

China and the South China Sea: How to Manage Maritime Crisis?

Ramses Amer *

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* Associated professor and Associated Fellow, Institute for Security & Development Policy, Sweden

I . Purpose and Structure

The main aim of this article is to examine China's policies towards the South China Sea and its approach to managing relevant maritime crises. China's claims, China's disputes with other countries, and China's perspectives and approaches, are outlined. China's contribution to the management of maritime crisis is examined through a case study of the China–Vietnam approach to managing disputes. In this bilateral case, China's first formal settlement of maritime dispute in the Gulf of Tonkin is highlighted.

The article is structured as follows. It starts in the second section with China's claims in the South Chins Sea. Outlined in the third and fourth sections are China's disputes with other countries in the South China Sea and its policies on dispute management relating to the South China Sea. In the fifth section, China's practice in dispute management is examined through a case study of the China–Vietnam approach. The sixth section highlights the settlement of the Gulf of Tonkin dispute. The article is concluded by a broader discussion relating to China and the management of the South China Sea situation.

II . China's Claims in the South China Sea¹⁾

China alongside Chinese Taipei has the most extensive claims in the South China Sea. China claims that it has “indisputable sovereignty over the islands in the South China Sea and the adjacent waters”,²⁾ i.e.

1) For a detailed overview of the extent and the basis of Chin's claims in the South China Sea see S. Wu, *Solving Disputes for Regional Cooperation and Development in the South China Sea, A Chinese Perspective* (Oxford: Chandos, 2013), pp. 15-83.

2) “Note from the Permanent Mission of the People's Republic of China to the

sovereignty over the Paracel archipelago (Xisha Quando in Chinese terminology), the Spratly archipelago (Nansha Quando in Chinese terminology), the Pratas islands (Dongsha Quando in Chinese terminology) as well as Maccles field Bank - including Scarborough Shoal - (Zhongsha Quando in Chinese terminology) and "the adjacent waters" of them. In addition China claims that it "enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof"³⁾ presumably within the U-shaped "nine-dashed lines"⁴⁾ which encompasses the major parts of the South China Sea in the area southwards to the east of the Vietnamese coastline, turning eastwards to the north-east of the Indonesian controlled Natuna Islands, and to the north of the Malaysian state of Sarawak, then turning north-eastwards along the coast of Brunei Darussalam and the Malaysian state of Sabah, and finally northwards to the west of the Philippines.

China controls the whole Paracel archipelago. China took control of the eastern part of the Paracels in 1956 and the western part in 1974. China gained its first foothold in the Spratly archipelago in 1988. The Pratas islands are under Taiwanese control.

China's claims in the South China Sea are based on historical records and maps, which are used to sustain two kinds of claims.

Secretary-General of the United Nations, 7 May 2009, CML/17/2009," Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission: Joint submission by Malaysia and the Socialist Republic of Viet Nam, *United Nations*, at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_my_s_vnm_e.pdf (accessed October 25, 2010), and "Note from the Permanent Mission of the People's Republic of China to the Secretary-General of the United Nations, 7 May 2009, CML/18/2009," Commission on the Limits of the Continental Shelf (CLCS) Outer limits of the continental shelf beyond 200 nautical miles from the baselines: Submissions to the Commission, Submission of Socialist Republic of Viet Nam, *United Nations*, at http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf (accessed October 25, 2010).

3) See note 2.

4) Up till now there is no official Chinese clarification of the full extent of its claims within the "nine-dashed lines". The assumption in this study is based on the text of the two Notes of 2009 and the map attached to them (see note 2).

First, they show that China discovered the island groups in the South China Sea, and second, they show how Chinese people occupied the islands and developed them. More recently China has also increasingly been arguing in terms of modern international law, i.e. the 1982 United Nations Convention of the Law of the Sea (UNCLOS), to substantiate its claims to water and continental shelf areas in the South China Sea.

III. China's Disputes with Other Claimants in the South China Sea⁵⁾

In the South China Sea, China's sovereignty claims to the Paracel archipelago overlaps with Vietnam's claim to the archipelago. China's sovereignty claims to the whole Spratly archipelago is another dispute with Vietnam which is bilateral – "China–Vietnam" – for areas not claimed by other Southeast Asian countries and a multilateral dispute for those areas also claimed by Brunei, Malaysia and the Philippines, respectively. Furthermore, China's claims within the U-shaped "nine – dashed lines" in the South China Sea overlap to varying degrees with claims to Exclusive Economic Zones (EEZ) and continental shelf areas made by Vietnam to the east of the Vietnamese coast, made by Indonesia to the north – east of the Natuna islands, made by Malaysia to the north of the coast of the state of Sarawak and to the north – west of the state of Sabah, made by Brunei Darussalam to north of its coast, and made by the Philippines to the west of the Filipino archipelago.

5) For a more detailed overview of dispute situations in the South China Sea see J. Li and R. Amer, "Recent Practices in Dispute Management in the South China Sea," in *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*, edited by Clive Schofield, Special Report, no. 37 (Seattle, WA: National Bureau of Asian Research, 2012), pp. 82–83.

