritime territory. UNCLOS hosts dispute-resolution mechanisms including the International Tribunal of the Law of the Sea (ITLOS) and can also refer disputes to the International Court of Justice (ICJ). However, when China became a Party to the Convention, it formally did not accept its dispute-resolution chapters.

Furthermore, UNCLOS’s provisions do not govern decisions on who owns which land or landmasses—they apply only to the maritime rights countries can claim around their sovereign land territory. The PRC’s expansive and vaguely defined claims in the South China Sea are not based on UNCLOS’s provisions, relying instead on historical documents predating UNCLOS,

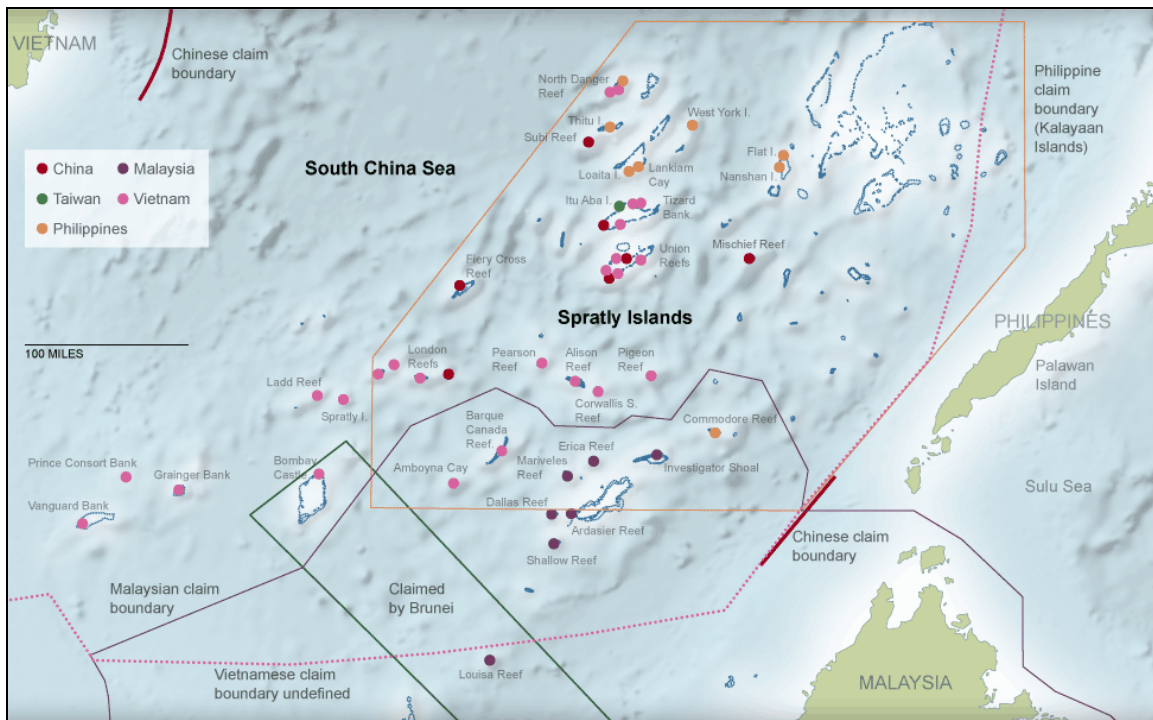
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<sup>11</sup> Senate Foreign Relations Committee, hearings, *The Law of the Sea Convention (Treaty Doc. 103-39): U.S. National Security and Strategic Imperatives for Ratification*, May 23; *The Law of the Sea Convention (Treaty Doc. 103-39): Perspectives from the U.S. Military*, June 14; *The Law of the Sea Convention (Treaty Doc. 103-39)*, June 14; and *The Law of the Sea Convention (Treaty Doc. 103-39): Perspectives from Business and Industry*, June 28, 2012.

which Beijing argues show it enjoyed centuries of administrative control of the areas. Countries have relied on numerous tools to demonstrate sovereignty claims, including evidence of historical administrative control or *de facto* administrative control through occupation or construction on islands and other landmasses. Nations have declared islets, some of them no more than rocks at high tide, as sovereign territories.

This dynamic has led to numerous instances of aggressive behavior by claimants trying to demonstrate administrative control over an area. Many observers argue that the rising frequency of Sino-Japan incidents in the Senkakus relates to a Chinese effort to demonstrate that Japan does not exercise undisputed administration over the uninhabited islets, and a Japanese effort to demonstrate that it does. Other incidents in the South China Sea—including a 2012 China-Philippines dispute over a set of outcroppings known as Scarborough Shoal and a May 2014 China-Vietnam standoff after the China National Offshore Oil Corporation (CNOOC) moved an exploration rig into waters claimed by both nations—can be seen as attempts to show which claimant has effective control over an area. Such behavior is not new: Beginning in the 1940s, claimants including China, Malaysia, the Philippines, Taiwan, and Vietnam have each occupied islands and rocks in the South China Sea in order to demonstrate administrative control.

**Figure 2. Five Claimants Occupy Portions of the Spratly Islands**



Source: State Department.

If sovereignty over an island or rock can be established, UNCLOS allows its members to claim various types of adjoining maritime territory, with varying associated rights and privileges (see **Table 1**). In essence, a landmass is entitled to an Exclusive Economic Zone of up to 200 nautical miles if it is habitable, although the Convention does not give a precise definition of the term. If the landmass is not habitable but extends above the sea level at high tide, it is deemed under UNCLOS to be a rock, and entitled to only a 12 nautical mile territorial sea. The distinction is one reason why claimants in the South China Sea have built extensive structures and even based

people above land features that are little more than rocks at high tide. Under UNCLOS, rocks that do not extend above sea level at high tide are not landmasses and do not allow a claimant to claim any maritime territory.

**Table I. Rights of Coastal Nations Under UNCLOS**

Territorial Sea	A belt of ocean measured seaward up to 12 nautical miles from the baseline of a coastal nation, or from the seaward side of any islets or islands under its sovereignty (1 nautical mile=1.15 miles). Nations enjoy full rights of sovereignty in their territorial seas, including their economic development and policing. All ships enjoy the right of “innocent passage” in a nation’s territorial sea.
Contiguous Zone	An area extending seaward from the baseline up to 24 nautical miles in which the coastal nation may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations that occur within its territory or territorial sea. Most observers hold that all ships and aircraft enjoy high seas freedoms, including overflight, in the contiguous zone, although some nations, including China and others, dispute this interpretation.
Exclusive Economic Zone (EEZ)	A resource-related zone adjacent to the territorial sea, in which a State has certain sovereign rights, including the right to govern economic development, but not full sovereignty. The EEZ may not extend beyond 200 nautical miles from the nation’s baseline. This zone can be claimed from a coastal state’s mainland, or from <i>habitable</i> landmasses, including islands. Most observers hold that all ships and aircraft enjoy high seas freedoms, including overflight, in the EEZ, although some nations, including China and others, dispute this interpretation.
Extended Continental Shelf	Under certain geological conditions, nations can make claims that extend beyond their 200 nautical mile EEZ, to the feature that geologists call the “continental margin.” If accepted by the Commission on the Limits of the Continental Shelf, nations enjoy the same rights as they do in the EEZ.

## South China Sea Claims

Maritime boundaries in the South China Sea are particularly problematic because they involve six separate claimants in a mostly enclosed body of water with a large number of disputed land features. The South China Sea, one and a half times the size of the Mediterranean Sea, is ringed by Brunei, China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam, and dotted with hundreds of small islands, shoals, reefs, and rocks, many of them occupied by the disputants.

China, Taiwan, and Vietnam each claim the Paracel Island chain in the northern part of the sea. China controls them in practice, having forcibly taken control of the group in 1974 from the former Republic of Vietnam (South Vietnam). Further south, the Spratly Island chain is claimed in totality by China, Taiwan, and Vietnam, and partially by Brunei, Malaysia, and the Philippines. Each of the claimants except Brunei occupies at least one of the Spratly islands or shoals. Virtually none of the landmasses in the Spratlys is habitable, but control over them could give a claimant rights to an area thought to be potentially rich in energy resources. Some claimants have gone to the extent of building extensive structures atop small rocks, or basing troops or other personnel on islets with no fresh water. Most observers say these actions are intended to demonstrate control, and in some cases even habitability.

The most problematic set of disputes derive from the broad and ambiguous claim that China makes to around 80% of the sea through a U-shaped nine-dash line that overlaps with the claims

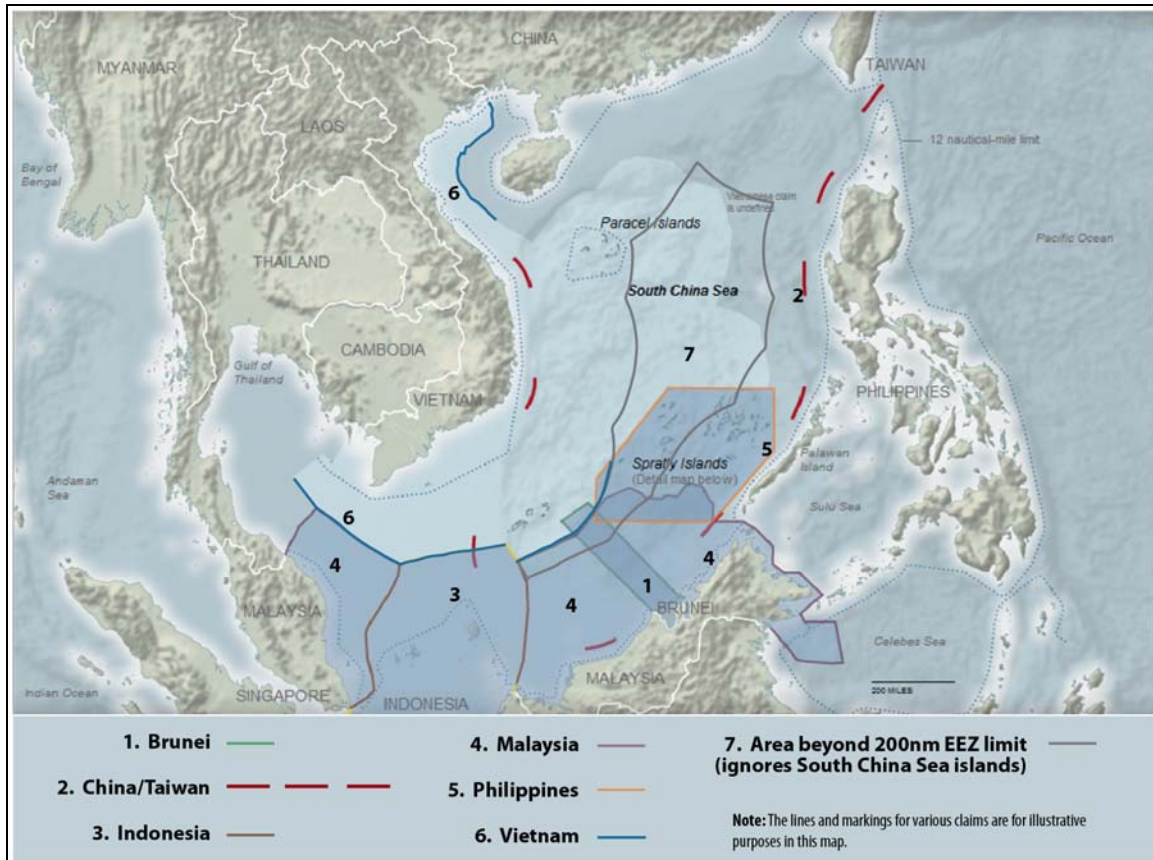
of each of the other claimants. Over the years, Chinese officials have been ambiguous about what the line means—whether China is claiming the entire sea and seabed, or just the landmasses within the line and whatever adjacent waters it is entitled to under international law.

