STIRRING UP THE SOUTH CHINA SEA (I)

Asia Report N°223 – 23 April 2012

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EXECUTIVE SUMMARY

The conflicting mandates and lack of coordination among Chinese government agencies, many of which strive to increase their power and budget, have stoked tensions in the South China Sea. Repeated proposals to establish a more centralised mechanism have foundered while the only agency with a coordinating mandate, the foreign ministry, does not have the authority or resources to manage other actors. The Chinese navy's use of maritime tensions to justify its modernisation, and nationalist sentiment around territorial claims, further compound the problem. But more immediate conflict risks lie in the growing number of law enforcement and paramilitary vessels playing an increasing role in disputed territories without a clear legal framework. They have been involved in most of the recent incidents, including the prolonged standoff between China and the Philippines in April 2012 in Scarborough Reef. Any future solution to the South China Sea disputes will require a consistent policy from China executed uniformly throughout the different levels of government along with the authority to enforce it.

China's maritime policy circles use the term "Nine dragons stirring up the sea" to describe the lack of coordination among the various government agencies involved in the South China Sea. Most of them have traditionally been domestic policy actors with little experience in foreign affairs. While some agencies act aggressively to compete with one another for greater portions of the budget pie, others (primarily local governments) attempt to expand their economic activities in disputed areas due to their single-minded focus on economic growth. Yet despite the domestic nature of their motivations, the implications of their activities are increasingly international. Other factors – both internal and external to China – have also been responsible for increasing tensions, but they are beyond the scope of this study. Regional dynamics, including arms build-ups, competition for resources and increasing nationalist sentiment in other claimant countries are the subject of a separate report.

Effective coordination of actors is also hampered by a lack of clarity over precisely what is supposed to be defended. China has yet to publicly clarify the legal status of the so-called nine-dashed line that appears on most Chinese maps, encompassing most of the South China Sea. While the foreign ministry has taken steps to try to reassure its neighbours that Beijing does not claim the entire South China Sea and has at least partially justified its claims on the basis of the United Nations Convention on the Law of the Sea (UNCLOS), the government cannot easily back down from claims to significant portions of the sea that are based on historical presence in the region. Local government agencies take advantage of this lack of legal clarity when engaging in activities in disputed areas.

Beijing has deliberately imbued the South China Sea disputes with nationalist sentiment by perpetually highlighting China's historical claims. This policy has led to a growing domestic demand for assertive action. While Beijing has been able to rein in nationalist sentiment over the South China Sea when it adopts a specific policy, this heated environment still limits its policy options and its ability to manage the issue.

In mid-2011, as tensions in the sea led to neighbouring countries seeking closer military ties with the U.S., China adopted a less assertive approach. While Beijing's overall emphasis on maintaining the status quo still includes a preference for bilateral negotiations, it is strengthening regional relations through high-level visits and multilateral engagement by signing with the Association of South East Asian Nations (ASEAN) the Guidelines for the Implementation of the Declaration of Conduct (DOC) in the South China Sea.

Internally, China has taken measures to calm nationalist sentiment and discourage aggressive actions by local agencies. However, China's current approach remains characterised by numerous ministerial-level actors and law enforcement agencies with no effective coordinating authority and no high-level long-term policy. While repeated and failed attempts to establish a centralised mechanism on maritime management show a lack of political will to address the coordination issue, Beijing might also see benefit in ambiguity. As long as this situation exists, however, its new conciliatory approach is unlikely to be sustainable. Ultimately, the ability to manage relations in the South China Sea and resolve disputes will present a major test of China's peaceful rise.

Beijing/Brussels, 23 April 2012

International Crisis Group
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STIRRING UP THE SOUTH CHINA SEA (I)

I. INTRODUCTION

A major flashpoint for potential conflict between China and some South East Asian countries as well as the U.S., the South China Sea remains a region of tremendous importance to the peace, stability and prosperity of the Asia-Pacific. China (both the People's Republic of China and the Republic of China on Taiwan), Vietnam, the Philippines and other countries all have claims to certain parts of the Sea. While the areas along the coastlines of these countries are not the focus of this dispute, the various claims overlap significantly further off shore in areas such as the Spratly and Paracel Islands, and in a number of coral reefs and maritime zones.[1] In addition to a desire to protect sovereign territorial integrity, much of the attention on the South China Sea stems from the region's abundant natural resources and strategic location.[2]

The sea accounts for approximately 10 per cent of the annual global fisheries catch, making it extremely important to the fishing industries of nearby countries.[3] The region as a whole is also rich in both oil and natural gas, which has led to speculation that the disputed territories could hold potentially significant energy resources.[4] Because of the tensions, however, the majority of hydrocarbon estimates in areas such as the Spratly Islands remain unproven.

The South China Sea occupies a significant geostrategic position in terms of international shipping. The majority of energy shipments and raw materials that pass through the Malacca Straits continue on through the South China Sea to countries such as China and Japan. The Chinese People's Liberation Army Navy (PLAN) has recognised the strategic importance of the sea, and has taken steps to bolster its capabilities within the region. The U.S. also has an interest in protecting the sea lanes that run through the area, as it considers open and stable maritime commons as essential to international trade and prosperity.[5]

China, Vietnam and the Philippines have made the most significant and forceful claims of sovereignty in the South China Sea. The former's claim to the Spratly Islands may have far-reaching consequences if it intends to claim full exclusive economic zones (hereafter EEZs) around those islands, which would then overlap significantly with the EEZs claimed by the Philippines, Brunei, Malaysia and Vietnam. While Beijing may seek to pursue this goal, it may also be thinking of demanding "historical rights" in

[1] China and the Philippines both claim Scarborough shoal. All these countries, as well as Indonesia, claim parts of the continental shelf as well as 12 nautical miles (nm) territorial waters and 200 nm exclusive economic zones (EEZs) extending from the baselines they have drawn around the islands and coastline territories to which they claim sovereignty.

[2] For previous Crisis Group reporting on similar issues, see Asia Report N°108, *North East Asia's Undercurrents of Conflict*, 15 December 2005. For previous reporting on Chinese foreign policy, see Asia Report N°200, *China and Inter-Korea Clashes in the Yellow Sea*, 27 January 2011; Asia Briefings N°112, *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, 21 September 2010; N°100, *The Iran Nuclear Issue: the View from Beijing*, 17 February 2010; Asia Reports N°179, *Shades of Red: China's Debate over North Korea*, 2 November 2009; N°177, *China's Myanmar Dilemma*, 14 September 2009; N°166, *China's Growing Role in UN Peacekeeping*, 17 April 2009; N°153, *China's Thirst for Oil*, 9 June 2008.

[3] "Prospectus, Regional Workshop/Expert Consultation on the Identification of Critical Fishing Grounds and on Regional Habitat Rehabilitation and Management Approach", Bangkok, 11-13 October 2011.

[4] A U.S. geological survey in 1993-1994 suggested 28 billion barrels of oil within the entire sea, whereas some Chinese estimates have claimed around 105 billion barrels of oil within the Spratlys and Paracels, but both of these figures remain unproven due to the lack of exploratory drilling. Estimated reserves will likely change as further exploration continues. Natural gas may be more abundant. There have been various estimates but proven reserves have already been found. In 2006, the Canadian company Husky Energy working with the Chinese National Offshore Oil Corporation (CNOOC) announced a find of proven natural gas reserves of 4 to 6 trillion cubic feet. U.S. Energy Information Administration, "South China Sea", www.eia.gov.

[5] The U.S. Maritime Strategy issued in 2007 declared that "the maritime domain … carries the lifeblood of a global system that links every country on earth". The paper then stated that the U.S. "will not permit conditions under which our maritime forces will be impeded from freedom of manoeuvre and freedom of access … nor permit an adversary to disrupt the global supply chain by attempting to block vital sea-lines of communication and commerce". U.S. Navy, "A cooperative strategy for 21st century seapower", October 2007.

other parts of the sea within the nine-dashed line.[6] The uncertainty as to what China's legal claims are, and apparent attempts to enforce sovereignty in areas that are too far away from its coasts to be part of its EEZ, has put it at odds with other claimants given that many of these areas are far closer to the coastlines of other claimants.

To bolster their claims, countries in the region have scrambled to occupy as many of the features as possible. This has led China into conflicts with South Vietnam in 1974 and a reunified Vietnam in 1988, while maritime forces of several countries have often harassed and detained foreign fishing vessels.[7] Currently, Beijing controls the entire Paracels and fifteen reefs and shoals within the Spratlys.[8] All the other disputed features are controlled by other claimants. Regional concerns led to the signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) by China and the ten ASEAN countries in 2002. While this was a positive step toward stabilisation, it was only in 2011 that the accompanying Guidelines for the Implementation of the DOC were agreed upon.

The underlying conflict has nonetheless remained, at least in part because the declaration is not legally binding and it has not fulfilled its promised advances in dispute resolution. In the last several years, the number of incidents between maritime forces has increased dramatically, and has included tense standoffs such as that between China and the Philippines at Scarborough Reef in April 2012. This has led to concerns that China, Vietnam and the Philippines are growing more assertive on this issue, endangering regional stability.

This report is based on interviews conducted in Beijing, Guangxi, Hainan, Xiamen, Hanoi, Jakarta, Kuala Lumpur, Manila, Singapore, Taipei, Tokyo, and Washington DC. Crisis Group spoke to a wide range of individuals, including officials, scholars, diplomats, journalists and insiders from the fishing, tourism and oil industries, most of whom asked to remain anonymous due to the sensitive nature of the subject. This report focuses on key Chinese domestic players and their interests. Although regional dynamics are a major factor in Chinese policy on the South China Sea, this report does not include discussion of these issues as they will be the subject of a separate paper.

[6] The nine-dashed line delineates China's claims to the South China Sea. See Section II.A "The nine-dashed line" below.

[7] In 1974, fighting erupted between the Chinese and South Vietnamese navies when China invaded the western Paracels. Vietnamese forces engaged four PLA Navy corvettes and two PLA battalions in heavy fire that left one Vietnamese frigate sunk, the remaining three damaged, and 53 Vietnamese soldiers dead. Chinese casualties have never been confirmed. When Vietnamese troops fled, China established full control of the Paracels. In 1988, the PLAN clashed with its Vietnamese counterpart in the Johnson South Reef Skirmish in the Spratlys with both navies sustaining heavy casualties. In the most recent incident between the Chinese navy and vessels from other claimant states, the former shot and killed nine Vietnamese fishermen and injured eight others in the Gulf of Tonkin on 8 January 2005. Wu Shicun, *Origin and development of Spratly disputes* (China Economic Publishing House, 2009), pp. 88-89; Raul Pedrozo, "Beijing's coastal real estate: a history of Chinese naval aggression", *Foreign Policy*, 15 November 2011; Stein Tønnesson, "Sino-Vietnamese rapprochement and the South China Sea irritant", *Security Dialogue*, vol. 34, no. 1 (March 2003).

[8] "中国移动完成南海海域七礁八点 信号全覆盖" ["China Mobile establishes mobile signal coverage over the seven reefs and eight shoals in the South China Sea"], Techweb, 16 March 2012.

II. TROUBLED WATERS: TENSIONS SINCE 2009

A. THE NINE-DASHED LINE

China's ambiguous territorial claims and its refusal to clarify them publicly have raised concerns in the region that it is assuming a more assertive posture in the South China Sea, particularly when combined with its growing naval build-up and the aggressive actions of its maritime law enforcement agencies.[9] In May 2009, Vietnam and Malaysia made submissions to the UN Commission on the Limits of the Continental Shelf, seeking to extend their continental shelves into the South China Sea beyond the normal 200 nautical miles (nm).[10] In response, China submitted a *Note Verbale* stating that this request seriously infringed on its rights. Along with this note, it included a map consisting of a nine-dashed line encompassing the majority of the South China Sea, including both the Paracel and the Spratly Islands.[11]

China has a historical claim to the islands and other geographic features in the South China Sea based on surveying expeditions, fishing activities, and naval patrols since at least the 15th century.[12] Modern Chinese cartographers have included the area shown by the nine-dashed line within maps of Chinese territory since as early as 1914.[13] The area was included in an official map drawn in 1947 by the Republic of China under the Kuomintang government, and the nine-dashed line has continued to be included in official maps published by the People's Republic of China. While China has some justification for these historical claims, it ratified the UN Convention on the Law of the Sea (UNCLOS) in 1996, which compels states to surrender the majority of their historical maritime claims in favour of the maritime zones awarded under the convention. Claims to islands and other geographical features are not affected by the treaty, but any claim to sovereignty over maritime areas must fall within either the territorial waters or EEZs awarded to those features by UNCLOS.

China's submission of the map with the nine-dashed line to the UN in May 2009 and the use of the term "relevant waters" raised concerns among other claimants that China might claim "historical waters" or "historical rights" to resources within the line, notwithstanding its ratification of UNCLOS.[14] The foreign ministry has begun to brief embassies behind closed doors that its claim is primarily to land features within the nine-dashed line and the EEZs they would generate.[15] In a 29 February 2012 statement, Foreign Ministry spokesman Hong Lei also differentiated between "disputes over territorial sovereignty of the reefs and islands of the Spratlys", and disputes over maritime delimitation, implying that China's claims are primarily to the island features and their territorial waters, EEZs and continental shelves.[16] However, recent actions of Chinese law enforcement vessels[17] suggest Beijing is trying to enforce its jurisdiction in all waters inside the nine-dashed line, which, adding to a lack of legal clarification, have exacerbated regional concerns and prompted countries to denounce an aggressive approach undermining international law.[18]

Beijing has been surprised by the region's reaction to its use of the nine-dashed line.[19] From its perspective, it is entitled to certain territorial gains as the result of being a

[9] For more on China's claims under UNCLOS, see also Section IV.A.5 "Lack of legal clarity".

[10] The Malaysia-Vietnam joint submission effectively split the southern section of the South China Sea between the two nations, an area also claimed in part by the Philippines and in large part by China. "Malaysia-Socialist Republic of Vietnam Joint Submission to the Commission on Limits of the Continental Shelf", May 2009.

[11] The note stated: "China has indisputable sovereignty over the islands in the South China Sea, and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof", and then made reference to the map of the nine-dashed line. People's Republic of China, "*Note Verbale* to the Secretary-General of the United Nations with regard to the joint submission made by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf", CML/17/2009, 7 May 2009.

[12] Shen Jiangming, "China's Sovereignty over the South China Sea Islands: a Historical Perspective", *Chinese Journal of International Law*, vol.1, issue 1 2002, pp. 94-157.

[13] Zou Keyuan, "The Chinese traditional maritime boundary line in the South China Sea and its legal consequences for the resolution of the dispute over the Spratly Islands", *International Journal of Marine Coastal Law*, vol. 14, issue 1 (1999), p. 52. The original maps show an eleven-dashed line. Two dashes in the Gulf of Tonkin were deleted in the 1950s.

[14] The submission of the U-shaped line drew immediate protest from the Philippines, Vietnam and Malaysia. Nguyen Hong Thao, The "nine-dashed line" – an irrational claim, *The People's Army Newspaper*, 17 June 2011. According to its interpretation, China is claiming the entire body of water within the line. "As Singapore's Ambassador-at-Large, and former President of the Third UN Conference on the Law of the Sea, Tommy Koh, has observed, such a claim would be incompatible with existing international law". Ian Storey, "China's bilateral and multilateral diplomacy in the South China Sea", *Cooperation from Strength: United States, China and the South China Sea*, Centre for New America Security, January 2012, p. 56.

[15] See Section IV.A.5 for more discussion. Crisis Group interviews, Beijing, August, December 2012.

[16] M. Taylor Fravel, "Clarification of China's claims?", *The Diplomat*, 5 March 2012.

[17] See Section IV.B "Competing Law Enforcement Agencies".

[18] Ian Storey, "China's bilateral and multilateral diplomacy in the South China Sea", op. cit., p. 57.

[19] Crisis Group interviews, Beijing, November 2010 and June 2011.

victor in World War II.[20] Furthermore, none of the other claimants openly challenged the U-shaped line when it was produced in 1947.[21] Some in China see the South China Sea as a natural area of influence, making a comparison to the Monroe doctrine, where they believe the U.S. views the Caribbean states and Latin America as a personal "backyard".[22] However, some Chinese scholars recognise that the line is difficult to justify under UNCLOS's definition of territorial waters.[23]

B. CORE INTEREST?

In early 2010, speculation arose that China had defined the South China Sea disputes as one of its "core interests", a term traditionally reserved for matters of national sovereignty such as Taiwan, Tibet and Xinjiang, where China is unwilling to compromise its position and would resort to force, if necessary.[24] Reports first suggested that Chinese officials used this expression during a private meeting with U.S. officials in March 2010,[25] and then cited U.S. Secretary of State Hillary Clinton as claiming that the senior Chinese leader responsible for foreign policy repeated this declaration in May 2010.[26] However, another senior U.S. official has since asserted that the term "national priority" rather than "core interest" was used.[27] Chinese researchers almost unanimously agree that the government has not made any conscious policy decision to rank the South China Sea as a core interest at the same level as an issue such as Taiwan.[28] However, the mere speculation coupled with Beijing's refusal to publicly refute these rumours further increased the already growing concerns among ASEAN countries that China was becoming more assertive regarding this issue.[29]

Underlying these concerns was China's insistence that negotiations be conducted bilaterally and without third parties. Despite its good neighbour policy, it fears that many ASEAN countries would not accept its claims, and that a negotiated settlement within the regional organisation would diminish its leverage. Beijing understands that the best strategy for smaller countries would be to balance China by seeking support and good relations with a major power: the U.S.[30] It has also rejected using any dispute settlement mechanisms through UNCLOS[31] for fear that, despite historical evidence to support its sovereignty over the islands and justification under the convention for at least some of its maritime claims, its demands would be denied.[32] Given the nationalist sentiment tied to the dis-

[20] Crisis Group interviews, Beijing, November 2010.

[21] At the time, most of the countries with claims in the South China Sea were still under colonial rule. Only the Philippines had gained independence. The economic potential of these islands had not been discovered when the map was first published, and most of the countries in the region were focused on post-World War II nation building. Vietnam in particular was fully engaged in a war of independence against France at the time. Even after independence, the Communist regime in the north relied on China for political and material support to a certain extent, making disputes over Chinese territorial claims counter to its primary interests. Wu, *Origin and development of Spratly disputes*, op. cit., pp. 54-57.

[22] Paul Giarra and Patrick Cronin, "China's Monroe Doctrine", *The Diplomat*, 23 July 2010. While most analysts refuse to acknowledge that this sentiment effectively creates a Chinese version of the Monroe Doctrine in the South China Sea, their statements and analysis are continually infused with the belief that China enjoys natural rights and privileges in the South China Sea. Crisis Group interviews, Beijing, October and November 2010.

[23] Crisis Group interviews, Beijing, October and November 2010. Also see 姜丽，李令华 [Jiang Li, Li Linghua], "南海传统九段线与海洋划界问题" ["The Nine-dashed Line and the Problem of Maritime Demarcation in the South China Sea"], 中国海洋大学学报 [*Journal of Ocean University of China*]. See also Section 4.V "Lack of Legal Clarity".

[24] Michael D. Swaine, "China's Assertive Behavior, Part One: on 'Core Interests'", *China Leadership Monitor*, no. 34, 22 February 2011, p. 2.

[25] Edward Wong, "Chinese military seeks to extend its naval power", *The New York Times*, 23 April 2010. According to the report: "In March, Chinese officials told two visiting senior Obama administration officials, Jeffrey A. Bader and James B. Steinberg, that China would not tolerate any interference in the South China Sea, now part of China's 'core interest' of sovereignty, said an American official involved in China policy". Subsequent news articles reported similar findings. See "China tells U.S. that S. China Sea is 'core interest' in new policy", *Kyodo News*, 3 July 2010; and John Pomfret, "U.S. takes a tougher tone with China", *The Washington Post*, 30 July 2010. One interpretation of the "core interest" issue is that Chinese officials were referring to U.S. military surveillance activities in China's EEZ as an infringement of their core interests. Several foreign diplomats in Beijing said that in the first six months of 2010, Chinese officials repeatedly referred to the South China Sea as a "core interest" in meetings with their U.S. counterparts. After the ASEAN Regional Forum in July that year, all reference to the South China Sea as a "core interest" was dropped. Crisis Group email correspondence, April 2012.

[26] Greg Sheridan, "China actions meant as test, Hillary Clinton says", *The Australian*, 9 November 2010.

[27] Jeffrey Bader, Chapter 7: "Year two: dealing with an assertive China", in *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Brookings Institution Press, 2012).

[28] Crisis Group interviews, December 2011. 王緝思 [Wang Jisi], "中国大战略求索" ["Exploring China's Grand Strategy"], 王緝思, 唐士其 [Wang Jisi, Tang shiqi (ed.)], 《多元化与同一性并存：三十年世界政治变迁 (1979-2009) [*World Politics in Transition: 1979-2009* (Social Sciences Academic Press, October 2011)], p. 118.

[29] Crisis Group interviews, Hanoi, December 2010, May 2011, Kuala Lumpur, May 2011, Manila, October 2011.

[30] Crisis Group interview, Beijing, November 2010.

[31] China has done this in accordance with international law by filing a reservation to the treaty. See Section V.C "Rejection of UN Mechanisms".

[32] Crisis Group interview, Beijing, November 2010.

putes, the government would have difficulty explaining why it must accept a negative decision rendered under a perceived "western-dominated" system.[33] The other claimants are concerned that engaging bilaterally will allow China to use its trade or investment policy as leverage to gain favourable outcomes, and see the preference for bilateral negotiations as yet another tactic to exert power and get its way in the region.[34]

C. INCIDENTS AT SEA

On 8 March 2009, five Chinese vessels[35] closely shadowed and surrounded the U.S. hydrographic survey vessel, the *USNS Impeccable*, about 120km south of Hainan Island.[36] According to a Pentagon statement, a Chinese intelligence collection ship had warned the vessel a day earlier to leave the area or "suffer the consequences".[37] The confrontation was primarily a result of different interpretations of the freedom of navigation between China and the U.S.,[38] and had nothing to do with the issue of sovereignty to the disputed areas.[39] However, Beijing's unusually vigorous response heightened regional concern that it would begin tightening control of its maritime periphery, potentially including the areas under dispute.[40]

This event played into increasing fears in the region about China's growing diplomatic sensitivity towards its maritime claims. Since 2007, the government repeatedly warned foreign oil companies that continued cooperation with Vietnam in the disputed waters of the South China Sea would affect their business in China,[41] reportedly causing some international companies to abandon drilling projects in Vietnam.[42] These warnings coincided with enhanced law enforcement patrols in disputed waters by the China Marine Surveillance and the Bureau of Fisheries Administration, which has provoked skirmishes with foreign seismic survey ships and fishing boats.[43]

When South East Asian nations openly criticised China during the July 2010 ASEAN Regional Forum in Hanoi for these assertive actions, Chinese Foreign Minister Yang Jiechi responded, "China is a big country and other countries are small countries, and that's just a fact".[44] While not occurring in the South China Sea, Beijing's extreme reaction to Japan's arrest of a Chinese ship captain in the territorial waters of the disputed Diaoyu/Senkaku Islands in September 2010 also confirmed regional concerns over the consequences of challenging its interests.[45]

Tensions peaked in the spring of 2011 when China Marine Surveillance (CMS) patrol vessels clashed with Filipino and Vietnamese seismic ships operating in areas considered by both countries to be within their EEZs.[46] On 2 March, two CMS ships manoeuvred to expel a Filipino

