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# China's response to disputes in the South China and East China Seas

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A Thesis

entitled

China's Response to Disputes in the South China and East China Seas

by

Miramelinda Badri Arribas-Douglas

Submitted to the Graduate Faculty as partial fulfillment of the requirements for the

Master of Arts Degree in Political Science

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Dr. David Davis, Committee Chair

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The University of Toledo  
December 2015

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An Abstract of  
China's Response to Disputes in the South China and East China Seas

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The escalating conflicts over territory in the heart of the maritime South and East China Seas have implications for regional stability in Asia. The territory is resource rich; located in strategic waterways; and contains undisputed oil and natural gas. There is also a perceived shift in the international system established by the United States since World War II, with China seeking to take its place as the regional power. China's behavior towards the remaining claimants and in part towards other external players in the disputes are analyzed through concepts in International Relations and case studies in International Law. In concluding, International Relations concepts in the realist tradition, namely the Balance of Threat, best explains China's behavior in pursuit of its maritime claims in the South China and East China Seas.

I would like to dedicate this thesis to my sources of inspiration: children Giles and Ayana; parents Irina and Boni; siblings Bonju and Jusuf; and loving Aunts Tita Beng and Tita Doc, who give new meaning to the phrase “it takes a village”.

# Acknowledgments

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# Contents

<b>Abstract</b>	<b>iii</b>
<b>Acknowledgments</b>	<b>v</b>
<b>Content</b>	<b>vi</b>
<b>1 Theory and a Review of Literature.....</b>	<b>1</b>
<b>2 Facts.....</b>	<b>14</b>
<b>3 Analyzing the Dispute.....</b>	<b>24</b>
<b>4 International Law.....</b>	<b>31</b>
<b>5 Conclusion.....</b>	<b>37</b>
<b>References</b>	<b>42</b>

# Chapter 1

## Theory and a Review of Literature

Territorial disputes in the South China and East China Seas are at risk of escalating to a higher level of conflict without the application of preventative measures to diffuse the high saliency of the issue. The territorial issues that may tilt the balance in one way or the other are located in the heart of maritime East and Southeast Asia: the Senkaku/Diaoyu Islands and the Paracel and Spratly Islands.

No indigenous population resides on any of the islands hence actions are solely government driven. The islands are strategically located on commercial fishing grounds, primary shipping lanes, and is in close proximity to unexplored oil and gas resources. China ties the issue to a defense of its national sovereignty, whereas the remaining claimant states see it as encroachment by the looming threat of China.<sup>1</sup> Currently scattered garrisons exist on various islands. Whoever obtains control over the islands inevitably controls the economic resources of a very large part of the East China and South China Seas. The issue is territorial in nature, it stems issues of national sovereignty, and is accompanied by a paramount fear and suspicion of Chinese

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<sup>1</sup> Mohan Malik, "Historical Fiction: China's South China Sea Claims," *World Affairs*, May/June 2013, accessed November 30, 2015, <http://www.worldaffairsjournal.org>.

dominance in the region. The nature and complexity of the dispute has the propensity to destabilize the entire region and escalate tensions unless continual dialogue and collaborative efforts pave the way for concrete negotiations.

China's ascendancy and economic growth is correlated with resolution of most of its land locked border disputes, seventeen out of twenty three since 1949 according to M. Taylor Fravel.<sup>2</sup> Due to regime insecurity, a delaying strategy was employed in the remaining six disputes. Compromising rather than delaying the resolution of highly salient territory meant that the threat to internal stability was also high.<sup>3</sup> Fravel documented the resolution of China's border disputes with Afghanistan, Kazakhstan, and Mongolia for example (see table 1) and found that it ceded a larger share of the territory it claimed in an attempt to secure its boundaries, allowing resources to be allocated elsewhere.<sup>4</sup>

Resolution of China's maritime disputes however are a different matter, and apart from the recent and widely publicized land reclamation efforts by the Chinese in the Spratly's, occupation of the Paracel's and efforts in the Senkaku/Diaoyu dispute are quiet and less obvious. The Chinese are pursuing “incursions and annexations too small to provoke a response but which cumulatively advance its position. The authorities think that over time, the present level of operations is enough to refute Japan's claim to effective administrative control.”<sup>5</sup> Because any movement is scrutinized at this

heightened stage in the disputes over the Spratly islands the United States, perhaps in

<sup>2</sup> M. Taylor Fravel, “Regime Insecurity and International Cooperation: Explaining China’s Compromises in Territorial Disputes,” *International Security* 30 (2005): 46.

<sup>3</sup> Fravel, Regime Insecurity and International Cooperation, 54.

<sup>4</sup> Fravel, Regime Insecurity and International Cooperation, 61.

<sup>5</sup> Stephen Harner, “China De-Escalating The Senkaku/Diaoyu Crisis, But Will Abe Respond?” *Forbes Asia*, August 21, 2014, accessed March 27, 2015, <http://www.forbers.com/sites/stephenharner>.

response to the sounding alarm of China's neighbors, solidified its position. Already the United States and Japan are expanding their military relationship by allowing Japanese Self Defense Forces increased global mobility.<sup>6</sup> If there is any doubt as to America's role in the Asia Pacific, Defense Secretary Ashton B. Carter declared during a May 30, 2015 dialogue in Singapore “We will remain the principal security in the Asia-Pacific for decades to come.”<sup>7</sup> Amid this backdrop, several theories explaining China's creeping expansionism in the East China and South China Seas are presented.

Pioneered by Kenneth Waltz, neorealism, also called structural realism, is based on the premise that the self-help international system is inherently anarchic.<sup>8</sup> Instead of human nature, the anarchic state of the international system offers a better explanation for state behavior.<sup>9</sup> State behavior is examined through the system's structure and a distribution of capabilities or power.<sup>10</sup> States provide for their own security and survival through any means at their disposal.

The balance of power theory is based on the assumption that the international system is anarchic; in the absence of world government states are the principal actors in a self-help environment. States will provide for its own security first because its actions are guided by self interest.<sup>11</sup> Balance in the international system is maintained through a

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<sup>6</sup> Minxin Pei, “Why the New U.S. - Japan Security and Trade Pacts Will Incur China's Wrath,” *Huffington Post*, May 4, 2015, accessed June 25, 2015, <http://www.huffingtonpost.com/minxin-pei>.

<sup>7</sup> Walter Pincus, “China is not the only country reclaiming land in South China Sea” *The Washington Post*, June 1, 2015, accessed June 8, 2015, <http://www.washingtonpost.com/world/national-security>.

<sup>8</sup> Timothy McKeown, “Neorealism” *Oxford Bibliographies*, April 28, 2014, accessed November 30, 2015, <http://www.oxfordbibliographies.com>.

<sup>9</sup> “Kenneth Waltz” *Wikipedia*, November 20, 2015, accessed November 20, 2015, [https://en.wikipedia.org/wiki/Kenneth\\_Waltz](https://en.wikipedia.org/wiki/Kenneth_Waltz).

<sup>10</sup> Joshua Goldstein and Jon Pevehouse, *International Relations* (New Jersey: Pearson, 2014), 56.

<sup>11</sup> Andre Munro, “Kenneth N. Waltz: American political scientist and educator, *Encyclopedia Britannica*, February 5, 2015, accessed October 30, 2015, <http://www.britannica.com/biography/Kenneth-N-Waltz>.

system of checks and balances. In a bipolar system states may balance through a maintenance of their military capabilities whereas in a multipolar system, states may form alliances instead.<sup>12</sup>

Inspired by Kenneth Waltz's Balance of Power theory and along the realist vein, Stephen Walt created the Balance of Threat Theory to help fill in the blanks that Kenneth Waltz's Balance of Power theory could not. Improving on the traditional balance of power theory, instead of reacting to an imbalance of power, an unequal distribution of aggregate capabilities, or towards the most powerful state or coalition in the system; responses are formed instead to an imbalance of threat.<sup>13</sup> The threatening state may prompt alliance behavior and in some cases an increase in internal measures to reduce perceived vulnerabilities. States form alliances as a reaction to an imbalance of threat.<sup>14</sup>

Stephen Walt suggests that states will ally to balance against perceived threats than with power alone. The most powerful state in the same system may not necessarily be the most threatening one. In looking for a better explanation of alliance behavior that could not be explained by a distribution of aggregate capabilities, he identifies four levels of threat perception: aggregate power, geographic proximity, offensive power, and aggressive intentions.<sup>15</sup> According to Walt, the greater a state's aggregate power or total resources derived from population, industrial and military capability, and technological ability; the greater its threat perception to others. Threat perception is also affected by a state's ability to project power and influence through its geographic proximity. Walt

<sup>12</sup> Steven Lobell, "Balance of Power Theory" Oxford Bibliographies, November 25, 2014, accessed November 30, 2015, <http://www.oxfordbibliographies.com>.