IV. China's Perspectives and Approaches⁶⁾

1. Broader dimension

As noted above in the South China Sea, China faces territorial disputes with neighbouring coastal countries over some insular formations as well as overlapping claims to maritime areas. In handling these disputes China follows its basic foreign policy guided by the Five Principles of Peaceful Coexistence, formulated for the first time in agreement between China and India of April 29, 1954. These principles are fundamental not only to China's overall foreign policy but also to China's bilateral relations with several countries. The essence of the five principles have been summarised as follows: "(1) respect for each other's sovereignty and territorial integrity, (2) non-aggression, (3) non-interference in each other's internal affairs, (4) equality and mutual benefit and (5) peaceful coexistence."⁷⁾ The relationship with its neighbouring countries is also emphasized in China's policy of handling territorial disputes by peaceful means.⁸⁾

China's policies serve two main aims, namely, to protect its territorial sovereignty and marine rights as well as to maintain peace and stability in its neighbouring area and in the region. This approach is in line with the basic assessment made by China's late leader Deng Xiaoping in 1985, "peace and development are the two themes in the current world". Only with peaceful and stable neighbourhood can China

6) This section is expanded and revised from the corresponding one in *Ibid.*, pp. 92-94.

7) K. Zou, *China-ASEAN Relations and International Law* (Oxford: Chandos Publishing, 2009), p. 25.

8) China's foreign policy emphasizes three relations which states that the relation with the big powers is the key, that with neighbouring countries is the essence, and that with all developing countries is the basis. R. Jin and W. Dai, "New Trends and Impacts of Changes in Big Powers Relations," *Journal of Contemporary Asia-Pacific Studies (Dandai Yatai)* 1 (2008), p. 54; and T. Zhu, "China's Good Neighbouring Policy and Practice," *International Review (Guoji GuanCha)* 2 (2001), p. 15.

focus on its economic and social development. In the context of the situation in the South China Sea, the dilemma for China is a scenario where protection of its territorial sovereignty and marine rights may lead to challenge its friendly relations with its neighbouring countries which could, if poorly managed, affect peace and stability in the region. China seems to be searching for an approach which takes into consideration its own interests and which can also accommodate the interests of other claimants.

2. Dispute management policy

On the issue of dispute management and settlement, China takes the stance that settlement should be achieved through direct negotiation and consultation on the basis of respect for sovereignty and equality. During the process leading to the UNCLOS, China repeatedly emphasized that negotiation and consultation is “a key way of dispute resolution.” China also recognised that “on the basis of consent, countries concerned may choose through consultation other peaceful means, including compulsory jurisprudence, to solve their disputes.”⁹⁾ China considers that since disputes over the islands and maritime delimitation are “closely linked with the sovereignty and key interests of the parties concerned, as well as concern many complicated factors”, they can better be resolved through friendly negotiation and consultation taking into consideration of each other’s reasonable and appropriate requirements.¹⁰⁾ On 7 June 1996 China ratified the UNCLOS after the approval by the Standing

9) J. Gao, *Zhongguo Yu Guoji Haiyang Fa* [China and the International Law of the Sea] (Beijing: Oceans Publishing House, 2004), p. 22.

10) *The Collection of Documents of Chinese Delegation to UN Meetings* (January to June, 1979) (Beijing: World Knowledge Publishing House, 1979), pp. 91-92; and L. Zhang, *Zhongguo yu Linguo Haiyang Huajie Zhengdun Wenti* [Dispute over Maritime Delimitation between China and its Neighbouring Countries] (Beijing: Oceans Publishing House, 2006), p. 239.

Committee of the 8th National People's Congress. China stated that:

“The People's Republic of China will effect, through consultations, the delimitation of the boundary of the maritime jurisdiction with the States with coasts opposite or adjacent to China respectively on the basis of international law and in accordance with the principle of equitability.”¹¹⁾

Peaceful settlement of disputes is also an international obligation for China. The Charter of the United Nations requires all countries to settle their disputes by peaceful means and to refrain from the threat or the use of force in the inter-state relations.¹²⁾ As a permanent member of the Security Council China is obliged to the principles reflected in the Charter of the United Nations. The UNCLOS emphasizes the principle of peaceful settlement of disputes. All countries involved in the South China Sea disputes including China are obliged to settle their disputes over maritime issues including, *inter alia*, sovereignty over islands, maritime delimitation, marine resources management, and navigational rights, by peaceful means.¹³⁾ China's guiding policy on maritime dispute management is reflected in its two basic laws on sea issues, the 1992 Law on Territorial Sea and Contiguous Zone and the 1998 Law on Exclusive Economic Zone and Continental Shelf. While the 1992 Law reemphasized its sovereignty over the four “island” groups in

11) “China,” *United Nations Convention on the Law of the Sea: declarations made upon signature, ratification, accession or succession or anytime thereafter*, at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China%20Upon%20ratification (accessed April 12, 2014).

12) See “Article 33(1)” and “Article 2(4),” *Charter of the United Nations*, at <http://www.un.org/en/documents/charter/chapter6.shtml> and <http://www.un.org/en/documents/charter/chapter1.shtml> (accessed April 12, 2014).

13) Section I of Part XV sets out the general provisions in regard with settlement of disputes. Article 279 is a restatement of a fundamental obligation to settle any dispute by peaceful means indicated in Article 33(1) of the Charter of the United Nations including, *inter alia*, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements “Article 33(1),” *Charter of the United Nations*, at <http://www.un.org/en/documents/charter/chapter6.shtml> (accessed April 12, 2014).

the South China Sea¹⁴⁾ the 1998 Law states that:

“Conflicting claims regarding the exclusive economic zone and the continental shelf by the People's Republic of China and States with opposite or adjacent coasts shall be settled, on the basis of international law and in accordance with the principle of equity, by an agreement delimiting the areas so claimed.”¹⁵⁾

To manage the maritime issues with its neighbours, China prefers direct bilateral consultation and negotiation. No means of third party involvement including judicial settlement, good office, mediation and conciliation has ever been opted for by China. On August 25, 2006 China submitted to the United Nations a declaration under Article 298 of the UNCLOS, its states that: “[t]he Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention”.¹⁶⁾ This rules out the compulsory dispute settlement procedures over disputes over maritime delimitations, historic bays or titles, military activities or in which the Security Council of the United Nations is exercising its functions. In an earlier Chinese government white paper on maritime affairs it was stated that:

“In view of the strategy of peace and development, the Chinese Government uphold that the disputes should be resolved through

14) According to the Chinese concept, the English equivalence of the four archipelagos of Xisha, Nansha, Dongsha and Zhongsha refers respectively to the four groups of insular formations of Paracels, Spratlys, Pratas and Macclesfield Bank including Scarborough Shoal.,

15) Article 2(3) of the “Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf,” at http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/chn_1998_eez_act.pdf (accessed on April 12, 2014).

