



Maritime Territorial Disputes in East Asia: Issues for Congress

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Summary

Tensions surrounding numerous maritime territorial disputes in East Asia have become a pressing challenge for U.S. foreign policymakers. Beginning around 2005-2006, long-disputed waters in the South China Sea and, more recently, the East China Sea have become the site of increasingly aggressive behavior from nations trying to strengthen claims to disputed areas or to explore and develop offshore energy and fishery resources. Rising tensions in these waters raise a number of important issues for the 113th Congress.

The tensions have been fed by a series of aggressive actions by maritime authorities, including harassing vessels, destroying equipment, and blockading islets and shoals. The increasing frequency of such events raises the possibility of miscalculations that could lead to overt conflict at sea. It also poses complex questions about security and U.S. diplomacy in the region, and represents one of the most complicated challenges for the Obama Administration's strategy of "rebalancing" foreign policy priorities towards the Asia-Pacific.

The territorial disputes at the heart of these tensions are decades old, and incidents between the parties to the disputes have been ongoing for many years.

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

Although the United States has no territorial claim in these waters and does not take a position on the various specific territorial disputes, it does have treaty obligations with Japan and the Philippines that could be invoked if they become involved in an active conflict with another of the claimants. It is longstanding U.S. policy that the U.S.-Japan Security Treaty, which stipulates that the United States is bound to protect Japan, covers the Senkaku islets, raising the prospect that the United States could become militarily involved in a Sino-Japanese conflict over the islets. The applicability of the U.S.-Philippines Mutual Defense Treaty to Philippine-claimed islands and waters in the South China Sea is less clear. This ambiguity presents a dilemma, in that the United States seeks to avoid being drawn into a potential conflict, but also seeks to support its treaty ally and deter a use of force against it.

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

- protecting free and unimpeded commerce along some of the world's busiest maritime trade routes;
- maintaining peace and stability among maritime nations in the Asia-Pacific;
- encouraging rules-based regional norms that discourage coercion or the use of force;
- protecting the U.S. Navy's ability to operate in these areas;

- managing U.S. treaty alliances with nations involved in the disputes; and
- avoiding intimidation of U.S. companies which may seek to operate in the region.

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

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Overview

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

The territorial disputes at the heart of these tensions are decades old, and incidents between the parties to the disputes have been ongoing for many years. The most serious sets of disputes are in the East China Sea and South China Sea. The former include the competing claims by China, Japan, and Taiwan over a set of Japanese-controlled islets called the Senkakus by Japan, the Diaoyu Islands by China, and the Diaoyutai Islands by Taiwan. The South China Sea disputes involve competing claims by Brunei, Malaysia, the People's Republic of China (PRC), the Philippines, Taiwan, and Vietnam. Other disputes involve Japan and South Korea in the Sea of Japan, and China and South Korea in the Yellow Sea. Observers have noted a sharp uptick in maritime incidents and diplomatic tensions over recent years, posing one of the first major challenges for the U.S. "rebalancing" of foreign policy priorities towards the Asia-Pacific.¹

The South China Sea, the East China Sea, and the Sea of Japan are among the world's busiest waterways, and incidents at sea can create risks for vessels operating in both seas. Incidents arise for many reasons, including the desire of nations around a sea's periphery to demonstrate sovereignty and to protect their ability to exploit economic resources including hydrocarbons and fish. In addition, the perceived challenge to territory considered sovereign has kindled protests in many of the nations involved, making it difficult for the claimants to negotiate.

The United States is not a claimant in any of these waters, and it has consistently taken no position on specific territorial disputes in these waters. However, it does have treaty obligations with Japan and the Philippines that could be invoked if they become involved in an active conflict with another of the claimants. (*For more, see the "Treaty Obligations" section below.*) The United States also has strategic and economic interests in the region that are substantially affected by the growing tensions and increasingly frequent incidents at sea.

These maritime territorial disputes are a significant factor in U.S. relations with China, Japan, and Southeast Asian nations, particularly the Philippines and Vietnam. They have also played an important role in growing U.S. engagement with the Association of Southeast Asian Nations (ASEAN), Southeast Asia's primary multilateral body.² They have also touched on the management of treaty alliances, particularly those with Japan and the Philippines. Policymakers face the challenges of supporting allies and equipping them to monitor and police their maritime domains, while managing U.S. obligations and limiting both the chances of conflict, and the possibility the United States could be drawn into one if it occurs.

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

² ASEAN's ten members are Brunei Darussalam, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

The United States has voiced support for multilateral dialogues to help manage tensions, acknowledging that the territorial disputes are longstanding and will be very difficult to resolve in the near term. It has voiced particular support for discussions between China and ASEAN over a Code of Conduct for disputants in the region, which began in the early 1990s but have not yet resulted in a formal code. To many analysts, such a set of mutual understandings—ideally with some form of enforcement mechanism—is critical to preventing potential conflict. Although regular ASEAN-China meetings on a code were restarted in 2011, disagreement among parties about what should be included, and whether a Code should have binding dispute resolution mechanisms, has stymied progress.

The Obama Administration has taken several steps to raise the level of U.S. involvement in the disputes. In what many analysts regard as a touchstone moment in the U.S. approach, Secretary of State Hillary Clinton stated at the July 2010 meeting of the ASEAN Regional Forum (ARF) in Hanoi, Vietnam, that the United States has a “national interest” in “freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea.”³

Chinese officials reacted angrily to the statement, and to the fact that 11 other nations at the meeting also voiced similar concerns. At nearly every regional security dialogue since that meeting, U.S. and other regional officials have voiced concern about the issues, while China has sought to have them removed from the multilateral agenda, arguing that the maritime territorial disputes and incidents are bilateral issues to be resolved by the nations involved. In 2012, these conflicting approaches led to angry diplomatic exchanges at two high-level regional fora, ASEAN’s Foreign Ministers Meeting in July and the ASEAN Leaders Meeting in November.

In the East China Sea, the Obama Administration has raised the profile of the longstanding U.S. position that the U.S.-Japan Security Treaty, under which United States is bound to protect “the territories under the Administration of Japan,” covers the Senkaku islets because they are administered by Japan. Administration officials have coupled statements to this effect to statements that the U.S. takes no position on the question of sovereignty and that it opposes unilateral attempts to undermine Japanese administration.

For many observers, Chinese actions in the disputed waters will be a key factor for regional security, and a test of China’s development as a regional power and a responsible global actor. Many observers believe the rising tensions stem disproportionately from PRC actions, but PRC officials regularly argue that they are responding to the actions of other nations to change the status quo in the area. Such disagreements indicate that the process of shaping a regional code will be a difficult.⁴

This report will discuss the territorial claims in East Asia that underlie the growing tensions, U.S. interests that are at stake, factors that may be driving the growing tensions, and possible options for Congress to consider. A companion CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke,

³ See <http://www.state.gov/secretary/rm/2010/07/145095.htm>

⁴ Senator Jim Webb said at a September 2012 hearing on maritime territorial disputes in East Asia, “China’s actions this past year go a step farther in attempting to expand administrative and physical control over areas in the South China Sea previously out of its internationally recognized jurisdiction. . . . All of East Asia is watching the United States’ response to these recent Chinese actions in the South China Sea and East China Sea, particularly the countries of ASEAN, with whom we have shared expanding relations, and Japan and the Philippines, two countries with whom we share the solemn commitment of being treaty allies.” Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs, hearing, *Maritime Territorial Disputes and Sovereignty Issues in Asia*, September 20, 2012.

focuses on the security implications for Congress of disagreements over the definition of and the permissible activities in the disputed EEZs in the East China Sea and the South China Sea, with a focus on issues involving China.

Other CRS reports discuss these issues as well, including:

- CRS Report R42761, *Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations*, by Mark E. Manyin;
- CRS Report R41108, *U.S.-China Relations: Policy Issues*, by Susan V. Lawrence and David MacDonald;
- CRS Report RL32496, *U.S.-China Military Contacts: Issues for Congress*, by Shirley A. Kan;
- CRS Report RL33436, *Japan-U.S. Relations: Issues for Congress*, coordinated by Emma Chanlett-Avery;
- CRS Report R40208, *U.S.-Vietnam Relations in 2012: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin;
- CRS Report RL33233, *The Republic of the Philippines and U.S. Interests*, by Thomas Lum;
- CRS Report R41952, *U.S.-Taiwan Relationship: Overview of Policy Issues*, by Shirley A. Kan and Wayne M. Morrison.

Figure I. Map of East Asia



Source: University of Texas.

Issues for Congress

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

incidents in the East China Sea. Congress may choose to examine the rebalancing towards Asia and its implications for relations between China and other claimant nations. In addition, the Senate may reconsider whether to recommend accession to the United Nations Convention on the Law of the Sea (UNCLOS), which provides legal options for adjudicating territorial claims at sea and managing maritime disputes.

A key congressional concern has been the possibility that the United States could be drawn into a conflict in the region. Some analysts point to the risk of a conflict that could bring in the United States,⁵ arising from scenarios that include:

- Chinese action to block U.S. surveillance activity within China's 200-nautical-mile Exclusive Economic Zone (EEZ) (the area from 12 nautical miles from China's coast to 200 nautical miles from its coast), where China takes the position that foreign militaries must seek its approval to conduct any activity⁶;
- Armed conflict between China and another claimant, which might arise over economic activity within waters claimed by both countries. The latter would be of particular concern in the cases of Japan or the Philippines, both of whom have treaty alliances with the United States. The U.S. position is that the U.S.-Japan Security Treaty of 1960 applies to the Senkaku Islands, which are claimed by China, Japan, and Taiwan, and administered by Japan. The 1951 Mutual Defense Treaty with the Philippines is less definitive about the U.S.'s responsibilities in the event of an attack on Philippine-claimed territory in the South China Sea.

The East Asian maritime territorial disputes may play a role in consideration of various legislation during the 113th Congress, especially defense authorization and appropriation bills. Defense authorization legislation may consider the implications of the reallocation of military resources within the Asia-Pacific region on the political dynamics among the various claimants in the East and South China Seas. Similarly, Congress may examine defense appropriation legislation which may provide for the provision of military resources to Southeast Asian nations.

