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THE U.S.-JAPAN SECURITY ALLIANCE, ASEAN, AND THE SOUTH CHINA SEA DISPUTE

Joshua P. Rowan

Abstract

The situation in the South China Sea—where sovereignty and oil and natural gas interests are converging—creates a flashpoint with significant policy implications for the U.S., Japan, and other Asian nations. Only the U.S.-Japan security alliance, operating in conjunction with the Association of Southeast Asian Nations, can safely foster a long-term solution.

In the post-Cold War environment, geopolitics continues to play a critical role in shaping conflicts between nations. As Ewan W. Anderson writes:

Boundaries indicate the accepted territorial integrity of the state and the extent of government control. In the majority of cases boundaries are legally recognized by the states which share them and also by the international community. However, partly at least as a result of the global geopolitical changes over the past decade, approximately one-quarter of the world's land boundaries can be classified as unstable. In addition, some two-thirds of the global maritime boundaries have yet to be settled.¹

These “global geopolitical changes,” namely, the dissolution of the Soviet Union, have given regional powers the freedom to pursue historical and territorial claims.

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1. Ewan W. Anderson, “Geopolitics: International Boundaries as Fighting Places,” in *Geopolitics: Geography and Strategy*, eds. Colin S. Gray and Geoffrey Sloan (London: Frank Cass, 1999), p. 125.

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Nowhere is this phenomenon more evident than in the South China Sea, where state sovereignty, oil and natural gas interests, and shipping are converging to create a potential flashpoint with significant policy implications for the U.S., Japan, and other Asian nations.

Over 90% of the world's international trade occurs via commercial shipping and 45% of that tonnage makes its way through the virtually unregulated waters of the South China Sea.² Interestingly, the Strait of Malacca—located at one end of the South China Sea—is the world's second busiest international sea lane, second only to the Strait of Hormuz. The more than 200 small islands, rocks, and reefs that lie in the Spratly and Paracel Island chains in the South China Sea are claimed—in part or in total—by six Asian nations.³ Any overt conflict between littoral states over the sovereignty of these islands, regardless of its scope or intensity, would directly impact the U.S. and Japan, two of the world's largest trading nations. Therefore, it is relevant to study the interplay between geography and power politics in this critical region. In order to facilitate such a discussion, three major points must be addressed: the geostrategic importance of the South China Sea, the claimant states and their respective territorial issues, and the role (or lack thereof) of non-claimant states and organizational bodies.

This article will begin by addressing the geostrategic importance of the South China Sea. Included will be a discussion on the importance of international shipping in this region. Critical to such an analysis are transnational issues such as piracy and terrorism, which have plagued the shipping industry in Southeast Asia. Additionally, the South China Sea region is important because of its oil and natural gas potential. In the next 20 years, oil consumption in Asian nations is expected to rise by 4% annually, with half of this demand coming from the People's Republic of China (PRC). If projections are correct, the demand for oil among Asian countries will be 25 million barrels per day, a rate more than double the current consumption level.⁴ As a result, oil and natural gas considerations will fuel the behavior of claimant states in the South China Sea. This essay will consider recent oil and natural gas discoveries as well as speculate on the impact of such finds on the South China Sea dispute.

The next section will appraise the successes and failures of the United Nations Convention on the Law of the Sea in preserving orderly transportation,

2. Keith Bradsher, "Warnings from Al Qaeda Stir Fear That Terrorists May Attack Oil Tankers," *New York Times*, December 12, 2002, p. A 20.

3. China and Taiwan both claim the entire Spratly archipelago. Partial claims have been made by Vietnam, the Philippines, Malaysia, and Brunei. The Spratlys alone extend across about 800,000 square kilometers of sea but total less than five square kilometers in land area. See <<http://www.wsws.org/articles/1999/dec1999/spra-d13.shtml>>.

4. <Global Security.org>, "Spratly Islands," <<http://www.globalsecurity.org/military/world/war/spratly.htm>>, October 6, 2004.

exploration, and development of natural resources. The article will then address the respective claimant states as well as their territorial disputes. Several militaries that are modernizing or clamoring for funds to modernize—especially those of the Philippines, Malaysia, and China—claim they are doing so in response to the South China Sea issue.⁵ Therefore, military and/or non-military confrontations that arise among claimants Brunei, Indonesia, Malaysia, the Philippines, Taiwan, Vietnam, and the PRC will be explored in depth.

The third section of this essay will focus on the role of two non-claimant states, specifically the U.S. and Japan, in the dispute in the South China Sea. How the dispute in this critical region affects both Washington and Tokyo will be addressed. Section three will also explore the historical attempts by the U.S. and Japan to mediate the dispute. Finally, several current developments—including Japan’s decision to sign the Treaty of Amity and Cooperation (TAC) in Southeast Asia—will be discussed.

In section four, the role of the Association of Southeast Asian Nations (ASEAN) in regulating or failing to regulate conflict in the South China Sea will be examined. Based on the available evidence, the article will suggest that this multilateral organization must be involved in any attempt to resolve the dispute peacefully: ASEAN alone will be unable to manage such conflict. We will also consider how the U.S.-Japan security alliance can ensure a more long-term solution to the conflict.

Geopolitical Considerations

The first and most critical question that must be addressed at the start of any geopolitical survey is, “What defining features make this dispute worth studying?” In the case of Southeast Asia, several factors are worth noting. First, the South China Sea is the world’s second-busiest international shipping lane. Each year, more than half of the world’s supertanker traffic passes through the Straits of Malacca, Sunda, and Lombok, with the majority of seafaring traffic continuing on to China, Japan, Taiwan, and South Korea. This shipping is primarily raw materials and energy resources—crude oil, liquefied natural gas (LNG), coal, and iron ore—en route to these East Asian nations.

With respect to oil and LNG, the amount transported through the South China Sea is three times greater than that traveling through the Suez Canal and 15 times greater than the amount transported through the Panama Canal. The majority of this crude oil comes from the Persian Gulf and is bound for Japan, South Korea, and Taiwan. Additionally, about two-thirds of South Korean

5. For examples, see Andrew Tan, “What’s Behind Malaysia’s Defense Buildup?” *Straits Times* (Singapore), July 4, 2003; Wang Xiangwei, “Admiral Wants Spratly Islands Developed Faster; National Interests Need Protecting, Southern Chief Says,” *South China Morning Post*, March 9, 2004, p. 5.

and 60% of Japanese and Taiwanese LNG supplies flow through this critical region.⁶

This volume of shipping creates numerous opportunities for piracy and terrorism. In 1999, the Thai tanker *MV Tenyu*, the Singapore-owned tanker *Petro Ranger*, the Indonesian tanker *MT Atlanta*, and the Honduran tanker *MT 1* were all targets of piracy. The suicide attack in October 2002 of a speedboat packed with explosives against a French oil tanker has led many in the shipping industry to wonder if such an attack could be mounted in the Strait of Malacca by al-Qaeda extremists in Indonesia. As Pootengal Mukundan, director of the International Maritime Bureau, an organization established in 1981 to serve as the focal point in the fight against maritime crime, notes, “With the attack on the Limburg [French oil tanker], commercial vessels, especially vulnerable vessels like tankers, are terrorist targets.”⁷

In addition to its importance as a shipping lane, the South China Sea region contains potentially vast oil reserves. Oil deposits have been found in many of the continental shelves surrounding the sea. Currently, this region retains proven oil reserves of seven billion barrels and a production capacity of 2.5 million barrels per day.⁸ The discovery of oil in adjacent littoral countries has fueled speculation that there could be a massive reserve, located near several nations with growing demand for oil. But because there has been no exploratory drilling near the Spratly and Paracel Islands, there are no proven oil reserves for those areas and estimates vary greatly.