[33] Crisis Group interview, Beijing, November 2010.
[34] Crisis Group interviews, Hanoi, December 2010 and July 2011, Kuala Lumpur, May 2011, Manila, October 2011.
[35] The five vessels included a Bureau of Fisheries Administration patrol vessel, a State Oceanic Administration patrol vessel, a PLAN ocean surveillance ship, and two Chinese-flagged naval trawlers. Raul Pedrozo, "A Close Encounter at Sea: The *USNS Impeccable* Incident", *Naval War College Review*, vol. 62, no. 3, (Summer 2009), p. 101.
[36] Ann Scott Tyson, "US protests Chinese shadowing in international waters", *The Washington Post*, 10 March 2009.
[37] Yuli Yang, "Pentagon says Chinese vessels harassed U.S. ship", CNN (online), 10 March 2009.
[38] Article 58 of UNCLOS provides that all states enjoy freedom of navigation and over-flight within the EEZ. While it has not ratified the convention, the U.S. agrees to this principle and believes that activities such as surveillance and intelligence gathering are permitted within the zone. China, however, declared when it ratified UNCLOS that a state could require foreign warships to obtain advance approval before entering the EEZ. UNCLOS, Declaration under Article 298, China, 7 June 1996. See also Ji Guoxing, "Rough Water in the South China Sea: Navigation issues and confidence building", *Asia Pacific Issues*, no. 53 (August 2001), p. 4. China maintains that freedom of navigation only applies to "peaceful purposes", and has "difficulty in seeing the missions conducted by U.S. military ships and planes so close to China as peaceful". Shen Dingli, "Spying activities unacceptable", *China Daily*, 21 November 2011.
[39] The area was clearly within China's EEZ.
[40] Peter Dutton, "Cracks in the Global Foundation: International Law and Instability in the South China Sea", *Cooperation from Strength*, op. cit.
[41] Jason Folkmanis, "China warns some oil companies on work with Vietnam, U.S. says", Bloomberg (online), 16 July 2009.
[42] See for example, Greg Torode, "Diplomatic balancing act for oil exploration", *South China Morning Post*, 23 August 2008; Eric Randolph, "Hunt for oil raises stake between Asian rivals in South China Sea", *The National*, 22 September 2011.
[43] In 2009, China extended its annual unilateral fishing ban in the northern section of the South China Sea, including the waters around the Paracels, to last between 16 May and 1 August. Ostensibly to prevent overfishing, the ban includes additional patrol ships in disputed territories, increasing the number of fines and arrests of foreign fishermen. 农业部渔业局，2010："中国渔政年鉴" [Fisheries Administration, agriculture ministry, 2010: "China Fisheries Yearbook"], (China Agriculture Publishing House, 2010), p. 124. Additionally, in 2010 the China Marine Surveillance increased its total number of naval vessels on patrol by 36, including the CMS-75, its fastest surveillance ship. "China boosts maritime surveillance fleet amid disputes", BBC News (online), 20 October 2010. In 2010, the Marine Surveillance monitored 1,303 cases of intrusions by foreign ship into claimed Chinese waters, as compared to 110 cases of both plane and ship intrusions in 2007. "China to strengthen maritime forces amid disputes", *People's Daily*, 17 June 2011.
[44] Aileen S.P. Baviera, "Power asymmetry in South East Asia", *Philippine Daily Inquirer*, 26 June 2011.
[45] Ibid. Crisis Group interview, Hanoi, December 2010.
[46] Stephanie Kleine-Ahlbrandt, "Rocky times ahead in South China Sea", *Global Post*, 5 July 2011.

survey vessel conducting seismic studies in the Reed Bank, close to the Philippines Island of Palawan.[47] According to Manila, at least five other incidents occurred between Chinese and Filipino vessels before June 2011,[48] leading Filipino President Aquino to assert, "we must let the world know that we are ready to protect what is ours".[49]

In 2011, Chinese vessels severed the exploration cables of Petro Vietnam seismic surveillance vessels on two occasions,[50] the first occurring deep within what Vietnam considers its EEZ and far from the disputed Paracel Islands.[51] In both instances, Chinese law enforcement vessels were either directly involved or were escorting the fishing vessels that cut the cables. These skirmishes, described by Vietnamese officials as "hostile", "aggressive" and the "most serious incident" between China and Vietnam since 1998,[52] triggered twelve weeks of anti-China protests in Hanoi and Ho Chi Minh City. Beijing repeatedly claimed that its vessels' actions were justified as foreign ships were illegally surveying in Chinese waters.[53]

Regional concern has been further exacerbated by exercises conducted in the region in April 2010 by the People's Liberation Army Navy (PLAN) South Sea Fleet.[54] The most significant was a large-scale exercise in which the South Sea Fleet cooperated with the North Sea and East Sea Fleets for the first time to demonstrate the PLAN's power projection capabilities.[55] Nothing indicates the PLA has conducted these exercises with the aim of strengthening claims to the South China Sea or deterring the other claimants. However, as the PLAN attempts to improve its war fighting capabilities and increase its presence in the South China Sea, it has contributed to regional concern over China's intentions.[56]

[47] "Philippines halts tests after China patrol challenge", BBC News, 8 March 2011. Manila protested through a *note verbale* to China and formally objected to its 7 May 2009 submission of the map showing nine-dotted lines to the Commission on the Limits of the Continental Shelf (CLCS). Beijing replied by reiterating that China has indisputable sovereignty over the Spratlys and the adjacent waters. "Communications received with regard to the joint submission made by Malaysia and Vietnam to the CLCS", dated 5 April 2011 from the Philippines. According to a Malaysian foreign ministry official, the complaint regarding the Chinese submission was already underway but had yet to be submitted. Crisis Group interview, Manila, 27 April 2011. The Philippine military immediately dispatched two ships and two OV-10 planes in support of the seismic vessel, but arrived only after the Chinese patrol vessels had left the area. For more on the incident, see Ian Storey, "China and the Philippines: Implications of the Reed Bank Incident", *China Brief*, vol. 11, no. 8, Jamestown Foundation, 6 May 2011.

[48] In that month, the Philippine government began referring to the West Philippine Sea, instead of the South China Sea, in all its official communications.

[49] President Benigno Aquino III, State of the Nation Address, 25 July 2011, official English translation, at www.gov.ph/2011/07/25/benigno-s-aquino-iii-second-state-of-the-nation-address-july-25-2011-en/.

[50] On 25 May 2011, three Chinese surveillance boats clashed with a PetroVietnam seismic survey ship, the *Binh Minh 02*, severing its exploration cable. On 9 June, a Chinese fishing vessel collided with a second PetroVietnam survey ship. On this occasion, the Vietnamese stated that the Chinese fishing ship was accompanied by two paramilitary enforcement vessels, although Beijing replied that the enforcement vessels were forced to come to the aid of the Chinese ship after it was attacked by armed Vietnamese vessels and then snagged by the cable as it tried to flee. PetroVietnam Deputy General Director Do Van Hau, "May 27 2011 Press Statement". "Vietnam urged to stop sovereignty violation", *China Daily*, 6 June 2011.

[51] A Vietnamese official explained that the ship was only 120km off the Vietnamese coast. Crisis Group interview, Beijing, June 2011.

[52] Crisis Group interview, Hanoi, July 2011

[53] On 24 March, the foreign ministry spokesperson, Jiang Yu, responded to Philippines' protests by declaring, "China owns indisputable sovereignty over the Nansha Islands and their adjacent waters. Oil and gas exploration activities by any country or company in the waters under China's jurisdiction without permission of the Chinese Government constitutes violation of China's sovereignty, rights and interests, and thus are illegal and invalid". "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on 24 March 2011", foreign ministry website, 24 March 2011, www.mfa.gov.cn/eng/xwfw/s2510/2535/t810015.htm. Following the May incident with Vietnam, she stated: "The law enforcement activities by Chinese maritime surveillance ships against Vietnam's ships that are illegally operating inside Chinese waters are completely justified". "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on 31 May 2011", foreign ministry website, 31 May 2011, www.fmprc.gov.cn/eng/xwfw/s2510/2511/t827089.htm.

[54] The South Sea Fleet conducted six exercises in total, including a live fire military exercise on 26 July 2010, during which a total of 71 missiles were tested. "解放军今年演习频密规模大多军兵种军演成常规" ["PLA conducted frequent large-scale exercises with various militaries this year"], *Oriental Outlook*, 13 December 2010. For other exercises, see "军事时评：解放军应淡定的加强实战演习" ["Military commentary: PLA should calmly strengthen combat exercises"], *People's Daily*, 26 September 2010; "南海舰队组织"蛟龙—2010实兵实弹演习" ["South Sea Fleet organises the Jiaolong 2010 live fire exercises"], *Sina Military News*, 4 November 2010; "南海舰队演习击中目标仍不合格 原因让官兵信服" ["South Sea Fleet exercises show target-interception rate not up to standards; officers and soldiers convinced"], *PLA Daily*, 22 December 2010.

[55] "中国周边大规模军演频登场" ["Large-scale military exercises are frequently on stage in China's periphery"], *参考消息* [*Can Kao Xiao Xi*], 6 July 2010.

[56] Crisis Group interviews, Hanoi, May and July 2011, Manila, January 2012.

D. REGIONAL RESPONSE

In response to Chinese actions, other claimant states have sought to challenge China's claims by "multilateralising" the issue within the ASEAN framework and by encouraging other players outside the region, in particular the U.S., but also Europe and Japan, to become diplomatically involved.[57] In 2010, Vietnam used its ASEAN chairmanship to list the South China Sea on the organisation's agenda. With Hanoi's encouragement, Secretary of State Hillary Clinton positioned it as a primary topic at the July 2010 ASEAN Regional Forum (ARF), and in the organisation more broadly, by stating that freedom of navigation in the South China Sea was a "national interest" and that the U.S. was willing to facilitate a collaborative resolution.[58]

In addition to Vietnam's efforts, the Philippines has proposed that ASEAN members set aside the disputes among themselves and form a united front to force Beijing to clarify its claims, and has also looked beyond ASEAN for support.[59] In particular, it encourages Washington to play a key role in strengthening the Philippines' military capacity. In January 2012, Manila announced that it was likely to grant the U.S. military greater access to its territory for re-supply, refuelling and repairs.[60] Despite China's opposition, Vietnam and the Philippines have also actively sought the support of outside countries, including India, Japan, and South Korea, in an effort to balance Beijing's assertiveness in the region.[61]

E. U.S. INVOLVEMENT

While China realises that its actions in the South China Sea have damaged its relationships with its neighbours, the perception that the U.S. has been taking advantage of the situation to strengthen its presence and its alliances in the region was the factor that brought the South China Sea issue to the direct attention of the Chinese leadership.

Since 2010, when Hillary Clinton re-affirmed that freedom of navigation in the South China Sea was a U.S. national interest,[62] a key aim of China's policy in the South China Sea has been to discourage U.S. involvement and the internationalisation of the disputes.[63] From Beijing's perspective, ASEAN countries have been using the U.S. as a hedge to counter-balance its growing power, and Washington has been using them to expand its regional presence.[64] Beijing also fears that U.S. involvement will internationalise the territorial disputes in the South China Sea, isolating China and further hindering its efforts to achieve its desired outcome.[65] Beijing's singular focus on the U.S. role in the region was emphasised by a Vietnamese diplomat who said that China did not take Vietnam seriously before Clinton's statement: "They listen to us now", he said.[66] Given that increased U.S. involvement has come at the request of South East Asian nations, Chinese analysts question whether China has "lost too much" to the U.S. in the region.[67] This prompted Beijing to adopt a more moderate approach in mid-2011 to defuse regional tensions.[68]

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[57] For more discussion, see Crisis Group Asia Report, *Stirring up the South China Sea (II): Regional Responses*, forthcoming. See also Sections III.D and VI.B.

[58] Mark Landler, "Offering to aid talks, U.S. challenges China on disputed islands", *The New York Times* (online), 23 July 2010.

[59] This includes cooperation with Japan to train and equip the Philippine coast guard, assistance from South Korea to modernise its military, and diplomatic backing from Australia on its territorial claims in the Spratlys. "Japan, Philippines agree to step up naval cooperation", Reuters, 28 September 2011; "President Aquino's Statement on the state visit of President Lee Myung-bak of South Korea", 21 November 2011, at www.gov.ph/2011/11/21/president-aquino%E2%80%99s-statement-on-the-state-visit-of-president-lee-myung-bak-of-south-korea-november-21-2011/; "Australia backs Philippines on Spratlys bid", *Philippine Daily Inquirer*, 14 November 2011.

[60] "US military seeks more access in Philippines", Reuters, 9 February 2012.

[61] For more analysis regarding the internal drivers and international strategies behind the responses of the other claimant countries, see Crisis Group Report, *Stirring up the South China Sea (II): Regional Responses*, op. cit.

[62] The U.S. had previously described an abiding interest in maintaining the peace and stability of the South China Sea in May 1995. U.S. Department of State, "U.S. Policy on Spratly Islands and South China Sea", Daily Press Briefings, 10 May 1995. In her statement at the ASEAN regional forum in Hanoi on 23 July 2010, Secretary Clinton focused on the U.S. interest in maintaining freedom of navigation and commerce in the region, as well as the desire that claims in the South China Sea be valid under the Law of the Sea and be solved through a collaborative process. Jeffrey Bader, *Obama and China's Rise: An Insider's Account of America's Asia Strategy* (Brookings Institution Press, 2012).

[63] "别把南中国海"多边化" ["Do not 'multilateralise' the South China Sea issue"], *环球时报* [*Global Times*], 28 July 2010.

[64] Crisis Group interviews, Beijing, November 2010.

[65] Crisis Group interviews, Beijing, November 2010.

[66] Crisis Group interview, Hanoi, December 2010. Another Vietnamese diplomat stated, "inviting in the Americans and trying to balance Chinese influence with that is our best strategy". Crisis Group interview, Hanoi, December 2010.

[67] Crisis Group interview, Beijing, January 2012.

[68] See Section VI "Shifting Tactics: A New Approach".

III. THE NINE DRAGONS

The proliferation of domestic actors and the complicated bureaucratic structure behind Chinese management of the issue has often been described with a reference to the traditional myth of nine dragons stirring up the sea.[69] However, the number of government actors involved in the South China Sea exceeds the number of dragons in the myth. The bulky bureaucracy includes eleven ministerial level government agencies, under which there are five law enforcement agencies and private actors. The most active of these eleven actors include the Bureau of Fisheries Administration, China Marine Surveillance, the local governments, the PLAN and the foreign ministry (see Appendix C).

A. BUREAU OF FISHERIES ADMINISTRATION

The Bureau of Fisheries Administration of the agriculture ministry[70] is responsible for one of the two largest law enforcement forces responsible for all of China's claimed maritime territory: the China Fisheries Law Enforcement Command.[71] Its duties include regulating the domestic fishing industry, safeguarding fishing vessels as well as land features, rocks and reefs claimed by China, preventing foreign vessels from fishing in the claimed regions, and where necessary, expelling them.[72] Historically, it has also been sent by the government to occupy and safeguard disputed areas in the South China Sea such as the Mischief Reef.[73]

One of three regional administrations directed by the Bureau of Fisheries Administration,[74] the South Sea Region Fisheries Administration Bureau[75] commands the South Sea Fisheries Law Enforcement Command,[76] which is responsible for the South China Sea and has been involved in numerous incidents with Vietnam and the Philippines.[77] It was originally a provincial level administration directly under the State Council and the Central Military Commis-

[69] The Chinese term is 九龙闹海. According to Chinese legend, the Dragon king has nine sons and the mystic creatures are seen as symbol of power, images of nine dragons playing in the sea can be found in Chinese palaces and many traditional artworks (including in the Forbidden City in Beijing where there is a glazed mural featuring nine dragons each playing with a pearl). The most common accounts are "nine dragons" and "five dragons" stirring up the sea. The "five dragons" refer to the five law enforcement agencies, while the "nine dragons" include the law enforcement agencies as well as the foreign ministry, the PLA, the environment ministry and state-owned oil companies. These accounts do not include the role played by local governments and national tourism administration. According to a scholar with the public security ministry, Chen Wei, the nine dragons include the PLAN, Customs Law Enforcement (General Administration of Customs), China Fisheries Law Enforcement Command (agriculture ministry), Marine Safety Administration (transport ministry), Search and Rescue Centre (transport ministry), Maritime Police (public security ministry), border police (public security ministry), China Marine Surveillance (State Oceanic Administration), and maritime environmental protection. But according to PLA researcher Major General Luo Yuan, the nine dragons exclude the PLAN and include all the agencies Chen Wei noted, with the addition of the Salvage Centre under the transport ministry. 陈伟 [Chen Wei], "合理行使紧追权 维护中国海洋权益" ["The safeguard of maritime rights and interests of China based on the reasonable enforcement of right of close pursuit"], *Annual of China Marine Law*, 22 June 2011 (2), pp. 19-24. "政协委员罗援少将建议组建国家海岸警备队" ["CPPCC delegate Luo Yuan proposes the establishment of cost guard"], *中国新闻网* [*China News*], 5 March 2012.

[70] 农业部渔业局 in Chinese.

[71] The other major law enforcement force is the China Marine Surveillance. See Section III.B. Crisis Group interview, Beijing, December 2011.

[72] Since 2009, the South Sea Region Fisheries Administration under the China Fisheries Law Enforcement Command has sent more than ten fisheries patrol boats into the south west fishing area near Spratly Islands to safeguard Chinese fishing boats. In the first nine months of 2011, Chinese fisheries patrol boats have confronted 22 armed vessels of Indonesia, Philippines and Vietnam. "中国渔民频被抓仍闯南海 称不能失去'祖宗地'" ["Chinese fishermen keep running into South Sea despite the risk of being caught"], *International Herald Leader*, 22 November 2011; "China Fisheries Yearbook 2011", op. cit., pp. 24-25. Since 1994, fisheries patrol boats have been participating in building and safeguarding landmarks on the Mischief Reef, which is also claimed by the Philippines. "南沙执法管理" ["South Sea Law Enforcement and Management"], agriculture ministry official website, www.nhyzchina.moa.gov.cn/yzzf/200603/t20060310_2111096.htm.

[73] "'五路诸侯'竞逐中国海上管理权" ["'Five warlords' competing for regulating power on China's Seas"], *南方周末* [*Southern Weekly*], 8 December 2010.

[74] The three regional administrations are Yellow Sea and Bo Sea Region Fisheries Administration, East Sea Region Fisheries Administration and South Sea Region Fisheries Administration.

[75] 南海区渔政局 in Chinese.

[76] 中国渔政南海总队 in Chinese.

[77] In 2010 alone, Chinese fisheries law enforcement forces expelled 66 foreign fishing vessels, confiscated one foreign fishing boat, and rescued nine Chinese fishing boats from foreign law enforcement vessels in the South China Sea. "中国渔业年鉴" ["China Fisheries Yearbook 2011"], op. cit., p. 134; "Vietnam: Chinese soldiers attack fishermen", Associated Press, 14 July 2011.

sion,[78] but was taken over by the agriculture ministry in 1984.[79]

In the past decade, the China Fisheries Law Enforcement Command has acquired an increasing number of well-equipped, large patrol vessels, as well as older, decommissioned military vessels from the PLAN that have been upgraded for the purpose of fishery patrols.[80] Since the passage of an EEZ law in 1998, the South Sea Fisheries Law Enforcement Command has been increasing the range of its patrols, and its fleet often accompanies fishing boats into the disputed waters near the Spratly Islands.[81] These patrols have become more frequent in recent years, partly due to improved weather capabilities in the newer vessels in the fleet.[82]

B. CHINA MARINE SURVEILLANCE

The State Oceanic Administration commands the China Marine Surveillance,[83] the other major maritime law enforcement force.[84] One of the State Oceanic Administration's key roles is to defend sovereignty over claimed waters in the sea.[85] It wields the widest range of power in ocean management[86] and enjoys considerable independence outside the government's power structure. For example, the director can select his own personnel (approval from the land and resources minister is required but this is a routine procedure), while other agencies of the same level are more dependent on their higher authority.[87]

The State Oceanic Administration, which had previously been involved in activities in the South China Sea when it dispatched ships in the 1970s and 1980s to investigate the possibility of establishing observation posts,[88] set up China's Marine Surveillance in 1998, and its South Sea Command in 1999.[89] In its early years, dealing with domestic misuse of the sea was a major task of the South Sea Command.[90] In 2001, defending China's sovereignty, especially over disputed areas on the sea, became another priority.[91] It started to regularly patrol China's claimed waters on the sea, including the South China Sea since 2008,[92] and has been the major player in several serious incidents with Vietnam since 2009.[93] Together with Fisheries Patrol boats, it was also involved in the *USNS Impeccable* case in 2009 and the China-Philippines standoff in Scarborough Reef in April 2012.[94]

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[78] The State Council is the highest administrative body and the Central Military Commission is the highest military authority, roughly equivalent to the State Council.

[79] The official website of South Sea Region Fisheries Administration offers the details of its history, www.nhyzchina.gov.cn/Html/2006_03_10/2_1507_2006_03_10_1684.html.

[80] "农业部官员寄语中国渔政：敢碰硬，敢执法，敢维权" ["Agriculture ministry official told Chinese fisheries administrations: be tough and confront foreign vessels, enforce law with courage, defend maritime rights bravely"], *China News*, 27 February 2012; "七〇一所设计国内最大渔政船下水" ["The Biggest Fisheries Patrol Boat Designed by Institute 701 Tested the Water"], *China Shipbuilding Industry*, April 2010; "首批西沙海域渔政执法船交付使用" ["First batch of fisheries patrol boats for Paracel region delivered"], *Guangzhou Metro Daily*, 31 August 2010; "喜迎渔政310船返回广州母港" [Happily Greeting Fisheries Patrol Boat 310 Returning to Its Birth Harbour], South Sea Region Fisheries Administration Bureau official website, www.nhyzchina.gov.cn/Html/2010_10_01/2_1459_2010_10_01_2953.html.

[81] M. Taylor Fravel, "China's Strategy in the South China Sea," *Contemporary South East Asia*, vol. 33, no. 3, p. 304.

[82] Fisheries vessels started annual patrols around Spratly Islands from 1994, but there were not enough large vessels to conduct all-weather patrol until recent years. "中国渔政联合编队巡航南沙 巡航模式变贴身护航" ["China fisheries law enforcement organise united patrol around Spratly Islands, starting accompanying fishing boats"], *Guangzhou Daily*, 2 April 2010.

[83] 中国海监总队 in Chinese.

[84] For more details, see CMS official website, www.soa.gov.cn/soa/governmentfairs/overview/jigoushezhi/jsdw/webinfo/2007/03/1271382671424901.htm.

[85] Others include environmental protection and preventing misuse of the sea,www.soa.gov.cn/soa/governmentaffairs/overview/zhuyaozhineng/webinfo/2010/04/1270102487344747.htm; "China's Ocean Development Report 2011", op. cit., p. 480.

[86] Crisis Group interview, Beijing, December 2011.

[87] Crisis Group interview, Beijing, August 2011.

[88] John Garver, "China's Push Through the South China Sea", *The China Quarterly*, No. 132, December 1992, p. 1009.

[89] "纪念中国海监南海总队成立10周年" ["Celebrate 10 Years Anniversary of China Marine Surveillance South Sea Command"], website of State Oceanic Administration South China Sea branch, 21 September 2009, www.scsb.gov.cn/Html/2/13/article-236.html; "China's Ocean Development Report", op. cit., p. 478.

[90] "纪念中国海监南海总队成立10周年" ["Celebrate 10 Years Anniversary of China Marine Surveillance South Sea Command"], website of State Oceanic Administration South China Sea branch, 21 September 2009, www.scsb.gov.cn/Html/2/13/article-236.html.

[91] "China's Ocean Development Report", op. cit., p. 478.

[92] Ibid, p. 2.

[93] "Vietnam demands China stop sovereignty violations, *Vietnam News*, 29 May 2011; "China boats violate Vietnam sea, cut cables again", *TuoiTreNews*, 9 June 2011.

[94] "Pentagon: Chinese vessels harassed unarmed ship", Associated Press, 9 March 2009. "菲律宾军舰与中国海监船南海对峙" ["Philippine navy engaged in a standoff with Chinese Marine Surveillance vessels"], BBC Chinese, 11 April 2012.

C. LOCAL GOVERNMENTS

Three coastal provincial governments, Hainan, Guangdong and Guangxi, are involved at different levels in the South China Sea disputes and their profit-driven behaviour has escalated tensions in the region. Their three coastlines border the South China Sea, which serves as a key economic growth area in their economic plans.[95] Like most local governments in China, they focus above all on GDP (gross domestic product) growth, as it is the most important criteria for advancement in the political system other than inherited family political power.[96] As a result, local governments are especially eager to expand their economic activities, including fisheries and tourism, into the disputed areas of the South China Sea even at the cost of confronting other claimant countries.[97]

As provincial governors are at the same level of authority as ministers, their governments enjoy considerable freedom with regard to local issues.[98] For example, they have direct command over all provincial-level law enforcement forces.[99] This often brings unfavourable outcomes for the central government when provinces handle relations with bordering countries without effective central coordination.[100] The most active coastal government along the South China Sea is the Hainan government, which theoretically has governed all of the Paracel and Spratly Islands (Xisha, Zhongsha and Nansha Islands as they are called in Chinese)[101] and the surrounding waters since the establishment of the province in 1988.[102] It has repeatedly tried to establish a governing body over these islands, or to develop a high-end tourism industry on them or their surrounding waters, despite the fact that they are also claimed by Taiwan, Vietnam, the Philippines, Brunei and Malaysia.[103] These attempts have sparked demonstrations and diplomatic protests in Vietnam.[104]

D. PEOPLE'S LIBERATION ARMY NAVY

Despite a rapid expansion of its presence in the South China Sea, the PLAN has so far played a secondary role in managing disputes in the area. While the navy's role traditionally has been defined as a protector of China's maritime sovereignty, it has not engaged in any incidents in the South China Sea with other claimants since 2005 even though it has been regularly patrolling the area since then.[105] When incidents happen, it is informed but its vessels tend to either stay in the background or arrive late, allowing civilian law enforcement or paramilitary agencies to handle the issues.[106] While only civilian agencies have been responsible for engaging in recent intimidating actions, China's naval build-up and modernisation and its lack of transparency are also stoking tension in the region by driving other claimant countries to increase the size of their own maritime forces.[107]

[95] Following the national development master plan "Twelfth Five Year Plan (2011-2015)" issued by the State Council, Hainan, Guangdong and Guangxi governments put "Developing Ocean Economy" as one of their key missions during this period. For the Twelfth Five Year Plan of the central government and the three provincial governments, refer to "中华人民共和国国民经济和社会发展第十二个五年规划纲要" ["Twelfth Five-Year Plan on National Economic and Social Development"], Xinhua News，16 March 2011; "'十二五'时期广西海洋经济发展规划》通过评审" ["Twelfth Five-Year Plan on Guangxi's Ocean Economic Development Approved"], 广西日报 [*Guangxi Daily*], 14 November 2011; "广东'十二五'海洋经济发展规划获省政府原则通过" ["Twelfth Five-Year Plan on Guangdong's Economic Development Principally Approved by Provincial Government"], 中国海洋报 [*China Ocean News*], 17 January 2012, "海南省国民经济和社会发展第十二个五年规划纲要" ["12th Five-Year Plan on Hainan's Economic and Social Development"], 海南日报 [*Hainan Daily*], 3 March 2011.

