



# CANADA-ASIA AGENDA

## Canada and the South China Sea Disputes: Challenges for Re-Engagement in East Asia

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**The South China Sea is a recurrent flashpoint in East Asia that has recently threatened to destabilize East Asia. China and the Philippines are currently engaged in a standoff at Scarborough Shoal in the latest round of tensions between claimant states. Furthermore, disputes over access to coastal waters by military vessels have led to repeated confrontations between the United States and China. There are typically three facets to maritime disputes; contested sovereignty claims to small islands and rocks; overlapping claims to maritime space and disputes over the appropriate level of coastal state authority over this maritime space.<sup>1</sup>**

**As the Canadian government shifts its focus towards Asia, the South China Sea disputes present three challenges to Canada's re-engagement with the region. First, regional tensions challenge the Ottawa's preference to keep its engagement strategy confined to economic issues. Second, South China Sea tensions are an increasingly important issue to Canada's friends in the Pacific: Australia, Japan, South Korea and the United States. Third, Canada's diplomatic track record in the region, such as it exists, has previously been centred on supporting maritime security in Southeast Asia. This article describes recent tensions in maritime East Asia, assesses the interests of the relevant actors and identifies the challenges for Canada.**



### About The Author

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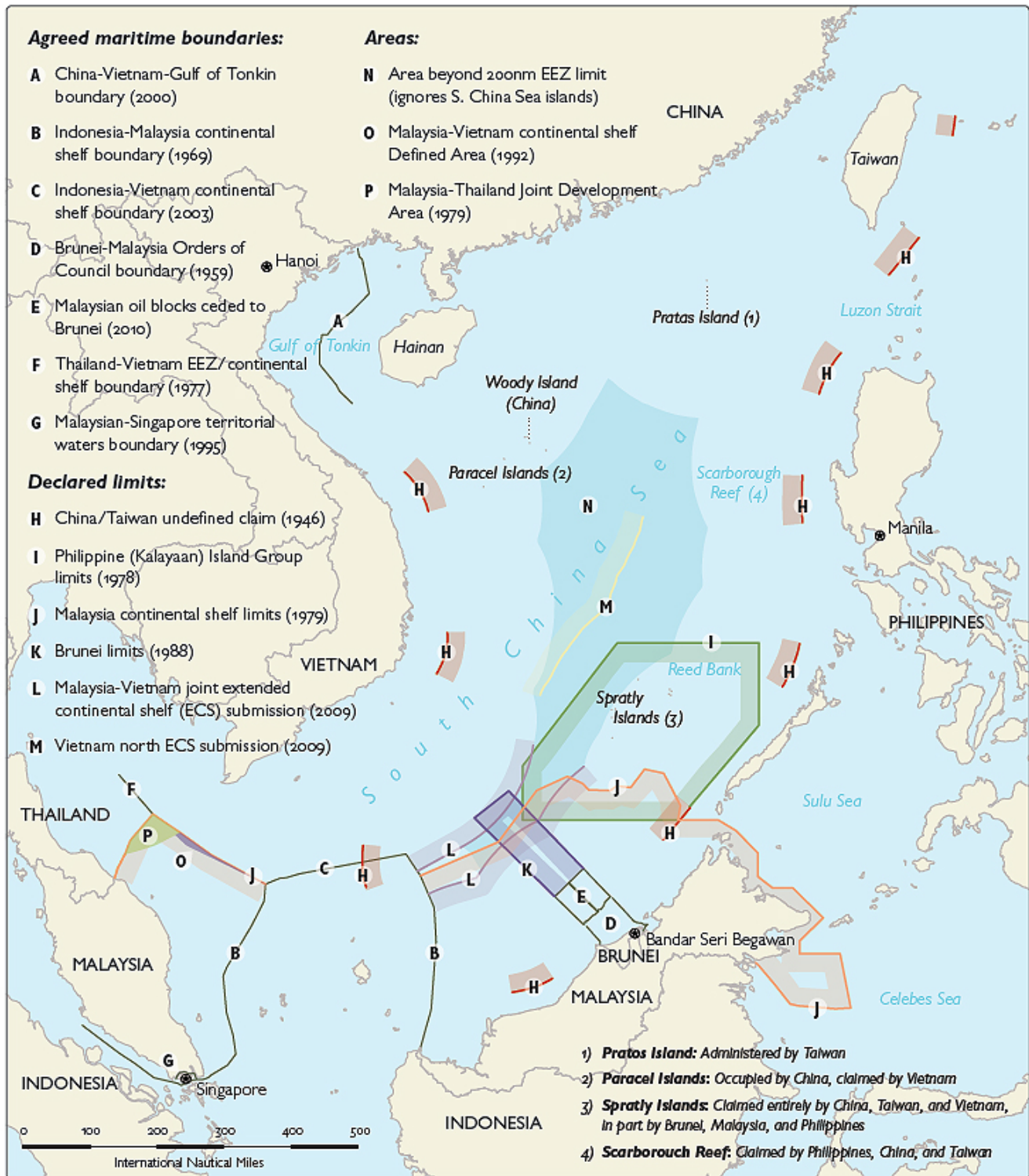