Moderate Chinese estimates indicate that the potential oil resources of the Spratly and Paracel Islands could be as high as 105 billion barrels of oil, while the resources of the entire South China Sea region could run as high as 213 billion barrels. As noted in a U.S. Department of Energy (DOE) analysis, using the common 10% rule of thumb for frontier areas, Chinese figures would put production levels for the Spratly Islands at 1.4 to 1.9 million barrels per day.⁹ However, not everyone shares the optimistic estimates of the PRC. Some organizations have downplayed potential oil reserves in the region. A 1993–94 estimate by the U.S. Geological Survey (USGS) concluded that “total discovered reserves and undiscovered resources in the offshore basins of the South China Sea” ran closer to 28 billion barrels.¹⁰ Using the 10% rule, peak production would only be between 137,000–183,000 barrels per day.

6. Federation of American Scientists, “Spratly Islands,” January 20, 2000, <<http://www.fas.org/man/dod-101/ops/war/spratly.htm>>.

7. Bradsher, “Warnings from Al-Qaeda Stir Fear.”

8. U.S. Department of Energy, “South China Sea Region,” *Country Analysis Briefs*, September 22, 2003, <<http://www.eia.doe.gov/emeu/cabs/schina.html>>.

9. *Ibid.*

10. *Ibid.*

A similar debate is occurring regarding the potential for natural gas. The USGS estimates that 60%–70% of the hydrocarbon reserves in the region are natural gas. One Chinese report stated that there are 225 billion barrels of hydrocarbons in the Spratly Islands alone, and that of these hydrocarbons, 70% are natural gas resources.¹¹ As the DOE report points out, if these estimates are correct, then the entire South China Sea region would contain more than 2,000 trillion cubic feet of natural gas resources. In general, however, “China’s optimistic view of the South China Sea’s natural gas potential is not shared by most non-Chinese analysts.”¹²

United Nations Convention on the Law of the Sea

Before looking at the various claimant states’ claims, it is helpful to examine what laws, if any, govern the South China Sea. In 1982, the U.N. adopted the United Nations Convention on the Law of the Sea (UNCLOS) in an effort to peacefully settle disputes over maritime matters. Despite several oversights, UNCLOS remains the most recognizable document regarding maritime disputes. Within UNCLOS, three sections are generally recognized as being most relevant to the South China Sea dispute.

Article 3 states: “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from the baselines determined in accordance with this Convention.”¹³ In essence, this article allows each claimant state in Southeast Asia to extend its national territorial boundary 12 nautical miles into offshore waters. In accordance with UNCLOS, these areas are sovereign territory, controlled by the mainland state.

Articles 55 through 75 deal with an important concept known as an Exclusive Economic Zone (EEZ). According to Articles 55 and 56, the EEZ is “an area beyond and adjacent to the territorial sea” where a nation can engage in “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. . . .”¹⁴ However, Article 57 notes that the EEZ cannot extend beyond 200 nautical miles from the baseline of the state. The remaining articles, 58 through 75, stipulate what activities can take place in a country’s EEZ.

Finally, Part VIII of UNCLOS, entitled the “Regime of Islands,” deals with certain issues regarding the definition of territory. Specifically, Article 121 states,

11. *Ibid.*

12. *Ibid.*

13. United Nations, United Nations Convention on the Law of the Sea, Part 2, Section 2, Article 3, December 10, 1982, <http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, p. 27.

14. *Ibid.*, p. 43.

“Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive zone or continental shelf.”¹⁵ This has been a particularly important article in the South China Sea dispute and was used by several countries to justify attempts to build structures on submerged rocks and reefs in order to establish a new EEZ in the region.

Overall, UNCLOS is a helpful instrument for beginning discussions of sovereignty among South China Sea claimant states. Indeed, it is essentially the only document—signed by all six countries—that addresses issues related to the dispute. However, despite all its positive contributions, UNCLOS has significant shortcomings. Taken collectively, its articles create the potential for overlapping claims in the South China Sea. For example, if two countries establish structures in close proximity, then an overlapping EEZ could emerge.

Claimant States

Any discussion of the South China Sea dispute that focuses exclusively on the legal considerations of UNCLOS is shortsighted. Xavier Furtado writes, “Although the Spratlys conflict is in many ways a straightforward territorial dispute, it is also a function of the region’s unique set of historical and geopolitical considerations that challenge the ability of the Convention to provide an authoritative framework that all parties can use.”¹⁶ Keeping this in mind, it is helpful to examine the claims made by each of the six nations surrounding the South China Sea region. It is also worth considering the historical conflicts that have occurred and evaluating the potential for future conflicts between various claimant states.

Brunei

Most of the Spratly Island claimants have occupied some part of the island chain and/or stationed troops and built fortifications on various reefs. Brunei, on the other hand, does not claim any of the Spratlys, nor has it stationed troops on any islands in the South China Sea. Brunei has, however, claimed two separate areas, the Louisa Reef and Rifleman Bank. Controlling the Louisa Reef, which is also claimed by Malaysia, would allow officials in Bandar Seri Begawan to extend Brunei’s EEZ. The Louisa Reef claim is relatively weak because this reef features merely two small rocks partially exposed during high tide.

Brunei’s claim to Rifleman Bank is based on a 1954 decree by Britain declaring the boundaries of the island of Borneo, on which Brunei is situated, to

15. *Ibid.*, p. 66.

16. Xavier Furtado, “International Law and the Dispute over the Spratly Islands: Whither UNCLOS?” *Contemporary Southeast Asia* 21:3 (December 1999), p. 387.

include, “[T]he area of the continental shelf . . . to the territorial waters.”¹⁷ A more recent map published by Brunei in 1988 extended its continental shelf to 350 nautical miles, further justifying its territorial claim to Rifleman Bank. Brunei’s claim to an extended continental shelf, however, does not appear to be consistent with the provisions of UNCLOS, which mandates that the natural prolongation of the continental shelf must be uninterrupted.