The Senate faces the issue of whether to give its advice and consent to U.S. adherence to the United Nations Convention on the Law of the Sea (UNCLOS), which went into force in 1994 and is widely considered the governing regime for oceans and the primary (though not the only) venue for making maritime territorial claims and adjudicating maritime territorial disputes. In the 112th Congress, the Senate Foreign Relations Committee held four hearings on UNCLOS, considering the opinions of the Obama Administration, military leadership, the private sector, and opponents of accession.⁷ The committee held no vote on the Convention in the 112th Congress.

Overall, Congress has the ability to lend its voice in support of processes to lower tensions and seek resolution of the disputes, and to urge that U.S. relations with China, Taiwan, Southeast Asian claimants, and multilateral bodies such as ASEAN be conducted in ways that serve U.S. interests in the region.

⁵ See Bonnie S. Glaser, *Armed Clash in the South China Sea, Contingency Planning Memorandum No. 14*. Council on Foreign Relations.

⁶ For more on the EEZ issue, see CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke.

⁷ Senate Foreign Relations Committee, hearings, *The Law of the Sea Convention (Treaty Doc. 103-39): U.S. National Security and Strategic Imperatives for Ratification*, May 23; *The Law of the Sea Convention (Treaty Doc. 103-39): Perspectives from the U.S. Military*, June 14; *The Law of the Sea Convention (Treaty Doc. 103-39)*, June 14; and *The Law of the Sea Convention (Treaty Doc. 103-39): Perspectives from Business and Industry*, June 28, 2012.

Background: Who Claims What?

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

UNCLOS presents one possible venue for making formal claims to maritime territory. Each of the claimant states is a party to the Convention (the United States is not), and many of the disputants have submitted formal maritime territorial claims under its provisions. However, while UNCLOS hosts dispute-resolution mechanisms including the International Tribunal of the Law of the Sea (ITLOS), all parties in a dispute must agree to submit to their jurisdiction, and no dispute in these waters has been taken to the tribunal or any other third-party settlement mechanism. (*See section below on The Role of UNCLOS.*)

UNCLOS allows its members to claim various types of adjoining maritime territory with varying associated rights and privileges (*See Table 1*):

Table 1. Boundaries of the Ocean

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

UNCLOS submissions are not the only manner in which countries make claims. Countries rely on evidence of historical administrative control, or *de facto* administrative control on the ground through occupation of islands and other landmasses. The PRC’s expansive claims in the South China Sea are not based on UNCLOS’s provisions, relying instead on historical documents it argues show it enjoyed centuries of administrative control of the areas. One of the greatest challenges in resolving disputes is the difficulty in agreeing on the means for resolution, be it geography (distance from the nearest landmass), or evidence of historical administrative control.

South China Sea Claims

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

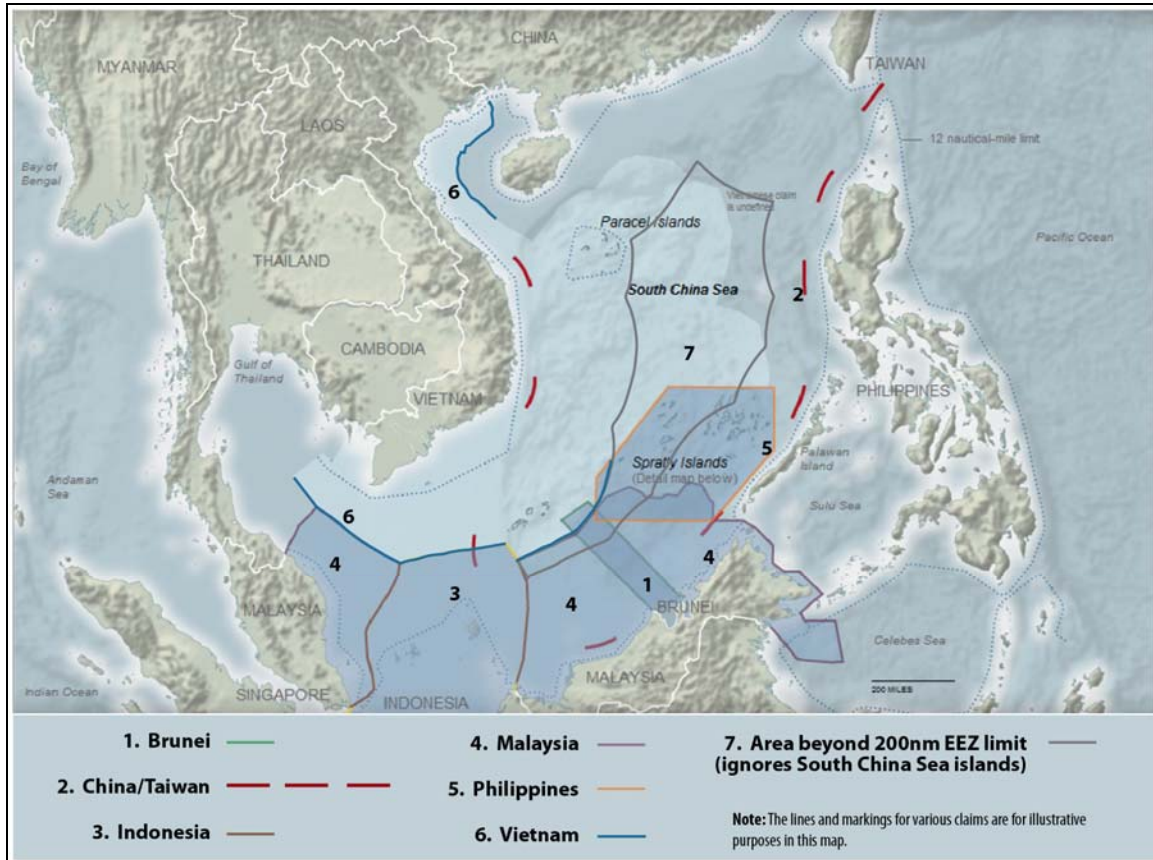
China, Taiwan, and Vietnam each claim the Paracel Island chain in the northern part of the sea. China controls them in practice, having forcibly taken control of the group in 1974 from South Vietnam. Further south, the Spratly Island chain is claimed in totality by China, Taiwan, and Vietnam, and partially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

Similar issues govern dynamics within the exclusive economic zones (EEZs) drawn from the mainland of several of the claimant nations. In 2012, the state energy companies of China and Vietnam issued overlapping tenders for offshore energy exploration in areas that lie within both Vietnam's EEZ and the nine-dash line that China uses to indicate the maximum scope of its claims (*See below for more information about China's claims*). China and the Philippines engaged in a prolonged standoff in 2012 over a dispute about which nation has the right to police Scarborough Shoal, which is within the Philippine EEZ and also inside China's nine-dash-line claim.

The territorial disputes have been made more complicated over several decades by frequently aggressive behavior by rival claimants. They have occupied and built structures on small islands or shoals far from their coasts, seeking to establish evidence of control and/or habitability, which would give them rights to claim territorial seas or EEZs around the landmasses. Claimants have harassed fishing, exploration, and naval vessels in disputed waters, publicly disputed resource exploration by other nations or companies working under contract, and instituted measures to assert legal or administrative control over disputed waters and landmasses outside their actual control.

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

Figure 2. Territorial Claims in the South China Sea



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

People’s Republic of China

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

The PRC makes the most expansive claims of any of the South China Sea claimants, marking its maps with a broad U-shaped, nine-dash line that includes most of the sea. It adopted the dashed line from maps with an eleven-dash line first drawn in 1947 under the pre-1949 Republic of China government, which are also the basis of Taiwan’s claim. China has not clarified whether it is claiming sovereignty over the entire sea and seabed enclosed by the nine dash line, or is making a more limited set of claims, such as to the land features within the line or to historical rights, such as fishing or navigation rights. This ambiguity has been an important driver of tensions, and has made negotiations with other South China Sea claimants difficult.

In a 2009 submission to the U.N. Commission on the Limits of the Continental Shelf, an UNCLOS body, China submitted a map with the nine-dash-line in a response to a claim by

Malaysia and Vietnam, asserting “indisputable sovereignty over the islands in the South China Sea and the adjacent waters.”⁸

PRC officials commonly refer to the South China Sea as China’s territory. In March 2012, for example, the commander of a PLA Navy submarine base discussed the South China Sea as China’s “maritime national territory” and called the nine-dash line China’s “intermittent national boundary in the South China Sea,” while stating that actions to assert China’s jurisdiction were needed to support the marking of the national boundary.⁹ In June 2012, the PRC announced it was upgrading the administrative level of Sansha, a city located on an island in the Paracels, to administer disputed areas of the South China Sea, and in July it announced it would set up a People’s Liberation Army (PLA) garrison there. These announcements prompted a State Department response that the moves “run counter to collaborative diplomatic efforts to resolve differences and risk further escalating tensions in the region.”¹⁰

The PRC has taken other unilateral actions to assert its claims. In 1999, the PRC first imposed a unilateral fishing ban in the northern part of the South China Sea. These bans have been re-imposed annually, and PRC maritime patrol ships have detained foreign fishermen, expelled fishing boats, or confiscated the catch of fishermen operating in this part of the sea, particularly from Vietnam.

Like each of the claimants except Brunei, the PRC occupies some land features in the South China Sea, including the entire Paracel Island chain, which the PLA Navy forcibly took over from South Vietnam in 1974, and a set of reefs in the Spratlys, including: Subi (Zhubi in Chinese), Gaven (Nanxun), Kennan (Dongmen), Johnson (Chigua), Fiery Cross (Yongshu), Cuarteron (Huayang), and Mischief (Meiji).¹¹ In 1995, the PRC used naval ships to take over Mischief Reef, which was previously inhabited by the Philippines. The PRC occupies the small rocks that make up Mischief Reef using large hexagonal platforms built above the rocks below.