The nine-dash line overlaps with exclusive economic zones (EEZs) that other states draw from their mainland territory, citing UNCLOS. This creates uncertainty about what the coastal states have authority to do in these waters. As an example, in 2012, the state energy companies of China and Vietnam issued overlapping tenders for offshore energy exploration in areas that lie within both Vietnam's claimed EEZ and the nine-dash line. Similarly, China and the Philippines engaged in a prolonged standoff in 2012 over a dispute about which nation has the right to police Scarborough Shoal, an outcropping of rocks that lies within the Philippine EEZ and also inside China's nine-dash-line claim.

The territorial disputes have been made more complicated over several decades by frequently aggressive behavior by rival claimants. Claimants have harassed fishing, exploration, and naval vessels in disputed waters, publicly disputed resource exploration by other nations or companies working under contract, and instituted measures to assert legal or administrative control over disputed waters and landmasses outside their actual control.

The following is a claimant-by-claimant discussion of claims in the South China Sea.

**Figure 3. Territorial Claims in the South China Sea**



**Source:** Map as published by the *New York Times* on May 31, 2012, and adapted by Congressional Research Service.

## People’s Republic of China

The PRC contends that China was the first country to discover and name the islands in the South China Sea (which it calls *Nanhai*, or South Sea). China asserts that it developed these landmasses, islets and shoals, and exercises political jurisdiction over them. The PRC maintains that people from China started to fish around the Spratly Islands during China’s Ming Dynasty (1368-1644), and that the Spratly Islands first came under the political jurisdiction of China during the Yuan Dynasty (1271 to 1368, when the Mongolian empire conquered and ruled China).

As noted above, the PRC makes the most expansive claims of any of the South China Sea claimants, marking its maps with a broad U-shaped, nine-dash line that includes around 80% of the sea. It adopted the dashed line from maps with an 11-dash line first drawn in 1947 under the pre-revolution Republic of China government, which are also the basis of Taiwan’s claim.<sup>12</sup> China has not clarified whether it is claiming sovereignty over the entire sea and seabed enclosed by the nine-dash line, or is making a more limited set of claims, such as to the land features within the line or to historical rights, such as fishing or navigation rights. This ambiguity has been an

<sup>12</sup> The Republic of China moved to Taiwan in 1949, after being defeated in a civil war against the Chinese Communists, who in 1949 established the People’s Republic of China.



important driver of tensions, and has made negotiations with other South China Sea claimants difficult.

In a 2009 submission to the U.N. Commission on the Limits of the Continental Shelf, a UNCLOS body, China included a map with the nine-dash line in a response to a claim by Malaysia and Vietnam, and asserted “indisputable sovereignty over the islands in the South China Sea and the adjacent waters.”<sup>13</sup> This raised questions among legal observers about the nature of the Chinese claim, and whether it comports with international law, as embodied in UNCLOS. (See section on “The Role of UNCLOS,” below.)

PRC maps call the nine-dash line a “national border,” and PRC officials commonly refer to the South China Sea as China’s territory. In March 2012, the commander of a PLA Navy submarine base discussed the South China Sea as China’s “maritime national territory” and called the nine-dash line China’s “intermittent national boundary in the South China Sea,” while stating that actions to assert China’s jurisdiction were needed to support the marking of the national boundary.<sup>14</sup> In June 2012, the PRC announced it was upgrading the administrative level of Sansha, a city located on an island in the Paracels, to administer disputed areas of the South China Sea, and in July 2012 it announced it would set up a People’s Liberation Army (PLA) garrison there. These announcements prompted a detailed State Department response that the moves “run counter to collaborative diplomatic efforts to resolve differences and risk further escalating tensions in the region.”<sup>15</sup>

In 1999, the PRC first imposed a unilateral fishing ban in the northern part of the South China Sea. This ban has been re-imposed annually, and PRC maritime patrol ships have periodically detained foreign fishermen, expelled fishing boats, or confiscated the catch of fishermen operating in this part of the sea, particularly from Vietnam. On January 1, 2014, amended regulations announced by China’s Hainan province took effect, to implement the PRC Fisheries Law. Article 35 requires foreigners to seek permission from authorities of the State Council to fish in Hainan’s “jurisdictional waters,” which were not defined but appeared to cover more than half of the South China Sea. The amended regulations applied the PRC law explicitly to foreign nationals and PRC citizens. On January 9, 2014, the State Department said:

The passing of these restrictions on other countries’ fishing activities in disputed portions of the South China Sea is a provocative and potentially dangerous act. These regulations appear to apply to the maritime space within China’s so-called nine-dash line. China has not offered any explanation or basis under international law for these extensive maritime claims.

Like each of the claimants except Brunei, the PRC occupies some land features in the South China Sea, including the entire Paracel Island chain, which the PLA Navy forcibly took over from South Vietnam in 1974, and a set of reefs in the Spratlys, including Subi (Zhubi in Chinese), Gaven (Nanxun), Kennan (Dongmen), Johnson (Chigua), Fiery Cross (Yongshu), Cuarteron (Huayang), and Mischief (Meiji).<sup>16</sup> In 1995, the PRC used naval ships to take over Mischief Reef,

<sup>13</sup> The PRC’s claim is here: [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf). It was made in response to the Vietnamese/Malaysian claim here: [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>14</sup> *Renmin Haijun [People’s Navy]*, March 13, 2012.

<sup>15</sup> <http://www.state.gov/secretary/rm/2010/07/145095.htm>

<sup>16</sup> The place names given here, as elsewhere in the report, are the names officially used by the United States Board of Geographic Names. The names given here parenthetically are those officially used by the PRC.

which was previously inhabited by the Philippines. The PRC occupies the small rocks that make up Mischief Reef using large hexagonal platforms built above the rocks below.

### Changing the Status Quo: The 2012 Scarborough Shoal Incident

The growing frequency of Chinese actions in the East and South China Seas has led many analysts to argue that China is seeking incrementally to assert and strengthen its maritime territorial claims, using gradual threats and coercion that, while aggressive, fall short of direct conflict. Many analysts argue that China has sometimes used a model in which it responds to what it says it considers provocative actions by others—which it argues have changed the region’s status quo—by taking its own strong or coercive steps to seek control over an area and further change the status quo in its favor. By using such an incremental strategy, these analysts argue, Beijing is using gradual threats and coercion to fortify its territorial claims.

As an illustration, some observers point to the 2012 events at Scarborough Shoal, a set of disputed islets approximately 120 miles from the Philippine mainland and also within China’s nine-dash line, in which a Philippine navy ship intercepted Chinese fishing vessels in the disputed waters. Chinese maritime vessels subsequently entered the area and blocked the Philippine vessel from exiting. Following weeks of negotiations aimed at de-escalating the situation, some intermediated by the United States, and despite a reported verbal agreement that all vessels would leave the area, Philippine vessels left the shoal but Chinese vessels returned and proceeded to cordon off parts of the atoll, resulting in China taking *de facto* control of the islets.

Other Chinese actors have indirectly made territorial assertions for China, including China’s national oil companies. On May 2, 2014, the state-owned China National Overseas Oil Corporation (CNOOC) moved a large exploratory oil rig into waters that Vietnam says lie on its continental shelf. The rig was less than 20 miles from one of the Paracel Islands claimed by both China and Vietnam. Around 80 Chinese ships reportedly entered the area escorting the rig, and some used water cannons to disperse Vietnamese patrol boats. Yi Xianliang, deputy director general of the Department of Boundary and Ocean Affairs of China’s Foreign Ministry, was quoted as saying the rig is in “China’s inherent territory.”<sup>17</sup>

The PLA also has appeared to challenge the U.S. military in international waters and airspace. In a recent incident on December 5, 2013, a PLA Navy ship reportedly placed itself in the path of the cruiser *USS Cowpens*, forcing the cruiser to take evasive action to avoid a collision. The incident occurred in the South China Sea, in an area widely considered to be international waters, at a time when the *Cowpens* reportedly was about 30 miles from the Chinese aircraft carrier the vessel was accompanying. The actions of the Chinese ship, like those of Chinese ships in earlier incidents with U.S. ships in 2001 and 2009, may have violated China’s obligations under the October 1972 multilateral convention on the international regulations for preventing collisions at sea (28 UST 3459; TIAS 8587; commonly known as the COLREGs, or the “rules of the road”), to which both China and the United States are party.

## Taiwan

Taiwan (as the Republic of China, or ROC) has asserted “historical claims” to the four groups of islands, reefs, and atolls in the South China Sea. In terms of occupation, Taiwan has controlled the Pratas Islands since 1946. In 1947, the ROC’s Ministry of Internal Affairs printed the “Location Map of the South China Sea Islands,” with an 11-dash line around the Pratas Islands, Paracel Islands, Macclesfield Bank, and Spratly Islands. In 1948, the Ministry of Internal Affairs published a second map indicating the ROC’s territory with an 11-dash line in the South China

<sup>17</sup> Jane Perlez and Rick Gladstone, “China Flexes Its Muscles in Dispute with Vietnam,” *The New York Times*, May 8, 2014.

Sea. Taiwan has occupied Itu Aba Island (Taiping Island), the largest island in the Spratlys, since 1956. Since 2000, Taiwan has stationed Coast Guard personnel on the Pratas and Taiping Islands, though the military has supplied weapons to and trained the Coast Guard. Although Taiwan maintains its historical claims in the South China Sea, it has generally refrained from interdicting ships from other nations that enter the disputed waters or detaining fishing boats of other nations found fishing in these waters.

## **The Philippines**

The Philippines, a U.S. treaty ally since 1952, has emerged as a key player in the disputes. Philippine claims in the South China Sea include much of the Spratly chain, and overlap with claims made by China, Malaysia, Taiwan, and Vietnam. In the Spratlys, the Philippines cites historical exploration of the area by Filipinos in the 1940s and 1950s. Philippine historians also respond to China's claims of centuries-old administrative control of the region by noting that Philippine fishermen have also fished in the South China Sea for centuries.

The Philippines has taken numerous steps to assert its claims. In 1972, the Philippine legislature formally designated 53 islands and shoals in the Spratly chain as part of Palawan Province, and defines them as a special "regime of islands" distinct from the rest of the Philippine archipelago. In 1999, it grounded a vessel at a landmass called Second Thomas Shoal and based Philippine troops there, where they continue to be based. In 2009, the Philippines passed a law clarifying the baselines that the country uses to demark its maritime borders, and bringing its Spratly claims closer into compliance with UNCLOS by stating that all maritime claims derive from land features.

The Philippines has waged notably acrimonious disputes with China. These flared particularly in the mid-1990s when China seized Mischief Reef, a landmass in the Spratly chain, and have arisen again over the past four years as the Philippines announced new energy exploration in its claimed EEZ and then engaged in the prolonged 2012 Scarborough Shoal standoff, which began with the Philippines using a naval vessel to arrest Chinese fishermen, and ended with China essentially taking de facto control of the atoll. More recently, in 2014, Chinese vessels have blocked supplies being shipped to Philippine personnel on Second Thomas Shoal.

Manila has explored several means for resolving disputes. In 2012, the Philippines offered China the opportunity to take their dispute over Scarborough Shoal to a number of dispute settlement mechanisms, including the International Tribunal under the Law of the Sea (ITLOS) or other international bodies, a move to which China declined to respond. Then, on January 22, 2013, the Philippines formally requested that an ITLOS Arbitral Tribunal rule on whether China's claims and its actions within the nine-dash line comply with UNCLOS. (See section below on the Philippines UNCLOS Suit.)<sup>18</sup> Foreign Secretary Albert del Rosario said the Philippines had exhausted diplomatic and military approaches to the dispute, and had resorted to a legal approach.