Indonesia

Indonesia also has modest territorial claims in the South China Sea. Jakarta, like Brunei, does not claim any part of the Spratly or Paracel Islands; however, it does assert a 200-mile EEZ under the provisions of UNCLOS. Despite its reasonable sovereignty declarations, Indonesia would very likely be drawn into a regional conflict as a result of Chinese and Taiwanese claims that extend into Indonesia’s EEZ and continental shelf, specifically the West Natuna gas field.

Despite the potential for conflict, however, relations between Beijing and Jakarta over the issue of the South China Sea have been good. For example, after acquiring nine Repsol YPF S.A. subsidiaries in April 2002, China’s state-owned oil giant, the China National Offshore Oil Cooperation (CNOOC), became the largest offshore oil producer in Indonesia. Moreover, CNOOC recently paid \$275 million to acquire a 12.5% stake in Indonesia’s Tangguh LNG project.¹⁸ Indonesia has two additional natural gas agreements with Singapore and Petro China. One of these projects is the West Natuna pipeline project, which fulfills a contract with the Singapore consortium Semb Gas.

Malaysia

In total, Malaysia claims 12 islands in the South China Sea. Six of these—Ardasier Reef, Dallas Reef, Louisa Reef, Mariveles Reef, Royal Charlotte Reef, and Swallow Reef—are physically occupied by Malaysian forces. The Malaysian government has also used soil from the mainland to raise the level of Swallow Reef, constructing a hotel, airstrip, and chalet for scuba divers on the reef. Three reefs—Erica, Investigator, and Luconia—are also claimed by Malaysia but are unoccupied. The Commodore Reef is claimed by both the Philippines and Malaysia, while the Amboyna Cay and the Braque Canada Reefs are jointly claimed by Malaysia and Vietnam.

Malaysia has consistently used the continental shelf theory, outlined in UNCLOS and reaffirmed in Malaysia’s own Continental Shelf Act of 1966, to

17. Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea* (Honolulu: University of Hawaii Press, 1997), p. 38.

18. China National Offshore Oil Cooperation, *Annual Report* (Beijing: China National Offshore Oil Cooperation, 2002), p. 20.

justify its claims in the region. However, researchers Valencia, Van Dyke, and Ludwig argue that Kuala Lumpur's claims are dubious at best.¹⁹ Although Malaysia has never used violence to assert its claims in the region, it did briefly detain 43 Filipino fishermen in spring 1995 for violating Malaysia's EEZ.

Philippines

The Philippines claims eight islets of the Spratly Island chain, but not the main landmass itself. By and large, Manila's claim is based on four arguments: the islets are adjacent or contiguous to the main Philippine islands; this region is economically and strategically vital to the Philippines; the islets were abandoned after World War Two; and the recent Philippine occupation of some of the islets gives it title either through "discovery" or "prescriptive acquisition."²⁰ However, the strongest of Manila's arguments is rooted in historical record.

In 1947, Tomas Cloma, a Filipino businessman, established a settlement on eight islands of the Spratly archipelago. In 1956, Cloma declared himself protector over the islands and named them Kalaya'an (Freedomland). Cloma deeded the Kalaya'an Islands to the Philippines in 1974. In 1971 and 1978, President Ferdinand Marcos formally declared the Kalaya'an Islands to be part of the Philippines. Manila reiterated its claim prior to signing UNCLOS in 1982.

To bolster this historical claim, the Philippines in 1971 sanctioned drilling off the Reed Bank area and occupied eight of the islands—Nanshan, Flat, West York, Northeast Cay, Thitu, Lankiam Cay, Loaita, and Commodore Reef—in 1978. An all-weather airstrip capable of handling small aircraft has been constructed on Thitu Island; reportedly, Manila has expressed an interest in developing infrastructure for tourism there.

On five separate occasions during the 1990s, the Philippines and the PRC clashed over disputed territory in the South China Sea. In 1995, China occupied Mischief Reef and built "fisherman's structures" over these half-submerged atolls. In objection to the Chinese occupation of the reef, the Philippine navy evicted the Chinese and in March 1995, Filipino forces destroyed Chinese stone markers in the area. With respect to Mischief Reef, two points are worth considering. First, this disputed territory is within the Philippines' EEZ and over 1,000 miles from the Chinese mainland. Second, the Chinese took these provocative actions despite having signed the 1992 ASEAN Declaration on the South China Sea that called for mutual restraint by all parties.

A second incident, in January 1996, involved three Chinese naval vessels that engaged in a 90-minute gunbattle with Philippine naval ships near Campones

19. According to experts on the South China Sea dispute, neither UNCLOS nor Malaysia's own act indicate that the continental shelf pertains to land or rocks that rise above sea level. The wording of both documents addresses only submerged land and rocks. See Valencia et al., *Sharing the Resources of the South China Sea*, p. 37.

20. *Ibid.*, p. 33.

Island. Twice during the next two years, the People's Liberation Army-Navy (PLAN) and Philippine fishermen clashed near Scarborough Shoal over the placement of Chinese markers in the area. More recent events suggest that the PRC and the Philippines have not resolved their differences regarding Mischief Reef. In late 1998 and early 1999, new construction was observed on Mischief Reef, prompting one Filipino professor to quip: "China's record on matters of territory and national pride does not induce calm on the part of the smaller countries sitting under the belly of an increasingly prosperous dragon."²¹ Manila intelligence sources have reported that multistory Chinese structures manned with anti-aircraft guns and large enough to serve as landing pads for helicopters when completed have been upgraded with new communications equipment linked to Chinese satellites.²²

More recently, China and the Philippines have shown a willingness to cooperate on territorial matters. In November 2003, Philippine Foreign Affairs Secretary Blas Ople branded new claims of Chinese aggression in the South China Sea "inaccurate and exaggerated."²³ Chinese and Philippine oil companies have also begun joint exploration in the South China Sea, a proposition that Beijing had rejected more than 10 years ago. In November 2003, CNOOC and the Philippine National Oil Company signed an agreement to undertake joint exploration in an area offshore of northwest Palawan, the westernmost Philippine province.²⁴

Taiwan

The Republic of China (ROC) on Taiwan claims sovereignty over several South China Sea island groups including the Spratlys (Nansha), Paracels (Hsisha), Macclesfield Bank (Chungsha), and Pratas (Tungsha) Islands and was the first claimant state to occupy an island within the Spratly chain. Taipei also occupies Taiping (also known as Itu Aba), the largest island in the Spratly archipelago. As of April 1997, Taiwan had a garrison on Taiping with approximately 110 marines, a radar station, meteorological center, and power plant. Taipei has also considered constructing a communications facility and airstrip on Taiping. However, Taiwan has historically taken no action when other claimant states have occupied other parts of the island chain. In addition, the ROC has refrained from constructing lighthouses on ROC-claimed islands for similar reasons. As Cheng-yi Lin has noted, "It is clear that Taipei has adopted a policy

21. Alex Magno, "Naval Power Play Sets Off Alarms," *Time Asia*, September 27, 1999, <<http://www.time.com/time/asia/magazine/99/0927/spratly.html>>.