<sup>13</sup> Andre Munro, "Kenneth N. Waltz: American political scientist and educator, *Encyclopedia Britannica*, February 5, 2015, accessed October 30, 2015, <http://www.britannica.com/biography/Kenneth-N-Waltz>.

<sup>14</sup> Stephen Walt. *The Origins of Alliances*, (New York: Cornell University Press, 1990), p.263.

<sup>15</sup> Walt, *The Origins of Alliances*, 263-264.

defines a state's offensive power as "the ability to threaten the sovereignty or territorial integrity of another state at an acceptable cost." States with large offensive capabilities are more likely to trigger alliances as opposed to states that are militarily or geographically constrained. Regardless of a state's offensive capabilities, if a state is perceived to have aggressive intentions this affects alliance choices making balancing behavior more likely.<sup>16</sup>

In response to the levels of threat perception, states may exhibit bandwagoning or balancing behavior, with the latter type more observable. Balancing is described as aligning with others against the prevailing threat or a threatening power while bandwagoning is alignment with a great power, a significantly stronger state, or with the source of danger. Weaker states choose to bandwagon with a great power when little can be done to affect an outcome, when allies are unavailable, and when profits may be reaped from a great power's victory. Balancing occurs when the threatening state is in close geographic proximity, when a state has greater offensive capabilities and aggregate power, and if it is perceived to have aggressive intentions.<sup>17</sup>

According to Stephen Walt, states choose alliance partners depending on whether they ally with or against the external threat. If states ally against the principal external threat, and if balancing behavior is more common; Walt believes states are more secure because the aggressor will find themselves facing a unified front. Should states ally with the principal external threat; bandwagoning is the dominant tendency. Walt asserts that

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<sup>16</sup> Stephen Walt. *The Origins of Alliances*, (New York: Cornell University Press, 1990), p. 22-25.

<sup>17</sup> Walt, *The Origins of Alliances*, 148-152.

successful aggressors attract additional allies, enhancing power and reducing that of their opponents, in this instance security is scarce.<sup>18</sup>

The strategic order established in the Asia-Pacific since World War II and maintained under the US security umbrella is being challenged by China. Some analysts are calling on a grand strategy to contain China; that past efforts to integrate China into the liberal international order worked so well that China is now challenging the United States' supremacy in the region and eventually globally.<sup>19</sup>

A pioneering neoliberal thinker and proponent of soft power; according to Joseph Nye the preponderance of American power in the present international system is challenged by rising tides of nationalism and calls for separate states.<sup>20</sup> By stressing the importance of sovereignty, an element of constructivism is introduced in the neorealist/neoliberal debate of China's growing militarism and the regions expanding economic interdependence<sup>21</sup>. Concepts such as power and threat perceptions are important when analyzing the maritime disputes between China and its neighbors but so are the socially constructed concepts of sovereignty and nationalism.<sup>22</sup>

Nye brings the overwhelming subject of China's rise to a manageable size by providing a road map which utilizes a combination of the individual, the state, and the system in his level of causation or analysis. Nye looks at the structural, process, and domestic approaches to explaining international events going so far as to say: "Thus far,

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<sup>18</sup> Stephen Walt. *The Origins of Alliances*, (New York: Cornell University Press, 1990), p.17.

<sup>19</sup> Banyan, "The strategic order in place in Asia since the Vietnam war is being challenged" *The Economist*, April 25, 2015, p. 41.

<sup>20</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 2.

<sup>21</sup> Nye, *Understanding International Conflicts*, 8.

<sup>22</sup> Nye, *Understanding International Conflicts*, 8.

predictions based on process and domestic change seemed to have fared best.”<sup>23</sup> Whether process and domestic change help explain China's behavior toward its territorial disputes is to be determined.

At the structural level, Nye believes that World War I originated because of a change in process due to the rise of Germany, and the inflexibility and eventual bipolarity of the alliance system. Germany had world ambitions under Kaiser Wilhelm, but unlike during Otto Von Bismarck's time, the use of hard power to pursue its ambitions pushed other states to fall into rigid camps. The move towards bipolarity, indicating a change in the process; the rise of nationalism; an increasing complacency about peace; the introduction of social Darwinism, and German policy which focused too much on hard power, all contributed to the start of World War I.<sup>24</sup>

Nye also applies the three levels of analysis to the Pacific war in 1941. At this time nationalists controlled the government and coupled with an insecurity about access to raw materials, made the case for imperial expansionism.<sup>25</sup> On the individual level, Nye credits Japan's expansionist generals and admirals in addition to Franklin Roosevelt's challenging stance. Had appeasement been applied to Japan, it would be the regional power in Asia. On the domestic level economic collapse contributed to Japan's militarism and expansionism. Isolationist sentiments were strong in the United States. Nationalist China, internally weak, easily succumbed to Japanese aggression.<sup>26</sup> At the structure or system level, Nye credits Japan's unsatisfied ambitions, the economic

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<sup>23</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 43.

<sup>24</sup> Nye, *Understanding International Conflicts*, 71-74.

<sup>25</sup> Nye, *Understanding International Conflicts*, 107-108.

<sup>26</sup> Nye, *Understanding International Conflicts*, 109.

problems of the 1930's, a need for raw material, and the weakness of the League of Nations and collective security.<sup>27</sup>

Small states can often use their greater intensity and greater credibility to overcome their relative vulnerability in asymmetrical interdependence.<sup>28</sup> Nye analyzes complex interdependence and liberalism by using the example of the U.S.-China relationship. China has a strong domestic incentive to trade with the United States and although China has a trade surplus with the U.S., the U.S. is nevertheless able to purchase Chinese goods elsewhere. Furthermore, should China attempt to sell its holding of dollars earned from exports, it would only hurt its sales to the United States. The United States would lose out by not gaining a foothold in the large Chinese market. Domestic demand for Chinese goods means the U.S. is further constrained by transnational actors who implement trade and human rights sanctions against China.<sup>29</sup>

Nye discusses the security dilemma by describing how the Peloponnesian wars grew out of a rational reaction of states to an absence of higher government. States take matters into their own hands by building strength and increasing their security in an insecure world. Fear and perceived threats lead states to build defenses. This self-defeating act is attributed to what he terms the prisoner's dilemma.<sup>30</sup> States acting independently in such an insecure environment ultimately incurs the most losses, whereas the best outcome is attained if everyone opts to cooperate. The dilemma arises when

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<sup>27</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 111.

<sup>28</sup> Nye, *Understanding International Conflicts*, 215.

<sup>29</sup> Nye, *Understanding International Conflicts*, 220-221.

<sup>30</sup> Nye, *Understanding International Conflicts*, 16.

cooperation can only be attained in a secure environment nurtured by communication, trust, and credibility, otherwise states will opt to provide for their own security.<sup>31</sup>

There are striking parallels between the backdrop of the Peloponnesian war and the maritime disputes between China and its neighbors. The mutually insecure regional environment in Asia is prompting a military build up and demonstration of force that is characteristic of the prisoner's dilemma and increasingly so, of China. To illustrate, compared to \$42 billion today, defense spending in Southeast Asia is expected to reach \$66 billion by 2020, says *IHS Jane's Defense Weekly* reports.<sup>32</sup> At a maritime defense show held in Singapore in May 2015, participant interest ranged from increasing maritime capabilities either through procurement of Russian or German submarines to the repair of older equipment.<sup>33</sup>

Taylor Fravel examines the compromises China made in its territorial disputes, offering regime insecurity as the best explanation behind its cooperation and delaying strategies. Since 1949 China has compromised in seventeen of its twenty-three territorial disputes, often losing out on territory and other concessions in border disputes involving ethnic minorities.<sup>34</sup> The saliency of internal threats to regime stability trumps territorial concessions in defense of China's numerous borders (see table 1). According to Fravel, there is a direct correlation between regime insecurity and cooperation in territorial disputes, at least along China's long land border. On the other hand, in three of six off

<sup>31</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 16-17.

<sup>32</sup> Siva Govindasamy, "South China Sea dispute: Southeast Asia maritime build-up accelerates" *The Sydney Morning Herald*, May 26, 2015, accessed May 26, 2015, <http://www.smh.com.au>.

<sup>33</sup> Siva Govindasamy, "South China Sea dispute: Southeast Asia maritime build-up accelerates" *The Sydney Morning Herald*, May 26, 2015, accessed May 26, 2015, <http://www.smh.com.au>.