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<sup>18</sup> The International Tribunal under the Law of the Sea (ITLOS) requires that all parties in a dispute agree that the matter will be brought before the tribunal. UNCLOS also created an arbitration process in which a five-member Arbitral Tribunal is formed, with input from all disputing parties, to arbitrate a dispute. The Philippine Department of Foreign Affairs statement on its action is here: <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/7300-statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-the-unclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps>.

The Philippine suit argues that China's nine-dash line has no standing in international law, because it is not clear whether the PRC is claiming international waters, or merely the landmasses enclosed within the line. It also asks for a ruling on the limits of maritime boundaries that would accrue to the owners of the islands and islets. China has argued that the tribunal does not have legal standing to hear the case, stating that these questions by their nature touch on questions of sovereignty. In 2013, over Chinese objections, the tribunal took the case, and the Philippines submitted its full argument to the body on March 30, 2014. The tribunal has not yet ruled in the case.

## Vietnam

Vietnam makes a broad claim that includes both the Spratly and Paracel Island chains, although the full extent of Vietnam's claims have never been formally delimited on maps or in text. The historical basis of many of these claims dates to activity by Vietnamese vessels in the 17<sup>th</sup>-19<sup>th</sup> centuries. Vietnam also argues that a claim to the Paracel chain made in 1933 by French colonial administrators has passed to the present-day Vietnamese government.

In June 2012, Vietnam's National Assembly passed a Maritime Law that delineated its claims, based on baselines that had been drawn in 2003, laying out its formal claims to the Paracel and Spratly chains. In 2009, Vietnam and Malaysia submitted a joint claim to UNCLOS's Commission on the Limits of the Continental Shelf, which manages claims to areas beyond their 200 nautical mile EEZ.<sup>19</sup> It was this claim that prompted the PRC response that included a submission of the map including its nine-dash line. Vietnam's navy regularly patrols its claimed EEZ and has periodically detained fishing vessels of other nations found fishing in disputed waters.

Hanoi walks a difficult line in balancing its increasingly active public diplomacy against China's broad claims with its need to maintain reasonably positive ties with Beijing because of their shared land border and extensive economic links. In recent years, Vietnam has been very active in soliciting international support for its claims, including from the United States. During its 2010 chairmanship of ASEAN, Vietnam was effective in bringing maritime security onto ASEAN's agenda and encouraging the United States and other ASEAN partners to be more vocal on this issue.<sup>20</sup>

However, at the same time Vietnam has urged others to become more active in promoting maritime security and freedom of navigation in the South China Sea, Vietnam has also maintained regular government-to-government, military-to-military, and Party-to-Party communications with Beijing. Many analysts believe Hanoi's diplomatic mechanisms to manage disputes with China are more developed than those of other claimants, particularly the Philippines.<sup>21</sup> Analysts note that Vietnam is the only Southeast Asian nation to have successfully

<sup>19</sup> UNCLOS's Part VI, Article 76, defines the claimable continental shelf of a coastal state as comprising "... the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

<sup>20</sup> For a discussion of Vietnam's position on the issue, see CRS Report R40208, *U.S.-Vietnam Relations in 2013: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin

<sup>21</sup> See, for instance, *Stirring Up the South China Sea (II): Regional Responses*, International Crisis Group, July 24, 2012.

delineated any of its maritime boundaries with China, when the two marked out their territory in the Gulf of Tonkin, which lies between northern Vietnam and the southernmost parts of the PRC.

## Malaysia

Malaysia drew its continental shelf claim in the South China Sea in 1979, and it includes islets that Malaysia, the Philippines, and Vietnam each occupy. Malaysia does not claim the entire Spratly chain, but its claims to parts of the region overlap with claims made by China, Taiwan, the Philippines, Vietnam, and Brunei. Until recently, Malaysia's disputes with China have not been as hotly contested as Vietnam's or the Philippines's, most likely because Malaysia is located farther from the PRC and presents less economic competition. Malaysia's fishing industry, for instance, is much smaller than that of Vietnam or the Philippines. However, Chinese maritime law enforcement vessels reportedly have interfered with the operation of vessels operated or contracted by Malaysia's state energy company Petronas.<sup>22</sup> Malaysia itself has occasionally detained Vietnamese fishing vessels found operating in its claimed waters, causing some tensions between the two nations.

Malaysia has sought to foster more cooperation among Southeast Asian claimants. For example, its competing claims with Vietnam did not preclude it from joining Vietnam in submitting a joint extended continental shelf claim to the U.N. Commission on the Limits of the Continental Shelf. Malaysia's territorial dispute with Brunei was resolved when the two countries signed a boundary agreement in April 2009, which was followed in 2010 by an agreement between Malaysia's state energy company, Petronas, and the Brunei government to develop jointly two blocks offshore Borneo Island. Some observers have pointed to this resource-sharing arrangement as a potential model for others to resolve maritime territorial disputes.

Malaysia will serve as chair of ASEAN in 2015, and will have considerable authority over the degree to which maritime disputes are discussed at ASEAN-centered fora such as the ASEAN Regional Forum (ARF) and the East Asia Summit (EAS).

## Brunei

Brunei has narrow claims in the South China Sea that primarily consist of the claimed EEZ extending 200 nautical miles from its marked coastline. As noted, its claims overlap with those made by China and Taiwan, and there is a small overlap with claims made by the Philippines. It has resolved disputes with Malaysia through a 2009 agreement providing for joint development of energy resources.

## East China Sea Claims

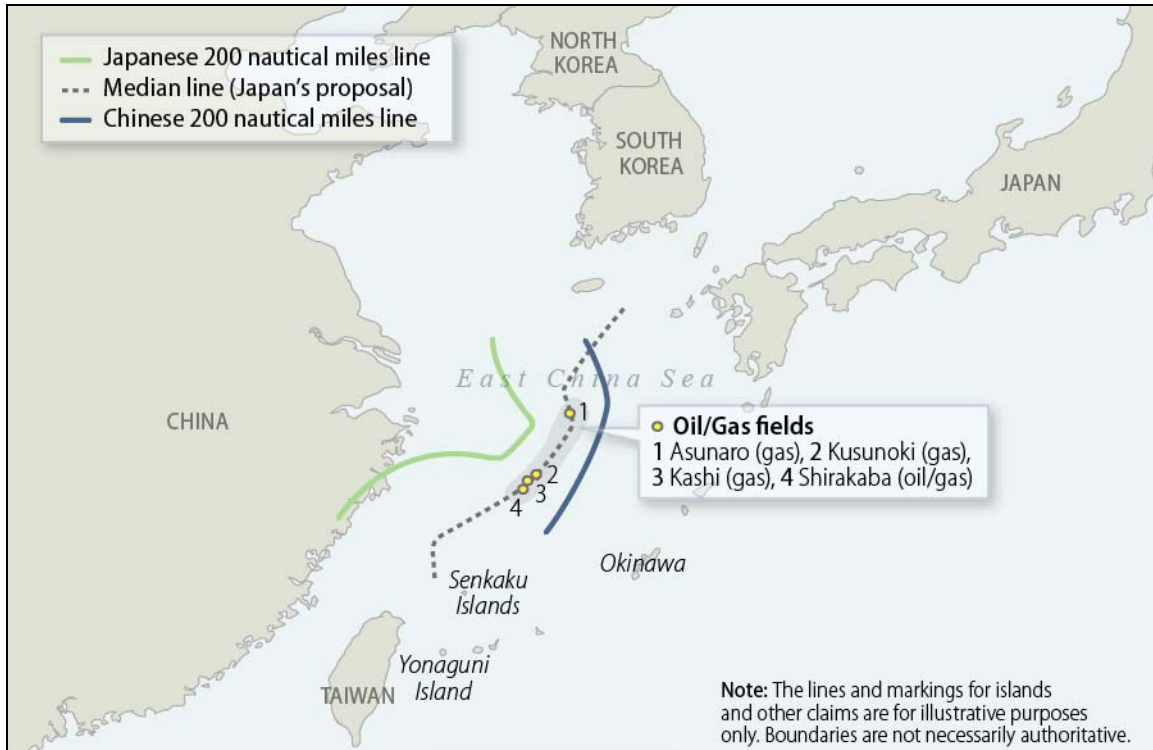
There essentially are two disagreements over territory and boundaries in the East China Sea (known in China as *Dong Hai*, or East Sea). The first, and most acrimonious, is the territorial dispute over the Senkaku islets (called the Diaoyu islets by the PRC and the Diaoyutai islets by Taiwan), which are administered by Japan, but also claimed by China and Taiwan.

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<sup>22</sup> Carlyle A. Thayer, "Can ASEAN Rise to the Chinese Challenge?" Yale Global Online. March 18, 2014.

The second major East China Sea disagreement is a maritime sovereignty dispute between China and Japan. While China claims the whole continental shelf to the Okinawa Trough, Japan claims the same shelf to a median line between its undisputed territory and that of China.

**Figure 4. East China Sea Claims and Resources**



**Source:** Congressional Research Service

## Competing Territorial Claims

The territorial disagreements over the Senkaku/Diaoyu/Diaoyutai islets have been the most contentious of the disagreements. Debate over the historical basis for the Japanese, Chinese, and Taiwanese claims over the islets center around three questions:

- Did Japan incorporate the islets as part of or separately from the 1894-1895 Sino-Japanese War?
- Should the islets be considered to be part of territories that China ceded to Japan in the 1895 Treaty of Shimonoseki that ended the Sino-Japanese War?
- Were the islets included in the arrangements under which Japan returned Taiwan to China in 1945, at the end of World War II?

China and Taiwan assert that China's Ming Dynasty (1368-1644) considered the islets part of its maritime territory and included them on maps and documents of areas covered by Ming Dynasty coastal defenses. China claims that the Qing Dynasty (1644-1911) went further and placed the islands under the jurisdiction of Taiwan, which was a part of the Qing Dynasty.<sup>23</sup> The PRC contends that upon Japan's surrender in World War II in 1945, Japan gave up Taiwan and should have also given up the Diaoyu Islands. Geographically, China also argues that the Okinawa Trough in the ocean floor separates the Senkakus (Diaoyu/Diaoyutai) and China's continental shelf from Japan's Ryuku Islands.

Japan, which maintains that there is no territorial dispute over the Senkakus, laid claim to the islands in January 1895, when the Japanese Emperor approved an Imperial Ordinance annexing them to Japan.<sup>24</sup> Before then, Japan argues, the islands were uninhabited (Japan uses the term "terra nullis") and "showed no trace of having been under the control of China."<sup>25</sup> In April 1895, Japan and the Qing Dynasty government of China signed the Treaty of Shimonoseki ending the Sino-Japanese War that had begun the previous year. Under the Treaty, China ceded Taiwan (Formosa) to Japan "together with all the islands appertaining or belonging to the said island of Formosa." The Treaty did not specifically mention the Senkakus (Diaoyu/Diaoyutai), and the islands were not discussed during the negotiating sessions.

Japan has claimed from this that its incorporation of the Senkakus (Diaoyu/Diaoyutai) was an act apart from the Sino-Japanese War. In contrast, China and Taiwan argue that Japan used its victory in the war to annex the islands. They also argue that the intent of the Allied declarations at Cairo and Potsdam during World War II was to restore to China territories taken from it by Japan through military aggression.<sup>26</sup> In October 1945, when Japan relinquished authority over Taiwan, the disposition of the Senkakus/Diaoyu/Diaoyutai was not explicitly resolved.

The ROC maintains that it "regained" sovereignty over Formosa (Taiwan) upon Japan's surrender at the end of World War II in 1945 and also should have regained what the ROC calls the Diaoyutai Islands. Taiwan's Foreign Ministry also asserts that the Diaoyutai Islands first appeared in China's historical records as early as the Ming Dynasty (1368-1644). President Ma Ying-jeou, in an August 2012 speech, argued that various international agreements after World War II "confirmed that Taiwan has been returned to the Republic of China." He added that "the Diaoyutai Islands, an island group part of Taiwan prior to World War II, naturally should have been returned to the Republic of China along with Taiwan after the war."<sup>27</sup> (Taiwan was a colony of Japan from 1895 to 1945. The ROC was established in 1911.)

