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**China and the Cooperative  
Architecture in the South China Sea:  
Prospects and Problems**

Sithara Fernando

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## **ICS Occasional Paper # 5**

### **China and the Cooperative Architecture in the South China Sea: Prospects and Problems**

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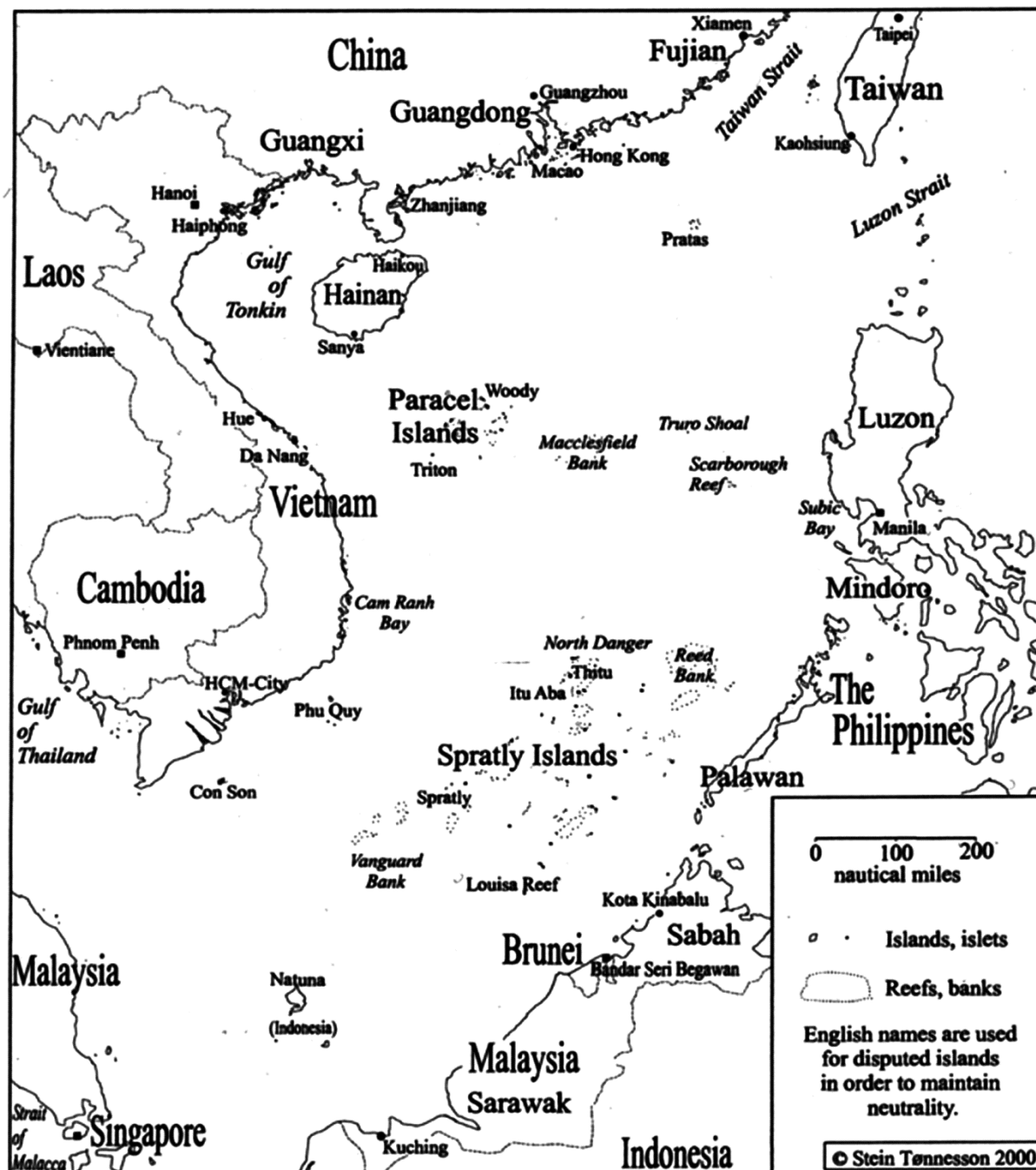
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<sup>\*</sup> The author was a Visiting Fellow at the ICS from October 2011 to September 2012 when he started work on this Paper.

### Map 1: The South China Sea



Source: Stein Tønneson, 'China and the South China Sea: A Peace Proposal', *Security Dialogue* 31, 3 (September 2000), p. 308.

## Introduction

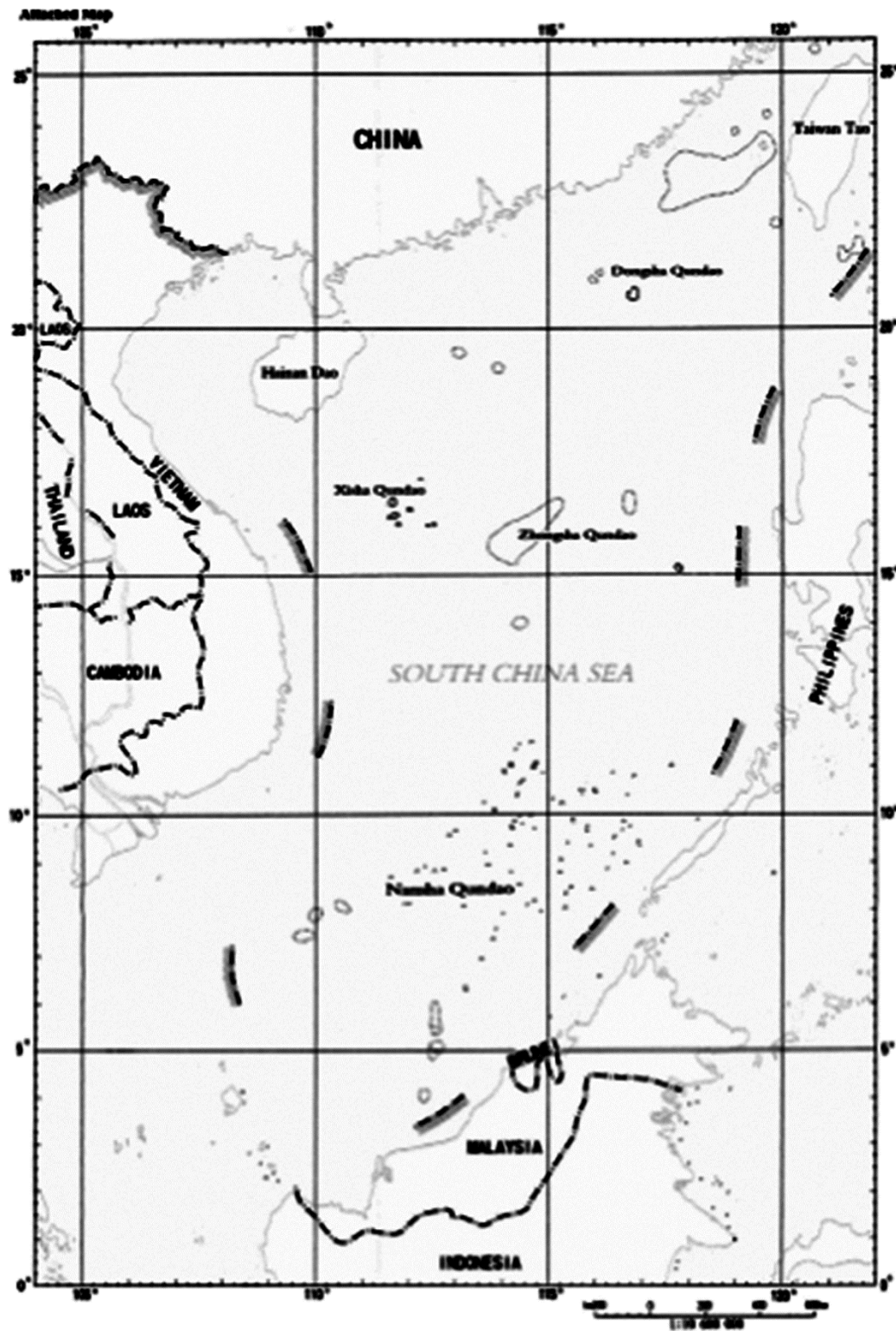
The signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) by China and the Association of South East Asian Nations (ASEAN) countries in November 2002 at Phnom Penh, Cambodia was a significant contribution to the cooperative architecture in the South China Sea (SCS), and ushered in a period of hope regarding peace and stability in the region. While the DOC did not prevent minor incidents from occurring, as documented by Nguyen Hong Thao (2009: 211–14) and Bensurto (2011: 16–18), China respected the spirit of the DOC and made an effort to play down tension. A good example is the case of Sansha City. In December 2007, China announced that it would upgrade the administrative status of its claimed territories of Paracel (Xisha) Islands, Spratly (Nansha) Islands, and Macclesfield Bank (Zhongsha) in the SCS to a district at the county level within the Hainan Province, to be administered by Sansha City on Woody Island (Yongxing Island) in the Paracels. Both Vietnam and Indonesia formally protested this move, and there were demonstrations against China outside its Embassy in Hanoi and consulate in Ho Chi Minh City (Elleman 2009: 54; Emmers 2009: 134). Heeding these protests and demonstrations, Hainan officials began avoiding public mention of the city (ICG 2012a: 23) until the issue resurfaced in mid-2012. Incidentally, Emmers (2009: 134) has noted that in 2007 the Philippines, Malaysia and Brunei did not protest against Sansha City, possibly in the interests of maintaining good relations with China.

While in the early 1990s China preferred a bilateral approach to resolving disputes in the SCS, by becoming a party to the DOC it appeared to accept a multilateral approach. But in recent years the bilateral approach has resurfaced. According to Nong Hong (2011: 58), China will adhere to a bilateral approach as far as the territorial and jurisdictional disputes are concerned, while it is open to a multilateral approach on non-traditional security issues such as piracy and marine environmental protection. However, in a statement issued at the ASEAN Regional Forum (ARF) in July 2012, the then Chinese Foreign Minister Yang Jiechi, echoing the language of Paragraph 4 of the DOC, stated that the territorial and jurisdictional disputes should be resolved through negotiations by ‘sovereign states directly concerned’ (MOFA, PRC 2012c). This position is open to interpretation with regard to the bilateral versus multilateral issue.

Most accounts date the recent rise in tension in the SCS to 2009 (ICG 2012a: 3; ICG 2012b: 22; Nong Hong 2011: 54; Storey 2012: 62). In May 2009, Vietnam both on its own and together with Malaysia made submissions to the United Nations Commission on the Limits of the Continental Shelf (UNCLCS), with the intention of extending their continental shelves into the SCS beyond 200 nautical miles (nm). China protested against these submissions immediately through notes to the United Nations (UN) Secretary General. These notes contained a map with the U-shaped nine-dash line which is the basis of China's extensive claim to most of the SCS (see Map 2). This was the first time China had officially submitted this map to an international organisation. The inclusion of this map alarmed the other claimants, and they in turn protested against China's claim based on the U-shaped nine-dash line.