<sup>34</sup> M. Taylor Fravel, "Regime Security and International Cooperation: Explaining China's Compromises in Territorial Disputes," *International Security* 30 (2005): 46.

shore island disputes, “a delaying strategy was adopted in order to maximize potential economic or strategic benefits.”<sup>35</sup> A further review of the remaining three cases in his study revealed that although no internal threats to regime security were identified, other exigent external factors proved a stronger incentive to compromise.<sup>36</sup> Perhaps should there be increasing rivalry such as the United States' rivalry with China, there will be an incentive for China to cooperate and compromise over territorial disputes. M. Taylor Fravel, in “Strong Border Secure Nation” states that the USSR's rivalry with the US resulted in the Soviets' pursuit of compromise with China over territorial disputes.<sup>37</sup>

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<sup>35</sup> M. Taylor Fravel, “Regime Security and International Cooperation: Explaining China’s Compromises in Territorial Disputes,” *International Security* 30 (2005): 62.

<sup>36</sup> Fravel, Regime Security and International Cooperation, 61-62.

<sup>37</sup> Fravel, Strong Borders Secure Nation, 304.

**Table 1: China's territorial disputes, 1949-2005**

<b>Disputed Area</b>	<b>Talks</b>	<b>Description of Settlement</b>
Homeland dispute: Hong Kong	1984	Territory returned to China
Frontier dispute: Mongolia border	1964	China received 29% of disputed land
Frontier dispute: Afghanistan border	1965	China did not receive any of the disputed Wakhan corridor.
Frontier dispute: Kazakhstan border	2002	China received approximately 22% of the disputed land.
Frontier dispute: Kyrgyzstan border	2004	China received approximately 32% of the disputed land.
Offshore island dispute: White Dragon Tail Island	No formal agreement	Island was transferred to North Vietnam.

Source: M. Taylor Fravel, "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes," *International Security* 30 (2005): 56-57, table 1.

Fravel believes that the importance to China of securing a maritime frontier is both economic and military. China pursues a policy of delay and cooperation when it comes to the question of sovereignty and occupation as opposed to ceding any claims to territory. When the rising value of the islands are coupled with the threat of occupation by other states, further diminishing China's relative position, the use of force is employed to secure its claim.<sup>38</sup> Furthermore, maintaining its claim as the legitimate government of China is directly tied to the territorial dispute over the three island groups, especially since the Republic of China is laying claim to the same islands.<sup>39</sup>

Gregory Gause III argues that states will overwhelmingly balance against the most immediate threat to its domestic regime security, namely transnational ideologies rather than raw military capabilities. "Given these facts, security challenges to Third World states are as likely, if not more likely, to originate within their borders, even if these internal threats are supported and encouraged by other states or international actors. For that reason, internal threats to regime, as opposed to state security become much more salient to decision-makers as they calculate their security policy, including alliance decisions."<sup>40</sup> Gause criticizes the theoretical limitations in Stephen Walt's study on the Balance of Threat for not being able to identify the threats which are the most threatening. The story behind the East and South China Seas disputes is different, whereas the alliance decisions of all the claimants are affected by their respective

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<sup>38</sup> M. Taylor Fravel, "Strong Borders Secure Nation: Cooperation and Conflict in China's Territorial Disputes." (New Jersey: Princeton University Press, 2008), 277.

<sup>39</sup> Fravel, Strong Borders Secure Nation, 268.

<sup>40</sup> F. Gregory Gause III, "Balancing What? Threat Perception and Alliance Choice in the Gulf," *Security Studies* 13:2 (2003/4): 279.

interests, the degree of involvement of external powers, namely the United States, and the acquisition of territory.

Gause and Fravel are attempting to order issue salience with regard to territorial disputes. Although they have identified several factors influencing a state's decision to cooperate or delay in disputes over territory, an overarching theme is evident, and that is a state's need to survive.

# Chapter 2

## Facts

Located in the South China Sea, the Paracel Islands are controlled by the People's Republic of China and is claimed by Vietnam and the Republic of China (Taiwan). China took over parts of the islands from Taiwan in 1950 during the Chinese Civil War.<sup>41</sup> Japan renounced its claim to the islands in 1951. Due to a reduced U.S. military presence and of South Vietnamese garrisons, China took unilateral action and gained control of the remaining islands from South Vietnam in 1974, essentially controlling the entire archipelago.<sup>42</sup> By skirting the issue of sovereignty and delaying settlement, China concurrently upgraded infrastructure on Woody Island in 1991 by building a runway.<sup>43</sup> On July 12, 2012, China established the city of Sansha, under Hainan Province, to administer the area. A military installation was built on Woody Island containing an upgraded 1.24 mile airstrip and an artificial harbor.<sup>44</sup> Between May 2 and July 15, 2014,

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<sup>41</sup> "Paracel Islands," CIA World Factbook, accessed April 2, 2015,

<https://www.cia.gov/library/publications/the-world-factbook/geos/pf.html>.

<sup>42</sup> Ngo Minh Tri and Koh Swee Lean Collin, "Lessons from the Battle of the Paracel Islands," *The Diplomat*, January 23, 2014, accessed April 3, 2015, <http://thediplomat.com/2014/01/23>.

<sup>43</sup> M. Taylor Fravel. *Strong Borders Secure Nation: Cooperation and Conflict in China's Territorial Disputes*. 2008 Princeton University Press. p.270

<sup>44</sup> John Boudreau, "China's Airstrip in Paracel Islands Heightens Vietnam Tensions," *Bloomberg Business*, October 9, 2014, accessed April 2, 2015, <http://www.bloomberg.com/news/articles>.

China completed drilling operations by its state owned energy company close to Vietnam's claim, kicking off naval confrontations at sea and violent anti-Chinese riots on land.<sup>45</sup>

The Spratly Islands consist of more than 100 small islands or reefs and 12 main islets. Similar in resource make up to the Paracel's, the Spratly's contain fertile fishing grounds and potential oil and gas deposits. Geostrategically important, over half of all global merchant traffic and 80 percent of oil heading to Japan, South Korea, and Taiwan traverses the Spratlies and its waters.<sup>46</sup>

The French held the islands from 1933-1939, and then Japan occupied the archipelago during the Second World War. After 1951 the islands were claimed in whole by China, Taiwan, and Vietnam, and in part by Malaysia and in 1955 by the Philippines.<sup>47</sup> Brunei claims Louisa Reef as an extension of its continental shelf and as a part of an exclusive economic zone.<sup>48</sup>

The largest island in the Spratly group and the only one with a fresh water source, Itu Aba, has been occupied by Taiwan since 1955.<sup>49</sup> As part of a \$100 million port, and without much protest from China, Taiwan in 2014 began reclamation efforts, adding to an existing radar station and meteorological center.<sup>50</sup>

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<sup>45</sup> Zoe Li, "China Finds Signs of Oil Near Disputed Paracel Islands," *CNN*, July 16, 2014, accessed April 3, 2015, <http://www.cnn.com/2014/07/16>.

<sup>46</sup> Jorn Dosch, "The Spratly Islands Dispute: Order-Building on China's terms?" *Harvard International Review*, August 18, 2011, accessed April 8, 2015, <http://hir.harvard.edu/archives/2841>.

<sup>47</sup> "Spratly Islands," The editors of *Encyclopaedia Britannica*, accessed April 8, 2015, <http://www.britannica.com>.

<sup>48</sup> "East and Southeast Asia: Spratly Islands," *Central Intelligence Agency*, accessed July 6, 2015, <https://www.cia.gov/library/publications/the-world-factbook>.

<sup>49</sup> Michael Gold and Greg Torode, "As Taiwan beefs up prized South China Sea outpost, barely a peep from China," *Reuters*, May 25, 2014, accessed October 28, 2015, <http://www.reuters.com/article>.

<sup>50</sup> Walter Pincus, "China is not the only country reclaiming land in South China Sea" *The Washington Post*, June 1, 2015, accessed June 8, 2015, <http://www.washingtonpost.com/world/national-security>.

Since 1975, the Philippines has a military air strip on Ranudo Air Field on the island of Zhongye Dao. More recently, a Sino-Philippine maritime standoff occurred at Scarborough Shoal in April 2012 followed by a show of force off the Philippine held Second Thomas Shoal.<sup>51</sup> In response to Chinese build up over the past 18 months, the Philippine government announced in June 2014 that \$11 million is set aside to upgrade the runway and associated facilities.<sup>52</sup>

Between 1992-1995 Taylor Fravel documented an increase in competition between China, the Philippines, and Vietnam with contracts awarded to Crestone, Mobil, and Alcorn for seismic surveys and petroleum exploration.<sup>53</sup>

To strengthen its claim, in May 2014 China proceeded to dredge land on four islands in the Spratlies causing speculation of a southward expansion and projection of power.<sup>54</sup> In August 2014 at Fiery Cross Reef, China built a 1.86 mile long land feature large enough for a runway, in addition to a harbor able to accommodate tankers and major surface combatants. Already occupying islands with airstrips, the newly added runway places China on par with Taiwan, the Philippines, Malaysia, and Vietnam.<sup>55</sup> However unlike China, after the 2002 signing of the Declaration on the Conduct of Parties in the South China Sea and until recently, many of the signatories refrained from

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<sup>51</sup> Ngo Minh Tri and Koh Swee Lean Collin, "Lessons from the Battle of the Paracel Islands," *The Diplomat*, January 23, 2014, accessed April 3, 2014, <http://thediplomat.com/2014/01/23>.