From the early 1950s until 1972, the United States administered the islets, under the terms of the 1951 Treaty of Peace with Japan.<sup>28</sup> The United States then turned administration over to Japan in

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<sup>23</sup> State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

<sup>24</sup> Upton, op. cit., p. 768.

<sup>25</sup> Ministry of Foreign Affairs of Japan, "Recent Developments in Japan-China Relations. Basic Facts on the Senkaku Islands and the Recent Incident," October 2010, <http://www.mofa.go.jp/region/asia-paci/china/pdfs/facts1010.pdf>.

<sup>26</sup> Okinawa Reversion Treaty Hearings, p. 149, 152; "The Diaoyutai Islands: An Inherent Part of the Territory of the Republic of China (Taiwan)." State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

<sup>27</sup> ROC (Taiwan), "East China Sea Peace Initiative," Washington Post, October 10, 2012.

<sup>28</sup> Treaty of Peace with Japan, signed Sept. 8, 1951, 3 U.S.T. 3169. The Treaty did not mention the Senkakus (Diaoyu/Diaoyutai), but it referred to other islands that had reverted to Chinese control or which China claimed. These (continued...)

1972, after the signing of the U.S.-Japan Okinawan Reversion Treaty, under which the United States returned Okinawa and other nearby islands to Japan. China has described the U.S.-Japan understandings related to the islands as “backroom deals” that are “illegal and invalid.”<sup>29</sup>

In the 1970s, the question of the Senkakus/Diaoyu/Diaoyutai’s sovereignty was discussed, but not resolved, in the process of the PRC and Japan normalizing their relations in 1972 and concluding a peace treaty in 1978.<sup>30</sup> China claims that the two countries reached an understanding that the issue should be left for “future generations” to resolve.<sup>31</sup> Since the 1990s, both the PRC and Japan have accused each other of breaching this understanding of setting aside differences.

## The Maritime Sovereignty Dispute

The PRC claims maritime rights from its claim to a continental shelf that is a natural extension of China’s mainland, beyond 200 nautical miles to the middle of the Okinawa Trough (and east of a median line). The PRC contends that its oil and gas projects are in its continental shelf (which is not in dispute) and that joint development may be negotiated for some areas. In 2009, the PRC submitted to the U.N. Secretary General its “Preliminary Information Indicative of the Outer Limits of the Continental Shelf beyond 200 Nautical Miles,” a claim extending to the Okinawa Trough. Then, on December 14, 2012, it submitted its formal claim to the extended shelf.<sup>32</sup> Japan has proposed a median line that would divide the rights to the overlapping EEZ. Beijing has rejected Japan’s proposal.

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(...continued)

included Taiwan and the Pescadores (off the western coast of Taiwan), as well as the Spratlys and the Paracels (both in the South China Sea). Article 3 gave the United States sole powers of administration of “Nansei Shoto south of 29 north latitude (including the Ryukyu and the Daito Islands)...” In 1953, the U.S. Civil Administration of the Ryukyus issued U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27), which defined the boundaries of “Nansei Shoto [the southwestern islands] south of 29 degrees north latitude” to include the Senkakus. At the time of the signing of the Okinawa Reversion Treaty, several State Department officials asserted that following the signing of the Japan Peace Treaty, “Nansei Shoto south of 29 degrees north latitude” was “understood by the United States and Japan to include the Senkaku Islands.” Moreover, during the period of U.S. administration, the U.S. Navy established firing ranges on the islets and paid an annual rent to the son of the first Japanese settler of the islands.

<sup>29</sup> State Council Information Office, The People’s Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

<sup>30</sup> From 1949 until 1972, Japan recognized Taiwan (known as the Republic of China) as the legitimate government of China.

<sup>31</sup> Around the time of agreement on the PRC-Japan Treaty of Peace and Friendship of 1978, PRC paramount leader Deng Xiaoping declared the policy of “setting aside sovereignty disputes and seeking joint development” to handle the disagreement with Japan over the Senkaku Islands. Before signing the treaty in August 1978, Deng said that the “Diaoyu Island issue” can be set aside from the treaty and can be discussed later in a calm manner in a way that both sides can accept, perhaps by the next generation. In September 1978, Deng said that Japan has its position, and China has its position. He added that since both sides could not find a way to resolve the issue, they reached an “understanding” to set aside the issue. In October 1984, Deng said China and Japan had a dispute over the Diaoyu Island issue with different names for the islands. He added that his stance on “setting aside sovereignty disputes with joint development” (whether for the Senkaku or Spratly islands) was an alternative to China’s use of force. Later, the PRC asserted that the approach of “setting aside the dispute” still meant “sovereignty belongs to China.” Deng Xiaoping, Remarks with Japan’s Foreign Minister, August 10, 1978; Remarks with Bangladesh’s President, September 9, 1978; Remarks with Japan’s Prime Minister, October 25, 1978; Remarks to Central Advisory Commission, October 22, 1984, *Deng Xiaoping Wenxuan* [Selected Works of Deng Xiaoping]; PRC Foreign Ministry, “Set Aside Dispute and Pursue Joint Development,” November 17, 2000.

<sup>32</sup> Available at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_chn\\_63\\_2012.htm](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_chn_63_2012.htm).



Since at least the 1970s, China has been exploring and building pipelines in the disputed waters of the East China Sea, under which lie gas and oil reserves. For decades, the Japanese government did little to protest or block these moves. Indeed, in the 1990s, Japan's Export-Import Bank provided financing to the PRC for oil and gas pipelines from the Pinghu field in disputed waters. However, beginning in the late 1990s, Japan took a more assertive stance toward perceived PRC encroachment.

In the 2000s, China and Japan began to pursue a bilateral agreement over the exploitation of the undersea hydrocarbon resources. In their negotiations, both Beijing and Tokyo have sought to make a distinction between their territorial dispute over the Senkakus and the rights to develop the undersea hydrocarbon fields. On June 18, 2008, the two sides announced an agreement on joint exploration for gas and oil in two of the fields close to or straddling the "median line" that Japan claims is the rightful boundary between the two countries' EEZs. Their goal was to transform the disputed areas of the East China Sea into a "Sea of Peace, Cooperation and Friendship." The agreement explicitly states that it does not prejudice either side's legal claims in the area.

Under the agreement, the two countries reached an "understanding" for cooperation in the Chunxiao gas and oil fields (called Shirakaba in Japanese), the southernmost of the two fields. Japanese companies were to form a joint venture with China's state-owned companies, with profits split in proportion to their investment. The Japanese firms would operate under Chinese laws and procedures. The Chunxiao field is on the Chinese side of Japan's median line and is under the charge of CNOOC. Japan has protested CNOOC's extraction from the Chunxiao field, fearing that it will siphon off gas from its side of the "boundary." (*For more on joint resource development, see Resources as a Driver of Competition section below.*)

The June 2008 understanding calls for the two sides to negotiate a formal agreement in order to implement the joint development provisions. In Japan's case, such an agreement would take the form of a treaty, subject to ratification by the Japanese Diet (parliament). To date, no progress has been made in implementation of this agreement.

## **Tensions Since 2010**

There has been a series of flare-ups in tensions over the Senkakus since 2010. In September 2010, after a fishing boat from the PRC collided with two patrol boats from Japan's Coast Guard near the islands, Japanese officials arrested the boat's captain. The PRC took a number of actions in response: calling for the captain's release, accusing Japan's ships of endangering the safety of PRC fishermen and fishing boats in waters near China's territory, warning of countermeasures against Japan, deploying two fisheries patrol ships near the Senkakus, suggesting that restrictions on rare earth exports to Japan stemmed from bad feelings toward Japan, demanding Japan's apology and compensation even after it released the captain, and, in the following month, allowing rare anti-Japan protests.

Two years later, tensions heated up again after Japan announced on September 10, 2012, that the central government would purchase certain islands in the Senkakus from private owners. The announcement prompted sharp reactions from the PRC and from Taiwan, who viewed it as a nationalization of the islets and therefore a major change to the status quo. The PRC deployed China Maritime Surveillance (CMS) and Fisheries Law Enforcement Command (FLEC) ships to patrol near the islands, including into the territorial waters on some days, and stepped up what it called routine and normal patrols at sea to assert jurisdiction in what Chinese officials called

“China’s territorial waters.” On the same day as the announcement, China announced baselines for the islets, which it filed with the United Nations days later.

According to some sources, for much of 2013, China increased its maritime and aerial patrols around the islets, prompting reciprocal responses from the Japanese coast guard and the Air Self Defense Force. Tensions were further heightened on November 23, 2013, when the PRC announced an Air Defense Identification Zone (ADIZ) for the East China Sea that covers the Senkakus and that overlaps with the ADIZs of Japan, South Korea, and Taiwan. The PRC also issued rules to apply to all aircraft flying in the ADIZ, regardless of whether they enter China’s airspace, with a vague threat of actions by the PLA in the event of noncompliance. Secretary of Defense Chuck Hagel stated on November 23, 2013, that the ADIZ was a destabilizing attempt to alter the status quo and would not change how the U.S. military conducts operations. Secretary of State John Kerry said that the United States does not recognize efforts by any State to apply its ADIZ procedures to foreign aircraft not intending to enter national airspace. (The United States does not apply its ADIZ procedures to foreign aircraft not intending to enter U.S. airspace, but there is no international law or treaty governing practices in ADIZs.) The Secretary of State called on China not to implement its “threat” to take action against aircraft.

## **Other Disputed Areas**

### **Sea of Japan**

In August 2012, tensions between Japan and South Korea rose dramatically after South Korean President Lee Myung-bak visited a set of small islets called Liancourt Rocks (known as Dokdo by Koreans and Takeshima by Japanese), that are claimed by both countries and administered by South Korea. The islets are in the Sea of Japan, which Koreans call the East Sea. In response to Lee’s move, the Japanese government of then-Prime Minister Yoshihiko Noda intensified assertions of Japan’s claims to Takeshima, including reviving a dormant effort to take the issue to the International Court of Justice (ICJ). South Korea rejected this move, arguing that there is no territorial dispute. In the days after President Lee’s visit, the Noda government also postponed some bilateral meetings and threatened to take other steps if the situation continued to worsen. Although the period of tension appeared to ease by late September, they were still sufficiently high in November to prevent the two countries from holding heretofore routine bilateral leaders’ meetings on the sidelines of two gatherings of Asian heads of state. Meanwhile, tactical cooperation among Japan, South Korea, and the United States over North Korea appears to have continued.

Current U.S. policy is to take no position on the territorial dispute and urge its two allies to resolve the issue through dialogue. Notwithstanding ongoing tactical cooperation over North Korea policy, the souring of Tokyo-Seoul relations over this and other issues has eroded the prospects for raising trilateral U.S.-Japan-South Korea relations to a new level.

The dispute over the islets is significantly influenced by domestic politics in both nations, where defense of territorial claims is viewed as a matter of national pride. South Korea has administered the islets since it seized the islands in the early 1950s, one of the first unilateral actions of the new country following its independence from nearly a half-century of rule by Imperial Japan. Dokdo thus has become a symbol of South Korean independence. South Koreans have developed what some observers have described as a quasi-religious devotion to the islets, and most regard the

Japanese government's expressions of sovereignty as a sign that Japan has not fully turned its back on its imperialist past.

