

Unresolved Border, Land and Maritime Disputes in Southeast Asia

*Bi- and Multilateral Conflict Resolution Approaches
and ASEAN's Centrality*

By

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The Logic of Strategic Restraint and Prospects for Joint Development in the South China Sea¹

Truong-Minh Vu

Introduction

In recent years, the South China Sea (SCS)² has become one of the “flash-points” of conflict in East Asia. One of the policies which has caused a great deal of concern for the nations of Southeast Asia is “setting aside disputes and pursuing joint development”. The origin of this concept can be traced back to the Deng Xiaoping period. On 11 May 1979, Deng suggested this concept in relation to China’s territorial dispute with Japan over the Diaoyu/Senkaku Islands (Ministry of Foreign Affairs China 2000). This policy was further strengthened in June 1986, during Deng’s visit to the Philippines, when it was connected to efforts to solve the issue of the Nansha Islands. Deng’s strategy aimed to avoid military conflict and to pursue an approach of joint development. Meeting with Filipino Vice President Laurel, Deng stated that: “We should leave aside the issue of the Nansha Islands for a while. We should not let this issue stand in the way of China’s friendship with the Philippines and with other countries” (Ministry of Foreign Affairs China 2000). As China’s influence in Southeast Asia began to grow after 1990, this initiative became a key part of China’s incessant quest both for a leadership role in the region, and as an avenue to settle South China Sea disputes in a peaceful way.

However, despite China’s efforts to establish new cooperative initiatives in the South China Sea, attempts have generally hit a brick wall. The cooperative initiatives began as a bilateral arrangement between the China National Offshore Oil Corporation (CNOOC) and the Philippine National Oil Company (PNOC), which Vietnam initially protested, but later joined. In 2005, PNOC,

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- 1 Parts of this chapter are based on my Inaugural Dissertation “China as an emerging regional leader? Analyzing China’s leadership projects in Southeast Asia” (Rheinische Friedrich-Wilhelms-Universität, Bonn 2015), available at <http://hss.ulb.uni-bonn.de/2015/3914/3914.pdf>.
 - 2 It should be noted that there are many names for the sea depending on the view of the respective claimants. China calls it the “Southern Sea” (Nánhǎi), Vietnam calls it the “Eastern Sea” (Biển Đông), and the Philippines calls it the “West Philippines Sea” (Dagat Kanlurang Pilipinas).

CNOOC and the Vietnam Oil and Gas Corporation (Petro Vietnam) signed a tripartite agreement on a Joint Marine Seismic Undertaking (JMSU) to jointly acquire geoscientific data and assess the petroleum resource potential of certain areas in the South China Sea. Since 2008, China has repeatedly brought up the topic of joint development in the South China Sea. Although Southeast Asian countries including the Philippines and Vietnam have not officially rejected the possibility of joint development, they have showed little sympathy with China's viewpoints.

Thus the questions arises as to why Southeast Asian countries in an earlier period (2005–2008) accepted China's proposal to set aside disputes and pursue joint development in the South China Sea, but later (since 2009) recanted this position and have become more confrontational in their relationship with China regarding disputes. The obvious answer is that a shifting power balance and the ways in which China has utilized its growing power have caused problems in terms of regional cooperation. Whilst it seemed like China would accept limitations being placed on its power, as embedded in agreed-upon rules and institutions, the country's leadership was broadly acknowledged. After Beijing signed the Declaration on the Conduct of Parties in the South China Sea (2002) and ASEAN Treaty of Amity and Cooperation (2003), the South East Asian states were more willing to accept and work with Chinese cooperative initiatives (for example, the JMSU). China has failed to gain the support of Southeast Asia countries since 2009 because it is unwilling to solve disputes regarding the South China Sea through multilateral rules and agreements. The lack of a "rule-based order" in the South China Sea, which would delimit and control China's hegemonic power in the region, has led to a lack of enthusiasm for Chinese-led cooperative projects from Southeast Asian states. Thus we conclude that joint development will only be feasible when China accepts the binding limitations of institutions or legal agreements.

This chapter is divided into four parts. Firstly, the analytical framework with regards to the relationship between power and institutions, as supposed by International Relations theory, will be introduced. By applying this framework we aim to explain how rising power can negatively impact the promotion of cooperation between countries, and how rising powers must thus find alternate means to stimulate weaker countries to cooperate with them. From this perspective, the two periods of joint development in the South China Sea, between 2005 and 2008 and since 2008, will be examined. Empirical evidence will be used to explain how the ways China has managed its growing power in an attempt to become more credible and connected to Southeast Asia countries has led to the success or failure of joint development projects. The final part of the article will summarize major findings and discuss joint development project scenarios in the South China Sea, taking into account the interaction between power and institutions.

Analytical Framework: Rising Power and the Logic of Strategic Restraint

Possible avenues of joint development in the South China Sea can be analyzed using one of two distinct analytical frameworks already put forward in earlier research. The first highlights technique-based factors (based on international law); the other emphasizes factors relating to claimants' domestic political situations (*Innenpolitik*). The first approach states that joint development can be seen as a feasible solution to foster cooperation among the claimants. However, the question remains as to how this is to be implemented in practice. Researchers such as Valencia and Hong (2013), Valencia, Van Dyke and Ludwig (1999), Keyuan (2006), Lee and Shaofeng (2009) or Duong (2011) have gone into more depth, questioning four main points, namely: Where and how is the joint development going to take place? What is to be jointly developed and who is going to do it? Answers for these questions are an important precondition for putting joint development projects into practice.