16) “China,” *United Nations Convention on the Law of the Sea: eclarations made upon signature, ratification, accession or succession or anytime thereafter*, at http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China%20Upon%20ratification (accessed April 12, 2014).

friendly consultation, and that pending the final resolution, disputes could be put aside while cooperation shall be strengthened for promoting joint development”.¹⁷⁾

Such a declaration together with the above-mentioned laws indicates China’s basic policy on dispute management. First, disputes shall be resolved by peaceful means through friendly consultation on the basis of the principle of equity and based on international law. Second, the reiterated notion of joint development reflects China’s attempts to search for alternative peaceful means in managing its maritime disputes before they be formally resolved.

In its foreign relations China’s first proposal of “joint development” together with “putting aside the dispute” (over sovereignty) was introduced by Deng Xiaoping during his 1978 visit to Japan when the dispute over Diaoyu Island was raised at a press conference. He was quoted as saying that the issue of Diaoyu Island “can be put aside.” In addition he said that: “Maybe our next generation is cleverer than us and could find a real resolution to it.” In regard to applying this approach to the South China Sea issue, it was also first raised by Deng at his meeting with the Vice President of the Philippines in June 1986. Deng was quoted as saying that the issue of Nansha/the Spratlys “involves more than one country”. He also said that from a “practical view, we opt to put aside this issue.” He continued by arguing that: “Maybe in several years’ time, the Chinese Government could propose a solution acceptable to all parties concerned.” In his meeting with President Aquino of the Philippines on April 16, 1988 Deng reiterated, “after many years of consideration, we think that to solve the issue (of Nansha/the Spratlys), all parties concerned could explore joint

17) “Zhongguo Haiyang Shiye de Fazhan” [The Development of China’s Ocean Affairs], *PeopleNet*, at <http://www.people.com.cn/GB/channel2/10/20000910/226233.html> (accessed on April 24, 2011) and Zhang, op. cit., p. 280. English translation of Chinese text derived from J. Li and R. Amer, op. cit., p. 93

development under the premise of admitting China's sovereignty over them."¹⁸⁾ The implication of Deng's views on these two occasions can be understood as implying that China could agree to put aside the dispute over the Spratlys, but not that China would be willing to give-up its sovereignty claim. Furthermore, joint development is a choice of practical sense for all parties concerned to manage the situation without compromising their sovereignty claims.

From then on Chinese top leaders have reiterated China's proposal on joint development at various occasions. In 1990 Chinese Prime Minister Li Peng, during his visit to Malaysia, expressly put forward the joint development proposal as "shelving the disputes and developing jointly" (*gezhi zhengyi, gongtong kaifa*).¹⁹⁾ At the 25th ASEAN Ministerial Meeting (AMM) in Manila in July 1992, after the Foreign Minister Qian Qichen raised the proposal he stated that "when conditions are ripe we can start negotiations". In 2003 when Wu Bangguo, Chairman of the National People's Congress, visited the Philippines he proposed to his Filipino counterpart joint development of petroleum in the South China Sea.

Thus, China emphasizes both peaceful settlement of disputes in the South China Sea issue and that pending the final settlement joint development arrangements and cooperation on broader economic issues are proposed as a solution of practical nature on dispute management for building confidence among relevant disputants. China's practice in handling its disputes with Vietnam in the South China Sea illustrates its general dispute management policy.

18) Zhang, *op. cit.*, pp. 281-285. English translation of Chinese text derived from J. Li and R. Amer, *op. cit.*, pp. 93-94.

19) K. Zou, "Joint Development in the South China Sea: A New Approach," *The International Journal of Marine and Coastal Law* 21, no.1 (2006), p. 102.

V. China's Dispute Management and Settlement in Practice - The China - Vietnam Case²⁰⁾

1. Background and dispute situation²¹⁾

The first indication of tension relating to the border disputes after the end of the Vietnam War in 1975 came during a visit by the Secretary-General of the Communist Party of Vietnam (CPV), Le Duan, to China in September 1975. For the first time in discussions between the two sides, Le Duan officially raised the issue of sovereignty over the Paracel and Spratly archipelagos in the South China Sea. Prior to the meeting both China and Vietnam had sought to emphasise their territorial claims in the South China Sea. In January 1974, China had seized control over the whole Paracel archipelago from the Republic of Vietnam (ROV/South), having previously taken control over parts of the archipelago in 1956. The Democratic Republic of Vietnam (North) seized six features in the Spratly archipelago from the ROV in April 1975.

Attempts at negotiations relating to the land border and Gulf of Tonkin issues were made between 1974 and 1978. Negotiations on the Gulf of Tonkin began in August 1974 and were suspended without agreement in November the same year. Renewed negotiations on the Gulf of Tonkin as well as on the land border started in October 1977, but failed to bring the parties closer to an agreement. Negotiations in 1979 and the early 1980s also failed to resolve the border issues. The territorial disputes including those in the South China Sea became

20) For an overview of the case see R. Amer, "Sino-Vietnamese Border Disputes," in *Beijing's Power and China's Borders: Twenty Neighbors in Asia*, edited by B. Elleman, S. Kotkin and C. Schofield (Armonk, New York and London: M.E. Sharpe, 2012), pp. 295-309 (hereafter Amer "Sino-Vietnamese Border").