Japan took over the islands in 1905, five years before annexing the Korean Peninsula. Traditionally, regaining possession of Takeshima has not been important to most Japanese, aside from some conservative activists and fishermen in western Japan. President Lee's visit, however, appears to have made the territorial dispute a mainstream issue in Japan, a development that could complicate Japan-South Korean relations in the future. Prior to the visit, many Japanese were already feeling increasingly threatened by perceived encroachment from the south by China and the north by Russia (over the four Kurile islands, which Japan calls the Northern Territories).

### Sea of Japan/East Sea Naming Controversy

For centuries, South Korea and Japan have used different names to refer to the sea that lies between the main islands of the Japanese archipelago and mainland Asia. Japan refers to these waters as the "Sea of Japan," while South Korea and North Korea refer to them as the "East Sea."<sup>33</sup> "Sea of Japan" is the name used in a majority of atlases, by most international institutions, and by most governments, including the United States government.<sup>34</sup> The South Korean government urges the concurrent use of both names, perhaps for an interim period, until only "East Sea" is universally recognized.<sup>35</sup> Japan opposes attempts to either replace the "Sea of Japan" with "East Sea" or to use both names concurrently. For many Koreans, the predominant use of "Sea of Japan" is a legacy of the period when Korea was under Japanese rule, because a number of key decisions about the world's geographic names were made during the first half of the 20<sup>th</sup> century.

In recent years, the South Korean government, South Korean citizens, and some Korean-Americans appear to have been broadening their appeal to atlas publishers, U.S. federal government institutions, and the legislatures of some U.S. states such as Virginia and New York. The South Korean government states that there is a "steady increase" in maps using both names.<sup>36</sup> The Japanese government states that the name Sea of Japan is "overwhelmingly" used.<sup>37</sup>

In the United States, geographic place name policies for federal government agencies are set forth by the Board on Geographic Names (BGN), pursuant to P.L. 80-242. The BGN's policy is that "a single conventional name, if one exists, will be chosen as the standard name" for seas and oceans. The BGN decides on what constitutes a "conventional name" by consulting various print and online geographic references to determine which name is "under widespread and current usage."<sup>38</sup>

## Yellow Sea

In a more minor disagreement, China and South Korea also claim EEZs covering overlapping portions of the Yellow Sea (called the "West Sea" in South Korea) and the northwestern portion

<sup>33</sup> Other countries also use the name "East Sea" to refer to different bodies of water. For instance, the body of water commonly referred to as the "South China Sea" is referred to as the "East Sea" by Vietnam.

<sup>34</sup> For instance, in 2012, the International Hydrographic Organization (IHO), an intergovernmental organization that creates widely-used reference sources on the names and borders of waters around the world, decided not to change its naming protocol of using only "Sea of Japan."

<sup>35</sup> The South Korean effort began in 1992, when shortly after they joined the United Nations, South Korea and North Korea began urging that "East Sea" be included on world maps. *JoongAng Ilbo*, "Gov't Goes Easy on East Sea Renaming Demand," May 2, 2011; International Hydrographic Organization, XVIIIth International Hydrographic Conference, April 23-27, 2012, Report of Proceedings, Volume I.

<sup>36</sup> "East Sea: The Name from the Past, of the Present and for the Future," 2012 pamphlet published by the South Korean Ministry of Foreign Affairs and Trade, and the Northeast Asian History Foundation.

<sup>37</sup> "Sea of Japan: The One and Only Name Familiar to the International Community," 2009 pamphlet published by the Japanese Ministry of Foreign Affairs.

<sup>38</sup> United States Board on Geographic Names Foreign Names Committee, "Statement Regarding the US Board on Geographic Names' Decision on the Name 'Sea of Japan,'" approved by e-mail vote March 29, 2013.

of the East China Sea. These disputes have surfaced from time to time because of a submerged rock—called Ieodo in Korea and Suyan Rock in China—that is administered by South Korea. Each side claims that the feature is part of its EEZ. In the late 1980s, South Korea began to construct a research observation station, which has been expanded to include a helipad and other features. China has diplomatically protested these activities and occasionally has flown surveillance missions over the rock and its facilities.<sup>39</sup> Although the Sino-Korean disagreement over Ieodo has not flared into a significant bilateral irritant, some South Koreans cited it as a reason they closely followed the September 2010 Sino-Japanese incident in the Senkakus.<sup>40</sup>

The dispute received greater attention in late 2013, following the PRC's surprise announcement of its ECS ADIZ, which not only overlapped with South Korea's ADIZ but also covered the airspace over Ieodo/Suyan Rock. South Korea reportedly asked China to redraw its ADIZ so that it did not overlap with the Korean ADIZ.<sup>41</sup> Some observers criticized the South Korean action for not pursuing a joint approach with Japan and/or the United States. However, the potential for greater U.S.-South Korean or Japan-South Korean tensions largely was avoided when Chinese officials rejected South Korea's request.<sup>42</sup> South Korea then announced that it would expand its own ADIZ to include an airspace overlapping with the Chinese as well as the nearby Japanese ADIZs.

Another irritant in China-South Korea relations has been a series of violent clashes since at least 2010 between the South Korean Coast Guard and Chinese fishermen who were fishing—often illegally—in South Korea's uncontested EEZ. The incidents have resulted in the deaths of a South Korea Coast Guard official, who was stabbed by a Chinese fisherman, and a Chinese fisherman who was hit by a rubber bullet shot by a South Korean Coast Guard officer on a raid for allegedly illegal fishing.

## Drivers of Competition

East Asia's territorial disputes are decades old, and incidents at sea have taken place for many years. To some, the fact that the disputants have not resorted to large-scale combat since China's 1974 seizure of the Paracel Islands from the faltering Republic of Vietnam (South Vietnam) is a testimony to the region's stability. However, the notable uptick in tensions since 2005-2006 has raised deep concerns in the region and among those who rely on trade routes through the South China Sea and East China Sea to support economic growth and trade.

The explanations for the uptick in tensions in recent years are numerous, and include:

- **Competition for energy and fishery resources.** Such competition long has been a factor in the South China Sea, but it has been heightened by the greater energy needs of rapidly growing economies, higher energy prices, and more

<sup>39</sup> Mark J. Valencia, "The East China Sea Dispute: Context, Claims, Issues, and Possible Solutions," *Asian Perspective*, Vol. 31, No. 1, 2007, p. 134; "China demanded S. Korea Stop Activities Near Ieodo," *Korea Herald*, July 27, 2011.

<sup>40</sup> Chang Se-jeong, "[Viewpoint] China, Japan Dispute Troubling," *JoongAng Ilbo*, September 27, 2010.

<sup>41</sup> "Korea calls for re-drawing of air zone, China rejects," *Arirang News*, transcript of television news report, November 30, 2013, [http://www.arirang.co.kr/News/News\\_View.asp?nseq=153704](http://www.arirang.co.kr/News/News_View.asp?nseq=153704).

<sup>42</sup> Victor Cha, "Korea's Mistake on China's ADIZ Controversy," Center for Strategic and International Studies, Korea Chair Platform, December 2, 2013.

sophisticated offshore exploration and extraction technology that makes offshore development a more realistic prospect. Overfishing in coastal waters has also pushed more fishing vessels to operate in disputed territory. Growing energy demand in the region's expanding economies compels maritime nations, particularly China, the Philippines, and Vietnam, to seek the greatest possible rights to exploit resources.

- **China's emergence as a regional power, and deep uncertainty about its strategic intentions.** Questions about China include whether its foreign policy has shifted to a fundamentally more assertive stance, whether it is actively seeking a strategic maritime buffer zone in the region, and whether it sees Southeast Asian nations as strategic and economic partners or rivals. Over the past two years, there also have been questions about how China perceives and will respond to the United States' strategic rebalancing to the region, and whether this will lead to greater or lesser tensions.
- **Rising importance of national image in the domestic politics of several of the disputing countries.** Many analysts allege that the political importance of national pride appears to be increasing in the politics of China, Japan, the Philippines, South Korea, and Vietnam, and that this has made it difficult for their governments to compromise or negotiate, particularly given the increasing frequency of aggressive or assertive actions by other claimants.
- **Myriad other factors, including UNCLOS's emergence as a formal diplomatic mechanism that allows claimants to make direct assertions of claims.** Some analysts, including many Chinese observers, argue that moves by claimants to stake formal claims almost inevitably bring a counter-response by other claimants. Combined with the other drivers of competition, they argue that this dynamic raises tensions and makes compromise more difficult.

## Resources as a Driver of Competition

Many analysts feel that resource competition has become one of the key drivers of territorial disputes and tension, particularly in the South China Sea and East China Sea. The South China Sea, for example, is a major source of fish resources for each of the nations that border it, and the largest source of fish for China, the Philippines, and Vietnam. Many energy industry observers believe the sea also has substantial reserves of oil and natural gas. New technologies are making complicated offshore oil and gas development more feasible, and high energy prices are contributing to the desire to control these resources.<sup>43</sup>

At the same time, territorial competition has created uncertainties that constrain hydrocarbon development and the smooth management of fishery resources. Two important developments have served as triggers that may be at least partly responsible for greater tensions in these areas. The first is overfishing in coastal waters, which has led fishing boats to work further offshore. The second is rising energy demand in countries with claims in the South China Sea, which has encouraged more offshore energy development in their economic planning.

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<sup>43</sup> For a discussion of evolving energy dynamics, see Michael T. Klare, *Island Hopping: Why the South China Seas are So Tense*. *Foreign Affairs*, September 4, 2012.

## Energy Resources

Because much of the South China Sea never has been fully explored, accurate assessments of exploitable oil and gas reserves do not exist. A 2013 report from the U.S. Department of Energy's Energy Information Administration (EIA) estimated that the sea contains 11 billion barrels of proved or probable oil reserves and 190 trillion cubic feet of proved or probable natural gas reserves—most of it in undisputed areas near the claimants' coastlines.<sup>44</sup> There is the possibility that larger amounts of energy resources may exist in areas that have not been widely explored, many of them disputed. A 2010 survey by the U.S. Geological Survey (USGS) estimated that there may be another 5-22 billion barrels of oil and 70-290 trillion cubic feet of natural gas in the sea.<sup>45</sup> Although those potential reserves are substantial, analysts note that they place the South China Sea well below the levels of potential resources the USGS found in other parts of the globe.

Much of the South China Sea is deep, so there are technical issues as well as territorial issues in its possible exploitation for energy resources. In May 2012, the state-owned China National Offshore Oil Corporation (CNOOC) unveiled a deep-water drilling rig that could extend its ability to exploit resources into waters deeper than its previous capabilities allowed.<sup>46</sup> In May 2014, as noted above, CNOOC deployed the rig in disputed areas between the Paracel Islands and the Vietnamese mainland, prompting formal protests from Hanoi. Despite the CNOOC moves, industry analysts believe that international energy companies have considerably more technical ability to develop resources in difficult offshore settings—and thus, much of the sea will likely go undeveloped as long as the disputes continue.

Most of the energy resources discovered and developed in the South China Sea have been in relatively shallow coastal waters. For Vietnam and the Philippines, the South China Sea presents the largest offshore source of oil and natural gas, and an important part of national energy plans to fuel growth in their developing economies. The constraints posed by competition over claims are a deep frustration to governments and economic planners in each country.

Under UNCLOS, a coastal state has in its EEZ

sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds...<sup>47</sup>

Offshore energy development is based on assertion of sovereignty over parts of the sea, and because such assertions are still widely overlapping, there are increasing chances for conflict. For example, China warned international oil companies in 2006 they should not work in regions with unsettled territorial disputes where Vietnam was seeking development partners. In 2012, CNOOC offered tenders for offshore oil and gas exploration within Vietnam's claimed EEZ, overlapping

<sup>44</sup> U.S. Energy Information Administration, *South China Sea*, February 7, 2013. Available at [http://www.eia.gov/countries/analysisbriefs/South\\_China\\_Sea/south\\_china\\_sea.pdf](http://www.eia.gov/countries/analysisbriefs/South_China_Sea/south_china_sea.pdf).