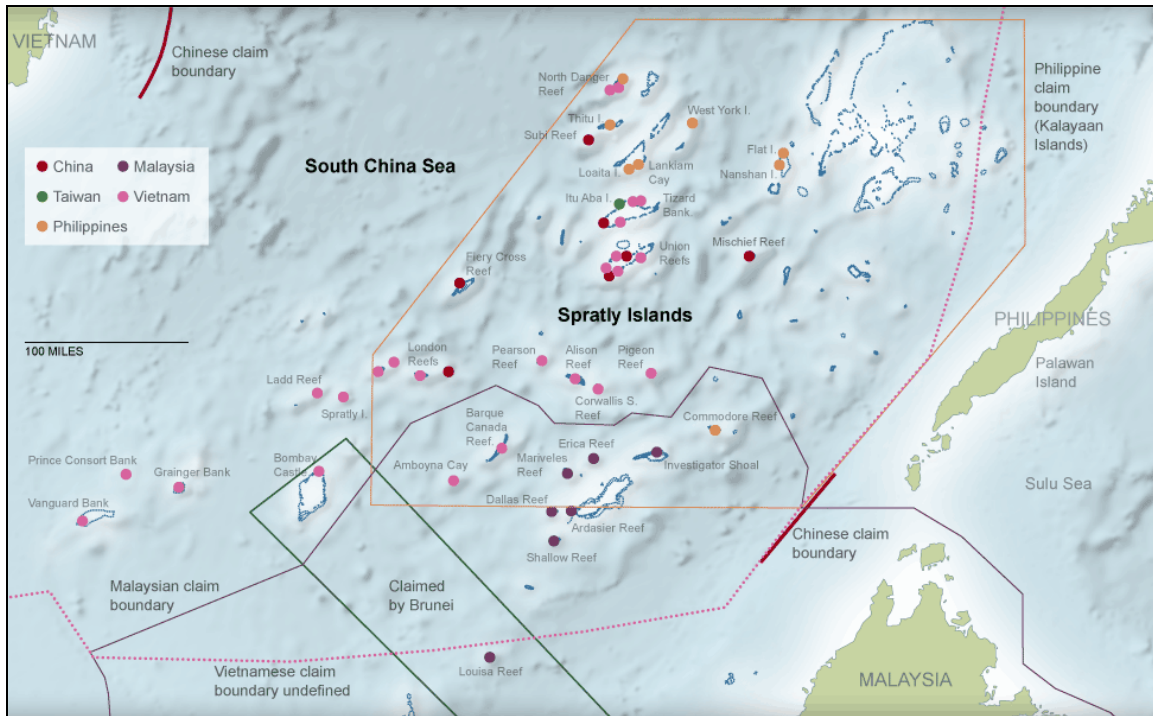
⁸ The PRC’s claim is here: http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf. It was made in response to the Vietnamese/Malaysian claim here: http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm

⁹ *Renmin Haijun [People’s Navy]*, March 13, 2012.

¹⁰ See <http://www.state.gov/secretary/rm/2010/07/145095.htm>

¹¹ The place names given here, as elsewhere in the report, are the names officially used by the United States Board of Geographic Names. The names given parenthetically are those officially used by the PRC.

Figure 3. Five Claimants Occupy Portions of the Spratly Islands



Source: State Department map as published by the *New York Times* on May 31, 2012.

Taiwan

Taiwan (as the Republic of China, or ROC) has asserted “historical claims” to the four groups of islands, reefs, and atolls in the South China Sea. In terms of occupation, Taiwan has controlled the Pratas Islands since 1946. In 1947, the ROC’s Ministry of Internal Affairs printed the “Location Map of the South China Sea Islands,” with an 11-dash line around the Pratas Islands, Paracel Islands, Macclesfield Bank, and Spratly Islands. In 1948, the Ministry of Internal Affairs published a second map indicating the ROC’s territory with an 11-dash line in the South China Sea. In 1956, Taiwan’s forces first landed on Itu Aba Island (Taiping Island), the largest island in the Spratlys; Taiwan has occupied it since. Since 2000, Taiwan has stationed Coast Guard instead of military personnel on the Pratas and Taiping Islands, though the military has supplied weapons to and trained the Coast Guard. Although Taiwan maintains its historical claims in the South China Sea, it has generally refrained from interdicting ships from other nations that enter the disputed waters or detaining fishing boats of other nations found fishing in these waters.

Southeast Asian Countries

With the exception of Indonesia, whose maritime claims in the South China Sea lie to the southwest of (though close to) China’s 9-dash line, each of the Southeast Asian claimants has claims that overlap with those made by the PRC and Taiwan. Southeast Asian claims also overlap with each other. Malaysia, the Philippines and Vietnam each have claims to part or all of the Spratly Island chain, in the southeastern part of the South China Sea. Each of those three claimants either has occupied or built structures on islets in the Spratlys. Vietnam controls the greatest number of islands, reefs, and banks in the Spratlys, followed by, in order, the Philippines, China, Malaysia, and Taiwan. Features under Philippines control include the Spratlys’ second and

third largest islands. The Philippines also has a maritime border dispute with Malaysia and a smaller one with Brunei.

The Philippines

The Philippines, a U.S. treaty ally since 1952, has emerged as a key player in the disputes. Philippine claims in the South China Sea include much of the Spratly chain, and overlap with claims made by China, Malaysia, Taiwan, and Vietnam. In the Spratlys, the Philippines cites historical exploration of the area by Filipinos in the 1940s and 1950s. In 1972, the Philippine legislature formally designated 53 islands and shoals in the Spratly chain as part of Palawan Province.

The Philippines has waged notably acrimonious disputes with China, which flared particularly in the mid-1990s when China seized Mischief Reef, and again over the past two years as the Philippines stepped up energy exploration in its claimed EEZ, and as Chinese interdiction of Philippine vessels intensified. On several occasions, the Philippines has commandeered Chinese and Vietnamese fishing boats found fishing in disputed waters, seizing the boats and their catches and arresting the fishing crews.

Manila has explored several means for resolving disputes. In 2012, the Philippines offered China the opportunity to take their dispute over Scarborough Shoal to a number of dispute settlement mechanisms, including the International Tribunal under the Law of the Sea (ITLOS) or other international bodies, a move to which China declined to respond. Then, on January 22, 2013, the Philippines formally requested that an UNCLOS Arbitral Tribunal rule on whether China's claims and its actions within the nine dash line comply with UNCLOS.¹² The government of President Benigno Aquino has also proposed a multilateral project called the Zone of Peace, Freedom Friendship and Cooperation (ZoPFFC), which would seek to identify portions of the South China Sea that are not disputed and establish joint research and economic development bodies that could build confidence among disputants. The proposal has not brought much progress, given the difficulty in delineating claims in the first place.

Vietnam

Vietnam makes a very broad claim that includes both the Spratly and Paracel Island chains. The historical basis of many of these claims dates to activity by Vietnamese vessels in the 17th-19th centuries. Vietnam also argues that a claim to the Paracel chain made in 1933 by French colonial administrators has passed to the present-day Vietnamese government.

In June 2012, Vietnam's National Assembly passed a Maritime Law that delineated its claims, based on baselines that had been drawn in 2003, laying out its formal claims to the Paracel and Spratly chains. In 2009, Vietnam and Malaysia submitted a joint claim to UNCLOS's Commission on the Limits of the Continental Shelf, which manages claims to areas beyond their 200 nautical mile EEZ.¹³ It was this claim that prompted the PRC response that included a

¹² The International Tribunal under the Law of the Sea (ITLOS) requires that all parties in a dispute agree that the matter will be brought before the tribunal. UNCLOS also created an arbitration process in which a five-member Arbitral Tribunal is formed, with input from all disputing parties, to arbitrate a dispute. The Philippine Department of Foreign Affairs statement on its action is here: <http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/7300-statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-the-unclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps>

¹³ UNCLOS's Part VI, Article 76, defines the claimable continental shelf of a coastal state as comprising "... the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of (continued...)

submission of the map including its 9-dash line. Vietnam's navy regularly patrols its claimed EEZ and has periodically detained fishing vessels of other nations found fishing in disputed waters.

Hanoi walks a difficult line in balancing its increasingly active public diplomacy against China's broad claims with its need to maintain reasonably positive ties with Beijing. In recent years, Vietnam has been very active in soliciting international support for its claims, including from the United States. During its 2010 chairmanship of ASEAN, Vietnam was effective in bringing maritime security onto ASEAN's agenda and encouraging the United States and other ASEAN partners to be more vocal on this issue.¹⁴

However, at the same time Vietnam has urged others to become more active in promoting maritime security and freedom of navigation in the South China Sea, Vietnam has also maintained regular government-to-government and Party-to-Party communications with Beijing. Many analysts believe Hanoi's diplomatic mechanisms to manage disputes with China are more developed than those of other claimants, particularly the Philippines.¹⁵ Analysts note that Hanoi is the only Southeast Asian nation to have successfully delineated any of its maritime boundaries with China, when the two marked out their territory in the Gulf of Tonkin, which lies between northern Vietnam and the southernmost parts of the PRC. Despite the current heightened level of tensions, Hanoi and Beijing currently are engaged in discussions about extending the boundary delineation further south, into the mouth of the Gulf of Tonkin.

Malaysia

Malaysia's claims in the South China Sea overlap China's, though their disputes have not been as hotly contested as Vietnam's or the Philippines's, most likely because Malaysia is located farther from the PRC and presents less economic competition. Malaysia's fishing industry, for instance, is much smaller than that of Vietnam or the Philippines, and the PRC has generally not responded to Malaysian energy offshore energy exploration in the South China Sea with the same vociferousness it has with Vietnam and the Philippines. However, Malaysia has detained Vietnamese fishing vessels found operating in its claimed waters, causing some tensions between the two nations.

Malaysia does not claim the entire Spratly chain, but its claims to parts of the region overlap with claims made by China, Taiwan, the Philippines, Vietnam and Brunei. Malaysia has sought to foster more cooperation among Southeast Asian claimants. For example, its competing claims with Vietnam did not preclude it from joining Vietnam in submitting a joint extended continental shelf claim to the UN Commission on the Limits of the Continental Shelf. Malaysia's territorial dispute with Brunei was resolved when the two countries signed a boundary agreement in April 2009, which was followed in 2010 by an agreement between Malaysia's state energy company, Petronas, and the Brunei government to develop jointly two blocks offshore Borneo Island.