<sup>52</sup> Walter Pincus, "China is not the only country reclaiming land in South China Sea" *The Washington Post*, June 1, 2015, accessed June 8, 2015, <http://www.washingtonpost.com/world/national-security>.

<sup>53</sup> M. Taylor Fravel. *Strong Borders Secure Nation: Cooperation and Conflict in China's Territorial Disputes*. 2008 Princeton University Press. p.297.

<sup>54</sup> Edward Wong and Jonathan Ansfield, "To Bolster Its Claims, China Plants Islands in Disputed Waters," *The New York Times*, June 16, 2014, accessed April 7, 2015, <http://www.nytimes.com/2014/06/17/world/asia>.

<sup>55</sup> James Hardy and Sean O'Connor, "China building airstrip-capable island on Fiery Cross Reef," *IHS Jane's 360*, November 20, 2014, accessed April 8, 2014, <http://www.janes.com/article/46083>.

erecting any additional structures.<sup>56</sup> The voracity and scale of reclamation work on the part of the Chinese far outpaces that of the other claimants.

The signatories to the 2002 “Declaration on the Conduct of Parties in the South China Sea,” affirm a commitment to international law, specifically the 1982 UNCLOS. Other highlights within the ten point document include the freedom of navigation and overflight; peaceful resolution of disputes without the use or threat to use of force; use of restraint to stem dispute escalation; undertake cooperative activities; and promote peace and stability.<sup>57</sup> The 2002 declaration signed in Cambodia fell short of a binding code of conduct; although in March 2005 a joint accord to conduct seismic activities was signed by the national oil companies of China, the Philippines, and Vietnam.<sup>58</sup>

An indicator of China's aspirations in the Paracel and Spratly islands is the Nine Dash Line. Amended by the People's Republic of China in 1953, the nine dash line, or the U shaped line, was originally a part of the eleven dash line drawn up by the Nationalists in 1947 under Chiang Kai-shek.<sup>59</sup> In 2009, Malaysia, Vietnam and the Philippines submitted their claims to the United Nations Commission on the Limits to the Continental Shelf. China submitted a counter-claim attaching a map with the nine dash line indicating its claim to an indeterminate area within the U-shaped line.<sup>60</sup> On February 5, 2014, the United States publicly invited China and Taiwan to clarify their respective

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<sup>56</sup> Mohan Malik, “Historical Fiction: China's South China Sea Claims,” *World Affairs*, May/June 2013, accessed April 7, 2015, <http://www.worldaffairsjournal.org/article/historical-fiction>.

<sup>57</sup> “Declaration on the Conduct of Parties in the South China Sea.” *Association of Southeast Asian Nations*, Cambodia, November 14, 2002, accessed July 10, 2015, <http://www.asean.org/asean>.

<sup>58</sup> “Spratly Islands,” *CIA World Factbook*, accessed April 6, 2015, <https://www.cia.gov/library/publications/the-world-factbook/geos/pg.html>.

<sup>59</sup> Mohan Malik, “Historical Fiction: China's South China Sea Claims,” *World Affairs*, May/June 2013, accessed April 7, 2015, <http://www.worldaffairsjournal.org/article/historical-fiction>.

<sup>60</sup> David Rosenberg, “The Paradox of the South China Sea Disputes.” *The China Story*, Australian Centre on China in the World, April 23, 2013, accessed April 16, 2015, <http://www.thechinastory.org>.

claims and bring it in accordance with international law.<sup>61</sup> According to Sun Yun, former analyst for the International Crisis Group in Beijing, “This ambiguity serves China's domestic purpose which is to safeguard the government's legitimacy and satisfy domestic public opinion.”<sup>62</sup> Should the abstract Nine Dash Line one day become a reality, China would control 80 percent of the South China Sea.

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<sup>61</sup> Jeffrey A. Bader, “The U.S. And China's Nine-Dash Line: Ending the Ambiguity,” *Brookings*, February 6, 2014, accessed April 10, 2014, <http://www.brookings.edu>.

<sup>62</sup> Craig Hill, “China's nine-dashed line in the South China Sea,” *China Daily Mail*, May 25, 2012, accessed September 9, 2015, <http://chinadailymail.com>.



**Image 1: China's nine dash line and claims in the South China Sea**

Source: China Daily Mail, <http://chinadailymail.com/2012/05/25/chinas-nine-dashed-line>.

Five uninhabited islands in the East China Sea called the Senkaku Diaoyu islands, are claimed by China and Taiwan (based on ownership since the 14<sup>th</sup> century). Japan's claim to ownership is since 1895 when it incorporated the islands through a Cabinet decision and only after a ten year survey declaring the islands uninhabited.<sup>63</sup> The Senkaku/Diaoyu islands were administered by the United States and returned to Japanese control in 1969 as part of the Okinawa Treaty. Oil and gas reserves located under the sea bed were discovered in 1968 based on a geological survey by the UN Economic Commission for Asia and the Far East.<sup>64</sup> The 1970's saw a renewal of sovereignty claims by China, Japan, and Taiwan. The problem of meeting China's energy demands are growing and relying on Middle East imports similar to Japan's post war energy model leaves its security wanting. The U.S. Energy Information Administration estimates that the East China Seas hold 100 million barrels and one to two trillion cubic feet of natural gas, enough to sustain China's long term energy demands for the next 100 years.<sup>65</sup>

On September 18, 2012, four days after Japan announced its intent to purchase the islands from its private owner, protests broke out across China, some believe purposely manufactured by the government to stoke nationalist sentiment.<sup>66</sup> According to political analyst Li Weidong, the numerous protests that broke out across China and its government's tolerant attitude resemble the Qing dynasty's use of Boxers to oppose political incursions from foreign powers. Evidence exists that Chinese government

<sup>63</sup> "How uninhabited islands soured China-Japan ties." *BBC News*, November 10, 2014, accessed April 16, 2015, <http://www.bbc.com/news/world-asia-pacific-11341139>.

<sup>64</sup> Janet Xuanli Liao "Sino Japanese Energy Security and Regional Stability: The Case of the East China Sea Gas Exploration," *East Asia* 25 (2008): 57-78.

<sup>65</sup> "Disputed Islands with 45 Years of Oil Split China, Japan" *Bloomberg News*, October 12, 2012, accessed September 21, 2015, <http://www.bloomberg.com/news>.

<sup>66</sup> "Protesting too much; East Asian Rivalry." *The Economist*, September 22, 2012, accessed April 10, 2015, <http://www.economist.com>.

officials, including the police chief of Xi'an a western city, were involved in the protests.<sup>67</sup> A study by American scholars Wenfang Tang and Benjamin Darr concluded that nationalism is used to impede public demands for democratic change. Of the 36 countries surveyed over the past decade they also found that China, America, and Japan had the highest levels of nationalism.<sup>68</sup>

On September 2013, the Japanese government purchased the three islands from their private owner in an attempt to keep them from falling into the hands of their own right wing nationalists.<sup>69</sup> Instead of appeasing China, the move triggered another row of public and diplomatic protests, since any government seen as conciliatory is also seen as weak by their respective domestic constituents.<sup>70</sup>

On November 2013, Beijing created an Air Defense Identification Zone (ADIZ) in an attempt to further its position vis-a-vis Japan. The ADIZ is a preventative measure so accidents like mid air collisions can be avoided. Although there are no international agreements governing an ADIZ, it is a security and safety measure which countries nevertheless adhere to.<sup>71</sup> According to David Welch, the declaration of an ADIZ by the Chinese defense ministry creates the mistaken assumption that it confers sovereign rights or increases their bargaining position; deepening regional fears and adding a layer of

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<sup>67</sup> Ian Johnson and Thom Shanker, "Beijing Mixes Messages Over Anti-Japan Protests," *The New York Times*, September 16, 2012, accessed September 22, 2015, <http://www.nytimes.com/2012/09/17/world/asia>.

<sup>68</sup> "Protesting too much; East Asian Rivalry." *The Economist*, September 22, 2012, accessed September 23, 2015, <http://www.economist.com>.