21) Information derived from R. Amer, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, Maritime Briefing 3, no. 5 (Durham: International Boundaries Research Unit, University of Durham, 2002), pp. 6-8 (hereafter Amer, "The Sino-Vietnamese Approach").

increasingly publicised, following the land border war of early 1979. The 1980s was a period of continued tension and up to early 1988 the military confrontation was concentrated along the land border. However, in March 1988 tension increased in the Spratly archipelago and led to a naval clash—the Battle of Fiery Cross Reef. Vietnam suffered some casualties in the brief battle and China managed to get a foothold in the archipelago by seizing some of the insular formations.

During the process leading up to the full normalisation of relations between China and Vietnam border and territorial disputes were not resolved. If a resolution of the territorial disputes had been a precondition for full normalisation of bilateral relations then the later would not have been possible back in 1991. Thus, to put the territorial disputes aside and aim for a resolution in the longer-term perspective made full normalisation a reality in early November 1991. Thus, after full normalisation of relations China and Vietnam had to deal with the following border and territorial disputes: overlapping sovereignty claims to the Parcel and Spratly archipelagos; overlapping claims to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin; and disputes relating to some areas along the land border.

2. Context of maritime disputes after normalisation

Following the full normalisation of bilateral relations in late 1991 sharp differences relating to all the territorial disputes, i.e. overlapping claims to the Paracel and Spratly archipelagos; to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin; and to areas along the land border, were prevalent from May to November 1992. Differences relating to oil exploration in the South China Sea and the signing of contracts with foreign companies for exploration were prevalent during the periods April–June 1994, April–May 1996, and March–April 1997. In 1998 there was no extended

period of tension relating to the border disputes but shorter periods can be noted such as in January along the land border and in the South China Sea in April, May, July, and September.²²⁾ In 1999 focus was on reaching a settlement of the land border dispute and this resulted in the signing of a *Land Border Treaty* on December 30, 1999. In 2000 focus was on settling the Gulf of Tonkin disputes and this resulted in the signing of the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* on December 25, 2000. During both these years there was no noticeable tension relating to the disputes in the South China Sea.²³⁾ Developments from 2001 to 2008 displayed that this pattern of interaction relating to the disputes in the South China Sea continued to prevail with continued dialogue and only limited periods of tension caused by the disputes in the area.²⁴⁾ During the period of 2009–2011 there were periodic increases in the level of tensions relating to the disputes in the South China Sea.²⁵⁾

22) Ibid., pp. 8-26.

23) Ibid., pp. 26-34.

24) For an overview of incidents during this period see R. Amer, "The Sino-Vietnamese Approach to Managing Border Disputes -Lessons, Relevance and Implications for the South China Sea Situation," in *The South China Sea: Cooperation For Regional Security and Developments, Proceedings of the International Workshop, co-organized by the Diplomatic Academy of Vietnam and the Vietnam Lawyers Association, 26-27 November 2009, Hanoi, Vietnam*, edited by Tran Truong Thuy (Hanoi: The Gioi and Diplomatic Academy of Vietnam, 2010), pp. 264-267.

25) For an overview of key incidents in 2009 and 2010 see R. Amer, "Dispute Settlement and Conflict Management in the South China Sea - Assessing Progress and Challenges," in *The South China Sea: Towards A Region of Peace, Security and Cooperation*, edited by T. T. Tran (Hanoi: The Gioi Publishers and Diplomatic Academy of Vietnam, 2011), p. 266 (hereafter Amer, "Dispute Settlement"). For details about developments in 2011 see R. Amer and J. Li, "Recent Developments in the South China Sea - An Assessment of the Core Bilateral Relationship Between China and Vietnam," in *Maritime Security Issues in the South China Sea and the Arctic: Sharpened Competition or Collaboration?*, edited by G. Houlden and N. Hong (Beijing: China Democracy and Legal System Publishing House, 2012), pp. 43-58 (hereafter Amer and Li, "Recent Developments"). For developments from 2009 to 2011 see also R. Amer, "China, Vietnam and the South China Sea - Disputes and Dispute Management", *Ocean Development and International Law* 45, no. 1 (2014), pp. 20-25 (hereafter Amer, "China, Vietnam").

3. Management approach

In order to manage their territorial disputes China and Vietnam have initiated a system of talks and discussions which was both highly structured and extensive and from bottom to top it looked as follows: Expert-level talks; Government-level talks, i.e. Deputy/Vice-Minister; Foreign Minister-level talks, and High-level talks, i.e. Presidents, Prime Ministers, and Secretary-Generals of the Chinese Communist Party (CCP) and the CPV.²⁶⁾

Talks at the expert-level were initiated in October 1992; up to late 1995 the talks focused mainly on the land border and the Gulf of Tonkin issues. Talks at the government-level began in August 1993 and the thirteenth round of talks was held in January 2007. There have also been meetings and talks that have not been included in the official rounds. The first achievement was the signing of an agreement on October 19, 1993 on the principles for handling the land border and the Gulf of Tonkin disputes. It was further agreed to set up joint working groups at the expert-level to deal with the two issues. The joint working group on the land border held sixteen rounds of talks from February 1994 to December 1999 when the *Land Border Treaty* was signed. The joint working group on the Gulf of Tonkin met seventeen times from March 1994 to December 2000 when the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* was signed. Talks at the expert-level on the disputes in the South China Sea proper, the so-called “sea issues”, were initiated in November 1995 and the eleventh round of talks was held in July 2006.²⁷⁾

After the ratification of the Land Border Treaty in 2000 the

26) Amer, “The Sino-Vietnamese Approach,” pp. 9-14, 50-58.