[96] In practice, this rule generally applies to officials who have no kinship with central leaders. Crisis Group interview, Beijing, January 2012.

[97] See Section IV.C "Economic interests"

[98] Crisis Group interview, Beijing, January 2012.

[99] This allows them, for example, to use these provincial forces for patrols including in disputed territories.

[100] Crisis Group interview, Nanning, August 2009. For example, local governments in Yunnan province have been giving approval to logging companies to cut down trees in Myanmar without informing Beijing of it in the past years. While these companies only cooperate with local powers in Kachin instead of the Myanmar central government, Naypyitaw issued a protest to both the Chinese central government and Yunnan local government. See Crisis Group Report, *China's Myanmar Dilemma*, op. cit.

[101] In Chinese, they are 西沙,中沙,南沙.

[102] Hainan provincial government website, www.hainan.gov.cn/code/V3/zjhn.php.

[103] See Section IV.C "Economic interests".

[104] See Section IV.C "Economic interests".

[105] The PLAN began regular patrols in the disputed South China Sea waters in approximately 2005. Michael Swaine and M. Taylor Fravel, "China's assertive behavior, Part Two: The maritime periphery", *China Leadership Monitor*, no. 35, p. 6.

[106] Crisis Group interview, Beijing, January 2012.

[107] As a result of China's growing capabilities and lack of transparency, a number of ASEAN states are increasing their own weapons procurement. These trends do not only include force modernisation but also focus on acquiring new capabilities such as submarine warfare. Carlyle A. Thayer, "Efforts to Ensure Maritime Security", Presentation to Second Tokyo Defence Forum Seminar, organised by the defence ministry, Galaxy, Chinzan-so, Tokyo, 16 March 2012.

The PLAN's South Sea Fleet,[108] formerly the weakest of China's three naval fleets, could soon surpass the East Sea Fleet as China's strongest naval force.[109] Today it is home to the country's largest and most advanced fleet of destroyers[110] and may include the first aircraft carrier once it is deployed.[111] To accommodate the growing fleet, the Yulin Naval Base in Hainan's city of Sanya has been expanded to include underground facilities for a reportedly increasing number of nuclear and conventional submarines, as well as piers for carriers.[112] The Chinese navy has also reportedly extended an airstrip on Woody Island in the Paracels, and enhanced its facilities at Fiery Cross Reef in the Spratlys.[113]

China has expanded its naval presence in the South China Sea for various reasons that primarily have to do with protecting perceived national interests. In the face of persistent tensions in the area, a stronger naval presence helps Beijing project its power to deter other countries from challenging its claimed sovereignty and economic interests.[114] Another common argument for a stronger navy is the South China Sea's rising strategic significance as China's export-orientated economy becomes increasingly dependent on maritime transport.[115] Since 2003, President Hu Jintao has repeatedly underlined the importance of securing sea lines of communication, making it a point during his tenure to strengthen the South Sea Fleet.[116]

Structurally, the PLA sits outside of the civilian bureaucracy for South China Sea policy but has the potential to undermine the government's efforts to manage tensions. The PLA reports directly to the Central Military Commission, which is administered by the Politburo Standing Committee, but it still enjoys a certain degree of autonomy.[117] Certain hardline academics and retired military officers have taken a high-profile role in promoting an assertive handling of territorial and maritime economic disputes.[118] These demands for assertiveness, while not necessarily representative of the views of the PLA leadership and coming from PLA personnel outside the military's central hierarchy, have inflamed nationalist public sentiment.[119] While the military has not thus far engaged in clashes in the disputed waters since its skirmish with Vietnamese fishermen in 2005,[120] its rapid naval expansion and modernisation, together with a lack of transparency and lack of well-established mechanisms to deal with incidents,[121] play a key role in increasing tensions in the South China Sea.

[108] Headquartered in Guangdong, the South Sea Fleet geographically covers the region south west of Hainan's Nan Ao Island, including Paracel and Spratly Islands.

[109] After the founding of the PRC in 1949, the North Sea Fleet received all the destroyers purchased from the Soviets and the East Sea Fleet inherited almost all the vessels left by the Kuomintang government as China perceived its biggest threats to be from the Soviet Union in the north and the U.S.'s proxy bases in the east. According to a Chinese analyst, the South Sea Fleet now receives the biggest budget as compared with the North Sea and East Sea fleets. Crisis Group interview, Beijing, June 2010. James C. Bussert, "Hainan is the Tip of the Chinese Navy Spear", *Signal Magazine* (online), June 2009.

[110] Crisis Group interviews, Beijing, January 2012. For example the South Sea Fleet has "five of the seven modern destroyers that China developed indigenously in the past ten years", as well as China's first modern landing platform dock Kunlunshan. M. Taylor Fravel, "Maritime security in the South China Sea and the competition over maritime rights", *Cooperation From Strength*, op. cit., p. 40.

[111] Chinese media has reported that the aircraft carrier will be assigned to the South Sea Fleet as soon as 1 August 2012, on the anniversary of the founding of the PLA. "中国首艘航母或将编入南海舰队" ["China's first aircraft carrier likely to be assigned to the South Sea Fleet"], *南方日报* [*Nanfang Daily*], 16 August 2011.

[112] The PLA has never officially confirmed the base's construction, but the original Jane's Intelligence Review report was carried by Chinese media. "简氏称已确认中国核潜艇和航母编队新基地" ["Jane's Intelligence Review claims it has confirmed a new base for China's nuclear submarine and aircraft carrier"], *环球时报* [*Global Times*], 16 April 2008. The original report is from Richard D. Fisher, "Secret Sanya: China's New Nuclear Naval Base Revealed", *Jane's Intelligence Review*, April 2008.

[113] Carlyle A. Thayer, "Maritime security and the role of naval diplomacy in the South China Sea", Paper to the Maritime Institute of Malaysia, Conference on the South China Sea: Recent Developments and Implications for Peaceful Dispute Resolution, 12-13 December 2011.

[114] Crisis Group interviews, November 2011, January 2012.

[115] Crisis Group interview, Beijing, January 2012; "Because the South China Sea has potentially rich deposits of fossil fuels and natural gas and straddles major sea-lanes through the Strait of Malacca into the Indian Ocean, Hu seems to favour particularly the development of the South Sea Fleet". Li Nan, "Chinese Civil-Military Relations in the Post-Deng Era: Implications for Crisis Management and Naval Modernisation", U.S. Naval War College, *China Maritime Studies*, no. 4, p. 37.

[116] Hu Jintao first mentioned the term "Malacca dilemma" in the Central Economic Work Conference in 2003. See also 林锡星 [Lin Xixing], "必须跳出马六甲游戏圈，中国新石油通道的两难选择" ["Jumping out of the Malacca game, the dilemma of China's new oil passage"], *中国新闻周刊* [*China News Weekly*], 9 August 2004.

[117] For example, in most occasions, the Central Military Commission does not report its military exercise plans to the Politburo Standing Committee. Crisis Group interview, Beijing, December 2011, January 2012.

[118] See discussion in Section IV.D.

[119] See Sections VI.B "Calming the PLA", and IV.E "Nationalism".

[120] Tran Dinh Thanh Lam, "Vietnamese fishing in troubled waters", *Asia Times*, 25 May 2005.

[121] Maritime confrontations often occur between the U.S. and Chinese navies, but the two countries have yet to set up a specific mechanism to communicate with each other to resolve incidents when they happen. Carlyle Thayer has suggested that both countries task their joint Maritime Safety Working Group

E. Enter the Ministry of Foreign Affairs (MFA)

As the only agency that is experienced in handling diplomatic affairs and authorised to negotiate with neighbouring countries over the South China Sea disputes, the foreign ministry is tasked with providing policy guidance and tracking other agencies' activities in disputed areas with a view to preventing international incidents.[122] Although it remains theoretically responsible for the formulation and execution of Chinese foreign policy, its leadership role, responsibility and authority on most foreign policy issues of strategic significance has been largely bypassed by other more powerful players.[123] Its mission is also made more difficult by a lack of legal clarity, nationalist public sentiment, and the presence of three different internal departments with overlapping responsibilities over South China Sea issues.[124] As a result, the ministry struggles to wield influence over other agencies, leaving it in a difficult position as it tries to manage the situation.[125]

F. Energy Companies

Some of the most important potential quasi-governmental actors in Chinese South China Sea policy are the national oil companies. These include China National Petroleum Corporation (CNPC), China Petrochemical Corporation (Sinopec) and China National Offshore Oil Corporation (CNOOC). Thus far, Chinese oil companies' interest in exploiting oil reserves in the waters around the disputed areas has been limited due to the unclear status, political sensitivity of the South China Sea issue as well as financial and technological concerns about the feasibility of such operations.[126]

These companies, especially CNOOC, which is the only one possessing deep sea drilling technology, have been trying to overcome these obstacles. They have been urging the central government to sponsor and approve energy exploration in the disputed waters in the South China Sea, arguing that such actions would help reinforce China's sovereignty claims in these areas.[127] So far, Beijing has been reluctant to support them.[128] However, CNOOC's decision to take bids on developing energy reserves in some disputed waters near the Paracels in May 2011 has raised questions on whether the factors constraining these companies are as strong as they once were.[129]

G. The Other Dragons

While eleven "dragons" are involved in South China Sea affairs, five of them currently play minor roles, although this could change in the future. These agencies include the China Coast Guard, the China Customs Anti-Smuggling Bureau, the Maritime Safety Administration, the National Tourism Administration, and the environment ministry.

The National Tourism Administration, which promotes tourism industries and provides necessary approval for new tourism projects in China, has helped facilitate the approval of high-end tours to the Paracel Islands that have repeatedly caused antagonism between China and Vietnam.[130] The Tourism Administration has a vested interest in facilitating tourism in the South China Sea, particularly as demand for domestic travel rises rapidly.[131] Meanwhile, such requests for approval for local tourism projects are supported to a certain extent by the central government because tourism is a demonstration of sovereignty and administration of the disputed territories and helps boost the legitimacy of Beijing's claims.[132]

The environmental protection ministry is responsible for reviewing the environmental impact of near sea maritime development projects so far.[133] It has no patrol vessels.

with drafting such a mechanism. Vietnam and China also lack an effective mechanism for handling such incidents, although a hotline was established between the two governments during the agreement to the Guidelines for the Implementation of the DOC in 2011. Carlyle A. Thayer, "Efforts to Ensure Maritime Security", presentation to the 2nd Tokyo Defense Forum Seminar organised by the Ministry of Defense (Japan), 16 March 2012; "China, Vietnam agreement on sea dispute", *United Press International*, 12 October 2011.

[122] Crisis Group interviews, Hainan, November 2011.

[123] See Section IV.A.2 "General institutional weakness".

[124] Ibid and Section IV.A.3 "Internal divide".

[125] Ibid.

[126] For more discussion on state oil companies' potential role in China's South China Sea policy, see Section IV.D "Potential Energy Resources".

[127] Crisis Group interview, Beijing, September 2011.

[128] Crisis Group interview, Beijing, September 2011.

[129] "Vietnam protests CNOOC's plans in disputed South China Sea", *The Wall Street Journal*, 16 March 2012.

[130] While it was not the initiator of the project, by giving its approval to the local government's initiative it provided critical support to it. For the high-end tourism projects on the Paracel Islands that caused a diplomatic crisis between China and Vietnam, see Section IV.C "Economic Interests of Local Governments".

[131] Crisis Group interview, Beijing, November 2010.

[132] Crisis Group interview, Beijing, November 2010.

[133] See its official website, www.mep.gov.cn/zhxx/jgzn/; "中海油南海石化项目通过验收" ["CNOOC's Petroleum & Petrochemical Refinery Project Passed the Review"], *中国化工资讯网* [China Chemical Information Net], 11 May 2011, www.nfhgw.com/news/show/513/. Crisis Group interview, Beijing, December 2011.

The China Coast Guard under the public security ministry is a paramilitary force primarily responsible for preventing smuggling and human trafficking on the near seas.[134] Although its vessels and personnel are equipped with weapons, its forces are understaffed and most ships are not large enough to conduct regular patrols far into the disputed waters of the South China Sea.[135] Maritime paramilitaries, and particularly the Coast Guard, deal with areas of security and law enforcement of concern to all states with maritime interests that frequently require international cooperation (ie, piracy, smuggling, search and rescue, etc.). As such, maritime paramilitaries can be uniquely placed to build closer ties between countries and promote confidence-building measures.[136]

The China Customs Anti-Smuggling Bureau under the General Administration of Customs is another agency with law enforcement authority over the claimed territory and territorial waters surrounding China.[137] Its primary responsibility is anti-smuggling operations. It collaborates with Maritime Law Enforcement on intercepting suspicious vessels and inspecting their cargoes.[138] Like the Coast Guard, it does not yet possess large, all-weather vessels to patrol regularly in the disputed waters in the South China Sea.[139] Neither force has been involved in major South China Sea confrontations so far.

The Maritime Safety Administration (MSA) affiliated with the transport ministry commands the third most powerful law enforcement force on the sea. It plays a major management role in the maritime transportation affairs of the South China Sea. Most notably, it is responsible to ensure the openness and smooth operation of the sea lanes.[140] It often has to coordinate with other law enforcement agencies on anti-smuggling operations (with the Administration of Chinese Customs); on fighting illegal activities (with Maritime Law Enforcement); on piracy (with the South Sea Fleet), etc. The coordination process is usually long and painful.[141]

The MSA has not been involved in major conflicts on the disputed waters so far, but its ambition is to seek a larger role in the sea.[142] From 2006 to 2010, it has acquired three large vessels of over 1,000 tonnes equipped with helicopters, and plans to monitor all the EEZs claimed by China by 2015.[143] Its largest patrol ship, "*Haixun* 11", is a 114-metre-long vessel of 3,249 tonnes that can land helicopters.[144] With its ambitious and increasing law enforcement power, it could become another major player in the South China Sea disputes in the future.

[134] See China Coast Guard official website, www.mps.gov.cn/n16/n80254/n80271/index.html.

[135] "傅宏裕：加强海警部队建设，维护海洋权益" ["Fu Hongyu: Strengthen the Coast Guard build-up, defend maritime interests"], China National Radio, 5 March 2010.

[136] The Japanese Coast Guard, for example, has provided training, equipment or funding to all the coastal states of the South China Sea, and the North Pacific Coast Guard Forum, initiated in 2000 by the Japanese, brings together maritime paramilitaries from China, Canada, Japan, South Korea, Russia and the U.S. in an annual gathering. In the past ten years, U.S.-China maritime paramilitary agencies have held frequent and successful joint exercises; while on the other hand, U.S.-China military ties have been fraught with suspicion and tension – notwithstanding some very positive progress of late. "North Pacific Coast Guard Forum", Canadian Coast Guard official website; "U.S. Coast Guard Trains with China Coast Guard", U.S. Coast Guard official website, 18 August 2007.

[137] China Customs official website, www.customs.gov.cn/tabid/8015/Default.aspx; Crisis Group interview, Beijing, January 2012.

[138] 金永明 [Jin Yongming], 东海问题解决路径研究 [Study on the Solution to the Issues of East Asia Sea], *法律出版社* [*Legal Press*], 2009, pp. 175-176.

[139] "南沙护渔启示：中国需要职业海岸警卫队" [What has fisheries protection in the Spratly Islands indicated: China needs professional coast guard], *Netease news*, 31 May 2010, http://war.163.com/10/0531/13/68133RT900011232.html.

[140] For information on the Maritime Safety Administration and its responsibilities, see www.msa.gov.cn.

[141] Crisis Group interview, Hainan Province, November 2009.

[142] Crisis Group interview, Beijing, December 2011, March 2012.

[143] "我国装备三千吨级海巡船，维护国家主权" ["China builds 3,000 tonnes maritime safety patrol vessels to defend national sovereignty"], China News Agency, 1 March 2009; "中国海事建最先进海巡船 可起降大型直升机" ["China Maritime Safety Administration builds the most advanced patrol ship that can land helicopters"], Xinhua News Agency, 12 November 2010; "畅读海事发展" ["Expecting the Development of Maritime Safety Power"], p. 13, *中国海事 China Maritime Safety*, Issue 1, 2011.

[144] "中国最大最先进海巡船'海巡11号'建成下水" ["China's biggest and most advanced MSA vessel '*Haixun 11*' tried the water"], *凤凰资讯* [*Phoenix News*], 2 March 2009, http://news.ifeng.com/mil/2/200903/0302_340_1038751.shtml.

IV. WHY THEY STIR

A. INEFFECTUAL COORDINATION

1. Domestic actors playing foreign policy role

The biggest problem in coordinating the actors – apart from their number – is that most of these agencies were originally established to implement domestic policies but now play a foreign policy role.[145] They have almost no knowledge of the diplomatic landscape and little interest in promoting the national foreign policy agenda.[146] This focus on narrow agency or industry interests often means that their actions have significantly detrimental effects on foreign policy.[147] For example, the promotion of tourism in the disputed areas by the National Tourism Administration and local governments has led to international incidents arising from complaints from the governments of competing claimants.[148]

Law enforcement forces present the same problem. While the Bureau of Fisheries Administration is not a traditional foreign policy actor, in recent years its boats frequently have been used to patrol disputed territories and rescue fishermen detained by foreign navies.[149] Beijing likely perceives fishery patrol boats as a less aggressive way of demonstrating strength and establishing sovereignty than using the navy, but the governments and peoples of other claimant countries still see them as part of a rising Chinese threat.[150] Furthermore, the patrols by each of these law enforcement agencies make the Chinese military presence seem much more prominent than it is.[151] Naturally, they handle foreign policy incidents in ways far less diplomatic than trained foreign affairs officials, further fuelling neighbouring countries' fears and deepening suspicions about Chinese military intentions.[152]

2. Structural weakness of the foreign ministry

Given that the disputes are an unambiguous matter of foreign policy and require bilateral and multilateral diplomacy, the foreign ministry (MFA) should be playing a principle role advising and coordinating many of these actors.[153] But it lacks sufficient authority due to the structural environment in which it operates: almost all of the other relevant actors are at the same level of authority and enjoy significant autonomy.[154] Because organs at the same level structurally cannot force one another to do anything, these agencies resent being advised and coordinated by the MFA.[155]

Another reason for this lack of authority is that domestic issues, such as sustaining economic growth and political stability,[156] still far outweigh foreign policy on the leadership's priority list.[157] As China's global role has grown, many of the domestically oriented agencies have acquired additional foreign policy powers. In this environment, the MFA's influence has declined relative to that of domestically focused actors, such as the commerce ministry, the finance ministry, the state security ministry, and the National Development and Reform Commission.[158] As a scholar explained, "the foreign ministry is weaker than ever".[159]

Another key problem is that the PLA significantly outranks the MFA in China's bureaucratic hierarchy, making coordination of South China Sea policy through the min-

[145] Crisis Group interview, Beijing, October 2010.
[146] Crisis Group interview, Beijing, October 2010.
[147] Crisis Group interview, Beijing, October 2010.
[148] Crisis Group interview, Hanoi, December 2010.
[149] "中国最先进渔政船将去南海和钓鱼岛巡逻 宣示主权" ["China's most advanced fishery patrol vessel demonstrate sovereignty rights in the South China Sea"], *世界新闻报* [*World News Journal*], 15 September 2010.
[150] Crisis Group interviews, Hanoi, December 2010 and July 2011, Manila, October 2011 and January 2012, Kuala Lumpur, May 2011, Jakarta, January 2010.
[151] Ibid.
[152] Ibid.
[153] The most effective overall coordinating body would likely be the State Council or Central Military Commission, as coordination requires leadership from the party above the ministry level.
[154] A mainland scholar ranks the foreign ministry somewhere between 40th and 50th in China's national political ranking. Crisis Group interview, Shanghai, September 2010.
[155] Crisis Group interview, Beijing, February 2012.
[156] With economic growth commonly regarded as a source of the Communist Party-led government's legitimacy, China's foreign policy is primarily aimed at creating a favourable international environment for economic growth. David Lampton, "China's Foreign and National Security Policy-making Process: Is it Changing, and Does it Matter?", *The Making of Chinese foreign and security policy* (Stanford University Press, 2001), pp. 1- 36.
[157] Crisis Group interviews, Beijing, November 2011.
[158] Crisis group interviews, Beijing, September and November 2011. See also Linda Jakobson and Dean Knox, "New foreign policy actors in China", *SIPRI Policy Paper 26*, September 2010. The MFA's powerbase in the CCP was not always this weak. From 1988 to 1998, Qian Qichen simultaneously held the positions of Chinese foreign minister and State Council vice premier. Currently, State Councillor Dai Bingguo, regarded as the highest ranking foreign policy official in China, is not even a member of the Chinese Communist Party (CCP)'s 25-strong Politburo, the second-highest level decision making organ in the party after the Politburo Standing Committee.
[159] Crisis Group interview, Shanghai, September 2010. A Chinese analyst put it this way: "Yang Jiechi [China's current foreign minister], isn't even as powerful as [State Councillor] Dai Bingguo's assistant". Crisis Group interview, Beijing, May 2011. Another Chinese scholar noted that, according to international protocol, Dai is more like China's foreign minister while Yang Jiechi is "just like a director general of the foreign office". Crisis Group interview, Beijing, January 2012.

istry impossible.[160] The Central Military Commission, the military governing body, is at the level of the State Council, while the MFA is below it. The PLA does not even report all of its activities to the Politburo, let alone communicate properly with the ministry.[161] The MFA has little direct access to information about the military, even though the latter plays an influential role in China's international behaviour in general, and its policy and actions in the South China Sea in particular.[162] On some occasions, the MFA has been forced to rely on reports from Western diplomats regarding the PLAN's activities in the South China Sea.[163] In general, local actors are reluctant to inform the MFA, claiming that foreign policy bureaucrats in Beijing do not understand the situation on the ground.[164] In defiance of protests by the Vietnamese government, for example, local tourist agencies have continued to conduct tours to the Paracel Islands.[165]

3. Internal divide in the foreign ministry

The MFA's internal organisational structure, in which separate departments have overlapping roles in managing the South China Sea, further complicates its effectiveness as a coordinator on these issues. Two of the departments, the Asian affairs department and the North American and Ocean affairs department, have longstanding histories of dealing with issues related to the South China Sea, while the boundary and ocean affairs department was established in May 2009 at the same time as the deadline for submitting the first calculations to the UN Commission on the Limits of the Continental Shelf.[166] This new department is charged with administering legal matters over territorial claims. It was also given a role to provide diplomatic policy guidance to other agencies on maritime issues including the South China Sea.[167]

However, after three years, the boundary and ocean affairs department is still "under construction".[168] It is still assembling its team and trying to define its objectives and strategy,[169] and it is not a particularly strong department within the ministry. Its authority and power certainly cannot compete with the more established geographical departments such as the Asian affairs department.[170]

Because Beijing insists that the negotiation over the disputes be carried out bilaterally (between China and each of the four Asian claimants), the Asian affairs department has a much more important role, all the more as the delimitation dispute is considered in the context of and balanced against other bilateral issues.[171] With the enhanced U.S. involvement in the South China Sea since 2009, the issue also became a priority in the context of U.S.-China bilateral relations, ensuring that the North American and Ocean affairs department must also be consulted, thus placing the issue higher on the list of priorities than that of maritime boundary demarcation between China and its Asian neighbours.[172] All of this inter-departmental competition makes it harder to achieve internal consensus on South China Sea issues and weakens the already limited effectiveness of the foreign ministry in managing disputes.[173]

4. Heated domestic political environment

The foreign ministry is also constrained by the heated domestic political environment that is inflamed by strident nationalism and reinforced by actors such as the PLA, state-owned companies and local and provincial actors. Without an effective inter-agency mechanism, harder-line actors are more successful in promoting their views that Beijing should be less compromising and that international pressure on China on various issues is an effort to undermine its rise. These voices are louder than the voices of reason and moderation that generally come from the foreign ministry. For example, any attempt by the latter to assure other countries that China does not claim the entire South China Sea is often met with disbelief by the Chinese people, many of whom have been taught since childhood

[160] See Appendix C.
[161] Crisis Group interviews, Beijing, August 2011, January 2012.
[162] When the *USNS Impeccable* was harassed by Chinese paramilitary and navy vessels on 8 March 2009, the Chinese foreign ministry was apparently not immediately informed and had to learn what had happened from Western interlocutors. Crisis Group telephone interview, Beijing, August 2011.
[163] Crisis Group interview, August 2011.
[164] Crisis Group interview, Beijing, February 2012.
[165] For more information on the role of the tourism industry in the South China Sea disputes, see Section III.C "Economic Interests of Local Governments".
[166] The creation of the department raised wide speculation at the time that China was going to initiate major efforts to settle its maritime boundary with its neighbours. Crisis Group interview, Beijing, May 2009.
[167] This role was exercised for example, in the context of the visit of the Vietnam Party Secretary to China in October 2011, when the department provided media advice to relevant agencies. Crisis Group interview, Beijing, March 2012.
[168] Crisis Group interview, Beijing, October 2011.
[169] Crisis Group interview, Beijing, October 2011.
[170] Ning Fukui, former deputy director of the department of Asian affairs, was made the first head of the new department. But this did not translate into the same level of power as held by the department of Asian affairs. Crisis Group interview, Beijing, November 2010.
[171] This also further hinders the prospect of a resolution purely over the territorial disputes. Crisis Group interview, Beijing, November 2010.
[172] Crisis Group interview, Beijing, Washington DC, December 2010 and January 2011.
[173] Crisis Group interview, Beijing, November 2010.

that their country has an inviolable claim to the area within the nine-dashed line.[174]

The MFA has long been criticised by nationalist elements from the Chinese public and harder-line agencies, which accuse it of selling out China's interests. Members of the public have reportedly long sent calcium pills to the ministry in allusion to a weak spine, with others calling it the "ministry of traitors".[175] Many scholars and National People's Congress representatives, lamenting the weak coordination among the numerous actors of the South China Sea policy, are now calling for the establishment of a new agency to govern maritime affairs, a step that would further undermine the MFA's role.[176] This proposal, coupled with public pressure on the other governmental actors to act more assertively, further weakens their willingness to accept coordination. This constraint has created space for other actors, such as local governments and the fisheries and maritime surveillance administrations, to compete for more resources and advance their own agendas, escalating diplomatic tensions in the region and creating confusion over who is running policy.[177]

In an effort to moderate the nationalist tone of reporting on maritime issues, a group of diplomats and scholars organised a seminar in late 2011.[178] In his keynote speech to an audience that included many journalists, Assistant Foreign Minister Yue Yucheng said that foreign policy should not be overly simplified as "soft" or "hard" and that "wisdom is more important than fists".[179] Several scholars also made the point that the media is not well versed in international relations and often produces poorly informed reports as a result.[180]

5. Lack of legal clarity

Coordination of actors is also hampered by a lack of clarity over what is supposed to be defended. Despite international speculation about and pressure to explain the exact extent and justification of China's claims,[181] the government has yet to publicly clarify the legal claims it intends to make within the nine-dashed line specifically, and its policy objectives for the South China Sea in general. The actual size of the territory claimed will depend a great deal on the legal arguments developed by Beijing.