Figure 1: Sovereignty Claims in the South China Sea.

Source: Office of the Secretary of Defense, United States. (2012). *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2012*, Retrieved May 24, 2012, from: [http://www.defense.gov/pubs/pdfs/2012\\_CMPR\\_Final.pdf](http://www.defense.gov/pubs/pdfs/2012_CMPR_Final.pdf)

## Sources of Tension in the South China Sea

The South China Sea, a semi-enclosed sea that contains several groups of small islands, rocks and reefs, is claimed by China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei. As to the first facet of the dispute – contested sovereignty claims to rocks and islands – all claimants except Brunei have occupied islands or rocks and have built structures on them. By establishing sovereignty over rocks and islands, states can claim territorial seas and Exclusive Economic Zones (EEZ) from the islands. These claims bring with them the political imperative to rhetorically defend these claims as part of a state's national identity. The Philippines, Vietnam and China have all witnessed expressions of grassroots nationalism associated with the islands in the South China Sea, which in some cases has tied the hands of policymakers. Simultaneously, this nationalism discourages cooperation and has served as a legitimizing tool for leaders in all three states.



*Photo Credit: MikeRussia*

The second facet of the dispute relates to the existence and breadth of claims to maritime zones from claimant state coastlines and from the disputed islands. All parties claim some form of EEZ or continental shelf from their coastline (see Figure 1). It remains to be seen which of the islands in the South China Sea are entitled to the full spectrum of maritime zones and whether claimant states will opt to make such claims. Under article 121 of the UN Convention on the Law of the Sea (UNCLOS), features that are below water at high tide or rocks that cannot sustain human habitation

are not entitled to an EEZ or continental shelf. These zones establish jurisdictional entitlement to regulate economic activities such as living and non-living resource exploitation and marine scientific research (MSR). Southeast Asians are the most heavily reliant people in the world on fish as their primary source of protein and primary source of income.<sup>2</sup> Combined with declining fish stocks, poor fisheries management regimes, and weak enforcement capacity, this reliance drives fishermen into contested areas of the South China Sea. Although there are high hopes for oil and gas deposits buried under South China Sea waters, most projects are currently close to shore and have only found modest reserves.<sup>3</sup> Recent efforts by coastal states to exploit hydrocarbons in disputed areas are one source of tension in the South China Sea, however others argue that the relative importance of oil reserves in this region will decline over time.<sup>4</sup>