27) Amer, “Sino-Vietnamese Border,” pp. 297-298.

Tonkin of Gulf agreement was ratified in 2004.²⁸⁾ The demarcation process of the land border was completed at the end of 2008.²⁹⁾ In response to the periodic increases in the level of tensions relating to the disputes in the South China Sea bilateral contacts increased and in October 2011 China and Vietnam reached an “Agreement on basic principles guiding the settlement of sea-related issues”.³⁰⁾ In addition the first high-level summit between the two countries since 2008 took place on October 11 to 15 when the Secretary-General of CPV, Nguyen Phu Tong, visited China. He met with China’s then President and Secretary-General of the CPC, Hu Jintao, and other Chinese leaders. In the Joint Statement issued in connection with the high-level summit considerable attention was devoted to maritime issues. It was stated that the two sides “exchanged views in a sincere and straight forward manner on the sea issue, stressing their political will and determination to settle disputes via friendship negotiation and talks in order to maintain peace and stability” in the South China Sea. The two sides agreed to “speed up negotiations on the sea issue, seek basic and long-term solutions acceptable to both sides”. The two sides also stated that they “will firmly speed up negotiations on the demarcation of areas beyond the mouth of the Tonkin Gulf and actively discuss co-operation for mutual development on this area.”³¹⁾

In late February 2012 Vietnam’s Deputy Foreign Minister, Ho Xuan Son, held talks with his Chinese counterpart, Zhang Zhijun, in

28) Information derived from R. Amer and H. T. Nguyen, “Vietnam’s Border Disputes: Legal and Conflict Management Dimensions,” in *The Asian Yearbook of International Law* 12 (2005–2006), general editors B.S. Chimni, M. Masahiro and L. Thio (Leiden and Boston: Martinus Nijhoff Publishers, 2007), pp. 117–121 (hereafter Amer and Nguyen, “Vietnam’s Border Disputes”).

29) Amer, “The Sino-Vietnamese,” pp. 256–257.

30) See Amer and Li, “Recent Developments,” pp. 53–56. The full text of the “Agreement on Basic Principles” has been reproduced in Amer, “China, Vietnam,” pp. 39–40.

31) “Vietnam–China joint statement,” (October 16, 2011), *Communist Party of Vietnam Online Newspaper*, at http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30107&cn_id=484891 (accessed August 14, 2013).

Beijing. They agreed to establish working groups at the “department level to negotiate on the delineation of the sea area outside the Bac Bo (Tonkin) Gulf mouth and cooperate in jointly developing this area”. They also agreed to set up working groups to co-operate in “less sensitive sea domains, including sea environment protection, scientific research out at sea, search and rescue activities and mitigation of damage caused by natural calamities”. Finally, they agreed to launch a “hotline between the two foreign ministries”.³²⁾ In May 2012, the “first-round of talk at the departmental level” was held on the “demarcation of areas outside the mouth of” the Gulf of Tonkin in Hanoi.³³⁾ This signalled the resumption of talks relating to this area. The fifth round of talks was held in February 2014.³⁴⁾ In May 2012 the first round of talks on “co-operation in less sensitive fields at sea” was held in Beijing.³⁵⁾ The fourth round of talks was held in September 2013.³⁶⁾

High-level meetings in 2013 have highlighted the continued push for management of the South China Sea situation by the two countries. On June 19 to 21, 2013 Vietnam’s President made a State visit to China. In

32) “Talks Between Deputy Foreign Minister Ho Xuan Son and Chinese Counterpart,” (February 29, 2012), *Viet Nam Ministry of Foreign Affairs*, at http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns120229101237/newsitem_print_preview (accessed March 7, 2012).

33) “Vietnam - China First-Round Talk Held on the Tonkin Gulf Area,” (May 24, 2012), *Nhan Dan Online - English Version*, at www.nhandan.org.vn/en/politics/external-relations/item/1514602-.html (accessed August 15, 2013).

34) “Vietnam, China discuss Tonkin Gulf, sea issues,” (February 20, 2014), *Nhan Dan Online - English Version*, at <http://en.nhandan.org.vn/politics/external-relations/item/2322302-vietnam-china-discuss-tonkin-gulf-sea-issues.html> (accessed April 13, 2014).

35) “Viet Nam, China Negotiate Cooperation in Less Sensitive Fields at Sea,” (June 12, 2012), *Website on Viet Nam’s sovereign boundaries. The National Boundary Commission - Ministry of Foreign Affairs*, at <http://123.30.50.199/sites/en/vietnam-chinanegotiatecooperationin-gid-eng18d6f-nd-eng89522.aspx> (accessed April 14, 2014).

36) “Viet Nam, China talk cooperation on less sensitive fields at sea,” (September 27, 2013), *Viet Nam Ministry of Foreign Affairs*, at http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns130927155020/newsitem_print_preview (accessed April, 13, 2014).

connection with the visit an agreement between Vietnam's Ministry of Agriculture and Rural Development and China's Ministry of Agriculture on "the establishment of a hot line on unexpected incidences in fishing operations at sea". In the Joint Statement from the State visit it was stated that the two sides had reached "consensus that the two Parties and States should maintain regular exchanges and dialogues". They will "persistently seek fundamental and long-term solutions acceptable to both sides through consultations and friendly negotiations". It was agreed to "intensify negotiations of the Working Group on the sea off the Gulf of Tonkin as well as to "increase negotiations of the Working Group on Viet Nam-China cooperation in less sensitive issues at sea". The two sides also agreed to "properly settling emerging issues with a constructive attitude, not letting the issue affect the overall situation" of their relationship as well as peace and stability in the South China Sea." Finally, the two sides had "reached consensus on the comprehensive and effective implementation" of the DOC.³⁷⁾