If its claims were only to the islands themselves, then China would be entitled under UNCLOS to also claim 12 nm territorial waters around them.[182] If the islands are able to sustain human habitation or an economic life of their own, then Beijing could also claim an EEZ and continental shelf measured from each of its claimed islands. But even if these claims should be realised in full, the combined area would not encompass the entire sea within the nine-dashed line.[183]

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[174] See Section IV.D "Nationalism."

[175] From 外交部 to 卖国部. Crisis Group interview, Beijing, November 2011. See also Susan Shirk, *China: Fragile Superpower* (Oxford University Press, 2007), p. 101.

[176] See Section IV.A.6 "Proposals to establish a centralised mechanism".

[177] See Section IV.B "Competing Law Enforcement Agencies", and Section IV.C "Economic Interests".

[178] The seminar, entitled "China's diplomatic review and outlook in 2011", was jointly organised on 18 December 2011 by the foreign ministry and China Foreign Affairs University. According to a participant at the event, the organisers deliberately included journalists in the seminar in order to convey the message that they should stop fuelling the nationalist sentiments. Crisis Group interview, Beijing, February 2012.

[179] Transcript of the seminar available on Global Times website www.huanqiu.com/www/textlive/live2011/index.html.

[180] For example, in response to media reports about the arrest of Chinese fishermen in the East China Sea, Song Ronghua, a guest professor of China Foreign Affairs University, said the media had to be aware of its social responsibility and should not have hyped up the event. He said the media reports have given an impression that the authority had failed to try its best to protect the Chinese fishermen and people's interests. He said the media should be more careful. www.huanqiu.com/www/textlive/live2011/index.html.

[181] Some observers argue that the nine-dashed line, together with two other *notes verbales* that Beijing submitted to UNCLOS, created the perception that "China was escalating the dispute and expanding its claims". Swaine and Fravel, "China's Assertive Behavior, Part Two: The Maritime Periphery", op. cit., p. 3.

[182] Under the treaty, the area within 12 nm of the coast is considered territorial waters. From this point, each country is given an EEZ that extends up to 200 nm from the territorial waters although this can extend to 350 nm if the country can claim an extended continental shelf. Within the EEZ and continental shelf area, the sovereign country enjoys exclusive resource and development rights. If a country claims an offshore feature such as an island or a reef, this can sometimes generate additional territorial waters and EEZs. If the island can sustain habitation and economic activity, then it is entitled to both territorial waters and an EEZ. Islands that cannot sustain life or economic activity are considered "rocks" under UNCLOS, and receive the 12 nm territorial waters, but not an EEZ. Other features that are submerged, only above sea-level at low tide, or that are artificially built up above the tide are only entitled to a 500-metre safety zone.

[183] It would also be impossible to award the full 200 nm EEZ to each of the Spratly Islands since this would overlap with other nations' zones. When maritime zones overlap, Article 15 of UNCLOS states that the boundaries will be established at an equal distance from both countries coasts, although there are other factors that can modify this, including the lengths of the relevant coastlines, the distance of the various mainland and island coastlines from each other, as well as the number of different island features owned by the various parties to the dispute. Since the coastlines of the Spratly Islands are very short in overall length, and since many of the islands are geographically closer to the Philippines, Vietnam and other countries, even if China established its sovereignty over the islands, the South East Asian

As mentioned, the foreign ministry has sought to reassure neighbouring countries that its claims are only to the islands themselves and their adjacent waters. However, shortly after it ratified UNCLOS, China passed its own domestic law on the treaty, which included a provision stating that it would not affect the historical rights enjoyed by the Chinese people.[184] In addition, the attitudes of other government agencies and the general public are often at odds with the MFA's statements.[185] Incidents involving Chinese law enforcement vessels in other countries' EEZs suggest that law enforcement agencies may believe they are continuing to enforce the country's "historical rights" throughout the entire area within the nine-dashed line.[186] The Chinese public also overwhelmingly believes that China's territory encompasses the whole area.[187] All of this indicates significant uncertainty over the government's legal position on its claims in the South China Sea.

There are several possible explanations for the current legal ambiguity. As stated above, it reflects the lack of consensus on this issue in the government. To a certain degree, it also shows China's lack of confidence that it could back its claims within the framework of international law.[188] Many scholars and officials in Beijing recognise that the nine-dashed line cannot serve as a formal delimitation of a maritime boundary.[189] It is also clear that the navy is not currently ready to occupy the features in the Spratlys not under its control, many of which are occupied by other claimants.[190]

It is likely that Beijing also sees benefit in ambiguity, which allows it to maintain room for future manoeuvring. As a leading Chinese scholar summed up: "To keep our claim vague is to allow us more flexibility and save our face".[191] Unsurprisingly, Beijing has yet to assign the National People's Congress, the highest law-making body, the issue of the nine-dashed line's legal interpretation.[192]

The MFA's boundary and ocean affairs department is left to handle foreign relations amid this legal ambiguity. It consults legal experts on how to reconcile inconsistencies between domestic and international maritime laws, but any consensus is still far off.[193] To defuse tensions, officials from the department have been briefing ASEAN embassies about China's position on territorial claims in accordance with UNCLOS[194] – stating that Beijing is claiming the geographic features within the nine-dashed line and the territorial waters and EEZs they would generate under the convention's provisions.[195] MFA officials

claimants would have a very strong argument that the overlapping maritime areas should be assigned, principally, to their EEZs. It is also likely that a number of the islands would not be eligible for an EEZ because they cannot sustain habitation or economic activity.

[184] Robert Beckman, "China, UNCLOS and the South China Sea", paper presented at the Third Biennial Conference of the Asian Society of International Law on Asia and International Law: A New Era", Beijing, China, 27-28 August 2011, p. 12.

[185] Foreign ministry spokesperson Hong Lei said, "No country including China has claimed sovereignty over the whole South China Sea". "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference", 29 February 2012. But others in the government still publicly assert that China is entitled to 3 million sq km of maritime territorial waters, including the maritime zone within the nine-dashed line. In a state media interview on 10 March 2012, Wang Dengping, PLAN's North Sea Fleet Political Commissioner, said China was justified to possess an aircraft carrier because it had 3 million sq km of maritime territory. "2012年2月29日外交部发言人洪磊举行例行记者会" ["MFA spokesman Hong Lei's regular press briefing on 29 February 2012"], foreign ministry website, 29 February 2012, www.MFA.gov.cn/chn/gxh/mtb/fyrbt/t909551.htm. For further analysis of this press conference, see Fravel, "Clarification of China's Claim?", op. cit.; Li Mingjiang, "China's rising maritime aspirations: impact on Beijing's good-neighbour policy", *RSIS Commentaries*, 28 March 2012.

[186] Beckman, "China, UNCLOS and the South China Sea", op. cit., p. 15.

[187] See Section IV.E "Nationalism".

[188] Crisis Group interviews, Beijing, December 2011.

[189] First, the line itself is not solid, but comprised of nine dashes. If China were to claim that all the territorial waters within the line are Chinese, it would still be unclear whether the territory in-between the dashed lines is included. Second, the line itself does not satisfy the definition of territorial waters as defined by the UNCLOS, which allows for a maximum of 12 nm territorial waters zone, and a 200 nm EEZ (possibly more, if continental shelf claims are involved) extending from the coastlines. Therefore, even if China could claim all the islands in the South China Sea, those islands would only receive a maritime zone extending 200 nm at most. While this would be a substantial portion of the area within the nine-dashed line, it would not include all of it. Thus, the theory that all waters within the line are Chinese is unsupported by international law. Crisis Group interviews, Beijing, December 2010, July 2011. Xu Senan "Implication of the dotted boundary", "South China Sea in 21st Century" (2000), pp. 80-81; Li Linghua, "南海九段线的法律地位" ["Ocean and Legal Protection in 21st century"], October 2010.

[190] Crisis Group interview, Xiamen, September 2011.

[191] Crisis Group interview, Xiamen, September 2011.

[192] In theory, the NPC would be the government body that handles any deliberation on legal matters in China, and especially so in the case of the South China Sea given its diplomatic importance, Crisis Group interview, Beijing, December 2011.

[193] Crisis Group interview, Beijing, December 2011. In an online discussion with Chinese internet users on 6 January 2012, Yu Xianliang, deputy head of the department of boundary and ocean affairs said that it was unrealistic to expect the nine-dashed line to accord with the UNCLOS as the former came into existence 35 years before the latter's promulgation in 1982. Transcript of the online discussion on Chinanews at www.chinanews.com/shipin/313/2012/0104/257.html.

[194] Crisis Group interviews, Beijing, November, December 2011.

[195] Crisis Group interview, Beijing, September and December 2011.

have also explained in private to embassies that China would at least partially use UNCLOS to defend its claims.[196] However, nationalism and divergent opinions within the MFA between hardliners and moderates perpetuate legal and operational ambiguity. The boundary and ocean affairs department itself is divided on what the nine-dashed line really represents.[197] Even within the MFA there is no clarity on these issues; building consensus within the government and party outside of the ministry will be an even greater challenge.

Local government agencies take advantage of this lack of legal clarity. It has allowed the Hainan provincial government to push forward a plan to develop tourism on the Paracel and Spratly Islands and to encourage fishermen to sail farther into disputed waters. It also leads to further decentralisation as local agencies resent guidance or directives from the top after having enjoyed a certain amount of latitude.[198] Law enforcement vessels risk causing international incidents in the absence of clear instructions on which waters should be considered sovereign Chinese territory. As an official from the Hainan Maritime Safety Administration has pointed out: "We do not know what we are defending in the South China Sea".[199]

6. Proposals to establish a centralised mechanism

For the past decade, various government agencies, experts and National People's Congress representatives have been calling for the establishment of a coordinating body or a unified law enforcement force to manage China's ocean affairs.[200] In 1998, Chinese lawmakers put forward a proposal to set up a "National Ocean Management Council" to centralise and streamline administration of the country's maritime territories.[201] In 2003, the Chinese Society of Oceanography organised a forum and called for the government to "establish a paramilitary, modern ocean law enforcement force as soon as possible", suggesting that the State Council directly oversee this force.[202] Over the years, numerous individuals and organisations have tried to push for similar solutions in publications or through proposals to the National People's Congress.[203] One such proposal was allegedly endorsed by President Hu Jintao in 2005.[204] It, too, was never adopted.

The latest high-profile proposal was made by a military scholar, Rear Admiral Luo Yuan, at the Chinese People's Political Consultative Conference (CPPCC) in March 2012.[205] He proposed that China set up a Coast Guard to cope with the "increasingly challenging" maritime disputes with neighbouring countries as a parallel to another CPPCC member's proposal to establish an "oceans ministry".[206] In Luo Yuan's view, making a Coast Guard the frontline of defence for maritime interests would mean that China could avoid using the navy (to deal with maritime disputes) and thus avoid "raising the conflicts to the military level".[207]

While these proposals attest to the government's awareness of the coordination problems, most of them faltered because the relevant agencies do not want to relinquish their power to another organ. Overall, the repeated and failed attempts to establish a centralised mechanism on maritime management show a lack of political will in the

[196] Crisis Group interview, Beijing, August 2011.
[197] Crisis Group interview, official from the boundary and ocean affairs department, Hainan, November 2011.
[198] The local fishery bureaus, for example, resent the foreign ministry's instructions about what they are permitted to do in disputed waters. Crisis Group interview, Beijing, February 2012.
[199] Crisis Group interview, Hainan, November 2011.
[200] While local and regional level maritime law enforcement agencies have been conducting joint law enforcement operations (联合执法) they are mainly ad hoc, bringing little lasting benefit to coordination of actors in the South China Sea.
[201] Crisis Group interview, Beijing, January 2012.
[202] 中国海洋学会"第二届海洋强国战略论坛"落下帷幕, Chinese Society of Oceanography, 21 November 2003.
[203] 何忠龙, 任兴平, 冯水利, 罗宪芬, 刘景鸿 [He Zhonglong, Ren Xingping, Feng Shuili, Luo Xi-anfen, and Liu Jinghong], 中国海岸警卫队组建研究 [*Research on the Building of the Chinese Coast Guard*] (Beijing Ocean Press, 2007), *海洋出版社 Ocean Publishing House*; 1 January 2007. A famous ocean law scholar and former official from Shangdong, Wang Shicheng proposed to the government on his personal website to establish a national ocean committee, "建设海洋强国战略思考" ["Strategic Thinking on Building a Strong Ocean State"], 11 January 2009, www.wangsc.com/wscwenzhang/ShowArticle.asp?ArticleID=16788; "环合会员会'提议设立国家海洋委" ["China Council for International Cooperation on Environment and Development Proposed to Establish National Ocean Committee"], 11 November 2010, http://ep.chinaluxus.com/Efs/20101111/18781.html. A People's Congress Representative, Zhong Mingzhao, raised a proposal to establish an inter-committee agency, National Ocean Committee, to coordinate the ocean affairs. "记者微博记录两会委员代表声音" ["Reporters Microblogs Taking Notes of the Voices of People's Congress Representatives and CCPCC Members"], 5 March 2011, http://news.sina.com.cn/c/2011-03-05/045522056105.shtml; "政协委员陈明义：成立国家海洋委保护海疆" ["CPPCC Member Chen Mingyi: Establishing National Ocean Committee to Protect Maritime Borders"], 12 March 2011, http://news.163.com/11/0312/02/6UTN7MV000014AED.html.
[204] Crisis Group interview, Hainan, November 2011.
[205] "Call for establishment of oceans ministry", Xinhua News, 5 March 2012; "Coast guard needed for maritime disputes", *China Daily*, 6 March 2012.
[206] Ibid.
[207] "罗援少将建议设海岸警卫队 减少海上执法内耗" ["Rear Admiral Luo Yuan proposed to establish China coast guard to reduce the internal conflicts between law enforcement forces"], *China Radio International*, 5 March 2012.

central leadership to address the coordination issue. So far this ambiguity has also been beneficial in allowing the government to not be bound by the assurances that the foreign ministry has given countries regarding the claims. As long as no agency has the final say on the issue, Beijing has the flexibility to change its positions depending on the situation.

B. COMPETING LAW ENFORCEMENT AGENCIES

Many government agencies have law enforcement arms with jurisdiction over the sea. These include: 1) the Maritime Police (Coast Guard) under the public security ministry; 2) the Fisheries Law Enforcement Command under the agriculture ministry (whose vessels were involved in the *USNS Impeccable* incident in 2009);[208] 3) the Maritime Safety Administration under the transport ministry and responsible for ensuring the safety of maritime traffic; and 4) the China Marine Surveillance under the State Oceanic Administration. There is frequently an overlap in the law enforcement issues on which these agencies focus.[209] They have an expression to describe how they carry out their missions: "Grab what you can on the sea, and divide the responsibilities between agencies afterwards",[210] demonstrating the considerable latitude they feel they enjoy.[211]

Two of these five agencies have been involved in major incidents: the Marine Surveillance and the Fisheries Law Enforcement Command.[212] The competition between the law enforcement arms of the land and resources ministry and agriculture ministry is driving rapid expansion of the fleets that carry out assertive actions in disputed waters.[213] The South Sea Marine Surveillance and South Sea Fisheries Command[214] are the largest law enforcement forces patrolling China's claimed area of the South China Sea,[215] both of them responsible for defending the country's maritime rights.[216] They are motivated by the possibility of obtaining a larger portion of the State Council's fixed budget.[217] One way to justify a larger budget is to gain approval from the council to expand law enforcement powers.[218]

Since 2000, large maritime surveillance ships, fisheries patrol boats and law enforcement personnel of both forces have significantly increased,[219] and both agencies have

[208] They were involved but fishermen actually were trying to catch the cables.

[209] For an organigramme of the different law enforcement bodies, see Appendix D.

[210] In Chinese: "海上一把抓，回来再分家".

[211] Crisis Group interview, Beijing, January 2012.

[212] For details about the importance of the five dragons in the South China Sea conflict, see Sections III.A "Bureau of Fisheries Administration", III.B "Maritime Surveillance" and III.G "Other Dragons".

[213] Crisis Group interview, Beijing, January 2011; Carlyle A. Thayer, "China's New Wave of Aggressive Assertiveness in the South China Sea", Center for Strategic and International Studies, 30 June 2011.

[214] The land and resources ministry is in charge of State Oceanic Administration, www.soa.gov.cn/soa/governmentaffairs/overview/A010805index_1.htm, which directly controls the South Sea Marine Surveillance (中国海监南海总队) and its subordinate teams. "中国海监" ["China Marine Surveillance"], http://big5.huaxia.com/hxhy/hyqy/2011/07/2485698.html (huaxia.com is a website supported by the Taiwan Affair Office of the State Council). The agriculture ministry is in charge of the Bureau of Fisheries Administration, which controls the South Sea Fisheries Command (中国渔政南海总队) through the South Sea Region Fisheries Administration. www.nhyzchina.gov.cn/Html/2006_03_10/2_1507_2006_03_10_1684.html.

[215] Crisis Group interview, Beijing, January 2011.

[216] "China's Ocean Development Report (2011)", op. cit., p. 480, 483.

[217] Crisis Group interview, Beijing, January, February 2012. At the end of each year, the various ministries submit their annual budget plans to the State Council based on their projected expenses for the coming year.

[218] See Sections III.A "Bureau of Fisheries Administration" and III.B "China Marine Surveillance".

[219] Marine Surveillance ships over 1,000 tonnes have doubled to 26, and five planes were added to the four existing planes (not including the 22 new ships over 1,000 tonnes built by local governments). Fisheries Law Enforcement administration also plan to add five patrol boats over 3,000 tonnes from 2010 to 2015, including the Yuzhen 310 launched in 2010, adding up to the existing nine vessels above 1,000 tonnes. "中国5年建5艘渔政船 将对钓鱼岛展开永久性巡逻" ["China will build five fisheries patrol boats in five years and conduct permanent patrol around Diaoyu (Senkaku) Island"], *Xinhua News*, 21 December 2010; Niu Dun 牛盾, "全国渔业大会上的讲话" ["Deputy of agriculture ministry, speech at the National Fishery Conference"], December 2012, www.moa.gov.cn/zwllm/tzgg/tz/201201/t20120119_2469717.htm; Liu Cigui 刘赐贵, "在全国海洋工作会议上的讲话" ["Director of State Oceanic Bureau, speech at the National Ocean Conference"], December 2011, www.gov.cn/gzdt/2011-12/26/content_2030089.htm; Li Jianhua 李健华, Director of China Fisheries Law Enforcement Command, "与新世纪同行——中国渔政指挥中心成立十周年" ["Advancing with the New Century – Looking back up the Ten-Year Anniversary of China Fisheries Law Enforcement Command"], *China Fisheries*, Issue 5, (2010); "中国即将完成１３艘千吨级海监船建造增强海洋维权能力" ["China will finish building thirteen Marine Surveillance ships above 1,000 tonnes, strengthening the ability to defend its maritime rights"], Xinhua Net, 6 January 2011.

[220] "明年预算提前编制，中央部委支出零增长" ["Budget plan advanced for next year, ministries will have zero budget growth"], 经济观察报 [*The Economic Observer*], 10 July 2009; "全国渔业发展第十二个五年规划" ["The Twelfth Five Years Plan of the Development of National Fishery Industry"], www.moa.gov.cn/ztzl/shierwu/hyfz/201110/t20111017_2357716.htm; "China to strengthen maritime forces amid disputes",

continued to develop their equipment despite a 2010 State Council decision to freeze budget growth that has affected most other agencies.[220] A Marine Surveillance official announced that by 2020, the number of its personnel will increase from 9,000 to 15,000 and the number of ships will rise from 280 to 520.[221] Between 2011 and 2015, the Fisheries Law Enforcement plans to build five large fisheries patrol boats over 3,000 tonnes and equipped with helicopters. As of 2010, it only had nine patrol boats over 1,000 tonnes.[222]

Regional dynamics, including the build-up of conventional and paramilitary forces, have provided additional incentives for marine law enforcement build-up.[223] Both agencies have referenced Vietnam and the Philippines' increasing capacity to violate Chinese maritime sovereignty when justifying expansion of their own law enforcement forces.[224]

In addition to budget concerns, the competition between the agriculture and the land and resources ministries is also driven by a desire to gain more power in the administrative system. Although the establishment of a cross-ministerial governing body overseeing maritime affairs is unlikely in the near future, both ministries are positioning themselves to take the lead in any potential future structure by trying to ensure that they are stronger than the other.[225] While China Marine Surveillance considers itself the most legitimate authority to represent the government on maritime issues,[226] the Bureau of Fisheries Administration, with its longer history of enforcing maritime laws, would be unwilling to subordinate its budget, personnel, and potentially vessels to the Marine Surveillance.[227] This not only further drives competition for power and budget, but also complicates any eventual decision about which agency would assume the lead role.

The agriculture ministry and the land and resources ministry also compete for the central government's recognition of their respective political achievements, essential for evaluating officials' performance.[228] Defending China's

China Daily, 17 June 2011; "首批西沙渔政执法船交付使用" ["The first batch of fisheries patrol boats launched, to be patrolling around Paracel Islands"], Dayang Net, 31 August 2011, http://ycdtb.dayoo.com/html/2011-08/31/content_1462772.htm; "China to beef up maritime forces", Xinhua Net, 17 June 2011, op. cit.; "中国渔政指挥中心陈毅德谈'十二五'渔政事业发展" ["Chen Yide, the director of China fisheries patrol command talked about the development of fisheries administrations in the Twelfth Five Year Plan"], 中国水产, *China Fisheries*, Issue 8 (2011).

[220] "明年预算提前编制，中央部委支出零增长" ["Budget plan advanced for next year, ministries will have zero budget growth"], 经济观察报 [*The Economic Observer*], 10 July 2009; "全国渔业发展第十二个五年规划" ["The Twelfth Five Years Plan of the Development of National Fishery Industry"], www.moa.gov.cn/ztzl/shierwu/hyfz/201110/t20111017_2357716.htm; "China to strengthen maritime forces amid disputes", *China Daily*, 17 June 2011; "首批西沙渔政执法船交付使用" ["The first batch of fisheries patrol boats launched, to be patrolling around Paracel Islands"], Dayang Net, 31 August 2011, http://ycdtb.dayoo.com/html/2011-08/31/content_1462772.htm; "China to beef up maritime forces", Xinhua Net, 17 June 2011, op. cit.; "中国渔政指挥中心陈毅德谈'十二五'渔政事业发展" ["Chen Yide, the director of China fisheries patrol command talked about the development of fisheries administrations in the Twelfth Five Year Plan"], 中国水产, *China Fisheries*, Issue 8 (2011).