<sup>69</sup> "Dangerous shoals," *The Economist*, January 19, 2013, accessed March 13, 2015, <http://www.economist.com/node/21569740>.

<sup>70</sup> "How uninhabited islands soured China-Japan ties," *BBC News*, November 10, 2014, accessed April 16, 2015, <http://www.bbc.com/news/world-asia-pacific-11341139>.

<sup>71</sup> David Welch, "What's an ADIZ?" *Foreign Affairs*, December 9, 2013, accessed April 15, 2015, <http://www.foreignaffairs.com/articles/140367/david-a-welch/whats-an-adiz>.

confusion to an increasingly complex dispute.<sup>72</sup> China, having to back up its stance despite being ignored by Tokyo and Washington, has created an environment more volatile for everyone involved.<sup>73</sup>

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<sup>72</sup> David Welch, "What's an ADIZ?" *Foreign Affairs*, December 9, 2013, accessed April 15, 2015, <http://www.foreignaffairs.com/articles/140367/david-a-welch/whats-an-adiz>.

<sup>73</sup> David Welch, "What's an ADIZ?" *Foreign Affairs*, December 9, 2013, accessed April 15, 2015, <http://www.foreignaffairs.com/articles/140367/david-a-welch/whats-an-adiz>.

**Table 2: China's claims in the East and South China Seas**

<b>Dispute</b>	<b>Senkaku/Diaoyu</b>	<b>Paracel</b>	<b>Spratlies</b>
Other claimants	Japan, Taiwan	Vietnam, Taiwan	Brunei, Malaysia, Philippines, Taiwan, Vietnam
Other non claimant	United States	United States	United States
Number of islands and location	8 islands in the East China Sea	13 islands in the South China Sea (Amphirite and Crescent groups)	44 islands in the South China Sea
Basis for claim	Historical-context	Historical-context	Historical-context
Occupied by	Japan	China	Brunei, China, Malaysia, Philippines, Vietnam
Interests	Resource, economic, strategic, sovereignty	Resource, economic, strategic, sovereignty	Resource, economic, strategic, sovereignty
Use of force		1974 China	1988, 1994 China

Source: M Taylor Frael. *Strong Borders Secure Nation*, p. 267.

## Chapter 3

# Analyzing the Dispute

There are a number of factors at play when looking at China's behavior towards competing claimants in the disputes namely: a shifting balance in the international system, sovereignty claims, and resource scarcity. The Parcel, Spratly, and Senkaku/Diaoyu islands are in close proximity to undetermined oil and gas resource potentials. The role the presence of oil plays, as a dimension in the conflict is difficult to determine. Some believe that oil acting alone is a sufficient incentive for conflict.<sup>74</sup> Others believe that its role is merely an aspect of the different domestic and export needs of the claimants.<sup>75</sup> Should the former hold true, high demand and the presence of potential oil creates higher stakes, risks, and increases overall volatility in the region.

A shifting balance in the international system is analyzed by applying Joseph Nye's concept of soft and hard power and the self help system underlying realist thought. There are a number of examples of China utilizing soft and hard power in its conduct of relations with its competitors in the East and South China Sea disputes. To demonstrate its soft power reach and to extend its economic influence in the region, China is offering

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<sup>74</sup> Marwyn Samuels, "Contest for the South China Sea," (New York: Methuen & Co., 1982), 154.

<sup>75</sup> Samuels, Contest for the South China Sea, 154.

an alternative to the International Monetary Fund (IMF) and the World Bank. In 2014, China announced the creation of the Asian Infrastructure Investment Bank which is capable of financing large infrastructure projects in the region.<sup>76</sup> ASEAN's biggest trading partner, apart from inter-ASEAN trade and at about 14.5 percent, is China, followed closely by the European Union (EU), Japan, and the United States (see table 2). From mining operations in Africa, the modernization of the Nigerian railway, the construction of highways spanning Asia into Europe; so far China's soft power reach includes hundreds of infrastructure projects all over the globe.<sup>77</sup> It seems China is making every attempt to make sure its ambitions are a win-win for those involved and anything but alienating.

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<sup>76</sup> Jim Zarroli, "New Asian Development Bank Seen As Sign of China's Growing Influence" *National Public Radio*, April 16, 2015, accessed June 25, 2015, <http://www.npr.org/2015/04/16>.

<sup>77</sup> Vivian Giang and Robert Johnson, "108 Giant Chinese Infrastructure Projects that are Reshaping the World" *Business Insider*, December 5, 2011, accessed June 25, 2015, <http://www.businessinsider.com>

**Table 3: 2014 Top ten ASEAN trade partner countries and regions**

	Value (US\$ million)			Share to total ASEAN trade (%)		
	Exports	Imports	Total Trade	Exports	Imports	Total Trade
ASEAN	329700	278617	608318	25.5	22.5	24.1
China	150425	216116	366541	11.6	17.5	14.5
EU	132484	115847	248331	10.2	9.4	9.8
Japan	120248	108827	229076	9.3	8.8	9.1
USA	122377	90040	212418	9.5	7.3	8.4
Korea, Republic of	51659	79814	131473	4	6.5	5.2
Taiwan	39543	68841	108385	3.1	5.6	4.3
Hong Kong	85274	14096	99371	6.6	1.1	3.9
Australia	45345	25027	70372	3.5	2	2.7
India	43346	24381	67728	3.4	2	2.7
Total	1292633	1236283	2528917	100	100	100

Source: "ASEAN External Trade Statistics," *Association of Southeast Asian Nations Secretariat*, June 17, 2015, accessed October 10, 2015, <http://www.asean.org/resources>.

Perspective dictates which actions appear offensive or defensive. From the Chinese perspective, the use of soft power as a tool for containment goes both ways. There is the current dilemma of using military, economic, or soft power against China especially since its failed use during the cold war.<sup>78</sup> In recent negotiations regarding the Trans Pacific Partnership (TPP) between the US and Japan, Japan is accused of using the TPP to contain China and detract from the real issue of loosening tariffs locally and opening up its protected rice market. The Chinese can argue that trade is being used by Japan as a tool for its containment as well as a political tool to avoid answering the difficult questions at home.<sup>79</sup> The use of the TPP by the United States as a counterweight to China's growing economic prowess and as a global standard bearer are the arguments presented by the Obama administration in its bid to securing Congressional approval.<sup>80</sup> China's use of soft and hard power and the international community's response to it reflects the shifting balance in the international system.

By applying Stephen Walt's Balance of Threat theory, the claimant states place a higher salience on intangible values than tangible values. Based on the Balance of Threat theory, external sources of threat influenced by the intangible variable of sovereignty serves as a stronger impetus for claimant state behavior in the East and South China Seas disputes. Despite growing regional trade between the ASEAN (Association of Southeast Asian Nations)<sup>81</sup> countries, Japan, and China, neither country is willing to shelve its

<sup>78</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 117.

<sup>79</sup> "Don't Treat Trade as a Weapon," *The Economist*, April 25, 2015, accessed October 5, 2015, <http://www.economist.com/news/leaders>.

<sup>80</sup> Jackie Calmes, "Trans-Pacific Partnership Is Reached, but Faces Scrutiny in Congress," *The New York Times*, October 5, 2015, accessed October 5, 2015, <http://nyti.ms/1Ngd3Z4>.

<sup>81</sup> ASEAN's top trading partner in the region, as of December 2014 is China, followed by the European Union, Japan, and the United States. *ASEAN External Trade Statistics*, accessed February 25, 2015,

respective sovereignty claims and the territorial conflicts continue to escalate. Each country has utilized some form of economic statecraft to assert its position whether through a boycott of consumer goods, tightening imports, or reaching out to other states to balance China's growing assertiveness.<sup>82</sup>

China up until recently has adopted a delaying strategy in its conduct of relations in the East China Sea and South China Sea disputes, while the remaining claimants exhibit balancing behavior, not against the most powerful state in the system, but the more threatening state China. According to Fravel, domestic or internal sources of insecurity serves as an impetus for Chinese leadership to cooperate in territorial disputes; there is a direct correlation between the two variables. The impetus is likely the opposite for off shore land disputes tied to sovereignty as leadership may use territorial issues to curry domestic opinion in its favor. In the South China Sea disputes, there are no threats to internal regime security, therefore the impetus to cooperate is lacking.<sup>83</sup> Fravel analyzed twenty three territorial disputes since 1949 and found that China compromised in at least seventeen, none of which included off shore disputes. In the off shore disputes, China adopts a delaying strategy instead citing the value of the islands tied to maritime rights to resources, access to sea lanes, and strategically as bases for deployment of forces. "...states are most likely to adopt a delaying strategy to maximize the potential economic or strategic benefits."<sup>84</sup>

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[http://www.asean.org/images/2015/January/external\\_trade\\_statistic/table20\\_asof04Dec14.pdf](http://www.asean.org/images/2015/January/external_trade_statistic/table20_asof04Dec14.pdf)

<sup>82</sup> "The Pacific Age," *The Economist*, November 15, 2014, accessed February 25, 2015, <http://www.economist.com/news/special-report>.