The third facet relates to the degree of coastal state authority over claimed maritime space, in particular the balance between coastal state authority and the freedom of navigation for user states. South China Sea claimants China, Vietnam and Malaysia forbid the conduct of military activities in their coastal waters without their consent.<sup>5</sup> This view is most problematic in the EEZ as coastal states assert their right to enforce domestic laws banning such surveys against ships engaged in such activity. This interpretation differs significantly from UNCLOS under which coastal state jurisdiction over the EEZ is limited to economic and marine scientific research activities. Part V of UNCLOS explicitly grants coastal states jurisdiction over MSR, but not other kinds of research, such as hydrographic surveys. The military activity that lies at the root of recent tensions is surveys conducted by military vessels. China defines survey in the broadest possible terms to include both hydrographic and military research activities. Although UNCLOS does not contain specific regimes for these, the Convention does distinguish them from MSR and thus, in the American view, they are not subject to coastal state jurisdiction. These differing interpretations have led to a number of dangerous confrontations between the United States and China. For example, in March 2009 an American survey vessel, the USNS Impeccable, was confronted and harassed by Chinese vessels in the Chinese EEZ

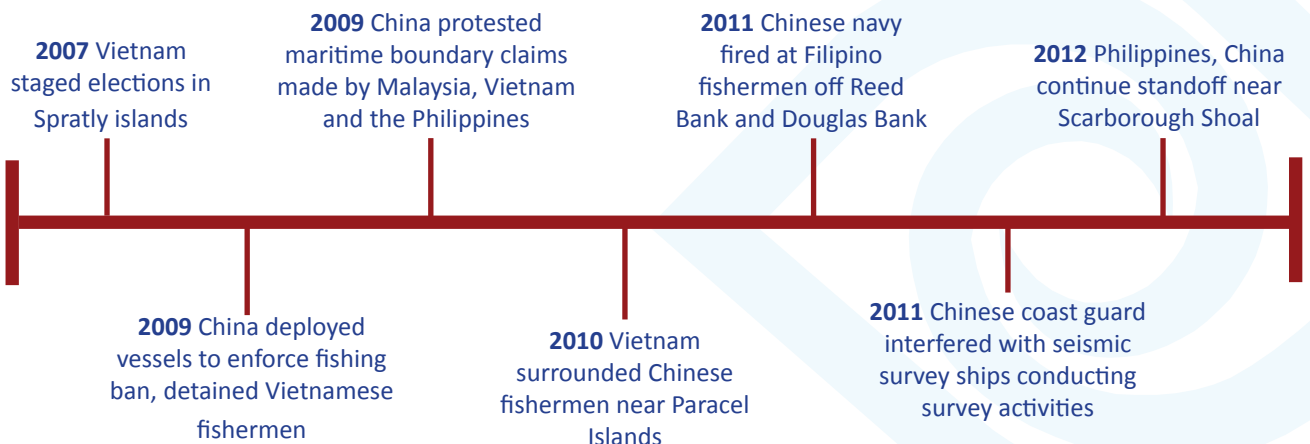
near Hainan Island. Although the Impeccable left the area to avoid conflict escalation, it returned the next day, accompanied by a destroyer, to finish its survey work. Washington perceives this kind of harassment as a deliberate attempt to restrict access to East Asian waters. Preserving the freedom of navigation is thus Washington’s primary interest the South China Sea. Although China’s stated position is that it supports the freedom of navigation, its practice suggests that it draws a distinction between commercial and military vessels in Chinese-claimed waters.<sup>6</sup> Problematically these claimed waters amount to the entire littoral area from the Yellow Sea to the waters off Indonesia, bounded on the east by the islands of Japan and the Philippines.

The driving force of tensions in the South China Sea dispute is the perception of claimant states that in order to maintain a claim to disputed territory or maritime space one must act, symbolically or practically, to enforce one’s jurisdiction in contested areas. For instance, in 2007 Vietnam staged elections in the Spratly islands in the South China Sea and China has unilaterally banned fishing in those waters since 1999. The proliferation of regional coast guard capabilities has bolstered coastal states’ capacity to practically enforce jurisdictional claims in contested waters. In 2009 China deployed a number of fisheries department vessels to enforce its fishing ban and detained a number of Vietnamese fishermen in the process. Vietnam reciprocated the gesture in April 2010 by surrounding Chinese fishermen with its own coast guard near the Paracel islands. Tensions increased after China protested Malaysian and Vietnamese continental shelf claims made to the United Nations and baselines legislation passed by the Philippines. In 2011, China again was perceived as the aggressor when a Chinese ship reportedly fired at Philippine fishermen, when Chinese coast guard vessels harassed Philippine survey vessels working off Reed Bank, and when Chinese officials reinforced an installation at Douglas Bank, which is occupied by China and claimed by the Philippines. In May and June of 2011 Chinese coast guard vessels interfered with seismic survey ships conducting survey activities in the South China Sea.<sup>7</sup> Currently, (May 2012), Philippine and Chinese vessels continue standoff near Scarborough Shoal – that began