The second approach argues that joint development in the South China Sea results from domestic political struggle (Chung 2007, 2004). From the perspective of the various Southeast Asian states, conducting joint development projects with China has been viewed in different ways. In the view of Vietnam, accepting joint development projects proves the victory of the "anti-imperialist" faction within Vietnamese domestic politics, who advocate pursuing pro-China policies, vis-à-vis the "integrationist" approach favouring Western-integration policies (Vuving 2009, 2006). In other cases, such as that of the Philippines, joint development with Beijing is explained as a trade-off for the economic benefits of cooperating with China (Baviera 2014; Goh 2011a).

These researchers have provided different views on the possibilities for joint development between China and Southeast Asian states in the South China Sea. However, they are of limited value when applied to the particular research question under examination here. For instance, in terms of timing, the approach focusing on technique-based factors does not provide a convincing argument as to why the JMSU in 2005 was approved. On the other hand, since 2009, Vietnam has repeatedly expressed doubt about or outright rejected Chinese proposals for joint development (Duong 2011, 2010; Tran 2009), which can be interpreted, following this analytical framework, as resulting from a prevalence of integrationists in contemporary Vietnamese politics. However, it is not possible to verify this assessment with concrete evidence from contemporary Vietnamese politics. In addition, the *Innenpolitik* approach is inherently not specific enough, stating that Southeast Asian countries accept the Chinese policy of "setting aside disputes and pursuing joint development" to gain some benefits from trade, investment or Official Development Assistance (ODA)

from their rising neighbor. Advocates of this approach have cited evidence demonstrating that since 2009, economic relations between China–Vietnam and China–Philippines have been developing rapidly, particularly with regards to trade, investment and ODA. In 2012 China offered 3 billion yuan (c. US\$475 million) for a maritime cooperation fund (SINA English 2012). These expressions of goodwill, however, have not been enough to persuade the countries to accept China’s proposals for cooperation.

Whilst not entirely repudiating the arguments of the *Innenpolitik* approach or the approach focusing on technique-based factors, this article aims to provide another perspective, which will contribute to current research by seeking an answer to the question of the different responses of Southeast Asian states towards China’s proposal to set aside disputes and pursue joint development in the South China Sea. The main argument is that the power differential (particularly military) between China and Southeast Asian states should result in increased cooperation, as weaker states are incentivized to accept the position of a more powerful state (in this case, China). The concentration of power is a double-edged sword in international politics. Balance-of-power and balance-of-threat theory predict that states will try to prevent the rise of a power or external security threat. States in such a position will try to balance internally by extensively increasing their own material capabilities, or externally by allying and forging close strategic partnerships with extra-regional powers (Walt 1987; Waltz 1979). Especially in the case of a region with an asymmetrical power balance between big countries and smaller ones, power sharing is understood as a prerequisite. A big country needs to temper its leading position by managing the asymmetry of physical capacity, which in turn reduces fears from lesser states about the use and abuse of growing resource powers of big states. Therefore, power sharing techniques of rising powers can be seen as a useful method to avoid the scenario of smaller states becoming frustrated or taking steps to rebalance power relations in the region. It is also a long-term regionalist strategy, utilized in order to build a stable politico-economic order in which relations are regulated by laws and institutions (Pedersen 2002).

Institutional theory identifies two mechanisms which can be utilized by regionally hegemonic powers in order to manage such power asymmetries and thus encourage other states to comply with cooperative projects. The first is the credible exercise of institutionalized self-restraint from a big state. In a widely cited book, Ikenberry (1999) posits a “strategic restraint hypothesis”, in which he explores the choices of great powers that emerge after hegemonic wars, and generates new insights into America’s “constitutional order” created after World War II. He argues that from the perspective of the hegemon, the creation of a constitutional order organized around agreed-upon legal and

political institutions is on the one hand an investment in the long-term future in case of a decline of power, and on the other hand a tool to lower overall “enforcement-cost” in maintaining order. Binding itself through institutions or legal agreement does not mean the reduction of the hegemon’s power, but it implies at least a legal limitation on strategic choices about how to use and exercise power in a way that is less endangering to secondary states (Ikenberry 1999, p. 57). It follows that rational weaker states might be willing to participate in the hegemon’s projects (with the risks that they forsake some autonomy in decision making) in exchange for the credibility and the “institutional opportunities to work and help influence the leading states” (Ikenberry 2012, p. 106). The underlying logic behind maintaining a generally positive disposition toward the restraint and commitment of a hegemon’s power also aims to make hegemonic power more predictable and “user-friendly”. An underlying cause of this trade-off is that “The more that a powerful state is capable of dominating or abandoning weaker states, the more the weaker states will care about constraints on the leading state’s policy autonomy” (Ikenberry 2012, p. 195). If rising powers want to employ their supremacy to gain followers, they have to operate through the provision of rules and institutions, which institutionalize and thus limit the ways the hegemonic state can use its power. The more rising powers agree to restrain their power and bind themselves within institutions and a set of rules and rights, the greater is the probability that weaker states will enter into projects under their leadership.

Another way of using institutions as a tool of political control derives from the weaker states. On the one hand, they can use institutions and institutionalization as a method to ensure that their own disadvantages in power resources are balanced by the limitations on the ways in which more powerful states can use their powers, as in the above argument proposed by Ikenberry (2012). On the other hand, institutions can be utilized to form a specific diplomatic influence. Secondary powers’ choices can be explained by the question whether their quest for “greater symmetry in voice opportunities” can be fulfilled. Based on the empirical record of the Economic and Monetary Union (EMU) adopted by the European Union (EU) in the 1992 Maastricht Treaty, Grieco (1996, p. 36) has pointed out: “States – and especially relatively weak, but still necessary partners – will seek to ensure that any cooperative arrangement they construct will include effective voice opportunities.” The decision of the French government to adopt the EMU can be interpreted as a way to influence its policies and thus attempt to counteract the hegemonic role of the German Bundesbank (Grieco 1995, 1996).