<sup>83</sup> M. Taylor Fravel, "Regime Insecurity and International Cooperation," *International Security* 30 (2005): 61.

<sup>84</sup> M. Taylor Fravel, "Regime Insecurity and International Cooperation," *International Security* 30 (2005): 62.

The concept of sovereignty and nationalism also plays a role as an internal dimension of China's behavior. Fravel and Dobson note that nationalism and successive assertive stances plays to conservative leaders and factions. Rapid economic modernization and subsequent reforms degenerate their power base. An international backlash over China's actions may slow reforms to a manageable level.<sup>85</sup> Along with rising tides of nationalism, there is a desire to compensate for territory lost during the Qing dynasty.<sup>86</sup>

China has employed both soft and hard power in its conduct of relations with its neighbors. However, despite evidence of growing economic interdependence between China and the other claimants to the East China and South China Sea disputes, China prefers to employ a military approach to the disputes. Due to the self help nature of the international system, China is attempting to reduce its vulnerability by gaining control of strategic waterways. It is providing for its economic security by attempting to gain control of disputed resources. China is already exerting its soft power reach in other continents. The case of the Paracel, Senkaku and Spratly islands is the most recent evidence of China providing for its military security by employing hard power to balance the United States in the Asia Pacific region.

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<sup>85</sup> William Dobson and M. Taylor Fravel, "Red Herring Hegemon: China in the South China Sea," *Current History* (September 1997) 260.

<sup>86</sup> Dobson and Fravel, *Red Herring Hegemon*, 262.

# Chapter 4

## International Law

International law provides an alternative to the military approach China has been taking. The provisions of the Law of the Sea and other treaties offer a way to resolve the disputes without resorting to heavy handed hard power tactics. The parallel situation of dividing up the North Sea by Norway, the United Kingdom, Denmark, Germany and the Netherlands has lessons for the maritime disputes over the islands in the South China Sea and the East China Sea. These competing claims were negotiated smoothly and peacefully during the period 1959 when oil and gas were discovered to 1965.<sup>87</sup>

The implementation of international law is a success in the North Sea despite competing interests such as access to trade routes, shipping lanes, and fishing rights going back over 400 years.<sup>88</sup> There are examples of cases where sovereignty was shelved, albeit temporarily, for joint resource development to take place. The resolution of conflicts in the North Sea occurred through various treaties agreed upon by the contesting parties.

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<sup>87</sup> Alexander Lewis, "North Sea," *Encyclopedia Britannica*, March 18, 2015, accessed November 9, 2015, <http://www.britannica.com/place/North-Sea>.

<sup>88</sup> Michael Barry, Ina Elema, and Paul van der Molen, "Governing the North Sea in the Netherlands", *International Federation of Surveyors*, 36 (September 2006): 66.

According to Ashley Roach, UNCLOS defines a full fledged island as able to sustain life, is above water at all times and therefore subject to sovereignty claims as well as entitlements to maritime zones. According to UNCLOS, maritime zone entitlements include a 12 nautical mile (nm) territorial sea, 200 nm mile exclusive economic zone (EEZ) and a continental shelf<sup>89</sup>. Based on an EEZ, freedom of navigation and communication is exercised by all states however the right to extract, explore, manage, and exploit resources belong to the State with sovereign rights.<sup>90</sup> The median line principle, every point equidistant from the baseline<sup>91</sup>, should also be mentioned as it was used as an initial approach to resolve North Sea disputes. It was the method used when the North Sea was originally divided up between the UK and Norway in 1965, between Scotland and the rest of the UK for fisheries in 1999, and for boundaries with other countries in the 1960s.<sup>92</sup>

Oil and natural gas were exploited in the 1960's and only after national limits on the EEZ were ratified by the United Kingdom, Norway, Denmark, Germany, and the Netherlands. Oil production is based on a median line principle, which was agreed to in March 1965. Production licenses giving exclusive rights to explore, drill, and produce were then given to oil companies.<sup>93</sup> In 1999 the same principle was used by Scotland and the rest of the UK for fisheries. Although the median line based on UNCLOS is the

<sup>89</sup> J. Ashley Roach, "China's Shifting Sands in the Spratlys", *American Society of International Law*, July 15, 2015, accessed August 20, 2015, <http://www.asil.org/insights/volume/19/issue/15>.

<sup>90</sup> Michael Barry, Ina Elema, and Paul van der Molen, "Governing the North Sea in the Netherlands", *International Federation of Surveyors*, 36 (September 2006): 67.

<sup>91</sup> Clive Symmons, *The Maritime Zones of Islands in International Law*, (The Hague: Martinus Publishers, 1979) 156.

<sup>92</sup> Steven Brocklehurst "Who has a right to claim North Sea oil?", *BBC*, April 16, 2013, accessed October 10, 2015, <http://www.bbc.com/news>.

<sup>93</sup> "Norway's oil history in 5 minutes", *Government of Norway*, October 9, 2013, accessed July 17, 2015, <https://www.regjeringen.no>.

norm, according to David Scheffer, "... international law has always invited negotiation on how to draw that line."<sup>94</sup>

Management and governance, sharing a philosophy and setting limits, is according to Barry, Elema, and van der Molen, the Dutch formula behind the successful governance of the North Sea. Governance is composed of three features: regional and international treaties, conventions, and legislation; formal institutions to help smooth out national policy; and shared information systems to aid in administration.<sup>95</sup> Negotiations to resolve maritime disputes usually begin by employing the median line method give or take a few "when political and equity considerations are taken into account." Since baselines are continually shifting in tandem with demands on resources, it is promising to see treaties adapt to the changing international environment.<sup>96</sup>

The Frigg Unitization agreement signed in 1976 between the United Kingdom and Norway set precedence for other cooperative agreements. The treaty was borne of a shared problem: how to divide a fluid hydrocarbon deposit whose location straddled an international boundary. The treaty allowed for the development of a field by a single operator acting on behalf of several parties. It also retained important elements from previous agreements including a common deposit clause and a respect for the continental shelf demarcation as the remaining controlling factor for apportioning reserves.<sup>97</sup> Other

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<sup>94</sup> Steven Brocklehurst "Who has a right to claim North Sea oil?" *BBC*, April 16, 2013, accessed October 10, 2015, <http://www.bbc.com/news>.

<sup>95</sup> Michael Barry, Ina Elema, and Paul van der Molen, "Governing the North Sea in the Netherlands", *International Federation of Surveyors*, 36 (September 2006): 70.

<sup>96</sup> Michael Barry, Ina Elema, and Paul van der Molen, "Governing the North Sea in the Netherlands", *International Federation of Surveyors*, 36 (September 2006): 68.

<sup>97</sup> Avril-Lee Wong, "The North Sea Experience-An Analysis of Cross Border Unitisation- And Move Towards Establishing an International Legal Framework," *The Centre for Energy, Petroleum and Mineral Law and Policy Gateway*, 2008/2009, accessed October 10, 2015, <http://www.dundee.ac.uk/cepmlp/gateway>.

cross border unitization agreements along the same vein followed suit including the Statfjord Agreement in 1979 between the United Kingdom and Norway.<sup>98</sup>

The Ems-Dollard Treaty between Germany and the Netherlands, signed on April 8, 1960 in the Hague concretized other arrangements for cooperation while leaving the boundary issue unresolved. Fishing for example was permitted in the common area classified as internal water or territorial sea.<sup>99</sup> The agreement was adapted several times to accommodate expanding interests including provisions to address mining and the environment.<sup>100</sup> In negotiations since 1989, an agreement was signed in 2013 regarding management of the estuary including waterway traffic and resources.<sup>101</sup>

Introduced in 1970, and adopted by the European community in 1983, the regulation of the common fisheries policy underwent its most recent update on January 1, 2014.<sup>102</sup> To ensure sustainability and economic viability, catch quotas are assigned to the member states of Denmark, the Netherlands, Norway, and the United Kingdom. In 2003, implementation came in the form of a monitoring program where observers would board fishing vessels.<sup>103</sup>

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<sup>98</sup> Ana Bastida, Adaeze Ifesi-Okoye, eds., “Cros-Border Unitization and Joint Development Agreements: An International Law Perspective,” *Houston Journal of International Law*, 29:2 (2007): 396.