Photo Credit: navy.mil

**Rising Tension in the South China Sea**



on April 10 – after Philippine officials observed Chinese fishermen poaching in nearby waters.<sup>8</sup>

However, not all tensions arise with direction from the policy centre in claimant states. For instance, the tensions surrounding the maritime boundary claims by the Philippines, Vietnam, and Malaysia in 2009 were a function of deadlines placed on states by the UN to make claims to extended continental shelves.<sup>9</sup> These were not deliberate acts to escalate tensions, nor were the Chinese protest notes they elicited. Furthermore, the International Crisis Group has illustrated how bureaucratic politics among Chinese enforcement authorities and local governments drives behaviour often ascribed to “assertiveness” directed by Beijing.<sup>10</sup> Nevertheless, there is also evidence of deliberate escalation by claimant states. For example, in 2008 Chinese officials quietly requested that BP and ExxonMobil cease work on gas and oil projects done in conjunction with the Vietnamese government. By contrast, in 2011 Chinese vessels physically interfered with resource surveys by foreign vessels contracted to PetroVietnam. The purpose, to prevent Vietnamese exploration in Chinese claimed waters, is the same but the tactics used are decidedly more assertive.

**The Scarborough Shoal** is a reef in the South China Sea claimed by China and the Philippines. China refers to the reef as **Huangyan Island**, while the Philippines calls it **Panatag shoal**.

There have been latent tensions between Beijing and Manila for years with both countries maintaining maritime claims over the reef.

On **April 10, 2012**, hostilities escalated when Manila sent a warship to prevent Chinese ships from fishing in the disputed shoal. China responded by sending its own surveillance ships to intervene. The incident triggered a number of retaliatory measures from both sides with Chinese authorities allegedly blocking fruit shipments and calling on travel agencies to suspend tours to the Philippines, while the Philippines has been accused of instigating street protests against China and seeking military support from the United States under the Philippines-US Mutual Defense Treaty. After weeks of tension, Beijing and Manila are now taking steps to resolve the dispute through mediation.

## Regional and American Perspectives

Regional forums have had limited mitigating effect on tensions; rather they have become theatres of political drama. At the 2010 ASEAN Regional Forum (ARF) meeting, Chinese Foreign Minister Yang Jiechi is reported to have had an outburst in response to American expressions of concern over regional tensions. The 2011 Shangri-la dialogue witnessed strident statements of concern by the Vietnamese and Malaysian Defence Ministers about regional maritime security concerns. Finally, at the 2011 East Asia Summit, all but two countries raised the issue of maritime security as a concern.<sup>11</sup> Nevertheless, at the 2011 ARF meeting China and ASEAN states agreed to negotiate a series of guidelines to implement a Code of Conduct for the South China Sea initially set up in 2002. What effect, if any, this will have on state behaviour remains to be seen. Similarly, China and Vietnam have taken steps to reduce tensions.