Assessing the role of ASEAN in the creation of a new stable regional society, Goh (2011b) argues that this regional origination and its ASEAN “+” mechanisms

have helped to institutionalize “the voice of smaller states in regional security management”. Faced with a set of asymmetric bargaining powers, the weaker states’ position within ASEAN ensures that their voices are heard and allows them to “make known their interests and seek for political partners” in a given issue through what might be termed “insider-activism” within multilateral institutions (Hurrell 2002, p. 15). When secondary states try to make a proposal, all member states are forced to listen to their voices. The risks associated with continued “exclusion” from the formulation of regional security policies also creates an incentive for weaker states to join multilateral security pacts. To domestic audiences, participation in such hegemon-led forums and organizations provides a forum through which weaker states can legitimate their relationship with rising powers.

In sum, it is not only the problem of growing capabilities per se, but also the changes in the application of this power that can lead to assumptions regarding a rising power’s intentions. Seeing the rising power as a revisionist power reduces the willingness of the secondary states to support and join in the emerging rising power-led cooperative projects. This unwillingness might be understood as the weaker states’ fear of domination by stronger states. In order to gain the support of the weaker states, the stronger states are expected to limit their power. This leads to increased willingness on the part of rational weaker states to participate in the hegemon’s projects (acknowledging the risk of forsaking some autonomy in decision making) in exchange for the credibility and institutional opportunities for exercising some political control. The joint development projects in the South China Sea promoted by China in the two periods of 2005–2008 and since 2009 can be explained using this logic.

Joint Development in the South China Sea

DOC and JMSU (2005–2008)

After a long period of discussion and negotiation, the Philippines and China signed a Joint Marine Seismic Undertaking on 1 September 2004, covering a total area of 142,886 square kilometers of the South China Sea (The Tripartite Agreement for JMSU 2005). JMSU included the implementation of a three-year oil research exploration project around the waters in the Spratlys³ and a separate agreement on fishery cooperation (The Philippine Star 2004). As Cronin

3 See more in Annex “A” of The Tripartite Agreement for Joint Marine Seismic Undertaking (2005).

and Dubel (2013, p. 24) have noted, “it involved exploratory surveys of the seabed off of the Philippines to lay a framework for potential future joint development”. This marked a milestone in regional relations on issues pertaining to the South China Sea and a “diplomatic breakthrough” for both the Philippines and China, since the two countries had reached a contemporary consensus for pursuing joint development in the South China Sea.

Following the successful conclusion of this bilateral agreement, the Vietnamese government decided to join the Philippines and China and agreed a Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea. On 14 March 2005, PNOOC, CNOOC and PetroVietnam signed a tripartite agreement for a JMSU to jointly acquire geoscientific data and assess the petroleum resource potential of certain areas in the South China Sea (PNOOC 2013). Under the tripartite agreement, the three countries, China, the Philippines, and Vietnam agreed to temporarily set aside their territorial disputes over the Spratlys and pursue development with a view to transforming the South China Sea into an area of peace, stability, prosperity and cooperation.

The importance of JMSU is clarified by Lucio Blanco Pitlo III’s assertion that the trilateral JMSU could have been “the most ideal platform from which an all-encompassing multilateral joint development arrangement for the South China Sea could be anchored upon” (Pitlo III 2012). Although considered to be a tripartite agreement among the states companies, JMSU was promisingly “conducive to the maintenance of peace and stability in the South China Sea” (Storey 2008) and seen as a way of calming down tensions and promoting peace in the region. Since then, JMSU has served as a mechanism for China to encourage a peaceful approach and peaceful settlement to issues affecting the South China Sea region. In 2008, the JMSU expired and was not extended.

Why did the Philippines and Vietnam join the JMSU? The argument followed here suggests that this agreement was a “trade-off” for both sides. The Philippines and Vietnam were willing to participate in a Chinese-led project in exchange for the credibility and institutional opportunities afforded through such cooperation. From the late 1990s until 2007–2008, China changed its strategy towards the South China Sea issue. Instead of resorting to military power domination,⁴ China has sought to settle disputes by advocating institutions and initiating dialogues with relevant states. This act of (self-)restraint is

4 In the past, China has in many instances used military force to resolve maritime disputes in the *South China Sea*. In 1974, the Chinese military fought with the navy of South Vietnam, officially the Republic of Vietnam, and occupied the Paracels. In 1988, China and Vietnam clashed over Johnson South Reef in the Spratly Islands.

evident in the multilateral relationship between China and ASEAN, which was underscored by the Declaration on the Conduct of Parties in the South China Sea (DOC) signed at the end of the Sixth China-ASEAN Summit (10 + 1) in 2002 in Phnom Penh, Cambodia. The basic principles of the DOC are outlined in four points: (i) peaceful solution for disputes in the South China Sea, (ii) trust and confidence, (iii) recognition and respect of the provisions of the US for freedom of navigation and overflight, (iv) maintaining the status quo, and the completion of new occupations of islands in the South China Sea. Essentially, in practice, the DOC has served as the “management mechanism” with the aim of restraining China and promoting cooperative activities between countries in the South China Sea. Despite being considered as a compromise document without binding legal force,⁵ the DOC was designed as an interim measure with the ultimate goal of forming a more formal binding code of conduct in the South China Sea (COC). Nevertheless, the agreement was significant because, with the world watching, there was a lot at stake (Buszynski 2003). Indeed, many saw the guidelines as just the first step towards a binding code of conduct. Thus, the DOC was a milestone in the process of regional cooperation on South China Sea issues and signaled that China was willing to engage in a regional process to enhance the peaceful resolution of South China Sea issues.