(...continued)

its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

¹⁴ For a discussion of Vietnam's position on the issue, see CRS Report R40208, *U.S.-Vietnam Relations in 2012: Current Issues and Implications for U.S. Policy*, by Mark E. Manyin

¹⁵ See, for instance, *Stirring Up the South China Sea (II): Regional Responses*, International Crisis Group, July 24, 2012.

Brunei

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

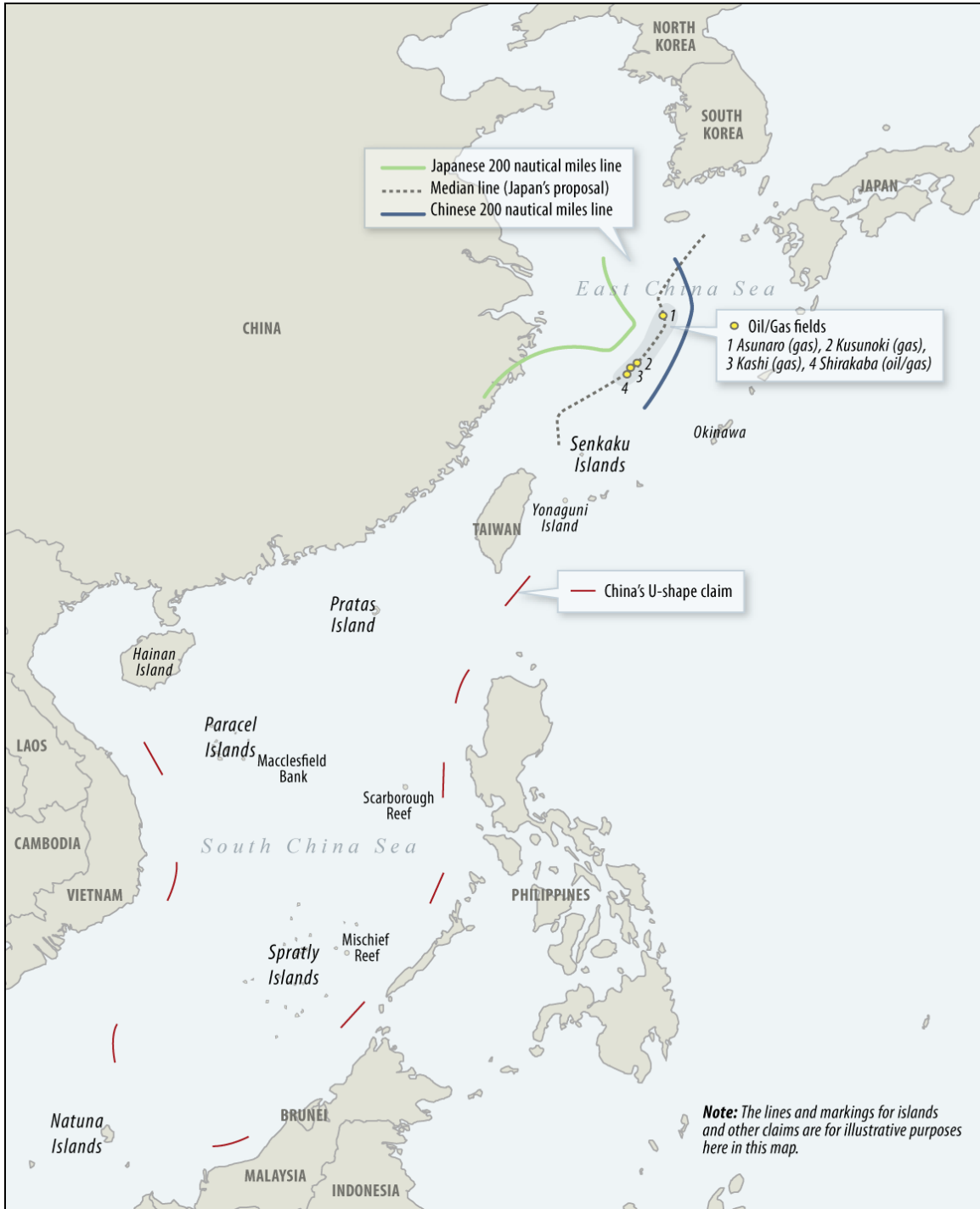
Brunei will serve as chair of ASEAN in 2013 and may play an important role in 2013 in agenda-setting for ASEAN meetings and broader fora such as the ASEAN Regional Forum (ARF) and East Asia Summit. The chair of ASEAN plays a key role in setting the agenda of key meetings, and managing negotiations over differing drafts of key documents, such as meeting communiqués and even drafts of documents such as a proposed Code of Conduct.

East China Sea Claims

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

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

Figure 4. China and Japan Territorial Claims



Source: Congressional Research Service.

Competing Territorial Claims

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

- Did Japan incorporate the islets as part of or separately from the Sino-Japanese War?
- Should the islets be considered to be part of territories that China ceded to Japan in the 1895 Treaty of Shimonoseki that ended the Sino-Japanese War?

China and Taiwan assert that the Ming Dynasty (1368-1644) considered the islets part of its maritime territory and included them on maps and documents of areas covered by Ming Dynasty coastal defenses. China claims that the Qing Dynasty (1644-1911) went further and placed the islands under the jurisdiction of Taiwan, which was a part of the Qing Dynasty.¹⁶ The PRC contends that upon Japan's surrender in World War II in 1945, Japan gave up Taiwan and should have also given up the Diaoyu Islands. Geographically, China also argues that the Okinawa Trough in the ocean floor separates the Senkakus/Diaoyu/Diaoyutai and China's continental shelf from Japan's Ryuku Islands.

Japan, which maintains that there is no territorial dispute over the Senkakus, laid claim to the islands in January 1895, when the Japanese Emperor approved an Imperial Ordinance annexing them to Japan.¹⁷ Before then, Japan argues, the islands were uninhabited (Japan uses the term "terra nullis") and "showed no trace of having been under the control of China."¹⁸ In April 1895, Japan and the Qing Dynasty government of China signed the Treaty of Shimonoseki ending the Sino-Japanese war that had begun the previous year. Under the Treaty, China ceded Taiwan (Formosa) to Japan "together with all the islands appertaining or belonging to the said island of Formosa." The Treaty did not specifically mention the Senkakus (Diaoyu/Diaoyutai), and the islands were not discussed during the negotiating sessions.

Japan has claimed from this that its incorporation of the Senkakus (Diaoyu/Diaoyutai) was an act apart from the Sino-Japanese War. In contrast, China and Taiwan argue that Japan used its victory in the war to annex the islands. They also argue that the intent of the Allied declarations at Cairo and Potsdam during World War II was to restore to China territories taken from it by Japan through military aggression.¹⁹ In October 1945, when Japan relinquished authority over Taiwan, the disposition of the Senkakus/Diaoyu/Diaoyutai was not explicitly resolved.

The ROC maintains that it "regained" sovereignty over Formosa (Taiwan) upon Japan's surrender at the end of World War II in 1945 and also should have regained what the ROC calls the Diaoyutai Islands. Taiwan's Foreign Ministry has asserted that the Diaoyutai Islands first appeared in China's historical records as early as the Ming Dynasty (1368-1644). President Ma Ying-jeou, in an August 2012 speech, argued that various international agreements after World War II "confirmed that Taiwan has been returned to the Republic of China." He added that "the

¹⁶ State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

¹⁷ Upton, op. cit., p. 768.

¹⁸ Ministry of Foreign Affairs of Japan, "Recent Developments in Japan-China Relations. Basic Facts on the Senkaku Islands and the Recent Incident," October 2010, <http://www.mofa.go.jp/region/asia-paci/china/pdfs/facts1010.pdf>.

¹⁹ Okinawa Reversion Treaty Hearings, p. 149, 152; "The Diaoyutai Islands: An Inherent Part of the Territory of the Republic of China (Taiwan)." State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

Diaoyutai Islands, an island group part of Taiwan prior to World War II, naturally should have been returned to the Republic of China along with Taiwan after the war.²⁰ (Taiwan was a colony of Japan from 1895 to 1945. The ROC was set up in 1911.)

From the early 1950s until 1972, the United States administered the islets, under the terms of the 1951 Treaty of Peace with Japan.²¹ Administration was then turned over to Japan in 1972, after the signing of the U.S.-Japan Okinawan Reversion Treaty, under which the United States returned Okinawa and other nearby islands to Japan. China has described the U.S.-Japan understandings related to the islands as “backroom deals” that are “illegal and invalid.”²²

In the 1970s, the question of the Senkakus/Diaoyu/Diaoyutai’s sovereignty was discussed, but not resolved, in the process of the PRC and Japan normalizing their relations in 1972 and concluding a peace treaty in 1978.²³ China claims that the two countries reached an understanding that the issue should be left for “future generations” to resolve.²⁴ Since the 1990s, both the PRC and Japan have accused each other of breaching this understanding of setting aside differences.

The Maritime Sovereignty Dispute

The PRC claims maritime rights from its claim to a continental shelf that is a natural extension of China’s mainland, beyond 200 nautical miles to the middle of the Okinawa Trough (and east of a median line). The PRC contends that its oil and gas projects are in its continental shelf (which is not in dispute) and that joint development may be negotiated for some areas. In 2009, the PRC submitted to the U.N. Secretary General its “Preliminary Information Indicative of the Outer

²⁰ ROC (Taiwan), “East China Sea Peace Initiative,” Washington Post, October 10, 2012.