Although the United States has long sought to stay out of maritime disputes and does not support the sovereignty claims of any state, the recent flare-ups have resulted in two noticeable shifts in Washington’s Asia policy. First, beyond simply having an interest in the freedom of navigation and peaceful dispute resolution, at the 2010 ARF meeting, Hillary Clinton suggested that the United States could have a role in facilitating confidence building and that Washington supported “a collaborative diplomatic process” for resolving the disputes.<sup>12</sup> This was widely condemned by Beijing as interference in a regional matter. Secondly, in response to requests from the Philippines and Japan, US officials reiterated the American commitment to the defence of these two states under the terms of their respective Mutual Defence Treaties.<sup>13</sup> Washington is typically loath to make such statements for fear of emboldening its allies to confront China. For instance, as recently as 2010 Washington was ambiguous as to whether the Senkaku/Diaoyu islands were covered by Article 5 of the US-Japan security treaty.<sup>14</sup> At minimum, South China Sea tensions have created the diplomatic space for the Obama administration to re-assure regional states as it ‘rebalances’ its defence policy to the Asia Pacific.<sup>15</sup>

## Challenges for Canada

These developments raise a number of challenges for the Harper government, which is undergoing a rebalancing act of its own. The government has made a clear decision to engage East Asian states, particularly China, as it attempts to capitalize on the second half of the 'Asian Century'. The bulk of this engagement has been economic although defence ties with regional partners have deepened.<sup>16</sup> However, the Harper government has been silent on the recent flare-ups in maritime East Asia. There has been no statement of a Canadian position on any facet of the South China Sea disputes. As noted by Amitav Acharya, this silence was most striking at last year's ARF meeting as maritime boundary issues dominated the agenda.<sup>17</sup> This is in stark contrast to Canada's strident criticism of previous instances of deviant behaviour in the region: North Korea's acts of war against South Korea in 2010 and Burma's human rights record. Although a Canadian statement on sovereignty and maritime boundary disputes in East Asia may be seen as meddling, it is striking that Canada has remained silent on freedom of navigation issues given the importance of this issue to its primary ally, to its partners in the region and to global order. There are a number of possible explanations.

The first explanation is that the Harper government has simply decided to stay out of the region's security problems. Although Canada has long avoided direct involvement in regional disputes, this policy, is decidedly less activist than previous Canadian efforts. Canada's perceived impartiality on regional security issues allowed the Canadian International Development Agency (CIDA), in conjunction with Canadian scholars, to support the Indonesian-hosted South China Sea dialogues in the 1990s.<sup>18</sup> These were an important confidence-building measure at a time of escalating tension over disputed maritime space and the only meeting where all South China Sea claimants, including Taiwan, were present. Canada's role as an honest broker was evidenced by the fact that the Chinese were on record as preferring Canadian funding to US or Japanese funding for future South China Sea workshops.<sup>19</sup> This role was possible because Canada then, as now, was not seen as a party to the disputes and had substantial expertise to contribute.

A second explanation is that the Harper government is reluctant to alienate China. Ottawa has made an about-face on China policy, turning from a 'values'-based foreign policy to an economic one.<sup>20</sup> Thus, articulating a position on any facet of the South China Sea disputes risks isolating China, which could adversely affect Canada's efforts to deepen economic ties. This is unsurprising as most states are loath to adopt policy positions on questions that do not directly threaten their interests, or where others serve their interests. For instance, American and Japanese statements on navigational freedoms accomplish at least as much as a Canadian statement would, and come at no cost to Sino-Canadian relations.

Third, it could be argued that Canada may be reluctant to raise navigational issues on the grounds that this may draw attention to Canada's unique perspective on navigation through the Northwest Passage (NWP). Canada's friends in East Asia have raised this as a point of concern: that Canada may not be accommodating to states concerned about navigational issues in East Asia on the basis that it seeks to restrict transit through the NWP. However, the issue of military activities in EEZs and passage issues through the NWP arise from fundamentally different areas of international law, even if in the American view the effect is the same: limitations on access. The NWP dispute is a function of differing interpretations of the definition of a strait; whether the functional or geographic criterion is more persuasive. This is quite distinct from China, Vietnam and Malaysia's blatant misinterpretation of state jurisdiction over the EEZ. Nevertheless, misunderstandings on this issue are common, and the Harper government may be wary of attempts by East Asian states to link the two in an effort to undermine Canada's position on the NWP.