[221] Ibid.

[222] "中国将永久性巡逻钓鱼岛，建5艘3千吨级渔政船" ["China will conduct perpetual patrol around Diaoyu (Senkaku) Island and build five fisheries patrol boats over 3,000 tonnes"], Eastday.com.

[223] Christian Le Mière, *Policing the Waves: Maritime Paramilitaries in the Asia-Pacific*, 28 January 2011; "China to Strengthen Maritime Forces amid Disputes", *China Daily*, 17 June 2011; "China's Three-Point Navy Strategy", *Strategic Comment*, International Institute for Strategic Studies (IISS), vol. 16, comment 37, October 2010; Chris Rahman & Martin Tsamenyi, "A Strategic Perspective on Security and Naval Issues in the South China Sea", *Ocean Development & International Law*, Special Issue: Issues in the South China Sea, vol. 41, Issue 4, 2010. "中国军舰和执法船在南沙大增 邻国抗议日渐稀少" ["Chinese military and law enforcement vessels greatly increased near the Spratly, protests from neighbouring countries gradually reduced"], *国际先驱导报* [*International Herald Leader*], 1 February 2010.

[224] Historically, Chinese maritime forces were mostly competing with those of Japan and South Korea, but in recent years some South East Asian countries have started to increase their paramilitary forces on the sea. Vietnam, for example, established a marine militia in 2009 to "cooperate with border guards, navy, sea police and other forces to protect national border security and the sovereignty of Vietnam's sea areas". Although these forces are still small in comparison to China's, Chinese law enforcement agencies see this expansion as an alarming sign and have used it to justify the country's increased law enforcement activities in disputed waters. "Vietnam to set up militia to protect sea borders", Agence France-Presse, 23 November 2009; "Chinese military and law enforcement vessels greatly increased near the Spratly, protests from neighbouring countries gradually reduced", op. cit., *国际先驱导报*. For discussion of the driving forces behind this expanding capacity within Vietnam and the Philippines, see Crisis Group Report, *Stirring up the South China Sea (II)*, op. cit.

[225] Crisis Group interview, Beijing, January 2012.

[226] Crisis Group interview, Beijing, December 2011.

[227] When the South Sea Fisheries Administration was first established in 1974, it was under the direct command of State Council and Central Military Commission. www.nhyzchina.gov.cn/Html/2006_03_10/2_1507_2006_03_10_1684.html; Crisis Group interview, Beijing, January 2012.

[228] Political achievement, 政绩, is an overall assessment of Chinese officials' performance within the Communist Party. The measurements, set by Organisation Department of the CPC

claimed territorial and maritime rights against foreign countries is one of the most important political achievements according to both ministries' annual reports.[229] Evictions of intruding foreign vessels in China's claimed waters are recorded in detail.[230] This reward system is reinforced by high-level ministry officials urging their personnel to be more assertive in defending the country's maritime rights.[231] Both ministries give annual awards to staff considered "tough and brave in defending China's sovereignty" in the face of perceived incursions by foreign vessels.[232]

For its part, the central government sees benefits in using these two law enforcement forces as tools to assert China's claimed sovereignty and to defend maritime rights without causing military confrontations with other countries. While the region focuses on China's growing conventional naval strength (including new submarines and aircraft carriers), armed clashes rarely actually involve the PLA.[233] To an extent, the use of law enforcement or paramilitary forces can be seen as a welcome alternative to military force. For example, the U.S. would have likely replied far more robustly had Chinese naval vessels, as opposed to Fisheries and China Marine Surveillance vessels, harassed the *USNS Impeccable*. While they perform many of the functions of a conventional navy, law enforcement forces are generally seen as less threatening.

However, though conflicts between law enforcement vessels are less severe than military vessels, the extensive use of paramilitary and law enforcement forces in sovereignty disputes also lowers the threshold of entry into confrontation. Naval vessels are likely to behave with more restraint than domestic actors with a limited understanding of foreign policy implications, while paramilitary agencies often tend to take more assertive actions precisely due to the lesser political ramifications of incidents in which they are involved. Moreover, civilian vessels, such as fishing boats, are more willing to retaliate against paramilitary than military vessels, thus increasing the risk of violence.[234] On the other hand, a study conducted by Chinese scholars at the Ningbo Coast Guard Academy proposed that creating an enlarged, unified maritime security apparatus would strengthen flexibility in maritime conflicts.[235] They concluded that relying on the navy to resolve disputes runs the risk of dangerous escalation, while the current model of fragmented law enforcement agencies lacks coherence and thus can lead to unpredictable risks of conflict.[236]

Furthermore, when China sends law enforcement vessels to patrol all of the waters within the nine-dashed line, sometimes even entering into the economic zones of Vietnam and the Philippines, it appears to be exerting authority over areas claimed by other countries and to which it may not have a claim under UNCLOS.[237] At the 2012 National People's Congress session, Liu Cigui, director of the State

Central Committee, include economic and political achievements, and range from ensuring the lowest number possible of incidents of unrest to providing visible public goods and increasing GDP growth. In the South China Sea, it includes safeguarding fishermen facing foreign law enforcement vessels and expelling foreign vessels from Chinese waters, which are very important for the reward and promotion of the officials. Crisis Group interview, Beijing, January 2012.

[229] "China's Ocean Development Report 2011", op. cit., p. 2; China Fisheries Yearbook 2011", op. cit., p. 24.

[230] Ibid; "农业部关于表彰护渔维权先进集体和个人的决定" ["Agriculture ministry's decision to reward outstanding team and individuals for protecting (Chinese) fishing vessels and (China's) maritime rights"], 12 January 2011, www.moa.gov.cn/govpublic/YYJ/201112/t20111213_2434780.htm; "中国海监频传佳绩" ["China Marine Surveillance repeatedly makes great achievements in 2011"], 16 January 2012, http://manage.oceanol.com/?optionid=465&auto_id=16667.

[231] "Tough and brave in defending China's sovereignty" in Chinese is"勇于维权";"农业部官员寄语中国渔政：敢碰硬，敢执法，敢维权" ["Agriculture ministry official told Bureau of Fisheries Administration: Be tough and confront foreign vessels, enforce law with courage, defend maritime rights bravely"], *China News*, 27 February 2012.

[232] "农业部关于表彰护渔维权先进集体和先进个人的决定" ["Decision of agriculture ministry to commend excellent team and individuals in safeguarding fishing and defending sovereignty"], 13 December 2011, www.moa.gov.cn/govpublic/YYJ/201112/t20111213_2434780.html; "党旗下的中国海监——庆祝中国共产党成立九十周年" ["China Maritime Surveillance under the Communist Party's flag – Celebrating the 90th anniversary of the founding of the party"], 28 June 2011, www.soa.gov.cn/soa/news/organizationnews/webinfo/2011/06/1309138249620003.htm; "关于开展年度海洋人物评选的公告" ["Announcement for selecting annual people of the ocean"], 15 March 2011, www.soa.gov.cn/soa/news/importantnews/webinfo/2011/03/1300064997553491.htm.

[233] Indeed, recent clashes involving Chinese vessels in the South China Sea, as well as elsewhere in the Sea of Japan, have primarily involved small, lightly armed paramilitary and law enforcement vessels, belonging both to China and the other countries involved, as in the case of the East Sea in 2010, and Reed Bank. Christian Le Mière, "Policing the Waves", op. cit., pp. 133-146.

[234] Ibid.

[235] See: 何忠龙, 任兴平, 冯水利, 罗宪芬, 刘景鸿 [He Zhonglong, Ren Xingping, Feng Shuili, Luo Xi-anfen, and Liu Jinghong], 中国海岸警卫队组建研究 [*Research on the Building of the Chinese Coast Guard*] (Beijing Ocean Press, 2007). A large number of articles by the same or nearly the same authors have also appeared in a wide variety of civil and military maritime professional journals on the same subject.

[236] Ibid.

[237] Even if China gained sovereignty over all geographic features in the sea, the maritime zones they would receive under UNCLOS would be unlikely to encompass the entire nine-dashed line.

Oceanic Administration, indicated that China was serious about carrying out law enforcement activities in the South China Sea. He said that regular patrol activities would cover all the maritime zones under its jurisdiction.[238] This could potentially include the entire nine-dashed line region, thus causing further confusion and anxiety among the other claimants.

C. LOCAL ECONOMIC INTERESTS

The governments of the two main provinces bordering the South China Sea, Hainan and Guangdong, have been responsible for assertive actions against Vietnam and the Philippines, driven primarily by economic interests. Economic growth has been the major criteria in evaluating the performance of local officials. Since the 1980s, China has undergone a process of rapid decentralisation. Local governments enjoy wide latitude in provincial affairs, as long as they maintain political loyalty to the Communist Party.[239] They often bypass the central government's restrictions by adopting an "act first, ask questions later" strategy, only retreating if and when Beijing responds negatively.[240] This combination of GDP-oriented policy and high autonomy has reinforced profit motive.[241] Local coastal governments have all issued plans for developing the ocean economy in the past years.[242] In 2005, Hainan was the first one to do so: it aims to triple its ocean GDP by 2020 to reach over 30 per cent of the provincial GDP – from 25.5 in 2010.[243]

Fishing illustrates this profit-driven motive. The South China Sea is one of the largest fishing grounds in the world with a rich biological diversity,[244] on which fishermen from Guangdong, Guangxi and Hainan provinces rely as their main livelihood.[245] Due to over-fishing and pollution in the near sea, the Guangdong and Hainan governments have encouraged, and in some cases forced, fishing companies and individuals to fish farther out.[246] The two provincial governments started using their administrative power and state investment to develop large-scale deep-sea fishing as early as 2006 by reducing the number of licences for small fishing vessels, organising fisheries associations with supply ships enabling fishing vessels to stay out longer, and sending more local patrol boats to safeguard fishing boats against foreign law enforcement vessels in disputed waters.[247]

[238] These extend to the estuary of the Yalu River in the north, Okinawa Trough in the east, and Zengmu Reef (James Shoal) in the south, as well as features including the Suyan Islet (Socotra Rock), Diaoyu (Senkaku) Islands, Huangyan Islands (Scarborough Reef) and the Nansha Islands (Spratlys). Li Mingjiang, "China's rising maritime aspirations: impact on Beijing's good-neighbour policy", *RSIS Commentaries*, 28 March 2012.

[239] Crisis Group interview, Beijing, January 2012; "China tightens local oversight", *The Wall Street Journal*, 11 August 2007.

[240] Crisis Group interview, Beijing, January 2012.

[241] Local Yunnan governments have been operating under an "act first, ask questions later" strategy for many years in Myanmar, to Beijing's dismay. For example, provincial authorities gave permission to logging companies to cut down trees in Myanmar despite a Chinese official ban and agreements to strengthen bilateral collaboration to address illegal logging. Yunnan authorities, regional army commanders and ethnic groups have all been directly involved. This led Myanmar to officially protest to Beijing and Yunnan local officials. See Crisis Group Report, *China's Myanmar Dilemma*, op. cit.; and Asia Briefing N°112, *China's Myanmar Strategy: Elections, Ethnic Politics and Economics*, 21 September 2010.

[242] "广东为海洋经济发展探新路, 三个试点省份区域规划全部'出炉' 我国海洋经济蓝图呈现雏形" ["Guangdong exploring new ways of developing ocean economy, three experimental provincial areas all came out with their plan, China's economic blueprint coming into shape"], *中国海洋报* [*China Ocean News*], 26 July 2011, www.soa.gov.cn/soa/management/economy/webinfo/2011/07/1311482429777111.htm. Developing ocean economy has become even more important as a national strategy since Hu Jintao raised the idea of promoting "Blue Economy" in April 2009, which was followed up by a State Council's white paper. "2006-2010建设创新型国家白皮书"（十二）["2006-2010 White Paper on Constructing an Innovation Oriented Country"] China Promotion Committee of Constructing an Innovation Oriented Country Strategy, 26 August 2011, www.cxzg.org/lilun/2011/0826/1257.html.

[243] "海南省发展规划：2020年海洋经济总量翻三番" ["Hainan development plan: Triple the ocean economy by 2020"], 中国海洋文化在线 [*China Ocean Online*], 16 March 2005, www.cseac.com/Article_Show.asp?ArticleID=487. "专家学者共商海南海洋经济发展之路" ["Experts and scholars discussing about the development of Hainan's ocean economy"], *中国海洋报* [*China Ocean News*], 20 December 2011, www.soa.gov.cn/soa/management/economy/webinfo/2011/12/1324183847926358.htm.

[244] Pakjuta Khemakorn, "Sustainable Management of Pelagic Fisheries in the South China Sea Region", UN – The Nippon Foundation Fellow, New York, November 2006.

[245] "中國南海漁船生存空間萎縮 或將出臺政策緩解困境" ["Chinese fishing boats facing shrinking fishing space in the South China Sea, government will probably issue new policy to help"], *中国新闻网* [*China News*], 10 November 2011.

[246] "Chinese fishermen keep running into South Sea despite risk of being caught", op. cit.; "广东近海捕捞量逐年萎缩，市民无奈吃受污染海鲜" ["Catch in the near sea of Guangdong shrinks year by year, Guangdong people have to eat polluted seafood"], *广州日报* [*Guangzhou Daily*], 5 October 2011; "养护近海资源 我省将核减旧小捕捞渔船766艘" ["To protect near sea resources, Hainan will reduce 766 permissions to old or small fishing boats"], *海南日报* [*Hainan Daily*], 16 July 2011.

[247] To reduce the conflicts between local fishery companies for limited fishing areas, and driven by the interest brought by the rapidly growing market for seafood, local governments started to build up semi-governmental fishery associations at least

Since 2010, some of the steps taken by the Hainan government to develop the fisheries industry was to "change from mainly depending on near sea fishing to mainly focusing on outer ocean fishing"; and to "reduce small fishing boats and build big ones to venture deeper into the sea" by providing subsidies, low interest rate loans to the fishermen or encouraging them to build private shareholding companies that have the capacity to fish farther into waters near the Paracels and Spratly Islands.[248] As a result, both Vietnam and the Philippines have noticed an increasing number of Chinese fishing vessels in disputed waters.[249] For example, the April 2012 standoff between China and the Philippines in Scarborough Reef was caused by Chinese fishermen poaching in the disputed area.[250]

Profit-driven local government efforts have directly caused diplomatic crises. When Hainan was established as a province in 1988, the central government gave it administrative authority over the Paracel and Spratly Islands and their surrounding waters. However, this authority is only theoretical as the PLAN has been in actual control of the islands held by China, including the entire Paracels and some of the Spratlys, while Vietnam, the Philippines, Malaysia and Taiwan control the rest. In an attempt to establish its own administrative control to develop economic activities such as tourism, the Hainan government requested approval from the State Council to build a city called "Sansha" to govern the Paracel and Spratly Islands,[251] which was granted in 2007. When this news became public, the Vietnamese government accused China of violating its sovereignty,[252] and hundreds of people demonstrated outside the Chinese embassy and consulate in Hanoi and Ho Chi Minh City.[253] As of publication, the City of Sansha has not been established and Hainan officials have since avoided public mention of the city.[254]

However, Hainan's effort to develop tourism on the Paracel Islands has continued, despite repeated protests from Vietnam. Believing that the limited tourism resources of Hainan Island were no longer sufficient to meet the growing demand for tourism, the province submitted a proposal to the central government in 1994 to develop high-end tourism on the Paracel Islands. Throughout the process, it strongly lobbied various parties and ministries, including the National Tourism Administration, the State Development Planning Commission, the Navy Bureau of the PLA's general staff department and the PLAN's operations department. One of the most difficult to convince was the Navy, which has de facto control of the Paracel Islands, which helps it keep tourists away from its military bases. Hainan government officials held multiple talks with the Navy, the South Fleet and officers at Yulin Base on the Paracel Islands from 1997 to 2000, finally persuading it in 2000 to submit a joint application to the State Council and Central Military Commission to open the Paracels for tourism.[255] The State Council's final approval of the plan in 2007 triggered strong protests from Vietnam, and Hainan suspended the plan shortly afterwards.[256]

since 2006. They send supply ships that help fishing vessels venture further into South China Sea. Crisis Group interview, Beijing, November 2010. "临高两艘远海补给船开航" ["Two supply ships in Lingao set sail"], *Southern Metropolitan Daily*, 6 December 2006; "首艘专业远海补给船带回200吨深海鱼" ["The first professional supply ship brought back 200 tonnes deep sea fish"], *Southern Metro*, 23 April 2007.

[248] "Reduce small fishing boats and build big fishing boats to venture deeper into the sea" in Chinese is "压小船造大船闯深海", "*中国渔业年鉴2011*" [*China Fisheries Yearbook 2011*], op. cit., pp. 89-90.

[249] According to statistics provided by South Sea Region Fisheries Administration Bureau, from 1989 to 2010, more than 750 Chinese fishing boats and 11,300 fishermen have been "attacked, robbed, detained, killed" by "foreign countries". "Chinese fishermen keep running into South Sea despite risk of being caught", op. cit. An Indonesian official also complained about China's "modern fleet" of fishing vessels in his country's waters. Crisis Group interview, Hassan Wirayuda, Indonesian presidential adviser (former MFA), Jakarta, 31 January 2011.

[250] Michael Auslin, "Scarborough scare in the South China Sea", *The Wall Street Journal*, 18 April 2012.

[251] Sansha in Chinese is 三沙.

[252] "海南籌建三沙市 - 爭議海域設轄區 面積約全國1/4" ["Hainan plans to establish Sansha City, setting up administrative district over disputed sea, maritime territory as big as a quarter of the whole country"], 20 November 2007; "Vietnam objects to China's establishment of Sansha City on the Hainan Island", Vietnamese foreign ministry official website, www.mofa.gov.vn/en/tt_baochi/pbnfn/ns071204135539.

[253] "Vietnam's policy of resolving all disputes in the East Sea through peaceful negotiations", Press and Information Department – foreign ministry, 9 December 2007, http://biengioilanhtho.gov.vn/eng/vietnam-spolicyofresolvingall-nd-d2d60c26.aspx; "China moves to expand its reach", *Asia Times*, 29 January 2008.

[254] "低调海南：'这里没有三沙市'" ["Hainan in low profile: 'There is no Sansha City here'"], *东方早报* [*Dongfang Daily*], 19 March 2009, http://news.163.com/09/0319/13/54P788MH000120GU.html.

[255] Crisis Group interview, Hainan Province, November 2009; "南海旅游开发规划获通过，西沙旅游定位高端" ["South China Sea tourism development plan approved, Xisha tourism aim at high-end market"], *Hainan Economic Daily*, 8 August 2007; 关于开放开发西沙暨南海旅游等问题的建议, 14 March 2005, Hainan People's Congress official website, www.hainan.net/cgi-bin/news/subject/countrypc2005/read.asp?id=6350.

[256] In January 2010, Hanoi condemned China's decision to establish local governing bodies in the Paracel Islands and develop the islands' tourism industry as a violation of Vietnamese sovereignty. Later, China passed the "2010-2020 Grand Plan for Construction and Development for the International Tourism Island of Hainan", under which the air and sea tourist routes bound for the Paracels would be promoted, and registration for

Yet Hainan persisted in its effort to push the State Council to renew its approval of the tourism plan. In 2009, it persuaded the National Tourism Administration to jointly submit another proposal to develop a "Hainan international tourism island", including the Paracels. The State Council's approval was announced on 31 December 2009.[257] On 4 January 2010, a Vietnamese foreign ministry spokeswoman stated that the move "seriously violates Vietnam's sovereignty and causes tension and further complicates the situation".[258] Hainan responded by closing down some of the tourism companies that ran Paracel projects.[259] Beijing's decision to suspend the establishment of Sansha while twice granting permission to engage in tourism development on the Paracels suggests that it sees tourism as a relatively low-key and gradual way to assert sovereignty.

Despite the current suspension of tourism development on the Paracels, the Hainan government continues to encourage it. A local official even stated that although the State Council's approval has been suspended, it is still considered valid and local authorities are trying to revive it.[260] Smaller local tourism companies in Hainan continue to organise limited, low profile group tours to the Paracels, with the agreement of the local government and the military.[261] On 21 November 2011, Hainan Strait Shipping Company announced that it had gained approval from the Hainan government to open a tourism business – owned by the city of Haikou – on the Paracels.[262] On 28 March 2012, retired PLAN Rear Admiral Yin Zhuo stated that developing tourism is "of course very good for declaring our sovereignty and strengthening our foothold on the Paracels".[263]

The National Tourism Administration also sees an opportunity through these projects to help strengthen China's sovereignty claims. At a People's Political Consultative Conference session in March 2012, Wang Zhifa, deputy director of the National Tourism Administration, when speaking about how his Bureau was working with Hainan Province and other central government agencies to promote tourism in the Paracels, indicated that doing so would be "advantageous for securing China's sovereignty claim and border security".[264]

Hainan also conducts other commercial activities to attract tourists to the Paracels. On 28 March 2012, it hosted a sailing competition from Sanya to the Paracels. All these moves have led to another protest from Vietnam.[265] On 6 April 2012, the Hainan government publicly denied that a tourism project would be carried out within the year, and the National Tourism Administration denied that it had issued any statement about the Paracels tourism project.[266] Its decision to continue with tourism development on these islands demonstrates its determination to press ahead for more freedom of action in the South China Sea. In all of these cases, local governments have been able to bring significant pressure to bear on the central government. The latter's wavering between approving projects and halting them when diplomatic problems arise allows it to test the waters and helps strengthen its claim to the land territories.

D. POTENTIAL ENERGY RESOURCES

China's powerful national oil companies (NOCs)[267] have the potential to escalate conflict by operating in disputed

the right to use uninhabited islands encouraged. In June 2010, the Vietnamese foreign ministry condemned the plan as a violation of its sovereignty and contradictory to the spirit of DOC. Tran Truong Thuy, "Recent Development In The South China Sea: From Declaration To Code Of Conduct", East Sea (South China Sea) Studies, 15 July 2011; "China moves to expand its reach", op. cit.; Crisis Group interview, Beijing, November 2011.

[257] "国务院关于推进海南国际旅游岛建设发展的若干意见" ["State Council's several opinions on further building and developing Hainan international tourism island"], Chinese government official website, 31 December 2009, www.gov.cn/zwgk/2010-01/04/content_1502531.htm.

[258] Kristine Kwok, "Tourism plan for disputed islands", *South China Morning Post*, 6 January 2010.

[259] Crisis Group interview, Hainan, November 2011.

[260] Crisis Group interview, Hainan, November 2011.

[261] These small companies normally have good connection with local government and the military. They use military planes or government supply ships to bring tourists to the Paracel Islands. Crisis Group interview, November 2011.

[262] The Hainan Strait Shipping Company Limited is owned by the State-owned Assets Supervision and Administration Commission of the Haikou government, "海峡股份以1047 万元改造'椰香公主'轮" ["Haixia shareholding will spend 10.47 million yuan upgrading 'Yexiang Princess' Cruise], *东方早报* [*Dongfang Daily*], 24 November 2011. "国内首开西沙群岛旅游线路，海峡股份成吃螃蟹第一家" ["The first Paracel tourism route opened in China, brave Haixia Strait Shipping Co. Ltd. got ahead of others"], *Securities Daily*, 22 November 2011.

[263] "西沙旅游群岛旅游即将开通，军事禁区首次开放" ["Tourism in the Paracels about to be developed, military restricted zone will be first open"], CCTV, 28 March 2012.

[264] Li Mingjiang, "China's rising maritime aspirations", op. cit.

[265] "越宣称对我南沙西沙拥有主权 要我停止侵犯" ["Vietnam claimed sovereignty over China's Paracels and Spratly Islands, demanding China to stop violation"], *环球时报* [*Global Times*], 16 March 2012.

[266] "海南称着手规划西沙旅游 如何避免过度开发引关注" ["Hainan announced plan to develop tourism in the Paracels, public concerns focus on how to avoid over-development"], *新京报* [*Beijing News*], 6 April 2012.

[267] "NOCs" in this section refer to Chinese oil companies unless otherwise specified. For Crisis Group reporting on China's energy use and policymaking process, see Crisis Group Report,

regions of the South China Sea; however, at present NOCs do not consider resource exploration in these areas worth the political and economic trouble. To date, they have only drilled wells in non-disputed locations immediately south of the country's coastline.[268] However, should they decide that the benefits of drilling in the South China Sea outweigh the obstacles or should Beijing encourage them to drill, they could expand their operations into the disputed areas in the future.