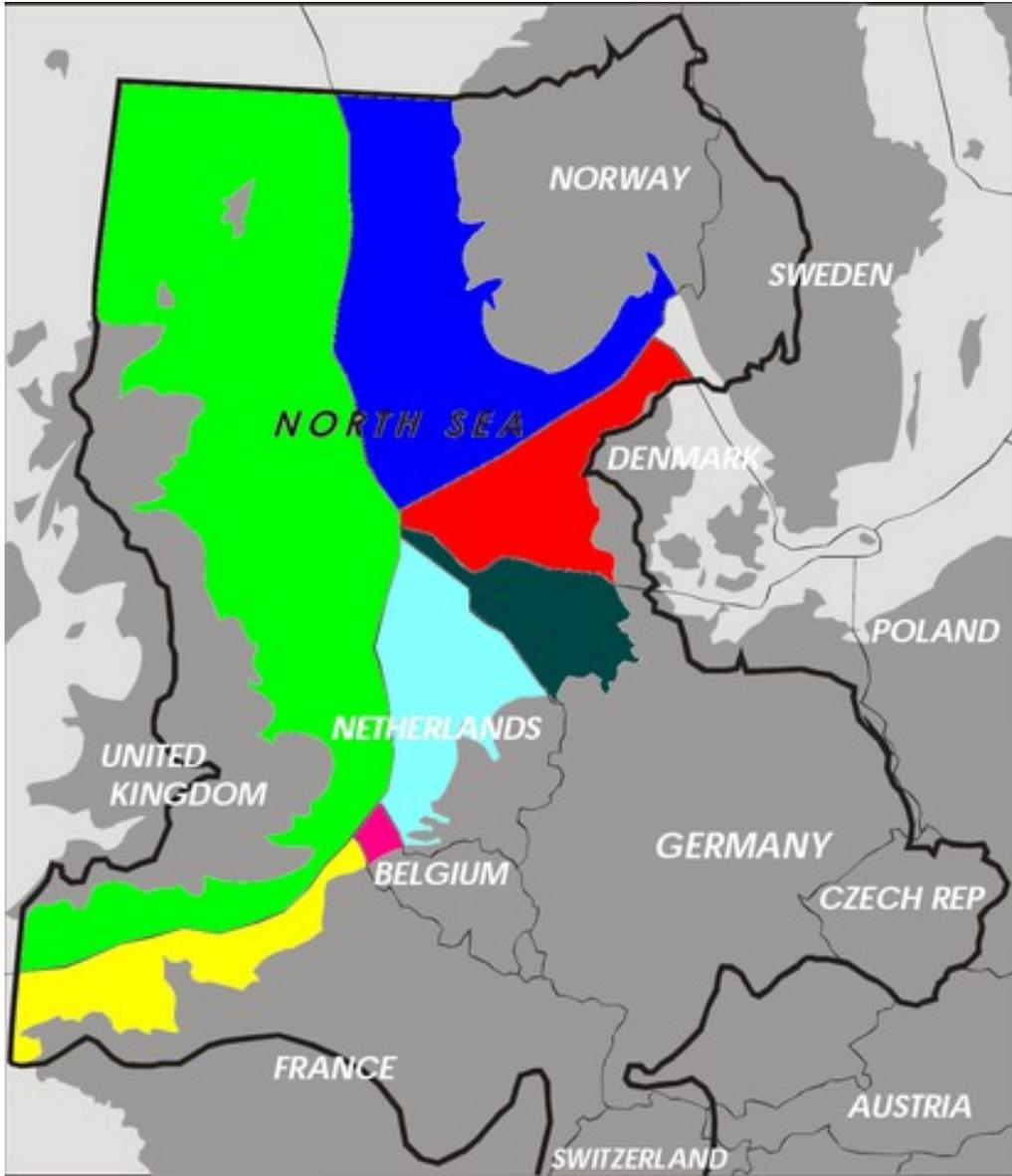
<sup>99</sup> E.J. Molenaar, “Fisheries in a European and international legal context”, *Netherlands Yearbook of International Law*, 33 (2002): 133.

<sup>100</sup> Victor N de Jonge Dsc, “Advice and Research of Estuarine Areas,” presentation at the University of Hull, United Kingdom, accessed September 23, 2015, [http://tide-project.eu/downloads/Victor\\_De\\_Jonge](http://tide-project.eu/downloads/Victor_De_Jonge).

<sup>101</sup> “Broad Agreement on Ems-Dollard estuary,” *Government of the Netherlands*, August 16, 2013, accessed September 23, 2015, <https://www.government.nl/latest/news/2013/08/16>.

<sup>102</sup> “The Common Fisheries Policy,” *European Commission*, accessed October 10, 2015, [http://ec.europa.eu/fisheries/cfp/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/index_en.htm).

<sup>103</sup> Lewis Alexander, “North Sea,” *Encyclopedia Britannica*, March 18, 2015, accessed November 9, 2015, <http://www.britannica.com/place/North-Sea>.



**Image 2: North Sea exclusive economic zone demarcation by country**

Source: Inwind, "North Sea EEZ"

[https://commons.wikimedia.org/wiki/File:North\\_sea\\_eez.PNG](https://commons.wikimedia.org/wiki/File:North_sea_eez.PNG).

The maritime disputes in the South China Sea evidenced some effort at cooperation. In 2002, a cooperative gesture to codify a non binding code of conduct came in the form of the Declaration on the Conduct of Parties in the South China Sea. It was signed by Ministers from ten ASEAN countries and the PRC. The most important points include: “... A commitment to freedom of navigation and oversight as provided by universally recognized principles of international law, including UNCLOS. Second is to use peaceful means to resolve disputes without resorting to threats or use of force. Last is the exercise of self restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability, including inhabiting features.”<sup>104</sup>

In contrast to developments in the North Sea and based on violations of the UNCLOS treaty and the 2002 Declaration on the Conduct of Parties in the South China Sea, the Philippines on July 7, 2015 submitted the Spratly case to arbitration at the UN tribunal.<sup>105</sup> The most important claims brought up by the Philippine government against China include: China is not entitled to historic rights; the nine dash line has no basis; the maritime features China claims as islands are actually rocks therefore permanently changing its features through reclamation does not change its original nature; and China has irreversibly damaged the marine environment<sup>106</sup>.

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<sup>104</sup> “Declaration on the Conduct of Parties in the South China Sea,” *Association of Southeast Asian Nations*, November 4, 2002, accessed October 19, 2015, <http://www.asean.org/asean/external-relations/china>.

<sup>105</sup> Speech by Secretary Albert Del Rosario, “Why the Philippines Brought this Case to Arbitration and its Importance to the Region and the World” *Philippine Daily Inquirer*, July 7, 2015, accessed, August 20, 2015, <http://globalnation.inquirer.net>.

<sup>106</sup> Speech by Secretary Albert Del Rosario, “Why the Philippines Brought this Case to Arbitration and its Importance to the Region and the World” *Philippine Daily Inquirer*, July 7, 2015, accessed, August 20, 2015, <http://globalnation.inquirer.net>.

At the conclusion of Philippine Secretary del Rosario's statement before the Permanent Court of Arbitration, and to make the case for invoking arbitration, he stated “If China can defy the limits placed by the Convention on its maritime entitlements in the South China Sea, and disregard the entitlements of the Philippines under the Convention, then what value is there in the Convention for small States Parties as regards their bigger, more powerful and better armed neighbors?”<sup>107</sup> At the risk of letting “.... others Darwin you out,” the Philippines is utilizing everything it has in its limited arsenal.<sup>108</sup> Lacking the foresight or means to solidify its position on the ground, the Philippines is raising the diplomatic stakes for China, either it honors its treaty commitment as a 2006 UNCLOS signatory, or disregards it in a very public way.

In October 2015, the Permanent Court of Arbitration determined that it did have jurisdiction over the Philippines' case against China and that it will hold hearings.<sup>109</sup> China does its utmost to stall the process by refusing to participate in the proceedings and insisting on settling the issue bilaterally instead.<sup>110</sup> China has yet to clarify its claims; whether it is areas containing resources or the entire South China Sea within the nine-dashed-line. It has opted out of compulsory arbitration going so far as to question UNCLOS' mandate in adjudicating the sovereignty related disputes.<sup>111</sup>

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<sup>107</sup> Secretary Albert Del Rosario, “Statement before the Permanent Court of Arbitration, The Hague”, July 7, 2015, accessed October 19, 2015, <http://www.gov.ph/2015/07/07>.

<sup>108</sup> Richard Javad Heydarian, “This Philippines vs. China: The Real Fight in the South China Sea” *Huffington Post*, July 17, 2015, accessed October 19, 2015, <http://www.huffingtonpost.com/richard-javad-heydarian>.