22. David G. Wienczek, "South China Sea Flashpoint," *China Brief* 1:2, July 24, 2001.

23. *People's Daily*, "Philippines Dismisses Claims of Chinese Transgression in South China Sea," November 14, 2003, <http://english.peopledaily.com.cn/200311/14/eng20031114_128271.shtml>.

24. "Oil Giants to Tap Ocean Resources," Xinhua Economic News Service, November 13, 2003.

of self-restraint with regard to the South China Sea, and it has done this simply because it does not have the military capability to back up its historical claims.”²⁵

Although the Spratly archipelago is 800 nautical miles from Taiwan and effectively beyond the ROC’s power projection range, the government in Taipei has given a high priority to the islands. In 1990, the Executive Yuan (cabinet) placed Pratas and Taiping Islands under the temporary jurisdiction of the municipal government of Kaohsiung, Taiwan’s southernmost city. In October 1992, Taipei established a 4,000-meter wide prohibited sea zone around Pratas and Taiping. The *National Defense Report, Republic of China, 1993–1994* included a special section on the South China Sea.²⁶

From a geographical standpoint, the Pratas Island chain is extremely important. The archipelago, consisting of Pratas Island and two coral reefs that are submerged at high tide, is more than 140 miles from Hong Kong and, some experts believe, would provide Taiwan an additional five minutes of warning time against an air attack from mainland China.²⁷ Although the PRC also claims Pratas, Taiwan has occupied the island and constructed razor wire and concrete structures designed to protect it from invasion.

Indeed, Taiwan has not abandoned the military option for responding to a South China Sea contingency. Beginning in April 1994, the ROC Navy began to patrol the waters surrounding the Spratly and Paracel Islands. In March 1995, Taiwan’s Seventh Peace Preservation Police Corps (marine police) sent three patrol boats to the South China Sea but turned back after reaching Pratas Island. Later that month, warning shots were fired at a Vietnamese cargo vessel that intruded into the prohibited zone around Taiping Island. Since 1995, the ROC Navy has dispatched two transports and two destroyers to Taiping for semi-annual resupply missions. Should Taipei decide to increase its presence in the region, this could be accomplished relatively easily through Taiwan’s modernized naval assets.

Since 1995, however, Taiwan has insisted on a peaceful solution to the South China Sea dispute. In an effort to reduce tension with China over this issue, in December 2000 Taiwan President Chen Shui-bian transferred responsibility for Pratas and Taiping Islands from the Ministry of Defense to the civilian Coast Guard Administration. Some members of the ruling Democratic Progressive Party believe that this move helped to reduce tensions in the region.

25. Cheng-yi Lin, “Taiwan’s South China Sea Policy,” *Asian Survey* 37:4 (April 1997), p. 329.

26. See Chapter 2, “The Military Posture of the Rim of the Republic of China on Taiwan,” in *National Defense Report, Republic of China, 1993–1994* (Taipei: Li Ming Cultural Enterprise Co., 1994), pp. 31–48.

27. Mark J. Valencia, “The South China Sea Disputes: Taiwan’s Role,” email communication to author, December 11, 2002.

Overall, Taipei's South China Sea policy is guided by five principles, embodied in the 1993 "South China Sea Policy Guidelines": insist on Taiwan's sovereign claim over the Spratlys, support any actions to settle the dispute peacefully, oppose any provocative move in the region that would trigger new conflict, support the idea of temporarily shelving the sovereignty dispute in order to exploit resources jointly, and continue to actively participate in the Workshop on Managing Potential Conflicts in the South China Sea and other related international conferences to fully cooperate with other claimant states to avoid a conflict.²⁸

Vietnam

The relationship between the final two claimant states—Vietnam and China—is historically antagonistic. This fact has not changed in the post-Cold War environment and, indeed, is again evidenced by repeated military clashes in the South China Sea. Although oil and natural gas considerations fuel the conflict between Hanoi and Beijing, the rivalry is one of the best examples of a geopolitical struggle for influence in Southeast Asia.

Vietnam claims the entire Spratly Island chain as an offshore district of Khanh Hoa Province. In addition, Vietnam continues to claim the Paracel Islands, despite their seizure by China in 1976. Hanoi maintains garrisons on about 22 geographic features in the South China Sea, including locations at Spratly Island, West London Reef, Amboyna Cay, Pearson Reef, Sin Crowe Island, Namyit Island, Sand Cay, Barque Canada Reef, and Southwest Cay. In 1988, Vietnam had an estimated 350 troops stationed on these islands and by 1992 the total had grown to 1,000. The main garrison on Sin Crowe Island is heavily fortified with coastal artillery and anti-aircraft batteries.²⁹

In addition to a military presence, the Vietnamese have undertaken extensive construction in and around the South China Sea. In 1989, Vietnam built a small airstrip on Spratly Island and artificial structures on Vanguard Reef, Prince Consort Bank, and Grainger Bank. Hanoi's claim to these islands, however, has often been contested because these geographic features are submerged in several feet of water. Overall, Vietnamese claims are based on a combination of historical data and the continental shelf principle. According to Vietnamese court documents during the reign of King Le Thanh Tong (r. 1460–97), the Vietnamese claimed sovereignty over the Spratly Islands. This claim was well documented during the 17th century when many Vietnamese maps incorporated parts of the Spratly archipelago into Vietnam. In 1884, the French established a protectorate over Vietnam and asserted their colonial claim to the Spratly and Paracel Island chains. Ironically, the current Vietnamese govern-

28. Lin, "Taiwan's South China Sea Policy," 325.

29. Valencia et al., *Sharing the Resources of the South China Sea*, p. 31.

ment continues to use these historical claims as part of its justification for sovereignty in the South China Sea.³⁰

Hanoi also argues that the extent of its continental shelf—in accordance with the provisions of UNCLOS—entitles Vietnam to occupy the Spratly Islands. Vietnam suggests that each littoral country be entitled to a full 200-nautical-mile EEZ starting from the main coastline and that any high seas area beyond that distance should be governed by the International Sea-Bed Authority.³¹ However, in 1982 Vietnam used straight baselines originating from its coasts, some of which were inconsistent with the provisions of UNCLOS. Under international pressure Vietnam reassessed its baseline claims and is expected to make a new map in the near future.³²