The fundamental incentive for energy companies to explore the South China Sea is the lure of profits from potential oil and gas resources,[269] which are played up by the media, for example, as a "second Persian Gulf".[270] CNOOC, as China's leading offshore oil company, wants the country to control and solidify its claims over disputed areas of the sea.[271] Both Sinopec and CNPC have also sought to increase their income by expanding into upstream offshore operations, and are interested in the South China Sea in particular.[272]

However, a range of political, economic and technological barriers have limited the NOCs' ability to operate in the South China Sea, particularly in disputed waters. Overlapping territorial claims form one such barrier. A Chinese oil executive said politics is the "foremost" reason that Chinese NOCs cannot freely develop the South China Sea.[273] On at least two occasions, companies have halted projects there after they became too controversial. In 1994, CNOOC abandoned a joint exploration project with U.S. firm Crestone Energy near the Spratlys after Vietnam protested.[274] In 2009, Sinopec stopped a survey in the southern Qiongdongnan basin, also following Vietnamese protests.[275] The potential diplomatic consequences, combined with the fact that the NOC CEOs are appointed to their posts by Beijing,[276] mean that oil companies have to tread carefully when considering investment in the region.[277]

Chinese oil companies are hesitant to conduct expensive drilling operations in proximity to countries embroiled in territorial disputes with Beijing because "if anything happens on the rig those countries won't help us out".[278] They also do not wish to operate in regions of the South China Sea where the military cannot protect the country's claims.[279] The geographical distance of the disputed regions would also require construction of expensive support infrastructure and the offshore exploration costs would be significantly higher than onshore, particularly in the deepwater regions of the South China Sea.[280] Thus, Chinese drilling activities in the South China Sea to date have been conducted within non-disputed waters immediately south of the coast.

China's Thirst for Oil, op. cit. The three main NOCs are China National Petroleum Corporation (CNPC), China Petrochemical Corporation (Sinopec) and China National Offshore Oil Corporation (CNOOC).

[268] The southernmost Chinese drilling project to date is the Y13-1 gas field, jointly developed by CNOOC and ARGO, in the Qiongdongnan Basin off the south east coast of Hainan province. Crisis Group interview, Chinese South China Sea analyst, Hainan, November 2011.

[269] No comprehensive survey of South China Sea resources has been completed. However, oil companies have located significant reserves in areas which have been explored. CNOOC has called the South China Sea a "海上大庆" [Maritime Daqing] (Daqing is China's largest oilfield). For further analysis of the ultimate value of South China Sea resources to claimant countries' energy security see "Maritime Energy Resources in Asia", U.S. National Bureau of Research, Special Report no. 35, December 2011. "中国海洋石油天然气年产超5100万吨 "海上大庆"梦想成真", *人民日报 (海外版)* 2011 年1月5日. ["CNOOC annual oil and gas production exceeds 51 million tonnes, 'Maritime Daqing' dream comes true", *People's Daily Overseas Edition*, 5 January 2011]. The Chinese land and resources ministry's most optimistic estimate pins resources at 55 billion tonnes of oil and 20 trillion cubic metres of gas.

[270] "第二个波斯湾". For examples see 沈泽玮," 为改变缺油局面 南中国海将建'深水大庆'", *联合早报网*, 4月18日2011年. [Shen Zewei, "To change the oil shortage situation, a 'Deepwater Daqing' to be established in South China Sea", Lianhe Zaobao, 18 April 2011].

[271] Crisis Group interview, Beijing, December 2010.

[272] Crisis Group interview, Beijing, October 2011. Both CNPC and Sinopec have acquired licenses from the Chinese land and resources ministry to explore blocks of the sea. "PetroChina says 'major breakthroughs' due by 2010", *People's Daily* (online), 17 March 2006.

[273] Crisis Group interview, Beijing, October 2011.

[274] The "WAB-21" block is in waters disputed with Vietnam. Crisis Group interview, Hainan, November 2011. The project has yet to be resumed.

[275] In 2009, Sinopec refuted media reports that it would begin new surveying activities in Qiongdongnan basin. A senior official said "I have no knowledge of the issue. Such a report may inflict diplomatic ire with Vietnam". "Sinopec denies WSJ report on drilling", *The Global Times*, 18 June 2009. The project was halted because of Vietnamese protests. Crisis Group interview, Beijing, November 2011. Sinopec had already conducted an initial resource study in the southern regions of the Qiongdongnan basin in 2008. "琼东南盆地油气资源完成评价研究", 中国石化新闻网, 2008年11月18日 ["Evaluation study of Qiongdongnan basin oil and gas resources completed", Sinopecnews.com.cn, 18 November 2008].

[276] See footnote 7.

[277] See footnote 6.

[278] Crisis Group interview, Hainan, November 2011.

[279] Crisis Group interview, Beijing, October 2011.

[280] Crisis Group interview, National Development and Reform Commission energy official, Beijing, October 2011; Hainan, November 2011. "PetroChina eyes South China Sea exploration", *China Daily* (online), 6 July 2004.

Furthermore, China's NOCs are relative newcomers to deep-water exploration. CNOOC just unveiled its new deep-water equipment in 2011.[281] Oil companies are also reluctant to use their own funds for offshore surveying and the government has rejected requests for financial assistance.[282] For these reasons, some Chinese energy officials believe it is better to leave these resources untouched for now.[283] Drilling in non-disputed waters has been sufficient for them for now – particularly as significant resource discoveries have been made near the coast.[284] As a Chinese energy analyst stated "China would rather go to Africa" for resources at this point than into the disputed waters of the South China Sea because it is "too troublesome".[285]

Yet the NOCs have hardly given up interest in future development of the South China Sea resources. CNOOC has continued to apply for government sponsorship of survey projects in the deep-water regions of the South China Sea, including those that are disputed.[286] As part of their strategy, NOCs have argued that such projects would strengthen China's claims to these areas.[287] In May 2011, CNOOC announced on its website that it would open up biddings for nineteen new blocks in the South China Sea. The announcement only drew diplomatic protest from Vietnam almost a year later, when Hanoi singled out one block one mile from an island in the Paracels in a statement on 15 March 2012.[288] CNOOC is also moving quickly to develop its deep-water drilling capabilities, planning to drill its first deep-water well in the northern area of the South China Sea in 2012.[289]

Continued access to energy resources will be crucial for China's development and Beijing is keen to reduce its reliance on oil supplies from the Middle East and develop alternative sources of oil and natural gas, particularly closer to the mainland.[290] For this reason, the potential energy resources in the South China Sea are one of the key factors in China's unwillingness to compromise its territorial claims. As the technical ability and desire of CNOOC and the other companies to drill in the South China Sea grow, the NOCs will likely play a greater role in territorial disputes.

E. NATIONALISM

Nationalism has been both useful to Beijing in its South China Sea policies and a constraint that limits its options. The government has historically taken advantage of – and encouraged – nationalism when it suits its policy goals.[291] Local governments and law enforcement agencies also use it to advance their own agendas. After being unleashed, this sentiment has sometimes become extreme enough to damage Beijing's interests and even call into question its domestic legitimacy.[292] As long as the central leadership

[281] The "981" drilling platform, the first of its kind constructed in China, marks a significant advancement in the country's deep-water exploration capabilities. Over the 11th Five Year Plan period, CNOOC invested 15 billion yuan ($2.35 billion) in deep-water exploration, of which 6 billion yuan ($942 million) alone was spent on the 981. The company also unveiled a new deep-water crane and twelve-streamer seismic vessel. "Deep-water semi-submersible drilling platform 'Hai Yang Shi You 981" completed for operation", press release, CNOOC, 24 May 2011. "Deepwater pipe-laying crane 'Hai Yang Shi You 201' enters trial stage for delivery", press release, CNOOC, 25 May 2011. "12-streamer seismic vessel 'Hai Yang Shi You 720" commences operation", press release, CNOOC, 23 May 2011. "CNOOC to explore the depths", *People's Daily Online*, 25 May 2011.

[282] Ibid.

[283] Ibid.

[284] Chinese geologists found 38 offshore oil and gas-bearing basins in the northern part of the South China Sea in 2011. "Discoveries fuel China's resource security", *China Daily*, 17 January 2011. In 2011, the land and resources ministry announced that China will focus on "exploration work in the deep northern part of the South China Sea". Peng Qiming, Geological Survey Bureau Chief, Chinese Land and Resources Ministry, press conference, Beijing 24 November 2011. CNOOC's new deep-water equipment will commence work on the company's blocks in the sea's northern region as early as spring 2012. "CNOOC to explore the depths", *People's Daily* (online), 25 May 2011. Crisis Group interview, Hainan, November 2011.

[285] Crisis Group interview, Hainan, November 2011. CNOOC is not only looking into Africa for oil venture projects but also to Argentina and other Latin American countries. "CNOOC looking to Latin America for oil, gas", *China Daily*, 14 July 2010. Sinopec and CNPC are also turning elsewhere to expand into offshore. For example, in March 2010, Sinopec acquired its first deep-water upstream assets in Angola to gain technical expertise. Liu, Hall & Knight, "China's Deep-Water Campaign", op. cit. According to its website, CNPC is operating a "deep-water exploration and development project" in Myanmar.

[286] Crisis Group interview, Beijing, September 2011.

[287] Crisis Group interview, Beijing, September 2011.

[288] Brian Spegele, "Vietnam protests CNOOC's plans in disputed South China Sea", *The Wall Street Journal*, 16 March 2012.

[289] CNOOC will use the "981" drilling platform to drill its first deep-water exploration well. Chen Aizhu, "China's CNOOC to sink first deepsea well in Deccember/Jananuary", Reuters, 6 December 2011.

[290] Zhang Jian, "China's Energy Security" Prospects, Challenges, and Opportunities", Brookings, CNAPS Visiting Fellow Working Paper, July 2011.

[291] The Chinese government will sometimes use foreign policy issues to create more positive public perceptions of its governing abilities, or to distract the public from domestic issues. Susan Shirk, *China: Fragile Superpower*, op. cit., p. 62.

[292] For example, the public's dissatisfaction with policy choices has led to accusations in the past that the government is "selling out" the country. "200家西方公司狂敛南海油气 中国政府要迂腐到何时！" ["200 Western companies robbing oil and gas in the South Sea. How long will Chinese government keep its useless policy"], CNEWN.com, www.cnewn.com/

adopts a clear policy and decides to rein in dissent, however, it can play a role in temporarily limiting nationalist sentiments. "Public opinion is a double-edged sword," said a Chinese analyst, "Beijing can use it as a foreign policy instrument to get other countries to compromise, but it has to satisfy it as well".[293]

An important component of Chinese nationalism is a victim mentality. Despite the country's growing influence, many continue to draw on the so-called "Century of Humiliation" as the framework for their views on how they should interact with other nations.[294] Since the founding of the People's Republic of China, the government has continually made selective use of history in textbooks and the media to emphasise the need to reestablish national honour.[295]

In the case of the South China Sea, the government has deliberately imbued the maritime disputes with nationalist sentiment. In current textbooks, the map of China includes the South China Sea and the nine-dashed line. A section referencing China's "Beautiful Spratly Islands" has also been included in the curriculums of different provinces since at least the early 1980s.[296] The government has perpetually highlighted its historic claims to the Spratlys and Paracels,[297] while media reports regularly paint China as a victim, for example by claiming that out of the "more than 1,000 oil rigs in the South China Sea and the four airports in the Spratly Islands, none of them belong to China".[298] U.S. support for other claimants has further strengthened views of China as the weaker party and ultimate victim in the disputes.

More generally, the Chinese government has found nationalism a useful tool to justify its position on foreign policy issues when other countries argue that their legislatures and constituencies prevent compromise.[299] An official argued that other claimants' use of nationalism to support their own positions justifies China's use of the media to encourage similar sentiments.[300] Netizens and nationalists have long called for Beijing to step up military deployments in the region to "teach the Vietnamese, the Filipinos and Malaysians a good lesson".[301] Many have expressed a desire for the South Sea Fleet to repeat the 1974 and 1988 "victories" and send the Vietnamese "home with tails between their legs".[302] Most nationalist scholars and netizens are ardent supporters of a maximalist view of the nine-dashed line claim, calling "not to forget the 3 million sq km of Chinese maritime territory" and arguing that "the size of Chinese territory should be 12.6 million sq km, not 9.6 million".[303] The escalation of incidents in the South China Sea raised public interest in the issue.[304] According to a Chinese newspaper editor, "Sometimes it is not con-

thread-6015-1-1.html. Moderate opinions, such as explaining why China should not take the South China Sea by force, have been interpreted as traitor's opinions. "精英汉奸们在南海怎样卖国" ["How the elite traitors sell out China's interests in the South China Sea"], 1 July 2011, http://club.china.com/data/thread/1011/2727/85/08/4_1.html.

[293] Crisis Group interview, Beijing, November 2010.

[294] The "Century of Humiliation" is a description of the period from 1839, when Britain launched the First Opium War against China, until 1949, when the People's Republic of China was founded. During this period, China signed what are now described as several humiliating treaties with Western powers. Alison Kaufman, "The 'Century of Humiliation', Then and Now: Chinese Perceptions of the International Order", in *Pacific Focus*, vol. 25, Issue 1 (April 2010), pp. 1-33.

[295] Numerous examples can be found on the internet, eg a collection of videos related to this topic on Youku.com, the biggest video website in China. "百年国耻国仇专辑" ["Collection of videos related to a hundred years of humiliation and rancour"] www.youku.com/playlist_show/id_184561.html.

[296] In Chinese, this section is entitled "美丽的南沙群岛" 《小学语文》苏教版三年级下册 [Third grade Chinese textbook, II, Jiangsu Education Publishing House], pp. 9-11, 2011; Crisis Group interview, Beijing, March 2012.

[297] For example, see "中国对南沙群岛拥有主权的历史依据" ["The historic proof of China's sovereignty rights on Spratly Islands"], foreign ministry website, www.mfa.gov.cn/chn/gxh/zlb/zcwj/t10648.htm.

[298] "当前是在南海动武的良机" ["Right now it is good timing for a war in the South China Sea"], *Global Times*, 27 September 2011.

[299] Crisis Group interviews, Beijing, July 2011 and February 2012.

[300] Crisis Group interview, Beijing, March 2012. "美智库分析越南强烈民族主义把自己逼入困境" ["American think-tank analyse how strong nationalism sentiments (encouraged by Vietnamese government) has put Vietnam into a dilemma"] *环球时报* [*Global Times*], 15 June 2011.

[301] "南沙群岛的占领情况及军事展望", bbs.tiexue.com.

[302] "北京该出手了：两岸联手行动震慑越南白眼狼", ibid.

[303] "中国有960+300万平方公里陆地+海洋国土" ["China has 9.6 + 3 million sq km land + maritime territory"], www.china.com, 20 February 2006, http://military.china.com/zh_cn/history2/06/11027560/20060220/13108524.html; "郑明少将：中华世纪坛'地图'忘记海洋国土" ["Rear Admiral Zheng Ming: China's maritime territory is missing from the 'map' in China Millennium Monument"], Phoenix TV, 22 April 2009; "中国海洋国土近一半存在争议，八邻国提无理要求", Outlook Weekly, 15 April 2009, http://news.qq.com/a/20090415/000975.htm.

[304] One indication of this is the dramatic increase of news reports and published comments in 2011 compared to those in 2010. For example, on the biggest Chinese news congregation website news.sina.com, a search for news and published comments containing the phrase "South China Sea issue" in 2011 comes out with 2,888 entries, and only 911 entries for 2010.

venient for the more hardline officials to say the things they want, so we do that for them".[305]

Local governments and law enforcement agencies also take advantage of nationalism to advance their own agendas. These agencies often issue public statements criticising other countries' aggression in the South China Sea as a way to pressure the central government for greater resources – both to pursue economic activities and to acquire more law enforcement patrol vessels. Accusing Vietnam and the Philippines of constantly "robbing and bullying Chinese fishermen", usurping fishing grounds and infringing upon sovereignty is one way to do this.[306] The PLA also has used the disputes in the South China Sea as a way to justify an expanded budget and greater influence, although it focuses more on the perceived threat of U.S. political and military activity in the region, which it interprets as an effort to contain China's rise.[307] Such remarks often generate strong nationalist responses among netizens.

While nationalism has a strong influence on China's foreign policy, the government has some ability to restrain these sentiments, although this ability is declining with the rapid growth of new media.[308] When Beijing felt the need to ease tensions in the South China Sea in 2011, it took measures to moderate domestic public opinion while adopting a more compromising stance towards regional countries and ASEAN.[309] One measure was to issue requests that its official media take a more moderate line. For example, shortly after the July 2011 ASEAN Regional Forum, the *People's Daily* devoted a page to the importance of pursuing joint development.[310] Such a collection of essays on the South China Sea is perhaps unprecedented and was likely designed to "unify thought" within the party on the issue.[311]

Since August 2011, the *People's Daily* published several columns (under the pen name Zhong Sheng) stressing the need to be less confrontational. In January 2012, for example, Zhong Sheng discussed the importance of "pragmatic cooperation" to achieve "concrete results." In the context of the visit of the Vietnamese Party Secretary in October 2011, various government agencies were informed by the foreign ministry that they should refrain from talking to media.[312] These examples suggest that while nationalism can serve as a constraint when leaders have no clear policy on major issues, once Beijing makes a decision, it can take measures to tame nationalist sentiments if the issue has not captured high-profile international attention.[313] Any settlement in the South China Sea that involves Chinese compromise on land and maritime territory will require measures to calm the public similar to some of Beijing's past messaging when settling territorial disputes.[314]

[305] Crisis Group interview, Beijing, October 2011.
[306] For more discussion see Section IV.B "Competing Law Enforcement Agencies".
[307] For more discussion see Section IV.A.4 "Heated Political Domestic Environment".
[308] Crisis Group interviews, Beijing, October 2011. See also Susan Shirk, *China: Fragile Superpower*, op. cit., p. 104.
[309] See Section VI "Shifting Tactics: A New Approach".
[310] The *People's Daily* is the official newspaper of the Chinese Communist Party and under control of the Central Committee. 王木克 [Wang Muke], "中国， 南海合作的积极推进者" ["China, Active promoters of the South Seas cooperation]"; 李清源 [Li Qingyuan], "唱响和平稳定合作的主旋律" [Playing the melody of peace, stability and cooperation"]; 丁刚 [Ding Gang], "南海问题缘何被炒热" ["Why the South Sea issue is sizzling"]; and 暨佩娟 [Ji Peijuan], "必须从合作开始不断增进互信" ["Continuously increase mutual trust through cooperation"], all in *People's Daily*, 2 August 2011, p. 23.
[311] Taylor Fravel, "China's Strategy in the South China Sea", *Contemporary South East Asia*, vol. 33, no. 3 (2011), pp. 292-319.
[312] Crisis Group interview, Beijing, March 2012.
[313] Crisis Group interview, Beijing, January 2012. The higher profile the incident the more pressure Beijing feels to not be seen by the public as responding weakly. This was the case, for example in China's overreaction to the September 2010 arrest by Japanese officials of a Chinese fishing captain in the Diaoyu/Senkaku islands.
[314] After China reached an agreement with Russia on Heixiazi Island/Bolshoi Ussuriysky Island, official media published articles justifying the deal. "为何说中俄边界条约是'双赢'" ["Why do we say China-Russia's border treaty is a 'win-win deal'"], Xinhua net, 31 May 2005.

V. BEIJING'S POLICY DILEMMA

Beijing feels that it suffers from a lack of good policy options in the South China Sea. Diplomatic efforts have failed to bring about change and a military solution is not viable. China calls for joint development of resources beneath disputed waters, but has no backup plan when other parties reject the proposal. It continues to reiterate that the disputed islands, rocks, reefs and waters are Chinese territory, but it has neither effective justification nor the means to alter the fact that the majority of them are under the de facto control and administration of other countries.[315] Furthermore, the government understands that the longer this de facto control and administration continues, the slimmer is the chance of China gaining recognition for its legal title. Beijing feels that it faces a conundrum. It has other important national priorities and interests that make a status quo policy seem like the only option. The idea of leaving seemingly intractable problems to the next generation – first proposed by Deng Xiaoping in 1978 in relation to the East Sea dispute – is now being applied to the South China Sea.[316]

A. NO MILITARY SOLUTION

Although China is engaging in significant military modernisation and is strengthening its South Sea Fleet to demonstrate its power in the region, and has on two previous occasions (1974 and 1988) used the military to wrest control of islands and reefs in the South China Sea, it is clear to current leaders that use of military force to reoccupy the disputed territories under other claimants' control is not an option.[317] Even if it had the capacity to do so, Beijing knows the diplomatic costs would be too high, especially in providing the U.S. with a pretext to strengthen its presence in the region. For now, China does not want to deliberately start a military conflict involving Washington, nor one that would disrupt regional trade and stability.[318] Its national priority remains domestic economic development as well as resolving other internal social and political problems.

B. FAILURE OF THE DIPLOMATIC APPROACH

China's diplomatic approach to the South China Sea has little prospect of success because of the legal conundrums it faces in clarifying its claims, particularly in light of having used different standards for territorial settlements throughout negotiations with its neighbours. Domestic pressure is also hindering a practical solution to the issue.

1. Failure of joint development

A key component of China's position in the South China Sea (for the Spratly Islands in particular) has been "setting aside the disputes and engaging in joint development". Deng Xiaoping first proposed this to Filipino Vice President Salvador Laurel during his visit in June 1986.[319] Since then, Beijing has repeatedly used the term "joint development" when accusing other claimants of unilaterally developing natural resources in the region.[320] Officials and analysts have defended the proposal by saying that China is making a tremendous compromise by offering joint development of a region that legally belongs to it, and that unilateral development efforts by Vietnam, Malaysia and Philippines can be seen as a complete rejection of Chinese good-will.[321]

Beijing has failed to implement any joint development plan with other claimants since the launch of the proposal,[322] which has been rejected primarily because of the precondition China set – that the other claimants must accept Chinese sovereignty over the disputed territories before joint development is discussed or implemented.[323] Beijing's interpretation of "joint" means that China must be a partner in every single joint project, which is very difficult

[315] China controls none of the habitable Spratly Islands, only a few shoals and reefs. Vietnam, the Philippines and Malaysia have de facto military occupation and administration of most of the disputed islands, although the largest feature, Itu Aba Island, is under the control of the Taiwan government. Crisis Group interview, Hanoi, December 2010.

[316] Crisis Group interview, Beijing, November 2010. "邓小平：日本是世界上欠中国的帐最多的国家" [Deng Xiaoping: Japan is the country in world that owes China the most], *人民网* [*People's Net*], 8 February 2012 http://hi.people.com.cn/GB/n/2012/0208/c231184-16730917.html

[317] Crisis Group interview, Beijing, December 2010, September 2011.

[318] Crisis Group interview, Beijing, December 2010.

[319] The policy was decided as a compromise by Beijing in exchange for its desire to establish diplomatic relations with countries that China had a territorial dispute with, such as the Philippines. "中国南海问题立场：'搁置争议，共同开发'", foreign ministry website.

[320] Crisis Group interviews, Beijing, Hanoi, November and December 2010.

[321] Crisis Group interview, Beijing, November 2010.

[322] Crisis Group interview, Beijing, December 2010.

[323] Many hear the term "setting aside the disputes and joint development", but are unaware of the second half of China's statement: "The sovereignty of the disputed territories belongs to China". "邓小平：'搁置争议共同开发"前提"主权属我'", *Study Times* of Central Party School, January 2011. Another possible obstacle is the requirement of Chinese national oil companies that they maintain a stake of at least 51 per cent in joint venture projects. Crisis Group interview, Beijing, April 2012.

for the other claimants to accept. In the one case where agreement was reached with the Philippines and Vietnam, the proposal ultimately failed due to public hostility against it in the Philippines.[324] Other claimants have never accepted this condition but China has failed to come up with any viable alternatives.[325] Most South East Asian claimants do not see the grounds for joint development at all.[326] In their views, the Spratly Islands are their territory and there is no need to share it with any other countries. According to an ASEAN diplomat:

> If China feels confident about its own claim over the territories, why would it share the benefits of development of them? They [the South East Asian claimant countries] certainly feel confident enough about their sovereignty over the area that they don't see it necessary to share them simply because China claims it has ownership as well.[327]

2. Inconsistent precedents

China adopts different standards throughout territorial negotiations with its neighbours.[328] As a result, it does not have a consistent set of policies to decide how to settle these disagreements with its neighbours, particularly when it comes to maritime disputes.