By mid-2011, the tension in the SCS had escalated to their highest point since the end of the 'Cold War' (Storey 2012: 63). In March 2011, two vessels of China's civilian maritime agency China Marine Surveillance (CMS) harassed the Philippine-chartered MV Veritas Voyager near Reed Bank (west of Palawan Island) in the claimed Exclusive Economic Zone (EEZ) of the Philippines. In May 2011, CMS vessels deliberately cut cables towing seismic survey equipment behind the PetroVietnam vessel Binh Minh 02, which was operating within Vietnam's claimed EEZ. Again in May Chinese ships unloaded construction material at Amy Douglas Reef in the Philippines' claimed EEZ, in a clear violation of Paragraph 5 of the DOC which calls on the parties not to 'inhabit' unoccupied geographical features. In June 2011, a specially equipped Chinese trawler severed the cables of another Vietnamese-chartered survey ship, Viking 2. During the fishing season of 2011, which usually spans from May to August, China tightened the enforcement of a fishing ban in the northern areas of the SCS detaining dozens of Vietnamese fishing boats. People's Liberation Army-Navy (PLA-N) and CMS vessels are also reported to have fired warning shots at Filipino and Vietnamese fishing boats (Storey 2011: 2–3). While Storey's account puts a larger share of the blame on China, it is important to highlight an alternative interpretation that China may have been reacting, perhaps admittedly overreacting, to Filipino and Vietnamese efforts to engage in unilateral offshore oil exploration in what is, in China's view, its claimed waters.

Map 2: China's U-Shaped Nine-Dash Line



Source: United Nations Commission on the Limits of the Continental Shelf, China's Note Verbale CML/17/2009

Following the adoption of the Guidelines for the Implementation of the DOC in July 2011 by China and ASEAN, the tension subsided only to re-emerge by April 2012 with the Scarborough Shoal incident between China and the Philippines, which will be discussed in relation to the DOC later in the paper. The tension was further heightened in July 2012 when China yet again upgraded Sansha City, responsible for administering its claimed territories in the SCS, to a prefectural-level city and announced that the Central Military Commission (CMC) had authorised the People's Liberation Army (PLA) Guangzhou Military Command to form and deploy a military garrison there (Xinhua 2012a).

In this context of heightened tension in the SCS, an examination of the prospects and problems of China's participation in the cooperative architecture there would be a timely exercise. After providing an overview of the competing claims in the SCS, this paper will examine China's participation in the following cooperative initiatives in the region: joint development of resources; the informal workshops on 'Managing Potential Conflicts in the South China Sea'; the Code of Conduct (COC) and the Declaration on Conduct (DOC); and maritime cooperation facilitated by economic cooperation. Subsequently, it will briefly dwell on what might be construed as important impediments to the cooperative architecture in power politics and nationalism.

### **Competing Claims in the South China Sea**

The mosaic of competing claims in the SCS is a complex one. While China is a party to many of the territorial and jurisdictional disputes in the SCS, there are disputes amongst the southeast Asian countries as well. The International Crisis Group (2012b: 36–8) provides a very useful overview of the competing claims in the SCS.

China claims 'indisputable sovereignty' over the main island groups and maritime rights over related waters in the SCS, based on a map drawn by the Kuomintang (KMT) government in 1947 to show the country's historical waters. This map with a U-shaped 11-dash line enclosing most of the SCS indicates historical claim to the islands and other geographical features based on survey expeditions, fishing activities and naval patrols dating to the fifteenth century. The 11-dash line appeared on the map of China published by the People's Republic of China (PRC) in 1949 and it was used between 1949 and 1953. However, a nine-dash line has been appearing on PRC maps since 1953 after the deletion of two lines below the Gulf of Tonkin by Premier Zhou Enlai. As a contemporary basis for its territorial claims, Beijing is said to use a statement made in August 1951 by Premier Zhou Enlai in which he asserted



sovereignty over the island groups. In 1958 China had released a statement linking for the first time its territorial claims concerning the Spratlys (Nansha) and Paracels (Xisha) to maritime rights in surrounding waters (ICG 2012b: 36). In addition, Article 2 of the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone claims sovereignty over Pratas (Dongsha) Islands, Paracel (Xisha) Islands, Macclesfield Bank (Zhongsha Islands), and the Spratly (Nansha) Islands (MOC, PRC 1992).

As mentioned earlier, China officially submitted a map containing the U-shaped nine-dash line to an international organisation for the first time in May 2009 as a part of its notes to the UN Secretary General, protesting the Joint Submission by Malaysia and the Socialist Republic of Vietnam dated 6 May 2009, and the Submission by the Socialist Republic of Vietnam dated 7 May 2009 to the UNCLCS concerning the limits of the continental shelf beyond 200 nm (UNCLCS 2009a, 2009b). China's notes to the UN Secretary General contained the following sentence: 'China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof.'

The submission of the map containing the U-shaped nine-dash line to the UN and the use of the term 'relevant waters' led to concern among the other claimants that Beijing sought exclusive rights to natural resources in the entire area within the line. While a number of Chinese scholars and commentators have argued that the whole region within the line is Chinese territorial waters, some officials in Beijing have admitted that this interpretation is not consistent with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and preferred to claim only the islands within the line and their adjacent waters (ICG 2012b: 36). On 29 February 2012 at the Chinese Ministry of Foreign Affairs (MOFA) regular press conference, spokesperson Hong Lei stated that '...neither China nor any other country lays claim to the entire South China Sea' (MOFA, PRC 2012b).

Taiwan uses the map containing the U-shaped lines drawn by the KMT government in 1947, from which China's claim also originates, as the basis of the extent and legitimacy of its claims in the SCS. However, unlike Beijing, Taiwan uses the original 11 dashes. Taiwan was the first entity to establish a physical presence in the Spratly Islands following the Japanese withdrawal at the end of the Second World War. Following Taiwan's attempt to draft baselines and demarcate its territorial sea and EEZ between 1989 and 1990, it declared territorial claim over the Pratas, Paracel and Spratly Islands and Macclesfield Bank on 16 July 1991. It reaffirmed this claim in 1991 and 1992 at the informal

workshops on ‘Managing Potential Conflicts in the South China Sea’ initiated by Indonesia. It reasserted its claim over most of the SCS in 1993 when it adopted a document known as the ‘Policy Guidelines for the South China Sea’ which claimed all geographical features within the U-shaped line and the whole area as its ‘historic waters’. On 10 February 1999, Taiwan attempted to clarify the basis of its maritime territorial claims by defining and publicising baselines around its land territory and internal waters, which included the Pratas Islands and Macclesfield Bank. At the time Taipei stated that the baselines for the Spratlys would be drawn later. It has reiterated its claim in a statement made in June 2011. When China–Taiwan relations have been amicable, they have jointly promoted territorial claims on behalf of China as a whole. Taiwan physically occupies Pratas Islands and Itu Aba (Taiping) Island, the latter being the largest island in the Spratlys (ICG 2012b: 36–37). However, while Taiwan has participated in the informal workshops on the SCS initiated by Indonesia, the other southeast Asian claimants have respected Chinese concerns and not involved Taiwan in formal official negotiations over the SCS.

Vietnam claims the Spratly and Paracel Islands in their entirety, making its claim the most extensive after China’s and Taiwan’s. Two authoritative white papers published by Vietnam on 28 September 1979 and 18 January 1982 have stated claims to all features of both island groups. Vietnam made the earlier referred to joint submission to the UNCLCS with Malaysia in May 2009 which defined 200 nm EEZ limits derived from the mainland, but did not specify the extent of maritime or territorial claims stemming from the disputed islands. This submission, as mentioned earlier, was protested by China. Vietnam provides a number of justifications for its sovereignty claims. First, it maintains that it was the first country to discover and name the Spratlys, called Truong Sa in Vietnamese, as evidenced by their inclusion in Vietnamese maps dating from the beginning of the nineteenth century. Second, it argues that its historical claims to the Paracels are supported by its former coloniser France’s repeated statements in the early 1930s declaring sovereignty over these islands. The Vietnamese Navy replaced French forces in the Paracels till the Chinese took control in 1974. Third, Vietnam argues that Japan’s renunciation of all SCS islands in the San Francisco Treaty of 1951 did not specifically constitute a transferring of the territories to China. Vietnamese Prime Minister Tran Van Huu’s assertion at the San Francisco Treaty peace conference that the Spratly and Paracel Islands were Vietnamese territory is said to have gone unchallenged. Finally, Vietnamese administration of those islands in the Spratlys under its control has been continuous through the Nguyen Dynasty (1802–1945), the French colonial government and the Republic of Vietnam (ICG 2012b: 37).

The Philippines claims more than 50 geographical features in the Spratlys, which it calls the Kalayaan Island Group, and physically occupies nine of them. Its military presence in the Spratlys is second only to that of Vietnam. The Kalayaan Island Group was claimed by Tomas Cloma, a Filipino citizen, in 1956. He transferred the deed to the government of the Philippines under President Ferdinand Marcos in 1974. President Marcos declared them as a part of Philippine territory through a presidential decree in 1978. In 2009, the Philippine Congress passed a legislation to revise baselines to comply with international law. This act claims the Kalayaan Island Group and Scarborough Shoal near Macclesfield Bank (also claimed by China and Taiwan), which are beyond the archipelagic baselines of the Philippines, under the ‘regime of islands’ in UNCLOS (ICG 2012b: 38).

Malaysia claims islands and other features in the southern Spratlys, and since 2009 has occupied five of them. Swallow Reef (Terumbu Layang-Layang) is among these occupied features on which a military installation, airstrip and diving resort have been established. Malaysia’s claims originate from a map drawn in 1979 which is referred to as the *Peta Baru*, or new map, which put forward its continental shelf claim off Sabah and Sarawak states. Malaysia further asserted its claim through the earlier referred to joint submission with Vietnam to the UNCLCS in May 2009. However, like Vietnam, it did not specify the extent of maritime territory it claims from the islands themselves. China, Taiwan, Vietnam, Philippines and Brunei have all protested Malaysia’s claims, and Vietnam and the Philippines physically occupy islands claimed by Malaysia (ICG 2012b: 38).

Citing the UNCLOS, Brunei claims two features in the Spratly Islands which are submerged formations known as Louisa Reef and Rifleman Bank. It extends its EEZ around the features and into the southern half of the SCS. Brunei’s territorial and maritime claim overlaps with that of Malaysia, and extends into those of China, Taiwan, Vietnam and the Philippines. Brunei is the only claimant that does not physically occupy and have a military presence on any of the islands in the SCS (ICG 2012b: 38).

### **Joint Development of Resources**

The joint development of resources can be regarded as the earliest cooperative initiative in the SCS. The Chinese proposal for this joint development of resources in disputed areas was initiated by Deng Xiaoping himself. It was first enunciated in late 1978 by Deng at a press conference in Tokyo in relation to the disputed area of Diaoyu (Senkaku) Islands in the East China Sea, which are claimed by China and Japan (Lee and Chen 2009: 155; Li and Amer 2012: 93). This proposal appears to have been first

applied specifically to the SCS by Deng during a speech given to the third plenary session of the Central Advisory Commission of the Communist Party of China (CPC) in October 1984. In this speech based on the principle of resolving disputes through peaceful means, he proposed that the policy of ‘joint development’ be applied to the Spratly Islands. While stressing that the Spratly Islands belonged to China, he took note of the fact that Taiwan, the Philippines, Vietnam and Malaysia also occupied islands in this group. With regard to how China should respond to this state of affairs, Deng Xiaoping suggested two possible courses of action. One was to take the entire group by force, and the other was to shelve the sovereignty problem and jointly develop the area. From these two courses of action, in this speech at least, emphasising the Chinese preference for using peaceful means to resolve disputes Deng opted for ‘joint development’ (Lee and Chen 2009: 155–6).