As outlined in the provisions of the DOC, all countries concerned should show restraint and avoid carrying out activities which could further aggravate and complicate the disputes and affect peace and stability in the South China Sea (ASEAN 2016a). In addition, the countries concerned should find a way to resolve the dispute in a peaceful and constructive way (Nguyen and Amer 2009, pp. 339–340). According to the Beijing Times, the DOC was the first time that China had agreed to join ASEAN in signing a multilateral document which offered “a new security concept with mutual trust, mutual benefit, quality and coordination at its core” (Beijing Times 2002). Hence, although the terms are not legally binding as in a law, the DOC can be regarded as a way for rising powers like China to practice self-restraint. By signing the DOC, China agreed to partially limit its power, and as a consequence “weak and secondary states might agree to become more rather than less entangled with such a potential hegemon” (Ikenberry 1999, p. 43). In 2003, China became the first outside actor in the region to become a signatory to the ASEAN Treaty of Amity and Cooperation (TAC), which included essential clauses that stipulated “mutual respect for the sovereignty and equality of ASEAN countries”, “non-interference in the

5 A legal scholar Nguyen Hong Thao stated: “(DOC is) not a legal instrument and thus is technically not legally binding and is even less persuasive than the code of conduct that many countries in the region had desired” (Nguyen-Thao 2003, p. 281).

internal affairs of one another” and/or “settlement of differences or disputes by peaceful means” (ASEAN 2016b).

Since 2002, Southeast Asian states have reacted positively to the joint actions and interactions of China in South China Sea disputes. The “glue” that holds leadership relationships together here is the relatively credible commitment of dominant states not to abuse their power resources over subordinates. By signing the DOC and TAC, an “informal contract” between China and Southeast Asian states was established. Thanks to the features of the DOC and TAC, which contained provisions of “mutual restraint in the conduct of activities” and “co-operative activities”, weaker states such as Vietnam or the Philippines have become less intimidated by their stronger neighbor. At this point, the only cost that China has borne has been a reduction of its unilateralist capacities and policy autonomy. In return, it has reduced concern amongst the smaller states. It has been argued – in the case of Vietnam for example – that Vietnam chose a rapprochement approach to the Chinese proposal mainly for the reason that China, through the DOC (and the expected COC in the near future), would be obliged to exercise restraint (interview by the author with Vietnamese scholars and senior officials in Hanoi in 2011 and 2012).

More importantly, the DOC was merely a political statement (as will likely be the COC, expected in the near future). It was not binding and had no legal basis. It provided the normative basis for the JMSU, which allows Vietnam and the Philippines to change their multilateral stance towards Chinese cooperation proposals. Likewise, “joint exploration” among China, Vietnam and the Philippines was stimulated. The Department of Energy (DOE) Secretary of the Philippines, Vicente Perez, believed that this would mark a new stage for both China and that Philippines and said that it (the agreement) was “the first concrete manifestation of the ASEAN-China Declaration of Conduct for the South China Sea” (The Philippine Star 2004). As Dosch (2010) has noted, the JMSU was regarded by the Philippine Foreign Minister, Alberto Romulo, and the Vietnamese Foreign Minister, Nguyen Dy Nien, as a “significant measure to strengthen ASEAN-China cooperation and possibly paved the way for settlement of the South China Sea disputes”.

The Lack of “constitutional order” since 2008 and Its Implications

Since 2008, there has been a rise in the level of concern exhibited by actors with a stake in South China Sea disputes, which accompanies a general rise in geopolitical and military tensions in the region. At the international conference in 2009, Ji Guoxing, former head of the Asia-Pacific Department at the Institute for International Strategic Studies, repeatedly emphasized Chinese guidelines for “setting aside disputes and pursuing joint development” (Duong 2010).

Ji Guoxing suggested that claimants pursue the overall framework for exploiting resources in the South China Sea. Along with this proposal, he was also keen to explore the possibility of China and Vietnam working together to jointly develop the Vanguard Bank, based in the Spratly Islands. Although he admitted that it is not a permanent solution to the problem, he considered “setting aside disputes and pursuing joint development” to be “a practical, realistic, wise and feasible approach” at that time (Duong 2010; Tran 2009).

The proposal for “setting aside disputes and pursuing joint development” was also suggested by Chinese leaders in formal meetings. Speaking at a press conference held in Hanoi, the Chinese Ambassador to Vietnam, Sun Guoxiang, stated that “China’s senior leaders have taken the initiatives to solve the South China Sea issue, especially in setting aside disputes and pursuing joint development”. The objective of this approach is for both parties to ignore disputes and jointly conduct activities for social and economic development (Tien Phong 2010). In an interview with the Philippine Daily Inquirer editorial team in December 2012, the Chinese Ambassador to the Philippines Ma Keqing suggested that “joint cooperation” would be the best way to solve sovereignty disputes. “I think it is still a very valid formula pending the solution of the disputes. We can have cooperation with each other to [explore] the resources because we cannot see in the near future (...) that we can solve all the disputes”, the Chinese ambassador stated (Philippine Daily Inquirer 2013).

Although China has frequently raised the topic of joint development in the South China Sea, Southeast Asian countries including the Philippines and Vietnam have responded only cautiously to the Chinese proposal. On the JMSU between the Philippines, China and Vietnam, President Benigno Aquino III stated that “we will not inflame tension in the Spratly Islands Group or the Kalayaan Island Group. We will always work to achieve diplomatic solutions to all these contending claims on the Kalayaan Group of Islands”. Affirming the Philippines’ peaceful and sincere approach towards the South China Sea issue, he stated that the JMSU “should not have happened”, saying it encroached on the country’s territorial waters (ABS-CBN News 2011). At a bilateral meeting with Vietnamese partners, Philippine Foreign Minister Del Rosario even confirmed that the Philippines would not be cooperating with China on joint projects such as oil exploration if Beijing continued to insist on its sovereignty over all waters of the South China Sea (The Philippine Star 2013).