²¹ Treaty of Peace with Japan, signed Sept. 8, 1951, 3 U.S.T. 3169. The Treaty did not mention the Senkakus (Diaoyu/Diaoyutai), but it referred to other islands that had reverted to Chinese control or which China claimed. These included Taiwan and the Pescadores (off the western coast of Taiwan), as well as the Spratlys and the Paracels (both in the South China Sea). Article 3 gave the United States sole powers of administration of “Nansei Shoto south of 29 north latitude (including the Ryukyu and the Daito Islands). . . .” In 1953, the U.S. Civil Administration of the Ryukyus issued U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27), which defined the boundaries of “Nansei Shoto [the southwestern islands] south of 29 degrees north latitude” to include the Senkakus. At the time of the signing of the Okinawa Reversion Treaty, several State Department officials asserted that following the signing of the Japan Peace Treaty, “Nansei Shoto south of 29 degrees north latitude” was “understood by the United States and Japan to include the Senkaku Islands.” Moreover, during the period of U.S. administration, the U.S. Navy established firing ranges on the islets and paid an annual rent to the son of the first Japanese settler of the islands.

²² State Council Information Office, The People’s Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, <http://english.people.com.cn/90785/7960320.html>.

²³ From 1949 until 1972, Japan recognized Taiwan (known as the Republic of China) as the legitimate government of China.

²⁴ Around the time of agreement on the PRC-Japan Treaty of Peace and Friendship of 1978, PRC paramount leader Deng Xiaoping declared the policy of “setting aside sovereignty disputes and seeking joint development” to handle the disagreement with Japan over the Senkaku Islands. Before signing the treaty in August 1978, Deng said that the “Diaoyu Island issue” can be set aside from the treaty and can be discussed later in a calm manner in a way that both sides can accept, perhaps by the next generation. In September 1978, Deng said that Japan has its position, and China has its position. He added that since both sides could not find a way to resolve the issue, they reached an “understanding” to set aside the issue. In October 1984, Deng said China and Japan had a dispute over the Diaoyu Island issue with different names for the islands. He added that his stance on “setting aside sovereignty disputes with joint development” (whether for the Senkaku or Spratly islands) was an alternative to China’s use of force. Later, the PRC asserted that the approach of “setting aside the dispute” still meant “sovereignty belongs to China.” Deng Xiaoping, Remarks with Japan’s Foreign Minister, August 10, 1978; Remarks with Bangladesh’s President, September 9, 1978; Remarks with Japan’s Prime Minister, October 25, 1978; Remarks to Central Advisory Commission, October 22, 1984, *Deng Xiaoping Wenxuan* [Selected Works of Deng Xiaoping]; PRC Foreign Ministry, “Set Aside Dispute and Pursue Joint Development,” November 17, 2000.

Limits of the Continental Shelf beyond 200 Nautical Miles,” a claim extending to the Okinawa Trough. Then, on December 14, 2012, it submitted its formal claim to the extended shelf.²⁵ Japan has proposed a median line that would divide the rights to the overlapping EEZ. Beijing has rejected Japan’s proposal.

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

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

Under the agreement, the two countries reached an “understanding” for cooperation in the Chunxiao gas and oil fields (called Shirakaba in Japanese), the southernmost of the two fields. Japanese companies are to form a joint venture with China’s state-owned companies, with profits split in proportion to their investment. The Japanese firms will operate under Chinese laws and procedures. The Chunxiao field is on the Chinese side of Japan’s median line and is under the charge of CNOOC. Japan has protested CNOOC’s extraction from the Chunxiao field, for fear that it will siphon off gas from its side of the “boundary.” A development to watch in the future is whether the Japanese government allows a Japanese company such as Teikoku to begin drilling on Japan’s self-declared side of the field. *(For more on joint resource development, see Resources as a Driver of Competition section below.)*

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

Recent Tensions

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

²⁵ Available at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_chn_63_2012.htm.

Two years later, tensions heated up again after Japan announced on September 10, 2012, that the central government would purchase certain islands in the Senkakus from private owners.²⁶ The announcement prompted sharp reactions from the PRC and from Taiwan. The PRC deployed China Maritime Surveillance (CMS) and Fisheries Law Enforcement Command (FLEC) ships to patrol near the islands, including into the territorial waters on some days, and stepped up what it called routine and normal patrols at sea to assert jurisdiction in “China’s territorial waters.”

The incidents set off a series of escalating actions between China and Japan. A Chinese Vice Minister of Commerce said on September 13 that it was understandable if China’s consumers boycott Japan’s products sold in China. Violent anti-Japanese protests in China spread to a reported 125 cities, and caused some Japanese companies to curtail or suspend their operations. The PRC declined to send officials to the annual meetings of the International Monetary Fund and World Bank in Tokyo in October. On December 13, Japan’s Defense Ministry said a CMS maritime patrol plane entered the airspace over the Senkaku Islands that Japan considers its own, calling it the first such incursion since 1958. Japan scrambled eight F-15 fighters in response. The dangerous escalation to actions in the air continued when the PLA, on January 10, 2013, then scrambled two J-10 fighters in response to Japan’s dispatch of F-15 fighters.²⁷

The confrontations involved Taiwan as well, raising concerns about escalation of tensions. On September 25, the same day the PRC and Japan held diplomatic exchanges to try to cool tensions (as the United States urged), Taiwan deployed 12 Coast Guard ships to escort about 60 fishing boats into the islands’ territorial waters. Reportedly, Japan’s Coast Guard ships fired water cannons at Taiwan’s fishing boats in the territorial waters, but Taiwan’s Coast Guard ships fired water cannons toward Japan’s official ships. Taiwan also sent military assets into the area.

Other Disputed Areas

Sea of Japan

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

²⁶ In April 2012, Tokyo Governor Shintaro Ishihara announced a plan to buy three of the Senkaku islands from a private Japanese owner. In July, Japan’s central government indicated it would nationalize the islands. The central government said the move to buy the islands, which was discussed through the summer, aimed to prevent a group of Japanese nationalists from acquiring the islands. The group’s nominal leader had called for showing Japan’s control over the islands by building installations such as a telecommunications base, a port, and a meteorological station.

²⁷ *Kyodo*, December 13, 2012; *Xinhua*, January 11, 2013.

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

The dispute over the islets is significantly influenced by domestic politics in both nations, where defense of territorial claims is viewed as a matter of national pride. South Korea has administered the islets since it seized the islands in the early 1950s, one of the first unilateral actions of the new country following its independence from nearly a half-century of rule by Imperial Japan. Dokdo thus has become a symbol of South Korean independence. South Koreans have developed what some observers have described as a quasi-religious devotion to the islets, and most regard the Japanese government's expressions of sovereignty as a sign that Japan has not fully turned its back on its imperialist past.

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

Yellow Sea

In a more minor disagreement, China and South Korea also claim EEZs covering overlapping portions of the Yellow Sea (called the "West Sea" in South Korea) and the northwestern portion of the East China Sea. These disputes have surfaced from time to time because of a submerged rock—called Ieodo in Korea and Suyan Rock in China—that is administered by South Korea. Each side claims that the feature is part of its EEZ. In the late 1980s, South Korea began to construct a research observation station, which has been expanded to include a helipad and other features. China has diplomatically protested these activities and occasionally has flown surveillance missions over the rock and its facilities.²⁸ Although the Sino-Korean disagreement over Ieodo has not flared into a significant bilateral irritant, some South Koreans cited it as a reason they closely followed the September 2010 Sino-Japanese incident in the Senkakus.²⁹

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

Drivers of Competition

East Asia's territorial disputes are decades old, and incidents at sea have taken place for many years. To some, the fact that the disputants have not resorted to large-scale combat since China's

²⁸ Mark J. Valencia, "The East China Sea Dispute: Context, Claims, Issues, and Possible Solutions," *Asian Perspective*, Vol. 31, No. 1, 2007, p. 134; "China demanded S. Korea Stop Activities Near Ieodo," *Korea Herald*, July 27, 2011.

²⁹ Chang Se-jeong, "[Viewpoint] China, Japan Dispute Troubling," *JoongAng Ilbo*, September 27, 2010.

1974 seizure of the Paracel Islands from the faltering Republic of Vietnam (South Vietnam) is a testimony to the region's stability. However, the notable uptick in tensions since 2005-2006 has raised deep concerns in the region and among those who rely on trade routes through the South China Sea and East China Sea to support economic growth and trade.

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

- **Competition for energy and fishery resources.** Such competition has long been a factor in the South China Sea, but it has been heightened by higher energy prices and more sophisticated offshore exploration and extraction technology that makes offshore development a more realistic prospect. Overfishing in coastal waters has also pushed more fishing vessels to operate in disputed territory. Growing energy demand in the region's expanding economies compels maritime nations, particularly China, the Philippines, and Vietnam to seek the greatest possible rights to exploit resources.
- **China's emergence as a regional power, and deep uncertainty about its strategic intentions.** Questions about China include whether its foreign policy has shifted to a fundamentally more assertive stance, whether it is actively seeking a strategic maritime buffer zone in the region, and whether it sees Southeast Asian nations as strategic and economic partners or rivals. Over the past two years, there have also been questions about how China will respond to the United States' strategic rebalancing to the region, and whether this will lead to greater or lesser tensions.
- **Rising importance of national image in the domestic politics of several of the disputing countries.** Many analysts argue the growing political importance of national pride in the politics of China, Japan, the Philippines, South Korea and Vietnam has made it difficult for their governments to compromise or negotiate, particularly given the increasing frequency of aggressive or assertive actions by other claimants.
- **Myriad other factors, including UNCLOS's emergence as a formal diplomatic mechanism that allows claimants to make direct assertions of claims.** Some analysts, including many Chinese observers, argue that moves by claimants to stake formal claims almost inevitably bring a counter-response by other claimants. Combined with the other drivers of competition, they argue that this dynamic raises tensions and makes compromise more difficult.

Resources as a Driver of Competition

Many analysts feel that resource competition has become one of the key drivers of territorial disputes and tension, particularly in the South China Sea and East China Sea. The South China Sea, for example, is a major source of fish resources for each of the nations that border it, and the largest source of fish for China, the Philippines and Vietnam. Many energy industry observers believe the sea also has substantial reserves of oil and natural gas. New technologies are making complicated offshore oil and gas development more feasible, and high energy prices are contributing to the desire to control these resources.³⁰

³⁰ For a discussion of evolving energy dynamics, see Michael T. Klare, *Island Hopping: Why the South China Seas are So Tense*. *Foreign Affairs*, September 4, 2012.