The application of ‘joint development’ to the SCS had been raised by Deng at a meeting with the then Filipino Vice President Salvador Laurel in June 1986. In a meeting in April 1988 with the Filipino President at the time Corazon Aquino, Deng had stated that ‘after many years of consideration, we think that to solve the issue [Spratly Islands], all parties concerned could explore joint development under the premise of admitting China’s sovereignty over them’ (Li and Amer 2012: 94). This Chinese insistence on other claimants accepting China’s sovereignty over the Spratlys as a precondition for ‘joint development’ has turned out to be one of the primary obstacles to implementing the proposal, as we shall see later in this section. In 1990, the then Chinese Premier Li Peng during a visit to Malaysia put forward the ‘joint development’ proposal as ‘shelving the disputes and developing jointly’. When China participated for the first time in the second workshop of the informal Indonesian initiative ‘Managing Potential Conflicts in the South China Sea’ in July 1991, the leader of the Chinese delegation, Wang Yinfan, the then director of the Asia Department of the Chinese Ministry of Foreign Affairs, advocated the shelving of the sovereignty issue and the joint development of the Spratlys. The then Chinese Foreign Minister Qian Qichen had raised the proposal at the 25<sup>th</sup> ASEAN Ministerial Meeting in Manila in July 1992. Wu Bangguo, the Chairman of China’s National People’s Congress (NPC) at the time, during a visit to the Philippines in 2003 proposed to his Filipino counterpart the ‘joint development’ of petroleum in the SCS (Li and Amer 2012: 94; Lee 1999: 60–1). Through such repetition, Deng’s proposal for ‘shelving disputes and conducting joint development’ in disputed areas has become one of China’s guiding principles in dealing with territorial conflicts in the SCS (ICG 2012a: 29; Lee and Chen 2009: 156).

Partly as a result of China persisting with the ‘joint development’ proposal at the third workshop of the above mentioned informal Indonesian initiative on the SCS held in 1992, the latter set up a Technical Working Group on Resource Assessment and Ways of Development (TWG-RA). Moreover, at the fifth workshop of this initiative held in 1994, Indonesia proposed what came to be known as the ‘doughnut formula’ for joint development. This formula proposed to establish 320 km EEZs from the coasts of the states around the SCS, with the space left in the middle of the SCS being taken as the area for joint development. But China opposed this proposal because of its extensive claim deriving from the U-shaped nine-dash line; the other claimants too were not in favour of it for fear of compromising their own claims (Lee 1999: 65–6, 74). The TWG-RA met in 1993 and 1999. It also setup a study group to gain a better understanding of the concept which met in 1998 and 1999. The TWG-RA came to an agreement that ‘joint development’ had much potential and that it should gain an understanding of the various concepts or models of ‘joint development’ in other parts of the world, and draw from them what could be applied to the SCS area. It was argued that the concept should be developed with agreement on the following four points:

1. The zone where joint development will take place;
2. The topics of cooperation (fisheries, minerals, gas, oil, environment, marine scientific research, marine parks, etc.);
3. The mechanism for such joint development, which could be an authority or loose coordinative organization or arrangement; and
4. The entities which are to participate in such joint development or joint cooperation activities: governments, companies or corporations (Djalal 2009: 185–6).

Apart from ‘joint development’, the informal SCS workshops have discussed a host of other issues and cooperative possibilities in the SCS which will be considered in detail in the next section.

Within China, while the local governments of Hainan and Guangxi Autonomous Region have supported the application of the proposal for ‘joint development’ to off-shore energy resources in the SCS, the leading off-shore energy company, China National Offshore Oil Corporation (CNOOC), has reasons for supporting the same. Hainan and Guangxi Autonomous Region border the SCS and their local governments have been keen on conducting off-shore oil exploration and production. These two provinces will be affected most by rivalry in the SCS. Tension in the area have at times held back the Chinese central government from supporting their large-scale plans for development and prevented the

inflow of foreign investment. These two provinces have sought to draw on off-shore energy resources as a part of their developmental plans. Hainan has become self-sufficient in oil and gas as a result of energy production off-shore and it is aiming to be the petrochemical hub for China. As the province delegated by Beijing to administer most parts of the SCS claimed by China, Hainan will benefit a great deal if joint development projects are successful. To this end Hainan put forward a proposal to the NPC in 2002, suggesting that it should formulate a comprehensive plan for developing the SCS. It maintained that the safeguarding of peace and stability in the SCS would promote joint development of energy. Hence Hainan was very enthusiastic about the Joint Marine Seismic Undertaking (JMSU) initiated in March 2005 by CNOOC, PetroVietnam and the Philippine National Oil Company (PNOC) to conduct surveys in a designated area of the SCS. At the Boao Forum that year, its then governor Wei Liucheng committed that the province would play a supportive role in facilitating regional energy cooperation. The tripartite agreement on the JMSU was signed for a period of 3 years. Similarly Guangxi has also been keen on promoting joint development. It has proposed the establishment of a Pan-Beibu (Tonkin) Gulf Economic Cooperation Zone which would include the Chinese provinces of Guangxi, Guangdong and Hainan, as well as Vietnam, Thailand, Cambodia, Malaysia, Singapore, Indonesia, the Philippines and Brunei. While more will be said about this proposal in a later section suffice it to note here that, among other things, it includes cooperation on maritime energy resources. For its part CNOOC may be interested in 'joint development' because this would enable it to access off-shore energy resources in the Spratlys where it has not been very successful in the past (Lee and Chen 2009: 162–4; Li and Amer 2012: 91). With regard to practical efforts to implement the proposal in the area of off-shore energy it must be noted that, in addition to the JMSU, in November 2003 CNOOC and PNOC agreed to jointly explore oil and gas in the SCS. In November 2006, China and Vietnam agreed to jointly explore oil in the Gulf of Tonkin (Li and Amer 2012: 98; Zou 2008: 154).

With regard to fishery resources, the China–Vietnam fishery cooperation agreement in the Gulf of Tonkin can be considered an instance in which the proposal for 'joint development' was put into practice through a legal framework. In December 2000, China and Vietnam signed boundary delimitation and fishery cooperation agreements in the Gulf of Tonkin. In April 2004, the Supplementary Protocol to the Agreement on Fishery Cooperation and regulations on preservation and management of the living resources in the Common Fishery Zone (CFZ) in the Gulf of Tonkin were signed. In June the same year, both the boundary and fishery agreements were ratified and enforced. By the consent of both parties, the fishery agreement was negotiated together with the delimitation

agreement. The coordination reflected in the fishery agreement was expected to contribute to the rational use and sustainable harnessing of living resources as stated in the delimitation agreement. The CFZ established by the fishery agreement spreads from the closing line of the Gulf of Tonkin northward to latitude 20 degrees north, and extends 30.5 nm from the demarcation line both eastward and westward. It was envisioned as a long-term cooperation arrangement. The amount of fish that can be caught and number of fishing vessels of each country that can operate in the CFZ are to be determined annually by a Joint Fishery Committee (JFC) on the basis of equity and mutual benefit. A 'buffer zone' has also been established to prevent disputes arising from the accidental entry of either country's small fishing vessels into the territorial sea of the other. The JFC is in charge of implementing the fishery agreement. It was established soon after the agreement came into force; under it are two sub-mechanisms, the China–Vietnam Experts Group on fishery resources in the Gulf of Tonkin and the law enforcement mechanism. By August 2011, the JFC had held eight annual meetings. The expertlevel group carried out a 2-year joint research programme in CFZ from 2006 to 2007. Under this programme, 17 aerial surveys were conducted. Joint inspections were also carried out to monitor, control and supervise fishing activities in the Gulf. The two countries held six working group meetings and five joint inspections from September 2006 till the end of 2010. The process of reaching the delimitation and fishery agreements involved direct negotiation at the government level as well as consultations at the expert level, and the political will shown by the top leaders of the governments of both countries is reported to have been crucial to their successful conclusion. Meanwhile, the JFC as the implementation mechanism was expected to handle disputes if and when they arise, as well as contribute to confidence building between China and Vietnam (Li and Amer 2012: 97–8).

Something akin to 'joint development' has also been proposed for fishery resources in the SCS as a whole at the academic level by Nong Hong (2011: 61–2), an expert at the NISCSS in Hainan. This proposal asserts that the conservation and management of fishery resources in the SCS is an issue which a single country cannot deal with alone, and that a joint effort is a prerequisite especially considering the fact that the state of SCS fisheries has deteriorated while the demand for fish has increased. She argues that, without prejudice to jurisdictional boundaries, it is possible to have regional joint fishery management in the SCS if all states in the region regard cooperation as being of mutual benefit. She points out that while some fishery resources are still under-exploited, most are over-exploited. Therefore fishery development in the SCS is in urgent need of a rational resource management scheme. The key obstacle to establishing such a scheme is the overlapping claims among the littoral states. Therefore this

proposal suggests that, pending a final settlement of the disputes, a start can be made by defining and minimising the disputed areas. Following this, she proposes that a joint committee be established to manage fish-related issues. She also takes note of the fact that fish are highly migratory and that a maritime boundary cannot totally protect a state's fishery resources from encroachment, because fish can migrate beyond a state's own waters and overfishing beyond its maritime boundaries can affect fish stocks within it. Therefore a regional management mechanism is needed for littoral states to keep fish stocks at sustainable levels. Nong Hong stresses that joint development of fisheries can have a spillover effect on cooperation in other areas in the SCS as long as there is political will to pursue such cooperation.

Meanwhile, in mid-2011, the Philippines put forward a new proposal for joint development titled Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C). This proposal envisions a two-step process. First, it proposes to segregate or 'enclave' disputed areas such as the Spratlys and Paracels from uncontested areas of the SCS. Second, it proposes that the claimants pull back their military forces from occupied features and put in place a joint cooperation area to manage maritime resources. The Foreign Ministers of ASEAN considered the Philippine proposal in July 2011, and in September the same year a meeting of legal representatives of ASEAN member states is reported to have come to the conclusion that the proposal had some legal basis (Bensurto 2011: 23; Storey 2012: 60;). The Philippine President Benigno Aquino III also brought up the ZoPFF/C at the East Asia Summit (EAS) in November 2011 (Calica 2011).

However, the optimism that prevailed about 'joint development' at the time of the signing of the high-profile JMSU in 2005 began fading away when that initiative ran into problems in the beginning of 2008. In January 2008, Antonio M. Cailao, President of the PNOC, declared that the Philippines would invoke 'sovereignty rights' over the area earmarked for the JMSU in the eastern part of the Spratlys, giving it the exclusive right to decide which parties could be involved in the project (Lee and Chen 2009: 168). The JMSU is also reported to have faced public hostility in the Philippines (ICG 2012a: 30). Consequently, the JMSU was not renewed after the 3-year agreement period elapsed. The issue that lies at the heart of the failure of joint development to take off in the SCS is the Chinese stipulation that the other claimants accept its sovereignty over most of the SCS, which the latter have been reluctant to accept. In the meantime, China's reaction to the Filipino proposal for a ZoPFF/C has been very negative. The Chinese have reportedly protested the meeting of ASEAN legal representatives that considered the



ZoPFF/C in September 2011. Commentaries in China's state-run media have criticised the initiative as a 'trick' and accused the Philippines of not being sincere (Storey 2012: 60). Nevertheless, it is important to note that the Chinese expert Nong Hong's suggestion for 'defining and minimising the disputed areas' as a step towards joint development of fisheries closely parallels the Filipino ZoPFF/C's suggestion to 'segregate or enclave disputed areas', as a step towards establishing a joint cooperation area to manage maritime resources.