Vietnam has consistently clashed with other claimant states including the PRC over territory in the South China Sea. In January 1974, the first clash occurred between Vietnam and China over the Paracel Islands. The incident began when two Chinese fishing boats sailed into the area. South Vietnamese soldiers and gunboats fired on the fishermen, driving them away from the archipelago. Shortly thereafter, South Vietnamese military personnel removed PRC flags from Robert and Money Islands and landed troops there. The Chinese response was swift. On January 17, the PLAN escorted troops from Woody Island to Money and Duncan Islands, where a gun battle between PRC and Vietnamese forces ensued. After the final shots were fired several weeks later and a Vietnamese corvette was sunk, the PRC effectively seized control of the Paracels.³³

In 1975, the People's Army of Vietnam moved to occupy several of the Spratly Islands, previously held by the Saigon government. In 1988, China and Vietnam clashed again at Johnson Reef—also known as Fiery Cross Reef—in the Spratlys, resulting in over 70 Vietnamese deaths. Based on the evidence, this geographic feature hardly seems worth fighting over. According to the U.S. Defense Mapping Agency, Johnson Reef is 14-nautical-miles long and submerged at high tide. However, since occupying the reef in 1988, China has converted the area into an artificial island with a supply base, helipad, industrial pier, and ultramodern oceanic observation station.³⁴

In 1992, Vietnam accused China of drilling for oil in the Gulf of Tonkin and landing troops at Da Luc Reef. Beijing responded by seizing 20 Vietnamese cargo vessels en route to Hong Kong. Again in 1994, 1996, and 1997, Vietnam

30. *Ibid.*, pp. 30–33.

31. *Ibid.*, p. 31.

32. *Ibid.*, p. 32.

33. John W. Garver, "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests," *China Quarterly* 132 (December 1992), pp. 1001–05.

34. Mark J. Valencia, *China and the South China Sea Disputes*, Adelphi Paper, no. 298 (London: Oxford University Press, October 1995), p. 9.

and China clashed over conflicting oil claims in so-called Vietnamese oil blocks. The most recent incident occurred in 1998 when Vietnamese soldiers fired on a Filipino fishing boat near Tennent (Pigeon) Reef. At present, Hanoi and Beijing continue to have unresolved disputes regarding territory in the South China Sea.

China

The most provocative of all South China Sea claimant states is the PRC, which claims virtually the entire South China Sea for itself. China's name for the Spratly Islands—located about 1,000 kilometers from the closest point of China proper—is the Nansha Archipelago. Describing China's actions in the South China Sea, Mark Valencia, a leading expert on the region, notes, "What the situation is in a nutshell is China's thirst for oil is pushing its search and its claims further and further offshore, and in the process it is both rubbing up against its neighbors and competing with them for the resources of the sea."³⁵

Although China sounds highly assertive, its statements of entitlements in the South China Sea region have been a relatively recent phenomenon. In fact historically, Chinese attitudes toward the South China Sea were best reflected in the statement by one author that "[u]ntil World War II, the islands in the South China Sea were only worth their weight in guano."³⁶

Beijing bases its claims in the region on what the PRC calls historical data.³⁷ In the year 110, the Han Dynasty embarked on a naval expedition into the region surrounding the Spratly Islands. Another expedition was sent by the Ming Dynasty during 1403–33. From the 12th century until the 17th century, Chinese historical records made periodic references to the Spratly Islands, including a discussion of their elevation above sea level. However, because of the Confucian tradition—which believed that territory was expressed in zones of influence rather than definite linear boundaries—it is difficult to prove many of the PRC's claims in the South China Sea.³⁸ As Valencia, Van Dyke, and Ludwig note, delineating historical claims vis-à-vis Vietnam is difficult because "China asserted dominance over Vietnam during this period."³⁹

35. Jim Colbert, ed., *Proceedings from the Conference on Natural Resources and National Security: Sources of Conflict and the U.S. Interest* (Washington, D.C.: Jewish Institute for National Security Affairs, 2000), p. 1.

36. Stewart S. Johnson, "Territorial Issues and Conflict Potential in the South China Sea," *Conflict Quarterly* (Fall 1994), p. 29.

37. According to Beijing, 400 scholars spent 10 years to "prove historically that China discovered and developed the Spratly Islands." According to then-Chinese Ambassador to the U.N. Gao Feng, "Beijing's sovereignty over the island was based on historical facts . . . recognized by neighboring countries." See Thalif Deen, "China Warns Outsiders to Keep Out of the Spratlys Dispute," *Asia Times* online, December 8, 1999, <<http://www.atimes.com/se-asia/AL08Ae02.html>>.

38. Valencia et al., *Sharing the Resources of the South China Sea*, p. 20.

39. *Ibid.*, p. 21.

Beginning in the 19th and 20th centuries, the Chinese government asserted claims to both the Spratly and Paracel Islands. The first formal claim of sovereignty was made in 1876 when China's ambassador to England claimed the Paracel Islands as Chinese territory. This was followed in 1883 by the expulsion of a German survey team from the Spratlys. However, by the 1930s China was losing portions of the islands. For example, in the late 1930s, Japan established a strong presence in the South China Sea using Itu Aba as a submarine base for intercepting commerce in the region.

Two years after the conclusion of World War Two, Beijing produced a map featuring a line of nine undefined dashes, which go deep into the South China Sea, forming a "tongue-like configuration" that encompassed most of the territory in the region.⁴⁰ In May 1996, Beijing published a list of baselines that connected the Paracel Islands but made no mention of the Spratly Islands, stating that it would resolve the matter at another time.⁴¹ No further clarification of the map lines has been offered; Taiwan also refers to the U-shaped broken line for discussion of claims. From 1956 onward, the PLA occupied the largest of the Spratly Islands. Chinese aggression was not challenged by any Southeast Asian nation until the 1970s, when China's rivals began to forcibly occupy other parts of the Spratly chain. As previously noted, by 1973 Vietnam and the Philippines together had occupied 12 islands previously claimed by China.

The PRC synthesized its claims to the South China Sea on February 25, 1992, when Beijing passed the Law on the Territorial Waters and Their Contiguous Areas, known as the Territorial Sea Law. According to Article 2, the Nansha (Spratly) Islands were officially Chinese territory. In addition, the law decreed, "The extent of the PRC's territorial waters measures 12 nautical miles from the baseline of the territorial sea. . . . The PRC's territorial sea refers to the waters adjacent to the territorial land. The PRC's territorial land includes the mainland and its offshore islands, Taiwan and the various affiliated islands including Diaoyu Island, Penghu Island, Dongsha Island, Xisha Islands, Nansha (Spratly) Islands and other islands that belong to the People's Republic of China."⁴² However, Beijing has never publicly published any such territorial baselines.

As the evidence suggests, Chinese claims in the South China Sea have not been merely rhetorical. Of all the states concerned, the PRC has been the most aggressive in pursuing its claims, as seen, for example, in multiple clashes with the Philippines and Vietnam. China has also used its territorial claims to justify its naval assets as well as expand Beijing's influence in the region. More

40. *Ibid.*, pp. 24–25.