In connection with the official visit of China's Prime Minister, Li Keqiang, to Vietnam on October 13 to 15, 2013 the two sides agreed to: "observe the common perception reached by leaders of the two Parties and States, and stringently implement 'the agreement on basic principles guiding the settlement of sea issues between Viet Nam and China'."³⁸⁾ The two sides were also:

"unanimous in efficiently employing the Government-level negotiation mechanism on Viet Nam-China boundary and territory and persistently seeking mutually acceptable fundamental and long-lasting solutions through negotiations and peaceful talks, and actively studying

37) "Viet Nam, China issue joint statement" (22 June 2013), *Viet Nam Ministry of Foreign Affairs*, at http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns130624152141/newsitem_print_preview (accessed June 28, 2013).

38) "VN, China issue joint statement," (October 16, 2013), *Viet Nam Ministry of Foreign Affairs*, at http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns131016041515/newsitem_print_preview (accessed November 1, 2013).

transitional solutions that do not affect each side's stance and policy, which will include studies and discussions pertaining to cooperation for mutual development."³⁹⁾

Both sides also agreed to: "establish a working group in charge of cooperation for mutual development at sea as part of the Governmental Negotiation Team on Viet Nam–China Boundary and Territory." In addition it was agreed to: "intensify instructions to the existing consultation and negotiation mechanisms, boost the operation of the working group on the waters off the mouth of the Tonkin Gulf and the expert–level working group on cooperation on less sensitive issues at sea."⁴⁰⁾

VI. The Gulf of Tonkin - China's First Settlement of a Maritime Dispute⁴¹⁾

39) Ibid.

40) Ibid. In January 2014 the "first round of the Working Group Consultation on China–Vietnam Joint Maritime Development" was held in Beijing ("Vice Foreign Minister Liu Zhenmin Meets with the Vietnamese Delegation Attending the First Round of Consultation on China–Vietnam Joint Maritime Development," (January 9, 2014), *Ministry of Foreign Affairs of People's Republic of China*, at http://www.mfa.gov.cn/mfa_chn/wjbxw_602253/t1116520.shtml (accessed April 13, 2014)).

41) This section is partly derived from H. T. Nguyen and R. Amer, "The Management of Vietnam's Maritime Boundary Disputes," *Ocean Development and International Law* 38, no. 3 (2007), pp. 312–313; and R. Amer and H. T. Nguyen, "Regional Conflict Management: Challenges of the Border Disputes of Cambodia, Laos, and Vietnam," *Austrian Journal of South–East Asian Studies* 2, no. 2 (2009), pp. 62–63. For a broader study on China and maritime delimitation including the Gulf of Tonkin including the Gulf of Tonkin see K. Zou, "China and Maritime Boundary Delimitation: Past, Present and Future", in *Conflict Management and Dispute Settlement in East Asia*, edited by R. Amer and K. Zou (Farnham and Burlington: Ashgate, 2011), pp. 149–169. For a study on the role of Chinese province of Hainan in the context of the Gulf of Tonkin settlement see B. Kang and J. Li, "Hainan's Role in the Management of South China Sea Issues: A Case Study of the Gulf of Tonkin," in *Conflict Management and Dispute Settlement in East Asia*, edited by R. Amer and K. Zou (Farnham and Burlington: Ashgate, 2011), pp. 201–220. For a broader study on Vietnam and maritime delimitation including the Gulf of Tonkin see H. T. Nguyen, "Vietnam and Maritime Delimitation," in *Conflict Management and Dispute Settlement in East Asia*, Edited by R. Amer and K. Zou (Farnham and Burlington: Ashgate, 2011), pp. 171–199.

The negotiation process on the Gulf of Tonkin with regular rounds of talks of the joint working group did not differ much in frequency on a yearly basis up to 1999. The developments during 2000 displayed that an increase occurred with five rounds of expert-level talks held during that year, in March, May, June, September, October–November, and late November, respectively, as compared to only one round of talks during the whole of 1999. The *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* signed on December 25, 2000⁴²⁾ stipulated the coordinates for the tracing of the maritime boundary between the two countries in the Gulf of Tonkin.

The crucial issue was how to reach an agreement on a mutually acceptable framework or model for dividing the Gulf. As displayed by the outcome of the negotiations, once such an agreement was reached the tracing of the maritime boundary would not be problematic as it connects the specific coordinates agreed upon.

The core issue to be settled in the Gulf of Tonkin was which principle should be used in order to divide the Gulf. In this context the impact of islands was of crucial importance and in particular the Vietnamese controlled Bach Long Vi Island. An assessment of the agreed coordinates indicates that the impact of Bach Long Vi was not “valued” fully in the delimitation. However, Bach Long Vi was given a quarter of impact, i.e. 15 nautical miles from the island.⁴³⁾

Another potentially complicating factor in the negotiations was the

42) For detailed analyses see H. T. Nguyen, “The Gulf of Tonkin: A case Study of Dispute Settlement,” in *Management and Resolution of Inter-State Conflicts in Southeast Asia*, edited by K. Askandar (Penang: Southeast Asian Conflict Studies Network, 2003), pp. 207–214 (hereafter Nguyen, “The Gulf of Tonkin”), and H. T. Nguyen, “Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf,” *Ocean Development and International Law* 34, no. 1 (2005), pp. 25–44 (hereafter Nguyen, “Maritime Delimitation”). See also K. Zou, “The Sino–Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin,” *Ocean Development and International Law* 34, no. 1 (2005), pp. 13–24.