### **The Informal Workshops on 'Managing Potential Conflicts in the South China Sea'**

The informal workshops on 'Managing Potential Conflicts in the South China Sea' (hereafter referred to as the, informal SCS workshops) initiated by Indonesia in 1990 has been a major impetus to cooperation in the SCS. Government officials in their personal capacities and experts mainly from countries of the SCS region were the participants in these workshops. According to Hasjim Djalal (2009: 178–9), a former Indonesian ambassador who was a formative influence behind the establishment of the initiative, the informal SCS workshops were meant to develop a sense of 'community' in the SCS area, and to 'transform the habit of confrontation into a habit of cooperation'. Till 2001 the initiative was funded by the Canadian International Development Agency (CIDA). The initiative was coordinated by the Centre for Southeast Asian Studies (CSEAS), Jakarta, Indonesia with the support of the South China Sea Informal Working Group (SCS-IWG) at the University of British Columbia (UBC), Vancouver, Canada in the initial stages.

The first workshop was held in Bali, Indonesia in 1990 with participation only from delegations of the ASEAN member countries of the time, Indonesia, Malaysia, Philippines, Singapore, Thailand and Brunei. Discussions at this first meeting were conducted under the following themes: a) territorial and sovereignty issues; b) political and security issues; c) marine scientific research and environmental protection; d) safety of navigation; e) resource management; and f) institutional mechanisms for cooperation. The possibilities of involving other Southeast Asian countries who were not members of ASEAN at the time, Vietnam, Laos and Cambodia as well as China and Taiwan were also discussed. This meeting acknowledged the workshop as a forum for both policy-oriented discussions as well as the academic exchange of views (Djalal 2009: 179).

China participated in the workshop process for the first time at the second workshop held at Bandung, Indonesia in July 1991. The Chinese delegation to this workshop was headed by Wang

Yinfan, the then Director of the Asia Department of the Ministry of Foreign Affairs. They made it clear that their participation at the workshop should not be taken as an indication of their willingness to compromise on Beijing's 'indisputable' sovereignty claims in the SCS. At the same time, however, Wang stated that since the latter part of the 1980s China had been calling to shelve the sovereignty issue in favour of 'joint development' of the Spratlys. The Chinese participants presented specific proposals for cooperation in the protection of marine living resources, control of maritime pollution, search and rescue operations, scientific research, anti-piracy, exchange of maritime information, studies on typhoons and changes of sea level and safety of navigation. They also called for cooperation in the spirit of UNCLOS, and adherence to the requirements of the International Maritime Organization and provisions of international law. However, Wang made it clear that China was not in favour of involving the UN or a third party in the resolution of disputes in the SCS. The joint statement issued by the second workshop stated that the participants agreed to call on the concerned governments to explore areas of cooperation in the SCS 'without prejudice to territorial and jurisdictional claims'. With regard to territorial and jurisdictional disputes, it stated that they should be resolved through peaceful means through dialogue and negotiation, and that the parties involved should exercise self-restraint so as not to complicate the situation. The Chinese participants agreed to invite their own experts to submit proposals for cooperation in the following areas: 1) a joint expedition to investigate natural phenomena in the SCS; 2) a joint study on the meteorological conditions in the SCS; and 3) a joint study on the promotion of safety of navigation in the SCS (Lee 1999: 60–3). In addition to the original ASEAN six and China, Vietnam, Laos and Taiwan also participated in the second workshop. The joint statement issued by the second workshop was a precursor to the official ASEAN Declaration on the South China Sea issued in Manila in July 1992 (Djalal 2009: 179–80).

The third workshop was held in Yogyakarta, Indonesia in 1992. By then it was felt that formulating cooperative projects would have to be worked out in more detail by specific Technical Working Groups (TWGs) and Groups of Experts Meetings (GEMs). This meeting decided to establish two TWGs, one on Resource Assessment and Ways of Development (TWG-RA), and the other on Marine Scientific Research (TWG-MSR). While some participants wanted to formalise the workshop process, others objected to this, particularly China because of its refusal to participate in an official process that also included Taiwan. It was also felt that ideas could flow more freely in an informal process, whereas in an official meeting participants would be constrained by the policies of their respective governments (Djalal 2009: 180). From this point onwards, the workshop process was

structured in the following manner: GEMs would report to their parent TWG, which would in turn report to the annual workshop, which would adopt proposals for cooperation and recommend them to their respective governments (Townsend-Gault 2009: 195). The Chinese participants at the third workshop presented two papers, one proposing development of interregional cooperation to ensure safety of maritime traffic, and the other dealing with regional cooperation in reducing maritime disasters (Lee 1999: 65).

The fourth workshop was held in Surabaya, Indonesia in 1993. It discussed the involvement of non-SCS countries and organisations, and agreed that they could be permitted to participate on a case-by-case basis to implement specific agreed programmes of cooperation. This workshop discussed the outcomes of TWG-RA and TWG-MSR meetings, agreed to establish TWGs on Marine Environmental Protection (TWG-MEP) and Legal Matters (TWG-LM), and discussed the possibility of establishing a TWG on Safety of Navigation, Shipping and Communications (TWG-SNSC). The participants acknowledged that they needed clearly defined projects to carry forward the cooperative effort in an incremental manner (Djalal 2009: 180–1). While calls to formalise the workshop process were reiterated at this meeting, differing to the objections of countries such as China, it was conceded that formalisation was not essential at this stage, as long as the participants were willing to recommend proposals formed at the workshops to their respective governments. China was not in favour of involving non-SCS countries and organisations due to its fear of ‘internationalising’ the dialogue. The Chinese participants were of the view that the cooperative efforts of the workshop process were best directed at scientific and technical matters rather than territorial and jurisdictional issues. Their position was that territorial and jurisdictional disputes should be discussed directly between the countries concerned. At the same time, however, some Chinese participants did exhibit a willingness to cite UNCLOS. With regard to the TWG-MSR, China agreed to formulate proposals for cooperation on databases, information exchange and networking. In connection with the TWG-MEP, China consented to host its first meeting. The Chinese considered these technical cooperative projects as important contributions by the workshop process to confidence building in the SCS region (Lee 1999: 68–70).

The fifth workshop was held in Bukit Tinggi, Indonesia in 1994. It approved a project for cooperation on the study and conservation of biodiversity in the SCS. It also agreed to authorise Amb. Hasjim Djalal to seek funding for the project proposal on biodiversity; to convene a meeting of the TWG-MSR to finalise proposals on sea levels and tide monitoring and on a database, information

exchange and networking; and to convene the first meeting of the TWG-LM in Thailand. Furthermore, it deliberated on confidence building measures (CBMs) such as the need for not building-up the existing military presence in the SCS (Djalal 2009: 181). At this workshop, efforts were also made, in particular by the then Indonesian Foreign Minister Ali Alatas, to ensure that proposals formulated by the workshop process would get governmental approval from China and the other claimant countries when they were ready for implementation. With regard to the involvement of non-SCS countries and organisations, he proposed that this could be limited to technical and financial aspects. However, the Chinese delegation continued to be reluctant to involve non-SCS participants at this stage, even though it did not rule out their participation in the future. It also stated that the workshop process and its TWGs had been helpful in achieving mutual understanding, and called for peaceful consultations and respect for international law in dealing with territorial disputes. At the same time, perhaps due to the presence of Taiwan, the Chinese were averse to discussing political and security issues, and reiterated their stance that the workshop process should focus on technical, scientific and non-political issues. The delegation also expressed reservations about Taiwan hosting some of the TWG meetings, in particular the first meeting of the TWG-SNSC (Lee 1999: 71–4).

The sixth workshop was held in Balikpapan, Indonesia in 1995. Two project proposals were approved by this workshop, one on tides and sea level change, and another on a marine science data and information network. The participants agreed to submit these proposals to their respective governments for consideration and support in implementation (Djalal 2009: 181). A third project on biodiversity studies was also approved and recommended to the concerned governments. The Chinese delegation at this workshop stated that China was happy with the workshop process because it helped establish mutual understanding, confidence and trust among the SCS states. However, China reiterated its objection to involving non-SCS states even with regard to financial and technical support out of fear of ‘internationalizing’ the SCS disputes (Lee 1999: 75–6).

The seventh workshop was held at Batam, Indonesia in 1996. One of the concerns of this workshop was the implementation of agreed project proposals. While many countries of the SCS region were willing to help implement the agreed programmes by providing expertise, facilities and financial aid, China was of the view that implementation should be left solely to national institutions because of the sensitive nature of sovereignty disputes (Djalal 2009: 181). This workshop was also used to work out a schedule for the ensuing TWGs and GEMs. China agreed to host the second meeting of the TWG-

MEP. While by this stage most participating countries were ready to start implementing the biodiversity project, China was among the few who were not (Lee 1999: 78–79).

The eighth workshop was held in Pacet Puncak, Indonesia in 1997. The agenda of the workshop consisted of the following items: safety of shipping, navigation and communication; marine scientific research cooperation; resources assessment; marine environmental protection; and legal matters. The workshop was used to review the progress of numerous TWGs and GEMs in these areas and to plan future meetings. Speaking at this workshop then Indonesian Foreign Minister Ali Alatas revealed that, by this time, parties such as the United Nations Development Programme (UNDP), the United States, Japan, Australia and the European Union (EU) had shown an interest in providing financial and other resources for implementing projects (Lee 1999: 79–80). At this workshop, the participants achieved a consensus to jointly implement the agreed projects mentioned earlier. Amb. Hasjim Djalal was asked to seek support for the implementation of the projects from international, regional and national agencies, either governmental or non-governmental (Djalal 2009: 181).

The ninth workshop was held in Jakarta, Indonesia in 1998. In the context of discussions on implementing the agreed projects, a representative of the United Nations Environment Programme (UNEP) announced that it was willing to assist in the implementation of some aspects of the biodiversity project. This meeting also deliberated on a Code of Conduct (COC) for the SCS about which more will be said in the next section. With regard to the safety of navigation, the delegates decided to recommend to their respective governments the ratification of the 1988 Rome Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, the 1990 International Convention on Oil Spill Pollution and Preparedness, Response and Cooperation, the 1992 International Convention on Civil Liability for Oil Pollution Damage, and the 1992 International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage (Djalal 2009: 181–2).

The 10th workshop was held in Bogor, Indonesia in 1999. This workshop felt that conditions had become more conducive to cooperation even though some obstacles remained. Suffice it to mention at this point that the issue of a COC for the SCS came up again for discussion. At this meeting, the delegations decided to carry out the biodiversity expedition in and around the undisputed Anambas Islands belonging to Indonesia.

The 11th workshop was held in Cengkareng, Indonesia in 2001. At this point the workshop process ran into a financial crisis as a result of CIDA's decision to withdraw funding. Faced with this crisis, the participants were unanimous in acknowledging the need for persevering with the workshop process and decided to hold a Special Meeting to deal with the issue of funding. The Special Meeting which was held in Jakarta later in the same year decided to continue with the workshop process at the informal level, with an aim towards building confidence and cooperation while avoiding controversial issues. With regard to funding, this meeting decided to solicit voluntary donations from participating countries, non-governmental organisations, foundations or private companies from the SCS region, as well as voluntary contributions from similar institutions outside the SCS region under the stipulation that no political conditions were attached. It also decided to recommend the establishment of a special fund which would be administered by the CSEAS. Meanwhile, the biodiversity expedition in and around Anambas Islands was carried out from 11–22 March 2002. It discovered a number of new marine species, with its scientific results being published in the *Raffles Bulletin of Zoology* in Singapore in March 2004.