Taking China’s proposal for joint resource development in disputed waters into consideration, Vietnam has shown neither official opposition nor explicit support. Luong Thanh Nghi, the spokesperson of Vietnam’s Foreign Ministry, stated that “Viet Nam is not opposed to the idea of developing resources in disputed waters with neighboring countries, but says such cooperation has to be

carried out in accordance with the United Nations Convention on the Law of the Sea that was adopted in 1982". However, Nghi stressed that Vietnam would not cooperate with China in areas claimed by Vietnam. Along with this clear message to China, Vietnam further called for the establishment of an active partnership with India, China's rival, which could be interpreted as an rejection of Chinese overtures regarding cooperation. On 12 October 2011, during the visit of Vietnamese President Truong Tan Sang to India, both countries signed six agreements, including ones on joint resource development.

These examples show how Southeast Asian states have refused to accept China's proposal to set aside disputes and pursue joint development since 2008. Why? Based on our analytical framework, we argue that China is becoming too powerful and has increasingly possessed more hard power such as economic and military capability, but has refused to limit its power through the implementation of institutional frameworks. Contrary to the peaceful approach towards the South China Sea issue before 2008, China has raised concern of other claimants when it competed for sovereignty, jurisdiction and control of the South China Sea. Over the past decades, the rapid expansion and modernization of the People's Liberation Army Navy (PLAN), which has been criticized for its lack of transparency, has led to concerns amongst China's neighbors in the SEA region. Since 2007, China tried to base its Type 094 nuclear powered ballistic submarines on Hainan Island, an indication that the Chinese navy is strengthening its patrol activities in the South China Sea (US Office of the Secretary of Defense 2010).

The growing concerns of claimants over South China Sea issues were worsened by the aggressive behavior exhibited by China during an incident in March 2009, wherein five Chinese vessels shadowed and aggressively harassed the unarmed USNS *Impeccable* in the South China Sea (International Crisis Group [ICG] 2012a, 2012b). The rate of collisions between Vietnamese and Chinese civilian boats and Chinese surveillance vessels also notably increased in 2009. On 26 May 2011, two Chinese maritime surveillance vessels for oil and gas exploration were spotted in Vietnam's EEZ some 120 kilometers off the southern Vietnamese coast. Videos of a Chinese vessel breaking the cable attached to the Vietnamese vessel "Binh Minh" were later released by the Vietnamese Foreign Ministry (Energy-Pedia News 2011).

The Philippines also clashed with China during this time period. In an incident on 2 March 2011, in the Philippine-claimed zone 250 kilometers west of Palawan, an oil exploration ship was harassed by two Chinese patrol boats. However, China denied this story and even accused the Philippines of "invading" its waters (Buszynski 2012, p. 142). The tensions between China and the Philippines escalated in April 2012 in a dispute over the sovereignty of the

Scarborough Shoal. The fracas began when a Filipino vessel discovered Chinese fishermen poaching protected species in the areas. Relations between the two sides became tense as they both sent further forces to the area without showing intention to withdraw. Lasting for nearly two months, the standoff over the Scarborough Shoal has been one of the longest standoffs in the South China Sea in the past two decades (Fravel 2012).

From the point of view of ASEAN, the DOC was designed as an interim measure with the ultimate goal of forming a more formally binding COC. The non-binding declaration states that the claimants should comply with the spirit of pursuing comprehensive settlement and cooperative solutions by further agreeing to legal commitments which were expected to follow the DOC. But China has not accepted to bind itself through a COC. China and ASEAN only reached an agreement on the Guidelines for the Implementation of the DOC in 2011, and these Guidelines remain tentative and nonbinding (Thayer 2011, p. 91). China also opposed the Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C) proposed by the Philippines in 2011. More importantly, despite attempts by ASEAN to foster COC negotiations, China still seems skeptical. In early 2013, a positive indicator appeared when China proposed consultations through the ASEAN-China Joint Working Group (JWG) to Implement the DOC Guidelines. Consultations on the COC are conducted within the framework of the JWG. However, the timeline for the successful completion of the consultations – which ASEAN has stated it expects to be finished within the current year – is not clear. During his official visit to ASEAN countries in 2013, the new Foreign Minister of China, Wang Yi, stated that ASEAN should have “realistic expectations” and take “a gradual approach” in searching for a COC consensus (South China Morning Post 2013).

There are, however, examples of China operating in a more cooperative manner. In 2011, Vietnam and China signed a bilateral agreement on six basic principles guiding the settlement of maritime disputes, including seeking “a basic and long-term approach to resolve maritime issues” and conducting “friendly consultations between the two countries on handling maritime issues” (Xinhua News 2011; cf. Nhandan 2011). However, this agreement does not meet the required conditions for the establishment of a “constitutional order”, which China has thus far avoided. China prefers bilateral negotiations as a method which increases the likelihood of individual states’ eventual submission. The objectives of such strategy are to “bring its strength to bear on the Southeast Asian countries and impose its own rules, rather than internationally accepted ones from international law on these waters” (Duong and Le 2010). Furthermore, as Vietnam made clear at the time the agreement was signed, “any cooperation for mutual development would occur only in areas of

bilateral disputes, which mainly referred to the waters at the mouth of the Gulf of Tonkin" (ICG 2012b, p. 5). The area mentioned by both sides was not directly related to the islands and water around the Spratly Islands.