Northwest Passage

Photo Credit: CountingPine

## Policy options

Regional concerns over freedom of navigation issues will not abate. According to one Japanese defence official, Japan is seeking to build as much international support as possible for its interpretation. This logic is also heard in support of American ratification of UNCLOS.<sup>21</sup> It stands to reason that Canadian, Russian, Indian and EU statements in support of the American position – as signatories to ASEAN's Treaty of Amity and Cooperation – would be highly valued. Quiet diplomatic pressure has been applied to Canada by its friends in the region to address the growing disconnect between China, its neighbours and the United States on maritime security and navigational issues in East Asia. Therefore, one option is for Ottawa to issue a diplomatic statement supporting navigational freedoms through regional seas and, perhaps, acknowledging an international interest in peaceful resolution to the disputes in the South China Sea. Beyond issuing such a statement, Canada could leverage its legacy as an impartial dialogue partner, built during the 1990s, to once again facilitate dialogue between China and Southeast Asian states.

However, Ottawa appears reluctant to weigh in on security questions to which it does not see itself a part of, particularly security questions surrounding the rise of China. Furthermore, unlike the 1990s, Southeast Asia is now home to numerous dialogues on maritime issues, under the auspices of the ARF and other institutions. Canadian participation in a regional track two dialogue would likely be welcomed, but is not as vital as it was previously. Moreover, the assumption that Chinese behaviour will change as a product of international pressure overlooks longstanding trends in Chinese foreign policy. Although China has become socialized into select international norms, like all states it will deviate when it is in its interest to do so, particularly when perceived 'core interests' are threatened.<sup>22</sup> Therefore, additional diplomatic support from Canada on South China Sea issues may in fact do little to modify Chinese behaviour. Indeed a public Canadian statement that supports the US-Japanese position on freedom of navigation in the South China Sea could further reinforce the dominant nationalist narrative within China, in which Western states seek to impose their will on China and violate its 'core interests'. Therefore, continued Canadian ambiguity on South China Sea issues, however challenging, may be the best way forward.

## Glossary

**Freedom of navigation** – a norm as old as human transit of the sea, all vessels are allowed to pass unmolested through all maritime zones with the exception of the territorial sea, where the innocent passage regime applies

**Innocent passage** – vessels are allowed uninterrupted, continuous passage through a state's territorial sea. Military vessels must fly their flag and submarines must navigate on the surface.

**Surveys** – UNCLOS distinguishes between marine scientific and hydrographic research, but only outlines rules the former under Part XIII. The United States perceives research conducted by military vessels to be permissible in the EEZ on the grounds that it does not impinge on coastal state economic rights.

**EEZ** – a zone extending 200nm from a coastal state's baselines. States have exclusive jurisdiction over the exploitation of living and non-living resources in the water column and the seabed, as well as jurisdiction over marine scientific research.

**Island** – According to UNCLOS article 121 an island is a naturally formed area of land, surrounded by water that is above water at high tide and is entitled to a full complement of maritime zones including a 12nm territorial sea, an additional 12nm contiguous zone and a 200nm EEZ.

**Rocks** – rocks and features submerged at high tide and which cannot sustain human life are not entitled to an EEZ or continental shelf.