43) Nguyen, “The Gulf of Tonkin,” pp. 210–213.

status of the Sino–French Agreement of 1887. The agreement reached indicates that if the status of the 1887 Agreement was brought up during the negotiations, both sides eventually agreed that it would not have an impact on the delimitation of maritime zones in the Gulf of Tonkin.

The increased number of rounds of expert–level talks and indeed of government level talks in 2000 is evidence of the complexities involved in reaching a mutually acceptable compromise in order to sign the delimitation agreement by the end of 2000. The political pressure to reach an agreement before the end of the year did generate increased activity to reach this goal. The agreed co–ordinates indicate that the two sides ended up with an agreement on a line of equidistance, albeit modified, having sorted out their differences relating to the question of how islands should impact on the delimitation, in particular Bach Long Vi Island.⁴⁴⁾

Although the issue of fishing in the Gulf of Tonkin is not directly linked to the question of border disputes it is still relevant. It is therefore interesting to note that the two countries held six rounds of talks between April and December 2000 on the issue of fishing. *The Agreement on Fishing Cooperation in the Gulf of Tonkin* signed on December 25, 2000 included regulations for the establishment of joint fishing areas, cooperation in preserving and “sustainably” exploiting the aquatic resources in the Gulf and regulations for fishing cooperation and scientific research.⁴⁵⁾

In order for the two agreements to enter into force it was necessary to complete talks on a Supplementary protocol to the agreement on

44) For an argument relating to the fairness of the outcome see Nguyen, “The Gulf of Tonkin,” p. 210.

45) Nguyen, “Maritime Delimitation,” pp. 35–41, and K. Zou, “Sino–Vietnamese Fishery Agreement in the Gulf of Tonkin,” *The International Journal of Marine and Coastal Law* 17, no. 1 (2012), pp. 127–148. See also J. Li and P. Chen, “China–Vietnam Fishery Cooperation in the Gulf of Tonkin Revisited,” in *The South China Sea: Towards A Region of Peace, Security and Cooperation*, edited by T.T. Tran (Hanoi: Gioi and Diplomatic Academy of Vietnam, 2011), pp. 303–317.

fishery co-operation. At the tenth round of Government-level talks held in Hanoi in January 2004 it was reported that the two sides had “appreciated” the progress made in the settlement of technical issues relating the to fishery issues. Furthermore, the two sides “showed their determination to complete the subsequent work in order to put the Agreement on Delineation and the Agreement on Fishery Co-operation in the Tonkin Gulf into reality in the first half of 2004.” The progress in the talks on the Supplementary protocol on fishing was publicly displayed in reports from the ninth round of talks at vice-ministerial level on the issue held in Hanoi on February 21 to 24, 2004. The agreement on the additional protocol was eventually signed in Beijing on April 29. This paved the way for the ratification of the *Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* and it entered into force on June 30, 2004.⁴⁶⁾

VII. Concluding Discussion

As a main claimant in the South China Sea dispute, China insists on direct bilateral negotiation and consultation in settling the sovereignty disputes with neighboring countries in Southeast Asia. This policy has helped advance the resolution of maritime disputes in the Gulf of Tonkin, where resource exploitation and conservation seem to be under more efficient management than before. However, less progress has been achieved in settling both bilateral disputes in the South China Sea proper and the de facto multilateral dispute over the Spratly archipelago. Furthermore, from the early 1990s onward, China has participated in talks with other claimants at both first – and second –

46) Amer, “China, Vietnam,” p. 19.

track meetings with the aim of promotion of confidence as well as more engagement. This has contributed to the overall stability in the region.

The case study of the China–Vietnam approach displays that the two countries have made considerable efforts in managing their disputes in response to re-occurring periods of tensions as exemplified both in the 1990s and also more recently during the period 2009–2011. The management of disputes and tension caused by the periodic increase in incidents is a priority for the leaders in both China and Vietnam as displayed by high-level talks. The progress made in formal dispute settlement is evident in relation to the land border and the Gulf of Tonkin whereas in relation to the South China Sea issues efforts are still devoted to managing the disputes and related tension. Such efforts yielded notable results with the reduction of tension in the late 1990s and also more recently since October 2011. The signing of the “Agreement on basic principles guiding the settlement of sea-related issues” in 2011 and renewed High-level efforts ever since have contributed much to better management. Steps taken to implement the October 2011 Agreement are encouraging. The gradual reduction in incidents causing tension in recent years is also noteworthy, but needs to be sustained.

One key issue that needs to be addressed by the two parties is the lack of mutual agreement on the scope of talks on the South China Sea. Currently only dispute relating to the Spratly Archipelago is on the agenda. China opposes the inclusion of the Paracel Archipelago while Vietnam opposes the inclusion of areas to the East of the Vietnamese coast where Vietnam claims to continental shelf and EEZ areas extend into the area encompassed within the “nine-dashed lines” claimed by China. If China and Vietnam could agree on which features and which maritime areas both countries claim it would be an important step forward as this would create a realistic agenda for bilateral talks.