The 12th workshop which was held in Jakarta in 2002 took the decision to set up the recommended special fund. The 13th workshop was held in Medan, Indonesia in 2003. This workshop discussed the Palawan Biodiversity Expedition as a continuation of the biodiversity project. It also discussed the previously mentioned projects on tides and sea level change to be coordinated by Indonesia; marine science data and information network to be coordinated by China; and a new project on organising a training programme for marine ecosystem monitoring to be coordinated by the Philippines. The augmentation of the special fund was also discussed.

The 14th workshop was held in Batam, Indonesia in 2004. In addition to the projects already mentioned, it discussed other projects on training seafarers, fisheries stocks assessments, hydrographic survey, search and rescue, and piracy and armed robbery. At this workshop China reported that it had convened a working group meeting in Hainan on the marine database project earlier in the year and, based on discussions at that meeting, had taken steps to revise the project. The workshop assented to the revised project proposal and asked China take measures to implement the project. Meanwhile, the Philippines informed the workshop that it wanted to upgrade the Palawan Biodiversity Expedition to the official level, which resulted in that particular activity moving out of the purview of the workshop process. The workshop requested Indonesia to proceed with the sea level rise project, and Malaysia to

start work on the search and rescue project. The Taiwanese proposal for a South East Asian Ocean Network for Education was not adopted due to Chinese objections.

The 15th workshop was held in Anyer Banten, Indonesia in 2005. It discussed and approved the results of TWG meetings on the marine database and sea level rise projects held in China and Indonesia, respectively. All delegates recognised the workshop process as an important confidence building measure and preventive diplomacy initiative. As a continuation of the biodiversity project, China, Taiwan, the Philippines and Vietnam were asked to consider the possibility of carrying out biodiversity expeditions in the northeast and northwest SCS to assess the biodiversity in the entire SCS.

The 16th workshop was held in Bali, Indonesia in 2006. At this workshop China agreed to organise a technical training course on designing a website on marine science information on the SCS. The 17th workshop was held in Indonesia in 2007. Special mention was made of the importance of the ‘consensus’ based approach to decision-making in the workshop process. In addition, China put forward a proposal for an SCS marine science education, training and exchange programme (Djalal 2009: 182–4).

By November 2011, the initiative had held 21 workshops, all of which highlighted the need to resolve SCS disputes through peaceful means, and promoted the principles of the non-use of force and the exercise of restraint to avoid worsening the situation. Through more than 20 years, the workshop process has functioned as a platform for the SCS countries to exchange ideas on subjects of common concern and promote collaboration on non-controversial issue-areas (Li and Amer 2012: 90). From the Chinese pronouncements at the workshops, it is clearly evident that they consider these non-controversial issues to be those of a scientific and technical nature.

### **Code of Conduct (COC) and the Declaration on Conduct (DOC)**

A regional Code of Conduct (COC) for the SCS was advocated officially for the first time in Paragraph 4 of the ASEAN Declaration on the South China Sea issued at Manila, Philippines in July 1992 (ASEAN 1992). Meanwhile, at the bilateral level, China and the Philippines agreed to a COC in the Spratlys in August 1995. The China–Philippines bilateral COC stipulated that the disputes in the Spratlys should not affect the normal development of relations and that they should be resolved through peaceful means. It mandated that the disputes must be settled in accordance with the recognised principles of international law including UNCLOS. The two sides also agreed to be open to multilateral

cooperation in the disputed areas at the ‘appropriate time’. The code included cooperation in the following areas: protection of the marine environment, safety of navigation and prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology, and maritime pollution control. This bilateral COC was regarded at the time as a significant CBM (Lee 1999: 109–10). Encouraged by this bilateral code, the Joint Communiqué of the ASEAN Ministerial Meeting (AMM) in July 1996 again advocated a COC at the regional level. It stated that such a code ‘...will lay the foundation for long term stability in the area and foster understanding among claimant countries’ (ASEAN 1996).

According to Amb. Hasjim Djalal of Indonesia, a COC for the SCS should consist of the following elements: 1) peaceful settlement of disputes; 2) prohibition of the use of force or threat of force; 3) the exercise of self-restraint; 4) development of confidence-building measures; 5) cooperation; 6) consultation; 7) transparency; 8) respect for international law and freedom of navigation in the SCS; and 9) the area of application of the code (Djalal 2009: 185).

As mentioned in the earlier section, a regional COC was discussed at the ninth and 10th informal SCS workshops in 1998 and 1999 respectively. At the ninth workshop China was not in favour of a regional COC for a number of reasons. First, China did not want to be constrained by such a code. Second, it did not think that this particular initiative was a suitable mechanism to negotiate a COC because it was informal and Taiwan was also a participant. Third, at this stage, the Chinese preference was for bilateral COCs rather than a multilateral one at the regional level. This Chinese attitude began to change as a result of the emphasis placed on ‘stabilising the neighbouring regions’ (*wending zhoubian*) in China’s foreign policy which saw the value of maintaining a stable environment in the SCS, and the endeavours of the ASEAN countries to convince China that cooperation between them was essential for stability. Thus, in 1999, China tabled its own proposal for a COC in response to that by ASEAN at the official level. The first ASEAN–China consultation on the COC in the SCS was held in March 2000 at Hua Hin, Thailand. Since there were differences between the two documents, they initiated negotiations to resolve them. At this stage China and the ASEAN countries went through a number of negotiating sessions to produce a COC for the SCS (Zou 2008: 152–3; Nguyen 2009: 209). However, what emerged from these discussions was not a COC, but the Declaration on the Conduct of Parties in the South China Sea (DOC) which was signed at Phnom Penh, Cambodia in November 2002.



Through the DOC, China and the ASEAN countries committed themselves to exploring ways of building trust and confidence on the basis of equality and mutual respect. They reaffirmed their commitment to the freedom of navigation in and overflight above the SCS in accordance with international law including UNCLOS. In a similar manner, they also undertook to resolve their territorial and jurisdictional disputes through negotiations among the concerned sovereign states in accordance with international law and UNCLOS. Furthermore, they agreed to exercise self-restraint so as not to complicate or escalate disputes, refrain from occupying uninhabited geographical features, and handle their differences in a constructive manner. In order to build trust and confidence, they decided to engage in the following activities: a) dialogue and exchange of views among their defence and military officials; b) ensure just and humane treatment of all persons in danger or distress; c) notify, on a voluntary basis, the other parties of any planned joint military exercises; and d) exchange, on a voluntary basis, any relevant information. Pending a settlement of the disputes, the parties agreed to explore the possibility of undertaking cooperative activities in the following areas: a) marine environmental protection; b) marine scientific research; c) safety of navigation and communication at sea; d) search and rescue operation; e) combating transnational crime such as drug trafficking, piracy and armed robbery at sea, and arms trafficking. It allowed for the pursuit of these activities both at the bilateral and multilateral levels. The parties encouraged non-SCS countries to respect the provisions of the DOC. Finally they reaffirmed that the adoption of a COC in the SCS would further promote peace and stability in the SCS and agreed to work, on the basis of consensus, to achieve this objective (ASEAN 2002).

At the time the Philippine Secretary of Foreign Affairs, Blas F. Ople, called the DOC a ‘major leap for peace’. Wang Yi, then the Chinese Vice Foreign Minister, who was appointed as China’s Foreign Minister in March 2013, had stated at the time that while the DOC by itself would not solve the territorial disputes, it would serve the cause of peace and help claimant countries set disputes aside and focus on economic development. In addition to these views, the importance of the DOC was that it was the first official political document on the SCS agreed to by China and ASEAN (Nguyen 2009: 210, 220). As such it was a significant contribution to the cooperative architecture in the SCS.

The first ASEAN–China Senior Officials Meeting (SOM) on the implementation of the DOC was held in December 2004 in Kuala Lumpur, Malaysia. This meeting decided to establish the ASEAN–China Joint Working Group (JWG) on the DOC which was directed to formulate and recommend guidelines for the implementation of the DOC, as well as to come up with specific cooperative projects.

At the first meeting of this particular JWG held in August 2005 in Manila, Philippines ASEAN put forward the following draft guidelines (Nguyen 2009: 218):

1. The implementation of the DOC should be carried out in a step-by-step approach in line with the provisions of the DOC.
2. ASEAN will continue its current practice of consulting among each other before meeting China.
3. The implementation of the DOC should be based on activities or projects clearly identified.
4. The participation in the activities or projects should be carried out on a voluntary basis.
5. Initial activities to be undertaken under the ambit of the DOC should be confidence-building measures.
6. The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of the Code of Conduct.
7. In the implementation of the agreed projects under the DOC, the services of the Experts and Eminent Persons, if deemed necessary, will be sought to provide specific inputs on the projects concerned.

The JWG met for the second time at Hainan, China in February 2006. It agreed to the following cooperative projects to be implemented under the DOC:

1. Joint ASEAN–China Table Top Maritime Search and Rescue Exercise
2. Workshop on Marine Ecosystems and Biodiversity
3. Workshop on Regional Oceanographic and Climate Exchanges in the South China Sea
4. Workshop on Disaster Prevention and Reduction, Establishing Disaster Monitoring and Warning System in the South China Sea
5. Training Programme on Ecosystem Monitoring and Monitoring Technology
6. Regional Oceanographic Exchange around the South China Sea

The second ASEAN–China SOM on implementing the DOC at Siem Reap, Cambodia in May 2006 discussed the guidelines for implementation proposed by ASEAN, and approved the six projects mentioned above as joint ASEAN–China projects. They were to be funded by the ASEAN–China Cooperation Fund (ACCF) and in-kind contributions from the involved countries themselves. However, not much progress in implementing the projects was expected until the finalisation of the guidelines for implementation of the DOC (Nguyen 2009: 215, 218).

While the JWG on the implementation of the DOC met again in 2008, the process of reaching a consensus on the guidelines for implementation was held up at this stage because of China's objection to Paragraph 2 of the draft guidelines mentioned earlier, which stated that the ASEAN countries would consult among themselves before meeting China. Such consultation was in line with the 2007 ASEAN Charter which called on ASEAN member countries to 'coordinate and endeavour to develop common positions' in the conduct of external relations. The ASEAN countries tried to address Chinese concerns by rephrasing Paragraph 2. The JWG met twice during 2010, at Hanoi, Vietnam in April and at Kunming, China in December, but could not reach a consensus. It met again at Medan, Indonesia in April 2011. By July 2011, the ASEAN countries finally agreed to remove the clause on prior consultation before meeting China (Storey 2012: 62–63). This enabled them to finalise the Guidelines for the Implementation of the DOC which was endorsed at the ASEAN–China Post Ministerial Conference (PMC) at Bali, Indonesia in July 2011. In the final version, Paragraph 2 read as follows 'the Parties to the DOC will continue to promote dialogue and consultations in accordance with the spirit of the DOC'. Apart from this and minor changes in words, the only other addition to the draft mentioned earlier was Paragraph 8, which stated that progress on the implementation of the agreed activities and projects under the DOC shall be reported annually to the ASEAN–China PMC (ASEAN 2011a and 2011b).