- <sup>1</sup> Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea," *Naval War College Review* 64, no. 4 (2011), pp. 42-67.
- <sup>2</sup> Robert Pomeroy et al, "Fish Wars: Conflict and Collaboration in Fisheries Management in Southeast Asia," *Marine Policy*, 31, no. 6 (2007), pp. 645-656.
- <sup>3</sup> Resource claims vary widely. Chinese estimates reach as high as 213 billion barrels of oil, while the US Geological survey estimated 28 billion barrels in the early 1990s. See Energy Information Administration, *Country Analysis Brief: South China Sea*, March 2008, [http://www.eia.gov/emeu/cabs/South\\_China\\_Sea/pdf.pdf](http://www.eia.gov/emeu/cabs/South_China_Sea/pdf.pdf).
- <sup>4</sup> See for instance "Taiwan Protests Philippines Oil and Gas Exploration Plan in Spratlys," *Agence France Press*, 13 May 2012. For a sober assessment of oil reserves in the South China Sea see Nick Owen, "Oil Disputes in the South China Sea in Context," in *Maritime Energy Resources in Asia: Energy and Geopolitics*, NBR Special Report no. 35, (December 2011), pp. 11-38.
- <sup>5</sup> Sam Bateman, "Solving the 'Wicked Problems' of Maritime Security: Are Regional Forums Up to the Task?" *Contemporary Southeast Asia* 33, no. 1 (2011), pp. 1-28.
- <sup>6</sup> James Manicom, "Beyond Boundary Disputes: Understanding the Nature of China's Challenge to Maritime East Asia," *Harvard Asia Quarterly*, vol. 12, no. 3&4, (Winter 2010/11), pp. 46-53.
- <sup>7</sup> For background see Carlyle Thayer, "Chinese Assertiveness in the South China Sea and Southeast Asian Responses," *Journal of Current Southeast Asian Affairs*, 30, no. 2 (2011), pp. 77-104.
- <sup>8</sup> Samantha Hoffman, "Sino-Philippines Tension and Trade Rising amid Scarborough Standoff," *China Brief*, 7, no. 9 (2012), pp. 13-16.
- <sup>9</sup> Clive Schofield and Ian Storey, *The South China Sea Dispute: Increasing Stakes and Rising Tensions* (Washington DC: Jamestown Foundation 2009).
- <sup>10</sup> International Crisis Group, "Stirring Up the South China Sea (I)," *Asia Report* no. 223, 23 April 2012.
- <sup>11</sup> Minxin Pei, "Is It China's Turn to Pivot?" *The Diplomat*, 28 November 2011, <http://the-diplomat.com/2011/11/28/is-it-china%e2%80%99s-turn-to-pivot/>.
- <sup>12</sup> Hilary Clinton, "Remarks at Press Availability," National Convention Centre, Hanoi, Vietnam, 23 July 2010, <http://www.state.gov/secretary/rm/2010/07/145095.htm>.
- <sup>13</sup> "Clinton: Senkakus Subject to Security Pact," *Japan Times*, 25 September 2010; "US Backs Philippines on South China Sea," Reuters, 24 June 2011;
- <sup>14</sup> "U.S. Fudges Senkaku Security Pact Status," *Kyodo News*, 17 August 2010.
- <sup>15</sup> US Department of Defense, *Sustaining US Global Leadership: Priorities for 21st Century Defense*, 3 January 2012, p. 2.
- <sup>16</sup> Brian Stewart, "Will Canada Follow the US into China's Seas?" *CBC News*, 17 May 2012, <http://www.cbc.ca/news/world/story/2012/05/17/fvp-stewart-china-navy.html>.
- <sup>17</sup> Amitav Acharya, "The South China Sea Remains a Dangerous Flashpoint," 3 August 2011, <http://www.asiapacific.ca/fr/editorials/canada-asia-viewpoints/editorials/south-china-sea-remains-dangerous-flashpoint>.
- <sup>18</sup> Hasijm Djalal, and Ian Townsend-Gault, "Managing Potential Conflicts in the South China Sea: Informal Diplomacy for Conflict Prevention," in C.A. Crocker, F.O. Hampson, and P. Aall, eds., *Herding Cats: Multiparty Mediation in a Complex World* (Washington, DC: United States Institute of Peace Press, 1999), pp. 107-133.
- <sup>19</sup> Scott Snyder, Brad Glosserman, and Ralph Cossa, "Confidence Building Measures in the South China Sea," *Issues & Insights* (2 August.-01), 2001.
- <sup>20</sup> Wenran Jiang, "Canada Resumes Summit Diplomacy with China," *China Brief*, 10, no. 1 (2010), pp. 8-10; Jeffrey Simpson, "Better Late than Never, the Harperites Get the Hang of China," *Globe and Mail*, 19 August 2009.
- <sup>21</sup> Thad W. Allen, Richard L. Armitage and John J. Hamre, "Odd Man Out at Sea: The United States and UNCLOS," *New York Times*, 25 April 2011.

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