As mentioned above, China has been attempting to avoid limiting its ability to use its own power through participation in institutional frameworks. Another example of China's non-cooperative approach within an institutional framework is their objection to UN-led arbitration of disputes in the region. In 2013, the Philippines was the first Southeast Asian nation to initiate court proceedings with the International Tribunal for the Law of the Sea (ITLOS), asking the Tribunal to declare that the nine-dash line had no basis in international law. In January 2013, the Philippines officially sued China at the UN Court in The Hague. Immediately following this, Philippine Foreign Minister Albert del Rosario announced the move to the media prompting China to recall their Ambassador from Manila. In April, 2013, the Filipino government officially opposed China's claim before the UN. According to the Philippines, China's U-shaped line, which is based on "historic rights" has violated Philippine territory under international law and is not consistent with the UNCLOS. Foreign Minister del Rosario said that Manila will bring the case against China to arbitration under the provisions of UNCLOS, a treaty that both sides signed in 1982. The Philippines has been taking steady steps to further the case. In January 2014, the country asked a UN Permanent Court to consider its case. A month later, it amended its arbitration pleading to "get a favorable decision soonest" (Bloomberg 2014). In March 2014, it submitted 40 maps and a 4,000-page document to the court.

In response these actions by the Philippines, China has said that it has sufficient historic and legal evidence to prove its sovereignty over the Scarborough Shoal. Chinese Ambassador in Manila Ma Ke-qing reiterated Beijing's position and stressed that China has indisputable sovereignty over islands in the South China Sea and its adjacent waters. The Ambassador said "the Chinese side strongly holds that the disputes on the South China Sea should be settled by parties concerned through negotiations" (quoted in BBC 2013). Therefore, China refused to join the arbitration case and warned that it could damage bilateral relations. Chinese Foreign Ministry spokesman Hong Lei reaffirmed Beijing's stance on 30 March 2014. "China cannot accept the international arbitration sought by the Philippines, and the Philippines occupies some islands in the South China Sea illegally." Moreover, the Philippines should be on the "right track" of using bilateral talks to resolve territorial disputes, Hong said in the statement" (Bloomberg 2014). Despite China's rejection of UN arbitration, the arbitration court is still carrying out procedures. In response to the first procedural order issued by the court, dated 17 August 2013, the Philippines

submitted the Memorandum on 30 March 2014. In its second procedural order, the tribunal issued a note fixing 15 December 2014 as the deadline for China to submit its counter-memorial (Permanent Court of Arbitration [PCA] 2016).

In sum, the Chinese approach to foreign policy in the South China Sea since 2008 has caused its neighboring countries to fear that the country is now merely unilaterally affirming its national interests. The lack of a “constitutional order” that can make hegemonic powers more predictable has led to the fact that China’s cooperative projects have received little sympathy from Southeast Asian countries. Although countries such as Vietnam, Malaysia and the Philippines have agreed that joint development may be a solution, their actual views – as reflected by public opinion and in academic circles – holds that the Chinese proposal is in fact a conspiracy to enhance its de jure access to the “disputed areas” while maintaining its de facto control of the South China Sea.

Joint Development Possibilities: Bringing “rule-based order” Back in

The change in the regional balance of power in favor of China, and the ways it has utilized its growing power, have affected the secondary strategic choices of Southeast Asian states in response to the Chinese proposal. Following the signing of the DOC in 2002, China and ASEAN agreed to solve the disputes through negotiations. Whilst China and ASEAN were unlikely to reach an agreement that would satisfy both sides, the act of strategic restraint in participating within the framework of the DOC led to more positive engagement between China and the Southeast Asian states, as China, although an emerging power, showed its willingness to play by the rules of the game. In contrast, since 2008 the situation has changed to another path, which is demonstrated by the fact that Southeast Asian states have continuously refused China’s proposal to cooperate in the joint development of the region. As such, China has not achieved its goal of constructing a cooperative mechanism in the South China Sea because it is unwilling to solve the conflict through multilateral rules and agreements. Instead, China began to pursue a series of unilateral power policies, which triggered widespread opposition from neighboring states, as well as refused to bind itself with any institutions or legal agreements.

As previously mentioned, balance-of-power and balance-of-threat theories predict that states will try to prevent the emergence of a rising power or an external security threat by extensively increasing their own material capabilities, or by allying and forging close strategic partnerships with extra-regional powers (Walt 1987; Waltz 1979). If China continues to increase its capabilities but is unwilling to bind itself under legal and political frameworks in the South China Sea, a classic “security dilemma” will arise within the Southeast Asian region. Other countries in the region will have to choose to follow self-help principles of either depending on their own capabilities for security by increasing

their military budgets or seeking strategic cooperation with security guarantors as a hedge against growing Chinese power.

Unwillingness to exercise strategic restraint of its power may prevent China from achieving acceptance of its leadership by other regional players. China's economic dominance has not transformed into political leadership in terms of gaining a following from amongst the Southeast Asian countries regarding regional cooperation in South China Sea disputes. Indeed, improving the state's capabilities in terms of "hard power", along with bearing international responsibilities, is the principal challenge for China to become a hegemonic leader. In this context, Robert Beckman (2007) suggested an approach to enhance joint development, arguing that "before meaningful discussions can take place on the creation of joint development zones, it may be necessary to first negotiate a framework document that 'shelves' or 'freezes' existing claims and sets out the principles upon which cooperation and joint development can proceed". The lack of a "constitutional order" guiding the resolution of these issues could become an important impediment to China's successful effort in managing territorial conflicts. Thus, when examining the potential of China's leadership performance in this issue, the underlying question is how China engages other claimants such as Vietnam, the Philippines and Malaysia to accept its approach.