If the case of China–Vietnam displays encouraging efforts in dispute management and in addressing incidents and tension relating to the South China Sea the same cannot be said about the China–Philippines

case. Since 2009 developments relating to disputes in the South China South have caused periodically deep tension between China and the Philippines, but the two parties have faced problems in defusing tension. One reason is the lack of institutionalised forms of dialogues and talks to address incidents and the tension that the incidents have caused. This can be contrasted with the China–Vietnam case.⁴⁷⁾ It can also be contrasted with the mid–1990s when China and the Philippines agreed on a bilateral “code of conduct” relating to the South China Sea. In response to the incidents which have led to increased tensions—in particular relating to Scarborough Shoal in 2012—the Philippines “instituted arbitral proceedings” against China on 22 January 2013. This was done under Annex VII to UNCLOS “with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.”⁴⁸⁾ On 19 February 2013, China rejected and returned the Philippines’ Notification through a Note Verbale to the Philippines through its Embassy in Manila. China’s refusal to participate in the arbitral proceedings implies the initiative of the Philippines has become a unilateral one.⁴⁹⁾

China’s proposal to shelve the sovereignty issue and instead engage in joint development has thus far not materialised. One

47) For a detailed comparison between the two cases as well as details on recent tension between China and the Philippines see R. Amer and J. Li, “Recent Developments in the South China Sea –Assessing the China–Vietnam and China–Philippines Relationships,” in *Recent Developments in the South China Sea Dispute, The Prospect of a Joint Development Regime*, edited by S. Wu and N. Hong (London and New York: Routledge, 2014) (forthcoming).

48) See pdf file “Notification and Statement of Claims on the West Philippine Sea,” in “SFA Statement on the UNCLOS Arbitral Proceedings against China,” *Department of Foreign Affairs, Republic of the Philippines*, at <https://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/unclos> (accessed November 1, 2013).

49) “Foreign Ministry Spokesperson Hua Chunying’s Remarks on the Philippines’ Efforts in Pushing for the Establishment of the Arbitral Tribunal in Relation to the Disputes between China and the Philippines in the South China Sea,” (April 26, 2013), *Permanent Mission of the People’s Republic of China to the UN*, at <http://www.china-un.org/eng/fyrth/t1035577.htm> (accessed November 1, 2013).

reason is that the aim of the proposal is perceived to legitimize China's claims within the "nine-dashed lines". Another reason is that China has not specified the exact scope of the proposed joint development, for example, the area, form, content, and governing mechanism for joint development.⁵⁰ This highlights a need for China to clarify its proposal so as to alleviate concerns from other claimants in the South China Sea in order to create conducive conditions for China's proposal to come to a concrete result.

Regionally China's participation in a dialogue with the Association of Southeast Asian Nations (ASEAN) and its members has become increasingly relevant to the South China Sea situation. The ASEAN-China dialogue relates to the overall relationship between the Association and China in political and economic fields. The South China Sea has gradually been brought into the dialogue process. The dialogue relating to the South China Sea initially focused on the search for mutually agreeable mechanisms to manage the situation in the area. In 2000 the "ASEAN-China Working Group on the Regional Code of Conduct on the South China Sea" was established. After addressing differences within ASEAN and between ASEAN and China this paved the way for signing of the "Declaration on the Conduct of Parties in the South China Sea" (DOC) on 4 November 2002 by the ASEAN members and China. The dialogue has continued, which resulted in adoption of the guidelines for the implementation of the DOC in 2011. There are also on-going discussions relating to a possible "Code of Conduct" (COC) both among the member states of ASEAN and between ASEAN and China. The process leading to the DOC displayed that there was not only a need for ASEAN to reach and agreement with China, but also that the ASEAN members needed to reconcile their positions. Consequently, the path to a possible

50) For an earlier discussion on this issue see H. T. Nguyen and R. Amer, "A New Legal Arrangement For the South China Sea?," *Ocean Development and International Law* 40, no. 4 (2009), pp. 342-343.

future COC involves two processes –an intra-ASEAN one and an ASEAN-China one.⁵¹⁾

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51) For analyses of both the internal ASEAN dimension and the ASEAN-China dimension see Ramses Amer and Li Jianwei, “ASEAN, China and the South China Sea Dispute Management,” *China-US Focus* (September 5, 2012), at <http://www.chinausfocus.com/foreign-policy/asean-china-and-the-south-china-sea-dispute-management/> (accessed September 6, 2012); and Ramses Amer, “The South Chins Sea: Challenge for ASEAN,” *Policy Brief*, no. 150 (March 31, 2014), at <http://www.isdp.eu/images/stories/isdp-main-pdf/2014-amer-the-south-china-sea-challenge-for-asean.pdf> (accessed March 31, 2014). See also Carlyle A. Thayer, “ASEAN’S Code of Conduct in the South China Sea: A Litmus Test for Community-Building?,” *The Asia Pacific Journal* 10 (August 20, 2013), at http://japanfocus.org/-Carlyle_A_-Thayer/3813 (accessed November 1, 2013).

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요 약

중국과 남중국해: 어떻게 해양위기를 관리하나?

람세스 아메르*

이 논문의 주요 목적은 중국의 남중국해에 대한 정책을 평가하는 것이며, 해양갈등 및 위기 상황과 관련된 사건을 관리하기 위한 중국의 접근을 분석하는 것이다. 주된 핵심은 중국의 남중국해에 대한 영유권 주장, 중국과 남중국해 인접국과의 분쟁 그리고 중국과 베트남 간 사례를 통해 분석된 분쟁 관리에 있어 중국의 행태, 접근방식 그리고 시각이다. 중국과 베트남과 같은 양자간 분쟁에 있어 남중국해 통킹만에서의 분쟁해결 사례는 강조될 수 있는 사례이며, 이는 중국이 인접국과의 분쟁을 공식적으로 해결한 첫 번째 사례였다. 결국 이 논문은 이를 근간으로 향후 중국이 어떻게 남중국해 현황을 관리할 것인가에 대해 넓은 논쟁을 결론으로 제시하고 있다.

핵심 주제어: 중국의 남중국해 전략, 중국과 베트남 관계, 아세안 딜레마, 통킹만 합의, 지역 해양안보, 동중국해, 중국의 대(對)아시아 정책

* 스웨덴 안보 및 개발 정책연구소 연구위원