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

Energy Resources

Because much of the South China Sea has never been fully explored, accurate assessments of exploitable oil and gas reserves do not exist. One 2008 report by the Department of Energy's Energy Information Administration (EIA) cited some of the most optimistic estimates—Chinese assessments that it could have reserves totaling 213 billion barrels of oil and 900 trillion cubic feet of natural gas.³¹ Many analysts argue, however, that because much of the northern part of the South China Sea is deep, energy resources may not be exploitable on this scale. In May 2012, the state-owned China National Overseas Oil Corp. (CNOOC) unveiled a deep-water drilling rig that could extend its ability to exploit resources into waters deeper than its current capabilities allow.³² Still, industry analysts believe that international energy companies have considerably more technical ability to develop resources in difficult offshore settings—and thus, much of the sea will likely go undeveloped as long as the disputes continue.

In recent years, seismic studies have pointed to substantial offshore reserves of oil and gas in areas relatively close to the shores of each claimant. Competition over these resources has led directly to disagreements and incidents in shallower waters, particularly near the Vietnamese and Philippine coasts. For Vietnam and the Philippines, the South China Sea presents the largest offshore source of oil and natural gas, and an important part of national energy plans to fuel growth in their developing economies. The constraints posed by competition over claims are a deep frustration to governments and economic planners in each country.

Under UNCLOS, a coastal state has in its EEZ “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds...”³³

Offshore energy development is based on assertion of sovereignty over parts of the sea, and because such assertions are still widely overlapping, there are increasing chances for conflict. For example, China warned international oil companies in 2006 they should not work in regions with unsettled territorial disputes where Vietnam was seeking development partners. In 2012, a Chinese state oil company, the Chinese National Overseas Oil Corp. (CNOOC) offered tenders for offshore oil and gas exploration within Vietnam's EEZ, overlapping with areas Vietnam had already tendered and, in some cases, in which companies were already exploring and drilling. This action prompted angry reactions in Vietnam, which deemed the moves illegal.³⁴

Such disputes have created uncertainties that constrain offshore resource exploration and development, which requires long-term periods of stability. There are, however, some examples

³¹ http://www.eia.gov/cabs/South_China_Sea/pdf.pdf.

³² China Daily, *Testing CNOOC's Deepwater Credentials*, May 21, 2012.

³³ See http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm.

³⁴ M. Taylor Fravel, “The South China Sea Oil Card,” *The Diplomat*, June 27, 2012.

of exploration and development that have taken place in disputed areas. China, the Philippines, and Vietnam have each undertaken oil-and-gas exploration in disputed parts of the South China Sea, and the Philippines and Vietnam have offered exploration and development contracts to international oil-and-gas firms, including American companies.

As Vietnam focused on its offshore oil-and-gas development in the 1980s and 1990s, it concentrated primarily off its southern coast. Its largest offshore natural development is jointly operated by state-owned PetroVietnam and BP. Though it lies within China's Nine Dash Line claim, the Nam Con Son gas fields have operated uninterrupted since the early 1990s. Since 2005, Vietnam has been more active in soliciting bids for the exploration and development of offshore oil and gas blocks off its central coast, in areas more hotly disputed with China. Vietnam's 11th Five Year Plan, which covered the years 2006-2011, placed a strong emphasis on offshore energy development. This has resulted in increasing conflict, including a direct Chinese warning to international oil companies not to partner with Vietnam's state oil company, PetroVietnam, in areas disputed with China, as well as at least two incidents in which Chinese vessels cut the sonar cables trailed by seismic exploration vessels working for PetroVietnam.

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

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

Fishery Resources

Fishing presents another potential source of conflict. The South China Sea is the largest source of fish, an important foodstock, in each of the claimant countries. The fishing industries of each of the disputants include large numbers of vessels which travel increasingly farther from their home coasts due to overfishing in coastal waters, bringing them into disputed waters.³⁵ This has led to frequent incidents of harassment of vessels, confiscation of catches and equipment, and sometimes imprisonment of fishermen. The disputed waters are policed by coast guards and local maritime agencies, and according to one analysis, "the claims of sovereignty also serve to justify

³⁵ Stephanie Kleine-Ahlbrandt, *Fish Story*, Foreign Policy, June 25, 2012.

greater civilian patrols in the sea—opening up still more possibilities of run-ins with fishing vessels.”³⁶

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

China’s Rise and Evolving Regional Dynamics

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

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

The PRC’s expansion of fishing boats and official paramilitary or law-enforcement patrol ships partly explain the rise in confrontations over the past few years. Increasingly, the PRC has asserted control and claims using civilian maritime patrol ships from multiple official agencies, rather than naval vessels. Some PRC and foreign commentators have blamed confrontations involving China’s ships on inadequate coordination among central and local authorities, and competing bureaucratic actors, compounded by a weak Ministry of Foreign Affairs and active national oil companies.³⁷ These multiple maritime forces carry out functions like the U.S. Coast Guard but are dispersed under different government agencies in the PRC’s “stove-piped” system. The principal official maritime forces include:

³⁶ Ibid.

³⁷ *Jiefangjun Bao*, March 9, 2012; International Crisis Group, “Stirring Up the South China Sea (I),” April 2012; George Vance, “The Role of China’s Civil Maritime Forces in the South China Sea,” paper presented at CNA, August 2012.

- China Maritime Surveillance (CMS), under the Ministry of Land and Resources;
- Fisheries Law Enforcement Command (FLEC), under the Ministry of Agriculture;
- China Coast Guard (CCG), a paramilitary People's Armed Police (PAP) force under the Ministry of Public Security;
- Maritime Safety Administration (MSA) and China Rescue and Salvage (CRS), under the Ministry of Transportation;
- Anti-Smuggling Maritime Police, under the General Administration of Customs;
- The assets include ships, aircraft, and unmanned aerial vehicles (UAVs).

The assets of these maritime forces include ships, aircraft, and unmanned aerial vehicles (UAVs). Some of the ships in the official maritime or paramilitary fleets are former PLA Navy (PLAN) ships, armed with guns, and equipped with helicopters. These official ships may operate at least partly under the PLA's direction. On occasion, the civilian ships have been used to counter other naval ships. Moreover, the missions, assets and bases of these non-PLA "white hull" ships have been expanding.

Although some have attributed rising tension to inadequate coordination among these myriad Chinese actors, other analysts report inter-agency civilian coordination and cooperation between the PLA and the civilian maritime forces.³⁸ According to these analysts, the official ships and aircraft augment the PLA's naval ships and aircraft to assert China's claims and control.

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

According to the Defense Department's 2012 report to Congress, China's announced defense budget grew at an average rate of 11.8% in inflation-adjusted terms annually from 2000 to 2011.³⁹ In 2004, PRC leader Hu Jintao announced a set of "New Historic Missions" for the PLA, which included protecting China's expanding national interests farther from China. This has been accompanied by an expansion of naval resources. Since 1995, the PLA Navy has been acquiring seven new classes of submarines. In 2011, on top of older boats, the PLA Navy deployed 56 submarines, including 53 diesel-electric or nuclear-powered attack submarines. The PLA Navy has expanded a major base on Hainan Island near the South China Sea for submarines and ships. The PLA Navy commissioned its first aircraft carrier on September 25, 2012, though deploying operational fighters is expected to take years.⁴⁰

³⁸ For example, on March 4-8, 2009, Y-12 maritime surveillance aircraft, a PLAN frigate, PRC patrol and intelligence collection ships, and trawlers coordinated in the harassment of unarmed U.S. ocean surveillance ships, the USNS *Victorious* and USNS *Impeccable*, during routine operations in international waters in the Yellow Sea and South China Sea. The civilian ships involved in the "Impeccable Incident" included those from the CMS and FLEC.

³⁹ In March 2011, the PRC announced a 2011 defense budget of 601 billion renminbi (\$91.5 billion). The Secretary of Defense's report to Congress estimated China's total military-related expenditure in 2011 at a range of between \$120 billion and \$180 billion. The Defense Department has assessed China's defense budgets as markedly understating actual defense-related expenditures, by excluding other military-related funds. In March 2012, China announced a 2012 defense budget of 670.3 billion renminbi (\$106.4 billion).

⁴⁰ Director of the Defense Intelligence Agency's testimony to the Senate Armed Services Committee on February 16, (continued...)

According to some observers, such improved Chinese naval capabilities have facilitated a greater range of potentially coercive tools against rival claimants in the South China Sea and East China Sea. Thus, many argue that there may be an implicit PRC effort to maintain the status quo while strengthening actual control of waters surrounding disputed reefs and islands, including through official patrols in the rival claimants' territorial waters. Such control could arguably be used to solidify Chinese sovereign claims to the landmasses and the waters around them. A version of this strategy appears to be behind two recent developments—Beijing's near-constant deployment of ships since September 2012 to patrol in the waters near the Senkakus, and its moves to retain physical control of Scarborough Shoal while negotiating a de-escalation with the Philippines, including cordoning off the area. China's actions may be designed to demonstrate that China administers both areas, thereby exploiting the distinction the United States makes between sovereignty and administrative control.

The Obama Administration increasingly has stressed U.S. opposition to not only a use of force but also coercion, intimidation, or threats to advance claims. In July 2012, in the midst of the PRC-Philippines standoff over Scarborough Shoal, Secretary of State Clinton said that “we have seen worrisome instances of economic coercion and the problematic use of military and government vessels in connection with disputes among fisherman.”⁴¹ Testifying to the Senate Foreign Relations Subcommittee on Asia on September 20, 2012, Assistant Secretary of State Kurt Campbell stressed that “we are very, very clear and firm about our opposition to the use of coercion, intimidation, threats or force.”