<sup>45</sup> U.S. Geological Survey, World Petroleum Resources Assessment Project: Assessment of Undiscovered Oil and Gas Reserves of Southeast Asia. <http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf>.

<sup>46</sup> China Daily, *Testing CNOOC's Deepwater Credentials*, May 21, 2012.

<sup>47</sup> See [http://www.un.org/depts/los/convention\\_agreements/texts/unclos/part5.htm](http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm).

with areas Vietnam had already tendered and, in some cases, in which companies were already exploring and drilling. This action prompted angry reactions in Vietnam, which deemed the moves illegal.<sup>48</sup>

Such disputes have created uncertainties that constrain offshore resource exploration and development, which requires long-term periods of stability. There are, however, some examples of exploration and development that have taken place in disputed areas. China, the Philippines, and Vietnam have each undertaken oil-and-gas exploration in disputed parts of the South China Sea, and the Philippines and Vietnam have offered exploration and development contracts to international oil-and-gas firms, including American companies. China has offered exploration tenders in Vietnam's EEZ.

Since 2005, Vietnam has been active in soliciting bids for the exploration and development of offshore oil and gas blocks off its central coast, in areas disputed with China. Vietnam's 11<sup>th</sup> and 12<sup>th</sup> Five Year Plans, which covered the years 2006-2011 and 2011-2016, placed a strong emphasis on offshore energy development. This has resulted in increasing conflict, including a direct Chinese warning to international oil companies not to partner with Vietnam's state oil company, PetroVietnam, in areas disputed with China, as well as at least two incidents in which Chinese vessels cut the sonar cables trailed by seismic exploration vessels working for PetroVietnam.

The Philippines also seeks to develop what it believes are substantial natural gas and oil deposits beyond its 12-mile nautical boundary. The Philippines' largest offshore energy resource is the Malampaya field, located in the country's EEZ, about 50 nautical miles off the coast of the island of Palawan, which has been producing natural gas since 2001. Manila has issued exploration licenses in an area near the Reed Bank in the Spratlys, an area also claimed by China, Taiwan, and Vietnam, prompting angry responses from China. In 2012, Philex Petroleum, a prominent Philippine energy firm, announced plans to begin drilling in the area, though such activity has not begun.

For several years during the 2000s, Chinese officials stressed their interest in joint development of resources in the South China Sea. In 2005, CNOOC signed an agreement, known as the Joint Marine Seismic Undertaking (JMSU), with the Philippine National Oil Corporation (PNOC) and PetroVietnam to conduct joint seismic exploration in parts of the Spratlys. The companies undertook two rounds of seismic exploration, but the agreement was not renewed in 2007 amid deep controversy in Manila about whether the areas it covered included waters that were only Philippine, and thus may have been interpreted as suggesting a ceding of Philippine sovereignty claims. Many observers see joint exploration and development as one possible way to manage territorial disputes without formally resolving them. Analysts note, however, that actions such as CNOOC's 2012 tenders of exploration licenses in Vietnam's EEZ and 2014 positioning of an exploration rig in disputed waters have altered the diplomatic environment in ways that make such joint activity extremely difficult. Additionally, as discussed in the East China Sea section above, a 2008 Sino-Japanese joint energy exploitation agreement has not been implemented.

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<sup>48</sup> M. Taylor Fravel, "The South China Sea Oil Card," *The Diplomat*, June 27, 2012.

## Fishery Resources

Fishing presents another potential source of conflict. The South China Sea is the largest source of fish, an important foodstock, in each of the claimant countries. The fishing industries of each of the disputants include large numbers of vessels which travel increasingly farther from their home coasts due to overfishing in coastal waters, bringing them into disputed waters.<sup>49</sup> This has led to frequent incidents of harassment of vessels, confiscation of catches and equipment, and sometimes detention of fishermen. The disputed waters are policed by coast guards and local maritime agencies, and according to one analysis, “the claims of sovereignty also serve to justify greater civilian patrols in the sea—opening up still more possibilities of run-ins with fishing vessels.”<sup>50</sup>

Fishing vessel seizures and arrests pose a risk of escalation if injuries are sustained by those arrested. The 2012 dispute between the Philippines and China at Scarborough Shoal began when Philippine coast guard officials boarded Chinese fishing vessels and confiscated illegally obtained shark and coral. The dispute escalated into a protracted standoff over which nation had the right to police the area. In a broader sense, competition over valuable fishery resources is another calculation for countries as they assert sovereignty. Some analysts point to joint management of fisheries as a potential path towards lowering tensions and fostering functional cooperation among disputants. However, as with hydrocarbon development, analysts note that repeated unilateral actions makes the diplomatic environment more difficult for fostering joint cooperation.

## China’s Rise and Evolving Regional Dynamics

China’s emergence as a more powerful and assertive actor in the region has been an important factor in rising tensions. Many analysts note that the current period of heightened tension differs from earlier flare-ups in the 1970s and 1990s in that China has considerably greater capacity to project force further from its coastal waters. China’s emergence as an economic power has increased its dependence on open trade routes for energy supplies and for its own imports and exports, increased its leverage against other disputants, and also given it greater financial resources for military modernization.

As China’s military capabilities have grown and it has become more active and assertive along its maritime periphery, nearly all the region’s countries have become warier of its intentions. The United States and other nations have concerns about ensuring access given China’s growing anti-access and area-denial capabilities. For their part, some Chinese officials suspect the United States is pursuing a “containment” policy and see its strategy as defensive “strategic deterrence” to protect political power and territory. Other Chinese officials argue that China must develop the naval capacity to protect its vital trade links. Since the 2011 announcement of the U.S. policy of rebalancing to Asia, Chinese commentators have complained that U.S. statements and actions have emboldened countries engaged in territorial disputes with China, particularly Japan and the Philippines, increasing regional instability. Many U.S. officials and analysts argue that U.S. policy has been in response to regional calls for U.S. leadership on maritime issues.

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<sup>49</sup> Stephanie Kleine-Ahlbrandt, *Fish Story*, *Foreign Policy*, June 25, 2012.

<sup>50</sup> *Ibid.*



The PRC's deployment of a greater number of fishing boats and official paramilitary or law-enforcement patrol ships partly explains the rise in confrontations over the past few years. The PRC regularly has asserted control and claims using civilian maritime patrol ships from civilian agencies which carry out functions similar to those of the U.S. Coast Guard. For a number of years, some analysts in the PRC and overseas attributed the increasing frequency of incidents at sea to a lack of coordination between these agencies, but China restructured its civilian maritime agencies in 2013, bringing the former China Marine Surveillance (CMS), Coast Guard, Fisheries Law Enforcement Command (FLEC), and Maritime Anti-Smuggling Police under a unified Chinese Coast Guard that is part of the State Oceanic Administration. The SOA answers to the Ministry of Land and Resources, although the Coast Guard is also meant to get "operational guidance" from the Ministry of Public Security.<sup>51</sup>

The frequency of Chinese maritime patrols in these waters has increased. CMS ships, for example, started regular patrols in the East China Sea in 2006 and expanded to regular patrols in the Yellow Sea, Gulf of Tonkin, and South China Sea in 2007. FLEC ships began regular patrols around the Senkaku Islands in 2010. In May and June 2010, two armed FLEC ships, escorting a PRC fishing fleet near the Natuna Islands off Indonesia, aimed guns at an Indonesian naval ship, and demanded the release of one of the fishing boats.

China also has broadened the scope of its naval patrols. In March 2013, the PLA Navy sent ships to James Shoal, a submerged feature 50 miles off Malaysia's coast, at the southernmost tip of the PRC's South China Sea claims. In January 2014, another incident occurred in which the PLA Navy's South Sea Fleet reported that it sent an amphibious landing ship and two destroyers that patrolled and trained around the Paracel and Spratly Islands, as well as the waters at James Shoal.

According to the Defense Department's 2012 report to Congress, China's announced defense budget grew at an average rate of 11.8% in inflation-adjusted terms annually from 2000 to 2011.<sup>52</sup> In 2004, PRC leader Hu Jintao announced a set of "New Historic Missions" for the PLA, which included protecting China's expanding national interests farther from China. This has been accompanied by an expansion of naval resources. Since 1995, the PLA Navy has been acquiring seven new classes of submarines. In 2011, on top of older boats, the PLA Navy deployed 56 submarines, including 53 diesel-electric or nuclear-powered attack submarines. The PLA Navy has expanded a major base on Hainan Island near the South China Sea for submarines and ships. The PLA Navy commissioned its first aircraft carrier on September 25, 2012, though deploying operational fighters is expected to take years.<sup>53</sup>

According to some observers, such improved Chinese naval capabilities have facilitated a greater range of potentially coercive tools against rival claimants in the South China Sea and East China Sea. Thus, many argue that there may be rhetorical PRC commitment to maintaining the status quo while strengthening actual control of waters surrounding disputed reefs and islands. Such

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<sup>51</sup> For discussion, see <http://thediplomat.com/2013/08/the-promise-and-peril-of-chinas-new-coast-guard>.

<sup>52</sup> In March 2011, the PRC announced a 2011 defense budget of 601 billion renminbi (\$91.5 billion). The Secretary of Defense's report to Congress estimated China's total military-related expenditure in 2011 at a range of between \$120 billion and \$180 billion. The Defense Department has assessed China's defense budgets as markedly understating actual defense-related expenditures, by excluding other military-related funds. In March 2012, China announced a 2012 defense budget of 670.3 billion renminbi (\$106.4 billion).

<sup>53</sup> Director of the Defense Intelligence Agency's testimony to the Senate Armed Services Committee on February 16, 2012; Secretary of Defense, annual report to Congress, "Military and Security Developments Involving the People's Republic of China, 2012," May 17, 2012; *Jane's Defense Weekly*, May 18, 2012; and various media reports.

control arguably could be used to solidify Chinese sovereign claims to the landmasses and the waters around them. A version of this strategy appears to be behind two recent developments—Beijing’s near-constant deployment of ships since September 2012 to patrol in the waters near the Senkakus, and its moves to retain physical control of Scarborough Shoal while negotiating a de-escalation with the Philippines, including cordoning off the area. China’s actions may be designed to demonstrate that China administers both areas, thereby exploiting the distinction the United States makes between sovereignty and administrative control.

### **Taiwan’s Role in the East China Sea**

One issue for U.S. policy concerns trends across the Taiwan Strait since 2008, particularly the question of whether Taiwan’s moves to engage more closely with the PRC have created a greater willingness in Taipei to cooperate with China on issues in which it sees their interests as aligned, such as in the East China Sea. Some analysts argue that there is an issue for U.S. policy makers surrounding whether Taiwan coordinated with the PRC in asserting sovereignty of the Senkaku Islands against Japan amid rising tension in September 2012. Beijing has urged cooperation over the islands to advance cross-strait ties. Taipei’s officials have denied cooperating with the PRC.

Even without explicit coordination, the parallel actions of the PRC and Taiwan in the 2012 East China Sea flare-up that followed the Japanese government’s purchase of the Senkakus have added pressure against Japan. Both the PRC and Taiwan deployed government patrol ships and military assets that raised concerns about the potential for accidental collisions and the escalation of tensions. On September 25, 2012, Taiwan deployed 12 Coast Guard ships that escorted 60 fishing boats and fired water cannons toward Japan’s patrol ships. Furthermore, Taiwan dispatched military systems sold by the United States during the incident.

## **ASEAN and the Code of Conduct Negotiations**

Since its creation in 1967, ASEAN, Southeast Asia’s primary multilateral organization, has been a key player in diplomacy over the South China Sea.<sup>54</sup> Four of its 10 members are involved in the territorial disputes in the South China Sea, while a fifth, Indonesia, has substantial maritime territory and is increasingly seen as a regional leader on the issue. A sixth, Singapore, is a heavily trade-dependent nation that regularly asserts its national interest in protecting freedom of navigation in the South China Sea.