Soon after the finalisation and endorsement of the Guidelines on the Implementation of the DOC the *People's Daily*, the flagship newspaper of the Central Committee of the CPC, published a number of articles on 2 August 2011 supporting the DOC process. Wang Muke (2011) wrote that the adoption of this document 'shows that China and [the] ASEAN countries have [the] determination, confidence and potential to actively implement the follow-up efforts and jointly promote peace and stability in the region'. The article by Li Qingyuan (2011) pointed out that 'the consensus [on] implementing the follow-up work of the Declaration on Conduct was an important step', and argued that the 'the step ahead should be that both the parties need to walk down this path, actively implement the Declaration on Conduct and promote practical cooperation in the South China Sea'. According to Ji Peijuan's (2011) article, experts and officials in the region thought that the 'follow-up efforts would be helpful in promoting future cooperation in the region and ease tension between nations'. It quoted the ASEAN Secretary General at the time Surin Pitsuwan as saying,

Starting with the Declaration on Conduct we have now undertaken a few projects together as our follow-up initiative and paved [the] way to [the] peaceful settlement of [the] South China Sea issue. Let all the parties learn how to protect and conserve the resources of the South China Sea. Our next generations would like to see the results.

In this atmosphere of optimism about the DOC process, the Chinese Premier at the time Wen Jiabao announced at the 14th China–ASEAN Summit at Bali, Indonesia in November 2011 that, to expand practical maritime cooperation, China would setup the China–ASEAN Maritime Cooperation Fund (CAMCF) of RMB 3 billion to promote cooperation in the following areas: marine research and environmental protection; connectivity; navigation safety; search and rescue; and combating transnational crime (Xinhua 2011). In the Chairman’s Statement of this summit, the ASEAN leaders welcomed this initiative by the Chinese (ASEAN 2011b).

In December 2011, a workshop on the ‘Regional Oceanography of the South China Sea’ was held at Qingdao, China as part of the implementation process of the DOC. Later in the same month, a workshop on ‘Implementing the DOC: Maintaining Freedom and Safety of Navigation in the South China Sea’ was held at Hainan, China. Speaking at the second workshop China’s Assistant Foreign Minister Liu Zhenmin stated,

I believe that dialogue and cooperation are the most realistic and effective way to maintain peace and stability in the South China Sea, solve differences and problems and increase mutual trust among various parties. China sincerely hopes to work with the ASEAN countries, speed up the implementation of the follow-up actions of the DOC, and promote practical maritime cooperation so as to make the South China Sea a sea of peace, friendship and cooperation for the benefit of people of all countries.

He further underscored the importance of freedom of navigation to carry out the external trade of countries in the region which was very important for their economic development. He recognised that freedom of navigation and over-flight in the SCS was a right enjoyed by all countries in accordance with international law. Pointing out threats to the safety of navigation such as piracy and transnational organised crime, Liu Zhenmin highlighted the need for regional cooperation mechanisms to combat these threats (MOFA, PRC 2011). The fourth ASEAN–China SOM on the implementation of the DOC was held at Beijing, China in January 2012. At this meeting the participants appreciated China’s establishment of the CAMCF, which they thought would speed-up the implementation of the DOC. China agreed to hold two workshops, one on Disaster Prevention and Reduction, and the other on Ecosystem Monitoring and Monitoring Technology, while the ASEAN countries agreed to hold two

seminars, one on Maritime Search and Rescue and the other on Marine Ecosystems and Biodiversity. They also agreed to consider the possibility of setting up special technical committees on marine scientific research and environmental protection, navigation safety and rescue, and combating transnational maritime crime (MOFA, PRC: 2012a). Thus, in the second half of 2011 and early 2012, there were a number of positive developments in the DOC process with vigorous Chinese participation.

In January 2012, the Philippines circulated a draft COC within ASEAN. At the 20th ASEAN Summit at Phnom Penh, Cambodia, in April 2012 differences within ASEAN emerged over the involvement of China in the discussions on the COC. While Cambodia wanted to involve China in these discussions, the Philippines and Vietnam wanted ASEAN to agree on a COC internally before approaching China. These differences at the summit were resolved by a compromise — ASEAN would continue its internal discussions on a COC while simultaneously keeping China informed through the ASEAN Chair (Thayer 2012). The compromise clearly indicated ASEAN's intention of keeping the DOC/COC process moving forward with Chinese concurrence.

At this point, it would be pertinent to take note of the academic proposal made by Beckman (2009: 232–3) to give more substance to the 'self-restraint' clause in Paragraph 5 of the DOC by supplementing it with a protocol designed to assert that the 'self-restraint' clause is applicable to fishing activities, research activities and enforcement activities in all disputed waters in the SCS. In proposing this protocol to the DOC, what Beckman had in mind was the management of a situation where State A and State B have an overlapping claim in their EEZ, and a fishing vessel or marine scientific research vessel flying the flag of one claimant state is intercepted in the disputed waters by an enforcement vessel from the other claimant state. This was precisely the situation that arose in Scarborough Shoal (Huangyan Island in Chinese), claimed by both China and the Philippines, in April 2012. The tense situation arose when eight Chinese fishing vessels took shelter in a lagoon near Scarborough Shoal from bad weather and the Philippine warship Gregorio del Pilar attempted to enforce Philippine jurisdiction. This attempt was countered by two China Marine Surveillance (CMS) vessels which appeared on the scene and attempted to enforce Chinese jurisdiction (Wu 2012). The protocol to the DOC proposed by Beckman would contain rules of engagement for enforcement vessels in disputed waters. It is not hard to see that such a protocol would have been extremely useful in managing the Scarborough Shoal incident of April 2012, and would be so for any similar incidents in the SCS that may occur in the future.

While the ASEAN Ministerial Meeting (AMM) held at Phnom Penh, Cambodia in July 2012 failed to issue a joint communiqué for the first time in its 45-year history due to disagreement over the SCS, through the strenuous efforts of the Indonesian Foreign Minister Marty Natalegawa the ASEAN Foreign Ministers did produce a joint statement on the SCS on 20 July 2012. This statement reaffirmed their commitment to the DOC, the Guidelines for Implementation of the DOC and the substance of these two documents, in particular to the early conclusion of a regional COC on the SCS (MOFAICC 2012a). The Chinese Ministry of Foreign Affairs Spokesperson Hong Lei responded positively to this statement as follows,

China is ready to work with ASEAN countries to fully and effectively implement the Declaration on the Conduct of Parties in the South China Sea (DOC) in a bid to jointly uphold peace and stability in South China Sea. China is open to discussions with ASEAN countries on working out a Code of Conduct in the South China Sea (COC). We hope all parties can abide strictly by the DOC so as to create necessary conditions and atmosphere for the discussion of the COC (MOFA, PRC 2012d).

In late October 2012, an ASEAN–China SOM was held in Pattaya, Thailand to prepare for the 15th ASEAN–China Summit, the ASEAN Plus Three Summit and the 7th East Asia Summit to be held in November. At this meeting the senior officials recognised the value of maintaining stability in the SCS and agreed to ‘keep the momentum of dialogue and consultation and work together to create mutual trust and confidence for eventual adoption of a code of conduct in the South China Sea on the basis of consensus’ (MOFA, PRC 2012f).

A workshop to commemorate the 10th anniversary of the DOC was held in Phnom Penh, Cambodia, on 1 and 2 November 2012, jointly organised by the Ministry of Foreign Affairs and International Cooperation of Cambodia and the Ministry of Foreign Affairs of China, under the theme ‘Toward Peace, Stability, Cooperation and Prosperity in the South China Sea’. The Press Release issued after the conclusion of this workshop notes that China and the ASEAN countries agreed to maintain the momentum of consultations on the implementation of the DOC and the eventual adoption of a COC on the basis of consensus (MOFAICC 2012b). Speaking at the workshop, China’s Vice Foreign Minister Fu Ying stated,

There is no better way to avoid confrontation and realize common security except by engaging in persistent dialogue and going for cooperation....We can continue discussion based on the principle of equal consultation so as to jointly create sound conditions and a good atmosphere for COC discussion. China is ready to keep the dialogue momentum and work towards this goal.

The process itself is very important to increase understanding and trust, which is necessary for us to move forward (MOFA, PRC 2012g).

However, intra-ASEAN disagreement over the SCS crept up once again at the ASEAN summit meetings in mid-November 2012, with Cambodia claiming that there was an ASEAN consensus not to ‘internationalise’ the SCS issues and the Philippines disputing the claim (Shen and Wang 2012). Nevertheless, the 15th ASEAN–China Summit that was held at this time issued a Joint Statement commemorating the 10th anniversary of the DOC. It stated that the DOC was a milestone document which embodied the collective commitment of the ASEAN countries and China to promote peace, stability and mutual trust in the SCS; noted the progress in the implementation of agreed cooperative projects under the DOC and their contribution to the enhancement of mutual confidence; and recognised that the full and effective implementation of the DOC would strengthen the partnership between ASEAN and China and create favourable conditions for finding a durable solution to the SCS disputes. Apart from reiterating the substance of the DOC and the Guidelines for Implementation, it contained an undertaking to sustain the momentum of dialogue on a COC (*Global Times* 2012). Meanwhile, as the ASEAN summit meetings were proceeding in Phnom Penh, Cambodia, at the Chinese Ministry of Foreign Affairs regular press conference in Beijing on 20 November 2012, in response to a question regarding ASEAN’s hopes for fast-tracking the COC, spokesperson Hua Chunying stated the following,

China stays in unobstructed and effective communication with ASEAN countries on the formulation of the COC. Both sides agree to comprehensively and effectively implement the Declaration on the Conduct of Parties in the South China Sea (DOC), maintain the momentum of dialogue, actively create conditions and work towards finally reaching the COC based on consensus through consultation (MOFA, PRC 2012h).

Looking at the above cited series of statements made by China and ASEAN together as well as by China on its own in late 2012, one gets the impression of an emerging commitment to maintaining the ‘momentum’ of dialogue and consultation in the COC/DOC process.

Brunei is reported to be keen on using its Chairmanship of ASEAN in 2013 to pursue a binding COC for the SCS. Meanwhile, the former Deputy Foreign Minister of Vietnam, Le Luong Minh, who became the ASEAN Secretary General in January 2013, has said that ‘ASEAN should speed up efforts toward an early start to negotiations with China, with a view to achieving an early conclusion of a code of conduct on the South China Sea’ (Chalermpananupap 2013). The new ASEAN Secretary General is thought to be an adherent of quiet diplomacy, which is expected to help in dealing with the Chinese

(Schearf 2013). The Chairman's Statement issued by the 22nd ASEAN Summit held at Brunei Darussalam in April 2013 has tasked ASEAN Foreign Ministers to continue to work with China towards an early conclusion of a COC based on consensus (ASEAN 2013a). The Chairman's Statement of the 20th ARF, held also at Brunei Darussalam in July 2013, noted with approval the decision to hold the sixth ASEAN–China SOM on the implementation of the DOC and the ninth meeting of the ASEAN–China JWG on the DOC in China in September 2013. At these meetings the parties are expected to have official consultations on the COC (ASEAN 2013b). On 5 August 2013, China's Foreign Minister Wang Yi said that while China has a positive and open attitude towards the formulation of a COC, one must not expect 'quick fix' solutions and that the top priority was to continue implementing the DOC, especially its cooperative projects, with consultation on the COC being approached as a part of this process in a 'step-by-step' manner (MOFA, PRC 2013). Therefore, while ASEAN appears to be keen on concluding a regional COC at an early date, China's emphasis on the prior implementation of the DOC in order to create conducive conditions for negotiating a COC indicates a preference for a more incremental and gradual approach.