41. *Ibid.*, p. 25.

42. Law on the Territorial Sea and the Contiguous Zone, February 25, 1992, <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf>.

recently, the Chinese military establishment has used the South China Sea dispute to lobby for additional upgrades to PLAN equipment, including the possible acquisition of an aircraft carrier. As one Chinese military expert stated, "Once the Taiwan front is closed, we may turn to the South China Sea."⁴³

From Beijing's perspective, controlling the South China Sea region is critical in solidifying Chinese influence in Southeast Asia as well as establishing an aerial and sea denial zone, in which an opposing force is denied the ability to use air or sea space for a given period of time, around mainland China. China's attempt to establish such a zone began in 1971 after geological surveys of the easternmost island cluster of the Paracel archipelago were completed by the Amphitrite Group. At the conclusion of this survey, a harbor was dug at Woody Island and a 350-meter concrete wharf was constructed for mid-sized ships. The construction of Chinese bases in the South China Sea region continued in 1974 following the clash between PLAN and South Vietnamese forces over the remainder of the Paracels.⁴⁴

Construction in the Paracels was given top priority by the Central Military Commission and the PLA General Logistics Department. Throughout the Paracels, harbors were dredged, wharfs repaired and constructed, gun emplacements built, and storage facilities for fuel, water, and ammunition erected. These new features created additional responsibilities for the South Sea Fleet and gave PLAN new platforms for operations throughout the South China Sea region.

Additional facilities at the Spratly Islands were built during the late 1980s. Responsibility for construction of the Spratly facilities was given to PLAN, with supplemental assistance provided by the Oceanic Bureau and the Transportation Ministry. On February 3, 1988, construction of an oceanic observation post at Fiery Cross Shoal began. Although the fighting with Vietnamese at this location (described above) slowed construction of Chinese facilities, the oceanic post was completed, amid much fanfare, on August 2, 1988.⁴⁵

During the mid- to late 1990s, the PRC used the facilities as a platform for military engagements with several Asian nations, including the Philippines and Vietnam. Since the appointment of President Hu Jintao in March 2003, however, Beijing has followed a more peaceful path to resolving disputes in the region. On October 8 that year, China formally joined the ASEAN Treaty of Amity and Cooperation. Under its provisions—first established by the five founding ASEAN nations in Bali in 1976—member states "[s]hall have the determination and good faith to prevent disputes from arising. In case disputes

43. Craig S. Smith, "China Reshaping Military to Toughen Its Muscle in the Region," *New York Times*, October 16, 2002, p. A12.

44. Garver, "China's Push Through the South China Sea," pp. 1004–05.

45. *Ibid.*

on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall at all times settle such disputes among themselves through friendly negotiations.”⁴⁶ Since signing the TAC, China has refrained from using force to settle disputes in the South China Sea region.

The U.S.-Japan Security Alliance

In addition to the dispute among claimant states in Southeast Asia, two nations—the U.S. and Japan—have specific interests in the South China Sea that necessitate involvement by both parties. Indeed, events in the region could have dramatic security implications for Washington, Tokyo, and the 50-year-old bilateral security alliance. Therefore, the positions of Washington and Tokyo with respect to the on-going territorial disputes in the South China Sea are worth exploring in greater detail.

The United States

Skeptics of U.S. involvement in East Asia—specifically in the South China Sea dispute—have traditionally asked an important question: Why should the United States care about a dispute among Asian countries in a region so far from the United States when there are far more pressing U.S. foreign policy considerations? This question is insightful and worth addressing. Valencia outlines two major reasons for U.S. involvement. First, the PRC treats the nine-dashed line as a *de jure* claim to the entire sea region. If this claim were accepted, freedom of navigation there would virtually vanish, crippling seafaring transportation in Southeast Asia. Second, concomitantly, after ratifying the 1992 ASEAN Declaration on the South China Sea, Beijing drew territorial lines around the Parcel Islands and then suggested that it might take similar action on the Spratlys. If this notion were accepted, the PRC could demand that vessels entering and leaving the South China Sea obtain China’s permission to do so, further restricting international sea lanes. As Harvey Feldman, a former U.S. ambassador in Asia noted, this action would turn the South China Sea into a “Chinese lake.”⁴⁷

In addition to issues of freedom of navigation, there are significant American business interests in the region. As one government official was quoted as saying in the *Far Eastern Economic Review*, “We don’t want our companies drilling for oil in disputed areas. They can’t expect the U.S. Government to

46. Treaty of Amity and Cooperation in Southeast Asia, Indonesia, February 24, 1976, <<http://www.aseansec.org/1654.htm>>.

47. Harvey Feldman, “American Interest in the Region,” in Colbert, ed., *Proceedings from the Conference on Natural Resources and National Security*, p. 63.

help later if they have problems.”⁴⁸ Yet, the fact remains that American oil companies are engaged in numerous drilling projects in the South China Sea. Crestone, a Denver-based oil company, signed a contract with the PRC in 1992 to explore for oil near the Spratly Islands. In 1994, Crestone expanded its cooperation with China by exploring the Wan’an Bei-21 block, also claimed by Vietnam.⁴⁹ Hanoi, in April 1996, leased Exploration Blocks 133 and 134 to the U.S. firm Conoco. In August 2001, Conoco and its partners issued a commercial declaration for the Sutu Den discovery in Block 15–1, offshore of Vietnam. Conoco expects total future production from the Sutu Den structure to be at least 200 million barrels of oil, with the potential to exceed 400 million barrels.⁵⁰

The U.S. has also been militarily involved with one claimant state near the Parcel Islands. On April 1, 2001, a U.S. Navy EP-3E Aries 2 surveillance aircraft flying some 80 miles off China’s southern coast collided with a Chinese fighter plane. The mid-air collision left the Chinese pilot dead and forced the American plane to make an emergency landing on Hainan Island. The American crew was held by the Chinese for 11 days and released after Washington offered a carefully worded apology. Although the incident was resolved peacefully, the clash suggests that future conflicts between the two superpowers—including over freedom of navigation and commercial interests—could occur.

However, as Valencia points out, despite a clear U.S. interest in the region, Washington’s policy regarding the South China Sea remains vaguely embodied in four major principles:

1. The United States urges peaceful settlement of the issue by the states involved in a manner that enhances regional peace, prosperity, and security;
2. It strongly opposes the threat or use of military force to assert any nation’s claims to the South China Sea territories and would view any such use as a serious matter;
3. It takes no position on the legal merits of competing sovereignty claims and is willing to help in the peaceful resolution of the competing claims if requested by the parties;
4. It has a strategic interest in maintaining lines of communication in the region and considers it essential to resist any maritime claims beyond those permitted by UNCLOS.⁵¹

48. Susumu Awanohara, “Washington’s Priorities,” *Far Eastern Economic Review*, August 13, 1992, p. 18.

49. *Oil and Gas Journal*, August 1, 1994, p. 4.