ASEAN and China have been discussing a Code of Conduct for parties in the region since the 1990s, without success. In 2002, ASEAN’s members and China agreed on a Declaration on the Conduct of Parties in the South China Sea,<sup>55</sup> which outlined principles for avoiding conflicts but did not create mechanisms to solve them. The declaration stated: “The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of

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<sup>54</sup> ASEAN was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand to promote political and economic cooperation and regional stability. Brunei joined in 1984. Vietnam joined as the seventh member in 1995. Laos and Burma were admitted into full membership in 1997. Cambodia became the tenth member in 1999.

<sup>55</sup> Available at <http://www.aseansec.org/13163.htm>

international law, including the 1982 UN Convention on the Law of the Sea.” The declaration formally called on signatories to work towards a formal Code of Conduct, but subsequent discussions between ASEAN and China have not led to such a code.

To many analysts, such a set of mutual understandings—ideally with some form of enforcement mechanism—could be a major tool for preventing conflict. To others, however, the prospect of a formal, binding code that would deal with an actual crisis is likely years away, making it an insufficient means for addressing a security crisis occurring now. Although regular ASEAN-China meetings on a code were restarted in 2011 and formal negotiations restarted in 2013, disagreement among parties about what should be included, and whether a Code should have binding dispute resolution mechanisms, has stymied progress. Some observers believe China is dragging out negotiations on the Code of Conduct while it continues to consolidate greater effective control over the South China Sea.

Some analysts argue that ASEAN’s lack of unity and emphasis on consensus has made it an unwieldy place to discuss these issues. In July 2012, an ASEAN Foreign Ministers’ Meeting in Phnom Penh, Cambodia, failed to produce a communiqué, stalled by disagreements over whether specific mention should be made of South China Sea incidents. Reports indicated that Cambodia, the meeting’s chair and widely seen as China’s closest ally in the region, blocked any such mention. This was followed by a Cambodia-hosted ASEAN-China Leaders Meeting in November 2012 in which Cambodia and others, particularly the Philippines, publicly argued about whether the group had agreed on a common stance on how to proceed with negotiating a code.

Two other ASEAN nations, Indonesia and Singapore, have played increasingly active roles in diplomacy over the South China Sea.

**Indonesia:** Indonesia’s position is unique in that it has negotiated each of its maritime borders in the South China Sea with its neighbors, and in the small area where Indonesian waters overlap with the nine-dash line, there are no landmasses to dispute with China. Indonesia is also Southeast Asia’s largest and most populous nation, and it carries disproportionate diplomatic weight within the group. In the wake of the unsuccessful July 2012 ASEAN ministerial meeting in Phnom Penh, Indonesia’s foreign minister shuttled to other capitals to gain an agreement on six points related to the South China Sea. These included agreement on the need for early conclusion of a regional Code of Conduct; the continued exercise of self-restraint and non-use of force by all parties; and the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including UNCLOS.<sup>56</sup>

**Singapore:** Singapore has become more vocal in urging actions to lower tensions in the region. In a high-profile September 2012 speech in Beijing, Singapore’s Prime Minister Lee Hsien Loong said: “The many overlapping claims by multiple claimants in the South China Sea are unlikely to be resolved any time soon. Hence ... the involved parties must manage the disputes responsibly. All sides should avoid escalating tensions or precipitating confrontations that will affect the international standing of the region.” Because the speech was made at the Chinese Communist Party’s Central Party School, observers believe it was meant as a pointed message to China’s leadership. Prime Minister Lee also stressed that Singapore has an interest in seeing the disputes

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<sup>56</sup> Statement of ASEAN Foreign Ministers on ASEAN’s Six Point Principles. Available at <http://www.aseansec.org/documents/AFMs%20Statement%20on%206%20Principles%20on%20SCS.pdf>.

in the South China Sea over territorial sovereignty and maritime resource rights resolved peacefully and in accordance with international law, including UNCLOS.<sup>57</sup>

## Treaty Obligations

Although the United States does not take a position on the specific maritime territorial claims in East Asia, it does have treaty obligations with two of the claimants—Japan and the Philippines—that could be invoked if they become involved in an active conflict with another of the claimants. The 1960 U.S.-Japan Security Treaty and the Mutual Defense Treaty between the Philippines and the United States contain provisions describing conditions under which the United States would provide military assistance if either nation were attacked.

U.S. administrations going back at least to the Nixon Administration have stated that the United States takes no position on the territorial disputes over the Senkaku Islands. However, it also has been U.S. policy since 1971 that because Article 5 of the 1960 U.S.-Japan Security Treaty stipulates that the United States is bound to protect “the territories under the Administration of Japan,” and Japan administers the Senkakus, the islands are covered by the Security Treaty.

China’s increase in patrols around the Senkakus since the fall of 2012 appears to many to be an attempt to demonstrate that China has a degree of administrative control over the islets, thereby exploiting the U.S. distinction between sovereignty and administrative control. In its own attempt to address this perceived gap, Congress inserted in the FY2013 National Defense Authorization Act (H.R. 4310) a resolution stating among other items, that “the unilateral action of a third party will not affect the United States’ acknowledgment of the administration of Japan over the Senkaku Islands.” As noted, President Obama made a similar statement during his April 2014 visit to Tokyo.

The Philippines has been an outspoken proponent of an extensive U.S. role in resolving maritime disputes. Some Philippine officials have on occasion suggested the Mutual Defense Treaty with the United States should apply in the case of disputes in Philippine-claimed waters of the South China Sea.<sup>58</sup> On this question, the language of the treaty is not definitive. Article IV of the Treaty states: “Each Party ... declares that it would act to meet the common dangers in accordance with its constitutional processes.” Article V refers to an armed attack on the “metropolitan territory of either of the Parties,” the “island territories under its jurisdiction in the Pacific Ocean,” or its “armed forces, public vessels, or aircraft in the Pacific.” Although some American analysts have expressed support for a stronger understanding of the Treaty, most U.S. interpretations have not explicitly included the disputed areas as part of U.S. obligations.<sup>59</sup> This ambiguity presents a dilemma, in that the United States seeks to avoid being drawn into a potential conflict but also seeks to support its treaty ally and deter a use of force against it.

On an April 2014 visit to the Philippines, President Obama sought to outline the U.S. position regarding the treaty’s obligations.

<sup>57</sup> Report on Prime Minister Lee Hsien Loong’s speech at the Central Party School of the Communist Party of China on September 6, *Straits Times*, Singapore, September 7, 2012.

<sup>58</sup> See “Statement of Foreign Affairs Secretary Albert F. del Rosario Regarding the “The Philippines-US Mutual Defense Treaty,” May 9, 2012.

<sup>59</sup> For more on the Mutual Defense Treaty, see CRS report *The Republic of the Philippines and U.S. Interests*, by Thomas Lum.

Let me be absolutely clear. For more than 60 years, the United States and the Philippines have been bound by a mutual defense treaty. And this treaty means our two nations pledge—and I’m quoting—our “common determination to defend themselves against external armed attacks, so that no potential aggressor could be under the illusion that either of them stands alone.” In other words, our commitment to defend the Philippines is ironclad and the United States will keep that commitment, because allies never stand alone.<sup>60</sup>

One emerging dynamic is that the United States and the Philippines are involved in plans to increase U.S. access to Philippine naval facilities, and the United States is offering assistance and making sales to the Philippine military to help it with maritime domain awareness in its coastal waters, including the South China Sea. On April 28, 2014, the United States and the Philippines completed the Enhanced Defense Cooperation Agreement (EDCA) after eight months of negotiations. Under the 10-year, renewable arrangement, U.S. military personnel are to be deployed to the Philippines on a rotational basis. The accord allows the United States to use Philippine bases, including U.S.-built facilities and improvements, and facilitates the increased presence of U.S. forces, ships, aircraft, and equipment in the Philippines.<sup>61</sup> In addition, the EDCA “improves opportunities for bilateral training; supports the long-term modernization of the Armed Forces of the Philippines (AFP) as it works to establish a minimum credible defense.”<sup>62</sup>

## **U.S. Diplomatic Approaches**

The United States has pursued bilateral approaches with China including confidence-building measures and other dialogues or agreements. The U.S. military and China’s People’s Liberation Army have held meetings under the Military Maritime Consultative Agreement (MMCA), talks which could be reinvigorated and expanded to include the PRC’s civilian maritime enforcement ships. The 1998 MMCA only covers meetings to discuss maritime and air safety. The U.S. military has continued to face challenges to operational safety and freedom of navigation, and has discussed maritime security with the PLA, including at the Strategic Security Dialogue, a joint civilian-military dialogue that takes place under the broader bilateral U.S.-China Strategic and Economic Dialogue (S&ED).

As part of the U.S. strategic “rebalance” to the Asia-Pacific, the Obama Administration has expanded military-to-military engagement with the PLA. Such expanded engagement involves military exercises, including an invitation for the PLA Navy to participate for the first time in the 2014 U.S.-led RIMPAC maritime exercise, which will take place between June 24 and August 1. China has accepted the invitation. Some analysts see security interests being served by the PLA’s exposure to a demonstration of U.S. allied capabilities and international norms for forces operating in close proximity with one another. Others worry that such engagement could strengthen the PLA’s warfighting capability.

Over the years, disputants have discussed and pursued numerous multilateral options, including joint exploration and development of resources, and efforts for disputants to work together and consult in other areas seen as non-sensitive. Joint management of hydrocarbon and fisheries

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<sup>60</sup> Remarks by President Obama to Filipino and U.S. Armed Forces at Fort Bonifacio. April 28, 2014, <http://www.whitehouse.gov/the-press-office/2014/04/28/remarks-president-obama-filipino-and-us-armed-forces-fort-bonifacio>.

<sup>61</sup> <http://www.gov.ph/2014/04/29/document-enhanced-defense-cooperation-agreement/>

<sup>62</sup> The White House: Fact Sheet: United States-Philippines Bilateral Relations, April 28, 2014.

resources has been proposed as a way to defuse tensions over the two resources that drive many of the disputes. Another option for multilateral management of disputes is expanding cooperation in current anti-piracy operations from the Gulf of Aden to waters such as the Indian Ocean and Malacca Straits. In February 2012, the navies of China, India, and Japan agreed to increase coordination of escort operations in the Gulf of Aden.

Among other confidence-building proposals that some analysts have offered are:

- Creating a regional coast guard forum, which could be modeled after the North Pacific Coast Guard Forum that cooperates on maritime and legal issues;
- Utilizing the Western Pacific Naval Symposium, a 20-member naval gathering created in 1987, which will hold its next meeting September 24-28 in Kuala Lumpur, Malaysia;
- Strengthening the International Maritime Organization's (IMO's) Convention on the International Regulations for Preventing Collisions at Sea and/or establishing information-sharing centers;
- Building on the Code for Unplanned Encounters at Sea (CUES), approved at the 14<sup>th</sup> Western Pacific Naval Symposium in April 2014, and adopted by the U.S. and Chinese navies, among others.
- Promoting naval cooperation in areas such as environmental protection, scientific research, search and rescue operations, and others;
- Deepening the activities of functional ASEAN-centered bodies including the ASEAN Maritime Forum and maritime security dialogues under the ARF or the ASEAN Defense Ministers' Meeting Plus (ADMM+).

The ASEAN Treaty of Amity and Cooperation might offer conflict-mediation mechanisms acceptable to the broad range of disputants. China ratified the treaty in 2003. In 2009, Secretary of State Clinton signed the agreement, which says that signatories should “refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.” It offers a non-mandatory dispute settlement mechanism, but also offers that if disputants do not wish to utilize it, “this shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute.”<sup>63</sup> Some have suggested that Indonesia or a nation outside the region could fill this role.