U.S. concerns have covered the East China Sea as well as the South China Sea. In Beijing on October 17, 2012 during China-Japan tension over the Senkaku Islands, Deputy Secretary of State William Burns stressed that all sides should use diplomacy to manage disagreements in the East China Sea “without coercion, intimidation, threats, or the use of force.”⁴²

Taiwan's Role in the East China Sea

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

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

(...continued)

2012; Secretary of Defense, annual report to Congress, “Military and Security Developments Involving the People's Republic of China, 2012,” May 17, 2012; *Jane's Defense Weekly*, May 18, 2012; and various media reports.

⁴¹ Secretary of State Hillary Clinton, Press Availability in Phnom Penh, Cambodia, July 12, 2012.

⁴² Press Statement on the Visit of Deputy Secretary Burns to Beijing, China, U.S. Embassy, October 17, 2012.

The Role of ASEAN

ASEAN, Southeast Asia's primary multilateral organization, has been a key player in diplomacy over the South China Sea since its creation in 1967.⁴³ Four of its 10 members are involved in the territorial disputes in the South China Sea, while a fifth, Indonesia, has substantial maritime domain in the part of the sea that China does not claim, and is increasingly seen as a regional leader on the issue.

ASEAN and China have been discussing a Code of Conduct for parties in the region since the 1990s, without success. In 2002, ASEAN's members and China agreed on a Declaration on the Conduct of Parties in the South China Sea,⁴⁴ which outlined principles for avoiding conflicts but did not create mechanisms to solve them. The declaration stated: "The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea." The declaration formally called on signatories to work towards a formal Code of Conduct, but subsequent discussions between ASEAN and China have not led to such a code.

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

Two other ASEAN nations, Indonesia and Singapore, have played increasingly active roles in diplomacy over the South China Sea. Indonesia's position is unique, in that it has maritime territory within the South China Sea, but it does not overlap with China's claims. Indonesia is also Southeast Asia's largest and most populous nation, and it carries disproportionate diplomatic weight within the group. In the wake of the unsuccessful July 2012 ASEAN ministerial meeting in Phnom Penh, Indonesia's foreign minister shuttled to other capitals to gain an agreement on six points related to the South China Sea. These included agreement on the need for early conclusion of a regional Code of Conduct, the continued exercise of self-restraint and non-use of force by all parties; and the peaceful resolution of disputes, in accordance with universally recognized principles of International Law, including UNCLOS.⁴⁵ In September, 2012, an unnamed senior State Department official was quoted as saying that Indonesia is "the leading state in the effort" to find a unified Southeast Asian position on the South China Sea.⁴⁶

Singapore, meanwhile, has become more vocal in urging actions to lower tensions in the region. In a high-profile September 2012 speech in Beijing, Singapore's Prime Minister Lee Hsien Loong said: "The many overlapping claims by multiple claimants in the South China Sea are unlikely to

⁴³ ASEAN was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand to promote political and economic cooperation and regional stability. Brunei joined in 1984. Vietnam joined as the seventh member in 1995. Laos and Burma were admitted into full membership in 1997. Cambodia became the tenth member in 1999.

⁴⁴ Available at <http://www.aseansec.org/13163.htm>

⁴⁵ <http://www.aseansec.org/documents/AFMs%20Statement%20on%206%20Principles%20on%20SCS.pdf>

⁴⁶ See <http://translations.state.gov/st/english/texttrans/2012/09/20120906135548.html#axzz2651WWS5m>

be resolved any time soon. Hence... the involved parties must manage the disputes responsibly. All sides should avoid escalating tensions or precipitating confrontations that will affect the international standing of the region.” Prime Minister Lee also asserted Singapore’s critical interests in the issue, although it is not a claimant country. He stressed that Singapore has an interest in seeing the disputes in the South China Sea over territorial sovereignty and maritime resource rights resolved peacefully and in accordance with international law, including UNCLOS. He also stressed that Singapore has a fundamental interest in freedom of navigation, especially along the sea lanes of communications in the Malacca Strait and the South China Sea. Third, he emphasized that Singapore’s security depends on a peaceful and stable Southeast Asia, which in turn depends on a cohesive ASEAN.⁴⁷

Policy Issues

Obama Administration officials say the disputes and tensions will likely be evident in the region for years.⁴⁸ Because the United States is not a claimant in the South China Sea or the East China Sea, its options for reducing tensions rely primarily on discouraging the disputing parties from resorting to coercion or the use of force, and encouraging dialogues, diplomacy, or other projects that could lessen tensions.

As noted, in the 112th Congress, Congress passed two resolutions relating to the maritime tensions, and held several hearings relating to the disputes and to the question of joining UNCLOS. The 113th Congress may also seek to raise issues related to maritime disputes via statements and resolutions, or support for specific measures or diplomatic mechanisms to lessen tensions. The Senate could choose to consider offering its advice and consent for acceding to UNCLOS, or supporting measures to strengthen treaty allies through arms and equipment transfers, or military exercises in the maritime domain.

Statements and Resolutions

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

⁴⁷ Report on Prime Minister Lee Hsien Loong’s speech at the Central Party School of the Communist Party of China on September 6, *Straits Times*, Singapore, September 7, 2012.

⁴⁸ See, for example, Assistant Secretary of State Kurt Campbell, “Maritime Territorial Disputes and Sovereignty Issues in Asia,” testimony before the Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs, September 20, 2012.

In the House, Representative Ileana Ros-Lehtinen introduced **H.Res. 352** in July 2011, calling for a peaceful and collaborative resolution of maritime territorial disputes in the South China Sea, East China Sea, and Yellow Sea. In August 2012, Representative Eni Faleomavaega introduced **H.R. 6313**, reaffirming U.S. support for the peaceful and collaborative resolution of maritime territorial disputes in the South China Sea, Taiwan Strait, East China Sea, and Yellow Sea.

These paralleled statements made by the State Department during the year, including a pointed statement on August 3 that stated, in part:⁴⁹

We are concerned by the increase in tensions in the South China Sea and are monitoring the situation closely. Recent developments include an uptick in confrontational rhetoric, disagreements over resource exploitation, coercive economic actions, and the incidents around the Scarborough Reef, including the use of barriers to deny access. In particular, China's upgrading of the administrative level of Sansha City and establishment of a new military garrison there covering disputed areas of the South China Sea run counter to collaborative diplomatic efforts to resolve differences and risk further escalating tensions in the region.

The United States urges all parties to take steps to lower tensions in keeping with the spirit of the 1992 ASEAN Declaration on the South China Sea and the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea. We strongly support ASEAN's efforts to build consensus on a principles-based mechanism for managing and preventing disputes. We encourage ASEAN and China to make meaningful progress toward finalizing a comprehensive Code of Conduct in order to establish rules of the road and clear procedures for peacefully addressing disagreements. In this context, the United States endorses the recent ASEAN Six-Point Principles on the South China Sea.

We continue to urge all parties to clarify and pursue their territorial and maritime claims in accordance with international law, including the Law of the Sea Convention. We believe that claimants should explore every diplomatic or other peaceful avenue for resolution, including the use of arbitration or other international legal mechanisms as needed. We also encourage relevant parties to explore new cooperative arrangements for managing the responsible exploitation of resources in the South China Sea.

Treaty Obligations

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

U.S. administrations going back at least to the Nixon Administration have stated that the United States takes no position on the territorial disputes over the Senkaku Islands. However, it also has been U.S. policy since 1971 that because Article 5 of the 1960 U.S.-Japan Security Treaty stipulates that the United States is bound to protect “the territories under the Administration of Japan,” and Japan administers the Senkakus, the islands are covered by the Security Treaty. China's increase in patrols around the Senkakus since the fall of 2012 appears to many to be an attempt to demonstrate that China has a degree of administrative control over the islets, thereby

⁴⁹ See <http://www.state.gov/r/pa/prs/ps/2012/08/196022.htm>.

exploiting the U.S. distinction between sovereignty and administrative control. Some observers, seeking to avoid a situation in which the United States inadvertently encourages more assertive Chinese actions, have called on Obama Administration officials to stop using the word “neutral” in describing the U.S. position on the issue and to also publicly declare that unilateral actions by China (or Taiwan) will not affect the U.S. judgment that the islets are controlled by Japan. In its own attempt to address this perceived gap, Congress inserted in the FY2013 National Defense Authorization Act (**H.R. 4310**) a resolution stating among other items, that “the unilateral action of a third party will not affect the United States’ acknowledgment of the administration of Japan over the Senkaku Islands.” Perhaps responding to the criticism of the Administration’s rhetoric, in January 2013 Secretary Hillary Rodham Clinton stated that “we oppose any unilateral actions that would seek to undermine Japanese administration” of the islets during opening remarks to the press with Japanese Foreign Minister Fumio Kishida.⁵⁰

The Philippines has been an outspoken proponent of an extensive U.S. role in resolving maritime disputes. Some Philippine officials have on occasion suggested the Mutual Defense Treaty with the United States should apply in the case of disputes in Philippine-claimed waters of the South China Sea.⁵¹ On this question, the language of the treaty is not definitive. Article IV of the Treaty states: “Each Party... declares that it would act to meet the common dangers in accordance with its constitutional processes.” Article V refers to an armed attack on the “metropolitan territory of either of the Parties,” the “island territories under its jurisdiction in the Pacific Ocean,” or its “armed forces, public vessels, or aircraft in the Pacific.” Although some American analysts have expressed support for a stronger understanding of the Treaty, most U.S. interpretations have not explicitly included the disputed areas as part of U.S. obligations.⁵² This ambiguity presents a dilemma, in that the United States seeks to avoid being drawn into a potential conflict but also seeks to support its treaty ally and deter a use of force against it.

One emerging dynamic is that the United States and the Philippines are involved in plans to increase U.S. access to Philippine naval facilities, and the United States is offering assistance and making sales to the Philippine military to help it with maritime domain awareness in its coastal waters, including the South China Sea.

Bilateral Diplomatic Approaches

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

⁵⁰ State Department, “Hillary Rodham Clinton Remarks With Japanese Foreign Minister Fumio Kishida After Their Meeting,” January 18, 2013. In response, a PRC Foreign Ministry spokesman said that “China expresses strong dissatisfaction and resolute opposition” to Clinton’s comments, which “disregard the facts and confuse right and wrong.” “Foreign Ministry Spokesperson Qin Gang’s Remarks on the US’ Recent Comments on the Diaoyu Islands,” January 20, 2013.