### **Maritime Cooperation Facilitated by Economic Cooperation**

China–ASEAN trade stood at USD 7 billion at the beginning of the ASEAN–China dialogues in 1991. By 2006 it had grown to approximately USD 160 billion, reaching USD 362.8 billion in 2011. From 1991 to 2011 it showed an average annual growth rate of 20 per cent, with the China–ASEAN Free Trade Agreement coming into effect in 2010. In 2011 China was ASEAN's largest trade partner and ASEAN was China's third largest trade partner. By July 2012, their mutual investments was nearly USD 100 billion (Li 2009: 150; Xinhua 2012b).

While China–ASEAN economic relations were growing stronger, in early 2006 China's Guangxi Autonomous Region started calling for a Pan–Tonkin (Beibu) Gulf Economic Cooperation Zone which would comprise China's southwest and southeast regions, Vietnam, Thailand, Cambodia, Malaysia, Singapore, Indonesia, the Philippines, and Brunei. Liu Qibao, the former Guangxi party leader, called for the Pan–Tonkin Gulf Economic Cooperation Zone to be officially incorporated into ASEAN–China cooperation. The proposal was approved by China's State Council and supported by Hu Jintao and Wen Jiabao, China's President and Premier at the time respectively. In particular, Wen undertook to bring up the proposal at the China–ASEAN summit meetings in November 2006 and January 2007. By January



2007 the proposal had gained the support of the leaders of Singapore, Malaysia, the Philippines and Vietnam. The significance of this proposal for maritime cooperation lies in the possibility that it could turn the SCS into virtually an ‘internal lake’ of the envisioned economic cooperation zone (Li 2009: 150). Moreover, the proposal contains specific provisions for maritime cooperation such as a network of ports surrounding the SCS, fishery cooperation, off-shore energy cooperation and marine environmental cooperation (Li 2009: 149–51). The Chairman’s Statement at the 14th ASEAN–China Summit held at Bali, Indonesia in November 2011 welcomed the conclusion of a Feasibility Study Report on this proposal, and appreciated China’s suggestion to launch a roadmap for its realisation (ASEAN 2011b).

Speaking at the 9th China–ASEAN Business and Investment Summit and 2012 Forum on China–ASEAN Free Trade Area in Nanning, Guangxi Autonomous Region in September 2012, Xi Jinping, at the time China’s Vice President, stated that China is ‘...committed to resolving differences with neighbours concerning territorial land, territorial sea and maritime rights and interests peacefully through friendly negotiations’. Recognising the importance of connectivity in promoting economic cooperation, he made known China’s intention of contributing to a regional maritime connectivity network and improving cooperation in sectors such as ports, maritime logistics and port industries (Xinhua 2012b). Increasing economic interdependence can raise the costs of a major conflict in the SCS to an unacceptably high level, and function as an incentive for states of the region to make use of the SCS, both as a repository of resources and as a transport-surface, in a cooperative manner. While the cooperative initiatives and possibilities mentioned in this paper exist, and China and the other countries of the region are engaged in efforts to improve and realise them, they also face significant obstacles. The next two sections will briefly consider what are arguably two of these obstacles, namely power politics and nationalism.

### ***Power Politics***

Since heightened tension in the SCS beginning in 2009, the Philippines and Vietnam have been engaged in efforts to get the US more involved with the intention of balancing Chinese power. The US’ receptiveness to these overtures is seen by China as a part of US efforts to ‘contain’ the rising power of China. The US’ ‘pivot to Asia’ strategy, or ‘rebalancing towards Asia’ as it has also come to be known, since late 2011 has given further impetus to this dynamic (ICG 2012b: 22).

As the Scarborough Shoal incident in April 2012 between China and the Philippines was unfolding, the latter and the US held a joint military exercise which included mock beach invasions along coastlines facing China. While Philippine President Benigno Aquino III stressed that the exercises were planned well in advance of the Scarborough Shoal incident, indicating that it was not directed against China, the Chief of Staff of the Philippine Armed Forces, Lt Gen. Jessie Dellosa stated that ‘the conduct of this annual event reflects the aspiration to further relations with our strategic ally [US], a commitment that has to be nurtured especially in the context of evolving challenges in the region’ (Whaley 2012). The reference to ‘evolving challenges in the region’ in Gen. Dellosa’s statement could be taken as a veiled reference to the tension with China in Scarborough Shoal.

The Philippine effort has also focused on obtaining an assurance from the US that their 1951 Mutual Defense Treaty (MDT) covers an attack on Philippine armed forces in disputed areas in the SCS. The Philippine Foreign Affairs Secretary Albert del Rosario was engaged in such an effort in May 2012. When President Aquino met US President Barack Obama in Washington, DC in June 2012, they reaffirmed their commitment to the MDT and to peace and security in the Asia Pacific region. At this meeting, the US also pledged support to the Philippines for upgrading its Armed Forces and building a ‘minimum credible defense posture’. Walter Lohman, Director of the Asia Studies Centre at the Heritage Foundation, Washington, DC has been quoted as arguing that,

The US should make clear to [Chinese] officials privately that in the event of an armed PRC attack on Philippine ‘public vessels’, the US must invoke its treaty commitment to declare such action ‘dangerous to its own peace and safety’ and would initiate formal consultations with the Philippines to determine an appropriate course of action. The nature of its response would be dictated by the nature of the attack (Malig 2012).

Following the meeting between Presidents Aquino and Obama, the Pentagon announced that it would make available to Manila a land-based radar system to track ships along its coastline, which is believed to have been targeted against China and related to the US strategy of ‘rebalancing towards Asia’. The two countries are also believed to be engaged in discussions to, among other things, prioritise joint exercises and training activities related to maritime security (ICG 2012b: 26).

In June 2012, the then US Secretary of Defense Leon Panetta became the highest ranking US official since the end of the Vietnam War to visit Camh Ran Bay, which had been a major base for US activity during that war. During this visit, Panetta stated that there was ‘tremendous potential’ for the

enhancement of military ties between the US and Vietnam. After meeting Panetta, the Vietnamese Defence Minister Phung Quang Thanh announced that his country would open three previously closed sites to search for missing US soldiers from the Vietnam War. He also made known that his country was keen to acquire US weapons (Huang and Hao 2012). Senior Vietnamese officials have also been flown out to visit US aircraft carriers. Three of these visits, once to USS John C. Stennis and twice to USS George Washington, took place off the coast of Vietnam, highlighting Hanoi's view that the US has a legitimate presence in the SCS and that 'China is not the region's only big player'. Vietnam is said to intend to use its growing strategic ties to the US to 'raise the stakes for China's misbehavior' (ICG 2012b: 23, 24).

Interestingly, Li Mingjiang (2009: 151) has argued that greater US involvement in the SCS can play an important role in moderating Beijing's behaviour. The ICG (2012b: 22) has argued that such involvement could put pressure on claimants to develop cooperative measures to mitigate risks. This line of argument appears to be borne out by the happenings at the July 2010 ARF. As the Chairman of ASEAN that year, Vietnam had used its position to get the US more involved in the SCS at the multilateral level, hoping that the US would help the ASEAN countries develop a common position vis-à-vis China. Following these efforts, the then US Secretary of State Hilary Clinton had placed the SCS issue in the limelight by stating at the July 2010 ARF that the US was willing to facilitate a collaborative resolution of the SCS disputes. As a consequence, 12 states, including all the ASEAN claimants, had taken up the SCS issue at the forum and this is said to have put pressure on China to come back to the negotiating table with ASEAN (ICG 2012b: 23).

However, countering the above mentioned line of argument, Emmers (2009: 138) has argued that a more assertive US approach to East and Southeast Asia would be taken as a source of great concern by China, resulting in more aggressive Chinese diplomacy. This argument is supported by the vehement Chinese response to US criticism in August 2012 of China's move to upgrade the administrative level of Sansha City on Woody Island in the disputed Paracels, and establish a new military garrison there. The US State Department had stated that this ran 'counter to collaborative diplomatic efforts to resolve differences....further escalating tensions in the region'. In response to this statement the Chinese Ministry of Foreign Affairs summoned Robert Wang, the US Embassy's Deputy Chief of Mission, to express its 'strong dissatisfaction'; its spokesperson Qin Gang issued a lengthy statement that, among other things, accused the US of meddling in the region and going against its own position of not taking

sides in the SCS disputes (Krishnan 2012; MOFA, PRC 2012e). While China's own actions are not conducive to stability in the SCS, the point to note is the strident Chinese opposition to US involvement there. Moreover, the ICG (2012b: 22), despite its argument mentioned earlier, has pointed out that US involvement could make China more suspicious of ASEAN initiatives on the SCS. Therefore it appears that the Filipino and Vietnamese efforts to balance against Chinese power by getting the US involved is, in the context of this paper, at best a 'double edged sword', which can have both favourable and unfavourable effects on China's diplomacy and cooperative engagement with ASEAN on the SCS.

Having said that, China's overwhelming preponderance in terms of power in the SCS region makes it inevitable, in the short to medium term, that the other relatively smaller countries will seek to balance against China by involving other major powers such as the US. Till the emergence of stronger forms of regional identity and institutions encompassing both China and the other claimants, power politics will remain a basic feature of the regional system.

### ***Nationalism***

Extreme forms of nationalism can be a major 'stumbling block' for the resolution of disputes and international cooperation in the SCS. Public expressions of extreme forms of nationalism can weaken and damage the political will to cooperate (Bateman 2009: 241; Nong Hong 2011: 64). The capability to occupy and control remote islands is seen as a measure of a government's performance and a sign of national pride and sovereignty. As a result claims to the sovereignty of islands can be imbued with a high degree of nationalist symbolism (Till 2009: 37–8). Among the SCS claimants, nationalism has played a major role in how China and Vietnam approached the disputes. The Vietnamese nationalist discourse on the SCS is worth considering in this section because, unsurprisingly, China occupies an important place in it as an adversary.

Since the establishment of the PRC, the Chinese government has continuously emphasised the need to re-establish national honour. With regard to the SCS, the government has infused the disputes with nationalist sentiment. Chinese school textbooks contain a map of China with the U-shaped nine-dash line. At least since the early 1980s a section referencing China's 'Beautiful Spratly Islands' has been included in the school curriculum of different provinces. As a result, attempts by the Chinese Foreign Ministry to reassure other claimants that it does not claim the entire SCS is met with incredulity by the Chinese people, who have been taught since childhood that their country has an indisputable

claim to the areas within the U-shaped nine-dash line (ICG 2012a: 15–16, 27). After the end of the Cold War, the Chinese government is said to have encouraged a type of nationalism which has been the driving force behind popular and elite demands for a hard-line approach to China's territorial disputes. This nationalist discourse points to what it calls a 'Century of Humiliation' from the mid-nineteenth century to the mid-twentieth century during which China was treated unfairly, and its territorial integrity and sovereignty were violated by other countries. This discourse emphasises the accumulation of sufficient power by China to regain the lost and now disputed territories by force if necessary. This discourse is not receptive to the concerns of other claimants and calls for China to compromise (Sutter 2012). Media reports that out of the 1,000 oil rigs in the SCS and four airports in the Spratlys none belong to China, and US support to other claimants have given credence to views of China as the victim. Netizens and nationalists have called for China to build up its military forces in the region to 'teach the Vietnamese, the Filipinos and Malaysians a good lesson'. They have also called for China's South Sea Fleet to repeat the 1974 and 1988 'victories' and send the Vietnamese 'home with tails between their legs'. Nationalist scholars and netizens support a maximalist view of the U-shaped nine-dash line, and urge the Chinese government and the public 'not to forget the 3 million sq km of Chinese maritime territory' (ICG 2012a: 27).