In this sense, the asymmetry of physical capacity between China and secondary states in SEA not only matters in terms of the prospects for joint development in the South China Sea, but also matters in terms of the evolving regional security order in which the shift of power is taking place. We assume that whether or not states conduct joint development projects (either bilaterally or multilaterally) in the South China Sea is influenced by many factors, particularly the interrelation between power, technique and domestic politics within the respective claimants' states. Some factors are necessary preconditions of joint development and some factors only start to affect the issue after the claimants agree to negotiate.

Taking into consideration these preexisting conditions, an ideal solution for tackling these issues at the next negotiation of new joint development agreements would be to divide the negotiations into two major parts. Firstly, it is process-based part. The second one should be aimed at seeking consensus with regards to the essence of the issues (issues-based). We believe that the regional structure, formed by balance of power between regional and external countries such as, in the process-based period plays a crucial role. ASEAN states will not agree to take part in the joint development if the balance of power leans toward China without control mechanisms or counterweights (both from inside or outside the region). The imbalance of power may lead ASEAN countries to be suspicious about joint development proposals as a plan of China to turn the undisputed areas into disputed ones, to encroach their exclusive economic

zones. In the meantime, technical factors are more highlighted in the content-based period. The factors will help the claimants to identify in which area to conduct joint development, what to jointly develop and how to do it. The technical choices will be affected by domestic politics and interests of the claimants, which are reflected by efforts to control the process and content of policy as much as possible of different interest groups in their countries.

Bibliography⁶

- ABS-CBN News (2011): "PNoy: JMSU with China, Vietnam shouldn't have happened." 4 January. Available at: <http://www.abs-cbnnews.com/nation/01/04/11/pnoy-jmsu-china-vietnam-shouldnt-have-happened>.
- ASEAN (2016): "Treaty of Amity and Cooperation in Southeast Asia Indonesia." February 24, 1976. Available at: <http://www.asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>.
- Association of Southeast Asian Nations (ASEAN) (2016): "Declaration on the Conduct of Parties in the South China Sea." Phnom Penh, 4 November 2012. Available at: http://www.asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.
- Baviera, Aileen (2012): "The Influence of Domestic Politics on Philippine Foreign Policy: The case of Philippines-China relations since 2004." *S. Rajaratnam School of International Studies (RSIS) Working Papers*, no. 241.
- Beckman Robert C. (2007): "Joint Development in the South China Sea: Time for ASEAN and China to Promote Cooperation?" *RSIS Commentaries*, no. 46.
- Beijing Times (2002): "China offers new security concept at ASEAN meetings." 2 August.
- Bloomberg (2014): "Philippines Sues China to Assert Claim Over Gas-Rich Waters." 30 March. Available at: <http://www.bloomberg.com/news/articles/2014-03-30/philippines-calls-china-threat-to-security-over-isles-squabble>.
- Buszynski Leszek (2003): "ASEAN, the Declaration on Conduct, and the South China Sea." *Contemporary Southeast Asia*, 25(3), 343–346.
- Leszek Buszynski (2012): "The South China Sea: Oil, Maritime Claims, and U.S. – China Strategic Rivalry." *The Washington Quarterly*, 35(2), 139–156.
- Chung, Chien-Peng (2004): *Domestic Politics, International Bargaining, and China's Territorial Disputes*. London and New York: Routledge.
- Chung, Chien-Peng (2007): "Resolving China's Island Disputes: a Two-Level Game Analysis." *Journal of Chinese Political Science*, 12(1), 49–71.

6 All internet sources have last been accessed on 1 October 2016.

- Dosch Jörn (2010): "The Fallacy of Multilateralism Rhetoric in China-Southeast Asia Relations – A Neo-Realist Perspective on Regional Order building." *UNISCI Discussion Papers*, no. 24, 135–152.
- Duong, Huy (2011): "'Setting Aside Dispute, Pursuing Joint Development' the Chinese Way." *Vietnamnet Bridge*, 7 November.
- Duong Huy and Le Tinh (2010): "China's South China Sea Claim." *Asia Sentinel*, 11 October.
- Energy-Pedia News (2011): "Vietnam: Chinese patrol boats harass Vietnamese oil and gas survey ship in South China Sea." 29 June. Available at: <http://www.energy-pedia.com/news/vietnam/chinese-patrol-boats-harass-vietnamese-oil-and-gas-survey-ship-in-south-china-sea>.
- Fravel, Taylor (2012): "How to Defuse South China Sea Conflicts." *The Wall Street Journal*, 26 June. Available at: <http://www.wsj.com/articles/SB10001424052702304870304577490332845083476>.
- Goh Evelyn (2011a): "Rising Power ... To Do What? Evaluating China's Power in Southeast Asia." *RSIS Working Paper*, no. 226.
- Goh Evelyn (2011b): "Institutions and the great power bargain in East Asia: ASEAN's limited 'brokerage' role." *International Relations of the Asia-Pacific*, 11(3), 373–401.
- Grieco John (1995): "The Maastricht Treaty, Economic and Monetary Union and the Neorealist Research Programme." *Review of International Studies*, 21(1), 21–40.
- Hurrell Andrew (2004): "Hegemony and Regional Governance in the Americas." *Global Law Working Paper Series*, New York University.
- ICG (2012): "Stirring Up the South China Sea (II): Regional Responses." *Asia Report*, no. 229, Brussels, 24 July. Available at: <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/229-stirring-up-the-south-china-sea-ii-regional-responses.pdf>.
- Ikenberry, John G. (1999): "Institutions, Strategic Restraint, and the Persistence of American Postwar Order." *International Security*, 23(3), 43–78.
- Ikenberry, John G. (2012): *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*. Princeton: Princeton University Press.
- International Crisis Group (ICG) (2012): "Stirring Up the South China Sea (I)." *Asia Report*, no. 223, Brussels, 23 April. Available at: <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/223-stirring-up-the-south-china-sea-i.pdf>.
- Lee, Lai To and Shaofeng, Chen (2009): "China and Joint Development in the South China Sea: An Energy security Perspective." In Bateman, Sam and Emmers, Ralf (Eds.): *Security and International Politics in the South China Sea*. London and New York: Routledge, 155–171.
- Lucio, Blanco Pitlo III (2012): "Searching for China's concept of joint development in the South China Sea." *Eurasia Review*, 1 November. Available at: <http://www.eurasiareview.com/01112012-searching-for-chinas-concept-of-joint-development-in-the-south-china-sea-analysis/>.