50. Conoco Inc., “Conoco in Vietnam: Key to Aggressive Growth in Southeast Asia,” 2002, <<http://www.conoco.com/about/major/special/vietnam.asp>>.

51. Valencia, *China and the South China Sea Disputes*, p. 25.

The United States is also bound by the 1951 Mutual Defense Treaty Between the United States and the Republic of the Philippines. According to Article 4, “Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.”⁵² Although Washington has never recognized Manila’s claim to the Spratly Island chain, a confrontation between China and the Philippines over this archipelago could easily escalate, drawing in U.S. military forces.

Japan

Historically, Japan has also been active in the South China Sea. A Japanese company began mining the Spratly Islands in 1918. During the early 1920s, several Japanese companies occupied various islands and excavated guano for fertilizer. In February 1939, Japanese forces occupied the large island of Hainan in southern China and the Paracel Islands, establishing a submarine base at Itu Abu (Taiping Island). After defeat in World War Two, in accordance with Chapter 2 of the 1951 San Francisco Peace Treaty, Japan lost all claims to its occupied territories including Formosa (Taiwan), the Pescadores, and the Spratly and Paracel Island chains.

In the post-Cold War period, Japan has once again expressed an interest in the South China Sea. Although not a claimant state, Tokyo has specific reasons for being involved. First, Japanese tankers carry 70% of Japan’s oil through sea lanes in the South China Sea. While these tankers could avoid a conflict by sailing around Indonesia into the Pacific Ocean, this option would be both costly and time-consuming. Second, Japan wants to increase its influence in East Asia. As Lam Peng Er has noted:

A study of Japan’s interests and attitudes toward the Spratly dispute is also important because the issue may be seen as a litmus test of Japanese foreign policy in the post-Cold War era. Japan aspires to play a leadership role in world affairs, but if it is unwilling or unable to deal actively with the potentially most destabilizing issue in its own backyard, Tokyo will find it difficult to claim the mantle of regional let alone global leadership.⁵³

Indeed, one criticism leveled at Japan after the 1991 Gulf War was that Tokyo engaged merely in checkbook diplomacy. If the relationship between

52. *Mutual Defense Treaty Between the United States and the Republic of the Philippines*, August 30, 1951, <<http://www.yale.edu/lawweb/avalon/diplomacy/philippines/phil001.htm>>. For a recent commentary on the treaty, see U.S. Pacific Command, “Joint Statement by the Philippine-U.S. Mutual Defense Board,” June 27, 2002, <<http://www.pacom.mil/news/news2002/rel020-02.html>>.

53. Lam Peng Er, “Japan and the Spratlys Dispute: Aspirations and Limitations,” *Asian Survey* 36:10 (October 1996), p. 996.

the U.S. and South Korea continues to be strained, Washington will increasingly count on Japan to take a more active role in East Asia. In addition to being an active participant in the discussions on North Korea's nuclear weapons program, Tokyo can also begin to use its diplomatic influence in the South China Sea dispute. Indeed, from Japan's perspective, stability in the South China Sea will translate into a more stable Southeast Asia, creating new markets for Japanese products and services.

Finally, Japan is concerned about China's creeping influence in Asia and looks to affairs in the South China Sea as an indicator of Beijing's intentions elsewhere. Officials in Tokyo are mindful of the American geopolitician Nicholas Spykman's famous dictum, "Who controls the rimland rules Eurasia; who rules Eurasia controls the destinies of the world."⁵⁴ Japan and the PRC are already engaged in a heated debate over the Senkaku (Diaoyutai) Islands northeast of Taiwan, with each side claiming this island chain as sovereign territory. A more aggressive PRC stance vis-à-vis the South China Sea suggests that Beijing has other expansionistic tendencies that could further threaten Japanese interests.

Japan has used two forums available for resolving Southeast Asian disputes, but to date its ability to affect events in the region has been minimal. Japan has tried to work multilaterally through the ASEAN Regional Forum (ARF) to solve South China Sea disputes. Although Japan relies primarily on the U.S.-Japan security alliance, Tokyo has attempted to use the ARF to raise its profile in the region. In addition, Japan has promoted the Workshops on the South China Sea Conflict hosted annually by Indonesia. In December 2003, Prime Minister Junichiro Koizumi verbally committed to sign the TAC. Responding to a question from a reporter, Koizumi remarked:

[I]n order to further strengthen these friendly relations that we have with ASEAN . . . I felt that it may be important to sign [the treaty] in response to this strong request. . . . If the ASEAN countries wish us to sign the treaty, there [is] no reason not to sign it and to respond to their expectations. I thought it was a better thing for Japan to do.⁵⁵

Accession to the treaty will give Japan additional diplomatic leverage in future discussions on the South China Sea dispute.

54. Nicholas J. Spykman, *The Geography of Peace* (New York: Harcourt, Brace, 1944), p. 43. Sir Halford Mackinder, a European geopolitician, formulated a theory in 1904 known as the Heartland Theory. It basically defined the Heartland as the Russian mainland and areas in Eastern Europe. Mackinder argued that whoever controlled this region would control the world. In 1942, Spykman developed a counter-theory that stated the coastal areas of Eurasia, not Russia and lands in Eastern Europe, were the key to controlling the world island.

55. Ministry of Foreign Affairs of Japan, "Joint Press Conference 12 December 2003," December 12, 2003, <<http://www.mofa.go.jp/region/asia-paci/asean/year2003/summit/press1212.html>>.

ASEAN and Multilateralism: The Way Ahead

On August 8, 1967, the foreign ministers of Indonesia, Malaysia, the Philippines, Thailand, and Singapore met in Bangkok to sign the ASEAN Declaration. The stated purpose of this new alliance was to encourage cooperation in economic, social, cultural, technical, educational, and other fields; promote regional peace and stability through abiding respect for justice and the rule of law; and reaffirm adherence to the principles of the U.N. Charter. During much of the Cold War, ASEAN carefully avoided security-related matters. However, in the spring and summer of 1992, the ASEAN foreign ministers passed the first-ever formal declaration dealing with a security issue. This announcement, known as the ASEAN Declaration on the South China Sea, urged all claimant states to settle disputes peacefully; cooperate on safety of navigation and communication, pollution prevention, and search and rescue; and combat piracy and drug smuggling. While most members supported the resolution, the PRC—which was not a member of the organization—continued to oppose the resolution and called for joint development of the South China Sea region. However, PLAN deployments to Southeast Asia for “patrol” missions further complicated cooperative efforts.