When Japan proposed a 50-50 delimitation in the 1970s to resolve the Sino-Japan disputes over the East China Sea continental shelf, China firmly rejected it. Instead, it adopted the position that the dispute should be settled on the basis of the "natural extension of the continental shelf", meaning that all of the East China Sea continental shelf extending eastwards from its coastal lines should be Chinese.[329] This formula, when compared with the "50-50" formula proposed by Tokyo, allows Beijing to increase the size of its claimed continental shelf by 30,000 sq km.[330]

However, when China negotiated its territorial disputes over the Heixiazi Island with Russia in the 1990s (over which they fought a battle in 1969), it compromised on its claim over the whole island and accepted a "50-50" formula.[331] In the Gulf of Tonkin, China accepted the "50-50" formula again, with further compromises over the Vietnam-occupied islands in the Gulf.[332] The eventual result of the boundary demarcation was "53-47", with Vietnam taking a larger share of the maritime area.[333] People later attributed this willingness to compromise with Russia and Vietnam to then-President Jiang Zemin's eagerness to settle border disputes.[334]

The maritime settlements with Vietnam also set an inconsistent precedent for China's historical claims to territory in the South China Sea.[335] Beijing asserts that South East Asian countries should accept its sovereignty over the geographic features within the nine-dashed line because historically they have been Chinese.[336] However, China transferred control of White Dragon Tail Island 70 nm off the coast of Hainan to Vietnam in 1957, despite the fact that a Chinese fishing village had been on the island for almost 100 years.[337] If this island, so close to the Chinese coastline and with historical evidence of Chinese occupation and administration, was not considered to be China's "historical territory", questions can be raised about how the numerous South China Sea islands, farther away from the mainland and with less historical evidence, can be considered as such.[338] The other claimants are pointing to the territorial settlements with Vietnam as an "example of Chinese double standards".[339]

China has also set inconsistent legal precedents for its claim that the *Nansha* (Spratly) Islands – almost all of which are small islands, rocks, low tide elevations or un-

[324] Fravel, "China's Strategy in the South China Sea", op. cit., p 299. The Philippine government, which was then under Gloria Arroyo's administration, was later forced to drop the agreement due to domestic political pressure. Jerry E. Esplanda, "Philippines refuses joint Spratlys development with China", *Philippine Daily Inquirer*, 27 February 2012. Shen Hongfang, "South China Sea Issue in China-ASEAN Relations: An Alternative Approach to Ease the Tension", *International Journal of China Studies*, vol. 2, no.3 (December 2011), pp. 585-600.

[325] One alternative could be China accepting other proposals, such as the Philippines' proposal for a zone of peace, freedom, friendship and cooperation (ZoPFFC) for joint development in areas where there are no disputes.

[326] Crisis Group interviews, ASEAN diplomats, Hanoi, December 2010.

[327] Ibid.

[328] Crisis Group interview, Beijing, December 2010.

[329] Jin Yongming, "Study on the Solution to the Issues of East China Sea", *Legal Press*, 2009, p. 12.

[330] Ibid, p. 9. For more on this subject, see also Fravel, *Strong Borders*, *Secure Nation*, op. cit.

[331] "*中俄*40年划界尘埃落定中国黑瞎子岛界碑竖立回归进入倒计时", *Red Net*, 2 September 2007.

[332] "中越北部湾划界协定情况介绍", foreign ministry website.

[333] In settling their land boundaries, China and Vietnam also divided the disputed territory on a roughly equal basis. Fravel, *Strong Borders*, *Secure Nation*, op. cit., p. 148.

[334] Crisis Group interview, Beijing, December 2010.

[335] Ibid.

[336] For the discussion of historical claims, please see Section I "Introduction".

[337] Many scholars believe the island was transferred as a show of solidarity during the Vietnam War. Fravel, *Strong Borders*, *Secure Nation*, op. cit., pp. 332-333.

[338] Crisis Group interview, Beijing, December 2010.

[339] Crisis Group interview, Hanoi, December 2010.

derwater reefs largely incapable of sustaining long-term habitation[340] – are entitled to an EEZ.[341] In the case of the Japanese island of Okinitorishima, China maintained that small uninhabited islands should not be given a continental shelf or EEZ of their own, and added that similar practice should be followed in the South China Sea.[342] If Beijing holds to this principle, it will be unable to justify its claim over a large part of the waters around the Spratly Islands and within the nine-dashed line.

3. "Leaving it to the next generation"

The foreign ministry probably best understands all the problems stemming from unfavourable precedents and the lack of good policy options in the South China Sea.[343] However, the ministry and government have been propagating the idea that the disputed territories are Chinese for so long that they cannot easily back down without appearing as if they were capitulating to foreign interests or surrendering territory.[344] MFA officials understand that any realistic negotiation of the disputes would require compromise on all sides, given China's disputable claim over the entire Paracel and Spratly Islands and in light of the current de facto control by different claimants.[345] This has put the MFA, especially the boundary and ocean affairs department, in a dilemma over seeking a solution that includes abandoning some claimed territories or maintaining the current claims with the impossibility of reaching a diplomatic settlement.[346]

The issue has tremendous political implications: domestically, any compromise, even for the sake of a mutually beneficial dispute resolution, would be heavily criticised.[347] Therefore, maintaining the status quo is seen as the safest policy option for the MFA, impeding meaningful diplomatic dialogue that could lead to a solution.[348] Conventional wisdom within the ministry is "you don't have to do it, but you'll be blamed if you do it and it doesn't end up well".[349] Therefore, the MFA would rather "set the disputes aside" and "leave it to the future, smarter generation".[350]

C. Rejection of UN Mechanisms

The International Court of Justice (ICJ) and the dispute settlement mechanisms provided under UNCLOS could be utilised to address different elements of the South China Sea disputes. Claims to the islands represent a dispute of sovereignty over land territory, and could be submitted to the ICJ, while those to the maritime zones generated by the islands would be determined by UNCLOS' provisions and its dispute settlement mechanisms, which include the ICJ and the International Tribunal for the Law of the Sea. However, Beijing has repeatedly made clear that it will not resort to any of these mechanisms to resolve the disputes.

1. International Court of Justice

For the ICJ to hear a case, all parties involved in the dispute must give consent.[351] At this time, the only claimant in the South China Sea to accept any role for the court in the dispute is the Philippines.[352] While the ICJ has decided a number of territorial disputes since it was established, there is widespread belief in Chinese policy circles that even if it is invited to decide a territorial issue, it is limited to those disputes resulting from decolonisation, invasion and secession, none of which apply in the case of the Spratly or Paracel Islands.[353]

2. UNCLOS dispute settlement mechanisms

UNCLOS offers extensive dispute settlement mechanisms on maritime boundaries, providing four choices of venue for arbitration or adjudication, including the International Tribunal for the Law of the Sea, the ICJ, ad hoc arbitration, and a "special arbitral tribunal" constituted for certain categories of disputes.[354] However, although China ratified UNCLOS in 1996, it specifically rejected its dispute settlement mechanisms.[355] Beijing understands that inter-

[340] Except for a few islands that might be eligible to receive an EEZ, such as Itu Aba Island.
[341] Note from China to the Commission on the Limits of the Intercontinental Shelf, 14 April 2011.
[342] Note from Indonesia dated 8 July 2010, and Note from the Philippines dated 5 April 2011, Robert Beckman, "China, UNCLOS and the South China Sea", paper presented at the Third Biennial Conference of the Asian Society of International Law on Asia and International Law: A New Era, Beijing, China, 27-28 August 2011, op. cit.
[343] Crisis Group interview, Beijing, August 2010.
[344] Crisis Group interviews, Beijing, July, August 2010.
[345] Crisis Group interview, Beijing, November 2010.
[346] Crisis Group interview, Beijing, January 2011.
[347] Ibid.
[348] Crisis Group interview, Beijing, December 2010.
[349] Ibid.
[350] "Leaving the problems for future generations with more wisdom" was first proposed by Deng Xiaoping in his comments on the disputes in East China and South China seas. It has now become somewhat of a motto of the foreign ministry.
[351] Beckman, op. cit., p. 2.
[352] However, the Philippines still exempts a number of categories of dispute in the region from arbitration by the ICJ, including territorial and resource rights in the area.
[353] Crisis Group interview, Beijing, June 2010.
[354] The Convention and the Settlement of Disputes, Division for Ocean Affairs and the Law of the Sea, United Nations.
[355] "The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of

national adjudication or arbitration would likely not support all of its claims over territories and territorial waters. Yet it would be difficult to explain to the domestic audience why it should accept a decision against its claimed national interests by a Western-dominated system.[356] Beijing has therefore concluded that such binding arbitration would not be in its interests.

disputes referred to in paragraph 1(a) (b) and (c) of Article 298 of the Convention". Declaration of States Parties Relating to Settlement of Disputes in Accordance With Article 298, 25 August 2006, China, www.itlos.org/fileadmin/itlos/documents/basic_texts/298_declarations_June_2011_english.pdf. China's reference to Section 2 refers to the UNCLOS provisions stating that disputes will be solved through one of four venues: the International Tribunal for the Law of the Sea, the ICJ, ad hoc arbitration, or a "special arbitral tribunal" constituted for certain categories of disputes. UNCLOS, Article 287.

[356] Ibid.

VI. SHIFTING TACTICS: A NEW APPROACH?

In mid-2011, China adopted a new more moderate approach to the South China Sea as it tried to defuse tensions and repair relations with South East Asian countries.[357] In addition to concern about U.S. influence in the region, a Chinese scholar explained that the central leadership felt that there were "too many dragons, too much noise".[358] Chinese analysts have pointed to two internal steps and three regional conciliatory gestures as tangible signs of this shift: demanding that the PLA be more moderate, requesting that the foreign ministry provide more guidance to other actors, signing the July 2011 China-ASEAN agreement on the Implementation Guidelines for the DOC, reaffirming Deng Xiaoping's South China Sea principles in the September 2011 White Paper on Peaceful Development, and agreeing to limit negative media reports and commentaries at the October 2011 visit by the Vietnamese Communist Party secretary.[359] Many countries have also noticed the more moderate tone of diplomatic rhetoric especially when compared with Foreign Minister Yang Jiechi's widely noted "small countries" remark.[360] Detentions of Vietnamese fishermen were reduced, and China did not obstruct oil exploration in disputed waters.[361]

However, the structural reality of South China Sea policy, with eleven central and local actors executing policy based on their own interests likely makes a conciliatory approach unsustainable in the long term, particularly without a strong but moderate coordinating authority.

A. STRENGTHENING COORDINATION

Concerned about tensions in the region, the central leadership decided in mid-2011 to reinvigorate the MFA's

[357] Crisis Group interviews, Beijing, January and February 2012. For more discussion on the foreign ministry's ineffective role as coordinator, see Section IV.A; for more discussion on the PLA's role in the South China Sea, see Section IV.E.

[358] Crisis Group interview, Beijing, February 2012.

[359] Crisis Group interviews, Beijing, January and February 2012.

[360] Crisis Group interviews, Manila, January 2012, Singapore, February 2012, Jakarta, February 2012.

[361] Between 2005 and 2010, China detained 63 fishing boats and their crews. Since then, there has been one widely reported incident in 2012 where 21 Vietnamese fishermen were detained, although Vietnamese media have claimed that other arrests have occurred. Exxon's drilling of an exploratory well in October 2011 also suffered no harassment, in contrast to attempts in May 2011 to cut the exploration cables on a Vietnamese seismic survey ship. M. Taylor Fravel, "All Quiet in the South China Sea", *Foreign Affairs*, 22 March 2012; "Vietnam fisheries association calls on gov't to help fisherman illegally detained by China", *Thanh Nien News*, 20 August 2011.

coordination mandate.[362] Law enforcement agencies were asked to inform the ministry of intentions to engage other countries' ships.[363] Plans from the local bureaus of Maritime Safety Administration and China Marine Surveillance to send patrol vessels to disputed territories were also supposed to be sent to the MFA.[364] The ministry was encouraged to inform other agencies such as the Bureau of Fisheries Administration of specific policies in the South China Sea.[365] Additionally, the MFA gave policy instructions to other government agencies on how to handle the media during the visit of the Vietnamese Party Secretary in October 2011.[366] Agencies such as Fisheries and China Marine Surveillance have expressed frustration with the ministry's reinforced coordination authority.[367]

The decision by the central leadership to vest the MFA with more coordination powers followed its decision in late 2010 to create a new ad hoc Leading Small Group, chaired by Dai Bingguo, to work on the South China Sea issue. Leading Small Groups are formed under Chapter IX of the constitution as supra-ministerial coordinating and consulting bodies to try to build consensus on issues that cut across the government, party and military systems.[368] However, this Leading Small Group was established purely as a reactive mechanism and has had difficulty in fulfilling its mandate.[369] The fact that it was in place during the May and June 2011 incidents also suggests that it might have suffered from inadequate authority to coordinate the actors responsible for these incidents.

B. Calming the PLA

Concern in the central government about excessive "noise" in the South China Sea led to efforts to tone down assertive comments from researchers and retired PLA officers, which had previously received significant media attention. Amid the rise in regional tensions since 2009 and especially in the early summer of 2011, several PLA officers made strong public statements that reinforced regional concern about China's intentions. In the face of this concern, the central government made efforts to rein in the military. In a move that demonstrates the strong influence it can wield when it seizes an issue, in mid-2011 the central leadership issued a message to stop fuelling tensions that effectively stifled inflammatory commentaries from the military on the issue.[370] Since then, there have been just occasional barbs from expectedly outspoken figures such as Major General Luo Yuan.[371] The PLA also increased high-level exchanges with counterparts from other claimants.[372]

Within the PLA, there are differing opinions on how China should approach the issue. Overall, the military believes that the country has important strategic interests in protecting the sea lines of communication, and securing the navy's access to the waters in the region. The South China Sea is considered a key area in which it should be able to exert control.[373] However, the military leadership is not in agreement on how aggressively to defend these interests. The hardliners argue for greater assertiveness by making

[362] Crisis Group interview, Hainan, November 2011 and Beijing, February 2012. While the foreign ministry's role and power is generally limited to implementing decisions made by the central leadership, its authority can be enhanced when a serious crisis erupts and the central leadership wants to see an issue urgently resolved. This has occurred for example, when the international community condemned China over its role in Sudan in the run-up to the 2008 Beijing Olympic Games and when the issue of China's attempt to ship arms to Zimbabwe via South Africa's Durban in 2008 sparked an international outcry.

[363] Foreign ministry personnel have also been sent on board Maritime Safety Administration vessels patrolling the Spratlys. Crisis Group interview, Hainan, November 2011.

[364] Crisis Group interviews, Hainan, November, 2011.

[365] Crisis Group interview, Beijing, March 2012.

[366] The boundary and ocean department was given responsibility upon its establishment in 2009 for coordinating communications over diplomatic crises involving territory issues, but it has not been consistently effective. Crisis Group interview, Beijing, March 2012.

[367] Crisis Group interview, Beijing, February 2012.

[368] See Lu Ning, "The Central Leadership, Supraministry Coordinating Bodies, State Council Ministries, and Party Departments", pp. 45-49; and David M. Lampton, "China's Foreign and National Security Policymaking Process: Is It Changing, and Does It Matter?", pp. 16-19; both in David M. Lampton, ed., *The Making of Chinese Foreign and Security Policy in the Era of Reform* (Stanford University Press, 2001).

[369] The Leading Small Group was given the ability to approve actions of other actors, under a system of "one action, one approval". Crisis Group interviews, Beijing, February, March 2012.

[370] Crisis Group inteviews, Beijing, January and February 2012.

[371] Maj. General Luo Yuan has stated that China is always ready to use force if necessary to defend its territorial integrity in the South China Sea, and as a result the country needs a strong and big military. "China raising 2012 defense spending to cope with unfriendly 'neighbourhood'", Bloomberg, 5 March 2012. See also "PLA researcher says U.S. aims to encircle China", Reuters, 28 November 2011; "Coast guard missing piece of naval strength", *Global Times*, 8 March 2012.

[372] From 21 to 25 November 2011, Defence Minister Liang Guanglie visited the Philippines, where both sides pledged to resolve territorial disputes through dialogue. "Philippines, China support discussion on South China Sea", Voice of America, 24 May 2011. However, given the strategic importance of the area as a justification for the PLA's budgetary growth, it is likely to continue to emphasise the need for more assertive policy (see Section IV.D).

[373] Admiral Liu Huaqing, PLAN commander in the 1980s, advocated that by 2000 China should be able to exert control over the first island chain extending out to the Philippines and Indonesian archipelagoes, and eventually out to Singapore and the Malacca Straits.

provocative comments in the media,[374] though few believe the military has any short-term intent to engage in conflict in the South China Sea.[375] The provocative comments cannot be considered representative, coming mostly from retired PLA officers or researchers at PLA-affiliated institutions.[376]

Within this debate, there are others in the PLA who favour a more cautious approach.[377] The hardliners have received more attention and inflamed nationalist public sentiment, placing more moderate policymakers in a difficult position.[378] Some ascribe these strong statements to the PLA's overriding desire to secure greater domestic resources for itself and possibly also an enhanced political role.[379] Although the PLA's role in the South China Sea remains secondary, it is difficult to expect neighbouring countries to play down assertive comments from retired military officials when analysing the PLA's intentions and strategy.

C. Guidelines for the Implementation of the Declaration of Conduct in the South China Sea

China agreed at the July 2011 ASEAN Regional Forum to accept the Guidelines for the Implementation of the Declaration of Conduct of Parties (DOC) in the South China Sea. The declaration had previously been negotiated between China and ASEAN countries, in which all parties agreed to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes".[380] China and

[374] Particularly up until mid-2011, several PLA personnel repeatedly made public statements that reinforced regional concern about China's intentions in the South China Sea. In an interview with Xinhua news agency in June 2011, Major General Luo Yuan said that if other claimants continued to insult China beyond its limits, the Chinese people would have no choice but to "wield their swords". "罗援少将谈南海问题：不要把中国逼得忍无可忍" ["Luo Yan on South China Sea: Do not push China beyond the point of tolerance"], 新华社 [Xinhua News Agency], 15 June 2011. Another outspoken advocate for greater assertiveness is PLA Air Force Colonel Dai Xu, who wrote a commentary in the nationalist-leaning *Global Times* in 2009 calling on China to speed up its exploitation of natural resources in the area. Dai Xu, "Speed up exploiting natural resources in the South China Sea", *Global Times*, 20 April 2009. In 2010, he wrote to the same media outlet urging China to "draw a clear red line" against U.S. attempts at encirclement. "中国应给美国围堵行为划红线" ["China should draw a red line against US encirclement"], 戴旭 [Dai Xu], *环球时报* [*Global Times*], 2 August 2010.

[375] For more discussion, see Section V.A "No Military Solution".

[376] Major General Luo Yuan is a researcher with the PLA's Academy of Military Sciences. Dai Xu is a retired Air Force colonel and is now a professor with the PLA's National Defence University.

[377] A researcher with the PLA National Defence University said that the hardliners' comments "have created a misleading perception that the PLA has become more aggressive over the recent years". In his opinion, the military is still "observing" U.S. involvement in the South China Sea and will not "do anything" if the pivot does not bring substantial changes to regional security, such as through new military alliances with countries in China's periphery. Crisis Group interview, Beijing, January 2012.

[378] Crisis Group interview, Beijing, January 2012. The foreign ministry has at times had to revise statements to be more assertive following remarks of the PLA on certain issues. After the sinking of the South Korean naval ship Cheonan on 26 March 2010, which was allegedly carried out by North Korea, the U.S. announced joint exercises with South Korea in the Yellow Sea. The ministry initially expressed concern over actions that might cause tension. PLA Deputy Chief of Staff Ma Xiaotian then stated that U.S. actions could pose a threat to China's national security, leading the ministry to revise its previous statement and say that the U.S. should not send navy ships. While taking a firmer stance probably avoided criticism of the ministry from within the government, the revised statement prompted criticism from South Korea, Japan, the U.S. and ASEAN countries. On a separate occasion, when the U.S. decided to notify Congress regarding a large arms sale package to Taiwan, active duty military officers published articles calling for sanctions and a reduction of cooperation with the U.S. The foreign ministry took a similar line following the publication of these articles. "外交部就美国核动力航母赴黄海军演等答问" ["The MFA's response to U.S. nuclear powered aircraft carrier military exercise in the Yellow Sea and other questions"], 外交部网站 [foreign ministry website], 22 June 2010; "我军总参谋长马晓天称坚决反对美韩黄海军演" ["PLA Deputy Chief of Staff Ma Xiaotian adamantly objects US-South Korea joint military exercise"], *环球时报* [*Global Times*], 4 July 2010; "中方月内5次表态反对美韩黄海军演" ["China opposes U.S.-South Korea joint military exercises for five times in one month"], *中国新闻网* [*China News Net*], 16 July 2010; "美宣布对台售武计划，外交部急召美大使抗议" ["U.S. announced weapon sales plan to Taiwan, the MFA summoned U.S. ambassador to protest"], *环球时报* [*Global Times*], 22 September 2011.

[379] According one Chinese scholar, Dai Xu's recent remarks on the South China Sea were choreographed as part of tactics to get a military representative on the Politburo Standing Committee – which it has not had since 1997 despite a continuous increase in military budgets over the past decade. In a 17 December 2011 commentary widely circulated on the internet, he said the government had been too lenient on other claimant countries and those who support the "lie low" approach were traitors. He added that those who are afraid of going into a war were cowards and short-sighted, China must destroy all the foreign vessels traversing in its South China Sea waters. "We shed our blood today so that our grandchildren won't have to shed blood tomorrow", "Situation in the South China Sea: the PLA must be assertive, and must destroy all the invading vessels, www.chnqiang.com/article/2011/1225/mil_56272_7.shtml. Many other analysts disagree that the PLA wishes to have a representative in the PSC. Crisis Group interviews, Beijing, February 2012.

[380] This breakthrough came after more than six years of efforts and at least 21 successive drafts by ASEAN statesmen to push

Vietnam had been deadlocked over the implementation of the DOC,[381] and the guidelines were seen as a positive sign of cooperation between the two countries.[382] First agreed in 2002, the DOC was intended as a preliminary step to a legally binding code of conduct for activity in the sea. Its implementation stalled over Vietnam's insistence that ASEAN states be allowed to meet before holding working group discussions with China.[383] However, during a visit to China by the Vietnamese deputy foreign minister, Ho Xuan Son, Vietnam agreed to drop this provision while Beijing signalled that ASEAN nations could continue their de facto practice of meeting as a group before meeting with China.[384]

While the guidelines lack concrete measures for solving the South China Sea dispute,[385] China's agreement is an important symbolic good-will gesture to avert tensions by promoting regional dialogue.[386] Chinese Foreign Minister Yang Jiechi said at the forum that the Implementation Guidelines and the DOC could facilitate resolution of disputes through negotiation.[387] Prior to signing the guidelines, China also hosted several workshops on Chinese-ASEAN maritime cooperation and other related issues.[388] After the January 2012 meeting in Beijing between ASEAN and Chinese officials on the continuing implementation of the guidelines, four working groups were set up to explore four out of the five cooperative activities listed in the 2002 DOC: marine environmental protection, marine scientific research, search and rescue operations and combating transnational crime.[389]

D. State Council White Paper on Peaceful Development

On 6 September 2011, the State Council Information Office released a white paper on China's peaceful development. It attracted little international attention but signalled a key turning point towards moderation in Beijing's approach to the South China Sea.[390] The paper reaffirmed Deng Xiaoping's guidance of "setting aside disputes to pursue joint development"[391] at a time when other countries were highly concerned about China's intentions in the South China Sea and Vietnamese officials were campaigning within ASEAN to "make China lose face and poke holes in its story about its peaceful rise".[392] According to Chinese scholars, Beijing intended this official report to allay fears among its South East Asian neighbours and demonstrate that it was now willing to promote cooperation

for implementation of the 2002 DOC. Carlyle A. Thayer, "Will the Guidelines to Implement the DOC Lessen Tensions in the South China Sea? An Assessment of Developments Before and After their Adoption", paper to Third International Workshop on the South China Sea, 3-5 November 2011, p. 15.

[381] After signing the DOC in 2002, ASEAN and China established a joint working group to draw up implementation guidelines in 2005. Crisis Group email correspondence, April 2012; "Documents on ASEAN and South China Sea", June 2011, Document Database of Centre for International Law, National University of Singapore.

[382] "China signs S. China Sea guidelines, seeks to turn page on row", Reuters, 21 July 2011.

[383] Vietnam agreed not to include this provision in paper (though it said that Article 6 of the Implementation Guidelines is a veiled reference to ASEAN's ability to meet), and China currently allows the meetings to continue in practice. Crisis Group interviews, Beijing, June 2011, Manila, January 2012. For more, see Fravel, "Maritime Security in the South China Sea and the Competition over Maritime Rights", op. cit., p. 44.

[384] Fravel, "China's Strategy in the South China Sea", op. cit., pp. 310-311.

[385] The guidelines avoid tackling the thorny sovereignty issue and focus on technical cooperation such as maritime research, rescue and anti-piracy efforts. Jian Junbo, "China averts collision in South China Sea", *Asia Times*, 29 July 2011.

[386] See for example, Patrick M. Cronin and Robert D. Kaplan, "Cooperation from Strength: U.S. Strategy and the South China Sea", in Patrick M. Cronin, ed., *Cooperation from Strength*, op. cit., p. 16: "China changed the narrative by accepting a vague set of implementation guidelines for a nonbinding Declaration of Conduct. This pre-empted the array of regional actors insisting on multilateral mechanisms. China then managed to improve bilateral relations with the two most vociferous claimants to South China Sea waters, Vietnam and the Philippines".

[387] "China averts collision in South China Sea", *Asia Times*, op. cit., 29 July 2011.

[388] The breadth of these different proposed cooperative activities seems to make it unlikely that China is merely using them as a delaying tactic. Fravel, "All Quiet in the South China Sea", op. cit.

[389] The missing area of cooperation is safety of navigation and communication at sea. 东盟高官聚首北京促落实《海南各方行为宣言》 [ASEAN top officials gather in Beijing to push for the implementation of the Declaration on the Conduct of Parties in the South China], 外交部网站 [foreign ministry website], 14 January 2012.