## **The Role of UNCLOS**

The 1982 United Nations Convention on the Law of the Sea, which entered into force in November 1994, establishes a comprehensive legal regime governing activities within the oceans, and provides the primary (though not the only) venue for making maritime territorial claims and adjudicating maritime territorial disputes. Each of the disputants in the South China Sea is a party to the treaty, although some still take exception to the dispute settlement mechanisms that UNCLOS provides. Within East Asia, the only non-party states are Cambodia and North Korea.

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<sup>63</sup> The full text of the treaty is available at <http://www.asean.org/component/zoo/item/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976-3>.

The United States signed the convention in 1984 but has not ratified it. As noted above, the Senate Foreign Relations Committee held four hearings in 2012 to consider whether to recommend action on the Convention.<sup>64</sup> At the first hearing, on May 23, 2012, Secretary of State Hillary Clinton, Secretary of Defense Leon Panetta, and Chairman of the Joint Chiefs of Staff General Martin Dempsey testified together. Secretary Clinton stated that U.S. navigational rights and the ability to challenge other countries' behavior should stand on the firmest and most persuasive legal footing, "including in critical areas such as the South China Sea." She said that in the promotion of U.S. vital interests such as freedom of navigation in face of claims that countries are making in the South China Sea, the United States would have greater credibility in invoking the convention's rules and a greater ability to enforce them if it were a party to UNCLOS. Secretary Panetta stated that not acceding to UNCLOS potentially undercuts U.S. credibility in a number of multilateral meetings in a strategically vital arc extending from the Western Pacific and East Asia to the Indian Ocean and the Middle East.<sup>65</sup> He said that the United States is pushing for a rules-based order and peaceful resolutions of maritime and territorial disputes in the South China Sea, Strait of Hormuz, and elsewhere. General Dempsey stated that joining UNCLOS would provide legal certainty to support navigational freedom and maritime operations that include the right of transit through international straits, the right to exercise high seas freedoms in foreign Exclusive Economic Zones, and the right of innocent passage through territorial seas. He cited concerns about countries expanding their maritime claims and restricting movement in the oceans.

Many of the region's nations have publicly urged the United States to join UNCLOS, which they argue would give greater international legitimacy to U.S. diplomacy, as well as give the United States a seat at the table in UNCLOS discussions of key issues relating to maritime law. Indonesian Ambassador to the United States Dino Djalal, for instance, said at a 2011 conference in Washington, DC, that given the priority the United States has placed on maritime security in East Asia, becoming a party to UNCLOS "has become a matter of strategic necessity—I repeat, strategic necessity, for the United States..."<sup>66</sup>

On the broadest level, becoming a party to the Convention would give the United States a seat at the table at UNCLOS bodies, and give it the opportunity to influence experts from other nations in consideration of issues before the Convention. Some of the key maritime issues related to UNCLOS that could have an impact on disputes in East Asia include:

- **The rights of military craft to operate in other nations' exclusive economic zones (EEZs).** China has taken a position that military craft need permission to operate in another nation's EEZ. This has become a deep point of contention between the United States and China, but if China's interpretation of the UNCLOS provisions on EEZs were to become widely accepted, it could affect U.S. surveillance and other military activity worldwide. According to the Navy,

<sup>64</sup> The Senate Foreign Relations Committee also held hearing on the Convention in October 2003, and in September and October 2007, favorably reporting to the Senate on March 11 2004 and December 2007 respectively. The Senate did not consider the Treaty on either occasion, and it was automatically re-referred to the Foreign Relations Committee.

<sup>65</sup> <http://www.foreign.senate.gov/hearings/the-law-of-the-sea-convention-treaty-doc-103-39-the-us-national-security-and-strategic-imperatives-for-ratification>

<sup>66</sup> See Center for Strategic and International Studies, *The Bali Debrief: An Insider's Perspective of the November Summits*. Available at this link: <http://csis.org/multimedia/video-bali-debrief-insiders-perspective-november-summits>. The discussion of UNCLOS begins at the 30:00 mark.

26 other nations subscribe to views similar to that of the PRC, including South China Sea disputants Malaysia and Vietnam, although Vietnam's 2012 Law of the Sea relaxed Vietnam's position, requiring notification of such activity rather than approval.<sup>67</sup>

- **Extended continental shelf claims.** As discussed above, UNCLOS has a formal body, the Commission on the Limits of the Continental Shelf, that may consider formal claims that extend beyond 200 nautical miles from a coastal state. UNCLOS gave parties the right to make such claims, based on the depth of the seabed beyond their EEZs. Malaysia and Vietnam submitted such a claim in 2009, to which China objected.<sup>68</sup> In December 2012, China made such a claim in the East China Sea, which may also be considered by the Commission.
- **Definitions of inhabitable islands.** UNCLOS allows nations to claim 12 nautical mile territorial waters around uninhabitable rocks and shoals, but a 200 nautical mile EEZ around islands that can support permanent habitation. This difference has influenced moves by each of the disputants to base people and build structures and other infrastructure on or over small islands and shoals which would not otherwise support life. China's designation of a settlement on Woody Shoal in the Paracels as an administrative capital, and its moves to build a sewage system on the small island, are seen as moves to both demonstrate administrative control over the area and to demonstrate its inhabitability.

Opponents of accession argue that UNCLOS does not, in and of itself, solve the territorial disputes and because many of China's claims do not rely on UNCLOS's provisions, U.S. accession would do little to make the PRC any more willing to submit to dispute resolution procedures. Opponents also argue that U.S. accession would do little to change the underlying cause of insecurity in the region—the overlapping claims which parties are unlikely to withdraw, and Chinese claims that do not fundamentally rely on UNCLOS.<sup>69</sup>

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<sup>67</sup> A broader discussion of these issues is contained in CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke.

<sup>68</sup> The joint Malaysia/Vietnam submission is available 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). The PRC response is at [http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf).

<sup>69</sup> For example, Walter Lohman, "Not the Time to Go Wobbly: Press U.S. Advantage on the South China Sea," Heritage Foundation, September 22, 2010; Dan Blumenthal and Michael Mazza, "Why to Forget UNCLOS," *Diplomat*, February 17, 2012.



### The Philippine UNCLOS Case

On January 22, 2013, the Philippines made a formal request that an Arbitral Tribunal under the International Tribunal of the Law of the Sea (ITLOS) rule on whether China's South China Sea claims and its behavior within the nine-dash line comply with UNCLOS. Over Chinese objections, the Tribunal agreed to hear the case, and on March 30, 2014, the Philippines submitted its full argument. China argues that the tribunal does not have legal standing to rule in these questions, and has thus far opted not to participate in the proceedings. Should it continue not to participate, it would be the first time a nation opted not to defend itself in this forum.

As noted above, the Philippine suit argues that China's nine-dash line has no standing in international law, because it is not clear whether the PRC is claiming international waters, or merely the landmasses enclosed within the line. It also seeks a ruling on two sets of important legal questions: (1) the extent of maritime territory that China (or any other nation) would be able to claim around uninhabitable rocks in the South China Sea (the Philippines argues that it would be a 12-nautical-mile radius) and (2) the status of several rocks that the Philippines argues are under seawater at high tide (which the Philippines argues are unclaimable by any nation because they are not landmasses). China has argued that the tribunal does not have legal standing to hear the case, arguing that these questions by their nature touch on questions of sovereignty.

The case raises several opportunities and challenges for the United States. Administration officials have made several statements supportive of the Philippines. In a press appearance with Philippine President Benigno Aquino on April 28, 2014, President Obama said: "Today, we have reaffirmed the importance of resolving territorial disputes in the region peacefully, without intimidation or coercion. And in that spirit, I told him that the United States supports his decision to pursue international arbitration concerning territorial disputes in the South China Sea."<sup>70</sup>

Some analysts are concerned that should the tribunal rule partially or wholly in the Philippines' favor, China may maintain its objection that the body does not have legal standing, and could opt not to abide by the tribunal's findings. Such an outcome, they argue, would be detrimental to both the opportunity to make any progress in the territorial disputes, and also to the international standards of maritime law.<sup>71</sup> Because the United States is not a party to UNCLOS, it has no formal role in the case, but some analysts have suggested that the Administration may wish to encourage other governments to support the Philippines' right to use available international arbitration mechanisms, and to proactively seek broad international support for implementation of the tribunal's decision.<sup>72</sup>

Whether to consider UNCLOS accession is just one of the questions arising from the maritime territorial disputes in East Asia that the 113<sup>th</sup> Congress faces. Most analysts believe that because the sovereignty disputes themselves are so difficult and raise such wide-ranging issues for U.S. policy, managing them will touch on many of Congress's roles in foreign policy, including its oversight of the Administration's diplomatic actions in Asia, its consideration of military posture and budgets, and its search for ways to limit the potential for conflict and create a more stable environment in the region.

<sup>70</sup> <http://www.whitehouse.gov/the-press-office/2014/04/28/remarks-president-obama-and-president-benigno-aquino-iii-philippines-joi>.

<sup>71</sup> Sourabh Gupta, *The Whole Nine Dashes and Why the Philippines' Arbitration Case Against China Is a Bad Idea*, East Asia Forum. July 28, 2013.

<sup>72</sup> See, for instance, Bonnie Glaser, "People's Republic of China Maritime Disputes," Statement before the U.S. House Armed Services Subcommittee on Seapower and Projection Forces and the House Foreign Affairs Subcommittee on the Asia-Pacific, January 14, 2014.

## **Appendix. Selected Legislation on Asian Maritime Disputes in the 112<sup>th</sup> and 113<sup>th</sup> Congresses**

In the 113<sup>th</sup> Congress, on July 27, 2013, the Senate passed one resolution (**S.Res. 167**) introduced by Senator Robert Menendez, reaffirming the strong support of the United States for the peaceful resolution of territorial, sovereignty, and jurisdictional disputes in the Asia-Pacific maritime domains. Senator Menendez introduced another resolution (**S.Res. 412**) on April 7, 2014, “reaffirming the strong support of the United States Government for freedom of navigation and other internationally lawful uses of sea and airspace in the Asia-Pacific region, and for the peaceful diplomatic resolution of outstanding territorial and maritime claims and disputes.”

In the House, Representative Faleomavaoega introduced **H.R. 772** in February 2013, seeking peaceful and collaborative resolution of the South China Sea disputes. On April 28, 2014, Representatives Randy Forbes and Colleen Hanabusa introduced the Asia Pacific Region Priority Act (**H.R. 4495**), “to strengthen the United States commitment to security and stability in the Asia-Pacific region,” which among other things calls on the Department of Defense to conduct an assessment of the maritime balance of forces in the Asia-Pacific region, with a focus on the Chinese People's Liberation Army and State Oceanic Administration.

The 112<sup>th</sup> Congress also undertook several legislative actions regarding maritime disputes in Asia. The Senate passed two resolutions on East Asian maritime disputes, and took other legislative action related to the tensions. In June 2011, the Senate passed a resolution (S.Res. 217) introduced by Senator Jim Webb calling for a peaceful and multilateral resolution to maritime territorial disputes in Southeast Asia. In August 2012, the Senate also passed S.Res. 524, introduced by Senator John Kerry, reaffirming U.S. support for the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea and a collaborative diplomatic process by all claimants to resolve disputes. In November 2012, the Senate unanimously accepted an amendment introduced by Senator Webb to the National Defense Authorization Act for Fiscal Year 2013 (S. 1253) that expressed the sense of the Senate regarding the East China Sea disputes, calling for parties to refrain from coercion and stating that the U.S.-Japan Treaty of Mutual Cooperation and Security covers areas under Japanese administration, such as the Senkakus. It was ultimately incorporated into the National Defense Authorization Act for Fiscal Year 2013 signed by the President (**H.R. 4310/P.L. 112-239**).

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