⁵¹ See “Statement of Foreign Affairs Secretary Albert F. del Rosario Regarding the “The Philippines-US Mutual Defense Treaty,” May 9, 2012.

⁵² For more on the Mutual Defense Treaty, see CRS report *The Republic of the Philippines and U.S. Interests*, by Thomas Lum.

dialogue that takes place under the broader bilateral U.S.-China Strategic and Economic Dialogue (S&ED).

Other bilateral options the United States has pursued—and could pursue to greater degrees—include offering greater resources to individual claimant states to monitor, secure and protect their maritime domains. The United States is engaged in discussions with the Philippines in efforts to improve its maritime domain awareness and ability to police its waters. Congress has approved some, and may be asked to approve more, sales to the Philippines of equipment such as radar equipment and coast guard cutters.⁵³ Similar assistance to Malaysia and Vietnam has also been discussed.

Providing more military resources to the Philippines and other claimants, and conducting more joint exercises in disputed areas with them, could increase tensions and potentially prompt a further buildup of PLAN resources. Despite U.S. reassurances, PRC officials have frequently expressed the position that such support indicates the United States is diverging from its position of taking no position on specific territorial disputes.⁵⁴

Multilateral Diplomatic Approaches

Over the years, disputants have discussed and pursued numerous multilateral options, including joint exploration and development of resources, and efforts for disputants to work together and consult in other areas seen as non-sensitive. Joint management of hydrocarbon and fisheries resources has been proposed as a way to defuse tensions over the two resources that drive many of the disputes. U.S. diplomacy also has encouraged joint resource projects, even in disputed areas. At a hearing at the Senate Foreign Relations Subcommittee on Asia on September 20, 2012, Assistant Secretary of State Kurt Campbell testified that:

We also encourage relevant parties to explore new cooperative arrangements for managing the exploitation of resources in the South China Sea. For example, as Secretary Clinton discussed at the ASEAN Regional Forum this July in Cambodia, this could include equitable joint exploration and exploitation arrangements for hydrocarbon resources in areas of unresolved claims. Joint exploration would not only allow claimants to reap material benefits, but could also help to build the habits of cooperation and collaboration that will ultimately be needed to resolve these disputes.⁵⁵

Questioned on these proposals, however, Campbell noted that given heightened tensions in the region, negotiations surrounding such projects would be extremely sensitive and difficult.

Another option for multilateral management of disputes is expanding cooperation in current anti-piracy operations from the Gulf of Aden to waters such as the Indian Ocean and Malacca Straits.

⁵³ See, for instance, Renato de Castro and Walter Lohman, “Getting the Philippines Air Force Flying Again: The Role of the U.S.-Philippines Alliance,” Heritage Foundation, September 24, 2012.

⁵⁴ Some analysts note that the 2012 Philippine-China tensions over Scarborough Shoal, discussed above in the Resource Competition section, began when the Philippines deployed the BRP Gregorio del Pilar, a 46 year old decommissioned Coast Guard Cutter that had been transferred by the United States several months earlier, to investigate Chinese vessels fishing in the area, which is within the Philippine EEZ. China moved maritime surveillance vessels to block the Philippines vessel’s entry into the enclosed shoal, setting off a months-long diplomatic standoff. Some Chinese commentators argue that the Philippines was using the newly acquired U.S. vessel to expand its activities in the South China Sea. Other analysts argue that the Philippines was exercising its rights within its own claimed EEZ.

⁵⁵ Assistant Secretary of State Kurt Campbell, “Maritime Territorial Disputes and Sovereignty Issues in Asia,” testimony before the Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs, September 20, 2012.

In February 2012, the navies of China, India, and Japan agreed to increase coordination of escort operations in the Gulf of Aden.

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

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

The ASEAN Treaty of Amity and Cooperation might offer conflict-mediation mechanisms acceptable to the broad range of disputants. China ratified the treaty in 2003. In 2009, Secretary of State Clinton signed the agreement, which requires signatories to “refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.” It offers a non-mandatory dispute settlement mechanism, but also offers that if disputants do not wish to utilize it, “this shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute.”⁵⁶ Some have suggested that Indonesia or a nation outside the region could fill this role.

The Role of UNCLOS

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

As noted above, the Senate Foreign Relations Committee held four hearings in 2012 to consider whether to recommend action on the Convention.⁵⁷ At the first hearing, on May 23 2012, Secretary of State Hillary Clinton, Secretary of Defense Leon Panetta, and Chairman of the Joint Chiefs of Staff, General Martin Dempsey testified together. Secretary Clinton stated that U.S. navigational rights and ability to challenge other countries' behavior should stand on the firmest and most persuasive legal footing, “including in critical areas such as the South China Sea.” She

⁵⁶ The full text of the treaty is available at <http://www.asean.org/component/zoo/item/treaty-of-amity-and-cooperation-in-southeast-asia-indonesia-24-february-1976-3>.

⁵⁷ The Senate Foreign Relations Committee also held hearing on the Convention in October 2003, and in September and October 2007, favorably reporting to the Senate on March 11 2004 and December 2007 respectively. The Senate did not consider the Treaty on either occasion, and it was automatically re-referred to the Foreign Relations Committee.

said that in the promotion of U.S. vital interests such as freedom of navigation in face of claims that countries are making in the South China Sea, the United States would have greater credibility in invoking the convention's rules and a greater ability to enforce them. Secretary Panetta stated that not acceding to UNCLOS potentially undercuts U.S. credibility in a number of multilateral meetings in a strategically vital arc extending from the Western Pacific and East Asia to the Indian Ocean and the Middle East.⁵⁸ He said that the United States is pushing for a rules-based order and peaceful resolutions of maritime and territorial disputes in the South China Sea, Strait of Hormuz, and elsewhere. General Dempsey stated that joining UNCLOS would provide legal certainty to support navigational freedom and maritime operations that include the right of transit through international straits, the right to exercise high seas freedoms in foreign Exclusive Economic Zones, and the right of innocent passage through territorial seas. He cited concerns about countries expanding their maritime claims and restricting movement in the oceans.

Many of the region's nations have publicly urged the United States to join UNCLOS, which they argue would give greater international legitimacy to U.S. diplomacy, as well as give the United States a seat at the table in UNCLOS discussions of key issues relating to maritime law. Indonesian Ambassador to the United States Dino Djalal, for instance, said at a 2011 conference in Washington, DC, that given the priority the United States has placed on maritime security in East Asia, becoming a party to UNCLOS "has become a matter of strategic necessity—I repeat, strategic necessity, for the United States..."⁵⁹

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

- **The rights of military craft to operate in other nations' exclusive economic zones (EEZs).** China has taken a position that military craft need permission to operate in another nation's EEZ. This has become a deep point of contention with China, but if China's interpretation of the UNCLOS provisions on EEZs were to become widely accepted, it could affect U.S. surveillance and other military activity worldwide. According to the Navy, 26 other nations subscribe to views similar to that of the PRC, including South China Sea disputants Malaysia and Vietnam, although Vietnam's 2012 Law of the Sea relaxed Vietnam's position, requiring that such activity requires notification rather than approval.⁶⁰
- **Extended continental shelf claims.** As discussed above, UNCLOS has a formal body, the Commission on the Limits of the Continental Shelf, that may consider formal claims that extend beyond 200 nautical miles from a coastal state. UNCLOS gave parties the right to make such claims, based on the depth of the seabed beyond their EEZs. Malaysia and Vietnam submitted such a claim in

⁵⁸ <http://www.foreign.senate.gov/hearings/the-law-of-the-sea-convention-treaty-doc-103-39-the-us-national-security-and-strategic-imperatives-for-ratification>

⁵⁹ See Center for Strategic and International Studies, *The Bali Debrief: An Insider's Perspective of the November Summits*. Available at this link: <http://esis.org/multimedia/video-bali-debrief-insiders-perspective-november-summits>. The discussion of UNCLOS begins at the 30:00 mark.

⁶⁰ A broader discussion of these issues is contained in CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke.

2009, to which China objected.⁶¹ In December 2012, China made such a claim in the East China Sea, which may also be considered by the Commission.

- **Definitions of inhabitable islands.** UNCLOS allows nations to claim 12 nautical mile territorial waters around uninhabitable rocks and shoals, but a 200 nautical mile EEZ around islands that can support permanent inhabitation. This difference has influenced moves by each of the disputants to base people and build structures and other infrastructure on or over small islands and shoals which would not otherwise support life. China's designation of a settlement on Woody Shoal in the Paracels as an administrative capital, and its moves to build a sewage system on the small island, are seen as moves to both demonstrate administrative control over the area and to demonstrate its inhabitability.

Opponents of accession argue that UNCLOS does not, in and of itself, solve the territorial disputes and because many of China's claims do not rely on UNCLOS' provisions, U.S. accession would do little to make the PRC any more willing to submit to dispute resolution procedures. Opponents also argue that U.S. accession would do little to change the underlying cause of insecurity in the region—the overlapping claims from which parties are unlikely to withdraw, and Chinese claims that do not fundamentally rely on UNCLOS.⁶² As noted above, the Philippines publicly sought to resolve its dispute over Scarborough Shoal with China through the International Tribunal for the Law of the Sea (ITLOS), but China's refusal to utilize the forum made the proposal unworkable. That was followed by a formal Philippine request on January 22, 2013, that an UNCLOS Arbitral Tribunal take up the question of whether China's South China Sea claims and its behavior within the nine dash line comply with the Convention.

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

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⁶¹ The joint Malaysia/Vietnam submission is available at http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm. The PRC response is at http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf.

⁶² For example, Walter Lohman, "Not the Time to Go Wobbly: Press U.S. Advantage on the South China Sea," Heritage Foundation, September 22, 2010; Dan Blumenthal and Michael Mazza, "Why to Forget UNCLOS," *Diplomat*, February 17, 2012.