In July 1994, another ASEAN-sponsored multilateral forum, the ARF, was established, in part as an organizational counterbalance to Chinese influence in the South China Sea, a role traditionally played by the U.S. As Larry M. Wortzel writes, “The reduced U.S. presence in the Asia-Pacific, combined with conflicting claims over the South China Sea islands, were the principal factors that contributed to the development of the regional security dialogue in ASEAN.”⁵⁶ In July 1995, it appeared as though discussions in ASEAN were paying off. At the ASEAN Annual Meeting in Brunei, Chinese Foreign Minister Qian Qichen stated that the PRC would be willing to use customary international law and UNCLOS as a basis for negotiating South China Sea disputes. In addition, Taiwan considered abandoning some of its claims to islands jointly claimed by Beijing and Taipei.⁵⁷

In August, China and the Philippines agreed to a code of conduct that rejected the use of force in settling disputes; this announcement was followed in November by a statement by the Philippines and Vietnam with similar provisions. At the June 1996 ASEAN-China dialogue in Bukitittinggi, Indonesia, Beijing formally proposed an ASEAN-China joint code of conduct. This was followed in May with the signing of a confidence-building measure between

56. Larry M. Wortzel, *The ASEAN Regional Forum: Asian Security Without an American Umbrella* (Carlisle Barracks, Penn.: Strategic Studies Institute, December 13, 1996), p. 15.

57. Valencia et al., *Sharing the Resources of the South China Sea*, p. 88.

the ARF and PRC in which Beijing agreed to give advance notice before undertaking any military maneuvers in the South China Sea region.⁵⁸

At the same time that representatives from the PRC signed the confidence-building measure, however, Beijing's state apparatus announced its new territorial boundaries, which enclosed the Paracel Islands, a clear violation of the provisions of UNCLOS. Additionally, Foreign Minister Qian stated that China had indisputable sovereignty over the Spratly Islands and their adjacent waters. According to Qian, China's national laws—rather than ASEAN agreements—would serve as the basis for settling any future disputes in the region.⁵⁹

Despite these setbacks, ASEAN officials continued to seek a peaceful solution to the territorial dispute. In November 1999, they attempted to draft a regional code of conduct to prevent conflicts over the Spratly Island chain. The Philippines, the major author of the document, sought to form a coalition of ASEAN member states against what was seen as aggressive Chinese behavior. Vietnam wanted additional provisions to cover the Paracels. Malaysia did not want the code of conduct to encompass all of the South China Sea, and Australia demanded a moratorium on occupying reefs and atolls or building facilities on these geographic features. Beijing protested and refused to agree to several provisions of the draft document. As a result, ASEAN member states and the PRC were unable to agree on a code of conduct for the South China Sea.⁶⁰

On November 4, 2002, all ASEAN claimant states—Brunei, Malaysia, the Philippines, and Vietnam—signed a 10-point document entitled, Declaration on the Conduct of Parties in the South China Sea. In this, all parties agreed to “[r]efrain from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features.”⁶¹ In addition, ASEAN and the PRC pledged to resolve territorial issues peacefully and to “[r]espect freedom of navigation in and overflight above the South China Sea.”⁶² ASEAN followed this declaration by establishing a monitoring regime to increase transparency and ensure that new occupations of islands did not occur.

One could suggest that the November 2002 China-ASEAN agreement is fraught with problems. First, the declaration is merely a political statement, not a legally binding document. If one party violates a provision, there is no method for enforcement. Second, the statement fails to mention any geographic scope, specifically concerning the Spratly or Paracel Island chains. Finally, some

58. *Ibid.*, p. 89.

59. *Ibid.*

60. <Global Security.org>, “Spratly Islands.”

61. Mark J. Valencia, “South China Sea Agreement: Close but No Cigar,” email communication to the author, December 11, 2002.

62. David Wiencek, “South China Sea Flashpoint Revisited,” *China Brief* 2:24 (December 10, 2002), <http://www.jamestown.org/pubs/view/cwe_002_024_002.htm>.

experts claim that while the language of the Declaration on the Conduct of Parties in the South China Sea commits the signatories to cooperative conduct, history shows that this is unlikely to happen. Valencia writes, “The sad truth is that the claimants agreed on a ‘declaration’ because they could not agree on a binding code.”⁶³

However, Beijing’s accession to the TAC in October 2003 and Tokyo’s promise in December that year to ratify the document both demonstrate that multilateralism—via ASEAN—is working. Moreover, the absence of recent conflict in the South China Sea region suggests that a peaceful resolution to the dispute can be reached. Yet, to ensure long-term stability there, the U.S.-Japan security alliance must be involved, for a variety of reasons. First, the U.S. Navy is the only reliable guarantor of freedom of navigation in Asia. Tokyo’s Maritime Self-Defense Forces, the naval component of Japan’s military, are quite capable but now limited by Tokyo’s recent accession to the TAC, specifically the non-intervention clause. Other claimant states are ill-equipped to deal with any future violations of treaties or multilateral agreements by the PRC. Moreover, ASEAN, unlike NATO, does not maintain a standing army, navy, or air force capable of ensuring compliance with regulatory agreements. In this sense, only the U.S. Navy’s Seventh Fleet can play the role of an honest broker, enforcing future China-ASEAN pacts.

Second, the United States—a non-claimant state—can highlight violations of state sovereignty and treaty abrogations before the international community, using the U.N. Security Council. For example, the PRC claims entitlement to a 200-nautical mile zone of sovereignty around mainland China. Beijing also claims all of the reefs and islands of the South China Sea and suggests that the sovereignty zone extends out from each of these geographic features. However, under traditional maritime law a state is only entitled to a 12-mile zone of sovereignty. With the exception of China, only the United States has a permanent seat on the Security Council—and the soft power to bring about an international consensus against infractions by parties to the TAC and UNCLOS.

Finally, Japan can insist that all sides withdraw military personnel currently stationed on fortifications in the South China Sea until competing claimant states formulate a temporary set of guidelines in the absence of a formal treaty. Tokyo, unlike the United States, is well positioned to make such demands. The countries in Southeast Asia are the largest recipients of Japanese foreign aid. Moreover, Japan’s decision to sign the TAC at the December 2003 ARF meeting has given Prime Minister Koizumi a voice in discussions on regional issues, including the South China Sea dispute.

63. Valencia, “South China Sea Agreement.” See also “Still a Sea of Troubles,” *Economist*, November 9, 2002.

In summary, the South China Sea continues to be a region in flux. Southeast Asia's geostrategic importance to the United States and Japan necessitates that future disputes be resolved peacefully and in accordance with customary international law. Yet, the U.S.-Japan security alliance alone will not suffice to resolve the maritime conflict. Washington and Tokyo must rely on ASEAN's established diplomatic channels to bring about a long-term, peaceful solution to this potential flashpoint.