<sup>109</sup> Jane Perlez, “In Victory for Philippines, Hague Court to Hear Dispute Over South China Sea” *New York Times*, October 30, 2015, accessed December 10, 2015, <http://www.nytimes.com/2015/10/31/world/asia>.

<sup>110</sup> Andreo Calonzo, “Arbitral tribunal ends jurisdiction hearing on Philippine case vs. China,” July 14, 2015, accessed October 19, 2015, <http://www.gmanetwork.com/news/story>.

<sup>111</sup> Richard Javad Heydarian, “The moment of truth: Philippines vs. China at The Hague,” *CNN Philippines*, July 9, 2015, accessed October 19, 2015, <http://cnnphilippines.com/news/2015/07/09>.

# Chapter 5

## Conclusion

The most contentious issue in the maritime disputes over the East and South China Seas is sovereignty or competing claims to ownership over the islands. If claimants are willing to put their respective ownership claims aside to foster joint development in the interim; preferably one that takes into account the lessons learned from the North Sea experience; without alienating smaller powers in the region or leave China wanting, much can be accomplished.

To provide an avenue for conflict management, confidence building measures were employed in Europe in the 1970's.<sup>112</sup> As an example, in the North Sea cases agreement was reached before resource extraction commenced to avoid competitive drilling. The treaties governing the North Seas are based on the principles of international law which fosters a climate of restraint and cooperation, inked "... in Article 83(3) of the Law of the Sea convention which provides that states concerned shall make every effort not to jeopardize the final agreement."<sup>113</sup> According to Bonnie Glaser,

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<sup>112</sup> Bonnie S. Glaser, "Confidence Building Measures," *Center for Strategic and International Studies*, accessed October 30, 2015, <http://csis.org/programs/international-security-program/asia-division>.

<sup>113</sup> Avril-Lee Wong, "The North Sea Experience-An Analysis of Cross Border Unitisation- And Move Towards Establishing an International Legal Framework," University of Dundee, p. 10.

confidence building measures are an effective tool towards resolving political stalemates. A wide range of formats may be utilized: formal, informal, unilateral, bilateral, multilateral, military, cultural, social, non profit; the main goal is for transparency in order to build mutual trust and the cessation of hostilities<sup>114</sup>. On the other hand, in the case of the Spratly, Paracel, and Senkaku/Diaoyu disputes very little is undertaken to promote confidence building measures or to exercise restraint, instead the opposite is occurring. Creeping expansionism in the South China sea dispute is similar to what Nye identified as British and Soviet defensive expansionism in the 19<sup>th</sup> century.<sup>115</sup>

On October 29, 2015 the Permanent Court of Arbitration determined that it will hear the Philippines case against China regarding the features currently occupied by China in the South China Sea.<sup>116</sup> China has boycotted the proceedings and its Foreign Ministry refused to accept any ruling from the court.<sup>117</sup> Although the PRC ratified UNCLOS in 1996, ten years later in 2006 it filed a statement that it would not accept procedures entailing binding decisions. Ironically in 2009, China invoked UNCLOS provisions in its dispute with Japan over the Senkaku/Diaoyu islands.<sup>118</sup> Amid international criticism over the aggressive pursuit of its maritime claims, China is threatening to withdraw from the treaty arguing, among other things that: the US is not a signatory; international law is used by world powers for self interest; and the benefits of

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<sup>114</sup> Bonnie S. Glaser, "Confidence Building Measures," *Center for Strategic and International Studies*, accessed October 30, 2015, <http://csis.org/programs/international-security-program/asia-division>.

<sup>115</sup> Joseph S. Nye Jr., *Understanding International Conflicts: An Introduction to Theory and History* (New York: Longman, 2008), 132.

<sup>116</sup> James Kraska, "A Legal Analysis of the Philippine-China Arbitration Ruling," *The Diplomat*, November 2, 2015, accessed November 2, 2015, <http://thediplomat.com/2015>.

<sup>117</sup> Jane Perlez, "Hague Court Will Hear Case on Isles in China Sea," *New York Times*, October 31, 2015, p. A-8.

<sup>118</sup> Daniel Wagner and Edsel Tupaz, "China, the Philippines, and the Rule of Law," *Huffington Post*, November 2, 2015, accessed November 2, 2015, <http://www.huffingtonpost.com>.

withdrawing from the treaty outweigh the costs.<sup>119</sup> China is circumventing and violating international law at every step, pushing forward with its land reclamation efforts in the Spratlies, which is in addition to the latest worry, that China will announce an expanded ADIZ over the Spratly and the Paracel islands.

When nationalistic sentiments ring loud, historic passions are regularly regurgitated, and the status quo forcibly disrupted, any form of cooperation or appeasement will not be well received by domestic constituents. According to Gause, because the states tested in his study in the Middle East faced multiple foreign and domestic threat environments, alliance decisions must be structured accordingly. He offered the example of Jordan and Saudi Arabia in 2003; both balancing the maintenance of ties to the United States but publicly opposing the domestically unpopular Iraq War.<sup>120</sup> Similar balancing behavior is evidenced by China's competitors and neighbors in the East and South China sea disputes. Japan and the Philippines have sought closer economic and military ties to the United States. Gause also found that most states found threats to their domestic regime security emanating from pan-Arabism and Islam, more salient than states simply increasing their military capabilities<sup>121</sup>. Similar support for Gause's hypothesis is found in Fravel's study of China's territorial compromises whereby it ceded most of its territory in border areas where the government's administration was precarious.<sup>122</sup> In addition, soft and hard power tools are employed by China, Japan and the Philippines.

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<sup>119</sup> Mark Valencia, "The danger of pushing China too far on law of the sea," *South China Morning Post*, July 9, 2013, accessed August 30, 2015. <http://www.scmp.com>

<sup>120</sup> F. Gregory Gause III, "Balancing What? Threat Perception and Alliance Choice in the Gulf," *Security Studies* 13:2 (2003/4): 304.

<sup>121</sup> F. Gregory Gause III, "Balancing What? Threat Perception and Alliance Choice in the Gulf," *Security Studies* 13:2 (2003/4): 303.

Up until recently, for several decades China has employed a delaying strategy in its interactions with countries involved in its maritime disputes in the East and South China Seas. This strategy has changed as a result of Chinese domestic politics and a change in China's economic needs; a shifting balance of power among the key players in the region; and a shift in the international system as a result of a perceived waning of US influence in the Asia Pacific. As a result of this accelerated use of hard power by China, countries in the region are exploring different strategies to ensure that their interests are secure.

At the system level, China's activities may be a reaction to changes in the alliance system; it's ascendancy may be a case of too much too soon. China's accelerated use of military power in its maritime disputes in the East and South China Seas is prompting threat balancing behavior by the United States, Japan, and some of its neighbors. The Philippines and Vietnam are also utilizing the soft and hard power tools available at its disposal including: increased militarization; courting external partners like the United States through mutual defense treaties; and soliciting UNCLOS thereby elevating the disputes to a multi-lateral level.

Neorealism offers the best explanation for China's behavior towards its maritime disputes in the East China and South China Seas. On October 27, 2015 a United States guided missile destroyer sailed 12 nautical miles off Subi Reef, closest to the Philippines, in territory occupied by China.<sup>123</sup> Although China denounced the move, statements of

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<sup>122</sup> M. Taylor Fravel, "Regime Security and International Cooperation: Explaining China's Compromises in Territorial Disputes," *International Security* 30 (2005): 51.

<sup>123</sup> Simon Tisdall, "US manoeuvre in South China Sea leaves little wiggle room with China," *The Guardian*, October 27, 2015 accessed November 3, 2015, <http://www.theguardian.com/world/2015/oct/27>.

support came in from Australia, Japan, the Philippines, and others<sup>124</sup>. The United States and Japan are expanding their military relationship by allowing Japanese Self Defense Forces increased global mobility.<sup>125</sup> In the absence of a higher government, states are providing for their own security. The manner in which resolution is arrived at may set precedence for other territorial claims, vis-a-vis China's growing influence in the region. As a regional power, China can act as a stabilizing or destabilizing force in the Asia Pacific. As it stands, sovereignty will not be shelved for interim joint development.

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<sup>124</sup> Sam LaGrone, "U.S. Destroyer Made an 'Innocent Passage' Near Chinese South China Sea Artificial Island in Recent Mission," *US Naval Institute News*, November 2, 2015, accessed November 3, 2015, <http://news.usni.org/2015/11/02>.

<sup>125</sup> Minxin Pei, "Why the New U.S. - Japan Security and Trade Pacts Will Incur China's Wrath," *Huffington Post*, May 4, 2015, accessed June 25, 2015, <http://www.huffingtonpost.com/minxin-pei>.

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