At this point, it might be worthwhile to briefly look at the merits and demerits of the legal basis of the U-shaped nine-dash line claim. According to Nong Hong (2012), an important legal basis for the U-shaped nine-dash line is the concept of 'historic waters'. As noted by Storey (2012: 54), China's claim is based on discovery, long-term historical use and centuries of administration by Chinese governments. Nong Hong (2012) argues that there is a trend towards the assertion of historic claims to waters in state practice, and that it may result in more importance being given to the concept of 'historic waters' in international law. However, Storey (2012: 54) points out that the claim based on 'historic waters' would not be consistent with current international law, including UNCLOS, which favours the claims of states best able to prove 'continuous' and effective administration. China cannot prove that because of the weakness of the central government during the 'Century of Humiliation'. Even if one accepts Storey's argument, the point to be noted here is that the way in which the U-shaped nine-dash line has become ingrained in the Chinese nationalist mentality means that much time and effort will be needed for China to reconsider it as the basis of its claims in the SCS.

Vietnamese claims in the SCS are a central and emotionally charged element of a historical narrative that is ‘forcing the party’s hand’. As an unnamed Vietnamese official said, ‘for [a] 1000 years we spilled blood to keep our country intact...the East Sea [the Vietnamese name for the South China Sea] disputes strike at the heart of what it means to be Vietnamese’. In school young Vietnamese are taught that Hoang Sa (Vietnamese for Paracel Islands) and Truong Sa (Vietnamese for Spratly Islands) are a part of the Quang Ngai District of Vietnam. Vietnam also has a museum named Hoang Sa and Truong Sa: Vietnamese Islands, the purpose of which is to inculcate ‘national land awareness’ among the Vietnamese, particularly the younger generation. The history of violent conflict between China and Vietnam and the territorial disputes make China one of the prime targets of assertive Vietnamese nationalist sentiment on the SCS. When Chinese vessels cut the cables of Vietnamese survey ships in May and June 2011, the Vietnamese government granted the state media unprecedented freedom to report on the SCS and encouraged anti-China demonstrations which lasted for 12 weeks. In July 2011 20 leading ‘patriotic personalities’ including Maj. Gen. Nguyen Trong Vin, a former Ambassador to China, Ho Uy Liem, the Chair of the Vietnam Union of Scientific and Technical Associations, and a number of retired government officials, submitted a petition to Vietnam’s Politburo and National Assembly Chairman, stating that Hanoi was being ‘too soft’ on China in connection with the SCS (ICG 2012b: 20–1; Nong Hong 2011: 64–65).

According to Nong Hong (2011: 64), in order to prevent Chinese nationalist sentiment from being inflamed and worsening the situation in the SCS, the Chinese government should carefully control the direction of the nationalist movement. Pointing out that Chinese writings stress how the outside world needs to understand China’s bitter experience of a ‘Century of Humiliation’, she argues that the other claimant state should understand its nationalism positively and express sympathy for its unfortunate experiences in the second half of the nineteenth and first half of the twentieth centuries, especially since most of them also went through similar experiences of being invaded and colonised. By the same token China too should seek to better understand the nationalist discourses of other claimant states, particularly that of Vietnam. While on the face of it domestic nationalism makes compromise in international negotiations difficult, China and Vietnam would do well to come to terms with the nationalist significance of each other’s claims.

## Conclusion

The components of the cooperative architecture in the SCS that have been examined in this paper are joint development of resources, the informal SCS workshops, the COC/ DOC process and maritime cooperation facilitated by economic cooperation. Efforts to implement the joint development of resources in the SCS with Chinese participation have been the fishery cooperation agreement in Gulf of Tonkin between China and Vietnam; the agreement between CNOOC and PNOC to jointly explore oil and gas; the JMSU involving CNOOC, PNOC and PetroVietnam; and the agreement between China and Vietnam to jointly explore oil in the Gulf of Tonkin. However, the joint development of resources in the SCS has not been particularly successful because of the Chinese insistence that the other claimants accept China's sovereignty over most of the SCS based on the U-shaped nine-dash line as a precondition, which obviously the other claimants have been unwilling to do. Nevertheless, on a positive note it must be pointed out that the Hainan-based NISCSS' Nong Hong's academic proposal for joint fisheries management, and the Filipino proposal for a ZoPFF/C at the governmental level both have in common the suggestion to separate disputed and undisputed areas as a step towards the joint development of resources.

In the informal SCS workshop process, China was averse to discussing territorial and jurisdictional issues because of the forum's unofficial nature and the participation of Taiwan. Within this forum China's preference was for the discussion and pursuit of cooperative projects of a scientific and technical nature. It felt that such projects would be important in building confidence and trust among the claimants. China has functioned as the coordinator of the project on a marine database for the SCS within this particular initiative. The informal SCS workshops provided China and the other claimants with a regular forum through which to familiarise themselves with each other's concerns, and achieve mutual understanding.

A regional COC for the SCS was mentioned officially for the first time in the 1992 ASEAN Declaration on the South China Sea. As a result of perceiving the need for good relations with ASEAN for stability in its neighbourhood and ASEAN's own promptings, China overcame its initial preference for bilateral COCs and started negotiations with ASEAN on a regional COC in the late 1990s and early 2000s. The result of these negotiations, however, was not a COC but the DOC. The DOC was a major contribution to the cooperative architecture in the SCS and ushered in a period of relative calm from late 2002 to mid-2009. There was nevertheless a delay in implementing the DOC mainly because China

objected to a clause in the draft Guidelines for Implementation of the DOC produced by ASEAN which stated that the ASEAN countries would consult amongst themselves before meeting China. After ASEAN finally agreed to rephrase this clause in such a way that it did not explicitly mention such prior consultation among the ASEAN countries, the Guidelines for Implementation of the DOC was adopted in July 2011. As cooperative projects under the DOC, China hosted workshops on Regional Oceanography and Freedom and Safety of Navigation in late 2011 and early 2012. The ASEAN–China SOM on the implementation of the DOC held in January 2012 welcomed the establishment of the RMB 3 billion CAMCF by China, and the utilisation of this fund in the implementation of the DOC. During this SOM China also agreed to host another two workshops as part of the DOC process, one on Disaster Prevention and Reduction, and the other on Ecosystem Monitoring and Monitoring Technology. At this point a special mention must also be made of Beckman’s (2009: 232–3) academic proposal for a protocol to the DOC which would introduce rules of engagement for enforcement vessels in disputed waters. Such a protocol would have been extremely helpful in managing the Scarborough Shoal incident of April 2012, and would be so for any similar incidents that may arise in the future. While there were tensions within ASEAN over the SCS at its meetings both in July and November 2012, statements issued by China on its own and by China and ASEAN together in late 2012 indicated the emergence of a commitment to maintaining the ‘momentum’ of dialogue in the COC/DOC process, with the aim of concluding a regional COC. However, while ASEAN is eager to conclude a COC at an early date, China appears to prefer a more gradual approach.

In the context of growing China–ASEAN economic relations, the Pan–Tonkin (Beibu) Gulf Economic Cooperation Zone proposed by China’s Guangxi Autonomous Region has gained the approval of both China’s central government and ASEAN. The 14th ASEAN–China Summit in November 2011 welcomed the conclusion of a feasibility study on this project and China’s suggestion to formulate a roadmap for its realisation. The project provides for cooperation in fisheries, off-shore energy, the marine environment and a network of ports surrounding the SCS. The implementation of this project could result in the SCS becoming an ‘internal lake’ of the proposed economic cooperation zone (Li 2009: 150). Increasing economic interdependence can raise the costs of a major conflict to unacceptable levels and function as an incentive for China and the other states of the region to utilise the SCS, both as a repository of resources and a transport-surface, in a cooperative manner.



While these cooperative initiatives and possibilities exist and China and the other countries of the region are engaged in efforts to improve and realise them, they also face a number of obstacles; this paper has briefly considered what are arguably two of them, power politics and nationalism. Since the current period of tension began in 2009, in the face of strong Chinese opposition, the Philippines and Vietnam have been engaged in efforts to balance against Chinese power by getting the US more involved in the SCS. In the context of this paper, the involvement of the US in the SCS is at best a 'double edged sword' which can have both favourable and unfavourable consequences on China's cooperative engagement with ASEAN. Given China's overwhelming preponderance in terms of power in the SCS region, while power politics drawing in extra-regional major states such as the US will remain a basic feature of the regional system at least in the short to medium term until the emergence of stronger forms of regional identity and institutions, the existing cooperative architecture can play a role in curbing its sharper edges. The perseverance of the cooperative architecture can prevent the tension that arise at times from deteriorating into a major conflict. As evidence for this argument, one can point to the periods of relative calm that followed the signing of the DOC and then again after the endorsement of the Guidelines for Implementation of the DOC. While on the face of it domestic nationalism makes compromise in international negotiations difficult, a greater familiarity on the part of policymakers of the nationalist significance of each other's claims would better inform their decision-making and facilitate greater understanding among them.

At this point the importance of political will to play down tensions and to engage in cooperative activities must also be underlined. This was arguably what was demonstrated by Hainan officials when they avoided referring to Sansha City in public from late 2007 to mid-2012. As noted earlier in the paper, the political will shown by the top leaders of China and Vietnam played a crucial role in the successful conclusion of delimitation and fishery cooperation agreements in the Gulf of Tonkin. Nong Hong of the NISCSS in Hainan has stressed the importance of political will in establishing a joint management mechanism for fisheries in the SCS as a whole. While conventional wisdom seems to be that extreme forms of nationalism weaken the political will for international cooperation, as an extension of the argument made about nationalism earlier, it is possible to argue that a greater understanding of the nationalist significance of each other's claims would ground China's and other claimants' political will to cooperate on more complex but ultimately more secure and durable foundations.

Mention must also be made of the then Chinese President Hu Jintao's Report to the 18<sup>th</sup> National Congress of the CPC delivered in November 2012 as it contains pronouncements which are of relevance for the SCS. While in an assertive tenor it calls on the CPC to '...resolutely safeguard China's maritime rights and interests, and build China into maritime power', in a more conciliatory tone it also states that 'China is committed to the peaceful settlement of international disputes and hotspot issues' (Xinhua 2012c). The latter line indicates that China will continue to give a significant measure of importance to its participation in the cooperative architecture in the SCS. Moreover, Professor Xiang Lanxin of Fudan University, Shanghai has admitted that China's assertive approach on the SCS was a diplomatic error, and has expressed the expectation that China's new leadership that took office in late 2012 and early 2013 will appeal less to nationalist sentiment on the SCS (Stearns 2012).

However, it must be acknowledged that China's insistence on the U-shaped nine-dash line as the basis of its claims, and its penchant for a bilateral approach to resolving territorial and jurisdictional disputes do not bode well for the cooperative management of the SCS disputes. The legal basis of the U-shaped nine-dash line is contentious. While China must come to terms with this fact, one must also recognise that it is ingrained in the Chinese nationalist psyche and that much time and effort will be required for China to reconsider it as the basis of its claims. In the Spratlys the territorial and jurisdictional disputes involve five countries even if you do not include Taiwan, and are hence clearly multilateral in nature. Therefore, in the long run and in the search for cooperative solutions, China would do well to rethink the U-shaped nine-dash line and its preference for a bilateral approach to resolving territorial and jurisdictional disputes as far as the Spratlys are concerned.

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