- Ministry of Foreign Affairs China (2000): "Set aside dispute and pursue joint development." 17 November. Available at: <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm>.
- Nguyen H. Thao (2003): "The 2002 Declaration on the Conduct of Parties in the South China Sea: A Note," *Ocean Development & International Law*, 34(3-4), 27-28.
- Nguyen, H. Thao and Amer, Ramses (2009): "A New Legal Arrangement for the South China Sea?" *Ocean Development & International Law*, 40(4), 333-334.
- Nhandan (2011): "Vietnam-China agree on basic principles to resolve maritime issues." 12 October. Available at: <http://en.nhandan.org.vn/en/politics/external-relations/item/1808602-vietnam-china-agree-on-basic-principles-to-resolve-maritime-issues.html>.
- Pedersen, Thomas (2002): "Cooperative Hegemony. Power, Ideas and Institutions in Regional Integration." *Review of International Studies*, 28(4), 677-696.
- Permanent Court of Arbitration (PCA) (2016): "The Republic of Philippines v. The People's Republic of China." Available at: <http://www.pcacases.com/web/view/7>.
- Philippine Daily Inquirer (2013): "China open to joint oil development in Recto Bank." 7 January. Available at: <http://globalnation.inquirer.net/61007/china-open-to-joint-oil-devt-in-recto-bank>.
- SINA English (2012): "China unveils 3-billion-yuan maritime fund for ASEAN." 8 October.
- South China Morning Post (2013): "Beijing tells ASEAN to be realistic in hopes for South China Sea code of conduct." 6 August.
- Storey Ian (2008): "Trouble and Strife in the South China Sea Part 1 + 2: The Philippines, Vietnam and China." *China Brief*, 8(9), 28 April.
- Thayer, Carlyle A. (2011): "Chinese Assertiveness in the South China Sea and Southeast Asian Responses." *Journal of Current Southeast Asian Affairs*, 30(2), 77-104.
- The Philippine Star (2004): "RP, China approve joint oil exploration in Spratlys." 2 February. Available at: <http://www.philstar.com/headlines/263251/rp-china-approve-joint-oil-exploration-spratlys>.
- The Philippine Star (2013): "Philippines, Vietnam discuss sea feud with China." 2 August. Available at: <http://www.philstar.com/world/2013/08/02/1043091/philippines-vietnam-discuss-sea-feud-china>.
- Tien Phong (2010): "Gác lại tranh chấp Biển Đông, chờ điều kiện chín muồi" (Set aside dispute and wait for the right time.) 10 June. Available at: <http://www.tienphong.vn/xa-hoi/182662/Gac-lai-tranh-chap-Bien-Dong-cho-dieu-kien-chin-muoi.html>.
- Tran, Truong Thuy (Ed.) (2009): "The South China Sea: Cooperation for regional security and development." *Proceedings of the International Workshop*. Diplomatic Academy of Vietnam, 26-27 November, 34-35.
- United States Office of the Secretary of Defense (2010): "Military and Security Developments Involving the People's Republic of China 2010: Annual Report to Congress." Washington, D.C..

- Valencia, Mark and Nong, Hong (2013): "Joint Development Possibilities: What, Where, Who and How?" *Global Asia*, 8(2), 102–109.
- Valencia, Mark and Van Dyke, Jon and Ludwig, Noel A. (1999): *Sharing the Resources of the South China Sea*. Honolulu: University of Hawaii Press.
- VietNamNet (2009): "Giải quyết tranh chấp Biển Đông trong mắt học giả Trung Quốc" (Solving the disputes of the East Sea in the eyes of Chinese scholar.) 7 December. Available at: <http://www.tuanvietnam.net/2009-12-04-giai-quyet-tranh-chap-bien-dong-trong-mat-hoc-gia-trung-quoc>.
- Vuving Alexander L. (2006): "Strategy and Evolution of Vietnam's China Policy: A Changing Mixture of Pathways." *Asian Survey*, 46(6), 805–824.
- Vuving Alexander L. (2009) "Grand Strategic Fit and Power Shift: Explaining Turning Points in Vietnam-China Relations." In Tang, Shiping, Li, Mingjiang and Acharya Amitav (Eds.): *Living with China: Regional States and China through Crises and Turning Points*. New York: Palgrave Macmillan, 229–245.
- Walt, Stephen M. (1987): *The Origins of Alliances*. Ithaca: Cornell University Press.
- Waltz, Kenneth (1979): *Theory of International Politics*. New York: McGraw-Hill.
- Xinhua News (2011): "China, Vietnam sign accord on resolving maritime issues." 12 October. Available at: http://news.xinhuanet.com/english2010/china/2011-10/12/c_131185606.htm.
- Zou, Keyuan (2006): "Joint Development in the South China Sea: A New Approach." *The International Journal of Marine and Coastal Law*, 21(1) 83–109.