[390] Crisis Group interviews, Beijing, January and February 2012.

[391] "China actively enhances friendly cooperation with its neighbors and works with them to promote a harmonious Asia. China calls on countries in the region to respect each other, increase mutual trust, seek common ground while putting aside differences, safeguard regional peace and stability, and settle disputes including those over territorial claims and maritime rights and interests through dialogue and friendly negotiation". Section III: China's Foreign Policies for Pursuing Peaceful Development, "White Paper on China's Peaceful Development", State Council Information Office, 6 September 2011, www.china.org.cn/government/whitepaper/2011-09/06/content_23362744.htm.

[392] Crisis Group interview, scholar at a Vietnamese diplomatic institute, Hanoi, July 2011.

in order to remain "a good neighbour, friend and partner of other Asian countries".[393]

From mid-2011, senior officials have repeatedly reaffirmed Deng Xiaoping's guidelines to put aside maritime disputes to promote economic cooperation. In his August 2011 meeting with Philippine President Aquino, President Hu Jintao stated, "the countries concerned may put aside the disputes and actively explore forms of common development in the relevant sea areas".[394]

E. HIGH-LEVEL BILATERAL EXCHANGES

The Vietnamese Communist Party Secretary General Nguyen Phu Trong's visit to Beijing between 11 and 15 October 2011 confirmed this new approach. In line with Beijing's strategy to appease claimants with economic incentives, Nguyen Phu Trong secured economic support from China during the trip.[395] More significantly, the two countries signed a bilateral agreement including six basic principles to the settlement of the maritime disputes,[396] affirming commitment to regional stability and to a solution based on international law, and setting up a hotline mechanism to manage any imminent conflict.[397] Within China, the fact that the negotiations were bilateral was seen as a victory.[398] Informally, both countries agreed to stop publicly criticising the other over the disputes and to avoid the type of inflammatory rhetoric that had increased tensions earlier that year.[399] Beijing also intended that the visit play a calming role in the region,[400] and reciprocated with Vice President Xi Jinping travelling to Hanoi on 20 December 2011.[401] Since then, China and Vietnam have begun to implement their agreements by establishing a working group to demarcate and develop the southern portion of the Gulf of Tonkin near the disputed Paracel Islands.[402]

At the same time, China has also taken steps to improve its relations with the Philippines and calm the issue of territorial disputes. During Filipino President Aquino's five-day state visit to China starting 30 August 2011,[403] Beijing sought to assuage regional tensions with economic incentives as Aquino reportedly brought home $13 billion worth of planned Chinese investments,[404] while the issue of the South China Sea was only briefly mentioned in the joint statement.[405]

These overtures to South East Asian countries were part of a deliberate effort by Beijing to focus on its relations with the region. When Premier Wen Jiabao delivered his work report to the National People's Congress on 5 March 2012, relations with neighbouring countries were prioritised over all other international relationships, including with developing nations or major powers, the first time this had been done.[406]

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[393] Crisis Group interviews, Beijing, January and February 2011. Section III "White Paper on China's Peaceful Development", op. cit.

[394] "China, the Philippines agree to downplay disputes", *China Daily*, 31 August 2011.

[395] During the trip, a Five-Year Economic Trade Cooperation Development Plan was signed. "Hu Jintao holds talks with Nguyen Phu Trong", foreign ministry website, 12 October 2011, www.MFAprc.gov.cn/eng/wjdt/wshd/t866965.htm.

[396] These principles included: 1. Ensure the region remains a territory of peace and cooperation; 2. Continue negotiations, seeking long-term solutions acceptable to both sides; 3. Implement the DOC; 4. Discuss temporary measures that do not affect the stances and policies of either country; 5. Make progress on easy issues first and difficult issues later, pursue environmental protection and scientific research; 6. Hold meetings between heads of government and set up a hotline mechanism to deal with sea-related issues. For full text of the basic principles see "Vietnam, China sign agreement on basic principles guiding settlement of sea issues", Nhan Dan Online, 12 October 2011, www.nhandan.com.vn. Vietnam refers to the South China Sea as the East Sea in its official document. "关于指导解决中华人民共和国和越南社会主义共和国海上问题基本原则协议" ["Agreement on the basic principles guiding settlement of sea issues between the People's Republic of China and the Socialist Republic of Vietnam"], foreign ministry website, www.fmprc.gov.cn/chn/pds/ziliao/tytj/tyfg/t872687.htm.

[397] "China, Vietnam agreement on sea dispute", United Press International, 12 October 2011.

[398] Foreign Ministry Spokesman Liu Weimin said the Sino-Vietnam joint declaration played an important role in promoting China and Vietnam's long-term relationship. A Chinese commentator, Xue Baosheng, wrote that Vietnam took a "sensible step" to "correct its own mistake" by sending Nugyen to China. 薛宝生 [Xue Baosheng], "中越联合声明奏响的是和平发展之曲" ["The Sino-Vietnam joint declaration strikes a tune of peaceful development"], *China Net*, 17 October 2011. http://opinion.hexun.com/2011-10-17/134275495.html.

[399] Crisis Group interview, Beijing, January 2012.

[400] Crisis Group interview, Beijing, January 2012. The visit also increased suspicion in the region that Beijing had "done a deal" with Hanoi. Crisis Group interview, Manila, January 2012.

[401] "Vice President Xi Jinping arrives in Hanoi, Vietnam for visit", foreign ministry website, 20 December 2011.

[402] Fravel, "All quiet in the South China Sea", op. cit.

[403] The visit was originally planned for April 2011, but was postponed after the Reed Bank incident in March.

[404] "Aquino brings home $13 billion worth of China investments", *The Gulf Today*, 5 September 2011.

[405] Carlyle A. Thayer, "Will the Guidelines to Implement the DOC Lessen Tensions in the South China Sea? An Assessment of Developments Before and After their Adoption", paper to Third International Workshop on the South China Sea, 3-5 November 2011, p. 16.

[406] Tan Yingzi, "Focus turns to good neighborly relations", *People's Daily*, 8 March 2012.

VII. CONCLUSION

Beijing's shift toward a more moderate approach in the South China Sea in mid-2011 was rooted in the desire to repair some of the damage done to regional relationships that had led to an expanded U.S. role in the region. In this context, Beijing took several steps to reduce regional tensions and the risk of conflict in the South China Sea. By signing the Guidelines for the Implementation of the DOC, China sent a message to ASEAN that it had not closed the door to multilateral talks. By engaging in high-level diplomatic outreach in the region, it helped calm the war of words. By deepening its political relationship with Vietnam, Beijing has shown willingness to work on one of its thorniest regional bilateral relationships. It also took some steps to reassure its neighbours about its territorial claims, going so far as to say that it would present a claim based on UNCLOS.

In the longer term, however, maintaining a more moderate approach will be difficult in the absence of a consistent overarching policy executed uniformly throughout the different levels of government. The proliferation of institutional actors in managing the South China Sea presents both a source of tensions and a major hindrance to China's diplomatic efforts to resolve the disputes. In addition to the coordination problem, most of the agencies involved are traditional domestic policy actors with little knowledge of foreign policy priorities. They often act exclusively in their own interests, ignoring broader policy implications. Furthermore, there is little legal clarity on what exactly is to be protected or defended and nationalism continues to restrict Beijing's policy options.

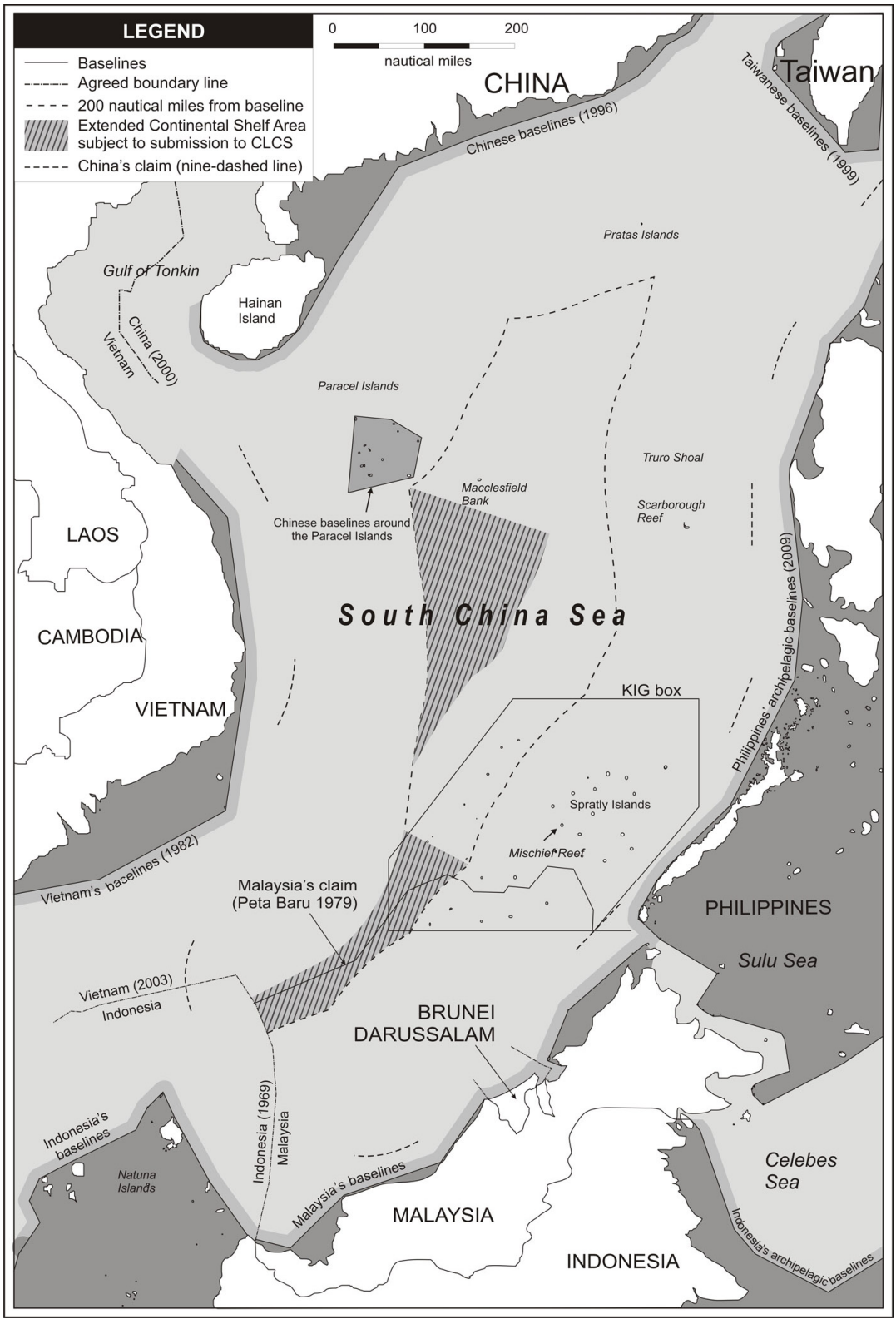
While much of the assertiveness and incidents at sea to date are an outgrowth of Beijing's inability to overcome structural challenges, there are benefits to ambiguity, which allows it to act assertively at times. China's ability to moderate its approach to the South China Sea between mid-2011 and 2012 suggests that it is able to exert some control over its maritime forces and local governments when it so chooses, but sees a degree of ambiguity as in its interest, giving it the freedom to take a more hardline position when deemed necessary.

Any future solution to the South China Sea dispute needs to address the problem of China's mix of diverse actors and construct a coherent and centralised maritime policy and law enforcement strategy. The escalating tensions since 2009 have dealt a severe blow to Beijing's relationships with its South East Asian neighbours and gravely tarnished its image both regionally and internationally. While some efforts have been made to patch up diplomatic ties since mid-2011, the longer-term situation in the South China Sea will remain volatile in light of China's internal coordination problems and the legal confusion surrounding the nine-dashed line.

Beijing/Brussels, 23 April 2012

APPENDIX A

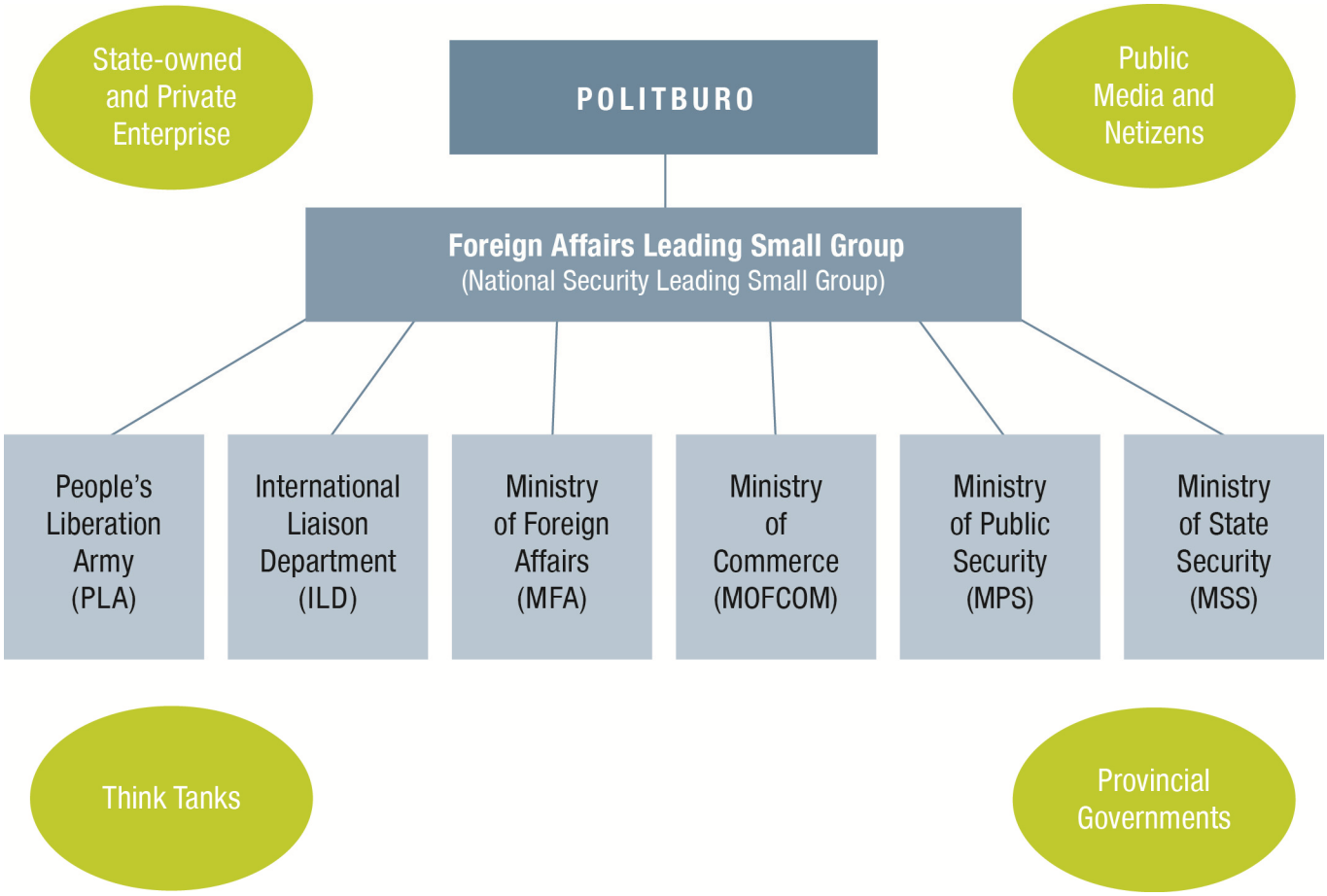
MAP OF SOUTH CHINA SEA



Prepared by I Made Andi Arsana, Department of Geodetic Engineering, Gadjah Mada University, Indonesia; Australian National Centre for Ocean Resources and Security (ANCORS), University of Wollongong, Australia. Included with Permission.

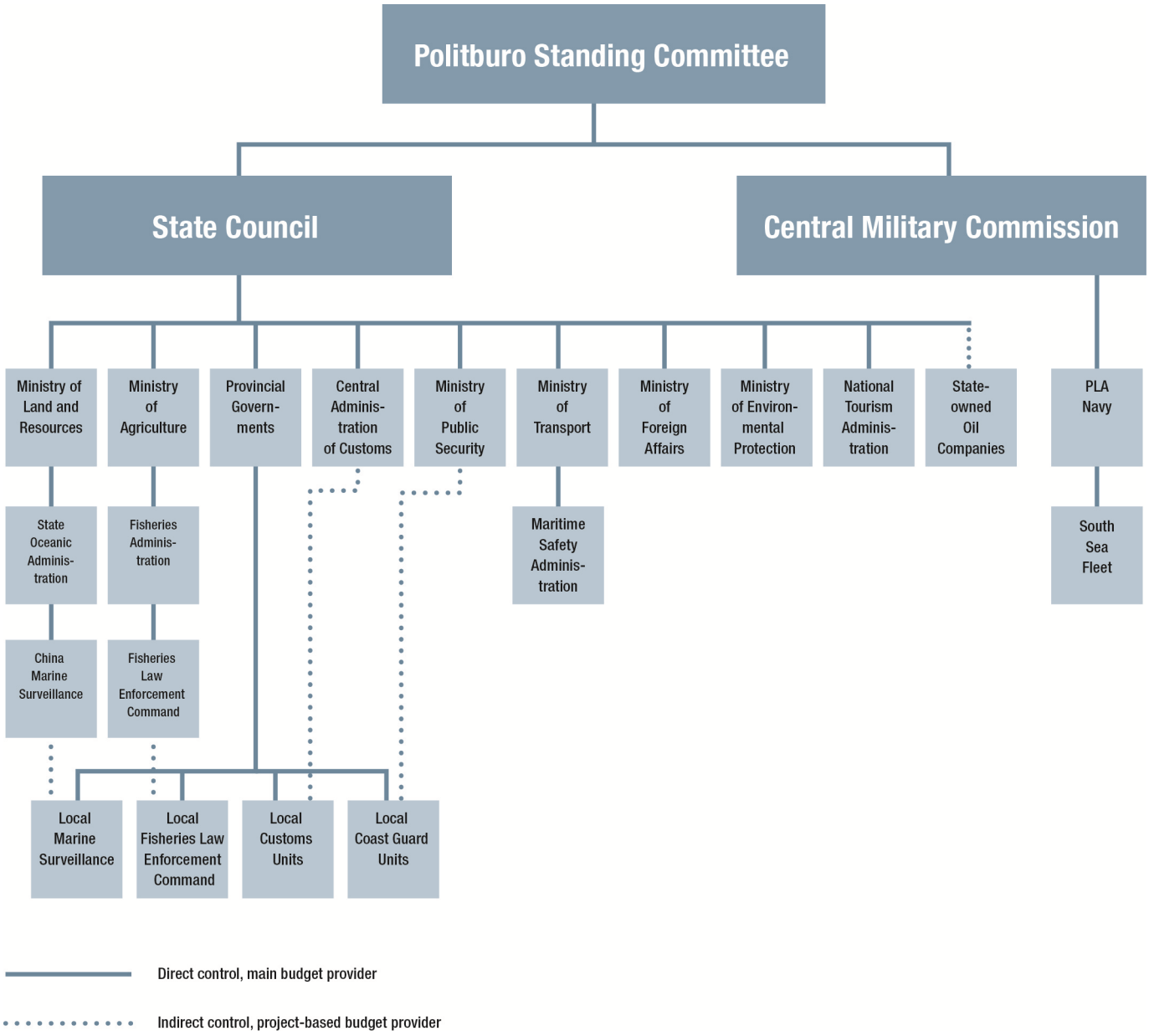
APPENDIX B

ORGANIGRAMME OF CHINESE FOREIGN POLICY ACTORS



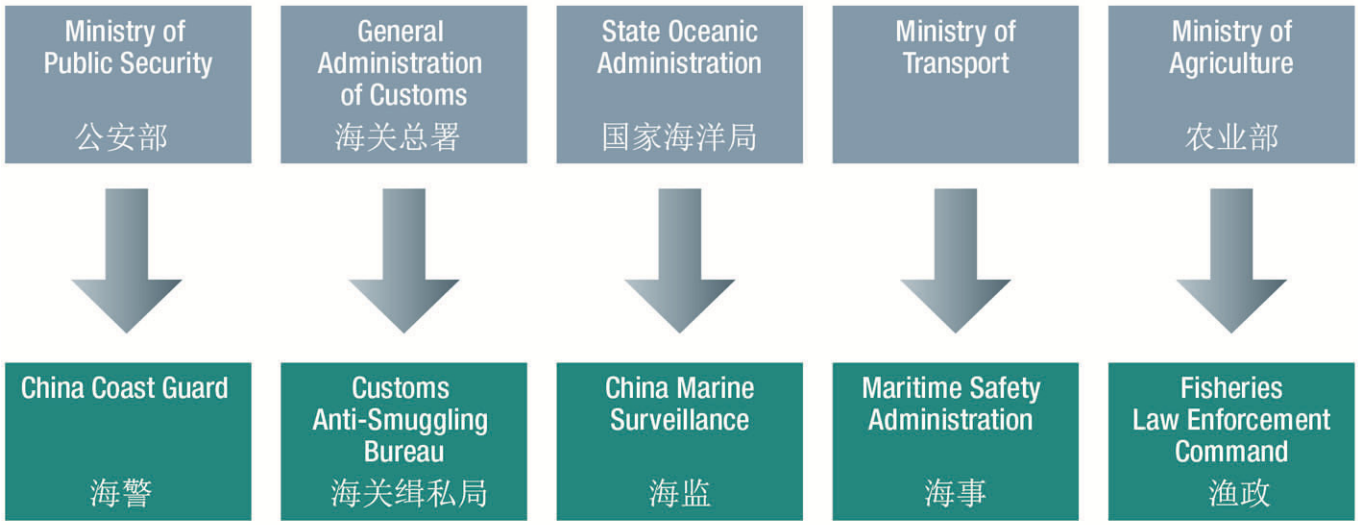
APPENDIX C

ORGANIGRAMME OF KEY ACTORS IN THE SOUTH CHINA SEA



APPENDIX D

ORGANIGRAMME OF LAW ENFORCEMENT AGENCIES IN THE SOUTH CHINA SEA



Role: patrolling territorial waters; anti-smuggling, anti-piracy; maritime policing and ship inspections; harbour and coastal security; research and surveying; search and rescue; fisheries protection. Mostly operates in the near sea.

304 small patrol boats (100+ tonnes), 149 small cutters (500+ tonnes), 19 mid-size cutters (1,500+ tonnes) and 8 large cutters (3, 500+ tonnes) as of 2007.

Prefix: Haijing-##

Largest vessels: *Haijing*-44068 (600 tonnes, 37mm gun); *Haijing*-1001 (Pudong-class cutter, 1617.5 tonnes, 37 mm gun); two former Type-053 *Jianghu*-class frigates (dual 37 mm guns, dual anti-aircraft machine guns).

Role: Anti-smuggling, mostly patrols in territorial sea.

Approximately 212 vessels.

Small number of armed patrol vessels.

Prefix: Haiguan-##

Role: Patrolling territorial waters; protecting China's maritime sovereignty; protection of ocean environment and resources against illegal or harmful activities.

280 surveillance vessels, nine aircraft.

Prefix: Haijian-##

Largest vessel: *Haijian*-50 (3,000 tonnes, unarmed), *Haijian*-83 (3,000 tonnes, unarmed).

Major expansion planned by 2020: 240 patrol vessels, including four 1,000 tonne-class, two 1,500 tonne-class and one 4,000 tonne-class, and seven aircraft.

Role: Supervision of maritime traffic safety and security, prevention of pollution from ships, inspection of ships and offshore facilities, navigational safety measures (including Search and Rescue, Aids to Navigation and the GMDSS), administrative management of port operations, and enforcement of maritime safety law; also responsible for maritime accident investigation.

207 patrol boats; majority small vessels, 2 ships over 1,000 tonnes

Prefix: Haixun-##, Haibiao-##

Largest vessels: *Haixun*-31 (3,000 tonne cutter, helicopter-equipped); *Haixun*-11 (3,000 tonne cutter).

Target of significant expansion, 5,400 tonne cutter to be added in 2012.

Role: Enforcement of laws concerning fishing and maritime resources in all the waters claimed by China; protecting Chinese fishing vessels and personnel, resolving disputes over fishing activities, preventing illegal fishing, protecting maritime resources and protecting China's maritime sovereignty.

1,300 vessels in total, including many small vessels operating on rivers, lakes and the near sea; 9 patrol boats over 1,000 tonnes.

Prefix: Yuzheng-##

Largest Vessels: *Yuzheng*-88 (15,000 tonnes); *Yuzheng*-310 (2,580 tonnes) & *Yuzheng*-311 (4,550 tonnes) both of which can accommodate helicopters.

Some ships fitted with machine and anti-aircraft guns.

Five ships of over 3,000 tonnes to be added before 2016.

APPENDIX E

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